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**The
Neighborhood Defender Service
of Harlem**

**Intake:
The First
500 Cases**

**Report for
December, 1990,
through March, 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 the NDS staff in winning a higher 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.

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Introduction:

Building the Caseload of a New Defender Service

The Neighborhood Defender Service began full operations on December 3, 1990—not quite seven months after New York City's Board of Estimate had approved the creation of the service. In the months leading up to the December start, 55 staff members had been hired and trained, including 21 attorneys; offices had been leased and renovated; a sophisticated computer system had been designed and installed; administrative systems and procedures had been developed; and—most significantly—the legal practice itself had begun on a pilot basis. None of this work before December, however, had really tested the basic hypothesis on which NDS had been conceived: that it is practical and efficient to provide high-quality legal representation to indigent people accused of crimes through a neighborhood-based, team-based, client-centered public defender. To test this hypothesis, it was necessary to develop a substantial caseload.

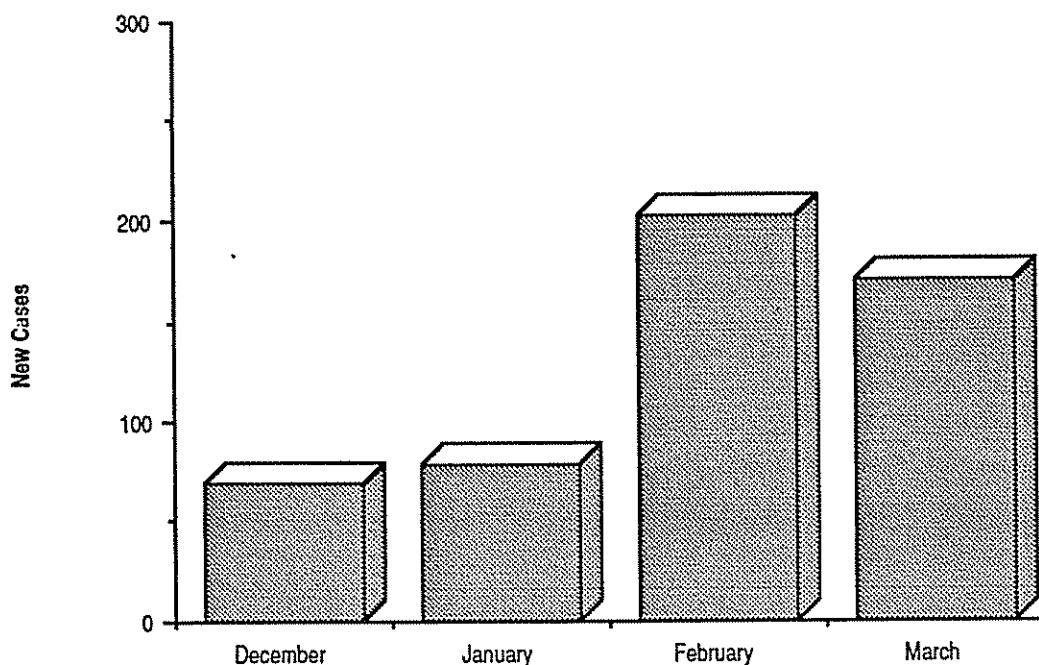
When NDS began full operations on December 3, 1990, its six teams had 73 open cases remaining from the pilot period. In the next four months—the period covered by this report—NDS opened 523 new cases and closed 195 cases, leaving it on March 31, 1991, with 398 open cases.

We had hoped that NDS would build its caseload more quickly than this, but the project encountered early difficulties with some of its systems for receiving court assignments. As a result, intake was kept frustratingly low in December and January, rising to an adequate level only in February and March (see figure 1).

We use this quarterly report to examine the first 523 cases received after the pilot period. What kind of cases are they? How did they get to NDS, and what did NDS do to get them? How did NDS work on them, and what early indications do they provide about the viability of the neighborhood-based, team-based, and client-centered model of representation that NDS is testing?

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Figure 1. Intake of New Cases by Month



