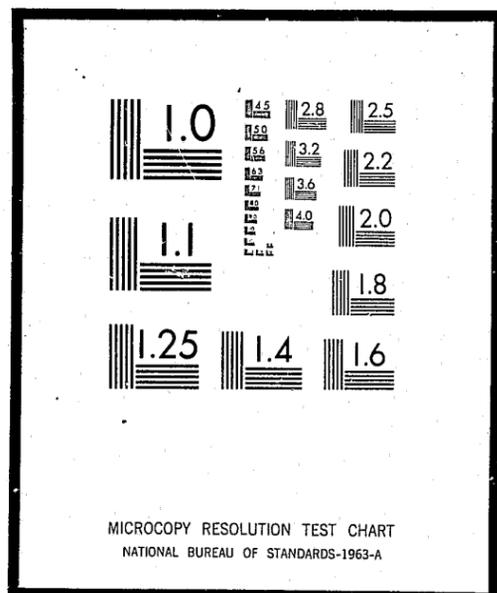


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DEFERRED PROSECUTION AND CRIMINAL JUSTICE:

A Case Study of
The Genesee County Citizens Probation Authority

STATE OF MICHIGAN
OFFICE OF CRIMINAL JUSTICE PROGRAMS
GRANT #2-10-05-0730-01

013994
EVALUATION

PREFACE

The present report is the product of an evaluation of the Citizens Probation Authority conducted by an interdisciplinary research team. Two "editorial comments" seem appropriate in presenting the report: (1) The strong consensus among the interdisciplinary staff was that the Genesee County (Michigan) deferred prosecution program was successful as measured against its own goals, and (2) that the program is worthy of emulation in other jurisdictions. It should be noted that neighboring Lapeer County has instituted a deferred prosecution program utilizing volunteer counselors; those persons responsible for the Lapeer program expressed satisfaction with the results attained during the first two years of operation.

Although there was considerable staff interaction on the various segments of the report, primary responsibilities were as follows:

Legal Analysis: Mr. James Rice, Editor, University of Michigan Journal of Law Reform

Client Interviews: Professor Philip Singer, Oakland University

Case Record Analysis: Professor Carl Vann, Oakland University

Staff Interviews: Professor John Runcie, University of Michigan - Flint

Cost Analysis: Professor Edward Schnee, University of Michigan - Flint

Analysis of recidivism, perspectives in other agencies, utilization of staff time: Professors Theodore Curtis and Ellis Perlman, University of Michigan - Flint

Coordination of research: Ellis Perlman, University of Michigan - Flint

The final report can be characterized as a joint research effort. Major substantive revisions in the final report have been undertaken by the Project Director with the assistance of Joel B. Saxe, Genesee County Assistant Prosecuting Attorney, Eugene S. Baldwin, Director, Region V Crime Commission, and B. James Wright, Director, Genesee County Citizens Probation Authority.

Ellis Perlman
Project Director
July, 1972

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We also wish to thank the police agencies, the courts, probation agencies, the prosecutor and his staff, and the director and staff of CPA for their help and consideration. We also would like to thank the clients of CPA -- both active and past -- who were willing to be interviewed and contributed their time.

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SECTION A: MAJOR FINDINGS AND INTRODUCTION

SUMMARY OF MAJOR FINDINGS

Section B: Program Effectiveness

1. Qualitative analysis of CPA case records illustrates the successful utilization of social therapy as a sanctional process to achieve social control and rehabilitation.
2. CPA case records provide a rich source of criminological-social data on a relatively specific population, which with further analysis through time could provide important information to guide development of public policy to most effectively treat the offender who is a "lawbreaker" rather than a "criminal." CPA experience and success substantiate the view that deferred prosecution is a vital element in the criminal justice system.
3. Although CPA is frequently referred to as a "first-offender" program for young adult offenders, 27% of the research sample had prior juvenile and/or adult arrest records and 30% were over age 25.
4. Clients expressed satisfaction with CPA and acceptance of its structure and goals. Although clients see the need for increased contact with counselors, clients particularly emphasized the interest and empathy shown by counselors. Further, clients generally reported that the CPA treatment program, counseling and/or referrals to other community agencies, had contributed to improving their life situations.
5. The community goal of social control is well served by a policy that distinguishes between "lawbreakers" and "criminals," and a program designed specifically for the "lawbreaker" which emphasizes rehabilitation rather than punishment.

6. The 40-50% referral ratio of CPA clients to other community agencies is consistent with the CPA treatment concept of the widest possible utilization of available community resources.
7. Re-arrests and incidence of probation violation are very low for the CPA program, even in light of the initial expectation that such rates would not be high. Whether the low rates of recidivism and probation violation can be explained by CPA's referral criteria and/or treatment program, the desired end result is attained to the degree that former clients tend strongly not to become involved with the law again.
8. Because CPA functions without the hierarchical and statutory constraints of traditional corrections agencies, CPA is more readily adaptive to new concepts of client treatment and to the changing demands of an explosive growth rate.
9. Of key importance to a deferred prosecution program is the coordination of police agencies and the prosecutor's office with CPA in the referral and intake process. A major part of the success of CPA is attributed to meeting this need through the utilization of a federally funded Probation Liaison and Training Officer (PLATO project).

Section C: Cost Considerations

1. CPA is well managed: the agency maintains a qualitatively high level of performance even under the adverse conditions of excessive counseling caseloads; the administration of the program demonstrates careful budget management.

2. The CPA deferred prosecution program undoubtedly represents one of the most economical probation field services in the United States. Although total program expenditures have increased each year, per-client costs have declined from \$126.00 in 1968 to \$65.00 in 1971, far below even the 1965 national average of \$198.00 reported by the President's Crime Commission. This is accounted for by high counselor caseloads, rapid caseload turn-over as a result of a shorter probation period, and the payment by clients of a \$100.00 Probation Service Fee.
3. The flexibility of the deferred prosecution approach in handling felony or misdemeanor cases has further financial import in view of the recent ruling of the United States Supreme Court extending the right of indigent misdemeanants to court-appointed counsel.
4. CPA's existence brings reduction in the workloads of police, prosecution, courts and adult corrections. A significant number of probationary cases, which prior to 1967 would have been processed through the courts to Adult Probation, are now being handled by CPA.

Section D: Legal Aspects

1. The Citizens Probation Authority type of deferred prosecution represents a proper exercise of prosecutorial discretion.
 - a. CPA procedures correct three deficiencies found by the President's Crime Commission to be frequently present in the normal exercise of prosecutorial discretion:
 - 1) Lack of sufficient information. CPA operates as a supplement

to the prosecutor's office impairing neither the legal justifications of prosecutorial discretion nor the prosecutor's final control over the charge/no charge decision. Rather, CPA enhances the knowledge and expertise necessary for a just decision-making process.

- 2) Lack of clear standards. The program provides a rational and well articulated process for deciding which offenders become subject to full criminal sanctions and which to more informal disposition, a process which assumes great importance if one subscribes to the position that not all offenders can or should be processed through the conventional criminal justice system.
- 3) Lack of established procedures. CPA standardizes the operation of prosecutorial discretion through the promulgation of rules and regulations, to the end not of expanding the scope of discretion but of exercising that discretion more intelligently.
 - b. The extent to which the prosecutor in the exercise of his charge decision makes referrals to CPA for their recommendations is on firm legal ground and is beneficial to the decision process.
 - c. Referral of multiple and adult offenders is not an abuse of discretion, for it has been shown that such referral as practiced by CPA does not endanger the community and thus does not violate the public interest.
2. Constitutional rights of clients and prospective clients are generally well-safeguarded by present CPA procedures. Some possible constitutional questions raised in pre-prosecution probation are presented in Chapter 8.

Chapter I

INTRODUCTION

Background and Principles of CPA

The Citizens Probation Authority and its predecessor, the Court of No Record, were established by the Genesee County (Michigan) Prosecuting Attorney Robert F. Leonard, in the belief that not all offenders require the full prosecution of the law in order to protect society, secure justice, and correct unlawful behavior. In 1965, at a meeting of civic leaders, Leonard discussed the need for a suitable alternative to "charge or dismiss," the options traditionally available:

During the years I've spent as an assistant prosecutor and prosecutor, I have had the opportunity to observe, first hand, the family situation of many youthful offenders. It has been clear to me that many of the reasons underlying the behavior of these youths are the direct result of a breakdown in family ties. I am convinced that what is needed in many cases is a program that will not only help the youth, but which will also act as an instrument in drawing the family back together. If this strengthening of the family can be accomplished, at least half of what we are seeking to do for these youths will be achieved. Action by my office and the courts is not enough. What we must have is a means of involving the community in the problems of these youthful offenders. If we can marshal the support of the family and the community behind these youths, the chances of successful rehabilitation will be immeasurably improved.*

*As reported by Jeffrey Chimovitz in "Court of No Record Report," 1967, on file with the Genesee County Citizens Probation Authority.

Leonard proposed a Court of No Record to deal with cases in which neither the interests of justice nor the community were adequately served by the "charge-dismiss" options. The Court of No Record (CONR) has been described as

a community participating program of deferred prosecution designed for those without previous criminal felony records, between the ages of seventeen and twenty-one, who allegedly [had] committed a non-violent crime. The goal of the program [was] to help candidates avoid the stigma of a criminal record and to assist in their rehabilitation using community resources.

Candidates [were] chosen by the prosecutor based upon the above criteria. The candidates [were] then interviewed by the director of the program which [was] followed by consultation with the family. Field assistants [gathered] further information to facilitate an evaluation of the candidate by the director and the CONR.

If the candidate [met] the criteria of the program, a file [was] prepared and presented with the candidate and his family to a voluntary professional committee, CONR. These committee members [were] broadly representative of the community and [consisted] of such persons as doctors, psychiatrists, teachers, police personnel, lawyers, and ministers, etc. This committee, upon interviewing the candidate, first [determined] whether he [was] acceptable for the program and secondly, if acceptable, [designed] a program of rehabilitation using community resources. This program ...[involved] various requirements, depending on the individual and ...[lasted] from three to twelve months. A major portion of the rehabilitative efforts [were]... conducted through social agencies existent in the community.

During this period of unofficial probation, the field assistants [prepared] follow-up reports that [were] reviewed by the committee periodically. The candidate [was required to] comply with the requirements imposed by the committee or face prosecution on the original charge. Volunteer counselors [were] provided as necessary.

Upon completion of the program the candidate [was] again reviewed by the committee. If the candidate successfully [completed] the program his tenure [was] terminated, his record cleared and the charge dropped.*

*Described by then Assistant Prosecuting Attorney Edward G. Henneke in a proposal for funding directed to the U.S. Department of Health, Education, and Welfare, 9/14/66, on file with the Genesee County Citizens Probation Authority.

The volunteer citizens of CONR received 185 referrals from November 1965 to October 1967, of which 116 cases were accepted by the Prosecutor for probation. The apparent success of the program, the enthusiasm of the citizens and clients, the few failures, and the desire to broaden the opportunity for more accused persons to participate, led to the initial hiring of professional staff by the Genesee County Board of Commissioners.

Under the guidance of its present director, B. James Wright, the concept of the Citizens Probation Authority, as known today, began to evolve in 1968 from the Court of No Record. This transformation involved four fundamental changes: substantial broadening of the referral criteria, professionalization, creation of the agency as a separate County department, and development of procedures necessary to guarantee protection of the Constitutional Rights of referred individuals. (See Constitutional Rights Questionnaire, Appendix 4.)

Changes in the referral criteria involved the following:

- 1) Age of offender Eligibility was broadened to include persons older than age 21, with no upper age limit.
- 2) Previous record The requirement of no previous juvenile or adult record was replaced by "the present offense shall not constitute part of a continuing pattern of anti-social behavior."
- 3) Nature of the offense The CONR requirement precluding crimes of a violent nature, was interpreted to exclude all so-called "crimes against persons." CPA restated this criterion to read that "the offense shall not be of an assaultive or violent nature, whether in the act itself or in the possible injurious consequences of the act." This provided a necessary restrictive clause and was also reinterpreted to permit consideration of some selected offenders committing Indecent Exposure, Indecent Liberties, and Statutory Rape.

4) Admittance of guilt The CONR requirement of informal but written admittance of guilt was replaced by requiring only that the accused "accept moral responsibility for whatever his behavior in the alleged offense."

5) Restitution to the victim Full restitution, where called for, was required prior to admission to the CONR. CPA provides for the possibility of deferred payment during the probationary period.

6) Residency The unwritten CONR requirement that the offender live within an area (possibly extending beyond the County) which made close supervision feasible, was formalized by CPA, with special arrangements for out-State college students.

The close application of the revised criteria, ensuring an equitable screening process, had the effect of deemphasizing the officer's recommendation for or against CPA referral and acceptance, as compared with the former experience of the CONR.

One of the early major concerns of the CPA was to achieve professionalization of staff and program without losing the community-oriented perspective of the CONR approach to deferred prosecution. The effort to maintain a community responsive program was made through retention of a role for citizen volunteers through participation on a Citizens Advisory Council. The Advisory Council played a prominent role in the formative stages of CPA by acting as a sounding-board of community attitudes and concerns. The Advisory Council has also functioned importantly to assist the Prosecutor's Office and CPA in the formulation of policy. A second aspect of community-orientation, enlisting the "support of the family and the community," as originally advocated by Prosecutor Leonard at the first organizational meeting, has been continuously stressed through CPA emphasis upon family counseling and community agency referral.

Professionalization of staff initially meant substitution of full-time professional corrections workers for the CONR committee volunteers. Subsequently, it came to mean the development of professional standards and a professional ethos. This has been reflected in the encouragement of staff continuing education in graduate and specialized programs, the innovative use of staff meetings for inservice training as well as client case staffing, and a high degree of involvement by staff in shaping and evaluating policies and practices of the program. (See Chapter 4.)

The third fundamental change from CONR to CPA status involved the creation of CPA as a separate, autonomous County department in 1968 by the Genesee County Board of Commissioners*, at the request of Prosecutor Leonard. It was felt that the autonomy of the program would foster independence and enhance its professional reputation as a non-political agency.

A fourth important change involved the protection of referred clients' rights under the law. A Constitutional Rights booklet and Questionnaire, based upon accepted court procedures, was developed in cooperation with the Citizens Advisory Council, to be administered to clients at the intake stage. The informal efforts to safeguard Constitutional Rights under the CONR suggested a need to build into the program formal guarantees. (See Chapter 8).

Protecting society, insuring justice, and correcting unlawful behavior are objectives basic to any Criminal Justice agency. An inherent premise of the Citizens Probation Authority is that not all law violators are "criminals;"

* See "Resolution authorizing establishment of Citizens Probation Authority," Appendix 2.

therefore, it follows that fulfillment of the basic objectives of the Criminal Justice process does not require that all offenders receive full prosecution under the law. Two immediate implications of this position are:

- 1) Deferred prosecution contributes to a more effective allocation of the limited resources available to the Criminal Justice System. This permits a concentration of resources upon the more serious crime cases which present a real threat to public security.
- 2) The distinction between law violators and "criminals" makes it possible for the Citizens Probation Authority, through deferred prosecution, to intervene at the "grass roots" stage of a potential criminal career. Law violators are distinguished from "criminals" as having committed an offense of a temporary, situational, impulsive nature, and who, although they may have had some previous contacts with the law, do not exhibit a continuing pattern of anti-social behavior. In essence, the law violator is a first or occasional offender who has not developed a life-style of career criminality.

From these considerations it follows that deferred prosecution may inhibit entry into a criminal career for some law violators by screening them from the formal Criminal Justice process which defines people as criminals and so publicly brands them. Deferred prosecution can prevent the stigma of arrest and conviction and the notoriety and shame which often accompanies criminal prosecution. Deferred prosecution offers more rational and humane treatment of the law violator than is afforded by those aspects of the Criminal Justice process which were designed to deal with "criminals" and often tend to be contaminating, brutalizing, and dehumanizing.

Two further attributes of deferred prosecution deserve mention:

- 1) Diversion from the Criminal Justice process at the warrant stage, with further prosecution held in abeyance, offers the accused the most prompt disposition of his case.
- 2) Although police diversion of cases from arrest and prosecution ("stationhouse release") is commonly practiced throughout the United States, this approach can lead to the serious impairment of an equitable judicial process and an effective deterrent system. Deferred prosecution remedies these defects by standardizing procedures and giving accountability to the diversionary process, while at the same time offering a rehabilitative treatment program.

The Court of No Record -- Citizens Probation Authority anticipated by two years the 1967 recommendations for deferred prosecution by the President's Commission on Law Enforcement and Administration of Justice, and by six years the 1971 recommendations for nation-wide implementation of deferred prosecution by the First Annual National Conference on Corrections, Williamsburg, Virginia. Other jurisdictions are now evidencing considerable interest in the Genesee County experience. Neighboring Lapeer County, Michigan, has reported satisfaction with its self-supporting, volunteer staffed program in operation for the past two years. San Bernardino County, California, is reported to be geared to 1972 implementation of a combined professional-volunteer model of the Citizens Probation Authority. It may reasonably be anticipated that citizens' desire for involvement in the Criminal Justice process will find legitimate and needed expression in Citizens Probation Authorities throughout the United States in the years ahead.

Research Assumptions and Procedures

Evaluation of the work of CPA involves a different task and a different conceptual

approach than would be appropriate in evaluating a more traditional probation authority. Several basic differences are immediately obvious:

CPA is highly selective in choosing its clients; a more traditional authority may not be so selective (its clients are designated by the Courts and not by the agency).

CPA's clients are persons for whom the probability of recidivism is low; the probability of recidivism among clients of the more traditional probation authority is substantially higher, and its caseload would normally include individuals for whom the probability was very high.

CPA intervenes in the criminal justice process before an individual is tried, convicted, or sentenced, and offers the prospect of a "clean" record, presumably allowing the probationary process to be viewed as non-punitive by the client; the client of the more traditional program has been through the court system and assigned to probation, suggesting that he is less likely than his CPA counterpart to view his experience as non-punitive.

The list of differences could be expanded. The present purpose is only illustrative, however, intended to demonstrate that CPA functions on a different basis than the traditional probation agency and to assist in developing a useful approach to evaluation of the program. In developing that approach it is important to consider the assumptions on which creation of a CPA-type program is based. Such assumptions should be informative regarding program goals and valuable in identifying the expectations held for agency performance. The following assumptions would appear to underlie creation of CPA and of any program designed to selectively divert persons charged with crimes from the criminal court process:

1. Certain types of criminal offenses, or situations in which criminal offenses are committed, may represent isolated instances in the life histories of persons charged with such offense, and are not best handled by processes designed to deal with "criminals."
2. Exposure of a person who has not demonstrated a pattern of

criminal behavior to processes designed to deal with "criminals" may at best fail to help the person and at worst influence him in the direction of a life-style linked to criminal activity.

3. Prevention of future criminal behavior on the part of persons who have not demonstrated a pattern of criminal activity does not require a punitive approach; in fact, a punitive approach may induce the opposite result and contribute to the person's identifying himself in a role which fosters future criminal activity.
4. A program diverting selected criminal offenders from the usual criminal court process carries a very limited risk for society. Careful screening should result in a low recidivism rate, which should be further lowered if the agency's counseling and problem-solving efforts are successful.
5. Diversion of those who are not habitual criminals from the regular criminal court process should increase the effective use of resources in the criminal court process, by lightening caseloads of police, prosecution, and the courts. The Adult Probation Program similarly should benefit through increased capability to focus its resources on more serious cases.
6. Prosecutorial discretion in disposing of offenses includes the authority to establish a program for the systematic and large-scale diversion of offenders from the Criminal Justice process.
7. Programs that divert persons charged with crimes from the normal criminal court process should lower the overall cost of administering the Criminal Justice process. Cost per case in the CPA program should be substantially lower than in existing alternative processes.

The CONR-CPA program has been in operation almost seven years; an objective evaluation of the program testing the above assumptions seemed appropriate.

This view was shared by the CPA staff and others in the correction community at a time of growing interest in the deferred prosecution concept. In response to this interest, the present evaluation was conducted by a team of researchers recruited from three university campuses, representing several academic disciplines.

The basic research approach to this evaluation study was stated in the research design:

The standard, structured interview was discarded in favor of the open-ended depth interview most often utilized by anthropologists. The structured interview serves best when its purpose is the gathering of data on attitudes and characteristics that will be subjected to correlational analysis. We do not believe this approach would serve the purposes of providing useful information on CPA for those in the corrections field. By the size, nature and newness of the CPA program, a major effort to correlate personal attributes with "success" or "failure" would reveal little of value. Rather, we propose a limited number of depth interviews, employing an agenda of points to be covered and permitting flexibility in each case. This technique will be utilized to document how persons are processed through CPA and with what range of results. One product of this approach should be at least some tentative criteria for judging success or failure, as measured by changes in life situation rather than just by recidivism or its avoidance.

In order to evaluate the effectiveness of the CPA program, the evaluation team interviewed former clients of CPA, police and prosecutors who deal with CPA, and staff members of the agency. In addition, a cost analysis, an analysis of case records, and a legal analysis were undertaken.

Three types of data sources about CPA clients were utilized: (1) Interviews with former clients; (2) case records of a 50 percent sample of clients whose formal participation with CPA was completed between August, 1969, and February, 1971; (3) records of the Flint Police Division to determine subsequent

histories of clients whose formal participation with CPA ended during 1969. Interviews focused on clients whose contact with CPA was late enough so that CPA would have developed treatment routine, far enough in the past to permit assessment of post-CPA experience. The sampling of case records, conversely, was drawn from more recent experience to reflect changes that had been made in the CPA program. Cases selected for the recidivism study, again, were drawn from an early period to allow the maximum time to elapse for the testing of recidivism.

Court decisions, statutes and documentation on comparable programs were examined in assessing the statutory and constitutional aspects of the deferred prosecution approach in general, and CPA specifically. A time study and cost study were carried out based on budgetary documentation and an analysis in depth based on daily logs kept by all CPA staff members for one month during the study. Operations of CPA were further examined through lengthy interviews with all CPA staff members and an analysis of historical and operational documents of the agency. Further interviews were conducted with more than fifty police officers, prosecutor staff members, state and county probation officers, judges and attorneys to ascertain the viewpoints of all types of functionaries in the Criminal Justice System whose roles relate them to the CPA program.

SECTION B: PROGRAM EFFECTIVENESS

SECTION B: PROGRAM EFFECTIVENESS

Major Findings

1. Qualitative analysis of CPA case records illustrates the successful utilization of social therapy as a sanctional process to achieve social control and rehabilitation.
2. CPA case records provide a rich source of criminological-social data on a relatively specific population, which with further analysis through time could provide important information to guide development of public policy to most effectively treat the offender who is a "lawbreaker" rather than a "criminal." CPA experience and success substantiate the view that deferred prosecution is a vital element in the criminal justice system.
3. A quantitative assessment of CPA case records portrays the "typical" CPA client as between the ages of 17 and 21, white, of lower-middle socio-economic background, with at least an eleventh grade education, and in a majority of cases having been charged with Larceny from a Building.
4. Although CPA is frequently referred to as a "first-offender" program for young adult offenders, 27% of the research sample had prior juvenile and/or adult arrest records and 30% were over age 25.
5. As a consequence of the selection criteria, CPA clients tend to exhibit a relatively more stable living pattern than offenders prosecuted through the court system. This factor, together with the treatment aspect of the program, predisposes a high success ratio in terms of personal and social adjustment and future law violation deterrence.

6. A unique set of psychodynamic factors is believed to contribute importantly to the success of CPA deferred prosecution:
 - a. Although "constructive coercion" may be present in the client's decision to accept the program, the decision is made voluntarily.
 - b. Although admissions of guilt are not required, in accepting moral responsibility for his behavior the client is immediately confronted with the reality of his behavior and its possible legal and social consequences.
 - c. Treatment normally begins within days after the client is apprehended rather than months-to-a-year later as is often the situation with cases processed through the court system.
 - d. The abrasive and stigmatizing aspects of the Criminal Justice System which detract from the correctional process are effectively and substantially minimized.
7. The 40-50% referral ratio of CPA clients to other community agencies is consistent with the CPA treatment concept of the widest possible utilization of available community resources.
8. Clients expressed satisfaction with CPA and acceptance of its structure and goals. Although clients see the need for increased contact with counselors, clients particularly emphasized the interest and empathy shown by counselors.
9. Former clients tended to express uncertainty and some concern as to whether their arrest records had been destroyed. Efforts to develop an effective return of records procedure has been a major and continuing concern of CPA.
10. CPA is characterized by a high degree of consensus among staff on methods and goals and a similarly high esprit de corps, reflecting the extent to which the agency has been shaped by the concepts in administrative and

correctional philosophy fostered by its director.

11. The agency's administrative philosophy regarding staff professionalism which encourages and actively involves all staff members in the decision making process is viewed as an important and distinguishing factor contributing to the success of the program.
12. The lack of counseling privacy in the CPA facility is inhibiting to clients and staff and detracts from the effectiveness of the important counseling function.
13. Because CPA functions without the hierarchical and statutory constraints of traditional corrections agencies, CPA is more readily adaptive to new concepts of client treatment and to the changing demands of an explosive growth rate. Characteristic of the innovative stance of the program, the negative aspects of excessive caseloads, disturbing to both clients and counselors, have provided the impetus for the development of new case management and treatment approaches, and the solicitation of additional funding to implement these ideas (PLATO and RAP projects, for example).
14. Re-arrests and incidence of probation violation are very low for the CPA program, even in light of the initial expectation that such rates would not be high. Whether the low rates of recidivism and probation violation can be explained by CPA's referral criteria and/or treatment program, the desired end result is attained to the degree that former clients tend strongly not to become involved with the law again.
15. The community goal of social control is well served by a policy that distinguishes between "lawbreakers" and "criminals," and a program designed specifically for the "lawbreaker" which emphasizes rehabilitation rather than punishment.

16. Of key importance to a deferred prosecution program is the coordination of police agencies and the prosecutor's office with CPA in the referral and intake process. A major part of the success of CPA is attributed to meeting this need through the utilization of a federally funded Probation Liaison and Training Officer (PLATO project).

Recommendations

1. (Finding #8) A volunteer program involving former probationers is recommended to provide assistance in counseling and supervising clients, provided that, the volunteer program be under the full-time direction of a professional staff member.
2. (Finding #9) An effective return of records procedure must be developed to retain the trust thus far engendered in CPA's clients, and to maintain the integrity of the program's reputation.
3. (Finding #12) Installation of private offices for each counselor and the casework supervisor is called for at the earliest possible date.
4. (Finding #13) It is imperative to the coordination of CPA with police and prosecution, the control of caseloads, and the continuation of CPA as an innovating and testing edge of progressive criminal justice and correctional philosophy, that continued funding of the PLATO and RAP projects be found. Failure to secure necessary funding would not only seriously jeopardize the program but would detract from the nation-wide spread of deferred prosecution programs, of which CPA is a foremost model.

5. (Finding #15) The high degree of success experienced by CPA with clients selected under the criteria that have evolved over the past four years suggests that, given the counseling staff necessary, and with careful monitoring, the criteria might be broadened to include more difficult cases.

CHAPTER 2

DEFERRED PROSECUTION: PROCESS AND CLIENTELE

Methods of Approach to CPA Case Records

Analysis and evaluation of the data contained in a sample of CPA case records yields two types of information. Summaries and discussions of the statistical records are presented in subsequent sections of the chapter. This section presents the second type of information: non-statistical information which emerges from a careful, clinical reading of the case records from an interdisciplinary social science perspective. This second approach yields important insights into the operation of CPA and its impact upon individuals, the total community, and key sub-systems (e.g., social control mechanisms) within the total community.

Qualitative Analysis

Reading the formal records and reports of CPA data shows the evaluator that the CPA form of probation utilizes social therapy as a sanctional process. By specializing in a limited type of case situation and in receiving cases via a form of administrative delegation CPA, during the period under study, has become expert in utilizing a counselor method of communication and referral, along with minimal sanctions, as a community arm in achieving social control and rehabilitation. This type of generalization comes from a prolonged reading of the case records which illustrate the social-criminal-economic-personal-sanctional settings and situations of the clients and their acts.

The records are a reflection of social values and behavior patterns of a diverse segment of the population not generally included in the phrase "hard core criminal." They further illustrate changing life-styles and social pathology for a large number of the cases studied. Not unpredictably, the CPA records provide insight into the dynamics of the social work-probation situation encountering such problems as persons moving about, not showing up for appointments and a high incidence of sick-role problems.

The CPA records thus provide us with criminological-social data on a relatively specific population and thus set a stage for possible public policy development with respect to some classes of offenders and types of crimes.

It can be stated that an examination of the early records and a comparison of those records with later years indicate a progression within CPA to more sophisticated and better organized data. The condition of case file data in the 1969-70 research sample reflects the fact that the director, four counselors, and one secretary for half the year, handled intake for 743 referrals and supervised 543 probationers during the year 1969.

It should also be pointed out that formal record-keeping is time consuming and of limited utility to the main task of guiding clients to successful probation. Thus, the dynamics of the interviews, counseling and inter-personal relationships with clients can never be found in formal documents.

Profile of a Typical Participant in the CPA Program: Male and Female

According to the 1969-70 research sample, CPA participants were divided 2/3 male, 1/3 female. (By 1971 that ratio had changed to 52% male, 48% female, as a result of the increasing percentage of female Larceny From Building offenders. For that offense-type alone, in 1972, females exceed males by 56% to 44%.) The model

characteristics of the 1969-70 research sample participants were pronounced enough to make useful a description of the "typical" man and woman served by CPA. However, it should be kept in mind that there were many "untypical" CPA participants, as in any population studied, and the extent and variation from the "typical" can be read from the detailed data presented later.

The typical male participant was between the ages of 17 and 21, white, of lower-middle socio-economic background, and single. He has lived all his life in the community, has at least an eleventh grade education and has no previous arrest history. The offense for which he was referred to the CPA program often involved little dollar value (stealing an item worth \$1 - \$10, or Carrying a Concealed Weapon).

Numerous "reasons" were given for committing a theft offense (Larceny from Building). Among the more frequent were: "Others are doing it and getting away with it," or, "I just didn't think." In the case of CCW, the explanation usually related to transporting the weapon from one place to another, from home to work, for example. With the less frequent but more serious dollar value crimes, such as Breaking and Entering (often involving restitution) or Larceny from an Auto (a stereo tape deck, typically), the offender "needed the money" that someone was willing to pay for the stolen property.

Typically, the accused accepted a one-year voluntary probation program and completed the probationary requirements while prosecution was held in abeyance. He had contacts with his counselor at least once a month, or more often as needed and as the counselor's time and caseload permitted. The average case was not considered to require "maximum supervision"; the probationer normally received more attention in the early months of the probationary period than later.

Counseling services covering a range of problem areas (finances, education and training, marriage and family, etc.) represented the most frequent direct assistance provided the client, with employment and financial aid the most common referrals to community agencies. The client may have acquired a traffic violation during the probation period, but usually no further offenses were incurred.

The typical female participant, as the male, was between the ages of 17 and 21, white, and from a lower-middle socio-economic background, but, unlike the male, she was probably married. She had lived in the community more than ten years, had no previous arrest record, and had at least an eleventh grade education. For women, the most common offense was Larceny from a Building of a shoplifting nature. The reasons given were typically the same as those of the young-adult male (peer pressure, situational and impulse oriented). Length of probation, conditions of probation, treatment program, and a record of little or no further involvement with the law, typically were the same as for the male participant.

The above profile drawn from the 1969-70 research sample corresponds closely to a November 1969 analysis of 257 active CPA probationers, and to a 1971-72 sample of 247 Larceny from Building cases, representing 75% of this case type over a 9 month period. Both of the latter analyses, made by CPA, are reported for comparison with the research sample at the conclusion of this report.

The Sample

The data in the following narrative and accompanying charts was taken from 208 cases which comprise a 50% sample of male and female participants in the Citizens Probation Authority program whose cases were terminated during a period of one and a half years, from August, 1969 to February, 1971. Statistical information

was obtained from the intake sheet as well as from the notes made by counselors interviewing and supervising each participant.

Source of Referrals to CPA *

The CPA accepts all referrals directly from the Prosecutor's Office. During the 1969-70 period of the research sample, numbers of different assistant prosecutors interviewed various police officers in making decisions whether to request issuance of a warrant or refer to CPA. Therefore, both the police agency in charge of the case and the assistant prosecutor making the referral are included in the following charts.

As a majority of Genesee County offenses are committed within the corporate limits of the City of Flint, it is understandable that a higher proportion of referrals (70%) originated with the Flint Police Department. In only one case did the participant proceed to District Court before being referred.

Nineteen different prosecutors' involvement in the referral process was indicated on the CPA intake forms for the study period, reflecting changes in personnel and assignments within the Prosecutor's Office. Although the large number of different assistant prosecutors making referrals had a salutary educational affect upon the prosecutorial staff, this referral procedure proved to be cumbersome and inefficient. This situation was improved in 1970 by assignment of warrant-referral decisions to a limited number of assistant prosecutors. The warrant-referral process was further refined in 1971 by the hiring of a full-time intake-coordinator (PLATO). (The PLATO function is described in Chapter 5 4,7.)

*See "Flow Chart" of the CPA deferred prosecution process, Appendix 3.

Table 2-1

Source of Referrals

| | |
|--|----------|
| Flint Police Department | 146 |
| Michigan State Police | 28 |
| Sheriff's Office | 18 |
| Mt. Morris Police | 4 |
| Swartz Creek Police Department | 3 |
| Flushing Police Department | 3 |
| Lapeer Police Department | 2 |
| Davison Police Department | 1 |
| Grand Blanc Township Police Department | 1 |
| Linden Police Department | 1 |
| District Court | <u>1</u> |
| | 208 |

Table 2-2

Prosecutor

| | |
|------------|----------|
| Wascha | 38 |
| McGraw | 21 |
| Beaudry | 17 |
| Fox | 16 |
| Conway | 15 |
| Black | 14 |
| Karas | 12 |
| Stecco | 11 |
| Anastor | 10 |
| Carl | 10 |
| Marroso | 9 |
| Kittendorf | 8 |
| Eakin | 8 |
| Berry | 8 |
| Clark | 6 |
| Leonard | 1 |
| Blanchard | 1 |
| Lewis | 2 |
| Miller | <u>1</u> |
| | 208 |

Classification of Participants by Sex, Race, Crime, and Age

The 208 cases reviewed in the 1969-70 research sample comprised 138 males (66%) and 70 females (34%). Twenty-seven percent were Black, and 2 percent Mexican-American. The proportion of Blacks was higher among females (40 percent) than males (23 percent).

The research sample statistics correlate closely with the 1969 CPA active caseload analysis: 180 males (70%) and 77 females (30%), 173 white (67%) and 84 non-white (33%). Of the 1971-72 CPA Larceny from Building sample of 249 cases, there were 108 males (44%) and 139 females (56%), with 177 white (72%) and 70 non-white (28%).

Thus, while the racial mix has remained fairly constant, the sex ratio has changed within the past few years with females now representing 48% of the caseload. As

previously noted, this is accounted for by the increase in Larceny from Building referrals (shoplifting) of which 56% are committed by females.

