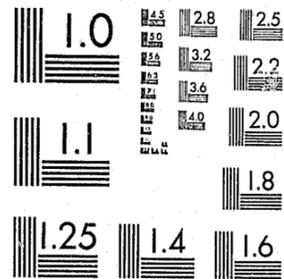


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THE USE OF
SOCIAL WORKERS IN A
PUBLIC DEFENDER OFFICE
AN EVALUATION OF THE
OFFENDER REHABILITATION PROJECT
OF THE PUBLIC DEFENDER OFFICE
FOR SANTA CLARA COUNTY, CALIFORNIA

Prepared by Professor Michael S. Wald
for the Public Defender Office
Law Enforcement Assistance Administration
U.S. Department of Justice

(Grant No. NI-658 and NI 70-62)

January, 1972

PREFACE

This report is a description of the Offender Rehabilitation Project of the Santa Clara County Public Defender. The Project was carried out from May, 1969, until October, 1970, utilizing a fifteen thousand dollar grant from LEAA. The Project was designed to provide dispositional plans for a selected number of clients of the Public Defender. The plans were developed by two program developers hired by the Public Defender office.

The main research goal was to see whether these plans differed from those submitted by the County Probation Department, and, if so, whether the Court would accept the defense plan in lieu of the probation recommendation.

Originally, it was planned that the research would be primarily of a statistical nature, involving a detailed statistical comparison of the two sets of dispositional reports. Unfortunately, after a preliminary analysis of the data, all of the questionnaires which contained the raw data were lost by the person hired to do the statistical analysis. Therefore, this report is less statistical, and more impressionistic, than had been planned. Moreover, since the evaluator was not present in Santa Clara County during the course of the Project, this report basically reflects the retrospective impressions of the project staff and others affected by the Project, rather than of the evaluator himself.

This project was supported by Grant Number (N169-058) and (N170-062) awarded by the Law Enforcement Assistance Administration, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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Therefore, this report has a much more modest goal than originally planned. It attempts to give a description of the Project that will be helpful to others contemplating such a Project, and also to evaluate, mostly through interview data, the impact of the Project as fully as possible given the data limitations. It is hoped that this report will provide ideas for other projects and researchers, as well as provide a limited evaluation of the Santa Clara Project.

I would like to thank Judge John McInerny of the Santa Clara Superior Court, William Hoffman, Assistant District Attorney of Santa Clara County, Lyle Smith, Chief County Probation Officer, Sheldon Portman, the County Public Defender, and Fred Lucero, a Deputy Public Defender, who all cooperated extensively in providing information about the Project. I would also like to thank Robert Cushman, whose comments on earlier drafts were extremely helpful. Above all, I would like to thank Mrs. Willa Dawson and Mrs. Betty Hofele, the project staff, for their substantial help in preparing this report. Their candid analysis of the Project greatly helped in the evaluation.

SUMMARY

On October 1, 1969, a demonstration project, known as the Offender Rehabilitation Project, was begun in the Public Defender Office of Santa Clara County, California. The Project was supported by a grant of \$15,000 from LEAA.

The purpose of the Project was to provide the Public Defender attorneys with personnel who would help them develop sentencing recommendations for their clients. Using grant funds, the Public Defender Office hired two non-lawyers with social work backgrounds to prepare sentencing plans for Public Defender clients to be presented to the Court at the time of their sentencing. It was expected by the Public Defender that the availability of such personnel would help the Defender clients obtain sentences that reflected each client's treatment needs.

The Project had two research goals. First, because the sentencing recommendations and reports of the Adult Probation Department are public documents in California, it would be possible to compare the Defender reports and the probation reports to see in what ways, if any, the reports differed. Previous studies of similar projects were not able to compare defense reports and probation reports, so it was unknown whether the reports prepared by social workers working in a defense office were merely duplicating those of a probation department, thus negating one of the justifications for having such workers.

Second, it was hoped to study whether the sentencing Court, when faced with differing reports, would adopt plans submitted by defense counsel.

The Project lasted twelve months. The first three months were spent gathering data about local community agencies which might provide rehabilitative services to Defender clients. These agencies would then be utilized to carry out the rehabilitation plans recommended by the project workers.

After compiling a full list and evaluation of agencies, the project workers began preparing presentence reports. Each worker prepared two reports a week. These reports were presented to the Public Defender attorney, who used them in making a sentence recommendation to the Court. All of the cases involved defendants who had pled guilty to felony charges.

Because of opposition from the District Attorney's office, the full reports were not allowed to be submitted to the Court. Therefore, the defense attorney presented the rehabilitation plan orally and also presented any background data about the defendant which would be useful in supporting the recommended plan.

Unfortunately all of the statistical data comparing the defender and probation reports, and evaluating the sentencing judges' reaction to the two reports, were lost. Therefore, this report gives an impressionistic evaluation of the impact of the Project, plus a description of the Project's development.

The major findings of the Project were:

(1) The reports prepared by the project workers were substantially different from those of the Probation Department. Most obviously, they rarely recommended jail sentences, while this was a frequent recommendation of the Probation Department. More significantly, the reports differed substantively. The project reports contained much more extensive background data about the defendant than did the probation reports. Further, the project reports contained treatment plans, geared to the defendant's problems; the probation reports never contained such plans. No measure could be developed to rate the two reports in terms of superiority of recommendations in reducing recidivism. However, it was felt that, because the project reports gave data about specific client problems, such as drugs, often unrevealed by the probation report, and because the project workers uncovered and utilized community treatment programs previously unknown to the Court, the project reports were an important addition to the sentencing process.

(2) The sentencing judge was influenced in some, but not all cases, by the project recommendations and did alter his sentencing patterns in cases in which project workers had developed rehabilitation plans.

This report also describes the impact of the Project on the criminal justice system -- specifically, the Court, the Probation Department, the District Attorney's Office, the Public Defender's Office, and the community service agencies.

Based on interviews with persons from all of these agencies it was concluded that the Project had influenced the sentencing judges' views of the sentencing process and that most of the judges were favorably disposed to the Project. As a result of the Project they became more aware of community treatment facilities and showed a willingness to use such facilities if an adequate plan were presented to the Court.

The District Attorney's Office maintained a consistently hostile attitude towards the Project; there was no evidence of changed views as the Project progressed. The basic reason for the hostility was the belief that project reports were only an attempt to get the defendant the lightest possible sentence and therefore could not be treated as reliable by the Court.

The impact on the Probation Department was mixed. The Chief Probation Officer and most of his supervisory staff had a consistently hostile attitude towards the Project. They argued that the Project merely duplicated work they were doing adequately and, therefore, was unnecessary. They also indicated they found the Project threatening to the Department.

On the other hand, a very good working relationship developed over a period of time with many individual probation officers. These workers felt that the project staff often could do things the probation officer did not have time to do, and that the project plans were realistic treatment plans. There was close cooperation between the project staff and the probation officer working on the case in many instances.

As a result of the Project the attorneys in the Public Defender's Office developed a different conception of their role at sentencing. Previously they felt that there was little they could do to help a defendant at sentencing and that this was not an important part of their role. By the end of the Project most of the attorneys looked to the project staff for help in developing sentencing plans and they saw the sentencing process as an opportunity to help the defendant. They also became more sensitive to their clients' rehabilitative needs.

The Project also had a clear impact on the community service agencies. As a result of their contact with the project staff and clients, many agencies which had been unwilling to serve clients with criminal backgrounds began to offer programs to help such clients. Several agencies even developed new programs for persons in the criminal system and sought extra funding to service Defender clients. While the project staff felt that many agencies remained bureaucratic and inflexible, they were encouraged by the response of the community agencies.

Thus, it was concluded that the Project did provide services presently unavailable in Santa Clara County and that the major components of the criminal justice system will alter their behavior in response to a new force. However, considerably more study is necessary before it can be determined whether providing defense attorneys with social work staff to aid in dispositions will have any lasting impact on the defendants' behavior and will result in less recidivism.

TABLE OF CONTENTS

	Page
Preface.....	2
Summary.....	4
Introduction.....	13
Developmental History of the Project.....	18
Methods of Evaluation.....	25
Introduction.....	25
Case Selection.....	28
Report Preparation.....	30
Data Gathering.....	32
Data Analysis.....	35
Comparison of Public Defender and Probation	
Department Presentence Reports.....	36
Content of Reports.....	36
Why Reports Differed.....	42
Evaluation of Reports.....	45
Impact of Reports on the Court.....	49
Impact of the Project on the Criminal Justice	
System.....	55
Judiciary.....	57
Probation Department.....	59
District Attorney's Office.....	63
Defense Attorneys.....	68
Community Agencies.....	74

Table of Contents - continued:

	Page
Conclusion.....	86
Footnotes.....	90
Appendices.....	104

LIST OF TABLES

	Page
Table 1 - Crimes Committed by Project Clients.....	37
Table 2 - Type of Agency Clients Referred to.....	40
Table 3 - Agreements and Disagreements - Project Reports and Probation Reports.....	51

I. INTRODUCTION

In the past few years an increasing number of experts on the criminal justice system have maintained that defense counsel should play a larger role in the sentencing phase of a criminal case. The right to counsel at sentencing has now been recognized by the United States Supreme Court,^{1/} so that a defense lawyer has an obligation to represent his client at that stage of criminal proceedings. The President's Crime Commission,^{2/} the American Bar Association,^{3/} numerous other commissions^{4/} and individual commentators^{5/} have concluded that the criminal justice system would be improved if defense counsel played a more active role in the sentencing process. Yet, most attorneys still do little, if anything, to help their clients at time of sentencing.^{6/}

Advocates of greater participation by defense counsel make several assumptions about the sentencing process and what a defense lawyer can do to improve it. First, suggestions that defense counsel play a more active role implicitly assume that the people currently participating in the sentencing process -- usually a judge and a probation department representative -- are not doing an adequate job. In particular, the proposals for increased defense participation assume that either the judge is not getting enough information about various sentencing alternatives or that the institutional biases of judges and probation officers lead them to reject community based rehabilitative "plans", which would be appropriate in more cases. Second, there is the explicit assumption that a sentencing system in which defense counsel played an active role would be more likely to rehabilitate defendants, presumably because defense attorneys, as compared to probation officers, will develop meaningful rehabilitation programs for their clients. Thus, the Crime Commission has described the activities of the defense attorney in this expanded role as follows:

When counsel believes that probation would be an appropriate disposition for his client, he should be prepared to suggest a positive program of rehabilitation. He should explore possibilities for employment, family services, educational improvements, and perhaps mental health services and attempt to make specific and realistic arrangements for the defendant's return to the community. 7

In a similar vein, the Conference on Legal Manpower Needs of Criminal Law, in June of 1966, recommended:

... [P]art of the job of counsel is to act on behalf of his client in cooperation with the court to work out a favorable disposition program. In many cases, careful development of a plan, including living arrangements and a job, may persuade the court to a disposition of the case which enables a convicted defendant to avoid imprisonment and yet enables society to avoid another crime in the future. The need for counsel includes these aspects of a defense as well as the more traditional functions of counsel. 8

And the American Bar Association concluded that by this new role the "lawyer can perhaps perform his greatest service, not only to the defendant, but to the society that will be benefited by one less potential recidivist." 9

Advocates of greater participation by defense counsel recognize that most defense lawyers have neither the knowledge nor the time to work out detailed rehabilitation plans for their clients. Therefore, they have proposed that defense counsel have access to trained persons who can help them develop dispositional plans for the defendant.^{10/} The most desirable situation, according to many commentators, is to have a full-time social work staff working in conjunction with defense counsel to provide help to the defendant and alternative plans to the court.^{11/} However, opponents of an expanded defense role have argued that in a jurisdiction which has a probation department that provides the courts with presentence reports, defense lawyers utilizing presentence reports prepared by their own social workers would only duplicate the efforts of the probation department.^{12/}

In order to test the hypothesis that social workers in a defense office would not duplicate the work of a probation department, the Public Defender Office of Santa Clara County applied to LEAA for funds to support two social workers, who would work full time for the Public Defender Office, preparing dispositional plans for selected clients, which would be submitted to the sentencing court by the defense attorney. Since the Santa Clara County Probation Department was required, in felony cases, to make presentence reports, which became public documents, available to defense counsel forty-eight hours before the sentencing hearing, a detailed comparison of the reports of each agency could be made. It was proposed to study in what ways, if any, the two sets of reports differed. Secondly, it was proposed to study the impact of the reports on the sentencing court, i.e., whether the sentencing judges would follow a defense recommendation rather than that of the probation department more often in cases where the defense could present a social work report than in cases where the defense attorney did not have such reports.

