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The Neighborhood Defender Service of Harlem:  
Research Results  
from the First Two Years

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## **Neighborhood Defender Service of Harlem: Research Results from the First Two Years**

The right to counsel is generally regarded as one of the most fundamental due process rights guaranteed defendants in criminal cases. Although the Sixth Amendment to the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense," the right to *free* counsel as a matter of constitutional law is grounded in a Supreme Court decision involving due process. In *Powell v. Alabama*<sup>1</sup> the Supreme Court ruled that due process required that defendants charged with capital crimes had the right to counsel and, if the defendant was indigent, the right to have counsel appointed for them.

In 1963, the Supreme Court ruled that the states must follow the sixth amendment and provide the right to appointed (free) counsel to all felony defendants.<sup>2</sup> And in 1972, the Supreme Court further extended the right to counsel to include misdemeanor cases when conviction could result in the "actual deprivation of a person's liberty."<sup>3</sup> Later, the Court extended the right to counsel to juvenile proceedings<sup>4</sup> and to "every critical stage of the criminal proceeding," including preliminary hearings, sentencing, probation revocations and certain forms of parole revocation.<sup>5</sup>

There are several options available to the state when it must provide indigent defendants with counsel. Under the "assigned counsel" model attorneys are assigned by the court to

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<sup>1</sup> 287 U.S. 45, 71-73 (1932)

<sup>2</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963)

<sup>3</sup> *Argersinger v. Hamlin*, 407 U.S. 25 (1972)

<sup>4</sup> *In re Gault*, 387 U.S. 1 (1967)

<sup>5</sup> *Coleman v. Alabama*, 399 U.S. 1 (1970); *Mempa v. Rhay*, 389 U.S. 128 (1967); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973)

represent indigent defendants. According to the Bureau of Justice Statistics' (BJA) *Criminal Defense Systems: A National Survey* (Spangenberg *et al.*, 1986:11), 60% of all counties in the United States have an assigned counsel system.<sup>6</sup> Another option available to the state is "contract counsel." In such a system, a private law firm or individual attorneys contract with the court to provide representation to indigent defendants. In 1986, 6% of all counties in the United States used this system, which represented an increase over past years (Spangenberg *et al.*, 1986:11). States may also create a "public defender" office that serves indigent defenders. The public defender system is essentially a public law firm that is charged with the responsibility of providing legal services to indigent criminal defendants. Some 1,048 counties in the United States (34%) are served by a public defender system (Spangenberg *et al.*, 1986:11). Counties served primarily by the assigned and contract counsel systems tend to be the least populated counties in the nation. The 50 largest counties in the nation (those with a population of 500,000 or more) where 70% of the population resides, favor the public defender system. Less than 30% of the nation's population resides in jurisdictions favoring the assigned counsel system, and less than 5% lives in jurisdictions served by contract counsel (Spangenberg *et al.*, 1986:13).

New York City's criminal defense system for the poor consists of a combination of assigned counsel (the 18-B Panel of private attorneys) and institutional defenders (the Legal Aid Society). The Legal Aid Society is the primary provider of criminal defense for the poor in the city (McConville & Mirsky, 1986:583).<sup>7</sup>

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<sup>6</sup>For the purpose of simplification, the BJA survey of criminal defense systems separates counties into one of three major indigent defense system types -- assigned counsel, public defender or contract counsel. The category to which a county is assigned depends on the *predominant* system in a given county. Often, all three systems operate within a county (as is the case in New York City).

<sup>7</sup>Under Article 18-B of the County of New York law, New York City may choose among four options in providing defense services to indigent criminal defendants: a public defender system consisting of attorneys hired as city employees; a private defender agency that would work under contract to the city (*e.g.*, the Legal Aid Society); a "panel" of private attorneys (*i.e.*, the "18-B Panel"); or a combination of the above approaches.

### Previous Research on Criminal Defense for the Indigent

It is a widely-held belief among criminal justice practitioners and criminal defendants that there are significant cost and quality differences associated with the different types of counsel for the poor. Indigent defendants commonly perceive, for example, that the best representation can be obtained only by retaining a private attorney. Accordingly, public defenders, because they are provided by the state without cost to the defendant, represent the "worst" representation a defendant can obtain (Casper, 1972; 1978).<sup>8</sup> A large number of research studies that address the issue of whether different types of defense counsel result in different case outcomes, however, cast doubt on such assertions.

