A PUBLICATION OF THE NATIONAL CENTER FOR STATE COURTS

WILLIAMSBURG, VA
300 NEWPORT AVENUE
WILLIAMSBURG, VA 23185

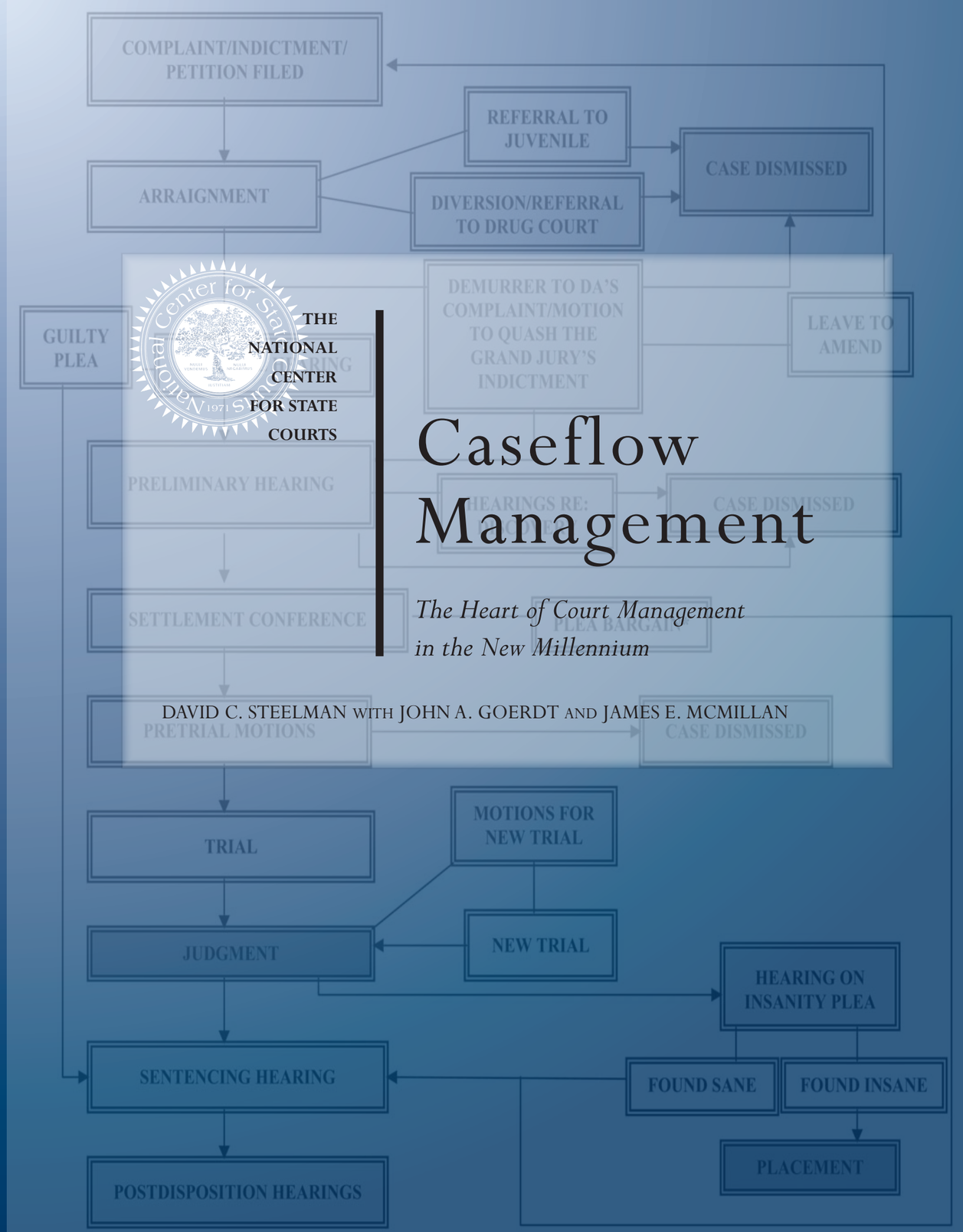
DENVER, CO
1331 17TH ST.
DENVER, CO 80202

ARLINGTON, VA
2425 WILSON BLVD.
ARLINGTON, VA 22201

ASSOCIATIONS (800) 616-6165
CONSULTING (800) 466-3063
EDUCATION (800) 616-6206
GOV. RELATIONS (800) 532-0204
INFORMATION (800) 616-6164
INTERNATIONAL (800) 797-2545
PUBLICATIONS (888) 228-6272
RESEARCH (800) 616-6109
TECHNOLOGY (888) 846-6746

ISBN: 0-89656-205-0

Caseflow Management *The Heart of Court Management in the New Millennium*



THE NATIONAL CENTER FOR STATE COURTS

Caseflow Management

The Heart of Court Management in the New Millennium

DAVID C. STEELMAN WITH JOHN A. GOERDT AND JAMES E. MCMILLAN

CASEFLOW MANAGEMENT

The Heart of Court Management in the New Millennium

DAVID C. STEELMAN
WITH
JOHN A. GOERDT
AND
JAMES E. MCMILLAN

2nd Printing, 2002

3rd Printing with revisions, 2004

ISBN: 0896562352

The preparation of this book was funded by the National Center for State Courts as a service to judges, court managers, and others interested in court administration and the operation of the courts. The point of view or opinions expressed here are those of the authors and do not necessarily represent the official position or policies of the National Center for State Courts.

Photos on pages x, 2, 24, 42, 60, 72, 88, 98, 110, 136, and 192 appear courtesy of the California Administrative Office of the Courts.

CASEFLOW MANAGEMENT
The Heart of Court Management in the New Millennium

TABLE OF CONTENTS

ACKNOWLEDGMENTS

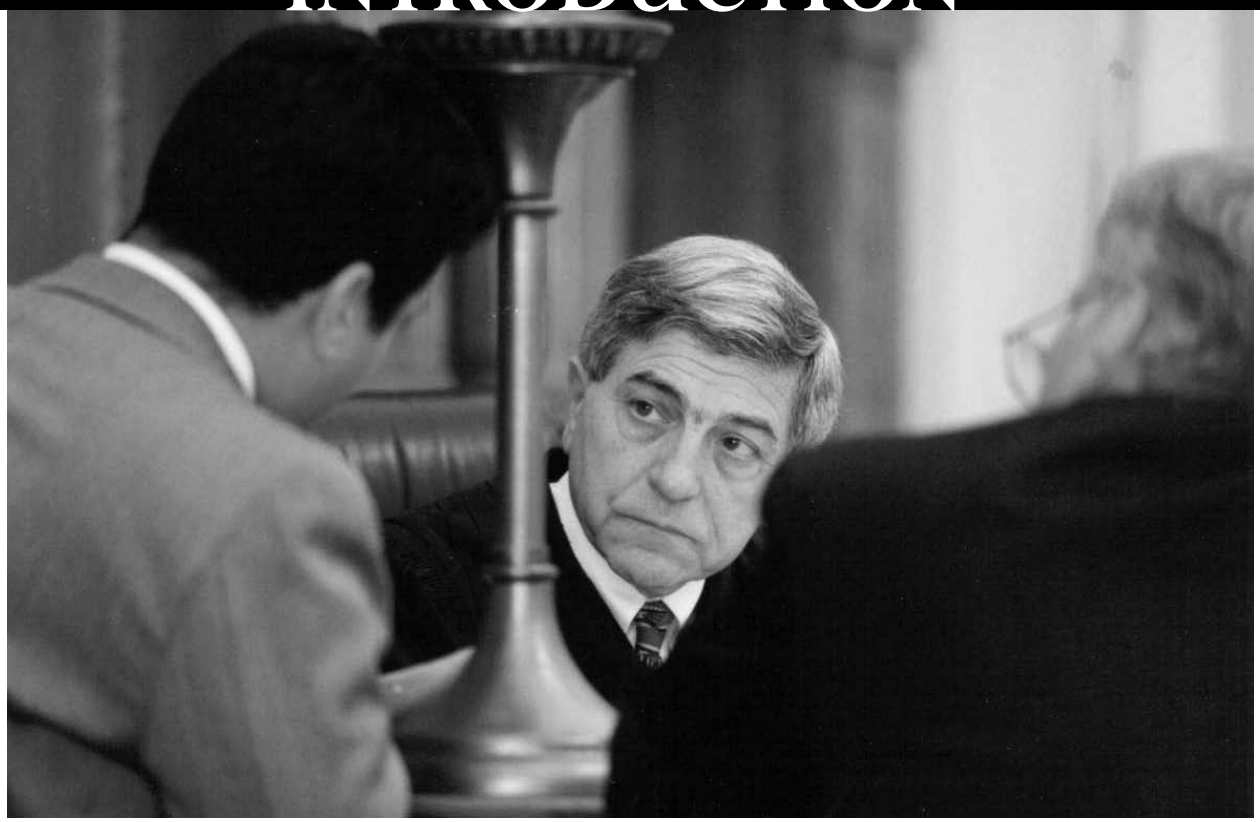
Few books are the work of only one person, and this one is no different. Many people have contributed materially to the work presented here, and I want to express my deep gratitude to all of them. Jim Thomas contributed what makes the world go round—funding support—as well as continuing encouragement from the beginning to the end of the effort. John Goerdt prepared the first draft of Chapter VI, along with the sample caseflow management reports in Appendix D. Jim McMillan is responsible for the initial draft of section A in Chapter VII.

Janet Cornell, Tom Henderson, Geoff Gallas, George Gish, and John Goerdt made extensive critical comments on a first draft of the manuscript, and Geoff Gallas reviewed and commented on the second draft. Their efforts have made the final product immeasurably more accurate and coherent. Other colleagues who were kind enough to read and comment on a draft of the manuscript were Suzanne James, Barry Mahoney, Doug Somerlot, Chris Crawford, Ingo Keilitz, and Sherif Hosni. I am also in debt to many of these reviewers and to other experts (including Ernie Friesen, Maureen Solomon, Holly Bakke, Caroline Cooper, Larry Polansky, the Commission on Trial Court Performance Standards, and the Professional Development Advisory Committee of the National Association for Court Management), whose written works have contributed so much to our thinking about caseflow management and have provided a significant part of the conceptual foundation on which this book is based.

Finally, I want to thank Anne Kelly for successfully managing the difficult task of turning the final manuscript into a book suitable for publication in 2000, as well as Sara Lewis and Chuck Campbell for arranging a new layout for the book in its third printing. As is always the case, however, none of these people bears any responsibility for any defects that may remain in the book.

David C. Steelman
Manchester, New Hampshire
December 2003

INTRODUCTION



Superior Court of Riverside County (California)
Judge Victor Miceli holds a sidebar conference with attorneys.

INTRODUCTION

As the great British statesman William E. Gladstone said in the nineteenth century, "Justice delayed is justice denied."[1] In America, delay reduction has been one of the primary focuses of twentieth-century court reform efforts. To reduce and avoid delay, American courts have developed a set of principles and techniques since the 1970s that we refer to as "caseflow management." Caseflow management involves the entire set of actions that a court takes to monitor and control the progress of cases, from initiation through trial or other initial disposition to the completion of all postdisposition court work, to make sure that justice is done promptly.[2]

The main premise of this book is that caseflow management is more than just a way to reduce or avoid delay, however. In fact, caseflow management is the conceptual heart of court management in general. We can fully understand courts as organizations only if we understand the requirements of caseflow management. In managing a court, the chief judge and court managers should focus first on caseflow management—not just because it addresses problems of delay or backlog, but more importantly because it is the very foundation of court management in general. Even if a court is current and has no problems of delay, it should have an effective caseflow management program, both as a *means to achieve* successful general court management and as *a key aspect* of successful overall court management.

