
Observation and Study: Critique and Recommendations on Federal Procedures

46983



THE FEDERAL JUDICIAL CENTER

Board

The Chief Justice of the United States
Chairman

Judge Ruggero J. Aldisert
*United States Court of Appeals
for the Third Circuit*

Judge Frank J. McGarr
*United States District Court
Northern District of Illinois*

Judge Robert H. Schnacke
*United States District Court
Northern District of California*

Judge Aubrey E. Robinson, Jr.
*United States District Court
District of Columbia*

Judge John C. Godbold
*United States Court of Appeals
for the Fifth Circuit*

William E. Foley
*Director of the Administrative
Office of the United States Courts*

Director

A. Leo Levin

Deputy Director

Joseph L. Ebersole

Division Directors

Kenneth C. Crawford
*Continuing Education
and Training*

William B. Eldridge
Research

Charles W. Nihan
*Innovations
and Systems Development*

Alice L. O'Donnell
*Inter-Judicial Affairs
and Information Services*

1520 H Street, N.W.
Washington, D.C. 20005
Telephone 202/633-6011



NCJRS

MAY 5 1978

ACQUISITION

**OBSERVATION AND STUDY: CRITIQUE
AND RECOMMENDATIONS ON
FEDERAL PROCEDURES**

By Larry C. Farmer

**Federal Judicial Center
December, 1977**

FJC-R-77-13

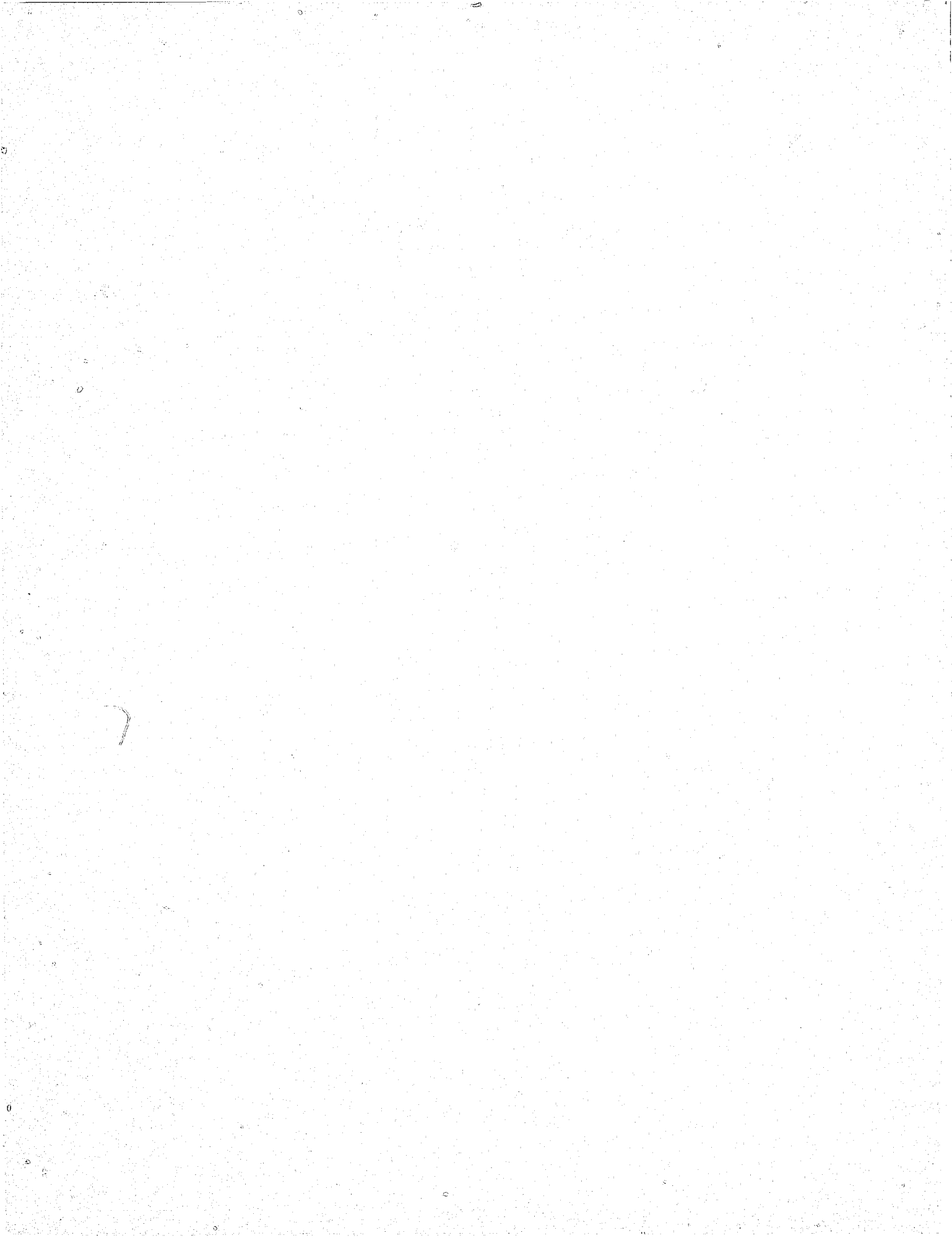


TABLE OF CONTENTS

PREFACE	v
CHAPTER 1: INTRODUCTION	1
The Need for Professional Evaluations	1
A Brief History of Presentence Studies	1
Statutory Authority for Presentence Studies	2
Statistical Data on the Use of Presentence Studies	3
Dissatisfaction with Presentence Studies	3
CHAPTER 2: METHODOLOGY AND PURPOSE	5
Research Objectives	5
Some Comments on Research Strategy	5
Summary of Research Methods	6
CHAPTER 3: COURT OBJECTIVES AND PROCEDURES IN PRESENTENCE STUDIES	7
Court Objectives in Ordering Presentence Studies	7
The Probation Officer's Role in the Study Process	8
Selecting Offenders for Study	10
Referral: The Court's Opportunity to Define the Presentence Study	11
CHAPTER 4: HOW THE BUREAU OF PRISONS CONDUCTS PRESENTENCE STUDIES	13
The Bureau's Design for Presentence Studies	13
Bureau Procedures Used in Presentence Studies	14
A Brief Description of the Study Process	14
Seeking the Court's Referral Questions	15
An Evaluation of Bureau-Prepared Study Reports	16
Motivation Problems	17
CHAPTER 5: SENTENCING RECOMMENDATIONS IN PRESENTENCE STUDIES	18
The Examining Institution's Role in Formulating Sentencing Recommendations	18
Regional Review by the Bureau of Prisons	19
Parole Commission Review of 5010(e) Studies	19
CHAPTER 6: THE LOCAL STUDY ALTERNATIVE	21
Advantages of the Local Study	21
Why Local Studies Are Underused	22

The Variety of Local Alternatives	22
Recommendations for Using Local Studies	22
CHAPTER 7: JUDICIAL OVERSIGHT AND TRAINING	24
A Need for Judicial Oversight	24
A Need for Training Court Personnel	25
CHAPTER 8: A NEW MODEL FOR BUREAU-PREPARED PRESENTENCE STUDIES	26
Improving Referral Procedures	26
Expanding the Probation Officer's Role in Presentence Studies	27
The Study Specialist	27
A New Concept for Presentence Studies	27
Bureau-Prepared Sentencing Recommendations	28
Regional Review of Sentencing Recommendations	29
Advantages of the Model	29
APPENDIX A: METHODOLOGICAL NOTES	30
APPENDIX B: PREPARING PRESENTENCE STUDY REFERRAL LETTERS	32

PREFACE

The Federal Judicial Center undertook the observation and study project to evaluate study commitments under sections 4205 (c) and 5010 (e) of title 18 of the United States Code. The project's initial purpose was to investigate the reasons for complaints from judges, probation officers, and corrections officials about observation and study.

While this project was being conducted, Congress was considering the problems of sentencing criminal offenders. New legislation was being proposed that would establish congressionally mandated policies to govern the sentencing process. Detailed policies of that type have never really existed before in the federal system. Previously accepted philosophies, such as indeterminate sentencing, are being challenged on all fronts.

The absence of defined sentencing policies presented something of a problem for this project. Given this ambiguity, it was difficult to deal with questions regarding the proper contribution of observation and study to the sentencing process. The project moved forward on the initial assumption that the use of professional evaluations in sentencing decision making is valid. Although this assumption temporarily cannot be justified by reference to an agreed-upon sentencing policy, it appears to be reasonable in light of the proposed sentencing legislation. Congress has been heading toward a system of sentencing guidelines that includes consideration of mitigating and aggravating factors, which would require professional evaluations of the observation and study variety.

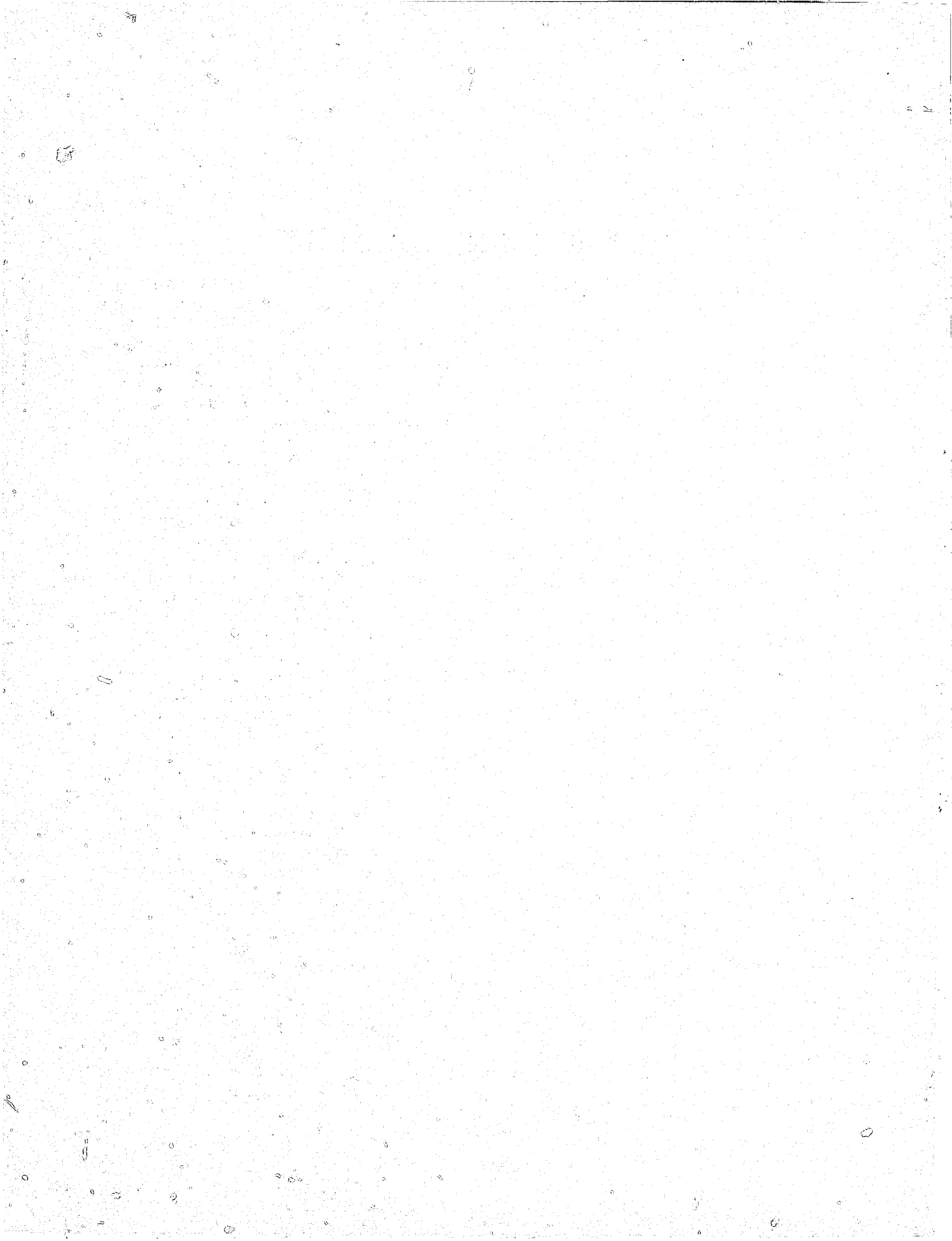
Taking the validity of observation and study as

a point of departure, this project was designed to examine current methods of obtaining the kind of professional evaluations usually included in these studies. Thus the project focused on an investigation of practice and a search for better methods when problems were discovered.

Observation and study was established with the hope that it would prove to be an effective method of obtaining professional evaluations to support sentencing decisions. The Center's investigation revealed that this objective has not been met, and that observation and study is a cumbersome and periodically misused procedure. In response to these findings, this report proposes a new model for these studies.

In general, the people associated with observation and study are dedicated and would sincerely like to make the process work. Although they are now frustrated, as a group they are willing to experiment and seek new ways to conduct these studies.