The Project began in October, 1969, and ran, with an extension of the grant, until October, 1970. This report contains a description of the Project and an evaluation of its effectiveness.

II. DEVELOPMENTAL HISTORY OF THE PROJECT

The first task in setting up the Project was choosing personnel. In retrospect, this was the most important phase of the Project, since the caliber of personnel was central to the success of the program. No set qualifications were to be required for the project staff. People with social work training and an interest in criminal defendants were sought, but it was not felt that staff members had to be professional social workers. The main concern was to find people who could work in a public defender setting, i.e., people sympathetic to a rehabilitative approach to criminal justice. The first person hired was a law student, Marjorie Mandanis, who had formerly been a Juvenile Probation officer. She worked part-time in the early stages of the Project, until she graduated from law school in January, 1970. At the same time as the law student was hired, the Project also obtained the services of Mrs. Betty Hofele, a senior student in psychology at San Jose State College,^{13/} who began working for the Project as a student-intern, obtaining course credit for her work. Later, she was hired to work on a part-time basis, which usually resulted in full time work. Mrs. Hofele had no formal experience as a social worker, but she had extensive background experience as a volunteer in many community agencies that proved extremely useful in the evaluation of agency services. The third person, Mrs. Willa Dawson, was hired full time in January, 1970. At the time she was supervisor of the women's detention facility of the Santa Clara County Jail and was working towards a master's degree in criminology at Berkeley.

The purposes of the Project, and its research component, were carefully explained to the staff members. In particular, it was stressed that their control over cases would be limited by two facts: That an attorney would make the final determination as to whether or not their reports would be submitted to the court, and that the research component of the Project would restrict, to a degree, their ability to experiment. They all felt that they could work in this setting.

After hiring the personnel, the Project was divided into two phases. The first phase, which took about three months, involved obtaining information about the agencies offering services in the community to see if they had programs that would be useful and available to persons in the criminal process. The second phase involved the preparation of presentence reports by the project staff, which were to be submitted to the court by defense counsel to aid in obtaining desired sentences.

During the first phase a list of all agencies in Santa Clara County, both public and private, which might provide services to public defender clients was compiled. Then a representative of each agency was interviewed to determine what services the agency was actually providing, the limitations of the agency, its receptiveness to accepting public defender clients, and other data necessary to determine the usefulness and reliability of the agency for handling criminal clients.^{14/}

This phase of the Project was extremely important. It provided the project staff with a realistic assessment of the potential rehabilitative facilities in the community; it provided information about the previous use, if any, of these facilities by the court and the probation department; and it generated interest and cooperation from a number of the agencies, whose services were often central to the project staff's recommendations of rehabilitation plans in the second phase of the project. All of the information was compiled into a booklet, and some effort was made to keep the evaluations up to date by including information about how the agencies actually responded when asked to service a project client.^{15/} In addition, new agencies were discovered during the course of the Project and they were evaluated and added to the comprehensive list.

The interviewing of the agencies and compilation of the manual of agencies took approximately three months. Initially fifty agencies were contacted. Eventually ninety-two agencies were on the active referral list. The project workers ultimately made use of fifty-two of these. (A fuller description of the use of these agencies is found in Part VI.)

The second stage of the Project involved actual work-up of cases by the project staff. A detailed description of how cases were chosen and the staff's methods of preparing reports is found in the section on research methodology. Basically, each staff member prepared two full presentence reports every week. The project workers received their cases at the same time as the probation department. The worker interviewed the client and other relevant people, decided along with the client on a rehabilitation plan, and wrote out a written report which was given to the attorney representing the client at the sentencing hearing.

As indicated above, the research design contemplated that these reports would be presented to the court by the attorney. This raised a difficult ethical question: Since the reports often contained information which a judge might consider very damaging to the defendant, the attorney felt that he could not always submit them as written and still adequately represent his clients -- who were not interested in social reports which might result in heavier sentences. On the other hand, it was felt that edited reports should not be turned into the Court, because such reports would not actually reflect the findings of the social worker and therefore the reports would be a misrepresentation.

Therefore, it was decided that in those cases in which the report was negative the attorney would not present the written report to the judge. Instead, in such cases, he would present an oral report based on the written report and proposing alternatives acceptable to the defendant. He did not indicate that he was relying on a full report. Of course, if asked specifically about other information, the attorney was bound to reveal what he knew.

The ethical problem soon became moot, however. After the first four reports were submitted, the District Attorney's Office formally objected to the Court's receiving any more written reports from the Public Defender's Office. He claimed that, under California law, the only written reports which a judge may receive before sentencing are those submitted by the Probation Department.^{16/} The District Attorney claimed that the submission of Public Defender reports not only clearly violated the law, but that the reports might be untrustworthy absent review by the District Attorney and therefore should be barred. The District Attorney was joined in his objection by the head of the Adult Probation Department, who viewed the reports as unnecessary.^{17/}

While not agreeing with the District Attorney's view of the law, it was finally decided, after a series of conferences, that future reports could be accepted by the Court only if they were appended to the probation report, and checked for accuracy by the probation officers. However, because the probation officers rarely had time to check the defender reports, virtually no more written reports were submitted. Thus, in all but six cases, the sentencing alternatives were presented orally by the Public Defender attorney at the sentencing hearing.

On several occasions either the project staff or the representatives of the community programs recommended in a given plan were called to testify at the sentencing hearing. A few times they were called by the District Attorney so that he could examine them about the program or recommendations. On other occasions, the Public Defender attorney asked them to testify.

In almost all cases, the probation department, although aware of the Project, did not know which defendants were going to be in the Project. Therefore, probation workers could not single out cases for special consideration just because the Public Defender was also preparing a presentence report. Occasionally, there was contact between the defender worker and the probation officer on a given case.

The final stage of the Project involved a follow-up study of the clients who had been involved in the Project. The follow-up was designed to provide additional data about the effects of the program. In a number of cases, the project staff had continued helping the client after sentencing, so the follow-up data was already on hand. In the other cases, either the client, his family or his probation officer (or a combination of these) were contacted to provide follow-up data. Unfortunately, all of this data was lost and therefore the report contains no analysis of the follow-ups.

The Project lasted for twelve months. During this time, reports were prepared for eighty-six clients. In addition, three other defendants were offered services but refused to accept them or to cooperate with the project staff and no reports were prepared for them.

III. METHODS OF EVALUATION

A. Introduction

This section describes the research goals of the Project and the methods used to gather the data to test the research hypotheses. As indicated previously, much of the data we gathered was lost before it could be analyzed. Thus, the analysis in this report will be primarily subjective, not statistical. However, we will present our research methods for whatever value they may have for other projects.

The project at its conception had a dual purpose: (a) to provide the Santa Clara County Public Defender Office with a resource, i.e., social workers, the attorneys felt was necessary to help them perform their work; and (b) to provide research data on the need for, and effectiveness of, the social work services in a defender office.

The research design specifically attempted to gather data on how, if at all, the dispositional plans provided by the Public Defender Office differed from those provided by the County Probation Department, and whether the judges, given different reports and recommendations by the Probation Department and the Public Defender, would be willing to adopt the Defender recommendations. In addition, we attempted to evaluate the impact of the Project on other parts of the criminal justice system -- the Probation Department, the District Attorney's Office and community rehabilitative resources.^{18/}

As the research in the Project progressed one fact became increasingly clear -- there were inherent conflicts between the operational needs of the Public Defender Office regarding the Project and the goal of research purity. For example, ideally all of the cases selected for the Project might have been chosen randomly. However, since the Project was operating under limited funds and it was hoped to maximize benefits to the defender clients, it was decided to pick only cases which seemed likely to benefit from additional work, i.e., those in which neither prison nor probation seemed assured.

Therefore, any finding that the several Project reports were necessary and influential might not apply to non-project cases, since the Project cases were the ones most likely to need such reports. Similarly, because the attorney handling the sentencings had to carry a full case load, he often did not have time to complete the research questionnaire until several weeks after a defendant was sentenced -- thus causing loss of data through memory lapse.^{19/} And, perhaps most importantly, it was recognized from the beginning that the Project was a pilot study exploring a new method of helping criminal defendants. It was felt that the staff members would learn from experience about the problems in running such a project and would change their methods as experience dictated. Therefore, they were encouraged to be flexible in what they did and not to follow a strict pattern. Thus any analysis must take into account the evolutionary nature of the Project activities. It is suggested that these problems are not inherent in such projects and similar research efforts should avoid them.

B. Case Selection

The basic research plan was to select several cases a week which would receive social work services prior to sentencing. Since the hypothesis being tested was that the social work plan and sentencing recommendation of the Defender Office would be different from that of the Probation Department, this required taking cases which would definitely receive probation reports. Therefore, cases were selected only after the defendant had pled guilty and the judge had asked the Probation Department to prepare a presentence report.^{20/} The cases were all felonies.

The project staff received their cases at the same time as did the probation officers responsible for preparing presentence reports.^{21/} However, each of the public defender workers took only eight cases per month, while a probation officer is generally responsible for twenty-six reports a month. Thus, the project workers were able to spend considerably more time on each case than were the probation officers.

The cases were selected jointly by the project worker and the Public Defender attorney who would represent the client at the sentencing hearing. Since the Defender Office assigns attorneys to stages of proceeding rather than to clients, only one attorney represented all of the clients for whom reports were prepared.

As indicated previously, cases were selected in which the sentence was not a foregone conclusion. The prior record of the defendant and the present offense were the main factors considered. Whenever additional background information about the client was available, it was utilized, since this affected the likelihood of achieving a community-based sentence.

The three basic sentencing alternatives available to the judges were prison, straight probation (with or without a fine), or county jail time -- usually followed by a period of probation. Cases in which prison sentences were mandatory or extremely likely were rejected,^{22/} as were cases where straight probation, without any jail time, appeared to be a certainty. The main effort was to find cases which would normally result in prison or county jail time, but which might result in community treatment if a dispositional plan could be developed.

C. Report Preparation

After a case was selected the project member responsible for it prepared a full dispositional report. The two social workers were told to follow any format they wished in report preparation, and to be completely free in expressing what they felt should be the disposition. Early in the Project a number of suggestions on report writing were made to the workers^{23/} -- particularly concerning the means of relating the background data to the proposed disposition. However, the reports were never edited.

The social workers were aware, of course, that the attorney representing the client at sentencing would only utilize those reports, or parts of reports, he found favorable to his client. Since the attorney knew the probation recommendation at least one day before the Court hearing,^{24/} the workers knew he would not use reports which recommended harsher sentences than those of the probation department. Also, they discussed the reports with the attorney as they were being written and changes did occur to accommodate his views of the case.

As a result, the problem of rejected reports never arose. The reports of the project staff were almost always more "lenient" or as "lenient" to the defendant as was the probation department, so the attorney could almost always use the report. In the few cases of harsher recommendations, favorable factors in the reports were used.

D. Data Gathering

1. General Questionnaire

The main research tool was a questionnaire designed to provide all the demographic data about the defendants, to record the differences between probation and Defender reports, and to record the effects of the Defender report on the Court. A questionnaire was completed for every client. (A copy of the questionnaire is attached as Appendix D.)

The questionnaires were filled out by the project worker who handled the case, by the attorney who represented the client at sentencing, and by a law student who was hired to observe the sentencing proceedings and record the outcome and the comments by the judge. The questionnaires were completed as soon after the case was completed as was possible.

Also, a copy of the probation report and the Public Defender report was obtained for each case. These were then analyzed for content differences, as well as just dispositional recommendations.

2. Follow-up Reports

In August and September of 1970, the two project workers did a brief follow-up of every client for whom they had prepared a report. The purpose of these follow-ups was to obtain as much data as possible on the behavior of the client since his contact with the Project. This data would permit some preliminary analysis of the effectiveness of the program.

