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COURT EMPLOYMENT PROJECT EVALUATION

PRETRIAL DIVERSION FROM PROSECUTION:  
DESCRIPTIVE PROFILES OF SEVEN SELECTED PROGRAMS\*

April 1978

\*Prepared under Grant Numbers 76-NI-99-004 and 77-NI-99-0075 from the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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## INTRODUCTION

This report is made up of descriptive profiles of seven pre-trial intervention (diversion) programs based upon interviews and observations made by Vera researchers during on-site visits to the programs between October 1976 and July 1977.\* The visits were undertaken as part of a larger Vera research effort, namely the evaluation of the Court Employment Project (CEP) in New York City, one of the first diversion programs in the United States.\*\* From the standpoint of the Vera evaluation, the purpose of the site visits was to examine the structure and context of diversion in other jurisdictions in order to provide the Vera staff with a broader perspective from which to examine the diversion process in New York City and the issues raised by it.

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\* The site visits were made by: Pamela Samuelson, Research Associate; Orlando Rodriguez, Deputy Project Director; Deborah Cohn, Research Analyst; and Sally Hillsman Baker, Project Director.

The profiles were written by Pamela Samuelson, Anne Berrill and Sally Hillsman Baker.

\*\* The Court Employment Project was originally a Vera demonstration project; since 1971, however, it has been an independent, not-for-profit corporation funded by the City of New York. The Vera evaluation of this program began in 1976, funded by the National Institute of Law Enforcement and Criminal Justice as part of its innovative research program. The core of the research is a pre-post test, control group design. The anticipated completion date for the Vera evaluation is May 1979.

Most widely circulated descriptions of diversion programs are useful but brief, listing only formal characteristics.\* More extensive descriptions are available for a few programs but are several years old. The Mullen (Abt) study of the nine Department of Labor programs contains considerable informative material, as do the three fairly comprehensive profiles of two of those nine sites plus an additional non-Department of Labor funded site included in the Dilemma of Diversion.\*\* But, they date from 1973-1974, as do the profiles published by the American Bar Association's National Pretrial Intervention Service Center.\*\*\* The latter profiles have the additional disadvantage of being based only on program documents rather than field visits.

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\* For example: Diversion from the Judicial Process: An Alternative to Trial and Incarceration, prepared by the Subcommittee on Elimination of Inappropriate and Unnecessary Jurisdiction of the Departmental Committee for Court Administration of the Appellate Divisions, First and Second Departments, New York, December 1974; American Bar Association, National Pretrial Intervention Service Center, Directory of Criminal Justice Diversion Programs, National Inventory of Projects Under Development and Operational, updated annually.

\*\* Joan Mullen, Pre-Trial Intervention: A Program Evaluation of Nine Manpower-based Pre-trial Intervention Projects Developed Under the Manpower Administration, U.S. Department of Labor, Abt Associates, Inc.: Cambridge, Massachusetts, 1974; -----, The Dilemma of Diversion: Resource Materials on Adult Pre-Trial Intervention Programs, U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, 1974.

\*\*\* Descriptive Profiles on Selected Pretrial Criminal Justice Intervention Programs, American Bar Association, Commission of Correctional Facilities and Services, National Pretrial Intervention Service Center, April 1974.

These earlier documents are extremely interesting because they reflect the period when pretrial intervention programs (PTI's) were new and still substantially funded by U.S. Department of Labor (DOL) or LEAA demonstration monies. As such, they may be considered "baseline" data. Because the Vera research now underway focuses on a well-established program--one in existence ten years and fully funded locally--it was considered important for the site visits to update the earlier baseline descriptions in order to understand what changes these other programs have undergone and how they are currently operating. The aim here has been to produce new descriptions that are comprehensive not only with respect to how diversion is carried out, who makes the decisions, who the clients and service personnel are, and how these are related to the location of the diversion programs in their particular criminal justice system, but also with regard to the philosophies and specific content of their service efforts.

While the detailed field notes of the Vera research staff constitute an internal resource document for the Vera evaluation of CEP, profiles of the seven sites have been constructed to update and expand descriptive materials already available in the literature.

Selection of the programs. The diversion programs visited were not selected as representative of all diversion efforts in the United States. Rather, Vera researchers

chose them because most are well-established programs with national reputations in the pretrial area.\* The seven include four programs described in either the Mullen or the ABA document noted above, or both.\*\* While regional diversity was also important, resource limitations affected the geographic distribution and number of sites visited. It was also decided to focus mostly on programs that, like CEP, operate in urban environments, although not all are inner-city programs. Among the programs that filled these general criteria, Vera researchers selected sites that differed somewhat along several important structural dimensions: the basis of their authority to divert; the auspices under which they operate; at what point in the legal process they divert; their eligibility criteria with regard to pending charge; their service philosophy or orientation; and whether the outcome of successful participation is a dismissal of the charges or charge reduction.

Most of the sites chosen will be familiar to readers involved in pretrial diversion: the Court Employment Project (New York City); Operation de Novo (Minneapolis, Minnesota); the Court Resource Program (Boston, Massachusetts); the Hudson County Pretrial Intervention Project (Jersey City, New Jersey); the Bergen County Pretrial Intervention Project (Hackensack,

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\* The only exception to this is the Bergen County, New Jersey, program which was included to contrast two programs (Bergen and Hudson County PTI's) developed under the same operating authority (a court rule).

\*\*Mullen: de Novo, TCRP, Dade County; ABA: de Novo, TCRP, Dade County, Hudson County.

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New Jersey); the Dade County Pretrial Intervention Project (Miami, Florida); and Operation Midway (Mineola, New York).

From the standpoint of their authority to divert, both Massachusetts (The Court Resource Project, or TCRP) and Florida (Dade County PTI) have state legislation for diversion. New Jersey (Hudson and Bergen County PTI's), in contrast, has a court rule. The other programs operate under informal agreements to divert defendants based upon the discretionary authority of the prosecutor.

The programs also operate under different auspices. Project Midway and Bergen County PTI are sponsored by probation departments. While Dade County PTI is no longer directly under the auspices of the prosecutor's office, relations remain extremely close. The other programs are sponsored by local governments but are run by a variety of independent agencies and differ in terms of whether they receive criminal justice or social service funds. In diverting defendants, all but one program suspend prosecution before trial; TCRP in Boston alone now diverts defendants after trial.\* All the programs divert adult defendants; de Novo, however, also takes juveniles.

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\* After trial, the judge withholds a judgment of guilt and instead enters a finding of facts sufficient to enter a finding of guilt.

From the standpoint of their service orientation, three of the programs (CEP, de Novo, and TCRP) were among the early diversion efforts funded by the Manpower Administration of the U.S. Department of Labor; to some extent, therefore, they have maintained an emphasis on the delivery of employment and educational services. Less directly related to that early tradition, the other programs visited have from their beginnings emphasized personal counseling that focuses on helping clients change attitudinal and behavioral patterns; each of these programs does this in a distinctive way, and none ignore issues of employment and education. Finally, with regard to the outcome of diversion, all the programs but one offer defendants a dismissal of the charges if they successfully participate. Project Midway offers the prospect of dismissal of charges to some clients, and an opportunity to plead guilty to reduced charges to others.

Site visits. Visits to these programs were conducted by Vera research staff between October 1976 and July 1977. In addition to talking with program directors and key administration staff, the researchers met with court screeners, counselors, and service specialists in the programs. The project directors also arranged for the researchers to observe the programs in operation and to interview prosecutors, judges, and defense lawyers.

It is important to remember that these profiles capture the programs at a particular point in time, and that some

of them may have changed their definitions of their own activities in response to changing circumstances (financial and otherwise) since our visits seven to fourteen months ago. Where possible, the profiles note these changes and the reasons for them. Again, however, the descriptions largely reflect the programs "frozen" in time.

In most cases, the site visits were three to four days in length. Unfortunately, time constraints limited the visits to Midway and Bergen County PTI. The descriptions of these two programs are therefore somewhat less detailed than those for the other sites. On the opposite side, the materials on CEP are more extensive than those on any other program. This is to be expected given the research staff's close involvement with the program since the start of its evaluation in April 1976. Although the information on all the programs is not uniform with respect to the amount of detail on every issue and the degree of emphasis, the profiles follow the same format, and the content of the descriptions fall within the same framework.

Organization of the profiles. It was the goal of the research to explore the connections among the location of the program in the criminal justice system, the basis of its authority to divert, its eligibility criteria, who makes the decision to divert, the composition of the resulting client population, and the services rendered. An evaluation of these relationships with regard to outcomes (either for

the defendant or the criminal justice system) was not included because only more elaborate research techniques could do this adequately.\* The profiles do, however, include a discussion of the "exit" process from each program (how dismissal or unsuccessful termination are decided upon and carried out).

Each profile is divided into seven major topic areas, which we shall discuss here in order to suggest what questions researchers were attempting to answer in their interviews and observations.

1. Where is the program located in the criminal justice system? To set the stage for understanding the specific structure of the diversion process, the services offered and recent changes in these, each program is described from the standpoint of the legal authority under which it diverts (e.g., a court rule, state legislation, prosecutorial discretion); under whose auspices it operates (e.g., a line criminal justice agency, and independent corporation); to whom it reports; and from whom it receives financial support.

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\* As found by earlier researchers, programs still do not collect well-constructed data evaluating their own efforts. While it is obviously difficult and often expensive to do, it also reflects the fact that many diversion programs no longer consider themselves "experimental"; consequently, collection of such data has low priority. The lack of systematic data on the consequences of diversion is one reason for Vera's evaluation of CEP and the attempt to use a controlled experimental design in the research.

2. What are its eligibility criteria? Understanding where the program is located in the system leads to a more comprehensive understanding of its criteria for eligibility. For example, the nature of its funder and source of its authority to divert influence the process by which the program establishes and evaluates its criteria for diverting defendants. The formal (written) and informal (tacitly agreed-upon) criteria used by each program are considered with particular reference to defendants' legal status (e.g., whether they are treated as juveniles or adults; the severity of pending charges; their prior criminal records).

3. What are the programs' selection and intake procedures? Once eligibility criteria are established, programs must identify suitable defendants and secure permission to divert them. The issues raised here include how defendants are identified (e.g., actively, by solicitation in the courts, or passively, by referral); who evaluates their eligibility; who is the major decision-maker in determining whether they will be diverted; and at what stages in the legal process diversion takes place.

4. What are the characteristics of diverted defendants? As the result of the above selection processes, a program will serve a particular type or types of clients. The concern here is with the demographic and social composition of the program's client population. Who are they

and how do the counselors perceive them, their life situations, and the reasons for their criminal behavior? This, in turn, is linked to how they treat the defendant as a social service or counseling client.

5. What services do the programs offer clients? Each diversion program has a somewhat different service philosophy and offers somewhat different concrete services. Those visited can be roughly divided into two groups, although they are not as different as the conceptual distinction might suggest. Some of the programs are specifically concerned with "counseling" clients; that is, they focus on helping the clients to understand themselves better and hence to alter their attitudes or behavior. Other programs, while also engaged in counseling, are more concerned with providing the client with specific services or referrals to help him improve his education or his employment situation. For convenience of identification and because they were all originally funded by the U.S. Department of Labor, the latter are referred to in the profiles as "manpower-model" programs.

While both types of diversion programs more (or less) openly think of their services in terms of "rehabilitation,"\*

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\* Even most manpower model programs (e.g., CEP) spend a good deal of time "counseling" clients, and most "counseling" programs (like Dade County PTI) believe clients should be employed or in school before their charges are dismissed. But, philosophies--what the programs believe they are doing with clients--do differ, as do ... (continued on next page)

they go about this somewhat differently; in fact, one of the distinguishing features of the "counseling" programs in contrast to the "manpower-model" programs is that the former are more likely to say openly that what they are doing is "rehabilitation." This section attempts to describe the philosophy behind the programs' service efforts, the content of those services, who delivers them and how.

6. How does the defendant exit from the program? In accordance with their differing service goals, programs define clients' "success" somewhat differently (though definitions of "un-success" tend to be more uniform). The focus of this section is the criteria used to define "success," its relationship to the program's requirements to report back to the court or prosecutor, and the disposition of the case. Procedures for handling "unsuccessful" clients are also considered.

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(continued from preceding page).... service strategies; the distinctions are sometimes obvious and sometimes subtle.

The National Association of Pretrial Services Agencies' most recent draft of diversion standards and goals (Spring 1977) does not include rehabilitation as a diversion goal. A consultant on the draft said the drafting committee had decided not to include it because of widespread skepticism about rehabilitation efforts. Nevertheless, Vera researchers found most diversion staff in the programs visited did believe they were engaged in some kind of rehabilitation.

Acknowledgements. Our thanks are extended to all screeners, counselors, service specialists, administrators, and administrative assistants of the diversion programs visited. They gave generously of their time and their insights into their programs; their candor was refreshing and much appreciated. Special thanks go to the project directors for allowing us to visit the programs, to observe their operations, and to take up valuable staff time for interviews. They were also most cooperative in arranging interviews with prosecutors, judges, and defense lawyers involved in the diversion process. The project directors were additionally helpful in the production of this report by constructively commenting upon early and final drafts of the profiles sent to them by the Vera staff.

It is our hope that these descriptive profiles will be of use to others struggling in whatever way with problems like those faced by the programs visited. We are sure the staffs of these programs were expressing a similar hope by the very fact of their cooperation with us.

One further note: For the sake of clarity and brevity, masculine pronouns are used in most places throughout the text. It is understood, of course, that women as well as men are served by the diversion programs described here, and that women make up a substantial portion of the program personnel.



## PROFILE

### THE COURT EMPLOYMENT PROJECT

346 Broadway  
New York, New York 10013

Ian Bruce Eichner, Director

### PROGRAM LOCUS

Founded in 1968 with a U.S. Department of Labor grant as a project of the Vera Institute of Justice, the Court Employment Project (CEP) is one of the oldest diversion programs in the country. It began as a "manpower-model" pre-trial intervention program and retains much of that employment emphasis, though it now sees itself somewhat more as a general social service agency providing a wide range of services to a client group much in need of them. The courts then are its "catchment area." This change may have resulted partly from its shift in funding. After the DOL grant expired in 1971, CEP became an independent non-profit corporation under contract to the Human Resources Administration (HRA), an agency of New York City that supports social, employment, and other service activities.

For the five years following this shift, CEP's funding

seemed quite secure. For fiscal year 1975-76 alone, HRA allocated it \$3.4 million to serve an anticipated 2,600 diverted defendants. But New York City's fiscal problems were worsening, and in June 1976 HRA would not automatically renew CEP's contract. Until a decision could be made, the program was allocated only enough to maintain a skeleton administrative staff and services came to a virtual standstill. In December 1976, HRA made the final decision to continue funding CEP but at a considerably reduced level. For the remaining six months of fiscal year 1976-77, the program received funds at an annualized amount of \$1 million to service 500 defendants. In 1977-78 it received \$1 million to serve approximately 1,000 clients. To adjust to the lower level of funding, CEP reorganized its structure somewhat (as described in Section 1 of the special appendix to this profile). It also acquired a new director and some top-level administrative staff. Despite some changes, CEP has maintained its basic structure and a service emphasis on finding its clients employment, job training, educational and other assistance.\*

New York does not have a statute authorizing pretrial diversion,\*\* and since its inception CEP has operated on the

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\* This profile describes CEP's basic structure and operations during calendar year 1977; as noted above, changes between the program as described here and its earlier form are noted in the first section of appendix to the profile. In addition, the program is currently beginning some alterations in the structure of its service delivery system; these are outlined in the second section of the appendix.

\*\* New York State does have a law ( CPL 170.55 ) permitting prosecutors to adjourn a case in contemplation of a dismissal (ACD) and to place conditions upon the defendant which he must fulfill before the final dismissal is granted. CEP does not operate under the law since cases are not ACD'd at the time of diversion; instead, a four month adjournment of the case is obtained during which the prosecutor suspends prosecution.

basis of an informal understanding with judges, district attorneys, private defense attorneys and the Legal Aid Society. At present, CEP's court staff believes there is no need for legislation, except perhaps to protect the confidentiality of counselor-client communications, which is now protected only by a tacit understanding between prosecutors and CEP. While the fragility of that agreement may be illustrated by an event in January 1977, when a Manhattan Assistant District Attorney (ADA) threatened to subpoena CEP's files on a former participant, such events are extraordinarily rare. This may have been the only such case in CEP's ten year history. CEP staff members responded by examining the files and assuring the ADA that nothing in the files would help his case. The matter was dropped, in large part because of the sound and trusting relationship CEP has developed with prosecutors over the years. While the incident served as a reminder that confidentiality is maintained only at the prosecutor's sufferance, it also points out that the information in these files is likely not to be of sufficient use to prosecutors to encourage their substantial effort to obtain it.

CEP screening staff operate in four of New York City's five counties or boroughs--Manhattan, Brooklyn, the Bronx, and Queens--each of which has a discrete system of Criminal (or lower) Courts and Supreme (or felony) Courts and a separate DA's office. All program services, however, are delivered from the program's Manhattan facility.

#### ELIGIBILITY CRITERIA

CEP has as its formal eligibility criteria that defen-

dants must:

- (1) be 16 years of age or older (i.e., not juveniles as defined by New York State Law);
- (2) be residents of the boroughs of Manhattan, Brooklyn, the Bronx, or Queens;
- (3) be charged with a C, D, or E felony;\*
- (4) have no outstanding bench warrants;
- (5) have no other pending felony charge (one outstanding misdemeanor case is allowed);
- (6) currently have no serious (chronic) alcohol or drug abuse problem;\*\*
- (7) consent to participate in CEP, as well as have their defense lawyer's consent.

CEP itself does not limit eligibility according to the number of a defendant's "priors" (that is, prior criminal arrests or convictions). But, in practice, few defendants with prior felony or misdemeanor convictions are accepted--

---

\* Prior to January 1977, CEP took both misdemeanors and felonies. While it is now a felony-only program, CEP generally diverts only the lower C, D, and E felonies and not the more serious A and B felonies. The other program visited for this report which made a similar shift recently is Dade County PTI (Profile 6). However, while CEP makes occasional exceptions (see "Selection and Intake" below), Dade does not.

\*\* CEP screening staff are generally charged with determining conformity with this as well as the other criteria. A client may have a previous abuse record but not a current, identifiable chronic problem. Defendants with such problems may be referred by CEP screening staff to appropriate programs but are not diverted by CEP.

usually because ADAs withhold their consent.\*

Although CEP's major goal is to help unemployed and underemployed clients find jobs, better jobs, or improve their education and training, it does not reject as ineligible persons who have stable employment and are satisfied with their jobs.

Neither the arresting officer's nor the victim's consent is required for a defendant to enter the program. Officers are often contacted by CEP screeners, however, if the case is screened before arraignment; their objection to diversion, if there is one, is noted.

CEP is the only program described in this report that never requires full or partial restitution as a condition of participation. The program is adamant about this policy--it has flatly rejected defendants for whom diversion was conditioned on restitution by an ADA or a judge--for reasons ranging from the philosophical to the practical. First, CEP believes that restitution requirements imply per se the guilt of defendants who have not been legally adjudicated guilty. Second, the program recognizes that restitution is not a realistic expectation from its client group--most are simply too poor to make payments to victims. And third, for purely

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\* As the other programs in this report illustrate, this is a common trend: few of them divert a significant proportion of repeat offenders, though Dade PTI (Profile 6) and de Novo (Profile 2) are the only ones reported here that have an official first-offenders-only policy

administrative reasons, CEP does not want to get involved in "the business of bill collecting."

#### SELECTION AND INTAKE

CEP draws its clients from the Criminal Courts of Manhattan, Brooklyn, the Bronx, and Queens where nearly all defendants arrested on felony charges are arraigned. The first step of the court process takes place in the Complaint Room. Here, an ADA decides whether a felony arrest case will be fully prosecuted as a felony (in which case it will be sent to the Grand Jury for indictment), initially charged as a felony with instructions that the arraignment ADA take a guilty plea to a misdemeanor, or initially charged as a misdemeanor. The Complaint Room ADA may also decline to charge the case, or he may recommend a dismissal to the court. At arraignment (the defendant's first appearance in court) between 60 and 65 percent of all cases are disposed of, either by a guilty plea, by an adjournment in contemplation of dismissal (ACD, roughly the equivalent of a nolle prosequi) or by outright dismissal. Most of the people CEP diverts are charged with felonies to which the ADA is prepared to accept misdemeanor pleas at arraignment or which he would prosecute

as misdemeanors.\* Until recently, CEP drew virtually all of its cases from the arraignment parts of the Criminal Courts; it has now moved toward accepting more referrals from Legal Aid attorneys and judges after arraignment (see below).

CEP has traditionally had screeners operating in the courts to actively solicit clients. When the program resumed full operation in January 1977, it worked out an arrangement with New York City's release agency, the Pretrial Services Agency (PTSA, now the New York City Criminal Justice Agency)\*\* for PTSA staff before arraignment to make photocopies of the forms completed during PTSA interviews with defendants fulfilling CEP's requirements--those charged with C, D, and E felonies, having no outstanding warrants or pending felony charges. The PTSA interviewers put these copies in a box for CEP screeners to pick up. A CEP screener then briefly interviewed the defendant in the detention pens to determine whether he was in fact eligible for CEP and interested in the

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\* This closely resembles the prosecutorial screening and diversion referral pattern in the other New York State program visited, Operation Midway in Nassau County (Profile 7).