Several names are used for commitments under sections 4205(c) and 5010(e). They are variously called "study cases," "observation and study commitments," "adult studies," "youth studies," "c studies," "e studies," etc. A new term, "presentence studies," has been coined in the proposed sentencing legislation. For the sake of clarity, this term and the frequently used term "observation and study" will be used throughout this report in reference to studies ordered for sentencing purposes. Reports returned from such studies will be called "study reports."



CHAPTER 1: INTRODUCTION

The Need for Professional Evaluations

Conscientious judges have long felt the need for accurate, timely information to serve as a basis for sentencing decisions, but it has not been possible for judges to personally study offenders. To get the information they need, judges necessarily rely on the evaluations and reports of other people. Defense and prosecuting attorneys often provide valuable assistance in gathering information on defendants, but the sentencing judge's primary source is the probation office's comprehensive presentence investigation and report.

The presentence report is the mainstay of the sentencing process, and, to the credit of the probation officers, it serves as an adequate information base for most sentencing decisions. Yet because probation officers, as a group, are not trained to undertake specialized evaluations, the court must use other resources when it needs specialized medical, psychological, educational, and vocational information. In recognition of this fact, judges, through the Judicial Conference of the United States, sought a convenient method for obtaining specialized professional evaluations.

A Brief History of Presentence Studies

The Judicial Conference provided the impetus for both the Federal Youth Corrections Act of 1950 and the federal sentencing legislation of 1958. In 1941, the Judicial Conference appointed a committee of seven federal judges to study the general subject of punishment for crime.¹ In 1943,

1. This committee was composed of Chief Judge John J. Parker of the Fourth Circuit, chairman; Chief Judge Learned Hand of the Second Circuit; Chief Judge Orin L. Phillips of the Tenth Circuit; Judge John C. Collet of the Eighth

the committee's report to the Judicial Conference was presented in hearings before both houses of Congress. At that time, the Judicial Conference was proposing indeterminate sentencing for both youth and adult offenders. But the provisions for adults encountered considerable opposition in Congress, and the entire proposal, dealing with indeterminate sentencing for both youth and adult offenders, was defeated. Following this defeat, the Judicial Conference dropped the provisions dealing with adult offenders and reaffirmed its proposed reforms for treatment of youth offenders. In September, 1949, the Judicial Conference approved recommendations calling for the separate treatment of youth and adult offenders and youth offenders' commitment under indeterminate sentences. These recommendations were enacted as the Federal Youth Corrections Act of 1950. Sentencing legislation dealing with adults was enacted several years later (see below).²

The forties and fifties were a time of considerable optimism about psychological testing and assessment, and at the time the Youth Corrections Act was passed, this enthusiasm permeated popular thinking in corrections. It was in this atmosphere that Congress and the judiciary embraced the concepts of indeterminate sentencing.

Two assumptions were central to the corrections philosophy that supported the indeterminate sentencing movement. First, it was thought that through careful observation and measurement,

Circuit; Chief Judge Bolitha J. Laws of the District Court for the District of Columbia; Chief Judge Carroll C. Hincks of the District Court for Connecticut; and Chief Judge Paul J. McCormick of the Southern District of California.

2. The author thanks Robert Schwaneberg, a former research assistant at the Federal Judicial Center, for his research on the legislative history and statutory authority for observation and study. More detailed treatment of these aspects can be found in *Legislative History of Observation and Study* (FJC-SP-77-8), by Mr. Schwaneberg.

sentencing and parole release could be individualized to foster rehabilitation of offenders. Second, the indeterminate sentence was seen as a motivational device that would encourage prisoner participation in rehabilitation programs.

As an essential adjunct to its broader purposes of individualized treatment, the Youth Corrections Act required that each offender sentenced under the act had to be studied within the institution—"classified" in the legislative terminology—to determine his placement and program.³ The observation and study concept was borrowed, without significant change, from the classification studies created to implement this indeterminate, individualized approach to corrections. When the Youth Corrections Act established classification centers to conduct classification studies, federal judges immediately thought of an additional function for these centers and proposed that they be made available to the court for use in selected cases. This suggestion eventually became section 5010 (e) of title 18. This section provides for sixty-day presentence studies and makes the machinery of the classification study available to federal judges, who must first decide whether or not to sentence an offender under the provisions of the Youth Corrections Act. In adopting this approach, the courts made no attempt to modify the design of classification studies to make them specific to the needs of sentencing judges. Thus, a study developed for corrections classification purposes became the court's presentence study, but it included nothing to address fundamental questions—for instance, probation versus incarceration.

Supporters of indeterminate sentences argued that effective, i.e., rehabilitative, sentences must be based on detailed evaluations of those to be sentenced. Consequently, the statutory language establishing presentence studies called for "complete" evaluations of offenders sent for those studies. In principle, this concept could hardly be criticized, but the complete evaluation proved to be an impractical ideal. It seems that the idea's supporters expected sentences to flow naturally from the information gathered about offenders.

³ These studies are provided under 18 U.S.C. § 5014 for all youth offenders.

The more information the better. The more comprehensive the evaluation, the better.

There were several serious problems with this approach to sentencing and parole release. First, even after a great deal of information was obtained about individual offenders, it was not always obvious what the sentences should be. Second, the most useful information proved extremely difficult, and in many cases impossible, to obtain. Third, classification studies had been based on the optimistic and untested notion that the key to offender rehabilitation could be determined by extensive testing and evaluation. But the key to rehabilitation in prison was never found, and corrections officials have largely abandoned the belief that such studies can serve as a basis for rehabilitative programs and effective parole release.

Except for the notion that impressionable youth should not be imprisoned with hardened criminals, most of the underlying philosophy of the Youth Corrections Act was later seen as also applicable to adult offenders. In 1958, Congress passed sentencing legislation that was based on proposals of the Judicial Conference. The act's overall purpose was to minimize the wide disparity in sentences imposed on adult offenders in federal courts. It established sentencing institutes and councils, and also authorized indeterminate sentencing and presentence studies for adult offenders. These studies were intended to be used in particularly complex cases and were again based on the classification study model.

Statutory Authority for Presentence Studies

Federal judges who want more information before passing sentence on adult offenders can commit them to the custody of the attorney general for ninety days of observation and study, under 18 U.S.C. § 4205(c). The attorney general is required to conduct a "complete" study of the offender and may examine his or her mental and physical health, social background, and previous criminal experience. After receiving the results of a presentence study, the court has the option of placing an offender on probation, reducing the

sentence, or affirming the maximum sentence authorized for the crime.

Under a similar provision of 18 U.S.C. § 5010(e), judges who want additional information on whether youth offenders will benefit from treatment under the special provisions of the Youth Corrections Act can commit them to sixty days of observation and study.⁴

A "complete" study of these offenders is to be conducted at "an appropriate classification center or agency," and the Parole Commission is to report to the court on the results.

The two observation and study sections of title 18, although similar in many respects and sharing a common origin, were enacted eight years apart. Section 5010, which deals with youth offenders, was added to the code by the Federal Youth Corrections Act of 1950. Section 4205(c), providing for presentence studies of adult offenders, was originally enacted in 1958 as section 4208(b) of title 18.⁵

Statistical Data on the Use of Presentence Studies

Federal district judges presently order studies (of all types) on approximately 1,400 offenders a

4. Individuals twenty-six years old and younger may qualify as youth offenders.

5. See note 2. The Parole Commission and Reorganization Act of 1976 reenacted the provisions of the 1958 legislation's section 4208(b) as section 4205(c). Minor amendments were made but they did not affect the substance of the provisions.

year. Table 1 summarizes the number of studies of each type conducted during fiscal 1975 and 1976.⁶ Typically, three-fourths, or about 1,050, of these studies are presentence studies: commitments under sections 4205(c), 5010(e), 4252, and 5037. Although the number of offenders committed for presentence studies constitutes only a small percentage of the total number of offenders sentenced by federal judges, they account for approximately 7 percent of the prisoners received at the Bureau of Prisons each year.⁷

Most presentence studies are adult (4205(c)) or youth (5010(e)) studies. Together these two categories account for approximately 80 percent of all presentence studies. Narcotic Addict Rehabilitation Act (NARA) studies make up the bulk of the remaining studies; there are relatively few juvenile studies. (Competency studies are not presentence studies.)

Dissatisfaction with Presentence Studies

Even though judicial attitudes vary regarding the usefulness of presentence studies, there appears to be a significant undercurrent of dissatisfaction with the studies. The study reports often

6. Study cases accounted for approximately 9 percent of all court commitments received by the Bureau of Prisons during those years.

7. According to table B-14-1 of the annual statistical report of the Bureau of Prisons, there were 15,474 court commitments in 1975, and 16,025 in 1976.

TABLE 1

Presentence Studies Conducted by the Bureau of Prisons During Fiscal 1975 and 1976

Fiscal year	Adult 4205(c)	Youth 5010(e)	Juvenile 5037(c)	NARA 4252	Competency 4244
1975	435 ^a	371	34	185 ^b	244
1976	460 ^a	364	16	227 ^b	262

Source: Data in this table were taken from table B-14-1 in the bureau's 1975 and 1976 annual statistical reports.

^a Table B-13 in the bureau reports cites the number of adult studies as 441 in 1975 and 464 in 1976.

^b Most of these studies are reported as coming from the District of Columbia; sixty-seven in 1975 and ninety-three in 1976. Apparently the data for the superior court and the federal district court are combined in this table.

disappoint affected judges and probation officers, who often view them as hardly more than rewritten presentence reports containing little new information. Some judges state quite frankly that the reports they receive are seldom helpful in sentencing decisions.

Court personnel are not the only people who are frustrated with study cases. Corrections officials are concerned about the lack of guidance they receive from the courts in individual cases and about possible abuses of the study process. The morale of corrections staff is affected by the

possibility that many presentence study commitments are ordered for nonstatutory reasons. The legislative history of presentence studies clearly indicates that these studies were intended to provide judges with evaluations and information in difficult cases—not for use as short-term sentences. Most observers consider it inappropriate to sentence a person for study in order to give the offender “a taste of jail” or to manipulate time factors in sentencing—that is, to delay sentencing pending the outcome of proceedings in other courts.

CHAPTER 2: METHODOLOGY AND PURPOSE

The presentence study process is complex and involves a variety of people, professions, and procedures.⁸ The courts, the Bureau of Prisons, and the Parole Commission are all involved in preparing and using these studies. To further complicate matters, studies can be ordered by any one of almost 400 district court judges and are prepared by personnel at more than forty separate Bureau of Prisons locations.

Given the nature of presentence studies, a strictly empirical approach to the evaluation of these studies was neither economically possible nor desirable as a research strategy. Empirical techniques were employed where useful, as adjuncts to a more impressionistic evaluation. The research method used in this project is best described as a mix of empirical methods, professional evaluation, and scholarly analysis.

Research Objectives

The courts' need for presentence studies was accepted as an established fact in undertaking this evaluation. To do otherwise would have been prohibitive as it would have required an evaluation of sentencing in general and the role of psychological data in the sentencing process. Thus, the project did not attempt to define a role for testing and evaluation in sentencing, but rather tried to evaluate procedures and conceptual approaches used to obtain professional evaluations for sentencing purposes.

From this point of departure, the project's first task was to catalog the courts' reasons for ordering these studies. At the beginning of this project,

⁸ At one time or another, probation officers, judges, marshals, prisons officials, psychologists, psychiatrists, vocational counselors, and Parole Commission personnel may be involved in the preparation of presentence studies.

we knew nothing specific about the purposes served by these studies; this information was necessary to establish criteria for evaluating procedures used in presentence studies. The criteria for evaluating the presentence study process were whether or not it served the courts' intended purposes and whether or not the courts were using effective procedures to further their purposes.

In addressing this evaluation, the project had three primary objectives:

1. To identify problems associated with the presentence study process
2. To find procedures that would make presentence studies more useful in sentencing
3. To consider the use of local evaluations as an alternative to bureau-prepared presentence studies.

Some Comments on Research Strategy

In obtaining a working knowledge of the problems associated with presentence studies, we did not gather statistical data on the attitudes of probation officers and judges about these studies. It was not possible, in the context of this project, to both make the needed assessment of current practice and generally survey all judges and probation officers about presentence studies. Such a survey would have been of questionable utility in any case. We did not try to catalog all the different procedures used by the courts to handle presentence studies; rather, we explored the methods that seemed to produce the more useful studies. The general objectives of the project were to discover the root causes of complaints about the study process and to suggest improved procedures for handling these studies. A preliminary

investigation revealed that many judges and probation officers had similar, yet very general, complaints about presentence studies.

This project was limited to an evaluation of studies under sections 4205(c) and 5010(e). Two other types of presentence study, juvenile (5037(c)) and NARA (4252), are available to the courts. But they are not used frequently and, for purposes of economy, were not included in this project.

Summary of Research Methods

(Some of the research methods used in this project are explained in greater detail in appendix A.)

Unstructured interviews. In order to develop general familiarity with the entire study process, the first phase of the research was devoted to informal discussions and interviews with probation officers, district court judges, prison personnel, psychiatrists, psychologists, United States marshals, and Parole Commission personnel.

