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ABSTRACT

This report presents the findings, conclusions and policy implications of the Evaluation of the Early Representation by Defense Counsel Field Test funded by the National Institute of Justice through its Field Test Program series. The ERDC Field Test was designed to test the impact of early, continuous and enhanced representation by the Public Defender on the overall administration of justice.

Specifically, NIJ was interested in learning what would be the impact of an early representation program, which provided the services of the public defender to defendants as early in the adjudication process as possible and which enhanced normal services by including early investigation and early plea negotiation, on the management of and services delivered by the public defender office, on the attorney-client relationship, and on the criminal justice system.

The public defender offices of Passaic County, New Jersey, Shelby County (Memphis), Tennessee, and Palm Beach County, Florida were selected by NIJ to implement the early representation concept. The three offices were organized differently and operated with three diverse criminal justice systems. Each designed an early representation program which reflected the criminal justice process of its jurisdiction, sought out and obtained the cooperation of the local criminal justice community and implemented the ERDC program for one year.

The ERDC Field Test at each site was controlled by an experimental design which provided two comparable groups of defendantss, which were represented by two comparable staffs. Over five thousand cases were randomly assigned to test and control groups during the test. The data demonstrate that the three offices were able to maintain programs which identified, screened, and represented test clients prior to the first appearance before a magistrate even though such representation for a variety of reasons was not always available within twenty four hours of arrest. The test staffs provided a range of services, including investigation and plea negotiation, to their defendants much earlier in the adjudication process than did the control staffs who operated "normally."

The analysis of the available data provide some rather startling findings which tend to validate the early representation concept. Improved public defender representation at the initial bail hearing had an interesting and important impact upon pretrial detention at each site--test defendants obtained pretrial release much sooner (from two to five days) than control clients. Since there was relatively little variation in the proportion of clients who were released pre-trial in two of the three sites, the test provided a net savings to the jurisdictions without unduly endangering the public safety.

Interviews with attorneys, clients and members of the criminal justice community at each site revealed that early representation does improve the attorney client relationship. Test attorneys found it easier to establish rapport and to assert "client control," while test clients were more often satisfied with their early representation attorneys than were control clients.

The test results also demonstrate that ERDC had a dramatic impact upon case processing. Together, early investigation, early plea negotiation and increased public defender involvement in cases at the lower or municipal court level resulted in the early resolution of a higher proportion of test cases than control cases, and considerably reduced the average time from arrest to disposition for all test cases. The savings in case processing time and money were achieved by the test grantees without an appreciable increase in the expenditure of resources. In one site the additional staff resources committed to cases in lower or municipal court were off-set by reductions in resources committed to those cases which reached upper or superior court. The net result was that test cases on the average received fewer resources than control cases. In the other sites the additional resources committed to test cases were more than compensated for by the savings realized.

The benefits to the participating public defender offices and their jurisdictions were obtained without any noticeable reduction in the quality of defense services. In one site a significantly higher proportion of test cases proceeded to trial, while at the other sites there was no reduction in the number of trials conducted on public defender cases reported during the test period.

In short it is concluded that the early representation concept promotes system efficiency without compromising public safety or the quality of defense services available to indigent defendants. It is recommended that (1) public defender systems commit as high a level of quality resources as possible to the early stages of the adjudication process; (2) criminal justice communities be made aware of the valuable savings available from a program of early public defender representation; (3) NIJ sponsor workshops and seminars at the appropriate national conventions of key practitioner and criminal justice associations; (4) further research be conducted on the efficacy of early representation for assigned counsel systems; and (5) further research be conducted using the existing data bases created by the ERDC program to discern the impact of ERDC on recidivism, to develop public defender performance standards, and to examine the range of felony cases which are ultimately resolved as misdemeanors.

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The core staff of the Early Representation by Defense Counsel Field Test was as follows: Mr. Ernest Fazio, Jr., Principal Investigator, Shelby County Site Liaison; Ms. Sandra Wexler, Deputy Principal Investigator, Field Staff Liaison and Data Manager; Mr. Thomas Foster, Data Analyst; Dr. Michael J. Lowy, Palm Beach County Site Liaison; Dr. David Sheppard, Passaic County Site Liaison; Ms. Juliet A. Musso, Assistant Data Manager; Mr. Ray Henton, Project Secretary, Final Report Production; Ms. Lynne Thingvold, Final Report Production; Ms. Cathy Jacob, Final Report Production.

I--INTRODUCTION AND BACKGROUND TO THE FIELD TEST

INTRODUCTION

Early in 1981 the National Institute of Justice (NIJ), initiated a research and development effort to examine the operation and effects of early, continuous, and enhanced public defender representation on the administration of justice. To explore these issues, NIJ designed the Early Representation by Defense Counsel (ERDC) Field Test, which was implemented in three distinct jurisdictions across the country.

Investigation of the public defense function was not a new area of inquiry for NIJ. On the contrary, NIJ had sponsored and reported on a special executive training program to assist public defender offices around the country in establishing improved office systems in the areas of case management, budgeting, personnel administration and external office relationships (1978). NIJ also funded and disseminated the findings of research on the role of private counsel in indigent defense (1981), the efficacy of alternative sentencing programs (1982) and the defendant's perspective on the adjudication system in general and the public defender in particular (1978). Each of these efforts involved the examination of the public defense role. Moreover, public defender offices had significant influence in at least two previous field tests which examined the usefulness of: promoting fairness and consistency in negotiating pleas through a structured plea negotiation process, and limiting sentencing disparity through the use of mandatory sentencing guidelines.

NIJ's decision to focus a field test on the public defense function, however, marked an important departure from those previous efforts. While prior field tests supported the operations of police departments, prosecutor offices, courts and court administrators, probation and parole agencies, and neighborhood or community-based organizations, the ERDC Field Test was the first time that the public defender was designated as the grantee agency. As such, the

ERDC Field Test was the first to examine the degree to which the public defender could be instrumental in improving the administration of justice.

OVERVIEW OF THE ERDC FIELD TEST DESIGN

The Field Test Program of the National Institute of Justice is one of a small number of government efforts which seek to test theory through controlled experiments in action settings. The Field Test Program is an applied research and development effort that attempts to examine the effects of systemic changes on existing practices and policies in community and agency settings. The aims of the Field Test Program are practical in that results are oriented toward potential users within the broader criminal justice community. Typically, research results focus on describing policies or approaches which can be instrumental in improving the administration of justice and on describing the settings within which these interventions appear to be best suited.

The Test Design Document

Each field test is controlled by a Program Test Design. The test design document presents the critical program elements to be tested and enumerates the criteria which structure the testing process. The test design document which controlled the Early Representation by Defense Counsel Field Test, Early Representation in Public Defender Programs, was published by NIJ in May of 1981.

The ERDC design was shaped, in part, by a survey of the public defender offices in 32 of the 39 metropolitan jurisdictions in the U.S. with populations within the 300,000 to 750,000 range. The survey revealed that, while over 60% of the offices provided "some form of early representation," the forms which such "representation" took varied dramatically. Moreover, there was little or no empirical evidence to suggest that such early representation--while admittedly serving the interests and constitutional rights of the client/defendant--actually enhanced the quality and administration of justice.

However, public defenders reported that they believed such services helped their offices: to establish early attorney-client rapport; to conduct investigations while witnesses and other evidence were still available; and to eliminate those cases from felony prosecution which would be better handled as misdemeanors, diversions, etc.

NIJ brought together a working group of experts, from within and outside of the agency, to design the ERDC Field Test. The team which developed the test design included individuals from the NIJ Offices of Development, Testing, and Dissemination (ODTD) and Program Evaluation (OPE); from consultant firms which supported the overall Field Test Program; and from the public defense practitioner community.

The Goals of ERDC

The Early Representation by Defense Counsel Field Test sought to examine practical and theoretical assumptions regarding the range of benefits possible through early representation. More specifically, the test was designed to learn whether implementing a program of early representation by defense counsel could achieve three basic goals:

- the establishment of management policies which broaden the range of services provided to the clients of the public defender program, improve the timing and delivery of those services, and encourage early legal actions in cases accepted for representation by the program;
- the improvement of the attorney-client relationship by establishing early client contact and early factual investigation, so that counsel may provide the client with competent legal advice in determining appropriate legal actions and remedies; and
- the improvement of the efficiency, effectiveness, and cooperation of the various components of the criminal justice system by speeding the process of case disposition.

It was NIJ's intention that the results of the Field Test would provide guidance to defender offices nationwide which are interested in providing earlier and improved representation to their clients and would demonstrate to state and local governments the efficiency and effectiveness of such services in the overall administration of justice.

Mandatory Test Elements and Criteria

Under the ERDC Field Test, three public defender offices were selected to implement a series of policies and procedures which would produce a test group of at least 600 non-capital felony clients/defendants. The test group clients/defendants would receive the services of the public defender:

- within twenty-four hours of arrest and prior to First Appearance before a magistrate; and
- continuously (though not necessarily from the same attorney) throughout the adjudication process.

Test cases also were eligible to receive early investigative services and early consideration for other available special services (e.g., diversion) where warranted.

Each participating public defender office also was to provide its traditional non-capital felony representation services to at least 600 similarly situated and randomly selected clients. This control group of clients was to receive the same level and quality of representation as had been available to all felony defendants prior to the implementation of the Field Test.

To ensure that the Field Test would be implemented appropriately, a series of criteria for site selection and participation were set out in the test design document. These criteria identified the necessary contextual conditions for site selection. In addition, they set forth the procedures which were to be established by participating public defender offices to control the implementation of the Field Test.

LITERATURE AND ISSUES REVIEW

The Early Representation by Defense Counsel Field Test raises a number of critical issues which should be examined and discussed before the actual operation of the Field Test is reported. For example, the focus on the public defender requires at least a cursory review of the history and development of the public defender approach to indigent defense. Since the test was concerned with the timing, continuity and extent of public defender services, the extension of the right to counsel and the trends which have developed regarding the rights of indigent clients vis-a-vis their appointed counsel are reviewed. Last, since the test sought to examine the impact which an intervention promoted by a public defender could have on the criminal justice system, an examination of the role of the public defender within the criminal justice system and the forces and tensions which shape that role is appropriate.

The Public Defender and Public Defense

Any analysis of the growth of the public defender approach to indigent defense should begin with a definition of the term. As defined by Singer and Lynch (1983), public defender agencies are:

structures providing nonfee legal defense services through an attorney or group of attorneys pursuant to contractual agreement or public employment, on a regular basis to indigent defendants.
(p. 105)

Public defender agency structures began surfacing during the second decade of this century. As early as 1913, Los Angeles, California established a public agency to handle the representation of defendants in the Court of General Jurisdiction. Shelby County (Memphis), Tennessee followed suit in 1917. Portland, Oregon and Columbus, Ohio also established defender operations for their municipal courts prior to 1920.

Commentators (McDonald, 1983; Albert-Goldberg and Hartman, 1983) have noted that the early rise of public defender agencies, between 1913 and 1932 --when the U.S. Supreme Court recognized the indigent defendant's right to counsel in the famous Scottsboro Boys case -- was based in large measure on reformist

notions. The appointment of private counsel traditionally was the sole approach available, short of no representation. The assigned counsel system was often corrupt and was viewed by many reformers as an unfortunate and often abusive and unsavory means of providing representation. Public defender agencies were established to cure such abuses. However, the reform movement to establish such agencies was not sufficient. To expand the reforms nationwide, the courts had to better define the rights of indigent defendants.

Prior to the Scottsboror Boys decision, Powell v. Alabama, the Sixth Amendment guarantee of right to assistance of counsel was extended only to defendants who could afford it. In 1938, Johnson v. Zerbst established the right to counsel for indigents in federal courts.

Four years later, Betts v. Brady constitutionally required counsel in state prosecutions, but only in cases marked by "special circumstances." Almost 20 years transpired before Hamilton v. Alabama (1961) mandated counsel in state prosecutions for all capital offenses. Finally, in 1963 the Zerbst-defined right to counsel was made fully applicable to the states by the landmark decision in Gideon v. Wainwright, which required the states to make appointed counsel available to indigent defendants in all felony cases. Douglas v. California (1963) further extended the rights of indigents to counsel and lent support to the notion that appointment of counsel for indigents is required by the equal protection clause of the Fourteenth Amendment. In 1972, the Gideon rule was applied to misdemeanor cases in Argersinger v. Hamlin.

The court defined expansion of the right to counsel has not resulted in any systematic establishment of entities to provide the representation that the right demands. In fact, today at least three major approaches exist in the United States for the provision of indigent defense services:

- Ad Hoc Appointment of Counsel--the approach which has been decried for decades, and still suffers from the same charges of cronyism and abuse as it did when Los Angeles and Memphis achieved their reforms, is the primary approach to indigent defense in the majority of counties of eleven states (among them Tennessee);

- Coordinated Assigned Counsel Systems--an improvement upon the assigned counsel system adopted by some jurisdictions which establishes some means of administering the assignment process and ensuring an acceptable level of representation;
- Defender Systems--as suggested in the above definition, defender systems include public arrangements of full-time staff, part-time staff, a mix of the two, and private arrangements operated under a special non-profit corporation or other private entity or under a contract between private attorneys or a private law firm and the jurisdiction.

In addition to these approaches, a fourth or mixed method of providing indigent defense services relies on elements from any two of the above. This approach often consists of a defender system and an ad hoc or coordinated assigned counsel system, and may be used to handle conflict situations and/or lower and upper court representational responsibilities.

Taken together, pure and mixed defender systems constitute the major approaches to indigent defense representation currently employed. A survey of public defender agencies conducted by the National Legal Aid and Defender Association (NLADA) in the early 1970s revealed that over 570 separate defender agencies employed 5300 attorneys, and served the geographic areas representing approximately two-thirds of the nation's population. The larger the jurisdiction the more likely it was to be served by a public defender agency. Usually, the public defender agency represented more than half of all criminal defendants in the jurisdiction.

The more recent Singer and Lynch survey provides data from 399 defender agencies on organization and staffing, eligibility, the point of first client contact, and the relative costs of defender and assigned counsel systems. They found most defender agencies (69%) are located in areas with populations of less than 250,000 persons. Fifty-five percent of defender agencies operate with three or fewer attorneys. Most public defender agencies are headed by a full-time Public Defender who is appointed by public officials and whose staffs (71%) are considered public employees.

The survey also found that there is considerable cross-jurisdiction variation in defining indigency and assigning the responsibility for the ultimate determination of such indigency. Only 16% of the reporting defender agencies were vested with full authority for eligibility screening and 36% of the agencies had no role whatsoever in the determination of indigency and the appointment of counsel. This, in turn, accounts for the fact that only 21% of reporting defender agencies routinely made contact with their clients prior to the first court appearance, since such contact can be made only after defender appointment. Singer and Lynch agree that the earlier the representation the more likely it is that the rights of the defendant will be protected and the interests of the system will be promoted. They also found that attempts to achieve early representation by a public defender agency may be challenged by the private bar which often views such enhancement of service as competitive with private practitioners.

One of the most interesting findings reported by Singer and Lynch is the dramatic cost difference between representation by public defenders and private assigned counsel. Data are analyzed from seven jurisdictions where both approaches exist side by side. In all seven jurisdictions, public defender agency operation is cheaper than the accompanying assigned counsel system. Public defender representation on the average cost only 10% as much as assigned counsel representation.

As the foregoing suggests, public defender agencies are the primary source of the provision of indigent defense services in this country. The nature of state and local government in general and the criminal justice process in particular dictate that the ways in which agencies deliver those services will vary. In the next section we examine the limits of that variation and the relationship of the defender to his clients as dictated by the courts.

An Examination of the Rights of Indigent Clients

● When the Right Attaches

Between 1932 and 1967 the Supreme Court steadily expanded the scope of the pretrial right to counsel, on which the Sixth Amendment is silent. As Austin

(1974) has noted, this expansion was based on a functional analysis of whether the presence of counsel at a particular stage of the criminal proceeding was necessary to protect the defendant's right to a fair trial. In 1932 Powell v. Alabama held that a defendant was entitled to the assistance of counsel at the "critical stage" of a criminal prosecution but failed to specifically define that stage. The court finessed this issue by holding that the right attached at a point before trial sufficient to allow for adequate preparation, i.e., some time between arraignment and trial.

A number of cases during the sixties further "defined" the moment when the right to counsel attaches. The court held that lack of counsel at Arraignment (Hamilton, 1961) or when the police have advanced beyond mere investigation on to efforts to prove their case (Massiah, 1964) could render the right to counsel at trial meaningless. The Escobedo decision (1964) temporarily fixed the "critical stage" at "informal accusation," i.e., at that point when the police begin to believe that they have found the guilty party (earlier than formal accusation). Some commentators (see Austin, 1974) criticized this standard as subjective and difficult to apply.

In what has become the most controversial decision of the Warren Court, Miranda v. Arizona (1966) resolved the timing issue by fixing the period when the right to counsel attaches at "custodial interrogation," or "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way" (p. 444). The custodial setting, the court believed, increased the danger of coercion of the defendant, necessitating the increased protection of counsel.

In 1967 the U.S. Supreme Court extended the right to counsel to pretrial identification lineups in two companion cases whose holdings are known as the Wade-Gilbert doctrine. In United States v. Wade, the court defined "critical stage" as any stage where "potential substantial prejudice to defendant's rights inheres." Gilbert held that any testimony resulting from such an identification must be excluded.

Several commentators (see, for example, Austin, 1974; Schechter, 1979) have interpreted subsequent cases as indicating that the court did not intend to limit its Sixth Amendment protection to post-indictment situations. Stovall v. Denno (1967) held as prejudicial the identification of a defendant which took place prior to indictment or Arraignment. Kirby v. Illinois (1972), interpreting Wade-Gilbert, held that constitutional protections apply to lineups occurring at or after the initiation of adversary proceedings by way of formal charge, Preliminary Hearing, indictment, information or Arraignment. Subsequent cases (Moore v. Illinois, 1977; Brewer v. Williams, 1977), confirmed that Preliminary Hearings and Arraignments suffice as the critical points of initiation of adversary proceedings. United States v. Henry (1980), by extending the right to counsel prior to the formal indictment, has been interpreted as further enhancing the scope of that right in general.

Despite a paucity of scholarly literature on the issue of early representation by public defenders, legal commentators (see, for example, Austin, 1974; Schechter, 1979) stress the importance of early representation and the inadequacy of Supreme Court case law to guarantee such representation. Some writers (Goldberg, 1975) suggest that adequate legal representation should begin prior to arrest. Even less radical proposals point out the dangers faced by an unrepresented defendant between arrest and Arraignment and the importance of counsel during that period.

Beaney (1972) has stated:

The importance of this time lag between arrest and appearance of counsel should not be minimized. If, as all statistics show, the state and defendant are engaged in most cases in a bargaining situation, the ready access of the state to the defendant before he has the assistance of counsel frequently means that statements have been made (in spite of warnings), witnesses for defendants have disappeared and police tests of various kinds have been conducted... (I)n general, an unrepresented defendant is more likely to plead guilty than one who has counsel. (p. 152)

It is fears such as these which have prompted the legal community to stress the importance of early representation of criminal defendants. For example, the National Study Commission on Defense Services (1978) recommended that

"effective representation should be available for every eligible person as soon as: (a) the person is arrested or detained, or (b) the person reasonably believes that a process will commence which might result in a loss of liberty or the imposition of a legal disability of a criminal or punitive nature, whichever occurs earliest" (p. 239).

To provide for such timely representation, the Commission further specified that each system of public defense:

- (a) Respond to all inquiries made by, or on behalf of, any eligible person whether or not that individual is in the custody of law enforcement officials;
- (b) Establish the capability to provide emergency representation on a 24-hour basis;
- (c) Implement systematic procedures, including daily checks of detention facilities, to ensure that prompt representation is available to all persons eligible for services;
- (d) Provide adequate facilities for interviewing prospective clients who have not been arrested or who are free on pre-trial release;
- (e) Prepare, distribute and make available by posting in a conspicuous place in all police stations, courthouses and detention facilities a brochure that describes in simple, cogent language or languages the rights of any person who may require the services of the defender or assigned counsel and the nature and availability of such services, including the telephone number and address of the local defender office or assigned counsel program; and
- (f) Publicize its services in the media. (p. 239)

- The Attorney-Client Relationship

One of the most important new developments in the area of indigents' right to counsel is the judiciary's growing concern for the attorney-client relationship. A recent treatment is the case of Slappy v. Morris (1981) which was argued before the U.S. Supreme Court last year.

The facts in Slappy are uncomplicated. The defendant's attorney, a public defender, became ill a week before trial. A substitute public defender was appointed, but Mr. Slappy requested a continuance so that his original attorney could represent him at trial. The trial court refused to grant the continuance without inquiring into the length of delay necessary to allow the original public defender to try the case. The U.S. Court of Appeals for the 9th Circuit decided that the failure to inquire deprived the defendant of his Sixth Amendment right to counsel.

In its decision, the Court focused on the importance of the attorney-client relationship: "The right to counsel includes more than just the right to representation by competent counsel at trial. This right would be without substance if it did not include the right to a meaningful attorney-client relationship" (p. 720). The Court went on to state that a defendant has "to rely on his attorney's advice for the most basic decisions in a criminal trial-- whether to present a defense, and which witnesses to call. If the defendant does not trust his attorney, he may be unwilling to follow his attorney's advice in these important areas" (pp. 720-21). The Supreme Court did overrule this decision, but the language it used and the other opinions filed under the case suggest that the issue is not settled.

In light of cases such as Slappy and U.S. v. Decoster (1976), which posit a standard of competency in indigent defense, public defenders and other publicly supported defense counsel are now having to meet increasingly rigorous professional standards. The National Study Commission on Defense Services (1978) underscored the importance of the attorney-client relationship to effective representation by recommending that:

Defenders and assigned counsel should be mindful that their primary loyalty is to their clients. They should seek to instill an attitude of trust and confidence in clients, and should scrupulously adhere to ethical dictates regarding confidentiality.

The defense attorney should frequently consult with his client so that the client fully understands the nature and scope of the legal representation which will be provided to him. Particular emphasis should be placed upon informing the client of the following:

- a) The nature and frequency of court appearances;
- b) The possibility of delays in the legal process; and
- c) The factual and legal bases for recommendations made by counsel to the client concerning pleas or trials...

Defender offices should provide for continuous and uninterrupted representation of eligible clients from initial appearance through sentencing up to, but not including, the appellate and post-conviction stages by the same individual attorney. Defender offices should urge changes in court structure and administration to reduce fragmentation and to facilitate continuous representation. (p. 259)

An aspect of the attorney-client relationship, whose importance is often overlooked and neglected, involves clients' attitudes toward and satisfaction with their attorneys. These factors may, however, be quite important to the overall administration of justice in a given jurisdiction. As Jonathan Casper (1977) noted:

Client satisfaction is an important element in evaluating the effectiveness of any system for providing counsel to indigents... Client attitudes may have implications for the outcomes of cases and for the environment in which defenders must spend much of their working day. To the extent that a client is highly suspicious of the attorney's motives and goals, he or she may not be open with the attorney about various aspects of the case that may affect the quality of the defense that can be offered. (p. 115)

Formally recognizing the importance of client attitudes, ABA standards for representation state that a defense attorney should "seek to establish a relationship of trust and confidence with the accused as soon as possible" (O'Brien et al., 1977). Research has shown, however, that public defender clients are less confident in and satisfied with their attorneys than are those with private counsel (Casper, 1977, 1978). Casper (1978) found that, of 812 defendants surveyed, 87 percent felt that private lawyers fight hard for their clients, while only 42 percent stated that public defenders do so. Moreover, 86 percent felt that private counsel was on the client's side, whereas 49 percent said that public defenders primarily represented the state's interest (pp. 16-18). In an earlier study, Casper (1977) found that 70 percent of indigent clients believed that public defenders cared more about

getting a case over with quickly than about getting justice for them, 30 percent felt that public defenders wanted to punish them, and 40 percent believed that public defenders did not want them (i.e., the defendants) to get the lightest possible sentence.

The above studies found that initial distrust and suspicion of public defenders was related to clients' perception of the defenders as part of the very system that was prosecuting them. This attitude can be changed. The more time public defenders (as opposed to investigators and paralegals) spend in face-to-face discussion with their clients, the more satisfied these clients were with their representation (Casper, 1977: p. 128).

Although the literature is mainly silent on the issue of attorney satisfaction, communications with experienced public defenders confirm the belief that early representation also would affect the satisfaction and attitudes of attorneys toward their clients. For example, those public defenders who believe that a high proportion of their clients are guilty do so, in part, because their first client contact occurs after the defendants already have made damaging admissions to the police and are unable to supply witnesses or other exculpatory evidence. Early representation, and hence earlier client contact, may have a positive influence on such attitudes.

The Role of the Public Defender and Current Trends Influencing That Role

● Participant or Outsider

The position of the public defender in the criminal justice system is complex. To some commentators (Nardulli, 1978; Heumann, 1978) the public defender is an active and compliant member of the system, a member of the "courtroom elite" and a participant in the system. Casper (1977, 1978) found that a significant number of the clients of public defenders share these beliefs.

However, the individual public defender does not always consider himself or herself as a member of the courtroom elite. Faced with a significant, and an often oppressive caseload, imbued with the belief that his/her clients are

likely resentful and more likely guilty of some criminal offense, and armed with the knowledge that the other "system actors" -- especially representatives of the enforcement and prosecutorial agencies -- are hostile to his/her role, the individual public defender must artfully negotiate the terrain if he/she is to survive. Lefstein (1982) and Albert-Goldberg and Hartman (1983) have addressed the issues of "burn out" and the need for dedication. They suggest that with such poor working conditions public defenders must have a level of dedication to go with their artfulness if their survival is to be long term.

Thus, while some commentators contend that the public defender is a compliant member of the courtroom elite, the practical realities of practicing public defense do not always warrant such a characterization. The very nature of the defense function requires that the public defender must consider the interests of the client over the often competing interests of the system. At the individual attorney level the public defender more likely views himself or herself as an adversary of the system, albeit often a friendly one.

At the agency level, the public defender office is rarely treated as a full participating member of the criminal justice system. For example, they are routinely denied access to information available to other elements of the system. In those jurisdictions which have adopted automated systems, the information available to the public defender may be restricted. Also, the public defender is often the last agency in the system to go "on-line." In light of such experiences, the public defender must become accustomed to the role of outsider. It is a role that is understood by many if not all of the agencies who together make up the criminal justice systems and one which is dictated by the nature of the defense function.

- The War on Crime

Over the past several years, a "hard approach" to crime has been promoted at the judicial, legislative, law enforcement, and community levels. A primary result of this "war on crime" has been an extension of incarceration for accused defendants as well as convicted criminals through preventive detention and mandatory minimum sentence enactments.

In support of this trend, Chief Justice Berger (1981) suggested that "the crime rate could be reduced if judges were allowed to take into account whether a defendant's pretrial release would pose a danger to the community" (p. 6). A further indication of the High Court's attitude toward crime is found in a recent decision holding that state laws which "permit prosecutorial appeal of a sentence deemed too lenient and lengthening of a sentence by the appeals court" are constitutional (Criminal Justice Newsletter (CJN), 1/81).

The legislative support of this attitude is evident in recent bail reform legislation. For example, Florida's bail laws have been amended to include provisions which authorize judges to "consider 'danger to the community' in setting bail" (Pre-Trial Reporter (PTR), 8/82:8). Interestingly, two seemingly contradictory trends are evident in the Florida legislation, which was initially "introduced to end the surety bail system and to establish a percentage deposit option" (p. 8). On the one hand, there is a liberalizing trend toward the pretrial release of those who previously would have remained incarcerated for lack of money. On the other hand, there is a legitimization of "preventive detention," which keeps some defendants incarcerated who previously were eligible for pretrial release on bail.

Legislators and the judiciary also are mounting attacks on the "exclusionary rule" (CJN, 11/81; PTR, 7/82) and are encouraging law enforcement personnel to become more aggressive in their investigative techniques. The police, in turn, are receiving more calls from citizens, whose fear of crime and willingness to label and report behavior as criminal have increased.

Together, all of these "hard" responses to crime control have created significant problems for elements of the criminal justice system, primarily by increasing the number of criminal defendants. This increase has resulted, most obviously, in considerable overcrowding of the nation's jails and prisons (Gardner, 1982). Some states have responded by allowing prisoners to be released early (CJN, 1/81); refusing to admit new state prisoners for short periods of time (PTR, 7/82); transferring inmates from crowded prisons to

county detention facilities (PTR, 3/82, 7/82); and setting up prosecutorial screening units to divert defendants from jail to appropriate programs.

From all of these trends and counter-trends, criminal justice institutions have emerged in crisis. Far from being a "system," criminal justice has evolved as a process involving a number of sets of participants with well-defined roles, often acting at cross purposes and lacking "feedback," the most rudimentary feature of a system (Phelps et al., 1979; Edelstein and Wicks, 1976). This lack of congruence is recognized by the participants themselves. For example, the report of the Florida Governor's Task Force on Criminal Justice System Reform (1982), co-authored by the Chief Justice and Attorney General, concludes:

The state's criminal justice efforts lack coordination, adequate resources, and long-term planning perspectives. Elements within the justice process often must compete with each other for resources. Changes in the capabilities of one component affect the requirements of other elements. In its present structure there is no mechanism for projecting the impact of changes on the entire system (p. 4).

● The Fiscal Crisis

The war on crime has made the role of the public defender more complex. Increasing caseloads have not necessarily been met with increasing resources. Moreover, an aroused citizenry is often most critical of the advocate of defendant's rights, especially when the salary of the advocate is tax supported. In an era of extreme competition for the tax dollar, the public defender agency is often an unsuccessful competitor.

The result, as one noted reviewer of indigent defense services has found, is that "meaningful compliance with the Constitution is often absent due to inadequate funding. Indeed, public defender and assigned counsel programs experience virtually every imaginable kind of financial deficiency. There are neither enough lawyers to represent the poor, nor are all the available attorneys trained, supervised, assisted by ample support staffs, or sufficiently compensated." (Lefstein, 1982: p. 56).

The conclusions of the original National Survey of Criminal Defense Funding (NLADA, 1973) found that:

The scope of representation provided for indigent defendants in many jurisdictions does not even meet specific constitutional directives of the Supreme Court, especially in the area of misdemeanor representation. Moreover, the resources allocated to indigent defense services have been found grossly deficient in light of the needs of adequate and effective representation. Relatively few indigent defendants have the benefit of investigation and other expert assistance in their defense. Their advocates are overburdened, under trained, and under paid, and as recent studies have shown, the poor have as little confidence in such advocates, who are often handpicked by the same authority which pronounces their sentence, as they do in the inherent fairness of the American criminal justice system. (p. 70)

After an extensive review of the public defense literature, Professor Lefstein (1982) echoed these findings: "Regardless of whether the study was conducted by NLADA, a private research organization, a bar association, or some other group, the message was the same: more funds are desperately needed to hire more lawyers and support staff, to reduce excessive caseloads, to compensate private lawyers adequately, and to provide a host of other needs" (pp. 15-16).

Despite the inadequate funding for public defense and the growing demands placed on public defenders by legislation, professional standards and judicial decisions, courts are finding that public defenders are not immune from malpractice suits (see Terri v. Ackernes, 1979; Lefstein, 1982; CJN, 8/82). The courts are also paying more attention to "ineffective assistance of Counsel" as a ground for overturning a criminal conviction on appeal (Lefstein, 1982: p. 16). Yet the judiciary has not intervened to reduce excessive caseloads.

The legislative response to this set of contradictory social forces has been a grudging expansion of some elements of the criminal justice process and a demand for greater efficiency from the indigent defense system. Despite their obvious weaknesses, contract defense systems, in which a law firm agrees to represent a certain number of defendants for a set price, are a growing trend throughout the nation (Lefstein, 1982: p. 59). These have attained popularity often at the expense of an established defender agency.

SUMMARY

The ERDC Field Test was initiated at an auspicious time in the history of indigent defense. It recognized that public defender agencies, which represent the majority of indigent defendants in the major metropolitan areas around the country, play an important, albeit complex, role in the administration of justice. The Field Test, therefore, was designed to investigate whether changes in the operation of the public defender agency could influence the administration of justice.

First, it sought to test whether early representation or representation which begins soon after arrest could better protect the constitutional rights of the accused than representation which begins later in the adjudication process. In doing so, the test reflected the dictates of recent case law and of defense standards designed to control the defense function.

Second, the test sought to examine whether early attorney representation and the early provision of investigative and other supportive services would influence defender case processing, case management, and the timing and disposition of cases. In doing so, the test provided a means of assessing whether a redistribution of resources by a public defender could result in both an enhancement of services and an improvement in office efficiency. In an era of diminishing resources and expanding responsibilities, such assessment would be of significant interest to public defenders nationwide.

Third, the ERDC Field Test provided a means of examining the attorney-client relationship in public defense from both attorney and client viewpoints. The extent to which early and continuous representation of defendants influences that relationship -- i.e., whether attorneys sense an improvement in their relations with clients due to the test process and whether clients receiving early and continuous services respond more positively to their attorneys. An important area of assessment, then, was to test the notion that the attorney-client relationship could be influenced by the early and continuous delivery of services. The ERDC Field Test provided a further incentive to public

defenders to meet the standards for indigent defense promulgated by the ABA, the NLADA and other professional bodies.

Fourth, the ERDC Field Test sought to examine the impact which early and continuous representation would have on the criminal justice system in general-- whether the test could demonstrate savings to the system in terms of the time defendants spend in pretrial detention, the number of cases which are disposed of prior to upper court arraignment, the time required to process cases through the system, and the ultimate disposition of cases.

At a time when the role of the public defender in the criminal justice system is in flux, when the resources available to the public defender are diminishing, and when the very existence of the public defender in many jurisdictions is threatened, the ERDC Field Test provided means of documenting the potential of the public defender in improving the efficiency of the criminal justice system.

Thus, on the one hand, the Field Test offered three defender agencies the opportunity to better serve their clients and more closely mirror the established standards for indigent criminal defense. On the other, it sought to demonstrate that the public defender could serve the interests of the criminal justice system and improve the overall administration of justice. The remainder of this report will document the operation of the Field Test and the results it achieved.

II--THE TEST SITES

A COMPARISON OF THE COMMUNITIES, PUBLIC DEFENDER OPERATIONS AND IMPLEMENTATION PLANS

This chapter examines the three public defender offices selected by NIJ to implement the Early Representation by Defense Counsel Field Test. First, the process used by NIJ to select the sites and the practical considerations which confronted the selection team are discussed. Thereafter, the discussion focuses upon the test sites, including a comparison of the structure and organization of the participating offices, their operations, and the criminal justice systems they serve. Last, a site by site description of the implementation plans developed by each office is presented. Schematics illustrating the test process at each site and a matrix comparing the sites prior to implementation along several key dimensions accompany the narrative.

THE SITE SELECTION PROCESS

The ERDC Field Test design was complex. To implement it a public defender agency would have to divide its caseload into two discrete groups, reorganize and reallocate its service delivery resources to provide early and continuous representation to one of those groups. Since the test sought to examine the impact of test services on case outcome, a participating agency would have to provide data on every stage in the adjudication process. While it is true that \$180,000 of federal money was made available to ERDC grantees, much of that money would have to be committed to grant administration, project management, and data collection. Technical assistance was available to grantees, but the level and extent of such support was limited.

No other field test has involved the entire breadth of the adjudication process, nor focused on the "outsider" of the system--the public defender. To implement the design correctly would involve the close cooperation of the police or sheriff's department jail staff, the clerk of court, the prosecutor,

the judges, and pretrial services and diversion staff. It would not be an easy job for a public defender agency to obtain such cooperation and there would be no guarantee that the cooperation, once given, would be maintained.

It is no wonder, then, that the ERDC site selection process was time consuming, difficult, and imperfect. It is also not surprising that the sites eventually chosen were not necessarily the most appropriate for the ERDC test experience. In fact, it is remarkable that the selection team was as successful as it was, given the constraints it found.

The team which developed the ERDC Field Test design was comprised of individuals drawn from the NIJ Offices of Development, Testing, and Dissemination (ODTD) and Program Evaluation (OPE); from consultant firms which supported the overall Field Test Program; and from researchers and attorneys with practical experience in the world of public defense. The conceptual design reflected NIJ's interests in testing the premise that early representation would improve the criminal justice process and enhance the quality of justice. The criteria for site selection reflected the interests of the NIJ working group in choosing sites that would be capable of implementing the test and supporting the evaluation research that was an integral part of the test design.

An ODTD selection team evolved out of the test design working group. That team, armed with the test design selection criteria initiated a four phase selection process early in 1981. The first phase of the selection process involved mailing out a summary statement of the test design to the approximately 200 public defenders' offices in the country which were large enough (i.e., serving a jurisdiction with over 200,000 population) to have a caseload that could provide the required 1200 cases for the test. Post cards were included in the materials so that offices could notify NIJ of their interest and their ability to satisfy the test criteria. Approximately 80 positive responses to the initial mailing were received. The selection team was concerned that positive responses were received from only 40% of the total.

Feedback indicated that many agencies felt they could not meet the demands which the design would place on the grantees.

The second phase of the selection process involved telephone interviews with representatives of the 80 interested offices. These discussions focused upon the criteria set out in the test design and aimed at screening out those jurisdictions which were inappropriate. While all of the mandatory criteria were used, three stood out as the principal reasons for disqualifying interested sites. First, a number of interested offices did not have a sufficient case-load to guarantee the 1200 case minimum needed for the experiment. Second, several offices could not guarantee the cooperation of the other agencies in their criminal justice systems. Third, a few offices already provided a range of services sufficiently early in the criminal justice process so that relatively little impact could be expected as a result of the test. It is interesting to note that two of the public defender agencies eventually chosen had been rejected during this phase because of their "too early" provision of services. Thus, at the conclusion of the second phase, 12 to 15 sites remained for further consideration.

The third phase of the selection process sought to achieve geographic representativeness. The candidate sites were screened further along this dimension and field visits were conducted to the east coast finalists (Passaic County, New Jersey; Wilmington, Delaware; and Nassau County, New York), the southern finalists (Charleston, South Carolina and Baton Rouge, Louisiana) and the west coast finalists (San Francisco, Oakland, and Fresno, California). These initial site visits proved inconclusive except for the case of Passaic, New Jersey which proved to be an excellent site for the test.

Neither southern finalist was deemed acceptable. Charleston, while an otherwise excellent candidate, could not guarantee that it would continue operating due to a statewide questioning of the public defender concept. The Baton Rouge criminal justice system was considered inappropriate for the test.

In the west, San Francisco emerged as the leading candidate but eventually had to be dropped because of the active opposition of the prosecutor's office. Fresno was then approached, but in the interim the Public Defender, who was the driving force behind its candidacy, had retired. Oakland was considered, but the selection team was unsure about its proposed approach and was unwilling to choose it without some procedural changes. The selection team decided, therefore, to open up the process to more of the sites which had survived the second phase of screening. A fourth phase of selection was proposed which would be more competitive in nature.

The process used during the fourth phase still was characterized by a desire to provide a "representative" geographic mix of test sites. Accordingly, one southern site, Shelby County (Memphis), Tennessee, which was originally passed over because it did provide some early representation and because its entry into cases was completely controlled by judicial appointment power, was reconsidered for the test. After an on-site visit, the selection team was impressed with the office and the Public Defender himself. They were even more encouraged by the strong support given the test by the criminal justice community. Shelby County was selected as the second site.

For the third site, the selection team set up a competition between two California sites, Oakland (Alameda County) and Orange County, and two Florida sites, Palm Beach County and Tampa. The Florida sites originally had been disqualified because their jurisdictions were participating in the NIJ Sentencing Guidelines Field Test. But, the ERDC selection process had been so lengthy that NIJ was assured that the two field tests would not overlap.

Only Palm Beach County and Oakland submitted responses within NIJ's deadline. After considerable debate, Palm Beach County was selected because its staff of younger attorneys was felt to more closely mirror the composition of public defender offices nationally and because the office was committed to attempting vertical representation. Vertical representation had been included as a desirable criterion for selection by the test design team, and, Palm Beach

County's interest in implementing ERDC within a fully vertical process tipped the scales in its favor. Hence, the Palm Beach County Office of the Public Defender became the third ERDC grantee.

The site selection process used in the Early Representation by Defense Counsel Field Test can be characterized as both practical and realistic. On the one hand, there was a desire to provide a geographic mix of sites each of which fulfilled the criteria set out by the design team. On the other hand, there was a desire to be as representative as possible of the array of existing defender agencies, thus ensuring that the ERDC concept would be tested within a rich diversity of environments. The remainder of this chapter describes that diversity and highlights the critical site-specific issues which structured the test effort and shaped the evaluation.

DESCRIPTION AND COMPARISON OF THE TEST SITES

The three sites selected for study are remarkably dissimilar. In examining these three public defender offices and the communities they serve, one is immediately struck by how little they have in common. The observable differences between the sites include the organization, structure, and character of the public defender offices and extend to the criminal justice systems and processes within and under which they operate. Since the conduct of the evaluation was dictated in part by these differences, the diversity between the sites along a number of dimensions is discussed in some detail, including:

- general community characteristics and key contextual issues;
- public defender office organization and operations;
- criminal justice system organization.

General Community Characteristics

At first glance, Passaic County, beset with the economic and fiscal problems of much of the urban northeast, appears dramatically distinct from the sprawling (2000 square miles) tourist mecca of Palm Beach County or Memphis, the

bustling administrative hub of the mid south. At the very least, one would expect Passaic to be the most crime ridden and plagued by the most severe social problems of the three sites. In fact, Passaic has experienced a high but relatively stable crime rate while the other two sites have experienced dramatic increases in crime over the past few years. Palm Beach County, caught up in the "crime explosion" of south Florida, had the fifth highest reported crime rate in the country according to the 1980 Uniform Crime Report. The violent crime rate in Palm Beach County more than doubled in the last decade. Shelby County too had experienced increases in its crime rate, but more importantly it had been faced with a 76 percent increase in felony case filings in the Memphis Municipal Court between 1976 and 1980.

The counties, in general, represent three distinct types of population centers. Passaic County with its deteriorating urban inner cities of Patterson and Passaic, its numerous small commuter towns, its diminishing industrial and manufacturing base, and its declining population represents many of the northeastern urban counties in general and northern New Jersey counties in particular.

Palm Beach County is a growth center, but its economy, based largely on tourism and services, recently has faced some growing pains. With its major city and county seat, West Palm Beach, representing only 20 percent of its total population, Palm Beach County is largely suburban.

Shelby County is dominated by Memphis, a distinctly southern urban metropolis containing 80 percent of the county's population. The atmosphere and character of the county is shaped as much by its rural fringes as it is by its urban inner city. Recent developments in Shelby County suggest the "new south," but the complex and subtle problems it faces owe much to the social and cultural structures of the "old south."

During the summer of 1982 as the Field Test was beginning, each community was feeling the effects of the 1981-83 recession. For Palm Beach County, 1982 marked the first year where there was a drop in per capita income after more

than a decade of unbridled growth and expansion. Passaic, New Jersey, was in its fifth year without any significant growth in personal income, and 1982 was a year of further considerable decline. Also, the Passaic County employment base had declined during the previous decade. In 1977 Passaic and Palm Beach Counties had virtually identical employment levels. By 1982 the growing employment base in Palm Beach had outstripped Passaic's by approximately 30%.

Shelby County enjoyed the largest and most integrated economy of the three test sites, but it too suffered during the inflationary/recessionary cycles of the late 1970s. The employment base of Shelby County has been stagnant since 1978, after an unprecedented era of growth during the previous decade. Personal income, which had grown by 30% between 1970 and 1978, leveled off and by 1982 was beginning to decline.

Each test community is characterized by considerable socio-political tension, which, in large measure, is a reflection of broader trends present in its geographic region. These tensions, in turn, have created political, economic, social and cultural conditions which have stimulated an increasingly more violent rate of crime, as well as unique and changing responses to crime. The Field Test was introduced into these communities at a time when each was undergoing a transition to meet the challenge of worsening economic conditions and growing crime rates.

Key Contextual Issues

The changing conditions in the test communities reflect the effects of recent legislation, administrative decisions, and fiscal expediency. The ERDC evaluation has attempted to identify these issues and to consider the impact of each on the Field Test.

The principal legislative changes affecting Passaic County included a mandatory sentencing law for use of a gun during the commission of any crime, and the introduction in the legislature of additional mandatory sentencing bills. These sentencing laws were seen as inhibiting the discretion available to the

prosecution and defense in case disposition. By limiting the incentive for plea negotiation, they directly affected case processing efficiency. In addition, a state appellate decision redefining conflict situations required the Passaic Public Defender Office to represent more than one co-defendant in a given case.

Numerous administrative changes have occurred in New Jersey in general and Passaic County in particular which shaped the Field Test. On the state level, because of severe prison overcrowding, the Governor placed a moratorium on transfers of convicted prisoners from county jails to the state prisons. This move exacerbated overcrowding in county jails such as Passaic's which consistently housed more defendants than their listed maximums. Just prior to implementation, the Chief Judge of the County Court authorized the use of a 10 percent cash program as an alternative to bail bondsmen. This gave Municipal and Superior Court judges the discretion to allow defendants to post a redeemable 10 percent cash bond with the court. In part, this decision was seen by local system actors as an attempt to deal with extreme overcrowding in the Passaic County jail.

Three other administrative actions threatened to change the nature of public defense in Passaic. First, the long term tenure of the State Public Defender ended in 1982 with the gubernatorial election in New Jersey. The State Public Defender serves as chief administrator of the state wide public defender system with direct fiscal and procedural control over all local public defender offices including Passaic County's. This change coupled with the fiscal crisis facing the State of New Jersey affected the nature and extent of public defense services in the Passaic office. There were several operational and staffing changes in the office due to budget cutbacks and the new State Public Defender was not as sympathetic to the plight of the local offices as was his predecessor.

Second, immediately prior to the Field Test, the Passaic County prosecutor set up a pre-indictment intake and screening unit to replace the existing vertical

prosecutorial system in his office. This unit may have "competed" with the Field Test--at a minimum it is a confounding factor, limiting the reliability of any pre-post evaluation analysis. Last, the city of Patterson, in July of 1982, opened its criminal justice complex which housed a combined police station, jail, and municipal court. This move was unanticipated by the grantee office and necessitated minor adjustments in early implementation activities.

Palm Beach County faced considerable change due to legislative actions. Bills calling for preventive detention and mandatory sentencing abounded prior to as well as during the test period. The Florida legislature was under extreme pressure to deal with the "crime explosion" in south Florida. The crime situation also prompted federal intervention in the form of a "strike force" and a pretrial services project both aimed at the problems of drug trafficking and bail fugitives.

Calls for preventive detention and mandatory sentencing, in turn, had an impact upon the prison and jail populations. Chronic overcrowding and poor conditions in the Palm Beach County jail had earlier prompted a federal court order. In response, the sheriff was forced to use two additional lockups--the Stockade and the Belle Glade jail--located at considerable distances from the public defender office. Use of these facilities made it difficult for the test office to implement the ERDC project as designed.

Just prior to implementation, both the Public Defender and the State Attorney were authorized additional felony court attorneys. Moreover, there was to be a sixth division of County Court created sometime during the test period. This was expected to have a considerable impact on the Public Defender in general and on the ERDC Field Test in particular.

Shelby County had experienced by far the most critical changes in its criminal justice system just prior to the test start-up. Dramatic changes occurred both in the general adjudication process and in the criminal justice community.

First, legislation authorizing the transfer of all criminal case processing from the Memphis City Court to the County General Sessions Court went into effect September 1, 1982, immediately prior to the implementation of the Field Test. The consequences of this transfer were: (1) the sheriff became responsible for pretrial detention of all Memphis city defendants approximately two weeks earlier than previously since the legislation terminated the Memphis Police Department's jail responsibility; (2) the six divisions of City Court which handled criminal cases were transferred to County General Sessions Court requiring the elimination of six City Judgeships and the creation of six General Sessions Judgeships. All six judges and the court clerk stood for re-election. The lower court adjudication process changed according to the dictates of the space and logistical limitations of the new facility. Changes in the adjudication process, directly affecting the ERDC Field Test were many and varied. New issues involved early access to clients, First Appearance, and relations with the clerk's office.

Second, a Judge Sentencing Act went into effect on July 1, 1982 empowering judges to sentence a convicted defendant, thus ending the long Tennessee tradition of jury sentencing. This legislation increased case processing time because it required new procedures, such as presentence investigations, and it introduced other enhancement and investigative deliberations into the sentencing process. The Judge Sentencing Act is believed to have had considerable impact on the pace of the administration of justice in Shelby County.

Third, Shelby County faced a potentially major fiscal crisis owing both to rising costs, especially the costs attached to its \$60 million criminal justice center, and to the rumblings of a taxpayer and property owners revolt which consistently fought attempts to raise the millage rate. The Public Defender's Office had suffered considerably due to the county's budget crunch. Just prior to the test, three out of the four persons in its Social Services Unit were laid off. The Office also was chronically understaffed in the critical areas of clerical and investigatory support. Further cutbacks were threatened during the test which seriously eroded the ability of the office to institutionalize any of the benefits of ERDC which it realized.

Public Defender Office Organization

The three test site public defender offices differ dramatically in the way that they are organized, funded, staffed, and operated. A summary of the key office characteristics of each site is therefore in order.

● Office of the Public Defender--Passaic Region

The Office of the Public Defender of the State of New Jersey is a division of the Office of the Public Advocate, a cabinet level position. The Public Defender is the chief administrator of the several trial regions in the state of which Passaic County is one. The State Public Defender Office sets policy and general administrative guidelines for the regional offices and handles their appeals. It is also responsible for general legislative liaison, record-keeping, analysis, and budgeting.

Each regional office is headed by a Chief Deputy Public Defender.

Traditionally, chief deputies have been given considerable autonomy in office organization, administration, and personnel matters. The Passaic County Chief Deputy has 15-years' experience in the office, with over ten years in that position. Administratively he answers to the Public Defender and operationally to the Chief Judge of the region.

No municipal or county funds support the regional public defender offices. Therefore, they often are considered to be outside of the political or bureaucratic pressures faced by the other criminal justice system agencies in their counties. They are, however, answerable to statewide considerations.

Structurally, the office is organized into a the Felony Division of ten assistant public defenders, who handle all cases from arraignment on the indictment through disposition; a Juvenile Division of six attorneys; an Investigative Division headed by a principal investigator who supervises ten investigators; and 13 legal secretaries. The Chief Deputy is supported by a first assistant deputy public defender who handles day to day operations. Both the Chief Deputy and his first assistant are experienced trial attorneys who handle cases when the need arises.

A full range of resources including access to expert witnesses and investigatory supports are available from the state office located at Trenton. Appeals are handled through the state office. With these, and its own considerable investigatory and clerical resources, the Passaic County Public Defender's Office had the most comprehensive support system of the three test sites.

Operationally, the office enjoyed other advantages. First, it is the only test office with the power to screen for eligibility and to accept cases without judicial approval. Second, it is the only site empowered to appoint cases to private attorneys in the event of conflict (a power which was eroded somewhat during the test by judicial and fiscal changes). Third, it is the only site to formally open hard copy case files and to assign cases to felony attorneys at first contact. Therefore, it had the most consistent case management system of the three sites.

In Passaic County, cases are opened upon receipt of an eligibility screening/request form (Form 5(a)) filled out by a defendant who receives the form from the magistrate or a jailer. When a Form 5(a) is received by the office--usually within three to five days after arrest--an investigator is dispatched to interview jailed defendants (or a notice is sent to bailed defendants to schedule an interview) to verify eligibility and to learn the facts of the case.

Probable Cause hearings are held in all felony cases. Prior to and during the Field Test, two non-staff private attorneys were under contract to the office to provide representation at these hearings. Their contact with a defendant was limited to the hearing process. Cases not disposed of at the hearing proceeded through the normal prosecutorial channels to the Grand Jury and, if indicted, to Arraignment and processing in Felony Court. In the routine case a staff attorney did not see his clients until after Arraignment on the indictment--one to two months after arrest.

During 1980 approximately 4,233 indictable complaints were filed in Passaic County and over 2,500 defendants were arraigned on indictments. The office opened 2,400 cases. Each felony attorney carried a yearly caseload of between 150 and 200 cases.

The office is proud of the high percentage of cases taken to trial and the high rate of success it enjoys at trial. Unlike the other two test sites, there is no Capital Division in the Passaic County Office. All felony attorneys are expected to handle murder cases. The recent reestablishment of the death penalty in New Jersey did not change the office policy regarding capital cases.

To an outside observer the Passaic County Public Defender's Office appears to be a highly efficient, well run operation staffed at all levels by professionals who have made public defense their careers. Attrition rates are low for all staff. Attorneys are rarely hired directly out of law school. Staff openings are often filled by transfers from the other public defender offices throughout the state, suggesting that the office has a positive reputation within the state system. Attorney tenure in the Felony Division ranges from four to 15 years with nine years being the average. The Passaic County Office of the Public Defender is somewhat atypical of public defender offices in general and of the two other test sites in particular. Of the three it can be characterized as The Career Office.

- Office of the Public Defender, 15th Judicial Circuit, Palm Beach County

Like the Passaic County Office, the Palm Beach County Office of the Public Defender is part of a state public defender system, but in most respects it operates as a wholly independent and autonomous entity. The office receives a considerable portion of its operating budget from the state, whose support has been generous at times. Just prior to the test, the office received authorization for a few additional felony attorneys.

The Public Defender is an elected official whose term of office lasts four years. The current Public Defender is in his third term. He has a chief assistant who also serves as supervisor of the appellate attorneys, an administrative assistant who supervises all clerical staff, and a chief investigator who supervises the investigators and interns.

The office is organized into a number of operating divisions. The Felony Division is headed by a chief who supervised 15 trial attorneys assigned in threes to each of five criminal Circuit Courts (during the test period a sixth division of court was added). These attorneys handle all non-capital felony cases assigned to the public defender after Arraignment. Each Circuit Court section is staffed by an investigator and a secretary who work on the cases assigned to their section. A Capital Division, handling the capital cases from each Circuit Court section, is staffed by two attorneys, a secretary, and draws investigatory support from the regular section investigators. The Appellate Division, headed by a chief and staffed by between 10 and 13 attorneys, three secretaries and a staff assistant, is responsible for handling all of the appeals from two nearby circuits in addition to those from the 15th. The County Court (Misdemeanor) Division of five attorneys, one of whom serves as chief, one intern/investigator and two secretaries is organized into two sections and handles all misdemeanor cases which are heard in the County or lower court. A Juvenile/Mental Health Division of five attorneys organized into four sections and supported by a secretary and an intern is responsible for all juvenile and mental commitment cases. Social services for defendants are available through a Social Service Division staffed by two workers and a secretary.

While not as resource rich as Passaic County, the Palm Beach County Public Defender's Office does have a range of technical and expert supports available to it. For instance, the chief investigator is a certified polygraph operator, but in the past his expertise rarely has been employed. Additionally, the office has a long and successful history of securing grants to support its activities.

Operationally, the office enters cases only upon judicial appointment. Routinely, this happens in County Court at the First Appearance, which under Florida law must occur within 24 hours of arrest. (This law requires the court to hold First Appearances seven days a week, 365 days a year.) However, while the office represents all defendants assigned to the public defender at First Appearance, as with Passaic County, little further legal representation is provided by the office to clients early in the criminal justice process.

At First Appearance, the judge considers issues of bail and establishes probable cause in a non-adversarial hearing focused upon the affidavit of complaint filed by the arresting officer. Upon a finding of probable cause the prosecutor has 21 days to file formal charges in Circuit Court on an information. Defendants are arraigned in Circuit Court on the information. This usually is the first time a Felony Division attorney meets a defendant. Therefore, during the period from First Appearance, when the defendant is represented by a County Division attorney, until Arraignment on the information, there is rarely any contact between the office and the defendant other than an interview by an investigator.

The Palm Beach County Public Defender does enjoy one considerable representational advantage over the other test offices--public defenders can depose all witnesses. Under Florida law, criminal defense attorneys have full deposition powers, thus enabling the individual attorney to depose all State's witnesses after receipt of the witness list during the discovery process. Discussions with observers revealed that public defenders in Palm Beach County use this advantage more than do private attorneys. They also suggest that the deposition power lessens the need for a large investigative staff, and in fact the office has the smallest number of investigators (5) of the three test sites.

Case management is decentralized by Circuit Court section. Hard copy files are opened only after Circuit Court Arraignment, and there is no systematic transfer of information between misdemeanor (County Court) attorneys and felony attorneys. No system of recording case data on case folders is maintained.

New hard copy files were developed for use during the test period so as to enable an attorney to document his or her cases.

In Palm Beach County during 1981, 8,400 felony arrests were made, and formal felony charges were filed on 4,300. The public defender office represented 3,500 defendants. Each felony attorney was assigned between 270-300 cases but not all those defendants were processed through felony court.

The Palm Beach County Office of the Public Defender is staffed by young attorneys who frequently are hired out of law school. At the beginning of the test, only five attorneys on the staff had more than five years of experience. The office has established an excellent orientation program to meet the needs of its younger staff. Attorneys rotate from the Appeals Division through the County or Juvenile Divisions to the Felony Division. The process can take up to two years. In addition to this phased orientation process, attorneys are given the opportunity to attend classes at the National Criminal Defense College in Houston each summer. Almost every felony attorney has attended the program at least once.

The Palm Beach Office of the Public Defender is staffed by an enthusiastic and committed group of individuals many of whom have chosen public defense as a first step in their legal careers. High turnover is due as much to the view that this is a first step on a career ladder as to the caseload pressures of a high volume office. Thus, of the three sites, it may be characterized as The Training Office.

- Office of the Public Defender of Shelby County

The Office of the Public Defender of Shelby County is a public agency funded by the Shelby County government and by the Supreme Court of the State of Tennessee. Administratively, the office is a department of the County Division of Health and Public Services, which also administers the welfare department, the medical examiner, the pretrial services operation, the divorce referee, and a number of health care centers. As a department of a county agency, the

Public Defender's Office is subject to all of the budgetary and administrative vagaries that other local bureaucratic units face. All hiring and personnel policies are dictated by county government and civil service. The County Mayor ultimately selects all assistant public defenders and reserves the authority to terminate them.

The Office of Public Defender is headed by the Chief Public Defender who is appointed by the Mayor and must be confirmed yearly by the County Commission. The Chief Public Defender serves in this capacity on a part-time basis and maintains a private law practice. He answers to the Director of the Division of Health and Public Services and ultimately to the Mayor on all administrative and personnel issues, but does have relative control over the operations of the office. As such, the Shelby County Office of the Public Defender is the least independent of the three grantees and faces the most severe fiscal constraints.

To understand the unique organization and staffing of the office, it is helpful first to examine the evolution of the office over time. The Shelby County Office of the Public Defender was authorized by the Tennessee State Legislature and established by Shelby County in 1917. It was one of the first public defender agencies in the country. From the beginning the Chief Public Defender served on a part-time basis and, until the 1950s, was supported only by a part-time assistant and an investigator. By 1969, the office had a staff of 14 part-time attorneys each of whom retained a private practice. In fact there was a strong resistance to hiring full-time assistant public defenders because, in the words of the then Chief Public Defender (who served from 1941 to 1974), "full-time lawyers would inevitably lower the standards of the staff." However, in 1969 three full-time attorneys were appointed and by 1975 this number had grown to seven.

Prior to 1972, only indicted felony defendants were provided public defense services in Shelby County. In that year, in response to Argentsinger v. Hamlin, the state legislature authorized the establishment of a public defense service

in the Memphis Municipal Court to serve misdemeanor clients. In 1974 the Memphis City Attorney established and staffed a City Public Defender Office which handled all misdemeanor cases and represented felony defendants until they were "held to the State" or bound over for Grand Jury indictment. In 1980, the City Public Defender Office was transferred to the county operation. However, at the time of the Field Test, the staff of the municipal unit had not yet been fully acclimated to the county operation. In fact, it was not until the summer of 1982 that municipal court attorneys were located in the main offices of the public defender.

The current Chief Public Defender is only the seventh individual to hold the position since 1917, but the third since 1974. He is given high marks as a manager and administrator both in organizing the office and in maintaining liaison with county government. He is assisted by a deputy administrator who is also appointed by the Mayor. The deputy supervises the investigators, handles appeals and serves as liaison to the legislature.

The office employs 31 attorneys (17 full-time and 14 part-time). Six attorneys are assigned to the City Court Division (which became the General Sessions Division on September 7, 1982, after the court reorganization), 16 are assigned to the Criminal or Felony Court Division (one full-time and one part-time attorney per division), and three attorneys (one full-time, two part-time) are assigned to the Capital Division. Three to five attorneys are assigned to an Appeals Division depending upon caseload pressures. The office has an investigative staff of ten. One investigator is assigned to the City General Sessions Court Division, eight are assigned to the eight divisions of Criminal Court each serving two divisions in a two-person team, and one investigator is assigned to the capital division. The office is authorized to employ only five full-time clerical staff: the secretary of the Chief Public Defender, an Appellate Division secretary, a secretary for the City Court Division, an administrative assistant and a custodian of records. Each of these staff supported the felony attorneys at times, but the office has always depended heavily upon CETA funded secretaries and summer youth work placements and attorneys often are forced to do their own typing.

While the Shelby County Office has the lowest level of clerical support of the three test sites, it had the advantage of having a full-time custodian of records. The primary duty of the custodian is to document the time spent on individual cases by the felony attorneys. In Shelby County all felony attorneys are required to record the nature and duration of each activity they undertake on a case. An attorney who fails to do so is subject to immediate suspension because reimbursement from the State Supreme Court is based upon individual case records.

The custodian of records is responsible for all case specific data management in the office. She receives the paperwork prepared on felony defendants represented at the lower court level, makes attorney assignments for all felony cases after Arraignment on an indictment, and receives all case files from the attorneys after a case has been closed. She also maintains files on all diversion cases assigned to the office to ensure that motions to expunge the criminal records of successful diverttees are made at the appropriate time. Last, for the past few years she has prepared a yearly report for the office documenting the activities conducted during the year and highlighting changes and trends evident over time. In short, the Shelby County Office of the Public Defender had by far the most comprehensive internal case management system of the three test sites.

The office has traditionally had little in the way of ancillary resources to fund special experts or technical support. Prior to the Field Test there was an active social services unit which was involved in post-conviction sentencing planning. The unit was to become involved earlier in cases during the ERDC test. However, budget cutbacks limited the staff of this once active division to one person. That person has worked exclusively on capital cases since that time. In fact, since then, capital cases are the only ones which receive any expert assistance, and that has been limited to psychological/psychiatric testimony bearing on the sanity of the defendant.

Operationally, the Shelby County Public Defender Office enters cases only upon judicial appointment. While similar to the Palm Beach County Office in this regard, the situation surrounding appointment in Shelby County is rather unique. Under the bifurcated Shelby County Court system, it has been a long-standing practice for private attorneys to represent felony defendants only until the case is "held to the state" or transferred to the Grand Jury for indictment. Thus, there has always been a very active defense bar at the Municipal Court level. The attorney does not have to make a formal motion to withdraw from a case to be relieved of his or her responsibility to the client. It happens automatically. Poor defendants in Shelby County know that they might be able to have family or friends contribute enough money to help them retain private counsel at least for municipal court proceedings. At the same time, they know that they might have a public defender represent them in Criminal Court after they are indicted.

Municipal Court judges, aware that an otherwise indigent defendant can receive private representation for \$500 or less, and interested in protecting the private criminal bar, have been reluctant to appoint the public defender at First Appearance. Public defenders rarely cover felony First Appearance, since appointments would never be made that soon. Rather, cases are routinely continued for from two days to two weeks, to "enable" defendants to retain private counsel. Thus, judges appoint the public defender only after the defendant has demonstrated over time that he or she is unable to arrange for private counsel. One outcome of this practice has been that the Shelby County Public Defender's Office represents more defendants in Criminal (Felony) Court than it does in Municipal Court, since many of its clients are represented by private counsel in Municipal Court.

The normal case process for all Municipal Court felony case appointments is as follows:

- the judge would appoint the public defender to represent the defendant and continue the case for report;
- upon judicial appointment, the lower court investigator would gather whatever case specific information was available from

the clerk and the prosecutor, interview the defendant in jail as soon as possible, and pass on the paperwork to an attorney, noting the date of the next court appearance (the report date);

- on the report date the attorney reviewed the paperwork and interviewed the defendant to determine whether a Preliminary Hearing was to be held or waived (waiver ensured an almost automatic motion for bail reduction by the Municipal Court prosecutor which was rarely denied), or whether the prosecutor was to be approached for an early resolution (only cases reduced to a misdemeanor, approximately 25% of all felony arrests, can be disposed of in Municipal Court). He or she then reported to the court regarding the intentions of the defendant;
- Preliminary Hearings result in a finding of probable cause, a finding of no probable cause and a dismissal (with or without costs), or a nolle prosequi by the prosecutor (if witnesses fail to appear). Only in the case of a finding of no probable cause where costs are assessed to the defendant does a dismissal actually dispose of the case. In all other situations, the prosecutor would send the case file to the Grand Jury Unit for indictment. All dismissals or nolles do result in the defendant being released if he or she has been in jail, but upon indictment a capias is issued, the defendant is rearrested and a new bond is set by the Criminal Court judge. Thus, defendants out on bond suffer a hardship when their cases are nolle prossed since the original bond will not be honored in Criminal Court.

The City/General Sessions Court public defenders cease all work on a case once it is bound over. From that point until Arraignment in Criminal Court, a period which could be as long as five months but averages closer to 45 days, no one from the office would have any involvement with a defendant or with his or her case. In Criminal Court, the public defender is appointed to a case at or soon after Arraignment on the indictment. The same attorney, then, handles a case from appointment through disposition.

In 1981, 5,500 felony defendants were processed through the Memphis City Court and 4,300 were transferred to the Grand Jury for indictment. Approximately 1,400 of these defendants were served by the Shelby County Public Defender in Municipal Court. The office served 2,400 defendants in Criminal Court, 700-1000 of whom also had been represented in Municipal Court. Caseloads for the

two City Court attorneys who handled felony processing averaged between 600 and 700 cases per year. Full-time felony attorney caseloads were approximately 200 cases per year while those of part-time attorneys averaged around 75. The extreme pressures on City Court attorneys, their inability to provide felony attorneys with adequate information regarding cases, and the failure of the office to provide representation continuously from bind over through indictment prompted the Shelby County Public Defender to participate in the ERDC Field Test.

The office has an interesting staff mix of young inexperienced attorneys and older more established attorneys. The City Court attorneys are usually younger; the felony attorneys both full-time and part-time are older and more experienced. In viewing the office in operation one gets a distinct impression of a medium sized private law firm, except for the lack of adequate secretarial support. The fact that there are a considerable number of part-time attorneys, each of whom has a private criminal defense practice, adds to this impression. It is further supported when one observes the group of younger "associates" who appear eager to move up to the responsible felony positions now held by the "partners." The overall laissez-faire management style of the office further promotes the image. In a sense the office is a hybrid between public service and private practice and of the three test sites is best characterized as The Hybrid Office.

Criminal Justice Systems Organization and Process

Chapter I discusses the considerable political, social, and fiscal tensions which confront the administration of justice in every jurisdiction across the country. Legislatures, the courts, prosecutors, enforcement officers and public defenders alike have increasingly had to respond to the growing pressure placed upon them by their communities to deal more stringently with crime and the criminal. Each of the ERDC Field Test sites faced such tensions.

This section focuses upon a comparative examination of the three criminal justice systems within which the test was to operate. It is organized into

discussions of the courts, prosecutors, law enforcement, and ancillary services.

- The Courts

Each state is headed by a Supreme Court which is the ultimate appellate review within the state for criminal justice matters. In New Jersey and Florida, Supreme Court Justices are appointed while in Tennessee they are elected. The administrative powers vested in the Supreme Courts vary considerably. For example, in New Jersey, the Chief Judge of the Court exercises broad administrative latitude over the state court system. He heads the Administrative Office of the Courts, a research and policy arm, which implements his policy decisions. He appoints the chief administrative judge of each trial region of the state and invests that individual with broad policymaking powers. The current Chief Justice has established a "speedy trial" program which is an attempt to eliminate case backlogs and delay. The speedy trial program has operated in Passaic County for some time and had broad procedural and operational repercussions on the county's criminal justice system.

In Florida, the Supreme Court also is invested with broad rule making authority. The current Chief Justice has been especially active in this regard. He has served as co-chairman of the Governor's Task Force on Criminal Justice System Reform, whose recommendations on a broad range of issues include one that became the basis for a preventive detention bill. The Chief Justice also has been interested in establishing a sentencing guidelines system statewide drawing upon the recently completed NIJ Field Test. His interests in a consistently administered sentencing guideline system are said to be based upon his objection to mandatory sentencing legislation.

In Tennessee, the Supreme Court is responsible for reimbursement of some of the costs of prosecutorial and defense services. However, it does not appear to have broad administrative responsibilities. In fact almost all procedural or administrative changes are initiated by the legislature.

Locally, the courts of the test sites are organized quite differently. The Passaic County Trial Region is made up of the fourteen municipalities of the county each with its own municipal court which feeds into the regional Superior Court. Passaic County is the only test site with multiple municipal courts and this fact is reflected in its test plan. Municipal court judges can commit a defendant convicted of a "disorderly persons" offense for up to six months imprisonment. In felony cases, municipal judges conduct First Appearances, set bail (for some serious offenses only a superior court judge can set bail), and hold Preliminary Hearings. The Superior (Criminal) Court is made up of six court divisions which process all felony indictments.

The Passaic County Trial Region is headed by an Assignment Judge who exercises broad administrative powers. In recent years he has authorized the use of the 10 percent cash bail system and has vigorously promoted speedy trial. The Passaic Criminal Court Delay Reduction Program (CCDRP) is the most ambitious speedy trial program in the state. One key element of the program is the Case Processing Order which is set out by the judge at Arraignment in each Superior Court division. That order notes the date of Arraignment and sets the schedule for all further activities on a case, including: full reciprocal discovery (within six weeks), the filing and answering of all pretrial motions (within 55 days), and establishes a cut off for all plea negotiations and an initial trial date (60th day). The CCDRP has received mixed assessments from system actors, but all agree that it speeds up the process dramatically. A number of informants in Passaic County raised questions regarding the level of impact that the ERDC Field Test could have given the existence of such an aggressive speedy trial program.

The Administrative Judge was a strong supporter of the ERDC Field Test in the Passaic County Trial Region. He believed it to be a valuable addition to the speedy trial program. He worked with the Chief Deputy Public Defender on the test, and made it a subject of consideration for the CCDRP committee which oversees the speedy trial program in the region.

Palm Beach County makes up the 15th Judicial Circuit of Florida. During the 1970s, the state established a fully integrated court system, doing away with all municipal courts. Each circuit is headed by a chief judge who makes judicial assignments. The Chief Judge in Palm Beach County was committed to the test concept but was not actively involved in its development.

In Palm Beach County, the lower or County Court handles all First Appearances, sets bail according to a prearranged bail schedule, and handles misdemeanor cases with authority to commit misdemeanants for up to one year. Prior to the test there were five divisions of Circuit Court to handle felony cases. (A sixth division was added during the test period.) Each is staffed by three Assistant State Attorneys and three Assistant Public Defenders. Since the system is integrated there is no problem of managing municipal caseloads similar to Passaic County. The court process is, in part, controlled by the elected County Clerk and his Automated Courts Division. He has the most elaborate record keeping and case tracking system of any of the court clerks at the test sites.

Case processing in Palm Beach County is relatively straightforward. Charges are filed on an information by an Assistant State Attorney 21 days after arrest. There is only limited use of the Grand Jury indictment. Defendants are arraigned in the appropriate division of Circuit Court within one week of filing. Florida speedy trial rules are controlled by statute which mandate that a defendant be brought to trial within 180 days of formal filing of charges absent any waiver or stipulation. Moreover, a defendant can, upon proper notice, demand that a trial commence within 60 days. Any request for a continuance is considered to be a waiver of speedy trial. Due to the heavy caseload in the circuit, speedy trial is a constant concern of all parties.

Original jurisdiction for criminal matters in Shelby County is vested in four small municipal courts and the county General Sessions Court which on September 1, 1982 assumed responsibility for all cases previously processed through the Memphis City Court. Under the county's bifurcated criminal process, one court-

room handles the pre-indictment processing of all felony and indictable misdemeanor cases. Each of the six criminal General Sessions judges presides over the felony processing courtroom for two months during the year. While one of these judges assumes some administrative responsibility and interacts closely with the elected Clerk of the Court and his staff, there is no one judge who has any authority to establish general rules or procedures for the other General Sessions judges. The judges are elected and operate independently and autonomously within the general rules of criminal procedure as established by the legislature and case law. General Sessions judges have the authority to set bail, to hold Preliminary Hearings and determine probable cause, and to commit defendants accused of some misdemeanors for up to one year in jail.

The General Sessions Court is not a court of record. Appeals on misdemeanor convictions can be heard in trials de novo in the Criminal Court, the court of general jurisdiction in Shelby County. The Criminal Court is organized into eight divisions each of which is staffed by three Assistant District Attorney Generals and one full-time and one part-time Assistant Public Defender.

Felony cases are assigned to the Criminal Court Divisions on a rotating basis by the Clerk of the Criminal Court. Thus, there are two elected clerks serving the criminal court process, and each handles the assignment and recording tasks independently. The Criminal Court judges elect one among their number to serve as an administrator, but, they retain their independence and autonomy.

There are no speedy trial provisions in the state of Tennessee, but observers contend that continuances are not routinely granted. The recently enacted Judge Sentencing Act is expected to extend the already considerable criminal court process since it requires that presentence investigations be made in most cases and introduced a range of sentencing guidelines which tie sentences to the relative seriousness of the crime and the prior criminal record of the defendant.

- Prosecutor

The three sites are characterized by three distinct prosecutorial styles which in part reflect the systems within which they operate and in part reflect the personalities of the chief prosecutors themselves. Two of the three prosecutors are elected--the Shelby County District Attorney General and the Palm Beach County State Attorney. The Passaic County Prosecutor is appointed by the Governor for a term of five years, but he must answer to the local County Commission for fiscal and budgetary matters.

The Passaic County Prosecutor's Office has a staff of 121 attorneys, investigators and clerical personnel. In addition to regular Superior Court divisional assignments of two prosecutors and two investigators, there are special units for the prosecution of homicides, white collar crime, arson, and organized crime/corruption. The Prosecutor has responded vigorously to the speedy trial program in the region. First, he verticalized prosecutions by assigning assistants to municipal courts where they conducted Preliminary Hearings and continued with cases through the Grand Jury and Superior Court proceedings until disposition. Second, he placed a time limit on negotiated pleas. If a plea is not agreed upon within the stipulated time period (initially 45 days, but extended early in 1982 to 60 days) only pleas to the indictment charges are to be considered. Third, immediately prior to the planned implementation of the Field Test, the Prosecutor established a screening unit to review cases at the municipal level prior to submission to the Grand Jury for indictment. While this move compromised the vertical prosecution system somewhat, it was seen both as a time saving move and as a relaxation of some of the burden placed on the trial prosecutors by verticalization.

Operationally, the office maintains strict controls over the prosecutorial process. One chief assistant prosecutor screens and approves pleas negotiated by the trial prosecutors on all but the most routine felonies. One chief assistant prosecutor supervises the special prosecutorial units.

Budget cutbacks and accompanying belt tightening measures have affected the staffing and operations of the Passaic County Prosecutor's Office in recent years. Observers suggested that the office suffers somewhat from morale problems and has experienced some turnover in attorney staff. The assistant prosecutors are on the average younger and less experienced than their counterparts in the Public Defender's Office.

The Palm Beach County State Attorney has campaigned for higher office in the past and was a candidate for U.S. Senate in the 1982 Florida primary. As such he is a highly visible political figure in the county and in statewide politics.

The Palm Beach County State Attorney heads a highly efficient office that is organized and run on a management systems basis. For example, the office makes the most use of computerization and case tracking of any of the three test site prosecutors. All failures to appear (FTA) for all offenses including traffic tickets are tracked, noted and aggressively pursued.

The office employs 151 people including attorneys, investigators, and clerical support. They are organized into a County (Misdemeanor) Division, an Intake Unit, a Felony Trials Division, an Economic Crime and Government Relations Division, an Organized Crime Division, an Investigative Division and subsidiary divisions focused on the special areas of child abuse, welfare fraud, juvenile crime, child support and homicide. Ancillary units tied to victim/witness support and community crime prevention are also operative. Administrative supports include units for word processing and data processing.

There are three Assistant State Attorneys assigned to each of the Circuit Court divisions. Of the 12 investigators, five, plus two paralegals, are available to the Felony Division to find witnesses, serve subpoenas and to do investigations that the police cannot or will not do. One legal secretary is assigned to each division. The organization of the Felony Division therefore mirrors that of the Public Defender's Office. The staff of the office is somewhat

older and more experienced than that of the Public Defender's Office; however, it does experience considerable turnover.

Management of the office is the responsibility of the Executive Assistant State Attorney. There are supervisors of the Felony and Intake Units who report to him. These units were the ones most directly involved with the ERDC Field Test. A discussion of their operations is in order.