Classification of Participants by Sex and Race

Table 2-3

| <u>Sex</u> | <u>Number</u> | <u>%</u> |
|------------|---------------|-----------|
| Male | 138 | 66 |
| Female | <u>70</u> | <u>34</u> |
| | 208 | 100 |

| <u>Race</u> | <u>Number</u> | <u>%</u> |
|------------------|---------------|----------|
| White | 143 | 69 |
| Non-white | 59 | 28 |
| Mexican American | 4 | 2 |
| Non information | <u>2</u> | <u>1</u> |
| | 208 | 100 |

| | <u>Male</u> | <u>%</u> | <u>Female</u> | <u>%</u> |
|------------------|-------------|----------|---------------|----------|
| White | 104 | 75 | 39 | 56 |
| Non-white | 31 | 22 | 28 | 40 |
| Mexican American | 2 | 2 | 2 | 3 |
| No information | <u>1</u> | <u>1</u> | <u>1</u> | <u>1</u> |
| | 138 | 100 | 70 | 100 |

There was a wide variety of criminal charges indicated in the cases, the most numerous indicated in the following table:

Table 2-4

Classification of Participants by Sex and Crime

| | <u>Male</u> | <u>Female</u> |
|---------------------------|-------------|---------------|
| Larceny from Building | 38 | 61 |
| Breaking and Entering | 16 | 1 |
| Carrying Concealed Weapon | 10 | 1 |
| Larceny from Auto | 16 | -- |
| Other | <u>58</u> | <u>7</u> |
| | 138 | 70 |

99
208

Females in the research sample are 34 percent of the total participants and account for 62 percent of the total Larceny from Building offenses. Larceny from Building accounts for 87 percent of the total criminal charges for female participants. For the total male participants, 28 percent were Larceny from Building, 30 percent a combination of Breaking and Entering, Carrying a Concealed Weapon and Larceny from Auto. Of the remaining 42 percent, 16 percent were sex related crimes, Indecent Exposure and Indecent Liberties, and 26 percent a combination of 24 various crimes. Although the table below is not broken down according to sex, the category in Table 2-4 which indicates 7 criminal charges as "other" for females are as follows: (1 each) Conspiracy to Commit Embezzlement, Illegal and Fraudulent Use of Stolen Credit Card, Uttering and Publishing NSF Check Under \$50, Attempt to Obtain a Hypnotic Drug Falsely, Conspiracy to Commit Breaking and Entering, Uttering and Publishing Obligatory Note, and Purchase Excessive Amount of Exempt Narcotic.

The near absence of referrals for Possession of Narcotics (two cases) needs clarification. The drug abuse problem had not really "surfaced" in the community at this time and there were proportionally few drug arrests and charges being made. Little in the way of drug treatment was available in the community and the Genesee County Regional Drug Abuse Commission was not to come into existence until June, 1970. However, in the first nine (9) months of 1971, 132 "soft" narcotics cases were referred to CPA (by policy, CPA has not received referrals on "hard" narcotics and "sale" cases). With Michigan Office of Criminal Justice Programs funding of a Law Enforcement Drug Referral Agent, in October, 1971 the drug referrals being made to CPA were diverted directly to the Drug Referral Agent using the same deferred prosecution procedures as CPA.

Classification of Participant by Age

Table 2-5

| <u>Age</u> | <u>Number</u> | <u>%</u> |
|------------|---------------|----------|
| 17-21 | 119 | 57 |
| 22-25 | 28 | 13 |
| 26-35 | 35 | 17 |
| 36-45 | 14 | 7 |
| Over 45 | 12 | 6 |
| | 208 | 100 |

The relative youth of CPA participants is apparent from Table 2-5 (57% are 17-21). However, a significant number of older persons are served by CPA (30% are over age 25, and 13% over 35). In the 1969 CPA active caseload analysis 22% were over 29, and in the 1972 CPA Larceny from Building study 22% were over 27 years of age. As expected, in all studies, the highest percentage of referrals is in the 17-to-25-year age group. This, of course, is consistent with the screening criterion which excludes violent crime offenders. The majority of adult crimes committed in the United States are by this age group and the majority of crimes they commit are non-violent (referrable) offenses. It is noteworthy, however, that the CPA approach to rehabilitation is not exclusively for the very young.

Financial and Marital Status, Education and Time in the Community

Indicators of a stable living pattern, i.e., financial status, marital status, education and time in the community play an important role as determinants of "who" constitutes the CPA clientele. At the referral stage, these factors are "hidden" in the sense that they are neither part of the criteria governing referral, nor are they generally known to the Officer-in-Charge-of-the-Case or the assistant prosecutor who has the warrant/referral decision responsibility. However, the selection criteria "screen out" at the referral stage those offenders whose previous record evidences a continuing pattern of anti-social or criminal behavior, and "screen in" those whose offenses appear to be of a

situational, temporary, or impulsive nature. The result is that the program tends to receive for referral "basically first-offender types" whose living patterns have not already become seriously disrupted or deteriorated.

In the post-referral stage, acceptance for probation by the Prosecuting Attorney is predicated upon an individualized "treatment plan" worked out for each participant by the counseling staff. For those few individuals for whom it is impossible to devise a realistic treatment plan, because of a highly unstable living pattern, the case is returned to the Prosecutor's Office for further disposition. Thus, personal and social stability play an important role, as a "hidden" determinant of offenders eligible for referral and as a highly "visible" determinant of those accepted on voluntary probation or returned to the Prosecutor's Office. (Similarly, in Circuit Court considerable importance attaches to the offender's living patterns in determining sentence.) A carefully designed procedure for giving high "visibility" to all cases returned to the Prosecutor is carried out through regular weekly case-staffing sessions, as described in Chapter 4.

None of the above, however, is to suggest that CPA clients do not have their share of personal and social problems; rather it would seem to be a matter of degree in comparing CPA participants with those being processed through the court system in Genesee County.

Seventy-four percent of the research sample evidenced relative adequacy of financial resources (17% economically deprived). The 1971-72 Larceny from Building sample similarly showed 18% unemployed, excluding students and housewives. Fifty-nine percent of the research sample and 74% of the Larceny From Building sample were attending or had graduated from high school. Fifty-five percent of the research sample had lived in the community for over five years, giving a measure of residential stability.

The relative stability of offenders referred to CPA predisposes their successful participation in a voluntary probation program. This would lead to the assumption that many referred offenders would probably not violate the law again even if there were no treatment aspect of the program. CPA acknowledges this possibility. The difficulty, of course, is in knowing which ones. The treatment aspect of the CPA program is seen as an analogical counterpart to their crime intervention role: If it is possible to intervene at the grass-roots level of adult involvement with the law and discourage further violations, it may be possible through counseling intervention (a requirement of participation) to resolve existing personal and social problems and prevent future problems.

Further, the treatment aspect of the program, together with the more stable type of individual CPA deals with, should result in a high success ratio in terms of personal and social adjustment and future law violation deterrence. The data would indicate that this is, indeed, the case. (See Chapter 3, "Life Situations Following Termination")

A unique set of underlying psychodynamic factors is believed to contribute importantly to the success of this deferred prosecution approach. First, although "constructive coercion" may be present in the client's decision to accept the program (the alternative being prosecution through the courts), the decision is made voluntarily. Second, although admissions of guilt are not required for participation, the client is required to accept "moral responsibility for whatever his behavior in the alleged offense." Therefore, the client is immediately confronted with the reality of his behavior and its possible legal and social consequences. Third, treatment normally begins within a day or two after the client is apprehended rather than six months to a year later as is often the situation with cases processed through the court system. Fourth, no one has

"ordered" the client to do anything, the decision is his. This is a factor which seems most "relevant" to young adult clients. Fifth, the abrasive and stigmatizing aspects of the Criminal Justice System which detract from the correctional process are effectively and substantially minimized.

Thus, it is possible to identify three distinct ingredients which constitute the correctional "mix" of CPA and contribute to its success: 1) the relative stability of its clientele, 2) the treatment aspects of the program, and 3) the psychodynamic factors which distinguish deferred prosecution from the traditional Criminal Justice process.

Table 2-6

| <u>Education</u> | | <u>%</u> |
|-----------------------|-----|----------|
| Some Grade School | 11 | 5 |
| Grade School | 6 | 3 |
| Some High School | 63 | 30 |
| Attending High School | 34 | 16 |
| Graduated-High School | 72 | 35 |
| Some College | 14 | 7 |
| College Degree | 2 | 1 |
| No information | 6 | 3 |
| | 208 | 100 |

Table 2-7

| <u>Time in Community</u> | | <u>%</u> |
|--------------------------|-----|----------|
| Under 1 year | 8 | 4 |
| 1-5 years | 58 | 28 |
| 6-10 years | 11 | 5 |
| Over 10 years | 103 | 50 |
| No information | 28 | 13 |
| | 208 | 100 |

Table 2-8

| <u>Financial Status as Indicated by Case Records*</u> | | <u>%</u> |
|---|-----|----------|
| Economic deprivation | 36 | 17 |
| Adequate | 81 | 39 |
| More than adequate | 72 | 35 |
| No information | 19 | 9 |
| | 208 | 100 |

* The determination of financial status was not based upon a single indicator, but derived from a subjective assessment of the client's total situation regarding income, family size, employment status, ability to pay Probation Service Fee, etc.

Thirty-eight percent of the clients in the research sample were school dropouts; 8% had at least some college education. In the CPA Larceny from Building sample, 26% were school dropouts, 12% had some post-high school education. Probationers in the Larceny from Building sample tended to be younger, more likely to be attending school at the time of the offense, and less likely to be school dropouts. The samples tended to exhibit similar characteristics reflecting the influence of the referral criteria. Differences in the two samples primarily reflect the different age compositions of those committing shoplifting offenses as compared with the slightly more diversified group involved in the total range of offenses referable to CPA, as represented in the research sample.

In the same vein, twice as many (46%) of the Larceny from Building sample were attending school during the probationary period, as was the case for the research sample (23% attending school). Again, the differing age compositions of the two groups was a significant factor. The CPA treatment plan is often successful in motivating school dropouts to resume their education, a process which is more feasible with the relatively younger population of the Larceny from Building sample.

As would be expected, age difference is also reflected in the marital status. Forty-nine percent are single and 41% married in the research sample; in the younger, Larceny from Building sample, 60% are single and 28% married.

Table 2-9

| <u>Marital Status</u> | | <u>%</u> |
|-----------------------|-----|----------|
| Married | 85 | 41 |
| Divorced | 8 | 4 |
| Single | 102 | 49 |
| Separated | 7 | 3 |
| Widowed | 2 | 1 |
| No information | 4 | 2 |
| | 208 | 100 |

Table 2-10

| <u>Prior Arrest History</u> | | | |
|-----------------------------|-----|-----|-----|
| (208 cases) | | | |
| <u>Arrested as Juvenile</u> | | | |
| | | Yes | No |
| <u>Arrested As Adult</u> | Yes | 5% | 16% |
| | No | 6% | 73% |

Twenty-seven percent in the 1969-70 research sample had been arrested prior to the offense for which they had been referred to CPA, which distinguishes the CPA approach from a purely "first offender" program. This reflects application of the referral criterion which stipulates that the present offense "shall not constitute part of a continuing pattern" of anti-social behavior. It might be noted that 5% of the sample had an arrest history including both juvenile and adult offenses, and 73% had no previous arrest history. Sixteen percent had previous adult arrest records, and 6%, previous juvenile records. (Table 2-10)

The standard probation term for CPA clients is one year, although many cases are terminated earlier and the RAP project, dealing with Larceny from Building offenders, is geared primarily to a six-month probation period. During the time covered by the 1969-70 research sample, 98% of the probationers were assigned a full-year term. However, only 45% served a full year. An equal number were terminated after a shorter probationary period, reflecting the CPA policy of early termination based upon successful participation in a community agency treatment program. Six percent were cited for Violation of Probation and recommended for further prosecutorial disposition, and 4% had charges against them dismissed as a result of CPA investigation and recommendation. (Tables 2-11, 2-12)

Table 2-11

| <u>Length of Probation</u> | |
|----------------------------|-----|
| 1 year | 204 |
| 10 months | 1 |
| 6 months | 3 |
| | 208 |

Table 2-12

| <u>Termination of Probation</u> | | % |
|---------------------------------|-----|-----|
| Terminated | | |
| Early | 94 | 45 |
| Regular | 93 | 45 |
| Violation of Probation | 13 | 6 |
| Dismissed | 8 | 4 |
| | 208 | 100 |

Table 2-13

| <u>Restitution</u> | | % |
|--------------------|-----|-----|
| None | 173 | 83 |
| Paid | 30 | 14 |
| Not Paid | 4 | 2 |
| No information | 1 | * |
| | 208 | 100 |

Assistance Given by CPA in the Form of Referrals to Community Services.

Basic to the philosophy of the CPA treatment program is the widest possible utilization of available community resources involving referral, follow-up, and early termination from probation once it is clear that the client's personal and social problems are being successfully resolved through the referral agency. This avoids two rather common community agency problems: duplication of services, and "too many fingers in the pie." While the CPA staff is highly qualified and customarily provides a wide range of counseling services, there are very practical as well as more theoretical reasons for community agency referral.

*less than 1%.

Referral strengthens the CPA treatment program by conserving counselor time and by making available to clients more specialized assistance (financial and alcoholism counseling, for example). Referral to other community agencies has made it possible for CPA counselors to carry heavy caseloads with a marked degree of success, and to terminate cases in the earliest possible time, thereby reducing client supervision costs (CPA supervised 1272 clients during 1971 at a per client cost of \$65.00). Moreover, referral is believed to benefit the client by providing him with problem-solving assistance and with a "positive" agency experience, thereby offering encouragement for him to seek out community assistance in the future if needed.

The purpose of this part of the research study was to determine the relative success or failure of the program in meeting these referral objectives.

A total of 105 referrals was recorded, involving 83 of the 208 clients in the 1969-70 research sample. One referral was made for each of 69 clients. The remaining 36 referrals were made in combinations of two or more for 14 clients.

(Table 2-14)

Table 2-14

REFERRALS MADE BY CPA COUNSELORS

| <u>Service</u> | <u>Number</u> |
|---|---------------|
| Employment and Financial Aid | |
| Direct job referral | 16 |
| Michigan Employment Security Commission | 12 |
| Financial Referral (Dept. of Social Services) | 10 |
| Michigan Credit Counseling Centers, Etc. | 2 |
| Scholarship Aid (DeWaters) | 4 |
| Health and Health Related | |
| Private Psychiatric Clinic | 19 |
| Genesee County Mental Health Services | 4 |
| Alcoholism services | 7 |
| Planned Parenthood | 6 |
| Mott Program-Health Center | 5 |
| March of Dimes Medical Clinic | 4 |
| Crippled Children Commission | 1 |
| Legal Aid | |
| Friend of the Court | 3 |
| Catholic Social Services | 4 |
| Other (one referral each) | 2 |
| | <u>6</u> |
| | <u>105</u> |

Referrals to community agencies were made in 40% of the cases in the 1969-70 research sample. The referral rate reflected the practice of providing most counseling in-house, relying on community agencies primarily for specialized counseling or for cases requiring an unusually high number of counseling contacts. It should be noted, however, that the relative stability of client's life situations made referral unnecessary in a significant proportion of cases. Further, the reported referral rate (40%) may have been higher in fact; procedures in effect during the 1969-70 period did not provide for a systematic recording of referrals to community agencies. (The procedures were modified in July, 1971.)

To test the possibility that referrals were not being made when there was a real need which was not being met by CPA counselors, several factors should be taken into account: the education and experience of staff (giving a measure of professional competence), participation of staff with other community organizations (community involvement), and program emphasis on meeting referral objectives in 1972. The CPA staff has had a reputation for high professional competence and community involvement since the program's inception. Program emphasis upon meeting referral objectives is amply evidenced by the Resources Are People Project of the Citizens Probation Authority (reported in detail in a later chapter in this report). As the name of the project implies, the emphasis is upon the "people resources" in the community. An analysis of the Project's Larceny from Building "active caseload" reveals that of 257 active cases, 128 referrals (50%) were made to 22 different community agencies. In this specially funded project geared to maximum agency utilization, only 10% more referrals were made than in the 1969-70 research sample. Allowing for the possibility of incomplete record keeping in the earlier sample, it would appear that the referral rate is fairly consistent in both studies. If you add to this the evidence of staff professional competence and community involvement, it is concluded that the 40-50% referral ratio strongly indicates that the CPA treatment program referral objectives are being met.

Table 2-15

Charges

| <u>Number</u> | | <u>Number</u> | |
|---------------|--|---------------|--|
| 100 | Larceny from Building | *1 | Embezzlement under \$100 |
| 20 | Indecent Exposure | 1 | Illegal and Fraud. Use of Stolen Credit Card |
| 17 | Breaking and Entering | 1 | Conspiracy to Remove and Conceal Stolen Property |
| 16 | Larceny from Auto | 1 | Larceny by Conversion |
| 11 | Carrying Concealed Weapon | *1 | Contributing to Delinquency of Minor |
| 5 | Grand Larceny | *1 | Obscene Telephone Calls |
| 4 | Unlawfully Driving Away an Auto | *1 | Entry without Permission |
| 3 | Conspiracy to Commit Embezzlement | *1 | Minor in Possession of Alcohol |
| 3 | Indecent Liberties | 1 | Unlawful use of Motor Vehicle |
| 2 | Possession of Narcotics | *1 | Uttering & Publishing NSF Check Under \$50 |
| 2 | Embezzlement over \$100 | 1 | Conspiracy to Commit Breaking and Entering |
| 2 | Possession of Stolen Property | 1 | Violation State Liquor Act |
| 2 | Possession of Stolen Auto | 1 | Conspiracy to Commit Larceny from Auto |
| 1 | Receiving and Concealing Stolen Property | 1 | Uttering & Publishing Obligatory Note |
| 1 | Making False Felony Report | 1 | Destruction Utility Property |
| 1 | Attempt to Obtain Hypnotic Drug Falsely | *1 | False Fire Alarm |
| 1 | Uttering and Publishing a Forged Check | | |
| 1 | Purchase Excessive amount of Exempt Narcotic | | |

*During 1968, CPA received 23 misdemeanor referrals from (then) Municipal Court on a "trial" basis to determine the feasibility of utilizing preadjudicatory practices in lower court.

CHAPTER 3

CPA FROM THE CLIENT'S PERSPECTIVE

Reported experiences and perceptions of clients of a probation agency provide a potentially valuable perspective on the agency's performance. Clients' reactions and assessments need not be taken at face value; as information sources they certainly are not objective nor neutral observers of the probation process. However, the client observes the agency from a unique vantage point; his or her objectivity should, on the average, be no less than that of other participants in the Criminal Justice process; the client's reported experience and reaction provide significant feedback from those persons whose situations and problems account for the probation agency's existence.

Methodology

An anthropological approach to client interviewing was utilized in this project. Respondents were selected using a modified quota sampling technique. Interviews were conducted and taped by an anthropologist with wide experience in field research and in the use of the unstructured depth interview. The unstructured interview was utilized to avoid shaping respondents' reactions to the particular concerns that might shape the researcher's point of view. The former client was led into the subject with an open-ended question directing attention to the CPA experience, the interviewer asking, in effect, "Tell me about it." The unstructured interview offers one disadvantage; since the interview direction is

largely determined by the respondent, the former clients do not respond necessarily to the same questions. The research team opted for this approach, however, for these reasons:

- (1) The unstructured interviews provided a means for eliciting from each client responses focusing on aspects of the CPA program and experiences most important to the client. The common denominator across the set of interviews, then, is that each respondent was drawn into commenting on elements of the CPA experience most important to him or her.
- (2) The intended product of the CPA evaluation was a planning document--pinpointing strengths, weaknesses and areas in which modifications in program might be appropriate. Accordingly, interviewing was geared to testing the CPA program's efficacy in varied client contexts. The approach utilized was designed to probe responses within these contexts. A more structured, quantitative approach would have demanded a prohibitive number of interviews (Note that interviews with clients ran from 30 minutes to almost three hours in length) without necessarily providing more meaningful findings for program planning purposes.

In order to obtain a representative group of ex-probationers, selection of clients for the interviews was based on five major categories.*

*Only one current probationer and one pending probationer were interviewed during the course of this project in order to avoid (1) biasing the data and (2) putting probationers under undue pressures.

There were not random selections in the first four categories but selections were based on the following considerations:

- (1) Probability of response to interview request,
- (2) Availability,
- (3) Socio-economic level, and
- (4) Race, sex and age.

The Random Selection category was picked by listing all the cases in 1971, then the 18th client on the following three lists was chosen for an interview:

- | | |
|----------------|-------------------------------------|
| (1) Active | (Active Probationers) |
| (2) Terminated | (Terminated Probationers) |
| (3) Pending | (New Referrals with no Disposition) |

Interviewed were fourteen ex-probationers, one active and one pending probationer and two family members. Appendix A contains a summary of client and family interview data.

No attempt was made to correlate the type of offense committed to the first three categories of the selection criteria because the problems or achievements of any client is not necessarily indicative of the type of crime committed. There is an exception with sex offenders "because the Indecent Exposure is arrested for the symptom of his problem," according to the CPA director.

For purposes of comparison cases are numbered 1 through 18, as shown in Table 3-1.

Table 3-1

Selection Criteria for Interviews

| | <u>Case Number</u> | <u>Number of Cases</u> |
|------------------------------------|--------------------|------------------------|
| I. Probation Violation | 1 | 1 |
| II. Special Treatment Problems | | 7 |
| Alcohol and Addiction Related | 2,3,4 | |
| Sex Offense | 5 | |
| Multiple-Problem | 6,7,8 | |
| III. Probation Achievers | 9,10,11,12,13 | 5 |
| IV. Member of Probationer's Family | 14,15 | 2 |
| V. Random Selection | | 3 |
| Active Case | 16 | |
| Terminated Case | 17 | |
| Pending Case | 18 | |
| <u>Total all cases</u> | | <u>18</u> |

CLIENTS' EXPERIENCE WITH CPA: Initial Reaction

Of all the clients interviewed, one had a continuous negative reaction to the CPA program. As shown in Table 3-2, 13 of the 18 people interviewed had an immediate positive reaction to the counselors and, by extension, the program. The following quotes are indicative of how the clients responded when asked about their reactions to the staff of CPA. "I realized they really cared what happened." (#3) "...she is really interested, it is not just a job to her." (#4) "...I could trust these people 100% because I knew these people were for me." (#5) "...his attitude was that he was trying to help me, you know." (#9)

Table 3-2

| <u>INITIAL REACTION</u> | | <u>DEVELOPED REACTION</u> | |
|--------------------------|--------------------------|---------------------------|--------------------------|
| <u>Positive Case No.</u> | <u>Negative Case No.</u> | <u>Positive Case No.</u> | <u>Negative Case No.</u> |
| 1 | 2 | 2 | 17 |
| 5 | 3 | 3 | |
| 6 | 4 | 4 | |
| 7 | 13 | 13 | |
| 8 | 17 | | |
| 9 | | | |
| 10 | | | |
| 11 | | | |
| 12 | | | |
| 14 | | | |
| 15 | | | |
| 16 | | | |
| 18 | | | |

Four of the clients were somewhat skeptical initially but acknowledged that their initial negative reactions were caused by their fear of the situation or misunderstanding of the program. All four came to the realization that the program was structured to directly help them and they were able to accept that help. Only one client felt that he didn't need help and said that going to the CPA office made him feel like a criminal. (#17)

Clients' Reactions to the Possibility of Incarceration

With respect to the fact that participation in the CPA program prevents the client from being prosecuted and possibly going to jail or prison, eight clients (of sixteen interviewed) verbalized their fear of a jail or prison sentence and noted that for this reason they were greatly relieved when referred

to CPA. Note that of the eight, four were among the five clients who initially had a negative reaction to CPA. (Tables 3-2 and 3-3)

Table 3-3

| <u>Clients Who Verbalized Fear of Incarceration</u> | <u>Clients Who Were Not Asked or Didn't Offer Information</u> |
|---|---|
| Case #2 | Case #1 |
| 3 | 4 |
| 7 | 5 |
| 9 | 6 |
| 12 | 8 |
| 13 | 10 |
| 16 | 14 |
| 17 | 15 |
| | 18 |

Constitutional Rights Questionnaire

Only three of the sixteen probationers interviewed were asked about the Constitutional Rights Questionnaire*. Of the three, two replied they didn't understand it (#3, #13) and one said that she did understand it (#7).

Reactions to Structure

Of the eight persons who indicated a preference, seven expressed a liking for "drop-in" appointments or simple "call-in" reporting.** Some had doubts whether this loosely structured system would be beneficial for everyone. Just one client (#10) expressed the need for a regularly scheduled appointment saying that, "It was a predictable situation I could depend on."

**On this same subject see the counselor reactions in Chapter 4.

*See Appendix 4.

Referrals

There were various referrals to community agencies reported by the clients. Of these, only one type, psychological counseling, can be used for a comparison of reactions because it is the only referral reported in more than two cases.

The clients who had negative reactions to the attitudes and methods of the psychological counselors to whom they were referred concretely verbalized their unhappiness and disapproval of those agencies. The following remarks taken from interviews illustrate this reaction. "...I think he only talked to me for about three minutes. He seemed to be rushed and had other things on his mind or somethin'-- he didn't want to be involved with talking to me, you know." (#3) "I didn't like the way that he approached me. Like when I first met him he came in the room and started asking me questions about if I was prejudiced and then he started throwing ideas at me..." (#8). "The interviews with the man at _____'s office were technique centered, very inhuman. They were just like someone has just gotten out of school and had read all the Carl Roger's books, client therapy and who goes step by step and I would walk in and he would say, "What are you thinking? What are you feeling? and the big silence." (#10)

The clients who had a positive reaction to psychological counselors expressed only a mild approval of the help or counseling that was offered. As indicated in Table 3-4, there is only one more unfavorable than favorable reaction. However, because of the strong unfavorable reaction compared to the mild favorable reaction it seems necessary to emphasize the point. In comparing these responses to the positive or negative reactions to CPA as a whole, only

one case (#3) had negative reactions to both CPA and the psychologist. (Table 3-4.)

It seems appropriate here to mention that in the extensive interview with the Director of CPA, he mentions the fact that a psychologist consults with the staff of CPA on their treatment of probationers, but there was no discussion of feedback to the counselors concerning the obviously many referrals to mental health agencies, except in noting that there were two principal agencies that the CPA staff referred clients to for psychological evaluation and counseling.

One client, (#4) said that she thought she should have been referred for psychological counseling because of her drug problem and was not referred.

Table 3-4

Referral-Psychological Counseling

| <u>REACTIONS</u> | |
|------------------|-----------------|
| <u>Positive</u> | <u>Negative</u> |
| Case #1 | Case #3 |
| 5 | 7 |
| 14 | 8 |
| | 10 |

There were four other referrals reported, one to Planned Parenthood, (#6), one to Credit Counseling (#2) and two to Hurley Hospital Alcohol Program (#2 and #3). All reactions were favorable to these programs.

Termination

There were fourteen terminated probationers interviewed and of these four continued on probation for one year or longer. Of the four, one female

toward the counselors at CPA who told them that there was no record, although only two of the five had actually received their records including fingerprints and photographs.

Four participants expressed doubt that their records were expunged, although two of the four were relatively unconcerned about it. One client (#4) said that she definitely thought that the judge had access to this information in a later arrest and conviction of a felony. She believed that had the judge not known about her previous arrest and involvement with CPA, she would not have received a sentence for the conviction of larceny from a building because without this information the judge would have seen it as a first offense and been more lenient. The other client who was concerned about his record (#9) reported that he had repeatedly inquired about it through the CPA staff and was never specifically answered, so he concluded that there is still a record in existence. The remaining two clients who were asked about their records were unsure whether to believe that their records had been destroyed or were still in existence.*

Table 3-6

Answers Concerning Existing Record of Arrest

| <u>No Record</u> | <u>Record Exists</u> | <u>Doesn't Know</u> |
|------------------|----------------------|---------------------|
| Case #5 | Case #2 | Case #10 |
| 7 | 4 | 17 |
| 8 | 6 | |
| 12 | 9 | |
| 13 | | |

*On this same subject see the counselor reactions in Chapter 4.

Life Situations Following Termination

Overwhelmingly there is an apparent improvement in attitude and future plans of the interviewed clients and family members. Certainly the most prominent positive aspect is the fact that these clients did not go to jail and that there is no official record of their arrest.* Three of the exprobationers did not report any significant change in lifestyle. Of the others, #10 and #11 completed college, #7 joined a therapy group, #3 is seeing a psychiatrist of his own volition and #13 and #15 are trying to get back to school. Number 6 was married while on probation and reports that everything is going well. Number 12 helped his wife get through Beauty School, bought a new car and is in the process of purchasing a house. Number 5 reports that marital and job problems have improved and #8 reports an improvement in the family situation, as did her mother, #14. Number 17 was in college while on probation and is continuing his education. Only one of the clients, #4, was involved in further criminal acts, reporting that she was convicted of Larceny from a Building.

Client's Suggestions for Improvement of CPA

As shown in Table 3-7, four interviewers made no suggestions, of whom two were family members, not probationers. Of the fifteen suggestions made, there were four suggestions that three or more clients recommended. Closer contact with probationers, including home visits, was suggested by five clients. Some of the responses supporting this suggestion include the following: "...they might surprise me with a dirty house, but at least I would have felt they were interested enough to come by." (#4), "Well, like I need help with my drinking

*Note, however, the ambiguity regarding the return of arrest records.

continued probation for fourteen months. The client who is still active has been on probation for over one year also. The average length of probation for the other ten clients is nine months, as illustrated in Table 3-5.

Table 3-5

| Length of Probation* | |
|----------------------|--------|
| Case No. | Months |
| 8 | 14 |
| 3 | 12 |
| 6 | 12 |
| 17 | 12 |
| 2 | 11 |
| 9 | 11 |
| 4 | 10 |
| 5 | 10 |
| 11 | 10 |
| 13 | 10 |
| 7 | 9 |
| 12 | 9 |
| 10 | 6 |
| 1 | 4 |

Records

There were twelve clients who were specifically asked whether they thought that there was a record of their arrest or if they thought that someone could find information concerning their subsequent participation in CPA. Five clients expressed belief there was no record and expressed feelings of trust

*Case 14 is omitted because this is a family member of Case 8. Case 15 is also a family member of a client who was not interviewed; however, the client was terminated after a probation period of nine months. Case 16 is active and Case 18 is pending.

problems and [the probation counselor should] make sure that I went to classes and met friends and got involved and really took it serious." (#3), "They could just show up and the person is surprised and then they would know whether they are genuine or not." (#7)

There was much interest expressed concerning the involvement of exprobationers in counseling active probationers. (It should be noted that the director of CPA has indicated a desire to institute such a program.) Comments supporting this interest included these: "...you know, it is like going on a new job -- first day kinda nervous and scared... but maybe somebody is going with you that you know -- it ain't so bad." (#3 referring to Alcoholics Anonymous meetings), "I would volunteer, I think I could help people. I have helped a lot of my friends... to get off drugs by just sitting down and you talk to me..." (#13).

The suggestion that there should be more frequent appointments with counselors was mentioned by four clients. This is yet another aspect of the interest expressed in establishing closer contact between probationers and counselors. These two suggestions seem to indicate a pronounced need for guidance and close supervision in order for the probationers to regain a sense of balance and direction in their lives.

Jobs are a continuing problem and interest was expressed in having better vocational guidance and job referrals.* None of the clients interviewed reported getting a job as a direct result of referrals made by CPA, although #7 said that a counselor had given her some names of people who might be interested in purchasing her ceramics.

*NOTE: Since April 1, 1972 a Division of Vocational Rehabilitation counselor has been assigned on a half-time basis to work with CPA clients.

problems and [the probation counselor should] make sure that I went to classes and met friends and got involved and really took it serious." (#3), "They could just show up and the person is surprised and then they would know whether they are genuine or not." (#7)

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*NOTE: Since April 1, 1972 a Division of Vocational Rehabilitation counselor has been assigned on a half-time basis to work with CPA clients.

There were various other suggestions including the possibility of expanding the program, instituting a group therapy program designed to include younger people. (Table 3-7)

Table 3-7

Clients' Suggestions for Improvement of CPA

| | |
|--|----------------------|
| Program involving ex-probationers | #2, 3, 9, 10, 11, 13 |
| Closer contact-home visits | #2, 3, 4, 6, 7 |
| More appointments with counselors | #2, 3, 8, 13 |
| Vocational guidance | #3, 4, 7 |
| Better job referral | #9, 13 |
| Expansion to include more people | #5, 16 |
| Group Therapy | #4, 7 |
| Better office environment | #9, 11 |
| More counselors | #6 |
| Systematic family involvement | #2 |
| Involvement with other probationers | #4 |
| Continued counseling after termination | #13 |
| More time during appointments | #13 |
| Guarantee of destroyed records | #17 |
| Program for younger people | #6, 11 |
| No suggestions | #1, 12, 14, 15 |

APPENDIX A

CLIENT AND/OR FAMILY INTERVIEW DATA

I. Population: 390 cases under supervision from July through December, 1969.

II. Basis of interview selection

A. Probation Violators

B. Special Treatment Problems

1. Alcohol and/or Addiction Related

2. Sex Offenses

3. Multi-problem

C. Probation Achievers

D. Family

E. Other considerations of categories A, B, C, D.

1. Probability of response to interview request

2. Availability

3. Socio-economic level

4. Race

5. Sex

6. Age

F. Random Selection

1. Active Case

2. Terminated Case

3. Pending Case

III. Client Data

A. Clients (not family) 16

1. males 8

2. females 8

B. Average length of Probation period 10 months

C. Average age of clients 21 years, 3 months

D. White 12

E. Non-white 4

F. Average grade level 11.6 years

G. Marital Status

1. Single 7

2. Married 9

H. Employment

1. Student 3

2. Housewife 4

3. Factory 4

4. Teacher 1

5. Skilled 1

6. Non-skilled 3

IV. Offenses

A. Larceny from Building 7

B. Breaking and Entering 4

C. Indecent Exposure 2

D. Carrying a Concealed Weapon 1

E. Larceny From Auto 1

F. Possession of Marijuana 1

CHAPTER 4

CPA FROM THE STAFF MEMBER'S PERSPECTIVE

The entire staff at the Citizens Probation Authority (CPA) was interviewed over a period of several months during 1971 to determine staff members' perspectives on the operations, and determine, from the staff vantage point, strengths and weaknesses of the CPA approach to probation. Staff attitudes and assessments are central to program evaluation for the descriptive and factual data presented, as a basis for comparison with the views of clients and others and as an indicator of agreement on goals, morale and other factors relevant to the successful operation of a probation program.

Methodology

Confidential interviews were conducted with each staff member, in the CPA offices, ranging from one-half hour to almost two hours. The average time was about one hour. Interviews were focused around an agenda rather than a structured format, reflecting the informational rather than attitudinal emphasis of the questioning, and the desire to avoid directing questions along pre-determined routes that might fail to elicit what staff members considered most important. All full-time employees of the CPA were interviewed, including counselors, supervisors and secretaries. Of the fourteen staff interviews, ten were conducted with counselors, four with secretaries. Comments in the following text are not linked to staff position, however, in order to preserve respondents' anonymity, and some quotations have been edited to serve the same purpose. (It is noted that interviews reflected staff attitudes of 1971 and not, necessarily, of the 1969-70 period of the

research sample, although excessive caseloads during both periods would tend to indicate a similarity of concerns, at least in that area.)

Staff Perspectives on CPA

CPA is characterized by a high degree of consensus on methods and goals and a similarly high esprit de corps. Not only do staff members have similar views on that program; it is also obvious that the members pitch in and help each other out. The boundaries between counseling, secretarial and supervisory posts are often crossed as staff members assist when needed.

The interchange of tasks reflects the high degree of rapport existing within CPA. Any differences or disagreements which may exist between staff members should be assessed with knowledge of this rapport as backdrop. Results of interviews with CPA staffers are presented below, organized topically as follows: personalities as a factor of cohesion and morale; organizational responsibilities; space and facilities; and finally, projects of CPA: PLATO and RAP.

Personalities as a Factor of Cohesion and Morale

A circumstance of the CPA program that is not unique, but rather striking, is the extent to which the agency has been shaped by the concepts in correctional philosophy and professionalism fostered by its director, B. James Wright. As is more often the case with innovative than traditional programs, the personality of its director has been ^a dominant force in guiding a fledgling program from "experimental" to accepted "professional" status. For this reason, the researchers sometimes found it difficult, if not impossible, to separate personality factors from the program's operational philosophy and practices.

