

PRETRIAL  
**ISSUES**

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**ent Research - A Review**

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## FOREWORD

This is the first edition of a new Resource Center publication, Pretrial Issues.

For several months we have considered various formats for addressing, in a timely and thorough fashion, current developments affecting pretrial alternatives. Other Center publications--The Pretrial Reporter, Annual Journal, and the various bulletins published in the Alternatives Series--provide either timely or detailed discussions of issues, but are rarely able to do both. Pretrial Issues, on the other hand, will be published as needed and provide coverage of important topics as they emerge and require detailed review.

This first edition focuses on current pretrial research which may have a significant impact on the state of the art of pretrial alternatives in the future. The intent of this and subsequent editions of Pretrial Issues is to brief you, to challenge, and to raise questions.

We welcome any comments you have about this specific edition, your response to this new format, and suggestions of topics you would like to see covered in the future. A detachable form is included at the back of this publication. Please use it to offer any comments and also to indicate whether you wish to be included on our mailing list for future publications in the Pretrial Issues series.

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PRETRIAL ISSUES  
CURRENT RESEARCH - A REVIEW

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## INTRODUCTION

Too often important research findings are released to a narrow audience and/or presented in a language which discourages the non-technician. Typically, reviews are limited to professional journal articles and to debates between researchers. As a result, practitioners and policy-makers are deprived of important knowledge or are unable to interpret the information they do receive.

Through this document we wish to bridge that gap by discussing five important pretrial research projects which are near completion or have been published recently. These projects have addressed many questions related to the day-to-day operations of pretrial systems and to the future of those systems. The five studies are particularly significant for a variety of reasons:

- As a group these studies review aspects of three major elements of pretrial alternatives: release, diversion, and dispute resolution (mediation/arbitration); and they cover a representative number of programs throughout the country.
- The studies address not only questions raised by practitioners but also those which are important to policy-makers.
- Each study has sufficient methodological strengths and/or data to lend significance and credibility to its findings.
- Implications of each study are not limited per se to the programs examined, but may (and quite probably will) be applied to pretrial alternatives in general.

Three of the research projects are devoted to pretrial release practices, one to pretrial diversion, and one to dispute resolution. They are discussed in the following order:

1. Study of Pretrial Release and Misconduct in the District of Columbia, conducted by the Institute for Law and Social Research (INSLAW);
2. Phase II National Evaluation of Pretrial Release, conducted by The Lazar Institute;
3. Evaluation of the Speedy Trial Act of 1974, Title II, including both a report of the Administrative Office of the U.S. Courts and a data analysis report from the

Federal Judicial Center, each of which addresses the administration and operation of federal pretrial services agencies established pursuant to Title II;

4. Evaluation of the Court Employment Project (diversion) in New York City, conducted by the Vera Institute; and
5. National Evaluation of the Neighborhood Justice Center concept, conducted by the Institute for Social Analysis. <sup>1/</sup>

It is unrealistic to expect a study author to evaluate his/her own project objectively; also, individual studies are not always placed in the larger context of other research and trends. Our intent with this publication is to provide a clear and concise impression of the scope of each study, its major findings, its limitations, and any questions that still need to be addressed. <sup>2/</sup>

To do so, the following format has been adopted:

- A brief description of the project and its purpose, significance, and current status;
- Explanation of the methods used;
- Major findings and conclusions reached by the authors; and
- Analysis of the limitations and implications of the study.

In summary of these individual reviews, a broader discussion is also presented which assesses the combined relevance of the findings and suggests where further research and actions appear necessary.

## PRETRIAL RELEASE RESEARCH

A number of important issues facing the pretrial release field have been addressed, at least in part, by one or more of the three release studies reviewed here. The interrelated concerns of pretrial crime, preventive detention, and what to do about the "dangerous" defendant are foremost among these. Related issues also addressed by the studies are:

- <sup>1/</sup> Several other research projects of significance are also nearing completion, particularly in the diversion and dispute resolution areas. They are not yet available for review but will be discussed by the Resource Center in the future.
- <sup>2/</sup> In drafting this document, Dr. Donald Pryor consulted with persons closely associated with each research effort; he discussed the interpretations of their work and provided them with an opportunity to react. Where relevant, their comments are included in the discussion.

- How well can we predict or identify those likely to commit additional crimes and/or to fail to make court appearances if released?
- Are judicial officials making appropriate decisions regarding who should be released, how much bail should be set, etc.?
- Could more defendants who are currently being detained pretrial be released without increases in the rates of flight or pretrial crime?
- Do pretrial release programs themselves make enough of a difference, particularly once initial reforms and procedures are instituted in a community, to justify their continued existence?

### INSLAW STUDY IN THE DISTRICT OF COLUMBIA

This study is one of 17 conducted under a four-year, \$1.5 million grant from LEAA's National Institute of Law Enforcement and Criminal Justice (NILE) to the Institute for Law and Social Research (INSLAW) in Washington, DC. The studies are based on DC Superior Court records and the Prosecutor's Management Information System (PROMIS). <sup>3/</sup>

This research was significant for a number of reasons: (1) It included some 11,000 defendants charged in the District with a felony or serious misdemeanor. (2) It examined the extent to which different types of defendants were more likely to miss subsequent court appearances and/or to be rearrested pretrial. (3) The study also attempted to assess whether the types of information that seem to shape judges' release decisions were, in fact, related to either measure of pretrial misconduct (failure to appear or rearrest).

The original draft of this study's report was prepared for LEAA review in March 1978, with a revision in October 1978. Subsequently, the report has not been officially published; nonetheless, parts of it have been widely quoted. Therefore, it was considered important to review the document here. <sup>4/</sup>

<sup>3/</sup> PROMIS is an information system designed for the use of prosecutors and courts. When this study was undertaken, the DC Pretrial Services Agency also maintained computerized records on defendants arrested in the District. These records contained some information not available through PROMIS, but it was not possible to use those records in the study. Thus INSLAW's analyses had to be based on PROMIS data. This led to some problems, as noted later under Limitations of the Research.

<sup>4/</sup> One impetus behind the creation of Pretrial Issues was to allow timely discussion of important research documents, thereby allowing responsible criticism to become part of the public discussion of such documents. The draft report has previously been quoted in such forums as the LEAA Newsletter, The Washington Post, and testimony before Congress. LEAA provided clearance for publication in July 1979. INSLAW officials indicate that the report (Pretrial Release and Misconduct in the District of Columbia, co-authored by Jeffrey Roth and Paul Wice) is currently undergoing final editing and will be published in early 1980. For further information, contact Brian Forst at INSLAW, 1125 15th Street, NW, Washington, D.C. 20005.

#### RESEARCH APPROACH

All defendants charged in 1974 with a felony or serious misdemeanor in the District were included in the study. A wide range of information was available for each defendant--including charge, previous record, various defendant descriptive characteristics, release conditions set at arraignment, subsequent court appearance, pretrial rearrest and conviction information, etc.

Using some of the information available to judges when making the initial release decisions, the study attempted to determine what information predicted, respectively, judges' release decisions and defendants' pretrial misconduct (failure to appear in court and rearrests while on release).

The PROMIS data did not indicate which defendants, of those for whom financial conditions (money bail) were set, were eventually released. To determine this information, the researchers had to select from other court files a random sample of those defendants for whom money bail was set. This sample (about 22% of all such defendants) was used in the prediction analyses and in determining actual release rates for those for whom money bail was set.

#### MAJOR FINDINGS AND CONCLUSIONS

The study's primary findings are outlined below. Several seem clearly substantiated by the data; others are subject to certain limitations of the study.

##### Findings Not Subject to Limitations

The following findings and conclusions presented in the report appear justified by the data, despite the limitations noted later:

- More than 80% of all defendants obtained release prior to disposition of their cases, most without financial conditions. <sup>5/</sup>
- Most released defendants returned for their court appearances (89%, including similar proportions of misdemeanors and felonies).
- Only about 4% of all released felony defendants and 3% of all misdemeanants willfully failed to appear. <sup>6/</sup>

<sup>5/</sup> About 62% of all defendants charged with felonies were released without financial conditions (including 17% released to a third party). Another 18% were released after posting either cash deposit or surety bond. About 80% of the misdemeanor defendants were released without financial conditions (9% to a third party). Another 12% were released on money bail. The report does not indicate how soon defendants released on money bail were able to actually post bail.

