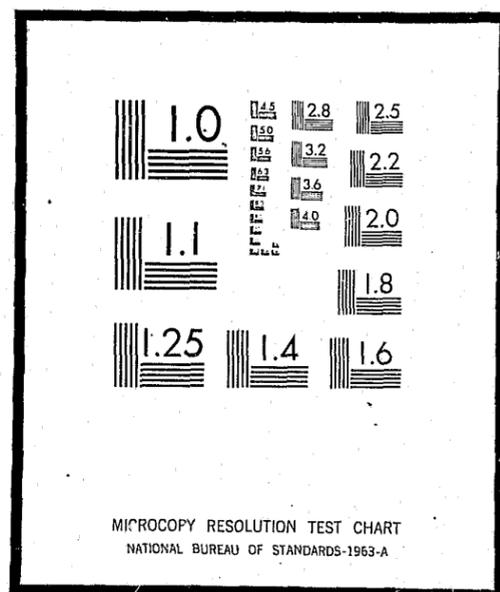


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Diversion Programming in Criminal Justice: The Case of Minnesota

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THE USE of discretionary authority and the role of diversionary programs have long occupied a central place in the administration of criminal law. Increasingly, however, these concepts are being systematically linked and formally structured at various points in the contemporary administration of criminal justice. Any attempt at developing nontraditional program alternatives within a criminal justice system will inevitably deal with the issue of the discretionary authority held by public officials in that system, especially in terms of the variety of ways such authority

can be used to divert out of the system those individuals implicated in it. Discretionary authority exists whenever the effective limits on the powers of a public official leaves that individual free to make a choice among possible courses of action or inaction and all of the criminal statutes calling for sanctions can be altered or nullified by the application of any one of several sets of discretionary power—the discretion of the police not to arrest, the discretion of the prosecutor not to prosecute, the discretion of the judge to rule in favor of suspended sentence or probation, the discretion of the parole board to release prior to the completion of a full sentence.¹

The formal diversion of offenders has recently been popularized by the President's Commission on Law Enforcement and Administration of Jus-

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¹ Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry*. Urbana: University of Illinois Press, 1971, pp. 4-18.

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tice. That Commission recommended, "the early identification and diversion to other community resources of those offenders in need of treatment, for whom full criminal disposition does not appear required.² As compared to the informal nature of prior diversionary attempts, the contemporary use of the term refers to some form of *structured* and *formal* intervention into the criminal justice process as a result of which the individual is referred for treatment or supervision to a community agency which is at least partially outside of traditional criminal justice establishments.

Two ways in which the term "diversion" is used can be identified: The first is "true" diversion in which any direct action on the part of a criminal justice official is avoided except that of referring the individual for some kind of action to agencies outside of the criminal justice system. If true diversion occurs, the individual is clearly placed outside of the official realm of the justice system and is immune from receiving any of the system labels. Examples of true diversion programs are those involving special categories of offenders such as drunks, addicts, and the mentally ill who are diverted from processing in the criminal justice system as a result of transfer to the jurisdiction of public health authorities.³ The initial concept of the juvenile court is an example of true diversion from the criminal justice system for a special class of offenders.⁴

The second, and more common, use of the term "diversion" refers to minimizing the offender's penetration of the juvenile or criminal justice systems. By this definition any action short of serving a full sentence in a correctional institution can be regarded as diversionary. To a great extent, the distinction between true and partial diversion programs corresponds to diversion prior to conviction as compared to postconviction diversion programs.

A primary rationale for the development of diversion programs comes from labeling theory in the hypothesis that a self-fulfilling prophecy

may be set in motion as a result of labeling persons as deviant—individuals stigmatized as delinquent or criminal become, at least to some extent, what they are said to be.⁵ A direct corollary of this argument is that the further a person proceeds through the sequence of stages within the juvenile or criminal justice systems—from apprehension to confinement—the greater the probability of psychological and social damage accruing to that individual and the higher the probability of becoming further implicated in the system in the future. In short, the criminal justice and juvenile justice systems are viewed as brutalizing, corrupt, and ineffective in achieving the espoused goals of either "controlling" or "rehabilitating" deviant behavior and structured ways of funneling out of the system are held to be desirable.

