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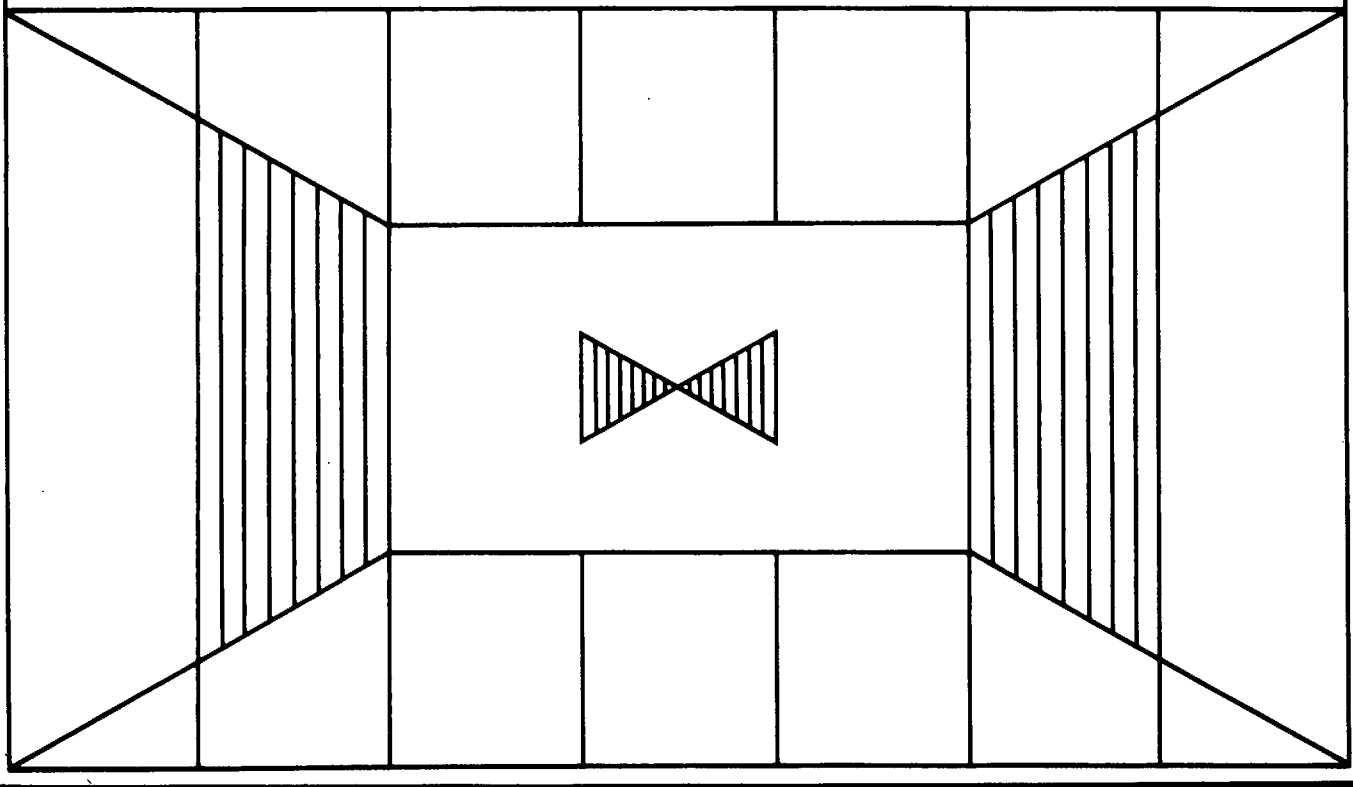
Diversion from the Juvenile Justice System and its Impact on Children: A Review of the Literature

by

Sharon Moyer



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DIVERSION FROM THE JUVENILE JUSTICE SYSTEM AND ITS IMPACT ON CHILDREN: A REVIEW OF THE LITERATURE

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Sharon Moyer

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This study is a revised version of a report which was completed in 1975 while the author was a Research Associate at the Centre of Criminology, University of Toronto. The original project was under the direction of A. N. Doob and V. L. Stewart and was funded by the Ministry of the Solicitor General. Professor Doob served as a consultant on the present report.

ADMINISTRATIVE ABSTRACT

This review summarizes and assesses research and commentary on: the agencies that traditionally screen young people to and from the juvenile justice system; and the "new diversion" which is currently being proposed to supplement the exercise of discretion by formal and informal institutions. It is emphasized that informal decisions have always been an integral part of the community's handling of delinquency, although the extent to which this discretion is exercised varies greatly by location. In the examination of the work in these areas, there is an attempt made (a) to clarify how decisions to screen children from court intervention are being made now, and (b) to consider the consequences of altering these practices by the introduction of formal diversion.

The failure of the juvenile court to rehabilitate young people has caused many commentators to consider alternatives to formal processing. Labelling theory has had an impact on the development of diversion, for a basic tenet of this theoretical outlook is that becoming enmeshed in the juvenile justice system increases, rather than reduces, the young person's commitment to deviant norms. A number of issues have arisen in the literature: the confusion in the definition of diversion and the consequent ambiguity of the term; the multiplicity of goals and the absence of priorities among them; and the problems of coercion, infringements on rights, the selection of diversion candidates, the accountability of the program, and the role of the victim.

The ways in which the new diversion has been implemented are described under the headings of legal programs (court-based and police-sponsored projects), the youth service bureau, and other para-legal and non-legal programs. It is tentatively concluded that the promise of the concept has

not been entirely fulfilled in practice. Despite the current proliferation of diversion programs, little research, evaluation or monitoring has been undertaken; available evaluations and their drawbacks are reviewed. Four basic stages which should be taken in any diversion assessment are presented and related to the research in diversion. Potential consequences of diversion that might not be anticipated by its advocates are also outlined.

The final chapter of the review presents a series of questions directed towards Canadian policy makers and researchers concerned with delinquency and the implementation of juvenile diversion. Not only is it emphasized that Canadian research is essential, but also that careful attention must be paid to the definitional issues and the specific objectives of diversion in this country.

SUMMARY

Traditional Screening Agencies in Juvenile Justice

In this chapter, there are presented the factors in the decision making of the individuals and organizations which have the power to "divert" or "screen" young persons in either direction to or from involvement with the juvenile justice system: the community, the family of the juvenile, schools, social agencies, law enforcement and court intake departments. While these sectors have been discussed separately, there are obviously interactions and inter-dependencies among them. There may be a series of decisions involving the young person which can culminate in a court referral.

Research on the community, the family, schools and social agencies has been limited, although these institutions are crucial in determining the degree and nature of formal intervention. From victimization surveys it is known that in many instances, a substantial number of citizens do not report events to the police that could be construed as criminal. At the same time, most police work is citizen-initiated. In the examination of the community, it was tentatively concluded that the more "stable" or homogeneous" community may be more willing to use alternative methods of handling trouble-making young people. Measures to increase the capacity of citizens to absorb deviance have been recommended to reduce the number of juveniles reaching the stage of official processing. The willingness of the ordinary community resident to accept a certain amount of delinquent or disturbing behaviour is the inevitable background variable in any discussion of screening and juvenile diversion.

The family's role in initiating contact with the formal justice and treatment systems is equally unclear. Research on "helping systems" and "social networks" has indicated that the existence and extent of informal networks of social support (kin, friends and neighbours) may influence the decision to seek assistance with the trouble-making child out of the immediate circle of intimates. At least one study has noted that the police and public social agencies tend to be sought out for assistance by lower class families. Middle or upper class families may possess more numerous and varied resources, both formal (i.e. private schools, psychiatrists) and informal, which allow them to find

alternative means of resolving problems with their children. One researcher has hypothesized that families lay complaints with police or the courts when they are no longer able to control behaviour of which they disapprove.

In a similar way, schools approach the juvenile court when intractable behaviour problems cannot be resolved internally. Official data indicate that schools rarely initiate delinquency charges directly. Teachers and school officials may play a powerful role in the early selection and definition of some children as "disturbed" (in need of treatment) and "delinquent", (in need of "controls" which can only be provided by the justice system). The use of the justice system may also be dependent to some extent on the availability of in-school resources such as counsellors and psychologists, with these services providing alternatives to invoking the justice system. However, when the youth becomes "unmanageable" within the school system, approaches to police and the courts may be made to use their authority to get the young person to conform to the demands of the school or to remove him.

The delivery of social services in Canada varies by community, and generalizations about the role of community agencies in delinquency decision making do not come easily. While criticisms of agencies have been abundant, it has rarely been recognized that there is a relationship of mutual inter-dependence between the courts and youth-serving agencies in the community. The court requires placement facilities for child welfare and delinquent youth. The social agencies need the court to apply sanctions on youths that have been defined as too difficult to handle. The frequency of application of such sanctions and the kind of children involved are not known.

The exercise of discretion by law enforcement officers is the most fully researched area in this review. Unfortunately, most research has been undertaken in the United States and contradictory findings abound. Two conclusions can be drawn which seem to have some validity: first, the wishes of the complainant or victim are influential in determining police dispositions of juvenile offenders; secondly, the officer's perception of the

attitude of the offending juvenile has been found to be important in the majority of studies examining this variable.

However, most contacts police have with juveniles are for minor legal violations, and a large proportion of young people are returned to their homes with nothing more severe than a warning. Data from the United States clearly show the tremendous variation by community in "arrest" rates for juveniles. Attempts at explanation for this variation have included the hypothesis that police decision-making about juveniles is strongly affected by the local community; however, research evidence of factors involved is limited.

In the review, the determinants of police dispositions were divided into three categories: "social psychological" factors (including attitudes and roles of participants); legalistic and particularistic variables (the effects of prior delinquent history, the seriousness of offence as compared to the characteristics of the offender); and departmental and community influences. All three types of variables interact, but attempts by researchers to untangle them have proved unsuccessful.

Among specific factors that have been found to play some role in the insertion-diversion decision: as previously noted, the presence and wishes of the complainant and the attitude of the child towards the officer and the offence; the age of the child (the older the child, the more seriously the offence tends to be viewed); the previous history of police contacts (and court referrals); the seriousness of the present offence; and the family status of the juvenile. The perceived consequences of the officer's decision (consequences to himself and to the child) are also related to the exercise of discretion. The "least risk" decision may be taken by the policeman; risk may be assessed in terms of the consequences for the officer's position in the police department or for the safety of the community, or both.

One of the best researched topics in police discretion -- the amount of bias exhibited by police in their decisions about lower class and minority group youth -- has had the most contradictory results. In most departments

which have allowed researchers access, discrimination in these areas has been minimal or non-existent. In most studies, seriousness and history tend to be more crucial in the decision to refer to court than do the particularistic variables of race and social class status. Other researchers have found some discrimination, however.

Court intake departments, the "gateway" to the juvenile court, have been established in some jurisdictions in Canada and in many American states for a number of years. In most areas, probation intake officers make decisions about court referral; wide latitude has been permitted. Despite the importance of the intake unit in the United States, little research on its operation has been undertaken. The variables researched in intake units are similar to those examined in police discretion: the influences of legalistic and particularistic factors on decision making. As in studies on police decisions, court intake research has found little evidence of discrimination by race and social class. However, offenders' attributes (for example, his age and the perceived stability of the home situation) clearly play a part. One author suggested that decisions are dependent upon the intake worker's conception of "fairness" and "justice"; which in turn are influenced by the seriousness and circumstances of the offence, the youth's attitude and background, and the perceived consequences to the juvenile of the decision. The wide frame of reference has prompted the conclusion that "professional judgment" weighs heavily in the decisions of the intake worker.

The New Diversion

The second chapter, under the heading of "the new diversion", presents an overview of the contemporary interest in diversion under the following headings: the basic assumptions of the diversion movement, the impact of labelling theory on the development of diversion, the definitions of diversion, its goals, and the key issues found in the literature. First, critics of the juvenile justice system in North America have focussed their attacks on a

number of areas. The failure of the court to provide individualized treatment, the theoretical shortcomings of the original ideals of the court, the necessity for the community to assume responsibility for delinquency, concerns for the status offender, and the stigmatization of the juvenile by the system have all been given as reasons for putting forward the diversion alternative.

Perhaps the most salient and widely accepted criticism of the juvenile court has been that it labels and stigmatizes youth with whom it deals. This labelling process accelerates delinquent behaviour, so that the system, which was established to act in the best interests of the child, creates a consistent pattern of non-conforming behaviour (secondary deviance). The propositions of labelling theory have been used by advocates of diversion as a rationale for removing juveniles from the system in order to avoid the presumed negative consequences of official processing; diversion was believed to block the labelling process by offering informal alternatives to insertion into the system.

However, labelling has been termed "the most accepted unsupported proposition" in criminology. Researchers have failed to provide firm evidence for the assumptions of this theoretical outlook. One area of research on labelling is discussed to illustrate the complexity of operationalizing superficially simplistic hypotheses: the evidence related to the effect of getting caught on self-perceptions and self-identity of the juvenile. On the whole, the proposition that the juvenile feels altered as a result of official intervention has not stood up under investigation. Juveniles interviewed have been conscious only of the disadvantages of a delinquency adjudication (increased police surveillance and future employment) rathan than of a "spoiled identity". Research on the effect of intervention or reactions to the juvenile by "significant others" (family and peers, for example) has provided mixed evidence of the "vicious circle" phenomonon because of perceived stigma predicted by labelling theorists. Juveniles' reports on themselves indicate that awareness of disability may be limited if it exists at all. It has been suggested that the process of acquiring a spoiled identity may be a gradual one, beginning long before the first legal contact; deviant or "good" self-images may have been developed in early or middle childhood through reactions of family and peers to the juvenile.

If there is any validity at all to labelling theory, it is important to discover at which level of processing by the system (police, court intake, the hearing, probation or institutionalization) has the most impact on increasing delinquent behaviour. Diversion or alternative handling could be instituted at whatever stage labelling has the greatest effect. One authority has recommended that a large-scale assessment of labelling be initiated, using a longitudinal sample from across the country involving every stage of processing by the juvenile justice system.

The various definitions of diversion are presented and an attempt has been made to differentiate diversion from decriminalization, prevention, post-adjudication alternatives, and screening. The distinction between prevention and diversion is critical. In prevention, the child might commit an act which might initiate justice system proceedings; in diversion, the child has already committed an offence and is in direct danger of a court appearance. Another issue of concern to both critics and advocates of diversion is the distinction between "true diversion" and "minimization of penetration". To minimize penetration means to turn aside from adjudication to a lower, "less official" level of processing rather than complete removal from the system. Some have asserted that true diversion necessitates removal from the juvenile justice system (with or without referral to a community agency), with no option of continued processing possible. Because most diversion projects have been developed "within" the justice system, this review enlarges the meaning of diversion to include minimization of penetration.

A clear definition is absolutely essential, for a fuzzy conceptualization will almost certainly lead to difficulties in operationalizing the term. A good definition will help in specifying objectives and in identifying criteria to be used in the choice of divertible candidates. It was emphasized that the goals and objectives of diversion in Canada must be clarified. The current literature shows that there have arisen a multiplicity of stated goals.

The section on "issues in diversion" open with a discussion of the claim that diversion is itself a diversionary tactic which is transferring the attention of justice system from more fundamental issues and basic reforms. Fears have been expressed that decisions will have low visibility in diversion, that diversion will reduce the pressure for decriminalization of delinquency statutes in the United States, and that diversion is another indicator of society's over-reaction to normal problems of adolescence.

More specific concerns have been: the coercion present in diversion programming, the violation of rights of the juvenile, the comprehensiveness of diversion and the criteria for selection of individual candidates, responsibility and accountability in diversion, and the role of the victim. The two issues that have probably raised the most discussion are the involuntary nature of participation in many programs and the scope, including the selection process. Some diversion programs give the offending juvenile a "choice" between court referral and the diversion alternative; because diversion is seen as the less drastic of the two options, the juvenile may be prompted to admit responsibility for an offence. The issue of comprehensiveness is also debated: Who should be diverted, that is, what proportion of the total number of cases coming to the courts? What types of children or offences should be included in a diversion program, or should both! Guidelines have urged that all youth who are neither a danger to themselves or to society should be diverted. In practice, diversion caseloads are predominantly of status offenders and "pre-delinquents" (many of whom were not directly liable to a court appearance). Criteria for inclusion into diversion programs have often been as loosely formulated as the criteria used in the informal exercise of discretion. Critics have warned that the "old" biases used in the past may be perpetuated in diversion programming unless specific guidelines are developed.

The Implementation of the New Diversion

Programs created within the past few years have been located both within the juvenile justice system (court-based and police diversion) and outside of its boundaries (e.g., youth service bureaus). The distinction between para-legal

programs (which are under some control of the system or there is coercion to participate, or both) and non-legal programs (which are completely independent and emphasize voluntary participation) is difficult to make from available program descriptions. Several commentators have seen a trend towards adoption of the legal model, with many supposedly independent, non-legal programs also being co-opted by the system and moving towards para-legal status.

Programs are discussed under the headings of legal diversion, both court and police-initiated, the youth service bureau, and other para-legal and non-legal programs. The advantages and disadvantages of each model are presented. It was indicated that there are two sub-types under court-based diversion; first, the creation of an alternative legal structure that has authority similar to that of the court (such as the screening agency proposed in Young Persons in Conflict with the Law). The more common form expands the court intake officers' already existing discretion to permit diversion of a larger proportion of youth, often with the provision of additional services to those diverted. The Sacramento County Diversion Program was included as one example of the latter which attempted to minimize penetration of status offenders and minor lawbreakers.

Police diversion programs have been the object of some controversy, particularly those which have developed in-service facilities for treatment, counselling, and other program activities. These in-service facilities are staffed either by police officers or specially-hired counsellors. Critics have argued that social service work is not a proper function of police departments and, in the case of officer-staffed programs, policemen are inadequately trained to perform treatment and other service-oriented duties. The Dallas Youth Services Program was one project described in this category. The other model of police-sponsored diversion is the out-of-system referral programs developed in many United States police departments. In this form, police have developed their capabilities to refer young people to carefully selected community agencies. Purchase of service agreements with these agencies may be involved. Fears have been expressed that if

traditional agencies are used almost exclusively, police may come to exercise undue control over the service activities of the agencies, and perhaps by their alliance with the treatment source alienate some of the diverted youth. As in other forms of diversion, it has been suggested that police may refer children to the program who would otherwise have been merely counselled and released. Research on one police referral project has given some support to this prediction.

Youth service bureaus were recommended in the 1967 President's Commission as a neighbourhood resource for dealing with troublemaking youth. The original idea was that police and court intake would supply the majority of bureau caseloads and the referrals would receive individually-tailored assistance from a mixture of professionals, para-professionals and volunteers familiar with the local neighbourhood. Unfortunately, despite the rapid growth of the bureaus throughout the United States, they appear to have had little effect on diversion. Police and court referrals have not been forthcoming; in most bureaus they constitute a small minority of the caseload. General prevention activities seem to play a major part in bureau operations. Possible reasons for this development are discussed.

Several university-sponsored diversion programs are examined in the discussion of para-legal and non-legal programs. The most notable problem associated with non-justice system programs has been, as noted above, their reliance on the justice system for caseloads. Many practitioners have found it difficult to maintain their programs on a non-legal status as a result of this dependence.

The variety of program activities subsumed under the label of diversion programming should be emphasized. Mediation, crisis intervention, restitution, family counselling and individual casework are among the modes of intervention. Most problems tend to locate the delinquence "problem" within the individual young person and attempt to "treat" him or her using the "treatment model". Several para-legal programs described in this section

have, however, taken a different tack; the Bronx Neighbourhood Youth Diversion Program has used community residents as mediators in hearings to resolve disputes between troublesome juveniles and their families. This program has accentuated the role of the community in dealing with delinquency and supervision problems. The Forum, as the mediation process is termed, is among the more innovative components found in diversion programming. Unfortunately, it appears to be more feasible with youth labelled "persons in need of supervision" than with violators of the criminal law.

The Effects of Diversion: The Problems of Evaluation

Diversion programming has not been characterized by methodologically sophisticated evaluation or systematic program monitoring. In general, evaluation has not been built into programs from their inception, with the exception of some experimental and quasi-experimental efforts. Despite the increasing number of juvenile diversion schemes, few researchers have focussed on describing the diversion process, on developing standardized indicators of recidivism, and on obtaining baseline data before program implementation. Chapter IV recommends research of a "survey of need" and a traditional outcome evaluation (in which the achievement of program objectives is assessed).

The problems of diversion research are discussed in terms of the stages which should be tackled by the evaluator working in conjunction with program personnel: the survey of need, the determination of the program's objectives, the description of program operations and the measurement of outcomes or effects. It is urged that a survey of the existing situation be undertaken before implementation of a diversion program to provide baseline data to guide subsequent planning. In social action programs such as diversion, the specification of objectives has often been problematic. Objectives should be clear, measurable, rated in order of priority. A description of program operations is essential if the evaluator is to interpret outcome data. A knowledge of what goes on in a program facilitates understanding of the relationship between the stated goals and the reality of

day-to-day operation. The researcher, generally, will not be able to rely on record-keeping by project personnel for this information; special efforts to collect monitoring data will have to be made. In the discussion of outcome measurement, the research now being conducted in juvenile diversion was divided into client outcome studies and system impact research. (The third category, process research, is rarely found in diversion.) The demands of good research (such as comparisons with other, similar groups dealt with differently by the justice system, before and after comparisons, and experimental and quasi-experimental designs) are outlined, with examples from diversion evaluations provided wherever possible.

System impact studies have usually collected data on the flow of cases to the courts before and after diversion, on its costs and benefits, and on the attitudes of justice system personnel towards the program. It was emphasized that if a program is to show that it is diverting children from the court, it is essential that data be collected on court referrals and hearings to estimate the extent of the impact of the project.

The section concluded with a recommendation by two American commentators that new measures of success be created for juvenile diversion programs, measures which include humanism, empathy and justice, and which approach the program's effectiveness from the child's view as well as that of the system administrator.

The remainder of Chapter IV deals with some hypothetical potential effects of diversion in the areas of the community, the juvenile justice and social service systems, law enforcement, and the diverted youth. Two effects of diversion programming on the community are suggested: the possibility of a negative reaction by citizens, and the potential effect on the reporting of juvenile crime. If the public responded favorably to diversion, the number of children subject to state intervention could be expanded because citizens may refer more children to the legal system.

In the case of the juvenile justice and social service systems, changes in organizations (their structure and operation) and in the nature of their case flow might occur as a result of diversion. One of the key organizational changes has been the growth of in-system diversion to counteract pressures for programs that serve children by "non-justice system means". It is possible, too, that with the existence of the milder diversion alternative, the decision maker will be tempted to refer more children than previously.

Unless community social agencies are provided with more resources, they may become overloaded with the addition of a caseload of diverted young people. They may also turn to child welfare legislation to obtain access to sanctions no longer available in the "delinquency stream". While no longer adjudicated delinquent, juveniles may be processed in much the same way. Finally, some authorities have warned that bias against minority group members may occur because of the nature of the selection criteria (status offenders and minor or first offenders) found in most diversion.

Diversion may have a variety of effects on law enforcement, depending upon the model implemented. It has been suggested that police may react negatively to some forms, particularly those court-based schemes which appear to question the policeman's judgment to refer a juvenile to court. Morale might be negatively affected, and police may begin to tailor the information provided to the program in order to influence its decisions. Police may refer more children because they perceive that the diversion option is both less severe than a court referral and offers less risk to the officer than the counsel-and-release option.

Thus, although not well documented empirically, there have been widespread fears that the existence of diversion will act as a "juvenile crime generator". Because of the availability of a non-punitive option, more juvenile misbehaviour may be reported by the public and, perhaps, police willingness to exercise their discretion may be reduced. Police may resent diversion because it is seen to usurp their discretion and question their professional competence.

Among the most serious omissions in diversion research is the absence of examinations of the impact of diversion on the juvenile. The question of whether the diverted young person feels that he or she is receiving a better deal has occasionally been raised and, thus far, no systematic attempts have been made to answer it. Concern has been expressed in at least five areas. What is the effect of diversion on recidivism? Does the youth perceive coercion to enter a diversion program and resent the involuntary nature of his or her participation? Is there any difference between diversion, warn-and-release and court referral in the degree of stigmatization? What benefits does the juvenile perceive from the content or substance of the diversion program? Finally, what effects does diversion have on the youth's subsequent contact with the system? Only the first and third questions have been approached empirically.

Data on recidivism after diversion participation are conflicting and ambiguous, with different programs reporting widely-differing results. While a number of programs have found that their in-program recidivism is lower than that of their control comparison group, longer term follow-ups (six months to one year) have shown less "success". With a few exceptions, most studies have not reported outstanding reductions in delinquent behaviour (self-reported or official delinquency, depending on the study). Furthermore, generalizations are greatly hampered by the inadequacies of the evaluations done to date; methodological shortcomings have included the attrition of follow-up samples and problems in the choice of control and comparison groups.

Research findings on the remaining four concerns are even more limited. The one study that examined perceived labelling by "significant others" found little difference between diverted youth and a matched sample of probationers. The nature of intervention in diversion programs has not been carefully investigated. The participants' views of the process are equally uncharted areas of study. It has been speculated that the short-term nature of most interventions is unlikely to bring long lasting changes in behaviour, including delinquent involvement. Critics have maintained that

enrolment in diversion may affect subsequent justice system contacts; it is possible that even more restrictive dispositions will be given children once they have been diverted, because their continuing delinquency shows that they do not "deserve another break". The decision-maker may perceive that the subsequent offence is an indicator that the diversion did not "work" and that the only remaining option is a court referral. Thus, harsher dispositions may be given to children who have been diverted than if no remedies had been applied.

The Implications for the Juvenile Justice System in Canada

The last chapter in the review of the literature on juvenile diversion discusses the implications of the preceding pages for the policy-maker concerned with delinquency legislation and diversion programs. Two lists of questions -- one for the policy planner and one for the researcher -- are provided. Diversion is still at the planning stage in Canada and many decisions remain to be made. While research and evaluation should be an integral part of the planning stage, more precise research questions related to diversion programming must wait until policy decisions have been made.

The underlying rationale for diversion in Canada should be explored. The assumption has been that too much socially-problematic behaviour is referred to the court for solutions via the legal process. It is desirable to establish more precisely the reasons why diversion is being considered as an alternative to the current system. A clear definition of diversion should be established in order to guide objective-setting and the subsequent stages of planning and monitoring or evaluation. After clear definitions have been outlined, then the goals and specific objectives may be considered. Efforts to avoid haphazard development of programs, as appears to have occurred in the United States, must be made.

A series of questions are presented on the nature of the diversion process. What is to be the scope of diversion? What selection criteria will be created? Are there to be clearly identifiable target groups based on offence type and previous delinquent history? What are appropriate guide-

lines for referral and to what extent is it desirable that they differ from region to region? What measures of accountability are considered necessary?

In the area of the content of diversion, one salient concern has been that there may be a danger of the "over-reach of treatment" and that the "burden of proof" should be on the justice system to show that intervention is beneficial to the juvenile. In the literature, there is a trend towards restraining public policy in dealing with delinquency. The treatment model, which has individual change as its goal, has been the model type of intervention in American diversion. Its effectiveness in reducing delinquent behaviour is increasingly being questioned. Policy decisions on the over-riding value to be chosen if there is conflict between treatment imperatives and individual rights may be necessary.

Another crucial question concerns the amount of resources necessary for diversion. Where will the financing come from? While advocates have claimed that diversion is cheaper than regular processing, this might not be the case. Savings to the justice system may be a possibility, but as far as society as a whole is concerned, the reduction in costs may be illusory. Funds may be only redirected from one sector to another.

The role of the community also requires the careful consideration of the policy maker. Efforts to create "community-based" services in the fields of corrections and mental health have often been met with public apathy or resistance. What methods are going to be used to gain community support for juvenile diversion? In addition, what methods will be employed to avert negative labelling of diverted youth by community residents?

There are many limitations on existing research of pre-court screening and juvenile diversion programs, the most severe being the dearth of Canadian research. It is not known to what extent American findings can be extrapolated to Canada. Firm statements about the most appropriate direction for juvenile diversion are therefore unwise when so little is known about the present situation. While no claim for all-inclusiveness is made, the research questions (on traditional screening agencies, diversion's effect on the community,

diversion and social agencies, the nature of the program, and its impact upon juveniles) are believed to be important in understanding how the system operates now and how diversion may operate in the future.

The chapter concludes with some remarks on the proposals to reform the Juvenile Delinquents Act, and notes that there may be alternatives other than diversion which might reach a similar desired end. Some considerations to be attended to are outlined if the concept of the screening agency is introduced on a large scale.

CHAPTER I: TRADITIONAL SCREENING AGENCIES IN JUVENILE JUSTICE

Introduction

The major objective of this chapter is to describe the research on the discretionary decisions involved in the handling of juvenile misbehaviour and lawbreaking that are made by formal and informal institutions of society. These institutions -- the community, the family, formal social and educational agencies, the police, and court intake departments -- have been chosen because they are the key decision-makers involved in the youth's insertion in the juvenile justice system.

Decisions which screen alleged offenders from further legal processing occur at many levels. Although rarely acknowledged in legislation, most officials of the system may make decisions which can reduce or increase the caseloads of the system. In juvenile justice, these decisions are made by law enforcement officials, court intake departments and (less frequently) prosecutors or crown attorneys.

However, officials of the formal system are not the only persons capable of affecting the flow of juveniles towards court. Representatives of community agencies (schools and social agencies) and the public at large also have the power to impel the child closer to the delinquent label. For this reason, this chapter opens with brief discussions of each of these non-justice system decision makers.

Much of the research described in this chapter has explored the hypothesis that decisions made by key personnel have ignored the juvenile's rights. Juvenile justice critics have often expressed concern that many official and unofficial decisions are less than completely visible, use vague and ambiguous criteria, and discriminate against certain types of young offenders, usually

those from lower socio-economic or minority sections of the population. It has been said that these discretionary decisions are inaccessible to review, idiosyncratic and grounded in personalistic rather than universalistic assumptions -- that is, decisions are based not on the offence or "what has been done", but on "who the juvenile is". As will be seen, on many of these points, the research evidence is mixed.

It is important to point out that discretion becomes problematic only when its exercise interferes with the pursuit of justice, due process rights, or other societal or criminal justice goals. The attacks on discretion made by juvenile justice critics must be weighed against the research evidence presented in this chapter. The criticisms, it should be noted, form a part of the general disenchantment with the exercise of discretion in the criminal justice and correctional systems. The injustices perceived there are said to have arisen from the unchecked discretion of its officials. In the past few years, a movement towards drastically limiting discretion in the areas of sentencing and corrections has had considerable influence. It is in this context that the critiques of juvenile justice decision-making should be placed.

This review of the literature will not be concerned with the underlying reasons for discretionary decisions in the system (for example, the ambiguity of delinquency legislation and the juvenile court's philosophy of individualized treatment), but rather with the ways in which these decisions are made and the influences upon them. It is, however, worthwhile to note that:

> the social selectivity of the juvenile justice system is not in itself a moral indictment of that system. The juvenile court was expressly designed to concern itself more with the offender rather than the offence, to afford benign paternalism rather than legalistic vengeance.
>
> Barton, 1976: 471

Of most concern in this review are the criteria implicitly or explicitly used by decision-makers when they are faced by a lawbreaking or troublesome young person.

The Community

In a real sense, delinquency statistics are the product of community decisions, including citizens' ability to deal with juvenile misconduct without the assistance of agencies of social control. Because research has shown that the public initiates much of the activities of law enforcement, it is thus necessary to ask why informal and formal intervention decisions are made. Most police work is reactive rather than proactive, with mobilization of services dependent upon the citizen's request for action or assistance. In what circumstances do citizens request such assistance?

When confronted with a situation involving a youth defined as "criminal" or a nuisance, members of the general public usually have a choice of one of three courses of action: to do nothing, to intervene informally (for example, to reprimand the youth or to inform his parents), or to invoke a formal law enforcement agency. Victimization surveys have shown that many events that could be construed as criminal are not reported to the police. Some reasons why many experiences go unreported are: public antipathy to the police; an assumption that police do not care about the public's problems; the victim's belief that the police are unable or unwilling to do anything about the incident; a desire to avoid contact with the criminal justice system, which is seen as taking time and causing inconvenience to witnesses; the perpetrator of the crime is a friend or relative and the victim may fear that the offender will be harmed to an extent disproportionate to the offence, if the police are summoned; and, finally, the behaviour is viewed as normal in the subculture of the victim.

Other research has examined why informal intervention seems to be more prevalent in some communities than in others. Two studies have provided tangential evidence that the members of a more "stable", "integrated", or "neighbourly" community are more likely to report the use of unofficial measures in the handling of delinquency (Hackler et al, 1974; Maccoby et al, 1958). While these data are by no means as precise as one would ideally desire, the findings of these two studies do somewhat confirm the common

sense notion that the willingness to intervene informally may be related to neighbourhood characteristics. More "heterogeneous" or "unstable" areas appear more inclined to bypass face-to-face confrontations with the offending juvenile or his parents, or both, in favour of official action.

