

Neighborhood Defender Service, Inc.
55 West 125th Street, New York, NY 10027
(212) 876-5500 • FAX (212) 876-5586
a project of the Vera Institute of Justice

VERA INSTITUTE
LIBRARY

1461

**The
Neighborhood Defender Service
of Harlem**

**Early
Assistance
of Counsel**

**Quarterly Report for
April through June, 1991**

The Neighborhood Defender Service of Harlem

The Neighborhood Defender Service is a new kind of public defender. Established in the spring of 1990 by the Vera Institute of Justice, NDS is designed to advance the development of new techniques in the public provision of legal representation to indigent criminal defendants. Our aim is to demonstrate that, by restructuring the way in which legal representation is delivered, public defender organizations can provide better services to their clients, and move cases to resolution more efficiently.

NDS is structured around three basic principles that distinguish it from virtually all other defender services. First, it is neighborhood-based, operating from the community where its clients reside rather than from the courthouses where they are prosecuted. Second, it is team-based, providing representation through teams of lawyers, paralegal investigators (called "community workers"), and administrative assistants, rather than through individual attorneys. The team approach brings the benefit of many minds to each case and allows our office to continue work on a case despite the temporary unavailability of an individual lawyer. Third, it is client-centered rather than case-centered, representing its clients in any proceedings related to their criminal charges, including proceedings concerning parole, immigration, housing, forfeiture, and termination of parental rights.

These three features enable NDS to bring to its work a detailed knowledge of cases, clients, and community resources, and to do so from the very first court appearances in each case. These features should also assist NDS in winning a high degree of confidence from its clients.

The Neighborhood Defender Service is a five-year demonstration project of action-research. Accordingly, many of the operational details of the design will be modified frequently throughout the first five years. These modifications will be based on the results of a parallel program of research, conducted by the Vera Institute of Justice, into the quality and efficiency of NDS representation, as well as its impact on other parts of the criminal justice system.

Contents

Introduction 1
 Why Provide Early Assistance? 3
 The Data 5

1. Early Assistance & Bail
 Bail Decisions 7
 Differences Between
 Assigned and Retained Cases 8
 Early Assistance in Verifying Community Ties 12
 Early Assistance in Verifying
 a Claim of Innocence 14

2. Early Assistance & Results
 Rapid Response 17
 Assistance Before Arrest 22

Afterword 24
Appendix: Social Service Assistance 25

List of Figures

Figure 1.
Charge Severity: Intake versus Caseload 6

Figure 2.
Release Rates by Charge Severity 8

Figure 3.
Distribution of Intake Cases by Charge Severity 10

Figure 4.
Intake Cases by Description and Charge Level 11

Introduction

Shortly after midnight on a recent Friday morning, a senior attorney at NDS was speaking on the telephone with a distraught and angry woman. She was explaining to the lawyer that her sixteen-year-old nephew, Kevin Price, had been arrested earlier that evening by police from the 32nd precinct in Harlem; but when she went to the precinct, the police denied that they had the boy.

She had never met the lawyer with whom she was talking. She had simply telephoned the main number for the Neighborhood Defender Service of Harlem in the middle of the night, and had been connected to an attorney. She had gotten the number from a friend who had said that NDS could help her nephew.

The lawyer, who had been woken from his sleep by the call, noted the information and told the woman he would call her right back. He called the precinct, informed the desk sergeant that he had been retained to represent a 16 year-old named Kevin Price, and asked if he was there. The desk sergeant checked, and said that he did not have the boy. The lawyer called the woman back and told her what he had done, but she was certain that Kevin was in the precinct. The lawyer tried calling the precinct again, giving the arresting officer's name, but was told that Kevin Price was not there and the officer he had mentioned had finished her shift. So the senior attorney called another lawyer on his team and told her to get to the precinct. Right away. Then he called the woman back and told her to meet his colleague at the front door of the police station.

A little after 1:00 a.m., the NDS lawyer and the boy's aunt walked up the precinct steps together. When they had met a moment earlier, the lawyer had asked the woman if Kevin might use any other names. The aunt had explained that Kevin lived with his father's mother because his father had been killed a few years earlier and his mother lived elsewhere. Price was Kevin's mother's last name; his grandmother's last name was the same as his deceased father's: Bolden.

As they walked into the police station, they could hear the sergeant on the phone with someone exclaiming that

*A little after
1:00 a.m., the
NDS lawyer and
the boy's aunt
walked up the
precinct steps
together.*

some kid had been arrested, and his lawyer had called twice. The lawyer approached the desk, and explained who she was. The sergeant told her that they only had two prisoners, neither named Kevin Price. She asked the sergeant if one was Kevin Bolden, and immediately a uniformed officer standing by the sergeant exclaimed sarcastically, "Oh, *that* Kevin!" There was no doubt in that moment that the police—with only two prisoners at the station, one of whom was a 16 year-old named Kevin who had been arrested by the officer whom the first lawyer had named—had known all along that they probably did have the woman's nephew.

Following police regulations, the sergeant permitted the attorney to interview her client in private. The boy was brought to her in handcuffs, and when she asked that they be removed, the officer refused. The lawyer appealed to the sergeant, however, who ordered that the boy be uncuffed: a sensible decision, and a kindness that the rules did not require. Perhaps the sergeant was trying to make up for his earlier obstructiveness.

It was then that the NDS attorney learned that Kevin had been arrested for selling drugs. At the end of the interview, the lawyer explained to Kevin that she and her colleagues would begin their investigations the next morning, and that a lawyer from NDS would see him in court the next day when he would be arraigned. Until then, he would have to remain in police cells, waiting for his turn to get to a judge.

Kevin had never been arrested before, so perhaps he did not know how strange it was for a lawyer to come to a precinct for someone without money. His aunt couldn't believe it: that there was a lawyer with her, there, at the precinct, at 2:00 a.m.

The police, on the other hand, were beginning to get used to it. Lawyers from NDS had been there every week for eight months in response to calls like this one, and recently the pace had been picking up. The police had played this "name game" before—with parents, with relatives, and with the lawyers and community workers from NDS.

Nineteen hours after his arrest, Kevin was arraigned in Manhattan Criminal Court on a charge of selling crack, a B-Felony. He was represented there by another NDS lawyer. By the time of the arraignment, the team's two community

The police had played this "name game" before—with parents, with relatives, and with the lawyers and community workers from NDS.

workers had been to the scene of the arrest, about two blocks from their office on 125th Street, and the lawyer who had gone to the precinct had spoken with Kevin's mother, with his grandmother, and with a social worker who knew him. The information the lawyer and community workers learned was relayed to the other lawyer in court, and the judge released Kevin on his own recognizance, without objection from the prosecutor.