However, since the entire Project lasted only nine months (i.e., the report preparing phase) most of the follow-ups were of persons who had been sentenced only a few months earlier. Many were still in jail; others had just been released. Thus, only a very limited amount of data could be gathered. [These reports were also lost before analysis was completed.]

3. Interviews

In order to obtain an idea of the impact of the Project on the criminal justice system, a number of in-depth interviews were conducted by Professor Wald. Each lasted between sixty and ninety minutes and took place in the interviewee's office. Judge John McInerney, who handled all the sentencings, William Hoffman, the chief deputy District Attorney, Al Fabris, the District Attorney assigned to sentencings, and Lyle Smith, the head of Adult Probation, were interviewed.

Professor Wald also interviewed all of the Public Defender staff connected with the Project, in order to obtain a full description of their work on the Project and their assessment of the strengths and weaknesses of the Project and its impact on the system.^{25/}

4. Agency Questionnaires

In addition to these interviews a brief questionnaire was sent to any person or agency who had any contact with the Project, asking their assessment of the Project. (A copy of this questionnaire is attached as Appendix C.) Eighteen of these questionnaires were returned.^{26/}

E. Data Analysis

It was planned to do both a statistical and qualitative analysis of these various sources of data in order to test the research hypotheses. Since the data were lost after only a very preliminary analysis, no hard data can be presented in this report. Thus the remainder of this report must be considered basically subjective, although some data, where available, will be used to support subjective conclusions. Because even these data were not fully tested for reliability, the results obtained should only serve to guide further research, not to support any policy conclusions.

IV. COMPARISON OF PUBLIC DEFENDER AND PROBATION DEPARTMENT PRESENTENCE REPORTS

(1) Content of the Reports

Reports were prepared in eighty-six felony cases. Table 1 shows the type of crimes involved. Sixty-four of the clients were male, twenty-two female. Half were between nineteen and twenty-two years old. Twenty-five percent were married, another twenty-five percent divorced or separated.

As hypothesized, the public defender reports did differ substantially from those of the probation department -- both in the sentence recommendations and in the nature of the report.

In almost all of the eighty-six cases the recommendation of the project worker was for straight probation combined with a detailed rehabilitation plan. However, the probation department recommended straight probation in only a small number of cases -- most of the time it recommended county jail plus probation^{27/} or state prison. Thus, in the first sixty cases receiving Project services the recommendations of the two agencies were the same in only eleven cases. In two other cases the project worker recommended a harsher sentence than did the probation officer; in all other cases, a more lenient one.

TABLE 1 - CRIMES COMMITTED BY PROJECT CLIENTS

Auto Theft.....	9
Drugs.....	28
Burglary.....	15
Robbery.....	6
Sex Offense.....	4
Assault.....	2
Forgery/Fraud.....	15
Other.....	7

It should be stated here that the project personnel did not consider their recommendations more lenient. They felt that the community could be best protected and the client best served by a community based rehabilitation plan. This philosophy was fundamental to their reports. Given this view, plus the defense connection of the workers, it is not surprising the recommendations differed so.

The two sets of reports also differed qualitatively. Although the public defender personnel were not trained social workers, and many of the probation officers were, the public defender reports tended to have far more of a social work flavor. In general, the reports of the probation department just summarized the facts of the crime (often in great detail) and gave a brief description of the defendant and his criminal history. The sentence recommendations almost invariably were based on the nature of the offense involved and the past criminal record of the defendant. Rarely, if ever, did the reports attempt to describe the reasons why a particular individual might have committed the offense or even to outline the individual's strengths and weaknesses. There was rarely any effort to give any reasons for the recommended sentence.

On the other hand, the project reports usually described extensively the defendant's background and psychological make-up, and his present situation. Family problems, mental deficiencies, drinking or drug problems were far more often revealed in project reports and the sentencing recommendations tended to focus on solving these problems. Rehabilitation plans often included services for the client's family, something almost never seen in a probation report. Unlike most of the probation reports, project reports singled out the strengths of the defendant. General deterrence was never a factor in sentence recommendations; they focused solely on the needs of the defendant.

Most significantly, the project workers always presented a rehabilitation plan, listing specific agencies which had agreed to provide the needed services.^{28/} Few of the probation reports detailed a treatment plan.^{29/} The proposed treatment plans of the public defender generally related to the emotional problems of the defendant, and thus usually included more than just a recommendation for job placement or vocational training. Family therapy, drug or alcohol counseling, out-patient psychiatric care and other "therapeutic" steps were frequently part of the plan. In forty-nine cases the plan involved in-community treatment, in many cases involving other family members besides the defendant.^{30/}

Table 2 shows the type of problems which the project staff identified and referred to appropriate agencies.

TABLE 2 - TYPE OF AGENCY CLIENTS REFERRED TO

<u>Type Service</u>	<u>Number of Referrals</u>
ALCOHOL.....	12
DRUGS.....	22
*MENTAL HEALTH.....	36
EMPLOYMENT.....	11
EDUCATIONAL.....	9
VOCATIONAL.....	20
OTHER.....	14

*Includes family counseling.

On some occasions, part of the plan had already been implemented before the sentencing hearing and this was related to the judge. Generally, however, the plan had not been implemented prior to sentencing, either because the defendant was in jail unable to post bond, or because the community agencies would not begin providing services until they were certain the defendant would be granted probation.^{31/} Since the judge would not order, as a condition of probation, that the defendant participate in the plan, the District Attorney opposed probation in many cases, arguing that there was no guarantee that the plan would be implemented.

(2) Why the Reports Differed

The difference in report content seemed to reflect three factors. First, as previously mentioned, the project staff viewed the defendants as their clients, and sought to develop a plan solely in their clients' interests. Since both staff members felt that neither jail nor prison were rehabilitative, except in rare circumstances, they always focused on a community based treatment plan. On the other hand, the probation department viewed society as its client.^{32/} Therefore, although the probation officers expressed a rehabilitative philosophy, they also felt that their recommendations must assure sufficient protection of society. Usually they felt this could only be accomplished by incarceration.^{33/}

Second, and more surprising, the two agencies differed on the relevance of extensive social background information. The head of the probation department believes that extensive psychological and sociological data are not necessary for sentencing purposes. To him, the most important factors are type of offense, previous record, and defendant's attitude.^{34/} The project staff, on the other hand, tended to disregard type of offense and previous record, except as these factors shed light on the rehabilitative needs of the defendant.

Third, the project workers were able to spend much more time preparing a report than were the probation officers. (If the probation department continued to rely on only the offense and prior record regardless of the time available this factor would make little difference. However, interviews with several probation officers indicated that they would provide more background data, and utilize it, if more time were available to them.) Each project worker would only prepare eight reports per month. The probation officer would be responsible for twenty-six such reports in the same period. Thus, although the probation officers would talk with the defendant and his family and anyone else the defendant recommended (at least by telephone), they rarely had time to seek out persons who knew the defendant and might have important information about him to offer. Moreover, they had no time to obtain vocational evaluations, psychological testing or other information about the defendant's capabilities and problems.

On the other hand, the project staff was hampered by not having all of the information available to them that the probation officers had. It was extremely difficult for them to obtain police reports, previous probation reports, and arrest records. As a result more time had to be spent getting background information, and occasionally the project worker was misled by a less than honest defendant.^{35/} Thus, the project reports occasionally differed because they were based on inadequate information and/or misinformation.

Overall, however, the main reason for the differences seemed to be one of orientation towards rehabilitation. It was the official view of the probation department that jail plus a probation officer could lead to rehabilitation. Although not all probation officers agreed with this, institutionally they were bound to this philosophy. In fact, it is possible that such a philosophy is necessary to the probation department's survival. If they used community agencies instead of probation casework, many probation jobs would become superfluous or radically altered. On the other hand, the project workers felt that the causes of the defendant's behavior were usually deep-seated, and that jail, then a job plus probation, would not suffice. They took a broader view of the necessary services and therefore recommended a more diverse set of alternatives.

(3) Evaluation of the Two Sets of Reports

It is very difficult to evaluate the dispositional reports of the two agencies. The ultimate purpose of such reports is to enable the judge to impose a sentence that will both protect society and lead to the rehabilitation of the defendant. Thus, ideally we would want to know whether one set of recommendations, if adopted, would result in less recidivism than the other. We have no data available to make this determination and, since very few of the public defender plans were adopted and implemented as proposed, no further study is possible.

A simpler comparison is the effectiveness in bringing relevant information to the judge. In this respect the defender reports must be rated superior. Even if some of the background data were rejected as useless in most cases, there are unquestionably instances where such information is extremely important. This would be true in any cases where the defendant's behavior can be causally related to a specific fact or factors. For example, if the defendant's offense is related to a drug problem, the court must know this if its sentence is to be at all meaningful from a rehabilitative point of view. In at least nine of the first sixty reports important data was missing from the probation report, such as a defendant's drug problems, his mental deficiencies, his family problems.

Moreover, knowledge of the availability of rehabilitative resources is essential to the judge. A judge can hardly be expected to give full consideration to the rehabilitative function of sentencing if he has no idea whether resources are available to meet a defendant's needs. Prior to receiving the project reports, the judges had to rely on whatever rehabilitation the probation department could provide. Since the department has an extremely high caseload, probation officers usually do little more than see the probationer once a month at the probation office. Faced with only this alternative, the judges, not surprisingly, think first of protecting the public. With a fuller awareness of potential resources, judges can better evaluate the likelihood of successful rehabilitation if the defendant is returned to the community.

Assuming that the project reports were superior for these reasons, we are still faced with the question of whether the probation department, given more resources, could produce equally comprehensive reports.

This question cannot be answered with certainty. However, there are a number of hypotheses which lead one to the conclusion that a probation officer can never get as much relevant information as a defense-oriented worker can.

First, there is the defendant's inherent distrust of the probation officer because of the officer's connection with "the system." As a result, confidential information cannot be obtained.

Second, it is possible that the dual role of the probation officer -- protector of society as well as helper to the defendant -- prevents him from ever obtaining a satisfactory relationship with the defendant, or ever really seeing the problem from that person's point of view. The project workers were very successful at identifying with the client and establishing a good relationship with him. In fact, the project workers were at times able to establish a better relationship with the defendant than was the attorney who would represent him at sentencing. It was discovered that the defendants would often tell things about themselves to the project staff they did not, or would not, reveal to the attorney. Occasionally, a defendant even requested that information be withheld from the attorney, because he thought that such knowledge would cause the attorney not to represent him as well. Given this perception of the attorney, it is not surprising that defendants would withhold information from the probation officer.

Third, the probation officer may be subject to a number of institutional restraints. In many agencies, innovation is not a highly regarded goal. The head of the agency has an approach to corrections which he expects the probation report to reflect. On the other hand, a person working for a defense attorney is forced to be as innovative as possible, since many judges will alter their sentencing schemes only if an unusual or new approach is presented.

Finally, and perhaps most important, it is the writer's opinion that the project staff had a desire to help defendants in a creative and innovative way rarely seen in probation officers. It is the writer's opinion that two factors accounted for this: First, the experimental nature of the Project and the desire of the staff to have the Project perpetuated created great enthusiasm on their part; second, the role of being the defendants' advocate created a sense of responsibility and mission not present in others whose roles require allegiance to more persons or institutions.

The enthusiasm did lead to creative plans, the result of much effort by the project staff. However, whether such plans adequately protected society or will really lead to rehabilitation is unknown, so any judgment on the superiority of one set of reports or the other can only be speculative.

V. IMPACT OF THE REPORTS ON THE COURT

It is, of course, essential if public monies are to be spent to fund programs like the defender Project, that the sentencing recommendations of the project workers be accepted by the court in a meaningful number of cases.^{37/} It was the plan of the research project to submit the defender reports to the judge in each case and then to measure the impact of each report in three ways: By direct comparison of the project recommendation, the probation recommendation and the judge's sentence; by recording the statements of the judge at sentencing to see if they reflected consideration of the Project report; and by interviewing the judge. (There was only one sentencing judge.)

Unfortunately, because of the District Attorney's claim that it was illegal for the sentencing judge to receive Project reports, only six reports were actually submitted to the Court. In all of the other cases, the plans developed by the project workers were presented orally to the Court by the defense attorney. In some instances the attorney gave almost the entire report, emphasizing the background analysis of the defendant as well as the rehabilitation plan. In most cases, however, he primarily presented the rehabilitation plan, and gave only a little social or psychological background. In all these cases, his participation at sentencing was far more extensive than in non-project cases, since in non-project cases he had little to offer the Court.