<sup>6/</sup> "Willful" failures to appear were defined as those which either led to the defendant's arrest on a Bail Reform Act violation or had prevented disposition of the case when the data base was constructed in August 1975.

- Pretrial rearrest rates were slightly higher than failure-to-appear rates.

About 13% of all defendants originally charged with felonies were rearrested pretrial, although only 5% were convicted on those new charges. For misdemeanors, the corresponding rates were 7% and 3% respectively.

- Although judges were generally similar in the frequency with which they set bail, the decisions as to types of financial or nonfinancial conditions set varied considerably.

There was relatively little variation between judges either in the proportions of defendants released with financial conditions or in the bond amount set in such cases. However, there were variations among judges in the following: proportions of defendants released on personal recognizance (versus those released to a third party) and proportions for whom surety versus cash bond was set.

- The closer the jail population was to capacity, the greater was the likelihood of nonfinancial release conditions being set for defendants arraigned in the next month.
- Variables associated with pretrial rearrest were found to be quite similar to those associated with recidivism over a five-year follow-up period.

This was based on a comparison of this study's findings with those of a separate INSLAW study of recidivism for defendants arrested in the District in a four-month period beginning in late 1972. The authors suggested that, given the different defendant populations and time periods of the two studies, the consistency of findings in both tends to support the ability to predict pretrial rearrests.

##### Findings Subject to Research Limitations

The following reported findings and conclusions should be interpreted cautiously in the context of the various limitations of the research discussed in the next section:

- Those released on personal recognizance appeared least likely to either be rearrested pretrial or to willfully fail to appear in court.
- The types of information (defendant characteristics, previous record, charge) which appeared to influence the judicial release decision (i.e., whether financial or nonfinancial conditions were set) had little relationship to those which were associated with failure-to-appear or pretrial rearrest. That is, those for whom financial conditions were set by judges did not appear to constitute a "high-risk" group in terms of either measure of pretrial misconduct.

A variety of characteristics or types of information which appeared to influence judges' release decisions had no significant relationship to either pretrial rearrest or FTA (failure to make court appearances); and the reverse was also true: various characteristics which did show a statistical relationship to pretrial rearrest and/or FTA appeared to have no influence on initial release decisions. Very few characteristics appeared to predict both the judicial decision and the likelihood of pretrial misconduct.

- Pretrial rearrests seemed to be more predictable than failures to appear in court.

Several characteristics appeared to predict pretrial rearrests. Defendants charged with felonies—especially burglary, robbery, larceny, arson, and property destruction—were more likely to be rearrested, as were those with "an extensive criminal history" and drug abusers. Employed, white, and older defendants seemed less likely to be rearrested. On the other hand, relatively few characteristics appeared to predict failure-to-appear. Employed defendants appeared to be better risks; drug users were less likely to appear. None of the previous record indicators were shown to be related to FTA.

- For cases in which money bail was set, the greater the amount, the less the likelihood of release (for both cash and surety bonds). <sup>7/</sup> However, the amount initially set appeared to have no relationship to the likelihood of court appearance.
- The study concluded that if judges based their release decisions more consistently on the types of information that actually appear to predict failure to appear and rearrests, numbers of defendants detained pretrial could be significantly reduced with no increase in the amounts of pretrial misconduct; alternatively, if a different emphasis were desired, levels of pretrial misconduct could be reduced with no increase in the number of people detained pretrial.

Specifically, by focusing on those most likely to miss their court appearances, the number of missed appearances could be reduced by 11% with no increase in the detained population; or, if the focus were on reducing the number of those detained, a 17% reduction could be effected with no increase in the nonappearance rate. Similarly, with no increase in the number detained, the number of pretrial rearrests could be reduced by 36% through more careful prediction; or the pretrial detained population could be reduced by 42% with no increase in the numbers rearrested.

<sup>7/</sup> Yet even for defendants with low surety bonds set (less than \$2,000), more than 40% never obtained their release.

#### LIMITATIONS OF THE RESEARCH

Despite the important issues raised by the study, the admirable attempts at developing predictor models, and the value of some of the information presented, the research has limitations which suggest that caution is advisable in interpreting and using the results:

- The reliance on PROMIS data led to problems. <sup>8/</sup>

—PROMIS maintained no information on whether bail amounts set at arraignment were subsequently reduced or eliminated. Thus, for example, there was no way of knowing what bail amounts were actually in force when defendants for whom money bail was set were subsequently released.

—Because detailed release information was not available through PROMIS for defendants for whom money bail was initially set, a smaller sample of those defendants had to be selected to determine that information. However, the resulting sample sizes were too small for some of the analyses (particularly those comparing effects of different release conditions). This led the report's authors to admit that the ability to draw firm conclusions by type of release was somewhat restricted. <sup>9/</sup> Also, no data were presented to indicate whether the sample selected was, in fact, representative of the entire group of defendants for whom bail was initially set. Therefore, conclusions in the report concerning effects of types of release conditions (especially financial) should be viewed with caution.

—PROMIS contained no data on a defendant's length of time in the community or at the present address, both of which are often considered by pretrial programs in determining their release recommendations. Various other indicators of community ties and socioeconomic status were also unavailable. These could have affected the levels of prediction possible.

- One of the report's central findings—that there is little relationship between factors or information affecting judicial release decisions and those affecting pretrial misconduct—is severely compromised because the reported relationships applied to different groups of the defendant population. Although never stated in the text, careful examination of the tables indicates that the judicial decision predictions were based only on felony cases; but the misconduct predictions were based on the combination of both misdemeanor and felony charges.

<sup>8/</sup> INSLAW researchers acknowledge this, and point out that they and D.C. Pretrial Services Agency officials preferred to use the PSA's data base (see footnote 3). However, technical problems prevented this, leaving PROMIS data as the alternative.

<sup>9/</sup> INSLAW's Director of Research, Brian Forst, correctly notes that there were some "statistically significant effects despite the alleged small sample problem". Nonetheless, the report itself labels conclusions based on comparisons of types of release "very tentative".

Because of the way the information was presented, it is impossible to determine what effect this discrepancy had on the conclusions. It may be that the overall conclusion of little relationship would not have changed, but this cannot be conclusively determined from the report in its current form. (However, co-author Jeffrey Roth has acknowledged this problem and indicates that the final report will make the needed changes and spell out the policy implications.)

- Differing numbers of defendants were used in various analyses with no explanation why.

At best this was confusing; at worst, somewhat damaging to the overall reliability and credibility of the report. (Director of Research Brian Forst indicates that explanations will be provided in the published report.)

- The study demonstrated an ability to predict pretrial misconduct. However, it is uncertain from the analyses whether significant reductions of pretrial detention and/or of pretrial misconduct could result if judges made their release decisions more systematically based on factors identified by the study.

--Although the statistical analyses indicated that pretrial misconduct could be predicted at a better-than-chance level, there would be many errors made in predicting what a particular individual would do. (INSLAW researchers agree, but emphasize that their predictions would lead to an improvement over current decision making practices.)

--The factors or types of information used in the study to predict pretrial misconduct included some information which would be of no value to a judge in making a decision whether or not to release someone. That is, the reported prediction levels were inflated by including, in the pretrial misconduct predictions, information about the type of release conditions assigned by the judge. The problem with this, of course, is that this information would be known only after the judicial decision has been made and, therefore, would have limited predictive utility in aiding the judge in making those decisions. Thus a judge's ability to predict misconduct would presumably be somewhat less than that reported by the study. (Jeffrey Roth suggests, however, that it is the composite effect of predictors and release conditions that is important, and that a judge should consider this joint effect in the release decision. However, some of the concerns stated earlier about the sample size for defendants assigned money bail still suggest caution in interpreting any predictions based in part on release conditions.)

