MEMORANDUM

Subject: BJA Criminal Courts Technical Assistance Assignment No. 4-050: Assistance to Mecklenburg Co. (Charlotte), North Carolina in Preparing a Plan to Address Jail Crowding and Court Delay Reduction: Report of Site Visit December 4-6, 2007.

Date: February 21, 2008 (rev. jail statistics)

Background

Mecklenburg County has had a serious and chronic jail crowding problem and must build a new jail facility. In order to determine the size and, therefore the cost, of the new facility, the County commissioned an outside vendor, Kimme & Associates, to advise on projected bed-space needs, facility options, and the potential for use of alternatives to incarceration. The study report will be completed shortly.

In response to continuous feedback during the course of the study, senior officials of the County's corrections, prosecution, indigent defense, and court administration agencies, formed a working group early in 2007 to review Mecklenburg County's judicial system performance and criminal case processes to determine how these might be improved to enhance the efficiency, fairness and interagency dynamics of the judicial system and to decrease reliance on incarceration in both the pretrial and post-disposition stages of the process. By late Fall of 2007, the working group had devised a preliminary plan, systemic in its scope and attempting to incorporate the national experience in evidence-based practices, in an effort to contribute substantially to achieving these objectives. The draft plan entails fundamental changes in the way state and local courts and related agencies serving the County conduct their business. The plan, once fully developed, will need to be presented to the County’s judicial leadership and gain their support, and then, with the Court's concurrence, to the County Commission. Like most justice system improvement efforts, implementation of the plan will require the concurrence and support of both the general government and judicial leadership.

Technical Assistance Requested

In finalizing its proposed justice system improvement plan and strategy for its adoption by the Bench and the County Commissioners, the working group leadership – elected district attorney and court administrator, joined by the Chair of the County Commissioners-- requested BJA’s Criminal Courts Technical Assistance Project (CCTAP) at American University to provide the perspective of national experts in
judicial system processes who had been successful in implementing innovative, systemic justice system improvements in their respective jurisdictions to provide constructive critique and guidance to the working group in terms of both strategy and substance, as they finalized their proposed plan and implementation strategy.

The CCTAP selected the following consultants to provide the requested technical assistance:

- Judge Ronald Taylor (ret.), former elected prosecutor and subsequently Chief Judge of the Berrien County (St. Joseph), Michigan Circuit Court who has also provided extensive training to judicial system officials on caseflow management;
- Judge Andrew Sonner (ret.), former elected prosecutor (Montgomery County, Maryland) and appellate judge (Maryland), with a long history of judicial system improvement development efforts through work with the various standards projects of the ABA;
- David Cook, chief public defender for Marion County (Indianapolis), Indiana and a former deputy district attorney for that county, who, in addition to his experience with both prosecutorial and public defender offices, brought perspective on county government/local justice agency relationships relevant to local justice improvement efforts;
- David Owens, retired Pennsylvania Commissioner of Corrections, and former Director of the Camden County, New Jersey jail, who brought the perspective of both institutional and community based corrections to the County’s efforts to address pretrial and post adjudication jail crowding issues; and
- Barry Mahoney of the Justice Management Institute (JMI) who was serving as a consultant to the Kimme Group study, served as a resource for the study team, bringing the perspective on the interface of the Kimme Group’s findings and recommendations with those of the working group.

CCTAP Director and Associate Director, Joseph Trotter and Caroline Cooper, also participated as part of the CCTAP study team. Judge Taylor has served as the study team leader.

**Focus of the Technical Assistance Services**

It was agreed that the initial technical assistance should take the form of a meeting of the CCTAP study team with the working group at which time the working group’s preliminary plan could be presented. The CCTAP study team could then provide suggestions, as appropriate, regarding additional issues to address and other aspects of implementation critical to resolving the County’s current criminal justice problems.

The meeting began the evening of December 4th and adjourned on December 6th. The following Mecklenburg County officials participated in the meetings:

Tom Eberly, Jail and Justice Director, Mecklenburg County Sheriff’s Office
Eva L. House, Criminal Caseflow Coordinator (December 4th only)
In preparation for the meetings, Mr. Nuccio sent a variety of background materials relating to the court process, jail population and trends, and various proposals for systemic improvement, including those of the working group, which the study team reviewed prior to the meetings. These included:

- Mecklenburg County Sheriff's Office.
  - "Low-Level Crime in Mecklenburg County, 2005" – May 17, 2006
  - "Analysis of the Mecklenburg County Inmate Population" – April 2005
  - "Quarterly Population Trend Analysis" – July-September 2007
- "Proposal to Enhance Rehabilitative Programming and Eliminate Weekenders at the Mecklenburg County Detention Facilities"
- "Summary of Criminal Justice System Recommendations from Three Decades of Studies"
- Superior Court Criminal Aging Analysis (Pending Cases, By County) – Page 42
- Arrest Processing Tracking Sheet Analysis – February 2007
- Administrative Order Establishing the Criminal Case Management System in Superior Court – Twenty-Sixth Judicial/Prosecutorial District, Mecklenburg County

As a supplement to these materials:

Mr. Nuccio also provided summaries of preliminary recommendations of the working group, including:

- Workflow Diagram [reflecting system improvement proposals of the working group
- Criminal System Planning Meeting: Core Case Processing Elements – November 26, 2007
- Criminal System Planning Meeting: Overall System Improvements Recommendations – October 30, 2007; and
- Criminal Court Rotation Schedules Team, Courtroom, & Day- Working Group proposal.

Mr. Mahoney also provided the following drafts of Kimme interim reports:
Focus of This Report

This report documents the observations and recommendations of the BJA Criminal Courts Technical Assistance Project (CCTAP) study team based on the meetings with Mecklenburg County justice system and county government officials December 4 – 6, 2007 and review of background materials provided to the study team. The report is presented in two sections: First: an overview of the study team’s overall observations and recommendations prepared by Judge Taylor; and, second: the individual commentaries prepared by each of the consultants which address in greater detail the observations and recommendations presented in Part One. The commentary of Barry Mahoney is appended to this report.

PART ONE: OVERVIEW OF STUDY TEAM’S OBSERVATIONS AND RECOMMENDATIONS:

As noted above, the technical assistance team from the Bureau of Justice Assistance (BJA)’s Criminal Courts Technical Assistance Project (CCTAP) at American University visited Mecklenburg County for a series of meetings over the period of December 4-6, 2007. The purpose of these meetings was to review current practices and procedures of the county criminal justice system and proposals for improvement currently under study. The team met at length with a multi-disciplinary group of county officials who have developed proposals for improvements to the system. As a result of these discussions the CCTAP team was asked to respond with comments regarding conditions within the existing system as well as the potential efficacy of proposed changes.

At the outset it should be noted that the team was uniformly impressed by the dedication and motivation expressed by the practitioners who participated in the meetings. Their recognition of existing problems and their willingness to seek improvements to the overall system, even at occasional cost to their individual interests, speaks well to the likelihood of ultimate success in necessary reform. We hope that the tactical approach that the team has taken of incrementally building its membership to involve additional key players in the judicial system will continue as the process of reform goes forward. Overall success will be determined by the buy-in and shared leadership of all the players.

Observations

A strong consensus of the CCTAP team recognized a number of substantial deficiencies in the Mecklenburg County and, indeed, the North Carolina, justice systems. These
deficiencies must be addressed in future attempts to seriously reform and improve the system.

In no particular order of importance, these are:

- the need for a much more proactive and "front-end loaded" case management system
- the need for an immediate Backlog Reduction program
- the need for bail reform, including policy and procedural change
- the need for modification of the system to provide positive management and control
- the need for increases in necessary system resources
- the need for control and reduction in the usage of jail resources
- the need for reform of the state policy of judicial rotation and associated problems, recognizing that this is a state-level problem that will require state response

While the above listing highlights major issues that were noted by the team, this list is not by any means exclusive. As will be seen in this summary discussion as well as the individual consultants' comments in Part Two, each of these general areas of concern includes many sub-issues that will need attention in the reform process. The team believes that the local practitioners have made an excellent start in their discussions to date but there is clearly a long way to go. As previously noted, the incremental enlistment of others beyond the existing planning group from the judiciary, county government and state and local peripheral agencies is of critical importance. The CCTAP team strongly believes that the extent to which additional support can be garnered will ultimately determine success or failure of the reform process. Therefore the strategic solicitation of support from those other agencies should occupy the highest priority in the planning and implementation of the reform effort.

As to the issues themselves, as noted above, the team recognizes the following issues that must be addressed in connection with the reform process:

- Need for a proactive "front-end loaded" system to promote early case disposition

It was noted by the team that the existing system actually discourages early disposition of cases. The fundamental and usually inherent responsibility of the court for case management has been statutorily assigned to the District Attorney. Court involvement in case management matters has been further limited by the unique requirements of judicial
rotation whereby local judges are assigned away from their home districts for periods of six months at a time. Given this situation, the judiciary’s sense of ownership of the docket has been significantly diminished. Over time, the system has fallen into a cycle of “learned helplessness” where for practical or perceived reasons, it cannot seem to find a way out. More about this later.

