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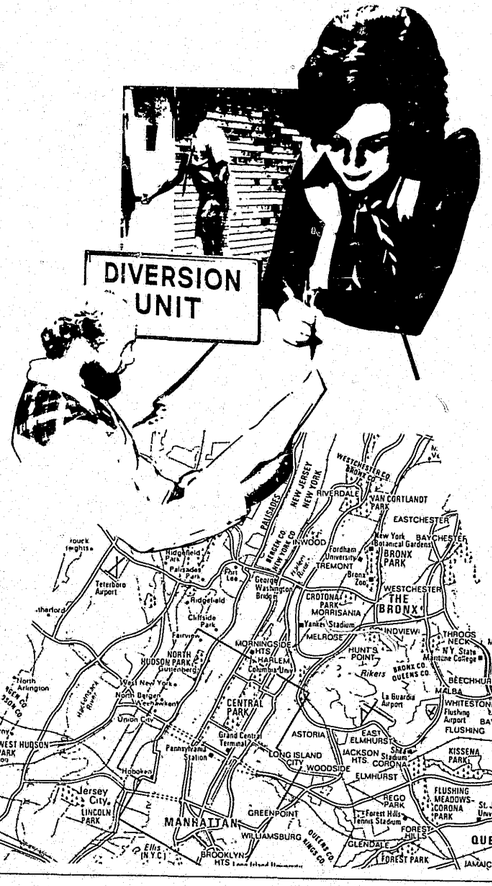
Diversion of Felony Arrests

An Experiment in Pretrial Intervention



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Harry M. Bratt
Acting Director

Diversion of Felony Arrests
An Experiment in Pretrial Intervention

An Evaluation of the
Court Employment Project

Summary Report

Sally Hillsman Baker
Project Director

Susan Sadd
Deputy Project Director

Vera Institute of Justice

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Preface

Confidence in the value of research is much enhanced when those whose efforts are subjected to scientific scrutiny respond creatively to the findings. The Court Employment Project's response to the findings reported here has that character, and illustrates the interplay between evaluative research and program development at its best.

In 1967, Vera launched the Court Employment Project as the nation's first pretrial diversion program. It was designed to avoid punishment and the stigma of conviction for young offenders who, it was thought, would be better dealt with by remedial programs, counselling and help finding work than by prosecution, adjudication of guilt, and penal sanction. CEP participants were diverted before trial and, if they took part in the program for four months, had the charges against them dismissed. It was soon apparent that CEP's service-based alternative could draw increasing numbers of cases out of the criminal process; and the best data available indicated that, by doing so, CEP was achieving the goals that inspired its effort. In due course, CEP was institutionalized, as an independent corporation supported with social service funds by contract with the City of New York, and the pretrial diversion model it had pioneered was replicated in hundreds of United States jurisdictions.

However, a crucial question had not been answered with certainty: do these pretrial diversion programs in fact divert their clients from full prosecution and punishment at the hands of the courts, or do they merely impose (without conviction) a new form of rather burdensome "treatment" on persons whose cases would have been dismissed or discharged anyway? This question, and a series of equally important questions about the effects of "treatment" provided in this way (e.g., does diversion reduce recidivism?), could not be answered with confidence except by random assignment controlled research, the difficulty and expense of which stood in the way of answers until 1977-79. During that period, Vera carried out a study of CEP, funded by the National Institute of Law Enforcement and Criminal Justice, the design for which had won support from those on the bench and in the bar who had opposed earlier controlled research proposals.

The results of the research effort confirmed that, by the late 1970's, pretrial diversion simply did not reach those who were likely to suffer significant convictions and sentences in the formal criminal justice process--even when only defendants facing felony charges were diverted. The research also showed that, despite their exposure to an array of CEP services of demonstrably high quality, the diverted group remained indistinguishable from the control

group with respect to recidivism, employment and educational status, and other measures of social adjustment. Because the research was grounded in the random assignment of defendants to CEP or to the control group, the findings--however disturbing they seemed--could not be explained away.

The news was not good, but it was important: CEP stood as one of the few service-providing agencies in New York City that cared for young adult offenders, and it had developed a fine staff--many of them street-wise ex-offenders --and a fine reputation in the courts and in the community. CEP's managers and Board could see that, if these resources were to be put to good use, pretrial diversion was not (or was no longer) the way to do it.

Although the research powerfully suggests that pretrial diversion is no longer effective in jurisdictions with dispositional patterns and offender populations that resemble New York City's, it may have been rendered ineffective, at least in part, by its own past success. That is, CEP and programs like it may have encouraged changes in the attitudes of prosecutors and judges so that the criminal process has become more diversionary in general. In this changed context, the decision not to prosecute or not to impose burdensome sentences seems not to depend upon the availability of a quality treatment program to which to send defendants. In addition, individuals who come to a service-based program--however high its quality--do not seem likely to take full advantage of it to change their lives if their motivation is grounded in a mistaken belief that their only choices are to cooperate or go to jail.

Whatever the policy implications of this research might be for those engaged in pretrial diversion efforts elsewhere, in New York the response was dramatic. Over the years since CEP's creation, there had arisen a much more sophisticated understanding of the dispositional process in criminal prosecutions, particularly the centrality of prosecutorial discretion and the forces that shape its exercise; research had also more fully revealed the complexity and difficulty of altering the behavior and life prospects of high-risk youth. Informed by the work of others in those fields, anchored by the practical experience and skill of its own staff, and moved to action by the research findings on pretrial diversion, CEP undertook a near-total re-design of its programs. In 1979, within a few months of learning the preliminary results of the research, CEP ceased accepting pretrial diversion clients and launched a pilot program to provide an alternative to incarceration for offenders who had already been convicted and sentenced to jail or prison. In this program, imposition of the custodial sentence was deferred for so long as CEP's conditions of intensive supervision were being met (all day, daily, for the first six

weeks, and thrice weekly for four months thereafter). This pilot attempted to bring CEP's resources to bear on cases the system treats severely rather than those the system dismisses or discharges. It was also an attempt to increase the intensity of services to a point where it would be reasonable to expect improvement in employment and education and, perhaps, a decrease in recidivism.

The pilot was right on target. Judges proved eager to use an alternative to jail when reassured by experience with it that the offender would not be allowed to ignore the conditions imposed, would be returned to court for imposition of the jail term if the conditions were violated, and would in fact be closely supervised. The pilot project went well enough to pick up foundation and City financial support in the summer of 1980, for a 12-month demonstration. At the same time that it experimented with this pilot for the "deep end" of the criminal court population, CEP made its services available--on an entirely voluntary, not a diversion basis--to anyone enmeshed in the criminal justice system who had a desire to make use of the counselling, educational, health and other services it offered.

The major change that followed termination of CEP's pretrial diversion effort was a re-design and re-financing that made the agency a direct provider of paid work experience and stipended job training for young adult offenders referred from any point in the criminal process. CEP and Vera saw this as a desirable field to explore because Department of Labor (CETA) funds have not, as a rule, been successfully applied to the difficult task of entering inner-city, ill-educated, delinquent minority youth into the world of work. Most jobs programs, focused on the placement-rate requirements written into their CETA contracts, seemed to exclude such unlikely candidates and to cream their participants off the top of the enormous pool of eligible youth; CETA programs that are open to criminally-involved youth are seldom sufficiently well-designed or well-managed to deal effectively with their often unruly behavior or their multiple deficits. In the fall of 1980, CEP received $2 million in CETA funds from the DOL's Office of Youth Programs to design and operate a youth employment program for its clientele.

Thus, by intensive supervision of jail-sentenced offenders, by providing services on a voluntary basis to anyone caught up in the criminal process who wants to make use of them, and by directly employing and training hundreds of high-risk youth, CEP has transformed itself and stands a good chance of once again playing a useful role. CEP's goals have not changed; the research inspired its managers to devise a program more likely to achieve them and helped guide them in the choice of new program strategies. Of course, there is reason to worry that the 1980s will prove

inhospitable to efforts, such as CEP's, to evolve programs that aim to humanize the criminal justice system and to break the destructive patterns that now characterize the lives of underclass youth. Nevertheless, the program development cycle continues, with refinement of CEP's new program models, and with further controlled research on them.

Michael E. Smith
Director, Vera Institute

ACKNOWLEDGEMENTS

A research effort that takes as long as this one did, and that has its complexities, owes much to many. Clearly the research could not have been carried out without the commitment of the Court Employment Project's management and staff. CEP's executive directors during the course of the research-- Bruce Eichner and then Rae Linefsky -- as well as its previous director, the late Ennis J. Olgiati, helped initiate and facilitate the research. CEP's court operations staff undertook with diligence and good humor the sometimes difficult task of screening sufficient individuals to fill both the experimental and control groups. Throughout the evaluation, there has been much give and take between the Vera research staff and the CEP program staff, a process that has contributed greatly to our mutual understanding of pretrial diversion in New York City.

On the Vera side of this effort, many non-project staff members as well as Institute managers, contributed helpful suggestions and reactions throughout the life of the project. Members of the research staff gave generously of the considerable energy and talent with which each is endowed. In the early stages of the study, Orlando Rodriguez, a sociologist, had a major role in designing and administering the data collection instruments. Pamela Samuelson, an attorney, influenced all stages of our work with her conceptual ability and her keen insight into how programs operate in the context of court systems. Deborah Cohn shouldered the considerable burden of orchestrating the initial stages of data collection, and Debra Kaplan managed with skill and patience to keep track of all the manual research records as their volume swelled alarmingly. June Swerdlin collected and updated the criminal history records of all the research subjects, a job that can be appreciated fully only by those who have tried to do it with care and accuracy. The task of computerizing the research data fell to John Best, who earned the appreciation of the entire staff for his truly special talent in designing, managing, and analyzing an unusually large, complex data-base, additions to which seemed never ending. Under the able and creative direction of David Gerould, the field staff established and maintained a research relationship with more than 600 of the youthful subjects of our study over a 23 month period. Tact, persistence and skill at working within the many, diverse neighborhoods of New York City were required to accomplish this difficult and often frustrating task. Joan Diaz, Robert Lopez, Piolate Montgomery, Luis Rolon, and Charles Williams brought these qualities, and more, to bear on this field work.

This report also reflects the contributions of several people outside Vera and CEP who had particular interest in the broader implications of the study. The National Institute of Law Enforcement and Criminal Justice provided three years of support, which enabled us to carry out a detailed longitudinal research design. Joel H. Garner, our project monitor in the Institute's Office of Research and Evaluation Methods, was always ready with help and encouragement. He made all our dealings with the Institute a source of energy rather than distraction, and he frequently provided thoughtful suggestions that helped shape the substance of the research.

Our Advisory Committee gave invaluable guidance, helping focus the research issues and offering fresh interpretations of the data. Professor Franklin Zimring provided both a deep understanding of methodological subtleties and a conceptual sophistication rooted in his long-standing interest in diversion research. In careful and detailed reactions to our interim research reports, U.S. District Judge Morris Lasker provided the kind of thoughtful and practical comment that have earned him his reputation as an intelligent, knowledgeable and humane jurist. Inez Reid tapped her interest in and knowledge of youthful offenders to help us design the research effort.

We deeply appreciate all the help and assistance we received during the course of this study from the many people who work in the Criminal Courts of Manhattan, Brooklyn, and the Bronx.

Finally, the many defendants and offenders who allowed us to talk with them at length about difficult personal experiences--not once, but several times--were both subjects of and major contributors to this study. We are grateful for their cooperation and we hope that the dialogue stimulated by the study will, in the long-run, justify their participation.

I. INTRODUCTION

From the early 1960s, when bail reform began, through the latter part of that decade when the first pretrial diversion program drew national attention, efforts at reform of the criminal justice system focused primarily on the pretrial period. The goals of these reforms ranged from conserving resources, to enhancing the quality of justice and rehabilitating offenders. Despite considerable national attention and the growth of many, relatively expensive pretrial reform programs, attempts to assess their impact have not produced definitive results. What consequencs do these programs have for defendants, for their pending cases, and for the courts through which they flow? Researchers' efforts to answer these questions about both bail reform and pretrial diversion have been plagued by methodological difficulties. A principal problem has been the lack of comparison groups adequate to the task of measuring program impact by reliably reflecting what would have happened to defendants and their cases in the absence of the reforms.

The research summarized here is a continuation of previous efforts to assess the impact of pretrial diversion. Prominent researchers who had conducted the early program evaluations uniformly concluded that research using an experimental design and a randomly selected comparison population was essential if policy and program development were to progress in the pretrial field. Therefore, in 1975, with the cooperation of New York City prosecutors, judges, and the Legal Aid Society,[1] the Vera Institute proposed an experimental evaluation of the Court Employment Project (CEP), one of the first pretrial diversion programs in the United States.[2] The research was funded by the National Institute of Law Enforcement and Criminal Justice (NILECJ/LEAA) under its Innovative Research Program. It was begun in 1976 and, after start-up delays resulting from New York City's fiscal crisis of that year, the experimental design was implemented in the courts in early 1977; the research was completed at the end of 1979. (For a full report of the study, see Baker and Sadd, 1979.)

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[1] The Legal Aid Society of New York provides counsel to the majority of indigent defendants in the City's Criminal Courts.

[2] See Appendix A for a description of the Court Employment Project and a discussion of its appropriateness as a case study of pretrial diversion.

II. THE ORIGIN OF A REFORM: THE CONCEPT AND GOALS OF PRETRIAL DIVERSION

Pretrial diversion programs emerged at the end of the 1960's as formal attempts to improve the operation of the criminal justice system. They were one response to a wide set of reform issues articulated most fully in the 1967 Report of the President's Commission on Law Enforcement and the Administration of Justice. The first diversion programs pursued several concrete goals for both defendants and the system. Yet the conceptual rationales offered for their implementation were often over-determined--that is, they drew upon many highly interrelated but untested theories and assumptions about how the criminal justice system operates, about poverty and discrimination, and about the etiology of criminality. While many of these notions continue to be widespread, practical experience and empirical research over the intervening years, including the study discussed here, have encouraged greater recognition of the complexity of the processes in which pretrial diversion has attempted to intervene, and more modest expectations for efforts to reform them.

