MEMORANDUM

SUBJECT: Comments Based on February 2011 Site Visit Regarding Issues To Incorporate in Brevard County Training Program

FROM: Judge Jeffrey Coker (Ret.), BJA Criminal Courts Technical Assistance Project

Date: February 28, 2011

Previous visits and reports by Dean Ernest Friesen and Judge Charles Edelstein have documented areas of concern and recommendations for the Circuit Court of Brevard County. The purpose of this site visit was to see what progress has been made and develop a training program to help this court achieve greater efficiency in its handling of criminal cases. The site visit showed that the Judges have made considerable progress in implementing significant improvements such as an early disposition court, focusing on older in-custody cases and increased use of pre-trial services. However, there have not been the structural changes in the processing of criminal cases that will be necessary to maximize the court’s efficiency in all criminal cases, both in custody and out. There are still too many hearings held on cases that accomplish nothing other than pushing the case down the road. Elimination of these unproductive hearings/court appearances will benefit everyone.

There was considerable concern expressed by several of the people interviewed that because of state budget issues, there have not been in the recent past, and will not be in the foreseeable future, any new resources provided to the court by the State and, in fact, there could be a constriction of funding.

Any training program developed for this court should focus on what can be done with existing resources to help this court change its processes and procedures without additional personnel or resources. There are some areas where existing resources can be used more efficiently and significant improvement made without more personnel.

JUDICIAL LEADERSHIP

We heard from many sources that everyone is looking to the Judges to take the lead in implementing the changes needed to move cases through the system more efficiently.

While it is generally recognized that the Judges work hard and carry heavy caseloads, there is a great desire for the Judges to take a leadership role and work with the stakeholders in developing a more efficient system to process cases. While the early disposition court is very successful and endorsed by all, there are still too many cases going forward that end with the same predictable outcome and could have been resolved earlier. The cases that do go forward have far too many hearings that do not accomplish...
anything that significantly moves the case toward resolution. Trial, rather than case preparation, is presently the anvil against which all things are hammered, and the trial dates continually get bumped so there is very little certainty in the court’s calendar. This lack of certainty in the court’s calendar helps breed an environment where continuances are the rule and preparedness the exception. Admittedly, change to this process will not be easy or quick and cannot be accomplished by the Judges alone, but it must start with them.

Training should start with helping the Judges learn how to take control of their cases. This would include: Differential Case Management; collaborating with the attorneys in setting goals and deadlines for the identification and accomplishment of the tasks that get cases resolved; exchange of disclosure and mitigation; witness interviews; where applicable, addressing a defendant’s mental health issues; addressing evidentiary issues; plea negotiations; etc. Training of the Judges in case management will help bring the focus away from an elusive and unpredictable trial date and put it on doing the things that get cases resolved earlier in the process.

Training should focus on the basic precepts of an effective caseflow system:
- The sooner in the process you resolve cases, the fewer hearings you will have;
- The more effective each hearing is in getting the case resolved, the more time everyone will have;
- The Judge is in a unique position to help design the system, preside over it and make it work.

These fundamentals of effective caseflow offer something to everyone: predictability, certainty and most importantly, more time to work on cases that need attention.

Training should also emphasize the inefficiency of a system wherein each Judge does his or her “own thing”. There was a very strong concern by a significant segment within the Brevard justice system that there is lack of uniformity between the Judges on how the present system works. While we were not present long enough to verify it, there is a strongly held perception that there is a significant variation between the criminal trial Judges on what their procedures are. People felt that it was very inefficient to have six different ways of processing cases. Whether true or not, there is a perception that the criminal Judges don’t uniformly handle cases, do not talk or learn from each other, and just do their own thing, which causes everyone to constantly adjust to different expectations and rules.

While it was not expressed specifically by anyone in this jurisdiction, Judges in other jurisdictions have expressed a concern that they are entitled to be individuals on the bench and don’t want cookie cutter justice. A consistent caseflow system simply says that there has been a meeting of the minds on the timeframes within which specific case
events will occur (there is room for unique and complex cases), and an expectation that the case events will get done within that time frame. Judges that have adopted a uniform caseflow system agree that there is still great room for a Judge’s individuality unhindered by the process by which cases get resolved.

DEFINING A SYSTEM AND EXPECTATIONS:

Training should include instruction on how the Judges can take the lead in setting up a Felony Task Force made up of the stakeholders (Judges, Prosecutors, both private and public Defense Bar, Clerk of the Court, Court Administration, the Jail, and Probation) which will then identify the events that get cases resolved, timeframes to get those events done and the intervals that the Court will set to monitor the accomplishment of those events. It must be recognized by all that this is not a one time event, the process is ongoing and regularly scheduled meetings are necessary to adjust the system to changing demands and resources.

ATTORNEYS:

There is recognition that Brevard County has good lawyers that take their responsibilities to the Court seriously. However, the present caseflow system is not conducive to aggressively resolving cases early in the process. The lack of certainty that frustrates the Judges also frustrates the attorneys and there seems to be consensus that the system can be made better by having defined goals and deadlines that the Judges enforce uniformly. For those attorneys who feel that the present system of delay and uncertainty works to their client’s advantage and no change is needed, they can be educated that a more defined system where the Judge can be turned to for help in getting something accomplished works to their and their client’s advantage in the long run. Even the most skeptical doubters have almost always become converts once they see the advantages in real time.

DATA:

Any efficient court must have at its foundation the collection of accurate and useful data on clearance rates, case aging, who is in custody and for how long, and other basic information about how the court is performing. This information needs to be “cleaned” to eliminate warrant time and other time delays that are out of the court’s control so that the judges have confidence in the data and progress can be measured as the court implements changes. While both the Clerk of the Court and the State’s Attorney now collect data, those systems were not necessarily designed for case management purposes. Training can perhaps help modify the existing systems such that reliable and useful data is collected and reports generated.

STRESS ON THE FUNDAMENTALS OF SUCCESSFUL CASEFLOW SYSTEMS

Training should also include fundamentals of successful caseflow systems such as:
- early screening by an experienced State’s Attorney before charging;
- a uniform and reasonable bond schedule;
- reliable and useful pre-trial services reports, and full use of pre-trial supervision services;
- early judicial involvement in the management of the cases;
- early best offers of plea agreements that do not, as a rule, get better over time;
- early exchange of disclosure and plea offer;
- effective regular communication between the attorneys away from the courtroom;
- defense attorneys that meet with their clients outside of the courtroom to discuss the case and the plea;
- every opportunity seized upon to plead a case at any juncture by any Judge;
- defendants need to attend or be present by phone at every hearing;
  attorneys doing what they say that they will do within the time frame that they say that they will do it;
- a centralized and uniform process on how probation violations and new charges on probationers are resolved;
- a uniform and consistently applied continuance policy that discourages continuances

The present case processing system in Brevard County, while it has made good progress in addressing in-custody defendants, has evolved over time into a system where too many cases still get set for too many hearings where too little gets accomplished. This is not anyone’s fault; rather it is the natural result of new and greater demands being placed on a system that does not evolve and change to meet these demands. Probably the most important part of any training for the Brevard County Court is giving them the understanding that rather than let the cases drive the system, the stakeholders can take control of their case process and make it fit their needs more efficiently. Certainly there is a need for more funding and greater resources, but they are not coming any time soon. Given this, and the fact that three new Judges will be coming to the criminal bench this summer, it seems the ideal time to help this Court roll up its sleeves and define and adopt a more efficient criminal caseflow system. A specific training curriculum covering the subjects set forth above can be developed to assist them in accomplishing this.