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# DEMONSTRATING REHABILITATIVE PLANNING AS A DEFENSE STRATEGY\*

*Samuel Dash,† Richard J. Medalie,†† and Eugene L. Rhoden, Jr.‡*

## I

### THE ROLE OF DEFENSE COUNSEL AT SENTENCING

Because a substantial number of defendants either plead guilty or are found guilty at trial,<sup>1</sup> sentencing becomes a most crucial stage in the criminal process. Defense counsel, therefore, has a vital role to play in achieving "the most appropriate disposition for his client."<sup>2</sup> This role, according to the National Crime Commission's Task Force on Administration of Justice, "extends to the gathering and evaluation of facts relevant to sentencing, and most important, to their presentation in court at the time of sentencing."<sup>3</sup> Moreover, "[w]hen [defense] counsel believes that probation would be an appropriate disposition for his client, he should be prepared to suggest a positive program of rehabilitation."<sup>4</sup> Preparation of this program should include exploring the "possibilities for employment, family services, educational improvement, and perhaps mental health services," as well as attempting "to make specific and realistic arrangements for the defendant's return to the community."<sup>5</sup>

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\* This study is the final report of a demonstration project conducted by the Institute of Criminal Law and Procedure of the Georgetown University Law Center from April 1, 1966 to March 31, 1967 under a grant from the Ford Foundation.

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‡ Director, Criminal Justice Planning Agency for the District of Columbia; former Director and Social Worker, Offender Rehabilitation Project, A.B. 1955, Morehouse College; M.S.W. 1963, Howard University.

<sup>1</sup> In fiscal 1965, ". . . 76 percent of the felons in the District Court and 49 percent of the serious misdemeanants in the Court of General Sessions" were convicted by plea or trial. PRESIDENT'S COMM'N ON CRIME IN THE DISTRICT OF COLUMBIA, REPORT 234 (1966) [hereinafter cited as D.C. REPORT].

<sup>2</sup> PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS 19 (1967).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 19-20.

Fulfilling these tasks cannot readily be accomplished by defense counsel alone. The National Crime Commission indicated that for defense counsel to play this role, he would need "ready access to a number of auxiliary services resembling those available to a modern and well-equipped probation office."<sup>6</sup> A program involving these "auxiliary services," known as the Offender Rehabilitation Project, was operated from April 1966 through March 1967 as a demonstration project in the Legal Aid Agency for the District of Columbia<sup>7</sup> by the Institute of Criminal Law and Procedure of the Georgetown University Law Center.<sup>8</sup>

The Offender Rehabilitation Project was the first major, systematic effort in this country to help defense counsel develop community-based rehabilitation programs for their clients at the presentence stage. It had three main purposes:

(1) To provide Legal Aid Agency attorneys, the Georgetown Legal Interns,<sup>9</sup> and some private, appointed counsel with presentence reports, known as "defendant studies," for use at the sentencing stage.

(2) To develop community-based rehabilitation plans to facilitate probation and other alternative disposition where appropriate.

(3) To help secure community-based social and rehabilitative services, when needed, for defendants and their families.<sup>10</sup>

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<sup>6</sup> PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, REPORT: THE CHALLENGE OF CRIME IN A FREE SOCIETY 151 (1967) [hereinafter cited as NATIONAL REPORT].

<sup>7</sup> The Legal Aid Agency was established by Congress in 1960 to serve as the public defender agency in the District of Columbia. It provides attorneys to represent indigents in the various courts and proceedings in the District. D.C. CODE ANN. §§ 2-2201 to -2210 (1966); see D.C. REPORT, *supra* note 1, at 343-44.

<sup>8</sup> Under a grant from the Ford Foundation, the Institute of Criminal Law and Procedure was established in October 1965 at the Georgetown University Law Center. The staff of the Institute is composed of attorneys and research associates from other disciplines, including sociology, psychiatry, psychology, social work, forensic science, history, and political science. The primary aim of the Institute is to engage in systematic studies of the criminal law process from police investigation practices to appellate and post conviction procedures.

Prior to the Institute's demonstration project, the Offender Rehabilitation Project operated from October 1, 1964 to March 31, 1966 as a two-man pilot project of the Legal Aid Agency, funded by the National Legal Aid and Defender Project.

<sup>9</sup> Begun in 1960, the Legal Internship Program provides a number of fellowships at the Georgetown University Graduate School of Law. In addition to following a graduate program of study and research, the legal interns represent indigent defendants in actual cases. See D.C. REPORT, *supra* note 1, at 344; Pye, *Legal Internships: Georgetown's Experiment in Legal Education*, 49 A.B.A.J. 554 (1963).

<sup>10</sup> These services were often part of the rehabilitation plan and may have included physical or mental outpatient or inpatient treatment, vocational training, employment and educational assistance, public welfare service, family and individual counseling, and housing and consumer assistance. See Medalie, *The Offender Rehabilitation Project: A New Role for Defense Counsel at Pretrial and Sentencing*, 56 Geo. L.J. 2, 5 (1967).

This study discusses four aspects of the Project. After an initial profile of the defendants serviced by the Project, its organization and operation, including staff composition and intake procedures, are analyzed. Of special concern in this portion of the study is an assessment of the relationship of defense counsel to the Project and a discussion of the evolution of the Project's concept that rehabilitative services for the defendant must be brought to bear as soon as possible after arrest.

In the next section, the Project's "presentence report," including the defendant study, its method and basis of preparation, its use by defense counsel, and its impact on court dispositions, is evaluated.

The concept of community-based rehabilitation programs and services, their availability to the Project, the methods by which they were used to help the defendants, and the difficulties encountered in developing rehabilitative programming for offenders are then discussed.

## II

### DEFENDANTS SERVICED BY THE PROJECT

Defense attorneys referred 226 defendants to the Project. Of these cases, 123 (fifty-four percent) were obtained from the Legal Aid Agency, sixty (twenty-seven percent) from the Georgetown Legal Interns, twenty-five (eleven percent) from private counsel,<sup>11</sup> and eighteen (eight percent) from other sources.<sup>12</sup> As a matter of general policy, the Project accepted all referrals.

Of the 226 cases, eighty-eight (thirty-nine percent) received complete services, including a defendant study, and the remaining 138 (sixty-one percent) received only selected services.

The defendants serviced by the Project did not differ markedly from the profile of the adult felon set forth in the District of Columbia Crime Commission's *Report*. In the *Report*, the offender was described as a young, poorly educated male, "unskilled and erratically employed," who is a product of a broken home and a large family.<sup>13</sup>

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<sup>11</sup> Although the Project made a concerted effort to elicit cases from the Agency and Interns, no such effort was made with private counsel. This latter group usually had heard of the Project from Legal Aid Agency attorneys, from newspaper articles, from their clients, or from judges who became interested in the defendants or their cases.

<sup>12</sup> The 8% of the referrals from other sources came primarily from persons who were not attorneys. These cases included referrals from parole officers, probation officers, institutional correction personnel, police officers or other interested community officials. In this category, the Project always sought permission from the attorney representing the defendant before any contact was made with the defendant or his family.

