

# Empirical Strategies to Strengthen Policy Environments in the Justice Sector

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## Preface

My proposition in this paper is straightforward. Those leading international development efforts to strengthen safety, security, and access to justice for people in poverty should focus particular attention on strengthening the policy environments in the countries where they work. In making that argument, however, I will explore three less straightforward questions: First, should we conceive the policy environment in any particular country as a single structure—strong or weak—or as multiple, overlapping policy environments of varying strengths. Second, how can an empirical approach to our work strengthen the strategies we use to improve policy environments. Third, is there a role for non-governmental organizations in advancing such an empirical approach to reform.

As a preface to this argument, let me begin by telling the story of the creation of the Vera Institute, for that story nicely illustrates the relationship between empirical approaches to reform and the strengthening of the policy environment.

The Vera Institute of Justice was created by a self-made millionaire, Louis Schweitzer, who, in 1960, was shocked to discover that thousands of awaiting trial prisoners sat confined on Rikers Island in New York Harbor because, although presumed innocent, they were unable to pay even small amount of bail for their freedom. He hired a young writer from Boys Life magazine, and together they sought advice about how they could relieve the economic injustice of pretrial detention.

Many suggested that Schweitzer do as other philanthropists had done before him and establish a bail fund. But Schweitzer understood that, while a bail fund would free many prisoners, it would eventually be exhausted. If he were going to arrange their release without the prisoners having to pay anything, it would be better if he convinced the government to release them without any payment from anyone. If he could use his money to persuade government to follow this course routinely, then his money would relieve the injustice permanently. So, in 1961, Schweitzer organized what I believe to be the first ever random-assignment experiment in a court of law.

Lawyers and judges are not, even today, predisposed to accept that they might detain and release prisoners on a random-assignment basis, but Schweitzer persuaded the judges to do just that. His small staff devised a point scale from 1 to 5 that purported to measure “community ties,” and then produced a score for each arrested defendant by interviewing

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\* For a description of Vera and its current work on crime and victimization, policing, judicial process, sentencing and corrections, and youth justice, see its web site: [www.vera.org](http://www.vera.org).

them in the courthouse cells before their first appearances. They then told the judges the scores in a random selection of the cases. When prisoners in the experimental group scored 4 or 5, indicating strong community ties, the staff recommended that judges release the defendants merely on their promise to return on their next hearing date. Sure enough, those released merely on their promise to return appeared just as often as the prisoners in the control group with the same scores but who had been required to post money bail, and the members of the experimental group were re-arrested less often than the controls.

These results led New York State, other states, and the federal government to reform their laws. The new laws created a presumption of release without money bail for awaiting trial prisoners and required that courts consider the strength of a prisoner's community ties in all bail proceedings. President Lyndon Johnson, when he signed the Bail Reform Act of 1966, thanked Vera for demonstrating the practicality of this approach.

Vera's founder realized that it was his method, not the particular issue of bail reform, that made his success distinctive. So instead of dedicating his young organization to the further reform of prisons, he dedicated the Vera Institute to further experiments in the cause of justice reform more broadly. He named it Vera after his mother, who had died in the 1930s, although many observers in those early days assumed that Vera was an acronym, standing for the Very Easy Release Agency.

In many ways, that story foreshadows what we are discussing here. Intuitively, Vera's founder understood that just putting money into the service of the poor—paying their bail bonds—would not make any lasting change. He realized that he had to change the laws and policies that caused the unnecessary detention of poor people, and to do so he chose a novel approach: he conducted a real-world experiment that produced empirical data about the behavior of the system. He proved that the costly detention of the poor was unnecessary. In doing so, he not only produced a change in policies, *he strengthened the policy environment itself*, improving its skill in the use of empirical data. Indeed, Vera's very first project left government eager to collect and analyze more data to resolve additional questions of justice policy.

## Why focus on the policy environment?

When speaking of the “policy environment,” some precision may be helpful. By policy environment, I mean *the quality or nature of government processes, capacity, and culture*. The *processes* are those by which governments adopt legislation, construct budgets, and formulate policies. The government *capacities* of concern are those for planning, coordination, analysis, and leadership—in short, the management capacity in the public sector. Finally, the *cultural elements* of the policy environment are amorphous yet crucial: is the government of the day ambitious or restrained, global or parochial, vain or public-spirited?<sup>1</sup>