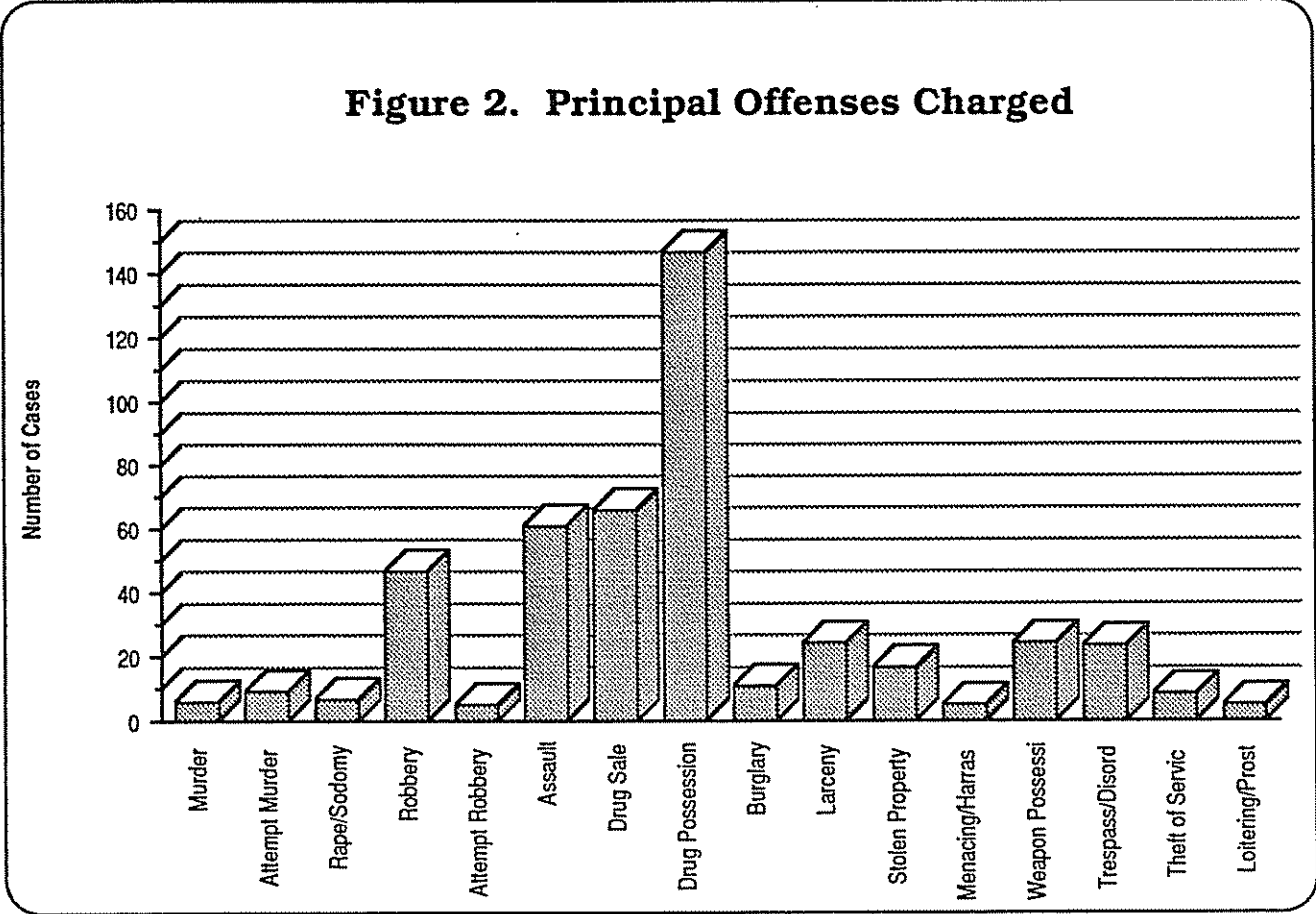
Types of Cases

Because NDS represents clients in civil court, family court, and administrative forums on matters connected to criminal allegations, staff members find themselves litigating in settings other than the Criminal and Supreme Courts. Nevertheless, almost all cases received during the first four months were criminal cases. The exceptions were two abuse cases in family court and one criminal appeal, along with three civil court cases and six administrative proceedings concerning housing, immigration, and education issues.* In addition, the office received a variety of allegations of police misconduct from defendants in connection with their criminal cases. Although none of these resulted in formal litigation during this period, the teams are assisting clients in appropriate cases in their dealings with the Civilian Complaint Review Board.

The core of criminal cases covered the spectrum from homicide to fare evasion. The largest categories were drug

* In order to prepare the teams to handle these related cases, NDS undertook representation in a small number of additional housing and immigration cases arising from criminal allegations. The immigration matters have included a deportation case as well an appeal to the District Director on behalf of a convicted client seeking a medical visa for cancer treatment.

possession, drug sales, robbery, and assault. The distribution of the criminal cases across the principal categories is shown below (figure 2).



Types of Intake

NDS obtains its cases in two distinct ways: by request of the client and by assignment from the court. When clients ask NDS to represent them and NDS agrees, an NDS attorney enters the case as retained counsel, although the client pays no fee. In contrast, when a court assigns NDS to provide representation in a particular case, NDS enters the case as assigned counsel.

Both types of intake—cases in which NDS is *retained* and those in which it is *assigned*—are crucial to the design of NDS. The benefits that the NDS model can provide to clients and to the system of justice depend on the earliest possible entry into a case, and this in turn depends on a defendant's request for an NDS attorney as soon as possible following an arrest. NDS, therefore, gives first priority to potential clients who seek to retain its services *before their first court appearance* in a criminal case. We assume, however, that these retained cases will never exhaust the capacity of the organization. It was essential, therefore, to include in the original design provision for NDS to receive a number of additional cases on assignment from the court, especially in the first year or two.

Because the systems on which NDS relies to generate assignments from the court and requests for representation by defendants are so different from each other, the discussion below of how NDS received its first 523 cases deals with these two groups of cases separately.

Nevertheless, these two types of intake are related because some number of those defendants to whom NDS is assigned as counsel will be arrested again at some future point and may then seek to retain NDS. Indeed, several of the cases in which NDS was retained during this period involved defendants to whom NDS had been assigned only a few weeks earlier in other cases. For this reason, we continue to expect the proportion of cases in which NDS acts as retained counsel to grow as the project develops a reputation among its own clients and in Harlem communities at large.

1. Retained Cases

How NDS is Retained

NDS can serve its clients best when it commences work early in a case. In order to make this possible, NDS has organized its staff so that attorneys are available by phone 24 hours each day. The teams rotate responsibility for 24-hour intake so that one of the teams is on duty each day of the year. If a call comes from a person who has just been arrested, members of the team on call go to the police precinct, to the Central Booking facility in lower Manhattan, or wherever the client is being held, and commence representation.