The initial pretrial diversion programs sought to dispose of some lower criminal court cases in ways that would avoid traditional adjudication of guilt and imposition of penal sanctions. Non-adversarial alternatives were thought necessary because criminal justice systems were viewed as "hopelessly overloaded with cases; ...brutal, corrupt and ineffective"(Vorenberg and Vorenberg, 1973:154). Earlier examinations of pretrial detention practices had confirmed reformers' beliefs that the criminal justice system discriminated against those who were poor through its use of money bail. And bail reform efforts had shown that alternative and less discriminatory methods of decision-making could be introduced successfully into that part of the system (Rankin, 1964; Wald, 1964). Some of these same reformers also believed that other inequities resulted from the discretionary power of prosecutors to decide which cases should be prosecuted fully by their offices. This decision-making process was often characterized as hasty, pressured, ill-informed and, thus, potentially harsh and inequitable (Report of the President's Commission, 1967: 133).

The introduction of pretrial diversion programs into the system, as nonpunitive alternatives to full prosecution, was designed to regularize this discretionary process and to increase the overall proportion of less serious lower court cases dismissed by prosecutors. The criminal justice system was thus to become more just and more humane. The process of diverting some defendants from prosecution was to be accomplished by establishing social service programs that would provide defendants (primarily those who were poor and typically unable to obtain such assistance) with an opportunity they would otherwise lack to demonstrate to prosecutors that, despite this arrest, they were worthy of being treated with leniency. "The simple but enormously significant idea behind these new programs was to provide justice and fairness through nontraditional means of handling defendants" (Crohn, 1980:26).

The goals of pretrial diversion programs were quite specific. They hoped to release more poor defendants pretrial; to provide those defendants with employment and other services not typically available to them (particularly not at the crucial point of arrest); and to use these services to affect defendants' behavior in ways that would encourage prosecutors to dismiss the charges pending against them. If the programs were successful, it was assumed that greater equity would result (since wealthier defendants had these opportunities already); that justice would be improved (since prosecutors' decision-making would be more informed, systematic, and open to review); and, finally, that the outcome of the arrest experience would be more rehabilitative and less punitive for defendants "for whom the full force of criminal sanctions is excessive" (Report of the President's Commission, 1967:133).

Operationally, how was this to work? Since reformers felt that the "adversarial system did not yield justice" (Crohn, 1980:26), the initial pretrial diversion programs were set up outside the official system. They independently screened and interviewed defendants awaiting either arraignment or a preliminary hearing, to identify suitable diversion candidates, and offered them job placement and other vocational services. Program personnel then provided prosecutors with whatever additional information they needed to make decisions about those defendants who had expressed a willingness to use the program's services during the pretrial period. Prosecutors used their discretionary powers to suspend (or defer) prosecution for some of these defendants; furthermore, they informally agreed not to resume prosecution if the defendants, with the help of the program, made an effort to improve their vocational activity during a specified period of time (usually a few months). Failure to demonstrate such effort, however, would be cause for the prosecutor to resume the court process.

The conceptual rationales used to justify these procedures were complex and were based on a series of interwoven assumptions about how the system worked and how criminal behavior was generated. These may be summarized by looking briefly at the way early diversion advocates viewed the criminal justice system, social services, and rehabilitation

efforts in the process of intervening in the lives of youthful defendants.

First, diversion was considered an indictment of, and a solution for, a criminal justice system that was thought to be criminogenic as well as demonstrably unable to rehabilitate or deter. While not new, the notion that the criminal justice system encouraged criminality had gained prominence during the 1960s through the work of several social scientists who were applying theories of social learning to the study of criminality. They believed that, through association with people who adhered to deviant values and ways of acting, some individuals learned to be criminals in the same way others learned conforming behavior. This approach to the etiology of criminal behavior led to the view that exposure to more hardened criminals or delinquents already in the criminal justice system would increase youthful first offenders' likelihood of committing other, and possibly more serious, crimes. Furthermore, it was thought that formal institutions, such as the courts or probation, reinforced the exploratory criminal behavior of youthful offenders by officially labelling them "criminals," "offenders," or "delinquents." Such terms were thought both to encourage defendants to adopt deviant self identities and to make relevant others (such as schools and employers) more likely to label them as such. Thus stigmatized, the ability of young offenders to pursue legitimate careers would be further blocked. Thoughts of these kinds, focused on the potential power of the criminal justice system to reinforce criminality, encouraged reform efforts, such as pretrial diversion, directed at routing defendants out of that system.[1]

Second, from the beginning, pretrial diversion was considered not only diversion <u>from</u> the official criminal justice system, but also diversion <u>to</u> formal programs providing services. While the early removal of defendants from detention and the courts was designed to discourage their development of illegitimate careers, diversion to manpower services located in the community was designed to help them overcome the disadvantages they faced from racial, class and age discrimination which were seen as major barriers to

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[1] The concept of "differential association" was introduced by Sutherland in the 1930s, and made popular in the 1960s; see Sutherland and Cressey, 1960; Cressey, 1960; and Becker, 1953, 1963. The companion ideas of "labeling theory" were found primarily in the works of Lemert, 1951, 1967, 1970, 1971; Wheeler and Cottrell, 1966; and Schur, 1971, 1973.

their access to legitimate careers.[2] "Pretrial intervention, we said initially, was to try to help people who were caught in the revolving door of crime get a handle to the 'mainstream of society'." We wanted to catch them, intervene at some point--first, second or third time, to give them the opportunity not to come back through the criminal justice system. It is as simple as that" (Throckmorton, quoted in Fitzgerald, 1979:82).

Third, diversion was also considered an innovative approach to rehabilitation. It was thought that intervention with nonpunitive social services at what was presumed to be a strategic point in people's lives--early, and before they had penetrated too deeply into the criminal justice system --would be a positive alternative to more traditional correctional approaches. The content of this rehabilitative strategy was increased employment. The idea that "unemployment may be among the principal causal factors involved in recidivism of adult male offenders" (Glaser, 1969) was becoming an important part of the conventional wisdom of the 1960s. Indeed, the federal government had extended the provisions of the Manpower Development and Training Act (MDTA) of 1962 to include the "criminal offender as a manpower resource" (Rovner-Pieczenik, 1973:77). This shift made it possible for pretrial reformers to implement this rehabilitative strategy using federal resources that had not previously been available to support social services for the youthful defendants who were the targets of diversion. In this way, it was possible to combine diversion from the criminal justice system (to avoid stigma and punishment) with social services located in the community (to improve defendants' vocational status). It was thought that both types of intervention, applied simultaneously, would have the rehabilitative effect of discouraging further criminal involvement.

This conceptual framework was a relatively elaborate superstructure for the quite concrete program goals sought by the reformers who launched the pretrial diversion movement in the late 1960a. For defendants facing criminal charges, the goals were to reduce detention time, to avoid prosecution, to limit exposure to court processes, to prevent conviction, to forestall punishment, and to improve employment and educational status. For the community, the goals were to lower the costs associated with processing minor court cases, and to free the system to focus on more

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[2] See the works of Cloward and Ohlin (1960); Fleisher (1966); Singell (1966); Burns and Stern (1967); and Wheeler, Cottrell and Romasco (1967).

serious ones. Of course, threaded through both sets of goals was the hope of reducing recidivism.

III. DISPUTED ISSUES: THE ACCUMULATED RESEARCH EVIDENCE

"No word has had quite the power of 'diversion'... which offers the promise of the best of all worlds: cost savings, rehabilitation and more humane treatment" (Vorenberg and Vorenberg, 1973:151-2). Nevertheless, even as pretrial diversion programs spread rapidly across the country, they generated controversy. They were characterized variously as an innovative alternative to prosecution and incarceration, an important rehabilitative reform, and an unhealthy expansion of state supervision.

Because formal diversion was considered innovative, the original programs were subject to scrutiny, both by those (principally lawyers) whose main concern was justice and by those (principally researchers) whose main concern was empirical knowledge. From each direction came challenge. Daniel Freed of Yale Law School, for example, (in his often quoted 1974 testimony before the House of Representatives' subcommittee on Courts, Civil Liberties and the Administration of Justice) eloquently voiced the legal and ethical concerns raised by the potential use of diversion as a pre-adjudication sentence imposed without due process or informed consent.[1] In cautioning federal decision-makers not to leap quickly into the diversion movement, Freed urged a careful review of the empirical evidence concerning the impact of diversion. Unfortunately, however, despite fairly extensive research efforts, the accumulated evidence was thin as to the benefits of diversion.[2] A 1978 review of this literature concluded that while "the lack of appropriate research does not mean that diversion is a failure ...research does not exist to demonstrate whether or not diversion has an impact on clients" (Kirby, 1978:29).

What were the disputed issues in the diversion controversy by the mid-1970s?

Early research left standing the concern that diversion would be used for cases that otherwise would not (or could not) be prosecuted. This was largely because research efforts had not been able to address adequately the question of what dispositional benefits defendants actually received from diversion. In a 1974 review of pretrial research, Rovner-Pieczenik reported that only three out of the fifteen

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1 Freed (1974); see also Morris (1975), Gorelick (1975), and Nejelski (1976).

2 See especially Mullen (1974); Rovner-Pieczenik (1974); Zimring (1974).

available program evaluations provided any comparative data on case disposition. Even for the few that did, however, her conclusion was that:

> Lack of confidence in the equivalence of the non-participant group against which patterns of disposition and sentences of [diversion] participants were assessed, and in other methodological problems...does not enable us to state with confidence that apparently favorable adjudicatory treatment was due to program participation (p.92).

More recent research, despite somewhat improved designs, has not eliminated this persistent concern. For example, a comparison group matched to a group diverted pretrial in Monroe County, New York, indicated that a third or more of those diverted would not have been prosecuted at all in the absence of the program (Pryor, 1978:79).[3]

Concern with the use of pretrial diversion to increase supervision (or "widen the net of social control") over defendants was also heightened by early data about diversion's impact on defendants' likelihood of avoiding punishment. The Rovner-Pieczenik review of program evaluations (1974) indicated that few diverted defendants would have spent any time in jail in the absence of these programs. The data did suggest, however, that the period of diversion services might have been shorter than the period of probation supervision for comparable defendants who were sentenced rather than diverted (1974:90); but because these evaluations combined suspended sentences with probation sentences, the data were not conclusive. While the more recent Monroe County study (Pryor, 1977 and 1978) suggested that length (and possibly severity) of sentence may have been greater for the non-diverted comparison population, interpretation of the

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[3] Furthermore, much of the research literature on the diversion of juveniles suggested that diversion "widened the net of social control" as exercised by the police and the juvenile courts. The data showed that many, and often most, of the diverted youths would not otherwise have been officially dealt with (Gibbons and Blake, 1975; Cressey and McDermott, 1974; Rutherford and Osman, 1976; Klein et al., 1975).

data is difficult because the study did not randomly select the comparison group.[4]

With respect to diversion's power to lessen defendants' penetration of the criminal justice system, comparative data for diverted and non-diverted groups were even less satisfactory. Most research simply assumed program impact was limited because the charges pending against typical diversion clients were "light." However, the only study that dealt with this issue empirically produced unexpected and unexplained results:

> The diversion sample actually logged more court events (excluding preliminary hearings, trials, pleas and sentencing dates) at the lower court level than did the control sample. Court events included pre-trial conferences, argument of motions, adjournments, etc. According to court records ..., there were a total of 453 lower court events in the (diversion) sample, and 292 in the Matched Control sample... (Pryor, 1977:69).

Finally, the issue of whether diversion protects adult defendants against harmful, stigmatizing labels was not

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[4] "The matched comparison group [in the Pryor study] is carefully chosen and equivalence is clearly demonstrated. However, program clients are screened by the program and district attorney, while the comparison group is selected by researchers. Thus the two groups could be different because of varying selection procedures" (Kirby, 1978:16). Among possible differences that could result from a matched rather than randomly-selected comparison group is the motivation of the defendants. Whereas program personnel interview candidates often several times, to select those who demonstrate high motivation to change their lives, researchers selecting a comparison group from records cannot make such assessments.

addressed at all in early diversion research.[5] None of the studies provided data on whether programs helped specific defendants avoid particular legal statuses that were presumed to stigmatize. While several evaluations analyzed the proportion of defendants who were diverted unsuccessfully and then convicted or jailed, we do not know if these same individuals previously had clean records, or if those who were successfully diverted by these programs had prior arrest or conviction records. Furthermore, the studies typically tell us nothing about record sealing practices in the jurisdictions under study.

The second set of impact issues has remained in even greater dispute--whether, by providing social services in the context of diversion, pretrial programs have succeeded in changing defendants' behavior. While program impact on participants' employment and life stability was of central concern to research on the early programs, the possibility of analysis was limited by the lack of adequate comparison groups. Mullen found that although diverted defendants' unemployment levels generally dropped during their program participation, the effect was short-lived, and the quality of the jobs they had obtained was poor (1974:63-4). Rovner-Pieczenik's review of early research also indicated that, while some diversion programs appeared to have positive employment effects, the extent of these changes and the length of their effect could not be assessed (1974:55-73). Unfortunately, the more recent Monroe County research (Pryor, 1977) did not address this issue at all.