It is through this policy environment that our assistance will contribute significantly, or not, to greater safety and justice and thereby to a reduction of poverty. This is true whether our assistance is financial or technical, and whether we provide it directly to

government or to non-governmental organizations. We must focus on the policy environment because our money and ideas, placed into environments that remain weak, unskilled, corrupt, or jealous, will pass through quickly, like water through a sieve. Our assistance will touch some people along the way, helping some perhaps, but it will leave not a trace behind. In contrast, if we are to help build strong, capable, ambitious environments, that same assistance will be translated into public policies and government practices which themselves produce greater safety and justice for people in poverty, and continue to do so long after the assistance has come to an end.<sup>2</sup>

Consider again Vera's first experiment in reducing pretrial detention in New York City. The experiment alone did not produce the reform. Reform depended on the strong policy environments in which it was placed: a local chief judge with a sincere ambition to improve the administration of justice in New York, and a national Department of Justice led by Robert Kennedy itself filled with highly trained officials eager to close the gap in the administration of justice for rich and poor.

Vera's first international project—the adaptation of its Manhattan Bail Project to the London magistrates court at Camberwell Green—also benefited from a strong environment. The invitation for Vera to work in England came in 1974, when Roy Jenkins began his second stint as Home Secretary, assisted by his young and promising special advisor, Anthony Lester. As in the United States a decade earlier, the experiment contributed to the Bail Act 1976 and its new right of unconditional bail.

Most policy environments are not as strong as these. While some may occupy extreme positions either as utterly hopeless or as fully capable of any reform, most lie somewhere along the broad spectrum between these extremes. Our task, then, is not only to provide assistance appropriate to the particular policy environment, but also to strengthen that environment through our work.<sup>3</sup>

Consider the case of South Africa under President Mandela from 1994 through 1999. In many ways, the policy environment was extremely strong. South Africa's longstanding, technically efficient, legal and legislative institutions had passed, relatively peacefully, into the hands of a democratically elected, ambitious government, comfortable in its role on the global stage, with the strongest possible commitment to domestic reform. At the same time, however, the political leadership was generally inexperienced in the exercise of government power, and distrustful of many of the senior civil servants upon whom it was dependent for the implementation of its policies. As Mandela's Justice Minister, Dullah Omar, told me 1996, "the ANC never had the luxury of being in opposition, able to shadow the party in power. We were a resistance movement, not a loyal opposition." As a result, Omar explained to me, the ANC came into government without the experience or capacity to implement the scores of new policies it quickly adopted.

In that context, when Minister Omar asked Vera to assist in the reform of the administration of justice, we focused on the training of a new generation of young social scientists and lawyers in the practical implementation of police and court reform. While we carried out projects on pretrial services, prosecution of car hijacking, and improved treatment for victims of rape, our primary aim was to improve the skill and experience in

the management of practical reform among professionals from formerly disenfranchised groups, and to build a home for them in a new South African NGO. As in our very first project in New York, we aimed simultaneously to make a difference for poor people dependent on the justice system, to improve the policies that guided that system, and to strengthen the environment in which those policies were made and implemented.<sup>4</sup>

## Where is authority in the policy environment?

Some people eager to influence policy often mistakenly assume that they know where authority lies within the policy environment. They focus their efforts on a senior minister in a national government, or they lobby the members of the legislature. In some cases, ministers and legislators indeed exercise crucial authority, but there are many other places where authority may lie, and the location of authority may shift over time and vary from one matter to the next. This variation turns out to be particularly broad for issues of public safety and justice.

Moreover, the location of authority can constrain the range of strategies appropriate for influencing policy and strengthening the policy environment. For example, the techniques likely to influence a small national council of experts are unlikely to prove as effective in influencing decisions made by a large, local council of popularly elected representatives.

Before choosing one or more strategies for strengthening the policy environment, it is therefore useful to ask whether authority over the particular issue is to be found:

- with national officials or local officials;
- with professional civil servants or politicians;
- with budget officials or substantive officials;
- with experts or with representatives of those affected by the issue;
- with autonomous government agencies or interdependent departments;
- in public deliberations or private negotiations.

To see the significance of these questions in perhaps the most studied policy environment in the world, consider the changing strategies of public interest law firms in the United States. In the 1960s and 1970s, federal government agencies in the United States accumulated their maximum authority on issues of healthcare, environment, and public welfare affecting people across the country, especially those in poverty. As one scholar describes this history, advocates for disadvantaged groups had encouraged the centralization of this authority, but also saw the dangers in it: “narrow participation in agency decision-making, the capture of agencies by regulated industries, and the self-interested bureaucracies.”<sup>5</sup> To strengthen the commitment of these government agencies to the poor, advocates and donors supported the growth of public interest law firms, most based in Washington, whose lawyers—largely the graduates of elite law schools—advocated before federal courts, federal agencies, and Congress. By the 1990s, however, trust in the federal government had waned and authority had moved downwards to state

and municipal governments. The strategies of public interest lawyers had to change as well. As a result,