Whenever an NDS attorney agrees to provide representation to a person who has contacted the Service, the attorney enters a notice of appearance with the clerk of the court and, if the case is not yet in court, notifies the police that the person is represented by counsel. Technically, NDS enters these cases as retained counsel, without the need for the court to make any assignment at all.*

NDS gives first priority for intake to people who contact NDS seeking legal representation in criminal matters shortly after an arrest. NDS tries to discourage defendants

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* The ability of NDS to enter cases as retained counsel caused some confusion in a few cases in these first months of operation. Some attorneys in private practice were accustomed to thinking of "retained" as implying the payment of a fee, and others assumed that NDS needed the court to assign it cases in order to authorize payment for the work done.

NDS does not draw its funds through the 18-B voucher system, by which judges authorize payments for work done on assignment. Rather it operates under contracts with the Deputy Mayor for Public Safety and the State Division of Criminal Justice Services, thereby eliminating any financial need to be assigned by a court to a particular case.

When NDS is retained by a client, the NDS attorney appears in court with the client, obviating the need for the court to make any assignment. NDS is properly characterized as retained counsel in these circumstances, even in the absence of a fee. Under New York law, "whether or not an attorney is in a retained capacity does not depend upon his receipt of a fee or some other form of compensation. An attorney may furnish free legal service to a criminal defendant and still be considered retained counsel." *People v. Arroyave*, 49 NY2d 264, 272 n.3 (1980), quoting with approval the opinion of the Appellate Division, First Department, in the same case, 63 A.D.2d 127, 132 (1979).

from changing attorneys late in their cases and will undertake representation in such cases only in unusual circumstances, and then only with the approval of the project director.

Outreach

We expect that it will be approximately two years before NDS is well enough established within Harlem to rely on retained cases as its principal source of intake. In these early days, NDS must rely on an aggressive program of outreach to educate Harlem residents about the existence of the service and how to use it.

The outreach strategy has been built on several assumptions about how potential clients will make contact with a defense service. First, representation in criminal cases is not a service that most people think they need when they hear about NDS. Our outreach, therefore, relies on materials that people can find again when they need them, such as posters and stickers, rather than on brochures or leaflets that are quickly discarded. Second, people are more likely to choose lawyers on the basis of referrals from people they trust than on the basis of advertisements. NDS outreach, therefore, emphasizes liaison with other service providers and community leaders to whom residents might turn in times of need. Finally, there are groups within any community who are more likely than others to need the services of defense attorneys, such as young people and recent parolees. Our outreach has therefore emphasized direct contact with students and with programs for ex-offenders.

Responsibility for outreach activities extends throughout the staff of NDS. During the first two weeks of full operations, NDS distributed thousands of posters throughout Harlem describing the service in both English and Spanish and explaining how to reach an attorney around the clock. During this same period, NDS staff visited businesses, churches, social service offices, schools, and housing projects and spoke with people on the streets to explain the services available at NDS. At the end of this two week blitz, particular areas of responsibility for continuing outreach were delegated to each of the six teams, known in the office as Teams "A" through "F."

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Team A has been in contact with organizations including Woman's Care, Hostos Community College, Steps to End Family Violence, United Family of East Harlem, Legal Aid Community Tenants, the Dispute Resolution Center, the Youth Action Program, and the I Have a Dream Program. Team A is also in contact with the residents at the 1199 Apartments and the Rangel Houses.

Team B has been responsible for contact with health care organizations and two housing projects. One attorney and one community worker from the team met with the tenants association at the Drew Hamilton Houses, and the team's other community worker distributed material about NDS at the St. Nicholas housing complex. The team's community workers spoke with staff at Mount Sinai Hospital and at Metropolitan Hospital. Two of the team's attorneys conducted a question-and-answer session with residents of the Addicts Rehabilitation Center and met with the director and site coordinator of the Lenox Primary Care Network. One attorney visited the Paul Robeson Family Medical Center, and material was sent to another half-dozen health care providers in Harlem.

In addition to its assigned responsibilities, Team B has also established liaison with staff at the Hispanic Housing Task Force, the office of Councilwoman Carol Maloney, the office of State Senator Olga Mendez, MFY Legal Services, Citizen's Action for a Safer Harlem, the Rockin' Magicians Sports Association, the Dunleavy Milbank Children's Center, and Phase Piggy Bank. One of the team's attorneys established an arrangement with the State Division of Substance Abuse Services to have NDS staff join DSAS for outreach when they use their Mobiletruck in conducting their own outreach activity on the streets.

Team C has focused its efforts on schools, churches, and programs for ex-offenders. At the beginning of January the two community workers on this team mailed letters and brochures to approximately 230 churches within Harlem explaining the service and offering to speak to any interested groups. Several churches contacted the team for more information, and several requested posters and stickers, but this mailing has not yet produced any invitations to speak to congregations. One of the community workers also mailed a letter and brochure to each of the high schools and intermediate schools serving large numbers of Harlem residents.

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Packages were also mailed to the presidents of the parents associations in these schools. The two community workers on the team spoke to staff at Rice High School, and one community worker has organized a mock trial program with students at IS 10's North End Youth Program. This team also organized a series of talks with ex-offenders recently released on parole from New York State's shock incarceration program. These discussions have involved community workers and attorneys from several of the teams and are conducted at the offices of the Neighborhood Work Project, another project of the Vera Institute of Justice. One of the community workers on Team C has established liaison with the director of the Ralph J. Rangel Community Center. No outreach has yet been made, however, to this team's housing projects.