<sup>13</sup> D.C. REPORT, *supra* note 1, at 140. For a complete picture of the criminal offender, see *id.* at 117-41. The profile was developed for the Commission in a study by the Stanford

Overwhelmingly, the defendants serviced by the Project were male Negroes. The average age was twenty-seven, with a range of ages between seventeen and sixty-two years. Forty-five percent of the defendants were Protestant, eighteen percent Catholic, and five percent Black Muslim. More than one-half of the defendants were single, one-fourth were married,<sup>14</sup> and the remainder were involved in a para-mour relationship, separated, or divorced.

The educational status of the defendants was not notably high: over one-third received eight or fewer years of schooling and more than five-sixths did not complete high school. The defendants had little vocational training, and more than half were unemployed both at the time of arrest and at the time of sentencing.<sup>15</sup>

More than half of the defendants were born in the District of Columbia, and almost one-third came from the South. In addition, the defendants had a relatively low degree of geographic mobility.<sup>16</sup>

Somewhat less than two-thirds of the defendants had previous misdemeanor convictions; less than one-third had previous felony convictions; and forty-one percent had previously been incarcerated.

At the time the defendants were referred to the Project, more than one-half were charged with nonviolent felonies and two-thirds had already pleaded guilty to at least a portion of the original charges. Approximately one-third had been released on monetary bond, one-fourth on personal recognizance, and one-third were in jail.

### III

#### ORGANIZATION AND OPERATION OF THE PROJECT

##### A. *The Project Staff*

The staff of the Project was composed of a coordinator, a social worker, and four social work assistants.<sup>17</sup>

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Research Institute of the presentence reports of 932 felons convicted in 1964 and 1965 in Washington, D.C. The SRI Report is contained in the D.C. REPORT, APPENDIX at 511-644.

<sup>14</sup> This category includes both licensed and common law relationships.

<sup>15</sup> The high rate of unemployment at the time of sentencing was due partially to the fact that almost one-third of the defendants were in jail prior to sentencing and were not released on bond or personal recognizance.

<sup>16</sup> Nearly half of the defendants had always lived in the District; an additional 20% had lived there more than 10 years; and only 12% had lived in Washington 4 years or less. These facts tend to argue against any theory of a relationship between criminality and broad geographic mobility. In the present Project, however, there was no opportunity to explore the relationship of criminality to local or neighborhood mobility. For discussion of this relationship, see Robins & O'Neal, *Mortality, Mobility and Crime: Problem Children Thirty Years Later*, 23 AMER. SOC. REV. 162, 166-69 (1958).

<sup>17</sup> Coordinator - Bertram L. Keys, Jr.; social worker - Eugene L. Rhoden, Jr.; social

The coordinator, as chief administrator, served as the main channel of communication between the Institute and the Legal Aid Agency, negotiated with community rehabilitation agencies, and developed new programs.

The social worker conducted the staff training, performed the day-to-day supervision of the social work assistants, and prepared and collected the Project data essential to program operation.

The four social work assistants were primarily responsible for assessing the defendants' needs, locating the most appropriate community services available to meet those needs, and preparing the defendant studies. The assistants were one of the innovative hallmarks of the Project. They were not professional social workers, but were recent college graduates with relevant background experience. This innovation reflected both the recognition that there were insufficient professionals to meet the community's needs and the belief that non-professionals could be trained to function well so long as they were under the appropriate supervisory control of the social worker.<sup>18</sup>

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work assistants - Cynthia S. Broadie, Mary Ellen Leary, Mary Thompson, and John Batchelder. The Project was housed in a main office at the Institute of Criminal Law and Procedure, where the coordinator and social worker were located, and in neighborhood offices in two high-crime and poverty areas, in each of which two social workers and a field secretary were located.

<sup>18</sup> Cf. NATIONAL REPORT, *supra* note 6, at 167-68.

One of the initial tasks of the social worker was to conduct a two-week orientation and training program for the social work assistants so that they would understand their role in the Offender Rehabilitation Project. The training related to the following areas:

- (1) The offender population and its problems.
- (2) The nature of social welfare service and its present-day institutions.
- (3) Criminal law and procedure.
- (4) The roles of the judge, defense counsel, prosecuting attorney, and probation officer in the criminal justice system.
- (5) The skills and techniques of interviewing and of developing effective client-staff worker relationships.
- (6) Record-keeping.
- (7) The collection of psychological and socio-economic data essential to good diagnostic practices.
- (8) The preparation of the defendant study.

Lectures and group discussion on relevant materials assigned for reading served as a basis for the training sessions. In addition, various personnel in the criminal justice system—including judges, attorneys, probation and correction personnel—were brought in to talk with the group about their roles and the problems they encountered in the performance of their duties. Individual or group field visits to courts, community agencies and other such institutions were also arranged. Following these visits, the institutions were discussed in terms of the needs they met, the gaps in service they left, their strengths and weaknesses, and the ways they could be utilized in meeting the needs of Project defendants and their families.

In addition to the initial orientation and training program, the social worker also conducted a program of ongoing supervision and training through weekly staff meetings

### B. *Intake Procedures*

Upon referral a case was assigned to a social work assistant depending on the number of cases he was carrying, the defendant's location in the city, the assistant's interests in and ability to work with certain types of defendants, the charge, and the defendant's age, sex and family situation.<sup>19</sup> A social file on the defendant was opened and notification of the receipt of the case was sent to the referring attorney.

The social work assistant would then invariably consult with the referring attorney before seeing the defendant, his family, his references or anyone else involved in the case. In this preliminary conference, the Project staff member would learn something about the particulars of the case, the defendant's background and where he could be located. The social work assistant would also attempt to find out what the attorney believed to be his client's problems and needs. The assistant next interviewed the defendant. Personal introduction of the defendant to the Project worker by the attorney proved to be the most effective way of putting the defendant at ease.

### C. *The Relationship of Defense Counsel to the Project*

One of the ultimate aims of the Project was to service the accused, not only after he pleaded or was found guilty, but as soon as possible after he was assigned counsel, and to continue to service him as long as possible after disposition of the case.<sup>20</sup>

Recognition of the need for early Project contact evolved from Project experience rather than from original program design. As originally conceived the project aimed to clarify the role of the defense lawyer at the time of sentencing. By training and practice, defense lawyers have perceived themselves as challengers and defenders at

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and an on-the-job training program. During the weekly staff meetings, the social work assistants, on a rotating basis, would present active cases from their case loads for critical review and suggestions about possible alternative methods of handling them. New community resources and new approaches to present problems were also discussed, as were current articles on subjects relevant to the Project. Finally, the social worker had monthly supervisory conferences with each social work assistant, at which time individual problems on cases were discussed.

<sup>19</sup> Cases were usually referred to the Project by the defense counsel. Information related by counsel would usually include the defendant's name and location, the current charge, the criminal case number, the court in which the case was pending, any special considerations or peculiar circumstances, and the matter needing immediate assistance.

<sup>20</sup> The National Crime Commission has encouraged this approach to the problem: "When planned by the defense, such a program can begin before conviction and be part of the defendant's own response to the case, rather than a regimen imposed on him as a form of punishment." NATIONAL REPORT, *supra* note 6, at 151.

trial, and have not defined their role at the time of disposition of the case. Indeed, most defense lawyers "bow out" at the time of sentencing and leave their clients to the mercy of the court's resources. Thus the defendants are without effective assistance of counsel at what is for them the most important part of the criminal proceedings.

