FINAL REPORT

Award Number NI-055
Bernalillo County Release on Recognizance Program
Albuquerque, New Mexico

HISTORY AND DESCRIPTION OF PROGRAM

The Release on Recognizance Program in Bernalillo County, New Mexico was founded by the University of New Mexico Law School students and Prof. Frank Dewey in fall, 1963. It has always been run solely by law students, all volunteers except one administrator, who is paid $30 a week during the school year, (figured on a basis of $2/hour). The original plan was to pay all students working in the program, but sufficient funds were never found. The program was given free space, and was dependent on other offices for office supplies. Our beginning was very different from that of the Vera Program, which began with a $115,000 Ford Foundation grant.

The summer of 1967 was the first summer the program operated. John Stanton, a law student, ex-Marine, and ex-vice squad cop, took over as administrator that summer and continued in that post until June 1969. He resumed the post for his last semester of law school, fall 1969. During the summers of 1967 and 1968, he was paid for 40 hours work, at $2/hour. The summer of 1969, the present administrator, Noelle L'Hommedieu, a law student, ran the program. She was paid for 20 hours work each week; near the end of the summer, the program funds were cut to pay for only 15 hours work each week. The hours for which the administrator is paid are stressed. The administrator nearly always exceeds that number of hours in work. Since the school leaves the administrator free to run the program as his best judgment dictates, each administrator feels a personal responsibility to run it well, and thus will work overtime without pay. The program is the complete responsibility of the administrator.

The officials and attorneys we deal with never seem to realize the limited amount of time for which the administrator is paid to work. Since all other help is volunteer, the administrator is the only person these people deal with. He is the only one the defense attorneys and clients' families come to when they want someone out of jail. He gets blamed when a lawyer does not think his client's case is being handled fast enough. He is the only one who gets called down by the judge when a release does not show up in court. He is the person everyone thinks of when they think about the program. As a result, it becomes a matter of personal pride, as well as dedication to the purpose of the program, to put in as much time as possible, not only to serve candidates for release, but also to satisfy those people whose cooperation makes the program run more efficiently and aids in keeping official and public support.

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The program has a faculty advisor, but he has limited his involvement to reviewing abuses of discretion by the student administrator (of which there has never been a case) and advising the administrator when asked concerning occasional knotty problems of policy.

UNM's program is one of few in the nation that is independent of any government office or pressure group. Most projects are tied with an already-existing office. Some programs are run by the probation officers (St. Louis; U.S. District Court for the Northern District of California; Oakland, Nassau County, Baltimore, Boston, New York City) The interviews in Tulsa are conducted by defense counsel. Public defenders in Chicago and Philadelphia conduct the interviews. Los Angeles uses court staff investigators. Prosecuting attorneys conduct interviews in the U.S. District Court for the Eastern District of Michigan and in Seattle. Law students staffed or staff the Manhattan Bail Project, D.C. Bail Project, and Des Moines Pre-trial Release Program. Freed and Wald, Bail in the United States, p. 58.

The ROR program has a good working relationship with the District Attorney's office, the Legal Aid Society, the Magistrate and District Court judges, the Sheriff's office and jail staff, the probation office, the city's attorneys, and the community it serves. We have always had free office space in the Bernalillo County Courthouse. We have complete access to the District Attorney's files on each defendant, something even the defense lawyers do not have. Because we have no formal affiliations, but must keep communications open with both conservative and liberal forces, our program operates somewhere in the middle. We can collect information from the many sources open to us because of our independence.

Our office, located off the Bernalillo County Law Library, in the Courthouse, is separate from all other offices. The Legal Aid Society attorneys know that they can talk freely with us and frequently a Legal Aid attorney will come to us about getting a client released. We do not divulge incriminating information to the District Attorney. Similarly, the District Attorney's staff can speak freely about a defendant, and know it will go no farther. We have kept our independence despite help from the Legal Aid Society and the District Attorney. We have released defendants charged with assaulting an officer although the District Attorney's office did not favor release (Vera does not handle those charged with offenses against the police). We refused release to a community VISTA worker under some pressure from the Legal Aid Society to release him.