Observation of bureau procedures. The most observable part of the study process is the classification team meeting held at the completion of presentence studies. Several visits were made to each of four Bureau of Prisons institutions (a) to observe these meetings, (b) to become familiar with the study environment, and (c) to observe the attitudes and skills of those conducting the studies. We also visited two regional offices of the Bureau of Prisons to examine study review procedures. In addition, telephone interviews were conducted with case management coordinators at other regional offices.

Court and probation office observations. Six federal courts and two state court probation offices were visited to examine presentence study procedures used in these offices.

Parole Commission visits and interviews. Parole Commission review procedures for studies under

section 5010(e) were examined in visits to two of the commission's regional offices and in subsequent telephone interviews with regional pre-release analysts.

Evaluation of study reports. All studies completed by the Bureau of Prisons during the month of January, 1977 were evaluated. Ninety-nine reports were received from the Bureau of Prisons. The information in these presentence study reports was compared to that in accompanying presentence reports. In addition, the psychological reports attached to the study reports were examined to determine their typical content.

Pilot tests of new procedures. Three courts were asked to test new procedures for handling presentence studies.⁹ These courts were selected in part because they made greater relative use of presentence studies than other federal courts. The pilot testing also provided an opportunity to examine more intensively the skills and methods of court and bureau personnel handling these studies.

Survey of the reasons for studies. For five consecutive weeks, probation officers associated with every presentence study ordered in the federal system were interviewed by telephone. During these interviews, data were collected on ninety-one cases involving defendants recently committed for presentence studies. These contacts were made to find out why the studies had been ordered and to obtain basic information about each case. The survey was also intended to test hypotheses developed in the pilot courts and to evaluate current bureau methods of obtaining court referral questions. All calls were made within a few weeks after the relevant study was ordered.

9. Courts participating in the test of presentence procedures were the Southern District of California, the Western District of Missouri, and the District Court of the District of Columbia. The author wishes to express his gratitude to personnel in these courts for their time and assistance.

CHAPTER 3: COURT OBJECTIVES AND PROCEDURES IN PRESENTENCE STUDIES

Court Objectives in Ordering Presentence Studies

Overview. Three methods were used to develop more specific information about the functions served by presentence studies. First, probation officers and judges were asked for their purposes in recommending and ordering studies. Second, the participating pilot courts kept records of the reasons for each study ordered. Third, in the survey of recently ordered studies, probation officers, and in some cases judges, were asked for the court's reasons for each study commitment.

Interview results. When asked for their purposes in recommending studies to judges, probation officers consistently said they recommended presentence studies when they needed psychological evaluations.¹⁰ Although their specific goals varied, they usually recommended studies to obtain psychological evaluations when they were concerned with an offender's (1) mental condition, (2) motivation for criminal activity, (3) unusual behavior in interviews, (4) previous psychiatric history, (5) character structure, or (6) psychological treatment needs. Other purposes, particularly vocational and medical evaluations, were mentioned infrequently. Somewhat surprisingly, sentencing recommendations were seldom mentioned as the primary reason for studies. Probation

10. Although both psychiatrists and psychologists are involved in preparing presentence studies, it is awkward and unnecessary to continually use terms referring to both professions. Since clinical psychologists are used far more frequently than psychiatrists in this process, the remainder of this report will usually refer to psychologists rather than to psychiatrists, and to psychological evaluations rather than to psychiatric evaluations. It should be understood that these references apply to both professions.

officers also cited nonstatutory reasons for studies, such as a "taste of jail" and manipulation of time factors to dispose of cases. Interviews with judges produced similar responses.

Presentence studies effectively suspend the final sentencing decision for sixty or ninety days, and, consequently, can be used to delay sentencing decisions for reasons other than warranted concern about psychological, medical, or vocational issues. Some judges reported using studies to delay sentencing decisions pending the outcome of proceedings in other courts. In these cases, the primary purpose for the study was to allow enough time to elapse that those judges would effectively become the final sentencing authority.

Probation officers and judges found it difficult to give precise reasons for seeking psychological evaluations. Their answers suggested general and frequently nebulous concerns rather than a desire to have specific questions answered. For example, some would say that they just wanted to know more about the person, but could not readily explain what new information they sought. Many judges and probation officers could only deal in general terms with the concept of a psychological study, and lacked sufficient knowledge of the mechanics of psychological evaluations to state their objectives specifically.

Survey results. Data collected in the national survey of study cases basically supported the impressions gained during interviews. Table 2 summarizes the surveyed probation officers' reasons for studies. Table 2 shows that psychological evaluations were sought far more frequently than any other type of evaluation. In some cases, the court had specific questions in mind, to be answered by the study report. But in many cases,

only a "general" psychological evaluation was sought. This was particularly true of studies ordered to update records on offenders with psychiatric histories. It seemed that many judges and probation officers had a reflex response to the presence of a previous psychiatric history: they recommended or ordered a presentence study. It was not possible to determine the exact number of studies ordered for this reason, but almost half of the offenders sent for studies had psychiatric histories.¹¹

Pilot court results. In the pilot courts, referral questions accompanied thirty-eight cases sent for presentence study. Psychological evaluations were needed to respond to the courts' referral questions in thirty-five of the thirty-eight cases (92 percent). Of these, ten studies required no other types of evaluation to respond to the courts' referral questions. Eleven additional requests for studies sought sentencing recommendations as well as psychological evaluations. Only six studies were ordered to obtain vocational information, and in each of these cases, the principal reason for the study was to obtain a psychological evaluation. Thus, in twenty-seven of the thirty-five cases in which psychological evaluations were needed to respond to the courts' referral questions, psychological evaluations were the courts' exclusive or primary concern in ordering studies.

A total of 185 separate referral questions were sent to the bureau with these studies. Table 3 contains summary data on the different kinds of referral questions posed by judges and probation officers in these cases. The percentage of reports containing each type of question is also indicated in the table. Of the questions asked, approximately 154, or 83 percent, were of the type usually referred to psychiatrists and psychologists.

11. A psychiatric history might have been as inconsequential as a previous presentence study or a few visits to a mental health center several years before. Or, it might have been significant: for instance, many prior hospitalizations for severe mental problems. The concern created by prior contacts with mental health professionals was indicated by the fact that many of these studies were ordered when many, and sometimes recent, psychological evaluations were available to the court. Of the eighty-seven cases for which data were collected, forty-one (47 percent of all cases) had such psychiatric histories.

The Probation Officer's Role in the Study Process

The probation officer's limited role. In many courts, probably in most, probation officers play a very limited role in the presentence study process; they influence the process only at the beginning, through the sentencing recommendation. Probation officers may recommend further study of an offender before the imposition of final sentence, but they are not usually asked to convey to the bureau the court's reasons for a presentence study, nor are they required to review studies returned to the court. Also, in most courts, they are not obligated to integrate study results with their previous findings. Thus, they usually have little or nothing to do with presentence studies after the studies are ordered by the court. The probation officer's role in the study process is even more limited in courts that do not request sentencing recommendations from the probation office. In these courts, probation officers neither recommend further study nor participate in the study process once a study has been ordered.¹²

Despite such a limited function, probation officers do have a significant impact on the study process, since their recommendations influence the courts' decisions to seek further information through the study process. Judges frequently order studies when the probation office recommends them. For example, in the cases surveyed, probation officers recommended studies in 53 percent of the cases eventually sent for studies.

The procedural consequences of a presentence study recommendation. A presentence study recommendation can be viewed as a suggestion to defer the sentencing decision until more information has been gathered, rather than as a sentencing recommendation. Most courts do not require additional sentencing recommendations from probation offices when studies are returned from the bureau. Thus, study recommendations usually release probation officers from the obligation of making final sentencing recommendations to the

12. Procedures for handling presentence studies vary greatly between courts; these observations reflect only the most commonly followed procedures.

TABLE 2
Survey of Reasons for Presentence Studies

Principal reason for presentence study	N	% of all cases	% of cases excluding "don't know"
Psychological evaluation	58	67	82
Medical evaluation	2	2	3
Vocational evaluation	0	0	0
Sentencing recommendation	3	3	4
Nonstatutory	8	9	11
"Don't know" or unable to determine	16	18	—
Totals	87	100	100

TABLE 3
Referral Questions Asked in Thirty-Eight Pilot Court Cases

Groups	Referral questions	No. of such questions asked	% of cases with the question
I.	Offender's mental condition		
	1. Intellectual ability	6	16
	2. Mental disturbance present	10	26
	3. Psychological disturbance from brain damage	6	16
	4. Psychotherapy needed	14	37
	5. Type of therapy needed	16	42
	6. Benefit from therapy	4	11
	7. Mental condition deteriorating	4	11
	8. General psychological evaluation	5	13
II.	Predictions about future behavior		
	1. Criminal activity likely to continue if given probation	7	18
	2. Potential for violence	6	16
	3. Suicide potential	6	16
	4. Carry out threats	2	5
	5. Function without medication for psychological disorder	1	3
III.	Motivation, causal factors		
	1. Motivation for past crimes	9	24
	2. Psychological problem related to criminal activity	8	21
	3. Brain damage contributed to criminal activity	3	8
	4. Reason for abrupt change in behavior	2	5
IV.	Assessment of current behavior		
	1. Feigning memory loss, problem attitude, remorse, etc.	4	11
	2. Drug addict, including alcohol	6	16
	3. Interpret some unconventional aspects of behavior	9	24
	4. Interpret unusual interview behavior	2	5
	5. Basically a manipulative person	4	11
V.	Probation and institutional treatment needs		
	1. Implications of study for probation supervision	11	29
	2. Suggest specific treatment plan for probation	7	18

TABLE 3—continued

Groups	Referral questions	No. of such questions asked	% of cases with the question
	3. How can probation officer relate to offender	2	5
	4. Recommend institutional treatment plan	2	5
	5. Recommend appropriate institution for treatment	8	21
VI.	Requests for sentencing recommendations ^a		
	1. Benefit from probation	5	13
	2. Benefit from Youth Corrections Act treatment	6	16
VII.	Medical evaluation other than for brain damage		
	1. Survive in prison with medical problems	1	3
	2. Can person be medically treated in prison	1	3
	3. Diagnose medical problems	1	3
VIII.	Vocational evaluation		
	1. Basic academic skills	2	5
	2. Vocational training needs	4	11
	3. Assess current vocational skills	1	3

^a These data may significantly underrepresent the courts' interest in sentencing recommendations. Sentencing recommendations are so commonly provided that court personnel may not have seen any need to ask for them.

courts. This practice might induce some probation officers to recommend studies to escape difficult decisions. To an extent, this problem could be eliminated if probation officers were required to review presentence studies and provide courts with final sentencing recommendations.

Communications between judges and probation officers. In making study recommendations, probation officers typically provide courts with supporting reasons. These reasons are usually very general and seldom indicate exactly what purpose the study will serve in the judge's sentencing decision, nor do they suggest what questions the court should have answered by the study. The general reasons given by probation officers to support their recommendations suggest that they contribute to the referral problem discussed below (page 11).

Probation officers are often unaware of the courts' reasons for ordering presentence studies. In the survey of recent study commitments, probation officers were totally unaware of the courts' purposes in 40 percent of the studies that were ordered without a recommendation from the probation office. In most of the other cases,

probation officers had only general knowledge of the sentencing judges' objectives. Without some statement of reasons for study commitments from the court, a probation officer is effectively cut off from feedback that could increase his or her understanding of the court's objectives in ordering these studies. The officer is also prevented from assisting the judge by communicating the judge's objectives to those conducting the studies.

Probation officers have few incentives to improve their ability to handle study cases, because they are recommending studies which they are rarely required to use. They are not accountable for the appropriateness of study recommendations, nor for the quality of the studies returned to the courts. One cannot expect an improvement in probation officers' ability to select appropriate cases for presentence study unless the officers receive systematic feedback from the court and are obligated to use the study results.

Selecting Offenders for Study

The selection of appropriate cases for presentence study is the most crucial decision in the

study process. The Bureau of Prisons cannot be expected to produce useful study reports on inappropriately ordered studies. All else being equal, the usefulness of a study report is probably proportionate to the appropriateness of the case for study. Obviously, not all cases are appropriate for study, and when inappropriate cases are sent for studies, courts shouldn't be surprised when they receive unhelpful study reports. The probability of selecting a case for a study that would be useless is greatly enhanced when the selection criterion is only an interest in "knowing more about the person." There may simply be nothing new the bureau can discover that will be helpful in the sentencing decision. The "failure" of such a study is thus a function of the selection decision rather than of bureau personnel's inability to study the offender adequately.

An extreme example of this problem occurs when a study is ordered to give an offender "a taste of jail." In such a study, the court frequently has no objective in mind other than a short-term sentence. The bureau's report in such a study will usually be of no help to the court in its sentencing decision. Yet when the report is returned from the bureau, the judge may critically respond to the lack of useful information in the report, not realizing that the disappointing study results were primarily a function of his decision to commit that offender for a study.

