

PRETRIAL SERVICES IN NASSAU COUNTY

*A Study prepared for  
Nassau Coalition for Safety and Justice*

*by Diana R. Gordon, Consultant*

*August, 1978*

NCJRS

AUG 21 1978

ACQUISITION

499647

## Table of Contents

I.	Introduction and Conclusion	i
II.	What is Pretrial Services	4
III.	Activities and Notable Features of Selected Pretrial Programs	6
IV.	Major Issues for Nassau County Pretrial Services Agencies	13
v.	Recommendations	18

## PRETRIAL SERVICES IN NASSAU COUNTY

### I. Introduction and Conclusions

On May 17, 1978, Nassau County Executive Francis Purcell noted, in a speech stressing the importance of offender employment programs, that Nassau County has a wide variety of pretrial services for defendants and that judges often prefer to use these services as an alternative to incarceration. While some of these services are public - such as the ROR (release on own recognizance) and conditional release programs of Operation Midway in the Probation Department or the programs run by the Office of Drug Abuse Services - a number are provided by non-governmental organizations. Funding sources are varied. Some programs are supported partially with foundation or church funds granted to not-for-profit groups; there is at least one fee-for-service operation; and one of the non-profit organizations gets its support from Nassau County through the Youth Board. The non-governmental organizations offer diverse services and are not regulated by a single set of programmatic or procedural guidelines.

The private programs are, however, represented by the Pretrial Services Task Force of the Nassau Coalition for Safety and Justice. This group meets regularly to share information about program activities and clients, and to plan improvements. In the Winter and Spring of 1978 it seemed to the Task Force that existing services were not reaching all potentially eligible detainees at the Nassau County Correctional Center. The Task Force was also concerned for the future of the private pretrial services programs, because current sources of support were running out and replacement funding was not immediately available.

One of the most important functions of the Task Force is to bring pretrial problems to the attention of criminal justice agencies (public and private) and county officials, in order to stimulate improvements in service delivery as the need arises. The Coalition, therefore, commissioned an examination of the need for pretrial services in the county, the extent to which that need was being filled, and the likelihood that the current non-governmental programs could find permanent funding to continue with or expand the services they now provide. It hoped to use that examination to bring attention to the role pretrial services play in Nassau County and to stimulate concern for strengthening that role. This report is the result.

It is important to note that this paper is NOT an evaluation of the programs looked at. Both the shortness of time and the lack of comparability among programs preclude a real analysis of their effectiveness, either in terms of their own objectives or in terms of ideal results from pretrial release and diversion

services. Data are skimpy with regard to both the recidivism rates and the service needs of the pool of defendants who are program participants. The programs' clients do, however, generally return to court on time, and judges demonstrate their belief in the efficacy of the programs by continuing to follow release recommendations in many cases.

Some general conclusions can be drawn about the role of non-governmental programs in meeting the need for pretrial services in Nassau County. Many people interviewed for this paper say that the private organizations often provide more intensive one-to-one service - both in investigating a defendant's suitability for release and in providing post-release services - than the larger public programs can, although they handle far fewer clients. And the programs give Legal Aid and private defense attorneys a kind of back-up service that the Probation Department and the Office of Drug Abuse Services cannot afford - either politically or programmatically - to do.

But permanent funding for some of these private services will be hard to obtain. County funds are short, LEAA funding (through the Nassau County Criminal Justice Coordinating Council) is committed through October, 1979, and the individual organizations of the Pretrial Services Task Force do not have the aggressive and concerted support of Nassau County officials who set policy in the criminal justice area. Furthermore, both the Nassau County Probation Department and the Legal Aid Society are expanding their pretrial services and would appear to have the lead, in political and strategic terms, in claiming the scarce resources of the County and the Law Enforcement Assistance Administration of the Federal Government. Additionally, Nassau County officials often do not understand the differences between programs and feel that the funding by the Nassau County Department of Drug and Alcohol Addiction of a TASC (Treatment Alternatives to Street Crime) program to be administered by the Education Assistance Center's Criminal Justice Unit may duplicate existing services provided by pretrial programs, despite EAC's intention to refer cases where pretrial data must be obtained to the Probation ROR unit and the Pretrial Services program of the Nassau Pretrial Services Agency. Finally, the conservative, belt-tightening sentiment of the late 1970's works against the public funding of defendant's services in general.