Early empirical studies of the effect of type of counsel on case outcomes sometimes found that defendants who had retained private counsel had lower conviction rates than defendants who were represented by public defenders (Silverstein, 1965). Such early studies, however, failed to control for such variables as the prior record of the defendant and the seriousness of the offenses with which defendants had been charged. When such controls were introduced in later studies, it was found that type of counsel had virtually no effect on probability of conviction or type of sentence received by a defendant (Taylor *et al.*, 1973; Hermann *et al.*, 1977; Nardulli *et al.*, 1988). In an exhaustive review of 12 multivariate studies conducted between 1919 and 1988, resulting in 21 measures of the effect of type of counsel on case outcomes, Feeney and Jackson (1991:367) found that 14 of the 21 measures showed no difference between public defender and retained counsel performance. Only five measures showed better results for privately retained counsel, and two showed mixed results.

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<sup>8</sup>The preference expressed by defendants for private counsel over public defenders may be the product of the widely-held belief among defendants that, because public defenders are employees of the state, they must represent the interests of the state. Because they are employees of the court and must interact with judges and prosecutors on a day-to-day basis, public defenders are virtually non-adversarial in the interest of maintaining good working relationships with other members of the court system. Public defenders as thus seen as being co-opted into the court bureaucracy. Private attorneys, because their contacts with the court are more limited, can avoid this co-optation (for an explication of this perspective see, for example, Blumberg, 1967 and Sudnow, 1965). Another possible reason for defendants' preferences for private attorneys is that private attorneys may spend more time with their clients than public defenders (Feeney and Jackson, 1991:378).

Other studies have compared the performance of retained counsel, assigned counsel and public defenders (see, for example, Silverstein, 1965; Oaks & Lehman, 1968; Hermann *et al.*, 1977; Clarke & Koch, 1980; Clarke & Kurtz, 1983; and Sterling, 1983). When type of offense, type of offender and strength of evidence are controlled for in the more sophisticated of the studies, type of counsel has no effect on case outcome (see, for example, Feeney *et al.*, 1983).

In a more recent study of nine state trial courts, Hanson *et al.* (1992) found that in some areas, public defenders performed better than privately retained attorneys. "Indigent defenders," for example, consistently processed cases in less time than privately retained attorneys in eight of the nine state courts studied (Hanson *et al.*, 1992:40-44). Even when controlling for the effects of seriousness of offense and whether or not a case went to trial, privately retained counsel had longer case processing times than did indigent defenders (*i.e.*, the number of days from the date of indictment to adjudication of the case). Hanson *et al.* (1992:52-57) also compared privately retained attorneys and indigent defenders on other measures of performance and found, for example, that there were no statistically significant differences between conviction rates of defendants represented by indigent defenders and of those represented by privately retained counsel. Indigent defenders were also no less successful than privately retained counsel in achieving acquittals or dismissals for their clients and performed about as well as privately retained attorneys in obtaining charge reductions for their clients. Indigent defenders, however, were found to be somewhat less successful in keeping their clients out of jail or prison.<sup>9</sup>

### **The NDS Model**

In the summer of 1990, the Vera Institute of Justice created the Neighborhood Defender Service of Harlem, Inc. (NDS), a non-profit corporation, established to develop new techniques for the public provision of legal representation to indigent criminal defendants. The goal of NDS is to demonstrate that, by restructuring the manner in which legal representation for poor people

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<sup>9</sup>Hanson *et al.*, however, were unable to control for the prior record of the defendants. Were this possible, it is likely that the already weak association between type of defense counsel and likelihood of incarceration would be reduced.

is delivered, public defender organizations can provide better services to their clients in ways that improve the quality of criminal justice generally.

NDS is a five-year demonstration project of "action research."<sup>10</sup> NDS staff provide direct legal representation to indigent defendants who reside in a catchment area in northern Manhattan's Harlem communities. The representation is organized around a set of three principles -- neighborhood-based representation, team representation, and client-centered representation -- that distinguish it from most public defense services. Funding for the operation of the NDS comes from New York City and New York State, a reflection of government responsibility to provide criminal defense for indigent defendants and its desire to do so in an effective and cost-efficient manner.

### **Program Objectives**

Most institutional mechanisms for the delivery of defense services to indigent defendants -- whether based on "panels" of private attorneys or on offices of salaried public defenders -- have been subjected to a number of criticisms. Many defendants, for example, argue that they receive lower quality representation than they would from "real" (*i.e.*, privately-retained) attorneys. Public defenders complain that excessive caseloads, poor working conditions and a narrow definition of their role impede effective representation of indigent defendants and lead to rapid "burnout." Appellate courts are deluged with petitions from prisoners who allege that they were wrongfully convicted because of the ineptitude of their assigned counsel. Government funding agencies complain that legal services are not deployed efficiently, contributing to court delays, jail overcrowding, and increased costs throughout the criminal justice system. Academic,

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<sup>10</sup>Beginning with the Manhattan Bail Project in 1961, the Vera Institute has been committed to an action research model -- designing innovative, replicable programs that are guided by planning research and whose effectiveness is evaluated using the most comprehensive research designs feasible. The Vera Institute typically mounts such initiatives with a combination of program and research funds. Research funds are typically secured separately from local, state, and federal government agencies and private foundations to conduct evaluations of demonstration projects and to disseminate their findings. Unlike most Vera research projects, however, the funds for the current research are provided by NDS itself.

institutional, and professional studies periodically confirm the substance of these criticisms (*e.g.*, for New York City see McConville & Mirsky, 1986-1987). Although many dedicated professionals throughout the country provide high-quality representation for many indigent defendants, few informed and objective observers of our criminal justice system can be satisfied with the manner in which the majority of poor people accused of crimes are represented in court.

