



CENTER CITY

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Diversión Program

How the City of Memphis rejected \$200,000 for criminal reform.

by James Kopernak

Late on a recent Friday afternoon, newly elected Attorney General Hugh Stanton turned down a \$200,000 federal grant to fund a comprehensive pretrial services program. The money was rejected because the proposal included a plan for *diversion*. Some public confusion has ensued as to why the refusal and as to what is meant by *diversion*.

Pretrial *diversion* is a means whereby certain criminal defendants are *diverted* from the normal prosecution process, pending successful cooperation with a one year counseling program. The program emphasizes regular contact with a counselor, employment, psychological testing, and restitution or compensation for the victims of crime. The focus would be upon first offenders accused of relatively minor felonies such as larceny of an auto. It is this class of offenders that statistically is most likely to become repeat offenders.

The purpose of *diversion* is to screen out those individuals who meet a carefully drawn profile which considers such factors as age, prior record, nature of the offense, and psychological test results. Those meeting the profile would be offered an opportunity to avoid the stigma of a criminal conviction and get assistance in finding and keeping employment. If the person accepts the offer but fails to cooperate, he is returned to the normal criminal process without prejudice.

The *diversion* concept differs from traditional reforms such as Project First Offender in that it deals with persons before conviction.

The proposal presented to General Stanton by Richard Borys, Director of the Shelby County Pretrial Release Program, is a very well drawn plan based on similar programs throughout the country. Under this plan all accused persons would be screened by pretrial services investigators for recommendations as to pretrial release (bail) and pretrial *diversion*. Those selected for *diversion*, if approved by the Attorney General and a Criminal Court Judge, would be required to enter into a "behavioral contract" for one year. If the contract were successfully completed then the Court would be asked to approve dismissal of the charges.

The proposal called for annual evaluations according to forfeitures (bonds), re-arrests, recidivism and a cost analysis. The major grant was offered through L. E. A. A.

It is central to the *diversion* concept that the Attorney General must agree to delay action on a warrant subsequent to arrest but prior to arraignment. His decision would be based on the independent investigation of pretrial services and would be subject to approval by a judge.

General Stanton says that under present law,

Exclusive:

Strolling with Memphis Myth

CENTER CITY: Mr. Crump, some say you are an autocrat, the rural planter that served as patriarch of Memphis, and, as Meeman of the PRESS accused, your machine was designed not "to make democracy work, but to work democracy."

MR. CRUMP: "I am no boss. I am no dictator. I am just an unassuming citizen working with and for the people. Some people wondered how we have been successful in politics. It is simple. We have been fair with the honest poor and the honest rich and they know it...."

[As for Meeman,] "he would like to deal in Greek philosophy without knowing what he is talking about. He is the perfect example of a man who travels from cradle to grave without having been aroused from the state of invincible ignorance....His statement is another conspicuous example of journalistic juggling of the facts designed for the consumption of an uninformed public."

CENTER CITY: When your machine was humming did anyone ever stuff a few extra votes in the box to your advantage?

MR. CRUMP: "If some of my supporters appeared zealous," [it was] "because constant unwarranted vilification of me no doubt prompted many friendly to us to become very active in registration and voting."

CENTER CITY: Well, Shelby County has recently voted in favor of restructuring County government to a County Mayor form, thus slaying the "three headed dragon" commission system of "Crump bossism." What do you think of the new fiefdom, no doubt there is richer booty in store for someone, perhaps a County Squire?

MR. CRUMP: "We did not urge the commission form merely to give more power to the occupants of such offices"; [but in line with progress,] "the commission was established to allow order, efficiency and business sense in government." [With the strong mayor], "no good man would want that authority and no bad man should have it..." [But the Shelby County Squire is] "a huckster of uncleanness; ...there are 27 portraits of Judas Iscariot in the museums of Europe, none resemble the other, but they all resemble" [a County Squire] ; [he] "milks his neighbor's cows through a crack in the fence; .. he lies by nature and tells the truth by accident..."

CENTER CITY: MR. CRUMP! MR. CRUMP! ...please, another question? You were very much concerned with the outside control of the Memphis utility companies. Recently, the executives of one publicly owned utility were found to have been investing the revenue from our utility bills outside of the City and the State.

MR. CRUMP: [Ha, still playing footsey with the] "Wall Street gang." "They are notorious tax dodgers.... They have always maintained a policy of Give and Take, but they construe such a policy to mean that they should take everything and give nothing. ... There is not one in ten who believes that he consumes the amount charged to him by the company."

CENTER CITY: With the recent buffoonery of the City Council, which opened "Panderosa's Box" with the mere mention of ethics, do you think this "democratic" body can really do the people's business?

MR. CRUMP: [The present Council] "sits in its office, supine and docile, an easy prey for designing selfish interest, gougers in the taxpayers money, and has permitted mismanagement of city affairs." [The result of the Council's] "colorless and utterly inefficient, feeble attempt to run the city makes it clear that it is possessed solely with the illuminating and brilliant idea of being [Council] in name only."

CENTER CITY: Tell Memphis how to get where it's going. Where is it going?

