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PHASE I EVALUATION OF PRETRIAL RELEASE PROGRAMS

SUMMARY REPORT

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PHASE I EVALUATION OF PRETRIAL RELEASE PROGRAMS

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Barry Mahoney, the National Center's Associate Director for Programs, wrote the proposal for this study and also served as project director for the first three months. After I assumed the role of project director, Barry continued to provide valuable assistance in reviewing draft reports and offering project guidance.

The Phase I staff, which had been assembled before I became Project Director, proved to be extremely competent and a delight to work with. Drafts of each of the work products produced during this study were prepared originally by one of the three senior staff members: Janet Gayton, Robert Davis, and Roger Hanson. In conducting the phone survey and site-visits, the project had the able assistance of research assistants: Victoria Cashman, Forrest Futrell, Bruce Harvey,

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WAYNE H. THOMAS, JR.
Project Director

Davis, California
February, 1976

I

INTRODUCTION

During the past fifteen years, the traditional American practice of conditioning the pretrial release of criminal defendants upon the posting of financial bail has been the target of major reform efforts. The principal target of this reform movement has, of course, been the money bail system--a system which makes pretrial release almost wholly contingent upon a person's ability to raise money in an amount set by a judge. The basic assumption of this system is that a defendant released on money bail will be motivated to return for future court appearances rather than suffer the loss of the money he has pledged in order to obtain his release.

The pretrial detention issue is one which has long troubled persons concerned with problems of the poor as well as those concerned with the criminal justice system. In a pretrial release system which relies almost exclusively upon money bail it is axiomatic that impoverished individuals will suffer the most. Such a system makes pretrial freedom a commodity to be purchased. Those who can afford the price are released; those who cannot are detained. The discriminatory nature of the system is compounded by the fact that in setting the cost of pretrial freedom--the amount of bail--only rarely has allowance been made for individual differences among defendants based on their likelihood to appear at trial or the amount of bond they can afford. In setting bail judicial officers generally know only the charge against the defendant and perhaps his prior arrest record.[1]

An advisory committee of the American Bar Association's Project on Minimum Standards for Criminal Justice criticized the traditional bail system in these words in a 1968 report:

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[1]Daniel J. Freed and Patricia Wald, Bail in the United States: 1964 (Washington, D.C.: United States Department of Justice and the Vera Foundation, Inc., 1964), p. 18.

> The bail system as it now generally exists is unsatisfactory from either the public's or the defendant's point of view. Its very nature requires the practically impossible task of translating risk of flight into dollars and cents and even its basic premise--that risk of financial loss is necessary to prevent defendants from fleeing prosecution--is itself of doubtful validity. The requirement that virtually every defendant must post bail causes discrimination against defendants who are poor and imposes personal hardship on them, their families and on the public which must bear the cost of their detention and frequently support their dependents on welfare. Moreover, bail is generally set in such a routinely haphazard fashion that what should be an informed, individualized decision is in fact a largely mechanical one in which the name of the charge, rather than all the facts about the defendant, dictates the amount of bail.[2]

The routine manner in which bail decisions have traditionally been made belies the fact that the decision is one of critical significance. Bail is the mechanism by which society's interest in the smooth administration of criminal justice is squared with the individual's right to pretrial liberty. The consequences of the bail decision are, thus, important both to the defendant and to the community. In a 1967 report the President's Crime Commission discussed the importance of the bail decision:

> A released defendant is one who can live with and support his family, maintain his ties in the community, and busy himself with his own defense by searching for witnesses and evidence and by keeping in close touch with his lawyer. An imprisoned defendant is subjected to the squalor, idleness, and possibly criminalizing effects of jail. He may be confined for something he did not do; some jailed defendants are ultimately acquitted. He may be confined while presumed innocent only to be freed when found guilty; many jailed defendants, after they have been convicted, are placed on probation rather than imprisoned. The community also relies on the magistrate for protection when he makes his decision about releasing a defendant. If a released defendant fails to appear for trial, the law is flouted. If a released defendant commits crimes, the community is endangered.[3]

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[2]American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Pretrial Release (New York: Institute of Judicial Administration, Sept. 1968), p. 1.

[3]President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society (Washington, D.C.: U.S. Government Printing Office, 1967), p. 11.

Although the workings of the money bail system have been subject to recurrent criticism for more than half a century,[4] it was not until the 1960s that the first significant effort was made to reform pretrial release practices. That pioneering effort--the Manhattan Bail Project, undertaken in the criminal court in New York City in 1961 under the auspices of the Vera Foundation--was widely acclaimed as a major success, and led directly or indirectly to the development of a number of other bail reform efforts throughout the nation. During the 1960s, the bail reform movement was marked by the convening of two national conferences on bail and alternative forms of pretrial release, the passage of important bail reform legislation on both the national and state level, and the establishment of a number of pretrial release programs designed to implement the reform ideas.

By the end of 1965, pretrial release programs were operational in over 60 jurisdictions. Today, partly as a result of funding support provided by LEAA and the various state criminal justice planning agencies, such programs are operating in well over 100 jurisdictions. This report is intended to summarize what is now known about these programs--the assumptions upon which they are based, the similarities and differences that exist among programs, and the effectiveness with which they operate. The report also seeks to identify the principal gaps in our knowledge about these programs and to suggest some research priorities.

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[4] See R. Pound and F. Frankfurter, eds., Criminal Justice In Cleveland: Reports of the Cleveland Foundation Survey of the Administration of Criminal Justice in Cleveland, Ohio. (Cleveland, Ohio: The Cleveland Foundation, 1922) and Missouri Association for Criminal Justice, The Missouri Crime Survey (New York: The McMillan Company, 1926). The first major empirical study focusing upon the bail system itself was Arthur L. Beeley's landmark book The Bail System in Chicago (Chicago, Illinois: University of Chicago Press, 1927; reprinted in 1966).

II

THE NATURE OF THE UNIVERSE--SIMILARITIES AND DIFFERENCES AMONG PROGRAMS; CRITICAL OPERATING ASSUMPTIONS

Over the past fifteen years, police agencies and courts in a large number of jurisdictions have changed their practices regarding pretrial custody and release in response to calls for reform of the money bail system. In many places, for example, police departments now routinely issue summonses or citations requiring a person to appear in court at a future date to answer charges against him, instead of making an arrest and holding the person in custody until he posts bail. And many courts no longer rely simply on the operation of the money bail system to determine whether a defendant is released or not; instead they utilize nonfinancial release options such as release on recognizance and release under specified nonfinancial conditions. Another option is release on "deposit bail" in which the defendant deposits a percentage of the total bond amount--usually 10 percent--with the court rather than using money to buy the services of a professional bondsman. Money deposited with the court--unlike the fee paid a bondsman--is returned to the defendant upon completion of the case, less a small service fee in some jurisdictions.

In this short-term study, we have been concerned with the operations of organized and identifiable programs that have been actively involved in the administration of alternative forms of pretrial release. The dominant concern of all of these programs is to expand the number of defendants released prior to trial through the safe use of alternative pretrial release mechanisms. All of them are based upon certain fundamental assumptions as to the inadequacy of the traditional money bail system and the need for program intervention. These assumptions are:

> The traditional money bail system of pretrial release is inadequate in that it results in the needless detention of large numbers of criminal defendants solely because they cannot afford the costs of release.

The principal defect of the traditional system is its failure to consider individual differences among defendants in terms of their likelihood of appearance.

Community ties represent the best method of separating those defendants who would appear if released from those defendants who would not.

Based upon their ties to the local community, many defendants can be released prior to trial without requiring financial bonds.

The court will, in fact, release more defendants without imposition of bail if it is presented with verified information on the ties defendants have to the local jurisdiction.

Defendants released without imposition of bail on the basis of this information will perform as well while on pretrial release in terms of making their court appearances and abstaining from criminal conduct as will defendants released on financial bond.

Based on these underlying assumptions, the pretrial release programs examined in this study typically allocate their resources to five functions:

1. Interviewing persons in pretrial detention.

2. Verifying the accuracy of the information obtained through the interview.

3. Screening of defendants to determine which ones appear to be eligible for release, under criteria set by the program and/or the court, in light of the information about the defendant that the program has obtained.

4. Preparation and submission to the court of information regarding the defendant and recommendations regarding his pretrial custody or release status.

