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Probation Service
Work on Bail
with the
Crown Prosecution
Service

Interim Report
on the Implementation
of the Probation Initiative
"Diversion from Custody
and Prosecution,"
May 1987

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Introduction: A New Kind of Bail Work

There is nothing novel in the idea that probation services have a useful role to play in the bail process. For years, probation officers throughout England and Wales have been working on bail issues in a wide variety of ways. Many probation services, for example, provide hostel accommodation for defendants on bail when requested to do so by magistrates, defence solicitors, or the police; several prison-based probation officers assist prisoners on remand in their efforts to obtain pretrial release; and some probation services have used ancillary workers to verify the local addresses and community ties of defendants held in custody overnight by the police.

The probation bail work described in this report, however, is different. The difference lies not in the type of work performed, for the new schemes incorporate many familiar methods: hostel accommodation is provided, remand prisoners are assisted, and addresses are verified. The difference is that the information known to the probation service—both about available bail resources and about individual defendants' suitability for bail—is here supplied to the Crown Prosecution Service (CPS) rather than directly to the magistrates' courts. Though this may seem a small innovation, it has broad implications, potentially bearing both on the numbers of defendants remanded in custody and on the future development of the CPS.

This new kind of bail work is being developed through several pilot schemes as part of a broader probation initiative. That initiative was launched in the spring of 1986 with the publication of a paper, "Diversion from Custody and Prosecution," sponsored by the Association of Chief Officers of Probation (ACOP).

The authors of that paper saw the new Crown Prosecution Service as a potential catalyst for significant change in the operation and organization of criminal justice in England and Wales. They argued that the probation service nationally, as the principal social work service within the criminal justice process, ought to participate actively in this process of change, helping to shape new developments while re-examining existing probation practices in their light. Their paper proposed that individual probation services ought to explore together the ways in which they might professionally interact with the CPS on issues relating to bail and to the decision to prosecute.

In January 1987, the first three pilot schemes began formal operations in the Manchester City, Leicester City, and Newcastle upon Tyne Magistrates' Courts. Since then, two more pilot schemes, in Dorset and Staffordshire, have joined their ranks. A sixth pilot scheme, in Suffolk, will begin operations in June, and more are being planned for the summer.

The focus on the CPS is reflected in every aspect of the bail work undertaken by these pilot schemes, from the explanation that the interviewers give defendants to the format in which the probation officers provide information. New procedures for interviewing defendants in police cells have been designed to protect confidential information. New liaisons have been arranged between probation officers in court and in the field to assure the proper exchange of information about clients. New forms have been prepared to keep the information relevant and concise, and copies are provided for the defence to guarantee openness and to protect against error.

The new focus has also required unusual cooperation among criminal justice agencies. Even beyond the crucial relationship between probation services and the CPS, these schemes depend upon the assistance of police forces, magistrates, justices' clerks, and defence solicitors. In some areas, representatives from all these groups have joined local advisory committees to assist the probation service with the development of their work.

Each scheme is designed, staffed, and controlled by the local probation service. Each scheme is, therefore, slightly different from the others, but they share a common set of principles, practices, and procedures. Formal coordination of the schemes is provided by a national steering committee within ACOP, and all are assisted by the Vera Institute of Justice.

The Vera Institute of Justice will monitor all of this pilot work until the end of 1987 and will thereafter prepare a full assessment. In the meantime, however, concern about the numbers of defendants remanded in custody and interest in the development of the CPS have grown to the point where it seems useful to provide a progress report.

Although this report is necessarily tentative about what has been and can be accomplished through these schemes, it attempts to provide specific answers to four basic questions: Why have the probation services embarked on this new kind of bail work? How they are doing it? What early lessons can be learned? And where might we go from here?

The CPS Role in the Bail Process

The Prosecution of Offences Act of 1985 established the CPS as an independent, national service responsible for the prosecution of all charges commenced by the police. Less widely noticed, the Act also worked an important though subtle change in the structure of bail decision-making.

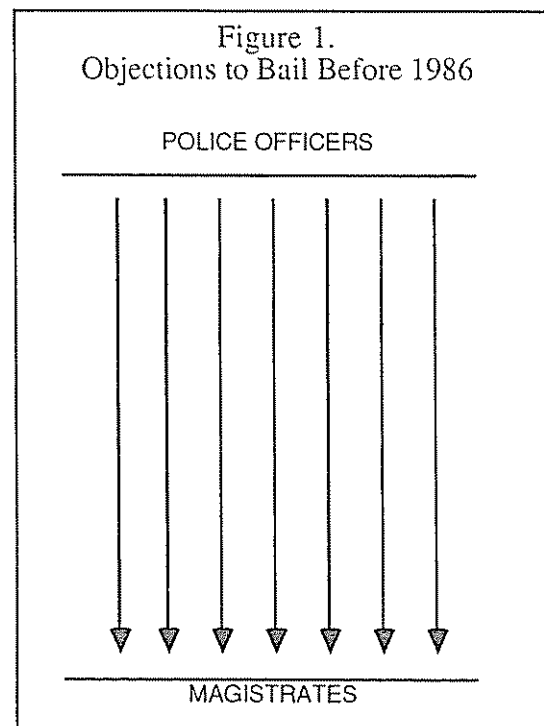
Objections to Bail Before 1986

Before the arrival of the CPS, the police were responsible for putting any objections to bail before the magistrates at the time of a defendant's first appearance. In practice, this meant that every year in every court hundreds of police officers were formulating objections to bail and then relaying these to scores of magistrates. (See Figure 1.)

This process lacked any focal point. Even a moderately busy court might have more than a hundred magistrates in a year dealing with its custody cases. The individual magistrates, with very little information on which to base a decision, and with less experience than the police in such matters, often deferred to the professional judgment of the police on matters of bail. Yet, in practice, this meant deference, not to the carefully considered judgments of senior officers, but to requests fashioned with little time in the hours between charge and first appearance. A court's bail practices, therefore — whether strict or liberal — were the product of countless independent

decisions taken by the almost limitless permutations of police officers and magistrates passing through the courtrooms.

The Bail Act of 1976 provided an important, new set of principles to guide bail decisions, but it did not attempt to alter this structure. The Act defined a specific language and established a logical sequence



Before 1986, recommendations on bail from hundreds of police officers were relayed to hundreds of separate magistrates.