Offenders are selected for presentence studies almost entirely on a case-by-case basis. Most probation officers and judges make these decisions without guiding criteria. Some courts have established general criteria for the use of presentence studies. But, although helpful in selecting cases for study, these criteria are usually insufficient to solve the selection problem. Unless court personnel are sensitive to the strengths and weaknesses of presentence evaluations, it is unlikely that established criteria can adequately instruct probation officers and judges to select only those cases for which studies will contribute to the sentencing decisions. There are several possible solutions to this problem; one is to train selected probation officers in the uses of presentence studies. This possibility is discussed later in this report.

Referral: The Court's Opportunity to Define the Presentence Study

Judges consistently fail to communicate their objectives and questions to those conducting presentence studies. It was not possible to determine the exact percentage of studies sent to the Bureau of Prisons without referral questions, but all the data collected in this project suggest that it is very large, probably more than 95 percent. Even when referral letters are sent to the bureau, they usually contain only a brief reference to the information the court is seeking. In the course of this project, copies of many court referral letters were collected from judges, probation officers, and corrections personnel. A few exceptional referral letters were located, but most were inadequate for referral purposes. Most letters amounted to little more than letters of transmittal; they seldom contained specific questions.

The failure to send referral questions to the bureau is a root cause of the frustration court personnel experience with the results of these studies. It undermines the rest of the presentence study process. This can best be demonstrated by analyzing the task facing presentence study examiners and comparing it to the task of preparing competency evaluations.

The court refers cases for presentence study the same way it refers cases for competency and similar psychiatric evaluations. This is unfortunate, since the environment of the presentence study is quite different from that of other court-ordered evaluations.

Except for the involvement of psychologists and psychiatrists in both presentence and competency evaluations, there is little similarity between the two examinations. Presentence studies initially require more court attention than do competency evaluations. Competency evaluations have a clearly and narrowly established purpose. The rules for determining competency are generally agreed upon and known to psychiatric examiners. Competency examinations are thus ordered to obtain expert opinion on a predetermined question, and must be answered in accordance with established criteria. (Perhaps this overstates the amount of agreement regarding competency eval-

uations, but in contrast to presentence studies, competency studies are well defined.) Consequently, there is no need for judges to tell examiners the purpose of these examinations; they may simply order the studies and await completed reports.

Unlike competency evaluations, presentence examinations have no agreed-upon objectives and rules adequate to guide those conducting the studies for the courts. In addition, there are no clearly defined relationships between the findings of these studies and later court decisions. Sentencing policies precise enough to form a framework for such studies simply do not exist. Statutes authorizing presentence studies do not provide specific guidance. In the final analysis, the only

purposes that can be clearly associated with specific presentence studies are the purposes in the minds of sentencing judges when they order those studies.

Recommendation. Given the ambiguities associated with presentence studies, judges who want useful study reports need to carefully define objectives for each study they order and communicate those objectives to the people doing the studies. Unless the courts provide such guidance, it is improbable that the resulting reports will be helpful in making sentencing decisions. The referral problem was carefully studied in the course of this project and is discussed further in the next chapter.

CHAPTER 4: HOW THE BUREAU OF PRISONS CONDUCTS PRESENTENCE STUDIES

The Bureau's Design for Presentence Studies

"It is the policy of the Bureau of Prisons to provide comprehensive reports which will be responsive to the courts' requests for aid in establishing a final sentence on specifically referred cases."¹³ The comprehensive (or "complete") report usually includes testing and evaluations performed by the educational, psychological, and medical departments at bureau institutions. In practice, however, study reports are more comprehensive in breadth than in depth; that is, professionals from many disciplines contribute to the reports, but none of them extensively examines the offender. The collection of a number of superficial evaluations produces reports that are no greater than the sum of their parts.

The statutory language used to establish presentence studies and the bureau's design for them have led many people to regard presentence studies as predefined processes rather than as flexible resources that produce useful responses only when triggered by specific questions. This view of presentence studies has had some unfortunate consequences.

The concept of the complete study has generated a considerable amount of ambiguity. The bureau is required to prepare a complete study of the offender, but what defines a complete study, and are such studies what judges need when they order presentence studies?

Presentence studies have been conceived and consistently designed as general evaluations. As

noted earlier, this model was borrowed from the classification study, which was created to serve the purposes of indeterminate sentencing. When the model was adopted, a great deal of optimism existed about the potential for presentence studies. The assumption underlying the model was that careful observation and study would maximize the rehabilitative potential of each sentence. Optimism about rehabilitation has diminished considerably since these studies were established. The idea that such studies could determine the key to rehabilitation has been abandoned by both the Parole Commission and the Bureau of Prisons. Parole Commission release decisions are no longer based on evaluations of the rehabilitative status of inmates. But the initial concept of a complete study still dominates the presentence study process.

There is no such thing as a complete study. All presentence studies are necessarily the result of choices between alternative issues that might be evaluated. There are literally hundreds of potential avenues of inquiry. The diverse topics contained in table 3 (pages 9-10) are only a sampling of the issues that might be addressed by a presentence study. Yet any study that undertook a thorough evaluation of each of the topics in that list would be prohibitively expensive and time-consuming.

When the court has limited objectives in mind, the "comprehensive" evaluation is a form of overkill. Genuinely comprehensive evaluations are not only frequently unnecessary for the court's purposes, but also technically impossible.

The courts and the Bureau of Prisons have to make conceptual and procedural changes in the way presentence reports are handled. The court already has a comprehensive evaluation, the pre-

13. Federal Prison System Policy Statement, no. 7200.16, item 4 (Oct., 1975).

sentence report, available for sentencing purposes. It does not need another, largely duplicative, study. What the court does need is a report that refines and extends selected aspects of the information uncovered in the presentence investigation. The bureau's presentence study would better serve the courts' needs if it were designed as a specific supplement to information contained in the presentence report. Thus, as an alternative, the courts might consider procedures to produce reports that are individually responsive to the sentencing court's needs. Such a model would be much more useful and less wasteful of professional resources than current presentence study procedures. Chapter 8 outlines procedures for such a study.

Some judges and probation officers worry that they may miss something if they do not ask for complete evaluations. This concern is unnecessary because of the nature of psychological evaluation. In order to respond to virtually any significant question from the court, a psychologist has to conduct a general evaluation of the offender, since this evaluation is a necessary basis for any response the bureau might make to the court's referral questions. Even if this were not the case, the court could, as one of its referral questions, ask the bureau to conduct a general psychological evaluation of the offender.

Under present procedures, examining psychologists conduct only a general evaluation because they have no motive to pursue their assessments of offenders. Psychologists and psychiatrists are most helpful and effective when they are trying to respond to specific questions. Thus the use of referral questions, rather than limiting the information contained in these studies, can only increase the precision and depth of the bureau's response to the court. In fact, requesting a complete study without providing referral questions will usually produce less thorough studies.

Bureau Procedures Used in Presentence Studies

Presentence studies are managed by institutional caseworkers who coordinate the various meetings and evaluations involved in the course of

a study. Caseworkers are also responsible for integrating the findings of all study contributors in a comprehensive study report. As a group, caseworkers are not well trained for this role. Their position does not require master's-level training, although some caseworkers have master's degrees in areas related to testing and assessment. Even presuming they have master's-level training in a discipline related to assessment, caseworkers have a role in these studies that would be demanding for psychiatrists or clinical psychologists. The assignment of caseworkers to write study reports may account, in part, for the superficial nature of many reports.

The study report format is carefully governed by a bureau policy statement, and the suggested format is consistently used for all studies, regardless of the nature of the court's referral questions. A study report consists of four basic parts: (1) a cover letter to the court containing a brief summary of the study findings and the bureau's sentencing recommendation, (2) a staff summary "providing opinion" regarding the facts in the classification summary, (3) the classification summary, which "brings together [factual] information known about the offender," including that developed in the presentence study, and (4) attachments, which usually include a psychological report and the results of a medical examination and educational testing. A psychiatric report will also be attached if a psychiatric evaluation was made in the course of the study.

The outline of topics and the format for staff and classification summaries are very similar to those of the presentence reports prepared by the probation office. Thus, these reports duplicate, at least topically, reports already available to the courts. In practice, many sections of the study report are taken entirely from the presentence report.

A Brief Description of the Study Process

When an order for a study is received at a designated institution, those involved in the study are to hold a brief organizational meeting to determine the court's objectives for the study and

make assignments in conjunction with these objectives. Since the court seldom communicates its purposes to the bureau, this meeting, if held, usually serves only to schedule a standard set of tests, interviews, and examinations.

During the course of a study, an offender spends several days being tested and interviewed. The offender may be unsystematically observed during the rest of the commitment period, but these observations do not appear to contribute to the study results in an important way. Few, if any, institutions have developed methods for learning about offenders from systematic observation of their day-to-day behavior. Reports seldom comment on the results of institutional observation, and in staff meetings there is usually only cursory discussion of an offender's institutional behavior. When comments about institutional behavior are made, they appear to be more the product of incidental than of systematic observations.

Because so many people are involved in these studies, most of the time allowed for the study is devoted to scheduling and to report preparation and review. The amount of time actually devoted to evaluation of offenders is very small compared to the time devoted to procedural mechanics and report preparation.

After the various evaluations and reports have been completed, the study team staff meets to review findings and settle on a sentencing recommendation. In theory, this meeting should bring people together to integrate perceptions gained during the study of the offender. Like the quality of study reports in general, the quality of discussion in these meetings varies greatly. There was only perfunctory interest in discussing cases at some of the staff meetings we attended, but in other staff meetings, there were more thorough discussions and exchanges of views. Unfortunately, we observed fewer meetings of the latter type. The lack of intensity and participation can be explained somewhat by the fact that most of the people attending study team staff meetings have not been trained in testing and evaluation. In most meetings we observed, the staff psychologist was the only person present who had been trained in those areas.

Upon receiving the study team's comments, the case manager prepares a final draft report for review by the case management coordinator and the warden's office. This review should, and apparently does, examine both the quality of the study and the nature of the sentencing recommendation.

Despite these checks, several cases sent by the pilot courts for study were returned without the bureau's having answered or acknowledged the court's referral questions. There were enough of these cases to raise questions about the seriousness with which some case managers and wardens undertake their review obligations. The climate for an insensitivity to referral questions has been set by the courts' failure to provide them in the great majority of study cases. Nevertheless, procedures should be established to insure that referral questions are not overlooked when provided.

Seeking the Courts' Referral Questions

Bureau evaluators are acutely aware of the courts' failure to communicate referral questions. When an offender arrives at an institution without an accompanying referral letter, either case managers or caseworkers must try to find out the court's study objectives and referral questions. If the court's purpose isn't clear from the presentence report, bureau policy requires that the case manager call probation officers to determine the reasons for each study. Although this procedure is probably the only practical option for the bureau to obtain some insight into the courts' reasons for these studies, it seems to be of questionable value. Thus, this project made an effort to assess the effectiveness of this procedure.

The telephone survey of probation officers associated with recent study commitments provided insight into the consequences of the bureau's procedure. In this survey, the probation officers who prepared the presentence reports on the committed offenders were asked why these studies were ordered, and what questions the court wanted answered. Probation officers often simply did not know why judges had ordered the studies, and it was not possible to determine even

a general reason for the studies in almost one out of five cases. This represented 40 percent of those cases committed for studies without study recommendations from probation offices.

In those cases where probation officers had some knowledge of the courts' study objectives, the officers were still frequently unable to frame specific questions to be answered by the study. In many cases, probation officers and judges simply did not have specific questions in mind when they recommended or ordered these studies; they could only state the most general reasons to support study decisions. In some cases, they did have specific objectives in mind but had difficulty articulating them. This problem arose often in interviews with pilot court probation officers. In interviews conducted to draft referral questions, it frequently took half an hour or more to determine what information the officers wanted from these studies. A few case managers were interviewed to follow up the telephone survey; they were asked what information they had obtained from telephone calls to probation officers. The knowledge of the courts' purposes that the officers derived from this procedure was usually inadequate to serve as the basis for effective studies. The case managers' notes tended to be brief and sketchy. These oral communications were probably subject to further loss of information as they were passed among those conducting the studies. Thus, although they produce some information, these procedures typically result in ambiguous communications, inadequate consideration of the reasons for individual studies, and outright speculation.

Bureau responses to referral questions. During the course of this project, many test studies were sent to the bureau with carefully prepared referral letters that contained many questions for evaluators to answer in their study reports. These questions went unnoticed and unanswered in several studies, even though bureau policies require personnel preparing presentence studies to respond to any referral questions sent from the court. In other studies, only brief responses were made to the courts' questions. But these responses, when they occurred, were usually contained in the body of the report and were often difficult to find. In many cases, it was impossible

to tell whether the study did or did not respond to the courts' referral questions. Only in a few cases did bureau personnel respond directly to study referral questions. In a few studies, these questions were answered with some care.

It is difficult to account for the fact that many referral letters were ignored. Perhaps these letters accompany studies so infrequently that bureau personnel do not really look for them when a study arrives. Also, the complex, rigid format the bureau uses to report these studies appears to distract bureau personnel from the task of responding to court-prepared referral questions.

