REVIEW OF CRIMINAL CASE PROCESSING IN MARICOPA COUNTY, ARIZONA AND RECOMMENDED AREAS FOR FURTHER STUDY

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Consultants:
Hon. Bruce Beaudin
John A. Carver
Howard R. Messing

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I. INTRODUCTION

A. Background of the Study

In 1981 the Maricopa County Superior Court in Phoenix, Arizona launched a court delay reduction program which entailed a number of changes in criminal case processing within the Court and within the offices of the County Attorney, Justice Courts, and Public Defender. These changes included:

. More timely presentation of police reports to defense counsel;
. Setting a pretrial conference on all cases 30 days from the arraignment date with a subsequent trial date in two to three weeks;
. Guarantee of a firm trial date in exchange for counsel not expecting continuances to be granted;
. Establishing the pretrial date as the last chance to accept a plea with the county attorney withdrawing the offer if not accepted at the pretrial; and
. Division of the county into quadrants with each quadrant designed to contain certain Justice and Superior Courts within it and prosecutors and defendants assigned to the quadrants to provide fewer conflicts and more consistency among judges and attorneys working on these cases.
Since instituting the court delay reduction program, there has been a considerable increase in criminal cases filed and the calendars of each trial division have increased substantially. The number of criminal cases filed increased 19% from 1984 to 1985 and approximately 12% from 1985 to 1986. The increase in criminal filings has imposed a burden on the Court as well as the County Attorney and Public Defender offices and a number of the policies and procedures instituted when the 1981 court delay project was launched were no longer being consistently followed.

In March of 1986, responding to the pressure of this increasing case load, Chief Judge B. Michael Dann convened a group of interested practitioners to discuss the situation. During the course of an intensive meeting, a number of issues were identified as catalysts for what was perceived to be a mounting delay in the processing of cases.

Throughout the months that followed, several meetings were scheduled to permit further amplification of the issues and to explore alternatives that might ease the situation.

Ultimately, in August of 1986, Chief Judge Dann and Court Administrator Gordon Allison requested BJA's Adjudication Technical Assistance Project at the E.M.T. Group, Inc. to review existing case processing throughout the entire criminal justice system in Maricopa County with particular attention to be focused upon an analysis of the existing structure of the criminal department and the "quadrant" plan; whether the existence of 15 divisions
was appropriate; reasons for continuances; an analysis of resources available to the Court and related agencies that participate in the criminal justice process; and a review of the relevant statutes and local rules pertaining to criminal case processing.

B. Consultant Team and Approach

In order to define the specific focus of the technical assistance, Judge Bruce Beaudin was assigned to conduct a "problem definition" visit in August, 1986, at which time he met with Chief Judge Dann, Presiding Criminal Judge Cecil Patterson, Court Administrator Gordon Allison, and the Assistant Court Administrator for the Criminal Division, Lance Wilson. Based on the discussions that took place, Judge Beaudin narrowed the focus of the study and outlined a study approach that consisted of two phases: (1) validation of or disproval of the perception that delay was increasing by interviewing key individuals in the system who would be able to confirm the existence of any factors that might exacerbate or mitigate any processing delay and (2) analysis of the data provided to the project team by Court employees.

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1 Bruce Beaudin is an Associate Judge of the Superior Court of the District of Columbia. He has provided technical assistance for the past 20 years in the area of court administration to many jurisdictions throughout the country.
To carry out this study, the ATAP assigned a team of consultants who had considerable experience as criminal justice practitioners to conduct a three day site visit in Maricopa County to address the issues outlined by Judge Beaudin and to work with him in preparing the assignment report. The team, consisting of Professor Howard R. Messing\(^2\) and John A. Carver\(^3\) met with Judge Beaudin in Washington to review with him the notes from his visit, the various materials, including statutes, caseload statistics, court rules and other data supplied by the Court, and to map out a strategy for a site visit to be conducted in December.

\(^2\) Howard R. Messing, an attorney and Professor of Law at Nova University in Florida, has experience as a prosecutor, a defense attorney, a member of the crime detection profession and has served as a Master in a number of jail cases. In addition to his present profession, he is a Visiting Fellow at the National Institute of Justice and has participated in providing technical assistance to many jurisdictions throughout the country.

