

LEFSTEIN TO THE DEFENSE

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Somewhere along the line, administration has gotten a bad name—synonymous with bureaucracy, red tape and preoccupation with petty concerns. Call someone a great administrator, and your praise is considered faint, or perhaps slightly ironic. But I will risk it because Norman Lefstein *is* a truly great administrator, and the story of how he used his skills to build a struggling little agency into a model of criminal defense is an emblematic one that belongs in any summary of his professional achievements.

It is also a story about the uses of administrative excellence—which like due process of law, does more than merely keep things running along. The story starts in the early 1960s in Washington, D.C. Norman Lefstein, fresh (perhaps fleeing) from several years of civil litigation in Elgin, Illinois, arrived to take a Master's Degree in Trial Advocacy at Georgetown (The Prettyman Program).

Gideon v. Wainwright,¹ assuring a state-paid lawyer to indigent criminal defendants, was still brand new, and the program Norm came to join was one effort to train effective lawyers for the new day coming. Like many other places, the District had no regular public defender agency, but relied instead on lawyers appointed to serve pro bono.

Soon after *Gideon* came down, Congress created a small experimental outfit—we used to call them pilot programs—for providing indigent defense in the Nation's Capital. It was named the Legal Aid Agency, (“the agency” to its first members). Five or six high-spirited young lawyers dedicated themselves to realizing the dream of *Gideon*: of “a vast, diverse country in which every [person] charged with crime will be capably defended, no matter what his economic circumstances, and in which the lawyer representing him will do so proudly, without resentment”²

The agency's problem at its creation (and still) was that the public, and its representatives, do not embrace the dream of *Gideon* for every defendant. Instead, they want their public defenders to represent only the deserving few in court, and to plead the rest guilty. Thus, sooner or later in the life of every public defender agency, its caseload starts to outstrip its resources, and it comes under tremendous pressure to process cases rather than defend them.

This happened to the Legal Aid Agency within a few years of its founding. But the agency got a second life and grew into the major channel for defense services in the District of Columbia: the Public Defender Service (PDS). Much of the credit goes to Norman Lefstein's administrative brilliance; he became Deputy Director a few months after I took over as Director in 1968. We worked as a team for four years, and then he headed the PDS for three more years.

First on our agenda was to put the agency on a sound statutory and budgetary footing. Norm wrote a model public defender statute, and led the effort to lobby it through a Congress notably unsympathetic to the needs of local citizens. Yet

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1. 372 U.S. 335 (1963).

2. ANTHONY LEWIS, *GIDEON'S TRUMPET* 205 (1989).

in his guise of careful administrator rather than crusading defender, Norm talked to them, not about civil rights, but about cost efficiency; not in abstractions but in the details of charts and projections. And Congress responded; the agency grew and prospered. Once more it attracted top legal talent, once more there was a true adversary system at work, and once more poor people had a defender when they faced the state in court.

To keep all this going, Norm needed data; data for his reports, and his regular treks to Congress. We decided that the lawyers must keep records of their work. Now anyone who thinks this was easy does not know public defenders. As I look back on it, herding cats is the right analogy. Defenders consider themselves lawyer-outlaws, iconoclasts, working to preserve precious liberty, instead of fighting over money and keeping records in order to get paid. Freedom from the time clock was the only perquisite of a job short on compensation and prestige. I can still hear the outraged cries, thirty years later. Yet our lawyers kept records—and even submitted to their review—on forms that Norm designed. They did it because they knew his alchemy—how he could turn these facts into a stable future for PDS.

Many of Norm's ideas were novel for the time; today they are the hallmarks of excellence in a defender program. An intensive training program—for instance—to prepare lawyers for the courtroom, for plea bargaining, for counseling, for all the grave responsibilities of defenders. Systematic training using the techniques now familiar from clinical programs, quite new at the time, required considerable resources and planning. Norm Lefstein took it on himself to demonstrate that good training saved time in the long run—on cases reversed for ineffective assistance, on the ability of lawyers to handle a number of cases efficiently.

In the statute he drafted, Norm named the new organization The Public Defender Service. It may have been the first to bear the "Service" title, reflecting the insight that for public defenders, the strictly legal work is only part of the picture. Public defenders need social workers to help in the representation of many clients: to locate treatment and employment opportunities, to counsel on personal issues. Social workers enable the lawyers to present a coherent life picture and plan at sentencing time (an inevitable day for many clients). Norm built an Offender Rehabilitation Program into the PDS statute, along with a provision for trained investigators.

In 1974 the Public Defender Service was named an "Exemplary Project" by the Law Enforcement Assistance Administration of the U.S. Department of Justice; the agency was the only public defender program in the nation to have been recognized in this fashion. Norm still lists this recognition on his official resume; I am here to say it was in large measure his personal accomplishment.

Others are writing about his long service as Dean, but in these years he has not abandoned his old Defender commitments (once a Defender, always a Defender). Again, his successes have the cast of administration: building institutions; writing standards and statutes; guiding and directing programs. Norm Lefstein's resume is a roll call of the important bar and governmental groups working to improve indigent defense services everywhere. For all those who wish to see fully the beauty of the administrative approach to social

injustice, I commend Norm's description of the work of the Indiana Public Defender Commission, a group he continues to chair, in his article, *Reform of Defense Representation in Capital Cases: The Indiana Experience and Its Implications for the Nation*.³

I will close with one of my last, and fondest memories of the public defender days that Norm Lefstein and I shared. It was May Day, 1971; anti-war demonstrators threatened to close down the Capital, and marched at rush hour on the various government buildings. Hundreds of people were arrested throughout the morning, and we defense lawyers prepared to represent them. But hours passed, the smell of tear gas faded from the streets, and still no one was brought to court for arraignment. Nor could we find our potential clients in the usual places—the jails, the houses of detention.

Public defenders on motorcycles fanned out over the city, and finally located a thousand people, locked up in the football stadium, without medical, sanitary or other provisions. Night was drawing near and there was a chill in the Spring air. Speedily, Norm drafted up a petition for habeas corpus; without hesitation he called a judge at home to come back to town and hear it. Moonlight was streaming through the courtroom windows as we examined police officers and Justice Department officials and made our case for immediate release. It felt like a great battle over the next few days, as we deployed the defense resources of the city to represent those caught up in the system and unable to help themselves. We were able to do a fine job because we were well-trained and well-organized. And that is due, in great measure, to Norman Lefstein.

Perhaps the reader is wondering about my role as Director of the Agency. I too am an administrator at heart and one who follows the first rule of leadership: get a great deputy. I hired Norm Lefstein. And I did it at a time when the Legal Aid Agency statute set the top salary, that of the Director, at \$16,000 per annum. Norm had a young family, and could not live on that amount. "But Norm," I said in persuading him to come, "the statute says nothing about the salary of the Deputy."

3. 29 IND. L. REV. 495 (1996).