An Evaluation of Bureau-Prepared Study Reports

In order to assess the general nature of the bureau's reports, the project staff collected all study reports produced for the federal courts during January, 1977. Ninety-nine reports were received from the Bureau of Prisons, and eighty-eight of these reports were complete enough to review. Examination of these studies and their accompanying presentence reports produced the following observations.

1. Other than test scores and the material in the psychologists' reports, almost no new factual information was contained in these studies.
2. The study reports borrowed heavily from the presentence reports for social background and criminal history information. The entire classification study, up to the statement of "current findings," typically summarized the presentence report.¹⁴
3. All studies were returned with sentencing recommendations.

14. Reliance on the presentence investigation is widespread and defensible. Bureau personnel do not have access to the probation officer's resources and thus cannot easily add to the basic background information provided by the probation officer. In addition, bureau examiners recognize the futility, in most cases, of reinvestigating the offender's background. The appearance in study reports of large amounts of material from presentence reports frustrates some judges and probation officers. In this case though, the problem is one of design rather than of inadequate evaluation. Once the decision is made to rely on the presentence report, that fact need only be noted, rather than duplicating criminal history and social information.

4. All studies were returned with psychological reports. The quality of the psychological reports varied widely. Some psychologists apparently only screened offenders for obvious signs of mental disorder; others thoroughly investigated such issues as criminal orientation, motivation, and personality characteristics. Most psychological reports indicated that the psychologist had not received a referral question from the court.
5. Only fifteen reports (17 percent) contained psychiatric evaluations. Most of these reports dealt only with questions of mental competency and provided general comments about the mental status of those examined, for example, the presence or absence of obvious signs of mental disorder.
6. Therapy suggestions in the psychological and psychiatric reports were limited to statements of need; they seldom provided treatment recommendations that would assist probation officers in arranging for therapy for offenders.

In summary, the only new information these studies reliably produced were mental status screenings and sentencing recommendations. To be sure, there were notable exceptions to this general observation. A few psychologists and psychiatrists routinely provided thorough evaluations and carefully discussed many issues, even though the court had failed to provide referral information.

Motivation Problems

Thorough evaluations like those mentioned above require an enormous effort. Evaluators operating in the present presentence study environment cannot remain highly motivated and pursue all potential avenues of inquiry without

guidance from the court. If the issues involved in presentence studies were narrower, it might be possible for evaluators to correctly anticipate them without direction from the court. But the range of issues that might be studied is very broad indeed; the court is often trying to explore relationships between various factors in a person's life and his or her criminal behavior. For example, the court may want to know if a person can live independently, apart from a parent. This is quite a different question than, Is this person mentally ill? Although the answer to the latter question might be made obvious by some unusual or bizarre behavior on the part of an offender, the answer to the former question is not obvious; the question usually arises because of judicial concern about the effects of a certain kind of sentence on the person being studied.

Given this situation, bureau personnel tend to study issues of their own choosing and, in the great majority of cases, to limit their inquiry to basic mental status screenings and obvious problems raised by presentence reports.

Many bureau personnel were concerned that they were devoting a lot of time to studies the courts might not be using. They frequently asked whether judges read these studies. They had all heard rumors that many studies were ordered for a "taste of jail" or other nonstatutory purposes. This uncertainty about the courts' real interest in study results seemed to undermine the motivation of people conducting the studies. If the courts are not serious about these studies, bureau staff reasoned, why should they extend themselves and undertake difficult assessments? When the courts don't bother to send referral letters, it is natural for bureau personnel to wonder about the extent of the courts' interest in the studies.

CHAPTER 5: SENTENCING RECOMMENDATIONS IN PRESENTENCE STUDIES

Presentence studies are composed of two parts: study reports and sentencing recommendations. Sentencing recommendations in adult studies are reviewed by regional Bureau of Prisons officials, and in youth studies, by regional officials of the Parole Commission.

After conducting an adult study, the Bureau of Prisons may statutorily recommend to the court any measures it deems appropriate. The bureau has routinely used this authority to provide only one kind of recommendation: a sentencing recommendation. It has not established equivalent procedures for formulating and reviewing other kinds of recommendations, such as treatment or therapy recommendations. The importance ascribed by the bureau and the Parole Commission to sentencing recommendations is signaled by the prominent position of the recommendations in study materials returned to the courts: they are always included in the cover letters to the courts. Further, they are virtually the only aspect of these studies subject to administrative review.

Despite the attention given to the preparation of sentencing recommendations, the courts should not view these recommendations uncritically. Sentencing recommendations are the product of a loosely controlled yet complex process. Early notions of the presentence study included panels of sentencing experts gathered around a table debating various sentencing alternatives for the court. Such panels have been neither trained nor assembled. Federal district judges have far more sentencing experience and expertise than anyone else involved in the presentence study process.

The Examining Institution's Role in Formulating Sentencing Recommendations

Sentencing recommendations are initiated by personnel at examining institutions. At the conclusion of each study, assigned personnel meet to compare opinions and formulate a sentencing recommendation. These recommendations are made by people who have no claim to special expertise in sentencing. Their background is in corrections; the bureau does not provide them with special training in sentencing. Making sentencing recommendations is tangential to other duties each team member performs for the institution.

The bureau has developed policies to guide preparation and review of sentencing recommendations.¹⁵ But these policies are very general and give little direction. Thus, the study teams' sentencing recommendations are necessarily very personal expressions. Like probation officers, the people who make sentencing recommendations do have a personal knowledge of the offender, and can draw on that knowledge in recommending sentences. This is virtually the only advantage that can be attributed to the recommendation procedures. Federal judges should weigh this advantage against the limited sentencing expertise and experience of those making the recommendations. Although the people involved in recom-

15. Federal Prison System Policy Statement, *supra* note 13.

mending sentences take their responsibilities quite seriously, their recommendations must be considered with caution.

Regional Review by the Bureau of Prisons

Almost all presentence studies are reviewed at bureau regional offices before they are forwarded to the courts.¹⁶ This review has a very narrow purpose, as it only includes the institution's letter of recommendation to the court. Reviewers are to see that the bureau's cover letter "meets acceptable [stylistic] standards," and contains a reasonable sentencing recommendation.

Regional reviewers may change an institution's sentencing recommendation, but bureau policy requires them to first consult with institutional personnel when differences of opinion occur. In practice, this policy appears to be frequently ignored. Institutional case managers, who are charged with coordinating these studies, periodically complain that recommendations are changed without their knowledge. This problem may be quite significant; a recent Bureau of Prisons study found that institutional and regional office recommendations in one region differed almost 50 percent of the time.¹⁷

16. Metropolitan Corrections Centers can send their reports directly to the sentencing courts.

17. A recent study by the Southwestern Regional Office of the Bureau of Prisons examined the correspondence rate between final sentences given by the court, sentences recommended by examining institutions, and sentences approved by the Southwestern Regional Office. Fifty-nine cases were compared. The following general results were observed:

Comparison groups	Percentage of agreement
Regional office and judge	30.5
Institution and judge	25.5
Regional office and institution	56.0

For a copy of *Decision-Making Processes Involved in Study and Observation Cases*, an unpublished manuscript by Patricia Pontesso, contact Stephen F. Pontesso, United States Department of Justice, Bureau of Prisons, Washington, D.C. 20534.

Whether or not regional and institutional personnel agree on a final sentencing recommendation, the court usually receives only the regional office's recommendation. Regional administrators seldom inform sentencing judges that differences of opinion exist. Thus the courts have no convenient method of determining whether the bureau's recommendations come from the examining institution or the regional office. Once a presentence study is completed, regional administrators do not have access to any more information than would be available to the court. Sentencing judges are certainly at least as capable as regional administrators are of determining whether an institutional recommendation is reasonable.

Two arguments can be made for regional review of presentence studies. First, it can be argued that regional review reduces the potential for disparity in recommendations. This is a weak argument, since the bureau does not employ systematic methods for reducing disparity at the regional level. Regardless of the value of regional review, federal judges should receive the sentencing recommendations of those who actually study offenders. When a disagreement occurs between the institution and the regional office, the regional office should forward both recommendations and provide the court with supporting rationale for each of them. The court could only benefit from such a dialogue.

Second, regional review can be used as a quality check on those preparing presentence studies. This would help the courts more than reviews of sentencing recommendations do. Courts are bothered by the quality of studies returned from the bureau more often than by the nature of sentencing recommendations. Such a review could insure that presentence studies are prepared according to bureau policies, and that they respond adequately to referral questions from the courts.

Parole Commission Review of 5010(e) Studies

The findings of 5010(e) (youth) studies are reported to the court by the Parole Commission, although the commission neither prepares these

studies nor provides policy guidance for their preparation.¹⁸ Except for transmitting sentencing recommendations, the commission plays a very limited role in the study process.

Parole Commission review is initiated when a regional office of the Bureau of Prisons forwards a 5010(e) study, with a sentencing recommendation, to the corresponding regional office of the Parole Commission. These materials are received by the regional prerelease analyst, who reviews the study and sentencing recommendation. When in agreement with the bureau's recommendation, the analyst prepares a letter for the regional commissioner's review and signature. (When in disagreement, the analyst redrafts the recommendation; the regional commissioner has access to the bureau's recommendation.) This letter contains the commission's sentencing recommendation and serves as a letter of transmittal to the court.

When considering sentencing recommendations from the Parole Commission, the courts should be aware of the limitations and the arbitrary nature of the commission's review. First, prerelease analysts do not conduct qualitative reviews of these studies. They accept the findings of the studies at face value, and make no effort to examine bureau procedures. Like the bureau reviewers, they focus on the nature of the sentencing recommendations. Second, they make no effort to determine whether these studies adequately address issues raised by sentencing judges. Third, the Parole Commission has not

established guidelines for the prerelease analyst's review of these studies or for the preparation of sentencing recommendations. Each analyst reviews sentencing recommendations using personally developed criteria. Fourth, there have been no procedures established to resolve disagreements between the commission and the bureau. Some prerelease analysts routinely discuss their differences with bureau personnel; others may or may not do so. Prerelease analysts can change bureau recommendations at their discretion and without obligation to notify the bureau. Although the regional commissioner has the final authority to determine the commission's recommendation, the prerelease analyst's impact on the recommendation returned to the court shouldn't be underestimated. Fifth, it is unlikely that the court will be notified of differences of opinion between the Parole Commission and the Bureau of Prisons regarding sentencing. Most regional offices of the commission do not routinely notify courts of such differences. In neither 5010(e) studies nor adult presentence studies can the court be certain that those who studied the offender agree with the commission's final sentencing recommendation.

Parole Commission review of youth presentence studies follows a procedure very similar to that of bureau review. Reviewers are primarily concerned with the format of the cover letter to the court and the nature of the sentencing recommendation contained in the letter. The Parole Commission reviews the bureau's recommendations in light of its own policies, and can modify them without consulting the initiating institution. These layers of review may reduce the possibility of grossly deviant suggestions, but they also increase the possibility that the recommendation the court receives will be based on factors that are not revealed in the findings of the study.

18. The Parole Commission has left the task of designing these studies to the Bureau of Prisons and has reserved for itself a minor reviewing role. Many Parole Commission personnel interviewed for this project had no idea why they were required to review these reports.

CHAPTER 6: THE LOCAL STUDY ALTERNATIVE

Rather than use presentence study commitments, judges periodically seek local professional evaluations of offenders. It is difficult to determine exactly how many of these studies are ordered each year, since the Administrative Office does not keep statistics on local evaluations. Also, rather than ordering studies themselves, judges sometimes ask defense and prosecuting attorneys to arrange for local psychiatric and psychological evaluations. In addition, in certain circumstances these studies are paid for by the attorney general. Examination of payment vouchers indicated the Administrative Office paid for between 100 and 150 of these studies in 1976.

Advantages of the Local Study

For several years the probation division of the Administrative Office has encouraged more frequent use of local studies. Still, judges continue to send the great majority of all presentence studies to the Bureau of Prisons rather than to local consultants. Like the bureau-prepared studies they replace, local studies are almost always ordered because judges want psychiatric or psychological evaluations.

Local studies certainly have many attractive features. They are usually completed within two weeks, compared to the five to eighteen weeks required for bureau studies. They are ten to fifteen times less costly than bureau studies.¹⁹ They are conducted by professionals who are in closer

contact with local community resources and, possibly, with the sentencing court. In spite of these advantages, local studies are underused, and offenders are frequently committed to the bureau for evaluations that could be performed very adequately by local professionals.

Partly because bureau studies are not really different from local evaluations (from the court's perspective), most presentence studies—perhaps as many as 70 to 80 percent—could be handled locally. That figure is based on this project's consistent finding that at least 80 percent of all presentence studies are ordered primarily for psychological or psychiatric evaluations. There are considerations that would reduce the percentage of cases appropriate for local referral. The court may be seeking a sentencing recommendation from the bureau. Competent professionals may not be locally available. The court may want some offenders to have a "taste of jail" while they are being studied. Still, most presentence studies conducted at the Bureau of Prisons technically do not have to be done there.