Problems and issues in operationalizing the concept of diversion will be analyzed in this article in relationship to several projects currently existing in Minnesota. These projects will be discussed in relation to diversion at the level of the police, the pretrial level, the level of the court, and the level of the parole board. Each of these programs will be viewed in relation to the following questions:

(1) How is diversion operationalized and assured? Included here are questions about what the nature of the diversionary process is and specifically what the individual is diverted *from*.

(2) How is discretion operationalized? Specifically, who has authority to make diversionary decisions and on what basis are these decisions made?

(3) To what is the offender diverted? Specifically, what program components are utilized to provide services to the diverted offender and also insure a reasonable level of public protection?

Police Level Diversion

One of the more widely accepted and implemented recommendations of the President's Commission on Law Enforcement and Administration of Justice has been the establishment of youth service bureaus to divert youth out of the juvenile justice system. The Commission recommended the expanded use of community agencies for dealing with delinquents nonjudicially and close to where they live⁶ and suggested that a primary function of youth service bureaus would be individually tailored work with troublemaking youth. These services would be under the bureau's direct control either through purchase or by voluntary

agreement with other community organizations. Thus, the President's Commission saw the bureaus as central coordinators of all community services for young people as well as providing services lacking in the community, especially ones designed for less seriously delinquent juveniles.

The White Bear Lake Youth Resource Bureau has been providing services to youth for 3 years. Four assumptions are central to this program: (1) Formal contact with the juvenile justice system is more harmful than helpful to the majority of young people. (2) Many of the behaviors bringing youth before juvenile courts (such as incorrigibility, run away, drug offenses, petty theft) indicate that the youth and their families can benefit more from social services than court processing. (3) Social services will be more effectively and efficiently utilized when located in the community being served. (4) Services of the Youth Services Bureau will be more economical than existing institutions of the juvenile justice system.

While the President's Commission perceived youth service bureaus as potentially providing services to all young people in a community, the *primary* aim of these programs was that of diverting youth from the juvenile justice system. One of the major issues in operationalizing the concept of diversion in such programs is determining whether the program is in fact diverting youth who, if it were not for the agency, would be caught up in the juvenile justice system or whether the agency is primarily providing a generalized special service to youth who, even without its service, would have a low probability of having contact with the juvenile justice system. One way to assess the extent to which these programs divert youngsters from the juvenile justice system is to examine the referral source. If referrals are coming predominantly from the police or juvenile court, the implication is that youth service bureaus are diverting from the usual juvenile justice institutions. During 3 years of operation, the White Bear Lake program received 3,350 referrals. The largest number of these were self-referrals (2,085 or 62 percent), followed by 504 (15 percent) direct police referrals, 218 (7 percent) referrals from parents, 188 (6 percent) from schools, and approximately 335 (10 percent) were referred from a variety of other sources—clergy, physicians, relatives, friends, and social agencies.

An examination of the reasons for referral to this program further illustrates the difficulty of establishing its diversionary nature. The major

referral reason (64 percent) was for employment or job related problems while 17 percent of the referrals were for reasons which could, conceivably, have led to juvenile court involvement, including drug related reasons (5 percent), juvenile status offenses (5 percent), and criminal behavior (8 percent).

The argument could be made that the agency is intervening on a preventive level in dealing with the problems of youngsters before they become involved in the juvenile justice system. There are, however, two major problems with this argument. One is that it treats the concepts of diversion and prevention as synonymous. Clearly, however, this contradicts the original concept of the youth service bureau which, while it included preventive components, was to be distinguished from other wideranging delinquency prevention programs. Secondly, a position that the YSB prevents youngsters that would otherwise get caught up in the criminal justice system from entering the system is difficult to evaluate without a research design that raises serious ethical, program, and public relations problems. For example, the random assignment of youngsters to the program.

How is discretion exercised in referrals received from the police? In this jurisdiction the juvenile division of the police department has the discretionary authority for the disposition of each case. At the same time, while the police exercise discretion in the decision to refer or not, the youth and his parents also exercise discretion around accepting the referral or the alternative of juvenile court processing. The program imposes two conditions on all referrals: The referral must be acceptable to the young person and his parents and they must agree to cooperate with the bureau staff.

The White Bear program is advised by an 18-member board with 50 percent youth representation; the adult members of the board are representatives of diverse community interests. Staff services are provided by six salaried staff (four part-time plus two contracted family counselors) and 30 volunteers.

