



Jessenia Class
Research Assistant
Austin 009
1515 Massachusetts Avenue
Cambridge, MA 02138
(617) 496-0917
jclass@college.harvard.edu

To: Jim Greiner
From: Jessenia Class
RE: Ernest Fazio et al., *Evaluation of the Early Representation by Defense Counsel Field Test*. Washington, D.C.: US Dep. Justice, Natl. Inst. Justice (1984).
Date: January 25, 2019

Title: Evaluation of the Early Representation by Defense Counsel Field Test
Authors: Ernest Fazio Jr., Sandra Wexler, Thomas Foster, Dr. Michael J. Lowy, Dr. David Sheppard, Juliet A. Musso
Location: Public Defender Offices of Passaic County, NJ, Shelby County, TN, and Palm Beach County, FL
Sample: N=5,661
Timeline: February 1982 through November 1983
Target group: Public defenders
Intervention type: Early Representation
Research papers: <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=97595>
Partners: National Institute of Justice

Abstract

The U.S. government was concerned about unrepresented defendants being disadvantaged before their first court appearance and sought to evaluate the effect of early representation by public defenders nationwide. The Early Representation by Defense Counsel Field Test measured the effectiveness of early, continuous, and enhanced public defender representation for indigent, noncapital felony defendants. The results demonstrate that early investigation, early plea negotiation, and increased public defender involvement led to earlier resolution, and significantly reduced average processing time.

I. Policy Issue

Public defender agencies began in the early 1910s, establishing themselves as alternatives to insufficient counsel for indigent defendants. Court decisions expanded the right to counsel but did not establish agencies to provide these rights. This resulted in variation in the availability and power of public defender offices as well as later first contact with clients. Some writers and those in the legal community have argued that defendants should have the right to representation between arrest and arraignment because

unrepresented defendants are less able to prevent witnesses from disappearing and avoid making potentially incriminating statements, which leads made them more likely to plea guilty than defendants with representation. However, there was a lack of scholarly literature studying early representation by public defenders. How did early and continuous representation from a public defender impact the administration of justice?

II. Context of Evaluation

The ERDC field test was the first time that the public defender was the grantee agency of NIJ. The public defender offices of Passaic County, New Jersey, Shelby County (Memphis), Tennessee, and Palm Beach County, Florida were evaluated after NIJ determined they were suitable for implementing NIJ's early representation test design. Passaic County was a large, diverse, northeastern urban jurisdiction with a high poverty rate as well as a high but relatively stable crime rate. Shelby County was a southern urban metropolis with rural edges experiencing a sharp rise in felony case filings. Palm Beach County was a suburban district experiencing financial issues and a "crime explosion," with the fifth highest crime rate in the country at the time of the study.

Each site has a different office operational system. Passaic County was the highly efficient "Career Office" operated by experienced attorneys and other staff with long tenures, Palm Beach County was described as the younger, inexperienced "Training Office" staffed mostly with individuals for whom it is their first position in their legal careers and characterized by high turnover, and Shelby County was the "Hybrid Office" of mixed attorney experience levels and a laissez-faire management style similar to a private practice,

III. Details

In order to be eligible for the study, locations first filled out a grant application and were then evaluated by a committee. Sites were selected for their caseloads, adaptability of the office to the study, geographical representativeness and their administrative cooperativity and staffing. Once the site was established, each site underwent test processes that varied according to site, with randomization of control and test communities controlled by each site's respective scheduling systems.

Each site's test process was somewhat different, but all followed the fundamental requirements laid out by NIJ. The experimental design provided two similar groups of defendants represented by two similar staffs at each site. Researchers worked with each public defender office on executing the field test process in accordance with the office's system.

Assessment of early public defender representation fell along four objectives: the extent to which the field test project was implemented; the amount that program management policies influenced timing and range of services during early representation; the program's effect on attorney-client relationships; and the impact of the ERDC Field Test project on the criminal justice system. These evaluations were completed in three steps over a 24-month-funded period: the process study, impact study, and departure from the test design. Intake forms, case processing forms, activity data (coded attorney and

investigator actions), and client interviews were recorded at each site. Field researchers also recorded participant and formal observations which were sent to the URSA Institute every two weeks for the duration of the study.

Passaic County completed: intake forms for 1,241 cases, 576 test and 665 control; case processing data for 870 cases, 437 test and 433 control; activity data for 706 cases, 373 test and 333 control; and client interviews for 104 cases, 52 test and 52 control.

Shelby County completed: intake forms for 1,953 cases, 801 test and 1,152 control; case processing data for 1,301 cases, 567 test and 734 control; activity data for 1,263 cases, 548 test and 715 control; and client interviews for 113 cases, 54 test and 59 control.

Palm Beach County completed: intake forms for 2,467 cases, 888 test and 1,579 control; case processing data for 1,688 cases, 790 test and 898 control; activity data was coded insufficiently, with only 289 cases, 150 test and 139 control, recorded; and client interviews for 83 cases, 37 test and 46 control.

IV. Results and Policy Lessons

Early and improved public defender representation advanced efficiency in the judicial system to varying degrees without compromising the quality of defense provided to indigent clients.

In Shelby County, test defendants were more likely to receive pretrial release, with 51.6 percent released in the test condition compared to 36.9 percent in the control condition ($p < 0.001$). Test defendants in Shelby (3.4 days vs. 5.9 days) and Passaic Counties (5.3 days vs. 12.8 days) received pretrial release significantly earlier than control clients ($p < 0.05$).

A higher proportion of test cases than control cases were resolved early through increased dismissal or treatment as a misdemeanor, reducing average time from arrest to disposition and saving case processing time and money ($p < 0.05$). These differences were only statistically significant in Shelby and Palm Beach Counties, though differences in Passaic County were in the same direction. The authors analyzed the severity of lower court sentences, but did not report the statistical significance of their findings.

In Shelby County, the increase in the proportion of cases involving serious charges going to upper court was more pronounced for test cases (from 28.4 percent to 49.1 percent) than control cases (from 28.5 percent to 37.6 percent, $p < 0.001$). The authors reported that Palm Beach County also reported that test cases were more likely to involve a serious charge but did not state at what level this was significant. In Palm Beach and Shelby Counties, test defendants arraigned in upper court showed incarceration for longer periods ($p < 0.05$).

The authors did not report significance levels for any questions in attorney interviews. While the authors argue that the data from client interviews supported the hypothesis that early intervention would improve attorney-client relationships, the results are mostly insignificant and highly variable between counties.

For Shelby and Passaic Counties, test cases had significantly less time elapse between arrest and disposition, were more likely to be resolved at the municipal level, and reached a final verdict a median between 2 and 6 months sooner.

V. Quality of the Study

There were certain limitations to this study that call into question the strength of its findings. There was a lack of attention to evaluability concerns in site selection, limiting the availability and accessibility of data in the choosing of these three test locations, which was inappropriate to the research interests of the field test. Technical assistance was inconsistent and inadequate and complicated evaluation across the test sites. The full case processing period was longer than the funded study period, limiting the amount of closed cases available for analysis. Inaccuracies plagued case data for the first month at minimum for each office.

On a site level, the case management systems lack centralization and did not meet the evaluation data requirements fully. Import of control data recording was not universally understood, particularly with control staff. Staff at all three sites lacked knowledge on available and accessible, baseline criminal justice data within their systems.

The researchers also acknowledged that the ambitious design of their study and the researcher's decision to adopt a cross-site rather than a case study approach narrowed their evaluation process. Lack of clarification on the role of the field researcher led to a thinning of their expectations and strained data collection processes between site staff members and the field researcher.