The Intake Unit is responsible for screening all arrest and police report information and for filing felony charges by use of the information process. As mentioned above, under Florida law, the State has 21 days from arrest to file charges or the defendant is entitled to an adversarial Preliminary Hearing. The 21-day period is ostensibly to give sufficient time for the police report and the State's case to be prepared. In practice, if the Intake Unit has not received the police report within the time period, it will nolle prosequere the case. In this way, the office manages the performance of the police agencies in the county; few cases are dismissed for want of a police report.

The unit is very aggressive in downfiling felony cases to misdemeanors. Approximately 50% of all felony arrests reportedly are reduced to misdemeanors by the Intake Unit. The interesting result of this practice is that Palm Beach County processes 60% more felony arrests than does Shelby County but files formal felony charges on fewer defendants.

In recent years the office, through the Intake Unit and the various special divisions, has worked closely with the police to increase the number of cases filed by warrant arrest. Warrant cases are considered stronger and require less follow-up work; thus, limiting the pressure of speedy trial on the Felony Division.

The Felony Division prosecutes all felony cases arraigned in the Circuit Court not assigned to the special prosecutorial units. The Division is headed by a

supervisor who screens negotiated pleas. The plea negotiation process of the division has been influenced in recent years by a number of factors. First, Palm Beach County participated in the NIJ Sentencing Guidelines Field Test which set up a process by which sentences were determined by a system which assigned points to a case according to the charges, the defendant's prior record, and other variables. The guidelines were designed to achieve a level of consistency in sentencing. The test was in effect from April 1981 to April 1982.

Second, just prior to the implementation of the sentencing guidelines process, the State Attorney instituted a policy that prohibited charge bargaining in a case after formal charges were filed. This policy severely hampered the plea negotiation process, and forced assistant prosecutors to "point bargain" and thus compromised the sentencing guidelines effort. These two related factors have changed the nature of plea bargaining in the county somewhat, and did influence the Circuit Court process during the ERDC Field Test.

The District Attorney General of Shelby County recently began his second eight-year term of office. He is the son of a former Chief Public Defender (1940 to 1974) and was himself a part-time Assistant Public Defender before becoming the District Attorney General. His office is organized in a manner which reflects Shelby County's bifurcated criminal process. A General Sessions Court Unit of five Assistant Attorney Generals, a secretary and a victim/witness counselor handled all felony case processing in municipal court. A Grand Jury Unit of two to three attorneys and several secretaries prepare all cases for Grand Jury indictment. Three trial prosecutors are assigned to each of the eight divisions of Criminal Court. Each of these units is headed by a supervisor.

Since there are no speedy trial regulations which control the criminal case process in Tennessee, the District Attorney General's Office is not under any general pressure to speed up processing. The most consistent period of delay in case processing is the extended time between the bindover and the issuance

of a bill of indictment by the Grand Jury. As with Passaic County all felonies are charged by a true bill and no mechanism for charging on an information or for allowing a waiver of indictment is currently used. Once bound over, a case is held by the Grand Jury Unit pending receipt of the police report and the state's case. Unlike the Palm Beach County State Attorney's Office, there are no formal performance controls placed on law enforcement by the District Attorney General's Office. According to a 1982 Public Defender survey, the average time between bindover and indictment was 45 days.

Each felony trial division is headed by an Assistant District Attorney General who assumes responsibility for serious felonys, controls assignments of other cases to the other two Assistant District Attorney Generals and exercises general control over the plea negotiation process. In certain cases, the supervisor of the Criminal Court Division or the District Attorney General himself assumes plea negotiation responsibility. A unique aspect of plea negotiation is that trial prosecutors can bargain on charge, length of sentence and facility where the sentence is to be served since the Shelby County Correctional Center is licensed to house prisoners for up to seven years and is an alternative to state prison.

- Law Enforcement

The law enforcement agencies of the three test sites, while reflecting the distinct atmospheres and environments of their communities, are in many ways quite similar. Only the Memphis Police Department with over 1600 sworn and civilian personnel can be considered a large urban police force. The major pretrial detention responsibility at each site is assumed by the elected county sheriff although there are other enforcement agencies, most notably the Passaic and Patterson, N.J. police departments, which do house arrestees for a time.

The law enforcement agencies are faced with a number of critical problems. For example, each of the sites has a jail overcrowding problem. In Palm Beach and Passaic Counties, this problem is endemic and any effort to reduce the pretrial jail population is supported. In Shelby County, the costs of housing

a defendant in the massive new county jail escalate after 72 hours of detention. The more defendants who can be released within 72 hours, the less cost to be borne by the local system.

Pretrial release, while supported by the sheriffs, is usually opposed by the police. Other tensions between police and sheriff's offices do exist and in Shelby County have caused the Memphis Police Department and the Sheriff's Office to resist efforts to create an integrated metropolitan police force. However, they have participated in a metropolitan effort to upgrade drug enforcement efforts. Palm Beach County law enforcement agencies also have been involved in aggressive efforts to stop drug trafficking, and work with the federal strike force in south Florida was a part of those efforts.

- Ancillary Agencies

Ancillary agencies are those agencies, such as pre-trial release programs, diversion programs, and alternative treatment programs, which are involved in the criminal justice process, but operate outside of the formal administration of justice. They are included because they are important elements of the systems within which they operate.

Pretrial Release. There is an organization at each site which screens defendants to support the bail setting process; however, only one, the Shelby County Pretrial Services Agency (PTS), can actually be considered a pretrial release program. In Passaic County the bail unit of the county probation department, screens arrestees and gives information to judges regarding bail. In Palm Beach County, staff of the Treatment Alternatives to Street Crime Project (TASC) also provide this service. However, the Shelby County PTS screens defendants, makes recommendations to the judge and supervises defendants released on their own recognizance (ROR) insuring their appearance at court. PTS is an independent arm of county government and enjoys an excellent reputation in the system.

Of the three pretrial agencies, only PTS had an important role in the ERDC Field Test. PTS staff conducted the indigency determination/eligibility screening function for the test.

Diversion. Diversion or "deferred prosecution" is available to first time defendants accused of minor felonies at each site. While broad eligibility criteria are established by statute, each prosecutor has limited the range of the diversion option in his jurisdiction. Only in Passaic County does there appear to be any latitude in awarding diversion. Supervision of divertees is the responsibility of units of the probation departments in Palm Beach and Passaic Counties. In Shelby County, PTS assumes that responsibility.

Public defender participation in diversion decision making, therefore, is most evident in Passaic County since diversion occurred late enough in the process to enable a trial attorney's involvement. In Palm Beach and Shelby Counties, diversion is usually available only during the early case screening period, but there is some limited post-indictment diversion in Shelby County. In Passaic County, a defendant can petition for diversion only after arraignment on an indictment.

Treatment Alternatives. While each site has a range of social service and rehabilitative options, few if any are involved early in the adjudicatory process. The Palm Beach and Shelby Counties Public Defender's Offices did have units to develop sentencing alternatives but neither involved these units in the test.

THE FIELD TEST AS PLANNED

Each test site public defender office was required to submit a grant application detailing the operational procedures it proposed to use in implementing the field test. After grant award in March of 1982, ODTD staff and consultants worked together with each office to refine and update the plans. URSA Institute evaluation staff also participated in these efforts.

The site plans all addressed the mandatory criteria set out in the Test Design Document and by and large the criteria were satisfied. The criteria which remained somewhat in question included:

- 1200 Case Minimum--There was some question that Passaic and Shelby Counties could generate the required 1200 cases called for in the test design during the projected test period. The Passaic County office shifted from an original plan designating four communities as test targets to two communities--Passaic and Patterson. The Shelby County office served fewer clients in Municipal Court than it did in Criminal Court, and there was some speculation that the private bar would resist any attempts by the office to expand its Municipal Court caseload.
- Early Discovery--The discovery rules in each of the test sites are controlled by state statute and case law. None of the jurisdictions had provision for early discovery called for in the design other than receipt of the Affidavit of Complaint and/or an arrest report. Full reciprocal discovery occurred only pursuant to motion after arraignment on the indictment or information. There were concerns that the full impact of ERDC might not be realized because of the limits on early discovery which existed at each test site.
- Public Defender Staffing--There were distinctions between test and control group staffing at the sites. In Passaic County, during municipal court processing, the two test attorneys were staff of the office while the control attorneys were non-staff contract attorneys. Test attorneys represented clients from arrest through Preliminary Hearings while control attorneys represented clients only at Preliminary Hearings. In Palm Beach County, four attorneys and two investigators staffed the test divisions and three attorneys and one investigator staffed the control divisions. Under Palm Beach County's vertical representation plan, test attorneys handled cases from arrest through disposition while control attorneys handled cases from Arraignment in Circuit Court through disposition. In Shelby County, three test public defenders handled test cases from First Appearance through the indictment stage while two control attorneys handled cases from appointment through the Preliminary Hearing.

The following discussions summarize the implementation plans developed by the test sites. They focus upon the key elements of the test design and include the methods adopted by each site to screen for indigency, randomize into test and control groups, represent clients within 24 hours of arrest, conduct early investigation, and provide continuous representation to clients through the criminal justice process.

Passaic County Test Process: The Multijurisdictional Plan

The plan of the Passaic County Public Defender's Office was characterized by an attempt to provide early representation services within a multijurisdictional setting. Two test communities, Patterson and Passaic, the cities with the heaviest concentration of crime in the county, were the target municipalities. Randomization was to be controlled by the following scheduling system. For a two week period test services would be delivered in one of the target communities. During that period, the test attorneys were responsible for all eligible defendants who were arrested for indictable offenses in the community. Therefore, for two weeks, Patterson would be designated the test site and the test staff handled all cases accordingly, while Passaic would be designated the control site and cases processed normally. During the following two weeks, Passaic would become the test site and Patterson the control site and so on through the term of the Field Test. The Passaic County random assignment scheme may be characterized as "Timed Randomization."

The early contact aspects of the test process was planned as follows. The two test attorneys were to be in communication with the county jail and target site lock-ups on a regular basis. When an individual was booked, one of the test staff, usually an attorney, would go to the lock-up to gain access to the defendant, screen him or her for eligibility using the procedures established by the office, and interview the defendant to gather the salient factors of the case. Thereupon the attorney represented the client at First Appearance, directed any needed early investigation, and represented the defendant at the Preliminary Hearing.

As a special negotiating component, test attorneys were authorized to waive indictment and enter a plea on an accusation in Superior Court on those cases where such a procedure was appropriate. The non-staff attorneys who handled control cases were not authorized to use the accusation method.

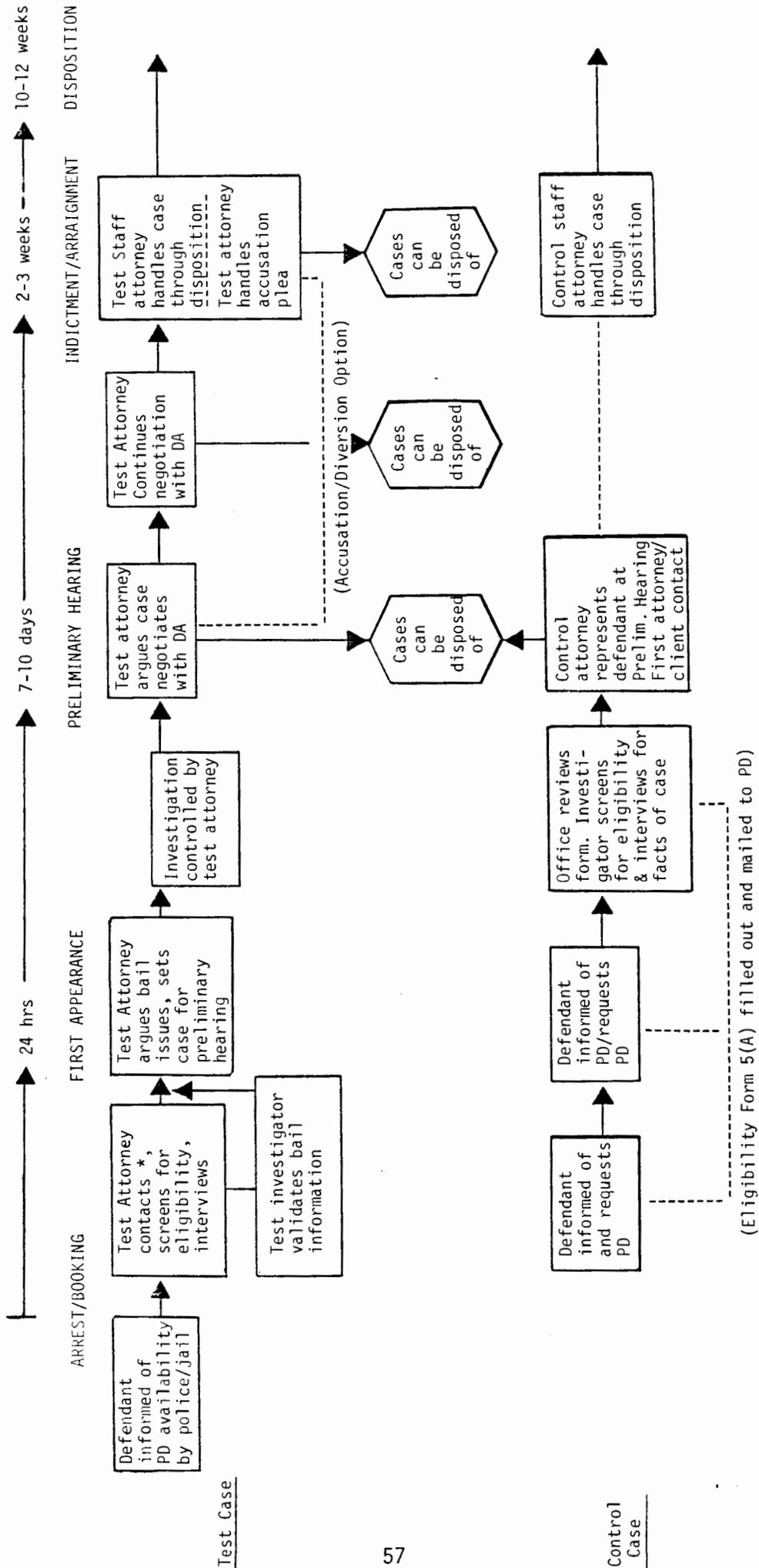
The Passaic County Public Defender's Office uses a horizontal representation system and continued to do so during the test. Given this fact, a special

assignment system was set up to accommodate the test in the four Superior Court Divisions which received experimental cases. In each division one attorney was designated the test attorney and one was designated the control attorney. Each was to be assigned only those types of cases. The assignment process was to be controlled centrally and thus test and control conditions were preserved where possible throughout the adjudication process.

The following schematic graphically depicts the planned test process in Passaic County.

Figure 1

TEST PROCESS: PASSAIC COUNTY



Test Case

Control Case

Palm Beach County Test Process: The Vertical Representation Plan

The Palm Beach County Public Defender's Office approach to the ERDC Field Test was characterized by a fully verticalized representation process. Two test trial divisions out of five were selected to implement the test. Vertical representation by court division was made possible by the fact that court division assignments were automatically made by the county computer system soon after booking. This enabled the Public Defender's Office to know the eventual Circuit Court divisional assignment for each case. Divisional assignments were made by the computer on a random basis. Randomization was controlled by using the automated division assignment process.

The Palm Beach County grantee had the largest test staff of the three sites. Each test division contained four attorneys who were supported by two investigators, one witness interviewer and one full-time and one half-time secretary.

The test process in Palm Beach County was to proceed as follows. Each morning at 8:30 the witness interviewers were to obtain copies of the First Appearance list, to determine which defendants were assigned to the test divisions, and to interview them in the jail. The interviewers used the forms developed by the court in screening clients for eligibility and gathered information helpful for bail discussions. They then verified bail information and turned in their materials to the test secretary who made the attorney assignments. Test attorneys were to interview defendants prior to First Appearance and, upon appointment by the County Court judge, were to represent them at First Appearance. During the 21-day waiting period, the test investigators were to actively investigate cases under the direction of the test attorney, and test attorneys were to negotiate with the Intake Division of the State Attorney's Office regarding the possible settlement of cases. Upon Arraignment in Circuit Court, the test attorneys continued case preparation activities and interacted with the trial prosecutors in their divisions.

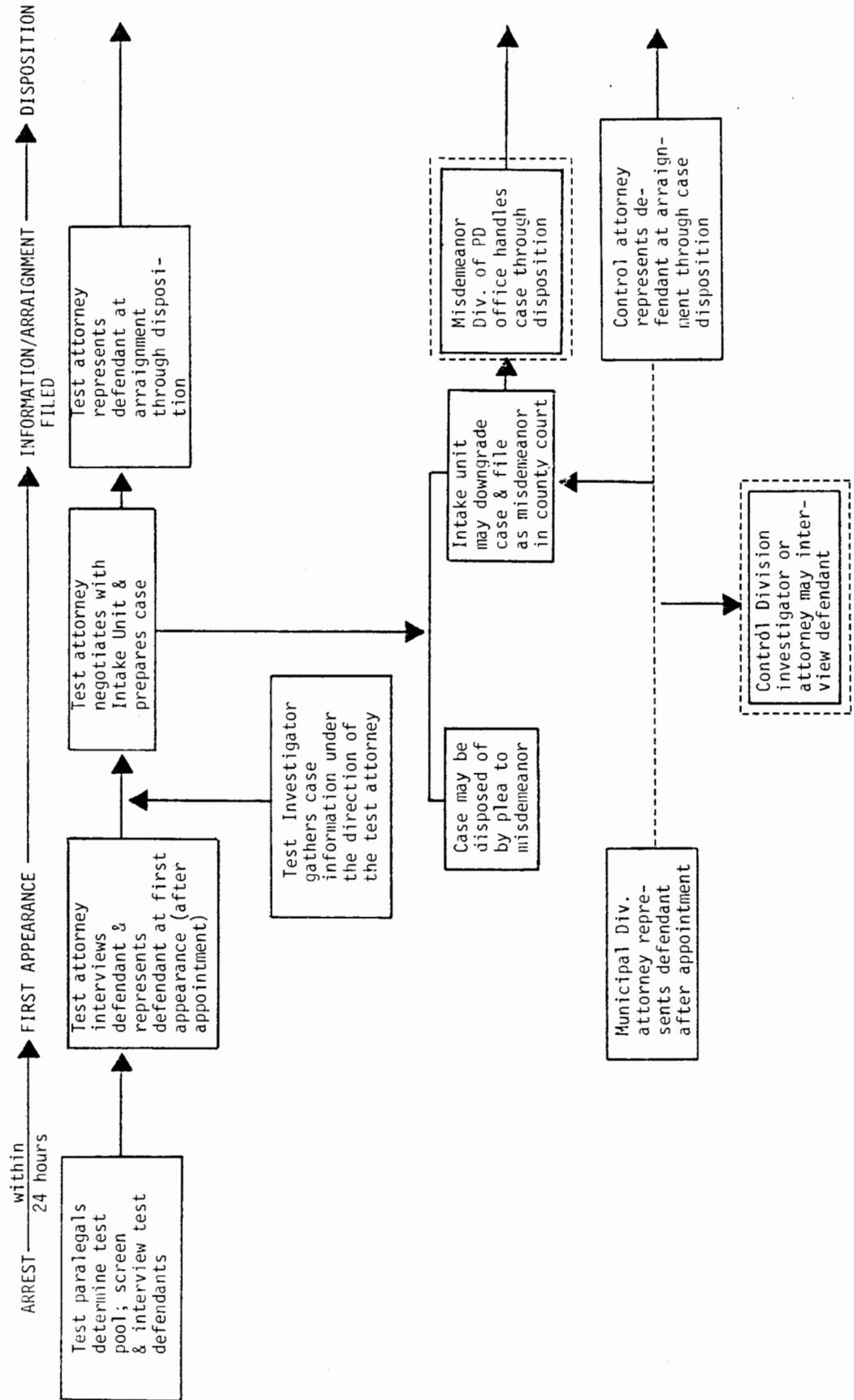
Control cases in the three (subsequently four) non-test divisions were to be handled in the routine manner with limited representation provided defendants

at First Appearance and formal representation deferred until Arraignment in Circuit Court.

The following schematic depicts the test process in Palm Beach County.

Figure 2

TEST PROCESS: PALM BEACH COUNTY



Shelby County Test Process: The Eligibility Screening Plan

The key elements of the ERDC Field Test planned for Shelby County included the earlier appointment of the public defender and the continuous representation of defendants by the test staff from appointment through the indictment stage. Randomization of cases was to be characterized by a true random assignment process whereby eligible defendants were to be assigned to the test and control conditions on the basis of their booking number. The UI on-site field researcher, using a random number system, was to inform the test secretary on a daily basis whether test cases, drawn from the pool of eligible defendants, were those with odd or even booking numbers. The test team included three attorneys, one of whom served as the coordinator of the test, an investigator and a secretary. Originally, the test staff was to include a part-time social worker, but this position had to be dropped to allow for a special subcontract with the Pretrial Services Agency (PTS) to support the hiring of a person to conduct the eligibility screening and indigency determination functions. It had been determined early on that the private bar and the judiciary would not allow the office to determine indigency and PTS was the logical choice to assume this function.

The test process was to proceed as follows. Each morning between 6:00 a.m. and 7:30 a.m. and each afternoon from 1:00 p.m. to 3:00 p.m. a Pretrial Services Agency staff member was to interview every person arrested on felony charges since the last jail sweep. The interview was to document whether the defendant wished to be represented by a public defender and whether the defendant was indigent and eligible for such representation.

At the conclusion of each round of interviews, the PTS interviewer was to deliver the list of eligible defendants to the test secretary. The secretary randomized cases into test and control groups using the booking number system, opened a file for test cases and assigned cases to the test attorneys. Test attorneys interviewed the test defendants prior to First Appearance and were to have them execute an affidavit attesting to their indigency and eligibility to receive public defender services. This affidavit was used to further placate the private bar objections to ERDC.

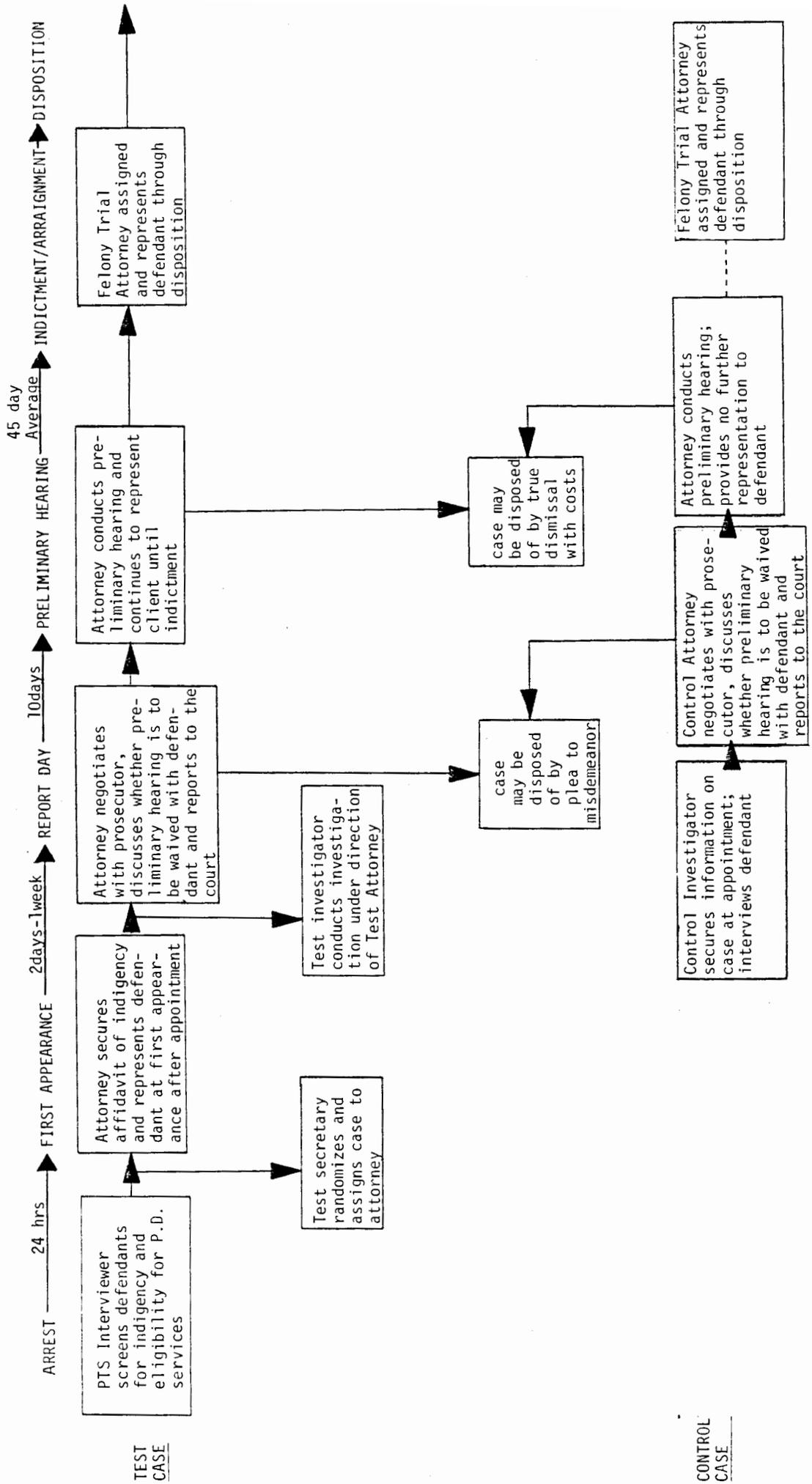
At First Appearance the test attorney was to submit the affidavit to the judge and, upon appointment, was to represent the defendant during the bail setting process, at the report date, during negotiations with the prosecutor, at the Preliminary Hearing and through the indictment stage. Control attorneys were to continue to represent defendants from appointment until the Preliminary Hearing.

Upon Arraignment in Criminal Court, each felony trial attorney was to be assigned both test and control cases since, unlike Passaic County, there was no way to anticipate divisional assignments prior to indictment. Trial attorneys were to represent defendants, test and control, from appointment through case disposition.

The following schematic depicts the test process in Shelby County.

Figure 3

TEST PROCESS: SHELBY COUNTY



TEST CASE

CONTROL CASE

Figure 4
ERDC TEST SITE CHARACTERISTICS

	Passaic County, New Jersey	Palm Beach County, Florida	Shelby County (Memphis), Tennessee
SITE CHARACTERISTICS			
• population	• 440,000 (approx.)	• 573,125	• 777,000
• target area	• municipalities of Patterson and Passaic	• entire county with the exception of the area of Belle Glade	• Entire county with exception of 4 small municipalities
Delinquency Cases:			
• Arrests	• 4233 (indictable complaints 1980)	• 8381 (1981); 8395 (1980)	• 5270 (1980)
• Indictments/Bindovers/Informations	• 2500 (approx.)	• 4315 (1981) 4805 (1980)-informations filed	• 4392 (1980 bound over or transferred to Grand Jury)
Key Contextual Issues:			
	• State Public Defender has been replaced occasioning changes in central office	• South Florida crime wave an issue with recent refugees from Cuba & Haiti expected to increase crime rate	• Judge sentencing legislation will affect case processing
	• Legislature may pass restrictive mandatory minimum sentencing (gun use law already in place)	• Legislature considering preventive detention, mandatory minimum sentencing	• 9/82 system reorganization from City to County will affect lower court case processing, jail and bail issues, judgeships, court clerks, etc.
	• Governor's moratorium on transfers to state prison exacerbates jail overcrowding	• November elections may change scene somewhat (i.e., State Attorney running for Congress).	• Legislation calling for waivers of juveniles over age 12, codification of bail requirements, mandatory minimums for sentences
	• Budget and fiscal crisis state-wide may present problems		• August elections may affect local system--judges, county mayor, sheriff, etc.
SYSTEM ORGANIZATION			
Public Defender			
--Office organization	• State PD system with local PD appointed by State PD	• State PD, but local PD is elected and operates autonomously. Misdemeanor Division, Felony Division (5 divisions--3 attorneys in each), Capital Division & Appeals Division, 5 investigators, adequate clerical support, social services unit (1 person)	• County PD appointed by County Mayor, serves part-time. City Court Division (1980), Criminal Court Division (8 divisions, 1 full-time & 1 part-time attorney in each), 1 Capital Div. active Social Services Division (1 person currently) limited clerical support
--Caseload	• 2400 cases--appointment power vested in PD	• 3500+ cases (appointment at first appearance, case opened after arraignment)	• 1400 City Court--appointment limited due to private bar activity; 2400 after arraignment (cases opened formally after appointment in Criminal Court). Numerous defendants served by private counsel in City Court are served by PD in Criminal Court
--Case Assignment and Handling	• APDs assigned cases on rotational basis, pre-arraignment activities conducted by investigators and non-staff attorneys; staff attorneys enter case after arraignment on indictment. Conflict cases may be handled by office due to recent budget cuts.	• Cases assigned randomly to divisions by county computer. Limited pre-arraignment contact by misdemeanor or investigator staff. After arraignment cases assigned to division attorneys on rotational basis, investigators tied to divisions and usually do not get involved until arraignment. Conflict cases are appointed out.	• In City Court cases are handled by one of two attorneys. Many defendants retain private counsel in City Court. After indictment Clerk of Court assigns cases to 8 divisions. After PD appointment assignments are made by the office--3 cases to full-time attorney out of every four. Up to three defendants in conflict situation are served by the office.
Prosecutor			
--Organization	• Prosecutor appointed by governor for five years but answerable to county for budget. 16 assistant prosecutors--2 to each division, there are specialized units also, limited data processing capability, limited investigatory capacity	• State's Attorney selected, 151 staff in office, numerous specialized units--Intake, Felony (3 ASAs per division) other specialized divisions. Highly organized and specialized; clear systems approach to prosecution, reasonably high investigatory capacity	• Elected District Attorney General, City Court Unit (3 AAGs), Grand Jury Unit (3 AAGs), and Criminal Court Unit (8 divisions; 3 AAGs in each). Limited data collection and reporting capabilities; City Court Unit only one to collect aggregate statistics on activities; limited investigatory capacity

Figure 4 (cont'd)

Passaic County, New Jersey

Palm Beach County, Florida

Shelby County (Memphis) TN

- Case Screening
 - Vertical system which has divisional APs covering municipal courts from preliminary hearing through disposition. Significant number of cases (50%) screened out at PH and at Grand Jury levels. (Prosecutor has initiated (3/1) a case screening unit of 1 or 2 men to screen out cases prior to preliminary hearing)
 - Plea Bargaining
 - Pre-arraignment plea bargaining is allowed. Post arraignment plea bargaining must be accomplished within 60 days of arraignment or indictment (proposed test process includes possibility of waiving indictment and pleading to an accusation)
 - Courts
 - Organization
 - 14 municipal courts--3 yr. appointments for judges. Handle cases thru preliminary hearing, but cannot set pleas on felonies and cannot set bail on certain offenses
 - 8 superior court divisions, one administrative/assignment judge who makes policy and sets assignments and will promote test
 - Interesting Elements
 - Speedy trial program is rigorously promoted by assignment judge
 - Courts are consolidated through regionalization, appointed clerk of court
 - State Administrator of Courts has administrative power over local courts
 - Other System Elements
 - Police
 - Municipal PDs County Sheriff Police report made available prior to preliminary hearing
 - Pretrial Release
 - Bail unit in probation office screens cases and makes bail recommendations. Strong advocate for OR and new 10% bail system, but not actively involved in process
- Intake unit of 4 ASAs screen out approximately 50% of cases and have great latitude in doing so. Defense rarely interacts with intake unit which relies on police report files information within 21 days of arrest
 - Pre-arraignment plea-bargaining is rare, post arraignment there is a policy of no charge bargaining. ASAs will sentence bargain by compromising sentencing guideline test point system
 - Consolidated court system with County Courts (lower) and Circuit Courts (upper) having county-wide jurisdiction. One county court division handles felony first appearances, all subsequent case processing in Circuit Court. Five Circuit Court divisions which are headed by a chief judge who can assist test
 - Operating in Circuit Court under sentencing guidelines Field Test. Expected to be made mandatory 4/1 by Supreme Court
 - No preliminary hearing, first appearance settles probable cause using only affidavit of complaint
 - 37 municipalities. West Palm Beach PD largest department. Police must prepare state's case within 21 days of arrest or case is nolle prossed. On line booking system at jail ties into court computer
 - TASC does classification screenings for jail and prepares material for bail setting. Not actively involved in process. Prosecutor makes recommendations for OR
- City Court unit screens out 20% of cases through reductions to misdemeanors or diversions. Cases where probable cause is not found are not dismissed outright but are transferred to grand jury unit. Grand jury unit reviews State's case (police report) and either dismisses or presents to grand jury
 - In City Court, AAGs will reduce felonies only up to 3rd degree burglary. Will bargain reduction in bail for a waiver of preliminary hearing. No bargaining in Grand Jury Unit and no waiver of indictment. Bargaining in Criminal Court includes charge, sentence, and location bargaining
 - Courts are separate (until reorganization). There will be one division of lower court to handle felony processing. No judge manager, administration by elected clerk. Criminal courts also without assignment judge. 8 divisions administered by elected clerk. All judges are elected and operate autonomously
 - Lower court not a court of record. Preliminary hearings do not dispose of cases
 - Jury sentencing prevails until new legislation is operative (7.82)
 - Memphis police & Shelby City Sheriff are large organizations. MPD has ICAP system. Investigators prepare affidavit of complaint and participate in all elements of CJ process. Metropolitan unit for drug cases has been organized
 - Pretrial Services Department actively involved in release process. 60% of all felony defendants are interviewed (others have too long a record or have other holds). Staff makes presentations in city and criminal courts, participates in bail hearings, and monitors ORed defendants.

Figure 4 (cont'd)

Passaic County, NJ

Palm Beach County, FL

Shelby County (Memphis), TN

--Diversion

- Pre-trial Intervention Unit, within probation department, administrators deferred prosecution program answering to prosecutor. Defense makes formal request only after arraignment on indictment, and program has 23 days to screen. Prosecutor accepts 96% of all recommendations for diversion. Divertees are monitored by PTI until completion of plan. 8% of divertees are revoked. The program is limited to persons with minimal records who are accused of lesser felonies

- Deferred prosecution is not an alternative widely used by prosecutor. Mental health or drug diversion is possible in limited number of cases but prosecution is not deferred. Public defender has little or no involvement in diversion. Probation Department monitors divertees.

- Pretrial Service Agency runs the diversion program. Eligible clients are identified at or around first appearance and cases are disposed of in Municipal Court. Screening is considerable taking up to 2 months. Recommendations are invariably accepted, but only first time offenders with lesser felony charges are eligible. There are a limited number of cases diverted in Criminal Court. Term of diversion is one year with close supervision. Successful completion results in dismissal and expungement of record upon motion by defense

FIELD TEST DESIGN
PROCESS ISSUES

● Eligibility
Screening

- Current procedures (5A) form will be used by attorney or investigator should be no problem other than negotiating access to clients in overcrowded jail. Process for lock-ups will need to be negotiated

- Procedures have been established with court. Intern will screen defendants using approved format. Access to clients may be difficult. TASC interviewers might be a resource

- PTS to handle screening under subcontract. Procedures will have to be established with judges, PTR, clerk of court, and city and county jails. Initial access will be critical

● Randomization

- Two week on; two week off system will be used, and should be sufficient to assure random assignment. Clear designations of start and finish of period should be made and schedule made available to courts & jail

- Two divisions are assigned to test Randomization is assured with on-line court division assignment. Office should research vagaries in system to assure compatibility with test

- Randomization process using odd/even booking numbers of eligible pool provided by PTS. Test secretary randomizes

● Initial
Attorney
Contact

- Test attorneys are expected to make first contact. Thus, contact within 24 hours of arrest, and prior to first appearance seem to be assured. Nights and weekends will be covered using an answering service

- Intern is to make first contact. There is some question of whether attorney will interview client prior to first appearance. Problems with computer may make early representation difficult (i.e., too many cases in a day, computer goes down.)

- Attorney under application is 2nd person to get involved in test after screener. May be difficult to get there before first appearance, however, office is committed to plan outlined in application.

● Appointment

- PD has appointment power/no problem for test. Assignment of attorney is not established.

- Little screening is done at first appearance, so it may not be a problem for office. However, on THOs, PD must be reappointed after arraignment. Query whether "THO" appointments are appropriate for test? Process of assigning cases for ERDC staff. Job of test secretary could present a problem due to the expanded caseloads in the test divisions and the need for current division attorneys to maintain their pre-test caseloads

- A very critical issue is whether judges will appoint PD at first appearance. If not we may not have many true test cases and ERDC will be compromised. The possibility of having new judges in September make this a reoccurring problem since no one judge can commit the court. Assignment process has not been developed. It may mirror the City Court prosecutor or be on a straight case assignment basis

● Early
Investigation

- Office now conducts the most extensive pre-arraignment investigation in the test and is organized to do investigation in the absence of attorney direction. Under test this process will be enhanced with the addition of an ERDC investigator

- Investigation is not routinely initiated prior to arraignment in Circuit Court. Investigators are now tied to divisions so only Test Division investigators will be involved in ERDC. ERDC should considerably improve office investigatory practices, however, expanded caseloads may limit work possible on individual cases

- Pre-arraignment investigation in City Court is handled by one investigator and is limited. Post-arraignment investigation is conducted by investigators tied to divisions. The ERDC investigator may not be able to do all that is projected in the application due to caseload, but will do more than control investigators.

Figure 4 (cont'd)

Passaic County, NJ

Palm Beach County, FL

Shelby County (Memphis), TN

- | | | | |
|--|---|---|---|
| <ul style="list-style-type: none"> ● Early Case Processing | <ul style="list-style-type: none"> ● Test attorneys expect to make bail motions and to argue preliminary hearings. The extent of their negotiation activities will be controlled by the prosecutor's new screening unit and the ability of Assistant Prosecutors to negotiate prior to indictment | <ul style="list-style-type: none"> ● Access to the intake unit will be critical since, other than investigation, negotiations with intake will be the most critical activity conducted by test attorneys prior to arraignment in Circuit Court. Hawthorne contamination is possible with Municipal Court Unit | <ul style="list-style-type: none"> ● ERDC test attorneys will mirror current City Court processing. However, contact with PTS may increase diversions, social services unit staff may be involved earlier, and the ERDC Test will attempt to interact with the Grand Jury Unit. Hawthorne contamination is possible with City Court Unit. |
| <ul style="list-style-type: none"> ● Superior Court Processing | <ul style="list-style-type: none"> ● Trial attorneys will be separated into test and control sections. Superior court processing will proceed as normal, except ERDC Test attorneys may waive indictment and plea to an accusation in superior court on some cases | <ul style="list-style-type: none"> ● The Test is set up to examine the impact of vertical representation. There should be no impact on the non-test divisions | <ul style="list-style-type: none"> ● There is no way of separating out test and control condition subsequent to City Court processing, thus, all felony attorneys will be assigned test and control cases. This should not be a problem, but the office and the evaluation should monitor the impact this has on superior court processing |
| <ul style="list-style-type: none"> ● Data Gathering and Recording | <ul style="list-style-type: none"> ● A wide range of data are available on each case from both the local office and the State Central Office. Construction of a baseline is possible. Activities are recorded on case files, but attorneys do not log in the time they spent on cases nor do they log in every contact with the client. The test will endeavor to get such information recorded | <ul style="list-style-type: none"> ● Current case files are limited in the nature of data recorded. Baseline data will have to be collected from closed files. Attorneys do not routinely record all activities. Requests for investigation are recorded, but attorneys vary. New case files are proposed for the test and should be encouraged for the office as a whole. | <ul style="list-style-type: none"> ● Represents the most extensive recording of attorney activity after Criminal Court arraignment. Pre-arraignment activities are recorded but not routinely. Specific case recording requirements should be requested for City Court processing |
| <ul style="list-style-type: none"> ● Data Management | <ul style="list-style-type: none"> ● Files are opened early and all files are centrally managed and updated. Office has sufficient clerical support to accommodate test. The on-line bail list is considered the best in the state and will be instrumental in assessing length of detention. The Speedy Trial Project records case processing time for each municipality & each court division. | <ul style="list-style-type: none"> ● Files are not opened until after arraignment and there is limited data tracked on a masterfile. Some changes in data management will probably be occasioned by the test. The court docket system is automated and screens will be located in the office this should facilitate the test. | <ul style="list-style-type: none"> ● Files are not opened until arraignment but there is a centralized data management system in operation. Both City & Criminal courts have computerized systems but they are not compatible. This should not be a problem after reorganization. |

III--EVALUATION APPROACH AND METHODOLOGY

THE DESIGN, IMPLEMENTATION, AND ASSESSMENT OF THE EVALUATION EFFORT

This chapter describes the approach and methodology of the evaluation of the Early Representation by Defense Counsel (ERDC) Field Test sponsored by the National Institute of Justice (NIJ). It begins with an overview of the evaluation, including both the objectives of the evaluation and the scope and methods employed in the effort. Next, a description of the study components and data sources for this report are discussed. Some of the problems encountered in implementing the evaluation design are presented in the final section.

Several policy and programmatic considerations influenced the evaluation design and its implementation. The description and analysis of social interventions in an action setting raises numerous methodological choices. These choices are not limited to decisions about which methods or techniques should be employed, but include more fundamental issues such as the selection of variables to operationalize theory, and the measurement and attribution of "change." Sensitivity to and appropriate resolution of issues such as these held particular importance for the successful evaluation of the ERDC Field Test.

As described in the previous chapter, the criminal justice processes of the three sites chosen to implement the ERDC Field Test varied greatly. What the literature and practitioners have come to call the Criminal Justice System is, perhaps, more accurately termed a process than a system. That is, the delivery of justice in this country involves the employment of laws through jurisdictionally specified procedures. As such, the justice system reflects a series of standardized legal rules rather than standardized legal behaviors. For these reasons, the approach and methods employed by the evaluation had to be sensitive enough to capture the broad jurisdictional differences that existed while at the same time providing for policy relevant information. This chapter discusses these factors in more detail.

APPROACH AND METHODS

The ERDC Field Test was a national policy experiment designed to test the efficacy of early representation for indigent, non-capital felony defendants. The design of the Field Test (NIJ, May 1981) set forth not only program selection, design, and implementation criteria, but evaluation design criteria as well. The test design mandated that an experimental design be employed by the evaluation. The design also stipulated that the ERDC evaluation should encompass the full period from arrest through case disposition. However, while the document articulated the principles for the evaluation, the operationalization of these principles required the involvement and participation of the NIJ program managers, key actors at the three Test sites, and evaluation staff.

Evaluation Objectives

Evaluation activities were guided by four objectives:

- to assess the extent to which the ERDC Field Test project was implemented;
- to assess the extent to which program management policies have had an effect on the range of services provided and the timing of the delivery of those services in developing early representation capabilities;
- to assess the impact of early representation on the attorney-client relationship; and
- to assess the impact of early representation on the criminal justice system.

The first objective, assessment of the extent of ERDC implementation, suggested the need for process documentation. Hence, to fulfill this objective it was necessary for the evaluation to develop a descriptive component to document the methods and procedures of ERDC implementation at each site. Of special importance was the ability to identify local factors which either facilitated or hindered the implementation of ERDC services. Such descriptive data not

only could serve to delineate what occurred at each site during the service delivery phase of the Field Test, but also could be used to identify the essential features of ERDC for replication by other jurisdictions interested in this model of representation.

The latter three evaluation objectives correspond to the three overall goals of the Field Test. They reflect the three particular areas of outcome which hold national policy significance. Exploration of each of these outcome areas has relevance to both practitioners and policy makers; cumulatively, data regarding these outcomes provide documentation of the effects of the ERDC representational method.

General Approach

● Overview

In developing an evaluation methodology for the ERDC Field Test, it was recognized that the study needed to be both scientifically rigorous and pragmatic. URSA Institute's experience in field evaluations suggested the importance of a flexible approach to the conduct of an effort of this sort. A rigid methodology which did not allow for naturally occurring changes in project activities or operating environments would be incapable of capturing important data elements. As other criminal justice researchers have indicated (cf., Casper, 1983), changes in the justice system are often incremental and methods used in the study of justice innovations must be capable of detecting such incremental modifications.

In light of the evaluation objectives and principles articulated by the test design, URSA Institute undertook an ambitious and multifaceted approach to evaluation activities. The Evaluation Workplan (September, 1982) discusses in detail the range of methods used as well as the justification for method selection. The approach assumed by the URSA Institute in the evaluation of the ERDC Field Test included the employment of multiple data collection methods. For example, URSA Institute utilized eight data gathering activities to conduct the evaluation. These activities included: (1) a case intake and monitoring procedure; (2) a case tracking procedure; (3) a public defender attorney interview; (4) a public defender investigator interview; (5) a public defender support staff interview; (6) a key criminal justice actor interview with special

items included for judges, prosecutors, jail staff and pretrial services staff; (7) a client followup interview; and (8) formal and participant observations of key events. These data gathering techniques are described more fully in subsequent sections.

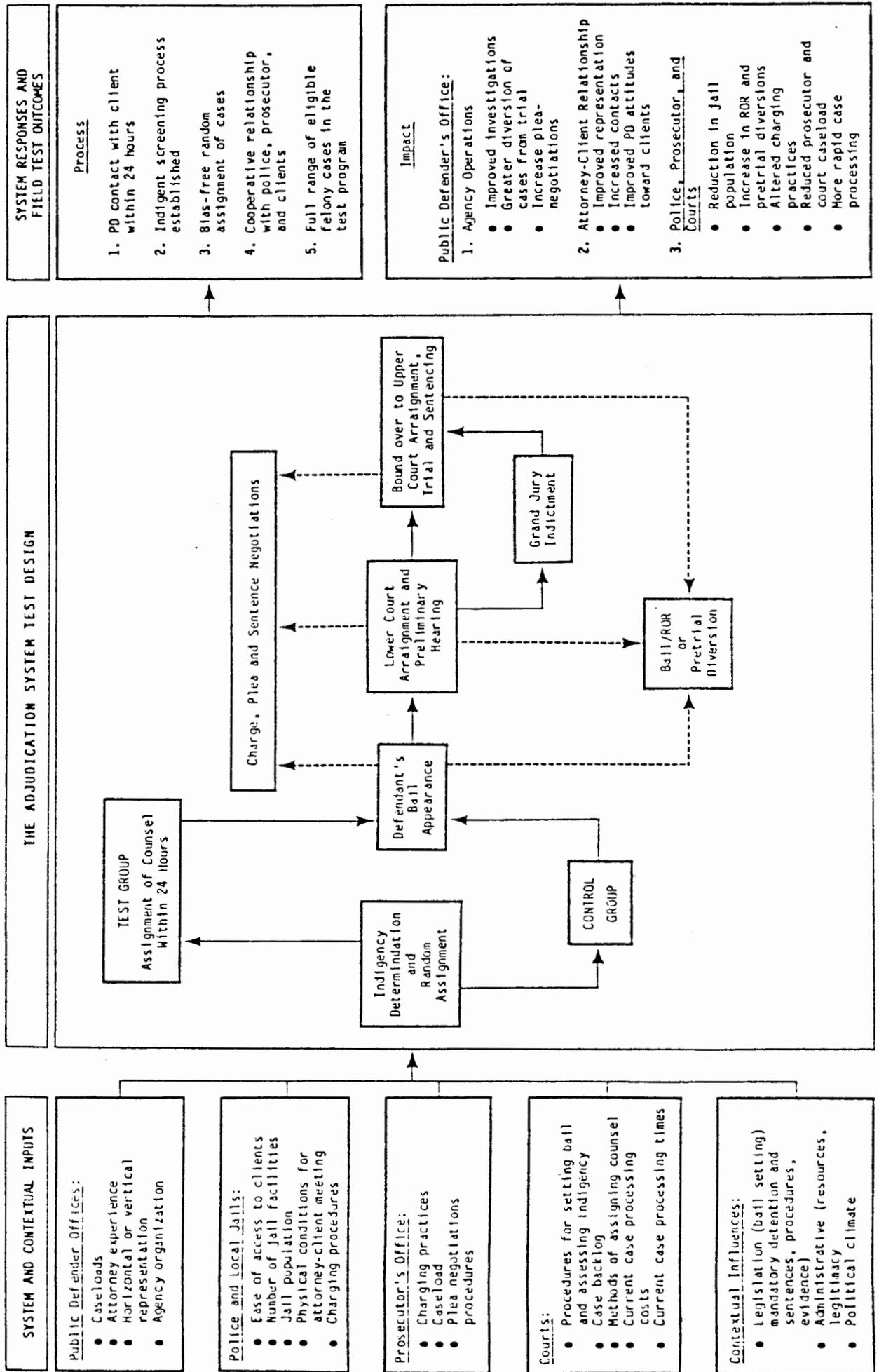
A central feature of UI's approach to the ERDC Field Test evaluation was the use of on-site field researchers. A full-time field worker was hired at each site and, by agreement, located in the public defender office. Their presence in each of the participating offices, and integration into the office routine, enabled the evaluation to document subtle changes in attitudes and operations that otherwise might not have been captured by more traditional evaluation techniques. In their role as participant observers, on-site evaluation staff were expected to be unobtrusive, yet not isolated from events and activities affecting the implementation and outcomes of the Field Test. Their field notes provided the evaluation with a wealth of descriptive data regarding systemic and contextual changes that influenced the ERDC program as well as the procedures and activities involved in implementing the field test in each site.

The field researchers also were responsible for coordinating case tracking for monitoring the quality of information recorded at each site and for data transfer. Their on-site presence proved to be essential to the conduct of the evaluation.

The general conceptual framework which guided the evaluation is graphically displayed in Figure 5. As the figure illustrates, systemic and contextual inputs influence the adjudication process; this process in turn, yields procedural, process, and case outcomes. Assuming that systemic and contextual inputs are held constant, the introduction of a change in the adjudicatory system -- such as the early representation services provided under the Field Test -- would be causally related to any observed differences in outcomes. The conceptual framework was operationalized through the activities of the process and impact studies. These studies, designed to address the four objectives of the evaluation, are described in more detail below.

Figure 5

EARLY REPRESENTATION BY DEFENSE COUNSEL CONCEPTUAL FRAMEWORK



- Process Study

In conducting the process study, UI adopted a general approach reflective of a temporal view of organizational development. Accordingly, four areas of investigation were identified, including:

- a baseline or pre-implementation stage;
- a developmental or startup stage;
- an implementation or delivery stage; and
- an institutionalization or wind down stage.

The process study also examined, to the extent possible, cost factors associated with the provision of early representation. Finally, the process study identified essential and replicable features of the test design which could be utilized by other jurisdictions interested in providing this type of representation.

Embodied in this approach was the flexibility to permit data acquisition and analysis to span the four developmental stages while allowing the focus of study to shift over time. Central to this approach was the need to establish regularized (and commensurable) data collection procedures and a feedback process for project management.

The process data fulfilled three central purposes. First, these data were utilized to monitor the implementation of the test design by each of the three public defender offices. Second, the data provided documentation of the range of services and activities undertaken by the public defender offices during the course of the test period. Third, these data offered useful contextual variables for subsequent outcome analyses.

More specifically, the process study was designed to explore:

- the characteristics of defendants receiving public defender representation;
- the types and range of felony cases represented by the public defender offices;
- the process of implementing the test design by the participating public defender offices so as to ensure the:

- comparability of experimental and control groups,
- early assignment of public defenders to experimental group defendants,
- early contact by public defenders and/or public defender office staff with experimental group defendants,
- continuous representation by test public defenders in lower court;
- early investigation of experimental cases;
- changes over the course of the test period in office operations and the delivery of defendant services;
- the nature of felony case processing so as to:
 - describe the judicial process at each test site,
 - compare experimental and control group experiences;
- those factors which either facilitated or impeded the institutionalization of the ERDC services by each of the participating public defender offices, with emphasis on:
 - continued operational feasibility as perceived by key public defender office personnel,
 - costs associated with institutionalizing early representation,
 - changes and/or accommodations made by other key criminal justice system elements to permit institutionalization, and
 - replicability issues.

Each of these areas was assessed in relation to the developmental stages described above. For example, the evaluation sought to document the nature of felony cases as well as the speed of felony case processing prior to the implementation of the field test, during the startup and implementation stage, and during the ongoing service delivery stage. Exploration of these issues at multiple points in the process of ERDC development permitted the evaluation to describe and assess changes over time. In addition to the questions outlined above, particular issues were identified for each of the four developmental stages. As described in the Evaluation Workplan, the approach to the process study embodied both stage-specific and well as cross-stage issue exploration. A detailed schematic presenting the evaluation questions, data sources, data collection techniques, and data analysis procedures employed in the process study is included as an Appendix of this report.

The presence of the on-site field researchers proved critical to the success of the process study. The field researchers were instructed to maintain detailed field notes documenting the ERDC process as implemented by each test grantee

and the responses made by other system actors to that implementation. Local factors which facilitated or impeded the implementation of test services were documented also. And perhaps most importantly, the on-site evaluation staff were able to record the perspectives and attitudes of those participating in the field test, thus allowing the evaluation to attach underlying "meanings" to actions. Chapter IV of this report presents the findings of the process study, while Volume 2 of this report includes three detailed case studies which highlight the experiences of each grantee in implementing the ERDC design and providing early representation services.

- Impact Study

While the process study was designed to assess how the three grantee sites operationalized the concept of ERDC, the impact study sought to determine the effects associated with the provision of such early representation services. Reflecting NIJ's test design, the impact study was designed to explore the effects early representation on the three major domains of interest:

- public defender office operations;
- the attorney-client relationship; and
- the local criminal justice system.

Affecting change in each of these areas was the primary purpose of the ERDC experiment. The impact study focused on these three areas of potential outcomes and sought to document effects in each area through the application of a variety of methodological techniques. Again, UI adopted an approach to the impact study that permitted flexibility while maintaining rigor.

The experimental design expressed in the Field Test (i.e., the random assignment of defendants into experimental and control conditions) allowed for a greater degree of control and precision than is typically found in applied social science efforts. The variations between the sites and the particular dictates of their local criminal justice processes necessitated attention to site-specific details in the construction of a cross-site design. The decision to use multiple data collection methods, in part, represented an attempt to respond to as well as capture these local nuances.

More specifically, the impact study was designed to explore:

- the effects of ERDC on the public defender office operations, including changes in:
 - office management practices,
 - data management practices,
 - the time associated with case preparation activities,
 - the nature of activities undertaken as part of case preparation,
 - services available through the public defender office,
 - case disposition,
- the effects of ERDC on the attorney-client relationship, including changes in:
 - client attitudes toward and satisfaction with their public defender,
 - attorney attitudes toward their clients,
 - the perceptions of criminal justice system actors regarding Public Defender-client relations; and
- the effects of ERDC on the criminal justice process, focusing on:
 - bail issues,
 - pretrial and adjudicated detention time,
 - case processing time,
 - attitudes toward public defenders,
 - practices and procedures of other criminal justice agencies.

Multiple indicators were designed to assess the above areas. Data sources included case-level information, system data obtained from grantee personnel, former clients and key system actors. A chart illustrating the evaluation questions, data sources, data collection methods, and analytic techniques employed in the impact study is included as an Appendix to this report.

Like many other social systems, some commentators (cf. Casper, 1983) have suggested that the criminal justice system is highly resistant to change. When modifications do occur, they most often are incremental. The ability to affect such systemic changes also is determined partially by the degree of authority and power which the change agent has within the system. In the case of the ERDC Field Test, the change agent was to be the public defender's office, a relatively powerless actor within the criminal justice process. The relative powerlessness of the public defender's office vis-a-vis judges, prosecutors, and law enforcement, combined with the broad and ambitious test goals to be achieved led UI to create an impact study that would be capable of assessing minor as well as major changes.

As with the process study, the presence of on-site field researchers was exceedingly valuable to the conduct of the impact study. The on-site field researchers were able to act as the "eyes and ears" of the evaluation and were able to alert UI core staff to minimal modifications occurring at the sites. Recognizing that some outcomes might not reach "statistical significance," the qualitative data provided by the on-site field researchers as well as that captured by extensive interviews allowed for the identification and assessments of impacts created by the test process.

- Departures from the Test Design

Initial program implementation activities at each of the three sites indicated the need to modify some of the service design criteria. These modifications of the program design reflected the realities of local contextual constraints. The departures from the test design included:

- Expansion of the original test period--In the test design, emphasis was placed on contact by the public defender's office within 24 hours of arrest. Following the initial planning activities at each site, it became apparent that the test period would expand to incorporate other early representation activities. It was assumed by the design team that clients in most jurisdictions were normally represented within 72 hours of arrest, and hence that the test period would focus on activities occurring within the first 24 hours. However, it soon was found that clients in the three test sites were not always contacted within the 72 hour period and often were seen at a much later date by their attorneys. At these three sites only limited representation occurred prior to Arraignment in upper court. Thus, assessment of test activities explored not just the initial 24 hour contact period, but, in addition, documented the additional work of test attorneys and investigators during the one to four week period prior to Arraignment, when control clients were receiving little or no active representation.
- Lack of comprehensive case management systems--the test design suggested that the participating public defender sites "maintain a management information system, or a similar system, as defined by Section 5.2 of the National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States, Final Report, 1976, Page 411."

During URSA Institute's initial review of the test sites' case management practices, it was found that none of the grantee systems for managing case flow and documenting case status would qualify as an adequate MIS.

Moreover, significant variation existed regarding formal case opening and individual case recording. For example, in Shelby and Palm Beach Counties, formal case files were not opened until after Arraignment in upper court. In Passaic County, although hard files were opened upon appointment, date and time of arrest as well as bail status were not routinely collected until discovery information was received. Only in Shelby County did the attorneys and investigators routinely record the activities they performed and the time they spent on each case-- primary data elements required by the design and needed for the evaluation. Thus, the test design assumptions that extant case management systems could provide the evaluation data proved to be incorrect. URSA Institute, in collaboration with NIJ program managers and site personnel, had to design case inventory systems for each site to supplement existing data management practices.

-- Variations in the randomization process--The process by which indigent defendants were to be randomized into test and control groups was graphically presented in Figure 1 of NIJ's test design. The randomization scheme described in the document set forth an experimental design wherein within 24 hours of arrest defendants were to be screened for indigency and, on the basis of that determination, randomly assigned to the test and control conditions. In fact, the complexity of situational variables at each test site dictated early on that the random assignment procedures employed would vary from grantee to grantee. For example, in Palm Beach County, cases were assigned "randomly" soon after booking by computer assignment to test or control court divisions. In Passaic County, cases were to enter the test program on a two week on and two week off basis depending upon the arresting jurisdiction (i.e., City of Passaic vs. the City of Paterson).

Only Shelby County adopted a process paralleling that described in the design document. There, cases were to be assigned on a random basis from a pool of eligible defendants following screening by the Pretrial

Services Agency. Each of these random assignment procedures, adapted to local conditions, was subject to manipulation. In light of these modifications, the evaluation had to closely monitor the random assignment process at each site to ensure the integrity of the Field Test.

EVALUATION COMPONENTS

As the discussions of the process and impact studies indicate, multiple quantitative and qualitative data collection methods were employed in the conduct of the evaluation. To the extent possible and appropriate, the data collection activities were designed to address multiple evaluation questions. For example, interviews conducted with attorneys elicited information regarding office operations, data management systems, attitudes toward clients, and the effects of the test on their jobs. Similarly, the client-based case processing forms, designed as part of UI's case management system, obtained data on all critical case processing events as well as activities performed by office staff on behalf of the client and the times associated with those activities. Thus, the analysis of these case processing data could address issues within two impact areas. The evaluation components and the data collection approaches employed within each are discussed in fuller detail below. Copies of the evaluation instruments are included as an Appendix of this report.

Case Management System

One of the first activities undertaken by evaluation staff was to determine the routine case management practices of the three participating grantees. It was found that the case management systems used by these offices would not be sufficient to support the collection of necessary evaluation data. UI staff obtained copies of all pre-grant client recording forms used by the offices as well as descriptions of their case management systems. The case management system designed by UI attempted, to incorporate and build upon the indigenous data recording systems of the three sites. Two case-level forms were designed for the ERDC Field Test evaluation. They were an Intake Form and a Case Processing Form.

● Intake Forms

Design. An Intake Form was designed to capture early case processing information for all test and control cases. The Intake Form sought data to answer

three questions: Are test group clients comparable to control group clients? Is early client contact as specified by the site implementation plan being achieved on test cases? Is the initial client contact for control cases occurring in a fashion comparable to what occurred prior to the test? To address these questions the Intake Form collected information on client demographics (e.g., race, sex, age), prior criminal justice history, arrest date and time, instant charges, time and length of public defender staff contact, and bail status. Intake Forms were to be completed for all clients who received public defender services during the implementation period. They were sent to UI on a regular basis by the on-site fieldworker.

Initially, UI had developed a single Intake Form for implementation across the three grantee sites. The draft instrument was circulated to key staff at each of the public defender agencies for review and comment. On the basis of this feedback, UI determined that a single Intake Form would not be appropriate. The differences in early case processing and office styles necessitated site-specific Intake Forms. Although it may have been more efficient for the evaluation to have had a single Intake Form, UI core staff decided that the primary objective was to obtain these data in a way that minimized burdens to the sites and maximized the sites' cooperation. Thus, Intake Forms for Shelby County and Palm Beach County were designed as single page, client specific instruments while the Intake Form for Passaic County was in log format.

Implementation. While each site had problems in completing the Intake Forms, by and large these problems were centered on control cases. In Shelby County, staff were not used to a systematic data collection scheme for lower court activities. Prior to the test, events and activities in upper court were routinely documented for budgetary purposes. However, events and activities that occurred in lower court, were not documented routinely nor as thoroughly. Control attorneys, overwhelmed by high caseloads objected to the additional paperwork represented by the test.

In Passaic County, the lower court control attorneys were private attorneys

under contract to the office. They represented the office's clients at Preliminary Hearings and had the opportunity for only minimal client contact at that time. The two control attorneys were compensated on the basis of these representational activities and did not have financial or other incentives to take on any additional work. They consistently resisted the data collection effort.

Finally, in Palm Beach County, the absence of a systematic and centralized office case management system made all case recording requirements more difficult to implement. While each site presented unique data collection problems to the evaluation, collecting intake data for Palm Beach control cases was the most difficult of all. In lower court, control clients were represented by misdemeanor attorneys who were otherwise not participating in the test effort. Because of the number of clients that each misdemeanor attorney had to represent in lower court, the brevity of their contact with the clients, and their lack of understanding of and familiarity with the evaluation data collection needs, the misdemeanor attorneys, by and large, did not provide intake information. Instead, rather complex, and at times, convoluted systems requiring accessing computerized information from the county system had to be established to capture the necessary control intake information. For test group clients, the Palm Beach witness interviewers and test attorneys were able to supply most intake information. However, even in the test condition certain data gaps occurred which necessitated computerized retrievals by the site's data collector and the UI field researcher.

By the end of their grant periods, the number of intake forms completed at each of the sites surpassed NIJ's requirement of 1,200 cases. Intake data received by UI include:

- Shelby County -- 1,953 cases: 801 test and 1,152 control;
- Passaic County -- 1,241 cases: 576 test and 665 control; and
- Palm Beach County - 2,467 cases: 888 test and 1,579 control.

It should be noted that these figures do not purport to represent the actual caseloads of the offices during that period. In addition to capital cases

excluded by the NIJ test design, the evaluation excluded cases involving probation violations where there was not an underlying substantive felony charge and extraditions. Clients who made bail prior to initial ERDC contact also were excluded. These classes of cases were not documented because of difficulties in providing ERDC services to such defendants and the problems they presented for data acquisition and case tracking. Finally, even the most tightly controlled data collection system may be imperfect and it is probable that a few cases from each site were missed.

- Case Processing Forms

Design. A unique aspect of the ERDC Field Test was the definition of the study period--from arrest through case disposition. In contrast to prior field tests which assessed specific and time bounded features of criminal justice processing (e.g., plea negotiations, sentencing decisions), the ERDC Field Test sought to demonstrate the effects of early case intervention on subsequent case outcomes. In this way, the entire period of case processing and all associated case processing activities were deemed appropriate areas of exploration.

Again, the pre-grant case recording practices of the three participating sites did not capture data sufficient to fulfill the evaluation needs. Even the pre-grant case recording practices of the Shelby County Public Defender's Office, which were the most extensive and systematic of the three in capturing case data, did not satisfy completely the evaluation's data needs. To compensate for these data deficiencies, UI core staff developed a Case Processing Form. The form recorded all key events associated with criminal justice processing and provided room for documenting all case related activities and the times associated with those activities. For ease of completion the instrument was formatted into three major sections: arrest and initial contact information, lower court processing data, and upper court processing and dispositional information. Within each section specific dates and outcomes were to be coded and activities performed by PD staff and times were to be noted. The Case Processing Forms were to be completed by the attorney assigned to the case in both the test and control conditions. Investigators or support staff were to record their activities and the length of time spent as appropriate.

In designing the Case Processing Form every attempt was made to build upon and mirror the extant case recording practices of the three public defender agencies. Drafts of the Case Processing Form were distributed to key staff at the test sites for review and comment. The Case Processing Form as initially designed was implemented in Passaic and Shelby Counties.

In Palm Beach County, staff requested that revisions be made. A second draft was sent and reviewed by the office. In preparation for implementing the Field Test, the Palm Beach County Public Defender's office had prepared a new file folder for use in all felony cases. The file folder, modelled after that used by Dade County, Florida, provided recording space for major case events. The office requested that a third revision be made in the Case Processing Form to minimize potential duplication of data recording. UI complied with this request and produced a third version of the Case Processing Form that was accepted.

Implementation. The Case Processing Form was implemented at all three sites and served as the primary case data recording mechanism for the evaluation. Shelby County staff experienced the fewest implementation difficulties due to the prior experience of the office in recording such data elements. Control attorneys in municipal court did complain and offer some resistance to data recording, but they were persuaded to comply by the ERDC Project Director. In Passaic County, the contract attorneys offered considerable resistance to data recording. However, they did comply after several meetings with the Chief Deputy Public Defender and the on-site evaluator. Upper court control attorneys were more verbal in expressing their resistance to completing the form than were their test attorney counterparts.. Their objections stemmed from the amount of additional work required as well as an inability to see any immediate benefit for either their clients or themselves from so complying. Moreover, both test and control attorneys indicated a reluctance to coding the time associated with their activities. They worried that if they recorded the amount of time they spent on cases, their clients might be charged for their services. Despite their reticence, the overwhelming majority of Passaic County felony attorneys complied with the data collection requirements.

Implementation of the Case Processing Form was the most difficult to achieve in Palm Beach County. Attorneys expressed fears that their activities would be subject to individual scrutiny and this ran counter to the office's ethos of encouraging staff to "lawyer his/her own case in his/her own way." Palm Beach County staff objected to recording the time spent on representational activities because they too felt that the client might be charged for their services. Control attorneys did not understand the reporting requirements. They felt they were not doing anything differently and did not see themselves as part of the Field Test effort. Hence, they did not always comply with the data recording requirements.

Underlying the particular objections to recording expressed by Palm Beach staff was a basic lack of familiarity with centralized case recording systems. Prior to the Field Test, case management occurred by division and only minimal statistical data were centralized in the office. The pre-grant divisional case management systems permitted a high degree of attorney discretion in terms of recording practices. The introduction of a unitary and unified case recording format was, therefore, met with suspicion and confusion. Throughout the test period, completion of the Case Processing Forms varied greatly by division as well as within division. Although never completely free of problems, the acquisition of case processing data did improve somewhat over time.

Case processing data were received for:

- Shelby County -- 1,301 cases: 567 test and 734 control;
- Passaic County -- 870 cases: 437 test and 433 control; and
- Palm Beach County -- 1,688 cases: 790 test and 898 control.

Limitations. According to the case management systems implemented at each site, the case processing data received by UI should represent a pure subset of the case intake data. That is, for every case opened and assigned to the test or control groups during the test period, an Intake Form was to be filled out and upon case disposition, the Case Processing Form was to be sent to UI. Since not all cases opened during the test period were disposed of there should be: (1) more Intake Forms than Case Processing Forms; and (2) corresponding Intake Forms for every Case Processing Form received.

Only Shelby County data fulfill both of these criteria, and there the Case Processing Forms do represent a true subset of the intake data. The perfect functioning of the case management system is attributable primarily to the efforts of the site's test secretary, who maintained rigid control over the case numbering and assignment processes and consequently promoted the working of the whole system.

In Passaic and Palm Beach Counties, the case processing data received represented only partial subsets of the intake data. In neither of these sites was case identification and numbering as straightforward a process as it was in Shelby County. In the absence of such a tight degree of data control by the sites, normal criminal justice system operations imposed their processes on the data collection efforts. Therefore, cases appointed to the office at Arraignment had Case Processing Forms completed even though there no intake data were collected. This was more common for the control conditions at both sites, but also occurred in the test conditions.

Activity Data. In addition to assessing case processing events and outcomes, the Case Processing Forms served as a source of "activity data." Activities recorded on the instruments by the attorneys and investigators were coded in terms of the number and length of activities performed by each actor (i.e., attorney vs. investigator) as well as when during the processing of the case the events occurred (i.e., lower vs. upper court). These data were used to assess whether or not test and control cases differed as to the intensity and duration of public defender services received during the test period.

Since it was necessary to content code the narrative data provided, those cases containing incomplete information were not amenable to coding. In total, activity data were coded for:

- Passaic County -- 706 cases: 373 test and 333 control; and
- Shelby County -- 1,263 cases: 548 test and 715 control.

In Palm Beach County, it was impossible to determine who provided the service or when it occurred. Thus, only the total number of activities

and total time spent on a case were coded. In all, 289 Palm Beach County cases (150 test and 139 control) were susceptible to this coding scheme.

Interviews and Observations

Complementing the quantitative case-level data collection effort were a series of qualitative data gathering activities. The primary techniques employed were structured interviewing and observational methods. Data generated in these ways: (1) supported the analysis of case-level data by providing "meaning" to the analytical interpretations; and, (2) permitted assessment of impact in those areas where statistical data did not exist or where conventional statistical analyses were not appropriate. Each of the qualitative techniques employed by the evaluation is described in more detail below.

● Public Defender Office Staff Interviews

Structured interview protocols were designed for public defender office staff including office administrators, attorneys, investigators, and support staff. In addition, witness interviewer protocols were designed for the Palm Beach County site. By gearing the protocols to functional staff roles, UI attempted to capture respondents' perceptions of their responsibilities and activities for the period prior to test start-up and, hence, identify changes in those dimensions over the course of the Field Test. The interviews were administered by UI core staff and on-site field researchers at three points in time--at test start-up, in the middle of the test period, and at the end of the grant. The protocols contained both open-ended and close-ended, force-choice items. Open-ended items were subjected to content analysis. Simple tallies were undertaken of the empirically derived response codes and the closed-ended response sets.

The administrator interview protocols explored such areas as: the pre-grant role of the Public Defender's Office within the local community justice system; internal office management practices, office caseloads and operations; the grant preparation and application process; motivations for being a test site; effects of the Field Test on office management, staffing, staff attitudes, services, client attitudes, and relations to other criminal justice elements; and the continuation of services initiated as part of the test effort subsequent to grant funding.

The attorney interview protocol explored: pre-grant caseloads, perceptions of and attitudes toward clients, the timing and nature of services provided, case recording practices, perceptions of one's role within the local criminal justice system, perceptions of and satisfaction with one's job, and changes in each of the above areas over the course of the grant period.

The investigator interview protocol assessed: the nature and timing of investigative activities performed, caseloads, office management practices as they affected the investigative staff, perceptions of and relationships with clients, and changes over time in the above.

The interview protocol designed for support staff documented: pre-grant workload, case recording practices, case management systems, frequency of contact by clients or client families, and changes in these areas over the course of the grant period.

To assure that the interview protocols were appropriate to each site and were being administered in a timely fashion, UI staff conducted frequent and extensive debriefings. During the course of these sessions, an interesting and serendipitous finding emerged with respect to the attorney interviews. UI staff found that attorney respondents at each of the sites experienced difficulty in responding to questions which asked them to generalize on the basis of their experience. Frequently, attorneys preceded their answers with numerous qualifying statements. Attorneys had much less difficulty in responding to the more specific questions about processes or their own activities. UI suggests that the ability to comfortably respond to these sorts of general questions is associated with one's training and paradigmatic framework. For example, those trained in the social sciences are taught to generalize on the basis of observations or accumulated "facts." However, those trained in law are taught that each case is unique. Thus, the attorneys, even though they may have represented hundreds of defendants, tended to think of each case as slightly different and, therefore, had difficulty in consolidating their experiential "facts" about clients into general comments.

- Key Actor Interviews

Interviews were designed for key actors in the criminal justice system and were conducted at two points, at the beginning of the Field Test and at the

end of the grant period. Key actors included administrative and line prosecutorial staff, judges, police and sheriff personnel, jail staff, and staff from ancillary agencies, such as pretrial intervention, diversion, and alternative sentencing projects.

The first round Key Actor Interviews were designed to elicit respondents' impressions of: the Public Defender's Office; the relationship between public defenders and their clients; the practices and processes of the criminal justice system; the relationship among local criminal justice system actors, with particular attention to their interactions with the grantee; and knowledge of and expectations for the Field Test.

The second round of Key Actor Interviews assessed changes in these dimensions. Respondents also were asked to indicate if: the Field Test had any effect on their own agency; and whether or not it was successful, and the basis and criteria for this assessment. Specific items were designed for each class of respondents to highlight the experiences of each with the ERDC effort. In general, the Key Actor Interviews provided a useful alternative vantage point from which to assess the operations of the criminal justice system and the role of the Public Defender's Office in that system. The Key Actor Interviews provided an important data source for the assessment of system impacts.

As with the attorney interviews, the Key Actor Interviews deserve a brief methodological comment. As was discussed earlier, the criminal justice system may more accurately be thought of as a process rather than a system and the conduct of the Key Actor Interviews tends to bear this out. Respondents appeared very comfortable in describing their own agencies and, while able to describe local criminal processing in general, were less confident in discussing the organization or operations of other criminal justice agencies (i.e., the Public Defender's Office). In addition, the ability of the key actors to confidently respond to questions seemed to be directly related to their involvement in the Field Test effort. Key actors from those sites where the grantee actively had attempted to involve other criminal justice actors in the Field Test effort

(through orientation meetings, periodic briefings or regular meetings) were much better informed about the test and offered more detailed insights into its potential for effecting system changes. Where "a need to know" orientation was assumed with other criminal justice agencies, key actors were much more circumspect in their responses and could supply fewer details about the test or its effects.

● Client Interviews

To assess changes in the attorney-client relationship attributable to test service interventions, an interview protocol was designed for public defender clients. The construction of the client interview protocol, parallels Dr. Jonathan Casper's work (1977, 1978) on client satisfaction with and attitudes toward their attorneys. Several of the client's satisfaction and client trust items developed by Dr. Casper were included with his permission in UI's client interview protocol. The client interviews also assessed client perceptions of the nature and timing of their first contacts with office staff, the total amount of services received, and their feelings about their case disposition.

Client interviews were conducted with approximately 100 clients at each of the three public defender grantee sites. A sampling frame was developed to secure 50 test and 50 control group clients stratified on the basis of severity of arrest charge (i.e., Class I felony arrest charges were defined as "serious" and Class II and Class III charges were defined as "non-serious"). Arrest charges, while open to the influence of local law enforcement discretion, were deemed to be more reliable stratifiers than dispositional charges, which often are subject to the idiosyncratic vagaries of local criminal justice processing (e.g., the results of charge bargaining may have little to do with the "severity" of the "original offense").

The pool of potential respondents was constructed on the basis of dispositional dates and clients were randomly selected for inclusion in the client interview process according to the two stratifiers noted above (i.e., test vs. control group assignment and serious vs. non-serious arrest charge). Sampling for the client follow-up interviews was initiated in February 1983 using a monthly sampling quota scheme for cases disposed of in the preceeding month. Sampling was scheduled to end in June, but continued through the summer of 1983.

The UI on-site field researchers were responsible for implementing the sampling scheme and conducting the client interviews. At all three sites, the field researchers experienced difficulty in actualizing the sampling scheme, particularly in securing sufficient numbers of clients with severe arrest charges. In addition, clients whose cases had not resulted in incarceration were extremely difficult to locate. Investigators from each of the offices assisted the field researchers in trying to locate these individuals. However, many former clients seemed to simply "disappear" and attempts to trace them through neighbors and relatives often proved unsuccessful. Because of the difficulties in obtaining a sufficient number of clients for the sampling frame and subsequent difficulties in locating non-incarcerated clients, the client interview effort was continued past its original ending date.

The conduct of the client interviews was severely complicated in Florida because of the rapid transfer of convicted defendants to state prisons. By the time the UI field researcher was informed that a case was closed, the potential respondent could easily have been transferred to a prison more than 200 miles away from Palm Beach. This rapid dispersion of convicted defendants throughout the State of Florida prison system necessitated the hiring of eight additional interviewers. Also, the office committed one of the investigators hired under the grant to support this effort after ERDC test processing was concluded.

The other two sites did not face this problem. In Passaic County the Governor's moratorium on transfers of convicted felons to state prison required that convicted defendants be held in the local jail and were readily available to the UI field researcher. In Shelby County, convicted defendants were held in a transfer facility for a period of up to three months which allowed the UI field researcher to contact them before their transfer to a state prison. However, it was necessary for a few client interviews be conducted in the state prisons in Nashville and Brushy Mountain, Tennessee.

