PRETRIAL ADULT DIVERSION:

A Study of Impact And Process

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ABSTRACT

During the past two decades, numerous pre-trial adult diversion programs funded through federal grants developed throughout the country. These experimental programs were promoted as a means for reducing crime, reducing criminal justice costs, and reforming the criminal justice system. This study examines one such program - the San Pablo Adult Diversion project (SPAD).

Two levels of analysis were completed for the study. To determine the impact of SPAD, a rigorous experimental design using randomized experimental and control groups was applied. Both groups were followed for a 36 month period after initial arrest to compare re-arrest and re-conviction rates. A complete cost analysis was also conducted for both groups.

The second and most significant phase of research was a process study of how SPAD was promoted, resisted, accommodated, and transformed from its original intentions by participating criminal justice agencies. A dynamic and dialectic model using organizational concepts of ideology, values, structure, power, and costs are applied to understand why SPAD failed to reach its desired impact. The implication for future evaluations is that process studies must be conducted properly to interpret impact results and understand the limits and frequently counterproductive effects of social reform efforts.

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CHAPTER I

INTRODUCTION

A. The Promise of Diversion

In 1967, a novel and promising concept was promoted by the President's Commission on Law Enforcement which sought to reform the ills of criminal justice. Advertised by some as a "revolutionary" idea, the reform sought to protect citizens from the "evils" and unnecessary intervention of the criminal justice system. It also sought to reduce criminal court congestion, to reduce jail and prison populations, to maximize the already scarce resources of the justice system, to reduce crime, and to improve the quality of justice in America. The "miracle cure" for the problem was called diversion.

During the next 10 years, the federal government through the Law Enforcement and Administrative Assistance (LEAA) agency funded over 1,200 adult and juvenile diversion programs at an estimated cost of $112 million [1]. The Pre-Trial Resource Center, a national agency funded by LEAA whose primary function is to coordinate and assist adult pre-trial service programs indicated in 1978, that 190 diversion programs were operational in this country. The constitutionality of diversion programs has been made possible by court rulings in two states and by enabling legislation in seven others. These developments led the ABA to declare that diversion is a national movement with a bright future.

> The pre-trial intervention or diversion program represents one of the more promising correctional treatment innovations in recent years. Adaptable both to adult and juvenile correctional populations, the concept has received increasing recognition and endorsement as a rehabilitative technique for early and youthful offenders... Although there have been some recent criticisms of the diversion concept... the PTI movement appears to continue unabated. (ABA, 1977:1-2)

B. The Problem of Diversion

Despite its proliferation, diversion was not without its critics. Some argued diversion represented a process whereby criminal justice intervention powers had been extended at the expense of defendant's constitutional rights of due process. Researchers expressed concern that diversion was having no impact on crime and that criminal justice costs and levels of social control were increasing rather than being constrained. Initial optimism had gradually been replaced by a growing skepticism over the promise of diversion.

Several authors who have reviewed the existing literature conclude

there are no firm answers to the general question of whether diversion works and under what conditions. Gibbons and Blake (1975), Cressey and McDermott (1974), and McDermott and Rutherford (1975) have found results of juvenile diversion to be mixed. The same conclusion applies to adult pre-trial diversion efforts as reviewed by Mullen (1974), Rovner-Pieczenik (1974), Mintz and Fagan (1975), and Kirby (1978). Some studies claiming success (Pryor, 1977; Fishman, 1978; Baron and Feeney, 1972; Treger, 1973; Palmer et al., 1978) suffer from basic methodological problems such as absence of control groups, confusing control groups with diversion rejections, inadequate data collection, errors in statistical analysis, absence of statistical tests, unexplained exclusions of cases in the analysis, and small sample sizes [2]. Kirby (1978) in the most recent review of diversion reseach findings, concluded that many questions remain unanswered despite almost two decades of diversion programming. The absence of empirical findings, however, has not deterred many researchers launching a major attack on the value of diversion.

Some writers charge that diversion programs become dumping grounds for cases that formerly the system disposed of prior to adjudication. Rovner-Piecznik (1974) in her review of several adult pre-trial intervention projects observed that some were reserved for those alleged offenders who the District Attorney was unwilling or unable to successfully prosecute. Consequently, diversion programs function to allow the court to extend jurisdiction over cases for a 3-6 month period of supervision that would ordinarily have been dismissed or scarcely punished.

Mintz and Fagan (1975) conducted a feasibility study for San Francisco on whether to instutute pre-trial diversion program for misdemeanant defendants. Based on their analysis of typical court dispositions from the preceding year, the authors concluded that such a program would have minimal impact on reducing court conjestion and would probably increase the jurisdiction of the court rather than reduce it. Furthermore, they recommended that no "new" criminal justice agencies be created until existing shortcomings of police, probation, and the courts were corrected.

Klein (1975) in his evaluation of juvenile police diversion projects in Los Angeles found that divertees were typically youth who the police would have ignored or dismissed had diversion programs not existed. Duxbury found the same phenomenon occurring in her analysis of California's Youth Service Bureaus noting that most referrals were from non-criminal justice agencies. Gibbons and Blake (1975) and Dickover et al. (1975), also found indications of over-extension by law enforcement agencies via the diversion process. It should be noted however, that much of this frequent criticism of "widening the net" is based more on the fact diversion programs tend to work with minor defendants which is not to say they would be dismissed or ignored if not diverted. As we shall observe in the case of SPAD, minor misdemeanor offenders constitute a large and significant proportion of the court's business.

C. <u>The Problem of Reform</u>

Findings and issues raised in this study have broad implictions for other strategies of social change. Beginning with the competing perspectives of Lester F. Ward (1883, 1896) and W.G. Sumner (1907), American sociologists have pursued the illusive question of how best to effect desired reforms in individual and organizational behaviors. The

conservative perspective articulated by Sumner calls for a "laissez faire" approach where evolutionary laws are most influential in determining behavior. Within this paradigm, purposeful state intervention is undesirable, likely to be unsuccessful or have counter-productive effects [3]. The more liberal approach of Ward argues that purposeful manipulation can be achieved by state intervention or legislative enactments. Finally, radicals (Platt, 1974; Quinney, 1974; Schwendinger and Schwendinger, 1979; Marx, 1972) argue no significant change is possible without a fundamental restructuring of the political-economic relationships that dominate present systems of social control [4]. There are no "technocratic solutions" to a problem that requires revolution - not reforms.

Diversion represents one of many liberal criminal justice reform programs and legislation enacted during the past two decades. Bail reform, deinstitutionalization in Massachusetts, Mobilization For Youth programs, probation subsidy in California, indeterminate and determinate sentencing laws, and several landmark Supreme Court decisions (e.g., In re Gault, In re Miranda, etc.) are examples of the state's effort to reform existing organizational practices and procedures. And all of these induced reforms have met with considerable resistance and mixed results. (Dill, 1972; Lemert, 1970; Miller, Ohlin, Coates, 1977; Lemert and Dill, 1977; Marris and Rein, 1967). As predicted by Sumner, there appears to be considerable limits to what can be achieved through legislative and administratively induced reform strategies.

Understanding why reforms are resisted and frequently depart from their original purposes is furthered by observing a dymanic process that unfolds once a reform is introduced to organizations affected by the desired change. To achieve this goal, attention must be rediverted from a narrow preoccupation with impact analysis to studying organizational interactions and decisions that facilitate or impede reforms.

Nimmer (1978) reminds us that the history of court reform is replete with failure and urges more attention on analzing the process of reform implementaton. Only by observing how reforms are conceptualized, resisted, accommodated, transformed, and defeated, will we begin to understand the nature of induced social change and its limits.

D. Purpose of This Study

This is a case study of one LEAA funded pre-trial diversion project; the San Pablo Adult Diversion project (SPAD). It is a study of (1) how local law enforcement agencies responded to and re-defined diversion according to their individual and conflicting organizational interests and, (2) the impact of their actions. It presents a process analysis of an adult diversion project, and uses a randomized experimental control impact design to test diversion's impact on recidivism, costs, and social control.

Diversion was a concept of social change local criminal justice agencies did not originally formulate nor fully accept. It was conceptualized by academic outsiders, promoted by the federal government, and consumed (or purchased) by local agencies responsible for re-defining diversion's objectives, structure, and administration. This "ungrounded" character of diversion is a contextual factor that had important consequences for how SPAD evolved over time. Understanding this evolutionary process of reform is facilitated by applying a sociological

analysis.

Analysis is primarily organizational using the concepts of ideology, values, power, and costs. No attempt is made to directly address the validity of diversion as a workable concept or its underlying asumptions, i.e., there will be no answer to the question, "Does diversion work?" In this study, it will become clear that diversion was not faithfully tested as envisioned by its advocates. Impact data on the long-termed effects of diversion are presented but whether these findings negate diversion theory depends upon one's definiton of diversion.

E. Conceptual Aproach

This study involved two levels of data collection and analysis: process and impact. The latter is traditional and involved the implementaton of an experimental design with randomized control and experimental populations to test SPAD's effect on recidivism, costs, and social control. Process analysis was used to interpret the impact findings. It represents the main contribution of this study by examining organizational processes that limit diversion's impact on individuals and the criminal justice policy.

1. Process analysis. [5]. Studying the nature of formal reform movements is enhanced by using applicable sociological concepts with a process analysis perspective. Process analysis differs from traditional impact studies which seek to measure the long-termed effects or outcomes of the experimental reform strategy, such as reducing crime rates or changing client attitudes.

At a basic level, process analysis has two objectives; 1) to describe and analyze how the reform evolved into its various form(s) and 2) to give meaning to impact findings.

> Process evaluation consists of a comprehensive description and analysis of how crime and delinquency programs are conceptualized, planned, implemented, modified, and terminated..(P)rocess evaluation should be routinely integrated with impact studies to enhance the explanatory power or research designed to measure the effects of crime and delinquency (Krisberg, 1979:1).

The latter goal of integrating process with impact data is perhaps the most attractive contribution to improving scientific knowledge. For example, negative impact findings may be "explained" only by observing that the reform was never implemented in its intended form. Process evaluation will also document the validity of impact measures (e.g., policy changes in arrest procedures, contamination of experimental and control groups, etc.) [6].

Recently, much has been written on the rapidly developing field of process analysis (Scriven, 1972; Rutman, 1977; Freeman, 1977; Krisberg, 1979) with most authors agreeing on the need to capture the day-to-day activities of the reform program. However, a persistent problem that

limits process analysis is the absence of uniform methodological techniques of design and analysis (Rossi and Wright, 1977).

> The state of the art with respect to process evaluation in many areas of program interest...is exceedingly undeveloped. I do not think it too bold a position to argue that if one has to choose between directing efforts now at the improvement of process or impact evaluative procedures, the former has a higher priority. (Freeman, 1977:39)

The approach employed here relies on a dynamic, dialetic, naturalistic, and inductive model. Process analysis is used to explain dynamic patterns of interaction among reformers and affected organizations (directly or indirectly) that culminate in choices and decisions changing the content and direction of the reform program. Conflicting situations arise through interactions where creative and pragmatic decisions must be made. After such decisions occur, the dialetic process repeats itself where new group and individual interaction again lead to new choices and resolutions. To capture this dynamic and dialetic process, the analyst makes observations within the actors' natural organizational setting to understand the meaning ascribed to behavior. The method of analysis is inductive where data are applied to a broad conceptual model that emerges from observations and not pre-conceived hypotheses [7].

Within such a framework, organizational actors are seen as reflective where creative choices are shaped and infuenced by five organizational forces; ideology, values, structure, power, and economics. These factors give meaning to and shape difficult decisions confronting reformers and organizations as they confront the reform strategy. Confrontations are a necessary aspect of periods of change characterized by organizational conflict and competition. The reform policy is attempting to change a state of affairs that may be firmly entrenched and difficult to alter; but, it is unlikely to be a smooth or always successful experience.

2. The cycles of reform. Phases of reform can be categorized into periods of resistance, accommodation, transformation, dissolution, and, perhaps, rebirth. These stages do not always follow this sequential order, but are likely to appear.

Resistance is the most obvious where affected agencies view the prospect of change with apprehension and suspicion. Their resistance may stem from ideological or value differences, a possibe re-distribution of power, upsetting estabished organizational structure, or insufficient financial incentives. Resistance must be resolved through a period of accommodation where resisting agencies attempt to adjust the reform's content and direction making it more amenable and less threatening. Accommodation processes may include ensuring sufficient controls or client selection criteria, or selecting an experimental site likely to have minimal consequences for the more "important" agency operations.

Transformation reflects the discord between the reform in theory and in fact. Once early resistance and accommodation processes have transpired, the reform is ready for implementation. However, at this stage

significant departures from the original concept as conceived by outside theoreticians and planners has already occurred. Observing the two program activities of identification (who gets selected) and intervention (what happens to them) reveals how existing organizational factors affect and are affected by the new reform. For example, observing justifications for screening decisions show the expectations of agency officials and their understanding of the reform's intention. Contrasting new intervention services with old tells us if anything "new" is occurring and the direction of the change (e.g., more services to less serious offenders, more control over misdemeanant defendants, etc.).

Dissolution may suddenly develop when more powerful agencies perceive the reform as extremely threatening in terms of reinquishing power (in the forms of authority and jurisdiction) to competing or newly established agencies, or threatening the prestige and economic well-being of the agency (i.e., costs of reform). When a reform program is severey threatened, decisions are made to protect or relinquish the reform. Agencies sponsoring the reform must weigh the costs associated with maintaining the program, and determine how strong a constituency exists for its defense. In the absence of a strong coalition, the reform frequently will be abandoned. Rebirth occurs after a stronger coalition or agency agrees to once again attempt reform and a less threatening climate exists.

Throughout this study, data are applied to the first three phases of resistance, accommodation, and transformation. Although research from other evaluations of social reform and diversion within the justice system is drawn upon, additional comparative studies must be completed applying this approach which are more systematic in nature. No elaborate model for predicting change is presented in the following pages, but the concepts employed to explain change may have heuristic value for future comparisons.

F. Description of SPAD

SPAD began as a pre-trial adult diversion project sponsored and administered by the Contra Costa County Probation Department. In August 1975, $116,456 in LEAA funds were awarded to the Department to establish SPAD in the city of San Pablo, California. The proposal envisioned a project utilizing short-termed (3-6 months) and intensive supervision of misdemeanor defendants and a brokerage-referral service delivery system. Goals were reductions in crime, costs, and court congestion, plus, greater coordination among police, probation, public defenders, prosecutors, and judges.

The specific objectives listed in the initial proposal were as follows:

1. Divert 200 cases that would ordinarily result in a complaint being filed.
2. Reduce conjestion in the Municipal Court.
3. Reduce time-lag between arrest and the treatment process.
4. Limit the extent of penetration into the criminal justice system.
5. Reduce recidivism.
6. Provide opportunities for community involvement in the re-socialization process of those referred to the project.

SPAD differed from other diversion projects. It guaranteed dismissal of criminal charges upon successful completion of diversion supervision, actively involved police, District Attorney, community, and was evaluated by an experimental-control design with randomization. However, it resembled most diversion efforts in being appended to the justice system, as opposed to non-criminal justice agency sponsorship.

Exhibit 1 illustrates the flow of defendants through SPAD. All adults arrested by San Pablo poice against whom a complaint was filed were considered eligible. Once the complaint was filed by the District Attorney, it was then presented before a Screening Committee for review. This committee consisted of a (1) deputy district attorney, (2) San Pablo police officer, (3) San Pablo community representative, and (4) SPAD staff member, who actually was a deputy probation officer assigned to the program.

A broad criterion was developed by the project staff to guide diversion selection. Once the Screening Committee reached a decision to accept or reject the case, it was elevated to the next decision-making level where the eligible candidate was interviewed by project staff. If the candidate was accepted by staff and indicated a willingness to participate, the case was entered into the "eligibles" population. Cases were then randomly placed in experimental and control groups.

On admission to SPAD, a formal contract was signed by the divertee, staff, and District Attorney stating the expected activities, time restrictions, restrictions on behavior, and possible consequences of failure to comply with the contract. Specifically, divertees were informed that non-compliance could result in a resumption of criminal proceedings by the municipal court. In general, this contract closely resembled standard probation restrictions imposed on conviction probationers.

One year after its birth, SPAD was terminated by the department's Chief Probation Officer after having considered over 1,200 cases and admitting 154 divertees. Diversion remained dormant in the county until 1979, at which time new LEAA funds revived diversion in a new organizational framework, triggering a new era.

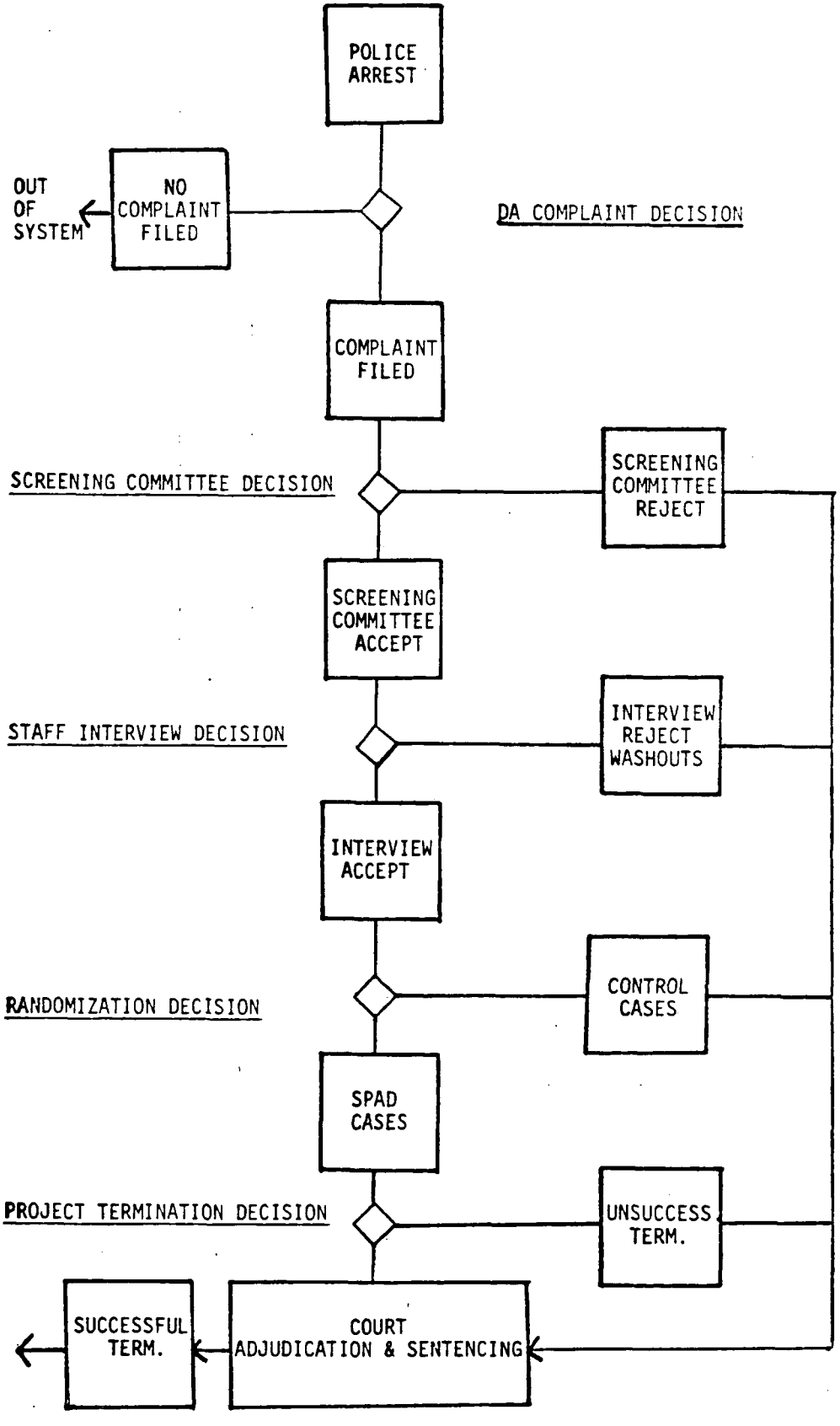
G. Data and Method of Collection

Research for this study had a unique and varied history spanning more than four years. Initially, the probation department requested a conventional impact evauation of SPAD that was to be largely a quantitative study of diversion. The impact design consisted of an experimental design with randomization "control" and "treatment" groups. A computerized management information data system collected sociodemographic, arrest and conviction, and project service data for all defendants screened by the SPAD projects.

As the study unfolded, it became apparent that qualitative data were needed to explain organizational behavior and its change. Organizational factors emerged as the dominant forces in the reform process, and required detailed analysis to make "sense" of impact data. Impact data, by itself, severely limited my understanding of why the experiment was exhibiting certain patterns of change.