--Before making definitive statements about the extent of reduction possible in pretrial detention and/or pretrial misconduct rates, the predictions should have been checked against a more current sample of defendants, i.e., a group of defendants not included in the data base used to determine the original predictive relationships. If the predictions were to

hold up for an independent group of defendants (from a different year), then the conclusions would be justified. The authors themselves pointed out in their report "the importance of validating results across samples", yet they did not do so. This may understandably have been beyond the scope of this study, but the report's conclusions should then have been qualified accordingly. (INSLAW researchers agree with this point, saying that they were prevented from doing this by a limited research budget.)

In addition to these limitations in the study as carried out, there were also omissions which were less crucial. Had the study incorporated them, further interpretations of the data could have resulted:

- The study "lumped" all conditional or supervised releases (except for third party) together with true own-recognizance releases, into a combined personal recognizance release category.

The ability to further differentiate cases on conditional or supervised release from those on own-recognizance release would have been helpful in assessing the value and appropriateness of various release conditions.

- The study made no attempt to assess the effect of "exposure time" (the amount of time a defendant was released pending case disposition).

Much previous research has suggested that the longer the time from arrest to trial, the greater the probability of rearrest and failure to appear. The authors noted the importance of this issue, suggesting that it "should be addressed in future research", but concluded that it was beyond the scope of the study. Such information could have been helpful, for example, in assessing the potential impact of enforcing speedy trial guidelines on pretrial misconduct.

#### STUDY IMPLICATIONS

The implications of this study are difficult to assess, given the limitations noted. It is unfortunate that a study of such scope and visibility appears to have such serious limitations. Nonetheless, it has made a contribution in raising serious questions about: (1) the relationship of judicial release decisions to subsequent pretrial misconduct, and (2) the issue of preventive detention in the context of the "dangerous defendant".

More specifically:

- The research performs a valuable service in questioning the extent to which systematic, rational release decisions are made. The potential value of and need for more direct feedback to judges on their release decisions is strongly suggested by the research.

Although the study's conclusions may be less definitive than indicated in the INSLAW report, it still appears that there were important differences between the factors or types of information that seem to affect judges' release decisions and those that were actually associated with FTA or pretrial rearrest.

- Although the magnitude of predictive capability claimed by the study should be questioned, there did appear to be some ability to identify a "higher-risk" defendant and perhaps even to improve on the ability to reduce the detained population without increasing pretrial misconduct.

It is possible that the ability to predict could be further enhanced if additional types of information not available to INSLAW at the time of the study could be used in making the predictions.

#### LAZAR NATIONAL EVALUATION OF RELEASE

The Lazar Institute is currently midway through the final year of its three-year Phase II national evaluation of pretrial release. The evaluation was designed as a follow-up to the Phase I study, conducted by the National Center for State Courts. The Phase II evaluation is being funded by LEAA's National Institute of Law Enforcement and Criminal Justice.

The evaluation was designed to address several issues suggested and left unresolved by the Phase I study. Among those issues were: (1) the extent and predictability of pretrial criminality and of failure-to-appear in court, (2) the relationship between different types of release and such pretrial misconduct, (3) whether factors affecting judicial release decisions are similar to those affecting pretrial misconduct, (4) the impact of pretrial programs on release rates and pretrial misconduct, (5) the cost effectiveness of those programs, and (6) the nature of the operations of release programs and how they interact with other parts of the criminal justice system.

This evaluation is important not only for the significance of the issues it considers, but also for the fact that those issues are analyzed using a large data base from a number of sites offering a wide range of release services and procedures. Thus overall findings can be reported, but variations can also be related to differences in program or in local context.

To date, Lazar has published a number of interim reports containing partial analyses of the data. <sup>10/</sup> These include descriptions and process analyses of eight programs and their relationships with the

<sup>10/</sup> For further information contact Mary Toborg at the Lazar Institute, 1800 M Street, NW, Washington, DC 20036.

criminal justice system, outcome analyses in some of those sites, a preliminary analysis of defunct release programs, preliminary three-site summary (aggregate) outcome analyses, <sup>11/</sup> and preliminary eight-site aggregate analyses on pretrial rearrests. <sup>12/</sup>

The evaluation is scheduled for completion no later than November 1980, and Lazar anticipates completion several months prior to that time. Although farthest from completion of any of the studies being reviewed here, the significance of this evaluation and the fact that some new information has recently been reported by Lazar made it appropriate for discussion at this time.

#### RESEARCH APPROACH

Ten different jurisdictions currently providing formal pretrial programs are included in the evaluation. Descriptive and process analysis, retrospective (after-the-fact) outcomes analysis, and experimental design techniques are used to study the issues addressed by the evaluation. In addition, two other jurisdictions with no formal release program are being analyzed in depth (one is a defunct program site; the other has never had a program). Several other sites were also studied in less detail as part of the defunct program analysis.

It is significant that some form of experimental analyses (with control groups) are underway in four of the ten program sites, although there are some problems with the experimental portion of the evaluation. <sup>13/</sup> The opportunity to undertake such experimental approaches is rare in the pretrial field. Perhaps even less frequent are cost effectiveness analyses, which this study is also attempting in the four experimental sites.

The total number of defendants included in the data analyses is expected to exceed 5,000 (both misdemeanors and felonies). A considerable amount of information is available for each case. Included are various community tie indicators (time in community and at local address, living arrangements, marital and employment status, etc.); previous arrests, convictions, and pretrial misconduct information; point scale scores; age, sex, and race; charge; release status; whether bond was met or not; pretrial rearrests (and convictions); and disposition and sentence on original arrest. Also included is information on exposure time (i.e., length of time on release). As in the INSLAW research, variables are being related to the type of release decision and to subsequent failure to appear and pretrial rearrest in an attempt to determine whether release decisions appear to be made on a rational, systematic basis.

<sup>11/</sup> Published in the 1979 Pretrial Services Annual Journal.

<sup>12/</sup> In "Crime During the Pretrial Period: A Special Subset of the Career Criminal Problem," co-authored by Mary Toborg, of Lazar, and Brian Forst, of INSLAW, for presentation to the Career Criminal Workshop sponsored by NILE in September 1979.

<sup>13/</sup> Primarily related to obtaining program agreement to use experimental approaches in their programs. Those ultimately agreeing have various unique characteristics that may somewhat limit the ability to generalize the findings. Further comments on the designs employed in each site will be deferred until results from the experimental analyses become available.

## MAJOR FINDINGS AND CONCLUSIONS

All findings from the study are tentative at this point. Only those recently reported by Lazar will be discussed here. Most of them pertain either to pretrial criminality or to the preliminary analysis of defunct programs. <sup>14/</sup>

Findings Not Subject to Limitations

As in the INSLAW discussion, the study findings which appear most defensible are separated from those where more caution is necessary. The findings and conclusions which appear most justified include:

- About one of every six defendants released across all eight retrospective sites was rearrested at least once during the release period.
 

Of those rearrested, almost 1/3 were rearrested more than once; just under 40% of the rearrests were for serious crimes (FBI Part I offenses). In preliminary three-site findings, about half of those rearrested were convicted on the new charges.
- Defendants with more serious original charges had higher pretrial rearrest rates (almost one in four) than did those charged with less serious crimes (about one in eight).
- Those rearrested were twice as likely as those not rearrested to have had some type of active criminal justice system involvement (on pretrial release, probation, or parole) at the time of their arrest on the instant charge (36% versus 18%).
- Those rearrested had more extensive prior records than those not rearrested (an average of 5 prior arrests and 2.5 convictions versus 3 and 1 respectively) and were more likely to have been unemployed or on public assistance when arrested on the instant charge.
- Courts frequently took no serious action if a defendant was rearrested pretrial or failed to appear in court.

Upon a rearrest, courts most frequently increased the bond or set it for the first time; but, in more than 1/3 of the cases, release circumstances from the first arrest were continued with no further action taken. A similar pattern existed for a second rearrest.

<sup>14/</sup> The pretrial criminality preliminary findings are based on data from the eight retrospective site sample of about 3,500 defendants. None of the experimental data are yet available. Preliminary findings from the defunct program analysis are based on 12 programs which had either completely ceased to exist or had had services suspended for a time and then subsequently resumed. Information was obtained through telephone interviews with former program directors, judges and other criminal justice officials in the jurisdictions; two site visits; and review of existing program reports or research analyses, where available. Lack of adequate information from several of these "defunct" sites suggests that caution should be placed on the interpretations of the findings, but the questions they raise are important.