In total, 300 client interviews were conducted. Client interview totals by site are:

- Palm Beach County -- 83 interviews: 37 test and 46 control;
- Passaic County -- 104 interviews: 52 test and 52 control; and

- Shelby County -- 113 interviews: 54 test and 59 control.

- Observations

Participant. The UI field researchers were responsible for conducting both participant and formal observations. The technique of participant observation derives from sociological and anthropological traditions of ethnographic research. As participant observers, the field researchers were expected to immerse themselves in the office culture while maintaining a critical distance. The difficulty of maintaining this role should not be underestimated. The field researchers familiarized themselves with all aspects of office operations and activities and were sensitive to any changes in these. As participants in the office culture they had to learn both the formal and informal rules which governed its activities. They had to navigate the often murky terrain of being within an organization but not part of it.

Participant observation activities were extended to other aspects of the criminal justice process whenever possible. The field researchers developed a thorough understanding of the local criminal justice process and became acquainted with key actors within each criminal justice agency. The interactions among these agencies and, more importantly, between these agencies and the grantee were appropriate subjects of observations. For example, the Passaic County field researcher became an ex officio member of the county speedy trial committee. His participation in the monthly meetings of the committee permitted him to develop deeper insights into the relationships between the justice system agencies and the assumptions underlying that innovative local program.

Participant observation data were systematically recorded in field notes which were sent to URSA Institute every two weeks. The challenge of recording accurate field notes lay in the necessity to strictly record data and not subject the information to interpretation. While a natural tendency is to want to make sense of one's observations, the field researchers were encouraged to report what they observed rather than what they thought was the meaning of what occurred. When interpretations were included they were noted as such. Thus, the field notes offer a rich data source regarding the implementation of the ERDC Field Test and the impacts of the test.

Formal. In contrast to participant observation activities, wherein the day-to-day occurrence of events dictates the data generated, formal observations specify which activities or events are to be documented. UI developed formal protocols for observations of plea negotiations, initial attorney-client contact and courtroom proceedings. The protocols indicated the particular data elements to be recorded as well as the recording formats to be used. Although attempts were made to implement the formal observations at each site, their conduct encountered many difficulties. Full implementation of the formal observational protocols was constrained by time and resource limitations, difficulties in gaining access to some of the observational "scenes," and concerns for confidentiality and privacy.

IMPLEMENTATION OF THE EVALUATION DESIGN

The implementation of URSA Institute's evaluation design coincided with the start-up of activities at the three grantee sites. The field researchers were hired shortly before test start-up, and were stationed in the grantee's office on the first day of test implementation. During this initial period, the field researchers familiarized themselves with the sites, and especially the case recording and management systems. Although briefed on their responsibilities and duties by UI core staff, the field researchers were brought to UI's San Francisco office in September 1982 for a week-long training session. For two of the field researchers this training occurred approximately one to two months after the start of their site responsibilities. For the third, the delays in grantee start-up meant that the training occurred prior to service implementation.

Each site experienced a variety of problems in implementing the evaluation design. Understandably, the most difficult aspect of the evaluation design to implement was the case management system. As discussed previously, the assumption in NIJ's test design regarding site data management capabilities had proved inaccurate. Rather, the sites selected for implementing the ERDC Field Test required an externally designed case management recording system in order to generate evaluation data. Many of the problems encountered in implementing and conducting the evaluation, hence, involved the reluctance

of office staff to use this new system. Technical assistance by UI field researchers and core staff somewhat mitigated initial problems. In addition, the active support and encouragement of the Public Defenders facilitated the use of the data recording systems by staff. Finally, presentations made by URSA Institute staff at regularly scheduled grantee cluster meetings, illustrated how the data were to be used in the evaluation. These presentations may have allayed some initial fears regarding data uses and accounted for improved compliance over time.

In general, the major elements of the evaluation design were successfully implemented at all three sites. Without the support of the Public Defenders, the cooperation of their staffs, and the extraordinary dedication of the on-site field researchers, the evaluation probably would not have been able to function as smoothly as it did. Remarkably collegial and cordial relations were maintained and evaluation activities proceeded with few of the "crises" often associated with national evaluation undertakings of this type.

Yet, several general constraints acted upon the evaluation to limit the scope of activities. In what follows, three general areas of constraints are identified, including federal-level limitations, site-level limitations, and limitations flowing from the evaluation design itself. Each is described separately below.

Federal-level Limitations

- Lack of Attention to Evaluability Concerns in Site Selection

The ERDC Field Test Design specified both specific and general criteria for site participation. General evaluability concerns (i.e., the availability and accessibility of data) seem to have received only limited attention during the grantee selection process. Of paramount importance was obtaining a commitment from the potential grantee to undertake the early and continuous representational activities. Next in priority was the potential sites' ability to secure letters of cooperation from other key criminal justice systems elements. However, whether or not the grantee's proposed service plan could be evaluated was not explored in as much detail.

The sites selected for participation in the Field Test reflect these priorities.

That is, all were committed to delivering the test services as defined by their agreements with NIJ and all had received necessary letters of cooperation from the criminal justice systems. Yet, none truly fulfilled criteria of evaluability. For example, the court reorganization in Shelby County, which dramatically changed the operation of the system, made it impossible to obtain useable baseline data for pre/post analyses. Hence, while the sites selected may have been appropriate to the service delivery aspects of the test, they were not necessarily appropriate to the research interests of the NIJ program.

- Lack of Consistent and Adequate Technical Assistance

Technical assistance (TA) implies the provision of supportive services that help projects clarify and resolve issues of organization, management, and service delivery. In federal demonstration efforts or field tests, it is quite common for such assistance to be provided by an independent contractor. Intensive technical assistance often is needed during the start-up period when projects are refining management practices and operationalizing service delivery plans. TA providers also can aid projects to negotiate working relationships with other system elements that may be vital to their service delivery strategies.

In the instance of the three ERDC grantee sites, TA needs involved not only help in effectively implementing their complex service designs, but also in implementing the case management system for the evaluation. The lack of priority given to evaluability concerns during the site selection process made evaluation TA even more necessary and important. Unfortunately, the resources of the Field Test's technical assistance provider were severely limited. The TA contractor, although providing some expert assistance on service delivery issues during the development period, was unable to maintain that level of assistance over the course of the grant nor expand TA activities to the area of evaluation. Subsequent to the start-up period, the primary method of TA delivery took the form of the regularly scheduled grantee cluster meetings which were convened under the direction of the TA provider.

At times this lack of technical assistance placed the evaluators in conflicting and contradictory roles. Evaluation staff in general and the on-site field researchers in particular were frequently asked to "help" by site personnel. Staff were asked their opinions on how to best handle unresolved start-up issues as well as those that emerged during the grant period. Moreover, extensive support was requested in determining methods and strategies for collecting the case management data. The situation created a dilemma in ethics and role. On the one hand, to be a "true" evaluator one can say that everything is data and that the appropriate role of the evaluator is to stand back from the process and simply document whatever it is the sites do, be it failures or accomplishments. On the other hand, the provision of limited and minimally intrusive support for the projects so as to achieve a successful evaluation does not necessarily violate the evaluation role. Lengthy staff discussions were held on these issues and staff decided that, because of the constraints faced by the TA provider, non-intrusive research oriented assistance to the projects would not compromise evaluation functions. However, this position necessitated case by case discussions and was a difficult and often uncomfortable position to maintain.

- Disparities Between the Field Test Design Goals and the Funding Period

An unusual feature of the ERDC Field Test was its focus on the relationship between early intervention and subsequent case outcomes. This implied that the full case processing period, from arrest through disposition, was to be the study period. In order to assess site achievement, it was necessary to secure a sufficient number of test and control cases that were disposed of by the three local criminal justice systems. Yet, case processing time, particularly for those cases which go to trial, can be quite lengthy.

Each of the grantee sites received funds for 18 months. Test services were to be provided for twelve months. The evaluation received 24 months of funding--six months to precede site implementation, twelve months paralleling site implementation, and six months subsequent to site implementation. The sites, then, had twelve months during which to generate sufficient closed cases for evaluation purposes.

Depending on the jurisdiction, the case data for the first month, at minimum, included inaccuracies because of start-up problems. Cases entering the office during the last few months of site implementation often were not resolved by the end of the test period. Narrowing the evaluation data collection period in this way not only limited the number of closed cases available for outcome analyses but also may have biased outcomes in favor of cases that were resolved more quickly through downfiles or plea negotiations. Since a primary concern of the evaluation was in obtaining a mix of case disposition methods (i.e., downfiles to misdemeanors, plea negotiations, and trials) every effort was made to secure data regarding the more lengthy case processing events.

In response to these concerns and to assure the rigor of the evaluation, NIJ authorized no cost time extensions for the grantees and UI so to continue the data collection activities. While the no-cost extension permitted the data collection to be supplemented, the limitations imposed by the grantee and evaluation funding periods were never fully reconciled with the analytic objectives of assessing fully the test design assumptions.

Site Level Limitations

- Lack of Centralized Case Management Systems

Of the three grantee sites, the felony case documentation practices in Shelby County most closely mirrored the evaluation data requirements. With the addition of only a few data elements the extant Shelby County felony case recording system was able to supply the evaluation with the necessary case processing data. The existence of such a comprehensive felony case recording system prior to the grant period not only meant that evaluation data could be acquired with relative ease but also minimized staff training needs. That is, attorneys and investigators were relatively familiar and comfortable with documentary practices and, thus, did not perceive evaluation data recording as something foreign to their normal activities.

However to obtain lower court data which were particularly critical to documenting the initial client contact, necessitated the introduction of new case data recording materials. Although this instrument was designed simply, it was greeted with initial resistance especially from control staff. Staff training and orientation greatly facilitated the use of these forms.

In Passaic and Palm Beach Counties, extensive case recording systems, such as the one that existed in Shelby County prior to the test, were not available. The case management system employed by the Passaic County Public Defender's Office prior to the grant period was highly centralized but obtained only minimal case information. A case recording system capable of documenting both lower and upper court activities had to be introduced so as to obtain evaluation data. In Passaic County both upper and lower court attorneys needed training and orientation as to their responsibilities in case documentation. The two most problematic areas in implementing the case recording system involved: (1) the control (contract) attorneys in lower court who because of their contractual arrangements with the office lacked incentives to fulfill data recording requirements in a timely and precise manner; and (2) the tendency of several upper court attorneys to not close their cases in a timely fashion. Since the felony attorneys were not used to operating within the quick turnaround time needed for acquiring evaluation data, they tended to accumulate files of disposed cases for periodic case closings. While not monumental difficulties, these problems made the collection of case data much more arduous and time consuming.

In Palm Beach County, there was no centralized case recording system prior to the implementation of the Field Test. Rather, case recording systems were maintained by each Circuit Court division. Again, as with the other two sites, there were no standardized recording procedures for attorneys representing felony defendants in lower court. Moreover, there was no system for transferring information between misdemeanor and felony divisions. Since the office did not open cases until after Arraignment in upper court, no documentation existed if a case was downfiled or plead out to a misdemeanor prior to that time. A felony case which was downfiled and handled by the misdemeanor division was simply treated as a new case.

For the purposes of assessing the ERDC Field Test a complete case management system for felony attorneys had to be created. The implementation of that system was met with initial resistance and over the course of the grant period achieved only partial success. Some felony attorneys actively cooperated with the data collection effort while others fulfilled recording requirements minimally and sporadically. Moreover, attempts to link misdemeanor and felony

information were never achieved. Evaluation staff were told that it would be impossible for office staff to provide information on cases charged as felonies but disposed of by the misdemeanor division.

The office did provide valuable assistance to the evaluation effort by assigning several test staff to support data collection after the termination of the test. However, this support did not fully mitigate the data collection problems which occurred during the grant period.

- Lack of Understanding of the Importance of Control Data Recording

All three grantee sites equated the Field Test with the delivery of test services. To the extent that data recording requirements were understood to be important, they tended to be defined as such for test staff, i.e., attorneys, investigators, or secretarial staff directly involved in the provision of test services. The experimental nature of the test design was never fully appreciated. Control staff, who were to continue to perform their jobs as they had prior to the grant, could not understand why such stress was placed on their data recording practices. Since they were not doing anything differently and since their clients were not receiving any of the potential benefits of the test services, they could not see why they had to assume the additional case recording responsibilities needed for the evaluation. Put most simply, control staff did not share the incentives that the test staff had in participating in evaluation activities. Evaluation staff attempted to explain the importance of control case data to the evaluation and the ultimate assessment of the ERDC Field Test. However, such explanations of intangible and rather abstract benefits provided little motivation in light of the day to day realities of public defense work. The difficulties in obtaining constant, accurate, and timely data on control cases remained to a lesser or greater extent a problem for all three sites.

- Lack of Knowledge Regarding Available and Accessible System Data

During URSA Institute's initial site visits, the criminal justice processes for each site were documented. These descriptions highlighted the relative isolation of the grantee offices vis-a-vis the other criminal justice system elements. The first chapter of this report briefly describes the outsider role which the public defender plays within the criminal justice system.

Whereas law enforcement, prosecutors, and other criminal justice elements work closely together and share information, public defender offices are often precluded from such information access.

Evaluation needs for data from other elements of the criminal justice system primarily involved the acquisition of baseline data. According to the design developed by UI, data from the test period were to be contrasted with baseline data on such indicators as jail populations, length of pretrial detention, and number of cases diverted. At all three sites it proved impossible to obtain baseline criminal justice data.

In Shelby County, the massive court reorganization and the opening of the new jail complex at the beginning of the test period made prior statistics meaningless for comparative purposes. In Passaic County, the moratorium on transfers of convicted defendants to state prisons and the introduction of a screening unit by the Prosecutor's Office also rendered pre-grant statistics of spurious value. In Palm Beach County, the Public Defender's Office was denied access to computer "screens" available to other system actors. Moreover, in all three sites the data definitions and collection practices of other criminal justice system agencies were highly variable. Often it was difficult to locate the person with appropriate authority within an agency so as to obtain the release of information. Thus, questions of the availability and accessibility of system data were major unresolved issues with which the sites could provide little assistance.

Limitations Inherent in the Evaluation Design

Some of the difficulties experienced in implementing the evaluation were inherent to the design itself. The evaluation design UI developed addressed specifically the concerns contained in NIJ's test design. The realities of implementing such a design were not fully appreciated until implementation activities were well underway. While many of these issues are related to and confounded by the federal-level and site-level problems described above, they warrant brief consideration in their own right. The overly ambitious nature of the design, the emphasis on a cross-site rather than a case study approach, and the ambiguous role of the field researchers are issues which directly emerge from the evaluation design.

- Overly Ambitious Design

The breadth and scope of the test design were incorporated fully into the evaluation design. The number of outcomes to be explored stand in sharp relief against the evidence in the literature as to the difficulties in documenting changes in the criminal justice system. Expectations that innovative services will result in dramatic results amenable to documentation by standard statistical procedures are viewed by some commentators as inappropriate. It has been suggested that where such expectations are held they will doom the innovation to failure.

In an attempt to assure that the evaluation could produce relevant policy and programmatic findings, UI assumed an approach that incorporated multiple quantitative and qualitative techniques. Each of the evaluation components described earlier in this chapter included a data gathering methods capable of generating vast amounts of information on some aspect or aspects of the Field Test. Evaluation staff placed a priority on ensuring that subtle as well as dramatic outcomes could be documented. The desire of UI to document fully the test processes at each of the sites as well as their test outcomes led to a highly ambitious evaluation design.

The decision to employ multiple techniques also reflected UI's concerns that simpler indicators might have been more vulnerable to inaccuracies and might have more easily succumbed to site constraints. However, the ambitious nature of the evaluation approach produced its own problems. The most important of which was the need to spread the limited evaluation resources across all these activities. In effect, a trade-off situation occurred wherein some design components received a greater share of resources than others. This, in turn, meant that not all evaluation activities could be implemented fully nor conducted for as long or in as great a depth as originally planned. The need to continually re-evaluate resource distributions and to periodically shift evaluation resources produced some staff confusion and demoralization. Another result of these decisions was that the evaluation was not able to capture all of the data it originally had planned to obtain.

- Adoption of a Cross-Site Rather than a Case Study Approach

In response to the test design document URSA Institute developed an evaluation approach that obtained comparable data across all three grantee sites. Rather

than pursuing a case study approach wherein each site would be uniquely assessed, the cross-site design developed by UI employed similar instruments capturing comparable information at the three public defender sites. Yet, the very diversity of the jurisdictions selected for participation made implementing the cross-site design that much more difficult. An evaluation task that was easily accomplished at one site proved to be a difficult undertaking at one of the others. Similarly certain data elements that were readily accessible in two of the sites proved inaccessible at the third. For example, whereas the implementation of the case recording system was achieved with only minimal difficulties in Shelby County, the introduction of systematic case recording activities proved more difficult to implement fully in Palm Beach County and required a greater commitment of resources.

The appropriateness and amenability of the site to evaluation activities, therefore, dictated the degree to which the full scope of cross-site evaluation activities could be undertaken. Although UI attempted to implement all of the cross-site evaluation activities at each of the sites it became apparent during the course of the evaluation that trade-offs were necessary. When appropriate, UI field researchers were instructed to curtail certain evaluation activities and focus on others. Thus while every effort was made to fully implement the cross-site design, comparable data elements for all indicators could not be obtained from each of the sites. In essence, the evaluation as actually conducted reflects more of a compromise between a cross-site and case study approach than either approach in its purest form.

- Ambiguities Concerning the Role of the Field Researcher

The on-site field researchers were involved in all data collection activities conducted. In many ways, though, their primary responsibility was to serve as participant observers for the evaluation. Their need to maintain a neutral, non-intrusive presence, thus, was vitally important. Although the scope of their responsibilities was communicated to staff at the three sites, the unfamiliar and abstract quality of their role tended to be confusing for site personnel. The aspect of their jobs most readily comprehensible to site staff was their responsibility to coordinate the case management systems. This led to their identification as "data collectors" and prompted site personnel to feel that this was and perhaps should have been their only function. Staff

at one site expressed resentment toward the field researcher because they felt that it was her job to collect all the case information rather than theirs. UI staff and the on-site field researchers attempted to correct these misimpressions, though often without success.

Confusion regarding the role of the field researcher emanating from the sites was confounded at times by contractory messages from UI core staff concerning evaluation priorities. The very number of tasks which the field researchers had to accomplish made their jobs exceedingly difficult and stressful. UI's emphasis on obtaining case-level data and the need to ensure that the case recording systems were operating successfully often led the field researchers to wonder if everyone viewed them simply as "data collectors." Moreover, their on-site location meant that they were physically isolated from UI core staff as well as from each other.

As the evaluation proceeded the number of tasks involved and the degree of difficulty associated with activities became clearer to everyone. The expectations for the field researchers were consequently narrowed. However, the job of the field researchers never became easy and under often trying working conditions their commitment to the evaluation was remarkable. Their contributions to the evaluation effort and to this report are invaluable.

Summary

The data sources described in this chapter serve as the basis for the remainder of this report. The next chapter presents the findings of the process study. Chapter V describes the impacts of the ERDC Field Test on the Public Defender Offices' operations and processes. The effects of the test on the attorney-client relationship are presented in Chapter VI. System impacts associated with the site's provision of test services are discussed in Chapter VII. The final chapter of this report presents conclusions and recommendations for affecting policy and services to effectively and efficiently enhance the representation available to indigent defendants.

IV--PROCESS FINDINGS

THE DEVELOPMENT AND IMPLEMENTATION OF THE EARLY REPRESENTATION BY DEFENSE COUNSEL FIELD TEST

OVERVIEW OF IMPLEMENTATION

From February, 1982, through November, 1983, the three participating public defender offices developed and implemented the Early Representation by Defense Counsel Field Test. Over 5,000 defendants were randomly assigned into test and control groups and were provided with the range of services called for in the test design. Over 3,800 cases were closed and documented during the reporting period.

The participating public defender offices performed a wide range of administrative, operational, and reporting tasks that directly involved almost every staff member on a day-to-day basis. In doing so, they faced numerous obstacles in implementing the experimental design, and in maintaining the integrity of that design throughout the adjudication process. Each grantee faced resistance from test staff, who were being asked to provide earlier and enhanced representation under difficult conditions. They faced resistance from control staff, who were denied the opportunities and resources available to test staff, but were still required to provide the same quantity of data. They encountered considerable burdens in attempting to meet the data recording, collection, and transfer requirements of the national ERDC evaluation. The presence in the public defender's office of a full-time field researcher employed by the evaluator served as a constant reminder of these requirements. Given the constraints and obstacles affecting implementation of the Field Test, each participating public defender agency should be commended for the efforts it expended and the success it achieved.

The test made sweeping demands upon the other agencies in the criminal justice system at each site, but there were only scattered reports of active resistance by these agencies, none of which seriously impeded program operations. The public defenders at each office were able to secure access to their clients soon enough after arrest to meet or closely approach the requirements of the design. Although jail staff were disrupted by the needs of the Field Test, for the most part they cooperated with their respective public defender offices. In each case the cooperation of jail staff required a departure from normal operations.

Each public defender was provided the opportunity to negotiate actively with the prosecutor in novel ways. Reports from both test attorneys and the prosecutors who came in contact with the experiment indicated that the ERDC Field Test at times changed the nature of public defense in their jurisdictions.

Prior to implementation of the experiment, both the program designers and the grantees had expressed concern that control clients would object to the special treatment provided to test clients. Furthermore, the agencies considered the possibility that local bar associations would seek to enjoin test operations to protect control client interests or private attorney perogatives. While these possibilities never materialized, other unanticipated problems at each site impeded the ultimate success of the experiment.

The process each ERDC grantee undertook to implement the Field Test was unique, idiosyncratic and reflective of its own operating style and environment. In examining the implementation of the Field Test, however, some common themes emerged which are clearly of benefit to public defender agencies across the country. These will be identified and discussed in the remainder of this chapter. The discussion is organized chronologically to provide a perspective on each of the major phases of the field test experience:

- the developmental phase, which comprised the period between formal grant award and actual implementation of the Field Test. Normally three months

in length, the developmental period for the ERDC Field Test lasted from five to seven months, an indication of the complexity of the experiment.

- the implementation phase, during which the Field Test was actually conducted at each site. The discussion of the implementation phase focuses on the implementation of the experimental design, the early representation, and the enhanced representation components of the ERDC process. Planned for one year, the implementation periods varied from 8-12 months.

THE DEVELOPMENTAL PHASE

Each field test sponsored by the National Institute of Justice involves the participating grantees in a developmental or planning phase. This process is designed to prepare the grantees for the actual implementation of the experiment. The developmental phase of the Early Representation by Defense Counsel Field Test was marked by a number of interesting occurrences. First, one of the participating Public Defenders ran for prosecutor in his jurisdiction, and was on administrative leave during much of the developmental phase. A second office sustained budget cuts which threatened to eliminate the attorneys who were to be responsible for the representation of control clients during the test. In the third office, the unique requirements of the system forced the elimination of a significant percentage of client population from full test services. In short, the developmental phase was not without its drama and controversy. In at least one case, the developmental phase was much more difficult than actual implementation.

The developmental phase of the ERDC Field Test can be divided into six discrete areas which relate to the key preparatory tasks performed by the grantees, NIJ, and the technical assistance and evaluation contractors. These include: management and administration of the test projects, technical assistance, staffing and training, finalizing the procedures manual, securing local support, and the pretest and start-up. In this section, we discuss each in turn.

Management and Administration

The administrative and management demands of a NIJ field test require the assignment of a project director to conduct those tasks for the grantee. For past field tests, project directors often have been new staff, hired expressly by the grantee agency to administer and direct the project. In other instances they have been employees of the agency, who have been assigned to the field test on a full-time basis. The management and administration of the Early Representation by Defense Counsel Field Test by the three participating public defender offices differed somewhat from these traditional forms. For example, with rare exception, the persons originally assigned to design the projects had little or no responsibility for ultimately implementing those designs. Moreover, the persons named to direct the projects often had other, more pressing office management responsibilities. In only one case was the project manager a full-time participant in the effort, and his duties were divided between management and actual participation in the test.

Each of the participating public defender offices submitted more than one application to NIJ describing and revising the approach it proposed to take in implementing the ERDC Field Test. Yet, only in the case of the Shelby County Office of the Public Defender was the individual who was ultimately responsible for managing the test involved in preparing these applications. The Passaic County application was prepared primarily by administrative staff of the State Office of the Public Defender with limited assistance from the Chief Deputy and his staff in Passaic. The Palm Beach County application was prepared by the Chief Assistant Public Defender and a member of his appellate staff, neither of whom was involved in the ultimate implementation of the test.

● The Shared-Management Approach

After the formal grant award, the design and development of the Field Test approach became the responsibility of a small group of individuals at each site. In Passaic County, that responsibility fell upon the Chief Deputy and Chief Assistant, individuals who had considerable day-to-day responsibility

for the overall direction of the office; the Chief Investigator, who supervised the investigatory, clerical, and recordkeeping staff of the office; and the senior test attorney, who was also carrying a full felony caseload at that time. The Chief Assistant, Chief Investigator and senior test attorney became responsible for discrete elements of the design under the ultimate direction of the Chief Deputy. However, as the design phase progressed, day-to-day direction of the Field Test became somewhat diffused. Eventually, the Chief Deputy relinquished the day-to-day management and administration of the project, while retaining responsibility for key decisions. In addition, the Chief Deputy handled liaison activities with NIJ and its contractors, and resolved internal project issues which were brought to his attention. Day-to-day management and administration of the project was shared loosely by the Chief Investigator, who retained responsibility for test clerical and data collection staff, and the senior test attorney, who retained responsibility for test attorney operations.

The Passaic shared-management system functioned effectively during the developmental phase; but during implementation there was confusion regarding responsibility for specific activities or individuals which had not been assigned during planning. For example, it remained unclear who was responsible for monitoring the performance of the Municipal Court contract attorneys, and for supervising the investigators who were assigned to the test. In the former case, this raised problems for the evaluation since no formal arrangements were initially available to compel the contract attorneys to comply with the data recording requirements. In the latter case, the Chief Investigator and the senior test attorney were unclear about who had authority for directing the work of the test investigators. Ultimately, both problems were resolved.

Other problems also arose during the test, and they were resolved through the shared management system. Had a substantial commitment of administrator-manager time been provided for in the Passaic County application, such problems probably would have been resolved much sooner. However, much of the staffing for the test, as budgeted by the state office, consisted of the commitment of existing

staff resources. Only two new positions for the office were supported by the budget and the office received only one replacement (for the senior test attorney) to balance test commitments of staff. Much of the work on the test, from the Chief Deputy's role in management to clerical staff's role in data collection had to be performed by existing staff. Moreover, the staff's normal workloads were not reduced to compensate for their additional test duties. The office must be commended for its work on the Field Test. From the Chief Deputy on down, the staff took on difficult tasks and handled them well.

- The Part-Time Approach

In Palm Beach County, the task of Project Director was assigned to the Chief of the Felony Division, who was also responsible for overseeing the operations of the attorneys in the five felony divisions, and for defending difficult cases arising from the divisions. His management responsibilities on the Field Test became the most complex of the ERDC effort.

The original application from the Office of the Public Defender of Palm Beach County, submitted to NIJ in September, 1981, proposed a rather modest plan which included a test staff composed of a full-time senior attorney project coordinator, two assistant public defenders, an investigator, a secretary, a paralegal, and a data collector. The test team was to represent 600 clients vertically as a "special sixth felony division" drawing its caseload from the other five. The final application, developed to ensure that the test would generate a sufficient number of cases, proposed a much more complex structure. The original test team, minus the full-time project coordinator, was assigned to two divisions of felony court. An additional investigator and a witness interviewer/screener were added to the test staff. This increased the test staff from seven to seventeen--by far the largest of the three test sites. The Chief of the Felony Division assumed responsibility for coordinating the test on a part-time basis.

During the developmental phase, the Project Coordinator was primarily responsible for designing the Field Test. He became the key liaison between the grantee, NIJ, and its contractors, and worked together with the supervising attorneys of the two test divisions to develop the test procedures. Since he and his supervising attorneys each had considerable ongoing management and defense responsibilities, the time they had available for design work was limited.

As a result, a number of problems which surfaced during the developmental phase were never adequately resolved prior to implementation. These problems included the county computer system, difficulties in designing services for weekend and women clients, and difficulties in managing the flow of data for the evaluation. The Palm Beach County office continued to have problems in these areas throughout the implementation phase of the Field Test.

Furthermore, the complexity of the experiment in Palm Beach County required the Chief to assume responsibility for the day-to-day management of the case assignment and data transfer processes. In conjunction with his ongoing defense and management responsibilities, the direction of the Field Test placed a considerable burden on him. The Chief must be commended for performing the ERDC management responsibilities with a high degree of professionalism and good humor.

The ERDC Field Test in Palm Beach might ultimately have run more smoothly had a more substantial amount of time and resources been committed to project management. However, the fact remains that the grantee was persuaded to expand the staffing and breadth of its original ERDC plan both to include two felony test divisions and to increase test staffing by two. The commitment of project resources to support additional full-time staff necessarily limited the funds available for project management. The assignment of the Project Coordinator on a limited basis was a compromise which was necessitated by the changes in design. Like all compromises its results were not perfect, but it did serve to provide the test with a level of direction without which it could not have achieved the level of success that it did.

- The Manager-Participant Approach

In Shelby County, three individuals participated in the design of the test: the Chief Public Defender, his Deputy, and the eventual Project Coordinator, who through much of the developmental phase was a full-time felony attorney. The Chief, and later his Deputy, assumed overall responsibility for management during the design phase. During implementation, however, the Project Coordinator came to assume more of the liaison and day-to-day management responsibilities of the project.

The Shelby County Office of the Public Defender had the most difficult and longest developmental period of the three grantees. It alone of the grantees had to negotiate a subcontract with an outside agency to assist in the test. Furthermore, its staff had to work without the Chief during his unsuccessful bid for prosecutor. Finally, only in Shelby County did the private bar actively oppose the Field Test. Responsibility for resolving these problems was shared by the "management team" which evolved during the developmental phase.

Approximately six weeks prior to implementation, the Project Coordinator was assigned full-time to the test. During that period, he was able to refine the rather impractical and disorganized design which had been included in the original application. When implementation started, the Project Coordinator became both a manager and a participant. He was responsible for supervising the two test attorneys, a test investigator, a secretary, and a data collector. He also monitored the performance of the PTR eligibility screener assigned to the test, and acted as a liaison with NIJ and its contractors.

In addition to performing these management duties the Project Coordinator functioned as a test attorney. As such, he assumed a partial test caseload and was responsible for managing that caseload. Because he was directly involved in the operation of the experiment, the Shelby County Project Coordinator was able to observe the test in operation in a way that was unique to the initiative. The role of the Shelby County Project Coordinator was the most comprehensive of the ERDC managers.

Three months into the test, the Project Coordinator was assigned by the Chief the added responsibility of supervising all municipal court attorneys. In this role, he became the immediate supervisor of the control attorneys in the felony division of General Sessions Court, and consequently, he monitored the data recording activities of the control staff. Control case data available to the evaluation from Shelby County improved considerably after that time.

While not ideal, the style of management and administration adopted by the Shelby County ERDC grantee appeared the most effective of the three test offices. During the implementation phase, a number of problems affected the test and its relationship to the office in general. Not all of these problems were resolved adequately. In the final analysis, however, the manager-participant approach adopted by the Shelby County grantee served it well.

- Limits of Management

Each of the grantees adopted an approach to management and administration which fit its own situation. Unlike the prosecutors whom they face in court, criminal defense attorneys are rarely supervised. They are expected to "lawyer" their cases as they see fit, subject only to a general liability for malpractice or ineffective assistance of counsel suits should they grossly err. Of the three test grantees only one, Palm Beach, provides supervision to attorneys, and there the philosophy and practice of the office is to limit such supervision considerably. Given the autonomy of the attorneys involved in the test, issues of project management and supervision became easily confused.

The test attorneys were required to follow test procedures, but they retained discretion in representing their clients. For example, no one could force a participating public defender to use the unique negotiating option made available by the test, nor could anyone demand that early investigation be conducted. The experiment provided each test attorney with a range of opportunities and resources which he or she could use in representing a client. Whether the attorney made use of these resources was not necessarily a function of the

worth of the procedures, but rather of the individual representational style of each participant. In a sense, therefore, the ERDC Field Test was unique in that it represented a project which would not conform to management. The problems of data collection and data recording reported in Chapter III bear this out. According to some test and control attorneys, no manner of supervision could have compelled them to cooperate with the research requirements because that was not the way they conducted their business. This was a difficulty for the test in general and for the evaluation in particular, but it underscores the contention that the ERDC Field Test was a unique experience.

Technical Assistance

Field test sites routinely receive a wide range of technical assistance and training to orient the staff to the test, to build skills in the particular program area, and to support the overall efforts of the grantee to implement the test as designed. Each field test grantee routinely is provided on-site technical assistance by experts in the substantive area, and is supported by the NIJ manager and technical assistance contractor.

During planning and implementation phases, cluster conferences typically are convened by the technical assistance provider. At these conferences key representatives from each grantee and other participants from the system make presentations regarding the progress they have made and the problems encountered in implementing the test. Grantees have the opportunity to share their experiences and to assist one another in identifying and resolving problems. In addition the NIJ manager and the technical assistance and evaluation contractors use the cluster conferences to discuss issues in special sessions with grantee staff, and to provide support and assistance in resolving those issues.

At the outset of the ERDC Field Test it became apparent that the technical assistance resources available to the sites would be limited. ERDC grantees would be provided with technical assistance during the developmental period, but assistance during implementation would have to be limited to general monitor-

ing and cluster conference activities. While this situation was not ideal, each grantee learned to operate without extensive technical assistance.

The level of technical assistance received by the grantees during the developmental phase varied considerably. The Passaic County Public Defender Office received the most substantive and beneficial assistance of the three. There, Mr. James Kura, Public Defender of Franklin County (Columbus), Ohio, was instrumental in the design of a case screening form for use by test attorneys during the initial client contact. This form was used extensively during the test and was praised by test staff as a critical tool in test operations. Perhaps more importantly, Mr. Kura also convinced grantee staff and NIJ that it would be difficult for two test attorneys to provide the early representation services to four municipal courts. As a result, the two smaller cities, Clifton and Wayne, were dropped from the test. While this move served to limit the cases which proceeded through the test, it is clear from all reports that the original design would have been unmanageable. The technical assistance provided by Mr. Kura was commendable. Test staff agreed that the ERDC field test was improved in Passaic County as a result of his efforts.

While not as focused and substantive, the technical assistance received by the Shelby County Office of the Public Defender from Professor Norman Lefstein of the University of North Carolina was no less important to implementation. Professor Lefstein's work with the Shelby office centered on refining and improving the procedures for securing early client contact and early judicial appointment. He succeeded in convincing the Project Coordinator and the Deputy Chief of the importance of the eligibility screening and appointment phases. He made these individuals aware of the difficult timing problems which might occur if the screening and appointment processes were not carefully planned. In response to the staffs' concern that various actors in the system might be hostile to the experiment, Professor Lefstein suggested strategies for negotiating with the judges, the prosecutor, the sheriff, and the private bar. In providing assistance to the Shelby County Office of Public Defender, Professor Lefstein focused on planning activities to ensure that the integrity of the

original test design would be maintained during implementation. His efforts educated the grantee regarding the design and the nature of the field test experience.

The Palm Beach County Office of the Public Defender had the most complex test design. It was to involve 17 test staff; it was to require use of the county computer system; and it was to attempt full vertical representation. Its technical assistance needs were considerable--perhaps the most extensive of the three grantees--but the assistance received was limited. The Project Director of the technical assistance effort, Mr. Edward Pesce, Esq., made several on-site trips to Palm Beach during the developmental phase to discuss issues of concern to the grantee. These discussions centered on the computer assignment process, the problems of providing test services to weekend clients and women, and the preparation of the operations manual.

Evaluation staff also assisted the office in learning the county computer system's procedures. This assistance was limited, however, and never resolved the problems presented by the computer.

The NIJ contractors made suggestions regarding certain problems which would be faced by the site in implementing vertical representation. The questions raised included: What would be done about the on-going felony caseloads which six of the eight test attorneys would be carrying when the test started, and what process would be used to approach and negotiate with the Intake Unit of the State Attorney? Unfortunately, only limited technical assistance was provided to the Palm Beach County office to help resolve these problems. In fact, the Project Coordinator, who was the only individual substantively involved with the project during the developmental phase, was forced to rely upon his own resources to answer each question and problem in turn.

The lack of technical assistance to the Palm Beach Office of Public Defender may have influenced the operation of its Field Test. The site faced a complex design and significant implementation questions which it was forced to resolve

without external expert assistance. Its implementation of that design, and resolution of those problems would have been enhanced considerably by the availability of technical assistance.

In sum, each of the sites received some technical assistance during the developmental period, but the level, quality, and relevance of that assistance varied. Interviews with the three Chief Public Defenders and their Project Coordinators revealed that the grantees would have liked more technical assistance, especially during the implementation year, when problems arose about the eligibility screening or random assignment elements of the experimental design. For example, the grantees were not certain how many attorneys had to be at First Appearance, or how cases were to be assigned to protect the experimental design. Resolving these questions took time, and each grantee had to operate the test for weeks before a solution was found. Had a more consistent and constant level of technical assistance been available to the grantees, the resolution of those issues would have occurred sooner.

Furthermore, such assistance would have helped the grantees considerably in implementing the experimental designs, which in essence were seen as artificially imposed separations of all or a significant portion of their caseloads. However, once the "process or flow" issues were resolved, the grantees did not express a need for any assistance in providing early or enhanced representation. The offices and attorneys knew what they wanted from early representation and had no expectation that anyone would assist them to provide it.

Staffing and Training

- Staffing of the Test Sites

The staff of a field test is assigned according to the nature of the work to be performed. The Early Representation by Defense Counsel Field Test involved eligibility screening, criminal defense representation, clerical support, and data collection. Therefore, the grantees had to assign attorneys, investigators, data collectors, and other staff to the test effort.

Each of the ERDC grantees faced externally imposed constraints in the hiring process. In the cases of the Shelby and Passaic County Public Defender Offices, these constraints derived from organizational controls. In New Jersey, the State Office of the Public Defender exercised broad control over the staffing of the regional trial offices. Of the two new staff assigned to the office during the test, one was imposed by the state agency. The hiring prerogatives of the Shelby County Public Defender were limited in a similar fashion. The ultimate hiring decision for all attorneys was made by the County Mayor, who was not bound by the recommendations of the Chief Public Defender. All non-attorney staff had to be hired through civil service. All of the six new staff were selected, therefore, through the county process. In one or two instances, the staff ultimately assigned to the test were not the first choices of the office.

The Palm Beach County Public Defender had full authority to hire staff without outside influence. In the case of the ERDC Field Test, however, the Public Defender was faced with the limitations of the grant budget. Eight full-time staff--two attorneys, two investigators, two witness interviewers, a secretary, and a data collector--all had to be supported on the grant. These budgetary considerations put pressure on the office. Although there was a concerted effort to hire individuals who were competent and up to the standards of regular office staff, the ability to hire staff may have been limited by the need to preserve the budget.

The Shelby County office faced the most significant problems in staffing the Field Test. The need to support an individual from an external agency so as to conduct the eligibility screening function presented a unique problem. Since it was politically infeasible for the Public Defender Office to screen for indigency, the Pretrial Services Agency (PTS) agreed to perform the function. The original design had anticipated this situation, but had not anticipated the level of funding which the function would require. The office had assumed that eligibility screening for felony defendants could be performed by the regular pretrial screener with some part-time support.

By August, it was clear that a full-time eligibility screener for the experiment would have to be hired by PTS and supported by the ERDC grant. To pay for this position, the grantee had to eliminate the social services worker position it had included in the grant. This was unfortunate because NIJ had been interested to learn if the test would have any impact on alternative dispositional options. The elimination of the social services worker position severely limited that aspect of the test in Shelby County.

The actual hiring of the eligibility screener also proved to be a problem. The position was not filled when the test began and an intern from the Public Defender Office had to conduct the screening function for the first six weeks of the test until the full-time screener was hired.

Apart from the organizational and budgetary constraints faced by the grantees, and Shelby County's unique problem in filling the screening position, the staffing effort was relatively successful. Little turnover in test staff occurred during the implementation phase and test staff have been retained by each of the offices since the test ended.

- Training

The training of staff to perform the activities required by the Field Test was sporadic, but generally sufficient to prepare test staff for the experiment. Three types of training were provided by the offices during the developmental phase: substantive skills training, orientation, and training in data collection and recording.

Some substantive skills training was provided by each of the grantees. In Shelby County, the delays in implementing the grant allowed the Project Coordinator to train the two other test attorneys in the municipal court process. Neither of these two attorneys had substantial experience in client representation, although both had been in practice for a number of years. During the two week period prior to the test, the Coordinator oriented them to

the court procedures under which they would operate. In addition, the coordinator instructed the test attorneys in interviewing prosecutors and in conducting preliminary hearings.

The training provided to the Shelby test attorneys was by far the most comprehensive available to any test staff. It was particularly necessary since the attorneys who assumed responsibility for the control clients were all experienced municipal court defenders with full knowledge of procedures and potential strategies. Thus, the training protected the experiment by changing a situation which could have confounded the test effects with attorney experience.

Less intensive substantive training was provided by the senior test attorney in Passaic County to the junior test attorney. This training consisted of a general orientation to the court procedures in the Patterson and Passaic municipal courts and the procedures for obtaining access to defendants in the Passaic city lock up and the county jail.

The Palm Beach County Project Coordinator trained the two test witness interviewers in the use of the county computer system to determine the divisional assignment of a defendant for random assignment purposes. Since the office was relatively unfamiliar with the computer system, and since staff in the clerk's office had rarely been interested in determining the ultimate divisional assignment so early in the adjudication process, the initial training was not sufficient and had to be supplemented several times during the test.

Orientation of control and general office staff to the experiment was an important although overlooked exercise. Both the Palm Beach and Passaic offices were briefed regarding the test prior to implementation. These were plenary sessions run by the Public Defender or the Project Coordinator. During these briefings the staff were informed of the Field Test and the responsibilities that everyone would have in implementing it. No general orientation was provided to the staff of the Shelby County Public Defender.

An initial round of interviews conducted at or just prior to test implementation indicated that few individuals in the offices not directly involved with the development of the test were aware of the actual operation of the test and its implications. In a few instances, even test staff were unaware of the full implications of the Field Test.

Orientation of the offices to the data recording and collection requirements of the test was conducted by an evaluation team member and the on-site field researcher. The orientation consisted of training in the use of the Management Information System (MIS) to be implemented at the site. In addition, the staff were trained regarding the system of data flow from arrest through disposition, and the steps in data transfer were described. In all sites, staff required additional orientation by the on-site field researcher.

The training provided by the three test sites to their staffs varied considerably, but two similarities are apparent. First, by and large, test staff were briefed adequately regarding the roles and responsibilities they were to assume; however, no consideration was given to preparing them for contingencies in the event of problems or departures from normal test operations. Such issues eventually were handled by the sites as they arose. Second, control staff were never fully briefed regarding the important role that they were to play in the Field Test. None of the grantees fully understood the need for a comparable control group for the Field Test. Therefore, the participants did not adequately prepare the control staff. Control staff were told to perform their jobs as usual; however, the nature of the Field Test and its data recording and collection requirements forced control staff to do more than "usual." Since control staff did not see themselves as part of the test, many of them came to resent those requirements.

Development of the Operations Manuals

During the developmental phase of an NIJ field test each grantee prepares an operations manual which describes the final pre-implementation design. Once designed, the operations manual controls the implementation of the field test.

The technical assistance Project Director assisted in the production of the operations manuals for the ERDC Field Test. He was responsible for monitoring the preparation of the manuals, and for ensuring that they conformed to the overall test design as mandated by NIJ.

The ERDC grantees were briefed regarding the form and content of the manuals at the initial Early Representation by Defense Counsel Field Test cluster conference in April, 1982. Individual sessions were convened with the representatives from each grantee to discuss the adequacy of the test design, as presented in their grant applications, and subsequently revised during the early design phase. The issues which were to be resolved by the operations manuals were identified during these sessions.

The preparation of the operations manuals was an important exercise for the ERDC grantees. It required each to examine closely the implications of the experimental design of the test and forced the grantees to consider elements of the test which otherwise may have gone unexamined. The specific areas to be covered in the ERDC operations manuals included:

- test process--How was eligibility for public defender services to be determined? How were defendants to be assigned to test and control divisions? How would the grantees ensure attorney-client contact within 24 hours after arrest? How would test cases be opened and assigned? How would test and control cases flow through the system? What special test activities would be anticipated?
- staffing responsibilities--What would be the responsibilities of each of the test staff? How would these differ from the responsibilities of the control staff?
- data collection--How would data on the cases opened and closed during the test period be routed to the evaluation staff? What responsibilities would the data collector assume?

Because each of the grantees changed their operating procedures considerably during the developmetal phase, the operations manuals required some revisions. In Passaic County, the only major change in operations was a reduction of the proposed coverage of test services from four municipalities to two municipalities.

In Palm Beach County, operational changes had to be made to accommodate female defendants and clients arrested on weekends. First, because female defendants were confined in a separate facility 15 miles from the county jail, early contact was very difficult. During the developmental phase, it was agreed that the Palm Beach grantee would not provide the same early test services to women. Second, since individuals arrested on weekends in Palm Beach County were processed differently from those arrested on weekdays, the grantee created a special system to provide test services to these cases (see, Volume II, Palm Beach County Case Study).

The original operations manual submitted by the Shelby County grantee was considered inadequate due to apparent inconsistencies in the design of scheduling and case flow. The grantee was required to make numerous revisions in its manual to address more precisely the critical areas of eligibility screening, test and control case processing, the opening of case files, data collection, and case management. The two NIJ contractors provided considerable technical assistance to the office. The office prepared several versions of the operating manual. The final version was submitted and approved in August, after the other offices already had begun implementation of the Field Test.

Securing the Support of the System

One of the primary selection criteria for the ERDC Field Test was whether or not a prospective grantee/public defender could guarantee that other system actors would cooperate with the experiment. At least one finalist, the San Francisco, California, Office of the Public Defender, had to be dropped because the prosecutor actively opposed the Field Test.

Each grantee was required to include a statement of understanding and cooperation signed by the primary criminal justice system actors in the jurisdiction, including: the Chief Judges of the relevant courts of original and general jurisdiction, the Prosecutor, and the Sheriff. The signatures of other local

representatives such as the County Clerk, the Chief of Police, and the County Mayor, were included where appropriate. This statement was intended to assure NIJ that the heads of the relevant agencies in the system understood the ERDC concept, pledged their support to its implementation, and intended to defer any major system changes during the eighteen-month grant period.

The technical assistant Project Director encouraged each site to solidify local support during the developmental phase. He suggested that the grantees convene on-site workshops to explain the workings of the test and to resolve any conflicts over test operations which might cause problems during implementation. Only one grantee, the Shelby County Public Defender's Office, convened such a session. The other two sites adopted other strategies. In Passaic County, a special Speedy Trail Committee convened and chaired by the Administrative Judge, and including all key actors in the adjudication process, was the forum chosen by the Chief Deputy to secure system support. During the development and implementation of the test, special time was set aside at the meetings of the committee to discuss the Field Test and to resolve disputes.

In Palm Beach County, it was determined that one-on-one sessions between the Public Defender and/or the Project Coordinator and other key actors in the Palm Beach system were preferable to a plenary session. The Public Defender and the Project Coordinator informed agencies on a "need to know" basis because they felt that larger sessions might create opposition where none otherwise existed.

In Shelby County, the private bar actively opposed the Field Test. Other key actors echoed their concerns. During the developmental phase, the Chief, his Deputy, and the Project Coordinator attempted to meet with interested parties to secure their support of the test. However, it soon became apparent that the one-on-one method would not reach enough individuals whose support would be needed during the test. Six different judges would be responsible for appointing the public defender in Municipal Court, and no single judge had the authority to speak for the others. Although the District Attorney General had

given the project his support, the Chief Municipal Court prosecutor and his staff, who would be critical to the test, had expressed some opposition to early representation. Even PTR was concerned about its role in the test. Therefore, NIJ and its contractors insisted upon scheduling a special half-day meeting to which all interested parties were invited. This was held on August 19, 1983. In attendance were five of the six municipal court judges, three assistant attorneys general, four representatives of PTR, and key representatives from the clerk's office and the Sheriff's department.

The plenary session held by the Shelby County Public Defender had one important result. It informed the "line staff" of participating agencies, especially the municipal court prosecutors and judges, of the intricacies of the Field Test and its procedures. Each participant was given a copy of the operations manual. Interviews with key system actors at the conclusion of the test revealed that many saw the "meeting at the Pink Palace" as the time when they first learned about the test in its entirety. In contrast, interviews with representatives of the system in the other two sites revealed that line staff in key agencies--for example, the police in Passaic city, and the Intake Unit of the Palm Beach State Attorney--were not aware of the test prior to implementation.

Pre-Test and Start-Up

- Overview

As a final stage in the developmental process, each ERDC grantee was to use the first two weeks of the test period to put its test into operation. The pre-test was intended to provide each grantee with an opportunity to assess the effectiveness of the experimental design in providing two distinct client populations, the ability of test staff to provide early representation to clients, and the appropriateness of the case management system (MIS) in capturing data on test and control clients.

For previous NIJ initiatives, the pre-test period was an important element of the field test process. The pre-test enabled test grantees to refine and revise their designs to reflect the operating realities of their systems. For the ERDC Field Test, the pre-test period was a mixed blessing. It served to identify some problems imposed by the respective systems, but it did not necessarily provide sufficient time to resolve them. This was due to a number of factors, which included:

- Representational--All test or control cases which were appointed to the Public Defender during the pre-test period became formal clients of the office, to be represented fully through the process; once they became clients they continued to receive services regardless of their pre-test status;
- Systemic--Each criminal justice system placed constraints upon the test process which could not be resolved by the grantee. For example, the Palm Beach Public Defender learned that at times the county computer system went out of service, making it impossible to screen test clients early enough in the process for test services to be provided; the Shelby County Public Defender learned that there was no accessible holding area in the new courtroom building where test attorneys could converse with their clients prior to First Appearance, which limited the initial attorney-client contact; and the Passaic County Public Defender learned that the Passaic City lock-up did not have adequate attorney-client meeting facilities, and that the Passaic City police were going to present problems to the test;
- Informational--Certain information was difficult to secure at each site early in the process, especially for control cases, such as time of arrest as opposed to time of booking (Shelby and Passaic), prior record of defendant (Passaic, Palm Beach), the degree of the arrest charge (Passaic), bail set at First Appearance (Passaic); and whether changes occurred during stages when control cases were not being represented (Palm Beach downfiles to misdemeanor).

In short, the nature of the ERDC experiment, and the fact that the grantee offices could be denied optimum access to their clients, limited the usefulness of the pre-test period. However, in each case it did serve to identify issues and problems, several of which continued in some form throughout the Field Test.

- Timing

Originally NIJ intended to award grants on January 1, 1982. Test implementation was scheduled to begin on April 1 after a three-month developmental period. Implementation occurred much later than this because the awards were not made until the middle of February, and each grantee required some additional time to prepare for test operations.

The Passaic County ERDC Field Test began on July 6. The office had delayed implementation for a few weeks to obtain clearance from NIJ to implement the test in only two municipalities, rather than the four which originally had been proposed. More importantly, the office needed to determine the impact of the long-delayed opening of the Paterson City jail and court complex. The opening of the jail, in June of 1982, had not been anticipated by the office. Test procedures had to be developed to enable test attorneys to contact defendants at the lock-up where they were to be housed prior to First Appearance.

The Palm Beach County pre-test period began on July 20. Originally scheduled for June 1, the test was started later to accommodate staff attorneys who were attending classes on public defense in Houston, to make agreements regarding the provision of test services to weekend and women defendants, and to give the witness interviewers some time to work with the computer assignment system prior to test implementation.

The Shelby County Field Test began on September 15. Difficulties in completing the operations manual had required some time, but more importantly, NIJ and the grantee had agreed to delay the test start until after the municipal elections of August, and the reorganization of the jail and the municipal court system in September.

- Issues Identified During the Pre-Test

The pre-test period provided each ERDC grantee with the opportunity to test the experimental procedures. Despite the representational, systemic, and informational constraints the grantees faced, each grantee was able to begin

implementing the Field Test. Early representation services were provided, and the MIS systems and data transfer began operating. At the conclusion of this early period a number of problems surfaced at each site. These problems continued to affect operations during the remainder of the test. The problems identified during the pre-test involved the areas of eligibility screening, random assignment, early client contact, and data collection.

Eligibility Screening. Each grantee faced some problems in the identification and initial screening of defendants for inclusion in the test. Passaic test attorneys learned that the criminal justice process in Passaic City departed somewhat from that of Paterson City and of the County in general. Unlike Paterson, the Passaic Municipal Court did not have a regularly scheduled First Appearance, and police would routinely bring defendants before a judge for First Appearance at odd hours. Since it was impractical to locate the test attorneys at the Passaic lock-up, arresting or investigating office had to call the office to inform test attorneys of felony arrests. An answering machine was set up in the office to receive calls from 5:30 P.M. to 8:30 A.M. Test attorneys were prepared to accommodate the needs of the Passaic police; nonetheless, they experienced resistance from police early on which continued throughout the test. Also, not all defendants contacted by the test attorneys wished the services of the public defender. A number of defendants who rejected the public defender in favor of private counsel later were forced to accept the services of the office when their efforts to retain private counsel failed. This occurred sporadically in Passaic County, but quite frequently in Shelby County.

In Palm Beach County, the county computer system, which controlled the assignment of defendants to Circuit Court divisions, created numerous problems for the test. These problems took months to resolve. The workings of the system were difficult to decipher, especially for defendants with multiple charges and pending holds. When the computer system was not functioning, the test could not operate. When it was slow, the screening process could not be completed prior to First Appearance.

During the pre-test period in Shelby County, the screening function was performed by an intern from the grantees; a full-time screener was not hired for six weeks. It was difficult for the intern to interview all appropriate defendants. Some defendants were missed. Of those who were screened, many eliminated themselves from consideration by saying they were going to retain private counsel, or by otherwise inappropriately answering the questions. Many of these eliminated defendants later were represented by the control attorneys in municipal court, potentially confounding the random assignment of cases.

Random Assignment. Only the Palm Beach computerized assignment system resulted in the creation of two almost identical client groups. In Passaic, the self-selection of certain defendants and the resistance of the Passaic police department operated to affect slightly the comparability of test and control groups. Shelby County's complex two-phased screening process, and the notion (prompted by the system) that one retained private counsel in municipal court even if destitute, served to affect the comparability of test and control populations.

The reorganization of the municipal courts in Shelby County created another problem related to the random assignment scheme. During the month immediately prior to the municipal court reorganization, the judge presiding over the Felony Division continued all felony First Appearances to September. When the Felony Division of the General Sessions Court convened on September 1, 1982, more than 100 of those "continued cases" had to be processed through the system. The two public defenders, who were to serve as the control attorneys, were inundated with cases--up to 25 per day for the first two weeks. As the pre-test period began, the "continued" caseload of the control attorneys was at its peak. Originally, the office had planned for only one control attorney, but the caseload pressures created the need for two. The control population remained high throughout the Field Test.

Early Client Contact. At the outset, Passaic test attorneys were able to contact clients well within 24 hours of arrest. They were also the only test attorneys to have lengthy contacts with their clients prior to First

Appearance. The Palm Beach and Shelby County test attorneys had to be content with short sessions with their clients immediately prior to First Appearance. In Palm Beach, test attorneys had information on bail secured by the witness interviewer. They could discuss bail and other details of the case with the defendant for a brief period. In Shelby County the bulk of the initial client session was devoted to having the client sign an affidavit waiving the attorney-client privilege. The affidavit was demanded by the private bar, as well as the judges, to ensure that any defendant who falsely understated his or her income could not invoke the privilege against the test attorney.

Data Collection. Each grantee experienced considerable problems in implementing the data collection system. The recording and collection of control case data presented the most difficult problems at each site. Shelby County's problems were mitigated by the fact that the on-site evaluator was there for one month prior to the pre-test and was able to establish a satisfactory system. In Passaic County, the test operated for two and one-half weeks before the on-site evaluator began working. He faced resistance from the control attorneys, who were not staff of the office. Moreover, data which the public defender staff could not provide were not easily retrievable since Passaic was the only county of the three not supported at least in part by an automated data processing system. All records were kept manually and access to them was limited.

While the on-site evaluator in Palm Beach County was hired prior to the pre-test, the system established to transfer test and control intake and case management information to the evaluator was never fully implemented. The evaluator was able to retrieve case specific information from the county computer, but the process was time-consuming and the on-line time available for this data collection effort was limited.

Summary

The developmental phase of the ERDC Field Test served to highlight some of the issues which would characterize the implementation during the following year:

- Except for the Shelby County Project Coordinator, none of the individuals involved in directing the design and implementation of the test were relieved of their normal full-time responsibilities to assume direction of the field test. Issues arose which could not quickly be resolved because of the general lack of day-to-day management.
- Not all of the needs of the grantees for expert training and technical assistance could be met, and this may have limited the identification and examination of potential problem areas. The limited expert technical assistance provided was instrumental in shaping and improving the Field Test in Passaic and Shelby Counties.
- Staff training was generally insufficient to prepare test and control staff fully for the demands which the test would place on them. Furthermore, the attorneys were not easily trained regarding the strategies to be used in representing their clients, and the procedures they should follow in documenting that representation.
- The preparation of operations manuals was an important experience for the grantees, but they did not adequately resolve the problems which confronted them.
- The pre-test period revealed that the implementation of the ERDC Field Test would be difficult, but it also revealed that implementation was possible. Each grantee demonstrated a high degree of resourcefulness during the pre-test period.

IMPLEMENTATION OF THE EXPERIMENTAL DESIGN

Overview

It was important for the ERDC grantees to develop designs which would work and could be implemented easily. The original test design document had envisioned a classic random assignment scheme for the ERDC Field Test in which an initial screening and indigency determination of all arrestees would determine the eligible pool of potential clients. These clients would be randomly assigned into test and control groups. The experimental design adopted by each grantee represented a compromise between the ideal of scientific rigor and the practical realities of operating an experiment within a dynamic criminal justice system. While each participating office enjoyed an excellent reputation with its jurisdiction, none of the offices had the opportunity nor the authority to change drastically the operating procedures controlling their systems.

In Passaic County, random assignment was controlled by the defendant's date of entry into the system and the arresting jurisdiction. The test population was drawn from all felony defendants arrested in one of two participating municipalities during a pre-scheduled two-week period. The test mode was rotated between the two jurisdictions every two weeks.

For the Palm Beach County Field Test, the automated courts divisional assignment system controlled random assignment. That system assigned each felony charge to a separate division of criminal court. The system was designed in such a way that it was possible to determine the division in which a case would be arraigned once formal charges were filed. The office planned to implement early representation by identifying and screening the defendants assigned to the two test divisions and providing the test services to those defendants.

While Shelby County used a classic random assignment scheme, the office was not fully responsible for its implementation. The local pre-trial release agency was responsible for screening all defendants. This agency delivered the list of those eligible to the test secretary, who randomly sorted defendants into test and control groups, and assigned test defendants to their test attorneys.

The Implementation of Eligibility Screening

● Refinements

Each site departed somewhat from its operations manual in implementing the eligibility screening component of the Field Test. These departures included:

- The two-week rotation period for the Passaic County test was rescheduled to begin on Friday evenings, rather than on Monday mornings as initially scheduled, to ensure that the individuals arrested during transition weekends would not be missed by the test as it rotated between test municipalities;
- Passaic test attorneys divided the screening function among themselves with the junior attorney covering early mornings from 7:30 A.M. to late afternoon, and the senior attorney covering early afternoon through the evening, often until midnight. The Passaic County test had the most extensive screening coverage of the three sites.

- Both the Shelby and Palm Beach County grantees departed from the original test designs by not conducting eligibility screening in the afternoon. Such afternoon "sweeps" were designed to identify and screen arrestees who were booked and processed too late to be included in the morning First Appearance list. Difficulties soon arose. The grantees found that it was not possible to schedule such sweeps late enough in the day to be practical, and early enough to allow test staff to screen without having to work overtime. Moreover, afternoon sweeps would have presented problems to jail staff. In each case, the benefits of two rounds of screening per day were lost because of the lack of test resources, and the potential for resistance from jail staff.
- Weekend screening proved difficult for each of the grantees. Since the primary screening function in Passaic County was performed by the test attorneys, they were forced to alternate weekend coverage during the duration of the study. The data show that they were able to meet the early contact requirements of the test on weekends as well as weekdays. No test screening was performed in Palm Beach County on weekends. This was attributed to the fact that weekend First Appearances occurred too soon for the test process to be performed, therefore, the extra burdening of test staff could not be justified. In Shelby County, weekend screening was not performed by the full-time test screener on weekends; rather, the weekend pre-trial release interviewers were responsible both for indigency determination and bail/OR screening, a situation which caused problems throughout the operation of the Field Test.
- Each grantee came to exclude certain classes of defendants from the test. Neither the test design document nor the individual grantee operations manuals anticipated the number of defendants whose status made them inappropriate for test consideration. These defendant groups included the following:
 - probation or parole violators where the underlying violation was not a felony which would be prosecuted;
 - individuals being held for extradition or transfer to federal court;
 - individuals arrested for failure to appear before the court in felony prosecutions filed prior to the test period.

- Problems with Eligibility Screening

The implementation of the eligibility screening process at each site was not perfect. In essence, the problems which arose served to underscore the difficulty of introducing a controlled experiment early in the adjudication process and in attempting to maintain the integrity of the experimental design through case disposition. However, while the eligibility screening process created problems for the test at each site, none of those problems seriously compromised

the random assignment plans of the grantees, nor did they seriously confound the test results.

The eligibility screening processes designed by the grantees did, however, present several threats of bias to the experimental design. The difficulties which were realized during the implementation period, included: identification of the defendant pool, problems in screening, and problems in implementation.

Identification of Defendant Pool. As noted above, the Passaic City police did not fully cooperate with the test. This fact is best demonstrated by the variation in cases drawn from the two participating municipalities, as shown in Table IV-1, below:

TABLE IV-1

Jurisdiction by Group Status

	Test	Control
Passaic	101 (17%)	178 (27%)
Paterson	475 (83%)	487 (73%)
Totals	576	665

Interviews with test staff and on-site observations revealed that certain Passaic policemen and investigators refused to contact the office, a prerequisite for test consideration. The police in Passaic City appeared to be more likely to contact the office regarding defendants arrested for serious crimes against the person than non-serious or property crimes. One result of this situation was that a conservative bias or a bias in favor of the control mode was created. A second result was that a higher number of control cases were processed through the system and assigned to felony control attorneys in Superior Court.

In both of the other sites, defendants were missed who could have been screened and later assigned to the test mode. In Shelby County, 185

defendants who were never screened for eligibility, later were assigned to the control attorneys, and processed as control cases. Interviews with site representatives revealed that irregularities at the jail often affected whether defendants showed up on the appropriate jail lists used by the test for screening. An assessment of data provided by the Palm Beach grantee revealed that a number of defendants were missed during the initial screening process, and later were Arraigned in test divisions. A portion of this population was said to be created by irregularities in the morning jail list, or computer breakdown. The exact number of such cases cannot be determined at this time.

Problems in Screening. Once the felony client was identified for screening, the eligibility determination process in Passaic County presented few problems. Those defendants screened by the test attorney were by and large eligible for public defender services. While test attorneys withdrew from a higher proportion of cases than control attorneys, observations revealed that this was not usually because the client was ineligible for public defense services. The same was true in Palm Beach County, which did not report any variation in attorney withdrawals.

The screening process in Shelby County was a problem from the outset. First, the test did not have a full-time screener for six weeks. Second, weekend screening always posed a problem. Test staff and the full-time screener agreed that a number of the "missed controls" were missed on the weekend. Third, the system in Shelby County resisted early eligibility screening and imposed controls on the screening process which created problems. The screening interview had to be lengthy to meet the demands of the private bar and the judges, and may have confused defendants.

Fourth, and most importantly, the eligibility screening was not always successful in identifying eligible defendants. If a defendant said that he or she wanted to retain private counsel, the interview was terminated and the defendant was considered ineligible. A defendant also would be ineligible if he or she appeared to have sufficient resources to retain private counsel for any stage of adjudication. Employed defendants and

defendants who could make bail routinely were considered ineligible. Many defendants who were considered ineligible for these reasons later required public counsel. Approximately 450 defendants who had been found to be ineligible, were unable to retain private counsel. These defendants eventually were assigned to the public defender and processed as control cases. Furthermore, a large number of control defendants who were found eligible for public defender services retained private counsel during the two to three week period between screening and the "normal" judicial appointment of control attorneys to cases. As a result, only 485 defendants could be considered "true control" cases, or cases that were randomly assigned to the control condition immediately following eligibility screening. This "true control" population was much smaller than the test population.

Problems in Implementation. The Passaic County test staff reported no problems in implementing the eligibility screening component of the test. The office used its pre-existing screening system to implement ERDC, and it was the only test office which had the authority to serve clients without judicial appointment.

In Shelby County, the judicial appointment power at times affected the screening process. It was reported that judges refused to appoint the test attorneys to some cases that were randomly assigned into the test condition. Furthermore, test attorneys were forced to withdraw from a number of cases after the defendant (or his family or friends) posted bond. Analysis of the Shelby County case processing data reveals that test attorneys withdrew from cases more often than control attorneys and did so earlier in the adjudication process. These differences are largely attributable to judicial intervention. Interviews and observations suggest that two of the six General Sessions judges refused to appoint the test attorneys at First Appearance during the early stages of the test. The data suggest that this occurred approximately 10% of the time.

In Palm Beach County the successful operation of the screening process depended on the computerized case management system. The computer system often did not function properly, and consequently, early screening was not

always possible. First, the computer was "down" at least 30 weekdays during the test, and was "slow" on many other occasions. When the computer was down, the witness interviewers were unable to determine the division assignments of defendants prior to First Appearance. Eligibility screening and early contact were not achieved, and the cases were treated as "weekend cases." Whenever the computer was slow, the witness interviewers were unable to get the First Appearance lists by 9:00 A.M. On such days the interviewers did not have enough time to review the list, determine the division assignments, and interview all the defendants assigned to the test divisions before the 11:00 A.M. jail inmate lunch. The defendants that were not interviewed prior to lunch could not be screened properly prior to First Appearance.

Second, the computer system was complex and the witness interviewers required some time to learn it. An analysis of the available data reveals that approximately 8% of all cases were improperly identified (125 cases) during the test period. Of these, 90 cases had to be transferred between test and control divisions. Fifty-five of these cases were transferred from test to control, with the remaining cases transferred from control to test divisions.

Finally, even when the computer was fully functional and both interviewers were on the job, the witness interviewers had only two to two-and-one-half hours to complete their complex tasks. When both interviewers were working at peak efficiency, it generally was not possible to interview more than eight (four each) defendants in the allotted time period. On heavy days, eligibility screening activities simply could not be completed.

Random Assignment

As the previous discussion noted, the experimental design used by each grantee resulted in the creation of remarkably comparable client groups. Tables IV-2 through IV-4 present comparisons of the demographics and arrest charges of the full test and control populations at each site.

TABLE IV-2
Passaic County Test of Randomization

DEMOGRAPHICS	TEST (N=576)	CONTROL (N=665)
Male	91%	91%
Female	9%	9%
White	11%	11%
Black	60%	58%
Hispanic	29%	31%
Mean Age	26.56 years	26.58 years
ARREST CHARGE		
Serious crime v. person	36%	26%
Non-serious crime v. person	4%	5%
Serious crime v. property	14%	15%
Non-serious crime v. property	13%	16%
Drug offense	24%	31%
Others	9%	7%
TOTAL	100%	100%

TABLE IV-3
Palm Beach County Test of Randomization

DEMOGRAPHICS*	TEST (N=888)	CONTROL (N=1579)
Male	91%	91%
Female	9%	9%
White	51%	51%
Black	48%	48%
Mean Age	26.47 years	26.78 years
ARREST CHARGE		
Serious crime v. person	28%	28%
Non-serious crime v. person	**	1%
Serious crime v. property	15%	10%
Non-serious crime v. property	40%	43%
Drug offense	10%	11%
Others	7%	8%
TOTAL	100%	100%

*There is no coding for Hispanic defendants.

**Less than 1%.

TABLE IV-4
 Shelby County Test of Randomization
 Entire Control Population

DEMOGRAPHICS	TEST (N=801)	CONTROL (N=1152)
Male	89%	90%
Female	11%	10%
White	15%	16%
Black	85%	84%
Mean Age	26.29 years	26.31 years
ARREST CHARGE		
Serious crime v. person	23%	26%
Non-serious crime v. person	0%	0%
Serious crime v. property	9%	10%
Non-serious crime v. property	58%	53%
Drug offense	8%	6%
Others	4%	6%
TOTAL	100%	100%

TABLE IV-5
Shelby County Test of Randomization
Separated Control Population

	Test (N=801)	Control I "True" Controls (N=485)	Control II "Ineligible" Controls (N=479)	Control III "Missed" Controls (N=185)*
<u>DEMOGRAPHICS</u>				
Male	89%	90%	91%	85%
Female	11%	10%	9%	15%
White	15%	15%	15%	24%
Black	84%	84%	85%	76%
Mean Age	26.29	26.30	25.72	27.88
No Prior Arrest Record	55%	35%	32%	34%

*Control populations do not add to entire control population due to missing data.

● General Cross-Site Discussion

The above tables support a number of observations concerning the similarities and differences between the client populations served by the three ERDC grantees. First, the grantees vary little in terms of the sex of their clients. Approximately 90% of all individuals arrested on felony charges in the three jurisdictions are male and 10% are female.

The racial composition of each group reflects the racial mix in the respective communities. Passaic County reports a higher proportion of Hispanic clients than does Shelby County. Unfortunately, the Palm Beach data are not reliable for race. The arrest reports in Palm Beach County do not have a coding category for Hispanic arrestees, even though every agency in the jurisdiction has bilingual staff to serve the considerable Hispanic population. Therefore, generalizations and comparisons concerning the racial composition of the Palm Beach County client population are not warranted.

Age is perhaps the most interesting client characteristic since it belies the socio-cultural and systemic differences between jurisdictions. The mean ages for the treatment groups vary only slightly, from a low of 26.29 years for Shelby County test clients, to a high of 26.78 years for Palm Beach County control clients. Given that the population consists of over 5,000 felony clients of three diverse public defender agencies in three considerably different jurisdictions, such similarity is startling.

The grantees differ somewhat in client arrest charges. In Passaic and Palm Beach Counties, clients arrested for serious crimes against the person and serious property crimes (1^o burglary, arson, etc.) constitute more than 40% of all felony arrests. In Shelby County, however, they represent less than 35% of all arrests. Less than 30% of all Passaic County defendants were arrested for non-serious property crimes (theft, auto theft, etc.), while in Shelby and Palm Beach Counties a much higher proportion (over 50% and 40% respectively) of clients are arrested on such charges. Passaic County experiences a much higher percentage of clients arrested on drug offenses than the other two sites.

Discussions with the administrators and staff of the offices revealed that much of the disparity in client arrest charges was attributable to both test-specific and jurisdictional differences. For example, the Passaic County Field Test was the only one of the three which did not draw its experimental population from the entire county. The inner cities of Paterson and Passaic provide only 60% of the county-wide felony arrest pool, but those arrestees represent over 80% of the serious crimes cleared by arrest in the county. This is one reason why the Passaic County experimental population has a greater proportion of serious arrest charges than the other two sites.

As mentioned in Chapter II, in Palm Beach and Shelby Counties, there are strong community concerns over property crime, and significant pressure exerted by victim organizations and the local press on the criminal justice communities to control such crime. This may account for those communities having a higher proportion of non-serious property offenses than Passaic County.

The low proportion of clients arrested for non-serious crimes against the person (purse snatchings, simple assaults) at all of the sites may be a reflection of the charging practices of the police. Attorneys at each site stated that there was a tendency on the part of local police to "overcharge." The aggressive screening practices and downfiling by the Passaic and Palm Beach County prosecutors were offered as proof of this contention.

Finally, attorneys of the Palm Beach and Shelby County grantees were of the opinion that drug offenders were the defendant population most likely to retain private counsel. Passaic County attorneys did not concur with that analysis.

Comparison of Treatment Groups. Comparisons of the test and control client groups for each site reveal two major differences. In Passaic County, a higher proportion of test clients were charged with serious crimes against the person than control clients; and in Shelby County, more test clients were found to have no prior arrest record than control clients. The test and control groups in Palm Beach County appear to be remarkably similar in terms of client characteristics.

The differences between treatment groups in Passaic and Shelby Counties were caused by the eligibility screening which operated during the test. In Passaic County, the higher proportion of defendants with serious charges in the test group may have created an analytical bias in favor of the control group. Passaic County Public Defenders agreed that clients who are charged with serious crimes against the person are normally less likely to obtain pretrial release and to have their cases settled in municipal court than are clients charged with lesser crimes.

Attempts were made at each site to collect data on defendants' prior records as an additional variable to measure the comparability of treatment groups. Such data were not available until after upper court Arraignment at any site, but prior arrest data were available in Shelby County. These data were not used by the Public Defender because they were not accurate predictors of a

defendant's actual prior conviction record which is considered in sentencing decisions. Prior arrest record data are presented in Table IV-6 for Shelby County because these do indicate some variation between test and control populations. "True" controls are clients randomly assigned into the control condition. "Ineligible" controls are those clients who required public counsel after initially having been found ineligible for services. "Missed" controls are defendants who were never screened for eligibility.

Table IV-6
Shelby County Client Type by Prior Felony Record

	Test (n=728)	All Controls	Control 1 "True" (n=917)	Control 2 "Ineligible" (n=408)	Control 3 "Missed" (n=149)
More than 2 prior felony arrests	9%	7%	7%	6%	11%
1 or 2 Prior felony arrests	36%	59%	58%	62%	55%
No prior	55%	33%	35%	32%	34%
missing observations=250					

The table shows that a higher proportion of test clients had either serious prior felony records or no prior records while a higher proportion of control clients had limited prior records. These variations in the number of test and control clients and in the prior records of test and control clients resulted from difficulties in implementing an effective eligibility screening process in Shelby County.

Summary

Implementation of the experimental designs in the three sites was the most difficult task of the ERDC Field Test. The eligibility screening and random assignment processes were designed to accommodate the unique requirements of

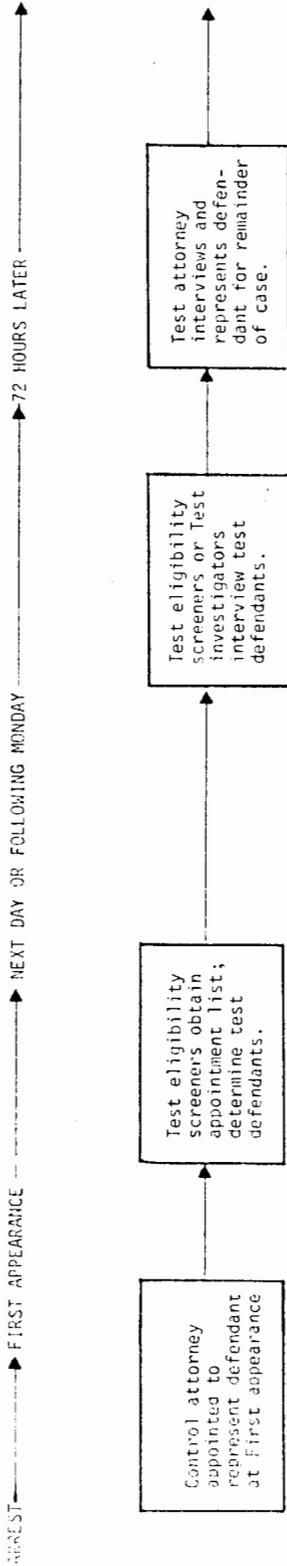
each test, but each jurisdiction placed barriers and constraints in the way of implementation.

Because eligibility screening and random assignment had to operate so early in the adjudication process, the criminal justice systems at each site could not easily accommodate their operation. However, all problems aside, these procedures became operational early during the test and operated successfully throughout the implementation period. At no site was the experimental design severely compromised and at no site did the design produce a fatally flawed experimental population. Differences in the experimental populations can be explained, and can be taken into account in subsequent analyses.