The fiscal, strategic, and administrative obstacles might be overcome if the private programs could better document the benefits accruing to defendants and to society from the services they provide. This experienced observer received the impression that personal, intensive services are provided by these programs to defendants who would not otherwise receive them and who, in some cases at least, improve their lot because of them. But, unfortunately, the programs have not collected the data to show that pretrial services bring about positive change in defendants' employment or education status, or that program participation leads to more appropriate dispositions when cases are adjudicated, or perhaps more importantly - that pretrial services provide significant cost/benefits to the criminal justice system and the community at large.

3.

While many of these outcomes are difficult to demonstrate, some collection of this kind of information seems necessary to convince Nassau County officials over the long run to find a permanent place for these programs in a time of austerity.

## II. What Is Pretrial Services?

The last decade has seen the development of a great range of programs intended to get the defendant awaiting trial out of jail and diverted from further prosecution. To a great extent, the initial impetus for these programs was disaffection with the traditional practice of requiring bail to secure the appearance of a defendant at adjudication. It was argued that the application of bail requirements discriminated against the poor and was used predominantly, not to ensure that an accused person would show up in court, but to protect the community from defendants deemed by the judge to be dangerous. The Manhattan Bail Project of the Vera Institute of Justice and the projects it spawned have conclusively demonstrated that bail is no more effective a way to secure most defendants' appearance than release on the defendant's promise to return.

Altering the traditional devices for pre-adjudication criminal justice system processing has not been limited to ROR programs. Beginning in 1965 with the Citizens' Probation Authority in Flint, Michigan, experiments with deferring prosecution for defendants being supervised on release pending trial have proliferated to the extent that two years ago the ABA counted 148 pretrial diversion programs in 38 states. In 1967, the President's Commission on Law Enforcement and the Administration of Justice (The Challenge of Crime in a Free Society) called for Federal legislation to support diversion programs for as many defendants as possible. In 1971, the ABA standards for defense counsel emphasized the lawyer's duty to "explore the possibility of an early diversion of the case from the criminal process through the use of community agencies," and that organization shortly thereafter set up a Pretrial Intervention Service Center to help the movement along. The National Advisory Commission on Criminal Justice Standards and Goals strengthened the mandate for pretrial diversion in 1973. By now at least three major Federal agencies have funded these programs (the Department of Labor, the Law Enforcement Assistance Administration, and the Department of Health, Education, and Welfare), with many local governments and foundations supporting services also.

"Pretrial Services" is an imprecise term that refers in general to public or private programs which work to obtain the defendant's release from pretrial detention and/or provide social services (and often supervision of release conditions imposed by the court) when a defendant is released. The National Association of Pretrial Service Agencies includes in its definition the program in which a defendant is indicted and pleads not guilty before being provided with services (what the ABA calls "post-charge intervention.") Strictly speaking, since a plea had been entered, this kind of program is not pretrial. There seems an inherent contradiction in calling a program pretrial where the defendant must agree to what Professor Daniel J. Freed of Yale Law School has called "a sentence-like control while maintaining his innocence".

Because the Nassau Coalition is primarily concerned with the future of services provided to a defendant before a formal charge is made, the term "pretrial services" will be used in this paper only to refer to "pre-charge intervention."

Narrowing the definition in this way has several consequences. For one thing, it excludes discussion of the parts of programs examined which are not strictly pretrial, except as they are diversion services incidental to a release program. For example, both the Pretrial Services program of the Nassau Pretrial Services Agency and the fee-for-service Court Consultation Services, in addition to their pretrial work serve clients who need help after a plea has been taken (or a trial held) but before sentencing. The major program of the Probation Department's Operation Midway is excluded from consideration, since it generally follows the model of serving defendants after they have pled guilty. (For many participants, that program defers prosecution only in the sense that the expected plea bargain is delayed until the end of the program, and the odds of a formal sentence at that time are greatly reduced.) Successful completion of the program usually results in a dismissal of charges for slightly less than half the cases, with more than half having the original charges reduced and the original pleas changed to "guilty" for the purposes of sentencing. The ROR unit and the new conditional release program of Operation Midway are, however, included in the category of pretrial services programs in Nassau County, since they operate before any plea is entered.

Pretrial services as usually defined fall into two general categories: release services and diversion programs. (The latter category includes both pre-charge intervention and programs like Operation Midway).

The National Association of Pretrial Services Agencies (NAPSA) specifies a number of activities included in release services: interviewing arrestees; attempting to get defendants released from custody by appearing with them at the police station house; verifying information on defendants' community ties; writing release recommendations to the court and appearing in court to support the recommendations and explain release conditions to defendants; notifying released defendants of court dates; keeping track of defendants' whereabouts and behavior; trying to find alternative programs for detained defendants who are not eligible for ROR. To some degree, Nassau County programs provide all these services; they also sometimes help defense attorneys argue for bail reduction or find bail monies.