5. Follow-up activity with released defendants, designed to insure that the releasees appear in court when scheduled.

Although these activities are common to virtually all pretrial release programs, enormous differences exist with respect to the ways in which the programs pursue these operational functions and with respect to their organizational structures, the environments within which they operate, and the methods of

release that they emphasize. Structured telephone interviews with the directors of 109 pretrial release programs revealed fundamental differences among the programs in each of the following areas:

-- Administrative Authority. In the early years of the bail reform movement, release projects were operated by a variety of organizations and individuals such as law students, bar associations, attorneys, public defenders, district attorneys, police agencies and private foundations as well as by the courts and probation offices. Our survey disclosed that today most of the pretrial release programs (86%) are being operated by public agencies, primarily either by probation departments (34%) or directly by the courts (31%).

-- Funding. The amount of funding with which projects operate varies enormously. Some projects survive through the ingenuity and perseverance of one or two individuals with no funding whatsoever while the largest programs have operating budgets in excess of $1,000,000. Likewise, the source of project funding varies--out of 109 programs that we surveyed, 61 reported that local government provided the major portion of their funds, 44 were funded primarily with federal (mainly LEAA) funds, and 4 had other primary sources of support.

-- Staffing. Projects differ both in the size of their staffing (from one person operations to permanent staffs of 20 or more) and in their composition (some programs rely heavily upon the use of volunteers and low salaried nonprofessional staff such as law students, while others operate with an exclusively professional staff of probation officers).

-- Clientele. Variations are found both in the number and type of defendants that projects service. A 1973 survey by the Office of Economic Opportunity reported that 27 percent of the projects interviewed less than 1,000 defendants a year, while six percent of the projects were interviewing in excess of 20,000 defendants annually.[5] While such a variation is undoubtedly in part due to the size of the jurisdiction in which the project operates, it is quite obvious that other variables are also at work. One of the most important of these is the criteria a project establishes for selection of the defendants it will interview. Since the Manhattan Bail Project, virtually all pretrial release programs have established a formal or informal list of excluded offenses which limit the number of defendants it will interview. Some projects, for example, handle only misdemeanor defendants; others only felony defendants. Most projects will exclude defendants charged with certain specific offenses, serious felonies and narcotic offenses being most prevalent.[6]

-- Point of Intervention. One of the most important factors affecting the number of defendants a project will interview and release is how quickly the project operates. At what point in the criminal justice system does the project have initial contact with defendants and how long does it take the project to process a case? Again, projects differ enormously in this area. Some programs are situated to interview defendants within minutes or hours of their arrest, while other programs do not have contact with defendants until days or even weeks

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[5]Hank Goldman, Dorva Bloom and Carolyn Worrell, The Pretrial Release Program (Washington, D.C.: OEO, Office of Planning Research and Evaluation, 1973), p. 6.

[6]Nearly half of the programs we surveyed exclude defendants charged with any crime of violence.

after arrest. How long it takes projects to process release recommendations is a function of several variables, e.g., verification procedures, evaluation procedures, the type of recommendations submitted, and when and to whom recommendations are made.

-- Verification Procedures. Some programs today have dispensed with the verification requirement in cases where the defendant is charged with a minor offense, at least insofar as to not require verification beyond that available from the papers carried on the defendant's person. Most projects, however, still require at least one independent verification of the information provided by the defendant; some programs require two verifications and at least one program, San Francisco's, requires three independent verifications before it will recommend release in a felony case. The majority of pretrial release programs rely exclusively on the telephone for verification, although a few have sufficient staff to do some field verifications.

-- Defendant Evaluations. One of the few areas in which projects do not differ appreciably is in the criteria used to measure a defendant's reliability once released. Quite uniformly, pretrial release programs have accepted the original Vera criteria of employment, residence, family contacts, prior record and current charge for passing upon a defendant's eligibility for pretrial release. A very basic difference among pretrial release programs is, however, whether a defendant should be measured against these criteria by use of a predetermined point scale or whether each defendant should be considered

individually and subjectively. The objective approach, which Vera adopted very early in the Manhattan Bail Project, assigns a numerical value to each local contact and the defendant's release recommendation is contingent upon accumulating a set number of points. Most of the early pretrial release programs followed Vera's lead and adopted the point scale approach to release recommendations but many programs did not. Projects operated by probation departments in particular tended not to use the point scale, preferring instead the more traditional case work approach. In light of the increasing number of programs situated in probation offices and with many programs now making recommendations other than straight release on recognizance, it is not surprising to see that use of the point scale has largely given way to the subjective approach. Thus, only 16 of the programs we surveyed reported that they relied exclusively on a point system for determining release eligibility. Many more programs did indicate, however, that they use a point system as a guide in reaching an essentially subjective release decision.[7]

-- Release Recommendations. Most pretrial release programs make some type of release recommendation to the court. The type of recommendation made, however, varies widely. Some programs will recommend only straight own recognizance release; while others will recommend supervised or conditional releases in appropriate cases. While the Manhattan Bail Project and most of the early programs would only present cases in which they were prepared to make a positive release

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[7] In 1973 OEO reported that only about one-fifth of the pretrial release programs were relying exclusively upon a point scale, although an additional 40 percent of the programs were using a point scale as a guide to their subjective decisions. H. Goldman et. al., supra note 5, p. 15.

recommendation, 58 percent of the programs we surveyed present negative as well as positive recommendations. Many programs will also make bail reduction motions in cases where nonfinancial release cannot be recommended. In presenting release recommendations, the early projects generally considered themselves advocates for the defendant. While some current programs still maintain this stance, today most programs consider themselves as neutral court services agencies.

The manner in which the recommendations are presented also varies. Some programs present recommendations only at a defendant's regularly scheduled court appearance, while others will present the recommendations personally to a judge in chambers as soon as they are prepared and still others have authority to contact judges by phone. A few projects--18 of those we surveyed--have been delegated the authority to release qualified defendants charged with minor offenses on their own recognizance without seeking prior judicial approval.

-- Release of Defendants. The time from arrest to interview, the verification requirements and the writing and presenting of release recommendations all have a bearing on the time it takes to secure pretrial release for a defendant. Because of the different procedures discussed above, it is not surprising to find considerable variation among projects in the average length of time needed to obtain the release of defendants. In some projects releases can be accomplished in a matter of hours, while in others it is days or even weeks before a defendant will be released.

-- Procedures After Release. Most pretrial release programs undertake some effort to ensure that persons they have assisted in gaining release return to court as scheduled. At a minimum projects will generally send a reminder letter alerting defendants of upcoming court appearances and many also utilize phone reminders. Some programs require that a defendant contact them within 24 hours of release, while other programs require periodic check-ins by defendants over the entire release period. Beyond this, however, some programs--those which have expanded into conditional releases--are concerned with monitoring the performance of the conditions imposed on the defendant's release. In these projects contact with the defendant is increased over the period of his pretrial release.

-- Procedures After Failure to Appear. Most projects will make some effort to locate defendants who have failed to appear and attempt to persuade them to return. In some projects, the staff will assist the police in locating the defendant for the purpose of making an arrest and a few projects, notably the one in Philadelphia, have the authority to serve bench warrants and effect an arrest themselves.

While the foregoing are by no means the only significant differences among pretrial release programs, they do indicate the great diversity represented in the universe of pretrial release programs. The existence of this diversity greatly complicates the task of evaluating the effectiveness of the programs on a comparative cross-jurisdictional basis.

A second characteristic of the programs which complicates their evaluation is the high degree of integration that most have achieved. Most pretrial release programs--and all of the largest ones--are no longer experimental undertakings, but rather have become deeply ingrained in the court process. The fact that so many of the programs have become institutionalized suggests that they have been widely regarded as valuable adjuncts to the adjudicatory system. At the same time, however, institutionalization makes it exceedingly difficult to isolate and analyze a program's impact from that of the system as a whole.

Despite the diversity of the programs and their extensive integration into the criminal justice process, and despite a paucity of sound empirical research in the area, it is possible to formulate some preliminary conclusions about the effectiveness of these programs. We turn next to a summary of what we now know with respect to some of the critical issue areas in the pretrial release field.

III

THE CURRENT STATE OF KNOWLEDGE ABOUT PRETRIAL RELEASE PROGRAMS

This assessment of the current state of knowledge concerning pretrial release programs is based upon our analysis of the existing literature in the field, structured telephone interviews with 109 pretrial release program directors, and site visits to ten jurisdictions in which pretrial release programs operate. In making this assessment, we focused on six substantive issue areas which have been identified by researchers and by policymakers in the criminal justice field as being of particular importance in evaluating program effectiveness. These issue areas are:

- Release Rates
- Speed of Program Operations
- Equal Justice--lessening the inequality of treatment of indigents and minorities
- Failure to Appear Rates
- Pretrial Crime
- Economic Costs and Benefits

Our findings below are organized in three main sections, designed to take account of data relevant to the six issues areas and to summarize what we know about the following key questions:

> First, how effective are pretrial release programs as instruments for changing long-standing bail practices?
>
> Second, to what extent do pretrial release programs influence pretrial release practices on a continuing basis, as long-term, ongoing agencies?