Perhaps our closest link is with the magistrate judges who approve our releases. Before January, 1969, no one approved our releases. Our recommendation was the final decision. The percentage of releases for 1969 is lower than previous years (40% as compared to 48% for 1968), although the judges deny few recommendations (8m 1969).

Interesting, but probably not statistically significant is the fact that our failure rate has increased slightly since the judges have been approving our releases. This is difficult to explain, since just knowing that we must get their approval may keep us from recommending release in some borderline cases.

The judge sees only our recommendations for release, not those we choose not to recommend. We make no negative recommendations, as some programs do. The judges issue us no directives and do not limit us in any way. Actually, they have broadened our program to cover certain drug cases.

Our policy otherwise does not permit us to release those charged with drug offenses. Many local organizations and many people affiliated with the program would like to eliminate this restriction. The magistrate judges have been asking us to interview those charged with Marijuana-connected offenses and to show them the results. They ask what our recommendation would be if we could release them. In every case, we have recommended release, and the judge has released the defendants directly from the bench. The first three released in this manner have subsequently appeared in court as ordered. None of the others have had court dates set yet.

Another aspect of the Bernalillo County ROR program that makes it unique is its efforts to get people released who do not qualify for release under the program. We have been able to arrange with a magistrate judge to get bonds lowered, to get people released to their families or other people, and to get people released providing they fulfill certain conditions imposed on their release. Often, families or friends telephone or visit us to see if their relative or friend can be released. Although a man may not qualify under our point system for release, that his family was sufficiently concerned about him to come to the courthouse may convince the judge to release him to his family. Frequently this is done with young first offenders. The people who come to see us often do not know the other methods of securing a release. We can take them to a judge and explain a situation to him, and obtain a release, or get the bond lowered to an amount the defendant can pay.

Although many people are concerned about a connection between drug use and crime today, our program and the county probation office have found that alcohol is to blame for much more crime than are drugs in this area. It has also become popular for defendants to tell the judge they are on drugs, hoping to be released for treatment, and many succeed. However, alcoholics tend not to reveal their problem. In talking with families we often learn that our client is law abiding and peaceful when sober, but beats up people or steals cars when he gets drunk, which may be fairly often. These people may not be alcoholics, but their antisocial behavior when they do drink indicates that they need help. We have secured releases on the condition that the defendant report to a doctor or county health center regularly. If he fails to report, he will be put back in jail. If he gets drunk, his family can put him back

in jail. This works. Wives of these men are usually very interested in helping them sober up permanently. We have also secured releases to various hospitals or to doctors for regular care, when, without our information, the judge would never have known of the defendant's need for medical attention.

The program has also arranged for young first offenders to join the Army and have the District Attorney drop the charges against them. Although for some, this may seem like a much worse alternative than jail and a record, many have already been considering joining the Service, and once they have a means of supporting themselves, they give up the habits that landed them in jail.

INTERVIEWING AND RELEASING PROCEDURE

Every day, the administrator picks up all felony arraignments from the District Attorney's office and enters them in the daily log in the ROR office. He makes out an interview form for each defendant arraigned, except those charged with drug or sex offenses. The interviewer will pick up an interview form in the office and check in the office records to see if the defendant has been interviewed before. He will then check with the probation office to see if the defendant is on probation or parole. If he is, the interviewer will talk with his parole or probation officer before proceeding any farther. If the officer prefers that we do not release his client, we usually stop procedure immediately, but only after hearing the officer's reasons for preferring that his client stay in jail. Usually the reason is that the client has not been reporting to his officers regularly. Often, the officer has not heard from the client for quite a long time, and we are the first to tell him that he is back in jail.

The interviewer then proceeds to the District Attorney's office, where he reads through the new file on the defendant and checks his old record. The administrator will go through this process with a less experienced interviewer, and weed out the more complicated cases. (New interviewers also attend an orientation meeting, go through the entire process, meet the people they will deal with, and sit in on an interview with the administrator.) The interviewer then proceeds to the jail to interview the defendant. Whenever possible, women law students interview women prisoners. The more experienced interviewers handle the people charged with the more serious crimes, and the administrator interviews all people charged with murder or manslaughter for whom bond has been set.