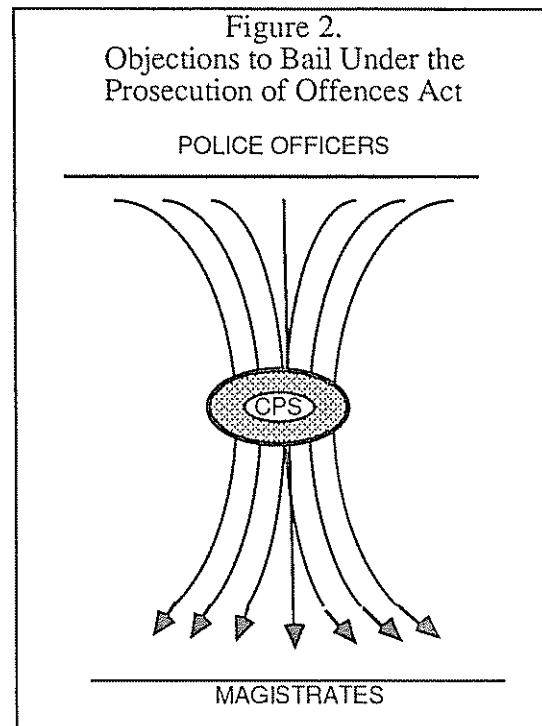
in which bail decisions were to be made, and it clearly defined the specific options available to the court. Yet the objections to bail continued to flow from countless police officers to a very large number of magistrates.

Where individual police forces employed full-time, prosecuting solicitors, bail objections were subjected to some amount of screening in some cases, but it is easy to exaggerate the extent of this screening. Prosecuting solicitors seem to have been more or less careful to ensure that the bail objections proposed by the police were presented to courts in terms acceptable under the Bail Act; but if the objections were legally proper on their face, few prosecuting solicitors had the time or responsibility to question the necessity for custodial remands in individual cases.

The Prosecution of Offences Act

The Prosecution of Offences Act of 1985 did not change the substantive law of bail, but it significantly altered the bail process. Sections 3(2)(a) and 15(3) of the Act took from the police all responsibility for making objections to bail and gave it instead to the new CPS. The police may propose objections to bail to the CPS, but the CPS alone decides whether or not to put these or other objections to the court.

The significance of this shift of responsibility to the prosecutor has been enhanced by the manner in which the CPS has deployed its staff. Although most offices continue to face severe staff shortages requiring them to hire temporary agents to appear for the Crown in several courts, many CPS offices have chosen to assign a small group of their own professional staff, rather than agents, to the courts dealing with custody cases at first appearance. As a result, a small handful of professional prosecutors now receive almost all bail objections proposed by the police and must decide what objections, if any, they will put to the court. In short, the CPS has become the focal point for bail decisions. (See Figure 2.)

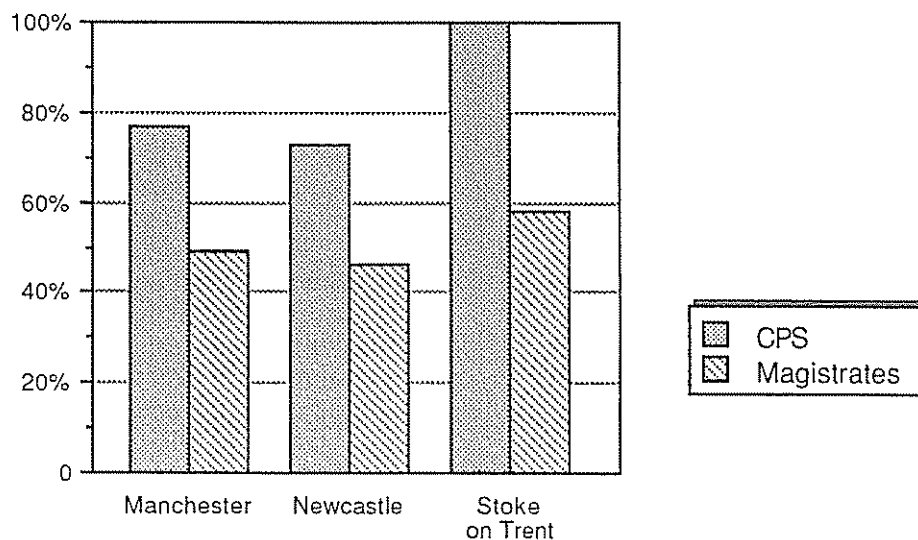


Since the introduction of the CPS, all police recommendations on bail are reviewed by a small number of prosecutors in each branch.

The significance of this change in structure is already apparent through monitoring conducted by the Vera Institute since December 1986. In each of three pilot courts, we looked at all cases in which the prosecution suggested a custodial remand. We then computed the proportion of these cases handled by each individual prosecutor, and the proportion in which each individual magistrate served as chair of the bench. By comparing the six prosecutors and six magistrates handling the largest percentages of these cases, we found that in every court the six prosecutors dealt with a far greater share of the total cases. (See Figure 3.)

These prosecutors are therefore in a powerful position. The judgment of a half dozen prosecutors in these courts may well have a broader impact on custodial remands than the views of the same number of magistrates or constables. The prosecutor, of course, only makes suggestions to the court; the decision to grant or withhold bail remains with the magistrates. Yet the views

Figure 3.
Percent of Total Requests for Custodial Remands
Made or Decided by the Six Prosecutors and Bench Chairpersons
Most Frequently Appearing in Three Pilot Courts



Notes: Figures for Newcastle are based on monitoring of the pilot scheme during January and February 1987. Figures for Manchester and Stoke on Trent are based on pre-pilot surveys conducted respectively in December 1986 and February to March 1987. All figures are based on requests for custodial remands at first appearance only. Comparative data is not available for Leicester.

of the prosecution on that subject are frequently decisive. In theory, then, by conferring on a handful of individuals in the CPS the independent discretion to oppose bail or not, the Prosecution of Offences Act has changed the nature of the bail process as much, perhaps, as did the Bail Act a decade earlier.

Independence in Practice

Legislation has positioned the CPS at the focal point of the bail process, but it has not determined how, in practice, the new Service will behave. It is one thing to confer on prosecutors the responsibility for independent decision-making, but it is quite another to give them the time, information, and guidance to make the actual decisions.

The decision whether or not to oppose bail would seem particularly troublesome in this respect, for there are few if any decisions of similar importance in the criminal justice process that are generally taken in so little time and with so little information.

Time is the most obvious problem. When the police object to a defendant's bail, they keep the defendant in custody after laying the charge. This defendant will then usually appear before the magistrates for the first time the following morning. The police use the time before that appearance to compile a file for the CPS, but the file does not generally reach a prosecutor until a few minutes before the court is to sit. On a good day, the prosecutor will have a minute or two in which to glance at the papers before court begins. On a bad day, the prosecutor will read the papers for the first time as the previous defendant is being led from the dock.

The quality of available information is also a problem for prosecutors trying to form independent judgments on the advisability of a custodial remand. The police will generally explain in a word or two the reasons why they suggest a remand in custody. Some reasons are fairly specific: the defendant threatened a witness, the offence was committed on while on bail for a similar offence, or the defendant has failed to answer

bail several times in the past. Others are generic: the seriousness of the offence, or the lack of a fixed abode. In any case, however, the file is unlikely to contain much against which the prosecutor can weigh such a suggestion, other than the apparent strength of the evidence of guilt.