Thus, the only thing that could be measured in most cases was the judge's reaction to the rehabilitation plan and his willingness to consider it in sentencing. Again, we have primarily subjective data on the impact the reports had.

We do have data on the sentences in the first sixty cases in the project. These are summarized in Table 3.

TABLE 3 - AGREEMENTS AND DISAGREEMENTS - PROJECT REPORTS AND PROBATION REPORTS

Agreements and Disagreements - Probation Department, Public Defender Sentence Recommendations and Judge's Decisions:

	<u>Number</u>	<u>Percent</u>
All three in agreement	8	13
Probation Department and Public Defender in Agreement	3	5
Probation Department and Judge in Agreement	26	43
Public Defender and Judge in Agreement	4	7
All three disagree	19	32
	<hr/> 60	<hr/> 100

The figures show that when the probation and Project recommendations differed the judge went along with the probation department twenty-six times and the Project only four. In three cases the judge's sentence was more severe than either recommendation. However, in sixteen cases the judge's sentence was somewhere between the two recommendations.

No conclusions can be drawn from these statistics.^{38/} However, an indication of the project's impact was derived from the judge's remarks at the sentencing hearing, or in his chambers before the hearing, when he would discuss his proposed sentence with the defense counsel, district attorney, and probation officer.^{39/} On a number of occasions, the judge prefaced his sentence by remarking: "I was prepared to sentence you to X. However, your attorney has worked out a good program, and, therefore, I am modifying my sentence to Y." Often, he would tell the defense attorney in chambers that he was influenced by the project plan.

Usually, the change in sentence was a reduction in the amount of county jail time the defendant would have to serve. Rarely was the judge willing to forego imposing some jail time, even if it was clear that going to jail would interrupt a rehabilitation program which the defendant had already started. The judge felt that the goals of retribution and deterrence had to be reflected in most sentences, and this usually required the imposition of a jail term.

During the course of the Project, the judge's sentences began to reflect his increased knowledge of community resources brought to his attention through the project.^{40/} In fact, the judge became so enthusiastic about one community program, a drug program at a V. A. hospital, that he began to utilize its services in a large number of cases, including some in which there was no project report. The judge had first become aware of this agency when the public defender put the program head on the stand during a sentencing hearing to explain his program, and he greatly impressed the judge.

In addition, as the project staff became familiar to the judge, he (and some other judges) would sometimes request the staff to work up a plan in a non-project case that disturbed the judge. Thus, there is little doubt that the Project did influence the judge's decisions, and that the judge was willing to be more "lenient"^{41/} when he was assured that a meaningful rehabilitation program was available.

On the other hand, because the judge was only willing to shorten jail time, rather than eliminate it, the potential rehabilitative effect of the Project was lessened. Jail sentences interrupted community treatment programs. Since the judge would not order the jail to allow the program to continue during the jail term, the early start at rehabilitation usually was curtailed. It was often impossible to get these programs started again after the defendant's jail sentence ended.

Thus, it appears that the Project did have an impact on this judge.^{42/} As a result, many new sentence alternatives were considered in the dispositional process. However, because of the way Project plans were implemented, it may be that the changes in sentencing will not result in lower recidivism by Project clients.

VI. IMPACT OF THE PROJECT ON THE CRIMINAL JUSTICE SYSTEM

The previous section dealt with the reaction of the Judge to the Project reports. However, direct effect on sentences through competition with the probation department is only one way of changing the criminal justice system to be more rehabilitative towards the defendant. In order to fully measure the impact of the Project on the criminal justice system, it is necessary to see what impact the Project had on the perceptions and actions of all the major participants in that system. In this section the impact of the Project on the Probation Department and District Attorney's Office is discussed. The next section explores the effect on community agencies.

It is extremely difficult to measure the impact of a project like this on the justice system. Moreover, any changes may be of short duration; in fact, the discontinuance of the Project due to lack of funds has already eliminated many of its positive effects. In spite of the difficulty, we have attempted to obtain, through interviews, questionnaires and other sources^{43/} the reactions of the major participants in the criminal justice system to the Project.

Two special factors must be considered in evaluating these reactions.

First, it was decided at the beginning of the Project that only minimal information about the Project would be given to the judges, the Probation Department, and the District Attorney. Although each group knew there would be some kind of project involving the use of social workers by the Public Defender, the aims of the Project were not explained and only gradually became understood by these agencies. Throughout the Project the District Attorney and the Probation Department (at least at the top) maintained a hostile to indifferent attitude toward it. It is possible that had better initial groundwork been done these agencies might have been more sympathetic and cooperative toward the Project, although this is by no means a certainty.

Second, because of the structure of the sentencing process in Santa Clara County, only a small number of people in each agency had any contact with the Project. As noted above, the same judge, prosecutor and defense attorney participated in almost all the cases involving Project clients. There is no way of assessing whether other judges and attorneys would have reacted differently.^{44/} Also, only a few probation officers ever saw any project reports. Most did not even know about the Project. Therefore, the findings in this section must be viewed as exploratory, as giving clues about how the system might respond, but in no way conclusive on this question.

A. Judiciary

One of the goals of the Project was to influence the judges not only in Project cases but in their overall sentencing patterns. As shown above, the Project apparently did affect the judge's sentencing in some cases. However, a personal interview by Professor Wald of the judge who handled most of the sentencings cast some doubt on the overall impact of the Project on him.

The interview took place on May 21, 1970. At that time, the judge expressed doubt about the value of receiving sentencing reports from defense attorneys. He questioned the need for extensive sociological and psychological data, indicating that he focused more on the crime. He also felt that the reports were too defense oriented. He stated that defense attorneys would do better trying to get a good report from the probation department, by giving them useful information.

The judge indicated that he generally made up his mind on the type of sentence, i.e., probation, jail, prison, without any background data about the defendant. He felt he could only be influenced on the length of sentence, not the type, which was dictated by deterrent needs and therefore should be based on the offense, not the offender. And, despite any rehabilitation plans, he felt all defendants should serve at least sixty days, if they went to jail. Sixty days is, in his view, the minimum needed for deterrence.

The judge did state that he needed to know more about community facilities and that the Project helped provide him with such information.

Given his attitude, above, it is not surprising that this judge expressed some skepticism about the value of the Project. However, events following this interview indicate that the judge became substantially more favorable to the idea of the Project as he became more familiar with it.^{45/} In fact, when a major battle took place over refunding the Project by the County, the judge advocated refunding against the contrary arguments of the District Attorney in an informal discussion with the County Executive and members of the County Board of Supervisors. Finally, towards the end of the project period this judge began requesting reports in some non-project cases, and fought with the District Attorney who objected to them.

Thus, it appears clear that the Project did alter the judge's perceptions of the sentencing process.

B. The Probation Department

It was recognized from the beginning of the Project that the services of the project workers would, at least in theory, closely parallel those the Adult Probation Department was supposed to be performing. Thus the potential was present for extensive cooperation or great antagonism between the Probation Department and the project workers. Over the course of the project both attitudes were present, as the department divided in its reaction to the Project.

The impact on the Probation Department was measured in three ways. First, the Chief Probation Officer was interviewed by Professor Wald in May, 1970, about four months after the court phase of the Project had begun. Secondly, the Department submitted an official response to a questionnaire sent to all probation officers shortly after the Project ended. Finally, the project workers noted all of their contacts and conversations with individual probation officers. These contacts provided insights which indicated that the "official" views were not shared by all the probation officers.

The official position of the agency varied from indifference to antagonism. On the one hand, the chief probation officer felt that the information provided by the reports was not of much use to the judge and that the recommendations were unrealistic. Accordingly, he stated, the reports had little, if any, impact on the judge. Moreover, he felt that it was a bad idea for defense attorneys to submit such reports, because the attorney had an "ulterior motive" -- he was bound to work for the easiest sentence for his client. The chief probation officer would have the attorneys limit themselves to their traditional role, i.e., providing any relevant information to the probation officer preparing the sentencing report. Then the probation department could submit its "non-partisan" report and recommendation.^{46/}

On the other hand, he also indicated that the probation officers, given more time, could produce reports which would be equivalent of the project reports. Thus he seemed to grant the value of the Project, but attribute it to the fact that his department lacked the resources to perform as well as he would like.

Underlying both of these attitudes was a clear-cut hostility towards the Project. He stated that the existence of the Project made his deputies feel unhappy, that it made them into second-class citizens, and reflected a lack of confidence in them.^{47/} He thought the Project was designed to make the probation department look bad.

The hostility of the chief probation officer, and the District Attorney's office, came out most clearly in the fight over refunding the project. After the County Board of Supervisors had agreed to provide funds to the Public Defender so that he could continue to employ the project staff after the initial grant had expired, the chief probation officer and the District Attorney mounted a campaign to get them to reverse this decision. Their campaign was ultimately successful, despite the support of the Project by the judges.

However, despite the official attitude of hostile indifference, a number of individual probation officers reacted very favorably to the project workers, and often worked closely with them in developing a rehabilitation plan for the client.^{48/} Some workers cooperated secretly, believing that they had to hide their cooperation, but offered to do everything possible to get the project recommendation accepted. Many of these probation officers were disenchanted with the lack of resources available to the probation department, and welcomed the additional input that could be provided by the Project.

Thus, a number of probation officers requested the use of public defender resource files on local rehabilitation agencies. Copies of all information, with the card index code system, were sent to them. Other probation officers would seek help in cases which were not being handled by the project. Most significantly, the Probation Officers' Union publicly sided with the Public Defender in his efforts to get the project refunded locally. Their representative appeared before the Board of Supervisors and argued against the Department's official position.

These probation officers did not feel there was a duplication of efforts. Instead, they thought joint efforts were beneficial and would try to implement the rehabilitation plans.^{49/}

The positive response by the probation staff was not universal. Some officers, especially supervisors, exhibited the same attitude as the chief probation officer. But the positive response of many of the officers indicates a potential for cooperation.

C. The District Attorney's Office

Due to the structure of the sentencing process in Santa Clara County, only two persons in the District Attorney's office had contact with the project. The District Attorney has one person assigned permanently to sentencing hearings. He is not the assistant who either tried the case or negotiated a plea. Therefore, only this attorney, plus his supervisor, the chief assistant district attorney, had any meaningful contact with the Project. They were both interviewed to assess their evaluation of the Project. Their views were closely parallel, but because the assistant chief more clearly articulated their position, references will be to his views.

His basic attitude towards the Project was one of skepticism, bordering on hostility. This was because he felt that any plans or information coming from the defense attorney necessarily were given only to get the lightest possible sentence, rehabilitation being only a secondary concern (if it was a concern at all). In his words:

Well, I think the Public Defender has a right and certainly a need to represent the client and urge any alternative that the client desires, but my own feeling is that as long as he is nothing more than a mouthpiece for the client, which is all he is under the law of this state and most other states, he is duty bound to advocate anything he thinks his client wants and the clients are not going to want to get out of their cycle. The clients want to stay in the cycle. They are in it now and they want a soft punishment, most of the hard-core criminals, ... they want to get out fast, they want to begin burglarizing and robbing again, and it is the duty of the Public Defender to urge anything that will get them out fast. ... You get into the Adult Probation Department who has an entirely different set of ethics, duties, responsibilities where they can urge objectively exactly what should be done now that this fellow is in the control of the court, then I think you might get somewhere.

Since he felt that the Public Defender was ethically bound to try to get the lightest possible sentence for the defendant, he saw no hope of the Public Defender ever presenting a neutral plan. Therefore, a judge properly concerned with protecting the public should treat the plans accordingly. 50/

A second concern of the District Attorney was that the court could not properly evaluate the proposed rehabilitation plans without knowing about the community agencies that would provide the suggested services. Such information would have to be developed at formal hearings, which would be a burden on the already over-burdened District Attorney's office. At such hearings, he stated:

[T]he persons responsible can be examined, the court can get a look at them and can look at the nature of the program, the financial interest if any that the proponents have in it, prior criminal record of the proponents if any, so that the court gets a good look at the program and then we know thereafter that the court knows what this program is all about and we might well be willing to waive formal hearing at least as to the nature of the program in each particular case. Now we don't like to conduct formal hearings, they take time, they sap our personnel, and we have few enough people to do the job as it is.