Why Provide Early Assistance?

In launching the Neighborhood Defender Service, the Vera Institute sought to develop a public defender that could and would begin work right from the beginning of a case. The most obvious reason to begin so early was to improve the bail decisions that would be made at arraignments by providing judges with more information about defendants and offenses at their initial court hearings.

Ordinarily in New York City, indigent defendants are provided with court-assigned counsel an hour or less before the arraignment hearings at which bail is set. As a result, almost all of the information that an arraignment judge hears about a case comes from the prosecutor, and most of the information about the defendant comes from the rap sheet and from the Criminal Justice Agency. These sources of information each carry problems: prosecutors are often relating information third- or fourth-hand, rap sheets often do not reflect the disposition of earlier cases or warrants, and CJA is seldom able to verify the community ties of defendants if their families do not have telephones. Yet judges at arraignments rarely have anything else with which to assess the risks of releasing defendants.

When defense attorneys are able to supplement or correct this information with facts that they have verified, judges are better able to assess the appropriateness of bail and, as a result, release defendants more frequently. Such a prospect is doubly attractive because it both improves the fairness of the proceeding and reduces the tremendous costs to the city of incarcerating people who could appropriately be released.

There are other reasons, as well, for the defense to concentrate on gathering information early in each case.

In launching the Neighborhood Defender Service, the Vera Institute sought to develop a public defender that could and would begin work right from the beginning of a case.

The more information that defense counsel can collect in the first few days of a case, the better able they may be to influence charging decisions by prosecutors and grand juries, to negotiate favorable dispositions of cases, and to preserve evidence for presentation at trial. Potentially more important, gathering information early in the case may help defense counsel to establish a relationship of trust and confidence with their clients, and that, in turn, can increase counsel's ability to bring their cases to satisfactory conclusions.

For traditional public defenders and assigned counsel, the practical difficulties of gathering information early in the case are formidable. Not only are indigent defendants assigned counsel at the last minute, but ordinarily the assigned attorney is working alone. Energetic attorneys may be able to make a few phone calls from court to verify information in the minutes between meeting their clients and going before the judge; but, like the CJA interviewers, defense counsel stuck at court and working alone can only reach people with telephones.

The Neighborhood Defender Service is trying to overcome these difficulties, as in Kevin's case, by starting work earlier and by working in teams. It is one of the only public defenders in the country that encourages clients to retain its services, without cost, as soon as they are arrested. Then, by assigning an entire team to the case from the beginning, NDS attempts to gather the maximum amount of information possible in the first days, hours, and even minutes of a case. Even in the case of a first arrest, when release is likely in any event, the added information can make a difference.*

As Kevin's case illustrates, starting early also brings new problems to the attention of the defense. For example, the criminal justice system does not ordinarily notice the difficulties that families without money experience when they try—as Kevin's aunt did—to locate their children at a police precinct. For many NDS staff, these are some of the most challenging aspects of this new and difficult practice.

NDS did not begin with any precise formula for how its teams should organize this early work. Instead, each team has been left alone during the months covered in this report to shape its own solutions to the myriad practical problems that have presented themselves in individual cases. At the end of this three-month period, each team met to consider

As Kevin's case illustrates, starting early also brings new problems to the attention of the defense.

* For example, in one recent case involving a young man whose release the prosecutor was not opposing, the early investigation persuaded the judge to decline the prosecutor's suggestion that he issue an order of protection.

its progress in developing strategies for teamwork at the start of each case. The aim of these meetings was to identify those cases in which the team had found ways of working together that successfully advanced one or more of the project's interests in providing early assistance.

Much of the material in this quarterly report grows out of those team meetings on the subject of early assistance. This report does not present any firm conclusions about how NDS will use its team structure in the future, for we are still many months away from forming any such conclusions. Instead, the report describes in detail some of the novel and effective ways that the teams have found to assist their clients, and places these individual case stories in context through the presentation of statistical data describing the overall work of the office during this period. Our aim—both during our internal discussions and in this report—has been to identify and examine those individual instances in which our practice has pointed us in promising directions.

The Data

The data presented throughout this report have been assembled by the project staff. Data concerning NDS cases comes from the database from which NDS manages its cases. When individual cases are described, the names of NDS clients—including “Kevin’s”—have been changed to protect their privacy. Comparative data for all Manhattan cases, where available, has been provided by the Criminal Justice Agency, for which we are most grateful. The data and conclusions in this report are not part of the separate evaluation of NDS that is being conducted by the research department of the Vera Institute of Justice.

The data concerning NDS cases are drawn from cases opened at NDS during the period of this report: April 1 through June 30, 1991 (N=356). Figures relating to charge severity exclude those cases outside of criminal court, such as parole revocations and family court matters (N=333). Figures relating to release decisions made at arraignments further exclude the substantial number of cases disposed at arraignment as well as those cases that NDS entered after the initial appearance, as when, for example, a client to whom NDS is assigned at arraignment requests that NDS take over the representation in a pre-existing case as well (N=181). Finally, because the figures in the report are based

Our aim—both during our internal discussions and in this report—has been to identify and examine those individual instances in which our practice has pointed us in promising directions.

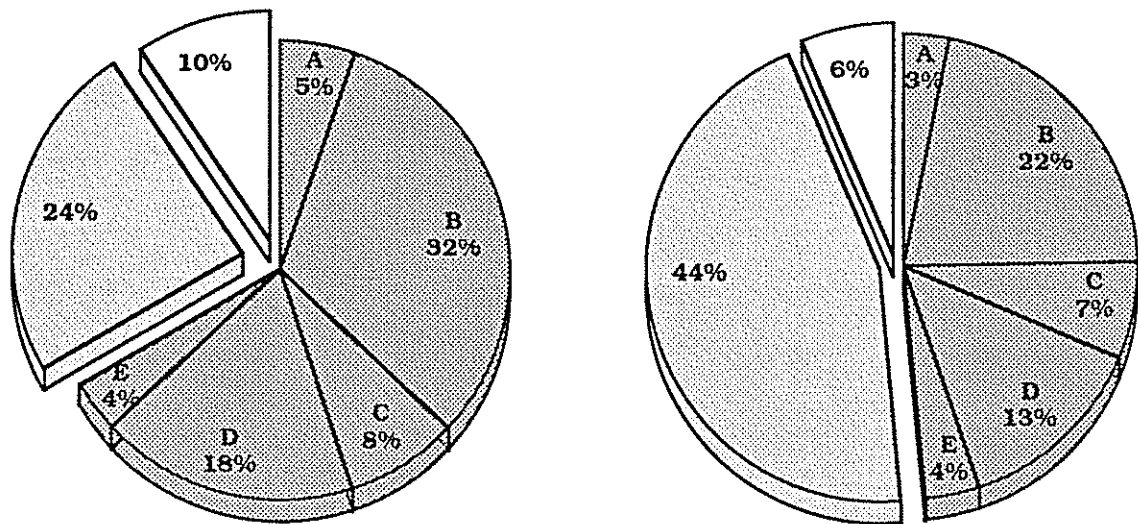
on intake, and cases of greater gravity tend to remain active for longer, the figures in the report do not necessarily reflect the caseload at any one point in time.