Team D was assigned to familiarize the office with community organizations as well as to make contact with residents of four housing complexes. The team acquired a list of 30 organizations from Community Planning Board 10, although they found many to be defunct or difficult to contact. So far, the team has been in contact with the Harlem Youth Council, the Harlem Parents Union, the Schomburg Center, the Harlem Athletic Association, and the Oberia D. Dempsey Multiservice Center, as well as two health services. The team also met with the manager of Boy Scout Leaders in the Harlem District and has found a variety of ways in which NDS can work with the Boy Scouts. Finally, Team D made contact with three of their four assigned housing complexes and have arranged for NDS materials to be on display in the Jefferson/Corsi complex, the Johnson houses, and Lehman Village.

Team E has been responsible for outreach to businesses. So far, the team has distributed posters, stickers, and other materials to more than 60 businesses throughout Harlem, including supermarkets, recreation centers, delicatessens, video and photo stores, laundries and cleaners, restaurants, liquor stores, and variety stores. In addition, Team E has been in contact with the Mt. Morris Church, the Hand Maids of Mary, the Community Service Council for Greater Harlem, and the public library branch at 124th Street.

Team F has concentrated its efforts on outreach within the part of the NDS service area that is heavily Dominican. On several days, the team's community workers handed out

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material and talked with residents along Broadway from 135th to 155th Streets, stopping frequently in commercial establishments and apartment houses. In addition, the team's community workers have spoken, or made arrangements to speak, at meetings of the tenants associations at all four of its housing projects: Dewitt Clinton, Harlem River, King Towers, and A. Phillip Randolph. In addition, the team has made a presentation to residents at the 1820 Lexington apartment complex and will attend the Service Providers Fair at the King Towers.

Intake of Cases as Retained Counsel

NDS accepted 184 cases as retained counsel during the period from December 3, 1990, through March 31, 1991. The cases covered the range of charges illustrated in figure 2, except the retained cases included proportionately fewer drug cases, proportionately more robbery charges, and all the homicide cases.

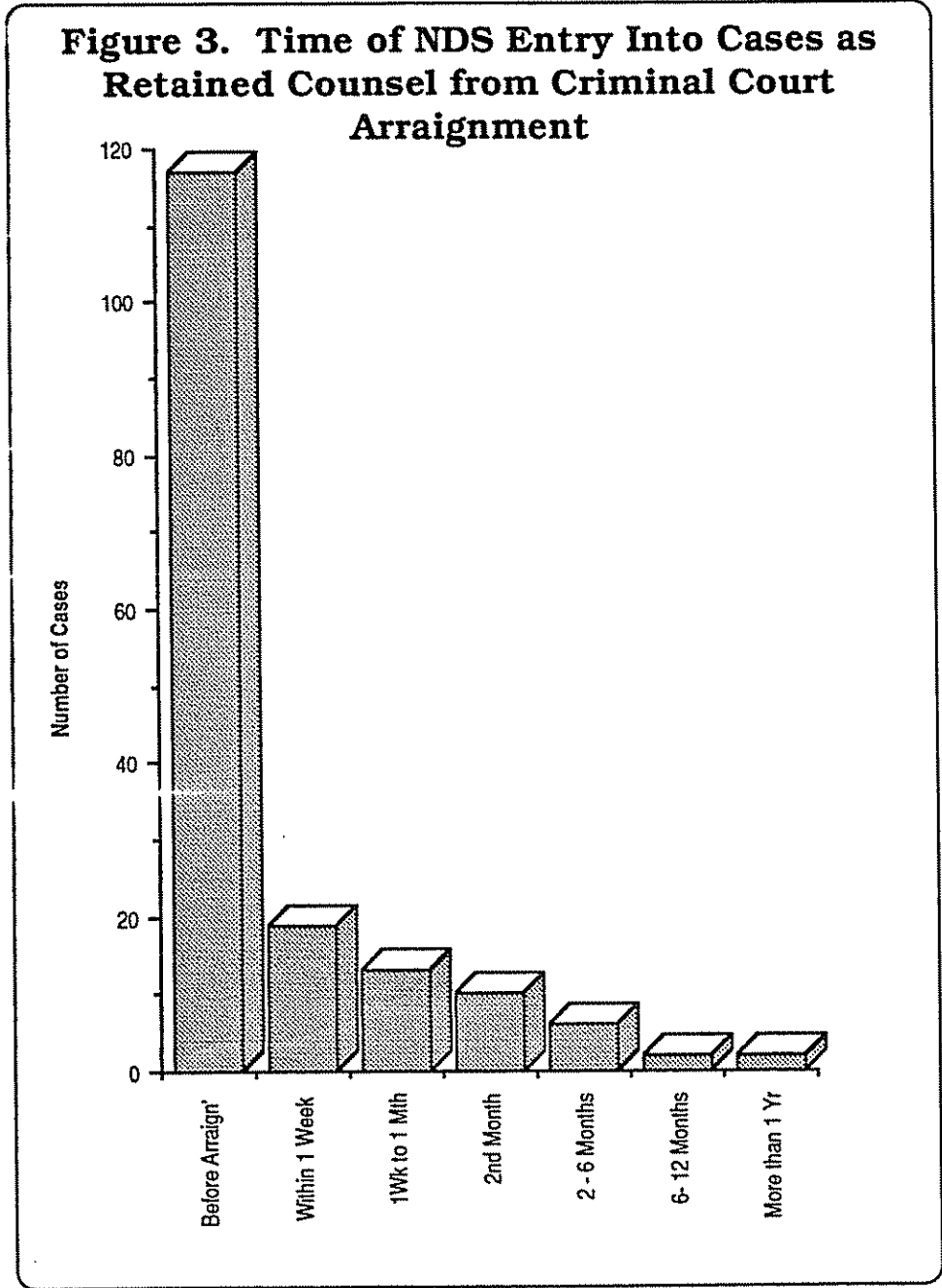
One of the concerns with which we began was that clients who retained NDS would have cases in courts throughout the city, spreading staff attorneys too thin. This concern arose from our having defined eligibility around the client's residence rather than the court in which the client was to appear. Data from 1988 suggested that we could expect about 10 percent of our cases to be brought outside Manhattan.