\(^3\) John A. Carver, Director of the D. C. Pretrial Services Agency, is also an attorney with a great deal of experience in the criminal justice system. He has provided technical assistance to a number of jurisdictions across the country and is presently helping the Department of Justice replicate what has been acclaimed as an outstanding drug detection and assistance program.
Professor Messing and Mr. Carver spent three days in Phoenix (December 15, 16 and 17, 1986) and had the opportunity to meet with a number of people. Without exception, those interviewed were both candid and incisive in the information they offered.

When the site visit was complete, the team met on several occasions to review the information collected and to formulate suggestions that might be appropriate for consideration by the practitioners in Maricopa County.

II. Observations

A. General Comments.

At the outset, we were in complete agreement that the Maricopa County Criminal Justice System operates smoothly and is quite efficient in meeting its obligations. By any comparative measure with any metropolitan court system, Maricopa County is in the forefront. It is probably the interest and dedication of those concerned with meeting the ends of justice that there is continuous examination of process and goals.

4 Appendix A contains a list of those persons interviewed.
Time constraints caused the consultants' visit to be a relatively short one. Our observations are, therefore, in the nature of suggestions for further inquiry by the local criminal justice community. Some of our suggestions are long range and would require major or even legislative changes. Others appear to us to be amenable to easy and immediate implementation. To give some order to our suggestions, we have listed them in their order of occurrence in the flow of cases through the court system, not necessarily in their order of importance.

B. Special Areas for Consideration

1. **Elimination of unnecessary courts and streamlining of initial proceedings.**
   
ea. Unifying the multiple levels of courts

There are many strong arguments in favor of unifying the multiple levels of courts currently extant in Maricopa County. It is a tribute to the commitment to efficiency of the current system that cases travel the system so quickly when confronted with so many stations along the way. In almost any other jurisdiction, this multi-level system in and of itself would guarantee delay and insure that many cases would "fall through the cracks." Even in Maricopa County some delay appears to
be attributable solely to this multi-level system. At the same time, we were unable to discover any advantage to the many court levels in Maricopa County. For example, observation of the work of the Commissioners in the "not guilty" arraignment court revealed that nothing really judicially significant actually occurred in the courtroom. During our visit it was impossible to determine the working interrelationship among judicial officers in initial appearance court, justice court, and Superior Court as cases moved from one point to the next. Often, what we observed was the passing of the case to the next authority with little of substance occurring. Only ministerial acts took place.

For example:

Justices of the Peace transferred felony pleas (those cases in which defendants did not wish to await indictment) to the Commissioners, who were empowered to take such pleas while the Justices of the Peace were not. Yet, Commissioners, lacking authority to
sentence, passed those pleas along to the Superior Court judges. The obvious question: why not empower Commissioners to sentence (as, indeed, pro. tem. judges may) or else allow the Justices of the Peace to accept the pleas, then forward the cases directly to the Superior Court?

Initial appearance court may or may not be the first judicial appearance for an accused. (He may already have been "presented" to a Justice of the Peace.) At any rate, the initial appearance, if attended by appropriate system actors could accomplish a great deal. What we saw was a ministerial approach to what could be a significant "weeding out" step in the process. Bail was set rather routinely with little or no thought given to case evaluation.

The initial appearance hearing is the valve which controls the flow of cases into the criminal justice system. This is an extraordinarily important part of the process and must be fine-tuned to guarantee the efficient initiation of cases in the system as well as the quick channeling out of those cases that are inappropriate.
b. Shortcomings in initial appearance proceedings

The announced purposes of the initial appearance are: to confirm the name of the defendant, advise him of his rights, appoint counsel (if necessary) and set release conditions. 5

None of these things appeared to be "really" happening when we observed initial appearance court. While all the goals were given lip service, we noticed many shortcomings. Release determinations seemed to be based upon the newly-implemented "bail guidelines" and the recommendations of the pretrial office. The court itself apparently did not see as part of its role the making of a truly independent release determination.

Few detainees requested bond reduction as they were unrepresented at this hearing. Nor was the prosecution available except for one high profile case. The lack of counsel at this initial and crucial stage should seriously be reevaluated.

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5 We noted that new "bail guidelines" are being used. They contemplate increased use of supervised release. Much more needs to be done to establish a good system of pretrial supervision.
The presence of counsel at initial appearance hearings is universally recognized as an important factor in the expeditious processing of criminal cases. Even a brief opportunity for the accused to consult with counsel should result in more effective release considerations. Counsel could also intervene early in the life of a case to begin the process of negotiation for early pleas, dismissal of poor cases and a host of other actions that could result in the expediting of cases.