A. CASEFLOW MANAGEMENT AS THE CENTRAL THEME IN COURT MANAGEMENT

The centrality of caseflow management to court management is apparent from a brief review of American court reform efforts in the twentieth century.[3] Not coincidentally, the principles of caseflow management were first articulated and tested in the 1970s and 1980s, when court management emerged as distinct profession in the United States. In fact, these two developments went hand in hand.

1. Court Reform in the First Half of the Twentieth Century

From the early 1900s until the years just after World War II, three figures dominated court reform efforts in the United States: Roscoe Pound, William Howard Taft, and Arthur Vanderbilt. For each of these men, court delay was a significant problem to be addressed in court reform efforts.

The father of court reform in America was Roscoe Pound, dean of Harvard Law School. In 1906, in "The Causes of Popular Dissatisfaction with the Administration of Justice," a speech to a convention of the American Bar Association, he noted "a widespread feeling that the courts are inefficient."[4] The most direct causes of dissatisfaction, he said, had to do with archaic judicial organization and procedure, resulting in "uncertainty, delay and expense" that "have created a deep-seated desire to keep out of court, right or wrong." Pound saw the court system as archaic in three respects: (1) having a multiplicity of courts, (2) preserving concurrent jurisdictions, and (3) wasting judicial resources that could be used to reduce court backlogs.[5]

1. Bruce and Allan Zullo, eds., and Kathryn Zullo, comp., *Lawyer's Wit and Wisdom: Quotations on the Legal Profession, In Brief* (Philadelphia, Pa.: Running Press, 1995), p. 139.
2. See Appendix A, "National Association for Court Management (NACM) Caseflow Management Curriculum Guidelines." These guidelines are also published in NACM Professional Development Advisory Committee, "Core Competency Curriculum Guidelines: History, Overview, and Future Uses," *Court Manager* 13, no. 1 (winter 1998): 6 at 7.
3. For a detailed discussion of the American court reform movement in the twentieth century, see Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform* (Williamsburg, Va.: National Center for State Courts, 1999), chaps. 6-9.
4. Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administration of Justice," *American Bar Association Reports* 29 (1906): 395; reprinted, *Journal of the American Judicature Society* 20 (February 1937): 178; and *Federal Rules Decisions* 35 (1964): 273, hereafter cited as FRD.
5. FRD, 284.

Pound was a leading proponent for the creation of the first court reform organization—the American Judicature Society—in 1913. Although the society focused more on issues such as judicial selection and tenure than on court operations, it helped initiate the movement to create judicial councils as planning and policy bodies for court systems. In addition, the society encouraged broader court exercise of rulemaking power to foster greater coherence in court operations and procedures.[6]

Another major court reform leader was William Howard Taft. In a law school commencement address in 1914, the former U.S. president criticized the federal judicial system and praised the simplicity and flexibility of English court procedures. To remedy the problems of the system, he recommended:

(1) A merger of law and equity

(2) Placement of rulemaking power completely under the Supreme Court or a council of judges

(3) Reduction of court costs

(4) Reduction of the number of cases that the Supreme Court is required to review

(5) Creation of a federal workmen's compensation act

(6) Authority for federal court leaders to redistribute judges to help eliminate backlogs[7]

After becoming chief justice of the Supreme Court in 1921, Taft took affirmative steps to reduce backlog in the Court. For instance, he supported federal legislation giving the Court wider discretion in its acceptance of cases.

A third great leader of court reform was Arthur T. Vanderbilt, who became president of the American Bar Association in 1938 and who created a section on judicial administration. Calling on the leaders of this new section to develop national standards for judicial administration, he directed that such standards be guided by certain fundamental needs and rights of litigants:

(1) Prompt and efficient treatment of one's case

(2) At a reasonable cost

(3) Represented by a competent attorney

(4) Before an impartial, experienced judge

(5) With the privilege of review[8]

After Taft resigned as chief justice of the Supreme Court, Charles Evans Hughes succeeded him. Chief Justice Hughes had to face the efforts of President Franklin Roosevelt to increase the number of Supreme Court justices from 9 to 15, ostensibly to deal with claims that the Court was slow and inefficient. Although this "court packing" effort failed, the chief justice recognized the need for administrative reorganization. In 1939, at his request, Congress created the Administrative Office of the United States Courts, which took control from the Department of Justice of all administrative functions for the federal courts, including the compilation of statistical data on the work of the federal judiciary.[9]

2. *Court Reform and the Rise of the Court Management Profession after the Second World War*

When Arthur Vanderbilt became chief justice of the New Jersey Supreme Court shortly after World War II, he was able to implement many of his ideas about judicial administration, including establishment of an administrative office with authority from

6. See Robert Tobin, An *Overview of Court Administration in the United States* (Williamsburg, Va.: National Center for State Courts, 1997), pp. 15-16.
7. See Larry Berkson, "A Brief History of Court Reform," in Berkson, Hays, and Carbon, eds., *Managing the State Courts: Text and Readings* (St. Paul, Minn.: West Publishing, 1977), pp. 8-9.
8. Ibid., pp. 9-10.
9. Ibid., p. 10.

the chief justice to carry out the state supreme court's administrative policy. Among the first steps he took was the appointment of Edward B. McConnell as America's first state court administrator in 1948. (Although West Virginia created a state court administrative office by statute in 1945, the first state court administrator there was not appointed until 1975.)[10] Other states soon followed the lead of West Virginia and New Jersey. In the 1950s, 11 states created state court administrative offices, and in the 1960s, 15 more did so. In 1955, the state court administrators created the National Conference of Court Administrative Officers, a professional organization in which trial court administrators could be members.

Although many activities involving the oversight of day-to-day trial court operations were performed by court clerks in eighteenth- and nineteenth-century America, the idea of a court manager other than a chief justice or administrative judge was unheard of until well into the twentieth century. Ms. Rita Prescott was probably the first person in the country with the title of court administrator of a trial court,[11] having been appointed to that position in 1950 by the Delaware County Court of Common Pleas in Media, Pennsylvania.[12] The further development of the court management profession was stimulated by factors such as uneven trial court performance and growing problems of delay:

> The issues that gave rise to the still-emerging court management profession and to recent developments in state-level funding and increased state oversight of trial courts were not merely changes in scale (increased caseloads) and procedural complexity. Rather, the accelerated development of the court management profession as a field of practice, with serious intent, resulted from uneven trial court performance within and across states; the chronic underfunding of trial courts by municipal and county officials; weak and even corrupt local court management; ever-worsening backlogs, times to disposition and waiting times; and undue and inappropriate interference in trial court functions by local executive and legislative agencies and personnel, many of whom were the primary litigants in the trial courts.[13]

Such problems led trial court presiding judges in California to support legislation authorizing a trial court to delegate management responsibility to a trial court executive.[14] In 1957, the Los Angeles Superior Court—then the nation's largest trial court with 134 judges—established the position of executive officer and in 1958 hired Edward Gallas to be the first trial court executive in California.[15] Similar positions were subsequently created in other urban trial courts. By 1963, there were six court administrator positions in Pennsylvania.[16] In 1965, pioneer court managers created the National Association of Trial Court Administrators (NATCA). In 1968, elected clerks of court (who have always performed important administrative functions for courts) created the National Association for Court Administration (NACA).

As the court management profession emerged, many other important organizations were created to serve courts. In 1952, the Institute for Judicial Administration (IJA) was formed under the leadership of Chief Justice Vanderbilt. In 1963, the National College of State Trial Judges (now the National Judicial College) was created. In 1967, the Federal Judicial Center was created as the research arm of the federal judiciary.

In 1969, Warren Burger took office as chief justice of the U.S. Supreme Court, and he soon joined Pound, Taft, and Vanderbilt as one of the greatest advocates of court reform in America in the twentieth century. Shortly after taking office, he took major steps to address the problems of congestion and delay in the courts.[17] First, he called distinguished officials together to plan the training of court managers. The result was establishment of the Institute for Court Management (ICM) under the leadership of Ernest Friesen, who until then had been the administrative director of U.S. courts. Then Chief Justice Burger arranged for the first national conference on the judiciary to be convened in Williamsburg, Virginia, in 1971.[18] The immediate result of that conference was the creation of the National Center for State Courts (NCSC) to promote research aimed at improving court administration in state and local courts. In 1982, a

10. See National Center for State Courts, Court Statistics Project, *State Court Organization, 1980* (Williamsburg, Va.: National Center for State Courts, 1982), Table 21.

11. Geoff Gallas, telephone conversation with author, May 15, 1999.

12. Survey conducted by the National Association of Trial Court Administrators in conjunction with the Institute of Judicial Administration, as cited by Harry Lawson and Dennis Howard in "Development of the Profession of Court Management: A History with Commentary," *Justice System Journal* 15, no. 2 (1991): 580 at 589-590.

13. Geoff Gallas and Edward Gallas, "Court Management Past, Present and Future: A Comment on Lawson and Howard," *Justice System Journal* 15, no. 2 (1991): 605 at 609.

14. Ibid., pp. 610-612.

15. See Richard Gable, "Modernizing Court Administration: The Case of the Los Angeles Superior Court," in Berkson, Hays, and Carbon, eds., *Managing the State Courts*, pp. 54-63.

16. Lawson and Howard, "Development of the Profession of Court Management," p. 590.

17. See Berkson, "Brief History of Court Reform," pp. 13-14.

18. See National Conference on the Judiciary, *Justice in the States* (St. Paul, Minn.: West Publishing, 1971).

merger of NCSC and ICM began, and ICM ultimately became the educational arm of NCSC.

The most significant organizational development of courts at the state level occurred in the 1970s, when 21 states and the District of Columbia created administrative offices. By the early 1980s, every state court system had a state-level administrative director.[19] In 1971, state court administrators established their own organization—the Conference of State Court Administrators (COSCA)—in which every state court administrative office is now represented.[20]

In the 1970s, the number of court administration positions at the trial court level began to grow. By 1980, NATCA had about 350 members.[21] In 1985, NATCA and NACA merged to form the National Association for Court Management (NACM). NACM had almost 2,000 members by 1990 and almost 2,500 members in early 1999.[22]

3. Emergence of Caseflow Management Principles and Techniques

From the beginning of the twentieth-century court reform movement until the 1970s, efforts to reduce delay focused on court structure, court resources, and rules of procedure—issues that arose from the cognitive framework of judges, law professors, lawyers, and legislators.[23] Roscoe Pound was an advocate of simpler court organization and of more flexible use of judicial resources. William Howard Taft argued for the merger of law and equity and the reallocation of judges to address delay.

Until the 1970s, the assumptions implicit in discourse on court delay were that court resources and formal rules and procedures determined the pace of litigation and that solutions to the problem of delay must be applied in these areas. A classic expression of this view is found in the 1959 study of delay in the Manhattan trial court by Professors Zeisel, Kalven, and Buchholz. In that study, the authors viewed delay as a problem of matching resources to workloads, a problem to be solved by additional effort on the part of judges (articulated as the number "judge years" needed to eliminate delay); adoption of "streamlined" or "business-like" procedures, such as use of impartial medical experts; or certificates of readiness, or more efficient use of judge's time through reduction of the loss of "judge days" per year or "judge hours" per day.[24] In 1968, a review of remedies for court delay limited the available options to (a) techniques to reduce inefficiency and delay in a court's calendar procedure, such as use of pretrial conferences, establishment of trial-readiness rules, and creation of "blockbuster" parts; (b) procedures to remove cases from the trial system, such as referral of cases to auditors and to compulsory arbitration; and (c) means to remove claims from the tort liability system, such as provision of no-fault basic insurance protection and operation by administrative agencies of an automobile accident victim compensation program similar to a workers' compensation program.[25]

By the 1970s, as the preceding section indicates, a growing number of states had state court administrators, and court administrators at the trial court level were becoming more numerous as well. At the same time that a body of court professionals who were charged with court management responsibilities was emerging, attention in the search for solutions to problems of delay was shifting from structure, resources, and rules to the actual process of how cases progress from filing to disposition. In 1973, the American Bar Association Commission on Standards of Judicial Administration (in the process of updating the standards promulgated earlier under Vanderbilt) commissioned a monograph by Maureen Solomon. In *Caseflow Management in the Trial Court*, she reasoned that debates among judges and others about matters such as the relative merits of different case assignment systems—for example, those used in the making of individual, master, or hybrid calendars (see Chapter VIII, pp. 153 to 160)—were not the most productive way to address court delay. Instead, she emphasized the need for commitment by judges to court control of the progress of litigation, using the services of a court administrator to coordinate the process in keeping with

19. See National Center for State Courts, Court Statistics Project, *State Court Organization 1980*, Table 21.

20. See Tobin, *Overview of Court Administration*, pp. 20-22.

21. Gallas and Gallas, "Court Management Past, Present and Future" at 613.

22. See ibid. at 613 for the estimated NACM membership in 1990. As of February 1999, NACM had 2,476 members (see "Membership Update," *Court Communiqué* 1, no. 1 [March 1999]: 8.