Third, how do different types of internal operating procedures affect the attainment of program goals?

A. Pretrial Release Programs as Instruments for Change: Initial Impact

As vehicles for producing changes in long-standing bail practices, pretrial release programs established over the past fifteen years have demonstrated two major virtues: they work (in the sense of decreasing the court's reliance on money bail and enabling the safe release of at least some persons who would have otherwise remained in detention because of inability to post bail) and they are relatively easily implemented.

The original pretrial release program, the Manhattan Bail Project, significantly influenced pretrial release practices in New York City during the early 1960s [8] and, as this influence became evident, a national bail reform movement emerged with the replication of similar programs throughout the country. Collectively these programs have enjoyed remarkable success in advancing the use of nonfinancial forms of pretrial release. The almost total reliance placed upon money bail as the means for obtaining pretrial release prior to the 1960s has given way in many jurisdictions to the extensive use of release on recognizance and other nonfinancial forms of release.

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[8] The impact of the Manhattan Bail Project on the court's use of own recognizance was dramatically demonstrated through the use of a control group experiment during the program's first year. This study showed that judges granted nonfinancial release in 60 percent of the cases favorably recommended by the program but to less than 15 percent of the control group which consisted of defendants equally qualified for release but for whom the program had withheld its recommendation. This study is reported in Charles Ares, Anne Rankin and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," New York University Law Review, Vol. 38 (1963), pp. 67-85.

Over its first two and one-half years of operation (October 1961 through March 1964), the Manhattan Bail Project had assisted in the nonfinancial release of over 2,000 defendants and less than one percent of these defendants failed to appear in court. Freed and Wald, supra note 1, p. 62.

The increase which has occurred in the use of nonfinancial release has been particularly dramatic in several jurisdictions which implemented pretrial release programs in the 1960s. A national study of pretrial release practices by Wayne Thomas showed, for example, that from 1962 to 1971 the rate of nonfinancial releases in felony cases increased from none to 56 percent in Washington, D.C.; from three to 47 percent in Des Moines, Iowa; from five to 45 percent in San Diego; and from none to 33 percent in Philadelphia.[9] Overall, in the 20 cities that Thomas studied, the rate of nonfinancial releases in felony cases increased from less than five percent of the defendant population in 1962 to 23 percent in 1971.[10] In misdemeanor cases the increase was from 10 percent in 1962 to 33 percent in 1971.[11]

Thomas' study also shows that this increase in the use of nonfinancial release was reflected in a decrease in the percentage of criminal defendants detained in custody for the duration of the pretrial period. In felony cases the detention rate in the 20 cities studied decreased from 52 percent in 1962 to 33 percent in 1971.[12] The detention rate also decreased in misdemeanor cases, going from 40 percent in 1962 to 28 percent in 1971.[13] Thomas observed, however, that the detention percentage in misdemeanor cases was heavily influenced by the large number of cases which terminated at the defendant's initial court appearance.

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[9]Wayne Thomas, "A Decade of Bail Reform," (Unpublished manuscript in draft form, dated February 1975), pp. 40-41. (Thomas' findings are based on analysis of 400 case samples drawn from each of 20 jurisdictions for the years 1962 and 1971).

[10]Ibid., p. 39.

[11]Ibid., p. 82.

[12]Ibid., p. 37.

[13]Ibid., p. 75.

He found that very few of the defendants involved in these cases secured pretrial release. Considering only those misdemeanor cases which advanced beyond first appearance, Thomas found that the percentage of detained defendants decreased from 21 percent in 1962 to just 12 percent in 1971.[14]

At least as important as the fact that the programs have contributed to an expanded use of nonfinancial releases and greater overall release rates is the fact that this has apparently been done without any appreciable cost in terms of the performance of defendants who obtained release on nonfinancial conditions. That is to say, it appears from the available data that defendants released on own recognizance or other forms of nonfinancial release do not have any greater tendency to skip scheduled court appearances, or to engage in criminal conduct while on pretrial release than do defendants released on money bail.[15]

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[14]The extent to which changes did occur in jurisdictions implementing pretrial release programs in the 1960s does not mean, of course, that a jurisdiction starting a program today will achieve similar results. First, the speed with which the bail reform movement spread in the 1960s indicates that dissatisfaction with the traditional bail system was widespread. Clearly, the time was right for bail reform and proponents of pretrial release programs capitalized. Second, over the period from 1962 to 1971 most jurisdictions experienced a large increase in the number of persons arrested for criminal offenses--particularly for offenses involving narcotic and drug laws--and this increased arrest rate in the face of limited jail capacities may have had a significant influence on the changes which did occur. It is thus possible that some changes in pretrial release practices would have occurred even without the rise of pretrial release programs. Third, Thomas' study reflects changes which occurred from a year, 1962, in which nonfinancial release was a little used and little understood method of pretrial release to a year, 1971, when the bail reform movement was in full bloom. By 1971 Thomas found that even in jurisdictions which had never had a pretrial release program, the use of nonfinancial releases was sometimes substantial.

[15]Of the 44 programs which provided failure to appear rates in response to our questionnaire survey, 28 (or 64 percent) reported a nonappearance rate of five percent or less. Thirty-nine of the 44 programs (89 percent) indicated a nonappearance rate of less than 10 percent. Although program-supplied data comparing the nonappearance rate by defendants on nonfinancial release with that of defendants on bail is fragmentary--only 13 programs were able to provide such comparative data--it does suggest that there is no discernable pattern between the nonappearance rates of the two groups.

The amount of crime which is committed by defendants on pretrial release and the relationship between type of release and incidence of pretrial crime has not been satisfactorily researched on either a national or local level. Comparative data on the rearrest rates for defendants on nonfinancial release and on bail supplied by four programs was inconclusive but we have no reason to believe that the rate of rearrests for persons released through pretrial release program interventions is appreciably different from that of defendants on bail.

The statistical data base from which such a comparative analysis may be made is admittedly quite skimpy. It is supplemented, however, by opinion data gathered from judges, prosecutors, public defenders, and other local government officials in jurisdictions where pretrial release programs have been operating. For example, a 1974 survey of these officials by the National Center for State Courts found that more than 90 percent felt that pretrial release programs either improved the functioning of the criminal justice system very significantly (56%) or helped somewhat (36%). These findings are reinforced by the interview data gathered in site visits undertaken in the course of this project--not a single person interviewed in any of the visited jurisdictions expressed a belief that the program should be discontinued because of the poor performance of persons on release. Indeed, to the best of our knowledge, no pretrial release program has ever been discontinued for that reason.

In addition to positively affecting release rates without producing negative consequences in the areas of failure-to-appear and pretrial crime, the programs have also shown that they can be integrated into an ongoing criminal court process without difficulty. During the course of our site visits to ten jurisdictions, we were impressed with the unobtrusive nature of the programs. In conducting their interviews and presenting release recommendations, the programs do not disrupt the routine processing of cases; rather, they fit well within the existing systems. They do not seek the release of all defendants as a matter of right, and they do not challenge the use of money bail per se. They do, however, provide a mechanism for releasing a substantial number of qualified defendants without the imposition of money bail requirements. Whether the programs themselves initiate changes in release practices, or whether they are merely the mechanisms through which an existing desire for change is implemented,

the fact is that substantial increases in the use of nonfinancial release have generally taken place after pretrial release programs have been implemented. In short, pretrial release programs have demonstrated an ability to produce significant changes in bail practices through decidedly non-radical means.

B. Pretrial Release Programs as Long-Term, On-Going Agencies: Continuing Impact

One of the most significant questions to emerge from our study concerns the extent to which pretrial release programs have a positive continuing impact as long-term, on-going agencies. Although the programs have demonstrated an ability to bring about initial changes in the release practices of jurisdictions where money bail had theretofore been the sole mechanism for obtaining pretrial release, the critical issue today--at least in those jurisdictions where the use of nonfinancial release has become a fairly well established practice--is whether the continued existence of a program is warranted once the demonstration has been made.