In the matter of setting release conditions for example, we noticed that those people who usually show up in court to "see what happened to Billy" were separated from the court by a glass wall. While courtroom security is an understandable concern, in no other jurisdiction have we seen an arrangement such as this one. Usually the hearing takes place in a large, open courtroom where judges and attorneys have access to the public (police, family, employers, etc.) and vice versa. Indeed, there are people present who could confirm (or contest) important release information whose input is denied.6

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6 The subject of pretrial practice is being addressed in greater detail by a companion study conducted by Mr. Carver for the ATAP which focuses upon pretrial decisions which affect the jail capacity situation in the County.
C. Importance of counsel at the initial appearance stage

There are those who believe that counsel at this initial appearance stage might only "delay" matters. After all, defense counsel would need to interview defendants and prosecutors would need to talk to arresting officers to assess properly the charges. Consider that if these "assessments" were to take place at initial hearing (since they ultimately take place somewhere along the spectrum anyway and often in a piecemeal fashion), putting them at the front end would permit that control valve to be analyzed at the earliest stage possible. Case processing time for those cases the prosecutor screens out early would be eliminated; police time in court would be eliminated; detention time both for those whose cases are dropped and those who secure release through the provision of better information usually available only at later stages would be eliminated; judicial and clerical time needed to process cases would be eliminated; and, frankly, a better system of justice would result.
We should point out that while the system may effect more releases and may eliminate some cases that are now being prosecuted, we are not necessarily advocating changes in any particular discretionary decisionmaking. What we are saying is that many cases wash out after arrest and many people initially detained are subsequently released. Why not push the decision making stage under whatever discretion presently exists forward?

2. Use by the Prosecutor of Grand Jury Versus Direct Filing of Charges.

Our limited time did not allow us to evaluate adequately the effect of the County Attorney's use of grand juries. Although preliminary hearings may be avoided by the use of the grand jury, many jurisdictions have found the preliminary hearing to be a good opportunity for the prosecutor and defense to decide which cases should proceed, which can lead to early pleas and which cases should be dismissed. If a unified system existed, direct filing would be a more expeditious and efficient means of handling cases.
3. Determination of Indigency and Appointment of Contract Attorneys or Public Defenders.

A very high percentage of detainees is given public defenders even though the exact number seems to be somewhat in dispute. In addition to being costly to the system (supporting a large public defender office costs money), it is appropriate for those who can afford private attorneys to hire them. Perhaps there should be reconsideration of indigency at each of the stages of processing at least until the Superior Court has had a chance to make its decision regarding the indigency of an accused. A reduction in the number of indigent appointments should result in a reduction of pressure on the public defender and contract attorney systems.

A review of the use of contract attorneys should also be conducted. It appears to us that the contract attorneys are a bargain to the county at this time. Their cost per case is small and the quality of representation seems quite good. Consideration should be given to the expansion of this system (as opposed to,
perhaps, further expansion of the public defender system) and a fair test should be given to determine which system better serves Maricopa County and criminal defendants.

Many places have a "mixed" system of representation for indigents. While some places, such as Maricopa County, appoint Public Defenders in all except "conflict" cases, others set aside a certain percentage of cases for appointed counsel from the private sector on the theory that such a mix insures the interest and support of the Bar. Because the criminal caseload demands so many of the Court's resources, the impact is felt in civil, domestic and other branches. It is appropriate and advisable that the whole Bar be involved in helping to solve problems of delay. A mixed system of appointing counsel for indigents insures that involvement.
4. **Emphasis on "In-Custody" Cases.**

From time to time within the Maricopa County criminal justice system, "in-custody" cases are featured. There is no unified attempt however, to expedite these cases or to highlight them as deserving special attention. In fact, in one area (presentence investigations) "in-custody" cases are handled less expeditiously than the cases of those out on bond or on O.R. release. Throughout the system "in-custody" cases should be identified, emphasized and expedited as a means of responding to the pressing problems of Maricopa County's crowded jail system.

5. **Prosecutor Assignment.**

It was noted by many individuals that even with the quadrant system of division assignment, prosecutors often find their responsibilities divided among several courtrooms. Consideration should be given to the assignment of prosecutor(s) to individual judges or courtrooms rather than to several courtrooms within
a quadrant. This type of "team" approach is typical in most large jurisdictions. With the large size of the prosecutor's office, it should be a relatively easy change to accomplish in Maricopa County.