MR. CRUMP: "I always tell people if I left Memphis, I know of no place I'd rather go, I love the people.... God might have made a better berry than the strawberry, but doubtless He never did. There might be a better place to live than Memphis, but no such place exists." "I love the life in Memphis...." [But Memphis should follow the rules of my work plan]: "The rules are: first, observe, remember, compare; second, read, listen and ask; third, plan your work and work your plan."

CENTER CITY: Mr. Crump, thank you for consenting to this interview.

MR. CRUMP: [Well.] "Even though your intellectual baggage is very light..." [and the paper] "is simply a blab mouth gabber around the square, I felt some one would get tired of being fooled about me." [So, I consented. If your editor, Mr. Murley,] "has the honesty of a common pick-pocket or the manhood of the lowest coward he will print this without deletions."

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Diversion, Cont.

when an accused is "bound over to the State" or held to the "action of the Grand Jury," he must either submit the matter to the Grand Jury for indictment or ask a judge to submit it. There is a large number of dismissals for various reasons. Stanton says he has no authority whatsoever not to do one or the other. Thus; he reasons he would need an enabling act by the legislature or approval by the Criminal Court Judges to delay prosecutions.

In a recent meeting with General Stanton, Mr. Borys, and three of the six Criminal Court Judges, the justices (Williams, Faquin, and Beasley) agreed they did not have the power to authorize the Attorney General to indefinitely delay prosecutions.

Concerning the *diversion* concept, Mr. Stanton called the proposal "workable" and agreed that there are situations where *diversion* would make good sense. The General cited a case of a person arrested for possession of marijuana who wanted to go to medical school as a proper case to be considered for *diversion*.

In fairness to the proposed plan, however, drug offenses were not included in the profile, although they could have been added. The emphasis, instead, is upon the minor property offenses where recitivism is so high.

Stanton's refusal of the grant seems based on

legal opinion rather than the viability of the concept. He believes he lacks the authority to delay prosecutions. However, he admits he could probably do it and doubts he would be impeached for implementing the plan. But, he maintains: "we need legislation."

There are some 30 similar projects around the country. A few of them are based on enabling legislation, but most are based on the broad discretion vested in the prosecutor. This discretion has been widely upheld in the courts and is deeply rooted in the English common law. In fact, Knox County has already begun a *diversion* project and the Davidson County Attorney General is expected to approve a similar program for Nashville—both without legislation.

This writer's legal research and discussions with several lawyers leads to the conclusion that General Stanton certainly could implement the program based on the lawful discretion of his office. His argument for enabling legislation or unanimity with the courts makes some sense. But, realistically, is not the call for legislation or unanimity merely a cautious call for adherence to the *status quo*?

The need for sensible reform in the criminal justice system is obvious. The *diversion* concept makes good sense, and the plan submitted by Mr. Borys is an excellent one. Memphis should begin a program now like Knoxville and Nashville.

Hopefully an informed community will ask General Stanton to reconsider.

Evening Film Theater

Subscriptions still are available to Lyceum Film Theatre, a film series which began September 3 in the First National Bank auditorium.

The series is sponsored by a non-profit organization called Front Street Arts, the aim of which is to bring quality films and other arts activities to the downtown community.

Subscribers pay \$5 for a membership card and \$1 for admittance to each film. Guests of members are admitted for \$1.75. The films are shown at 7:30 on Tuesday nights in First National's auditorium at Madison and Third.

The bank is donating use of its auditorium for this special downtown activity.



CENTER CITY

Each week a member of the church delivers stacks of the CENTER CITY to various locations in the downtown area. If someone from each distribution location were to volunteer to perform this task each week, it would help to facilitate circulation.

OPPORTUNITY FOR SERVICE

This would be a matter of stopping by the church office each Wednesday, picking up the newspapers for a certain location and depositing them in the specified office, business or building. (Which would be especially convenient for those who lunch at First Presbyterian.)

Also, a few people are needed to be on call to run the addressograph when the regular operator cannot. These people would need to be trained ahead of time.

INTERESTED?

Contact June Hicks at 525-5619.

CIVIC CENTER COMMUNITY CULINARY CLUB

Serving from 11:30 to 1:00

First Presbyterian Church, 166 Poplar Avenue

PRICE: \$1.25 per serving, including drink

MENU FOR SEPTEMBER 12-20

THURSDAY, SEPTEMBER 12

Corned Beef, scalloped cabbage, buttered potatoes, corn bread

FRIDAY, SEPTEMBER 13

Beef stew, tossed salad, and corn bread

MONDAY, SEPTEMBER 16

Chopped steak with onion gravy, whipped potatoes, green beans & rolls

TUESDAY, SEPTEMBER 17

Oven-baked chicken, rice and gravy, peas and carrots, & rolls

WEDNESDAY, SEPTEMBER 18

Spaghetti, cole slaw and French Bread

THURSDAY, SEPTEMBER 19

Turkey & Dressing, English peas, cranberry sauce & rolls

FRIDAY, SEPTEMBER 20

Meat Loaf, potatoes au gratin, lima beans, & rolls

THE COURT SQUARE MARKET FOR SEPTEMBER 13 IS A
GREENERY, ARTS AND CRAFTS SALE

Center City

First Presbyterian Church
166 Poplar Avenue
Memphis, Tennessee 38103

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