Our report at the end of the first year of service will examine the issue of caseload and times-to-disposition more fully. In the meantime, it may be useful to note some of the specific differences between intake data and caseload data. For example, cases outside of criminal court made up only six percent of the NDS intake this quarter, although they accounted for ten percent of the caseload at the end of the period. More significant, felonies made up roughly half of the intake for the quarter, but accounted for two-thirds of the caseload (figure 1). Such differences only begin to suggest the disjunction that can easily develop between statistical portraits of a defender office and the experience of working within it.

Figure 1. Charge Severity: Intake versus Caseload

NDS Caseload on June 30, 1991

NDS Intake for April-June



- Felonies
- Misdemeanors & Violations
- Other Cases (e.g., Parole Revocation, Abuse & Neglect)

1. Early Assistance & Bail

Bail Decisions

It will be a year or more before we will be able to measure the impact of early assistance on case outcomes, because so many cases take so long to reach conclusion; but we can already measure the impact of this kind of assistance on bail decisions.

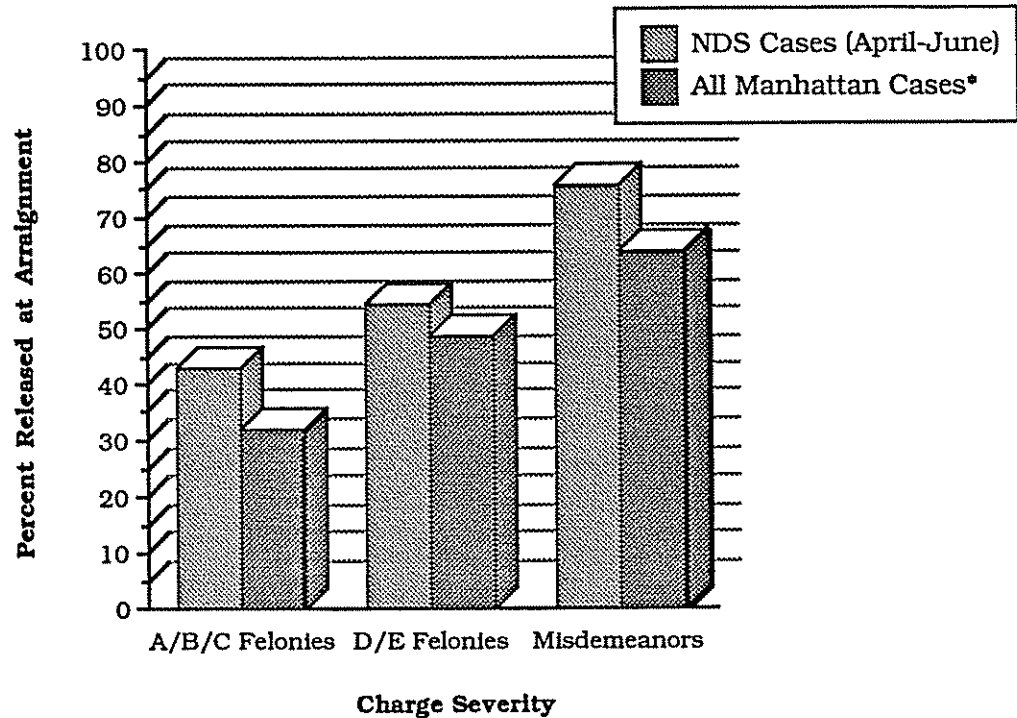
The release rate at first appearance for NDS clients whose cases continued beyond arraignment this quarter was higher than the rate for all defendants arraigned in Manhattan, continuing the trend found during the first four months of operations. The release rate for cases assigned to NDS at arraignment was 60 percent (the same as in the previous quarter), and the rate for all NDS cases—retained and assigned—was 59 percent. In contrast, the release rate for all cases arraigned in Manhattan and continued beyond first appearance was 49 percent: ten percent lower than the NDS rate. The higher release rate for NDS cases is particularly noticable in serious felony cases and in misdemeanors, though not in lower-level felonies (Figure 2).

The teamwork that produced these results took many forms. In some cases, the team attorneys were able to contact family members or neighbors by telephone to verify ties. In other cases, family members contacted NDS and so the bail verifications were done from the start. In most instances, however, the teams relied on community workers to contact the families, neighbors, and work-colleagues of clients.

As for factual investigation, most of the teams have relied heavily on their community workers for investigations. On some teams, attorneys have often accompanied community workers on these investigations, while on other, lawyers rarely go on investigations. On most teams, the community workers arrange their investigation in pairs either with another community worker or an intern; but on a couple of teams the community workers have sometimes investigated cases alone.

The release rate at first appearance for NDS clients whose cases continued beyond arraignment this quarter was higher than the rate for all defendants arraigned in Manhattan, continuing the trend found during the first four months of operations.

Figure 2. Release Rates by Charge Severity



* Note: The latest figures available by charge for Manhattan are for the period July-Dec 1990, but a comparison with May figures suggests that overall release rates have remained relatively stable. (Source: CJA)

Differences Between Assigned and Retained Cases

The way in which an NDS team works on bail issues largely depends on how the team enters the case: as assigned counsel or as retained counsel.*

Because the model of representation that is being tested is likely to provide the greatest benefits when NDS enters its cases at the earliest possible time, NDS gives priority at intake to those clients who are seeking to retain NDS as counsel prior to their initial court appearance. In order to accommodate these clients, NDS has a team available at the office or by telephone 24-hours each day, every day of the year. In addition, NDS assigns a team to receive assignments at criminal court three days each week, on the busiest arraignment days. In many instances, clients who retain NDS or to whom NDS is assigned then retain NDS to represent them in other cases. Once a client is represented by an

* In either mode, all of the legal services provided to clients are publicly funded and there are no fees or costs charged. The mechanisms by which NDS receives retained cases and assigned cases are described in detail in the quarterly report for the period ending in March 1991.

