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THE COURT EMPLOYMENT PROJECT EVALUATION: A SUMMARY OF THE FINDINGS*

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Description of the Research Project

The Vera Institute evaluation of the Court Employment Project (CEP) in New York City represents a continuation of previous efforts to study pretrial diversion as an important criminal justice reform. Prominent researchers in the field (notably Mullen, 1974; Rovner-Piecznik, 1974; and Zimring, 1974) concluded that thorough controlled research was essential for policy and program development to progress in this area. With funding from the National Institute of Law Enforcement and Criminal Justice of LEAA, the Vera Institute designed and implemented an experimental evaluation of the Court Employment Project in 1977.

CEP was one of the first pretrial diversion programs, begun by Vera in 1968 as a U.S. Department of Labor manpower demonstration. The program was launched with several hopes: that a service needy population of selected adult defendants (those 16 years or older) could be drawn out of the criminal justice system at the earliest possible stage and, during a short period of time (3-4 months), be provided with the services they needed; that such diversion would not only aid in reducing the congestion in already overcrowded courts, but that it would allow defendants to avoid prosecution, conviction and associated stigma; and that the diversion with services would effectively reduce those defendants' likelihood of recidivism and improve important aspects of their lives, especially their vocational behavior. For over a decade, CEP continued to provide services to defendants diverted pretrial in the New York City Criminal Courts as an independent, not-for-profit corporation under contract to New York City's Human Resources Administration. Over this period, its services to clients remained predominantly vocational and pre-vocational (including job referral and placement) and also emphasized individual need-assessment and referral to specialized community resources.

The current Vera research was undertaken with CEP's full involvement. Based upon its previous experience with two evaluation efforts, the agency believed an experimental design to be the best method of assessing the impact of its decade-old model. The results of this research (summarized below) suggest the agency has been successful over time in encouraging the New York City criminal justice system to accept, use and expand diversionary options in case disposition. Within that changed context, however, CEP's own impact on case disposition, as measured in 1977, was limited because of the

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availability and wide use of diversion options other than CEP.

CEP, as a social service agency with a commitment to criminal justice system clients, has seen this finding as an opportunity to free its social service aims from the constraints of operating within a diversion model which requires a primary focus on affecting case disposition. Within that model, as the research revealed, CEP's efforts to affect the lives and behavior of its clients by providing social and employment services were without impact; of course the research does not show that services cannot make a difference, but only that these services did not make a difference with these clients under these circumstances - despite the clients' demonstrable need for services. The lack of measurable impact on the behavior of its diversion clients has stimulated the agency to begin experimenting with somewhat different service delivery models and somewhat different client groups. Although these groups come to the agency's attention because of their involvement in the criminal justice system, CEP hopes they will both need and want the services offered rather than merely accepting services as a condition of having their cases diverted.

Design of the Research

The research designed by Vera to evaluate CEP had at its core an experimental design with the following major characteristics: the random assignment of defendants eligible for pretrial diversion to experimental (diverted) and control (normally processed by the courts) groups; a research population of 666 subjects to permit adequate analysis of program impact; a follow-up period of at least one year for all experimentals and controls including program dropouts; and the development of an extensive data base including material from personal interviews with defendants as well as official records.

The research was implemented in January 1977. By the end of October that year, using a method equivalent to random assignment, the research had assigned 410 defendants to the experimental group and 256 to the control group. (The numbers assigned each group were unequal because CEP needed to have sufficient diverted clients to satisfy its funding contract.) Analysis of the two groups at intake showed that they were comparable in all respects important to an analysis of CEP's impact on outcome measures. By December 1978, data collection for a one year follow-up had been completed including three personal interviews with research subjects (at intake, six and twelve months), verification of selected interview data, and collection of official criminal history records.

Analysis of the data focused on comparisons of the experimental and control groups, including in these comparisons all individuals assigned to the groups regardless of whether, in the case of experimentals, they had completed the CEP program. The research examined differences between the groups on the following outcome variables: intake case disposition, sentence, exposure to criminal justice system processes and stigma, use of services, vocational activity, life style, and the frequency of subsequent arrests and convictions. The methods of analysis included contingency tables, repeated measures analysis of covariance, and multiple regression, each with appropriate measures of statistical significance of differences between the two groups.

The full analysis of the research data is nearly complete; some time over the course of the summer, the Final Report of the research will be available.