There are only two basic differences between bureau and local studies when the usual needs of the court are being considered:²⁰ bureau studies (1) provide the court with sentencing recommendations and (2) give evaluators the opportunity to observe offenders extensively as part of the study. But, as has been noted, most presentence studies

the examining institution. Those costs can often add another \$1,000, bringing the total cost for some studies to more than \$3,000. In contrast, a local psychological or psychiatric evaluation may cost as much as \$300 in exceptional circumstances, but probably averages \$150 or less.

20. In most studies, the vocational testing and medical examinations cannot be considered "usual needs" because the court usually does not seek this data and consequently will not use it in its sentencing decision.

19. Estimates received from the Bureau of Prisons place the costs of presentence studies at approximately \$1,300 for 5010(e) (youth) studies and \$2,000 for 4205(c) (adult) studies. These figures are based on an estimated average daily cost of \$21.60. Studies that take longer than the customary sixty or ninety days would cost more. These estimates do not include transportation costs and marshals' fees to and from

are not significantly improved by the unsystematic observations of offenders that occur in bureau studies.

Why Local Studies Are Underused

It appears that many judges and probation officers use bureau studies because local studies are procedurally more difficult for court personnel to handle. Unlike bureau studies, local studies must be arranged for and monitored by the court. Arrangements for local studies are usually handled by the probation office. To provide for local studies, the probation office must (1) arrange for psychiatrists or psychologists to do the evaluations, (2) find a place or places to conduct evaluations, (3) handle procedures to pay the evaluators,²¹ and (4) incorporate the results of the study into the presentence investigation report. These tasks are not usually present with bureau presentence studies. As previously described, in most courts the probation officer's involvement in bureau studies is very limited; it usually involves only recommending a study to the sentencing judge.

Another reason that the bureau is called on more often to conduct presentence studies is that probation officers and judges frequently do not have the technical background to sort cases according to their appropriateness for local or bureau studies. Given this uncertainty, many view bureau studies as safer than local studies because they are more "comprehensive" and are conducted in an institution. Quite reasonably, judges and probation officers would rather err on the side of too much than too little evaluation.

The Variety of Local Alternatives

A number of workable arrangements are available for courts that want to use local studies. Some courts use panels of psychologists or psy-

21. Payment is made by the Administrative Office when the court submits AO form 19. Many of these procedures can be systematized and handled by a secretary, as has been effectively done in the probation office in the District of Oregon. Chief probation officer Walter Evans, by organizing local study procedures, has greatly reduced the complexity experienced in other offices.

chiatrists for most evaluations. Others have made arrangements with university hospitals or local clinics. Bureau of Prisons contract facilities are used in some districts. Many state probation systems employ full-time clinical psychologists to conduct presentence studies and oversee those that need to be referred. Other state courts contract with psychologists and psychiatrists to do a certain number of evaluations each year.

No attempt was made in this project to weigh the merits of these alternatives. In fact, they cannot be compared objectively. The best alternative for any given court is the most convenient arrangement that can satisfy the court's need for presentence evaluations. A few observations might be helpful, however. The advantages of the local study are greatly diminished if the evaluators are not familiar with the population being studied or with the needs of federal judges in making sentencing decisions. Thus, a good general rule to follow in setting up local studies is to limit the number of potential evaluators as much as possible (yet still meet the court's needs), and make sure evaluators are educated to the problems facing the sentencing judge.

Recommendations for Using Local Studies

More frequent use in some courts. Some courts, but not all, should use local studies more often. The complexities associated with local studies are sufficiently great that courts making few study commitments would be well advised to continue using bureau evaluations. A court will have to be able to justify the effort of making local arrangements and insuring enough contact between the court and evaluators to develop the needed familiarity and expertise. Courts that commit more than ten persons a year for bureau studies should seriously consider the local study option. Approximately twenty districts use studies this frequently, but the commitments from those districts account for more than 70 percent of all studies ordered from the bureau each year.

Study specialists in the probation office. Local studies would be more manageable if they were handled by "study specialists." The expertise

needed to manage an effective program of local professional evaluations calls for specialized training of involved personnel. But studies are used infrequently enough and are complex enough that in most courts it would be a waste of professional resources to expect all probation officers to become expert in handling study referrals. As an alternative to extensive general training, a limited number of probation officers in each court could be trained as consultants to judges and other probation officers considering studies.²² As study specialists, these officers could help the court define study objectives and prepare referral questions. They could also advise court personnel on the merits of local or bureau studies, given the purposes of each evaluation. They could schedule local studies and serve as the primary court contact with local evaluators and with bureau personnel handling study cases. Study specialists could also help evaluate study reports when they are returned to the court. The presence of such specialists in courts that use large numbers of studies should reduce the tendency to use bureau studies when unnecessary, and, hopefully, im-

22. Rather than train probation officers as study specialists, some courts might prefer to use either bureau or local psychologists as consultants to serve this function. In fact, an excellent case can be made for employing full-time psychologists in the probation offices of courts that regularly require many presentence studies. This person could perform some evaluations and coordinate others, as well as advise the court on the use of these reports in sentencing. The probation office would have the added benefit of this person's advice on the design of treatment programs and availability to provide therapeutic services to probationers.

prove selection and referral procedures in those courts.

Limiting the number of local evaluators. Psychologists and psychiatrists, to be most effective in preparing local evaluations, need to be familiar with the court's needs and the types of individuals sent for study.²³ The opportunity to develop this familiarity is significantly reduced when the court establishes a large panel of professionals to undertake these studies. Each person on the panel may end up examining only one or two individuals per year; the result is that court personnel and evaluators do not establish close working relationships. To avoid this problem, the ideal arrangement would be for each court using local studies to contract with one person to conduct all the studies. This person could work closely with the probation office's study specialist.

The use of written referral questions. The use of local evaluations does not reduce the need for referral questions. Like bureau-prepared presentence studies, local studies will be most useful if the court clearly defines the reasons for each study ordered and effectively communicates its reasons to those conducting the evaluation. Thus, in setting up local evaluations, each court should also establish procedures to effectively handle the referral process.

23. Psychologists and psychiatrists interviewed for this project consistently expressed the opinion that considerable experience with offenders is necessary before one can conduct these evaluations effectively. Some suggested that evaluators need to conduct as many as fifty to one hundred evaluations to become effective in that role.

CHAPTER 7: JUDICIAL OVERSIGHT AND TRAINING

A Need for Judicial Oversight

Responsibility for the design and preparation of presentence studies has been left entirely to the Bureau of Prisons. The judiciary has not assisted the bureau in the general design of these studies, nor, in most instances, has it provided them with specific guidance in individual studies. It is the absence of judicial oversight that, in large measure, accounts for the failure of many of these studies to satisfy the needs of sentencing judges. If the courts want more useful studies, they must exercise control by contributing to the development of policies governing preparation of the studies.

Given the absence of judicial guidance, it is hardly remarkable that presentence studies frequently prove to be of little value. Bureau personnel are being cast into the role of diviners. They are expected to anticipate a judge's needs with neither general nor specific guidance from the court. They are asked to do so without having personal sentencing experience and without nationally agreed-upon sentencing policies. The bureau, in spite of these difficulties, has attempted to establish policies and procedures to produce useful reports. This has not been feasible because of the absence of judicial guidance.

The need for judicial oversight of presentence studies has been overlooked for many years. There are two probable reasons for this. First, it is likely that the need for judicial guidance was never considered because the authorizing statutes made no mention of judicial participation in these studies. The responsibility for preparing and reporting these studies was given by statute to the attorney general, and by delegation to the Bureau of Prisons. Second, it is possible that the courts

felt no need to contribute to the design of these studies since the studies were established as "complete" evaluations. This is a consequence of the perception of presentence studies as predefined processes discussed in chapter 4.

The lack of judicial involvement in the design of these studies is illustrated by contrasting the policy guidance given to the Bureau of Prisons for presentence studies and that given to probation officers for presentence reports. The courts have long recognized the need to give probation officers both general and specific guidance for the preparation of presentence reports. Detailed oversight of this process has been provided by the Probation Committee of the Judicial Conference and by policies developed in each district court. No equivalent consideration has been given to the preparation and objectives of presentence studies.

Presentence studies involve many people and complex procedures. Typically, systems of this type are not wholly effective at first, but must usually evolve to reach their potential. The evolutionary improvement of such systems frequently depends on adequate feedback. Unfortunately, the courts have not given the bureau adequate feedback in the past. It is unlikely that presentence studies will ever be much more useful than they are now without two kinds of information from the courts: (1) general policy contributions, (2) day-to-day assessment of the adequacy of individual studies. This second type of feedback is essential because policies, however inspired, may not be adequately carried out by those responsible for implementing them. This is evident in the way presentence studies are currently handled. Many important aspects of bureau study policies are regularly ignored or followed superficially by their own personnel.

Recommendations. Undoubtedly, the Bureau of Prisons would welcome the judiciary's recommendations and feedback on the conduct of these studies. Therefore it is recommended that: (1) the Judicial Conference's Probation Committee develop presentence study policies for consideration by the Bureau of Prisons, (2) the federal courts and the Bureau of Prisons work together in a pilot program to refine procedures for producing effective presentence studies, and (3) a special liaison be established between the Judicial Conference's Probation Committee and the Bureau of Prisons to discuss these policy suggestions and periodically exchange feedback between the bureau and the courts. This exchange of ideas would promote conceptual and procedural improvements in the presentence study process. The pilot test of new procedures suggested here would provide a necessary testing ground to refine the ideas discussed in this report, particularly the suggestions in chapter 8.

A Need for Training Court Personnel

Even though judges and probation officers often find it necessary to consider psychiatric issues in sentencing, their experience has not prepared them to use psychiatrists and psychologists effectively to get this information. Without the appropriate experience, they have few means for increasing their skills in this area. There are virtually no published materials available; researchers have not examined the problems associated with the use of psychological data in sentencing, and only a few brief theoretical articles have been published.

Most courts and probation officers have not established detailed criteria for selecting cases for presentence study, nor have they developed procedures for handling these cases. In those courts where procedural guidance has been provided, it necessarily suffers from the lack of solid information about the presentence study process.

Recommendations. The training needs of courts and probation officers could be substantially met by providing (1) seminars that examine issues and procedures regarding the collection and use of psychiatric data in sentencing, and (2) a handbook modeled on the probation division's *Presentence Investigation Report* (Administrative Office publication number 103), which would consider the theoretical and procedural issues associated with these studies. This handbook should serve as a guide to a process that many judges and probation officers become involved in only occasionally.

A program should be developed to train selected probation officers as study specialists. (See "Recommendations for Using Local Studies," the last section in chapter 6, for more detailed discussion of study specialists.) This training would naturally have to be more intensive than that usually provided at the Federal Judicial Center's Advanced Seminars for Probation Officers. An adequate training program for study specialists would require an initial week of training, followed by an additional week after approximately six months of experience. The training program could be developed and tested as part of the procedural pilot test suggested in the preceding section of this report.

CHAPTER 8: A NEW MODEL FOR BUREAU-PREPARED PRESENTENCE STUDIES

Presentence studies must be viewed as the product of an interdependent process. Judges depend on the Bureau of Prisons for study reports that will assist them in making sentencing decisions. The bureau, in turn, relies on the courts for guidance in the form of clear referral questions and well-prepared presentence reports. Improvements in presentence studies depend at least as much on the court's handling of these studies as on the Bureau of Prisons'. The courts need to develop better methods of selection, referral, and review to make the presentence study process effective. The basic concept of the presentence study needs to be changed from that thrust upon the bureau by the sentencing legislation of the 1950s and modified to reflect the realities of testing and assessment in the criminal justice environment.

Although it is interdependent, the presentence study process has never been treated as such. Procedures and expectations that cross institutional boundaries need to be developed. The rest of this chapter includes recommendations that outline a coherent design and an integrated set of procedures, beginning with selection problems and ending with sentencing. These recommended procedures include consideration of efficiency, need, economy, and practicality. In an attempt to respond to the problems discussed in previous chapters, each recommendation discussed below will be related to some stage of the presentence study process and to the overall objective of serving the courts in their sentencing function. The model described in this chapter would incorporate the suggestions for judicial involvement in presentence studies, as discussed in chapter 7, as

well as the recommendations for local evaluations described in chapter 6.

Improving Referral Procedures

It is important that judges provide *written* study objectives and referral questions for the Bureau of Prisons with every presentence study. The court's referral questions should carefully explain the purposes of each study and should contain lists of specific questions to be answered in the study reports. Written referral questions are needed because (1) they will force the people who recommend and order studies to be more precise about their reasons for doing so, (2) they will be less subject to distortion than oral communications, (3) they will have greater impact on the form and content of studies than oral communications, and (4) they will serve an important reference function months later when the study reports are returned and judges need to refresh themselves on their reasons for ordering the studies.