[a]dvocates are now dealing with a variety of state and local agencies that are numerous and difficult to locate. They can no longer advocate exclusively before Washington-based agencies closely linked to Congressional leadership. The efficiencies of a single level of government, permitting a system where expert and experienced public interest lawyers affected important decisions by providing advocacy before a single agency with a limited number of decision-makers, are gone.<sup>6</sup>

In other words, the strategies of American public interest law firms on behalf of the poor in the 1960s and 1970s depended on an understanding of the U.S. policy environment as one in which authority was located with national officials, with substantive experts, and with relatively autonomous government agencies. The changes of the 1990s made the strategies of these law firms obsolete. Authority shifted to local officials and into the hands of “stakeholders” rather than experts. Decisions were taken as often in private as in public. Not only were the national strategies based on expertise ill-suited to this new environment, but the need for elite lawyers to be involved at all has been called into question.

The current plight of public interest law firms in the United States is a useful reminder that strategies adopted to influence one environment, may be ill-suited to a different one. More important for present purposes, however, the story reminds us that those who would influence policy must not only be skilled in tracing the contours of authority across complex political terrain, but also alert to the changes that are occurring on that landscape. We must not only be able to describe where authority is found in the present, but to predict where it will move.

It is useful, therefore, from time to time, to review the location of authority on the issue at hand, running down the six “choices” I posed earlier: national versus local, professional versus political, and so on. In most policy environments, authority is not held exclusively in any one place, but rather is found in all of these places at once: it is national *and* local, expert *and* representative, substantive *and* budgetary, political *and* professional, autonomous *and* interdependent, public *and* private. The exercise becomes one of weighing the balance for each of these dimensions, noticing that the balance will vary across time, place, and issue.

Having mapped authority within the policy environment, we must then choose strategies to influence it. Authority may be dispersed in many places, but the strategies we adopt will rarely be able to affect the exercise of authority in all of them. We should be clear, therefore, when considering specific strategies, which parts of the policy environment we intend to affect, and why those seem particularly important.

Consider the problem of rape in South Africa. If the hypothesis that criminal victimization perpetuates poverty is true anywhere, surely it is true for the women of the townships in the Western and Eastern Cape, where rape has grown to epidemic

proportions and is entwined with issues of HIV transmission. What strategies, then, should we consider to strengthen the ability of the South African government to improve the safety and confidence of women here? Where in this policy environment is authority to deal with rape principally located?

Is authority placed in one autonomous government agency, or spread across a series of interdependent departments? In matters of crime and justice, the answer is almost always that authority is shared across interdependent departments and separate branches of government: the police service, the prosecution service, the judiciary, and various prison and community corrections departments. In many countries, those separate departments barely acknowledge the need to support each other, often insisting on their independence as a matter of constitutional principle.

In South Africa, in contrast, at the national level, there is longstanding commitment and practice of consultation across those departments. But not all authority is national. The health services are a matter of provincial administration. Even prosecutions, now organized nationally, were until 1998 the responsibility independent provincial attorneys general. The new National Prosecuting Authority has turned out to be a strong and well-managed operation, but it would still be a mistake for anyone trying to affect prosecution policy and practice to focus exclusively at a national level.

Rather than a single policy environment, the picture that emerges from this series of questions is of multiple local environments, sharing a few national elements in common. Moreover, those multiple policy environments turn out to have different strengths: some are filled with skill and experience, embracing reform, while others are fractious and ineffective.

In the spring of 2000, when the South African Minister of Justice asked my colleagues at Vera to help him respond to the epidemic of rape, we saw an opportunity in the varying strength of these multiple environments. We organized a demonstration project to be conducted in one particular local environment, designed to improve the treatment of rape survivors. We then helped the government attempt to replicate the demonstration in a second site, with a different local policy environment. The National Prosecuting Authority took the lead in both locations, giving direction to the police. In the first site, the health authorities were strong, capable, and eager to embrace reform. In the second, however, the hospital administrators were insecure and resistant to experimentation. We knew we would have a difficult time even in the first location, but we hoped that if we could succeed in the stronger environment, then the people who made it work there would be able to inspire and guide improvement in the weaker environment. That, in short, is the value of these varied, local policy environments within national structures: they not only provide the basis for experimentation and innovation; they allow a society to repair and strengthen its own political apparatus.

What strategies can strengthen the policy environment? Beyond the straightforward provision of financial assistance, donors generally support three broad strategies for reform: training and technical assistance, advocacy, and demonstration projects.

Training and technical assistance build the skills and capacity in government, often through the engagement of outside trainers and consultants. The training and assistance can be provided to an entire class of civil servants, or directly to an individual elected leader.