23. David Steelman discusses the developments reviewed in this section in more detail in two earlier articles. See "What Have We Learned About Court Delay, 'Local Legal Culture,' and Caseflow Management Since the Late 1970s?" *Justice System Journal* 19, no. 2 (1997): 145 at 149-154, and "The History of Delay Reduction and Delay Prevention Efforts in American Courts," in Working Group on a Courts Commission, *Report on Case Management Conference* (Dublin: Government of Ireland, 1997): 73 at 81-95.

24. H. Zeisel, H. Kalvin, and B. Buchholz, *Delay in the Court* (Boston: Little, Brown and Company, 1959), pp. 8-17.

25. See Comment, "Remedies to Court Congestion," *Syracuse Law Review* 19 (1968): 714.

case-processing time standards and other system performance standards adopted by judges and administrators.[26]

One of the first studies to confirm the value of a caseflow management approach to court delay was a 1977 study based on data from U.S. district courts for fiscal years 1974 and 1975 by Steven Flanders of the Federal Judicial Center.[27] In that study, the researchers concluded that fast courts were distinguishable from other courts in several ways. The former:

- Strictly monitored pleadings, began and completed discovery within a reasonable time, and promptly initiated a trial if it was needed
- Delegated all docket control, attorney contacts, and most conferences to a courtroom deputy clerk or magistrate until discovery was complete
- Had judges who normally initiated settlement negotiations only when a case was nearly ready for trial[28]

The first comprehensive and rigorous national study of delay in state courts was conducted by the National Center for State Courts. Thomas Church and fellow researchers examined civil and criminal cases disposed in 1976 in 21 state trial courts of general jurisdiction. They concluded that:

> The speed of disposition of civil and criminal litigation in a court cannot be ascribed in any simple sense to the length of its backlog, any more than court size, caseload, or trial rate can explain it. Rather, both quantitative and qualitative data generated in this research strongly suggest that both speed and backlog are determined in large part by established expectations, practices, and informal rules of behavior of judges and attorneys. For want of a better term, we have called this cluster of related factors the "local legal culture." Court systems become adapted to a given pace of civil and criminal litigation. That pace has a court backlog of pending cases associated with it. It also has an accompanying backlog of open files in attorneys' offices. These expectations and practices, together with court and attorney backlog, must be overcome in any successful attempt to increase the pace of litigation. Thus most structural and caseload variables fail to explain interjurisdictional differences in the pace of litigation.[29]

Church and his colleagues observed that trial court delay is not inevitable but that "changes in case processing speed will necessarily require changes in the attitudes and practices of all members of a legal community." In accelerating the pace of litigation in a court, they noted, "the crucial element . . . is concern on the part of judges with the problem of court delay and a firm commitment to do something about it."[30] They found that attempts to alter the caseloads of individual judges by adding judges or decreasing filings are not likely to increase either productivity or speed. To reduce pretrial delay, they recommended that courts:

- Establish management systems by which the court, and not the attorneys, controls the progress of cases
- Use trial-scheduling practices and continuance policies that create an expectation on the part of all concerned that a trial will begin on the first date scheduled
- Emphasize readiness to try rather than settle cases, as a means to induce settlements
- Increase judicial accountability and productivity in civil cases, perhaps through institution of the "individual calendar" method of assigning cases to judges
- Increase effectiveness of speedy-trial standards for criminal cases through introduction of operational consequences for violation of the standards and through reduced ease of waiver by defendants

Taken together, the studies by Flanders and Church confirmed Solomon's observations and contributed to a shift in the terms in which causes of and remedies for delay in

26. Maureen Solomon, *Caseflow Management in the Trial Court* (Chicago: American Bar Association, 1973), pp. 29-30.
27. Steven Flanders, *Case Management and Court Management in United States District Courts* (Washington, D.C.: Federal Judicial Center, 1977), p.1.
28. Ibid., ix-x.
29. Thomas Church et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1978).
30. Ibid., p. 83.

American courts were discussed. Their efforts coincided with a shift in the emphasis in court management from organization and structure to accountability, performance, efficiency, and effectiveness, a shift that made case backlog and delay a primary focus of concern.[31] Flanders and Church laid the groundwork for the implementation in many courts in the 1980s of caseflow management programs emphasizing early court intervention in cases and active court oversight of their progress to disposition.

4. *The Centrality of Caseflow Management*

As the editors of a text on state court management observed in 1977, "The central theme of most reform proposals is the elimination of court delay. No other topic commands as much attention from the judiciary, the bar and the public at large."[32] Explaining why attention to delay is so important, Professor Ernest Friesen asserts that delay undermines the very purposes of courts and that control of delay is what makes caseflow management critical:

> The study of delay is not the study of inefficiency, but is the study of the very purposes for which courts exist…Justice is lost with the passage of time. . . . No matter how you look at it, whether it's a civil or a criminal matter, time destroys the purposes of courts. We study case management because case management is the way we get rid of the waiting time, [by] which we control delay, [and by] which we enhance the purposes of courts. Case management is what we're about in controlling delay.[33]

None of the other responsibilities of court managers—such as personnel management, financial management, records management, and facilities management—is as closely and directly related to the basic purposes of courts as the reduction and avoidance of delay through caseflow management.[34]

In 1990, the Commission on Trial Court Performance Standards—a distinguished national group of judges, court managers, and academic experts—promulgated standards indicating the results that courts should seek and achieve. The commission urged courts to measure their results in five areas. To function optimally, the commission said that courts should (1) provide access to justice; (2) act in an expeditious and timely manner; (3) have equality, fairness, and integrity in all of its procedures and decisions; (4) as governmental institutions, maintain both independence and accountability; and (5) engender public trust and confidence in the judicial branch of government.[35] Avoidance of undue delays is a theme that appears throughout the commission's performance standards for trial courts:

- *Standard 1.5, Affordable Costs of Access*, provides that "the costs of access to trial court proceedings and records—whether measured in terms of money, time, or the procedures that must be followed—are reasonable, fair, and affordable."
- *Standard 2.1, Case Processing*, provides that "the trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload."
- *Standard 2.2, Compliance with Schedules*, provides that "the trial court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use."
- *Standard 3.5, Responsibility for Enforcement*, provides that "the trial court takes appropriate responsibility for the enforcement of its orders."
- *Standard 5.2, Expeditious, Fair, and Reliable Court Functions,* provides that "the public has trust and confidence that basic trial court functions are conducted expeditiously and fairly, and that court decisions have integrity."[36]

31. See Lawson and Howard, "Development of the Profession of Court Management," 580 at 595.
32. Berkson, Hays, and Carbon, eds., *Managing the State Courts*, p. 203.
33. Ernest C. Friesen, "The Delay Problem and the Purposes of Courts," in National Center for State Courts, Institute for Court Management, *Caseflow Management Principles and Practices: How to Succeed in Justice* (Videotape, 1991).
34. Characterizing caseflow management as "the quintessential trial court administrative function," one commentator recently wrote, "Caseflow management appeared as a major aspect of trial court and appellate court administration in the 1970s, when court literature identified court delay as the key issue of trial court administration and created a broad interest in procedures for the expeditious disposition of cases." Tobin, *Creating the Judicial Branch*, p. 187.
35. See Bureau of Justice Assistance and National Center for State Courts, *Trial Court Performance Standards with Commentary* (Washington, D.C.: U.S. Department of Justice, 1997).
36. See Appendix B for trial court performance standards and measures relating to caseflow management.

The National Center for State Courts has conducted research and demonstration projects on caseflow management since Thomas Church's report was published in 1978.

In the most recent study of litigation in criminal matters, its researchers found in 1999 that the fastest courts had clearly stated policies governing the pace of litigation and also had the highest measures of case-processing quality as pled by both prosecutors and criminal defense attorneys.[37] The National Center's course on caseflow management, offered by the Institute for Court Management, is one of the basic courses required for completion of ICM's Court Executive Development Program. In 1997, NCSC president Roger Warren observed that "for more than twenty years the National Center has been in the forefront of essential activities that have come to define court administration." One of these activities has been development of the concept of caseflow management:

> The National Center has been instrumental in identifying the case as the essential work unit, and caseflow management as the essential business, of the courts—and in showing courts that they have the power and the responsibility to reduce delay and to ensure timely, as well as just, results.[38]

The National Association for Court Management (NACM) has identified caseflow management as one of the ten "core competencies" for court managers.[39] NACM's Professional Development Advisory Committee, charged with development of "core competency curriculum guidelines," has written about the importance of caseflow management:

> Effective caseflow management makes justice possible both in individual cases and across judicial systems and courts, both trial and appellate. It helps ensure that every litigant receives procedural due process and equal protection.
>
> The quality of justice is enhanced when judicial administration is organized around the requirements of effective caseflow and trial management. . . .
>
> Caseflow management is the process by which courts convert their "inputs" (cases) into "outputs" (dispositions). The quality of this process determines how well courts achieve their most fundamental and substantive objectives and purposes. Properly understood, caseflow management is the absolute heart of court management.[40]

B. PLAN FOR THIS BOOK

The materials presented here are organized into three parts and nine chapters. Part One begins with a chapter that describes the basic methods of caseflow management. Chapters II and III elaborate on the specific application of these methods in civil, criminal, traffic, family, and probate cases.

Part Two addresses the fundamental features of successful caseflow management programs. Chapter IV focuses on leadership, vision, communications, and learning—factors necessary for effective court management in general as well as for the success of any caseflow management improvement effort. Chapter V presents a discussion of expectations, measurement, and accountability—the essential features of doing management, whether it be caseflow management, court management, or management of any other kind.

Part Three deals with program implementation. Chapter VI suggests the kinds of reports that are needed for successful caseflow management. Chapter VII considers elements of a suitable case management information system and other technology applications to support caseflow management. Caseflow management's relation to case assignment systems, alternative dispute resolution, *pro se* litigation, and other important matters is the subject of Chapter VIII. Finally, Chapter IX outlines ways to successfully implement a caseflow management program.

37. Brian Ostrom and Roger Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1999), pp. 104, 110.

38. Tobin, *Overview of Court Administration*, p. 5.

39. For discussion of the development and nature of the core competency areas, see NACM Professional Development Advisory Committee, "Core Competency Curriculum Guidelines: History, Overview, and Future Uses."

40. See Appendix A, p. 205.

An epilogue offers answers to two vexing questions confronting court managers and those who have studied caseflow management during the past 25 years. First, if we know how caseflow should be managed, why do so many trial courts continue to experience problems with the pace of litigation in the cases before them? Second, having achieved initial success with caseflow management, how can a court maintain its effectiveness with caseflow management over time?