The operational philosophy and practices derive from the innovative concept of deferred prosecution, itself, as a preferable correctional alternative to

traditional Criminal Justice processing of cases with all of the attendant stigmatizing effects. What has been described as "openness of structure," "flexibility," and "willingness to try new things," are characteristically ascribed to emergent rather than established institutions. Functioning without the hierarchical and statutory constraints of traditional corrections agencies, CPA is more readily adaptive to new concepts of client treatment and to the changing demands of an explosive growth rate, 391 referrals in the first full year (1968) of professional staffing as compared with 1171 referrals in the fourth year (1971).

As would be expected, the daily process of operationalizing innovations bears, in large degree, the stamp of the director. Nowhere is this more apparent than in the agency's administrative philosophy regarding staff professionalism.

The agency operates on the premise that each staff member, holding a professional role and responsibility, ought to operate with considerable autonomy, and further, should have a continuing and significant opportunity to participate in assessing and recommending changes in CPA policies and procedures (always with a view to better meeting the clients' needs). Many of the decisions normally reserved to administration are, in fact, arrived at on a consensual basis with all staff members encouraged and actively involved in the decision making process, an important function of the regular weekly staff meetings.

Employees of the agency hold the director in the highest esteem. He is seen as the type of employer that one can work for easily, who is not overly demanding but who, at the same time, can get the work done. One staff member maintained there would be no CPA program without Wright. While others did not go as far, a frequently expressed sentiment was that CPA would be a far different - and by implication, less successful - program without Wright's role in shaping and guiding its development and operation.

It is obvious that the director's personality and philosophy have been dominant factors in establishing the posture of an innovative program which has had considerable success in its mission. A question is raised regarding what impact departure or diminution of the influence of the director would have on the program. It seems clear, however, that the impact of such change would be considerably less now than in the formative, experimental stages of CPA. (Note, though, that CPA has been evolving and innovating from its earliest period to the present - again, a reflection of the director's strength as well as evidence of the strength of the program -- and that in this sense the formative or experimental stage is a continuous one.

"Personality clashes" appear to have little effect on the day-to-day workings of the agency. As one of the employees indicated:

...it's real easy to work here, and the people are really cool, you know, they're genuine people, and if they've got something they don't like they tell you and if they've got something about you that they do like, they don't hesitate to tell you either...around here, it's just so easy to relate to people, it's so easy because there's just no--we don't have time for games.

Another employee indicated a similar feeling about co-workers in response to the question, "What do you like about CPA?":

First of all, the people, my co-workers, the atmosphere is quite pleasant to work in. It's not like a punch-in-punch-out thing and it's not a cold atmosphere. We have such a variety of co-workers, each one specializing in a different area.* If you have a problem or you want to discuss a case and you can't always talk to the casework supervisor, you can always talk to your other co-workers, and they're always willing to stop work and listen, or they'll come to you and you go to them. Helps you get along pretty good. It's pretty rewarding.

*This reflects an administrative policy of hiring well qualified, "independent-type thinkers," each with a distinct dimension of experience or ability to contribute to the agency and able to function well with a minimum of personal supervision. Also, see page 84.

Another employee in response to the same kind of question indicated:

I like the fact that we're getting away from the conventional correction systems and I think we are seeing some real positives. I like getting away from traditional agencies. I like the things we're attempting to do--the fact that we're seeing some positives. I like the atmosphere. We're very casual which kind of bothers me at times because I've usually worked in very very structured agencies and yet, I think that even this old dog is learning that the traditional way is not always the best way to do things.

Working relationships among CPA staff members are characterized by openness and cooperation. There appears to be little in the way of internal politicking or status seeking behavior of a type or degree disruptive to the agency's purposes. All persons interviewed indicated they enjoyed working for the CPA and tended to regard the agency as an ideal sort of place to work. This finding is particularly interesting in light of the similarly shared belief that, because of its large caseload, everyone in the agency is greatly overworked. Attitudes toward the director, the open situation relatively free of "petty gaming" frequently associated with organization, and of course a strong commitment to CPA's purposes and approach are major reasons underlying the positive staff outlook.

Organizational Responsibilities: the Constraints of Quantity Upon Quality

All agencies must develop procedural rules and routines to regulate and monitor the flow of work. The term "bureaucratic" is frequently applied to the case in which organizational "requirements" significantly interfere with program "needs." Elements of bureaucratization--despite the flexibility and openness described above--are fostered, as viewed by staff members, by such items as a heavy caseload, excessive paper work associated with heavy caseloads, and the concept of report day, among other items.

The caseload of the CPA appears larger than it should be for effective handling of individual cases. According to the case work supervisor at CPA and a nation-wide consensus of correctional authorities, the optimum caseload for one probation counselor is about 50 cases. Given the emphasis upon community agency referral, the relative stability of clients' living patterns, and the unique psychodynamic factors of deferred prosecution, referred to in Chapter 2, individual counselor caseloads larger than 50 can undoubtedly be sustained without immediate detriment to the program, as has been demonstrated. However, counselor caseloads are frequently well above the recommended figure. At any given point, caseloads have ranged from about 130 to 165 (until late 1971 when, with the addition of three RAP counselors, caseloads began to drop below 100.). Caseloads of this magnitude hold serious implications for the counseling process, a situation disturbing to both counselors and clients (a desire for more time with counselors was frequently expressed by ex-clients--see Chapter 3). As one counselor indicated:

...I wish I could have more time dealing just with clients. You always have a lot of cases pending that you have to do reports on. A lot of time you can't just sit down and talk with the people like you'd like to, and in a way, it's kind of frustrating. The program itself is a real good program if we had more counselors and our caseload could be cut in half.

Another counselor commented in a similar vein:

The job is perfect except it's too much. I don't like to rubber stamp cases. And I have to do a lot of rubber stamping of cases. I'm guessing that they'll be a good probation risk. I want to do a decent job on the case but there's just too many people passing through.

The problem of course is not restricted to any one area of CPA functioning. The overcrowding also is important in the influence it has on the number of field visits a counselor can make to a client's home. Assuming a caseload of even 100 persons, the average (hypothetical) counselor would have to make five house calls per day, five days a week to see all of his clients at home in any one month.

Obviously the case worker does not have to see all of his clients at home in any given month, but such visits are viewed as important by clients (see Chapter 3) as well as staff. Home visits are severely limited by present caseloads.

The impact of high caseloads has been graphically illustrated each month at CPA on "report day." Traditionally in juvenile and adult probation and parole agencies, report day is the day on which most probationers are required to visit the office and report in person their past month's activities to the counselor. The purposes of report day are: 1) to provide the agency with standardized data on clients' whereabouts and activities, 2) to determine if any changes relevant to the agreed upon conditions of the client's participation in CPA have occurred, 3) to determine if changes in the treatment plan are necessary, and 4) to set up further "counseling interviews" at another time, if so indicated. CPA is frank to admit that the report day practice was "inherited" from traditional corrections, was initially instituted as a known method of "keeping track" of a large caseload, and was employed, partially at least in the formative stages of the program, with an eye to gaining "professional acceptance" of the program. (Similarly, the agency's decision to employ a facsimile of the traditional "Probation Order.") Frequently on report days a client's regular counselor has been overloaded, the person could not wait, and he or she would then have to see another counselor, or the casework supervisor or program director, who may have been free momentarily but was just as harried and overworked as the regular counselor.

CPA staff recognized the problems with the concept of report day as practiced in the past, and offered various suggestions regarding how it could be changed to fit the particular needs of CPA. Characteristic of the flexibility of the program,

and the openness of administrative philosophy to the inputs of staff, effective April 1, 1972, traditional monthly report day was discontinued with each counselor instead being available in the office one day a week to receive clients by appointment or "drop in," supplemented by field contacts with clients during the month, which substitute for monthly reports. This "agency decision," it is now reported; better meets the needs of the clients and the staff, and has improved staff morale as a result. It should be observed that improved staff morale may also have been a function of participation in the decision making process.

Another counselor, at the very beginning of the interview stated:

A lot of my day too is spent doing reports. There's too much paper work here. The program is losing its effectiveness at this point or at a point three months ago, because of all the paper work that's involved. And it's really not excessive except that we're short staffed. We just have too many cases. Even when you short circuit a report it's really not enough so that you have more time to spend with your people and I think that you should spend time with the people and I'm getting this assembly-line feeling.

Another counselor put his feelings this way:

I think there must be better ways to do our paper work. I think we all feel that we are harried by the reams of paper work that must be done--the initial reports, recommendations to the prosecuting attorney, the road book entries themselves that must be done. Every contact you have with a client--make a notation. Although this is in the best interests of the client, it seems like we are recording constantly, and there must be a better way but we haven't found it yet.*

These comments suggest a number of related problems for the members of the agency all of which might hinder performance of its primary job: The amount of personal attention given to individual clients was not as high as it should be according

*It is interesting that the counselor's feelings are mostly aptly described as one of frustration rather than pessimism or defeat, as there is a note of optimism expressed in the last thought.

to CPA standards, or as desired by clients interviewed; the amount of time put into report writing was seen as excessive by the staff (which is important whether or not the time is excessive by some "objective" measure); following up a client after initial interviewing may also have suffered from the demands of paper work and a heavy caseload.

Internal communication represents another aspect of organization mentioned as a problem by several staff members. At present the CPA is housed at three different locations: the core staff is housed on the top floor of a building owned by the County; the PLATO (Probation Liaison and Training Officer) project which functions as the liaison and intake arm of CPA, is housed a block away in the Prosecutor's Office; and the RAP (Resources Are People) project is housed 6 blocks away with the Mott Crime and Delinquency programs in a former school building. CPA now comprises three units in one. The physical separation and the interrelated but diversified responsibilities of each call for increased attention to more formalized systematic inter-office exchange of information and documentation. A simple but extreme example of the problem is that for the first year of the RAP project there was but one line and three phones to service 5 staff members and hundreds of clients.

Another problem related to organization and communication dealt with the return of arrest records to offenders released from probation (approximately 35 percent of referrals have been formally arrested and booked). The law requires that should any accused person be released without a charge made against him, arrest and booking information shall be returned, except where the person arrested has any prior conviction other than misdemeanor traffic offenses or was charged with certain sex offenses (MSA 4.463; CL '48, 28.243; CL '29, 569). However, as one counselor remarked, "The only real hangup that

we have is the return of the arrest records. This is the only real mechanical breakdown that we have with the program right now." He further noted that return of arrest records may take as long as two-and-one-half years. When another counselor was asked if there was much difficulty in getting arrest records returned, he said, "Through the _____ police we have a hideous time. They just up until now would not cooperate at all. They didn't believe (in the program) and by God they weren't going to do it."

In addition to the possibility suggested by the above counselors, another reason cited for failure to return records promptly was the lack of knowledge of the law and its application on the part of some law enforcement agencies' records personnel. Like so much else related to the implementation of the program, "educating the system" has been a continuous effort, much improved, however, since the addition of the liaison and intake officer (PLATO). Admittedly, however, the problem has not as yet been fully and satisfactorily resolved. Former CPA clients tended to express uncertainty regarding whether their records had been destroyed (see Chapter 3). This aspect of the deferred prosecution probation program deserves continued attention.

Despite their physical separation from the main CPA office, the RAP and PLATO projects should continue to contribute to greater communication and coordination between CPA and law enforcement and community agencies. The PLATO officer has responsibility for liaison with the 23 police agencies in the County and the Prosecutor's Office in CPA matters. One of his most important responsibilities is public relations of a problem-solving nature, both on policy and procedural levels and with command and line staff personnel. Similarly, CPA and RAP counselors utilize community agency contacts not only for client referral follow-up but also for diffusing information about CPA and RAP as well as learning

more about other agencies' personnel and services. Although heavy caseloads have often limited such public relations efforts with other agencies, it is believed that CPA, because of its community out-reach orientation, has surpassed traditional corrections agencies in this direction. With the initiation of the RAP project in 1971, a main task of which is to acquaint other agencies with the work of CPA-RAP, and to bring these agencies' services to the attention and use of CPA-RAP clients, a more regular pattern of communication is developing, and closer interagency coordination will be feasible (see PLATO-RAP description later in this chapter).

Space and Facilities

The physical design of the offices of the CPA was not intended to house a counseling agency. The office space consists of two private offices for the use of the CPA staff (with another office available if and when the occupant happens to be absent). Others on the staff have desks separated only by plywood partial-partitions (purchased from funds out of the coffee kitty). It is possible for anyone in the waiting area to see into two of the counselor's offices and, if the person should so desire, into two more with only a slight effort. The secretaries, moreover, can look into the counselor's offices from their desks. All of this openness may inhibit the clients and cause them to be less open than might be appropriate if they are to get the full benefit of the treatment program.

One counselor explained:

I think the county expects a great deal from us in working under the conditions we do sometimes...I think that with the kind of interviews we do we inhibit a client when he comes into an open area, particularly when he's fairly new to the program. He comes into an open area--as you can see there are little hanging partitions--and here he is talking about his personal business. That may be a sex offense and we may be going into some detail and he's sittin' around trying to see who's listening and very very inhibited which makes it difficult to work with these people.

Another counselor asked about the open spaces, responded:

...when I first came in, I'd be sitting there, interviewing a client, and I'd feel somebody watching me and I'd get super-self-conscious about it, you know, and if it bothered me, then I wonder what it does to the client...But right now there's not really too much we can do about it because of the fact that there are no funds to develop individual offices with doors and windows and everything else, so it's a little bit of a problem.

When counselors were asked what changes they would make if given the chance, consideration of working facilities was paramount: "That's it, more privacy!"

One aspect of the space problem that is positive is the open feeling one has in the agency's waiting area. Although open, this area is often peopled with counselors and others engaged in informal conversations, as the counselors, including the director and casework supervisor, often take over for the secretaries when the secretaries are ill, leave for lunch or coffee breaks. In addition, if a counselor or a secretary moves through the reception area, he or she always asks if the person waiting has been helped. As one staff member put it:

Jim Wright (the director of CPA) says, when you go out through that area and see someone, speak to them, ask them if they have been helped. "Has anybody waited on you?" for example, or "wink at them or something." To me he's right on target doing that. You make people feel comfortable. Get them to like you.

The difficulties encountered by the CPA in their utilization of available space have, then, both positive and negative consequences for the agency. As mentioned, the open area in the waiting room is a very friendly and warm area in which the clients wait, and here we would suggest no basic changes. Counselors should have private offices, however, so that they might interview clients in private and not be worried that the client is failing to reveal his own very personal problems because of the inhibiting effects of a semi-public interview.

PROJECTS OF CPA: PLATO and RAP

In addition to the core program of the Citizens Probation Authority, two agency projects also come under the head of CPA. These are the PLATO (Police Liaison and Training Officer) project and the RAP (Resources Are People) project, PLATO financed through a Michigan Office of Criminal Justice Programs grant, and RAP through a private trust fund grant. Both complement CPA functions and staff.

The PLATO project, implemented in 1970, has two distinct but interrelated functions: liaison and training, and intake of clients. The first aspect of PLATO is what its name implies, liaison with the Prosecutor's Office and the 23 police agencies in the County, and informal inservice training of their personnel on a day-to-day, case-to-case basis. The liaison and training function involves frequent daily contacts with police and assistant prosecutors regarding referral and disposition of cases, return of arrest records, re-institution of prosecution, etc. In coordinating the law enforcement and CPA functions, PLATO has been instrumental in refining procedures, interpreting interdisciplinary roles, and monitoring the process to prevent bottlenecks and backlogging of cases.

The "public relations" aspect of these functions has been a major factor contributing to the law enforcement community's growing acceptance and support of the concept of deferred prosecution. The two PLATO officers who have held the job to date have been highly experienced and respected, former, command-level police officers (retired under 25 year mandatory rule).

The second principal function of PLATO is to assist the police agencies and Prosecutor's staff in making referrals, and to conduct intake interviews. After the referral decision by the Prosecutor's Office, governed by the referral criteria, PLATO interviews the applicant to advise him of his Constitutional

Rights, explains the purpose and nature of the CPA program, secures the cooperation of the client and refers him to a staff counselor for a work-up on the personal and social history of the client. Cases not meeting CPA criteria or who voluntarily withdraw from participation at the intake stage are referred back to the Prosecutor for further disposition.

In addition to serving the above ends, the PLATO project has made it possible to release the counselors' time for counseling; they no longer have to work on an individual case basis with the many assistant prosecutors, police officers and agencies involved in the deferred prosecution process. All communications and processing normally flow through the PLATO office. The possibility of staff becoming too removed from this important function has been minimized by new staff members training with PLATO, by rotating staff in PLATO absences, and by the participation of PLATO in the weekly case-staffing sessions. The PLATO project is considered by police, Prosecutor's staff, and CPA personnel to be the key to a successful deferred prosecution program.

The Resources Are People (RAP) project, as its name suggests, is a community out-reach approach emphasizing maximum utilization of the "people resources" in the community. The RAP approach involves client participation in Public Information Meetings, small group discussions, individual and family counseling, and referral to community treatment agencies.

The twice-monthly Public Information Meetings, conducted by agency representatives, are designed to acquaint clients/families and agency workers with the nature and scope of a wide-range of social problems (alcoholism and drugs, family planning, education and job training, etc.) and the community agencies available to deal with these problems. Through these meetings, small group discussions relating

these problems to client and family needs, and through referral to community agencies, the project hopes to encourage clients to utilize these "people resources" in the future by giving them a successful experience on this occasion. RAP referrals are Larceny from Building (shoplifting) offenders whose living patterns evidence social rather than primarily personal (psychological) problems. The RAP project attempts to offer an intensive six-month probationary program, or less if the client has been referred and is successfully participating with a community agency, whereas the CPA treatment program, dealing with the more serious felony offenders and those who evidence more disturbed personal living patterns, places a greater emphasis upon staff counseling for up to a year's duration. By servicing 327 clients in the first 9 months of operation, the RAP project has substantially reduced CPA counselor caseloads.

Staff Meetings: Revocation Procedures, Case Staffing, Inservice Training.

The CPA follows a carefully designed procedure for all probation violation cases. The counselor usually learns of the alleged new offense from the client or the daily police arrest sheets. The counselor discusses the alleged offense with the client, police, and the Prosecutor's Office to determine the "sufficiency" of the case for prosecution, and the client is notified that possible revocation of probation is pending. Satisfied that a new offense has been committed, the counselor reviews the matter with the casework supervisor; the case is then "staffed" at the regular weekly staff meeting and a consensus recommendation is reached. The report is then directed to the Prosecutor, at which point the Prosecutor makes a determination to prosecute or return the case for further probationary supervision. All cases in which the counselor is experiencing difficulty in devising or implementing a probationary treatment plan are discussed with the casework supervisor, the psychological consultant to the agency, and are "staffed." Also, cases in which the intake worker (PLATO) or the counselors question whether the client meets program criteria are staffed. Thus staff meetings provide well regulated procedures for casework problem-solving, as well as a case forum for continuing inservice training.

CHAPTER 5

RECIDIVISM, PROBATION VIOLATION, SUBSEQUENT ARRESTS

A major consideration in evaluating a probation program centers around the question of its "effectiveness." The most direct usual gauge of effectiveness is the so-called "recidivism" rate among the probation agency's clients and former clients--that is, the rate at which those in the program are subsequently arrested and convicted for violation of laws. It was suggested at the initiation of this project that

...analysis and evaluation [of the Citizens Probation Authority program] could not rely on the assessment of recidivism and its causes. CPA's recidivism rate is low; the program does not select clients for whom recidivist probability is high. There may be no systematic way to account for the level of recidivism presently in the program.

Similarly, it was suggested that the most meaningful test of the deferred prosecution approach was "the extent to which exposure to the CPA program alters the life situations of its clients."

It became clear, early in the research, that the proposed approach to evaluation of the CPA program was consistent with the expectations held for CPA by those instrumental in establishing it. A key member of the prosecutor's staff maintained that the deferred prosecution concept was a vital element in the Criminal Justice System, arguing that the major function of the system should be rehabilitation rather than punishment, and that the system had to distinguish between "criminals" and "lawbreakers."

Well, my particular philosophy is that the major function of the Criminal Justice System after they've apprehended an offender is rehabilitation. That should be the prime objective for many reasons. First, a humanitarian reason. Secondly, I don't think that punishment necessarily deters others from committing a crime. Most people don't figure on getting caught anyway. So, I think it's a false illusion to say that punishment is a significant factor. What we are really punishing for, as far as I can see, is to please the people who enacted the laws, the people who may not have committed crimes, who are sitting back saying "I want a little blood." Well, I'm not satisfied that the system should operate on the premise, so, I think rehabilitation is the important thing and I think you have to recognize too, that about 90% of those people who are in prison come back to the same community and it seems to me that we should be concerned that that person when he does come back is not worse than when he went. If our only concern or our major concern is punishment, and I suggest to you that most of these crimes were committed because of the antisocial attitude of the people involved, you don't correct that by punishment, you correct that by working through rehabilitation. So, as a result, if we're really interested in doing some good for ourselves and our community, the thing to do is to work on the rehabilitation program. This is true also, of those young people who do not go to prison who are given a criminal record; and criminal records are very heavy handicaps for anybody to carry through his life, especially if it's a one offense type thing. In most cases the first offenders, when they are arrested and caught will never commit another crime; and in most cases they will not go to prison. In most cases if they just carry this record--this conviction--with them all through their lives it inhibits them educationally, employment wise...it's a very inhibiting factor, especially with young people or especially with people who just got caught. Most people commit some type of an offense, especially when they are young, and don't get caught. To me there ought to be...a more meaningful distinction than just a mere getting caught between those young people who suffer the severe consequences of a criminal record and those who don't but who have, in many instances, committed the same crime.

In effect, the prosecutor's staff member argued (1) that CPA is not designed nor intended to modify "criminal" behavior, and (2) that a legitimate and major need exists to process and treat persons who are "lawbreakers" but not "criminals," and whose anti-social behavior reflected problems in their life

situations rather than predispositions to criminality. It should be noted that this perspective was generally shared among agencies in the Criminal Justice System; significant disagreement revolved around the question of what constitutes a "law breaking" rather than "criminal" type. (For further commentary on this point, see Chapter 7.)

The primary purpose served by analysis of recidivism among CPA clients, then, is not to test the program's effectiveness as a deterrent to future law-breaking activity. Such a test would document (as the evidence below indicates) what most observers anticipated, that the types of persons referred to CPA were predominantly not individuals "likely to be arrested and convicted again."

Parenthetically, however, it is worth recalling that all habitual offenders, at one time in life, had to commit their "first felony." Following the above line of reasoning, without acknowledging the role of treatment, a "high" recidivism rate would have been strong evidence that the referral criteria were not sufficiently selective in screening out criminally disposed offenders. All of this, however, does not really address the basic problem of employing recidivism as a criterion measure of success or failure. "Recidivism," like "I.Q.," is a much bandied about term meaning different things to different people. Does recidivism refer to probation violation rates, probation violation rates plus post-probation arrests and convictions, or only subsequent arrests and convictions? And if the latter, does it refer to subsequent arrests and convictions within an arbitrarily assigned time span (3 years, 10 years) or the remainder of a person's life?

If recidivism is defined as probation violation, there is no sound basis in comparison between CPA and Adult Probation violation rates. The reasons for this can be easily seen: the court has few options in a Probation Violation

Hearing -- continuance on probation by lengthening the term and imposing more restrictions, combining probation with a term in jail, or sentencing to prison. For this reason, many Adult Probation violators, both technical violators and new offenders, are continued on probation and "successfully" complete probation under these conditions. CPA, on the other hand, knowing that most probation violators will receive Adult Probation if subsequently convicted, holds to a rather firm policy of returning technical violators and new offenders to the Prosecutor's Office.

RECIDIVISM, FOR THE PURPOSES OF THIS STUDY, IS DEFINED AS BOTH PROBATION VIOLATION AND SUBSEQUENT ARRESTS (NOT CONVICTIONS) OVER A POST-PROBATION PERIOD UP TO 36 MONTHS.

The data from Flint Police records reveal a low incidence of arrests for serious crimes among CPA probationers. The police data are particularly convincing since they cover periods ranging up to more than three years for some former CPA clients, and at least 27 months in the case of every client. Flint Police records were searched, with the cooperation of the Chief of Police, to determine whether 376 former CPA clients who had successfully completed probation had been processed through the Flint department at any time subsequent to the arrest leading to referral to CPA.

18 persons had been arrested, and 3 convicted, on felony charges during or after probation;

38 persons had been arrested, and 23 convicted, on misdemeanor charges during or after probation;

42 persons had been arrested, and 26 convicted, on traffic charges during or after probation.

In total, 63 individuals were arrested on some charge during or after CPA probation; this represented approximately 17% of 376 CPA clients who were under supervision during 1969 and were subsequently successfully terminated from probation or Dismissed.* (The categories above total more than 63 arrests, reflecting inclusion of multiple offenders in more than one category.)

Regarding recidivism in its usual meaning -- arrest and conviction -- only three persons (less than 1%) were convicted on a felony charge for an offense during or (up to 36 months) after a successfully completed probationary period with CPA. Twenty-three persons (6%) received misdemeanor convictions, and 26 (7%), convictions on traffic warrants.

*Since the probation period for these cases does not correspond to a calendar year, statistics based upon these cases do not correspond to data elsewhere in the report based on a calendar year. For a description of the above sample, see footnote to Table 5-1, p 74. "Dismissed" cases represent cases dismissed by the prosecutor after investigation, casework, and recommendation by the CPA, for reasons of: allowed to enter military service, mental and physical health, etc. Cf. Appendix 6, Statistical Comparison Chart.

Table 5-1
Subsequent Arrests, Convictions For
Successful CPA Probationers
376 Cases - 1969*

| | | |
|--|-----|---------|
| Clients with no subsequent arrest or conviction during or after probation | 313 | (82.7%) |
| Clients with subsequent arrest or conviction during or after probation period. | 63 | (16.8%) |
| Client with: arrest on traffic charge | 42 | (11.2%) |
| conviction on traffic charge | 26 | (6.9%) |
| Clients with: arrest on misdemeanor charge | 38 | (10.1%) |
| conviction on misdemeanor charge | 23 | (6.1%) |
| Clients with: arrest on felony charge | 18 | (4.8%) |
| conviction on felony charge | 3 | (0.8%) |

The felony arrest figures provided by the Flint Police records undoubtedly are low. First, the search covered the Flint department (which also handles booking for some of the smaller police units in the county) but not the Sheriff's Department. (The latter was in the process of reorganizing its records and a search for arrest data was not feasible at that time.) According to officials in the Flint and Sheriff's departments, 70 to 80% of all bookings in the county are processed through the Flint department. If Sheriff's and Flint Police Departments bookings are equally likely to produce felony arrests, however, the 4.8% figure reported above would be boosted to 6.4%, and the conviction figure from 0.8% to 1.1%. (Beyond this, Flint bookings would not reflect arrests made outside Genesee County.)

*Represents 3/4 of those clients under probation supervision in 1969 who were subsequently terminated successfully, and 1/2 of the cases who were Dismissed in 1969 for reasons of entering military service, etc.

Another frequently examined "measure" of program "effectiveness" is probation violation. Although this is not a valid criterion by which to measure CPA effectiveness against other probation agencies, for reasons described earlier in this chapter, it is, nonetheless, an important indicator of an agency's internal standards of success/failure. That is, the statistical pattern over a number of years assumes considerable agency importance as viewed in relation to such factors as caseload volume, number of staff, number, frequency, and type of client contacts (office, field), etc.

Table 5-2
Probation Violation -- Yearly Comparison

| Year | Total Under Prob. Supervision | Violated Probation | Percent |
|-----------------|-------------------------------|--------------------|---------|
| *11/65 to 10/67 | 116 | 4 | 3.5 |
| **1968 | 292 | 2 | .7 |
| 1969 | 543 | 20 | 3.7 |
| 1970 | 880 | 35 | 4.0 |
| 1971 | 1272 | 70 | 5.5 |

* Represents the two (2) year period of the Court of No. Record.

** 1968 - on represents CPA administration of the program.

The percentage increase in probation violations over the years may involve the following:

- 1) The broadening of referral criteria at the inception of the CPA administration resulted in an immediate and significant increase in referrals, including new offense types as well as offenders with some previous juvenile and/or adult arrests/convictions (Data are not available to compare probation violation or recidivism rates between first offenders and those with a prior record, although the percentage of referrals with these characteristics is reported in Chapter 2.)
- 2) The increase in numbers of referrals and those accepted on probation was not correspondingly compensated by increase in staff, resulting, probably, in increased violations particularly of a "technical" nature (absconding, etc.).
- 3) As reported in Chapter 5, CPA requires high standards of probation performance and, therefore, recommends violation of probation in situations which might be normally continued on probation in District or Circuit Court.

The data in Table 5-3, combined with those reported in Table 5-1, indicate that of 543 clients under probation supervision during 1969, an estimated total of 8-9 (2%) were convicted of felony charges either during their time of probation or during a period of 12 to 36 months after termination from probation.

Table 5-3

CPA Probation Violations -- 1969*

| | |
|-------------------------|-----------|
| 1. Technical Violations | 10 |
| 2. Arrested New Offense | |
| a. Traffic | 1 |
| b. Misdemeanors | 2 |
| c. Felonies | 7** |
| | <u>20</u> |

The actual recidivism rate among CPA clients, it is suggested, demonstrates the following:

- (1) The selection criteria for admission to the CPA program emphasize a judgmental factor -- that the act leading to arrest did not represent "a continuing pattern of anti-social behavior." The low frequency of subsequent arrest for serious offenses indicates the particular selection criterion is well applied.
- (2) Even given the expectation of low recidivism, and the incompleteness of re-arrest (not conviction) data, the recidivism rate among CPA clients is remarkably low. Whether or not the low recidivism rate can be explained by CPA's treatment program, the desired end result is attained to the degree that former clients tend strongly not to become involved with the law again.

*Corresponds with the same general time period of the population sample studied earlier in this chapter.

**Represents 1.3% of the number of probationers (543) under supervision in 1969. Of the 7 new arrests for felonies, 3 persons were eventually convicted of felonies, 1 for a Circuit Court Misdemeanor, while the remaining 3 may have been convicted of simple misdemeanors.

SECTION C: COST CONSIDERATIONS

SECTION C: COST CONSIDERATIONS

Major Findings

1. CPA is well managed: the agency maintains a qualitatively high level of performance even under the adverse conditions of excessive counseling caseloads; the administration of the program demonstrates careful budget management.
2. The necessity of the director and casework supervisor being diverted from their responsibilities to cope with casework overload is detrimental to the over-all effectiveness of the program and contributes to a reduction in cost-efficiency.
3. Any increase in caseload would jeopardize counseling effectiveness, cost-efficiency, and staff morale.
4. The CPA deferred prosecution program undoubtedly represents one of the most economical probation field services in the United States. Although total program expenditures have increased each year, per-client costs have declined from \$126.00 in 1968 to \$65.00 in 1971, far below even the 1965 national average of \$108.00 reported by the President's Crime Commission. This is accounted for by high counselor caseloads, rapid caseload turn-over as a result of a shorter probation period, and the payment by clients of a \$100.00 Probation Service Fee.
5. The flexibility of the deferred prosecution approach in handling felony or misdemeanor cases has further financial import in view of the recent ruling of the United States Supreme Court extending the right of indigent

misdemeanants to court-appointed counsel.

6. CPA's existence brings reduction in the workloads of police, prosecution, courts and adult corrections. A significant number of probationary cases, which prior to 1967 would have been processed through the courts to Adult Probation, are now being handled by CPA.
7. The CPA program is generally favorably assessed among other elements of the criminal justice system. Most frequent reasons for this assessment include a low recidivism rate and general program efficiency and effectiveness, although some concern is expressed over the scope of CPA jurisdiction regarding certain types of offenses eligible for referral.

Recommendations

1. (Finding 2) Some increase in counseling and secretarial staff is necessary to reduce individual counselor caseloads to a more manageable level and to free CPA supervisory personnel to handle their assigned functions, rather than handling counseling and secretarial overloads. The actual need will be influenced by the impact and continued funding of PLATO, RAP, and the Drug Referral Agent of the County Regional Drug Abuse Commission which now handles all drug abuse referrals.

CHAPTER 6

CPA: MANAGEMENT AND DIRECT COSTS

The ideal cost analysis would be either a cost-benefit analysis of CPA or a cost comparison with an equivalent agency. Neither one is feasible at the present time. The straight cost benefit analysis was ruled out in the original research proposal because of the inability to quantify the benefits the individual and society receives by not sending the offender through the normal process. The benefits include such items as the value of the output the offender will produce if he were being detained, the additional contribution to society's wealth by his working at a more skilled position which he might have been denied if he had a record, the value to society of not disturbing his family life, etc. Some of these items could be adequately described qualitatively but the lack of an objective measurement scale by which dollar values could be assigned to these benefits eliminates the possibility of a ~~cost benefit analysis~~ which requires everything to be stated in monetary terms.

Similarly, a cost comparison was ruled out because there is no other agency which handles identical cases and could, therefore, be used as a benchmark. To use an agency that does not handle comparable cases, such as Adult Probation, would require the analyst to make arbitrary adjustments for the differences in the average time the agencies handle the cases as well as different services performed which would give rise to different costs.

These arbitrary adjustments could be justified by a logical measurement system and would, therefore, subject this report to criticism for the ability of the researcher to inject his personal values into the analysis. Therefore, the

cost analysis will be limited to a descriptive treatment of the use of CPA resources.*

The project staff evaluated the managerial and cost aspects of CPA through the research efforts of Professor Edward Schnee. Professor Schnee's time-cost methodological approach to CPA concluded that the CPA personnel effectively utilized their available time in relation to the various categories of their responsibility and that the costs of the various components of the CPA program compared favorably with other known managerial cost variables. Indeed, given the heavy caseload and limited personnel, the CPA staff seemed to be overworked and in need of additional counselors and secretaries, although they managed to keep pace with the work load even under these adverse conditions.

From the data gathered it appears that the counselors and casework supervisor are unable at times--through caseload overload--to handle all the cases. Consequently the director is forced to work on cases, increasing drastically the average cost per case. From the point of view of cost effectiveness there is no doubt that the agency would save considerable amounts of money by hiring additional counseling personnel, thus permitting the better utilization of the upper-level administrative time.

Even though we have previously pointed out that the counselors carried unusually high caseloads in relation to the nature of the interpersonal relationships established with the clients, it is safe to predict that any further increase in the case contact load would result in a lowering of morale which could have the effect of reversing the favorable cost-client ratio.

*For a more complete description of the rationale behind eliminating formal cost analysis see: "Staff Report 3--Methodological Problems in Cost Analysis," available through the Urban Studies Program of the University of Michigan - Flint.

Table 6-1

| CPA Expenditures for a Sample Month | | |
|-------------------------------------|-------------------------|----------------|
| | Month of 9/7-10/6/71 | 1971 Budget |
| Salaries | 8859.30 | 95,911.00 |
| Services and Supplies | | |
| Supplies | 194.04 | |
| Postage | 6.02 | |
| Telephone | 132.00 | |
| Mileage | 268.00 | |
| Gas & Oil | 20.35 | |
| TOTAL | 620.41 | 8,435.00 |
| TOTAL CPA COSTS | 9479.71 | 104,346.00 |
| PLATO Costs | 1960.07 | |
| RAP Costs | 3183.30 | |
| TOTAL OPERATION COSTS | 14623.08 | |
| LESS: Probation Service Fees Paid | 3032.00 | |
| TOTAL NET EXPENDITURES | 11591.08 | |

(1) PLATO = Probation Liaison and Training Officer (LEAA Federal Funding Project)

(2) RAP = Resources Are People (DeWaters Trust Fund)

Legend

As the CPA expenditures chart indicates, the staff performed well within the limits of the budgeted cost parameters. It is clear from the record that expenditures of monies are carefully planned and balanced so that there is no disproportionate expenditure in any one period which would cause budgetary stress during the remainder of the fiscal year.