These estimates proved reliable in the first months of operation. Only 8 percent of our first 523 cases were brought outside Manhattan, but the proportion was about twice that for cases in which NDS was retained. Of those clients who retained NDS, 85 percent did so in connection with cases in Manhattan. Another 10 percent did so in connection with Bronx cases, and the remaining 5 percent had cases scattered in the other boroughs.

Of greater concern during the planning for NDS was the likelihood that defendants would come to NDS seeking representation late in their cases, long after other counsel had been appointed and done substantial work. This did occur, especially in the first weeks of operation. In many of these cases, it was not in the client's interest to change attorneys; but in some cases it was clearly in the interests of justice (as well as efficiency) that NDS agree to undertake

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representation, especially for clients whom we were representing in other pending litigation that could be resolved with the old case. Based on this early experience, we developed guidelines on the acceptance of retained cases, discouraging attorneys from accepting cases that are far advanced to trial. As a result of applying these guidelines, almost all cases in which NDS accepted work as retained counsel from December through March came to the office before arraignment, and the next largest group came to the office within one week of arraignment. The distribution of the cases across time is shown in figure 3.



2. Assigned Cases

Experience during the Pilot Period

During the planning and training periods from July through November 1990, NDS undertook representation of a small number of cases on a pilot basis. We did this in order to build an understanding of how our method of working, in both a retained and an assigned capacity, would fit with the existing system of moving cases through the courts. In our retained cases, we found that the court and its associated agencies could accommodate NDS just as it did private counsel. Where the city sought to use NDS as assigned counsel, however, we found that the pre-arraignment systems then in place in the Manhattan Criminal Court were ill-suited to the entry of a new defense service.

We had anticipated that the principal difficulty for the courts in making assignments to NDS would be the identification of defendants who resided within the NDS service area, because no other defense provider used such a criterion in the acceptance of assignments. In practice, this proved to be relatively easy, because the defendant's residence appears reliably on forms generated by the police department and by the Criminal Justice Agency, which conducts pretrial interviews with defendants to determine community ties.

The real difficulty came, instead, from the fact that there is no moment at which the court or its clerk formally assigns defense counsel to individual cases in the Manhattan Criminal Court. Unlike the practice in many jurisdictions, defendants in Manhattan are arrested, booked, and transported to court; assistant district attorneys meet with police and draft complaints; rap sheets, charging papers, outstanding warrants, and pretrial release recommendations are assembled into a package; and cases are docketed for arraignment—all without defense counsel being assigned.

Only after all these steps have been completed and the case is ready for arraignment does the system concern itself with the provision of counsel. Retained counsel can file a notice of appearance at any time after an arrest with the

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clerk of the court, in which case the notice is attached to the papers that reach the courtroom. In cases without retained counsel, however, the case papers are deposited in the courtroom when the case is ready for arraignment. At this point, a clerk employed by the Legal Aid Society goes through the papers to determine which defendants will be represented by the Society and which will go to lawyers from the assigned counsel plan. In effect, the Legal Aid Society clerk makes the individual assignments within guidelines established by the court.

This system for assigning counsel made the assignment of NDS to any cases difficult. During the planning of NDS, the administrative judge of the Criminal Court and the Deputy Mayor had agreed that NDS would alert the court clerks as to the days on which its attorneys would be available to receive assignments, and that the clerks would then assign an agreed number of defendants to NDS from those who lived within the Harlem service area. For the first few days on which we piloted this system, the deputy clerk in charge of arraignments personally went through the case papers to find eligible cases before the papers went to the Legal Aid Society. Unfortunately, this yielded very few cases because the clerk could spare the time to do this sifting only once or twice each day.

In light of this experience, we sought to design a variety of practical systems for receiving assignments that could work more efficiently and also assist the City with its need to make counsel available to indigent defendants. Conversations regarding the possible design of such systems were held with Criminal Justice Agency, the Police Department, the office of the District Attorney, and the office of the Deputy Mayor for Public Safety. As a result of these discussions, NDS experimented with several systems during the period covered by this report, beginning with a novel system for the assignment of cases to NDS at a much earlier stage in the process of moving them to court for arraignment. In the weeks that followed, other systems were designed, and a few tested, as described below. Although this process of experimentation slowed intake significantly and proved frustrating for staff, we succeeded, by the end of the period covered in this report, in developing a system satisfactory to all involved.

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Assignments to Defendants Held in the Precincts

Two of the systems for generating assignments relied on the members of the Criminal Justice Agency (CJA) to identify eligible defendants during their pre-arraignment interviews with defendants.