It is obvious that the case management system must be reformed in such a way as to provide more opportunities for disposition early in the life of a case. This would include such mechanisms as: early screening of misdemeanor cases; DA screening of Citizen Complaint cases; development of a system for handling of H and I class felony offenses at the District Court and/or Magistrate levels; case screening by both DA and PD personnel at the jail intake stage; early case evaluation by attorneys on both sides (particularly those cases involving pretrial detainees).

It was also noted by the team that there appears to be a general lack of screening of cases throughout the system. It is axiomatic that good case management requires that cases in the system be constantly monitored and periodically examined for potential disposition. There can be no opportunity for cases to become “out of sight-out of mind” in a well-managed criminal justice system. In Mecklenburg County, it appears that the cases tend to slip below the radar shortly after filing, or even before (pre-indictment), then march slowly in lockstep toward a trial that will in all likelihood never occur anyway. This is not a system designed to provide management opportunity. Therefore, it is obvious that some serious systemic reform will be necessary. Unlike the existing system, current planning should be focused on a new process that provides as many opportunities for re-evaluation of cases as necessary to produce case disposition at the earliest possible time. Basically this means keeping the case visible to all participants at all times and providing as many opportunities for discussion and settlement as possible during the life of the case.

- **Need for a special backlog reduction initiative**

It was obvious and recognized by all meeting participants, both local and CCTAP team members, that the Mecklenburg County criminal justice system has a very serious backlog problem. This exists in both pre and post indictment cases. It is a particularly serious problem in drug cases, where many offenders may continue to use and market drugs with impunity during periods of delay in indictment and disposition. Such a backlog poses a number of serious problems. First of course, it is a classic situation of “justice delayed is justice denied”. Both the defendant and the public have rights to reasonably timely disposition of issues of justice. Secondly, the fact that massive backlogs exist itself, works against system improvement. The reality is that system participants become so wrapped up in the fight against overwhelming numbers that they don’t have the ability to step back and look at systemic reform.

Accordingly, backlog reduction should assume an extremely high priority within the plan to reform and improve the system. This effort should begin with a complete inventory of all existing filed cases and also those currently awaiting indictment. If necessary,
additional Grand Jury resources should be considered to clear backlogged pre-indictment cases. Likewise, additional judicial and associated support personnel should be developed to deal with existing cases. The use of retired or visiting judges should be solicited through the AOC. A systematic plan should be developed for conferencing cases through the use of specially designated judges teamed with assigned DA and PD staff.

In addition, it is important that all participants agree on a working definition of the term “backlog”. All existing cases are not necessarily cases that are “backlogged”. Only those cases existing past a point of agreed-upon reasonableness in terms of case age should be considered “backlogged”. Thus, there should be a mutually agreed upon policy with regard to the definition of the term and backlog reduction procedures should be established accordingly.

Among those existing procedures that should be adjusted to accommodate such a backlog reduction program are: the “plea slot” practice, which inhibits prompt disposition after agreement; “bundling” of cases involving multiple offenders; and “teaming” of judicial and attorney resources. An immediate review of all pretrial detainee cases should also be conducted to prioritize disposition.

- **Need for bail reform**

One of the major problems currently challenging the Mecklenburg County justice system is the chronic overcrowding of the jail system. Indeed, one of the driving forces in the effort to reform the system is concern about possible future action to enforce jail population limits through the filing of a federal lawsuit. This concern has drawn together the various agencies and disciplines represented in the working group and has forced consideration of changes to the system to improve efficiency.

A major item of discussion during the site visit was the impact on jail population created by the application of various policies and practices within the court and criminal justice agencies. It was noted that past inattention to the effect of judicial decision-making regarding bail practices, for example, and prosecutorial/police discretionary actions regarding custody recommendations and doing away with citations in favor of arrest, for example, has been largely responsible for the chronically overcrowded correctional institutions in the county. Actions to promote a “strict law enforcement” approach have therefore had some cost in terms of jail overcrowding and now warrant consideration of ways to achieve a better balance between the two. This recognition stimulated a discussion at the December meetings of the existing system of bail requirements, bonding

1 See ABA Standard 10-1.3. **Use of citations and summonses**

The principle of release under least restrictive conditions favors use of citations by police or summons by judicial officers in lieu of arrest at stages prior to first judicial appearance in cases involving minor offenses. In determining whether an offense is minor, consideration should be given to whether the alleged crime involved the use or threatened use of force or violence, possession of a weapon, or violation of a court order protecting the safety of persons or property.
practices and pretrial release criteria. As a result of these discussions it became apparent that some serious reform of pretrial release practices in the county is in order.

The question of bail reform must start with the adoption of a revised bail/pretrial release policy based upon identified release criteria. This schedule should take into consideration well tested standards, such as those promulgated by the American Bar Association or other such national organizations which call for individualized decision-making regarding potential release, provide for the use of money bail only when no other conditions appear to ensure appearance, and should be administered through a professionally prepared and objective risk assessment instrument. In addition, the use of these standardized criteria should be made mandatory and enforced by judicial leadership. Such standards should emphasize that the use of pretrial detention should be reserved for only those where no reasonable alternative exists. The general principle of the use of the least restrictive method consistent with likelihood of future appearance and public safety should be adopted.

The use of non-incarceration pretrial status can only be successful when practiced in combination with a well-designed and operated pretrial release agency. This agency should have the capability of not only providing knowledgeable input to the judiciary in regard to risk assessment, but also should have the ability to monitor and control individuals during the pretrial period. This means that the pretrial services agency should be in a position to take advantage of all modern technology and techniques to assure the Court of the acceptability of non-incarceration pretrial release.

Inevitably there will be defendants for whom bail is not practical despite best efforts to apply pretrial release standards. The number of such individuals incarcerated at any given time, coupled with the average length of such detention constitutes a major factor in overcrowding. Accordingly care must be taken to assure that the length of such pretrial detention is kept as short as possible. In order to maintain the shortest possible average detention it will be necessary that the design of the criminal justice process contemplate priority handling of cases involving pretrial detainees. Multiple cases involving the same defendant should be bundled before a single judicial officer for handling during the pretrial phase and disposition of multiple charges should be encouraged. Both the DA and PD offices should be encouraged to deal with multiple charges in single settings as often as possible. Perhaps the attorney’s offices should consider the establishment of a “team” approach to the disposition of multiple offenders and all such cases assigned to these teams.

Bail decisions are of ongoing concern during the life of the case. Procedures should be established for periodic review of bail amounts and conditions at various intervals during the pendency of the case. Where additional information bearing on the bail issues develops during the course of the case it should be brought to the attention of the Court promptly so that it may be acted upon. Repeat offenders involving new offenses committed while on pretrial release should also be promptly reported and the Court should deal with the defendants accordingly.
While considering the effect of bail decisions on the jail population, planners should also consider other factors bearing on the issue—for example, the apparent over-utilization of local jail resources by the federal authorities, usually well in excess of that authorized by contract. While this practice provides a nice bit of income to the county it also limits the use of such facilities by the local system and also risks federal court intervention. As a result, such excessive federal usage may prove to be a false economy in the long run. Another important factor to be considered is the lack of individual and collective ownership taken for managing the jail population, which is sometimes characterized by the perception that “Jail overcrowding is not my problem”. Indeed, jail population control is everyone’s business as the lack of available jail space plays into sentencing and pretrial detention capability, risks federal intervention and incurs demonstrable additional cost to the county. The fact is that jail overcrowding is a multi-agency problem and must be dealt with on a unified basis. Planners should also be aware of the effect of such practices as mandatory detention of offenders under Domestic Violence, DWI and other offenses. Obviously such detention, which may be mandated by existing law, cannot be avoided. However, the effects of such requirements on overall jail population and average detention time should be considered by planners.

- **Court system case management and control**

Considerable discussion was engaged in during the site visit regarding a unique feature of the county and state system that seems antagonistic to effective case flow management. That is the relatively limited involvement of the judiciary in the process. This is partially the result of the state practice of judicial rotation (more about that later) and also the statutory assignment of case management authority to non-judicial officers, primarily the District Attorney. It has long been the practice in this jurisdiction (and, other North Carolina jurisdictions) that responsibilities for managing the criminal docket, maintaining the Court’s calendar and scheduling case events has rested with the DA.

The authority placing the DA in the case management business derives from NC statutory law, specifically sec. 7A-49.4 and sec. 7A-61. In combination, these statutes provide for the following powers and duties of the DA in regard to the caseload of the Superior Court:

- Establishing the Criminal Court calendar
- Establishing a “docket plan” (in consultation with Superior Court judges)
- “Announcing” proposed trial dates
- Publishing trial calendar
- “Announcing” order of cases to be called for trial
- Preparing a trial docket
A fair reading of the above statutory scheme would indicate that while the court has some role in “consulting” with the DA (the defense has little, if any), the DA holds the principal role in establishing and controlling the court’s docket.