Although a conventional cost analysis was not feasible (see above), certain facts were observed from a time study conducted during one month. These observations on use of staff resources should be read in conjunction with the findings in Chapter 7 regarding CPA's impact on other Criminal Justice Agencies.

Table 6-2

Case Activity by Number of Months Client has been with CPA

| Period of Case (from most recent month)* | No. of Cases Originating in this Period | %Originating in this Period | Total Minutes Spent (on all types) | Average Minutes Per Visit | Average Minutes Per Case | % Visits Cases Originating in the Period | Visits for Cases Originating in the Period | % of Total All Types Cases Originating in Period |
|--|---|-----------------------------|------------------------------------|---------------------------|--------------------------|--|--|--|
| 1 | 51 | 12.5 | 2831 | 31.8 | 49.9 | 14.2 | 80 | 30.1 |
| 2 | 43 | 11.4 | 3015 | 26.4 | 60.2 | 17.4 | 98 | 23.4 |
| 3 | 59 | 15.7 | 1406 | 15.3 | 22.8 | 15.6 | 88 | 12.1 |
| 4 | 33 | 8.7 | 971 | 17.6 | 29.4 | 9.8 | 55 | 8.8 |
| 5 | 34 | 9.0 | 611 | 13.3 | 17.9 | 8.2 | 46 | 5.5 |
| 6 | 25 | 6.6 | 293 | 9.8 | 11.7 | 5.3 | 30 | 2.6 |
| 7 | 28 | 7.4 | 363 | 10.1 | 12.9 | 6.4 | 36 | 3.3 |
| 8 | 26 | 6.9 | 481 | 14.6 | 18.9 | 5.9 | 33 | 4.3 |
| 9 | 15 | 4.0 | 109 | 8.5 | 9.0 | 2.8 | 16 | 1.2 |
| 10 | 7 | 1.9 | 113 | 14.1 | 16.1 | 1.4 | 8 | 1.0 |
| 11 | 16 | 4.2 | 249 | 13.1 | 15.6 | 3.4 | 19 | 2.2 |
| 1 year 12 | 11 | 2.9 | 178 | 11.1 | 16.2 | 2.8 | 16 | 1.6 |
| 13 | 10 | 2.6 | 115 | 8.2 | 11.5 | 2.5 | 19 | 1.0 |
| 14 | 6 | 1.6 | 99 | ---- | ---- | 1.1 | 6 | 0.9 |
| 15 | 3 | 0.8 | 14 | ---- | ---- | 0.5 | 3 | 0.1 |
| 16 | 5 | 1.3 | 109 | ---- | ---- | 1.2 | 7 | 1.0 |
| 17 | 2 | 0.5 | 54 | ---- | ---- | 0.9 | 5 | 0.5 |
| 18 | 1 | 0.3 | 3 | ---- | ---- | 0.2 | 1 | 0.0 |
| 19 | 1 | 0.3 | 5 | ---- | ---- | 0.2 | 1 | 0.0 |
| 20 | 1 | 0.3 | 10 | ---- | ---- | 0.2 | 1 | 0.1 |
| 1 yr,9 mos. 21 | 1 | 0.3 | 3 | ---- | ---- | 0.2 | 1 | 0.0 |
| TOTAL | 378 | 100.0% | 11032 | | | 100.0% | 564 | 100.0% |

* Period of case refers to the Month the case originated with CPA. Period 1 represents September 7 through October 6; period 2 represents August 7 through September 6, etc. Periods 1-12 represent a one year probationary period, therefore, most cases referred in period 12, October 7 through November 6 of 1970, would have completed their probation by period 1.

As can be seen from Table 6-2, the amount of time spent by counselors on individual cases drops markedly after the first few months of contact. It has also been suggested in this and other sections that the drop in contacts does not necessarily nor invariably adversely affect the clients, either during the probation period or afterward. The drop in time spent is to be expected, of course, assuming that CPA counseling is effective and that CPA is meeting its objectives in the referral of cases to other community agencies (See Chapter 2). If the counseling time expended had stayed constant, the indications would be that the client was probably no better off at the end of his probation period than at the beginning.

On the whole, the drop in time spent does not appear to adversely affect the client because--as suggested in the other sections--a very strong interpersonal bond is set up between counselor and client in the very early months of the probationary period. In fact, the feelings expressed by the clients in the interviews was that they could always rely on their counselors (See Chapter 3). It is, then, this high interpersonal-feeling-set that allows a higher caseload for the counselors than might otherwise be handled without a serious drop in "efficiency." A related and significant finding of the time-study was that despite excessive caseloads, 30 (8%) of the 378 clients seen during the month had been terminated from probation up to 9 months earlier, yet had received nearly 7 hours of counseling time, or almost 15 minutes each. Since this kind of expenditure of time is not normally considered "required" in most agencies, it has to be viewed as a "bonus" staff effort in behalf of CPA clients, past or present.

CPA has evolved a mix of specialized and non-specialized counselors in response to the demands of the agency's caseload. Table 6-3 indicates that some CPA counselors tend to specialize in the cases they handle. Counselor C, for

example spent 99.5% of his time on larceny cases, while Counselors A and E had much more diversified caseloads. This is a result of some differential diagnosis and assignment of cases as well as the differing strengths and dimensions of individual counselors.

The overwhelming bulk of the caseload during the sample month (59%) consisted of Larceny (primarily "shoplifting"), Auto Theft and Conspiracy cases. The next highest offense type (Drugs) was only 18%. Given the new programs of the Genesee County Drug Commission (to which all drug cases qualified for pre-prosecution disposition are now referred directly by the Prosecutor's officer), this category should sharply decrease at CPA. Most other types of offense absorb more staff time per case than do those in the Larceny category. This may reflect (1) specialization effects, (2) the nature of the offenders and their needs, or a combination of the two factors. If CPA admission procedures and criteria were to change so that the caseload shifted, emphasizing categories of offenses which presently require more time per case, the total demand on staff time could be expected to increase at a faster rate than total caseload.

Table 6-3

Percent Time Spent by Each Counselor by Case Type

| <u>Case Type</u> | <u>Counselor A</u> | <u>Counselor B</u> | <u>Counselor C</u> | <u>Counselor D</u> | <u>Counselor E</u> |
|---|------------------------|------------------------|------------------------|------------------------|------------------------|
| 1. Larceny, Auto Theft, Conspiracy | 56.0% | 93.7% | 99.5% | 83.2% | 35.8% |
| 2. Fraud, Forgery, Embezzlement, Conspiracy | 19.7 | 1.3 | 0.0 | 13.8 | 26.0 |
| 3. Carrying Concealed Weapon | 5.7 | 0.0 | 0.0 | 0.5 | 9.9 |
| 4. Stolen Property and Conspiracy | 3.5 | 0.0 | 0.05 | 1.0 | 0.9 |
| 5. Illegal Drugs and Conspiracy | 15.2 | 5.0 | 0.0 | 1.6 | 22.6 |
| 6. Minor Sex Offenses | 0.0 | 0.0 | 0.0 | 0.0 | 2.1 |
| 7. Malicious Destruction of Property | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |

CONTINUED

1 OF 3

Table 6-4

Staff Time, Caseload, and Work Contacts by Type
of Offense during Sample Month

| | <u>Total Minutes for Cases</u> | <u>Percent of Total Minutes</u> | <u>Number of Contacts</u> | <u>Number of Cases</u> | <u>Minutes Per Contact</u> | <u>Minutes Per Case</u> |
|---|--|---|-------------------------------|----------------------------|------------------------------------|---------------------------------|
| 1. Larceny, Auto Theft, Conspiracy | 31947 | 58.9 | 2309 | 482 | 13.8 | 66.3 |
| 2. Fraud, Forgery, Embezzlement, Conspiracy | 8516 | 16.0 | 456 | 95 | 18.7 | 89.7 |
| 3. Carrying Concealed Weapon | 1839 | 3.0 | 133 | 38 | 13.8 | 48.4 |
| 4. Stolen Property and Conspiracy | 1449 | 3.0 | 75 | 15 | 19.4 | 96.6 |
| 5. Illegal Drugs and Conspiracy | 9744 | 18.0 | 525 | 118 | 18.5 | 82.9 |
| 6. Minor Sex Offenses | 659 | 1.0 | 41 | 8 | 16.1 | 82.4 |
| 7. Malicious Destruction of Property | 57 | 0.1 | 11 | 2 | 5.2 | 28.5 |
| TOTAL | 54211 | 100.0% | 3550 | 758 | *15.3 | *71.5 |

* Average

CPA Annual Per-Client Costs

At the recommendation of the Citizens Probation Authority, effective July 1, 1969, the Genesee County Board of Commissioners passed a resolution* establishing an adjustable \$100.00 Probation Service Fee, waivers to be made in hardship and indigent cases. The monies are paid by the probationers directly to the County General Fund and have the purpose of defraying the cost of operating the program. The impact of this savings to the County and the financial contributions of the PLATO and RAP projects are represented in the following tables.

Table 6-5
Funding Sources

| Year | Genesee County | **PLATO | ***RAP | TOTAL | Less Probation Service Fees | TOTAL |
|------|----------------|----------|----------|-----------|-----------------------------|---------|
| 1968 | \$36,803. | -- | -- | \$36,803. | -- | 36,803. |
| 1969 | 67,874. | -- | -- | 67,874. | \$12,673. | 55,201. |
| 1970 | 100,891. | \$6,834. | -- | 107,725 | 34,842. | 72,884. |
| 1971 | 93,041. | 16,143. | \$12,815 | 121,999. | 39,303. | 82,696. |

**PLATO is funded by Michigan Office of Criminal Justice Programs (LEAA).

***RAP is funded by DeWaters Charitable Trust Fund.

Table 6-5 represents a break-down of the funding sources, monies expended, and the amounts of Probation Service Fees paid. (Note that PSF were instituted in July 1969, and, therefore, represent only six months of Fee payments for that year.)

* See Appendix 5.

Table 6-6
CPA Annual Per-Client Costs

| Year | Actual Expenditures | No. of Clients Supervised | Per Client Cost |
|------|---------------------|---------------------------|-----------------|
| 1968 | \$36,803.65 | 292 | 126.04 |
| 1969 | 55,201.23 | 543 | 101.65 |
| 1970 | 72,884.31 | 880 | 82.82 |
| 1971 | 82,696.85 | 1272 | 65.01 |

The "Expenditures" column in Table 6-6 represents actual monies paid out by the Genesee County Controller's Office which also administers the PLATO and RAP budgets. The Annual Per-Client Cost was computed by dividing each year's total actual expenditures (minus the amount of Probation Service Fees paid) by the number of probationers supervised during the year. Although total expenditures have increased each year, largely as a result of personnel salaries (See Table 6-1), per-client costs have declined. This is accounted for by the yearly increase in numbers of clients supervised and a proportionally larger amount of Probation Service Fees paid.

As the CPA has been partially subsidized by other than Genesee County funds (See Table 6-5), the cost of the program to Genesee County has been substantially reduced. The payment of Probation Service Fees has resulted in the following direct savings:

1970 -- Genesee County expenditures reduced from \$100,891.35 to \$66,049.39 at a per client cost to the County of \$75.05 (Probationers paid back 34% of County expenditures.)

1971 -- Genesee County expenditures reduced from \$93,041.02 to \$53,737.52 at a per client cost to the County of \$42.24 (Probationers paid back 42% of County expenditures).

This chapter has attempted to evaluate actual accountable financial expenditures for the total CPA program. For reasons discussed earlier it was impossible to quantify cost-benefits to clients and society, or to the taxpayers in not having to process CPA clients through the Criminal Justice System. These intangible savings are considered throughout the following chapter. It is worth noting at this point, however, that the value of the PLATO and RAP projects to CPA, the Criminal Justice System, and the community, cited in numerous instances in this report, will be lost if their funding does not continue beyond the present projected periods: PLATO to expire in the fall of 1972 and RAP in the summer of 1973.

CHAPTER 7

IMPACT UPON RELATED AGENCIES: COSTS AND WORKLOADS

The most important question regarding CPA, from the perspective of other agencies in the criminal justice process, involves the impact of CPA activity on functions of the various agencies, specifically police agencies, the Prosecutor's office, the courts and the Adult Probation Department.

Law Enforcement

Assessment of the CPA program by police officers, based on observations by key personnel in seven police agencies which have had substantial contact with CPA, is predominantly favorable.

CPA is widely rated as doing a "good job" by officers in both large and small police departments. Although some important reservations are expressed, the program is evaluated favorably by a wide majority of police officers (primarily detectives and those at command level) including officers who report strong, earlier skepticism. CPA, in its early months, acquired the nickname "Free Felony Association" among some police officers, although this feeling is not prevalent today.

An assessment of the program offered by an officer in one of the township departments illustrates the major positive aspects identified by police. The township officer reported having been very skeptical when the program was introduced. He had come to support both the deferred prosecution concept and the ongoing program for two reasons. First, of the cases referred to CPA,

very few individuals had subsequently been arrested for a new offense in his jurisdiction. And, secondly, the program resulted in what he termed significant budgetary savings in that he did not have to pay officers for time in court when a case went to CPA. The first view--that re-arrests (on new charges) of those referred to CPA were rare--was widely shared by local police officers. The second factor--cost savings--was accepted as valid in most of the police agencies covered by the study. A variant of this point-of-view was that program results were what counted, and that costs (within a reasonable range) should not be a major consideration in assessing the program. However, a dissenting view-point held that CPA introduced new costs, in that "most" cases referred there would have been handled in a discretionary way by the police officer at "no cost," and that comparing CPA costs to costs of prosecution was not valid.

The first argument--regarding a low level of probation violation and recidivism--is clearly validated by evidence presented elsewhere in this report. The felony conviction rate among CPA probationers appears to be less than 2% percent. (See Chapter 5.)

The second argument--that CPA creates a "new" workload--deserves close attention.

- (1) There is wide agreement that considerable discretion is necessarily exercised by officers in determining whom to arrest and by detectives in assessing the facts of a case. The argument that a significant proportion of cases referred to CPA would otherwise be "deferred from prosecution" by police officers is difficult to pin down. Considerable question arises as to whether officers would, in fact, employ large-scale "stationhouse release," even of shoplifters, as prior to and during the formative period of CPA, substantial "heat" was being applied to police and prosecutor by

merchants who felt that "Shoplifters Go To Jail" should be more than a slogan posted in their stores. (Not only has this attitude abated but store owners and managers are now cooperating in a face-to-face confrontation with selected shoplifters as part of an experimental treatment approach of the RAP project.)

2. Several respondents pointed out that an officer so inclined could still exercise such discretion (in practical terms) and that referral to CPA probably tended to indicate a belief on the part of the Officer-in-Charge-of-Case that some punitive or treatment program was necessary in a given case. Whatever the reason, it is a fact that officers frequently press for referral of offenders who do not meet the referral criteria, speaking either to the officer's attitudes towards the offender or to the fact that referral is a time and work saver for the officer. (See below)

It is appropriate to observe that while a large proportion of CPA cases could be plea bargained to a lesser charge and not go to trial, the same argument could be made, and is made by defense counsel, in many cases going to Circuit Court. The disposition, as of March 1, 1972, of Larceny from Building (shoplifting) arrests handled by the Flint Police during the first six months of 1971, as presented in Table 7-1, provides a rough indication of the "slice" taken by CPA among an array of cases. Larceny from Building - Shoplifting cases comprise nearly half the CPA caseload and are chargeable as a four year felony. While there is a commonly held belief among the law enforcement community that these cases, considering the qualifications for referral to CPA, would probably, in most instances, be charged as misdemeanors, of 35 shoplifting cases referred to CPA but not Accepted on Probation or Violated Probation, for which warrants were issued, almost 1/4 (9 cases) were processed as felony warrants (Table 7-1). This might tend to indicate that for shoplifting referrals who are not Accepted on Probation or Violate Probation, a higher proportion of felony warrants is issued

than is commonly believed, or that the assumption that the great majority of CPA shoplifting referrals would be charged as misdemeanors may be an overstatement. In either case, it is apparent that the police and prosecutor do not "rubber stamp" all Larceny from Building - Shoplifters as misdemeanors.

Table 7-1

Disposition of Persons Arrested for Shoplifting by
Flint Police During First Six Months of 1971, as of March 1, 1972.

| | | |
|--|----|------------|
| Warrants obtained at time of offense | | 59 |
| Suspects not charged | | 39 |
| Referred to CPA | | 116 |
| On probation | 30 | |
| Successful Termination of probation | 51 | |
| Not Accepted by CPA, or Violated Probation | 35 | |
| Felony warrants issued | 9 | |
| Misdemeanor | 21 | |
| No warrant | 5 | |
| Total Suspects | | <u>214</u> |

Table 7-2

Reasons for Non-acceptance by CPA or
Violation of Probation*

| | |
|--|-----------|
| Failure to keep appointments (Not Accepted) | 9 |
| Maintains innocence & desire to go to court (NA) | 3 |
| Continuing pattern of anti-social behavior (NA) | 5 |
| Failure to meet CPA criteria (unspecified)(NA) | 3 |
| Subsequent arrest while on CPA (Violation) | 4 |
| Left state without permission (Violation) | 1 |
| Information not recorded by FPD (Not Accepted) | <u>10</u> |
| | <u>35</u> |

*Data in this table were furnished by the Flint Police Division.

Other Criminal Justice Agencies

Regarding CPA's impact on other institutions in the Criminal Justice process, these observations can be made (noting that the data to support these findings are "soft" and that no strong claim is made for their validity):

- (1) Existence of CPA probably reduces the work load of police agencies. A rough estimate (furnished by the Flint Police) indicated that about two hours of an officer's time is involved in a case that goes to a preliminary examination, and that a case bound over to Circuit Court on a "not guilty" plea might involve (typically) six hours of court time for each officer involved in a case. The speculative nature of the data do not justify converting this into dollar estimates. It should be noted, again, that probably a small proportion of CPA-eligible cases would be adjudicated by trial in Circuit Court if CPA did not exist, but that even if a relatively small number (200) were adjudicated by plea, the cost in time and work, as well as money, would be substantial.

Flint (and other) detectives complete a Circuit Court record on a case with or without referral to CPA. (This was not a practice in the early stages of the CPA program.) Cost considerations would favor eliminating this procedure for CPA cases. However, the procedure appears necessary as a hedge against cases found to be ineligible for deferred prosecution. Although such cases are now returned to the police agency within three weeks (as compared to the early years of CPA in which the period was twice that long), problems of memory, etc., mandate

that the report be completed at the earlier time.

- (2) Existence of CPA undoubtedly reduces the work load of the Prosecutor's staff and that of the District and Circuit Courts. Approximately three hundred seventy (370) Larceny from Building-Shoplifting cases were Accepted on Probation in 1971 and, assuming that all such cases would be prosecuted as misdemeanors, would have been processed through District Court. Of the remaining 370 cases (felonies), if only 200 were processed through Circuit Court, there still remains another 170 felony cases to be disposed of. While it must be emphasized that these assertions are based on "soft" data, and inadequate to obtain precise estimates, in the absence of CPA a substantial number of these cases would have been processed through the court system.
- (3) Given that most cases that would go to trial in the absence of CPA would require appointed counsel, paid from public funds, a further probable saving is realized by the CPA case's rarely involving defense counsel (Legal Aid). With the June 12, 1972 ruling of the United States Supreme Court which extends the right of indigent misdemeanants to court-appointed counsel, and considering the youthful age of CPA clients, CPA obviously offers substantial future savings in that area alone.
- (4) Finally, CPA's existence modifies and apparently reduces the work load of the Adult Probation Department. Modification occurs to the extent that CPA absorbs cases from among those, otherwise under jurisdiction of Adult Probation, which present the least difficulty in terms of background of criminal activity, "anti-social" attitudes,

etc. It is generally acknowledged, given rises in crime rates in Genesee County over the past several years, that Adult Probation would have a caseload larger than at present if CPA did not exist. The possible magnitude of CPA's impact on Adult Probation's caseload is indicated by the following table:

Table 7-3
Relationship of CPA and Adult Probation Caseloads*

| Citizens Probation Authority (Up to 1 year probation) | | | Adult Probation (Up to 5 years probation) | | | |
|--|-------------------------|-------------------------|--|-------------------------|-------------------------|------------|
| % Increase | 1-1-69 to 6-30-69 | 1-1-70 to 6-30-70 | | 1-1-69 to 6-30-69 | 1-1-70 to 6-30-70 | % Increase |
| +40% | 183 | 256 | Accepted on Probation | 145 | 110 | -24% |
| +91% | 89 | 170 | Terminated or Transferred | 157 | 157 | 0% |
| +42% | 220 | 312 | Active Caseload | 455 | 447 | -2% |
| +48% | 335 | 494 | Total Under Supervision | 614 | 634 | +3% |
| +28% | 61 | 78 | Average Case-load Per Officer | 50 | 53 | +6% |

Since the beginning of the CPA program, the number of cases placed on Adult Probation has continued to decline while the number of cases placed with the CPA has continued to increase. Prior to the institution of CPA, a majority of convicted offenders were

*Statistical Comparison Chart

placed on Adult Probation, whereas by 1970, the majority were sentenced to prison. This shows that a significantly large number of probationary cases, which prior to 1967 would have been processed through the courts to Adult Probation, are now being handled by the CPA. The inference from this is that CPA is now handling a significant number of cases which, without the presence of CPA, would have been sentenced to probation after the trial process, is accomplishing roughly the same ends for the community that Adult Probation accomplishes but without the time delay and the cost of going through the trial process.

This approach provides for a more effective court process, since a greater percentage of those who are brought into the system formally by way of an authorized warrant now end up receiving sentences which remove them from the community, while a majority of those who do not require incarceration are diverted from the formal judicial process at the very beginning. This observation also holds the following important meaning: police, prosecution, courts, and adult probation may now concentrate their attention upon the more serious criminal offenders who constitute the principal threat to public security.

(Therefore, it should be noted that Adult Probation's "success" rate should be lower, other things being equal, given the existence of CPA and the criteria for admission to the latter program.)

A major concern regarding the CPA program, particularly expressed by police officers, revolves around the perennial "punishment vs. rehabilitation" dialogue

in law enforcement. A major reservation expressed by some police officers was concern that CPA removed a fear of punishment, held by some police to deter criminal activity. Whether punishment, or a fear of punishment, is a deterrent is one question. Whether prior knowledge of the existence of CPA is an encouragement to commit crime is quite another question. There are many police officers and prosecutors (see Chapter 5.) who do not believe that a criminal has either "getting caught" or "getting off" in mind when he commits an offense --particularly CPA referrals whose offenses are characterized as situational or impulsive in nature. The question of deterrence goes far beyond the scope of this analysis, however. Where the question becomes directly pertinent in the views of some police officers is in the determination of types of offenses eligible for deferred prosecution treatment.

An offense raising particular concern, among some police officers, was breaking and entering a residence, because of the possibility of violence occurring. The argument was made that this is a crime for which repeated offenses are common, and that frequently, police are convinced (based on evidence not sufficiently conclusive to build a case) that a "first offender" on record frequently is a multiple offender in fact. The argument that the potentially violent nature of residential breaking and entering calls for its removal from the list of CPA eligible offenses cannot be tested adequately at this time. The low incidence of recidivism for those arrested on this charge reported elsewhere in this report suggests that the expressed fears may be exaggerated. This reservation represents a question of central importance to a deferred prosecution program, however, and deserves careful analysis in the future.

The relatively higher evaluation of CPA by police officers now, as compared with two and three years ago, reflects several changes in CPA operations. Most

important are these:

1. The PLATO position, which has been filled to date by former, highly respected police officials, has strengthened communication between police and CPA and, on the whole, contributed to increased confidence in the program on the part of police.
2. The daily functioning of an assistant prosecutor and PLATO within the Flint Police Division servicing the 68th (City) District Court, and in the 67th (County) District Court, in handling the charge/no charge decision has eliminated communication problems and contributed to faster processing of cases, particularly important to the police for cases rejected by CPA and returned for prosecution.
3. PLATO has been instrumental in returning documentation to the police for cases not accepted by CPA. Although the referred-but-rejected case is still a sore point with detectives who must pick up a "cold" case, the present situation is viewed as a substantial improvement over earlier practices.
4. CPA referral policies and criteria have been refined through experience to the degree that most police officers interviewed who had negative views or reservations directed them toward certain types of cases rather than the deferred prosecution concept. The low recidivism rate among those referred to CPA, as noted above, has played a major part in shaping such attitudes. The plan followed by the Prosecutor in 1965, to initially limit admission to the program and gradually broaden the selection criteria, undoubtedly was a key element in determining police response.

An additional concern expressed by some persons in the Criminal Justice System

deals with the distinction made, in law, between a felony and a misdemeanor. At present, a person arrested on a misdemeanor charge has no pre-prosecution probation available to him, while a person arrested on a felony charge (if he fits the CPA criteria) may seek this type of probation. The implication here is that the person accused of the felony is not burdened with a permanent police record while the person guilty of the misdemeanor is stigmatized for life. Many police officers and others in the Criminal Justice System felt this to be an inequity of the system and one that should be corrected--possibly by adding misdemeanors to CPA's caseload. While an endorsement of the CPA concept, this observation ignores the existing dispositional authority of the misdemeanor courts where in fact a preadjudicatory process has for the past few years been in widespread usage for alcohol related offenses. There is no legal impediment to the courts' greater utilization of both pre and post adjudicatory practices which would provide for probationary services and prevention of an arrest and conviction record. Both District Courts in Genesee County have established probation departments, (also, see footnote to Table 2-15).

SECTION D: LEGAL ASPECTS

Major Findings

1. The Citizens Probation Authority type of deferred prosecution represents a proper exercise of prosecutorial discretion.
 - a. CPA procedures correct three deficiencies found by the President's Crime Commission to be frequently present in the normal exercise of prosecutorial discretion:
 - 1) Lack of sufficient information. CPA operates as a supplement to the prosecutor's office impairing neither the legal justifications of prosecutorial discretion nor the prosecutor's final control over the charge/no charge decision. Rather, CPA enhances the knowledge and expertise necessary for a just decision-making process.
 - 2) Lack of clear standards. The program provides a rational and well articulated process for deciding which offenders become subject to full criminal sanctions and which to more informal disposition, a process which assumes great importance if one subscribes to the position that not all offenders can or should be processed through the conventional criminal justice system.
 - 3) Lack of established procedures. CPA standardizes the operation of prosecutorial discretion through the promulgation of rules and regulations, to the end not of expanding the scope of discretion but of exercising that discretion more intelligently.

- b. The extent to which the prosecutor in the exercise of his charge decision makes referrals to CPA for their recommendations is on firm legal ground and is beneficial to the decision process.
 - c. Referral of multiple and adult offenders is not an abuse of discretion, for it has been shown that such referral as practiced by CPA does not endanger the community and thus does not violate the public interest.
2. Constitutional rights of clients and prospective clients are generally well-safeguarded by present CPA procedures. Some possible constitutional questions raised by the new developments in pre-prosecution probation are presented below.
 - a. It would appear that there are no constitutional due process requirements calling for an independent judicial determination of the "sufficiency" of the prosecutor's case. Further, such an independent judicial determination would appear to violate the constitutional doctrine of "separation of powers" and would be an invalid encroachment upon the executive functions of the prosecutor.
 - b. Right of the accused to representation by counsel in relation to the CPA process raises some issues. In brief, assistance of counsel does not appear to be constitutionally required at the referral stage of CPA proceedings but does appear to be required when a decision about revocation of probation must be made, unless the ground for revocation is conviction for a subsequent offense. That is, counsel would appear to be required at probation revocation proceedings when there is a substantial and material "factual dispute" regarding the question of whether a participant has either violated the terms and conditions of his probation or has "voluntarily" withdrawn from the CPA program.

- c. In those limited situations where assistance of counsel is mandated, fourteenth amendment equal protection would seem to require that counsel for indigent clients be furnished through Legal Aid or other appropriate means.
 - d. Denial of access to the CPA program for the sole reason that a prospective CPA candidate is, or will likely be, unable to meet the restitution requirement would appear to be a constitutional denial of equal protection of the law. Revocation of probation solely for the same reason would also appear to be a constitutional denial of equal protection of the law. Such a constitutional problem may be obviated by allowing the CPA prospective participant, or participant, to make restitution within reasonable and/or extended time periods through installment payments.
 - e. Holding a criminal charge in abeyance pending referral to, or completion of, CPA probation does not constitute a denial of the right to speedy trial or of due process of law.
3. The potential reinstatement of criminal proceedings, the ultimate sanction of the deferred prosecution process, raises further constitutional questions. There is no evidence that this sanction has been misused by CPA or the prosecutor, however, the following should be considered:
- a. The prospective CPA client must be, and is, notified with reasonable specificity of the charge with which he would be charged if prosecuted. It is unlikely that delays preceding the initiation of a formal criminal action for a CPA client would constitute denial of due process or the right to speedy trial, as he has voluntarily waived these rights.

- b. A fifth amendment privilege against self-incrimination does not appear, in fact, to have been jeopardized by the practices of CPA or the prosecutor's staff. Nevertheless, considering all theoretical possibilities, it would be advisable to insure that the accused's privilege against self-incrimination be safeguarded.

Recommendations

1. (Finding #2,b) A formal hearing should be held before revocation of a CPA client's probationary status, except where conviction for a subsequent offense is the ground for termination. The present procedure* of staffing all such cases, while uniformly and conscientiously applied, should be formalized to provide for the additional safeguards recommended. This might include holding such cases in "Pending Revocation" status by the prosecutor until conviction for new arrests has been obtained.
2. (Findings #2, b, c) In a deferred prosecution program, a right to counsel would appear to exist where revocation of probation is under consideration, at least where there is a substantial and material "factual dispute" a violation of probation has occurred. In such limited situations, counsel should be provided for indigent clients on request, through Legal Aid or other appropriate means.
3. (Finding #2, d) The constitutional guarantee of equal protection appears to post a requirement that an accused person otherwise eligible for deferred prosecution not be denied participation in CPA solely because of prospective inability to make restitution.

*See Chapter 5, page 68.

4. (Finding #3, a) Officials at all stages of the CPA process should make clear, and ascertain that the prospective probationer understands, that successful completion of probation is a requisite for non-prosecution. It should also be made clear that the alternatives to deferred prosecution include the right to a trial by jury and the right to speedy trial, more specifically, these points ought to be made clearly in the "Constitutional Rights Questionnaire."
5. (Finding #3, b) Legislation to guarantee confidentiality of client-staff communications and perhaps to make even the fact of participation in a deferred prosecution program inadmissible at trial, would appear to provide a complete safeguard to the client's constitutional privilege against self-incrimination, and at the same time would contribute to the effectiveness of the deferred prosecution program.

CHAPTER 8

CONSTITUTIONAL AND LEGAL QUESTIONS ON THE DEFERRED PROSECUTION PROCESS

In many cases effective law enforcement does not require punishment or attachment of criminal status, and community attitudes do not demand it. Not all offenders who are guilty of serious offenses as defined by the penal code are habitual and dangerous criminals. It is not in the interest of the community to treat all offenders as hardened criminals; nor does the law require that the courts do so. It is at the charge stage that the prosecutor should determine whether it is appropriate to refer the offender to noncriminal agencies for treatment or for some degree of supervision without criminal convictions. ^{1*}

The Citizens Probation Authority of Genesee County (CPA)² is a program of deferred prosecution and diversion from the criminal court process of selected criminal offenders. A Court of No Record, predecessor of the CPA, was initiated in 1965 by the Genesee County (Michigan) Prosecuting Attorney as a means of relieving the overcrowded conditions of the traditional criminal process and of freeing from the stigma of a criminal conviction those offenders who could benefit from a community treatment plan. The Court of No Record functioned on an informal basis; volunteers from the community screened and worked with probationers through the prosecutor's office. In 1968, the Citizens Probation Authority supplanted the Court of No Record. CPA was established as an autonomous County department with professional staffing, in response to an expanding caseload and an acknowledged need for stability and expertise in the program.

*Footnotes to Chapter 8 appear at end of report, Appendix 1.

The transition from Court of No Record to Citizens Probation Authority represented a major and distinct transformation of the deferred prosecution process in Genesee County. The agency's role was transformed in terms of staffing, clientele, scope of jurisdiction, potential impact on the community and potential impact on various elements of the criminal justice system. The shift from working with a relatively small number of first offenders, 116 clients accepted for probation during 1966- 67, to a substantially larger number, 1335 accepted during 1970- 71, including some previous multiple offenders involved more than a change in scale of operation. As a matter of public policy, the expanded program, including the possibility of certain multiple offenders, represents a potential concern for the possibility of increasing recidivism and lessening of public security. From the constitutional and legal perspective, a different set of problems was posed: Does the deferred prosecution program, given its broadened scope, constitute an abuse of "prosecutorial discretion" within the common law meaning of that term? Are criteria for admission to the CPA program applied equitably and consistently, in accord with the constitutional demand for equal treatment under the law? Are constitutional rights of individuals, both those accepted and those rejected as CPA clients, adequately protected?

Findings of a legal analysis of the operation of the CPA deferred prosecution program are presented in this section. Examination of legal aspects of the CPA program is particularly important because, as pointed out above, the program represents a significant departure from traditional law enforcement treatment programs. A number of pre-trial diversion projects, similar to CPA, funded either by the Law Enforcement Assistant Administration³ or by the United States Department of Labor,⁴ have been set up in recent years in a number of cities around the country. Many are modeled after the Vera Institute's Manhattan Court Employment Project in New York and Project Crossroads in Washington, D.C.

While the programs are not entirely identical in operation, hopefully this discussion of some of the legal issues involved in non-trial disposition of criminal offenders will be of use outside the immediate confines of the CPA situation. It should be noted that descriptions and conclusions in this section are based primarily on legal and documentary analysis, as opposed to other sections of the report which draw more heavily on empirical observation.

Nothing in the Michigan statutes specifically authorizes large scale deferred prosecution for adult offenders. Nor has the Legislature ever laid down standards delineating the scope of the constitutional rights of referred clients, many of whom are not subsequently formally accused of a crime. At the outset, then, serious questions arise regarding (1) enabling law and (2) security of rights guaranteed by the Constitution. Yet the Citizens Probation Authority of Genesee County has operated just such a large and growing program on a professional basis since 1968. Other communities around the state and around the nation have requested information and help in developing their own programs of deferred prosecution. Often they inquire as to the unique status of the CPA and wonder if perhaps a more clearly defined legal mandate is necessary.

At present the CPA program functions as a necessary and proper incident to the exercise of the County Prosecutor's traditional discretion in deciding whether to charge or otherwise dispose of criminal offenders. Whereas there is ample precedent for the concept of deferred prosecution in both the state and federal criminal justice systems, the Genesee County project is distinguishable by some of its unique features.

At the state level, the Holmes Youthful Trainee Act, Mich. Comp. Laws ## 762.11-762.15, provides that a court having jurisdiction over the case may assign a youth between the ages of seventeen and twenty the status of youthful trainee.

The same court may, in its discretion, revoke such status upon which action the criminal case against the youth may be reinstated. The rationale of this legislation is clearly to enable youthful offenders to avoid the stigma that attaches to prosecution and conviction as a criminal. Two facts are important: First, it is a judge who decides whose prosecution ought to be held in abeyance; on the other hand the Genesee County program essentially involves pre-prosecutorial disposition of cases at the initiative of the prosecutor. Second, the Holmes Act benefits only very youthful offenders whereas the benefits of CPA are extended to those particular adult non-violent offenders, the facts of whose cases recommend deferred prosecution treatment, with high potential for rehabilitation.