The first of these operated from December 5, 1990, through January 3, 1991, and involved the assignment of NDS to cases while the defendants were lodged in Harlem precincts awaiting transportation to court. This system of precinct assignments was practical because the police department and the District Attorney's office have been operating their own pilot project in Harlem in which prisoners and arresting officers, rather than going to central booking and to the District Attorney's ECAB* office, respectively, instead remain in the Harlem precincts. In these cases, when the police have completed their investigative work on a case, they lodge their prisoners in a local precinct to await transportation to court, while the arresting officers go to the 32nd precinct to talk with an assistant district attorney at ECAB over a video link. CJA staff members, therefore, interview these prisoners in the Harlem precincts rather than at central booking, and are able to identify those who are eligible for NDS services.

The basic design of the precinct assignment system was relatively straightforward: early each morning an NDS team would go to the 32nd precinct to pick up the list of assigned cases identified by CJA. An attorney on the team would interview these defendants in the precinct cells while the defendants were awaiting transportation to court for arraignment. The team would then be able to spend several hours investigating the case and preparing a bail application.

The defendants would usually arrive at court during the afternoon, but there would be no need for them to take up space in the crowded cells behind the arraignment parts because they would already have been interviewed by defense counsel. Instead, they would be moved from the basement cells directly to the benches in an arraignment part at the start of the 5:00 p.m. shift so that they could be arraigned then—a time when the court is often without many

Among the advantages of this system for the courts and the City was the possibility of increasing the absolute number of cases that could be arraigned during the evening shift.

* The Early Case Assessment Bureau (ECAB) is a set of offices in which arresting officers discuss their cases with assistant district attorneys before the complaints are drafted.

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A variety of procedures were put in place to assist the court in arraigning these defendants promptly. At the end of the client interviews at the precincts, NDS staff would mark the prisoner movement slips, which follow defendants until arraignment, indicating that the prisoners had been interviewed by NDS. The NDS team would then return to the NDS office on 125th Street and fax a list of the defendants interviewed to the police staff at court, to the assistant district attorney in charge of the ECAB room, to the Corrections staff in the courthouse, and to the court clerk's office. These lists allowed court personnel to get these cases ready and the prisoners into the courtroom for arraignment shortly after 5:00 p.m.

Several safeguards were built into this system to answer the concerns within the police department about having defense attorneys routinely present at the precincts. First, NDS only took assignments from among the defendants who were far along in their police processing to be interviewed by CJA. Second, NDS staff wore special identification cards, supplied by the police department, throughout their 8:30-to-10:00 a.m. interview time at the precincts. Third, NDS staff began every visit to the precinct by checking in with desk sergeant, and they dealt with no other officers other than the cell attendants. Fourth, NDS staff did not have access to any police department paperwork (other than the movement slip), but relied instead on the CJA log showing each prisoner's name, arrest number, arrest charge, time of arrest, and zip code of residence.

The precinct assignment system operated on twelve days between December 5th and January 3rd because of some practical difficulties and the December holidays. The number of cases handled in the month was, of course, quite small. Nevertheless, the results of that short period of work are interesting, for they suggest that the early assignment of cases can achieve what the City wants from NDS.

We saw these benefits most clearly—albeit in a most preliminary way—in the lower use of pretrial detention. In the cases assigned to NDS from the precinct that continued

In the cases assigned to NDS from the precinct that continued beyond their first appearances, 34% of the defendants were held on bail that they could not meet. The equivalent number for all cases in Manhattan that year was 53%.

beyond their first appearances, 34 percent of the defendants were held on bail that they could not meet. The equivalent number for all cases in Manhattan that year was 53 percent. Moreover, of those defendants who were assigned to NDS at the precincts and subsequently released at arraignment, a greater proportion actually appeared at their subsequent hearings.

These very preliminary results are consistent with the impressions developed by the NDS team members. It was their perception that the work that they were able to do between the time that they interviewed the defendants and the time of the arraignments was often crucial to their ability to demonstrate the appropriateness of pretrial release. They were able to bring family members and neighbors to court for the bail arguments, and they could frequently speak knowledgably about the criminal allegations based on early investigation.

The system of precinct assignment encountered some logistical difficulties in its first week, but these were quickly resolved by the police department. Of greater concern were the complaints that began to come from the District Attorney's office.

The complaints made by assistant district attorneys in the first few weeks were relatively minor and did not cause any disruption to the system of assignment. In one case, an NDS attorney accepted a police officer's invitation to talk with the assistant district attorney in a case over the video link, and the appearance of the defense attorney on the video screen at ECAB caused a mild panic. Although it was later agreed that the attorney had not acted improperly, NDS agreed to decline future invitations to talk to prosecutors over the video link. There was also a rumor started within the D.A.'s office that an NDS staff member had taken a statement from a complaining witness inside a precinct, although we subsequently confirmed that no such statement had been taken and that no NDS staff had interviewed any witnesses within the precincts.

Then, on January 2, 1991, a case involving an alleged rape of a minor was mistakenly processed by the police through the video project rather than in person at ECAB. Although NDS staff did not know this at the time, such cases are among a group of serious felonies that the police and the

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District Attorney's office had agreed not to process over the video link. Nevertheless, the complaint was written as part of the video project and the case was assigned to NDS. An NDS attorney interviewed the defendant at the precinct, and the case continued toward arraignment until the defendant reached the courthouse. At that point, the case was flagged to a special unit within the District Attorney's office and the assistant district attorney in that unit (unaware of the list faxed to her office showing this defendant as represented by NDS) arranged to interrogate the defendant prior to his arraignment. The result of this was that the defendant made inculpatory statements to the assistant district attorney outside the presence of counsel after counsel had entered the case.