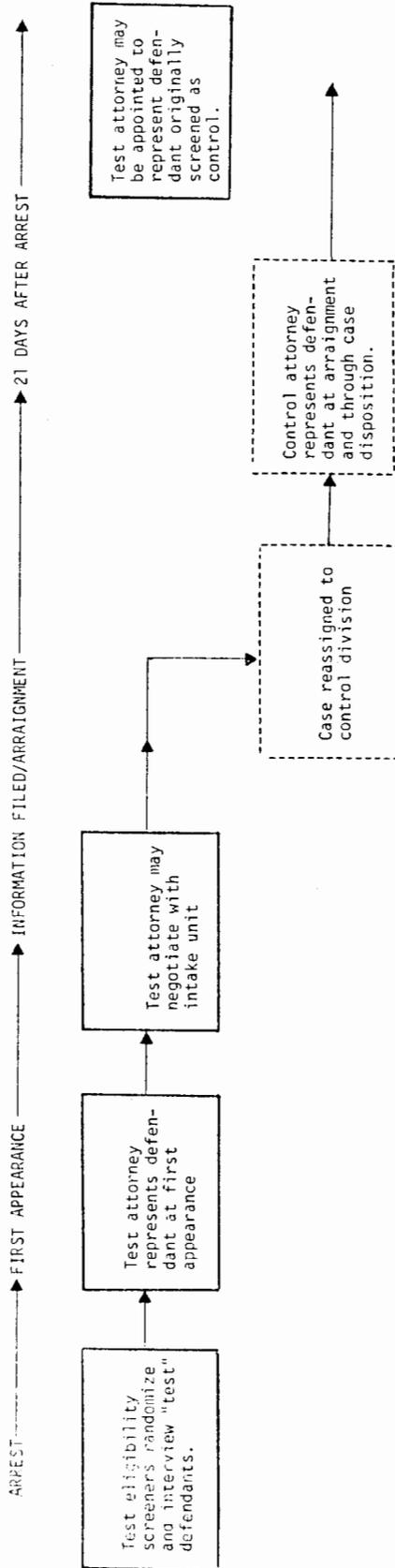
In Chapter II, the experimental design process adopted by each ERDC grantee was presented in graphic form. The following figures depict the departures from those original designs which occurred during the test.

DEPARTURES FROM ORIGINAL TEST PROCESS

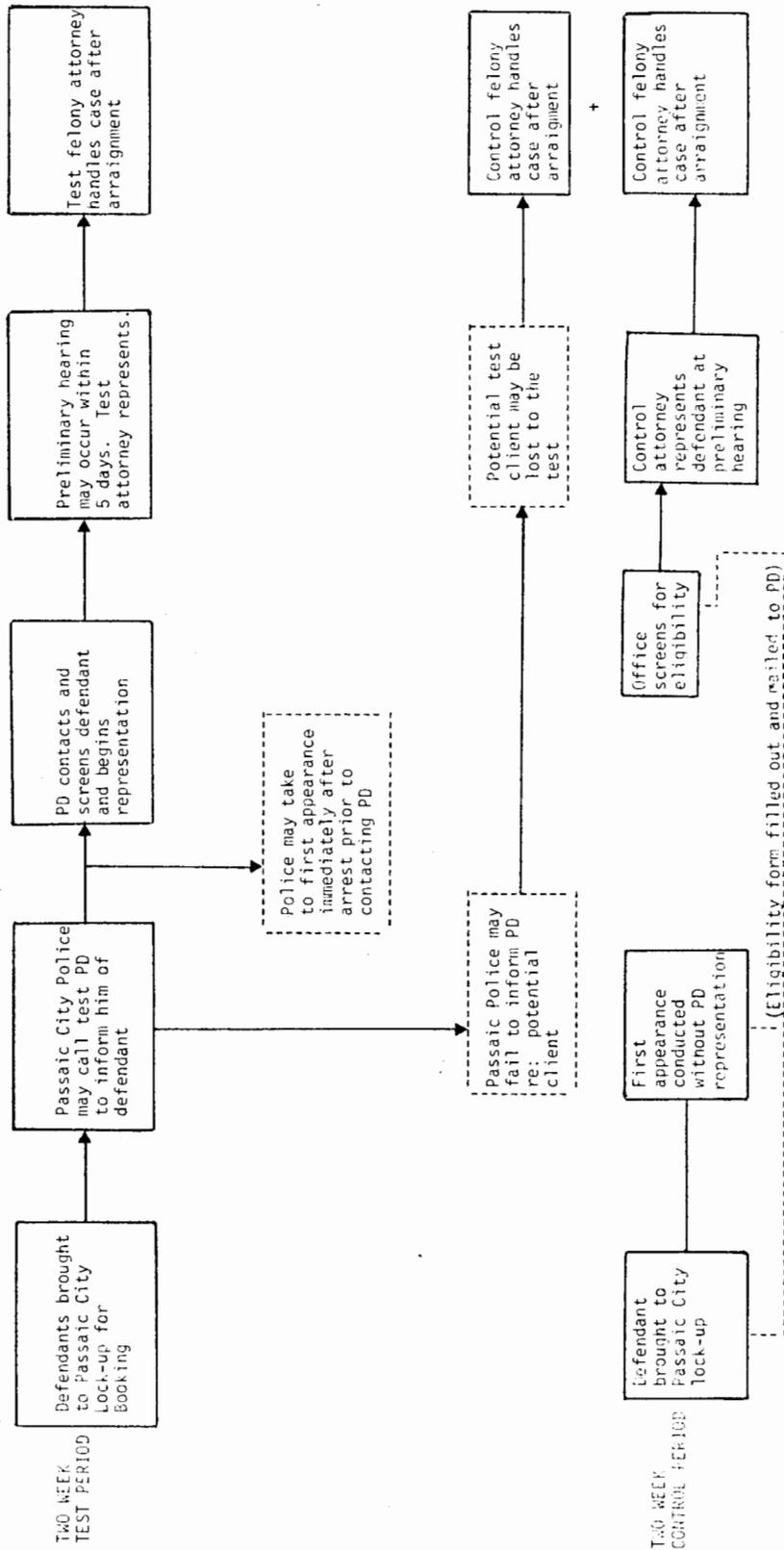
Palm Beach: Weekends and Days when Computer Malfunctioned



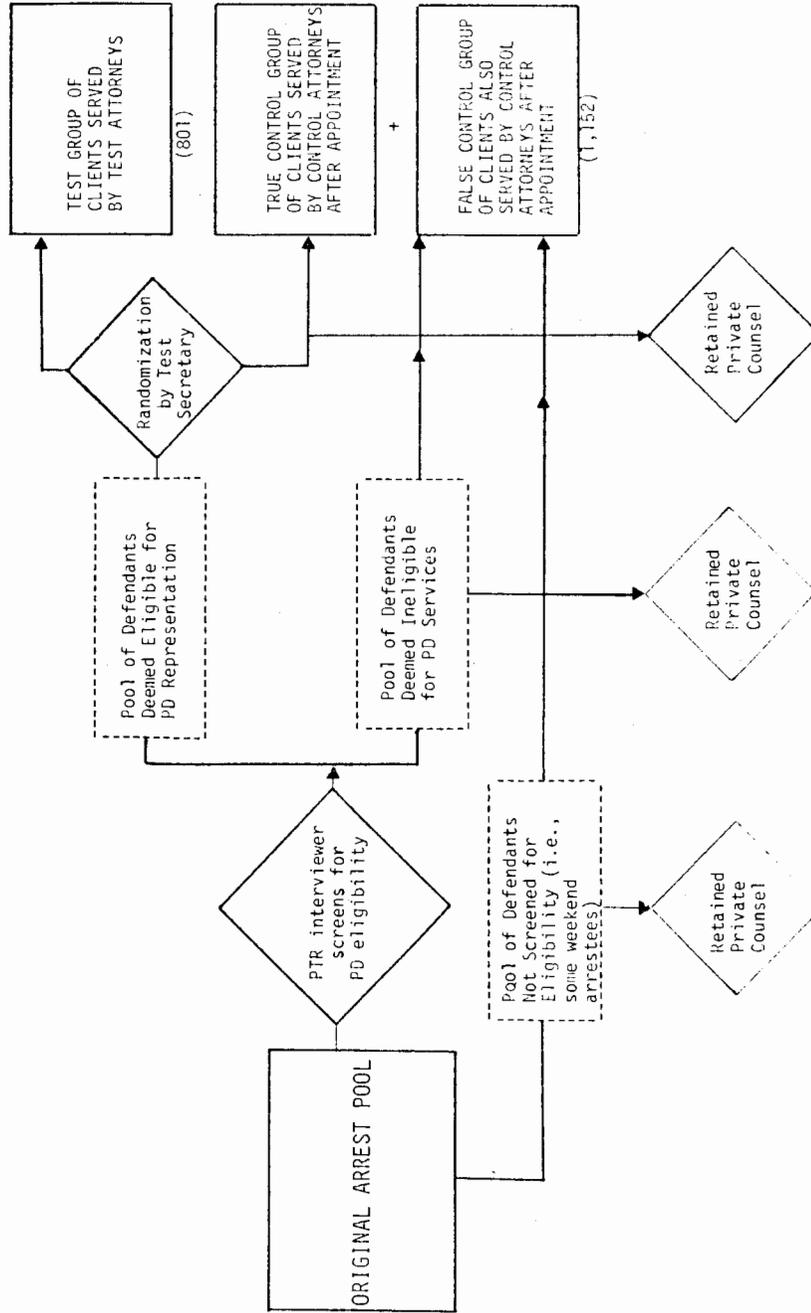
Palm Beach: Inter-division Transfers



DEPARTURES FROM ORIGINAL TEST PROCESS
 Passaic County: Passaic Police Resistance to Test



DEPARTURES FROM ORIGINAL TEST PROCESS
 Shelby County: Eligibility Screening Process



IMPLEMENTATION OF EARLY REPRESENTATION

The very essence of the Early Representation by Defense Counsel Field Test was early attorney-client contact. The ERDC test design document stipulated that "early representation" meant contact with the client within 24 hours of arrest, and prior to First Appearance. We discuss here the implementation of the early representation component of the Field Test in terms of the timing, the nature, and the results of early attorney-client contact.

Timing of Early Contact

Each of the ERDC Field Test grantees was somewhat successful in achieving early attorney-client contact. The Passaic County test attorneys were able to screen and interview their clients within fifteen hours of arrest--weekday and weekend clients included. Palm Beach and Shelby County test attorneys also succeeded in establishing contact with their clients immediately prior to First Appearance. In Shelby County, however, this occurred more than 24 hours after arrest on the average for both weekday and weekend arrestees. In Palm Beach County, early contact occurred only 80% of the time on weekdays.

● Passaic County

The Passaic County grantee was the most successful of the three in implementing the early representation concept. The office was forced to adjust its initial plans considerably to reach that goal. The major adjustment was caused by the need to cover three separate lock-ups--the Paterson and Passaic City jails and the Passaic County jail. The office had planned to cover only the County jail, but when the Paterson criminal justice complex was opened, it too had to be included. When it became clear that the Passaic Municipal Court First Appearance process departed from the county norm, the office also had to design a way of covering the Passaic City lock-up.

The staff maintained coverage of the facilities in three ways. First, test attorneys staggered their schedules to ensure that they would be available to

clients from early morning through the evening. The attorneys made jail sweeps twice a day. Second, most jail staff members cooperated with the test by asking arrestees if they wanted the services of a public defender and by contacting the office to report these requests. An answering machine was set up for that purpose during off-hours. Third, test attorneys provided weekend coverage by conducting jail sweeps on Saturdays, and often on Sundays.

From the outset of the test, the Passaic County test attorneys were able to establish contact with test clients well within the 24 hour limit. The timing of initial contact varied very little during the test. During the initial month of the test, contact was made with clients on the average within 16½ hours of arrest. That time was reduced to 14½ hours for the remaining test months. The timing of early client contact appeared to be similar for test cases initiated in Paterson and Passaic, and for test cases initiated on weekdays and weekends.

Early client contact represented a dramatic departure from the normal operating procedures of the Passaic County Public Defender Office. Throughout the test period, the average control client was contacted by an attorney eleven and two-thirds days after arrest. The timing of control case contact was dictated by the schedule of Probable Cause (P.C.) Hearings in the respective municipal courts. Data suggest that P.C. Hearings occurred somewhat earlier in Passaic than in Paterson.

- Palm Beach County

Palm Beach County succeeded in implementing early representation when the eligibility screening interviewers were able to complete their work. The Palm Beach test was fortunate in having an afternoon schedule for felony First Appearance. This enabled the two test screeners to identify, screen, and interview prospective test clients and then pass on information to the test attorney. Therefore, initial client contact was with a test screener in the jail, followed soon afterwards by the initial attorney-client contact, which occurred outside of or in the First Appearance courtroom.

The operation of the Palm Beach test generally followed the plan described in the operations manual. Only defendants detained in the county jail immediately after arrest were provided the full test services within 24 hours of arrest. Defendants housed in any of the three other detention facilities in the county were provided an alternative form of test service, as were defendants arrested on weekends.

As noted above, the eligibility screeners experienced numerous problems in using the computer system to determine the test population. During the latter part of the test, other events created further problems for the screeners. The County planned to open and occupy a new jail facility, complete with courtrooms, during the summer of 1983. The moving process involved some adjustment of the county computer system, requiring that the system be inoperative for an increased number of days in the spring of 1983.

The reliance on the computer system, which was entirely outside of the control of the grantee, presented problems throughout the test period. However, the data suggest that for a significant majority of weekday test cases the test staff accomplished early contact with defendants. Observations and interviews revealed that the test screeners made initial contact with test clients at least two and as many as four hours prior to the initial control client contact. Control contact was made by a misdemeanor control attorney at the First Appearance courtroom. That meeting typically coincided with the initial test attorney-client contact.

- Shelby County

It was difficult for test attorneys from Shelby County to meet with their clients within twenty-four hours after arrest. Before a test attorney could contact his or her client, the eligibility screener had to interview the client and deliver the results to the office. The test secretary had to randomly assign the client to the test mode, open a case file, and deliver the file to the test attorney. The test attorney then had to contact his client prior to First Appearance.

Early in the test, problems arose regarding eligibility screening. Interview results were not being received by the test secretary early enough to ensure First Appearance coverage. The problem on weekdays apparently was caused by the PTS practice of having more than one person screen for indigency. Once the test eligibility screener was given full responsibility for interviewing, the process operated more smoothly. Weekends presented a similar problem. Interviews were received too late in the day for the attorney to meet with the test defendants without some difficulty. By December, the Public Defender and PTS made agreements which established clear schedules for the delivery of interviews. Likewise, the test attorneys were scheduled to make a late Saturday afternoon jail sweep. This minimized the time between arrest and initial contact for weekend cases.

The problems faced by Shelby County in implementing the early contact component of the ERDC Field Test were troublesome, but not fatal. In all, 800 clients received test services although the judges refused to appoint the defender on over 100 of those cases. As Table IV-7 indicates, contact with control clients took much longer. Thus, even with the problems faced by the test staff early during implementation, the test succeeded in reducing by over two weeks the time between arrest and first attorney-client contact in Shelby County. Moreover, after the pre-test, the project staff approached the timing target for first contact on the majority of weekday cases.

Table IV-7

Time From Arrest To:

	<u>Test</u>	<u>Control</u>
PTR Interview	1.2 days	1.6 days
First Attorney Contact:		
--start-up period	4.3 days	
--later on	2.25 days	
--average during test	2.5 days	22.3 days

Nature of Early Representation

Each grantee provided a range of early representation services to its test clients. The extent of test services varied according to the limits imposed upon the test by the three participating jurisdictions. For the purposes of this discussion, early representation services included the initial client contact, participation in the client's First Appearance, and any additional activities conducted soon after First Appearance.

● Passaic County

Test attorneys in Passaic County conducted lengthy client interviews lasting from twenty to forty minutes during the initial client contact. These interviews provided information to be used later in the bail setting hearing, and case-specific information regarding events, witnesses, or other matters pertaining to the case.

Test attorneys interviewed their clients in the lock-ups. The facilities available for these interviews varied somewhat: The new Paterson jail complex had adequate interview space; the extremely overcrowded county jail had limited space; and the Passaic City lock-up had little or no available space. In fact, on more than one occasion a test attorney remarked to the on-site researcher that he had to limit his interview with a client in the Passaic lock-up due to the close proximity of policemen.

Test attorneys represented their clients at First Appearance, where bail was set and the Probable Cause Hearing was scheduled. Their presence at First Appearance was a departure from normal county operations. For the first time, public defender clients had someone to present arguments in favor of lowered bail, release on own recognizance, or participation in the 10% option.

In Passaic County, a prosecutor is not present at First Appearance. Municipal Court judges are authorized to set bail on all but a few "Class X" felonies which require Superior Court judge consideration. The municipal courts are

only occasionally supported by a bail unit of the probation department. The test attorneys became an important resource to the municipal court judges in the bail setting process.

- Palm Beach County

Two screeners conducted twenty to thirty-minute interviews with test defendants in the jail on weekday mornings. These interviews established the defendant's indigency, and secured information regarding his ties to the community (an important consideration), and regarding whether family members or employers could be contacted to show up at First Appearance. The defendant was also asked to give his version of the circumstances surrounding his arrest.

The screeners had to finish their interviews prior to the 11:00 A.M. jail lunch. Between 11:00 A.M. and First Appearance at 1:30, the screeners would verify the information obtained from the defendants and try to encourage family members or employers to attend First Appearance. The screeners would then brief test attorneys about the defendants and the likelihood of someone attending First Appearance.

One attorney from each of the two test divisions was available to represent test defendants each weekday. Responsibility for covering First Appearance was rotated on a weekly basis between the four test attorneys in each division. Discussions with test attorneys revealed that they often had to cover for each other at First Appearance because of the demands of Circuit Court.

During the test, defendants were brought to First Appearance in a group shortly after noon. Test attorneys had the names of their clients and contacted each prior to First Appearance. This individualized service was quite different from the initial contact with control clients, which consisted of a group meeting between the misdemeanor attorney or intern and the prospective clients.

At First Appearance, the State is represented by an Assistant State Attorney, who controls the proceedings. Test attorney representation at First Appearance

was likened to a "real adversary process" by this prosecutor, who praised the test effort.

Test cases received a level of representation not available to control cases. Test attorneys had information regarding the defendant and the case which was useful, especially since local county residents with substantial ties to the community are given preferential bail treatment. Moreover, it was reported that test attorneys often argued over the sufficiency of the charging document or arrest report which provided the basis for probable cause to hold the defendant. Therefore, while formal probable cause hearings are not routinely held in Palm Beach County, some discussion of probable cause was had on a number of test cases.

In Palm Beach County, questions regarding probable cause and the need to assess a defendant's mental or physical condition often result in a "second First Appearance" to give time for the State to amend the charging document or to screen the defendant. While data are not sufficient to document any increases in second First Appearances during the test period, observations suggest that this was indeed the case.

After First Appearance, test investigators were assigned to conduct substantive interviews with test clients in the jail, or in the office if the client had obtained his release. Attorneys also occasionally conducted such interviews. The form used was essentially the same as the investigator interview routinely used by the office, but test interviews occurred significantly earlier than prior to the test. There were reports that during the test, jailed control clients were interviewed by control investigators and office interns soon after First Appearance. Since this practice was not followed routinely prior to the test, it can be viewed as a "Hawthorne effect" of the ERDC Field Test in Palm Beach County.

- Shelby County

The nature of the early representation varied during the test in Shelby County. During the pre-test period, jail staff allowed test attorneys to meet with their clients in the "holding tank" adjacent to the courtroom prior to First Appearance. Test public defenders were the only attorneys allowed in this area. Since the area was not designed for any contacts with defendants, jail staff soon became concerned with issues of security and order. Furthermore, private attorneys became concerned that they didn't have similar access to their clients.

Members of the private bar began registered complaints about the special privileges given the test attorneys. A meeting was held, with judges, prosecutors, jail staff, the Public Defender, and private attorneys attending. At this meeting, it was decided that no one would be allowed to meet with clients in the holding facility prior to First Appearance. Afterwards, access to the holding area was limited.

The initial attorney-client contact was, according to the Shelby County office's final report of October, 1983:

"limited to a brief and whispered conversation in the courtroom, often moments before arraignment. It was not unusual for the defendant's case to be called while the test attorney was engaged in his first contact with the prospective client."

Thus, the initial client contact in Shelby County was limited to the minimal information a test attorney could learn about the case from the defendant after explaining and executing the waiver of attorney-client privilege. First Appearance in Shelby County was held daily from 9:00 a.m. until all defendants were processed. Test attorneys rotated on a daily basis with the project coordinator assigned to one day and the other attorneys assigned to two days each week.

The First Appearance of the test defendant followed immediately upon the initial client contact. At that hearing the test attorney argued bail and/or release on recognizance drawing upon the recommendation of the pretrial release representative who was present in court. Also present was an assistant district

attorney general who would argue the State's case concerning bail. Prior to the test, the prosecutor's recommendation was invariably followed by the court since there was no one available to argue the defendant's case. During the test, attorneys were present and their participation in the bail setting process was substantive and significant.

One area which was viewed as critical by the test attorneys concerned the use by the State of the defendant's prior arrest record to discredit the defendant and justify the setting of a high bail. Test attorneys reported being able to counter the State's position by either suggesting that arrests did not constitute convictions or by securing information from their clients regarding the ultimate resolution of the prior arrests. The actual prior record of a defendant is not available at First Appearance in Shelby County, and arguments based only upon the client's input often served to counter the State's arguments.

Control clients were not represented at First Appearance, nor would they receive counsel for approximately two weeks afterwards. At appointment, the control investigator would record the case, interview the defendant, and provide the attorney with the record of that interview. Control attorneys would meet with their clients sometime later--often three weeks after First Appearance.

After First Appearance, test attorneys routinely met with their new clients in the jail or the office. These interviews were similar to those conducted by the control investigator, but geared more substantively to the facts of the case. This interview gave the attorney the information needed to determine whether the case was appropriate for investigation, or whether the facts warranted a settlement conference with the prosecutor. Test attorneys rarely used the waiver of preliminary hearing approach, which was more prevalent for control cases, preferring to use the preliminary hearing for discovery purposes.

Results of Early Representation

The early representation services implemented during the Field Test had both immediate and long-term effects. First, early representation served to establish the attorney-client relationship in the eyes of the attorney, his client, and the court. Second, early client contact had an effect on the bail setting process of each of the participating jurisdictions. Under normal or control conditions, indigent defendants either were not represented during bail setting or, in the case of Palm Beach, were provided only nominal representation. Therefore, judges routinely set bail relying on the prosecutor or the pretrial program, but rarely on the defendant's attorney. With ERDC, an attorney would represent the position of the defendant and could offer information with regard to community, family, employment ties, and other matters concerning the defendant. The judges responsible for bail setting agreed that the information provided by the test attorneys, when taken together with that available from other sources, enabled them to make better and more informed bail decisions at First Appearance. Other participants in the bail setting process, especially prosecutors involved in First Appearances in Shelby and Palm Beach Counties, agreed with that position.

Third, the impressions of the judges, prosecutors, and public defenders that having an attorney at First Appearance made a difference is supported by the data. At each site, test defendants who obtained pretrial release were released sooner than control clients. In Passaic County, the average difference in the timing of pretrial release between test and control clients was one week. In Palm Beach and Shelby Counties, the differences were not as great but in both cases test clients obtained their release sooner than did control clients.

Lack of available data on pretrial release from the Passaic and Palm Beach County tests make it impossible to support the contention from judges, test attorneys, and other key staff that a higher percentage of test clients obtained pre-trial release than did control clients. In Shelby County, the available data do support such a contention: a greater percentage of test clients (46%) obtained pretrial release at First Appearance than did control clients (34%). Moreover, those test clients who obtained pretrial release did

so sooner after arrest than did released control clients. It is interesting to note that Shelby County was the only one of the three test jurisdictions that did not have a county jail under federal court order from chronic overcrowding. While there was some sentiment to foster pretrial release there due to high detention costs, the Shelby County Sheriff did not experience any of the pressure to reduce the jail population faced by his two counterparts. Thus, it might be hypothesized that in Palm Beach and Passaic Counties the maximum number of defendants who could be released were released, and ERDC impacts were limited to a net reduction in detention days rather than detainees. In Shelby County, some increase in the number of those released would be possible, because the impetus for release was not as great.

Fourth, early client contact had a positive effect on the attorney-client relationship at each site as reported by a majority of test attorneys. As explained in the final report of the Shelby County grantee, "a benefit of (early representation) was an increased level of confidence and communication between the test attorney and his client." These sentiments were echoed by the other grantees and reinforced by the follow-up client survey conducted during the test.

Fifth, while early representation had positive effects on the bail setting process and the attorney-client relationship, there is no evidence to suggest that early contact achieved any significant reduction in the percentage of defendants who made confessions without the advice of counsel or any increase in the percentage of defendants represented by the participating public defender offices at line-ups or police interrogations. All participating attorneys, regardless of site, agreed that the design of the test would have had to mandate much earlier client contact (i.e., at the station house) for any real effects to occur in these areas. Individual test attorneys at each site reported isolated instances where their involvement early in a case or their presence in the jail served to protect a defendant's rights; but each agreed that such cases were isolated and the exception rather than the rule.

IMPLEMENTATION OF ENHANCED REPRESENTATION

Early representation, while vital, was only one element of the ERDC Field Test. The NIJ test designers recognized that the full potential of the early representation of indigent defendants would not be adequately tested and measured unless the benefits of early client contact were sustained by an enhancement of services. Accordingly, they required grantees to design and operate programs which ensured that test representation was continuous from early contact through the ultimate disposition of the cases. Vertical representation--the system which most closely mirrored the private counsel method--was to be the ideal, but continuous representation was the mandate. Within the context of continuous representation, ERDC test programs were also expected to have the capacity to conduct early investigation and to identify alternative methods of case disposition. In short, the ERDC grantees were expected to provide not only early but also enhanced representation.

The following discussion examines the delivery of enhanced services by the three test programs. It highlights the implementation of the continuous representation, early investigation, and enhanced plea negotiation components of the ERDC Field Test.

Continuous Representation

None of the ERDC grantees provided full, continuous representation to their clients prior to the Field Test. In each case, the period prior to Arraignment in upper court was neglected in favor of felony court representation. Each office focused its resources on providing vertical representation to its clients after Arraignment. The grantees saw the ERDC program as an opportunity to expand the services provided to clients early in the adjudication process. They believed that continuous representation would relieve some of the client dissatisfaction created by the gaps in service, and improve the case preparation and case management practices of the office staff.

- Passaic County

Test attorneys were to represent their clients through the Grand Jury stage. In practice, this meant that they would argue the merits of the case at a Probable Cause Hearing, and negotiate with the prosecutor to achieve an early resolution. The test plan had identified three possible results of negotiation: early resolution in Municipal Court, waiver of indictment and plea on an Accusation in Superior Court, and early assignment to pre-trial intervention (PTI) or diversion. The latter two methods were not available to control cases, and were expected to extend the negotiation process beyond the Probable Cause Hearing.

Representation was to be individualized as well as continuous. Test attorneys were to represent their clients through all phases of the municipal court process. Clients were to be represented by the same attorney from initial contact through that process. Upon indictment, the case would be closed and the file transferred to the felony test attorney assigned to the case. The test attorney would be available to discuss the case with his felony counterpart where warranted.

Early in the test, it became apparent that several problems constrained the implementation of continuous representation in Passaic County. These included:

- the accusation and early PTI assignment options did not prove viable for the test attorneys, and were used only sparingly; and
- because of the workings of the Prosecutor's screening unit, negotiations were to occur prior to the Probable Cause Hearing.

Therefore, early on in the test it became clear to the test attorneys that any work on a case after the Probable Cause Hearing would be superfluous. No negotiations were possible during the Grand Jury stage and the proposed negotiating options were not used. Any investigatory work would have been completed prior to the P.C. Hearing. Test attorneys realized that their work on a case effectively ended with the Probable Cause Hearing. They were unable to maintain close contact with clients due to their heavy caseloads. Therefore, they began the process of transferring cases to the felony test attorney soon after the Probable Cause Hearing.

One result of this "early pass-off" was that felony attorneys and investigators became involved in test cases earlier than the norm. Test clients routinely would call the office prior to Arraignment, and ask for their attorney. They would be referred to the felony attorney assigned to the case. Felony test attorneys also reported that they received test files prior to Arraignment and began case processing at that time. Felony investigators reported an increase in pre-Arraignment client interviews on test cases due to the early pass-off.

The implementation of continuous representation was accomplished with relatively little difficulty once the alternative negotiating avenues were closed. The enhancement of representation during the pre-Arraignment phase did have effects on felony representation. These included:

- felony investigators reported that there was some duplication of effort. The normal practice was to conduct a client interview on all felony cases. Since many test clients already had been interviewed, felony investigators felt that there was no need for an additional interview;
- felony test attorneys reported that the preparation of test cases was far superior to the norm, and shortened the time required by them to prepare a case. Where early investigations were conducted, the need for felony investigation was often eliminated; and
- felony attorneys and investigators reported that test defendants were often better briefed than the norm regarding their cases. These defendants, however, were often confused about the pass-off, and upset that they were not going to be represented by their municipal court attorney.

By and large, the felony test attorneys and investigators agreed that the provision of test services improved felony court representation. They agreed, however, that certain procedures needed improvement if early representation was to be institutionalized. Most in need of improvement were the procedures for initiating and processing cases at the "pass-off" from municipal to felony court.

- Palm Beach County

The Palm Beach County Office of the Public Defender attempted by far the most ambitious plan for continuous representation of the three test grantees. Test

cases were to be provided vertical representation from First Appearance through Arraignment and ultimate case disposition. Eight attorneys in two test divisions were assigned to provide vertical representation. Case assignment responsibilities were rotated among the test attorneys on a weekly basis. Each test attorney represented all of the defendants that were assigned to his or her division during one week of the month.

A number of factors influenced the implementation of vertical representation in Palm Beach. These included:

- the computer assignment process created problems in case identification which could not be easily resolved;
- the requirements of felony representation in Circuit Court placed demands upon test attorney time which made coverage of First Appearance and Arraignment a constant burden for test attorneys; and
- any sickness or other absenteeism by the screeners/witness interviewers or the assigned test attorneys created problems.

All of the test attorneys resented some of the more artificial aspects of vertical representation. They believed that the improved services provided to clients at First Appearance and, to a lesser extent, at Arraignment had positive benefits. They argued, however, that the system could not be adjusted to make such coverage easier and less burdensome. Since the local adjudication process could not be expected to accommodate the test, they believed that certain aspects of the test should have been adjusted. Among these was the need for exclusive vertical representation.

There were a number of responses to vertical representation by the system, especially by the State Attorney, which affected implementation. These were:

- negotiations with the State Attorney's Intake Unit prior to Arraignment were constrained by a lack of clarity regarding the process of negotiation;
- the number of Assistant State Attorneys in each test division was increased from three to four to match the number of Assistant Public Defenders assigned to test divisions;
- the fact that test attorneys had early involvement in a case was used against them by the State Attorneys. In both test divisions, the State

Attorneys argued that bail motions should be denied since the attorney already had the opportunity to argue bail at First Appearance. Felony judges responded by tightening up their bond decisions; and

- because a high percentage of all felony arrests were downfiled as misdemeanors by the Intake Unit without any intervention by the defense attorney, a number of test attorneys concluded that negotiation with the Intake Unit would not be productive.

Vertical representation placed certain burdens on the test staff, and reportedly resulted in backlash from the State Attorney; however, test attorneys and investigators agreed that it aided both case preparation and the attorney-client relationship. Test attorneys reported that their management and preparation of cases improved as a result of enhanced representation. Furthermore, fewer waivers of speedy trial were required. Finally, client problems occurred less frequently in test divisions than in control divisions, and fewer client complaints were registered with the office.

In the final analysis vertical representation achieved mixed success. It was difficult to implement, and was not universally accepted by the test staff, nor by the system. It did, however, prove that during the pre-Arrestment period, much could be done which was of benefit to the client, the attorney, and the office.

- Shelby County

The services provided to test clients in Shelby County were to be both continuous and individualized. For Shelby County, this meant that test attorneys would be responsible to their individual clients from appointment through Arrestment on an indictment. While all activities on a control case ceased when a defendant was bound over, test cases were to be continued for purposes of investigation, client contact, and/or ongoing negotiation. While the test client was to be represented at all times by the same attorney, the control defendant was not to be assigned to a single attorney. Cases were to be shared, with one control attorney conducting the initial interview while the other appeared at the Preliminary Hearing.

The project experienced a slight problem in implementing individualized representation. Initially, cases were assigned to test attorneys in rotation, a procedure which was called for in the design to protect the integrity of the test. Practically speaking, this requirement forced all test attorneys to be at First Appearance from 9:00 A.M. until noon each day.

Shelby County obtained permission from NIJ to allow one attorney each day to assume responsibility for all test appointments in that day. The daily assignment system proved to be an important component of the test process. An immediate effect of individualization was that every court officer knew at appointment which defender was responsible for each test case. The clerk would note the name of the attorney on the court file which controlled all activities in municipal court. Since no one represented control defendants at First Appearance the only notation on those cases was "Public Defender."

Individualized case processing was cited by clerks, prosecutors, judges, and public defenders--test and control--as one of the most important system effects of the Field Test. Once assigned, everyone knew which public defender was responsible for a case at First Appearance and thereafter. Over time, test cases came to be treated like the cases of private attorneys. All court officers indicated that this "treatment" represented an elevation in status for the defendant, his attorney, and public defense in general. The individualized case assignment system was cited by control attorneys as one of the elements of the Field Test which they would have liked most to have used.

Implementing continuous representation was relatively simple for the office. Test attorneys were made aware of their extended responsibilities, and they continued to work on cases after General Sessions processing was completed. Unfortunately, the ease of implementation belied the problems which continuous representation was to create for the office. In providing continuous representation, test attorneys often neglected a key internal procedure which was critical to smooth running of the office.

Office procedures dictated that all public defender cases closed in municipal court, which might result in later indictment were to be written up by the attorney and delivered to the Custodian of Records. The Custodian would file the records, and include them in the formal case file when a defendant was appointed the public defender in felony court. After the first few months of implementation, it became apparent that not all test files were being delivered prior to Arraignment. On those cases, felony attorneys were not receiving the benefits of the test. Without the transfer of records, there was no way of knowing that the public defender had represented the client in General Sessions. Often a case which had been investigated in municipal court would be re-investigated in felony court due to the failure of the test attorney to follow office procedure.

Office meetings were held to correct the situation. Test attorneys were told that their first responsibilities were to their clients and the office. They were reminded that continuous representation carried with it the responsibility to monitor the processing of cases through the system. They were told to turn in all case information prior to, or immediately after criminal court indictment.

In general, the ERDC Field Test was well received by felony attorneys. Apart from "pass-off" problems, a majority of felony attorneys reported that test cases and test clients were better prepared when they got to Criminal Court. Cases which were investigated were given special praise.

Early Investigation

Early investigation was an important but undefined element of the NIJ test design. There were expectations that early attorney contact would result in early investigation, but the procedures by which such early investigation was to be implemented were not defined. The staffing plans of each of the three ERDC grantees did include test investigators--four test investigators for the Palm Beach project, two for the Passaic project, and one for the Shelby project.

Prior to the test, each of the offices routinely assigned investigators to cases during the pre-Arrestment period, but investigator activities at such times only consisted of conducting client interviews. Under ERDC, investigators were to be used to interview witnesses, visit the crime scene, and to collect other information germane to test cases.

Implementing early investigation proved to be relatively simple for each grantee. However, three critical issues had to be resolved at each site before the full benefits of early investigation could be realized. These were:

- An Assignment and Supervision Process--General procedures had to be developed to control investigator activities. In both the Passaic and Palm Beach offices, the pre-Arrestment activities of the investigators were controlled by a supervising Chief Investigator. During the test, those activities were supervised by the test attorneys. Procedures had to be established to ensure that attorneys used investigators appropriately.
- An Operational Process--In both the Palm Beach and Passaic County tests, a substantial amount of test investigator time was to be devoted to client interviews. Passaic test investigators often assisted the test attorneys, and, on 10% of the cases, made the initial client contact. In Palm Beach County test investigators were to interview all test clients soon after First Appearance on weekdays. After the first few months of the test, they were assigned to make the initial contact with weekend and women clients. The Shelby County test investigator had no client interview responsibilities. His role was exclusively as a field investigator. He interviewed clients only when required in the course of an investigation.
- Work Product--There was a need to be sensitive about the work product of the investigator due to the reciprocal discovery laws of the three test jurisdictions. Hence, while taped and transcribed interviews might be the most productive means of preserving witness statements, they could also be harmful to a defendant if named in discovery. Test investigators had to consider such issues in conducting early investigation.

Each site conducted early investigation during the test period. Attorneys and investigators agreed that field investigations served to improve case processing, to facilitate early case resolution and generally to improve the delivery of defense services. Each office differed somewhat in terms of the benefits received from early investigation.

- Passaic County

The test attorneys and investigators in Passaic County reported that early investigation was critical to the success of ERDC. Felony test attorneys reported that test cases which were investigated were much easier to process and prepare for trial. All respondents agreed that test investigation resulted in the preservation of statements and information which in normal control circumstances were lost. A minority of felony investigators agreed that during the test there was a reduction in the number of requests for post-Arrestment investigation, and attributed that reduction to ERDC. The client interview responsibilities of the test investigators may have limited their field investigation activities, but in general, test attorneys were satisfied with the results of early investigation.

- Palm Beach County

Palm Beach County test investigators reported conducting jail interviews with test clients within a few days of arrest. Two of the four test investigators reported an increase in pre-Arrestment witness interviews and crime scene investigation. Only one of the four noticed an increase in post-Arrestment witness interviewing or crime scene investigation. In fact, one test investigator saw a decrease in post-Arrestment activities due to ERDC.

One interesting phenomenon observed during the test was that interns, volunteers, and investigators were assigned to conduct early, "in jail" interviews with control group defendants. Control division investigators did not have as much time, nor as clear a mandate as test division investigators to conduct early investigation. However, such interviews with control group defendants, reportedly a rare occurrence prior to the Field Test, may be understood as a Hawthorne-type effect. Control division investigators may have been responding to subtle pressures to modify their activities and to parallel more closely the behaviors of the test division investigators.

At least two features of the Palm Beach County criminal justice system tended to inhibit complete implementation of early investigation. These factors included:

- The ability of criminal defense attorneys to depose witnesses. Under the circumstances, it was thought to be cheaper, easier, and more effective in many cases to subpoena witnesses and question them under oath, rather than to send an investigator to interview them in the community.
- The screening practices of the Intake Unit of the State Attorney. It was felt by many that early investigation would be a poor use of scarce resources, given the fact that at least half the cases would be downfiled to a misdemeanor, or nolle prossed during prosecutorial screening.

- Shelby County

The Shelby County Public Defender had stressed the role of early investigation in its original application and in its operations manual. The Chief Public Defender had long believed that early investigation would be beneficial to his office and saw the ERDC Field Test as the vehicle to demonstrate its value.

Over two hundred cases were investigated by the test investigator during the ERDC Field Test. These investigations were an invaluable tool in the ultimate resolution of cases. For the first time in General Sessions Court, public defenders were armed with information gained from eye witness or victim interviews. For the first time, crime scenes were visited. Such information aided in plea negotiations. In the words of one prosecutor:

"The information we (are) getting from P.D.s is often sufficient to allow us to downfile a felony to a misdemeanor on cases with charges which we could never touch before. Information is what makes the system work, and now the P.D.s have some and we all benefit by it."
(Assistant Attorney General, General Sessions Court)

One unique example of early investigation in Shelby County was the "refusal to prosecute." After a number of months it became apparent to the investigator and his supervisor that many victims of crime simply did not wish to proceed with prosecution. Test staff developed a pre-printed refusal to prosecute form. The prosecutor agreed to accept this form as a formal victim statement, and favorable plea arrangements or dismissals were entered on such cases during the test. Today, the form is used even more extensively as the prosecutor has become more comfortable with the process.

The role of early investigation in the Shelby County Field Test did not end in municipal court. It was also the general consensus of the felony attorneys that an indicted case with early investigation from General Sessions Court was disposed of more quickly in Criminal Court.

Early investigation was to many the most successful element of the Shelby County ERDC Field Test. While opinions regarding the efficacy of the test varied widely both within the grantee office and externally, there was a general consensus that early investigation was the one element of the test which should be retained. This point was stressed by the Chief Public Defender and his Test Coordinator at each of the three Cluster Conferences held during the term of the Field Test. It was echoed by the test, control, and felony attorneys in the two evaluation interviews conducted after the test began operating. Finally, it was expressed by prosecutors and judges who observed the results of early investigation in action.

Implementation of Enhanced Plea Negotiation

One of NIJ's primary expectations for the ERDC concept was that early and enhanced representation would help public defenders to resolve cases earlier through plea negotiation and alternative processing. The felony courts of many jurisdictions are crowded with cases which should not be prosecuted as felonies due to the condition of the defendant, or the circumstances surrounding the offense. As court calendars have become more crowded, many prosecutors have sought ways to eliminate those cases as soon as possible by "downfiling" them as misdemeanors, dismissing them outright, or otherwise diverting the defendants from the adjudication process. The NIJ design team saw ERDC in part as a means of introducing the public defender into that screening process.

The ERDC grantees saw the test as a means of resolving many of the "junk" or "garbage" cases which cluttered their caseloads. They recognized that each case arraigned in felony court had to be processed by the office, and represented by a felony attorney. Cases which should have been diverted from the

system required the same commitment of resources as did true felony prosecutions. If such cases could be resolved in municipal court, the client, the public defender office, and the system in general would benefit.

The test plans of each grantees included a unique negotiating opportunity for test attorneys which was not available to the offices prior to the test. These opportunities were:

- Passaic County test attorneys were to be allowed to waive Grand Jury indictment, and to enter a plea to an Accusation at Arraignment in Superior Court on cases where such a plea--to a negotiated felony charge-- was appropriate. Furthermore, the test attorneys were to be allowed to present cases for prosecutorial diversion (PTI) during municipal court processing rather than having to wait until after Arraignment;
- Palm Beach County test attorneys were to be allowed to negotiate with the State Attorney's Intake Unit and, thus, became involved in the process of downfiling cases and reducing the charge on cases filed in Circuit Court prior to Arraignment.
- Shelby County test attorneys were to be allowed to negotiate with the Grand Jury Unit of the District Attorney General regarding the possible downfiling or dismissal of cases "held to the State" or otherwise transferred to the unit by the General Sessions Court.

Test attorneys at each site also continued to negotiate with the prosecutors by means of the normal procedures available to them. In Shelby and Passaic Counties, attorneys negotiated with the municipal court prosecutors. In Palm Beach County, the test attorneys negotiated with the State Attorneys in the test divisions. Finally, test staff were to attempt to refer clients to available treatment or diversion programs.

- Passaic County

Passaic County experienced mixed success with enhanced plea negotiation. Negotiations with the new Intake Unit were commenced early and were successful. Information gained from early investigation aided plea negotiation, and the test attorneys generally were satisfied with the experience.

Unfortunately, the expansion and enhancement of the Probable Cause Hearing for test cases created some tension between the test attorneys and the Intake Unit prosecutors. One prosecutor went so far as to write a letter to the Assignment Judge of the Region complaining about the "unnecessary length" and intensity of those hearings for test cases. His complaints went unheeded and the test attorneys continued to advocate strenuously for their clients at P.C. Hearings.

Test attorneys and investigators felt that a higher proportion of test cases were resolved through negotiation than control cases. The data do not support this contention; there was no apparent difference in the proportion of test and control cases resolved in municipal court. A number of factors can account for this. First, the test attorneys had more serious cases than the control attorneys, which limited the proportion of test cases which could be settled in municipal court. Second, the speedy trial program in the county was taken very seriously by the prosecutor, and the Intake Unit was charged with a mandate to screen as many cases as possible. These factors aside, data do reveal that the test attorneys were able to settle cases considerably sooner than the control attorneys. This finding was acknowledged by defenders, prosecutors, and judges.

The Passaic County Field Test had little success with its unique negotiating option. The Accusation method of resolution was attempted twice during the year, but the test attorneys felt that the offers made were not sufficiently lenient to justify a plea to a felony charge. The office, therefore, judged the Accusation method a failure. However, the Prosecutor did complain that it could have been used more often. This method of resolution probably will not be used in Passaic County in the future.

Early PTI consideration was never used during the test because it was never authorized. Passaic County was the only jurisdiction of the three ERDC test sites which delayed diversion or deferred prosecution until after Arraignment. The process consisted of initial screening, after which the office of Probation would recommend diversion to the Prosecutor. Unfortunately, the grantee could not negotiate a way to initiate the process earlier. State law did allow for

earlier processing, but there was no way to change the existing process for the Field Test.

Passaic County has only limited resources for alternative processing for mental health and drug or alcohol diversion. No change in those resources occurred during the test period and no improvements in those areas were observed or reported during the test period.

- Palm Beach County

Prior to ERDC, public defender staff had little or no contact with the Intake Unit. The high volume of downfiling was accomplished by the Unit with minimal involvement of public defenders. With ERDC providing an opportunity for early involvement, negotiating with the Intake Unit was expected to be the primary pre-Arrestment option available to test attorneys.

In implementating the negotiation option, no formal training was provided to test attorneys regarding the process to be followed in approaching the Unit, the timing of negotiations, or the types of cases which would be most appropriate for negotiation. Test attorneys were expected to "lawyer their own cases," and that meant that they were to establish their own procedures for Intake Unit negotiations.

Furthermore, the State Attorney did not prepare the Unit for public defender intervention. No training was provided Intake Unit staff. Apart from the Chief Assistant State Attorney, the staff of the Unit, including the supervisor, were unaware of the changes in procedure to be occasioned by the test. This lack of understanding regarding the test continued during early implementation into August and September, 1982.

Each test public defender reported using the Unit to settle cases; some attorneys reported using it extensively. However, the comments of approximately half of the test attorneys suggested that use of the negotiating option

was limited in part by misunderstandings over the negotiating process. For example, a number of attorneys remarked that they became disenchanted with the option after they had gone to negotiate with the Intake Unit on a number of cases soon after First Appearance, and had been rebuffed.

Interviews with State Attorney staff revealed that negotiations on individual cases could not proceed so soon after First Appearance without real investigative information. To a number of the test public defenders, the recognition that negotiation with the Intake Unit could occur only ten days to two weeks from arrest limited their interest in the option. They reported that the benefits accruing to their clients did not justify the use of the Unit in the majority of cases. However, each test attorney reported that the option did serve a very useful purpose in a few cases. The negotiating option was most useful where early investigation had revealed facts which would serve to exonerate the client and which, when reported to the Intake Unit, resulted in a dismissal or downfiling.

A number of issues may have served to limit the use of the option further. These included:

- Early Downfiling. Immediately prior to the Field Test, the County Court State Attorney approached the Chief of the Felony Division to negotiate the early downfiling of felony cases at, or immediately after First Appearance. Meetings were held to review the daily First Appearance list to determine whether any could be resolved by early downfilings and the entering of misdemeanor pleas. After a number of days, the public defender ceased participation in this early downfiling option. The offers made were seen as too severe to warrant early downfiling. The Public Defender's rejection of the early downfiling option reportedly had an impact upon the State Attorney staff, and may have influenced the Intake Unit negotiating option.
- Deposition Practice. It was reported that the State Attorney's Office agreed to cooperate with ERDC with the expectation that intake negotiations would result in fewer depositions being taken on test cases. There was no assurance given the State Attorney that any reduction in deposing witnesses would occur, and no data exist to suggest that any reductions did occur. Interviews with State Attorneys revealed that Public Defender deposition practices, especially the routine deposing of police officers,

are resented. The deposition practices of the Public Defender may have influenced the Intake Unit's willingness to negotiate with test attorneys.

- Vertical Representation. One fact constraining negotiations in Palm Beach County was that prosecution was organized horizontally. Under that organization at least three levels of Assistant State Attorneys-- the First Appearance SA, the Intake Unit SA, and the Felony Unit SA would be involved with each case. negotiate successfully with the Intake Unit and the prosecutors in his or her division, the test public defender had to establish relationships with at least eight Assistant State Attorneys. The logistics of negotiating with so many prosecutors presented problems for several test attorneys. They reported that they felt more comfortable and worked better with the prosecutors in their divisions.
- Staffing Changes. During the test, the Chief of the Intake Unit was assigned to other responsibilities. It was the impression of both test attorneys and State Attorneys that this move resulted in a change in the downfiling practices of the Intake Unit. They agreed that under the new Chief a lower percentage of felony cases were downfiled to misdemeanors. This apparently became a problem for the State Attorney's Office, and the original Chief of the Unit was returned to his position soon after test operations ended. His absence during the test was cited as a further impediment to negotiating with the Intake Unit.

Even with all of the problems affecting Intake Unit negotiations in Palm Beach County, this was the most widely used special negotiating option of the three developed for use by the ERDC Field Test grantees. Every test attorney used it, some quite extensively. Even control attorneys reported interest in it. The problems of implementing such a sweeping change in prosecutor-public defender relations over such a short period of time may have limited its effectiveness during the test period. However, the office recognized its potential and has institutionalized the process by forming an Intake Unit of its own to mirror the State Attorney operation.

The Palm Beach County Public Defender had predicted that during the test more cases would be referred to the PTI program for deferred prosecution, and more cases would be referred to the available social and rehabilitative service options for diversion or alternative sentencing. Interview and anecdotal information suggest that the implementation of ERDC did indeed have an influence on the nature of that referral process. During the test period,

attorneys and investigators could assess earlier their clients' potential for drug or alcohol diversion or pretrial intervention. Early and sustained contact with clients resulted in earlier referrals to the appropriate agency.

In the case of PTI, or prosecutorial diversion, both Public Defender test staff and PTI staff reported an increase in referral activity prior to Arraignment. PTI staff reported an increase in diversion referrals from the public defender, and an increase in defendants' being considered for PTI. However, PTI diversion in Palm Beach County did not appear to be influenced by the test. The rigid eligibility criteria were in no way influenced; the decision to divert was not changed; and it cannot be determined from available data whether any more test cases were accepted for diversion than control cases.

ERDC did have an influence on the social and rehabilitative service referral process in Palm Beach County. The most notable case of a change from the pre-ERDC process was cited by representatives from TASC, the agency which screens, refers, and monitors defendants provided conditional release or alternative treatment options. Prior to the test, defendants were routinely processed, unless the TASC worker identified them as a potential drug or alcohol program divertees prior to First Appearance. Public Defender referrals occurred only after Arraignment, about one month later. During the ERDC Field Test, test attorneys and investigators were involved in identifying appropriate clients, and referring them to TASC for review soon after First Appearance.

TASC reported a dramatic increase in referrals and a definite improvement in the referral process. Test staff agreed, but stated that their activities did not necessarily result in an expansion of service alternatives or in an increase in the number of defendants served by TASC. This is due largely to the fact that the resources devoted to alternative programs in Palm Beach County are not sufficient to provide services to all potential clients. Any increase in the use of alternative sentencing options would require an increase in the resources allocated to such programs.

- Shelby County

The Shelby County test success with plea negotiation was mixed, but generally positive. Prior to the test, prosecutorial screening in Shelby County was limited to third degree property felonies. No crime against a person, especially crimes of violence, were considered appropriate for downfiling. During the test, the fruits of early investigation were reported to have opened up the screening process to include more serious felonies. The "refusal to prosecute" form also was an innovation created by ERDC. Data indicate that a higher proportion of test cases were resolved in municipal court than were control cases. This finding was echoed by the attorneys, prosecutors, and judges interviewed during the test.

ERDC also had an impact on the timing of case disposition. With earlier appointment, test attorneys were able to enter into negotiations sooner and to complete the process sooner. The average time between arrest and every important case event up to and including grand jury indictment was shorter for test cases than for control cases.

In contrast, the promise of Grand Jury Unit negotiations was never realized. Each test attorney attempted to use it, but only the Test Coordinator was successful and then in only a small percentage of cases. The two junior test attorneys were largely unsuccessful.

Interviews with the Grand Jury Unit staff revealed that they were largely unaware of the Public Defender Office's interest in negotiating. No formal meetings were convened to establish protocols, and no criteria was agreed upon to control the boundaries of negotiation.

The limited success of negotiating with the Grand Jury Unit has not meant a rejection of the concept, but rather has prompted the Chief Public Defender to approach it differently. Instead of stressing contact with the prosecutor, the Public Defender's Office is now more interested in maintaining client

contact. The office hopes to assign one experienced public defender to support clients after they have been bound over to the Grand Jury. Contact and negotiations with the Grand Jury Unit on individual cases will become a secondary priority to maintaining such continuity in representation.

The Shelby County Public Defender's ERDC application had stressed the need for increased use of diversion and alternative sentencing in the county. It stated that too many defendants were processed through the Shelby County system when they should have been diverted into mental health or alcohol and drug treatment programs. It also claimed that more cases could be diverted from the system safely through deferred prosecution if the Public Defender had a role in the process.

So great was the Public Defender's commitment to alternative sentencing, that a position on the grant was reserved for a Social Worker to support the efforts of the test attorneys and the investigator in Municipal Court. Unfortunately events conspired to defeat the plans of the office. First, the staff of the office's once flourishing Social Services Unit was reduced to one person due to budget cuts. That person had to be assigned exclusively to capital cases. Second, the increased costs of the PTR eligibility screener forced the elimination of the test Social Worker from the grant.

The ERDC Field Test had little or no impact on diversion or alternative sentencing in Shelby County as a result. The test attorneys never became involved in the diversion process. The pretrial services agency administers the program under the overall direction of the Municipal Prosecutor. Interviews with the prosecutors and diversion staff revealed that the test had little or no impact on deferred prosecution. The diversion process did not change significantly during the test, although test defenders reportedly made more referrals to diversion than did control defenders.

The test also had little impact on alternative sentencing and social services treatment options. The loss of the social worker and the heavy caseload of

the test attorneys and the investigator seriously limited the opportunity for test staff to use such options. Unlike the Palm Beach County test, which required investigator-client contact and therefore promoted the identification and referral of clients to alternative programs when warranted, the Shelby County test investigator worked almost exclusively on field investigations. His contact with clients was minimal, and his knowledge of the social service community was limited.

Moreover, as was true for the other ERDC sites, the lack of resources to support service programs limited their availability. The ERDC Field Test could help identify, refer, and advocate for a client, but it could not create services. Nor could the test staff change the selection criteria used by the agencies. In Shelby County, budgetary constraints severely restricted the test staff's ability to increase diversions to social service programs.

Summary

In many ways the enhanced representation provided during the ERDC Field Test by the test offices was more important than early client contact. Elements of enhanced representation have been institutionalized at each site, while none of the grantees plans to maintain its procedures for early client contact. Moreover, substantial improvements in service were reported, including:

- early investigation resulted in the preservation of information on test cases which would otherwise have been lost;
- test cases were resolved earlier than normal;
- test case preparation improved and was praised by felony attorneys in the two jurisdictions which implemented the test horizontally; and
- negotiations with the prosecutor occurred earlier on test cases and were enhanced by the ERDC process.

At the same time, the test staff, and other individuals reported negative effects of components of ERDC, including:

- some duplication of client interviewing in Passaic;
- prosecutors in Passaic and Palm Beach Counties reacted negatively to ERDC successes; and;

- ERDC test staff in Shelby County neglected internal case processing procedures in implementing the test.

CHANGES IN OPERATING ENVIRONMENTS DURING THE TEST PERIOD

As noted above, each grantee had to obtain the cooperation and support of the criminal justice community in its jurisdiction to be selected as a participant in the Early Representation by Defense Counsel Field Test. That commitment included assurances from the key agency heads to NIJ that no major changes would occur in the criminal justice system in general, or in their agencies in particular during the term of the test. NIJ sought such assurances to protect the ERDC experiment by attempting to limit the influences on the participating systems which could "compete" with the test. If exogenous changes in the operation of the criminal justice system were limited, changes observed between the test and control populations would be attributable to the changes implemented by the Field Test.

In fact, each participating jurisdiction experienced some change during the test period. That such change occurred was due in part to delays in implementation. The projects did not become fully operational until at least one year after securing commitments from local key actors. Moreover, as is often the case with criminal justice or large systems in general, there were many economic, socio-cultural, and political forces operating in the jurisdictions, forces which created and sustained a momentum for change where none might have been anticipated. A number of these changes directly influenced the operations of the Field Test, and may have limited its results. However, none was dramatic enough to seriously challenge the findings already presented in this chapter.

The changes in the operating environments during the test period were varied and at times subtle, but they can be organized into three general categories. These categories are:

- Structural/Procedural Changes--those changes which involved the structure or process of the administration of justice in the three jurisdictions;

- Staffing/Personnel Changes--those changes in the system which involved the staffing of key criminal justice agencies at the administrative/management and operational levels, and turnover in ERDC test staffing; and
- Fiscal Constraints/Enhancements--those changes which resulted from cut-backs or increases in funds available to support the individual criminal justice systems.

Structural/Procedural Changes

Each jurisdiction faced a number of structural and procedural changes either immediately prior to, or during the Field Test. These changes influenced the implementation of the Field Test, and often limited the analyses of the data generated. The structural and procedural changes included:

- Shelby County restructured its municipal court and pretrial detention operations immediately prior to the test. The court change directly influenced the test by burdening the control attorneys with a greater than normal caseload and limiting the contacts which test attorneys could have with their clients prior to First Appearance. The shift of jail responsibility reportedly influenced the Memphis police since all pretrial detainees were booked in the County Jail rather than the City Jail, limiting police access to defendants after booking. The capacity of the County Jail was much greater than that of the City Jail, limiting the impetus for pretrial release due to overcrowding. Furthermore, mandatory incarceration for DWI offenders was instituted by the State legislature. Jail staff believed that this had a great impact on jail population during the test period.
- Passaic County experienced a number of changes. First, the opening of the Patterson jail complex had an impact on eligibility screening and early client contact, since arrestees were detained there prior to First Appearance. Second, the Prosecutor set up a two-man unit to screen felony cases in municipal court. This replaced an earlier "verticalized" prosecution process which extended the coverage of felony court prosecutors to municipal court. The screening unit, available to both test and control attorneys, was aggressive in downfiling, but did come into some conflict with the test staff during implementation. It may have limited a true test of the impact of the experiment, inasmuch as it was the Prosecutor's response to ERDC.
- Palm Beach County experienced a number of changes in its operating environment during the test. First, a sixth Division of Circuit Court was set up in December, 1983. This court was staffed by the appropriate judicial, clerical, prosecutorial, and public defense operations. The Public Defender was forced to reassign one test investigator and three staff attorneys to the division. A number of cases, test and control, were transferred to the division to relieve the congestion in the other courts.

Second, the major pretrial detention responsibility was transferred, during or immediately after the test period, from the old County Jail to a new facility some miles away. While the move itself did not affect the test, the fact that the computer had to be shut down often to accomplish the move did influence test operations.

Finally, the office began using AMICUS, the NLADA designed case management system, in February, 1983. This change had an impact on the evaluation by creating a competing case recording MIS system in the office. The AMICUS forms differed from the ERDC forms, and the office staff were reportedly confused by the change.

These structural and procedural changes were reported during interviews and informal discussions. There were additional forces at work at each site which may have influenced the relative impact of the ERDC Field Test, but which were not directly cited. These included mandatory sentencing legislation for some crimes including DUI/DWI in New Jersey and local pressures to limit pretrial release, and the national recession which was felt by all three sites and which may have influenced crime rates and the communities' response to crime. These and the influences cited above became a part of the contexts within which the ERDC Field Test was implemented.

Staffing/Personnel Changes

Changes in personnel can have dramatic influences on the operations of agencies and the system as a whole. It is a credit to the three participating public defender agencies that they suffered very little turnover in test and control staff while implementing the complex and demanding ERDC test concept. The other agencies in their systems were not always as fortunate. The changes in staffing and personnel during the test included:

- In Palm Beach County, both the judges who presided over the two test divisions transferred into civil court in January, 1983. The way their replacements operated their courts differed enough to have possibly influenced the timing or ultimate disposition of cases.

Numerous prosecutorial changes occurred during the test period. First, as a direct response to ERDC, both test divisions were increased from three to four prosecutors. This move apparently created some problems for the State Attorney, and required numerous additional shifts of felony prosecutors. Second, as mentioned previously, the Chief of the Intake

Unit was replaced during 1983, and the Unit was reportedly not as aggressive in downfiling cases, reducing charges, and negotiating with test attorneys under the direction of his successor.

Within the Public Defender's Office some important changes also took place. Two attorneys in one of the test divisions were transferred to control divisions and replaced by control attorneys. Within the control divisions, thirteen inter-divisional attorney transfers were made, in part to cover the new division of court. Few clerical and investigatory staff left the test; however, the illness of one test secretary placed a burden on the others. One witness interviewer left the office to enter law school four weeks prior to the end of the test.

- In Passaic County, the key criminal justice system agencies reported no major staff changes during the test period. However, one major staffing change at the state level did affect the grantee. During early implementation, the State Public Defender was replaced. He reportedly had been a proponent of public defense, and had advocated strongly for the adequate funding of the state system. His replacement was reportedly a fiscal conservative who threatened to cut the budgets of the Regional Offices. In Passaic County, it was also rumored that the Chief Deputy Public Defender might be replaced because of his close identification with the previous administration. While that did not happen, the threat posed to the office may have adversely affected staff morale.
- In Shelby County, in the staffing of the system changed little after the test began. The same prosecutors, judges, clerks, and pretrial counselors were assigned to the felony division of General Sessions Court. There were a number of changes in Superior Court judges and prosecutors, and the Grand Jury Unit increased by one, but these were far removed from the test.

The changes that did occur during the test period were limited largely to internal personnel shifts within the Public Defender's Office itself. These included:

- the original data collector hired for the test died in October, 1982. His replacement missed approximately six weeks of work during the Spring of 1983 due to childbirth;
- the test staff remained the same throughout the test; however, one test attorney missed considerable time due to pregnancy and childbirth;
- a complete turnover of control attorneys occurred during the test. The first two-person team of control attorneys worked through November 1, 1982. They were replaced by a single attorney who had some part-time support for the month of November. A second, full-time control attorney was hired on December 1, 1982. He continued in the position through May, 1983, when he was replaced by an experienced misdemeanor attorney;

- several full- and part-time Criminal Court attorneys were replaced during the test period; and
- the on-site evaluator took a six-week maternity leave during the middle of the test.

In sum, staffing changes had the greatest impact in Palm Beach, and reportedly affected the relationship between the Public Defender and State Attorney Offices. Changes in Shelby were minimal, and in Passaic the replacement of the State Public Defender was the only staff change which may have influenced the test.

Fiscal Constraints/Enhancements

During the test period, the national recession and the accompanying fiscal crisis faced by municipalities across the country forced each of the counties to cut services somewhat. In Shelby and Passaic Counties this exacerbated budgetary austerity which had gone on for some years. For Palm Beach County, it meant cutbacks in services and staffing freezes for agencies which had grown consistently over the years. The fiscal constraints presented some general threats to the test. These included:

- The Passaic County office was threatened with the loss of its contract "control" attorneys. Ultimately, their contracts were changed, and the coverage of municipal court was limited to the two test communities of Passaic and Patterson. The other municipalities had to be covered by other office staff, and this placed additional burdens on these staff. Furthermore, threats of cutbacks in investigatory and secretarial staff were not good for morale. Also, the state legislature passed fiscally motivated legislation limiting the office's authority to assign cases to a "pool" of private attorneys in the event of conflicts.

Other system agencies were even more affected by the budget crunch. Cuts in clerical staff made court administration difficult, and limited the evaluator's access to system data. The prosecutor was confronted with limits to his staff, and had difficulty obtaining services from support agencies that were affected by budget cuts. For example, it took six to eight weeks to get laboratory reports for drugs, where previously it had taken less than a week. In short, the Passaic system received budget cuts from the State and County levels during the field test; these cuts may have adversely affected the provision of test services.

- The Shelby County office had already sustained staff cuts prior to the Field Test. The Social Services Division had been cut from four to one, and the support staff had been decimated. The County was implementing

an austerity program and openings due to retirement or resignation routinely were not filled. As head of a subdivision of county government within the social service agency, the Public Defender had very little leverage to build his program. The fact that his operation was unique in county government did not help his position. Government officials did not understand the need for more secretarial staff or investigators because they did not understand the nature of public defense. Other agencies in the system fared somewhat better, but reductions in police and sheriff's staff were reported by the media. In general, Shelby County fared only slightly better than Passaic County during the 1981-83 recession.

- Palm Beach County was not hurt as severely by budget cuts as the other two jurisdictions. Immediately prior to the field test the State Attorney and the Public Defender were allocated additional felony staff to handle the increased caseload. However, fiscal austerity was not unknown to the office. Reports of staffing cuts were heard by the middle of the test. Complaints were heard from the State Attorney staff regarding the problems of staffing. A number of respondents suggested that the Public Defender had installed the AMICUS system in part due to the fact that the State and county governments were going to require a more precise method of documenting case activities for funding purposes.

The mental health and substance abuse treatment agencies which served the criminal justice system were reported victims of fiscal austerity. Palm Beach County enjoyed the most complete array of such services of the three sites, but it was reported that cutbacks in recent years seriously depleted the number of available agencies and drastically limited the resources of the agencies which did survive.

Fiscal cutbacks had a number of impacts on ERDC. First, they limited the potential effects of ERDC. Second, they limited the potential for institutionalization of the ERDC procedures. Third, the lack of job security resulting from budget cuts negatively affected the staff members of the three agencies.

Summary

Each participating jurisdiction experienced some change in its operating environment during the test period. Modifications occurred in:

- structural/procedural features of the local justice systems;
- personnel of the local criminal justices agencies; and
- the fiscal support available to the local justice system in general and the public defender's office in particular.

Some of these changes were sweeping and dramatic (e.g., the court reorganization in Shelby County just prior to the test) while others were more limited. However, none of the modifications impeded the provision of test services or seriously undermined evaluation activities and findings.

V. IMPACT ON CASE PROCESSING AND OUTCOMES

One primary goal of the ERDC Field Test was to study the impact of early representation and enhanced services on case processing and dispositions. In this chapter, we examine the extent to which the ERDC services resulted in:

- more frequent pretrial release of defendants;
- more frequent dismissal of charges;
- more frequent case dispositions in lower courts;
- changes in the use of various sentencing alternatives and/or in the severity of sentences; and
- more expeditious processing of cases to final dispositions.

Anecdotal evidence regarding these potential effects was obtained through interviews, conducted after the Field Test, with Public Defender personnel and other key actors in the criminal justice systems of Passaic, Shelby, and Palm Beach Counties. The findings derived from these interviews are encouraging. First, attorneys and investigators at each site were asked to rate the success of the Field Test in reducing case processing delays, in facilitating case resolutions, and in achieving more favorable case outcomes for their clients. Attorneys from all three sites generally viewed the Field Test as being "successful" or "very successful" in these contexts. This positive assessment was shared by test and control attorneys, at both upper and lower court levels. Similarly, the majority of investigators at each grantee site indicated that the ERDC Field Test was successful in achieving these objectives.

Second, both test and control attorneys were asked to assess the effects of their representation on various case processing events, including pretrial release, lower court case resolution, and type of case disposition. In general, attorneys responded positively regarding the impacts of their services on achieving early case resolution and on the type of case dispositions obtained. However, control attorneys were much less positive regarding their ability to affect defendants' pretrial release status. In contrast, test attorneys at all three sites were uniformly positive regarding the impact of their services on all three aspects of case processing.

Third, other key criminal justice system actors were asked to report on changes they observed in the processing of felony cases during the test period. In particular, respondents were asked if they believed that there was a change in the occurrence of certain events as a result of the Field Test, including: the number of bailed defendants, the number of pretrial diversions, whether there were earlier pleas, the number of dismissals, and the number of trials. In Passaic and Palm Beach Counties, approximately 30% of those interviewed stated that they did not know if there had been changes in the frequency of these events, and at all three sites approximately 35% of those interviewed reported noticing no change in the frequency of these events. Those key actors who reported changes resulting from the Field Test most frequently observed increases in the numbers of bailed defendants and earlier pleas. Respondents in Shelby and Palm Beach Counties also reported more pretrial diversions during the test period. Finally, whereas several respondents from both Shelby and Passaic Counties reported an increase in the number of trials, none of the Palm Beach County respondents noted such an increase and, in fact, several felt that there were fewer trials during the test period.

In the remainder of this chapter, we examine more rigorously the impacts of ERDC services on case processing and dispositions as evidenced by data collected on several thousand public defender clients from the three test sites. These data were collected largely by grantee personnel using two primary data collection instruments. First, an Intake Form was used to collect basic demographic data regarding clients, the arrest date, time, and charges, and the dates and times of initial contact by the grantee of and the initial contact by a public defender attorney. A Case Processing Form was used to collect information documenting the nature and timing of public defender services, and key case processing milestones such as pre-trial release, lower court disposition and sentence, Arraignment, and upper court disposition and sentence.

For all three sites, Case Processing Forms were only prepared and submitted to UI upon final case disposition. As a result, much of our analysis excludes cases which had not reached final disposition prior to the termination of our data collection period (November 1, 1983). Since the number of Case Processing Forms submitted from each site was substantial, this block of missing data was

not a major impediment to analysis. However, the reader should be cautioned that the cases for which case processing data are not available may be systematically different from those for which these data were submitted. This observation follows from a recognition that our sample of completed cases systematically excludes cases which required an exceptionally long time to reach final disposition. These excluded cases may well have involved more serious charges, and may also have resulted in patterns of court dispositions and outcomes which are different from those described in the analyses which follow.

Finally, a great deal of our analysis is confined to Passaic and Shelby Counties. While a substantial amount of data were submitted from Palm Beach County, these data are nonetheless seriously deficient in several respects:

- Time of initial PD Office contact and the person making that contact were not systematically recorded for control clients. Also, only 289 out of 1,688 Case Processing Forms submitted contained complete or nearly complete documentation of public defender attorney and investigator services; and even for these cases, no distinction was made as to whether the services were delivered while the case was in lower or upper court. As a result, it is difficult to assess the extent to which the test condition in Palm Beach County was in any way different from the control condition.
- A large and undetermined number of control cases were "lost" to the analysis when charges were downfiled and subsequent dispositions were not reported. As a result, all analyses of the dispositions of Palm Beach County's control cases and the elapsed time to disposition of control cases are likely to be highly misleading. Moreover, comparisons between control cases and test cases should only be made with the recognition that control clients as a group in fact fared much better than the available data indicate.
- Sentencing data were available for less than 5% of all cases disposed of in municipal court. We are unable to determine the extent to which the sample of cases for which data are available is representative of the entire population of cases resolved by lower courts.

While we have included throughout this chapter those data which are available from Palm Beach County, as a result of the deficiencies noted above a thorough and rigorous evaluation of the impacts of the ERDC Field Test at this grantee site is not possible.

In the remainder of this chapter, we examine various case-related outcomes of the ERDC Field Test. We begin with an analysis of the extent to which the

timing and nature of public defender services were in fact different for test clients as opposed to control clients. Next, we review differences in the pattern of pretrial releases obtained by test and control clients. Following this, we compare test and control cases regarding dispositions and sentences-- first at lower court, and then at upper court. Finally, we combine lower and upper court case outcomes to assess the overall impacts of ERDC services.

EXPERIMENTAL IMPLEMENTATION

In this section, we assess the extent to which there are documented differences between the services provided to test clients and those provided to control clients. We begin by reviewing the extent to which test clients in fact received earlier public defender representation than did control clients. Next, for Passaic and Shelby Counties, we compare test and control clients as to the relative enhancement of lower court PD services, as measured by recorded attorney and investigator time spent on each case. In the following section, we examine the extent to which Passaic and Shelby County test clients continued to receive enhanced services after their cases were transferred to upper court. Finally, we compare Palm Beach County test and control clients regarding total attorney and investigator time.

Early Representation

Passaic County achieved substantial success in its implementation of early representation. A total of 486 out of the 520 test clients for whom data were available (93.5%) were contacted within the first 24 hours after booking. In contrast, only 19 out of 283 control clients for whom data were available (6.7%) had contact with any representative from the public defender during the first 24 hours. As shown by Table V-1, the average time to first contact with test clients was just over 14 hours, as compared with more than 11 days for control clients. Almost 50% of all test clients were seen within 12 hours of booking, whereas the median elapsed time for control clients was almost 12 days.

INSERT TABLE V-1

The primary problem faced by Passaic County during the first month of the ERDC Field Test was the provision of weekend coverage for initial contact. As shown

Table V-1
Time to First Contact, Passaic County

	<u>Average Time</u>
<u>First Contact was by Attorney</u>	
Test Clients (n=458)	.61 days
Control Clients (n=268)	11.45 days
<u>First Contact was by Other PD Representative</u>	
Test Clients (n=62)	.58 days
Control Clients (n=15)	5.84 days
<u>Totals</u>	
Test Clients (n=520)	.61 days
Control Clients (n=283)	11.15 days

by Table V-2, once procedures were developed to respond to this problem, the elapsed time to first contact for weekend test cases declined from more than 30 hours to just over 12 hours.

INSERT TABLE V-2

Full implementation of early representation was especially difficult in Shelby County. As described in Chapter IV (and in greater detail in Volume II), initial eligibility screening in Shelby County was conducted by a representative of the Pretrial Services Agency (PTS), rather than by the Office of the Public Defender. As a consequence, only 249 out of 753 test clients for whom data were available (33.1%) actually had contact with a public defender representative within 24 hours after their booking. It is important to recognize, however, that even this modest accomplishment of the early representation objective differed substantially from the status quo in Shelby County. Thus, in contrast, only one out of 1,077 control intake records with available data (.1%) indicate any contact by a public defender representative within the same 24 hours after booking.

As shown in Table V-3, the average time to first contact by a representative of the Office of the Public Defender and the average time to first contact by a public defender attorney were both substantially and significantly lower for test clients than for control clients in Shelby County. For the 753 test clients for whom these data were available, the average time to first contact was only 2.56 days, as compared with an average of 14.87 days for 1077 control clients. More than 50% of test clients were seen within the first 35 hours after their booking, while the median elapsed time for control clients was just under ten days. Similarly, the average test client actually met with a public defender attorney only 2.60 days after booking, compared with an average waiting time for control clients of 19.05 days. Again, the median elapsed time to attorney contact for test clients was under 35 hours, while that for control clients was more than eleven days.

INSERT TABLE V-3

Table V-2
Time to First Contact, Passaic County:
Pre-Test vs. Subsequent Implementation and
Weekday vs. Weekend Arrest

<u>During Pre-Test</u>	<u>Average Time</u>
<u>Weekday Arrests</u>	
Test Clients (n=50)	.65 days
Control Clients (n=32)	12.76 days
<u>Weekend Arrests:</u>	
Test Clients (n=13)	1.37 days
Control Clients (n=13)	12.38 days
<u>Totals:</u>	
Test Clients (n=63)	.80 days
Control Clients (n=45)	12.63 days
 <u>After Pre-Test</u>	
<u>Weekday Arrests:</u>	
Test Clients (n=343)	.61 days
Control Clients (n=182)	10.89 days
<u>Weekend Arrests:</u>	
Test Clients (n=114)	.51 days
Control Clients (n=56)	10.79 days
<u>Totals:</u>	
Test Clients (n=457)	.58 days
Control Clients (n=238)	10.87 days

Table V-3
Time to First Contact, Shelby County

<u>Time to Any Contact by PD Office</u>	<u>Average Time</u>
<u>First Contact was by Attorney:</u>	
Test Clients (n=747)	2.53 days
Control Clients (n=370)	22.29 days
<u>First Contact was by Other PD Representative:</u>	
Test Clients (n=6)	6.99 days
Control Clients (n=707)	11.09 days
<u>Totals:</u>	
Test Clients (n=753)	2.56 days
Control Clients (n=1077)	14.87 days
 <u>Time to First Contact by PD Attorney</u>	
<u>First Contact was by Attorney:</u>	
Test Clients (n=747)	2.53 days
Control Clients (n=370)	22.29 days
<u>First Contact was by Other PD Representative:</u>	
Test Clients (n=6)	12.03 days
Control Clients (n=676)	17.27 days
<u>Totals:</u>	
Test Clients (n=753)	2.60 days
Control Clients (n=1046)	19.05 days

Moreover, as Table V-4 shows, Shelby County's implementation of early representation improved dramatically after the initial ("pre-test") period of the ERDC Field Test. Thus, the average time to first contact with test clients was decreased from a pre-test duration of 4.28 days to a subsequent duration during full ERDC implementation of 2.25 days. We have also noted in Chapter IV that the PTS screening process created special problems for early contact with clients arrested on weekends. Table V-4 also shows the differences between time to first contact for weekend arrestees and that for weekday arrestees. As these data suggest, the Shelby County grantee was able to overcome the problems associated with weekend arrests and to keep the elapsed time to first contact for weekend arrestees roughly in line with that for clients arrested during the rest of the week.

INSERT TABLE V-4

While the data available from Palm Beach County regarding time to first contact do not allow for comparisons with the same degree of precision as those shown above, it is nonetheless clear that the office experienced relatively few difficulties in implementing the early representation aspects of the ERDC Field Test. Thus, 802 out of 841 test clients for whom data were available (95.4%) were contacted by a public defender attorney before the end of the calendar day following their booking. In contrast with Passaic and Shelby Counties, however, some 1,472 out of 1,535 control clients for whom data were available (95.9%) were seen by a misdemeanor attorney within this "one-plus day" time period.