Central Findings of the Evaluation

1. Population Diverted

- A. Criminal Justice Profile. Most defendants diverted to CEP were charged with felonies (97%), 87 percent of which fell into the two lowest classifications of severity (D and E felonies). In 75 percent of the cases the charge was theft, 10 percent assault, and 7 percent robbery. While the majority of the defendants were first offenders (59%), 41 percent had official prior arrest records and 16 percent prior conviction records; 19 percent reported they had been arrested as juveniles.
- B. Socioeconomic Profile. Defendants diverted to CEP were primarily youthful (median age 18); male (90%); of minority ethnic origins (51% Black, 39% Hispanic); single (90%); undereducated (median educational level 10th grade); poor (45% of their families received public assistance); and most were not actively engaged in traditional vocational pursuits at the time of arrest and intake (17% were employed and 37% enrolled in school).

2. Diversion Impact

- A. Disposition. While diversion to CEP had some effect on the disposition of defendants' felony cases, its impact was limited because the CEP program was only one among several other "diversionary" options available to decision-makers in the New York City criminal justice system. Since CEP began as the first diversion effort in New York in 1968, other alternatives to full prosecution and a criminal conviction have been introduced into the system. The best example is the addition in 1971 of the Adjudication in Contemplation of Dismissal (ACD) to the range of dispositions provided for in the Penal Code. Another addition, in the same year, was the extension of mandatory Youthful Offender status to certain adult defendants, namely those aged 16, 17 or 18 found guilty of their first misdemeanor offense. These dispositions, in addition to a conviction for a violation (a non-criminal disposition), were widely used by the system in 1977 to dispose of eligible, approved but non-diverted (control) cases and indicate that, over CEP's ten year history, there had been a general shift in the system's acceptance of a diversionary strategy for handling many felony cases. Almost five out of ten controls (46%) had their cases dismissed (including ACDs) without diversion to CEP. While participation in CEP increased dismissals to seven out of ten (72%) for experimentals, it is clear that CEP was not expanding the diversion of felony defendants much beyond that accomplished by other diversionary mechanisms. Of the controls who did not have their cases dismissed, few received criminal convictions. Despite felony charges, most were either convicted of non-criminal charges (violations) or treated as "Youthful Offenders" (which is considered by law an adjudication rather than a criminal conviction).
- B. Sentence. When it came to sentences imposed by the court, some differences between experimentals and controls were apparent. Most important, however, was that the program had *no* impact on the proportion of defendants incarcerated; only four percent of each group were sentenced to jail. However, three

percent of experimentals compared to 11 percent of controls were sentenced to a probation term; seven percent compared to 23 percent, respectively, were given discharges and two percent compared to 11 percent fines. More experimentals than controls absconded (12% vs. 5%).

Although the differences between the two groups in the sentences imposed were statistically significant, it is not clear that this represents real differences in the harshness or onerousness of the punishments imposed on the two groups. Very few in either group received relatively harsh sentences (jail or probation). Furthermore, the majority of defendants whose cases were not dismissed received discharges or small fines, outcomes which in the context of the New York City courts do not tend to impose very heavy burdens on defendants.

- C. Dispositional Consequences of "Success" or "Failure" in CEP. Fifty-five percent of all experimentals were successful in CEP, that is, they completed the four month program and were recommended to the prosecutor and court for a dismissal of the charges. In all cases, the recommendation was accepted and the charges dismissed (94%) or ACDd (6%). For those who failed to complete the program (45%), such failure does not appear to have affected case disposition (using the control group as a basis for comparison). From the standpoint of the prosecutor, the delay in prosecution resulting from the diversion does not appear to have increased the probability of a dismissal. However, it is interesting to note that 29 percent of the unsuccessful experimentals absconded when their case was returned to court.
- D. Exposure to Criminal Justice System Processes. Because of the expansion of diversionary alternatives by 1977, diversion to the CEP program had very little impact on the amount of time defendants spent in the system and their exposure to various (potentially "harmful") processes. This was largely because defendants approved for diversion had little initial risk of such exposure whether or not they were diverted. Although experimentals were scheduled for somewhat fewer court appearances than controls (3.49 compared to 3.91), they took somewhat longer on the average to have their cases fully disposed than did controls (21 weeks compared to 16 weeks). Few defendants (10%) in either group were detained pretrial; most were RORd, although 7 percent had bail or bond set as a condition of release. There were no experimental-control differences on the above measures.
- E. Protection from Stigma. Again, as a criminal justice system which had become more accepting of diversionary strategies for case disposition, New York had also expanded its legal mechanisms for protecting defendants from the stigma of a criminal history record. Consequently, by 1977, diversion to CEP had only a limited impact on protecting first offenders from the stigma of an official arrest record. Of the defendants without a prior arrest record (that is, 60% of the sample), 76 percent of the experimentals and 51 percent of the controls had their arrest records sealed by the system under New York State's sealing statute (CPL 160.50). However, of those