It was only if there was a third rearrest that the pattern changed substantially—with higher proportions of detentions and increases in bond amounts, and no further action taken in only about one of six cases reaching that point.

Preliminary three-site data indicated that in about one of every five FTAs, no action was taken, although in most cases some combination of the following took place: a bench warrant was issued, bail was set, own-recognizance release was revoked. However, prosecution was rare for failure-to-appear in court (less than 10% of all FTAs); even fewer were convicted of an FTA.

- Most rearrests occurred fairly early in the release period: 16% within one week of the original arrest, 45% within four weeks, and 67% within eight weeks.

Findings Subject to Greater Caution

Those preliminary findings from the Lazar study which should be treated with more caution follow. The first findings appear justified by the data but must be labelled as tentative, since they are based on only three sites:

- Those rearrested pretrial were also twice as likely to fail to appear at least once in court proceedings for the original arrest as were those not rearrested (26% vs. 13%).

The nature of this overlap between rearrests and FTAs and its cause-and-effect implications will be addressed further by Lazar.

- There appears to have been a more consistent relationship between those factors affecting the judicial release decision and those affecting pretrial misconduct (FTA or rearrest) than appeared to be the case in the INSLAW analysis.

If these findings hold up, they indicate that previous criminal record and some aspects of community ties may in fact have a significant relationship to both the judicial release decision and pretrial misconduct.

The following findings concern "defunct" programs and should be treated with caution because of the tentative and incomplete nature of the data on which they were based (see footnote 14):

- Evidence was mixed but suggested relatively minimal impact of the 12 defunct programs.

Interview findings suggested that the programs had resulted in increased release rates, lower failure-to-appear rates, and no increase in pretrial rearrest rates. Data gathered from existing reports appeared to confirm some program impact on increasing release rates during the life of the program. In the two sites where relevant data existed, release rates continued at about the

same levels after the program's demise, suggesting that judicial attitudes may have been changed—but that the programs may no longer have been making an added contribution to increasing the release rates. What little data were available suggested that there may have been some slight program effect in holding down FTAs, but the evidence was flimsy at best.

- Lazar concluded that programs may not have done sufficient initial work in planning or in soliciting and involving key officials (including those opposed to the program concept) in the program development efforts.

In several cases they apparently failed to build a strong support base and, therefore, had no constituency of supporters to help when the "fiscal crunch" came.

#### LIMITATIONS OF THE RESEARCH

The analysis of defunct programs was clearly limited by the inadequacy of reliable data for most of the programs. The conclusions, therefore, are speculative; but the issues they raise are important for the pretrial field to consider. Lazar is currently studying one defunct program site in greater detail through analysis of outcomes for samples of defendants processed before, during and after the program, and through an in-depth consideration of release practices over those time periods. This may offer additional insights concerning causes and consequences of program demise.

The findings reported to date are preliminary and have not yet controlled for defendant characteristics (including previous record and current charge) in assessing what impact different types of release may have in preventing pretrial misconduct. However, Lazar indicates that such analyses are in process and that findings will be reported subsequently.

Other questions or possible limitations about the research will be discussed when more information is released by Lazar in the future.

#### STUDY IMPLICATIONS

- Based on data from the eight retrospective sites, substantial proportions of those released (16%) were rearrested. Preliminary analyses suggest that correlates of such "danger to the community" can be identified with at least better-than-chance accuracy. This could potentially increase the ability of judges to make "safer" release decisions, given proper feedback on what types of information appear related to pretrial crime. Subsequent analyses will address the impact of supervised release and the various other forms of release on pretrial crime. They should also begin to isolate possible "high-risk" types of defendants for whom

certain conditions or forms of supervision might most appropriately be tried to reduce the risk. These analyses should provide useful information in the debate over what might be possible to deal with the problem of "danger".

- If most rearrests occur within two months of the original charge, as the data indicate, a 90-day requirement for speedy trials may not itself be a panacea for dealing with "dangerous" defendants, as some have thought. However, a prioritized speedy trial calendar, focusing on even earlier trials for some, may make important inroads toward reducing pretrial rearrests. The final Lazar reports will deal further with this issue.

#### STUDY OF FEDERAL PRETRIAL SERVICES AGENCIES

Title II of the Federal Speedy Trial Act of 1974 authorized the establishment of demonstration pretrial services agencies (PSAs) within ten federal district courts. Congress further mandated that in five of the districts the agencies be operated through existing federal probation offices and that in the other five the agencies be created as independent operations responsible to boards of trustees. Between October 1975 and April 1976, all agencies became operational.

The Director of the Administrative Office of the U.S. Courts was required to submit to Congress by mid-1979 a detailed evaluation of the agencies. That report was to address the accomplishments of the ten PSAs, with particular emphasis on their effectiveness in reducing pretrial crime and in reducing unnecessary pretrial detention. The report was also to compare the respective accomplishments of the Board and Probation agencies.

The Research Division of the Federal Judicial Center was requested by the Chairman of the Probation Committee of the Judicial Conference to undertake an independent analysis of the data base constructed by the Administrative Office of the Courts (AOC). The Judicial Center report became an appendix to the full final report of the AOC, which was completed in June. The entire report has gone to Congress and will serve as part of the basis for Congressional hearings (scheduled to begin shortly) on the future of the agencies. 15/

Congress has previously appropriated enough money to assure that the PSAs can function through mid-1980. By that time it is expected that Congress will have decided on the future of the PSAs. Thus the research and report are significant, as the conclusions will affect the future of the federal pretrial release system. 16/

15/ For more information about the report, contact Guy Willetts, of the Administrative Office of the U. S. Courts, Pretrial Services Branch, 1030 Executive Building, 15th and L Streets, NW, Suite 1000, Washington, DC 20005.

16/ It should be noted that the Administrative Office's report itself is significant because of the frequent use of graphs to present the major findings of the study. As a result, the report is easy to follow. This attention to style of presentation is a good example of concern for one's audience and a desire to make the information easily accessible to busy decision makers.

## RESEARCH APPROACH

More than 30,000 cases, processed both before and during the existence of the PSAs, are included in the data base. This represents the largest data base ever available to researchers in the pretrial release field. As such, opportunities exist for addressing nearly any issue of pertinence to the release field. <sup>17/</sup> This is particularly true inasmuch as the data make possible a comparison of probation and independent release agencies, and allow for comparisons between defendants processed through formal pretrial agencies and nonagency procedures.

The information available on each defendant is quite comprehensive. A variety of characteristics of the person, his or her ties to the community, previous record, type of charge, etc. is combined with detailed information on the type of release, bail amount, bail review hearings, whether placed under PSA supervision, various types of bail violations, time on release, time detained prior to release, case disposition, and sentences. <sup>18/</sup>

All cases processed through the ten PSAs since their beginnings in 1975-76 were included in the data base. To provide a comparison with what happened in the same districts prior to the establishment of the PSAs, samples were also drawn of defendants processed in the two years immediately preceding the startup of the new agencies. Furthermore, in order to control for the effect of the Speedy Trial Act, five federal districts without PSAs were selected as comparison sites. <sup>19/</sup> A sample of almost 3,000 defendants was selected from the comparison districts from 1974, before the PSAs began, and 1977, the second year of the PSA operations. This enabled a pre-post comparison of non-PSA districts to see whether improvements were occurring in those districts without the effect of a formal program.

In selecting the samples from the pre-PSA years in the ten demonstration districts and from both years (1974 and 1977) in each of the comparison (non-PSA) districts, only convicted defendants were used, since presentence investigation reports were the best source for the data, and such reports are typically prepared only after conviction. Therefore, analyses involving any types of comparisons of what happened before and after the PSAs began necessarily focused strictly on convicted defendants. <sup>20/</sup>

<sup>17/</sup> Caution, however, should be exercised in generalizing too much from federal to nonfederal agency data.