At the outset, therefore, the primary focus of the program was on providing defendant studies and rehabilitative plans which the defense lawyer could use at the time of sentencing. Because of this focus, the lawyers participating in the program rarely felt the need to refer the defendant to the project for rehabilitative programming until one or two months before sentence.

As time went on, it became increasingly clear to the Project staff members that they should be brought into the case as early as possible after the defendant was assigned counsel. Early referral was seen as necessary to do the kind of thorough background study that was required and to get the defendant, if he was on bail, into a job situation, a training program or a form of therapy, if indicated, prior to trial and case disposition. This early attention to the defendant's needs was important not only for the ultimate disposition of the case, but was essential in order to help alleviate the impact and crisis confronting the defendant and his family as a result of the arrest and often as a result of the removal of the head of the household from the home.

As the Project developed it became clear that early referral of a defendant to the Project had a separate value and purpose. It permitted the development of background material on the defendant and a plan for rehabilitation that could be relevant for discussion between the defense lawyer and the prosecutor even *before* trial. The concept of early diversion developed out of this recognition and became the basis for an expanded project at the termination of the initial demonstration. Under this concept, the same information that was being made available to the judge for sentencing purposes could be made available to the prosecuting attorney to guide him in exercising his discretion to divert the case out of the criminal system for a solution through other community resources.

The need for early servicing is illustrated by the case of a married man with three children, who was arrested and charged with house-breaking. Left with the children, his wife was unable to find employment that would permit her to pay for child care, transportation, and maintenance expenses for the family. On her own, she contacted the Public Assistance Division of the Department of Public Welfare. Some time elapsed before the Welfare Department was able to provide a case worker to assess her dilemma.



After the rent was not paid for the second month in a row and before arrangements could be completed for welfare assistance, the wife and children were evicted and their furniture placed on the street. Neighbors salvaged what they could for her, and housed the family until the wife's mother sent money which enabled her and the children to join the mother in New York.

Only after several weeks did the attorney refer the case to the Project for assistance in finding the man a job. The attorney indicated that the judge would grant the accused release on personal recognizance if he had employment. The Project found him a job. The accused was thereupon released, but he had no home to which to return; nor did he have money with which to meet his own needs until he received his first pay check. The Project arranged for material assistance for the man through a local private social agency with an offender-oriented program.

Although the defendant had the charges of housebreaking pending against him, he was more concerned about the well-being of his family. He spent more of his energy trying to reunite his family than he did in trying to assist his attorney in his defense. Since his family was no longer with him, he was not eligible for help from any of the family assistance programs of the Department of Public Welfare. Moreover, although he was able to establish contact with his family, he could not bring them back with him because he had no place for them to stay.

After several months, the defendant was found not guilty by the court. He still was in no position, however, to replace the lost furniture or to provide new housing for his family. Had the available services in the community been brought to bear on the defendant and his family earlier, this broken home might have been prevented.

The Project's failure initially to recognize the importance of early case referral and the full use of its services for a defendant raised other problems as well. During the beginning months, the lawyers, frequently without consultation with the Project staff, deferred making use of the Project until they had determined for themselves a particular dispositional strategy for the case. During this period of the Project, a defendant was frequently released to the community on low bail or on his own recognizance early in the criminal law process, but without being referred to the services of the Project.

In these cases, his need for special assistance in employment, financial matters, housing and the like received no attention. The lawyer waited until he and the defendant had decided to enter a plea of guilty or until the defendant had been found guilty before contacting the Project for a defendant study and rehabilitation plan. Thus

precluded from becoming involved in rehabilitative planning and programming sufficiently early in the criminal process, the Project was relegated to a position comparable to the probation office, which does not begin presentence investigation until guilt is established, and which therefore cannot be of assistance to the offender until that time.

Other factors also indicated a need for early referral to the Project. Frequently, neither the Project staff worker nor the defense attorney knew well enough in advance exactly when a trial would be held or a disposition made. At best, they knew that sentencing in the felony cases would take place approximately four weeks after a guilty plea or a finding of guilt. This situation made it difficult for the social work assistants to have enough time to place the defendant in a good, sound rehabilitative plan prior to sentencing, to determine the appropriateness of the plan, and to observe the defendant's willingness and ability to follow it. Nor was there sufficient time to afford the probation office an opportunity to check and verify the plan; if the defense attorney chose to make that office aware of it, or to allow the judge adequate time to read, study and evaluate the plan.

Although the Offender Rehabilitation Project intended to prepare defendant studies for all cases referred to it, it was only able to prepare the studies for eighty-eight of its clients. The reason very often was directly attributable to the referral procedure of the attorneys and the Project staff. Defense counsel usually requested defendant studies only in cases in which they thought that probation, a split sentence (imprisonment up to six months, then probation); the Federal Youth Corrections Act,<sup>21</sup> or some work-release program was a possibility.

In the case of the 138 remaining defendants, their attorneys usually requested specific services for their clients such as employment, a loan or housing. If the lawyer felt that no other service was needed, often the Project staff did not feel free to do much more for the defendant regardless of whether he needed further help. This practice often meant that defendant studies were not requested and consequently not prepared.

Problems of this type were especially prevalent when the need for employment was involved. Most defense attorneys felt that their defendants' primary need was employment. In their bail motions and in their requests to the courts for probation, counsel tended to emphasize that their clients had jobs or had promises of jobs. Frequently, they would say to Project staff members that they were sure the court would grant release on personal recognizance or probation if the defendant had a job. The lawyers believed that employment was the most impor-

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<sup>21</sup> 18 U.S.C. §§ 5005-26 (1964).

tant factor in the judges' dispositional decisions. And, in fact, the defendants did need jobs. But employment was not their only need, and should not have been the only consideration in planning for community rehabilitation or satisfactory community adjustment.

A case illustrating this problem concerned a defendant in jail awaiting trial. He had not been able to make monetary bond and had not been recommended for release by the District of Columbia Bail Agency.<sup>22</sup> The defense attorney requested the Project to get the man a job since counsel believed the judge would release the defendant on personal recognizance if he had employment.

The Project social work assistant who interviewed the defendant believed that the defendant was somewhat unstable and might not be able to maintain himself without incident while awaiting trial and therefore might possibly need some form of psychiatric treatment. As a result, the staff member advised the lawyer that the defendant should have a mental health evaluation, that such an evaluation could be arranged on an out-patient basis in the community, and that the defendant should perhaps be placed in a community-based halfway house where treatment programs and other services he needed were available.

The lawyer informed the social work assistant that he feared that the proposed program was much too involved and that the judge might feel that, if all the indicated measures were necessary for this defendant's needs, he should not be in the community.

Frequently this kind of rationale on the part of counsel resulted in the defendant's obtaining an incomplete Project evaluation and therefore an incomplete and inadequate service. With only the lawyer attempting to make the diagnosis of the defendant's needs, the defendant was thereby often deprived of needed and appropriate services. Because of late referral, the Project's options for comprehensive service were limited. As a result, the attorney was not able to make maximum use of the Project's social service investigation and assistance.