Diversion programs are extremely varied in their procedures and services. Their objectives, however, are fairly uniform. The American Bar Association's Pretrial Intervention Services:

A Guide for Program Development summarizes them as:

- To substantially increase the employability of selected defendants through the application of intensive short-term vocational counselling, employment placement services, vocational training and education placement;
- To substantially reduce unemployment and recidivism among the defendants served;
- To assist in effecting change within the traditional criminal justice system; and
- To remove the stigma of a conviction record for citizens who can avoid future criminality.

The NAPSA Performance Standards and Goals for Pretrial Diversion adds to these general objectives the important refinement of aiming to permit the criminal justice system to concentrate the major part of its resources on crime that posed as serious threat to the order of neighborhoods, communities or the society in general. Specific activities of the Nassau County programs will be described in the next major section; diversion services generally include referral to or delivery of the standard social services, with special emphasis on certain services where Federal program models are involved (e.g., detoxification efforts in TASC projects, job development in early Department of Labor projects.) In addition, some programs include informal brokering and advocacy activities helping a "client" negotiate the problems of daily life in the community and promoting the defendants' interests with the institutions that act upon his or her life.

### III. Activities and Notable Features of Selected Pretrial Programs

There is no real national model for pretrial services programs, though there has been the promulgation of standards which are followed, to a greater or lesser degree, by hundreds of programs. Perhaps the closest thing to a national model is the Vera Institute's Pretrial Services Agency (now the New York City Criminal Justice Agency), which grew out of the original Manhattan Bail Project. An independent agency funded primarily by LEAA, Pretrial Service Agencies (PTSA), operates in four boroughs of New York City (Manhattan, Brooklyn, Staten Island and the Bronx.) A 1976 report describes its activities and is summarized below:

PTSA interviews defendants who are detained pending arraignment, with an eye to assessing the defendant's community ties and obtaining numbers and names of community contacts for later use. On the basis of this interview, the agency will make a recommendation



as to whether the court should release the defendant on his own recognizance. The recommendation is the result of the weighing of variables indicating community ties, such as 1) defendant's possession of a telephone, 2) defendant's length of residence at the present address, 3) defendant's plan to have relatives or friends in court, 4) defendant's closeness to the people with whom he lives, 5) defendant's employment or school status; and 6) defendant's criminal record. Positive evaluations of community ties include the designation "Recommended for ROR based on the Certified Information on this form" and "Qualified for ROR based on the unverified information furnished by the defendant." To get a positive evaluation, the defendant must also have an address in or near New York City. The PTSA recommendation does not take into account the nature or circumstances of the present charge.

Defendants who are ROR'd are given notification of court dates by PTSA staff. If a defendant fails to appear, PTSA staff try to arrange to have him return to court voluntarily, in which case the warrant against him may be vacated.

PTSA also tries to provide the defendant not successful at getting ROR with a second or third chance. The staff sends letters re-arguing the case for ROR at a subsequent court hearing; it finds sponsors for some defendants whom the court did not originally wish to release to their own recognizance; and it requests supervised release for those defendants who are eligible for and willing to participate in a supportive service program. Supervised release includes keeping in close personal touch with defendants who have been released and referring them to services, where appropriate.

This program had many features generally shared and/or modified in the present look at pretrial services programs: a "point system" which evaluates defendants for release, a notification process to get defendants back to court at scheduled times, some supervision during the time a defendant is released pending adjudication, and linkages with community agencies that can provide services to defendants.

This program and others justify themselves in terms of both money saved that would otherwise be spent on detaining released defendants and the low rates of failure to appear in court for program participants. It does not seek to show that the program reduces recidivism or prevents crime during the pretrial period, presumably on the theory that the program operates as an alternative to bail, which is constitutionally required to secure court appearance not as the justification for preventive detention. Information gathered from 1974 and 1975 indicates that the annual net savings from ROR (for the

boroughs of Brooklyn, Staten Island and Bronx) was almost \$5.3 million, or more than 400,000 detention days. (Not all of these savings are attributable to PTSA programs, since some defendants would have been ROR'd without those services.) Failure-to-appear rates for ROR'd defendants were 8.3% for Brooklyn (18-month period), 9.6% for the Bronx (12-month period), and 4.3% for Staten Island (18-month period). For those given "recommended" status by PTSA, the rates were lower (5.8%, 6.0% and 3.5%, respectively.) These figures are based on a total of 75,732 defendants given ROR interviews, with ROR rates of 44% in Brooklyn, 58% in the Bronx, and 52% in Staten Island.