Two observations made during the course of this project prompt us to question how much of a difference program intervention actually makes in a jurisdiction's pretrial release practices once the jurisdiction has moved away from allowing release solely on money bail. First, information supplied by the programs indicates that the vast majority of defendants released as a result of their interventions are charged with misdemeanors or relatively low grade felony offenses. While it is probably true that in the past many of these persons would have remained in custody because of failure to post bail, it is certainly questionable whether--given the changes that have taken place in judicial attitudes toward the use of nonfinancial releases since the inception of the bail reform movement--such would be the case today. There is substantial evidence indicating that in many jurisdictions, if the programs did not exist, the judges themselves would question the defendants about their ties to the

community and would release a substantial proportion of them on nonfinancial conditions.

Second, in interviews with pretrial release program directors and judges we found little discernible difference between the pretrial release philosophies of the programs and the judges. Although pretrial release programs may pose a significant initial challenge to bail practices in a jurisdiction where nonfinancial release has not been widely used, it appears that over time the attitudes of the court and program merge on when a nonfinancial form of release is appropriate. This, we believe, explains in large part why the programs are generally well received in the jurisdictions in which they are operating and why favorable program recommendations have a high rate of acceptance by the judges. There is, in fact, some evidence that the judges are more inclined to the use of nonfinancial releases than are many of the programs. We observed that judges not only routinely grant nonfinancial release on the favorable recommendation of the programs but that in addition they often grant releases to defendants not recommended (usually because the program had only unverified information) and occasionally grant such release despite a negative program recommendation. If we can conclude from this that the programs are recommending only the most highly qualified defendants for release on recognizance but that the judges are willing to release others, then it is likely that those persons now recommended by the programs would continue to be released even without program intervention.

The danger in this supposition, however, is that is considers program impact only in terms of the recommendations which are made. This may be a very misleading measure of program impact. As on-going agencies, the impact of pretrial release programs may be much more indirect. It may be that while the recommendation made is not critical, the background information on community ties provided by the program is. Even in those cases in which the judge grants a non-

financial release without a favorable program recommendation or despite a negative recommendation, the background information supplied by the program may have played a critical role in the judge's release decision. We cannot at this time, therefore, discount the possibility that the programs do influence the use of nonfinancial releases and that this influence goes beyond simply those cases in which the program presents a favorable release recommendation.

Furthermore, pretrial release programs may indirectly influence the court's use of nonfinancial releases through their capacity to provide supervision for defendants granted this form of release. In maintaining contact with defendants on own recognizance, the programs are filling a role normally assumed, if at all, by bondsmen. Moreover, in a few jurisdictions--notably Philadelphia--pretrial release programs assume the further bondsman function of recapturing persons who flee the court process. Whether or not this follow-up activity is genuinely valuable in reducing failures to appear, the fact that it is provided may increase the use of nonfinancial release by the court.

At this time we are simply unable to reach any firm conclusions as to the impact on-going pretrial release programs have on the rate of pretrial detention. Furthermore, since the cost effectiveness of pretrial release programs is primarily contingent upon their ability to reduce the detention population by providing for the release of persons who would otherwise be detained, we are unable to reach a firm conclusion in this critical area as well.

We do believe, however, that the intervention of pretrial release programs is valuable in many types of cases--particularly in felony cases where the pretrial release decision is generally more complex and often controversial. We also feel that pretrial release programs serve an important on-going role as an overall pretrial release system monitor and as a force for constructive change within that system. The available evidence would

suggest, however, that the programs, in order to increase their cost-effectiveness, must give greater attention to defining their role as on-going agencies in light of changes which have occurred in the attitudes and practices of the court and police toward pretrial release. If the police and/or the court can provide for the prompt, nonfinancial release of persons charged with minor criminal offenses, the programs can focus upon those defendants charged with the more serious crimes and for whom the program's intervention would appear most critical.

C. Relationship of Program Activities to the Attainment of Program Goals

As discussed in Section II, major differences exist in the organizational structures and operating procedures of pretrial release programs, and in the environmental contexts within which the programs operate. Although it is obviously desirable to know how these differences affect a program's ability to achieve its objectives, the existing research in the field is of little help in this regard. Very little cross-program research has actually been done, and there are serious methodological problems which present barriers to doing such research.

Nevertheless, it is possible to describe what appear to be some significant relationships between certain types of program activities and the attainment of program goals. Our discussion here is organized in terms of the five functions noted earlier as being common to virtually all pretrial release programs--interviewing, verification, screening for release eligibility, preparing and submitting release recommendations, and maintaining "follow-up"

contact with released defendants. The Denver Pretrial Release Program is representative of the programs which carry out these five functions. Flow charts of the Denver Program's operations are included in the appendix to illustrate the processes involved.

1. Interviewing

All pretrial release programs interview defendants who are in pretrial custody, in order to obtain information about their backgrounds and ties to the local community. The programs differ, however, in the timing of these interviews and in their selection of defendants to be interviewed. Three basic approaches to interviewing can be identified:

First, some programs operate on the assumption that all pretrial detainees should be interviewed prior to an initial bail determination, since each is a potential candidate for release on nonfinancial conditions and the information will be helpful to the court in reaching a bail determination even if the defendant is clearly a poor risk for nonfinancial release. Programs operating on this assumption typically interview defendants close to the time of their arrest either by staffing the detention facility 24 hours a day to conduct interviews after the police have completed the booking process or by appearing at the jail once or twice a day to interview all persons arrested over the past 12 or 24 hours.

Most pretrial release programs, however, do not strive to interview every detainee. The majority of the programs assume that all persons who might qualify for nonfinancial release should be interviewed (and, thus, also attempt to reach defendants as close to the time of their arrest as possible), but that some defendants charged with serious offenses or with extensive prior criminal records will not be granted nonfinancial releases regardless of their local ties and that it is therefore not an

efficient use of program resources to interview these defendants. Thus, most pretrial release programs screen the list of detained prisoners, eliminate those who fall in an exclusion category and interview the remainder. How broadly a program draws its exclusion list will obviously have a great bearing on the number of interviews conducted.

A minority of the programs believe that only those defendants truly in need of the program's service should be interviewed. The underlying assumption is that the program will be considerably less costly but at the same time achieve nearly the same result in reducing the pretrial detention population if only those defendants who cannot achieve release through normal court procedures are interviewed. On this assumption, some programs do not interview defendants immediately after arrest but instead wait until the defendants have appeared in court and demonstrated their inability to secure release by their continued incarceration.

There are significant advantages to the court, as well as to the program and to many detainees, when the program conducts its interviews prior to the defendant's court appearance. The court receives background information on defendants at the time of the initial bail decision, when such information is most critical, and the program will be able to favorably recommend many more defendants than it would if its intervention were delayed until after this first appearance. Quite consistently, pretrial release programs which intervene close to the time of arrest are involved in more nonfinancial releases than are programs which intervene later. This relationship between the speed with which a program operates and the number of releases generated is, of course, not a surprising finding. Conditions in American jails being what they are, it is not unexpected to learn that defendants

tend to secure release by whatever method is fastest--even surety bail--rather than waiting the time necessary for a nonfinancial release. Included in the exiting defendants are undoubtedly many who would qualify for a program release recommendation.

Aside from increasing the number of persons released through the program, a second advantage of early intervention is, quite obviously, a reduction in the amount of time released defendants must spend in detention. Compared to delays of several days--and sometimes a week or more--which exist in programs which do not intervene until after first appearance, most persons released by programs which intervene close to the time of arrest secure release prior to or at their first court appearance. If early intervention is combined with the authority to release defendants without seeking prior judicial approval, the time lag between arrest and release can be cut dramatically. The Santa Clara Pretrial Release Program, which has such authority in misdemeanor cases, reported that the project reduced the time from arrest to non-financial pretrial release in misdemeanor cases from 74 hours in 1970 (before the program started) to just 2.4 hours in 1971, which was the first year of program operations.[16]

In addition to the benefit to defendants who spend less time in detention, there is also some cost-savings to the jurisdiction in the early intervention of pretrial release programs. The jail detention population is a function of both the number of defendants committed to jail and the length of their stay. Hence, even if a program does not

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[16] American Justice Institute, "Santa Clara County Pretrial Release Project First-Year Evaluation Report" in Ronald J. Obert et al, Pretrial Release Program in an Urban Area: Final Report, Santa Clara County Pretrial Release Program (1973), p. 53.

release persons who would otherwise be detained, the fact that its intervention provides an earlier release than would otherwise be obtained does result in some detention cost-savings. When a program can provide for the release on weekends of persons who would otherwise be held until a Monday bail hearing, these savings can be significant.