A job placement program is one of the major services provided by the program. While this service is available to all youth in the service area of the bureau, a special emphasis is placed on finding jobs for youngsters experiencing difficulty with the law on the assumption that employment will be a major factor in decreasing their delin-

² The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*. Washington, D.C.: U.S. Government Printing Office, 1967, p. 184.

³ See: *Diversion From the Criminal Justice System*, National Institute of Mental Health, Center for Studies of Crime and Delinquency. Washington, D.C.: U.S. Government Printing Office, 1971.

⁴ Anthony Platt, *The Child Savers*. Chicago: Aldine, 1969.

⁵ See: Howard Becker, *Outsiders*, Glencoe, Illinois, The Free Press, 1963; Edwin Lemert, *Social Pathology*, New York, McGraw-Hill, 1951; Edwin Lemert, "Beyond Mead: The Societal Reaction to Deviance," *Social Problems*, 21, 4, April 1974, pp. 457-467.

⁶ The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime*. Washington, D.C.: U.S. Government Printing Office, 1967, pp. 19-22.

quency. Group, individual, and family counseling services are also offered; a drop-in center provides youth with a positive relationship with adults and is a place where disenchanted and troubled youth can be directed into other helping resources. Finally, the bureau accepts the responsibility for acting as a catalyst in the formation of youth resources not available in the community. The program has been active in establishing two emergency shelter homes which are used by the police to temporarily house youth that are experiencing family problems. These emergency shelters divert youth out of the county detention center. Counseling services to youth in the shelter homes are provided by the bureau; the counseling services and shelter homes have prevented 95 percent of the cases who have entered the homes from entering court. From its own followup, the bureau has determined that 95 percent of the referrals received from the police during its first year of operation were able to complete a full year after their initial contact with the program without further difficulty with the law.

Pretrial Diversion

From the perspective of the accused, the public criminal trial may be understood as one status degradation ceremony⁷ in a series of such ceremonies which begin at the time of contact with the police and terminate with the completion of the criminal penalty. Labeling theorists suggest that such ceremonies have important consequences for the deviant's concept of self and the manner in which he is defined by the community. Avoiding the ceremony of a criminal trial, as may occur in pretrial diversion, should reduce the negative effects of stigmatization. In short, pretrial diversion involves a decision not to prosecute an arrestee on the condition that the arrestee does something in return, such as completing a rehabilitation program.

Efforts to divert arrested and charged defendants out of the criminal justice system prior to the ceremony of a public trial have become increasingly popular since the development in 1968 of the Manhattan Court Employment Project.⁸ This project has served as a model for a large number of pretrial diversion projects around the country, many of whom were initially funded as manpower projects by the U.S. Department of

Labor. One of these early projects is the Operation de Novo program situated in Minneapolis.

This project has been developed to test three questions: (1) Will a 6-month diversion from criminal prosecution to manpower training, employment, vocational or educational counseling be sufficient to effectively limit future involvement with the criminal justice system? (2) Is there value in using paraprofessional line staff within such a program? (3) Can a pretrial diversion program operate at less cost with equal or greater benefits as compared to the traditional court-correction system?

Operation de Novo diverts adult defendants from both felony and misdemeanor courts as well as juveniles in the 16 to 18 year age range from juvenile court. In 1973, 68 felony defendants, 394 misdemeanor defendants, and 954 juveniles were diverted to Operation de Novo. This constitutes approximately 5 percent of all criminal (felony and misdemeanor) cases handled in the county during the year. Demographic characteristics of persons diverted reveal a pattern of about 30 percent female; approximately 37 percent members of minority groups, 65 percent in the 18 to 21 year age range; 51 percent who have not completed high school; and 50 percent of the total volume of enrollees who are unemployed at the time of admission to the program.

If defendants who are diverted to Operation de Novo make a satisfactory adjustment, charges against them are dropped and they avoid the stigmatization of formal court processing. Although charges might possibly be dropped or the defendant acquitted without de Novo's intervention, this is unlikely as over 90 percent of all defendants in the county courts plead guilty and of the 10 percent who go to trial, 90 percent are convicted.