The New York City program which has succeeded the PTSA, the New York City Criminal Justice Agency, has the same goals but somewhat different programs. They no longer have a supervised release program, as it was found to be too expensive and its cost-effectiveness too difficult to measure. They now conduct research on a number of pretrial issues, (for example, the Desk Appearance Ticket procedures in New York.) The program now extends to all five boroughs of the city and conducts interviews with all defendants except those given Desk Appearance Tickets and those charged with some minor violations. The program is independent of the Vera Institute and is part of New York City Government.

The Monroe County program (Rochester and surrounding towns) has adapted many of the PTSA program features into its smaller purview, and has developed a diversion program which provides services after arraignment and defers prosecution for ninety days, after which charges are usually dismissed if the defendant has cooperated. Like PTSA, the program does ROR interviews for virtually every defendant detained and uses a point system to determine whether he or she should be recommended for release. But the point system is applied more flexibly, and partly because the program is smaller (fewer than 6000 interviews in 1970), exceptions can be made to the rules that guide recommendation decisions. Similarly, rules as to eligibility for the diversion program can be stretched in exceptional cases. The program does not regularly notify defendants of upcoming court dates, but a staff person checks to see if ROR'd defendants have appeared and finds them if they haven't. Its failure-to-appear rate is about three percent.

The diversion program of the Monroe County Pretrial Services Corporation works in close conjunction with the District Attorney's office. Many referrals come from there, and the presumption seems to be that the DA will defer prosecution on a reasonable request from the program. (In 1977 the DA refused to defer prosecution in only seven percent of the cases recommended by the program.) The program is also closely tied in with many community resources for jobs, schooling, medical and psychological testing, etc. These services are sometimes provided also for successful clients of the release program who are awaiting adjudication. The diversion program had 389 clients in 1977 and is likely to have about the same number in 1978.

In 1977, the Center for Governmental Research in Rochester conducted an evaluation of the diversion program and found that, measuring the cost to the county of the program against the costs of fully processing defendants in the criminal justice system if the program had not existed, the program had a 1.3 to 1 ratio of costs to benefits. The authors of the study described this ratio as representing "solid, real benefits" which pertained despite the "extremely conservative research methodologies and circumstances" of the evaluation.

Like the New York City program, the Monroe County Pretrial Services Corporation is now funded with local sources, through a contract with the county and a regular annual appropriation. This is the third funding source the program has had since it began in 1969 on a demonstration basis, as a Junior League project. From 1970 to 1973 it was funded with LEAA monies supplied through the New York State Division of Criminal Justice Services.

\* \* \* \* \*

Nassau County's pretrial services, unlike those of New York City and Monroe County, are scattered among many agencies, public and private, and provide more diverse services. The remainder of this section will describe those programs.

#### Nassau Pretrial Services Agency

This program, started by the Long Island Bail Commission, provides both pretrial release services for indigent defendants and advocacy for services after a client is released. It is directly funded by the Veatch Program of the North Shore Unitarian Society and indirectly by the Nassau County Human Rights Commission, which provides office space and some staff. It operates outside of the regular criminal justice system, and cannot rely on the regularized promise of reduced or dismissed charges for a defendant that performs well. Nonetheless it is well-known in the county, is used as a resource by a wide variety of people who have contact with defendants, on occasion provides a more intensive service for a problem defendant than any other program, public or private, can do.

The program works as follows: A defendant being held at the Nassau County Correctional Center is referred to the program by the defense lawyer, friend, relative, correction officer, or community organization. A member of the program staff interviews the defendant, obtaining information on community ties (and often service needs) and explaining the purposes and activities of the program. The defendant is told that if he wishes to participate in the program, he will have to assist the staff member in obtaining accurate information for the ROR request and enter into "a trust relationship" with the staff members who work with him. He is also expected to cooperate with efforts the staff members make to find education, drug treatment, employment and other services for the defendant once he is released, if need for these services is indicated. Rough criteria for participation also include a "spark of hope

or self-esteem" in the defendant, according to the former program director. The required mutual trust is considered essential to the close relationships with both the defendant and his family which are often at the heart of the program.

When the case is made in court for releasing a defendant on ROR, the Pretrial Services Agency staff member appears to assure the judge that the program has verified the defendant's community ties, will be responsible for seeing that he or she appears at future court dates, and will provide services or referrals to the defendant as needed before adjudication. In some cases the defendant is actually released in the custody of the program. Persons interviewed about the effectiveness of having Pretrial Services staff in court to support defendant's request said that judges were influenced by the greater likelihood that a defendant would not "skip" if a participant in the Pretrial Services Agency program. The likelihood that services will be provided seems to be a secondary, though not insignificant, consideration. County and Supreme Court judges are felt to be most responsive, District Court judges less so.