For both test and control clients in Palm Beach County, the number seen within 24 hours--as opposed to within "one-plus days"--cannot be determined, since the time to first attorney contact expressed in hours was provided for only 65 test cases and 25 control cases. However, we can say that at least 21.2% of test clients (178 out of 841) and at least 20.1% of control clients (309 out of 1,535) were definitely contacted within 24 hours, since their initial PD contact was reported on the same day as their booking. As one might expect from these observations, the difference between test and control clients in mean time to first attorney contact was neither substantial nor significant in

Table V-4
Time to First Contact, Shelby County:
Pre-Test vs. Subsequent Implementation and
Weekday vs. Weekend Arrest

<u>During Pre-Test</u>	<u>Average Time</u>
<u>Weekday Arrests:</u>	
Test Clients (n=71)	4.43 days
Control Clients (n=114)	13.61 days
<u>Weekend Arrests:</u>	
Test Clients (n=37)	4.23 days
Control Clients (n=46)	11.52 days
<u>Totals:</u>	
Test Clients (n=108)	4.28 days
Control Clients (n=160)	13.01 days
 <u>After Pre-Test</u>	
<u>Weekday Arrests:</u>	
Test Clients (n=485)	2.17 days
Control Clients (n=652)	15.27 days
<u>Weekend Arrests:</u>	
Test Clients (n=159)	2.50 days
Control Clients (n=265)	15.00 days
<u>Totals:</u>	
Test Clients (n=644)	2.25 days
Control Clients (n=917)	15.20 days

Palm Beach County. As shown in Table V-5, the average elapsed time for test clients was 1.03 days, while that for control clients was 1.04 days.

INSERT TABLE V-5

Finally, as Tables V-6 and V-7 suggest, Palm Beach County did not appear to have substantial difficulties in achieving compliance with ERDC's early representation mandate during the initial pre-test period. However, these tables do suggest that throughout the test period, clients arrested on weekends were not seen--either by a PD representative or by an attorney--as early as were those arrested on weekdays.

INSERT TABLES V-6 AND V-7

Enhanced Services (Lower Court)

Table V-8 shows the average amounts of lower court attorney and investigator time per case in Passaic and Shelby Counties. At both sites, test cases had the benefit of substantially and significantly (at the .001 level) more attorney time than did their counterparts in the control group. In Shelby County, the investigator time allocated to test cases was also significantly greater than that for control cases. However, in Passaic County, slightly more investigator time was spent on the average control case at lower court than on the average test case.

INSERT TABLE V-8

Enhanced Services (Upper Court)

As Table V-9 shows, Passaic County test clients continued to receive more attorney time and more investigator time after being bound over to upper court than did control group clients. As we shall discuss later in this chapter, this continuation of enhanced services was most probably the result of the greater frequency with which Passaic County upper court attorneys took test cases to trial rather than the result of any concerted effort to deliver continued experimental services to test clients. In contrast, Shelby County

Table V-5
Time to First Contact, Palm Beach County

<u>Time to Any Contact by PD Office</u>	<u>Average Time</u>
<u>First Contact was by Attorney:</u>	
Test Clients (n=241)	.98 days
Control Clients	Not available
<u>First Contact was by Other PD Representative:</u>	
Test Clients (n=544)	1.19 days
Control Clients	Not available
<u>Totals*:</u>	
Test Clients (n=800)	1.14 days
Control Clients	Not available
 <u>Time to First Contact by PD Attorney</u>	
<u>First Contact was by Attorney:</u>	
Test Clients (n=241)	.98 days
Control Clients	Not available
<u>First Contact was by Other PD Representative:</u>	
Test Clients (n=531)	1.05 days
Control Clients	Not available
<u>Totals*:</u>	
Test Clents (n=841)	1.03 days
Control Clients (n=1,535)	1.04 days

* Totals shown may be greater than the sum of the two items due to missing data regarding person making first contact.

Table V-6

Time to First Contact, Palm Beach County:
Pre-Test vs. Subsequent Implementation and
Weekday vs. Weekend Arrest

	<u>Average Time</u>
<u>During Pre-Test</u>	
<u>Weekday Arrests:</u>	
Test Clients (n=55)	.96 days
Control Clients	Not available
<u>Weekend Arrests:</u>	
Test Clients (n=26)	.65 days
Control Clients	Not available
<u>Totals:</u>	
Test Clients (n=81)	.86 days
Control Clients	Not available
<u>After Pre-Test</u>	
<u>Weekday Arrests:</u>	
Test Clients (n=517)	1.01 days
Control Clients	Not available
<u>Weekend Arrests:</u>	
Test Clients (n=189)	1.62 days
Control Clients	Not available
<u>Totals:</u>	
Test Clients (n=719)	1.17 days
Control Clients	Not available

Table V-7

Time to First Attorney Contact, Palm Beach County:
Pre-Test vs. Subsequent Implementation and
Weekday vs. Weekend Arrest

	<u>Average Time</u>
<u>During Pre-Test</u>	
<u>Weekday Arrests:</u>	
Test Clients (n=66)	.92 days
Control Clients (n=101)	.74 days
<u>Weekend Arrests:</u>	
Test Clients (n=27)	.67 days
Control Clients (n=20)	1.20 days
<u>Totals:</u>	
Test Clients (n=93)	.85 days
Control Clients (n=134)	.86 days
<u>After Pre-Test</u>	
<u>Weekday Arrests:</u>	
Test Clients (n=550)	1.01 days
Control Clients (n=922)	1.12 days
<u>Weekend Arrests:</u>	
Test Clients (n=183)	1.21 days
Control Clients (n=431)	.88 days
<u>Totals:</u>	
Test Clients (n=748)	1.06 days
Control Clients (n=1,401)	1.05 days

Table V-8
Enhanced Public Defender Services at Lower Court

<u>Attorney Time</u>	<u># Cases</u>	<u>Average Time Per Client</u>	<u>Standard Deviation</u>
Passaic County:			
Test Cases	373	40.5 min.	25.9 min.
Control Cases	333	24.1 min.	51.4 min.
Shelby County:			
Test Cases	548	102.2 min.	88.4 min.
Control Cases	715	77.7 min.	35.3 min.
<u>Investigator Time</u>			
Passaic County:			
Test Cases	373	25.5 min.	37.5 min.
Control Cases	334	31.7 min.	61.8 min.
Shelby County:			
Test Cases	553	41.0 min.	105.8 min.
Control Cases	714	10.2 min.	8.8 min.

test clients whose cases went to upper court received slightly less in attorney and investigator time than did their control-group counterparts.

INSERT TABLE V-9

ERDC Services in Palm Beach County

Public defender service time in Palm Beach County was not consistently recorded for each activity undertaken on a given case-- neither by attorneys nor by investigators. As a result, out of the full sample of completed cases, 289 (17.1%) Case Processing Forms included complete documentation of time allocated to service delivery. Moreover, the majority of these records do not distinguish between attorney time and investigator time, nor between time spent while the case was in lower court and time spent after the case was transferred to upper court. Table V-10 summarizes what can be said regarding enhanced services. In terms of combined attorney and investigator time, and across both upper and lower court combined, test clients appear to have received somewhat more service time than did control clients. However, even this difference is not statistically significant because of the large variance in reported time as well as the rather small number of cases for which data are available.

INSERT TABLE V-10

A second aspect of the ERDC Field Test in Palm Beach County was to have been vertical representation. That is, test clients were to be represented by a single attorney from first contact through final disposition. The extent to which this aspect of the ERDC experimental design was implemented also cannot be determined. However, the results of our follow-up interviews with 83 Palm Beach County clients who were sentenced in upper court suggest that implementation of vertical representation may not have been entirely consistent with original experimental plan. Sixteen out of 36 test clients (44.4%) responding to a series of items comparing their pre- and post-Arrest attorneys reported having different attorneys in upper court.

Table V- 9
Enhanced Public Defender Services at Upper Court

<u>Attorney Time</u>	<u># Cases</u>	<u>Average Time Per Client</u>	<u>Standard Deviation</u>
Passaic County:			
Test Cases	104	337.9 min.	555.0 min.
Control Cases	107	228.0 min.	407.9 min.
Shelby County:			
Test Cases	196	257.5 min.	295.2 min.
Control Cases	375	285.1 min.	300.3 min.
<u>Investigator Time</u>			
Passaic County:			
Test Cases	103	27.6 min.	51.5 min.
Control Cases	107	22.4 min.	40.0 min.
Shelby County:			
Test Cases	190	0.0 min.	0.0 min.
Control Cases	347	.3 min.	4.9 min.

Table V- 10
Enhanced Public Defender Services in Palm Beach County

<u>Attorney Time</u>	<u># Cases</u>	<u>Average Time Per Client</u>	<u>Standard Deviation</u>
Test Cases	150	267.7 min.	809.3 min.
Control Cases	139	192.2 min.	297.8 min.

Summary

The three ERDC test sites had varying degrees of success in achieving the early representation objective. From the standpoint of experimental design, Passaic County provides the best possibility for assessing the merits of early client contact. The vast majority of Passaic County test clients were contacted within the required 24-hour period after arrest, while only a handful of control clients received comparably expedited service. In Palm Beach County, virtually all clients--test and control--were contacted within "one-plus" days after their arrest. The differences in time to first contact between test and control clients in Shelby County were in fact significant. However, slightly less than one-third of all test clients were actually contacted within 24 hours after their arrest, thereby decreasing (at least slightly) the power of any subsequent test-vs.-control comparisons.

In terms of the enhanced services objective of the ERDC Field Test, data from both Passaic and Shelby Counties indicate that test clients did in fact receive significantly more attorney time while in lower court than did control clients. In Shelby County, test clients also received more investigator time. From an analysis of the Palm Beach County cases where data were reported, it appears that test clients may have received slightly more attention than control clients, although the difference is not statistically significant. Similarly the available data regarding implementation of vertical representation (from client follow-up interviews) suggest that implementation may not have been realized.

PRETRIAL RELEASE

We begin our examination of the effects of the ERDC intervention by reviewing the pretrial release status of test and control clients. First, we compare these two groups as to the likelihood of release, both in aggregate and by arrest charge. Next, we consider the quality of pr-trial release, both as to how quickly clients are released after arrest and the type of release (e.g., own recognizance, cash bond, etc.).

Likelihood of Release

Table V-11 shows the comparisons between test and control clients at each site

as to the likelihood of their obtaining pretrial release. As this table indicates, there was a substantial (and statistically significant at the .001 level) improvement in the likelihood of pre-trial release for Shelby County test clients, while there was no significant difference in Palm Beach County and a modest decline in Passaic County. Since both Passaic and Palm Beach Counties were faced with substantial jail overcrowding during the test period, this failure to find improvements in test clients' pretrial release status may well be the result of an overriding general tendency to release all defendants who could be released. In contrast, Shelby County was not faced with problems of jail overcrowding. Accordingly, the only special effort to obtain pretrial release was on behalf of ERDC test clients.

INSERT TABLE V-11

Tables V-12 to V-14 provide a more refined analysis of the relative likelihood of clients' being released prior to disposition. In Table V-12, we can see that most of the decrease in pretrial release observed in Passaic County took place in cases involving serious arrest charges. Thus, only 39.3% of all test clients who were arrested for serious crimes against either persons or property obtained pretrial release, as compared with 48.6% of control clients. This difference is statistically significant at at least the .10 level, and suggests that the more extensive ERDC services in Passaic County may have resulted in a greater degree of selectivity by the court as to allowing more potentially serious criminals back on the street.

INSERT TABLE V-12

In Shelby County, Table V-13 shows that test clients were significantly more likely than control clients to obtain pretrial release regardless of their arrest charge. However, it should be noted that the greatest increase (from 40.0% for control clients to 56.9% for test clients) occurred among clients arrested for non-serious charges, while the increase for those with serious arrest charges was somewhat less dramatic (from 27.8% for control clients to 37.9% for test clients).

INSERT TABLE V-13

Table V-11
Pre-Trial Release Status

	Passaic		Shelby		Palm Beach	
	Test	Control	Test	Control	Test	Control
Released	209 (51.6%)	238 (57.9%)	290 (51.6%)	270 (36.9%)	435 (55.6%)	509 (57.6%)
Not Released	196 (48.4%)	173 (42.1%)	272 (48.4%)	462 (63.1%)	347 (44.4%)	375 (42.4%)
Total	<u>405</u>	<u>411</u>	<u>562</u>	<u>732</u>	<u>782</u>	<u>884</u>

Table V-12
Pre-Trial Release by Arrest Charges:
Passaic County

	<u>Distribution at Arrest</u>		<u>Distribution of Cases Released</u>		<u>Probability of Release</u>
	#	%	#	%	%
<u>Test Cases</u>					
Serious (vs. person)	137	32.3	50	24.2	36.5
Non-serious (vs. person)	21	5.0	17	8.2	81.0
Serious (vs. property)	69	16.3	31	15.0	44.9
Non-serious (vs. property)	62	14.6	30	14.5	48.4
Drug	93	21.9	56	27.1	60.2
Other	42	9.9	23	11.1	54.8
<u>Control Cases</u>					
Serious (vs. person)	113	26.7	56	24.0	49.6
Non-serious (vs. person)	19	4.5	13	5.6	68.4
Serious (vs. property)	70	16.5	33	14.2	47.1
Non-Serious (vs. property)	77	18.2	38	16.3	49.4
Drug	106	25.1	70	30.0	66.0
Other	38	9.0	23	9.9	60.5

Table V-13
Pre-Trial Release by Arrest Charges:
Shelby County

	<u>Distribution at Arrest</u>		<u>Distribution of Cases Released</u>		<u>Probability of Release</u>
	#	%	#	%	%
<u>Test Cases</u>					
Serious (vs. person)	118	21.4	45	15.9	38.1
Non-serious (vs. person)	9	1.6	4	1.4	44.4
Serious (vs. property)	43	7.8	16	5.7	37.2
Non-Serious (vs. property)	320	58.1	182	64.3	56.9
Drug	45	8.2	31	11.0	68.9
Other	16	2.9	5	1.8	31.3
<u>Control Cases</u>					
Serious (vs. person)	147	20.4	43	16.4	29.3
Non-serious (vs. person)	8	1.1	0	0.0	0.0
Serious (vs. property)	65	9.0	16	6.1	24.6
Non-serious (vs. property)	405	56.3	162	61.8	40.0
Drug	42	5.8	24	9.2	57.1
Other	52	7.2	17	6.5	32.7

In Palm Beach County, Table V-14 shows that there were no systematic differences in pretrial release status for different arrest charges. Just under half of those arrested for serious charges obtained release, and slightly more than 60% of those with less serious charges were released. These observations apply to both test and control clients.

INSERT TABLE V-14

Quality of Release

Table V-15 shows the means and standard deviations for elapsed time to pre-trial release for test and control clients from each site. At all three sites, test clients were released earlier than were their control group counterparts. This difference is statistically significant at the .003 level in Passaic County and at the .001 level in Shelby County. In Palm Beach County, the difference, while smaller, is statistically significant at the .07 level.

INSERT TABLE V-15

In Table V-16, we summarize the relative likelihood of obtaining various kinds of pre-trial release. In Passaic County, where the 10% bond method of securing bail was available, there were no notable differences in the type of release between test and control clients. In both Shelby and Palm Beach Counties, test clients were substantially and significantly more likely than control clients to obtain release on their own recognizance, and correspondingly less likely to be required to post a cash bond.

INSERT TABLE V-16

Summary

Across all three sites, there is evidence to suggest that the ERDC intervention had a significant impact on test clients' pretrial release status. In Passaic County, this is evidenced in the substantial reduction in the average time from arrest to release. In Palm Beach, there is a modest reduction in time to release and a significant increase in the percentage of clients released

Table V-14
Pre-Trial Release by Arrest Charges:
Palm Beach County

	<u>Distribution at Arrest</u>		<u>Distribution of Cases Released</u>		<u>Probability of Release</u>
	#	%	#	%	%
<u>Test Cases</u>					
Serious (vs. person)	198	25.7	101	24.0	51.0
Non-serious (vs. person)	8	1.0	5	1.2	62.5
Serious (vs. property)	201	26.1	93	22.1	42.3
Non-serious (vs. property)	225	29.3	134	31.8	59.6
Drug	91	11.8	63	15.0	69.2
Other	46	6.0	25	5.9	54.3
<u>Control Cases</u>					
Serious (vs. person)	208	23.7	105	21.2	50.5
Non-serious (vs. person)	15	1.7	9	1.8	60.0
Serious (vs. property)	202	23.0	95	19.2	47.0
Non-serious (vs. property)	279	31.8	175	35.4	62.7
Drug	127	14.5	89	17.8	70.1
Other	47	5.4	22	4.4	46.8

Table V-15
Time to Pre-Trial Release

	Passaic		Shelby		Palm Beach	
	Test	Control	Test	Control	Test	Control
# Cases	205	232	284	264	422	499
Mean Time	5.3 days	12.8 days	3.4 days	5.9 days	5.4 days	6.9 days
St. Deviation	11.4 days	36.4 days	5.8 days	8.2 days	11.4 days	13.9 days

Table V-16
Type of Pre-Trial Release

	Passaic		Shelby		Palm Beach	
	Test	Control	Test	Control	Test	Control
Own Recognizance	31 (15.3%)	34 (15.0%)	161 (56.7%)	118 (44.2%)	220 (50.8%)	201 (39.5%)
10% Bond	109 (53.7%)	125 (55.3%)	--	--	--	--
Cash Bond	63 (31.0%)	67 (29.6%)	94 (33.1%)	146 (54.7%)	213 (49.2%)	308 (60.5%)
Other	--	--	29 (10.2%)	3 (1.1%)	--	--

on their own recognizance. In Shelby County, where pretrial release was much less prevalent prior to the ERDC Field Test, there were significant improvements in time to release, type of release, and the overall likelihood of release.

LOWER COURT OUTCOMES

In this section, we examine the impacts of the ERDC intervention on case dispositions in lower court. We begin by comparing the relative likelihood of various dispositions. Next, for those who are sentenced in lower court (i.e., for misdemeanors) we compare test and control clients as to the nature and severity of their sentences.

Lower Court Dispositions

Figures V-1 to V-3 show the distribution of lower court dispositions for test and control cases from Passaic, Shelby, and Palm Beach Counties respectively. While the percentage of cases reported as reaching final disposition in municipal court varies from a high of 68.1% in Passaic County to a low of 37.8% in Palm Beach, the general pattern of dispositions is consistent across all three sites. First, the percentage of cases where charges were dismissed or dropped (after attorney withdrawals are excluded) is substantially greater for test cases than for control cases. The differences in these percentages are statistically significant at better than the .01 level in Shelby and Palm Beach Counties. Second, of those cases which are not dismissed, the percentage down-filed or plea bargained to misdemeanors and disposed of by the lower court was also larger for test cases than for control cases. While this difference was statistically significant only in Shelby and Palm Beach Counties, the same pattern can be observed in Passaic County as well.

Finally, the net effect of these two differences taken together is that the percentage of test clients bound over to upper court is much less than that for control clients. In Passaic County, only 28.3% of test cases went on to upper court as compared with 33.6% of control cases. In Shelby County, 38.7% of test cases were bound over compared with 56.9% of control cases. And in Palm Beach County, the percentages were 50.0% and 72.9% for test and control cases respectively.

INSERT FIGURES V-1, V-2, V-3

Figure V-1

Lower Court Dispositions
Passaic County

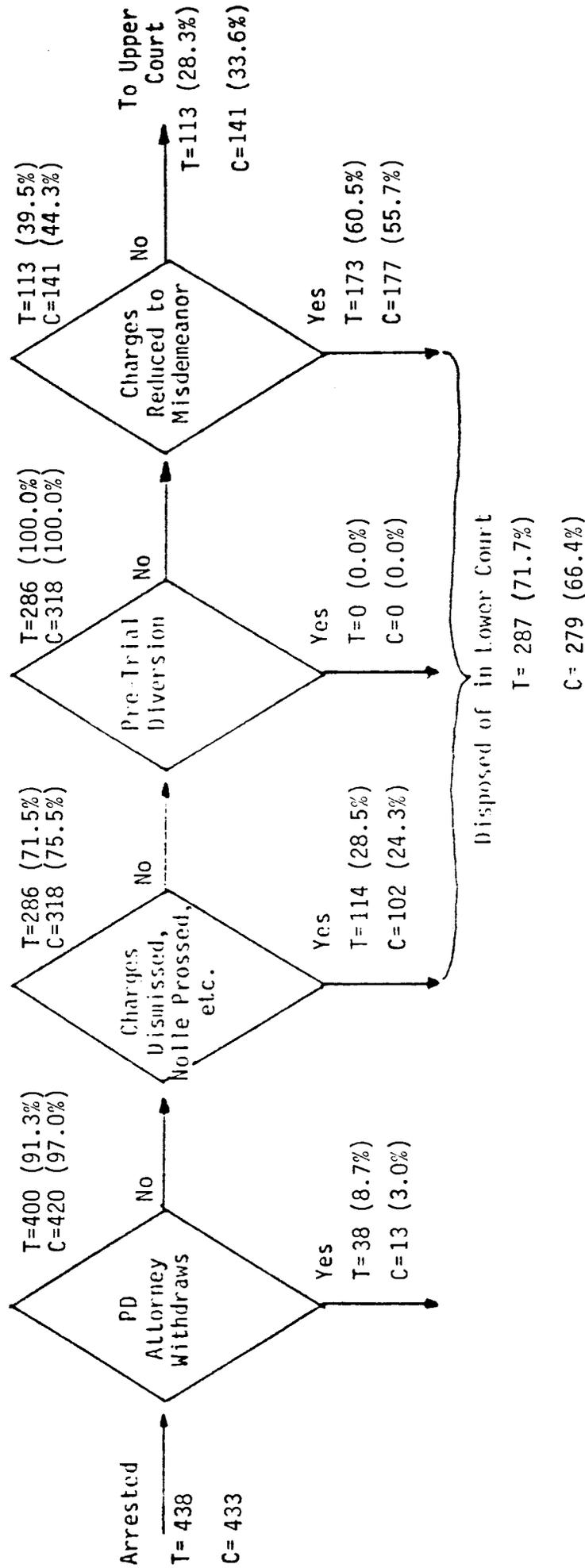


Figure V-2
Lower Court Dispositions
Shelby County

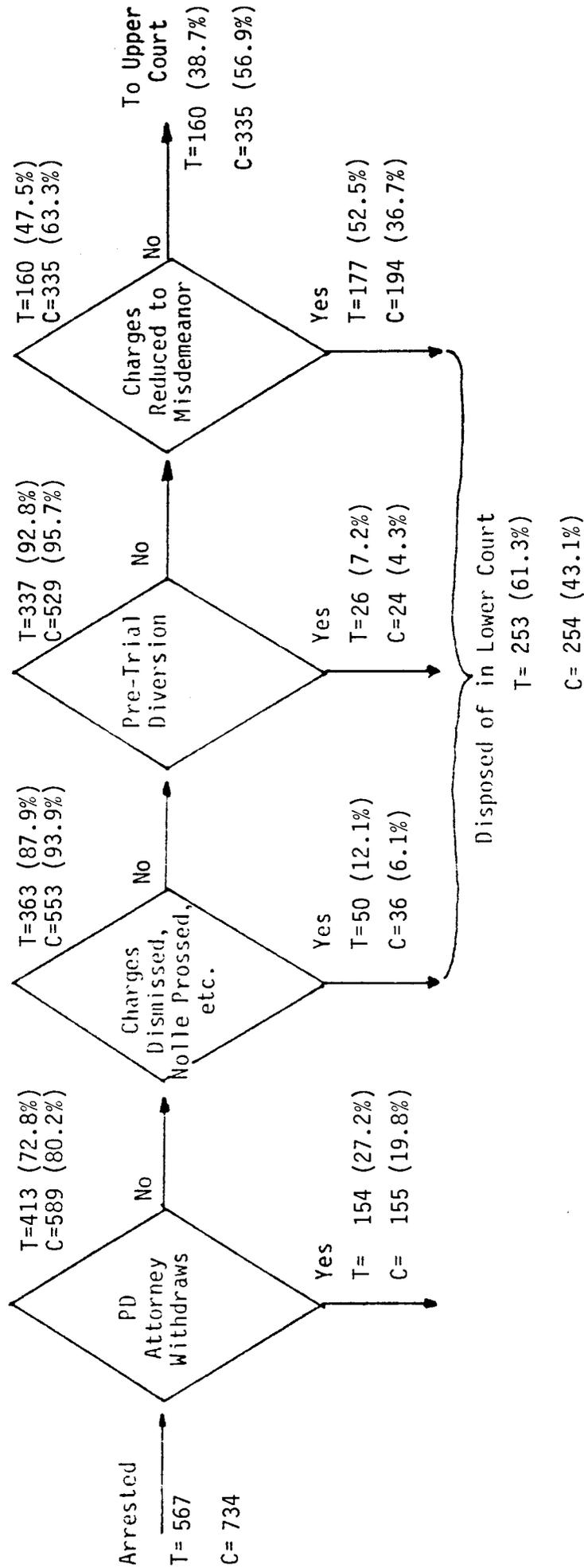
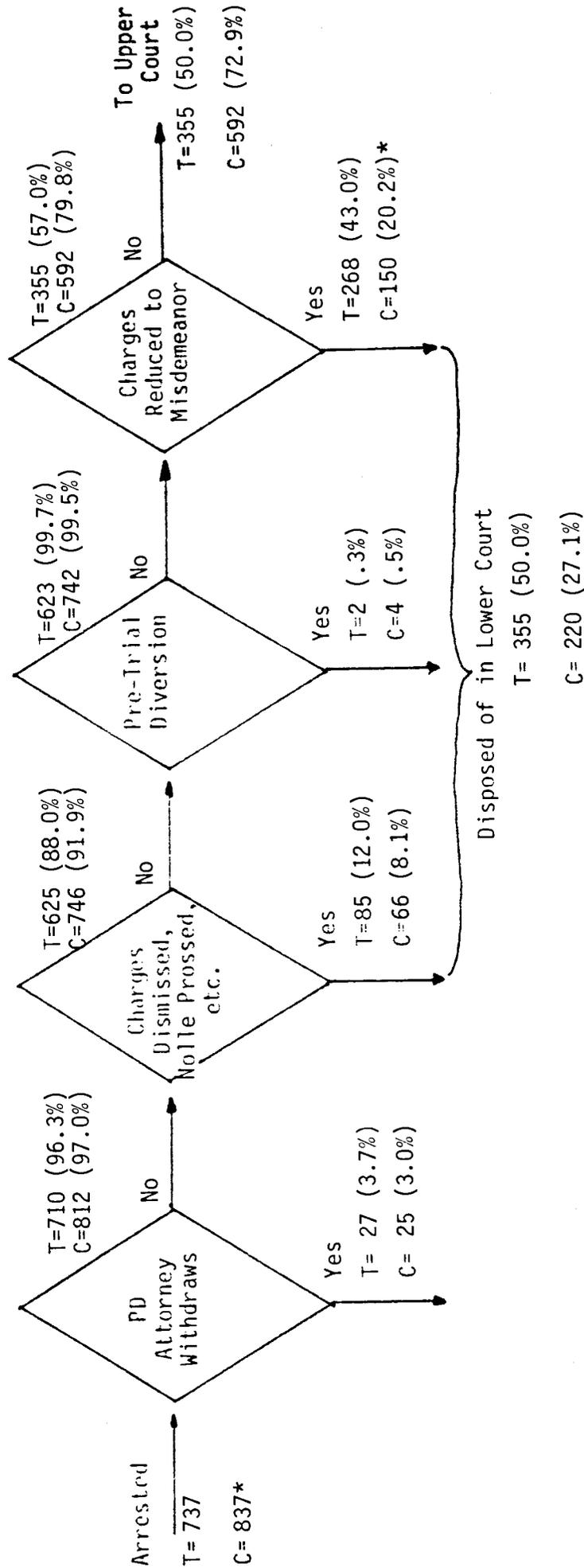


Figure V-3
Lower Court Dispositions
Palm Beach County



*NOTE: Analysis does not include an undetermined (but believed to be substantial) number of control cases which were downfiled but not reported to UI. Therefore, all percentage figures shown for control cases may be misleading; and in particular, the percentage of downfilings is seriously understated for control clients.

Lower Court Sentences

Table V-17 shows the frequency with which Passaic and Shelby County defendants who were sentenced in municipal court received sentences including incarceration, probation, and fines and/or restitution. The totals for these sentencing alternatives exceed the number of clients sentenced at each site because of the frequent use of multiple sentences-- e.g., jail time followed by probation, etc. The analysis reveals that control clients were more likely than test clients to receive sentences which included incarceration. Sentences to probation provided the mirror image of this pattern, with test clients being more likely than control clients to receive probation. At both sites, judges were more likely to levy fines and/or impose restitution requirements on test clients than on control clients.

INSERT TABLE V-17

Table V-18 shows the average severity of sentences to incarceration, probation, and fines and/or restitution. In both sites, there were no statistically significant differences in severity of sentence, although test clients appear to have received slightly longer jail sentences and correspondingly shorter sentences to probation.

INSERT TABLE V-18

Summary

All of the above suggests that the ERDC intervention had a major impact at the municipal court level. For all three counties, test cases were more likely than control cases to be dismissed; and test clients were more likely than control clients to have their charges reduced--either by downfiling or by plea bargaining--and thereby to be sentenced in lower court. As a consequence, significantly fewer test cases were submitted to upper court than might have been the case in the absence of ERDC services. Moreover, for the two sites where lower court sentencing data are available, test clients appear to have received jail sentences slightly less frequently than control clients; although for those who were sentenced to incarceration, the term of sentence for test clients was, on average, slightly longer than that for control clients.

Given that the test population which was sentenced in lower court included a significant number of clients who might otherwise have gone to upper court,

Table V-17
Sentencing Alternatives Imposed by Lower Court

	<u>Sentence Included:</u>						<u>Totals</u>
	<u>Incarceration</u>		<u>Probation</u>		<u>Fines/ Restitution</u>		
<u>Passaic County</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	
Test Cases	67	54.9	39	32.0	88	72.1	122
Control Cases	78	61.4	34	26.8	90	70.9	127
<u>Shelby County</u>							
Test Cases	138	79.8	56	32.4	66	37.3	177
Control Cases	182	95.8	59	30.9	58	29.9	194

Table V-18
Severity of Lower Court Sentences

<u>Incarceration</u>	<u># Sentences Reported</u>	<u>Mean Sentence</u>	<u>Standard Deviation</u>
Passaic County			
Test Clients	65	1.9 mos.	1.6 mos.
Control Clients	77	1.7 mos.	1.2 mos.
Shelby County			
Test Clients	138	6.6 mos.	4.2 mos.
Control Clients	181	6.4 mos.	4.2 mos.
<u>Probation</u>			
Passaic County			
Test Clients	34	13.6 mos.	6.5 mos.
Control Clients	27	14.0 mos.	6.4 mos.
Shelby County			
Test Clients	53	11.4 mos.	2.0 mos.
Control Clients	59	11.6 mos.	1.5 mos.
<u>Fines or Restitution</u>			
Passaic County			
Test Clients	88	\$278.41	\$161.39
Control Clients	90	\$301.67	\$170.47
Shelby County			
Test Clients	65	\$188.92	\$293.95
Control Clients	64	\$178.59	\$229.37

the fact that sentences for test cases were not substantially more severe than those for control cases suggests that ERDC services have had an important positive impact on lower court sentencing. Thus, test clients appear to have benefitted from the ERDC intervention, both in terms of their case dispositions as well as in terms of the sentences which they received in municipal court.

UPPER COURT OUTCOMES

In this section we examine the possible impacts of the ERDC intervention on case dispositions in upper court. For test and control clients whose cases went to upper court, we begin by comparing the relative likelihood of alternative case dispositions. Next, for those who were convicted, we compare test and control clients as to the severity of their respective sentences. While the primary focus of the ERDC Field Test was upon public defender activities prior to Arraignment, the rationale for studying upper court or post-Arraignment outcomes is two-fold. First, it is certainly possible that some of the more significant impacts of the test services--from the client's point of view, from that of the criminal justice system as a whole, or from both--can be observed at the upper court level. Second, for Palm Beach County in particular, the effects of vertical representation are more likely to be observed after than before Arraignment. In general, four alternative hypotheses regarding upper court outcomes merit consideration:

- "ERDC Intervention as a Filter" (Hypothesis #1):
This hypothesis begins with the observation that the ERDC test services resulted in a substantial increase in cases being decided in lower court and a corresponding reduction in clients bound over to upper court. It is reasonable to hypothesize that this "filtering" of test cases is not random but that instead the effect is to eliminate early in the adjudication process those cases involving less serious charges and/or cases of more dubious prosecutorial merit. If this hypothesis is true, the implication is that test cases brought to upper court would, as a group, involve more serious charges and/or that these cases would be those for which district attorneys anticipated a greater likelihood of conviction. As a result, test clients brought to upper court would be expected to enter guilty pleas more frequently, to be acquitted less frequently, and, as a group, to receive more severe sentences than their control group counterparts, who have not benefited by the hypothesized pre-Arraignment filtering process.

- "ERDC Intervention as a Support" (Hypothesis #2):
Alternatively, there are a variety of ways in which enhanced pre-Arraignment services can be expected to have a favorable impact on test clients' case dispositions at upper court. For example, the advantages of early crime scene investigation and witness interviewing are well understood; to the extent that these activities are conducted for test cases as a part of ERDC's enhanced services, upper court public defenders may be better prepared to defend and to win acquittal for test clients. Also, as described in detail in Chapter VI, one of the goals of the ERDC model was to improve attorney-client relationships. To the extent that such improvement contributes to an ongoing cooperative relationship between the client and his or her upper court attorney, the client's prospects in upper court may be correspondingly enhanced. As a result, under this hypothesis, test clients brought to upper court would be expected to go to trial more frequently, to be acquitted more frequently, and to receive generally less severe sentences than their control group counterparts.
- "Balanced Effects" (Hypothesis #3):
This hypothesis accepts both types of arguments advanced above--that ERDC services function both as a filter and as a support. However, because these two processes tend to pull in opposite directions, it is possible that they effectively "cancel each other out" in terms of observable outcomes in upper court. Accordingly, under this hypothesis, there should be no significant differences in the respective fates of test clients and control clients.
- "No Effect" (Hypothesis #4):
Finally, there is a "null hypothesis" which assumes that pre-Arraignment activities have no effect on upper court outcomes. As with Hypothesis #3, this hypothesis leads to an expectation of no differences between test and control cases.

ERDC "Filtering" of Arrest Charges

We begin our analysis of the effects of ERDC services on upper court outcomes by examining the extent to which the earlier and enhanced services received by test clients prior to Arraignment may have contributed to systematic differences between test and control cases brought to upper court. Tables V-19 through V-21 show the distribution of original arrest charges for test and control clients (excluding cases involving subsequent PD attorney withdrawals) for whom case processing forms were submitted during the data collection period. These tables also show the distribution of original arrest charges for the subset of these clients whose cases were transferred to upper court (as opposed to reaching final disposition in lower court).

INSERT TABLES V-19, V-20, V-21

Table V-19
Effects of ERDC on Distribution of Original Arrest Charges
For Cases Resolved in Upper Court
Passaic County

<u>Test Cases</u>	Distribution at Arrest		Distribution of Cases Going to Upper Court		Probability of Going to Upper Court
	#	%	#	%	%
Serious (vs. person)	120	30.6	39	34.5	32.5
Non-serious (vs. person)	20	5.1	0	0.0	0.0
Serious (vs. property)	67	17.1	22	19.5	32.8
Non-serious (vs. property)	62	15.8	10	8.8	16.1
Drug	82	20.9	34	30.1	41.5
Other	39	9.9	8	7.1	20.5
Charge not reported	8	--	0	--	0.0
Totals	400		113		28.3
<u>Control Cases</u>					
Serious (vs. person)	109	26.5	44	31.2	40.4
Non-serious (vs. person)	18	4.4	0	0.0	0.0
Serious (vs. property)	69	16.7	32	22.7	46.4
Non-serious (vs. property)	76	18.4	13	9.2	17.1
Drug	103	25.0	37	26.2	35.9
Other	37	9.0	15	10.6	40.5
Charge not reported	8	--	0	--	0.0
Totals	420		141		33.6

Table V-20
Effects of ERDC on Distribution of Original Arrest Charges
For Cases Resolved in Upper Court
Shelby County

<u>Test Cases</u>	Distribution at Arrest		Distribution of Cases Going to Upper Court		Probability of Going to Upper Court
	#	%	#	%	%
Serious (vs. person)	81	20.0	55	33.3	67.9
Non-serious (vs. person)	5	1.2	4	2.4	80.0
Serious (vs. property)	34	8.4	26	15.8	76.5
Non-serious (vs. property)	248	61.4	72	43.6	29.0
Drug	26	6.4	5	3.0	19.2
Other	10	2.5	3	1.8	30.0
Charge not reported	9	--	4	--	44.4
Totals	413		169		40.9
<u>Control Cases</u>					
Serious (vs. person)	108	18.7	85	24.8	78.7
Non-serious (vs. person)	7	1.2	3	.9	42.9
Serious (vs. property)	57	9.8	44	12.8	77.2
Non-serious (vs. property)	330	57.0	185	53.9	56.1
Drug	35	6.0	11	3.2	31.4
Other	42	7.3	15	4.4	35.7
Charge not reported	10	--	4	--	40.0
Totals	589		347		58.9

Table V-21
Effects of ERDC on Distribution of Original Arrest Charges
For Cases Resolved in Upper Court
Palm Beach County

<u>Test Cases</u>	Distribution at Arrest		Distribution of Cases Going to Upper Court		Probability of Going to Upper Court
	#	%	#	%	%
Serious (vs. person)	174	25.2	72	20.7	41.4
Non-serious (vs. person)	8	1.2	0	0.0	0.0
Serious (vs. property)	182	26.3	111	31.9	61.0
Non-serious (vs. property)	212	30.7	109	31.3	51.4
Drug	77	11.1	39	11.2	50.6
Other	38	5.5	17	4.9	44.7
Charge not reported	19	--	7	--	36.8
Totals	710		355		50.0
<u>Control Cases</u>					
Serious (vs. person)	185	23.2	113	19.5	61.1
Non-serious (vs. person)	15	1.9	6	1.0	40.0
Serious (vs. property)	188	23.6	150	25.9	79.8
Non-serious (vs. property)	256	32.2	201	34.7	78.5
Drug	109	13.7	81	14.0	74.3
Other	43	5.4	29	5.0	67.4
Charge not reported	16	--	12	--	75.0
Totals	812		592		72.9

As Tables V-19 to V-20 show, in Passaic and Shelby Counties the proportion of cases with serious arrest charges increased for those cases arraigned in upper court. In Passaic County, this shift was more pronounced among control cases than among test cases. However, because Passaic County test clients were, as a group, more likely to have been originally charged with serious crimes, the net effect was that the same proportion of cases, test and control, resolved in upper court had serious original arrest charges (54.0% for test cases vs. 53.9% for control cases). In Shelby County, both test and control cases going to upper court included much higher percentages of serious arrest charges than did the original populations. Moreover, the shift among test cases (from 28.4% to 49.1%) was much more pronounced than that among control cases (from 28.5% to 37.6%). Analysis of variance indicates that this differential "filtering" in Shelby County was statistically significant at the .001 level.

In Palm Beach County, the composition of neither test nor control group appears to have changed significantly between arrest and transfer to upper court. However, serious original charges were nonetheless slightly more prevalent among test cases transferred to upper court than among control cases going to upper court (52.6% of test cases compared with 45.4% of control cases).

Based upon these analyses, it is clear that in Shelby County the ERDC test services did in fact serve to "filter" cases significantly more than that which would normally have occurred--i.e., more than is observed with control cases. Thus, at least in terms of original arrest charges, test cases arriving in upper court presented generally more serious arrest charges than did control cases. While no significant "filtering" was observed in Palm Beach County, test cases going to upper court were slightly more likely to involve serious charges than were control cases going to upper court. The findings for Shelby and Palm Beach Counties are consistent both with Hypothesis #1 ("ERDC Services as a Filter") and with Hypothesis #3 ("Balanced Effects"). Accordingly, we should expect test clients at these sites to fare no better than (Hypothesis #3) or generally worse than (Hypothesis #1) control clients in upper court. In contrast, the findings for Passaic County are consistent with either Hypothesis #2 ("ERDC Services as a Support") or Hypothesis #4 ("No Effects"). Therefore, at this site, we should expect test clients to fare better than

(Hypothesis #2) or generally the same as (Hypothesis #4) their control group counterparts.

Upper Court Dispositions

Figures V-4 to V-6 show the distribution of upper court dispositions for test and control clients from Passaic, Shelby, and Palm Beach Counties respectively. What is most interesting about these data are the striking differences between jurisdictions. For example, clients of the Palm Beach County Public Defender-- both test and control-- were far more likely than clients in Passaic and Shelby Counties to have their case dismissed after Arraignment. Passaic County attorneys were much more likely than their counterparts in Shelby and Palm Beach Counties to take cases to trial. Once arraigned in upper court, Shelby County Public Defender clients could be virtually certain that they would eventually be sentenced (better than a 60-to-one chance) while convictions in Passaic and Palm Beach County were far less likely (nine-to-one and five-to-one chances respectively). All of these differences are highly revealing regarding how these three rather different criminal justice systems actually operate. Yet they shed rather little light upon the relative merits of ERDC services.

INSERT FIGURES V-4, V-5, V-6

In terms of the hypotheses outlined earlier, the data are consistent with Hypotheses #3 and #4--that is, either that test activities had no effect on upper court outcomes, or that the hypothesized positive and negative effects were approximately balanced. In either event, Figures V-4 to V-6 show that there were few differences in the eventual dispositions of test and control cases. (In fact, the only difference reaching a respectable level of statistical significance (.06) is that Passaic County control clients were more likely than test clients to have their case dismissed. Yet the numbers involved in this contrast--only one test case and seven control cases--are so small as to make the comparison pragmatically unimportant.)

In order to augment these data, officials in Passaic County provided additional follow-up data covering 371 cases (145 test cases and 226 control cases) which

Figure V-4

Upper Court Dispositions: Passaic County

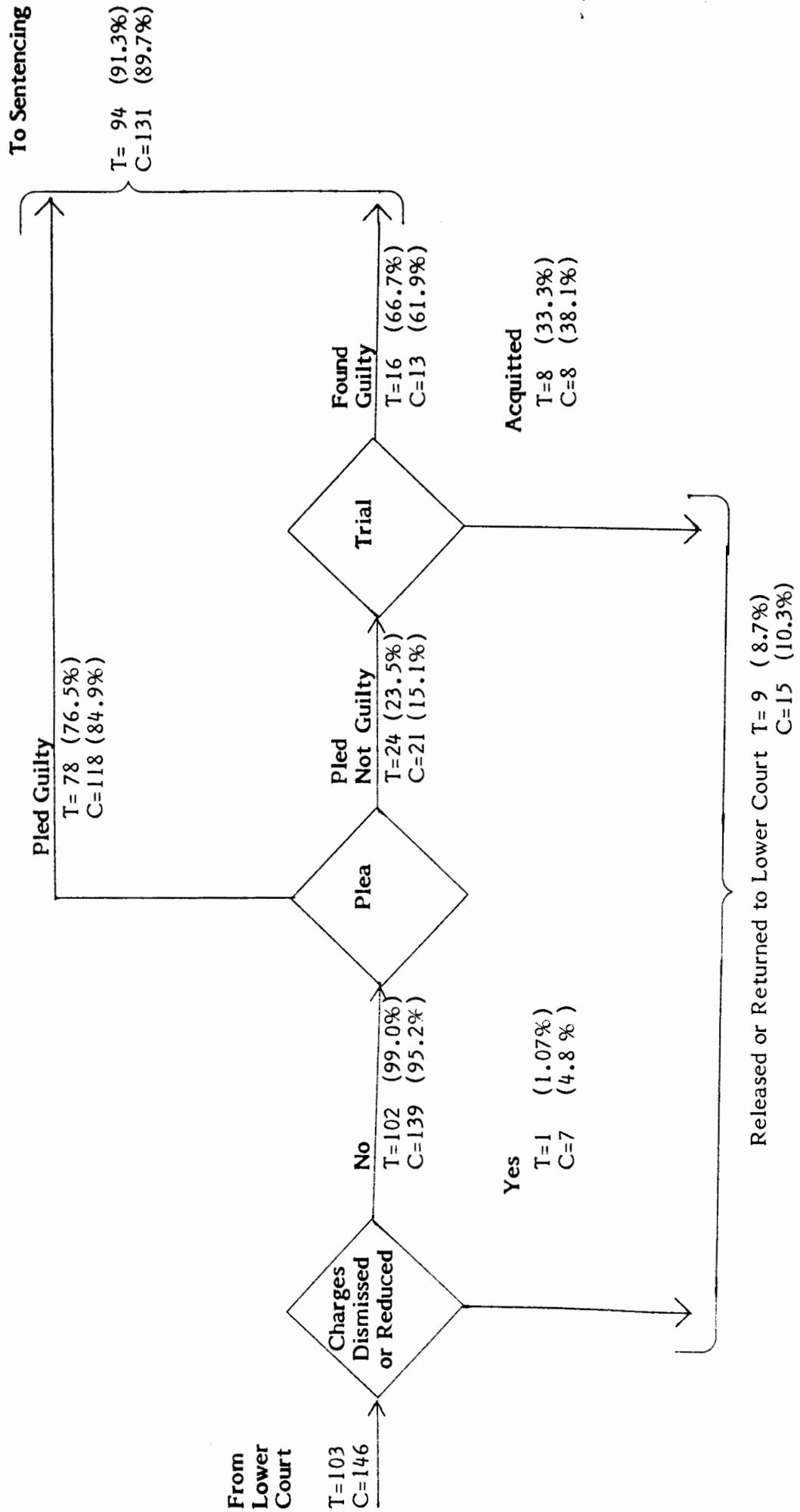


Figure V-5

Upper Court Dispositions: Shelby County

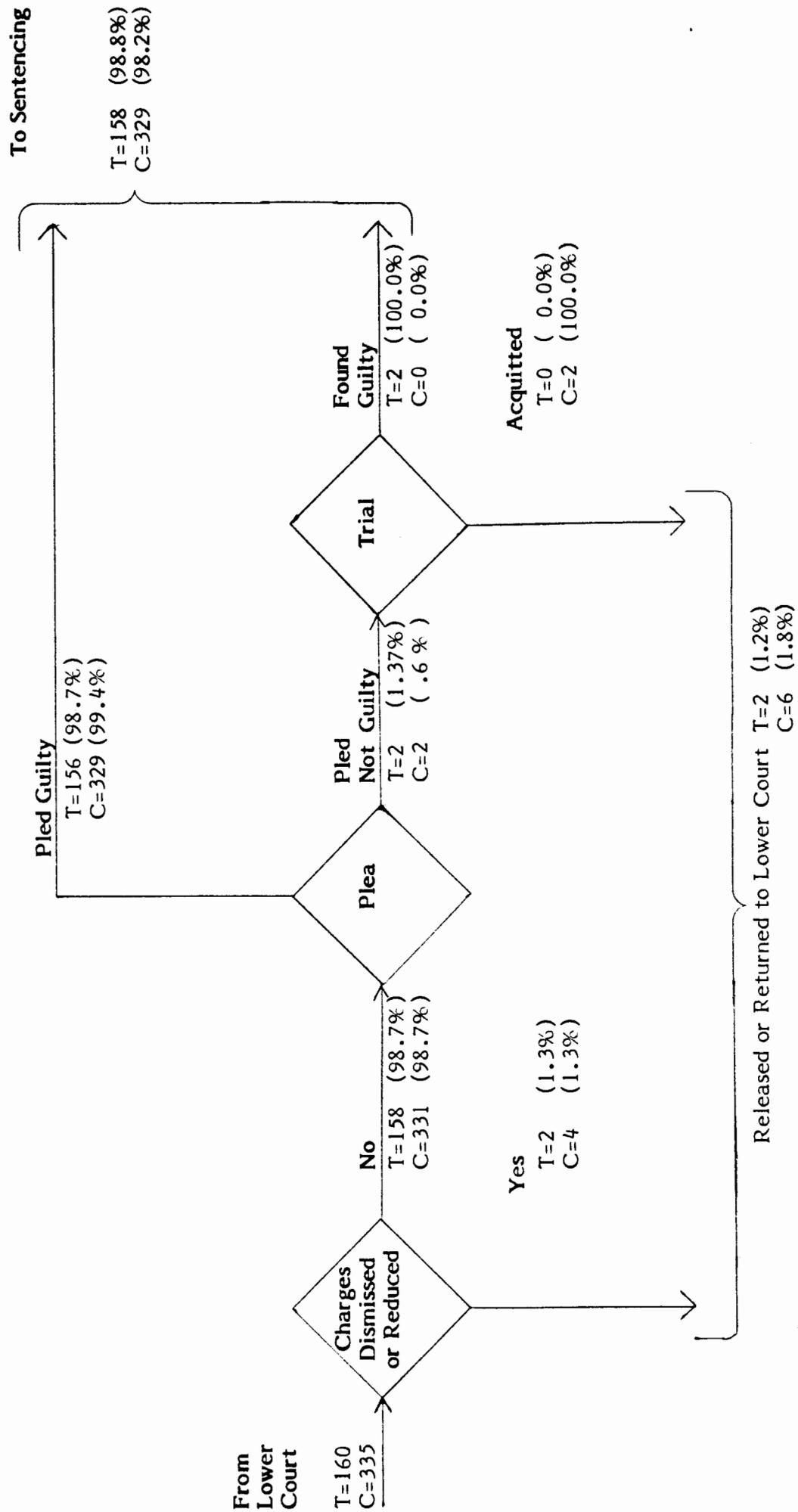
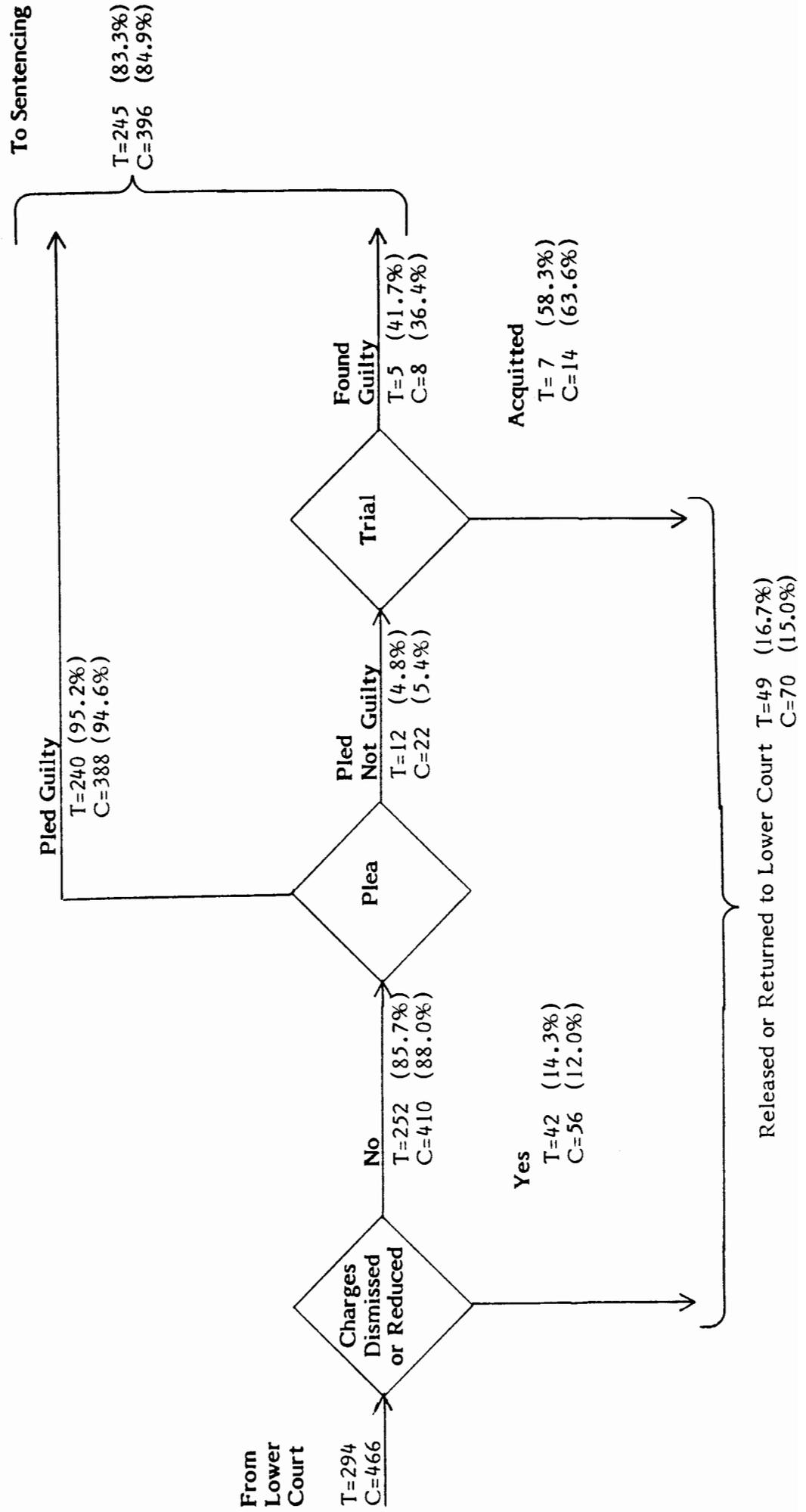


Figure V-6

Upper Court Dispositions: Palm Beach County



had not reached final disposition by the end of UI's data collection period. Of these, a total of 39 cases (27 test cases and 12 control cases) reached the plea entry stage of upper court proceedings. Figure V-7 shows the subsequent outcomes for these 39 cases and presents revised totals for Passaic County.

INSERT FIGURE V-7

With the addition of these new cases, there is a potentially interesting shift toward outcomes more consistent with Hypothesis #2--"ERDC Services as a Support." Passaic County test public defenders appear to have been significantly more aggressive in taking cases to trial than were their control counterparts. Thus, 33 out of 129 test cases (25.6%) arraigned in upper court went to trial, as opposed to only 25 out of 151 control cases (16.6%). While public defenders were slightly less successful with test cases brought to trial than with control cases (30.3% test acquittals vs. 32.0% control acquittals) the net effect was that ten out of 129 test clients reaching the plea entry stage (7.8%) were acquitted of all charges while only eight out of 151 control clients (5.3%) were acquitted. While this final observation is not statistically significant, it is nonetheless true that a shift on even this small magnitude--i.e., from a 5.3% to a 7.8% chance of acquittal--represents a major improvement in favor of test clients.

Our interviews with upper court attorneys in Passaic County suggest that the greater attention given to preparing test cases by lower court test attorneys and other PD staff members--i.e., investigation, witness interviews, etc.--may well be causally linked to this more aggressive attitude of upper court attorneys. If this observation is true, it represents a major positive outcome of the ERDC intervention.

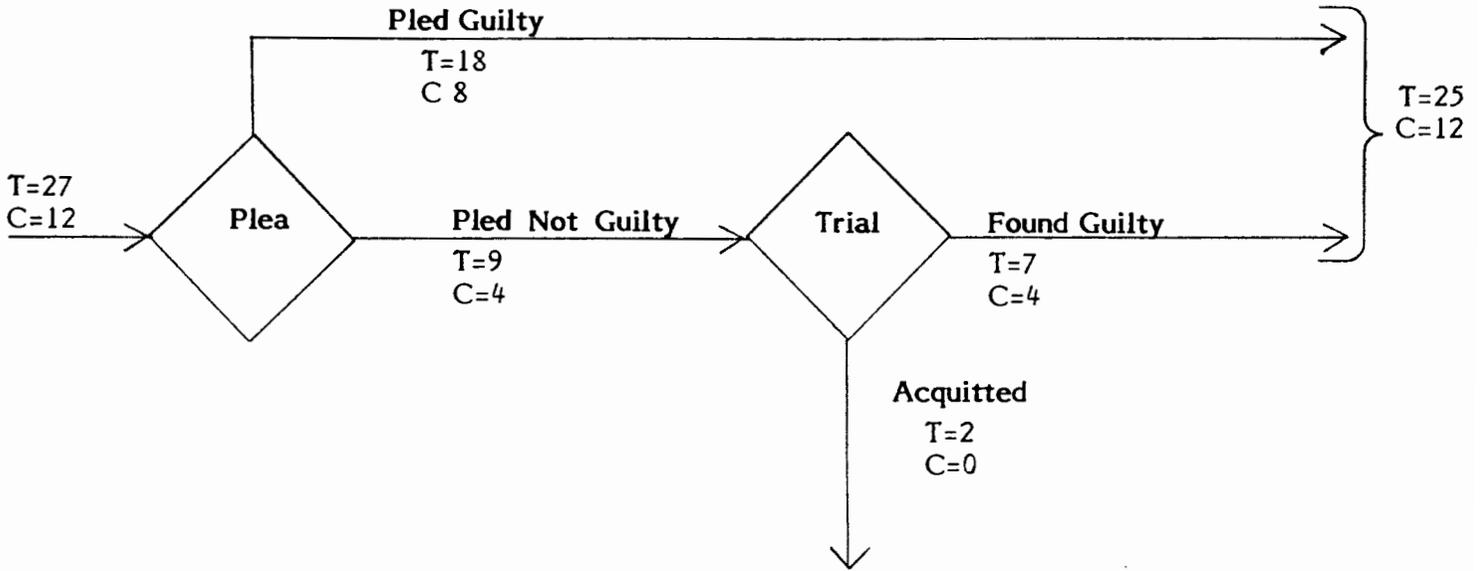
Upper Court Sentences

In this section, we turn to an examination of the sentences imposed at upper court. We include in this analysis sentences for both those clients who entered guilty pleas to a felony as well as those who went to trial and were subsequently found guilty. Table V-22 shows the number and percentage of test and control

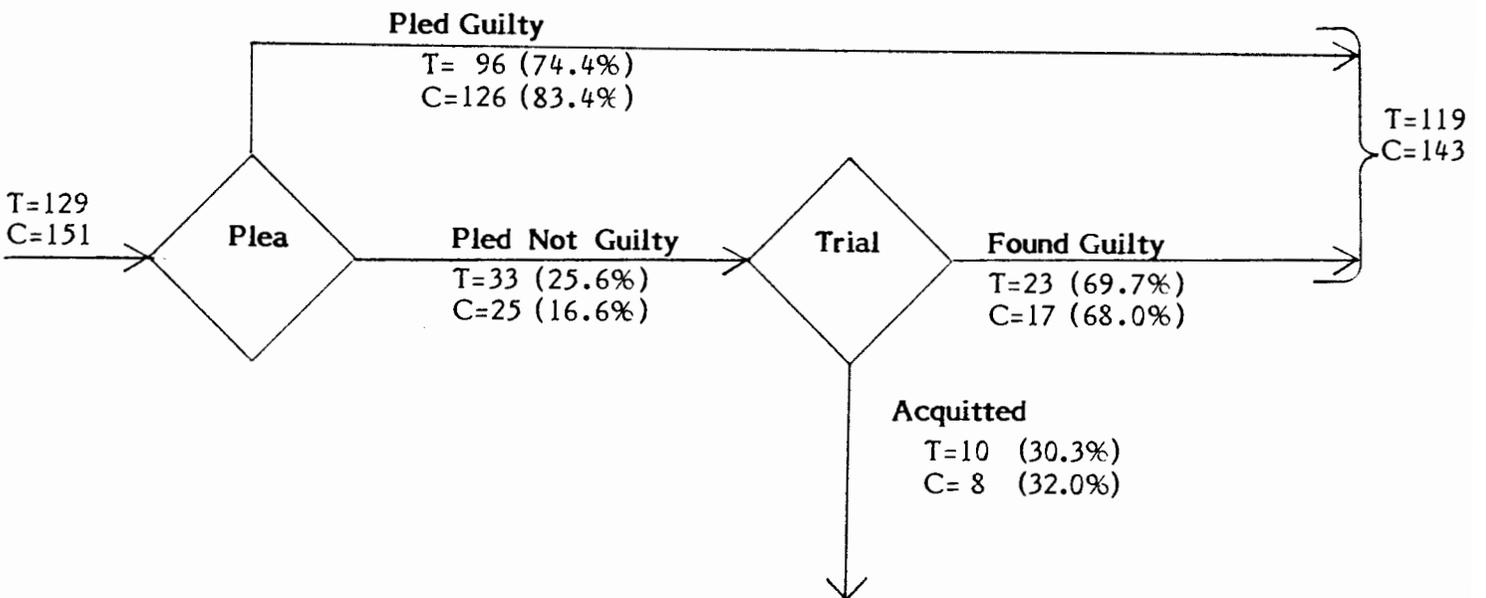
Figure V-7

Effects of Passaic County Follow-up Data
on Upper Court Dispositions

Follow-up Data:



Revised Passaic County Totals:



clients at each site who received sentences including incarceration, probation, and fines or restitution.* As Table V-22 indicates, the patterns of sentencing alternatives for test clients were not substantially different from those for control clients. In Passaic County, test clients' sentences were slightly more likely to include incarceration and correspondingly less likely to include probation than were the sentences of control clients (although these differences were not statistically significant); and in Palm Beach County, test clients' sentences were somewhat more likely to include fines and/or restitution than were control clients' sentences (significant at less than the .001 level).

INSERT TABLE V-22

Table V-23 shows the average lengths of incarceration and probation and the average dollar amounts of fines for test and control clients receiving these sentencing alternatives at each site. With the exception of fines in Palm Beach County, and incarceration in Passaic County, there is a general pattern of longer sentences (both to incarceration and to probation) and larger fines imposed on test clients than those imposed on control clients. For Shelby County, this observation is consistent with our earlier finding that the ERDC intervention served to "filter out" a greater percentage of the less serious cases at the lower court level. For Palm Beach County, this finding is similarly consistent with the generally higher proportion of test clients with serious arrest charges at all stages. Finally, for Passaic County, these inconclusive sentencing data are entirely compatible with the approximately comparable distributions of arrest charges for test and control cases transferred to upper court.

INSERT TABLE V-23

The total of those receiving these three sentences exceeds the total number sentenced at each site because of the substantial number of defendants whose sentence included multiple sanctions--e.g., incarceration plus probation, probation plus fine, etc.

Table V-22
Sentencing Alternatives Imposed by Upper Court

	<u>Sentence Included:</u>						<u>Totals</u>
	<u>Incarceration</u>		<u>Probation</u>		<u>Fines/ Restitution</u>		
<u>Passaic County</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>%</u>	
Test Cases	67	72.0	36	38.7	76	81.7	93
Control Clients	83	66.9	60	48.4	101	81.5	124
<u>Shelby County</u>							
Test Clients	156	99.4	6	3.8	6	3.8	157
Control Clients	331	99.7	15	4.5	29	8.7	332
<u>Palm Beach County</u>							
Test Clients	130	53.1	146	59.6	99	40.4	245
Control Clients	198	50.0	241	60.9	93	23.5	396

Table V-23
Severity of Upper Court Sentences

<u>Incarceration</u>	<u># Sentences Reported</u>	<u>Mean Sentence</u>	<u>Standard Deviation</u>
Passaic County			
Test Clients	56	65.0 mos.	67.1 mos.
Control Clients	70	67.7 mos.	86.4 mos.
Shelby County			
Test Clients	155	36.5 mos.	53.8 mos.
Control Clients	331	31.7 mos.	38.2 mos.
Palm Beach County			
Test Clients	130	17.0 mos.	4.3 mos.
Control Clients	191	16.5 mos.	3.7 mos.
<u>Probation</u>			
Passaic County			
Test Clients	36	37.5 mos.	12.6 mos.
Control Clients	60	36.6 mos.	10.9 mos.
Shelby County			
Test Clients	6	32.0 mos.	18.1 mos.
Control Clients	15	26.4 mos.	15.8 mos.
Palm Beach County			
Test Clients	144	34.8 mos.	18.8 mos.
Control Clients	239	34.5 mos.	18.1 mos.
<u>Fines or Restitution</u>			
Passaic County			
Test Clients	76	\$203.82	\$634.58
Control Clients	101	\$132.57	\$211.64
Shelby County			
Test Clients	6	\$ 95.00	\$129.27
Control Clients	26	\$ 55.00	\$ 42.54
Palm Beach County			
Test Clients	92	\$519.02	\$758.30
Control Clients	88	\$1012.96	\$1952.48

Summary

The available data regarding upper court dispositions and sentencing reveal few significant differences between outcomes for test and control clients. In terms of upper court dispositions, the only change of note was the apparently greater likelihood of Passaic County attorneys to take test cases to trial, and consequently the greater likelihood that test defendants would ultimately be acquitted. In terms of the sentences imposed in upper court, those imposed on test clients were slightly more likely to include incarceration than those received by control clients. Moreover, test case sentences were generally slightly more severe than those for control cases. These differences can be attributed to the fact that test cases arriving in upper court involved, as a group, somewhat more serious arrest charges than did control cases. This difference can be traced, in part, to the substantially greater number of test cases resolved in lower court, and in part to the greater proportion of serious arrest charges among the original test populations in Shelby and Passaic Counties. Thus, as we noted earlier with respect to lower court sentences, the failure to find substantial and statistically significant differences in upper court suggests that the earlier and enhanced services of the ERDC intervention in lower court had some positive effects even at the later stages of court processing. We tentatively attribute these benefits to more thorough case preparation and more productive attorney-client relationships in lower court which resulted in better preparation and increased cooperation by clients in their own defense in upper court. This last hypothesis will be explored in greater detail in Chapter VI of this report.

OVERALL OUTCOMES

In this section, we review the combined outcomes from both lower and upper courts. We begin by examining the frequencies of alternative forms of final dispositions. Next, for those who were sentenced--either in upper or lower court--we compare test and control clients as to the nature and severity of their sentences. Finally, we analyze the elapsed time required for cases to reach their final dispositions and compare test and control cases on this critical measure.

Combined Dispositions

Table V-24 shows upper and lower court final dispositions for test and control cases where public defenders remained with the case throughout (i.e., excluding attorney withdrawals) and where the final disposition was reported to UI. We have aggregated dispositions into four categories:

- Excused--including dismissals, cases where no probable cause was found, cases which were nolle-prossed or no-billed, and trial acquittal
- Diverted--specifically pre-trial diversion;
- Sentenced for a Misdemeanor--including, in Palm Beach County, cases where charges were reduced in upper court; and
- Sentenced for a Felony--including both cases of guilty pleas and trial convictions.

INSERT TABLE V-24

For both Passaic and Shelby Counties, Table V-24 shows that the percentage of test clients who were excused was higher than that for control clients, and that the test clients were more likely to be sentenced for a misdemeanor and less likely to be sentenced for a felony than control clients. The difference in proportions for felony sentencing is statistically significant at the .03 level in Passaic County and at less than the .00001 level in Shelby County.

While there is an apparently highly significant difference between the distributions of final case dispositions for test and control clients in Palm Beach County, the reader should be cautioned that a substantial number of control cases for which dispositions were not reported to UI are believed to have been downfiled.

Combined Sentences

Table V-25 shows the number of Passaic and Shelby County test and control clients whose sentences included incarceration, probation, and fines and/or restitution respectively. At both sites, among those who were sentenced--whether for a misdemeanor or a felony--test clients were less likely than control clients to be sentenced to jail or prison time. While the difference in probabilities was only marginal (64.1% vs. 62.3%) in Passaic County, it was

Table V-24
Combined Final Dispositions

	<u>Test Clients</u>				<u>Control Clients</u>			
	Lower	Upper	Totals		Lower	Upper	Totals	
	#	#	#	%	#	#	#	%
<u>Passaic County</u>								
Excused	114	9	123	31.5	102	15	117	27.5
Diverted	0	0	0	0.0	0	0	0	0.0
Misdemeanor	173	0	173	44.4	177	0	177	41.6
Felony	0	94	94	24.1	0	131	131	30.8
<u>Shelby County</u>								
Excused	50	2	52	12.6	36	6	42	7.1
Diverted	26	0	26	6.3	24	0	24	4.1
Misdemeanor	177	0	177	42.9	194	0	194	32.9
Felony	0	158	158	38.3	0	329	329	55.9
<u>Palm Beach County</u>								
Excused	85	42	127	19.9	66	64	130	19.0
Diverted	2	0	2	.3	4	0	4	.6
Misdemeanor	268	7	265	41.5	150	6	156	22.7
Felony	0	245	245	38.3	0	396	396	57.7

substantial (97.5% vs. 88.0%) in Shelby County. At the same time, test clients were slightly more likely than control clients to be sentenced to probation and to be required to pay fines and/or restitution.

INSERT TABLE V-25

As Table V-26 shows, among those who were sentenced to incarceration test clients' sentences were slightly (though not significantly) shorter than those of control clients. Similarly, the average period of probation received by test clients who were sentenced to probation was also slightly (and again, not significantly) shorter than that imposed upon control clients. However, among those whose sentences included fines and/or restitution, the average dollar amount levied against test clients was somewhat higher than that charged to control clients.

INSERT TABLE V-26

Elapsed Time to Final Disposition

In addition to its impact on the nature of final dispositions, the ERDC Field Test was also expected to have a significant impact on the elapsed time from arrest to disposition. In earlier sections of this chapter, we have commented on various components of this total time to disposition, including:

- time to attorney contact;
- time to lower court disposition; and
- time from lower court to final disposition (for those clients bound over to upper court).

We have also noted the impact of the ERDC concept on the number of cases resolved in lower court and the effect of this increase on the average time to final case disposition. In this section, we examine the cumulative effects of all of the above on total elapsed time to final case disposition.

Since the Case Processing reports from all three test sites include both the date of arrest and the date of final case disposition (either in lower or upper court), the most straightforward method of analysis would be simply to compute the elapsed time to final disposition for each case, examine the distributions

Table V-25
 Combined Use of Sentencing Alternatives

	<u>Sentence Included:</u>						<u>Totals</u>
	<u>Incarceration</u>		<u>Probation</u>		<u>Fines/ Restitution</u>		
<u>Passaic County</u>	#	%	#	%	#	%	
Test Cases	134	62.3	85	39.5	164	76.3	215
Control Cases	161	64.1	94	37.5	191	76.1	251
<u>Shelby County</u>							
Test Cases	294	88.0	62	18.6	72	21.6	334
Control Cases	513	97.5	74	14.1	87	16.5	526

Table V-26
Severity of Combined Sentences

<u>Incarceration</u>	<u># Sentences Reported</u>	<u>Mean Sentence</u>	<u>Standard Deviation</u>
Passaic County			
Test Clients	122	30.9 mos.	55.2 mos.
Control Cases	147	33.2 mos.	68.0 mos.
Shelby County			
Test Cases	292	22.5 mos.	42.0 mos.
Control Cases	512	22.7 mos.	33.1 mos.
<u>Probation</u>			
Passaic County			
Test Cases	17	25.7 mos.	15.7 mos.
Control Cases	87	29.6 mos.	14.3 mos.
Shelby County			
Test Cases	60	13.5 mos.	8.4 mos.
Control Cases	77	14.6 mos.	9.1 mos.
<u>Fines/Restitution</u>			
Passaic County			
Test Cases	164	\$243.84	\$447.86
Control Cases	191	\$212.25	\$210.59
Shelby County			
Test Cases	70	\$183.43	\$285.70
Control Cases	87	\$135.86	\$193.24

(both for test and control cases) of this elapsed time variable, and compare the mean elapsed times (i.e., test vs. control). However, such an approach is subject to substantial error, because it is based only on those cases which reached final disposition during the data collection period. The problem is that at least some of those cases which did not reach final disposition prior to the termination of UI's data collection phase were cases initiated early in the test period. In contrast, many of the cases not reaching final disposition during the data collection period were those which might in fact have been disposed of relatively quickly, but were initiated at the end of the test period. In effect, for those cases where case disposition was not recorded during our data collection phase, we simply do not know how much additional time (i.e., time beyond the data collection cutoff date) was required before these cases were finally completed.

To compensate for the possible biases introduced by this relatively large number of uncompleted cases, and additionally to make use of all available data, we have adopted a rather different analytical procedure. In addition to computing the elapsed times for all completed cases, we have also computed--for all uncompleted cases--the elapsed time from arrest to the end of our data collection phase. For each of these unfinished cases, while we do not know how much time was required to reach final disposition, we do know that the time to final disposition was at least equal to the difference between the arrest date and the data collection cut-off date. Similarly, for each case from which the public defender withdrew, while we do not know how much longer the case continued, we do know that the total time to final disposition was at least the difference between the arrest date and the date of the PD attorney's withdrawal. For both types of cases--i.e., for cases extending beyond our data collection cut off date as well as for cases where the PD attorney withdrew prior to disposition-- we will make use of this information by treating these cases as being withdrawn from the analysis at this "lower limit" point.

We begin by examining all cases (either test or control cases from a given site) during the first week after arrest. During that week, one of three events can occur for each case:

- the case is disposed of;

- the case is withdrawn from the analysis; or
- the case continues to the next week.

The "disposition rate" for the first week after arrest (DR_1) is computed by dividing the number of cases reaching disposition during that week by the number of cases "exposed" to possible disposition (defined as the total number of cases less one-half the number withdrawn from analysis during the week). Next, the probability of a case not reaching disposition during the first week (ND_1) is computed as $1-DR_1$. Finally, dispositions and withdrawals from the analysis are subtracted from the original total to obtain the number of cases entering the second week.

For each succeeding week after arrest, the disposition rate (DR_j) is again computed by dividing the number of cases reaching disposition during that week by the number of cases exposed to possible disposition in that week. For each week, the number of exposed cases is defined as the number of cases entering the week (i.e., cases not yet disposed or withdrawn) less one half the number withdrawn during the week. The probability of not reaching disposition during the week (ND_j) is again computed as $1-DR_j$. Next, the probability of not reaching a disposition at any time prior to or during the week ($CumND_j$) is calculated as $ND_j \times CumND_{j-1}$ (where $CumND_1=ND_1$). Finally, the probability of reaching a disposition at any time prior to or during the week ($CumDR_j$) is simply $1-CumND_j$.

Tables V-27 and V-28 show, for Passaic County test and control cases, the number of cases entering each week, the number withdrawn during the week, the number of cases exposed to possible disposition during the week, and the number of final dispositions during the week. The next four columns in each table show the disposition rate for the week (DR_j) the probability of not reaching disposition during the week (ND_j), and the cumulative probabilities of not reaching disposition during the week ($CumND_j$ and $CumDR_j$ respectively).