While recognizing the statutory realities of DA docket control in NC, it is nonetheless a highly questionable practice. First, it violates the principal of separation of powers. The DA, while clearly an integral part of the criminal justice system, should not be considered, functionally, a judicial officer but, rather, a member of the executive branch of government. The principle of delegating discretionary responsibility to the District Attorneys regarding judicial activity such as controlling case flow, case scheduling, etc. would appear to be inappropriate.2 The CCTAP team, therefore, urges that serious consideration be given to appropriate statutory amendment to clarify this situation.

Second, such delegation of authority would appear to play into an imbalance of power between DAs and defense agencies. It is axiomatic that DAs are advocates. Their attention is necessarily devoted to the prosecution of criminal cases and, where appropriate, the conviction of criminal defendants. The defense, on the other hand, occupies the other point of view and must assure that the state sustains its burden before a conviction can be had. Placing decision-making authority over priorities for trial, event scheduling, etc. in the hands of one of the advocates on one side of the case would seem to place an improper advantage in the hands of the DA. This practice, at the very least, carries with it the appearance of impropriety. In addition it is also worthy of comment that, regardless of good intentions, DAs have a limited view of the system from their perspective. DAs are simply not in a position to consider the “big picture” in regard to caseflow practices.

For the above reasons and many more, it is the position of the CCTAP team that the authority for the operation of the criminal justice system, and, in particular, the day-to-day management of the caseload should be placed with the Court.3 However, given the

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2 In North Carolina, the district attorney is regarded as an officer of the judicial branch contrary to any concept of separation of powers. The district attorneys in North Carolina are organizationally a part of the Judicial Branch, with budgets administered through the Administrative Office of Courts. The DA’s authority (and responsibility) for calendar management is derived from N.C. Gen Statutes §7A-61 which provides in relevant part that “The district attorney shall prepare the trial dockets....”

3 Also note ABA Standard 12-4.5. Court responsibility for management of calendars and caseloads.
(a) Control over the trial calendar, and over all other calendars on which a case may be placed, should be vested in the court. The court should exercise responsibility for case scheduling and for the expeditious resolution of all cases beginning at the time of first appearance, taking account of information relevant to case scheduling that may be provided by both the prosecutor and defense counsel. Continuances should be granted only by a judicial officer, on the record. The court should grant a continuance only upon a showing of good cause and only for so long as is necessary. In ruling on requests for continuances, the court should take into account not only the request or consent of the prosecution or defense, but also the public interest in timely resolution of cases. If a ruling on the request for a continuance will have the effect of extending the time within which the defendant must be brought to trial, the judge should state on the record the new speedy trial time limit date and should seek confirmation of this date by the prosecution and the defense.
(b) The court should establish mechanisms and procedures to promote the resolution of all cases within the time periods established by applicable management goals and without exceeding the time limits of the
existing statutory provisions regarding the DA’s authority over calendar management and, since the rotation system does not lend itself to direct hands-on control by the Senior Resident, the DA should delegate authority for calendar management to the Trial Court Administrator (or to the proposed Criminal Case Manager), who would be in the TCA’s office assuming the approval of the Senior Resident. The preferred approach would be for the Criminal Case Manager to be jointly appointed by the Court and the DA, with the DA designating him/her to administer the various case administration functions of the DA as set forth in the statute. If all agree, it should be possible to do this via a memorandum of understanding.

Accordingly, it is recommended that the Court create the position of Criminal Case Manager within that office. Adequate staff and facilities to allow for ongoing management of the caseload in accordance with standard practices and procedures to be designed and implemented through this study should support this position. Following the implementation of the Criminal Case Manager position all day to day authority for the management of caseflow should be removed from the office of District Attorney.

It is also essential that the judiciary understand and support the above-suggested position to be added to the office of Court Administrator. Therefore a program of education of the judges should be undertaken in which the purposes and importance of the position should be explained in detail. The vocal support of the judiciary should be encouraged in order to insure necessary resource allocation on the part of the county government.

Concurrent with the establishment of the Criminal Case Manager position, discussion should be undertaken to develop standards, practices and procedures in regard to the management of the criminal docket in the future. These should be adopted as operating requirements and should become the standard future procedure in the office. At a minimum these standard practices should include: scheduling requirements; standard orders dictating future case events; early disposition opportunities; speedy trial rule adherence; and ongoing monitoring and reporting of system performance.

The participants in the discussion also noted that there are a number of events during the processing of the typical case where the interaction between the authority responsible for case management and the office of County Clerk is critical. The handling of files, interaction of Clerk personnel and the Clerk’s ability to affect the flow of cases through the system must be taken into consideration in planning for future caseflow practices. Accordingly, it is recommended that the Clerk be included in the working group in connection with the development of future practices and procedures as planning proceeds.

speedy trial rule or statute. Reports on the age and status of pending cases should be prepared regularly for the chief judge of the court and made available to leaders of other organizational entities involved in criminal case processing.
Other concerns that should be considered in establishing planning committees and developing future plans include: the need for IT assistance in the caseflow process and the need for improved liaison with the Mecklenburg/Charlotte PD. Both of these needs should be reflected in the membership of groups responsible for planning the new system.

- **Resources**

It would not do for this report to fail to make mention of the severe need for additional financial and human resources devoted to the criminal justice system that was evident during the site visit. While much of the concern regarding the effectiveness and efficiency of the system can be alleviated through planning and re-assignment of authority, the fact is that the system in this jurisdiction is seriously under-resourced.

For example, the District Attorney’s office has a smaller budget than defense services when including the PD’s office and outside private defense counsel. This lack of DA resources drives delay, staff inexperience and high turnover. It is clear that many, if not most, of the problems that plague the DA in regard to relatively efficient movement of cases are driven by lack of financial resources that translates into inexperienced, high-turnover staff. In view of the fact that a fairly large percentage of defense resources are allocated to private counsel, the PD’s office suffers from similar, although less severe, shortage of resources and staff turnover.

These factors significantly impact the efficiency of the justice system and should be addressed by funding sources, be it state or local. While the principal responsibility for funding of these criminal justice agencies rests with the state, where the state does not allocate sufficient resources, the county should step up and assist. In the long term it is in the best interest of the county to assure that the justice system functions reasonably efficiently. Such efficiency and effectiveness translates into reduced overall costs and improved system credibility.

- **Judicial rotation**

The CCTAP team believes it would be remiss in its response to the planning process if it did not recognize a problem that, unfortunately, is beyond the ability of the planners in the local system to solve. That problem is the state policy of judicial rotation.

It is historic practice, going back many years, to rotate judges around the state of North Carolina. This practice is rooted in the state Constitution⁴, and therefore will require state action to change. Accordingly, there is little that the officials of Mecklenburg County can do on their own to effect change to this practice. Notwithstanding that, it is felt that this practice is so inimical to the establishment of reasonable control on the part of the local courts over their own dockets that the North Carolina courts should join together to attempt to seek change. Until that time, however, it does not appear that there is any prohibition against designating a Superior Court judge in the division (whether resident in

⁴ Article IV Section 11 of the North Carolina Constitution provides in part that “The principle of rotating Superior Court judges among the various districts of a division is a salutary one and shall be observed”
Mecklenburg County or one of the other counties of the division) who is interested in—and good at—caseload management to serve as the criminal administrative judge for Mecklenburg County.

Among other problems created by the rotation of judges are such issues as a lack of “ownership” of the system by any judicial authority. (Although the Senior Resident Superior Court Judge is the titular head of the system, the authority of this position is limited.) In addition, the aforementioned delegation of authority over the criminal case flow to the DA appears to be a byproduct of the lack of judicial control resulting from the rotation of judges.

Other difficulties resulting from this rotation include: lack of dedicated judicial attention to the use of jail resources; lack of monitoring of case progress; inability to control and standardize judicial performance; and the necessity of handling cases through the “master calendar” approach instead of by individual dockets, thereby discouraging judicial control of case progress. Frankly, it is clear that many of the problems outlined earlier in this report can be traced back to the ever-changing face of judicial personnel in the county.

It is our belief that until this rotation practice is abandoned, the North Carolina justice system will continue to suffer from a host of problems that could be readily resolved by the retention of resident judges with ownership of the system and the caseload. Accordingly, we suggest that the members of the working group consider soliciting support from other county court systems in petitioning the state to put an end to this archaic practice.

**Conclusion**

Mecklenburg County is extremely fortunate to have a multi-agency group of practitioners committed to working together to address current justice system problems and to making the system work better. The formation of this working group and their collegial efforts to improve the system marks a major step in achieving system improvement despite the difficulties that the system and the size of the problem. Committed people working together can accomplish a great deal. We all know that the administration of justice is no race for the short winded, and some problems never can be completely solved. It is the nature of the system! They have, however, made an excellent beginning.