<sup>18/</sup> There is no information on subsequent bail reductions, nor is there an indication of what the actual original program release recommendation was for PSA defendants. There is an indication of whether the type of release followed PSA's recommendation, but no ability to determine what the specific recommendation was if it differed.

<sup>19/</sup> This was designed to help assure that any changes noted over time in the ten PSA districts could be attributed to the agencies and not to effects which would have occurred anyway without the PSA, such as effects associated with speedy trial requirements.

<sup>20/</sup> Nineteen percent of all Probation district cases and 23% of all Board cases were defendants who were never convicted (according to information from the Judicial Center report).

Separate analyses were undertaken by the Judicial Center and by the AOC. These analyses frequently employed different procedures, used different bases of comparisons, and had different emphases. The Judicial Center placed more emphasis on comparisons of the PSA and non-PSA districts. The AOC, on the other hand, placed greater emphasis on comparisons between the Probation and Board agencies. The AOC also focused more on measuring changes in variables from year-to-year. <sup>21/</sup>

## MAJOR FINDINGS AND CONCLUSIONS

As will be seen in the limitations section which follows, there are few findings from either the Judicial Center or AOC analyses which can be stated conclusively. Either because of differences in interpretation or analysis between the two reports or because of unanswered questions, most of the findings are questionable at this point. It does not mean that these findings were necessarily wrong, but simply that whether they were correct or not cannot be determined from the data presented in the two reports. All findings presented here pertain only to convicted defendants unless otherwise noted.

Findings Reflecting Agreement

The following findings and conclusions reflect general agreement in the Judicial Center and AOC analyses (or were dealt with by only one of the reports). However, even such agreement may not be justified, subject to the limitations discussed in the next section:

- Comparison districts (those with no PSAs) as a group showed a faster rate of improvement from 1973-74 to 1977-78 in (1) increasing initial release rates, (2) increasing proportions of nonfinancial release and (3) decreasing proportions of defendants detained at any point pretrial than did either Board or Probation districts.

Although the comparison districts improved more rapidly over the five-year period, the PSA districts nonetheless remained superior to the comparison districts on all three of those measures.

- A survey of 54 judges, magistrates, U.S. Attorney's staff, and defense attorneys in the ten PSA districts provided generally positive support for the impact of PSAs and for their continuation in the future.
- Board districts had lower overall detention rates and showed greater reductions in those rates over time, compared with Probation districts.

<sup>21/</sup> This was done through use of time series analyses. Rather than combining numbers into single pre and post totals (as the Judicial Center did in most of its analyses), time series analysis involves plotting the different types of information at various points in time, enabling trends to be more readily determined.

However, the Judicial Center authors attributed the apparent Board advantage to differences in seriousness of offense and use of money bail in the Board and Probation districts.

- Board PSAs have had more nonfinancial releases and have increased those rates over time more than Probation districts.

This relationship was maintained when comparing directly for the same types of serious charges.

- Board PSAs have also increased the rates of release at the initial appearance for nonconvicted defendants, compared to a decline for Probation districts. For convicted defendants, Board agencies have maintained a less pronounced advantage.
- A higher proportion of defendants was placed on supervision in Probation than in Board districts.
- There was a significantly greater reduction in FTA rates over time in Probation districts than in Board PSAs.

#### Findings Reflecting Disagreement

The following findings reflect disagreement between the Judicial Center and AOC reports:

- The reports differed on the impact of PSAs in reducing FTA rates.

The Judicial Center indicated that although PSAs did reduce them, the rate of reduction was no greater than occurred over time in the comparison (non-PSA) districts. The AOC report, on the other hand, indicated that PSAs were considerably more effective in reducing FTA rates than were the comparison districts.

- The reports also differed on PSA impact on pretrial rearrests.

The AOC report indicated that the PSAs had led to significant reductions in rearrest rates over time, while the comparison district rates had increased. The Judicial Center report concluded that PSAs did do better in reducing rearrest rates for those released following felony charges; but the opposite effect was indicated for misdemeanors, although the difference was not statistically significant.

- The reports differed on Board vs. Probation impact on pretrial crime.

The AOC report concluded that Board agencies showed more reduction of pretrial crime over time than did Probation; the Judicial Center report, however, indicated that there were no significant differences between the two in amounts of reductions over time.

- The ultimate report recommendations, made by the AOC, were for Congress to grant statutory authority to maintain the ten PSAs and to expand to other district courts "when the need for such services is shown". New units should be "independent of the probation service, except in those districts in which the caseload would not warrant a separate unit".

The Judicial Center report made no specific recommendations.

#### LIMITATIONS OF THE RESEARCH

The question becomes, what does all of the above mean? Despite the somewhat anti-PSA and pro-Probation conclusions of the Judicial Center analyses and the pro-PSA, pro-Board conclusions of the AOC analyses, there is no clear answer. Given the lack of controls built into the research and some of the limitations already suggested above, the ambiguity of the results is not surprising.

It is understood that some analyses could not realistically have been addressed at this time. Nonetheless, some issues and analyses which were realistic and which seem necessary to provide unambiguous answers to Congress were not addressed, either by the Judicial Center or the AOC. The information presented frequently did not go far enough to adequately answer many of the key questions.

- In both reports, few analyses attempted to adequately control for differences in the types of defendants and charges across the various samples.

For example, the comparison districts appeared to have been substantially different from the PSA districts, particularly in terms of changes over time in the proportions of cases included in the sample from each district and in the type of charges and previous record of the defendants. Clearly, this would affect the interpretation of the PSA vs. non-PSA findings. In fact, there appeared to have been decreases in the proportions of "higher-risk" defendants over time in both the comparison and Board districts (based on somewhat unclear data presented in the Judicial Center report). <sup>22/</sup> What impact would analysis of such changes have had on the conclusions? And those apparent trends pertained only to convicted defendants; what was the corresponding pattern for the nonconvicted? These questions were not dealt with in the analyses.

- If the characteristics of defendants in each group are different, the analyses should first make that fact clear and then proceed to statistically control for those differences to answer the subsequent question: "For those who are similar in the different samples, which approach makes the biggest difference?"

<sup>22/</sup> Board districts have the highest absolute proportions of higher-risk defendants of all the districts in 1977-78, despite the decreases over time.

--To be more specific, defendants' characteristics, previous criminal activities, and the charges must be delineated much more precisely for each group (convicted vs. nonconvicted, PSA vs. comparison districts, pre-PSA vs. post-PSA years, Board vs. Probation, etc.). The characteristics should be monitored separately for each year to enable trends to be noted.

--The following types of variables should have been analyzed: use of various types of release (rather than simply financial vs. nonfinancial), percentage of recommendations accepted by the judge, bail amounts set, extent of assignment to agency supervision, days detained prior to release, etc. Have the types of release options used, bail amounts assigned, etc., changed over time? It is important to know how similar types of defendants fared against these variables in the different districts in order to judge the impact of the PSAs and the relative impact of Board and Probation districts.

--Once such questions are answered, it would become important to assess pretrial crime and FTA rates for similar defendants released through the various options. The Judicial Center report made some attempts at these types of analyses but did not go nearly far enough.

- Any subsequent analyses of the data should include a more careful analysis of all defendants, not just the convicted ones.

Analyses indicated clear, statistically significant differences between convicted and nonconvicted defendants. This is important because, as noted in footnote 20, about one of every five defendants in all districts were not convicted; yet many of the analyses were based only on convicted defendants. Of 18 defendant and case-processing characteristics measured, 15 showed significant differences between the samples, leading the Judicial Center authors to conclude that their report's findings (based only on convicted defendants) could not be generalized to the nonconvicted defendants.

AOC officials indicate that it was simply impossible to obtain even small samples of non-PSA nonconvicted defendants. Nonetheless, at least all analyses of Probation vs. Board agencies should have included both convicted and nonconvicted defendants, since such data were always available for the PSAs. Unfortunately, the Judicial Center report excluded the nonconvicted from virtually all analyses, and the AOC report was inconsistent in its use of the convicted and nonconvicted groups.

- The analyses included all defendants in the districts, including those not processed by the PSAs. The fact that in some cases the number of non-processed defendants was substantial could have affected the conclusions considerably and in unknown ways. Only cases actually interviewed by the PSAs should have been included in the analyses.