However, the major jail cost saving to be realized through a pretrial release program quite obviously lies in the release of persons who would otherwise be detained for the duration of their pretrial period. In terms of achieving objectives such as reducing the detention population and lessening the inequality of the bail system for indigents, early intervention is not necessarily the most efficient procedure. The danger exists that with early intervention a program can achieve an impressive number of nonfinancial releases simply be skimming off the best release risks but be failing those persons the bail reform movement was intended to benefit--those persons too poor to post bail. Fundamentally, if pretrial release programs are to be cost effective they must structure their procedures around the existing pretrial release system and carry that system beyond where it would be without program intervention. This means focusing their intervention on persons truly in need of the program's service.

In the timing of its initial interviews and in the selection of persons to be interviewed, the programs are defining their target population. Proper selection of this target group is critical to program cost effectiveness. If, for example, current release practices provide for the routine use of citation releases for misdemeanor defendants, and if the police do in fact release a large proportion of defendants on citations, then it makes little sense cost-wise to implement a separate pretrial release program

to service these defendants. Police citation releases offer the quickest mechanism for pretrial release and are also much less costly to the jurisdiction than a pretrial release program. In fact, in light of the success of police citation releases in some cities,[17] jurisdictions might be well advised to consider such a procedure preferable to a pretrial release program in the cases of misdemeanor defendants.

It is the more serious felony cases, in which the pretrial release decision is more complex and controversial, that make the more detailed background information and release eligibility screening of a pretrial release program particularly valuable. It is in these cases that the information supplied by the program would appear to have the greatest impact on custody/release decisions. However, even in felony cases, the wisdom of interviewing all defendants immediately after arrest must be considered in light of the jurisdiction's release practices. If, for example, the police practice is to arrest a substantial number of persons on suspicion of felony offenses only to release them within hours or a day without charging, it would not be a cost-effective procedure to interview all felony arrestees immediately after arrest. The time and money spent interviewing persons who are no longer in the system at the time the program is ready to act in their behalf is not well spent. For

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[17] In the state of Connecticut, where the initial bail decision is made by the police, a 1973 study of bail practices in the Sixth Circuit Court of Connecticut (New Haven) revealed that the police make extensive use on non-financial releases. During a three month period in 1973, 86 percent of the arrest population secured pretrial release and 50 percent were released on non-financial conditions. Furthermore, only six percent of the defendants who achieved pretrial release were detained longer than 24 hours. The majority of released defendants were freed immediately by citation release (17 percent) or within three hours of booking (44 percent). For those defendants released within three hours, citations and promises to appear outnumbered bail bonds three to one. See Malcolm Feeley and John McNaughton; "The Pretrial Process in the Sixth Circuit: A Quantitive and Legal Analysis" (New Haven, Connecticut: Yale University, mimeo, 1974).

instance, the Denver Pretrial Release Program interviewed 3,425 felony defendants in its first six months of operation but submitted less than 2,000 of these cases to the court. Over half of the persons arrested on felonies during this period had their charges dismissed or reduced to misdemeanors after the program interviewed them. In this situation, the program might be more cost-effective if it delayed its interviewing until the decision has been made to prosecute.

As we have already noted, one of the consequences of delayed interviewing is likely to be a dramatic reduction in the number of persons released through program intervention. However, there may be some offsetting advantages. First, the program will be less costly if it interviews only those persons who are not capable of securing release without its intervention. Second, if the program finds that few of the persons interviewed qualify for release under its criteria, this should spur the program to experiment with its release criteria and possibly adopt alternative release mechanisms such as various forms of conditional release. By concentrating on persons not released by the time of their first court appearance, the programs would save money and at the same time would be focusing more directly upon the persons truly in need of their services.

2. Verification

Verification of the information provided by defendants in the initial interviews is an integral part of the activity of most pretrial release programs. Underlying this verification activity is an assumption that a defendant who has an obvious interest in securing pretrial release cannot be trusted to provide totally accurate information during his interview and that, therefore, a program should not make pretrial release recommenda-

tions until this information has been independently verified. In order to verify the information supplied by the defendant, most programs attempt to contact an employer, friend or relative of the defendant by telephone. Primarily because of the heavy, often exclusive reliance placed upon the telephone for verification, pretrial release programs generally have difficulty obtaining verifications in many of their cases. Sometimes a defendant cannot supply phone numbers for any references, and often it is impossible to contact a reference even when a phone number is given. In recognition of this problem, some programs now employ field investigators to assist in contacting references who are not reachable by phone. Other programs will send letters to references who cannot be contacted by telephone, but the majority of the programs--57 percent of the ones we surveyed--still rely exclusively on the telephone.

Programs which attempt to present their recommendations at the defendant's first court appearance have a particularly serious problem with verification because of the limited time available for this activity. The Denver Pretrial Release Program, for example, is able to verify only approximately half of its cases in the two hours available each morning prior to court. Despite the lack of verification, however, the Denver program, and many others as well, will present unverified information to the court at first appearance, although withholding any pretrial release recommendation. Not infrequently the judges will grant nonfinancial releases on the basis of this unverified information. From this, we tentatively conclude that those programs which are still adhering to the practice of presenting only verified cases to judges are unnecessarily limiting their impact. Whether it is verified or not, the information collected by the programs can be valuable to the court in making bail decisions. The fact that judges may be willing to grant nonfinancial releases upon unverified program information, the practice of many judges to grant

nonfinancial releases without any program intervention whatsoever, and the growing use of citation releases by the police, all cast doubt upon the general assumption that it is necessary for the program to fully verify the information in all cases. If a defendant is charged with a relatively minor offense and does not have a serious prior criminal record, sufficient verification may be obtained simply by substantiating his name and current residence from papers carried on his person. Cases of defendants charged with more serious criminal conduct may, of course, require more complete verification. In any case, by employing different levels of verification, the program can put its primary efforts where verification is most critical and process defendants involved in less serious cases more quickly. In doing so the program will increase its cost effectiveness.

3. Screening for Release Eligibility

Implicit in the operational procedures of all pretrial release programs is the belief that nonfinancial releases should be selectively employed. On the assumption that a defendant's pretrial release reliability can be measured on the basis of the extent and stability of his ties to the local community, pretrial release programs screen defendants to determine their local contacts in the areas of employment, residence and family. Underlying this screening is a belief that a defendant with strong ties to the local community has an intrinsic motivation for remaining in the jurisdiction and is therefore unlikely to flee. In addition, virtually all programs consider the defendant's prior criminal history and most also consider the pending charges. Both of these factors will have an obvious bearing on the defendant's sentence if he is convicted and the assumption is that the more severe the potential sentence, the

more likely the defendant will be to flee. The current charge, in fact, is frequently given an over-riding importance by pretrial release programs. Most programs have exclusion criteria which bar them from either conducting an interview or presenting any release recommendation for defendants charged with certain offenses. Nearly half of the 109 programs we contacted in this study reported that they excluded from consideration all defendants charged with any crime of violence. The effect of using relatively strict eligibility criteria is, of course, to eliminate from consideration a large number of potential releases. The more restricted the criteria, the smaller the proportion of defendants likely to be released through the program.

One of the principal issues to emerge from this study is whether, in fact, it is necessary to be as restrictive in setting eligibility criteria as many programs are. There does not appear to be any correlation between the number of persons released and the rate of nonappearance. Although Thomas did report that the increase in defendants released over the period from 1962 to 1971 was accompanied by a rise in the nonappearance rate from about 6 percent in 1962 to 9 percent in 1971,[18] he also found that some cities which had the largest increase in releases over this period maintained very low nonappearance rates. In addition, from the data supplied by the programs to this study, we found no correlation between the rate of nonfinancial releases and the rate of failure to appear. Programs which have the higher release rates do not generally have nonappearance rates any different from programs much less active in generating releases.

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[18] Thomas, supra note 9, p. 103.