The CCTAP team greatly appreciates the interest and enthusiasm of the local working group members. With the exception of the addition of a few members representing other agencies and, subject to contact with the judiciary in support of the effort, we believe this group is well suited to lead the effort to improve the Mecklenburg County criminal justice system. We are happy to assist and look forward to working closely with the group in the future.
PART TWO: OBSERVATIONS AND RECOMMENDATIONS OF EACH OF THE CONSULTANTS

DAVID COOK

[The following observations and recommendations are submitted in terms of the following suggested priorities: I- Initial (within the next 90 days); MT-Medium Term (within 90 – 180 days); and LT-Long Term (within 180 days or longer)]

Judiciary

Judicial Rotation (LT) - While I understand that judicial rotation is perceived as a “stump to be plowed around”, it is hard for me to imagine that we would conduct an honest study and evaluation of this system without commenting on the practice. Many of the issues and concerns are directly related to a judicial rotation system where the judges take no responsibility for, or ownership in, the efficient operation of the system. Many systems have the opposite problem where the judges want to be in control of everything and regularly overstep their authority. It was an education to me that overzealous judges may create less systemic havoc than those who don’t get actively involved.

A note of some kind that in our opinion the judicial rotation system breeds non accountability and leaves the system rudderless in many ways is apparent. Any change in that regard is an obvious long term fix but is never too late to begin making the observations that could eventually support change.

District Attorney

Under Funded (LT) - They are very under funded. Sixty full time ADA’s is not a sufficient number for the attorneys to have manageable case loads and make the system function efficiently. Implementation of caseload standards for DAs will lead to more efficient disposition of cases and lay the data base for additional resources.

Need Full Time Management (MT to LT) - Working supervisors are not able to have meaningful management functions because they spend an inordinate amount of their time as trial attorneys and manager leaders. I suggest that little actual management takes place because the supervisors are busy doing cases. This, of course, is a function of adequate funding.

Team Prosecution (I) – It is our understanding that the entire prosecution effort is divided into teams. I question the efficiency of this team approach. It reduces the available pool of talent to be directed where the problems appear and, in the long term, creates a level of comfort between the DA and the Defense attorneys mostly with the PD attorneys that can result in ineffective representation for clients. The screening function is rotated within the individual teams which could minimize the screening function and because it is passed around can tend to minimize its importance. Rotating screeners make it more difficult to implement and enforce screening policies.

Court Calendaring (I)- The fact that the DA is responsible for the calendaring function is very unique. Real conflict of interest claims could be made when the DA is responsible for
calendaring criminal cases. The DA’s function is to prosecute persons accused of criminal offenses, not to run the court calendaring system. Transferring this duty to the Court Administrator would be a short term solution that would immediately free DA resources to attack the backlog and staff changes suggested in frontloading the system.

**Prosecution by Indictment Only (LT)** - hand cuffs the system because of the procedural requirements for the indictment process. Allowing prosecution by a prosecutor’s charging information would facilitate the process of bringing cases into the system and force earlier reviews of the case on its merits.

**Public Defender**

**Parity in Funding (LT)** - I was advised by the DA that there was a disparity in the funding to the favor of indigent defense. After being shown the statistics the DA and the PD were close in funding but the private bar had a substantial amount of funding, almost equal to the PD, for cases that were “farmed out”. It is important that disparity in funding be addressed where ever it appears. It seems as though the private bar is “greasing its sleds” at the expense of appropriate funding for the DA. It is usually the opposite.

Private attorneys who are being paid hourly rates have no real incentive to move the cases through the system. Movement towards a properly funded predominantly full time PD office is one way to reduce the moral hazard of eternal case life.

**Role of Public Defender** – The Chief Public Defender participated and was proactive and systemic in his thinking. Many of the systemic issues discussed would operate to his clients’ benefit. Some of the issues, like revised citizen’s complaint practices and early intervention relating to case evaluation do operate to his clients’ best interests and we should expect that he will be supportive. From time to time, the defense attorney’s role in representing his/her client’s best interests interfere with their ability to be team players. Balancing the best interests of the client and participating in creating system that facilitate prosecution can create conflicts. Certainly cooperation in efforts where he can and still operate in the best interest of the client should be expected. Systemically we should recognize the conflict the defense attorney can have when asked to participate in creating systemic changes that facilitates prosecution of their clients.

**Court System**

**Inflexible System (I)** – The system that is in place is not flexible to the extent it can not take advantage of opportunities to dispose of cases when the opportunity arises. We were informed of cases in which the parties were prepared to enter a plea but the cases got set out to another court date with another judge because the file was not in the court room. There was not in place a system to get the file and dispose of the case that day.

The system of moving from Hearing 1 to Hearing 2 to Plea Conference to Plea Slot is a convenient way to move the case to the next calendar with out any sincere attempts to resolve it. The Plea Slot hearings were often an ineffective use for court time because the parties were still negotiating when they arrived. Plea Slots should be for only those cases were the plea has been worked out, signed and filed with the court. When you appear for a plea slot it should be for accepting the plea and entering sentence.
Front End Loading (I) – It was noted that many low level offense cases that could be either weeded out or disposed of on the spot languish in the system because there are no DAs or PDs to evaluate and dispose of them either by dismissal or plea.

The Initial Hearing Court should be staffed with screeners who evaluate the charge, and PDs, prosecutors and judges to take advantage of and dispose of cases on the spot.

Average Life of Case – It was agreed that the average life of the case before a DA was assigned for a serious look and evaluation of the case was 28 days. This seems way too far down the line in the system. The assignment of DAs and PDs to evaluate cases on their merits must be earlier in the system.

Scheduled Hearings Too far Out (I) – Bond hearings are set out 10 days. First Hearings are 120 days out. Up front loading and assignment of counsel -- both DA and PD -- with courts available to dispose of issues like bond and early dismissals will have immediate impact in reducing case load and the average life of a case.

Bail (LT) – We were advised that the bail schedule was antiquated and set artificially high bonds. My notes reflected that over 90% of the lower level felonies went to secured bond. This is a long term fix because I am certain the bail industry will have strong lobbying efforts to challenge any changes.

Trial Dates (I) – Trial dates are set deep into the system. Most attorneys, especially those with high case loads, triage cases. The case that has an activity set is the case that gets the attention. This system allows, even encourages, cases to get shelved because they are not operating off known trial dates.

Electronic Case Management System (LT) – I heard comments that a big part of the system is paper driven and the inefficiencies of that compared to a shared electronic system are obvious and would be a major contributor to reducing case backlog.

Magistrates (MT to LT) – Although most or all were attorneys, being an attorney was not a condition of the position. I believe it should be. The Magistrates seemed under utilized in this system. If these positions were actually substitute judges, they would provide judicial resources that already exist in the system and could be used to facilitate the court processing of cases, especially the backlog.

Citizen’s Complaint Procedure (I) – A system where the DA has no involvement in the decisions relating to the filing of citizen’s complaints is, at best, troublesome. It places citizens in the system often times forcing secured bonds or even incarceration without a meaningful review by the Agency responsible for prosecution. This procedure should be done away with and all citizens’ complaints should be reviewed and charged by the DA before a warrant is issued.

Sheriff/Jail/Police Department

Federal Space (MT) – We heard that even though the feds contract for 350 beds they actually utilize upwards of 700 (my notes reflected 555 beds occupied by fed prisoners and 174 for immigration) when the immigrant population initiative is thrown in. Even though this is lucrative to the county general fund it denies the use of beds for the jail overcrowding concern.
Mention was made that many programs were funded by this initiative. I wonder, since the money goes to the general fund, what is the accountability for those dollars getting to where everyone seems to think they are going and is it worth the opportunity costs experienced by losing that valuable space.

**Recidivism Rate** – The recidivism rate was recited as being 76% on lower class felonies. All the more need to front end load the system and direct resources to dealing with and disposing of those types of cases as early in the system as is possible.

**Domestic Violence Holds (I)** – These cases are no bond holds for 5 days then placed on high bonds with no apparent mechanism in place to expedite the case. I think it is important to understand what percentage of the jail population is represented by this population. Judges and the bail matrix, for fear that someone is going to be released and commit an offense, tend to try to take themselves out of the bail market and set high bonds to insure this isn’t a problem. If there is no system in place to expedite these cases, they will stack up and clog the system.

**Jail Cases as Priority (I)** – I did not get the sense that there was in place a priority calendaring process for jail cases. Expediting jail cases can have an immediate effect on the over crowding issues.

**Jail Facilities** – We understand that there are four detention facilities: Juvenile-Gatling Center (30 beds), Jail Central (1,904 beds), Jail North (614 beds) and Work Release (150 beds), with an average daily population that has, at times, approached 2,700. This makes the policies relating to space designated for federal prisoners and illegal immigrants more important. There might be immediate relief resulting from adhering to the contracted rate.

Federal law suits on jail overcrowding issues loom on the horizon with this type of an over crowding situation. Better systemic movement of cases can provide immediate release and is preferable to having a federal judge administer the local jail.

**Local Police (MT to LT)** – The arrest policy discourages the use of citations. This places everyone into the jail system and creates an unnecessary burden on an already over taxed system. The police do have a role in facilitating the system. On my ride to the airport the taxi driver referred to the Gestapo tactics of the local police. While it can be a feel good effort for the police, its effectiveness in deterrence of serious crime is suspect as such tactics normally deter those who are not predisposed to commit offenses. Demonstrating to local funding authorities how these policies unduly tax the system can be effective in forcing the local police to become partners in systemic changes.