The exercise of discretion in Operation de Novo is a complex process involving the de Novo staff, the county prosecutor, and judge. Two project screeners review all arrest and court lists to determine if defendants fall within the target population (i.e., are unemployed or underemployed at the time of arrest, charged with nonviolent offenses, and are not diagnosed as mentally ill or chronically addicted to drugs or alcohol). Screeners seek out potential clients to interview prior to arraignment hearings for purposes of assessing the defendant's motivation for self-improvement. If the defendant, whom the project wishes to accept, is charged with a misdemeanor, the prosecutor is approached; if the prosecutor agrees to

placement in the program, the court is then moved for a 6-month continuance without a plea. Because of the more serious nature of felonies and gross misdemeanor offenses, procedures in district court differ slightly from those in the municipal court. The staff screener interviews the defendant between the time of appearance in the lower court and the time he is bound over to the district court. If this initial interview indicates technical eligibility and motivation, a comprehensive report similar to the presentence investigation is prepared. This report is provided to the prosecutor and, if he is in agreement with the proposed diversion plan, the arraignment judge is petitioned for up to a 1-year continuance. Discretion in this project is exercised by project staff in deciding whether or not to recommend diversion, by the defendant in terms of accepting or rejecting the diversion option, by the prosecutor, and finally by a judge. Approximately 50 percent of all defendants who are screened by the program staff are ultimately recommended for diversion. Of these, the prosecutor concurs in approximately 95 percent of the cases and the defendant is diverted out of court and into the program.

Clients diverted into this program experience intensive counseling focused on work and work-related problems; assisting with employability is a major component of the project. A maximum caseload of 25 provides opportunity for intensive counseling services. A nontraditional staff including both professionals and paraprofessionals is an important ingredient of the program. Staff are selected with careful recognition of the value of many kinds of life experience, including experience in prison.

Community support for Operation de Novo has been mobilized with a widely representative governing committee which has policy making authority. The Project board includes corporate executives, members of the professions, community representatives, ex-offenders, representatives from the criminal justice system, and minority group members. The Board is instrumental in exerting a powerful influence in protecting the program in times of crises as well as dealing with funding agencies. Project de Novo has developed and maintained cooperation and credibility with judges, prosecutors, and the legal community by involving these communities in the development

and inception of the program and by providing these officials with open and honest communications concerning the program. If clients fail, this information is candidly reported to the prosecutor and to the court.

Sixty-five percent of the defendants diverted to Operation de Novo have improved their situations in a satisfactory manner either by obtaining and holding a job or by completing an educational or vocational training program which has resulted in a dismissal of their charges. Followup interviews are conducted at 3-, 6-, and 12-month intervals after a client has completed the pretrial program; these interviews are to secure information on current employment status and continued involvement in the criminal justice system. At the 3-month followup of 328 clients, criminal record checks have indicated only 13 (3.9 percent) have been charged with new offenses. A 6-month followup interview has been completed on 267 former clients and record checks for this population indicate that only 4.8 percent have been charged with new offenses. A 1-year followup interview has been completed on 161 former participants however this information is not yet available. Cost benefit data have not yet been compiled; however, preliminary cost figures indicate that the services average approximately \$700.00 per diverted defendant.

Postconviction Diversion

Residential community corrections facilities located within or close to the community from which correctional clients come are one of the major developments in contemporary corrections. When coupled with the objective of providing an alternative sentencing resource to prison, these programs divert offenders from penal incarceration. The Probationed Offenders Rehabilitation and Training (PORT) Project of Olmsted County (Rochester, Minnesota) is one example of a community-based, residential program for convicted felons and adjudicated delinquents which aims at diverting offenders from the more traditional state prison, reformatory, and delinquency institutions. The program is operated as a private, nonprofit corporation under a board of directors composed of lay citizens, representatives of the local criminal justice system and supportive community agencies.⁹

PORT provides the court with an open residential facility as an alternative resource to State institution commitment; both adult and juvenile of-

⁷ Harold Garfinkel, "Conditions of Successful Degradation Ceremonies," *American Journal of Sociology*, 61, 1956, pp. 420-424.
⁸ "Programs in Criminal Justice Reform," *Vera Institute of Justice Ten Year Report 1961-1971*, May 1972.