The referral letter to the bureau should serve as the central document of the entire presentence study process. This document is so important to the success of these studies that the bureau's report format should be flexible enough to allow examiners to respond clearly to the court's referral questions. It would be helpful if brief responses to all of the court's referral questions replaced the general, frequently unhelpful comments that most study report cover letters now contain. More detailed replies could also be contained in the body of the report.

Procedures for creating written referral questions were pilot-tested during this project. Sugges-

tions for preparing referral questions are contained in appendix B.

Expanding the Probation Officer's Role in Presentence Studies

Probation officers have traditionally had too little to do with presentence studies. By virtue of their training and experience, probation officers are well suited to provide more support in presentence studies than they do now. Currently, probation officers serve as information specialists in preparing presentence reports for the court. In this role, they develop expertise in gathering and evaluating information. They also become quite familiar with the characteristics and backgrounds of individual offenders, and thus are in an excellent position to help judges collect and evaluate more information on offenders before the court for sentencing.

There are many ways that probation officers can provide useful support to judges who do not have the time to become experts in referral and evaluation procedures. First, probation officers should, upon recommending a presentence study to the court, always provide the sentencing judge with a draft referral letter. This draft letter would serve several useful functions. It would allow a sentencing judge to see exactly why a probation officer has recommended a given study and what questions he expects the study to answer. It can save the court the time required to prepare a referral letter, should it order a study. Second, probation officers could also assist judges by preparing referral letters when judges order studies without recommendations from the probation office. Third, probation officers could carefully examine study reports returned to the court from local and bureau evaluators and test their perceptions against those in the report. The probation officer's familiarity with the offender provides an excellent basis for the officer to evaluate the report's conclusions and recommendations.

The training suggestions given in chapter 7 could be used to increase probation officers' ability to perform these functions for sentencing judges.

The Study Specialist

As discussed in chapter 6, selected probation officers could be trained as study specialists, to deal with professional evaluators, particularly psychiatrists and psychologists. Such study experts could assist judges and other probation officers in selecting cases for evaluation, preparing referral questions, and reviewing study reports returned to the court.

A major problem with presentence studies in most courts is that no single person is responsible for the quality of the studies prepared for the court. It would be a valuable service to the court if study specialists were given this responsibility; they would systematically review study reports to determine whether court referral objectives were adequately handled in each study. Inadequately prepared studies could be reported to sentencing judges and feedback could be provided to the Bureau of Prisons. Study specialists could help probation officers integrate presentence study findings with their own presentence information, as needed, and provide the court with a final sentencing recommendation from the probation office.

Psychologists and psychiatrists as a group have neither the motivation nor the opportunity to become familiar with the information needs of federal judges. Study specialists could provide a procedural and conceptual bridge to these professions. In this role, they could serve as the court's liaison with bureau and local evaluators—arranging for, monitoring, and reviewing each study ordered by the court. In summary, there are many reasons to train study specialists in courts that use presentence studies frequently.

A New Concept for Presentence Studies

The basic approach. The presentence study should be designed as a flexible resource to support federal judges in their sentencing responsibility, rather than as a predefined process, i.e., the "complete" study now in vogue. This distinction is critical, and it is particularly important for

judges and probation officers to begin to perceive studies as a flexible tool. In providing an evaluative resource for the court, the bureau should simply make its professional staff available for any type of evaluation the court requests, but should not define a broad study in advance. Changing the concept in this way will force the courts to decide what they want in each study they order. Nothing is lost by adopting this model, since the current "comprehensive" presentence study is basically so sterile that courts seldom get the information they seek from such studies.

As a point of departure, the bureau should provide a basic response to all unspecified study requests. Since most courts seek psychological evaluations, the basic presentence study should provide only a general psychological evaluation of offenders sent to the bureau without referral questions. Beyond this basic response, the bureau should maintain the flexibility to provide more comprehensive evaluations at a court's request. For example, all evaluations routinely contained in the current presentence study should be available to a court when the court's study objectives require such evaluations. "In-depth" evaluations should be undertaken in response to each of the court's referral questions.

Managing the presentence study. Prison psychologists should be given the responsibility for conducting most presentence studies and should prepare study reports for the court. Unless the court's referral questions indicate that the study has some other purpose, there is no need for a response from anyone other than the psychologist conducting the evaluation. Of course, the psychologist would not perform this function in studies ordered solely for medical or other nonpsychological evaluations. Such studies would be handled administratively and prepared by the respective professional departments.

Case managers should not be responsible for integrating the findings of various evaluators in a "comprehensive" study report to the court. These efforts seldom improve the insights of the various evaluators. If the court's referral questions require collaboration between various evaluators, the evaluators should be responsible for coordinating their perceptions. This model tends to place

accountability for the quality of the report on those people who are trained to professionally study offenders.

Case managers could serve a valuable administrative function: scheduling the different evaluations and assembling the various reports to the court. In the context of this report, it is not possible to identify and describe exact administrative procedures to make this concept work. The important issue is the basic approach. There is little question that once it has been established, the task of instituting workable procedures will not be difficult.

Under this model, the design of each study would be dictated by the court's referral questions.

The role of observation. This model does not assume the value or necessity of an extended period of observation. Like all other evaluative efforts, observation should only be used as needed to respond to the court's referral questions. Shifting observation from a mandatory to an optional procedure should result in shorter presentence studies and more systematic observation when it is determined to be useful in achieving the objectives of a particular study.

The length of time needed for presentence studies. Since most evaluations do not require an extended period of observation, and since this model minimizes the number of people involved in the average study, it is clear that the length of time used for presentence studies could be cut dramatically. Most studies could be completed and returned to the court within a few weeks after the offender arrives at the institution. Longer periods of time would be necessary only when the court's referral questions raise issues requiring systematic observation over the customary sixty or ninety days. Again, the emphasis should be on flexibility. The size, complexity, and duration of each study should be dictated by the nature of the court's referral.

Bureau-Prepared Sentencing Recommendations

Like other aspects of the presentence study, sentencing recommendations should not be rou-

tinely included in study reports unless they are specifically requested by the court. The primary benefit of making currently mandatory recommendations optional is to focus attention on and bring genuine expertise to the task of providing sentencing recommendations. Under this model, the machinery for preparing sentencing recommendations would be set in motion only when the court requests such a recommendation. When requested, sentencing recommendations would be prepared according to criteria and procedures provided by the judiciary.

Different people should be responsible for preparing sentencing recommendations and conducting the presentence study. Those involved in recommending sentences need to be trained in sentencing. They should receive reports from those conducting the presentence studies. Also, the study evaluators should be present at meetings of the bureau's sentencing panel.

Regional Review of Sentencing Recommendations

If the present type of regional review of sentencing recommendations is to be continued, regional administrators should be required to forward copies of all recommendations made in each case to sentencing judges. It is imperative that the court be appraised of the study team's recommendations. If the regional reviewers disagree with institutional recommendations, they should state clearly why their recommendations differ from the institution's. This policy is already followed occasionally in some regional offices, and it is recommended that it be routinely followed by all reviewers.

It is recommended that regional review not only include a review of sentencing recommendations, but also, more important, serve as a qualitative

review of the evaluations undertaken at examining institutions. This review should aim to insure an adequate response to the court's referral questions. The reviewers, in most cases, would have to be psychologists. Perhaps one psychologist in each region could serve this function for the regional office. There would be no need to locate this reviewer at the regional office.

Parole Commission review of 5010(e) (youth) studies no longer serves a useful purpose; it only extends the time required before these studies are returned to the court. Therefore, it should be eliminated.

Advantages of the Model

This model has several advantages over the current procedures used for presentence studies. The model

1. will not unduly raise judicial expectations of what the bureau can accomplish when referral questions do not accompany offenders sent for presentence studies
2. should result in less costly studies
3. should allow Bureau of Prisons personnel to concentrate their efforts on questions of interest to the courts
4. would provide assistance—study specialists—for federal judges in the unfamiliar task of analyzing professional answers to questions raised for sentencing purposes
5. should substantially reduce the average time needed for presentence studies
6. would greatly reduce the number of people routinely involved in study cases
7. emphasizes in-depth rather than horizontally comprehensive evaluations.

APPENDIX A: METHODOLOGICAL NOTES

Court and Probation Office Observations

The six federal district courts visited for this project were the Southern District of California, the Northern District of Georgia, the District of Oregon, the Western District of Washington, the Western District of Missouri, and the District of Columbia. State courts in Washington and Oregon were also visited.

In each of these courts, project staff generally interviewed one or more judges, the chief of probation, and probation officers. Formal and informal presentence study procedures were reviewed in each court. Whenever possible, people interviewed were asked to review the procedures used in recent presentence studies and to explain what the court hoped to accomplish in each study. Procedures for local studies, if the particular court used such studies, were also examined. In visits to some courts, local psychologists who had previously conducted local studies were interviewed.

Evaluation of Study Reports

In order to learn what new information was typically received from the Bureau of Prisons in presentence study reports, a sample of these reports was obtained from the Bureau of Prisons. The sample consisted of all reports completed by the bureau during January, 1977. In response to the request for copies of these study reports, the bureau provided the Federal Judicial Center with parts of ninety-nine reports.

These reports were examined in two ways. They were compared to the courts' presentence reports, and the contents of the accompanying psychiatric and psychological reports were analyzed. The study reports were compared with

their respective presentence reports to determine which sections of the study reports typically contained new information for the sentencing court. Information was considered to be new if it was not provided in the court's presentence report. Section-by-section comparisons were made of twenty of the ninety-nine reports: every third presentence study was compared with its accompanying presentence report from the court. Only fifty-eight of the ninety-nine reports received from the bureau were accompanied by presentence reports. The method of analysis was largely impressionistic. The related sections in the two reports were read together, and the existence of new information was noted when it occurred.

It was assumed that the psychological and psychiatric reports would contain new information, or at least unique observations. Thus, a different direction was taken in analyzing those reports. They were examined to determine what kinds of evaluations were performed and what issues were usually addressed. Eighty-eight of the study reports received from the bureau contained psychiatric and/or psychological reports. Each of these reports was examined with the following questions in mind:

1. Did the court supply a referral question?
2. Was the offender interviewed by the reporting psychiatrist or psychologist?
3. Was there any indication that the offender was systematically observed?
4. What kinds of psychological tests were used to evaluate the offender?
5. Did the psychologist or psychiatrist explore the offender's motives for his/her crime or criminal activity?
6. Were treatment considerations mentioned in

the report? If so, were specific recommendations made to the sentencing court? Was a detailed therapy or treatment program outlined, or was there only a general reference to treatment?

7. Did the psychiatrist or psychologist limit the evaluation to screening the offender for obvious signs of mental disorder?
8. Could the evaluation have been adequately handled by a local psychiatrist or psychologist?

Research in the Pilot Courts

For three months, the author of this study interviewed, by telephone or in person, probation officers in three district courts (the Southern District of California, the Western District of Missouri, and the District Court of the District of Columbia) each time the officers were associated with a presentence study. Probation officers in these courts were asked to contact the author (1) each time they decided to recommend a presentence study to the court, (2) each time a judge

committed an offender for a study without a recommendation from the probation office, and (3) each time a study report was returned from the Bureau of Prisons. In the early contacts in each case, both the probation officer's reasons for recommending and the judge's reasons for ordering each study were sought. In addition, these probation officers were interviewed to determine what referral questions the court and the probation office wanted answered by the study. The author drafted a referral letter, attempting to reflect exactly the court's concerns and questions about the offender as they were expressed in the interviews.

In three months, the author worked on thirty-eight cases that were sent for presentence study with referral letters. When the study reports were returned from the bureau, each was reviewed, and the affected probation officers were asked to evaluate the bureau's response to the court's questions. In addition, the author followed up on five of the thirty-eight cases by observing the Bureau of Prisons classification team meetings held at the end of the studies.

APPENDIX B: PREPARING PRESENTENCE STUDY REFERRAL LETTERS

Content Suggestions for Presentence Study Referral Letters

Referral letters from the court to presentence study examiners should contain at least:

1. a statement of the court's purposes in ordering the study
2. a brief statement of relevant background information
3. a list of specific questions for the study examiners to respond to in the presentence study.

These three items are considered separately below. After these items have been discussed, sample referral letters will be provided and discussed.

The statement of study objectives. The people conducting presentence studies must know why a study is ordered before they can respond to the needs of the court ordering the study. As discussed in chapter 3, it is improbable that the contents of a study report will address the issues of concern to the court unless study examiners are provided with a statement of the court's objectives. Even the most general statements would help, but the more precise the court can be in defining its own purposes, the more helpful the referral letter will be to those conducting the study.

Presentence studies were created to aid judges in sentencing offenders. Thus, study commitments should be related in some clear way to sentencing options being considered by the court. If judges notified study examiners of the sentences they were considering in each case and how these considerations were related to the decision to order a study, the people conducting these studies

would be able to give the court valuable professional service by commenting, in light of the study results, on the sentencing alternatives being considered. This would greatly help judges who are presently confronted with the difficult task of applying the results of presentence studies to the sentencing options available to them. This task is made more difficult because those conducting presentence studies cannot presently assist the court by pointing out the implications of the study findings for various sentencing decisions.