**Court Administrator**

**Closing of Courts (LT)** – My notes reflected that the courts were closed 4 weeks out of the year. That seemed excessive to me especially when there are magistrate resources available to have continued and on going calendars.

**Court Administrator (I)** – If the judges are not going to be responsible for calendaring (that will not be practical if the rotation system continues) a court administrator should be the position responsible for calendaring cases.
I must say at the beginning of these comments that I was both impressed with and encouraged by the commitment and sincerity of the Mecklenburg County officials. The County officials are looking for recommendations that would allow them to be proactive in their effort to address the County's jail crowding problems and reduce court delays.

Court delays normally have a negative impact on the growth of the County jail's inmate populations. By taking appropriate action now to address the jail crowding and court delay problems the officials are engaged in taking preliminary steps to implement a practical response. This projected plan could maintain the Jail’s inmate population at an acceptable level and prevent costly federal legal action, as well as disruptive jail disturbances, while providing appropriate and timely court action. The working group and their leaders should be applauded.

Impressions of County Court System

The court appears to operate in an unyielding process that does not maximize its opportunities to dispose of cases as promptly and judiciously as possible and practical. It would be most beneficial for the court and county administration to adopt the low hanging fruit approach in their strategy to reduce the jail inmate population: reduce the court backlog. Low hanging fruit refers to those programs that can be implemented with little or no resistance first, with attention then moving to the more difficult and long range program solutions. By taking this approach, the plan will be able to develop early accomplishments that can then provide a record of success to build upon to demonstrate the effectiveness of the strategic plan.

• Timely Review

Low level offender cases are not initially reviewed by a representative of the District Attorney’s office and the Public Defender’s office to evaluate and screen out these low level cases that should not move forward or could be resolved. Therefore, some of the offenders will remain in custody at the jail longer than may be necessary.

The District Attorney’s office averages 28 days before an evaluation of the cases takes place, and the PD’s office may take longer for their review. An ADA and PD could be assigned to the Jail intake area for a few hours a day to review the arresting agency’s documents and screen the cases within 48 hours of arrest. They could agree on the low hanging fruit and also dispose of the cases of questionable merit.

• Bail Review

The first bond review is set for 10 days and the hearings can be 120 days after incarceration. This timeframe has a negative impact on the jail inmate population, as well as potentially results in unnecessary interruption of the incarcerated person’s freedom and employment.
• Local Police and Sheriff Department's Arrest Policies

All appropriate documents may not be completed and submitted by the arresting agency at the time of arrest and commitment to the County jail. It is my understanding that it could take a considerable amount of time to collect these documents and move forward with the cases. It is also my understanding that the subject of the arrest may be in custody while the document collection process is going on. Our recommendation that the PD and DA review cases within 48 hours would drive the system to submit completed documents and hopefully solve the document problem.

• Complaint Procedure

It is my understanding that citizens can complain about the actions of someone and an arrest warrant will be issued and served on the subject of the complaint without a judge or law enforcement officer’s review of the merits of the complaint. We would recommend that the complaint should be reviewed by a law enforcement officer and a summons to appear in court be served on the subject, with a date and time for the hearing.

• Jail Crowding

It has long been my view that detention or correctional facilities’ crowding is not the function of a breakdown or failure in one part of the county’s criminal justice system, but rather a breakdown of the system at several critical points. Therefore, the solution to reduce court delay and eradicate jail crowding cannot be found by just looking at or taking corrective action in one area of the criminal justice system; a comprehensive approach seems to be the appropriate solution. The working group is correctly looking at all of the critical agencies in this process. Arresting agencies’ policies and practices, Court Administration’s policies, procedures and practices, and the policies of the officials of the County’s governing body -- all can contribute to the Jail’s crowding problems, and must be a part of the solution. The working group appears to have adopted a comprehensive approach in their plan of action. After reviewing the information provided by the Mecklenburg Sheriff’s Office Low-Level Crime in Mecklenburg County,2005, I am persuaded that no plan of action would be complete or comprehensive if it did not include a strategy to develop a good relationships between the county’s law enforcement agencies and the communities to reduce the number of individuals with low level charges coming into the jail.

JUDGE ANDREW SONNER (RET)

The Mecklenburg County justice system has serious problems. In most ways that is an understatement. In spite of some heroic dedication by various actors within the Mecklenburg County justice community, the system is dysfunctional. It is inefficient, poorly coordinated, and results in frequent injustice and waste.

In preparation for the visit, I read many of the materials furnished by the American University School of Public Affairs. Some of the electronic materials would not download, but I attempted to read all that I acquired. Much of it was helpful. Those prepared by the Mecklenburg County Court Administrator explained how the system worked and what the perceived problems were and also proposed some well thought out solutions designed to adapt to some unchangeable aspects that are peculiar to the local and state system. The supplied materials were not only
useful as background, but they also furnished a starting point for addressing problems and proposing change. Most significant of all, those materials disclosed an eager openness to change and a desire to work cooperatively to achieve common goals.

The “Working Paper” prepared in advance by Barry Mahoney and Teri Martin was particularly valuable. That work showed a clear understanding of the Mecklenburg system and its difficulties. The recommendations were highly aspirational and geared toward perfecting a dysfunctional system. They provided starting points, but the existing and so far unalterable conditions make an ideal or perfect unlikely. North Carolina courts and related agencies need to change a great deal before Mecklenburg County can ever hope to achieve a truly efficient system. There exists, however, a climate for change and some possible changes in case processing that could make the system work better.

The highest priority viewed from outside is to develop practices and procedures with proper resources to:

1. Screen cases at intake;
2. Establish proper bail and release process;
3. Evaluate cases much earlier with sufficient information from courts and police;
4. Move H and I felonies for disposition in the District Court;
5. Change the process of plea slots to one that allows for intelligent scheduling of progressive stages in the proceedings and also allows for differentiated handling and treatment of cases.
6. Do whatever is necessary so that unanticipated need for cases is not frustrated by lack of files.

There is definitely a need for more resources. Where those resources can come from, or where they are to be apportioned, is difficult to evaluate. The District Attorney’s Office needs more resources assigned to screening at all screening levels. That would be at the initial stages, the charging stages, the plea discussion and evaluation stages, and evaluating and preparing for trial. [There is also a need for some support that would seem desirable to assist in getting the information in files expeditiously completed, A sounder system of screening should diminish the number of cases in which support staff will need to give attention to file preparation, but at least in the short run, as the system gets up and running and before the backlog of cases diminishes, there exists a need to have more paralegal or secretarial support.

The District Attorney’s Office may be the least resourced of all the Mecklenburg county justice agencies. That office is unique in having to compete in court with a Public Defender’s Office that has almost double the budget of the prosecution. The two offices, that is the District Attorney’s Office and the Public Defender’s, do have more or less harmonious relations, but that may be an characteristic resulting from there being two sensible officials in those offices rather than anything coming from the system itself. The imbalance is a problem because it inhibits at every stage the assignment by the DA of sufficient personnel and attention to screening and review of the cases at critical stages. The lack of resources essentially results from being dependant upon allocations from the state justice budget controlled by the Chief Justice of the North Carolina Supreme Court. The county commissioners have come to the rescue of the office to some degree by providing some additional positions beyond those awarded by the State budget, but that county complement does not assure adequate resources to run the office at a level in keeping with all of its responsibilities.

But not all of the difficulty in achieving a truly efficient system comes from lack of resources. The District Attorney’s Office evidently does not have difficulty attracting beginning lawyers but
the salaries are so low the office cannot compete with other employment opportunities available for experienced practitioners. This leads to undesirable attorney turnover. Approximately the longest that the majority of assistant district attorneys stay is five years. Those who leave deprive the office of the kind of experience that could assist in the mature evaluation of cases and proper disposition of cases through plea bargaining as well. The District Attorney’s salary scale cannot attract most of the young attorneys to make a career of prosecution.

Aside from the lack of resources, there exists in North Carolina a relic from the colonial period: rotating judges. At any one time, the judges at the Superior Court level rotate in from out of county. As a consequence, those judges may be unfamiliar with the local justice culture and less willing to assist in attacking the local problems and assist in addressing reform. They are not part of the local system and do not place a high priority upon relieving systemic problems. Consequently there is little ownership of the problems in the Superior Court and by default, the blame for problems lodges elsewhere when the system causes are noticed. However, most problems with solutions fall below the horizon and escape real public scrutiny. There is little citizen awareness of the individual problems or the magnitude of the systemic shortcomings. The local bar appears indifferent.

Other system deficiencies have so far evaded repair. There are, however, some available remedies that can with effort and cooperation go a long way toward changing the administration of justice in the county for the better.