We interview all people under our jurisdiction (those charged with felonies, not drugs or sex-related) regardless of whether or not they are indigent. The judge has all those arraigned read a form describing our

program and asking whether or not the defendant wants an interview. Even if they say no, we check with them again. Often, they are confused. Although the defendant must, with the judge's assistance, fill out a certificate of indigency to get a court-appointed attorney, he need do nothing of the sort to qualify for our program. A man need not be indigent to be unable to afford his bail. If the man is in jail when we go to see him, he is probably going to be there for months, or else fall prey to a bondsman's ten percent, if we do not release him. If a man can afford his bond, he probably is not in jail. He will bond out immediately. We usually interview following arraignment, and occasionally before arraignment. We cannot release anyone until after arraignment, although often we do present our recommendation to the judge immediately at the end of the proceedings. We would like to do more interviewing before arraignment, but most prisoners are not brought to the county jail until immediately before arraignment.

We interview defendants in a private room with the door closed. We are on good terms with the jailers, and the Chief will let us use his office if the other rooms are not vacant. (Often jailers know the prisoners and help us verify information.) No one but the interviewer and the defendant is present. Only one defendant is interviewed at a time. (New interviewers will sit through an interview conducted by the administrator, and the administrator will be present for the recruit's first interview.) The interviewer asks the defendants the questions on the attached form, first having the defendant sign the statement on the first page. It is made clear to the defendant that his answers will not be shown to anyone but the judge setting bail and approving release. The defendant will never appear before this judge again on this charge. The defendant's personal responsibility to appear in court is also stressed. His attention is called to the New Mexico statute imposing an additional charge and penalty for failure to appear in court. If the defendant cannot read, the statement is read to him. Many of our clients are Chicano, and if their understanding of Spanish is better than English, the entire interview will be conducted in Spanish. Either the administrator or his assistant must be fluent in Spanish. Several of the interviewers speak Spanish. We also have available students who can interview Laguna Pueblo or Navajo Indians in their native languages.

The defendant is asked no questions about the charge against him. We are mainly trying to establish whether he is a local resident and has enough ties to the area so that he will probably stay here for court appearance. We need a verified local address where we can reach the defendant. Our other major considerations are whether he has family he sees frequently and whether he has a job or goes to school.

The interviewer tries to get the names of several people from the defendant by whom he can quickly verify the information and dispose of the case. We will take anyone as a reference. The interviewer finds out how

he can reach the references and family of the defendant. If they do not have telephones, he may be able to call them at work or through a neighbor. If not, he will have to make a personal visit. He finds out how to contact the employer, and who the defendant's immediate supervisor is. He gets the name of a doctor treating the defendant for physical or mental problems. This information may help him secure a release for the defendant even if he does not qualify under our point system. He finds out every possible way to find the defendant if he is released. For example, can he always be reached through his parents? He finds out any possible reason why the defendant might not show up in court, and impresses upon the defendant the importance of his court appearance over anything else. The interviewer finds out if his job, construction, for example, may take him out of town, or if he has a sick relative out of town who he might have to visit, or if he is likely to be drafted.

After the interview, the volunteer returns to the office and verifies as much information as he can by phone. If necessary, he will make personal visits. He will not contact anyone the defendant does not want him to contact, for example, an aged grandmother. He will try not to let on that the defendant is in trouble when talking with references. The man is not yet guilty. On the basis of the information he has gathered, he will tally up the points on the last page of the interview form and make a recommendation on the basis of the points given. The method of evaluation is completely objective. Programs using a more subjective method have a lower rate of appearance. National Conference on Bail and Criminal Justice, p. xxviii. Negative points are seldom given. Positive points have been given to those attending school, on the same basis as a defendant gets points for this job. Most forms are reviewed by the administrator. If the interviewer wishes to recommend release, he presents the interview form to a magistrate judge for approval.