It seems clear that measures to increase the community's capacity to absorb its own deviance would possess at least the same potential for reducing the number of juveniles reaching official processing as does formal screening by police or official diversion programs (See Carter, 1972). Unfortunately, little is now known about the means by which tolerance or absorption could be increased. As a consequence, it may be necessary to continue to rely on more formal programs to divert young people from court appearances. However, it must always be remembered that an increase in diversion decisions must be acceptable to the local community. The willingness of the community to accept back into their midst their misbehaving youth is the inevitable background to all discussions of juvenile diversion and its future in this country.*

The Family

Parents and families of juvenile-court-aged youth are another group of decision-makers who have the power to move children towards justice system involvement. Undoubtedly, families are witnesses to, or are at least aware of, incidents involving their children which could be construed as delinquent actions or which could be used to bring the child to court (under child welfare statutes, for example). Tolerance of "deviant" behaviour (mental illness, other disturbing behaviour) has been shown to vary inversely with social class

*See Chapter IV for a discussion of the potential effects of diversion on the community.

(Myers and Roberts, 1959). Patterns of accommodation may be developed for the same behaviour which would, in other families, precipitate concern and active help-seeking. It is not known what other variables (in addition to class) affect the degree of family tolerance for deviance.

In instances where tolerance is not perceived as an appropriate response to a problem child, assistance may be sought from a variety of formal and informal sources. While a high proportion of families may seek help from friends, relatives or professional help-givers (doctors, clergymen, mental health or other social workers), a small number approach the legal system -- the police or the juvenile court and its surrounding agencies -- for assistance with their children. Elaine Cumming and her colleagues found over a decade ago that police in effect provide social work services to a segment of the population, predominantly those from the lower class (Cumming et al, 1965).

Unfortunately, there is scant information available on why some families use legal agencies rather than deal with problem children within the family setting or seek assistance from "helping" professionals. Research on help-seeking behaviour has provided some suggestive evidence. Families which are integrated into a network of friends and relatives have resources to draw upon which may be used before moving "outside" the network. More socially-isolated families may be forced to seek assistance from social or justice system agencies because they lack these network resources. In addition, the use of formal helpers also depends on the family's knowledge of, and trust in, community service agencies. Many social agencies require appointments and have formal screening mechanisms. Law enforcement and courts do not.

Few families directly initiate delinquency proceedings against their children -- considerably less than 1% in Canada in 1973, according to Statistics Canada data. Many more may indirectly initiate proceedings through contact with the police and other court-related agencies, but there are no data available on the frequency of this practice or for what reasons it is done.

Reluctance to use justice system agencies for assistance with children may be related to the perceived consequences of the decision. These consequences may include a fear of being labelled an inadequate parent, a fear of disapproval of neighbours and friends, and a fear that, once the justice system has been invoked, the situation will be out of the control of the family.

However, parents may lay complaints against their children when their authority and control are questioned or perceived to be ineffective.

> Thus, parents may complain that their offspring refuse to obey them, stay out late without permission, hang around with the wrong friends, or date undesirable boys. In all cases they are requesting the court to throw its support behind their efforts to control or put a stop to such behaviour.
>
> Emmerson, 1974: 627

A parental request to remove the child from the home may be the last resort available to those families with "already dangerously overloaded emotional, social and economic resources" (Mahoney, 1974).

Family reactions to the juvenile once he or she has formally been labelled a "problem" by schools or the justice system are another area of interest. Again, only speculation is possible since the data are lacking.

> It is important to acquire this kind of information. In what kinds of situations does the family join with its deviant member to ward off negative evaluations by the community? In what kinds of cases does the family coalesce with the court agencies to villify the family member? In what kinds of situations does the family withdraw from the whole affair?
>
> Mahoney, 1974: 40

Answers to these questions could provide more understanding about the reasons why some parents invoke the justice system for assistance with their problem young people.*

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*Mahoney has suggested that the "ideal image of the family" is both unrealistic and harmful, for two of its major tenets (preservation of the family unit is essential at all costs, and "the family takes care of its own") have impeded the provision of adequate services for disturbed youth. The firmly-held belief that the family must be preserved has made "morally suspect any commitment of public money to homes and programs which provide alternatives to the family". The second tenet has had the effect of shifting the responsibility "for youthful deviant behaviour away from the community" and locating it in the family (Mahoney, 1974: 41).

The School

The school is another key societal institution which has the power to make decisions about youth, decisions which may thrust the youth further towards involvement with the juvenile justice system. The school is among the most salient of the institutions with the ability to make discretionary decisions about troublesome young people. During the decade of compulsory education, the child spends more time in the school than in any place except his home. Therefore, it is not surprising that the school may be involved in situations involving conflict, the outcome of which may be contact with the juvenile court.

The most direct way in which the school may be involved with delinquency is through truancy. According to Statistics Canada data, of the adjudicated delinquents in Canada in 1973, about 5% of the females and about 1% of the males were brought to juvenile court on truancy charges. Policies of local school boards undoubtedly affect the extent to which this option is used. With the growth of other alternatives in many urban areas (school psychologists, for example), it seems probable that there is considerable reluctance on the part of school boards to invoke the justice system for truancy.

School officials may come to the court for assistance with a truanting child only after a period of negotiations and pressure on the juvenile to attend school. According to Emerson (1974: 627), when school officials approach the court, it means that they are asking that the court involve itself "in an intractable control problem": "a truant is not simply a child who has refused to attend school, but one who has done so while resisting all efforts to the contrary".

Certainly behaviour other than truancy is found in schools which could warrant referral to police or to juvenile court. Limited evidence from Britain (Phillipson, 1971) and the United States (National Advisory Commission, 1973b) has shown that many incidents that could be defined as

delinquent are not reported to police. In Inner London schools, for example, only in "very rare" occasions are internal delinquencies handled by formal social control agents.

> This could have been for a variety of reasons, such as guarding the public reputation of the school or even because the school felt that although not responsible it could deal with the problem more effectively than other agents. These responses and the consequent institutional immunity of the schools creates a double standard of enforcement of which pupils are well aware; offences open to prosecution outside can be committed with relative impunity within the school.
>
> Phillipson, 1971: 254

Again, Robert Emerson interprets the school enforcement process as reflecting an appeal for assistance in controlling a long-standing behavioural problem.

> The court is entreated either to use its authority to get the youth to conform, or to get rid of him. In the first instance, the court is expected to provide a realistic, supplementary threat to a tenuous situation of control; in the second, to remove a disruptive troublemaker.
>
> Emerson, 1974: 627

However, delinquency statistics seem to suggest that the schools directly initiate only a minute proportion of court referrals. The court referral may be only one source of "supportive action" available to the school.

Unfortunately, most research has not been directed towards the decision to refer the child to social control agents, but rather has been concerned with the initial sorting out process whereby some students become defined as "troublemakers" or as otherwise deviant. It appears probable that in many areas there is little "need" for the schools to use the courts. Because in some communities school officials (guidance counsellors, psychologists, and public health nurses) share responsibility for youth with other members of local social and legal agencies, informal interaction and discussions of problem children and families may occur. During these contacts information may be exchanged and mutually agreed upon decisions reached about what to do with the problem child. These decisions may or may not involve the legal process; if they do, it may be unclear even to the participants just who made the decision to take the child to court.

The ways in which schools define some children as needing treatment, as opposed to legal sanctions, is not precisely known. As in most areas of discretion, it is often assumed that socio-economic status influences the decision-making process. Indeed, one experimental study has shown that school counsellors are more likely to perceive that the upper class child is in need of treatment than the low status juvenile (Garfield et al, 1973). Almost certainly, there are additional factors involved -- the age and sex of the child; the perceived ability of the parents to control the child's behaviour; the perceived consequences of the police or court referral to the child and to the school -- but these have never been systematically examined by researchers.

Social Agencies

Like schools, social agencies are powerful intermediaries between the child and the juvenile justice system. In a manner somewhat similar to schools, it is difficult to speak in terms of one role of social agencies in screening children in either direction to or from the court. Not only is this because there has been little direct investigation of the phenomenon, but also because the mandates and activities of "social agencies" (a generic term masking great variety) are diverse and complex. These differences are important in understanding the results of decisions about delinquent youth:

> Any understanding of the interaction between delinquents and officials will require that we are tuned into the subtle differences between agents and agencies, as well as to the different personalities and problems of the delinquents.
>
> Wheeler, 1968: 318

Criticisms of the role of social agencies in delinquency control abound:

- their overlapping and confusing jurisdictions (Gandy, 1971);
- their stringent intake policies;
- their lack of follow-up on referrals;

- their preoccupation with "early intervention" so that the case-load which results is comprised of more malleable children (Teele and Levine, 1968a, 1968b);
- their use of the juvenile court as a "dumping ground" for the children they are unable to handle (Cloward and Epstein, 1965);
- their focus on the psychogenic or medical model of delinquency causation(Kupperstein, 1971; Wheeler, 1968);
- their reluctance to act as advocates for clients with legal conflicts (Fogelson and Freeman, 1968); and,
- their lack of accountability (Lemert, 1971).

Robert Emerson has maintained that child care agencies, like schools and families, use the juvenile court to lend weight to their authority. Often the caseloads of the courts are composed of children who have proved too difficult for other institutions to handle. "Under these circumstances, the court's capacity to apply coercive sanctions provides a necessary and even essential service." (Emerson, 1974: 628). Courts provide the back-up to the "internal control regime of a public institution" such as the group home and the shelter facility. Training school may be seen as the sole remaining alternative for juveniles who have proved incapable of orderly conduct in these settings. Thus, social agencies may seek out the court for its sanctioning powers and especially for its function as a gatekeeper to correctional institutions. Rather than the court being the provider of treatment-rehabilitative services, it becomes the last resort of other agencies which have failed to quell a youth's disruptive behaviour.

The mutual interdependence of the court and local youth-serving agencies has also been emphasized. The court must rely on the cooperation of group and foster home placement agencies, for those youth not sent to correctional institutions. Reciprocal obligations are developed because the agencies want the court to handle their "hopeless" youth. While organizational and legal constraints may prevent the granting of a specific request, "these exchanges create obligations that cannot be easily ignored by either party" (Emerson, 1974: 631).

In such a complex, interactive system as is found in the interface between social agencies and the justice system, explanation of the movement of the child in trouble between the two "streams" (child welfare and delinquency) becomes difficult. While agency characteristics (their organizational realities), worker attitudes and their knowledge of local resources, and the perceived characteristics of the child and his family will each play a part in decisions, the type of community resources (their number, quality and ability to control or influence misbehaving children) is probably the most important factor in the direction of the decision-making. When community resources have been exhausted the juvenile justice system may be invoked.

The Police

Introduction

> Since police make decisions about arrests and also make the great majority of referrals to juvenile court, theirs is the strategic power to determine what proportions and what kinds of youth problems become official and which ones are absorbed back into the community.
>
> Lemert, 1971: 54

As Lemert points out, police decisions are among the most critical links in the decision-making chain starting in the community and ending at the door of the court room. The "strategic power" of the police has been the subject of considerable research attention in the past decade. This section will describe and interpret the research on the police exercise of discretion in relation to juveniles.

Many youths are screened out of the juvenile justice system by law enforcement officials. That there is wide latitude in the handling of juveniles by police is clear from court referral statistics in the United States and

Canada. Nationally in the United States about 50% of juveniles are processed informally, that is, they are not referred to court. However, the proportions vary greatly from police department to department. Klein (1974) reports that the proportion screened out of the system in Los Angeles County varies from 2% to 82%, a range similar to that found by Bordua (1967). In Metropolitan Toronto, more than five out of six juveniles suspected of violating the Juvenile Delinquents Act were either released without further action or referred to other agencies. Other Canadian police departments claim to screen as many as 90%, while one force screens only one-quarter of their cases.*

There are a number of dispositions available to police confronted by a juvenile offender, with the youth bureau officer having a wider range of options open to him or her than does the patrolman on the beat. The alternatives open to the specialized youth officer include: no action or further investigation, an oral warning or "caution" (often in the police station and often performed by a youth section officer), informal police supervision or restitution, referral to a variety of social and welfare agencies, and court referral. The on-the-street decision of whether to take the matter any further is, of course, usually made by the uniformed patrolman. In many urban areas, his decision choice is limited to taking no action (beyond a reprimand) or referring the youth to a member of the police youth section.

A few general reasons for this wide latitude in the police handling of juvenile offenders should be noted. First, the ambiguity of the Juvenile Delinquents Act allows many types and degrees of misbehaviour to be brought before the court -- for example, a ten-year-old snatching a quarter from another ten-year-old may be accused of robbery. Undoubtedly, police view much misbehaviour as normal and believe it unnecessary to take the matter further

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*Klein (1974) found that part of the difference among departments was due to differences in definitions and recording practices. This is almost certainly also true in Canada. There is no uniform method of calculating "diversion rates".

than an oral warning. They may also see a police warning as a more effective deterrent than the dispositions of the court on many minor offenders. Secondly, the decision to screen out of the system may be related to the perceived responsibility of the juvenile. Young people are usually considered to be less responsible for their actions than are adults. Younger juveniles in particular are often released for this reason (Patchett and McClean, 1965). Third, it may be that some of the philosophy of the juvenile court has been assimilated by police, especially juvenile officers, who may believe that decisions should be made in accordance with the child's "needs", rather than strictly with regard to the nature and seriousness of the offence.

Many studies reviewed in this section, particularly those of American origin, focus on the difference in exercise of discretion by law enforcement agencies, that is, on the non-offence variables associated with decision-making. This emphasis is in part a consequence of the popularity of the labelling perspective within the criminological literature on delinquency.* Supporters of this perspective have used labelling to provide a theoretical basis for what has been a long-held liberal belief -- that, like the rest of the criminal justice system, law enforcement agencies discriminate against lower class and minority group youth.

In general, the variables examined by researchers may be roughly divided into three major categories:

- social psychological: the attitudes of the juvenile, the police and the complainant or victim, and the interactions among them. Some of this research has examined the on-the-street encounters between juveniles and police.
- legalistic-particularistic: the effects of the characteristics of the offence (its seriousness) and the prior legal involvement of the juvenile as compared to the personal characteristics and background of the offender.

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* See Chapter II for further discussion of labelling theory and its implications for screening and diversion.

- departmental-community: the influence of the community (its demographic and sociological characteristics) and the police department (its organizational pressures, style of operation and policies) upon the exercise of discretion.

None of the research reported here has been able to untangle the various effects of the multiple factors that may influence the police decision to thrust a youthful suspect further into the formal justice system. In the overview that follows, each category of variables had been treated more or less in isolation from other factors. The reader is reminded that this is an artificial division, chosen for ease in presentation of a number of research studies.

Social Psychological Variables in the Decision-making Process

Two observation studies of police-juvenile encounters deserve detailed discussion, if only because of the number of citations they have received in the criminological literature. Both studies deal with on-the-street encounters between youth and police, with the first exploring the activities of the uniformed patrolman and the second those of the youth section officers both on patrol and in the station. In many locales, there is a two-stage screening process first by the general duty, uniformed officer and then by the specialized youth section.

The work by Black and Reiss (1970) is part of a larger study based on observations of patrolman-suspect encounters in Washington, Boston and Chicago in 1966. Of a total of 5,713 encounters, 281 were with juveniles. In their study, Black and Reiss have made the well-known distinction between "reactive" and "proactive" police mobilization. As was discussed earlier in this chapter, contrary to popular myth, the vast majority of police activities are initiated by citizens. In this research, about three-quarters of the juvenile field encounters were initiated by telephone by the general public.

The incidents observed by the field workers were overwhelmingly minor; alleged felonies accounted for only 5% of the total number of encounters. Personal conduct violations (e.g., rowdiness or disorderly conduct) comprised 60%. Other misdemeanors constituted 13% and traffic violations, "suspicious person", and non-criminal disputes made up the remaining 22%. About one-sixth of the encounters resulted in official action (arrest), with the probability of arrest increasing with the seriousness of the offence. The arrest rate of black juveniles was higher than that for whites, even when the seriousness of the offence was taken into consideration.

The role of the other participants in the encounter is perhaps the most notable of the findings of Black and Reiss. When there was a complainant who expressed a preference for arrest, the tendency of the officer to comply was strong. "In not one instance did the police arrest a juvenile when the complainant lobbied for leniency". The authors explain that the higher arrest rates for black youth appears to be a consequence of the police tendency to agree to the wishes of the victim. "This tendency is costly for Negro juveniles, since Negro complainants (complainants were black when the suspects were black) are relatively severe in their expressed preferences when they are compared to white complainants vis-à-vis white juveniles" (Black and Reiss, 1970: 71).

"Situational evidence" is also important in the decision to arrest: when patrolmen did arrest juveniles, they almost always had evidence of guilt. In most encounters, however, police released the juvenile even if there was persuasive evidence of guilt.

The degree of deference shown by the youth to the patrolman is the most quoted finding of the Black and Reiss research. After categorizing demeanour of the youths into "very deferential", "civil", and "antagonistic", the authors found a weak relationship between deference and arrests, and an insignificant tendency for both extremes of demeanour (very deferential and antagonistic) to be charged. Unfortunately, Black and Reiss draw firmer conclusions about this relationship than appear to be warranted by their data.

The number of encounters in the extreme categories is small (when controled by race, between 10 and 23), and the differences statistically insignificant. The data do not entirely justify their claims that deference plays a part in the arrest decision. (It is interesting to note that, even in areas of low income and high crime, over one-half of the juveniles encountered were categorized by the field researchers as "civil".)

In summary, two variables were found to affect the decision of the patrolman: the presence and wishes of the complainant-victim,* and situational evidence of guilt. However, Black and Reiss present no clear cut evidence on the relationship of demeanour to the arrest decision. Nor was outstanding evidence of police discrimination against black juveniles found in this research.

The second observation study (Piliavin and Briar, 1965), has been among the most influential of all research on the ways in which police handle juveniles. With only a few exceptions (Bordua, 1967 and Thornberry, 1971), the commentaries on this work have been uncritical; the results have been assumed to be widely applicable to encounters between police and juveniles.

The police who were observed were juvenile officers on routine patrol; the 66 encounters observed took place both on patrol and in the station, although no breakdown is provided. Since 90% of the encounters in which the police took some action were for minor offences (offences which were unhappily never defined), the nature of the offence played only a small part in the officers' decisions. The decision was usually made with little information about the interaction with the offender, such as attitude or demeanour. (However, data on

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* Other research has also found that the victim's preferences are crucial. Hohenstein (1969), employing a 10% sample of reported delinquent events gathered for Sellin and Wolfgang's Philadelphia study, used predictive attribute analysis to discover that the attitude of the victim was the primary factor influencing the juvenile officer's decision. The prior record of the offender and the seriousness of the current offence also has some bearing on the disposition. Very different in methodology from other research reviewed, it is interesting that Hohenstein also found no evidence of discrimination by race.

prior records were presumably available for juveniles taken to the station and those who were already personally known to the policeman. Piliavin and Briar do not state what proportion of the 66 juveniles had records which were known at the time of the decision.)

The youth's group affiliations, age, race, grooming, dress and demeanour were the major cues available to the officer, according to the authors. After dividing demeanour into "cooperative" and "uncooperative" categories, Piliavin and Briar found that only two out of 45 juveniles exhibiting cooperative behaviour were arrested, compared to 14 of 21 juveniles who were "fractious, obdurate, or who appeared nonchalant" (Piliavin and Briar, 1965: 210). In addition, officers stated in interviews that 50 to 60 per cent of first offence dispositions were based on demeanour.

Black youths, whose appearance often matched the stereotype of a "delinquent" held by police officers, were more frequently stopped and were usually given more severe dispositions than white youths who had committed the same violations.

Any assessment of the Piliavin and Briar research should consider: the relatively small number of encounters observed (66); the seriousness of the offences involved is neither defined nor used as a control variable in disposition decisions; while prior record is said to be the most important variable, Piliavin and Briar base most of their discussion on demeanour. If prior contact was in fact the most important factor, then the number of previous legal contacts should have been used as a control variable when examining disposition decisions.

This criticism is not meant to deny that demeanour is necessarily an unimportant variable in the exercise of police discretion. From what is known of police concern about maintaining authority and controlling situations (e.g., Reiss, 1971; Westley, 1970; Skolnick, 1966), it seems likely that an uncooperative attitude or demeanour increases the probability of arrest.

Indirect evidence of the importance of the youth's attitude is provided by Ferdinand and Luchterhand (1970) who obtained police data on youth interviewed in six inner city neighbourhoods in the United States. Blacks received harsher police dispositions, a difference which was not explained by racial differences in types of offences committed. Black offenders were also found to be high scorers on an Authority Rejection Scale. The authors examined the relationship between scale scores and police dispositions, holding type of offence and race constant. For black property offenders, their attitude toward authority appears to make a difference in disposition. "They are given more severe dispositions if their attitude toward authority is particularly defiant" (Ferdinand and Luchterhand, 1970: 517). While this evidence is obviously tangential, it does suggest racial differences in attitudes and behaviour towards police, and hence possibly in police reactions.

In another type of research, Sullivan and Siegel (1972), using an information board of the type developed by Leslie Wilkins, found that about three-quarters of the police tested made their final decision on whether to arrest after reading the item describing the "attitude of the offender". More experienced officers selected this item more quickly than did the less experienced policemen. Also notable was that the police officers needed five pieces of information, on average, before making their disposition decision.

Garrett (1972) used questionnaire data from officers in three cities to investigate the extent to which police expect male juveniles of differing social class and demeanour to be involved in delinquent acts. She assumed that these expectations would form "guidelines" for police actions in field encounters. After briefly describing (in vignette form) four families of varying social class, Garrett asked her police respondents to rate the likelihood of delinquent involvement for each of the four boys and to predict the manner and appearance of each type of boy. There was a strong association between perceived demeanour and perceived involvement in delinquency. For most offences, police saw lower class boys as much more delinquent than boys from other backgrounds, as well as more closely resembling a stereotype of delinquent

demeanour. Despite having respondents from three widely disparate communities, Garrett found remarkable homogeneity in judgments. She concluded that the police subculture "socializes men in a nearly uniform way" (Garrett, 1972: 146).

Another study which attempted to explain the attitude-demeanour dimension examined police contact cards, upon which youth section officers had rated juvenile attitudes. Harris (1967) obtained data from 1952 to 1961 from the Detroit police department. Using a 10% random sample of contact cards, he tried to locate the relationships between dispositions and offender attitudes. Two-thirds of the youths rated as "honest" in their attitude towards the officer were referred to court; 70% rated as "responsive", 78% as "evasive", and 80% perceived to be "anti-social" had petitions filed, i.e., were given court referrals (Harris, 1967: 113).

Thus, it appears that the weight of the research evidence indicates that the attitude of the juvenile affects the police decision to charge. Werthman and Piliavin (1967) extend the discussion of this dimension to include "moral character". In an encounter with a juvenile, police assess his or her "moral status": whether he is "guilty but essentially good", "guilty but sometimes weak", or a "punk". In the term "moral character", Werthman and Piliavin refer not only to the youth's present behaviour but also to the officer's assessment of his <u>future</u> behaviour.

Therefore, it appears that the offender's attitude is one of a number of factors considered in estimating future legal involvement. Another crucial factor is prior police contact; Werthman and Piliavin suggest that previous legal involvement is important in the judgment of moral character, regardless of the reasons for the earlier contacts. The officer's perception of the degree of parental control is the third factor; the likelihood of a future offence is considered to be lessened if the juvenile has the "right kind" of parents.

In more general terms, Werthman and Piliavin describe the relationship between police methods of detection, assessment of moral character, and their selection of certain groups for particular attention:

> Policemen develop indicators of suspicion by a method of pragmatic induction. Past experience leads them to conclude that more crimes are committed in the poorer sections of town than in the wealthier areas, that Negroes are more likely to cause public disturbances than whites, and that adolescents in certain areas are a greater source of trouble than other categories of the citizenry. On the basis of these conclusions, the police divide the population and physical territory under surveillance into a variety of categories, make some initial assumptions about the moral character of the people and places in these categories, and then focus attention on those categories of persons and places felt to have the shadiest moral characteristics.*
>
> Werthman and Piliavin, 1967: 75

The policeman's perception of the juvenile's family situation is a "social-psychological" factor affecting decision-making which deserves more discussion and research. Conceptually, "family situation" can be divided into four categories: family intactness (broken homes), the degree of parental neglect, the "moral character" of the parents, and parental attitudes towards the offence and the police. Most research and commentary has focussed on the first aspect. Forty-five years ago, Shaw and MacKay (1931: 227) concluded that the number of young delinquents from broken homes was a function of police response to a disrupted home situation rather than a casual factor in delinquency. Hirschi (1969) found that boys without fathers were more likely to be picked

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* Gandy reported similar "indicators of suspicion" when he asked members of the Toronto force why juvenile contact cards were not consistently completed. Patrolmen and detectives tended to use them as a deterrent. The criteria reported included: "the attitude, dress, and deference shown by the juvenile; the crime rate of the neighbourhood in which the juvenile is accosted; and the distance between the place where he is contacted by the police and his home" (Gandy, 1970: 334).

up by police than boys with fathers or step-fathers. However, Hirschi's research did not allow for seriousness of offence; it is possible that juveniles from broken homes commit more serious delinquencies.

Aaron Cicourel has also noted that broken homes are related to more severe police dispositions. Juveniles from this background are selected for further processing because their environment is seen as "disorganized". "Thus court jurisdiction and authority over the future disposition of the juvenile is 'best' for the youth in question" (Cicourel, 1968: 38). In addition, Cicourel contends that the family life of lower class groups is more likely to be subject to these kind of judgments.

Recently, Howard (1973) found that the juvenile division of a New Hampshire force was more likely to refer children from non-intact families to court; this relationship held for all social classes, leading Howard to conclude that a key factor influencing disposition was the family situation.

Garrett and Short (1975), on the other hand, point out that the perceived inadequacies of the home may "create" a link between social class and delinquency in the mind of the working policemen.

> Police saw parental contact with youth as a requisite for keeping youth out of trouble. In their experience in lower class neighbourhoods they see "obvious" signs of neglect ... and conclude that the neglect explains the heavy delinquent involvement of lower class youth.
>
> Garrett and Short, 1975: 371

Robert Emerson, however, argues that police are well aware of class differences in family life and do not judge homes by rigid middle class standards. Rather, they look for "forms and values that distinguish the respectable from the disreputable poor" (Emerson, 1969: 132).

Each component of this determinant of dispositions (intactness, parental neglect and attitudes) may be indicators of the family's ability (and willingness) to supervise the juvenile. As is discussed later in this section, police are very concerned about maintaining control of the area they service and make a considerable effort to avoid losing control. If a family is perceived as incapable of supervising their juvenile-court-aged youth, youth section officers may be more willing to refer the children to court, where -- they may hope -- the youth will receive the "needed" controls.

The Influence of "Legalistic" Variables on Police Decisions

The major interest in this group of studies is the interaction between "legal" variables (the nature and seriousness of the present offence, existence and extent of a prior record) and the non-legal variables, largely the social characteristics of the offender (his or her age, sex, race and socio-economic status). Research on the relationship between legal and personal variables usually employs police records of contacts and dispositions as data sources. Investigators are thus dependent upon the quality and completeness of police records. The other factor to be remembered is that these data are the end products of what may be a series of decisions -- including those by the citizen complainant or victim, the patrol officer, and the youth section representative.

Terry (1967a, 1967b) explored the criteria employed by the police, the probation intake department, and the juvenile court in the sanctioning of young offenders. His study site was a city in Wisconsin; his sample or universe was all cases of delinquent behaviour occurring between 1958 and 1962 obtained from police records. Eighty-four per cent of the 9,023 offences were reported by citizen complainants.

After ranking police dispositions in order of severity, Terry found that almost 90% of the offences resulted in the least severe disposition, "release". He first examined the basic relationship between the severity of the sanction and sex, age, socio-economic status, and minority status. Consistent weak

relationships were found between race and social class and severity of sanction received by the juveniles. However, controlling by number of previous contacts and the seriousness of the current offence, the relationships disappeared -- with the exception of age. Terry concludes that social control agents, including police in youth sections, follow a "legalistic" pattern in handling juvenile offenders.

> The severity of societal reaction is a function, at least in part, of the amount of deviance engaged in by the offender (i.e., the number of previous offences). Also relevant, but less clearly so, are the degree of deviation (the seriousness of the offence), the unfavourability of the personal and social biography of the deviant, the place in which the deviance is committed, and the unfavourability of the situation in which the deviance is committed.
>
> Terry, 1967b: 179

As Terry himself admits, his measure of socio-economic status was crude, and his findings were not controlled for variations in the population which appears in the formal records in the first place (Terry, 1967a: 229). More pertinently, Bordua notes that nine out of ten of the youth contacted were released by the police: "surely, in order for socio-economic bias to appear, it would have to be monumental since after all the police must pay some attention to the law) (Bordua, 1967: 158).

An early study by Boldman (undertaken in 1950 but not reported until 1963) came to a similar conclusion to Terry, although he handled his data with less sophistication -- not controlling strictly for seriousness of offence and previous contacts, for example. In the four communities Goldman studies, the proportion of contacts resulting in court referral varied from 9% to 71%, although serious offenders were more likely to be referred in every locale. Differences in court referrals were largely the result of different handling of minor offences. When the offence was serious the court referral rate was similar for black and white youths. Less serious delinquent acts, however, did result in a larger proportion of black juveniles being taken to court.

Females brought to police attention were more liable to referral than were males. Older children were also referred more often; from Goldman's text, one assumes that older juveniles tended to be recidivists and to have committed more serious offences.

McEachern and Bauzer (1967) used historical and current data obtained from the Los Angeles County and Santa Monica police departments. They found that the court referral decision had relatively little to do with the juvenile's family status, his race or his sex when the nature of the offence was held constant. Age, however, remained an important factor in the decision to refer.

In an analysis of four years of Syracuse police data, Bodine (1964) tested the hypothesis that the relationship between disposition and social class (as measured by the income level of the juvenile's residential area) could be explained by previous arrest history, age, and the nature of the offence. Strong associations were found between arrest history and disposition, and between arrest history and income level. First offenders apprehended for personal conduct violations were treated differently, while those arrested for serious theft offences were almost always charged. Age did not remain a factor when number of prior arrests and offence-type were considered. Bodine concluded:

> Juveniles from low income areas have a higher referral rate to court than juveniles from high income areas for two reasons: low income youth are more often apprehended as repeating offenders, and repeating offenders have a referral rate which is twice as great as the rate for initial offenders; low income youth have a higher arrest rate for petty theft and petty thieves in general, and low income petty thieves in particular, have a higher court referral rate.
>
> Bodine, quoted in Bordua, 1967: 158

Shannon (1963) attempted to establish the relationship between delinquency referral rates and other variables for three residential areas of varying social status. He concluded that controlling for seriousness of offence eliminated any area differences in referral rates. "Juveniles engaging in comparable types of delinquent behaviour receive pretty much the same treatment from the Madison police" (Shannon, 1963: 33).

Weiner and Willie (1971), using police data from the cities of Washington and Syracuse, also used area of residence (in this case, census tract characteristics) to test whether there was differential treatment at the youth bureau level. They discovered that in Washington "similar proportions of the contacted affluent and poor youth, as well as black and white youth were being referred to Juvenile Court" (Weiner and Willie, 1971: 204). Lack of racial bias was also discovered in Syracuse. The authors expressed surprise at their results and concluded that the juvenile bureaus did not allow racial or socio-economic bias to affect their disposition decisions.

In general, the preceding studies have found that, when legal variables (seriousness of the present offence and number of previous contacts or offences) are held constant, police disposition decisions are not discriminatory. These findings are in sharp contrast to widely-held beliefs. However, as is common in social science research, several studies have formulated a precisely opposite conclusion. Three of these will be briefly described.

In Detroit, Harris (1967) found that race remained a factor in juvenile court referrals, even when the seriousness of the offence was controlled. Non-whites consistently had a higher rate of referral than did whites. Furthermore, from data not included in his main analysis, Harris discovered that boys picked up by patrolmen, taken to the police station, and then released by the Youth Bureau (because of insufficient evidence or because there was no offence) tended to be black youths between 14 and 16 years of age. Harris suggested that

> the relative absence of whites in this category suggests that reasonable doubt about a youth having committed an offence is resolved with his release on the street by the patrolman if the youth is white, but resolved with his release in the precinct station by the Youth Bureau if the youth is non-white.
>
> Harris, 1967: 101

This observation might indicate that there is discriminatory treatment at the street level of law enforcement, which may not be reflected in the decisions

of the specialized youth sections. Furthermore, the discrimination will not be found in police records if the street decision is overruled by the youth bureau officer.

