MEMORANDUM REPORT

To: Deborah Schaefer, Court Administrator
Yavapai County Superior Court
From: BJA Criminal Courts Technical Assistance Project
Subject: Site Visit by Judge Ronald Taylor (ret.) March 29-30, 2007: Summary Observations and Recommendations (BJA CCTAP Assignment No. 049)
Date: June 20, 2007

I. BACKGROUND

This memorandum report summarizes the observations and suggestions resulting from a technical assistance visit to the Yavapai County, Arizona Superior Court conducted by Judge Ronald Taylor (ret.) on March 29 - 30, 2007. The visit was made in response to a request for technical assistance submitted by Deborah Schaefer, Court Administrator for the Yavapai County Superior Court in November 2006, to BJA’s Criminal Courts Technical Assistance Project (CCTAP) at American University for the purpose of improving the management of the trial calendars. The request for technical assistance was generated, in part, by a concern by the Presiding Judge and others that aspects of the caseflow process had decreased in efficiency in recent months and that this was likely to result in increases in pending cases and reduction of disposition rates.

At the time of submitting the technical assistance request, the Court was contemplating that the technical assistance would entail the conduct of a workshop on caseflow management principles and strategies for judges and others involved in the local caseflow process. The CCTAP assigned Judge Taylor to provide the requested assistance. Judge Taylor, former Chief Judge of the Second Judicial District Court in Berrien County (St. Joseph), Michigan, has had extensive experience in providing technical assistance and training in the area of caseflow management and had recently completed several caseflow management improvement technical assistance studies for courts in other Arizona counties. In planning for the provision of the requested assistance, CCTAP staff reviewed various background materials provided by Ms. Schaefer and spoke, preliminarily, with her regarding the Court’s efforts to improve the management of the caseflow.

The Yavapai County Superior Court is a __ judge court of general jurisdiction which sits in Prescott (x judges) and Camp Verde (x judges). The Court has its principal offices in the city of Prescott, AZ, with a branch court located in Camp Verde, some 50 miles
distant from Prescott. The court has had a long history of introducing initiatives to improve the efficiency of the caseflow process, with, most recently, the introduction in 2004 of an “Early Disposition Court” (EDC), presided over by four criminal judges and designed to dispose of cases shortly following arraignment. The EDC was established for the purpose of reducing the then existing case backlog and the timeframe for processing criminal cases generally and, in particular, the number of pretrial defendants in jail awaiting disposition of their cases. As a result of the EDC, the jail population has been reduced substantially as has the Court’s case backlog. Nevertheless, while a substantial percentage of cases are disposed of at the EDC, a major issue generating the request for technical assistance is the need to assist the Court in determining additional strategies for efficiently managing those cases remaining not disposed of at the EDC and remain in the system.

On February 12, 2007, the CCTAP conducted a telephone conference call with Ms. Schaefer, Chief Judge Robert Brutinel and Associate Presiding Judge William Kiger and Judge Taylor. The purpose of the call was to discuss further the issues generating the Court’s request for technical assistance as well as additional issues which surfaced during the course of the telephone discussion. These included: (1) the frequent scheduling for trial of more cases than could be handled by the assigned trial judge, creating last minute pressures to have back-up judges available while, at the same time, recognizing that most of these cases would never go to trial on the trial date set; (2) complaints from attorneys that they don’t have adequate time to prepare their cases; and (3) the fact that the impact of the EDC in terms of reducing the case backlog appears to have plateaued by March 2005 and, although the pending caseload has remained constant since then, it has not significantly decreased. These factors suggested that, although a workshop on effective caseflow management strategies could be very useful, it should be held after a review was conducted of the criminal case process generally. This review could potentially suggest additional strategies that might now be considered to supplement the EDC and apply to those cases not disposed of at the EDC.

It was therefore agreed that Judge Taylor would conduct a site visit to Prescott and Camp Verde to discuss current criminal case management practices and policies with the judges as well as representatives of the public defender’s office and contract assigned counsel, the county attorney’s office (prosecutor) and others involved in the criminal case process. The focus of the site visit was to be upon identifying the factors contributing to case resolution at the EDC as well as the nature of cases that remain in the system and the characteristics (timeframe, events, scheduling practices, etc.) of the criminal case disposition process for these cases. It was intended that the outcome of this review would be recommendations to provide greater consistency and certainty to the criminal case process generally as well as to trial scheduling practices so that only those cases likely to go to trial would be actually set on the trial docket. Following the site visit, Judge Taylor would prepare a draft report of his observations and recommendations which the CCTAP would send to the Court for review. Judge Taylor would then make a follow up visit to the Court to conduct a workshop session which would draw upon both his observations and recommendations as well as accepted effective case management strategies necessary to implement the recommendations he proposed.