Advocacy, in contrast, is usually provided locally. Depending on the nature of the policy environment, it ranges from the presentation of expert testimony before parliamentary committees to the organization of mass protests in the streets. This is generally the work of non-governmental organizations, strengthening the policy environment by broadening the range of voices that are heard during the formation or implementation of policy; but donors sometimes themselves become advocates.

Finally, demonstration projects involve the donor directly in the business of government, strengthening the policy environment through direct partnership in the administration of justice.

### How can an empirical base bolster each of these strategies?

An empirical approach to safety and justice reform is not actually a strategy in its own right, but rather a way of enhancing any of the basic strategies already mentioned: training and technical assistance, advocacy, and demonstration projects. By empirical, I do *not* mean statistical. The empirical approach that I have in mind is one that mines local experience in a systematic way, producing both quantitative and qualitative results. It stands in contrast to approaches that depend on ideological assertions or on experience gained in other societies.<sup>7</sup>

#### *Empirically based reform: the example of rape in South Africa*

Return one more time to the challenge of responding to rape in South Africa. At the time that my colleagues began their work on the problem, the newspapers in South Africa were full of stories of women—young and old—who turned up at police stations to report a rape, only to be kept waiting for hours or days. Rather than take that as an adequate statement of the problem, we conducted a simple but powerful empirical study. We stationed three young researchers in three police stations in the Cape Flats, prepared to interview each person who came to report a rape over a one-month period. In each case, the researchers explained the study to the complainant, and obtained her consent. The researcher then conducted a first interview at the station, a second interview two weeks later, and a third interview after another two weeks. Our goal was to understand, in detail, the actual experience of rape victims from these poor communities who attempted to use the criminal justice system. Fifteen complainants participated in the study, with all but one completing all three interviews.<sup>8</sup>

Simple yet systematic, this method produced a rich, empirical picture of how police, doctors, and prosecutors were actually handling these most sensitive cases. Indeed, it is a useful reminder that empirical methods need not focus on quantitative statistics nor depend on sophisticated research skills. Here, the results were largely qualitative, yet the

systematic nature of the exercise gives the results far more power than individual anecdotes or new stories as the basis for project and policy design.

For example, the research produced several insights into the nature of the rapes themselves. Eleven of the fifteen women were raped by someone they knew, and four were raped by multiple assailants. All the rapes occurred between 1900 and 0500 hours. In many cases, neighbors and witnesses failed to intervene; in only one case did people respond to a woman's calls for help.

In addition, the research provided a picture of procedures at police stations, the work of detectives, medical services, HIV testing, use of counseling services, and bail information. Encouragingly, the research found several areas where government practice was strong: the complainants had their initial statements taken in under an hour, usually by a woman, and they were correctly referred to the victim support room. The investigating officers ensured that the women saw a doctor, the district surgeons generally treated the women sensitively, and the investigating officers usually re-contacted the women once within the first two weeks. At the same time, the research revealed many weaknesses:

- Several women who had been raped by former boyfriends or ex-husbands were discouraged at multiple points from filing complaints
- Women waited between two and four hours in most cases for the police to handover the case to an investigating officer.
- Investigating officers often treated the women poorly.
- Most women waited three or four hours before being taken to the district surgeon, and those surgeons talked about the incident primarily with the officers, not the women.
- By the time four weeks had passed, there was little continuing contact with the investigating officers, there had been no further contact with the district surgeons, and only four of the fifteen women had received formal counseling.

This qualitative but nonetheless empirical research quickly proved valuable in strengthening the policy environment through all three strategies: advocacy, technical assistance, and demonstration projects. For example, the authors distributed the 15-page, straightforward report through NGOs and over the internet, allowing advocates to use its findings as they argued for better treatment of rape survivors and the implementation of new legislation protecting women. At the same time, the Minister of Justice distributed copies to his cabinet colleagues, including the Minister of Safety and Security. The findings were then incorporated in specialized training courses for police investigating officers and for prosecutors specializing in sexual offenses. Most significantly, my colleagues and the government used the findings to design a demonstration project to show how a coordinated effort among departments could improve treatment of victims and the results in their cases.



The demonstration project that emerged from this empirical study is called the Thuthuzela Care Centre for rape survivors. Thuthuzela is a Xhosa word for care, and these centers, based in hospitals, are designed to allow multiple departments to serve rape survivors in a single, efficient, caring environment. The initial demonstration centre was based in Manenberg Hospital, and served five township police stations. Now, when a rape victim appears at a police station in one of the townships served by the center, the desk officer, instead of taking her statement and calling for an investigating officer, simply calls the emergency medical services. Within an hour, a custom-fitted ambulance with a social worker aboard is supposed to pick up the survivors from the police stations and brings them to the Thuthuzela Centre. There, victims are first seen by nurses and doctors, then offered a bath and change of clothes, and only then interviewed by detectives. Before they leave, they are offered counseling and tested for HIV.