⁹ Francis A. Tyce, "PORT of Olmsted County, Minnesota," *Hospital and Community Psychiatry*, 22, 3, 1971, pp. 74-78; Kenneth F. Schoen, "PORT: A New Concept of Community-Based Corrections," *FEDERAL PROBATION*, 36, 3, 1972, pp. 35-40.

fenders who might otherwise be incarcerated in State institutions are diverted into the program. Referrals in lieu of violation of probation and parole are accepted directly from the local probation office.

Discretion in the decision to divert to the PORT program is exercised by both the court and the program management. The sentencing judge has the ultimate decision on placement; however, admission is not a unilateral decision. The PORT program has autonomous authority to accept or reject any offender. Likewise, the individual offender has the right to accept or reject the opportunity to enter the program. Therefore, prior to entering the program, a potential candidate must agree to a contract with PORT, the program staff must agree to accept him, and the judge must agree to make participation in the program a condition of the probation sentence. Court case intake occurs during the presentence investigation. The prospective resident lives in the program for 3 weeks and then decides whether or not to sign a contract and enter the program. The contract states in specific, observable terms the services to be provided by PORT and community resources as well as individual goals to be accomplished by the offender before the contract is completed, e.g., a vocational program, a driver's license, restitution, debt repayment, etc. During this 3-week period, the prospective resident is interviewed by three community members of the admission committee, a private citizen, a psychiatrist, and a parole supervisor. Each has one vote on the decision to accept or reject. The PORT staff, residents in the program, and a group of live-in volunteers also have one collective vote each. If the contract is agreed to by the individual and if he receives four out of six screening votes, the individual returns to the court with a general evaluation and notification of acceptance to the program. The judge then has the option to use PORT as a condition of probation and as an alternative to the more traditional institutional setting.

This program illustrates one of the difficulties in assessing the diversionary impact of a program operating at the court level. How can the fact of diversion from a State institution be assured? What is the basis for assuming that the clients would have been incarcerated in a State institution if PORT did not exist? Might not the program be diverting away from traditional probation and providing a form of community incar-

ceration rather than diverting from State institutions?

On any referral situation subjectivity is involved in assessing a particular individual's need for the program. For diversion to be assured, the judge would have to first decide to incarcerate while totally ignoring the possible availability of PORT and then allow a referral to PORT. Likewise, the probation officer would follow the same difficult thought process with the added complication of predicting the outcome of his "intended" parole or probation violation recommendation. The individual being referred is, of course, in the most difficult predicament of all. He must simultaneously consider committing himself (conceivably for the length of his probation sentence) to a 24-hour-a-day "therapeutic" environment, living with individuals who "want to help him change" and control other important aspects of his life, and yet the prospect of entering a total correctional institution may become a reality if he does not opt for the PORT program. The conflict for the program and admissions committee frequently seems to be between choosing compliant offenders (who oftentimes are easier to control and low probable failures) and offering the program as a true diversion for those who need the program.

Admissions criteria alone do not resolve these issues. In fact, PORT's criteria relate mainly to residence (the individual must be from the three local counties), sex (the individual must be male), and motivation (the individual must be requesting admission and indicating a desire and ability to change). In practice, the admissions committee has done little screening. Of the 145 referrals made during PORT's first 4½ years, 24 were not admitted; 19 of those 24 cases received regular probation and only 5 went to institutions.

Data indicate that PORT is offering a real diversion. The average volume of commitments to the State-operated adult institutions from the area during the 5-year period immediately preceding the development of PORT (1963-1968) was 21 per year. Since the program was instituted in 1969, the rates have decreased to an average of less than six per year. Comparable areas in Minnesota have all shown a slight increase of such commitments during the same time period. Further, the rate of State commitments has decreased in successive years of PORT operation; during fiscal 1969-1970, there were 11 commitments to State institutions, six during 1970-1971, four during 1971-1972, and two during fiscal 1972-1973. Ju-

venile commitments have also shown a decrease. Prior to PORT, the yearly average was 24 per year; since PORT the average has been 11 per year.