Monahan (1970) used data from the Philadelphia cohort study of Wolfgang, Figlio and Sellin (19 2). Like researchers in other cities, he noted fluctuations in court referral rates from year to year; he related them to changes in policy within the police department, rather than to differences in youth activity. After classifying juvenile offences into minor and major categories, Monahan found that serious offenders are arrested about three times as often as minor offenders. When seriousness of the offence was controlled, there were still more black children arrested but sex differences disappeared. The amount of the bias depended on the type of the offence.

Monahan emphasized two inadequacies of research such as his own: first, while youths may be charged with the same offence, it is difficult to tell from police statistics how grievous the offences are. Offences within the same category might vary considerably in their seriousness. To vary the example given earlier -- robbery might mean rolling a drunk or snatching money from a school mate. In addition, other criteria for arrest decisions may be operating in the situation; these criteria would not usually be obtainable from police records. They may include the availability of community resources and the presence of a responsible adult to whose care the child might be released.

Different methods of analysis were used by Thornberry (1971, 1973) on the same Philadelphia data. His scope was larger than Monahan's, for he included an examination of three levels of dispositions: decisions made by the police, probation intake department, and the juvenile court itself. Over 9,000 delinquent events (almost 3,500 boys) were analyzed in Thornberry's research. Race and social class differences in police dispositional practices held <u>even when</u> seriousness of offence <u>and</u> number of previous offences are held constant. Thornberry is the only researcher to control for both "legal" variables at all three levels of dispositions.

Thornberry was himself puzzled at the difference in results between his research and other work done in the same area.

> All the studies were conducted in urban areas; data were collected during similar time periods (the late 1950's and early 1960's); they used comparable measures of the major variables; and they employed a valid sample of the juvenile delinquency cases occurring in the cities in which the studies were conducted.
>
> Thornberry, 1973: 98

Thornberry suggested that, if other variables -- the demeanour of the youth, the quality and intactness of his home, and the attitude of the victim -- had been introduced, perhaps the racial and class differences in dispositions would have been eliminated. While the scope of his findings is limited by the absence of these variables, "it does not explain the discrepancy between this study and the previous ones" (Thornberry, 1973: 98).

In his excellent critique of labelling theory, Wellford (1974-5: 338-339) has questioned Thornberry's findings on methodological grounds. He argues that the conclusions are hampered by the absence of variables such as complainant behaviour and offence seriousness. Wellford states that the low seriousness category used by Thornberry was largely made up of status offences, with high seriousness including all other crimes. The use of the median income of the juvenile's area of residence as the indicator of status is "an obvious example of the ecological fallacy". (If this is so, then many other researchers have been equally guilty of ecological fallacy.) After reworking the data, Wellford concludes that only minimal contributions were made by social class and race and that Thornberry's conclusions at all three levels of decision-making were unjustified by his data.

The Influence of the Department and the Community on Police Decisions

The third area which affects the exercise of discretion in the handling of juvenile offences is the characteristics of the police department and the community in which it is located. The substantial variations in arrest rates

across police jurisdictions have already been mentioned. Similarly, considerable differences in court referral rates have been found over time in the same department (McEachern and Bauzer, 1967; Harris, 1967). Not unnaturally, commentators have tried to explain these variations by examining differences in the structure and organizational features of police departments, their relationships to the communities they serve, and in the degree of "integration" and homogeneity found in the community. The work of James Q. Wilson has focussed on the first two of these three areas.

Wilson was the first researcher to examine the handling of juvenile offences in relation to organizational variables of the department. In his examination of two urban areas, he concluded:

> Far more important, it seems to me, than any mechanical differences between the two departments are the organizational arrangements, community attachments, and institutionalized norms which govern the daily life of the police officer himself, all of which might be referred to collectively as the "ethos" of the police force. It is this ethos which, in my judgment, decisively influences the police in the two places. In Western City this is the ethos of a professional force; in Eastern City, the ethos of a fraternal force.
>
> Wilson, 1968a: 21

Using both statistical and observational data, Wilson attempted to explain differences in the exercise of discretion between the two cities. In Western City, the police officers were well educated and enforced the law impersonally with little discrimination against black community members. This highly professionalized department had a higher court referral rate (47%) than did their counterparts in Eastern City (30%).

The officers in Eastern City had obtained less formal education and training, had often grown up in the community, and had the same lower- or working-class backgrounds as most of the youths with whom they came into

contact. The eastern department released most first-offenders; even those with more than one prior contact were sometimes only reprimanded unless they committed what the police regarded as a "serious" crime. Eastern City officers referred a higher proportion of black juveniles to court within most offence categories.

Wilson attributes these differences in policing style to the "bureaucratization" of the Western City department. "Organizational measures intended to ensure that police behave properly with respect to non-discretionary matters (such as taking bribes) may also have the effect (perhaps unintended) of making them behave differently with respect to matters over which they do have discretion." On the other hand, in Eastern City the fraternal ethos "leads officers to treat juveniles primarily on the basis of personal judgment and only secondarily by applying formal rules" (Wilson, 1968a: 22).

In addition, the organization of the juvenile divisions in the two departments differed considerably; Western City officers worked as a unit out of headquarters, while in the Eastern City, each juvenile officer was assigned to a precinct. The reference group of the Western City juvenile officer was his fellow officers at headquarters, but for the latter it was the patrolmen and detectives in the precinct. In the Western City, "a principal effect of the inculcation of professional norms is to make the police less discriminatory but more severe" (Wilson, 1968a: 28). In the other force, the juvenile officers were deterred from making juvenile arrests because their peers did not regard young people as a "good pinch".

Wilson is cautious about generalizing his results, pointing out that city size and the "age" of the force are additional variables that may affect police behaviour. Differing degrees of professionalism alone will not necessarily produce corresponding differences in screening rates.

In Varieties of Police Behaviour, Wilson (1968b) enlarged his typology of policing styles to three: legalistic (professional), watchman (fraternalistic)

and service. The third category is often found in middle class communities with small minority-group populations, according to Wilson. In Nassau County, one of his service-style departments, "serious" juvenile crimes were dealt with by detectives; 95% of the remainder were handled informally, often through family interviews by youth section officers. In the service-style, "unlike watchman-style departments, the police do not overlook violations of the law, but unlike legalistic departments, they are less likely to handle these infractions by taking the person to court" (Wilson, 1968b: 210). Service departments had a strong "community relations orientation" with the police acting as though their task were to estimate the 'market' for police services and to produce the 'product' that meets the demands" (Wilson, 1968b: 206).

Bottomley has noted that Wilson's work has obvious attractions, in particular its linkage of organizational and political constraints and officers' ideological orientations to recruitment policies and career prospects. However, Bottomley concludes that this approach omits crucial variables.

> Some account (must be) taken of the important part played by "stereotypes" in the every-day working philosophy of the police, in such a way that the focus of attention should never be allowed to stray too far from the imperatives of the immediate situation facing the police patrolman.
>
> Bottomley, 1973: 61

Nor has Wilson's research been replicated by others. Sundeen, in an attempt to validate some of Wilson's conclusions, concluded that departmental characteristics alone did not explain differences in juvenile diversion rates (Sundeen, 1972). However, Sundeen relied on data from questionnaires administered to juvenile officers, rather than on observation. He did find that the best predictors of screening rates were: amount of training, local friendships, and officer's residence.

Two studies, one American and the other Canadian, have looked at the organization of police departments from a different perspective. Both have examined the daily working pressures on the policeman and the effects these have on the decisions made by juvenile and other officers.

Robert Emerson (1968/1969) spent six weeks observing the activities of two juvenile officers working out of one district police station and described them in his excellent account of the operations of a juvenile court in a medium sized American community. Emerson viewed the activities of the juvenile officers as attempts to keep the peace in the local community. Most of the officers' time is spent in checking out minor complaints about young people.

> The juvenile officer's job is not so much to solve "crimes" committed by juveniles as to handle often legally-ambiguous complaints involving juveniles. The juvenile officer seeks both to satisfy the complainant and to keep the youth from making further trouble.
>
> Emerson, 1969: 42

By mediation and threats of court action, he tries to reach both goals.

Police concern for maintaining their authority is another point emphasized by Emerson. A charge may be laid when the officer decides the youth is in need of "tough treatment"; this may be because his authority has been questioned, because the youth has repeatedly made trouble, or because he has committed an offence which would bring public or official criticism if the case were handled informally. Emerson suggests that "control" of troublesome behaviour is more important to the police than any rehabilitative measures taken to change behaviour (Emerson, 1969: 43).

Furthermore, the officer's perception of the leniency or severity of court dispositions may influence his decision to charge. If the police perceive that the youth they want controlled receives only a nominal sentence, they may be more reluctant to refer a similar case to court. Similarly, if the officer feels that an appearance in court may unduly stigmatize the juvenile,

or that court rehabilitative efforts are bound to fail (either because of their inherent ineffectiveness or a lack of resources), he may be equally loath to lay a charge. Therefore, perception of the consequences to the child appears to be involved in the decision-making process.*

At the same time, juvenile officers may also be considering the consequences in terms of their own image with the court. In some instances (for example, when due process standards in the court are high), the officer must evaluate the probabilities of the case standing up in court, and consider the amount of effort he must expend in order for it to do so, e.g., getting witnesses to appear. Police thus may anticipate the action of the juvenile court should a referral be made.**

Discretionary decisions with regard to delinquency charges may equally be affected by the officer's perceptions of the consequences of his action in terms of his reputation in the police department. For patrolmen and detectives, children are not considered good "pinches"; if an officer apprehends a child for a minor offence, ridicule from fellow officers may result.

A similar approach to decision-making was taken by Gandy, in his research on the operation of the youth bureau in the Toronto police force during the mid-1960's (Gandy, 1967; 1970). Focussing on the structural characteristics of the force, and the internal organizational pressures exerted on various branches of the department, Gandy explored the relationship between disposition criteria and the officer's assignment within the department.

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* See Wheeler et al, 1968 and Kupperstein, 1971 for discussions of police attitudes towards court leniency.

** See also Sellin and Wolfgang, 1964: 100.

Although no clear or consistent differences in attitudes* among uniformed men, youth bureau personnel and detectives were found, Gandy did observe that a higher proportion of juvenile officers were inclined to perceive themselves as exercising "substantial" discretion in juvenile indictable offences than did uniformed officers. Inner city versus suburban differences in the amount of perceived discretion were also found, with the suburban policemen believing they had more freedom. Whether this difference was due to the influence of the community or to characteristics of the division (demands and attitudes of superior officers, for example) is not clear.

A lack of uniformity in dispositions was noted by Gandy, who explained this in terms of the decentralization of decision-making throughout the force (each Desk Sergeant was responsible for the final decision to charge juveniles), the absence of any review of these decisions and of any formal guidelines on how to handle juveniles. The youth bureau was dependent on detectives and patrolmen for referrals and had low status in the department. Because detectives were under pressure to obtain a high clearance rate, only the most minor offenders were referred to the bureau.

Gandy concluded that the administrative sub-units of the force tended to have ambivalent and often conflicting attitudes towards the handling of juveniles. The Uniform Branch officers were less oriented towards family circumstances than the Youth Bureau officers, and often did not even know that an agency referral was a possible disposition. As a result, social agency referrals were made almost exclusively by youth officers. Because there were no formal mechanisms for referral, it was left to the individual policeman to establish his own contacts within social agencies. The result was an "uneven" relationship between the bureau and agencies dealing with juvenile problems.

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* Gandy used a questionnaire which attempted to differentiate orientations towards the primacy of "child welfare" attitudes vs. "community protection".

In summary, Gandy suggested that working pressures (e.g., work loads, the patterns of supervision, rewards and sanctions) played an important part in the amount of discretion exercised. In some circumstances, the officer made the decision with the least risk to himself (that is, a court referral) because he perceived that a "wrong" choice might have a detrimental effect on his record in the department (Gandy, 1967: 344). The amount of discretion perceived varied between the administrative sub-units with the youth bureau officers possessing a "self image" of exercising substantial discretion. In addition,

> there were significant differences between the administrative sub-units (a) in the emphasis and weight given to the same criteria in making choices among possible dispositions; (b) in their perceptions of the relative seriousness of certain types of behaviour; and (c) in the frequency with which certain courses of action were selected.
>
> Gandy, 1970: 342

Differences such as these should be explored further by police researchers interested in the impact of organizational variables on the exercise of discretion.

Police Discretion: Discussion and Conclusions

Taking the example from Malcolm Klein (1973), this section deals with the literature on police discretion in relation to juveniles under three broad categories: social-psychological factors, legalistic variables, and the effect of the police department and surrounding community. Here an attempt will be made to draw together the disparate research material for each factor in police dispositions.

Social-Psychological Variables

Of the social-psychological determinants of police actions, the least disputed area appears to be the role and attitude of the victim or the complainant, or both. Those who have researched the role of victims (Black and Reiss, Hohenstein, Emerson) all have found that their presence and their preferences are influential factors in police decisions. Data on patrolmen's encounters with juveniles collected by Black and Reiss show that in not one of the thirty encounters where the complainant expressed a preference for an informal disposition did the police arrest the suspect. (However, felonies -- presumably more serious cases -- were excluded from this tabulation.) Hohenstein's data were were even stronger: "regardless of the seriousness of the events or the previous records of the offenders, when victims made statements to the police that they were against prosecution, offenders were 'remedialed' (i.e., given an informal release) in 96% of the cases" (Hohenstein, 1969: 146).

There is also general agreement in the literature on the importance of the attitude of the offender. The earlier discussion of the work of Black and Reiss and of Piliavin and Briar pointed out that their data did not entirely justify their conclusions. It is thus fortunate that there is other evidence which also supports the conclusion that the suspect's demeanour influences the decision-making process. Self-reports by police officers in interviews and in attitudinal scales administered to a variety of men and women in a variety of locations indicate that the youth's attitude, both to his offence and to the policeman confronting him, influences the way in which police make their decisions (e.g., Goldman, 1963; Sullivan and Siegal, 1972; and Harris, 1967).

Furthermore, the officer's attitude towards the misconduct of youth in general and his definition of what is "normal misbehaviour" for a youth of a specific age will play a part in decision-making. The policeman's knowledge of the local area and his interpretation of the standards and expectations regarding

juveniles which are held by community members are probably additional background factors. In the process of evaluating the juvenile's behaviour and the community's expectations, the officer's length of service on the force and in the neighbourhood, and the amount of experience in handling juveniles may also affect his decisions.

In addition to these "background" factors, "future" factors are also involved. What are the officer's perceptions of the consequences of his decision to himself and to the suspect? Because there are few cues available to the police when confronted with an unknown juvenile, the officer must be able to guage whether it is safe for the community and his own career to release the boy or girl. It is for this reason that attitude becomes crucial: contrition and deference would offer some indication that a decision to release the boy or girl poses a minimal risk. On the other hand, demeanour perceived as "defiance of authority" may bring a negative reaction.

> Law enforcement personnel view "defiance of authority" as a "sign" of "bad" things to come, as an important threat to their ability to maintain control over persons.
>
> Cicourel, 1968: 240

An exhibition of disrespect and overt defiance may be seen as a threat to that ability to maintain control. Because control is a central concern of the police, lack of respect may be the quickest way to influence a police decision (Skolnick, 1966; Westley, 1970; Bittner, 1970).

Perhaps just as importantly, the policeman looks at the effect of making the "wrong" decision on his position within the police department. Officers strive to avoid negative sanctions from both superiors and colleagues. A disposition must be chosen which avoids eliciting such sanctions or embarrassment. (The point made earlier that children are not considered "good pinches" by patrolmen bears repeating.) Another "future" factor is the effect of the decision on the officer's work load -- for example, the time necessary to process the case or the amount of "extra" duty involved (Skolnick, 1966; Gandy, 1967). Also, in some jurisdictions, the officer must consider whether he can present a case which will stand up in increasingly legalistic juvenile courts.

The officer's perceptions of the consequences to the juvenile may also affect his choice of dispositions among the options available. He must assess which of the available dispositions would be most potent in controlling the child's future misconduct. If the parental home is seen as lacking in discipline and supervision (either through neglect or the lack of one parent), the child may be more in "need" of court-imposed controls. Attitudes towards the juvenile court would equally be involved in the disposition decision: Are the judges lenient or firm? Will the court appearance act as the necessary deterrent to future misdeeds? Will the child who needs social or psychiatric services receive them through the court?

These, then, are the attitudinal and situational factors, discussed here under the heading of "social-psychological" variables, which have been thus far found to determine the ways in which police make decisions with regard to juveniles.

Legalistic Variables

Box (1971), after reviewing some of the same studies that have been summarized in this paper, draws similar conclusions: It would be unwise to make unequivocal statements regarding the balance between particularistic and legalistic criteria in the handling of juveniles.

> Nonetheless, on the surface of things it would appear that police decisions are more particularistic and biased at the deployment end of the process, and more legalistic and unbiased at the decision end, with "on-the-street" encounters being governed by an indeterminate balance of the two opposing criteria. In other words, it is where the police look when no one has been suspected that the infiltration of bias is greatest. In police stations, the evidence seems to suggest that decisions are based more on "legalistic" criteria... .
>
> Box, 1971: 195

Variations among police forces in their use of "legal" factors may explain the variations in research results. One reason for the large number of

legalistic (i.e., unbiased) departments may be the result of the difficulty of obtaining access to departments which do not have high standards. Forces which have allowed researchers to use their records have generally been of a high calibre (Bordua, 1967).

A further criticism made by Box is that at least one of the "legalistic" variables -- the prior offence record or police contact history -- is the product of numerous previous judgments made by a variety of people (policemen, public, and so on), and may not be an objective assessment of past delinquent activity. Particularly in juvenile cases, it is common for the number -- rather than the nature -- of prior contacts to be instrumental in the decision to refer to court. It is in this area where the lower class youth may encounter discrimination; with greater police deployment in central city and other low-income areas, the probability is high that the patrolman will encounter lower status and minority-group youth more frequently than those from the middle class. In this way, the concentration of police resources may cause more lower class juveniles to have more contacts (Box, 1971: 197).

With fewer grounds, Box also suggests that seriousness of offence may also be a less-than-legalistic criterion, because middle to upper income groups are often able to obtain a reduction in the charges, while more impoverished youths lack the power and resourcefulness to secure such concessions.

> If this is so, it means that there is a weakness in the reasoning of those researchers who argued that offence variations between class and race accounted for variations in police dispositions; the weakness being that these offence variations were themselves partly the product of police decisions on what charges to bring against a suspect.
>
> Box, 1971: 197

Perhaps a more workable criticism of using police classifications of offences is that all offences with the same label may not be equally "grievous" (Monahan, 1970). Because researchers must usually of necessity rely on the police classification of offences, without knowing how descriptive of the

incident the charges may be, their results may be distorted. Much of the work in this area seems to have ignored the efforts of researchers such as Kitsuse and Cicourel (1963), Cicourel (1968), and Bottomley and Coleman (1976). All of these writers have pointed out that police records are a product of social organization. If researchers use police definitions without clear knowledge of the ways in which they were formulated, their analyses may suffer. Official statistics are not an accurate reflection of the "reality" of criminal activity existing in a community. In his excellent examination of the practices of two California police departments, Cicourel makes this point.

> The classification of offences like auto theft, burglary, and assault is never clear because the descriptive information in the police files is ambiguous, unless the material is tied to a knowledge of various practices, the changing nature of the offence category as the case moves through various administrative stages, and the fact that investigative procedures (and hence possible alterations) continue after some preliminary classification has occurred.
>
> Cicourel, 1968: 90

With these factors in mind, it seems important for researchers to combine observational with statistical data when they are attempting to guage the relative weights of various factors in the exercise of police discretion.

In summary, research in the area of legalistic vs. particularistic criteria in dispositions has had conflicting and inconsistent results. It does seem, however, that variables such as complainant behaviour, perceived seriousness of offence, and past police contacts are more important in the decision to arrest young people than social class, race, or demeanour. This is not to say that these factors play no part in the decision; the characteristics of the offender may influence decisions, but are most probably on the lower end of the hierarchy of variables which affect police dispositions.

Characteristics of Police Departments and Communities

Of the three determinants of police discretion, it is most difficult to make generalizations about the effects of departmental and community variables. It appears obvious that the structure, policies and working pressures of police forces affect decisions about juvenile lawbreaking. Unfortunately, researchers have not explained the ways in which these variables influence variations in court referral rates. As Malcolm Klein has written,

> There does seem to be some cause-and-effect residue in the area of departmental policy, but it is diffuse and weak, suggesting a multitude of casual agents rather than a few.
>
> Klein, 1973: 395

Similarly, little systematic research has been done on the relationship between the community and the exercise of police discretion. Thus far, no one has been able to relate in any systematic fashion differences in police discretion to specific community variables. It has been claimed that the more "integrated" or "homogeneous" communities enable police to engage in maintaining the peace without invoking the justice system (Goldman, 1963; Quinney, 1970). Some authorities have suggested that the exercise of police discretion is more a function of the community's ability and willingness to absorb (keep within its own boundaries) illegal behaviour than it is a function of the juvenile's characteristics or those of the police department.

Further research should focus on the ways in which the general public function as "gatekeepers" to the juvenile justice system. The prevalent emphasis on the "bias" in police decision-making should be dropped in favour of examining the much more complex "bias" exhibited by the groups which initiate much of the actions of the police and, as a consequence, the juvenile courts.

> In other words, the main focus of attention should be upon the general public or those in special positions to

> control the "input" into the penal process, such as store detectives, school teachers, caretakers, etc. "Bias" is still likely to be found in these groups but the direction and "representativeness" of such bias may be much more complex than the typical allegations of bias made against the police and other official penal agents. Crime cannot be viewed in isolation from the community in which it flourishes, either in terms of aethiology or, even more relevantly, in terms of its very definition and official construction.
>
> Bottomley and Coleman, 1976: 55

Intake Units of Juvenile Courts

The final "checkpoint in the gateway to the correctional system" (Sheridan, 1967) is the juvenile court intake unit. Intake procedures at the door of the juvenile court are found in the majority of states in the United States and in some areas of Canada.* Most units of this type are located with the juvenile probation department, although the intake workers may be separated into a special section.

Court intake procedures were originally established to screen out cases where the court lacked jurisdiction or where evidence for further action was insufficient. A secondary function was to eliminate cases which could be informally adjusted, or which appeared to be isolated events in the juvenile's life. More recently intake has been used to avoid the stigma presumed to be associated with the "juvenile delinquent" label, to refer the youth to appropriate social or other services in the community, and, more pragmatically, to reduce court costs by decreasing the workloads of the court.

Approximately one-half of all delinquency cases referred to juvenile courts in the United States are handled informally by court staff. Variations in the extent of intake screening seem to be almost as extreme as those found in police handling; proportions of juveniles handled informally (i.e., not referred to court) range from 27% to over 80% in 1967 (Ferster and Courtless, 1971: 1128).

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* For example, Winnipeg and Calgary both have pre-court screening mechanisms although of a very different nature.

Considering the importance of intake screening in the juvenile justice process in the United States, it is surprising that so few research studies of the criteria employed by the intake unit worker have done. The majority of the studies have used court and probation department records to investigate the bias -- if any -- in intake procedures; they have studied the effects of legal vs. particularistic criteria in the court referral process. To be discussed first are the two projects which have examined the social psychological factors in the intake process. Observational and interview methods were the primary methods of study in both instances.

Smith (1972) attempted to combine observations of interaction between youths and intake workers with a statistical analysis of referral data in a court in a southern U.S. city during a three-month period in 1971. His interest was the pre-hearing bargaining behaviour between the "juvenile counsellor" (the intake officer) and the juvenile, and to a lesser extent the juvenile's lawyer and the victim.

Since the intake worker has the power to adjust cases informally, negotiation of terms ("bargaining") almost inevitably becomes a factor in the encounter between the counsellor and youth. Smith found that when seriousness of offence and past offence history were controlled, age, socio-economic status and race had no relationship to the recommended disposition. Interestingly, frequency of past delinquent acts known to the court had a stronger relationship to disposition than did seriousness (as measured by the Sellin and Wolfgang seriousness scale). Regardless of the bargaining process, females were treated more leniently by the intake unit.

As in police handling of juveniles, intake studies have found that the family situation and/or degree of family intactness have affected the intake disposition. Aaron Cicourel (1968) has observed that a negative home environment, particularly a one-parent family, influences the probation officer's decision making. Smith found only a slight statistical relationship between family structure and dispositions. However, he discovered a strong

relationship between (worker-identified) problem families and recommended dispositions. Like other research, this study indicated that it was the "lack of controls" in the family situation that prompted the imposition of more severe sanctions. "The continual 'acting out' by the juvenile meant to the counsellor that the juvenile was 'asking that something be done'." (Smith, 1972: 82).

Smith has found, like police researchers, that the victim's wishes helped determine the decision. Unofficial dispositions were almost always made when the victim was in favour of leniency. The demeanour or attitude of the juvenile was not a factor in the small sample of cases observed, for "proper respect" was shown in most encounters (Smith, 1972: 84).

An exploratory study of several intake units in "Mountain State" is described in a recent paper by Cressey and McDermott (1973). The methods employed by the authors appear to have been unstructured interviews and observation of unit activities. Their main interest was the decision to divert and the ways in which intake units are adjusting to the recent emphasis on the utilization of diversionary options.

Cressey and McDermott focussed largely on the attitudinal or "social-psychological" dimension of decision-making. They suggested that there are many criteria operating in the decision. First and probably least important are the facts of the case, the probabilities of proof, and the technicalities of the arrest. However, the decision is more dependent on the intake worker's conception of "what is right, just, fair, and proper". In turn their perceptions of "fairness" are influenced by the seriousness and circumstances of the offence, the attitude and background of the juvenile, and the possible consequences of the decision. Undoubtedly the policies and programs of the worker's superiors influenced decisions but the intake officers in general have considerable latitude. A multitude of officer-related variables have an effect on dispositions:

> the individual intake officer's conception of justice and his philosophy and theory of correction, as well as by his knowledge of community resources, by his relationships

> with other professional welfare workers both within and without his department , by his personal assumptions, attitudes, biases, and prejudices, by the size of his caseload and the work load of his department , and by many other subtle conditions.
>
> Cressey and McDermott, 1973: 12-13

The second group of studies to be discussed focus more directly on the relationships among "legal" variables and the more personal characteristics of the juvenile and his family and the disposition decision.

Eaton and Polk (1961) reported a study of probation intake and court intake dispositions in Los Angeles County, using all referrals to the court in 1956 as their data base. The dispositions available were "closure" at intake, informal supervision and court referral. In 1956 one-quarter of the cases were closed at intake, and just over 2% received informal supervision. The offence types most frequently handled informally were what the authors classified as "miscellaneous minor violations" (vagrancy, incorrigibility, and truancy for example), while major traffic violations were referred to court most frequently.

Sex and ethnicity appeared to have no relationship to the proportion of cases closed at intake. The authors appear to claim that offence type is of minimal importance, although their data indicated that the proportion of offence types closed at intake varied from 14% to 37% (Eaton and Polk, 1961: 10-12). Higher proportions of younger (under nine years) and older (over 15) juveniles were given informal dispositions than those in their early teens, a finding found nowhere else in the literature. Children from broken homes and those with prior court referrals were most often sent from a court appearance.

Eaton and Polk used what they termed "analytic" categories (e.g., miscellaneous minor violations) to classify the offences, with the result that the traditional comparisons by seriousness are difficult to make. Furthermore, they did not control the personal characteristics of the juvenile and his family by the seriousness of the present offence or the number of prior offences.

Robert Terry's study of police, court intake and court dispositions in Racine, Wisconsin (already discussed with regard to police decision making), found little or no evidence of discrimination by intake. He ranked the four dispositions available according to the severity of sanctioning: release, informal supervision, referral to juvenile court, and waiver to the criminal court (Terry, 1967a: 22).

Controlling by seriousness and number of previous offences, Terry reported little evidence of bias on the basis of sex, socio-economic status, and degree of minority status (white, Mexican-American and black). The relationships between age, seriousness and prior record and disposition decisions were the most prominent. Unlike Eaton and Polk's work, age showed a linear, rather than a curvilinear, relationship. The other independent variables (including the social control function of the complainant, the delinquency rate of the offender's area of residence, and the number of persons involved in the offence) showed insignificant relationships to the degree of sanctioning.

A more recent study of a mid-western county in Indiana has been done by Kiekbusch (1972); he took a 20% random sample of all referrals to the county probation department in 1970 and 1971. The major conclusion of this study was that intake workers showed a strong therapeutic strain in their decision making. Severity of intake disposition did not vary by age or sex of the offender; race was of minor importance when frequency and seriousness of conduct was considered. Children not referred by police appear to have been dealt with more severely, a finding which was in part a consequence of the practice of placing truants and runaways on informal supervision (the second

most severe disposition). Prior offences and gravity of the present offence were related strongly to the dispositional severity. The probation department meted out more severe dispositions to juveniles from disrupted, non-intact homes.

Kiekbusch cautiously concludes that sex and race appear to have little impact on decision making by intake workers. However, one shortcoming of his work is that he failed to include any variables related to social class, presumably because probation records made no note of status.

Terence Thornberry (1971; 1973) examined Philadelphia intake decisions as well as those made by the police and the courts. The decisions were categorized simply as "adjusted" and "court referral", unlike the finer divisions made by Terry or Kiekbusch. Because of data limitations, Thornberry confined his analysis to the relationships between the "legal" variables and race and socio-economic status.

After holding seriousness and number of previous offences constant, racial differences in intake dispositions were almost eliminated, with the exception of offences categorized as low in seriousness. A higher proportion of blacks who committed minor offences were referred to court. The findings for social class were also inconsistent; marked differences by class appeared only when the event was low in seriousness and there had been three or more previous offences. In this group, more lower status juveniles were given court referrals.

Thus, Thornberry's findings did not indicate pronounced discrimination against black and lower class young people, although the disposition pattern is similar to both the police and court stages of decision making.* For some types of offenders, particularly those with previous offence records and who commit less serious crimes, there is some evidence of bias.

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* It should be noted that Thornberry seems more convinced that he found satisfactory evidence of discriminatory treatment at all three levels of decision-making than are this reviewer and Wellford (1974-1975).

A different type of research on court intake decision-making has been reported by Ferster, Courtless and Snethen (1970), and Ferster and Courtless (1971). The orientation of these papers is towards the legal issues surrounding the status of court intake units; however, data on the intake procedures of Affluent County are reported in both articles. While their data are hampered by their small sample and the inadequate record-keeping of probation staff, some of the authors' general comments and conclusions deserve brief discussion.

The rate of informal handling of referrals by the Affluent County intake unit rose from 39% in 1967 to 50% in 1969. The authors stated the change in this period was the consequence of the growing emphasis on community dispositions. Despite the probation intake workers' insistence that seriousness of the offence was the major criteria for their decision making, the researchers found no one offence for which court referral was automatic. Other criteria included age, and prior police and court contacts. The data, on the other hand, showed no significant difference in age between samples of "formal" and "informal" dispositions. When the authors looked at previous involvement with the police and the court, similar differences between actual and reported referral criteria were found.

> While prior intake contact was the same for both groups (about 6 per cent for each), 39 per cent of the informals and only 22 per cent of the formals had prior police contacts.
>
> Ferster and Courtless, 1971: 1137

Because the criteria reported by intake personnel did not seem to be those actually employed, the authors analyzed the records of 162 informal cases and 49 formal cases to attempt to determine the reasons for these decisions. However, reasons were available in only one-half of the informal and less than one-third of the formal dispositions, reducing the small sample to the point where generalizations become speculative at best. "Family able to cope with the problem" was the category found most often in the informal group (28 out of 83 cases). Also, there was some suggestion that intake workers believed that a complainant has the right to insist on judicial action (Ferster and Courtless, 1971: 1140).

As a result of inadequate data, the findings of the Affluent County study are inconclusive. Much more valuable to the reader is the discussion which provides background material on related topics, such as informal adjustments, informal probation, consent decrees, and the right to counsel in intake proceedings. Furthermore, the list of recommendations made in the conclusion of the 1971 paper are among the most detailed suggestions for intake criteria available in the literature (Ferster and Courtless, 1971: 1148-1153).

In summary, research on intake decision-making has been too scanty to clarify the ways in which the insertion decision is made at the point of intake to the juvenile court. One may tentatively conclude that perceived seriousness, prior record, and the juvenile's home situation each seem to bear on the decision. It may be, as David Matza has asserted, that dispositions are dependent in the final analysis on the

> professional training, experience and judgment of court agents. Any system with an extremely wide frame of reference in which the items included in the frame are neither specifically enumerated nor weighted must come to rely heavily on professional judgment.
>
> Matza, 1964: 115

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CHAPTER II: THE "NEW" DIVERSION

Introduction

This chapter discusses the "new" diversion under the following headings: the basic assumptions of the diversion movement, the impact of labelling theory on the development of the concept, the differences between diversion and other popular movements in juvenile justice, the goals of diversion, and the issues emanating from the implementation of the diversion concept.