With lack of time and lack of knowledge both working against the prosecutors, it is unfortunate that they also receive relatively little guidance in the exercise of their new discretion. Having inherited two principal decisions from the police—whether or not to terminate proceedings and whether or not to oppose bail—the CPS have concentrated almost all their training on what they call "discontinuance" or "case review." The Code for Crown Prosecutors, for example, which the Act requires the DPP to produce as guidance for the new service, deals at length with the principles that should guide the selection of charges and the decision to discontinue proceedings; but the Code contains not a single word about bail. As for the rest of their training, prosecutors describe this as doing little more on the subject of bail than referring them back to the general terms of the Bail Act of 1976.

In practice, then, prosecutors are hard put to construct an independent approach to bail. More than half a year after the arrival of the CPS, it is still common to hear Crown Prosecutors at a defendant's first appearance simply report that they have been "instructed by the police to oppose bail" or similarly to request "the conditions sought by the police." Despite the rhetoric of independence and the end of the solicitor-client relationship, they have little else besides these "instructions" with which to work.

In this new situation, the probation and prosecution services each have something to offer the other. The CPS can offer the probation service a more effective focus for its efforts to divert defendants from custodial remands. The probation service can offer the CPS a second source of information that will enhance its capacity to act independently.

The ACOP Initiative

The ACOP Initiative is designed to tap this potential source of mutual benefit.

By routinely supplying the CPS in a timely fashion with accurate information both about defendants' suitability for bail and about available bail resources, the pilot schemes hope to overcome the largest obstacle that impedes the CPS in the practical exercise of its new role in the bail process: the lack of timely information. As a consequence, the schemes hope to reduce the number of unconvicted defendants remanded into custody at early court appearances, and to do so more efficiently than would be possible through work focused directly on the courts.

The potential difficulties in carrying out such an enterprise are daunting. There are practical concerns about where the information is to come from and how it will be assembled in time. There is a need for safeguards to prevent the improper disclosure of information. There are territorial concerns affecting the relations between the schemes and the police, the defence solicitors, the magistrates, the justices' clerks, and, indeed, the rest of the probation service. Finally, there is the awkwardness inherent in coordinating pilot work between a single, national prosecution service and several local probation services.

The ACOP Initiative has been organized to meet each of these issues at an appropriate level by taking advantage both of ACOP's national position and of the decentralized structure of the probation services themselves.

Nationally, the schemes are coordinated by a steering group, sponsored by ACOP, on which each of the participating probation services has a place. Issues of principle that require a coordinated response can be debated and decided here. For example, before any pilot work began, this committee resolved that the schemes should make inquiries and provide information only with the consent of the defendant; that they should provide information to the CPS in writing, with copies going to defendants' legal representatives; that the pilot schemes should not restrict themselves to defendants previously known to the probation service; and that the pilot schemes should not include any new forms of compulsory supervision for defendants on bail.

Most of the potential difficulties, however, have been addressed in the specific

context of particular courts. Each court has its own arrangements for the listing of custody cases at first appearance, its own impediments to allowing physical access to defendants prior to court, and its own understanding of the boundaries separating the work undertaken by the defence, the police, and the probation service. Locally, therefore, each participating probation service has developed its own mechanisms for consulting other professional groups in order to fit its own scheme within these necessary constraints. One measure of the success of this decentralized strategy has been the willingness of other agencies to adjust their own routines to facilitate the work of the schemes.

Finally, the local and national levels of organization have been linked in the process of program development. Each local scheme, for example, had to begin by discovering how bail matters were already being handled in their courts. In Manchester, Newcastle, and Stoke on Trent, this was accomplished through pre-pilot surveys conducted by the probation services and compiled by the Vera Institute. The results of these surveys were then shared both with interested groups locally and with the national steering committee as the scheme was designed in detail. When the design was implemented in each area Vera continued to monitor the work, and the early results were again shared at both a local and national level as adjustments to the scheme were discussed. This cycle of monitoring, consultation, planning, and implementation is repeated every few months, allowing each scheme to develop and refine its own techniques based on its own experience, the advice of other professionals locally, and the experience of other schemes. By the end of 1987, this method should have produced a variety of practical models for effective bail work with the CPS.

The Mechanics of the Pilot Schemes

Consultation & Collaboration

It is now commonplace to refer to the interdependence of the various agencies and professions that together superintend the criminal justice process. Cooperation between these groups is vital to the daily operation of the courts, but the need is that much greater on any new initiative.

These schemes in particular would be unable to operate without the good will and active assistance of several agencies. In Manchester, for example, long before the pilot scheme was scheduled to begin, the Assistant Chief Probation Officer in charge of the scheme convened a meeting of the Branch Crown Prosecutor, the Clerk to the Justices, and a delegate each from the Police Force and from the Law Society to discuss the proposed design. This group has continued to meet on a quarterly basis as an advisory committee to the local pilot scheme and has greatly facilitated the scheme's introduction. Similar meetings and advisory committees have since been organized in Newcastle, Stoke on Trent, and other pilot areas.

For the probation officers appointed to carry out the pilot schemes, this spirit of cooperation has produced invitations to spend one or more days observing the routine work of the crown prosecutors and police responsible for the particular courthouse. By sitting through a night-shift

in the police cells or by watching the avalanche of files that descend on a crown prosecutor on a typical morning, the probation officers have then been able to take account of the constraints under which these other services work as they design their own routines.

One practical result is that several of the pilot scheme officers now conduct their interviews with defendants arrested overnight before the defendants already on remand arrive in the court cells from prison. This requires an early start, but it prevents the schemes from further burdening the police at their busiest moment and it avoids competition with solicitors for precious time and space in the cells later in the morning.

Collaboration has also been arranged between the separate probation services. Coordination of policy is accomplished through ACOP's national steering committee, on which each of the participating services is represented. Equally important is the exchange of practical experience and the sharing of concerns between the probation officers themselves. This is encouraged through national pilot staff seminars, sponsored by ACOP and regularly attended by all the probation officers and senior probation officers responsible for the work of the schemes. These seminars also provide a convenient introduction to the work of the pilot schemes for officers from probation services contemplating similar work.

When completing the section that identifies the "factors . . . in favour of bail," the probation officers are encouraged to rely on factors from a standardized list. The list contains several two- or three-word phrases that relate to a defendant's reliability and stability in the community, issues generally recognized as relevant to the bail decision. These standard factors include:

- Verified Stable Address
- Good Community Support
- Strong Local Ties
- Demonstrated Reliability
- Hostel Place Available
- Appropriate Services Available

The information in support of any one of these factors varies greatly from case to case, but the schemes have agreed to adhere to certain guidelines in the preparation of these forms.

First, the Bail Information Sheet should be based on at least one contact with someone other than the defendant. Addresses, community ties, support, and reliability can be verified by relatives, friends, employers, doctors, probation staff familiar with the defendant, or in other ways, but the schemes will not rely entirely on the defendant. This guideline is not meant to suggest that defendants' own information is unreliable, but rather is designed to keep the role of the schemes distinct from that of defence solicitors. Information coming solely from defendants can more easily and appropriately be conveyed by those defendants or their legal representatives.