No one but the interviewer and the judge are present to hear discussion of the client. When Vera program interviewers talk to the judge, the prosecuting attorney and the defense attorney are present. We would not reveal our information to the District Attorney. Many other programs, including the program in San Francisco, have one person who presents recommendations to the judge. Our interviewer presents the recommendation to his client. The judges have agreed wholeheartedly with this policy. They want to talk to the person who handled the interview and follow-up, the only person who can answer questions about the interview form and the client. As soon as the judge approves the release, the defendant is freed. The District Attorney office sends a letter to the jail authorizing the release.

The office never questions a release. The defendant receives a letter with our phone number and address, telling him that he must contact us if he moves, and telling him of the consequences if he fails to appear in court.

We will reconsider a defendant's case if new information becomes available to us, or if his situation changes, for example, if his family finds him a job.

The District Attorney's office sends the ROR office notifications of our clients' appearance dates. We immediately send a letter to the client, informing him of the date and giving him the name, phone number and address of his attorney. About a week before his appearance, he receives a reminder notice, and a day or two before, we contact him personally. In most cases, our notices are the only ones the defendant receives. Actually, we are in a better position to notify many of our clients than is the D.A. We are much more likely to have his current correct address, and we know of many more ways to reach him from our interview form. If our letters are returned and our phone calls and visits are fruitless, we notify the D.A.'s office immediately and give them our latest information on the client's whereabouts. Usually they can find the client before his court appearance date. But this is a last resort taken only after we have talked to the defendant's attorney and tried to contact him through family and friends.

RELEASEES WHO FAIL TO APPEAR IN COURT

There do not seem to be definite characteristics common to the defendants who fail to appear in court. During 1969, one person did not show up for his arraignment in District Court, the first court appearance a defendant makes after our release. (His attorney may schedule a pre-trial hearing, but he is responsible for getting the defendant to it.) He appeared later for trial. Six showed up for District Court arraignment, but did not appear for a later court appointment. Only one of these seven had a previous record (two felony convictions). There is a higher percentage of Anglos in this group than of our total releasees. Two of the failures were co-defendants. We have found that releasing two co-defendants is a bad practice as far as the failure rate is concerned. None of the failures have had other charges against them since the release (except for a charge of failure to appear in court). Five of the group were released on burglary charges. One was released on an unarmed robbery charge, and one on a charge of forgery.

Judges are hesitant to release forgers. They say that they most frequently commit more crimes (other forgeries). Psychologists say that forgers are likely to not know right from wrong. We have not found the judges' feeling to be true. Of ten forgers released, only two now have another charge pending against them. Only one of the failure group had a job, and one was attending school. However, the student's court appearance date was during summer vacation. We will pursue further the question of whether those without jobs, who must have had strong local family ties to be released, are less likely to show up for court.

Our responsibility is actually to make sure releasees appear for District Court arraignment. After that, they are under the jurisdiction of the District Court. We do not formally work with the District Court and cannot release people after arraignment in District Court. Although the district judges usually continue our releasees' releases (by this time, the releasee has usually been on his own for months), they are not obliged to do so, so actually failures to appear for appointments after the appearance at District Court arraignment are the District Court's responsibility.

Recently, we have not been receiving the court appearance notices as far in advance as we would like. Indeed, one afternoon we received a notice for a client to appear that morning. From now on, we will check each day with the D.A.'s office for the cases newly scheduled. In that way, we should know as soon as possible when our clients are due in court.

The delay in cases coming to trial is becoming a problem. Recently we received notice that a defendant we released two and a half years ago was due in court. We did locate her, after much searching in California.

PROGRAM DATA

The Bernalillo County ROR Program has been collecting data since January, 1963. However, for the first few years, the program was running only sporadically. But we have managed to survive and stabilize, and we now get many requests for information from programs in trouble or from people who want to start a program. The year 1969 was chosen as the sample we append hereto because our records for that period were more complete and accessible than those for earlier years.

There has been sufficient time for the majority of cases to be disposed, and for the releasees to get in trouble again if they are so inclined. (One of our main concerns is in not releasing those who may commit more crimes while out under our program. We consider mainly those who commit crimes soon after release. Those who get in trouble years later are not so much of a concern to us.)