C. THINKING REALISTICALLY ABOUT CASEFLOW MANAGEMENT

Caseflow management is no longer a new concept for judges and court managers in the United States and some other countries.[41] Caseflow management programs have been in place in many jurisdictions for years. Some courts may have been successful implementing caseflow management, while others may have been less so. Growing workload volume and new problems may have overwhelmed courts that have historically had successful programs. In many jurisdictions, the successful application of caseflow management to felonies and general civil cases may not yet have been extended to juvenile cases, domestic relations, probate matters, or misdemeanors.

This book is therefore conceived in terms of improving caseflow management in trial courts. The authors seek to provide information not only to those who have not yet been exposed to caseflow management but also to those who may seek to refine or renew caseflow management or extend it to case types to which it has not previously been applied.

Judges and court managers must be realistic about what they can reasonably expect to accomplish with caseflow management. Delay and cost have been around for centuries in courts, proving perhaps that the goals of prompt and affordable justice cannot easily be achieved.[42] The difficulty of achieving these goals does not mean, however, that the satisfaction of providing greater service to citizens through efforts to improve caseflow management cannot be achieved. This book aims to help judges, court managers, court staff members, and representatives of court-related agencies and organizations who seek such satisfaction.

41. Indeed, it is clear that caseflow management improvement efforts are no longer solely an American experience. In Canada, there has been considerable judicial activism about questions of court delay. See Carl Baar, "Court Delay as Social Science Evidence: The Supreme Court of Canada and 'Trial Within a Reasonable Time,'" *Justice System Journal* 19, no. 2 (1997): 123. Australian courts have been active in the development of caseflow management. See Ronald Sackville, "Case Management: A Consideration of the Australian Experience," in Working Group on a Courts Commission, *Conference on Case Management* (Dublin: Government of Ireland, 1997), p. 165. This conference was sponsored by the government of Ireland as a step toward the initiation of caseflow management efforts. Effective April 26, 1999, new rules of civil procedure went into effect in England and Wales that involve active management of cases by trial courts. See Ian Grainger and Michael Fealy, *An Introduction to the New Civil Procedure Rules* (London: Cavendish Publishing, 1999), on the nature of the rules implementing changes proposed in the report by Lord Woolf, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (London: Stationery Office, 1996).

Nor are common law countries the only ones whose judicial systems are experimenting with caseflow management. For example, Latin American civil law countries have begun to explore its suitability for their cases. See Carlos Gregorio, "Case Management and Reform in the Administration of Justice in Latin America," and William Davis, "Strategies to Reduce Trial Court Delay," discussion papers prepared for *Judicial Reform Roundtable II* (1996). In the Arab Republic of Egypt, where civil and commercial cases are heard under civil law procedures derived from the Napoleonic Code, the Ministry of Justice has been overseeing experiments with civil and commercial caseflow management in selected courts of first instance. See David Steelman and Jeffrey Arnold, "Experimental Civil Caseflow Management Improvement Plan for North Cairo and Ismailia Pilot Courts," paper presented to the First Assistant to the Minister of Justice, Arab Republic of Egypt (Cairo: Amideast and National Center for State Courts, Administration of Justice Support Project, Sept. 16, 1998).

42. There remains a general public feeling that cases in court take too long, as is illustrated by continuing expressions of concern by members of the public about the pace of litigation. For example, in a public opinion survey conducted for the National Conference on Public Trust and Confidence in the Justice System, held on May 14, 1999, about one-half (52 percent) of all respondents indicated that they agreed with the statement that "Courts adequately monitor the progress of cases." Yet 80 percent expressed agreement with the statement, "Cases are not resolved in a timely manner." National Center for State Courts, *How the Public Views the State Courts: A 1999 National Survey* (Williamsburg, Va.: National Center for State Courts, 1999), pp. 27-28.

PART ONE

METHODS AND THEIR APPLICATIONS

CHAPTER 1

BASIC CASEFLOW MANAGEMENT METHODS

Superior Court of Riverside County Judge Stephen D. Cunnison conducts voir dire in a malpractice case.

Although courts may differ in their specific approaches to caseflow management, those approaches can generally be considered to be variations on certain basic methods or techniques that successful courts have in common. These methods include (a) early court intervention and continuous court control over case progress, (b) differentiated case management (DCM), (c) realistic schedules and meaningful pretrial court events, (d) credible trial dates, (e) management of trials, and (f) management of court events after initial disposition.

While these methods have been identified largely on the basis of research in urban trial courts, they are also applicable in rural courts. They are discussed here in general terms, and (with the exception of firm trial dates and trial management, issues that affect all case types) their application to specific kinds of cases is addressed in more detail in Chapter II (civil, criminal, and traffic cases) and Chapter III (family and probate cases).

A. EARLY COURT INTERVENTION AND CONTINUOUS COURT CONTROL OF CASE PROGRESS

A basic tenet arising from caseflow management research in the last 20 years is that the court, and not the other case participants, should control the progress of cases.[1] The court should accept responsibility for the movement of cases from the time that they are filed, ensuring that no case is unreasonably interrupted in its procedural progress from initiation through completion of all court work.[2]

National research shows that early court control is clearly correlated with shorter times to disposition in civil cases.[3] In practice, *early control* means only that the commencement of a case triggers a monitoring process. In this process, the clerk records the initial filing of a case and enters the case into a system under which it will be reviewed at a fixed time to determine whether the next anticipated event has occurred in keeping with time standards for interim stages in the case's progress. This process can and should be part of the court's automated case-management information system (see Chapter VII). The court "controls" case movement by setting it into the clerical and automated case-management routine.

Early court intervention in case progress involves tasks such as the collection of case information at case initiation, the scheduling of hearing or conference dates, and the issuing of case management orders that govern case progress to trial or disposition by nontrial means. The objectives of early intervention are to resolve cases as early in the process as is reasonable and to reduce the costs for the parties and the court of doing so. These objectives reflect recognition that most cases are resolved by negotiated settlement or plea, and that only a small percentage of cases are actually resolved by the binding decision of a judge or jury after a trial.

The process of court control should be continuous, so that progress to each scheduled control point or event triggers application of the next scheduled control point.[4] As a well-known caseflow management expert has written, *continuous* control means that "no

1. See Thomas Church et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1978), pp. 66-67. This principle is embodied in the American Bar Association's delay reduction standards: "To enable just and efficient resolution of cases, the court, and not the lawyers or litigants, should control the pace of litigation." American Bar Association, *Standards Relating to Trial Courts*, 2d ed., 1992 Edition (Chicago: American Bar Association, 1992). See Section 2.50.
2. ABA, Trial Court Standards, Section 2.51A and Commentary.
3. John Goerdt, Chris Lomvardias, and Geoff Gallas, *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1991), p. 55.
4. Ernest Friesen, "Cures for Court Congestion," *Judges' Journal* 23, no. 1 (winter 1984): 4 at 7.

EARLY COURT CONTROL IN FAIRFAX, VIRGINIA

The Fairfax Circuit Court, a general jurisdiction court in northern Virginia near Washington, D.C., faces rapid regional demographic changes, and a growing and changing caseload. Though the court had a tradition of rapid case processing, its elapsed times for civil cases had increased dramatically by 1989.

With the cooperation of members of the civil trial bar, the court introduced a delay reduction program in 1989, which was fully implemented in 1990. Structured around the American Bar Association time standards, the program allows the court to exercise early and continuous control of its civil cases. The elements of the program include:

- Court monitoring of case status and service and answer 50 days after filling
- A status conference, 100 days after filing, in which a judge sets cases on differentiated case management (DCM) tracks—one for simple cases and the other for complex cases
- Early neutral evaluation of cases by senior members of the trial bar (as of 1964)

Through early control and early neutral evaluation, the court was able to bring the size and age of its pending civil inventory back to the manageable levels of the 1980s, even in the face of growing volume, by 1996. The involvement of trial attorneys and their support for court control of case progress made a significant contribution to the success of the program.

Source: This description is based on that by William Hewitt, Geoff Gallas, and Barry Mahoney in *Courts That Succeed* (Williamsburg, Va.: National Center for State Courts, 1990), pp. 45-82, and on a personal communication from Dr. Mark Zaffarano, then-director of Judicial Operations for the Fairfax Circuit Court, in November 1996.

5. Ibid.

6. See, for example, David Steelman, *Post-Adjudication Procedures in the Pennsylvania Courts of Common Pleas: Final Report* (North Andover, Mass.: National Center for State Courts, Northeastern Regional Office, 1982).

7. See "Handbook of Recommended Procedures for the Trial of Protracted Cases,"25 FRD 351 (1960), and Federal Judicial Center, *Manual for Complex Litigation*, Third (St. Paul, Minn.: West Publishing Company, 1995).

8. See Michael Planet et al., "Screening and Tracking Civil Cases: A New Approach to Managing Caseloads in the District of Columbia," *Justice System Journal* 8, no. 3 (winter 1983): 338.

9. Maurice Rosenberg, "The Federal Civil Rules After Half a Century," *Maine Law Review* 36, (1984): 243 at 248. The first effort in a state court to put Rosenberg's suggestion into practice was the 1986 experimental DCM program in the Bergen County Superior Court in Hackensack, New Jersey. See Rudolph Rossetti, "Special Civil Tracks," *Judges' Journal* 33, no. 1 (winter 1994):34.

case ever goes into judicial limbo. Cases which cannot proceed for good reasons are given a future review date to make sure the conditions haven't changed. . . . If parties and witnesses attend a hearing, they are given official written notice of the next hearing before the hearing is adjourned."[5]

If necessary, court control of case progress should extend after the entry of an initial judgment or disposition, until all trial court work is done. Postjudgment activities create a large part of the workload for judges and court managers in domestic relations and juvenile proceedings. Probate matters may require court oversight for decades. For traffic cases, an important management issue is to monitor motorist compliance with fine and fee payment schedules. Postdisposition proceedings can also be troublesome in individual criminal cases (for example, violations of probation and postconviction remedies), and even in general civil cases (for example, enforcement of judgments).[6] (For further discussion, see "Management of Court Events after Initial Disposition.")

B. DIFFERENTIATED CASE MANAGEMENT

One means for ongoing court control of case progress is "differentiated case management" (DCM), under which a court distinguishes among individual cases in terms of the amount of attention they need from judges and lawyers and the pace at which they can reasonably proceed to conclusion. DCM is a more refined approach than allocation of jurisdiction between a general- and a limited- or special-jurisdiction trial court (as between a traffic case and a felony or between a small claims case and a civil case in which more than $25,000 is at issue).

In the absence of case differentiation, courts customarily apply the same procedures and timetables to all cases of a given type. Typically, courts would give attention to cases in the order that they were filed, maintaining that older cases must be disposed before younger cases. Such an approach fails to recognize the differences among individual cases, however. Treatment of all cases in the same way may mean that some cases are rushed and others are unnecessarily delayed. Some cases needing little attention from a judge may be scheduled for more appearances than they require, restricting the judge's ability to give more attention to cases that need it.

Courts have long recognized that certain cases may be so complex that they need special judicial attention and call for a departure from procedures typically applied to all cases. Since at least 1960, federal courts have used special procedures for the management of complex litigation.[7] In 1978, the Superior Court of the District of Columbia introduced a case management system that differentiated general civil cases into two tracks—complex and routine—for the purpose of case processing.[8] Then, in a 1984 law review article reviewing almost 50 years of experience with the Federal Rules of Civil Procedure, Professor Maurice Rosenberg wrote that judicial management of cases might be made more effective by designation of different modes of supervision for different kinds of cases. This designation would permit "simple, streamlined procedures to be used in cases that do not need the more elaborate process" provided by existing procedural rules; in particular, "it would allow paring down [of] pretrial discovery in appropriate cases."[9] In recognition that a procedural and caseflow management distinction might be made for simpler cases as well as for more complex cases, the concept of DCM was born.