Second, the Bail Information Sheet should contain no information about the charged offence. Indeed, those conducting interviews with defendants are carefully instructed to avoid any discussion of the alleged offence. If, as often occurs, defendants themselves raise issues related to the charges, the interviewers are instructed to cut off such discussion and urge the defendant to bring those concerns to the attention of a solicitor.

Third, the Bail Information Sheet should only be completed and presented after defendants consent to participate in the scheme. Again, those conducting the interviews with defendants are instructed to explain the purpose of the interview and to

emphasize that the scheme will provide information to both the prosecution and the defence. The interviewer is instructed then to ask defendants if they consent to the interview. That consent may be withdrawn at any time before information is provided to the CPS. What neither the defendant nor the solicitor may do, however, is withdraw consent from the provision of only some part of the information collected by the scheme. If the defendant insists that a portion of the relevant information be excluded from the Information Sheet, then no information is provided at all.

Fourth, the Bail Information Sheet should not itself be provided to the court. The form is designed to complement the information that the police have presented to the CPS as part of the case file. The police form lists various factors against bail, while the probation form lists factors in favour of bail. When the CPS put the two together, they have a more complete picture than is supplied by either form alone. The presentation of information to the court, however, remains the responsibility of the lawyers on each side. By providing both the prosecution and defence with an additional source of information, these schemes hope to improve the quality of the presentations made to the court; but the probation form, like the police form, is not itself directly provided to the magistrates.

As for the "hostel places" and "appropriate services" mentioned as two of the standard factors in favour of bail, these should not include forms of compulsory bail supervision other than those already incorporated in probation bail hostels. Nonetheless, the schemes are designed to make maximum use of existing opportunities to assist defendants in the community during a period of remand. Thus, the "appropriate services available" in a particular case might include alcohol counselling provided by a voluntary organization, medical treatment that the defendant needs and wants, or mental health services provided by a local authority. It might also include services provided under an existing probation order, during a period on licence, or through voluntary aftercare for defendants recently released from custody. In other cases, the pilot scheme staff may assist defendants to obtain a place on a voluntary job scheme. In still others, former probation clients may be offered the chance

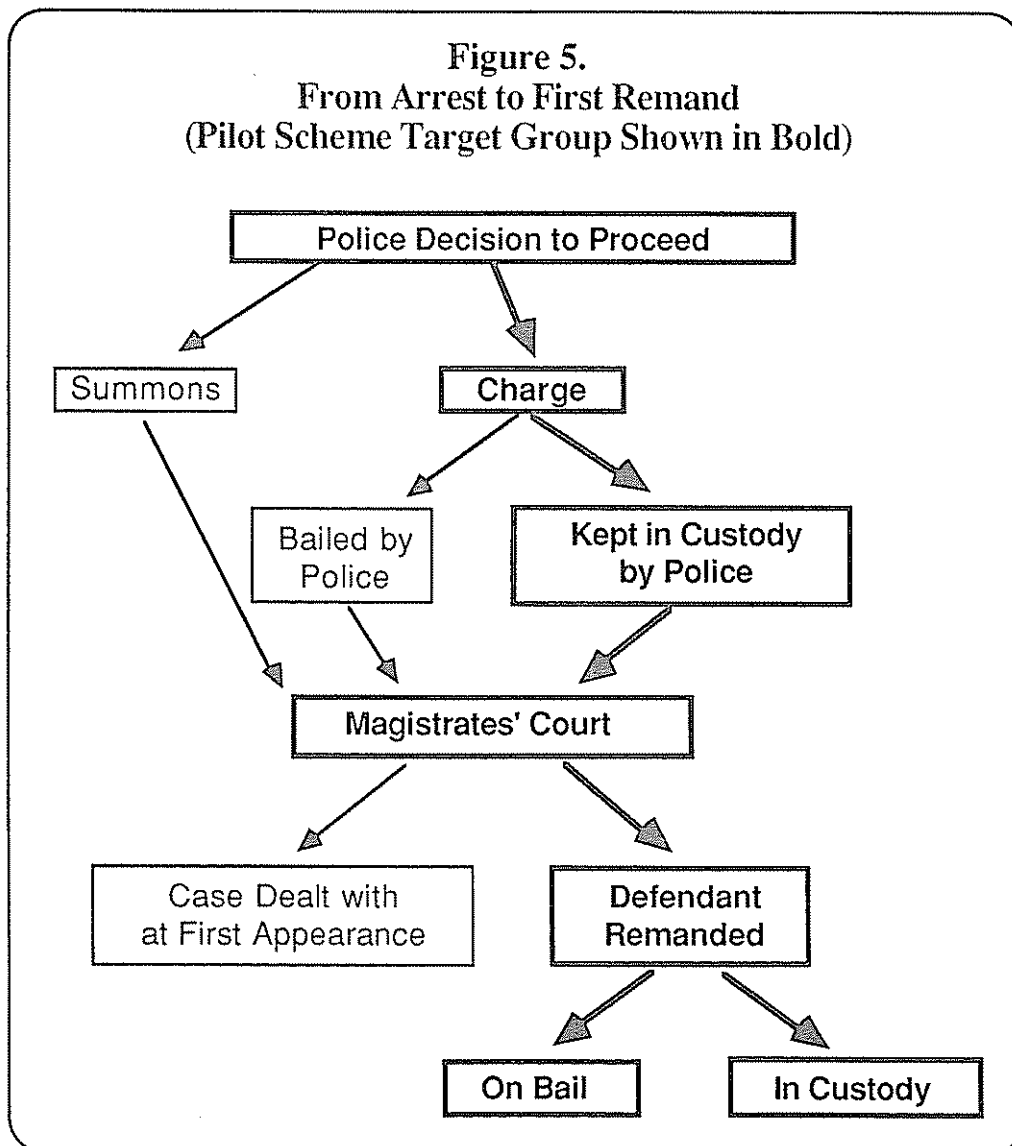
to renew their ties, on a voluntary basis, with a probation officer whom they already know and trust. The probation officers in the schemes try to visit the centres where voluntary services are available locally, so that they are better prepared to match clients with services and better able to arrange any necessary referral.

Timing & Target Groups

From the beginning, the pilot schemes have been determined to minimize the work they do with defendants who would be granted bail even without the intervention of the probation service, but they have also tried to intervene as early as possible with those defendants who would otherwise be remanded in custody. The schemes have therefore focused on defendants who arrive at their first court appearance having been kept in custody by the police. These

defendants comprise only a small subset of the cases that come before the magistrates each day, but they include nearly all of the untried defendants subsequently remanded in custody by the magistrates. (See Figure 5.)