#### STUDY IMPLICATIONS

The Judicial Center report implies that the federal release programs (PSAs) have made little difference. The Administrative Office of the Courts not only says that the programs have made a difference but that Board-run or independent programs are preferable to Probation-run agencies. Unfortunately, neither set of conclusions seems justified at this time. In fact, the only firm conclusion that seems reasonable is that there is no firm conclusion which is justified by the analyses done thus far.

Congress will hold hearings on Title II in the near future. It is hoped that additional analyses will be done before a permanent decision is made about the future of federal PSAs.

Perhaps it is appropriate here to quote the Judicial Center's report, which in its conclusions stated:

"There is much more that can be done to understand better the relationships between pretrial services, detention, crime on bail and characteristics of defendants. We readily agree that further analysis could conceivably change the above findings." (emphasis added)

#### OVERALL IMPLICATIONS AND FUTURE RESEARCH NEEDS IN PRETRIAL RELEASE

- Among the key issues raised at the beginning of this section on release were the interrelated ones of pretrial crime, preventive detention, and what should be done about the "dangerous" defendant. What have we learned about these issues from the three studies just discussed, and what is still to be learned?

Both the Lazar and INSLAW studies suggest that it may be possible to identify with some limited degree of accuracy a "higher-risk" group of defendants. Assuming that some ability to predict such defendants at the point of making release or detention decisions does in fact exist, the question is then how that information is to be used.

It may be that many "dangerous" defendants can be released without undue risk under certain types of restrictions or conditions. More research is needed to determine experimentally whether different conditions or levels of supervision can help reduce subsequent pretrial misconduct for defendants with varying degrees of "risk." Such research is presently being contemplated for funding by NILE and could have significant implications for future directions in the release field.

Data from earlier studies, now being confirmed in several sites in the Lazar research, suggest that courts take relatively little serious action once a defendant on release is rearrested or fails to appear for a court appearance. This suggests that more consistently-applied follow-up efforts by the courts might also have a positive impact in reducing pretrial misconduct.

- The issue of the appropriateness of using community ties to identify who should be released under what conditions is certainly not resolved by the research reported here. There seems to be some indication, however, that at least certain indicators of ties to the community (employment foremost among them) are associated not only with judges' decisions but also with subsequent appearance in court. What is clear is that there are few automatic, across-the-board predictors of pretrial misconduct. Variables differ from jurisdiction to jurisdiction, and may even vary over time as conditions change. As such, there is a need for programs to periodically reassess the appropriateness of the criteria being used in their jurisdictions to determine release eligibility.
  - Of importance to the future of the release field are the issues of the impact of the bail bondsman and of percentage deposit bail on pretrial misconduct for similar types of defendants. The Lazar research may be able to shed some light here in its subsequent analyses, and the federal data have the potential to do so as well. In addition, a federal study of the impact of bondsmen may be funded next year by the National Institute.
  - Finally, two of the three studies have addressed the questions of the relative impact of pretrial programs on the criminal justice system and the need for continuation of such programs after a certain point. The findings are far from conclusive as yet, but they raise important questions which should be seriously addressed by the field. For example:
    - It may be that some programs in the future should be playing a more active supervisory role--perhaps spending less effort on making recommendations or verifying information--as a way of releasing more people and assuring that the community is "protected" from "dangerous" defendants.
    - In other cases, it may be that programs have been unnecessarily cautious in their approach to release recommendations and need to begin to loosen up their overly-restrictive criteria.
- The key is for programs to assess their role more realistically and to be willing to attempt new approaches as needed on an experimental, demonstration basis.

## PRETRIAL DIVERSION RESEARCH

Despite the proliferation of formal pretrial diversion programs in the past decade, little is known about their impacts. Although a considerable amount of research has been done in diversion, weaknesses in most research designs have limited the ability to make definitive statements about the value of such programs. Little research has been done in the past two or three years with enough methodological credibility (e.g., adequate comparison groups, sufficient sample sizes, etc.) to add significant knowledge to the field. <sup>23/</sup>

Fortunately, some of the gaps in knowledge may begin to be filled within the next few months, since several evaluations nearing completion should add considerably to our knowledge about the impact of diversion programs. The first of these research efforts is discussed below.

### VERA EVALUATION OF COURT EMPLOYMENT PROJECT

The Court Employment Project, one of the first pretrial diversion programs in the country, was established in New York City in 1968 as a U.S. Department of Labor manpower demonstration program. It is a private, non-profit independent agency. In 1976, with the program's agreement, the National Institute of Law Enforcement and Criminal Justice of LEAA agreed to fund an extensive, carefully controlled experimental study of the program.

Of all the research in the diversion area, this is the most methodologically sound evaluation ever done. In the past, research in the field has been criticized on the grounds of one or more of the following methodological problems: insufficient sample size, failure to provide adequate comparison groups, exclusion of program "failures" from the analyses, inadequate data on important variables such as subsequent employment and recidivism, insufficient post-program follow-up of participants and comparison group members, and insufficient attention to the program's impact on the criminal justice system within which it operates. This study was carefully designed and implemented to overcome each of these problems.

After some initial delays occasioned by budget cutbacks in New York, which temporarily halted diversion intake in 1976, the research was undertaken beginning in early 1977. At that time, CEP was dealing almost exclusively with felony cases. Data collection was completed in late 1978, and the research grant officially expired in September 1979. Vera's report is in the final editing process and is about to be sent to LEAA, according to Dr. Sally Hillsman Baker, the project director. The report will not be generally available until it completes review by LEAA.

<sup>23/</sup> The most important of these was the evaluation of the Monroe County, New York, program which indicated that the program was having a positive impact on clients and was operating cost effectively.

This Pretrial Issues discussion is based on a draft report released to the Resource Center for review by LEAA and on a summary of findings presented by Dr. Baker at the National Symposium on Pretrial Services in Louisville in April 1979. 24/

#### RESEARCH APPROACH

Some have argued that it is inappropriate, unwieldy, and perhaps unethical to conduct experimental research within the criminal justice system. This argument states in part that, if defendants are randomly assigned to experimental (program) and control (normal criminal justice processing) groups, the control group is in effect being systematically denied services and thereby denied due process and equal protection.

Although there are sound counter-arguments to that position, the essence of the research approach used in this evaluation was to negate the issue by creating separate experimental and control groups based on an "overflow" strategy. Because of funding and staffing limits, CEP was not able to divert or provide services to everyone who was actually eligible for diversion. This enabled the development of a strategy that, simplified, assigned the "overflow", once a program quota was filled for a particular time period, to the control group. 25/ The randomized procedure resulted in samples of 410 program participants and 256 control group members.

Criminal justice history and recidivism data were obtained from appropriate system records, data were collected for program participants from CEP files, and persons in each sample were scheduled to be interviewed at three separate points in time: at intake into the research population and at six months and one year later. The interviews were designed to obtain information about changes over time in education status, employment, use of various services, various lifestyle questions, and the like. Stipends were paid for each interview. Although contact was lost with some subjects, data presented by the researchers indicated that most defendants were interviewed all three times and that the falloff was comparable in numbers and characteristics for both the experimental and control groups.

24/ The authors of the massive report have done an excellent job of condensing a large amount of material into a useful, succinct summary of the study's approach, significance, and primary findings.

25/ For more detail about the approach used, see Sally Baker and Orlando Rodriguez, "Random Time Quota Selection: An Alternative to Random Selection in Experimental Analysis", in Evaluation Studies Review Annual, Vol. 4, 1979, Sage Publications.

#### MAJOR FINDINGS AND CONCLUSIONS

##### Clearly Supported Findings

The following findings and interpretations by the authors of the study seem to be clearly supported by the data reported:

- The "successful" completion rate for CEP was 55%.

Success was defined as attending program services throughout the four-month diversion period. In all "successful" cases, charges were dismissed or Adjourned in Contemplation of Dismissal (ACD).

- For the 45% who failed to complete the program, the ultimate disposition of their cases did not appear to be adversely affected (i.e., their dispositions were no more severe than those of the control group).