In its simplest terms, a DCM plan might put cases into three categories:

- Cases that proceed quickly with only a modest need for court oversight
- Cases that have contested issues calling for conferences with a judge or court hearings but that otherwise do not present great difficulties
- Cases that call for ongoing and extensive involvement of a judge, whether because of the size and complexity of the estate involved, the number of attorneys and other participants involved, or the difficulty or novelty of the legal issues presented

Through an early screening process involving court-counsel communications soon after filing, cases falling into these three categories would be divided into three "tracks" reflecting

their respective management requirements: an *expedited* track for cases that move quickly with little or no involvement of judges, a *standard* track for those that require conferences and hearings but that are otherwise not exceptional, and a *complex* track for those requiring special attention.

A court might determine that its cases need even further differentiation than can be accommodated within this simple three-part scheme. In that circumstance, the court could develop a management system with four or more tracks. As experts on DCM have observed, "There is no magic number [of DCM tracks]; the number should reflect realistic distinctions in case-processing requirements."[10]

Within a set of standards, the court would establish different overall time expectations for each track. If the three-track model described above were applied to general civil cases, for example, the time from case initiation to disposition might be six months for cases in the expedited track, 12 or 18 months for cases in the standard track, and 24 months for the small number in the complex track.

The operation of a differentiated case management program depends on early court cognizance of each case—at the moment of filing (or even before in some kinds of cases, such as delinquency cases and many criminal matters). On the basis of case information sheets filed by parties, the judge or a court staff member would screen cases for complexity on the basis of criteria established by the court. On the basis of the case screening assessments, cases would be assigned to different case management tracks. Each track would have its own specific intermediate event and time standards, as well as management procedures.

DCM for pretrial matters has a particular effect on the time allowed for completion of discovery. For cases assigned to an "expedited" track, little or no discovery might be needed. At the other end of the continuum would be complex cases, requiring individually tailored timetables for discovery completion. "Standard" track cases would generally be subject to a uniform discovery timetable.

Under a DCM system, court monitoring of case progress would be continuous. The court would also want to monitor compliance with deadlines set by parties and counsel. The level of judge involvement in any particular case would be determined by its specific track assignment.[11] (See chapters II and III for a discussion of the application of DCM to the management of criminal, general civil, or domestic relations cases.)

10. Caroline Cooper, Maureen Solomon, and Holly Bakke, *Bureau of Justice Assistance Differentiated Case Management Implementation Manual* (Washington, D.C.: American University, 1993), p. 21.

11. See Holly Bakke and Maureen Solomon, "Case Differentiation: An Approach to Individualized Case Management," *Judicature* 73, no. 1 (1989): 17.

CIVIL AND CRIMINAL DCM PROGRAMS IN ST. PAUL, MINNESOTA

Minnesota's Second Judicial District Court is a general-jurisdiction court serving St. Paul and other municipalities in Ramsey County. In April 1988, the court introduced a DCM program for all civil cases. Because of the success of the civil program, the court added a criminal DCM program in 1990 and a special fast track for drug cases in 1991.

In each civil case, parties file a joint information statement within 60 days after filing, to give the court information about discovery and complexity and to request a track assignment. The court uses an *expedited track* for simpler cases (18 to 20 percent of the total), which receive a trial date 6-8 months from filing, and in which there is no further court action before trial. Most cases (65 to 70 percent) are assigned to a 10-12 month *standard track*, for which the court issues a scheduling order for completion of discovery and motions, with dates for a dispositional conference, a pretrial conference, and trial. Cases that do not fit the criteria for the expedited track but do not need the discovery time provided in the standard track (around 10 percent of cases) are put in a modified standard track and are scheduled to take 1-2 months less to reach trial. A small number (3 to 8 percent) of cases require the attention of an individual judge because of complicated claims or defenses, the number of parties, or the amount of discovery, and with the approval of the chief judge these cases are assigned to a *complex track*.

In an omnibus hearing held 14 days after arraignment, felonies and gross misdemeanors are assigned to one of three tracks on the basis of whether there are contested issues relating to suppression of evidence. Track A cases are those with no suppression issues, and they are set for a pretrial conference 30 days later. Track B cases are those with suppression issues that are not considered likely to be dispositive; if not resolved at the omnibus hearing, they are set for a pretrial conference and any unresolved issues are heard on the trial date. Track C is for cases in which contested hearings are needed to resolve suppression issues. A second, contested omnibus hearing is set for 14 days after the first, and any rulings in that second hearing are binding on the trial judge. If not resolved at the contested hearing, a case is set for a pretrial conference 14 days later. In addition to these tracks, a special fast-track drug calendar is held to expedite certain targeted drug-related offenders into treatment or supervision programs.

DCM results in St. Paul have been substantial. The number of pending cases has been sharply reduced. Disposition times for both civil and criminal cases have been reduced, and jail crowding has been reduced as a result of the criminal program. Because of increased judge availability, only 5 percent of trial continuance requests in civil cases are granted, and only 8 percent are granted in criminal cases.

Source: Suzanne Alliegro, "Beyond Delay Reduction: Using Differentiated Case Management," *Court Manager* 8, no. 2 (spring 1993): 12, at 13-15, and Thomas Mott, "Reducing Delay and Trial Continuances," *Judges' Journal* 33, no. 1 (winter 1994):6.

12. Telephone discussion with Geoff Gallas, May 1999. See Ernest Friesen, "Cures for Court Congestion," *Judges' Journal* 23, no. 4 (1984): 4.
13. See Barry Mahoney et al., *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1988), p. 201.
14. Friesen, "Cures for Court Congestion," 7.
15. See the discussion of Friesen's concept of short scheduling in Barry Mahoney et al., *Planning and Conducting a Course on "Managing Trials Effectively": A Guide for Judicial Educators* (Williamsburg, Va., and Reno, Nev.: National Center for State Courts and National Judicial College, 1993), pp. 6-3.
16. Friesen, "Cures for Court Congestion," 7.
17. Mahoney et al., *Planning and Conducting a Course on "Managing Trials Effectively,"* pp. 6-3 and 6-4.
18. Friesen, "Cures for Court Congestion,"8; Mahoney et al., *Changing Times in Trial Courts*, p. 201.

C. MEANINGFUL PRETRIAL COURT EVENTS AND REALISTIC PRETRIAL SCHEDULES

For management of case progress to be effective, the court must promote preparation for court events by parties and lawyers. Professor Ernest Friesen observes that it is lawyers, not judges, who settle cases. Lawyers settle cases when they are prepared, and lawyers prepare for significant and meaningful court events.[12] Creation of the expectation that court events are meaningful (that is, that they will contribute substantially to progress toward disposition) and will occur as scheduled is an important way to ensure that lawyers and parties will be prepared to make those events meaningful in terms of progress toward appropriate outcomes. If events are continued without good cause, the emotional and financial costs of litigation may increase because of the need to prepare for additional court appearances.

The scheduling of pretrial matters calls for the careful exercise of court control. The scheduling of future events should balance the need for reasonably prompt completion of necessary case-related activities with reasonable accommodation of the conflicting demands placed on the time of the participants in the proceedings. Forthcoming events should be scheduled sufficiently far in the future to allow accomplishment of necessary tasks. Yet they should also be scheduled sufficiently soon to maintain awareness that the court wants reasonable case progress and does not want continuances because participants have not completed necessary preparation.[13]

Creation of the expectation that events will occur as scheduled is critically important.

In addition to early and continuous court control, Professor Friesen urges that the management of pretrial events be characterized by (1) "short scheduling," (2) reasonable accommodation of lawyers, and (3) creation of the expectation that events will occur as scheduled. Whenever possible, he asserts, case events should be scheduled to occur in relatively short time intervals.[14] Especially when a particular stage of a case (such as discovery in a complex civil matter) will have a long duration, the court should schedule intermediate, monitorable events, such as periodic status conferences, to ensure that attorneys retain a sense of urgency about case preparation and case progress.[15]

Given the nature of the trial court process, in which case development is largely dependent on the efforts of prosecutors, public defenders, appointed counsel, and privately retained counsel, a caseflow management improvement program must not impose unreasonable demands on practicing lawyers. As Friesen observes, it is important that the court engage in "continuing honest communication" with litigators.[16] Among the elements of such communication are:

- Reasonable advance notice to lawyers of deadlines and procedural requirements
- Notification to lawyers that all requests for adjournments and other schedule revisions must be made in advance of the deadline date, and will only be granted on a showing of good cause
- Action in response to lawyers' noncompliance with deadlines or other requirements
- Consistent action on lawyers' requests for extensions or schedule revisions[17]
- Contemplation of the reasonableness of management procedures in terms of burden on the lawyers' costs for the parties

D. FIRM AND CREDIBLE TRIAL DATES

Trials should commence on the first date scheduled. Creation of the expectation that events will occur as scheduled is critically important. If case participants doubt that trials or hearings will be held at or near the scheduled time and date, they will not be prepared.[18] If, on the other hand, it is far more likely than not that a court will be prepared to commence a trial on the first-scheduled trial date, counsel and parties will begin preparation in time to decide whether to go to trial

or to reach a negotiated resolution. Having reasonably firm trial dates is a key feature of a successful caseflow management improvement program.

Because most cases are disposed by plea or settlement, reasonably firm trial dates will produce earlier pleas and settlements and encourage trial preparation in cases that cannot be resolved by other means. National research shows that a court's ability to provide firm trial dates is associated with shorter times to disposition in civil and felony cases in urban trial courts.[19] Furthermore, a court's ability to provide a firm trial date in felony cases has been found to be associated with shorter civil jury trial case processing times.[20]

Greater trial-date certainty may have a positive effect on a court's juror costs. If a court sets a high number of cases for trial, it must provide a jury pool sufficiently large to accommodate the trials scheduled or estimate how many cases will actually go to trial. If the court guesses incorrectly, it may have too few or too many jurors at the courthouse, perhaps perturbing jurors. If the court has predictable trial dates, however, the number of cases to be tried will be more certain, and juror costs will be more manageable (and they may be lower than they were before introduction of the caseflow management improvement program).

Four steps will ensure firm and credible trial dates: (1) disposition of as many cases as possible before establishment of actual trial dates, (2) introduction and maintenance of realistic trial calendars, (3) implementation of a firm policy to limit trial continuances, and (4) provision of "backup" judges.

1. *Maximizing Dispositions Before Setting Specific Trial Dates*

According to recent national statistics, approximately 96 percent of all criminal cases were disposed by means other than trial in 1996, and almost 97 percent of all general-jurisdiction civil cases were disposed by nontrial means in 1992.[21] If a court does not dispose of cases until after they have been scheduled for trial, the court cannot have firm and predictable trial dates. Fewer than 1 in every 20 cases set for trial will actually go to trial, but predicting which case will go to trial is impossible. By necessity, the "trial list" will be many times longer than the number of actual trials; and listing a case for trial will not signal to lawyers and litigants that the case will actually be tried.

Instead, the court should seek opportunities to dispose of cases before they are put on the court's trial list. Whenever possible, the court should rule on pretrial motions, especially motions that may be dispositive, such as suppression motions in criminal cases or summary judgment motions in civil cases, before cases are set for trial. Moreover, the court should make every pretrial court event *meaningful* as an opportunity for disposition or for progress to disposition by trial or other means. Provisions of means for guilty pleas to be entered at the time of a probable cause hearing or at the arraignment on an indictment or information can sharply reduce the number of criminal felony cases to be set for trial. The volume of civil cases to be set can be reduced by provision of means for dismissals or default judgments in cases with no responsive pleading by a defendant, by early referral to alternative dispute resolution (ADR), or by setting of a pretrial settlement conference or a trial management conference before establishment of a final trial date.