Finally, while virtually all evaluations attempted to assess the impact of diversion programs on defendants' subsequent criminal behavior, their findings were mixed. Rovner-Pieczenik suggested that some (not all) program data indicated lower in-program recidivism rates compared to non-participant groups, although "the extent of this decrease in recidivism among participants...cannot be ascertained" (1974:79). For post-program recidivism, she reported that "too many uncertainties in the evaluation methodology

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[5] This is somewhat understandable given the intrinsic difficulties of such research. Critics of labeling theory have pointed out that the theory is hard to operationalize; that is, testable hypotheses are difficult to construct in specific research settings (Gibbs, 1966:9ff). Consequently, although the diversion literature assumes there is considerable stigma associated with arrest, conviction and prison records, no one has adequately measured the actual stigma or social handicap resulting from these labels.

existed to conclude the issue either positively or negatively" (p.84). Mullen's analysis of the early programs led to a similar conclusion: diversion did not seem to affect rearrest because most programs selected low-risk defendants in an attempt to provide a humane alternative to the stigma of a conviction record. In contrast, the later Monroe County research (Pryor, 1977) concluded that the diversion program did have a significant impact on recidivism, but the findings are difficult to interpret because they were not based on a randomly selected comparison population.

By the mid-1970s, therefore, as pretrial diversion was about to enter its second decade, virtually all reviews of its achievements concluded that the central issues confronting the reform effort were unresolved, largely because of serious weaknesses in the research designs used to evaluate the programs.[6] The major methodological problem identified was the need for adequate comparison groups. Addressing the disputed issues required an answer to the fundamental question: what would have happened to defendants who were diverted if there had been no program? Because most previous studies had no comparison groups, program impact could not be separated from the effect created by participants' maturation or by historical change. For example, diversion services might have increased employment, but the passage of time alone could have produced the same effect (particularly because age is known to be related to employment); frequency of arrest or severity of crimes committed by program participants might be found to decrease but that also could have resulted from maturation, decreased police surveillance or unofficial changes in arrest or charging policy.

However, even studies that did provide for comparison groups were inadequate because their designs did not insure comparable groups. Researchers typically compared program "successes" with program "failures," or diverted defendants with those who were formally eligible but rejected for the program. The results of such comparisons could not be regarded with much confidence because it is the nature of diversion programs to be highly selective. Many different actors are involved in the decision-making process including defendants, defense attorneys, prosecutors, program personnel, and judges. In most jurisdictions, many defendants who

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[6] Mullen, 1974; Rovner-Pieczenik, 1974; Freed, 1974;Zimring, 1974; Mintz and Fagan, 1975; Galvin, 1977; and Kirby, 1978, who also noted similar methodological problems in related criminal justice research.

are formally eligible for diversion are screened out, often by the application of informal or hard-to-define eligibility criteria (e.g., "amenability to rehabilitation"). Therefore, even when highly sophisticated methods of matching diverted and non-diverted defendants are used (such as in Pryor, 1977), there can be no assurance that the groups contain the same types of individuals in terms of motivational, perceptual, psychological or unmeasured social or demographic factors.

In summary, the accumulated research evidence did not provide a very satisfactory assessment of the serious issues plaguing pretrial diversion as a criminal justice reform. Consequently, a decade after the initiation of the first demonstration projects, a major review of the pretrial field was forced to conclude that "embarking on a diversion program is pretty much an act of faith" (Galvin, 1977:44).

IV. FINDINGS OF THE CEP EVALUATION

Begun in 1976, the Vera research had three interrelated goals. The methodological goal was to design and implement a mechanism for randomly selecting a control group of sufficient size to provide an adequate comparison with defendants diverted to CEP. The NILECJ, which funded the research, identified this as a major priority. The analytic goal of the research was to subject the rationales underlying this reform to rigorous investigation. Randomly selected experimental (diverted) and control (normally processed) groups were considered essential to testing diversion hypotheses because the complex process of screening program eligibles precluded the formation of other satisfactory comparison groups. Finally, the evaluative goal of the research was to assess the effectiveness of CEP in meeting its specific objectives. Despite ten years of operations and several previous evaluations, CEP continued to have questions about its success at handling the practical problems of diversion: were prosecutors using the program to divert defendants who would have been prosecuted and punished if the system ran its course; was the agency effective in helping first offenders avoid the stigma of a criminal conviction; were its social services improving clients' lives in significant ways; was the experience of diversion, with services, helping clients avoid further contact with the criminal justice system?

To meet these research goals, Vera devised an experimental design and implemented it in the Brooklyn and Manhattan Criminal Courts from which CEP diverted the bulk of its clients. Appendix B contains a brief description of that design, the data collected, and the methods used to analyze them.

A. Summary

Data from the experimental design reflect the Court Employment Project's operations in 1977. While they can shed no light on what impacts, if any, the agency had on the system or its clients in the late 1960s when its goals were first articulated, the experimental data indicate that the Court Employment Project did not fully meet those goals during 1977.[1] From its beginning, CEP had been able to identify and divert a large number of youthful defendants each year (over a thousand in 1977). In that year, all its

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[1] See Appendix A; CEP (whose goals remained remarkably stable from its inception in 1967 through 1977) was the prototype for the pretrial diversion movement which adopted similar goals and methods.

clients had been brought to adult court on felony charges; most were socially and economically disadvantaged, and many had been arrested previously and were likely to be arrested again. Despite CEP's apparent success at focusing its efforts on cases in which its intervention ought to make a difference, the research data showed that the project was not able to make a meaningful difference in the disposition of the criminal charges, in the vocational status of those who were diverted, or in the likelihood of their future involvement in the criminal justice system.

B. The Issue of Disposition: Diversion as an Alternative to Prosecution, Stigma, and Harsh Punishment

As a nonpunitive alternative to normal court processing, pretrial diversion seeks to select defendants who face full criminal prosecution and sanction, but for whom harsh punishment and the stigma of a criminal conviction might better be avoided. In the earliest years of pretrial diversion, this notion tended to lead programs--CEP among them--to focus their efforts on first offenders facing minor charges. However, at the time of this study, CEP had had nearly ten years of experience diverting lower court defendants and the knowledge it had gained about the process had sensitized it to charges that diversion merely extended the net of social control. To meet this concern, CEP had begun to focus increasingly on defendants facing felony charges. In 1977, it established a felony-only policy in a deliberate attempt to avoid diverting defendants who were not taken seriously in the court process. As a consequence, virtually all the defendants CEP diverted from the Manhattan and Brooklyn courts in the year of the Vera study faced felony charges, most at the lower levels of felony severity.[2]

Despite this shift over time to diverting defendants facing more serious charges, CEP still felt those who had substantial prior records were not likely to be diverted by prosecutors. In addition, CEP was not sure that diverting those already heavily involved in the system was entirely consistent with the concept of diversion. It is not surprising, therefore, that the defendants diverted to CEP in 1977, though facing felony charges, did not have substantial prior contact with the system. Sixty percent had no prior arrest record; while 40 percent had had one or more prior arrest, only 16 percent had a prior conviction.

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[2] Three quarters were charged with property crimes; among the remainder, seven percent were charged with robbery and nine percent with assault.

Prosecution and Conviction. CEP was designed to provide program participants with an alternative to full prosecution and criminal conviction. As a specific program objective, CEP sought to obtain dismissal of the charges pending against diverted defendants. Data from the experiment showed that all the defendants who were diverted to CEP and who completed the program (55% of the experimentals) received a CEP recommendation for dismissal and had the pending charges dismissed by the prosecutor. However, of the 45 percent who did not complete the diversion program (and for whom CEP made no recommendation for dismissal of charges), 41 percent nevertheless had the pending charges dismissed. Overall, therefore, 72 percent of the diverted (experimental) group had their charges dismissed. This percentage compares favorably with a 46 percent dismissal rate for control cases.

The data indicated, therefore, that diversion to CEP had some impact on the proportion of cases dismissed: statistically, the 72 percent dismissal rate for all experimentals is significantly higher than the 46 percent for the controls. However, despite this effect on the dismissal rate, it appears that diversion to CEP did not typically provide an alternative to full prosecution and conviction. First, the control group's experience showed that if there had been no CEP--no formal pretrial diversion--almost half the defendants who were diverted would not (or could not) have been prosecuted. Second, although the remainder of the controls were prosecuted, most of their cases were disposed leniently. One out of four controls was convicted of a violation (for example, disorderly conduct) which is not a criminal offense in New York in the same way that other petty offenses (such as traffic infractions) are not. An equal proportion were adjudicated "youthful offenders" under a New York State law permitting prosecutors to substitute an "adjudication" of this type for a criminal conviction where the defendant is 18 years or younger; such findings of guilt are sealed and may not be considered subsequently in relation to employment, licensure, or rearrest. In short, while all had been charged with felonies, only 6.6 percent of the controls were convicted on a criminal charge, most of these at the misdemeanor level; this compares with 1.9 percent of the diverted experimentals. (A difference that is not very great, though it is statistically significant.)

Protection from stigma. The experimental data also suggested that CEP had only limited success protecting first offenders from the potential stigma of a criminal history record. While stigma could not be addressed directly by the research, we could compare the proportion of defendants in the diverted and control groups who acquired official labels that are thought to stigmatize, and the proportion whose criminal history records were officially sealed.

Looking only at those who had a clean record at the time of their arrest (i.e., the 60% of the research population with no prior arrest record), the vast majority of both the experimentals and the controls (84% compared to 71%) had the record of this first criminal justice system involvement automatically sealed from public access by the court, either by dismissal or a youthful offender adjudication. Furthermore, of those first offenders who did acquire a public offense record as a result of their arrest, so many were of the violation type that few were encumbered with a record of criminal conviction; pretrial diversion had no effect on the likelihood of that outcome for first offenders. Only about one out of ten first offenders from each group, therefore, were left at risk of being denied a future job because of a criminal record on this arrest or, if rearrested, risked being treated as a prior criminal offender. Finally, despite the fact that they had all been arrested for and charged with a felony, only one percent of each group left the system officially labelled a felon.[3]

Exposure to criminal justice processes. The experimental data suggested further that early diversion to CEP had little impact on whether defendants were exposed to various potentially harmful court processes. Diversion did not affect the proportion detained between arraignment and final disposition (10% of each group); nor did it significantly reduce the amount of time they spent in detention (an average of 1.4 days for experimentals and 2.1 days for controls). In fact, although experimentals were scheduled for significantly (but only slightly) fewer court appearances than were controls (an average of 3.49 compared to 3.91), they also spent significantly more time awaiting disposition than did those who were not diverted (an average of 21 weeks compared to 16 weeks).

Punishment. The goal of diversion is to provide a nonpunitive alternative to normal court outcomes. The CEP data indicated, however, that relatively few diversion-eligible defendants faced punishment or the burdens of supervision as a result of normal court processing. Seven out of ten control cases were disposed without any sanction (either by dismissal of the charges or by sentence to conditional or

[3] It is important to note that the research could not explore what consequences sealing official records really had for defendants, or whether there were meaningful differences in the stigma associated with these different arrest-related labels. However, whatever protections or vulnerabilities resulted from their arrest and processing by the court, the research demonstrated that diverted and non-diverted defendants were affected similarly.

unconditional discharge); this is compared to eight out of ten diverted cases. It is important to note, however, that while controls who received no sanction at the conclusion of their cases were free from any supervision during the pretrial period (except those few in detention), most of the experimentals who won dismissals were subject to CEP's supervision during the period before final disposition of their cases--a period which was, as indicated above, significantly longer on the average than it was for controls.

Nevertheless, significantly more controls than experimentals did receive at least the symbolic sanction of a sentence (26% compared to 9%). This does not necessarily imply, however, that those who went through the normal court process received more punishment overall than did those who were diverted. First, the proportion of controls receiving a really punitive outcome--a custodial sentence (either in the form of a jail sentence or "time served"--was very small (4%), and it was the same for experimentals. Second, although more controls than experimentals received a short probation sentence or a small fine (11% compared to 3% and 11% compared to 2%, respectively), these differences may partly reflect the higher rate at which experimentals failed to appear for dispositional hearings. Twelve percent of the experimental group (compared to 5% of the controls) did not appear in court; although warrants were issued for their arrest, the warrants had not been executed (and the cases had not been disposed) by the time our data-collection effort closed. Not only does this affect the relative proportions officially sanctioned (sentenced), it raises the possibility that the overall level of punishment received by the experimental group might increase somewhat in the long run. If arrested and charged with a subsequent offense while a warrant for the previous failure to appear remains outstanding, there is an increased likelihood of pretrial detention; there is also the possibility of a harsher outcome on the new charges or on conviction of bail-jumping.

In summary, research evidence suggested that while there were some statistically significant differences between the dispositions of cases diverted to CEP and those normally processed by the courts, these differences were not substantively meaningful in the view of the program or

others in the system.[4] Pretrial diversion to CEP was an alternative to normal court processing, but it was not typically an alternative to full prosecution, criminal conviction, or official sanction and supervision.

Is failure in diversion prejudicial? Two further questions concerning CEP's impact on defendants' court cases remain. The first is whether unsuccessful participation in the diversion program hurts defendants when their cases are returned to court for prosecution. This question is difficult to answer and could not be addressed directly through the experimental design. As expected, successful CEP participants had their cases dismissed; unsuccessful participants, however, received a wider range of dispositions. To address indirectly whether lack of success in the program had an effect on the subsequent disposition of their cases, experimentals who were terminated from the program were compared with the entire control group.

Similar proportions of each group had the charges against them dismissed (41% of the terminated experimentals compared to 45% of the controls). A more detailed analysis of outcomes is difficult, however, because substantially more experimentals absconded (after being terminated from the program) than did controls (29% compared to 5%). Hypothetically, if the same proportion of terminated experimentals had absconded as did controls, and if the remaining terminated experimentals had been convicted of an offense, the proportion of the two groups convicted would not have been significantly different. Thus, even loading our assumptions in the direction of a prejudicial effect, none was found. The way prosecutors handled the cases of unsuccessful diversion clients who were prosecuted appeared to be a function of the characteristics of original cases rather than a result of program failure.