In 1977 Nassau Pretrial Services received 647 referrals and accepted 337 of those as clients. They obtained release for 179, 93 into the custody of the program. In 1978 thus far the comparable figures are somewhat lower. The program reports that, based on the number of defendants released through its efforts, the daily cost of detaining someone in the Nassau County Correctional Center, and the average numbers of days a defendant stays at Nassau County Correctional Center, (NCCC), Pretrial Services saved Nassau County \$313,071 in 1977. This figure should be approached with caution. On the one hand, the savings to the county may actually be greater, because if a defendant had lost his job as a result of continued detention, the County might have had to bear the cost of supporting his family. Also, if the program creates opportunities for the defendant which avert later incarceration, money is saved. On the other hand, the program itself costs the County money, through the salaries of some Human Rights Commission staff who are assigned to the program. (The program's total budget is about \$160,000, with approximately 3/4 of that provided by the Human Rights Commission.)

#### Court Liaison Unit, Long Beach REACH

The Court Liaison Unit of Long Beach REACH is funded by the Nassau County Youth Board and the Long Beach Youth Bureau to provide services and advocacy to young people in trouble with the law. Figures from 1975-76 indicate that they had 122 clients for release services and/or post release advocacy. A variety of court-connected service (working with the defense attorney or law guardian, collecting information for judges, appearing in court with the defendant) was provided for 107 of these youth. Services for released clients included referrals to youth centers, drug alcohol programs, special schools, Job Corps, etc. An important part of the services provided come from the REACH clinical component which includes diagnostic screening and evaluation, individual, group and family therapy.

This program operates in a very different environment from the Pretrial Services program, perhaps because its catchment area encompasses only five communities: Long Beach, Lido Beach, Island Park, Atlantic Beach and Point Lookout. It serves the Long Beach city court as well as district and county courts, and its relationships with the local judges are close and formal. Staff works closely with the courts and defense attorneys. Some of the services they provide are reenforcement to defense attorneys filing bail and ROR applications, in-court appearances to discuss clients' problems, community supervision, referral services, etc. They also serve kids referred by other REACH components. Youth must be a resident of the catchment area, under 25 years old, and be referred by defense lawyers, community organizations, police, Probation's Operation Midway, courts or agencies (or by self-referred). Recommendations for release are made on the basis of more subjective standards than in some other programs; staff are aware of the Vera point system, but say they use it only to the extent they feel it appropriate. Because of the large number of families from Nassau County who are placed in the community, the Court Liaison Unit has had to broaden its criteria for release recommendations.

The Court Liaison Unit is supported with about \$56,000 annually from the Nassau County Youth Board and the Long Beach Youth Bureau. In addition, they have indirect support from the other components of REACH. REACH itself is supported by the County, through the Drug and Alcohol Abuse Agency, and by the local United Way. No research component was available to assess the cost effectiveness of the Court Liaison Unit. Calculations would be different from those made for the Pretrial Services Agency, since the tendency to release youth is somewhat greater than for a general sample of defendants and the charges are probably, on the average, somewhat lower. However, in the spring of 1977, as part of its application for LEAA refunding, REACH did a costout of its entire program and then a separate breakout of the Court Liaison Unit component and found that the average cost per client annually was only \$285.

#### Court Consultation and Referral Service (CCRS)

The Court Consultation and Referral Service is a private, one-woman business, run by Susan Andrews (who created and implemented REACH, as well as the Court Liaison Unit, and previously worked for the State Office of Drug Abuse Services) using part-time consultants, primarily a psychiatrist and a social worker. CCRS does psycho-social histories, diagnostic testing, and service referrals for a fee. The agency provides back-up to defense attorneys filing bail and ROR applications, appears in court with clients to discuss their problems (often psychiatric) with the judge, works with parole and probation officers who need psycho-social information on a client, and provides defense attorneys with information relevant to plea negotiation. Her services continue into post-charge stages of the criminal process; she develops a pre-sentence evaluation or memoranda always with recommendations to the court that will follow a defendant through incarceration or probation. Her clients are generally referred to her by defense lawyers, occasionally by judges; she also gets some clients who come directly to her. She often takes non-paying clients and occasionally is referred 18 B cases.

Because CCRS is a profit-making enterprise and such a small operation, it is not regulated by any set of state standards, but is guided by professional standards. Ms. Andrews does not have specific criteria for clients. They must be willing to be interviewed and tested, but that is all. She relies for clients on her reputation for successful advocacy, which is good among both attorneys and judges.