NDS team, that team will continue to be available to represent that client in any future matters.

In cases assigned to NDS at arraignment, the team has only an hour or so to gather independent information about the defendant and the offense. Most of the teams have organized themselves for their arraignment days so that the attorneys on the team are downtown at court while the community workers, the administrative assistant, and the intern are at the Harlem office. As the team on duty has been assigned to cases through the day, the attorneys have generally called the other team members and discussed ways of finding information for the arraignment. Collecting this information has usually required the community workers to visit family members at home, visit a client's place of employment, or visit the scene of an alleged offense. Once the community workers leave the office to do this, they remain in contact with the attorneys in court by telephone and beepers so that they can relay information as they collect it, and can respond to additional requests as the attorneys pick-up other cases at court.

For clients who retain the services of NDS in advance of arraignment, the process is less rushed. These cases come to NDS either during the work day, when most of the team is usually in the office, or after working hours, when one member of the team answers telephone calls and others on the team are available by telephone or beeper. When a team is retained by a client before arraignment, a team member—usually an attorney—telephones the police precincts to locate the client and advise the police that the client is represented by counsel. One or more members of the team then go to the precinct to interview the client. Even in the middle of the night, an attorney and a community worker sometimes meet at the precinct and begin to work on the case together from the start.

If the client has already been moved from the precinct to the central booking facility, a team member may interview the client at central booking, but, in practice, interviews at central booking have been rare. Instead, because there is less time before the arraignment when the client is already at central booking, team members have generally begun by speaking with relatives and friends of the client to collect information about the client's family background, community ties, and other factors relevant to bail.

Collecting this information has usually required community workers to visit family members at home, visit a client's place of employment, or visit the scene of an alleged offense.

The two groups of cases—assigned and retained—are different not only in the time available to the team to assemble the bail information, but also in the seriousness of the charges involved. The cases assigned to NDS from April through June, 1991, matched the profile of all Manhattan cases both in the average age of the defendants—29 years old—and in the distribution of cases by the charge level of the top charge. The cases in which NDS appeared as retained counsel, however, were significantly more serious than the assigned cases (Figures 3 & 4).

Figure 3. Distribution of Intake Cases by Charge Severity

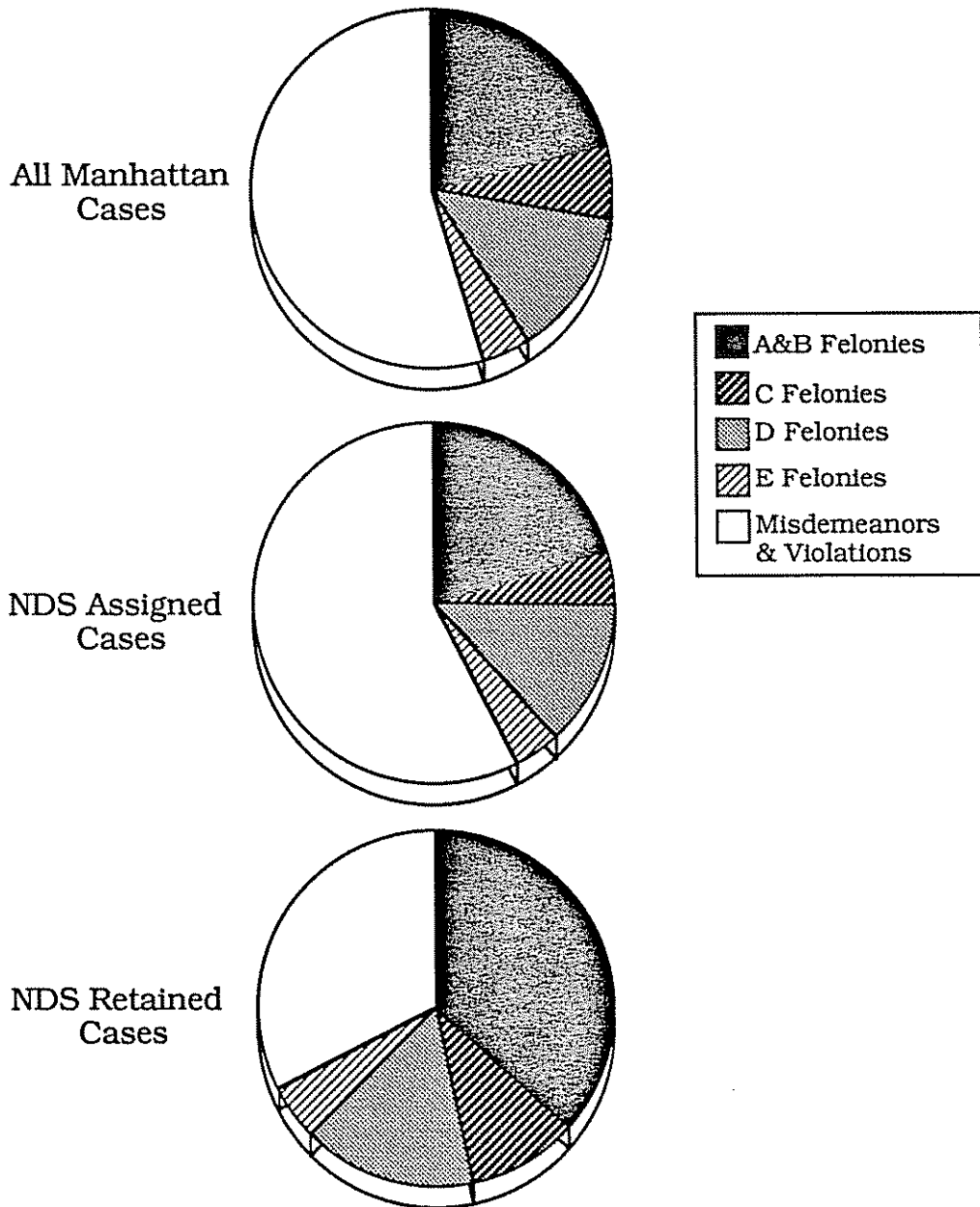
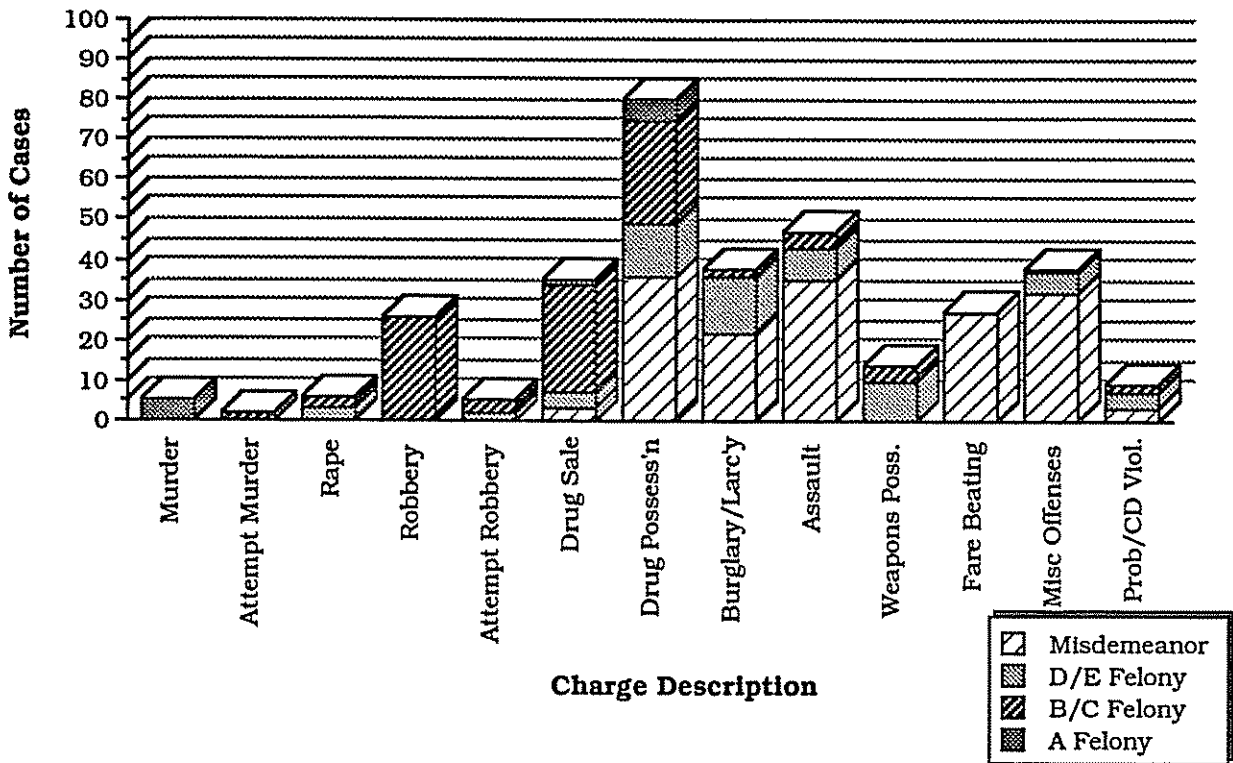