Also presenting a useful analogy at the local level is the work of the New York City Youth Counsel Bureau. Typically, Bureau representatives intervene at the arraignment stage and ask the court's and district attorney's permission to work with defendants between the ages of sixteen and twenty-one while prosecution is deferred, usually for a period of three months. At the end of this period the Bureau may ask the court to dismiss charges. Seventy percent of the time the Bureau's clients will voluntarily enlist in military service, this apparently being the ground upon which dismissal of charges is granted. Again it is noteworthy that the courts share in the decision whether to make referrals in the New York procedure. The offenders with whom the Bureau is concerned are youthful ones, and the ground for their dismissal is enlistment in military service. In the Genesee County CPA program, the offender is frequently over twenty-one years of age. Referral to the program invariably takes place at the pre-accusatory stage. However, CPA provides a broader base of standardized criteria and a full-scale community treatment program, in addition to the possibility of military enlistment, in contrast to the limited criterion of the New York Counsel Bureau procedure.

At the federal level, the technique of deferred prosecution of selected juvenile offenders has enjoyed wide acceptance since first advocated by the Attorney General in a bulletin issued in 1946. Significantly there is no Congressional legislation on the subject. Basically, the U.S. Attorney, in the exercise of his discretion, defers prosecution of selected juvenile offenders and places them under the supervision of probation officers for definite periods of time, usually a year. The decision whether to defer prosecution is made on the basis of a pre-sentence report prepared by probation officers. The U.S. Attorney reserves the right to terminate probation and reinstate criminal action at any time. Insofar as the federal scheme relies upon pre-prosecutorial diversion in the discretion of the U.S. Attorney pursuant to the recommendation of probation officers the federal program is very similar to that of CPA.

However, two significant differences exist between the two approaches: (1) the ages of the offenders is higher in CPA because "juveniles" are not included and (2) there is more standardization of the criteria for inclusion in the CPA program than the federal program. Only rarely will the federal authorities offer an offender over seventeen years of age the alternative of probation in lieu of prosecution. The operation of the federal system of deferred prosecution only serves to underscore the vast power embodied in the notion of prosecutorial discretion. It may well be that the proper exercise of this discretion without more legislative authority is enough to support the activities of CPA.

Prosecutorial Discretion

A client's participation in CPA takes place before he is actually charged with an offense, often even before formal arrest. Any offender who meets certain criteria, for example, that his suspected offense be a non-violent crime,⁵ and does not represent a "continuing pattern of anti-social behavior," is referred by

the prosecutor's office to CPA for an interview and investigation. If on the basis of these preliminary contacts CPA counselors determine that the program of probation and counseling, as opposed to traditional criminal prosecution, would offer appropriate treatment, and if the suspect voluntarily agrees, the prosecutor will allow the offender to participate in the customary probationary treatment period of up to one year under the supervision of CPA. Given satisfactory completion of probation, which may include a requirement of restitution to the victims of a crime, prosecution is dismissed and any arrest or booking records are given to the probationer. CPA may, after careful analysis of both the individual's potential and the facts of the case, decide at the referral stage that voluntary probation would not be appropriate treatment; the case is then referred back to the prosecutor's office with a recommendation for further consideration and decision by that office. Anyone referred to CPA has the right to withdraw from the program at any time, with the understanding that his case then becomes subject to prosecution. Additionally, probation may be revoked by the prosecutor's office upon recommendation of CPA if the client violates the terms of his probation.

Separation of Powers

Although the duty of the public prosecutor is to represent the state in all criminal proceedings,⁶ one fundamental premise of American criminal procedure is that a public prosecutor may act according to his own discretion in deciding whether to charge an individual with a particular offense.⁷ The precise limits of this discretion have never been clearly defined, in part because of the inherent difficulty,⁸ and, indeed, undesirability⁹ of doing so. While the commentaries have discussed the subject extensively,¹⁰ courts treat it with a broad brush.¹¹ The available material suggests that the scope of the discretion is very broad¹² and that judicial checks on the exercise of that discretion are few.

Nevertheless, the CPA program is a sufficiently basic alteration of the prosecutor's standard operating procedures to bring into question the proper scope of the discretion vested in his office. This program of large scale diversion¹⁴ of suspected offenders from the criminal process cannot be reasonably viewed as an "executive encroachment" upon what might be designated unexercised legislative power. However, if according probation opportunity to some and denying it to others pursuant to established referral criteria¹⁵ might be viewed as a usurpation of the legislature's function of defining classes of offenders and the appropriate treatment for each such class,¹⁶ then to forestall such possible objections and to assure CPA's legality, legislative authorization for the program would appear at first glance to be useful.¹⁷

However, since the basic concept of the broad discretion vested in the prosecutor in the charging function has been well recognized in the law, legislative authorization regarding CPA would appear to be not only unnecessary but questionable in legal terms as perhaps being a legislative encroachment upon the executive power of the prosecutor. Systematic pre-prosecutorial diversion of offenders through CPA is not, properly viewed, an expansion of traditional prosecutorial discretion. To the contrary, CPA actually regulates that discretion within proper bounds. Every prosecutor's office engages in large-scale diversion of offenders through real-bargaining, refusal to prosecute, or similar practices. Where there are no controlling criteria, this diversion takes place on an ad hoc basis and may be influenced by illegal factors such as class or racial prejudice or political pressure. CPA standardizes the operation of prosecutorial discretion through the promulgation of rules and regulations, to the end not of expanding the scope of discretion but of exercising that discretion more intelligently. The prosecutor still makes an individualized, case-by-case determination of whether to prosecute; CPA enables him to have more and better information about

the suspect at the time the decision is made and offers the prosecutor a useful alternative to traditional criminal prosecution.

Delegation of the Charge Decisions

Even though the concept of prosecutorial discretion provides a sufficiently broad legal basis to support CPA as presently administered, the question might be considered as to whether the prosecutor's reliance upon CPA's conclusions with respect to the suitability of clients for participation in the program is permissible within the broad scope of the prosecutor's decision-making power.¹⁸ In a case in which the suspected offender has not been arrested, the prosecutor or his deputy first must decide whether a request for a warrant is appropriate.¹⁹ When lack of sufficient evidence or any other reason makes a request inappropriate, the prosecutor should not refer the suspect to CPA.²⁰ Where a warrant request is appropriate or the suspected offender is already in custody, the prosecutor, according to policy, refers him to the CPA for a pre-charge report providing that the suspected offender meets all of the referral criteria.²¹

Referral, however, does not assure acceptance into the CPA probationary program and consequent suspension of criminal charges.²² The referred offender is immediately scheduled for an initial interview with a member of the CPA staff to determine his (1) willingness to accept moral responsibility for his unlawful acts; (2) consent to a further investigation that will enable the CPA to decide whether his social history prevents acceptance into a community treatment plan;²³ and (3) willingness to fulfill the program's expectations of him.²⁴ Once the CPA staff determines that an individual is amenable to community supervision during a period of probation, it develops a plan directed at short-term treatment of recent behavioral problems. Within three weeks it submits a "pre-sentence type" investigation and report to the prosecutor who then makes his own independent

decision based upon all information available to him as to whether to press charges or defer prosecution during the probationary period.²⁵ The offender who is accepted is asked to enter into and sign an informal agreement with the prosecutor wherein he agrees to abide by the terms of his probation.²⁶

To the extent the above procedure demonstrates a mutual cooperation between the prosecutor and CPA in the initial stages of the charging function, it would appear to be clearly consistent with the traditional legal basis of prosecutorial discretion. In fact, the impartiality of the prosecutor in ultimately making his final charge decision is not impaired and ultimate control of the charge decision still resides in the prosecutor. One basis of prosecutorial discretion is the traditional and well-founded jurisprudential concept that an elected and responsible public official is more capable of making impartial decisions concerning the advisability of bringing charges against an offender than is a private complainant -- the person who in effect made the charge decision under the old English system of criminal justice.²⁷ Permitting CPA contributions of information relevant to the desirable goal of insuring intelligent and enlightened charge decisions by the prosecutor does not vitiate the impartiality of the prosecutor or the prosecutorial process. A prosecutorial decision made in conjunction with the helpful and valid information supplied by a politically neutral²⁸ CPA staff would clearly tend to be made in a more impartial manner than would the decision of the prosecutor acting without any such assistance.

It might be argued that this very impartiality makes the CPA staff insensitive to public opinion regarding the types of persons who ought to participate. Judicial deference to the judgment of public prosecutors has often been justified by the belief that the prosecutor, especially an elected state prosecutor, makes charge decisions that accurately reflect community values.²⁹ But this objection

has no force since: (1) the CPA worker is protected from improper pressures concerning individual cases; (2) the CPA program itself was established by the prosecutor; and, (3) the CPA program is always under the prosecutor's ultimate control, and thus through his elected office provides for sensitivity to community values.

Thus, CPA operates merely as a supplement to the prosecutor's office. It impairs neither the legal justifications of prosecutorial discretion nor the prosecutor's final control over the charge/no charge decision. Rather, CPA enhances the knowledge and expertise necessary for a just decision-making process.

Referral of Multiple and Adult Offenders

In deciding whether to suspend criminal proceedings, the prosecutor must of course consider the public interest.³⁰ Specifically, in the exercise of his discretion a prosecutor must not jeopardize the safety of the public.³¹ That most previous programs for the nontrial disposition of convictable offenders usually have involved first and juvenile offenders³² raises the question whether the prosecutor's practice of referring multiple and/or adult offenders to CPA is violative of public policy and, as such, an abuse of discretion.

The fact that CPA embraces pre-trial dispositions of adult and multiple offenders does not lead to the conclusion that the program is not in accord with public policy. The low rate of recidivism among individuals who have participated in the CPA program (see Chapter 5) supports the assertion the program does not compromise the security of the community. Indeed, the generally higher rate of recidivism among juvenile offenders as compared to adult offenders³⁴ indicates that CPA acceptance of adults endangers the community less, not more, than acceptance of juveniles.

Advantages of Systematization

The President's Crime Commission saw prosecutorial discretion as a potentially useful tool in the administration of justice.³⁵ Three deficiencies in the normal exercise of discretion had to be corrected, however, before that discretion could be utilized in a rational and intelligent manner. Currently, most prosecutors are hampered by a lack of sufficient information on which to base decisions to prosecute or not to prosecute, a lack of clearly stated standards to guide their decision-making, and a lack of established procedures to implement their decision-making.³⁶

CPA strongly serves to remedy these three deficiencies. By requiring that a preliminary interview and an investigation of the suspect be conducted and that a report be submitted to the prosecutor,³⁷ CPA provides the prosecutor with information about the suspect before he makes the final charge/nocharge decision. Further, the prosecutor has set forth explicit, published criteria to guide the decision-makers.³⁸ Finally, there is an established procedure for making the decision.³⁹ The program provides a rational process for deciding which offenders become subject to full criminal sanctions and which to more informal disposition, a process which assumes great importance^{39a} if one accepts the position that not all offenders can or should be processed through the conventional criminal justice system.

Protecting the Constitutional Rights of Participants

The rights of participants in the CPA program and safeguards necessary to protect those rights are examined in this section. The primary concern is with analysis of the availability to participants in the CPA program of constitutional protections guaranteed to individuals formally charged with a crime. A special problem is presented in the immediate case, in considering how best to preserve

the CPA client's fundamental rights without destroying the effectiveness of the CPA treatment plan.

Showing of "Probable Cause"

It is necessary first to examine the constitutionality of an unstated but fundamental premise on which the program is built, that an individual may consent to restrictions of his liberty imposed by governmental authority. The CPA client does voluntarily accept certain limitations on his complete freedom of behavior in return for the benefits accruing to him from deferred prosecution.⁴⁰ In the broadest sense possible, although the client voluntarily agrees to abide by these restrictions, the theory of our government is that the right to liberty is inalienable.⁴¹ One might characterize the legal issue here as being whether, as presently structured, CPA bases participation on an unconstitutional condition. Fourteenth Amendment due process secures to the individual the right to a judicial determination of the sufficiency of the government's grounds when the government attempts to assert involuntary control over him. Participation in the CPA program, on the other hand, involves a wholly voluntary compliance by the client in a mutually agreed upon and cooperative effort with CPA which has reciprocal beneficial consequences for all parties concerned. Although there is no constitutional right of freedom from arrest, it is true that an actual arrest must be carried out in accordance with due process.⁴² The essential difference between the typical arrest situation and the CPA situation is that in the former, in order to obtain a warrant to arrest a suspect the government must show probable cause to believe him guilty of a crime.⁴³ Participation in CPA, on the other hand, usually takes place without the prosecutor's ever obtaining a formal warrant.⁴⁴ It is true that the client may spend as much as a year on CPA probation without a judicial procedural check.⁴⁵

This possible objection to the CPA structure would seem to be unfounded given the following constitutional considerations. The existing policy of the prosecutor's office is that it will not refer a person to CPA when the evidence is insufficient to secure his prosecution.⁴⁶ Because of the constitutional "separation of powers" stated in the Michigan Constitution⁴⁷ and because entrance into the CPA program is purely voluntary on the part of the client, it would appear that there are no constitutional due process requirements calling for an independent judicial determination of the "sufficiency" of the prosecutor's case. In fact, any such independent judicial determination of the "prosecutability" of a criminal action against an accused would constitute a direct and invalid interference with and usurpation of the properly recognized legal discretionary power of the prosecutor in his executive functions by the constitutionally separate judicial branch of State government.⁴⁸

[Contra is Note, 5U. Mich. J.L. Ref. 453,461-62 (1972) which also analyzes the legal basis for the imposition of state control over CPA clients. The student authors conclude that the prosecution should seek arrest warrants (or the equivalent) for CPA clients as well as for those offenders who do not qualify for referral, since due process requires a showing of probable cause to believe that an individual has committed an offense before the state can restrict his liberty to any significant extent. -Ed.]

Representation by Counsel at CPA Proceedings

The Sixth Amendment and Fourteenth Amendment Due Process - There are two possible stages in the CPA program at which the assistance of counsel might be considered important. At the time of the initial referral an attorney's advice would enable a prospective client to make an informed decision as to whether to participate in the program. Also when a CPA client is threatened with revocation of his conditional probation, counsel could assist him in determining if such action is justified where there is a material factual dispute.

The right to counsel in criminal proceedings where the accused faces imprisonment is guaranteed by the sixth amendment,⁵⁰ as made applicable to the states by the due process clause of the fourteenth amendment.⁵¹ The sixth amendment entitles the accused to the assistance of counsel in "all criminal prosecutions," and the Supreme Court has interpreted this provision to mean that an accused is entitled to the guidance of counsel at every critical stage in the proceedings.⁵²

It has been held that the accused must be afforded the assistance of counsel in a state hearing revoking probation and imposing sentence.⁵³ In Mempha v. Rhay the sixth amendment was deemed to require appointment of counsel at every stage where substantial rights were affected.⁵⁴ Although Washington state procedure⁵⁵ directed that the probationer who has violated the terms of his probation receive the maximum sentence prescribed for his original offense, the Court held that substantial rights were involved since the sentencing judge recommended the length of time the person should actually serve before becoming eligible for parole.

The decisions of courts considering whether Mempha compels a state to provide counsel at parole revocation hearings might have relevance as to the right to counsel in CPA proceedings, for the analogies between parole and the CPA program are interesting. Both parole and the CPA program have as one of their primary purposes rehabilitation of the participant. Moreover, although parole proceedings take place after sentence has been imposed while participation in the CPA program occurs prior to the initiation of formal criminal charges, neither involves an adjudication of the suspect's guilt or innocence. A parole board determines whether a prisoner has been sufficiently rehabilitated to be eligible for conditional release. CPA evaluates an individual's psychological and sociological history in order to determine his amenability to a treatment plan.⁵⁶ Unlike a jury which must determine as a matter of fact whether a defendant is guilty of the behavior charged, a parole board, like the CPA staff, subjectively evaluates the character and prospects of the individuals appearing before it.

In view of the functional analogy between CPA and a parole board, it is significant that most federal courts hold that Mempha does not imply a sixth amendment requirement of assistance of counsel at parole, as opposed to probation revocation hearings.⁵⁷ Mempha is often said to stand only for the proposition that counsel

is required at deferred sentencings.⁵⁸ In Beardon v. South Carolina,⁵⁹ the Fourth Circuit suggested that Mempha does not compel states to furnish counsel at parole revocation proceedings, because the burden of providing counsel is heavier than in the case of probation revocation. The court posited that parole revocation proceedings, unlike probation revocation hearings, would probably not occur in the same district as that in which the individual was originally tried. Moreover, more time likely would intervene between trial and parole revocation proceedings than between trial and probation revocation hearings. Therefore, the attorney who represented the releasee at his original trial could also represent him at probation revocation proceedings with little additional effort, but this would not be possible in the case of a parolee. However, this rationale should not be dispositive of the issue whether the sixth amendment requires the presence of counsel at parole revocation.⁶⁰ Moreover, the Beardon court's holding that counsel is not required at parole revocation hearings does not apply to CPA proceedings. The burden of providing counsel to assist the CPA participant either at the time of referral or at a limited hearing prior to revocation would not be as great as that of providing counsel at parole revocation hearings. CPA proceedings take place in the same city in which a subsequent trial would be held and would have to take place within a short time of the trial because the maximum probationary period is one year. The burden of providing counsel at an informal revocation hearing would be even less than that of providing counsel to all potential clients at the referral stage, because, should probation be revoked,⁶² the right to counsel in any event attaches shortly thereafter when the accused appears before a judge or magistrate.⁶³

There is a second and more frequently given reason for the inapplicability of Mempha to proceedings before parole boards. The danger of the loss of certain legal rights, such as the right to appeal and the right to withdraw a plea of

guilty, which was⁶³ major factor motivating the Supreme Court's decision,⁶⁴ does not arise in parole revocation proceedings.⁶⁵ Parole is said to be a privilege, and not a right; and in Hyser v. Reed (D.C. Circuit) it was decided that the assistance of counsel is not secured by the constitution.⁶⁶ The unstated premise of this argument is that the parolee has no legal right to freedom from incarceration before the stated terms of his sentence has expired. Since the CPA client likewise has no "legal" right to be referred for supervision in the community rather than formally charged with his alleged offense, the assistance of counsel would seem to be unnecessary insofar as the sixth amendment is concerned either at the referral stage when the probation privilege is at stake or when the probation privilege is withdrawn.

However, the viability of the right-privilege distinction has become questionable as a result of the decision of the Supreme Court in Goldberg v. Kelly.⁶⁷ In deciding that recipients of welfare benefits were entitled to notice and a hearing before payments could be terminated, the Court rejected the state's argument that the constitutional challenge to procedures preceding withdrawal of benefits could be answered by the assertion that public assistance benefits are a "privilege" and not a "right."⁶⁸

In United States ex rel Bey v. Connecticut Board of Parole,⁶⁹ the Second Circuit recognized the implications of Goldberg when it decided contrary to the majority of the federal circuit courts⁷⁰ that due process required the assistance of counsel at all parole revocation proceedings. The court realized that to rely unanalytically on the "act of grace" theory as was done in Hyser was no longer tenable. Rather it held that whether lack of counsel deprived parolees of due process involved a consideration of three factors: (1) the stake of the parolee in the proceedings; (2) the lawyer's impact on the fairness of the proceedings;

and (3) the foreseeable effects on state institutions recognizing that right.⁷¹

If the Bey analysis is adopted, the analogy between the parole and the CPA participant suggests that, although the assistance of counsel is likely not required at the referral stage of CPA proceedings, due process may require providing counsel at the revocation stage of CPA proceedings, at least where there is a material factual dispute as to whether a violation of probation has occurred. Whereas the three factors set forth in the Bey case are present at the revocation stage of CPA proceedings, perhaps two of these factors are absent at the referral stage. First, in both cases the CPA client's interest in the proceedings in maintaining his continued freedom from prosecution, is, perhaps, similar to that of the parolee.⁷² Second, although neither forensic skill, legal training, nor the advocate's role in a decision-making process qualifies a lawyer for participation in the referral phase of CPA proceedings,⁷³ when revocation of the conditional probation is involved, an attorney might be able to assist CPA in deciding the factual question of whether the client's behavior constituted a violation of the conditions of his probation.⁷⁴ Finally, while at the referral stage counsel might interfere with the atmosphere of rehabilitation necessary, the participation of counsel in a hearing to decide whether to continue the CPA client's probation or initiate formal criminal charges would not unduly disrupt the CPA program.⁷⁵ Counsel would not interfere with the relationship between the client and his probation officer, since the right to counsel would not attach until revocation seemed imminent.⁷⁶

Fourteenth Amendment Equal Protection - Some state courts, including the Michigan Court of Appeals, hold that if due process does not require the assistance of counsel at a limited parole revocation hearing, fourteenth amendment equal protection⁷⁷ requires the state to furnish counsel at public expense to parolees

threatened with revocation of parole.⁷⁸ In Warren v. Michigan Parole Board,⁷⁹ the Michigan court overruled an earlier decision⁸⁰ that held that neither due process nor the sixth amendment entitled an indigent parolee to representation by counsel. The Warren case decided that when a statute⁸¹ permits the parolee to be represented by counsel, the state's failure to appoint counsel to represent indigent parolees in cases where there is a factual dispute as to whether there was a violation of parole constitutes a denial of equal protection.⁸² While no statute applies to proceedings before CPA, CPA permits retained counsel to attempt to persuade it to continue probation,⁸³ and the Michigan court's reasoning would seem to dictate that failure to appoint counsel at a probation revocation hearing, at least when there is a material factual dispute, would deny indigent clients equal protection of the law. In the absence of a material factual dispute, the Warren holding does not decide whether it would be appropriate to appoint counsel.⁸⁴

Also, it would appear that Warren would not necessitate that counsel be provided at the initial referral stage of the CPA program. At present, retained counsel can accompany potential clients to the initial interview but are not allowed to alter the probation decision which is strictly based on referral criteria.⁸⁵ The lawyer's role is primarily one of advising his client on whether to accept conditional probation or to contest the charge. In Warren, the court noted that an advocate could attempt to persuade a parole board to parole⁸⁶ and that failure to provide counsel to all indigents would deprive them of equal protection of the laws.⁸⁷ The interests of the indigent CPA candidate would be adequately protected by providing counsel upon request.⁸⁸

Restitution Requirement

The willingness and ability of an offender to make restitution is a most important factor in the prosecutor's decision whether to suspend prosecution in favor of

voluntary probation in the CPA program.⁸⁹ If possible, restitution should be made immediately so that the complainant is completely repaid prior to the time the prosecutor makes his final decision to accept or deny probation.⁹⁰ However, if money is still owed at the time the prosecutor must make a decision, he evaluates efforts made by the CPA candidate to date and the expectation of his making restitution within the normal probationary period.⁹¹ In addition the CPA candidate is expected to pay a one hundred dollar probation fee before entering the CPA program, except that payment is not required in hardship cases.⁹²

The restitution requirement and probation fee conform to conditions permitted by statute in Michigan for court-imposed probation.⁹³ However, the restitution requirement, in extremely rare cases, may result in exclusion of indigents from participation in the CPA program. This possibility raises the issue whether an otherwise referable indigent is denied equal protection of the law by CPA procedures that permit a person with means in a similar position to be eligible for probation.

In Griffin v. Illinois⁹⁴ the Supreme Court rejected by implication the argument that the state is not required to equalize financial disparities⁹⁵ and held that failure to furnish at public expense a trial transcript necessary for appeal denied the indigent defendant equal protection of the law.⁹⁶ In Douglas v. California,⁹⁷ decided six years later, the Court held that an indigent could not be denied the assistance of counsel on appeal. Therefore, in the context of criminal proceedings, a statute both fair on its face and nondiscriminatorily administered but which leads to one result for the wealthy and another for the poor may violate the equal protection clause.

Two recent Supreme Court decisions, Williams v. Illinois⁹⁸ and Tate v. Short,⁹⁹ rely on the Griffin-Douglas analysis for the decision that imposition of a fine

as a sentence and automatic conversion of it into a jail term solely because of inability of the defendant to pay the fine immediately in full denies an indigent defendant equal protection. Since confinement was contingent upon ability to pay, the state imposed different consequences on two categories of persons without meeting its burden of showing a substantial and legitimate purpose justifying the discriminatory result. An important factor in both decisions was the state's lack of a penological interest in the incarceration of the indigent defendants involved.¹⁰⁰ In both cases the Court also emphasized the available alternatives to which the state could resort to avoid imprisoning indigents for involuntary nonpayment of fines and implicitly approved procedures for installment payments of fines.¹⁰¹

Although inability to make restitution does not result in automatic incarceration of a CPA candidate, the rationale for Williams and Tate nonetheless applies. If an otherwise eligible offender is automatically denied the rehabilitative advantages of participation in the CPA program solely because of his inability to make restitution, the state has established a procedure leading to one result for the indigent defendant and another for the wealthy. It should be noted that such situations, in fact, have occurred with extreme rarity in the CPA program.¹⁰² Such a result may deny equal protection unless the state can demonstrate that the requirement of restitution is rationally related to a substantial state interest.¹⁰³

Certain significant state interests are perhaps unique to the CPA restitution requirement. The requirement may remind the CPA client of his wrongdoing and so increase his awareness of an obligation to society.¹⁰⁴ Therefore, restitution may be a necessary part of the CPA rehabilitative program. Furthermore, exclusion of indigents from the program is not automatic, since payment in installments over reasonable time periods (beyond the normal one year probation period) should

therefore preclude a finding that the restitution requirement deprives indigents of equal protection of the laws.¹⁰⁶

Nonetheless, providing for payment of restitution in installments does not insure that a bona fide unskilled and unemployable person will not be excluded because of his probably prospective inability to make restitution.¹⁰⁷ If the accused qualifies for referral to the CPA on all other grounds, to deny referral solely because his unemployable status makes the payment of restitution improbable clearly discriminates against the poor and constitutes a denial of equal protection according to the Griffin and Douglas analyses. Although the issue is unlikely to be litigated given the difficulty a rejected individual would have in proving that he was otherwise eligible for probation, fairness would require that restitution as a condition of probation be waived or reduced in such cases after all effort at a fair resolution of the circumstances has been made.

Speedy Appraisal of the Charge

If the CPA client has a constitutional right to be speedily apprised of the charge against him being held in abeyance, it would derive from the sixth amendment right to a speedy trial¹⁰⁸ as made applicable to the states by the fourteenth amendment.¹⁰⁹ In United States v. Marion¹¹⁰ the United States Supreme Court indicated that there is no such sixth amendment right to be speedily charged until either a formal indictment or information is filed or the suspect is subjected to the actual restraints imposed by arrest and detention to answer a criminal charge.¹¹¹ Nevertheless, the Court did concede that if delay in charging a suspected offender were shown to have caused "substantial prejudice" to the accused's rights to a fair trial and that the delay was a "purposeful device"¹¹² to gain a tactical advantage over the accused, the due process clause of the fifth amendment¹¹³ would require dismissal. Although the Court stipulated

that a decision on whether delay had impaired the accused's right to a fair trial would involve a delicate judgment based on the circumstances of the individual case,¹¹⁴ decisions of several lower federal courts suggest that certain factors are relevant to a finding of a violation of the fifth amendment: possible prejudice to the accused because of his inability to recall details relevant to a defense against the charge;¹¹⁵ the unavailability of witnesses necessary to an adequate defense;¹¹⁶ and purposeful aspects of the government's delay.¹¹⁷

By way of analogy these considerations demonstrate the possible prejudicial effect of failing to inform a deferred prosecution participant of the specific offense with which he may be subsequently charged. Failure to notify such a person, at the very outset, of the crime for which he was referred, may hamper his ability to recall details essential to an adequate defense if proceedings are later reinstated.¹¹⁸ Although the problem of witnesses becoming unavailable would still exist, at least the accused individual who was informed of the charge could soon thereafter discuss relevant details with potential witnesses and thereby increase the probability of their remembering details relevant to a possible defense.¹¹⁹ Moreover, full disclosure would discredit allegations of purposeful delay¹²⁰ brought against the state by accused persons who ultimately were prosecuted for an offense initially disposed of by deferred prosecution.

Since participation in CPA precedes and usually obviates the need for initiation of formal proceedings involving the filing of an indictment¹²¹ or an information,¹²² the CPA client is never formally informed of the charges against him.¹²³ Nevertheless, CPA does adequately safeguard any due process right to be speedily apprised of the charge which the client, unlikely, but may arguably, possess.

The client is informally apprised of the offense giving rise to his referral during

the initial intake interview with a CPA worker.¹²⁴ After fully discussing his unlawful behavior with the CPA worker, the client is required to complete a "Constitutional Rights Questionnaire" which includes a question designed to determine whether he understands the nature of his purported crime.¹²⁵ Therefore, the CPA client, though not given the opportunity to read a formal indictment or information at the time of referral, is notified with reasonable specificity of the offense. It appears quite certain that delays preceding the initiation of a formal criminal action for a CPA client would not constitute denial of due process.

Reinstatement of Criminal Proceedings

This chapter has so far dealt with the general legal basis for CPA -- what in the law authorized such a program, the rights of clients while participating in the program, and the safeguards necessary to preserve these rights. This section focuses on the ultimate sanction of the CPA: the reinstatement of criminal proceedings. Or perhaps for "reinstitution" one should read "institution;" for recall that a client's participation in the CPA program, if he is accepted, begins even before he is formally charged with a criminal offense. If the client adheres to the terms of his probation, the entire matter is officially forgotten. If, however, a client violates the terms of his probation or voluntarily withdraws, the matter is referred to the county prosecutor, who may decide to press charges.¹²⁶

The following discussion examines the constitutional questions implicit in such a decision in terms generally of (1) what warnings must initially be given the CPA participant in light of the possibility of subsequent prosecution; (2) whether there are limits on CPA's power to recommend termination of a client's probation against his will; and (3) whether a client forfeits, without having legally waived, any constitutional rights by agreeing to cooperate with CPA.

Warning of Possible Revival of Criminal Charges - One issue is whether a deferred prosecution client has a right to be warned of the possibility of revival of criminal charges before consenting to participate in the program. Due process has been held to require that an accused have the right to prepare his defense when the evidence against him is fresh.¹²⁷ Therefore, failure to warn the client of the possibility of reinstatement of criminal charges based on the offense that gave rise to his referral would deny him notice of the charge and thereby deny him due process.¹²⁸ Furthermore, by participating in a deferred prosecution program the client has in effect waived his sixth amendment right to a speedy trial.¹²⁹ Under the due process clause, an essential element of an effective waiver¹³⁰ of a constitutional right is knowledge of the possible consequences.¹³¹ If the deferred prosecution program participant is ignorant of the possibility of ultimately being charged with his original offense, his decision to accept voluntary probation and waive his sixth amendment right to a speedy trial can scarcely be "intelligently" made.

CPA does effectively disclose the possibility of initiation of formal criminal proceedings if the client voluntarily withdraws or violates the terms of his probation. At the intake interview CPA provides potential clients with a "Constitutional Rights" booklet which sets forth this information in bold face type.¹³² The CPA interviewer discusses the booklet with the client in detail in order to be sure that he understands the information contained therein. However, the "Constitutional Rights Questionnaire" which the client is required to complete at the end of the discussion does not inquire as to whether the individual understands that non-prosecution is contingent upon successful completion of probation. Such a question should be included to be sure that the accused cannot subsequently attack his waiver on the ground that it was not intelligently made.

The same reasoning compels the conclusion that at the time of referral the candidate should be told of his alternative right to a jury trial. By agreeing to accept one year's voluntary probation, the CPA client temporarily waives his sixth amendment right to a jury trial. The jury trial he receives at a later date may not be of as high quality as a jury trial at the time of referral would have been when the evidence for an against him was fresher.¹³³ The client therefore should be informed of the alternative of a jury trial in order for permanent waiver of fifth amendment rights to be effective.¹³⁴

The CPA "Constitutional Rights" booklet saliently lists the right of a trial by jury as one of the constitutionally guaranteed rights of a criminally accused person. In addition, the CPA questionnaire includes a question asking the potential client whether he understands that he has a right to answer any accusations made against him in a court of law.¹³⁵ In order to protect the CPA client against unintelligent waiver of his right to a trial by jury, this question could be altered slightly by adding the phrase "before a jury composed of your equals" to the question.

Prior Adversary Hearing - One aspect of participation in CPA is that the government does not relinquish its right to prosecute until after the client has satisfactorily completed probation. This immunity from prosecution is a matter of grace, given by the government in exchange for good behavior and participation in the program; it is therefore revocable during the probation period. While the threat of reinstatement of criminal proceedings is a reasonable sanction for the government to retain, constitutional fairness might seem to require safeguards against the arbitrary use of this power. The United States Supreme Court in Escoe v. Zerbst,¹³⁶ a 1935 opinion that has never been overruled, held that the Constitution did not require a probation-revocation hearing. The Court reasoned

that because probation is an "act of grace," it may be granted on whatever conditions the legislature chooses.¹³⁷ This is, of course, the classic right-privilege distinction since abandoned by the Court in other contexts.¹³⁸

Although some courts still follow the old precedent,¹³⁹ the better-reasoned opinions, including decisions in at least two federal courts of appeals,¹⁴⁰ hold that modern notions of due process require a hearing before probation or parole can be revoked. In Hahn v. Burke,¹⁴¹ for example, the United States Court of Appeals for the Seventh Circuit declined to follow Escoe, finding that the "holding" that probation is a privilege and can be granted on any conditions whatever was in reality only dicta, indeed dicta the basis for which "has all but been obliterated by recent Supreme Court opinions."¹⁴² Applying the balancing test of Goldberg v. Kelly,¹⁴³ the court determined that due process required a hearing prior to probation revocation.¹⁴⁴

Arguably, the Hahn holding does not apply to the CPA situation, since the traditional probationer faces imprisonment should his probation be revoked, while the CPA probationer faces only a criminal prosecution and the possibility of incarceration. But immunity from possible loss of liberty is a substantial interest. Moreover, this interest is hardly outweighed by the slight governmental interest in "summary adjudication."¹⁴⁵ True, the government need not grant immunity from prosecution; but if it does, it should not be able to revoke that immunity without meeting the requirements of due process, which in these circumstances would seem to entail a hearing at which the client could present his side of the case.

Michigan Compiled Laws Annotated section 771.4 guarantees a probationer a hearing before his probation can be revoked.¹⁴⁶ It must be noted, however, that

that statute applies by its terms only to court-imposed probation, not to a CPA-type program. The explanation for this is probably not that the legislature meant to exclude other forms of probation from the guarantee, but that in 1947 when the law was passed, programs like CPA did not exist. The legislature was thinking only in terms of traditional court-imposed probation. In any event, the policy thrust of the statute clearly indicates that the legislature was concerned with guaranteeing rights to probationers and not with limiting that guarantee to a particular type of probation. Thus, though courts have never been asked to apply the hearing requirement of the statute to situations other than the revocation of the typical probation imposed by the sentencing court,¹⁴⁷ it would not be difficult for them to construe the section to apply to the CPA context, using the legislative intent indicated above as the basis for its reasoning.

Michigan statute law, then, would appear to require at least a limited hearing before CPA probation could be terminated without the client's consent. Even if the courts should find section 771.4 inapplicable to CPA probation, recent constitutional decisions indicate that modern notions of due process, quite independently of any statutory mandate, require limited hearing in those situations where a material factual dispute as to whether a violation of probation has, in fact, occurred, before CPA probation can be revoked.¹⁴⁸ Of course, if probation is being revoked because the client committed a crime while on probation, the trial which resulted in his conviction on that second offense would satisfy the hearing requirement.