There is a powerful reciprocal relationship between firm trial dates and meaningful pretrial court events that promote early nontrial dispositions. Anticipation of a certain and unavoidable trial date leads lawyers and litigants to prepare their cases and to resolve more than 95 percent of them by a negotiated settlement or plea. On the other hand, capacity to provide firm trial dates depends significantly on knowledge that the cases most likely to be disposed before trial have been disposed, so that the cases remaining to be set for trial are *only* those most likely to go to trial. A court that is able to promote both early pretrial dispositions *and* firm trial dates can experience a "positive feedback loop" that magnifies its capacity to achieve more negotiated resolutions sooner. This in turn will reduce the size and age of the court's pending inventory and provide even greater certainty that its trials will commence when scheduled.[22]

2. *Realistic Calendar-setting Levels*

This has to do with how many cases a court schedules for trial on any given date. If a

19. See Goerdt et al., *Examining Court Delay: The Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1989), Figure 14, p. 38 (civil cases), Figure 26, p. 87 (felony cases), and related text. Firm trial dates is are strongly correlated with shorter disposition times in felony cases. See Goerdt et al., *Reexamining the Pace of Litigation in 39 Urban Trial Courts*, Figure 2.7, p. 23.

20. Goerdt et al., *Reexamining the Pace of Litigation in 39 Urban Trial Courts*, Figure 4.1 and text on p. 63.

21. Brian Ostrom and Neal Kauder, eds., *Examining the Work of State Courts, 1996: A National Perspective from the Court Statistics Project* (Williamsburg, Va.: National Center for State Courts, 1997), pp. 24-25 and 57.

22. For discussion of "positive feedback" in complex systems, see Robert Jervis, *System Effects: Complexity in Political and Social Life* (Princeton, N.J.: Princeton University Press, 1997), pp. 97, 125-131, and 146-155.

23. Institute for Law and Social Research (INSLAW), *Guide to Court Scheduling: 1. A Framework for Criminal and Civil Courts* (Washington, D.C.: National Science Foundation, 1976), pp. 14-17 and 27-30.

24. A court in which this approach was tried successfully is the Philadelphia Municipal Court, which experienced greater effectiveness (in terms of case dispositions) and efficiency (in terms of reduced work for court staff having to reset cases) by experimenting empirically to find optimal setting levels. Telephone discussion with Geoff Gallas, October 1998.

25. See Larry L. Sipes et al., *Managing to Reduce Delay* (Williamsburg, Va.: National Center for State Courts, 1980), Appendix A.

26. See ABA, Trial Court Standards, Section 2.51E and Commentary.

court anticipates that some cases scheduled for trial may settle or have to be continued, it must set its trial calendars realistically, like airlines that "overbook" flights in recognition of the prospect that some passengers may not appear for flights. But what policy and practice with regard to calendar setting will promote the greatest degree of certainty, while permitting the court's dispositions to stay abreast of new filings?

To simplify scheduling, a court might choose not to overbook. It might rely on the assertions of counsel that cases will go to trial and, with estimates of how long trials will last, schedule only one trial at a time. With this practice, however, the judge might experience excessive "down time" because of unavoidable continuances or party settlement of contested matters set for hearing. In addition, the court that does no oversetting may find that its dispositions are not keeping pace with new filings, that the age of pending cases is increasing beyond time standards, and that the backlog (the number of cases that cannot be concluded within tolerable time limits) is growing.

To avoid these problems and to keep the judge busy by making sure that at least one case is actually ready to begin trial, a court might set far more cases for trial than it can possibly reach. There are at least three obvious problems, however, with setting many more cases for trial than the court expects to reach. The first is that court staff members must prepare trial notices, enter scheduled trial dates in the court's case information system, and bring case files to the courtroom for many more cases than anyone expects to be reached for trial. The second is that many more attorneys and parties must appear at the courthouse, thereby increasing the cost of litigation to the parties. To reduce the cost of appearance for parties, attorneys may be unprepared for trial and not have parties and witnesses available if they do not expect that their cases will be reached.

This in turn may lead to an additional problem, especially if the court freely grants continuances (see discussion of continuances below). Even with a large list of cases set for trial, the court may find that no cases are ready for trial, so that the judge may have "down time" even with a heavily overbooked trial calendar.

The most effective way to avoid either excessive overbooking or down time is to develop a "reasonable setting factor" and to apply a reasonable but firm policy limiting the granting of continuances. This factor and this policy promote reasonably firm trial dates and allow the court to keep pace with both time standards and new filings. Determination of a "reasonable" setting factor depends on the dynamics of each court. It is the lowest number of cases per calendar that permits the court to keep its pending inventory manageable in terms of size and age. There is no "magic formula" to determine the optimal setting level. Rather, this level must be determined on the basis of experience with the circumstances in each court.

The number of cases to set for trial can be effectively determined in a "manual" or

COMPARISON OF DIFFERENT TRIAL-SETTING PRACTICES IN AN OHIO TRIAL COURT

The Trumbull County Court of Common Pleas in Warren, Ohio, is a trial court of general jurisdiction. Under Rule 4 of the Common Pleas Rules of Superintendence promulgated by the Ohio Supreme Court, cases are randomly assigned to trial judges on an individual-calendar basis, so that one judge is responsible for a case from filing through disposition. (See the discussion of case assignment systems in Chapter IV.) In 1982, the court in Trumbull County had a general division with three judges, who asked the National Center for State Courts to study their civil case scheduling practices and recommend improvements.

The National Center project team examined trial scheduling patterns for the three judges in January, May, and September 1981. They found that of 73 civil trials scheduled, 38 (52 percent) were held on the date scheduled, while 23 (32 percent) were settled, and 12 (16 percent) were continued or reset to a subsequent date.

With individual calendars, each judge controlled the scheduling of his own trials. The three judges had very different trial-setting practices, and although they each received about the same number of cases each year, they had very different civil pending inventories. One judge scheduled only 19 cases for trial during the three months examined, and 15 of these (79 percent) started trial on the date scheduled. Because he scheduled so few cases for trial, however, he had a pending civil inventory of over 900 cases. The second judge scheduled almost $2^{1}/_{2}$ times as many cases (47) for trial during that period, but had only four more (19, or 40 percent) actually commence on the date scheduled. His pending inventory was considerably lower, however, at about 500 civil cases. The third judge scheduled more cases for trial (35) than the first judge did but fewer than the second judge, and he had more trials commence on the date scheduled (24, or 69 percent) than either of his colleagues. The fact that he had more credible trial dates probably explains why he had the lowest inventory of pending civil cases (about 400) of the three judges.

Source: David Steelman and Lorraine Adams, *Civil Case Scheduling in the Trumbull County (OH) Court of Common Pleas: Findings and Recommendations* (North Andover, Mass.: National Center for State Courts, Northeastern Regional Office, 1982), pp. 32-34.

automated environment. The court manager should use both historical information and knowledge about the cases and case participants. How many cases does the court now set, and what typically happens with them? Using information from case records in the clerk's office or from the court's automated case management information system, the court can compare the number of cases scheduled to the number actually heard and establish a ratio of cases heard to cases continued, settled, or dismissed.[23]

In addition, it is necessary to determine the likelihood that cases will go to trial or be disposed by plea or settlement. Factors affecting the likelihood of trial include the type of case, the amount at stake (in a civil case) or possible penalty (in a criminal case), the complexity of the case, and the practice styles of the attorneys in the case.

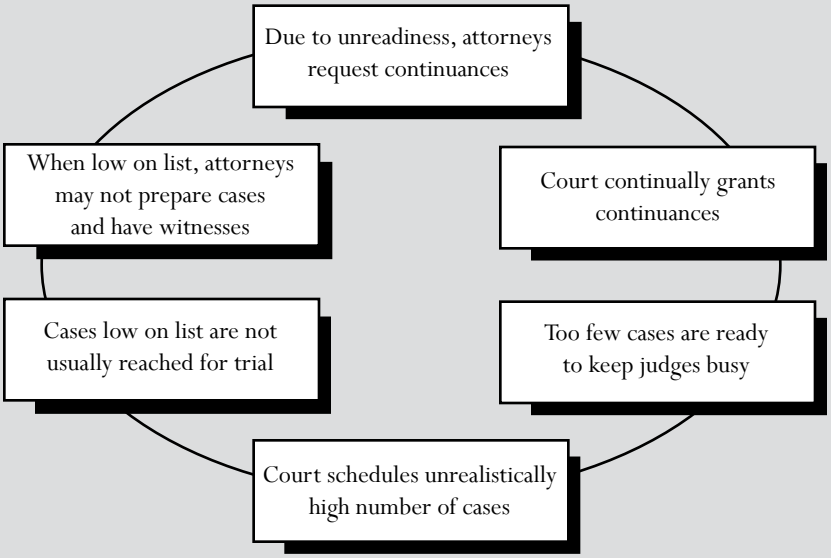
An "optimal setting level" must often be achieved through experimentation. What happens if cases are added to each calendar? The court manager should increase the number of cases set and see what happens to the ratio of cases tried, continued, and settled or otherwise disposed. If the ratio of cases tried or disposed to those continued improves, the manager should continue adding cases until there are too many cases continued because the court cannot reach them. At that point, the manager should reduce the number of cases set until an optimal ratio of trials and other dispositions to continuances is reached. Because circumstances change over time, such empirical experimentation should be repeated periodically to determine whether a different setting level is better.[24]

The "setting factor" should result in the setting of the smallest number of cases possible to ensure hearing of matters at or near the scheduled time and date, accommodation of cases that "fall out," and case progress sufficient to ensure compliance with time standards.[25] Because of the changing dynamics associated with the setting of trial and hearing dates, the court should regularly reassess trial rates, fallout rates, and other factors affecting its scheduling activities.[26]

3. *Continuance Policy*

The third part of the formula for ensuring credible trial dates is firm and consistent ap-

FIGURE 1
EFFECT OF SCHEDULING AND CONTINUANCE POLICY ON ATTORNEY READINESS



Source: Maureen Solomon, *Caseflow Management in the Trial Court* (Chicago: American Bar Association, 1973), p. 50.

THE "SMART CALENDAR" TRIAL SCHEDULING SYSTEM IN THE WRENTHAM, MASSACHUSETTS, DISTRICT COURT

An example of an effort to achieve credible trial dates through the use of "realistic setting" and estimates of the likelihood of trial or settlement in civil cases is the "Smart Calendar" system used in Wrentham, Massachusetts, by the Wrentham Division of the District Court Department of the Trial Court of Massachusetts. When the civil jurisdiction of the District Court Department was increased and civil jury trials were authorized in district court cases, this new approach to scheduling jury and bench trials was introduced in Wrentham.

Under the system, judges, clerks, conciliators, or mediators conducting civil pretrial conferences or settlement conferences are asked to assign a "trial rating" to cases that estimates the actual likelihood of trial or settlement. If the expectation is that a case will definitely settle, it is to be assigned a trial rating of 10 percent to 30 percent; if it probably will settle, it is to be given a trial rating of 40 percent to 60 percent; a case that probably will be tried is to be given a rating of 70 percent to 90 percent; and a rating of 100 percent is to be assigned only if there is absolutely no way that the case will resolved without trial.

Cases are not to be scheduled for trial more than 90 days after a pretrial conference without a judge's authorization. A judge's internal civil trial calendar for a given morning (NOT posted for public view) shows the case name, docket number, anticipated duration, bench or jury trial, and trial rating, for up to four cases. The total trial rating for all cases must not exceed 150 percent. The trial rating of any case that the court does not reach must be changed to 100 percent and rescheduled accordingly. The afternoon calendar for any given day may be set aside for case management conferences and pretrial conferences.

Source: National Center for State Courts, Information Service, *Report on Trends in the State Courts*. 1997-1998 edition (Williamsburg, Va.: National Center for State Courts, 1998), pp. 11-12.

plication of a policy for minimizing trial-date continuances.[27] Continuance practices that are too lenient may not encourage attorneys to be prepared and may create a negative cycle, as is shown in Figure 1.

As this illustration suggests, attorneys who are not prepared request that the court grant continuances. If the court grants too many continuances, the docket for the day collapses, and the judge's time is underutilized. If the court is not aware of its calendar dynamics, it may add even more cases to the next day's docket, making for a very long trial list. Attorneys who are low on the court's trial list do not expect their cases to be reached, and they are unprepared. If they are reached, however, they must request continuances, so that the vicious cycle starts all over again.