\*\* This is the only program visited that had established an on-going relationship with a release (or bail) agency to carry out joint screening; the arrangement, however, did not work out satisfactorily from CEP's perspective because release agency personnel could not screen out persons who were addicts and uninterested in diversion or arraigned at night court. Consequently, the joint screening system resulted in extensive over-screening of defendants not likely to be diverted.

program. If he was, the screener gave the PTSA sheet and CEP interview form to a CEP tracker who obtained the consent of the defendant's lawyer, consulted with the arresting officer if he was available, and verified the defendant's address. The tracker then gave the papers to the screening supervisor who took the case to an ADA liaison to get his consent to the diversion. CEP screeners often must advocate on behalf of the defendant to get the prosecutor's approval. If the prosecutor's consent was obtained, the supervisor went to the arraignment part to await the defendant's arraignment and to present the same arguments for diversion to the judge.

By August 1977 CEP had completed a gradual transition from this screener-solicitation system to a referral system of acquiring cases. The change was made for two reasons. First, CEP felt that active recruitment was wasteful of resources since screeners had to evaluate many defendants who were found ineligible, rejected by the ADA or judge, or who themselves refused diversion.\* Second, CEP had somewhat altered its philosophy about screening, deciding that the agency should not play such an active role in determining who should

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\* The Court Resource Program in Boston (Profile 3) solved a similar problem by becoming a post-trial, rather than pre-trial, diversion program. By diverting after trial but before final adjudication, it could be assured of both the defendant's seriousness and judge's willingness to divert before it completed an extended evaluation of prospective clients.



be diverted; that decision, according to the new director, should be a legal one and is the province of the criminal justice system, not of a social service agency. The role of the diversion program in the process is to advise criminal justice decision-makers who it believes can be helped by its services.\*

Most referrals to CEP under the new system are made by defense lawyers and judges, although a few come from ADAs. Referrals may be made before or after arraignment. CEP screeners interview referred defendants in a court building office and then go to an ADA liaison for prosecutorial consent to divert. If the ADA consents, defense counsel is informed of CEP's intention to make an application for diversion to the judge. Unless the defense counsel or the judge vetoes the application, the defendant becomes a CEP participant.

#### Who makes the decision

As the above description shows, the major decision-maker on diversion is the Assistant District Attorney. Although under the referral system CEP screeners do not initially identify cases for diversion, they still must "push hard" for defendants they think would be significantly helped by the program's

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\* Hudson and Dade PTIs (Profile 4 and 6) have also shifted from an emphasis on solicitation to one on referral, though for somewhat different reasons.

services. By the same token, ADAs occasionally push CEP to accept defendants (sometimes misdemeanor defendants, who are technically ineligible) they believe are particularly suited for diversion.

The last word on diversion belongs to the judges, and they sometimes reject defendants whom prosecutors are willing to divert--approximately 15 percent were rejected by judges in 1976. They also occasionally place defendants in the program over the protests of both the prosecutor and CEP.

#### Other intake issues

Two other matters concerning CEP intake bear mention here: waivers of preliminary hearings and access to prosecutorial files.

In New York City, prosecutors have traditionally required defendants to waive their right to a preliminary hearing as condition of diversion into CEP on the logic that diversion is, among other things, a means to conserve prosecutorial resources. (Prosecutors tend to equate a defendant or his lawyer wanting both diversion and a preliminary hearing with the proverbial desire to have your cake and eat it too.) Prosecutors also want the waiver in order to be able to permanently excuse the complainant from having to appear should the case come back for prosecution. New York Legal Aid lawyers, however, protest the waiver requirement because they lose their opportunity to get a dismissal for failure to prosecute if the defendant is terminated from CEP and the case returns to court. They also regard the preliminary hearing as their first opportunity to evaluate whether the State

has sufficient evidence to prove the charges against their clients. Consequently, they feel that when there is no hearing, they and their client lack an informed basis for consenting to or refusing diversion. They argue that the diversion decision should be based on the defendant's need for services which will lead to a dismissal of the charges rather than on whether it saves time for prosecutors.

Second, since neither defense lawyers nor CEP screening staff have legal access to prosecutor's files, it is difficult for them to protect the program from becoming a "dumping ground" for weak cases (always a danger when the prosecutor is the chief decision-maker about diversion). While it is difficult to judge its extent, CEP believes case-dumping is a problem.\* Program screeners, therefore, must rely on the judgment of defense attorneys (often overworked Legal Aid lawyers) or that of judges (who have heavy court calendars) to veto the diversion decision in such situations.

#### PARTICIPANT CHARACTERISTICS

The figures below are based on data compiled by CEP on all its participants during the first quarter of 1977:

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\* Operation de Novo in Minneapolis (Profile 2) and Midway in Nassau County, N.Y. (Profile 7) are two programs visited in which diversion staff has access to prosecutorial files. In the former it is the result of a legally-sanctioned discovery procedure; in the latter, of an informal agreement with ADAs. "Dumping" in these jurisdictions, therefore, should be less of a problem though, again, it is difficult to be sure.

<u>Age:</u> *	16-17	29%
	18-20	27
	21-25	22
	over 25	21

<u>Race:</u> **	black	53%
	latin	35
	white	11

<u>Sex:</u>	male	89%
	female	11

<u>Employment</u>		
<u>Status At</u>		
<u>Intake:</u>	employed (including 3% marginally employed)	16%
	unemployed	46
	student	20
	marginal student	5
	unemployable	2
	training	2
	info. not available	10

(Note: 105 of the 126 (83%) CEP participants about whom information was available reported having 0 weekly salary.)

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\* CEP's population appears to be younger than that of any other program visited except TCRP (Profile 3) which mandates in its formal eligibility criteria that clients be between the ages of 17 and 22.

\*\* CEP serves a much higher proportion (88%) of minority clients than any other program reported here. TCRP (Profile 3), Hudson PTI (Profile 4), and Dade PTI (Profile 6) all report that about half their clients are minorities; at de Novo (Profile 2), the figure is about 30 percent and at Midway (Profile 7), about 15 percent. Bergen PTI (Profile 5) does not collect statistics on participants' backgrounds, but it appears that well under 10 percent are from minority groups.

<u>Prior Record:</u>	0 convictions	79%
	1 conviction	5
	2 convictions	3
	3 convictions or more	5
	info. unavailable	8

(Note: 62% of those about whom information was available had never been arrested before.)

Type of Charges: Felonies only

<u>Most Serious</u>		
<u>Charges at</u>		
<u>Arrest:</u>	burglary	42%
	larceny	28
	assault	9
	forgery/impersonation	9
	stolen property	3
	other	9

The profile of CEP clients drawn by the CEP counselors is a bleak one, and it appears that as a group, CEP's population is more difficult and taxing to serve than that of any other program reported here. Clients are, for the most part, young, poor, and either black or Hispanic.\* Many of their families are on welfare. If at least one parent is employed, his or her job is usually quite menial. (Many clients are so poor that CEP must pay their subway fare to and from counseling sessions and job interviews.) They live in the ghetto areas of the city, and for the most part, their days are spent "hanging out" or "hustling."

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\* The program does, however, serve a few clients who are middle-class, have stable jobs, and need little more than a dismissal of charges. At present CEP views helping participants obtain dismissals as one of its legitimate services.

Counselors report that time is a concept many CEP clients don't understand in the way that the working population does. They think nothing of showing up at 11:00 a.m. or 4:00 p.m. for a 2:00 p.m. appointment; they may show up a day early or two days late. They often demand to be seen at once and become impatient and resentful when told that the CEP counselors have others to see.

Counselors report that most of their clients have either dropped out of school or are attending irregularly. Most read at third-to sixth-grade levels, and some are totally illiterate. Clients are often bitter about the educational system and complain that their teachers are racists. (Although counselors are aware of the deficiencies of the public school system, many of them feel that illiteracy is, at least to some extent, the clients' fault.)

When asked, most clients say that they do want jobs, but counselors believe many, perhaps most, do not understand what it means to keep a job and don't want the responsibilities of regular employment (having to be on time, submitting to authority, and so on). Two examples might help illustrate their point:

-CEP placed James, a 16-year-old black male, in a job with a community agency. The agency was willing to be flexible about his hours so that he could attend some classes. Because the job required that he visit the courts from time to time, the employer requested, and then insisted, that James wear regular shoes instead of sneakers. He absolutely refused and

wanted CEP to find him another job where he could wear his sneakers. (One counselor noted that "these kids are serious as cancer in the terminal stage" about wearing sneakers.)

-CEP placed Henry in a summer job at an agency on 11th Street in Manhattan. He refused to accept it because it was "too far away" from his home on 125th Street (a few miles, easily accessible by public transportation). So CEP found him another job on 108th Street. But Henry also refused that one for the same reason.

Counselors perceive most CEP clients as living entirely in the present, day-by-day. While this may be somewhat realistic given the clients' immediate circumstances, counselors see part of their role to be to prod clients into thinking about what they must do to prepare for the kind of futures their clients say they want. What the counselors say they are up against are clients' often unrealistic expectations about opportunities open to them. Most CEP participants have no job skills and little education; yet they do not want menial, entry-level, and low-paying jobs because such jobs offer them no status and little money. They want to "make it", and they do not see taking a menial job as the way to do that.

According to counselors, many clients are angry and bitter about their poverty; some feel themselves to be the victims of an unjust and corrupt social system. They want to get their share of the good life, but the opportunities for a college education and a good career are, generally speaking, closed to them. The obvious symbols of financial

success in their communities are the criminals. The pimps and the higher-level drug pushers are especially attractive-- they have cars, women, and ready cash for no (or at least very little) work--and they are widely admired as people who have "gotten over" on the system. If there is an ethos to this generation of poor minority youth, counselors say, that ethos is "getting over." Getting over seems to mean getting what you want for nothing in a world that wants you to have nothing.

Counselors feel that many of CEP's clients think of welfare as a way to "get over" on the system, and hence most counselors are adamantly opposed to it. They believe it has as destructive an effect on the clients as hard drugs, creating a cycle of dependency that becomes increasingly difficult to break.

CEP counselors gave the following descriptions of some of their individual clients:

-Anthony was with a friend who got into a verbal altercation with a police officer. The disagreement came to blows, and in defense of his friend, Anthony struck the officer. He was arrested for assaulting a policeman. Anthony's mother told his CEP counselor that he had been staying out late at night and had been hanging around a "very tough crowd." The counselor wanted to help Anthony, but Anthony kept him at a distance. He did not fear going to jail.

-Jorge, an illiterate Hispanic male, was arrested for stealing from a decoy police officer and for assaulting the officer who ar-



rested him. He tended to use his physical strength instead of his brain to get along in life.

- Carl, in his late teens, was also arrested for stealing from a decoy policeman. He was utterly destitute when he came to CEP; he had nowhere to live and no money coming in. Although his counselor opposes welfare as a general matter, he thought that getting Carl on welfare was the first step on the road to recovery. Eventually Carl did obtain a job.
  
- Virginia was 16 years old and came from a highly religious family. She was arrested for snatching a purse, but her counselor doubted very much that she had committed the crime; he thought she had simply been in the vicinity when it happened. Virginia attempted suicide soon after the arrest, and her mother threw her out of the house. She was placed in a residential facility, where she was beaten by the other residents. The counselor was looking for alternative housing.
  
- Luke, a Vietnam War veteran, was arrested for burglary and larceny after he stole a lead pipe from an old building. It was his first offense. When he enrolled in CEP he had a part-time job and was taking correspondence courses. Soon after his entry into the program he obtained a full-time job, which he has kept for several months.
  
- Emmet was arrested for robbing an elderly man. He insisted on his innocence, claiming that he had come along while others were robbing the man and had tried to help. The ADA found his story hard to believe--especially as Emmet had a lengthy prior criminal history. He had just spent several months in jail and had had a severe drinking problem ever since his mother died several years before. Not long after enrolling in CEP, Emmet was arrested on burglary charges. He was terminated from the program.

## SERVICES

CEP has a more complicated system for delivering services than any other program studied for this report.\* To help the reader understand that system, the following is a description of the six major categories of staff involved:

(1) The Rep is typically an ex-offender or at least a "street-wise" person. He counsels clients about their arrests and personal problems (other than vocational/educational) and makes one home visit to discuss CEP with the client's family;

(2) The Vocational Counselor (VC) is usually a more "middle-class" person with a college degree. He counsels clients about their vocational and educational goals, tests their reading and math levels, and tries to prepare them for the job application and interview process;

(3) The Vocational Placement Specialist (VPS) is knowledgeable about educational opportunities (including training programs) in New York City and about jobs available in various fields. He maintains a network of telephone contacts with employers and refers clients to educational programs and job openings.

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\* This system is currently being somewhat reorganized; see the second section of the appendix below.

(4) The Job Developer (JD) goes into the field to solicit information about available jobs and interviews CEP clients before referring them to job openings.

(5) The Community Resources Specialist (CRS) maintains files on community resources such as medical facilities, temporary residences, mental health programs, recreational facilities, and so on. He also makes most of the referrals to such outside community agencies.

(6) The N.Y.C. Department of Social Services Representative (DOSSR) is a specialist on welfare and social security benefits, procedures, and regulations.

There are three basic administrative units at CEP: the screening or court operations unit, the counseling unit, and the services unit. The counseling unit consists of seven teams of Reps and VCs. The services unit includes the VPS, JD, CRS, and DOSSR.

Once accepted as a CEP participant\*, a person is assigned to a Rep-VC team within the counseling unit. The Rep and VC share responsibility for his progress in the program. After the first three sessions (during which the Rep and VC see the client jointly), the participant usually sees

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\* CEP prefers use of the term "participant" whereas most other programs tend to use the term "client." The two words are used interchangeably here.

primarily either the Rep or the VC. If he has obvious, serious personal problems (no place to live or an alcohol problem, for example), he will see the Rep until the problem has subsided or been solved. The Rep also sees participants who are already very stable and need only monitoring. The VC sees those who wish to get a job or go back to school and who can do so if they are given some advance preparation. To a certain extent, the roles of the VCs and Reps overlap, and each counseling team works out a comfortable division of labor. In some teams the Rep is dominant; in others, the VC is dominant. A few teams always see their participants jointly.

When and if a VC determines that a participant is "job ready,"\* he refers him to the services unit where the participant is assigned to a VPS or JD who will try to find him a job commensurate with his skills and interests. In practice, most participants are so unskilled that they qualify only for low-level jobs in factories or messenger services.

Similarly, when and if the VC decides the participant is ready to be referred to a night school, college, or

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\* According to the VCs, this means that the participant is literate enough to fill out a job application, has some motivation to get and keep a job, can make a presentable appearance at an interview, and can pass whatever test an employer might require for a given job.

training program, he refers him to the services unit, where a VPS attempts to make the placement.

If a participant needs other kinds of help, such as medical attention or a place to live, the Rep usually refers him to the CRS, who makes the appropriate referral. Sometimes, the Rep makes the referral himself and tells the CRS later.

A participant needing help with a welfare-related problem is referred by the the Rep or VC to the DOSSR, who determines his eligibility for benefits, informs him of the procedures he must follow, and refers him to the appropriate city office.

If services unit personnel (the VPS, JD, CRS, or DOSSR) do not think a referral appropriate, or fail to find an appropriate placement for the participant, they send the client back to the counseling team along with a brief report on actions taken. If they can make successful placement or referral, they inform the counseling team, which then resumes monitoring the participant's progress.

Counseling teams usually see their clients once a week, although contact may be more frequent if participant wishes or counselor believes it necessary.\* Very stable

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\* CEP, because of the counselors views on the personal limitations of their clients, has the most lenient policy toward absences from counseling sessions of any program visited. The penalty is usually...(continued on next page)

clients are asked to come in every other week and to call in during the week they do not visit CEP. Caseloads have been as high as 60 clients per team. When counselors found this volume a hardship, caseloads were cut back to around 50 clients per team by slowing down intake. The program does not now offer group counseling, although it has in the past.

CEP participants generally stay in the program four months. In exceptional circumstances, an additional two-month continuance may be requested by CEP (or insisted upon by the ADA or judge CEP asks for a dismissal) if the client does not have a job, is not in school, and has not made substantial efforts towards finding employment or education.

#### CEP counseling style

Personal or "insight" counseling plays a secondary role at CEP. Counselors (the Reps in particular) have been instructed not to delve into personal areas unless the client has an obvious and severe problem that needs immediate attention or that renders him unemployable.\*

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(continued from preceding page)...not more serious than a scolding from the counselor, unless the problem persists indefinitely or the client stops showing up at all. In an interesting parallel, the program with the client group least like CEP's--Bergen PTI (Profile 5), which serves white, middle- and upper-middle class clients almost exclusively--has the most rigid attendance policy: one unexcused absence is grounds for automatic termination.

\* This attitude toward clients'...(continued on next page)

Vocational counseling begins with questioning about the client's educational and employment history. The Vocational Counselor assesses his employability and job readiness based on this information, reading tests, and the client's demeanor (attitude, ability to articulate, and dress). He finds out what job the client wants or is willing to take and whether he has the requisite skills to get that type of job. (A similar assessment is made of clients who say they wish to go into job training or school.) Before sending the client to the special services unit personnel for referral, the VC asks him to fill out a job application and then "role-play" an employer-applicant interview. When he believes the client is job ready, he refers him to a Vocational Placement Specialist in the services unit. (The VPS, in turn, refers the client to a job if one is

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(continued from preceding page)...personal lives is highly unusual among the diversion programs visited. All of the other programs visited concern themselves to some extent with personal matters, and some of them focus on it almost exclusively--Bergen PTI (Profile 5), for example, which seeks to "strip the person" in counseling as the first step toward rehabilitating him. The other program notable for the extent of its involvement in clients' lives is TCRP (Profile 3), which mandates that counselors set goals for participants not only as regards employment and schooling, but also living arrangements, leisure time, and money management. (Some of TCRP's counselors, however, regard the latter two, especially, as constituting an unwarranted intrusion by the program, and they try to avoid pursuing them in counseling.)

available for which he is qualified.)\* The VC is responsible for following up on clients after their referral to the services unit. Once the client finds employment, the VC counsels him about any adjustment problems and encourages him to stay on the job.

While CEP has done vocational counseling for a long time, this function did not assume much prominence until January 1977. Before that, the Reps were primarily responsible for counseling individual clients; when they thought it appropriate, they asked for the Vocational Counselor's assistance in preparing a client for the job search. Since January 1977, however, Reps and VCs have had joint responsibility for cases, and the role of the VC seems to have become (at least from the administrative point of view) predominant.\*\*

To the extent that it is possible to characterize the counseling philosophy at CEP, it is that CEP seeks to alert

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\* For a variety of reasons, the VC sometimes refers a client to the services unit who is not job-ready. For example, a vocational counselor referred one hostile client to a VPS in hope that the client would "shape up" when she realized CEP would really try to find her a job.

\*\* CEP administrators say that Reps are not supposed to see clients unless they have severe personal problems--and even then only to "bandage" them up. Once bandaged, clients are to be seen primarily by the VC. Thus the roles have been reversed: the Reps now assist the vocational counselor rather than the other way around. Individual Reps have not acquiesced to this reduction of their role, however. They continue quietly to counsel as they always have, particularly when the Vocational Counselor with whom they are teamed is a more passive or inexperienced staff member.



clients to alternatives to their street life, to communicate that with some effort they can succeed (in finding a job or learning to read or whatever), but to let them make the choice of how they want to live--not to make it for them. The counselors realize that only those clients who are ready to be receptive to this message will respond. The counselors' general attitude is that they are there to offer services to a population badly in need; they hope that the services will produce some long-term benefit to the client, but they express little conviction that they will.

This tolerant counseling philosophy results in a fairly lenient attitude toward unexcused absences (the most lenient of any program visited), but does not preclude counselors from prodding their clients to look for jobs or get back into school, even to the point of threatening (and carrying through) termination if the clients persistently refuse to comply. It is not so much that the counselors are betraying their own philosophy, as it is that there is agency and court pressure on them to get every client employed or in school, (or at least attempting to do one of these) in order to justify charge dismissals. To maintain its credibility, CEP must deliver to prosecutors and judges on its promise to return to court as successful participants, persons who are employed or in school.

## Job development at CEP

As one of the first manpower-model diversion programs, CEP has had a job development component since the program was established nearly 10 years ago.\* At first CEP had two basic types of service delivery personnel: the Rep and the Career Developer. The latter was to prepare the participant for the job search, to find out what sort of job he wanted and was qualified for, and to help him find a suitable job. Career Developers were expected to go out into the field to make contact with prospective employers and find job opportunities. CEP had hoped that it could establish stable "accounts" with a number of medium- and large-size businesses committed to the idea of rehabilitating these youths or at least willing to give them an opportunity to work. CEP hoped it could then refer its clients to these accounts on a regular basis. This hope was not realized.