INSERT TABLES V-27, V-28

Table V-27
 Analysis of Elapsed Time to Final Disposition
 Passaic County Test Cases

<u>#</u> <u>Week</u>	<u>#</u> <u>Cases</u>	<u>#</u> With- <u>drawn</u>	<u>#</u> <u>Exposed</u>	<u>#</u> Dispo- <u>sitions</u>	<u>#</u> <u>DR</u>	<u>#</u> <u>ND</u>	<u>#</u> <u>CumND</u>	<u>#</u> <u>CumDR</u>
1	576.0	10.0	571.0	31.0	0.0543	0.9457	0.9457	0.0543
2	535.0	10.0	530.0	105.0	0.1981	0.8019	0.7584	0.2416
3	420.0	10.0	415.0	113.0	0.2723	0.7277	0.5519	0.4481
4	297.0	1.0	296.5	23.0	0.0776	0.9224	0.5091	0.4909
5	273.0	0.0	273.0	5.0	0.0183	0.9817	0.0500	0.5003
6	268.0	0.0	268.0	1.0	0.0037	0.9963	0.4979	0.5021
7	267.0	0.0	267.0	1.0	0.0037	0.9963	0.4960	0.5040
8	266.0	0.0	266.0	1.0	0.0038	0.9962	0.4941	0.5059
9	265.0	0.0	265.0	3.0	0.0113	0.9887	0.4885	0.5115
10	262.0	0.0	262.0	2.0	0.0076	0.9924	0.4848	0.5152
11	260.0	0.0	260.0	0.0	0.0	1.0000	0.4848	0.5152
12	260.0	0.0	260.0	4.0	0.0154	0.9846	0.4774	0.5226
13	256.0	0.0	256.0	1.0	0.0039	0.9961	0.4755	0.5245
14	255.0	0.0	255.0	2.0	0.0078	0.9922	0.4718	0.5281
15	253.0	0.0	253.0	5.0	0.0198	0.9802	0.4624	0.5326
16	248.0	0.0	248.0	5.0	0.0202	0.9798	0.4531	0.5469
17	243.0	0.0	243.0	7.0	0.0288	0.9712	0.4401	0.5598
18	236.0	0.0	236.0	4.0	0.0169	0.9831	0.4326	0.5674
19	232.0	0.0	232.0	5.0	0.0216	0.9784	0.4233	0.5767
20	227.0	0.0	227.0	4.0	0.0176	0.9824	0.4158	0.5842
21	223.0	0.0	223.0	2.0	0.0090	0.9910	0.4121	0.5879
22	221.0	0.0	221.0	1.0	0.0045	0.9955	0.4102	0.5897
23	220.0	2.0	219.0	5.0	0.0228	0.9772	0.4009	0.5991
24	213.0	4.0	211.0	4.0	0.0190	0.9810	0.3933	0.6067
25	205.0	3.0	203.5	1.0	0.0049	0.9951	0.3913	0.6087
26	201.0	1.0	200.5	4.0	0.0200	0.9800	0.3835	0.6165
27	196.0	1.0	195.5	2.0	0.0102	0.9898	0.3796	0.6204
28	193.0	5.0	190.5	3.0	0.0157	0.9843	0.3736	0.6264
29	185.0	5.0	182.5	7.0	0.0384	0.9616	0.3593	0.6407
30	173.0	2.0	172.0	2.0	0.0116	0.9884	0.3551	0.6649
31	169.0	1.0	168.5	2.0	0.0119	0.9881	0.3509	0.6491
32	166.0	4.0	164.0	3.0	0.0183	0.9817	0.3445	0.6555
33	159.0	7.0	155.5	1.0	0.0064	0.9936	0.3423	0.6577
34	151.0	2.0	150.0	1.0	0.0067	0.9933	0.3400	0.6600
35	148.0	0.0	148.0	1.0	0.0068	0.9932	0.3377	0.6623
36	147.0	5.0	144.5	0.0	0.0	1.0000	0.3377	0.6623
37	142.0	12.0	136.0	2.0	0.0147	0.9853	0.3327	0.6673
38	128.0	4.0	126.0	2.0	0.0159	0.9841	0.3274	0.6726
39	122.0	0.0	122.0	0.0	0.0	1.0000	0.3274	0.6726
40	122.0	4.0	120.0	2.0	0.0167	0.9833	0.3220	0.6780
41	116.0	9.0	111.5	3.0	0.0269	0.9731	0.3133	0.6867
42	104.0	3.0	102.5	1.0	0.0098	0.9902	0.3103	0.6897
43	100.0	6.0	97.0	2.0	0.0206	0.9794	0.3039	0.6961

Table V-27 (continued)

<u>#</u> <u>Week</u>	<u>#</u> <u>Cases</u>	<u>#</u> With- <u>drawn</u>	<u>#</u> <u>Exposed</u>	<u>#</u> Dispo- <u>sitions</u>	<u>#</u> <u>DR</u>	<u>#</u> <u>ND</u>	<u>#</u> <u>CumND</u>	<u>#</u> <u>CumDR</u>
44	92.0	6.0	89.0	0.0	0.0	1.0000	0.3039	0.6961
45	86.0	5.0	83.5	1.0	0.0120	0.9880	0.3002	0.6998
46	80.0	3.0	78.5	0.0	0.0	1.0000	0.3002	0.6998
47	77.0	2.0	76.0	1.0	0.0132	0.9868	0.2963	0.7037
48	74.0	2.0	73.0	0.0	0.0	1.0000	0.2963	0.7037
49	72.0	1.0	71.5	0.0	0.0	1.0000	0.2963	0.7037
50	71.0	3.0	69.5	0.0	0.0	1.0000	0.2963	0.7037
51	68.0	0.0	68.0	0.0	0.0	1.0000	0.2963	0.7037
52	68.0	1.0	67.5	0.0	0.0	1.0000	0.2963	0.7037

Table V-28
 Analysis of Elapsed Time to Final Disposition
 Passaic County Control Cases

<u>#</u> <u>Week</u>	<u>#</u> <u>Cases</u>	<u>#</u> With- <u>drawn</u>	<u>#</u> <u>Exposed</u>	<u>#</u> Dispo- <u>sitions</u>	<u>#</u> <u>DR</u>	<u>#</u> <u>ND</u>	<u>#</u> <u>CumND</u>	<u>#</u> <u>CumDR</u>
1	665.0	2.0	664.0	33.0	0.0497	0.9503	0.9503	0.0497
2	630.0	6.0	627.0	105.0	0.1675	0.8325	0.7912	0.2088
3	519.0	5.0	516.5	72.0	0.1394	0.8606	0.6809	0.3191
4	442.0	1.0	441.5	15.0	0.0340	0.9660	0.6577	0.3423
5	426.0	0.0	426.0	9.0	0.0211	0.9789	0.6438	0.3562
6	417.0	0.0	417.0	1.0	0.0024	0.9976	0.6423	0.3577
7	416.0	0.0	416.0	1.0	0.0024	0.9976	0.6408	0.3592
8	415.0	0.0	415.0	1.0	0.0024	0.9976	0.6392	0.3608
9	414.0	0.0	414.0	3.0	0.0072	0.9928	0.6346	0.3654
10	411.0	1.0	410.5	2.0	0.0049	0.9951	0.6315	0.3685
11	408.0	0.0	408.0	4.0	0.0098	0.9902	0.6253	0.3747
12	404.0	0.0	404.0	2.0	0.0050	0.9950	0.6222	0.3778
13	402.0	1.0	401.5	3.0	0.0075	0.9925	0.6176	0.3824
14	398.0	0.0	398.0	1.0	0.0025	0.9975	0.6160	0.3840
15	397.0	0.0	397.0	10.0	0.0252	0.9748	0.6005	0.3995
16	387.0	1.0	386.5	7.0	0.0181	0.9819	0.5896	0.4104
17	379.0	0.0	379.0	10.0	0.0264	0.9736	0.5741	0.4259
18	369.0	0.0	369.0	7.0	0.0190	0.9810	0.5632	0.4368
19	362.0	0.0	362.0	8.0	0.0221	0.9779	0.5507	0.4493
20	354.0	1.0	353.5	3.0	0.0085	0.9915	0.5460	0.4590
21	350.0	0.0	350.0	3.0	0.0086	0.9914	0.5414	0.4586
22	347.0	0.0	347.0	5.0	0.0144	0.9856	0.5336	0.4664
23	342.0	1.0	341.5	6.0	0.0176	0.9824	0.5242	0.4758
24	335.0	1.0	334.5	3.0	0.0090	0.9910	0.5195	0.4805
25	331.0	2.0	330.0	2.0	0.0061	0.9939	0.5163	0.4837
26	327.0	12.0	321.0	5.0	0.0156	0.9844	0.5083	0.4917
27	310.0	14.0	303.0	1.0	0.0033	0.9967	0.5066	0.4934
28	295.0	1.0	294.5	2.0	0.0068	0.9932	0.5032	0.4968
29	292.0	2.0	291.0	3.0	0.0103	0.9897	0.4980	0.5020
30	287.0	7.0	283.5	3.0	0.0106	0.9894	0.4927	0.5073
31	277.0	15.0	269.5	0.0	0.0	1.0000	0.4927	0.5073
32	262.0	2.0	261.0	4.0	0.0153	0.9847	0.4852	0.6148
33	256.0	4.0	254.0	7.0	0.0276	0.9724	0.4718	0.5282
34	245.0	7.0	241.5	1.0	0.0041	0.9959	0.4698	0.5302
35	237.0	10.0	232.0	2.0	0.0086	0.9914	0.4658	0.5342
36	225.0	6.0	222.0	0.0	0.0	1.0000	0.4658	0.5312
37	219.0	0.0	219.0	1.0	0.0046	0.9954	0.4637	0.5363
38	218.0	5.0	215.5	2.0	0.0093	0.9907	0.4594	0.5406
39	211.0	9.0	206.5	0.0	0.0	1.0000	0.4594	0.5406
40	202.0	6.0	199.0	2.0	0.0101	0.9899	0.4547	0.5453
41	194.0	7.0	190.5	1.0	0.0052	0.9948	0.4524	0.5476
42	186.0	5.0	183.5	2.0	0.0109	0.9891	0.4474	0.5526
43	179.0	7.0	175.5	2.0	0.0114	0.9886	0.4423	0.5577

Table V-28 (continued)

<u># Week</u>	<u># Cases</u>	<u># With- drawn</u>	<u># Exposed</u>	<u># Dispo- sitions</u>	<u># DR</u>	<u># ND</u>	<u># CumND</u>	<u># CumDR</u>
44	170.0	4.0	168.0	1.0	0.0060	0.9940	0.4397	0.5603
45	165.0	0.0	165.0	0.0	0.0	1.0000	0.4397	0.5603
46	165.0	8.0	161.0	1.0	0.0062	0.9938	0.4370	0.5630
47	156.0	11.0	150.5	3.0	0.0199	0.9801	0.4283	0.5717
48	142.0	6.0	139.0	0.0	0.0	1.0000	0.4283	0.5717
49	136.0	0.0	136.0	2.0	0.0147	0.9853	0.4220	0.5780
50	134.0	9.0	129.5	1.0	0.0077	0.9923	0.4187	0.5813
51	124.0	9.0	119.5	1.0	0.0084	0.9916	0.4152	0.5848
52	114.0	8.0	110.0	0.0	0.0	1.0000	0.4152	0.5848

Figure V-8 is a plot of the CumDR_i values for Passaic County test and control cases. It is clear from this graphic portrayal that at any point after their arrest, test clients were more likely to have reached final disposition than were control clients. For example, after 26 weeks, 61.7% of all test cases had been disposed as compared to 49.2% of the control cases. It is also clear that the greatest differences in the respective rates of case disposition occur during the first four weeks after arrest; thereafter, the cumulative distribution curves remain roughly parallel to one another, suggesting that there is little if any further reduction in time to case disposition after the first few weeks.

INSERT FIGURE V-8

Tables V-29 and V-30 and Figure V-9 provide a similar analysis for test and control clients in Shelby County. While the cumulative distribution patterns shown in Figure V-9 are similar to those for Passaic County, there are several important differences. First, neither Shelby County group experienced the extremely rapid rates of disposition shown during the first few weeks for their counterparts in Passaic County. Second, as a result, the cumulative distribution curves for both test and control clients are substantially below those for Passaic County. Third, after the first ten to twelve weeks, Shelby County control clients gradually begin to "catch up" with test clients, so that after one year, the percentages of test and control cases having reached disposition are nearly identical (54.7% for test cases vs. 53.6% for control cases).

INSERT TABLES V-29, V-30, FIGURE V-9

Table V-31 and Figure V-10 show the results of an analysis of the elapsed time to disposition for Palm Beach County test cases. What is most interesting about these Palm Beach test cases is that the cumulative distribution curve of elapsed time to final disposition is much steeper and generally higher than those for test or control clients in Passaic and Shelby Counties. Thus, after one year, more than 88% of all Palm Beach County test cases had reached final disposition (as compared with 58% and 54% for Passaic and Shelby Counties).

Figure V-8

Cumulative Distribution Time to
Final Case Disposition: Passaic County

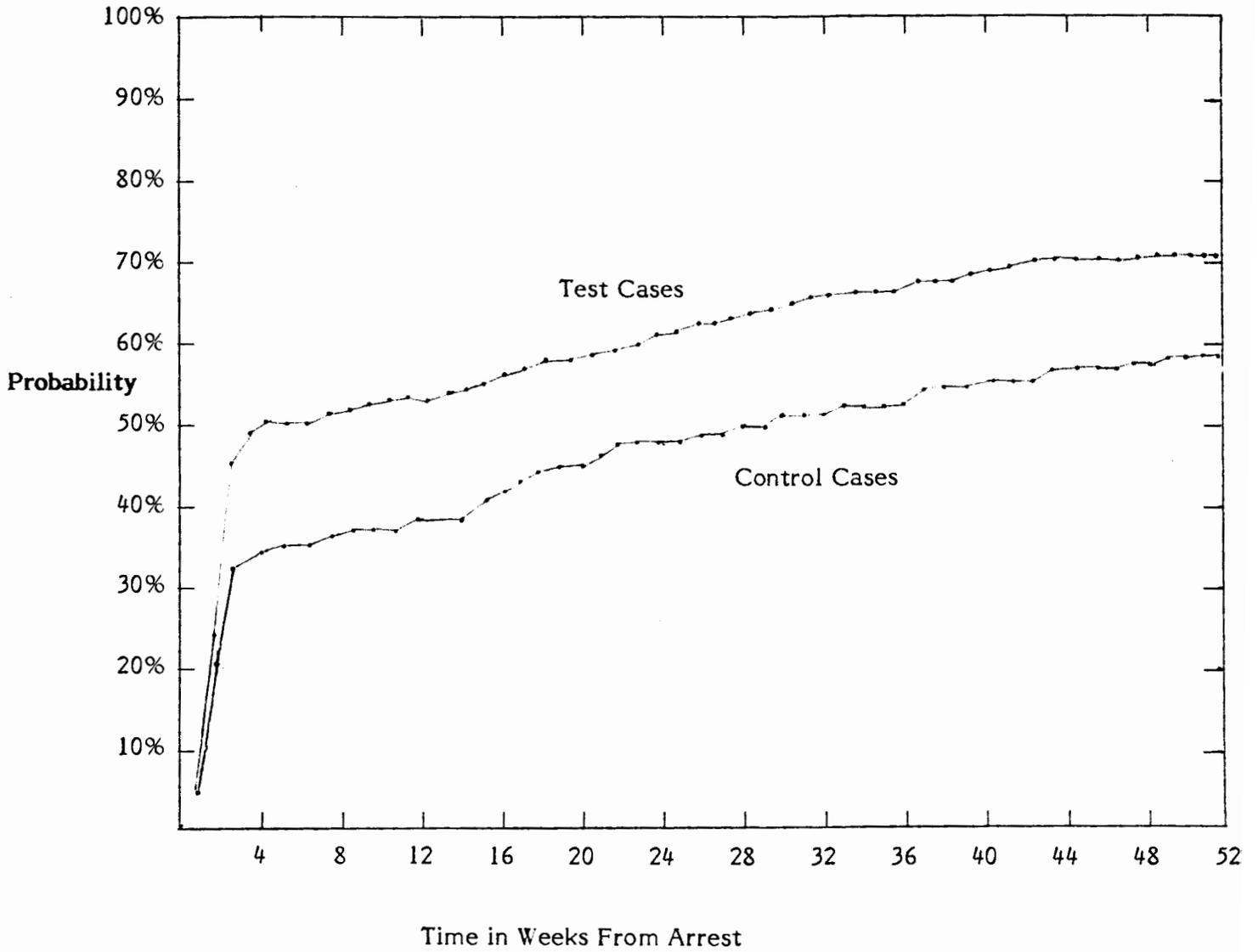


Table V-29
 Analysis of Elapsed Time to Final Disposition
 Shelby County Test Cases

<u>#</u> <u>Week</u>	<u>#</u> <u>Cases</u>	<u>#</u> With- <u>drawn</u>	<u>#</u> <u>Exposed</u>	<u>#</u> Dispo- <u>sitions</u>	<u>#</u> <u>DR</u>	<u>#</u> <u>ND</u>	<u>#</u> <u>CumND</u>	<u>#</u> <u>CumDR</u>
1	800.0	26.0	787.0	34.0	0.0432	0.9568	0.9568	0.0432
2	740.0	4.0	738.0	47.0	0.0637	0.9363	0.8959	0.1041
3	689.0	9.0	684.5	30.0	0.0438	0.9562	0.8566	0.1434
4	650.0	3.0	648.5	29.0	0.0447	0.9553	0.8183	0.1817
5	618.0	5.0	615.5	34.0	0.0552	0.9448	0.7731	0.2269
6	579.0	1.0	578.5	13.0	0.0225	0.9775	0.7557	0.2443
7	565.0	3.0	563.5	9.0	0.0160	0.9840	0.7436	0.2564
8	553.0	3.0	551.5	15.0	0.0272	0.9728	0.7234	0.2766
9	535.0	1.0	534.5	13.0	0.0243	0.9757	0.7058	0.2942
10	521.0	0.0	521.0	6.0	0.0115	0.9885	0.6977	0.3023
11	515.0	1.0	514.5	7.0	0.0136	0.9864	0.6882	0.3118
12	507.0	0.0	507.0	9.0	0.0178	0.9822	0.6760	0.3240
13	498.0	0.0	498.0	8.0	0.0161	0.9839	0.6651	0.3349
14	490.0	1.0	489.5	9.0	0.0184	0.9816	0.6529	0.3471
15	480.0	0.0	480.0	10.0	0.0208	0.9792	0.6393	0.3607
16	470.0	0.0	470.0	6.0	0.0128	0.9872	0.6311	0.3689
17	464.0	0.0	464.0	9.0	0.0194	0.9806	0.6189	0.3811
18	455.0	0.0	455.0	6.0	0.0132	0.9868	0.6107	0.3893
19	449.0	1.0	448.5	6.0	0.0134	0.9866	0.6026	0.3974
20	442.0	0.0	442.0	15.0	0.0339	0.9661	0.5821	0.4179
21	427.0	2.0	426.0	9.0	0.0211	0.9789	0.5698	0.4302
22	416.0	0.0	416.0	7.0	0.0168	0.9832	0.5602	0.4398
23	409.0	0.0	409.0	1.0	0.0024	0.9976	0.5589	0.4411
24	408.0	2.0	407.0	11.0	0.0270	0.9730	0.5438	0.4562
25	395.0	4.0	393.0	7.0	0.0178	0.9822	0.5341	0.4659
26	384.0	12.0	378.0	5.0	0.0132	0.9868	0.5270	0.4730
27	367.0	18.0	358.0	2.0	0.0056	0.9944	0.5241	0.4759
28	347.0	13.0	340.5	5.0	0.0147	0.9853	0.5164	0.4836
29	329.0	6.0	326.0	5.0	0.0153	0.9847	0.5084	0.4916
30	318.0	5.0	315.5	4.0	0.0127	0.9873	0.5020	0.4980
31	309.0	14.0	302.0	2.0	0.0066	0.9934	0.4987	0.5013
32	293.0	11.0	287.5	2.0	0.0070	0.9930	0.4952	0.5048
33	280.0	14.0	273.0	0.0	0.0	1.0000	0.4952	0.5048
34	266.0	14.0	259.0	0.0	0.0	1.0000	0.4952	0.5048
35	252.0	8.0	248.0	1.0	0.0040	0.9960	0.4932	0.5468
36	243.0	13.0	236.5	3.0	0.0127	0.9873	0.4870	0.5130
37	227.0	17.0	218.5	3.0	0.0137	0.9863	0.4803	0.5197
38	207.0	10.0	202.0	1.0	0.0050	0.9950	0.4779	0.5221
39	196.0	22.0	185.0	0.0	0.0	1.0000	0.4779	0.5221
40	174.0	10.0	169.0	1.0	0.0059	0.9941	0.4751	0.5249
41	163.0	11.0	157.5	2.0	0.0127	0.9873	0.4690	0.5310
42	150.0	9.0	145.5	2.0	0.0137	0.9863	0.4626	0.5374
43	139.0	10.0	134.0	0.0	0.0	1.0000	0.4626	0.5374

Table V-29 (continued)

<u># Week</u>	<u># Cases</u>	<u># With- drawn</u>	<u># Exposed</u>	<u># Dispo- sitions</u>	<u># DR</u>	<u># ND</u>	<u># CumND</u>	<u># CumDR</u>
44	129.0	9.0	124.5	0.0	0.0	1.0000	0.4626	0.5374
45	120.0	5.0	117.5	1.0	0.0085	0.9915	0.4586	0.5414
46	114.0	6.0	111.0	0.0	0.0	1.0000	0.4586	0.5414
47	108.0	8.0	104.0	0.0	0.0	1.0000	0.4586	0.5414
48	100.0	9.0	95.5	0.0	0.0	1.0000	0.4586	0.5414
49	91.0	3.0	89.5	0.0	0.0	1.0000	0.4586	0.5414
50	88.0	13.0	81.5	1.0	0.0123	0.9877	0.4530	0.5470
51	74.0	14.0	67.0	0.0	0.0	1.0000	0.4530	0.5470
52	60.0	6.0	57.0	0.0	0.0	1.0000	0.4530	0.5470

Table V-30
 Analysis of Elapsed Time to Final Disposition
 Shelby County Control Cases

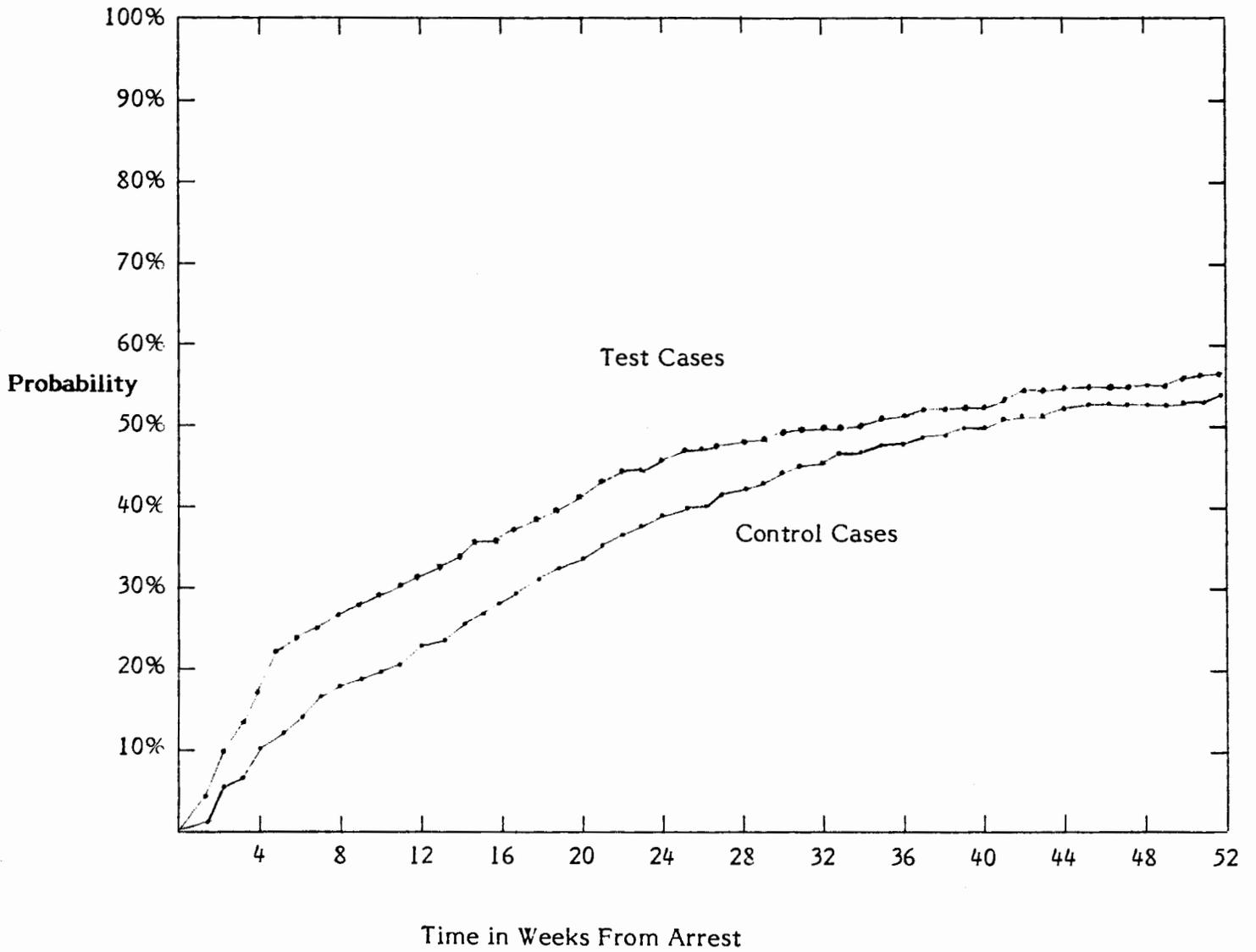
<u># Week</u>	<u># Cases</u>	<u># With- drawn</u>	<u># Exposed</u>	<u># Dispo- sitions</u>	<u># DR</u>	<u># ND</u>	<u># CumND</u>	<u># CumDR</u>
1	1150.0	20.0	1140.0	13.0	0.0114	0.9886	0.9886	0.0114
2	1117.0	17.0	1108.5	43.0	0.0388	0.9612	0.9502	0.0497
3	1057.0	19.0	1047.5	26.0	0.0248	0.9752	0.9267	0.0733
4	1012.0	13.0	1005.5	37.0	0.0368	0.9632	0.8926	0.1074
5	962.0	6.0	959.0	17.0	0.0177	0.9823	0.8767	0.1233
6	939.0	7.0	935.5	19.0	0.0203	0.9797	0.8589	0.1411
7	913.0	3.0	911.5	20.0	0.0219	0.9781	0.8401	0.1599
8	890.0	1.0	889.5	19.0	0.0214	0.9786	0.8221	0.1779
9	870.0	2.0	869.0	16.0	0.0184	0.9816	0.8070	0.1930
10	852.0	3.0	850.5	9.0	0.0106	0.9894	0.7985	0.2015
11	840.0	0.0	840.0	15.0	0.0179	0.9821	0.7842	0.2158
12	825.0	1.0	824.5	14.0	0.0170	0.9830	0.7709	0.2291
13	810.0	0.0	810.0	11.0	0.0136	0.9864	0.7604	0.2396
14	799.0	1.0	798.5	26.0	0.0326	0.9674	0.7357	0.2643
15	772.0	0.0	772.0	19.0	0.0246	0.9754	0.7176	0.2824
16	753.0	0.0	753.0	13.0	0.0173	0.9827	0.7052	0.2948
17	740.0	1.0	739.5	13.0	0.0176	0.9824	0.6928	0.3072
18	726.0	4.0	724.0	13.0	0.0180	0.9820	0.6803	0.3097
19	709.0	2.0	708.0	10.0	0.0141	0.9859	0.6707	0.3293
20	697.0	2.0	696.0	12.0	0.0172	0.9828	0.6592	0.3408
21	683.0	2.0	682.0	15.0	0.0220	0.9780	0.6447	0.3553
22	666.0	3.0	664.5	13.0	0.0196	0.9804	0.6320	0.3680
23	650.0	5.0	647.5	17.0	0.0263	0.9737	0.6155	0.3845
24	628.0	0.0	628.0	3.0	0.0048	0.9952	0.6125	0.3875
25	625.0	1.0	624.5	11.0	0.0176	0.9824	0.6017	0.3983
26	613.0	8.0	609.0	6.0	0.0099	0.9901	0.5958	0.4042
27	599.0	20.0	589.0	14.0	0.0238	0.9762	0.5816	0.4184
28	565.0	13.0	558.5	8.0	0.0143	0.9857	0.5733	0.4267
29	544.0	20.0	534.0	6.0	0.0112	0.9888	0.5669	0.4331
30	518.0	25.0	505.5	8.0	0.0158	0.9842	0.5579	0.4421
31	485.0	23.0	473.5	7.0	0.0148	0.9852	0.5496	0.4504
32	455.0	27.0	441.5	9.0	0.0204	0.9796	0.5384	0.4616
33	419.0	19.0	409.5	7.0	0.0171	0.9829	0.5292	0.4708
34	393.0	24.0	381.0	3.0	0.0079	0.9921	0.5251	0.4749
35	366.0	19.0	356.5	4.0	0.0112	0.9888	0.5192	0.4808
36	343.0	12.0	337.0	2.0	0.0059	0.9941	0.5161	0.4839
37	329.0	33.0	312.5	2.0	0.0064	0.9936	0.5128	0.4872
38	294.0	24.0	282.0	2.0	0.0071	0.9929	0.5092	0.4907
39	268.0	14.0	261.0	5.0	0.0192	0.9808	0.4994	0.5006
40	249.0	14.0	242.0	0.0	0.0	1.0000	0.4994	0.5006
41	235.0	14.0	228.0	3.0	0.0132	0.9868	0.4928	0.5072
42	218.0	9.0	213.5	2.0	0.0094	0.9906	0.4882	0.5118
43	207.0	15.0	199.5	1.0	0.0050	0.9950	0.4858	0.5142

Table V-30 (continued)

<u>#</u> <u>Week</u>	<u>#</u> <u>Cases</u>	<u># With-</u> <u>drawn</u>	<u>#</u> <u>Exposed</u>	<u># Dispo-</u> <u>sitions</u>	<u>#</u> <u>DR</u>	<u>#</u> <u>ND</u>	<u>#</u> <u>CumND</u>	<u>#</u> <u>CumDR</u>
44	191.0	12.0	185.0	1.0	0.0054	0.9946	0.4831	0.5169
45	178.0	7.0	174.5	3.0	0.0172	0.9828	0.4748	0.5252
46	168.0	5.0	165.5	1.0	0.0060	0.9940	0.4720	0.5280
47	162.0	10.0	157.0	0.0	0.0	1.0000	0.4720	0.5280
48	152.0	20.0	142.0	1.0	0.0070	0.9930	0.4686	0.5314
49	131.0	14.0	124.0	0.0	0.0	1.0000	0.4686	0.5314
50	117.0	9.0	112.5	0.0	0.0	1.0000	0.4686	0.5314
51	108.0	8.0	104.0	0.0	0.0	1.0000	0.4686	0.5314
52	100.0	12.0	94.0	1.0	0.0106	0.9894	0.4637	0.5363

Figure V-9

Cumulative Distribution Time to
Final Case Disposition: Shelby County



INSERT TABLE V-31, FIGURE V-10

Based upon the analyses described in this section, it is clear that test clients' cases in both Passaic and Shelby Counties reached final disposition more quickly than did control cases. Moreover, in both counties, the difference is statistically significant at the .001 level.* Beyond this, we can conclude that virtually all of the improvement experienced by test clients occurred during the first few weeks and was therefore largely the result of more test cases being disposed of at the lower court level. After approximately one month, Passaic County control clients appear to have fared at least as well as their test group counterparts; and in Shelby County, control clients actually fared slightly better than did test clients after the first month.

Summary

Test clients in Passaic and Shelby Counties fared substantially and significantly better than did their counterparts in the control condition. Test clients were excused from the system more frequently than control clients; they were sentenced less often; and of those who were sentenced, test clients were more likely than control clients to be sentenced to a misdemeanor and less likely to be sentenced to a felony. Moreover, test clients' sentences were less likely than those of control clients to include incarceration, and the sentences of those test clients who were incarcerated were slightly shorter on average than incarcerations of control clients. As a result, the average test client, upon arrest, had a lower likelihood than his control group counterpart of eventually being sentenced to any jail or prison time, and an expected period of incarceration of shorter duration. Finally, test clients' cases reached final disposition more rapidly than those of control clients. The median test case was resolved approximately six months earlier than the median control case in Passaic County and approximately two months earlier in Shelby County.

* Statistical significance was determined using the Lee-Desu statistic, which is based on the relative rank orderings of elapsed time to disposition for test and control clients.

Table V-31
 Analysis of Elapsed Time to Final Disposition
 Palm Beach County Test Cases

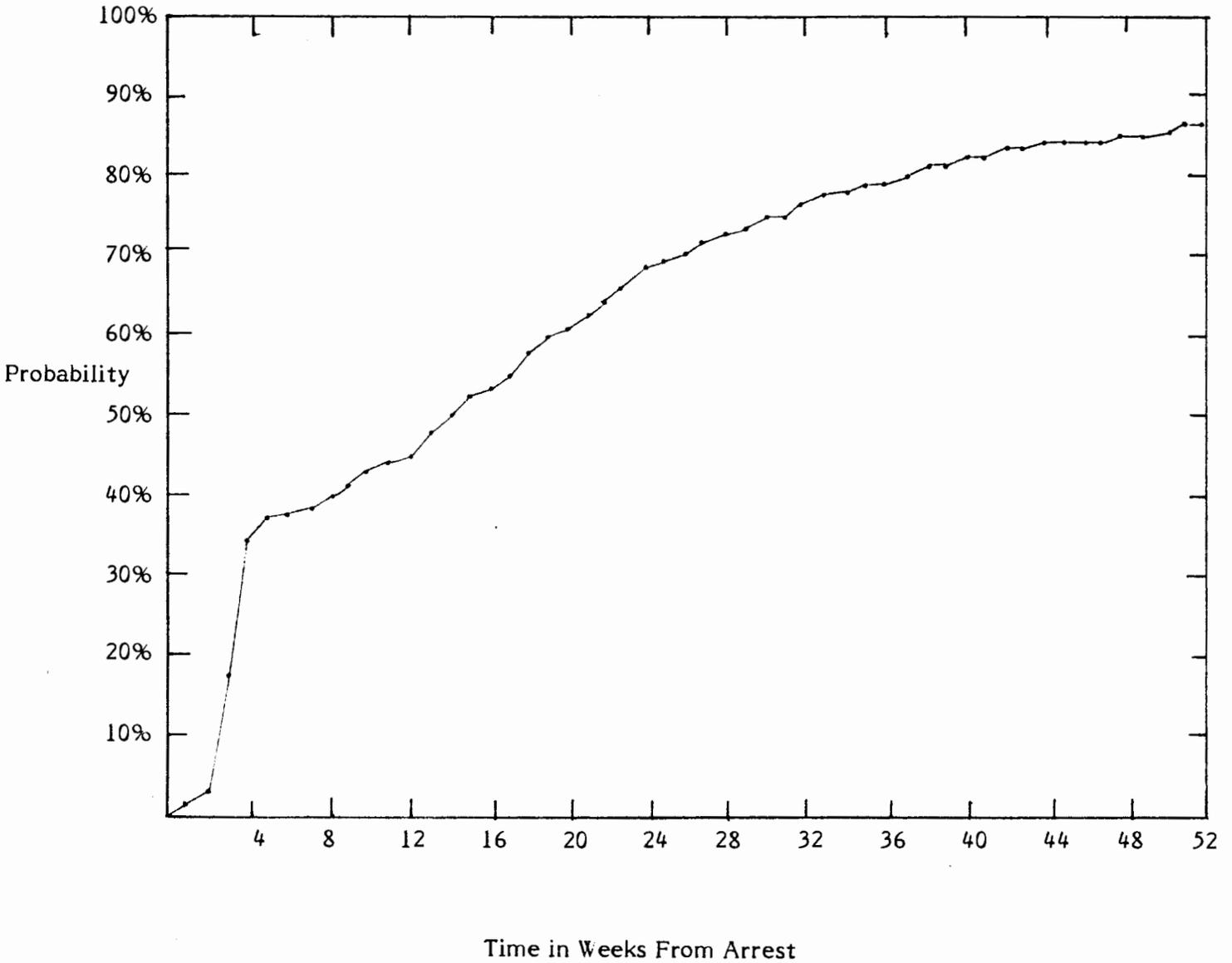
<u># Week</u>	<u># Cases</u>	<u># With- drawn</u>	<u># Exposed</u>	<u># Dispo- sitions</u>	<u># DR</u>	<u># ND</u>	<u># CumND</u>	<u># CumDR</u>
1	1003.0	0.0	1003.0	6.0	0.0060	0.9940	0.9940	0.0060
2	997.0	5.0	994.5	33.0	0.0332	0.9668	0.9610	0.0390
3	959.0	9.0	954.5	132.0	0.1383	0.8617	0.8281	0.1719
4	818.0	5.0	815.5	169.0	0.2072	0.7928	0.6565	0.3435
5	644.0	10.0	639.0	30.0	0.0469	0.9531	0.6257	0.3743
6	604.0	14.0	597.0	9.0	0.0151	0.9849	0.6163	0.3837
7	581.0	7.0	577.5	9.0	0.0156	0.9844	0.6067	0.3933
8	565.0	2.0	564.0	8.0	0.0142	0.9858	0.5980	0.4020
9	555.0	5.0	552.5	9.0	0.0163	0.9837	0.5883	0.4117
10	541.0	2.0	540.0	14.0	0.0259	0.9741	0.5731	0.4269
11	525.0	4.0	523.0	8.0	0.0153	0.9847	0.5643	0.4357
12	513.0	5.0	510.5	12.0	0.0235	0.9765	0.5510	0.4490
13	496.0	2.0	495.0	22.0	0.0444	0.9556	0.5265	0.4735
14	472.0	1.0	471.5	23.0	0.0488	0.9512	0.5009	0.4991
15	448.0	4.0	446.0	23.0	0.0516	0.9484	0.4750	0.5250
16	421.0	2.0	420.0	17.0	0.0405	0.9595	0.4558	0.5442
17	402.0	2.0	401.0	10.0	0.0249	0.9751	0.4444	0.5556
18	390.0	0.0	390.0	18.0	0.0462	0.9538	0.4239	0.5761
19	372.0	3.0	370.5	18.0	0.0486	0.9514	0.4033	0.5967
20	351.0	2.0	350.0	13.0	0.0371	0.9629	0.3883	0.6117
21	336.0	2.0	335.0	17.0	0.0507	0.9493	0.3686	0.6314
22	317.0	0.0	317.0	11.0	0.0347	0.9653	0.3558	0.6442
23	306.0	0.0	306.0	19.0	0.0621	0.9379	0.3337	0.6663
24	287.0	0.0	287.0	11.0	0.0383	0.9617	0.3210	0.6790
25	276.0	1.0	275.5	7.0	0.0254	0.9746	0.3128	0.6872
26	268.0	0.0	268.0	7.0	0.0261	0.9739	0.3046	0.6954
27	261.0	1.0	260.5	6.0	0.0230	0.9770	0.2976	0.7024
28	254.0	0.0	254.0	11.0	0.0433	0.9567	0.2847	0.7153
29	243.0	0.0	243.0	14.0	0.0576	0.9424	0.2683	0.7317
30	229.0	0.0	229.0	13.0	0.0568	0.9432	0.2531	0.7469
31	216.0	0.0	216.0	6.0	0.0278	0.9722	0.2461	0.7539
32	210.0	0.0	210.0	8.0	0.0381	0.9619	0.2367	0.7633
33	202.0	0.0	202.0	11.0	0.0545	0.9455	0.2238	0.7762
34	191.0	1.0	190.5	7.0	0.0367	0.9633	0.2156	0.7844
35	183.0	0.0	183.0	4.0	0.0219	0.9781	0.2109	0.7891
36	179.0	1.0	178.5	1.0	0.0056	0.9944	0.2097	0.7903
37	177.0	0.0	177.0	9.0	0.0508	0.9492	0.1990	0.8010
38	168.0	1.0	167.5	5.0	0.0299	0.9701	0.1931	0.8069
39	162.0	2.0	161.0	5.0	0.0311	0.9689	0.1871	0.8129
40	155.0	2.0	154.0	5.0	0.0325	0.9675	0.1810	0.8190
41	148.0	0.0	148.0	3.0	0.0203	0.9797	0.1773	0.8227
42	145.0	0.0	145.0	5.0	0.0345	0.9655	0.1712	0.8288
43	140.0	1.0	139.5	3.0	0.0215	0.9785	0.1675	0.8325

Table V-31 (continued)

<u>#</u> <u>Week</u>	<u>#</u> <u>Cases</u>	<u># With-</u> <u>drawn</u>	<u>#</u> <u>Exposed</u>	<u># Dispo-</u> <u>sitions</u>	<u>#</u> <u>DR</u>	<u>#</u> <u>ND</u>	<u>#</u> <u>CumND</u>	<u>#</u> <u>CumDR</u>
44	136.0	0.0	136.0	5.0	0.0368	0.9632	0.1614	0.8386
45	131.0	0.0	131.0	5.0	0.0382	0.9618	0.1552	0.8448
46	126.0	0.0	126.0	5.0	0.0397	0.9603	0.1491	0.8509
47	121.0	0.0	121.0	3.0	0.0248	0.9752	0.1454	0.8545
48	118.0	1.0	117.5	1.0	0.0085	0.9915	0.1441	0.8559
49	116.0	0.0	116.0	5.0	0.0431	0.9569	0.1379	0.8621
50	111.0	1.0	110.5	8.0	0.0724	0.9276	0.1279	0.8721
51	102.0	0.0	102.0	3.0	0.0294	0.9706	0.1242	0.8758
52	99.0	1.0	98.5	4.0	0.0406	0.9594	0.1191	0.8809

Figure V-10

Cumulative Distribution Time to
Final Case Disposition: Palm Beach County
(Test Cases Only)



In general, to the extent that benefits were realized by test clients, these can be traced to lower court outcomes. The greater likelihood of test cases' being dismissed or having charges reduced in lower court accounts for most of the improvement in final dispositions, in combined sentences, and in elapsed time to final disposition.

VI. IMPACT ON ATTORNEY-CLIENT RELATIONSHIP

The second of the three goals of the Early Representation by Defense Counsel Field Test was to improve the relationship between public defenders and their clients. The test design hypothesized that this relationship could be improved "by establishing early client contact and early factual investigation, so that counsel may provide the client with competent legal advice in determining appropriate legal actions and remedies." In short, the test designers sought to assess whether making the public defenders' services more closely approximate those of the private attorney would change the attorney-client relationship.

The scholarly literature regarding public defense suggests that mutual distrust and suspicion characterize the relationship between public defenders and their clients. Studies have shown that public defenders believe that most of their clients are guilty of some offense, and most clients will lie to them about significant aspects of their case.* It is generally accepted that these attitudes are supported by the institutional position of the public defenders themselves-- that is, by the need to get along with the other major criminal justice system actors, despite their publicly asserted adversarial relationship.

Moreover, research suggests that the relationship between the attorney and the client has a very real effect on clients' satisfaction with the services they have received. Much of the knowledge to date in this area is based upon the research of Professor Jonathan Casper.** He has found that:

What occurs in the lawyer-client relationship makes a difference... (to)...whether a defendant thinks he has been adequately represented in the particular case...(and)...the general beliefs that defendants

* See, M. Heumann (1977) Plea Bargaining, pp. 90, A. Blumberg, (1967) The Practice of Law as a Confidence Game. 1 Law and Society Review 15; D. Sudnow (1965) Normal Crimes: Sociological Features of the Penal Code in a Public Defender's Office. 12 Social Problems 255.

** Criminal Courts: The Defendant's Perspective; 1978. A study based upon interviews of 812 felony defendants, during the Spring of 1975 in Phoenix, Detroit, and Baltimore.

take with them from their particular experience and bring to their next encounter (page 80).

Dr. Casper's research identifies three dimensions around which clients attitudes toward their treatment cluster: 1) trust of their attorney; 2) satisfaction with their attorney; and 3) fairness of the process. Finally, his reserach suggests that defendants' attitudes towards public defenders can change.

In sum, the attorney and his or her client are involved in a relationship which is characterized by the attitudes held by each individual. These attitudes may affect the quality of the services provided to the client, as well as the attorney's job satisfaction. For example, mistrust and suspicion may inhibit open and honest communication, which in turn can influence the choice of defense and overall strategy. Furthermore, feelings of mistrust and suspicion may reduce the public defenders' enthusiam and commitment to their jobs, which in turn may reduce the client's confidence in the public defender. One of the major goals of the ERDC Field Test, and therefore of the evaluation effort, was to examine whether early representation could improve the attorney-client relationship by fostering trust between the attorney and client, and thereby breaking the mutually reinforcing cycle of mistrust and suspicion which often characterizes this relationship.

Some evidence suggests that the ERDC Field Test indeed changed the relationship between attorneys and clients. Prior to test implementation, major criminal justice system actors at each site were asked: "In your opinion, what type of relationship do the attorneys in the Public Defender's Office have with the typical felony defendant?" As is shown by Table VI-1, most key actors believed that the relationship was "neutral," that is, professional. However, a substantial number of respondents, especially in Palm Beach County, characterized the relationship as either "close" or "very close." By the end of the test, many key systems actors noticed some change in this relationship as a result of the ERDC Field Test. They were asked: "Have you been aware of any differences between test

and control group defendants in terms of the PD's relationship with defendants?" One of eight in Shelby County, two of eleven in Passaic, and three of nine in Palm Beach County had noticed a difference between test and control groups. Moreover, all of these individuals thought that the attorneys' relationships with test clients were better than those with the control clients. (See Table VI-2.)

INSERT TABLES VI-1 AND VI-2

While the interviews with key system actors suggest that ERDC may have affected the attorney-client relationship, the goal of the evaluation was to examine this relationship from both the attorneys' and the clients' perspectives. In order to do so, UI conducted a series of structured interviews with public defenders and with a sample of clients. The following discussion presents the results of our analyses of these interviews.

IMPACTS FROM THE ATTORNEY'S PERSPECTIVE

UI conducted interviews with public defenders at each site in order to collect baseline information concerning the attorneys' view of the attorney-client relationship. At the end of the Field Test, a second round of interviews was conducted to assess attorneys' attitudes as they were affected by the intervention. In all, 64 attorneys (16 in Passaic County, 31 in Shelby, and 17 in Palm Beach County) were interviewed prior to the ERDC Field Test, and 49 (13 in Passaic County, 17 in Shelby County, and 19 in Palm Beach County) were interviewed after the Field Test. These interviews contained a series of questions aimed at examining affective or emotional aspects of the attorney-client relationship, as well as questions concerning the instrumental or representational dimension of the relationship.

Affective Aspects of the Attorney-Client Relationship

The affective dimension of the attorney-client relationship consists of attorneys' feelings toward their clients, and their assessment of how clients feel toward them. The interview questions tapping this dimension included, for example, whether the attorneys trusted their clients, whether attorneys liked their clients, and whether the attorney believed that they were liked by their clients.

Table VI-1:

"In your opinion, what type of relationship do the attorneys in the Public Defender's Office have with the typical felony defendant?"

Passaic County

	<u>Prosecutors</u>	<u>Judges</u>	<u>Police/ Jail/Sheriff</u>	<u>Other</u>
Very close	0	0	0	1
Close	0	1	1	2
Neutral	5	4	2	1
Detached	0	1	0	0
Very detached	0	1	0	0
Don't know, not applicable	3	1	2	4

Shelby County

	<u>Prosecutors</u>	<u>Judges</u>	<u>Police/ Jail/Sheriff</u>	<u>Other</u>
Very close	0	0	0	0
Close	2	1	0	1
Neutral	6	3	2	2
Detached	1	0	1	2
Very detached	0	0	0	2
Don't know, not applicable	3	0	1	0

Palm Beach County

	<u>Prosecutors</u>	<u>Judges</u>	<u>Sheriffs/ Police</u>	<u>TASC/CARP Probation</u>	<u>Witness Coordinator</u>
Very close	0	0	0	0	1
Close	1	3	1	2	1
Neutral	5	2	0	0	1
Detached	2	0	0	1	0
Very detached	0	0	0	0	0
Don't know, not applicable	4	2	1	1	1

Table VI-2:

"Have you been aware of any differences between test and control-group defendants in terms of the PD's relationship with defendants?"

Passaic County

	<u>Prosecutors</u>	<u>Judges</u>	<u>Police/ Jail/Sheriff</u>	<u>Other</u>
Yes, test better	0	1	0	1
Yes, test worse	0	0	0	0
No	2	2	0	5
Don't know or no response	6	7	4	1

Shelby County

	<u>Prosecutors</u>	<u>Judges</u>	<u>Police/ Jail/Sheriff</u>	<u>Other (Pretrial Services)</u>
Yes, test better	0	0	0	1
Yes, test worse	0	0	0	0
No	4	1	1	1
Don't know or no response	2	1	0	0

Palm Beach County

	<u>Prosecutors</u>	<u>Judges</u>	<u>Sheriffs/ Police</u>	<u>TASC/CARP Probation</u>	<u>Witness Coordinator</u>
Yes, test better	1	1	0	1	0
Yes, test worse	0	0	0	0	0
No	4	2	0	0	0
Don't know or no response	4	3	3	2	0

- Guilt

Public defenders at each site were asked to estimate: 1) the percentage of their clients who they thought were factually guilty of the crime charged or of some crime connected with the offense; and 2) the percentage of their clients who they thought were legally guilty of the crime charged, or of some crime connected with the offense. The findings shown in Tables VI-3 to VI-6 are consistent across the three sites and all experimental classifications: public defender attorneys believed that most of their clients were factually guilty of the crime charged, and that an even higher percentage of them were factually guilty of some crime connected with the offense charged. Similarly, at each site the public defenders believed that a small percentage of their clients also were legally guilty of a crime. This observation is consistent with an interpretation that public defenders at all sites believe that only in a small percentage of their cases can their intervention make a difference in the determination of the defendants' guilt or innocence.

The patterns concerning attorneys' belief in their clients' guilt generally remained the same or increased during the ERDC Field Test. In Palm Beach and Passaic Counties, wherever test and control attorneys varied in their opinions, test attorneys were more likely to think that clients were guilty. However, in Shelby County, the number of control and upper court attorneys thinking that clients were factually and legally guilty increased.

Our finding that the ERDC experience generally did not change attorneys' views as to the guilt of their clients is very important. In fact, in two sites, ERDC appeared to have the opposite impact. This may be explained by a belief that during the year of the test, those prosecutors who were involved with the ERDC test engaged in earlier and/or better screening, leaving a proportionately higher percentage of guilty clients in the pool of eligible test clients.

INSERT TABLES VI-3, VI-4, VI-5, VI-6

- Lying

Public defenders were asked to approximate what percentage of their clients lied to them about significant aspects of their case. Over 75% of the attorneys

Table VI-3:

"What percent of your clients do you believe are factually guilty of the crime charged?"

Passaic County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 60%	0	0	2	2
> 60%	6	5	4	3
Don't know	1	1	1	0

Shelby County

	Test		Control		Upper Court	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 60%	0	0	0	0	1	1
> 60%	3	3	1	2	7	10
Don't know	0	0	1	1	3	0

Palm Beach County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 60%	2	1	0	2
> 60%	7	8	7	7
Don't know	0	0	0	0

Table VI -4:

"What percent of your clients do you believe are factually guilty of some crime connected with the offense?"

Passaic County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 80%	0	0	1	1
> 80%	6	4	5	4
Don't know	1	2	1	0

Shelby County

	Test		Control		Upper Court	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 80%	1	0	1	1	3	1
> 80%	2	3	0	1	5	11
Don't know	0	0	1	1	3	0

Palm Beach County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 80%	1	0	0	3
> 80%	8	9	7	6
Don't know	0	0	0	0

Table VI-5:

"What percent of your clients do you believe are legally guilty of the crime charged?"

Passaic County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 60%	2	0	1	1
> 60%	4	5	4	4
Don't know	1	1	2	0

Shelby County

	Test		Control		Upper Court	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 60%	1	1	1	0	3	1
> 60%	2	2	1	2	7	9
Don't know	0	0	0	1	1	1

Palm Beach County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 60%	4	2	1	1
> 60%	5	7	6	6
Don't know	0	0	0	0

Table VI-6:

"What percent of your clients do you believe are legally guilty of some crime connected with the offense?"

Passaic County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 80%	4	0	2	2
> 80%	2	4	3	3
Don't know	1	2	2	0

Delby County

	Test		Control		Upper Court	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 80%	2	1	1	2	5	1
> 80%	1	2	1	0	5	10
Don't know	0	0	0	1	1	0

Palm Beach County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 80%	4	4	3	3
> 80%	5	5	4	4
Don't know	0	0	0	0

at each site believed that more than half of their clients initially lied to them about some significant aspect of their case. In all three sites, test attorneys' assessments of the percentage of their clients who were lying virtually unchanged at the end of the test period. Control attorneys' assessments also changed little. In Palm Beach County, more control attorneys thought a high percentage of clients were lying. In Shelby County, there was no change among control attorneys, but a slight decrease among upper division attorneys. These responses are shown in Table VI-7.

INSERT TABLE VI-7

- Client's Trust

Attorneys were asked what percentage of their client's trusted them. When asked at the start of the test the majority of attorneys at all three sites believed that their clients trusted them. As is shown in Table VI-8, at least 70% of all attorneys at each site believed that their clients think that the attorneys are "on the clients' side" (rather than "in the middle" or "on the state's side").

The attorneys' perception of their clients' belief in the attorneys' loyalty did not change dramatically after the Field Test. In Passaic County, two test attorneys shifted to a belief that their clients now thought they were "in the middle" from an initial perception that their clients believed they were on the client's side. At the other two sites, the changes were even less noticeable. The expected pattern--that test attorneys would perceive increased trust, while control attorneys noted no change--was not borne out by the data.

INSERT TABLE VI-8

- Speed vs. Justice

In the first round of interviews attorneys were asked whether their clients believed that they were concerned with getting the case over quickly or with getting justice for the client. Although most attorneys thought that their clients trusted them, a substantial number in Shelby and Palm Beach Counties thought that their clients believed that public defender attorneys cared more about getting the case over with quickly than about getting justice for the

Table VI-7:

"What percent of your clients do you think are lying to you about significant aspects of their case?"

Passaic County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 50%	1	0	2	2
50%	0	1	0	0
> 50%	6	5	5	3
Don't know	0	0	0	0

Shelby County

	Test		Control		Upper Court	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 50%	1	1	1	2	3	5
50%	0	0	0	0	2	2
> 50%	2	2	1	1	5	4
Don't know	0	0	0	0	1	0

Palm Beach County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
< 50%	1	2	1	1
50%	0	1	3	4
> 50%	7	6	3	4
Don't know	1	0	0	0

Table VI-8:

"Generally speaking, would you say that your clients believed you were: on his/her side; on the state's side; in the middle?"

Passaic County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
Client's side	7	4	3	4
State's side	0	0	0	0
Middle	0	2	4	1

Shelby County

	Test		Control		Upper Court	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
Client's side	2	3	1	2	9	8
State's side	0	0	0	0	2	1
Middle	1	0	1	1	0	2

Palm Beach County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
Client's side	9	8	6	8
State's side	0	0	1	1
Middle	0	1	0	0

client. In Passaic, only a small number (2 of 14) of attorneys believed this to be true.

In Palm Beach County, the final round interview data suggest a possible "Hawthorne effect." As is shown in Table VI-9, the control attorneys' beliefs about their clients' perceptions changed considerably during the course of the Field Test. After the test was completed, not one of the control attorneys interviewed thought that their clients believed they were more interested in getting the case over with quickly than in getting justice for the client. (Control attorneys possibly generalized their response to include all the clients represented by the office.) In Passaic County, there was no change in attorneys' responses to this question. The Shelby County upper court attorneys' responses reflect a small change toward clients' perceiving greater concern for justice than speed. Given that Shelby County's implementation of the ERDC experiment used a "pass off" between lower and upper court, the direction and magnitude of this attitudinal change was expected.

INSERT TABLE VI-9

● Personal Feelings

Attorneys were asked to estimate the percentage of their clients that they "liked," and who they thought "liked them." As is shown in Table VI-10, more than two-thirds of Palm Beach County and Shelby County attorneys liked at least half of their clients. In Passaic, only 6 of 13 respondents liked at least half of their clients. When asked to assess the percentage of clients who liked them, at least 60% of attorneys at all three sites believed that at least half of their clients liked them.

It could be expected that test attorneys and upper division attorneys would like more of their clients after the Field Tests, while control attorneys would remain the same in their assessments. As Table VI-10 shows, the actual patterns of attitudinal changes were rather different. In Passaic County, the test had virtually no impact on test attorneys. Control attorneys, however, showed a slight increase in the percentage of clients they liked. In Shelby County,

Table VI-9:

"Generally speaking, would you say that your clients believed you cared more about getting his/her case over with quickly than about getting justice for him/her?"

Passaic County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
Speed	1	1	1	0
Justice	6	5	6	5
Other (don't know)	0	0	0	0

Shelby County

	Test		Control		Upper Court	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
Speed	2	2	0	1	5	3
Justice	1	1	2	2	5	7
Other (don't know)	0	0	0	0	0	1

Palm Beach County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
Speed	3	1	5	0
Justice	6	7	2	8
Other (don't know)	0	1	0	1

the expected pattern was realized. However, in Palm Beach County, the results were contrary to our expectations. After the Field Test, test attorneys liked fewer of their clients than they had before, while the control attorneys liked more of their clients. The test attorneys' attitudes may be the result of greater contact with their clients. However, these findings more probably reflect test attorneys' negative evaluation of the extra work the test required of them. In effect, the negative feelings test attorneys had toward attending First Appearances, and toward the additional paperwork caused by the Field Test may have been transferred to their clients. The change in the control attorneys' attitudes is not easily interpreted.

INSERT TABLE VI-10

Table VI-11 shows that at the beginning of the Field Test, it was more common for attorneys in Passaic County to think that their clients liked them, than to like their clients. This is consistent with the Passaic attorneys' belief that their clients think they are more interested in justice than speed. In Shelby County, about the same number of attorneys liked more than half of their clients, and thought that more than half of their clients liked them. In Palm Beach County, the number of attorneys who liked a majority of their clients was less than the number of attorneys who thought that more than half of their clients liked them.

The ERDC Field Test had virtually no effect on attorneys' estimates of the percentage of clients who liked them. In Palm Beach County, the test attorneys did not change their perceptions consistently, and in Passaic County, there was only a slight change. In Shelby County, both test and control attorneys, showed an increase in their estimates of the number of clients who liked them. This increase was not apparent, however, among upper division attorneys.

INSERT TABLE VI-11

Table VI-10:
 "What percent of your clients do you like?"

Passaic County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
50%	4	4	3	1
50%	2	1	1	1
50%	1	1	2	3
Don't know	0	0	1	0

Shelby County

	Test		Control		Upper Court	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
50%	1	0	0	1	1	2
50%	1	0	0	1	1	2
50%	1	2	1	1	7	8
Don't know	0	0	0	0	0	1

Palm Beach County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
50%	1	3	2	2
50%	3	2	2	0
50%	5	4	3	7
Don't know	0	0	0	0

Table VI-11:
 "What percent of your clients do you think like you?"

Passaic County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
50%	1	2	1	1
50%	0	1	1	1
50%	4	3	4	3
Don't know	2	0	1	0

Shelby County

	Test		Control		Upper Court	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
50%	1	0	2	1	1	1
50%	1	0	0	0	2	2
50%	1	3	0	2	7	7
Don't know	0	0	0	0	1	1

Palm Beach County

	Test		Control	
	<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
50%	4	2	2	1
50%	2	1	4	1
50%	3	6	1	6
Don't know	0	0	0	1

Summary

Our evaluation of attorneys' attitudes toward their clients at the three test sites prior to the ERDC Field Test implementation provided few surprises. Public defenders were initially suspicious of their clients and believed that they lied about significant aspects of their cases. They were divided as to the number of clients they liked, and as to their perceptions of their clients' attitudes towards them as attorneys.

For the most part, our expectations regarding the impact of the ERDC Field Test on attorneys' perceptions of the affective aspects of the attorney-client relationship were not fulfilled by these interview data. The test had only a limited impact on changing attorneys' feelings toward their clients. Moreover, some of the interview items showed modest changes in unanticipated directions and/or substantial changes by control and upper court attorneys. These changes are not readily interpretable.

"Instrumental" Aspects of the Attorney-Client Relationship

The instrumental dimension of the attorney-client relationship includes those aspects which help attorneys perform their jobs, such as establishing rapport and increasing client control. At the beginning and again at the end of the ERDC Field Test, we asked each public defender to rank the importance of "rapport with their client," "knowledge of the law," and "good working relations with the prosecutor" in helping them do their job. We expected that experience with ERDC among test and upper division attorneys would increase the relative importance attached to rapport with clients. We did not anticipate a similar shift among control attorneys' assessments.

As suggested by Table VI-12, Palm Beach County data supported our hypotheses. The test attorneys showed a dramatic, positive shift in their ranking of the importance of client rapport. Control attorneys showed essentially no change. In Shelby County, the attorneys' rating of the relative importance of client rapport did not change. In Passaic County, the expected changes did not occur; in fact, both test and control attorneys believed that rapport with their

clients was less important to their job after the test than they had before the test. The more dramatic shift occurred among the control attorneys. This may be a result of a negative reaction to the ERDC Field Test by a few felony control attorneys at this site.

INSERT TABLE VI-12

Approximately halfway through the Field Test, all attorneys were asked if ERDC had a positive, negative, or neutral impact upon various aspects of their relationship with their clients, including the ease of establishing rapport with their clients and increasing client control. We expected to find a positive response from test and upper court attorneys and a negative or neutral response from control attorneys. As Tables VI-13(a-f) show, in Palm Beach County the responses by test attorneys were in the expected direction for all questions. The control and test attorneys responded similarly to the question, "Has ERDC had a positive, negative or neutral impact on the relationship of the office with its clients in general?" The control attorneys responded in the negative to the remaining questions.

The attorneys in Passaic County generally responded in the expected direction, although the differences were not as dramatic as those in Palm Beach County. Passaic County attorneys, both test and control, responded negatively to the questions concerning client trust. They did not think that ERDC had increased the number of clients who believed them, nor who believed that the attorney was on their side. More of the control attorneys than test attorneys thought that the clients' relationship with the Office was better in general. This may reflect the Passaic County control attorneys' belief that the test attorneys and staff were getting the benefits of the Field Test.

All of the Shelby County attorneys--test, control, and upper court--generally recognized the positive effects of the ERDC Field Test on the attorney-client relationship. These attitudes were pervasive, and did not vary according to the group status of the attorney. However, as we expected, test and upper division attorneys thought that ERDC had a positive impact on their relationship with clients, whereas the control attorneys responded neutrally to this question.

INSERT TABLE VI-13 (a-f)

Table VI-12:

"Rank in order from the most to the least important aspect of your job: rapport with clients; knowledge of the law; good working relations with the prosecutor in your division."

Passaic County

		Test		Control	
		Time 1	Time 2	Time 1	Time 2
I. Rapport with client	1)	3	1	5	1
	2)	3	3	1	1 + tie
	3)	1	2	1	2
II. Knowledge of the law	1)	3	3	2	1
	2)	3	2	4	3 + tie
	3)	1	1	1	0
III. Relationship with prosecutor	1)	1	2	0	2
	2)	1	1	2	1 tie
	3)	5	3	5	2
Summary Position	I	Equal	3	1	3
	II	Equal	1	2	2
	III	3	2	3	1

Shelby County

		Test		Control		Upper Court	
		Time 1	Time 2	Time 1	Time 2	Time 1	Time 2
I. Rapport with client	1)	1	1	2	1 + 1 tie	4 + 1 tie	5
	2)	1	2	0	0	6	4
	3)	1	0	0	0	0	2
II. Knowledge of the law	1)	1	0	0	1 tie	2 + 1 tie	3 + 2 ties
	2)	1	0	1	1	6	0
	3)	1	3	1	0	6	6
III. Relationship with prosecutor	1)	1	1	2	0	1 tie	4 + 1 tie
	2)	1	1	1	0	2	5
	3)	1	0	1	1	4	1
Summary Position	I	Equal	2	1	1	1	1
	II	Equal	3	Equal	2	3	3
	III	Equal	1	Equal	3	2	2

Table VI-12 (continued):

Palm Beach County

		Test		Control	
		<u>Time 1</u>	<u>Time 2</u>	<u>Time 1</u>	<u>Time 2</u>
I. Rapport with client	1)	2	4 + 1 tie	2	2 + 1 tie
	2)	4 + 1 tie	1	1	0
	3)	2	3	4	4
II. Knowledge of the law	1)	4	2	2	1
	2)	3	5	2	3
	3)	2	2	3	3
III. Relation- ship with prosecutor	1)	3	2 + 1 tie	3	3 + 1 tie
	2)	1 + 1 tie	3	4	3
	3)	4	3	0	0
Summary Position	I	3	1	2	2
	II	1	3	2	3
	III	2	2	1	1

Table VI-13:

"Has the ERDC field test:

- a) Made it easier to establish rapport with clients?
- b) Made you feel clients now believe what you tell them more often than they did before the test?
- c) Made you feel that more clients now believe you are on their side?
- d) Helped you to better control your clients?
- e) Had a positive, negative, or neutral effect on your relationship with clients?
- f) Had a positive, negative, or neutral impact on the relationship between the office and its clients in general?"

Passaic County

		<u>Test</u>	<u>Control</u>
a) Rapport easier with clients	Yes	3	0
	No	3	6
	Neutral	1	0
	Don't know	0	1
b) Clients now believe you	Yes	1	0
	No	5	5
	Neutral	0	0
	Don't know	1	2
c) Clients now believe you are on their side	Yes	2	0
	No	5	5
	Neutral	0	0
	Don't know	0	2
d) Better client control	Yes	3	0
	No	1	6
	Neutral	1	0
	Don't know	2	1
e) Relationship with client because of ERDC (+), (-), neutral	Yes	3	1
	No	0	0
	Neutral	3	4
	Don't know	1	2
f) Relationship with office because of ERDC (+), (-), neutral	Yes	1	3
	No	0	0
	Neutral	1	1
	Don't know	5	3

Table VI-13 (continued)

Shelby County

		<u>Test</u>	<u>Control</u>	<u>Upper Court Attorney</u>
a)	Rapport easier with clients	Yes	3	3
		No	0	1
		Neutral	0	0
		Don't know	0	4
b)	Clients now believe you	Yes	2	3
		No	0	2
		Neutral	1	1
		Don't know	0	2
c)	Clients now believe you are on their side	Yes	3	3
		No	0	2
		Neutral	0	1
		Don't know	0	2
d)	Better client control	Yes	3	4
		No	0	2
		Neutral	0	0
		Don't know	0	2
e)	Relationship with client because of ERDC (+), (-), neutral	Yes	3	5
		No	0	0
		Neutral	0	3
		Don't know	0	0
f)	Relationship with office because of ERDC (+), (-), neutral	Yes	1	4
		No	0	1
		Neutral	1	2
		Don't know	1	0

Table VI-13 (continued)

Palm Beach County

		<u>Test</u>	<u>Control</u>
a) Rapport easier with clients	Yes	8	0
	No	0	7
	Neutral	0	0
	Don't know	1	0
b) Clients now believe you	Yes	6	0
	No	3	6
	Neutral	0	0
	Don't know	0	1
c) Clients now believe you are on their side	Yes	8	2
	No	1	5
	Neutral	0	0
	Don't know	0	0
d) Better client control	Yes	9	0
	No	0	7
	Neutral	0	0
	Don't know	0	0
e) Relationship with client because of ERDC (+), (-), neutral	Yes	9	0
	No	0	2
	Neutral	0	5
	Don't know	0	0
f) Relationship with office because of ERDC (+), (-), neutral	Yes	5	3
	No	2	0
	Neutral	0	2
	Don't know	2	2

Finally, the attorneys, investigators, and secretaries were asked how successful the ERDC Field Test was in achieving its objective of improving the relationship between attorneys and clients. Shelby and Palm Beach County respondents were similar in their responses. There, almost all respondents thought the test was successful in achieving this goal. The attorneys and other staff in the test condition tended to rate the degree of success more highly than their control counterparts. Passaic County respondents were less convinced of the success of the Field Test. Only half of the investigators thought that the Field Test was successful in improving the attorney-client relationship while only one of six secretaries with an opinion thought so. Although more positive in their responses, attorneys were far from unanimous in answering this question. Two of five test attorneys were neutral, and one of the three control attorneys who responded thought that ERDC was unsuccessful in improving this relationship.

INSERT TABLE VI-14

Summary

The Field Test does not appear to have had a significant impact upon attorneys' perceptions of the attorney-client relationship. At each site a small percentage of the key system actors noticed differences in the behavior of attorneys and their clients. All who noticed a difference thought that test attorneys' relationship with their clients were better than that of control attorneys. The test did not significantly improve test attorney's beliefs about the guilt of their clients, nor diminish their perceptions that a substantial number of their clients initially lied to them about their case. ERDC did not move the test attorneys to trust their clients any more than they had.

Not surprisingly, the public defenders did not believe that the Field Test had changed their clients' attitudes toward them. In two sites, the attorneys did not change their beliefs about clients' perceptions of their concern for "speed" over "justice." In Palm Beach County, the one site in which there was a positive change, that change occurred among the control attorneys. Furthermore, the

Table VI-14:

"How successful do you feel the ERDC Field Test was in achieving its objective of improving the attorney-client relationship?"

Passaic County

	Investigators		Attorneys	
	<u>Test & Control</u>	<u>Secty</u>	<u>Test</u>	<u>Control</u>
Very successful	0	0	1	1
Successful	3	1	2	1
Neutral	2	3	2	0
Unsuccessful	1	2	0	1
Very unsuccessful	0	0	0	0
Don't know	1	1	0	1

Shelby County

	<u>Secty</u>	Lower Court Attorneys		Upper Court Atty
		<u>Test</u>	<u>Control</u>	
Very successful	0	2	0	0
Successful	1	1	2	5
Neutral	0	0	1	2
Unsuccessful	0	0	0	1
Very unsuccessful	0	0	0	0
Don't know	0	0	1	3

Palm Beach County

	Investigators		Secretary		Attorneys		<u>WI & DC*</u>
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	
Very successful	3	1	0	0	4	0	2
Successful	1	1	2	1	6	4	1
Neutral	0	1	0	1	0	0	0
Unsuccessful	0	0	0	0	0	0	0
Very unsuccessful	0	0	0	0	0	0	0
Don't know	0	0	1	0	0	3	0

*Witness interviewers and data collector

percentage of clients whom test attorneys liked was not uniformly increased by early representation. In Passaic County, it remained unchanged; in Shelby County it increased; but in Palm Beach County, it decreased. There was neither a consistent nor a substantial change in the attorneys' perception of the percentage of their clients who liked them.

In one of the three sites the test attorneys dramatically increased the relative importance they attached to achieving rapport with their clients. In two of the three sites, test attorneys noted that the Field Test positively affected their relationship with their clients, and especially the instrumental aspects of the relationship such as "client control." Finally, the attorneys (both test and control) and other office staff at two of the sites believed that the Early Representation by Defense Counsel Field Test had achieved its goal of improving the attorney-client relationship.

IMPACTS FROM THE CLIENTS' PERSPECTIVE

Overview of Client Follow-Up Interviews

To assess changes in the attorney-client relationship from the client's perspective, an interview protocol was designed for public defender clients. The construction of the client interview protocol parallels Dr. Jonathan Casper's work (1977, 1978) on client satisfaction with and attitudes toward their attorney. Dr. Casper allowed UI to include several of his client satisfaction and client trust items in the interview protocol. The client interviews also included items regarding clients' perceptions of the nature and timing of their first contacts with office staff, the total amount of services received, and their feelings about their case disposition.

Client interviews were conducted with approximately 100 clients at each of the three public defender grantee sites. A sampling scheme was developed to select 50 test and 50 control group clients stratified on the basis of severity of arrest charge. (Class I felony arrest charges were defined as "serious" and Class II and Class III charges were defined as "non-serious.") Arrest charges, while open to the influence of local law enforcement discretion, were deemed

to be more reliable means of stratification than dispositional charges, which often are subject to the idiosyncratic vagaries of local criminal justice processing (e.g., the results of charge bargaining may have little to do with the "severity" of the "original offense").

The pool of potential respondents was constructed on the basis of dispositional dates and clients were randomly selected for inclusion in the client interview process according to the two categories noted above (test vs. control-group assignment and serious vs. non-serious arrest charge). Sampling for the client follow-up interviews was initiated in February, 1983, using a monthly sampling quota scheme for cases disposed of in January. Sampling was scheduled to end in June but continued through the summer of 1983.

The UI on-site field researchers were responsible for implementing the sampling scheme and conducting the client interviews. At all three sites, the field researchers experienced difficulty in actualizing the sampling plan, particularly in securing sufficient numbers of clients with severe arrest charges. In addition, clients whose cases had not resulted in incarceration were extremely difficult to locate. Investigators from each of the offices assisted the field researchers in trying to locate these clients. However, many clients seemed to "disappear" and attempts to trace them through neighbors and relatives often proved unsuccessful. Because of the difficulties in obtaining a sufficient number of clients for the sampling frame and subsequent difficulties in locating non-incarcerated clients, the client interview effort was continued past its original ending date.

The conduct of the client interviews was severely complicated in Florida because of the rapid transfer of convicted defendants to state prisons. By the time the UI field researcher was informed that a case was closed, the potential respondent could easily have been transferred to a prison more than 200 miles away from Palm Beach. This rapid dispersion of convicted defendants throughout the State of Florida prison system necessitated the hiring of eight additional interviewers. Also, the office committed one of the investigators hired under the grant to support this effort after ERDC test processing was concluded.

UI staff at the other two sites did not face this problem. In Passaic County, the Governor's moratorium on transfers of convicted felons to state prison required that convicted defendants be held in the local jail. Thus, they were readily available to the UI field researcher. In Shelby County, convicted defendants were held in a transfer facility for a period of up to three months, which allowed the UI field researcher to contact them before their transfer to the state prisons. However, it was necessary for a few client interviews to be conducted in the state prisons in Nashville and Brushy Mountain, Tennessee.

In all, 300 client interviews were conducted. Client interview totals by site are:

- Passaic County -- 104 interviews: 52 test and 52 control;
- Shelby County -- 113 interviews: 54 test and 59 control; and
- Palm Beach County -- 83 interviews: 37 test and 46 control.

Theoretical Background

As noted above, our approach to assessing how clients viewed their attorney-client relationships follows from the work of Jonathan Casper (1977, 1978). Casper found that criminal defendants initially exhibit a high degree of suspicion and mistrust of their public defenders. For example, only 58% of 467 defendants interviewed by Casper believed that their public defender attorney was on their side (25% on state's side, 17% in the middle). One source of this distrust was the negative predispositions clients brought from their past experience with public defenders. Casper found that client distrust centered on what he called a "process dimension," the interpersonal aspect of the attorney-client relationship. Even though clients generally believed that public defenders wanted a favorable outcome for them, they did not think that their attorney wanted to "fight" for them. One indication of this belief was the fact that 55% of 469 clients stated that their attorneys were more interested in getting the case over with quickly than in getting them "justice."

Dr. Casper found that several factors would affect a defendant's level of satisfaction with his attorney. Of utmost importance to increasing the satisfaction

level was seeing the public defender "act like a lawyer." This included: having the case go to trial; spending more time in direct, face-to-face contact; and the dress, general office appearance, and location of the public defender's office. As might be expected, as the severity of sentence increased, the proportion of clients rating their lawyers highly decreased as well. Yet, those who had trials tended to rate their attorneys positively, regardless of the sentence received. The increase in face-to-face contact between client and public defender also increased client satisfaction, although it did not appear to produce more favorable outcomes. In other words, Casper found that increased client satisfaction is a more or less direct result of increased face-to-face interaction with their attorney, not the result of any relationship between increased time of contact and more favorable outcome.

Defendants in Casper's sample based their evaluation of fairness on four different aspects of the process: whether or not they believed they were treated like other defendants similarly situated; whether or not they believed they were denied their constitutional rights; whether or not the decision in their case was unbiased and based upon the facts; and the outcome of their case. Not surprisingly, Casper found that defendants' perception of fairness was closely associated with the outcome of their case. Confinement is the breakpoint -- that is, most defendants who believed their treatment was fair were not incarcerated, whereas most defendants who believed that their treatment was unfair were incarcerated. Similarly, most of those who thought they had received heavier sentences than others thought they were treated unfairly. Those defendants who pled guilty were more favorable to the process than were those who went to trial.

This latter finding is susceptible to numerous interpretations. It might reflect a predisposition of those who were willing to plea bargain. However, it is more likely that it reflects the relative disappointment of those who went to trial with high expectations, or the increased sense of control and/or participation associated with plea bargaining.

In summary then, the major study on criminal defendants' attitudes toward their attorneys found that they are characterized by initial distrust. Public defender clients' satisfaction with their attorneys increases in proportion to the opportunities they have to see their public defender behave like a "real lawyer," such as having their case go to trial, and the amount of direct, face-to-face contact they have with attorneys. Finally, criminal defendants' assessment of the fairness of their treatment is complex. Although it is strongly influenced by the severity of their sentence, it is not entirely based on self interest and it is sensitive to perceived inequities.

In the section which follows, we compare the perspectives of test and control group clients along several dimensions related to Casper's findings. These include:

- How soon after arrest did clients perceive that their public defender was working on their behalf?
- How much public defender service did clients perceive that they received?
- Did clients perceive that their public defender attorneys were concerned about them (the clients) as persons?
- Did clients perceive that their public defender attorneys were on their (the client's) side?
- Did clients view their public defender attorneys as competent professionals?
- Did clients trust their public defender attorneys?
- Were clients satisfied with the outcome of their case?
- Were clients satisfied with their public defender attorneys?

Early Representation

We begin our analysis of clients' perceptions of ERDC service delivery with an examination of the clients' reports of the timing of public defender representation. All respondents were asked three questions bearing upon the timing of initial PD contact and service delivery. These questions were:

<u>Item #</u>	<u>Variable #</u>	<u>Question</u>	<u>Responses</u>
35	V151	Do you believe that you received the services of the PD earlier, later, or about the same time as other defendants arrested around the same time as you?	1=Earlier 2=Later 3=Same Time 9=Don't know
9c	V43	How soon after your arrest did you meet (1st contact from PD Office)?	Time in hours
11a	V60	About how soon after your arrest did you meet (PD prior to arraignment)?	Time in hours

Table VI-15 shows the distribution of responses to Item 35 for test and control subjects at each site. (The response alternatives have been re-ordered here to range from most desirable, "Earlier," to least desirable, "Later." "Don't know" responses have been treated as missing data, and are not considered in this analysis). As this table suggests, there is a tendency for test clients at all three sites to indicate earlier contacts as compared with control-group clients.

For statistical analysis, the scale of client responses--i.e., "Earlier," "Same Time," "Later"--can be treated as an ordinal scale. That is, "Earlier" is deemed to be better or more desirable than "Same Time" or "Later," and "Same Time" is similarly superior to "Later." However, because we are unable to quantify just how much more desirable one response is than another, traditional statistical tests based on interval scaling assumptions are inappropriate. Instead, we compare experimental and control group responses using the Mann-Whitney U Test, which is based upon a rank-ordering of all responses (from a given site) from least desirable to most desirable. Thus, respondents with the most desirable responses will receive a lower rank score (e.g., 1, 2, 3 . . .) than those with less desirable responses.

Based upon the rankings, it is possible to compare experimental and control groups as to: (1) mean rank scores; and (2) the overall pattern of rank scores. Table VI-15 shows the mean rank scores for each group (experimental vs. control) for each site. To facilitate intersite comparisons, we have also "standardized" these mean rank scores by dividing by the respective highest possible rank (=n). For all three sites, test subjects' responses yielded higher mean ranks than did control subjects' responses, with the difference being greatest in Shelby County and least in Palm Beach County. This was to be expected given the actual variation between the timing of initial contact for test and control clients at the sites.

INSERT TABLE VI-15

Based upon the overall pattern of responses for each site, the Mann Whitney U test yields an estimate of statistical significance for observed differences. Since we begin with the hypothesis (H_1) that experimental subjects are in fact seen earlier than are control subjects, a "one-tailed" significance test is appropriate for comparing actual findings with those expected under the null hypothesis (H_0) of no difference. Thus, the derived significance levels reflect the likelihood of achieving, by random sampling from a universe with no real differences, results as positive as those actually found. The respective significance levels for the three sites are:

- Passaic County--.031;
- Shelby County--.006; and
- Palm Beach County--.239.