From this fact one might conclude that many of the programs today could liberalize their screening procedures and thereby greatly expand the number of defendants released on nonfinancial conditions without jeopardizing the rate of nonappearance. In the past, two programs have, in fact, found this to be the case. As a result of a serious overcrowding in the Santa Clara County jail, the pretrial release program in that jurisdiction was authorized to release all misdemeanants, except public intoxication defendants, during a three month trial period in 1972. The result was that nearly 90 percent of all misdemeanor defendants were released and the nonappearance rate remained virtually unchanged.[19] Perhaps even more instructive, because it involved expanding the release rate in felony cases, was the experience of the Brooklyn Pretrial Services Agency during a two-week period in 1974. During this period, the program's release rate increased from a norm of 42 percent to 66 percent without adversely affecting the nonappearance rate.[20]

There, of course, are a number of factors which may influence the rate of non-appearance aside from the program's selection criteria. These include the personal attributes of defendants, the severity of the alleged offense, the procedures employed by the program and the court in notifying defendants about future court date, the supervision provided during the release period, local practices regarding apprehension and prosecution of defendants who fail to appear, and the amount of delay between release and case

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[19]Conversation with Ronald J. Obert, Director Santa Clara County Pretrial Release Program, July, 1975.

[20]James W. Thompson, "Pretrial Services Agency Operations Report, April 1 - April 28, 1974" (Brooklyn, New York: Brooklyn Pretrial Services Agency, 1974). The project reported that of all scheduled appearances for the expanded release defendants 8.7 percent ended in initial warrants for failure to appear--a negligible difference from the 8.4 percent FTA rate by defendants released under the prevailing ROR rate of 42 percent.

disposition. To date, however, there has been very little research addressing the question as to what factors influence the nonappearance of criminal defendants. The two most thorough studies--one by Malcolm Feeley and John McNaughton, the other by William Landes--suggest that it is difficult to find a positive correlation between any of the variables and likelihood of nonappearance.[21] What emerges is simply the fact that the vast majority of persons released prior to trial do appear as required. To date, researchers have not been able to clearly isolate any factor or combination of factors which either explains why failures to appear occur or identifies in advance persons who will not appear. The fact that pretrial release programs have demonstrated over the past 15 years that persons who meet their release criteria are acceptable release risks does not prove that less stringent criteria would not be usable predictors of pretrial release reliability. At this time we have no basis for concluding that persons who do not meet existing criteria are in fact bad risks in terms of nonappearance.

A second area of obvious concern in evaluating the performance of defendants on release is that of pretrial crime. It may well be that it is the risk of pretrial crime, and not the risk of nonappearance, that accounts for the custody status of many detained defendants. If a defendant is charged with a serious or violent crime, or if he has an extensive prior record, a program is not likely to recommend release nor is a judge likely to grant nonfinancial release, no matter how strong the defendant's community ties may be. Concern over possible flight from

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[21] See William M. Landes, "Legal Theory and Reality: Some Evidence on Criminal Procedure," Journal of Legal Studies, Vol. 3 (June 1974), pp. 320-325; and Malcolm Feeley and John McNaughton, supra note 17, pp. 29-39.

the jurisdiction may be a factor in the decision to deny such release, but it is fairly obvious that the risk that the defendant might commit additional crimes is also a factor. No cross-jurisdictional studies have attempted to assess the comparative effectiveness of different programs in light of rearrest or conviction rates, and there have been only a few studies in single jurisdictions. Of the 109 programs that we surveyed in the course of this Phase I study, only 18 were able to provide even fragmentary data on rearrests of defendants that they had assisted in gaining release. These programs reported rearrest rates ranging from less than one percent to as high as 16 percent. The lack of data on the effectiveness of the program's screening criteria in terms of the likelihood of a defendant's involvement in criminal activity during the pretrial period is a significant gap in knowledge.

4. Release Recommendations

The impact which a pretrial release program will have on bail practices is ultimately contingent upon the use judges make of the information gathered and recommendations presented. While a few projects do have the authority to release some qualified defendants--generally those accused of misdemeanors--without prior judicial approval, most programs are limited to gathering information and presenting recommendations. The release decision is one for judges to make.

Since 1970 the most significant change that has occurred in the operation of pretrial release programs is in the number and types of recommendations made. The Manhattan Bail Project and most of the early programs were focused solely upon identifying defendants qualified for release on their own recognizance and recommending their release to the court. Today the posture of most programs has changed to one in which information on all interviewed defendants is presented to the court. In

those cases in which the defendant does not qualify for nonfinancial release under the program's own criteria, the programs either make no recommendation or make a negative one. Of the programs we surveyed which intervene at first appearance, 58 percent make recommendations against the use of nonfinancial release when they feel it is warranted.

The second significant change which has occurred in the recommendation practices of pretrial release programs involves the use of conditional releases. Started initially in the District of Columbia, the use of conditional releases has grown remarkably over the past few years. Seventy-two percent of the programs we surveyed which intervene at first appearance indicated that they do make conditional release recommendations in appropriate cases. Through the use of conditional nonfinancial releases, the programs are seeking to expand the number of defendants released without bail. The assumption is that such a practice will enable the court to safely release additional, higher risk defendants. The types of conditions which are typically imposed on defendants include requirements that they maintain periodic contact with the pretrial release program, live at a certain address, not associate with certain persons or groups, obtain or maintain a job, enroll in school or a job training program, abide by curfew restrictions, or obtain counseling for alcohol or drug abuse.

Two principal issues are raised by conditional releases: First, do they in fact provide for the release of additional higher risk defendants? Second, are they genuinely valuable in reducing the risk posed in the release of criminal defendants? As to the first question, there is some evidence that conditional releases do allow for the release of additional, higher risk defendants. Conditional releases started and have been used most extensively in the District of Columbia. In the District the use of

conditional releases did have the desired effect of increasing the number of defendants released without bail. According to the D.C. Bail Agency's annual reports, the rate of nonfinancial releases increased from 48 percent of the defendant population in 1969 to 63 percent in 1971. Furthermore, no pretrial release program in the country secures the release of as many felony defendants as does the D.C. Bail Agency. In addition, a comprehensive evaluation of a conditional release program in Des Moines, Iowa--the Polk County Community Corrections Program--indicates that conditional releases can facilitate the release of higher risk defendants.[22]

Although the use of conditional releases has had the effect of increasing the number of persons released without bail in the District, it also resulted initially in a sharp decrease in the use of simple release on recognizance (ROR). Where previously ROR had been used in better than 40 percent of the cases, after the widespread implementation of conditional releases the use of straight ROR dropped to about 10 percent in 1971. Hence, one of the immediate consequences of conditional releases in the District was a sharp drop in the number of simple ROR's. This suggests that when judges are allowed the option of using the more restrictive methods of release, they will be inclined to do so in preference to the use of ROR. In Des Moines, however this did not occur. According to the programs's evaluator

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[22]Peter S. Venezia, Pretrial Release With Supportive Services for "High Risk" Defendants. (Davis, California: National Council on Crime and Delinquency Reserach Center, May, 1973).

conditional releases were selectively employed and did not reduce the number of defendants granted nonfinancial releases without conditions. The difference in the results in the District of Columbia and Des Moines may lie in the fact that in the District conditional releases are considered at the defendant's first bail hearing, while in Des Moines defendants are screened for conditional release only after the initial bail decision has been made.

The impact which the imposition of conditions has on the pretrial release performance of defendants is unknown. According to the third year evaluation of the Polk County Community Corrections Program, the "high risk" defendants released to the program had a two percent failure to appear rate and a 22 percent rearrest rate.[23] Neither rate was appreciably different from that achieved by defendants on other forms of release. Unfortunately, however, we do not know whether either the FTA or rearrest rates would have been different without the imposition of conditions.

Whether conditional releases are genuinely valuable in increasing the number of defendants released prior to trial or in influencing the performance of defendants while on release, they have clearly given new purpose to pretrial release programs. The programs are now called upon to recommend the use of conditional releases and sometimes to suggest the type of conditions which should be imposed. Secondly, the program's role in maintaining contact with released defendants has increased importance in that the programs are now involved in supervising defendants to see that the conditions imposed are met.

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[23]Peter S. Venezia, supra note 22, p. viii.

5. Supervision of Released Defendants

Pretrial release programs generally assume the responsibility of maintaining contact with defendants released through their intervention during the pretrial period. Because of the lack of program experimentation with different levels of follow-up contact, we do not know how valuable such activity actually is in reducing failures to appear. Nor do we know much about the relative merits of different types of follow-up activity. With the development of conditional releases the amount of program time and money allocated to follow-up has increased significantly, yet we have no information by which to judge the impact of this activity on the performance of released defendants. It may be that follow-up activity is extremely important and, if properly implemented, could allow for the safe release of a considerable number of defendants who are now judged ineligible for nonfinancial release. On the other hand, it may be that follow-up contact is of little utility. The Hennepin County (Minneapolis) Court Services Agency assists in the release of approximately 1,000 defendants annually, employs no follow-up procedures and yet, according to director Richard Scherman, has a nonappearance rate of less than one percent. This is a particularly important area for future research.