Does pretrial diversion conserve court resources? According to research estimates, CEP diverted less than two percent of the Manhattan and Brooklyn Criminal Court defendants who were eligible under the program's formal selection criteria. Despite CEP's ability to divert a thousand defendants annually, its capacity was too small in relation to the size of the court caseloads for it to have much, if any, system impact. Because the number of appearances scheduled for eligible but nondiverted cases was small (an average of 3.91 for the controls), the reduction of this number through diversion to CEP (to an average of 3.49) had little significance for the overall workload of prosecutors, judges, Legal Aid attorneys or arresting officers. Finally, because relatively few defendants would have served probation or jail sentences in the absence of the program, CEP also did not have any significant impact on the use of resources allocated to these parts of the system. One prosecutor suggested that CEP had to be viewed as "a qualitative phenomenon, not quantitative." By this he meant that, he felt, CEP provided more appropriate and more just outcomes, but only for a small number of cases. Yet, our assessment of the research evidence on CEP's dispositional effects, presented above, tends not to support this perspective on the program.

[4] The distinction between differences that are statistically significant and those that are also substantively meaningful is important, but ultimately one of interpretation--political, programmatic, or normative. In this case, there were statistically significant differences between the dispositional patterns of the two groups, differences that can be attributed to the impact of the diversion program. However, CEP's Board of Trustees and management considered it undesirable for the program to continue to base its work on a diversion model when almost half of those "diverted" would have had their cases dismissed anyway and when those who would be prosecuted and sentenced without CEP's intervention would not--practically speaking--face very serious consequences. Therefore, in 1979, CEP made a major organizational change. While continuing its commitment to criminal justice clients, it abandoned its traditional reliance on pretrial diversion as a method for selecting clients for social services.

C. The Issue of Intervention: Diversion Services' Impact on Life Stability

Diversion to a program of social services has been an integral part of most formal pretrial diversion efforts. In conformity with the standards and goals established for such programs (NAPSA, 1978), CEP's purpose in delivering social services to its particular client population was to help expand their legitimate vocational activities. CEP's clients were faced with substantial structural barriers associated with their race, class and age. More than half were Black and another 40 percent were Hispanic; 90 percent were male, and more than half were 18 or younger. While fewer than 50 percent had completed the 10th grade, only 25 percent were enrolled in school, and most of these were not attending regularly. Only 17 percent were employed at the time of their arrest. Not unexpectedly, almost half of all their families were receiving public assistance. Although economically and socially disadvantaged, and living in a major metropolitan center, these young people were not receiving much help from the formal network of social service providers. In the course of research interviews, researchers inquired about whether respondents were having concrete problems in areas

such as housing, welfare, employment and school, and whether those having such problems were receiving any help with them; many reported problems, but few reported receiving any help from professional sources in dealing with them.

Employment and education. Data from the experiment suggested that CEP's intervention did not influence its clients' vocational activities. During the first six months after their arrest, diverted defendants reported an average of 1.29 months of employment compared to 1.41 for controls (a difference that is not statistically significant). Over time (from six months before their arrest through twelve months after), diverted defendants experienced a significant increase in their salaries and the amount of their employment (including the number of jobs they held, the number of months they worked, and the number of hours they worked). However, this improvement was probably a result of maturation rather than a consequence of their participation in CEP because the controls experienced exactly the same improvements.[5]

There are parallel findings about the impact of CEP's intervention on clients' involvement in school, although, as might be expected, there was no increase over time in enrollment or attendance for either the experimental or control group. In short, CEP's service efforts did not improve clients' immediate vocational or educational status.

Level of general legitimate activity. Because CEP's client population was youthful and characterized by unstable

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5 Despite the overall increase of employment activity in the research population, their work behavior remained very erratic over the period studied. Correlations were computed between employment variables at intake and at six months; all were extremely weak. This is striking because most employment research suggests that knowing whether someone was working at Time 1 (or knowing how much they worked) is generally a good predictor of whether (or how much) they were working at Time 2. This was not the case with this population. Low predictive power on these variables may result partly from measurement error, but the correlations still cast doubt on the appropriateness of using measures such as "unemployed at entry/employed at exit" as indicators of a program's success or failure at changing the behavior of individuals having the characteristics of CEP's clientele. Knowledge that a program has an initial overall impact on the employment status of its clients (e.g., that they are employed on the day of exit from the program) may not tell much about what their situations will be the next day or at some later point.

employment behavior, not all of them were ready or able to secure a job or return to school. Therefore, CEP's service efforts were also directed at helping its clients increase the amount of time they devoted to legitimate activities that might improve their future prospects (for example, searching for jobs, attending school with greater regularity, joining the military, etc.). In this way, CEP sought to help diversion clients demonstrate to prosecutors that they were generally motivated to change their lives; prosecutors and judges did not seem concerned with whether these young people were employed, seeking jobs, or engaged in child care, so long as they were not "hanging out." This was particularly so for those officials who assumed (correctly or not) that if youths were hanging out with other idle people they were likely to become involved in illegal activity.[6]

The research showed that members of both the experimental and the control group did tend to become more generally active during the period studied. However, the amount of this increase was virtually identical for both groups. This implies, again, that maturation rather than program intervention was the major process affecting the lives of these young people.

Other improvements in lifestyle. Although jobs, school, and active pursuit of other legitimate vocational goals were the most tangible indicators of the kind of life changes sought by CEP, there were other lifestyle changes that program staff hoped would occur for at least some clients during their participation. Among these were increased use of local community resources, improved living conditions, reduced drug or alcohol use, and greater participation in group athletic or social activities. The first of these was considered particularly important. Because CEP provided services at a central location, not at the commun-

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6 It may be that many prosecutors and judges do not really expect youthful defendants they divert to social service programs to demonstrate very specific signs of "life stability" (such as a steady job) after a short period of time. (CEP's service period was only four months.) One New York City prosecutor, for example, said that, while they look for something concrete, such as participation in a training program or a job, for a CEP client to be considered successful and have the charges dismissed, "he's got to be doing something beside breathing; most of them are just breathing when they come in here [arraignment]." This supports CEP's notion that their central concern is evidence of increased legitimate life activity, not specifically school enrollment or a job.

ity level, staff felt it was necessary to help clients "hook into" social service networks located in their own neighborhoods.[7]

Changes in lifestyle during the study period appeared quite limited for individuals whether they were diverted or not, and there were no significant differences between the two groups. There was a small, but statistically significant, increase over time in the range of social services used by members of the research population and in the frequency with which they used them. However, there was no evidence that the program had an independent impact on this process. Apparently, as research subjects matured, they recognized more fully their need for services; while this affected their use of services, the effects were uniform across both groups. Self-reported data also indicated a decrease in research subjects' use of alcohol and marijuana, and an increase in social activities involving friends whom they characterized as "straight" rather than involved in illegal activities. However, there was again no evidence that participation in CEP was related to these changes.

In summary, it is likely that CEP's social services played a role in helping some clients deal with the serious and difficult life problems they faced. It is also likely that for selected clients the agency's role may have been profound. Nevertheless, the experimental evidence indicated that, in the absence of the program, an equal number of young people would have found similar help elsewhere; few, however, would have found it through the intervention of formal service organizations. The experience of the control group suggested that, during the study period of almost two years while most were in their late teens, this highly disadvantaged, court-involved population had very limited exposure to any such systematic helping efforts. Unfortunately, they also experienced minimal life change, vocationally or otherwise.

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[7] CEP diverted defendants from four large, socially distinctive counties but gave services at only one central location. Its staff felt that many clients were anxious about working with organizations outside their own communities, so special efforts were made to help them forge relationships with more locally-based services. In addition, since CEP did not have the financial resources to provide directly some of the services needed by its clients (e.g., health or housing), it tried to do so indirectly through referral.

D. The Issue of Rehabilitation: Diversion's Impact on Recidivism

Pretrial diversion has been considered a means to avert the development of criminal careers by diverting youthful defendants away from a deepening association with deviant or criminogenic influences found within the criminal justice system and by facilitating their access to legitimate vocational experiences. The effectiveness of this strategy for reducing recidivism is particularly hard to establish (as early researchers pointed out) when diversion programs do not (or cannot) select clients who are likely to recidivate. As Mullen commented in 1974,

> It is clear that the pretrial intervention concept poses a fundamental dilemma acutely reflected in the evaluation literature. The basic conflict is between the delivery of services to reduce recidivism (presumably among those with enough likelihood of recidivism to make such reduction meaningful) and the provision of a humane alternative for those not likely to recidivate. In practice, the former may become unintentionally or quite purposefully subordinate to the latter as defendants must pass a number of screening tests prior to admission: In most cases, the logic of such screening is either implicitly or explicitly the selection of minimum risk defendants (pp.29-30).

CEP's clients--inner-city, minority males who were neither employed nor in school--were part of a population at relatively high risk of rearrest. A substantial minority (40%) had been arrested previously, although the majority were first offenders. While many did not get rearrested within the 23 months of research follow-up, there were sufficient numbers who did (37 percent of the total research popula-

tion) to assess CEP's impact on subsequent criminal behavior.[8]

Within program recidivism. Typically, recidivism rates for diverted and comparison groups are compared for the period during which the former are in the diversion program. The logic behind such comparisons is as follows: first, those who were diverted receive supervision during this period, while members of the comparison group do not; second, if the program services are rehabilitative, the in-program rate for those who were diverted should be lower than that for the comparison group.

Recidivism data from the CEP experiment were compared for all experimentals (including those who were terminated from the program) and for all controls during the four months after their assignment to these groups. There were no statistically significant differences between experimentals and controls in either their rate of rearrest or the number of their arrests. (19.8% of the experimental group was rearrested, compared to 16.5% of the controls; the mean number of rearrests for experimentals was .261 and it was .213 for controls.) There was also no significant difference between experimentals and controls on the severity of rearrest charges, or on their severity relative to intake charges.

Twelve month recidivism. As with the short term effects, the experimental data showed no significant differences in the proportion of experimentals and controls arrested during the twelve months subsequent to intake, although the rates increased substantially for both groups (to 30% for experimentals and to 33% for controls). Furthermore, there was no significant difference in the mean number of

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[8] Although comparisons are difficult because different methods of data collection and different definitions of groups were used, CEP appears to have taken defendants at somewhat greater risk of rearrest than most of the defendants who participated in the other diversion programs assessed by Mullen in 1974. Looking only at those who did not successfully complete the programs (those presumably not affected by diversion), we estimated standard four month rearrest rates from the Mullen data (roughly equivalent to the first four months after arrest and diversion). They were: Atlanta, 13.1%; Baltimore, 16.1%; Boston, 20.3%; San Jose, Calif., 23.6%; Santa Rosa, Calif., 10.9%; Haywood, Calif., 39.6%; Cleveland, 13.2%; Minneapolis, 29.5%; and San Antonio, 2.6%. CEP's actual four-month rearrest rate for unsuccessful clients in 1977 was 31.7%, which is higher than those for all programs but Haywood.

their arrests for this period (.517 for experimentals and .506 for controls). They were arrested on charges of similar severity, and there was no significant difference between them in the severity of rearrest charges relative to intake charges. Finally, there were no differences between the two groups in subsequent convictions. Seventy-three percent of the population had no subsequent convictions; three percent were convicted on violations, 11 percent on misdemeanors, seven percent on felonies. Six percent had open cases at the time of the final data collection.

Longer-term recidivism. Because of time constraints on the evaluation, data could not be collected on all research subjects for equal follow-up periods longer than twelve months. Since the final recidivism data were collected on all subjects during the 23rd calendar month after the beginning of the research intake period, they cover different periods of risk for each defendant in the research population (i.e., a full 21 months for those taken into the research during the first month of intake, and a full 12 months for those taken in during the last month). However, because the experimental and control groups were selected concurrently, the aggregate data reflect similar periods at risk for each group taken as a whole.

The purpose of the analysis was to see if the twelve month rearrest rates continued to rise, and to identify differences, if any, emerging between experimentals and controls over the longer run. The data showed that the proportion of each group re-arrested rose only slightly over the twelve month figure (to 35% for experimentals and to 39% for controls), and that the difference was not statistically significant.

Thus, despite our finding that diverted defendants were slightly less likely to be rearrested than were those not diverted, the difference cannot be attributed to the program. It is not just that the difference is small; the statistical test applied to the data indicates that the difference between the groups is a result of chance or random variation. Reluctantly, one is led by the experimental data to conclude that pretrial diversion to CEP, and the services provided in that context, did not have the hoped-for impact.

V. HOW CAN THE CEP EVALUATION FINDINGS BE EXPLAINED?

A. Introduction

At the simplest level, pretrial diversion was built upon the assumption that if free social services were made available to defendants, as an alternative to conventional court processing, official decision-makers would be encouraged to treat certain of them with greater leniency, and in a less stigmatizing fashion. An additional assumption--that the services delivered to needy defendants would improve their prospects and avert their criminality--made the launching of CEP in 1967, and the subsequent national pretrial diversion "movement," irresistable. The 1977 experimental data suggest that the assumptions that were so widely accepted for so long were wrong, and that the objectives were not being achieved to any meaningful degree.

Why not? As difficult as it was to conduct experimental research in a court setting, it was even more difficult to explore systematically the processes that account for the effects measured. Nevertheless, when the experimental data are subjected to further analysis and are combined with data from collateral research efforts (including unstructured interviews and observations in court), several explanations emerge. In seeking to provide some explanatory insight into our experimental findings, we hope to assist readers apply the results of this single site study to an assessment of other programs and other jurisdictions.