The last chapter essentially described research efforts to explain the traditional screening practices of informal and formal institutions. Since the President's Commission in 1967, which recommended the institutionalization of formal diversion programs, an amazing variety and number of diversion projects have been developed in the United States and Canada. This proliferation has assumed some characteristics of a fad. Agencies both within and without the juvenile justice system have suddenly become involved in "diverting" young people from the formal court process. The enthusiasm with which the concept was greeted undoubtedly reflects the discontent with the present administration of juvenile court systems and the intervention practices with youth. It is unfortunate that the spread of diversion programming has been so rapid that the definitional and other problems presented in this chapter have often been ignored by the practitioner.

Many commentators have noted that the concept is not a new one in juvenile justice. Originally the juvenile court itself was established to divert the young offender from the rigid and punitive adult court and towards an informal proceeding designed to diagnose the needs of the youth and provide appropriate treatment (American Correctional Association, 1972). This comment has been repeated so often that it has become one of the cliches of the diversion movement. With something of the same degree of originality, others have seen diversion as an outgrowth of the system in that the concept expands, and to a certain extent formalizes, the discretion already built into every stage of the process.

The problematic aspects of diversion will be the focus of much of this chapter. This is a reflection not only of the academic literature in the area, but also the author's own concern that the enthusiasm for establishing programs has prevented serious assessment of the roots of the movement, its goals and objectives, and the legal and practical issues raised by its implementation.

The first section describes the "bias for the current expanded concern about a process which heretofore has been more or less commonplace" (Carter and Klein, 1976: xii).

The Need for Change in the Juvenile Justice System

The assumptions about the existing juvenile justice system made by the proponents of the new diversion will be presented in this section. Many of the following assumptions are assumed to be "facts" by the diversion advocates. The concerns expressed below are by no means the only criticisms of the operation of the justice system used to justify juvenile court reforms; however, they are the most frequently used rationalizations for the diversion of young people from the formal justice process. Supporters of the diversion concept claim that formal handling of juveniles should be only a last resort, in situations where informal methods have failed or where the offence was sufficiently serious to necessitate intervention by the legal system.

1. The court's failure to provide individualized treatment

Reformers believe that abuses have occurred in the operation of the juvenile justice system which have impeded the achievement of the objective of individualized treatment which would be in the best interests of the child. The abuses include impersonal treatment, superficial court hearings (the "three minute children's hour"), the misuse of detention and commitment to training

school, and inattention to due process rights. It is often implicitly assumed that the system has been ineffective in meeting the juvenile's needs because of scarce resources, shortage of personnel and service facilities, and heavy workloads.

This assumption is related to the operation of the system, and the inadequacy and poor quality of the resources provided by the community. The potential of the juvenile court movement has not been realized as a consequence of the low status of the judiciary, the lack of clinical and social services, and the limited number of dispositions available to the court (President's Commission, 1967a). Diversion is seen as the solution to the evils of the system for it would reduce workloads and remove all but the most serious offenders from the jurisdiction of the court. It is sometimes assumed, too, that community resources can be used as alternatives to formal court intervention.

2. The failure of the juvenile court in theory

The founders of the juvenile court movement held out high hopes for the formal system's ability to rehabilitate young people and hence to control and prevent delinquency. Increasingly, these hopes have been held to be unrealistic.

> The failure of the juvenile court to fulfill its rehabilitative and preventive promise stems in important measure from a grossly over-optimistic view of what is known about the phenomenon of juvenile criminality and of what even a fully-equipped juvenile court could do about it. Experts in the field agree that it is extremely difficult to develop successful methods for preventing serious delinquent acts through rehabilitative programs for the child. What research is making increasingly clear is that delinquency is not so much an act of individual deviancy as a pattern of behaviour produced by a multitude of pervasive societal influences well beyond the reach of any judge, probation officer, correctional counsellor, or psychiatrist.
>
> President's Commission, 1967a: 80

This failure in theory has led to disenchantment with the original ideals of the juvenile court movement, or at least its reliance on official actions to deal with delinquency. Insertion into the system has not reduced recidivism; nor have the rehabilitative measures taken by the correctional system proved to have noticeable effects on the majority of adjudicated delinquents.

Diversion is seen as an alternative to official action by the justice system, one which offers a "new", informal way of dealing with trouble-making juveniles in the community.

3. The return of responsibility to the community

Too many youth get caught up in the formal system for relatively minor actions which should have been informally absorbed by the community. There is a tendency to rely on the criminal justice system for the solution of social problems, many of which will never be amenable to resolution by legal action. The corollary is that society must no longer use the courts as the "dumping ground" for hard-to-handle young people. Instead, the community must accept responsibility for its troublesome juveniles.

Implicit in this assumption is the belief that North American society once knew how to handle problems without seeking assistance from formal institutions. This responsibility has been abdicated over time. A "return to the community" is seen as a precursor to reducing high crime rates. In a sense, this assumption is related to other recent reform movements -- for example, community corrections, community mental health programs, and experiments in political and administrative decentralization in urban areas.

4. The plight of the status offender

Of particular concern to many diversion advocates has been the status offender, those youth who are liable for intervention although they have committed no offence that would be a crime if committed by an adult. Incorrigibility,

immoral conduct, beyond control of parents, running away, liquor offences and truancy fall into the category of "status offence". There has been considerable research to suggest that these juveniles are treated as harshly -- sometimes more so --than youth involved in more serious criminal activity. Vagueness of the proscribed behaviour and discrimination by sex have been additional criticisms.*

Suggestion solutions have included "decriminalization", that is, removing these offences entirely from the jurisdiction of the courts. Because legislation to eliminate status offences has been slow in coming, diversion and community treatment have been suggested as alternatives which would separate status offenders from young people exhibiting criminal behaviour. Treatment-oriented diversion programs are seen as the solution for these young people, who are perceived by the public and justice system personnel as in need of social intervention such as family and individual counselling and crisis intervention, rather than intervention by the justice system.

5. Stigmatization of juveniles by the justice system

Those who would reform the juvenile justice system maintain that contact with the system has stigmatized normal youth by labelling them "juvenile delinquent". Not only has the juvenile justice system not fulfilled its promise, it has also exacerbated the problems of delinquency by setting offenders apart from their peers. The delinquency label is believed to set off a chain of events which increase the involvement of the juvenile in illegal activities.

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* Critiques may be found in Office of Children's Services, 1973; Notes, 1974; Sheridan, 1967; Stiller and Elder, 1974. See Chesney-Lind, 1973 for comments and research evidence on sex discrimination. Thomas, 1976 has included a number of references on the status offender in his paper. For a brief overview, see Abadinsky, 1976.

Diversion is seen as a method which will avoid the stigmatization and labelling associated with handling by the formal justice system. Youths no longer will become caught up in a cycle of delinquent conduct caused by the self-fulfilling prophecy.

Diversion is only one of a number of cure-alls being proposed to eliminate the perceived evils of the system: de-institutionalization and community-based treatment, legislative changes which would narrow the court's jurisdiction, and the "right to treatment" movement.* Perhaps the most salient of the solutions has been the pressure for greater legal safeguards for the juvenile in court.** In theory, diversion is one of several social reforms being urged for the system. In practice, however, diversion appears to have become the universal panacea for its ills.

Before continuing with the remainder of the chapter, the last assumption -- that the process stigmatizes juveniles in a way that lays the groundwork for the establishment of a deviant identity -- will be explored in more detail. Because of its impact on diversion this perspective will be given closer examination.

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* For discussions of community-based treatment, see Committee on Mental Health Services, 1972; Empey, 1973; Leavey, 1976; Lerman, 1975; and Sarri, 1974. For legislative reform in the juvenile court, see Comments, 1972; Fox, 1974; Gilman, 1976; Lemert, 1970; McNulty, 1972; Notes, 1974; and Ohio Youth Commission, 1974. For right to treatment, see Birnbaum, 1960; Britt, 1974; Faber and Schack, 1973; Klaber, 1973; Renn, 1973; and Skemp, 1974.

** For commentary and research on legal safeguards in the juvenile court, see Allen, 1964; Duffee and Siegel, 1971; Edwards, 1973; Elson, 1962; Erickson, 1974; Fox and Spencer, 1972; Fox, 1970; Ketcham, 1961; Kittrie, 1971; Klapmuts, 1972; May, 1971; Rosenheim and Skoler, 1965; Stapleton and Teitelbaum, 1972; and Tappan, 1946.

The Impact of Labelling Theory on Juvenile Diversion

The theoretical rationale for diversion, in the measure that one exists, may be said to be labelling theory. Certainly, this outlook has been the most frequently quoted basis for diverting young people from court processing. The discontent with the operation of the system has been reinforced by fears that the system was causing secondary deviation (that is, commitment to deviant norms) in the recipients of its attentions.

The early proponents of diversion originally intended that the new diversion would be different from the previous arbitrary decisions made by justice personnel, because the new programs would be aware of, and hence avoid, labelling and stigmatizing children. "Diversion programs can be distinguished from informal pre-adjudication dispositions by reference to a well-articulated awareness of the ... consequences of formal processing" (Lundman, 1976: 430).

The propositions of labelling theory are simple and appealing. When a youth gets caught, he becomes labelled as a "delinquent" by agents of social control. Once this occurs, the juvenile may internalize a deviant self-image and begin to act according to that self-image. Official response is considered an important step in acquiring a deviant identity, because the youth becomes discredited in the eyes of his or her peers, family and school. Official reaction to what may have been an isolated incident or a reflection of the normal problems associated with growing up places the juvenile in a different category from others. "Significant others" may then begin to respond to him as a deviant. "The delinquent boy is supposed to realize that it is no longer possible for him to maintain a public image of being a 'good boy', since it is now a matter of public record that he is not" (Foster, Reckless and Dinitz, 1972: 203).

Secondary deviation -- a consistent pattern of non-conforming behaviour -- "evolves out of adaptations and attempted adaptations to the problems created by official reactions to original deviance" (Lemert, 1971: 13). The offender

becomes isolated in a way which limits his or her access to conventional social roles and also the opportunity to maintain a conforming identity* (Elliott, Blanchard and Dunford, 1976: 6).

This perspective predicts that youths who are apprehended and inserted into the system are likely to commit more crimes than youths who commit the same offence but are not apprehended.

> If we assume that the further a youth goes into the juvenile justice system, the more acts of labelling he experiences, and the more seriously the label is taken, then it also follows that the more severe a youth's disposition in court the more likely he is to commit additional offences.
>
> Mahoney, 1974: 6

Diversion is said to block the labelling process by offering informal alternatives to system insertion. Programs which removed youth from official processing would not stigmatize them as "delinquent" and would in this way lower the probability of "career deviance" (Lundman, 1976: 433). To do this, diversion would allow the offender to obtain access to socially-acceptable roles and reduce his allienation from conventional society (Gemignani, 1973).

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* It must be noted that this outline of labelling theory is not only brief it is also extremely simplistic. The reader is referred to labelling theorists such as Schur, 1973 and Lemert, 1971 for a more complete exposition of the theory. The October, 1976 issue of Social Problems, a journal which more than any other organ has influenced the development of labelling theory in the last ten or so years, also includes a number of discussions of the spread of this outlook.

During the late nineteen sixties and early nineteen seventies, relatively uncritical acceptance of the labelling approach was prevalent. At that time, the limited empirical evidence available did appear to support the labelling outlook.* Since the early 1970's, a number of studies have attempted more systematic assessments of some hypotheses, and these results have tended to question the inevitability of labelling.** Statements like the following by Malcolm Klein have become commonplace in the literature. Labelling theory

> may rank as the most accepted unsupported proposition in the criminology of the 1960's and 1970's... Labelling theory seems to constitute one of those instances in criminology -- much like Lombroso's work in an earlier era -- in which the proposition fits the needs and biases of the field so well that careful empirical investigation has been largely by-passed.
>
> Klein, 1973: 403

In recent years, there has been an increase in empirical research on labelling theory and its application to juveniles. An excellent summary of research results and the more questionable aspects of the theory may be found in Mahoney (1974).*** For this reason, a detailed resume will not be repeated in this review; instead, one area of research has been chosen for special attention and only a brief outline of the other areas will be given. The research on the effect of "getting caught" on self-perceptions and self-identity has been chosen because it reflects the basic simplicity of diversion hypotheses and, at the same time, the complexity and confusion involved in trying to operationalize the propositions. Researchers have inquired to what extent juveniles perceive themselves altered as a result of being brought to the not ice of law enforcement or court authorities.

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* Early studies include Becker, 1963; Schwartz and Skolnick, 1964; Scheff, 1966.

** See Lundman, 1976 for a discussion of this point.

*** Other critical analyses of labelling theory may be found in Wellford, 1974; Rogers and Buffalo, 1974; Ward, 1971; Tittle, 1975; and Lundman, 1976. See also, Buikhuisen and Sijksterhuis, 1971; Davis, 1972; Duncan, 1968; Faust, 1973; Fisher and Erickson, 1973; Hagan, 1973; McAllister, 1975; Newton and Sheldon, 1975; and Stuart, 1969.

In this area of investigation, the most common method of research is to ask youthful offenders how the experience of the intervention has affected them. A study reported by Foster (1971) and Foster, Dinitz, and Reckless (1972) included cases from both the police and the court levels. Interviews revealed that the boys in the sample reported few changes in attitudes of significant others following intervention. Nor did they perceive that the situation at school and the "street" were "two distinctly different and separate social settings" (Foster et al., 1973: 205).

Perception of social liability did arise in other settings, specifically in the future employment prospects of the juvenile and increased police contacts. The proportion who believed that employers would hold their legal involvement against them increased with the severity of sanctions received. Youths also expected more surveillance by the police. About 40% of the recidivists interviewed perceived some social liability, but the majority reported that their experience would not greatly affect their lives. The authors concluded: "Clearly a significant number of boys with previous records are not caught up in the 'vicious circle' phenomenon due to perceived stigma as described by labelling theorists" (Foster et al., 1972: 208). Many, perhaps realistically, did expect that some areas of their life would be affected.

A study of incarcerated delinquents found little or no relationship between delinquent identification and self-esteem (Theis, 1975). Another recent work found that the majority of incarcerated boys in the sample failed to develop a "delinquent self-identity". The length of recommitment, i.e., the severity of official sanctioning, was positively correlated with unawareness of labelling effects (Fishman, 1976). Fishman concluded that labelling may function as a deterrent to criminal activity and not necessarily exacerbate it.* Siegal (1975) interviewed boys at several stages before and after legal processing using scales designed to measure self-labelling and perceived labelling by"significant others". He found that, in the process of self-labelling, the official label was less important than the delinquent behaviour itself. After legal processing, self-labelling tended to stabilize or decline, except for the small proportion of delinquents who reported few previous legal contacts, but had received serious dispositions.

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* This conclusion has also been drawn by Tittle (1975). See the paper by Thorsell and Klemke (1976) on deterrent effects of labelling.

While the above research has drawn generally negative conclusions about the validity of labelling propositions around spoiled identity, confirmation of some components were reported by Ageton and Elliott (1974). Official labelling (in this instance, police contact) caused a significant decrease in self concept in a longitudinal sample of high school youth. Police contacts were a factor in accounting for increased delinquent orientation only for Anglo youth, a finding similar to that of Jensen (1972). Unlike Jensen, no differences by socio-economic status were noted. Because of these inconsistencies, Ageton and Elliott commented that the "relationship between class and legal processing remains ambiguous" (1974: 97). The authors concluded that the susceptibility of delinquent orientations may be less comprehensive than suggested by labelling proponents, in part because the relationships, although significant, were not strong and in part because the effects seemed to erode with the passing of time.

These studies have been described in order to illustrate the difficulty of assessing the variety of studies and methods used to assess labelling effects on youth's self-esteem and delinquent identity. Samples have ranged from incarcerated delinquents to youth who have had minor police contacts. The scales used to measure self-identity and perceived labelling by others have differed in content and in analysis. Research efforts in this area have been recently criticized.

> To examine the question of labelling and its effects, one might combine self-reports of delinquent behaviour from large national sample of youth with equally representative samples of the actions of relevant actors at every stage of the juvenile justice system. Such a study has not been done. In their typically fragmented fashion, social scientists have independently studied small portions of the process of becoming officially delinquent. One must exercise caution in generalizing from their findings, which have been narrowly fixed in time and place as well as scope.
>
> Barton, 1976: 471

Next, the main points of the research to date -- "fragmented" as it is -- will be summarized.

First, evidence on the juvenile's perception of stigma, lowered self-esteem or spoiled identity as a consequence of official intervention is mixed. Self reports indicate that awareness of disability may be limited and differential if it exists at all. Some youth may be more affected than others; it has been found by some researchers that white youth may be more susceptible to being stigmatized than are blacks or other minorities. Clearly, there is not the universal or uniform effect once assumed. In more practical realms, such as perceptions of employer discrimination, there is more evidence that some youth see prospective problems arising as a result of justice system contact. Regrettably, in neither the practical nor the psychological areas is it known what categories of youth are most affected, why, and to what extent.

Secondly, there is little evidence to suggest that the court hearing itself is perceived as degrading or stigmatizing. Subjective reactions to court hearings have been found to vary from fear, to shock, to incomprehension (Snyder, 19 1; Baum and Wheeler, 1968). Studies that have followed up on juveniles after court intervention have revealed that the effects of labelling wear off over time. It would appear logical that the degree of stability would depend on subsequent events in the life of the juvenile, not only on the initial impact of the contact.

One major problem in operationalizing labelling theory is that the process of acquiring a spoiled identity may be gradual, beginning long before the first legal contact. It may be that official processing does not greatly alter a negative or deviant self image (or a "good boy" one) that has been formed in early and middle childhood by the response of family, friends and school authorities (Mahoney, 1974).

Third, if one assumes that there is some validity in the theory, then it becomes important to discover the point in the intervention process which has the most effect. No research has indicated whether it is police contacts, court intake, the hearing itself, or institutionalization which has the most impact on

the juvenile's commitment to delinquent behaviour. Empirically, it has proved difficult to separate the effects of legal intervention from the other variables that exist in the life situation of the juvenile. The difficulty in isolating these two areas is among the greatest problems in labelling theory research.

> For policy makers concerned with the minimization of the labelling effect of the juvenile justice system, the stage at which labelling is most crucial has important policy implications. If labelling impact is greatest at apprehension, then serious attention needs to be given to police practices and ways of avoiding any unnecessary apprehension of youths. If the crucial labelling occurs with the decision to send a case to court, then emphasis must be placed on diversion techniques and programs. If the crucial point is the decision to incarcerate, then great effort is essential to develop more extensive supervision programs and alternatives to incarceration.
>
> Mahoney, 1974: 10-11

Because diversion programs can be implemented at any one of several stages, it is important to discover which stage has the greatest potential for reducing the impact of stigma. Some have held that any formal intervention tends to stigmatize youth (e.g., Schur, 1973).

Definitions of Diversion

This section will first differentiate diversion from other concepts currently popular in the criminal justice literature, and will then present a preliminary typology of diversion activity, a typology which will be expanded in the next chapter.

Diversion vs. Decriminalization

Some writers (e.g., Empey, 1973; Vorenberg and Vorenberg, 1973) have considered that changes in legislation to reduce the range of activities categorized as delinquent are one form of diversion. In the eyes of most observers, however, decriminalization is distinct from diversion. Changes in the juvenile code, which

remove previously prescribed behaviour from the jurisdiction of the justice system, are in a different category from diversion programs which attempt to halt or defer official processing. (For example, removing public drunkenness as an offence is not identical to automatically referring persons found under the influence of alcohol to detoxification centres.) Because the behaviour is no longer illegal, the offender is not in danger of a court appearance and thus, strictly speaking, is not eligible for diversion (National Advisory Commission, 1973b).

Diversion vs. Prevention

Several authors have made the important distinction between diversion and prevention, pointing out that prevention is concerned with deterring youth from engaging in delinquent activity or with treating a group of children identified as "pre-delinquent" (American Correctional Association, 1972). Diversion programs, on the other hand, are designed to be alternatives to court handling.

Nejelski has made the clearest distinction between the two concepts. In the case of prevention, the juvenile might commit an "anti-social" act, so services are designed to suit his or her presumed needs. In diversion, the child has already committed a criminal or anti-social act and is in immediate danger of coming within the court's jurisdiction (Nejelski, 1976: 396-7).

In diversion, the possibility of a court appearance is real and imminent, for it has been alleged that the juvenile has done something regarded as illegal, immoral, or dangerous to himself or to the community. Implied in this definition is that the program intervenes directly between the youth and the court by providing an alternative to adjudication. Prevention is concerned with providing some type of service to young persons who are merely "at risk" with regard to formal system involvement -- not to those who are in clear jeopardy of an appearance in juvenile court.

In the broadest sense, it may be true that prevention programs initiated to ameliorate social conditions in communities with high proportions of misbehaving youth would contribute to the achievement of some diversion goals.

> However, in the interests of clarity it does seem helpful to distinguish between the two aims of general community change, on the one hand, and, on the other, the provision of genuine alternative responses for certain groups of children at risk or in trouble.
>
> Seymour, 1971b: 5

Nejelski (1974; 1976) has also made the point that the importance of this distinction is magnified when the evaluation of diversion is attempted. If programs are effectively diverting youth from court appearances, then a reduction in the number of juveniles appearing in court (in roughly the same proportion as are being handled by the diversion program) would be one indicator of "success". If prevention is the major function of the project there would be no immediate decrease in court caseloads, because the court would lack jurisdiction over most of the children being assisted by the program.

Diversion vs. Post-Adjudication Alternatives

The term diversion has also been seen as applicable at a much later stage in the criminal justice process. "Post-adjudication diversion" is a phrase occasionally found in the literature; this usually refers to the use of community-based alternatives to incarceration and other dispositions which reduce the impact of the usual correctional process (e.g., Vorenberg and Vorenberg, 1973; Carter, 1972). The recent growth of community corrections has facilitated the "diversion" of offenders from confinement in training schools and other large institutions.

However, most authorities have chosen not to use the term diversion in this context, in part because its meaning in the pre-adjudicatory stage has been ambiguous. It is felt that to extend the definition to include sentencing or

dispositional alternatives would only confound an already nebulous situation. In Canada, on the other hand, post-adjudication measures to reduce incursion into the system have been considered to fall within the definition of diversion.

> Formal criminal justice diversion refers to the routine suspension of further criminal justice processing at any point of decision-making from first contact with police to final discharge for any pre-determined category of offender otherwise liable to continued processing, coupled with referral to a community program, open as well to community referrals, on condition that further processing will be terminated if he fulfills the obligations specified by such program.
>
> Glinfort, n.d.: 10

In this definition, diversion may occur <u>at any stage</u> in the process. In this case, it is perhaps important to consider the formulation of different terms to more precisely describe "the various alternatives that may be invoked at each stage of traditional processing" (Klapmuts, 1974: 112). The wide currency of the term diversion suggests, however, that complete abandonment is unlikely.

Diversion vs. Screening

Some authorities have recommended that screening and diversion be differentiated. Screening "involves cessation of formal proceedings and removal of the individual from the criminal justice system". Diversion "uses the threat or possibility of conviction for a criminal offence to encourage an accused to agree to do something" (National Advisory Commission, 1973c: 27). Other commentators have defined diversion less rigidly by including screening as one aspect or type of diversion. (For example, Rutherford and McDermott, 1976, have defined diversion as the handling of cases through non-court means, a definition which would clearly include screening.) This disagreement in the literature raises the important issue of "true" diversion as opposed to schemes which only minimize penetration of the alleged offender into the justice system.

True Diversion vs. Minimization of Penetration

Diversion theorists (e.g., the President's Commission, Nejelski, Lemert, Cressey andMcDermott) have often insisted that true diversion exists only when system processing is terminated, when no further threat of system insertion occurs, and/or when referral is made to an agency outside of the system. In practice, however, most diversion programs have halted the insertion process only upon condition of successful program completion and/or have referred offenders to within-system agencies or programs. Thus, the juvenile is moved to a "lower" level of the system, which is perceived as less "official" or formal by the diverting agency. To minimize penetration means to turn aside from adjudication rather than complete removal from the system.

> Diversion is sometimes viewed as the middle range between minimal official action and application of the full force of the law -- adjudication. Viewed in this manner diversion is an alternative to screening. It seems, however, to make for greater conceptual clarity to view all discretionary acts directed at forestalling adjudication as diversion processes. If such processes terminate official intervention and/or refer a youth to a program outside of the juvenile justice system, "true diversion" has occurred. If the processes result in further intervention and/or referral to a justice system program -- minimization of penetration is the objective.
>
> Rutherford and McDermott, 1976: 26

Rutherford and McDermott continue by noting that "traditional" diversion (presumably screening) was concerned largely with "process" (i.e., discretion) while the emphasis in the "new" diversion has been expanded to include programs (services) in addition to discretion. What has not usually been adequately emphasized is that "true" diversion also implies that sanctions or official action cannot be resumed once the decision to divert has been made. As Cressey and McDermott so succinctly indicate, "when he (the divertee) walks out the door from the person diverting him, he is technically free to tell the diverter to go to hell" (Cressey and McDermott, 1973: 6).

Among those who disagree with these distinctions are Delbert Elliott and his colleagues (1976), who believe that diversion must be differentiated from screening. "The basic distinction is that screening provides no referral, no service or treatment, and no follow-up. Diversion implies all three" (Elliott, Blanchard, and Dunford, 1976: 3). To these University of Colorado researchers, diversion necessitates referral to a community-based program or agency completely independent of the justice system.

This approach is not surprising since Elliott appears to be closely identified with the "National Strategy" (for diversion and delinquency prevention) of the Youth Development and Delinquency Prevention Administration (now the Office of Youth Development) in the United States. This agency has widely promoted the "youth service bureau" concept.* A basic tenet of the original concept was that diversion should be implemented through the establishment of non-coercive, community-based, multi-focus agencies accepting referrals from the community as well as from the justice system. Unlike most subsequent diversion programming (often at the court intake or police levels), the original youth service bureau ideal demanded voluntary referral practices and the provision of a range of services to youth in need.

It is probably true to say that more definitional confusion has arisen as a consequence of this model of diversion than from any other factor. As will be discussed in the next chapter, the original ideal was not entirely fulfilled. Certainly, the majority of diversion programs appearing in the literature in the past few years are not patterned after the original bureau concept. More common are the programs which have been developed by various agencies in and associated with the justice system. Perhaps these have been developed in a self-interested attempt to keep youth within the system and to maintain the complement of staff in justice system agencies (that is, the simple desire for job security). Also, Carter and Klein (1976) have noted that the exigencies of funding have

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* Youth service bureaus were proposed by the 1967 President's Commission; the concept was later expanded by such commentators as Sherwood Norman (1972) and John Seymour (1971a; 1971b), who revised some of the original recommendations.

created the proliferation of "less official" (as opposed to non-official) diversion programs within the system. Whatever the reasons for the disjunction between the original proposals in 1967 and the reality ten years later, it is clear that the yardsticks implied by the original concept cannot be usefully employed to assess the effectiveness of many programs in operation today. The majority of diversion programs accept involuntary referrals, are to some extent coercive, are located within the system (or are allied with it), and make only sporadic attempts to develop community resources for youth.

In practice, programs have been developed whose aims seem to be simply to keep the youth out of the courtroom, rather than channel him or her to non-court institutions. The villains are now not the entire system of juvenile justice, but "merely courtroom ceremonies, their offspring, and their aftermath" (Cressey and McDermott, 1973: 6-7). The intensity and the degree of processing is harmful, not just processing per se (Rutherford and McDermott, 1976: 25). Despite the importance of labelling theory in the original development of the diversion concept, many diversion programs have tended to ignore one proposition of that theory -- that system contact is stigmatizing to some degree. The incursion of stigma may be reduced by removing the youth to another official or less official program, but whether the juvenile perceives any differences in his treatment in the less "formal" diversion alternative is a question for research.

Therefore, in practice, diversion programs have minimized penetration into the justice system by referring juveniles to less formal alternatives, rather than referring them to an agency out side the justice system. As others have indicated, it is possible that each level of the system comes to perceive the next as the "harmful" one, so that keeping the juvenile from moving on to the next level becomes the objective.

This paper will make the assumption that diversion "ideally" involves removal of the offender from the system or referral to programs outside the juvenile legal process, or both. Cessation of formal processing without conditions is also implied. While this definition might be construed as too-rigid clinging to

the works of such commentators as Rutherford and McDermott, it is believed that the conceptual problems found in diversion necessitate that this definition form one end of a continuum or typology of approaches. With "true" diversion at one extreme of a typology, it becomes feasible to establish the range of goals and the variety of approaches being taken -- and their distance from the "true" diversion. At the other extreme would be the approach in which a justice agency has chosen to halt the processing of some offenders (otherwise in danger of moving on to the next level of the system) either by referring them to a less official agency or by dealing with them itself upon condition of program success. Participation in many programs is involuntary for the potential client usually has the choice between system insertion and program participation. Funding or program staff, or both, come from the formal system of social control. Program failure may mean that the juvenile will resume his path towards adjudication.*

In summary, Klapmuts (1974) has termed "diversion from the criminal justice system" a misnomer because of the conditional and revocable nature of most of the alternatives offered as the "new" diversion.

> Diversion is thus concerned with persons who, under existing law, are properly within the criminal justice system, whose authority over these persons continues until satisfactory completion of the diversion conditions.
>
> Klapmuts, 1974: 114

Perhaps the first task of the policy maker and diversion practitioner is to delimit the meaning of the term. It is certain that a fuzzy, ambiguous conceptualization will increase the probability that programs will be developed whose objectives are vague, multiple and perhaps internally inconsistent

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* Some of this discussion has been taken from the excellent over-view of juvenile diversion problems by Rutherford and McDermott (1976). Their conceptual clarity is unusual in an area as obscure as diversion tends to be. The distinction made by these researchers between legal, para-legal, and non-legal programs will be used throughout this paper.

or conflicting. A specific, shared meaning is necessary before program standards can be established, and before evaluation can be instituted.

One way to move towards conceptual clarity is to specify the goals to be achieved. As the next section will show, the goals of current diversion programs are so broad that they have provided little clarification.

The Goals of Diversion

Perhaps the most noticeable feature of the literature on diversion are the multiplicity of goals. Among the stated goals of the diversion movement are the following:

- to avoid regular legal processing, to avoid the "evils" and inequities of the system as it operates today;
- to reduce or eliminate the stigma assumed to be associated with official processing;
- to ensure that the poor as well as the affluent have the means to benefit from the system's built-in discretion;
- to provide a more equitable access to services for offenders in need of counselling, employment or other assistance;
- to reserve insertion into the justice system for offenders committing the most serious crimes;
- to reduce recidivism of program participants;
- to reduce juvenile crime rates in the community;
- to provide a mechanism for resolving "non-criminal" disputes (between juveniles and their families, for example) through non-justice system means;
- to utilize existing community resources for the treatment of delinquent behaviour or to ascertain what services are missing and then to provide them, or both;
- to return to the community some of the responsibility for dealing with juvenile offenders;

- to formalize existing discretion in order to eliminate any biases that may exist in the present system;
- to utilize the discretion available to justice system personnel in order to screen children who are not in "need" of formal sanctions;
- to identify potential recidivists early in their careers in order to prevent the development of a commitment to criminality;
- to provide an alternative to decriminalization of some juvenile offences;
- to enhance the cooperation between law enforcement and justice system personnel and the youth serving agencies in the "private" sector;
- to give the victim a role in the justice process;
- to provide less expensive alternatives to legal processing; and,
- to reduce court workloads.

It is apparent from this list, which may not be inclusive, that the overall goals of diversion are overly ambitious and sometimes conflicting. Instead of providing guidance to the movement, the sheer number and variety of goals may have hindered the development of a clear conceptual framework.

Issues in Diversion

Introduction: Some General Comments

A number of critics have said that diversion has the potential to become a tactic which diverts the attention of juvenile justice reformers away from more fundamental concerns (Cressey and McDermott, 1973; Klapmuts, 1972: Platt, 1970; Howlett, 1970; Nejelski, 1976). These issues will be briefly described in this introduction.

First, part of the impetus for the diversion movement was provided by the belief that the juvenile justice system was discriminatory and the decisions of its agents too covert and inaccessible for review. There have been fears that this situation will continue under diversion and that the burgeoning of programs with few uniform standards have invited abuses equally as harmful as those found in the traditional system.