Diversion is into a residential program including a reality oriented group counseling process directed toward encouraging self-help and improving interpersonal relationships. The focus on group counseling is often supplemented by a behavior modification token economy. Individuals in the program take part in individual vocational or educational programs within the community. The amount of freedom provided the individual offender beyond school attendance and employment is contingent upon objective performance in contract areas as well as subjective feelings of trust. Decisions concerning freedom are made jointly by staff, offenders, and live-in volunteers. Ongoing discretion is exercised by the PORT program and the individual offender—together they determine the nature of the daily program as well as the amount of freedom available to the offender. The offender can elect to leave the program at any time. If he makes this choice either prior to completing his contract or without the program's consent, the court is notified. In this situation the court again has ultimate discretion on any change in the sentence.

Residential community corrections facilities attempting to divert offenders from more secure institutional settings are confronted with problems of increased community visibility and potential community reactions both in terms of adjustment problems by residents and renewed illegal acts. Every community-based program must deal with this problem for continued community support requires a high level of trust between the program, other elements of the criminal justice system, and the community at large. At the same time, however, the internal integrity of the program requires that a high level of trust must exist between residents and staff. At the time of contacting, offenders are made aware of the potential range of responses by the program to both detected and self-reported illegal behavior and nuisance adjustment problems. The offender must also believe that a mutual plan can be developed which can effectively and responsively address the behavior in question. As advocate for the offender, the staff of the program is committed to the development and implementation of the plans for reconciliation. Every effort is made to bring about the cooperation of the community agencies

which are seen as essential to the needs of the offender.

Internal cooperation and technique, however, are not always enough. The initial organization of PORT, especially its board and associated advisory committees, has been an extremely important ingredient in the program's successful initiation and continuance. The board and committees have been planned to include people who have the power to influence the program's success or demise. These are individuals who are selected either because of their position in the criminal justice system or their role as active and respected community leaders.

In the first 4½ years more than 100 offenders have completed the PORT program. During the fiscal year 1971-1972, cost of the program was \$3,600 per client year; during this same time, State-operated juvenile institutions in Minnesota averaged more than \$10,000 per client year and adult institutions averaged \$4,800. This is in addition to the obvious benefits derived from maintaining the offender in the community; residents in a community-based program can continue to support themselves and their families, pay taxes, and have opportunities to make restitution to their victims.

Parole Board Level Diversion

The indeterminate sentence provides parole boards with considerable discretion on the release of incarcerated offenders and opens the possibility for early diversion of selected inmates out of the prison and into community-based correctional centers. The Minnesota Restitution Center which is administered by the Minnesota Department of Corrections, is one such program.

Adult male property offenders are diverted from the Minnesota State Prison to the Minnesota Restitution Center in the fourth month following their admission to the prison. Considering that the average sentence of a man admitted to the Restitution Center is 5 years and that it is rare for the parole board to release inmates from prison only 4 months after admission, diversion is assured in the Restitution program. Because all the men admitted to the program serve 4 months of their sentence at the prison, the Restitution Center is not a complete diversion from the penal setting to parole in the community. However, given the lengthy sentences received by the men selected for this program and the brief period of time spent in prison prior to diversion to the com-

munity this does constitute a relatively radical break with the conventional practice of parole in Minnesota.

Discretion is exercised in two ways—in defining the characteristics of a group of men that can be considered for the Restitution Center program and in the selection of individual inmates to be offered the opportunity to enter the program. Efforts have been made to minimize the latter discretion in order to allow for random selection procedures which are necessary as part of the evaluation plan for the Center. Discretion in defining the characteristics of a population of men that can be considered for the program was exercised jointly by the parole board and the program developers. Five population criteria were defined which appeared to meet the parole board's needs to release offenders that they consider nondangerous and the program's need to focus on offender's making restitution to crime victims: The present admission to the prison must be for a property crime, there can be no detainers filed, there must be no indication that the man was in possession of a gun or knife at the time the offense was committed, the man must be committed from one of the seven metropolitan counties (to facilitate victim contact), and there must be a total of at least 5 years of free world living between any prior felony convictions for a crime against a person and the present admission. Each person admitted to prison meeting these population criteria goes into a monthly population pool from which random selections of residents for the program are made. The program itself does not exercise individual discretion but accepts all men who are randomly selected; the parole board, however, reviews each case and has retained the prerogative of rejecting release of men to the Center. During the first 16 months of operation, however, the board has exercised its discretion and rejected only three of 46 men; two of these were men who the board felt were professional offenders who earned their livelihood from theft, were inappropriate candidates for early release because they might be dangerous to society, and for whom restitution was not thought by the board to be a viable program. The third rejection appeared to relate primarily to pressure brought upon the board by an influential citizen from the community in which the man was committed. The individual offender can also exercise discretion in accepting or rejecting the Restitution Center program in lieu of continued serving of his sen-

tence in prison; three of the 49 men who were randomly selected during the first 16 months have exercised this discretion. Two based their decisions on comparatively short sentences (a year and a day) and their anticipation that they would be released early anyway; a third man preferred the program of another community corrections center and decided to request early release to that facility.