Thus "failure" in the program did not appear to lead to harsher treatment when the "unsuccessful" cases were returned to court for normal processing.

- There were differences between the program and control groups in sentences imposed (for those cases not dismissed), but no differences in rates of incarceration.

About half of the control group received some form of legal sanction in the intake case, compared with 15% of all program participants. 26/ More specifically, only 4% of all defendants in each group were sentenced to incarceration. Somewhat fewer program participants were sentenced to probation (3% vs. 11% of the control group). Most of the control group sentences were relatively inconsequential: 23% were convicted but discharged (compared to 7% of all program participants), and 11% were fined (compared to 2%), with a median fine of \$50.

- The program had no apparent impact on various measures of vocational or education activity, use of services, or lifestyle (alcohol and drug use, types of friends, self-reported illegal activity, etc.).

In some cases, improvements did appear over the period of the investigation, but any such improvements were attributed to maturational or other non-program effects, since similar improvements were also recorded for the control group members.

- The program appeared to have no impact on reducing subsequent rearrests or convictions on those rearrests.

26/ Including both successful and unsuccessful participants. Only about 1/3 of the "failures" wound up with sentences. The remainder were found not guilty, had charges dismissed, or had not been adjudicated at the close of the evaluation.

This was true despite the fact that the program appeared to be diverting a relatively high-risk population in terms of likelihood of rearrest. Whether measured at four months or one year following intake--and regardless of whether the measure was proportion rearrested, total number of rearrests, severity of rearrest charges, or convictions--the results were the same: no significant difference between experimental and control groups.

- With its relatively small caseload compared to the large New York City court system, the program had no significant measurable impact on the system.

#### Findings Subject to Greater Caution

The other major findings and conclusions are somewhat less definitive, because they are subject to different interpretations:

- The study concluded that CEP's impact on case disposition was limited, even though 72% of all program participants (successful and unsuccessful) had their original charges dismissed, compared with 46% dismissals for the control group. <sup>27/</sup>

The authors suggested that these differences had little practical significance, since even though nearly all the arrests (97%) were for felony charges, (1) only 1% of the defendants in each group were convicted of a felony; (2) 23% of the control group were convicted only on non-criminal violations; and (3) 25% were treated as Youthful Offenders (YO)--an adjudication with finding of guilt, rather than actual conviction, for a misdemeanor.

Thus the authors concluded that, given the various options available in New York, CEP had little practical impact on disposition or avoidance of an official criminal record--since YO records are sealed and the violation convictions do not constitute a criminal conviction record. However, as admitted by the researchers, those distinctions may be more significant legally than in actual practice, and even the statutory requirements for sealing of records can frequently be abused.

- The overall conclusion from the evaluation is that, although over time CEP may have had an impact in encouraging the greater use and expansion of diversionary options in case disposition within the criminal justice system in New York City, it had no apparent unique impact on the lives of its participants in 1977.

<sup>27/</sup> Dismissals included Adjudgments in Contemplation of Dismissal, which, as practiced in New York, is virtually equivalent to an outright dismissal.

#### LIMITATIONS OF THE RESEARCH

- It is possible to raise questions about the heavy reliance on interviews in the research, though these questions are not serious enough to challenge the study's primary conclusions.

Interviews can be notoriously unreliable; and, with stipends being paid, it is difficult to determine what impact that may have had on what was reported by the defendants. Attempts were made to verify through schools, employers, and public assistance rolls some of the factual information reported in the interviews. Generally, the proportions of agreement were around 80-85%. But many questions could not be verified, and many of the institutions or people needed for verification could not be reached. However, the overwhelming consistency of the findings between the program and control groups (i.e., little or no program impact) is such that this reservation is hardly serious enough to affect the conclusions of the study.

- The study may have understated the impact of the program in preventing official criminal records.

The authors do an excellent job of putting the dispositional findings in the context of New York State law. They also admit that there are often abuses of the statutory requirements concerning sealing of records and of the legal distinctions between criminal and violation convictions.

These disclaimers are correct and appropriate, but they are also buried in the text; and the primary conclusions which most will read do not make note of those qualifiers. Particularly because of the way the study will be interpreted in states without some of the options available in New York, the conclusions should clearly emphasize these cautions. (Sally Baker indicates that this issue will be addressed in the final editing process.)

- It should be noted that the evaluation was conducted during a period of upheaval and relative uncertainty among staff concerning the program's future, given economic crises in New York just preceding and during the course of the study. What impact, if any, that factor may have had on the program and the evaluation's conclusions cannot be determined.
- Overall, the study has been meticulously carried out, and it is difficult to find serious fault with it.

The approach used is one which could not be easily replicated in every program because of its relative complexity and need for an overflow group. Nevertheless, it does lay out a model which suggests the types of research that some jurisdictions could and should begin to do.

## STUDY IMPLICATIONS

- Clearly, as the authors point out, generalizing from the study findings is limited by the fact that this evaluation pertains only to this one program at one point in time. Despite its strengths, it should therefore not be thought of as the "definitive study on diversion".

--The program was operating in an environment prone to using alternative dispositions and unlikely to use severe sentences for people charged with the types of offenses of CEP's defendants.

--The program's decision to provide few in-depth services and to typically limit the diversion period to four months appears to have made CEP different from most diversion programs dealing with felony cases.

- It is important to recognize that other programs may have more of an impact on dispositions and sentences, depending upon the types of persons diverted and the other options available in their jurisdictions. Any communities considering starting a new diversion program should seriously assess who their primary target groups will be and what is now happening to those people under normal circumstances.

Many programs are designed to look successful on the surface (i.e., they divert people who are unlikely to recidivate, thereby making program statistics look artificially good). But when systematically compared to the option of no program (i.e., the existing system), such programs may have little unique impact on dispositions, sentencing, and the courts. In short, some programs may in effect be designed almost to assure "lack of impact" in this context; whereas, if they were able or willing to divert more serious or "high-risk" cases (e.g., those likely to recidivate), their ultimate impact could perhaps be greater. This issue needs further assessment and research. It will be addressed in more detail in 1980, when the Resource Center publishes a more extensive discussion on diversion.

- We continue to know very little about what types of services, if any, may work for what types of defendants to accomplish what types of objectives.

Little research has systematically addressed the question of what types of defendants, with what types of needs, can best be dealt with by what types of services in a diversion setting. It may be that for some, diversion alone (without services) is significant. Perhaps other defendants may need more services over a longer period of time than diversion programs can provide. Or services in a pretrial diversion context may simply be inappropriate. These are issues that were not answered in the CEP study, nor have they really been addressed elsewhere.

- Despite these caveats, the primary conclusions of the study should not be minimized: even allowing for a different, more favorable interpretation of the diversion impact on the defendant's record than the report suggests, this carefully controlled study presented clear, consistent evidence that the program had little unique impact on the lives of its participants.

Indeed, the findings were so persuasive that the program itself concluded that it would no longer accept cases under the diversion model that existed at the time of the evaluation in 1977 (except on a limited basis in one borough of the city).

CEP continues to provide services to those within the criminal justice system, but at different points in the system and without reporting defendant success or failure to the court. The agency is in the process of experimenting with a variety of different service delivery approaches with different groups of defendants.

<p>OVERALL IMPLICATIONS AND FUTURE RESEARCH NEEDS IN PRETRIAL DIVERSION</p>
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An evaluation model has been developed which, modified as needed to fit local idiosyncracies, should be useful in different jurisdictions for systematically assessing the impact of diversion programs. This research model may be the basis for field test evaluations in other sites around the country if NILE decides to fund such research in the future. Tentative plans for doing so are being discussed at this point. Sites selected for such evaluations should include areas with fewer existing alternatives within the system than was the case in the CEP evaluation. Programs offering different levels and philosophies of service to those diverted should also be included.

The CEP evaluation suggested that the program may have had a catalytic role in inducing system change. This concept implies that once such change has been institutionalized, the need for a program to continue to exist in its initial form may be reduced or eliminated. Thus programs should be willing to assess their stage of development and the developments of the system within which they operate in order to determine what they should be doing. If system changes have reduced the need for a formal diversion program, at least in its current form, a number of new options may be suggested: that the program cease to exist, that it devote its attention to other aspects of the criminal justice system where its impact could be even greater, or that it be diverting more and/or different types of defendants.