The second general concern of the diversion critic is that the reform of the delinquency and child welfare statutes may be delayed by the growth of diversion. The minor readjustments created by diversion may reduce the pressure for change in legislation (Nejelski, 1976). Diversion has replaced over-criminalization as "a major rallying cry for those concerned with the reform of the criminal law", because efforts to de-criminalize have proved unsuccessful,

> It could be suggested that diversion represents a scaling down of the aspirations of the reform movement to take account of "political reality". Thus if one cannot get possessing marijuana rendered legal one can at least try to get possessors diverted from the full rigors of the system... . If an activity is so trivial that the state has no interest in punishing the offender, and would in fact prefer to see the matter either ignored completely or settled informally between citizens, is there any real justification for retaining that activity as criminal?
>
> Cameron, 1974: 4

More radical commentators (Anthony Platt, for example) decry diversion because it ignores the fact that much delinquent activity is the result of normal problems of adolescence. The Motto of this group has been "leave the kids alone" (Schur, 1973). The philosophy of individualized treatment found in many diversion programs is, it is claimed, not so different from the ideals of the juvenile court. Sandord Fox, who has urged replacing the slogan "the right to treatment" with the "right to punishment", has written that diversion is "the same rehabilitation world under a new sheepskin, only this time one which permits far less due process than would otherwise be called for" (Fox, 1974b: 7).

Many of the same critics suggest that a good proportion of misbehaviour seen as delinquent would disappear sooner or later without sanctions or processing in any helping system within or without the criminal justice system.

> Given the relatively minor, episodic, and perhaps situationally induced character of much delinquency, many who have engaged in minor forms of delinquency once or twice may grow out of this pattern of behaviour as they move toward adulthood. For these, a concerted policy of doing nothing may be more helpful than active intervention, if the long-range goal is to reduce the probability of the acts.
>
> Wheeler et al., 1969: 610

Efforts to provide services for young people "may prevent recognition of the fact that for much of what is labelled deviance in this society the problem is not how to treat it, but how to absorb and tolerate it"* (Harlow, 1970: 161).

The remainder of this chapter will draw on the diversion literature to present the major issues of concern to diversion critics. Most of these concerns have been identified by academic observers of the diversion scene; perhaps it should not be surprising that the problematic aspects of diversion are more appealing to the outsider than to the treatment-oriented (or, at least, action-oriented) practitioner.

I. Coercion and Involuntary Participation in Diversion Programs

Early interpreters of the diversion concept maintained that voluntary referral was a cornerstone of the approach. Not only should the receiving agency be outside the formal system, but also the diverted youth should not be liable for a return to the system unless another delinquency is committed. Many out-of-system diversion projects have found that social control agents were reluctant to refer youth over whom they would no longer have any jurisdiction. When an

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* The effect of diversion on the community is a recurring theme of the literature, a situation which is reflected by the emphasis in this review. (See Chapter IV) Carter (1972) and Klein (1973) have also commented on the need to "normalize" or "absorb" deviance.

adequate system of referrals has been arranged in these programs, care to avoid implicit coercion by referring agencies has had to be taken. Some have argued that diversion can never be completely voluntary.

> Where participation in some program or treatment is required, voluntary diversion is a contradiction in terms. The coercive power of the state and the court is always present in diversion. The child and his parents "ageee" to enter a particular program "recommended" by some state official, because they can be ordered in the alternative by a judge to accept this same program or one which is substantially more unpleasant.
>
> Nejelski, 1974: 22

One criterion of the "non-legal" type of diversion program is that no coercion be involved in referral.

> Non-legal programs/processes are predominantly client oriented with voluntary participation a hallmark of the interaction. As client referrals will draw upon official social control agencies the "voluntariness" of client participation must be closely guarded from the taint of subtle or implicit coercion.
>
> Rutherford and McDermott, 1976: 14

The rarity of the truly non-legal program indicates that perhaps the concept of "non-legal" in diversion is impossible to operationalize in practice, or at least difficult to operationalize on anything but a small scale in a small number of communities.

One underlying fear related to referral practices is that enthusiastic referral sources, believing in the effectiveness of the program, may refer children for help when legally sufficient evidence for a court appearance is lacking. Unaware that one of the two evils is non-existent, the juvenile and his family may accept the diversion option. Another problem involves the admission or assumption of guilt found in many programs. The youth may perceive that admission leading to diversion may be a less "drastic" intervention than denial and a court referral, thus pressuring him or her to acknowledge complicity in the offence.

2. Other Issues Related to the Juvenile's Rights

A number of critics have questioned the propriety and fundamental fairness of programs which fail to provide adequate protections to the young people being assisted. Programs urging early treatment for young people against whom the state has not yet offered "sufficient and procedurally acceptable evidence... smacks of favouring arbitrary governmental intervention". The absence of legal protection is compounded by the fact that there is little evidence to indicate that the earlier the intervention, the more effective it is; in fact, the reverse may be the case (Sullivan, 1973: 63). Therefore, a major issue has been: can the state force an unadjudicated individual to participate in a program before there is presented any legal proof of the alleged offender's guilt?

Other "due process" issues may also arise. One area of concern has been the confidentiality of diversion proceedings and their aftermath. Will referral sources receive reports on the diverted youth's behaviour and statements? Is the individual protected from having his statements in treatment sessions repeated in a subsequent court hearing?

The open-ended nature of some diversion schemes has caused concern. While some programs are clearly short-term, others are not as clear-cut. When the juvenile is confronted with the decision to accept or reject the proferred diversion, he may not know how long an involvement his acceptance would imply. It is possible that some youths may be obliged to stay in a diversion program with more restrictions and for a longer time than if they had been referred to court and received probation. The date of, and the criteria for, termination of diversion should be clear to both the juvenile and his parents.

A final issue that needs to be clarified is the consequence for the juvenile if his or her parents refuse to cooperate in the decision to divert. Parents may demand more restrictive measures than are felt to be justified by the diversion agency. One set of standards for youth service bureaus has recommended that the bureaus act as advocates for the child in parent-child disputes. Practically and legally, this would appear to be a difficult policy to implement with minors.

A possible partial solution to the rights issue may be the presence of legal counsel during diversion proceedings. Maron (1976: 464) has recently proposed that there should be a statutory requirement for legal representation, preferably non-waiverable. The report of the Solicitor General's Committee, Young Persons in Conflict with the Law, recommended that the juvenile be represented at hearings of the proposed screening agencies, although they did not indicate that the representative must be legally trained. To date, the informal nature of most diversion programs has precluded the presence of counsel; in most cases, there is no formal "hearing" but only a meeting between the diverter and the juvenile and his parents, at which point the diversion alternative is offered.

3. The Selection of Diversion Candidates: Who Should be Diverted?

The selection of diversion candidates involves two sub-issues: the criteria for diversion in specific cases and the over-all comprehensiveness of diversion programming (Klapmuts, 1974). The criteria for diversion in specific cases still appear to be based, at least in part, on the "old" biases traditionally used in the court selection process -- the juvenile's "character" and the degree of family "stability", for example.* While one solution may be to develop fixed guidelines (all juveniles with two or fewer previous system contacts and whose present offence is in such-and-such group), this may be too rigid a procedure to be acceptable. However, loose guidelines may formalize "opportunities for discriminatory application (e.g., the ambiguous stipulation that the 'needs and interests of the victim and society' be better served by diversion)" (Klapmuts, 1974: 129).

The second part of the selection issue -- over-all comprehensiveness -- is equally problematic. Restricted segments of juvenile misbehaviour are

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* In a Los Angeles County police diversion poject, Pitchess (1974) has reported that young people who do not possess the requisite two parents had a lower diversion referral rate than would be expected by their numbers in the pool of "pre-delinquents". Others have noted a similar pattern: A "good" or at least an intact home is considered advantageous by diversion decision makers.

the most attractive targets of diversion. In adult diversion, only a few programs have extended the potential diversion population beyond minor first offenders, drug and alcohol offenders or petty misdemeanants.

The President's Commission offers little guidance, other than to note that official action should be reserved for "offenders for whom more vigorous measures seem necessary" and then "only as a last resort" (President's Commission, 1967a: 81). However, from the literature it appears that a high proportion of diversion programs accept seemingly low risk candidates, often status offenders. There are several reasons for this situation. Programs designed exclusively for the minor or status offender have used the rationale that early intervention is the most fruitful method of delinquency prevention. Specifically juvenile offences are considered preludes to "real" criminality.* Practical problems of implementation are also reasons why medium risk juveniles have rarely comprised a high proportion of diversion caseloads. Juvenile justice personnel may be loath to refer more seriously delinquent children.

It would seem important to investigate whether diversion can be extended to more serious lawbreakers without threat to the community's safety or a loss of the deterrent effect of sanctions, or other negative effects on criminal justice goals. At present, it is the "pre-delinquent" who is "amenable to counselling" and "not hard core" (or so the decision-maker perceives) who is most likely to be diverted** (Cressey and McDermott, 1973: 33). These authors conclude that offence type as the basis for inclusion into diversion programs should be thoroughly researched.

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* Although many critics, including the advocates of legislative reforms in the area of status offences, have claimed that this is not the case, recent research by Thomas (1976) found that status offenders frequently return to court for other types of misconduct and that these offenders were not, in fact, so different from violators of the criminal law.

** It should be pointed out that this study was confined to one U.S. state's intake diversion programs. It is possible, too, that in the three or four years since this observation was made, diversion selection has become broader based. Generalizations on the selection of divertees are made difficult by the vagueness of many program descriptions on the nature of their clientele.

Another reason why diversion programs have concentrated on status offenders and other low risk clientele is related to the contents of diversion programming for juveniles. Counselling and the provision of other treatment services are the major activities of many programs. Juveniles whose offences appear reflective of emotional disturbance -- such as incorrigibility, drug or alcohol abuse, running away -- are regarded as more suitable for this type of service than is the violator of criminal law. Even programs which have attempted to mediate between offender and "victim" or reconcile warring parents and children have found these techniques not as successful with law violators. (See Cressey and McDermott, 1973 and the Annual Report of the Neighbourhood Youth Diversion Program, 1971-2).

Despite the emphasis in diversion guidelines on reducing the impact of normal delinquency processing, in most programs it is not known what the consequences would have been if diversion had not occurred. As Mullen has suggested for adult diversion: "It is certainly not unreasonable to assume that participants who have been identified as sufficiently low risk for diversion might have been classed as low priority for prosecution and hence not convicted" (Mullen, n.d.: 18).

4. Responsibility and Accountability in Diversion

In the area of accountability, there are also two sub-issues. First, what methods can be employed to ensure accountability for the decision to divert? Some constraints on the decision-maker are presumably desirable both for the protection of society and for fairness to diverted youth. Second, how is accountability of the diversion receiving agency to be maintained? Once a child becomes enrolled in the program, it may be necessary to ensure that he or she is receiving appropriate assistance.

The hegemony of the administrator has been predicted unless restraints on his actions are established. The pot ential for broad unreviewable discretion exercised by individuals not responsible to the courts has been of concern to the standard makers. The Corrections report of the National Advisory Commission (1973b: 96-97) urged that formal guidelines be developed and that the decision-maker be required to state his reasons for the diversion decision. Requiring disclosure of the reasons would force the diversion process to become more open, as well as provide an avenue for judicial or administrative review. As the Courts report commented, the structuring if discretionary judgments would "obviate whimsical and erratic decisions" (National Advisory Commission, 1973c: 40). Paul Nejelski has drawn similar conclusions, relating the needs of diversion and the rise of administrative agencies and arbitration tribunals.

> The major ingredients are the stated criteria for decisions, such as written guidelines approved from above, and a mechanism for review of the administrative decisions, such as written reports from below. Rather than pretend that the problem of delegation does not exist, we can attempt to gain control over the diversion process through various means of formalization.
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> Nejelski, 1976: 409

Like many areas of diversion, the gap between the standards and the reality is wide. Few program descriptions state that diversion decisions are systematically and regularly reviewed. It is rare to find that written reasons for decisions are demanded in every case. In many diversion programs, record-keeping of all kinds is at a minimum, including those aspects which would permit some measure of accountability.

Accountability for the mechanics of the intervention process is the second area of concern. One fear is that the alleged offender will be unfairly imposed on by the requirements of the program. Another is that without controls on the program the required assistance will not be received. Again, written reports would be one method of ensuring accountability; the referral source

could receive regular reports of the assistance provided and the progress observed in diverted youths. This practice would, however, raise the dilemma of confidentiality. There is a fine line between valid information sharing and release of confidential or personal information. Periodic progress reports might help to ensure accountability and would probably aid cooperative relationships with the referral source, but they could also violate the juvenile's rights and be detrimental to the process of assistance -- is it likely that the juvenile will trust his counsellor if he or she becomes aware that progress reports are being circulated?*

A more fair, although equally difficult to implement, method of ensuring accountability throughout the diversion process would be to "develop a research capability to monitor the performance of the various agencies systematically". The appointment of an ombudsman to oversee operations and report periodically to the public and to the juvenile court would be another means of achieving some degree of responsibility and accountability in diversion programming (Nejelski, 1976: 408).

5. The Role of the Victim

In many of the discretionary judgments made by traditional screeing agents, the wishes of the victim have played a part in the decision for or against system insertion (See Chapter I.). In a minority of diversion programs, the opinion of the victim or complainant is sought. It is not known, however, what proportion of programs informally ask the complainant if he or she objects to the diversion alternative. It would seem reasonable that many police and court-based programs would, to some extent take cognizance of the wishes of the victim.

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* Pitchess (1974: 63) has gone even further in this area of accountability and recommended that police diversion programs purchase services from local community agencies on a performance basis: "should the youth not demonstrate improvement or terminate the program, the money would be discontinued". Klein (1976) has outlined similar developments in police schemes.

Some guidelines have, however, recommended that the victim's role be extended further than merely seeking his or her wishes. Victim compensation or restitution by the alleged offender has been suggested, as well as mediation or reconciliation procedures between the concerned parties. Maron (1976) has even gone so far as to recommend that victim compensation become a prime goal of the juvenile justice system.

A variety of reasons have been given for including the victim in the diversion process: to provide him financial and other redress, to influence the juvenile not to repeat the behaviour, and to tailor more precisely the disposition to the offence.

The role of the victim has been emphasized more in Canada than in the United States. The research of the Law Reform Commission of Canada has had a major influence on the development of diversion in this country. The pilot project in the Borough of East York in Metropolitan Toronto, financed by the Commission, was an effort to test the potential of mediation and reconciliation procedures in instances of minor criminal activity. The working paper on Diversion notes that the East York project found that a high proportion of assaults were between persons who had a pre-existing relationship, either as neighbours, friends, or family members. The Commission suggested that when there is this prior relationship, mediation is especially appropriate (Law Reform Commission of Canada, 1975: 10).

There is still little research which would indicate whether these methods -- reconciliation, mediation or restitution -- would succeed in diverting many youths from a court appearance. In very urbanized areas, there frequently may be no "on-going" relationship in property offences, which usually constitutes a majority of both reported juvenile offences and delinquency charges. Evidence suggests that when there is no relationship there may be more difficulty in implementing mediation.

One issue that is infrequently discussed in involving the victim in the process of diversion is the effect of a punitively inclined complainant on the

decision. Is an otherwise eligible candidate to be denied a diversion disposition merely because he had the misfortune to choose a victim unwilling to allow the case to be diverted (Cameron, 1974)?

Clearly, more experience must be gained in victim involvement before resolution of the issue can occur. Programs which have included the complainant as one component of their "process of assistance" should be examined with care in order to discover the consequences both for the juvenile and the program as a whole.

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CHAPTER III: THE IMPLEMENTATION OF THE NEW DIVERSION

Introduction

As the definitions in the last chapter indicated, diversion programs may be examined in relation to the degree of justice system control over them. Programs range from those which are completely controlled by the system, to those which are based in the community with varying degrees of justice system control. Of course, even a cursory examination of the literature will show that this dichotomy is, in practice, difficult to make. Many programs, ostensibly community-based and independent from the influence of the justice system, are in fact closely, although informally, allied with the system.

Court-based schemes are the most "official" or "legal" type of diversion. Most programs labelled as "court-based" use intake officers or other court agents as decision makers in the diversion decision. Deferred prosecution programs are often court-based in that an officer of the court has responsibility for the operation of the program. Also legal in nature are police programs; these can be divided into services operated by the police themselves and those which expand already existing referral capabilities of the policeman.

Programs operating outside the juvenile justice system include both "para-legal" and "non-legal" agencies, with the categorization dependent upon the program's independence from the system (Rutherford and McDermott, 1976). Most out-of-system programs receive referrals from law enforcement and courts, social agencies, and others (including self-referrals), and diversion may be only one of several objectives.

The distinction between non-legal and para-legal programs is important if one is concerned with "true" diversion as opposed to minimization of penetration. In their field visits to diversion operations throughout the United States, Rutherford and McDermott found that many projects claiming to be independent from the system in fact had formed ties which restricted their freedom of action. Although program personnel may have denied that there were major constraints on their activities, the field observers believed that "cooperative co-optation" was not uncommon. Programs that want to engage in juvenile diversion are usually dependent upon the system for referrals; cooperation with agencies of social control thus becomes necessary if the referrals are to continue. "Such 'accountability' to the regular juvenile justice system becomes the primary vehicle by which the new form becomes more and more similar to the old" (Rutherford and McDermott, 1976: 25).

Rutherford and McDermott are pessimistic about the non-legal program's ability to remain outside the ambit of justice system authority and control.

> If such programs alienate referral sources (police/ probation) they may find themselves without clients. If they attempt to be too cooperative they may become "para-legal" in nature. If programs are funded by the juvenile justice system agencies their policies may be controlled by those agencies under threat of loss of funds if they do not comply to demands. The very fact that clients maintain legal status as "offenders" may make it difficult if not impossible for such programs to remain non-legal in nature.
>
> Rutherford and McDermott, 1976: 32

Some mention should be made of the criteria for selection of the programs discussed throughout this chapter. Obviously, some diversion programs have been better publicized than others (often through LEAA's Office of Technology Transfer, as well as through journal articles). While every effort has been made to locate unpublished material on lesser known projects, the availability of adequate program descriptions has been a

limiting factor. Of Special interest have been programs which have reported some evaluative component, however minor. While program descriptions are available from a variety of sources,* they are frequently cursory and often more laudatory than analytical. For this reason, the choice of programs reviewed here has, on the whole, been limited to those which have made available some data on program assessment or impact. A third criterion has been the amount of detail available on program process -- that is, on key features of the operation of the program, including referral sources, the amount of coercion used, the extent of involvement with the justice system, and the selection criteria employed in choosing eligible diverted youth. Efforts have been made to include programs with this type of descriptive material.

The programs described in this chapter may be distinguished from "traditional diversion" or screening in that they use new facilities, often create new programs and staff, and find new funding to establish diversion from the juvenile justice system (Nimmer, 1974). First described are the legal programs, those based in the juvenile court and law enforcement sectors, followed by descriptions of some para-legal and non-legal programs located at the periphery of the system. Special attention is given to the youth service bureau, whose apparent failure to become a major force in diversion has considerable importance for the future of the non-legal program category.

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* For example, the National Advisory Commission reports (1973) and various publications of the United States Youth Development and Delinquency Prevention Administration.

Legal Diversion Programs: Court-Based Projects

Programs based in the juvenile court may vary in purpose, structure and organization, and type of clientele. Commonly, although not invariably, they involve conditional diversion, or deferred prosecution. With few exceptions, court-based diversion involves minimization of penetration. Coercion to enter and to continue in the program may be minimized, but it is often present in some form; the diversion unit may have the power to return the juvenile for regular processing by the courts.

Juveniles in court-based programs are diverted from formal processing at the "doorway" to the court (in some cases, almost literally). Usually decisions are made by intake or probation officers but sometimes by other court agents. The programs to which the diverted youth are referred are usually "within" the juvenile justice system in that they are responsible to the court, or are staffed by court personnel. Special units set up within the framework of existing intake sections of juvenile courts seem especially common (Cressey and McDermott, 1973). In this pattern, diversion is either an extension of the normal responsibilities of the intake workers or a new, specially staffed unit, with a distinct treatment or service-oriented program. Crisis intervention and individual counselling are common methods of intervention. Staff are usually regular or volunteer probation officers. Clientele may be either status offenders or juveniles accused of minor criminal activity -- few court-based programs have accepted higher risk offenders.

One variant of the court-based model is the "alternative legal structure", in which a parallel organization (often a committee or hearing board) is established with similar dispositional powers to the juvenile court. In some instances, fewer due process rights for the accused may exist. Referrals to these structures come from law enforcement and court intake departments. In Canada, there appears to be a movement towards this form of diversion. The proposals of the working group on the draft legislation to replace the Juvenile Delinquents Act recommended there be established a

screening agency -- a proposal which resembles the "alternative legal structure" type of diversion (Solicitor General of Canada, 1975). In Kingston, Ontario, a committee has been established at the court level which has the power to make dispositions of cases which have met the project's eligibility requirements. In most of these bodies, dispositions include referrals to agencies, restitution, the imposition of a curfew and other restrictions on the juvenile's freedom. This type of diversion program is allied to the juvenile court, although not precisely part of the system, and possesses much the same authority usually associated with formal processing.*

However, most diversion programs classified as "court-based" are neither new nor alternative structures. They have, for the most part, been developed as an extension of the discretion already existing in the system. The programs that will be discussed in this section are: the Sacramento County Diversion Program, the "Van Dyke" program, and Project Crossroads.

Cited by LEAA as an "exemplary project" in 1976, the Sacramento County program is an outstanding example of a court-based juvenile diversion project. When the project originally began in 1970, it was established to deal with "601" referrals to probation intake -- truancy, runaway, and beyond control offenders. Two years later, the project was expanded to include some "602" cases -- minor offences (disorderly conduct and drunkenness). These two components will be discussed in turn.

Children charged with status offences constituted a sizeable proportion of those dealt with by the Sacramento County intake section. Recidivism (i.e., repeat intake referrals) of these juveniles was high. The experiment was

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* One of the earliest examples of an alternative legal structure is the New Jersey Juvenile Conference Committee, located in a number of communities in that state. See Nejelski, 1976 and Tenney, 1968 for descriptions of this approach to handling delinquency.

designed "to test whether juveniles charged with this offence -- the 601 offence -- can be better handled through short-term family crisis therapy than through the traditional procedures of the juvenile court" (Baron et al, 1973: 16). More specifically, the aims of the project were to keep the child out of detention, the family out of court, and to reduce recidivism.

The Sacramento 601 project is among the first diversion programs which attempted to conduct an evaluation experimentally. Experimentals were those cases referred to intake four days a week, while the control group were cases appearing on the remaining three days. The latter were handled normally. Days were rotated monthly to ensure there was no bias. Family counselling sessions were arranged immediately upon receipt of the referral in the experimental group. During the sessions, the counsellors (selected probation officers) attempted to resolve the family problems that precipitated the referral, at least to avoid placing the child in detention. The first session was not voluntary, although it was generally up to the family whether there were additional sessions.

The evaluation of the 601 component of the Sacramento program showed encouraging results. Follow-up data indicated that the experimental group had fewer periods of detention and a lower recidivism rate for both 601 and more serious offences. The average number of officer hours per youth was lower for the project group than for the control group, a difference reflected by considerable savings in costs. Workloads were also lighter in the probation department as a result of the reduced use of detention and fewer supervision and placement cases.

The 602 component was established in 1972. The approach was similar to that of the initial project: family counselling on a crisis basis was instituted on four project and three non-project days per week. The four member project staff were integrated with the existing 601 staff and their training was similar.

The authors of the final report note rather obliquely that the nature of the counselling sessions differed in the 602 project, because there was less overt hostility between parents and the young offender.

> This changed the dynamics of the counselling session and sometimes made the counselling more difficult, particularly as the staff was not accustomed to the new situation. Several training sessions were subsequently developed to assist in dealing with this problem..
>
> Baron and Feeney, 1976: 18

The evaluation of the 602 component showed that the proportion of the project group referred to court was less than 1%, compared to 29% for the control group. During the seven-month follow-up period 42% of the control youths went to court while only 15% of the juveniles handled by the experimental method did so. Similarly, a much smaller proportion (.2% versus 20%) of the project cases was given informal probation. Recidivism was measured for seven months and was defined as rebooking. One-quarter of the project group was rebooked, compared to over one-third of the controls.

Always of interest in juvenile diversion projects is the type of offences considered suitable for diversion. Drug-related offences (in most cases, presumably possession of soft drugs) and petty theft constituted over one-half of the cases in the first year. Curfew violations, alcohol-related offences, and other minor offences each were approximately ten per cent of the total. From the court referral comparisons between the control and project groups, it seems that juveniles were being diverted from court appearances. However, most of the offences appear to have been of a less serious type.

In Cressey and McDermott's 1973 monograph on diversion programs of "Mountain State", there is a description of a project similar to the Sacramento County scheme. It is probable that, despite the attempt at anonymity through the use of pseudonyms, the "Scottville" project is the Sacramento diversion program. The comments made by the authors, based on their observations and interviews

project personnel, are illuminating. First, they note that the attempt to include 602 or minor legal violations in the project had created problems in the counselling sessions: "the tendency is for the family to reject the idea that the juvenile's offence is a result of family failure" (Cressey and McDermott, 1973: 40).

Secondly, the observers found that there was disagreement among unit personnel as to the definition of "true diversion" with the result that there was considerable variation in the number of referrals per officers. Some believed that immediate referral after problem identification was their function, while others used their counselling skills. On the whole, the unit leaned towards a referral model, often closing cases after the mandatory first session and referring juveniles to community agencies with no further action.

More seriously, perhaps, Cressey and McDermott questioned the purity of the experimental and control groups. Unofficial referrals to the unit on one of the days in which regular processing was to occur were not unknown: occasionally, cases referred by police came to the attention of the intake officers when the diversion unit was supposed to be handling all incoming cases. Furthermore, the local law enforcement agency also initiated its own diversion program during the same time period, with an undetermined effect on the activities of the diversion unit (Cressey and McDermott, 1973: 39).

While Cressey and McDermott did not deny that the "Scottville" program had impressive reductions in court referral rates, they indicated that the interpretation of this data presents some difficulties.

> But there is room for doubt about whether the reduction of pre-delinquency cases in juvenile court reflects successful <u>treatment</u> of juveniles or a mere change in the bureaucracy's attitude towards petitioning cases (that is, in making court referrals). As one individual commented, "filing a petition is a no-no". The reduction of petition filing, then, might not have occurred only because juveniles have increasingly been either treated or referred to "other means". The reduction might stem also from a conception of diversion that maintains, simply, that doing something "official" to a juvenile delinquent is not always better than doing nothing.
>
> Cressey and McDermott, 1973: 40

Thus, attitude change and peer pressure in the unit, rather than the diversion program itself, may have been one reason for the apparent success of the program in diverting juveniles from court.

Cressey and McDermott also described the Van Dyke Pre-delinquent Diversion Unit (again anonymously); from their description it appears to be one of the few court-based projects which attempts to screen youthful offenders entirely out of the juvenile justice system. The intake unit has located a screening officer at the local detention centre and all female pre-delinquents are directly referred to him (1973: 24). No records are created if the screening officer decides that the youth is an appropriate candidate for diversion. The criteria for inclusion "seem to be the willingness of the juvenile to participate, and the sex of the female pre-delinquent" (Cressey and McDermott, 1973: 24).

The females so selected are placed in a 12-bed residential facility down the street from the detention centre. The stay in the residence may be up to five days, during which time the offender is free to leave or to refuse the counselling available, or both. Completely out of the justice system, he or she may not be referred to court nor put on informal probation after the decision to be placed has been made. There is no limit on the number of times a youth may be referred.

> Although the program has not been in existence long enough for a meaningful evaluation, there is some indication that recidivism may be lower than it is among girls detained in juvenile hall or those placed on informal probation. The idea of direct diversion from probation to a community agency is, of course, quite appealling as nearly all contact with the juvenile justice system is thus avoided.
>
> Cressey and McDermott, 1973: 37

The final court-based project to be described is Project Crossroads, a program developed in Washington, D.C. for older juvenile and young adult unemployed offenders. It was designed to provide manpower-related services such as employment counselling and job placement, and to increase the access of youth to training and educational resources. Among the objectives of the

project were: to increase the flexibility of case processing, to alleviate congested court calendars, to reduce the costs associated with normal processing, to provide alternatives to the delinquent or criminal label, and ultimately to decrease recidivism through the provision of job opportunities (National Committee for Children and Youth, 1970: 2).

Deferred prosecution was the model used by Project Crossroads: charges were suspended pending the outcome of the accused offender's participation in the intervention program. If the offender was successful in meeting program requirements charges were dismissed. It was found that dismissal rates were lower for the juveniles (40%) than for the young adults (76%). Nor was recidivism of the juvenile group affected by their participation. Those most likely to be favourably terminated were married men in their twenties.

The evaluation efforts of this program were extensive; however, later criticisms of the implementation and analysis have been cogent. Project Crossroads has been included here to illustrate a type of court-based program that has been influential (if not necessarily goal-achieving) in diversion program development. Supporters of pre-trial intervention have praised this and similar manpower programs because they demonstrated the feasibility of the concept: "The willingness of the courts to accept this innovation (pre-trial intervention), thereby assuming an added social responsibility, was considered a major criterion of success." Mullen also indicates that program feasibility seems to have replaced the "vagaries of recidivism as a measure of the program's value" in the minds of administrators and funding agencies (Mullen, n.d.: 10, 50).

Errors in logic and over-enthusiasm have been found in the reporting of Project Crossroad's research. Mullen has summarized the major problems with the evaluation.* The comparison group selected did not meet all the participant selection criteria, thus making the validity of the comparisons dubious.

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* A more detailed critique of a similar evaluation strategy -- the Manhattan Court Employment Project -- is found in Zimring (1974).

Comparisons were made only between "successful" participants and comparison group members. In-program failures were not considered in the analysis, thereby making the experimental group look better than actually was the case. Finally, the bias of the pre-post comparisons has been criticized: "Since favourables are designated as such because their performance has improved, 'after' measures cannot fail to look better than 'before' " (Mullen, n.d.: 11).

Legal Diversion Programs: Police Sponsored Projects

There are two models of police diversion thus far identified in the literature: in-house social work or counselling, and referral programs which emphasize out-of-system diversion with feedback and accountability to the referral source. A major issue in police-sponsored diversion has been the degree of control held by law enforcement over the activities of the program of juvenile diversion. Controversy has also developed around whether police departments should develop their own services or treatment programs instead of seeking out community sources of referral.

In police forces which have opted for the first model -- supplying treatment, crisis intervention or supervision cum counselling within the department -- there are several variants. In some areas, direct services are supplied by police officers and in others by civilians educated in psychology or social work.

Examples of the first variant can be found in the north of England and in some jurisdictions in Scotland, where there have been juvenile liaison officers operating for many years. These officers, apparently with little or no special training, are used to counsel and supervise young people identified as delinquent or, more frequently, as "pre-delinquent" (Mays, 1965; Lemert, 1971).

Voluntary supervision or police probation has long been a practice of many United States police departments (although apparently not in Canada). In police probation, youth section officers supervise juveniles extra-legally, but in much the same way as does court-ordered probation -- that is, conditions of behaviour may be laid down for a period of time and restitution demanded. Edwin Lemert (1971) has termed these practices "do-it-yourself social work" and a "spurious" diversion model. Criticisms have centred on the inadequacy of training in most departments; police officers are not selected or trained to perform preventive and counselling duties.

Perhaps less "spurious" a model is the type of program which uses specially-trained officers to work in the areas of prevention and diversion. One project in Montclair, California recruited personnel from outside the department, put them through the police academy, and assigned them responsibility for implementing an alternatives-to-arrest program (Hunsicker, 1976: 240-1).

Departments have also used social workers and other helping professionals in a civilian capacity. A prominent example of this type of program is the Police-Social Service Project in three Illinois communities (Treger et al, 1975). Social workers placed within the department provided assessment, crisis intervention, counselling and therapy, and referral to community agencies for both adults and juveniles (Treger, 1972). Reasons for juvenile referrals included running away, drug abuse, and theft. However, law violations constituted a minority of reasons for referral in all three communities, in one instance, less than ten per cent. An informal agreement is worked out with the juvenile and his family to accept the services of project staff. Thomson and Treger (1973) noted that in one community court referrals were reduced by over thirty per cent. This project is one of several programs in which a university social science department cooperated with a local agency in the establishment of a counselling service. It is unclear from the program descriptions to what extent the Police-Social Service Project functioned as a diversionary force. Assistance to people in trouble seemed to form most of the activity of project personnel.

Another example of the direct service model is provided by the Dallas Police Department's Youth Services Program (YSP).* This project divided its program into two: one for first offenders (FOP) and the other for repeaters (the Councelling Unit). Referrals are voluntary and require written acceptance of both the youth and his or her parents. First offender misdemeanants are referred by the investigating officer to one three-hour "lecture-awareness" program. Youthful repeaters are selected from the "middle range youth" who commit a moderate to severe offence (e.g., theft or burglary) or who have a "less serious prior record (one to six prior arrests)", or both, and who are judged by the police officer capable of benefiting from the six-month program operated by the Counselling Unit. The Counselling Unit was composed of civilian counsellors, carefully selected and trained. Those juveniles assigned to the program participated in a phased process in which skills training (physical fitness, interpersonal and study-learning skills) were provided. Individual programs, family counselling and community referrals were also provided if required. Finally, the YSP also participated in the training of youth selection officers.