27. ABA, Trial Court Standards, Section 2.51G and Commentary.

PROVIDING "BACKUP JUDGE" CAPACITY IN BARRY COUNTY, MICHIGAN

Located between Grand Rapids and Kalamazoo, Barry County has one circuit judge, one district court judge, and one probate/juvenile judge. When a new circuit judge came on the bench in April 1995, there was a period when he had to recuse himself in cases where he had previously been an attorney representing parties before the court. To help deal with this problem and avoid the expense of having an out-of-county judge sit for him, his colleagues in the district and probate courts agreed to take cross-assignments (with approval from the state court administrative office) to hear the cases in which he had to recuse himself because of conflicts.

In 1996, Barry County was designated by the Michigan Supreme Court to operate a trial-court consolidation demonstration project. Under the project, all three separate trial courts became part of a single trial court for the county, with a circuit division, a district division, and a family division. The project also involved administrative and budgetary changes.

Having all attended a recent caseflow management workshop presented by state judicial educators, the judges developed an approach to caseflow management including an agreement to schedule all trials to start on the same day of the week. If any of the judges found that he had two cases on his calendar that would not settle and were ready to go to trial, they agreed that one of the other judges would, if not himself in trial, take the second trial of the "overbooked" judge. The logistics of helping one another are manageable for the judges and court staff, since the three judges sit in two buildings across the street from one another.

The result is that the Barry County Trial Court has firm trial dates. Attorneys in any particular case know that it will be tried on the date scheduled—if not by the originally scheduled judge, then by one of the other two judges. The circuit court backlog that existed in April 1995 has been eliminated, and the pending inventory for all three judges has dropped. Knowing that the court is willing and able to reach trials on the first-scheduled date, attorneys are much more likely to resolve cases by negotiation.

Source: David Steelman, Karen Gottlieb and Dawn Rubio, *Michigan Trial Court Consolidation. Volume Two: Final Evaluation of Barry County Demonstration Project* (Denver, Colo.: National Center for State Courts, Court Services Division, 1999).

4. Backup Judge Capacity

Trial scheduling is unavoidably uncertain, because it involves future events that may be affected by changes and developments that occur after matters are set for trial. Even with a well-conceived and realistic scheduling policy, the court may occasionally have problems. If a lower-than-expected number of cases scheduled on a given day are settled, dismissed, or continued for good cause, a court may find itself with more trial-ready cases than judges. Just as an airline that "overbooks" its flights must have means to deal with situations in which more passengers show up than were expected, a court must have means to protect its firm trial dates if there are more trial-ready cases than expected.

Another element of uncertainty in trial scheduling has to do with the anticipated length of trials. If a court has trials scheduled, for example, on Monday and Wednesday, it has a scheduling problem if the Monday trial does not end on Tuesday afternoon. The undesirability of "discontinuous day" trials or the impracticality of rescheduling the testimony of a key expert witness may mean that the trial begun on Monday should be concluded before the trial judge starts another case.

The need to respond to unscheduled matters, such as an ex parte request for a temporary restraining order, also adds to uncertainty in scheduling. Many trial courts in recent years have found themselves overwhelmed by unpredictability in the volume of domestic violence matters that come before them. The necessity of dealing immediately with such matters may mean that trials must be interrupted or that other cases on the court schedule may not be reached.

These kinds of problems may arise regardless of whether a court has a "master calendar" or an "individual calendar" system for assigning cases to judges. (See Chapter VIII, pp. 111-115, for discussion of assignment systems.) In a large multijudge court, the court may seek to avoid or minimize the likelihood of such problems through a master calendar system with a pool of judges assigned to do nothing but hear trials. In a large or small

court with an individual calendar, the judge or judges may seek to minimize scheduling uncertainty by reducing the number of cases set for trial and estimating the likelihood that any given case may go to trial. Even courts with the best-run systems will occasionally have a day's work disrupted by unanticipated matters, trials that last longer than expected, or a greater number of trial-ready cases than expected.

In any of these circumstances, it is important for the court to have some means to provide for last-minute adjustments. The most reliable means is some kind of "backup" judge capacity—the availability of one or more judges to help colleagues facing unanticipated calendar problems.[28] The court should not have an "ad-hoc" approach to providing such capacity, but instead should develop regular and routine ways to have backup judges available as needed.

Few courts have the luxury of keeping one judge unassigned each day to deal with disruptions in the daily trial schedule. If the chief or presiding judge of a multijudge court or division carries a lighter caseload in order to deal with administrative responsibilities, he or she may be able to serve in this capacity.

More often, the most practical way to provide backup judge capacity is to have all the judges of a multijudge court help one another. This approach requires that there be means to determine which judge can help an overburdened colleague and to arrange for case files and case participants to be brought to the courtroom of the "helper" judge. Judges may simply call one another on the telephone to ask for assistance, they may develop "judge teams,"[29] or the chief judge and court manager may have means to monitor the status of all the judges' calendars to determine who might be available to help with a calendar.

Provision of backup judges is easiest in a multijudge court with all judges in the same building, but it can be managed with judges who sit in different locations. In rural courts in which judges sit alone in adjacent towns or counties, a reciprocal assistance agreement may be necessary. In rural areas where judges ride circuit, the provision of backup judges may have to be coordinated through state or regional court administrative centers.

Ultimately, the critical element in providing judge backup capacity is the shared commitment of the judges to making a firm trial date policy work. This commitment may require individual judges to overcome personality differences or differences in workstyle if they sit in a multijudge court or to overcome those differences plus the problems of distance if they sit in rural single-judge courts. If judges are committed, however, they will find ways to provide assistance to one another and to keep the trial calendar predictable and current. Also critical to the availability of adequate backup is a person or persons to manage calendars and move cases among judges when necessary.[30]

E. TRIAL MANAGEMENT

Although trials occur in 5 percent or less of all cases in trial courts, they are perhaps the most significant feature distinguishing jurisprudence in the United States from that in many other countries. Trials (and especially jury trials) consume a great deal of judges' time. About two-thirds of all criminal trials in 1996 were jury trials; and almost 55 percent of all civil trials were jury trials. It has been estimated that many judges spend from one-third to one-half of their work time conducting jury trials.[31] Although nonjury trials are generally not as time-consuming as jury trials, they probably take as much or more of a judge's time in court than almost any nontrial courtroom event.[32]

Research shows that courts vary considerably in the duration of their trials. A study of trials in nine courts in three states found that trials in some courts are completed in only one-third the time taken for trials in comparable cases in other courts. Researchers found that both judges and lawyers considered trials too long in the courts with the longest trial times. They also found that a large majority of judges and attorneys discerned no lack of fairness or justice in the courts in which trials were conducted more rapidly. In interviews

About two-thirds of all criminal trials in 1996 were jury trials; and almost 55 percent of all civil trials were jury trials.

28. See INSLAW, *Guide to Court Scheduling*, p. 10. See also, Friesen, "Cures for Court Congestion,"52.

29. For discussion of the use of "judge teams" for criminal cases, see David Steelman, Penelope Wentland, and Jeffrey Arnold, *Caseflow Management and Judge Assignments for Criminal Cases in Minnesota's Fourth District Court Hennepin County*, (Denver, Colo.: National Center for State Courts, Court Services Division, 1999), p. 17.

30. See Maureen Solomon and Douglas Somerlot, *Caseflow Management in the Trial Court: Now and for the Future* (Chicago: American Bar Association, 1987), p. 44.

31. Ostrom and Kauder, eds., *Examining the Work of State Courts*, 1996, pp. 25, 30, and 57.

32. In a multistate study of trials in nine courts, researchers found that median times for civil nonjury trials were from four to six-and-one-half hours, and that average times for criminal nonjury trials ranged from one to eight-and-one-half hours. See Dale Sipes and Mary Elsner Oram, *On Trial: The Length of Civil and Criminal Trials* (Williamsburg, Va.: National Center for State Courts, 1989), pp. 14-15 and 19-20.

33. Ibid., pp. 66-67.
34. Edward B. McConnell, "Court Management: The Judge's Role and Responsibility," *Justice System Journal* 15 no. 2 (1991):710 at 715.
35. ABA, Trial Management Standards, Section 1.
36. See ABA, Trial Management Standards; Harry J. Zeliff, "Hurry Up and Wait: A Nuts and Bolts Approach to Avoiding Wasted Time in Trial," *Judges' Journal* 28, no. 3 (summer 1989):18; Mahoney et al., *Planning and Conducting a Course on "Managing Trials Effectively"*; and Dale Sipes and Mary Elsner Oram, *On Trial: The Length of Civil and Criminal Trials* (Williamsburg, Va.: National Center for State Courts, 1989).
37. Indeed, a court's operation of its DCM program (see section B in this chapter) should provide that cases assigned to the complex track be managed in anticipation of trial from the time of track assignment.
38. See G. Thomas Munsterman, Paula Hannaford, and G. Marc Whitehead, eds., *Jury Trial Innovations* (Williamsburg, Va.: National Center for State Courts, 1997), Chapter V, § V-4.

and responses to questionnaires, judges overwhelmingly indicated their belief that it is appropriate for them to control trial length. Most civil attorneys agreed, as did prosecutors. Although criminal defense lawyers expressed the most concern about judicial management of trials, many of them in courts with longer trials expressed support for greater judicial controls.[33]

The implications of these findings are significant. First, variability in trial times from one court to another suggests that judges can make trials shorter through appropriate actions. Second, making trials shorter need not defeat the court's responsibility to do justice. Third, judge management of trials has considerable support among members of the bar as well as judges. Fourth, shorter trials mean that judges are available for other pretrial or trial events—in effect, increasing the availability of judicial resources. Finally, shorter trials mean that trial schedules can be more predictable and that the court can therefore provide firmer trial dates.

By managing trials effectively, judges can continue to do justice in individual cases while expanding the availability of the scarcest resources in the courts, judge time and courtroom space, for other matters.[34] In 1992, the American Bar Association adopted trial management standards recommended by the National Conference of State Trial Judges. The basic premise of these standards is that judges should aggressively exercise their responsibility to manage trial proceedings: "The judge shall be prepared to preside and take appropriate action to ensure that all parties are prepared to proceed, the trial commences as scheduled, all parties have a fair opportunity to present evidence, and the trial proceeds to conclusion without unnecessary interruption."[35]

As part of overall caseflow management, trial management involves a set of steps. These include (1) preparation for trial, (2) scheduling to start trials on time and provision of adequate time for them, (3) management of jury selection, (4) maintenance of trial momentum, and (5) establishment and enforcement of time limits.[36]

1. Preparing for Trial

Trial management should begin before the trial starts.[37] One of the most significant ways to ensure effective use of trial time is a trial management conference held about two weeks before the scheduled trial commencement date. Such a conference may not be necessary in a straightforward case with experienced counsel, and more than one conference may be appropriate for a complex case. For many cases, however, a single brief conference can serve to ensure that counsel are prepared and can help the judge prepare for trial. Among the subjects that can be addressed in trial management conferences are:

- Resolution of any remaining discovery issues
- Determination of the issues of law and fact that are really in dispute, as opposed to those that might be stipulated
- Marking and exchanging of exhibits
- Exchanging of witness lists, scheduling of witnesses, and avoidance of unnecessary duplication of testimony
- Agreement with counsel on time limits for different segments of the trial
- Review of pending motions and decisions on them, if possible, before trial
- Addressing of any potential disputes over admissibility of evidence
- Addressing of any special trial needs, such as use of interpreters and of audio/visual materials or video technology
- Consideration of dual juries in cases involving multiple parties, defendants, or claims arising out the same cause of action[38]
- Consideration of the possibility of settlement or of a trial without a jury