In time, the Career Developer's role was broken down into three separate positions. The Vocational Counselor prepared clients for a job search and found out what sort of job they wanted or were willing to take; the Job Developer made field visits to employers and tried to find job openings for CEP clients; and the Vocational Placement Specialist reviewed the

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\* The other two programs reported here that were similarly manpower-oriented, Operation de Novo and TCRP, have both abandoned this function entirely.

preparatory work of the Vocational Counselor and made referrals to the job sites the Job Developer found.

This is how CEP's job development component has been organized in recent years. However, despite the efforts of some very dedicated staff, job development at CEP has not been successful. Identifying the reasons for the failure of the job development component is not difficult. Some are endemic to the task, and some have to do with internal problems at CEP. The reasons noted by program staff include: (1) the job market is poor; (2) the clients are difficult to place in jobs; (3) most of the clients don't want the menial jobs CEP can find for them; (4) the counseling unit is slow in referring clients to the services unit for job referrals placement; (5) the services unit has too small a staff to do an adequate job of job development; and (6) the services unit staff members are not uniformly well-trained specialists.

The job market for minority group youths has never been very good, but CEP services unit staff reported that it was much easier ten years ago to find job openings and place clients than it is now. Several factors--fewer job openings, a political climate hostile toward the idea of giving young criminals a break, and the trend toward a more youthful CEP population (an average age of 17 instead of 19 or 20)--have come together to make present job development efforts extremely difficult.

Recent statistics indicate that the unemployment rate among black teenagers is about 40 percent. One can safely assume that the rate is even higher for lower-class, inner city black youths who are illiterate (or near-illiterate), unskilled, and have criminal (if only arrest) records--in short, those who form a substantial proportion of CEP's clientele. In addition to these shortcomings, many CEP clients, as noted earlier, are said to be unmotivated, articulate poorly, dress inappropriately, have negative attitudes toward employment, and they often don't show up for appointments CEP service unit personnel have made for them with prospective employers.

Another factor hampering job placement efforts, according to CEP staff, is that the counseling teams often do not refer clients to the services unit soon enough for the unit to find them a job. Because participation in the program is only four months, if it takes counselors two-and-a-half to three months to refer a client to the services unit, services personnel have only four or five weeks in which to find him a job.

Finally, CEP has only three Vocational Placement Specialists and three Job Developers to find jobs for approximately 1,000 clients a year. They cover four of the five boroughs of New York City. This appears to be too small a staff to do a thorough job of job development, particularly since the personnel are not all highly trained specialists.

## Ex-offenders as Counselors

From the outset CEP has had a firm commitment to hiring ex-offenders and ex-addicts as counselors. While not all its personnel (new or old) have these characteristics, the program has not fully backed away from this policy. There is still the belief that some ex-offenders, as "street-wise" persons attuned to lower-class, minority group cultures, are able to understand and speak the language of CEP clients. The program, however, does not reject the idea that college-educated, more middle-class counselors also have a role to play in serving the clients.

Over the past few years, many PTI programs that originally employed ex-offenders as counselors have gradually moved away from that policy.\* Instead they have begun to hire college-educated persons or, less frequently, professional social

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\* Of those reported here, TCRP (Profile 3) and Operation de Novo (Profile 2), like CEP, began as manpower-model diversion programs with a mandate to hire ex-offenders as counselors. At the time of the Vera site visits, however, TCRP reported it had only one ex-offender on staff and de Novo "three or four." (All of those at de Novo were veterans of the program's early days, and all had obtained or were working on college degrees; the ex-offender label is no longer considered particularly relevant.) Among the other programs, Hudson PTI (Profile 4) said it had one ex-offender on staff; Dade PTI (Profile 6) had none; and Operation Midway (Profile 7) and Bergen PTI (Profile 5) both employ only probation officers as counselors.

workers. This is partly a reflection of the fact that many of these programs serve more middle- and lower-middle class clients than does CEP. (It is not surprising that these programs often report that their greatest difficulty is in counseling their lower-class, minority clients).

The conventional wisdom is that ex-offenders tend to be either overly sympathetic with their clients, reinforcing negative attitudes toward society and the criminal justice system, or overly harsh, bent on forcing clients to make the changes they themselves have made. Nevertheless, CEP persists in its willingness to hire ex-offenders (though not to the exclusion of others) not least because it feels that these counselors, as successful members of the same class from which clients come, are good role models.

#### EXIT PROCESS

Just before a participant's court date, the VC and Rep team discuss with their supervisor, the counseling coordinator, what recommendation they will make to the court: dismissal of charges, an additional two-month continuance,\* or restoration of the case to the calendar (that is, either termination

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\* Unlike other diversion programs visited, CEP rarely asks for continuance of cases. More often, continuances are requested by ADAs or judges unwilling to accept dismissal recommendations in individual cases immediately after the first four-month participation period.

or administrative discharge of the case from CEP).\*

If they decide to recommend dismissal, they write a summary of the participant's progress in the program, stressing concrete vocational and educational improvements rather than "personal" achievements (such as improved hygiene, better relations with family or friends, more insight into self). The reason, according to the court operations staff, is that the less tangible gains are unlikely to impress judges and prosecutors.

CEP employs a court report writer who uses these summaries, case notes, and other data in the file to write a letter to the court recommending dismissal. This letter is first brought to the ADA liaison, who must concur with the recommendation (and so state), before it is taken to court. (A similar letter is written when the recommendation is for a continuance).

ADAs do not always accept CEP's recommendations for dismissal, although, so far, when they have rejected recommendations they have asked only that CEP continue to work with the defendant for another two months. By the end 1977, 292 CEP clients had successfully completed four months in the program and received dismissals (55% of the 532 clients exiting from the program during 1977).

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\* CEP tries to identify clients who will be terminated or administratively discharged from the program before the four-month adjournment is up so the case can be restored to the calendar earlier than if the recommendation were to be dismissed.

The procedures for unfavorable terminations of clients begin with the Rep-VC decision to terminate, which they discuss with their supervisor at weekly case conferences. If the supervisor concurs, one counselor sends the defendant and his lawyer a letter announcing CEP's intent to terminate the case. CEP considers this letter a notification rather than an invitation for discussion--and, in fact, a response from either the participant or his lawyer is rare. CEP then notifies the DA's office that the defendant has been disassociated from CEP. No reason for the disassociation is stated in the letters.

Of the 532 clients exiting the program during 1977, 45 percent have been terminated or administratively discharged; most had not been in the program a full four months. Most terminations result from a participant's failure to attend counseling sessions or his rearrest (although termination for the latter is not automatic); only occasionally do they result from the participant's failure to cooperate with the program (not going to scheduled job interviews or making no effort to get back into school as agreed upon in the program plan, for example).

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\* Prior to 1977, CEP had an average termination rate of about 30 percent (roughly the same as the current rates in Operation de Novo, (Profile 2) and TCRP (profile 3).



An administrative discharge is given to a participant the program can no longer assist either because the services CEP offers are not suited to his needs (for example, he is psychologically disturbed) or because he moves out of the jurisdiction.

#### Sealing of records

In September 1976 the New York state legislature enacted a law (CPL 160.50) providing for the return of fingerprints and automatic sealing of all court, prosecutorial, and police records of enumerated types of arrests that do not lead to conviction. Thus, under the law, successful CEP participants are supposed to have their records sealed. However, while the sealing should be automatic, the procedures that exist in each borough of New York City and the State level are not clear. Consequently, sealing may or may not be happening on a routine basis. Further exploration of this issue is necessary.

## APPENDIX

(1) Changes in CEP as of January 1977. The funding crisis of 1976 resulted in the lay-off of nearly 200 CEP employees. The cut in its budget from \$3.4 million to \$1 million annually caused CEP to make several major changes when it resumed operations in January 1977.

First, CEP's organizational structure was significantly altered. Instead of having five offices (a central administrative office and four borough offices carrying out service as well as administrative functions), CEP centralized both its services and administration in one Manhattan office, maintaining only "mini" offices in the Criminal Courts of each borough to carry out screening functions. CEP also reduced the number of clients it was committed to divert annually --from 2,600 to 1,000; however, the program continued to provide services to the families of diverted clients, and it introduced a new referral service in the courts to help defendants who are ineligible for CEP find drug treatment programs. In making these structural changes, CEP reduced the number of screeners and counselors on staff and eliminated its training staff, the tutoring program, and most of its research department.

The funding crisis also had an impact on CEP's eligibility criteria. Prior to 1977, CEP had diverted defendants charged

with both felonies and misdemeanors. The program's formal (i.e., written) criteria identified the specific felony charges making a defendant either eligible or ineligible; the latter included the majority of all A, B, and C felonies. In shifting to a felony-only eligibility policy, CEP altered its formal criteria to include consideration of only C, D, and E felonies. In effect, this change excluded all defendants charged initially with misdemeanors and expanded the criteria to include those facing the more serious C-felony charges. (Successful intake of these more serious cases, however, still depends upon overcoming ADAs' reluctance to divert them.)

A second significant change in eligibility involved informal rather than formal criteria. Previously, CEP screeners had employed informal (i.e., unwritten) standard of eligibility based upon the defendant's prior arrests. These varied from borough to borough and were based upon screeners' understandings of what standards ADAs in the different courts used to evaluate defendants for diversion. For example, in the Manhattan and Brooklyn courts, screeners used a rule of thumb that they would not seek approval to divert a case if the defendant had more than five or six prior arrests; in Queens the standard was two prior arrests. When CEP shifted its intake policy to felonies-only, it also altered this informal evaluation of policy. Screeners are now supposed to take virtually all formally eligible cases (whether recruited by the screeners

themselves or referred by Legal Aid attorneys) to the ADA for approval, regardless of the defendants' prior records. This they do unless they know for certain they cannot get the ADA's approval. Currently, therefore, CEP defines its screening function more passively than it had in the past although its advocacy role remains for those defendants for whom it seeks approval from the ADA to divert.

Finally, CEP's service delivery system in 1977 was slightly different from its previous structure, even though the actors remained the same and the program's emphasis on helping clients get employment, job training, and educational assistance was maintained. The organizational distinction between a counseling unit and a services unit also existed under the earlier system (though the latter was called the career development unit), as did the distribution of service responsibilities among the various actors. The major difference is that under the older system, the Rep and the Vocational Counselor did not function as an official team. Each Rep had a specific case load to counsel and each group of Reps (a counseling unit) had one VC to provide the vocational assessment of all the unit's clients. Within the career development unit, the functions of the Vocational Placement Specialist and the Job Developer were also somewhat more distinct. Formerly, the VPS referred participants to openings, and the JD did all the field and telephone contacts with employers. After January 1977, the chief distinction between their roles was that only the VPS made educational referrals and only the JD had

direct contact with employers. (Even more recently, the position of VPS was abolished and all vocational and educational referrals were made by the Job Developer.)

(2) Changes in CEP anticipated for early 1978. During 1977 CEP administrators began to view the agency's service delivery system as somewhat unwieldy, particularly because client services were so fragmented among the Rep, the VC, the JD and the recently eliminated VPS. Consequently, they have initiated several important changes in these service roles which should be completed by early 1978.

The primary changes is that Rep-VC teams will no longer have the basic responsibility for providing services to the client. Rather, there will be a single service deliverer called a counselor.\* Counselors will be the primary persons responsible for developing a service plan for the client and helping him carry it out. While there will no longer be VCs or VPSs, the emphasis in the counselors' activities with the clients will continue to be employment and, where appropriate, education. The individual counselor, however, rather than

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\* All other diversion programs visited for this report had a single service deliverer or counselor responsible for services to the client. CEP is moving in this direction by altering the structure of the Rep and VC positions and combining responsibilities. It is doing so without major changes in program personnel. Current Reps and vocational counselors are being retained as "counselors."

multiple service personnel will be responsible for the vocationally-oriented as well as other services.

This emphasis on a single service-deliverer will also be reflected in the changed role of the CRS. The CRS will become a resource for the counselors who will then make all outside referrals needed by clients (housing, medical, educational, etc.). JDs will continue, however, to do job development and referral.\*

Finally, in addition to providing one-to-one counseling in the vocational and educational areas, referral to outside agencies, job development and referral, CEP is also planning to expand its inhouse services and return to the use of groups. The groups, however, will not be used so much as counseling tools as information workshops. Counselors and a special "trainer" will conduct the workshops around topics such as career planning, parenting, or birth control, and specific problems such as how to read street or subway maps, how to do office procedures (e.g., answer a telephone), or how to read a phone directory. In addition, reading or math tutorials may be reintroduced

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\* CEP is the only program visited for this report which continues to do its own job development although several programs (especially those based upon a "manpower-model") did so originally (see, TCRP, Profile 3 and de Novo, Profile 2).

into the program.\*\*

Other changes may be introduced as the shift to a single service deliverer and an increase in inhouse services progresses during early 1978.

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\*\* CEP is the only program visited using or contemplating the use of such detailed inhouse services. The focus of groups in other programs is more as an aid to personal counseling (for example, de Novo, Profile 2 and Dade County, Profile 6).

PROFILE 2

OPERATION DE NOVO

(Hennepin County Pretrial Diversion Program)

321 Third Street, South  
Minneapolis, Minnesota 55415

Henrietta Adams Faulconer, Director

PROGRAM LOCUS

Operation de Novo, officially the Hennepin County Pretrial Diversion Program, has been in operation since April 1971. It was funded first by the U.S. Department of Labor and later by the state LEAA outlet; it is now financed through a direct services contract with Hennepin County from monies allocated for court services. The program is administratively independent of the courts, however, reporting directly to the County Board of Commissioners.

Minnesota has no statute or court rule governing pretrial diversion, and de Novo staff and the prosecutors report that adoption of such a rule or law seems unlikely, at least in the near future. The program operates instead under an informal arrangement with prosecutors and with criminal and juvenile court judges.

Relations between de Novo and the courts are excellent, a situation that appears due at least in part to the small size



of Hennepin County's court system--there are only about twelve prosecutors in all that are assigned to the criminal divisions.

For 1976-77 de Novo was allocated \$230,000 to serve between 500 and 600 clients, both adults and juveniles. The program emphasizes individual and group counseling to give defendants insight into themselves and to help them develop more productive ways of coping with the problems in their lives. Referrals to other agencies are often made for clients with drug or alcohol problems, or for those seeking job placement assistance.

#### ELIGIBILITY CRITERIA

To be eligible for diversion into de Novo, defendants must be:

- (1) charged in Hennepin County;
- (2) charged with a juvenile offense, a misdemeanor, or a low-degree felony; and
- (3) without a prior adult felony conviction.

Under some circumstances, de Novo takes defendants charged with very serious felonies, such as armed robbery or even murder. Defendants with prior misdemeanor convictions are also sometimes accepted.

There are no age restrictions. Persons who are alcohol or drug-dependent (including multiply addicted defendants) are admitted if the program's interviewers feel they are motivated to

overcome thier problem.\* This was the only program reported here that accepts defendants charged with prostitution.\*\*

Consent of neither the victim nor the arresting police officer is required. Restitution is frequently a condition for diversion.

#### SELECTION AND INTAKE

De Novo has four screeners, one who daily attends Municipal Court (the misdemeanor court) arraignments; one who attends District Court (felony court) arraignments; one who regularly attends in Juvenile Court; one is a Native American who floats between Municipal and District Courts. They find cases through a combination of solicitation and referral. About 30 percent of their cases are misdemeanants, 60 percent felonies, and 10 percent juveniles.

Typically, the screeners in the adult courts review each morning the list of cases on the court calendar for the day, selecting the names of defendants who might be eligible for de Novo. If neither the defendant's lawyer nor the prosecutor approaches the screener to refer a person on the screener's list, the screener himself suggests to them that the defendants might

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\* Willingness to accept a referral to an outside treatment program is a precondition for acceptance by de Novo (see "Services").

\*\* The researchers did, however, encounter a diversion program in Boston that serves female defendants exclusively, including prostitutes (see TCRP, Profile 3, "Participant Characteristics").

be eligible.\* Although the program draws most of its cases at arraignment, it also accepts referrals at later stages in the court process. Most referrals are made by public defenders, some by prosecutors, and a very few by judges.\*\*

A defendant who has been suggested for diversion is interviewed briefly by the screener in court. If the person agrees to diversion and the screener believes he is a good candidate (30 percent of all referrals are rejected at this point, often because the defendant himself refuses), the screener confers with the prosecutor. Together they decide whether the case is acceptable for diversion, but the last word in these discussions is the prosecutor's.

In the Municipal Court, once the prosecutor's consent has been obtained, only the judge's consent is necessary for diversion and an automatic six-month continuance.\*\*\* In the case of a felony charge, the client is then given an appointment for an evaluation interview at de Novo; if accepted he is assigned a counselor.

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\* While de Novo continues active court screening, the solicitation aspect of their screening is diminishing while the referral aspect is increasing, according to the director.

\*\* It is important to note that in Minnesota, defense attorneys (as well as de Novo screeners) have access to the prosecutor's files on the case. This discovery procedure means that the State's evidence in the case is available to all parties prior to the diversion decision. Whether this prevents weak cases from being diverted is not clear, but the legal safeguards are there.

\*\*\* The standard lengths of adjournments for each category of client have been established by informal agreement among the judges, prosecutors, and de Novo.

In the District Court, there must be a two-week adjournment for consideration of felony cases for diversion. During that period the de Novo screener interviews the defendant again and writes a short report on the services the program would offer him. The report is submitted first to the prosecutor and then, if he concurs, to the judge. Felony cases are usually continued for one year if the defendant is accepted into de Novo.

The de Novo screeners must make swift judgments about who among a day's defendants might benefit from diversion and the program's services (though in the case of felony offenders there is the two-week consideration period after the initial tentative decision). Aiding them in making these judgments are their clear understanding with the prosecutors about the types of cases appropriate for diversion and several years' experience working with and sizing up defendants.\*

They say that what they look for above all in an applicant is the ability and willingness to change the behavior that led to his committing the crime. The no-prior-adult-record eligibility criterion (to which exceptions are made in only about ten percent of all de Novo cases, and even then apply only to past misdemeanor offenses) generally excludes from consideration "hardened" offenders. But screeners do not necessarily reject defendants who are what they describe as "defiant"

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\* The District and Municipal Court screeners are both veteran staff members who also have other program responsibilities (see "Services" below.)

if they believe there is evidence of "willingness to change."

According to program personnel, there has been some trend at de Novo toward accepting more serious offenders-- even some involved in crimes of violence, such as assault--a result of the Hennepin prosecutors' growing confidence in the program.\* The evidence, of course, is largely anecdotal: recently, on the initiative of the Chief Prosecutor, de Novo accepted a murder defendant who had committed the act under mitigating circumstances. The de Novo staff is extremely proud of this sign of the prosecutor's faith in the program.

#### Intake for juvenile offenders

De Novo is the only one of the diversion programs visited that accepts juvenile as well as adult offenders. And, interestingly, the juveniles in the program are quite different from the adults: typically, a youngster diverted to de Novo has accumulated a record of fairly serious offenses and has already

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\* This seems to stem not only from the good working relationship developed over the years but also from the prosecutor's respect for de Novo's high standards: clients who do not observe their service contracts in the program must demonstrate clear evidence of a willingness to change or they are terminated and sent back to court. Such "second chances" are not taken lightly by counselors. (see "Services" below). In addition, prosecutorial confidence in diversion is encouraged by de Novo's recidivism statistics. Based upon self-reports of successful and unsuccessful clients three, six, and twelve months after they leave the program, de Novo claims that 90% of its dismissed clients have not been rearrested in contrast to 70% of its termines. These data are regarded by prosecutors as evidence of the program's effectiveness.

made the rounds of several of Minneapolis' many and varied juvenile treatment programs. De Novo may be an alternative to probation supervision of a young offender; often, it is his last chance before he is remanded to a state residential institution.

The Juvenile Court screener accepts referrals, directly from judges, after finding or plea of guilty to the juvenile charge. In evaluating a juvenile applicant, the screener looks for signs similar to those for an adult offender that he is willing and able to change the behavior that has led to criminal activity. Acceptance of a juvenile offender into de Novo takes place in stages, however, since his parents must agree to participate in the program, too. One or both are required to attend weekly sessions of a counselor-led group composed of parents of all juvenile clients (see "Services," below). Cases accepted into de Novo from Juvenile Court are initially adjourned for three months, but continuances extending up to a year, and sometimes longer, are common.

#### Who makes the decision

Although prosecutorial consent is required, the weight of most decisions about whether to divert adult defendants is carried by the de Novo screeners. This is heavily influenced, however, indirectly, by prosecutorial attitudes concerning diversion.

The screener's experience and relationship with the prosecutors are such that they can predict in advance which cases will receive consent and which will not. The Hennepin public defenders (of whom there are only 14) play some role in this process as well. While not decision-makers in the strict sense, they too know what kinds of cases prosecutors and judges believe are appropriate for diversion, and they sometimes bring to screeners' attention through referrals defendants who might otherwise be overlooked. The judges technically have the last word on diversion of a case, but they rarely overrule a prosecutor's decision.

In the juvenile cases, the judge is the chief decision-maker. The de Novo screener rarely turns down a recommendation from the bench, so long as the defendant's parents agree to cooperate in his treatment.

#### PARTICIPANT CHARACTERISTICS

The data below are based on figures in the first quarter of 1977. Statistics on the breakdown of charges were unavailable.