The following memorandum report summarizes Judge Taylor’s observations as a result of his site visit.
II. **SITE VISIT AGENDA**

Judge Taylor visited the Yavapai County Superior Court on March 29-30, 2007. During this two-day preliminary visit, the following persons were interviewed:

- Ms. Tina Ainley, ACA
- Ms. Shelly Bacon, Court Services Coordinator
- Hon. Robert M Brutinel, Presiding Judge
- Ms. Kathleen Cartier, JA – Judge Sterling
- Hon. Warren R Darrow, Pro-Tem Judge – Camp Verde
- Mr. John Erickson, ACA
- Mr. Jim Grandjean, Supervising Attorney, Public Defender’s Office, EDC Attorney
- Ms. Jeanne Hicks, Clerk of Superior Court
- Hon. William T. Kiger, Associate Presiding Judge
- Ms. Diane LaBarbera, Caseflow Manager
- Ms. Janet Lincoln, Public Defender
- Hon. Thomas B Lindberg
- Mr. Chet Lockwood, Private Defense Counsel
- Mr. Julio Marroquin, Dir., Victim Assistance – CA Office
- Mr. Dennis McGrane, Deputy County Attorney
- Mr. Jim O’Haver, Deputy Public Defender
- Mr. Jeff Paupore, ACA
- Ms. Sheila Polk, County Attorney
- Ms. Deborah M. Schaefer, Court Administrator
- Hon. Janis A. Sterling
- Mr. David Stoller, Private Defense Counsel
- Ms. Diane Troxell, Judicial Assistant, Judge Darrow

III. **SUMMARY OBSERVATIONS**

A. **Overview**

As noted above, the focus of this visit was upon assessing current caseflow conditions following the implementation of an “early disposition” process in 2004, as well as certain other aspects of processing practices in the criminal caseload.

While the court leadership strongly favors the early disposition process, it also believes that, overall, the caseload could be managed more efficiently and effectively. Since the early disposition process is managed by designated judges and effectively operates as a “stand-alone” procedure, it seems to be the case that the problems that exist are primarily occurring after assignment to the trial divisions. Thus, the leadership of the court feels that some education in currently acceptable caseflow management principles might be effective in correcting these shortfalls.
Accordingly, the Court has requested that the CTAP assess various factors that may be involved in this perceived loss in efficiency and recommend corrections to deficiencies with possible presentation of a limited caseflow management program for judges and other critical staff in the near future. As will be seen, the observations during the site visit disclose several systemic problems that should be addressed in addition to the future presentation of any educational program. These problem areas affect the operation of the court and the smooth movement of cases through the system and are mostly independent of any delay occasioned by judicial case management.

The purpose of this brief memo is to document the observations during the visit and to set the stage for further analysis and corrective action as necessary.

B. Discussion

1. The Early Disposition Court (EDC)

The Early Disposition Court (EDC) is an opportunity for the parties to appear before a designated judge at a very early time in the case process (approximately ten days after case filing) and attempt to work out a settlement. This process envisions that the parties will exchange discovery and that a plea offer will be forthcoming at or before the hearing. Although this exchange almost always takes place at the time of the hearing, the defense has adapted well to that reality and many times is able to review the material with the client and react to the offer. In many cases this results in a disposition on the spot. Unfortunately, the lack of disclosure and plea offer in advance of the conference has an impact on the success of the process. It therefore would appear that either steps should be taken to expedite the information from the prosecution to the defense or, perhaps, the EDC itself should be moved a bit later in the process to allow for this information exchange.

As can be seen from the above description, while, overall, the EDC is quite successful, the lack of timely disclosure and plea offers in advance of the conference has an impact on the success of the process. It therefore would appear that either steps should be taken to expedite the information from the prosecution to the defense or, perhaps, the EDC itself should be moved a bit later in the process to allow for this information exchange.

The EDC process has been in place approximately 2 ½ years. During that time the new procedure has shown remarkable results. Because of the availability of the opportunity for prompt disposition of cases, typical jail population rates and average times to disposition have fallen markedly. In 2004, for example, before the advent of the Early Disposition Court, the average time to disposition was 137 days. As of FY05/06 that same figure had dropped to 83 days, a decrease of almost 40%. Likewise, average jail
population has consistently fallen during the time that EDC processing has been available. The current population, while still seemingly higher than normal for this size jurisdiction, averages approximately 10% less than comparable periods before EDC.