first offenders in the control group who were not eligible to have their record sealed under this statute, almost half had their record sealed under the (somewhat more limited) provisions of the Youthful Offender statute (CPL 720.10). While most of the remaining first offenders in the control group acquired a public arrest record, it was not a *criminal* conviction record. In summary, CEP could have no impact on four out of ten diverted defendants with respect to protecting them from the stigma of an arrest record since they already possessed such a record. For the remaining six out of ten CEP had some, but limited impact compared to the control group.

3. Social Service Impact on Behavior

- A. Use of Services. As a social service agency committed to providing information and referral to clients for services not given in-house, CEP has identified its population as individuals unlikely to receive such services through other agencies. Data collected on the number and types of social services received by members of the research population suggest that CEP's target population is not heavily serviced by others. Interviewed subjects did not report many contacts with other formal programs, and they did not often report receiving problem-solving assistance from social service workers (other than CEP counselors). Nevertheless, CEP appears to have had no impact on the number of services utilized by CEP clients during the twelve months following intake. While there were some increases in the number and types of services received by members of the research population, and they reported wanting more services over time, there were no differences between experimentals and controls.
- B. Vocational Activity. Using seven (interrelated) measures of employment behavior to investigate changes over time (up to one year after intake), no differences were found in the work activity of experimentals and controls. Although for both groups, employment and earnings increased over the eighteen month period (six months before to 12 months after intake), the levels of both were very low and the data suggest no significant impact of CEP's services. Results are similar for CEP's impact on educational activity. Research data show no increase over time in either school enrollment or attendance for either group. Although both research groups show some increase over time in their general level of vocationally relevant activity (including job search, child care, etc.) as contrasted with "hanging out," this is probably a result of maturation rather than program impact since the changes are virtually identical for both experimentals and controls.

Finally, while there are some differences in vocational behavior between older and younger members of the research population, it does not appear that CEP had a more pronounced effect on any particular age group. The age effects are similar for both experimentals and controls, with one exception (hours worked per month); older members of the experimental group made greater improvement over time than did their counterparts in the control group. The absolute magnitude of the effect, however, is quite small and might not reflect a program impact.

- C. Lifestyle. Several different kinds of data were collected from interviews with subjects concerning their lifestyles, including drug and alcohol use,

types of friends, living arrangements, and self-reported illegal activity. Analyses of these data suggest that CEP did not play a measurable role in affecting the lifestyles of its clients along these dimensions.

- D. Predictors of "success" in CEP. As noted above, 55 percent of CEP's participants were "successful" in the program, that is, they attended the program regularly. The remaining 45 percent did not involve themselves in the program or its services (most, in fact, absconded soon after intake). Of those who chose to remain the full four months, many were reported by counselors as expressing court-related needs at intake; they also had fewer (or no) prior arrests and higher salaries than those who chose to leave before completion. These characteristics suggest particular concern among those who remained in the program with obtaining a favorable disposition of the pending criminal charges.
- E. Recidivism. Recidivism data on individuals in the research population suggest that, compared to a number of other pretrial diversion programs discussed in the literature, CEP was diverting a population at considerable risk of rearrest. During the four month diversion period, 19.8 percent of the experimental group were rearrested; of the nine diversion programs studied by Mullen (1974), the rate of recidivism among the populations diverted approximated that of CEP's population in only two programs (Boston 12.7% and Minneapolis 15.3%). However, there is no evidence that diversion to CEP had any impact on recidivism (proportion rearrested, number of rearrests, or severity of rearrest charge) during the period of program participation. During the same four month period, the proportion of the control group rearrested was 16.5, which is not significantly different from the rate for the experimental group. At twelve months after intake into the research, there continued to be no difference in the rearrest experience of the two groups: 30 percent of the experimentals compared to 33 percent of controls had been rearrested at least once; the mean number of rearrests was not different (0.517 for experimentals compared to 0.506 for controls); charges were of similar severity and the mean number of subsequent convictions was also not different (0.332 for experimentals and 0.365 for controls).
- F. Predictors of Recidivism. Analyses were designed to identify the defendant characteristics associated with recidivism. While assignment to the experimental or control group was obviously not one of these characteristics, *attendance* at CEP was. However, we cannot conclude from these data that full participation in the program prevented defendants from committing further criminal actions. Rather, it appears that those who chose to attend CEP regularly (who were also those noted above as being successful in the program, who wanted and received a dismissal of the charges) possessed characteristics at entry to the program that were related to being less likely to recidivate.