Citizen Complaints: The first problem that presents itself clearly is the initial step in the North Carolina system that allows citizens to initiate misdemeanor prosecution without any approval by the District Attorney. Ideally, the cases that enter the system should contain the approval of the DA’s Office, after review based upon an analysis not only of the supporting evidence and the consideration of the public policy affecting the decisions to use the prosecutor and court resources to solve a dispute. Such a review should involve more than consideration of probable cause and possibility of conviction. There are available non-prosecution resources in the community that are better adapted to assisting the public than those designed to determine guilt and impose punishment. A review by someone familiar with such resources before the charging document comes into existence would allow the office to seek more beneficial attention for the each case and the better serve the involved parties who apply for court action.

The North Carolina experience of having to dispose of cases after the system has been accessed for prosecution is not unique. Many jurisdictions have to address disposition of the cases that lack prosecutorial merit after the expenditure of public and law enforcement resources, but seldom does one see a jurisdiction in which so few resources are assigned to weeding the system of the unsuitable cases until after so many resources have been applied to the cases and so much time has elapsed. At the very least, the system should be reformed so as to supply intelligent evaluation as early as possible, ideally before the arrest decision becomes final, but in any case before the unnecessary expenditure of court, police, and prosecution resources.

And although not directly related to resources, there is a fairness aspect, a due process concern about the current system. Cases lacking prosecutorial merit enlist law enforcement and judicial resources and then wrongly assemble those resources against citizens who are not guilty or whose disputes do not belong in the system. The result can be enormous private expense to detach the individual defendants from the process and to repair the damage that an unnecessary accusation has caused. Aside from unnecessary expense, some of the damage can never be repaired. Time wrongly spent in custody can never come back. The innocent or wrongly accused acquire records that for life require explanation and often put those with records in the position of not ever being
able to erase suspicion. The obvious result is more than just embarrassment. It can affect security clearance and employment eligibility. The criminal justice system owes a public duty to avoid such injustice.

Pretrial Release: Next, the system should hasten the consideration of those cases that meet minimal requirements but do not belong in the system yet still require district attorney attention and possible court attention and services. The first timely review could be at the time of the pretrial detention decision, a hearing before a magistrate some eight or nine hours after arrest. North Carolina currently uses the discredited system of monetary securities that equate release with ability either to pay a bondman or post sufficient personal resources. The amount of the bond follows a schedule based almost completely on the particular charge and developed some time in the past apparently in defiance of North Carolina law. The system ignores twenty-five to thirty years of study and experience about bail bonds in the USA. The adoption of most of the recommendations contained in the ABA Standards concerning bond would take few resources, would cut down on the number of people waiting trial in jail, and would yield a justice dividend by allowing defendants to remain free and able to assist in defense and avoid time served sentences that exceed what would ordinarily result from a guilty verdict. Together with prosecutorial screening, revising the practice of setting bail would not call for additional resources but instead would for certain reduce the jail population and improve the conditions of those necessarily confined. The current conditions of crowding at the jail risk a federal law suit, which could result in the removal of local control over a critical aspect of the criminal justice system with far reaching undesirable consequences.

Although this change would more than likely result in conservation of some resources and diminish the jail crowding, it required the cooperation of officials beyond the direct control of the working group. Nevertheless, the report should make clear that there exists a major problem by those in Mecklenburg County neglecting to abide by fundamental standard for pretrial detention. The appointed magistrates appear to be central to the problems, but their supervision belongs to the District Court, and the District Court has no direct involvement in the appointments. Attacking this problem will require coordination with the State AOC and/or the Chief Justice.

Although the practice for issuing warrants and for determining pretrial release causes much of the inefficiency in the system, the inefficiency continues on along the path cases historically taken in Mecklenburg County.

Investigatory Reports: The next area that needs attention is in the practice for developing and filing the reports essential for evaluating the cases, conducting plea negotiations, and preparing for trials. This includes the lab reports -- particularly for drug cases -- the investigation reports, the rap sheets, and subsequent information beyond the initial reports of investigations that determine defense and prosecution positions involving disposition, witness availability, supplying discovery, and so on. The Mecklenburg County police department is not lacking in resources and has modern electronic data processing. It would seem possible for the county to hook up the police department with the District Attorney’s office to transmit much of the information electronically, and also expedite the state’s furnishing of discovery, perhaps electronically as well to the defense attorneys and the Public Defender’s Office. Investigative information furnished early to both the prosecution and defense would enhance case processing and evaluation and allow both sides to address the cases that call out for special attention. But whether achieved by electronic means or with procedures and time lines designed to improve the transmission of information, the reform of that process is of the highest priority and would address as well the other problems that influence delay and jail crowding.
H and I Felonies: Another change that would also have an impact on delay and crowding is to move the trial of the minor felonies, called H and I felonies, to disposition at the District Court level. This change would also necessitate acquiring the agreement or acquiescence of the lower court, which currently believes itself to be at maximum capacity as well. There is little disagreement that most of the H and I felonies need to be tracked and disposed of in the lower court in an expedited fashion. Better early screening of all cases could significantly reduce the District Court caseload and expand that court’s capacity to accommodate the H and I felonies. Moving those cases will require revision of current processes and priorities and acquiring the agreement of judicial and police officials. It holds, nevertheless, a great deal of promise for improving the just and proper handling of the bulk of the Superior Court, P.D. and DA case loads.

Case Scheduling: The current practice in processing the Superior Court caseload is through the use of scheduled hearings in which the TCA sets “plea slots,” and schedules pending cases for some usually inefficient and pro forma hearing. Various attorneys for both sides appear with their files and schedules and receive information about subsequent hearing dates. The whole system is poorly designed. It is beyond the control or even meaningful influence of those most involved and potentially informed about the critical aspects of the cases. The elected and independent clerk controls the plea slots, the judge supervises the proceedings, the DA is nominally responsible for the trial calendar, but there is no one official who has ownership of the process. A better practice would be for the court to control the calendar and to have the defense attorneys and prosecutors supply information about their availability to the assigning authority, taking into account the time reasonably necessary for processing the cases and critical factors affecting disposition after attorneys have gone through discovery and can help the court in apportioning resources.

Case Evaluation: Currently in Mecklenburg County, the cases get no informed analysis and evaluation, and all proceed in lock step toward a distant trial while all know that in the vast majority of scheduled trial will never occur. Mecklenburg County needs a radical change that would assure early transmission of information to the prosecution and defense and then a consequent means for scheduling dates after a differential and informed analysis of the factors that determine the likelihood of trials vs. guilty pleas and the amount of court resources that the cases are likely to demand.

Court Files: There also exists a difficulty with moving the official court files from where they are kept to the courtroom where events can happen that affect the cases. When all parties are available, the court is ready, and a disposition agreed upon or inevitable, the case may still not go forward because the file is unavailable. This characteristic of the Mecklenburg County justice system needs correcting, and will require action by the Clerk to change the system and may also require additional resources. It would therefore seem desirable to include the clerk in future planning sessions and have the team make a determination of how to supply resources if they are necessary.

Teams: As already noted, the system of teams in the prosecutor and public defender’s office may need reconsideration, abandonment or modification. As a minor point, the District Attorney has some difficulty retaining experienced personnel. It may become a more attractive occupation if the various attorneys would find that as they become more experienced, they could see more variety in the cases and responsibilities assigned. Together with a “purer” assignment of cases that have been screened, evaluated, and supplied with sufficient reports they might enjoy a larger assignment of trials instead of plea bargains. That might enhance the excitement and attraction of prosecution for some able attorneys who leave for other employment.
Without more information, it is difficult to determine whether the trial team organization inhibits efficiency, but it seems possible that the shifting of resources to meet different demands may be less efficient than some other system that would permit experienced attorneys to prepare for trial and, at the same time, participate in the evaluation and screening of cases.

**Backlog:** The backlog needs attention. Even with more efficient procedures and better coordination among the various actors in the system, there will be a definite need to address the huge number of pending cases that have been stalled or slowly creeping through the system. The system needs a shot of temporary judicial and prosecution resources to attack the backlog. Where they come from is dependant upon the criminal justice community, the bar, and the funding agencies. Some former or retired prosecutors and judges might fill a temporary need and be an efficient means of addressing the backlog. With additional funds, the District Attorney could hire additional attorneys, but hiring some with sufficient experience would pose a problem. In any event, there is a desperate need to eliminate the backlog of cases while assuring the community that the system will in the future not allow backlogs to accumulate or cases to grow stale.

**Resources:** When addressing resources it seems that exploration of ways to enlist the Mecklenburg County Police Department in reforming process and help supply resources. Experienced police officers often can appreciate the differences among cases and assist the District Attorney’s Office by making recommendations about dispositions of cases backlogged in the office and the rest of the system and assist in the explanation of the reasons back to the police officers who may believe themselves owners of the cases. In addition, the management information system in the police department may be adaptable not only to the transmission of investigative information, but of tracking the cases within the court system which would give the police the benefit of a means for giving notification to witnesses about pending cases, or notice to victims who have some legal standing within the North Carolina justice system. And then finally, one of the offered causes for delay involves the backlog and delay in getting test results back from the lab, a state run agency. Since Mecklenburg County also has its own lab with the local ability to prioritize tests and give quick turn around time, attention needs to be given to systematically streamlining the lab analysis process. Bringing the police into the further planning process would make additional resources possibly available and supply an important participant with a stake in the outcome.