During a three-year period ending January, 1970, we had released 413 people. During 1969, we interviewed 289 people and released 113, 40% of those interviewed. (We interview all those charged with felonies; we do not yet have the staff to interview misdemeanants. Vera interviews 70% of those charged.) This is an 8% decline from 1968, probably because beginning January, 1969, all our releases had to be approved by the magistrate judges. Although the judges deny few releases (8m 1969), the fact that we have to get their approval may make interviewers hesitant to recommend some borderline cases. Yet the number of failures to appear in court increased slightly over the previous year.

Our program has a high rate of acceptance of releases by the judges, in comparison with their programs. Judges approved 93% of our release recommendations. In 1964, judges accepted 70% of the program's recommendations, and the DA. accepted 80%. The D. A. never questions or reviews our releases. The

District of Columbia Project recommended 367 for release out of 940 interviews in 1964, and only 54 were approved.

Of the 113 released, the charges against 38 are still pending. The cases against 56 have been dismissed. Nineteen defendants have been convicted, and two have been acquitted. Of those convicted, four received suspended sentences and six were placed on probation. Four people convicted served no time, four served less than six months, and 11 served or are serving more than six months. As of April, 1965, the percentages of Vera's disposed cases which were dismissed or acquitted was 48%. Sixty percent of our 1969 disposed cases were dismissed or acquitted. Fifty-two percent of Vera's releasees were convicted. Twenty-five percent of our releasees were convicted. Of Vera's releasees found guilty, 70% received suspended sentences, and 10% served time in prison. Twenty percent were given alternative fine or jail sentences. National Conference on Bail and Criminal Justice, p. xxii. Of our releasees convicted, 21% received suspended sentences, 31.5% were placed on probation, 21% served no time, 21% served six months or less, and 58% served or are serving more than six months.

Of those released by the Bernalillo County Program, 17 had previous convictions, and four had other charges pending against them. Since release, six have been convicted on other charges, and seven more have new charges pending. One did not appear for District Court arraignment and six others failed to appear for a later court date.

Fifty-eight of our releasees were acquitted or had the charges against them dropped. Had we not released them, they would have served time needlessly.

Each New Mexico county jail allots $1.25 per prisoner per day and the jail always has more than ten prisoners. For each month one prisoner was in jail, the county would spend $37.50. For 58 prisoners in jail for one month, the county would spend $2175. The ROR Program saves the county and state money in other ways. Of the 113 released, 32 had jobs to which they returned upon release and six returned to school. A working defendant may be able to hire his own attorney, whereas if he were in jail, he would need a court-appointed attorney. He can help his attorney prepare his defense and cut down the bill to the court. He can support his family, which would go on welfare if he was in jail. Those 32 with jobs are contributing to the economy and paying taxes, instead of living on others tax money. Those in school are getting valuable training so that they will be able to work and support themselves. If jail interrupts their schooling, they probably will never return.

THE FUTURE

In the future, we hope to expand the program to cover all felonies and misdemeanors. At the present time, our staff is insufficient to do so. When we are able to get staff through the University of New Mexico Law School's

new clinical program, we will be able to increase our coverage. If we were able to pay interviewers, we would have a more regular group working with the program and would not lose interviewers who find they must work elsewhere to earn money to stay in school.

Perhaps the only reason the program has not handled drug and sex-related cases is community and government office sentiment. However, some people were hesitant about supporting the program with these restrictions. If we can expand the release-on-conditions aspect of the program, we should be able to release selected drug and sex offenders for their benefit and the benefit of the community. Those charged with sex or drug offenses who might endanger the community, or those the community would fear most, would not qualify under our present point system because of previous convictions, no job, or broken family ties.

We hope to develop a closer relationship with the Magistrate Court judges so that we can interview all defendants and present the judge with our results and recommendations before arraignment. Then, at arraignment, he could choose to release a defendant unconditionally, release him to another person, release him on conditions, or set his bail lower (or higher) than he might have done without our help and using the standard schedule. The main service our program furnishes is in making the judge aware of things about the defendants that he would not ordinarily find out. We would like to provide this information to the judges for all defendants, and the judges support us in this goal. We deal in helping individuals who are not usually considered as individuals.