B. The Limited Impact on Case Disposition

Summary. CEP did not have a substantial impact on dispositions in 1977 because dismissal rates, in cases of the kind diverted, were already high in the New York City Criminal (lower) Courts. Dismissal disposed of about 40 percent of all cases reaching disposition in these courts and about 36 percent of those cases commenced by felony arrests. Not only was the chance of dismissal high, but there was frequent use of other dispositions that--as a formal matter--are something less than full criminal conviction.[1] Many of the latter dispositional options trigger statutory requirements that all official records be sealed, as they are in cases dismissed, to protect from future harm persons who are not convicted of crimes.[2] In such a context, where most dispositions carry some of the characteristics of diversion, it is obviously rather difficult for formal pretrial diversion programs to reduce the degree of punishment and stigma in the dispositional process.

As important as these contextual factors are in explaining CEP's inability to divert defendants who would otherwise have been sanctioned, further explanation can be found in the way the decision was reached to exempt some cases from prosecution so that they could be diverted. Prosecutors controlled the flow of cases into the diversion program. It is not surprising, given the prosecutors' structurally defined role, that they perceived it to be in their interests to use their own resources in cases where conviction is relatively likely and sanctioning the conduct or incapacitating the offender is relatively important. They tended to exercise their discretion by diverting to CEP's supervision other defendants--those who would have been difficult or impossible to prosecute, and defendants who would have received insignificant levels of supervision if convicted. Some defendants--generally those already knowledgeable about how the court system operates--were able to prevent this by withholding their agreement to diversion. For less experienced defendants, however, diversion seemed a "break" and their defense attorneys did not (or could not) show them that the benefit of diversion would be illusory under the circumstances. It seemed that defense attorneys, responding to their own structurally defined interests, were glad to see clients diverted because diversion would maximize the likelihood of a dismissal with the least expenditure of scarce legal defense resources. The net effect of these decisions by and attitudes of prosecutors, defense lawyers and defendants was that pretrial diversion to CEP was often an alternative to dismissal or to a lenient and

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[1] Conviction may occur after the charges are reduced to "violations" (such as disorderly conduct) which are not criminal offenses in the same way traffic violations are not; or the State's Youthful Offender statute may be applied, by which prosecutors may substitute a non-criminal adjudication for a conviction on a criminal offense if a defendant is 18 years old or younger.

[2] By statute, all official records of the arrest and criminal proceedings are required to be automatically sealed and the fingerprints and photographs are to be returned to the defendant if criminal proceedings are terminated in favor of the defendant (including acquittals, dismissals and, since 1977, convictions for violations). For cases treated under the Youthful Offender statute, official records are to be sealed from public access but may be used for future criminal justice purposes. Defendants and their attorneys are not required by the law to take any action to accomplish sealing; the statutes mandate that the court order the sealing.

unsupervised disposition, rather than an alternative to criminal conviction with its potentially punitive sanctions, burdens of supervision, and lasting stigma.

Constraints on impact arising from system context. Diversion literature tends to evoke an image of criminal courts that prosecute and convict most cases brought before them, even the less serious ones. However, over the last ten years or so, empirical data have become regularly available that undermine this picture. In New York City, as well as in other urban courts around the country, a substantial proportion (usually about half) of arrests--both misdemeanors and felonies--are voided, dismissed or rendered a roughly equivalent court disposition. This is not a recent phenomenon. Official statistics on misdemeanor and felony cases reaching disposition in the New York City Criminal Courts between 1963 and 1978 indicate a general upward trend in dismissals, the trend is gradual and started about 1966 --two years before the introduction of CEP.[3] Approximately three out of ten Criminal Court dispositions were dismissals in the 1963-1965 period; this rose to four out of ten in 1966 and remained at that level until 1970 and 1971 when it peaked at just under five out of ten; the dismissal rate dropped back to just over four out of ten in 1972 and remained at that level through 1978.

This pattern suggests that CEP (and other formal diversion programs appearing in the city courts during the early 1970s) were part of a general systemic increase in the proportion of cases being dismissed which was already underway. The factors accounting for this trend are quite complex, not well understood, and cannot be addressed here. However, while the increase in dismissals was obviously not caused by the introduction of formal pretrial programs, it may have been augmented by their availability. But official reports of aggregate data do not permit us to be sure about what, if any, role pretrial diversion had in this increase in the dismissal rate.[4]

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[3] See State of New York, 1965-1978; and Office of Court Administration, New York City Courts, 1979.

[4] Since most cases are dismissed because prosecutors feel the benefits of conviction and sentence are outweighed by the difficulties of securing a conviction (e.g., there are evidentiary problems, witnesses refuse to appear, and so forth), it is particularly difficult to be sure what role diversion programs played in the overall increase in the dismissal rate (see Vera, 1981).

In the light of these historical data, it does seem that many of the defendants diverted to CEP's services and supervision (even at its inception) would not have been convicted. Even in CEP's early days, New York City prosecutors appear to have used the program either as a somewhat coercive way to provide defendants with services, or as a way to maintain some control over those they did not want (or would not be able) to prosecute.[5] The way New York City prosecutors have used other formal diversion options lends support to this conclusion. For example, in 1971, the State Legislature introduced as a formal disposition an Adjournment in Contemplation of Dismissal (ACD) which might be called diversion without services (Section 170.55 of the Criminal Procedure Law). Similar to the Massachusetts "case continued without a finding," the ACD permits the prosecutor to adjourn a case without setting a date for its return to court; if the prosecutor does not restore the case to the calendar, it is dismissed automatically after six months. In the interim, the prosecutor is, at least in principle, free to resume prosecution if the defendant's conduct so warrants; this threat of renewed prosecution is perceived to be (and may in fact be) a way of maintaining at least some degree of control over the case and the defendant without having to prosecute, adjudicate, and sentence. Since the proportion of disposed cases dismissed in New York City Criminal Courts did not increase after passage of this statute, and since, by 1977, the ACD was the single most frequent form of dismissal (constituting nearly 43% of all dismissals), it appears that prosecutors used pretrial diversion via the ACD in cases which would previously have been dismissed outright.

This somewhat imprecise analysis of system data suggests that, in New York City at least, pretrial diversion's power to change the dispositional pattern was constrained by an already high and increasing rate of dismissal in the caseload of the lower courts. Generalizing this conclusion to other jurisdictions should be done only with caution but New York City is by no means the only jurisdiction in which many misdemeanor and felony cases are (and for a long time have been) dismissed. Official New York State data for this same period suggest that lower courts in other cities in the state dismissed an even greater proportion of cases than did New York City courts, and that the proportion

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[5] Although tentative because it lacked a true controlled design, Zimring's evaluation of CEP in 1971 suggested that, four years after its inception, perhaps as many as half the diverted cases would have been dismissed anyway (Zimring, 1974).

of cases dismissed in these jurisdictions also increased steadily during the 1960s and 1970s. Similar data for non-urban courts in New York State (available only for the 1963-1970 period) suggest that about the same (and similarly rising) proportion of cases were dismissed there. While we have not fully explored the data for other states, virtually all the well-known studies of case disposition published between the mid-1960s and the late 1970s (most of which focus on urban courts and felony cases) show similar and sometimes higher levels of dismissal or its equivalent.[6]

These data do not prove that pretrial diversion has had as little impact on dispositional patterns in other jurisdictions as it seems to have had in New York City. However, the findings about CEP's impact on dispositions cannot be explained away as a product of factors unique to this jurisdiction or by unusually lax or lenient dispositional habits.

Constraints on impact arising from selection process. Not all cases are dismissed in the normal course--indeed, most are not. Therefore, we must explore more than general dispositional patterns if we are to understand why CEP--despite its efforts to affect dispositions--had so little impact. In order to understand who gets diverted in any given jurisdiction, it is necessary to discover what influences the exercise of prosecutorial discretion and the agreement of the defense. It has been assumed by many who operate pretrial diversion programs and by many who write about them that opportunities for coercion and overreaching in the selection process will be limited if the diversion decision occurs after charges are drawn by prosecutors and after defendants have consulted with an attorney. Since, without exception, these conditions were met in cases diverted to CEP in New York City, and since significant overreaching still occurred, we should explore the reasons why.

Data collected in the CEP evaluation offer several insights into how the selection process operated. First, a collateral study of cases rejected for diversion revealed that the primary reason prosecuting attorneys (ADAs) refused to divert otherwise eligible felony cases was that they con-

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6 See, for example, Pope (1975); Eisenstein and Jacob (1977); Heumann (1977); Farrell (1978); Hamilton (1979); McDonald (1979); and Feeley (1979). As Nimmer (1978) has pointed out, extensive screening of arrests takes place in most systems, but cases are not always "screened out" at the same points in the process; however, it often takes place (as in New York City) after charges are drawn.

sidered them "too serious" (rather than "too minor"). The data also suggest that by "too serious" prosecutors meant "prosecutable" (as violations or misdemeanors), not "indictable" as felonies. While six out of ten of the felony cases prosecutors rejected for diversion ended by conviction in the lower court, fewer than two out of ten were deemed serious enough to be sent to the higher court for felony prosecution. Prosecutors, therefore, actively blocked diversion of some of the more "convictable" cases while acquiescing in diversion of the less "convictable" ones. A senior prosecutor told researchers that, of the cases ADA's under his supervision diverted to CEP, probably at least 50 percent fell into two categories: "those where there is a technical problem with the case...and those that would have been ACDd without the program but where the ADA felt the defendant needed the services." This observation was later confirmed by data from the experimental research showing dismissals in almost 50 percent of the control group cases.

Second, prosecutors reported as much interest in placing diverted defendants under supervision as they did in obtaining services for them. As one put it, "ADAs don't like the ACD because it does not tell either them or the defendant where the defendant will be over the next six months; CEP did." Therefore, since "only the ADA can offer the ACD ...as long as there is [a possibility of diversion to] CEP, the ADA won't accept an ACD." Supervision was sometimes an even more central issue for prosecutors than was conviction. Some reported that the diversion program offered a more attractive form of supervision than did traditional post-conviction options. The prosecutor just quoted, for example, went on to say that "ADAs don't like [probation] much either, because if they allow themselves to think about it, they realize probation is giving these defendants no supervision at all; CEP did."

The likelihood that prosecutors would divert cases when they presented evidentiary problems, or when full prosecution was otherwise unlikely, is precisely the problem early critics of diversion such as Freed (1974) and Morris (1974) pointed to when cautioning against the use of diversion as a "preadjudication sentence." However, exercise of prosecutorial discretion in ways that divert the unprosecutable case and place control over the unconvictable defendant can occur routinely only when defendants do not fully understand the real dispositional options open to them. Defendants having the advice of counsel (as in New York) would be expected to agree to diversion when their cases are unprosecutable only if defense attorneys tend to be ignorant of the facts of the cases, are inexperienced in negotiating dispositions in the court, or (more likely) tacitly cooperate

with the prosecutor because they believe it is in their interests to do so.

Diverted defendants' lack of knowledge about the dispositions they are actually facing in the court system is suggested by CEP research data. Defendants who refused diversion to CEP when it was offered (taking their chances instead on the normal court process) were typically older and had more prior experience with the court than were defendants who agreed to diversion. Four out of ten defendants who agreed to participate in CEP believed at the time that they would receive a jail sentence if their cases were prosecuted; an additional one out of ten expected probation. Most of them were wrong. Only one out of four expected a dismissal. Yet, as the control group data show, almost one out of two would have had the charges dismissed without diversion, and the likelihood of jail was minuscule.

Why didn't their attorneys correct these defendants' misperceptions? Recall that significantly more court appearances were scheduled in the cases of defendants assigned to the control group than in cases of diverted defendants and that, although controls received fewer outright dismissals, they were rarely sanctioned heavily. Put somewhat more cynically than is probably warranted, defense attorneys had little incentive to prolong negotiations in an effort to obtain lenient outcomes (even dismissals) when an immediate diversion to CEP would guarantee the dismissal if the defendant stayed with the program. Obtaining a dismissal is clearly in the interests of a defendant; it may be less obvious why it is in the independent interests of a defense counsel, and why he might have an independent interest in obtaining it through the pretrial diversion mechanism. If dismissal is accomplished with minimal negotiation, it enables him to limit expenditure of scarce professional resources--both organizational and interpersonal--while at the same time helping to demonstrate that he and, in the case of Legal Aid, his organization, provides clients with competent, aggressive legal advocacy. CEP assured dismissal with little or no negotiation. When a dismissal did not result, it was because the defendant failed to complete the CEP program; in such cases, the onus for a failure to win dismissal would fall upon the defendant rather than upon the defense counsel. For cases in which defense counsel thought dismissal was likely, diversion assured it without effort or risk on his part (though it did require effort from defendants). For cases in which defense attorneys were less certain of dismissal, pretrial diversion maximized the likelihood of this most-desired disposition--again without requiring much expenditure of defense counsel resources to negotiate or try the case. In neither situation, however, was it

clear that diverted defendants fully understood the options, or their attorneys' strategies and independent interests. For defense attorneys, particularly the overburdened Legal Aid staff, diversion was a useful tool to achieve what their professional and organizational roles demanded: dismissals expeditiously obtained.[7]

It should not be ignored that many defense attorneys also believed that their clients needed social services and needed them desperately. Defense attorneys often said pretrial diversion was more helpful to their clients than dismissal or other lenient dispositions which did not involve any help or supervision:

> [Diversion] is a good thing. If you just put someone back on the street, he really doesn't know what has happened. These programs help them understand the court process, what has happened, and to recognize they would get hurt by getting arrested [again]. People learn to recognize that they have done something that is defined as wrong and that the consequences could be serious.