AGE:	under 18	14%
	18-25	73
	over 25	13

ETHNIC GROUP:	white	71%
	black	23
	Native American	5
	Other	1
SEX*:	male	73%
	female	27
EMPLOYMENT STATUS AT INTAKE (adults):	employed	27%
	unemployed	39
	school/training	16
	homemaker	9
	employed and school/training	7
	other	2
PRIOR RECORD:	none	64%
	juvenile (include adult clients with juvenile records)	27
	adult-misd.	8

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\* De Novo reported the highest proportion of women clients among the programs visited, perhaps in part because it accepts defendants charged with prostitution. Dade PTI was close, reporting 25 percent. Midway reported 14 percent, CEP and Hudson PTI around 10 percent, and TCRP 6 percent. Bergen PTI does not collect statistics on clients but reported that "many" are "middle-class, middle-aged ladies."



TYPE OF CHARGES:	felonies	60%
	misdemeanors	30
	juvenile	10

BREAKDOWN  
OF CHARGES: Not available

As the statistics show, most of de Novo's clients are adult white males, 18 to 21 years old, charged with first-offense felonies. Although breakdown on charges were not available, it appears that most of them were arrested for property crimes.

No data are collected on clients' socio-economic backgrounds, but program staff report that the majority are middle- or working-class.\* This is substantiated by the following breakdown of clients' sources of income: jobs, 40 percent; parents, 26 percent; public assistance, 14 percent; unemployment insurance benefits, 6 percent; spouse, 4 percent; and other, 8 percent. In addition, more than half of the adult clients have high school diplomas.

De Novo's juvenile client population neither proves nor disproves the widespread assumption that most serious repeat juvenile offenders come from severely disordered families of lower-class backgrounds. Its juvenile clients are chiefly middle-

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\* This seems to reflect the population of Hennepin County as much as it does the screening effect of the no-prior-record eligibility criterion.

class, but the requirement of parental cooperation may screen out those youngsters whose parents will not or cannot take an interest in their rehabilitation.

#### SERVICES

In its early years, Operation de Novo was a "manpower-model" diversion program. Its major funding sources was the U.S. Department of Labor, and its major service to provide young adult defendants with access to employment. The hope was both that steady jobs would significantly reduce clients' likelihood of recidivism and that diversion and dismissal of charges would remove one of the major barriers to their employment: the onus of a criminal record.

The program's shift to state and then local criminal justice funding coincided fairly closely with a shift in its staff's philosophy about the usefulness and efficiency of the manpower approach. Not only did the elaborate data-gathering necessary for manpower funding require vast administrative machinery (and thus a "top-heavy" administrative structure for the program), but the program felt the statistics generated were not indicating good results. De Novo leadership and services staff were also concluding from their day-to-day experience that a program that all but handed clients jobs may in fact have been discouraging them from taking responsibility for their own lives and that the

services they were giving were neither crucial nor appropriate for their clients.\*

By its own choice, therefore, de Novo is now primarily a counseling service.\*\* Counselors try to encourage self-reliance, self-esteem, and self-control in their clients by helping them set modest, realistic, and specific goals. If, for example, a client says he wishes to return to school, that is specified as a goal in his service contract; the clause might go on to state that he must find out about educational alternatives in his community and return to the next session with the information. (For a juvenile, the week-by-week steps toward goals are usually even more modest--he may agree that during the week he will mow the lawn, for instance, or make his bed every day.)

The de Novo counselors seem to have no preconceived notions about what specific accomplishments constitute "rehabilitation," and they take pains to ensure that the client himself--not the counselor--sets the goals.\*\*\* They see the process of setting and

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\* It should be noted, however, that this observation is based on de Novo's experience with relatively well-educated clients from middle- and working-class backgrounds. As a group, they did not carry the employment handicaps exhibited by poor, inner-city youths with little or no high school education--much the kind of population served by some diversion programs, including New York's Court Employment Project (Profile 1) and, to a lesser extent, Hudson County PTI (Profile 4).

\*\* Among the three programs reported here that began as manpower programs (the other two are CEP and TCRP) de Novo has made the most marked departure from the original emphasis.

\*\*\* Quite different from TCRP (Profile 5), for example, where counselors are very active in setting the goals for clients and monitoring their progress toward them.

meeting goals as the most important step toward self-reliance and behavioral change in the client.

There are two exceptions to this policy. First, an agreement concerning attendance requirements at individual and, in most cases, group counseling sessions is written into every service contract. And second, for those clients for whom restitution was a condition of diversion (18 percent of de Novo's clients were in the program under this condition at the time of the site visit), the amount and frequency of payments to the victim are also a mandatory clause in the contract.\* (A clerical staff member handles the paperwork and collection of the restitution payments, freeing the counselor from a "policing" role; in the sessions, the counselor can treat restitution strictly as an issue of contract compliance.)

If the de Novo counselors do not (except as noted) impose goals on their clients, they are very firm about their clients meeting the goals they set for themselves, and sometimes do outside checking to assure this. If the client who agrees to bring back information about educational programs fails to do so, on the specified date, he is (barring a very good excuse) unequivocally in violation of his contract; and only a few such violations are tolerated before termination proceedings

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\* In 1976 de Novo participants returned over \$20,000 to victims, still another reason for the program's high standing with both the courts and the public. The appeal of restitution appears to be a politically supportive factor for many diversion programs (including Dade, Profile 6) despite the problem that defendants have not been legally found guilty.

are set in motion. The exact number of tolerable violations is left up to the individual counselor, but the counseling staff as a whole has a reputation for both consistency and toughness in the matter of enforcement.

By mutual agreement of counselor and client, a contract may be rewritten during the participation period. Some clients exhibiting strong stability and self-reliance may be excused from counseling altogether after a time and placed on weekly telephone contact schedules.

#### Group counseling

All juvenile and most adult de Novo clients must attend one weekly group counseling session in addition to their individual sessions. Among the groups meeting in July 1977 were:

-Two or more "Chemical-Dependency" groups composed of adults with drug and alcohol problems. De Novo reports that counselors have identified chemical dependency problems (ranging from excessive marijuana use to narcotics addiction and alcoholism) in close to 30 percent of the clients. (For many of them, however, the dependency was not directly related to the charges against them.)

-The juvenile groups--one for the clients themselves (of whom there were about 30 at the time of the site visit) and one for their parents.

-A Native American group, part of a unit within the program that is staffed by Native Americans and receives special separate

funding from LEAA. In this group, drug or alcohol dependency is treated as the root cause of clients' problems, regardless of the original charges against them.

-The "F-Troop" group, a disciplinary group for clients who have violated their contracts. This group is more closely monitored than the others, since its participants are getting their last chance in the program.

-Three "Personal-Growth" groups for clients who need some extra support in straightening out their problems and becoming self-reliant.

Each de Novo group session is led by at least one counselor, sometimes more. The juvenile group is led by two full-time counselors and one part-time assistant. The leaders encourage open discussion of personal problems and mutual support. This is a significant change from de Novo's "manpower" days, when groups were de-emphasized (though they were used) and when anything resembling group therapy was eschewed in favor of what has been called a "group educational-informational model."\*

#### Other services

De Novo counselors make frequent referrals to outside agencies that can give clients specialized assistance. Most commonly, they refer those with drug- or alcohol-dependency problems to

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\* See Mullen, The Dilemma of Diversion, page 79; note also the discussion of the new group workshops CEP is considering (Profile 1, Appendix section 2).

treatment programs. Those who appear to need professional psychotherapeutic counseling (which de Novo does not provide) are referred to local mental health facilities. Now that the program no longer does inhouse job development, referrals are also made to a CETA-sponsored organization that offers testing, career counseling, and job placement.

#### The services staff

When de Novo began operations in 1971, the services staff was composed almost entirely of ex-offenders. A core group of three or four of these early staff members remains, although the "ex-offender" label has faded into obscurity--they are now veteran counselors, and all of them have obtained or are working on undergraduate degrees. More recent hires have tended to come from paraprofessional backgrounds and were counselors in probation, court, or corrections settings before de Novo. At present, there are seven full-time counselors and six part-time counselors; several of the latter are students interns. Caseloads for the full-time counselors average 50 clients.

Each counselor has a specialty--though none gets only one kind of client. One, for example, is especially good with serious offenders; another works particularly well with older clients who have no prior records. Matching clients to counselors on the basis of crime charged, personality, and special needs is taken very seriously at de Novo. It is the responsibility

of the District and Municipal Court screeners to make counselor assignments. They spend their mornings in the courts and afternoons at the program office interviewing potential candidates for diversion. (The Municipal Court screener, a long-time de Novo veteran, has added administrative duties to perform in the afternoon.)

All the counselors do group as well as individual counseling. They do not make visits to clients' homes.

#### EXIT PROCESS

As the day draws near for the client to return to court, his counselor decides whether his performance in the program has been satisfactory enough to warrant a recommendation to dismiss the charges. If so, the counselor writes a report about the client's accomplishments, which is edited by the director and then sent to the prosecutor. Prosecutors and judges virtually always accept de Novo's dismissal recommendations.\*

About one-third of de Novo's clients are unfavorably terminated from the program and returned to court without a recommendation. This reflects de Novo's toughness about clients' compliance with their service contracts and, again, is seen by the courts as a measure of de Novo's success rather than its failure. The termination procedure begins with a counselor's decision

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\* The other programs visited reported little or no difficulty in getting charge dismissals for successful graduates are Hudson, Bergen, and Dade PTIs (Profiles 4, 5, and 6).



to terminate, which he discusses with the program director. The counselor then sends letters to the client and his defense lawyer notifying them that de Novo intends to terminate the client and that a hearing on the issue has been scheduled. If the termination decision is not contested, or if it stands after the hearing, the counselor officially notifies the prosecutor, court, and defendant that the defendant is being returned to court without recommendation.

This letter states the reasons for termination but also mentions any positive accomplishments of the defendant made in the program.\* The most common reasons for termination are failure to attend counseling sessions, failure to comply with other terms of the service agreement, and rearrest. (Termination upon rearrest is not automatic, however.)

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\* The de Novo director admits some discomfort with the idea of revealing counseling information but believes that the Court has a right to know whether--and to what extent--the terminated client upheld his part of the diversion bargain. Nevertheless, some Hennepin judges feel that the letters might prejudice the defendant's case upon his return to court, and they refuse to read them.

### PROFILE 3

#### THE COURT RESOURCE PROGRAM

14 Somerset Street  
Boston, Massachusetts 02108

Paul Hallisey, Director

#### PROGRAM LOCUS

The Court Resource Program (TCRP) is one of four diversion programs operating under the aegis of the Justice Resource Institute (JRI), a private non-profit organization that plans and operates programs aimed at improving the criminal justice system. TCRP began in 1971 as a "manpower-model" pretrial diversion program, with funds from the U.S. Department of Labor. Its present source of funding is a contract between JRI and the state probation department which receives funds from the Committee on Criminal Justice, Massachusetts's LEAA funding distribution. TCRP's funding has been severely cut back in the recent past; it fell from \$435,000 for 1975 to \$185,000 for 1977. The severity of this cut precipitated a reorganization in late 1976 of all program's screening and service delivery processes (see "Services" below).

TCRP's major purpose now is to "stabilize" and monitor four aspects of its client's lives, of which employment and education are only one. The others are living situation, leisure time, and money management. The program anticipates that it will serve 318 clients in 1977 (after screening 525 and assessing

450), of whom 255 will be diverted defendants and 63 probationers. It operates in a relatively wide area that include ten District Courts in two counties, including the Boston Municipal Court .\*

#### The phenomenon of post-trial diversion

TCRP is the only one of the programs visited that is now engaged primarily in post-trial, rather than pretrial diversion. For a defendant whom the judge thinks a likely prospect for diversion, he conducts the trial (without a jury) and makes a finding of facts sufficient to enter a verdict of guilty; he then withholds the actual judgment of guilt. At that point he refers the case to TCRP for assessment.

This phenomenon developed more as a reflection of the peculiarities of the Massachusetts judicial system than of a philosophical or legal point of view of program operators.\*\* In the state's lower courts, guilty pleas are rare, and trials (of a somewhat abbreviated nature) are common.\*\*\* The judge who arraigns a defendant rarely presides at that defendant's subsequent appearances. The judge who tries the case, however, is always the one who

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\* In Massachusetts, District and Municipal Court have jurisdiction over all misdemeanors and all felonies carrying maximum penalties of less than 5 years. These courts also conduct probable cause hearings to determine whether defendants charged with the more serious felonies should be bound over to Superior Court.

\*\*However, diversion at or post trial is viewed positively by the program because it avoids legal right-to-trial conflicts. TCRP believes case dismissal is the primary element in an individual's avoiding the stigma of a criminal record as opposed to the individual not having to appear for trial.

\*\*\*No right to jury trial exists in the District or Municipal Court. A defendant found guilty in a lower court can appeal his conviction to the higher criminal court (Superior Court) for re-trial by a jury.

decides disposition. When TCRP was a pretrial program, it frequently came up against the problem of accepting referrals from an arraignment judge and assessing their suitability for the program, only to have the trial judge unequivocally refuse the diversion recommendation. Since TCRP expends considerable energy on assessment, seeing prospective clients four to six times during the two-week assessment period, much of the staff's time was being wasted. The program concluded that accepting referrals for assessment after trial (but before final judgment) would be a more sensible route; the staff could then be fairly certain that the judge was seriously considering diversion and would be receptive to its recommendation.

If the practice of post-trial diversion was initiated for purely practical reasons, it does result in some positive byproducts, according to TCRP staff members. They said they feel that diversion at the later stage (1) protects the rights of innocent defendants by giving them the opportunity to contest guilt before a sanction--and participation in diversion program is a sanction--is imposed; (2) gives the defendant additional incentive to cooperate once he is in TCRP, as he knows a dismissal of charges is virtually out of the question if he is negatively terminated; (3) enables the TCRP counselors to avoid confrontations with their clients over the question of guilt or innocence, since guilt has already been established; and (4) saves prosecutors the inconvenience of producing wit-

nesses and re-preparing a case if the defendant is negatively terminated--because the trial has already been held.

Not all of Boston's criminal justice officials agree, however. One judge interviewed stated that the post-trial diversion is simply a result of "a failing in the system." The problem, in his opinion, is that there is no convenient way to screen defendants before arraignment. He felt that pretrial diversion would be much more sensible.

Meanwhile, TCRP does operate under a statute (Massachusetts Laws, Chapter 276A, Sections 1-9) adopted by the state legislature in 1974. The law describes pretrial, not post-trial, diversion, however, since it was modeled on the procedures used by TCRP and other District Court diversion programs at that time. Diversion under the law has not been established, however since, as yet, the legislature has not appropriated any funds to establish new diversion programs or support existing ones.\* Consequently, the law has had little or no effect.<sup>\*\*</sup> Nor does it fully protect the confidentiality of client-counselor communications. TCRP's director noted, however, that confidentiality of its records has never been challenged, and added that is not likely since the program now diverts defendants after trial.

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\* There have been a few new programs started but not with State monies.

\*\* The legislation did institute several changes with regard to age and other criteria; however, it did not effect the change desired by diversion advocates; namely state financial support.

### ELIGIBILITY CRITERIA

To be eligible for TCRP, defendants must be:

- (1) 17-22 years old (some exceptions are made);\*
- (2) residents of the greater Boston area;
- (3) not addicted to or dependent on drugs;
- (4) charged with a lowest-level felony (that is, a felony within the jurisdiction of the District or Municipal Court) or a misdemeanor;
- (5) without more than two prior adult convictions. (In 1976, 46% of all clients had prior convictions.)

Although the program has traditionally sought to serve the unemployed and underemployed, it does not reject persons who have stable jobs.

Consent of the victim or arresting police officer is not necessary. Restitution is frequently required, however; when it is, it must be made before the charges will be dismissed.

### SELECTION AND INTAKE

TCRP actively solicits most of its cases. Program screeners-- either TCRP counselors, volunteers (usually college students), or probation officers--spend several mornings a week in

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\* Ten percent of TCRP clients are over 22 years old. The only other program reported here that officially limits its client group by age is Operation Midway (Profile 7), which requires that participants be between the ages of 16 and 25.

court.\*

The actual process varies from court to court, but the system at the Boston Municipal Court is fairly typical. There, the screener examines the list of cases on the day's calendar, searching for likely defendants based on the charges against them. Among possible TCRP clients are defendants charged with larceny, use of an auto without permission, possession of marijuana, and low-degree assault and battery.

He then checks those defendants' probation records to see whether they are within the eligible age range and whether they have prior criminal records. The screeners have found that those with no adult records and/or no serious juvenile records are most likely to be considered acceptable for diversion by Boston Municipal Court judges. They will, however, screen defendants who have a record of one or two minor adult offenses.

The screener goes first to the defendant's lawyer to get permission to speak to him, then to the defendant himself. In this interview, which usually takes place in the detention pen, he asks about the defendant's status in school or employment and attempts to judge his attitude: Does he wish to change his behavior? Is he likely to respond to TCRP's counseling?

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\* The specific staff position of "screener" was eliminated in 1977 when the program's budget was cut.

For defendants he thinks might be good candidates for diversion, the screener makes arguments before the judge as the cases are called. If the judge makes a finding of facts sufficient to enter a verdict of guilt after the trial and is moved by the screener's arguments, he then refers the defendant to TCRP for assessment and grants a two-week continuance for that purpose.

The major exception to this sequence of events occurs in the Roxbury District Court, where the screener often receives referrals from arraignment judges and accepts defendants for assessment before trial.

#### The assessment process

Before accepting a defendant into TCRP, a counselor spends two weeks evaluating his suitability for the program. He meets with the candidate four to six times during this period; at least one meeting is a home visit. The applicant is usually asked to perform various tasks to prove his motivation--for example, he is asked to bring in a list of ten businesses to which he has applied for jobs in the previous week, or to write an essay on what he wants to be doing in five years, or to obtain an application form from a local junior college. If he fails to complete his assigned tasks, misses more than one interview, or is rearrested during the assessment period, he is likely to be dropped from consideration. This-- or a refusal by the judge to divert after a TCRP recommendation--



happens in about 30 percent of the cases that TCRP evaluates.

By the end of the assessment period, counselor and prospective client agree on a service plan to be administered if the defendant is accepted into the program. It covers the four areas of the defendant's life emphasized by TCRP, as well as any special needs he might have. At an intake disposition conference, a TCRP supervisor reviews the plan with the client and counselor and determines the program's acceptance recommendation. The plan is written as a contract and signed by the applicant, who thereby commits himself to fulfill it while he is in the program. It is submitted to the judge when the TCRP counselor returns to court to make his recommendation for diversion. If the judge consents, the case is continued.

To TCRP the great value of this extended assessment is that it tests the motivation of the defendant to succeed.\* In addition, it allows the counselor and client to agree ahead of time on the service plan and frees up the entire three months of the continuance period for work on it.\*\*

TCRP projected that in 1977 it would intake (that is, evaluate for diversion and services, or in the case of probationers, evaluate for service delivery) 450 defendants, of whom 318 (70 percent) would be accepted by both TCRP and the judge and 222 (70 percent of

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\* Nevertheless, TCRP has one of the highest negative termination rates among the programs studied for this report. Until 1977, it averaged around 40 percent; it is now closer to 30 percent, according to the TCRP directors.

\*\* Compare to Hudson PTI extended assessment of felons, Profile 4.

those accepted) would successfully complete the program. It was anticipated that 90 of the 450 evaluated would be probationers. At the end of the second quarter of 1977, TCRP had assessed 203 persons (of whom seventeen were probationers) and accepted 153 (including 15 of the 17 probationers).

#### Who makes the decision

As the above description makes clear (and as the Massachusetts diversion statute mandates), judges are by far the most important decision-makers in the diversion process. Depending on their individual preferences and the courts in which they sit, the judges vary considerably in the types of cases they consider appropriate for diversion. Some seem to be against diversion on principle. Others, in some of the suburban court especially, are willing to divert misdemeanants but not felons. Some refuse to divert a defendant who has any kind of prior adult record or a serious juvenile record. Some will refer only "Eagle Scouts"; others are willing to take some risks. In any case, they are not required by law to state their reasons for denying consent to diversion.

Because they usually solicit cases and make diversion arguments before judges, the TCRP screeners do have some influence on the decisions.\* Nevertheless, judges have referred cases for assessment over screeners' objections. The Boston area's court system is unlike any other visited for this report in

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\* See footnote on page 68 infra.

that prosecutors play almost no role in diversion decision-making.

PARTICIPANT CHARACTERISTICS

TCRP does not maintain data on the characteristics of actual participants, although it does collect some on defendants evaluated for participation (of whom, on the average, about 70 percent are eventually accepted). The statistics below reflect the 203 persons evaluated for diversion in the first six months of 1977.