Men admitted to the Restitution Center program participate in four program components in lieu of their institutional program. One program component centers around the restitution obligations including the developing of a restitution contract, implementing that contract, and maintaining direct contact with victims. A mandatory group program constitutes the second program component; all residents participate in twice weekly group meetings aimed at assisting residents in the development of responsible behavior defined as completion of the restitution agreement, to follow through on commitments he makes to the Center, and to remain free from law violating behavior. The third program component involves the mobilization and utilization of community resources: Efforts are made to utilize employment resources, chemical dependency, counseling resources, marital counseling resources, etc. The phase structure provides a fourth program component; all men in the program move through phases involving increased privileges and freedom as the man increasingly accepts responsibility. Phases move from a fairly structured first phase to the fourth phase involving residing in the community under the supervision of the Center and returning for group meetings.

A program diverting incarcerated offenders out of the prison a few months after entry is potentially subject to considerable community pressure and opposition. Efforts were made to avoid community opposition by defining a population of low profile offenders for diversion—offenders who are unlikely to have engaged in crimes that might lead to notoriety. Secondly, the program has been located in the downtown area in a YMCA building; this was a necessary accommodation to neighborhood pressures about locating community corrections programs in residential areas. Thirdly, as the program became operational, an Advisory Board was assembled to assist with public interpretation of the program as well as advising on program development. The Advisory Board consists of influential businessmen, representatives

of the criminal justice system, insurance industry, and other publics who are in a position to offer advice and assistance to the Center. After 16 months of operation, the Center has had minimal public criticism or attack.

The random selection procedures are incorporated in an experimental design used to evaluate the program; at the same time the restitution group is randomly selected, a control group is also selected. Both groups of men will be followed for a total of 18 months after their release from prison in order to assess comparative outcomes on indicators such as recidivism, self and family support, and a number of attitudinal scales. Likewise, cost data are being assembled in order to assess effectiveness in relation to cost.

Summary and Conclusion

The programs that have been presented in this article illustrate the use of discretion and diversion at key points in the criminal justice system: the level of the police, prosecuting attorney, court, parole board. In each of these cases, the focus has been on the way in which discretion is operationalized, what the individual is diverted from, and the nature of the diversion program itself.

To a varying extent, the various programs presented here illustrate the difficulty of clearly identifying what is or is not a diversion program. This is especially the case in preconviction programs in which all that may be "diversionary" about the program is the name. This problem is

compounded when rigorous evaluative measures are lacking. Without rigorous evaluation research, indirect evidence must be relied upon to document the diversionary nature of the program.

At the same time, while we may wish to believe that programs labeled as "diversionary" or "community-based" are more effective in achieving the desired result of rehabilitation, little reliable evidence can be produced in support of this belief. That such programs may be more humane, more economical, and do no worse than their conventional alternatives is justification enough for their continued support and expansion. Clearly, however, the administrative discretion operationalized in most diversion programs has the potential for abuse. This is especially the case when clearly articulated and openly established program policies and procedures are lacking. Most diversion programs are viewed as treatment or quasi-treatment alternatives to conventional processing by the criminal justice system. These programs, however, have in common with the criminal justice system a governmental policy aimed at solving social problems by obtaining individual compliance to a given social structure. Given the assumptions that most of these programs provide closer surveillance or supervision of their clients, have quicker reactions to client behaviors, and greater political leverage with community decisionmakers, what may begin as a benevolent program designed to help the offender could turn into a more oppressive program than the conventional correctional alternative.

DIVERSION is both a challenge and an opportunity. As a potentially major mechanism of the justice system, diversion requires considered attention.

—ROBERT M. CARTER, D.CRIM.

END