Yet even this small part of the total work of a court can overwhelm the small staff of the schemes. In order to intervene in these cases at first appearance, the collection of bail information and the preparation of the Information Sheets must be accomplished in a matter of minutes. The defendants arrive in court cells between 8.00 and 9.30 a.m., and the courts begin to hear their cases between 10.00 and 10.30 a.m. It would be difficult enough within these time constraints merely to interview all the defendants, but to collect information from other sources as well requires the pilot scheme officers to make the most of every second.



Streamlining this process has been a major focus of work in every scheme since each began operating. With time, the officers have generally found that more efficient interview techniques can help them speed the work to some extent, but this alone is insufficient. At the very least, the schemes must find ways to target their work more narrowly, without excluding the defendants who are remanded in custody for substantial periods of time.

Two alternative strategies are now being implemented to narrow the target group, one in Leicester and another in Manchester and Stoke on Trent.

In Leicester, intervention beyond the provision of accommodation is attempted only after a defendant is actually remanded in custody. If, at a defendant's first appearance, the probation officer on the scheme believes that the provision or verification of an address may meet the objections to bail, the officer will either verify a private residence or arrange a hostel place. Such hostel placement has become quite sophisticated, making use of hostels in several counties to match defendants with particularly suitable regimes. If accommodation cannot be arranged in time for first appearance, additional work may be done and further information supplied prior to the defendant's second appearance.

Defendants who are remanded in custody for other reasons, and who therefore have not been interviewed by the officer at court, are subsequently interviewed by probation officers at Leicester Prison and Glen Parva Remand Centre. These interviews can be relatively short and to the point, because the scheme's court-based staff already has a record of whatever was said at the time of the custodial remand. The bail interview forms are then returned to the probation officer at the court, who makes additional inquiries and submits Bail Information Sheets in appropriate cases prior to the defendants' second appearance.

By splitting the original target group in two and delaying some intervention until defendants have actually been remanded in custody, the Leicester scheme avoids working with many defendants who have been kept in custody by the police but who are nonetheless bailed at their first

appearances in court. Yet the scheme continues to intervene in a significant number of cases at first appearance and is well positioned to intervene at second appearance when the need arises.

In Manchester and Stoke on Trent, the schemes have been able to narrow the target group without waiting for the result at first appearance. This has been possible through assistance received from several agencies, and illustrates the way in which it is hoped that these schemes will continue to develop.

At the first meeting of the scheme's advisory group in Manchester, the Branch Crown Prosecutor and the Superintendent representing the police shared with the probation staff a copy of the form on which the police provide details of each case to the CPS. Such forms are used by all police forces, but the design of the form varies from area to area. In Manchester, the fourth page of the form is devoted exclusively to objections to bail, including the police view as to whether or not conditions of bail will meet the objections.

It was clear to all that the information on this page would greatly assist the probation officer on the scheme to identify those cases in which the scheme could be most useful. The Branch Crown Prosecutor agreed, in principle, that the probation service could have this information, but he noted that the completed forms are available to the CPS only minutes before court begins. The CPS, therefore, would be unable to provide the information to the probation officer in time for it to be of any use. Instead, the police agreed to alter their own procedures so that copies of the fourth page of the form would henceforth be attached by arresting officers to the papers that accompany the defendants to the police cells at court. As a result, the probation officer on the scheme should now be provided a copy of the police objections to bail in all custody cases early each morning. This will allow the officer to narrow the target group to those actually at risk of custody.

These arrangements in Manchester became the model for similar procedures in Stoke on Trent, but the form used by the police in Staffordshire does not contain a single page conveniently devoted to bail.

Here, the police created a new, small form to be attached to the papers available in the cells that indicates simply whether the police are recommending bail on conditions or a custodial remand and, if the latter, on what grounds. These small forms are collected by the pilot scheme staff each morning, allowing them to target their work on the most appropriate cases.

As a result of these refinements to the schemes, each now operates under a unique combination of time constraints and targets. These are summarized in Figure 6.

No effort has been made to define target groups by reference to particular offences or to profiles of defendants. The schemes may prove to be more helpful in some cases than in others; but it is impossible to predict at this stage where their strengths will lie. Indeed, as pilot schemes, one of their purposes is to explore the limits of the role that the probation service can usefully play. The schemes have therefore avoided adopting these sorts of restrictions to cope with the pressure of time and numbers.

Staffing & Resources

Although previous bail work within the probation service has often been undertaken by ancillary workers or assistants, the Bail Information Sheets provided by these schemes are all prepared by probation officers. The use of fully qualified staff has been deemed necessary because of the professional skills required in this new role. Although the particular skills required vary somewhat with the design of the particular scheme, the officers regularly encounter several professional issues, including:

- *Liaison with the CPS:* The officers frequently provide the CPS with information derived from client interviews and from probation officers in the field. Handling such information properly requires an understanding both of the context in which it was obtained and of the uses to which it will be put. Not only must the officers occupying this post appreciate the professional issues involved in this role, but their colleagues in the probation service and the lawyers on both sides must have confidence that they do so.

- *The Decisions to Intervene:* The officers must choose whom to interview and, having done so, in which cases to provide information. Neither choice is straightforward. Each draws on the experience of the officer with defendants and with the court. For example, the officers must maintain the credibility of the schemes without avoiding serious cases; and they must provide information about available services in appropriate cases without unduly widening the net of pretrial supervision.

- *Motivating the Defendant:* The officers do not restrict their inquiries to a few, predetermined categories of information such as a local address and community ties. In addition to collecting information on these topics, the pilot scheme officers are encouraged to explore anything in a defendant's life that might, in a particular case, have some bearing on the defendant's reliability. Such an approach requires the officers to draw anxious defendants into appropriate conversation minutes before their first court appearance

As a result, the schemes in Leicester, Manchester, Newcastle, and Stoke on Trent all use probation officers to provide the bail information, and each of these officers is immediately supervised by the Senior Probation Officer in charge of the particular court. In addition, some of the officers are assisted by other staff in recording results, keeping files, or preparing forms. The precise division of responsibility between the professional and support staff varies from scheme to scheme, depending on its particular design.

Thus, the officer in Leicester has a full-time assistant; the officer in Newcastle has a half-time secretary solely to assist her; the officer in Stoke on Trent has the assistance of a half-time ancillary worker; and the officer in Manchester is assisted at times by the ancillary workers attached to the court team. The probation officers assigned to the schemes in Newcastle and Manchester devote themselves to the work full-time. The officer in Leicester has some additional responsibility for the preparation of social inquiry reports, but this is under review as the work of the scheme increases. The officer in Stoke on Trent does not prepare

Figure 6.
Timing and Targets for Defendant Interviews Prior to First Appearance in Four Pilot Schemes

Pilot Area	Defendant Interviews Commence	Defendants Interviewed	Interviews Concluded	Court Begins
Leicester	9.45 a.m.	Those who can be assisted with accommodation*	Noon	10.15 a.m.
Manchester	8.00 a.m.	Those for whom the Police are Recommending a Custodial Remand	9.00 a.m.	10.00 a.m.
Newcastle	8.30 a.m.	All Defendants Kept in Custody by the Police for First Appearance	9-9.30 a.m.	10.00 a.m.
Stoke on Trent	9.30 a.m.	Those for whom the Police are Recommending a Custodial Remand	Noon	10.00 a.m.

