Fair Treatment for the Indigent: The Manhattan Bail Project

There are many penalties imposed upon an accused person who is detained in jail because he is too poor to post bail, and of them all perhaps the most unjust are two that are still not widely known: the detainee is more apt to be convicted than if he were free on bail; and, if convicted, he is more apt to receive a tougher sentence.

I. Vera takes action

The need for reform in this inherited system of combined rationality and injustice had long been recognized, but action had been rare.

[In 1961,] Vera’s investigators set out to learn everything possible about bail practices and about other studies that had been undertaken on this subject. The findings... were eye-opening:

- bail bonds were almost always required by the judges, even though the law allowed other alternatives such as cash deposits or outright release for defendants who could be trusted to return for trial;
- bail was set arbitrarily, without regard to individual cases, and bail amounts tended to be standardized according to type of offense, not according to the trustworthiness of the individual;
- nearly one in three unsentenced detainees in a random sample in Chicago could have been released safely on their promise to appear in court later;
- nearly one in five detainees had pathological problems such as alcoholism, drug addiction, epilepsy, or mental retardation or illness, which would have been better handled in a medical treatment facility;
- bondsmen were crucially important in the bail-setting process and often had collusive arrangements with police, attorneys, and organized crime;
- the relatively high detention rate was extremely costly to the taxing public, which of course had to meet the cost of housing and feeding all detainees;
- there was a disturbing correlation between the fact that an individual was detained and the fact that he later was convicted and received a severe sentence.

II. Release on recognizance

Real reform was indeed possible, and approaches to it had been suggested in the past.

This was the idea of encouraging judges to release far more accused persons on their honor pending trial, and providing the judges with verified information about the accused on which such releases could be based. It was an obvious, but at that time daring idea: find out who can be trusted, and trust them to appear for trial.

What was needed was a carefully designed project that would open the way for adoption of new procedures—procedures that would circumvent the bail bond industry, develop information about defendants which would enable the courts to grant release to good risks, and, most of all, begin providing the indigent accused with the fairness that the American system of rights and liberties promised him.

A project based on these concepts quickly took form:

1. Indigent defendants awaiting arraignment in Manhattan’s criminal courts would be questioned by Vera staff interviewers to determine how deep their community roots were and thus whether they could be trusted to return for trial.
2. The test of indigency [sic] would be representation by a Legal Aid lawyer.
3. Questions would develop information about the defendant’s length of residence in the city, his family ties, and his employment situation.
4. Responses of the defendant would be verified immediately in personal or telephone interviews with family, friends, and employers.
5. When verified information indicated that an individual was trustworthy and could be depended on to return for trial, the Vera staff member would appear at arraignment and recommend to the judge that the accused be released on his own recognizance (ROR or pretrial parole) pending trial.

III. A demonstration project is set up

It was anticipated that such a simple but radical change in generally accepted procedures would meet opposition from those accustomed to the old ways or fearful of the
new, and so the entire project was devised as a demonstration—an experiment to see whether people would return for trial if released without bail and, in general, how their cases compared with the cases of those not granted release as well as those released on bail.

If the experiment validated the premise that defendants with verifiable community ties would be released on their own recognizance far more often than anyone suggested, then pressure for widespread adoption of the idea would be hard to resist.

The experiment was scheduled to begin in the fall of 1961 in the arraignment part of the Manhattan Magistrate’s Felony Court, one year prior to its merger with the Court of Special Sessions. Evening students from the School of Law at New York University were recruited as Vera staff interviewers and received a period of training during which they learned how the arraignment court functioned.

IV. Launching the Manhattan Bail Project

On October 16, 1961, after months of detailed planning, the Manhattan Bail Project began operations. Specifics attending the launching were carefully arranged:

1. No publicity was given the inauguration of the venture, on grounds that it would be most effective as a demonstration to the community if the results could later speak for themselves. Aroused public expectations might also bias the project by conditioning the behavior of its participants.

2. The answers sought through the project were limited and precise:
   a. Would judges release more defendants on their own recognizance if they were given verified information about the defendants than they would without such information?
   b. Would released defendants return for trial at the same rate as those released on bail?
   c. How would the cases of released defendants compare with a control group not recommended for release, both in convictions and in sentencing?

3. A group of research methodologists was persuaded to serve as consultants in designing the study.

4. All magistrates who would be sitting in court during the project were visited personally by Vera staff members prior to its initiation so that they would understand fully what was happening and why.