Assessment of the YSP after 12 months of operation showed that 2,282 juveniles were referred to the First Offender Program (69% of whom participated), and 1,084 to the Counselling Unit (75% participating). The non-participants were subject neither to police nor court action. Almost one-half of the Counselling Unit's clientele were "felons".**

Evaluation was a component of the YSP program; assessment included the degree of improvement in functioning of Counselling Unit participants

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* Program descriptions of the Youth Services Program in Dallas may be found in Collingwood, Douds and Williams (1976) and Dallas Police Department (1976). The program was financed by the Criminal Justice Division of the Office of the Texas Governor for 34 months.

** Although not mentioned in the descriptive material available on the Dallas YSP, re-calculation of the data provided in the Collingwood, Douds, and Williams paper indicate that only about one-third of participants in the Counselling Unit completed the six-month treatment process.

(measured by rating scales), recidivism rates of the participant and control groups, and system effects of the program. The control group was composed of those juveniles referred but who did not participate because they refused, because the program could not cont act them, or because they had sought assistance from other sources. The comparison group was similar to the YSP group on both demographic and offence related variables, but there may be other differences (in motivation, for example) between the two groups not examined by the evaluation. Certainly, on the surface it seems unlikely that a control group composed of those who refused and those not contacted would differ in key ways from the youths who agreed to participate in the YSP treatment process.

In the final report of the program, there is a detailed exposition of the evaluation findings (Dallas Police Department, 1976). The skills training evaluation showed that there was a signif icant difference between pre- and post-training, as shown in the counsellors' ratings of YSP participants. A four-month follow-up (apparently of the parents) found that home, school and free time behaviour had remained about the same as in the immediate post-training period. Just less than one-quarter of the YSP participant s were rearrest rate, almost 43% Both participants and controls had a lower recidivism rate than the total population of youths arrested in 1975 (53%). The control group had a higher average number of repeat offences and a higher percent age of felony offences than did the YSP participants. Only limited data is reported on the proportion of petitions filed on the control and experimental groups, but those available suggest that the controls had a higher proportion of court referrals than the YSP group. The most interesting system effect reported was a reduction in the number of court referrals between 1973 and 1975, in a period when there was an increase in the juvenile population.

For a number of reasons, it is difficult to assess the impact of the Dallas Youth Services Program; these include: the unusual choice of a control group, the lack of explanation of key features of the evaluative results (for example, the variable length of the follow-up period and the differences between the YSP participants and the total arrest population), and the high (unexplained) drop-out

rate of the Counselling Unit's clientele. It is also unclear whether the YSP is an alternative to court referral or an alternative to releasing the juvenile back to his or her parents without further action. The authors of the final report concluded: "The implication is that those youths diverted to the YSP would have eventually become juvenile department referrals without the YSP" (Dallas Police Department, 1976: 31). Again, as is common in many so-called diversion programs, prevention rather than diversion seems to have been the main focus of the program. Young people which were not in direct jeopardy of court referral may have constituted a large proportion of the clientele of the Dallas project.

Other issues, of an ethical nature, are also raised by this type of program. (See Sullivan, 1973 for a critique of the Police Social Service Project in Illinois, and other similar projects.) Abuses of confidentiality (both oral statements made by project participants and confidential remarks in case files) would be likely to arise when the counsellor or social worker is in constant interaction with police officers, as was the case in both the Dallas and the Illinois projects. The advisability of counselling and social work professionals involving themselves in legal (or "extra-legal") decision-making is also seen as an issue.

Direct treatment of delinquents by units located within police departments has been criticized on other grounds. Duplication of services available elsewhere in the community might be considered wasteful of public money. "If a community lacks treatment facilities, the role of the police department is to cooperate with others in an effort to gain such facilities, but not to develop them" (Lemert, 19 1: 58). The appropriateness of children being counselled by officers or workers closely allied with the police has been questioned; labelling theorists might well wonder if these interventions are any less stigmatic than a referral to court intake. On the other hand, the avoidance of stigma is rarely a stated goal of police-sponsored diversion projects.

Issues found in other diversion approaches recur here: voluntarism and coercive state intervention, control over discretionary decision making,

and the redress available to participants in which treatment dispositions are disputed. More practically, police opinion seems to be against instituting direct treatment in law enforcement agencies. Their view of the police role does not include adding specifically social work responsibilities to youth sections. Screening and apprehension are perceived as appropriate functions; counselling and other remedial services within the department are not (Pitchess, 1974).

The advantages of the direct service model include: the accessibility and convenience of the social service unit, the ease of obtaining control over the unit's operation and accountability for its decisions, the reduction of problems associated with case coordination and communication, and the possibility of improved relations with other justice system agencies (for example, probation; Hunsicker, 1976).

An alternative police model involves the development of the referral capabilities of police officers. Referrals are made to carefully-selected community agencies, which are required to feed back information on case progress to the referring officers. In some programs, there may be purchase-of-service agreements either on a straight fee-for-service basis or a split fee, "part on acceptance of the offender client and part payable upon 'success' (for example, no recidivism for six months)" (Klein, 1976: 425). Klein has described these and similar activities as pro-active and noted they are a new role for the police. More departments are urging agencies to accept diverted youth and are assisting the community to establish new programs where gaps in service have been discovered. In some large California police departments, "police are almost literally going out into the community and 'drumming up business'," a "significant departure" from past practices (Klein, 1976: 423).

Advantages of the referral type of police diversion include: improved community relations through the establishment of mutual endeavours, the provision

of a selection of services throughout the community rather than in one area, the reduction of input into an overburdened juvenile justice system, and a reduction of costs through community treatment.

Pitchess (1974) has described a prototype of the referral model, developed in the Los Angeles area in the early nineteen-seventies. The project plan has been to select the youth designated in need of services and refer them to acceptable agencies within the community. As in many program descriptions, there is little emphasis on the program's "process" (what precisely occurs in the referral situation, for example), but it appears that the officer makes an appointment with the selected community agency and completes a referral form which is sent to the resource. It is not clear how accountability at the case level is maintained, although Pitchess implies that some follow-up is made to see that the appointment is kept by the juvenile. Fairly clear guidelines on the selection of the community agencies are outlined in Pitchess.

An interesting commentary of the police selection of community resources is found in two papers by Malcolm Klein (1973; 1976), who maintains that the agency selection practices of most police diversion projects are conservative ones or -- as he puts it -- "constricted". Interviews with Los Angeles officers revealed negative views of non-traditional agencies.

> These officers shied away from involvement (other than intelligence!) with self-help agencies, ghetto agencies run by residents, agencies with a taste of militancy or radicalism, and so on. Agencies emphasizing lay or volunteer rather than professional staffs were viewed with considerable skepticism.
>
> Klein, 1973: 383

Acceptability or "attitude" (Pitchess, 1974) is of importance in the selection process, in addition to easy accessibility by the client, adaptability and perceived competence.

Another related problem with the referral model of police diversion is the degree of police control over the service activities of the agencies. Police, not unnaturally, want to be "in a position to 'blow the whistle' on ineffective counselling by withdrawing support, funds or the client population" (Klein, 1976: 425). Obviously, purchase of service arrangements would facilitate a greater degree of control than would straight referral with no financial exchange or obligation. Many agencies may be reluctant to tie themselves that closely to law enforcement. Agency autonomy, client coercion and confidentiality of treatment sessions are among the concerns of agency personnel, according to Klein. Just as importantly, agencies

> fear regimentation, a narrow focus on recidivism rather than more general personal adjustment, and stigmatization of their own programs by association with law enforcement officials. Many counsellors and agency administrators believe further that some youngsters will shy away from a police-connected program and that others will fail to establish good rapport with their counsellors for fear of having their acts reported to the police.
>
> Klein, 1976: 425-6

Research on police referral programs would do well to include some measures that try to ascertain the extent to which these fears are grounded in reality.

A final problem with the referral type of program are the criteria used by the officers in selecting diversion candidates. Few programs seem to have developed specific criteria, with the result that the majority of divertees in many programs resemble "pre-delinquents". There is no evidence to show what proportion of diverted youth would have otherwise been sent to court if it were not for the existence of the referral project. Research on one program by Lincoln (1976) examined the police dispositions of a comparison group of non-referred offenders that had been matched with the divertees on key characteristics.

> Almost all thirty offenders in the matched group were treated either very leniently or very severely. Five cases were sent to probation or the disposition

> of the case had not been recorded. Of the remaining twenty-five cases, twelve offenders were released from the station with no further action, and thirteen offenders were detained and petitions filed at court on their behalf... . The most striking feature of these dispositions is, of course, that about half of the juveniles were released outright. One can infer that the referred counterparts to these matched juveniles would have been released rather than inserted into the justice system if there had been no referral program.
>
> Lincoln, 1976: 327

The limitations of this study are obvious. Only one department was studied. Matching procedures are generally considered problematic, and the numbers are small. Despite these caveats, the findings should serve to remind the diversion proponent once more that, unless more attention is paid to establishing guidelines for referral, diversion may become an alternative not to system insertion, but to release.

Many United States police departments claiming to be engaged in diversion have only labelled their old practices with the new terminology in order to obtain state and federal funds now available for diversion. The multiplicity of definitions of "diversion" and "referral" may also account for this trend (Klein, 1976). In this type of diversion, there is no, or only a minimal, attempt to supply officers with appropriate community services, to monitor progress, to obtain feedback or to ensure agency accountability. While the number of juveniles referred may increase, and the number of agencies utilized expanded, it is on an ad hoc basis and there are no structural or organizational changes in the force designed to accommodate the program.

Another type of police diversion has received little attention in the literature, perhaps because (like the quasi-diversion programs mentioned above) many authorities assume that "police hearings" belong in the category of screening or traditional diversion. In many ways, the police cautioning procedures in

England, Scotland and New Zealand are an extension of the "warn and release" disposition. In London, after investigation, the preparation of a background report, and the agreement of the complainant or aggrieved person, the Chief Inspector of the division in which the offence occurred may decide that a court referral is not necessary, but that some sanctioning process would act as a deterrent. A formal "caution" is administered by the Chief Inspector to the child in the presence of his or her parents. The intention seems to be to warn the juvenile in an impressive atmosphere of the consequences of delinquent conduct (See Oliver, 1973).

Para-legal and Non-legal Programs: Youth Service Bureaus

Of the categories of diversion programs in existence in the United States, the youth service bureau has received the most attention. As a result of the recommendations of the 1967 President's Commission, several hundred bureaus have been created in that country. While the outline of the goals and functions of the bureaus was broad, their mandate was apparently to act as a neighbourhood resource for trouble-making youth. Involvement of the local residents was emphasized. Bureaus were to provide a broad range of services and certain mandatory functions.

> A primary function of the Youth Services Bureau thus would be individually tailored work with trouble-making youths... . The most significant feature of the Bureau's function would be its mandatory responsibility to develop and monitor a plan of service for a group now handled, for the most part, either inappropriately or not at all except in times of crisis.
>
> President's Commission, 1967a: 83

There was also stress on the clientele of the YSBs; while both delinquent and non-delinquent youth would be served, "the bulk of the referrals could be expected to come from the police and the juvenile court intake staff". The bureau would be required to accept all such referrals. While the initial referral would be voluntary, the bureau could refer the child back to court if he or she was

"deemed unlikely to benefit from its services". However, the referral source would not have this power, only the YSB itself (President's Commission, 1967a: 83).

The advantages of the original concept of the youth service bureau were manifold. Youth in trouble with the legal system would be referred to a community-based agency where services would be provided either by program personnel or through arrangements with other community agencies. Delays in obtaining needed services for youth would be reduced. The involvement of local citizens in the bureau would heighten the community's sense of responsibility for youthful misbehaviour. Priorities in service could be established locally, with a view to providing services in areas where there were gaps. Hard-to-deal-with youth, a group frequently untouched by traditional agencies, would be given assistance in developing more socially-acceptable behaviour. Staff would be a mixture of professionals, para-professionals and volunteers; sensitivity to the backgrounds of the clientele would thus be increased.

The major benefit of the youth service bureau would be its independence from the justice system; the bureaus would be "non-judicial" in nature. Unlike the probation and correctional system, the bureau's informality and voluntary participation would circumvent many problems in treating juveniles in more coercive settings. A non-authoritarian approach was to be emphasized.

On paper, the disadvantages of this model were few. Some skeptics believed that the original recommendations were overly optimistic in their assumptions that juveniles would be amenable to participation without any pressure, and that the bureaus would welcome dealing with a group that had been labelled "hard core". It was maintained that the marginally delinquent are more acceptable to most agencies. The proviso that court referral could be an option in some instances also became a source of controversy. Finally, despite the emphasis on

the wide referral base, some feared that the youth service bureau would acquire a negative image in the community; hence, users would be stigmatized as much as if they had been inserted into the formal justice and correctional systems.

On the whole, the ideals of the youth service bureau concept were immediately acceptable to those concerned with delinquency and its prevention, as is shown by the rapid growth of programs termed YSBs. Unfortunately, it seems that the vision of the President's Commission has not been fulfilled.

First, considerable conflict and confusion has arisen in the YSB literature on the goals and objectives of these new agencies. The over-all, most general goals as enunciated by a United States government agency (the Youth Development and Delinquency Prevention Administration) were: to provide more socially-acceptable and meaningful roles for youth, to divert youth away from the juvenile justice system into alternative programs, to reduce negative labelling, and to reduce youth-adult alienation. The development of more specific objectives has created confusion around the precise functions of the bureaus. For example, there has been controversy whether the bureaus should act as "conduits" to services available in the community (as urged by Norman, 1972), or whether they should provide direct services themselves.

The priorities of the various objectives have also been problematic; diversion seems to have assumed a lower priority than envisioned by the President's Commission. Diversion is only one of several priorities -- modification of the social services system through coordination and advocacy, service brokerage, youth development, and the provision of treatment services -- that may be chosen by the individual bureau.* Perhaps most importantly, the youth

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* In addition to the President's Commission, guidelines for YSBs may be found in Sherwood Norman (1972); the National Advisory Commission, Community Crime Prevention, (1973); the U.S. Youth Development and Delinquency Prevention Administration, Youth Service Bureaus and Delinquency Prevention, and Gemignani (1972).

service bureau has been hailed as a delinquency prevention measure, rather than a purely diversionary one. In prevention, the program is directed towards children who might commit a delinquent act. "In diversion, the child has already been designated as an immediate candidate for court adjudication and formal processing" (Nejelski, 1974: 8). An inescapable conclusion to be drawn from the literature on the YSB is that more general preventive efforts play a major part in their operation.

A clear indication that conflict in goals has arisen is found in the YDDPA census of youth service bureaus operating during 1971-2. The primary objectives varied among participants.

> Although diversion from the juvenile justice system was reported to be the primary objective by the majority of the directors (63.8%), this response diminished the further one moved down through the administrative hierarchy. Staff in general tended to emphasize goals that were broad in focus, such as delinquency prevention and youth development. Program participants tended to see the objectives of the bureaus as practical help to people with problems; help with family problems; individual help; help to keep out of trouble. Over-all, participants seemed to view the programs as service agencies for young people.
>
> U.S. Youth Development and Delinquency Prevention Administration, 1973a: 20

When there is disagreement on the importance of diversion among staff levels, and between staff and users, goal achievement is almost certainly impeded.

One indicator of the degree to which YSBs are diverting youth from formal intervention is to examine their referral sources.* Researchers have found that justice system referrals usually constitute a minority of the total caseloads of the bureaus. The National Survey referred to above estimated that 18% of the referrals were from law enforcement, with unofficial referral sources approximating 40%. "It is estimated that for twelve months in 1971-1972, approximately 50,000

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* Of course, another indicator would be a drop in court referral rates in the target area of the youth service bureau. See Duxbury's analysis in her 1973 evaluation of California bureaus.

youth, who were in immediate jeopardy of the juvenile justice system, received direct services from approximately 140 youth service bureaus" (U.S. YDDPA, 1973a: 18). Since 150,000 youth not in jeopardy were also served, it appears that about 25% were "diverted". The immediacy of the "jeopardy" is not clear from the data; the unanswered question is what proportion of the "divertees" would have been sent to court of not for the YSB referral.*

In California, low justice system referral rates have also been found. Law enforcement referred 12% in 1971-1972, while probation intake referred only 9% (Duxbury, 1973). In seven bureaus in Minnesota, about one in ten clients were referred by agencies of the criminal justice system. Law violations constituted only 6% of the reasons for referral. For every 100 youths counselled for a non-law violation problem, only one reported a law violation problem (Minnesota Centre for Sociological Research, 1974: H-12).

Some reasons for the failure to divert have been enunciated by the authors of the National Advisory Commission's Community Crime Prevention report.

> Although many youth service bureaus ostensibly have diversion as one of their primary objectives, their decision-making structure and the functions they perform have caused them to move away from criminal justice diversion as the primary source of clientele. Not the least of the reasons for this shift has been the inability to convince law enforcement and probation intake personnel of the value of diverting young people from the justice system to the bureaus.
>
> National Advisory Commission, 1973a: 63

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* "These figures suggest that youth service bureaus may be following the established pattern of service agencies which, suffering from the battle fatigue of dealing with hard-to-treat recidivists, increasingly turn their attention to more malleable children whose only offence is an administrative determination of pre-delinquency" (Nejelski, 1976: 397).

More specifically, the reasons for the inability of the YSBs to reach their diversion objective have included:

- justice system distrust of the new agencies, which are often unstable and insecure in their funding arrangements;
- police departments are usually centralized in their decision-making and may be ill-equipped to establish a policy of diversion at the local or neighbourhood level (Minnesota Centre for Sociological Research, 1974);
- diversion is a low priority in many police departments;
- the development of alternative, criminal justice managed projects have undoubtedly prevented the use of bureaus in some communities;
- some bureaus have proved inconvenient in terms of hours of operation;
- some bureaus have not been able to respond rapidly in crisis situations;
- in many instances, there is little systematic feedback to the referral source;
- some bureaus have been established in communities with little room for improvement in court referral rates, for they are already low; and,
- in inner city or other areas with high delinquency rates, the sheer size of the problem is unlikely to be greatly affected by the new agency with few resources and little political influence.

In summary, the promise of the youth service bureau concept does not yet seem to be fulfilled, at least not on the nationwide United States scene. These multi-purpose agencies seem to be responding to a need for direct services such as counselling and crisis intervention; many are not moving towards achievement of their diversion objective.

Other Para-legal and Non-legal Diversion Programs

In addition to the youth service bureau, there are many other programs in the United States and Canada which could be classified as para-legal or non-legal in character. Unfortunately, it is not clear from many program descriptions which diversion programs can be said to have true non-legal status. It is difficult to assess the degree of independence from the justice system -- the major criterion differentiating non-legal from para-legal programs. While many community-based diversion schemes claim to be completely outside of the justice system, in a number of instances informal arrangements may have superceded the intent of their planners. The sharing of staff, physical facilities and information with the justice system are often found. The recent survey by Rutherford and McDermott (1976) reported few completely non-legal diversion projects.

For a diversion agency to maintain its diversion component (as opposed to general assistance to youth-in-trouble), it is necessary for it to obtain justice system referrals. In order to do so, it is usually necessary to cooperate with the referring agencies, a necessity which might result in cooperative co-optation (to use Rutherford and McDermott's phrase). It is a rare program, apparently, that has established its reputation in such a way that has produced both an adequate number of referrals of juveniles in immediate jeopardy of legal processing and has had no constraints on its decision making or program approach.

No one pattern of assistance has evolved in these agencies. Some emphasize mediation and reconciliation between juveniles and victims or parents. Others have been explicitly developed with a view to increasing the community's sense of responsibility for delinquent behaviour and/or to use "grass roots" non-professionals in the provision of services to the diverted population. Many emphasize individual casework, family counselling and crisis intervention during times of stress for the juvenile and his family. Behaviour contracting is a relatively new approach which has gained the interest of some diversion practitioners. Referral sources to community-based diversion agencies may include parents, social agencies, and the juvenile himself although several of the more prominent projects have limited their caseload to police referrals.

The programs selected for inclusion in this section have been chosen because they to some extent fit the criteria discussed earlier in the chapter: fairly detailed descriptive material is available, evaluation was one component of the project's operation, and their approaches seem representative of other, less-publicized schemes. The projects touched upon are the Neighbourhood Youth Diversion in the Bronx, the Adolescent Diversion Project in Illinois, and the Youth Service Program in Orange County, California. The first project was initially sponsored by the Vera Institute of Justice and Fordham University, while the latter two were at least partially initiated by university personnel.

The Bronx Neighbourhood Youth Diversion Program (NYDP) was started in 1971 in a predominantly black and Puerto Rican area of the Bronx. The original goals of the program were to divert young people from family court and to resolve their problems through the resources of the program. In the target area, there was a high delinquency rate and the majority of the residents were poor. *

Children are diverted to the project by probation intake, with a small number coming from police and the courts after adjudication. Referrals from non-justice system agencies are not sought. If the youth does not fulfill the requirements of the treatment program, this decision is revocable and he or she may be referred back to court intake. Every child accepted by the project is assigned an advocate, who is usually a local resident. The functions of the advocate are two-fold: counselling and referral with follow-up to ensure that the necessary services are provided.

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* The written sources of information used in this description are: Paul Nejelski's brief summary (1976); the Neighbourhood Youth Diversion Program's Annual Report, December 1, 1971 to November 30, 1972; a Program Description by Warren Williams (the director of NYDP), updated but from internal evidence late 1973 or early 1974; a short description in the National Study of Youth Service Bureaus, 1972: 175-6; and a summary in Vorenberg and Vorenberg (1973).

The most unusual feature of NYDP is the Forum, a community hearing panel composed of two or three volunteers who have been given some training in techniques of arbitration and conciliation. These Mediators hold hearings to resolve problems between the youth and his family. The child's advocate actively participates in these sessions. The Mediators make efforts to reach an agreement that both sides state they will abide by. After a year of operation, the project staff decided that only in situations where the child was having problems at home or at school did the Forum sessions seem to be effective. The project decided to limit Forum referrals to PINS (persons in need of supervision) cases, recidivists who had previously been seen by the Forum, and delinquency cases with a "PINS element". The strict mediation model was replaced by a "family service" orientation. Approximately 250 cases had been heard by the Forum and 71 persons trained as Mediators by late 1973 or early 1974.

Other components of the Bronx NYDP include a mini-school for youth transferred there by the local school district and a group home where children may be placed as a result of Forum decisions.

The program description of the Neighbourhood Youth Diversion Project claims that over 800 juveniles have been "diverted" during the first three years of the project. The Vorenbergs (1973) reported that, during a nine-month period in 1971, the project diverted 36% of the delinquency cases and 21% of the PINS cases residing in the project area which appeared at probation intake. The same authors state that there were problems in delivering services to clientele because: the project lacked funds to buy services; there were few services in the area; and the indigenous staff were not part of the professional network that controlled most of the social services in the city (Vorenberg and Vorenberg, 1973: 170).

Academics from the University of Illinois at Urbana-Champaign initiated the Adolescent Diversion Project in 1973 (Seidman, Rappaport and Davidson, 1976 and Office of Technology Transfer, 1976). Cooperation of the local police was obtained

after an intensive round of negotiations. During the two-year research period, the project leaders attempted to implement "service-oriented research" in which youths who would have otherwise been referred to court by the police were randomly assigned to treatment and control groups. All were misdemeanants with two or three previous police contacts. The control group was composed of youths who were released back to their parents with no further action. The purpose of the project was to test whether early intervention to avoid "envelopment by detrimental 'rehabilitation' systems" would be more effective than leaving the kids alone. Other aims were to foster self-sufficiency and to teach critical negotiation skills. Traditional casework was not a component of the project.

The first and second years of the project differed in that in the first year only one experimental group was used. In the second, the approaches used in the first were divided into behaviour contracting (between parents and child) and advocacy (in which the counsellor secured services and helped in disputes with schools and the justice system). During the two years, 74 youths were referred, 49 of which were placed in the service group and 24 diverted with no services. Participation in the program was voluntary on the part of the juvenile and his parents. No refusals were received. University students were assigned to work with the service group. The strategies used by the students during the first year of the project were a mix of relationship skills teaching, behavioural contracting and child advocacy.

First year evaluation results showed that there were no differences between treatment and control groups on any of the scales administered to them after four months. Police and court record searches revealed, however, considerable differences between the two groups during intervention, and at the first and second year follow-up periods. The service group had fewer, and less severe, justice system contacts and fewer petitions filed than did the control group. The percentage of youth still enrolled in school at program termination was higher for the experimental group.

In the second year of research, two service groups were used -- one in which the student-counsellors were trained to use behaviour contracting and the other in which child advocacy was specified as the sole approach to be used. The purpose of this division was to "ferret out differential effects of behavioural contracting, child advocacy and 'treatment as usual' conditions". Once more, the treatment period was 18 weeks. The other major purpose of the second year was

> to gain a detailed monitoring and understanding of the critical components of events in the lives of the youth, the components of the intervention approaches, and the salient features of the training and supervision sessions.
>
> Seidman, Rappaport, and Davidson, 1976: 11

Interviews were conducted at four, ten, and sixteen weeks after referral with the juveniles in both groups, their parents, the volunteer student counsellors (experimentals only) and the student supervisor (experimentals only). These structured interviews tried to evaluate "life domains", the dimensions of the intervention process, and the process of supervision.

In the second year, police and court contacts were again fewer and lower in severity for the experimental groups. However, no differences were found between the behaviour contracting and child advocacy approaches. Further analysis indicated

> that the outcomes observed in the experimental and control group youth were related not only to group assignment but to an apparent set of critical events. Given that the relationship of the youth to important social systems showed some deterioration following referral to the project, successful outcomes are unlikely to result. These patterns of interaction were observed much more frequently in the case of controls. When the interventions of the experimental youth met with initial success both in terms of their impact on the youth and the degree to which they can get things going in multiple areas of the youth's life, the program provides a stabilizing influence.
>
> Seidman, Rappaport, and Davidson, 1976: 15

This program is exemplary (as, in fact, LEAA has indicated) in its focus on process, its careful attention to evaluation, and the degree of cooperation

received from local police. One advantage of this program is the use of college students (at little or no cost). On the other hand, the program would be unlikely to continue in precisely the same form (with, for example, the same care taken with evaluation), unless the university involvement is maintained. Furthermore, as Seidman and his colleagues (1976: 16) point out, experimentation should be undertaken in other locations of varying size, and with different police procedures and community resources, before the approach is generalized to other communities. *

Of particular interest in this research is the type of control group used; the efficacy of treatment was examined in relation to "outright release" rather than to system insertion. Thus, this experiment provided preliminary evidence that the provision of some services was more effective in reducing official delinquency than releasing the juvenile back to the street with no action.

The final project to be described was also implemented by academics (Binder, Monahan and Newkirk, 1976). The Youth Service Program in Orange County, California had the objective of early identification of potential offenders in order to prevent future delinquent behaviour. All referrals to the program were made by the local police departments which served the three participating communities. Unlike the Adolescent Diversion Project, it is not apparent that the juveniles were heading directly for juvenile court; referrals were made at the request of parents as well as a consequence of legal violations. The youths who agreed to participate in the YSP were all under 18 years of age, had no more than three previous arrests, and were a group for whom the police agreed to take no further action. The modes of intervention included contingency contracting, methods to improve parent-child communication and the juvenile's coping skills, and service brokerage with local agencies. The Youth Service Program was larger, and the time period shorter and presumably less intensive, than the 18-week Adolescent Diversion Project; service consisted of between four and eight weekly sessions with the juvenile and his or her parents.

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* In addition, it is important to note that the size of the sample was small (only 12 per group), thus making generalizations even more tenuous.

Youths referred by police were randomly assigned to treatment and control groups. Pre- and post-measures of problem improvement and attitude change were used. At six and twelve months after referral, telephone interviews with families and a check of police and school records were undertaken. Preliminary analysis of recidivism data showed that arrests were lower for the treatment group (17%) than for the controls (23%) and the refusals (20%). However, recidivism varied by community; one city showed a much lesser treatment effect than did the remaining two.

Little information is available on the process of assistance in this program. Of some interest, however, are the problems encountered by the university researchers in attempting random assignment. The existence of the control groups was a source of continuing complaint by the police officers, who strongly believed in the effectiveness of the program and were disturbed when suitable candidates for treatment were placed in the control group. At pressure from the department and other community leaders, a second treatment group was created where juveniles of special concern were placed. This service group was not included in the evaluation format. Additional efforts were made to ensure the continuing cooperation of the police, including immediate feedback on every case referred and reports on progress. While these practices may have had the effect of reducing the independence of the YSP, they paid off in terms of the cooperation of the police, who on the whole were enthusiastic about the program.

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CHAPTER III: THE IMPLEMENTATION OF THE NEW DIVERSION

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CHAPTER IV: THE EFFECTS OF DIVERSION: THE PROBLEMS OF EVALUATION

Introduction

In an excellent summary of issues in evaluation of action programs, Riecken (1972) divided evaluation research into the following categories:

- Outcome studies, in which the focus is on the ends of the program, the degree to which program objectives are being achieved. This approach usually assumes that there are specific objectives, clearly thought out and mutually shared by all concerned, and that there is a hypothesized relationship between the activities of the program and the ends to be achieved.

- Process studies, in which the means or operations of the program are examined. A process evaluation describes "what is" in the program, often without reference to any predetermined standards. If process elements are not included in a program evaluation, then it is difficult for the observer to know why the program was successful or unsuccessful in reaching its specific objectives.

- Surveys of need, in which a survey is undertaken to assess the need for and desirability of such a program, with the implicit assumption that the probable worth of the program could be estimated.

- Investigations which are distinguished from the above forms more by intent than by any other variable. Here, the emphasis is on an outside body "policing" an action program.

Evaluations of juvenile diversion programs should combine the first three categories. An analysis of needs should be undertaken before any detailed planning is begun. While it is important to know to what extent the program is meeting its objectives, it is also necessary for the policy maker and administrator to know why -- or why not. The inclusion of process research is especially crucial in juvenile diversion programs because of the number of different labels applied to a variety of different programs. In order to be able to compare projects it is necessary to have an accurate knowledge of what goes on in each.

In Riecken's classification of action programs, diversion projects would fall under "microcosmic social welfare programs", a category which has a number

of evaluation problems, including: broad aims, ambiguous criteria for success, a multiplicity of means which are often not well catalogued, and a wide variation in client characteristics and problems which makes it difficult to obtain adequate control groups or baseline measurements without large samples (Riecken, 1972: 89). In addition,

> such programs tend to have less control over the variables that affect outcome of action since the program is ordinarily carried out in the context of normal social life over a considerable period of time and 'extraneous' influences are likely to be very important in determining the achievement of objectives.
>
> Riecken, 1972: 89

These problems have arisen in many diversion projects. Program practitioners often fail to define what they want to do and how they are going to go about it in a way that clearly links ends and means. Enthusiasm for the diversion concept has, in some cases, led to the assumption that any lessening of the severity of official processing is more beneficial to the juvenile and to the community than no action, and much more beneficial than traditional processing.

A review of diversion evaluations shows that these difficulties are reflected in, and perhaps magnified by, the nature of the research undertaken thus far. In juvenile diversion,

> the program area is new, little of its evaluation has focused on impact, criteria of impact have not been specified, standardized indicators to measure diversion recidivism are lacking, baseline data is often non-existent, and few cross-project comparisons have been made. Yet, funding for juvenile diversion is increasing substantially.
>
> California Youth Authority, 1973: 11

While there is growing insistence by funding agencies in both the United States and Canada that criminal justice innovations should have evaluation built into the design of the project, this has not consistently occurred. A second problem

is that the meaning of evaluation, as stated by funding bodies, is very circumscribed. As one United States government publication has maintained:

> Many projects should simply be audited to make sure that the money was properly spent and that the necessary people were reasonably satisfied with the results. At best, this is what occurs in the vast majority of what are currently called evaluations.
>
> OLEA Evaluation quoted in Nejelski and LaPook, 1974: 27

In many areas of criminal justice, particularly in small scale programs with few resources, this approach to program assessment may be the wisest course of action. However, in diversion, the proliferation of projects suggests that there is wholehearted acceptance of the concept among certain constituencies. This enthusiasm needs to be tempered with caution -- and with data on effectiveness, impact, and the nature of assistance provided diverted youth.

In all areas of social action, there has been a general failure to collaborate the skills of the evaluator with those of the program administrator and planner. The next sections of this chapter will outline the stages which should be taken by the evaluator working in conjunction with program personnel: the survey of need, the determination of the program's objectives, the description of program activities, and the measurement of effects of diversion programs. The final part of this chapter will discuss the potential, hypothesized effects of diversion programming in a variety of areas.

The Survey of Need

Like other social action programs, diversion has been based on a number of "self-evident" and "obvious" propositions: too many children appear in court for inconsequential offences; many court hearings are thus unnecessary and perhaps "harmful"; the correctional system is overloaded with a great number of youths who recidivate no matter what treatment is applied; there has been discrimination in the selection process; alternatives to official processing could

be developed which would be less expensive and more efficient and effective in reducing delinquent behaviour. During the preliminary analysis of "need" for a diversion project, efforts should be made to spell out the propositions upon which the program will be based. Interviews and other data collection should thus precede more detailed planning.