EXHIBIT I

SPAD CASE-FLOW AND DECISION POINTS



Qualitative data were generated from structured interviews, informal conversations, and field observations. During SPAD's life, site visits were made twice a week. Field data were recorded with techniques developed by Glazer and Strauss (1967) and Strauss and Schatzman (1970). After SPAD's demise, contact continued with ex-SPAD staff and those associated with the old and new versions of diversion were conducted to probe as fully as possible both the dissolution and revival of the project. Considerable time was also spent with former staff to capture their thoughts on how diversion succeeded or failed.

H. Chapter Sequence

The following chapters trace the natural stages of a reform movement from its early development through its unexpected dissolution and subsequent rebirth. Chapter Two focuses on early resistance to diversion by selected criminal justice agencies which forced accommodations necessary to make SPAD amenable to agency values and ideology. Chapter Three tells how SPAD worked, and represents the heart of the analysis. Extensive data on divertee selection, policy formation, modes of intervention, and termination processes are also presented. This chapter illustrates the transformation of the reform and the shift from its original purposes.

Chapter Four summarizes the impact of SPAD on recidivism, costs, and social control. These "impact" findings are best understood in terms of the program's departure from its conceived goals (shown in Chapters Two and Three). In the concluding chapter, some generalizations are made about possible undesirable consequences of diversion, its future as a reform movement, and problems inherent in any criminal justice reform strategy.

deinstitutionalization reform programs, agrees that resistance is likely to emerge from agencies in conflict with the reform's direction but ironically responsible for the reform's implementation.

> Social reforms, almost by definitions, must encounter resistance. Such resistance is most likely to come from those with a "stake in the game"...juvenile justice professionals already active in the system, people more comfortable with maintaining the status quo.
> (Klein, 1979:40-41)

Klein goes on to cite agency unwillingness to reduce current levels of agency jurisdiction as being the primary reason for reform resistance. Expanding Klein's analysis, SPAD not only threatened agency hegemony, but also was unacceptable given conservative agency ideologies of crime control, due process, treatment, and values reinforcing such ideologies. Law enforcement agencies rejected notions that their work was criminogenic and should be curtailed. Instead, they believed there was a need to expand their crime control and rehabilitative work to deal more effectively with increasing levels of criminal behavior. Acceptance of diversion occurred only when these agencies were able to restructure the reform encouraging agency jurisdiction to be extended. Specifically, this occurred by allowing the sponsoring agency (probation) to enter the pre-adjudication arena to "treat" defendants and for police and prosecutors to retain traditional discretionary powers of arrest and prosecution while gaining additional control over "criminals" likely to escape prosecution or receive minimal punishment. Consequently, the original structure of the program was compromised and conceptually transformed into an expansionary program in line with organizational concerns. The following chapter describes how this potential for transformation was realized in the activities of client selection and intervention.

CHAPTER II

RESISTANCE AND ACCOMMODATION

Resistance to reform occurs when action agency values and ideology conflict strongly with the desired change [1]. This is not to say that all agencies oppose the intended reform. For some, the change is desirable, although not always as was intended originally by reform strategists. In other words, the reform becomes a vehicle for dealing with other issues not directly tied to the reform. For example, the reform may hinder the ability of the prosecutor to gain convictions or may run counter to a law and order ideology of police work. Where reforms challenge organizational ideology and values, resistance is likely to occur.

Reforms also threaten to disrupt the tenuous balance of power existing among competing criminal justice agencies. Reforms are designed to disrupt and alter this status quo or established organizational turf. The "threat" of reform is that some agencies may lose clients, prestige, funds, and ultimately, power. These are the potential "costs" of reform.

Resistance is observed through a series of interactions among agencies which anticipate being affected by the reform. Agencies must decide if they wish to promote, resist, or remain neutral in their involvement with the program. Level of resistance is often determined by the power of the agency. Diversion is an especially good example because certain agencies must be supportive of the program before it can become a reality. There must be cooperation among police, prosecutors, and judges, because of their control over informaton and key decision points (complaint filing and sentencing). Should resistance become extreme, accommodation is necessary to make the reform less threatening to resisting agencies.

During this period of early opposition and negotiation, one agency emerges as the one most interested in selling the reform to more cautious groups. Securing special grant funds to support the program is typically a unilateral action on the part of one agency - compared with implementation, which is necessarily multilateral and inherently more difficult to accomplish.

Because change entails altering existing agency ideology, values and power relationships - resistance to the idea can be expected from less interested and more cautious agency participants who feel threatened by the proposed change. They need to be convinced that reform will facilitate rather than impede or alter established work patterns. Such an intransigent posture can have significant consequences for reform such as diversion, which seeks to curtail justice agencies rather than enhance or expand jurisdiction. By identifying sources, nature of, and ultimate resolution of agency resistance - one is able to observe the initial steps of accommodation.

Discussion in this chapter centers on an analysis of SPAD's early development. SPAD, like most diversion programs, was directly tied to the workings of the justice system. It is impossible to operate a program intended to remove certain defendants from routines of arrest, prosecution,

and disposition without involving police, prosecutors, public defenders, and judges. Prosecutors are especially critical actors for the diversion movement, since diversion seeks to alter pre-trial adjudication processes - processes traditionally controlled by the prosecutor. Each agency has its own values and ideologies relative to administering justice, which conflicted with each other and the reform. Implementing what was viewed by some as a liberal reform upon primarily conservatively oriented agencies (police and prosecutors) premised upon mutual cooperation of heretofore competing agencies will lead to considerable resistance to reform.

Accommodation marks the first stage of compromising or re-interpreting reform's goals. When resistance becomes insurmountable, changes must be made in the reform itself before it becomes acceptable to the involved agencies. In the case of SPAD, the critical issue of who controlled divertee selection was resolved in favor of police and, primarily, prosecutors. Secondly, the philosophy of diversion was adjusted in concert with agency values and ideology. Prosecutors and police, assured of their power over selection, redefined diversion as an opportunity to punish and control defendants likely to be minimally sanctioned by the municipal court. Probation interpreted diversion as a vehicle for expanding its organization's activities into a new field - the pre-adjudication stage. Such accommodations gave assurances to the more cautious police and prosecutor agencies that diversion would not impede their work and made it organizationally attractive. The final act of accommodation - selecting a relatively unimportant target city - further ensured that diversion could not have negative side-effects for police, prosecutorial and probation work.

A. Resistance

SPAD required a collaborative effort by diverse justice agencies. As proposed and finally implemented, SPAD anticipated the active cooperation of probation, prosecutor, police, and public defenders. Yet, each had differing levels of influence and concerns relative to diversion and more importantly, each had differing conceptions of what diversion should accomplish patterned along organization ideology, values, and power dimensions. The nature and extent of resistance can be best understood by considering each agency separately.

1. Probation - Promoting Diversion.

> The first (diversion) project I heard of was the San Bernardino project. It was based on a joint partnership between probation and the District Attorney. There was a presentation, and from what they said, it was obvious to me that they were on the track of something good. (Field Notes, Probation Official)

Convincing other law enforcement agencies that diversion was a "good" idea proved not to be easy for the probation department. Probation had to submit three project proposals to the LEAA Regional Planning Unit (RPU) beginning in 1971 before diversion finally was approved and funded in August, 1975. During this period of unsuccessful LEAA proposal solicitations, probation clearly emerged as diversion's primary advocate.

It was probation that prepared each proposal and developed an administrative structure for adult diversion where probation was the primary sponsor working in collaboration with other justice agencies.

Several organizational factors explained probation's persistent interest in diversion [2]. Idealogically, diversion's emphasis on the provision of services coincided with probation's own treatment philosophy toward controlling crime. Secondly, diversion offered probation an opportunity to increase its power by extending its jurisdiction to the pre-trial area and developing a new source of business. Finally, diversion's economic "costs" were made favorable through the availability of LEAA grants that supported probation staff.

Traditionally, probation has been used by the court as a supervisory and rehabilitative agency intended to work with defendants after conviction and sentencing. Officially, they serve the court by monitoring convicted persons who received probation sentences in lieu of incarceration. Probation also fulfills a pre-sentence investigation function by providing the court with detailed investigations and recommendations for sentencing when requested by the judge or by law. However, this consumes a relatively minor role for probation with most of their resources directed toward post-sentencing supervision.

Probation officers maintain the dual purposes of control and treatment. The function of control requires verifying for the court that defendants adhere to prescribed conditions of probation and do not become involved in additional criminal activities. At the same time, probation is expected to work with defendants via traditional social work approaches: to define, diagnose, and treat the "criminal's" pathological condition.

Never clearly defined by the courts or probation itself, the ideology of probation work remains ambiguous and antagonistic.

> We wear two hats. On one hand we are expected to treat and stimulate the client. On the other, we provide information and supervision for the courts...This means that when I enter a police department, I'm viewed as a liberal do-gooder who is helping the criminals. But when I go to social services, I'm a fascist because I can have people locked up for probation violations. It's very difficult. (Field Notes, Probation Official)

> Clearly a central issue of probation supervision is the treatment control dilemma...(Klockars, 1972:552)

Of the two perspectives (control vs. treatment), treatment was emphasized by officials and staff as the primary reason for probation entering diversion work. It was viewed by departmental officials as a vehicle for <u>extending</u> rather than curtailing its treatment capabilities to a new population - the pre-adjudicated defendant. What was needed was for probation to provide more and not less services to defendants [3].

> We (probation) see diversion as an important area of probation. It should become part of the regular probation services as well as pre-trial release programs...Private organizations should not sponsor these projects. For one thing, they could not absorb the project once federal funds are gone. Probation is committed to making diversion part of our overall services. (Field Notes, Probation Official)

Money also played a rather obvious role. Diversion and other LEAA sponsored programs were desirable as they allowed probation to subsidize existing staff positions via LEAA funds. The department had enjoyed considerable success in securing LEAA funds to operate several juvenile diversion programs which served to subsidize appropriated staff positions. SPAD, as finally funded, involved the transfer of three probation officers and a secretary to the program with salaries largely paid by the LEAA grant [4]. These temporarily vacated positions then were filled by newly recruited probation officers and assigned to regular probation caseloads. Organizational growth was thus facilitated by the successful procurement of special grants from LEAA and other external funding sources such as California's Probation Subsidy program [5]. The contradiction of diversion when appended to social control agencies is that it expands the domain of organizations that administer it. Expanding agency resources contradict the goal of reducing agency activities.

> The original basic assumption (for diversion) had to do with keeping people out of the criminal justice system...I think the other assumption was that of money. The administration felt that as a matter of policy, we should get as much money into the department to provide services to clients. The basic idea was more services is better services. (Field Notes, Probation Official)

> I think they were interested primarily because there was some money available. It (diversion) was the new thing - the new merchandise of corrections. Diversion sounded good so we decided to go out and buy one. (Field Notes, Probation Official)

Finally, probation's interest in securing the grant was related to the unique personality of the Chief Probation Officer. Despite earlier setbacks, he persistently encouraged his executive staff and other law enforcement agencies to collaborate in a joint diversion program. Under this Chief Probation Officer, the department had grown in 30 years from a small handful of agents to a multi-million dollar agency with over 200

agents. He was described as an "empire builder" who used diversion and other LEAA grants to expand staff and agency influence. Despite three previously unsuccessful attempts to fund adult diversion projects, he persisted in seeking federal funds to start such a program.

> (He) was an empire builder who had seen his department grow and wanted to keep on expanding it...And he could not accept any criticism of the department or the notion that probation services were ineffective. (Field Notes, Probation Staff)

This organizational growth policy also had important negative consequences for selling the concept of diversion to other criminal justice agencies described in the following sections; prosecutors, public defenders, and police were wary of probation's motives for pushing the concept of diversion and strongly resisted diversion for several years until their organizational concerns could be accommodated.

2. District attorney - primary source of resistance. Probation's inability to get funds for proposed adult diversion proposals was attributed to resistance by the District Attorney [6]. Repeatedly, the prosecutor opposed the first three adult diversion proposals submitted by probation to the LEAA Regional Planning Unit (RPU). The prosecutor, along with police, probation, public defenders, and judges are represented on the RPU for purposes of reviewing and approving all proposals submitted for LEAA funding. Each agency representative is responsible for reviewing grant applications in their substantive area of criminal justice (e.g., adjudication, corrections, etc.). Diversion proposals receive special attention from the prosecutor since they are directed toward altering pre-adjudication policies where prosecutors enjoy considerable power. Without the active support of the prosecutor, diversion proposals were likely to be rejected.

The DA's resistance to pre-trial diversion proposals can be explained in relation to (1) their conservative ideology of crime control which conflicted with diversion's liberal approach; (2) concern that diversion could usurp the prosecutor's authority and power to prosecute; and (3) fear that diversion might negatively affect the valued objective of high conviction rates.

Understanding these sources of early resistance to diversion begins by examining the ideology of prosecutors and their practicing values. Herbert Packer (1968) has described two models of criminal justice. For prosecutors (and police, judges, and public defenders) the due process model represents the ideal where reliance is placed on formal, adjudicative, adversary fact-finding processes where guilt or innocence is established by an impartial tribunal. The crime control model is based on the proposition that repression of criminal behavior is the most important objective. Typically, this is achieved through informal and efficient criminal justice processes. Whereas due process values a presumption of innocence, crime control values presumption of guilt.

It is the crime control model with its emphasis on efficiency and informality which seems to best characterize the prosecutor's approach to justice.

> It is no accident that statements reinforcing the Due Process Model come from the courts, while at the same time facts denying it are established by the police and prosecutors. (Packer, 1968:52)

Prosecutors are the law enforcers of their communities, and adhere to basically conservative positions. Their job is to convict. As such they embrace such "crusading" issues as excessive leniency toward criminals, too little attention paid to the rights of victims, rejection of the treatment/rehabilitative approach and acceptance of a punitive/deterrence philosophy of crime control.

> This prosecutorial ethic - conservative, embracing law enforcement values, and identifying the prosecutor's duty with the protection of the community against offenders - manifests itself in a distinctive professional self-image...Whatever might puncture that reputation, including defeat in the courtroom or evidence of a conciliatory stance toward criminals must be avoided. (Utz, 1979:103)

> The problem with the courts is that some cases get off too easily. We get someone convicted for burglary and he gets off on probation...We need to think more about the victim and not so much concern for the criminal. (Field Notes, Prosecutor)

The prosecutor's conservative ideology becomes increasingly significant given their powerful role in determining how justice is administered. The traditional flow of defendants begins with police arrest and booking. Thereafter, the prosecutor has authority to decide if a formal complaint should be filed. Complaint filing indicates that the prosecutor is willing to prosecute and believes conviction can be obtained. If a complaint is filed, the prosecutor then must decide the "worth" of the case and how best to obtain a conviction with a minimal expenditure of agency resources [7]. They decide who to prosecute and for what offenses.

> As the nexus of the adjudicative and enforcement functions, the prosecutor has been called the most powerful single individual in local government. If he doesn't act, the judge and the jury are helpless and the policemen's word meaningless. (Cole, 1972:142)

In reaching decisions to prosecute, two objectives become highly valued: efficient case flow and high rates of convictions. Many authors (Feeley, 1979; Cole, 1972; James, 1968; Heumann, 1975; Eisenstein and

Jacob, 1977; and Rosett and Cressey, 1976) have examined the impact of overcrowded court caseoads on prosecutorial decision-making. Excessive caseloads force prosecutors to adopt plea-bargaining strategies to ensure speedy movement and disposition of criminal cases.

Feeley (1979:244-277) argues that excessive caseloads found in municipal courts (60-150 dispositions per day) result in efficient case dispositions negotiated by prosecutors and public defenders signalling an equitable solution has been reached even if it means dismissal of charges. Prosecutors may believe, in such misdemeanor cases (such as petty theft, trespass, etc.), the defendant has been sufficiently punished by going through the process of pre-trial detention, payment of counsel, and the inconvenience of multiple court and attorney visits during regular working hours.

Diversion within the efficient municipal court system becomes redundant. As such, it has little appeal to prosecutors already engaged in diversionary acts of dropping or reducing charges through plea bargaining negotiations with judges and public defenders. Diversion of municipal court defendants could only result in imposing greater control over cases the prosecutor would prefer to prosecute more fully but can't, due to an absence of sufficient agency resources. Diversion does afford an opportunity for fuller treatment of the misdemeanor defendant.

> The court is coming to a crisis. We need to discriminate between felonies and misdemeanors because we can't provide the right of trial to all defendants. I see diversion as a means for helping this situation. It's a way of getting rid of the misdemeanor backlog. (Field Notes, Prosecutor)

The second, and perhaps most important concern for prosecutors, is conviction rates [8]. A decision to prosecute is typically predicated upon a belief that the case probably will end in conviction. Their primary interest is to "score as many wins as possible."

> The DA is prosecution oriented and we become discouraged if our conviction rate drops. Convictions, even without a severe disposition or sentence, are important in gaining leverage over the defendant by having a list of priors... Convictions are the stuff that DA's are elected for. (Field Notes, Prosecutor)

> Prosecuting attorneys are especially eager to impress the public with their record of convictions. They generally compute this by adding the number of guilty pleas to the number of trial convictions and dividing by the total number of cases processed. It is little wonder that most are able to boast a 98 percent conviction record when they run for

re-election. (Cole, 1973:115)

Collectively, practicing values of efficiency and high conviction rates mutually support the phenomenon of plea bargaining. Defendants are encouraged or pressured into accepting guilty pleas to less serious offenses by being rewarded with less severe sentences than if they had maintained their innocence and been convicted on original charges. Prosecutors are rewarded by maintaining a respectable conviction rate, plus, moving the case through the system at an efficient rate. Trials are to be avoided since they are time-consuming and the probability of acquittal is increased.

> The desire for a high conviction rate does not necessarily imply a desire for maximum sentences. While prosecutors do make judgements about desired sentences, the basic wish is to obtain severe sentences in all cases. As a result, plea negotiations serve both administrative efficiency and the interest in conviction rates... Guilty pleas (or abbreviated trials) obviate the risk of a verdict of not guilty. (Nimmer, 1978:40)

Making the adjudication process efficient also makes it very cheap. This has important economic consequences for reform strategies that tamper with "assembly-line" justice. Costs associated with reforms increasing levels of supervision and services to the misdemeanor defendant will make the process more expensive and, perhaps, more time-consuming. Although the District Attorney espouses due process values of full-prosecution and blinded justice, in reality they must adhere to more practical interests of plea bargaining and quickly administered dispositions.

The concept of diversion raised several potentially negative consequences for prosecutorial ideological positions, value, and agency power. Diversion's assumptions of labelling, stigma, and overcriminalization conflicted with the prosecutor's crime control position. Diversion represented another liberal reform designed to help the criminal and not the victim. The prosecutor most closely involved in SPAD openly expressed this conflict when he responded to the question of what he thought of concepts such as labelling theory and stigma: "I think (diversion) is bullshit."

Diversion's potential for removing the stigma of conviction also threatened the prosecutor's ability to convict. Prior convictions (or "stigma") are a critical resource he relies on in plea bargaining and trial work [9]. If a defendant has a prior record of criminal convictions, subsequent prosecutions are made easier for the prosecutor compared to defendants with no prior convictions. By removing or "diverting" a likely conviction, the prosecutor is also reducing the likelihood of future successful prosecutions, and thus, relinquishing an important weapon. In this sense, the prosecutor understood diversion as potentially handicapping his daily work. At the same time he recognized the need to reduce the onslaught of misdemeanor cases which minimized his ability to allocate appropriate levels of resources to more serious felony cases.

Finally, the prosecutor was suspicious of probation's attempt to move into an area of justice traditionally reserved for lawyers and judges. As one prosecutor commented:

> There were problems of structure. We believe that the DA has sole responsibility for deciding who is prosecuted. Probation has a bad reputation because of its lack of standards and its stylized approach to processing cases. (Field Notes, Prosecutor)

Under the approved SPAD proposal, defendant selection for diversion was to be jointly controlled by police, prosecutor, probation, and community. But, the prospect of delegating prosecutorial decisions to such a committee was disturbing as it threatened existing prosecutor hegemony and jurisdictional powers. Until this concern over selection authority was resolved, the prosecutor was simply unwilling to fully support probation's diversion proposals.

Prosecutorial resistance to diversion over this issue of selection has been noted elsewhere. Federal prosecutors, who were otherwise favorable to a bill authorizing pre-trial diversion programs within Federal Court, opposed provisions allowing court and program directors a say in diversion selection (Yale Law Journal Notes, 1974:837). Reforms restricting prosecutorial discretionary powers can expect to encounter resistance to change.