#### IV

##### THE DEFENDANT STUDY AND THE SENTENCING STAGE

###### A. *The Nature of the Defendant Study*

Basic to the Project servicing was the preparation of the defendant studies for use by defense counsel at the sentencing hearings. Defendant studies were usually composed of eight sections: (1) defendant's present situation and criminal involvement; (2) his prior record; (3) a descrip-

<sup>22</sup> Created by the District of Columbia Bail Agency Act, D.C. CODE ANN. §§ 23-901 to -909 (1967).

tion and assessment of the defendant; (4) the defendant's family history; (5) his education and training; (6) his employment record; (7) community resources appropriate for the defendant, if any; and (8) a summary of the report, as well as the Project recommendations and the proposed rehabilitation plan.

In preparing a defendant study, the Project staff member conducted an extensive social background investigation of the offender, including interviews with the offender, members of his family, and other significant persons in his life. Letters of reference and special psychological and psychiatric evaluations were also obtained when necessary. Information from the investigation was used by the social work assistants to develop a community-based rehabilitation program for the offender in the event of probation, or to suggest an appropriate penal institution providing specified educational, vocational, or treatment facilities in the event of incarceration.

Recommendations made to the court for disposition and rehabilitative programming were based on several considerations, the most frequent being the defendant's history and background, his academic or vocational training, and his employment situation. His family background and support, as well as his degree of maturity were less decisive. Current treatment for mental disorders and drug addiction occasionally served as bases for Project recommendations.

A typical defendant study with an accompanying memorandum by counsel follows:

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	Criminal No. 000-66
	)	
	)	
JOHN DOE, JR.	)	

PRESENTENCE REPORT MEMORANDUM

Attached to this summary is a report from the Legal Aid Agency's Offender Rehabilitation Project concerning John Doe, Jr. In the view of counsel, the following factors are of paramount significance.

All reports indicate that Mr. Doe is a rather dependent young man. D.C. General Hospital described him as a "very lonesome, dependent person who is in need of much support." The attached report confirms this view.

His addiction began in 1959. His four petit larceny convictions,

between 1960 and 1962, were related to drug use. His 1964 commitment to Lexington was a failure, inasmuch as he relapsed within several months of his release. This is the nearly inevitable result of a system which returns the addict to his former environment without continuing contact with supportive individuals or agencies.

Since his release on bond in the spring of 1966, Mr. Doe has not used narcotics. This is attributable to two factors: Miss Mary Smith, an intelligent, understanding young woman who will marry Mr. Doe if he is placed on probation, has provided incentive and support. Mr. Doe has recently opened a savings account to provide for his future family. He maintains two jobs at present. Second, the Georgetown Pre-Trial Clinic has worked with Mr. Doe since the summer of 1966 and will continue to do so if he is placed on probation.

In conclusion, it seems clear that institutionalization at this time would be not only unnecessary, but also disastrous to the very real prospects for Mr. Doe's rehabilitation. Because of society's failure to come to grips with this man's needs between 1959 and 1965, he is now presented with his first realistic chance for improvement and rehabilitation. Yet, in view of his record, he well realizes it may be his last chance as well. It is therefore urged that imposition or execution of sentence be suspended.

Respectfully submitted,

/s/ \_\_\_\_\_,

Richard L. Roe

601 Indiana Avenue, N.W.

Washington, D.C. 20004

Counsel for the Defendant

#### DEFENDANT STUDY

Name of Defendant:

John Doe, Jr.

*Present Situation:*

Mr. Doe was arrested in the autumn of 1965 for violation of narcotics laws. In a two-count indictment, he was charged with violation of 26 U.S.C. § 4724(c) (possession of narcotics) and 21 U.S.C. § 174 (facilitating concealment and sale of narcotics). Under court order, he was sent to D.C. General Hospital for a thirty-day mental observation. Having been found competent to stand trial, he was returned to the District Jail, where he remained until he was released on bond. Three months later he entered a plea of guilty to count one of the indictment. He has remained in the community on bond pending sentencing.

*Prior Record:*

Juvenile: There is no available record of any juvenile offenses.

Adult: Prior to the instant offense, Mr. Doe had had no felony convictions.

He has been arrested three times for disorderly conduct; each time he elected to forfeit collateral.

He has been convicted four times of petit larceny and received the following sentences: 1960, 180 days, suspended sentence, one year probation; 1961, 120 days; 1962, 180 days; 1963, 360 days. In 1964 he was sentenced to one year imprisonment for violation of the Uniform Narcotics Act and sent to the U.S. Public Health Hospital in Lexington, Kentucky.

Mr. Doe said that he began using narcotics in 1958, after his mother died, and was addicted by 1959. It would not appear that he has been able to abstain from drugs out of a prison setting until he was released on bond in the spring of 1966. His most recent period of uninterrupted narcotics addiction was from May 1965, shortly after his release from Lexington, until his arrest for the instant offense.

Immediately prior to that time, he was examined by psychiatrists at D.C. General. It was felt that he is "a very lonesome, dependent person who is in need of much support," and that he is "suffering from Drug Addiction, heroin, with underlying personality disorder, passive aggressive type."

#### *Family History:*

Mr. Doe was born to Mary and John Doe, Sr. on August 17, 1941. Reports indicate that there were three other children born to this relationship: a sister, age 27; a brother, age 21; and a sister, age 19.

John Doe's mother is deceased. His father, who was convicted of second degree murder for her death in 1958, is presently on parole and resides in Cleveland, Ohio. From all evidence the Doe children were exposed to a rather turbulent home environment marked by heavy-drinking parents who frequently inflicted violence upon each other.

Apparently, the total early developmental family situation was a very unstable one as evidenced by their frequent moving from neighborhood to neighborhood. This, of course, meant frequent changes in schools; often during school years.

Mr. Doe has seen his father since the latter's release to the community and, at least intellectually, is able to accept him and the fact that the father is responsible for the mother's death. However, the relationship is not a close one.

Although Mr. Doe sees his siblings from time to time, and also sees his aunt occasionally, these relationships are not of a supportive nature for him.

No doubt his closest community contact is Miss Mary Smith, his girlfriend, to whom he plans to be married after disposition of the present charges against him. Miss Smith, a government employee, has presented herself as a stabilizing force for Mr. Doe and has given him some incentive that may increase to the extent that Mr. Doe will develop motivation on his own with less support than he now receives from her and other helping sources:

In the summer and early fall of 1966, Mr. Doe attended

sessions at the Georgetown Pre-Trial Clinic for psychiatric observations and help. Miss Smith has encouraged him to attend these clinic sessions and has taken an active part herself.

#### *Education and Training:*

Mr. Doe remained in the D.C. Public School System until 1958, when he was enrolled in the tenth grade. Records indicated that he left school at that time to enlist in the Army. Mr. Doe, however, explained that he left school because he had no goals and felt that he was not learning. He said also that his mother had died shortly before that time, and he felt everything to be against him.

Records indicate that while in school he was a fairly average student (C's and B's) and that, although he had the ability to succeed, he lacked sufficient motivation.

#### *Employment:*

Since 1958, when Mr. Doe became a school drop-out, he has had limited contact with the labor force. He has worked as a janitor, at a drugstore as a porter-delivery man, and as a laborer in a company. He did not keep any of these jobs longer than nine months. This worker is led to believe that Mr. Doe's undisciplined youth, his use of drugs and his prior commitments have all played significant parts in his rather poor employment record in the past.