The information collected in the survey of need should reveal "the extent to which the conditions assumed by program planners actually exist" (Riecken, 1972). It should also provide baseline data. It can be easily recognized that the state of affairs before implementation must be known in order to provide a basis for measuring the outcome or effects of the program. After an initial survey, the baseline data can also be fed back to the planners in a way which aids their early decision making about the most likely target groups and other key matters.

When this first step is by-passed (often when the evaluator enters after the project is begun), the collection of baseline data is dependent upon retrospective report (with all the associated memory inaccuracies and distortions) and/or upon available documents present when the program was initiated. In the case of justice system data, the documentation is often incomplete and inadequate, except perhaps for the most elementary pre-post comparisons.

In the rush to implement juvenile diversion, few surveys have been made of the situation existing prior to program implementation. The Sacramento County Diversion Project is an exception; the originators made efforts to gather data on 601 cases in the county and used that information for program planning (Baron and Feeney, 1976). Unfortunately, similar data was not collected by two suburban youth service bureaus; an evaluation showed that the "need" for a diversion project was practically non-existent, for the police were already screening most juvenile offenders away from the courts (Minnesota Centre for Sociological Research, 1974). The collection of data from law enforcement and court records would seen essential before the establishment of any agency whose goal is to prevent children who commit minor offences from entering the system.

Of course, many "self-evident" propositions cannot be empirically tested by a survey of need. For example, it would be impossible for a planning group to test the theoretical assumptions about the relationship between official handling and negative labelling. However, it is possible and most desirable that the originators of a diversion project examine the situation existing in their community empirically as well as at a "gut" level.

The Determination of the Program's Objectives

The next step to be undertaken by the evaluator and diversion practitioner is to move from a broad statement of purpose (that is, the project's over-all goals) to define clearly, concisely and measurably the specific objectives of the project. One of the most common problems in evaluation is the inability of program personnel to accept that specific objectives are essential to guide their activities. Not only are objectives necessary for evaluation purposes they are also crucial to defining the nature of the program and planning the specific activities to be undertaken. Operational definitions are necessary at this point.

> When the identity of the thing being studied is to obviously up for grabs, the over-all statistics showing how it works or whether it is a 'success' aren't likely to be very meaningful to the scientifically oriented researcher.
>
> Cressey and McDermott, 1973: 57

Precise statements of "what should be" also guide the operation of the program. For the evaluator, objectives serve to focus the collection of data as well as to assist in the definitions of "success". Since many diversion projects attempt to make changes in a variety of areas, few programs have such a narrow focus that personnel can say they have "succeeded". Most projects find it easier to speak in terms of "success" in meeting specific objectives than of "success" of the program as a whole (Nejelski and LaPook, 1974: 24).

Levy (quoted in Glaser, 1973: 4-5) has commented that corrections research (and criminal justice research generally) has often failed to distinguish among three types of goals -- humanitarian, managerial and correctional. Humanitarian diversion goals include:

- to reduce the negative effects of criminal justice processing, including impersonal treatment and the labelling effects of formal intervention by the system;
- to reduce discriminatory and arbitrary decision making;
- to increase access to socially desirable goals;
- to keep the child in the community and away from closed institutions; and,
- to provide a humane alternative to system insertion that is both just and helpful to the individual.

Managerial goals tend to focus on efficiency and costs, and are "an attempt to achieve the same, if not better, results at considerably less cost to the public" (Klapmuts, 1974: 109). Goals in this category include:

- to reduce caseloads in justice agencies;
- to reduce the number of court hearings;
- to create a more efficient administration of justice;
- to provide "faster" services to juveniles in need of them; and,
- to reduce the costs of all the above.

The correctional goals of the diversion movement are perhaps the most salient of the three categories. It is hoped that by diverting young people from the justice system their subsequent involvement with the system will be eliminated or reduced. Thus, to reduce secondary deviation and juvenile crime rates are primary goals.

Most evaluations have focussed on assessing the achievement of correctional goals, with managerial goals (particularly reduction in costs and court hearings) also often a component. Difficulty in operationalizing humanitarian goals is one reason why these have not been as frequently examined; research costs of a sophisticated evaluation design may be another.

Another problem area in diversion is the existence of multiple objectives, usually unrated as to their priority in both the short and the long term. Few evaluations have come to grips with the meaning of the multiple goals to the various participants in the agency. The objectives articulated by agency spokespersons may not be shared at all levels of the organization. Lip service may be given to diversion by the project coordinators, who have an eye on the predilections of the funding agencies, while the staff may believe that the provision of services is the primary purpose of the program. Differences between personal and organizational goals are by no means uncommon in crime and delinquency research (Glaser, 1973). The careful evaluator must assess the degree to which objectives are shared by staff, administrators and clientele. Evaluation efforts will be impeded if there is the mistaken assumption that there are no disagreements about "what should be". If differences arise, the reasons and the potential effects on the program's operation should be assessed *. (Even without an evaluator, projects should try to explore these areas with staff.)

In this stage, of most importance, is the establishment of specific unambiguous, and measurable objectives and the priorities in the short and long term. Operational definitions of terminology must be developed..

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* In the view of some authorities on program evaluation, ideally the evaluator should assume a program development role and explore with staff and administrators the disagreements.

The Description of Program Activities

Rutherford and McDermott have made the following three criticisms of the current literature on diversion research.

> Insufficient attention has been given to the provision of good descriptive material as to what takes place when diversion occurs.
>
> Diversion research has tended to focus upon programs rather than the process of diversion. This is hardly surprising given the programmatic orientations of most policy-makers. It has, however, had the consequence of further obscuring the original conception of diversion as a process rather than as a series of new programs.
>
> There has been little sound monitoring or evaluation of the diversion process. In a recent survey of some adult pre-trial intervention programs it was found that the research was often oriented towards political and funding realities.
>
> Rutherford and McDermott, 1976: 6-7

This discontent highlights some of the points to be made in this section on the necessity for monitoring and describing diversion programs.

The third step in evaluation is to design methods to describe the activities in the program in order to "find out what concrete actions are being employed to achieve the ends" (Rieckèn, 1972: 93). The omission in the literature of descriptive material on "concrete actions" has been commented on a number of time in this report. While this may be frustrating for the reviewer, it is far more disruptive to the evaluator who must rely on ambiguous project narratives and insufficient data on the diversion process. First hand observation is invaluable for the evaluator who desires to ascertain the nature of the relationship between the stated goals and the reality of daily program operation.

For example, the exigencies of funding agency requests and requirements have made some programs adjust their activities in a minor way in order to gain (or not to lose) their financing. Klein's comments (1976) on police diversion programming are again applicable; he noted that traditional practices were reclassified as diversion in order to take advantage of available funds earmarked for diversion. Others have reported a program which redefined its status offence caseload "for the record" as "felony-like" in order to meet its new grant requirements. Another agency, to meet requirements to serve a certain number of divertees, was receiving cases from probation intake which were ordinarily closed out at this level; intake workers were sympathetic to the program and were accommodating their dispositions to meet the diversion agency's needs* (Rutherford and McDermott, 1976: 35). If a traditional outcome analysis were performed on these projects, it is possible that these distortions would not be detected. For this reason, the evaluator should spend time in the program observing the diversion process in order to supplement the outcome data.

Program monitoring is valuable for other reasons, such as in aiding the evaluator in distinguishing between impacts and effects.

> Impact is a question of the intensity, duration, and appropriateness of the treatment rather than its consequences. To illustrate: an information or propaganda campaign may succeed in influencing virtually all the people it reaches but may reach only a small proportion of the available audience; a counselling program for preventing juvenile delinquency may be well designed but the case load of counsellors may be so large that they do not have a strong impact on any cases.
>
> Riecken, 1972: 94

This point was made by the Minnesota Centre for Sociological Research (1974) in their discussion of one youth service bureau in an inner city area with a high crime

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* Several comments may be made about these examples. First, they suggest that simply auditing or monitoring what is done is not entirely a fruitless type of evaluation. Secondly, policy makers and decision makers should be aware of the potential effects their requirements may have on the operation of diversion programs. Third, the number of juveniles participating in a program (and similar raw data) does not necessarily represent an agency's "success".

rate. The services rendered by the YSB staff may have been effective as far as the assistance provided to clientele was concerned; however, the number of youth in trouble with the law so far exceeded the resources of the bureau that their impact on youth crime and court referrals was negligible.

"Evaluations of diversion programs based on recorded information will be a time consuming and expensive process and without the brightest prospects for meaningful results" (Cressey and McDermott, 1973: 59). Program personnel resent filling out forms, believing that their "real" duties lay with interaction and treatment. As a consequence, there are inconsistencies, details are omitted and filing and retrieval systems are inadequate.* One solution may be to provide program personnel with feedback on their monitoring activities and reinforcement for accurate and comprehensive recording. Procedures of this kind are also useful for program development, and midcourse corrections in program areas where deficiencies are discovered.

Objections to record keeping may be especially strong in projects which emphasize their non-legal attributes. In daily operations, such projects often deemphasize their similarity to the justice system; to staff, the difference between them and formal agencies must be continually reinforced. Since record keeping is associated with officialdom, it is relegated to a low priority by the agency. The one truly non-legal program reported by Rutherford and McDermott (1976: 22) in their survey of juvenile diversion kept no records at all. The project organizer emphasized its non-bureaucratic procedures and insisted on its independence from legal authorities. It is perhaps unnecessary to point out that programs such as this example pose something of a conundrum for the funding agency administrator who is charged with obtaining accountability and empirical data from programs, and who may also be sympathetic to the anti-bureaucratic attitudes of non-legal programs.

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* Cressey and McDermott (1973: 58) note that some intake diversion programs visited did no paperwork or what was done had gaps. "Although many individual officers said that (a complete) inventory might be very helpful in reviewing their own decisions, they claimed they had no time to invest in the additional work necessary to maintain the inventory. Perhaps such data are unconsciously threatening."

In summary, good descriptive material should be collected from the inception of a diversion program. This information should describe what goes on when diversion occurs, as well as other activities of the project, in order to supplement other data on client outcomes and system impact. The data will assist the evaluator in determining whether the program is on the right track and if, in fact, activities conform to publicly stated objectives. Even when evaluation is not a component of a project, personnel should monitor their activities with a view to program improvement as well as to satisfy the requirements of the funding agency. Finally, program monitoring information helps the policy maker to judge whether a program based on or allied to the legal system "is in fact just a piece of the old juvenile justice apparatus with a few nuts and screws removed" (Cressey and McDermott, 1973: 8).

The Measurement of the Effects of Diversion

The choice of evaluation procedures at this stage depends on the data available (including the amount and type of baseline data and program monitoring information), and on the type of program and its objectives. Research on juvenile diversion schemes may be divided into three categories: client outcome studies, system impact research and process research (Rutherford and McDermott, 1976). Diversion projects which have focussed on humanitarian or correctional goals tend to take a client outcome approach, although other types of projects will include recidivism measures in their analysis. Projects which have basically managerial goals will tend to examine the effects of the program on the structures and procedures of the juvenile justice system. With the exception of Cressey and McDermott's monograph on probation intake diversion, few examinations of the diversion process have been made.

Almost all assessments which have gone beyond a simple descriptive "evaluation" of the program have included some measure of recidivism in their research. The emphasis on recidivism is one consequence of the insistence of many

funding agencies that a major criterion of a program's success is reduced delinquent behaviour among project participants.* On the surface, recidivism seems a relatively easy variable to handle if access is gained to police and court records and there is a reasonable length of time set aside for follow-up. In practice, however, there are difficulties. The operationalization of the concept has varied from project to project. Recidivism has been measured by: subsequent police contacts, arrests by police, referral to court intake and to court, and by self-reported delinquent behaviour. A standard definition of what constitutes recidivism is obviously desirable, if a long term goal of program evaluations is to compare among projects of various types.

Client outcome research may also include analysis of other categories of variables -- the choice of variables is dependent upon the modes of intervention of the program and the hypothesized relationships between program activities and participant effects. The variables include: changes in perceived labelling by others (peers, parents and school); changes in access to desirable social roles; increases in skills; increase in skills; improvements in home, school and free time behaviour; and changes in alienation and self-esteem. Programs which include one or more of these variables have had client change as one aim. With a few exceptions (the Adolescent Diversion Project, for example), these programs have use a psychological or clinical model of delinquency; they have assumed that the "problem" (the reason for the behaviour) resides in the individual rather than in the environment. Counselling (group, individual or crisis intervention) in order to provide impetus for individual change is the major mode of intervention.

The tehcniques that have been employed in outcome evaluations include randomization or matching, with before and after comparisons. Rigorous methodologists such as Daniel Glaser (1973: 83) have emphasized the stringent requirements for a good evaluation. "Evaluation of people-changing methods

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* The use of recidivism as a criterion of success is, of course, also related to labelling theory which supplies the theoretical underpinnings for the hypothesis that diversion programs will lower recidivism rates -- that is, reduce the probability of career deviance (Lundman, 1976).

requires comparison in conjunction with a follow-up period." For evaluation purists, the classic experimental design if essential in order to reduce "the possibility that the observed effects are the consequences of random or irrelevant forces that happen to occur simultaneously with the program" (Riecken, 1972: 96). As Carol Weiss has indicated, the use of randomly assigned control and experimental groups assists in the drawing of valid conclusions.

> For example, somewhere about the age of seventeen or eighteen, young men generally become less likely to commit crimes and more likely to hold jobs -- a phenomenon that has confounded evaluators of delinquency prevention programs whose research lacked control groups. They were tempted to attribute these good results to the program under study. Outside events also have an effect on people. They are exposed to a multiplicity of incluences, from changes in the economy and the availability of jobs to changing emphasis in television shows. The controlled experiment effectively rules out the contention that it was this outside 'history' that brought about the observed changes. It protects against other sources of invalid conclusion-jumping, too.
>
> Weiss, 1972: 62

Unfortunately, there are practical and ethical problems in the implementation of the classic design. First, the multi-focus, broad aim diversion project is not the ideal candidate for controlled experimentation, for its program components and activities may not be sufficiently well defined to draw conclusions about their effects. Second, it has often proved difficult to obtain the cooperation of justice system personnel, who may not understand the importance of random assignment.* Nor have program sponsors asserted their rights to experiments as extensively as they might have (Mullen, n.d.).

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* Several evaluators have found that random assignment has been by-passed by referral sources who believed in the effectiveness of the program (Cressey and McDermott, 1973; Binder et al, 1976). Gibbons and Blake (1976: 417) report that Klein's efforts to randomly assign youths to four experimental conditions were thwarted by officers' assigning certain youths to dispositions regarded as most appropriate for them. The consequence was that the counsel and release group was made up of "less petitionable" offenders, while the petitioned cases "included an unduly large number of more serious offenders".

Another problem is "who should be compared to whom?" Some diversion evaluations have used a sample of children processed "as usual" as controls, while others have compared the experimental group with a sample which were released without further action. The former approach permits the assessment of the benefits of diversion versus normal handling and system insertion; the latter allows comparisons between diversion and screening out of the system, or "no treatment". Information on both comparisons is of interest, but the most useful design would be to compare among three groups: court referrals, diversion with treatment, and counsel and release. Gibbons and Blake (1976) have reported that this approach was attempted recently by Klein in a West Coast study of a police referral program, but this is the sole reference in the literature to such an approach.

Experimental procedures may arouse ethical concerns. The issues of community safety, infringement on the individual's rights, and of denying services or treatment are among the most salient.* A more acceptable design may be one which would randomly assign only juveniles whose situations were ambiguous in terms of the decision to insert into the system -- although this solution would not meet the concerns of critics who argue against involuntary participation.

As many researchers have discovered, quasi-experimental methods, such as comparison group matched as closely as possible to the treatment group, may be less powerful and symmetrical but have "the over-riding virtue of feasibility" (Weiss, 1972: 73). Quasi-experimental methods are found in many evaluations of diversion, especially youth service bureaus (Duxbury, 1973 and Elliott et al, 1976) and one police referral program (Lincoln, 1976). One approach in system impact studies is to compare court referral rates of the project catchment area with a contiguous area similar in demographic and other characteristics. Outcome studies often employ comparison groups either matched on key variables on a one to one basis with each member of the treatment group or choose a group passing through the system soon before or after the experimental intervention.

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* For a discussion of these and other ethical issues common to random assignment, see Binder and his colleagues (1976: 9-13).

In addition to the use of control or comparison groups, pre-post changes are essential in the assessment of a diversion program. Typically, data on delinquent behaviour is collected for a pre-program period, during the program, and during a follow-up period. (If there are control or comparison groups, of course the same data and time periods are used.) Psychological and other tests measuring adjustment in key areas of the juvenile's life may also be administered. The length of the follow-up period varies among studies; some have reported results from a follow-up period as short as two months. A two year follow-up is rare. Unless the diversion project is located in a stable community, problems of attrition arise; juveniles become difficult to locate for interviews or questionnaires. Costs are also considerable and must be weighed against the importance of knowing longer term effects. For this reason, a records' follow-up of delinquency or criminal offences is more common, although obviously not an adequate measure if the program included changes in attitudes, roles, and self-perceptions as objectives.

A few general comments may be made about system impact studies, the second type of research found in diversion. Data available on system impact usually fall into one of three categories: quantitative data on the flow of cases to the courts and adjudications; unsophisticated cost-benefit analyses, and qualitative information (often testimonials) on the reactions of juvenile justice system officials to the project.

Many studies with the objective of diversion have attempted to ascertain the effect of the project on the court referral rates in the community. A number of police and court-based schemes have found that court referrals dropped after program inception. Although as was indicated earlier, a change in attitude or policy, rather than the diversion program per se may have been the cause of the reduction. It is also usually difficult to separate the influence of the diversion program from other influences that may have occurred at the same time.

However, it must be emphasized that a diversion program must collect data on court referrals and hearings (as well as the sources of referral to its program), if it plans to carry out diversion activities. If diversion is to be "effective", it must be shown that the number of court hearings are reduced.

> To illustrate, a court may be handling 50 cases a week before a diversion project. After the project it is still handling 50 cases, and an additional 20 cases are receiving coercive treatment in the diversion program. Instead of a reduction of court cases, the number of children coercively treated merely rises in proportion to the money spent on diversion. In fact, no one is diverted. The subjects of diversion would never have been adjudicated under the previous system -- their cases would have been dismissed.
>
> Nejelski, 1976: 397

In order to avoid the charge of widening the net of juvenile justice, the diversion program must make every effort to separate the diversion effect of the program from other concurrent developments in the community.

No thorough cost-benefit analysis has been applied to juvenile diversion, although several projects report per capita costs and the Sacramento County Project compared program costs to the costs saved by diverting 601 cases from traditional intake handling. Project Crossroads attempted a sophisticated analysis of costs and benefits, but "was undone by a faulty evaluation design that included a non-representative sample of participants and a non-equivalent control group" (Mullen, n.d.: 62-3). The absence of good data on the expense associated with regular processing is one barrier to this approach. The difficulty of assessing the monetary benefits of programs (particularly those with "humanitarian" goals) is another. Before an adequate analysis of costs and benefits can be made, better experimental designs must be undertaken. At present, few conclusions can be made with any confidence; however, short term crisis counselling does appear to be less costly for probation intake units than normal handling. That there would be savings in court costs is not as clear; a reduction in court hearings does not necessarily mean that there would be a noncommitant reduction in judges and ancilliary court staff.

One final point should be made with regard to measurement. Rutherford and McDermott have maintained that the usual procedures and criteria of success may not be as appropriate in diversion as they are in other criminal justice programs. On one hand, they acknowledge that "there is a crucial need to develop a research design that adequately compares doing 'something' with doing 'nothing' and both of these procedures, of course, should be contrasted against the 'success' of formal processing". On the other,

> new measures of success must be developed dealing, for instance, with degrees of humanism, empathy and justice, measures that view constructions of social reality from the perspective of the juveniles as well as from that of those who desire to control his/her actions and attitudes.
>
> Rutherford and McDermott, 1976: 39,40

These and other issues will be discussed in the remainder of this chapter, where potential or hypothesized effects of diversion programs will be discussed.

Potential Effects of Diversion on the Community

There is no research on the effects that the implementation of juvenile diversion may have on the residents of the community in which it is located. In this section, two hypothetical effects are briefly outlined.

There is a prevailing view among the public that "something ought to be done" about events defined as illegal and about behaviour that incurs disapproval.* To the public in general, "action is a necessity, treatment is not -- not necessarily" (National Advisory Commission, 1973b: 76). In Canada, there currently appears to be an increase in calls for punitive handling of lawbreakers, or so the media leads one to believe. Whether or not juvenile diversion would fall under the "soft on criminals" criticism is not known. These programs may encounter less hostility than their adult counterparts, because the individuals involved are "children".

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* See Hindelang, 1974 and Louis Harris and Associates, 1968.

This may be the case particularly if the offences committed by program participants are presented as victimless, as socially generated, or as the product of the offender's psychological disturbance. If diversion were to be extended to instances of law violations, in the grey areas between clearly minor and clearly major offences, then it is more likely that the programs would evoke negative community reaction.

With the exception of youth service bureaus and some community programs, few projects report their efforts to win public acceptance of their activities; those that do have apparently tried to gain support from community leaders by conferences and public relations campaigns, as well as by using community volunteers. Non-legal diversion projects, organized by local residents and para-professionals, have relied largely on the latter method of gaining support.

One reason why few programs have commented on problems of community acceptance may be that so many projects are presented as providers of services to youth in trouble, not necessarily as a means by which the full force of juvenile justice processing is avoided. In larger urban areas, there may be little effort to publicize court and police schemes outside of the criminal justice community; in any case, legal programs would be less likely to be perceived by the public as a threat to safety since they are still under the umbrella of the justice system. (The proliferation of within-system projects may be because diversion sponsors believe that there are fewer risks in terms of negative public reaction and publicity.)

The second potential effect of juvenile diversion involves the relationship between the public's perception of the project and their reporting of juvenile crime. Would more or fewer crimes be reported as a consequence of diversion? It is possible that more troublemaking behaviour will be reported if the public is aware that "help" or treatment might be provided the youth. The creation of alternative mechanisms to deal with delinquent behaviour may reduce the impetus for the community to deal with its own problems on an informal basis. The juvenile

justice net -- that is, the number of children and young adults coming into contact with a formal system of sanctions and/or treatment -- may be widened rather than reduced if there is widespread public acceptance of diversion programming as an alternative to formal court handling.

Potential Effects on the Juvenile Justice and Social Service Systems

System effects may be divided into two categories: organizational changes and changes in the nature of the caseflow. New organizations or even new units in traditional agencies have the potential to affect the structure and operation of the agencies with whom they interact. Unfortunately, there is at present little understanding of the organizational realities of the professionals in the criminal justice and adjoining social service systems.

The creation of legal diversion and alternative legal structures may widen the decision making powers of administrators in both the justice and the service bureaucracies. As was discussed in Chapter II, it is possible that mechanisms for review of decisions will be created and/or legal services will be provided to offset the possibility of abuses. However, these procedures may cause the growth of a cumbersome bureaucracy which could subvert one or more of the original purposes of diversion.

Furthermore, the juvenile justice system in the United States has responded to pressures by creating its own mechanisms for diversion. The growth of in-system, legal programs may be a self-interested attempt by justice system personnel to protect their jobs. There may also be an entrenched belief that professional services rendered by experienced correctional workers can only be obtained in the system, or at least under its close supervision. Whatever the reasons, legal diversion may increase the size of the formal system. Screening

agencies also expand the system, because an additional layer of decision makers is created within -- or closely allied to -- the system. The apparent unwillingness of justice system officials to divest themselves of some of their caseload may also lead to the increased state influence over non-legal or community-based diversion programs, so that they move towards the para-legal model.

The nature of the case flow through the juvenile justice and social service systems may also be altered. There may be an increase in the number of juveniles under the authority of the system, as a result of the widespread belief in the diversion solution. Lundman (1976: 436) has maintained that diversion programs "promise to temper harshness and be more effective" than the present routes through the system. Those who are in charge of the diversion decision may thus "be less reticent to take formal action" -- that is to refer to a diversion program, rather than to screen out of the system entirely. As Harlow affirmed several years ago,

> Not all deviant behaviour requires treatment, whether in or out of the criminal justice system, yet the mere presence of a functioning mechanism of community services, with none of the obvious drawbacks of the penal system, is likely to result in the 'treatment' of many more individuals by official agencies.
>
> Harlow, 1970: 170

The decision maker may be tempted to refer more and more less seriously delinquent children because, if the project is seemingly effective with one kind of offender, why not with all who appear in danger of becoming delinquent?

Social agencies faced with increasing caseloads of diverted children may find their resources strained and over-loaded. Cases may be returned to them which previously they had handed on to the courts and corrections for services. As Emmerson (1974: 628) suggested, community agencies resort to the justice system because "the court's capacity to apply coercive sanctions provides a necessary and even essential service". With the delinquency route to correctional services removed, agencies may turn to child welfare legislation in order to obtain access to government run facilities and additional sanctions. While no longer adjudicated delinquent, juveniles may be processed in much the same way, but in the child welfare "stream".

The two systems may also be altered by the kind of juveniles entering diversion, and hence those remaining in the system. Skeptics in the United States have noted the need for universalistic selection criteria in diversion; they believe that a continuation of the current discretion would only result in discrimination against minorities and lower socio-economic groups. Even if universalistic criteria for diversion were created, other commentators have maintained that there may still be differential selection of diversion candidates. Many programs have been established for the first or minor offender, whose delinquent behaviour does not appear too deeply rooted, and who can be "saved" from secondary deviance.

> The tendency for the administrator in the juvenile justice system is to absolve (a white middle class youth with no record) through diversion but to deny the ghetto resident (with a record) the benefits of diversion because he is already labelled and, therefore, not the proper subject of administrative grace.
>
> Nejelski, 1976: 397

Discrimination may arise in another way:

> It is quite possible that non-whites resolve their own status offence problems to a greater degree and non-white youths come into contact with the system for generally more serious categories of offences. It is at this level that institutionalized racism may operate to deprive such youths of a chance at diversion.
>
> Rutherford and McDermott, 1976: 41

Research to explore both propositions is required before condemnation of universalistic criteria can be made.

Assuming that large scale diversion is introduced, there is a final effect on the type of clientele entering the system. By removing the minor offences, and "beyond control" type of offender, the resultant caseloads will be made up of a different group -- the more committed offender.

> Law-breaking juveniles are likely to be processed along the lines of the adult model and hence will receive more due process and less humanistic considerations -- after

> all, are they not merely small criminals" Juveniles who have been called 'predelinquents', because they can't get along at home or at school, will be diverted.
>
> Cressey and McDermott, 1973: 61

Probation and other correctional services may have to adjust their methods of operation in order to deal with a different type of caseload.

Potential Effects of Diversion on Law Enforcement

It has been widely feared that the creation of diversion programs will affect the exercise of police discretion in a negative direction. That is, it has been hypothesized that, if favourable attitudes were generated by the program,* police would respond by referring children who earlier might have been simply counselled and released back to the street. Those who argue for this response have suggested several reasons. Police faced with the options of a court referral, diversion, and release may choose diversion, a choice which is both less "severe" than sending the child to court and less "risky" than outright discharge. Thus, the policeman's use of the extended formal system might be increased, and more young persons come under the influence of institutions of social control -- as, it must be acknowledged, are most diversion programs. Moreover, "the scheme may be seen as a way of getting 'expert' help to some clients which will save the harassed patrolman from the trouble of finding the help for himself" (Cameron, 1974: 9).

John Seymour has provided an example of the third reason why the diversion option might generate more cases. In a streetwork project, one aim of which was to divert children from court

> The local police department cooperated and referred a large number of children to the new agency. The effect of this was to free police energy, and the police had more time to scrutinize marginal cases, many of whom would previously have been dealt with by station adjustment. The result was that they referred more of these cases to court after the inception of the new program.
>
> Seymour, 1971b: 16

* This may be a large "if" for community programs. Possibilities presented here are more likely in police referral schemes and some para-legal programs in which the police have confidence.

In court-based models, where the decision to divert is not made by the policeman, but by another justice system official (an intake worker or a screening board), a similar situation could arise. Faced with a situation in which another component of the justice system can over-rule police decisions, by diverting youth police believe should be referred to court, the police may react by refusing to handle juveniles informally and send all but the most innocuous offenders to the next layer of decision makers. Officers may resent the abrogation of their right to be the final arbiter of court referrals, and retaliate by refusing to exercise any discretion.

This situation may also have negative consequences for police morale. The police may believe their professional competence to make decisions threatened, particularly since the diversion unit is unlikely to have the same prestige and authroity as the juvenile court. It is possible, too, that the relations between the police and the diversion program may become strained, with the result that police "tailor" the information presented on a case in order to influence the decisions of the diversion agency (Cameron, 1974).

Finally, police may use the diversion unit as an additional sanction for youth against whom a court case cannot be made. While the diverting agency may dismiss the child for lack of evidence, the police have still moved the juvenile further into the justice system.

In summary, there may be other options which would accomplish ends similar to diversion's goals, which could be less disruptive to law enforcement agencies and more beneficial to their clientele.

> Why not simply work directly at the police level and avoid the proliferation of bureaucrats and decision-stages that formal diversion requires. Why not put our efforts into police training programs, into changing the law to force the police to try alternatives before sending a man to court, into fostering greater cooperation between the police and other social services, and indeed into the provision of adequate social services on a 24-hour basis.
>
> Cameron, 1974: 16

Potential Effects of Diversion upon the Juvenile

> The faddist nature of diversion has produced a proliferation of diversion units and programs without generating a close look whether the juvenile subject to all this attention is receiving a better deal.
>
> Cressey and McDermott, 1973: 58-59

The object of all the commentary, the juvenile himself, has rarely been consulted about what he thinks of being diverted. The onlooker may perceive that the effects of the juvenile justice stream will be different, but is this in fact the case? Do juveniles perceive the difference when they are moved from one type of processing to the other?

> So far as we know, no one has shown that the juvenile offender and his family perceive their handling as materially different under the auspices of a diversion unit than under a more traditional juvenile justice agency. The question is rarely formulated, let alone asked. It is probable that the juvenile does not discriminate as readily as the intake officer between such realities as counselling, informal probation, and coercion. It seems plausible that if an act of diversion were truly successful in an individual case, the subject of the act would perceive that something positive had entered his life and something negative had gone away.
>
> Cressey and McDermott, 1973: 59-60

While this quotation refers directly to court-based, in-system diversion models, the comments are equally true of diversion programs not so closely identified with the system.

Five areas of concern have been identified in the literature:

- Does diversion bring a reduction in delinquent behaviour or official delinquency?

- Does the diverted youth perceive any coercion present at point of referral and, if so, is involuntary participation resented or act as an impediment to the process of assistance?

- Is there any differency among diversion, court referral and release to the community in terms of labelling and stigmatization?
- What benefits does the juvenile see in his participation in a diversion program in terms of program content?
- What effects, if any, does diversion have on the youth's subsequent contacts with the justice system?

Researchers have not yet addressed these questions in a satisfactory manner; however, the remainder of this section will give an over-view of the evidence obtained to date.

As might be expected, the evidence on the impact of diversion on delinquent behaviour which comes to the attention of the authorities is mixed and varies from program to program. On the whole, the evidence suggests that slight decreases in officially recognized delinquency may occur during and immediately after program participation. The one study which used self-reported delinquency as an indicator of recidivism found that in one program delinquency decreased during program involvement and in another, there was a "tremendous increase" (Elliott, Blanchard and Dunford, 1976: 23). Longer term effects have been less well examined and suffer, as does all discussion of recidivism, from the problems of sample attrition, the previously noted variations in measuring recidivism, and problems in the choice of control and comparison groups. At present, there is no observable pattern in the findings. Some programs (e.g., the Sacramento County Diversion Project and the Adolescent Diversion Project in Illinois) have found a reduction in recidivism at twelve months, when program participants were compared with controls. On the other hand, the above-mentioned study by Elliott and his colleagues (1976), which compared youth service bureau participants with a matched group of probation cases found no difference in self-reported delinquency after one year. Lincoln's analysis of a police referral diversion plan (1976), using a small sample of referred offenders matched with non-referred youth, found that the referred group had a slightly higher number of subsequent offences in police

records. Binder, Monahan and Newkirk (1976) compared their treatment group with a control group of youths who were released to the community and found a lower arrest rate in the former group.

As a consequence of these conflicting and ambiguous results (often it must be remembered from research that is methodologically flawed), it is not yet possible to make generalizations about the long term effects of diversion participation, as compared to system insertion or to release with no further action.