5. Since a primary function of the project was to demonstrate to the public and to those within the criminal justice system that pretrial parole was a device that could serve the public’s interest as well as the defendant’s, some offenses were excluded at the outset from the experiment. These were homicide, forcible rape, sodomy involving a minor, corrupting the morals of a child, and carnal abuse—crimes that were all thought to be too sensitive and controversial to be associated with a release program; narcotics offenses, because of special medical problems and because of a greater risk of flight; and assault on a police officer, where intervention by Vera might, it was feared, arouse police hostility.

6. Comprehensive follow-up procedures were devised to be sure that released defendants knew when they were expected in court for further appearances in connection with their trials. These procedures included mailed reminders, telephone calls, visits at home or work, and special notifications in the defendant’s language, if he did not speak English.

Vera’s small staff took up quarters in the Manhattan Criminal Court building at 100 Centre Street, and the law students began their interviews in the detention pens in the arraignment court. At first, they were asked to make subjective evaluations of the defendant’s eligibility for pretrial parole after they had verified their community ties. It was discovered, however, that pressures were developing that caused some interviewers to withhold recommendations for release in cases where it was probably justified. To relieve the individual of these pressures and of the personal responsibility that, in part, created them, a weighted system of points was developed and the sole determinant as to whether or not a defendant would be recommended for release without bail was his achieving a point score of five or above. This development of a set of objective criteria on which to base release recommendations proved to be an important innovation.

V. Comparing the experimental and the control groups

During the first year of Bail Project operations, Vera was especially anxious to compare the experiences of those who had been recommended for release with the experiences of the control group, a statistically identical group for which recommendations had not been made to the judges.

It found that 59 per cent of its pretrial parole recommendations were followed by the court and that only 16 percent of the control group was released without bail by the judges acting on their own. Judges were clearly basing their actions on the availability of reliable information about the defendants.

More significantly, 60 per cent of those released pending trial during the first year eventually were acquitted or had their cases dismissed, compared with only 23 per cent of the control group. And only 16 per cent of the released defendants who were convicted were sentenced to prison, where 96 per cent of those convicted in the control group received prison sentences. Unquestionably, detention resulted in a higher rate of convictions and in far more punitive dispositions.

At the end of the second year, the control group was dropped. A sufficient body of evidence had been accumulated and it was no longer necessary to exclude anyone simply for purposes of statistical comparison.
VI. Modifications in project procedures
Further innovations came in the third year of the project. An important one was that the number of offenses that had been excluded for political reasons was sharply reduced to include only homicide and certain narcotics offenses. Also, the indigency requirement was dropped. It was felt that bail costs should not be imposed on a defendant merely because he had funds; the test for those with money, as well as those without, should be the same: will the accused return for trial?

VII. The National Bail Conference
While Vera’s Manhattan Bail Project was changing policy in New York City, it was the National Conference on Bail and Criminal Justice, held in Washington, D.C. in May of 1964, that provided the major impetus to bail reform across the United States. The Conference was sponsored jointly by the Department of Justice and Vera, and brought together for the first time expressly to discuss the bail problem more than 400 judges, prosecutors, defense lawyers, police officials, bondsmen, corrections officers, and interested academicians and government officials.

The extraordinary success of the National Bail Conference could be seen in the great flurry of activity in bail reform that it stimulated over the following months, culminating in enactment of the Bail Reform Act of 1966, signed into law by President Lyndon B. Johnson on June 22, 1966—the first change in federal bail law since the Judiciary Act of 1789. Spurred on by the conference addresses of Chief Justice Earl Warren, Attorney General Robert Kennedy, and Bernard Botein, then a Presiding Justice of the Appellate Division of the New York State Supreme Court, as well as by the promotional efforts of an Executive Board set up by the Conference for the purpose, state and regional groups in all parts of the country convened to discuss what might be done about bail reform in their own jurisdictions. By the spring of 1965, 44 counties and cities were reported to be operating pretrial release projects, and 35 more had such projects in planning stages. In addition, 21 professional groups of judges, lawyers, attorneys general, and probation officers had scheduled special conferences in various states on problems of bail.

VIII. The Bail Reform Act of 1966
Passage by Congress a year later of the Bail Reform Act of 1966 seemed a fitting climax to the effort begun just five years earlier. The Act stipulated that persons should not be detained needlessly in the federal courts to face trial, to testify, or to await an appeal; that release should be granted in non-capital cases where there is reasonable assurance the individual will reappear when required; that the courts should make use of a variety of release options, depending on the circumstances (for example, release in custody of a third party, or with cash deposit, or bail, or with restricted movements); and that information should be developed about the individual on which intelligent selection of alternatives could be based. The Act guaranteed the right to judicial review of release conditions, and also the right to appeal. President Johnson referred to the Act as “a major development in our system of criminal justice.”

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