This case highlighted the use that Manhattan prosecutors make of the delay in the assignment of counsel until the moment of arraignment. The assistant district attorney in that case agreed that she could not use these statements in her case, but the District Attorney's office at this point insisted that the City suspend the assignment of cases to NDS at the precincts, arguing that the City should not assign counsel prior to the drafting of a complaint.

In the wake of this case, the City ended the assignment of cases to NDS at the precincts and sought an alternative system that allowed NDS attorneys to enter cases as soon as the charging document in a case had been drafted at ECAB. This moment would be later than in the precinct system, but still several hours earlier than other assignments of counsel in Manhattan.*

Assignments to Defendants Held in the Courthouse Basement

The alternative to assignment at the precincts was assignment to defendants held in the courthouse awaiting the compilation of the paperwork in their cases. We agreed to try this alternative to precinct assignment for a one-month period, from January 23 through February 22, 1991. Because the team assigned to intake on any particular day under this system conducted its interviews with clients in the crowded cells in the basement of the courthouse, this assignment came to be known within NDS as "dungeon duty."

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*Although this ended our work in precincts as *assigned counsel*, NDS continues to represent clients at precincts when retained before arraignment.

Clients to whom NDS was assigned through this system were still identified at 6:00 a.m. by CJA in its pretrial interviews of prisoners lodged in the 32nd and 25th precincts. Under this system, however, CJA faxed a list of the defendants to the District Attorney's ECAB office, where these cases were given priority by the assistant district attorneys preparing the charging documents. While the staff at ECAB were preparing complaints, the police department would transport these defendants to the courthouse, where the Department of Correction would lodge them in a specially designated basement cell.

The NDS team on dungeon duty each day would telephone ECAB at 10:30 a.m. to determine in which cases the complaints had been drafted. The team would then interview these defendants, after which it would call back to ECAB to determine which other cases were now ready for interview. This process would continue until all the defendants on the CJA list had been interviewed. Then, while the court papers were being prepared, NDS staff would be able to prepare the cases for arraignment.

Although this system resembled precinct-based assignment in that NDS was assigned several hours before the usual arraignment time on the basis of CJA interview data, it suffered from three fundamental flaws.

First, the use of the cells in the courthouse basement to hold defendants who were not to be arraigned for several more hours fought the basic routine of the courthouse. As a result, many defendants were arraigned earlier than planned, while their attorneys were still in the basement interviewing other defendants, unaware of the arraignment proceeding without them. Even when NDS became aware of these early arraignments, covering them meant that the team was not able to do the early investigation and bail preparation that had made the precinct system worthwhile.

Second, there were too many agencies involved. The precinct system worked because it was essentially all in the hands of the police who handled the arrangements relatively efficiently. Dungeon duty required the coordination of CJA, ECAB, the Police Department, the Department of Correction, and the court clerks. Inevitably, prisoners who were supposed to be in the basement for interview could not be found, others could not be moved out of the basement for

Inevitably, prisoners who were supposed to be in the basement for interview could not be found, others could not be moved out of the basement for arraignment in a timely fashion, and still others remained there waiting for paperwork that had not been done because one or another of the lists was misplaced.

arraignment in a timely fashion, and still others remained there waiting for paperwork that had not been done because one or another of the lists was misplaced.

Finally, the system was not replicable even if it had worked because it depended on the ECAB personnel giving priority to one group of cases. This flaw escaped notice when the system was proposed by the District Attorney's office; but, when NDS suggested that the first two problems be avoided by moving the interviews back into a single, secure precinct, both the City and the District Attorney's staff pointed out that its dependence on ECAB staff giving these cases priority meant that it could not be replicated even if it proved helpful to the City.

As a result, NDS abandoned its efforts to craft a system of assignment that allowed the assignments to be made before the court papers were available in the clerk's office. By the end of this period, NDS had been assigned to 141 cases in this manner, and 70 percent of the defendants whose cases continued beyond arraignment had been released on bail or on their own recognizance.