> Since a prosecutor is considered to have almost unfettered discretion to prosecute, it is widely assumed that he has almost unfettered discretion to divert as an incidence of that power. Any suggestion of limiting that discretion is denounced by prosecutors as an improper subvertion of their traditional authority. (Yale Law Journal, 1974:837)

3. Police resistance. Resistance to early diversion proposals also surfaced among the county's police agencies. Here again, resistance is best understood in relation to ideology and values that conflicted with diversion assumptions and agency jurisdiction. Skolnick (1967) and Cicourel (1968) depict the police's ideology as a crime control perspective. Similar to prosecutors, police place an emphasis on factual issues of guilt or innocence and swift administration of justice [10]. More importantly, police view themselves as "craftsmen" possessing specialized skills to unilaterallly determine guilt or innocence without regard to court procedures mandated by criminal law. Consequently, legal issues such as entrapment, search and seizure restrictions, and other procedural rights accorded defendants are seen by police as restricting and interfering in their work as they try to enforce criminal laws.

> He (police) sees himself as a craftsman, at his best, as master of his trade. As such, he feels he ought to be free to

> employ the techniques of his trade, and that the system ought to provide regulations contributing to his freedom to improvise, rather than constricting it. (Skolnick, 1966:196)

During the 60's and early 70's, police witnessed what they viewed as unnecessary restrictions placed on their crime control activities. Increasingly, arrest practices were defined by the Supreme Court as illegal with police complaining a subsequent decrease in arrests, convictions, and ultimately less punishment for the criminal. Criminals were "getting off" because police powers were being significantly restricted.

In this context, diversion had little appeal (or value) as originally understood by police. Similar to prosecutors, diversion represented another liberal effort intended to "help" the criminal and not police or the victim. Specificaly, diversion was an opportunity for the criminal to escape conviction and punishment after police arrest. Diversion assumptions explicitly criticized police by suggesting they frequently made unnecessary arrests. Police maintained a contrary perspective where they defined the problem of too few criminals being arrested and punished. To them, the courts had become excessively lenient and were more concerned with the rights of the criminal rather than those of the victim [11].

> It's getting real bad. Today, someone commits a crime and he goes in the judge slaps him on the wrist. Many crooks are back on the street laughing at us just a few hours after we arrest them. (Field Notes, Police Official)

Agency jurisdiction was also an issue of concern to the police. Police were not as suspicious as the prosecutor about probation's intrusion into the pre-adjudication arena. But they were also quite reluctant to relinquish their discretionary arrest powers fearing it would compromise their authority to decide who would be selected for diversion. This "problem" of police control over diversion selection has been noted by other researchers of diversion programs.

> With respect to diversion programs, resistance has typically taken the form of retaining control by coopting diversion programs. In diversion, it is primarily the police whose desire to maintain control has been most prominent. They wish, understandably, to keep the strings attached. (Klein, 1979:45)

It was difficult for county police agencies to see how this new reform would reverse liberal trends. Expectedly, police officials were not enthusiastic over the idea and opposed the first three diversion proposals. The county's influential Police Chief's Association formally protested these proposals as did police representatives on the LEAA/RPU. During these unsuccessful years, probation and the RPU were unable to locate a single police agency. And without cooperating with police agencies,

diversion was simply impractical to implement.

4. Public defender rejection. The County's Public Defender office went beyond resistance to the concept of diversion: they were flatly opposed to it. After the SPAD proposal was approved, the Public Defender was invited to participate with the prosecutor, police, and probation, in planning and operating the diversion program. However, the Public Defender quickly decided that diversion was an alternative serving more the interests of prosecutors, probation, and police than their clients.

Ideologically, public defenders conflict with police and prosecutors and embrace more liberal positions almost by definition. They are in the business of securing acquittals for defendants. They provide legal counsel to defendants, who because of their socio-economic status, are unable to attain private counsel. The due process model becomes an important tool for the public defender in his work. By applying or threatening to apply this approach, the court is faced with the potential of unnecessary delays, costs, and expense unless a satisfactory deal is negotiated.

> At any phase of the process, the defense has the ability to invoke the adversary model with its formal rules and public battle. It is this potential for a trial ...which the effective counsel can use as a bargaining tool with police, prosecutor, and judge. A well-known tactic, certain to raise the ante in the bargaining process, is for the defense to ask for a trial and to proceed as they meant it. (Cole, 1973:175)

However, others (Cole, 1973; Sudnow, 1965; James, 1968; Skolnick, 1966) have noted the practical necessity for publlic defenders to collaborate with their organizational adversaries for purposes of exchanging critical information and thus sharing with prosecutors and judges the goal of expediting dispositions. Nimmer (1978) describes public defenders as court agents whose primary organizational concern is to facilitate court dispositions, given overwhelming caseloads and limited staff resources. Caught in the same bind as prosecutors, they must collaborate to ensure that excessive backlogs and case delays do not develop. Levin (1972) argues that public defenders, in this context, place secondary value on client needs over court pressures to dispose cases.

> ...(N)either (public or private attorneys) primarily "represents" the client's interests; both mainly try to serve their own interests first. (The) public attorney's (primary needs) center on processing his caseload and (maintaining his relations with his peers... (Levin, 1972:92)

Contrary to this cynical caricature of Public Defenders, they firmly aligned themselves to the due process ideology of protecting defendant rights when approached by probation to participate in diversion [12]. Their opposition was grounded in a belief that pre-trial diversion

represented a clear conflict of interest with their clients and was unconstitutional. Others share these criticisms, questioning the legality of diversion programs that take "clients" prior to adjudication and treat them as offenders of the assumption that conviction would otherwise have occurred. These critics believe the defendant is presumed guilty and unnecessarily waives important constitutional rights of due process and equal protection as provided by the Fifth and Fourteenth amendments.

> The (diversion) programs therefore tend to ignore the significance of assertion of constitutional rights to be free and choose trial over early rehabilitation, and to require defendants to make the choice between restriction of liberty and the risk of trial without permitting the opportunity of discovering with reasonable assurance whether or not their guilt can be established. (Zaloom, 1974:14)

And as one county Public Defender argued:

> The concept of diverting people who are, in the eyes of the law, presumed to be innocent, requires one to make the assumption that they are in fact guilty... Aside from the philosopical and logical paradox inherent in this system, it (diversion) distorts the role of the judicial process...This type of system says that the alleged offender is presumed to be innocent and turns around and attempts to treat the person as an offender requiring the person to give up their constitutional rights to trial, etc. The function of the courts is not to prevent crime, but to deal with it after it occurs. (Field Notes, Public Defender Official)

Probation, police, and the prosecutor viewed potential divertees either as "offenders" and "criminals" presumably guilty of alleged charges awaiting a formal pronouncement of guilt by the courts. They were already defined as needing treatment or supervision. Public Defenders maintained an opposite perspective where potential divertees represented persons innocent of charges until proof of guilt had been established. Any program geared toward altering established legal procedures or imposing supervision prior to conviction conflicted with criminal law procedures and was constitutionally unacceptable.

Defense attorneys were also critical of a potential selection process whereby no standards of evidence or legal safeguards were provided. Divertees would be selected for a wide range of subjective reasons largely based on heresay evidence. Furthermore, the defendant was given no opportunity to appear and defend agency-constructed images as contained in police reports. Some defendants would be "convicted" or defined as being

non-divertable, thereby violating their rights of equal protection.

A final sore spot for Public Defenders was the proposed experimental design with randomization. Here again, they believe equal protection rights were being violated. The ABA has concluded that there exists no legal precedents in this area. Zeisel, et al., (1959:247) describe the dilemma of seeking knowledge without violating constitutional rights.

> In setting the limits within which they may permit legal experimentation, the courts will, as always, weigh the good which it attempts against the evil which, if only temporarily, it may bring about.

The Public Defender's opposition to diversion later dissipated and allowed itself to become an unwilling but important contribution to the diversion program. And, legal questions concerning the constitutionality of diversion later proved to be a significant force in SPAD's eventual dissolution.

B. Accommodation

At this stage of the reform, accommodation of these organizational conflicts was necessary. The primary sources of resistance, police, and prosecutors, were not convinced of the reform's value to them organizationally. Modification and control over the reform's direction in relation to resisting agencies' interests was required before the program could begin.

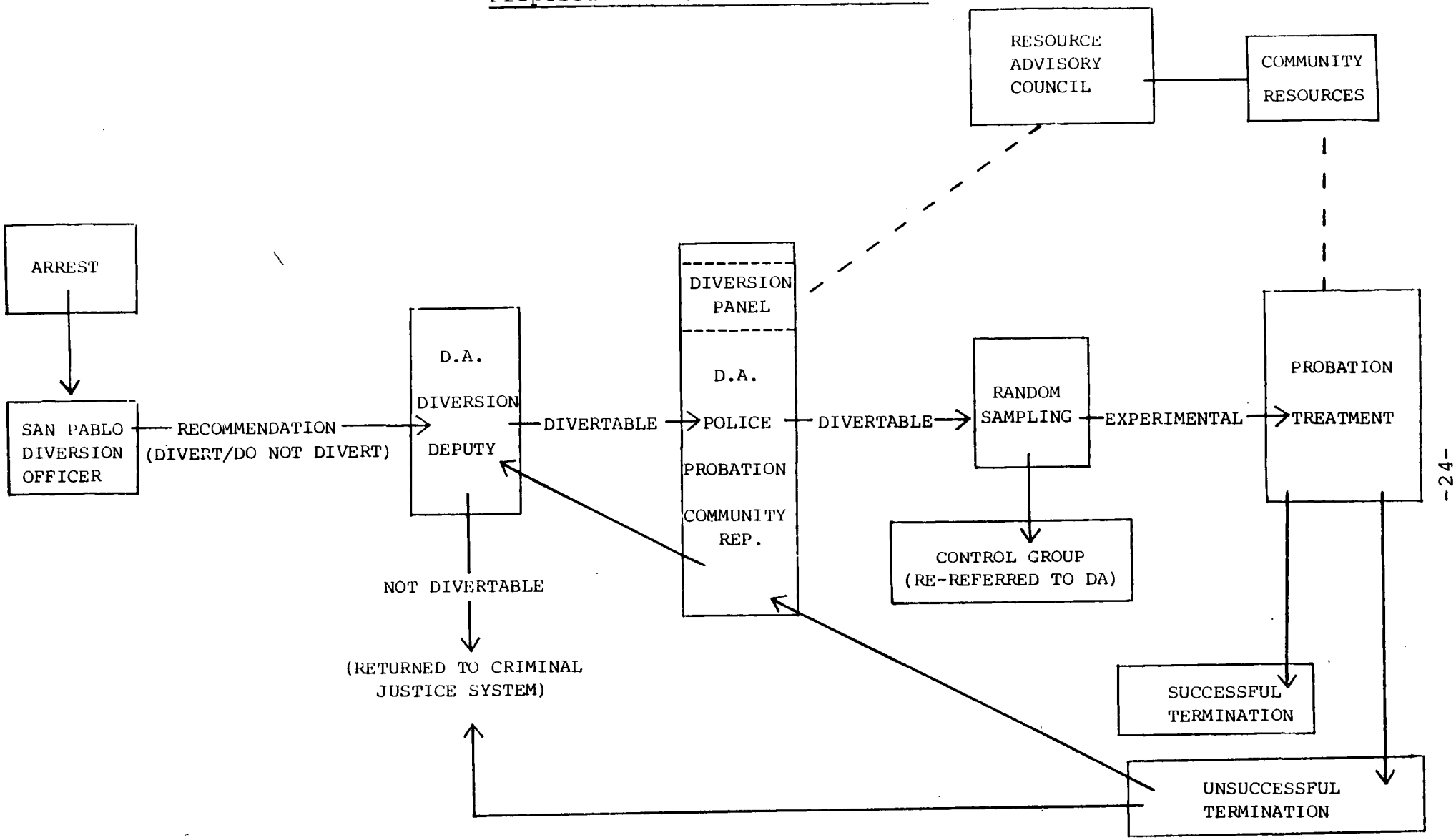
Probation, police, and the prosecutor did not share two pivotal assumptions of diversion; 1) that their crime control and rehabilitative activities were themselves crimogenic (stigmatic and labeling effects) and 2) that too many persons were being arrested, prosecuted, and convicted (overcriminalization). They did acknowledge the courts were backlogged and overcrowded but this "problem" could best be resolved by increasing budgets and agency resources. The system needed to become more efficient and effective, but not by reducing the power of law enforcement agencies. Consequently, diversion required modification so that it could become a resource rather than a threat to the work of criminal justice agencies.

1. Affirming police and prosecutorial powers. Police and the prosecutor feared diversion would further result in more criminals escaping justice. To alleviate such fears, it was essential for the diversion program not to compromise discretion of police to arrest and prosecutors to prosecute. Bear in mind, however, that diversion clearly called for such a re-adjustment of police and the prosecutorial discretionary decision-making that would curtail the system's control over current "markets" of agency business.

The fourth and final diversion proposal submitted by probation in 1974, called for a screening procedure whereby poice and prosecutorial decision-making powers were essentially maintained. Exhibit 2 portrays the client selection process as envisioned in this final proposal. Note how this screening system differs from the actual process described in Chapter I.

EXHIBIT 2

Proposed SPAD Caseflow Structure



Police, concerned with the possibility of more criminals escaping prosecution, requested being designated as the initial screening point.

> A police diversion sergeant, appointed by the San Pablo Police Department, would review cases of all accused (arrested) offenders. Upon consideration of eligibility, the diversion officer would present the District Attorney with his recommendation of both divertable and non-divertable cases. (Project Proposal)

This procedure allowed police to maintain their traditional discretionary arrest powers and to select defendants they believed would not be severely punished by the courts. Police could select those defendants who would escape full prosecution because of legal factors that police saw as interfering with their work of crime control. Such a selection structure also encouraged the goals of extension rather than diversion.

> Too many persons were getting off, especially the misdemeanor offender. We (police) saw diversion where we could put a string on them for 3 to 6 months. (Field Notes, Police Official)

Similarly, it was important for the prosecutor's discretionary powers of prosecution not to be compromised. The potential for diverting cases where a high probability of conviction existed conflicted with the agency value of high conviction rates. Secondly, the prosecutor had a concern of protecting certain defendants who also served as informants or "snitches" [13]. These persons are important sources of testimony and evidence for prosecutors. For example, where multiple defendants are charged with a single offense, the prosecutor may be able to use one informant's testimony against the others in exchange for a lesser sentence or dismissal of charges. In such instances, the prosecutor must have full control over prosecution decisions. To divert a potential informant would eliminate the leverage of the prosecutor over that individual.

To accommodate these concerns, the prosecutor became the second line of diversion selection after the police. A prosecutor was to review all cases approved by the police and decide which cases "merited" diversion. This selection procedure allowed prosecutors to retain cases likely to be successfully prosecuted and potential informants.

> The Deputy District Attorney would subsequently exercise his prerogative by removing those cases that in his judgement require prosecution. Those cases found to merit diversion then would be referred to the diversion panel (screening committee) for further consideration. (Project Proposal)

A final guarantee of prosecutorial control was eventually added to this process whereby the prosecutor could arbitrariy veto any screening

decisions. This meant that if the police, prosecutors, and screening committee approved a defendant for diversion, that decision could later be vetoed by the prosecutor.

> The initial (project) structure called for a screening committee (police, probation, DA, and community representatives) with one representative. But we (the DA) needed the veto power to protect our snitches, for example...Plus, we are constitutionally mandated to make such decisions. (Field Notes, Prosecutor)

Police and District Attorney concerns over the threat to curtail control over suspects were significantly reduced. However, the prospect of diversion functioning to divert defendants out of the system was simultaneously compromised.

2. Site selection as accommodation. Resolution of early resistance to diversion also was diminished partially in the selection of San Pablo as the project target area. Target area selection can have important consequences for a reform's success. Moreover, site selection frequently is predicated upon concerns and organizational pressures external to the reform's intent. In this selection, factors explaining the selection of San Pablo over 30 other county communities are explored.

San Pablo best can be described as an impoverished small suburb of San Francisco with a predominantly white population which had migrated from America's rural southwest during World War II. Originally settled as a Portuguese fishing village, San Pablo has undergone major demographic changes since its early days. During World War II, the Bay Area was an important center for Navy shipbuilding. Many white migrant farmworkers from the southwest relocated in San Pablo to be near the shipyards offering high wages and steady employment. San Pablo's population increased from 2,000 to almost 25,000 from 1940 to 1948.

Neighboring Richmond, which presently encircles San Pablo, attracted southern blacks also seeking work in the shipyards. Today, the two communities, despite being geographic neighbors, remain culturally isolated from each other. As the Navy began to cut back on its shipbuilding projects at the end of World War II, jobs became scarce and standards of living in both Richmond and San Pablo dropped dramatically. The level of economic adversity has persisted to the present.

In 1974, San Pablo had a dwindling population of 19,392 (compared with a 1973 population of 23,250). Unemployment was 12.3% with an average household income of $9,332. Approximately 2,500 persons were reported on some form of public assistance representing 25% of the eligible work force. Ethnically, San Pablo is predominantly white (81.4%) with blacks comprising 7.1% and Mexican-American 6.3% of the population. Described as an "okie" and "redneck" city, San Pablans have traditionally resisted migrations of blacks and Chicanos into their town. Such ethnic groups "belonged" in neighboring Richmond.

Crime data painted an imagery of violence and danger. According to 1973 figures from California's Bureau of Criminal Statistics (BCS), San Pablo had the highest state crime rate for violent and assaultive offenses

(308 reported incidents with 114 arrests for such offenses). To fuel the crisis, two articles appearing in the New York Times (October 13, 1974) and the San Francisco Chronicle (October 18, 1974) screamed the following headlines: "SAN PABLO -- SMALL TOWN, BIG CRIME" and "SMALL CITIES, BIG CRIME RATES." Each article attempted to discredit the belief that small suburban towns were safer than large urban areas.

> In 1823, Don Francisco Mario Castro, a government official, moved here across the bay from San Francisco, in search of the peaceful life, free of chaos, the crime and fear of the city. Don Castro found his peace, as many latter-day-suburbanites. But it all is changing now.
> (New York Times, 10/13/74)

Official rationales listed in the 1974 proposal echoed the above socioeconomic and crime data to justify San Pablo's selection.

> Confronted with an exceedingly high crime rate, the San Pablo Police Department's efforts to control crime are further thwarted by a lack of community treatment resources that can provide a needed wide range of timely services. It is believed that the consequences of such a gap in needed community resocialization services further intensifies the problems in criminality; resulting in recidivism and an increased penetration by individuals into the justice system.
> (Project Application, 08/26/76, p. 12)

Accepting the picture of San Pablo as an impoverished community with a serious crime problem raises several questions relative to the appropriateness of placing a diversion program within such a setting. First, diversion never was intended as a means of reducing the incidence of violent crimes. Diversion traditionally has been directed at less serious (misdemeanor) offenses that congest the criminal justice system [14].

> An area of continuing controversy among criminal justice policymakers and diversion practitioners themselves is what categories of charges and defendants should be eligible for diversion. At one end of the spectrum, there are non-serious charges and so-called "light offenders" which most would agree are appropriate for diversion enrollment. At the other end are the obviously heinous and violent offenses and so-called "hardened" defendants; they are generally excluded.
> (Performance Standards and Goals for Pre-Trial Release and Diversion, 1978:46-47)

One of the major dilemmas of diversion has been its tendency to divert only the minor offender on whom the system typically imposes minimal or no

sanctions. Selecting the minor offender simultaneously limits diversion's chances of reducing crime and court costs because most minor offenders are unlikely to continue in future criminal activities. Consequently, one could not expect violent crime, the official reason for site selelction, to be significantly affected by diversion.

> The big problem here was court backlog. We (San Pablo Police) have the highest arrest rate in the state for a town our size. I think it's about 314 arrests per month...We also have the highest assaultive crime rate per capita, but we wouldn't want to divert those kinds of cases. (Field Notes, Police Official)

A second inconsistency was SPAD's proposed service model reflecting a brokerage referral concept. This intervention approach suggests primary "treatment" would be provided through existing community resources rather than the diversion staff itself. Staff would assume responsibility for selection, diagnosis, referral and supervision in coordination with a specialized outside agency. However, economically disadvantaged communities like San Pablo are poor choices for such programs where existing programs are already scarce. Diversion efforts (informal) tend to work best in affluent communities where private and public social services are readily available and law enforcement agencies believe offenders can be informally handled by such non-justice agencies (Carter, 1968).

What then were some of the pragmatic factors that more directly explain San Pablo's selection? First, there was the economic reality that limited LEAA funds were availabe from the RPU to support a diversion program. Previous diversion proposals were much larger in scope. However, in 1974 less money was allowed by the RPU for diversion partly because of the prior resistance by prosecutors or police. This necessitated locating a small community rather than a county-side program.

Secondly, probation had finally located a police department willing to participate in a diversion program.