Speedy Trial - A CPA client whose probation was terminated after, say, ten months might argue at a subsequent trial on his original offense that the government had intentionally delayed his trial, that his recollection of the events in question was no longer fresh, and that his ability to find witnesses had been

hampered. The argument would conclude that the prosecution denied him his right to a speedy trial by encouraging and permitting his participation in the CPA program. If such an argument were accepted, the government's retention of its right to press charges on the CPA client's original offense upon premature termination of probation would be of little use.

The right to a speedy trial is guaranteed by the sixth amendment,¹⁴⁹ as made applicable to the states by the fourteenth amendment.¹⁵⁰ In addition, the Michigan constitution,¹⁵¹ as implemented by statute,¹⁵² provides the same guarantee. However, it appears fairly certain that this right would not bar a trial after revocation of CPA probation, either because it never attached or because the defendant will be deemed to have waived the right.

Since a client's participation in CPA takes place entirely before he is formally charged, it seems doubtful that his right to a speedy trial ever attaches. The Supreme Court recently held that the constitutional right to a speedy trial does not vest until after prosecution is instituted.¹⁵³ Rather, delays in arrest and indictment are controlled by the applicable statute of limitations.¹⁵⁴

Even if a court were unlikely to find that the right to a speedy trial attaches at the point an individual is first referred to CPA,¹⁵⁵ it could go on to find that the client-defendant effectively waived that right under all the circumstances. The right to a speedy trial is easily waived,¹⁵⁶ especially in Michigan where the courts have adopted what might be termed a presumption of waiver. The right to a speedy trial never even attaches unless and until a defendant demands it.¹⁵⁷ In the CPA context, therefore, waiver would work to bar a client-defendant from asserting that his right to a speedy trial had been denied. The actions of the CPA client constitute more than mere failure to demand a speedy trial, which alone would be enough to waive the right. By agreeing to participate in the CPA

program, the client affirmatively acquiesces in whatever delay occurs.¹⁵⁸

Self-Incrimination - The fifth amendment privilege against self-incrimination,¹⁵⁹ made applicable to the states through the due process clause of the fourteenth amendment,¹⁶⁰ is repeated verbatim in the Michigan constitution.¹⁶¹ Since the right is a personal one, it can be waived when a witness, with knowledge of the privilege, voluntarily gives testimony on matters as to which he could claim the privilege.¹⁶² There are several possible theoretical problems regarding the constitutionally guaranteed protection against self-incrimination where a defendant stands trial subsequent to the premature termination of his CPA probation.

First, CPA participants uniformly assume moral responsibility for their alleged offenses.¹⁶³ A statement admitting guilt, made by the defendant to his CPA staff worker, might later be introduced at trial and used against him. The admission required¹⁶⁴ of the CPA participant is in no sense an admission of legal guilt. It is merely an assumption of personal responsibility for the physical actions which constitute the alleged offense, without regard to any justifications or legal defenses which might be available at an actual trial. Thus, at no time is the CPA participant required to confess to a crime, in the legal sense of that phrase. In addition, all such statements are made only in oral conversation with the probation officer; written statements are not taken.¹⁶⁵ Nevertheless, testimony of the probation officer concerning admissions made at the intake interview could be very damaging to the defendant at a later trial.

Second; a defendant's participation in the CPA program could itself imply guilt quite apart from any specific statements made by the defendant while a CPA client. If the jury were told of CPA's routine "assumption of responsibility" requirement, the fact of participation would be especially damning. Even without such detailed

knowledge of the program, a jury might very well reason that an innocent man would have demanded a trial from the beginning, and that the defendant, having participated in CPA, must be guilty.¹⁶⁶

Because the Supreme Court's holding in Miranda v. Arizona¹⁶⁷ would seem to make such self-incriminating evidence inadmissible at a subsequent trial as direct proof of the defendant's guilt, there is no constitutional requirement that CPA warn participants of their right not to incriminate themselves. Moreover, because advising the participant of his right to remain silent would be detrimental to the purposes of CPA,¹⁶⁸ no such warnings are given. Nevertheless, there is still a possibility that such evidence would come before the jury for purposes of impeaching the defendant should he decide to testify on his own behalf.¹⁶⁹ Moreover, recent cases challenging the scope of the Miranda holding foreshadow the possibility of a Supreme Court decision restricting Miranda and perhaps making the statements of CPA clients admissible at trial.¹⁷⁰

The one person who is in a position to make these theoretical problems for CPA participants real ones is the prosecutor. However, it seems clear that if the prosecutor were to make a systematic effort to use CPA-obtained information as incriminating evidence at subsequent trials, the willingness of suspected offenders to participate in CPA would be significantly diminished. The prosecutor instituted CPA and is committed to the program's success. Thus it seems unlikely that he would either risk or seek destruction of his own program, a program that is of great benefit to his office,¹⁷¹ by exploiting it for the sake of criminal convictions.

Nevertheless, the limited theoretical possibilities for distorting the intended purpose of deferred prosecution do exist. One way to protect CPA participants against

such possibilities would be to advise them at the intake interview of their right not to incriminate themselves. It is obvious, though, that one result of adopting such a policy would be to inhibit communication between the CPA participant and his interviewer. It would change the atmosphere of the interview from cooperation to adversariness. Since CPA's primary purpose is rehabilitative, it is important to maintain a relationship of confidence and full disclosure between the client and the CPA worker. To give Miranda-type warnings would be counter-productive to the maintenance of such a relationship.

An alternative and far superior method for protecting the CPA participant, and one that would advance rather than inhibit the purposes of the program, would be the enactment of a state statute making all CPA matters, even the fact of participation itself, privileged material and inadmissible at trial. Not only would such a statute prevent the rather remote possibility of the prosecutor's utilizing CPA related information against CPA participants who later become defendants,¹⁷² but it would also encourage full communication between participant and counselor, and further it would make the law's treatment of those on CPA probation consistent in this regard with its treatment of those serving traditional probation.¹⁷³

SECTION E: APPENDICES

Appendix 1.

FOOTNOTES TO CHAPTER 8

¹President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: The Courts 5 (1967).

²Genesee County encompasses the metropolitan area of Flint, Michigan.

³CPA has been funded in part by LEAA. LEAA has also received applications for grants for similar programs in other cities.

⁴The Manpower Administration of the Department of Labor provides funds because many of the diversion projects place a heavy emphasis on education and training, viewing steady employment as the best means of keeping offenders from becoming repeaters. Currently diversion programs funded by the Department of Labor are operating in Minneapolis, Baltimore, Boston, Newark, Cleveland, Atlanta, San Antonio, and San Francisco.

⁵See note 21 and accompanying text, infra.

⁶Michigan. Comp. L. Ann. §49.153 (1967).

⁷See K. Davis, Discretionary Justice 188-191 (1969).

⁸See Pugach v. Klein, 193 F.Supp. 630, 634-5 (S.D. N.Y. 1961), where the court discusses the myriad and complex factors which the prosecutor must consider in making his charge decision. The varying weight to be accorded each factor in individual decisions makes it impossible to define clear limits to these discretionary value judgments.

⁹The very multitude of factors which makes precise limits hard to define is also an argument for not attempting such a definition. Since the purpose of discretion is to make possible a consideration of shifting factors of varying importance, strict mathematical formulae may only promote injustice. The counter-argument is that wide-ranging discretion, by allowing for individualized decisions at the expense of the rule of law, promotes injustice. See generally, K. Davis, Discretionary Justice (1969).

¹⁰For a concise useful discussion see LaFave, The Prosecutor's Discretion in the United States, 18 Am. J. Comp. L. 532 (1970). Other recent articles include: Comment, Prosecutorial Discretion in the Duplicative Statutes Setting, 42 U. Colo. L. Rev. 455 (1971); Comment, Prosecutorial Discretion in the Initiation of Criminal Complaints, 42 S. Cal. L. Rev. 419 (1969); Kaplan, The Prosecutorial Discretion--A Comment, 60 N.W.U.L. Rev. 174 (1965); Nedrud, The Role of the Prosecutor in Criminal Procedure, 32 U.M.K.C.L. Rev. 142 (1964). The classic work remains Baker, The Prosecutor--Initiation of Prosecution, 23 J. Crim. L. & Crim. 770 (1933).

¹¹ See, e.g., *People ex rel Leonard v. Papp* (Mich. Sup. Ct. no. 53310, December 10, 1971) (judge has no authority to accept a guilty plea to a lesser offense over the objection of the prosecutor); *Taliaferro v. Locke*, 182 Cal. App. 2d 752, 6 Cal. Rptr. 813 (1960) (mandamus would not lie to compel district attorney to prosecute at the request of a third person); *U.S. v. Cox*, 342 F. 2d 167 (5th Cir.) cert. denied sub nom. *Cox v. Hauberg*, 381 U.S. 935 (1965) (prosecuting attorney belongs to executive branch of the government and courts will not interfere in decisions within his discretion); *Moses v. Kennedy*, 219 F.Supp. 763 (D.D.C. 1963) (mandamus would not lie to compel attorney general to prosecute at the request of a third person); *Pugach v. Klein*, 193 F. Supp. 630 (S.D. N.Y. 1961); *State v. Cory*, 204 Or. 235, 282 P. 2d 1054 (1955); *People v. Birmingham*, 13 Mich. App. 402, 164 N.W. 2d 561 (1968); *Bloss v. Williams*, 15 Mich. App. 228, 166 N.W. 2d 520 (1968). Cf. *Lloyd v. U.S.*, 343 F. 2d 242 (Bazelon, C.J., dissenting) (D.C. Cir. 1964) cert. denied 381 U.S. 952 (1965).

¹² The scope of the prosecutor's discretion is usually held to be limited only by the constitutional requirements of equal protection. The courts realize that the prosecutor cannot bring charges against every law violator, and they accept many justifications for selective enforcement of the laws. The prosecutor abuses his discretion only where there is an intentional, purposeful discrimination. Thus, a criminal conviction will be reversed where "the selective enforcement is designed to discriminate against the persons prosecuted, without any intention to follow it up by general enforcement against others. . . ." *People v. Utica Daw's Drug*, 225 N.Y.S. 2d 128, 136 (App. Div. 1962). See also *Two Guys From Harrison-Allentown, Inc. v. McGinley*, 179 F.Supp. 944 (E.D.Pa. 1959), aff'd, 366 U.S. 582 (1961), an action to enjoin selective enforcement of Sunday blue laws, citing *Snowden v. Hughes*, 321 U.S. 1 (1943).

¹³ In court it is difficult to challenge successfully the prosecutor's exercise of discretion. A person against whom prosecution is initiated has the heavy burden of showing purposeful discrimination. See note 9 *supra*. A suspect against whom prosecution is not instituted is hardly likely to complain; and courts will seldom let a third party, such as the victim of a crime, force the prosecutor to act.

The Court cannot compel him to prosecute a complaint, or even an indictment, whatever his reasons for not acting. The remedy for any dereliction of his duty lies, not with the courts, but, with the executive branch of our government and ultimately with the people.

Pugach v. Klein, 193 F.Supp. 630, 635 (S.D. N.Y. 1961). See also *Moses v. Kennedy*, 219 F.Supp. 762 (D. D.C. 1963)

¹⁴ In 1970, CPA received 1,000 new referrals from the prosecutor's office. Citizens Probation Authority Statistical Comparison--Yearly Summary, on file with the University of Michigan Journal of Law Reform.

¹⁵ For a discussion of these criteria and the decision-making process, see notes 20-26 and accompanying text, *infra*.

¹⁶ Unlike the United States Constitution, the Michigan Constitution contains a specific "separation of powers" clause.

The powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.

Mich. Const. art. 3, §2.

¹⁷ An example is provided by a Maryland statute that provides courts with authority to impose probation without verdict. Md. Ann. Code art. 27, §641. Note that the Maryland statute gives this power solely to the court, not to the prosecutor to be exercised as an aspect of prosecutorial discretion.

¹⁸ The prosecutor usually accepts a recommendation for referral made by the CPA. In 1968, 55 out of a total of 391 referrals made to the CPA were rejected. In 1969, 143 out of 743 referrals were rejected, whereas in 1970 the proportion of rejections declined further to 144 out of 1,000. Citizens Probation Authority Statistical Comparison--Yearly Summary (on file with the University of Michigan Journal of Law Reform).

¹⁹ Mich. Comp. L. Ann. §764.1

²⁰ Prosecutor's Policy and Procedures for Referral to Citizens Probation Authority of Genesee County (mimeographed materials on file with the University of Michigan Journal of Law Reform) / hereinafter cited as Prosecutor's Policy and Procedures./

²¹ Cases in which referral will not be made are offenses involving criminal conspiracies not of an incidental or temporary nature and crimes involving physical assault or intimidation. Minor sex offenses which do not seriously threaten a person's well-being, such as indecent exposure and statutory rape between consenting parties, are referable. Cases of carrying concealed weapons are referable unless the behavior of the accused entailed necessarily injurious consequences. Cases of possession of soft narcotics, which until recently were referable to CPA, are now referred to a separate agency, the Genesee County Regional Drug Abuse Commission. Prosecutor's Policy and Procedures.

²² Summary Description of the Citizens Probation Authority (mimeographed materials on file with the University of Michigan Journal of Law Reform) / hereinafter cited as Summary Description./

²³ If the referred offender's personal history indicates that the instant offense was part of a continuing pattern of anti-social behavior, a recommendation that the referred offender normally not be admitted to CPA probation will be made to the prosecutor. Summary Description.

²⁴ These expectations are generally goals of rehabilitation, such as reforming negative attitudes toward law and authority, Prosecutor's Policy and Procedure.

²⁵ See note 18 supra.

²⁶ The usual conditions of probation will include requirements that the client not leave the state without the written consent of the probation counselor, that he report periodically to his probation counselor, and that he not associate knowingly with law violators. In appropriate cases, the client may also be required to continue in school or to make restitution. Citizens Probation Authority Voluntary Probation Agreement (on file with the University of Michigan Journal of Law Reform).

²⁷ See F. Miller, Prosecution: The Decision to Charge a Suspect with a Crime 295 (1969). See e.g., State v. Wilson, 24 Kan. 189 (1880), Meister v. People, 31 Mich. 99 (1875), and Biemel v. State, 71 Wis. 444, 37 N.W. 244 (1888). Numerous judicial opinions denying the right of private citizens to compel prosecution reflect the same policy. See e.g., United States v. Brokaw, 60 F.Supp. 100, 101 (S.D. Ill., 1945); State ex rel. Steeb v. Holovachka, 236 Ind. 565, 570, 142 N.E. 2d 593, 596 (1957); Hermann v. Morlidge, 298 Ky. 632, 183 S.W. 2d 807 (1944); Jummonville v. Herbert, 170 So. 497 (La. Ct. App. 1936); Hassan v. Magistrate's Court, 20 Misc. 2d 509, 511-512, 191 N.Y.S. 2d 238, 241 (Sup. Ct. 1959) appeal dismissed, 8 N.Y. 2d 750, 186 N.E. 2d 102, 201 N.Y.S. 2d 765, cert. denied, 364 U.S. 844 (1960). See also cases cited in note 13 supra.

²⁸ Since its staff is not elected, there is little possibility that political expediency will influence CPA's decision to accept a given individual.

²⁹ F. Miller, supra, note 27, at 154-156.

³⁰ The prosecutor must decide whether public policy would justify the prosecution of acts that fall within the terms of a criminal statute. See, e.g., Howell v. Brown, 85 F.Supp. 537, 540, (D. Neb. 1949), and Hassan v. Magistrate's Court, 20 Misc. 2d 509, 514, 191 N.Y.S. 2d 238, 243 (Sup. Ct. 1959). Although courts rarely state explicitly that the interest of the community is a major factor in the charge decision, it is clear that in practice it is. See, F. Miller, supra note 27, at 287-292. See also Pugach v. Klein, 193 F. Supp. 630-634 (S.D. N.Y. 1961)

³¹ Prosecutor's Policy and Procedures states that "all rehabilitative endeavors of this program are subordinate to the primary and overriding concern for public security."

³² See the discussion of such programs in President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: The Courts 6 (1967).

³³ The rate of recidivism has consistently remained under four per cent, with many of those being so-called "technical violators." Summary Description defines recidivism differently than this report and thus comes to slightly different conclusions.

³⁴ President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society 55 (1967).

³⁵ Id., at 133.

³⁶ Id.

³⁷ See notes 23-25 and accompanying text supra.

³⁸ See notes 20-24 and accompanying text supra.

³⁹ See notes 19-26 and accompanying text supra.

^{39a} One important consequence: The process makes the exercise of direction more controllable, not only in the sense of managerial control by an executive (the prosecutor) over subordinate workers (the prosecutor's staff), but also in the sense of making the prosecutor's decision more amenable to judicial review. The creation of CPA and the promulgation of regulations have, in effect, established a new administrative agency. Arguably, therefore, in a proceedings for judicial review of administrative action, a person who fits within the class of persons described in the CPA program's published criteria for admission should be able to assert due process and equal protection rights if he is denied admission to the program on illegal grounds. The self-imposed rules of the program currently states that "failure to refer an offender who meets the referral criteria pre-empts the authority of the prosecuting attorney and denies that offender equal opportunity before the law." Prosecutor's Policy and Procedures.

⁴⁰ See note 26 supra.

⁴¹ This, of course, is an idea basic to the American democracy, appearing, for example, in the Declaration of Independence.

⁴² In Beauregard v. Wingard, 230 F. Supp. 167 (S.D. Cal. 1964), the court, in considering whether an arrest by state officers without due process of law gave rise to a cause of action under a federal civil rights statute, said at 185: "There is no question that freedom from arrest. . . except through due process is a right 'implicit in the concept of ordered liberty', and guaranteed by the Fourteenth Amendment against invasion by the State."

⁴³This requirement of a showing of probable cause is based on the fourth amendment, which was held to apply to arrest as well as search warrants in *Giordenello v. U.S.*, 357 U.S. 480 (1958). See also *Brown v. Fauntleroy*, 442-F.2d 838 (D.C. Cir. 1971), and *Pugh v. Rainwater*, 332 F. Supp. 1107 (S.D. Fla. 1971).

⁴⁴For a description of the CPA procedure, see text accompanying notes 19-26 *supra*.

⁴⁵Arguably, this deficiency has no harmful practical effect. Anyone who is so free even of the appearance of guilt that the government could not show probable cause would probably refuse participation in CPA, thus bringing into play all the procedural safeguards of the normal criminal process.

⁴⁶See text accompanying note 20 *supra*.

⁴⁷See note 16 *supra*.

⁴⁸See note 11 *supra*.

⁴⁹This new legal standard has been stated quite recently by the U.S. Supreme Court in the case of *State ex rel. Argersinger v. Hamlin*, ___ U.S. ___ (decided June 12, 1972) (Docket #70-5015)

⁵⁰U.S. Const. Amend. VI.

⁵¹*Gideon v. Wainwright*, 372 U.S. 335 (1963); *Hamlin*, *supra* at note 49. Furthermore, the Michigan Constitution, art. I §20, as implemented by statute, Mich. Comp. Laws Ann. §776.16, echoes this guarantee. See also Mich. Comp. Laws Ann. §768.7 providing for the appointment of counsel to represent prisoners accused of crimes.

⁵²The U.S. Supreme Court has yet to indicate definitely that stage of the proceedings at which the right to counsel attaches. It has, however, held that counsel must be furnished at any critical stage and that such a stage is "any stage of the prosecution, formal, or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial." *United States v. Wade*, 388 U.S. 218, 226 (1967).

⁵³*Mempha v. Rhay*, 398 U.S. 128 (1967).

⁵⁴*Id.* at 134.

⁵⁵Wash. Rev. Code §§.95.010, 9.95.030.

⁵⁶The CPA staff decides whether the alleged offense is part of an established pattern of anti-social behavior or an isolated incident of unlawfulness. The individual's willingness to accept responsibility for his previous unlawful behavior is an important factor in the CPA's decision to treat an offender initially referred by the prosecutor. Summary Description.

⁵⁷See, e.g., *Shaw v. Henderson*, 430 F.2d 1116 (5th Cir., 1970); *Rose v. Haskins*, 388 F.2d 91 (6th Cir. 1968), cert. den., 392 U.S. 946 (1968); *Morrissey v. Brewer*, 443 F.2d 942 (8th Cir. 1971); *Mead v. California Adult Authority*, 415 F.2d 767 (9th Cir. 1969). The United States Courts of Appeals for the Third, Fourth and Tenth Circuits have also held the sixth amendment does not guarantee counsel at parole revocation hearings. The decisions recognize that in extraordinary cases due process may compel the state to provide for the appearance of counsel if the fairness of the proceedings would otherwise be impaired. See *United States ex rel Halprin v. Parker*, 418 F.2d 313 (34d Cir., 1969) (the appointment of counsel was not necessary because appellant was arrested for an admitted violation of the terms of his parole and therefore could only attempt to persuade the board to overlook the violation); *Beardon v. South Carolina*, 443 F.2d 1090 (4th Cir. 1971) counsel need only be appointed when the parolee denied the existence of a violation and when the fundamental fairness of the proceedings would be impaired by the absence of counsel); *Alvarez v. Turner*, 422 F.2d 214 (10th Cir., 1970) cert. den. sub. nom. *McDonman v. Turner*, 399 U.S. 96 (1970) (the opportunity to appear with appointed or retained counsel must be available to every releasee whenever an issue of disputed fact is involved).

⁵⁸See *Williams v. Patterson*, 389 F.2d 374 (10th Cir. 1968), where the 10th Circuit refused to overrule a case decided before *Mempha* which denied parolees the assistance of counsel at parole revocation hearings. In that court's view, the United States Supreme Court held only that "the defendant was entitled to the assistance of counsel 'at the time of sentencing where the sentencing has been deferred subject to probation'." *Id.* at 375.

⁵⁹443 F.2d 1090, 1092 (4th Cir. 1971).

⁶⁰See Judge Winter's dissenting opinion, 443 F.2d at 1097. "I cannot read Mempha. . .to rest on the premise that the degree of the burden on the convenience of counsel is a determining factor of when the right to counsel attaches."

⁶²The CPA could revoke probation if the client violated the terms of his probation. A violation of the rules such as leaving the state without the counselor's consent, failure to report to the Authority regularly, association with known criminals, or refusal to make restitution payments could result in revocation. Summary Description.

⁶³Any person accused of a felony may request the state to provide counsel at the time he first appears before a justice of the peace or magistrate. Upon a proper showing of indigency, the state must then furnish counsel at public expense. Mich. Comp. Laws Ann. §775.16.

⁶⁴389 U.S. 128, 135-136.

⁶⁵See generally Note, Constitutional Law, Parole Status and the Privilege Concept, 1969 DUKE L. J. 1939.

⁶⁶318 F.2d 225 (D.C. Cir. 1963), cert. den. sub. nom. Thompson v. United States Parole Board, 375 U.S. 957 (1963). Judge, now Chief Justice, Burger wrote for the court:

Here there is not the attitude of adverse, conflicting objectives as between the parolee and the Board inherent between the prosecutor and defense in a criminal case. Here we do not have pursuer and quarry but a relationship partaking of *parens patriae*. In a real sense the Parole Board in revoking parole occupies the role of parent withdrawing a privilege from an errant child not as punishment but for misuse of a privilege.

Id. at 237. But cf., In Re Gault, 387 U.S. 1 (1967), where the Supreme Court noted that the state's role as *parens patriae* did not prevent the right to counsel from attaching in delinquency hearings.

⁶⁷397 U.S. 254 (1970).

⁶⁸Id., at 262.

⁶⁹443 F.2d 1079 (2d Cir. 1971). See also the dissenting opinion of Judge Winter in Beardon v. South Carolina, 443 F.2d 1090, 1096 (4th Cir. 1971).

⁷⁰See note 57 supra.

⁷¹443 F.2d at 1086.

⁷²Perhaps the interest of the CPA client deserves more protection than that of the parolee because, unlike the parolee, the CPA client has not been lawfully convicted. See Price v. Johnston, 334 U.S. 266, 285 (1948) for the proposition that conviction of a felony may permit restrictions of freedoms guaranteed other citizens so far as "justified by the considerations underlying the penal system."

⁷³The purpose of referral proceedings is to obtain a subjective evaluation of an individual's amenability to treatment. The lawyer's persuasive powers would not contribute to this process.

⁷⁴United States ex rel Bey v. Connecticut Board of Parole, 343 F.2d 1078 (2d Cir. 1971). The court points out that the decision to revoke or grant parole calls for knowledge of psychology, sociology, and penology-- fields in which the lawyer ordinarily has no expertise. It reasons that the initial parole release decision involves intangible subjective factors whereas a necessary precondition to reincarceration is a finding of a violation of the terms of parole. Legal training renders a lawyer able to analyze and organize evidentiary matter so as to aid the parole board in reaching a just conclusion. The same reasoning applies to the decisions involved in referral to and revocation of probation. See e.g., Mempha v. Rhay, 389 U.S. 128, 135 (1967).

⁷⁵See text accompanying note 59 supra.

⁷⁶The Bey court applies the same analysis to the case of a parolee.

Nor does our decision threaten to introduce friction into the relationship between a parolee and his assigned parole officer. The right to counsel does not attach until the parole status might imminently be discontinued. Neither will counsel's participation in proceedings post-dating a parolee's arrest and incarceration pending his hearing add in any degree to the burden of the overworked parole officer, or require him to divert his energies from his rehabilitative to his "patrolman" functions.

United States ex rel. Bey v. Connecticut Board of Parole, 343 F.2d 1078, 1088-1089. (4th Cir., 1971).

⁷⁷U.S. Const. amend. XIV §1.

⁷⁸See e.g., People ex rel Combs v. LaVallee, 286 N.Y.S. 2d 600, appeal dismissed, 22 N.Y.2d 857, 293 N.Y.S.2d 117, 239 N.E. 2d 743 (1968); Puchalski v. New Jersey State Parole Board, 104 N.J. Super 294, 250 A. 2d 19 (1969); Contra, Johnson v. Stueber, 203 Kan. 253, 453, P.2d 35 (1969) cert. den. 396 U.S. 904 (1969).

⁷⁹23 Mich. App. 754, 179 N.W.2d 665 (1970), appeal dismissed as moot, 283 Mich. 817 (1971).

⁸⁰Sanders v. Michigan Parole Board, 15 Mich. App. 183, 166 N.W.2d 278 (1968), appeal denied, 381 Mich. 818 (1969), cert. den. 396 U.S. 1025 (1970).

⁸¹Mich. Comp. Laws Ann. §791.240a. The Michigan Court noted that the previous statutory provision, Mich. Comp. Laws Ann. §791.240, had been repealed, that as reenacted the clause entitling the accused to appear with counsel "at his own expense" had been eliminated, and that the current statute merely provides that an accused may appear "personally or with counsel."

⁸²The Michigan court expressly reserved the question whether the state would be required to furnish counsel to indigents if there were no factual dispute as to the violation of the terms of parole:

Where. . .there is a factual dispute, counsel is of fundamental importance. . .and the refusal to appoint counsel for indigent parolees is, therefore, a denial of equal protection of the laws. We recognize that counsel might be of assistance even in a case where the parole violation is admitted. . .To decide this case, it is not, however, necessary to express an opinion whether the denial of counsel denies equal protection in a case where his function might be limited to a plea to discretion.

23 Mich. App. at 771, 179 N.W. 2d at 672.

⁸³Telephone interview with James Wright, Director of the Genesee County Citizens Probation Authority, Jan. 5, 1972. If a participant in the program retains counsel, his attorney could attempt to persuade the CPA to recommend extension of his client's probation.

⁸⁴See note 82 supra.

⁸⁵Telephone interview with James Wright, Director of the Genesee County Citizens Probation Authority, Jan. 5, 1972. The client is typically accompanied by a lawyer when he has been arrested and booked over the weekend and the prosecutor's absence prevents referral to the CPA. Mr. Wright insisted that attorneys do not influence the decision of the CPA staff to accept an individual; CPA strictly adheres to the criteria set forth in the Prosecutor's Policy and Procedures For Referral to Citizens Probation Authority.

⁸⁶23 Mich. App. at 771, 179 N.W. 2d at 672.

⁸⁷See page 25 infra for a discussion of equal protection standards for indigent offenders.

⁸⁸ Telephone interview with James Wright, Director of the Genesee County Citizens Probation Authority, Jan. 5, 1972. Clients who question the legality of their arrest generally request a lawyer. The CPA usually calls the Genesee County Legal Services to advise them that a potential client has been referred and request that the case receive prompt attention.

⁸⁹ Prosecutor's Policy and Procedures.

⁹⁰ Id.

⁹¹ This probationary period may be extended, however, if restitution is not completed within the given period, or probation may be terminated with the consent of the complainant. Id.

⁹² Telephone interview with James Wright, Director of the Genesee County Citizens Probation Authority, Nov. 8, 1971. The \$100 fee helps defray CPA costs. Inability to pay the \$100 fee does not, however, preclude referral. The example of a mother on A.D.C. was given as representative of the type of case in which the probation fee requirement is waived.

⁹³ Mich. Comp. Laws Ann. §771.3.

But a restitution payment not reasonably related to the offense involved is without authority under the statute. See People v. Becker, 349 Mich. 476, 84 N.W.2d 833 (1957) (probation order requiring hit and run driver to compensate injured pedestrians for hospital and medical expenses held invalid); People v. Sattler, 20 Mich. App. 665, 174 N.W.2d 605 (1969) (defendant who pleaded guilty to obtaining money by false pretenses must be given opportunity to demonstrate inaccuracy of amount of restitution determined by auditors.)

⁹⁴ 351 U.S. 12 (1956).

⁹⁵ Id. at 28.

⁹⁶ Id. at 19. Mr. Justice Black wrote: "Where there can be no equal justice when the kind of trial a man gets depends on the amount of money he has."

⁹⁷ 372 U.S. 353 (1963).

⁹⁸ 399 U.S. 235 (1970).

⁹⁹ 401 U.S. 395 (1971).

¹⁰⁰ Mr. Chief Justice Burger stated for the majority that:

once the state has defined the outer limits of incarceration necessary to satisfy its penological interests and policies, it may not subject a certain class of convicted defendants to a period

of imprisonment beyond the statutory maximum solely by the reason of their indigency.

399 U.S. at 241-242.

¹⁰¹The Williams court mentions installment payment plans as a means of avoiding imprisonment for involuntary non-payment of fines. 399 U.S. at 244, .21. After stating that the state is free to choose from a variety of solutions to the problem of imprisonment of indigents for nonpayment of fines, the Tate court noted existing procedures for payment of fines in installments. 401 U.S. at 395 .5.

¹⁰²Mr. Wright estimates that five out of one thousand individuals referred in 1971 were denied acceptance into the CPA program solely because they were unable to make restitution. Telephone interview, Jan. 5, 1972.

¹⁰³399 U.S. at 238. The court rejected the state's contentions that its interest in the collection of fines justified the incarceration of indigents beyond the maximum term specified by statute. Also rejected was the argument that the Illinois "work off system" was a rational means of implementing that policy. Id. at 238.

¹⁰⁴For a more thorough presentation of the rehabilitative impact of restitution, see Best and Birzon, "Conditions of Probation: An Analysis," 51 Geo. L. Rev. 809, 819 (1963).

¹⁰⁵Summary Description. Mich. Comp. Laws Ann. §769.2. This procedure has been approved by the United States Supreme Court albeit in dictum, as a means of maintaining equal protection for indigents in the context of imprisonment for nonpayment of fines. See note 101 supra.

¹⁰⁶See note 101 supra.

¹⁰⁷The Supreme Court left open the issue whether imprisonment of an indigent for non-payment of a fine would violate equal protection when alternative methods of enforcement failed despite a reasonable effort to pay the fine. Tate v. Short, 401 U.S. 395, 401 (1971).

¹⁰⁸The sixth amendment provides that "the accused shall enjoy the right to a speedy and public trial. . ."

¹⁰⁹See Klopfer v. North Carolina, 386 U.S. 213 (1967), where the Court held that a procedure whereby the state could postpone prosecution indefinitely on an indictment after the accused had been discharged because of the jury's inability to reach a verdict denied the sixth amendment right to a speedy trial.

¹¹⁰404 U.S. 307 (1971). The Court held that dismissal of an indictment for fraudulent business practices was not constitutionally required by reason of a three year delay between the occurrence of the alleged criminal acts and the filing of the indictment.

¹¹¹Id. at 320. The Court stated that until arrested "a citizen suffers no restraints on his liberty and is not the subject of public accusation. . ." Id. at 321. Whether the unique situation of an individual referred to the CPA and threatened with a potential charge would be the subject of a public accusation is unclear. Likewise, if an individual did enter into the CPA voluntary probation program it is not certain that the terms of probation would be considered to be a restraint on his liberty sufficient to justify application of the sixth amendment.

¹¹²Id. at 324.

¹¹³The fifth amendment to the United States Constitution provides in part that no person shall "be deprived of life, liberty, or property, without due process of law." The Michigan Constitution repeats this same guarantee verbatim. Mich. Const. art. 1, §17.

¹¹⁴404 U.S. at 325.

¹¹⁵See Ross v. United States, 349 F.2d 210, 213-214 (D.C. Cir. 1965). The defendant, a man of limited education, was prejudiced by a delay of seven months, since he could not reconstruct the events of the day on which the alleged offense was committed.

¹¹⁶See United States v. Hauf, 395 F.2d 555, 556-557. (7th Cir. 1968). Although the court decided that the defendant had not demonstrated prejudice due to preindictment delay, it emphasized that if the defendant had demonstrated actual prejudice resulting from the death of a witness, a violation of fifth amendment due process would have been found.

¹¹⁷See United States v. Parrott, 248 F. Supp. 196, 206 (D.D.C. 1965). Although the court was reluctant to find that the government purposefully gave priority to a civil rather than a criminal action concerning violations of the Securities Exchange Act to strengthen its case through the use of civil discovery procedures, this circumstance was a significant factor in the court's decision to exercise its discretion under FED. RULE CRIM. PRO. 48(b) to dismiss the indictment.

¹¹⁸Notice may be a factor in determining whether the accused has been prejudiced. See United States v. McCray, 443 F.2d 1173, 1175 (D.C. Cir. 1970). There, although ten months elapsed between the offense and arrest, the defendant knew the police were looking for him and "was on notice as to the charges against him."

¹¹⁹The inability of witnesses to recall details necessary to testify in behalf of the defendant has been a factor contributing to a finding of prejudice. See e.g., Ross v. United States, 349 F.2d 210, 214-215, (D.C. Cir. 1965). The court found that defendant was prejudiced when a witness who could have offered exculpatory testimony at trial refused to do so because she was doubtful of her ability to recall the events of the day of the crime. Defendant had been indicted seven months after the alleged crime was committed.

¹²⁰ See note 117 supra.

¹²¹ Mich. Comp. Laws Ann. §767.28. In order to obtain an indictment that prosecutor must present a prima facie case to the grand jury.

¹²² Mich. Comp. Laws Ann. §767.2. An information may be obtained when the prosecutor presents evidence sufficient to convict a suspect in the absence of a valid defense.

¹²³ Every person charged with any offense is entitled to a copy of the indictment or information. Mich. Comp. Laws Ann. §767.18.

¹²⁴ Summary Description.

¹²⁵ Constitutional Rights Questionnaire (available at the Genesee County Probation Authority and also on file with the University of Michigan Journal of Law Reform). The accused client is asked whether he understands that he had been accused of violating the law by engaging in a specific activity. If he answers no or indicates that he does not consider his acts to have been criminal, the CPA Interviewer discusses with the client the details of the accusation, including both the acts allegedly committed and the elements of the crime, until he understands the nature of the offense and the charge against him.

¹²⁶ In 1968 twenty-eight CPA candidates withdrew from the program voluntarily, two hundred and three withdrew in 1969, and one hundred and seventy-three withdrew in 1970. In 1968 two clients violated the terms of their probation, twenty did so in 1969, and thirty-five did so in 1970. All were subject to further prosecution. Citizens Probation Authority Statistical Comparison--Yearly Summary [on file with the University of Michigan Journal of Law Reform].