Before the rape survivors leave the center, the coordinator asks each survivor to complete a short assessment of the services they have received. Project staff tabulate the ratings each month and present them, along with other performance indicators, to officials in the police, prosecution, and health services. On a scale from 1 to 5, where five represents the highest level of satisfaction, the survivors in almost every month have rated the medical and police services at the Manenberg Thuthuzela Centre between a 4 and 5, suggesting that they are highly satisfied with both. In those few months where averages dip below a rating of four, supervisors intervene to help the staff identify and solve the problems.

The Thuthuzela demonstration project, like the initial research study, is a joint effort of private donors and government departments, with funding from both sides.<sup>9</sup> The donors' goal is not only to improve services to the women of the Western Cape, but also to strengthen the policy environment nationally so that government can sustain, improve, and replicate this initial center. Again, the empirical approach of the demonstration greatly enhances this effort.

As planned, my colleagues helped government open a second centre in the Eastern Cape at Mdantsane, where the health services and hospital were weaker partners. The staff of the two centers visited each other, and the medical leader in the first center trained those in the second. Working with the staff of the centers, my colleagues devised the monthly performance indicators shown in the table below. They are meant to capture practice of concern both to police and the medical staff, mixing objective data with the perspective of the women being served. The National Director of Public Prosecutions regularly reviews these, comparing the results of the different centers and demanding explanations when performance at one centre falls below what others can achieve. In other words, the measurement system not only guides front-line practice, it focuses leadership and management of the justice system as well. Happily, the annual report of the National Prosecuting Authority lists the further replication of Thuthuzela Centres nationally among the highest priorities for the year ahead.

Indicators	Oct 2002	Sept 2002	Aug 2002	Jul 2002	June 2002	May 2002
Number of cases						
Manenberg	42	49	42	35	21	40
Mdantsane	34	31	34	28	20	17
Victims seen by site coordinator						
Manenberg	30	23	23	28	11	18
Mdantsane	14	11	0	0	14	9
Number of victims attended 1 <sup>st</sup> follow-up visit						
Manenberg	28	23	26	28	26	na
Mdantsane	9	11	13	9	13	na
Average response time of ambulance						
Manenberg	107.5 min	112 min	54.4 min	60.2 min	47.5 min	52.3 min
Average response time of police						
Mdantsane	94.6 min	143.7 min	172 min	122 min	na	102.3 min
Average satisfaction with police interviews (1-5)						
Manenberg	3.9	4.3	4.3	4.2	4.4	4.5
Mdantsane	4.5	4.3	4.6	4.2	4.7	4.3
Average satisfaction with medical examinations (1-5)						
Manenberg	4.1	4.2	4.4	4.2	4.8	4.7
Mdantsane	4.4	3.9	4.6	4.3	4.3	3.6
Cases with immediate arrests						
Manenberg	10	12	12	16	6	19
Mdantsane	14	13	9	12	6	9

### *Empirically based reform: the example of pretrial detention in Russia*

Let us leave South Africa and the issue of rape, and instead examine what happens when efforts to strengthen the policy environment are *not* empirically grounded. Consider, for example, the issue of pretrial detention in contemporary Russia.

Here, too, access to justice would appear to be an important issue for those living in poverty. Fear of the police among the poor, and even among the working class, is largely driven by the fear of detention. The SIZOs—the prisons for those awaiting trial or sentence—are notoriously overcrowded, unsanitary, and brutal places, far worse in the public imagination than the labor camps to which sentenced prisoners are later sent. Fear

of being sent to such a place daily dissuades many Russians from seeking police assistance that they otherwise need. In their current state, the SIZOs also spread disease, such as tuberculosis, as thousands of poor people are held so long that they become weak, ill, and contagious, and then are released by the thousands to return to their communities. For these and other reasons, the elimination of overcrowding and the proper management of the SIZOs is an example of justice reform that might lead to a reduction of poverty by many routes, even on a short, five-year horizon.

Unfortunately, at first sight, the policy environment for such reform would seem to be quite weak. There is no better sign of this weakness than the regular recourse to mass amnesties as the principal device through which officials in Moscow have relieved the persistent overcrowding. The awaiting trial population builds up to intolerable levels, an amnesty is declared relieving the pressure temporarily, but the underlying dynamics of the pretrial process quickly fill the SIZOs again.<sup>10</sup> Not only do these amnesties fail to address the causes of the overcrowding, but they produce fear and anger among the public about the mass release of thousands of criminals and they overwhelm whatever social systems are otherwise available to absorb returning prisoners.