The NDS model strives to overcome many of the structural deficiencies in traditional models of criminal defense through early and intensive intervention in case processing. The neighborhood-based, team-based, and client-centered approaches are designed to make early and thorough defense involvement routine and to build high levels of client confidence so that cases can be completed more rapidly and defendants who should be released pretrial can be released sooner.

The objectives of speeding pretrial release and reducing disposition times are high priorities in the state courts. There is a growing demand, therefore, for faster methods of case processing without compromising justice. Although the reorganization of indigent defense delivery systems is one of the least explored delay-reduction strategies, several successful efforts to reduce delay in the criminal courts have shown the potential of such an approach. Specifically, programs that emphasize earlier provision of defense services in criminal cases have produced substantial reductions in case processing times, especially in felony cases. The most thorough demonstration of this kind was organized in the mid-1980s as a controlled experiment sponsored by the National Institute of Justice at three test sites in different states. An evaluation of this experiment found that the early provision of defense services produced significant savings in time and number of appearances without adversely affecting other aspects of the system (Fazio *et al.*, 1985). Similarly, a recent review of local and state efforts to reduce delays in urban trial courts concluded that courts with speedy felony case processing times are characterized by early assignment of counsel for indigent defendants (Mahoney, 1988).

It is commonly thought that defense practices are a major cause of delay in the adjudication of criminal cases; but this does not mean that public defenders are necessarily



hostile to efforts to reduce delay. Indeed, defense providers are increasingly willing to accept delay reduction as a legitimate measure of their performance (Legal Aid Society, 1989).

The key is to organize criminal defense services in such a way that rapid, high-quality defense work is practical. The success of such an effort would ensure that indigent defendants have access to a fair and effective system of justice while reducing delays in the adjudication of their cases.

The design and organization of NDS is one of the keys to meeting these objectives. The first organizing principle of NDS is that of neighborhood representation. In contrast to the traditional practice of assigning defense counsel on the basis of the courthouse in which a defendant appears, NDS represents poor people accused of crimes who live within a particular catchment area (Central Harlem and Morningside Heights in Manhattan). The main office of the project is located within its neighborhood catchment area, with a small, secondary office near the county courthouse. Residents of the catchment area who require defense services are encouraged, through contacts with neighborhood organizations, to contact the office before their first appearance in court. In addition, arrested persons from the catchment area are sometimes assigned to NDS as one of the institutional defenders available to indigent defendants in New York City.

The second principle is team representation. New York City is like many other jurisdictions around the country in that numerous factors conspire against the continuity of representation for indigent defendants by a single lawyer throughout the various stages of case processing. These include the reassignment of cases after first appearance; staff turnover; scheduling conflicts produced by prosecutor-based tracking to many different courtrooms on the same day, at the same time; attorney vacations; attorney illness; and attorney involvement in other cases. As a result, most indigent defendants whose cases go to trial or who make several appearances before a plea are not represented by the same attorney who represented them at arraignment, even though the unavailability of a client's lawyer produces considerable case delay

and substantial sums are spent in the attempt to maintain continuous representation (Jacobs & Chayet, 1986).

In the NDS model, clients are represented by defense teams, rather than by individual lawyers. Each team is composed of a senior attorney (the team leader), a mid-level attorney, a junior attorney, two community workers, an intern and an administrative assistant. The community workers and the administrative assistants fill the roles that investigators, social workers, and paralegals perform in more traditional offices. Clients are represented by these teams in much the same way that patients of a Health Maintenance Organization are served by a team of doctors, nurse-practitioners and other staff. The team members share responsibility for a caseload and divide tasks in ways that give non-attorney team members a greater than usual share of responsibility.

The third principle of representation for NDS is client-centered representation. The Service represents clients in relation to criminal accusations, regardless of the number of cases, types or cases or court in which those cases are heard. Traditional defender services, on the other hand, are case-centered. In New York City, for example, an indigent person facing three criminal accusations in three different boroughs within the city traditionally would be represented by three different court-appointed lawyers. If one of those cases raised civil issues as well, a fourth lawyer from civil legal service might become involved, though usually the client would be unrepresented in a civil case. Although NDS is not a "full-service" or "one-stop" legal office, it provides collateral representation in matters stemming from a criminal accusation. As prosecutors make greater use of civil sanctions (*e.g.*, forfeiture, eviction, deportation, termination of parental rights) to pursue alleged violations of the criminal law, NDS defense teams will attempt to develop similar agility.