The statement of study objectives should be the court's attempt to communicate the purposes of a given study to those conducting the study, and to explain how these objectives are related to sentencing options being actively considered by the court.

A statement of background information. Each referral letter should also summarize personal observations and background information related to the decision to order a study commitment. This information should be provided in support of the study objectives, since one cannot usually explain the reasons for a study without commenting on background factors and other information about the offender. This information allows those conducting the studies (a) to better understand the concerns and needs of the sentencing judge, and (b) to provide the court with independent evaluation of the behavioral observations and background factors that were of concern in ordering the study. The people conducting the study can report to the court their own interpretations of this information, and can relate the court's observations to the findings of the presentence study. The regular inclusion of relevant background information in referral letters from the court will alert study examiners to the kinds of information

and observations that cause concern in certain cases.

It is important, in providing background information, to be precise in describing the factors that concern the court. The more precise the information in the referral letter, the more likely that the court will receive interpretations of the behavior that generated the need for a study in the first place. Ideally, this material should be both factual and interpretive. In this way, probation officers and judges can better check their perceptions of the person being tested against the evaluators' interpretations.

This material may also be included in the presentence investigation report. Nevertheless, it is necessary to isolate the information in the report that is specifically relevant to the decision to order a study. To avoid the need to reproduce lengthy observations, relevant material in the presentence report could be referenced in the study referral letter. However it is done, it is important that background material related to the study commitment decision be identified and communicated to those conducting the study.

Listing specific referral questions. A presentence study referral letter should also contain a list of questions for examiners. Many benefits should result from the inclusion of specific questions in referral letters. First, the task of formulating specific questions forces judges and probation officers to think precisely and clearly about study objectives, and to decide which issues are of primary interest for sentencing purposes. Second, if examiners are required to respond to each question asked by the court, the court will be insured of replies to each issue that is important enough to be raised specifically in the referral letter. Third, in responding to these questions, examiners can provide probation officers and judges with feedback about the questions being asked by the court. For example, some questions may be impossible to answer; this procedure allows study examiners to notify the court when it is impossible to provide the information sought.

Sample Referral Letters

The following letters are offered as examples of

the format suggested above. There should be great flexibility in the referral letter organization, as a rigid format may interfere with necessary subtleties in the communication process. Thus, these samples are offered only as illustrations of the suggestions discussed above.

Dear Warden:

On January 3, 1978, Mr. J. Doe was sentenced for observation and study under 4205(c) in U. S. District Court, City, State. As noted in the presentence report, Mr. Doe made several threatening telephone calls to public officials. He is being sent for a study to see if you can determine why he made these calls, and whether or not he is likely to carry out the threats he made to those he called. I am concerned about these issues because I am considering a sentence of probation in this case. Most of the information I currently have on Mr. Doe suggests to me that he is unlikely to repeat these calls or to follow through with the threats he made, but there are some troubling aspects of his behavior that I need to better understand before I will be comfortable allowing probation in this case.

As noted throughout the presentence report, Mr. Doe's telephone threats and assaultive behavior were very much out of character. I am particularly concerned about the unusual nature of the violent outburst (described in detail in the presentence report) that occurred when Mr. Doe was apprehended by the police. It appears to me that he almost arranged to be caught and then fought his captors. Also of concern is the fact that he continues to deny making the threatening telephone calls in spite of the overwhelming evidence against him and the fact that he entered a voluntary guilty plea. His denials, as far as I can tell, are organized, clearly stated, and seemingly sincere.

There is one aspect of Mr. Doe's background that bothers me. He has changed jobs frequently, but has seemingly done so on his own initiative. His previous employers have typically been quite pleased with his work and his relationships on the job. He claims to have made these changes to improve his pay, but the facts do not fully support this assertion (see presentence report). It would help me if you would explore the reasons for Mr. Doe's frequent job shifts. This information will help us in making probation decisions, should Mr. Doe be given probation after he is returned from the study.

We had a psychiatric evaluation of Mr. Doe conducted at a local hospital. They did not find signs of "neurotic or psychotic behavior" in Mr. Doe. This

information is somewhat helpful but, as you can see, our concerns are much broader than this in this case. Their report did not address the concerns noted above. Thus, I ask that you consider the following questions, keeping in mind the general concerns noted above.

1. What motivated Mr. Doe to make the threatening telephone calls?
2. Given your assessment of his motivation for this offense, what of the future? Is he likely to do this again? Is there something we might do in a probation setting that would minimize the probability of his making more threatening calls?
3. How do you interpret his inability (or unwillingness) to acknowledge making the telephone calls, in spite of the contrary evidence and his guilty plea?
4. Is it possible that he doesn't recall having done the things with which he is charged?
5. His assaultive outburst is of concern to us in considering probation in this case. How do you explain it? Is this type of behavior characteristic of Mr. Doe?
6. How do you explain Mr. Doe's frequent employment shifts?
7. Given your understanding of his reasons for changing jobs so frequently, how might we work with him on probation to encourage him to maintain more stable employment?
8. How do you feel about a sentence of probation for this individual?

I would appreciate any other comments or observations you can provide, in addition to responding to the questions and concerns above. Thank you for your assistance.

Dear Warden:

On January 3, 1978, I sentenced Mr. Doe for observation and study under 4205(c). Some of Mr. Doe's behavior suggests to me that he is suffering from some type of mental disorder. In interviews with his probation officer, he has acted rather strange and smiled frequently and inappropriately. As described in the presentence report, he has frequently made unsolicited comments about prior criminal activities that were likely to prejudice our attitude in sentencing him, without seemingly being aware of the potential impact of these comments. He certainly seems to lack judgment and perhaps basic intellectual ability.

According to Mr. Doe's report, he previously suffered a "nervous breakdown" for which he was hospitalized. We have requested psychiatric data from

the hospital where he was treated, but it hasn't arrived yet. Consequently, we know little about the nature or extent of Mr. Doe's previous mental problems. Even if this data eventually comes, it will be approximately ten years old and, therefore, of only marginal utility. Thus, in addition to responding to the questions listed below, would you provide us with a general psychiatric evaluation of Mr. Doe?

As Mr. Doe's offense was relatively minor, I am considering probation in this case. In case Mr. Doe is given probation, I would like your opinion of how the information in your evaluation might assist us in supervising him.

1. Is Mr. Doe experiencing some type of mental or emotional disturbance?
2. What is the level of his intellectual ability?
3. Assuming you find Mr. Doe to be suffering from a mental and/or intellectual deficit:
 - a. could his participation in the instant offense have been influenced by his condition?
 - b. what are the implications for supervision, presuming either probation or later parole?
 - c. is psychotherapy in order, and, if so, what kind of therapy would be most helpful?
 - d. can any determination be made of how these problems might affect his future propensity to become involved in crime?
4. Is Mr. Doe particularly susceptible to peer influence? Mr. Doe described his role in the drug transactions he is charged with as that of the "heavy," or protector. This is a potentially violent role. His demeanor and his record are not those of a violent person; nevertheless, some of his comments in interviews (described in presentence report) have caused us some concern in this regard. Would you explore the question of potential violence in Mr. Doe's personality and respond to the following questions?
5. Is there a potential for violence in this person that should be of concern to the court?
6. If you find such a potential, what are the implications for supervision? How should a supervising probation officer treat this person to help him control such tendencies?
7. Does your finding support a decision for or against probation for this person?

Your recommendation concerning an ultimate disposition of this case will be most welcome.

Thank you for your previous assistance.

Procedural Suggestions

The preparation of presentence study referral letters need not be a burdensome or time-consuming task for federal judges, since they can call on the resources of the probation office. Probation officers, as part of their service to the court, could be asked to prepare draft letters for sentencing judges in all presentence study cases. Presently, most courts do not take advantage of probation officers' skills in preparing referral letters. The following procedures are recommended to tap this potentially useful resource.

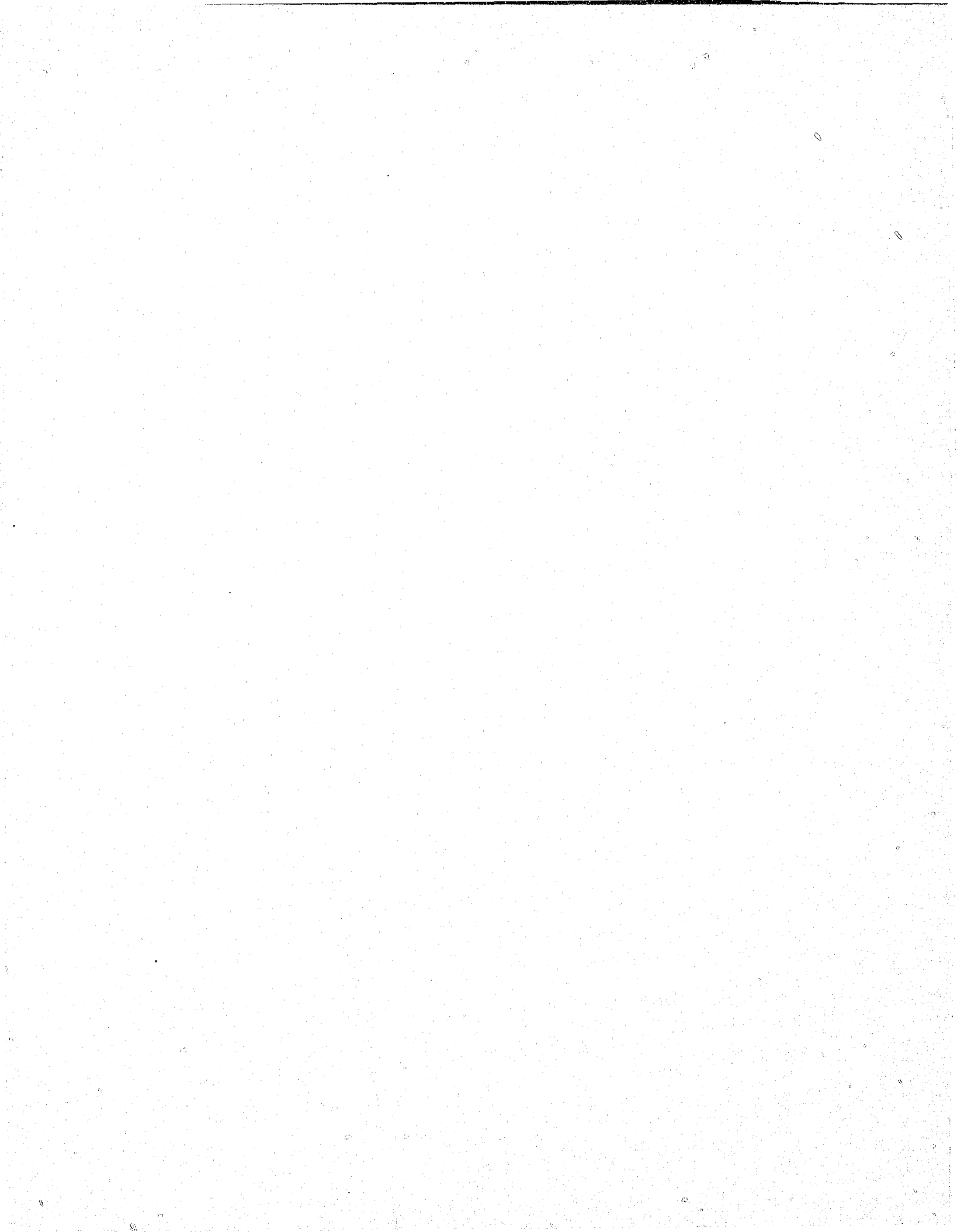
Two slightly different procedures are required if the probation office is to prepare draft referral letters in all presentence study cases, because it is not possible for probation officers to anticipate whether or not judges will order studies in specific cases. As a matter of policy, each study recommendation made by probation officers should be accompanied by a draft referral letter. This letter should be prepared by the same probation officer who prepared the presentence report, and sent to the sentencing judge with the presentence report and the probation officer's study recommendation.

These draft letters would be particularly helpful for judges considering study recommendations

from the probation office. Too often, the probation officer making such recommendations does not explain them adequately. Requiring referral letters of the type recommended here would force probation officers to state precisely their reasons for recommending a study. The referral letter format would provide judges with the basic information they need to consider the value of the study recommendation. They can see, for example, exactly what questions the probation officer would like answered by the study, and why. With this information, judges would be better able to decide whether such information would help them in making sentencing decisions.

When a presentence study is ordered without a study recommendation from the probation office, it is still possible to conveniently provide the sentencing judge with a draft referral letter. This could be done by having the probation officer who prepared the presentence report talk briefly with the sentencing judge about the reasons for the study commitment. On the basis of this interview, the probation officer would be able to prepare a draft referral letter, which would be sent back to the judge for his review before being forwarded to the Bureau of Prisons.

**FEDERAL JUDICIAL CENTER
DOLLEY MADISON HOUSE
1520 H STREET, N.W.
WASHINGTON, D.C. 20005**



END