The legitimacy of this concern may be questioned, however, since when offered extra funds to allow his staff to screen reports and conduct hearings the District Attorney refused the funds and opposed the use of such reports under any conditions.

A third objection voiced by the assistant district attorney was that because the rehabilitation plans had not been implemented at the time of sentencing, there was no guarantee that the defendant would participate in them if probation were granted. He continually stated that he thought the plans "were aimed at sentencing, not rehabilitation." He felt defendants were seldom really interested in rehabilitation and therefore the plans would come to nothing.

However, his views of the Project were not entirely negative. He did think that the Project enabled the Public Defender to better perform his role at sentencing:

I think any defense attorney has to present to the court alternatives in order to do a proper job for his client. The client universally desires the least punishment he can get from the court at the time of sentencing and one of the things the court wants to know is what is this individual going to do if I don't put him in jail or if I don't put him in prison. ... I certainly think the Public Defender needs a social worker and social services to keep abreast of all the various programs and to make these alternatives known to the court and to try very hard to get the defendant interested in them. I think this is part of his function solely as a lawyer and it is part of his job prior to sentence. I don't think he can do his job properly unless he does have these alternatives and social services are the best way to keep abreast of these alternatives and to use them.

Moreover, he felt that, if the defense attorney got information about rehabilitation possibilities to the District Attorney's Office before the defendant was even formally charged, it might be possible to get the charges dropped or reduced.^{51/} He felt the Public Defender could often be more successful at this stage than later on.^{52/}

Despite these views, however, the District Attorney's office and the two deputies who had any contact with the Project constantly opposed plans to expand or continue the Project. As noted above, the District Attorney's office successfully blocked the approval of funding by the County Board of Supervisors that would enable continued employment of the project staff by the Public Defender.

There are a number of explanations for this opposition. There are the stated reasons which have been elaborated above. But in addition to these reasons, it is the personal opinion of the writer that the main reason for his opposition is his view that criminals have failed morally and must be punished. Rehabilitation must remain secondary. And while fairness demands that all defendants be represented, defense attorneys should not be given tools that would allow them to get guilty people "off" with too lenient a sentence.

Thus, it is unlikely there will be a substantial change in his position. Perhaps more consultation prior to the commencement of the Project would have alleviated some of the difficulties. But it is not likely that more communication would have resulted in more cooperation. In fact, it may be that a degree of hostility is a sign of the success of such projects, for it indicates that the defense counsel is challenging the system in a meaningful fashion, thus hopefully improving the performance of all persons involved.

D. The Defense Attorneys

In describing the goals of the Offender Rehabilitation Project in the District of Columbia, the evaluators said that in order to utilize the project "[D]efense attorneys ... had to become sensitized, if they were not already, to a broader, less adversary role than merely getting the best 'deal' for their clients -- sensitized to a concern for a long-range rehabilitation through a variety of individually tailored correctional or other dispositions which it was their responsibility to point out to the court or prosecutor." The evaluators do not make clear whether by this they meant that an attorney should advocate a plan opposed by his client, if he felt it was in the best interest of the client. In our project, it was felt that the first obligation of the attorney was to present the wishes of the defendant. The views of the defendant were perhaps altered by his contact with the project workers but it was his desires which were to be reflected in the defender recommendation in court. Project reports which were not acceptable to the client were not to be submitted to the court.

Therefore, it was not expected that the Project would have a great impact on defense attorneys, other than to provide them with more information than they usually had at sentencing. However, this expectation turned to be quite incorrect, and the Project definitely did alter the defense attorney's view of sentencing, and, in effect, towards his clients. And the attorney who handled most of the sentencings began to take a broader view of helping his clients, and felt he played a more constructive role as a result.

The impact of the Project on the attorney is best illustrated by his description of its impact in one case. The charge was child molestation and the facts were particularly disturbing. According to the defense attorney, "I was originally appalled by the defendant's acts. I could see little to argue against sending him to state prison. However, the social worker had the defendant see a psychiatrist. Through the worker's and psychiatrist's reports I saw the medical nature of the problem, and changed my views about the case."

The reaction in this case typified the growth in role perception by this attorney, and mirrors a similar change that occurred in other office attorneys who came in contact with the Project.^{54/} All of the attorneys felt the social workers gave them a broader perspective on their clients, and they were therefore better able to represent them at sentencing. Because they were better able to see the defendants as individuals, in fact as human beings, they were better able to get the court to see the individual nature of each case.

The success of the Project in sensitizing the attorneys to this new role is largely attributable to the work of the two project workers. Although the Public Defender and much of the office supervisory staff strongly supported the Project, many attorneys were initially indifferent or hostile. However, the project workers were able to establish good working relationships with most of the attorneys, who felt that their plans were meaningful, realistic, and helpful to the defendant. Particularly important to the establishing of good relations was the recognition by the project workers of the attorney's role. They did not try to usurp the attorney's position as primary representative of the client; rather they sought to provide aids to the attorney in performing his role. They had no problem with this role relation and thus the interaction was successful from all perspectives.

The project reports were often, in fact, a result of collaboration with the defense attorney handling sentencing. He would read the reports as they were being prepared and discuss the case with the worker. He would indicate institutional considerations which should be considered in recommending a plan, and occasionally suggest alternative resources.

In approximately two-thirds of the cases, the attorney followed the plan as recommended. In fact, he was surprised that as the project went on, he would do so despite his belief that the court would react negatively to the plan -- at the start of the project he was reluctant to submit plans he expected the court to reject. Later he decided to try to "educate" the court and to his surprise the court would accept some of these plans.

In addition, the attorney would spend more time with clients who were receiving project services. He often spent over two hours discussing different plans with them, while in a normal case, he would spend only fifteen minutes with the client, sometimes not until the day of sentencing. In non-project cases, he could only ask for less than the probation recommendation, since an alternative plan could rarely be presented. But he felt that even these cases benefitted from the project, because as he became more familiar with community resources he could often recommend alternatives of which he was previously unaware.

He also found it easier to work on sentencing with project clients, since non-project clients would only think in terms of paying their debt to society, hopefully in the shortest amount of time, while many project clients thought in treatment terms and had a much more positive attitude towards the sentencing process.

The main problems that he found with the project were that the reports were sometimes too vague in describing the particular institution or agency that would provide the rehabilitative services. And, some of the rehabilitation plans were inadequate, mainly because of lack of facilities or funds to enable a given plan to be implemented.

In addition, he found that the use of these reports created an ethical problem for him. In some cases, the reports revealed that the client needed extended treatment, but the client only wanted the shortest possible sentence. As the project progressed, the attorney felt that he might not be serving his client's best interest by just arguing for the shortest sentence. In the end the solution was to try to convince the client to accept a treatment program, modify the program to meet the client's desires, and argue for what the client wished, even if the attorney disagreed.

The reactions of the other attorneys in the defender office were similar to those of this attorney. As the Project progressed, more and more office attorneys asked the staff to help them on given cases. Help was given as often as possible, despite time limitations. A very good relationship was developed with all the office attorneys. In fact attorneys began approaching the staff at earlier stages in cases and in several cases the efforts of the project staff resulted in getting clients diverted from the criminal process.

Thus, the Project had a clearly beneficial effect on the Public Defender office. The attorneys not only were made aware of more information that they could use at sentencing, but came to accept a larger role for themselves at sentencing. The attorneys developed a different image of their role and uniformly felt that they were able to be better lawyers as a result of the Project.

E. Community Agencies

An extensive part of the project program involved the identification of and development of good relations with community agencies which might help Public Defender clients. It is felt that, despite the fact that full cooperation was never received from most agencies, the discovery and utilization of community resources to provide rehabilitative programs constituted the most successful, important and long-lasting effect of the Project.

Prior to the start of the Project there was very little utilization of community agencies by the correctional system. Most offenders were either sent to county jail or placed on probation. The county jail provided almost no rehabilitative services, except for those prisoners (approximately twenty-five percent) who were in a work-furlough program. Those on probation presumably received rehabilitative services from their probation officers. However, the caseloads in the Probation Department are very high so there is little contact between the probationer and his probation officer. And, except for a special unit with small caseloads, those officers who do see their probationers rarely use community agencies as part of the rehabilitative planning.

Thus, there had been little contact between the correctional system and community resources.

In contrast, the Public Defender project was designed to use community agencies as an integral part of the sentencing plans. The staff never viewed their job as performing personal social work services for their clients. Rather, they felt that their job was to determine their clients' problems, and then to develop a rehabilitative plan utilizing existing community resources. Thus, it was essential that the project staff find and develop adequate and functioning community resources willing to help Defender clients.

To obtain these resources ninety-two agencies were contacted. Some of these agencies, such as the Drug Confrontation Ward at the Veterans Administration Hospital, had been totally unknown to correctional personnel and courts prior to the project. Even the well-known agencies, such as the Family Services Association, had had little or no previous contact with criminals as clients, and many were reluctant to take persons under court orders. Many agencies shared the common social work concept that clients must come voluntarily in order to benefit from their services. ^{54a/}

Every effort was made to insure that only agencies willing to help criminal defendants would be utilized. Each agency was visited by one of the project workers. The Project was fully explained and assistance solicited. At that time, arrangements were made to have specific personnel to whom the Public Defender could make referrals. The needs of Public Defender clients were discussed, and processes unique for incarcerated and/or persons with criminal charges were developed. At the same time, the project staff thoroughly examined the facility, and attempted to evaluate how well the agency performed. Program data, financial requirements, criteria for admittance and other information pertinent to assessing the utility of the resource were gathered. Most importantly, the worker determined the attitudes of the personnel toward extending services to clients with criminal charges outstanding. This information was recorded along with a subjective evaluation by the project worker.

As a result of the personal efforts of the project workers, most of these agencies agreed to provide services to Public Defender clients. Moreover, by establishing personal relationships with workers in each agency, the project staff was able to develop contacts who could help them on any given case.

Table 2, supra, shows the agency services that were recommended by the project workers. Many of these services were never utilized, since the clients were incarcerated before the agency services began. However, approximately forty clients did receive at least some services.

While it was felt that only agencies sympathetic to the Project goals could effectively be used, no agencies were eliminated entirely because of hostile attitudes. Sometimes a hostile agency was the only one providing a particular service. However, several of the larger (and most needed) county agencies were used infrequently because of their attitudes about the rehabilitation potential of lower-income and/or minority persons or their inflexibility in case acceptance. Several were just too large and bureaucratic to be responsive to individuals.^{55/}

Due to the relatively short length of the Project there is little in the way of concrete data on the services performed for Defender clients by the community agencies. Therefore, the section will discuss the general impressions of the agencies toward the Project, and the project workers' post-mortem evaluation of the agencies.

1. Agency Views of Project

A brief questionnaire was sent to each agency (52) which had had contact with the Project. (See Appendix C for a copy of the questionnaire). Replies were received from eighteen agencies,^{56/} which can be divided into the following groups: Eight public social welfare agencies (i.e., employment counseling), eight private social welfare agencies, and two law enforcement agencies.^{57/}

Of the eighteen replies, thirteen indicated that they had had enough contact to evaluate the Project,^{58/} although some qualified their statements by stating that their opinions were based on limited contact. Three of the others knew generally of the program and its aims, but each had been contacted in only one case and felt they lacked adequate information for an evaluation. Two claimed no knowledge, although they had been contacted by the project staff on a specific case. Of these, twelve were favorably impressed by the Project, one respondent was unfavorable. This latter agency felt that the project clients were merely using the services to get out of jail, and did not have the right attitude towards social work services. The more contact an agency had with the Project, the more favorable was its response.

The agencies gave a variety of reasons for their favorable reactions towards the Project. Many were impressed by the project efforts in a given case. Others focused on the general goals of the Project. One constant thread in the replies was that the agencies were extremely impressed by the project workers, Mrs. Hofele and Mrs. Dawson. Thus, much of their favorable response was to the project staff as much as to the concept of the Project itself.