Why wasn't CEP able to assure that only defendants facing prosecution and punishment were diverted? Because it had no official standing in the case through which to influence decisions and because prosecutors fully controlled the selection process. If CEP wanted to continue to obtain clients through the pretrial diversion mechanism, it needed the good will of prosecutors; prosecutors, however, did not

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[7] A similar observation might be made about the role of judges. Although in an official position to exert influence, they rarely did. Judges would occasionally block the diversion of a defendant obviously not likely to be prosecuted but only if they could get the case dismissed immediately. Judges (particularly those in arraignment) were anxious to have cases disposed and rarely interfered if a disposition (such as diversion) had been agreed upon by the other parties. The organizational imperative they faced daily was to clear their calendars.

particularly need CEP or its good will.[8] Equally important was the bind in which CEP's court screeners found themselves because of the duality of CEP's goals: the program was to deliver services to needy, disadvantaged clients, but it was also to affect their case outcomes in a positive way. Theoretically, the two goals were compatible: service delivery was assumed to be an effective means of influencing dispositional decision-making, and the prospect of favorable dispositions was seen to be a means of attracting to CEP defendants needing help. In reality, the two goals were not necessarily so neatly connected. CEP's screeners saw many defendants who had enormous social service needs, but who might or might not need help getting the charges against them dismissed. In selecting clients, CEP's screeners tended to take the position "when in doubt, divert," since these defendants were not likely to get help or services anywhere else.[9]

The diversion literature generally assumes that diversion will become increasingly just and fair as it becomes more formalized. The NAPSA Standards and Goals expressly argue that if diversion takes place after the charges are drawn, and if the defendant is represented by counsel, the potential for "coercion and overreaching" will be limited. Our examination of diversion in New York City is not reassuring about the power of formal protections to reduce "overreaching." Even with the advice of counsel, defendants' agreement to enter the diversion program seems to have been based upon inadequate understanding of the dispositional process and, although diversion was formalized, prosecutors retained virtual total control over who was diverted.

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[8] Despite its lack of official involvement and control, CEP did attempt to affect prosecutorial decisions indirectly. Sometimes screeners vigorously negotiated with ADAs to secure the diversion of a particularly serious case; in this way, they hoped to encourage prosecutors in this practice. Other times, the agency changed its eligibility criteria in attempts to exclude categories of cases unlikely to be treated punitively. Its move to a felony-only policy in 1977 was such an attempt.

[9] And, in fact, as the research data indicated, CEP's client population generally was not receiving help from other service-providing agencies.

C. The Lack of Impact on Life Stability

Summary. The research showed that CEP's efforts to change the life circumstances and behavior of diverted defendants by providing social services had no measurable impact.[10] This is not a demonstration that such impacts are impossible to achieve. (Although there is, of course, much literature suggesting that social services programs generally have substantial difficulty achieving goals of behavior change.) But, the central question emerging from the CEP research data was whether the delivery of social services within the framework of pretrial diversion could be effective with the CEP clientele. Some of the research findings suggest a negative answer.

More than half those diverted to CEP were considered "successful" participants: that is, they attended regularly and their cases were dismissed when returned to court with a program recommendation for dismissal. Research data, however, revealed that even for this group--those who participated in the agency's social services most fully--there was no evidence of program impact. Why not?

Four sets of explanatory factors are suggested by the research data. First, personal interviews indicated that these active participants were particularly focused on getting the pending charges dismissed; these interview data raise the question of whether, within the context of deferred prosecution, CEP's clients were appropriately motivated to make real use of the program's social services to achieve other personal ends. Second, there is evidence

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[10] A methodological comment is appropriate. Despite the overall power of the experimental design, the inability of the research to find program impact on vocational variables may have resulted partially from the difficulties involved in measuring these activities for this particular population. The variation in behavior found within each group (that is, within the experimental group and within the control group) was quite large. This meant that very large differences would have to exist between the groups if the measures used were to detect impact at statistically significant levels. Yet the findings of other research on behavioral change suggest one would expect the impact of a program such as CEP to be relatively small. In addition, because many of the research population were not employed at all during the research period, the sample size was reduced for some analyses; this further limits the power of the statistical tests. Consequently, it would have been difficult for this research to detect the very small effects that might have resulted from clients' participation in the program.

that, in general, CEP's clients were suspicious of formal helping organizations, had little experience with them, and typically sought out family and friends to solve personal and employment problems, rather than relying on a wider network of community resources. Third, research and policy literatures have consistently identified CEP's target population as an extremely difficult one with which to work toward behavior change; for minority inner-city youth, there appear to be substantial barriers to successful intervention in their vocational status ranging from labor market conditions to the inertia and lack of goal-orientation of youth. Finally, CEP had several organizational problems that may have limited its capacity to deliver services effectively; some of these problems were structural and arose from the agency's reliance on pretrial diversion as the principal mechanism for intake.

Mismatch between participants' goals and goals of service delivery. Most of those who agreed to participate in CEP reported that the major reason for their decision was their desire to have the charges against them dismissed. We have already noted the fear of many that normal court processing would result in a jail or probation sentence. It is interesting that at intake the CEP counselors were more likely to have identified "court case related needs" as a focus of potential clients' concerns for those who ultimately completed the CEP program, than for those who dropped out. This suggests that those who received the most program service were also those most focused on court outcomes and most anxious that their participation help them avoid conviction and punishment. When asked what they thought they had to do to obtain a dismissal of the charges, they were more likely than program dropouts to say simply that they

had to "attend."[11] In addition, they were less likely than dropouts to have had experience of the dispositional process through a prior arrest, and were more likely to have had prior employment and higher earnings. Thus, they may have had an exaggerated fear of the court consequences of dropping out and they may have had a better understanding of the importance to their vocational prospects of avoiding the anticipated conviction and punishment. As a group, these program completers exhibit the attitude--respect for or fear of authority--that one would expect from "boy scouts and virgins" (as the typical diversion clients were described by Morris in 1975).[12]

Participants' mistrust of formal social service programs. CEP clients' lack of experience with, and suspicious attitudes toward, formal programs of social service may also have limited the impact of CEP's program on their lives. Counselors typically described their young clients as angry, wary of helping agencies (particularly those connected with the courts), and afraid of organizations located outside

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[11] Among experimentals, attendance at CEP had a strong negative relationship to rearrest. "Successful" CEP participants were rearrested significantly less often than were CEP terminations (24% compared to 49%). Similarly, among the control group, defendants who received favorable dispositions on the intake case were less likely to be rearrested than were those with unfavorable dispositions. These and related data imply that the "boy scouts" in both the experimental and control groups were most likely to remain boy scouts, and the "bad guys" stayed bad. The control group members who received favorable dispositions, and those members of the experimental group who attended CEP regularly were the persons least likely to recidivate, even without services. Since those most likely to be successful in CEP were those who attended most often and had the fewest number of prior arrests, we can conclude that diverted defendants who were most likely to be rearrested (and to be arrested more often), and who were, therefore, most in need of rehabilitation, were the ones least likely to attend CEP or receive its services.

[12] It is important to remember that even those youths with relatively more prior work experience and higher salaries had very little of either. As indicated above, they also had a lower rate of rearrest then those who failed to complete the program, a fact which cannot be attributed to their participation in CEP. Both factors, therefore, suggest the "boy scout" interpretation of the data rather than an "economic stake" explanation.

their narrowly defined but "safe" neighborhoods. CEP was neither a "community based" service organization (in the sense that it was not an organization of community resources), nor were its services located in its clients' own neighborhoods. This encouraged CEP staff to believe that vigorous outreach was needed to help their clients become (and stay) involved in CEP's services,[13] and that referral to service agencies located closer to their homes was essential. Of course, to the extent that CEP sought direct services for its clients through referral to other agencies, it lost some control over the quantity and quality of the services delivered.[14]

While CEP's active clients often would not go to the community resources to which they were referred by CEP counselors, the research data also indicated that virtually none of CEP's target population (experimentals and controls alike) had had recent contact with such helping organizations or programs. In addition, after reporting to researchers about the specific problems they were experiencing (e.g., employment, school, health, housing), few indicated they had sought or been given any problem-solving help from social service workers (including employees of the City's Department of Social Services, from which half their families were receiving public assistance). As might be expected, most relied on friends and family for help; for example, eight out ten of those who had held a job recently had found it through such informal sources.

Age-related barriers to effective service delivery. While it is often claimed that systematic intervention may be most useful when individuals are still young, the late adolescent period is a demonstrably difficult time for influencing vocational behavior. Not the least of the barriers to be confronted is the very high structural unemployment among youth generally and particularly among urban minority youth. Youth unemployment has been considered a major, growing social problem at least since the early

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13 CEP's outreach activities were frustrated by the geographic dispersion and residential instability of its clients, characteristics that also affected the success researchers had in reaching the research population for interviews (see Appendix B).

14 Referring clients out for many services was a practice also encouraged by the level of CEP's funding (too low for direct provision of all services) and by the source of those funds (the City's Title XX "Information and Referral" budget).

1960s. In fact, various provisions of the MDTA (under which the early diversion programs, including CEP, were funded) grew out of this concern. In considering whether CEP could realistically have had any impact on its clients' involvement (or lack of involvement) in the world of work, the extent to which that world is foreign to them must be taken into account. Not only were CEP's clients unskilled, undereducated youth with very little prior experience of work or training, but-- before, after and during the CEP evaluation--the unemployment rate in New York City for the program's target population was in excess of 40 percent and relatively few job training programs were available to them.

Other factors associated with its clients' age may have inhibited CEP's service impact. Previous research on similar populations has shown, as do the CEP data, that the agency's clients were uncertain about their vocational goals and unrealistic about their employment opportunities. Both brought them into disagreement with the CEP counselors about what services the agency ought to provide. For example, while counselors tended to believe many clients should pursue "pre-vocational" goals (including improving their basic educational skills and obtaining credentials such as a high school equivalency diploma), CEP's participants tended to view their previous educational pursuits as unrewarding and were reluctant to return to school (even in non-traditional programs). Clients who wanted immediate employment and whose counselors agreed with this objective tended to be dissatisfied with what the agency was able to provide --namely, low-paying menial jobs.[15]

The research reveals the CEP population to be characterized by extremely erratic work patterns. While employment studies usually find that the number of months a person has worked during one period is a good predictor of whether (and how much) that person worked during a later period, this was not the case for CEP's clients. The unpredictable work pattern is partly a function of the relative youth of the group studied; however, while their involvement in the labor market improved somewhat over the 18 to 24 months covered by the research, it did not improve much, and while older subjects were more likely to be employed for longer periods and at higher salary levels than were younger

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15 Although their employment expectations were unrealistic, these youths' view of available jobs as poor in quality, and their belief that more education would net them few economic rewards, are rooted in reality. This is a powerful dilemma that, unfortunately, is not typically resolved simply by growing older.

subjects, the differences were surprisingly small. The most reasonable interpretation of these findings is that it may be inappropriate to expect that an intervention providing only modest levels of service over a relatively short time will produce a significant improvement in labor force participation with a population already severely and multiply disadvantaged.

Barriers to impact arising from CEP's structure. In seeking to explain the lack of impact of the program's social services, we cannot ignore problems in the agency. Several difficulties that could affect the efficacy of service delivery surfaced from the research staff's observation of program operations and from insights offered by CEP's own staff.

First, CEP had enormous difficulty with job development. Both the literature on manpower programs for youth and CEP's own experiences suggest that job development is an extremely important and complex aspect of any effort to improve the employment circumstances of disadvantaged youth. Although CEP struggled to make a success of job development for its clients, and although it refused to abandon these efforts even after many other diversion programs had done so, CEP did not believe it had been particularly successful in this area. CEP staff attributed this to three factors: (i) the intrinsic difficulties posed by the youth and lack of experience of its clients, the declining job market, and increasingly hostile public attitudes toward youthful offenders; (ii) the fiscal constraints limiting the size and quality of CEP's job development staff; and (iii) the difficulty the agency experienced in achieving effective coordination between the work of job development personnel and counseling staff.

Second, CEP's efforts may have been diluted by staff-management problems that were rooted in its history. From the beginning, CEP was committed, for philosophical and practical reasons, to hiring paraprofessional personnel, including ex-offenders. This commitment was rooted in part in a recognition that these individuals themselves needed satisfying employment opportunities, and in part in the agency's experience that such staff increased the program's ability to reach out to and to help its young clients. At the same time, however, CEP management believed that the different types of counselling and services it sought to provide could not all be effectively delivered by any single type of service deliverer, whether professional or paraprofessional. Consequently, it was characteristic of CEP that each client would be served by a number of staff, each having accumulated particular skills and specialized information, and each trying to establish a personal relationship with the client during the short service period. Most of the staff felt this situation confused clients and limited their ability to make full use of the services and relationships that CEP offered.

Finally, CEP's attempts to deal with its clients' problems faced constraints that stemmed from its reliance on pretrial diversion as the mechanism for selecting those whom it would help.[16] For example, the program's four month period of client participation was felt by many of CEP's staff to be too short for their deeply disadvantaged youthful clients who needed more extensive and intensive help than could be provided in that time; but the agency did not feel that requiring a longer service period or a more intrusive level of participation could be justified when clients were selected under conditions of deferred prosecution. As the research demonstrated, few diversion clients would have received much, if any, supervision from the criminal justice system in the absence of the program. CEP adhered to the widely accepted standard for pretrial diversion programs that the amount of supervision entailed should bear a direct relationship to the alleged offense.[17] This problem was compounded because, as suggested above, clients who come to a service-based program through deferred prosecution tend to be drawn to it by the prospect of a favorable case outcome rather than by the prospect of benefit from the services offered.

D. The lack of impact on recidivism

If we return to the assumptions upon which the model for pretrial diversion was built, the explanation of CEP's failure to reduce its clients' recidivism seems simple. Because the agency's efforts had little meaningful impact on case disposition, because CEP could not reduce by much the stigma flowing from an arrest and prosecution, and because

16 There were also constraints stemming from CEP's sources of funding. While these certainly affected its operations as a social service agency, they did not directly affect it as a diversion program. Therefore, we have chosen to concentrate on how its diversion operations affected service delivery.