## DISPUTE RESOLUTION RESEARCH

As dispute resolution (mediation/arbitration) programs develop throughout the country at a rapid pace, and federal interest in the area increases, research on such programs and their impacts becomes increasingly important. Evaluations are currently nearing completion or are under review by granting agents for programs in Brooklyn, New York, and Dorchester, Massachusetts. These have not yet been released. In addition, nearing completion is a major national evaluation of the federally-funded Neighborhood Justice Center (NJC) concept. This evaluation addresses a number of important issues facing dispute resolution programs.

### ISA EVALUATION OF NEIGHBORHOOD JUSTICE CENTERS

The Institute for Social Analysis (formerly Institute for Research) is in the final stages of its evaluation of the three experimental Neighborhood Justice Centers in Atlanta, Kansas City, and Los Angeles (Venice/Mar Vista). The sites began operation in the spring of 1978 under grants from LEAA. The NJCs were designed to process minor personal and civil disputes through mediation (primarily) and arbitration techniques, rather than through court procedures. The National Institute contracted with ISA to do the national evaluation.

The evaluation has particular significance because of its ability to simultaneously analyze and compare three different sites, each operating in different contexts, aimed at somewhat different constituencies and with different emphases (for example, community-based versus court-based focus). By including a detailed description and process analysis of each site, it is possible not only to develop overall conclusions, but also to relate the findings to the individual sites to help assess the impact of local variations on program effectiveness. The ability of one evaluation team to employ one consistent research design simultaneously in three separate communities has important implications for the generalizability of the study's findings.

An interim report was released by the evaluators in December 1978, primarily focusing on the program implementation and process components of the evaluation. A brief summary of that report was included in the May 1979 Pretrial Reporter (Volume III, No. 2, pp. 8-9). The final report will include and update the implementation and process analyses and will also address questions of program impact and cost.

Comments included here are based on discussions with Dr. David Sheppard, Principal Investigator of the evaluation, and with Janice Roehl, Project Director; on Congressional testimony by Dr. Royer Cook, president of ISA; and on some preliminary reports (other than the

interim report) which were made available to the Resource Center. It must be emphasized that additional analyses were still being undertaken as this was being written; thus the findings discussed here are tentative. A draft of the final report is currently being reviewed by the National Institute. 28/

### RESEARCH APPROACH

The research was designed to describe and analyze (1) the development and evolution of each Center's policies and procedures and (2) the target population and users of the Centers, the sources of referrals, and the resolution processes used. Also, the study determined outcomes of the cases (both short term and after six months) and assessed all those outcomes by type of case, referral source, and characteristics of the disputants (both complainants and respondents). The evaluation also attempted to analyze impact of the program on the courts, police, local community, and agencies referring cases to the Center. And the evaluation attempted to assess the relative costs and benefits of the programs. The cost study was the least well developed and most difficult aspect of the evaluation. A detailed assessment of the methods used in the cost analysis must await the final report.

A combination of record gathering, interviews, surveys, and observation was used to obtain the information needed in the evaluation. The study attempted to assess disputants' degree of satisfaction and the perceived holding power of agreements reached not only in cases resolved through formal hearings, but also in those cases which were reported as having been resolved outside a hearing setting. In addition, parties in cases initially referred to the program but not resolved were sampled to determine what happened to their disputes. In two of the three sites, small cohort samples--intended to be similar to those handled by the programs--were developed from local court records. Determination of what happened in those cases was made, and follow-up interviews with the disputants were designed to enable a comparison of program outcomes and degree of satisfaction with outcomes and satisfaction in cases handled through normal court procedures.

### MAJOR FINDINGS AND CONCLUSIONS

Partial tentative findings reported here are based on about 3,600 cases processed by the three NJCs through April 1979 (through their first year of operation).

- About 45% of all cases were satisfactorily resolved.

Almost two-thirds of the resolved cases went to formal hearings; the rest were resolved prior to a hearing (presumably facilitated at least informally by the program).

28/ For further information, contact Dr. David Sheppard at ISA, 11739 Bowman Green Drive, Reston, VA 22090.

- Almost half of all cases involved interpersonal disputes among family, neighbors, and friends.

These types of cases were more likely to reach the hearing stage than were the 52% of all cases which involved either civil types of disputes (landlord/tenant, consumer/merchant, and employee/employer) or other types of disputes, such as those involving strangers.

- Six-month follow-up with disputants whose cases were mediated showed a generally high level of satisfaction with both the agreements reached and the process leading to resolution. Disputants further indicated that agreements appeared to be holding.

General satisfaction was expressed by more than 80% of the disputants. Disputants indicated that the other party had kept at least part of the terms of the agreement in 75-80% of the cases (most indicated total compliance). Both respondents and complainants indicated similar levels of satisfaction. About a quarter of all disputants did indicate, however, that there had been some other subsequent problems with the other party.

- Cases resolved pre-hearings generally showed similar positive findings, though with slightly lower levels of satisfaction and agreement. Respondents and complainants again were similar in their patterns of response.
- The programs did not appear to be cost effective but perhaps should not be expected to be. Even if they did not significantly reduce court caseloads, they were perceived as providing judges with an important, time-saving alternative which allows for more attention to other types of cases not amenable to mediation.

#### LIMITATIONS OF THE RESEARCH

The original research design had held out the possibility of using an experimental design to randomly assign court cases to program (NJC) and control (regular court-processing) groups. However, this design had to be abandoned. The substitute strategy, use of cohort samples in two of the sites, is less satisfactory but should lead to valuable findings, assuming it can be demonstrated that the cases included were similar to the types processed by the Centers.

The six-month follow-up interviews with disputants provided important information on the "holding power" of the resolutions. Nonetheless, it would also have been helpful to have actual data indicating how frequently one or the other of the parties subsequently returned to the system with similar or other complaints. Apparently, it was not possible to obtain such information.

#### STUDY IMPLICATIONS

Implications will be clearer once the final report is issued, but the tentative findings seem to confirm that it is possible for a variety of types of disputes to be resolved, without the sanctions of a court setting, and with apparently lasting effect (at least half a year). The final report should provide further insights as to what types of cases, from what referral sources, and with what disputant characteristics seem most amenable to this process.

Further research is likely to be needed on what happens to those cases not successfully mediated, and to help assess the extent to which non-criminal justice system referrals might ultimately have wound up in the courts (i.e., the extent to which the programs are adequately playing a preventive role).

#### SUMMARY

From the diversity of conclusions and issues raised by the individual studies, several overall summary conclusions and statements seem justified. They are highlighted here without elaboration:

- Pretrial programs should--perhaps must--remain open to the possibility and process of change as they and the system within which they operate evolve. This need for openness to change is predicated on several practical bases: budgetary constraints, questions of program impact on defendants, changing needs, etc.
- There is need for considerably more thinking, research and exploration concerning the concept of a continuum of pretrial services available to defendants. Such a continuum implies the development of "classification schemes" to help ensure that defendants are dealt with in ways that minimize penetration into the system while simultaneously safeguarding the rights of defendants and society alike. For example, some defendants should be released on their own recognizance, whereas others should be released only under more stringent conditions; some should be diverted from the courts into dispute resolution programs, whereas others are perhaps appropriate candidates for "classical diversion" programs. The concept seems sound, but the practical implementation needs much more work by practitioners, policymakers, and researchers in the field.
- More effective and reliable feedback is needed by judges, prosecutors and defense attorneys concerning the impact of specific decisions made throughout the pretrial process.
- No matter how good the research done in a particular jurisdiction or program, unique aspects of programs and the systems within which they operate mean that there is a need for individual programs to periodically assess their performance and impact--and to be open to change which may be suggested by such assessment.

Ideally, in order to build up a more solid body of consistent data within the pretrial field, similar research designs should be employed in as many different settings as possible.

- Such research should be as carefully controlled as possible in order to increase the level of confidence in the findings. The studies reported here which had the fewest controls built in also seemed to have had the most problems and questions raised about the conclusions.

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