The NDS model is based on the assumption that together, team representation, neighborhood-based representation and client-centered representation will result in an early start to case preparation; rapid case preparation; high client confidence; and detailed information about the facts of the case, about defendants themselves, and about available community

resources that might be drawn upon to develop alternatives to incarceration.. These characteristics of the defense are expected, in turn to produce early pretrial release, rapid case resolution, substantial use of sentencing alternatives and well-informed plea bargains, all of which would reflect benefits to the criminal justice system and the defendant.

To test the assumptions regarding the effects of the NDS model, a limited study of case processing for a sample of NDS clients as compared to case processing for clients receiving more traditional defense services (*e.g.*, Legal Aid attorneys, 18-B Panel attorneys, and privately retained counsel) was conducted. Using administrative databases, it was possible to obtain data on the critical outcome variables: days in pretrial detention, case disposition, and sentence.

In the tradition of other Vera "action/research" projects, the NDS research was designed to serve two functions. First, it provides a feedback loop to the program's designers and operators. Research results are used by them to make modifications to the program's design and/or implementation. Second, the research on NDS provides its funders with information regarding effects of this new model of indigent defense, information intended to help them make decisions about future funding. This report is the second in a series of three; the first report was issued in December 1992 and was based on results from the first full year of NDS operation. This report is based on data from the first two years of operation.

### **Research Methods**

Two samples of data were obtained from the New York City Criminal Justice Agency (CJA) and the Office of Court Administration (OCA); the first sample was obtained in the spring of 1992 and contained all Manhattan criminal cases with arrest dates between January 1 and June 30, 1991. The second sample, obtained in the spring of 1993, contained all Manhattan criminal cases with arrest dates between January 1 and June 30, 1992. These data were originally analyzed at the time they were received to determine whether case outcomes differed for the clients represented by NDS; the results of these analyses were used to prepare reports for the City (see Vera Institute of Justice, 1992 for a discussion of the 1991 data).

The analysis began with the identification of clients represented by NDS attorneys. This was accomplished by obtaining a file from the NDS computer system containing NYSIDs, docket numbers, and indictment numbers (if they existed) for all NDS clients with arrest dates between January and June of the year being studied. This file was merged with the larger dataset (referred to as the "CJA data") to identify the NDS cases within it. Through a complex data analytic process, the NDS cases were compared with all Manhattan cases in the dataset to assess how NDS clients differ from other Manhattan cases (for a more complete discussion of the results of the analysis on the larger dataset, see Vera Institute of Justice, 1992). The focus of the current report, however, is on case outcomes for matched samples (combined across the two years).

To compare the results in the NDS cases with those achieved by other defenders in similar cases, research staff constructed two matched samples.<sup>11</sup> In creating the samples, two cases were considered "matched" if the two defendants (1) were the same gender, (2) were members of the same race or ethnic group, (3) were in the same age group, (4) had the same number of prior felony convictions, (5) had the same number of prior misdemeanor convictions, (6) had the same number of other open cases, (7) had been arrested on a charge of the same level of severity, (8) had been arrested on a charge of the same type, and (9) had been arrested on additional charges of the same level of severity.<sup>12</sup> Using this process, for each NDS case in the sample a non-NDS case was randomly selected from those that "matched"; if no match could be

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<sup>11</sup>The original process for creating the matched samples was developed using the 1991 data; the same algorithm was later applied to the 1992 data to create matched NDS/non-NDS samples for those data as well. Therefore, the method described here is applicable to both sample years.

<sup>12</sup>The algorithm for creating the matched samples was developed iteratively, beginning with a more restrictive formula, then gradually relaxing the criteria to optimize the number of cases while still retaining the rigor of the procedure. This process resulted in categorizing some of the variables on which the cases were matched. There were three categories of age: younger than 19, 19 to 30, and over 30. Race/ethnicity had four categories: black, white, Latino, and other. Prior felony convictions, prior misdemeanor convictions, and open cases were each grouped into three categories: none, one, and two or more. For the first arrest charge, all 11 levels of severity in the Penal Law were distinguished as were the 11 charge types defined by CJA. For any second or third arrest charge, the severity level as collapsed into felony and other.

found the NDS case was excluded. This process resulted in 425 NDS and 420 non-NDS matches for the 1991 data and 306 NDS and 296 non-NDS matches for the 1992 data, for a total sample size of 1447.<sup>13</sup>

As was indicated above, the original analyses on these matched samples were completed during the summers of 1992 and 1993 respectively. In the fall of 1993, requests were made to CJA and OCA for updated case information on the 1447 cases in the analysis sample. These agencies supplied information for each case that reflected its status as of September 30, 1993. Thus, a full 21 months had elapsed since arrest for the earliest cases (arrested during January 1991) and for the newest cases (arrested during June 1992), 15 months had elapsed, sufficient time for the vast majority of cases to be processed through disposition and sentencing.