AGE:	under 18	32%
	18-19	38
	20-22	22
	23 and over	8
RACE:	white	51%
	black	42
	Hispanic	6
	Other	1
SEX:	male	90%
	female	4

STATUS AT INTAKE:	employed	20%
	school and work	10
	school or training	22
	idle	51

PRIOR RECORD:	first offender	58%
	juvenile only	20
	adult only	16
	juvenile & adult	6

BREAKDOWN OF

CHARGES: Not Available

The reason for the extremely low percentage of female participants is that in six of the court systems covered by TCRP, the Justice Resource Institute operates another diversion program exclusively for women (called DFO--Diversion of Female Offenders).\*

TCRP counselors and administrators gave this "unofficial" profile of their clients: they are typically males between the ages of 17 and 19, first adult offenders, with irregular work histories and little education. Whether in school or not, they are "doing badly." Socioeconomic and racial backgrounds, not

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\* Among the advantages of a separate program, according to DFO's director, are that women offenders seem to be different from their male counterparts in both service needs and responses to the program. Typically, she said, they are more responsive to counseling, more aware of their own needs, and more motivated to change. About one third of DFO clients are charged with prostitution and another third with larceny. This was the only sex-segregated program the researchers encountered.

surprisingly, reflect the areas served by the courts in which the defendants are tried.\* Those from Roxbury, for instance, tend to be black, poor, and from single-parent or no-parent homes. Those from Brighton or Chelsea, on the other hand, are usually white, middle- to lower-middle-class and from two-parent families. (The majority of TCRP's clients are from low-income brackets, however.) But regardless of race or class, the staff emphasizes, nearly all TCRP clients need a good deal of help.

They are most commonly charged with property crimes: larceny (including shoplifting), use of an auto without permission, and breaking and entering an unoccupied dwelling or car (day or nighttime). The TCRP director estimated that about 40 percent of the program's clients are charged with felonies, 60 percent with misdemeanors.

#### SERVICES

As noted earlier, TCRP began as a "manpower-model" diversion program with Department of Labor funding of about \$325,000 a year and a mandate to deliver primarily manpower, but also social services, to disadvantaged clients. The program maintained

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\* They vary according to the preferences and philosophies of individual screeners as well. Some screeners will not, on principle, recommend defendants from middle-class backgrounds; they believe the program's resources should be expended only on the economically disadvantaged.

this focus through most of its first five years, and service delivery was built around a system of 18 screeners, advocates (counselors), and career developers. There was also a "client orientation director " who met with groups of prospective clients to help them evaluate what they could accomplish for themselves in the program. A career developer met with each client and his advocate and offered vocational counseling and direct placement in jobs or job training programs. Referrals to community agencies for educational, medical, and other services were frequent. TCRP's operations at one point extended into 13 District and Municipal Courts.

The program's funding level initially increased when it shifted to LEAA funding (first to \$650,000) and then began to drop, to about \$500,000. In 1976 it received \$335,000. In 1977 when the state probation department became the conduit for LEAA funds, the annual budget was cut to \$180,000.\*

The effect on TCRP of this last cut of nearly 60 percent has been profound. The functions of screener, advocate, and career developer were combined in one staff line and are now performed by 11 "service delivery coordinators."\*\* The number of courts in which the program operates was cut to ten. And

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\* (In 1978 TCRP, as one program serving ten counties, was not refunded. Two smaller projects were funded through CETA but only in two of the courts in which TCRP had operated.)

\*\* Hence the current use of volunteers and probation officers as screeners in those courts the TCRP coordinators themselves do not have time to cover.

the philosophy of service delivery shifted from a manpower service orientation to one of "reality therapy" directed toward four major areas of clients' lives: (1) employment, education, or job training; (2) home situation (including living arrangements and family relations); (3) leisure time activities; and (4) money management. According to TCRP staff, the aim during both the two-week assessment period and the 90-day diversion period is to "stabilize" the client quickly in all four areas, then to monitor him.\* The total service plan also takes account of special needs, they said, and referrals to outside agencies are still frequently made.

#### The counseling philosophy

The official counseling philosophy of TCRP is what is called "reality therapy."\*\* Recently the program held an all-day seminar at which coordinators were instructed on reality therapy. The following description represents the TCRP administration's understanding of the concept.

Reality therapy means a concentration on changing a client's behavior rather than his attitudes. It is based upon the premise that affecting behavior which is more easily measured and discussed than attitudes is more productive and that changes in behavior are, in any case, the ultimate goal. The TCRP director gave the following example of the program's

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\* Assessment might show that a client is already "stable" in one or more of the areas. In that case, those aspects of his life are monitored, and services are focused on the others.

\*\* The model for this approach is the work of William Glasser's as found in the following Harper and Row publications: Mental Health or Mental Illness (1961); Reality Therapy (1965); Schools without Fear (1969), and Identity Society (1974).

behaviorist approach. If someone feels badly when he doesn't make his bed after his mother has told him to do so, he should go ahead and make the bed so he will feel better. He shouldn't worry about why his mother wants him to make the bed, why he doesn't want to make the bed, or why he feels guilty about not wanting to make the bed--none of these things matter. It is assumed that the person's attitude and feelings will improve by making the bed, not by talking about his feelings.

Reality therapy as conceptualized at TCRP emphasizes that it is up to the client to take the initiative to change his life. The program takes the position that it can do nothing for him unless he is prepared to do for himself. Reality therapy means trying to make the client more self-reliant and more responsible. In pursuance of this goal, TCRP coordinators say they strongly urge their clients in the "right" (i.e., socially acceptable) direction. For example, a coordinator may strongly urge a client who lacks basic writing and reading skills to go back to school even though the client does not want to. Within program guidelines (e.g. avoid criminal involvement, keeping appointments, being involved on a full-time basis in productive activity such as work, school, training, etc.), each client is supposed to develop his or her service plan with the coordinator. It is reported, however, that the client will usually do as the coordinators urge and that this method sometimes works well in the end.



"Management by Objective" and service goals

The four service goals now used by TCRP for its clients grew out of an administrative reorganization within the Justice Resource Institute. JRI recently adopted for all its programs a management system called "Management by Objective" (MBO), which requires that each program project not only how many clients it will intake and service, but also how many services, and of what kind, it will deliver. TCRP came up with the four-service scheme as one that would both meet clients' major needs and lend itself to specific, quantifiable goals. The productivity of service delivery coordinators as well as the progress of clients are measured and evaluated according to these set objectives.

The administrators of both TCRP and JRI appear to be quite satisfied with this new system. They stated that it both makes TCRP more credible to judges and enables them to keep close watch over program effectiveness.

Some of the TCRP coordinators seem less satisfied, however. They said that they felt they were being evaluated on the quantity, rather than the quality, of their work--that numbers had become more important than actual service.\* A few said, for example, that they feel pressured to make referrals of clients to outside agencies that, in the absence of MBO, they would

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\* CEP counselors (Profile 1) also complain about the heavy demands on them by administrators for statistics on services rendered because they are needed to report back to the funding source. When de Novo (Profile 2) was funded by DOL it also experienced the need to generate social service statistics as costly in time and resources.

not have thought necessary. As the following discussion shows, some of the coordinators are also dissatisfied with the new service emphases--especially those on leisure time and money management.

In every case, the ideal is to stabilize the client in each area during the first month of his participation, and to monitor him in the second and third months.

Major Service Areas:

(1) Employment, Training, Education

Employment of some kind (part-time if not full-time) is a TCRP service goal in virtually every case.\* (If the client has a job, the goal is for him to remain employed.) TCRP does not always try to find jobs for its clients; most often clients are required to find jobs on their own.

Although the job of the service delivery coordinators now formally includes job development, the coordinators reported that they do not have time to do much of it. They rely on the assumption that the jobs are out there if the client will only look. Any job will do, however menial or dead-end or low-paying.

The unemployed client is expected to find a job within his first month of participation at TCRP, and he must keep it at least until the day after the court appearance at which his charges are dismissed. TCRP does not recommend dismissal of

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\* Dade PTI (Profile 6) also requires that a client have a job before recommending dismissal. Like TCRP, it does make occasional exceptions in special circumstances. CEP (Profile 1) tries to place every client in a job, job training, or school before requesting dismissals; while it is not required, CEP court operations staff feel the agency loses credibility if it returns to court for dismissal too many defendants who are not in school or at work.

charges unless the client has been employed for a month or more before the end of his participation, as the staff wants assurance that he is "stable" in his job. They recognize that many clients experience difficulties in adjusting to their employment--to close supervision, to punctuality requirements, to structure and the loss of free time. And they believe that if they do not see clients through the first month or two, many might quit when confronted with these adjustments.

But because the job market in the Boston area is not good for the unskilled and the uneducated, clients often don't find jobs in the first month or even the first two or three months. (In these cases, TCRP asks the court for continuances.)

TCRP clients are, for the most part, unskilled and uneducated, so the program may also emphasize such goals as enrollment in job training or academic programs. Opportunities for the former are few, however, and the waiting lists long; very few TCRP clients are placed in job training. If a client does not at least have a high school diploma or GED, TCRP usually sets some educational goal: enrollment in a night school, a GED preparation course, or a regular school. As with employment, TCRP aims to monitor the client's progress in school for at least a month and help him work through the adjustment problems.

The assumption underlying the employment, training, and education goals is that a major reason diverted defendants got into trouble was that they had too much idle time, too few constructive things to do with it, and no stable source of income. If clients have less free time, a job and a sense of responsibility for their own support, according to the TCRP

philosophy, they will be less likely to get into trouble again; they will have a stake in the community and something to lose by further criminal activity.

## (2) Living Arrangements

There are two basic concerns regarding living arrangements: does the client have a stable place to reside? how does he get along with his family? The hypothesis is that the more unstable the client's living situation, the more likely he is to get into trouble again and the more difficult it will be to stabilize him in other areas, such as employment. TCRP sees itself as arbiter of family problems only to a limited degree and does not usually counsel clients' families.\* They emphasize clients resolving family difficulties without direct staff involvement with family members. However, second and third home visits are occasionally done. If the client is having problems with his family, TCRP may help him to make the move out of his family home and get his own apartment. Coordinators will assist clients in finding suitable housing if that seems appropriate.\*\*

## (3) Leisure Activities

The major reason TCRP includes leisure time activities in its service areas is that it believes negative peer influence is a common cause of crime, particularly with young males; when a youth hangs out with the wrong sorts of people, he is likely to get into trouble. TCRP coordinators are expected to be

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\* CEP (Profile 1) will provide services to clients' families and sometimes even friends.

\*\* Note, however, that only six such placements were made in 1977.

concerned with how much leisure time the client has and how he spends it.\* They want to make sure that the client does not have too much leisure time and that he has something constructive to do with what leisure time he has (such as playing on a basketball team at a community gym).

If TCRP considers the client's leisure time activities to be detrimental to him in that evidence of continued criminal involvement is clearly determined, it will attempt to compel him (by threat of termination) to disassociate from the persons or group exerting the bad influence on him. Coordinators sometimes try to help the client find inexpensive recreational facilities or develop hobbies.

#### (4) Money Management

Money Management is the fourth area of service on which TCRP focuses, and here the theory is that most youngsters who get into trouble don't know how to handle money. When they have it, they spend it too quickly and too foolishly; when they don't they are tempted to commit crimes. Since most clients have little money to begin with TCRP feels they must be taught how to conserve it.

The coordinators are expected to teach the clients how to make a budget and develop a rational plan for future expenditures and savings. Clients are encouraged to save some money; opening a savings account is frequently a money management goal for a client.

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\* It appears, however, that some of them do not involve themselves in this area unless they perceive an obvious problem. At least a few of them regard this emphasis as an unwarranted intrusion into clients' lives.

Several TCRP coordinators reported reservations about probing into their clients' financial habits, however. They said they regard this as an undue intrusion into the clients' lives and felt there were more important things to discuss with them. One said she wasn't very good at budgeting and saving money herself and felt awkward lecturing her clients about it. Several others mentioned that they are occasionally pressured by the TCRP administration to give money management more attention.

The services staff

Each of the 11 service delivery coordinators carries a caseload of between 15 and 20 clients, whom they see once a week in individual counseling sessions (TCRP does not do group counseling). A few very stable clients may be put on a telephone contact schedule and be required to make only bi-weekly visits.

The coordinators are expected to do job development as well as screening and counseling (these three were, as noted earlier, previously separate staff functions), but they report that they have little time for the job development. Thus the onus of finding employment now rests mainly on the client himself.

Although one of TCRP's original objectives was to "select and train street people and ex-offenders to perform as professional counselors,"\* only one of its present coordinators in an ex-

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\*Mullen, Dilemma of Diversion, page 95.

offender. Two are CETA employees.

#### EXIT PROCESS

Toward the end of the three months of a client's participation, an exit conference is convened by the coordinator's supervisor with the coordinator and client to finalize the program's recommendation. The service delivery coordinator writes a report to the court on the client's progress in the program and makes a recommendation for either dismissal of the charges or an additional one- to three-month adjournment. (Additional adjournments are requested in between 25 and 35 percent of cases, according to the estimate of the TCRP director.)

Judges may choose to reject the recommendation for dismissal. In the first six months of 1977, they refused to dismiss in seven of the 108 cases for which TCRP recommended dismissal.\* Those defendants had their cases continued without a finding (the equivalent of a nolle prosequi) or were found guilty.

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\* Most of the programs visited for this report do not compile statistics on the rate at which successful program graduates are denied dismissal of charges upon their return to court, but it appears to be a rare occurrence if it happens at all. (Operation Midway, Profile 7, alone may recommend only reduction--rather than dismissal--of charges after successful completion, and it so informs defendants when they enroll.) So TCRP appears to be unusual in this regard. One screener reported that she tells prospective clients that there is "a 99 percent chance of dismissal" if they enter TCRP and graduate successfully. If the six-month figures for 1977 are representative, it is actually "a just-under-94 percent chance of dismissal."

Certainly, the Massachusetts diversion statute can be interpreted as giving the judges this discretion: "if the report indicates the successful completion of the program by the defendant, the judge may dismiss the original charges...." (Massachusetts Laws, Chapter 276A, Section 7.) Emphasis added.

A client may be terminated from TCRP for not attending counseling sessions, not cooperating in fulfillment of the service plan, or rearrest. (Termination is not automatic upon rearrest, however.) When a counselor decides to terminate a client, he discusses the matter at a case conference with his supervisor, then sends the client a letter informing him of the decision. If the client wishes, he may appeal a termination decision to the TCRP director of operations (who is also, for six of the counselors, the counseling supervisor). In the first six months of 1977, 48 of the 162 clients exiting the program were so terminated.

#### Sealing of records

TCRP reported that occasionally it does recommend that the Court seal the official records of a successful client's arrest at the same time that it recommends dismissal of charges. As a general matter, however, the program does not make the sealing recommendation, nor does it regularly inform clients of their right to petition the state probation department for sealing. If the record is not sealed and the former client is rearrested, the probation department automatically informs the court of the prior arrest. Often the disposition of the prior case (i.e., dismissal) is noted in the probation department's records; sometimes it is not. With sealed records, this same error can occur, that is, the order to seal is made but the activities required are not completed.



PROFILE 4

HUDSON COUNTY PRETRIAL INTERVENTION PROJECT

Twelfth floor-Health Services Bldg.  
Medical Center 30 Baldwin Avenue  
Jersey City, New Jersey

Rita Douglas, Director

PROGRAM LOCUS

The Hudson County Pretrial Intervention Project (Hudson PTI) was established in 1971 by concerned judges and prosecutors in New Jersey. Sponsored by the Administrative Office of the Court, it originally received funding through federal LEAA monies distributed by the state. From the start, the program had the active support of the county's chief prosecutor and the Supreme Court Assignment Judge. It continues to operate under the Administrative Office of the Court and is answerable only to the Assignment Judge of the county. It receives an annual budget of \$228,000 directly from Hudson County and serves about 800 defendants a year diverted from the county court and from the Jersey City and 13 other municipal courts in Hudson County. Hudson PTI interviews between 1300 and 1500 defendants a year. While they eventually reject approximately 50 percent for diversion, these defendants are likely to receive some services from the program during the lengthy evaluation process. Hudson PTI is basically a counseling service that also provides referrals to other agencies for clients needing specialized help. The counseling aim, according to PTI staff, is to effect change in a client's lifestyle, attitudes, or living circumstances

so that he will become less likely to commit crimes.

In 1970, the New Jersey Supreme Court promulgated procedures to govern pretrial diversion in the state (New Jersey Court Rule 3:28). The specific proposal for PTI programs adopted by the New Jersey Supreme court in 1974 for the most part formalized the basic procedure already existing in Hudson PTI's program: selection of defendants considered by the program to be "amenable to rehabilitation." Hudson PTI continued to exclude from consideration, however, certain categories of defendants, including all defendants with prior convictions charged with possession of weapons, armed robbery, rape, or atrocious assault and battery. The County prosecutors continued to be highly supportive of the programs, although they did not formally offer reasons when they denied a PTI recommendation to divert. Thus, except for protecting the confidentiality of counselor-client communications, the adoption of the 1974 procedures initially had little effect on Hudson PTI's substantive operations.

In July 1976, however, the State Supreme Court handed down a major decision, State v. Leonardis, which significantly affected the operations of the program with respect to its selection of defendants.\* The relationship of PTI to other components of the Hudson County criminal justice system was reshaped

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\* The decision also affected Bergen PTI, the other New Jersey program reported here, although not nearly so profoundly. See Profile 5.

somewhat by the Leonardis decision and by subsequent litigation of the issues raised by and in it. Therefore, an explanation of the facts of the case seems in order.

#### The Leonardis decision and its impact

This decision involved two basic issues affecting the selection of defendants for PTI, one raised by a defendant named Strychnewicz, the other raised by defendants Leonardis and Rose. (Although the two cases were independently filed in different counties, they were considered together by the Court under the rubric State v. Leonardis.)

Strychnewicz had been arrested in Hudson County on a non-narcotics drug charge. He applied to Hudson PTI and was accepted by the program. The prosecutor rejected Strychnewicz's application for diversion without stating a reason, as was the custom. The defense lawyer asked the judge to require the prosecutor to state and defend his reasons. The judge ruled he must do so, and the prosecutor appealed.

The New Jersey Supreme Court held that, upon a challenge by defense counsel, the prosecutor must state reasons for denial of pretrial diversion. The justices also held that if, after a hearing, the judge determined that the prosecutor had abused his discretion in denying consent to diversion, the judge could approve diversion of a defendant over the prosecutor's objection. A further New Jersey Supreme Court hearing on the standard to be employed by judges in considering "prosecutorial abuse" resulted in a decision that a judge could not

divert a defendant into PTI over the prosecutor's objection unless he found that the prosecutor had patently abused his discretion (theoretically a tougher standard).

Leonardis and Rose had been denied an interview with the Bergen County PTI (see Profile 7 in the report) because that program excluded as ineligible all person charged with sale of drugs (the charge against both defendants). Their defense lawyers challenged the blanket exclusion, but the lower court judge held that Bergen PTI could establish such exclusionary categories. The defendants appealed.

As part of the same decision in which it held for Strychniewicz, the New Jersey Supreme Court reversed the lower court decision against Leonardis and Rose, holding that diversion projects could not establish their own criteria for blanket exclusions. It stated that anyone charged with a crime has a right to apply for diversion (in any county that has a diversion program; not all of them do) regardless of the offense with which he was charged and regardless of prior criminal record. In the language of the decision, each defendant's application must be scrutinized to determine whether he would be "amenable to rehabilitation."

The impact of this decision on Hudson County PTI has been a rash of judicial hearings challenging both program and prosecutorial rejections of defendants' applications for diversion. This has meant that program staff--usually the director but sometimes also counselors--have had to spend a good deal of

time in court waiting for and testifying ("arguing" in the words of the Director) at these hearings.

The decision has also resulted in a deluge of applications to Hudson PTI; they estimate they receive applications from about one-quarter of all defendants charged with indictable offenses and 10 percent of these facing disorderly persons charges. This has seriously overburdened the program's intake staff, especially the unit that deals with indictable offenses. And, because its finite resources preclude the acceptance of any more applicants than it had in the past, Hudson PTI must reject more and more of an ever increasing number of applicants, which, in turn, has led to more and more challenges of PTI's rejection decisions by defense lawyers in the courts.

#### ELIGIBILITY CRITERIA

To be eligible for Hudson PTI a defendant must be 18 years or older; or if he is 16 or 17, he must be regarded by the court as an adult--rather than a juvenile--offender. PTI once required that defendants be state residents, but a state court decision, State v. Nolfi, eliminated residence as a requirement.\* Because of the Leonardis decision, Hudson PTI no longer has any outright rejection criteria based on offense charged or prior criminal record. Each case must be judged on its own merits according to whether the defendant is considered by the program to be amenable to rehabilitation.

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\*Obviously, residence requirements are now illegal at Bergen PTI (Profile 5) as well. The only other program reported here that does not have a residence requirement is Dade PTI (Profile 6).

Despite the absence of blanket eligibility exclusions, Hudson PTI is--as it must be because of the huge number of applications it receives--the most selective all the diversion programs visited. Reasons for rejection are based upon its mandate under the Court Rule (to which its own staff agrees) to select for diversion defendants who are amenable to rehabilitation. These reasons include: (1) the defendant's service needs are beyond the scope of the project (e.g., he is too psychologically disturbed); (2) appropriate rehabilitation services are not available in his area of residence if he lives outside Hudson County; (3) his probation or parole officer refuses to consent to diversion; (4) the defendant has been involved in continuing criminal business or enterprise (for example, he is a junk dealer facing a series of stolen goods charges); (5) he is charged with deliberate use or threat of violence (in contrast to a more passionate violent act); (6) he is involved in organized crime; (7) he has a co-defendant whom the State wishes to prosecute;\* or (8) he is otherwise not "amenable to rehabilitation."