Equally significant is that these respondents all indicated that they were surprised and delighted that there was someone in the correctional system that shared their perspective in treating offenders, i.e., that maximum utilization of community resources should be attempted. Many stated that they had previously had bad experiences with the court system and felt that the courts were hostile to community rehabilitation. Some of the respondents indicated that the project workers had changed their opinions and given them greater knowledge of the judicial process. Several indicated that their agencies benefitted from the Project because they learned from the project workers of other community resources of which they had not been aware.

The respondents did indicate some of the weaknesses of the Project. No clear pattern of responses appeared; thus, no "major problem" can be identified on the basis of the responses. Among the specific problems mentioned were the lack of funds to support Defender clients needing services, the time pressure created by having to take a person in time to affect his sentencing, and the uncertainty involved in working with a person who might be sent to jail, thus interrupting or ending the rehabilitative services. All of these reflect the common and correct concern of these agencies that without the entire correctional system supporting the program (including the court, the probation department, and the County Board of Supervisors -- the money givers), the Project's potential was greatly limited. However, despite these concerns, it is clear that the community agencies generally supported the concept of the Project and wished to see it expanded.

2. Reaction of Project Workers to Community Agencies

While the representatives of the community agencies almost unanimously praised the Project, the project workers were less enthusiastic about the performance of the agencies, despite the fact that they utilized agency services heavily. Basically they felt that despite an initial enthusiasm for the Project, most large county agencies were unwilling to commit the time or resources necessary to aid the project clients. The smaller, private agencies were far more responsive.

One of the major problems was getting agencies to accept clients with criminal records. As one staff member noted:

I was appalled at the number of agencies which admittedly "skim the cream" from the number of applicants and quite readily chalk off the rest as "losers" -- "those you just can't help anyway." This was particularly true of state agencies. Their explanation was that the caseworkers are held accountable for a measure of success. If a disproportionate number of failures appear on their caseloads they are censured for poorly selecting clients. The criteria of the agency precludes a percentage of failures above a certain point. Therefore, the caseworker is blamed.

As a result many clients were rejected by some agencies or received only minimal services after being accepted.

Another problem was getting agencies to act quickly. Most agency representatives and other individuals contacted had to be convinced that there was some degree of expediency in beginning services in the client's behalf when there were court matters pending. Generally the agencies wanted to defer services until all legal matters were cleared; the clients were advised to return at that time when they can be sure they'll be free to pursue the services sought. But absent agency acceptance of the client the court might not accept the project recommendation.

The project staff also felt that many agency

workers operated on a principle that would maximize success with the least amount of involvement and/or time expenditure. The success criteria seemed to be to fit a client into a slot manufactured from middle-class values; marital adjustment, employment, living in an unobtrusive way, being satisfied with what society was offering, etc. If a client accepted these values then the case was seen as successful. Workers seemed to operate best as "brokers." This is to say they worked well from behind a desk with the popular connecting tool, the telephone.

The project staff often felt that project clients could not fit a mold, nor benefit from this type of service.

However, not all agencies responded negatively. There were numerous instances in which people were very excited by the staff's efforts and eagerly expressed a willingness to engage in a cooperative effort. Also some agencies which were initially hesitant to help eventually became quite helpful after seeing two or three cases worked out.

The two staff members differed somewhat in their views of agency responses. One worker had negative feelings about most agencies. The other felt most agencies were cooperative and interested in the defender program. She felt that her efforts were aided by the fact that most agency personnel were hostile to law enforcement agencies, and therefore viewed public defender people as allies. Yet despite her more favorable reaction to the community agencies, she also concluded that most agencies were unwilling to go all out for clients who might turn out to be losers. She stated:

While rehabilitative services exist, my experience revealed that they are not readily available to someone charged with a criminal offense. The agencies do not accept those who are not free to enter programs and most require the applicant to appear in person to request services. Also, case work offered by the numerous services is confined to the specialty offered. Only the Social Service Department offers comprehensive services. Even so, Social Service case work is now placed in an "inactive" status immediately upon incarceration. Since bail funds are unlikely, the indigent remains incarcerated and isolated from the community. Since he sees little he can do for himself, he offers no constructive suggestions to the court regarding future behavior, and is sentenced to a jail term and/or fine. By this time it is probable he has lost his job, life continuity and both he and his family are then potential candidates for public assistance.

It is very difficult to draw any firm conclusions since the brevity of the Project prevented any long term contact with a number of agencies from developing. Therefore, we do not know, among other things, whether agency enthusiasm would increase or diminish over the long-run, whether the problems perceived by the project staff could have been corrected over a period of time, whether a larger number of agencies would receive extensive use.

However, it does appear that despite the reservations of the project staff, the project did have a marked impact on the use of community resources by the correctional system. It gathered together, for the first time, sound data about the existing resources. It discovered resources previously unknown to correctional people. It demonstrated to both the Court and the probation department the availability and usefulness of such services. It made the community agencies aware of their potential role in the correctional process. And it brought agency heads together who previously had had no regular contact.^{59/}

Significantly, as the Project neared termination, two of the largest county agencies, which previously had had little to do with persons in the criminal system, developed proposals for projects to enable them to expand their services to the offender population. These proposals were stimulated by the agencies' contacts with the project staff. Although neither agency received additional funding, both are trying to help more offenders with their existing resources.

Based on the limited evidence there is reason to believe that both the criminal justice system and the community rehabilitative agencies have established a closer, better relationship. This change is directly attributable to the Public Defender Project.

VII.

CONCLUSIONS

The major assumptions underlying the Project at its inception were that the availability of "social workers" to aid defense counsel in preparing sentencing recommendations would enable counsel to better perform his duties to his clients and that as a result the criminal justice system would be improved by better dispositions by judges. It was further hypothesized that the dispositional reports prepared by the defender workers would not be duplicating those of probation departments which presently prepare such reports for the court.

The evidence gathered from the Project tends to substantiate these hypotheses. The reports of the project staff revealed information about the defendants and proposed treatment plans unavailable to the court through the probation reports. These reports unquestionably aided the defense lawyer in representing his clients since the plans enabled counsel to obtain more favorable sentences for the client than would have been obtained without the reports.

However, the affirmative answers to these hypotheses do not in and of themselves justify establishing similar programs in all public defender offices. Several questions still remain unanswered. First, any conclusion that the Project was successful assumes that increased use of community resources will lead to more rehabilitation, or at least no more recidivism, than would incarceration. Indications from other studies^{60/} and a small amount of evidence in this Project^{61/} indicates that the offenders released to community treatment do not have a higher recidivism rate than similar offenders who are incarcerated. However, a long term follow-up of project clients would be necessary to fully test this hypothesis.

Second, the Project was conducted on a very small scale and the project staff had a considerably smaller case load than did the probation officers. It is possible that an expanded staff in the Public Defender's Office might develop the same institutional problems that plague large probation departments. As indicated above, a very important variable in the Project's success was the skill and dedication of the project staff. Or a probation department with smaller case loads might perform as well as did the project staff.

As indicated above, there appear to be institutional reasons why a probation department can never perform the same role as special workers in a defense office. The problems of obtaining the trust of the defendant when the probation department is serving the court, not the client, may be insurmountable. Also, it is very difficult to alter the set patterns of large bureaucracies.^{62/} Thus it is likely that programs in defense offices would be useful even if probation departments had smaller case loads.

A more difficult question is whether a program significantly larger than the Santa Clara project is desirable. The project staff felt they could not adequately do more than eight to ten investigations a month. This constituted only about 5 percent of the monthly sentencings in cases involving guilty pleas. If project workers were involved in other cases -- sentencings after trial, misdemeanors and juvenile cases -- two workers would only directly affect a very small percentage of the office's case load. Moreover, any expansion of efforts into earlier stages of the proceedings would further cut down the time available to prepare reports. Yet the project staff felt such an extension was necessary -- perhaps even more valuable than work at sentencing.

Thus, the Public Defender Office could use many more "social work" personnel. How large a staff is undetermined. However, even a small number of "social work" personnel would aid significantly. Through the efforts of these workers the attorneys themselves will become more familiar with rehabilitative planning and the available community resources. In many cases the attorneys may be able to divide the work with the "social workers". Also, the presence of just a few workers can change the attitudes of judges, community agencies and others involved in the criminal justice system by getting them to take a more active interest in rehabilitative planning.

Thus, the evidence from the Project supports the views of those who advocate more extensive defense participation in sentencing and the availability of social work staff for defense attorneys. However, because of the limitations on the study, no firm conclusions are possible.^{63/} It is hoped this study will provide some guides for similar projects and lead to further experimentation with such projects in defender offices.

FOOTNOTES

1. Mempha v. Rhay, 389 U.S. 128 (1967).
2. President's Commission on Crime and Delinquency: Task Force Report - The Courts, p. 19 (1965).
3. American Bar Association - ABA Minimum Standards Project. Tentative Draft on Sentencing, p. 245-46.
4. E.g. Report of the Conference on Legal Manpower Needs of Criminal Law, 41 F.R.D. 389, 402 (1966).
5. E.g. Dash, Medalie and Rhoden, Demonstrating Rehabilitative Planning as a Defense Strategy, 54 Cornell Law Review 408 (1969).
6. See An Evaluation of the Offender Rehabilitation Project of the Legal Aid Agency for the District of Columbia - Institute of Criminal Law and Procedure, Georgetown Law Center, p.25-33 (1969).
7. Crime Commission, supra note 2, pages 19-20.
8. Report of the Conference on Legal Manpower Needs, supra, note 4, p.402.
9. ABA Minimum Standards, supra, note 3, p.251.
10. Dash, supra, note 5.
11. Ibid.

[Footnotes, continued:]

12. Of course this argument would not apply to the use of social workers when the defendant is first arrested. The workers would develop plans to aid in diverting the offender from the criminal justice system.
13. She later became a graduate student in psychology.
14. The questionnaire used to obtain this information is included as Appendix A.
15. One of the weaknesses of the Project was the failure to perform this task adequately. Thus the project staff tended to keep new information in their heads rather than to write it down and update the role.
16. The Public Defender felt that this interpretation of the law was mistaken. However several conferences failed to produce an agreement on submitting the report and since a legal test of the District Attorney's claim might take as long as the Project, a compromise was worked out. However, as a result of this confrontation the Public Defender's Office eventually was able to get new legislation passed specifically authorizing judges to receive such reports. This occurred after the Project was over.
17. See Section VI. B., infra.

[Footnotes, continued:]

18. In order to fully evaluate the impact of the project there would have to be a long-term follow-up on recidivism by project clients. Such a follow-up was beyond the scope of the current project.

19. In this, and many other respects, the research aspects of the project clearly suffered because there was no one conducting the research, and checking on the data gathering, while the project was in progress.

20. This plan prevented the project staff from picking up cases before a plea was entered. Several other studies have concluded that the earlier the intervention the more successful it is likely to be. This was also the feeling of the project staff in this project.

21. After a defendant pled guilty to a felony the court would request the probation department to prepare a presentence report. Usually these reports were due three weeks from the date of the plea. The probation department had a separate unit of officers who did nothing but prepare these reports.

22. There was one exception to this rule. A report was prepared for a client who seemed almost certain to go to prison but whom the staff felt needed psychiatric help, not prison. The client was sent to prison.

[Footnotes, continued:]

23. These suggestions were made by Professor Wald, who had been involved in setting up the Project. However, Professor Wald only saw the first few reports. He did not supervise the workers or carry on any research while the Project was ongoing. It had been planned to hire a research consultant who would conduct ongoing research but unfortunately these plans never materialized.

24. State law required that he be given the probation report forty-eight hours before sentencing. Most often, however, reports were not received until twenty-four hours before sentencing. But the contents were often known earlier through informal contact with the probation officer.

25. In addition, both Betty Hofele and Willa Dawson prepared written reports summarizing their experiences and reactions to the Project.

26. This was a disappointingly small number. However all but three agencies which had significant contacts with the Project returned questionnaires.

27. California law permits a sentence of probation subject to spending up to twelve months in jail prior to beginning probation.

[Footnotes, continued:]

28. Very few of the defendants had ever received community services previously. Only fourteen of the eighty-six reported any substantial contact with a community agency. Sixty-eight had had no previous contact.

29. The recommendation for probation meant that the defendant would have a supervising probation officer as his caseworker. However, these probation officers had case loads of up to two hundred and supervision generally amounted to one fifteen minute meeting a month.