Such a team approach can work as follows: In felony cases, for example, three prosecutors can be assigned to each judge. If three trials per prosecutor are set per week, the judge will have 9 ready cases. Whenever cases ready for trial "break down," then a back-up case with another prosecutor can be ready at once. Meanwhile, those prosecutors not engaged in trial can handle motions or other short and relatively uncomplicated matters or prepare cases for trial, and judges whose calendars break down on any given day can be available for trial referrals from other judges.

In misdemeanor cases, the same approach can work with appropriate adjustments in the number of judges and prosecutors assigned.
6. Twenty-one Day Court Scheduling.

The fast track program in effect requires there be no more than 21 days between court events. This is an extraordinarily valuable technique that assures prompt and continuing attention to cases in the criminal justice system. In fact, this 21 day time limit is a model of how control can be maintained over a burgeoning case load. For the technique to be truly effective, however, the next event hearing should be a "real" hearing instead of an artifically created occurrence. If the case of a detainee is set for pretrial or status conference, then something should happen other than a continuance to another date. Cooperation of all parties is needed to hold to this fast track scheduling. A court proceeding should not be routinely continued; only when it is absolutely necessary and upon good cause shown. When continued, matters should be rescheduled within a few days rather than in an additional 21 or 30 day period. Even the current "flexible" use of 21 day periods is probably the most important single technique
driving cases through the Maricopa county criminal justice system.

7. Calendar Control.

Almost everyone we spoke with suggested one of several systems of controlling case flow. Individual calendars, central calendars, trial teams for prosecution, or combinations, etc., were suggested and should be considered by the Maricopa County criminal justice system.

We have referred above to the use of trial teams as a method of assignment by prosecutors. Such a system would complement an individual trial calendar system. Recognizing that such an assignment decision is the prerogative of the Chief Judge, we respectfully encourage him to consider such a system. In both misdemeanor and felony assignments, the use of the individual calendaring system would provide several benefits:
the initial appearance court could set a status or pretrial conference date at the time of first appearance that would allow the judge on whose calendar the case appeared time to utilize techniques to encourage quick dispositions in appropriate cases (in felony cases arraignment dates could be fixed upon return of the indictment and the trial judge could fix his own status dates);

- uncertainty of judge or "judge shopping" would be eliminated. It has been suggested that counsel "get down to business" much more quickly when the identity of the judge is known;

- peer pressure produces its own rewards. Judges have a sense of responsibility for their work and with individual calendar responsibility, the Chief Judge has a management tool that can be significant—especially when considering assignments;
the number of jurors needed at any given time can be assessed more accurately as a count is taken each day of the cases in trial, awaiting trial, etc.

8. Computerization.

Although some computerization exists and there are plans for extensive modifications, consideration should be given to moving quickly toward this goal. Some immediate automation could provide accurate management information for the court system; especially the presiding judge. It could also provide accurate records for all system users. Until such time as a complete online system is in effect, the clerk's office should consider expanding its use of multiple forms or xerox copies so that courtroom and other events can be recorded immediately and placed in the official court file while another copy of the form goes to microfilming. We were informed by many parties that the
current need to send original forms to be microfilmed resulted in a three or four day delay in the entry of data in the official court file.

9. **Presentence Investigations.**

Presentence investigations appear to be handled expeditiously but those people with whom we spoke in the probation department assured us that the time delay for presentence investigations could be reduced further if two rather simple system changes were made. The first would require changing the current report form to a shorter form in appropriate cases for those judges requesting it. The "cover sheet" and a sentencing recommendation, it appears, is often all that is really required by some judges. Implementation of a short form could expedite at least some presentence investigations.

We also learned that the "prosecutor's packet" needed by the probation department should be provided in a more timely manner. Sometimes there is up to a week's
delay in transferring this packet to the probation office. It would be a simple matter for the packet to be required by the court as part of the plea process guaranteeing no delay in this administrative transfer.