> It was only the final proposal that suggested San Pablo as the site because limited funds were available from the region (RPU), the San Pablo police chief was interested, and the DA was interested. (Field Notes, Probation Official)

Police resistance was partially tempered by structuring diversion to retain police discretion, negate the potential for diversion of conviction-bound defendants, and extend police social control activities. But there were additional factors contributing to San Pablo's decision to participate with probation and prosecutors.

Once again money entered into the picture; SPAD would help pay the salary of an officer to be reassigned as a "diversion" sergeant. Secondly, the San Pablo Police Chief was anxious to try innovative programs that might help "professionalize" and elevate the status of a small and lowly regarded department. According to several observers, San Pablo police

suffered from perceptions of being very unprofessional and poorly equipped to handle the city's crime problem.

> They were headbangers who would go into an arrest situation and bust heads. The DA couldn't trust them to make good arrests... The Chief was an unschooled cop who didn't want to look bad in front of the City Council. He was trying to deal with the problems of the 70's with techniques of the 40's and resources of the 30's. He wanted any program that would improve their image. (Field Notes, Probation Official)

> We have to drop a lot of complaints because they can't make good arrests...They are guilty as hell but we can't do a thing because evidence is lost, defendant rights violated, or the police report is badly written. (Field Notes, District Attorney)

Participation in diversion, while not comprehending its original purpose, represented an opportunity for police to improve its status, recieve much-needed departmental funds, and provide more effective ways of controlling the minor offender. Similar to the District Attorney's desire to make changes in the prosecution process, "anything would be better than the present situation," for police who also saw their crime control efforts as largely ineffective.

At a more subtle level, the selection of San Pablo minimized the potential for conflict and controversy among other county criminal justice agencies. In essence, the experiment was more controllable as it was to involve only 200 misdemeanor cases each year out of an annual municipal court docket of several thousand. Additionally, the low prestige ascribed to the San Pablo and Richmond communities, conceded to be the poor section of the county, minimized possible resistance from more influential and prestigious communities concerned about releasing "criminals" back to the community. Here site selection parallels experimentation with human subjects who typically come from institutions and lower class positions. If diversion did result in some defendants escaping conviction, gaining eary release and then committing additional offenses, such adversities would be limited to these communities. All these factors made San Pablo the most attractive location for experimentation.

C. Summary

In this chapter, organizational factors underpinning agency resistance to a diversion reform program have been examined. Resistance was resolved by allowing important accommodations or concessions in the reform's theoretical and practical direction. Processes of resistance and accommodations to social reform are best understood within a paradigm of conflicting agency ideologies, values, and power relationships. For SPAD, it was these factors that principally contributed to origins of accommodation and transformation to the concept of diversion.

Klein, in his recent analysis of "impediments" to diversion and

CHAPTER III

TRANSFORMATION OF DIVERSION

Several factors were identified in Chapter II that contributed to a situation where the intended reform was strongly resisted and subsequently altered from its original design. Diversion's underlying assumptions relative to crime causation and administration of justice conflicted with agency ideology. Moreover, the reform threatened basic values of police and prosecutors and to some extent probation. Collectively, these conflicts made diversion mutually suspect and it received, initially, little support from police and prosecutors. Only after basic changes were made in project design and location to accommodate these agencies was it possible to proceed with the project.

This chapter illustrates how accommodations emerged in the practical operations of selecting clients and applying certain intervention strategies. Resistance and accommodation, which took place during the developmental phase of SPAD, represented the potential for minimizing program impact. Transformation documents how the reform was carried off and was influenced by organizational ideology, values, and power relationships.

A. Selection

There are two basic reasons why it is critical to examine the dynamics of selecting defendants for diversion. First, diversion implies some changing police arrest and prosecution procedures in addition to the provision of services to defendants. Diversion assumptions of overcriminalization and unnecessary labelling by law enforcement agencies speak directly to issues of inappropriate selection. To be theoretically consistent, agencies should develop new strategies and procedures for processing defendants to minimize court penetration. More significantly, diverted defendants should represent those traditionally processed by the justice system. Agencies should be working differently with those they already control, rather than expanding to "new markets."

Secondly, how diversion selection occurs has important consequences for both defendants and for the justice system. If defendants accused of lesser offenses with minor criminal records dominate diversion caseloads, then the impact of diversion on reducing costs, crime, and social control will be minimal. Selecting the more serious offender, while increasing the risk of failure, also increases the potential for significant impact.

Organizational values of key agency officials described in Chapter II would lead one to expect that SPAD would follow other diversion programs and primarily deal with the minor misdemeanor defendants. However, their values were not necessarily the same for those directly responsible for running the program and making day to day decisions. The following section examines how program people decided who was a divertee and their reasons for selection and rejection.

1. Restructuring the selection process. Prior to SPAD's first day of

operations, an important modification in the original screening plan occurred. Instead of relying upon police and the prosecutors to review all arrests prior to Screening Committee review, project staff proposed that diversion should be considered for all cases for which a complaint was filed. Such cases would than be forwarded immediately to the Screening Committee for the first round of selection. Police and the DA accepted this revision after some negotiations between the two.

This change came about after the grant was awarded to probation and staff selected to run the program. During an early planning session with project staff, it was recommended by the author that a complaint filing requirement be instated fearing that without it SPAD would most likely select only minor cases. Only a filed complaint could assure that cases would be prosecuted [1]. The consequences of this proposal were (1) to reduce the power of police over selection decisions, (2) to significantly reduce the number of defendants eligible for the program, and (3) enhance SPAD's chances for demonstrating impact on recidivism, costs, and social control. According to San Pablo police data, 35% of their arrests result in no charges being filed by the District Attorney, due to insufficient evidence. Without the complaint restriction, it would be possible that many of these 35% non-complaint arrests would enter SPAD and "widen the net" as some feared.

SPAD's staff quickly agreed with this proposal and recommended the change to police and the prosecutor. Police initially were hesitant to relinquish their control over selection decisions, but consented once they realized the enormity of screening an average of one hundred arrest reports each month. The prosecutorial representative seleicted to work with SPAD concurred that the complaint requirement was imperative if SPAD expected to work with "good" prosecutable cases. The low professional esteem of police held by the prosecutors office furthered their desire to minimize power of the police in case selections [2].

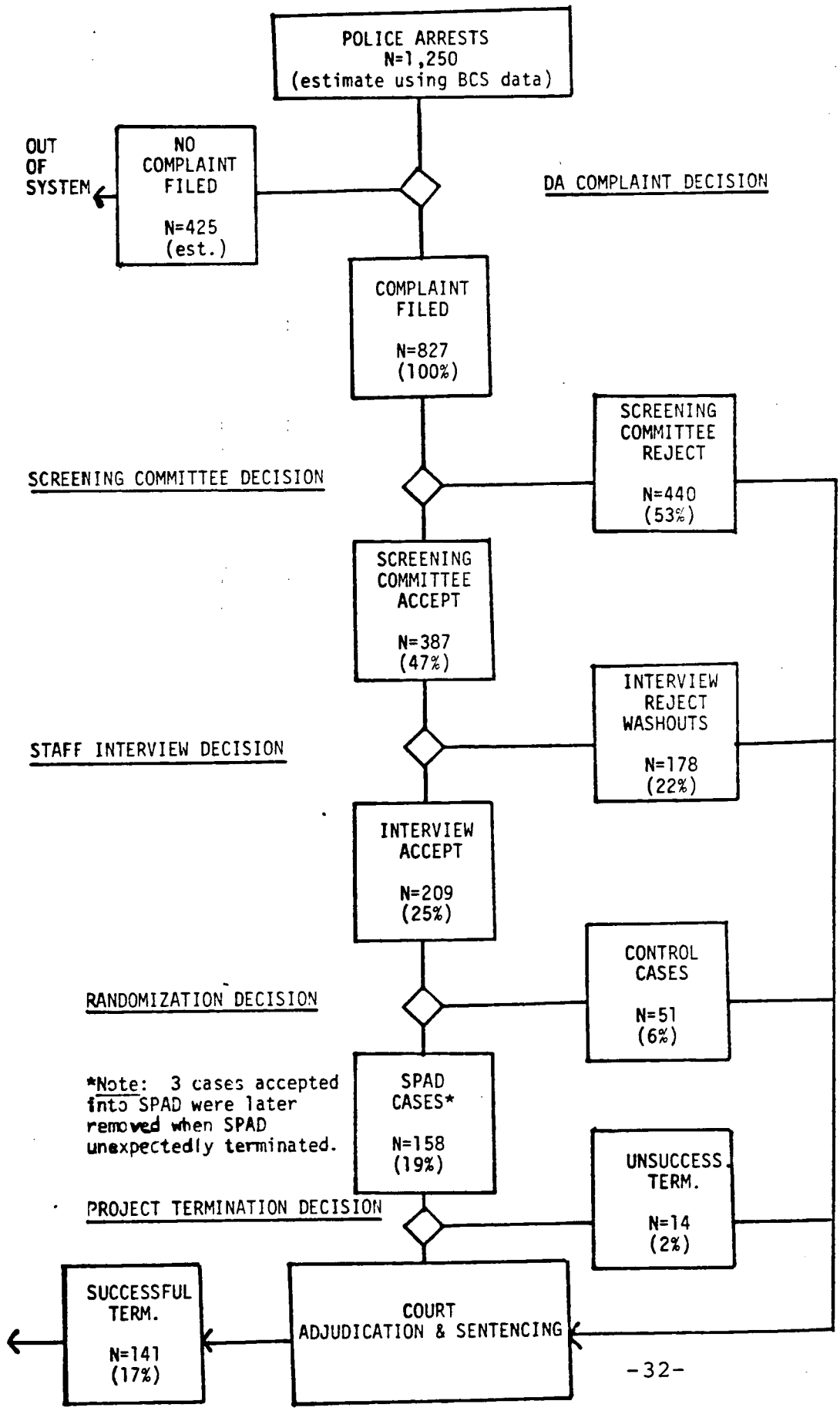
2. Overview of the selection process. Under this revised procedure, the following three screening points faced defendants prior to their acceptance into SPAD: (1) the Screening Committee decision; (2) the project staff interview; and (3) the project randomization decision. Since the final obstacle was statistically controlled, discussion here will focus on the Screening Committee and staff interviews - the two most subjective decision ceremonies.

Table 1 displays this revised screening process and rates of acceptance and rejection. It was estimated that San Pablo police made 1,250 arrests during SPAD's lifetime (Fall, 1975 - Fall, 1976). Of these arrests, 827 (65%) resulted in complaints filed by the DA and referral to the SPAD Screening Committee. Of the 827 cases, 158 (19%) individuals eventually entered the SPAD program. Demographic data for the total complaint population revealed the following major characteristics:

(a) 42% (339) of the complaint population resided in Richmond, compared to 39% (319) who were San Pablo residents.
(b) Only 6.7% (55) of the complaint population were charged with violent-assaultive offenses (homicide, assault and battery, robbery, rape, etc.).
(c) 36% (297) and 18% (146) of the complaint population

TABLE 1

SPAD CASE-FLOW RATES



were charged with petty theft and drunk driving, respectively.

(d) 44.6% (369) of the complaint population had no prior misdemeanor convictions. 84.6% (700) had no prior felony convictions. 89.5% (740) had no prior state or federal prison sentences.

(e) 43.7% (361) of the complaint population were identified as Black, Mexican-American, or Asian.

(f) 71% (587) of the complaint population were male.

(g) Average length of residence in the county was 12.9 years.

These findings show that the Screening Committee's pool of divertees predominantly consisted of misdemeanor offenders with limited criminal histories. Most of their offenses fell into petty theft and drunk driving categories with violent crimes representing only a small proportion.

3. The screening committee decision. Four members of the Screening Committee met each week to decide diversion eligibility. In reaching decisions, sources of information were (1) police arrest reports and (2) informal or personal information relative to the offense and defendant, which was not contained in the arrest reports. Using such limited data, members voted to accept or reject each defendant. A written rationale was required to justify rejection, but not for acceptance into the program [3].

Five guiding formal criteria were developed to aid the Screening Committee in making selection decisions (Exhibit 3). These criteria reflected the staff's concern not to accept (1) controversial serious offenders, possible guilt of heinous crimes which are unacceptable to the prosecutor, courts, and community; (2) cases already eligible for drug diversion or already under probation supervision (P.C. 1000 and probation statute), and (3) cases believed to be inappropriate for diversion as administered by probation (alcoholics and infractions) [4]. This guideline reflected an agency distinction made over who should control the alcoholic. Although frequently arrested by the police for charges of drunk driving and disorderly conduct, probation believed these "deviants" did not belong to criminal justice, but rather to mental health [5]. Just who should have jurisdiction over alcoholics, and more specifically the drunk driver, was an issue that resurfaced later and had deadly consequences for SPAD's existence.

In practice, the Screening Committee greatly expanded upon these five restrictions. Table 2 shows that a total of 25 rationales ultimately were used to justify rejections. The most frequent and most subjective reason was "excessive criminal history," which accounted for 23.4% of all rejections. Defendants already on probation or parole (17.5%), and defendants defined as alcoholics over age 26 (14.1%), accounted for the next most frequently used rejection rationales. These three factors accounted for 55.9% of all rejections and reflect a purposeful attempt to bypass the serious "offender."

Before proceeding to a more systematic analysis, a brief explanation is warranted of other rejection rationales. Committee members, except when applying the formalized criteria, were free to use whatever rationale best suited their collective decision. In many cases, there was a general reluctance to try and give a formal reason for what amounted to a "gut"

EXHIBIT 3

SCREENING COMMITTEE CRITERIA FOR ELIGIBILITY

	Restriction		Rationale
1.	"Heinous Crimes"	1.	Exceeds political and community tolerance limits.
2.	Cases eligible for P.C. 1000 and deferred prosecution project.	2.	Unnecessary duplication of diversion services already available.
3.	Current probation status at time of arrest.	3.	Lack of jurisdiction over case and cuplication of services.
4.	Alcoholics over age 26.	4.	Attempts to prevent project from becoming an alcoholic project-viewed as mental health problem and not law enforcement.
5.	Infraction Arrests	5.	Prevents project from accepting "marginal" cases and becoming a "dumping grounds" for non-prosecutable cases.

TABLE 2

Screening Committee Rationales

Rejection Rationale	N	%
Excessive Criminal History	103	23.4
Active on Probation-Parole	77	17.5
Alcoholic Over Age 26	62	14.1
Infraction Offense	42	9.5
Drug Addict	20	4.5
Eligible for P.C. 1000	19	4.3
Non-Amenable to Diversion	17	3.9
Non-Prosecutable Cases	15	3.4
Geographic Location Restriction	14	3.2
Absconded	14	3.2
Punishment Desired	13	3.0
Legal Complications	10	2.3
Negative Demeanor	6	1.4
D.A. Veto	5	1.1
Co-Defendant Restriction	4	0.9
Eligible for Deferred Prosecution	4	0.9
Already Pled Guilty	3	0.7
Active in SPAD	2	0.5
Excessive Property Damage	2	0.5
Heinous Offense	2	0.5
Active in Control Group	1	0.2
Excessive Violence	1	0.2
In Military	1	0.2
Victim Considerations	1	0.2
Totals	440	100.0

reaction. This ambivalence is reflected in the idiosyncratic nature and range of rationales used. For example, on two occasions the Committee rejected a defendant charged with petty theft after learning that he had on him large amounts of his own money at the time of arrest. This indicated to some screeners a "sickness" on the part of the defendant. Stealing was considered "normal" or a "normal crime" only if defendants were poor or unemployed. Otherwise, they were viewed as undeserving of diversion.

Seventeen cases were rejected with a simple statement that said they were "unamenable to diversion." In these, Committee members believed the defendant would probably fail diversion, but gave no clear rationale to support their beliefs. Often the probation representatives would state project staff had insufficient resources to effectively treat the defendant.

Two additional rejection rationales of interest were "DA veto" and "non-prosecutable cases." Votes occurred when the prosecutor believed justice would best be served by conviction, and punishment rather than diversion. The prosecutor had an eye to the future in such cases. Future prosecutions would be enhanced with a prior conviction.

"Non-prosecutable cases" represented instances where the prosecutor believed a complaint was improperly filed. Conviction would be quite difficult because of problems of evidence or improper police arrest behavior. These rejections also reflect infrequent examples where the prosecutor actively attempted to minimize SPAD's potential for becoming a dumping ground for non-prosecutable cases.

4. Searching for the non-criminal. Statistical comparisons of accepted and rejected defendants show the Screening Committee sought only to select defendants with minor charges and no serious prior record. Cross-tabulating defendant characteristics by Screening Committee decision (Table 3) shows a case was more likely to be accepted if the defendant's biography contained the following traits:

- Charged with a misdemeanor offense
- Charged with only one offense
- No prior felony arrests
- One or no prior misdemeanor convictions
- No prior state prison sentences
- Female
- Between ages 18 and 21.

The association of age at arrest reflects strongly on one's criminal biography, as adult criminal records are a function of time. Younger persons have less "risk" time than older persons, and are less apt to have criminal records. The Committee also perceived younger inmates as more amenable to treatment and less responsible for their behavior. Defining diversion as a "second chance" for youthful defendants will become more apparent in the qualitative analysis to follow.

But what of the sex bias? Why were females accepted more often than males? There are two potential explanations: (1) Females benefitted from a paternalistic attitude held by the male-dominated Committee or (2) females may possess more favorable biographies than males in regard to crime.

TABLE 3

Background Variables By Screening Committee Decision

Background Variable	Screening Committee Decision				Statistics
	Eligible		Rejected		
	N	%	N	%	
Age At Arrest					X^2=17.26
18-21	144	37.3	106	24.1	df=2
22-27	112	29.0	145	33.0	S=.00
28 & Above	130	33.7	188	42.8	V=.14
					G=.22
Total	386	100.0	439	99.9	
Missing Cases = 2					
Sex					X^2=20.09
Male	245	63.3	342	77.7	df=1
Female	142	36.7	98	22.3	S=.00
					V-.16
Total	387	100.0	440	100.0	G=.34
Missing Cases = 0					
Prior Felony Convictions					X^2=60.53
None	370	97.4	330	79.5	df=2
One	8	2.1	53	12.8	S=.00
Two or More	2	0.5	32	7.7	V=.28
					G=.80
Total	380	100.0	415	100.0	
Missing Cases = 32					
Prior Misdemeanor Convictions					
None	223	58.7	146	35.4	
One	70	18.4	54	13.1	X^2=95.32
Two	35	9.2	40	9.7	df=6
Three	22	5.8	34	8.2	S=.00
Four	10	2.6	24	5.8	V=.35
Five	15	3.9	53	12.8	G=.46
Six or More	5	1.3	62	15.0	
Total	380	100.0	413	100.0	
Missing Cases = 34					

TABLE 3

Continued

	Eligible		Rejected		P
Prior Prison Sentences					X^2=36.36
None	376	98.9	364	88.3	df=2
One	2	0.5	33	8.0	S=.00
Two or More	2	0.5	15	3.6	V=.21
					G=.85
Totals	380	100.0	412	100.0	
Missing Cases = 35					
Seriousness of Charge					
Assault-Violence	31	8.0	60	13.6	X^2=52.79
Narcotics	3	0.8	17	3.9	df=4
Felony Property	20	5.2	42	9.5	S=.00
Misd. Property	213	55.0	138	31.4	V=.21
Traffic	120	31.0	183	41.6	G=.00
Total	387	100.0	440	100.0	
Missing Cases = 0					
Number of Aliases					X^2=29.10
None	353	91.9	331	78.3	df=2
One	16	4.2	48	11.3	S=.00
Two or More	14	3.9	44	10.4	V=.19
					G=.50
Totals	384	100.0	423	100.0	
Missing Cases = 20					

** X^2 = raw chi square score or adjusted chi square where df=1
df = degrees of freedom
S = significance level for X^2
V = Cramer's V
G = Gamma

A straightforward analysis of this problem was to cross-tabulate sex with crime-related variables. Table 4 summarizes this analysis. Here we see that females do possess less serious criminal biographies than males. Females tend to have fewer misdemeanor convictions, fewer felony convictions, charged with less serious offenses, fewer prior prison sentences, and fewer charges at arrest. The one contradiction to this pattern is number of aliases. Women do have more aliases than males, but this may be only a reflection of marital status changes, i.e., women changing their maiden names. Another possible interpretation would be that females participate more often than males in property offenses involving the use of multiple aliases. This would be particularly true for crimes of forgery or fraud. However, it does not appear that females were favored simply because of their sex.

To confirm sex as an important variable, a stepwise multiple regression was performed using dummy variables. Table 5 shows "prior misdemeanor convictions" is entered first into the regression equation and explains approximately 9% of Committee decision-making variance. Sex is the third variable entered and increases the level of explanation only by 0.6%, underscoring its relative unimportance in Committee decisions. More importantly, one notes the low level of explanation provided by biographical variables (cumulative R^2 of .12933).