The latter is obviously a very broad category, and Hudson PTI's director said that any time a decision to reject is made on this ground, she reviews it.\*\* Should the defendant

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\* The State will not allow diversion of one of a set of co-defendants because of the fear that the one diverted will "take the heat" for the offense after receiving his dismissal and destroy the State's case against the co-defendants.

\*\* In fact, all decisions regarding acceptance or rejection are reviewed by both the Director and the Counseling Supervisors.

decide to contest PTI's decision, she is prepared to testify as to the reason PTI considers the person not amenable to rehabilitation.

Once he knows Hudson PTI is recommending a defendant's enrollment, the prosecutor contacts the arresting officer to get his opinion on the matter. He may also contact the victim. Nevertheless, he may consent to diversion over the objection of both officer and victim. Restitution is frequently a condition of participation in Hudson PTI, though complete restitution is not necessarily required for a PTI dismissal recommendation.

#### SELECTION AND INTAKE

How Hudson County PTI intakes clients depends on whether the offense charged is a disorderly persons offense (DPO, the equivalent of a misdemeanor) or an indictable offense (IO, the equivalent of a felony). During 1976 approximately 70 percent of PTI's cases were DPOs and 30 percent IOs. The IO cases, however, represented about 19 percent of all cases actually indicted in the county during that year.

#### Intake for DPO defendants

At arraignment in one of the twelve Hudson County municipal courts, defendants facing disorderly persons charges are notified

in court of their right to apply for diversion, and they are given a card with PTI's address and telephone number.\* If the defendant wishes then and there to indicate his intent to apply for PTI, he may do so, and the court case is set down for the one day a month all diverted cases are heard. If the DPO defendant is not sure about diversion, he may apply and postpone a final decision until his next court date; at that time he may indicate his interest in PTI and ask for postponement of the case to the PTI day.

After applying to PTI, the defendant is interviewed at length by one of the counselors (most of whom rotate intake interview tasks week-by-week) and told what will be expected of him if he is accepted into the program. The decision whether to accept an applicant charged with a DPO is made within three weeks after the initial interview. If the decision is positive, the Hudson PTI counselor writes a one- to two-page report on what the program can offer the client. The program director takes this report first to the prosecutor for his consent. On the court day set aside for diversion cases, she appears and petitions the judge to enroll the defendant formally in the program.

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\* This--along with the similar notification to IO defendants after indictment (see below)--is another result of the Leonardis decision. Formerly, Hudson PTI actively solicited cases at arraignment. (Note the shift away from active court solicitation by other programs visited, including New York City, Dade County, and Nassau County, Profiles 1, 6, and 7.)



The Hudson PTI director estimated that the program itself accepts about 45 percent of DPO applicants. Judges and prosecutors rarely reject DPO cases Hudson PTI urges them to enroll. If the judge agrees to diversion, the case is adjourned for three months.

#### Intake for IO defendants

While the program will consider defendants charged with indictable offenses at any point between arrest and 25 days after their original plea to an indictment, Hudson PTI does not usually seriously consider IO applicants until after an indictment is handed down by the Grand Jury (or until the case is reduced to disorderly persons and returned to Municipal Court). An IO defendant has 25 days after his plea to an indictment within which to apply for PTI. The information package sent by the court to an indicted defendant includes a notice of his right to apply for PTI. Presumably, 25 days gives the defense lawyer sufficient time to investigate any defenses to the charge.

A special intake unit has been set up at PTI to interview defendants charged with indictable offenses. Each week one of five special intake counselors is on duty to take all such cases. (Because of the Leonardis decision, the intake staff must interview all comers.) A person charged with an indictable offense is seen for at least six weeks (usually weekly) before being accepted for the program. In addition to collecting basic demographic data, the intake counselor questions the

defendant closely and carefully about the incident that led to the arrest (the defendant is informed that this information will be kept confidential pursuant to Rule 3:28) and about his social history, employment history, and personal problems.

The intake counselors' purpose is to judge applicants' amenability to rehabilitation--a judgment they maintain cannot be made quickly or facilely. The counselors report that during the interview they probe for the problem or problems in a defendant's life that caused him to commit a serious crime. (Some defendants resent the interrogation and choose to drop out of the intake process at this point.) Once a counselor feels he has uncovered the problem, he considers whether it could be alleviated or corrected with the program's assistance and whether alleviating or correcting it might substantially reduce the likelihood of the defendant recidivating. If he draws positive conclusions, he usually recommends diversion--and the interview notes will be used to help draw up the defendant's service plan in the program. (The intake counselor may also consider nature of crime and prior record before making a decision but, as noted earlier, no defendant is automatically denied diversion on either count.)

Only after six weeks--and often longer--do the intake counselors feel they have enough information to write a report to the court. In the report, the defendant's background is dis-

cussed at length and the reasons for PTI's rejection or acceptance of him are given. If a recommendation for pretrial intervention is made, the project also identifies what its goals will be for this defendant.

The intake staff looks for a person's positive qualities in deciding whether to take on a case, but it is also willing to take some risks. The more risky a case, however, the longer the intake staff takes to evaluate it, and the longer the defendant can expect to have to stay in the program.

The report on an IO defendant is first sent to the prosecutor's office by PTI's pretrial investigator who eventually makes a written recommendation concerning diversion of the case. Only about 25 percent of IO applicants are so recommended. It takes anywhere between two and twelve weeks for the prosecutor to decide whether to consent to such a defendant's enrollment in PTI, but only about ten percent of PTI's positive recommendations are turned down at this stage. Once the prosecutor consents to diversion, the court receives the report on the defendant. Generally, the judge concurs with the prosecutor's decision to divert an IO case. If the prosecutor refuses consent to diversion, the defendant has the right to a hearing at which the prosecutor must present and defend his reasons. But by the guidelines drawn up at Leonardis, the burden of proof that the prosecutor abused his discretion is on the defendant.

### Who makes the decision

In Hudson County, the PTI program is the most selective actor in diversion decision-making. Next in importance are the prosecutors, who do deny a small proportion of PTI recommendations--up to ten percent of those for defendants charged with indictable offenses. Judges almost always go along with prosecutors, but there are occasional exceptions. One judge recently placed a defendant in Hudson PTI over both the prosecutor's and the program's objections.

### PARTICIPANT CHARACTERISTICS

PTI collects statistics on the numbers of applicants, enrollments, dismissals, and terminations but not on participant characteristics. Because of limited resources, the program does little research on its population except as regards rearrests during and after PTI participation.

The PTI director indicated that most of Hudson PTI's clients are between 18 and 24. Only about one in twelve is female. About half of the clients are white; about one-quarter are black and one-quarter Hispanic. Some 80 percent have no prior convictions. Approximately 30 percent of the present clients are charged with indictable offenses (but this proportion is increasing). PTI provides services to some persons

charged with very serious crimes such as armed robbery, rape, and even homicide. The majority of both IO and DPO defendants, however, are charged with property offenses such as larceny, burglary, and possession of stolen goods; another large category is gun charges.

The following are sketches of several recent Hudson PTI clients, as described by their counselors:

- Corrine, in her early twenties, was charged with welfare fraud because she was both working and collecting welfare. She did it, she said, because her husband, a junkie, had been taking her pay checks to support his habit, leaving her nothing to live on.
- Jacob, a middle-aged store security guard, stole a few tablecloths each night as he was leaving the store. By the time he was arrested, he had \$10,000 worth of stolen goods in his possession. In his counseling at Hudson PTI it came out that he was afflicted with arthritis and fearful that the illness would soon force him to retire; the tablecloths were his insurance that he would be able to support himself.
- Michael was arrested for possession of a loaded pistol without a permit. He had recently separated from his wife, who had been given custody of their child. Michael was resentful of his wife's dating and told his PTI counselor he would kill any man who married her if that man ever touched his son. He had begun to collect weapons, mostly knives.
- Renee, a middle-aged divorced woman, worked the night shift at a factory. She lived in a tough neighborhood and carried an unregistered gun for protection to and from work. She was arrested on a weapons charge.
- Clayton, a black teenager, committed an armed robbery after his few possessions were stolen shortly after his arrival in New Jersey from Florida. He had no family or friends in New Jersey. He was unrepentant about the crime; he had done it, he said, because it had been done to him. Hudson PTI accepted Clayton because the counselor thought it was probably the only place he

would get help. At first, Clayton seemed angry but mentally stable. After ten weeks in the program, however, he gradually began losing touch with reality. Several months later he was actively psychotic: he was found in his room one day after having slashed the place apart with a knife. He was sent to a state hospital, which released him a few days later. PTI terminated him because he needed more help than it could offer. Before his case could be adjudicated, Clayton left the state and became a fugitive.

### SERVICES

Hudson County PTI's major service is counseling, and counselors report that they focus on the concrete problems that make an individual's life unstable. PTI counselors, like those in most other diversion programs, believe that the more stable a person's life becomes, the less likely he is to commit further crimes. However, unlike the other programs visited, they focus very little on employment and other concrete services. Rather, much of the counseling effort focuses on the events leading to the criminal incident and arrest. They hope to help the client see how further criminal activity is harmful to himself. The attitude of the counselors about the arrest is not one of moral condemnation but rather one of sober assessment of the client's situation at present and in the future. To supplement these counseling services, counselors also help clients make concrete achievements such as finding a job or getting back into school. For specialized assistance, PTI makes use of other community

agencies offering mental health services, alcohol and drug treatment, and remedial reading and English classes; it also uses the state-financed employment service. Clients may be required to go to a psychiatrist or an alcohol treatment program as a condition of their enrollment and continued participation in PTI.

All the counselors are paraprofessionals in the sense of having no formal training as social workers, but only one is an ex-offender.\* Caseloads have averaged 40 clients per counselor, but this has recently risen to 60-70 cases as a result of Leonardis. Each client is usually seen once a week. Some very stable clients may be put on a phone contact schedule after several months of weekly visits. PTI counselors do not make home or other field visits to meet with clients or their families.

PTI uses group counseling quite extensively. There are separate groups composed of clients who have or have had drug problems, those with alcohol problems, and those charged with serious indictable offenses. There is also a woman's group. Not all clients participate in group

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\* The program's one Counseling Coordinator has an MSW and the Supervisor of Intake has an MA in Psychology. Two senior counselors and five other counselors have BAs; the remaining four counselors do not. Hudson PTI also uses the services of three MSW students and three to five interns from local universities. Finally, the project has three staff members assigned by the Jersey City Probation Department, who do some counseling. Like many other diversion programs, however, Hudson PTI would prefer to retain its independence from line agencies such as Probation.

### EXIT PROCESS

Hudson County PTI is unique among the programs visited in that, despite its structure of three-month "enrollment periods" (see below), a client is, in effect, enrolled for an indefinite period of time; it can range from between three months and a year for a DPA defendant to between 6 months and two years for an IO defendant.\*\* The counselors make a dismissal recommendation when they believe a client is "stable" and unlikely to recidivate. This indefiniteness, according to program staff, grows out of PTI's rehabilitative goals and the combined factors of case overload, the time necessary to make decisions, normal administrative delays on the part of outside service agencies and Prosecutors. The extended time is used by the program to solidify counseling gains.

After a client has been formally enrolled in Hudson PTI for three months, his counselor writes a report to the court on

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\* Of the programs visited, Dade PTI, Operation de Novo, and Bergen PTI (Profiles 6, 2, and 5) also augment individual counseling with group counseling.

\*\* The Court Rule 3:28 permits a maximum of six months enrollment in a diversion program, generally two three-month enrollment periods. However, considering the long period required by Hudson PTI to evaluate more serious cases before formal enrollment (see pp. 86 f.f.above), the actual period the defendant attends the program (including evaluation and counseling session) may be considerably longer. DA and court administrative processing also generally delays the beginning of the second three-month enrollment and the final return of the case to court for the dismissal. Consequently, although a serious IO defendant will be formally enrolled for only six months, he may actually attend the program for much longer, even up to eighteen months. While some defendants charged with less serious DP offenses have in the past been in the program as long as six months, the program is trying to reduce the average period for such defendants to three to four months.



the progress made toward the service goals outlined in the recommendation report. For defendants charged with disorderly persons offenses whose service plan is completed, the counselor may recommend dismissal of the charges. If more work is needed or if the defendant is charged with an indictable offense, the counselor recommends a further enrollment of three months.

At the end of the second enrollment period, the counselor writes another report on the client's progress. If the client was charged with a disorderly persons offense, this report comes soon before the second enrollment period is scheduled to end. If he was charged with an indictable offense, the report is usually postponed several months to ensure that progress continues. Clients charged with disorderly persons offenses usually remain in PTI (from initial interview to dismissal) for about eight months. Most of those charged with indictable offenses remain in the program for 18 to 20 months. Hudson PTI is in effect the judge of how much time is needed.\* Neither prosecutors nor judges reject PTI's recommendation for dismissal of charges.

Hudson County PTI's reports to the courts are the most thorough and in-depth of all the programs visited. They carefully

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\* Hudson PTI has the longest average participation period of any program visited. The next longest are in de Novo (Profile 2), which usually serves misdemeanor defendants for about six months and felony defendants for a year, and Midway (Profile 7), where all clients remain for approximately one year (all are felony defendants). Participation time varies between three and six months at Dade PTI (Profile 6), four months at CEP (Profile 1), and averages three months at TCRP and Bergen PTI (Profiles 3 and 5).

describe not only the client's concrete accomplishments (such as enrolling in school or finding a job) but also the less tangible successes achieved in counseling (moves toward greater self-awareness, increased ability to resolve personal problems, and so on).\* Indeed, PTI attributes its success in getting prosecutors to consent to the diversion of some very serious cases--armed robbery, for example--to the care and thought that goes into these reports.

#### Negative terminations

When a defendant is being considered for negative termination, he is sent a letter requesting his attendance at an in-house hearing before the project director, and he is invited to bring his lawyer along. Few clients show up for these hearings; those who do not are automatically terminated. If the hearing does go forward, the participants are the director, counselor, the defendant, and, sometimes, the defense lawyer. The director opens the proceedings, which are quite informal, by explaining why the client is being considered for termination and what a termination will mean. The client is given an opportunity to explain his behavior and ask for a second chance. If

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\* Compare to Dade County PTI (Profile 6), whose staff feels that detailed reports would encourage the courts to "interfere" with treatment, plans, and therefore sends only short form letters, and CEP (Profile 1), which tries to limit the amount of "personal" information in the report other than employment and educational progress.

he is accepted back into the program, he may be required to contact PTI once a week for several weeks to rebuild the program's trust in him. If he is terminated in spite of his appearance at the hearing, the director notifies the court. The client may contest the termination by asking the court for a hearing on the matter. If he does not contest, the prosecutor and the judge are not informed of the reason for termination.

PTI's director reported a five percent termination rate for clients charged with indictable offenses and a 15-20 percent rate for clients charged with disorderly persons offenses. The most common reason for termination is failure to appear for schedule appointments.\* (There is no specific number of missed appointments that makes a person automatically subject to termination; each case is handled on an ad hoc basis.) On the other hand, PTI may terminate a client who does appear for scheduled sessions but who is not cooperating with counselors' efforts to rehabilitate him. Rearrest may also be grounds for termination but is not automatically so.

#### Sealing of records

In New Jersey, the official criminal records of a successful diversion program graduate are marked by the courts with the

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\* The program personnel agree their young male minority clients are the most likely group to perform poorly given the type of counseling services they emphasize and consequently to be terminated.

designation "Dismissal--PTIP" or "Matter Adjusted--PTIP."  
Nevertheless, it is up to the client himself to apply for  
an official sealing of the records concerning his arrest  
and dismissal. The last letter Hudson PTI sends to a success-  
ful client reminds him of his right to do so.

PROFILE 5

BERGEN COUNTY PRETRIAL INTERVENTION PROGRAM

150 Hudson Street  
Hackensack, New Jersey 07601

Howard Williams, Director

PROGRAM LOCUS

The Bergen County Pretrial Intervention Program (Bergen PTI) was established in April 1974 under a grant from the New Jersey state agency that distributes LEAA funds. It operates as a unit of the county probation department, and its three counselors are probation officers.\* Although part of its funding still comes from LEAA monies, it now draws about half directly from Bergen County. In 1976 it diverted and counseled 700 clients and had an operating budget of \$162,000.

The impact of the Leonardis decision

Like Hudson County PTI, the other New Jersey program visited,\*\* Bergen PTI operates under the provisions of the 1974

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\* Operation Midway in Nassau County, New York (Profile 7), is the only other program visited for this report that is officially part of a probation department. There, too, the counselors are probation officers.

\*\* Profile 4.

New Jersey court rule 3:28 (which, among other things, provides for the confidentiality of client-counselor communications) and under the constraints of State v. Leonardis, handed down by the State Supreme Court in July 1976.

To summarize briefly, the Leonardis decision (part of which originated in Bergen County), holds that (1) upon challenge of defense counsel, prosecutors must state their reasons for denying consent to diversion in individual cases; if the judge decides that the prosecutor has "abused his discretion" in rejecting a defendant, he may place the defendant in a diversion program over prosecutorial objection; and (2) diversion programs in the state may not make blanket eligibility exclusions of defendants based on crime charged or prior records;\* all defendants have a right to apply for diversion, and the standard for eligibility must be an individuals' "amenability to rehabilitation."\*\*

This decision has had an impact on the number of applicants to Bergen PTI, and, of course, on its stated eligibility criteria. But it appears to have had negligible effect on the program's operations and the types of clients it services. At least up until the time of the site visit (November 1976)

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\* An earlier decision, State v. Nolfi, had already established that diversion programs could not exclude defendants on the basis of residence outside the jurisdiction served by the program.

\*\* See the Hudson PTI profile for a fuller discussion of the facts and implications of Leonardis.

no defense attorneys in Bergen County had challenged a PTI rejection of a defendant. (In Hudson County, such challenges are common.) But it should be noted that Vera researchers visited the Bergen program only two months after the guidelines for compliance with Leonardis had been issued; Bergen PTI's director felt that it was still too early to predict how much the decision would affect the program.

#### ELIGIBILITY CRITERIA

As noted above, the New Jersey Supreme Court has mandated that the chief criterion for admission to Bergen PTI is "amenability to rehabilitation." The program has interpreted that mandate more narrowly than the Hudson County program. It continues to reject those applicants with prior records and those whom it previously rejected as charged with too serious crimes (such as drug sales or sex crimes). It bases these rejections on what the crime says about the person rather than the crime per se.\* For example, the program might say to the court: "Given the nature of the offense, PTI

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\* Hudson PTI also makes general exclusions under the "amenability" standard, but they tend to be narrower and are applied to individuals only after a relatively thorough assessment. The exclusions include involvement in continuing criminal activities or organized crime, deliberate use or threat of violence in the commission of the crime charged, and demonstration of needs beyond the program's scope of services (psychological disturbance, for example). See Profile 4, pages 84-86.

cannot rehabilitate this defendant's behavior."\*

When appropriate, restitution is usually a condition of participation in the program, although if an otherwise satisfactory client has not made full reparation after six months' enrollment, he may be discharged upon signing a promissory note in the amount still owed.

Bergen PTI also requires that a defendant admit guilt before it will accept him into the program (on the premise that admitting guilt is a necessary precondition of effective rehabilitation). It is the only program visited that does so.

Prosecutors usually consult with the arresting officer before agreeing to diversion, but neither the officer's nor the victim's consent is necessary.

#### SELECTION AND INTAKE

As in Hudson County, the Bergen County program obtains its cases through referrals--mostly from judges and prosecutors, but also a few from defense attorneys or police officers. Judges in municipal, or lower, courts are obliged to inform defendants

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\* Unfortunately, Bergen PTI does not keep statistics on the charges against its clients or on their prior records (see "Participant Characteristics," below.)



of their right to apply for diversion.

About 65 percent of Bergen PTI's cases are disorderly persons offenses (DPOs--the equivalent of misdemeanors), most commonly shoplifting and forgery. A DPO defendant must apply for PTI within three days after his initial appearance in court, and he must inform the court at arraignment of his interest in applying. (PTI does not accept applications from persons who come in "off the streets"--this is, without a referral from the court.) After one interview with the prospective client, PTI intake staff makes a decision on enrollment, then seeks the prosecutor's permission for diversion. A defendant is not informed of the decision until his next court date.

About 35 percent of PTI's cases are indictable offenses (IOs--the equivalent of felonies), typically breaking and entering, larceny in the amount of more than \$200, and gun possession. IO defendants have 25 days from their first appearance in the county court to apply for diversion, and they need not inform the court of their intent to apply until after they have been interviewed by PTI. They are interviewed once or twice by intake staff before the prosecutor's permission for diversion is sought.\*

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\* This intake assessment is much briefer in Bergen PTI than in Hudson PTI, where IO defendants are interviewed weekly for six weeks before they are accepted. One obvious reason for the difference is that Hudson PTI must frequently defend in court its reasons for turning down applicants, while Bergen PTI, at least at this writing, has never had to do so.

During the interviews, counselors are supposed to look for signs that the defendant is repentant and willing to change the behavior that led to the criminal act. Bergen PTI also prefers clients who are employed in stable jobs.