30. The defendants and their families all agreed to participate in the proposed program. Whether this was because they saw it as a way of getting out of a jail sentence, or whether they had a real desire for help is not known.

31. The short period of time between plea and sentencing also prevented implementation of the plans. Often it took the full three weeks to develop the plan and there was no time to begin implementation.

32. This was stated by Lyle Smith, Chief Probation Officer, in an interview with Professor Wald on May 21, 1970. Although individual probation officers might disagree with this view, their reports were subject to approval by the supervisory staff.

CONTINUED

1 OF 2

[Footnotes, continued:]

33. In this attitude they may only have been reflecting the views of the judges. Many studies have shown how probation reports are designed to reflect the probation officer's expectations of what the judge wants.

34. Interview note 32, supra.

35. This lesson was learned the hard way. In one case the report writer stated that the defendant did not have an alcohol problem. It turned out in the court hearing that he had forty previous arrests for drunkenness.

36. As one worker stated:

It was my impression that it was exceedingly critical for long-range success to elicit as much information as possible regarding the client's expressed needs, hopes and desires for rehabilitative direction and then to base the casework on that information. To accomplish this I worked to create a sense of partnership with the client -- working with him or her rather than for him or her. Through the partnership a bond of trust developed which created a semi-protective relationship in which the client could explore psychological concerns; dreams of the future and their relationship to reality, senses of inadequacy, pent-up emotions, etc. This gave me a base for the casework. I could then develop a plan which appealed to the client instead of basing it upon my assumptions about his needs.

[Footnotes, continued:]

37. This factor becomes less important to the degree that the recommendations of the defender program are incorporated into, or are similar to, the probation recommendations, or if the District Attorney is willing to drop or lower charges based on the rehabilitative efforts of the defender worker.

38. In order to see if the reports affected sentences by comparing recommendations and actual sentences it would be necessary to study the judge's sentencing pattern in non-project cases. In those cases there was a probation report and a defense recommendation. The latter was not supported by or based on a presentence study however.

The data was not obtained since the project data was lost and therefore statistical comparison was impossible.

39. The hearing in court was often only a show, the judge having decided on his sentence in chambers after consultation with the attorneys and probation department. Therefore remarks in chambers were considered in evaluating the court's reasoning for giving a particular sentence.

[Footnotes, continued:]

40. According to the project staff, this change in the judge's attitude seemed to occur after he attended a sentencing institute the California judges hold annually. At this institute hypothetical cases are presented and the judges discuss what sentence they would give. In one case, the judge who had been getting the sentence reports proposed a program that had been presented in one public defender report. All the other judges received the idea enthusiastically. After that time, according to the project staff, the judge was more favorable to Project recommendations.

41. Lenient in the sense of giving a lesser jail sentence. The project staff felt that requiring participation in the treatment plan often required more effort by the defendant than would additional jail time.

42. There is also evidence that the Project was received even more favorably by some other judges, particularly those in municipal court. Several judges actually postponed sentencings in cases and asked for an evaluation of the defendant by the project staff.

[Footnotes, continued:]

43. Such as public statements of judges and other officials, changes in probation reports, requests for Project help by defense attorneys in non-project cases.

44. See footnote 42.

45. At the time of these interviews project reports had been prepared for only four months and only thirty to forty cases were involved. Shortly after this time the Project grant was extended, so that the judge had greatly increased exposure to the Project. Unfortunately, Professor Wald left the Bay Area before the Project was extended and could not conduct any further on the scene research.

46. Theoretically, it is unclear whether a probation department report should take into account deterrence in its recommendation, as the Santa Clara reports did. The judge can adequately insert this factor. What he needs from professionals is information about what impact various sentences will have on the given defendant. In this respect the project reports should not be considered partisan because they did not reflect deterrent considerations. The only respect in which they should be more partisan is in omitting damaging information about the defendants' likelihood to respond to one plan rather than another.

[Footnotes, continued:]

47. This view was probably erroneous, as the text discussion illustrates.

48. The informal cooperation of individual probation officers with the project personnel seemed to be a product of time and trust in the Public Defender staff. On several occasions the probation reports included the recommendations as presented by the defender. On other occasions the social worker would be informed that the probation office report would complement her recommendations. The cooperation of most of the investigating probation officers was established near the end of the project after the most mature and sternest officer (heretofore the most skeptical and least cooperative) approached one social worker for assistance on a case where the judge asked for a full evaluation. He informed the judge of her involvement and sponsored her resulting program. The case was an extremely difficult one and resulted in the reversal of an Adult Authority decision to revoke parole. After this case this officer was most vocal about the need for these services and the realistic approach of the defender staff. After this case every request to work cooperatively was to some degree granted.

[Footnotes, continued:]

49. Some officers even called the project staff for advice on how to implement a plan and occasionally for advice on cases unrelated to the project.

50. These views of the defendants were at least partially shared by the public defender attorney. He said that clients were willing to accept the plan when facing long jail time, but less willing if they thought they could get a short sentence. However, he was surprised that a number of clients came back to the office to seek rehabilitative help after serving their jail time.

51. And, in fact, such diversion actually occurred in several cases, one in which a charge was reduced, several others resulting in referral to juvenile court or for mental health proceedings.

52. This feeling was shared by the project staff. The Washington, D. C. project also came to the same conclusion. See, Rehabilitative Planning Services for the Criminal Defense, Institute of Criminal Law and Procedure, Georgetown University Law Center, 328.

53. Offender Rehabilitation Project, op. cit. fn. 6, p. 151.

[Footnotes, continued:]

54. Eventually ten to fifteen attorneys out of twenty-five had contact with the Project.

54a. See Appendix B for a full list of the agencies contacted.

55. For example, the State Department of Human Resources (formerly the Department of Employment) maintains a special section for parolees and probationers, a service designed for ex-criminal offenders. Since project clients were persons with criminal charges pending and no formal financial arrangements had been made to service the public defender, they did not qualify. There was a reluctance to place these clients prior to a disposition of the case; therefore this resource was of very little assistance. Good relations could never be established with any specific personnel who would be responsive to the Project's requirements, mainly because it was not within the agency's structure.

56. While this number is smaller than had been hoped for, replies were received from almost all the agencies having substantial contact with the Project. Ideally interviews would have been held with all the agencies but time limitations required use of the brief questionnaire.

[Footnotes, continued:]

57. A full list of all the agencies surveyed by the project is found in Appendix B.

58. There were no patterns of differences between public and private agencies, so the replies will be discussed as a group.

59. In order to get the agencies together, the project staff sponsored monthly meetings at the local Friends Outside facility. These were luncheons that agency personnel could attend. Along with public defender attorneys, members from various larger county agencies were solicited along with one or two lesser known private agencies. Different ones were invited each month. Each would introduce themselves and explain their services briefly. These meetings served several purposes. They brought persons interested in the same problems together, to share ideas and information. As a result, the people were better able to coordinate efforts, identify gaps and overlaps in existing services, and organize to promote their mutual goals.

60. See Offender Rehabilitation Project supra note 6 at pages 311-14.

[Footnotes, continued:]

61. Follow-up studies of the project clients were done three months after the project ended. Since many of the clients were still in jail this involved only about forty cases. This data, like the rest, was lost. However, I had a chance to read through the reports before they were lost. The follow-ups indicated that only three of the forty clients released to the community had committed a new offense in the three to five months they were out. However, this is too short a time to draw any conclusions.

62. Perhaps small probation departments could be altered. However in most areas with high crime rates there are large departments and turnover may be small. Bringing about change in these circumstances is very difficult.

63. For a discussion of other problems with such projects see the Offender Rehabilitation Project supra note 6, pages 311-338.

APPENDIX A

Agency Information Sheet

Date _____

Name & Position of Person Interviewed _____

Interviewer _____

Agency Name: _____

Address: _____

Telephone: _____

Hours: _____

Names and Positions of Key Personnel:

<u>Name</u>	<u>Position</u>
_____	_____
_____	_____
_____	_____

[Appendix A, continued:]

General Description

- (a) Public _____ Private _____ Directly administered by _____
- (b) Principal funding _____
- (c) Scope and objectives _____
- (d) Staff resources (composition of staff and total resource breakdown, e.g., No. of caseworkers, qualifications, full/part time, etc.) _____
- (e) Cost to client: 1) Can it be waived? _____
Rate \$ _____ 2) Can it be taken in installments? _____
3) Will agency accept payment by county? _____
- (f) Area served _____
- (g) Location of service center(s) _____
- (h) Public transportation available to center? _____

[Appendix A, continued:]

Treatment or Service Procedures

(Check if agency offers) (For each category below, indicate No. and kind of workers available, time spent, etc.)

- (a) Brief counseling _____
- (b) Indiv. counseling/therapy _____
- (c) Group counseling/therapy _____
- (d) Family-centered counseling _____
- (e) Financial counseling _____
- (f) Medical services (Specify) _____
- (g) Length of therapy sessions _____
Any minimum or maximum No. of sessions that must be attended? _____
- (h) Have they specific arrangements with other agencies to offer services they don't? _____
- (i) Employment counseling _____
- (j) Job training _____
- (k) Job Placement _____
- (l) Physical rehabilitation services _____
- (m) Special education (e.g. for mentally retarded, functionally illiterate, etc.) _____
- (n) Other (specify) _____
- (o) To whom does agency refer client overload? _____

[Appendix A, continued:]

Does agency accept cases involving:

Alcoholism _____

Drug addiction _____

Mental retardation _____

Suicidal risk _____

Offer special services in :

Alcoholism _____

Drug addiction _____

Mental retardation _____

Suicidal risk _____

Where possible describe briefly the treatment/service program and the progress of a client through it; (e.g. initial diagnostic interviews and med. exam as needed; then assigned to intensive group meeting 3 x/week; as progress made, reassignment to 1 x/weekly group.) _____

[Appendix A, continued:]

Eligibility and Referral

- (a) Limitations on program(s): (e.g. age, sex, types of offense, linguistic background, etc.) _____
- (b) How long wait for active service (as opposed to diagnosis)?
- (c) Is staff equipped to care for Spanish-speaking clients? _____
- (d) Will agency accept referrals from Public Defender and Court? _____
- (e) Will agency send personnel to do intake in jail, if necessary? _____
- (f) Referral procedures: To whom and how should referral be made? _____
- (g) Will agency afford treatment to persons in a minimum custody facility who are temporarily released for that purpose?

Comments

(Include interviewer's impression of readiness of agency to respond to PD programs; assessment of physical facilities if observed): _____

APPENDIX B - AGENCIES SURVEYED

A. ALCOHOLISM

1. Action Council on Alcoholism
2. Alcohol Rehabilitation Clinic
3. Diablo Vy. Ranch
4. Fortunes Inn (men)
5. Harmony House (women)
6. Salvation Army
7. San Jose Rescue Mission
8. Society of St. Vincent's dePaul

B. CASEWORK

1. Family Service Agency
2. Friends Outside
3. Gilroy Family Welfare
4. Mexican American Services (MACSA)
5. Mountain View Community Services
6. Salvation Army
7. Santa Clara Social Services Dept.
8. California Dept. of Rehabilitation

C. DRUG ADDICTION

1. Chrysalis
2. Civil Addict Program (California Dept. of Correction)
3. Drug Communications, Inc.
4. Narcotics Anon. of Northern California
5. Palo Alto Veterans' Hospital
6. Pathway Youth Center
7. Santa Clara County Drug Abuse Clinic
8. South County Drug Abuse & Prevention Society
9. Switchboard
10. The House (formerly Damien House)

D. EMPLOYMENT

1. Bureau of Indian Affairs
2. Dept. of Human Resources - Palo Alto and San Jose
3. Economics Social Opportunity
4. Mexican-American Opportunities Center of Santa Clara County
5. Women in Community Services, Inc.
6. X-Squared Foundation

E. HOUSING

1. Odd Fellow Rebeckah Children's House
2. New Hope Home (unwed mothers)

[Appendix B, continued:]

F. MEDICAL

1. Child Development Diagnostic Clinic
2. Kaiser Permanente Medical Center
3. Santa Clara Valley Medical Center-Rehabilitation Dept.