These data are similar to other adult diversion programs [6]. Vera Institute (1978:5) in its survey of seven nationally known adult diversion projects concluded that few projects divert a significant proportion of repeat offenders. Two projects were found to have an official first offender only policy. Dickover et al., (1976:207-211) found in a survey of fifteen California diversion projects a tendency to select only minor cases with no prior arrest or conviction records. Eligibles tended to be charged with petty theft, 25 years or younger, and no prior arrest or conviction record. Unfortunately, these data fail to explain the basis for such trends. Additional qualitative factors must be accounted for to understand why SPAD and other diversion projects select such minor cases.

5. <u>The dramatic construction of divertees.</u> Deciding whom should be diverted is best analyzed by viewing the decision-making process as a dramatic enterprise in which decision-makers act out ascribed agency roles. Data contained in police reports about the defendants did not influence Committee decisions as much as the meanings given to police records and the control over the distribution and interpretation of background data [7]. Screening Committee members entered the drama representing their agency's ideology and values of regulating or treating crime. Members did not vote so much as individuals, but more as agency constituents. Police and prosecutor representatives rated cases from a perspective of crime control, while probation rated cases from a treatment ideology [8].

A second factor was the uneven influence of Committee members. Some agencies had disproportionate control and authority over defendant records, and their representatives were accepted as "experts" in interpreting such information.

Police had considerable influence over decisions, because they were the primary source of the defendants' biographical data [9]. Committee hearings consisted of paper reviews of police arrest reports and available

TABLE 4

Summary of Criminal Record Variables Associated With Sex*

Background Variable	Chi-Square**	Gamma	Crammer's V
Prior Felony Convictions	.00	-.58	.15
Prior Misd. Convictions	.00	-.45	.27
Prior Prison Sentences	.00	-.83	.15
Seriousness of Charge	.00	-.11	.31
Total Number of Charges	.02	-.32	.10
Number of Aliases	.00	.39	.15

*Sex was scored with Male = 1, Female = 2. Negative Gamma coefficients reflect inverse relationships between sex and frequency of prior record data i.e., females tend to have fewer prior felony convictions, prior misdemeanor convictions, etc.

**Chi-square reflects level of statistical significance.

TABLE 5

Summary Table of Multiple Regression Analysis:

Background Variables with Committee Decision

Step	Variable Entered	Mult. R	R^2 Charge	Beta
1	Prior Misd. Convictions	.30410	.09248	.24304
2	Total Number of Arrest Charges	.32705	.01449	.11780
3	Sex	.33615	.00604	-.09292
4	Number of Aliases	.34019	.00273	.05598
5	Race	.34392	.00255	-.04915
6	Prior Felony Convictions	.34673	.00194	.14130
7	Prior State Prison Sentences	.35828	.00814	-.13290
8	Age at Arrest	.35962	.00096	.03328

*Dummy variables were used for nominal independent variables of race and sex. This technique, described by Blalock (1972:498-502) allows the combining of interval and nominal data with a regression equation. The dependent variable committee decision was scored as follows: Accepted = o, Rejected = 1.

"rap" sheets from which Committee members reconstructed defendant images. Defendants did not attend these weekly sessions and could not challenge agency characterizations [10]. Committee members were largely dependent upon arrest data for their diagnostic work, except for informal or "working knowledge" frequently presented by police intimate with the case. Police functioned as experts on the community, indicating whether defendants could be identified with various community subcultures (e.g., gangs, gypsies, Okies).

Limited arrest data also gave the police a dominant role in diversion decision-making. This was particularly evident when sparse arrest records were "explained" by injecting conversational "background information" not in the reports.

> On January 29, 1976, the Screening Committee voted to reject a person for diversion after the police representative had concluded the defendant was a "drug addict." This data was not included in the official arrest report. Beyond this, he was able to precisely state the level of addiction: $70 per day. This data also was not included in the report. After the meeting, the probation representative indicated privately to me that he felt the policeman's opinion was unfounded, but no one challenged his opinion. (Field Notes)
>
> During the discussion of a case, the police representative stated, "I've known him (the diversion candidate) as a kid, and as far as I'm concerned, he is no good...I vote no." Case was rejected by all members. (Field Notes)
>
> The first defendant, whose case was presented before the Committee on March 25, 1976, had been arrested by the voting police representative. The probation representative requested additional information <u>not contained in the</u> police report. Specifically, he wanted impressionistic data on the defendant's demeanor and attitude during the arrest. Satisfied by the policeman's positive impressions, the Committee accepted the case. (Field Notes)

Often, Committee voters actively sought police impressions simply because of the lack of detailed police report data. But even with the police providing impressionistic information, many decisions were based on feelings rather than facts [11].

The prosecutor also exercised significant power over Committee decisions by virtue of his unchallenged "expertise" in law and prosecution matters [12]. Other Committee members were "outsiders" and ignorant of informal and formal adjudication procedures, which allowed the prosecutor to predict the outcome of a case. Probation, police, and community members

had no way to challenge statements like, "He'll probably get 2-5 years for that," or, "It'll be tough to prosecute that case." Questions of legal implications and probable dispositions often were left by default to the District Attorney [13].

An important "hidden" criterion for Committee members was what kind of punishment the defendant would receive if not diverted. The members' comments often revealed their search for the non-offender. Repeatedly, the prosecutor's assessment that cases would receive minimal punishment encouraged their choices for diversion.

> The fifth case presented before the Screening Committee tonight is a drunk driving offense aggravated by the defendant pushing the car in front of him into an intersection. Committee members were disturbed by the potential of themselves being pushed into a busy intersection by a drunk driver (although there was no indication how busy the intersection was.) The DA stated that prosecution would be difficult since subsequent breath tests were inconclusive due to discrepancies in the readings. The probation representative argued to divert the defendant after the DA predicted a small probability of conviction or a very light sentence (fine and weekend in jail). "I vote yes to put a string on him...We can keep track of him." Case accepted by the Committee. (Field Notes)
>
> The police see the project as very positive...It allows them to retain control on cases that ordinarily would be lost very quickly or get light sentences. (Field Notes, Probation Official)

Diverting defendants because the system is incapable of punishment runs counter to diversion's original purposes, but certainly conformed to law enforcement values. As one prosecutor stated, "There is guilt in law and guilt in fact." Defendants brought before the Committee were assumed to be guilty and knowing that the accused otherwise would "get off" justified selection decisions to divert [14].

> I know who the criminals are. I can drive to downtown Richmond on Sunday morning and point them out to you...But our hands are tied...Those are the ones we need to reach. (Field Notes, Prosecutor)

The presumption of guilt most clearly was shown for a select group of SPAD candidates who had been "diverted" previously into a state-sponsored drug diversion program prior to SPAD's existence. Referred to as P.C.

1000, this state-wide program accepted defendants arrested for various drug offenses but diverted from prosecution. Successful completion of P.C. 1000 resulted in removal of the conviction status. Criminal "rap sheets" contained only the dispositional status as "P.C. 1000," after the arrest entry, meaning the defendant had completed drug diversion.

When such cases were reviewed by SPAD, police, probation, and the prosecutor interpreted the P.C. 1000 notation as evidence of criminal involvement. "He got off" or "he doesn't deserve another chance" were typical rationales for rejection. Thus, the P.C. 1000 diversion program seems to have failed to curb law enforcement agencies' practical applications of the criminal label. Instead, a re-labelling phenomena surfaced; when previous diversion experience was followed by re-arrest, it further solidified agency perceptions of criminal pathology.

In contrast to police and the prosecutor, probation and community representatives had little influence on Screening Committee decisions. Probation's ineffectiveness was largely the result of factors already cited (lack of information and lack of experience in pre-trial policies and procedures). Probation's expertise was seen in "treating" the divertee, which was of little concern to police and the prosecutor. Probation's opinions typically were solicited to determine what services would be provided and how long supervision would be retained. Furthermore, project staff was initially in awe of police and especially prosecutor representatives to make interpretations of police reports and predict prosecution outcomes. Such determinations traditionally belong to prosecutors and police, and not the community or probation [15].

Community members were clearly the least powerful group in decision-making. This reflected an early reluctance of justice system workers to include community representatives in SPAD. It was only the insistence of the Regional Planning Unit that caused San Pablo residents to be included in the screening community. Probation officials previously had voiced their concern about permitting "non-experts" a role in criminal justice reform.

> There was some concern expressed over the community's involvement. "I want them to help us do our work in the role of volunteers, but not to tell us what to do."
> (Field Notes, District Attorney Official)

Community residents were not involved in the planning of SPAD or in making program policy [16]. For several months, the Project Director was reluctant to start a citizens' advisory board [17].

A second reason for the community members' ineffectiveness was their inability to comprehend the workings and language of criminal justice. They often acted as bystanders while police, prosecutors, and probation engaged in esoteric discussions over the merits of each case. Terms like "rap-sheet," "priors," and "deuces" were confusing to those new to the professional language of justice transactions and bartering. They had no means of assessing the seriousness of the case or its probable disposition by the court. Gradually, these community representatives became more familiar with the argot, and actively engaged in discussions as the project continued. And, as they assumed a conservative stance in diversion

selection (i.e., wanting to punish the defendant), their credibility was enhanced.

Yet, their input never matched that of the "system" workers, and their roles remained subordinate to social control "experts." If police defined a person as a drug addict, then he was treated as such. Law enforcement perceptions were uncritically accepted as social facts by community representatives.

Screening decisions often rested on unchecked speculation, moral judgements, and assumptions of individual pathology.

> I vote no because this lady gave him the trust of the house and he betrayed that trust. (Field Notes, 03/11/76: Police Representative)
>
> That person should have known better than to rip-off the store. I'll have to vote no. (Field Notes, 01/07/76: DA Representative)
>
> I think that driving on a revoked license is a very serious offense and shows intent on that person's part. (Field Notes, 01/07/76:DA Representative)
>
> In a case involving the theft of less than $10 of yarn, the level of criminal sophistication was measured by the modus operandi and amount of yarn stolen. "She's probably done it before because of the bag (store printed bag) and the amount of yarn...I vote no." (Field Notes, 11/24/76: Police Representative)

Predictably, such subjective interpretations of biographical data made for inconsistent decisions. For examle, one case was rejected simply because the defendant was carrying sufficient money to purchase the stolen merchandise. A few weeks later a defendant who switched price tags on a fishing pole and then attempted purchase was accepted. At the time of arrest this person had $1,000 cash on him. In another instance, a defendant was screened and rejected because of his "excessive" criminal record. A year later, the same person was screened again. Unaware the defendant was rejected previously, the Screening Committee declared him eligible! (The case later was "washed out" when staff learned the defendant was already on probation.) Although such inconsistencies were not common, they appeared frequently enough to underscore the relative and adventitious character of Committee decision-making.

Finally, Committee rejections highlighted a tendency to conceive diversion suitable only for those deserving a "second chance," a persective which cut across agency affiliation. People were judged according to individual factors such as moral character, motivation to "change," and criminal intent. In the Committee's eyes, divertees were presumed guilty but candidates for leniency. In this sense, diversion decisions were

similar to established sentencing alternatives such as probation and suspended sentences.

Selecting the "good" citizen whose criminal conduct is infrequent and episodic is a well-established pattern for many diversion programs. For example, Dickover et al., notes that for one California diversion program divertees "...must be a person who is otherwise a good citizen and whose criminal record discloses no pattern of criminality and no serious charges." (1976:53). Similarly, Feeley found in the New Haven program, "These officials consider those whom they admit into their programs, 'not really criminals,' but rather people with social problems in need of help." (1979:111)

6. Staff selection of divertees. Once candidates were approved by the Screening Committee, they had to appear for an interview with the SPAD staff. The intended purposes of this interview were to determine if the defendant wished to participate and to explain to defendants the nature of the program, including waiving their right to a speedy trial. Actually, the interview was more diagnostic in nature and used by probation staff to see if the defendant was amenable to treatment and supervision. Probation, as previously discussed, applied a psychological and/or social work model to its work. SPAD's staff of probation officers assigned to the diversion program reframed this psychological approach. For them the interview was a diagnostic session where client weaknesses and strengths were discovered, and selection of an appropriate service or treatment plan.

Table 6 summarizes the results of this interview session. Only 53.7% of cases defined as eligible passed successfully through the interview. The high rate of "wash-outs" was largely attributable to persons failing to appear for the interview. This finding is consistent with other diversion studies reflecting difficulty in recruiting eligible defendants (Hillsman-Baker, 1979; Pryor et al., 1979; Feeley, 1979; Robertson and Teitelbaum, 1973; Vera Institute, 1978).

Why so many failed to appear is open to speculation. SPAD staff believed a contributing factor was failure of the project to fully inform defendants of their eligibility and the necessity of the interview. To remedy the situation, staff used volunteers to make house calls encouraging diversion candidates to enlist [18].

> Early in our project, we experienced a high rate of failures to appear in response to our letters advising potential eligibility. Consequently, volunteers were trained and implemented to go to the homes of such people. We call them "no show chasers." Our "no show chasers" continue to attack the problem of potential eligibles' high failure-to-appear rate. (Project's Quarterly Progress Report)

Telegrams were also sent to potential divertees urging them to attend the scheduled interview. Despite these attempts to improve communication, the high "no-show" rate remained. A possible explanation is that defendants remained unconvinced that diversion offered an attractive

TABLE 6

Staff Interview Decisions

Decision	N	%
Eligible for Diversion	208	53.7
Ineligible for Diversion	179	46.3
Failed to Appear	77	19.9
Unmotivated	22	5.7
Already Pled Guilty	26	6.7
On Probation-Parole	21	5.4
Not Available-Absconded	8	2.1
Case Being Plea Bargained	3	0.8
Other	22	5.7
Total	387	100.0

alternative to traditional court outcomes. "No show chasers" reported that some defendants believed the court could not prove its case or that it would punish them only minimally. Previously noted rejection rationales of "unmotivated," "already pled guilty," and "plea-bargained" also reflected instances where defendants, after a staff interview, chose to take their chances in court [19].

This defendant rejection pattern appears to have been a consequence of a selection process whereby primarily minor cases were designated as divertable. In effect, this meant that six-month intensive supervision diversion programs were less attractive to minor misdemeanor defendants facing small fines and possible probation than they were to defendants facing possible imprisonment and substantial fines.

Feeley (1979) observed the same phenomena in the New Haven diversion program. He found that only 19 out of 800 eligibles actually entered diversion. He concluded:

> ...(A)rrestees consider participaton in the program itself a penalty that is much more severe than the one they think they will receive if they do not participate. (1979:233)

Robertson and Teitelbaum (1973) in their study of a drug diversion program found that 84% of all eligibles declined to participate. They concluded the diversion program was incorrectly directed at minor drug abusers not requiring an intensive treatment program. Consequently, the treatment was viewed by eligibles as more restrictive and punitive than what they would receive from the courts. (1973:704-708)

7. Randomization. Persons demonstrating an interest in SPAD were placed in a "project eligibles" pool. One of every four cases defined as eligible was placed in a control group [20]. Control cases were returned to court for "normal" processing with possible conviction and sentencing.

Randomization was achieved as follows: During the staff interview a determination was made by the probation officer as to project eligibility. If the person was defined as divertable, the project secretary pulled a blank envelope from a pool of such envelopes containing "experimental" or "control" messages. The pool of envelopes was created by the evaluator with one-quarter of the envelopes containing the "control" message. After the message was read, the candidate was informed of the decision. Control persons were told that only a limited number of openings existed due to its evaluation design. Rejection was not to be taken as a reflection of some personal deficiency or negative attribute.

The intent of randomization was to remove control over the final selection decision from staff and to control for client motivation levels. As has happened with other evaluations using randomized experimental designs (e.g., Klein, 1978; and Elliot, 1978), attempts to sabotage the process came from outside and within the project. Pressure was occasionally placed on the Project Director by defense lawyers and law enforcement agents to accept what they saw was a "perfect" diversion case. But, the Project Director resisted these pressures by pointing out that he was powerless to tamper with the final selection decision because it was

statistically determined.

Randomization also proved to be troublesome and painful for SPAD's staff. Telling a person they could not be served (or treated) ran counter to their social work ideology. There were several attempts to "beat the randomization system." Over the course of the project, it was necessary to revise the process as staff discovered ways of sabotaging it. This was accomplished principally by getting the secretary to divulge the next randomization message, than altering it or timing the eligible's interview to ensure project acceptance [21].

Randomization was verified by demonstrating statistical equivalency between experimental and control populations. A T-test (differences of means) was performed comparing the two groups or 28 socioeconomic and criminal variables. The results of this test showed no variables demonstrated significant differences in their mean scores at the .10 level. Thus, the two groups are equivalent, justifying later comparisons of impact.

8. Portraits of SPAD's clients. Beginning in October, 1975, and continuing through August, 1976, SPAD accepted 158 defendants. Table 7 and case file narration presented below summarizes the dominant characteristics of SPAD's clients. Quantitative summaries were supportive of staff beliefs that divertees required social services. Divertees entered the program with poor employment records, low occupational skills, low educational levels, dependence on public welfare assistance, and a substantial incidence of alcohol-related problems. Although psychological problems also may have existed (or developed in response to such social conditions), staff documented a need for services to enhance occupational skills and socioeconomic opportunities which could not be met through counselling approaches.

> George is a 19-year-old, white, U.S. Army veteran who was unemployed and residing with his parents at the time he came into the project. He had dropped out of the 9th grade at a continuation school to join the Army at the age of 17. He stated he had completed most of his units required for high school while in the Service. He has never held a job and has received no specialized training. (Case File Notes)

> Carol is a 23-year-old, black female who has resided in the county for 6 years. She has one year of college, a five-year-old child and no work history. When Carol came into the project, she was experiencing marital problems (she subsequently separated from her spouse and filed for divorce), the source of which was her husband's alleged compulsive gambling habits. The husband had gotten behind on bills, they were unable to keep the house they were purchasing, and she was under a great deal of stress. (Case File Notes)

TABLE 7

Client Profiles*

Background Variable	N	%
Residence At Arrest		
San Pablo	59	37.3
Richmond	66	41.8
Other	33	20.9
Total	158	100.0
Race		
Black	55	34.8
Mex-American	13	8.2
Asian	1	0.6
White	85	53.8
Other	4	2.5
Total	158	100.0
Sex		
Male	86	54.4
Female	72	45.6
Total	158	100.0
Age At Arrest		
Average Age	158	31.7 yrs.
Months in Contra Costa County		
Average Number of Months in Residence	158	15.4 mos.
Employment Status At Arrest		
Employed Part-time	13	8.2
Employed Full-time	48	30.4
Unemployed	69	43.7
Retired	6	3.8
Disabled	7	4.4
Student	7	4.4
Unknown	8	5.1
Total	158	100.0
Occupational Level At Arrest		
None	56	35.4
Laborer	40	25.3
Trades	25	15.8
Clerical	22	13.9
Sales	2	1.3
Managerial	7	4.4
Proprietor	1	0.6
Professional	4	2.5
Total	157	99.4

TABLE 7

Continued

Marital Status At Arrest		
Single	57	36.1
Married	55	34.8
Communal	5	3.2
Widow	3	1.9
Separated	21	13.3
Divorced	17	10.8
Total	158	100.0
No. of Legal Dependents At Arrest		
Average Number	158	1.3
School Grades Completed At Arrest		
Average Number	158	10.8
Highest Degree Earned At Arrest		
None	84	53.2
GED	8	5.1
High School Diploma	57	36.1
A.A.	4	2.5
B.A.	2	1.3
Masters	1	0.6
Total	156	98.7
Missing Cases = 2		
Average Weekly Income At Arrest	154	$107.86
Missing Cases = 4		
Public Assistance At Arrest		
Yes	49	31.0
No	109	69.0
Total	158	100.0
Drug Usage Difficulties		
Yes	10	6.4
No	148	93.6
Total	158	100.0
Alcoholic Difficulties		
Yes	55	34.8
No	103	65.2
Total	158	100.0
Seriousness of Charge		
Assault-Violence	2	1.3
Narcotics	12	7.6
Felony Property	7	4.4
Misdemeanor Property	91	57.6
Traffic	46	29.1
Total	158	100.0

TABLE 7

Continued

Prior Felony Convictions		
None	157	99.4
Three	1	0.6
Total	158	100.0
Prior Misdemeanor Convictions		
None	103	65.2
One	27	17.1
Two	14	8.9
Three	7	4.4
Four or More	7	4.4
Total	158	100.0
Prior State Prison Sentences		
None	157	99.4
Three	1	0.6
Total	158	100.0
History of Juvenile Probation Or Incarceration (CYA)?		
No	128	81.0
Yes	20	12.7
Unknown	10	63.
Total	158	100.0
Age at First Adult Arrest		
Average Age	158	28.9

> Jack is a 58-year-old, caucasian male, who has resided in the county for the past 33 years. He is an 8th grade drop-out, married, has one 17-year-old dependent, and has not worked on a regular job since 1970 when he became disabled due to heart trouble. He presently receives $290 a month in social security disability payments. (Case File Notes)

Official criminal records supported previous suspicions that divertees represented a new market for probation. Misdemeanor property crime arrests (typically petty theft) and traffic-related violations such as drunk driving or hit-and-run accounted for 86.7% of the cases (Table 8). Dispositional data on the controls will show these types of crimes, when punished, typically received fines, 1-3 days in jail, or court probation. They were unlikely to be placed on formal probation. For many, this arrest represented their first serious involvement with criminal justice.