Current liberal thinking proposes that treatment or other interventions should be a voluntary process; it is claimed that the failure of correctional rehabilitative programs has been a consequence of their involuntary nature. These critics maintain that diversion can never reach its humanitarian goals if there is coercion to enter and complete a program. However, whether juveniles even perceive the coercive element present in many programs -- and what effects arise from the imposition of intervention -- are areas that have not been researched. Qualitative data on attitudes and opinions about the referral decision and the problems associated with involuntary participation should be collected in all diversion programs.

The third area of concern is the labelling issue. A review of research on labelling in Chapter II indicated that many of the assumptions of this theoretical outlook have not been borne out empirically, and that others have been difficult to operationalize in a satisfactory manner. Similar problems arise with respect to labelling and diversion programming. Only one study has explored the perceptions of diverted youths with regard to labelling by others.

The Delbert Elliott study of two youth service bureaus found no difference between the clientele of the diversion programs and probationers in perceived

labelling by parents, peers and teachers at four months after program entry.* There was a general decline in perceived labelling for all groups -- that is, youth processed officially and unofficially experienced less labelling (Elliott, Blanchard and Dunford, 1976: 24). After twelve months, when most members of the treatment and comparison groups had completed their respective programs, more negative labelling was observed in the probationers. The long term effects of diversion on perceived labelling by significant others and on self-esteem measures were largely negligible. It is noteworthy that both bureaus evaluated explicitly attempted to avoid stigmatizing the youth they served.

This research clearly lends little support to the assumptions about reduced labelling effects made by diversion supporters. Obviously, the complex issues of stigmatization and labelling are not resolved. Assuming that there is some validity in the propositions of labelling theory, if diversion at the community level is as equally stigmatizing as formal handling, then it would seem probably that legal diversion programs will fare little better. When youth are placed in (or even choose to go to) programs that are publicly known to be for alleged delinquents it may be that some stigmatization is unavoidable. In addition, there is the possibility that even referral to a community treatment program or a helping professional may stigmatize: the label of "delinquent" may be exchanged for the label of "sick" (Klein, 1973).

The fourth area of concern -- perceived and actual benefits received from diversion program content -- is also little researched. Testimonials and questionnaire responses have occasionally been used as evidence for the youth's satisfaction with the assistance received in the program. Youth service bureaus which offered concrete services to youth in trouble have been generally well received by their clientele but, as has been indicated, the majority of their participants are not in

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* The difficulties in developing scales that adequately tap labelling by others are considerable. The semantic differential was employed in this research; children were asked to assess how they thought their friends, parents and teachers would rate them on six continuums, such as polite-rude, obedient-disobedient, conforming-deviant.

direct jeopardy of justice system processing. Again, it is the absence of descriptive or process information which makes conclusions on the type and quality of assistance impossible. Refusals to enter programs and drop out rates would be two indicators of "satisfaction", but even these variables may not be reported in program narratives. One area to be explored is the effect of relatively short term (five or six weekly sessions, for example) interventions proposed by many programs. Can long lasting changes be expected from such brief interaction? Another important area, especially in Canada, is the effect on the participants of restitution and offender-victim mediation programs.

The final area of concern is the effect of program participation on the subsequent justice system contacts of the diverted youth. It is possible that even more restrictive dispositions will be meted out on children who have been earlier diverted. Law enforcement may react negatively to a youth that has already been "given a break" once. Another contact, even a minor one, may bring a strong sanction because the child showed that she/he was not capable of benefiting from the earlier decision. The decision maker may perceive that the subsequent offence is an indication that the diversion did not "work", and that the only remaining option is a court referral. If the juvenile is referred to court, then the participation in diversion may be introduced at the disposition stage; will this too have the effect of labelling the youth as a "loser" who has exhibited that she/he "needs" more severe sanctions this time around?

In conclusion, this section has explored the possible consequences (the majority of them negative) of institutionalizing diversion in juvenile justice. The lack of empirical, or even qualitative, data on the areas discussed in these sections must be repeated. Before diversion can be assessed fully -- in both a system and a client change context -- more research must be initiated. Longitudinal studies which combine interviews and a records follow-up are essential before the ramifications of diversion can be predicted on a basis other than guesswork; guesses, even those based on a review of the literature, are not a substitute for research.

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CHAPTER V: IMPLICATIONS FOR THE JUVENILE JUSTICE SYSTEM OF CANADA

Introduction

When the juvenile court was established at the beginning of the twentieth century, its purpose was to resolve the problems of law-breaking youth in a way that would avoid the full force of the criminal law. It was set up to act in the place of a parent and in the best interests of the child. Now fears have been expressed that the courts and its surrounding agencies have not fulfilled their promise and that alternative methods of handling delinquent young people should be sought out.

At no point in its history did the juvenile court deal with all, or even most, of the offences committed by youth. The community and its formal and informal agencies of social control have always had a powerful effect on the work-loads of the court through their efforts to settle problems without recourse to the legal system. However, it is increasingly being suggested that the use of informal mechanisms has declined, that too many young people are becoming entangled in the juvenile justice system, and that intervention by the juvenile court be limited to the youth who create a threat to public safety. Diversion has been put forward as a possible solution to overburdened courts and to the possible harmful consequences of official processing. Chapter V will outline the possible implications of the literature on pre-court screening and diversion programming for police and research in Canada.

Questions for Policy Makers

In Canada, diversion is in the early stages of its development and many decisions as to its course remain to be made. This section will outline the more prominent policy-related questions that have been raised by the review of the literature. These issues should be carefully examined by policy makers and diversion administrators before program implementation.

The underlying rationales for considering the diversion alternative should be investigated. What problems are there in the structure and organization of juvenile justice in this country that prompt serious consideration of diversion? Are there fears that too many young people are appearing in court and being adjudicated delinquent on trivial charges? Are there concerns that contact with the justice system increases rather than reduces the criminal behaviour of the young? Or, is it believed that many juveniles are in need of early intervention services that they are not now receiving either within or without the system? Is diversion thus seen as a solution because it will redirect misbehaving youth towards agencies which are best equipped to deal with these problems? Is diversion being proposed because it is less expensive, more efficient and will reduce strains on the workloads of the courts and correctional systems? Is system impact rather than client change the predominant effect being looked for?

Arguments for diversion are numerous and have been based on the many faults seen to exist in the present methods of handling the behaviour of young people. Traditional diversion has been said to be overly informal and to lack consistency of application. Fears that the system discriminates against some categories of young persons (women, minorities, members of lower socio-economic groups) have long been current. Many children are said to become enmeshed in the system for minor offences or for behaviour that is socially unacceptable, rather than for actions that are clearly dangerous to themselves or to society. The court system is also said to impinge unduly into the life of its clientele. Contamination, not rehabilitation, is thought to be the major consequence of contact with the system.

The above arguments have been prominent in the United States. In Canada there appear to be slightly different rationales. In this country, there has been a strong emphasis on removing "socially problematic" behaviour from the purview of the justice system and encouraging the community to resolve behaviour

problems without resorting to the legal system. (Law Reform Commission of Canada, 1975; Glinfort, n.d.) These alternative means, based in the community, are said to benefit society as a whole, the victim, and the alleged offender. In the diversion of young persons, the basis for the choice of an alternative (for example, a screening agency which refers out-of-system to community agencies) should be precisely spelled out.*

Criminal justice in Canada does not need another "useless" label whose meaning is so varied that almost any type of program can be subsumed under it.** Definitions are essential in guiding the setting of goals and objectives and in obtaining uniformity of application of the principles involved -- if not uniformity in the substance of the approaches. For these reasons, efforts to define the precise meaning of diversion in the juvenile field should be made, on a national, regional and a program level. Does diversion necessarily imply that there will be new facilities established and new financing for them? Is diversion to be accomplished within or without the juvenile justice system? Is diversion to mean minimization of penetration or will it be defined more strictly? If an alternative legal structure (such as screening agency) is to be created, what is the intended relationship between the agency and the police, the juvenile court, and its ancilliary services? Will there be any in-system treatment facilities for diversion? Is the youth to be offered diversion unconditionally, or will there remain a threat of court referral until successful program completion? What degree of coercion will exist? Who will make the decision to refer to the diversion or screening agency? What controls will be introduced to ensure that only those directly liable for a court appearance become eligible for diversion?

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* See Young Persons in Conflict with the Law (Solicitor General of Canada, 1975) for a preliminary attempt to clarify the underlying rationale for diversion.

** Nimmer (1974: 5) has written that "when such diversity is possible under that label (i.e., diversion), the label is useless".

Once an operational definition has been reached, then the goals and objectives of the chosen meaning of the concept may be approached. Both the over-all goals and the precise objectives should be specified and their relative priorities established before implementation. It has been emphasized throughout this paper that clear and measurable objectives have rarely been found in diversion programming. In Canada, where the movement is only beginning, efforts to avoid the confusion of the American scene should be made. Haphazard development should not occur if the concept has been adequately operationalized and priorities set among the various objectives.

Before establishing formal schemes, attention should also be paid to decisions in the area of diversion process and diversion programs. In the process area, decisions will be required on the following issues: the over-all comprehensiveness of diversion, the criteria for selection of individual cases, the visibility of diversion decisions and the mechanisms for accountability. Each of these will be briefly addressed.

Policy makers must clarify what proportion and which cases of the large pool of alleged delinquents require official response in the form of court referral, and which can be diverted out of the system. Schur (1973) has recommended that more attention be paid to the "normative issue" -- that is, which actions or behaviour should be defined as offences and how their seriousness should be assessed. Because some behaviour is regarded as serious by large segments as society, some response is required -- either in the form of remedial programs or legal sanctions (Clarke, 1974). Others have suggested that the criteria for intervention should be based on the degree of threat to public safety exhibited by the youth.

The intent of the recommendations of the Solicitor General's Committee (1975) appeared to be that all offenders who could be dealt with by alternative means would be eligible for referral to the screening agency. The method required to achieve this is unclear. No matter what model finally evolves, care must be

taken to define the scope of the program -- particularly if significant reductions in court workloads are to be achieved. Most United States programs have been restricted to noncriminal or marginally criminal behaviour and have minimally affected workloads (Klapmuts, 1974). The American experience indicates that comprehensiveness is an issue that must be addressed early in the planning stage. If diversion is to have an appreciable impact on the operation of the system, it may be necessary to widen the net of eligibles to include more than the most minor offenders. How comprehensive is juvenile diversion to be in the various regions of this country?

The criteria for selection of individual cases should also be explored. Again, the experience in the United States has been that broad discretion has remained in the new diversion because most programs have lacked explicit guidelines. One Canadian proposal recommends that clearly identifiable target groups be chosen so that diversion referrals could be routinely made, thus eliminating discretion.* For example, one target group could be "the youthful vandal between the ages of sixteen and eighteen causing property damage of less than one hundred dollars" (Glinfort, n.d.: 14). What would be the reaction of justice system personnel to this proposal?** Might it be considered too piecemeal an approach? Would the elimination of social and personal factors be acceptable? In delinquency there is a well entrenched emphasis on the importance of "attitude" and psycho-social history. Can these ever be eliminated as criteria for diversion? Is it desirable to eliminate them? In general, what guidelines are going to be prepared for the selection of diversion candidates? How will they differ across the country?

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* The Solicitor General's Committee (1975) recommended that the decision to divert be made by the Crown; although they did include some broad criteria to be considered by the screening agency in arriving at a diversion agreement, no criteria for referral to the agency were mentioned.

** One statutory effort to make shoplifting of less than $10 a divertible offence led officials to change the real or wholesale value of a $40 item to only $19 if the offender was a 'typical' shoplifter (who merits diversion because she meets the preconceptions of officials), while less favoured offenders were sometimes prosecuted for goods prices $21 in the store" (Klapmuts, 1974: 131).

It is improbable that selection guidelines could be established which would abolish charges of bias entirely. As was indicated earlier, the most feasible solution may be to provide mechanisms for the review of decisions; reasons for decisions could be placed in writing and procedures set up for regular assessment by the courts or an ombudsman (Nejelski, 1976). In Canada, what mechanisms will be established to monitor decisions that under the present system have low visibility?

In the area of diversion programs, there are a number of points to be assessed by the policy maker: the over-reach of treatment and protection of individual rights, the nature or substance of the program to be provided, accountability and the resources necessary for acceptable services, and the role of the community.

The phrase "over-reach of treatment" has been used to describe the potential danger in implementing diversion which obliges the diverted youth to enroll in "treatment" (whether family counselling, skills teaching or some form of crisis intervention). Since the late 1960's, there has been a shift away from regarding delinquency as a major "social problem" which requires massive financial assistance to improve social conditions believed to "breed" criminal behaviour. Delinquency is regarded now by some as either a "non-problem" or one which is more likely to be resolved by restraining public policy, by narrowing legislation, or by diversion (Clarke, 1974; see also Schur, 1973 and Platt, 1969). The essence of this approach is that official over-reaction to delinquency should be avoided. As one aspect of this concern, it has been recommended that diversion be defined and operationalized in a way that reduces the possibility of the over-reach of treatment.

> Where the state coerces children into programs which usually restrict their liberty and attempt to modify their behaviour, important questions are raised about the fairness of the procedures and the substance of the mandated program.
>
> Nejelski, 1976: 405

This statement should remind diversion proponents that diversion programs, as well as perhaps doing something for the diverted youth, also do something to them. Much of diversion programming is perpetuating the treatment model, which has individual change as a paramount goal, at a time when the effectiveness of people changing methods is being questioned. Because the substance of diversion programs has yet to be shown to be beneficial, the decision maker should be aware that restrictions on liberty may be imposed in order to achieve an end whose effectiveness is uncertain. One rationale for juvenile court intervention has been that the restrictions involved are necessary in order to provide the needed individual treatment. Similar arguments are being made in diversion but often without the protections found in the court setting. If there are grave doubts about the possibility of achievement in diversion interventions, is it then "unethical to conduct such programs"? (Clarke, 1974: 396)

There is danger that, in their enthusiasm to assist young people, diversion reformers may create a situation in which more juveniles will be the objects of state intervention, intervention that resembles traditional, largely ineffective approaches. By utilizing the treatment model, there may still be "official over-reaction" to normal adolescent problems, with a consequence that the juvenile justice net will be widened.

Critics have said that the "burden of proof" (Klein, 1973) should be on the system to shown that state intervention into the lives of young people is beneficial, because their liberty is being restricted whether it is in "small doses (probation)" or "large doses (training school)" (Fox, 1974). The same proviso should also be applied to diversion for these programs also intervene in the lives of their clientele.

It may be that some decisions in this area (the imposition of treatment or assistance whose effectiveness is unknown on a less-than-willing-clientele) are policy decisions for which research can only provide the parameters. Does the decision maker accept the dictum that public policy should be restrained in its

handling of delinquent and criminal behaviour? If conflict arises between treatment imperatives and individual rights, what will be the over-riding value: protecting youth from infringement on their rights, or providing treatment to those perceived in need of help? Policy decisions such as these are made in a context wider than that provided by empirical research. These decisions, it must be stressed, should always be related to clearly articulated objectives of the system.

Equally as important are questions involving the substance of the diversion or treatment programs. Will innovative and less traditional agencies be utilized by the diversion program, or will there remain an emphasis on conventional case-work? How will the diverted youth be "matched" with the most appropriate intervention -- counselling, other services, restitution or mediation? Who monitors progress and makes the decision that the period of intervention should be terminated? In what ways can it be ensured that the juvenile is not unduly imposed upon by treatment requirements? Will the records of the treatment agency be confidential? What methods would be employed to ensure that agencies perform in an accountable manner? Would funding be linked to agency performance, as has been the practice in some U.S. programs?

Another program issue is the amount of resources required by the diverting agency and whatever community services are utilized. Advocates of diversion have often predicted that diversion would be less expensive than traditional processing through the courts, but will this be the case? It is possible that money will be transferred from one area (courts and corrections) to another (social and community agencies) with little or no reduction in cost to society. Is there awareness of this possibility?

Undoubtedly, considerable redirection of funds will be necessary if community social agencies are to receive significant increases in their caseloads. In general, where will the financing come for agencies which will be used as referral resources by diversion? Concern has been expressed whether there will

be adequate community services available in some regions. How will the social services of these communities be augmented? Is it not likely that there will be regional disparities in the quality and availability of services for a long time in the future? How much disparity is acceptable (to the public, to the government, to the justice system administrator)?

Canadian commentaries on diversion have generally assumed that diversion programs should be "community-based" so that the community can be re-educated to deal with its own behaviour problems. It is stated that socially problematic behaviour should not necessitate justice system intervention. Rather, community residents should resolve conflicts of a minor nature through mediation and negotiation. This "return to the community" is an outgrowth of several movements in the middle 1960's, including the community mental health movement. In efforts to involve the community in social problems, it has often been found that resistance and apathy have overshadowed more positive responses. Community correctional workers have found that few neighbourhoods are willing to have halfway houses and pre-release centres in their midst. Mental health personnel have found that the relocation of recently released psychiatric patients in the community has been vigorously opposed by residents. Will there be any efforts made to block or counter-act these reactions?

In the United States, it has been said that the "mainstream views deviation narrowly as the evidence of pathology requiring some form of control, whether punitive or rehabilitative" (National Symposium on Law Enforcement Science and Technology, 1973: 42). One might conjecture to what extent juvenile diversion will be regarded as sufficient "control" over deviant behaviour. Reactions would partially depend on the manner in which the programs are presented in the community. If it were introduced as an alternative for the "maladjusted" young person, then negative public response could be reduced, but the public stigma associated with diversion heightened. What methods, if any, will be employed to avert stigmatization of the diversion program clientele"

In addition to policy decisions on wide areas of diversion programming, there are a number of research questions that should be considered. The next section of this paper presents a series of researchable topics that have arisen from the review of the literature on pre-judicial screening and diversion. In many ways, they flow out of this section's suggested policy decisions. Once basic decisions on the future of diversion in Canada have been made, research questions on programs may be formulated more precisely.

Limitations of the Existing Research

The most obvious implication of the research and commentary presented in the main body of this review is that research on the Canadian situation is essential. It has not been by choice that most of the research discussed has originated in the United States; the reliance on American data has been by default. Early in the search of the literature, it was realized that research on juvenile justice topics has not flourished in this country.

It is not known to what extent United States research can be applied to the situation in Canada. The structure of the system differs considerably from that found in the United States. Canadian legislation is not the same as American, although there may be common characteristics -- ambiguity, for example. There are manifest differences in the magnitude of the juvenile crime problem. Diversion, while growing in this country, is not nearly as widespread as it is in the United States. In Canada, there is the additional dilemma provided by the separation of powers between the federal and provincial governments, and the resultant variation among the provinces, each of which is capable of choosing its own path towards the common objective of "juvenile justice".

In addition to the problem of generalizing to Canada, firm conclusions have proved impossible because of the absence of adequate research on almost every

topic covered by this review. It is equally as risky to draw conclusions about the American situation as it is to generalize to this country. As a consequence, recommendations on the logical next steps in the development of juvenile diversion programs become tenuous indeed. To quote Nejelski and LaPooke (1974), "how can you tell where you're going, when you don't know where you are?" How can statements about the direction of juvenile diversion be made when information on the present modes of operation, the currently operative ways in which discretion and screening are carried on, is so seriously deficient?

> Policy makers will not be able to restructure the confusing patchwork of sub-systems and institutions nationally until they are equipped with accurate information about how the juvenile justice system is currently functioning.
>
> Nejelski and LaPook, 1974: 18

Questions for Research

In the following inventory of research issues, questions have been listed which are believed to be important in understanding how screening operates now and how diversion systems may operate in the future. This list, while by no means all inclusive, does contain items which have recurred in the literature and which have emerged from a scrutiny of the available research material.

It should be emphasized that research and evaluation must be conducted in a number of areas throughout Canada. If research is sponsored on one or more of these topics, it is important either to sample different provinces (and different types of communities), or else to be keenly aware of the limitations of any research that uses only one location as its base.

The methods employed for research are, of course, dependent upon the nature of the questions being explored. Generally speaking, the nature of the problems in criminal justice research demands that multiple techniques be used. For example, screening or diversion rates by police cannot be understood completely

until the researcher ascertains the meaning of the categories employed by the police, and the ways in which the working policeman constructs the data. Thus, data collection in this area should go beyond the utilization of police records and include field interviews and observations of procedures. For several research questions, public opinion surveys are the most appropriate means of obtaining answers; this would be especially true in questions related to the community's attitudes towards delinquent behaviour and its response to diversion.

Before there are important changes in the Canadian juvenile justice system, there should be research performed to find out where we are at the moment. If baseline data are obtained it is then possible to compare what happens now with what occurs after the implementation of diversion. Furthermore, it would be preferable, for purposes of the evaluation, to implement any changes (including diversion) area by area. In this way it would be easier to draw conclusions about the effects of diversion.

In the evaluation of diversion programs, the research must be built into the project from its inception and it must be a long term commitment. Follow-ups of juveniles are critical if it is to be discovered which programs are effective in the long run, not only after six months or one year. The research should be organized in such a way that it is possible to find out when a program ceases to be the optimal program. Diversion projects should be monitored throughout their existence, not just for the first few years. Simple monitoring -- that is, keeping track of such information as how many enter, how long they stay, and what is done to and for them -- should be an integral part of every diversion scheme, even if it is decided that more sophisticated comparative evaluations are financially or politically infeasible.

Experienced social scientists, knowledgeable about program evaluation and its information needs, should be consulted through the planning process, not just after a program has begun. Record keeping systems will have to be developed which are effective in evaluating the effects of the diversion programs and which are still keeping with the rights of the juvenile and the constraints of the system (e.g., time and manpower). It may be necessary to experiment with a variety of schemes until a workable, efficient method of collecting data can be found.

In the United States, evaluations have often been on a small scale, and have rarely gathered baseline data or information on process elements (Gibbons and Blake, 1976). It is simply not known how "effective" diversion is. Even basic data on the number of juvenile diversion projects, their location, and the number of participants are not available. The literature gives the impression that the number of diverted juveniles is not an impressively large figure. One of the most talked about innovations in the field of juvenile justice, diversion is among the least researched.

Perhaps one logical first step would be to construct on a continuing basis an inventory of existing juvenile diversion programs in Canada. An inventory, similar to the one performed by the Solicitor General of Canada in the summer of 1976 (Arora and Maxim, 1976), could at least provide a picture of what is occurring in juvenile diversion at the present time. If at all possible, descriptive material should be supplemented by empirical information on caseloads and activities of the programs.

There is one final policy decision that has not been sufficiently emphasized. To what extent will there be extensive evaluation, research or monitoring in the areas of screening and diversion of juveniles? Will there be efforts to join with appropriate provincial authorities to fund these areas? On what scale? By whom will the research be conducted? To what extent will agreement of the provinces be obtained on issues in which decisions are necessary before research on juvenile

diversion can be initiated? What research role can the federal government play in a situation where the provinces have jurisdiction over court administration and the provision of social services? Is it realistic to anticipate that agreement on fundamentals can be achieved? While Ministry officials are doubtless more cognizant of these problems than is the author, these and other questions arise naturally from a consideration of the feasibility of implementing many of the research studies suggested in this chapter.

Traditional Pre-Court Screening Agencies

Knowledge of the ways in which decisions are made about juvenile misconduct and lawbreaking is at a stage that Gold (1974) has termed "pre-scientific". However, it is probably possible to choose from among the variables that have recurred in research, carried out in different periods and locations and with different methods, which factors seem more crucial than others in decision making by the community and the other informal and formal agencies of social control.

The community's "organization" in terms of its "stability" or "integration" has been suggested as being influential in decisions to intervene officially in cases of juvenile misconduct. In particular, the attitudes of the victim or complainant have been consistently shown to be critical in decisions to move the juvenile to or away from the justice system. Obviously, the juvenile's characteristics (both real and perceived) are important: his age, offence type, family status, and prior delinquent behaviour. So, too, are characteristics of the decision maker, the nature of the organization for which he works, and his perceptions of the consequences of the various alternatives open to him. Unfortunately, there is little precise evidence on the ways in which these variables affect the exercise of discretion.

More specifically, the following questions are among those which could be researched in the areas of community, school, and police discretion.

What factors determine whether the police are called in when a juvenile is apparently committing an act that could be defined as illegal? Variables that might be included are: characteristics of the decision maker, of the community, of the child, the behaviour of the child, knowledge of the child's family situation.

What communities have a high "screening rate"? What differentiates them from neighbourhoods which readily rely on official intervention when a delinquency is committed?

What characteristics of families determine their tolerance for "delinquent" behaviour exhibited by their offspring?

To what extent are Canadian schools screening children away from involvement with the justice system? To whom are they diverting them? To social agencies? To school services, such as psychologists? Who makes the decision and what factors help to determine it? What are the characteristics of the school diverted youth?

In what types of situations do the police acquiesce to the wishes of the victim?

In various types of situations, when confronted by a lawbreaking juvenile, what decisions are seen by the police as involving the least risk: for them in terms of their role in the police organization, for the juvenile and for the community?

What is the relationship between police organization and the exercise of discretion? What are the differences among the various administrative sub-units of the department?

Is there a relationship between the way in which police view the juvenile court and the likelihood that a child will be referred to it?

What is the nature of the relationship among the police, the court, and community social agencies?

Diversion's Effect on the Community

There has been considerable emphasis in this paper on the possible impact diversion may have on the residents of the local community. Several types of effects were hypothesized in Chapter IV, and measures to assess these hypotheses could be implemented.

Does the public see diversion as a way of being "soft" on juvenile offenders?

Does the existence of diversion affect the reporting patterns of society? If so, what kinds of offenders and offences are reported as a result of diversion?

Does the presence of diversion lessen the possibility of private, unreported settlement of conflicts involving juveniles?

What types of people and communities are willing to tolerate diversion and screening? For what types of offences and offenders?

Do the victims of crimes want to become involved in restitution or mediation plans or in the "treatment" of the offender? If so, in what types of crimes and what kinds of victims?

Are some forms of diversion (e.g., legal diversion run by the courts or police) more appealing and acceptable to the public than others?

Diversion and Social Agencies

Several forms of diversion rely on community resources for assisting diverted young people. In Canada, it has been proposed that much behaviour currently appearing in juvenile courts could be dealt with by and in the community. Diversion "out" of the system has already been recommended by the Solicitor General's Committee (1975). Whatever model of diversion is finally settled upon, youth-serving agencies will be affected in some way. Research should be addressed towards ascertaining diversion's impact in this area.

Will knowledge that a diversion program is funded by different level of government encourage agencies to divert youth to the program?

Will an agency which accepts diversion referrals be viewed differently by the public and its clientele as a result of becoming a repository for diverted youth? That is, will the client population become stigmatized because it is known the agency treats delinquents?

What effects on the diverted youth will agencies have? What types of treatment or other assistance are provided? What are most "effective" (in changing attitudes or behaviour) and with what types of youth?

What costs are involved in referring alleged offenders to the community's social agencies?

The Diversion Program

Questions for research in this area are dependent upon the model to be chosen. Since the direction in which Canada seems to be moving is diversion out to community agencies, many of the questions below are directed towards this model -- in effect, one which is "court-based" and "official" but which utilizes the services of agencies existing in the community for referral.

Will court-based diversion be seen as distinctly different from the present juvenile court process -- by the child, the police and the community?

What type of children will be diverted out of the system? How many? What is their offence type and delinquent history? How do these variables differ by region or community?

Does the juvenile sent to a screening agency feel less stigmatized than a juvenile who is referred to court?

Is a diversion program administered by the courts (or allied to the courts) more or less likely to be stigmatizing than one less closely associated with the justice system?

What effects will the presence of a screening agency have on other formal and informal systems?

Will the police send more children to the system, if there is a screening agency? How will police view having a case diverted? If it is viewed negatively, is there an effect on the way in which cases are presented to the agency by the police?

The Impact of Diversion on Juveniles

It has already been recommended that researchers attempt to guage the impact of diversion on the juvenile in a wide ranging fashion, beyond simple recidivism measures. Perceptions and attitudes should be investigated as well as behaviour at school (if these are components of the objectives).

> How do juveniles perceive the diversion process? Do they see it as different from the court process? As fair? Under what conditions is the diversion alternative preferred by juveniles? How many and in what conditions do juveniles reject the diversion alternative?
>
> What happens to juveniles who receive various dispositions from the diverting agency? e.g., social agency referral, mediation programs, or restitution? How long are they involved in each type of program? What are the characteristics of the offences and of the offenders in each type of program? How long does it take them to come back into the juvenile justice system?
>
> Is there a relationship between the degree of coercion present in the diversion program and the degree of stigmatization of the juvenile?
>
> What happens to juveniles who "fail" in a diversion program? How do various agencies and "significant others" perceive failure?
>
> If the child appears in juvenile court after being diverted, will the diversion be as harmful as previous court appearance? i.e. will the knowledge that the diversion hasn't "taken" negatively affect the view of the court?

What is the effect on the various decision makers (police, social agencies) of the knowledge that a child has participated in some kind of diversion? Will there be any labelling effects? Will programs accept children who have already been diverted once?

Concluding Remarks

Is it necessary to construct an elaborate apparatus for diverting young people who are involved in socially unacceptable behaviour? In Canada, legislation is anticipated which will replace the Juvenile Delinquents Act. The draft proposals contained in the report, Young Persons in Conflict with the Law, recommended sweeping changes in the processing of delinquents: the elimination of all but Criminal Code violations and a greater measure of protection for the rights of the juvenile through the introduction of more due process and a reduction in procedural informality. These changes were in addition to the proposals for the screening agency. If the new legislation alters the old act in such a way that reduces or nullifies some major criticisms of the current system, is it then as critical to introduce such an ambiguous entity as the screening agency?

It is possible that it is cheaper, less "harmful" and cumbersome to utilize other approaches which would serve an identical purpose -- the removal of socially problematic behaviour from the authority of the juvenile court. Another approach may be to remove this type of offender earlier in the legal process. Juveniles who present a minimal risk to the community (admittedly, a difficult category to define operationally) may be better served by being diverted at the pre-"arrest" stage, that is, before a charge has been laid. Training for officers, both youth bureau and uniformed patrolmen, on the available community services might be as equally "effective", in the long run, as establishing another layer of decision making to act as a buffer between the offending child and the juvenile court. Better coordination between law enforcement and social service organizations

might also be possible. In other words, police discretion to charge could be expanded. American experiments with crisis intervention teams staffed by police officers (Bard, 1970) demonstrated that diversion could be accomplished in family disputes and assaults. Informal referral to social agencies, based on the officer's assessment of the juvenile's offence, social problems, and on his or her knowledge of the community's resources, could perhaps serve a similar function as the establishment of a formal diversion agency.

In Canada, however, if the proposals presently under consideration become a reality, there will be more formal schemes created throughout the country. Pre-court screening mechanisms have as one objective to hand over to the community and its services the delinquent youth now processed by the juvenile courts. It is assumed that the community has greater capability (in terms of adequacy of resources?; reduction of stigma?; costs savings?) than does the court and its ancilliary resources. Some commentators have hypothesized that the juvenile court will always be the source of sanctions for community agencies, because of its access to sanctions such as training schools and other supervised environments.

If it is accepted by the planner that public policy should be restrained in its handling of delinquency, some of the following proscriptions related to the creation of a screening agency should be considered. The screening agency should avoid entangling young people in a formal process more severely than they would be under the current system. The possibility that the "Juvenile justice net" may be widened must always be kept in mind. There is danger, too, that the screening agency may become a quasi-punitive sanction for children who could not be taken to a court with more rigorous procedural safeguards. Procedures to avoid the over-reach of treatment should be created.

Care must be taken in introducing the concept of the screening agency to the community in order to avoid: the development of the notion that diversion is "soft" on juvenile criminals; stigmatizing children screened by the agency; and, to avoid punishment-minded citizens from forestalling efforts to institute restitution and mediation programs.

Harmonious relations with the police are clearly desirable, although how they may be obtained is difficult to anticipate. The nature of the relationship between the screening agency and the Crown should be specified early, and guidelines for referral agreed upon. There must be a balance between the need for accountability of social agencies which accept diversion referrals and the need for continuing the autonomy of these agencies. Encroachment by the system on non-system agencies should be avoided, if there is a desire to enroll youth in out-of-system programs.

Evaluation and monitoring must be instituted from the establishment of the screening agencies. Funds must be set aside for this purpose. Records must be kept which will adequately describe caseloads and activities. The designers of these records must remember that the information must meet high standards of confidentiality (as to individual identities) and also be easily retrievable by administrators and research personnel. Data should be regularly cumulated and analyzed in order to ascertain trends and patterns in key areas, such as the characteristics of the youth being diverted and the types of decisions being made by the agency. Most desirably, the information should be collected in a form that is comparable across the country. Uniformity in key variables, not necessarily in the entire data collection format, is essential if adequate comparisons are to be made.

With these injunctions in mind, it will be more feasible to bring into being a form of diversion which benefits the individual juvenile, operates in a just and even handed manner, and which has the desired impact on the operation of the juvenile justice system.

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CHAPTER V: IMPLICATIONS FOR THE JUVENILE JUSTICE SYSTEM OF CANADA

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