Innovations in Public Defense as an Investment in Better Sentencing

It is hard to imagine today that twenty years ago, when violent crime in New York City was at an all-time high, the city and state governments had the political courage to undertake an experiment aimed at redesigning public defender services in the United States and, as a consequence, making criminal sentencing more just. The Neighborhood Defender Service of Harlem opened its doors in 1990, hoping to demonstrate the benefits of a community-based, team-based public defender that began representation from the moment of arrest, or even earlier.

What made NDS different? Structured differently from court-based public defenders, its physical location—miles from the Manhattan courthouses but close to both its clients’ homes and the scenes of many of the crimes it investigated—allowed staff to find witnesses and document clients’ backgrounds quickly. Its community outreach and advertising encouraged potential clients and their families to call its offices immediately after an arrest so that NDS staff could begin investigating long before a traditional public defender would be appointed to the case at arraignment. Additionally, its staffing pattern, in contrast to traditional public defender offices, included a higher ratio of investigators and community workers to lawyers. This structure helped ensure that more facts were quickly brought to bear at bail hearings, plea negotiations, trials, and sentencing hearings.

NDS was also a problem-solving institution. Drawing on the same principles that inspired early experiments with community policing, NDS attempted to address the underlying problems that brought Harlem residents into repeated conflict with law enforcement. For example, NDS staff members participated in educational activities in Harlem, such as the Conflict with Cops courses offered in public high schools; invited neighborhood employers to meet NDS clients in order to assist with job placement; and developed expertise in arranging safe, voluntary surrenders for local residents wanted by the police.

Furthermore, NDS recognized that people living in heavily policed urban environments are likely to experience multiple contacts with the justice system over time and believed that public defenders could provide better representation more efficiently if they saw the clients, not the cases, as their focus. NDS ensured that clients facing a second or third case were represented by the same team, as well as that records of client interviews, evaluations, and character references remained active and accessible, even when the individual case for which this information had been gathered was concluded.

For the Vera Institute of Justice, NDS served as a demonstration project for the nation. The Vera Institute and NDS used several methods to evaluate the program over its five-year demonstration period. Customer satisfaction was measured in periodic surveys of former clients, and professional skill was assessed through interviews with judges and other lawyers in the Manhattan courts. The most rigorous evaluation focused on case outcomes. Testing the hypothesis that the NDS model would result in shorter periods of incarceration for clients compared with similar defendants charged with similar crimes but represented in a more conventional fashion, researchers used a matched-pair design to compare clients with comparable prior records facing comparable charges in the same courts.

The results of the research were surprising. Although pretrial detention time was not statistically different for NDS clients compared with similar defendants, NDS clients ultimately received significantly shorter sentences, and the savings to the government in terms of jail and prison time were substantial. Although NDS representation was more costly than traditional public defense, criminal justice author David Anderson concluded in a monograph for the National Institute of Justice that this cost was easily offset by the savings associated with shorter sentences.

Much of the success of NDS was attributable to the people—lawyers, investigators, social workers, technical staff, and volunteers—who dedicated themselves to their clients and community through this project. The team-based, client-centered, problem-solving model proved attractive to those who found the more conventional indigent defense practice alienating and whose commitment was to their clients, not to the system.

NDS spun off from the Vera Institute after its demonstration period, and it continues today as a formal part of New York City’s system of indigent defense. Equally...
important, the NDS experiment inspired other versions of client-centered, problem-solving defense services, including the Bronx Defenders. More than twenty years after its debut, NDS continues to show that high-quality public defense can play an important role in any strategy to unwind mass incarceration while improving the quality of criminal justice generally. NDS was implemented in the politically charged, high-crime era of the late 1980s and early 1990s. In the comparatively low-crime, cost-conscious era in which Americans live today, its efficiency and cost-effectiveness may prove even more compelling to governments and communities throughout the country.

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