> Jack was placed on diversion after a drunk driving arrest. A blood test administered at the time yielded 0.22 grams percent. Except for two arrests, one in 1951 for manslaughter, and the other in 1954 for being publicly drunk, Jack has no prior criminal record. (Case File Notes)

> Carol was placed on diversion after she and a friend were arrested for shoplifting. She has no prior record. (Case File Notes)

> George was charged with misdemeanor hit-and-run after sideswiping a car and failing to stop at the scene of the incident. The probation officer's investigation revealed that he had no prior adult or juvenile conviction record. (Case File Notes)

Project staff recognized that these profiles were not normal "crooks," as had been experienced in their prior positions as probation officers. Through its selection process, SPAD had located a new source of "offenders" to apply methods of probation work.

> These people are not the kind of persons we usually see on probation. There aren't any real crooks - maybe ony occasionally do we get a real crook, and we usually reject him. (Field Notes, Project Staff)

B. Intervention

SPAD was structured and operated much like probation. It's transformation was simply the natural outgrowth of a program administered by probation. Two probation officers were assigned to the project to supervise and provide services to SPAD's clients. Both had actively sought

TABLE 8

Primary Charge*

Charge At Arrest	N	%
Personal Offenses		
Assault with Deadly Weapon	4	2.5
Robbery	1	0.6
Battery	6	3.8
Property Offenses		
Petty Theft	89	56.3
Burglary	1	0.6
Malicious Mischief	1	0.6
Forgery	3	1.9
Fraud	1	0.6
Receiving Stolen Property	1	0.6
Miscellaneous Offenses		
Unlawful Possession of Weapons	4	2.5
Violation of Liquor Laws	1	0.6
Interfering with Enforcement of Law	3	1.9
Disorderly Conduct	2	1.3
Traffic Offenses		
Traffic Violations-Moving	5	3.2
Traffic Violations-License	1	0.6
Drunk Driving	34	21.5
Driving Under Influence of Drugs	1	0.6
Total	158	100.0

*In cases involving multiple charges, the most serious offense was listed as the primary charge.

the positions, hoping to become associated with a novel approach to probation work. Their previous supervisor who became the project director, had similar motivations. Volunteers from the community and surrounding area were recruited by SPAD staff to assist in supervising SPAD cases. Local community social service agencies were contacted to accept SPAD referrals for specialized services, such as job development or counselling for alcoholics.

After passing the initial diagnostic interview with the client, a formal contract was drawn up specifying what obligations the divertee had to meet to complete diversion successfully, This contract specified length of diversion, required attendance at counselling and outside agency service sessions, and restrictions on behavior (refrain from alcohol use, possession of weapons). The contract resembled a standard probation agreement, as exemplified by the two following cases:

> The two conditions of his diversion contract included the following:
>
> 1) Refrain from the excessive use of alcoholic beverages;
> 2) Attend eighteen sessions of the Alcohol Information and Rehabilitation Services. (Case File Notes)
>
> The final contract stipulated that he would comply with the following conditions:
>
> 1) Refrain from excessive use of alcoholic beverages;
> 2) Attend nine Alcohol Information and Rehabilitation Service sessions;
> 3) Honor any civil judgements resulting from the instant offense. This was included because Jack's vehicle had hit a parked vehicle prior to his drunk driving arrest.
> (Case File Notes)

1. Services provided. SPAD relied primarily on counselling services for its clients (Table 9). These services principally consisted of individual or group counselling by SPAD staff, volunteers, or outside agencies. "Volunteer work," the second most frequent type of service, consisted of assigning defendants to an agency to perform menial work-tasks such as janitorial or clerical work.

Less attention was directed toward providing divertees with needed educational and employment-related services. Compared to other diversion projects surveyed by Vera (1978) and Dickover (1976), SPAD offered more diverse intervention strategies that went beyond counselling [23]. Yet, the focus of treatment remained on the individual "offender" with SPAD doing what probation agencies frequently provide: counselling, volunteer work, and supervision.

Despite the close resemblance of SPAD to traditional probation services, staff actively attempted to disassociate themselves from the

TABLE 9

Type of Services Provided

Service Type	N	%
None	19	8%
Employment	20	8%
Education	33	14%
Medical	8	3%
Vocational	14	6%
Financial	7	3%
Legal	15	6%
Mental Health	71	30%
Volunteer Work	52	22%
Lodging	2	0%
TOTAL	239	100%

traditional image of probation officers. Staff feared their work might be hampered if defendants perceived SPAD and its staff as probation. Project facilities were located in an abandoned apartment building isolated from other justice agencies. Staff also tried to have their professional calling cards printed without reference to probation, but the department refused to permit this.

An important goal for SPAD was to shorten the time from arrest to treatment, so the defendant would not become embittered with a legal process that ordinarily took months to conclude.

> The criminal justice process takes so long - sometimes four months to a year between arrest and probation that people forget their offense and just get angry at the system. They feel they are the victim. The value of our program is that we provide help immediately, at the time of arrest, a crisis point in a person's life. (SPAD Staff, Field Notes)

SPAD was highly successful in meeting this objective. The mean time from arrest to service provision was only 31 days. Initially, it was expected that project participation would last three to six months. However, as the program evolved, staff began terminating cases faster than originally planned [24].

Police, prosecutors, and community representatives on the Screening Committee expressed some displeasure about the brevity of program participation and provision of traditional probation services. They had envisioned longer periods of supervision and more innovative services.

> The length of diversion should be extended. The police chief also feels that the diversion period should be longer than it is now... I'm not satisfied that it does anything different than probation. There's not enough experimentation with treatment programs. Innovation is needed. (Field Notes, District Attorney)

> I would have recommended continued funding only if we got a community organizer. There needs to be more community involvement. It (SPAD) still has a very strong probation orientation. It needs new ideas and experiences. (Field Notes, Community Participant)

> It was suppposed to be an intensive period of supervision, but I know there are a lot of cases where no supervision or very little supervision is happening. They need to increase the amount of supervision. (Field Notes, District Attorney)

Staff justified early terminations, claiming that little more would be accomplished by continuing the contract for an additional period of time.

They had become frustrated in their efforts to significantly affect divertees, given their long-termed developmental history that could not be overcome in three to six months, plus, the likelihood that divertees would not become re-involved in criminal justice [25].

> I feel frustrated in this project. I can't do a lot for these people in 3-6 months. Like jobs, I can refer them to job training, but we can't create jobs for them. Plus, they aren't likely to get in trouble again. They need help, but I can't do much. (Field Notes, Project Staff)

> There was a tendency for built-in success. These cases didn't prove to be much of a problem to manage. I spent most of my time with 4-5 people and I don't think it made much of a difference. (Field Notes, Project Staff)

> It may be the peculiar conceit of the social scientist and the worker to think his five minutes can overcome the forces that have been at work for ten or twenty years to the point at which he can be labelled delinquent or gang member or criminal offender. As one of our colleagues succinctly put it, "Just who the hell do we think we are, what do we think we've got to change all of this?" (Klein, 1969:144)

Despite staff dissatisfactions, some agency representatives believed SPAD had succeeded in at least achieving the goal of extending control over these defendants.

> I think the project has been good. Most of these cases would have gotten only a slap on the wrist. Now we've got more control. (Field Notes, Police Official)

2. <u>Differential levels of supervision.</u> Although supervision was generally limited to three months and uniformly distributed among divertees, there was considerable variation between the two probation officers on the <u>intensity</u> of diversion supervision. As the project unfolded, an interesting "natural" experiment came to light. One staff person practiced what was essentially a "hands off" policy with divertees as measured by contacts with defendants and referrals to other social service agencies. Conceptually, this style of casework resembles a "non-intensive" comparison group.

The other staff person worked quite intensively with divertees. Meetings were held on a weekly basis accompanied with multiple referrals to outside agencies. This casework approach limited this probation officer to handling only half the number of cases compared to the other probation officer. This group could best be described as receiving "intensive treatment." The approaches were so different that comparisons seemed

appropriate to determine if levels of supervision and services provided had any impact on the "success" of divertees completing their contracts or reducing the probability of being re-arrested after leaving the project.

A comparison between the two caseloads using 28 background variables revealed no significant differences between the two populations, further validating comparison. However, statistically significant differences in supervision intensity appeared. As Table 10 shows, for the "total number of formal staff contacts" and "total number of services provided," the "Intensive Treatment" group (Caseload B) received an average of 14.4 contacts per case, compared to the "Non-intensive" (Caseload A) mean of 5.3 contacts per case. Similarly, Intensive cases were referred to outside agencies on an average of 2.5 times per case, compared to Non-intensive cases whose rate was 0.2 service referrals per case.

The impact of these differential approaches can be measured by looking at project termination rates and re-arrest rates [26]. There were several ways defendants could exit from the program. Successful termination indicated that the defendant had successfully completed his contractual obligations and had not been re-arrested while participating in SPAD. These individuals appeared in court with the District Attorney, recommending charges be dismissed "in the interest of justice." Unsuccessful terminations fell into three categories. Administrative removals included those persons found by staff to have violated their contractual agreements. Arrest removals included those defendants found to have been arrested on a new charge while assigned to SPAD. Finally, individuals could remove themselves from SPAD at their own request. All unsuccessful cases were returned to the court for further prosecution.

Table 11 summarizes the termination rates for SPAD as a whole and by individual staff members. Ninety-one percent of all cases were successfully terminated with only 14 cases failing to complete their contractual agreements. Analysis also shows a negligible difference in "success" rates between the two basic levels of supervision. That is to say, an increasing level of supervision or services seems to have had very little effect on divertee behavior.

Looking only at the success rate, one might conclude that SPAD was highly effective in working with its defendants. However, two other statistical indicators of "success" raise doubts on SPAD's effectiveness. Staff were asked to subjectively evaluate each case's level of improvement while participating in SPAD. Only 54.2% of all cases were rated as exhibiting moderate to significant levels of improvement (Table 12). A high percentage (45.2%) were believed to have made no or minimal improvement. Moreover, comparisons between the two casework approaches revealed no significant variation on improvement. The high proportion of cases with no improvement is especially noteworthy since one would anticipate staff being excessively positive in their case ratings at termination.

Another statistical indicator of SPAD's immediate impact compares divertee's SES at intake and termination (Table 13). Specifically, measurements of employment status, occupational level, school grade level, and public assistance were analyzed at intake and termination. Here, no significant changes occurred among these variables between intake and termination. Divertees exited in pretty much the same condition as when

TABLE 10

Differences In Case Supervision

(T-test statistic)

Variable	N. of Cases	Mean	T-Value	D.F.	Probability*
Total Number Contacts	96	5.3789			
Caseload A	96	5.3789	-6.41	151	.000
Caseload B	59	14.4828			
Total Number Services					
Caseload A	96	0.2526	-4.17	151	.000
Caseload B	59	2.5345			

*Pooled variance estimate; 2-tailed probability

TABLE 11

SPAD Termination Decisions

By Supervision Level

Termination Decision	All Cases		Intensive* Supervision		Non-Intensive* Supervision	
	N	%	N	%	N	%
Successful	141	91.0	53	91.4	86	90.5
Unsuccessful						
Admin. Removal	7	4.5	2	3.4	5	5.3
Arrest Removal	6	3.9	2	3.4	4	4.2
Self Removal	1	0.6	-	1.7	-	-
Total	155	100.0	58	100.0	95	100.0

$X^2=2.18$ S=0.9024

*Missing cases = 2

TABLE 12

Degree of Client Improvement

By Supervision Level

Degree of Client Improvement	Total Cases		Intensive* Supervision		Non-Intensive* Supervision	
	N	%	N	%	N	%
Significant	13	8.4	4	6.9	9	9.5
Moderate	71	45.8	22	37.9	47	49.5
Insignificant	55	35.5	25	43.1	30	31.6
None	16	10.3	7	12.1	9	9.5
Totals	155	100.0	58		95	

$X^2=5.31271$ S=0.5044

*Missing cases = 2

TABLE 13

Pre and Post Project Measurements

of Socio-Economic Indicators

(T-test)

Paired Variables*	N	Mean	T-Value	D.F.	2-Tail Probability
Employment Status-Arrest	146	4.1096	1.26	145	.209
Employment Status-Term.		3.9315			
Occupational Level-Arrest	154	1.4416	0.62	153	.535
Occupational Level-Term.		1.5000			
School Grade Level-Arrest	155	10.8194	0.27	154	.790
School Grade Level-Term.		10.8523			
Public Assistance-Arrest	154	0.6883	-1.22	153	.223
Public Assistance-Term.		0.6169			

*Employment was scored as follows: 1=full-time employed, 2=part-time employed, 3=student part-time employed, 4=unemployed, 5=retired, 6=disabled. Occupational status was scored as follows: no skill=0, laborer or equivalent=1, tradesman or equivalent=2, clerical=3, sales=4, managerial=5, proprietor=6, professional=7. Public Assistance was scored as follows: none=0, self only=1, dependents only=2, self and dependents=3.

they came into the project. These findings are consistent with staff comments questioning their ability to change divertees radically during a three-month period.

C. Summary

The processes of selection and intervention in SPAD offer important insights on the problems of diversion. Its intake and screening process selected defendants unlikely to have penetrated significantly into the judicial process. Dominated by organizational values of crime control and punishment, selection informally extended control over the minor offender assumed to deserve a "second chance." In doing so, SPAD's potential was diminished as a significant alternative for defendants certain to be severely sanctioned by the court.

Intervention strategies reflected the dominant intervention mode of probation - the project sponsor. In the same vein defendants were called "clients." By virtue of their arrest and participaton in SPAD, guilt and pathological qualities of defendants were assumed and intervention and treatment was accepted as a logical necessity. Contrary to the presumed rationale for diversion, efforts to change agency policies and procedures were ignored. The focus of reform was solely on the defendant.

Despite the well-intentioned efforts of the staff and a well-administered program, little progress was made by defendants during their participation in SPAD. Defendants exited in much the same status as they entered.

At this stage, SPAD became an appendage of probation attempting to treat a new clientele population - the pre-trial defendant. In effect, SPAD evolved into a program in which the need for intervention preceded the court's need to determine guilt or innocence.

CHAPTER IV

THE IMPACT OF SPAD

Having described the activities of SPAD, what can be said relative to its impact on the justice system and the clients it served? Critics have argued that we should expect negative results when diversion programs extended social control over defendants who don't require intensive services and supervision. Other critics argue that stigma and labelling have been over-emphasized as determinants of human behavior. Diversion supporters counter that as long as it does not increase system costs or pose a threat to the community, it is a viable alternative to the criminal justice procedures.

Prior to the completion of this study and Vera Institute's evaluation of the Manhattan Court Employment Program, no research had measured the impact of pre-trial adult diversion programs using a pure experimental design. A diversion program was in the words of one commentator, "...pretty much a leap of faith" (Galvin, 1977:44). This chapter attempts to take the "faith" out of diversion. Detailed impact data are presented to see how successful SPAD was in reducing costs, recidivism, and social control.

A. Question of Costs

> "Diversion provides society with the opportunity to begin reordering the justice system by re-distributing resources to achieve justice and correctional goals - to develop truly effective prevention, justice, control and social restoration programs." (National Advisory Commission on Criminal Justice Standards and Goals, 1973:94.)

The above states the basic logic of diversion as a means of cost savings for the justice system.

Since many defendants are unnecessarily processed through the courts and placed on probation or incarcerated in jails and prisons, reducing the numbers of persons entering social control agencies should result in (1) decreases in criminal justice caseloads, (2) intensifications of services delivered, and (3) reductions of system expenditures. Implicitly tied to this reasoning is the belief that diversion will mainly handle people who otherwise would penetrate the justice system to a significant degree. Despite this presumed result of diversion, few have rigorously demonstrated the associated cost savings.

An experimental design to accomplish this will compare costs associated with experimental and control groups. Control cases are those "normally" processed by the system. The major difficulty with this approach is calculating each cost factor. All depend on various assumptions and projections of budget data frequently based on subjective cost estimates of specific agency tasks (i.e., arrests, court appearance,

days incarcerated, and prosecutors' supervision).

Only "system" costs are analyzed here, i.e., those associated with processing cases through the justice system. System costs are direct costs of processing defendants through diversion or normal court actions and do not include "intangibe" costs. For example, it was impossible to compute costs of services provided divertees and controls by other agencies, which were substantial for SPAD. Further, the costs of recidivism associated with reprocessing divertees who were re-arrested and adjudicated could not be computed [1]. These are excluded not so much because they are viewed as unimportant, but because it was too difficult to make accurate projections. Although conservative in nature, this approach gives greater confidence in estimates and comparisons between the two groups.

One additional note: The approach only includes "theoretical" costs. "Real" savings, which are rarely achieved, occur when budgets are reapportioned relative to actual cost savings. Claiming a diversion program saved $1,000 per client is typically a distortion of economics. If dollars are truly saved, cuts in other agency budget items (e.g., jails, court, etc.) should appear. False cost benefit claims are readiy detected from the unabated rise in criminal justice budgets despite massive federal funding of diversion-type programs. By this criterion, SPAD not only failed to achieve any cost savings, but actually added $116,458 to the existing county budget. The result of this kind of "cost-savings" is painfully evident to diversion staff when special funding sources become scarce.

Some might acknowledge this but add that criminal justice caseloads are presently excessive and that the intent of diversion is to reduce workloads but not necessarily budgets. This in turn will permit a more manageable and humane justice system by encouraging individualized justice and treatment (Gottheil, 1979). This is persuasive logic for some. Diversion must be compared with a very cost-efficient system - especially diversion dealing with minor "offenders." There is no faster or cheaper way to administer justice than by plea-bargaining dispositions or creating probation caseloads of 200 where little real supervision can occur. For example, a recent study revealed the following average costs per disposition of federal criminal cases (Holahan, 1970:12-20, 24-25):

- Grand Jury Hearing, $37.10
- Jury Trial, U.S. District Court, $3,096.66
- Non-Jury Trial, U.S. District Court, $1,151.36
- Plea, U.S. District Court, $140.35
- Jury Trial, Local Court, $756.00
- Non-Jury Trial, Local Court, $197.82
- Parole, Marginal Daily Cost per Parolee, $1.36
- Probation, Marginal Daily Cost per Case, $.53 - $.91
- Incarceration, $5.38 per day.

These figures show that justice is relatively "cheap" for the minor offender disposed via plea-bargaining and minimal sanctions (e.g., fines, court probation, etc.). The following pages illustrate the difficulty of creating less expensive alternatives for the misdemeanor defendant [2].

1. Computing costs for controls and divertees. To compare the costs

of diversion with the costs of the existing system, court processing and dispositional data were collected for three groups: divertees, controls, and interview rejects. These data reflect both the level of penetration and severity of court sanctions experienced by these groups. Costs were computed for each court proceeding or disposition (e.g., bench trial, probation). Experimental design allows one to state precisely what would have happened to defendants had diversion not occurred and compare those costs with those when it did.

For SPAD, differential costs began after the complaints were filed by the prosecutor. Several cost factors were computed [3] for each case. Each is briefly explained below.

Court Processing Cost Factors

1. Pre-Sentence Probation Report Cost Factor

   Costs here refer to cases where the court requested and received a pre-sentence report completed by the probation department prior to sentencing. According to the department, each report costs $138 to produce and present. This incudes overhead and administrative support costs.

2. Public Defender Cost Factor

   Costs here refer to cases where a public defender was assigned. Each appearance by the public defender was recorded and multiplied by a cost factor of $21. This rate represents costs associated with case preparation and court appearance by the Public Defender's Office. Given the nature of these cases (minor misdemeanors) it was estimated that one hour of Public Defender resources were spent per appearance for all three groups. This rate includes overhead and administrative costs [4].

3. District Attorney Cost Factors

   Costs incuded here refer to cases where the prosecutor is required to make appearances in court and case preparation. Each appearance by the prosecutor was recorded for each case and multiplied by a cost factor of $26. This rate represents costs associated with case preparation and court appearance by the prosecutor. Given the nature of these cases (minor misdemeanors) it was again estimated that one hour of prosecutorial resources were spent per appearance for all three groups. This rate incudes overhead and administrative support costs.