Several weeks ago, two men were arraigned on charges of armed robbery on the same morning. The first was a 27-year-old with a record. His family ties were slim, and he had made several trips to California and back. He did not have a job. The second defendant was a 62-year-old man with no record except for several drunk charges. He had emphysema and was not able to work, but he did take care of his retarded son and aged father-in-law so that his wife could work. He was an alcoholic and never got into trouble except when he was drunk. The second man was released through the release on recognizance program on the condition that he report to the county medical center weekly for help with his drinking problem. The bond for each of the two men had been set at $10,000. The magistrates do not have time, under the present system, to investigate each case. If the second man had been left in prison, his emphysema might have been aggravated. In the jail, he most likely would not have received proper treatment. Actually, his doctor had said that he might not live until the trial if kept in jail. Without his help at home, his wife would not have been able to work and five people would have been added to the welfare roles.

In another armed robbery case, the defendant's bond was set at $10,000, and we were unable to release him. To bond out with a property bond, a defendant must put up property equal to twice the amount of the bond set.

This man's house and land was worth $9700. We were able to get his bond reduced so that he could get out of jail.

Had the judge only been made aware of these two men's situations before arraignment, their families would have been saved much worry and achieved the same ends. We hope to bridge the gap between the defendant, his arraigning judge, and freedom.

We have instituted a new form to be signed by the defendant upon release. The defendant would sign a personal recognizance bond, which because of statutory wording, would entitle him to continue on his own until sentencing. Now, a convicted releasee is put in jail between conviction and sentencing. The defendant would also sign a statement agreeing that notification at the address he has given us on the interview form will be legal notice of his court appearance date, thus technically absolving us of responsibility for the defendant's appearance once we have sent him a notice. Of course, the appearance itself is the important thing to us, and not just that we have fulfilled our official duty.

The district judge, Judge Fowlie, who has discussed these ideas with us, is also planning to compare appearance rates of our program with those people released through bail bondsmen, those who bond themselves out, and those who were released by the judge.

Noell L'Hommedieu,
Program Administrator

Jerome A. Hoffman,
Faculty Advisor

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Enclosure

COMPARISON BETWEEN BERNALILLO CO. ROR PROGRAM AND MANHATTAN BAIL PROJECT

	Manhattan		Albuquerque
Approval by Judges	70%	Percentage of cases recommended	3%
Approval by D. A.	80%		100%
Cases Dismissed or Acquitted	48%	Percentage of cases actually released	60%
Convictions	52%	Percentage disposed by the court	25%
Served time	10%	Percentage of convictions	79%
less than 6 mo.			21%
more than 6 mo.			58%
suspended sentences or probation	70%		21% 31.5%
alternative fine or jail sentences	20%		

	No.		% of No. Released
Number Released 113			
With Previous Record	21		18.6
Other Charges Pending	4		3.5
Convictions			
One Felony	9		9.9
Two Felonies	4		3.5
Misdemeanor only	2		1.8
With Record Since This Charge	13		11.5
Pending Charges	7	(6 Fel. & 1 Misd.	6.2
Convictions	1	(2 Felonies)	.99
Felonies	5		5.3
Holding & Returning to Jobs	32		28.1
In School	6		5.3

		Number	Percentage of Total Released (113)	Percentage of Cases Disposed
1969	Number Interviewed	289		
	Number Released	113 (40%)		
	Of Those Released:			
	No. Pending	38	34	
	Cases Disposed	75	66	
	No. Dismissed	43	38	57
	No. Acquitted	2	1.8	2.7
	No. Convicted	19	16.8	25.3
	No. Receiving Suspended Sentence	4	3.5	5.3
	No. Place on Probation	6	5.3	8
	No. Serving no Time	4	3.5	5.3
	No. Serving 6 mo. or less	4	3.5	5.3
	No. Serving more than 6 mo.	11	9.7	14.7
	No. Failing to Show up for District Court Arraignment	1	.88	n.a.
	No. Failing to Show For Later Court Appearance	6	5.3	
	All Defendants Have Been Located			