Implications

While it is recognized that the generalizability of these specific research findings is limited by the nature of the design (that is, a single program at a single point in time), the findings raise issues concerning diversion programs in general which should be addressed.

First, with respect to dispositional effects, diversion programs may well be "transitional reforms," that is, for a limited time a diversion program may be a catalyst for system change. This certainly appears the model appropriate for CEP. System absorption of diversion concepts and adaptations to them may be taking place elsewhere, either with or without the specific encouragement of diversion programs. The implication, therefore, is that diversion programs should carefully examine their current stage of development by assessing the extent to which their jurisdictions have responded by change. Programs should also recognize the possibility that the time will come when such system adjustments make specialized pretrial diversion programs unnecessary in some jurisdictions. These assessments may enable existing diversion programs to seek new areas of their criminal justice systems where their services can be of value and catalytic for further change. Such assessments may also suggest that a new pretrial diversion program is not needed in a particular jurisdiction which has already absorbed diversion concepts.

Because different actors in the criminal justice system have potentially different interests in making use of diversion programs (something documented in the CEP research), programs cannot assume they are always diverting defendants from adjudication, conviction and harsh sentence. Consequently, in order to examine their dispositional impact within their own jurisdictions, it may be necessary for diversion programs to engage in research and probably controlled research. The information acquired during such an effort is of additional importance to resolving the recurrent problem of assuring defendants are giving truly informed consent to diversion. The CEP evaluation indicated that, in the absence of the research, defendants and their counsel believed the consequences of normal court processing were more serious than was actually the case. If, for whatever reason, controlled research is unacceptable, the process of assessing the program's impact on disposition will be much more difficult. Certainly, under these circumstances, it is much more important for defense counsel to know the facts of the case in sufficient detail to be able to predict the likely outcome of the case in the normal process; only then can the advantages or disadvantages of diversion be clear enough for consent to be informed.

Second, despite occasional protestations to the contrary, most diversion programs attempt to affect clients' behaviors. Certainly most hope for reductions in recidivism or are held accountable in those terms by their jurisdictions. Other behavioral objectives tend to include the improvement of clients' life situations with regard to employment, education, family relations and so forth. While the research did not show CEP to have had an impact in these ways during 1977, that does not mean such impacts are impossible. However, independent of the CEP research, there is a sizeable literature suggesting that social service programs of many types have substantial difficulty achieving goals of behavioral change. The CEP findings suggest, therefore, it cannot automatically be assumed that simply providing a program of social services -- without regard to the nature of those services -- to people selected by their desire to avoid unfavorable court consequences, will have significant impact on behavior. Certainly more careful consideration is needed of what services are appropriate for different client populations in relation to different desired outcomes, the length of the service period required, and whether the use of the diversion mechanism to select clients for services negatively affects their acceptance and utilization of the services offered. Focusing attention on these issues will help us develop more useful theoretical models of behavioral change which can then be examined

empirically. It is important to note, however, that more extensive and intensive services may be needed to affect behavioral change than is likely to be considered appropriate in the context of pretrial diversion as an alternative to prosecution.

Program Changes Since 1977

Following extensive discussion of the preliminary findings of this research, CEP announced to the system actors in all New York City boroughs but one that it would no longer accept cases referred to it under the old pretrial diversion model. (CEP continues to accept diverted cases, on a temporary and experimental basis, from the borough of Queens; although Queens cases were not included in the Vera research, there are indications that the increased use of "diversionary" alternatives has not proceeded in Queens to the point of general acceptance found in the other boroughs.) While many of CEP's current clients are referred to it by defense counsel, CEP does not report "success" or "failure" to the court. Primarily, CEP is in an exploratory stage, examining new places within the criminal justice system where there are clients needing and wanting its services. Some of the directions in which CEP is heading include:

- a proposed after-case service program for youths (over the age of 16) released from state training schools;
- a program of outreach toward youths (over age 16) no longer eligible for services from Family Court Probation, their families and peers; and
- an "alternatives to incarceration" program. (For this program, CEP has been working on an exploratory basis with a limited number of judges, who, after imposing a jail sentence upon a convicted defendant, will, if CEP agrees, delay imposition of the sentence on the condition that the defendant report daily to CEP while the agency attempts to provide intensive services; if the defendant satisfactorily performs the conditions, after three weeks, the judge will impose a conditional discharge for a period of six months during which the convicted defendant continues attending CEP.)