4. Police Overtime Cost Factor

Costs included here refer to cases where police officers were required to appear in court as witnesses. San Pablo police billed their officers' time for such services at $8 per hour. This rate does not include overhead or administrative support costs.

5. Court Cost Factor

Costs included here refer to those cases where court appearances are required involving judges, marshalls, clerks, court recorders, etc. Because no cost estimates were available from the court, it was necessary to create a crude estimation of costs per docket appearance. This was accomplished by randomly selecting six months from the 1975-76 docket appearances. This provided a tweve-month estimate of total appearances processed by the court. A cost per appearance was reached by dividing the combined Court and Marshall annual budgets by the total number of court appearances (total number of appearances = 18,271; combined total budget - $601,915). The cost per court appearance equals $33.

Dispositional Cost Factors [5]

6. Probation Supervision Cost Factor

Costs included here refer to these cases placed on formal probation as part of sentencing disposition. The Probation Department estimated that twelve months of supervision per case costs $233. This includes overhead and administrative support costs.

7. County Jail Incarceration Cost Factor

Costs included here refer to those cases incarcerated in the County Jail as part of sentencing disposition. Jail officials were able to account for the inflation. Cost per day of incarceration equals $25. This includes overhead and administrative support costs.

A third cost item for the divertee population was associated with the project's operations. A recent LEAA study (Watkins, 1975) suggested three ways to estimate diversion program costs. Design Capacity Costs uses the number of persons who would have participated if the project had operated at its intended capacity. This method tends to underestimate the case costs since few programs ever operate at their maximum capacity year round. Successful Terminated Costs relies on the number of persons who were successful in completing the diversion program. This approach over-estimates actual program costs since "unsuccessful" cases are removed from the analysis. The third alternative, and the one used in this study,

was the number of persons at Actual Capacity per year.

Actual Capacity refers to the actual number of clients accepted by the program per year. For SPAD, this figure was 158 divertees for its first 12 months. However, two of these months were spent planning and implementing the program during which no clients were accepted. This "dead time" can not be counted against SPAD in cost analysis. A more accurate capacity rate of 185 per year is reached by computing a monthly rate (158 - 12 = 13.2) and adding a two-month rate to the 158 total (158 + 26.4 = 185)÷

A final adjustment is necessary because SPAD's budget included $12,000 for evaluation, which should not be included in computing a cost per divertee rate. Also, there was a hidden probation cost factor associated with administering the program (e.g., administering project staff fringe benefits, processing grant-related documents, etc.). After first subtracting, then adding each factor, one reaches a final program budget of $110,725. This divided by the 185 divertees served, gives $598.50 per divertee [6].

2. Cost-Benefit Findings. Table 14 summarizes comparative cost analysis for the three populations [7]. This table shows SPAD proved to be the most expensive alternative when compared with controls, who were handled at approximately half the cost of divertees. Closer analysis of the data shows that while SPAD reduced the number of public defender, District Attorney, and Municipal Court appearances and the number of probation months, it did not reduce number of days in jail. However, the reductions were insignificant and did not change the high cost of diversion.

SPAD's failure to achieve cost savings is explained in terms of quantity (how many defendants were diverted) and quality (what kind of defendants were selected). More directly, it was a consequence of the site chosen and screening of clients. Locating the project in San Pablo severely limited the numbers of potential divertees. The large number of interview rejects unexpectedly cut the eligible divertee population in half. The project needed to double its divertee workload to become competitive with the justice system. Workload has been increased in the new version of SPAD, but costs have also increased. Doubling the divertee population would risk making the program more like the court system, with excessive caseloads and minimal supervision and service delivery. Thus, to compensate for low intake, diversion is forced to become more like the system it was expected to change.

A more important explanation of costs resides in the nature of criminal cases selected for diversion. These divertees (and divertees in most other diversion programs) were minor offenders unlikely to be severely sanctioned [8]. If felony cases had been included where long periods of probation supervision or extended periods of imprisonment might have otherwise occurred, the cost comparison would be more favorable.

Table 15 summarizes final court dispositions for both controls and experimentals. Two important findings should be observed. First, SPAD was successful in protecting its clients from the stigma of conviction. Ninety percent of the divertees had their cases dismissed, compared to a 6.6% rate for controls [9]. However, the sanctions divertees escaped were not overly severe. For controls, the dominant dispositions were small fines, and

TABLE 14

COST-BENEFIT ANALYSIS
BY
DIVERTEES, CONTROLS, INTERVIEW REJECTS

COST FACTORS	DIVERTEES* N=149		CONTROLS N=59		REJECTS N=171	
	Rate	Cost	Rate	Cost	Rate	Cost
1. Pre-Sentence Report ($138 per Report)	.095	$ 13.11	.620	$ 85.56	.411	$ 56.72
2. Public Defender Appearance ($21 per Appearance)	.705	14.80	1.339	28.12	2.127	44.67
3. District Attorney Appearance ($26.27 per Appearance)	1.376	36.15	1.567	41.40	1.880	49.39
4. Police O.T. Court Appearance ($8 per Appearance)	.007	.06	.005	.40	.063	.50
5. Court Appearance ($32.94 per Appearance)	4.315	142.15	5.259	173.23	6.166	203.09
6. Probation Supervision ($19.42 per Month)	.987	19.17	5.170	100.40	2.649	51.44
7. Jail Days Served** ($25 per Day)	5.311	132.78	7.122	178.00	9.637	240.93
8. Diversion Project Costs ($598.50 per Client)	1	598.50	0	-	0	-
TOTAL		$1,020.78		$606.91		$646.74
Diversion Cost Ratios		-.595		1.000		+1.065

*Includes Project Failures

**Includes Pre and Post Sentencing Jail Days

TABLE 15

COURT DISPOSITIONS

BY

DIVERTEES, CONTROLS, INTERVIEW REJECTS

DISPOSITIONS	DIVERTEES	CONTROLS	REJECTS
1. Dismissed	90% (135)	6.6% (4)	19.7% (31)
2. Fined	0% (0)	27.9% (17)	19.1% (30)
3. Jail	2.7% (4)	21.3% (13)	33.1% (52)
4. Formal Probation	0.7% (1)	9.8% (6)	3.8% (6)
5. Court Probation	2% (3)	6.6% (4)	3.2% (5)
6. Combinations of Probation, Jail, Fine	4% (5)	18% (11)	15.3% (24)
7. Absconded	0.7% (1)	1.6% (1)	5.7% (9)
	(150)	(61)	(157)

moderate periods of incarceration and probation. For those sentenced to jail, their average length of imprisonment was 14 days. For those sentenced to formal probation, (33%), the mean length of supervision was approximately 14 months with a mode of 12 months. Such sanctions are typical for defendants convicted of petty theft and drunk driving.

Focusing on minor cases also may have contributed to a large number of defendants declining to enter SPAD. Dispositions for the interview rejects show 20% of the cases dismissed, 19% fined, and 33% serving an average jail sentence of 11.7 days. These sanctions compare with three to six months of intensive diversion supervision. Diversion may not have appeared as an attractive alternative to the existing system which influenced some to "take their chances" in court. For them the consequences of bypassing diversion were not significant.

Without SPAD's policy requiring complaints to be filed before divertee selection began, justice system expansion would have been greater and diversion more costly than it was. To become economically competitive with the justice system, SPAD would have to accept more serious cases with longer periods of incarceration and supervision. But to do so would cut into the workloads of established justice. Defendants likely to be convicted, sent to jails and prisons, or placed on probation for substantial periods of time are not those prosecutors, probation officers, and police want to divert in significant numbers.

B. Question of Recidivism

Diversion programs theoretically reduce levels of criminal behavior. This is achieved by protecting defendants from the stigmatizing effects of court conviction and sentencing. If convicted, defendants are likely to become "offenders" and may internalize a self-identity as criminal and/or deviant. Without the conviction status, defendants are not subject to job discrimination. Finally, social control agencies cannot so easiy apply criminal labels to suspects. Prior convictions are less available for prosecutors to secure judgements against defendants.

The SPAD study used re-arrest and conviction data for a three year follow-up period beginning after the arrest that triggered the SPAD referral [10]. With one exception, arrest data for all misdemeanor and felony offenses as specified in the California Penal and Department of Motor Vehicles' Vehicle Code were collected [11]. Failure to Appear (FTA) for a court appearance was not coded even though it is a misdemeanor offense. This offense was excluded because; (1) it occurred numerous times and if included would create a high and misleading arrest rate, and (2) the criminal charge of FTA is usually dropped once the defendant appears in court.

Collecting all misdemeanor and felony offenses except FTA's still included many extremely minor criminal offenses. This is particularly true for DMV violations such as driving without a valid operator's license and excessive speed. Analysis presented here includes: (1) all arrests, and (2) arrests excluding minor traffic or vehicle code offenses.

It is important to note that conviction and non-conviction are the categories that most distinguish divertees from controls in the case of recidivism. The previous section showed that 90% of SPAD's divertees had

their charges dismissed compared to a high conviction rate for controls. In this sense, conviction or "stigma" is an important treatment variable being tested.

1. Recidivism by controls and divertees. After 36 months from the date of initial arrest and referral to SPAD, divertees demonstrated no reduction in rate, number, or severity of subsequent charges. Tables 16 and 17 summarize these findings for the three follow-up periods. Combining both controls and divertees shows an overall 39.7% re-arrest rate, mostly for property, traffic, and other miscellaneous offenses of a minor nature. This means that almost two fifths of the population remained arrest-free while those re-arrested were involved in minor offenses.

Divertees and controls showed a slight but statistically non-significant difference in re-arrest rate (37.7% versus 44.3% for controls). Excluding minor traffic violations from the analysis further reduces the difference (22.9% divertees versus 23.7% controls). Differences in the number of arrests per person also were insignificant for both groups (.96 arrests per divertee versus 1.00 per control). Despite expectations that diversion and avoidance of a prior conviction would limit the prosecutor's ability to convict, differences in rates of subsequent convictions on new charges between controls and divertees also were insignificant (22.9% versus 23.7%).

If one looks at the severity of new charges, the absence of systematic differences between controls and divertees continues. Some categories show slight differences, but these are probably attributable to random fluctuations caused by small cell sizes. Persons in both groups were re-arrested for essentially the same types of offenses that resulted in their initial referral to SPAD.

2. Recidivism by level of supervision. Chapter 3 revealed that divertees were exposed to two markedly different levels of supervision and services. One staff worker made frequent contacts with her divertee caseload and numerous referrals to outside agencies. The other worker made significantly fewer staff contacts and service referrals. Table 18 shows that the two approaches had similar results relative to re-arrests and number of arrests. There is a 9.8% difference in conviction rates but one is hard pressed to account for this difference by reference to supervision.

C. Question of Social Control

A final and much more complex question is whether diversion actually is a means for the criminal justice system to gain greater control over more people, rather than a means of limiting the number of people under official control. Answering this question requires suitable indicators of "social control." In this section, three such indicators are used. First we will look at the length of time spent under the jurisdiction of the court, beginning at the point of arrest. Second, we will examine the intensity of social control by asking whether diversion offers greater levels of supervision than experienced by "typical" defendants. Is a day of diversion equal to a day of probation? Finally, we can look at system rates to see if the absolute number of persons brought into the system changed as a result of the diversion program.

Length of time exposed to the justice system can be analyzed in two

TABLE 16

REARREST AND CONVICTION RATES
BY EXPERIMENTAL GROUP
(Three Year Follow-Up Period)

	DIVERTEES	CONTROLS
Rearrest Rate*	37.7% (138)	44.3% (61)
Adjusted Rearrest Rate**	25.4% (138)	27.9% (61)
Arrests Per Person*	.96 (138)	1.00 (61)
Conviction Rate*	22.9% (131)	23.7% (59)

*Includes all felony and misdemeanor offenses excluding Failure To Appear.

**Includes all felony and misdemeanor offenses excluding FTAs, Speedings, Failure to Possess Valid Operators License and other "minor" traffic violations except Drunk Driving.

TABLE 17

SEVERITY OF REARRESTS *

(Three Year Follow-Up Period)

	DIVERTEES	CONTROLS
Crimes Against Persons	12.0% (16)	13.0% (8)
Sex Offenses	2.3% (3)	1.6% (1)
Property Offenses	16.5% (22)	14.5% (9)
Forgery Fraud Conspiracy	6.8% (9)	11.3% (7)
Alcohol and Drugs	3.8% (5)	4.8% (3)
Traffic	12.8% (17)	16.1% (10)
Misc. Charges**	45.9% (61)	38.7% (24)
TOTAL	100% (133)	100% (62)

*Ns and percents reflect total number of arrests.

**Misc. refers to the following offenses: interfering with law enforcement, disorderly conduct, automobile banditry, possession of burglary tools, etc.

ways. First, we can measure how much time was spent in reaching a court decision for controls and divertees. Looking at the length of time from arrest to final disposition, we find no significant differences between controls and divertees. Controls spent an average length of 158.9 days compared to the divertee mean time of 157.43 days. For controls, delays are best explained by the number of requests by prosecutors and public defenders to continue court hearings. Such delays function to further negotiate pleas, locate key witnesses, or shop for judges believed to be more sympathetic to the defense or prosecution. Divertees spent their days in the diverion program and making an occasional court appearance to have contracts modified or charges dismissed after their participation in SPAD.

However, if one includes the additional time of post-sentencing supervision as a measure of social control, divertees are found to experience considerably less time in the system (318.34 days for controls compared to 187.84 days for divertees - a difference of approximately five months). This significant difference is attributable to the court's tendency to set formal probation at lengths of 12, 18, or 36 months. This practice exposed controls to a significantly longer period of court supervision compared to divertees, whose contracts were limited to a 3-6 month period of intensive probation-like supervision carried out during the adjudication period [12].

Social control results are somewhat mixed, depending on how one measures length of time. Diversion did not expedite the pre-adjudication process. However, combining "treatment" and supervision and guaranteeing dismissal of charges shortened the period.

The quality of control varied by group. Divertees were subject to more demands than were persons on probation or those awaiting trial [13]. Divertees were asked to report on a weekly basis to their caseworkers and their cases were reviewed at weekly staff meetings, in contrast to monthly reports for probationers. Systematic criminal record checks were also made prior to project termination. This is not to say that such a level of supervision is inherently bad. The intent was to "help" the divertee succeed by means of contractual services and supervision. Nevertheless, divertees probably experienced greater levels of contact with system agents than normally would have occurred if diversion had not existed. From another view, these differences are minor because we are essentially comparing different styles of probation work. Most observers would agree that the most "damaging" and extreme form of social control is imprisonment. Since both divertees and controls were not exposed to such sanctions, the comparisons may be relatively unimportant.

A final criteria to assess social control seeks to determine if the absolute number of persons brought into the system was reduced or increased after the implementation of diversion. To say that diversion is expansionist simply because it works primarily with less serious cases is misleading. Most criminal court cases involve "minor" charges and consume most court resources.

At the same time, one must ask if diversion had any impact on reducing the absolute number of persons processed by the system. SPAD's experience offers no firm answer to this question [14]. Over a one-year period, SPAD processed approximately 155 cases. Was there an accompanying decrease in the courts' workload? 1975 through 1977 court data show a systematic

increase in those placed on probation. In 1975, 1,737 persons were granted probation in lower court (misdemeanor cases). During the project year the number increased 20% to 2,079. In 1977, the numbers again rose to 2,241, an 8% increase over the previous year. However, the project was not responsible for these increases. Clearly there were other factors at work behind increases in persons placed under the control of the courts and on probation. More importantly, the small size of SPAD's operations and its type of clientele severely limited the impact it had on reducing the court's business.

D. Summary

Impact results show that SPAD was unable to reach its goals of reducing recidivism and costs. This "failure," however, should not be interpreted as a blanket indictment against the concept of diversion. Without careful attention to the process aspects of SPAD, one might incorrectly conclude the theory of diversion is invalid.

In the case of SPAD, failure to reduce crime and costs was linked to policy decisions that place SPAD in the context of municipal court and a selection criteria that purposely sought out minor offenders who would, in the absence of diversion, receive minimal criminal sanctions. Most of these offenders will discontinue their criminal acts independent of diversion intervention. Furthermore, the differential provision of intensive probation-type services that rely on mental health services versus non-intensive supervision has no differential impact on these divertees recidivism rates. Finally, intensifying supervision and services to misdemeanor offenders through diversion programs only increases the costs of criminal justice.

CHAPTER V

FUTURE DIRECTIONS FOR PRETRIAL DIVERSION

Throughout this study, a narrow evaluation criterion was applied to adult diversion in judging its contribution to criminal justice reform. The word "diversion" literally means the act of diverting from an established outcome to a new activity. SPAD was expected to place offenders in a less damaging and a less costly alternative setting. Data presented in this study and others show SPAD was not successful in meeting its goals. Diversion participants are as likely to be re-arrested as those not exposed to these programs. It is a more costly alternative and frequently results in defendants being placed in more restrictive social control settings than had the program not existed.

What went wrong? Is the concept of diversion a flawed idea whose time has not come and should be abandoned? Are there better ways to accomplish diversion? Will diversion programs continue in the future? More importantly, what lessons can be learned from diversion and other attempts at criminal justice reform that will better inform future efforts at purposive social change?

A. Was It Diversion?

Diversion programs are to be faulted for what they became and not what they were supposed to do. The problem of diversion lies not in its assumptions about the negative effect criminal justice actions have upon offender attitudes and criminal careers. These theoretical assumptions remain to be empirically tested. This study and others have shown that current diversion programs bear little resemblance to the theory to be tested. Instead of diversion, there was criminal justice extension and expansion.

This criticism of diversion is not new. It was first stated by Cressey and McDermott in 1973, and has been a constant thorn in the diversion practitioners side. What is significant is that many practitioners (certainly those associated with SPAD) would agree diversion programs provide offenders with much needed social services that otherwise might not be delivered because of legal obstacles. Extension of services and control was a pivotal concern for those involved in the SPAD program. It would be difficult to argue that those caught up in the criminal justice system would not benefit from employment, educational, legal, financial, or mental health services. It is not the intent of this study to argue these services are unnecessary or not needed. The issue raised here is more structural in nature. At what point of the judicial process should these services be provided and by whom? Should formal criminal justice intervention occur prior to a legal determination of guilt?

B. Danger of Diversion Programs

The problem with SPAD and other diversion programs lies in their tendency to place the value of control and treatment ahead of due process. Structures have developed that bypass the trial and begin with sentencing

and intervention. Criminal justice practitioners frequently assume that defendants are "guilty in fact" of some criminal act by virtue of the act of arrest and complaint filing. Diversion advocates believe that if the state was to await formal pronouncements of guilt by the court, valuable time and resources would be unduly wasted in establishing the defendant's guilt. Furthermore, some criminals would escape conviction because of legal technicalities and would go unpunished.

Criminal justice agencies realize they cannot meet their difficult objectives of curbing crime and punishing the offender under existing criminal court procedures which represent legal obstacles to their work. Informal processes are needed to neutralize these legal barriers. SPAD had become such an alternative used to facilitate the work of prosecutors, police, probation, and the courts to administer substantive rather than formal justice.

Most diversion projects do not require formal confessions by divertees as a condition of their participation. But some do. And it is these programs that represent the potential danger of pre-trial diversion. In such programs, defendants are told they must formally confess in writing to their offenses which can later be used against the defendant should they fail for whatever reasons their diversion contracts. Judges, prosecutors, and some social workers see these conditions as desirable. For the court, it means that judges and prosecutors are not forsaking their mission of controlling crime by allowing criminals to get off. If the defendant completes his contract, he is presumed to have paid his debt and acknowledged his previous criminal behavior. Should he fail diversion, the court can quickly prosecute without loss of time. Requiring an admission of guilt is justified to demonstrate diversion only works with criminals and is not a dumping ground for non-prosecutable defendants.

Social workers and probation officers adhering to their treatment ideology also see the confession as a necessary ingredient for rehabilitation to succeed. Only if the defendant acknowledges guilt can effective treatment occur. Similar to traditional standards for assessing personal pathology, admitting guilt is the first step toward treatment. The end result is a further weakening of the adversarial due process model where defendants are presumed innocent until proven guilty by the court.

Instead of attempting to correct the deficiencies of the justice system itself, diversion may simply extend what some call an "irrational system." In essence, the status quo is re-affirmed.

> In its attempt to "minimize penetration," "reduce criminalization," and "increase rehabilitative opportunities," diversion becomes a system where the need for rehabilitation takes precedence over guilt and innocence. In the municipal courts, were plea-bargaining is virtually the only method for determinations of guilt or innocence, diversion becomes a rationalization of the existing irrational system. The basic inequities are not addressed for the majority, while a few (whose cases would probably be dismissed

> outright because the probability of re-arrest appears unlikely) would be placed under some form of control in a neo-justice system.
> (Mintz and Fagan, 1975:61)

C. The Future of Diversion Programs

Will the diversion movement continue to flourish despite these criticisms? The answer to that question can best be answered by looking at economic factors likely to influence diversion's fate.