¹²⁷ See text accompanying notes 113-119 supra.

¹²⁸ See note 118 supra.

¹²⁹ See text accompanying notes 155-158 infra.

¹³⁰ Boykin v. Alabama, 395 U.S. 238 (1969). The court, per Mr. Justice Douglas, held that a defendant who pleaded guilty to a charge could not be presumed to have voluntarily waived his fifth and sixth amendment rights when the record did not show that the trial judge ascertained whether the defendant was aware of his rights. See also Johnson v. Zerbst, 304 U.S. 458, 464 (1968) (for waiver to be valid under the due process clause, it must be "an intentional abandonment of a known right or privilege").

¹³¹ For example, if a defendant pleads guilty to a crime, he must know the maximum penalty that can be imposed. See Von Moltke v. Gillies, 332 U.S. 708 (1948). In that case, petitioner brought a habeas corpus action in the federal district court to vacate her plea of guilty to a charge of

conspiring to violate the Espionage Act of 1917. The plea was tendered without the assistance of counsel. Here plea was vacated, in part because the record did not show that she was aware of the possible range of penalties. Id. at 724.

¹³² Summary Description.

¹³³ See text accompanying notes 113-119 supra.

¹³⁴ Boykin v. Alabama, 395 U.S. 238 (1969). The case involved vacating the petitioner's plea of guilty. A guilty plea may result in either incarceration or probation, both of which restrict an individual's liberty. The analogy of entering a guilty plea to a decision to participate in the CPA program is particularly compelling since the consequences of pleading guilty and participating in the CPA program are so similar, that is, possible incarceration or probation as opposed to a judicial adjudication of guilt or innocence of the charge.

¹³⁵ Your Rights as a Citizen When You Are Accused of an Offense, 1971-1972 (available at the Citizens Probation Authority of Genesee County, and also on file with the University of Michigan Journal of Law Reform).

¹³⁶ 295 U.S. 490 (1935). Petitioner was entitled to a probation-revocation hearing because of a federal statute and not because there was any constitutional right to one.

¹³⁷ Id. at 492-93.

¹³⁸ See, e.g., Sherbert v. Verner, 374 U.S. 398 (1963) (unemployment benefits cannot be conditioned on an infringement of constitutionally guaranteed religious liberty); Shapiro v. Thompson, 394 U.S. 618 (1969) (public assistance benefits cannot be granted on conditions violative of equal protection). In Goldberg v. Kelly, 397 U.S. 254 (1970), the Court held that due process required an evidentiary hearing before welfare benefits could be terminated. The Court said:

The constitutional challenge cannot be answered by an argument that public assistance benefits are "a 'privilege' and not a 'right.'" . . . The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss," Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring), and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication.

397 U.S. at 262-3. See also Mempha v. Rhay, 389 U.S. 128, (1967), discussed in pp. 22-25, supra.

¹³⁹ See, e.g., *Rose v. Haskins*, 388 F.2d 91 (6th Cir.) cert. denied, 392 U.S. 946 (1968) (due process does not require a hearing prior to parole revocation).

¹⁴⁰ *Murray v. Page*, 429 F.2d 1359 (10th Cir. 1970) (parole revocation); *Hahn v. Burke*, 430 F.2d 100 (7th Cir. 1970), cert. denied, 402 U.S. 933 (1971) (probation revocation).

¹⁴¹ 430 F.2d 100 (7th Cir. 1970) cert. denied, 402 U.S. 933 (1971).

¹⁴² 430 F.2d at 105.

¹⁴³ See note 138 *supra*.

¹⁴⁴ As the court states:

Weighing the "extent to which he (the petitioner) may be condemned to grievous loss" against "the governmental interest in summary adjudication" we find the petitioner's loss of freedom to outweigh the added state burden of providing a limited hearing to allow petitioner to be confronted with his probation violation and to be heard.

The state need not grant probation, but if it does so, it should not be able to arbitrarily revoke such probation without giving petitioner a reasonable opportunity to explain away the accusation that he had violated the conditions upon which his probation was granted. . . . To allow the state to summarily revoke the petitioner's probation without a hearing to determine if the conditions upon which the probation was granted have been violated, is state action inconsistent with the due process guarantees of the fourteenth amendment.

430 F.2d at 104.

¹⁴⁵ The most obvious governmental interest in allowing CPA to act unilaterally, without a prior hearing, in terminating a client's probation and referring his case back to the county prosecutor is the interest in avoiding the delay and expense inherent in any kind of hearing. In *Hahn* the court found that these considerations were outweighed by the petitioner's loss of freedom. See 430 F.2d 104 .3.

¹⁴⁶ Mich. Comp. Laws Ann. §771.4 provides in pertinent part: ". . . the probationer shall be entitled to a written copy of the charges against him which constitute the claim that he violated his probation, and shall be entitled to a hearing thereon."

¹⁴⁷ In *People v. Roberson*, 22 Mich. App. 664, 177 N.W. 2d 712 (1970), the court applied the protections of section 771.4 to revocation of a juvenile's status as a youthful trainee. The Youthful Trainee Act, Mich. Comp. Laws Ann. §762.11, does not provide the same procedural guarantees as §771.4. However, applying an equal protection concept and reasoning from *In Re Gault*, 387 U.S. 1 (1967), the court gave juveniles under the Youthful Trainee Act the same rights as adult probationers. 177 N.W.2d at 714.

While the equal protection argument might be useful for extending these guarantees to CPA probationers, there are significant differences by which one can distinguish a CPA probationer from the typical situation, the main difference being the fact that the CPA probationer has not been convicted. The most promising method for extending the application of §771.4 to the CPA probationer seems to involve the argument that the legislature's mention of post-conviction probation cannot be read as an intentional exclusion of other types of probation.

¹⁴⁸ CPA should establish regulations governing the conduct of such hearings. The proceedings should be of an adversary nature, and the client should be represented by counsel. See pp. 24-25 *supra*. Judicial interpretations of section 771.4 indicate that probation-revocation hearings need not be elaborate or formal, but the probationer must be given a reasonable opportunity to answer the charges against him, including the right to call witnesses in his behalf. See *People v. Wood*, 2 Mich. App. 342, 139 N.W. 2d 895 (1966); *People v. Hazen*, 19 Mich. App. 576, 172 N.W. 2d 860 (1969).

¹⁴⁹ "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . ." U.S. Const. amend. VI.

¹⁵⁰ *Klopfert v. North Carolina*, 386 U.S. 128 (1967). See note 109 *supra*.

¹⁵¹ Mich. Const. art. 1, §20.

¹⁵² Mich. Comp. Laws Ann. §767.38.

¹⁵³ *United States v. Marion*, 92 S. Ct. 455 (1971). The Court indicated that the right to a speedy trial might attach at the time of arrest, which could be well before the time of formal indictment. *Id.* at 463-4. Thus, *Marion* does not absolutely foreclose the CPA probationer from arguing that his sixth amendment rights have been violated. Nevertheless, his sixth amendment argument would probably be frustrated by the doctrine of waiver. See discussion in text accompanying notes 155-158 *infra*.

¹⁵⁴ While the sixth amendment right to a speedy trial does not itself govern pre-indictment delays, the Court in *Marion* stated that in some cases the fifth amendment due process clause would offer relief. Significantly, though, the Court indicated that the fifth amendment might not require dismissal of the charges unless the defendant demonstrated both that the pre-indictment delay had resulted in substantial prejudice to his rights

and that the pre-indictment delay was a "purposeful device to gain tactical advantage over the accused." 92 S.Ct. at 465. In any event, the accused would have to demonstrate actual prejudice to his rights. Id. However, the prominent characteristics of the CPA situation, not the least of which are the lack of oppressive governmental purpose in causing the delay and the voluntariness of the defendant's participation, are strong arguments against dismissing a subsequent prosecution on due process grounds. Note also that one of the primary ways in which pre-indictment delay causes a defendant prejudice, i.e., lack of timely notice of the charges against him, is effectively blocked in the CPA situation, since the client is informed of his suspected offense immediately upon referral to CPA. See discussion in pp. 29-31, supra.

¹⁵⁵ See notes 153-154 supra.

¹⁵⁶ See generally Annot., 57 ALR2d 302 (1958).

¹⁵⁷ See, e.g., People v. Foster, 261 Mich. 247, 246 N.W. 60 (1933) (no good cause was shown for the government's delay in bringing the case to trial, but defendants could not complain because they had made no demand in open court nor filed any motion requesting a speedy trial. In accord, People v. Duncan, 373 Mich. 650, 130 N.W. 2d 385 (1964), and People v. Kennedy, 23 Mich. App. 6, 178 N.W. 2d 144 (1970). This demand requirement in Michigan was found compatible with the United States Constitution in People v. Frazier, 16 Mich. App. 38, 1967 N.W. 2d 481 (1969).

¹⁵⁸ It might even be argued that by agreeing to participate in CPA the client-defendant causes the delay. Where delays are caused by the defendant, the case for waiver is certainly stronger than where there is only failure to demand a speedy trial. See People v. Nawrocki, 6 Mich. App. 46, 150 N.W. 2d 516 (1967) and People v. Wallace, 33 Mich. App. 182, 189 N.W. 2d 861 (1961).

The CPA client is free to terminate his participation in the CPA program at any time, with the understanding that he then makes himself amenable to criminal prosecution at the discretion of the prosecutor. Presumably, if a CPA client's participation in the program were prematurely terminated, either by voluntary action on the part of the client or by revocation of probation, his right to a speedy trial would attach upon his demand for same after he is formally charged.

¹⁵⁹ "No person. . . shall be compelled in any criminal case to be a witness against himself. . ." U.S. Const. amend. V.

¹⁶⁰ Malloy v. Hogan, 378 U.S. 1 (1964) and Griffin v. California, 380 U.S. 609 (1965), overruling Adamson v. California, 332 U.S. 46 (1947).

¹⁶¹ Mich. Const. art.1, §17.

¹⁶² See, e.g., Miranda v. Arizona, 384 U.S. 436, 478-9 (1966); Duckworth v. District Court, 220 Iowa 1350 264 N.W. 715 (1936).

¹⁶³ See text accompanying note 24 supra. This generally occurs during the preliminary intake interview. Since the primary purpose of the program is rehabilitative, CPA views the client's assumption of responsibility for the alleged offense as essential to the "reality therapy" approach used for reforming anti-social conduct. Summary Description.

¹⁶⁴ Telephone interview with James Wright, Director of the Citizens Probation Authority, October 27, 1971. The term "required" is used advisedly. Since the entire thrust of the CPA program is rehabilitative and not punitive, it is a psychological necessity that the CPA client honestly acknowledge responsibility for his behavior. Yet it is seldom necessary to "require" this acknowledgment in any formal sense. Most CPA clients freely and without being asked admit to their participation in the alleged offense.

Those who insist on their innocence are free to decline participation in CPA, thereby forcing the prosecutor to prove their guilt in a court of law.

¹⁶⁵ Telephone interview with James Wright, Director of the Citizens Probation Authority, October 27, 1971.

¹⁶⁶ Obviously, the validity of such an assumption is open to question. An innocent person caught in suspicious circumstances might very well agree to participate in CPA in order to avoid the expense, dangers, and stigma of a criminal trial.

¹⁶⁷ 384 U.S. 436 (1966).

¹⁶⁸ See text following note 171 infra.

¹⁶⁹ See Harris v. New York, 401 U.S. 222 (1971).

¹⁷⁰ See, e.g., Commonwealth v. Ware, 284 A.2d 700 (Pa., 1971), cert. granted sub nom., Pennsylvania v. Ware, 40 U.S.L.W. 3449 (Mar. 20, 1972).

¹⁷¹ The program helps relieve crowded prosecutor and court dockets, with consequent savings of time and money. The low failure rate of CPA participants (under 5 percent) indicates that the program provides more than temporary relief. Summary Description.

¹⁷² See note 126 supra.

¹⁷³ See Mich. Comp. Laws Ann. §791.229 giving privileged status to communications made while an offender is serving a court-imposed probation.

TO THE HONORABLE CHAIRMAN AND MEMBERS OF THE BOARD OF SUPERVISORS,
GENESEE COUNTY, MICHIGAN

LADIES AND GENTLEMEN:

WHEREAS, it has been recommended by the Special Services and Court Affairs Committees that the Citizens Probation Authority be established as a separate and distinct function of County management, and

WHEREAS, it has been deemed advisable that the Citizens Probation Authority be divorced from the direction and control of the Prosecuting Attorney's office and placed under the direct jurisdiction of the Court Affairs Committee.

NOW, THEREFORE, BE IT RESOLVED, that this Board of Supervisors authorize the establishment of the Citizens Probation Authority as a new department of the County, and directs that this department be placed under the jurisdiction of the Court Affairs Committee.

WAYS AND MEANS COMMITTEE

| | |
|-------------------|--------------------|
| <i>T. Mansour</i> | <i>M. Klein</i> |
| <i>E. Moon</i> | <i>Do Robinson</i> |
| <i>E. Gleason</i> | <i>E. Bowling</i> |
| <i>W. Kinsley</i> | <i>S. Mitoraj</i> |

PHOTOGRAPHIC COPY OF RECORD 221-A Legal News Print

STATE OF MICHIGAN
County of Genesee ss.

I, GEORGE G. DUNN, Clerk of said County of Genesee and Clerk of the Circuit Court for said County, do hereby certify that I have compared the foregoing photographic copy of Resolution authorizing establishment of Citizens Probation Authority

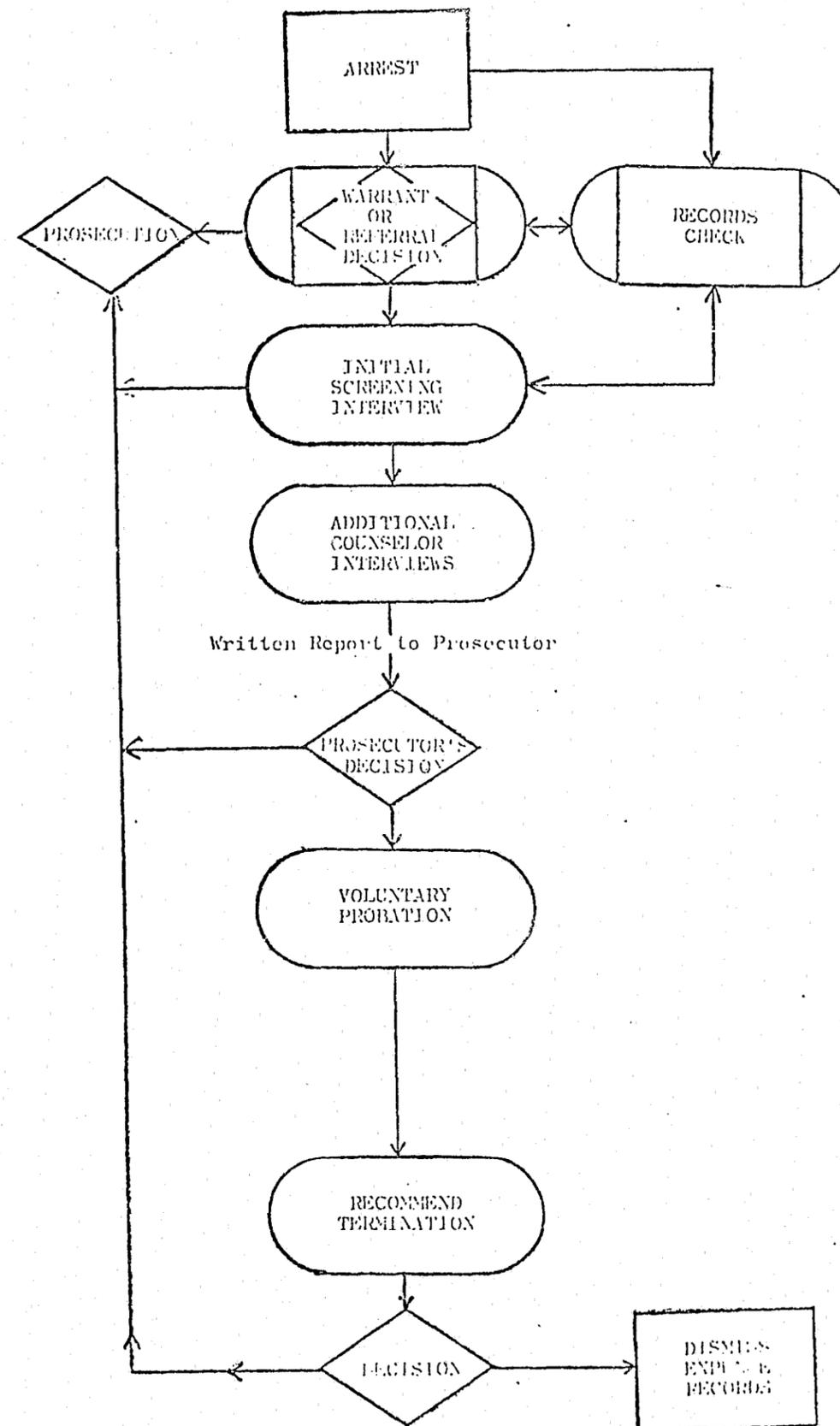
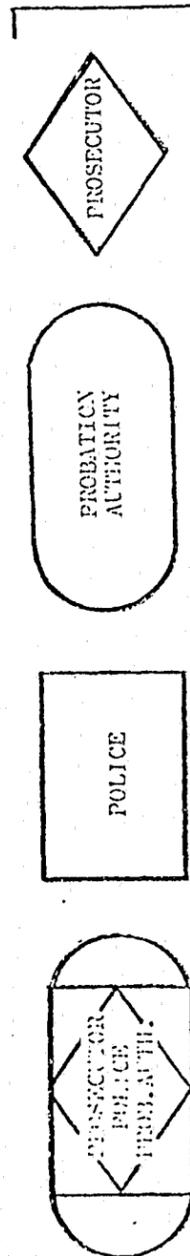
with the original record now remaining in my office and it is a true and exact photographic reproduction and the whole of such original record.

In Testimony Whereof, I have hereunto set my hand, and affixed the seal of said Court and County, this 29th day of June A.D. 1972.

GEORGE G. DUNN, Clerk
By *[Signature]* Deputy County Clerk

Genesee County Board of Supervisors
Approved Oct. 8, 1968
68-383

LEGEND:



CONSTITUTIONAL RIGHTS QUESTIONNAIRE

You have read the booklet explaining your Constitutional Rights. The purpose of this questionnaire is to demonstrate your understanding of those Rights.

(The Applicant will read and answer the first six questions without assistance from the interviewer.)

- 1. What is your legal name? Please write it. Name: _____
- 2. What is the date of your birth? Write the month, day, and year: _____
- 3. What is the highest grade you completed in school? _____
- 4. What is the name of the last school you attended? _____
- 5. Are you presently under the influence of drugs or intoxicants?
Answer YES or NO. _____
- 6. Do you understand the questions you have been asked thus far?
Answer YES or NO. _____

(The Applicant will read and answer the following questions with assistance from the interviewer.)

7. You have been accused of violating the law. The purpose of our talking with you at this time is to determine whether or not you clearly understand your Constitutional Rights. And for you to decide whether or not you desire to have prosecution temporarily deferred and be considered for the Citizens Probation Authority Program.

Do you understand the purpose of our talking with you at this time?
Answer YES or NO. _____

8. Do you understand that any decision you make must be made freely and voluntarily on your part? Answer YES or NO. _____

9. Do you understand that you have been accused of violating the law by:

Answer YES or NO. _____

How old were you at the time this violation is alleged to have occurred? _____

(Cont.)

11. Do you understand that you are presumed to be innocent of this violation of the law until you either plead "Guilty" or are found "Guilty" in a court of law?
Answer YES or NO. _____

12. Do you understand that you have the right to answer in court any accusations made against you? Answer YES or NO. _____

13. Do you understand that you have the right to have an attorney represent you and advise you at every step in any future criminal proceedings?
Answer YES or NO. _____

14. Do you want to consult with an attorney at this time? Answer YES or NO. _____

15. Do you understand that by participating in the Citizens Probation Authority program you may not surrender or be deprived of any of your Constitutional Rights, now or at any time in the future? Answer YES or NO. _____

16. Do you consent to a confidential investigation of your personal and family background by the Citizens Probation Authority? Answer YES or NO. _____

17. Do you now wish to request of the Prosecuting Attorney that your right of prosecution be indefinitely deferred for the purpose of your being considered for the Citizens Probation Authority Program. Answer YES or NO. _____

Do you fully understand all of the questions you have been asked?
Answer YES or NO. _____

Please sign your name here: _____

Interviewer: _____

Witnessed: _____

Date: _____

R.C. Brown
B. James Wright

TO THE HONORABLE CHAIRMAN AND MEMBERS OF THE BOARD OF SUPERVISORS,
GENESEE COUNTY, MICHIGAN

LADIES AND GENTLEMEN:

WHEREAS, it has been proposed to this Committee by the
Citizens Probation Authority, by B. James Wright, Director, that
a service fee of One Hundred Dollars (\$100.00) be charged to each
applicant who qualifies for the services of the Citizens
Probation Authority, and

WHEREAS, this Committee has been informed of the pertinent
law and facts concerning this matter.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

- (1) That effective July 1, 1969 a Probation service fee of One Hundred Dollars (\$100.00) be charged to each applicant who qualifies for the services of the Citizens Probation Authority.
- (2) In those cases where the applicant is deemed to be indigent by the Citizens probation Authority, using the same standards as used by the District and Circuit Courts when appointing counsel for criminal cases, no service fee shall be charged.
- (3) In those cases where in the judgment of the Citizens Probation Authority, payment of the entire service fee of One Hundred Dollars (\$100.00) would work an undue hardship on the qualified applicant, a lesser fee be charged, such fee to be determined within the discretion of the Director of the Citizens Probation Authority.
- (4) All fees collected shall be deposited in the General Fund of Genesee County.

FINANCE COMMITTEE

Theodore P. Mansour, Chairman

Nathaniel Turner
Nathaniel Turner

Edward A. McLogan
Edward A. McLogan

William P. Polk

George R. Poulos
George R. Poulos

Willard P. Harris
Willard P. Harris

PHOTOGRAPHIC COPY OF RECORD

221-A

LEGAL NEWS PRINT

STATE OF MICHIGAN }
County of Genesee

SS:

I, GEORGE G. DUNN, Clerk of said County of Genesee and Clerk of the Circuit Court for said County, do hereby certify that I have compared the foregoing photographic copy of Resolution authorizing a Probation service fee of \$100.00 for each applicant qualifying for services of Citizens Probation Authority with the original record now remaining in my office and it is a true and exact photographic reproduction and the whole of such original record.

In Testimony Whereof, I have hereunto set my hand, and affixed the seal of said Court and County, this 23 day of JUNE A.D. 1969.

Genesee County Board of Supervisors -
Approved 6-23-69
69-167

GEORGE G. DUNN, Clerk
By *W. J. ...* Deputy County Clerk

Appendix B.
CITIZENS PROBATION AUTHORITY
STATISTICAL COMPARISON -- YEARLY SUMMARY

| | COURT OF NO RECORD Vol. Citizen Prog. 2 yrs-Nov. '65-Oct. '67 | CITIZENS PROBATION AUTHORITY (Professionally staffed program) | | | |
|--|---|--|----------|---------|----------|
| | | 1968 | 1969 | 1970 | 1971 |
| 1. NEW CASES REFERRED | 186 | 391 | 743 | 1000 | 1171 |
| 2. ACCEPTED ON PROBATION | 116 | 227 | 338 | 595 | 740 |
| *3. TOTAL UNDER SUPERVISION DURING PERIOD (2 yrs) | 116 | 292 | 543 | 880 | 1272 |
| 4. ACTIVE CASELOAD (End of period) | 29 | 152 | 238 | 469 | 566 |
| **5. CASES DISMISSED (by CPA recommendation) | 2 | 36 | 53 | 47 | 63 |
| 6. REFERRALS REJECTED (Subject to Prosecution) | 14 | 55 | 143 | 144 | 230 |
| ***7. VOLUNTARY WITHDRAWALS (Subject to Prosecution) | 0 | 28 | 203 | 175 | 211 |
| 8. COMPLETED PROBATION | 87 | 105 | 207 | 331 | 565 |
| ****9. VIOLATED PROBATION | 4 | 2(.7%) | 20(3.7%) | 35(4.%) | 70(5.5%) |
| 10. CASES PENDING (End of period) | 50 | 109 | 120 | 160 | 96 |

*TOTAL UNDER SUPERVISION DURING PERIOD represents total of items 2, 5 and the number of active probationers carried over from previous year.

**CASES DISMISSED by the Prosecutor upon investigation and recommendation by the CPA, for reasons of: allowed to enter military service, etc.

***VOLUNTARY WITHDRAWALS represent those referrals who fail to appear or express a desire to go to court.

****VIOLATED PROBATION includes Technical Violations (failure to report regularly, live up to Conditions of Probation Agreement, etc.) as well as commission of New Offenses.

Appendix 7.

1969 CITIZENS PROBATION AUTHORITY
Active Probationers -- Statistical Analysis

I. VITAL STATISTICS

A. No. on Active Probation (as of 11-20-69): 257

No. of males: 180 (70%)
No. of females: 77 (30%)

B. Average age of males: 25 years
Average age of females: 27 years

| By Age Group: | Males | Females | Total | |
|---------------|-------|---------|-------|-------|
| Ages 17-19 | 95 | 26 | 121 | (47%) |
| 20-29 | 52 | 27 | 79 | (31%) |
| 30-39 | 19 | 11 | 30 | (12%) |
| 40-49 | 3 | 5 | 8 | (3%) |
| 50-59 | 8 | 7 | 15 | (6%) |
| 65 | 3 | 1 | 4 | (1%) |
| | 180 | 77 | 257 | |

C. No. of white probationers: 173 (67%)
No. of non-white probationers: 84 (33%)

D. Average grade level: 11th grade

E. Marital Status: 145 single, 92 married, 14 separated, 6 divorced.

II. PROBATIONERS BY EDUCATION

A. 61, or 23%, of 257 Active Probations are attending school.

43 in high school
15 in college (FJC, MSU, EMU, Ferris, Florida State)
2 in commercial schools

61

B. Of the 43 high school students, 22 are employed: 17 working part-time, and 5 full-time in the factory.

C. Of the 43 high school students, 27 are white and 16 non-white. Of the 16 college students, 8 are white and 8 non-white.

(Cont.)

D. Of the 257 Active Probationers, 32 have college experience:

17 1 year of college
7 2 years of college
2 4 years of college
5 Bachelor Degrees
1 Master's Degree
32

III. PROBATIONERS BY EMPLOYMENT

A. 18, or 7%, of the Active Probationers are unemployed (excluding students and housewives).

B. 9 of the 18 unemployed receive ADC assistance.

C. By Occupation:

| | | | |
|-----------------------------|----|---------------------|------------|
| Factory Non-skilled | 88 | Skilled (Business) | 17 |
| Construction (Menial) Labor | 36 | Clerical | 7 |
| Housewife | 29 | Factory Supervision | 4 |
| Sales | 23 | Factory Skilled | 2 |
| | | Teaching | 3 |
| | | | <u>209</u> |

IV. PROBATIONERS BY OFFENSES

A. Larceny from Building 57 Males (avg. age 21.1 years)
66 Females (avg. age 28.5 years)
123

B. Larceny From Auto 33 Males (avg. age 18.7 years)

C. Minor Sex Offenses 25 Males (avg. age 33.5 years)

D. Breaking and Entering 23 Males (avg. age 20.4 years)
1 Female (age 25 years)
24

E. Minor Weapons Offenses 14 Males (avg. age 33.3 years)
1 Female (age 32 years)
15

F. Forgery, Embezzlement, Larceny By Conversion 8
Unlawfully Driving Away Automobile 7
Malicious Destruction Property 5
Grand Larceny 4
Minor Drug Offenses 4
Possession Stolen Property 3
Breaking & Entering Coin Boxes 2
Entry W/O Permission 1
Disorderly Person 1
Perjury 1
False Report to Police 1
1

TOTAL 257

Appendix 8.

FIRST ANNUAL REPORT
1971-72

RESOURCES ARE PEOPLE PROJECT
of the
Citizens Probation Authority

I. GOAL and OBJECTIVES

A. Goal.

The Resources Are People Project, as the name suggests, is a community out-reach approach to rehabilitating adult, first-felony offenders who exhibit various social problems, through maximum utilization of the many "people resources" available in our community.

B. Objectives.

The above goal is being accomplished through an intensive 6 month voluntary probation program. Individual treatment plans are devised for each client and/or family as soon as the client comes in contact with the law. The Resources Are People approach involves client participation in Public Information Meetings, small group discussion, individual and family counseling, and referral to community treatment agencies.

The operational objectives are to:

1. Act as a "clearing house" for prompt referral of "social problem" clients to community agencies, and,
2. Avoid "duplication of services" by terminating such clients and/or families as soon as they have established a successful working relationship with the agency.

3. Provide Public Information Meetings designed to acquaint clients/families and agency personnel with the nature and scope of a wide-range of social problems and the community agencies available to deal with these problems, and,
4. Encourage clients to continue to utilize the full-range of community resources in the future by giving them a successful experience on this occasion.
5. Provide individual and family counseling, and "follow-through" to see that clients are receiving the needed services from the community agencies.
6. Develop a "para-professional" staff into a professionally responsible community out-reach program in the area of correctional services.

II. CLIENT/FAMILY SERVICES

A. Community Agency Referrals.

(A survey made of the Resources Are People "active caseload," being supervised by three counselors, as of April 25, 1972.)

- | | |
|---|-----|
| * 1. Number of active cases: | 257 |
| 2. Number of referrals to community agencies: | 128 |
| 3. Number of different community agencies: | 22 |

Agency

| | | |
|----|---|----|
| PI | (1) Division of Vocational Rehabilitation | 18 |
| PI | (2) Project Grow | 16 |
| PI | (3) Michigan Employment Security Commission | 16 |
| PI | (4) Drug Referral/Counseling | 15 |
| PI | (5) Credit Counseling Centers, Inc. | 14 |
| PI | (6) Department of Social Services | 14 |
| PI | (7) NCA-GFA Alcoholism Information Ctr. | 5 |
| PI | (8) Planned Parenthood | 5 |
| PI | (9) Genesee County Community Mental Health Services | 3 |
| PI | (10) Mott Adult High School | 3 |
| | (11) Al-Anon | 3 |
| | (12) WIM | 3 |

| | | |
|----|--|------------|
| | (13) Child and Family Agency of Michigan, Inc. | 2 |
| | (14) Genesee County Maternal and Child Care | 2 |
| PI | (15) Genesee County Legal Aid Society | 2 |
| PI | (16) Family Service Agency | 1 |
| | (17) Flint Area Parent-Child Nurseries, Inc. | 1 |
| | (18) Salvation Army | 1 |
| | (19) Mott Children's Health Center | 1 |
| | (20) Weight-Watchers | 1 |
| | (21) Social Security Administration | 1 |
| | (22) Misc. | 1 |
| | | <u>128</u> |

* (NOTE: The number of cases on the "active caseload" will vary at any given time according to the number of referrals from the Prosecutor's Office and the number of clients being terminated from the project. For this reason, the number of referrals to community agencies will vary, as will the agencies, according to client needs. The Community Agency Referral Statistics show quite clearly that a number of these clients suffer social problems in the areas of employment (16 referrals), vocational education and training (24), financial (29), and alcohol and drug abuse (23).)

PI (Denotes agencies which have conducted Public Information Meetings; over half of the agencies to which referrals were made on this caseload count had conducted Public Information Meetings. It should also be noted that a number of the 128 referrals were re-referred by some of the above agencies; for example, clients referred to SODAT through the Drug Abuse Commission; referrals to Goodwill Industries through Division of Vocational Rehabilitation.)

B. Public Information Meetings.

(The following 17 community agencies presented programs at 13 different Public Information Meetings conducted at the Flint Public Health Auditorium between November 3, 1971 and April 26, 1972.)

1. Community Agency Participation (17):

Genesee County Community Mental Health Services
 Family Service Agency
 Genesee County Department of Social Services
 Model Cities Health Outreach Project
 Credit Counseling Centers, Inc.
 Flint Police Youth Projects-Community Service Officers Program
 National Council on Alcoholism, Information Center
 RAP House Drug-Abuse Drop-In Center, Fenton
 Goodwill Industries
 Division of Vocational Rehabilitation
 Genesee County Legal Aid Society
 Michigan Employment Security Commission
 Mott Adult High School
 Women's Lib
 Planned Parenthood
 Genesee County Public Health
 SODAT

* 2. Number of clients attending: 919
 3. Number of family and friends attending: 209
 4. Number of agency personnel attending: 150

** Registered Attendance: 1278

Average Attendance: 100 plus

* (NOTE: represents some clients, family, and agency personnel attending more than one meeting.)

** (Attendance figures were taken from the Guest Register at each meeting, however, a "head count" of the audience usually revealed that 10-15 additional guests had not registered.)

III. RESOURCES ARE PEOPLE PROJECT - Statistical Sample

A. 247 Resources Are People Probationers***

1. Males = 108 (44%)
 Females = 139 (56%)

2. Average age of Males: 24 years and 4 months
 Average age Females: 24 years and 9 months

***A statistical sample was taken of 75% (247 cases) of the total number of referrals (327) in the nine month period from August, 1971 through April, 1972. Since all Resources Are People referrals in the first year were Larceny From Building offenders, the following information provides the first statistical profile of adult, non-habitual shoplifters in Genesee County.

| 3. By Age Group: | Males | Females | Total | |
|-------------------|-----------|------------|------------|------------|
| <u>(5 years)</u> | | | | |
| Ages 17-22 | 76 | 94 | 170 | 69% |
| 23-27 | 11 | 11 | 22 | 9% |
| 28-32 | 4 | 9 | 13 | 5% |
| Sub-total | <u>91</u> | <u>114</u> | <u>205</u> | <u>83%</u> |
| <u>(10 years)</u> | | | | |
| 33-42 | 5 | 9 | 14 | 5.5% |
| 43-52 | 6 | 10 | 16 | 6.5% |
| 53-62 | 4 | 4 | 8 | 3% |
| 63-72 | 0 | 2 | 2 | 1% |
| 73-81 | <u>2</u> | <u>0</u> | <u>2</u> | <u>1%</u> |
| TOTAL | 108 | 139 | 247 | 17% |

4. Percentage:

Males: 71% = ages 17 through 22
 Females: 68% = ages 17 through 22

Males: 31% = age 17
 Females: 29% = age 17

5. Racial Mix:

White: 177 (72%)
 Non-white: 70 (28%)

White/Male: 84 (77%)
 Non-white/Male: 24 (23%)
 108

White/Female: 93 (67%)
 Non-White/Female: 46 (33%)
 139

6. Marital Status:

Single 149 (60%)
 Married: 70 (28%)
 Divorced: 12 (5%)
 Separated: 11 (5%)
 Widowed: 5 (2%)
 TOTAL 247 100%

B. Educational Status:

1. Average Grade Level: 11.6 years
School Drop-outs: 64
High School Graduates: 70
High School Students: 83
Post-HS Education: 30
247
2. 113 (46%) of 247 probationers are attending high school or post high school.
70 (28%) of 247 probationers are high school graduates
64 (26%) of 247 probationers are school dropouts

C. Employment Status:

1. 42 (18%) of 247 probationers are unemployed
113 (46%) are students (high school and post high school)
37 (15%) are housekeepers
36 (36%) of 102 active students hold full or part-time jobs, 16-F and 20-M.
2. By Occupation:

| <u>FEMALE</u> | |
|---------------------------------------|-----------------|
| Student/Part-time | 16 |
| Housekeeping | 37 |
| Secretary/Clerical | 8 |
| Factory | 7 |
| Waitress | 5 |
| Sales | 4 |
| Teacher | 3 |
| Nursing Assistant | 2 |
| Dietician | 1 |
| Teacher's Aide | <u>1</u> |
| Full or part-time non-working student | 84 (60%) |
| Unemployed | <u>31</u> (22%) |
| | <u>24</u> (18%) |
| TOTAL | 139 (100%) |

| MALE | | |
|----------------------|-----|--------|
| Student/Part-time | 20 | |
| Factory | 25 | |
| Construction | 4 | |
| Retired | 2 | |
| Business Owner | 1 | |
| Railroad Employee | 1 | |
| Plumber | 1 | |
| Hospital Employee | 1 | |
| Taxi-Driver | 1 | |
| Salesman | 1 | |
| Teacher | 1 | |
| Waiter | 1 | |
| Gas Station Attnden. | 1 | |
| <hr/> | | |
| Full or part-time | 60 | (56%) |
| Non-working Student | 30 | (27%) |
| Unemployed | 18 | (17%) |
| <hr/> | | |
| TOTAL | 108 | (100%) |

3. Male and Female Employment

| | | |
|-------------------|-----|--------|
| Full or part-time | 144 | (58%) |
| Students | 61 | (25%) |
| Unemployed | 42 | (17%) |
| <hr/> | | |
| TOTAL | 247 | (100%) |

IV. SUMMARY

The original Project Proposal estimated that Resources Are People would "handle considerably in excess of 300 clients during the year because these cases will be terminated from further probationary supervision as soon as they have demonstrated successful response to community agency treatment -- thereby avoiding duplicating counseling services -- and diverting new clients to the Resources Are People project."