The response of many reformers has been to press for a change in responsibility: to shift responsibility for the SIZOs themselves from the Ministry of the Interior (MVD) to the Ministry of Justice (GUIN), and to shift responsibility for the decision to send prisoners to the SIZOs from prosecutors to judges. The first of these shifts was accomplished in the late 1990s, and the second took effect in July 2002. The arguments in their favor were basically two: (1) the police and prosecutors cannot be trusted with detention decisions because they will prolong these to coerce confessions and cooperation from pretrial prisoners, and (2) European convention requires that these functions be removed from the police and prosecutors and placed with the Justice Ministry and the courts. These arguments may have been grounded in principle and international convention, but the idea that they would reduce the population in the SIZO was not grounded empirically. Their proponents did not offer any empirical evidence that the overcrowding in the SIZOs was actually the result of decisions by police and prosecutors to extend detention in order to coerce confessions, nor did they offer any evidence that judges are actually less likely to grant requests for detention from prosecutors than prosecutors are to grant them from police. In short, the Russian policy apparatus responded to these arguments without testing the likelihood that they would result in the reduction of the overcrowding. Indeed, some experience from other countries would have suggested that these reforms were *unlikely* to reduce the numbers in detention except during a few months of transition.

In the event, these were probably important and sensible reforms, but they have not dealt with the problem of overcrowding, brutality, and contagion in the SIZOs. In Nizhny Novgorod, for example, Russia's third-largest city, the numbers of detentions ordered by the judges under the new system have now returned, after only five months, to the levels at which they were ordered by the procuracy previously. Indeed, in the courts where the reform has been introduced without an additional reform providing the judges with auxiliary staff, the judges are granting substantially more detention orders than were the prosecutors.

We know the results from Nizhny Novgorod because Nizhny has been the site for the last three years of an independent effort in empirically grounded reform of pretrial detention. This localized, independent effort has aimed not only to reduce the overcrowding in the single SIZO in Nizhny, but to create an appetite for empirical experimentation among local, regional, and national officials in the police, procuracy, courts, and prison administration.

In 1999 and early 2000, a two-person team (a researcher and a practitioner) from the Vera Institute systematically examined the files of small but representative samples of prisoners in two SIZOs—one in Nizhny and another in Moscow—discovering to their surprise that prosecutors actually seemed regularly to release defendants who would be detained in many other countries. The overcrowding, they found, was not principally the product of detaining too many people, but rather the product of detaining them for much longer than is common in other countries. To illustrate the difference, a prisoner who might be detained in New York or London for a matter of days, was likely to be detained in these SIZOs for six months.

The results of this small study suggested a previously ignored method for reducing overcrowding in the SIZOs—reduce the length of pretrial detention. In contrast to the bail reform that Vera had pursued in New York and London, which focused on changing the initial detention decision, my colleagues in Nizhny set out to construct a demonstration of how the length of pretrial detention might be substantially shortened.

The resulting demonstration project was a large undertaking, with specially trained staff placed in all eight police districts in Nizhny, a new information system developed to track decisions from arrest forward, and additional staff deployed in the courts and the SIZO. For present purposes, I shall describe only one of the elements of the effort: the one designed to speed the early phases of investigation in cases of detained prisoners.<sup>11</sup>