Economic factors influence how new systems of social control are established or old systems reformed. Historically, societies have constantly altered their social control systems in relation to changes in the economy. Moynihan (1969) noted that the development of the Community Action and Mobilization for Youth programs in the 1960's were made possible by a healthy economic picture and increasing tax revenues. Without such funds, the programs would never have started. Ruche and Kirchheimer's (1939) classic study of punishment argues that changes in economy greatly influenced the development of prisons and transportation to colonial countries by the English as an effective system of punishment. More recently, Scull (1978), Greenberg (1977), and Ignatieff (1978) have used historical data to show how economic relationships influence social control policy in this country.

Scull's work is particularly relevant to this study because he directly looks at the current reform movements of decarceration and diversion within mental health and criminal justice. Scull believes that beginning in the 1950's, a major decarceration movement began in this country because of a fiscal crisis resulting from the state's dependence on costly institutions and prisons to control criminals and the mentally ill. Relying heavily on O'Connor's (1973) previous work, The Fiscal Crisis of the State, Scull adopts a Marxist economic model to explain why the state was forced to experiment with new and less expensive methods for controlling the working class.

According to Scull, governmental expenditures for social control functions began to exceed tax revenues which led the state to search for new and less expensive control alternatives. He rejects two popular explanations of the decarceration reform movement, e.g., (1) the popularization of a liberal ideology seeking public concern for more humane conditions in prisons and mental hospitals, (2) the development of tranquilizing drugs. Scull believes the real reason lies in the state's dual goal of economically pacifying the working class by maintaining a high standard of living and, simultaneously, resolving the fiscal crisis. Diversion programs are seen by Scull as part of the decarceration movement in prisons. Reducing the state's dependence on prisons reflected an economic need to establish less expensive social control systems [1].

Scull's analysis is inaccurate for several reasons. First, the data do not fit the theory. Decarceration has not happened in prisons. Instead, there has been an unabated increase in the rate of incarceration in jails and prisons in this country since the 19th Century (Calahan, 1979). Secondly, as this study has shown, diversion programs have no impact on prison populations. The major impact of decarceration reforms

within criminal justice has been to increase and decrease social control. Finally, Scull depicts the decarceration movement as a conspiratorial movement used by the ruling class against the working class. This ignores the adversary role of prisoner rights groups and the prison movement of the 1960's and early 1970's (Calahan, 1979; Wright, 1973). Scull implies that the working class is an easily controlled and passive group incapable of intelligent resistance.

> The point is that mental patients' and prisoners' movements exist, that they have had an impact on institutional policies, and that they have contributed to the development of community treatment alternatives.
> (Speiglman, 1979:70)

Despite these shortcomings, Scull's emphasis on how economics influence social control policies can be applied to understand why diversion programs may soon disappear. State and local governments indeed are experiencing a fiscal crisis as recently dramatized by the passage of Proposition 13 in California and current efforts to balance the federal budget. Tax-cutting measures may continue for some time as taxpayers actively revolt against exceedingly high tax rates without accompanying satisfactory state services. As revenues decrease, politicians must decide what services are most important and necessary to satisfy their political constituents.

For diversion programs, the consequences of tightening revenues is already being felt. LEAA's grant program is likely to be terminated as politicians seek to balance the federal budget and present themselves as fiscally conservative. Such actions will curtail funds for experimental programs like diversion.

Many diversion programs are already experiencing difficulties in locating permanent funds as their three-year LEAA grants expire. The Pre-Trial Services Resource Center faces possible extinction because of dwindling federal funds in LEAA, and an inability to demonstrate cost savings.

> These last few days of summer are, for the Center, somewhat anxious ones as we await final word on our refunding. It is a time for reminiscing about the same problems faced by so many of the pre-trial programs around the country. Like you, we feel the impact of conservative fiscal policies and wonder from year to year if we will be able to continue our work. As a national agency, it is difficult for us to demonstrate that we save money other than in an indirect fashion. We must rely on the satisfaction of those we serve, the judiciousness of our priorities, and the relative merits of popularity of the mission we espouse.
> (Editorial by Madeleine Crohn, The

Pretrial Reporter, 1979:1)

If one strips away the economic rhetoric of diversion, i.e., that it saves resources and reduces agency costs, the realization that diversion adds to existing expenditures will speed their demise when political choices must be made between experimental and traditional crime control functions. Diversion programs now face their most stringent test for survival.

C. Is There A Better Way?

Some argue diversion can be accomplished through more direct methods instead of relying on the more circuitous strategy of federal agencies including local agencies to divert using the "bait" of grant money (Mullen, 1972). The results thus far of diversion programs illustrate the limits of administrative reform strategies as a means for bringing about reform. Perhaps there are other vehicles for change that would be more effective and less subject to distortive organizational processes.

Law enforcement agencies could efficiently adopt new administrative policies that would "divert" large numbers of persons out of the justice system. For example, police could choose to reduce their involvement in so-called victimless crimes, e.g., pubic drunkenness, marijuana use, etc. Prosecutors could choose to narrow their criteria for filing criminal charges thus reducing the number of cases forwarded to municipal and superior courts. Judges could choose to exercise their discretion at sentencing by making greater use of probation, restitution, community service orders, and other sentencing options that would not entail incarceration. Finally, correctional administrators could exercise their powers and restrict the use of imprisonment for offenders bound over to their authority. They could place these offenders in less restrictive and less costly settings other than prisons (e.g., community work programs, pre-release centers, etc.).

The experience of SPAD illustrates that the concept of diversion suffers from a low priority among criminal justice organizations. The idea of placing offenders in less restrictive and less punitive situations runs counter to organizational values and ideology that encourage the informal administering of substantive justice for those defendants where establishing legal guilt is problematic (Feeley, 1978). Until diversion becomes valued as an organizational imperative, there is little reason to expect pre-trial diversion programs to work as intended.

> Meanwhile, it seems safest to hold that diversion of children and youth from the official court system is a state of mind; once it is established as a predominant social value, the question of adaptation of means to the end should be easily answered. (Edwin Lemert in Instead of Court: Diversion, 1970:95).

FOOTNOTES

CHAPTER I

[1] - LEAA officials indicated these figures represent conservative estimates due to inaccurate and incomplete records. Also, the Department of Labor, National Institute of Drug Abuse, and Health, Education, and Welfare have allocated considerable funds for diversion programs.

[2] - See Mullen (1974) and Kirby (1978) for excellent critiques of adult and juvenile diversion research. Also, Zimring's (1974) early study of the Manhattan Court Employment Project explains why quasi-experimental designs are inadequate substitutes for controlled experimentation.

[3] - Sumner's position is clearly revealed in the title of an 1894 essay, The Absurd Effort to Make the World Over.

[4] - For excellent discussions of paradigms and ideologies of criminal justice social change, see Lemert, (1970:1-30) and Empey, (1979).

[5] - I am deeply indebted to an unpublished essay by Edwin Lemert and Michael Howe on process analysis from which many concepts presented here originated.

[6] - Lemert and Dill's (1978) and Lerman's (1970) studies of probation subsidy in California are examples of how process studies clarify the impact results. In both studies, qualitative data are used to document the counter-productive aspects of subsidy and correct misleading conclusions that incarceration was reduced for delinquent youth.

[7] - See Feeley (1979), Glaser and Strauss (1967), Lofland (1971), and Strauss and Schatzman (1970) for detailed methodological discussions on inductive and naturalistic qualitative methodologies.

[8] - Conducting post-project interviews with those intensely involved in the reform proved to be a useful point of data collection. Freed from political and organizational constraints to "prove" the reform successful, staff were able to offer candid and extremely insightful analysis that is typically missing from most studies.

CHAPTER II

[1] - Recent qualitative studies of resistance to legal and administrative change within criminal justice are Lemert (1970), Lemert and Dill (1978), Miller et al., (1977), Dill (1972), and Klein (1979).

[2] - Adult diversion programs are not aways administered by probation departments. In 1974, 40 percent of these programs were sponsored by independent, private sector organizations, although this number was reduced to 17 percent by 1976. Prosecutor-administered programs accounted for 23 percent of the total in 1974 and also had declined to 16 percent by 1976. Court-administered programs have increased from 5 percent in 1974 to 11

percent in 1976. In addition to probation-administered programs, one also finds police, public defenders, county boards of supervisors, and LEAA regional planning units administering such programs. However, in almost all projects, the direct participation of the DA is required.

[3] - A recent study by Elliott et al., (1978) questions probation's assertion that services are not stigmatizing to clients. Elliot found that juvenile court decisions to divert, screen, or refer have little impact on youth attitudes and behavior. Conversely, the receiving of agency services, whether provided by juvenile justice agencies or non-justice agencies, was associated with negative changes. In other words, receiving services was found to be an important contributor to negative labelling of youth.

[4] - LEAA grants typically require a 10% local match to meet the grant budget. The local match is increased during years two and three.

[5] - Begun in 1966, the California Subsidy program financially crowded county probation departments by limiting the number of commitments to juvenile and adult facilities. See Lemert and Dill (1978) for an interesting analysis, similar to this study, illustrating how this reform effort was transformed from its original objectives in several jurisdictions.

[6] - Little information exists for explaining why the DA's office actively did not seek diversion funding on its own. Probation traditionally had been administering juvenile diversion programs and believed adult diversion was a natural outgrowth of such efforts. Later on, the DA took a more aggressive stance to gain administrative control over SPAD. In Chapter IV, which describes the demise and subsequent re-birth of the diversion program, the DA succeeds in gaining administrative control over the diversion program and becomes an active supporter of diversion.

[7] - Feeley (1979) notes in his study of municipal court proceedings that prosecutors must quickly decide how best to "short circuit" the formal judicial process. The question is not guilt or innocence but rather "What is the case worth?" "How should we dispose of it?" or "What should we settle for?" (1979:273)

[8] - Many authors have reported the importance of conviction rates to prosecutors. For example, see James, 1967; Feeley, 1979; Nimmer, 1970; Cole, 1970; and Heumann, 1975.

[9] - It should also be noted that prosecutors anticipate working with some defendants on many occasions before finally securing a conviction or conviction on a more serious offense. "Trying to nail" a repeat "client" who has eluded "justice" is an important concern for police and prosecutors.

[10] - Police, despite their common ground with prosecutors, also view the prosecutor with some disdain. Prosecutors often refuse to press charges because of problems of evidence or illegal arrest practices. See Skolnick (1966) for discussion of such conflict.

[11] - Dill (1972:136) found similar issues raised by police in opposition to a California bail reform project. They believed bail bond premiums were

essential parts of punishment which the defendant should be required to pay. Police also objected to further liberalized decisions by judges to release defendants on their own recognizance after strenuous police efforts to arrest suspects.

[12] - Skolnick (1966) also found exceptions to the stereotype of public defenders always cooperating with judges and prosecutors. He concludes the system may be more adverse in nature than other authors have lead us to believe.

[13] - Diversion programs have a history of being used to "protect" informants. The typical situation is different for SPAD where "snitches" are directed as part of a deal with the prosecutor. See Misner and Clough, "Arrestees as Informants," Stanford Law Review, 1977.

[14] - This theme of selecting minor offenders for diversion has significant consequences for the success of such programs in terms of reducing crime, costs, and social control. It is a theme I return to throughout the study.

Chapter III

[1] - The Board of Directors of the National Association of Pretrial Services Agencies approved the standard that diversion should begin only after the formal filing of charges. "...pretrial diversion enrollment prior to formal filing of charges is viewed as premature and generally inconsistent with the requirements for voluntary participation contained in this standard." (1978:28)

[2] - San Pablo police's "low" professional status was partly related to the high number of cases rejected by prosecutors for complaint filing. Prosecutors rejected these cases largely because of poor arrest reports or failure to follow rules of evidence gathering.

[3] - Forcing Committee members formally to state reasons for rejection rationale would be difficult to formulate; it was the path of least resistance.

[4] - The age of restriction on alcoholics reflected probation's belief that they could not treat hard-core alcoholics whose adult patterns were well-established. However, such an exclusion based on age was probably unconstitutional under the principle of "equal protection" previously discussed. See "Pretrial Intervention Legal Issues" (1977:5-6) for a full discussion on criteria relating to age.

[5] - The Manhattan Court Employment Project also excluded those perceived to have a serious alcohol problem. As with SPAD, it was believed these persons should be handled outside a diversion program and referred to a specialized agency. (Vera Institute, 1978:4)

[6] - Also, see Dill (1972:163) for a similar discussion on selecting only "good risks" in his study of a bail reform project.

[7] - A similar finding was reached in my study of parole decision-making where biographical data explained insignificant levels of variance in

determining paroe eligibility. Observing the drama of parole selection greatly expanded my understanding of how parole eligibility was constructed which seemed to center on the inmate's demeanor during the face-to-face interview. (Austin, 1975)

[8] - There is a rich sociological tradition of understanding agency decision-making through dramaturgic analysis or ethnomethodology. Major writers in this area would include Becker (1963), Cicourel (1968), Emerson (1969), Garfinkel (1956), Goffman (1961), Kitsuse (1962), Lemert (1951), and Scheff (1964).

[9] - Police control over arrest data also proved to be a sensitive issue for the project. Concern was expressed by the Project Director during the early stages of SPAD that police were not referring copies of complaint filings to the Screening Committee for review. Project staff feared police were withholding cases they did not want diverted. Several examples of non-referral were cited, but eventually were shown to be the result of clerical error and not deliberate.

[10] - In practical terms, it would have been extremely difficult to permit defendant participation without transforming diversion into a highly bureaucratic and cumbersome program. Nevertheless, their absence is significant.

[11] - As one prosecutor representative noted when pressed to explain his reason for rejection, "I'm arguing a feeling - not knowledge."

[12] - The influence of prosecutors in diversion selection has been well documented in Vera Institute's survey of adult diversion programs (1978). Although no projects were found to use the Screening Committee review process, almost all projects including the Manhattan Court Employment Program depend heavily upon the consent of prosecutors for admission (1978:8). See also Feeley (1979:111-113) for his analysis on prosecutorial control over diversion selection in the New Haven diversion project.

[13] - Dill (1972:162-168) found the same phenomenon occurring in a bail reform program. "Pre-trial release recommendations were based partly on predictions of whether defendants would be prosecuted, whether conviction would result from a guilty plea or a trial, what the convicted offense would be, whether the court would be likely to grant OR to the defendant during the period prior to sentencing, and, most importantly, what the sentence would be." (1972:162)

[14] - Some diversion projects require formal admission of guilt prior to acceptance into the program. For example, the Bergen County, New Jersey, pre-trial diversion program requires admission of guilt as a condition of diversion eligibility (Vera Institute, 1978:49-53) strongly opposes such a criterion arguing it would transform diversion programs into vehicles for plea-bargaining. Although SPAD did not make admission of guilt as a requirement, defendants were assumed to be and treated as being guilty. Also see Austin (1975) illustrating how assumptions of guilt enter into parole selection.

[15] - See Chapter IV for a discussion on how these traditional areas of jurisdiction were gradually demystified as agencies interacted more frequently with one another over the course of the program. Certainly a

positive result of the Screening Committee concept was the development of better relations among the agencies during SPAD's existence.

[16] - None of the major pre-trial diversion program reviews (Vera Institute, 1978; Dickover et al., 1976; or Mullen, 1974) indicate community involvement in planning diversion programs.

[17] - Community representatives were recruited through public announcements in local newspapers and social service agency contacts in San Pablo. Few people responded to these notices. Those who did were personally screened by the Project Director before being allowed to paraticipate in Screening Committee hearings. Only a handful actually participated and were rotated on a monthly basis by the Director.

[18] - Vera Institute (1978) and Dickover et al., (1976), found several projects that rely on staff or volunteers to "sell" diversion to defendants when they appear in court or during a later interview.

[19] - See Chapter IV for a discussion on the final court dispositions of interview rejects.

[20] - Initially it was proposed that one of every two cases would be placed in the control group. However, the unexpected decrease in interested defendants forced a lower assignment ratio.

[21] - Fortunately, staff readily admitted their tendency to beat the randomized process to the evaluator and later assisted in developing the revised system.

[22] - Vera Institute (1978) and Dickover et al., (1976:124) report that the dominant offense for divertees in their surveys was petty theft, breaking and entering, and other property offenses. Additionally, most projects reported 70-90% of divertees having no prior conviction record.

[23] - Vera (1978) found only the Manhattan Court Employment project to offer services other than counselling. Most interesting was that three Department of Labor funded diversion projects had shifted or moved exclusively to a counselling model and abandoned employment and vocational training services. Employment and vocational services were found to be too difficult to sustain compared to counselling services which only require a room, clients, and a counselor.

[24] - The average length of time spent in SPAD was slightly less than three months (113 days).

[25] - Follow-up re-arrest data presented in Chapter IV show these perceptions to be accurate. Only 25.4% of the divertees had been re-arrested 36 months after their initial contact with SPAD.

[26] - Analysis of re-arrest rates for these two caseloads will be discussed in Chapter IV although the findings are similar to those based on project termination rates.

Chapter IV

[1] - Such costs, although significant, proved irrelevant to compute given the equivalent re-arrest and conviction rates for divertees and controls as presented in the following section on recidivism. In other words, if divertees had a significantly lower recidivism rate compared to controls, then it would be important to estimate the differentials re-arrest costs.

[2] - Some diversion programs, aware of the costs associated with misdemeanor offenses, are adjusting their criteria to work only with serious felony offenses. One project, the Snohomish County Diversion Project in Washington State, works only with serious felony charges including sex offenses. However, to make the program amenable to prosecution, a signed confession to the charges and a 36-month contract are required prior to entry into the program. Thus, as more serious offenses are made eligible, the costs of diversion also increase as length of supervision is significantly extended. Furthermore, it would appear that requiring signed confessions raised important questions of coercion and defendants' constitutional rights. (Conversation with Snohomish County Diversion Project Director.)

[3] - All cost estimates were developed by representatives from each respective agency. It is probably that the level of accuracy varies considerably for each agency. However, these are the figures departments use to prepare budget projections for special activities.

[4] - Estimating an hour of time devoted to these cases represents liberal estimates according to staff from the prosecutor and the public defender. In general, it is difficult, if not impossible, to know exact time spent or cost by these agencies. However, it was decided that the hour per appearance would not underestimate attorney costs.

[5] - Miscellaneous Correctional Cost Factors refer to additional costs for cases where state prison or other forms of "correctional" programming occur. Since these factors did not surface in dispositions, no estimates are presented here.

[6] - This figure is remarkably similar to other adult diversion programs. Watkins (1975:14-29) computed an actual client rate of $827, using similar computations in a survey of ten diversion projects. Feeley (1979:316) notes a $691 rate for the New Haven Diversion Project.

[7] - The rate column in this table refers to the average number of criminal justice activities per case. For example, the .095 rate for pre-sentence reports was computed by taking the total number of pre-sentence reports (which was ten) divided into the number of known cases. Similarly, the .705 rate for public defender appearances literally means an average of .705 appearances per case.

[8] - See Vera Institute (1978) and Dickover et al., (1976).

[9] - SPAD's rate of dismissal was significantly higher than those for most projects reviewed by Vera (1978). They found successful diversion release could result in dismissal of charges or reduction of charges. For example, CEP reported only a 55% dismissal rate.

[10] - Controlling for time at risk in the community is a necessary aspect of completing follow-up studies. This means that periods of incarceration

should not be counted as time in the community. Since few divertees or controls were incarcerated during this three-year period, it proved to be a rarely invoked necessity. Where appropriate, it was done.

[11] - Collecting both Penal and DMV arrest records necessitated requesting data from two state-wide computer systems. The California Identification Index forwarded all arrest and conviction data concerning Penal Code violations. DMV has their own state-wide system of vehicle code offenses. For each control and experimental case, separate request forms were sent. It should be noted that such data systems are primarily restricted to violations occurring in California only. Out-of-state arrests are not systematically reported to the two California data systems.

[12] - One-third of the control cases received formal probation as part of the final disposition.

[13] - Pre-adjudication supervision can be extremely intense for those incarcerated in county jails. But few controls found themselves in such a situation for more than 2-3 days.

[14] - For several reasons, it is impossible to calculate accurate system rate fluctuations. The most prominent problem is the absence of annual statistics collected by prosecutors, public defenders, and the courts. The only data we could find was for probation and only for the entire county - not the area believed to be most affected by SPAD. For these reasons, data presented here are quite limited in their explanatory powers.

Chapter V

[1] - The costs of new institutions is indeed staggering. In California, the Department of Corrections plans to build ten 400-bed prisons at a 1980 bid price of $1.8 billion. The major obstacle to construction at this time is dwindling state revenues created by Proposition 13 and further threatened by Proposition 9 that would cut state income taxes by 50%.

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