For both Passaic and Shelby Counties, these findings are highly significant (that is, highly unlikely to have occurred by chance); whereas for Palm Beach County, our findings, while positive, are not significantly so. (Sampling from a population with no real differences would yield results such as those actually obtained almost one-time-in-four.) Thus, we can conclude that test clients in Passaic and Shelby Counties were more likely to have seen themselves as being served earlier than were control-group clients at these same sites, but that the perceptions of test clients in Palm Beach County were not markedly different from those of their control-group counterparts.

Table VI-15:
Clients' Comparative Perceptions of Early Contact

	Passaic County			Shelby County	
	<u>Test</u>	<u>Control</u>		<u>Test</u>	<u>Control</u>
Earlier	11	3	Earlier	13	5
Same Time	26	32	Same Time	33	30
Later	8	11	Later	5	12

	Palm Beach County	
	<u>Test</u>	<u>Control</u>
Earlier	3	4
Same Time	23	23
Later	6	11

Mean Rank Scores

	Mean Rank		"Standardized" Mean Rank	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Passaic County	50.46	41.64	.555	.458
Shelby County	55.40	43.10	.565	.440
Palm Beach County	37.08	34.17	.530	.488

Next, we turn to an examination of the client-reported elapsed time from arrest to first contact with a representative from the PD office or with a public defender. To the extent that client reports are accurate, this variable represents the "objective reality" underlying the comparative assessments described above. It would be reasonable, therefore, to expect a similar pattern of findings. Table VI-16 shows the elapsed time (in days) from arrest to first contact by the PD office as reported by test and control subjects from each site. The mean differences between test and control conditions are substantial for all three sites (6.1 days, 6.3 days, and 2.6 days earlier contact for test subjects in Passaic, Shelby and Palm Beach Counties respectively). For Passaic and Shelby Counties, these differences are statistically significant at better than the .0005 level (one chance in 200), while for Palm Beach County, the difference is not statistically significant (in part because of the smaller number of subjects, in part because of the smaller mean difference, and in part because of the greater variability in the elapsed time for test clients).

INSERT TABLE VI-16

Table VI-17 shows the elapsed time (in days) from arrest to first contact with a PD attorney as reported by test and control subjects from each site. For all three sites, the differences between test and control subjects are substantial. For Passaic and Shelby Counties, these differences (6.8 and 8.4 days respectively) are statistically significant at less than the .0005-level. (That is, drawing two random samples from the same universe would yield such differences in sample means less than one time in 2,000). For Palm Beach County, the difference (7.9 days) is significant at just under the .025-level (one chance in 40).

These data further confirm that test subjects believed that they had contact with a public defender attorney earlier than did the control subjects. We must note that the data themselves appear to be somewhat unreliable. For example, approximately 25% of all test clients in Passaic and Shelby Counties and more than 30% of Palm Beach County test subjects indicated a first PD contact more than seven days after their arrests. Not only are these reports inconsistent with official case record data, but in many cases they are also inconsistent with other information provided by the interviewees themselves.

Table VI-16:
Client-Reported Elapsed Time to First PD Office Contact

First Contact	Passaic County			Shelby County			Palm Beach County			
	#	Test n=48 cum %	Control n=41 cum %	#	Test n=52 cum %	Control n=46 cum %	#	Test n=25 cum %	Control n=26 cum %	
1st day	31	64.5	7	14	26.9	5	15	60.0	12	46.2
2nd day	4	72.9	2	4	34.7	4	2	68.0	3	57.6
3rd day	6	85.4	4	7	48.2	2	1	72.0	0	57.6
4th day	0	85.4	0	1	50.0	1	2	80.0	0	57.6
5th day	0	85.4	2	2	53.8	5	0	80.0	0	57.6
6th day	1	87.5	0	2	57.7	2	0	80.0	0	57.6
7th day	1	89.6	11	12	80.8	9	1	84.0	3	69.2
8th-14th day	3	95.8	9	8	96.2	3	2	92.0	4	84.6
15th-21st day	0	95.8	3	1	98.1	7	0	92.0	0	84.6
22nd-28th day	0	95.8	0	0	98.1	1	0	92.0	3	96.2
After 28 days	2	100.0	3	1	100.0	7	2	100.0	1	100.0
Mean Time (hrs)		74.6			142.1			129.9		191.3
St. Deviation (hrs)		177.2			161.4			255.6		262.8
Mean Improvement		146.5 hrs 6.1 days			152.1 hrs 6.3 days			61.4 hrs 2.6 days		
T-statistic		3.3393			3.1366			.8291		

(We note, for example, a client from Shelby County who reported an initial PD attorney contact on the eighth day, but who also reported being represented by a PD before a judge within 24 hours after his arrest.) These observations suggest that many respondents did not understand the intent of this interview item. We suspect that at least some of the longer reported elapsed times represent time to a substantive attorney-client contact rather than time to the initial contact with a public defender at or before First Appearance.

INSERT TABLE VI-17

In sum, for both Passaic and Shelby Counties, test clients: (1) were more likely than control subjects to see themselves as receiving PD services earlier than other defendants; (2) reported shorter elapsed times to first contact with a public defender than did control subjects; and (3) reported shorter elapsed time to first PD attorney contact than did control subjects. In Palm Beach County, these same findings apply; however, the differences were not statistically significant. These observations are at least consistent with other findings, derived from official case records, which show that in both Passaic and Shelby Counties, test clients were in fact seen much earlier than were control clients; while in Palm Beach County, there were few if any differences in the timing of initial services.

Quantity of Services

In this section, we examine the extent to which clients viewed themselves as actually receiving the more extensive services envisaged by the ERDC experimental design. Three items from our client interview instrument bear upon this issue, including:

Table VI-17:
Client-Reported Elapsed Time to First PD Attorney Contact

First Saw PD	Passaic County			Shelby County			Palm Beach County		
	#	cum %	Control n=41	#	cum %	Control n=46	#	cum %	Control n=27
1st day	28	57.1	7	14	26.9	3	13	50.0	9
2nd day	5	67.3	2	4	34.6	3	1	53.8	2
3rd day	5	77.6	3	7	48.1	3	1	57.7	0
4th day	0	77.6	0	1	50.0	0	1	61.5	0
5th day	0	77.6	2	2	53.8	2	1	65.4	0
6th day	0	77.6	0	2	57.7	2	0	65.4	0
7th day	1	79.6	4	12	80.8	9	1	69.2	3
8th-14th day	6	91.8	13	8	96.2	7	5	88.5	2
15th-21st day	2	95.9	6	1	98.1	7	1	92.3	1
22nd-28th day	0	95.9	1	0	98.1	2	0	92.3	3
After 28 days	2	100.0	3	1	100.0	8	2	100.0	7
Mean Time (hrs)	105.2		267.3	142.1		342.8	182.8		373.3
St. Deviation (hrs)	193.6		232.7	161.4		296.4	277.3		384.9
Mean Improvement	162.1 hrs 6.8 days		200.7 hrs 8.4 days	190.5 hrs 7.9 days		200.7 hrs 8.4 days	190.5 hrs 7.9 days		190.5 hrs 7.9 days
T-statistic	3.5084		4.0447	2.0339		4.0447	2.0339		2.0339

<u>Item #</u>	<u>Variable #</u>	<u>Question</u>	<u>Responses</u>
36	V152	Do you believe that you received less, more, or about the same amount of PD services as other defendants arrested around the same time as you?	1=Less 2=More 3=Same 9=Don't Know
12a	V76-77	Altogether, how many times did you talk to your lawyer(s) about this case? Number of times prior to Arraignment (V76) Number of times arraignment and after (V77)	Actual number of times
12b	V78-79	Counting all your attorney contacts, about how much time did you spend talking to your lawyer(s) about this case? Time spent prior to Arraignment (V78) Time spent Arraignment and after (V79)	Time in hours

Table VI-18 shows the distribution of responses to Item 36 for test and control subjects by site. (Response alternatives have been re-ordered to read from most desirable, "More," to least desirable, "Less." "Don't Know" responses are treated as missing data.) For all sites, there is a tendency for test subjects to report a higher relative level of services received than control group subjects. Table VI-18 shows the mean rank scores and "standardized" mean rank scores for test and control subjects from each site. In all cases, the test mean is higher than the control group mean, although the difference is only large in Shelby County.

INSERT TABLE VI-18

Table VI-18:
Clients' Comparative Perceptions of Amount of P.D. Service Received

	Passaic County			Shelby County	
	<u>Test</u>	<u>Control</u>		<u>Test</u>	<u>Control</u>
More	4	4	More	9	6
Same	27	31	Same	31	27
Less	8	11	Less	8	14

	Palm Beach County	
	<u>Test</u>	<u>Control</u>
More	5	7
Same	23	21
Less	5	11

Mean Rank Scores

	Mean Rank		"Standardized" Mean Rank	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Passaic County	43.99	42.16	.518	.496
Shelby County	51.68	44.24	.544	.466
Palm Beach County	38.20	35.06	.531	.487

Since we expect test subjects to have perceived receiving somewhat more treatment than control subjects, our hypotheses are:

- Null Hypothesis (H_0): Both groups have similar perceptions; and
- Alternative (H_1): Test subjects report receiving more treatment.

Using the Mann-Whitney U Test, we derive the following significance levels for the observed differences:

- Passaic County--.339;
- Shelby County--.065; and
- Palm Beach County--.233.

For Shelby County, we can reject the null hypothesis of no difference (in favor of the desired alternative) with a modest degree of confidence, while the test group responses from Passaic and Palm Beach Counties are not sufficiently different from those of their respective controls to warrant rejection of the null hypothesis. Thus, we can conclude that test clients in Shelby County were more likely to see themselves as receiving enhanced public defender services than were their control-group counterparts, while the perceptions of test clients in Passaic and Palm Beach Counties were not substantially different from those of the control-group clients in these sites.

Table VI-19 shows test and control subjects' average responses (by site) to Item 12a: "Number of times talked to attorney about case." For each site, the mean number of pre-Arrestment, post-Arrestment, and total meetings with the public defender are shown. For all three sites, more pre-Arrestment meetings were reported by test subjects than by control subjects, although the difference is only significant (at below the .10-level--i.e., one chance in ten) for Shelby County. Table VI-20 shows client-reported time (in hours) spent in meetings with their public defender attorneys. Here, only Passaic County test clients reported significantly more time spent prior to Arrestment, while

Shelby County test and control clients reported approximately equal pre-Arraignment time, and Palm Beach County test clients reported significantly less pre-Arraignment time than their control-group counterparts.

INSERT TABLES VI-19, VI-20

One might expect that more extensive public defender involvement prior to Arraignment would lead to more cases being disposed of in lower court, and hence to a reduced demand for PD services after Arraignment. This scenario may have been achieved in Shelby County, where the more frequent pre-Arraignment meetings (though not the total time spent in such meetings) may have contributed to the fact that 13 out of 42 test cases (31.0%) were resolved at the lower court level (as compared with only seven out of 38 control cases (18.4%)). As a consequence of these early dispositions, both the average number of post-Arraignment attorney-client meetings as well as the average time spent in those meetings were substantially reduced. Thus, it appears that in Shelby County, the more extensive pre-Arraignment PD involvement may have reduced the need for subsequent, post-Arraignment meetings. In effect, the average Shelby County test client may actually have received less rather than more public defender services than did the average control client from this site--and this despite clients' strong impressions to the contrary (as noted earlier in this section).

To a lesser extent, this same phenomenon may also have occurred in Passaic County, where the average number of pre-Arraignment attorney-client meetings reported by test clients was only marginally higher, but the average total time reported by test clients was significantly higher. Again, perhaps as a result of this increased early effort, the average number of post-Arraignment meetings for experimental cases was approximately equal to that reported by control clients, and the average amount of post-Arraignment time reported on test cases was significantly less than that reported by control clients.

In contrast to the above, in Palm Beach County, the average number of reported meetings reported for test cases was marginally higher than that reported for control cases, and the average amount of time reported by test clients was

Table VI-19:
Client-Reported Average Number of Meetings
with Public Defender Attorney

<u>Passaic County</u>				
	Test (n=28)		Control (n=21)	
	<u>Mean</u>	<u>s.d.</u>	<u>Mean</u>	<u>s.d.</u>
Pre-Arraignment	2.68	2.11	2.33	6.41
Post-Arraignment	<u>5.18</u>	7.14	<u>5.10</u>	4.33
Total	7.86	8.23	7.43	8.82

<u>Shelby County</u>				
	Test (n=42)		Control (n=38)	
	<u>Mean</u>	<u>s.d.</u>	<u>Mean</u>	<u>s.d.</u>
Pre-Arraignment	2.48	1.60	1.97	1.73
Post-Arraignment	<u>2.38</u>	2.39	<u>3.18</u>	3.88
Total	4.86	2.71	5.16	3.88

<u>Palm Beach County</u>				
	Test (n=30)		Control (n=31)	
	<u>Mean</u>	<u>s.d.</u>	<u>Mean</u>	<u>s.d.</u>
Pre-Arraignment	1.77	1.81	1.42	1.43
Post-Arraignment	<u>7.07</u>	8.39	<u>4.58</u>	4.31
Total	8.83	8.89	6.00	4.46

Table VI-20:
Client-Reported Average Time Spent
with Public Defender Attorney

<u>Passaic County</u>				
	Test (n=26)		Control (n=19)	
	<u>Mean</u>	<u>s.d.</u>	<u>Mean</u>	<u>s.d.</u>
Pre-Arrest	1.69 hrs.	1.85	.58 hrs.	.61
Post-Arrest	<u>3.04</u> hrs.	3.81	<u>4.00</u> hrs.	7.47
Total	4.73 hrs.	4.38	4.58 hrs.	7.78

<u>Shelby County</u>				
	Test (n=36)		Control (n=36)	
	<u>Mean</u>	<u>s.d.</u>	<u>Mean</u>	<u>s.d.</u>
Pre-Arrest	1.19 hrs.	.58	1.13 hrs.	1.02
Post-Arrest	<u>1.19</u> hrs.	1.17	<u>2.31</u> hrs.	3.82
Total	2.39 hrs.	1.46	3.44 hrs.	4.00

<u>Palm Beach County</u>				
	Test (n=25)		Control (n=29)	
	<u>Mean</u>	<u>s.d.</u>	<u>Mean</u>	<u>s.d.</u>
Pre-Arrest	.96 hrs.	1.02	1.45 hrs.	1.86
Post-Arrest	<u>4.84</u> hrs.	8.09	<u>4.86</u> hrs.	5.54
Total	5.80 hrs.	8.03	6.31 hrs.	6.45

significantly less than that reported by their control-group counterparts. Perhaps as a result, post-Arrest attorney-client meetings were reported substantially more frequently by test clients, although total post-Arrest time spent in such meetings was approximately equivalent to that reported by control clients. It is interesting to note, however, that despite the statistically significant difference in number of attorney-client meetings (as well as the even more significant difference in terms of total meetings reported per client) Palm Beach County test clients did not see themselves as having received significantly more extensive services (as reported earlier in this section). Thus, from the client's perspective, earlier--i.e., pre-Arrest--services may well appear more significant and more worthwhile than later--i.e., post-Arrest services. This may be especially true when--as was the case in Shelby County--more frequent lower court dispositions are the net result.

Personal Treatment of Clients

In this section, we review our analysis of several interview items bearing upon clients' perceptions of how their public defender attorneys regarded them and treated them as individuals. The interview items which we will examine here include:

<u>Item #</u>	<u>Variable #</u>	<u>Question</u>	<u>Response</u>
11d(2) 38(2)	V73 V155 V159	Do you feel that (attorney) was concerned about you as an individual?	1=Not at all 2=A little 3=A lot
11d(3) 38(3)	V74 V156 V160	Do you feel that (attorney) listened to what you had to say?	1=Not at all 2=A little 3=A lot
16(5)	V99 V109	Do you think that (attorney) listened to what you wanted to do or did not listen to what you wanted to do?	1=Listened 2=Did not listen
16(1)	V95 V105	Do you think that (attorney) believed what you told (him/her) or did not believe what you told (him/her)?	1=Believed 2=Did not believe

<u>Item #</u>	<u>Variable #</u>	<u>Question</u>	<u>Response</u>
9d(1) 11c(1)	V44 V62	At initial contact with (the first person you met from the PD's office (V44)) (attorney prior to Arraignment (V62)), did (he/she) talk to you about family needs?	1=Yes 2=No 9=Don't Know
9d(2) 11c(2)	V45 V63	At initial contact with (the first person you met from the PD's office (V45)) (attorney prior to Arraignment (V63)), did (he/she) talk to you about medical needs?	1=Yes 2=No 9=Don't Know

Table VI-21 shows the distribution of test and control subjects' responses to the three interview items bearing on clients' perception of their attorneys' concern for them as individuals. For each site, interviewees were asked: (1) to recall their initial impressions of their pre-Arraignment attorney's concern; (2) to report their retrospective impressions of their pre-Arraignment attorney's concern; and (3) to rate their post-Arraignment attorney's level of concern. There is a marked similarity in the pattern of responses across the three sites. All three test groups reported initially perceiving more attorney concern than did their control-group counterparts. For all three sites, this difference between test and control subjects' impressions increased during the subsequent pre-Arraignment attorney-client relationship. And for all three sites, test subjects reported less concern about them as individuals by their subsequent, upper-court attorneys than did control subjects.

This last observation is only statistically significant for Passaic County clients. Moreover, this observation does not indicate that test clients universally perceived their post-Arraignment attorneys as being unconcerned, but simply that control clients reported perceiving greater concern. For example, in Palm Beach County, there was a marked tendency for test clients to report that their attorney showed concern "a lot." However, this tendency was even more pronounced for control clients. This merely suggests that control attorneys at this site were perceived as being particularly concerned about their clients as individuals, and should not be interpreted as a negative reflection on the Palm Beach attorneys handling test cases.

INSERT TABLE VI-21

Table VI-21:
Clients' Perceptions of Attorneys' Concern for Them as Individuals

	Attorney Prior To Arraignment				Attorney After Arraignment	
	Initial Impression		Retrospective Impression			
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
<u>Passaic County</u>						
Not at all	19	21	14	18	13	4
A little	12	11	15	11	4	5
A lot	15	7	17	10	8	10
Mean Rank	46.33	39.08	46.47	38.91	19.56	26.37
"Standardized"	.5450	.4598	.5467	.4578	.4454	.5993
Significance level	.0727		.0676		.0307	
 <u>Shelby County</u>						
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Not at all	15	20	14	26	11	11
A little	18	13	20	14	10	7
A lot	18	13	18	15	8	13
Mean Rank	52.24	45.41	59.13	49.15	28.84	32.05
"Standardized"	.5386	.4681	.5526	.4593	.4807	.5342
Significance level	.1029		.0386		.2253	
 <u>Palm Beach County</u>						
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Not at all	7	9	8	10	10	9
A little	8	11	6	11	10	12
A lot	11	4	12	3	17	22
Mean Rank	28.48	22.27	29.00	21.71	38.97	41.81
"Standardized"	.5696	.4454	.5800	.4342	.4871	.5226
Significance level	.0549		.0304		.2772	

Table VI-22 shows the distribution of client responses from each site regarding their attorneys' willingness to listen to what they (the clients) had to say. At all three sites prior to Arraignment, more test attorneys than control attorneys were seen as willing to listen (although the difference was significant only in Passaic County). After Arraignment, control attorneys were rated more highly than test attorneys.

INSERT TABLE VI-22

Table VI-23 shows the distribution of a similar variable, tapping clients' perceptions of the extent to which their public defender attorneys listened to what they (the clients) wanted to do. Prior to Arraignment, test attorneys in Passaic and Shelby Counties were perceived as being more willing to listen than were the control group attorneys in these sites; after Arraignment, this pattern was reversed, with test attorneys being seen as less willing to listen than were control attorneys. In Palm Beach County, there were no apparent differences between test and control attorneys, neither before nor after Arraignment. (Also, it is interesting to note that at both pre- and post-Arraignment, both groups of attorneys--i.e., test and control--in Palm Beach County were perceived as being more willing to listen to what their clients wanted to do than were their counterparts at either of the remaining two test sites.)

INSERT TABLE VI-23

Next, we examine the extent to which clients perceived that their public defender attorneys believed what they (the clients) said. Table VI-24 shows the distribution of test and control group responses regarding both their pre-Arraignment and post-Arraignment attorneys. At all three sites, test clients were more likely to perceive that they were believed prior to Arraignment than were control clients. In contrast, again at all three sites, this pattern was completely reversed after Arraignment. At two sites--Shelby and Palm Beach Counties--test clients' perceptions of being believed declined slightly after Arraignment,

Table VI-22:

Clients' Perceptions of Attorneys' Listening to What They Had to Say

	Attorney Prior to Arraignment					
	Initial Impression		Retrospective Impression		Attorney After Arraignment	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
<u>Passaic County</u>						
Not at all	12	15	11	11	12	5
A little	11	10	14	13	3	1
A lot	22	12	21	10	10	14
Mean Rank	45.04	37.19	43.38	36.60	20.06	26.67
"Standardized"	.5493	.4535	.5423	.4575	.4458	.5927
Significance level	.0562		.0850		.0298	
<u>Shelby County</u>						
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Not at all	9	15	9	17	10	10
A little	17	10	23	18	9	5
A lot	26	22	21	21	10	16
Mean Rank	52.34	47.41	57.75	52.39	28.53	32.34
"Standardized"	.5287	.4789	.5298	.4806	.4755	.5390
Significance level	.1781		.1722		.1829	
<u>Palm Beach County</u>						
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Not at all	7	5	8	2	6	2
A little	7	7	8	16	12	17
A lot	13	11	12	4	19	25
Mean Rank	25.28	25.76	26.21	24.59	38.74	42.90
"Standardized"	.5056	.5152	.5242	.4918	.4783	.5296
Significance level	.4497		.3357		.1870	

Table VI-23:
Clients' Perceptions of Attorney's Listening to
What They Wanted to Do

	Attorney Prior to Arrest		Attorney After Arrest	
<u>Passaic County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Listened	32 (71.1%)	19 (63.3%)	15 (57.7%)	13 (76.5%)
Did not listen	13 (28.8%)	11 (36.7%)	11 (42.3%)	4 (23.5%)
Significance Level	.4904		.2018	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Listened	38 (76.0%)	30 (57.7%)	17 (58.6%)	22 (64.5%)
Did not listen	12 (24.0%)	22 (42.3%)	12 (41.4%)	9 (29.0%)
Significance Level	.0500		.6307	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Listened	18 (81.8%)	20 (83.3%)	28 (80.0%)	35 (79.5%)
Did not listen	4 (18.2%)	4 (16.7%)	7 (20.0%)	9 (20.5%)
Significance Level	.8964		.9568	

while in Passaic County the proportion who reported that they were believed actually increased. However, the primary reason for the seemingly invidious comparisons between experimental and control-group attorneys after Arraignment is the substantial increase in the proportion of control clients who reported that they were believed. Thus, in Passaic County, the figure jumped from 56.5% to 76.5%; in Shelby County, from 53.1% to 67.7%; and in Palm Beach County, from 54.5% to 80.0%.

INSERT TABLE VI-24

Finally, we review the extent to which clients were asked about family and medical problems, at initial contact and at the first contact by a public defender attorney. Tables VI-25 and VI-26 show the frequency with which test and control clients were asked about these essentially personal problems at each site. Despite the fact that attorneys are not trained to act in these areas as a matter of course, what is most impressive here is that at all three sites, test clients reported more frequently than did control clients that during their first attorney contact there was some discussion of actual or potential medical problems. While these differences are not large, nor are they statistically significant, they are pervasive, suggesting that the increased time allocated to early client contacts affords public defenders the opportunity to show greater concern for their clients' personal needs.

INSERT TABLES VI-25, VI-26

Across the range of interview items examined in this section, a persistent pattern does emerge, however. From the client's perspective, test clients were treated with much more concern prior to Arraignment than were control clients. Based upon these data, it appears that one of the net effects of the ERDC experiment is improved relationships between pre-Arraignment attorneys and their clients. However, after Arraignment, control subjects report more favorable treatment by their attorneys than do test subjects. The continued separation of test and control clients after Arraignment, coupled with the significantly more positive regard with which post-Arraignment control-group clients report that they were treated, may well function to confound the subsequent analysis of both ultimate outcomes as well as client satisfaction.

Table VI-24:
Clients' Perceptions of Whether Their Attorneys Believed Them

	Attorney Prior to Arraignment		Attorney After Arraignment	
<u>Passaic County</u>				
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Believed	22 (62.9%)	13 (56.5%)	17 (70.8%)	13 (76.5%)
Did not believe	13 (37.1%)	10 (43.5%)	7 (29.2%)	4 (23.5%)
Significance Level	.6355		.6907	
 <u>Shelby County</u>				
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Believed	36 (70.6%)	26 (53.1%)	18 (60.0%)	21 (67.7%)
Did not believe	15 (29.4%)	23 (46.9%)	12 (40.0%)	10 (32.3%)
Significance Level	.0732		.5395	
 <u>Palm Beach County</u>				
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Believed	17 (73.9%)	12 (54.5%)	23 (63.9%)	32 (80.0%)
Did not believe	6 (26.1%)	10 (45.5%)	13 (36.1%)	8 (20.0%)
Significance Level	.1832		.1238	

Table VI-25:
Client-Reported Initial Discussions of Family Problems

	First Contact		First Attorney Contact	
<u>Passaic County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Yes	6 (12.5%)	5 (10.6%)	6 (12.8%)	4 (9.3%)
No	42 (87.5%)	42 (89.4%)	41 (87.2%)	39 (90.7%)
Significance Level	.7748		.6005	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Yes	11 (22.0%)	15 (31.9%)	11 (22.0%)	7 (15.6%)
No	39 (78.0%)	32 (68.1%)	39 (78.0%)	38 (84.4%)
Significance Level	.2777		.4291	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Yes	4 (11.8%)	68 (15.4%)	3 (10.7%)	1 (4.3%)
No	30 (88.2%)	33 (84.6%)	25 (89.3%)	22 (95.6%)
Significance Level	.6586		.3884	

Table VI-26:
Client-Reported Initial Discussions of Medical Problems

	First Contact		First Attorney Contact	
<u>Passaic County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Yes	6 (12.5%)	5 (10.9%)	6 (12.8%)	2 (4.8%)
No	42 (87.5%)	41 (89.1%)	41 (87.2%)	40 (95.2%)
Significance Level	.8117		.1791	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Yes	8 (16.0%)	6 (12.8%)	8 (16.0%)	4 (10.8%)
No	42 (84.0%)	6 (12.8%)	42 (84.0%)	33 (89.2%)
Significance Level	.6573		.4819	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Yes	4 (11.4%)	3 (7.7%)	4 (14.3%)	1 (4.3%)
No	31 (88.6%)	36 (92.3%)	24 (85.7%)	22 (95.7%)
Significance Level	.5965		.2176	

Client Perceptions of Attorney Allegiance

In this section, we examine several interview items which bear upon clients' perceptions of whether their attorneys were on their (the clients') side.

Included in this analysis are the following:

<u>Item #</u>	<u>Variable #</u>	<u>Question</u>	<u>Response</u>
18 19	V132 V133 (V132))	Generally speaking, would you say that (pre-Arrest attorney (V132)) (post-Arrest attorney (V133)) was on your side or on the State's side?	1=Client's 2=State's 3=Middle
28	V144	In general, would you say that Public Defenders are on their client's side or on the State's side?	1=Client's 2=State's 3=Middle
16(10)	V104	Do you think that (pre-Arrest attorney (V104)) (post-Arrest attorney (V114)) cared more about getting your case over with quickly or about getting justice for you?	1=Over quickly 2=Justice
16(8)	V102 V112	Do you think that (pre-Arrest attorney (V102)) (post-Arrest attorney (V112)) wanted you to be convicted?	1=Convicted 2=Not convicted
16(9)	V103 V113	Do you think that pre-Arrest attorney (V103)) (post-Arrest attorney (V113)) wanted you to be punished?	1=Not punished 2=Punished
16(7)	V101 V111	Do you think that (pre-Arrest attorney (V101)) (post-Arrest attorney (V111)) wanted to to get the lightest sentence for you?	1=wanted lightest sentence 2=Did not want lightest sentence
16(2)	V96 V106	Do you think that (pre-arrest attorney (V96)) (post-arrest attorney (V106)) fought hard for you?	1=Did not fight hard 2=Fought hard

Table VI-27 shows the distribution of client responses to three items which summarize their perceptions regarding their own public defender attorneys' allegiance (both prior to and after Arraignment), and their impressions of public defenders' allegiance in general. Curiously, while both test and control clients tended (in varying degrees) to see their own attorneys as having been on their side rather than on the state's side, their overall impressions were still that public defenders are on the state's side. In Passaic and Shelby Counties, test clients reported generally less favorable views regarding their pre-Arraignment attorneys than did control clients; however, the distinction is only significant in Passaic County. In contrast, test clients in these two counties responded more positively than did control clients regarding their perceptions of their post-Arraignment attorneys' allegiance. In Palm Beach County, this pattern is reversed, although neither comparison is statistically significant.

INSERT TABLE VI-27

The above observations for Passaic and Shelby Counties are somewhat puzzling in that they run counter to the general direction of our findings across a variety of client follow-up interviews. In almost every other context, we observe a pervasive shift from attitudes favoring test pre-Arraignment attorneys over control pre-Arraignment attorneys to attitudes favoring control post-Arraignment attorneys over test post-Arraignment attorneys. In Tables VI-28 through VI-32, we further explore our interviewee's perceptions of their respective attorneys' motivations and allegiance. The variables examined here include those tapping assessments of:

- Whether attorneys were perceived as wanting justice for their clients or wanting to get their cases over quickly;
- Whether attorneys were perceived as wanting their clients to be convicted;
- Whether attorneys were perceived as wanting their clients to be punished;

Table VI-27:
Clients' Perceptions of Public Defender Allegiance

<u>Passaic County</u>	Attorney Prior To Arraignment		Attorney After Arraignment		Public Defenders in General	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Client's side	12	19	11	5	16	13
In the middle	21	13	11	10	9	6
State's side	12	4	3	2	23	22
Mean Rank	35.50	47.88	22.58	19.91	45.96	43.86
"Standardized"	.4383	.5911	.5376	.4740	.5164	.4818
Significance level	.0057		.2222		.3890	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Client's side	22	24	16	11	11	13
In the middle	26	19	11	16	9	4
State's side	4	2	1	2	31	32
Mean Rank	46.29	52.13	31.89	26.21	50.89	50.09
"Standardized"	.4772	.5374	.5594	.4598	.5089	.5089
Significance level	.1261		.0726		.4861	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Client's side	8	10	8	11	10	10
In the middle	14	5	21	20	11	17
State's side	3	8	7	8	13	15
Mean Rank	25.12	23.83	37.22	38.72	38.85	38.21
"Standardized"	.5233	.4964	.4963	.5163	.5112	.5028
Significance level	.3661		.3759		.4969	

- Whether attorneys were perceived as wanting their clients to receive only a light sentence; and
- Whether attorneys were perceived as fighting hard for their clients.

Across all five of these interview items, there were few significant differences between the reports of test and control clients regarding their pre-Arrestment attorneys. In Passaic and Palm Beach Counties, test clients were much more likely than were control clients to view their pre-Arrestment attorneys as wanting justice for them (the clients) rather than simply to clear the case. On the remaining items, the patterns of test and control-group responses were quite similar to one another, with a general tendency throughout to ascribe favorable motivations to the attorneys for both groups.

Nor were there many statistically significant differences regarding post-Arrestment attorneys. Control-group clients in Passaic County were much more likely than were test clients to view their attorneys after Arrestment as not wanting to see them punished, and also more frequently saw their post-Arrestment attorneys as fighting hard for them. Beyond these exceptions, there were remarkably few differences between test and control clients' perceptions.

However, across the 15 possible comparisons of clients' perspectives (five items for each of three sites), the percentage of test clients giving favorable responses regarding their post-Arrestment attorney was less in 12 instances (80%) than the percentage responding favorably regarding their pre-Arrestment attorney. At the same time, in 11 of the 15 comparisons (73.3%) the percentage of control clients giving positive responses regarding post-Arrestment attorneys was greater than the percentage rating their pre-Arrestment attorneys favorably. This pattern of a shift toward lower ratings for test attorneys and higher rates for control attorneys after Arrestment is much more consistent with our general observations throughout this review of client perceptions, and contradicts our interviewees' overall pattern of responses to the summary items regarding allegiance discussed above.

INSERT TABLES VI-28, VI-29, VI-30, VI-31, VI-32

Table VI-28:

Clients' Perceptions of Whether Attorneys Wanted Justice
or Quick Ending to Case

<u>Passaic County</u>	Attorney Prior to Arraignment		Attorney After Arraignment	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Wanted justice, not speed	22 (50.0%)	8 (22.2%)	10 (40.0%)	11 (55.0%)
Wanted speed, not justice	22 (50.0%)	28 (77.8%)	15 (60.0%)	9 (45.0%)
Significance level	.0203		.4830	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Wanted justice, not speed	21 (41.2%)	19 (34.5%)	11 (36.7%)	11 (35.5%)
Wanted speed, not justice	30 (58.8%)	36 (65.5%)	19 (63.3%)	20 (64.5%)
Significance level	.6148		1.000	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Wanted justice, not speed	17 (70.8%)	10 (37.0%)	22 (64.7%)	24 (58.5%)
Wanted speed, not justice	7 (29.2%)	17 (63.0%)	12 (35.3%)	17 (41.5%)
Significance level	.0330		.7581	

Table VI-29:
Clients' Perceptions of Whether Attorneys Wanted Them Convicted

<u>Passaic County</u>	Attorney Prior to Arraignment		Attorney After Arraignment	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did not want client convicted	29 (76.3%)	22 (78.6%)	13 (72.2%)	13 (81.3%)
Wanted client convicted	9 (23.7%)	6 (21.4%)	5 (27.8%)	3 (18.8%)
Significance level	1.0000		.8302	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did not want client convicted	31 (67.4%)	32 (66.7%)	17 (63.0%)	18 (64.3%)
Wanted client convicted	15 (32.6%)	16 (33.3%)	10 (37.0%)	10 (35.7%)
Significance level	1.0000		1.0000	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did not want client convicted	16 (76.2%)	16 (66.7%)	21 (61.8%)	24 (66.7%)
Wanted client convicted	5 (23.8%)	8 (33.3%)	13 (38.2%)	12 (33.3%)
Significance level	.7087		.8585	

Table VI-30:
Clients' Perceptions of Whether Attorneys Wanted Them Punished

<u>Passaic County</u>	Attorney Prior to Arraignment		Attorney After Arraignment	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did not want client punished	26 (65.0%)	19 (67.9%)	9 (42.9%)	14 (77.8%)
Wanted client punished	14 (35.0%)	9 (32.1%)	12 (57.1%)	4 (22.2%)
Significance level	1.0000		.0596	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did not want client punished	29 (64.4%)	23 (59.0%)	16 (61.5%)	16 (59.3%)
Wanted client punished	16 (35.6%)	16 (41.0%)	10 (38.5%)	11 (40.7%)
Significance level	.7721		1.0000	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did not want client punished	15 (75.0%)	17 (77.3%)	21 (63.6%)	27 (79.4%)
Wanted client punished	5 (25.0%)	5 (22.7%)	12 (36.4%)	7 (20.6%)
Significance level	1.0000		.2456	

Table VI-31:
Clients' Perceptions of Whether Attorneys Wanted a Light Sentence

<u>Passaic County</u>	Attorney Prior to Arrest		Attorney After Arrest	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Wanted a light sentence	33 (78.6%)	22 (88.0%)	17 (73.9%)	16 (88.9%)
Did not want a light sentence	9 (21.4%)	3 (12.0%)	6 (26.1%)	2 (11.1%)
Significance level	.5196		.4215	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Wanted a light sentence	33 (71.7%)	36 (72.0%)	22 (73.3%)	21 (67.7%)
Did not want a light sentence	13 (28.3%)	14 (28.0%)	8 (26.7%)	10 (32.3%)
Significance level	1.0000		.8431	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Wanted a light sentence	19 (86.4%)	21 (87.5%)	30 (81.1%)	34 (87.2%)
Did not want a light sentence	3 (13.6%)	3 (12.5%)	7 (18.9%)	5 (12.8%)
Significance level	1.0000		.6788	

Table VI-32:
Clients' Perceptions of Attorneys' Effort in Their Case

<u>Passaic County</u>	Attorney Prior to Arrest		Attorney After Arrest	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did fight hard	18 (42.9%)	15 (41.7%)	12 (48.0%)	14 (77.8%)
Did not fight hard	24 (57.1%)	21 (58.3%)	13 (52.0%)	4 (22.0%)
Significance level	1.0000		.0981	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did fight hard	31 (59.6%)	28 (52.8%)	15 (50.0%)	20 (66.7%)
Did not fight hard	21 (40.4%)	25 (47.2%)	15 (50.0%)	10 (33.3%)
Significance level	.6143		.2949	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did fight hard	15 (60.0%)	14 (46.7%)	21 (60.0%)	27 (60.0%)
Did not fight hard	10 (40.0%)	10 (53.3%)	14 (40.0%)	18 (40.0%)
Significance level	.4746		1.0000	

Clients' Perceptions of Attorney Capabilities

In this section, we review clients' responses to items tapping the extent to which they viewed their public defenders as competent and reliable sources of legal advice. While our interest in this assessment in no way reflects a belief that clients are equipped to judge professional competence, the fact remains that they do, and that the impressions which they thereby form are as important as their equally subjective impressions of other attorney characteristics-- e.g., honesty, personal concern, etc. Perceptions of attorney competence not only contribute to overall client satisfaction, but also find their way into the outside world, to become part of the "street lore" about public defenders. It is scarcely an overstatement to suggest that this intangible body of "knowledge" about public defenders as an institution contributes substantially to the overwhelming preference of arrestees everywhere for private counsel. Thus, to the extent that the ERDC Field Test enhances client perceptions of public defenders' capabilities, it may also affect some lasting changes in the way future arrestees view their own legal options. The included items in our analyses of this variable include:

<u>Item #</u>	<u>Variable #</u>	<u>Question</u>	<u>Response</u>
11d(4)	V72	At that time (when you first met your attorney prior to arraignment) did you feel that (he/she) was competent?	1=Not at all 2=A little 3=A lot
38(4)	V157 V161	Now, looking back at your case, and the services you received, do you feel that (pre-Arrest attorney (V157)) (post-Arrest attorney (V161)) was competent?	1=Not at all 2=A little 3=A lot
16(6)	V100 V110	Do you think that (pre-Arrest attorney (V100)) (post-Arrest attorney (V110)) did not give good advice or did give good advice?	1=Did not 2=Did

Table VI-33 shows the distribution of test and control clients' responses to the three items asking for a direct assessment of their public defenders' level

of competence. Clients' initial impressions generally favored test group attorneys in all three sites and, except for Shelby County (where the shift was not substantial) this assessment continued to be reflected in their retrospective ratings of their pre-Arrestment attorneys. However, in all three sites, there is a familiar shift between these assessments and their ratings of their post-Arrestment public defenders, a shift toward more favorable evaluations by control-group clients.

INSERT TABLE VI-33

Table VI-34, which shows clients' assessments of the quality of advice (not specified in the interview instrument, but implied to be legal advice) given by their attorneys, further confirms this shift in perceptions. At all three sites, the ratings by test and control clients of their attorneys prior to Arrestment favored the test attorneys (although not significantly). In contrast, test clients' ratings of their post-Arrestment attorneys were no better than (and, in Shelby County, noticeably worse than) those of control clients.

INSERT TABLE VI-34

Clients' Trust in their Public Defenders

Table VI-35 summarizes clients' perceptions regarding whether or not their public defender attorneys could be trusted. In Passaic and Shelby Counties, test clients expressed greater trust than did control clients in their pre-Arrestment attorneys, and less trust than control clients in their post-Arrestment attorneys. In Palm Beach County, test clients continued to feel more trust in their post-Arrestment attorneys than did control clients, although even here, the significance level of this comparison is much less meaningful than that for Palm Beach County pre-Arrestment attorneys (about one chance in three vs. one chance in 57 of the observed difference occurring randomly).

INSERT TABLE VI-35

Table VI-36 shows clients' perceptions of whether their public defenders told the truth. Here too, the same pattern emerges:

Table VI-33:
Clients' Perceptions of Attorneys' Competence

	Attorney Prior to Arraignment					
	Initial Impression		Retrospective Impression		Attorney After Arraignment	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
<u>Passaic County</u>						
Not at all	9	11	8	10	7	4
A little	8	8	8	7	3	1
A lot	24	15	26	17	12	15
Mean Rank	40.65	34.81	40.81	35.65	19.57	23.63
"Standardized"	.5420	.4641	.5370	.4691	.4659	.5626
Significance level	.1026		.1283		.1029	
 <u>Shelby County</u>						
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Not at all	8	12	9	8	7	5
A little	10	7	12	13	7	7
A lot	34	29	32	35	15	18
Mean Rank	52.31	48.54	54.21	55.75	28.52	31.43
"Standardized"	.5231	.4854	.4973	.5115	.4834	.5327
Significance level	.2250		.3845		.2335	
 <u>Palm Beach County</u>						
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Not at all	5	5	6	7	8	5
A little	4	6	4	6	4	8
A lot	17	13	18	9	25	28
Mean Rank	26.65	24.25	27.93	22.41	38.76	40.17
"Standardized"	.5330	.4850	.5586	.4482	.4969	.5150
Significance level	.2531		.0708		.3691	

Table VI-34:
Clients' Assessments of Attorney Advice

<u>Passaic County</u>	Attorney Prior to Arrest		Attorney After Arrest	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Gave you good advice	29 (76.3%)	16 (66.7%)	12 (60.0%)	11 (61.1%)
Did not give you good advice	9 (23.7%)	8 (33.3%)	8 (40.0%)	7 (38.9%)
Significance level	.5910		1.0000	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Gave you good advice	32 (69.6%)	31 (66.0%)	18 (62.1%)	23 (76.7%)
Did not give you good advice	14 (30.4%)	16 (34.0%)	11 (37.9%)	7 (23.3%)
Significance level	.8805		.3500	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Gave you good advice	18 (75.0%)	16 (66.7%)	27 (75.0%)	27 (75.0%)
Did not give you good advice	6 (25.0%)	8 (33.3%)	9 (25.0%)	9 (25.0%)
Significance level	.7508		1.0000	

Table VI-35:
Clients' Perceptions of Attorneys' Trustworthiness

	Attorney Prior to Arraignment					
	Initial Impression		Retrospective Impression		Attorney After Arraignment	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
<u>Passaic County</u>						
Not at all	18	16	14	14	10	4
A little	14	13	15	12	6	4
A lot	12	9	17	10	8	11
Mean Rank	42.07	40.84	43.61	38.81	19.33	25.37
"Standardized"	.5130	.4980	.5318	.4733	.4495	.5900
Significance level	.4019		.1682		.0464	
 <u>Shelby County</u>						
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Not at all	10	14	13	17	12	9
A little	19	15	19	24	8	8
A lot	23	18	21	15	9	13
Mean Rank	52.51	47.22	58.70	51.50	27.74	32.18
"Standardized"	.5304	.4770	.5385	.4725	.4702	.5454
Significance level	.1640		.1029		.1453	
 <u>Palm Beach County</u>						
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Not at all	7	7	4	7	8	9
A little	10	13	9	10	7	12
A lot	9	6	14	5	22	22
Mean Rank	27.60	25.40	28.63	20.55	41.84	39.35
"Standardized"	.5308	.4885	.5843	.4194	.5230	.4919
Significance level	.2880		.0174		.2979	

- In Passaic County, there were no significant differences (test vs. control); but the magnitude of the observed difference increased (in favor of control attorneys) after Arraignment;
- In Shelby County, test group attorneys were favored (though not significantly) prior to Arraignment, while after arraignment, control group attorneys were strongly (and significantly) favored;
- In Palm Beach County, pre-Arraignment test attorneys were viewed as more likely than their control-group counterparts to be truthful (the difference approaches statistical significance), while after Arraignment, the difference (and the significance) decreased considerably. Here, the pervasive shift toward more favorable perceptions of control attorneys after Arraignment appears to be related to a general decline in test clients' ratings of their attorneys' truthfulness rather than to any consistent change in a control clients' ratings.

INSERT TABLE VI-36

Case Outcomes

In this section, we consider our interviewees' perceptions of the outcomes of their cases, and the extent to which they attribute these outcomes to their public defender attorneys. Included in this analysis are the following items:

<u>Item #</u>	<u>Variable #</u>	<u>Question</u>	<u>Response</u>
34	V150	All in all, do you feel you were treated fairly or unfairly in your case?	1=Fairly 2=Unfairly
24b	V138	Do you think this sentence (for those convicted) is too light, too heavy, or about right?	1=Too light 2=Too heavy 3=About right
25	V139	Compared with someone like you convicted of the same crime as you were, would you say your sentence was about the same as most people get, lighter than most people get, or heavier than most people get?	1=Same 2=Lighter 3=Heavier
20	V134	Do you feel you got off (for those with all charges dismissed) because of the way your lawyer represented you or for some other reason?	1=Lawyer 2=Other 9=Don't Know

Table VI-36:
Clients' Assessments of Attorneys' Truthfulness

<u>Passaic County</u>	Attorney Prior to Arraignment		Attorney After Arraignment	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did tell the truth	29 (78.4%)	21 (84.0%)	14 (58.3%)	13 (72.2%)
Did not tell the truth	8 (21.6%)	4 (16.0%)	10 (41.7%)	5 (27.8%)
Significance level	.8243		.5457	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did tell the truth	37 (77.1%)	34 (66.7%)	17 (56.7%)	25 (80.6%)
Did not tell the truth	11 (22.9%)	17 (33.3%)	13 (43.3%)	6 (19.4%)
Significance level	.3540		.0809	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Did tell the truth	21 (91.3%)	21 (70.0%)	30 (83.3%)	35 (79.5%)
Did not tell the truth	2 (8.7%)	9 (30.0%)	6 (16.7%)	9 (20.5%)
Significance level	.1202		.8855	

<u>Item #</u>	<u>Variable #</u>	<u>Question</u>	<u>Response</u>
25(a)	V140	Which one of these do you think was the most important reason you got a light sentence? (For those giving response=2 to V139)	3=Lawyer fought hard (among five possible reasons)
25(b)	V141	Which one of these do you think was the most important reason you got a heavy sentence? (For those giving response=3 to V139)	2=Lawyer didn't fight hard (among six possible reasons)

Table VI-37 shows the distribution of test and control clients' responses regarding whether or not they were treated fairly. While there were no significant differences between test and control responses, it is interesting to note that 74 out of 120 test clients (61.7%) and 80 out of 140 control clients (57.1%) believed that they had, in fact, been treated fairly.

INSERT TABLE VI-37

Table VI-38 shows convicted interviewees' responses regarding the severity of their own sentence. While there was a widespread tendency to rate sentences as "too heavy" by clients in both test and control groups, this tendency was most pronounced among test clients (as opposed to control clients) from Passaic and Shelby Counties. In contrast, when asked to compare their sentence with others convicted of similar crimes, only 38.7% of test clients and only 33.3% of control clients believed that their sentence was heavier, while almost as many (31.5% of test and 31.4% of control) believed that their sentence was lighter than most.

INSERT TABLE VI-38

Table VI-39 shows the extent to which clients attributed case outcomes to their lawyer's efforts. The consistency with which both test and control clients from all three sites failed to attribute outcomes to their attorneys is remark-

Table VI-37:
Clients' Perceptions of Fair Treatment

	Passaic County		Shelby County		Palm Beach County	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
Fair	23 (45.1%)	24 (49.0%)	27 (51.9%)	30 (63.8%)	24 (64.9)%	26 (59.1%)
Unfair	28 (54.9%)	25 (51.0%)	25 (48.1%)	17 (36.2%)	13 (35.1%)	18 (40.9%)
Significance level	.8506		.3205		.7618	

Table VI-38:
Clients' Perceptions of Severity of Sentence

<u>Passaic County</u>	Severity of Sentence			Severity Relative to Others	
	<u>Test</u>	<u>Control</u>		<u>Test</u>	<u>Control</u>
Too heavy	24	17	Heavier	15	9
About right	10	14	The same	9	12
Too light	1	1	Lighter	11	6
Mean rank	31.59	36.64		31.33	31.72
"Standardized"	.4714	.5468		.5053	.5116
Significance level	.1065			.4639	
<u>Shelby County</u>	<u>Test</u>	<u>Control</u>		<u>Test</u>	<u>Control</u>
Too heavy	28	16	Heavier	20	14
About right	22	28	The same	15	15
Too light	0	1	Lighter	12	14
Mean rank	43.18	53.36		43.03	48.20
"Standardized"	.4545	.5617		.4781	.5355
Significance level	.0194			.1596	
<u>Palm Beach County</u>	<u>Test</u>	<u>Control</u>		<u>Test</u>	<u>Control</u>
Too heavy	11	18	Heavier	8	12
About right	15	20	The same	9	10
Too light	2	1	Lighter	12	13
Mean rank	35.79	32.72		33.72	31.49
"Standardized"	.5342	.4883		.5269	.4920
Significance level	.2354			.3053	

able. Given this near unanimity, there were no statistically significant differences between test and control clients at any of the three sites.

INSERT TABLE VI-39

In summary, both test and control clients were prone to view their treatment as fair. Of those convicted, while most thought that their sentences were too heavy, clients were divided almost equally in their assessments of these sentences in comparison with those received by others. Finally, almost all clients attributed case outcomes to factors other than their attorneys. All of the above applies equally to both test and control clients.

Clients' Overall Satisfaction

Finally, we review in this section three interview items which summarize experimental and control clients' satisfaction with their public defender attorneys. These items are:

<u>Item #</u>	<u>Variable #</u>	<u>Question</u>	<u>Response</u>
29 30	V145	If you ever got in trouble again and could choose any lawyer, would you choose (attorney prior to Arraignment (V145)) (attorney after Arraignment (V146))?	1=No 2=Yes 9=Don't Know
26a	V142	If you could choose any kind of lawyer regardless of cost, would you choose...	1=Public Defender 2=Private attorney

Table VI-40 shows the distributions of test and control clients' responses to these three items for each test site. In general, the pattern of these responses is similar to that found throughout our analyses of client perceptions. In all three counties, test clients expressed a greater willingness to choose their pre-Arraignment attorney than did control clients (although this comparison is only marginally significant in Passaic and Palm Beach Counties and not at all significant in Shelby County). Nonetheless, it must be noted that in

Table VI-39:
Client Attribution of Outcomes to Attorneys

	Reason Client Got Off		Reason Client Got Light Sentence		Reason Client Got Heavy Sentence	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
<u>Passaic County</u>						
Attorney Responsible	1 (8.3%)	2 (16.7%)	4 (7.5%)	0 (0.0%)	2 (3.8%)	1 (2.0%)
Other	11 (91.7%)	10 (83.3%)	49 (92.5%)	51 (100.0%)	51 (96.2%)	49 (98.0%)
Significance level	1.0000		.1360		1.0000	

	Reason Client Got Off		Reason Client Got Light Sentence		Reason Client Got Heavy Sentence	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
<u>Shelby County</u>						
Attorney Responsible	0	1 (50.0%)	4 (7.4%)	2 (3.4%)	7 (13.0%)	6 (10.2%)
Other	0	1 (50.0%)	50 (92.6%)	57 (96.6%)	47 (87.0%)	53 (89.8%)
Significance level	NMF		.5951		.8652	

	Reason Client Got Off		Reason Client Got Light Sentence		Reason Client Got Heavy Sentence	
	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>	<u>Test</u>	<u>Control</u>
<u>Palm Beach County</u>						
Attorney Responsible	0 (60.0%)	1 (25.0%)	4 (11.1%)	5 (10.9%)	2 (5.4%)	4 (8.7%)
Other	5 (100.0%)	3 (75.0%)	32 (88.9%)	41 (89.1%)	35 (94.6%)	42 (91.3%)
Significance level	NMF		1.0000		.8816	

all three counties, the majority of both test and control clients indicated that they still would opt for a different attorney.

In contrast, test clients in both Passaic and Shelby Counties were less willing to choose their post-Arrest attorneys again than were control clients at these sites. In Palm Beach County, although the test group remained more favorable toward their attorneys post-Arrest than did control clients, the difference is much less pronounced than that found with regard to their pre-Arrest attorneys. In all three counties, this shift in attitudes appears to be associated with improved ratings for post-Arrest control attorneys as much if not more than it is related to any decline in ratings for post-Arrest test attorneys.

The third set of crosstabulations in Table VI-40 shows that regardless of their experiences during the Field Test (i.e., independently of their assignment to test or control conditions) clients at all three sites overwhelmingly indicated a desire for private counsel should they "get into trouble again." Thus, while nearly half of all clients said they would like the same attorney even if they could choose any attorney, roughly 80% said that they would prefer private to public defense. The implication, then, is that at least some of their negativity toward public defenders in general was not caused by correspondingly negative perceptions of their own public defender attorneys, but rather by a combination of other factors, perhaps including:

- A belief that if one has to pay for representation it must be better;
- A desire to be in the position of being able to pay for services;
- A lack of experience with private attorneys; and, possibly
- An insightful perception of the practical constraints placed upon public defender attorneys in providing legal representation.

INSERT TABLE VI-40

Table VI-40:
Clients' Choice of Attorney

	Choose Pre-Arrest Attorney Again		Choose Post-Arrest Attorney Again			Choose Public Defender or Private Attorney		
<u>Passaic County</u>								
	<u>Test</u>	<u>Control</u>		<u>Test</u>	<u>Control</u>		<u>Test</u>	<u>Control</u>
Yes	22 (47.8%)	11 (28.2%)	Yes	9 (39.1%)	8 (57.1%)	PD	10 (20.4%)	9 (18.8%)
No	24 (52.2%)	28 (71.8%)	No	14 (60.9%)	6 (42.9%)	Pvt. Atty	39 (79.6%)	39 (81.3%)
Significance level	.1039		.4677		1.0000			
<u>Shelby County</u>								
	<u>Test</u>	<u>Control</u>		<u>Test</u>	<u>Control</u>		<u>Test</u>	<u>Control</u>
Yes	24 (45.3%)	22 (43.1%)	Yes	12 (42.9%)	18 (62.1%)	PD	8 (16.3%)	8 (17.0%)
No	29 (54.7%)	29 (56.9%)	No	16 (57.1%)	11 (37.9%)	Pvt. Atty	41 (83.7%)	39 (83.0%)
Significance level	.9818		.2353		1.0000			
<u>Palm Beach County</u>								
	<u>Test</u>	<u>Control</u>		<u>Test</u>	<u>Control</u>		<u>Test</u>	<u>Control</u>
Yes	10 (43.5%)	4 (16.7%)	Yes	19 (59.4%)	18 (41.9%)	PD	5 (15.6%)	6 (14.0%)
No	13 (56.5%)	20 (83.3%)	No	13 (40.6%)	25 (58.1%)	Pvt. Atty	27 (84.4%)	37 (86.0%)
Significance level	.0910		.2051		1.0000			

Summary

The relative importance of all of these aspects of the attorney-client relationship--that is, their relative importance from the client's perspective--is perhaps best understood by examining the correlations between clients' expressed satisfaction and their responses to various other interview items. In Tables VI-41 and VI-42, we show (for pre-Arraignment and post-Arraignment attorneys respectively) the Spearman rank-order correlation coefficients between each of the items discussed above and clients' eventual satisfaction, as measured by whether they would choose the same attorney again. The pattern suggested by these correlation coefficients is remarkable. It is readily apparent that clients' subjective impressions of their attorney-client relationships (e.g., concern, trust, etc.) carry far more weight in determining ultimate satisfaction than does their recollection of objective aspects of public defender service delivery (e.g., quantity of service, early representation, etc.).

While there is a great deal of similarity between the correlational patterns shown in Tables VI-41 and VI-42, there are also several significant shifts between the factors which appear to shape clients' satisfaction with their pre-Arraignment attorneys and those which are most important in determining satisfaction with post-Arraignment attorneys. In particular, fairness, the client's perception that his attorney is on his side, the client's perception of whether the attorney wanted him (the client) to be "punished" and to receive a heavy sentence, and the client's perception of the attorney's truthfulness and competence all increase substantially in importance. At the same time, there are slight decreases in the more interpersonal items tapping concern and willingness to listen. In summary, it is reasonable to conclude that clients' satisfaction with their pre-Arraignment attorneys is largely a function of "affective" aspects of the attorney-client relationship. In contrast, their satisfaction with their post-Arraignment attorneys, while similarly conditioned, is at least slightly more related to clients' favorable perceptions of their attorney's allegiance and competence and of the fairness of their overall treatment.

INSERT TABLES VI-41, VI-42, VI-43

Table VI-41

Item Correlations with Clients' Satisfaction
with Pre-Arrestment Attorney

Item: (Client perception)	Coefficient
Attorney cared about client as an individual	.7166
Attorney trustworthy	.7076
Attorney listened to what client had to say	.6234
Attorney competent	.5419
Attorney fought hard	.5027
Attorney gave good advice	.4980
Attorney believed client	.4600
Attorney listened to what client wanted to do	.4451
Attorney truthful	.4115
Attorney wanted light sentence	.4028
Attorney wanted justice rather than speed	.3947
Attorney did not want conviction	.3924
Attorney on client's side	.3722
Attorney did not want client punished	.2804
Client treated fairly	.2741
Total time in meetings with attorney	.2587
Total number of meetings with attorney	.2552
Attorney responsible for dismissal	.2310
Discussed medical problems, 1st contact by attorney	.1944
Received more PD services than other clients	.1936
Received earlier PD services than other clients	.1758
Time to 1st contact by PD office	.1691
Time to 1st contact by attorney	.1307
Discussed medical problem, 1st contact by PD office	.1019
Discussed family problems, 1st contact by attorney	.0956
Discussed family problems, 1st contact by PD office	.0085

Table IV-42
Item Correlations with Clients' Satisfaction
with Post-Arrestment Attorney

Item: (Client perception)	Coefficient
Attorney trustworthy	.7404
Attorney cared about client as an individual	.6804
Attorney competent	.6545
Attorney on client's side	.6267
Attorney listened to what client had to say	.6154
Client treated fairly	.5743
Attorney fought hard	.5550
Attorney truthful	.5393
Attorney gave good advice	.5296
Attorney listened to what client wanted to do	.5141
Attorney wanted light sentence	.4951
Attorney believed client	.4694
Attorney wanted justice rather than speed	.4432
Attorney did not want client punished	.4224
Sentence too light vs. too heavy	.4153
Attorney did not want conviction	.3463
Attorney responsible for heavy sentence	.2810
Received more PD services than other clients	.2749
Sentence lighter than other defendants	.2696

Table IV-43
Rank-Order of Items Common
to Pre- and Post-Arrestment Attorneys
(by Correlation with Client Satisfaction)

Item: (Client perception)	Rank	
	<u>Pre</u>	<u>Post</u>
Attorney cared about client as an individual	1	2
Attorney trustworthy	2	1
Attorney listened to what client had to say	3	5
Attorney competent	4	3
Attorney fought hard	5	7
Attorney gave good advice	6	9
Attorney believed client	7	11
Attorney listened to what client wanted to do	8	10
Attorney truthful	9	8
Attorney wanted light sentence	10	12
Attorney wanted justice rather than speed	11	13
Attorney did not want conviction	12	15
Attorney on client's side	13	14
Attorney did not want client punished	14	14
Client treated fairly	15	6

The correlation coefficients shown in Tables IV-41 and VI-42 can also provide some useful insights regarding clients' willingness to choose their public defender attorneys should they get into trouble again. For example, while test clients in both Passaic and Palm Beach Counties were generally more inclined to choose their pre-Arrestment attorneys than were control clients in these sites (significance levels = .1039 and .0910 respectively), there was no difference between test and control clients in Shelby County. At least in part, this might be explained by examining the results of experimental-vs.-control comparisons for those variables found to correlate highly with this measure of satisfaction. Shelby County's performance on experimental-vs.-control comparisons is similar to that found in the other two sites for the first three (i.e., the most "important") items. However, on the fourth item--attorney competence--Shelby County's pre-Arrestment test attorneys were perceived less favorably by their clients than were pre-Arrestment control attorneys at this site. This is in contrast with similar comparisons for Passaic and Palm Beach Counties, where the competence of pre-Arrestment test attorneys was generally rated more favorably than that of their control group counterparts. Since perceived attorney competence is relatively highly correlated with ultimate satisfaction, it seems likely that Shelby County test clients' reluctance to choose their pre-Arrestment attorneys again is related to a negative assessment of their attorneys' competence.

Along these same lines, we might also "explain" why only Palm Beach County's test clients were more likely than their control group counterparts to choose their post-Arrestment attorneys again. Here, we note that Palm Beach County test attorneys fared better than test attorneys at either of the two sites in terms of test-vs.-control comparisons for each of the three items most highly related to satisfaction with post-Arrestment attorneys. Thus, the greater tendency of Palm Beach test clients to favorably assess their attorneys' trustworthiness, concern for clients as individuals, and competence may have much to do with these clients' subsequent greater willingness to choose the same attorneys again.

Finally, we have mentioned throughout this section a pervasive shift at all three sites from pre-Arraignment comparisons generally favoring test attorneys to post-Arraignment comparisons that are generally more favorable to control attorneys. This shift is especially noteworthy because it is consistent in several ways with the expectations underlying the ERDC Field Test. First, we note that the earlier and more extensive services envisioned by the ERDC model were expected to, and did in fact result in a greater number of lower court dispositions. (See Chapter V for a detailed examination of this hypothesized outcome.) As a consequence, the kinds of test cases (and, one might also expect, the kinds of test clients) not disposed of at the lower court level would be rather different from the control cases that went to upper court. In effect, ERDC services result in the early elimination of less serious cases (cases involving less serious arrest charges, clients with less extensive prior records, etc.). Thus, while the pre-Arraignment test and control samples were initially comparable, the subsets of these samples which remained in the system long enough to have any contact with a post-Arraignment attorney were quite different. For example, clients with extensive prior records might be over-represented in the control sub-sample relative to the test sub-sample. It seems reasonable to expect that clients with extensive records, or those accused of more serious crimes, might be more inclined to perceive their public defenders negatively. Therefore, the shift in attitudes from pre-Arraignment to post-Arraignment may partly be caused by the bias in the sample of cases arraigned in upper court.

Second, the shift to more favorable ratings for control attorneys might also be anticipated on psychological grounds. Specifically, control clients might tend to give especially high ratings to their post-Arraignment attorneys simply because of the contrast between the pre- and post-Arraignment services which they receive. Prior to their Arraignment, control clients receive relatively few P.D. services; whereas after Arraignment, they receive many more. This potentially strong contrast in favor of their post-Arraignment attorneys should be expected to result in client perceptions which tend to overstate the virtues of their post-Arraignment attorneys.

Finally, it is also reasonable to hypothesize that at least some of this shift is justified by objective reality. It may well be the case that post-Arrest attorneys for control clients feel a greater sense of urgency and/or approach their cases with greater zeal and enthusiasm simply because these clients have not yet received substantial legal services. Moreover, more work must be done to prepare control cases after Arrest than is necessary for test cases (test cases often have been well prepared by the pre-Arrest attorneys). Thus, control clients may actually have more opportunity to see their post-Arrest attorneys "in action" than do experimental clients, a factor which Casper (see above) found to be critical in determining client satisfaction.

All the above suggests that the observed shift toward higher ratings for post-Arrest control attorneys is a reasonable expectation which might have been hypothesized prior to the ERDC Field Test. Taken together with the generally higher ratings for pre-Arrest test attorneys, this phenomenon provides further, indirect confirmation of the efficacy of the ERDC model in terms of enhancing clients' satisfaction with their attorneys and with their attorney-client relationships.

CONCLUSIONS

The designers of the ERDC Field Test anticipated that early intervention by public defenders of felony cases would improve attorney-client relationships. In general terms, this conclusion is supported by some data at each test site. However, our findings concerning the impact of the Field Test on attorneys' and clients' attitudes about their relationship are far from consistent.

As noted earlier in this chapter, the ERDC Field Test had few if any effects upon attorneys' trust of their clients, their belief in their clients' innocence, their beliefs regarding how their clients perceived them, the number of clients whom they (the attorneys) liked, or the number of clients whom attorneys believed liked them. However, attorneys at all three sites did report that the ERDC model improved their ability to control their clients, and most attorneys also

reported after the Field Test that they viewed rapport with their clients as being a more important aspect of their job than they had prior to the Field Test. In effect, attorneys saw ERDC as an opportunity to improve their relationships with their clients; they came to view this as an important part of their job; but their feelings, beliefs, and expectations about their clients remained unchanged.

From the client's perspective, ERDC appears to have had a substantial impact on the attorney-client relationship. While not all of the comparisons between test and control clients' perceptions were statistically significant, most test clients rated most aspects of their relationship with their pre-Arrest attorneys more highly than did most of their control-group counterparts. Nonetheless, test clients were only marginally more likely than control clients to choose the same attorney again. Moreover, for the most part, the factors which appear to have the greatest impact on clients' satisfaction with their pre-Arrest attorneys are the more subjective, interpersonal aspects of the attorney-client relationship rather than the more objective characteristics of the services they received. Thus, despite some variation between sites, the data support the conclusion that felony defendants' overall satisfaction with public defense is more sensitive to what we have called "affective" aspects of the attorney-client relationship than it is to the "instrumental" aspects of this relationship.

Therefore, it is likely that an early representation intervention can break the cycle of mutual mistrust between felony defendants and their public defenders, if such representation also reduces attorney mistrust of their clients. However, the data from attorney interviews do not indicate that such a change has taken place. On the contrary, the most significant changes in attorney attitudes resulting from participation in the early representation intervention take place along the "instrumental" dimension. There is a lack of congruence between the attitudinal shifts we have identified for clients and attorneys, as a consequence of the Field Test. Apparently, early intervention by defense counsel does improve the attorney-client relationship on both sides, although unfortunately not in a mutually reinforcing manner.

VII. IMPACT ON THE CRIMINAL JUSTICE SYSTEM

In this chapter we review the available data pertaining to the impact of the ERDC Field Test on the criminal justice systems in the three grantee sites. We examine this impact from three rather divergent perspectives. First, we report on the perceptions of key actors throughout the criminal justice systems of each grantee site. Second, we review some of the findings presented earlier in Chapter V and assess their implications for system impact--both actual and potential. Finally, we discuss the extent to which each of the three counties has institutionalized various aspects of the ERDC model.

ASSESSMENT OF IMPACTS BASED ON KEY ACTOR INTERVIEWS

Interview data offer an important vantage from which to assess the effects of the Field Test. During final round interviews with public defender staff and local key criminal justice actors, respondents were asked several questions designed to elicit their impressions regarding the impacts of the Field Test.

Attorneys at each site were asked to describe the most important effect of the Field Test on their office. In Shelby County, two of the three lower court test attorneys and four of the eleven felony attorneys interviewed cited the importance of and need for continued early investigation. In addition, several mentioned that the individualized case handling and quality representation available in lower court during the test period led to better client interactions and quicker case dispositions.

Felony test attorneys in Passaic County reported that, as a consequence of the Field Test, cases of limited consequence were screened out and those cases which arrived in upper court could be afforded better representation and were easier to control. Felony control attorneys perceived the Field Test as reducing the caseloads of felony test attorneys.

In Palm Beach County, both test and control attorneys said that the most important consequence of the Field Test for the office was the improved attorney-client relations occasioned by the early contact and representational activities. Additionally, several test attorneys mentioned that, as a result of the Field Test, clients' perceptions of the office improved and that they (i.e., the public defenders) felt more like private attorneys.

Staff at all three of the sites also were asked to evaluate how successful the Field Test was in improving the efficiency and effectiveness of the criminal justice process in their jurisdiction. At each site, nearly half of the respondents reported either not knowing what effects the test had or that the effects on the criminal justice process were "neutral." Among those attorneys who perceived effects, the overwhelming majority rated the Field Test as successful in this regard.

Finally, attorneys were asked to describe what they thought was the most important result of the ERDC Field Test in their jurisdiction. Passaic County attorneys cited better client rapport and earlier case dispositions as the major effects of the Field Test in their jurisdiction. In Shelby County, lower and upper court attorneys cited four main system benefits:

- earlier and better pretrial release decisions;
- more cases disposed of in lower court;
- generally shorter case processing time in both lower and upper court; and
- the advantages of early investigation to better representation of clients and earlier case disposition.

Attorneys in Palm Beach County reported that the main results of the Field Test were that it improved pretrial release decisionmaking and that more cases were resolved earlier. One attorney also indicated that participation in the Field Test elevated the status of the office in the eyes of both clients and other criminal justice agencies.

The impressions of key actors in criminal justice agencies at each site also were obtained. During the final interview round these respondents were asked if the Field Test had any effect on the operations and procedures of their

agency and if it caused any changes in the criminal justice process. In all three sites, the majority reported that the Field Test did not affect the criminal justice process in general but did have some effect in terms of their particular agency.

For example, three Passaic County lower court judges reported that the test had positive effects on their courtrooms. They cited the client rapport established by early PD contact and the enhanced bail setting process as major benefits. As one said, "My courtroom is calmer, less uncontrollable. Clients listen to their PD and don't just speak out." Prosecutors at the site expressed mixed reactions. Several felt that they experienced no changes (as a result of the Field Test), although one reported that it slowed down case processing activities. Other prosecutors, however, suggested that the Field Test helped screen out "junk" cases and made case processing faster.

In Shelby County, several prosecutors reported that the test helped them to move cases faster. Judges interviewed also cited quicker movement of cases as a benefit, and one suggested that the individualized case assignment approach employed during the test period was the key to improved client and attorney attitudes. Two staff members of PTS reported that the screening function performed by their agency under the Field Test created some problems. However, another PTS staff member stated that presence of the test attorneys at bail setting relieved PTS staff of dealing with some of the legal issues involved in determining pretrial release. According to this respondent, PTS staff were happy to relinquish this aspect of their role in the bail determination process.

In Palm Beach County, the key actors interviewed reported very few effects, either positive or negative, on their agencies as a result of the Field Test. One judge indicated that the presence of the test attorneys improved the bail setting process at First Appearance and a representative of TASC, a local diversion agency, reported improved relations with the Public Defender's Office and fewer problems with clients as a result of the earlier and more extensive attorney-client contact.

ASSESSMENT OF IMPACTS BASED ON CASE PROCESSING DATA

Impact on Public Defender Resources

Table VII-1 provides comparisons between the amount of public defender attorney time recorded for test and control clients in Passaic and Shelby Counties. In Passaic County, the average test case required 40.5 minutes of lower court attorney time and--for those cases going to upper court--337.9 minutes (approximately 5.6 hours) of upper court attorney time. Control cases required an average of only 24.1 minutes of lower court attorney time and--for cases transferred to upper court--228.0 minutes (3.8 hours) of upper court attorney time. However, as was shown in Figure V-1 (p. 189), 74.2% of all Passaic County test cases were resolved in lower court, compared with 67.4% of control cases. Thus, the average total attorney time required for test cases was 127.7 minutes per case ($40.5 \times .742 + (40.5 + 337.9) \times .258$). The average total time required for control cases was 98.4 minutes per case ($24.1 \times .674 + (24.1 + 228.0) \times .326$), a total of 29.3 minutes per case less than the average test case.

INSERT TABLE VII-1

As we noted in Chapter V, Passaic County's upper court attorneys were more likely to take test cases than control cases to trial. At least some of the disparity in total attorney time required is an artifact of this increased propensity to try test cases. When we confine our analysis to cases not going to trial, the net cost of ERDC services in Passaic County is reduced to 25.6 minutes per case (82.1 minutes of attorney time per test case vs. 56.5 minutes per control case).

The average Shelby County test case required 102.2 minutes of lower court attorney time and--for cases going to upper court--257.5 minutes (approximately 4.3 hours) of upper court attorney time. Control cases required an average of 77.7 minutes of attorney time in lower court, and 285.1 minutes (approximately 4.8 hours) of attorney time in upper court. However, only 28.2% of all test cases went to upper court, compared with 45.6% of all control cases. Thus,

TABLE VII-1
Average Public Defender Attorney Time Required Per Case

	<u>Lower Court</u>	All U.C. Cases	<u>Upper Court</u>	
			<u>No Trial</u>	<u>Trial</u>
<u>Passaic County</u>				
Test Cases	40.5 min. (n=373)	337.9 min. (n=104)	201.7 min. (n=90)	1213.6 min. (n=14)
Control Cases	24.1 min. (n=333)	228.0 min. (n=107)	123.4 min. (n=96)	1,141.4 min. (n=11)
<u>Shelby County</u>				
Test Cases	102.2 min. (n=548)	257.5 min. (n=196)	257.5 min. (n=196)	Not Recorded
Control Cases	77.7 min. (n=715)	285.1 min. (n=375)	283.3 min. (n=373)	622.5 min. (n=2)

the average total attorney time required for test cases was 174.8 minutes $(102.2 \times 71.8 + (102.2 + 257.5) \times .282)$ compared with an average for control cases of 207.7 minutes $(77.7 \times .544 + (77.7 + 285.1) \times .456)$ of attorney time. In contrast with Passaic County, this amounts to an apparent net savings of 32.9 minutes of public defender attorney time per case. However, further adjustment must be made to compensate for the missing data for the two test cases going to trial. When the analysis is confined to cases not going to trial, the net savings is slightly reduced, to 32.1 minutes (174.8 minutes of attorney time per test case vs. 206.9 minutes per control case).

Table VII-2 shows comparable data for public defender investigator/interviewer time in Passaic County. (Upper court investigator/interviewer time was not systematically recorded in Shelby County.) The average test case required a total of 32.6 minutes of investigator/interviewer time $(25.5 \times .742 + (25.5 + 27.6) \times .258)$ as compared with 39.0 minutes for the average control case $(31.7 \times 67.4 + (31.7 + 22.4) \times 32.6)$. After adjusting for the greater frequency of test case trials in upper court, the mean savings per case is increased to an average of 8.1 minutes per case (29.5 minutes per test case vs. 37.6 minutes per control case).

INSERT TABLE VII-2

A major problem in interpreting all of the above findings is that attribution of upper court public defender staff time requirements to lower court ERDC service delivery is dubious at best. The picture is particularly clouded in Passaic County where those test and control cases transferred to upper court were assigned to separate units. The effects of ERDC services are potentially confounded with subsequent differences in the capabilities and enthusiasm of upper court attorneys and, even more seriously, with differences in caseloads. Thus, Passaic County assigned upper court test cases to a group consisting of five attorneys, while upper court control cases were assigned to a total of four attorneys. Since, among all cases transferred to upper court, control cases outnumbered test cases by almost 25% (141 to 113), the apparent differences in attorney time required (favoring control cases by more than 25 minutes per case) may have resulted from the additional staff time available for test

TABLE VII-2
Average Public Defender Investigator/Interviewer
Time Required Per Case

	<u>Lower Court</u>	All U.C. <u>Cases</u>	<u>Upper Court</u>	
			<u>No Trial</u>	<u>Trial</u>
<u>Passaic County</u>				
Test Cases	25.5 min. (n=373)	27.6 min. (n=103)	15.6 min. (n=90)	110.8 min. (n=13)
Control Cases	31.7 min. (n=334)	22.4 min. (n=107)	18.1 min. (n=96)	60.0 min. (n=11)
<u>Shelby County</u>				
Test Cases	41.0 min (n=553)	Not Recorded	Not Recorded	Not Recorded
Control Cases	10.2 min. (n=714)	Not Recorded	Not Recorded	Not Recorded

cases rather from any real effect of ERDC services. In contrast, test and control cases were handled by all upper court attorneys in Shelby County, so that this potential for confounding was effectively eliminated.

Impact on Pretrial Detention

Another impact of the ERDC service model was in terms of defendants' time in jail prior to case disposition. Table VII-3 shows the mean time in detention, prior to either making bail or final disposition, for test and control subjects (excluding cases involving attorney withdrawals) at each of the three sites. The differences in means range from 1.2 days in Palm Beach County to 20.4 days in Shelby County. As a percentage of control subjects' jail time, these differences translate into reductions of 16.4%, 38.7%, and 4.8% for Passaic, Shelby, and Palm Beach Counties respectively.

INSERT TABLE VII-3

Interpretation of these reductions in jail time must be tempered by two observations made earlier (Chapter IV). First, control clients in Shelby were less likely than test clients to have prior arrest and conviction records. Thus, they might be expected to win pretrial release more frequently; and, accordingly, the 38.7% reduction shown for Shelby County may somewhat overstate real program impact. On the other hand, the more modest reductions shown for Passaic and Palm Beach Counties may in fact represent understatements of the potential effects of ERDC services. Since both of these were faced with extremely overcrowded jail conditions, it is reasonable to presume that even control clients obtained pretrial release more often than might otherwise have been the case.