Figure 4. Intake Cases by Description and Charge Level



The added time available to the teams to work on bail issues in retained cases might be expected to increase the rate at which these clients are released at arraignment, but the greater seriousness of these cases probably reduces the rate at which these clients are released. Overall, there is no statistically significant difference in the release rates at first appearance between the cases that NDS entered as retained counsel and those in which it was assigned.

Early Assistance in Verifying Community Ties

The impact of the early assistance provided by NDS is most powerfully manifest in arraignment proceedings. In the case of Victor Green, whose arraignment transcript is reproduced below, that early assistance was of the most typical variety for NDS in that it was limited to his family and community ties. Information of this type is not very unusual in arraignment proceedings, regardless of how the defense attorney is employed; but the information is more meaningful when the attorney is able to draw upon the kind of leg work that an NDS team does routinely.

In the transcript below, there is a moment during the defense attorney's argument when the judge calls both lawyers to the bench. Unfortunately, that conversation is not recorded. The judge, who had only recently moved to the bench from the office of the Queens District Attorney, was incredulous that defense counsel had visited her client in the police precinct. At the bench, counsel was asked to explain how NDS worked and how she and her community workers had collected the information that she was presenting.

The defendant, Victor Green, was charged with two B-felonies, one for sale and one for possession of narcotics, and a D-felony possession. The report from CJA indicated that community ties were not verified.

People of the State of New York -against- Victor Green

MR. BURKE [prosecuting]: People are requesting bail in the amount of \$2,500. Defendant does have a bench warrant history. There was a buyer who was apprehended. That was apparently felony weight. There was an observation sale with matching stash. The arresting officer in an observation post sees several persons approaching the defendant [Victor Green], give him money, receive vials in exchange for the money ... The Officer [saw the buyer] give the defendant money and get vials in exchange. The backup team apprehended the [buyer], recovered one plastic bag containing one gold cap vial of crack from that defendant. The backup then apprehended [Victor Green] and recovered 32 of the same packaged vials of crack and \$62 of currency.

--

THE COURT: I'll hear from you, Counsel.

MS. MALDANADO [NDS]: Yes, sir, Your Honor. Your Honor, Victor Green is a 36 year-old family man with—I will submit—a very minimal record for a man of

his age. His only conviction dates back to 1971 at the time and place of his youth. He's since been a very changed man. I submit although he has a felony conviction, it is over ten years old. It would not serve at this point and time as a predicate felony..

THE COURT: What happened to the Queens case? [Referring to the rap sheet that showed a return on a warrant in Queens in 1988, but no substantive charge].

MS. MALDANADO: Your Honor, I submit the Queens case was disorderly conduct and disposed of by that disorderly conduct in 1988.

THE COURT: I understand that, by it looks like that was a warrant.

MS. MALDANADO: It looks like it was a warrant that dated back ten years ago, issued in 1977. My client informs me that he returned himself voluntarily on that warrant. He told me that yesterday when I met him at the precinct, and it is confirmed now by the fact that no other charge appears with that return [on the rap sheet].. I submit that my client last night at the precinct informed me of his criminal history, and everything is verified by what NYSID [the rap sheet] shows here today. He has a ten-year old-over a ten-year old conviction. He has one other case which he voluntarily turned himself in on, and it was then disposed of as a violation.