The Project supervised 327 clients in the first 9 months with a projection of 480 clients during the first year. In the first 9 months there were 7 probation violators, a 2% violation rate.

In the six month period that Public Information Meetings have been conducted, 17 community agencies have presented programs to more than 1278 clients, family, and agency personnel, with an average attendance of over 100 per meeting. This means

that a considerable amount of information about a variety of social problems confronting our clients, and the community resources available to deal with these problems, has been presented.

Throughout 1972-73, Resources Are People will continue to look at new approaches to solving old correctional problems:

- ** The role of the complainant. Study will be given to possibilities of involving the "left-out" person in the total criminal process, the complainant, as a volunteer counselor of the offender who victimized him.
- ** Counseling of the elderly. Since an increasing percentage of the population is living longer and, proportionally, are becoming involved with the law, special attention will be given to the possibility of developing counseling techniques suited to their problems -- as distinguished from the traditional emphasis given to young-adult counseling techniques.
- ** Shoplifting Research. The Project is in a unique position to conduct full-scale research into the motivational behavior of shoplifters. The feasibility of such research will be studied.
- ** Volunteer Probation Aides. The Project will study the possibility of utilizing Project "graduates" as volunteers to work with other clients.

UNITED STATES GOVERNMENT

*Memorandum*DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATIONTO : Bryan Beck
Off of Technology Transfer

DATE: February 14, 1974

FROM : Tom Lewin *TL*
Off of Technology TransferSUBJECT: ~~Off~~ Probation Authority, Genesee County, MichiganSummary

The CPA Program, an adult diversion program, was established in ~~1969~~ the Genesee County Prosecuting Attorney. Its objectives were: 1) to offer selected adult felony offenders the opportunity to avoid ~~the stigma~~ of a criminal record while 2) assisting in their rehabilitation utilizing community resources.

The CPA Program intervenes at the warrant issuance stage of ~~prosecution~~. All defendants who meet the program criteria of ~~non-violent~~ felony offense, whose present act does not exhibit a ~~recurring~~ pattern of anti-social behavior, who live in the jurisdiction and whose case evidences sufficiency for prosecution are ~~eligible~~ for program consideration. After defendants are referred ~~to the~~ DA to the project, they are interviewed and investigated. ~~The~~ project feels it can work with the defendant, the DA allows ~~the~~ defendant to participate in the program for one year. If at ~~the~~ end of this period, the defendant has satisfied the conditions, ~~he~~ is dismissed, and any booking records are returned. Defendants ~~do not~~ accept the moral responsibility for their act (in lieu of a ~~guilty~~ plea); must pay a \$100 fee to participate (this fee is waived ~~in~~ ~~domestic~~ cases) and in cases where restitution is in order, promise ~~to~~ the restitution. The program is voluntary, and at any time ~~the~~ defendant can withdraw, with the understanding that the case ~~will~~ become subject to prosecution.

The program has been evaluated by an interdisciplinary team ~~of~~ three Michigan universities. The evaluation included an analysis ~~of~~ records, of the legal aspects and costs considerations.

In 1971, of the 1,171 cases referred to CPA, 740 were accepted ~~for~~ probation. 230 referrals were rejected by the program and 211 ~~were~~ voluntary withdrawals and thus subject to prosecution.

Analysis of 208 cases comprising a 50% sample of male and female ~~participants~~ whose cases were terminated during a period of one and a ~~half~~ years from August 1969 to February 1971, indicates that 66% of ~~the~~ defendants were male, 34% females; 66% white; 57% were between ages ~~18-21~~, nearly 50% were charged with larceny from a building, and ~~had~~ a prior juvenile or adult arrest record. Although indicators

Page 2

of stable living patterns (financial status, marital status, education and time in the community) are not part of the criteria governing referral, they do play a role in the post referral stage. Basically, the project acceptances are "first offender types whose living patterns have not already become seriously disrupted or deteriorated."

Exemplary Project Criteria Achievement

I do not recommend this program be designated as exemplary due to the problems concerning the return of arrest records, the payment of the probation fee and restitution fee and the questions of the projects effectiveness without the expertise of the Director.

Goal AchievementDelivery of Services

The evaluation found that CPA was well managed. However, the high caseloads of 130-165 were an area of concern by both the staff and the clients. Although at present, it has not had a detrimental effect on the counselling process, home visits have been limited and the overall effectiveness of the program has been hampered by the necessity of the director and casework supervisor being diverted from their responsibilities to cope with casework overload. The evaluation states that any increase in caseload would jeopardize counseling effectiveness, cost efficiency and staff morale.

Although the amount of time spent by counselor on individual cases drops markedly after the first few months of contact, on the whole, the drop in time does not appear to adversely affect the client since a strong interpersonal bond is set up between counselor and client in the early months of the probationary period.

Return of Arrest Records

As part of the program design, clients are assured that upon successful completion of the probation period, arrest records will be returned to them. However, the project states that there is no guarantee that any and all arrest records are returned from the local, Michigan State Bureau and FBI files. This is a critical weakness in the program and one which seriously hampers its effectiveness.

Provision of Referral Services

The project provided 105 referrals for 83 of the 203 clients. The fact that only 40% were referred to outside agencies, attests to the relative stability of the clients.

Clients Response to the Program

13 of the 18 clients interviewed had a very positive reaction to the program. However, 6 of the 17 suggested that ex-offenders be involved in the program; 5 suggested that there be closer contact-hope visits; 4 suggested more appointments with counselors and 3 suggested vocational counseling.

Staff Members Response to the Program

During 1971 all project staff were interviewed. These interviews revealed a high degree of consensus on methods and goals and a high esprit de corps. However, the staff felt that the amount of personal attention given to the individual clients was not as high as it should be or as desired by clients interviewed and that the lack of private offices for counseling participants inhibited the participants.

Law Enforcement Response

Assessment of the CPA Program by police officers, based on observations by key personnel in seven police agencies which have substantial contact with CPA, is predominantly favorable.

Recidivism

376 cases in 1969, representing 3/4's of those clients who had successfully completed probation supervision and 1/2 of the cases which were dismissed in 1969, were analyzed for new arrests and/or convictions, anywhere from 27 months to 36 months after participation. The analysis revealed that 82.7% of the clients had no subsequent arrest or conviction during or after probation. Of the clients re-arrested and/or convicted, 11/2% were arrested on a traffic offense; 6.9% were convicted for a traffic offense; 10.1 arrested on a misdemeanor offense, 6.1% were convicted on a misdemeanor offense; 4.8% were arrested on a felony charge; and 8% were convicted on a felony charge. The project states that the felony figures are undoubtedly low since the Sheriff's departments files were not searched. However, since 70-80% of all bookings in the county are processed through the Flint Department, and, if it is likely that the Sheriff's and Flint Police Department are equally likely to produce felony arrests, the arrests rate would rise to 6.4% and the conviction rate to 1.1%.

Although these figures are very low, the project points out that measures of recidivism do not reflect the project's effectiveness since the type of CPA client is not likely to be arrested and convicted again. In fact, questions have been raised concerning the necessity of ever providing these type of clients with treatment. Because a control group of clients not receiving treatment was not established, the effects of treatment cannot be isolated. However, the low frequency of subsequent arrests for serious offenses indicates that the program criteria that "the present offense leading to arrest did not represent a continuing pattern of anti-social behavior" is well applied.

Probation Violation

CPA probation Violations include both technical violations and arrests for new offenses.

Although an increase in probation violations occurred from 1968 through 1971, from .7% to 5.5%, the evaluation states this may be due to 1) the broadening of criteria to permit new offense types and a prior criminal history, 2) the increase in referrals was not compensated by an increase in staff, resulting probably in increased violation particularly of a "technical" nature, and 3) the project recommends violation of probation in situations which might be normally continued on probation in District or Circuit Court.

Replicability

Two features of the program, the \$100 probation fee, and the payment of restitution, make the program design questionable in economically depressed areas. Although the project states that the fee is waived for hardship cases, these cases make up only 17% of the client enrollment. However, in urban areas, it is highly unlikely that only 17% would be unable to pay the fee. As a result of inability to pay the fee, the economic benefits of the program, whereby the probation fees reduce the costs of the program by one-fourth, would be diminished.

Additionally, the project Director's influence on the program raises questions concerning its replication. According to the evaluation, a rather striking circumstance is the extent to which the agency has been shaped by the concepts in correctional philosophy and professionalism fostered by the Director. A frequently expressed sentiment was that CPA would be a far different, and by implication, less successful program, without the Director's role in shaping and guiding its development and operation. Although the CPA has been initiated in other areas, whether these programs, which lack the expertise and influence of Mr. Wright, will be as effective is not known at present.

Measurability

Although the project provides much data to indicate its effectiveness, a few measures are missing. These measures include 1) the use of a control group, 2) analysis of recidivism and probation violation by type of offender (first offender versus offenders with some past history, 3) analysis of reasons why clients voluntarily withdraw from the program.

Efficiency

Neither a cost benefit analysis of CPA nor a cost comparison with an equivalent agency was undertaken. The straight cost benefit analysis was ruled out in the original proposal because of the inability to quantify the benefits the individual and society receives by not sending

the offender through the normal process. Similarly, a cost comparison was ruled out because there is no other agency which handles identical cases and could, therefore, be used as a benchmark. However, the managerial and costs aspects of the project were evaluated. The evaluation indicated that the staff performed well within the limits of the budgeted cost parameters. Expenditures of monies are carefully planned and balanced so that there is no disproportionate expenditure in any one period which would cause budgetary stress during the remainder of the fiscal year.

Although total expenditures for the project have increased annually, the per client costs have decreased. This is accounted for by the proportionally larger amount of Probation Services Fees paid annually. In 1971, the total operating costs were \$121,999. However, \$39,303 was paid in fees. These fees are paid to the County General Fund and have the purpose of defraying the cost of operating the program. Therefore, the average per client cost, completed by dividing actual expenditures, minus the amount of fees paid, by the number of probationers supervised during the year was \$65.00.

Although no hard data is available concerning CPA's effect on the workload of other agencies, the following observations have been made by the evaluators: 1) existence of CPA probably reduces the workload of police agencies; 2) CPA undoubtedly reduces the workload of the prosecutor's staff; 3) savings are realized since CPA cases rarely involve the use of public defenders and 4) CPA's existence modifies and apparently reduces the workload of the Adult Probation Department.

GENESEE COUNTY BOARD OF COMMISSIONERS

1101 BEACH STREET, ROOM 312

TELEPHONE 766-8926
Jan. 28, 1974

FLINT, MICHIGAN 48502

Mr. Gerald M. Caplan, Director
Technology Transfer Division
National Institute of Law Enforcement
and Criminal Justice
United States Department of Justice
Law Enforcement Assistance Administration
Washington, D. C. 20530

Dear Mr. Caplan:

Enclosed is our recommendation and application in behalf of the Genesee County Citizens Probation Authority for Exemplary Project designation.

As a County Department since only 1968, CPA has gained the full respect and support of the Genesee County Board of Commissioners as an effectively and efficiently operated department and criminal justice program. From a fledgling, experimental program, with more than half of its previous operational budget under other than County funding, CPA has become a permanent function of County operations supported entirely by County and County-apportioned federal monies, as are other departments.

For some years CPA has been locally appreciated, and has, recently, received national attention and approval at National Association of County Government meetings, and in professional publications. Genesee County government is proud to have been a parent and partner of this program which has become an important contributor to a national movement for improvement of criminal justice. It is our sincere hope that CPA will receive serious consideration for a designation, we believe, well earned.

Very truly yours,

Joseph A. Knapp
Joseph A. Knapp, Chairman
Genesee County Board
of Commissioners

JAK
Encl.

COMMISSIONERS

- | | | | |
|-------------------------------------|-----------------------------------|----------------------------------|----------------------------------|
| NATHANIEL TURNER DISTRICT 1 | MICHAEL J. CARR DISTRICT 5 | DONALD C. RUSCHMAN DISTRICT 9 | LAWRENCE B. RICE DISTRICT 13 |
| HAROLD R. HAYDEN DISTRICT 2 | DANIEL STAMOS DISTRICT 6 | JOSEPH A. KNAPP DISTRICT 10 | WILLARD P. HARRIS DISTRICT 14 |
| GERALD R. BROWN DISTRICT 3 | THOMAS L. GADOLA DISTRICT 7 | RICHARD A. HAMMEL DISTRICT 11 | |
| CHARLOTTE L. WILLIAMS DISTRICT 4 | RICHARD L. WILLIAMS DISTRICT 8 | GARY G. CORBIN DISTRICT 12 | |

T. RAY JOHNSON, BOARD COORDINATOR

ENDORSEMENT



UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

REGIONAL OFFICE
Room 121, 316 1/2 Des Plaines Avenue
Des Plaines, Illinois 60018

TELEPHONE
312/353-1203

December 5, 1973

Mr. Eugene S. Baldwin, Director
Region 5 Crime Commission
Galliver Building
932 Beach Street
Flint, Michigan 48502

Dear Mr. Baldwin:

In reference to your letter of November 13, 1973, the purpose of this correspondence is to give LEAA Region V's endorsement for the Genesee County Citizens Probation Authority to receive consideration as an Exemplary Project. This recommendation is based on a year-long research and evaluation study conducted by an interdisciplinary team of researchers from three universities, whose report is titled: "Deferred Prosecution and Criminal Justice: A case study of the Genesee County Citizens Probation Authority."

As indicated by the research report, the CPA qualifies for exemplary project consideration in the four major criteria: a measurable improvement in some aspect of the criminal justice system, demonstration of cost effectiveness, suitability for adoption in other jurisdictions, and a willingness to share information with other communities.

I would like to thank you for bringing this fine project to the attention of the LEAA Regional Office. I am confident that the CPA will get the recognition that it so obviously deserves.

Sincerely,

FRANKLIN D. ENGLISH
Acting State Representative, Michigan

CONTINUED

2 OF 3

ENDORSEMENT

MICHIGAN COMMISSION
ON
CRIMINAL JUSTICE

STATE OF MICHIGAN



WILLIAM C. MILLIKEN, Governor

DEPARTMENT OF MANAGEMENT AND BUDGET

LEWIS CASS BLDG., LANSING, MICHIGAN 48913
JOHN T. DEMPSEY, Director

OFFICE OF CRIMINAL JUSTICE PROGRAMS
Second Floor, Lewis Cass Building
LANSING, 48913
PHONE NO. 370-3392

DON P. LeDUC
Administrator
RICHARD K. NELSON
Deputy Administrator

EXEMPLARY PROJECT RECOMMENDATION

I. Project Description

1. Name of the program:
Genesee County Citizens Probation Authority
2. Type of program:
"Deferred prosecution" (pretrial intervention) diversionary program.
3. Area served:
Genesee County, Michigan, and environs.
4. Approximate population of area:
450,000.
5. Administering agency:
Genesee County Citizens Probation Authority
210 W. 5th Street
Flint, Michigan 48503
6. Project Director:
B. James Wright, Director
1-(313) 766-8536
7. Funding Agency:
Genesee County
Administration Building
1101 Beach Street
Flint, Michigan 48502
(313) 766-8926
8. Project Duration:
Project commenced November, 1965 -- on-going.
9. Project Operating Costs:
1968 through 1973
Federal: \$49,398. (LEAA)
53,413. (EEA)
22,112. (Revenue Sharing)
\$124,953.
State: -0-

Lt. Gov. James H. Brickley,
Ch. Thomas M. Kavanagh,
TASK FORCE CHAIRMEN
Professor Harold B. Johnson
Commissioner John F. Nichols
Senator Robert R. Charuson
Councilman Ernest C. Browne, Jr.
Colonel John R. Plants

Eugene Baldwin, Director
Region V Crime Commission
Galliver Building
932 Beach Street
Flint, MI 48502

Dear Mr. Baldwin:

I am pleased to endorse the Genesee County Citizens Probation Authority for consideration as an LEAA Exemplary Project. The CPA program is characterized by many notable achievements in addition to accomplishing its primary objective of providing effective treatment for offenders while minimizing their exposure to the deleterious effects of the criminal justice system. The program is well administered. It makes maximum use of community resources. Good coordination is maintained between the various criminal justice agencies which are involved. Costs are kept low. The record system contributes to evaluation and enhances extended data analysis if such analysis is desirable.

For these reasons, I do not hesitate to recommend the Genesee County Citizens Probation Authority for recognition as an exemplary project.

Sincerely,

Don P. LeDuc
Administrator

DPL:bc



Local: \$542,865.⁽¹⁾
Private Trust Funds: 69,792.
TOTAL: \$737,580.

(a) None of the above costs represent "start-up" or "one-time" expenditures.

(b) See budget breakdown attached, Exhibit A.

10. Evaluation Costs:

An interdisciplinary team of researchers from three Michigan universities conducted a year-long research and evaluation study of CPA in 1971-72 under Michigan OCJP Grant #2-10-05-0730-01 (\$12,000.).

11. Continuation:

CPA has been "institutionalized" under Genesee County funding, with commitments to absorb Emergency Employment Act and Revenue Sharing allocations. It has had full and autonomous County departmental status since 1968. Counselor and secretarial positions are protected under union contract: American Federation of State, County and Municipal Employees (AFL-CIO).

II. Attachments

A. Program Review

1. Project Summary.

The Citizens Probation Authority was established in 1965 in the belief that not all offenders require the full prosecution of the law in order to protect society, secure justice and correct unlawful behavior.

Initial objectives for deferred prosecution were (1) to offer selected

(1) Additional local revenue is achieved through Clint Probation Service Fees (\$100. according to ability to pay, since July 1969) in the amount of approximately \$162,000 through 1973. These fees are paid into the County General Fund account and do not directly benefit CPA.

adult felony offenders the opportunity to avoid the stigma of a criminal record, while (2) assisting in their rehabilitation utilizing community resources. Two major implications of deferred prosecution are that it contributes to (1) a more effective allocation of limited criminal justice resources, and (2) increased equity in the criminal justice process.

The deferred prosecution approach involves acceptance of the premise that persons charged with serious offenses often are not patterned criminals, that intervention to inhibit development of a criminal lifestyle may be more productive for such persons than a punishment-oriented response, and that diversion from the normal court-conviction-probation/incarceration procedure improves the chance for successful intervention.

The CPA program intervenes at the warrant issuance stage of pre-prosecution, thereby diverting eligible candidates from formal entry into the system. Selective diversion involves careful screening through the application of established criteria and formalized procedures: all non-violent, adult, felony offenders who do not exhibit a continuing pattern of anti-social behavior, who live within the legal jurisdiction of the prosecuting agency, and whose case evidences sufficiency for prosecution, are automatically eligible for deferral and program consideration.

The referred offender is scheduled for an intake interview to (1) advise him of his constitutional rights, (2) determine his willingness to accept "moral responsibility" for his behavior (in lieu of guilty plea, or formal admissions of guilt), (3)

obtain his consent to deferral of prosecution and further confidential investigation, and (4) determine his willingness to fulfill program requirements. Subsequent interviews are conducted by the counseling staff to develop a mutually agreed upon community treatment plan, and report and recommendation to the prosecutor. Participation in the CPA is voluntary and may be for any period up to one year at which time, upon successful completion of the program, further prosecution is dismissed and any booking records returned to the client. A formalized "violation" procedure is employed for re-instituting prosecution in those approximately 5% probation violation cases.

2. Criteria Achievement

See Exhibit B, 1972 LEAA research report, "Deferred Prosecution And Criminal Justice: A case Study of the Genesee County Citizens Probation Authority," specifically: "Preface," "Program Effectiveness Findings and Recommendations" (p. 16), "Cost Considerations Findings and Recommendations" (p. 78), and, "Legal Aspects Findings and Recommendations" (p. 102). The research report, in the sections cited above, deals specifically with such criteria as goal achievement, replicability, measurability, efficiency, etc.

3. Outstanding Features

Certainly one of the outstanding features of CPA is that as the first formal deferred prosecution program, without existing precedent or pattern, it developed a simple but highly effective diversion model which has been adopted from rural Lapeer County, Michigan, to highly urbanized San Bernardino, California.

A major contributing factor has been the "innovativeness" of approach to all phases of development: philosophy and concepts, administrative-staff-client relationship, treatment techniques, etc. (see specifically Ch. 4, p. 55 on)

4. Weaknesses

There is, apparently, no absolute "guarantee" that any and all arrest records are returned to clients from local, Michigan State Bureau, and FBI files, as prescribed by law.

Ideal cost analysis, either a cost-benefit analysis of CPA or a cost comparison with an equivalent agency, are not feasible at the present time (p. 80).

Objectively reliable measures and comparisons of "recidivism" are not feasible at the present time because of widespread differences in definition, reporting and data gathering procedures (pp. 71-73).

While the operation of any program may be adjudged "effective" without the kind of "hard data" required for ideal internal and comparative evaluation, this and other programs could be improved by development of and adherence to national "accountability" standards.

5. Degree of Support

Reference research report, specifically pp. 91-101, "Impact Upon Related Agencies."

Support is also indicated in the fact that for the first two years of its existence, 1965-'67, the program was conducted by volunteer citizens from the community and has had a 25 man

Citizens Advisory Council since 1968. (pp. 5-8). Adjacent Lapeer County program, modeled after CPA, is in its third year of successful operation totally financed and staffed by local volunteer citizen efforts.

One of the "innovative" treatment approaches developed by CPA has been the "Resources Are People" (RAP) project emphasizing a community out-reach approach and utilizing paraprofessional counselors. (pp. 67-68, also pp.35-37). This project of CPA was funded for two years in the amount of \$69,792 by a local charitable trust organization, and since by Genesee County. Exhibit C are copies of community agency letters of support of that project.

CPA has never sought (and, in fact, avoided) media "publicity." Exhibit D are copies of newspaper articles reflecting news media attitudes.

B. Endorsements

See attached letters from Don. P. LeDuc, Administrator, Michigan Office of Criminal Justice Programs, and

C. Budget Break-down and Evaluation Reports.

See Exhibits A and B.

COUNTY OF GENESEE - - Detailed Budget Request

Run Date 8/31/73

Activity No. 101-132

Department
Activity

Citizens Probation

Year 1974

Prepared By:

Page

| Line Item No. | Description | 1971 Actual Expenditure | 1972 Actual Expenditure | Current Year | | | Regular Program | Revenue Sharing | Grant Continuation | Total | | |
|---------------|-------------------------|-------------------------|-------------------------|------------------|-----------------------|----------------|-----------------|-----------------|--------------------|-----------------|-----------------|-------------|
| | | | | 8 months Encumb. | Revised as of 8-31-73 | Adopted Budget | | | | Regular Program | Regular Program | New Program |
| 702.00 | Salary, Suprv. | 16,343 | 17,447 | 12,633 | 19,434 | 17,509 | 20,200 | | 20,200 | 2,000 | | 22,200 |
| 703.00 | Salary, Perm. | 66,895 | 61,205 | 55,425 | 87,255 | 83,337 | 98,974 | 54,927 | 23,841 | 177,742 | 59,650 | 237,392 |
| 705.00 | Salary, Temporary | | 271 | 1,935 | 750 | 750 | 750 | | | 750 | | 750 |
| 802.01 | Health Services | 26 | 10 | 20 | 20 | 20 | 20 | | | 20 | 60 | 80 |
| 901.00 | Printing | | 171 | 8 | 347 | 347 | 377 | | | 377 | 200 | 577 |
| 728.00 | Postage | 130 | 194 | 142 | 240 | 240 | 240 | | | 240 | | 240 |
| 851.00 | Telephone | 1,772 | 1,524 | 1,026 | 1,981 | 1,973 | 1,596 | 188 | | 1,784 | 1,220 | 3,004 |
| 801.00 | Travel | 4,137 | 1,515 | 212 | 186 | | 0 | | | 0 | 400 | 400 |
| 802.00 | Travel, Workshop | 32 | 74 | | 450 | 200 | 200 | | | 200 | 1,550 | 1,750 |
| 867.01 | Co. Car Rental | | 4,571 | 5,632 | 5,500 | 5,500 | 5,500 | 2,200 | | 7,700 | 8,800 | 16,500 |
| 807.00 | Accident Ins. Charge | | | | 100 | 100 | 100 | | | 100 | 500 | 600 |
| 709.00 | Memberships & Subsc. | 8 | 10 | | 40 | 40 | 10 | | | 10 | 40 | 50 |
| 905.00 | Vehicle Repair | 93 | 2 | | | | 0 | | | 0 | | 0 |
| 906.00 | Office Equipment Repair | 654 | 513 | 199 | 460 | 460 | 204 | | | 204 | 432 | 636 |
| 727.00 | Office Supplies | 929 | 930 | 527 | 984 | 984 | 1,000 | 84 | | 1,084 | | 1,084 |
| 715.00 | FICA | | 3,951 | 3,912 | 5,004 | 4,972 | 6,127 | 3,214 | 1,395 | 10,736 | 3,432 | 14,168 |
| 712.00 | ENTIREMENT | | 5,388 | 4,141 | 6,820 | 7,383 | 8,247 | 3,802 | 1,650 | 12,699 | 4,031 | 16,730 |
| 716.00 | Hospitalization | | 2,714 | 2,490 | 3,850 | 3,850 | 3,814 | 2,505 | 598 | 6,917 | 4,775 | 11,692 |

69

A-1

RUN DATE 01-30-74

GENESEE COUNTY BUDGET AUDIT SYSTEM

REPORT PERIOD 01-01-74 TO 01-31-74

MASTER FILE LIST

PROGRAM BA08 PAGE 45

FUND 101 DEPT 230-CITIZENS PROB AUTHORITY

| | JAN | FEB | MAR | APR | MAY | JUNE | JULY | AUG | SEPT | OCT | NOV | DEC | TOTAL |
|-------------------------------------|----------|----------|----------|----------|-----------|----------|----------|----------|----------|----------|-----------|-----|-----------|
| 702.00 SALARY SUPERVISOR | 1,555.40 | 1,555.40 | 1,555.40 | 1,555.40 | 2,323.00 | 1,555.40 | 1,555.40 | 1,555.40 | 1,555.40 | 2,323.00 | | | 20,200.00 |
| 703.00 SALARY PERMANENT | 7,621.00 | 7,621.00 | 7,621.00 | 7,621.00 | 11,382.01 | 7,621.00 | 7,621.00 | 7,621.00 | 7,621.00 | 7,621.00 | 11,382.01 | | 98,974.00 |
| 705.00 SALARY TEMPORARY | 57.75 | 57.75 | 57.75 | 57.75 | 86.25 | 57.75 | 57.75 | 57.75 | 57.75 | 57.75 | 86.25 | | 750.00 |
| 715.00 FICA | 471.78 | 471.78 | 471.78 | 471.78 | 704.61 | 471.78 | 471.78 | 471.78 | 471.78 | 471.78 | 704.61 | | 6,127.00 |
| 716.00 HOSPITALIZATION | 316.49 | 316.49 | 316.49 | 317.86 | 316.49 | 316.49 | 595.36 | 154.90 | 291.13 | 291.13 | 288.66 | | 3,814.00 |
| 717.00 LIFE HEALTH INSURANCE | 217.24 | 217.25 | 217.25 | 218.56 | 217.25 | 295.92 | 320.01 | 179.68 | 252.96 | 239.19 | 246.49 | | 2,861.00 |
| 718.00 RETIREMENT | 635.02 | 635.02 | 635.02 | 635.02 | 948.41 | 635.02 | 635.02 | 635.02 | 635.02 | 635.02 | 948.41 | | 8,247.00 |
| 727.00 SUPPLIES OFFICE | 50.00 | 50.00 | 300.00 | 50.00 | 50.00 | 100.00 | 50.00 | 50.00 | 100.00 | 50.00 | 50.00 | | 1,000.00 |
| 728.00 POSTAGE | 14.77 | 16.00 | 14.77 | 16.00 | 14.77 | 16.00 | 14.77 | 16.00 | 14.77 | 71.38 | 14.77 | | 240.00 |
| 729.00 MAGAZINES AND PERIODICALS | | | | 10.00 | | | | | | | | | 10.00 |
| 802.01 HEALTH SERV. EMP. | | | | 20.00 | | | | | | | | | 20.00 |
| 851.00 TELEPHONE AND TELEGRAPH | 129.48 | 130.40 | 129.48 | 130.40 | 82.93 | 82.01 | 116.95 | 116.95 | 155.60 | 173.92 | 173.92 | | 1,596.00 |
| 862.00 TRAVEL WORKSHOP | | 40.82 | | | | 102.04 | 40.82 | | 16.32 | | | | 200.00 |
| 867.01 RENTAL CAR | 458.00 | 458.00 | 458.00 | 458.00 | 459.00 | 459.00 | 1,039.00 | 103.00 | 402.00 | 402.00 | 402.00 | | 5,500.00 |
| 867.02 DEDUCTABLE CAR INS. | | | | | | | 100.00 | | | | | | 100.00 |
| 901.00 PRINTING | 31.40 | 31.40 | 31.40 | 31.40 | 31.40 | 31.40 | 31.40 | 31.40 | 31.40 | 31.40 | 31.40 | | 377.00 |
| 911.00 WORKMANS COMPENSATION | 206.59 | 206.59 | 206.59 | 206.59 | 308.55 | 206.59 | 206.59 | 206.59 | 206.59 | 206.59 | 308.55 | | 2,683.00 |

RUN DATE 01-30-74

GENESEE COUNTY BUDGET AUDIT SYSTEM

REPORT PERIOD 01-01-74 TO 01-31-74

RUN DATE 01-30-74

GENESEE COUNTY BUDGET AUDIT SYSTEM

REPORT PERIOD 01-01-74 TO 01-31-74

MASTER FILE LIST

PROGRAM BAD8 PAGE 46

FUND 101 DEPT 230 CITIZENS PROB AUTHORITY

| | JAN | FEB | MAR | APR | MAY | JUNE | JULY | AUG | SEPT | OCT | NOV | DEC | TOTAL |
|------------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|
| 913.00 INSURANCE SURETY BONDS | | 12.00 | | | | | | | | | | | 12.00 |
| 936.00 REPAIRS OFFICE EQUIPMENT | 17.59 | 26.81 | 117.71 | | | | | | | 41.89 | | | 204.00 |
| 945.00 RENTAL COUNTY OFFICE | 784.52 | 784.52 | 784.52 | 784.52 | 784.52 | 784.52 | 784.52 | 784.52 | 784.52 | 784.52 | 784.52 | 788.28 | 9,418.00 |
| 962.01 REFUNDS GENERAL | 42.00 | 42.00 | 42.00 | 42.00 | 42.00 | 40.00 | 42.00 | 42.00 | 42.00 | 42.00 | 42.00 | 40.00 | 500.00 |
| DEPT 230 TOTAL | 12,609.03 | 12,959.16 | 12,673.23 | 12,626.28 | 17,751.19 | 12,774.92 | 13,682.37 | 12,025.99 | 12,638.24 | 12,674.97 | 17,786.59 | 12,631.03 | 162,833.00 |

RUN DATE 01-30-74

GENESEE COUNTY BUDGET AUDIT SYSTEM

REPORT PERIOD 01-01-74 TO 01-31-74

MASTER FILE LIST

PROGRAM BA08

PAGE 194

FUND 249 DEPT 230 CITIZENS PROB AUTHORITY

| | JAN | FEB | MAR | APR | MAY | JUNE | JULY | AUG | SEPT | OCT | NOV | DEC | TOTAL |
|-----------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-----------|
| 703.00 SALARY PERMANENT | 4,229.38 | 4,229.38 | 4,229.38 | 4,229.38 | 6,316.61 | 4,229.38 | 4,229.38 | 4,229.38 | 4,229.38 | 4,229.38 | 6,316.61 | 4,229.36 | 54,927.00 |
| 715.00 FICA | 247.48 | 247.48 | 247.48 | 247.48 | 369.61 | 247.48 | 247.48 | 247.48 | 247.48 | 247.48 | 369.61 | 247.46 | 3,214.00 |
| 716.00 HOSPITALIZATION | | | | | | | 373.71 | 636.47 | 373.71 | 373.71 | 373.71 | 373.69 | 2,505.00 |
| 717.00 LIFE HEALTH INSURANCE | | | | | | | 189.70 | 344.91 | 189.70 | 189.70 | 286.28 | 189.71 | 1,390.00 |
| 718.00 RETIREMENT | 292.75 | 292.75 | 292.75 | 292.75 | 437.23 | 292.75 | 292.75 | 292.75 | 292.75 | 292.75 | 437.23 | 292.79 | 3,802.00 |
| 727.00 SUPPLIES OFFICE | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 7.00 | 84.00 |
| 851.00 TELEPHONE AND TELEGRAPH | 15.66 | 15.66 | 15.66 | 15.66 | 15.66 | 15.66 | 15.66 | 15.66 | 15.66 | 15.66 | 15.66 | 15.74 | 188.00 |
| 862.00 TRAVEL WORKSHOP | 183.26 | 183.26 | 183.26 | 183.26 | 183.26 | 183.26 | 183.26 | 183.26 | 183.26 | 183.26 | 183.26 | 184.14 | 2,200.00 |
| 911.00 WORKMANS COMPENSATION | 133.52 | 133.52 | 133.52 | 133.52 | 199.41 | 133.52 | 133.52 | 133.52 | 133.52 | 133.52 | 199.41 | 133.50 | 1,734.00 |
| 913.00 INSURANCE SURETY BONDS | .33 | .33 | .33 | .33 | .33 | .33 | .33 | .33 | .33 | .33 | .33 | .37 | 4.00 |
| 979.00 OFFICE EQUIPMENT | 164.85 | 164.85 | 164.85 | 164.85 | 164.85 | 164.85 | 164.85 | 164.85 | 164.85 | 164.85 | 164.85 | 165.65 | 1,979.00 |
| DEPT 230 TOTAL | 5,274.23 | 5,274.23 | 5,274.23 | 5,274.23 | 7,693.96 | 5,274.23 | 5,837.64 | 6,255.61 | 5,837.64 | 5,837.64 | 8,353.95 | 5,839.41 | 72,027.00 |

(1974 EEA Funds (24,022) not spread on annual Master File Computer print-out.)

END