#### Court Counselling Service, Education Assistance Center

This is a defunct program, but because it was active for some time and has led to the new Treatment Alternatives to Street Crime program, it is included in this round-up of pre-trial services projects. Operating originally under contract to County Department of Drug Abuse and Alcohol Addiction (at about \$40,000 a year), the program provided bail funds (raised from the business community and religious sources) as well as release services like investigation of defendant's community ties, court advocacy, and the identification of program resources for released defendants. It serviced between two and three hundred defendants each year. Like the Pre-Trial Services program and the Court Consultation Service, it provided backup to defense attorneys and got many referrals to clients from them. It helped them with pre-sentence memoranda and got into other post-charge services. Its director, Rene Feichter, feels that many of the program's original functions will be assumed by the new TASC grant, but he is concerned that there remains a substantial pool of detained defendants who could be released who are not being released by the existing programs and who will not be eligible for TASC until they have progressed farther into the criminal justice process than is necessary. Funding ran out for this program because the Veatch Program wished to emphasize programs that effect systems change, rather than direct service.

#### Nassau County Legal Aid

The Legal Aid Society had, for some time, relied on the Pre-Trial Services program and previously on the EAC program for release and referral services for their clients before adjudication. But increasingly, the agency has conducted its own investigations and provided social service referrals for released defendants. It now has a professional social worker and graduate aides from Adelphi University and intends to include a request for more in-house assistance in its next budget request to the County. At present the social service unit of the agency has a caseload of 30 cases a month. No estimates of the costs of the program have yet been compiled.

#### ROR and Conditional Release programs, Operation Midway, Nassau County Probation Department

The ROR unit of Operation Midway (the post-charge diversion program of the Nassau County Probation Department) does court-requested investigations on defendants accused of first felonies (usually). In 1977 the program conducted 1652 investigations and recommended 602 defendants for release. This makes the

Probation Department the largest provider of release services in the county, by a substantial margin. Also in 1977, the Department began a conditional release program in which judges who were uncomfortable about releasing a defendant in his own custody could assign him or her to the Probation Department for supervision while his case was adjourned. The program currently has a caseload of about 125 and has plans to expand. No evaluation has yet been made of the program.

#### IV. Major Issues for Nassau County Pretrial Services Agencies

The National Association of Pretrial Services Agencies was founded on the premise that pretrial services agencies faced common issues and problems. While that is certainly true, local situations also create local issues which may be unique or nearly so. This section will present some of both the common and the unique issues that Nassau County pretrial services face, and draw some conclusions about them.

It will be immediately evident that the conclusions must be very tentative, based often on the experience of other jurisdictions and on common-sense speculation. This is for several reasons. First, neither the pretrial services programs nor the Nassau County Criminal Justice Coordinating Council have collected good data on who might be served by pretrial services, what they need, and what they are now getting. Second, despite the existence of the Pretrial Services Task Force of the Nassau Coalition of Safety and Justice, there is no real coordination of the provision of services by groups having different program goals and administrative auspices. Finally, there are some questions that could not be answered definitively under any circumstances, since they involve wholly speculative assessments of human behavior. (How would a judge have behaved if a pretrial services staff member had not told him of a shelter for retarded youth where the defendant could go instead of to NCCC? How would a client have behaved if he had not participated, with his family, in group counselling sessions at REACH?)

Although there are other major and minor issues, several seem pressing for assessing the future of pretrial services in Nassau. Not all these issues are resolvable, for the County or for pretrial programs in general. Furthermore, the fundamental question of effectiveness - in getting defendants to court, preventing crime during the pretrial period, and providing defendants with services pending trial - can be answered only through a precise, thorough statistical evaluation. Nonetheless, the following questions are relevant and should be kept in mind:

1. Is there a pool of defendants who need pretrial services? To what extent are these defendants being served now?
2. Are the present services appropriate to the needs of defendants and of the court?
3. Are the present services cost-effective? Do they cost society less than detention for defendants who would otherwise be held?
4. Is there a special role for the non-governmental programs?



### Client Pool

One of the criticisms most often leveled at the criminal justice system is that it operates selectively, coming down hardest on the poorest, least powerful members of society. Bail is perhaps the most explicit example of an institution where those who can pay (literally) buy their way out of trouble and those who cannot compound the effects of their crime by remaining in jail. (Studies have repeatedly shown that those who cannot make bail are most likely to be indicted, found guilty, and ultimately incarcerated than those who made bail for the same offenses.) Pretrial Services is partly justified by the need to redress this imbalance, to provide support for poor defendants that will help correct the race and class bias inherent in the system. It is therefore crucial that pretrial services reach the pool of least-served defendants, for whom release is possible but not immediately forthcoming without the services.