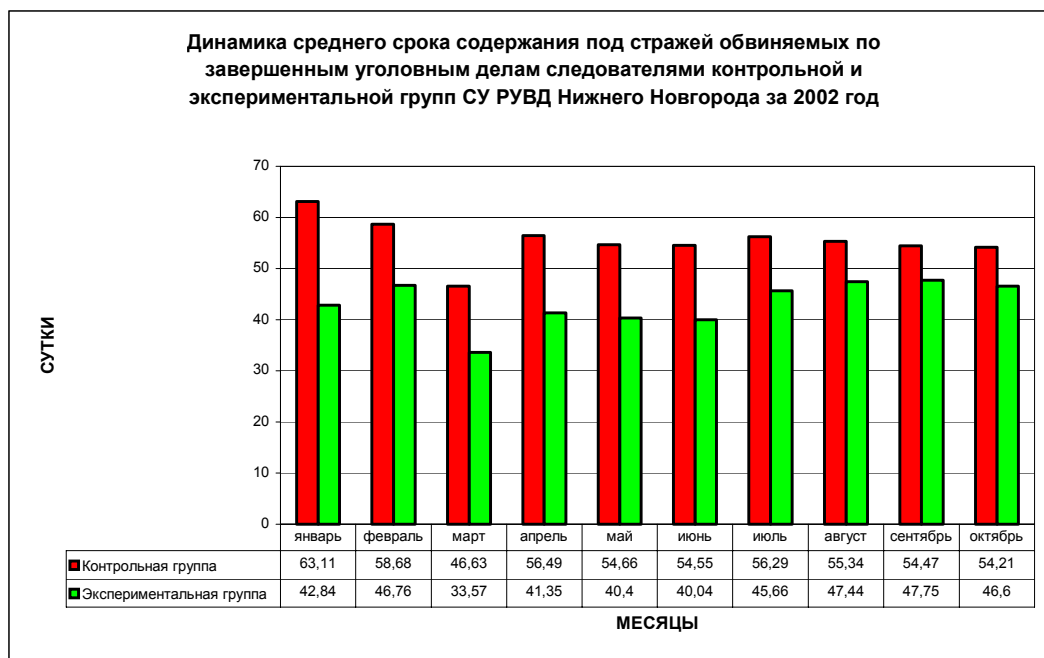
The law gives detectives two months to complete their investigations before the prosecutor must decide whether or not to send the case on to court for trial. We wanted to encourage detectives to complete many of their cases in only two or three weeks, so we provided them with the help of an assistant investigator, but only in the first two weeks of the case. In order to make use of this help, they would have to start work right away.

We wanted to operate the demonstration as an experiment, providing assistance in only half of the actual cases on a random-assignment basis. We might, instead, have compared the length of detention before and during our project, but in a system where many people are simultaneously making changes to procedures in order to accomplish a range of objectives, “pre-post” comparisons are very weak, conflating the effects of the many things happening. A random-assignment design cuts through this problem, by comparing cases handled simultaneously under the same circumstances, except for the intervention. In short, random assignment experiments get closer to issues of causation.

In the design we proposed to the police and prosecutors, we would assign individual cases to control and experimental groups on a random basis. The heads of some of the police districts objected to this, however, asking us instead to divide the detectives, rather

than the cases, between experimental and control groups. To further test the results, they suggested that we switch the detectives between the control and experimental groups halfway through the demonstration period. In terms of research methods, this posed only minor problems. Much more importantly, it showed us that we had engaged these local officials in the process of experimentation: they were actively participating in the generation of empirical knowledge about their own systems.

The results so far are impressive: detectives in the experimental group are completing their cases more quickly on average than the detectives in the control without any increase in later stages of case processing. As the chart below illustrates, in the first ten months of 2002 the length of detention during investigation for prisoners whose cases were in the experimental group was 22 percent below the control group.



So why have Russian officials not adopted these procedures nationwide? The answer lies in the complexity of the policy environment. The police, procuracy, and courts are national institutions, directed from Moscow, at once interdependent and terribly jealous of their individual authority. Moreover, there is also tension between three levels of authority in each department: the central government in Moscow, the federal district level with its presidential representative and agency heads, and the regional level with its governor and regional heads of the central agencies. Finally, the Duma also plays a role on this subject, as it has been actively debating criminal procedure reform throughout the period of this demonstration.

A large part of the work of this project has been to engage officials—police, prosecutors, judges, and senior advisors—at all three of these levels of government. We have tried to interest them in the methods of the demonstration, intrigue them with the data that we are able to produce, and persuade them that the project is capable not only of creating social

value through the improvement of justice, but also of creating political value for them. So far, the president's representative for the federal district, former prime minister Kirienko, has taken an interest, as have senior police and prison officials in Moscow. At the regional level, two of the project's early supporters—the regional head of the procuracy and the governor—have both been replaced, but the project retains support in the courts and the police.

It is a slow process: strengthening the policy environment. Officials come and go, authority shifts from place to place, and our understanding of the dynamics of safety and justice are themselves always imperfect. Still, the empirical approach I have described and illustrated here has great power. The methods and measurements are a genuine source of continuity as people change. You can see the power of the empirical approach reflected on the faces of normally cynical judges, hardened police officials, and even veteran politicians when they look at a set of measures, a simple pie chart or bar graph, and see for themselves that their work, or the systems over which they preside, make a difference.

### *The Role of NGOs in Empirically Based Reform*

Donors often think of NGOs in the justice sector either as policy advocates or as service providers. The South African and Russian examples above illustrate, however, that NGOs can also guide the process of empirically based reform. In both these cases, a local NGO played the same role that Vera plays in New York: conducting empirical research to better understand an issue and guide the design of a solution; then participating in the implementation and monitoring of a demonstration project to test that solution.