Preliminary analyses were computed to determine whether the 1991 and 1992 samples were sufficiently similar in terms of case outcomes to be combined. The results of these analyses indicated that in no instance was the direction of an obtained difference between NDS and non-NDS cases reversed across the two years, and therefore these two samples were combined for all analyses presented below.<sup>14</sup>

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<sup>13</sup>When the only match for an NDS case had already been matched to another NDS case, both NDS cases were included in the NDS sample, while the non-NDS case was included in the matched sample only once. This occurred five times in the 1991 data and ten times in the 1992 data.

<sup>14</sup>The results of the comparisons of the NDS and non-NDS cases presented below were obtained through statistical tests of significance and are described in these terms. While policy makers may be less interested in statistical significance than are researchers, this type of information is included in the report to allow those who are interested to draw their own conclusions, based on the results of these tests. Three different statistical tests were used: (1) chi square test of independence; (2) matched t-test; and (3) t-test for independent samples. Chi square ( $\chi^2$ ) is used for tables of categorized data to assess whether there is a relationship between two variables (*e.g.*, type of representation and case disposition). A t-test for matched samples is used to compare means of matched pairs; in this test, the value for one member of the pair is subtracted from that of the other, and then the mean of the differences is computed. The t-test assesses whether that mean is significantly different from zero. A t-test for independent samples is used for non-paired data; means are computed for each of two groups and the t-test is used to determine whether those two means are significantly different from each other. Regardless of which statistical test is used, results are presented (in footnotes or tables) in terms of "p" values. The "p" is the probability that a result of the obtained magnitude would be achieved by chance. The significance level used in this study is .05; this means that unless the attained probability was less than .05, the result was considered not statistically significant (indicated by "ns"). A p value of .05 means that there are only five chances in 100 that this result was obtained by chance.

## Description of the Samples

Because they are matched on demographics and criminal history, the NDS and non-NDS samples do not differ along those dimensions. Ninety-three percent of the defendants in the sample are male; 72% are black, 26% Latino and 1% are white.<sup>15</sup> Their mean age is 29.3 (and the median is 28), and they range from 14 to 80 years old.<sup>16</sup>

Criminal History. For 30% of the defendants, the arrest that brought them into the research sample was their first. More than two-thirds of the sample (69%) had no prior felony convictions; 17% had one prior felony conviction; 10% had two prior felonies; leaving 5% of the sample with three or more prior felony convictions. Similarly, nearly two-thirds of the sample (63%) had no prior misdemeanor convictions; 8% had one prior misdemeanor conviction; another 16% had between two and five priors; and 13% of the sample had six or more misdemeanor convictions. Fewer than half (42%) the defendants had any open cases at the time of the instant arrest; 24% had one open case; 11% had two open cases; and 8% of the sample had three or more open cases.

The Instant Arrest.<sup>17</sup> Over two-thirds of the defendants (69%) were arrested on felony charges. The most common arrest charge was drug-related (47%), followed by harm to persons (16%), harm to persons and property (12%), and property crimes (11%). Thirty-six of the 1447 defendants received only a desk appearance ticket (DAT), and the remaining 1410 were held in custody until arraignment. Of those, 857 were disposed in Criminal Court and 450 were transferred to Supreme Court.<sup>18</sup> Although 450 cases were transferred to Supreme Court, only

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<sup>15</sup>The racial/ethnic make-up of the sample reflects the demographic profile of the NDS catchment area.

<sup>16</sup>There are very few defendants in the sample who are under the age of 16; the 14- and 15-year-olds would be juvenile offenders (JOs).

<sup>17</sup>The term "instant arrest" refers to the sampled case, the case on which all case processing and outcome analyses are based.

<sup>18</sup>The remaining cases did not have outcomes that could be characterized as dispositions of "guilty" or "not guilty." For 64 of the cases, the disposition resulted in a warrant being ordered; 21 of the cases were transferred either to Family Court or to courts in other boroughs; 17 cases were not docketed; and 20 were not arraigned.

337 were disposed there; the remaining 113 cases were not indicted, although some were transferred back to Criminal Court for prosecution as a misdemeanor or violation, or for subsequent transfer to the Family Court.