17 It is also likely that if the period of program participation required for diversion was too far out of line with the possible consequences of prosecution, the program would not have attracted participants.

it was unable to effect relative improvements in clients' vocational and educational status, there is no reason why recidivism patterns should have been affected.[18]

CEP's inability to achieve a substantial impact on those variables that are specified, in the pretrial diversion model, as related to recidivism is, perhaps, explanation enough of the lack of impact on its clients' rearrests. But that model is now ten years old and much thinking about recidivism, some of it quite sophisticated, has gone on in between. Therefore, it is possible that the model itself may not reflect the etiology of crime.[19] In this context, the inability of this program to reduce recidivism in the lives of those it diverted does not mean it is impossible to do so, but it does suggest that it is not possible to affect the recidivism of this population in this way.

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[18] Once again, there is a methodological explanation of the research finding that CEP had no impact on recidivism which should also be considered. While very sensitive statistical tests were applied to the data, whether they detected statistically significant differences between the proportion of experimentals and controls who recidivated depended on the size of our sample and magnitude of the differences expected. Since from both previous research and from program experience, we expected the program's impact on recidivism to be relatively small, the CEP research sample of 666 provided an 80 percent chance that we would detect an actual program reduction of recidivism from, say, 30 percent to 21 percent; it provided a 90 percent chance that we would detect a reduction from, say, 30 percent to 20 percent. However, it is possible that CEP produced an impact on recidivism that was <u>smaller</u> than these examples; if this was in fact the case, our research could not have identified it at a statistically significant level without a much larger sample.

[19] We did attempt to see if we could find in the research data on this population something that would help us distinguish those who recidivated from those who did not, since program participation did not. Perhaps it is not surprising, but it is disappointing, that what distinguished the groups in our analyses were variables that do not suggest how to improve program attempts to affect recidivism (e.g., research subject's age, gender, prior conviction record, who they lived with during early adolescence, and that family's welfare status). Of course, this research project was not designed to fully explore causal models of recidivism.

VI. <u>CONCLUDING OBSERVATIONS</u>

The study we have just summarized assesses the impact of one of the country's most prominent efforts at adult pretrial diversion. At the time of the research, the Court Employment Project had carried out pretrial diversion in New York City's Criminal Courts for ten years, operating at full client capacity and under local funding. It's longevity and reputation provided powerful evidence of CEP's success at implementing and institutionalizing the pretrial diversion reform, but did not directly answer the question whether the program succeeded in changing the lives of its diverted clients or the dispositional decisions of the courts. Vera's experimental research was designed to examine these issues and, by doing so, to contribute otherwise unavailable empirical material to the lively, on-going national debate on diversion as a reform strategy.

Though disappointing, the experimental findings are not entirely surprising. Closely examining the body of literature on pretrial diversion that had emerged over the preceding decade, one finds a persistent cautionary note underlying a general tone of enthusiasm about diversion's potential for improving the way courts process youthful defendants and for helping them improve their life situations. Primarily, this note took the form of consistent (if often grudging) acknowledgement that systematic research had not produced solid evidence of program impact. In addition, uncertainty was occasionally expressed about whether diversion programs could ever operate, within the highly discretionary decision-making processes of the court, so as to routinely divert defendants who were facing prosecution and punishment and who were also willing and able to utilize short-term social services directed toward behavioral change.

The findings of Vera's experimental research on CEP's impact (discussed in Chapter II above) provide substantial evidence that caution was appropriate: under the rigorous conditions of random assignment, no meaningful differences in program effect were identified between those who were diverted and those who went through the normal court process. Possible explanations offered for the program's lack of impact (Chapter III above) tend to support the notion that pretrial diversion programs find it extremely difficult, and in some cases impossible, to establish routine operating procedures that assure diversion is used by court actors and by clients in ways intended by the programs.

What might we learn from these research findings? Certainly we cannot conclude that the early pretrial diversion movement was insufficiently thoughtful about how to achieve its goals; nor can we conclude that expending social service resources on helping this population is fruitless. Such facile conclusions would ignore the fact that much of the pretrial program planning of the 1960s and 1970s occurred in the absence of detailed knowledge about the complex court and societal processes within which intervention was attempted, and that much of what was believed at the time provided an inadequate basis for effective policy-making and planning. For example, while it was known in the 1960s (and acknowledged in the President's Commission Report) that a large proportion of cases in lower courts throughout the United States were routinely dismissed (or disposed in an equivalent way) and that discretion was a major element in the decision-making process, our empirical knowledge of exactly how courts operate, how case decisions are made, and how discretion operates in specific instances was limited and imprecise. In that sense, pretrial diversion programs set up their court operations and attempted to affect case outcomes in the absence of sufficiently detailed knowledge about courts as social systems.

Similarly, while there was considerable discussion in the literature about the role of official labelling in the development of deviant behavior, and about the appropriateness of various types of rehabilitative strategies for youth (especially employment-related strategies), rigorous empirical investigations were few. What was available showed mixed results and provided little concrete guidance for programs that were attempting to design strategies for affecting behavioral changes in clients in a variety of social and economic circumstances. Unfortunately, while our knowledge has developed since the early days of pretrial diversion, the "state of the art" is still uneven and all too frequently primitive.

We can, however, offer several general observations based upon our detailed examination of CEP's diversion efforts. First, simply providing court decision-makers with an alternative for handling cases does not assure that the new option will be used in the way preferred by its advocates. The potential impact of introducing any new resource into a complex system of negotiated decisions can be anticipated only through a careful analysis of how specific decision-makers see their roles, and how their behavior is influenced by the others with whom they must routinely interact. The existence of an opportunity for a decision-maker to use an alternative is not necessarily a sufficient

incentive for him to do so (even when it would be personally congenial), if his relationships with others in the system of negotiation would be disrupted, or if his other goals are jeapordized (see Nimmer, 1978). Because different actors in the court system are likely to be pursuing quite different interests when they agree to make use of a diversion program, existing diversion programs cannot assume they are diverting defendants from conviction and harsh sanction. Even if they believe their impact is great, their actual impact on dispositions may not be measurable without controlled research. The CEP evaluation indicated that, in the absence of such research, defendants and their counsel in New York City believed the consequences of normal court processing were more serious than they actually were. Therefore, if (for whatever reason) controlled research is not possible in a jurisdiction, an accurate assessment of a diversion program's impact is going to be difficult to obtain. Positive impact certainly cannot be assumed.

Second, despite occasional protests to the contrary, most diversion programs attempt to improve clients' behavior. The findings of the CEP research suggest that more detailed analyses are needed of what specific types of services are effective, with different types of clients, for the various behavior changes that are desired. While the CEP data do not themselves contribute to such an analysis (except in a general way), they do suggest caution about the fairly common assumption that a mildly coercive setting is a good context for delivering social services because it helps motivate behavior change. The research on CEP suggests that when young people enter a conventionally-structured social service program primarily because they want to avoid unfavorable consequences elsewhere (e.g., in court), they tend to work at satisfying program personnel, by complying with formal performance requirements, rather than using the social services to effect behavior changes or to improve their life situations.

Finally, CEP's response to the findings of Vera's research must be taken as encouraging by anyone interested in humanizing the criminal justice system and improving the prospects of underclass youth in our inner cities. When it became apparent that pretrial diversion was not achieving the agency's goals, pretrial diversion was abandoned. To reduce unnecessary incarceration, CEP launched a post-conviction supervision program; it offered intensity of supervision sufficient to provoke judges to entrust to CEP offenders already convicted for whom a jail sentence had been set (but not yet executed). To increase the chances that its social services would go to those who would use

them to improve their lives, CEP offered its help to anyone who wanted help, without offering hope of more favorable court treatment if the services were used. And to address as directly as possible the miserable life prospects of the multiply disadvantaged youth with whom it came in contact, CEP restructured itself and secured new financing to employ them directly, to train them and to ready them for entry into the world of work.

APPENDIX A

THE COURT EMPLOYMENT PROJECT: ARCHETYPE FOR PRETRIAL DIVERSION

Pretrial diversion was advocated as a criminal justice reform during the 1960s and was widely implemented during the 1970s. The U.S. Department of Labor (DOL) made it possible to launch a demonstration phase during 1968-1970, by providing Manpower Development and Training Act money for delivery of vocational services to offenders. In 1968, DOL funded the first pretrial diversion programs, the Court Employment Project (CEP) in New York City and Project Crossroads in Washington, D.C., to explore their feasibility as alternatives to regular court processing. The projects had similar operating procedures and were designed to achieve similar goals. First, to identify appropriate defendants and to advocate for their diversion, the agencies were administratively separate from the criminal justice system, and they independently screened cases in the courts. Second, to facilitate clients' vocational improvement and to discourage their future arrest, these programs provided diverted defendants with employment and other concrete manpower services that were not regularly available to youthful offenders. Third, to reduce the potentially stigmatizing effects of a criminal conviction, the programs negotiated with prosecutors to secure agreement that the charges would be dismissed and the official records sealed for defendants who successfully participated in their services.

After the demonstration phase, these two programs became prototypes for DOL's further expansion of manpower-based pretrial diversion programs. In 1971, DOL funded an additional seven programs and, in 1975, ten more; the latter were supported by money allocated under the Comprehensive Employment and Training Act (CETA). Also in 1971, the Law Enforcement Assistance Administration (LEAA) began to fund pretrial diversion with money authorized by the Omnibus Crime Control and Safe Streets Act of 1968. Heavily supported by LEAA, diversion programs grew rapidly--from four in 1970 to over 200 in 1978.

As one might expect, the LEAA-funded programs placed somewhat more emphasis on the development of increasingly formal relationships between diversion programs and the criminal justice system and somewhat less emphasis on particular manpower or other service strategies. As a result, the structure and--to some extent--the goals of pretrial diversion appeared to change after 1970-71. Some change can be explained by the diversity of local needs to which the prototypes were adapted; other changes seem best

explained by the growing closeness of the programs to official criminal justice agencies. "It is significant that 40 percent of the diversion programs listed in the [American Bar Association's] 1974 edition of the [Pretrial Diversion] Directory were sponsored by independent, private sector entities while reference to the 1976 edition of the Directory shows that only 17 percent of the programs are independent or sponsored by private sector groups" (Bellassai, 1978:26-7). By 1976, 36 percent of the programs were under the administrative control of executive agencies of state or local governments, 16 percent were administered by prosecutor's offices, and 11 percent were under the control of courts. Madeleine Crohn, Director of the Pretrial Services Resource Center, reflected recently on the "profound transformation of the programs" that occurred after their initiation in the late 1960s:

> While the programmatic 'shell' and guidelines were left somewhat intact, the purpose was altered. To be relevant, the programs were required to improve the system itself and to satisfy new societal interests.... Pretrial diversion switched from being an alternative to the criminal justice system to one within the criminal justice system (Crohn, 1980: 23,33).

As a consequence, Crohn suggests that "The full humanistic vision [of pretrial diversion] was never fully developed," and that "the underlying premises of the original pretrial diversion concept remain undemonstrated at best" (p.44).

In 1978, the National Association of Pretrial Services Agencies (NAPSA) approved standards and goals for pretrial diversion. Most of these were clearly rooted in the rationales advanced for this reform during the late 1960s and early 1970s. There is fairly convincing evidence, however, that contemporary programs do not conform to these standards. A national survey of pretrial agencies carried out by the Pretrial Services Resource Center (Pryor, 1980: 4-12) suggests that most programs conform to the standards in some important ways, but not in all. Unfortunately, the organizational and operational structures of the 200 or so diversion programs around the country are difficult to discuss in detail because information about what they are actually doing is scarce, and because the only recent body of data (gathered for the Pryor study) has not as yet been fully analyzed.

What of the Court Employment Project, the original pretrial diversion program, the "prototype" that was a decade old at the time it came under scrutiny for this evaluation? It is perhaps surprising that, despite changes in its environment and some internal reorganization, CEP had remained remarkably stable in its administrative and operational structure and in its programmatic goals (as formally and informally articulated by management and staff). The degree to which CEP's has adhered to the original concept of pretrial diversion (and to its underlying rationales) can be seen by comparing it, as it operated during the research period, with the NAPSA standards and goals. While this exercise cannot demonstrate the quality of CEP's operations, or reveal the extent to which it lived up to "the full humanistic vision" of diversion, it does suggest that, structurally and operationally, CEP remained a good model of the original notion of what a pretrial alternative to prosecution should be.

Intake procedures

As suggested above, many current diversion programs are administered by executive or judicial bodies that are part of the criminal justice system. Although it may be possible for official agencies to provide "alternatives" to official criminal justice processing (and the NAPSA standards take no express position on this), diversion was originally envisioned as a process by which defendants would be removed from the control of these agencies: defendants were to be offered not only an alternative form of treatment, but an alternative experience. Therefore, it was originally thought that pretrial diversion should be to a service agency located outside the criminal justice system. From its inception, this was how the Court Employment Project was set up, and it remained an independent organization funded through the City's social service budget.

The NAPSA standards propose that defendants not be diverted until after the formal charges have been filed and until after they have consulted with an attorney. In this area, the standards aim to assure that defendants who are likely to be dropped from the system early are not diverted, and that diversion is voluntary. CEP's intake procedure ensured that diversion took place only at or after arraignment, well after charges had been filed, and that the defendant was always represented by counsel whose consent was required before CEP would accept diversion. In contrast, according to the recent Pretrial Services Resource Center national survey, "almost half of all the programs divert at least some people prior to formal charges having been filed,

despite the potential for abuses inherent in such practices" and "in more than 40%...there is no formal requirement that counsel must be present and agree to a decision to officially divert a defendant" (Pryor, 1980:5-6, emphasis in original).