Nassau County has a relatively low rate of reported crimes, according to the FBI Crime Reports. For all seven index crimes (murder, rape, robbery, assault, burglary, larceny, and auto theft) the rate is 3835.5 per 100,000 population, only 63% of the rate for New York State and less than 3/4 of the rate for the country as a whole. Furthermore, reported violent crimes comprise only about three percent of the total (index crimes), whereas they are about 14% for New York State and nine percent for the entire U.S.

Unfortunately, comparable figures are not available for pre-trial detention rates. But we know that 5311 defendants were initially detained in the Nassau County Correctional Center in 1976. About half of that number were held for misdemeanors, violations, and traffic infractions; only about 30% of these held for felonies were charged with violent crime. The number of those who had committed serious crimes that might be thought to induce them to leave the county without returning to court for adjudication might, therefore, be presumed to be relatively small. We do not know, however, how many defendants simply had so little in the way of ties to the community to weigh against the temptation to "skip" that detaining them would ensure their appearance.

In fact we know very little about defendants who are detained. In 1976, 90% were male, more than 2/3 under thirty. To get figures on race, employment and education, we must assume that patterns for prisoners (both sentenced and detained) as reported in the Nassau Comprehensive Criminal Justice Plan can be applied to the detained population alone. Half the prisoners admitted in 1976 were white, with 46% black; about half had at least a high school education, with only nine percent having no high school at all; 28% were unemployed, with 32% being either service workers or unskilled laborers and 19% craftsmen. We have no information on family income, nor on which defendants are being defended by Legal Aid, 18-B attorneys, or private counsel.

The data that we do have suggests that, relative to New York City and other large urban areas, Nassau defendants in general



represent a smaller percentage of the poor, minorities and uneducated. But the average length of stay in NCCC is 33 days, and in 1976 11.5% (666) spent more than 60 days in detention. This figure might be thought to indicate a high number of heinous or violent offenses, but that seems unlikely, since no one was charged with first degree murder in 1976, and only 22 people were detained for rape. No data exists to show the characteristics of 11.5%; and because the pretrial services programs do not keep socio-economic profiles of their clients, we cannot know whether they come from the ranks of those most likely to be held for relatively long periods pending adjudication.

Although this skimpy analysis suggests that there are now defendants being held for less serious offenses who might be released, it does not consider the dimensions of the problem if the present pretrial programs did not exist. To some extent, judges release defendants without the information collected or the promise of service made by pretrial services. Furthermore, judges do not always follow the programs' recommendations. (Most of the non-governmental program staff members recommend more defendants than judges are willing to release; the Probation Department's ROR unit recommends against release in many cases where the judge releases the defendant anyway.) No effort has been made to define those cases where release would not have occurred without assistance but would be likely with it.

#### Appropriateness of services

Only anecdotal information is available to answer this question. The most important service a detained defendant needs is whatever efforts will get him out of jail. In general, interviews reported that judges review the information obtained by pretrial services programs, take the recommendations for release seriously, and are only too glad to release defendants to the programs' custody if that is possible. This suggests that for both the court and the defendant the release services are appropriate.

It is very difficult to come to conclusions about the provision of services to a defendant once he is released. Success must be measured in terms of whether or not the defendant uses the services, not usually according to whether the service gets results (because the impact of the service may come long after it is provided); and once again, data are not available. Individual stories of pretrial services staff who have labored mightily to get a defendant into a special school or build a trusting relationship that will ensure that he returns to court are, however, common and believable.

#### Cost-effectiveness

In measuring the costs to society (or, in particular, to Nassau County) of pretrial services, one should really know, not only the costs of the program, but also external costs, for example, the cost of the special school that a released defendant is sent to or the costs of medical care for a released defendant while he awaits adjudication. Opportunity costs, that is the costs (either to society or to the defendant) of things the

defendant would otherwise do if he were not part of the program, should also be figured in, though in the case of release services they are surely minimal, since the defendant is giving up very little to participate in the program and there appears to be little risk to society of crime by released clients. Cost-effectiveness measures have not been developed for the programs under consideration, but there is every reason to think that they are cost-effective to some degree. The Vera Institute proved long ago that the benefits of bail projects far outweighed the costs, and studies of pretrial diversion have repeatedly suggested cost benefit ratios at least as positive (and often much more so) as the Rochester program discussed earlier. In an even more analogous area than diversion, alternatives to arrest where citations are issued in the field and a defendant is immediately released have proved to be highly cost-effective, obviating entirely the costs of transportation, security, and housing for even the briefest detention.