### Case Outcomes

The purpose of creating matched samples of defendants with NDS representation and those with other types of defenders was to determine whether the NDS model results in any differences in case outcomes. To make these assessments, the results of criminal justice system processing on the "instant case" were compared for the two groups. There are a number of points in the process at which such differences could be observed: (1) the percentage of cases released on recognizance (ROR) at arraignment; (2) number of days in pretrial detention; (3) the percentage of cases dismissed or found not guilty; (4) among convicted defendants, the percentage sentenced to jail or prison time; (5) sentence length among those receiving incarcerative sentences; and (6) number of court appearances from arraignment to disposition (or sentence).

Release Status at Criminal Court Arraignment and Pre-Trial Detention. Forty percent (or 580) of the 1447 defendants were released on recognizance at Criminal Court arraignment, and an additional 10 individuals made bail at Criminal Court arraignment. There was no relationship between type of representation and the likelihood of receiving an ROR at arraignment: 41% of the NDS cases and 39% of the non-NDS cases received RORs.<sup>19</sup> When assessing these data, however, it should be remembered that defendants categorized as having NDS representation **may not** have been represented by NDS attorneys at arraignment; NDS obtains only about half its cases prior to Criminal Court arraignment.

The data on number of days in detention were analyzed using three different approaches. The first approach included the 708 pairs (or 1416 defendants) for whom data on days in

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<sup>19</sup>  $\chi^2=0.40$ ;  $df=1$ ; n.s.

detention were available.<sup>20</sup> However, more than half of the defendants in each of these groups spent no time in pretrial detention; the median for defendants represented by NDS attorneys and for those represented by other attorneys was zero. The second approach to pre-trial detention was to include only those defendants who spent *some* time in pretrial detention, a total of 642 individuals; 356 of those were represented by NDS attorneys, and the remaining 286 had other representation. The third analysis was computed on only those *matched pairs* in which both defendants had spent some time in detention; there were 152 such pairs (or 304 defendants). Matched t-tests were performed on the two sets of matched pairs; neither produced a significant difference between the groups. A t-test for independent samples was performed on the non-matched group. This, too, failed to reveal a statistically significant difference between the groups. The means for all three approaches are presented in Table 1 below. It is clear from the table that these analyses indicate that, regardless of the approach taken to the data, the mean number of days spent in detention for NDS clients did not differ from that for defendants who had other types of representation.

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<sup>20</sup>The data available for the research were not sufficient to make precise calculations of the number of days spent in detention for each client. The research data on release status were *hearing-based*, but did not include data on what happened in-between. Thus, for example, one defendant might have been detained at arraignment and made bail the next day while another defendant might have been detained at arraignment and not made bail until the day before the case was disposed. The information on release status in the research database would be the same for both people: detained at arraignment and out at disposition. As a result, it was necessary to estimate the number of days in detention using a complex algorithm that, for each hearing, took into account which court (Criminal or Supreme) the case was in, whether or not the case was disposed, and the release status of the defendant at that hearing.



Sample		NDS	NON-NDS	t	p
All Defendants	N	708	708		
	Mean	26.5	23.8	-1.06	ns
Defendants Who Were In	N	356	286		
	Mean	53.8	57.2	0.40	ns
Matched Pairs Who Were In	N	152	152		
	Mean	59.5	60.5	0.08	ns

Although there was no significant difference between days in detention for defendants represented by NDS attorneys and those who had other types of representation, the question remained as to whether there were differences in case processing and outcomes. There were 1398 defendants (or 699 pairs) for whom information was available on number of appearances from arraignment to disposition, and for these defendants, there was a significant difference in the number of appearances it took to get the case disposed.<sup>21</sup> The mean number of appearances for defendants represented by NDS attorneys was six (and the median was four), while the mean number of appearances for defendants with other types of representation was five (with a median of three).

Despite the increased number of appearances made by defendants with NDS attorneys, there was no relationship between type of representation and case disposition; 59% of the defendants represented by NDS attorneys either pled guilty or were tried and found guilty (in

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<sup>21</sup>  $t = -2.45$ ;  $df = 698$ ;  $p < .02$

either Criminal Court or Supreme Court), as compared to 61% of those who had other types of representation.<sup>22</sup>

The most important question for NDS, however, is whether having an NDS attorney affects the amount of time a convicted defendant spends in jail or prison. Reduction in incarceration time could be accomplished at a number of points in the process -- first, by increasing the likelihood of dismissal or acquittal, which as we've just seen, NDS did not accomplish. A second alternative would be to reduce the likelihood of a sentence of incarceration for convicted defendants; however, there was no relationship between type of representation and likelihood of incarceration -- 54% of NDS clients and 59% of non-NDS clients (who pled guilty or were convicted) received sentences of incarceration.<sup>23</sup> Alternatively, if more NDS cases were disposed in Criminal Court, the likelihood of receiving shorter incarcerative sentences would be increased; however, there was no relationship between type of representation and court in which the case was disposed. Seventy-three percent of NDS cases and 77% of other cases were disposed in Criminal Court.<sup>24</sup>