Assignments Identified by the Court Clerks

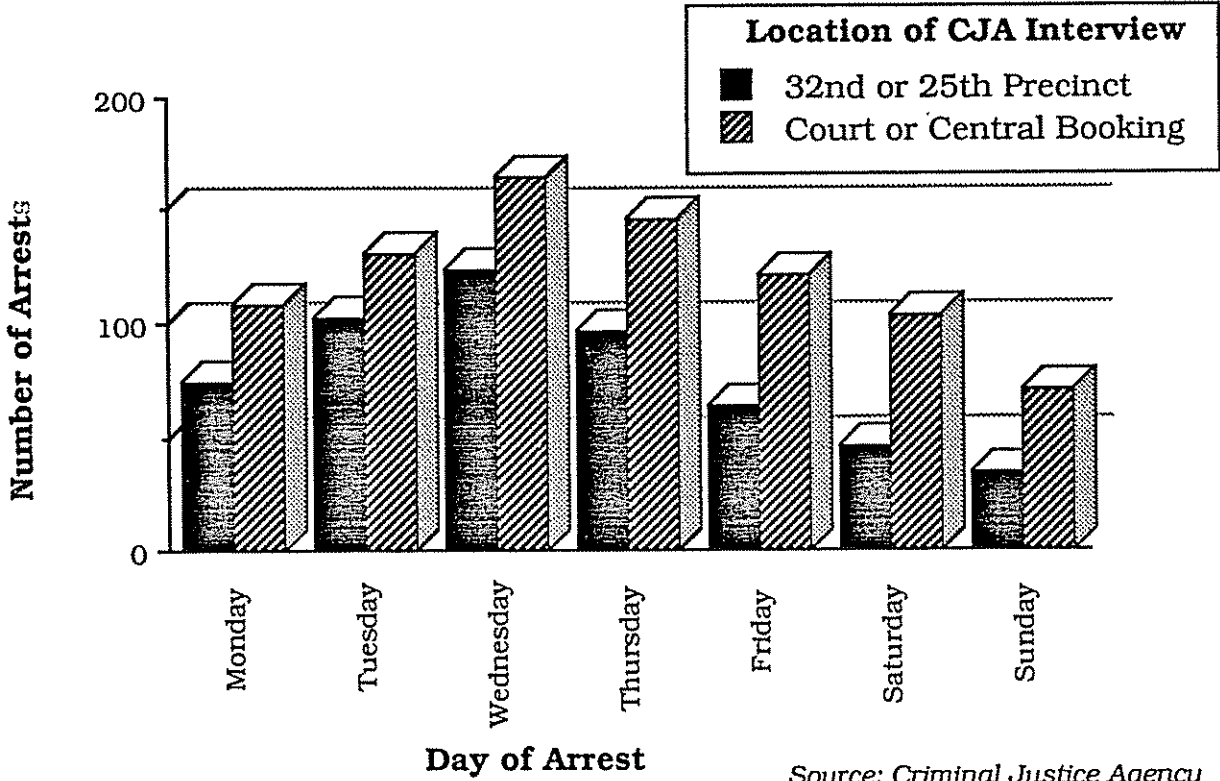
While the precinct and dungeon systems were in development, NDS was also continuing to experiment with systems of receiving assignments at the courthouse from the court clerks. Experience during the pilot period had taught us that there was no single point in time when the clerks could reliably identify more than three or four ready cases eligible for representation by NDS, so we began to explore ways of screening court papers over a period of hours. This required us to identify both a place in the process where that screening could be done efficiently and a time period during which that screening would regularly produce a substantial number of cases.

Data provided to the Vera Institute by CJA revealed that Manhattan defendants resident in the NDS service area were arrested in greatest numbers on Tuesdays, Wednesdays, and Thursdays, thereby producing the largest volume of arraignments on Wednesdays, Thursdays, and Fridays. The same data also revealed that, wherever these defendants

In the end, NDS had been assigned to 141 cases in this manner, and 70 percent of the defendants whose cases continued beyond arraignment had been released on bail or on their own recognizance.

Figure 4. Prisoners Eligible for NDS Service by Day of Arrest and Location of CJA Interview

October 1990
(adjusted for comparison between days)



Source: Criminal Justice Agency

were being arrested, CJA was interviewing most of them at Central Booking or in the courthouse and not in the Harlem precincts (figure 4).

This data led us to focus our efforts on the three busiest days of the week and to explore methods of identifying Harlem residents after the papers were assembled at the courthouse. For two weeks, NDS placed a paralegal staff member with the court clerks to track the movement of case papers and to correlate that process with the movement of the defendants to court. On the basis of these observations, the Deputy Mayor's arrest-to-arraignment coordinator together with the court clerks and the Police Department implemented the current system of assignments in which cases are identified and assigned to NDS at two points in time on Wednesdays through Fridays.

Under this system, an NDS team arrives at court to receive assignments Wednesday through Friday mornings no later than 9:00 a.m. A court clerk reviews the case papers that are then ready for arraignment and assigns eligible cases to NDS. In addition, from about 10:00 a.m. until 3:00 p.m., cases are screened as the papers are assembled in what is known as "the breakdown room." Any additional cases that are identified as eligible during these hours are also assigned to the NDS team on duty that day.

From late in February through the end of March, this system produced 172 case assignments to NDS. The system worked relatively smoothly and allowed NDS teams to complete their work by the court's dinner break each night and usually by 7:00 p.m. This is a long day, but not as long as that required by either the precinct or dungeon systems.

This system does not, however, permit nearly the same degree of advance work to be done on the case or on a bail argument as had been possible under the precinct or dungeon systems. Perhaps as a result, a lower proportion (60%) of the defendants to whom NDS was assigned in this way and whose cases continued beyond arraignment were released on bail or on their own recognizance, although this still compares favorably with the overall Manhattan rate of 47 percent.

Over the next six months, NDS will operate this system of receiving assignments in conjunction with its continued intake of cases in which it appears as retained counsel, after which we will again examine its problems and any possible alternatives.

Afterword

The development of efficient, practical, and effective intake mechanisms has been an exhausting but fascinating process. The work that NDS teams were able to accomplish under a system of precinct assignments demonstrated to our own staff, as well as to others, many of the strengths of this model of representation. Although the current system of receiving assignments is neither as interesting nor as useful as it might be, it continues to permit us to experiment with the advantages of the neighborhood-based and team-based model. In particular, the very early results of the practice suggest that this model does lead to higher rates of release at arraignment.

Meanwhile, we have learned a great deal about the difficulties and possibilities within our outreach efforts. The number of clients contacting NDS directly is surprisingly high for these first few months, and provides much encouragement for further outreach efforts. Over the next several months, we will be developing new programs of outreach and community education that build on these early efforts. Intake has not been as rapid as we had originally hoped, but the rate at the end of the period covered here was adequate. As NDS approaches its planned caseload, we will next turn our attention to the development of the team-model of practice.