Since the Leonardis decision, Bergen PTI has been receiving about five times more applications from defendants than before, according to its director, and the program has requested \$200,000 in additional funds to increase the size of the staff and office facilities.

#### Who makes the decision

Bergen PTI staff, prosecutors, and judges have a very close working relationship and usually reach a consensus on diversion decisions. It appears that there is general agreement among them as to PTI's purposes: it is essentially a "break" for first offenders who are ashamed of and repentant for their crimes, are willing to make restitution, are eager to do well in the program so that their charges will be dismissed, and are highly unlikely to recidivate.\*

The PTI director estimated that in roughly one out of every 14 cases, PTI recommendations for diversion are denied

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\* The three parties to the decisions also seem to agree that conventional probation is more suited to "experienced" offenders than is diversion. PTI staff noted that such offenders would often rather take their chances with probation than participate in "demanding" diversion programs.

by prosecutors. But judges do occasionally place PTI-recommended cases in the program over prosecutorial objection.

If the judge consents to diversion, the defendant is formally enrolled in PTI for a three-month period.

#### PARTICIPANT CHARACTERISTICS

Bergen PTI does not collect statistics on its client group, but staff gave this profile: participants tend to be white, middle-class first offenders charged with minor property crimes. Most are employed, many have alcohol problems, and their average age is about thirty. The program director explained this high average age (by far the highest among the programs visited) by the fact that many Bergen PTI clients are "middle-class, middle-aged ladies who are caught shoplifting." About 85 percent of the participants have privately-retained counsel.\*

As a whole, the client group is what the program calls "self-correcting," fearful of the consequences of arrest and "naturally amenable" to rehabilitation.

Clients generally reflect the area served by the program; Bergen County is affluent, largely white, and middle- and upper-middle-class. While about 12 percent of its residents

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\* Demographically, Bergen PTI's clients are most unlike Hudson PTI's, a reflection of both the locations served and the tacit eligibility criteria. In fact, Bergen's clients are very different in age, class, and offense, from those of the other program visited.

are minority, apparently a smaller proportion of PTI's clients are from minority backgrounds.

### SERVICES

Counseling is the primary service Bergen County PTI provides, and counselors see their clients once a week. The program director said that PTI mainly provides the defendant with "someone who will listen to his problems." The counselors directly confront their clients about the criminal act and the problems and circumstances that led to it. Clients are informed in the intake interview that they will be required to reveal a great deal about themselves, beginning with a full confession of the crime. The PTI director described the process of eliciting the confession as a "stripping of the person" that enables the counselor to begin to rehabilitate him. He acknowledged that clients with "fragile egos" must be approached gently, however.

The program has an openly middle-class perspective, and counselors work on strengthening clients' internal controls and helping them realize the seriousness of their crimes and the potential consequences of further criminal acts. Since Bergen PTI's clientele is mostly white and middle-class, counselors say, the tactic of inducing guilt about the crime and fear of consequences of future crime seems to work

well.\* PTI does some in-house group counseling.

Clients with special needs, such as drug or alcohol treatment or mental health care, are required to pursue referrals to outside assistance as condition of participation. (Most of those referred to psychiatric treatment can afford to pay for it themselves.) PTI has access to a job bank for clients who are looking for employment. However, most clients are employed and do not utilize this service.

Bergen PTI is stricter than any other program visited about attendance at counseling sessions; one unexcused absence is grounds for automatic termination. Yet this program also has a low termination rate--three percent, according to the director.

#### The service staff

As noted earlier, all three of Bergen PTI's counselors are probation officers, and all have at least two years' experience in regular probation jobs. The program director stated that he would like in the future to recruit counselors with an altogether different background or with at least less experience

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\* It is difficult to gauge to what extent most of the programs reported here are, in fact, systematically attempting to inculcate "middle-class" attitudes (including guilt about crimes) and behavior in their clients during the counseling process. Bergen PTI and, to a lesser degree, TCRP (Profile 3) both articulated that this is indeed a goal of counseling. From discussions with counselors, it would appear that CEP (Profile 1) is the program least engaged in "pushing" middle-class values. The tendency to do so probably varies from counselor to counselor as much as it does from program to program.

working with convicted offenders; he said that more traditional probation offers tend to be somewhat rigid in their counseling methods, quick to threaten clients with termination in order to encourage them to cooperate in counseling.\* The PTI director said he believes there are more effective ways to persuade clients to do what the counselor feels is best for them.

The counselors meet regularly with the program director to discuss cases. They do not involve clients' families in the counseling process unless a client has an alcohol-related problem.

#### EXIT PROCESS

Most Bergen County PTI clients are recommended for dismissal of charges after three months' enrollment. A client is judged successful if he has made restitution, has a "good attitude," has attained some insight into what had happened to him in the previous few months, and generally seemed to be "on his feet." Clients whose problems (such as alcoholism) need more treatment are re-evaluated for an additional three month period. PTI writes reports to the court

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\* In Operation Midway (Profile 7), the other diversion program described here that is located within a probation department, most of the counselors were called "non-conformists" in their former, "regular" probation jobs. The Midway director feels those same characteristics work to their advantage in the diversion program.

to which the prosecutor must assent before charges will be dismissed.

A defendant is automatically terminated from Bergen PTI if he misses a scheduled counseling session, if he is re-arrested while in the program,\* or if he otherwise fails to cooperate with the program (by not attending a drug program or sessions with a psychiatrist, for example). Despite these relatively strict criteria, PTI's director reported that the program has only a three percent termination rate.

#### Sealing of records

In New Jersey, the official criminal records of a successful diversion program graduate are marked by the courts with the designation "Dismissal--PTIP" or "Matter Adjusted--PTIP." Nevertheless, it is up to the client himself to apply for an official sealing of the records concerning his arrest and dismissal.

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\* Bergen PTI was the only program visited in which negative termination upon rearrest is automatic. But this and the other automatic termination criteria may not seem severe or arbitrary when one considers Bergen's target population compared to that of CEP, say, or de Novo.

PROFILE 6

DADE COUNTY PRETRIAL INTERVENTION PROJECT

Room 620, Metro Justice Building  
1351 N.W. 12th Street  
Miami, Florida 33125

Cheryl A. Welch, Director

PROGRAM LOCUS

The Dade County Pretrial Intervention Project (Dade PTI) was established in 1972 by the State's Attorney's Office (SAO) with LEAA funding. From its beginning, therefore, the program has had the active support of the prosecutor; its first director was an Assistant State's Attorney in Dade County who, after leaving PTI, returned to work there. Among his current responsibilities at the SAO is acting as liaison between the SAO and PTI which is now under the auspices of the Administrative Office of the Courts through which the county provides funding. This change resulted from the inability of the SAO to continue financially supporting the program with its own funds. Nevertheless, relations between the diversion program and the prosecutor's office remain extremely close.

In 1974, the Florida legislature enacted a law authorizing the establishment of pretrial intervention programs in the



state; they were to be overseen by the Florida Probation and Parole Commission (Florida Statutes, Section 944.025). However, Dade PTI has remained under the auspices of the Administrative Office of the Court, and it continues to operate under the discretionary authority of the prosecutor rather than by direct legislative mandate. The 1974 legislation has not appeared to alter the operation of the program\* and, in addition, does not provide any confidentiality protection for its records. In Florida (as in New York and Minnesota) all that stands between diversion program staff and a subpoena to compel testimony on such communications is an informal agreement with prosecutors that confidentiality will continue to be recognized and respected.

For 1977, Dade PTI was allotted \$500,000 to serve approximately 2,000 clients. It currently takes only first offenders charged with felonies. Even though its primary service is counseling clients to understand and find better solutions to their problems, Dade PTI does expect every client to have a job or be in school before leaving the program.

#### ELIGIBILITY CRITERIA

The formal criteria for eligibility for Dade PTI are:

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\* So far there have been no challenges (as there have been in New Jersey, see Hudson County Profile 4) under the statute to the diversion decisions made by PTI and prosecutors.

1. that the defendant have no prior adult convictions (unless for disorderly conduct or loitering);\*
2. that he be 18 or older;
3. that he be charged with a third-degree felony;\*\* and
4. that the victim, arresting officer, and State's Attorney consent to his diversion.

Only infrequently are exceptions made to the rule of no prior convictions. The program will not accept a defendant who was enrolled in it previously nor one on whom adjudication has been withheld.\*\*\* The felonies only policy was adopted in January 1977, without, however, changing the program's policies of taking only first (adult) offenders and less serious felonies. Before that, Dade PTI took a mix of both felony and misdemeanor cases. The program continues to be supported by the county as a device to streamline case processing in the courts and, to some extent, as a rehabilitative mechanism. It appears that a major goal from the county's

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\* Exceptions are made, but not often.

\*\* Dade is the only program reported here that is officially for first offenders only. In fact, however, tacit eligibility criteria--of the programs themselves or of prosecutors or judges--make most of the others, in effect, largely first-offender programs.

\*\*\* A withholding of adjudication is technically not a conviction; rather it is similar to a youthful offender adjudication, coming after a plea of guilty or finding of guilt. Nevertheless, the Florida court system tends to treat a withholding as if it were a conviction.

point of view is to eliminate cases prosecutors want out of the criminal justice system. The move to taking only felony cases, therefore, is part of this orientation. In 1976, the program is said to have diverted 15% of all felony arrests in Dade County.

Other recent changes in eligibility are the elimination of the county residence restriction and the inclusion of narcotics addicts and persons with lesser drug problems.\* Such defendants, however, are referred by PTI's intake supervisor to community treatment facilities for specialized service. Dade PTI also does not reject defendants because they appear unreceptive to help or unneedful of it. If, after being informed of the program's requirements, a defendant decides to enroll and if the other criteria are met, the defendant will be accepted into PTI. Consequently, although the program is primarily a counseling service, no "motivation" criteria (such as in Hudson County, for example) exist and no demonstration that the defendant needs specific services need be made.

Restitution is required when appropriate (that is, if the stolen goods were not returned, if property was destroyed, and so on). When it is required by the prosecutors, it must be made before the program will request the charges be dismissed.

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\* Operation de Novo (Profile 2), Hudson PTI (Profile 4), and Midway (Profile 7) also accept defendants who are drug-dependent or charged with drug-related crimes. Both CEP (Profile 1) and TCRP (Profile 3) have always specifically excluded drug cases.

## SELECTION AND INTAKE

When it began operations, Dade PTI solicited all its cases by sending letters to eligible defendants informing them of the program and inviting them to apply. Over the next several years, as knowledge of the program spread through the court system, PTI began to receive more and more referrals from defense lawyers and others involved in the criminal justice process. The solicitation system has now been phased out altogether.\* Below are sources of referrals and the percentages made by each in 1976; about half of all referrals are from defense counsel.\*\*

Private Attorneys	35%
Public Defenders	16
Ass't. State's Attorneys (ASA)	13
Police	14
Judges	10
Pretrial Release Agency	3
Other	9
	100%

A case may be referred to PTI any time after the preliminary hearing up to the time of trial. Both the program and prosecutors say they want only to divert provable cases, hence the requirement that defendants pass through the preliminary hearing stage.\*\*\*

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\* This same pattern of moving from solicitation to referral also occurred in the Hudson County, Nassau County, and New York City programs (Profiles 4, 7, and 1).

\*\*In 1977, the number of referrals from defense counsel dropped to 41% and the police provided 27%. PTI sees the increase in police referrals as a sign of their continued acceptance by the criminal justice system.

\*\*\*Similarly in Hudson County (Profile 4), indictable cases must wait for official indictment or return to the lower court. However, such precautions are less clear with disorderly person (misdemeanor) cases. In New York City (see Profile 1), there is some concern with this issue because cases diverted early in the formal process must waive a preliminary hearing.

Prosecutorial referrals are facilitated by a tracking system used by the State's Attorney's Office. Before preliminary hearings, an Assistant State's Attorney (ASA) reviews felony cases and affixes one (or more) of four stamps to the file: (1) "Possible PTI"; (2) "Division," which indicates normal prosecution of the case by filing the official criminal charges after the preliminary hearing (note: a case may be stamped both "possible PTI" and "division"); (3) "Direct File," which indicates an expedited processing of the case, directly filing the charges without a preliminary hearing; or (4) "Career Criminal." The process of early evaluation of these cases is overseen by the ASA liaison with PTI (who is the former director of the program).

#### Who makes the decisions

Regardless of the origin of a referral, Dade PTI must ultimately receive the prosecutor's consent to divert a case. Unlike any other program reported here, it must also obtain the consent of both the arresting officer and the victim, if there is one. The judge's consent is not necessary because the case is not returned to the calendar once the defendant has waived his right to a speedy trial.

Because of the close relations between Dade PTI and the State's Attorney's Office, the process of gaining prosecutorial consent is usually quite informal. More often than not, the PTI director simply notifies the prosecutor of PTI's intention to divert;

unless he has a specific objection or questions (in which case the PTI director presents her arguments), the intake process then begins. It is described in the following paragraphs.

#### The mechanics of intake

A defendant interested in applying for PTI must arrange to go to the Dade PTI office located in the county court building. There, an administrative assistant does preliminary screening to ensure that he meets the program's eligibility criteria. The assistant explains the basics of participation in the program and, if the defendant remains interested, arranges for a more extensive interview at the PTI field office. The defendant is here asked to sign a waiver of his right to speedy trial.

At the field office, the defendant is given a lengthy interview and is asked to sign an agreement to abide by Dade PTI rules and regulations. An assistant counseling supervisor reviews the interview. If the defendant seems to have drug problems, the supervisor will arrange to place him in a local drug program. If he seems very stable and is charged with a minor offense, the supervisor may put him on a once-a-week phone schedule. The majority of defendants interviewed will be referred directly to PTI counselors after this initial interview.

While the interview process is going forward, the administrative assistant at the PTI office in the court building sends a "deferred prosecution" memo to the court clerk and ASA in charge of the case, asking that the case be taken off the court calendar pending PTI's acceptance of it. The memo also requests that the

state's file be sent to PTI. If the ASA objects to diversion, he makes his objection known at this point.

After receiving the state's complete file on the case, PTI sends letters to the victim and the arresting officer to inform them that the defendant has applied for diversion. The letter states that if they object to diversion in this case, they must make their objection known to the PTI director within 10 days or their consent will be inferred. If they object, and if the director feels fairly certain that the defendant would benefit from diversion and treatment, she tries to persuade them to consent. But if they persist in their objection, the defendant's application to PTI is denied.

There have been several instances (most of them drug cases) in which arresting officers have attempted to condition their consent on the defendant in question agreeing to become a police informer. Dade PTI now has a clear policy prohibiting acceptance of defendants under such a condition, and it so informs arresting officers in advance.

If neither the officer nor the victim objects, PTI sends an acceptance memo to the ASA liaison and retains the state's file until the defendant completes the program. Because the case is then withdrawn from the calendar, it is unnecessary for PTI to go to court for the judge's consent.

PTI participation is usually 3 to 6 months in length, but occasionally PTI will keep a client in the program longer (for up to a year) if the staff deems it necessary for successful treatment.

PARTICIPANT CHARACTERISTICS

The data below on age, sex, and race are from the 1975 Annual Report of Dade County PTI. Complete data on employment status at intake are unavailable for the years 1974-1977. Statistics on the type of charges and the breakdown of charges were compiled for the 1976 Annual Report.\*

<u>Age:</u>	18	22%
	19-20	27
	21-25	31
	over 25	20
<u>Race:</u>	White	52%
	Black	35
	Hispanic	13
<u>Sex:</u>	Male	75%
	Female	25

Employment Status  
at Intake: Not available

Prior Record:  
Virturally none have prior adult convictions; no statistics are compiled about prior juvenile records.

<u>Type of</u> <u>Charge:</u>	Felonies	77%
	Misdemeanors	23

(In January 1977 PTI began taking felonies only)

<u>Breakdown of</u> <u>Charges:</u>	Poss. of Marijuana	18%
	Breaking and Entering	14
	Poss. Narcotics	13
	Petit Larceny	11
	Grand Larceny	8
	Weapons	8
	Stolen Property	4
	Assault and Battery	3
	Sale of Marijuana	3
	Others	18

\* Program data on participant characteristics during 1977 show few significant differences over 1976 except that 100 percent of their clients were charged with felonies; also, the percentage of clients 18 years old dropped from 20 percent to 18 percent and those over 25 increased to 30 percent of the total.



Although Dade PTI views itself as a rehabilitation program, neither the State's Attorney's Office nor Dade PTI itself requires that applicants demonstrate their amenability to rehabilitation in order to be diverted. It is the formal eligibility criteria which assure Dade PTI gets few serious offenders. PTI's clients (with rare exceptions) have no prior adult convictions. Although they may have juvenile records, they are also generally charged with the lowest-degree felonies. As noted in the statistics above, possession of marijuana was the single most common charge against PTI clients in 1976, a pattern going back to Dade PTI's earliest years. Yet their clients are not exclusively youths--more than half of the defendants admitted to PTI in 1976 were over the age of 21. In short, Dade PTI does not generally take what are regarded in the diversion world as "high-risk" clients. Program staff believe that many of their clients are, in their terms, "self-correcting" particularly after the trauma of an arrest. Nevertheless, some of their clients (particularly young minorities) have juvenile records and serious current employment, educational and familial problems.

The following are sketches of several recent PTI clients, as described by their counselors:

- Roberto, a 30-year-old Hispanic man, lived at home and was steadily employed. One night he struck up a conversation with a stranger in a bar (reputed to be a gay bar). He mentioned that he had been taking some pills to lose weight, and the other fellow prevailed upon Roberto to give (not sell) him one of the pills. Roberto was immediately arrested for transfer of a controlled substance; he had been talking to an undercover police officer.

- Margaret, a white middle-aged woman, had been regularly shoplifting expensive clothes from a department store. During her counseling at Dade PTI it came out that she was having great difficulty coping with the fact that her husband had abandoned her two and a half years before.
- Dennis was 19 when he was arrested for stealing an out-board motor. His family was upper-middle-class, but he had dropped out of school when he was 14 and was in drug treatment by the time he was 15. He said he felt very lonely and isolated.
- Maria, another teenager, got high on marijuana one night with her boyfriend, and the two of them stole a painting from a friend's house.
- Henry was arrested for stealing expensive clothing from a department store for his girlfriend. He did it, he said, because his social security stipend was not enough to allow him to buy her presents. He was over 65.

#### SERVICES

For internal purposes, PTI uses a coding system to determine at the intake stage how long the defendant might be in the program. While the codes are based on certain facts about the defendant (whether he is employed, in school, in need of special help, and so on), the criminal act with which he is charged is a primary factor in this early assessment. The codes are as follows:

Code 1--minimum 5 months of service;

2--minimum 4 months of service;

3--minimum 3 to 4 months of service;

4--VS (voluntary service); that is, a minimum of 3 months of telephone contact unless full services are requested by the client.

The more serious the crime, the lower the code number.\* Robbery, breaking and entering of a dwelling, sale of drugs, and aggravated assault are automatically a Code 1. Possession of heroin, a large grand larceny, and assault on police officers are often a Code 1. Smaller grand larcenies, possession of stolen property, sale of marijuana, possession of non-addictive drugs, and forgeries are usually a Code 2. Possession of marijuana, bad checks, and forged prescriptions are usually Code 3. Code 4 is a new service status for PTI. VS cases are usually charged with concealed weapons, possession of marijuana, and counterfeit inspection stickers which are considered to require minimal supervision.

The codes are not rigid. Their purpose is to give the program staff an early indication of how long it might have to work with a client. Greater stability in the client's life may lead to a reduced number of contacts or to earlier successful completion. Before either of these occurs, the zone leader (see below) or the counseling supervisor will review the case.

Partially, perhaps because of the composition of its client population, Dade PTI is primarily a counseling agency. Counselors say they aim to help the client become more insightful about himself, more aware of his alternatives, more self-reliant,

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\* The clearly serious crimes are rare and represent infrequent exceptions to the program's formal eligibility criteria.

and more stable. The counselors tailor their specific efforts to the needs of the individual, as they perceive them.

PTI has divided Dade County into four zones; each counselor is assigned to a zone. PTI zone leaders assign defendants to counselors according to the former's place of residence; there is also an attempt to match clients and counselors for personality. Individual counseling sessions are held weekly, either at the field office or out in the community (in a park, at a community mental health center, or at another site). Most clients also meet once a week in a group with other counselors and clients from the same zone.\* Two contacts a week is typical, although counselors will meet with a client more frequently if they think it necessary. Home visits are usually made several times during the client's participation in the program.

Although not originally one of the "manpower-model" diversion programs, Dade PTI emphasizes the importance of getting or keeping a job and obtaining more education. Counselors tell clients that barring extraordinary circumstances, they will not recommend dismissal of charges until clients are employed or in school. The burden of finding a job, training

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\* Groups are also occasionally used by the counseling supervisor to help counselors. For example, for a counselor she thought was being too authoritarian with some clients, the supervisor called together a group that included that counselor, two others, and several of the clients. The interactions in the group clarified the difficulties, and the other counselors were able to help their colleague identify and deal with the sources of her problem.

program, or educational opportunity, however, rests largely on the client. Counselors are supportive and helpful but will not do for the clients what they feel the clients must learn to do for themselves.\* Consequently they do not emphasize specific or concrete manpower services.