THE COURT: Would both of you approach, please. Both of you.

(DISCUSSION AT THE BENCH.)

MS. MALDANADO: Mr. Green was born and raised in New York City. He attended school up to eleventh grade at York Westinghouse. He married, in 1979, Shirley Green. Ms. Green resides at... An investigator from my office visited her at home. She has no phone, which is why CJA was unable to verify community ties. The investigator visited her at home and confirmed that Mr. Green lives with her. He is the father of three of her children and they have one baby on the way. Also, as an alternative address, he gives his grandmother's address in the Bronx. We contacted the grandmother, [who is] over eighty years old. She also confirms that Mr. Green was born and raised in New York City, [and] has strong community ties. His mother is presently in the hospital. She is the only family member not interviewed because of her present illness. We received a call from a cousin [Mr. Green] two hours after his arrest... I submit that this is an individual with very strong community ties... I submit, in light of the strong community ties, the fact his family is very supportive of him, and because of their financial condition, the fact that they cannot make any bail, Mr. Wilson is a good candidate for ROR.

--

THE COURT: Notwithstanding what the DA requests, \$2,500 bail, I'm going to ROR the defendant based on what Counsel said and based on my conversation with Counsel at the bench.

MS. MALDANADO: Thank you, Your Honor.

THE COURT: Defendant is ROR. And Mr. Green, I suggest you do your mother a favor, okay, and stay home.

In other cases, NDS teams encourage one or more family members to come to court. The attorneys describe this as a big help in arguing for release, but the most dramatic impact occurs when the family and friends present are able to post a small amount of cash bail. In one such case during this quarter, the prosecutor was seeking to keep the defendant in jail on \$5,000 bail in a case involving possession of a gun. The defendant, who was 21 years old, also had an outstanding warrant for failure to pay a \$250 fine. The defense attorney began her bail argument by stating that the client's father and wife, both of whom were in court that morning, were prepared to pay the fine then and there. By the end of the argument, which made reference to the fact that his father had employed him for four years, the judge set bail at \$1,000, which, by coincidence, was all that the family could afford. Bail was paid in court, and the client went home with his family.

Bail was paid in court, and the client went home with his family.

In several cases, NDS teams have helped clients and their families provide information to permit the police to issue a desk appearance ticket (DAT), allowing the client to be released from the police station to await a court date a few weeks later rather than remain in custody overnight. In one such case, where NDS was retained to represent a young man charged along with several co-defendants in a subway assault, the NDS attorney arrived at the precinct to find several relatives of the young men in the waiting room. The co-defendants did not have lawyers, and only the attorney was permitted beyond the waiting area. There, the attorney was able to talk with his client, discuss the case with the police, introduce them to the client's family, and facilitate his release from the precinct. The others were all held overnight.

Early Assistance in Verifying a Claim of Innocence

In cases that NDS receives several hours before arraignment, the teams are now almost invariably beginning their investigations before the bail decision. The information gleaned in the first few hours is rarely complete and often raises more questions than it answers. Nevertheless, there are a significant number of cases where the early investigation throws what appears to be a serious case into a very different light. If a serious case appears to be appropriate for eventual dismissal, the attorney may choose to reveal the

fruits of early investigation at the bail hearing in order to correct the impression made by a spurious charge.

The arraignment transcribed below was one such instance. The defendant in this case was charged with two felony counts of possession of a weapon. He had been arrested at Harlem Hospital where he was being treated for injuries he received when he leapt out of a window. He was then taken to the precinct where his NDS attorney caught up with him. He was arraigned less than eight hours later, but during that time the defense team had spoken to at least two witnesses and had visited the scene of the alleged crime. The defendant's statement mentioned in the excerpt below was made to the police before he had spoken to counsel.

People of the State of New York -against- James Booth

MR. BEARD [prosecuting]: People are serving 190.50a felony grand jury notice. People are also serving statement notice. One moment, Your Honor. Your Honor, no more on the statement notice. As to identification notice, there was a confirmatory identification in Harlem Hospital.

MR. NOISETTE [NDS]: By whom? The person named in the complaint?

MR. BEARD: By-this is rather confusing. One moment, Judge. Yes. He was identified at Harlem Hospital by two witnesses who are those named in the complaint, that being [the complainant] and another witness who is not in the complaint.

THE COURT: Does that complete the notices?

MR. BEARD: No, Your Honor. I'm just trying to decipher a little bit on the statement notice before I read it. I'm not sure it's actually a statement. [pause] Yes, Your Honor. There is statement notice. At approximately 4:30 in the station house, defendant in substance stated he was having a fight with the complaining witness and the complaining witness's brother over family matters. Defendant stated the complaining witness took a-I believe it's a noon chuk out of a closet so he went into his-so defendant stated he went into his room to get a black jack. Defendant stated that his girlfriend told him that the complaining witness was calling the cops so I jumped out of a window because I just got out of jail. No further notices, Your Honor.

The People are requesting bail in this case in the amount of \$3,500. Defendant has bench warranted in the past. He is on probation through 1992 here in New York County. I believe he may also be on probation in Peekskill, New York, as well. Defendant has an open case involving a weapon... Therefore, the People are requesting bail in this case in the amount of \$3,500.

MR. NOISETTE: I think \$3,500 is totally inappropriate in this case. Along the lines of statement notice that the People gave, I have spoken to two independent witnesses to the incident, and their information that they conveyed to me corroborates what the defendant said. There was a fight. The defendant was attacked by two individuals who are now pressing charges against him. They used not only a noon chuk, but a machete. The defendant jumped out of the window because he was in fear of his life. I spoke to two witnesses. One of the witnesses was at the hospital when the defendant was arrested. And with respect to the weapons charge in the complaint, the witness at the hospital who also was a witness to the incident told the police at that time the weapon they recovered was not used by the defendant. The defendant did not use the weapon in the apartment. This attorney [the prosecutor] may not have any information about this, but I spoke to this witness. He is prepared to testify if that becomes necessary. He informs me he related this information to the police at the hospital when they arrested the defendant.

THE COURT: Is that the person listed in the complaint?

MR. NOISETTE: That's not the person listed in the complaint. It's the nephew of the person who was listed in the complaint who was present at the time of the incident. More importantly, this attorney [the prosecutor] refers to a warrant in the defendant's history. The only warrant in his history was a warrant issued in May which was a violation of probation warrant. However, after the defendant returned to court, he was restored to probation. That's the only warrant in his history.