*In Leicester, defendants remanded in custody at first appearance who were not interviewed prior to their first appearances are interviewed at prison shortly after their arrival.

social inquiry reports, but does have additional responsibility for more general liaison with the magistrates' court.

The schemes do not perform their own monitoring separately from the collection of information required for the work. The Vera Institute monitors the schemes and assists in their design, implementation, and development. Funding

for this work of the Vera Institute is provided by the Home Office.

Early Lessons

False Starts

The introduction of these pilot schemes into the first four courts has not proceeded flawlessly. Although by the 1st of April 1987, all four appeared to be operating well, it may assist others interested in operating such schemes to note some of the problems that developed.

In Leicester, the coordination of the prison-based probation officers with the court-based team proved more difficult than had been anticipated. As a result, several dozen defendants in the first month slipped through the process that was meant to assist them before their second appearance. Even at the end of March, the probation officer in charge of the scheme there estimated that as many as six defendants each week were appearing in custody for the second time without having been interviewed.

In Manchester, operating the scheme during the principal officer's absence proved to be especially difficult, for no other officers had been sufficiently instructed in the techniques unique to the scheme. Several Bail Information Sheets submitted during one such period followed neither the structure of the form nor the guidelines for its use. This produced a series of complaints from clerks, defence solicitors, and, most vocally, from the CPS. The problem was soon identified through both the supervision process within the probation service and the monitoring

process for the pilot scheme, and the matter was soon resolved to the satisfaction of all; but the incident starkly demonstrated the capacity of these schemes to go wrong in visible and important ways.

Finally, in Stoke on Trent, on the eve of the scheme's launch, a letter complaining about the planned scheme was delivered to the probation service, signed by more than a dozen defence solicitors. The probation service had consulted with representatives of the duty solicitor scheme in the course of organising the scheme, but that process of consultation had apparently failed to meet everyone's needs. The scheme was delayed for a week while a further meeting was organised that included the clerk, the branch crown prosecutor, and more than thirty defence solicitors. By the end of the meeting, the solicitors were expressing general support for the pilot scheme; but again the potential for controversy and misunderstanding inherent in this sort of work had been made manifest.

These difficulties should not be allowed to distract observers from the efficiency, care, and sensitivity with which these schemes have been implemented. Days and months of planning and consultation have avoided countless similar problems and others potentially far worse. Yet it would be

foolish to ignore the warnings that these difficulties represent to others interested in such work.

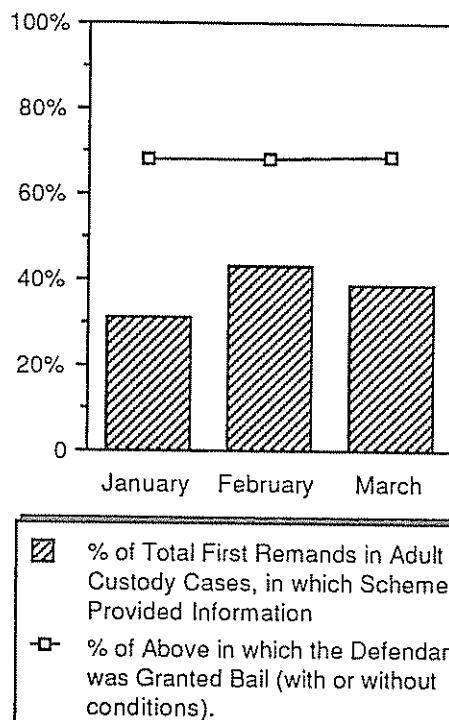
Preliminary Results

It is difficult to measure the success or failure of this sort of bail work. The decision to release a defendant on bail has so many components and is based on decisions by so many people that no single contribution can be said to have resulted in the person's release. Nor do statistics offer any escape from this predicament. Bail rates reflect a multitude of factors, from the mix of offences charged to the time of year. It is difficult to control for all such factors in the largest surveys, but even the most basic efforts in this direction are frustrated when the sample size is as small as that provided by the first few months of these pilot schemes.

Nonetheless, it is at least possible to describe what has happened where the schemes have been monitored consistently, and that consistency is best provided by the scheme in Newcastle. The Northumbria Probation Service was the first to launch its bail scheme with the CPS, and it is the only one that has reported the results in all overnight arrest cases consistently throughout its operation. For this scheme alone, the target group remains as originally defined: all adult defendants who are kept in custody by the police and who are then remanded at their first appearance.

In the first three months of 1987, the scheme in Newcastle recorded 253 defendants within the target group. In January, the scheme provided information in 31% of these cases, and 68% of the defendants about whom information was provided were then granted bail at their first appearances. In February, the rate of intervention rose from 31% to 43% and then settled slightly to 39% in March. Yet even with higher rates of intervention, the bail rate for these defendants remained at 68% in February and 69% in March. The scheme thus appears to be successfully expanding the numbers with which it works while maintaining a high rate of bail. (See Figure 7.)

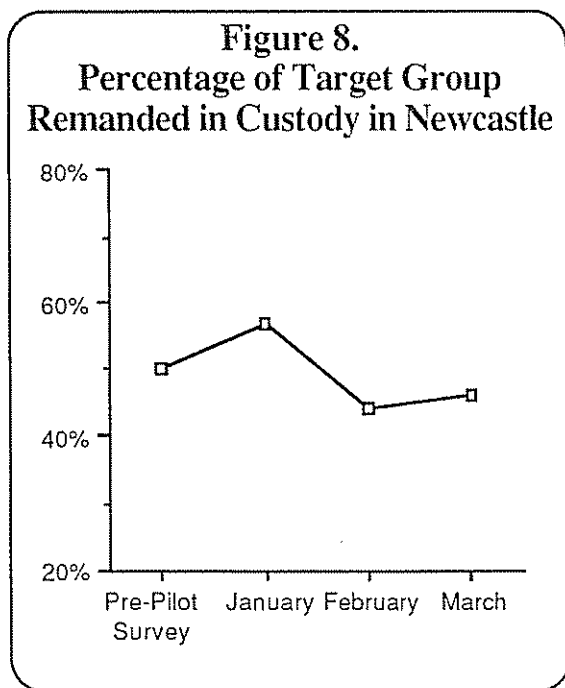
Figure 7.
Percentage of Defendants about whom the Newcastle Scheme Provided Information, and Percentage of These Granted Bail, Jan-March, 1987



The bail rate for the defendants in the target group during the pre-pilot survey in this court was only 50%, so the defendants with whom the scheme intervened in the first quarter of 1987 did substantially better as a group than the target group as a whole had done a few months earlier. It is theoretically possible that the higher rate of bail achieved by the scheme was due to some inadvertent selection of "easy cases" or to some other variation in the defendants held in custody by the police. By the end of 1987, we will have a large enough sample to be able to assess these possibilities, but these early figures provide some provisional evidence of success.