However, since Mr. Doe's release on personal recognizance he has taken three jobs, two of which he still has. First he worked for a few weeks at a company. This job was terminated by a lack of contract work for the company's services. Next he took a job working for a company as a part-time janitor. On this job he earns \$45.00 weekly. In addition, through the assistance of the Offender Rehabilitation Project, he has secured another job with a janitorial service at \$60.00 weekly. Recently, Mr. Doe has opened a savings account with a local bank and is making regular weekly deposits from his earnings.

The longer range plan for Mr. Doe's employment situation is vocational training. He has already been tested under U.S.E.S. Vocational Training Program. However, the vocational counselor reports that he did not do as well as was expected. She and this worker agree that Mr. Doe experienced "test fright," and that this contributed to his failure. He still remains interested in securing training and arrangements are being made to retest him.

#### *Summary, Recommendation and Plan:*

This twenty-five-year-old youth is still a somewhat dependent, unsure individual who experiences anxiety at slight provocation. However, he has shown the ability to accept help by keeping clinic appointments, finding and maintaining employment, avoiding the use of drugs while in the community (as far as can be determined), and by taking an interested and active part in his own rehabilitation. The term rehabilitation is being used in this context because Mr. Doe has actually begun the process.

His girlfriend, to whom he plans to be married if probation is granted, has presented another positive factor in Mr. Doe's rehabilitation effort. She has attended clinic sessions with him and has encouraged him in other constructive efforts. In a very large measure she meets his needs for family life and is a stabilizing force on whom he can rely when he is threatened by anxiety-inducing situations.

At this time, Mr. Doe presents himself as being a good probation risk. It is recommended that he be continued in supportive therapy. The Georgetown Pre-Trial Clinic has offered to be of assistance to Mr. Doe in obtaining psychotherapy or other treatment which might be of benefit to him, either by providing such services at the Clinic or by referring him to an appropriate community facility.

It is the plan of the Offender Rehabilitation Project to continue its efforts to involve Mr. Doe in a vocational training program if he remains in the community. The vocational counselor certainly remains interested in him and his potential. And Mr. Doe is at this time motivated and interested.

John R. Murray  
Social Work Assistant  
Offender Rehabilitation Project

Of the eighty-eight defendants for whom the Project prepared defendant studies, fifty-nine (sixty-seven percent) were recommended for probation either alone or in the alternative, eighteen (twenty percent) were recommended for sentencing under the Federal Youth Corrections Act,<sup>23</sup> either alone or in the alternative, and the rest were recommended for a variety of other dispositions, as set forth in the following table:

PROJECT RECOMMENDATIONS IN 88 DEFENDANT STUDIES

Recommendation	Number	Percentage of Total
Probation	(59)	(67)
Alone	45	51
or YCA*	6	7
or Incarceration	7	8
or Juvenile Inst.	1	1
YCA*	12	14
Incarceration	8	9
Juvenile Inst.	1	1
Split Sentence	2	2
Work Release	4	5
No Recommendation	2	2
<b>TOTAL</b>	<u>88</u>	<u>100</u>

\* Federal Youth Corrections Act, 18 U.S.C. §§ 5005-26 (1964).

<sup>23</sup> 18 U.S.C. §§ 5005-26 (1964).



As the bases for its recommendations, the Project proposed in the defendant studies a number of community-based rehabilitation plans which the defendants would follow if probation were ordered by the sentencing court. Of these plans, sixty percent involved vocational training and job placement, thirty-two percent included some type of medical assistance, eighteen percent involved some type of community supervision over and above the routine probation supervision, and the rest involved a variety of other proposed programs of rehabilitation.

COMMUNITY-BASED REHABILITATION PLANS PROPOSED IN 88 DEFENDANT STUDIES

Proposed Plans	Number	Percentage of Total <sup>a</sup>
Employment	(53)	(60)
Vocational Training	34 <sup>b</sup>	39
Unskilled Job Placement	15	17
Skilled Job Placement	4	5
Medical Assistance	(28)	(32)
Counseling or Psychiatric Therapy	24	27
Treatment for Alcoholism	3	3
Medical Treatment	1	1
Supervision	(16)	(18)
Close Supervision <sup>c</sup>	10	11
Halfway House	6	7
Improve Living Situation or		
Live with Family	12	14
Continue Education	4	5
Child Support	4	5
Miscellaneous	(2)	(2)
Attend Traffic School	1	1
Wife to Work	1	1

<sup>a</sup> Since some defendant studies proposed a combination of rehabilitative plans, these studies are counted more than once. The total for computing the percentage, however, is 88.

<sup>b</sup> Includes one plan of vocational training in a penal institution after which parole was recommended.

<sup>c</sup> "Close Supervision" indicates that the prospective probationer has good potential for community adjustment but still lacks motivation. Initially, therefore, the supervising probation officer observes and follows-up the probationer closely until he is satisfied that the probationer has developed the necessary motivation.

### B. Comparisons of Defendant Studies with Probation Office Presentence Reports

The Project staff had various meetings and conferences with probation officers in the United States District Court for the District of Columbia. In many instances, staff workers and some probation officers worked cooperatively on cases. In several cases, the Project staff and probation office shared information which proved to be of benefit to both the court and the defendant.

On the basis of these contacts, the Project was able to make an informal comparison between the Project's defendant studies and the probation office's presentence reports. Basically, five differences were perceived:

(1) Probation officers did not see defendants as early in the criminal process or as often as did members of the Project staff. Partially for these reasons and because of the relationship of the Project to the defense counsel, the Project staff was frequently able to establish closer relationships with the defendants and may have been more knowledgeable about the defendants as individuals than were the probation officers. Consequently, the Project staff was more apt to use this factor of close personal contact as a basis for dispositional recommendation than was the probation office.

(2) The Project staff spent a larger portion of its time interviewing friends, family members and others within the community who had had contact with the defendant than did the probation officers. As a result, the Project staff was able to develop a degree of insight into the defendant as he functioned in his family unit, with his peers, employers and former teachers, and within the community at large. This insight helped in formulating the rehabilitative plans.

(3) Project workers did not have the benefit of previous presentence reports on defendants with records and rarely had access to other official documents concerning previous court and institutional experiences of the defendants, as did the probation officers.

(4) Rehabilitation plans were rarely, if ever, included in the probation office presentence reports, even when probation was recommended, whereas these plans were the distinctive feature of the defendant studies. The Offender Rehabilitation Project therefore made its recommendations based on the strength of the rehabilitative plan, whereas the probation office made its recommendations based on the strength of its diagnostic conclusions.

(5) The Project staff prepared its defendant studies and developed its rehabilitation plans through the use of community resources and agencies, whereas the probation office rarely, if ever, turned to community-based resources.

### C. *Use of the Defendant Study by Counsel*

All completed studies were submitted by the Project to the defense attorneys. In most instances, the defense attorneys submitted the defendant studies to the sentencing court.<sup>24</sup> When defense counsel de-

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<sup>24</sup> Occasionally the study would be accompanied by a memorandum by the attorney, as indicated in the defendant study set out at pp. 418-22 *supra*.

cided not to submit any defendant study at all; it was primarily because the material disclosed in the study was believed to be more harmful than helpful to the defendant for purposes of disposition. In one case, however, the attorney rewrote the defendant study presumably to present the material on the defendant in a better light. This use of the defendant study involved a potential danger; had the judge relied upon the study and granted probation and thereafter had the defendant violated the terms of his probation, the Project would have been compromised.