Nevertheless, Dade PTI does have one vocational counselor on staff who maintains files on resources available in the county and assists interested clients in their efforts to find a suitable educational program, training program, or job opportunity. Typically, a client's regular counselor will arrange an appointment for him with the vocational counselor if the client is interested. The vocational counselor makes suggestions, and the three work together to try to find a placement. While successful in getting some CETA money to fund clients' stipends in a job training program and in placing a few clients in jobs, the number of clients serviced by the vocational counselor is not high.

#### The services staff

The process of hiring, training, and evaluating counselors at Dade County PTI is unusual and thus worthy of some discussion. An applicant for a counselor position is interviewed first by

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\* TCRP (Profile 3) also requires clients to have jobs before a dismissal recommendation is made, although it, too, makes occasional exceptions. CEP (Profile 1) tries to place every participant in a job, job training, or school before recommending dismissal.

a group comprising three counselors, the director, and the counseling supervisor. Second-round interviews are also conducted by groups of counselors. The qualities sought in applicants include: ability to relate well to people, good judgment, insight, flexibility, and self-motivation. PTI counselors have interviewed as many as 150 applicants for one position. Although the process is exhausting, PTI's staff reports that it's worth the effort to have a good staff.

A new counselor receives a great deal of training before taking on a full caseload. He spends most of his first month studying the PTI manual of policies and procedures, going to court to watch its processes, meeting with ASAs and public defenders to get their perspectives, reading old case files, observing group sessions, doing initial interviews, accompanying counselors to field visits with clients, and talking with the counseling supervisor. About a month and a half after starting at PTI, the new counselor will pick up his first few cases. He meets frequently with the counseling supervisor for intensive discussions of his clients' service needs and the best approaches to take. Not until he has been with the program four months does the new counselor handle a full caseload.

Counselors are evaluated one at a time on an on-going basis throughout the year. Each evaluation takes two weeks and has both quantitative and qualitative aspects. The counseling supervisor selects a three-month period and asks the counselor to send her all of his case folders for that period.

She makes up a sheet with the client's name on the left side and with the days of every week during the three-month period across the top. She studies the folder, noting every contact between client and counselor and its type (phone, home visit, field visit, office visit, group). She looks at the schedule the counselor made for the client and evaluates whether the counselor stuck to that schedule. She also looks to see what the counselor did when clients missed appointments. (She and the counselors have agreed that every counselor should spend at least 24 hours a week in direct contact with clients.) Each contact with a client is given a weighted score: two hours for each home visit, two hours for each field visit, one hour for office visits, and one hour for home visits when the client doesn't show. The counseling supervisor then calculates the average number of client contact hours for each week. If the counselor falls below the 24-hour-a-week minimum, he may be put on probation or even fired.

Once the raw quantitative scores are worked out, the counseling supervisor and the director divide the files in half and read each file carefully to get a sense of the quality of the work being done by the counselor with the client and the quality of the write-ups. Too many "clients seem stable" or "client and I discussed family problems" without more explanation are suspect. What they look for are the following: (1) identification of tangible needs, (2) attempts to meet tangible

needs, (3) identification of intangible needs and (4) attempts to meet intangible needs. Case notes must reflect what direction the counselor is moving in with the client.

The evaluators also look at the report of the initial interview with the client to get an impression of the client and then look to see if the counselor followed through on problem areas. They examine how well the counselor is able to utilize community resources and whether, when difficulties arose, he called on other staff to help. They take notes on the folders and then get together to discuss each counselor's cases and how he handled them. Then they meet with the counselor's zone leader or with a senior counselor in the zone to get their opinions on how well the counselor is responding to his cases. Finally, they meet with the counselor himself and discuss their evaluation with him.

Again, this is an exhausting process, but the staff members reported it is worth the effort because they feel it ensures high-quality services to the clients.

#### EXIT PROCESS

When a client has been in Dade PTI for the length of time he was coded to participate, his counselor decides whether he has made sufficient progress to justify dismissal of charges. Usually, this means that the client has at least found (or kept)



a job or enrolled (or stayed) in school. The counselor also considers whether he has maintained a cooperative attitude and attended counseling sessions regularly. If the client meets these criteria, the counselor and program director sign a form recommending the dismissal.

Unlike most of the other programs, which submit fairly lengthy, detailed reports on individual clients' progress in the program, Dade PTI sends the court a short form letter requesting dismissal. The letter states only the client's employment and educational status.\* The PTI director reported that neither ASAs nor judges have ever denied a PTI recommendation for dismissal.

The counselor also initiates the decision to terminate a client negatively. The reasons for negative termination are basically the same as those in most diversion programs: failure to attend counseling sessions and/or generally uncooperative attitudes. Clients who are rearrested are automatically terminated only if the charges survive the preliminary hearing.

The counselor may choose to send the unsatisfactory client a letter stating his intent to terminate, and the reasons. Or he may send a letter stating the conditions by which the client may avoid termination. If the client agrees to abide by the

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\* Dade PTI staff indicated that they felt a more detailed report would have the effect of inviting the court to "interfere" in the program's treatment efforts. Again, close relations with the State's Attorney's Office may account for the ready acceptance of Dade PTI's evaluation by prosecutors.

terms, he signs a letter of intent, entering into a specific contract with the counselor. If the contract is subsequently violated, the client is automatically terminated.

Dade PTI has introduced a mechanism by which a client may appeal a termination to the counseling supervisor who holds a hearing in the presence of the counselor. The hearing usually proceeds in this way: the client is asked if he understands why he is being terminated; the counselor then presents his reason for deciding to terminate the client; the client is given an opportunity to respond; the supervisor asks the client questions; the client is asked to leave the room; the supervisor makes her decision. If the supervisor decides to reinstate the client, she usually attaches further conditions. If the client fails to comply, automatic termination results. If a letter of intent is signed and violated, reinstatement is usually denied. If the decision to terminate is not altered on appeal, the counselor prepares papers for the SAO to process to put the case back on the calendar. The disposition memo sent to court on a terminated defendant states briefly the reason for termination. Dade PTI reported a termination rate of about 10-12 percent of its clients--one of the lowest of the programs studied.

#### Sealing of records

Dade PTI alone of the programs visited takes affirmative

steps to ensure that clients' arrest records are sealed after their successful completion of the program. \* One year after a client's exit, program staff members do the paperwork necessary for sealing; they later check to make sure that the sealing has, in fact, taken place. A client who wishes to have his record sealed less than a year after his participation may initiate a petition in the courts himself.

Dade PTI maintains its own records on past participants so that a defendant applying for diversion on an apparent first offense will not in fact be treated as a first offender by the program if he has been diverted in the past and has had his record sealed.

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\* Florida Statutes, Section 901.33 and Court Rule 3.692.

## PROFILE 7

### OPERATION MIDWAY

Probation Department  
Adult Division  
Social Services Building  
County Seat Drive and 11th Street  
P.O. Box 189  
Mineola, New York 11501

Paul Ritter, Assistant Deputy Director,  
Pretrial Services Bureau

### PROGRAM LOCUS

Operation Midway Began in 1970 as an experimental program within the Nassau County Probation Department, funded by LEAA money from the New York State Division of Criminal Justice Services. Planners included local judges, attorneys, sheriff's officers, prosecutors, and probation personnel as well as the county's criminal justice planning council staff. Midway was institutionalized within the probation department in 1974, with direct funding from it, and its administrative and counseling staffs are Probation Officers with Peace Officer status.\*

The program's staff had anticipated that the institutionalization would have a negative effect on program operations, but reported to researchers that this was not the case. Although they said that Midway must now pay more attention to "bureaucratic

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\* The Bergen County program in New Jersey (Profile 5) is the only other program visited that operates within a probation department.

details," they also noted that the institutionalization has appeared to make the program more, not less, credible to the courts and has contributed to the good relationship it enjoys with judges and district attorneys.

Nevertheless, institutionalization of the Midway program as a part of the probation department has also had difficult aspects. Some Probation Officers indicate that Midway's relationship with other components of the probation department are not always smooth. Some members of the staff acknowledge that the department as a whole does not view the diversion program as "part of the team," and that traditional probation officers see Midway counselors as "off-beat" or "non-conformist." The department, for example, recently turned down Midway's request to continue calling its diversion counselors "Probation Counselors," rather than Probation Officers; this change in title was considered very significant by the Midway program staff.

Midway operates under an informal agreement with Nassau County judges and district attorneys to divert defendants both before and after indictment. While the confidentiality of counselor-client communications is not legally protected, the District Attorney's office has an administrative policy against the subpoena of counselors' or case files. (Defense counsel are granted full access to Midway's files, however.) In fact, when a prospective client agrees to participate in the program, he signs a consent form stating, among other things, that no information he relates to a Midway counselor will be made available to anyone without the written consent of both him and his lawyer.

Since Midway operates as a part of the Probation Department, it has no separate funding. It received 574 applications (motions)

for diversion in 1976 from the County Court (indicted felonies) and accepted 468 of these for diversion; in the other 106 cases, Midway rejected the defendant and judges withheld consent to diversion. Since moving to pre-indictment screening (see below), Midway has increased the number of defendants diverted. In 1977 it received 1063 applications (indicted and non-indicted) and diverted 744 of these defendants. Midway's services consist largely of counseling and referral to specialized assistance in outside agencies. Its unique--and sometimes controversial--feature is that successful participation does not automatically result in a recommendation for a dismissal of charges. In about half its successful cases, Midway recommends only a reduction (although usually a substantial one) of charges (see "Exit Process," below).

#### ELIGIBILITY CRITERIA

Midway participation is limited to:

- (1) Nassau County residents;
- (2) defendants between 16 and 25 years of age; and
- (3) defendants with no prior felony convictions.

The program has traditionally taken only felony cases.

Midway is the only program visited for this report that has had a "felonies-only" policy from the beginning. That criterion was challenged in 1975 by the attorney of a larceny defendant who, if he had stolen goods worth two dollars more, would have been

charged with a felony and been eligible for the program. The court ruled that Midway was justified in establishing such a policy and that no violation of the defendant's equal protection rights had occurred. Natural caution and sensitivity to public opinion have generally dictated that most diversion programs begin by diverting only defendants charged with misdemeanors and perhaps low-degree felonies; as they become more credible to the courts, establishing a track record and good relationships with judges and prosecutors, they are often allowed gradually to divert more serious offenders. Midway, on the other hand, had from its inception the full support of a State Supreme Court (the felony court) justice, who wanted the program within his jurisdiction. This meshed with the philosophy of Midway's early planners, who felt that if diversion could be shown to work with felony offenders, it would then become an acceptable alternative for other offenders.

Restitution is sometimes a condition of participation in the program. When it is, Midway may consult with the victim to help establish the amount and arrange for a payment schedule; however, the victim's consent is not required for diversion. Neither is the consent of the arresting police officer required, although the recommendations of the arresting officer and the investigating detective are solicited and given strong consideration by the program.

#### SELECTION AND INTAKE

Until mid-1976, Midway obtained all its cases by referrals,

mostly from defense attorneys, and accepted only defendants who had already been indicted on felony charges. Although it still accepts such referrals, it now obtains most of its cases through a new pre-indictment screening bureau set up by the County District Attorney's office. \* The major effect of the new system is that the Assistant District Attorneys (ADA s) play an important role in identifying and selecting most cases for diversion (which they did not under the referral system), and they can (and do) select defendants arrested for felonies whose charges they would reduce to misdemeanors in the absence of diversion. In other words, Midway now is taking, on the ADA's initiative, many offenders whose felony charges would now not be taken to the Grand Jury. According to the program, the DA's office is now attempting to reduce the number of indictments by two-thirds because of the cost savings inherent in eliminating Grand Jury hearings and subsequent County Court activity. Consequently, it appears, indictments are being sought only for the most serious charges. Midway handles more than 50 percent of all those defendants charged with felonies but now obtains them prior rather than subsequent to indictment.

#### Pre-indictment screening

The procedure for screening defendants in the pre-indictment bureau is as follows: the defendant is arraigned on a felony charge in District Court. A few days later, a pretrial conference is held between the ADA and defense attorney. The ADA reviews the file and decides whether the defendant should be considered for diversion. If he is favorable, he calls Midway and asks it to

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\* In 1977 ,837 of the 1063 applications to Midway (79%) were pre- rather than post-indictment.



interview the defendant. A Midway screener does so, that same day, if possible. If he, too, thinks the defendant a likely prospect, a further evaluation takes place. Seven to ten days later, Midway submits a report to the ADA requesting the defendant's enrollment. When the case returns to court, the judge is asked to suspend court activity on the case while the defendant participates in Midway--about one year.

#### Post-indictment screening

The program continues to pick up some cases after indictment, cases which the ADA feels might be appropriate for diversion but which he would be unwilling to reduce to misdemeanor status. The intake process for these referred cases (i.e., those indicted on a felony charge) proceeds as follows. The defendant or his attorney obtains an application to the program from the clerk of the court, which the defendant must file within 15 days after his arraignment on an Indictment or Superior Court Information (an indictment without a Grand Jury). Midway staff interviews him, and if he seems a good prospect, assesses him. If he is found acceptable and still wishes to participate, the Midway staff carries out a lengthy investigation lasting about a month, then writes a "diagnostic report" to the court, which accompanies its recommendation for diversion. The court adjourns the case for one year for the defendant's participation in Midway. The ADA plays almost no part in this procedure, though he may object to the defendant's entry into the program. Judges generally concur with the Midway recommendation and rarely reject someone the program agrees to divert.

### The assessment process

Midway staff who screen prospective clients look primarily at the nature and extent of the problems that led to the criminal act and consider whether the program's services would make a significant impact on the defendant's life. About 25 percent of defendants referred by defense attorneys are rejected by Midway on the grounds that they are poorly motivated to change or the charges against them are too serious. The counselors are also sensitive to the limitations on their ability to treat certain kinds of problems, especially serious psychiatric disturbance. In fact, for defendants charged with sex crimes, Midway requires a psychiatric evaluation before acceptance.

The program at one time gave all clients psychological testing (the Minnesota Multi-Phasic) during the assessment period. But it found that the costs were prohibitive and the results ultimately of small value in treatment. Testing is still used in some cases, with results evaluated by a consulting psychologist.

### Who makes the decision

Midway does not accept defendants who emphatically insist on their innocence, but does not require a formal admission of guilt. However, the defendant must admit some involvement in the offense, or he is referred to his attorney for trial.

Before the establishment of the pre-indictment screening bureau, judges and Midway staff were the chief decision-makers. ADAs were involved only to the extent that they could object formally to adjournment of cases for purposes of defendant's

participation in the program. Defense lawyers, who were the major source of referrals, could also have been said to play an important role.

Under the new system, through which most of Midway's cases are now obtained, the influence of the ADA has increased considerably. It is now he who usually makes the initial decision to consider a defendant for diversion.

Judges, who have the final word on diversion, occasionally place defendants in Midway whom the program itself believes are unsuited. Staff said that in most cases these clients are discharged as "unimproved."

#### PARTICIPANT CHARACTERISTICS

The statistics below describe the population of 175 client Midway served in 1973. They are drawn from the "Final Evaluation, Phase II" of Project Operation Midway, submitted to the New York State Office of Planning Services, Division of Criminal Justice.

AGE:	16-18	38%
	19-20	30
	21-22	15
	23-24	10
	25-26	7
RACE:	white	86%
	non-white	14
SEX:	male	86%
	female	14
EMPLOYMENT STATUS AT INTAKE:	employed	58%
	student	23%
	unemployed	18

PRIOR CRIMINAL RECORD:	No	66%
	Yes	34%
TYPE OF CHARGES:	Felonies only	
BREAKDOWN OF CHARGES:	burglary	19%
	possession of drugs	12
	sale/poss. of drugs	33
	robbery/larceny	16
	assault	6
	poss. of weapon	3
	criminal mischief	3
	forgery	4
	other	4

As the figures show, Midway's participants in 1973 were mostly young males. Forty-five percent were arrested for drug-related crimes and 35 percent for property crimes. Since Midway is a felonies-only program and was at that time taking only indicted cases, the charges were fairly serious.\* The program has diverted and treated defendants charged with every serious crime except murder.

Midway staff report that about 20 percent of their present clients are black or Hispanic. The population of Nassau County is about five percent black and Hispanic, and police records indicate that these groups constitute fewer than 20 percent of those arrested in the county.

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\* Since the program's change to a prosecutor-dominated pre-indictment screening method, the types of cases obtained may have changed. The program claims, however, that they have not; if so, the program has always taken cases prosecutors would be willing to plead as misdemeanors.

Although Midway does not collect information on clients' socio-economic backgrounds, this can be deduced to some extent by the nature of their legal representation; only about one-third have privately-retained counsel. Generally, counselors report, clients come from middle - and working-class homes.\*

### SERVICES

Like most other diversion programs, the major service Midway offers is counseling. The two major purposes of counseling are to assist the client to become more stable and to help him understand and overcome the problems that led to his criminal act. Typically, counselors meet with their clients in individual sessions once a week. Counselor caseloads are approximately 25-30 cases.

A client who needs specialized services such as alcohol or drug treatment is referred to appropriate outside agencies; these services become part of his treatment plan in Midway.

Midway counselors state that their most difficult clients tend to be black and Hispanic youths from low-income backgrounds. They report that these defendants are often hostile to the program and indicate resentment about the intrusion of the (mostly white) counselors into their lives.

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\* Generally speaking, the population served by Midway is very similar to that served by Operation de Novo in Minneapolis (Profile #4).

### The services staff

Several of Midway's counselors were transferred to the diversion program from line probation jobs because they were non-traditionalists by the standards of regular probation officers. (The Midway director, however, generally regards this as an advantage in their work in the diversion program.) About half of them have Masters degrees, and all have Bachelors degrees. Like their clients, they are mostly from middle- and lower-class backgrounds.

Case conferences between counselors and counseling supervisors are held daily and are part of a system of close supervision of services staff that has been emphasized at Midway from its earliest days. In addition, the program director often reviews individual cases and helps counselors work through problems. He also audits cases occasionally to ensure that clients are getting adequate services.

### EXIT PROCESS

After a client has participated successfully in Midway for about a year, the counselor writes a report to the court

about his progress in the program. The report includes statements about (1) the offense with which the defendant is charged, (2) his background, (3) the problems he experienced in the recent past, (4) what the counselor did to help him with these problems, and (5) generally, his response to the program's rehabilitative efforts. The report concludes by recommending that the client be discharged from the program as "improved." (Technically it is the court, not Midway, that discharges clients from the program.)

When the case returns to court, the judge usually concurs with Midway's recommendation and discharges the client from the program. He schedules a disposition date three months after the discharge date. This delay enables the court to determine how well the client can get along without Midway's supervision.

Several weeks before the final disposition date, the Midway counselor checks the official state criminal history records to ensure the defendant has not been rearrested, and he verifies his residence and school or employment status. He then writes a final report to the court, with a copy to the ADA. This report recommends either dismissal or a substantial reduction of the charges. When Midway recommends a reduction, it usually also proposes as the sentence an unconditional discharge or, if further supervision seems necessary,

probation. The ADA and defense lawyer then meet to "bargain" a disposition. When the case returns to court, the ADA either moves to dismiss the charges in the interest of justice or announces the plea agreement. The judge nearly always complies with the prosecutor's suggestion.

If a client is considered an unsuccessful participant in Midway, the program recommends to the court (in a report similar to the successful completion report) that he be discharged as "unimproved." The current rate of unsuccessful terminations was estimated at 12 percent by the program director. (The 1975 annual report of the Nassau County Probation Department showed an 18 percent termination rate for that year.) Failure to attend counseling sessions, failure to cooperate, and rearrest are the major reasons for unsuccessful terminations.

In 1975, 127 of the 285 successful participants (45 percent) had their charges dismissed. Fifty-one of the other 158 successful participants pleaded guilty to misdemeanor charges (none to felonies) and 70 to violations. Thirty-seven were adjudicated youthful offenders. The sentence for most of those who pleaded guilty (125 of 158 persons or 79 percent) was an unconditional discharge. Because an unconditional discharge is roughly equivalent to no sentence at all, it appears that the fact of conviction is what the ADA seeks to obtain from plea bargaining in cases of successful participants of Midway



whose cases do not seem appropriate for dismissal. One of the major reasons for this practice by the prosecutors is explained below.

#### Sealing of records

In September 1976 the New York State legislature enacted a law providing for the automatic sealing of all court, prosecutorial, and police records of enumerated types of arrests that do not lead to conviction. Prosecutors may object to sealing in individual cases. It is reported that the law created a furor among district attorneys throughout the state and that in some jurisdictions, including Nassau County, prosecutors are said to be reluctant to consent to adjournment in contemplation of dismissal (ACDs) and other dismissals in the interest of justice, such as dismissals after participation in diversion programs.\* Their rationale is said to be that they do not want to lose track of how many times a defendant has been arrested.

Essentially, this means that although it is now more difficult for successful Midway clients to obtain dismissals, in those cases where they are obtained, the clients' records are supposed to be sealed automatically.

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\* Similar reluctance may also have affected some diverted defendants in New York City, where the Court Employment Project (Profile 1) operates.