Even this rate of success does not translate into a massive reduction in the total proportion of adult defendants remanded in custody at first appearance. Indeed, the percentage of the total target group remanded

in custody rose slightly in January from that during the pre-pilot survey, but the rate did move below the pre-pilot level in both February and March. It is far too early to make any judgments about the scheme, but the figures taken together are encouraging. (See Figure 8.)



Potential for Improvement

The monitoring that the Vera Institute is providing for these schemes is designed to do more than measure their impact. Its principal function is to assist in the development and modification of the schemes during their first year of operation so that their impact can be broadened as widely as possible.

For example, one of the promises of these schemes was that they would provide controlled access to information held by the probation service that might assist the CPS in its new role. To this end, the pilot schemes try to determine early each morning which of the defendants within their target groups have previously had contact with the probation service. They then locate the relevant officers and files, to gather whatever useful information they can.

In January and February, the schemes in Leicester and Newcastle both were able to identify past probation contact

for most of the defendants whom they interviewed. Some of this was revealed by the defendants themselves, while some was revealed through a check of the probation service's central index. Neither scheme, however, was able to collect much information from this potentially valuable source, because neither was able to locate the relevant officer or file in the time available. Thus, although approximately half of the defendants interviewed had been in contact with the probation service since January 1986, the pilot staff retrieved information from this source for only about 15% of the defendants, less than a third of the cases in which they knew it to be available. (See Figure 9.)

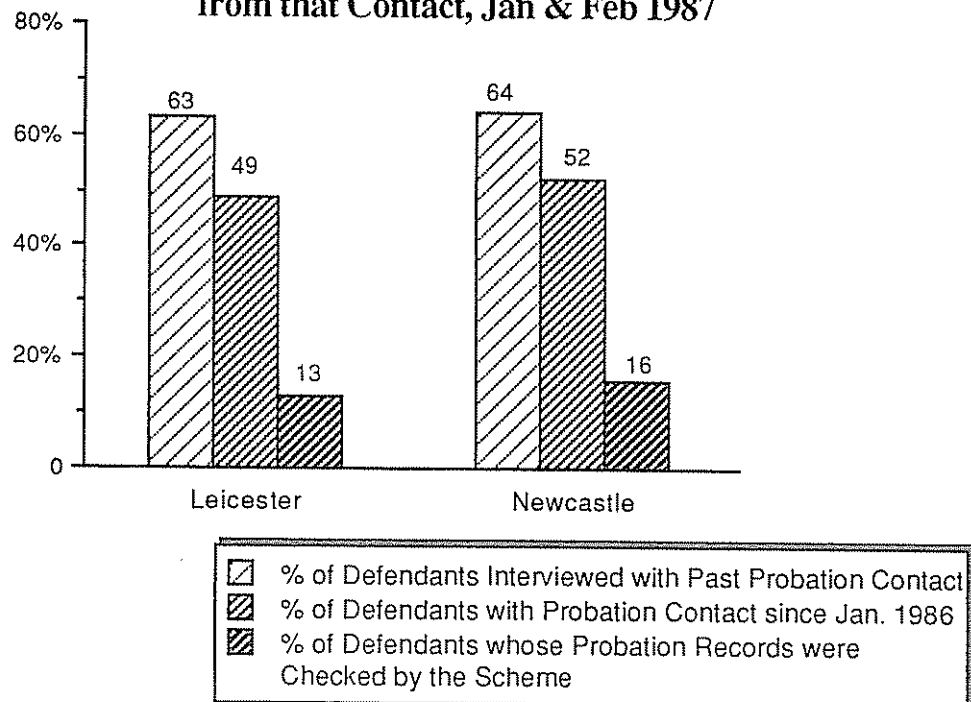
This gap was revealed through the monitoring process and, as a result, more efficient techniques for locating this sort of information and producing it quickly are now being developed in each of these schemes. In Newcastle, for example, while the probation officer conducts her interviews in the cells, her secretary now checks the names against the probation service central index. The secretary then telephones any field team that has had recent contact with a defendant in the cells, alerting the team and asking that the defendant's file be retrieved. When the scheme's probation officer returns from the cells, she can then telephone the teams and discuss the cases without delay. As the time available for all these calls is less than an hour, this advance warning to the field teams may greatly increase the number that can be contacted by the officer.

Impact of the Newer Schemes

The schemes in Newcastle, Leicester, and Manchester were the first to be established. As such, they provided much of the experience that has shaped the design of the schemes established more recently. Not only have the newer schemes benefited from the techniques developed in the other areas, but the monitoring itself has been more precise from the start. One result of this is that the newer schemes can provide a sharper picture than is available elsewhere of the potential impact that this new sort of bail work can make.

In Stoke on Trent, for example, the police agreed to provide information about their bail recommendations even before the

Figure 9.
Percentage of Defendants
Interviewed by Leicester and Newcastle Schemes
with Previous Probation Contact,
and Percentage in which Scheme Obtained Any Information
from that Contact, Jan & Feb 1987



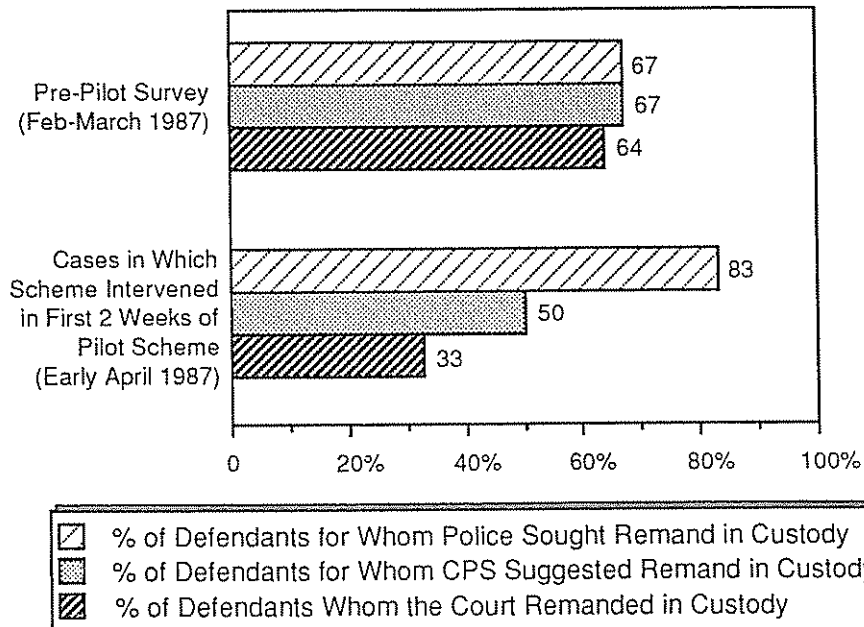
pre-pilot survey was undertaken, and the system for the delivery of that information was functioning well when the scheme began operation on the 1st of April. As a result, the monitoring in Stoke on Trent provides the first measure of the impact that these schemes are having with the CPS. The results from Stoke on Trent so far available are based on only a handful of cases, but they are dramatic nonetheless.