His fiance and his brother are in the courtroom. They are here to show the defendant has family ties. They have confirmed he lives where he says he lives. He's only been there for a month because he and his mother moved from the previous residence where they lived for five years. The defendant just got a job yesterday. Yesterday was his first day at work. He works as a porter for the Port Authority.

The judge and his probation officer [last May] felt he was a good enough risk to restore him to that probation. If he is incarcerated now, that's the end to any job and any attempt to rehabilitate himself. There is a problem with the People's proof in this case. I would ask Your Honor to release him on his own recognizance.

THE COURT: Anything further, Counsel?

MR. BEARD: No, Your Honor.

THE COURT: Defendant is released on his own recognizance.

Armed with the information gathered in only a few hours of investigation, the NDS attorney is able to lend plausibility to the defendant's account—an account rejected out-of-hand by the prosecutor who knew it, but who nonetheless sought to hold the defendant on a relatively high bail. After several months and four court appearances, the case was dismissed

2. Early Assistance & Results

Rapid Response

The NDS teams all put a high priority on being prepared to respond to requests for help quickly and effectively. Requests for help may come from new clients who call NDS day or night, from existing clients who come across something bearing on their case and need advice about what to do, and from former clients who may be re-arrested.

NDS teams are able to assist clients in all of these situations. Each day, one team is assigned to be on 24-hour duty, meaning that any potential client who walks into the office or anyone who calls during that 24-hour period is assisted by that team. On weekdays, these teams usually have at least one lawyer and some other team members available in the office. At nights, on holidays, and on weekends, the team on call may have one of its members remain in the office with the rest of the team available at home or on beeper, or the team may divert NDS telephone calls directly to their own homes. The person receiving the calls may be a lawyer or another member of the team, but there is always at least one lawyer backing-up any community worker or administrative assistant who is answering the phones.*

In April, with the practice four months old, calls requiring the team to go to see clients at police precincts were coming approximately once each week. The rate has been increasing, however, and it is now almost once each day.

Sometimes an attorney will visit a client at a precinct alone, but most teams have developed a preference for working in pairs. Often, lawyers and community workers both go to the precincts so that the community workers can be of assistance there and then move directly into the investigation of the case.

Many clients and neighborhood residents have expressed surprise that the community workers (and sometimes the lawyers) actually come to the crime scenes, take photographs, take measurements, and canvass the areas. Their reception has usually been enthusiastic; although early in the practice some people hanging out on the streets

* All of the teams now have community workers answer the phones during some of their 24-hour duty. Some of the teams also have their administrative assistant answer the phones for some of the time. This has been a gradual development, however, from the time at the start of the project when most of the teams had lawyers answering the phones during nights and weekends.

assumed they must be police officers. In one case, the people in the neighborhood were so certain that defenders did not do this kind of work that they insisted that the community workers were police, even after they showed their cards and the client introduced them. At that point, some people on the street concluded that the client must have started cooperating with the police and that the entire enterprise was an elaborate ruse by the police to infiltrate the block.

Increasingly, the NDS teams are commencing this kind of investigation as a matter of routine, without knowing in advance if the information they uncover may be useful at trial, at a suppression hearing, or as part of a plea in mitigation. Indeed, the information gained through rapid investigation has proved useful in unexpected ways. For example, in the case of one client charged with possession of drugs, the NDS attorney moved to suppress evidence because of an unconstitutional search, and the prosecution countered by claiming that the searched apartment was not used by the defendant, but was abandoned and chained closed. At the suppression hearing, the NDS attorney was able to call the team's two community workers as witnesses to testify that the police description of the apartment was not accurate and to introduce photographs of the apartment that they had taken at the time. Because of their immediate investigation, they were able to contradict the testimony of the police officer about the condition of the apartment on the day of the arrest.

A transcript of some of that hearing appears below. The police officer, on direct examination, had testified that the apartment was abandoned and secured with a padlock. The excerpts here begin with the NDS attorney cross-examining the officer about his testimony that the door was locked:

People of the State of New York -against- Richard Love

CROSS-EXAMINATION OF POLICE OFFICER DALESSIO BY MARTHA RAYNER [NDS]...

Q Now, when you were outside that door [to the apartment], you say there was a padlock on the door, correct?

A Yeah, it was sort of a chain coming through a hole in the wall and a hole through where the doorknob supposedly would be with a padlock.

Q The padlock kept the chain through those two holes, correct?

A Correct.

Q And you say there was an actual hole in the side in the wall, correct?

A There was a hole large enough for the chain to come through.

--

Q Now that hole was on -- let me -- the hole in the door, was that where the knob usually would have been?..

A There was a missing doorknob, and the chain proceeded through the hole.

DIRECT EXAMINATION, OF ROGER NAUT BY MARTHA RAYNER..

Q What is your occupation?

A I am a community worker for the Neighborhood Defender Service of Harlem.

Q Could you please tell the Court what exactly that is?

A I investigate cases and I also help clients with social, different social services as an alternative to incarceration, drug programs and so forth.

...

Q And did there come a time that you went to the 32nd precinct?

A Yes.

Q And what brought you to the 32nd precinct?

A Well, I remember that day because I was about to leave, and the office received a phone call stating that a client had been arrested [and was] at the 32nd precinct, and we went.

Q Who did you go to the precinct with?

A Jonathan Oberman, Whitney Tymas, Maggie Moroff, and Helen Qubain. [Three attorneys and one other community worker from his team].

...

Q How long did you remain at the 32nd precinct?

A About 20, 25 minutes.

Q And where did you go from there?

A We went to [the address of the apartment searched].

Q Who did you go with?

A Helen Qubain [the other community worker].

--

Q Did you actually enter the apartment?

A Yes, I did.

Q Was the door locked?

A It was closed but not locked.

Q Could you please describe the lock to the Court?

A Well, it was your basic, it had bronze coating on it. You know, it was bronze, had a glass door knob.

Q Was the doorknob intact?

A Yes, it was.

...

Q The outside doorframe of the doorway to apartment number two, was that intact?

A Yes, it was.

Q How about the wall that was on the lefthand side of the doorway?

A That also was intact.

Q Any hole in that wall?

A No.

Q Was there any hole in the door?

A None at all.

--

Q Mr. Naut, could you please take a look at that photograph. Do you recognize it?

A Yes

Q What is that a photograph of?

A This is a photograph of the entrance to [the address] and of the door to apartment number two..

