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**To:** Jim Greiner  
**From:** Chelsea Simpson  
**RE:** Stephen Weitzman, *Early Representation by Defense Counsel in Shelby County, Tennessee 1982-1983, Final Report*, National Institute of Justice Report (1983)  
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**Title:** Early Representation by Defense Counsel Field Test  
**Authors:** Stephen E. Weitzman  
**Location:** Shelby County, Tennessee  
**Sample:** N = 2,119  
**Timeline:** September 1, 1982 – May 15, 1983  
**Target group:** Arrestees charged with felonies and unable to afford counsel  
**Intervention type:** Legal representation  
**Research papers:** <https://www.ncjrs.gov/pdffiles1/Digitization/95725NCJRS.pdf>  
**Partners:** National Institute of Justice, Shelby County Public Defender Office

## **Abstract**

Many low-income clients relied on the services of public defenders in criminal proceedings, yet public defenders were not typically involved in the early stages of their clients' cases, and attorneys believed that this harmed the overall quality of their representation. To test this, researchers randomly assigned public defenders' felony cases to either a test condition, with earlier representation and additional defense staff, or to a control condition with standard representation. The researchers did not test the results for statistical significance and thus their policy conclusions are highly questionable.

### ***I. Policy Issue***

While public defenders represented thousands of low-income arrestees in criminal proceedings, they often did not get involved in arrestees' cases until a fairly late stage. The National Institute of Justice sponsored an Early Representation by Defense Counsel (ERDC) project to test the effects of earlier representation on public defenders' operations, the quality of attorney-client relations, and the overall quality of representation, among other factors. Did earlier representation by a public defender significantly improve representation and outcomes for clients?

## ***II. Context of Evaluation***

Pretrial Services assigned public defenders to all arrestees who were charged with felonies, unable to afford private counsel, and who desired the services of a public defender. The participants in the study were thus all low-income clients. The researchers did not discuss any other demographic characteristics of the participants, such as race, age, ethnicity, or sex, so it is unclear whether the results are widely generalizable. During the one-year period of the study, the Shelby County Public Defenders represented far more defendants than in an average year: 2,119 in total, compared to approximately 1,400 felony defendants in 1980. This constituted an approximate 50% increase in public defender appointments. The researchers believed this was due to three primary causes: 1) recession and heightened unemployment during the study year, 2) consolidation of the City Court System with the General Sessions System, and 3) more liberal appointments due to an increased number of Assistant Public Defenders. Absent the early representation involved in the study, indigent defendants generally had no representation during bail settings and judges set bail according to the prosecutor's recommendations.

## ***III. Details***

Shelby County Pretrial Services prescreened arrestees who were charged with felonies to determine whether they were eligible for public defender services. An interviewer asked arrestees if they were financially able to employ counsel, and if not, whether they desired the services of a public defender. If an arrestee indicated that he or she could not hire counsel and wanted a public defender, an interviewer asked a series of questions from a financial eligibility form. If the arrestee qualified based on their answers to these questions, the interviewer referred them to the public defender's office and they became a participant in the study. During the study period, researchers randomly assigned public defenders' normal felony cases to either a control (n = 1,301) or test group (n = 818) based on odd or even booking numbers. Arrestees in the test group received legal services earlier in the process, typically beginning within 24 hours after the arrest and before their first court appearance. Researchers also described the test group services as enhanced in "overall extent and quality." The control group staff consisted only of existing employees, and it included two attorneys, a secretary, and an investigator. The test staff included one supervising attorney, two staff attorneys, an investigator, a secretary, and an administrative assistant. Except for the supervising attorney, all test group staff were new employees and retained only for the duration of the study. Because researchers altered multiple variables between the test and control groups—changing not only the timing of the intervention, but also the number and type of staff involved—one cannot confidently discern how much, if any, impact the earlier representation had on the results.

## ***IV. Results and Policy Lessons***

The researchers believed that early representation had positive effects, including helping judges to make better informed bail decisions at defendants' first appearances. They also believed that having a street investigator in the test group helped the defense attorneys reach better settlements. However, all of these observations were anecdotal, and the

researchers did not test for statistical significance in client outcomes. This study thus provides no empirically sound basis for any policy conclusions.

#### ***V. Quality of the Study***

This study suffers from some significant weaknesses that undermine its findings. Researchers claimed to be testing for the effects of earlier representation, but they also altered other important variables between the control and test groups, namely the number and type of staff members involved in participants' cases. Manipulating multiple variables at once could confuse the results and make it unclear which variable caused an impact. In addition, they did not test any results for statistical significance and only made anecdotal observations. There is thus no sound scientific analysis underpinning the author's policy conclusions.