Obviously, an essential element for the continued success of the Project is the integrity of the Project's report to the court. Yet apparently overriding the Project itself is the adversary system and the role of the lawyer as a vigorous advocate for his client's cause. It was not a goal of the Project to effect a change of the adversary system of criminal justice; rather the goal was to define a new role for the defense lawyer at the disposition stage within the adversary system.

A cross current, raising serious questions of procedure, was consideration of the ethical standards of the social work staff of the Project. Clearly this staff understood its role to be completely objective and thorough in describing the background of the defendant and his potential qualities for rehabilitative planning. Yet, in the last analysis, the case was in the hands and under the control of the defense lawyer.

The Project arrived at the following resolution of these conflicting ethical problems. Under the adversary system, the defense lawyer surely had no duty to reveal to the court or the prosecutor data harmful to the chances for a disposition favorable to the client. But equally, within the standards of professional ethics, the defense lawyer could not fabricate or distort the material developed by the Project so as to present to the court what would amount to a false defendant study under the guise of the Project's program.

Within these guidelines, the Project determined that, if the lawyer desired to rely on the prestige and reputation of the Project for his presentation to the court on the issue of his client's sentence, he was required to submit the Project's full report, unaltered, except for any stylistic changes he believed were appropriate. On the other hand, if the lawyer believed that the Project's defendant study contained information harmful to his client, he was not obligated to submit it. In such a case, his appeal to the court on behalf of his client during the sentencing stage of the process would be in the form of his own advocacy without any reliance or reference to the Project.

The resultant risk that, when the defendant study was not used, the procedure followed by counsel would serve as a "tip off" to the

court that the Project's evaluation of the defendant was not wholly favorable, was a necessary consequence of the ethical considerations that had to control the operation of the Project. Furthermore, an unfavorable report was not always rejected by the defense lawyer for use in court. Good strategy sometimes dictated putting the harmful facts squarely before the court and taking advantage of some specific rehabilitative program suggested by the Project staff despite the individual factors in the defendant's background that may not have been favorable.

#### D. *The Sentencing Hearing and Disposition*

Although the social work assistant who prepared a study did not normally take an active part in the actual sentencing hearing, he was usually present at the hearing so that the defense counsel or judge could confer with him if necessary, so that the defendant would be reassured of the Project's continued interest and support, and so that the social work assistant could learn, if possible, to what extent the defendant study was being used by counsel and the sentencing court. Of thirty-three cases in which social work assistants attended the sentencing hearing, the defense counsel, in presenting his oral argument, relied entirely on the information in the defendant study in twenty-two cases (sixty-seven percent), and relied partially on such information in eight cases (twenty-four percent).<sup>25</sup>

Frequently, judges indicated their use of the defendant studies by their remarks at sentencing. In several instances, judges raised specific questions concerning the recommendations or accompanying plans. In these cases, the judges requested the respective social work assistants to respond to questions. In two cases, the judge indicated that sentencing would be postponed until further consideration could be given to the defendant study and a probation report which had made different recommendations.

Of the eighty-eight defendant studies, more than half (forty-five) recommended probation only. Of these cases, more than three-quarters of the defendants involved (thirty-five) received probation.<sup>26</sup> Of the ten remaining, six were incarcerated, three were sentenced under the Youth Corrections Act, and one had already been acquitted.

In fourteen other cases, although probation was the primary recommendation, alternative dispositions including the Youth Corrections Act, incarceration, and commitment to a juvenile institution were rec-

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<sup>25</sup> The one attorney who wrote his own report relied on his own information, and the results in two cases are unknown.

<sup>26</sup> A check of the present status of the first 25 defendants who received probation

ommended. Of these cases, more than one-quarter (four) received probation and more than half (eight) received the alternative disposition recommended.

In twelve cases, the Project recommended sentencing under the Youth Corrections Act, and two-thirds (eight) were so sentenced. In eighteen cases, the Project recommended either sentencing under the Youth Corrections Act or probation, and again two-thirds (twelve) received either disposition.

The Project also recommended several innovative dispositions, including two split sentences and four work-release dispositions. The court, however, agreed to the recommendation in only one such case.

## V

### COMMUNITY-BASED REHABILITATION PROGRAMS AND SERVICES

#### A. *Community Resource Development*

The Project found that a defendant's legal problems were often closely interwoven with complex psychological and socio-economic problems. The defendant study helped the defendant and his family secure not only equitable dispositions from the court, but, to the extent possible, it also helped them obtain rehabilitation assistance from community resources.

The Project effort during the year showed that without the deep involvement of community resources, rehabilitation could not be realistically effected. The development of community-based rehabilitation programs depended heavily on close cooperation and coordination between the Project and the various community agencies.

An assessment of these community agencies and the services they provided was an essential part of the Project program. Unfortunately, during the early stages of the Project, community resource development was not given top priority because of the Project's need to train the social work assistants; to develop close, cooperative relationships with the defense attorneys; to gain acceptance by the court for the

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showed that 17 were still in the community (68%), six were back into the criminal justice system (24%), one had died, and the status of the last was unknown. Of the 17 in the community, seven are known to be following all or part of the rehabilitation plan, two are known not to be following the plan, one continued service in the Navy, and one had his probation supervision transferred to another federal district; as for the remaining six, it is unknown whether they continued to follow the rehabilitation plan. With respect to the six back in the system, one had his probation revoked in another jurisdiction after he was convicted of another offense, one was convicted for driving under the influence of alcohol, and the remaining four were sentenced to jail for new offenses, two for robbery, one for forgery and one for carnal knowledge.

Project; and to develop program procedures. As a result, the Project may not have used some community services at all or may not have used them as effectively as it could have. Instead the Project developed certain services and resources on its own—especially in the employment area—which may have duplicated some services already existing in the community.

Ultimately, the Project sent out a questionnaire to 154 community agencies, including local government agencies, poverty-program organizations and social welfare groups, selected on the basis of their apparent potential for rendering service to the indigent defendant and his family. The questionnaire was primarily designed to gather data on what was available in the community to meet the needs of the offender and his family; on who were the key contact persons within the agencies; on what were the agencies' referral and intake procedures; and on what proportion of the offender population the community social services agencies could absorb. Responses were received from 128 agencies (eighty-three percent). The following table analyzes these responses:

TYPES OF SERVICES PROVIDED BY COMMUNITY AGENCIES  
RESPONDING TO THE PROJECT QUESTIONNAIRE

Type of Service	Agencies Providing Specific Services for D.C. Residents	Agencies Providing Specific Services for Offenders	
		Number	Percent
Medical Assistance	(29)	4	14
Psychiatric Treatment	12 <sup>a</sup>	—	—
Medical Treatment or Diagnosis	17	—	—
Counseling Services	23	9	39
Employment and Training	21	7	33
Emergency Housing, Food, Clothing, Financial Assist.	14	5	36
Educational Programs and Related Projects	13	1	8
Services for Children	10	—	—
Institutions and Detention Centers	6	4 <sup>b</sup>	67
Legal Services	5	4	80
Halfway Houses	4	3 <sup>b</sup>	75
Miscellaneous	3	—	—
TOTAL	128	37	29

<sup>a</sup> One project is now terminated and one is in the process of developing a program for offenders.

<sup>b</sup> These agencies provide services only for their own population.