Even more impressive are post-EDC disposition rates. Statistics show that the percentage of cases disposed of within 100 days of filing have consistently risen since the EDC was established. In 2004, before the establishment of the EDC process, this figure was 45%. Since then the figure has climbed to 67% in 2005, 68% in 2006 and is currently hovering around 72%. This figure clearly demonstrates that the early disposition process is being used successfully by the court and the attorneys to provide relatively speedy disposition in a large number of cases, to the benefit of all concerned.

As can be seen, the EDC appears to be having a very positive effect on the system and has produced a significant impact on the court’s statistics. Accordingly, no significant changes are recommended to this process at this time. As will be seen, however, some relatively minor changes to the process might produce somewhat better results.

2. Post-EDC proceedings

It is felt that the area that is most neglected in the court’s current caseflow practices is the time that begins running with the end of the EDC process. Discussions with many of the participants in the system confirm that there is a significant loss of momentum in case processing that occurs after the relatively efficient EDC process has been concluded.

There appear to be a number of reasons for this “pause” in the efficiency of processing of cases remaining in the system after EDC, but, overall, it has been repeatedly suggested that a kind of “catch your breath” mentality takes place upon exit of the case from EDC. This psychological component is exaggerated by a complete change of personnel that takes place at this time. Whereas the EDC is staffed by an assigned judge and dedicated prosecutors, defenders and court staff, virtually all cases surviving after EDC (at least those represented by appointed counsel – some 85-90%) are shifted to a trial docket with a new judge, prosecutor and defense counsel. This re-assignment can be very disruptive to the caseflow process as every one involved must acquaint themselves with the case and get “up to speed”. This disruption causes a major slowdown and greatly hinders the caseflow management scheme.

In addition, other factors come into play involving this “shift” between what are essentially two systems of case processing. For example, offers of settlement by the County Attorney’s office are generally made at, or immediately before, the EDC. In many cases the Defense has insufficient time to properly evaluate the offer at the time of the conference and thus must seek additional time to investigate, consult with the client, etc. In order to do this, the County Attorney requires that the defense waive any preliminary hearing. In the event that Defense Counsel refuses to waive hearing, the case is sent to the Grand Jury and offer is withdrawn. If the defense waives hearing, then the offer may remain open for an additional 30 days, until the time of the court’s Case
Management Conference. Unfortunately, it is unusual that much evaluation takes place during this period, thus rendering the CMC meaningless and any attempt to resolve the case at that conference futile. The result of this process is that the CMC is frequently continued, sometimes numerous times. Many of the participants in the system on all sides of the process complain of routine continuances and meaningless court appearances for useless conferences.

An additional problem that inhibits and greatly delays the disposition of cases during the post-EDC period is a lack of authority reposed by the County Attorney in her assistants. In part, this is a function of turnover in the office and, in part, is systemic due to somewhat restrictive policies on the part of the County Attorney herself. The effect of this practice is that assigned assistant County Attorney's during the post-EDC period can rarely exercise much flexibility in attempting to dispose of the case. The result is that, when the defense rejects the early (EDC) offer at the CMC, the case is routinely placed on the trial docket and then languishes until nearly the end of the period allowed by the Speedy Trial rules. This ultimately pushes a large number of cases toward the end of the caseflow process and skews dispositions toward the lengthy end of the spectrum.

As can be seen from the above, the current practice in the post-EDC period, which effects a fairly large number of cases (slightly over 50%) is structured in such a way as to favor longer case disposition times, rather than shorter. In virtually all cases emerging from the EDC process the default appears to be the placing of the case on a long-term trial calendar. It is pretty clear that changes must be made in case management practice in the post-EDC process in order to effect the overall case disposition rate. The process must be reformed in such a way as to provide incentive for continued attention to cases remaining in the system after the EDC process has been completed. Further analysis should include a review of the number and type of cases that typically emerge from the EDC, the reasons for lack of disposition at EDC and existing procedures that take place after EDC.

Emphasis should be placed on: creating meaningful events in the processing of cases beyond EDC and assuring compliance with court-established deadlines for disclosure of information; investigation and interviewing of witnesses; and provision of reasonable disposition proposals at specified, relatively early, times in the caseflow process. Control of case progress and management of events should proceed under the direct supervision of the assigned judge and a system should be created to allow for periodic judicial review of the pending caseload and progress toward case disposition.

3. Consistency in Case Management Practices and Organization of Case Processing Events

One of the concerns reported by a number of those interviewed during the site visit was a general lack of consistency between the various Court Divisions in regard to case management practices and a lack of any real organization of events occurring during the life of the cases. Virtually everyone recognizes that the responsibility for providing a relatively smooth and predictable case process rests with the Court. The attorneys and
others in the system look to the judges to provide leadership in managing the caseload and creating an atmosphere calculated to promote relatively prompt disposition of cases. Unfortunately, to date, this organization and consistency seems somewhat lacking in the current system. Participants report significant differences in case management practices between various judges and, in general, suggest a certain lack of desire or willingness on the part of the judges to actively manage their assigned caseloads. This may be partly reality and partly perception; however, to the extent that such a lack of organization is perceived by system users it becomes self-fulfilling, since a perceived lack of diligent management of cases creates lack of attention and preparation by system users.