D. Summary of Findings

The significant expansion which has occurred nationally over the past 15 years in the use of own recognizance and other forms of nonfinancial release is the most obvious finding to emerge from this Phase I study and it is also the most obvious evidence of the past success which pretrial release programs have

collectively enjoyed. The obvious correlation which exists between this increase in the use of nonfinancial releases and the rise of pretrial release programs clearly demonstrates that the programs have had a major influence on pretrial release practices. We, thus, feel confident in concluding that the programs have proven themselves as effective vehicles for implementing significant changes in long-standing bail practices and that the assumptions which underlie their intervention are basically sound. We believe that the programs have fully demonstrated that:

-- The traditional money bail system is unduly harsh in its reliance upon financial resources as the sole criterion for pretrial release.

-- Through their interviewing and screening of pretrial detainees, pretrial release programs can identify many persons qualified for nonfinancial pretrial release on the basis of significant ties to the local community.

-- The information and recommendations supplied by the programs are given considerable weight by judges in making bail decisions.

-- And, as a result, many persons are released on own recognizance or other forms of nonfinancial release who would otherwise have been detained or forced to secure their release at the cost of a bail bond.

The lack of methodologically sound cross-jurisdictional research on the issues of failure to appear and pretrial crime makes it difficult to reach firm conclusions as to the impact of pretrial release programs in these critical areas. However, based upon the consistently low rates of nonappearance reported by the programs, as well as the generally high esteem with which the programs are held by other actors in the criminal justice system, we would tentatively conclude that the programs are correct in their further assumption that:

-- Defendants granted nonfinancial releases on the basis of favorable program recommendations will perform as well

while on pretrial release in terms of making their court appearances and abstaining from criminal conduct as will defendants on money bail.

It is impossible and unwise at this time to attempt to define an ideal pretrial release program in terms of its organizational structure and operating procedures. The type of pretrial release program which will be most effective will vary from one jurisdiction to another depending upon the goals of the individual program, the effectiveness of the existing pretrial release system, and the attitudes of the local judiciary toward the program and the use of non-financial releases. The type of program which will work well in one jurisdiction will not necessarily be equally successful in a second. However, in terms of achieving the objectives of maximizing the use of nonfinancial releases and the speed with which pretrial releases are obtained, the speed with which the program operates in interviewing detainees and processing release recommendations is clearly the critical variable. To the achievement of these objectives, the optimal program strategy would include:

-- Conducting initial interviews with detainees immediately after their arrest and booking.

-- Limited verification requirements for defendants charged with minor offenses and independent authority to release qualified defendants in routine cases without prior judicial approval.

-- A large enough staff to do prompt verifications in other cases and prompt access to judges for presenting release recommendations in qualified cases.

-- Presentation of program information--whether verified or not--at the defendants initial bail hearing.

One of the consequences of the above procedure, however, will be program involvement in some cases in which the defendant would be fully capable of

achieving pretrial release without program intervention. The cost-effectiveness of pretrial release programs is primarily contingent upon their ability to secure releases in cases where the defendant would otherwise be detained and thus the most cost efficient program would likely be one more directed towards the needs of persons incapable of securing release through existing court procedures. In addition, the above procedure may not be the most conducive to achieving the goal of lessening the discriminatory nature of the pretrial release system.[24] The potential danger does exist that programs which intervene immediately after arrest can achieve an impressive number of nonfinancial releases simply by skimming off the best release risks but be failing those the bail reform movement was intended to benefit--those persons too poor to post bail.

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[24]One issue which is receiving growing attention is that of equal justice for women. During the course of our survey and site visits we frequently observed that the coverage of women's facilities was less than that of men's. Whether or not this inequity puts women at a disadvantage is open to question. Some program representatives suggest that it is more likely that women will be released by a judge and therefore the need for pretrial services for women is not as great. Others maintain that program services could reduce custody time and/or bond costs for women defendants but that such coverage would increase the programs' budgets without generating sufficient releases to be cost effective operations. At any rate, it would appear that equal justice for women in terms of pretrial service coverage is an issue area which should be addressed both in terms of individual program objectives as well as in national scope research.

IV

KNOWLEDGE GAPS AND RESEARCH PRIORITIES

Due in large part to the availability of federal money through LEAA grants, pretrial release programs are now enjoying a wave of success. Operational in well over 100 jurisdictions, many of the programs are today well integrated into existing court procedures. The programs we visited are, for the most part, well-administered, highly efficient operations. They are heavily involved in the pretrial release decision process in the jurisdictions in which they operate and also provide supervision and some supportive assistance to thousands of defendants on pretrial release annually. We do not doubt but that the efficiency of the criminal justice system would decrease substantially in many jurisdictions were the programs to be discontinued.

The question, nevertheless, remains whether local city and county governments, given their tight financial resources, can afford to support these programs for any extended period of time once the federal money supporting many of the programs terminates. We feel that the top research priority lies in assessing the impact which pretrial release programs have on pretrial release/custody decisions as long-term, on-going agencies. Once an experimental release program has demonstrated the feasibility of nonfinancial releases and educated judges in their use, do the programs continue to influence release decisions? Do they provide for the safe release of persons who would otherwise be detained and, if so, is their impact sufficient to justify their continued funding? The research challenge today is to assess the gains that have already been made in the use of alternative forms of pretrial release and to re-evaluate the role

pretrial release programs should play in light of the growing use of police citation releases and the receptivity of judges to the use of own recognizance on their own initiative.

In this connection, there are a number of more specific questions that need to be addressed by future research if we are to begin to close some of the gaps in our knowledge. The following questions, identified in the Evaluation of Policy Related Research on Pretrial Release Programs conducted by the National Center for State Courts, remain unanswered:

- What effect does a particular type of pretrial release program have on the proportion of defendants in the jurisdiction who are released prior to trial? To what extent does it result in the release of a greater proportion of defendants than would otherwise be released? To what extent does it reduce the proportion of defendants released on surety bail? To what extent does it relieve jail overcrowding?

- What are the comparative failure-to-appear rates for defendants on different types of pretrial release (e.g., release on recognizance, supervised release, deposit bail, traditional money bail)? What factors tend to produce low failure-to-appear rates?

- What effect does a particular type of pretrial release program have on the commission of a crime by persons already awaiting trial on earlier charges?

- What are the comparative rearrest rates for defendants on different types of pretrial release? What factors tend to produce low rearrest rates?

- To what extent is it possible to develop criteria by which to accurately predict which defendants will flee the jurisdiction or commit crimes if released?

- To what extent do different types of pretrial release programs contribute to reducing inequities based on race or economic status?

- How effective are different forms of pretrial release programs in reducing the time from arrest to release for defendants who are released?

- What are the comparative economic costs and benefits of different types of pretrial release programs?

- What are the advantages and disadvantages of alternative operational procedures? What type of agency or organization is best suited to administer a pretrial release program? Should release criteria be subjective, objective, or a combination of the two? What categories of defendants, if any, should be excluded from consideration for pretrial release? What should be done in cases where a project cannot make a positive recommendation regarding a defendant? What types of verification and notification procedures work best?

- To what extent does the pretrial release of a defendant contribute to delaying the disposition of his case? Are there ways to minimize delay while maximizing the number of persons released prior to trial?

For the programs themselves, the challenge today is to reassert their innovativeness. This can be most profitably done through the development of alternative operational procedures and the use of experimental research designs in which different levels of program treatment are assigned randomly to defendants. In this way the programs can experiment with different types of verification, release eligibility standards, and follow-up procedures to determine which procedures yield maximum impact for the least amount of money.

The cost effectiveness of pretrial release programs is primarily contingent upon their ability to assist in the release of persons who would otherwise remain in detention. This, in turn, closely correlates with the ability of the programs to lessen the discriminatory nature of the traditional bail system on indigents--who quite obviously are the ones most likely to be detained for failure to post bail. How successful the programs now are in achieving these goals and how their procedures might be altered to facilitate the attainment of these goals are the major unanswered questions.