There are benefits to society from pretrial services that cannot ever be measured in terms of dollars saved. A cost analysis of pretrial diversion conducted by the Correctional Economics Center of the American Bar Association (ABA) expressed them this way:

much of the benefit of diversion may be in quality of justice it offers its clients. Often they are "outsiders," suspicious of the establishment. Diversion activities may be the first services the "establishment" has offered which meet their needs. As a result of their participation diversion, they may "join the system," and society as well as the individual benefits. Reduced recidivism rates among diversion clients, though tentative, do support this conclusion.

#### Role of Non-Governmental Programs

In 1974 Paul Lazarsfeld, a prominent Columbia University sociologist, conducted an evaluation of the Pretrial Services Agency of the Vera Institute of Justice. One of the chapters compared the services of Pretrial Services Agency in New York City and the ROR unit of the New York City Probation Department. Professor Lazarsfeld found that Pretrial Services Agency (PTSA) verified information on defendants seeking release more often and more thoroughly than did Probation, and that recommendations to the court by PTSA more accurately predicted failure-to-appear rates than Probation recommendations. Failure-to-appear rates were also higher for defendants recommended for release by Probation, despite the fact that PTSA gave the court a considerably higher proportion of favorable recommendations.

These differences between a public and private N.Y.S. program were not seen as evidence of Probation's indifference to quality service, but rather as a sign that Probation was "hampered by sufficient staffing." Probation Departments have many other major functions, to which ROR is likely to be incidental. Both

Probation and Legal Aid officials in Nassau County have said that the non-governmental programs can provide an intensity of service that they cannot afford, and it is this ability that gives programs like the Pretrial Services program of the Nassau Pretrial Services Agency their unique quality. Probation often refers difficult cases to the Pretrial Services program--cases where a detailed investigation of a defendant's living situation must be done or where a trusting relationship is necessary to persuade a defendant that he should enter a drug program voluntarily and thus help convince a judge that he intends to stay in the county and try to address the problems that led to his offense. The special qualities that inhere in a program that is not seen as a law enforcement agency are valuable to both defendants and other programs, as in the situation where investigation of a case involving an assault on a police officer was referred to a non-governmental program because it was felt that greater objectivity was possible than with a Probation ROR investigation.

To a great extent, the non-governmental programs have a symbolic role in keeping the whole arena of pretrial services honest. Over the years of the development of the field of pretrial services, the emphasis has moved from being primarily advocacy for defendants to being primarily the provision of a neutral information service to the court. While in some jurisdictions there may be significant advantages to that shift in terms of gaining credibility with judges and thereby securing more releases (the New York City staff people feel that is so), there is also a benefit in having programs that are still very client-oriented and community-oriented, as Nassau County's non-governmental programs clearly are. They can challenge the practices of thoroughly institutionalized programs and force them to keep reassessing their program goals. They can also provide a resource for the "hard cases" and thereby continue to prove to the larger, public programs the value of intensive and more personal service. Finally, if the non-governmental programs tend to focus on the poorest and least-served of defendants (which impressionistic evidence would suggest they do), they will continue to further an important primary aim of the original pretrial service movement - the partial correcting of bias in the formal criminal justice system.

V. Recommendations

Despite the lack of data on which to base a real evaluation of Nassau County Pretrial Services, it appears that the combination of programs there is making a major contribution to a fair and effective criminal justice system. The diversity of program and administrative auspice gives richness and individuality to the provision of services, although it probably also means that not everyone who could benefit from the services receives them.

The above conclusions lead to the following recommendations:

1. Future program development for pretrial services should attempt to reach all potentially eligible defendants, and permanent funding should secure the provision of both release and follow-up services.
2. The Nassau Coalition for Safety and Justice should strengthen its Pretrial Services Task Force by including more representatives of public, as well as non-governmental programs, and by serving as a more involved coordinator of programs. The Coalition should also put pressure on programs to keep better data about who uses them and with what results.
3. Nassau County officials should become more familiar with the features of all programs, and a special effort should be made to see that there are several officials who are willing to champion the cause of pretrial services with the Nassau County Criminal Justice Coordinating Council, the County Executive and budget officials, and agencies in other parts of the criminal justice system.
4. A mix of private and public services should be maintained and the services of each program more narrowly focused, so as to avoid overlap and concentrate the particular skills of program staffs.



**END**