G. MENTAL HEALTH

1. Adolescent Residential Center
2. Adult & Child Guidance Clinic
3. Adult Protective Services
4. Because of Youth
5. Catholic Social Services
6. Community Mental Health Services
7. California Medical Facility-Vacaville
8. Eastfield Children's Center
9. Family Services Agency
10. Family Therapy Institute
11. Gamblers Anonymous
12. Group Therapy Center
13. Harvey House (half way house)
14. Hope for Retarded Children & Adults, Inc. of Santa Clara County
15. Mental Research Institute
16. Miramonte Mental Health Services
17. Napa State Hospital
18. Parole & Community Services
19. Project "Inside-Out", Inc.
20. San Jose Community Mental Health Center
21. Santa Clara Rehabilitation Mental Health Services, Inc.
22. Suicide & Crisis Services
23. Office of Public Conservator
24. V. A. Hospital-Confrontation Ward

H. VOCATIONAL TRAINING

1. California Trade School
2. Elmwood Rehabilitation Center
3. Gavilan College
4. Goodwill Industries
5. Pacific Technical Institute
6. Opportunities Industrialization Center
7. Philco-Ford Technical Institute
8. Sequoia Automotive Institute
9. Service Employment, Redevelopment
10. South Bay Training Center
11. California Department of Rehabilitation
12. Trabajadores Adelante

[Appendix B, continued:]

I. RECREATIONAL-EDUCATIONAL

1. American Red Cross
2. Jewish Community Council
3. LARK - Literacy for Adults
4. San Jose City College
5. San Jose Parks & Recreation Dept.
6. Volunteer Bureau of Santa Clara County

J. FINANCIAL

1. Consumers Credit Counselors, Inc.

K. LEGAL

1. CRLA - California Rural Legal Assistance

APPENDIX C

Agency Questionnaire

1. What contacts have you had with the project?
2. What was your impression of the aims of the project?
3. Was the project, from what you have seen, a useful innovation? Why or why not?
4. Would you comment, based on your experience, on the project's strengths? Weaknesses?
5. Other comments.

APPENDIX D

Questionnaire #1 -- Comparison of Probation Department and Public Defender

Sentence Recommendations - Full Report by Defender -

Date _____

Social Worker _____

1-4. Case number

5. Type offense - original charge

- 0. Murder
- 1. Rape forcible
- 2. Armed Robbery
- 3. Robbery 2d
- 4. Burglary 1st
- 5. Kidnapping
- 6. Auto Theft
- 7. Manslaughter
- 8. Agg. assault
- 9. Larceny
- 10. Arson/dwelling
- 11. Forgery
- 12. Possession narcotics/sale
- 13. Possession narcotics
- 14. Possession marijuana
- 15. Possession marijuana/sale
- 16. Sale narcotics
- 17. Sale marijuana
- 18. Sale narcotics/minor
- 19. Sale marijuana/minor
- 20. Assault w/int. to rape, rob
- 21. Robbery 1st

6. Type offense - final charge

7. Was charge, if any, a result of plea bargaining

- 0. Yes
- 1. No
- 2. No charge

8. Was weapon involved

- 0. Yes
- 1. No
- 2. Not ascertained

[Appendix D, continued:]

9. Was victim injured

- 0. Yes
- 1. No
- 2. Not ascertained

10. Sex

- 0. M
- 1. F

11. Race

- 0. Caucasian
- 1. Black
- 2. Mexican-American
- 3. Other

12. Age

- 0. 18-20
- 1. 21-25
- 2. 25-30
- 3. 31-35
- 4. 36-40
- 5. 40-45
- 6. 46-50
- 7. 51-56
- 8. 56-60
- 9. over 60

[Appendix D, continued:]

22. Education

0. Sixth grade or less
1. Seventh
2. Eighth
3. Ninth
4. Tenth
5. Eleventh
6. Twelfth
7. 1 year college
8. 2 years
9. 3 years
10. 4 years
11. Graduate degree or graduate work
12. Unknown

23. Military history

0. No military service

Military Service

1. Honorable discharge
2. Less than honorable discharge
3. Type of discharge unknown
4. Still in military service
5. Unknown

24. Occupation

0. Professional
1. Proprietor
2. Business Official or Executive
3. Salesman
4. Clerical
5. Skilled worker
6. Service worker
7. Unskilled
8. Military
9. Housewife
10. Student
11. Government employee
12. Bank Employee
13. Criminal activity only
14. Other

25. What occupational skills does defendant have?

117

[Appendix D, continued:]

26. Average monthly income during two years prior to court appearance

0. None
1. Under 100
2. Under 200
3. Under 300
4. Under 400
5. Under 500
6. Under 600
7. Under 700
8. Under 800
9. Over 800

27. Number of changes in employment in two years prior to court appearance

0. No job changes
1. One change
2. Two changes
3. Three changes
4. Four changes
5. Five or more changes
6. No employment
7. Unknown

28. Longest period of continuous employment in two years prior to court appearance.

0. Less than one month
1. One month
2. Two months
3. Three months
4. Four months
5. 3-6 months
6. 6-9 months
7. 9-12 months
8. 12-18 months
9. Over 18 months

29. Longest residence in one city in five years prior to court appearance.

0. None
1. One year
2. Two years
3. Three years
4. Four years
5. Five or more years
6. Unknown

118

[Appendix D, continued:]

30. Longest period at one address in two years prior to court appearance.

- 0. Less than one month
- 1. One month
- 2. Two months
- 3. Three months
- 4. Four months
- 5. 3-6 months
- 6. 6-9 months
- 7. 9-12 months
- 8. 12-18 months
- 9. Over 18 months

31. Narcotic uses

- 0. Yes
- 1. No
- 2. Not ascertained

32. Marijuana User

- 0. Yes
- 1. No
- 2. Not ascertained

33. Is defendant addicted

- 0. Yes
- 1. No
- 2. Not ascertained

34. Alcohol usage (amounting to problem as indicated in previous record of social workers/probation department investigation).

- 0. Yes
- 1. No
- 2. Not ascertained

35. Is defendant an alcoholic?

- 0. Yes
- 1. No
- 2. Not ascertained

36. Drug use connected with crime

- 0. Yes
- 1. No
- 2. Not ascertained

[Appendix D, continued:]

37. Alcohol use connected with crime

- 0. Yes
- 1. No
- 2. Not ascertained

38. Physical health

- 0. Good
- 1. Fair
- 2. Bad
- 3. Specific problems (list)

39. Mental health

- 0. No mental problems
- 1. Previous mental history no commitment
- 2. Previous mental history commitment
- 3. Current mental problem

40. State nature of mental problems:

41. Family criminality (Two serious misdemeanors or a felony conviction)

- 0. Yes
- 1. No
- 2. Unknown

Father
Mother
Brothers
Sisters
Grandparent

	Yes	No
Father		
Mother		
Brothers		
Sisters		
Grandparent		

42. Confinement status prior to sentencing

- 0. Incarcerated
- 1. Out on bail
- 2. Out on O R

[Appendix D, continued:]

43. Length of confinement, if any.

- 0. 1 day
- 1. 2 days
- 2. Less than week
- 3. Less than two weeks
- 4. Less than month
- 5. Over a month

44. Is defendant a homosexual

- 0. Yes
- 1. No
- 2. Not ascertained

45. Other sexual deviance -- specify:

46. Crime Partners

- 0. None
- 1. One
- 2. Two
- 3. Three
- 4. Four +
- 5. Unknown

47. Does our data on any of above differ from that of probation department

- 0. Yes
- 1. No

48. State differences:

49. Judge

- 0.
- 1.
- 2.
- 3.
- 4.
- 5.

[Appendix D, continued:]

50. Probation officer's name _____

51. When did public defender approach probation officer?

- 0. Before probation report written
- 1. After report written
- 2. Report in process of being written
- 3. Not ascertained

52. State nature of contacts

53. Was probation officer receptive to discussion?

- 0. Yes
- 1. No

54. Was probation officer willing to accept plan of public defender?

- 0. Yes
- 1. No

[Appendix D, continued:]

55. What was recommendation of probation officer at time public defender first approached him?

0. Fine
1. Fine with probation
2. Straight probation
3. Probation with community treatment
4. Jail
5. Jail and fine
6. Jail and probation
7. Observation
8. Community treatment
9. Not yet formulated

56. Length of term recommended _____

57. Reasons for probation recommendation

58. What were the recommendations that public defender offered to probation officer?

0. Fine
1. Fine with probation
2. Straight probation
3. Probation with community treatment
4. Jail
5. Jail and fine
6. Jail and probation
7. Observation
8. Community treatment

59. Length of term recommended _____

60. Reasons for recommendation

123

[Appendix D, continued:]

61. Was a separate public defender report submitted to judge?

0. Yes
1. No

62. If no, why not?

63. Sentence of judge

0. Fine
1. Fine with probation
2. Straight probation
3. Probation with community treatment
4. Jail
5. Jail and fine
6. Jail and probation
7. Observation
8. Community treatment

64. Term _____

65. Reasons given by judge for sentence.

66. Was there discussion of sentence in court?

0. Yes
1. No

67. By whom -- Describe.

68. Was social worker at hearing?

0. Yes
1. No

124

[Appendix D, continued:]

69. Was she called to testify?

- 0. Yes
- 1. No

70. If yes, by whom?

- 0. Public defender
- 1. Probation officer
- 2. Judge

71. Did anyone else testify?

- 0. Yes
- 1. No

72. Who?

73. Did judge appear to take account of public defender report in arriving at sentence?

- 0. Yes
- 1. No
- 2. Not ascertained
- 3. Not relevant

74. On what evidence do you base this conclusion?

75. Did District Attorney oppose attorney recommended?

- 0. Yes
- 1. No

76. Did defendant speak at sentencing hearing?

- 0. Yes
- 1. No

77. Did the defendant's statements appear to have effect?

- 0. Yes
- 1. No
- 2. No statement

[Appendix D, continued:]

78. If yes, describe the impact.

79. How often did social worker see defendant during investigation?

	Length of time				
	30 min.	1 hr.	2 hrs.	3 hrs.	Over 3 hrs.
0. First time					
1. Second time					
2. Third time					
3. More than 3 times					

80. Total length of time during contacts

- 0. 30 minutes
- 1. 1 hour
- 2. 2 hours
- 3. 3 hours
- 4. 4 hours
- 5. Over 4 hours
- 6. Didn't see

81. How many times did probation officer see defendant?

	Length of time				
	30 min.	1 hr.	2 hrs.	3 hrs.	Over 3 hrs.
0. First time					
1. Second time					
2. Third time					
3. More than 3 times					

82. Total length of time during contacts

- 0. 30 minutes
- 1. 1 hour
- 2. 2 hours
- 3. 3 hours
- 4. 4 hours
- 5. Over 4 hours
- 6. Didn't see

[Appendix D, continued:]

83. Which of following people did social worker see? Check as many as appropriate.
0. Wife
 1. Other relatives
 2. Employer
 3. Doctor (include psychiatrists)
 4. References of client
 5. Other _____
84. Which of following people did probation officer see? Check as many as appropriate.
0. Wife
 1. Other relatives
 2. Employers
 3. Doctor (include psychiatrists)
 4. Other
85. Did probation report have a rehabilitation plan?
0. Yes
 1. No
86. Did probation report discuss resources available to carry out suggested treatment?
0. Yes
 1. No
87. Did social worker have access to previous presentence reports?
0. Yes
 1. No
88. Did social worker use outside consultants?
0. Yes
 1. No
89. What sort?

[Appendix D, continued:]

90. Did probation officer use outside consultants?
0. Yes
 1. No
91. What sort?
92. Does social worker believe probation plan realistic?
0. Yes
 1. No
93. If no, why not?
94. State any ways in which social worker helped defendant before sentencing (e.g. helped find job, helped prepare statement given by defendant to probation department).
95. In what ways, if any, did work of social worker affect the recommendations of the probation department?
96. Does social work report depend on an agency's agreement to service defendant?

[Appendix D, continued:]

97. Which agency?

98. Was placement with this agency difficult to obtain?

- 0. Yes
- 1. No

99. If yes, explain.

100. Were any parts of social work report rejected for use by attorney or client?

- 0. Yes
- 1. No

101. If yes, explain in full.

102. Please describe, as fully as possible, any of your activities (such as finding housing etc.) that is not covered above.

END