During the pre-pilot survey, the CPS adopted the police recommendation about bail at the first appearance in every adult custody case where the recommendation was provided to the probation service. The CPS then succeeded in obtaining a remand in custody from the court in all but one of those cases. (See Figure 10.) When the scheme began operations it concentrated its efforts on defendants for whom the police were seeking a remand in custody, although it also provided information about hostel accommodation where this was the condition sought by the police. It is, therefore, not

surprising that the police had recommended custody for 83% of the defendants in whose cases the scheme then intervened, as opposed to 67% of all defendants kept in custody by the police during the pre-pilot survey. What is surprising, and most encouraging, is that in half of the cases in which the scheme intervened, the CPS now felt confident in asking only for conditions of bail, and the court deemed that custody was necessary in only a third.

It would be difficult to imagine a better illustration of what these schemes have been designed to achieve. It is too early to measure how many of these defendants complete their bail without breach, but if these results can be maintained over the next several months and if they can be duplicated in other pilot courts, they will make a significant contribution to the reduction in the use of custodial remands generally. Equally important, they will provide a powerful demonstration of the potential impact of probation work with the CPS.

Figure 10.
Percentage of Defendants in Stoke on Trent
for Whom Police Sought Remand in Custody,
Percentage for Whom CPS Suggested Remand in Custody,
and Percentage Actually Remanded in Custody



Further Development

Additional Work on Bail

The Probation Initiative, "Diversion from Custody and Prosecution," is at this writing just over one year old, and the oldest of the schemes has not yet completed its fifth month. There are several probation services that still hope to launch pilot schemes under its umbrella during the next several months, and most of these are concerned with bail.

In Ipswich, the Suffolk Probation Service are in the first weeks of their pre-pilot survey and hope to have their bail scheme in operation by July 1987. This will follow the design of the scheme in Leicester, working only with issues of accommodation at first appearance and with other issues following a first remand in custody. Here, however, the same full-time probation officer will conduct the interviews in the prison and court cells.

At the Brockhill Remand Centre, the Hereford and Worcester Probation Service are just launching their bail scheme, attempting to work to several courts in the West Midlands. This ambitious project contains variations in design for each of the target courts, some of which include provision of information to the CPS on their own forms and under different guidelines. The Hereford and Worcester Service have obtained special funding for this project and are monitoring the results themselves, but they have participated in the national

discussions from the start and continue to exchange insights and experiences with the pilot staff in the other areas.

In Bournemouth, the Dorset Probation Service have launched a scheme similar to that in Newcastle, except that the Dorset Service have incorporated a separate resource consisting of more than a dozen rooms retained from landlords and landladies for the use of bailees.

Discussions have also begun in other probation services about adapting the forms and methods developed in these schemes to their local circumstances. It is possible that, by September 1987, there will be as many as ten pilot bail schemes in England and Wales working with the CPS.

Diversion from Prosecution

The other half of the Probation Initiative, as originally conceived, aimed to provide information to the CPS tailored for its use during case review, with the hope of allowing the CPS to make more vigorous use of its power to discontinue proceedings where prosecution is not in the public interest.

Although this sort of work is unlikely to make any perceptible impact on the remand population in the prisons, it may have a substantial effect on the number of cases that first bring people into the criminal justice

network and that take up so much of the time of magistrates' courts.

Case review, however, is the core function of the CPS, and it must remain an independent function. The hope of providing information to inform that decision does not extend to any desire to participate in the decision.

Discussions are now beginning about the possibility of a pilot scheme concentrating on the case review process to be based in London. The scheme would build on the experience gained in the bail schemes, incorporating independent inquiries by the probation service and the controlled provision of appropriate and useful information to the CPS on a standard form. Some probation services are already contemplating procedures for the provision of such information to the CPS where the defendants are under supervision. The difference here is that the provision of information would be triggered by screening undertaken jointly by the CPS and the probation service from within the CPS case review process. Intervention would not, therefore, depend on the defendant's probation officer becoming aware independently that the defendant was involved in a case that might be appropriately discontinued.

The fact that a probation officer may soon be based inside the offices of the prosecutor is a sign of how dramatically the landscape of criminal justice may soon change. The complaints and inefficiencies dogging the CPS at the present moment can easily distract the eye from the larger, if subtler, changes that have begun with its arrival. These schemes represent the best efforts of several probation services to participate in those changes and to shape them in ways most beneficial to the many communities in which the services work.

Appendix: Summary of Related Work Currently Undertaken by Probation Services

With 56 independent probation services operating throughout England and Wales, it is difficult to define the current state of probation work at any moment in time. Each service has developed its own priorities and each conducts its own program of innovation where it sees opportunity.

Nonetheless, it seems useful to attempt to place the individual schemes described in this report within the context of current probation work on bail and current probation work with the CPS more generally.

To this end, during the preparation of this report, the Vera Institute wrote to all Chief Officers of Probation in England and Wales, other than those whose services were participating in the ACOP Initiative, asking for a brief synopsis of their current work on bail and with the CPS. Responses were received from all but six probation services.*

The Chief Officers were asked to respond briefly to the following four questions:

- Does your service do any court-based work to assist defendants kept in custody by the police to obtain bail at their first appearance?

* The six services not responding were those for Bedfordshire, Derbyshire, Essex, Somerset, Surrey, and Warwickshire.

- Does your service do any work with unconvicted remand prisoners to assist them in obtaining bail?
- Does your service provide the CPS, on a regular basis, with any information about unconvicted defendants' suitability for bail?
- Does your service have any formal arrangements for requesting the CPS to discontinue proceedings in appropriate cases?

In response to the last two questions, none of the services reported any regular work with the CPS regarding adult defendants, either on issues of bail or on questions of discontinuance. The Kent Probation Service indicated that they have established a formal line of communication that probation officers are to use when communicating information about a specific client, but there is no formal mechanism to trigger such communication. Seven other services—in Cheshire, Gwent, Hampshire, Lancashire, Lincolnshire, Powys, and West Yorkshire—indicated an interest in developing work with the CPS in the future.

In contrast, many services reported in response to the first two questions that they do undertake some traditional bail work, either at courts or in prisons. Most of this work concerns the provision of hostel accommodation or other lodgings at the request of solicitors or of the court; but four services—in Durham, Lancashire, Powys,

and Shropshire—appear to have extended this work with accommodation to include other bail issues. In Lancashire and Shropshire the probation staff in some courts interview defendants in the cells before their first appearances in order to assist with bail in any appropriate way. In Durham, the prison team has developed a special focus on bail work with remand prisoners.

The court-based work is performed by ancillary workers or by court duty officers, but always as one of several court duties. Finally, none of the services indicated that their bail work included any liaison with the CPS.