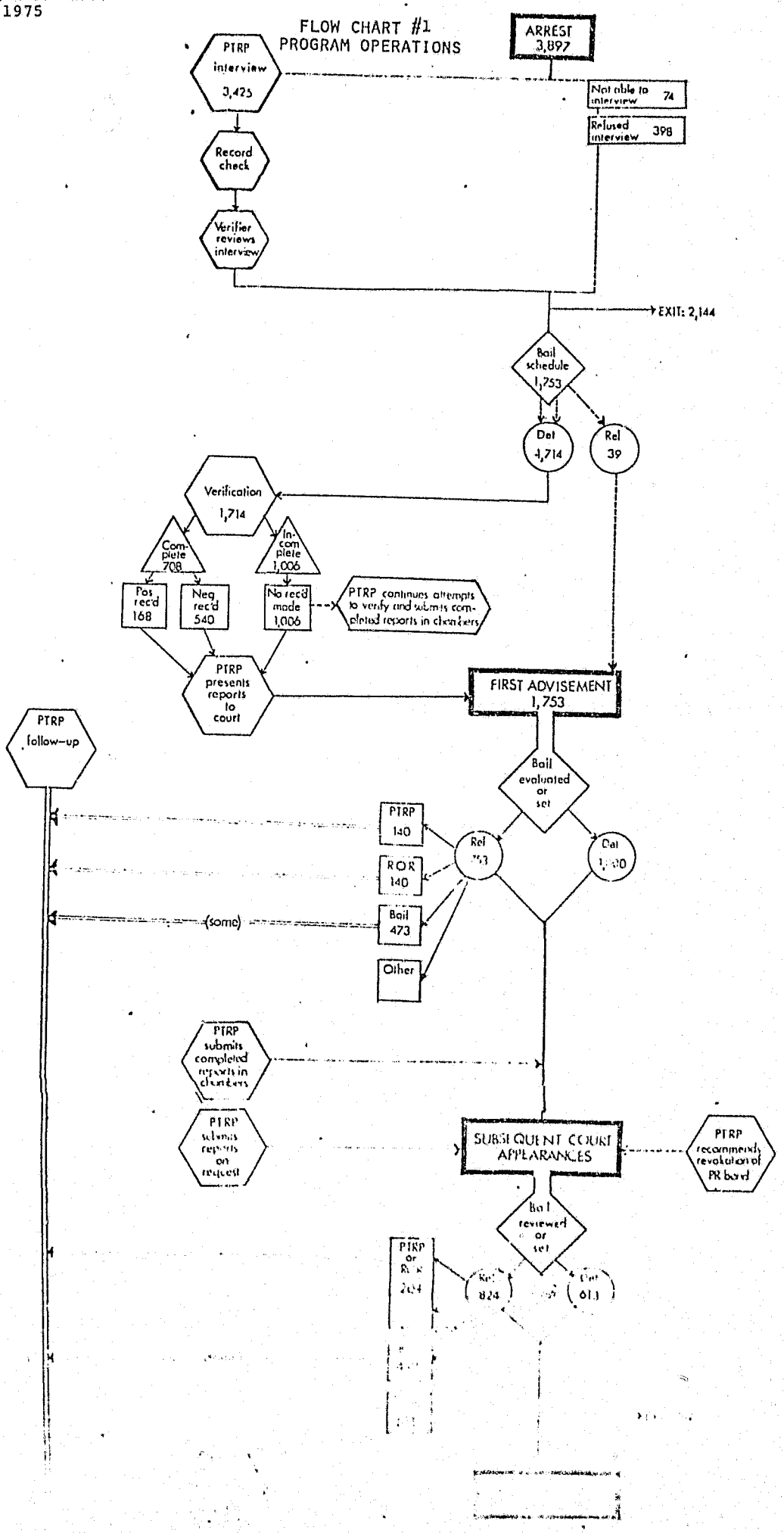
APPENDIX

FLOW CHARTS OF PROGRAM OPERATIONS

The Flow Charts of the Denver Pretrial Release Program's operations and follow-up procedures were chosen as being representative of the large number of programs which use the five basic functions in their operation--interviewing, verification, screening for release eligibility, preparing and submitting release recommendations, and maintaining "follow-up" contact with released defendants. Flow Chart Number 1, Program Operations, diagrams the activities of the program and the points at which program activities intersect with other aspects of the criminal justice system. The elements on the left side of the diagram represent program activities. The rectangles on the right hand side represent the major steps in the processing of felony defendants in the criminal justice system beginning at the top of the chart with law enforcement agents and on through the courts to final disposition. The figures represent felony case processing for a six-month period in 1974 and are included only to show the relative distribution of cases through the various outcomes.

In order to highlight the internal program operations involved in follow-up procedures we have also included Flow Chart number 2, a process flow diagram of the procedures used by the Denver Pretrial Release Program in the supervision of released defendants.

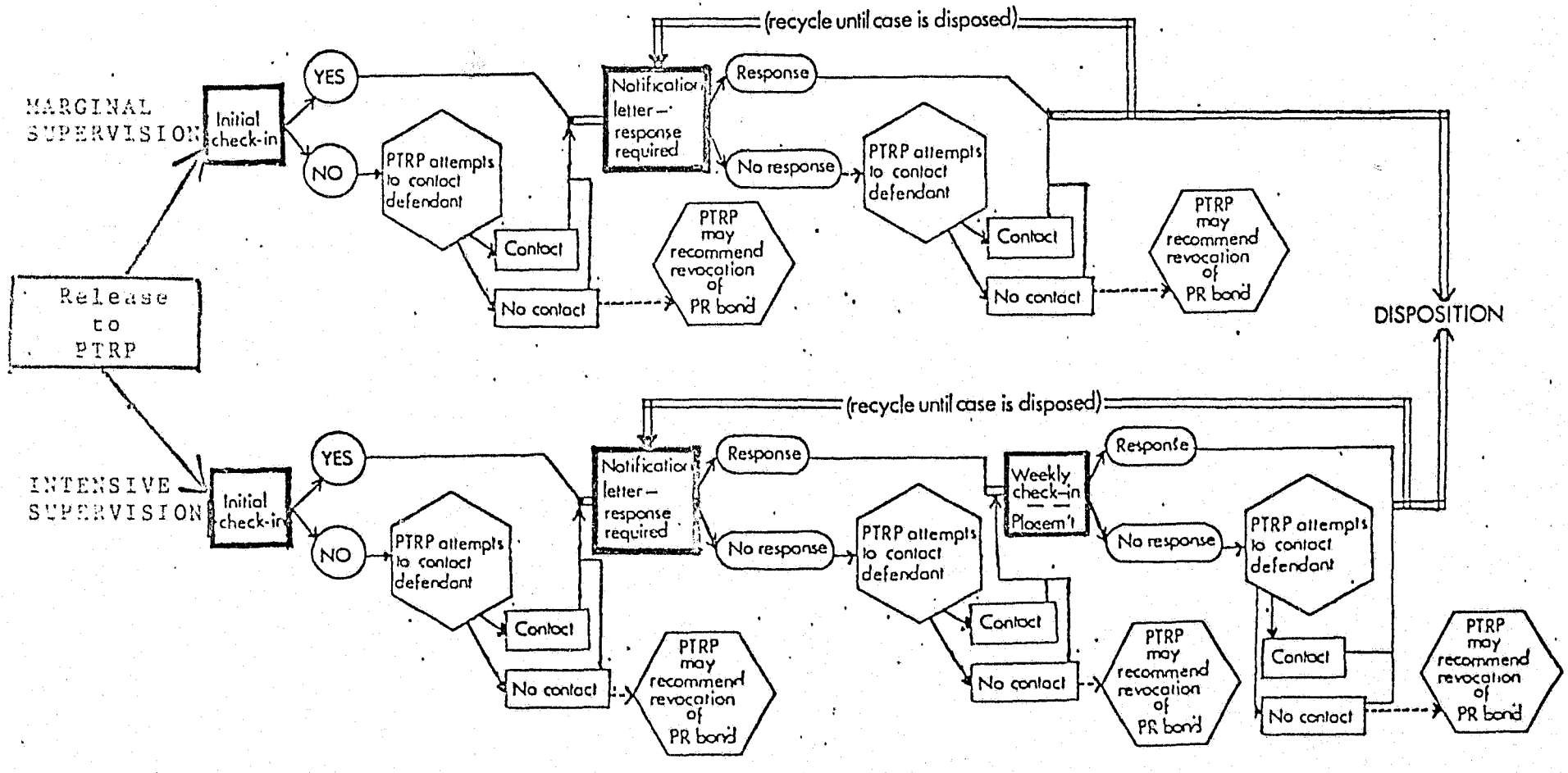
FLOW CHART #1
PROGRAM OPERATIONS



FLOW CHART # 2

FOLLOW-UP PROCEDURES

Denver Pretrial
Release Program
June 1975



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