These analyses suggest that NDS attorneys were no more successful than other defenders in getting dismissals/acquittals for their clients; obtaining non-incarcerative sentences for their convicted clients; or resolving their clients' cases in Criminal Court. The remaining question is whether NDS clients received shorter sentences than did clients of other defenders. Like days in detention, there are a number of different approaches one could take to the analysis of data on incarcerative sentences. The data presented in Table 2 represent three of these: (1) comparisons of all matched pairs of defendants in which both members of the pair had non-missing dispositions that could be considered "guilty" or "not guilty" (coding the sentence length as zero

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<sup>22</sup>  $\chi^2=0.59$ ;  $df=1$ ; ns

<sup>23</sup>  $\chi^2=1.59$ ;  $df=1$ ; ns

<sup>24</sup>  $\chi^2=3.28$ ;  $df=1$ ; ns

for any defendants who were not guilty, received sentences of time served or did not receive sentences of imprisonment); (2) comparisons of sentence length for all defendants who received sentences of imprisonment, excluding cases in which the sentence was not one of incarceration (but not requiring both members of a matched pair to have sentences on incarceration); and (3) comparisons of only those matched pairs in which *both* defendants were sentenced to

		NDS	NON-NDS	t	p
All Defendants	N	395	395	1.94	<.05
	Mean	198	299		
Defendants Sentenced to Incarceration	N	144	140	1.02	ns
	Mean	886	1074		
Matched Pairs Sentenced to Incarceration	N	50	50	2.05	<.05
	Mean	819	1246		

incarceration. There are advantages and disadvantages to each of these approaches. The first maximizes sample size and retains the matched pairs, but includes in the comparisons pairs in which one defendant was convicted and sentenced to prison while the other had his or her case dismissed. The second compares all NDS cases that received sentences of incarceration with all non-NDS cases that received such outcomes, but does not insure that the 144 NDS cases included in the analysis are matched with the 140 non-NDS cases. Finally, the third approach retains the matched pairs and limits the analysis to defendants who received sentences of imprisonment, but results in an analysis of a very small proportion of the total sample -- 50 defendants from each group.

The first approach was selected for the current study. The reason for this is concern over maintaining the integrity of the matched samples. That is, a fairly large number of cases were lost to the analysis of sentence length because they were not considered "disposed." While for a few cases, this means simply that the case remains open, for most of the cases, it means that we

don't know what happened to the case. Some of these were transferred to other courts (either in other boroughs or family court); warrants were ordered for others; and others were either not docketed or not arraigned. We do not know how these cases are distributed across the two samples or whether the cases that remain are comparable to each other. Therefore, the first approach preserves the match by including only those pairs for which both defendants had "disposed" cases. While the third approach also retains the match, so many cases are excluded (by virtue of not being sentenced to incarceration) that it is hard to draw any conclusions from this analysis.<sup>25</sup>

Based on this analysis, it appears that NDS clients received sentences that averaged 100 fewer days than their matched pairs who received other types of representation. Policy makers may be more interested in total number of days convicted defendants are sentenced to jail or prison.<sup>26</sup> While it is not possible to determine from these data the actual number of days served by these defendants, we can examine the sentences received by the two groups. NDS clients were sentenced to a total of 78,153 days of incarceration, and non-NDS clients were sentenced to a total of 117,913 days of incarceration, a difference of 39,760 days. In addition, NDS clients spent an estimated 9113 days in pretrial detention and non-NDS clients spent 9188 days in pretrial detention, a difference of 75 days.<sup>27</sup> Thus, the net effect was that non-NDS clients were detained or sentenced to 39,835 more days of incarceration than were NDS clients.

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<sup>25</sup>As is discussed above, because of the substantial sample loss, it is not possible to determine from the current analyses whether the two samples in "approach 2" remain comparable. With additional resources (time and funds), comparability could be determined by analyzing the variables on which the samples were matched **after** the attrition. If there were no significant differences between the remaining NDS and non-NDS cases on demographics, criminal history and the instant arrest, we could be confident that the two samples remained comparable. As it stands, however, we cannot ascertain whether the lack of statistical significance observed in approach 2 is substantive (*i.e.*, there is no difference in sentence length between the two groups) or methodological.

<sup>26</sup>An additional benefit of this approach is that it does not require one to make any decisions regarding including or excluding individuals on the basis of the disposition of their case or sentence received. The sums would be identical either way.

<sup>27</sup>These data are for the 395 pairs of defendants included in the sentence length analysis only.