While governments may want to play these roles themselves, and might develop the expertise to do so, keeping an NGO involved in the process provides an additional source of continuity as authority shifts over time within the national policy environments.

## Conclusion

To review: Unless our projects strengthen the policy environments in the societies where we work, the good we do is not sustained. Yet those policy environments are complex structures, made up of processes, capacities, and culture. Authority within them is dispersed, and its balance shifts over time.

I have tried to suggest that rather than seeing a single policy environment within which our assistance either thrives or dies, we might instead be alert to the multiple, local, overlapping environments within which officials formulate and implement policy. Some of those local environments are strong, others weak. Their variety presents us with an array of choices within which to situate our advocacy, training, technical assistance, and demonstration projects.

I have also tried to argue that an empirical approach to these strategies strengthens their ability to influence the policy environment, and that NGOs might play an important, independent role in the development and implementation of both initial studies and

continuing monitoring of demonstration projects. Empirically based strategies, rather than those grounded in ideology or foreign experience, not only are better fitted to the particular problems in a polity, but also have greater power to engage responsible officials and citizens in the strengthening of their own institutions of government. And good self-government, after all, is what we should be trying to achieve.

<sup>1</sup> The idea that the policy environment contains powerful cultural dimensions is illustrated provocatively in Nina L. Khrushcheva, “Cultural Contradictions of Post-Communism: Why Liberal Reforms Did Not Succeed in Russia: A Paper from the Project on Development, Trade, and International Finance” Council on Foreign Relations, 2000.

<sup>2</sup> This is rapidly becoming the orthodox view of development aid. See, for example, World Bank, *Assessing Aid: What Works, What Doesn't, and Why* (New York, Oxford University Press, 1998).

<sup>3</sup> Several commentators have called for the explicit development of governance capacity as part of an overall development strategy, often citing the steps already taken in that direction by the Department for International Development. See, for example, Carlos Santiso, “The Reform of EU Development Policy: Improving Strategies for Conflict Prevention, Democracy Promotion & Governance Conditionality” Center for European Policy Studies, Working Document No. 182, March 2002, pages 48-49.

<sup>4</sup> Even when pursuing both policy reform and a stronger policy environment, it is important to distinguish the two. For an example that blurs the distinction, see Andrew S. Natsios, “Foreign Assistance Builds a Foundation for Sustainability,” *Global Issues*, April 2002. (“USAID has also been instrumental in assisting countries to reform their policy environment as they move from the socialist economic model toward a free market model.”).

<sup>5</sup> Louise G. Trubek, “Public Interest Lawyers and New Governance: Advocating for Healthcare” in *Wisconsin Law Review*, 2002, 575.

<sup>6</sup> Trubek, pages 584-85.

<sup>7</sup> The empirical approach I advocate here therefore stands in contrast to the “rule of law orthodoxy” which, in its most extreme form, aims to import one or another particular legal structure into the country of concern. Yet this empirical approach allows for more innovation and dynamism in the policy environment than does the passive acceptance of pre-existing or traditional methods of decision-making. See: Frank Upham, “Mythmaking in the Rule of Law Orthodoxy” Carnegie Endowment for International Peace, Rule of Law Series, Democracy and Rule of Law Project, Working Papers Number 30, September 2002.

<sup>8</sup> Virginia Francis and Michelle India Baird, “A Rape Investigation in the Western Cape,” Vera Institute of Justice, 2000, available at [www.vera.org](http://www.vera.org).

<sup>9</sup> The Thuthuzela Centre at Manenberg was designed and is monitored by the Bureau of Justice Assistance, a joint venture of the Vera Institute of Justice and the South African Ministry of Justice and Constitutional Development. Donor funding for Thuthuzela is provided through the BJA by the Open Society Foundation of South Africa, the Open Society Institute, the Atlantic Philanthropies, and the Ford Foundation. The renovation of the hospital facilities and the ambulance service were funded by the Health Department of the Western Cape; funding for the centre coordinator is provided by the Sexual Offenses and Community Affairs Unit of the National Prosecution Authority; and fresh clothing for the survivors is donated by businesses throughout the Western Cape.

<sup>10</sup> See “UDO i vidy osvobozhdeniia iz mest lisheniia svobody v Rossii” (Parole and the Prison Release Repertoire in Russia), published by the Center for Justice Assistance, INDEM Foundation, Moscow.

<sup>11</sup> The operation of the project is in the hands of the Nizhny Project on Justice Assistance, a joint venture of the Vera Institute of Justice and the Open Society Institute. Design and monitoring of the project is the responsibility of the Center for Justice Assistance within the Indem Foundation in Moscow. Donor support is provided by the Open Society Institute and the Ford Foundation.