Thus, only twenty-nine percent of the community agencies indicated that they had special programs for offenders or that their program was designed to meet the needs of the offender as a special group. Ranking lowest in the services offered were children's services, educational programs and medical assistance. Despite the fact that more than one-third of the agencies providing emergency housing, food, clothing and financial assistance offer their services to offenders, most of these agencies are private or church social service programs with limited budgets and therefore minimal services.

The Project staff's procedure in securing community-based rehabilitation services depended on the nature of the problem presented. For the most part, the Project attempted to serve as a middleman between the offender and the community services. The staff made a concerted effort to establish contacts with key counseling personnel in employment and various other community agencies in order to facilitate referrals to them. The staff helped expedite the work of these community agencies by presenting general background information and possible referral suggestions before the counseling personnel interviewed the defendant. Communication between the Project staff and the community agency continued even after the referral was completed in order to provide continuity of service for the defendant. Periodic meetings were also arranged for mutual orientation to each other's facilities and for discussion of specific problems such as referral procedures, treatment limitations, and attitudes towards the indigent offender.

Nevertheless, many problems of community resource development and coordination were encountered. Among the most important were: (1) A breakdown in communications between the Project and the agency to whom a defendant was referred; (2) a lack of interest on the part of some agencies to offer their services to offenders; (3) long waiting periods for evaluation or testing of defendants before they were accepted in agency programs; (4) stringent eligibility requirements and the inability or refusal of some agencies to accept offenders while they were still in the criminal process; and (5) a lack of motivation on the part of some defendants to involve themselves in the agency programs.

During the year, the Project attempted to alleviate these problems as much as possible by making an appointment by telephone with a specified worker at a given agency in order that the defendant would know whom he was to see and when, by sending a letter of introduction with the defendant addressed to the worker spoken to by telephone, in cases where definite appointments could not be arranged, by

making occasional follow-up inquiries to the agency about the defendant, by requesting the defendant to call the Project staff worker occasionally to advise the worker of the defendant's situation, and by making frequent visits to and contacts with agencies to inquire about their problems and to inform them about the Offender Rehabilitation Project.

Unfortunately, even these techniques did not completely resolve the problems of community resources development and coordination. Despite these problems, however, the Project did a considerable amount of servicing and rehabilitative programming for the offenders.

### B. *Servicing the Defendants*

The Project made 359 requests in the Washington community for assistance to defendants or their families and had 263 of these requests (seventy-three percent) filled.

PROJECT SERVICES REQUESTED AND FILLED BY COMMUNITY AGENCIES

Services Requested	Requests to Agencies	Requests Filled by Agencies	
		Number	Percent
Employment	140	90	64
Financial Assistance (Loans) <sup>a</sup>	70	35	50
Medical Assistance	(57)	(51)	(89)
Psychiatric Diagnosis	25	21	84
Psychiatric Treatment	20	18	90
Medical Treatment	12	12	100
Housing	21	17	81
Training Programs	19	18	95
Legal Assistance (Civil)	15	15	100
Food, Clothing, Furniture, Tools	10	10	100
Miscellaneous	27	27	100
<b>TOTAL</b>	<b>359<sup>b</sup></b>	<b>263</b>	<b>73</b>

<sup>a</sup> The amount of the loans totalled \$5,603.29.

<sup>b</sup> The project also helped attorneys in 30 cases to obtain release of clients on bond or personal recognizance. These cases often included the furnishing of one or several other services.

Employment was the constant demand. Unfortunately, only about two-thirds of the requests could be filled in this area. Financial assistance had even lower rates of success—only one-half of the requests were filled. Other service problems arose in the areas of training pro-



grams and psychiatric diagnosis and treatment despite the apparent success the Project had in meeting service requests in these areas.

### 1. *Employment*

Although the Project's intention was to be a middleman between the defendant and the community services, in certain instances the Project ended up being the actual placement agency for the defendants. This was especially true in the employment area. Only forty-three defendants—a little less than half—who obtained employment did so through employment agencies contacted by the Project; the remaining forty-seven obtained employment directly from building contractors, service stations, dry cleaners, a local newspaper, carwash establishments, hospitals and other such private businesses and enterprises.

These private employment sources were developed in four ways: (1) Prospective employers learned of the Project through newspaper, radio and television publicity and informed the Project staff that they had job openings they were willing to fill with offenders on an experimental basis; (2) friends or professionals not directly involved with the offender population informed the Project staff of interested prospective employers; (3) former Project clients informed the staff of openings on their jobs and elsewhere that they knew about; and (4) former employers of the defendants agreed to rehire them.

The majority of the jobs made available by private employers were in the low-paying service worker and laborer categories, and an additional twenty-one percent were in the operator category which also usually included low-paying jobs.<sup>27</sup> In addition, many of the jobs offered the offenders had long or inconvenient working hours, poor working conditions, and no fringe benefits. Often, the offenders traveled long distances into the suburbs where the jobs were located. As a result, the offender incurred high travel costs and long traveling time—a low return for the effort spent.

The Project's experience with offender job placements exposed some other highly significant problems as well. The most obvious was that employers were not willing to employ all types of offenders. Alcoholics, drug users and sex offenders were usually more difficult to place than those convicted of even more serious offenses against a person or property. Employers were also not inclined to employ defendants who had to make frequent court appearances and thereby interrupt work continuity, defendants whose cases had not as yet been decided, or those

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<sup>27</sup> Categories based on United States Bureau of the Census criteria.

who might be committed after being on the job for only a short period of time.

At the same time, offenders often did not expect that they would actually get employment. They would therefore go through the motions of application and interviewing with pessimism. This attitude further depressed their already limited employment potential resulting from their lack of education and skills. A major roadblock was the interviewing and placement process itself. For the defendant to be interviewed by a Project staff member, who referred the defendant to an employment counselor, who in turn interviewed him and sent him to a prospective employer, who often did not hire him, proved too arduous for many defendants to go through more than once or twice.

Another problem with job placement was that one or two failures on the part of the offenders with an employer tended to "dry up" that employment resource. As a result, Project staff workers refrained from sending otherwise qualified prospective employees to certain jobs for fear that for one reason or another the offender would not be a reliable employee and might therefore lose that resource for the Project. Instead, the staff worker might refer the defendant to an employment agency for placement. Unfortunately, the employment agencies also had similar experiences with offenders and prospective employers, and would in turn avoid referrals of this type.

## 2. *Training Programs*

Although ninety-five percent of all requests for training programs were filled, only nineteen were in fact requested because of the general unavailability of training programs in the Washington area. Moreover, of the defendants who were placed in training programs during the year, few remained while on probation unless they had begun the training program while released on bail, bond or personal recognizance.

There were several reasons for this development. In most training programs, there was inadequate provision for maintenance during the course of the program. Many programs were reluctant to test and evaluate a defendant who was not yet on probation. Few of the training programs actually taught marketable skills. Moreover, both lawyers and defendants appeared more concerned about obtaining immediate employment than obtaining better future employment through any of the vocational training programs. Apparently they seemed to think—perhaps justifiably so—that the criminal justice system virtually dictated the need for the defendant to obtain employment "of any kind"

in order to qualify for bail or probation, even though the job might not have been satisfactory in terms of providing adequate income.