One essential part of a good case management system is the consistency with which the rules are applied. With some inevitable minor variation, participants in the system should be able to rely on the application of similar procedures and requirements, regardless of which division of the Court they find themselves. It is, therefore, essential that the Court adopt standard practices to be uniformly applied to all cases. Judges should be well aware of these court-wide procedures and should commit to practicing them as uniformly as possible. Attorneys and other system users should be made aware of new procedures prior to their adoption and should be advised that such procedures will be consistently applied across the Court. Users should also be made aware of potential sanctions for lack of compliance and of the willingness of the judges to apply them where necessary. The application of standard case management procedures should be collegially developed between the judges and administrators of the Court and all should be willing to abide by and enforce the requirements of the case management system. This concept should be one of the underlying principles in the development of a new case management process for the Court.

IV. SPECIFIC SUGGESTED AREAS OF IMPROVEMENT

Based on the discussions conducted during the site visit, the following suggestions should be given consideration in developing a new case management system:

1. The existing EDC procedure should be retained essentially intact subject to some refinement as suggested below.

2. The Case Management Conference (CMC) should be moved to a somewhat later stage of the case process and, under most circumstances, should be a single event with mandatory attendance and discovery/disclosure requirements. Continuance requests should be only sparingly granted.

3. Between the time of the case exiting the EDC process and the CMC, meaningful events should be created with appropriate monitoring and enforcement to assure compliance with performance requirements.
4. All cases emerging from the EDC should be relatively immediately analyzed to determine appropriate processing timeframes and necessary events during the life of the case leading to possible early disposition.

5. Following such analysis the future processes established should be memorialized by an order of the Court outlining case events and timeframes, potential sanctions for noncompliance and a potential disposition timetable.

6. Discussions should be conducted with the County Attorney’s office as to more flexible plea policies and the establishment of procedures to provide more disposition authority to assigned prosecutors.

7. Requirements should be established to assure that appropriate disclosure and plea offers are provided in advance of EDC – this should be made mandatory even if the EDC date has to be moved somewhat further downstream in the process.

8. The County Attorney should be encouraged to develop a plea policy consistent with case management practices adopted by the Court. Specifically, the CA should provide disposition alternatives at all stages of case processing. These disposition alternatives should be provided to the Defense at the earliest possible time in the life of the case and should remain in place subject to future changes in case priorities.

9. Trial scheduling practices should be re-examined. Virtually all attorneys on both sides of the trial spectrum and many staff members have concerns relating to the current court schedule. It appears that the courtroom schedule is so tight as to allow relatively little “down” time for necessary non-trial work which might have a positive effect on earlier case disposition. The current trial schedule has both the prosecution and the defense in court actually processing cases on average four days a week. The fifth day is devoted to law and motion practice. Thus, the lawyers, while recognizing the need for trial preparation and internal processing of cases to promote disposition, feel that they have little if any time to perform these necessary chores. They believe that this lack of “office time” actually has a significant impact on their ability to cooperate with the Court in its efforts to promote consistent and timely disposition.

The County Attorney has recently suggested a change in scheduling that would allow one week out of three for Law and Motion practice, meaningful Pretrial conferences and other short matters. While the particular proposal may prove to be somewhat restrictive in its own right, the concept has merit and the Court should be prepared to discuss alternatives to its current scheduling practice.

At such time as a new caseflow system is designed for Yavapai County, the above issues should be given high priority in the case management scheme. Many of the suggestions made above are essential to the development of a successful caseflow model. In addition, it is critical that the judges and others be persuaded that whatever program is developed
be strictly adhered to by all concerned since, only by a unified approach to case management on the part of the Court, will the rest of the system users adopt to the changes successfully.

V. FUTURE STEPS

The original request for Technical Assistance requested that a site visit be conducted to review the existing case management system and suggest possible improvements. This report reviews the observations made during the visit and some of the commentary of various participants in the system.

In addition to the site visit and observations, it was suggested that the judges and other staff of the Court might benefit by a short seminar or “mini-workshop” on the underlying principles of good caseflow management and the possible application of Differentiated Case Management concepts to the system in Yavapai County. Accordingly, the court leadership should evaluate the desire for such a training program in the near future after digesting the contents of this report. In the event that it is felt that such a program would be beneficial arrangements should be made through the CCTAP office at the American University in Washington, DC.