Despite these caveats, it is nonetheless informative to consider the magnitude of savings which were potentially available in each grantee site. In Passaic County, there were 1,241 intakes over an 11-month period, or an annual rate of 1,354 new public defender cases. Of these, an estimated 90 cases resulted in attorney withdrawals, leaving 1,264 total cases handled through final disposition. The average jail time reduction of 5.7 days per case (shown in Table VII-3) thus results in an estimated total potential reduction of 7,241 days of jail

Table VII-3
Jail Time Prior to Disposition

	<u>Mean</u>	<u>Standard Deviation</u>
<u>Passaic County</u>		
Test Clients (n = 372)	29.2 days	55.7 days
Control Clients (n = 387)	34.9 days	61.5 days
<u>Shelby County</u>		
Test Clients (n = 382)	32.3 days	50.6 days
Control Clients (n = 546)	52.7 days	63.5 days
<u>Palm Beach County</u>		
Test Clients (n = 640)	24.9 days	42.9 days
Control Clients (n = 675)	26.1 days	41.8 days

time. Using a conservative estimate of \$10 in variable costs per jail-inmate day, this reduction translates into a potential savings of \$72,411 per year.

Similarly, in Shelby County, the 1,953 intakes received during the 8½ month test period represents an annual intake rate of 2,757 cases. Of these, an estimated 561 resulted in attorney withdrawals, leaving 2,196 cases handled through final disposition. The total potential reduction in jail time (at 20.4 days per client) is thus 44,873 days. At \$10 per jail inmate day, this results in a staggering potential savings of \$448,734 per year.

Finally, in Palm Beach County, 2,467 intakes were received over a 12-month period, with an estimated 366 attorney withdrawals. The remaining 2,101 cases represent a potential reduction of 2,611 jail inmate days, or a potential savings of \$26,115 per year.

Based upon these findings, it is clear that the reduction in variable jail costs which is likely to result from implementation of the ERDC model is substantial. Given the caveats mentioned above, a reasonable estimate is that potential savings amount to approximately \$85 per public defender intake.

Impact on Case Processing Time

The ERDC model's potential for impact on the court system was amply demonstrated. Simple extrapolations from the data presented earlier regarding elapsed time to final disposition (Tables V-27 to V-30) suggest reduction in average case processing time in Passaic County from 17.4 weeks to 13.0 weeks, and in Shelby County from 23.7 weeks to 19.1 weeks. It is reasonable to conclude that the potential for reduction is somewhere between 20% and 25%.

The implication of this conclusion is that adoption of the ERDC model in Passaic County should result in a reduction in the average active public defender case-load of approximately 100 cases, and that implementation in Shelby County should result in a reduction of approximately 200 cases. These potential reductions are also applicable to the average number of active cases in the criminal court system. While a full examination of the impact of such reductions on court

system costs, case backlogs, etc. is beyond the scope of this study, it is safe to say that overall court system efficiency might be substantially enhanced.

Impact on Sentences

While the potential savings in pretrial detention costs and the apparent reductions which can be achieved in court backlogs are encouraging evidence of the value of the ERDC model, differences in post-trial sentencing patterns are equally noteworthy. Table VII-4 shows the percentage of all test and control clients from Passaic and Shelby Counties who received sentences including jail (lower court), prison (upper court), probation, and fines or restitution. The mean severity of each sentence alternative is also shown. Finally, Table VII-4 shows the unconditional sentence expectation (that is, the mean sentence severity across all client, including those ultimately excused from the system) for each sentencing alternative.

INSERT TABLE VII-4

These differences between sentencing expectations of test and control clients may not appear to be substantial. However, as is shown by Table VII-5, when these differences are translated into projected annual cost savings across the entire public defender caseload, the potential for fiscal impact is quite clear. Applying conservative estimates of variable costs--\$10 per inmate day in jail or prison, and \$3.50 per probationer day--and treating fines or restitution as revenues--Table VII-5 shows that had Passaic County applied the ERDC model to all felony clients, a net annual savings of over \$350,000, or \$278 per client, might have been realized. In Shelby County the potential savings were even more substantial, amounting to more than \$2.3 million, or \$1,065 per client.

INSERT TABLE VII-5

INSTITUTIONALIZATION

One key indicator of the success of a field test is the extent to which the tested approach is retained by the participating grantees. The decision by a

Table VII-4
Sentencing Expectations

		<u>Percent Sentenced</u>	<u>Mean Sentence</u>	<u>Expected Sentence</u>
<u>JAIL (Lower Court)</u>				
<u>Passaic County</u>				
Test Clients		23.7%	1.9 mos.	.45 mos.
Control Clients		25.9%	1.7 mos.	.44 mos.
<u>Shelby County</u>				
Test Clients		34.2%	6.6 mos.	2.26 mos
Control Clients		31.6%	6.4 mos.	2.02 mos.
<u>PRISON (Upper Court)</u>				
<u>Passaic County</u>				
Test Clients		18.6%	25.5 mos.	4.78 mos.
Control Clients		21.3%	24.2 mos.	5.15 mos.
<u>Shelby County</u>				
Test Clients		38.0%	36.5 mos.	13.88 mos.
Control Clients		55.7%	31.7 mos.	17.65 mos.
<u>PROBATION</u>				
<u>Passaic County</u>				
Test Clients	Lower:	13.8%	13.6 mos.	5.66 mos.
	Upper:	10.1%	37.5 mos.	
Control Clients	Lower:	11.3%	14.0 mos.	7.21 mos.
	Upper:	15.4%	36.6 mos.	
<u>Shelby County</u>				
Test Clients	Lower:	13.9%	11.4 mos.	2.05 mos.
	Upper:	1.5%	32.0 mos.	
Control Clients	Lower:	10.2%	11.6 mos.	1.84 mos.
	Upper:	2.5%	26.4 mos.	
<u>FINES/RESTITUTION</u>				
<u>Passaic County</u>				
Test Clients	Lower:	31.2%	\$ 278.41	\$ 130.19
	Upper:	21.3%	\$ 203.82	
Control Clients	Lower:	29.9%	\$ 301.67	\$ 124.49
	Upper:	25.9%	\$ 132.57	
<u>Shelby County</u>				
Test Clients	Lower:	16.0%	\$ 188.92	\$ 31.58
	Upper:	1.5%	\$ 95.00	
Control Clients	Lower:	9.8%	\$ 178.59	\$ 20.26
	Upper:	4.9%	\$ 55.00	

Table VII- 5
Potential Fiscal Impact of Sentencing Differences

	<u>Average Sentence</u>	<u>Gain (Cost)* per Case</u>	<u>Total Gain* (Cost)</u>	<u>Savings (Cost)</u>
<u>Passaic County</u>				
<u>Jail Sentences</u>				
Test Clients	13.72 days	(.34 days)	(429.76 days)	\$ (4,298)
Control Clients	13.38 days			
<u>Prison Sentences</u>				
Test Clients	145.46 days	11.1 days	14,030.4 days	\$ 140,304
Control Clients	156.56 days			
<u>Probation Sentences</u>				
Test Clients	172.23 days	47.17 days	59,622.88 days	\$ 208,680
Control Clients	219.40 days			
<u>Fines/Restitution</u>				
Test Clients	\$ 130.19	\$5.70		
Control Clients	\$ 124.49			\$ 7,205
	TOTAL POTENTIAL SAVINGS (COST):			<u>\$ 351,891</u>
 <u>Shelby County</u>				
<u>Jail Sentences</u>				
Test Clients	68.66 days	(7.24 days)	(15,899.04 days)	\$ (158,990)
Control Clients	61.42 days			
<u>Prison Sentences</u>				
Test Clients	422.18 days	114.79 days	252,078.84 days	\$2,520,788
Control Clients	536.97 days			
<u>Probation Sentences</u>				
Test Clients	62.30 days	(6.21 days)	13,637.16 days	\$ (47,730)
Control Clients	56.09 days			
<u>Fines/Restitution</u>				
Test Clients	\$ 31.58	\$ 11.32		
Control Clients	\$ 20.26			\$ 24,859
	TOTAL POTENTIAL SAVINGS (COST):			<u>\$2,338,927</u>

*As described earlier in this chapter, Passaic County had an estimated 1,264 clients per year; Shelby County had an estimated 2,196 clients per year.

grantee to retain any or all of the elements of a test design must be based upon a balancing of the benefits which institutionalization will provide against the increased costs which it will require. Therefore, the degree to which the approach is institutionalized is a practical measure of the success of the field test. To be truly successful a field test approach should both achieve positive analytical results, and be institutionalized by the participating agencies.

Each of the Early Representation by Defense Counsel grantees has institutionalized one or more of the elements it tested during the Field Test. There are elements of the test, however, which universally have been rejected. These elements should be examined first because they provide insights into the practical limitations of ERDC. They include:

- Early Client Contact. Contact with clients prior to First Appearance placed burdens on the test staff at each of the offices. None of the offices intend to retain the early screening components that had to be established for the test. For Passaic County, the difficulty of providing early contact was demonstrated by the extraordinary effort required of the Passaic test attorneys. Other municipal courts of the 14 jurisdictions which make up Passaic County also have unscheduled First Appearances and some variation in lock-up procedures. Providing early representation in a multi-jurisdictional setting presents problems to a public defender where there is more than one lock-up facility to detain defendants, and where municipal courts have no regular scheduling of First Appearances.

The early contact component also proved difficult for the Palm Beach and Shelby County offices. For these offices, the difficulties resulted from the need to rely upon judicial appointment. The Shelby County test was affected by the private bar's resistance to early screening and any attempts to institutionalize early screening would face even stiffer opposition. The judges did not mind the screening per se, but would never relinquish their appointment authority.

The Palm Beach County office continues to represent clients at First Appearance, but would have difficulty in providing services much earlier given the need to retain special staff to do so. Client contact and representation prior to First Appearance may be impractical for those public defender agencies which must rely upon judicial appointment.

- Weekend Coverage. Weekend coverage presented problems for each of the sites. The Shelby and Passaic County test attorneys were required to work on the weekends, and neither of the offices intends to provide that level of coverage to its clients in the future. The Palm Beach County test attorneys did not provide weekend coverage; however, the office has always represented defendants at First Appearance on weekends, and will

continue to do so in the future. Providing weekend client coverage would be a drain on resources for any public defender which did not have to provide such coverage otherwise.

- Continuous Representation. Certain elements of continuous representation will not be retained by the grantees. Palm Beach County will not institutionalize vertical representation. In Palm Beach County, vertical representation is incompatible with the criminal justice system since the prosecutor's office is organized horizontally, and since coverage of First Appearance and Arraignment conflicts with other attorney duties. Vertical representation is perhaps most appropriate in jurisdictions where the prosecutor is organized vertically, and where the regular scheduling of court hearings is compatible. Vertical representation should not be attempted by public defender agencies without the full cooperation of the entire criminal justice community because it places significant pressure upon the individual public defender.

Neither the Passaic nor the Shelby County ERDC projects realized significant benefits from full continuous representation. It is possible that some means of maintaining contact with clients will be devised, but the grantees found that there are periods where their systems are "idle," and where the commitment of resources to support cases during those periods is not easily justified. Neither Passaic nor Shelby had any success in implementing their unique negotiating options. Absent moves to speed up the Grand Jury process or to establish procedures with the prosecutor to allow for continued negotiations, continuous coverage will not be institutionalized.

The following discussion describes the intentions of the three grantees to institutionalize certain of the ERDC procedures. One central theme that recurs throughout the plans of the offices is that the commitment of additional resources to the pre-Arraignment period is justified on the practical grounds of enhancing service delivery, improving the attorney-client relationship, and improving the criminal justice process--the three goals of the ERDC Field Test.

The Passaic County Office of the Public Defender

Authorization was received from the State Public Defender to assign two staff attorneys to the pre-Arraignment stage for the 14 municipalities of the Passaic Trial Region. One of those attorneys will be the junior test attorney, whose year-long ERDC experience has prepared him well to cover the municipal court. The contract attorney system will end in Passaic County. All key actors in the criminal justice community agreed that there must be full time representation in municipal court to support the activities of the Prosecutor's screening unit.

The municipal court attorneys will not be able to provide services as early as the test required, but representation at First Appearance will be their goal. No full-time investigators will be assigned to municipal court, but the staff investigators will be made available on a case-by-case basis.

The excellent case preparation effects of the test are to be retained for all cases not resolved in municipal court, since municipal attorneys will be expected to prepare their cases for the "pass off" to felony attorneys. Procedures have been developed to ensure the smooth running of the municipal court process, and the efficient transfer of information to the superior court.

Shelby County Office of the Public Defender

The benefits of ERDC in Shelby County have not all been institutionalized. Today, public defenders in the General Sessions Court are not present at First Appearance. The bail setting process is concluded without their assistance. Thus, one of the most significant benefits of the Field Test in Shelby County was not institutionalized. Some informed observers do contend, however, that the Public Defender is appointed earlier now than before the test--as much as one week earlier in some cases.

The individualized case assignment system has been institutionalized in the felony division of General Sessions Court. Three experienced public defenders have been assigned to the division, including one felony attorney and one of the three ERDC test attorneys. The addition of a third public defender reflects the added importance given to municipal court representation by the Field Test.

Perhaps the most worthy element of ERDC in Shelby County was early investigation. The Chief Public Defender had difficulty in getting this position funded by the county, and was successful only after advocating for almost a year. His efforts have been well compensated. Approximately 40 cases per month have been investigated at the General Sessions level since the test ended in August, 1983. The "refusal to prosecute" form has been institutionalized, as have earlier and more substantive negotiations.

Today, with the General Sessions felony court served by a staff of three attorneys, a "street" investigator, and a client interviewer, the General Sessions process proceeds faster than it did prior to ERDC, even with the expanded caseload. It also has enabled the office to maintain the high level of case preparation for those cases not settled in municipal court. Thus, the benefits of enhanced representation will be preserved by the office.

Palm Beach County Office of the Public Defender

The positive aspects of test services were retained in Palm Beach County by the creation of a Public Defender Intake Unit housed at the new jail complex. It is staffed by two lawyers and a full-time secretary. The intake lawyers provide early representation services, including representation at First Appearance. Intake lawyers now negotiate directly with the Intake Unit of the State Attorney, which is also housed at the new complex. When early investigation seems warranted, all investigators are available for pre-Arrest investigation. Since a file will be opened on a case by the new Intake Unit prior to Arrest, it is possible to pass information on to a regular felony attorney when the case is arraigned in Circuit Court.

One aspect of the test experience that the office chose to institutionalize is a commitment to standardized case management. The introduction of the AMICUS case management system represents a dramatic step in achieving this goal. The use of AMICUS should improve and expedite internal office management. The management of cases will continue to be the responsibility of each Division, but the use of the AMICUS forms by both Intake and Felony staff will enable the central office to analyze case data centrally which will improve overall planning and reporting. Case data will be computerized to facilitate that analysis.

SUMMARY

The findings reported in this chapter reflect three substantially divergent perspectives. From the standpoint of criminal justice system participants, the primary effects of the ERDC Field Test were reported as relatively modest

improvements in case management capabilities: attorney-client relationships were improved; case processing was expedited; and the results of initial bail-setting hearings were more equitable. From the standpoint of systemwide costs and benefits, the ERDC model showed substantial promise. Overall system costs might have been reduced dramatically had the ERDC model been applied to all cases in the test sites. From the standpoint of subsequent institutionalization, only some aspects of ERDC services were retained. In general, however, all three counties are likely to continue to reap some of the benefits of the ERDC model.

VIII: CONCLUSIONS AND POLICY IMPLICATIONS

In this section, we offer our conclusions regarding the overall efficacy of the early representation concept, provide suggestions to interested public defender agencies regarding the potential of early representation in their jurisdiction and the approach which should be taken in developing an early representation program which fills their needs, and discuss the broad policy implications which logically flow from the Field Test results.

THE CONCEPT EXAMINED

The Early Representation by Defense Counsel concept can be described as the organized delivery of services by a public defender agency in a manner which promotes:

- early contact with the felony defendant as soon after arrest as possible and meaningful representation of the client at the First Appearance before a magistrate;
- continuous meaningful representation of the client by the office until the disposition of the case; and
- early investigation of the facts of the case, either to facilitate early settlement negotiation with the municipal or lower court prosecutor or to obtain and preserve evidence which is necessary for the defense of the case in a subsequent trial in the court of general jurisdiction.

Each ERDC grantee was faithful to that concept of early representation. The success they achieved was substantial and the impacts of that success on pre-trial defense, the timing of court dispositions, the nature of case resolutions, the attorney client relationship, and the criminal justice process in general were sufficient to justify the following conclusions regarding the ERDC concept.

Early representation improves the bail setting process and promotes the earlier release of defendants from pretrial detention without otherwise endangering the public safety.

- Across all three sites, a majority of the judges, prosecutors, and public defenders agreed that, under the ERDC test process, First Appearance became a more focused and informed hearing which resulted in a bail setting decision more appropriately tied to the offense charged and the defendant's prior court appearance record. This opinion was shared by representatives of the three jurisdictions which prior to ERDC had dramatically different approaches to the bail setting hearing--one had no defense or prosecutor involvement, one had only prosecutor involvement, and one had both prosecutor and defense involvement.
- Across all three sites, ERDC intervention had a significant impact on pre-trial release which can be translated into substantial cost savings. At each test site there was a reduction in the time from arrest to pretrial release and some indication that such release was more likely to be made on the defendant's own recognizance than secured by a surety bond. Moreover, in two of the sites there was no change in the proportion of defendants who obtained their release, only in the timing of that release, thus, savings were achieved without jeopardizing the public safety.
- At the one site where ERDC intervention resulted in an increase in the proportion of defendants released pretrial, two special conditions were present. First, under usual conditions there was no public defender to counter the strong prosecutorial presence at First Appearance; and, second, the jurisdiction was the only one of the three with a jail not under federal court order for overcrowding and a system not geared to release the maximum number of defendants possible to honor that order. Thus, the increased pretrial release activity there can be considered a function of the efficiency which ERDC services introduced into the adjudication process.

Early Representation has a dramatic impact on the nature and timing of municipal or lower court case processing by promoting the early resolution of those felony cases which are more appropriately handled as misdemeanors or dismissed outright, and such an impact can represent a substantial cost savings to the system.

- Test attorneys and investigators at each site agreed that added emphasis on improved case handling and the availability of field investigative services in municipal court generated information which increased the likelihood of resolving more felony arrests in municipal court as misdemeanors or dismissals.
- The municipal court prosecutors in one of the jurisdictions extolled the virtues of ERDC intervention and admitted that it had improved their case screening process considerably. Prosecutors in the other two sites acknowledged the increased involvement of the public defender during the test in municipal court and supported the continuation of such representational activities.
- At one site, early investigation was supported and promoted unanimously by the judiciary, the prosecution, and the defense.
- At all three jurisdictions, ERDC intervention had a major impact on the proportion of cases resolved in lower court. In each county, test cases were more likely than control cases to be reduced and handled as misdemeanors or dismissed outright. However, while a slightly lower proportion of test cases than control cases were sentenced to incarceration in municipal court, those test clients on the average were sentenced to slightly longer terms.
- Available data suggest that in at least one of the sites those test cases which were resolved in municipal or lower court were resolved significantly sooner than were control cases.

ERDC intervention also has some positive impact on the nature and timing of upper court processing.

- Those judges and prosecutors practicing in upper court saw little or no distinction between test and control cases or the handling of those cases

and could cite no observable impacts of ERDC intervention on upper court processing. However, since many of the less serious test cases were in fact disposed of in lower court, those test cases which were transferred to upper court were, as a group, more likely to involve serious charges.

- Nonetheless, of those cases arraigned and prosecuted in upper court as felonies, there were few distinctions between test and control cases except that:
 - test defendants were somewhat more likely to be sentenced to incarceration and sentenced to slightly longer incarceration periods; and
 - in at least one jurisdiction test cases were much more likely to be taken to trial than control cases.

ERDC intervention promotes early case resolution, which can be translated into considerable cost savings for the adjudication system.

- For two sites, test cases were more likely to be resolved in municipal court than control cases.
- For two sites, test cases reached final disposition significantly sooner than control cases--in one the median test case was resolved six months sooner and in the other the median test case was resolved two months sooner.

Early Representation tends to improve the attorney client relationship.

- While early representation had little impact on the feelings of test attorneys toward their clients in general, test attorneys at all three sites reported that ERDC intervention had a positive effect on their relationships with their clients by enabling them to establish rapport earlier and to achieve better client control.
- In the two jurisdictions with horizontal representation, felony attorneys observed that the test clients who had received ERDC services in lower court were better informed about their cases, better prepared to assist in their defense, and easier to establish rapport with.

- Key system actors at the three sites observed little variation in the relationships established between test and control clients, but the few individuals who reported any difference indicated that test attorneys enjoyed better relationships with their clients than did control attorneys.
- From the client's perspective, ERDC appears to have had a substantial impact on the attorney-client relationship, as test clients in each site were more positively disposed toward their municipal or early representation attorneys than were control clients and were more likely to choose that attorney again. ERDC had little impact, however, on the preference of clients, test or control, for privately retained counsel over a public defender.

Early representation is an efficient and cost-effective use of public defender resources which does not compromise the primary charge of the Public Defender to provide the best possible defense for all of its clients.

- ERDC intervention resulted in substantial savings to the test offices and communities which outweighed its costs in the following ways:
 - substantial jail housing and support cost savings were realized at each site due to the reduced time between arrest and pretrial release;
 - substantial savings were realized in court processing costs at two sites due to the higher proportion of test cases resolved in municipal court and the considerable overall reduction in time spent from arrest through final disposition for all test cases; and
 - the costs of implementing the early representation services (excluding the costs involved in grant administration, data collection and reporting, project management, and travel) were all but offset by other system-wide cost savings.
- The actual per-case costs to the public defender were not appreciably increased by the increased commitment of resources to the lower court phase of the adjudication process:
 - while test cases received substantially more attorney and investigator time and attention during municipal court processing, there was little

variation overall in the average time spent on test and control cases;
and

- at the one site where test cases on the average did receive more time and attention overall, this may well have been an artifact of the lower caseloads carried by upper court test attorneys and the fact that a higher percentage of test cases were taken to trial rather than resolved by a plea.

While ERDC intervention generally improves the services available to clients of the Public Defender, it does not necessarily afford representation to defendants early enough to reduce confessions nor to increase representation at line ups or interrogations.

- None of the three test grantees were able to contact clients early enough to represent them at police interrogations, nor were any increases in representation at police line ups reported by test staff.
- Test attorneys at each site agreed that only on rare occasions were they able to contact clients early enough to have any impact on the decision of the defendant to make an incriminating admission to police.

SUGGESTIONS FOR INTERESTED PRACTITIONERS

Early representation requires a redirection and enhancement of resources by the Public Defender to the earliest stages of the adjudication process. In this section we present some practical suggestions to interested public defender offices to assist them in their decision to establish an early representation program.

Optimum Conditions for Replication

While early representation should be beneficial to any jurisdiction where the public defender is not currently involved early and substantively in felony cases, it appears that some conditions can facilitate and/or enhance the early representation experience. These include:

- When the Public Defender can determine eligibility and accept clients for services absent judicial appointment, the benefits of ERDC can be

substantial. Where the judiciary cooperates in conditionally appointing the Public Defender to promote early representation, benefits will also be realized.

- When the Public Defender and Prosecutor are organized similarly (i.e., either horizontally or vertically but not a mix of the two) the process will work more smoothly.
- When Public Defender staff can gain access to defendants prior to First Appearance and where such access is accommodated by the sheriff or other pretrial detention authority, the benefits of ERDC will be enhanced through improved representation at First Appearance.
- Where the municipal or lower court is staffed by prosecutors who have the authority and responsibility to screen felony cases prior to submission to a grand jury or formal felony charging, ERDC can enhance the screening process.
- In jurisdictions with several municipal courts, the operating procedures of these courts should be consistent and compatible with each other.

Issues for Interested Public Defenders

In replicating a program of Early Representation by Defense Counsel, interested public defenders should give attention to a number of issues. These include:

- The agencies in the criminal justice system should be informed of the benefits of such a process as well as its demands because:
 - jail administrators will be more likely to cooperate with the increased public defender demands for client interviews when they learn that the average length of pretrial incarceration for public defender clients should be reduced;
 - judges will be more likely to cooperate by appointing the public defender early in the process when they learn that the initial bail setting

hearing will be improved and the municipal court process streamlined by an early representation program;

- prosecutors will be more likely to cooperate when they learn that early investigation and early defense attorney involvement can enhance and improve the screening of those felony arrests which should be prosecuted as misdemeanors or dismissed outright; and
- pretrial release, diversion, and alternative sentencing agencies and programs will be more likely to cooperate when they learn that coordination with the public defender agency can enhance and support their operations.

- Sufficient resources should be committed to the early representation program to achieve the full benefits of the concept. Such resources should include staffing with experienced attorneys and experienced investigators and adequate secretarial or paralegal support.
- The status of the municipal court operation must be elevated in the eyes of the public defender office. When attorneys and investigators see that municipal court service is more than just a steppingstone to felony trial practice, their performance will improve. Public defender offices should also consider regularly rotating experienced trial staff through the program to ensure that the best practitioners are involved in early representation.
- The implementation of an early representation program should be done according to a plan which specifies:
 - a process of eligibility screening which will be used to reduce the incidence of clients who later retain private counsel;
 - a process for early determination of conflicts, to achieve early withdrawals from cases when warranted;
 - early plea negotiation and case screening should be included in any program of early representation, and procedures should be set up with

the prosecutor to facilitate the negotiating process if none currently exist;

- (for defenders organized horizontally) a process for passing case information from lower court attorneys to upper court attorneys which ensures that all benefits of early representation are preserved, and which allows for and encourages discussions among attorneys regarding individual cases and clients;
- (for defenders organized horizontally) a process for apprising clients represented in lower court that they will be represented by another attorney in upper court, to preserve the benefits of early client rapport; and
- early investigation should be a key element of any program of early representation; a process of assigning and supervising investigators should be established which promotes the activities of early representation attorneys; procedures for documenting the findings of early investigation should be developed which are consistent with the client's interests.

RECOMMENDATIONS TO NIJ

We believe that the success of the ERDC Field Test should be widely announced and promoted by NIJ. This opinion is shared by informed practitioners. At the final cluster conference, convened in October, 1983, to report on the preliminary evaluation findings an esteemed group of individuals representing the public defense, prosecutorial, judicial, administrative, and court support communities were in attendance. After numerous presentations and lengthy, animated, and informed discussion, the conference participants were asked to make suggestions to NIJ regarding the best means of reporting and disseminating the eventual findings of the Field Test. We are proud to add the suggestions of those experts to our own.

Training

- NIJ should sponsor training to practitioners interested in the value and method of providing early representation services. The development of a

training manual should be considered and representatives of the three participating ERDC grantees should be recruited to participate in any formal training sessions. Specific groups to be trained include judges, prosecutors, pretrial service workers, and sheriffs/jailers, as well as public defenders.

- Workshops should be given at the national conferences of the ABA, NLADA, NDAA, etc., appropriately tailored to those audiences, to report on and promote the concept of early representation.
- Regional sessions should be convened by the three participating ERDC offices to report the results which they obtained from ERDC and to promote its widespread replication.
- An ERDC curriculum should be prepared for such bodies as the National College of Criminal Defense, and the National Judicial College.

Dissemination

- Scholarly papers should be prepared and submitted to journals devoted to the study of criminal law and the administration of justice to stimulate widespread discussion and debate.
- The findings regarding cost savings which can be achieved by the operation of an early representation program should be widely disseminated to appropriate fiscal and administrative bodies at the national, state, and local levels (e.g., NACO, League of Cities, State Bars, statewide defender agencies, etc.).
- Papers should be prepared and presented at the national conferences of those national associations whose members might most likely benefit from ERDC.
- Papers should be prepared and submitted to professional journals and newsletters of the ABA, NLADA, NCSC, NDAA, and NAPSA which are widely read by practitioners.

Future Research

- Follow-on research should be conducted at test sites to determine whether the positive effects and benefits of ERDC on test clients had any impact upon recidivism.

- Research should be conducted to determine the means of translating the ERDC concept to the assigned counsel method of providing public defense, which accounts for 30-40% of all appointed criminal work.

- Follow-on research should be conducted to examine the existing data bases produced by the evaluation more closely and rigorously including:
 - the attorney and investigator activities data base to determine any performance based trends and contrasts; and
 - the case processing data base to determine if there may be any systematic way of identifying broad groupings of felony cases appropriate for early screening and resolution in municipal court and to test if ERDC has an impact on recidivism.

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APPENDIX A:
PROCESS AND IMPACT STUDY APPROACHES

FIGURE A

OVERVIEW OF PROCESS STUDY METHODOLOGY

EVALUATION QUESTION	DATA SOURCE(S)	DATA COLLECTION TECHNIQUE/INSTRUMENT	DATA ANALYSIS
Baseline			
What was the grant writing & test planning process?	--Memos, correspondence, other written materials --PD office staff --Key actors	--Documents obtained from NIJ and PD office. --Formal interviews using protocols developed for PD office and key actors	--Enumeration of actor involvement in terms of event chronology with cross-site contrasts developed
What is the social, political, and legal climate in which the PD office operates?	--Memos, correspondence, grant application --Newspaper and magazine articles --Legislation & criminal statutes --PD office staff --Key actors	--Documents obtained from NIJ & PD office --Literature search --Legislative review --Formal interviews using protocols developed for PD office & key actors	--Summaries of stake holders, power associated with various interests and cross-site contrasts developed
How is the PD office organized and how does it operate?	--Memos, correspondence, grant application --PD office staff --Key actors	--Documents obtained from NIJ & PD office --Formal interviews using protocols developed for PD office & key actors	--Generate both formal & informal organizational charts with emphasis on case and decision flows
How does the criminal justice system operate with respect to processing felony cases?	--Grant application, memos --Annual reports of key justice system agencies --Extant data files --PDs and investigators --Key actors	--Documents obtained from NIJ, PD office, other criminal justice agencies --Data transfer of system files or special on-site runs --Formal interviews using protocols developed for PDs, investigators and key actors	--Develop flow charts
What activities are being undertaken in preparation for the startup of the test?	--Memos, correspondence, letters of support or cooperation, other written materials --PD office staff --Key actors	--Documents obtained from NIJ & PD office --Formal interviews using protocols developed for key actors	--Enumeration of activities said to be in preparation juxtaposed to others observed

EVALUATION QUESTION	DATA SOURCE(S)	DATA COLLECTION TECHNIQUE/INSTRUMENT	DATA ANALYSIS
<u>Startup</u>			
Did the PD office hire additional staff for the test?	--Memos, grant application, job descriptions and postings, other written materials --PD office staff	--Documents obtained from NIJ & PD office --Participant-observation	--Careful analysis of reported staff augmentation contrasted with staff movement across organizational positions
What training or orientation is being provided for the full office staff?	--Training manuals, other written materials --PD office staff	--Documents obtained from PD office --Participant-observation --Formal interviews using protocols developed for PD office	--Enumeration of various activities with actors involved identified with overall integration array highlighting apparent gaps and redundancies
What technical assistance, if any, is the office receiving in order to implement the test design?	--Memos, correspondence, other training materials --PD office staff	--Documents obtained from NIJ, URC, PD office --Participant-observation	--Enumeration of TA activities including timing and actors/purposes
Has the PD office established procedures for implementing the test design?	--Office procedures manual --Grant application, memos, correspondence, other written materials --PD office staff	--Documents obtained from NIJ, URC, Pd office --Participant-observation --Formal interviews using protocols developed for PD office	--Develop procedures/manual development chronology and sequence of dissemination/training with salient actors identified
Have data collection and data management procedures been established?	--Office procedures manual, data recording forms, other written materials --PD office staff	--Documents obtained from PD office --Participant-observation --Formal interviews using protocols developed for PD office and key actors	--Detail data flow as observed and contrast with the flow as described (or inferred) from in procedures manual, etc
Have protocols and procedures been established with other criminal justice elements?	--Office procedures manual, memos, correspondence, other written materials --PD office staff --Key actors	--Documents obtained from PD office --Participant-observation --Formal interviews using protocols developed for PD office and key actors	--Array evolutionary/developmental profile of protocols and procedures by functional area

EVALUATION QUESTION	DATA SOURCE(S)	DATA COLLECTION TECHNIQUE/INSTRUMENT	DATA ANALYSIS
Are the processes and procedures, as specified in the office procedures manual, being implemented or planned?	--Office procedures manual, memos, correspondence, other written materials --PD office staff --Key actors --Key justice system events	--Documents obtained from PD office, NIJ, URC --Participant-observation --Formal observation of key justice system events	--Array office procedures as observed with same as specified in manual and other official sources/track temporally
Are any new services available through the PD office? Through other elements of the criminal justice system?	--Memos, correspondence, other written materials --PD office staff --Key justice system events	--Documents obtained from PD office, NIJ, URC, other justice system agencies --Participant-observation --Formal observation of key justice system events	--Array of new services and service loci
Ongoing Service Delivery			
Are there any changes in PD office personnel that affect the design of the test and/or delivery of test services? Are staff roles and responsibilities being performed as planned?	--Memos, correspondence, other written materials --PD office operations --PD office staff	--Documents obtained from PD office, NIJ, URC --Participant-observation --Formal interviews using protocols developed for PD office	--Array personnel shifts with conjectural annotations with respect to impact on test
Are there any changes in the internal operations of the PD office during the test period?	--Office procedures manual, memos, correspondence, other written materials --PD office operations --PD office staff	--Documents obtained from PD office, NIJ, URC --Participant-observation --Formal observation of PD office operations --Formal interviews using protocols developed for PD office	--Array both staff and procedural changes (developments chronologically) with brief interpretive narrative
Are there any changes in the implementation of the test design and/or provision of test services?	--Office procedures manual, memos, correspondence, other written materials --PD office staff --Key justice system events --Intake Forms (PD Office)	--Documents obtained from PD office, NIJ, URC --Participant-observation --Formal interviews using protocols developed for PD office --Formal observation of key justice system events --Case Intake and Monitoring Form	--Array both staff and procedural changes (developments chronologically) with interpretive narrative

EVALUATION QUESTION	DATA SOURCE(S)	DATA COLLECTION TECHNIQUE/INSTRUMENT	DATA ANALYSIS
Are test group defendants comparable to control group defendants?	--Arrest and/or booking forms --Intake forms (PD office)	--Case Intake and Monitoring Form	--Chi square tests for offense and demographic characteristics
What is the time span between arrest and first office contact (first PD contact) for test group defendants? For control group defendants?	--Arrest and/or booking forms --Intake forms (PD office) --Investigator reports and/or logs --Attorney reports, memos, logs --File jackets	--Case Intake and Monitoring Form	--T-tests contrasting experimental and control
What is the frequency and length of contacts between attorneys (or other PD office staff) and test group defendants? Control group defendants?	--Court records --File jackets --Investigator reports and/or logs --Attorney reports, memos, logs --Key justice system events	--Case Intake and Monitoring Form --Case Processing Form --Participant-observation --Formal observation of key justice system events	--T-tests contrasting experimental and control
What is the average length of case processing time for test group defendants? For control group defendants?	--Court records --File jackets --Investigator reports and/or logs --Attorney reports, memos, logs	--Case Processing Form	--Survival modelling for experimental vs. control
Are any new services available through the PD office? Through other elements of the criminal justice system?	--Memos, correspondence, other written materials --PD office staff --Key justice system events	--Documents obtained from PD office, NIJ, URC, other justice system agencies --Participant-observation --Formal observation of key justice system events --Formal interviews using protocols developed for PD office	--Array of new services and service loci

EVALUATION QUESTION	DATA SOURCE(S)	DATA COLLECTION TECHNIQUE/INSTRUMENT	DATA ANALYSIS
Have any changes occurred in the social, political, or legal context which effect the test design and/or delivery of defendant services?	--Newspaper and magazine articles --Legislation and criminal statutes --PD office staff	--Literature search --Legislative review --Formal interviews using protocols developed for PD office	--Array changes noted and append conjectural annotations with respect to impact on test
<u>Institutionalization</u>			
Does the public defender office want to institutionalize the ERDC concept?	--Memos, correspondence, other written materials --PD office staff	--Documents obtained from PD office --Participant-observation --Formal interviews using protocols developed for PD office	--Narrative summarization with summary chronology
Do other criminal justice agencies support institutionalization of the design as implemented? With modifications?	--Key actors --PD office staff	--Participant-observation --Formal interviews using protocols developed for PD office and key actors	--Narrative summarization with summary chronology
To what degree is the ERDC design institutionalized?	--Memos, correspondence, other written materials --PD office staff	--Documents obtained from PD office --Participant-observation --Formal interviews using protocols developed for PD office	--Summarization of attitudinal information and future plans

FIGURE B

ERDC IMPACT STUDY DESIGN
CASE PROCESSING

EVALUATION ISSUES AND QUESTIONS	MEASURES/INSTRUMENTS	DATA COLLECTION MANAGEMENT	DATA ANALYSIS
<p><u>Implementation</u></p> <p>Has ERDC reduced the time between arrest and first contact? Between arrest and first PD contact?</p>	<p>Critical lapse time data will be recorded on the intake forms and case processing forms. Recording responsibility will vary site to site given data collector role and availability of control cases will have slightly different recording process given the nature of implementation plans.</p>	<p>Data on the intake and case monitoring form will be collected following the defendant's first court appearance. Test and control client data will be segregated. Data on the case processing form will be collected at the close of a case. Field researchers will review forms and fill data gaps where necessary.</p>	<p>T-tests comparing test and control cases on mean time to first contact and mean time to first PD contact.</p>
<p>Has ERDC increased the quantity of PD services delivered?</p>	<p>Test and control staff (i.e., attorneys and investigators) will record all activities they perform on each case on the case processing form.</p>	<p>Intake forms will be forwarded to URSA Institute every two weeks, and coding, data reduction, and data file input will be conducted on the same schedule. Case processing forms will be forwarded to URSA Institute on a regular basis corresponding to the rate of case closures within any given period.</p>	<p>T-tests comparing test and control cases on mean attorney time (lower and upper court) and mean investigator time (lower and upper court).</p>
<p><u>Bail Issues</u></p> <p>Are there more clients obtaining pretrial release?</p>	<p>The bail/pretrial detention status for each test and control case will be collected from court records and attorney entries on the case processing form.</p>		<p>T-tests for difference in proportions between test and control clients released.</p>
<p>Is there an increase in non-cash bond releases?</p>	<p>The nature and type of bail and OR release will be recorded on the case processing form for all cases.</p>	<p>Data on release date and type of release are recorded on the case processing forms collected at each site following disposition.</p>	<p>T-tests for differences in proportions between test and control clients released OR as a percentage of those released.</p>

FIGURE B (cont.)

EVALUATION ISSUES AND QUESTIONS	MEASURES/INSTRUMENTS	DATA COLLECTION MANAGEMENT	DATA ANALYSIS
<p>Is there a change in the time from arrest to pretrial release?</p>	<p>The date of pretrial release will be recorded on the case processing form for all cases.</p>	<p>Case processing forms are forwarded regularly and entered into the ERDC data file.</p>	<p>T-tests comparing mean time to pretrial release for both test and control clients obtaining release.</p>
<p><u>Lower Court Outcomes</u> Are there changes in lower court outcomes?</p>	<p>Lower court outcomes for each test and control client will be recorded on the case processing form.</p>	<p>On-site evaluation staff will obtain and review case processing forms upon case closing. Case processing forms will be transferred to UI on a regular basis for computer entry.</p>	<p>Sequential T-tests for differences in conditional probabilities comparing test and control cases at each stage.</p>
<p>Are there changes in the types of sentences imposed in lower court?</p>	<p>The types and durations of sentences imposed for those test and control cases disposed of in lower court will be recorded on the case processing form.</p>		<p>Chi-square tests for goodness of fit between type of sentence distributions for test and control cases. T-tests for differences in proportions of clients receiving particular types of sentences.</p>
<p>Are lower court sentences more or less severe?</p>			<p>T-tests for differences in mean sentence (by type of sentence) comparing test and control cases.</p>
<p>Is there a change in the number of cases referred to upper court?</p>	<p>The transfer of test and control cases to upper court will be recorded on the case processing form.</p>		<p>T-tests for differences in proportions between test and control cases by charge category.</p>
<p>Is there a change in the type of cases referred to upper court?</p>			<p>Chi-square tests for goodness of fit between test and control charge category distributions.</p>

FIGURE B (cont.)

EVALUATION ISSUES AND QUESTIONS	MEASURES/INSTRUMENTS	DATA COLLECTION MANAGEMENT	DATA ANALYSIS
<p><u>Upper Court Outcomes</u></p> <p>Are there changes in upper court outcomes?</p> <p>Are there changes in the types of sentences imposed in upper court?</p> <p>Are upper court sentences more or less severe?</p>	<p>Upper court case outcomes will be recorded for each test and control case on the case processing form.</p> <p>The types and durations of sentences imposed on adjudicated test and control clients will be recorded on the case processing forms.</p>	<p>On-site evaluation staff will obtain and review case processing forms upon case closing. Case processing forms will be transferred to UI on a regular basis for computer entry.</p>	<p>Sequential T-tests for differences in conditional probabilities comparing test and control cases at each stage.</p> <p>Chi-square tests for goodness of fit between type-of-sentence distributions for test and control cases. T-tests for differences in proportions of clients receiving particular sentences.</p> <p>T-tests for differences in mean sentence (by type of sentence) comparing test and control cases</p>
<p><u>Overall Outcomes</u></p> <p>Is there a change in the number of clients excused from the criminal justice system?</p> <p>Are there changes in the types of sentences imposed?</p> <p>Are sentences more or less severe?</p>	<p>Lower and upper court case outcomes will be recorded for test and control clients on the case processing form.</p> <p>The types and durations of sentences imposed in both lower and upper courts for test and control clients will be recorded on the case processing form.</p>	<p>On-site evaluation staff will obtain and review case processing forms upon case closing. Case processing forms will be transferred to UI on a regular basis for computer entry.</p>	<p>T-tests for difference in proportion of test and control cases dismissed, not prosecuted, or resulting acquittal.</p> <p>Chi-square tests for goodness of fit between type-of-sentence distributions for test and control cases. T-tests for differences in proportions of clients receiving particular sentences.</p> <p>T-tests for differences in mean sentence (by type of sentence) comparing test and control cases.</p>

FIGURE B (cont.)

EVALUATION ISSUES AND QUESTIONS	MEASURES/INSTRUMENTS	DATA COLLECTION MANAGEMENT	DATA ANALYSIS
<p>Are there changes in likelihood of receiving various sentences?</p>			<p>T-tests for differences in unconditional probabilities by type of sentence.</p>
<p>Are there changes in expected sentences?</p>			<p>T-tests for differences in means sentence (by type of sentence) assigning a zero value to those not so sentenced.</p>
<p>Is there a change in the time from arrest to final disposition?</p>	<p>The dates of all major case processing events, including case disposition in either lower or upper court, will be recorded for each test and control client on the case processing form.</p>		<p>Lee-Desu test for differences in elapsed time to final disposition (with truncations).</p>

ATTORNEY - CLIENT RELATIONSHIP

Changes in Attorney Attitudes

Is there a change in attitudes and perceptions by attorneys with respect to clients?
 --Does the PD like his/her clients?
 --Does the PD provide a vigorous defense?
 --Does the PD feel clients are factually guilty?
 --Does the PD feel the client is open and truthful?
 --Does the PD feel that clients follow their advice on a case?

Test and control attorney attitudes about their clients and the PD's perceptions of how clients view their efforts to defend them will be collected as part of the PD interviews. Questions will be designed to solicit attorney attitudes about their clients' feelings toward the PDs themselves. Questions in the PD interview will be based on research work conducted in other PD settings.

Attorney attitudes toward their clients and how they perceive what their clients feel about their representation will be gathered at three time periods--at the beginning of the test program in each site, during the middle of the test period, and near the end of the one-year test period. Both test and control attorneys will be interviewed by UI fieldworkers and core staff.

Content analysis of narrative materials; counts of forced choice response sets and tabular displays.

FIGURE B (cont.)

EVALUATION ISSUES AND QUESTIONS	MEASURES/INSTRUMENTS	DATA COLLECTION MANAGEMENT	DATA ANALYSIS
<p><u>Changes in Client Attitudes</u></p> <p>Do clients perceive that they received earlier service? More services?</p>	<p>Test and control client attitudes about their attorneys and how clients feel about their defense efforts will be gathered in the client followup interviews. A sample of 100 former T&C clients will be obtained at each site.</p>	<p>Client followup data will be collected in one-to-one interviews by the UI fieldworker within two to four weeks of case disposition. A sample of 100 test and control clients will be selected at each test site, representing all of the primary case and defendant types in the evaluation. Clients will be offered \$10 to participate in the interview. The interview protocols will be sent to UI.</p>	<p>Mann-Whitney U-tests for shifts comparing test and control clients' perceptions.</p>
<p>Are there changes in client perceptions of their attorney's competence, fairness, concern for them as persons, allegiance, etc.?</p>			<p>Mann-Whitney U-tests for shifts comparing test and control clients' perceptions.</p>
<p>Are there changes in client satisfaction?</p>			<p>Mann-Whitney U-tests for shifts comparing test and control clients' satisfaction.</p>
<u>CRIMINAL JUSTICE SYSTEM</u>			
<p>Are there changes in the overall amount of staff time required?</p>	<p>Test and control staff (i.e., attorneys and investigators) will record the amount of time associated with the activities they perform on each case on the case processing form.</p>	<p>After case closure, case processing forms will be obtained and reviewed by on-site evaluation staff and sent to UI.</p>	<p>T-tests for differences in mean total (upper and lower court) attorney and investigator time between test and control cases.</p>

FIGURE B (cont.)

EVALUATION ISSUES AND QUESTIONS	MEASURES/INSTRUMENTS	DATA COLLECTION MANAGEMENT	DATA ANALYSIS
Are there changes in the costs of pretrial detention time?	<p>Date of pretrial release will be recorded for each test and control case on the case processing form.</p> <p>Daily pretrial detention costs will be obtained from system documents and/or interviews at each site.</p>	<p>On-site evaluation staff will transfer case processing forms to UI on a regular basis.</p> <p>Core evaluation staff will obtain documents and conduct interviews with key system actors at each site during regularly scheduled site visits.</p>	<p>T-tests for differences in mean pretrial detention time.</p> <p>Translation of reduction into dollar savings in variable jail costs.</p>
Is there a change in case processing time?	<p>The dates of all major case processing events, including disposition, will be recorded for each test and control case on the case processing form.</p>	<p>Upon case completion, on-site evaluation staff will obtain and review case processing forms. The forms will be transferred to UI for computer input.</p>	<p>Lee-Desu test for differences in elapsed time to final disposition. Non-linear curve fitting of conditional disposition rates and integration to estimate mean case processing time.</p> <p>Translation into percentage reductions in court dockets.</p>
Is there a change in the costs of post-conviction sentencing?	<p>The length of incarceration for each sentenced test and control client will be recorded on the case processing form.</p>	<p>On-site evaluation staff will transfer case processing forms to UI on a regular basis.</p> <p>Core evaluation staff will obtain documents and conduct interviews with key system actors at each site during regularly scheduled site visits.</p>	<p>T-tests for differences in mean sentenced jail and prison time and for differences in mean fines imposed. Translation of net change into variable dollar savings (or costs).</p>

APPENDIX B:
DATA COLLECTION INSTRUMENTS

INTAKE FORMS

TEST

PALM BEACH COUNTY ERDC
INTAKE AND CASE MONITORING FORM

NAME: _____

CASE ID: _____

DIVISION/COURT: _____

SEX: _____

RACE: _____

AGE (YRS.): _____

CURRENT ARREST

DATE: _____

TIME (A.M./P.M.): _____

CHARGE(S) (BY CODE NUMBER; CIRCLE NUMBER OF COUNTS):

AMOUNT OF BAIL SET (AT JAIL): _____

RELEASED ON BAIL: YES _____

NO _____

PRIOR RECORD

NUMBER MISDEMEANOR ARRESTS: _____

NUMBER FELONY ARRESTS: _____

FIRST CONTACT

BY WHOM: _____

DATE: _____

TIME (A.M./P.M.): _____

LENGTH (MINS.): _____

FIRST P.D. CONTACT

DATE: _____

TIME (A.M./P.M.): _____

LENGTH (MINS.): _____

FIRST APPEARANCE

DATE OF FIRST APPEARANCE: _____

DATE OF P.D. APPOINTMENT: _____

TYPE OF P.D. APPOINTMENT: THO _____

PAF _____

UNKNOWN _____

AMOUNT OF BAIL SET (FIRST APPEARANCE): _____

RELEASED ON BAIL: YES _____

NO _____

CONTROL

PALM BEACH COUNTY ERDC
INTAKE AND CASE MONITORING FORM

NAME: _____

CASE ID: _____

DIVISION/COURT: _____

SEX: _____

RACE: _____

AGE (YRS.): _____

CURRENT ARREST

DATE: _____

TIME (A.M./P.M.): _____

CHARGE(S) (BY CODE NUMBER; CIRCLE NUMBER OF COUNTS):

AMOUNT OF BAIL SET (AT JAIL): _____

RELEASED ON BAIL: YES _____

NO _____

PRIOR RECORD

NUMBER MISDEMEANOR ARRESTS: _____

NUMBER FELONY ARRESTS: _____

FIRST P.D. CONTACT

DATE: _____

TIME (A.M./P.M.): _____

LENGTH (MINS.): _____

FIRST APPEARANCE

DATE OF FIRST APPEARANCE: _____

DATE OF P.D. APPOINTMENT: _____

TYPE OF P.D. APPOINTMENT: THO _____

PAF _____

UNKNOWN _____

AMOUNT OF BAIL SET (FIRST APPEARANCE): _____

RELEASED ON BAIL: YES _____

NO _____

PRE-ARRAIGNMENT CONTACT BY INVESTIGATOR

DATE: _____

TIME (A.M./P.M.): _____

LENGTH (MINS.): _____

PRE-ARRAIGNMENT CONTACT BY FELONY P.D.

DATE: _____

TIME (A.M./P.M.): _____

LENGTH (MINS.): _____

SHELBY COUNTY ERDC
INTAKE AND CASE MONITORING FORM

NAME: _____

EXPERIMENTAL #: _____ BOOKING #: _____

SEX: _____ RACE: _____ AGE (YRS.): _____

CURRENT INCIDENT

ARREST DATE: _____ TIME (A.M./P.M.): _____

BOOKING DATE: _____ TIME (A.M./P.M.): _____

CHARGE(S) (BY CODE NUMBER: CIRCLE NUMBER OF COUNTS):

PRIOR RECORD

* SERIOUSNESS SCALE:

SIGNIFICANT PRIOR FELONY RECORD _____ LIMITED PRIOR FELONY RECORD _____
NO PRIOR FELONY RECORD _____

PTR INTERVIEW

DATE: _____ TIME (A.M./P.M.): _____

FIRST CONTACT BY PD'S OFFICE

BY WHOM: _____

DATE: _____ TIME (A.M./P.M.): _____ LENGTH (MINS.): _____

FIRST P.D. ATTORNEY CONTACT

DATE: _____ TIME (A.M./P.M.): _____ LENGTH (MINS.): _____

APPOINTMENT

DATE OF FIRST APPEARANCE: _____

DATE OF P.D. APPOINTMENT: _____

AMOUNT OF BAIL SET (FIRST APPEARANCE): _____

RELEASED ON BAIL: YES _____ NO _____

CASE PROCESSING FORMS

Case Processing Form

Case Number: _____ Site: _____

PRE-FIRST APPEARANCE ACTIVITIES

First Contact with Defendant:
 Date ___/___/___ Time ___ AM/PM
 By whom? _____

Subsequent Contacts:

Date	Nature of Contact	By Whom	Time Spent

ARREST INFORMATION

Date ___/___/___ Time ___ AM/PM
 Arresting Jurisdiction _____
 Charge(s) (By Statute #)

Yes No

Prior Holds?
 Codefendants?
 Confession?
 Line Up?
 Other evidence?

Bailed? _____ Date ___/___/___

PRE-ARRAIGNMENT (Lower Court) ACTIVITIES

Date of PD Appointment ___/___/___
 Name of PD _____
 Name of Prosecutor _____
 Name of Judge _____
 Circuit/Court Room _____

Defense Activities (i.e., contacts with defendant or prosecutor or judge; case prep or investigation; first appearance, probable cause hearings)

Date	Nature of Activity	By Whom	Time Spent

PRE-ARRAIGNMENT STATUS

Bail Information:
 Date Set ___/___/___ Amount _____

	Date Released
OR	___/___/___
Cash Bond	___/___/___
10% Bond	___/___/___
Other	___/___/___

Case Status:

	Date
Dismissed/Nolle/No probable cause	___/___/___
Dismissed/Nolle/Refiled as Misd.	___/___/___

Misd. Charge(s) _____

Waived P.D. ___/___/___
 Diversion ___/___/___

Terms/Length _____

Bound Over ___/___/___

Charge(s) _____
 Guilty Plea/NoId ___/___/___

Charge(s) _____
 Sentence _____

Grand Jury Indictment:
 Waiver? _____ Date ___/___/___
 Date Indicted ___/___/___
 Charge(s) _____

PALM BEACH COUNTY ERDC
DATA COLLECTOR SUMMARY OF CASE ACTIVITY

CASE ID: _____

PRIOR RECORD

Number Misdemeanor Arrests: _____
 Number Misdemeanor Convictions: _____
 Number Felony Arrests: _____
 Number Felony Convictions: _____

CURRENT ARREST INFORMATION

Date: ___/___/___ Time (A.M./P.M.): _____

Arresting Jurisdiction: _____

Charges (By Code Number; Circle Number Counts)

	YES	NO	UNKNOWN
Prior Holds	_____	_____	_____
Codefendants	_____	_____	_____
Confession	_____	_____	_____
Lineup	_____	_____	_____
Other Evidence Taken (Blood, etc)	_____	_____	_____
Other:	_____	_____	_____

Was the client on probation at the time of the current arrest? Yes ___ No ___ Unknown ___

If yes, was probation revoked? Yes ___ No ___ Unknown ___

If yes, date revoked: ___/___/___

BAIL INFORMATION

Date Set: ___/___/___ Amount: _____

Date Changed: ___/___/___ Amount: _____

Type of Bail: _____ OR ___/___/___ (Release Date)
 Cash Bond ___/___/___
 10% Bond ___/___/___
 Other: ___/___/___

Was bail revoked? Yes ___ No ___ Unknown ___

If yes, date revoked: ___/___/___

If yes, reason: _____

PRE-TRIAL DIVERSION

Was the client accepted for pre-trial diversion? Yes ___ No ___ Unknown ___

If yes, date diverted: ___/___/___

Terms/Length of diversion: _____

Type of program: _____

MOTIONS

	Date Filed	Date Heard	Win/Lose
Discovery	_____	_____	_____
Bond	_____	_____	_____
Suppress Statement/Confession	_____	_____	_____
Suppress Phys. Evidence	_____	_____	_____
Suppress Ident.	_____	_____	_____
Other: _____	_____	_____	_____
Other: _____	_____	_____	_____
Other: _____	_____	_____	_____

CONTINUANCES

Date	Requested By	Granted/Denied
_____	_____	_____
_____	_____	_____

CASE OUTCOME

Method of Disposition: (Check One)
 P.D. Withdraws ___ (Reason: _____)

Jury Trial ___
 Bench Trial ___
 Plea ___
 Other ___ (Specify Method: _____)

Case Disposition:
 Dismissed/Nolle/No Probable Cause Date: ___/___/___
 Dismissed/Nolle/Refiled as Misd. Date: ___/___/___
 Misd. Charges: _____

(CONT. PG.2)

CASE OUTCOME (CONT.)

Case Disposition (Cont.)

Acquittal Date: ___/___/___

Conviction Date: ___/___/___

Charge(s): _____

Guilty Plea/Nolo Date: ___/___/___

Charge(s): _____

Other (JNOV,
Directed Verdict) Date: ___/___/___

Sentence: (Indicate Date of Execution
of Sentence)

Incarceration ___/___/___

Length: _____

Where: _____

Probation ___/___/___

Length: _____

Conditions: _____

Diversion ___/___/___

Length/Terms: _____

Type of Program: _____

Fine/Restitution ___/___/___

Amount: _____

Other: _____

Other: _____

CLIENT FOLLOW-UP INTERVIEW

INTRODUCTION

My name is _____ and I work for the URSA Institute, a private, non-profit research company located in San Francisco, California. We are doing a study of special Public Defender services for the National Institute of Justice. As part of this study, we want to talk to people like you who have had a Public Defender. Many of the questions I am going to ask will be about your experience in the criminal justice system. Your answers will be used to help us figure out what works and what doesn't and how things could be made better.

Anything that you tell me will be kept in the strictest confidence and your anonymity will be closely guarded. This means that your name will not be written anywhere on the interview and that no one will be able to match your name with the answers I will be writing down.

The interview will take about an hour. If at any time you don't understand something or if you have a question about what I mean, please feel free to ask. Also, if there is a question that you really do not want to answer just tell me. You should understand that your participation is voluntary. I would like you to read and sign this acknowledgement that you understand the nature of the interview and our purpose.

As promised you are to be paid \$10 for this interview and you will be asked to sign a receipt for the money received at the conclusion of the interview.

Before we begin I want to go over some information with you that I was given by the P.D.'s Office.

P.D. OFFICE	SELF-REPORT, IF DIFFERENT
Date of Arrest: _____	_____
Arrest Charge(s): _____	_____
Name PD (pre-arraignment): _____	_____
Name PD (post-arraignment): _____	_____
Date of Disposition: _____	_____
Method of Disposition: _____	_____
Adjudicated Charge(s): _____	_____
Sentence: _____	_____

Are you ready to go on or do you have any questions

INTRODUCTION (Cont'd)

Site Number: 1=NJ 2=TN 3=FL [] 1

Respondent Number [] [] 2-3

Group Status: 1=Exp. 2=Control [] 4

Interview Date: [][]/[][]/[][] 5-10
Mo Day Yr

Interview Time Start: _____ Total Length [][][] 11-13
(in mins)

Time Stop: _____

Interviewer Name: _____ [] 14

Arrest Date: [][]/[][]/[][] 15-20
Mo Day Yr

Arrest Charge(s) (Code # of counts first) [] [][][][][][] 21-27
[] [][][][][][] 28-34
[] [][][][][][] 35-41

Disposition Date: [][]/[][]/[][] 42-47
Mo Day Yr

Method of Disposition: [] 48
1=Dismissed 2=Plea Bargain 3=Trial 4=Other: _____

Adjudicated Charge(s) (Code # of counts first) [] [][][][][][] 49-55
[] [][][][][][] 56-62
[] [][][][][][] 63-69

Sentence (code each) 1=NO 2=YES

Incarceration [] 70

Probation [] 71

Diversion [] 72

Fine/Restitution [] 73

Other: _____ [] 74

SECTION A: BACKGROUND INFORMATION

I WOULD LIKE TO START BY ASKING YOU A COUPLE OF QUESTIONS ABOUT YOURSELF.

1. Sex (DO NOT ASK) [] 75
1=Female 2=Male
2. Age (in years as of last birthday) [][] 76-77
3. What racial or ethnic group do you consider yourself to be a member of? [] 78
1=Caucasian
2=Black
3=Hispanic
4=Other: _____
4. What was the last grade of school you completed? [][] 5-6
(e.g., H.S. grad=12, 4 yr. College Grad=16)
5. Are you currently married? [] 7
1=NO 2=YES
6. Over the past two or three years how have you supported yourself (and your family)? [] 8
1=Full-time Work 5=Welfare (e.g., AFDC, GA, SSI)
2=Part-time Work 6=Housewife/husband
3=Seasonal Work 7=Illegal Activities
4=Student 8=Other: _____

cc 80: 1
dup cc 1-4

(IF FULL, PART, OR SEASONAL WORK ASK 6a. OTHERWISE GO TO QUESTION 7)

- a. What kind of work do you do? (RECORD VERBATIM, DO NOT CODE) (PROBE: How long, if recently unemployed, etc.)

_____ []
_____ []

7. Before this case had you ever been arrested? [] 9
 1=NO 2=YES
 (IF YES, ASK 7a. OTHERWISE GO TO SECTION B)
- a. Had you ever been convicted of any of these prior charges? [] 10
 1=NO 2=YES, Misdemeanor 3=YES, Felony 4=YES, Both
 5=YES, Misd/Felony Unknown

SECTION B: ARREST & INITIAL COURT APPEARANCES

NOW I WOULD LIKE TO ASK YOU A FEW QUESTIONS ABOUT YOUR ARREST AND INITIAL COURT APPEARANCES.

8. At the time of your arrest were you told: (CODE EACH)
 1=NO 2=YES 9=DON'T KNOW
- IF YES, BY WHOM?
- That you had a right to remain silent? [] _____ [] 11-12
- That you had a right to have an attorney? [] _____ [] 13-14
- That you could have a P.D. if you could not afford a private attorney? [] _____ [] 15-16
- 9a. Who was the first person you met from the P.D.'s office? [] 17
 1=Attorney
 2=Investigator
 3=Paralegal
 4=Intern/Volunteer
 5=Other: _____
- b. Where did you meet this person? [] 18
 1=Jail
 2=Courtroom or Hallway Outside
 3=Court Lock-up
 4=P.D.'s Office
 5=Other: _____
- c. How soon after your arrest did you meet this person? [][][] 19-21
 (RECORD TIME IN HOURS)
- d. During that contact, did you talk about: (CODE EACH)
 1=NO 2=YES 9=DON'T KNOW
- | | | | |
|---|--------|-----------------------|--------|
| Family Needs | [] 22 | Guilt or Innocence | [] 26 |
| Medical Needs | [] 23 | Possible Plea Bargain | [] 27 |
| Bail | [] 24 | Maximum Penalty | [] 28 |
| What Will Happen at Next Court Appearance | [] 25 | Witnesses | [] 29 |
| | | Prior Record | [] 30 |
| | | Other: _____ | [] 31 |

10. Altogether, how many lawyers did you have in this case? [] 32
- 1=One
2=Two
3=Three
4=Four or More
- (IF MORE THAN ONE ASK 10a, 10b, OTHERWISE GO TO QUESTION 11)
- a. What kinds of lawyers were they?
(INDICATE NUMBER OF EACH)
- | | Prior to
Arraignment | Arraignment
and After |
|---------------------|-------------------------|--------------------------|
| Public Defenders | [] 33 | [] 35 |
| Or, Private Lawyers | [] 34 | [] 36 |
- b. When you were arrested, did you know that you would have more than one lawyer?
1=NO 2=YES [] 37
- 11a. About how soon after your arrest did you meet (Name of attorney prior to arraignment)? (RECORD TIME IN HOURS) [][][] 38-40
- b. Where did you first meet (Name of attorney prior to arraignment)? [] 41
- 1=Jail
2=Courtroom or Hallway Outside
3=Court Lock-up
4=Attorney's Office
5=Other: _____
- c. What did you talk about? Did (Name of attorney prior to arraignment) talk to you about: (CODE EACH)
1=NO 2=YES 9=DON'T KNOW
- | | | | |
|---|-----|-----------------------|--------|
| Family Needs | [] | Guilt or Innocence | [] |
| Medical Needs | [] | Possible Plea Bargain | [] |
| Bail | [] | Maximum Penalty | [] |
| What Will Happen at Next Court Appearance | [] | Witnesses | [] |
| | | Prior Record | [] |
| Other: _____ | | | [] 51 |
- d. At that time, did you feel that: (CODE EACH)
1=NOT AT ALL 2=A LITTLE 3=A LOT
- (Name of atty pre-arraignment) could be trusted? [] 52
- (Name of atty pre-arraignment) was concerned about you as an individual? [] 53
- (Name of atty pre-arraignment) listened to what you had to say? [] 54
- (Name of atty pre-arraignment) was competent? (competent=knew their business) [] 55

- 12a. Altogether, how many times did you talk to your lawyer(s) about this case?
- Number of times prior to arraignment [] [] 56-57
 Number of times arraignment and after [] [] 58-59
- b. Counting all your attorney contacts, about how much time did you spend talking to your lawyer(s) about this case? (RECORD TIME IN HOURS)
- Time spent prior to arraignment [] [] [] 60-62
 Time spent arraignment and after [] [] [] 63-65
- c. Where did you usually talk to him/her about this case?
- | | | | |
|--------------------------------|--------|--------------------------------|--------|
| Prior to Arraignment | [] 66 | Arraignment and After | [] 67 |
| 1=Jail | | 1=Jail | |
| 2=Courtroom or Hallway Outside | | 2=Courtroom or Hallway Outside | |
| 3=Court Lock-up | | 3=Court Lock-up | |
| 4=Attorney's Office | | 4=Attorney's Office | |
| 5=Other: _____ | | 5=Other: _____ | |

- 13a. How soon after your arrest did you come before a judge? (RECORD TIME IN HOURS) [] [] [] 68-70
- b. Had you been released from jail on bail before that first hearing? [] 71
 1=NO 2=YES
- c. Did a lawyer represent you at that first hearing? [] 72
 1=No, But Had An Attorney, Although Not Present
 2=Yes, PD
 3=Yes, Private Attorney
 8=NA, No Attorney At That Time
 9=Don't Know
- d. Was bail set or were you (R)ORed at that hearing? [] 73
 1=NO 2=YES, bail 3=(R)OR 8=NA, Already Released 9=Don't Know

(IF RESPONDENT HAD AN ATTORNEY AND HAD BAIL SET, ASK 13e, OTHERWISE GO TO QUESTION 14)

- e. Did your lawyer say anything to the judge at that hearing about the amount of bail set? 1=NO 2=YES 9=DON'T KNOW [] 74

What did s/he say? _____

_____ []

_____ []

14. Was the amount of your bail ever changed during the course of your case? 1=NO 2=YES 9=DON'T KNOW [] 75

(IF YES, ASK 14a, 14b, 14c, OTHERWISE GO TO QUESTION 15)

a. Was your bail raised or lowered? [] 76
1=Raised 2=Lowered 3=Both

b. By how much? (CODE IN HUNDREDS) (1st change) [][][][] 5-8
(2nd change) [][][][] 9-12

c. When during your case was your bail changed? (RECORD VERBATIM, DO NOT CODE)

_____ []

15. Did you ever make bail or otherwise get released from jail between the time of your arrest and the resolution (e.g, end) of your case? [] 13

1=No
2=Yes, Bail (Amount in hundreds: [][][][] and type: _____ []) 14-18
3=Yes, (R)OR
4=Yes, Other: _____

(IF YES, ASK 15a, OTHERWISE GO TO SECTION C.)

a. While out on bail or (R)OR, were you picked up again for this case or arrested on new charges? [] 19

1=No
2=Yes, This Case
3=Yes, New Charge(s)
4=Yes, Other: _____

SECTION C: INITIAL ATTITUDES TOWARD ATTORNEYS

NOW I AM GOING TO READ YOU SOME PAIRS OF STATEMENTS ABOUT LAWYERS. PLEASE CHOOSE THE ONE THAT COMES CLOSEST TO YOUR OPINION OF WHAT (NAME OF LOWER/MUNICIPAL COURT ATTORNEY) AND (NAME OF UPPER/SUPERIOR COURT ATTORNEY-- IF APPROPRIATE) WERE (WAS) LIKE.

16. Do you think that: (CHECK APPROPRIATE RESPONSE)

	Name of Attorney Prior to Arraignment	Name of Attorney At Arraignment and After (if same code 8)
Believed what you told (him/her)	[] 20	[] 30
Or, did not believe what you told (him/her)	[]	[]
Did not fight hard for you	[] 21	[] 31
Or, did fight hard for you	[]	[]
Wanted you to plead not guilty	[] 22	[] 32
Or, wanted you to plead guilty	[]	[]
Did not tell you the truth	[] 23	[] 33
Or, did tell you the truth	[]	[]
Listened to what you wanted to do	[] 24	[] 34
Or, did not listen to what you wanted to do	[]	[]
Did not give you good advice	[] 25	[] 35
Or, did give you good advice	[]	[]
Wanted to get the lightest possible sentence for you	[] 26	[] 36
Or, did not want to get the lightest possible sentence for you	[]	[]
Wanted you to be convicted	[] 27	[] 37
Or, did not want you to be convicted	[]	[]
Did not want you to be punished	[] 28	[] 38
Or, wanted you to be punished	[]	[]
Cared more about getting your case over with quickly than about getting justice for you	[] 29	[] 39
Or, did not care more about getting your case over with quickly than about getting justice for you	[]	[]

17. Had you ever been represented by a P.D. before this case? [] 40
 1=NO 2=YES

(IF YES, ASK 17a, OTHERWISE GO TO QUESTION 18.)

a. Compared with the public defender(s) you had in the past, did:
 1=NO 2=YES 8=NA 9=DON'T KNOW

	Name of Attorney Prior to Arraignment	Name of Attorney At Arraignment and After
Know more about your case?	[] 41	[] 49
Spend more time with you?	[] 42	[] 50
Explain what was happening more clearly?	[] 43	[] 51
Answer your questions better?	[] 44	[] 52
Talk to your family more?	[] 45	[] 53
Fight harder for you?	[] 46	[] 54
Seem more concerned about you?	[] 47	[] 55
Seem better prepared in court?	[] 48	[] 56

18. Generally speaking, would you say that (Name of attorney prior to arraignment) was: [] 57

1=On Your Side

2=On The State's Side

3=SOMEWHERE IN THE MIDDLE BETWEEN THE RESPONDENT
 AND THE STATE

DO NOT READ
 CODE ONLY
 IF VOLUNTEERED

19. Generally speaking, would you say that (Name of attorney at arraignment and after--if different) was: [] 58

1=On Your Side

2=On The State's Side

3=SOMEWHERE IN THE MIDDLE BETWEEN THE RESPONDENT
 AND THE STATE

8=NA, Same Attorney As Question 18

DO NOT READ
 CODE ONLY
 IF VOLUNTEERED

SECTION D: CASE OUTCOME

NEXT I WOULD LIKE TO ASK YOU SOME QUESTIONS ABOUT THE OUTCOME OF YOUR CASE.

(INTERVIEWER INSTRUCTIONS FOR QUESTIONS 20 - 22:
IF ALL CHARGES DISMISSED ONLY ASK QUESTION 20.
IF PLED GUILTY ONLY ASK QUESTION 21.
IF TRIAL ONLY ASK QUESTION 22.)

*20. Do you feel you got off because of the way your lawyer represented you, or for some other reason? [] 59

1=Lawyer's Representation
2=Other Reason
9=Don't Know

(IF "OTHER REASON," ASK 20a, OTHERWISE GO TO SECTION E.)

a. Why do you think you got off? (RECORD VERBATIM, DO NOT CODE)

_____ []

(GO TO SECTION E)

**21. Which one of these was the most important reason you decided to plead guilty? [] 60

HAND 1=You knew you couldn't beat the case if you went to trial
CARD 2=You wanted to get it over with quickly
A 3=Your lawyer advised you to plead guilty
4=You got a good deal from the prosecutor
5=Your friends or relatives advised you to plead guilty

(GO TO QUESTION 24.)

***22. Which one of these was the most important reason you decided to have a trial? [] 61

HAND 1=You thought you would get off
CARD 2=Your lawyer advised you to have a trial
B 3=The prosecutor didn't offer a good enough deal in return
for your pleading guilty
4=You felt you had nothing to lose by going to trial
5=Having a trial was your right, and you wanted to exercise it
6=No one talked to you about pleading guilty
7=You were innocent and wanted a trial

(IF TRIAL ACQUITTAL FOR ALL CHARGES, ASK QUESTION 23, OTHERWISE GO TO QUESTION 24.)

23. Do you feel you got off because of the way your lawyer represented you, or for some other reason? [] 62

- 1=Lawyer's Representation
- 2=Other Reason
- 9=Don't Know

(IF "OTHER REASON," ASK 23a, OTHERWISE GO TO SECTION E.)

a. Why do you think you got off? (RECORD VERBATIM, DO NOT CODE.)

_____ []

(GO TO SECTION E.)

24a. What sentence did you receive? (RECORD VERBATIM, DO NOT CODE) [] 63

b. Do you think this sentence is: []

- 1=Too light (ASK 24c.)
- 2=Too heavy (ASK 24c.)
- 3=Or, about right (GO TO QUESTION 25.)

c. What sentence do you think you should have received? (RECORD VERBATIM, DO NOT CODE)

_____ []

25. Compared with someone like you convicted of the same crime as you were, would you say your sentence was: [] 64

- 1>About the same as most people get (GO TO SECTION E.)
- 2=Lighter than most people get (ASK 25a.)
- 3=OR, heavier than most people get (ASK 25b.)

a. Which one of these do you think was the most important reason you got a lighter sentence? [] 65

- HAND CARD
- 1=The judge felt it was all you deserved
 - 2=You didn't have a long past record
 - 3=Your lawyer fought hard
 - 4=The prosecutor recommended a light sentence
 - 5=The court calendar was overcrowded, and everyone wanted to get the case over with as quickly as possible

b. Which one of these do you think was the most important reason you got a heavy sentence? [] 66

HAND
CARD

1=The judge felt you deserved it

2=Your lawyer didn't fight hard

3=You had a long past record

D 4=The prosecutor was out to get you

5=You had a trial instead of pleading guilty

6=The court calendar wasn't crowded, and they were in no hurry to get things over with

SECTION E. GENERAL ATTITUDES TOWARDS ATTORNEYS AND THE CRIMINAL JUSTICE PROCESS

FINALLY, I WOULD LIKE TO ASK YOU SOME GENERAL QUESTIONS ABOUT LAWYERS AND THE CRIMINAL JUSTICE PROCESS.

26a. If you could choose any kind of lawyer regardless of cost, would you choose? [] 67

1=A Public Defender

2=A Private Attorney

b. Why? (RECORD VERBATIM, DO NOT CODE)

_____ []

27. In general, would you say that private lawyers are: [] 68

1=On Their Client's Side

2=OR, On The State's Side

3=SOMEWHERE IN THE MIDDLE BETWEEN THEIR CLIENT AND THE STATE

DO NOT READ
CODE ONLY IF
VOLUNTEERED

28. In general, would you say that Public Defenders are: [] 69

1=On Their Client's Side

2=OR, On The State's Side

3=SOMEWHERE IN THE MIDDLE BETWEEN THEIR CLIENT AND THE STATE

DO NOT READ
CODE ONLY IF
VOLUNTEERED

29. If you ever got in trouble again and could choose any lawyer, [] 70
would you choose (Name of Attorney Prior to Arraignment)?
1=NO 2=YES 9=DON'T KNOW

30. If you ever got in trouble again and could choose any lawyer, [] 71
would you choose (Name of Attorney at Arraignment and After)?
1=NO 2=YES 8=NA, Same Attorney As prior To Arraignment 9=DON'T KNOW

31. In the average criminal case, who do you think is most important [] 72
in determining whether the defendant is convicted or not? Is it:
1=The Prosecutor
2=The Defense Lawyer
3=OR, The Judge?

32. In the average criminal case, who do you think is most important [] 73
in determining what sentence the defendant finally receives? Is it:
1=The Defense Lawyer
2=The Judge
3=OR, The Prosecutor?

33. If a defendant is convicted, which of these do you think is the [] 74
most important thing determining what sentence he receives?
1=The judge's idea of what would best make the punishment fit
the crime
2=The deal made between the defendant's attorney and the prosecutor
3=What the law says the sentence should be
4=The recommendation of the prosecutor to the judge
5=The defendant's past record
6=The judge's idea of what would best serve to rehabilitate
the defendant
7=OR, the argument the defense lawyer makes on the defendant's behalf?

HAND
CARD
E

34. All in all, do you feel you were treated fairly or unfairly in [] 75
your case?
1=Fairly (GO TO QUESTION 35)
2=Unfairly (ASK 34a.)

a. In what ways were you treated unfairly? (RECORD VERBATIM, DO NOT CODE)

[]

[]

35. Do you believe that you received the services of the PD earlier, later or at about the same time as other defendants arrested around the same time as you? [] 76
1=Earlier 2=Later 3=Same 9=Don't Know

(IF EARLIER OR LATER ASK 35a, OTHERWISE GO TO 36)

a. What makes you think so?

_____ []
[]

36. Do you believe that you received less, more or about the same amount of PD services as other defendants arrested around the same time as you? [] 77
1=Less 2=More 3=Same 9=Don't Know cc: 80: 3
dup cc 1-4

(IF LESS OR MORE ASK 36a, OTHERWISE GO TO 37)

a. What do you believe was different about the way your case was treated?

_____ []
[]

37. All in all, who do you think was most important in determining the outcome of your case--was it? [] 5

- 1=The Judge
- 2=The Prosecutor
- 3=Your Lawyer
- 4=You, Yourself
- (IF WENT TO A JURY TRIAL)
- 5=OR, The Jury?

38. Now, looking back at your case, and the services you received, do you feel that: (CODE EACH)
 1=NOT AT ALL 2=A LITTLE 3=A LOT 8=NA, Same Attorney As Prior to Arraignment

	Prior to Arraignment	Arraignment and After
(Use Atty Name) could be trusted?	[] 6	[] 10
(Use Atty Name) was concerned about you as an individual?	[] 7	[] 11
(Use Atty Name) listened to what you has to say?	[] 8	[] 12
(Use Atty Name) was competent? (competent=knew their business)	[] 9	[] 13

cc 80: 4

39. Suppose you had to do it all over again--from the time you were arrested to the time your case was ended--what would you do differently?
 (PROBE: What other things would you do differently?) (RECORD VERBATIM, DO NOT CODE)

THAT IS ALL THE QUESTIONS I HAVE. I WANT TO THANK YOU FOR ALL THE TIME YOU HAVE SPENT ANSWERING THESE QUESTIONS. IS THERE ANYTHING ELSE YOU WOULD LIKE TO SAY TO ME?