10. System Coordination.
   a. General Observations

   Perhaps the most important suggestion we can offer is the expansion of cooperation and interaction among the parties in the criminal justice system. System coordination is the predicate to, and instrument for, consideration and implementation of any suggestions offered in this report, as well as issues that arise on a regular basis. In addition, ongoing meetings provide a forum for the continuous review of policies, practices, and suggestions for changes. Many of those we interviewed said that changes were impossible because some one in the system was unwilling to make those changes. We were told repeatedly that the discussions that might have led to resolution of problems had never occurred since there was no routine opportunity for such discussion. Cooperation should begin at the
coordinating group level (including the leaders of each of the "stake-holders" in the criminal justice system) but also should take place at staff level meetings (especially between the public defender and prosecutor's offices). Staff level meetings could iron out the details for the big picture policy set by the coordinating group.

b. Role of the Chief Judge

The role of the Chief Judge in this process is very important. Recognized as the leader of the judicial system and as an impartial participant, he has the authority that comes with power and competence. In his role as Chief Judge he is listened to and followed by many. If he takes the lead in calling meetings - and attending them - can any department head do less? If changes are to be made, it is important that the chief policy makers meet regularly.

Specifically, we recommend that the Chief Judge and the Presiding Criminal Judge convene a monthly meeting. Initially, we would suggest that an agenda include consideration of the recommendations contained
herein. Recognizing that meetings tend to be viewed as a real annoyance by many who consider the press of other business to be much more important, we suggest that the meetings be no more than a half hour in length and be scheduled at the beginning of the work day. Such scheduling insures a prompt conclusion and will result in the attendance of those who otherwise might not appear. We are confident that once the meetings begin, even when consideration of this report has concluded, the participants will themselves urge the continuance of this monthly opportunity to raise and solve problems.7

11. Miscellaneous Concerns.

Two other areas that we were unable to evaluate with any meaningful insight during our visit were the actual amount of work required in the criminal justice system and the surprisingly low number of criminal trials.

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7 We must emphasize that to be effective, these meetings should be "closed" and attended by the policymakers or heads of the agencies. It might even be a good idea to develop memoranda of understanding signed by all parties when particular solutions to various problems are agreed to.
a. Low Trial Rate

We are unable at this time to determine the meaning or causes of Maricopa County's one or two percent trial rate. By both Arizona and national standards, this rate is low. An attempt should be made to discover the reasons. It may be that Maricopa's public defender and prosecutor offices are simply more adept at plea bargaining than are those offices in other areas of Arizona. Consideration should also be given to the possibility that this relatively low trial rate may indicate a lack of vigorous defense and/or prosecution in Maricopa's criminal justice system. At any rate, the pleas that do take place should be occurring much earlier. A plea is a plea, is a plea, and it would clearly influence the overall efficiency of the court system if pleas could be taken on the 20th or 30th day as opposed to the 90th or 100th day.

b. System Workload

Finally, all members of the system with whom we spoke insist that they are overworked in an absolute sense and in comparison to past responsibilities. We do not doubt the latter. Work loads have increased dramatically. Yet, the system appears to be functioning quite well. Courthouses are relatively uncrowded,
courthouse hallways are clean and not littered with paper or human castoffs. Judges appear able to take significant and adequate time in handling matters coming before them. Court calendars are manageable. Though we do not mean to suggest that Maricopa County would be better off with case loads such as those of the courts in New York, Miami or Los Angeles, comparison of the data of those large systems with what is accomplished in Maricopa County might, if nothing more, improve the morale of those who work in the Maricopa County criminal justice system.
APPENDIX

Individuals Interviewed During Site Study

Hon. B. Michael Dann  Presiding Judge
Hon. Cecil B. Patterson  Presiding Judge, Criminal Division

Gordon Allison  Court Administrator
Lance Wilson  Judicial Administrator for Criminal Division

Tom Collins  County Attorney
George Mount  Chief Deputy County Attorney

Jim Hicks  Trial Group Captains, County Attorney's Office
Greg Thurston
Steve Windtberg
Hugo Zettler

Miles Nelson  Grand Jury Section, County Attorney's Office

Hon. David Grounds  Criminal Improvement Hon. Committee
Hon. Steven Gerst
Hon. Thomas O'Toole

Ross P. Lee, Esq.  Public Defender
David Brauer, Esq.  Chief Deputy Public Defender

Jay Andrews  Public Defender Group Supervisor

Myrna Parker and Others  Contract Attorneys and Private Attorneys

H.C. Duffie  Chief Adult Probation Officer
Mike Goss  Adult Probation Supervisor

Ray Smith  Maricopa County Director of Finance

Hon. Stanley Z. Goldfarb  Judge

Philip L. Severson  Deputy Chief, Maricopa County Sheriff's Office

Nancy Shane-Hawkins  Planning and Research Division, Sheriff's Office

Terri Jackson  Pretrial Services
Tom Morrison

Robert Mauney  Maricopa County Manager