**Jail Practices:** There are also a number of reforms of the jail and detention facilities that exceed this writer’s personal qualifications to comment meaningfully, or at least not as well as other members of the team. The current warden appears to favor some changes that would assist in better and fairer treatment of those arrested and held and in making improvements to the entire justice process. The jail management will benefit from a more efficient and just handling of cases, particularly from early screening and expeditious evaluation of cases. The court, the Public Defender, and the Prosecutor should in their concern for developing a better and more efficient processing system also seek to assure humane treatment of prisoners whose care is assigned to the government.

**JUDGE RONALD J. TAYLOR (RET.)**

Initially it should be pointed out that the site visit provided an exceptionally good discussion of the various serious issues facing this criminal justice system. The wide diversity of the participants was extraordinary and the discussion lively and informative. Unfortunately at least two very important parts of the system, namely the Judiciary and the Police authorities, were not represented but will be added as planning progresses. Notwithstanding their absence, the
discussion provided significant insight into deficiencies and needs in those two elements of the criminal justice system.

It is fairly obvious that a great deal of forethought and planning had taken place prior to the site visit and those participating were already quite cognizant of the problems that need to be addressed. Thus this report will concentrate on various areas of needed improvement and suggested approaches with as little reiteration of the points made by the local participants as possible.

General observations regarding overall systemic needs:

There appear to be a number of very significant shortcomings in the NC and thus, Mecklenburg County, approach to the operation of the criminal justice system. In no particular order of importance, these are:

- Lack of control of and responsibility for the efficient operation of the system by the judiciary itself. This authority has historically been delegated to the DA.

- Historic acquiescence, particularly on the part of the judiciary, to large jail populations, lengthy average stays for incarcerated individuals and slow response to the problem by the CJ system.

- A lack of parity in both monetary and human resources allocated to various participant agencies within the system.

- The ability of citizens to engage the CJ system unchecked and un-reviewed.

- Lack of appropriate bail review and usage.

- Under-utilization of resources at the District Court and Magistrate level.

- Lack of recognition of need to "front-load" the system as management tool.

- Historic delegation of traditionally judicial roles to non-judicial agencies. (See above)

- Lack of Automated CJ management and data maintenance system.

These overall shortcomings in the system, whatever their long-term historic nature and whether the result of the judicial and legal culture of Mecklenburg County or of the state of North Carolina, are serious impediments to successful operation of a modern criminal justice system and should be addressed, one way or another. Some of these (e.g., judicial participation) may be addressed on a local level, some of them (e.g., lack of resources) are a combination of state and local issues, and some (e.g., judicial rotation) can only be addressed through state action and, thus, are probably outside of the purview of this project (although they should be noted as problems in any product).

Approaches to the problems in Mecklenburg County:
Against the background of the overall systemic problems noted above, the following high-priority local needs and possible approaches to improvement were suggested during the site visit.

- The need to oversee the current practice relating to citizen involvement in the initiation of complaints, and potential incarceration without any professional review. There seemed to be widespread acknowledgement during the visit of a need to create a system of review of citizen complaints by the DA’s office prior to any official action being taken against the alleged offender. This would seem to be a high-priority item as it reflects not only on the issue of jail population but also on basic civil liberties.

- The need to design and implement a system that would move the process of case management “upstream” and provide opportunities for much earlier disposition than exist in the current system. As it stands today a number of management shortcomings and other factors combine to result in over-utilization of jail resources, significant delay in dispositions and general inefficient utilization of resources. These factors were detailed in the discussions and will not be repeated here; however each needs to be addressed in order to produce a well rounded and efficiently operated system.

- The need for some positive control of the management of the system. Historically, I believe primarily because of the “Judicial Rotation” system in place in the state (which I find to be an anachronism), the judges, including the Presiding Resident Judge – the titular administrative head of the system, have taken little responsibility for the operation of the system as a result of their lack of authority and the practical limitations of rotation. Because of this rotation, most of the judges are “short-timers” who lack both the interest and, indeed (even if somewhat interested) the opportunity, to effect change and exercise control over the system. While it is obvious that this factor is a very major obstacle to improvement, because it is a state-mandated process, it is probably beyond the CCTAP study team’s ability to effect directly; thus a work-around must be designed. Historically this has been by virtue of ceding authority over the operation of the system to the DA. I believe this is an improper solution. The DA is a player in the system and has his own priorities, which are many times inconsistent with the needs of other participants. Having that office in control of the overall system including scheduling, case management, prioritizing various functions, etc. could be construed as a potential conflict of interest. In any event it would seem to violate the principle of separation of powers since the operation of the court system is a judicial, not an executive, role.

Accordingly, it would seem that the creation of another functionary to fill this role is mandatory. Given the configuration of the system, the Court Administrator’s office would seem to be the appropriate agency to take management control of the criminal caseload and system. Accordingly the creation of the proposed Criminal Case Manager position, together with appropriate support services and facilities, is a high priority.

- The need for improved utilization of the lower courts. Both the Magistrate and District Court have roles in the movement of cases through the system. The Magistrates make initial Probable Cause and Bail decisions that impact the utilization of system resources downstream; the District Court has potential
capability to assist in disposition of cases at a very early time in the process. Both of these resources need to be tapped and their role in the overall case management scheme must be defined and exploited. This will require the development of a specific plan that will include their participation and presentation of the plan to these judicial officers in a manner designed to enlist their approval and cooperation.

- The need to examine jail population, utilization, bail reform, pretrial services and all other aspects of the system touching on the usage of existing jail facilities. This would also include the usage of local facilities by federal authorities in excess of contractual requirements. Since it is apparent that the current situation is not ideal and that continued ill-use of jail facilities might well result in federal legal action, this review and actions to reduce jail population and average length of stay by inmates should carry a very high priority for both the CJ system and the county government itself.

- The need to address what can only be described as a “horrific” backlog problem. It is apparent that there are backlogs all through the system. Cases involving inmates of the jail who have been in fairly lengthy pretrial detention; unindicted cases; drug cases, etc., etc. The need for immediate attention to this problem was obvious. The participants must begin the process of establishing a backlog elimination program at the earliest opportunity. This should start with all cases involving incarcerated defendants in an effort to not only free up jail space but to eliminate the practice of long-term pretrial detention.

- The need to solicit support for system improvement from all aspects of the CJ community; judges, police, county administration, state authorities (including AOC resources) the organized Bar, etc. A program of education of all sides of the equation should be undertaken utilizing both local and visiting experts. The CCTAP services should be a participant in this process.

The above items encompass virtually all of the specific suggestions that were made during the three-days of meetings. Again, this report has attempted to comment on the various categories of necessary improvement and especially to note the priority needs without the necessity of reiterating the specific areas of changed practices and procedures discussed at length during the visit.
ATTACHMENT:

BARRY MAHONEY

I was impressed that the practitioners who participated in the meetings had done a good bit of work before the AU team arrived. Teri Martin and I had last met with most of them in May, and it is clear that they had done some serious thinking about the problems and ways to address them since that time. I was also impressed that they seemed very open to (and not defensive about) the comments and suggestions of the AU team members during the meeting.

You already have a pretty good summary of my thoughts about the types of changes that would be desirable for the Mecklenburg criminal justice system from the working paper and the summary of recommendations that Teri Martin and I prepared in advance of the December 4-6 meeting in Charlotte. Some of the key ideas in the working paper were reinforced by the discussions in Charlotte and the views of the other team members, especially:

- The need to “front-load the system to a much greater extent than is now done, so that there is an early triage process and a differentiated case management process is in place to enable rapid resolution of the large number of cases that now stay in the system for a far longer time than is necessary;

- The importance of developing a realistic plan for a major backlog reduction program, to be conducted in advance of or parallel to any significant changes in the processing of newly filed cases;

- The desirability of centralizing responsibility for calendaring and overall caseflow management in the Office of the Trial Court Administrator (i.e., the proposed new Criminal Administrator position), as the best way to provide for efficient and effective performance of these essential functions;

- The need to approach the problems systemically, with particular attention to what can be done through much better use of modern communications and information technology and through “re-engineering” of case processing, beginning with the preparation and prompt transmission of good quality police reports to the prosecutor;

During the discussions, I also heard a number of good ideas that were not directly addressed or not emphasized in the working paper. These included:

- The need to gain support for (or at least acceptance of) needed changes from other key actors outside the group of practitioners with whom we met. Others who are very relevant to achieving the needed changes include at least the judges (especially the Senior Resident Superior Court Judge and the Chief Judge of the District Court), the magistrates, the Charlotte-Mecklenburg Police Department (CMPD), the new Sheriff and senior-level officials in the Sheriff’s office, the private criminal bar in Mecklenburg County, the Chief Justice (who is originally from Mecklenburg County), senior staff in the AOC, and government officials responsible for mental health treatment.
• The desirability of noting in any report prepared by AU that there are significant resource problems, especially in the courts and the District Attorney's office. There are too few judges, too few clerks, and too few assistant district attorneys. It would be desirable to get comparative data on the resource levels in other counties that are roughly comparable in terms of population and criminal case volume. While this is a state-level problem in the first instance (since the courts, DAs, and indigent defense are all state-funded), the County may be able to provide some resources. Additionally, I think that we should assume that the audience for the AU report will be fairly broad and will include some state-level leaders and legislators as well as County officials.