The NAPSA standards also reject any conditioning of pretrial diversion upon a defendant's guilty plea (or informal admission of guilt), and severely limit requirements that defendants provide restitution.[1] In this area, the standards are designed to protect diverted defendants from prejudice (if prosecution is resumed) and from the imposition of essentially penal burdens. CEP's position was firm that no admission of any sort was required or encouraged by staff as a condition before diversion, and monetary restitution and community service were not permitted either as a condition of program participation or as part of a defendant's activities while in the program. In contrast, according to the Resource Center survey, four out of ten diversion programs across the country require an admission of guilt, and seven out of ten require restitution or community service as a condition of diversion.

Setting eligibility criteria for pretrial diversion is difficult, legally and practically. The NAPSA standards propose that programs formally establish

> eligibility criteria that are broad enough to encompass all defendants who can benefit from the diversion option regardless of the level of supervision or services needed, provided: the guidelines exclude categories of nonserious charges and defendants for for which less penetration into the system routinely occurs; and the guidelines exclude those cases for which the community demands full prosecution (1978:43).

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[1] While the NAPSA standards include restitution and community service as acceptible elements of a service plan, they suggest it should be used only under "limited circumstances" and when directed at therapeutic goals (p. 76).

CEP's formal eligibility criteria in 1977 excluded defendants arrested for misdemeanor charges as well as those charged with the two most serious categories of felonies. Despite these exclusions, their criteria embraced over half of all defendants arraigned in the lower courts in New York, including most of those charged with felonies. CEP's decision not to divert misdemeanants was designed to exclude defendants whose behavior was not as likely to draw heavy sanctions, whose cases were more likely to reach an early disposition, and whose dispositions were likely to be dismissals. By accepting only felony arrest cases (with few exceptions), CEP aimed to discourage prosecutors from routinely diverting defendants whom they would not or could not prosecute fully.

Pryor's data (1980:70) suggest that, while most diversion programs (88%) include at least some felony defendants, only one out of four routinely excludes categories of offenders charged with lesser offenses.

Services

Uniform standards about the services that should be offered diverted defendants and about the goals that should be sought through service delivery are also difficult to establish. Defendants' needs differ considerably, and pretrial diversion programs have long since adopted models of rehabilitation other than the original manpower model. As might be expected, therefore, the NAPSA standards in this area constitute the shortest section of the 144 page report, and the published data from the national survey of diversion programs include little relevant information. The NAPSA standards suggest that service plans should be realistic and individualized, and that they should address the individual's needs and not "merely...accommodate the crime charged" (p.71). While the standards do not explicitly delineate particular forms of "service," they provide the following example of an appropriate approach to services:

> Adherence to a model of providing services based on the personal needs of defendants means offering unemployed or employment-handicapped defendants aptitude achievement testing, vocational counseling, job training to develop the skills necessary to obtain and retain a job, and job placement that puts the defendant in employment commensurate with his abilities. As another example of individually-tailored service delivery, consider the youthful defendant. Broad-based educational services including remedial education, might be appropriate (pp.73-4).

Virtually all defendants diverted to CEP were "employment-handicapped," and relatively few were employed or actively in school at intake. They were primarily young (16 and 17, and most under 20), male, of minority ethnic origins, undereducated, and poor (half of their families were on welfare). CEP provided services that were in keeping with the above quoted NAPSA commentary: vocational and pre-vocational services (including job and educational referral and placement), individualized needs assessment, and referral to a wide range of specialized community resources. While some changes occurred over time in the specific services it provided and in the manner of their delivery, CEP remained strikingly similar to the early manpower model diversion prototypes, including Project Crossroads and CEP itself.

CEP's suitability as an archetype for pretrial diversion may be somewhat diminished by the shift, from an emphasis on services to an emphasis on counseling, that some observers say characterized pretrial diversion programs after LEAA entered the field. One diversion program director described the rehabilitative strategy of his agency as counseling focused "on the event leading to the criminal incident and arrest to help the client see that further criminal activity is harmful to himself" (Vera, 1978:93). It may be that programs having a greater emphasis on counseling than on services have clients with needs quite different from the needs of the inner-city minority youths diverted by the early programs (including CEP); it may also be that, as programs became more closely allied with traditional criminal justice agencies, they moved toward case-work perspectives that were more familiar to official agencies. Without more systematic information, it is difficult to know how great the differences may be in client-centered strategies between CEP and other pretrial diversion programs, and difficult to know how such differences arose.

The Resource Center's national survey does offer one item that suggests a shift, in the pretrial diversion field, away from the original rehabilitative strategies to approaches of a more punitive nature: "rather than the use of restitution or community service being the exception, as suggested by the (NAPSA) standards, their use has become the norm in most of the [diversion] programs" (Pryor, 1980:9, emphasis in original). There are many who believe that requiring unpaid community work (or monetary restitution) primarily "satisfies the need to punish" (Zaloom, cited in

NAPSA, 1978:77, emphasis in original). As noted above, CEP's service strategy, without exception, prohibited either restitution or community service as part of the plan.

Program exit: successful and non-successful

The NAPSA standards are clear concerning the desired outcome of pretrial diversion. Since diversion should be an alternative to prosecution, successful diversion should result in dismissal of the charges and the sealing of official records. Most diversion programs, including CEP, appear to satisfy the first part of this standard: pending charges are dismissed upon completion of the program. However, according to the Resource Center's survey, "it is of some concern that there are several jurisdictions [13% of the national sample] which do not automatically dismiss the current charge(s) ...and in some cases even hold open the possibility of charges being reinstated" (Pryor, 1980:11). Furthermore in only two out of ten programs sampled were official records automatically sealed or expunged (p.12), a routine procedure for defendants who completed the CEP program.

Obviously not all defendants will complete the program's requirements and win dismissal of the charges against them. The NAPSA standards suggest that participants be able to withdraw voluntarily from the program without prejudice to their cases, and that they be similarly protected if they are terminated by the project. The standards also suggest that rearrest or conviction should not be grounds for automatic project termination. While terminations--voluntary or otherwise--occur in all diversion programs, it is not clear how to judge whether terminated defendants' court cases are prejudiced. CEP tried to avoid such prejudice by sending a uniform, neutral letter to prosecutors about clients who were no longer receiving its services; no specific explanation of the termination was offered. CEP also took the position that neither rearrest nor conviction on new charges was grounds for termination, if defendants were otherwise performing well in the program; the agency actively advocated that position with prosecutors. In contrast, according to the Resource Center, "national standards notwithstanding, more than half of the diversion programs surveyed do in fact automatically terminate program participants based on either a rearrest while in the program or a conviction upon that rearrest" (Pryor, 1980:10).

These comparisons--between CEP's operations, the NAPSA Standards and Goals, and the national survey of diversion

programs--suggest that, during the time of the Vera study, CEP was no longer a "prototype" for many pretrial diversion programs. On the other hand, the exercise also suggests that CEP remained remarkably close, in structure and in operation, to the model of this pretrial reform as it was originally conceived and as it is currently idealized.

APPENDIX B

METHODOLOGICAL NOTE

To measure the impact of CEP's efforts as a pretrial diversion program, the Vera Institute designed an experimental study with the following major characteristics:

- the concurrent and random assignment of defendants, screened as eligible for pretrial diversion, to an experimental group (diverted) and to a control group (normally processed in the court);
- a research population large enough to permit adequate analysis of program impact (666 subjects);
- a follow-up period of at least one year after intake for all experimental and control group members, including program drop-outs; and
- an extensive database on all research subjects, including life history and criminal activity information from personal interviews with defendants and from official records.

Sample Selection

The study was implemented in January 1977 in the Manhattan and Brooklyn Criminal Courts. Eligible defendants --those screened by CEP in these courts who met eligibility criteria, who agreed to participate, and whose diversion to CEP was approved by their counsel, the assistant district attorney and CEP staff--were assigned by Vera research personnel to either the experimental group (diverted to CEP) or the control group (normally processed in the court). The assignment was made by a procedure that approximated random selection. This procedure involved creating variable length time periods, selected randomly by researchers. In each time period (which began and ended at times unknown to program personnel), a quota of CEP participants was set by researchers, based upon the program's overall service capacity; the size of the quota varied with the length of the time periods, and was also unknown to the program. Eligible and fully screened defendants over that quota were considered to be an "overflow," that is, beyond the program's service capacity, and were assigned to the control group. Because of the random selection of the time periods and the

varying size of the quota, program personnel could not predict whether the next eligible candidate for diversion would be assigned to the experimental or the control group (see Baker and Rodriguez, 1979). By the end of October 1977, 410 defendants had been assigned to the experimental group and 256 to the control group. Analysis of the characteristics of the two groups at intake indicated they were comparable.

Experimental Data Collection

Data on the research population were collected from personal inteviews with members of the experimental and control groups, and from official records. The research design called for each subject to participate in three personal interviews--the first at intake into the sample, the second six months after intake, and the third 12 months after intake. Certain characteristics of the population (youth, lack of consistent residence and employment, participation in street-life, etc.), and its geographical dispersion (residence in all five counties of New York City and general mobility within and outside New York State) made it difficult for the research staff to locate and interview some research subjects, even for the initial interview, and made it even more difficult to maintain contact with all of them for subsequent interviews. The selection procedures generated 666 cases; the research field staff were able to interview 533 (or 80 percent) at intake, and 466 (70 percent) six months later; staff were able to collect 12 months of interview data on 441 (66 percent). Although one-third of the sample members dropped out of the interviewing process by the end of the twelve months of follow-up, the composition of the experimental and control groups remained equivalent throughout. Analyses of data collected on all subjects, and of data collected on those who were interviewed, suggest that differences in behavior reported by experimentals and controls over time can reasonably be considered a result of program impact, rather than a result of differences in the composition of the two groups.

Official prior criminal history records were collected for all members of the sample from th Identification Section of the New York City Police Department. In addition, information on the progress and disposition of the intake case (the case pending when the individual was screened for diversion to CEP) and on subsequent arrests was collected from the New York City Criminal Justice Agency.

Finally, a systematic effort was made to verify subjects' self-reports of their employment, school enrollment, and public assistance status. Although it was not possible

to verify all their reports, our efforts revealed no evidence that discrepancies between subjects' reports and reports from the verifying agencies represented a pattern of deliberate falsehood by subjects. As important, the confirmation rates for experimentals and controls indicated no systematic differences in veracity or accuracy between the two groups.

Hypothesis Testing

Three basic sets of hypotheses were developed at the beginning of the research to be tested using data from the controlled experiment. These were drawn from the literature on pretrial diversion, including previous evaluations, and from discussions with CEP personnel concerning their program goals. First, hypotheses concerning CEP's impact on case disposition addressed the program's goals as a pretrial alternative to prosecution, criminal conviction, and harsh punishment. Second, hypotheses concerning the program's consequences for participants' lives (their vocational behavior, use of services and lifestyles) addressed CEP's social service aims. Finally, hypotheses concerning CEP's impact on recidivism addressed the program's rehabilitation aims.

(1) To assess CEP's impact on disposition, all subjects assigned to the experimental group were compared with all subjects assigned to the control group with respect to outcome on the intake case; outcomes included dismissal, type of conviction and type and length of sentence. Contingency tables and chi square tests were used to measure differences between the groups. Comparisons were also made of experimental and control case outcomes, by prior arrest and conviction record, to see if CEP's impact was mediated by prior record; this included analyses to assess whether CEP helped first offenders avoid the stigma of a criminal conviction. To explore the program's effect on defendants' penetration of the criminal justice system, experimental-control comparisons were made on the amount of time subjects spent in pretrial detention, the number of their court appearances, and the length of time it took to dispose of their cases. Hypotheses related to these outcomes were tested using a t-test for differences between means. A final analysis, lying outside the experimental design, was conducted to address the issue of whether failure to successfully complete the diversion program was prejudicial to defendants' cases. Using a contingency table and chi-square, the dispositions of unsuccessful experimentals were compared with those of the control group.

(2) To measure the effects of CEP's social service interventions, experimental and control subjects were compared with respect to their employment, education, general level of legitimate activity, drug and alcohol use, social activities, and use of social services. Because subjects were interviewed three times, it was possible to compare experimentals and controls on these measures over time. Repeated measures analyses of covariance were computed to test the hypotheses. In each analysis, research assignment (experimental or control) was the independent variable, measurement of the dependent variable (e.g., number of months employed) during the period six months prior to intake was the covariate, and measurement of the dependent variable from intake to six months and from six to twelve months after intake was the repeated measure factor. F-tests were used to assess the significance of the relationships. In addition, a series of analyses was conducted to determine whether CEP's effects were different for defendants by age; analysis of partial variance was used. Finally, outside the experimental design, these same variables were subject to multiple regression analyses to determine whether CEP had a greater impact on experimentals who participated in the program fully ("successful participants") than it had on experimentals who did not participate fully and were returned to court without a program recommendation ("unsuccessful participants").

(3) To measure CEP's rehabilitative effects, data on the proportion of each group arrested during and after program participation, the number of rearrests, and the severity and type of arrests were compared for all experimentals and all controls. T-tests and chi-square tests were used. As an ancillary analysis, outside the experimental design, an attempt was made (using multiple regression/correlation) to determine which factors predicted recidivism for all members of the sample.

Collateral Data Collection

To provide collateral, qualitative information which would help us explain the quantitative findings of the controlled experiment, the project collected data on a sample of cases rejected for diversion. Researchers also conducted a series of personal interviews with participants in the system, including assistant district attorneys, Legal Aid Society lawyers and judges, and collected observational data on the operation of the courts and the process of pretrial diversion. The latter included interviews with CEP

court operations staff, its social service staff, and its management. Researchers also observed these individuals go about their daily routines in the courts and at CEP during the more than two years from the agreement on research design to the sharing of final results with CEP's management and staff.

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