### 3. *Financial Assistance*

Many of the defendants needed financial assistance to get to work and to provide lunches until they could receive their first paycheck; others needed bus fare to get to job interviews or to sites where testing was done; still another group needed money to purchase tools, work clothes and the like. The Project was usually unable to find any government resource to help meet these needs.

Too frequently, public assistance programs—even those recently implemented and designed to bridge gaps not previously provided for—did not meet the needs of the offenders' families. Many of the government agencies and programs that did provide economic assistance along with their training programs tended to exclude offenders.

### 4. *Psychiatric Diagnosis and Treatment*

The Project was able to secure psychiatric diagnostic services and community-based psychiatric treatment for over eighty percent of the requests.<sup>28</sup> All of the defendants but one were in the community on bond before the diagnostic evaluations were made.

Defense counsel were extremely hesitant to include in any motion for pretrial release of a client on personal recognizance a provision that the defendant be released in order to undergo a diagnostic evaluation for fear that the court would confine the defendant in some diagnostic facility for sixty days for mental examination. Defense counsel also expressed some reservation that such a request on their part could result in revealing to the prosecutor information that might not be in the defendant's best interest. Defense counsel therefore limited the number of defendants they allowed to be examined. Rarely did any of the defendants receive diagnostic evaluation unless their cases involved issues of competency and insanity, and rarely did the defendants receive psychiatric treatment unless the cases started out originally as competency or insanity inquiries or involved alcoholism or the use of

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<sup>28</sup> Unfortunately, statistical results relating to psychiatric diagnosis and treatment do not give a true indication of the facilities for diagnosis and treatment available in the Washington community. The Offender Rehabilitation Project was in the advantageous position of being a sister project of the Institute of Criminal Law and Procedure's Pre-Trial Clinic. Over 90% of the Project's clients in this category were given psychiatric diagnostic evaluations by the Clinic, and over 60% of the defendants in this category obtained psychiatric treatment through the Pre-Trial Clinic's contacts with public and private treatment centers.

drugs. In this regard, treatment facilities were more receptive to accepting the defendants after they had undergone clinical diagnosis.

Finding community treatment facilities for the indigent—especially for the convicted offender—posed a serious problem for the Project, and finding facilities for the accused still within the criminal justice system posed even greater problems. Treatment centers rarely wanted to process and involve the accused in treatment programs, even though diagnostic evaluations frequently indicated that there was immediate need for such treatment and even though in some cases community treatment would have negated the need for correctional institutionalization.

At the same time, the judges were reluctant to grant probation to offenders who were not already undergoing treatment primarily for three reasons: (1) There was no evidence to show that the defendant would avail himself of treatment; (2) there was no evidence that the defendant would respond to treatment; or (3) some judges had unfortunate experiences with agencies who had reneged on promises to accept defendants for treatment once probation was granted.

In most of the cases in which the defendants did not avail themselves of treatment after probation had been granted, there was no condition in the probation order that the offender continue the treatment. When a defendant's community adjustment would begin to deteriorate, the probation officer would often feel hostile because he had been assigned a probationer for whom he himself had recommended incarceration. Moreover, the judge in these cases frequently felt that either the Project or the treatment center or both had reneged on their commitments.

In other cases, poor communication, a shortage of treatment staff, a long waiting list, poor coordination, or agency administrative interests resulted in the probationers not receiving treatment despite the agency's undertaking to do so. In one case, for example, a chronic alcoholic was charged with assault and attempted robbery. The clinical diagnosis indicated that the criminal offense was a product of his alcoholism. The judge agreed to grant probation on the following conditions: (1) That he would receive psychiatric treatment in a local mental health clinic; (2) that he would be maintained and supervised in a local halfway house; and (3) that he would be employed by a local employer who had already agreed to accept the defendant.

The problem in the case arose when the treatment center required the probationer to keep clinic appointments twice a week on Tuesday and Thursday between 10:30 a.m. and noon, the probation officer re-

quired the probationer to report to his office on Monday mornings, between 8:30 a.m. and noon, the employer indicated that these commitments were too demanding on the defendant's time and therefore he could not use him, and the halfway house required that all residents be at group meetings on Thursdays at 8:00 p.m., that no resident work night hours, and that all residents pay fifteen dollars per week for maintenance. Although the Project made an effort to negotiate with all four for a more flexible schedule, they refused to compromise. After three weeks, the offender began to avoid all supervision.

## VI

### THE OFFENDER REHABILITATION PROJECT: ASSESSMENT AND FUTURE PROSPECTS

Despite the many problems the Institute of Criminal Law and Procedure had in attempting to develop a viable Offender Rehabilitation Project, the Institute clearly demonstrated that an agency offering to defense counsel "a number of auxiliary services resembling those available to a modern and well-equipped probation office,"<sup>29</sup> could be of considerable help in assisting defense counsel to play a new and vital role at sentencing, in assisting the judge to arrive at a just sentencing disposition, and in assisting the defendant to obtain needed rehabilitative services.

The Institute's initial failure to recognize the need for early referral of the defendants to the Project afforded a valuable lesson in rehabilitative programming. Early referral proved to be essential for preparation of adequate defendant studies and for helping to alleviate the social and economic impact of arrest and of removal of the head of the household from the family group. As a result, one of the main features of the Project now is that it attempts to work with the accused immediately after he is assigned counsel and it continues to service him as long as possible after disposition of the case.

Another valuable lesson learned from the Project was that, without close cooperation between the Project staff and community agencies, or in other words, without the deep involvement of community resources in the rehabilitation plans and programs for the offenders, the rehabilitative services cannot be very effective. In this area also, the Project is attempting to develop better lines of communication with the community.

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<sup>29</sup> NATIONAL REPORT, *supra* note 6, at 151.

Following completion of the Institute's demonstration project, the Offender Rehabilitation Project received a substantial two-year grant from the Office of Economic Opportunity (OEO) to operate directly under the Legal Aid Agency for the District of Columbia and to extend its operations in three directions: (1) It is now servicing defendants in the District of Columbia's lower criminal court—the Court of General Sessions—as well as in the United States District Court; (2) it is now operating at the precharge and plea-negotiation stages as well as at the sentencing stage; and (3) its staff has been expanded to include a director and two other social workers, a part-time psychiatrist, a part-time psychologist, eight social work assistants, two second-year graduate social work students, three law students and six indigenous "rehabilitative aides," some of whom are ex-offenders.

At the same time, the Institute of Criminal Law and Procedure received a grant from the Office of Law Enforcement Assistance (OLEA) of the United States Department of Justice, with some supplementary financing from OEO, in order to conduct a comprehensive program of research and evaluation of the Offender Rehabilitation Project.

The research staff of the Evaluation Program is now in the midst of measuring the Project's functions against its own service goals of ascertaining the defendant's needs and of providing community-based rehabilitative programming. It also is measuring the impact of the Project on the criminal justice system in providing information about and proposed alternative dispositions for the defendants involved, and is looking for indications of long-range change in the system. The research staff will also attempt to determine whether the Project should be expanded into a regular service provided by the Legal Aid Agency and by other public defender systems throughout the country, whether the Project's services should be extended to all defendants, regardless of indigence and regardless of whether the attorney is appointed or retained, and whether services provided by the Project could and should be provided by the court's probation office or by other agencies either in a complementary manner or as a possible alternative.<sup>30</sup>

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<sup>30</sup> For a discussion of the new Project and evaluation program, see Medalie, *supra* note 10.