• The desirability of emphasizing the extent to which North Carolina is an anomaly in at least three major respects in addition to the very low resource levels for the courts and the District Attorney's office; (1) the legal responsibility of the District Attorney to be responsible for case calendaring; (2) the policy of having rotating judges, so that there is no on-going judicial responsibility for overall caseload management or for management of any single case; and (3) the judicial culture of declining to exercise leadership with respect to criminal caseflow. Again, this is principally a state-level issue, but it is part of the reality that Mecklenburg practitioners face and it will be desirable to include something about these issues in the CCTAP report.

In the past few days, I have reviewed my notes from the December 4-6 meeting, and find that the "Next Steps" discussion that Todd led in the final hour and a half of the meeting provides a good list of high priority areas for change. From my notes, these are the priorities that the Mecklenburg group identified:

1. Implement a system for expedited processing of in-custody misdemeanor cases, including rapid screening, by DA and Public Defender; interviewing of defendants prior to first appearance by Public Defender's jail interviewer; representation of defendants by the Public Defender at first appearance and continually thereafter; dismissal, guilty plea, or other disposition at first appearance or bond hearing if possible; expedited trial (within 21 days) if not resolved at first appearance or bond hearing. [NOTE: This can be done on an informal basis by DA and Public Defender prior to formal presentation as part of a plan that would also cover other revisions in front-end case processing including revision of the bond schedule and provision for the pretrial interview and risk assessment to take place before the defendant's appearance before a magistrate.]

2. Detailed planning for proposed revision of the bond schedule, conduct of pretrial services interview prior to a defendant's appearance before a magistrate, and development of an enhanced pretrial supervision capability. [NOTE: This proposal is most likely to succeed if a broad base of support (including support from the judiciary) can be developed before it is presented. As discussed in Charlotte, it may also be desirable to present it to the County together with the proposal for expedited resolution of in-custody misdemeanor cases.]

3. Development of plans for DA screening of citizen complaints in non-Domestic Violence cases prior to the serving of an arrest warrant. [NOTE: It will be important to develop reliable information on the number of citizen complaints that are brought to the magistrates, number of warrants issued, types of cases for which they are issued, time from issuance of warrant to service of the warrant and arrest of the defendant, time from arrest to defendant's release from custody, time from arrest to disposition of the case, etc. The information can be developed quickly, perhaps with the help of an intern. Having
the information will be essential for documenting the frequency of these arrests and developing a plan that makes sense.]

4. Development of procedures for early resolution of H and I felony charge cases, including arrangements for early case triage by the DA and arrangements for getting the police report to the Public Defender within 4-5 days. [NOTE: At the meeting on Dec 6, there was discussion of the possibility of beginning to do this on a pilot basis very quickly. This seems like a feasible approach, and starting to do this on a pilot project basis involving the DA and Public Defender staff should enable the system leaders to learn what problems exist that will have to be addressed.]

5. Continue conducting an inventory of all pending felony cases (indicted and un-indicted), by category of cases handled by each team responsible for some of the felony caseload – Property, Persons, Drugs, and Homicide. Identify the status, age, lawyers involved, and next steps needed to resolve the cases, recognizing that the steps needed for resolution will vary by case category, custody status, etc. Tentative approach:

- Property cases: Use the proposed new Administrative Court Process, with active cases identified through the inventory conducted by Steve Ward
- Persons Cases: Continue the inventory process and “clean-up” (e.g., closing of cases that have for practical purposes been resolved or that can not realistically be prosecuted.
- Drug Cases: Focus initially on the large number of un-indicted cases
- Homicide Cases: Review on case-by-case basis; may have to start by re-conferencing many cases.

6. Set up a Backlog Reduction Program, with additional judge(s) and clerk support provided by AOC. Begin calendaring and addressing cases pending over a year since indictment, by case (team) category.

7. Develop detailed plans for the proposed new Administrative Court process starting with post-indictment Property cases; plan to implement during the Spring/Summer of 2008.

8. Develop plans to seek County funding for (a) additional positions needed to make the proposed system changes succeed; and (b) salary supplements or other type of incentive pay to encourage retention of experienced Assistant District Attorneys and Assistant Public Defenders. Identify all the resources (both temporary and “permanent”) likely to be needed to enable the proposed system changes to be undertaken.

I think that this is a sensible set of priorities, and provides plenty to work on in the near-term and “mid-term.” Additionally, though not listed above or discussed in much detail at the meeting, I think that there is general agreement on the desirability of (a) making realistic estimates of the likely impact of the proposed system changes on the length of stays of persons admitted to the jail; and (b) setting measurable goals regarding the time period within which system changes can be implemented and the time within which specific impacts on the jail population and other aspects of system operations will be seen.

Note that all except Items 2 and 3 in the above list focus on changes that would tend to shorten the length of stays of persons brought to jail intake. Only Items 2 and 3 can have an impact on the number of persons admitted to the jail in the first instance. There are other recommendations in the Mahoney & Martin working paper that focus on ways to minimize jail admissions,
including greater use of citations, development of a crisis intervention center to deal with mentally ill and intoxicated minor offenders, etc. My understanding of the discussions is that these other recommendations were basically endorsed by the Mecklenburg practitioner group, but were not considered among the top priorities for action. This is appropriate, I think, given the fact that some of them (including greater use of citations and development of the crisis intervention center) will require commitments from other agencies including the CMPD and will probably take a longer period of time to put in place. However, I hope that all of them will be included in a proposed plan of action presented to the County Board.

My suggestions concerning priorities for implementation pretty well track what the Mecklenburg practitioner group felt were the top priorities. In terms of time, these are as follows:

**Initial Priorities (Next 90 Days):**

- Pilot the expedited processing of in-custody misdemeanor cases (Item 1 above).
- Develop plans for rapid resolution of new H and I felony cases; begin initial pilot project (Item 4 above).
- Gather information on the number and characteristics of cases involving cases initiated by citizen complaints and magistrates’ issuance of arrest warrants (Item 3 above)
- Continue and complete inventory of all pending felony cases, by team (Item 5 above).
- Develop plans for Backlog Reduction Program, organized by team; solicitation of additional judge and clerk resources to be provided by AOC (Item 6 above).
- Develop detailed plans for new Administrative Court procedure, with plans for initial pilot focusing on property cases (Item 7 above).
- Identify all resource needs for the proposed new system, including new positions, equipment, software, and compensation incentives to retain experienced staff (Item 8).
- Develop detailed plans for changes in front-end case processing, including expedited misdemeanor case processing (building on the pilot), revision of bond policy, procedures for conducting pretrial services interview, and procedures concerning issuance and service of warrants based on citizen complaints to magistrates (Items 2 and 3 above).
- Prepare a proposed plan that sets forth all of the proposed system changes, with suggested timelines, goals, costs, and anticipated impact on jail population and other aspects of system operations – First Draft by mid - January.
- Make plans for return of the AU team (or some members of it) in February, for meetings with key policymakers and practitioners including judges.

**Mid-Term Priorities (March – June 2008)**

- Finalize the plan for system changes and present it to County Commission, with specific measurable goals and with budget (and appropriate justifications) for additional resource needs.

In connection with the presentation to the County Commission, obtain support for the plan from key leaders of entities who will be involved in or affected by the changes sought through the plan. [NOTE: The sequence of plan development, generation of support, and presentation to the County Commission will be tricky, and should be thought through
carefully. Key idea: No surprises for policymakers whose interests will be affected by the plan.]

- Begin implementation of the changes once they have been approved by the County Commission.

- Continue expedited processing of in-custody misdemeanor cases; rapid resolution of H and I felony cases – early discovery and plea offers; sentencing incentives for early resolution, etc.

- Organize and begin implementation of the Backlog Reduction Program, utilizing additional resources provided by the AOC (judges and clerk staff) and the County (prosecutors and defense lawyers).

- Select the new Criminal Administrator and (if possible) a Supervising Criminal Judge to work with the Criminal Administrator; begin using the new felony case processing system for newly filed cases.

- Develop detailed plans for implementing all of the other components of the plan submitted to the County Commission, including:
  - Major changes in front-end case processing including revision of the bond schedule, pretrial interviewing and risk assessment prior to the hearing before the magistrate, and
  - revision in procedures for handling citizen-initiated complaints to provide for DA screening prior to issuance of an arrest warrant in most or all cases.

**Longer-Term Priorities (July 2008 Forward):**

Everything recommended in the Mahoney-Martin working paper and in the CCTAP report that is not accomplished by July 2008.