Q Will you please look at what is marked for identification as Defendant's "E." Do you recognize that photograph?

A Yes. I do.

Q Please tell the Court what that is.

A That is a picture of the door at [the address of the apartment]. The door is facing and it has picture of the bed inside the apartment at that time, half the chair, and a closer picture of the knob and lock....

Q Is that a fair and accurate representation of how the door looked on January 3rd when you saw it?

A Yes, it is.

... CROSS-EXAMINATION: ...

Q Can I ask you why you were taking pictures of the door inside the apartment; why you were with somebody that was taking photographs?

A Well, we work together as a team and, basically, when we go out to do our investigations we ... accompany each other; and whenever we do investigations, we usually like to take photos of alleged crime scenes. So that's why we took photos.

The ability of NDS to respond to clients effectively is greatly enhanced by the location of the office within their neighborhood.

For example, in another case received during this period, NDS was retained to represent a client minutes after his arrest on a serious assault charge. An NDS attorney went to the precinct right away, and, partly as a result of the team's work, the client was released the next day from court and was able to return to his job. A couple of days later, the client called the office to report that the police had just arrived at his job with a search warrant for his apartment, and that the police wanted him to accompany them to the apartment. As a result of the conversation with the NDS lawyer, the client remained at his job while the police went to execute the warrant. At the same time, a lawyer and a community worker went to the apartment, only a few blocks away from the NDS office, arriving just after the police had started their search. The lawyer reviewed the warrant and witnessed the rest of the search, which the officers conducted thoroughly, but with great care to preserve the good

order of the apartment. The attorney's presence certainly helped to protect the client's rights during the search, and—had any evidence been found—the community worker would have been able to testify about its discovery.

Occasionally, such early response to clients has allowed NDS attorneys to influence the prosecutor's charging decisions. In one case during this period, for example, a client was arrested in a decoy operation organized by the transit police. By beginning their work immediately, the team was able to present the prosecutors with enough mitigation to persuade them not to present the case to a grand jury as a felony despite a policy in their office to present every decoy case for indictment.

Finally, this rapid investigation of cases may have persuaded some clients of the strength of the case against them and of the wisdom of entering an early plea of guilty. It is too early in the life of the project to analyze this phenomenon statistically, and the impressions of staff members on this point vary from team to team. Nevertheless, several of the attorneys report that clients have talked about the results of early NDS investigations in explaining their decisions to enter guilty pleas early in their cases.

Assistance Before Arrest

A small but growing number of cases in the office commence even before a client has been arrested.

In one such case, NDS represented a client at a lineup. Following police regulations, the NDS attorney at the lineup made several suggestions to improve the fairness of the procedure, and the police agreed to make some adjustments. When the witnesses were brought in, the client was not identified as the perpetrator and was not charged.

In other cases, clients have retained NDS to assist them when they believe that conversations with police officers or detectives have taken on an accusatory tone. Some of these cases have come to nothing, while in others the clients have eventually been charged and NDS has helped the client to arrange a smooth surrender.

In still other cases, clients have retained NDS specifically to organize their surrender, and subsequently to represent them in the court proceedings. One such case involved

The lawyer reviewed the warrant and witnessed the rest of the search, which the officers conducted thoroughly, but with great care to preserve the good order of the apartment.

a person who was being sought by the police in a homicide case. A relative of that client retained NDS on the client's behalf, and the team's community workers began an investigation immediately. The speed and efficiency with which the team responded helped the client to develop sufficient trust in the team to permit them to assist her. The client, who may have been afraid that she would have been hurt if the police had captured her on their own, surrendered calmly in the presence of her attorney at a time pre-arranged with the detective on the case.

Although many NDS clients will never be arrested a second time, others will. Part of the design of the Neighborhood Defender Service permits an NDS team to represent those clients in their subsequent cases. Part of the work that the teams do, therefore, is aimed at preparing their clients to deal in an informed way with the criminal justice system in the future. Even in these early months, some NDS clients have been arrested a second time, and, in some of these cases, the work done the first time has assisted the client in the later case. Although this kind of assistance is usually difficult to document, in at least one case during this period one benefit to the client from the earlier representation was clear at the arraignment in the subsequent case:

COURT OFFICER: Notices, People.

MR. LANE [the prosecutor]: People are serving Felony Grand Jury notice. People are also serving statements notice. The defendant stated, "I'm invoking the Fifth Amendment."

THE COURT: Okay.

Afterword

The provision of early assistance at NDS is still in its early development. Through these first months of practice, the NDS teams have been learning new ways of working effectively at precincts and in the courts on issues that would not arise if counsel entered these cases only at arraignment. Similarly, the teams are becoming more accustomed to working together on early investigations and the collection of information for bail arguments. There is a strong sense within the teams that this form of practice is valuable to clients and succeeds in advancing public interests in reducing the use of unnecessary pretrial detention and improving the adversary process. Still, the development of these aspects of the practice continues at a rapid rate.

There are other novel aspects of the practice that are also under development. In particular, the coordination of representation in related criminal and non-criminal proceedings is an area where the teams are learning a great deal while providing a new and promising service. (There are obvious efficiencies to be gained here, as well, if a single lawyer can do a better job in pursuing a matter that has generated litigation in both family and criminal courts than can two separate court-appointed, publicly funded attorneys). Our next quarterly report will examine the development of this aspect of the practice at NDS.

Appendix:

Social Service Work

NDS attempts to assist its clients with a wide variety of problems through other neighborhood-based and city-wide programs. Although responsibility for coordinating that assistance with the legal representation remains the responsibility of the teams, the community workers on the teams work closely with the office's Chief of Social Services to identify possible sources of help and in assisting clients to gain access to services.

NDS is very grateful to the following organizations that have accepted NDS clients on referral for assistance or evaluation during this quarter:

The Door; Hospitality House; Red Cross Mother & Child Program; Jobs for Youth; CUNY/Columbia University—Community Impact; MICA; Harbor House; Samaritan Village; J-CAP Drug Program; Harlem Hospital; Second Chance Program, NYC Parks Dept.; PRACA (GED Training); Walter Hovin Home; YMCA; Upper Manhattan Mental Health Center; HEART Project; El Rio; Daytop; Youth Action Training Program; Coney Island Resource Center; Harlem Valley Churches; Canaan Baptist Church; Reality House; Addicts Rehabilitation Center; Project Return; Salvation Army Shelter; Fordham Tremont Domestic Violence Program; and Promesa.