## Discussion

The results obtained in the current research on NDS are not substantially different from those obtained by other researchers in other jurisdictions. The most recent work in this area is summarized by Feeney and Jackson (1991) and Hanson *et al.* (1992). These researchers found no significant differences in conviction rates for different types of defenders. Hanson *et al.* also reported that indigent defenders were somewhat less successful than privately retained attorneys in keeping their clients out of jail or prison; NDS teams had about the same success rate as other defenders in keeping their clients out of jail or prison. The critical difference between the current study and the other studies reviewed here is that the NDS research was done on *matched samples*. As a result, many of the criticisms made of earlier studies (*e.g.*, failure to control for prior record or seriousness of offense) do not apply to this research. Nevertheless, additional refinements of this research might further explain some of the current findings.

Studies in other jurisdictions suggest that earlier provision of services produces savings in time and number of appearances (see for example, Fazio *et al.*, 1985). Although it was not possible in the current research to analyze the effect of point in the case at which defendants became NDS clients, future research could include this type of analysis. Using data from the NDS computer, it would be possible to explore the effects on case outcomes of assignment of cases to NDS at arraignment. It is likely, for example, that some of the defendants categorized as "NDS" clients, in fact, had other types of defenders at arraignment. These could be identified and compared to defendants who had NDS attorneys prior to arraignment.

## References

- Blumberg. 1967. The Practice of Law is a Confidence Game: Organizational Co-optation of a Profession. *Law & Society Review*.
- Casper, J. 1972. *American Criminal Justice: The Defendant's Perspective*.
- Casper, J. 1978. *Criminal Courts: The Defendant's Perspective* 170.
- Clarke & Koch. 1980. Juvenile Court: Therapy or Crime Control, and Do Lawyers Make a Difference? *Law & Society Review*, 263, 301.
- Clarke & Kurtz. 1983. The Importance of Interim Decisions to Felony Trial Court Dispositions. *Criminal Law and Criminology* 476, 496-497
- Fazio, E.J., Wexler, S., Foster, T., Lowy, M.J., Sheppard, D., & Musso, J. 1985. *Early Representation by Defense Counsel Field Test: Final Evaluation Report*. Washington, DC: US Department of Justice: National Institute of Justice.
- Feeney, F., Dill, F., & Weir, A. 1983. *Arrests Without Conviction: How Often They Occur and Why*.
- Feeney, F., & Jackson, P.G. 1991. Public Defenders, Assigned Counsel, Retained Counsel: Does the Type of Criminal Defense Counsel Matter? *Rutgers Law Journal*, 22, 2:361-456.
- Hanson, R., Hewitt, W., Ostrom, B., & Lomvardias, C. 1992. *Indigent Defenders: Get the Job Done and Done Well*. Williamsburg, VA: National Center for State Courts.
- Hermann, R., Single, E., & Boston, J. 1977. *Counsel for the Poor: Criminal Defense in Urban America*.
- Jacobs, N., & Chayet, E. 1986. *Bang the Gavel Slowly: Felony Case Processing in New York City's Supreme Court*. New York City: John Jay College of Criminal Justice.
- Legal Aid Society. 1989. *Delivery of Defender Services: Benefits of a Staff Model*. New York City: The Legal Aid Society.
- Mahoney, B. 1988. *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts*. National Center for State Courts.
- McConville, M., & Mirsky, C. 1986-1987. Criminal Defense of the Poor in New York City. *New York University Review of Law & Social Change*, 15, 4:582-964.
- Nardulli, P., Eisenstein, J., & Flemming, R. 1988. *The Tenor of Justice: Criminal Courts and the Guilty Plea Process*.

- Oaks, D., & Lehman, W. 1968. *A Criminal Justice System and the Indigent: A Study of Chicago and Cook County.*
- Silverstein, L. 1965. *Defense of the Poor: The National Report.*
- Spangenberg, R., Lee, B., Battaglia, M., Smith, P., & Davis, A.D. 1986. *National Criminal Defense System Study: Final Report.* Washington, DC: US Department of Justice: Bureau of Justice Assistance.
- Sterling, 1983. Retained Counsel Versus the Public Defender: The Impact of Type of Counsel on Charge Bargaining. In W. McDonald (Ed.), *The Defense Counsel*, 162-165.
- Sudnow. 1965. Normal Crimes: A sociological Feature of the Penal Code in a Public Defender Office. *Social Problems*, 12.
- Taylor, Stanley, deFlorio, & Seekamp, 1973. An Analysis of Defense Counsel in the Processing of Felony Defendants in Denver, Colorado. *Denver Law Journal*, 9, No. 30, 35-37.
- Vera Institute of Justice. 1992. *The Neighborhood Defender Service of Harlem: Research Results from the First Year.* New York City: Vera Institute of Justice.