Occasionally, a court must try a high-profile case that draws intense attention from the public and from newspaper, radio, and television reporters. The court may find it necessary to make special arrangements to prepare for such a case. Naturally, the proper resolution of high-visibility cases involves pretrial caseflow management, just as in other cases. Experience shows, however,

that special steps should be taken to ensure timely progress of such cases to negotiated resolution or readiness for trial. Several caseflow management lessons have been learned from high-profile cases in recent years.[39]

- A high-publicity case should be specially assigned to a judge with the requisite training, experience, and temperament to manage the case from its inception through its conclusion.
- The supervisory (administrative) judge, assigned judge, court manager, and court staff should anticipate problems, have an explicit plan for management of the case, and be prepared to deal with unexpected developments.
- Because notorious trials make extraordinary demands on the trial judge's time, the court should consider provision of the assistance with the case from a special master or a judicial colleague.
- Throughout the pretrial stages of the case, the assigned judge should establish discovery deadlines and dates for motion hearings, require strict adherence to these deadlines and dates, and enforce a firm policy to limit continuances.
- The supervisory (administrative) judge and the trial judge must control both the preparation and the trial of the case, as well as the immediate environment surrounding the trial.
- The judge should deter attorneys from trying the case in the news media, seeking voluntary compliance with American Bar Association "Fair Trial and Free Press" standards and local disciplinary rules and forcing compliance through gag orders, sanctions, or other means only as a last resort.
- Gag orders that are narrowly tailored and supported by a written explanation for their necessity are easier to enforce and are more likely to survive appellate scrutiny.
- If the selection of an unbiased jury appears unlikely, the judge should grant a change of venue only as a last resort, after first having explored the possibility of a continuance, an out-of-county jury, or jury sequestration.
- The judge should determine how the trial will proceed in the courtroom with regard to news media arrangements, seating, security, and media access to exhibits.
- Once the trial begins, the judge's other trial and motion calendar responsibilities should be transferred to other judges when possible, both to permit the judge to maintain trial momentum and to allow reasonable case progress in unrelated matters.

2. *Scheduling to Start Trials on Time and to Provide Adequate Time for Them*

Another matter that might be addressed at the trial management conference is the extent to which any problems might need to be addressed beforehand to ensure that trial will begin at the scheduled time. There may be many reasons that a trial does not start at the scheduled time, such as problems ensuring the presence of particular witnesses, the necessity of bringing defendants to the court from jail, last-minute problems for the judge to work out with counsel, or demands from other cases on the judge's time. Any problems that can be reasonably anticipated, however, should be resolved so that case participants will not be frustrated by delay and so that the court can give as much time as possible to the trial on its first day.

Judges and attorneys often estimate that the time available for trial is usually five or more hours a day. In a multistate study of trial lengths in nine courts, however, researchers found that the actual average trial day for civil and criminal trials varied from less than three hours to slightly less than four and one-half hours. Judges should try to track the amount of time that they actually spend in trial each day, and they should seek to make each trial day as long as is reasonable for trial participants and court staff in order to make optimal use of trial time.[40] They should communicate their expectations about the length of the trial day to counsel and court staff and seek the aid of court staff in keeping to the trial schedule.

39. See Timothy Murphy et al., *Managing Notorious Trials*, rev. ed. (Williamsburg, Va.: National Center for State Courts, 1998), "Pretrial Matters," Chapter One.

40. There can be problems with having very extended trial days as a long-term standard policy. In Seattle, the King County Superior Court found in 1989 that extending trial days from 4.5 hours to 5.5 hours had a positive impact effect on trial time. It had a negative effect, however, on judge availability for settlement conferences and on court preparation time. Because of these problems, the court reduced its standard trial day in 1990 from 5.5 hours to 5 hours. See Charles Johnson, "What Can You Do with a 70,000 Case Backlog?" *Judges' Journal* 30, no. 1 (winter 1991): 16.

41. Sipes and Oram, *On Trial*, p. 52.
42. Ibid., pp. 42-46.

Efficiency is better served if a trial requiring more than a day to be completed is a continuous-day trial rather than being interrupted and spread over a week or more. Provision of sequential days for a trial requires attention to some of the same issues present in scheduling to determine firm trial dates. These issues include sound estimates of likely trial duration, provision of time in the calendar between trial starts, and "backup" judge capacity to deal with any last-minute adjustments that may be needed.

3. Managing Jury Selection

In a jury case, the trial starts with jury selection. In some states, juries are selected quickly (often in an hour or less), whether by the judge alone or with attorneys questioning prospective jurors. In other states, however, jury selection can take many hours. A study of trials in different states found that jury selection took 9-17 percent of the total duration of civil trials and 20-37 percent of the total duration of criminal trials. That research also found that courts in which the percentage of trial time consumed by jury selection is lower generally have shorter trial times than those courts in which it consumes a greater part of the trial.[41] Management of jury selection is thus one area that can affect overall trial times.

At least two elements of jury selection can have an impact on trial times. The first element is the questioning of prospective jurors. In the federal courts and in some state courts, the judge alone undertakes this task. In other courts, lawyers control the process and have extensive freedom to question prospective jurors. Other states have a mixed judge-attorney process in which attorneys have an opportunity to ask questions and judges control the nature and duration of questioning. Multistate research indicates that attorney-dominated jury selection takes the most time, whereas judge-only selection takes the least.[42]

The second element is the actual selection of jurors from a jury panel. Under a "struck-jury" approach, a large number of jurors are questioned as a group. Those subject to peremptory challenges or challenges for cause are then excused, and the first 6 or 12 remaining panel members (plus any alternates) constitute the jury. Under the "strike and replace" method, panelists are questioned individually or in groups of no more than 12 members. When any person is excused on the exercise of a challenge, a new prospective juror replaces him or her and the questioning begins again. Researchers have found that the "struck-jury" method takes less time.

Within the framework of jury selection law for a given state, a judge should assess the purposes of jury selection and determine how to complete it in the fairest and most efficient manner. The trial management conference might provide an opportunity for the judge to review jury selection issues with counsel before the process is begun.

4. Maintaining Trial Momentum

To maintain momentum in a trial, evidence should be presented without repeated interruptions or distractions. The judge can help ensure efficient presentation of evidence by:

- Making arrangements with court staff members to avoid telephone calls or requests for meetings
- Arranging with other judges for them to hear unanticipated matters
- Having the in-court clerk and bailiff control the length of recesses and arrange for jurors and counsel to return to the courtroom promptly.

The judge can maintain momentum during the course of the trial itself by:

- Having witnesses available and waiting to testify when needed
- Instructing counsel questioning witnesses to proceed to conclusion without excessive interruptions to consult with parties or co-counsel
- Requiring counsel to state objections succinctly and in appropriate legal terms to permit the court to rule summarily
- Having counsel arrange the exhibits that they need for each witness so that excessive time is not consumed with efforts to find exhibits and bring them to the witness stand for review
- Periodically reviewing the progress of the case with counsel to help ensure reasonable movement to conclusion

5. *Establishing and Enforcing Time Limits*

A growing body of law supports the use of time limits in trials in appropriate circumstances.[43] Case law supports the use of flexible and reasonable time limits on the length of trial, reasonable restrictions on time allowed for jury selection questions of prospective jurors by attorneys, and limitations on the duration of opening statements and closing arguments. Such time limits should be established in advance through consultation with counsel (for example, during a trial management conference). The time limits should be reasonable and related to the circumstances of each particular case. Moreover, they should be adjusted if necessary during trial if the need arises.

During the course of a trial, the court should consult with counsel from time to time to review case progress and determine whether lawyers will have adequate time to present their respective cases within pre-agreed limits. The court may consider it necessary to impose time limits during a trial in order to deal with repetitive or continued irrelevant questions or problems with witness availability. The judge should warn counsel if they are in danger of exceeding time limits.

6. *Managing Notorious Trials*[44]

Most cases are of little more than short-term interest to those other than the litigants and other case participants, but courts must occasionally deal with proceedings that draw sustained statewide or even national attention. Such "notorious" or "high-profile" cases may be sensational criminal prosecutions that involve mass murderers or celebrity defendants, divorce cases of the rich and famous, or will contests over the estates of reclusive billionaires. Like a complex civil case (see Chapter II),[45] a high-publicity case can place serious demands on judges, case participants, and court staff members, and it can seriously disrupt routine management of the court's dockets. Special management attention is therefore required from judges and court managers to ensure not only that a high-profile case reaches a prompt and fair conclusion but also that unrelated cases are not unduly delayed because the court is hampered by the demands of the high-profile case.

As much or more than trials in less visible cases, notorious trials can benefit from special trial preparation (see above "Preparing for Trial"). Furthermore, because of their nature, high-publicity cases that go to trial call for judges and court managers to develop appropriate means to deal with news media representatives, to address special issues involving jurors, and to take appropriate security measures. Highlights of these matters follow.[46]

a. Relations with media representatives

Intense scrutiny from news media representatives is a critical difference between a notorious case and the more routine matters that a court handles every day. Among the lessons that have been learned from high-profile trials about dealing with the news media are the following:

- The trial judge's approach to dealing with the media must be one with which he or she feels comfortable.
- The court must establish an effective communication method with the media about procedural and legal aspects of the case. There should be a single, reliable source of information for media representatives.
- The court must plan for all foreseeable contingencies in dealing with the media and the public.
- Before the trial begins, the trial judge should establish written ground rules for the media regarding trial procedures and access to proceedings and trial participants. The court should make reasonable efforts to accommodate media needs while giving all media representatives equal access and avoiding the appearance of favoritism. The trial judge should also avoid the appearance of unnecessarily withholding information from the media.
- The court and the trial judge should be aware of the pressures of a notorious

The judge should warn counsel if they are in danger of exceeding time limits.

43. See Munsterman, Hannaford, and Whitehead, eds., *Jury Trial Innovations*, Chapter IV, § IV-1.

44. Discussion in this section is based directly on Timothy Murphy et al., *Managing Notorious Trials*, rev. ed. (Williamsburg, Va.: National Center for State Courts, 1998). (The first edition was published in 1992 as *A Manual for Managing Notorious Cases*.) See also, American Bar Association, *Standards for Criminal Justice, Fair Trial and Free Press* (Chicago: American Bar Association, 1991).

45. Although a high-publicity case may present complex legal or factual issues, it can be distinguished from a complex case in that it presents issues of external news media attention that are often not present in complex cases.

46. For more details, see Murphy et al., *Managing Notorious Trials*, Chapter Two ("Dealing with the Media in a Notorious Trial"), Chapter Three ("Jury Considerations in a Notorious Trial"), and Chapter Four ("Planning for Security in a Notorious Trial").

47. The judge and the court manager should pay special attention to the comfort of jurors (that is, the adequacy of provisions for lodging, meals, and safety), letting jurors know that the court is concerned about their well-being while they are engaged in a difficult trial. Telephone conversation with Geoff Gallas, May 1999.

trial on courtroom staff. If possible, staff should be given training on dealing with the media and the public during high-publicity cases.

b. Special needs of jurors

A high-visibility trial also places great pressures on jurors. The judge presiding over such a trial must give attention to the safety and well-being of prospective jurors as well as those who actually sit in the case:

- Matters such as the number of prospective jurors to be called, prescreening methodology, sequestration logistics, and security needs.[47]
- Before evidence is presented, the judge should ask jurors whether they have been approached for information, news stories, or book (or movie or television) rights.
- Limited sequestration of jurors while they are in the courthouse is preferable to full sequestration.
- The trial judge should make sure that jurors inform him or her about any problems or concerns regarding matters such as improper exposure to media coverage or contact or improper comments by friends or family.
- Security plans should include specific provisions for safeguarding the jury members after they have delivered a verdict and been dismissed.
- The trial judge should give the jurors clear guidance about postverdict contact with the media and with attorneys for the parties.
- The court should be prepared to respond to jurors' needs for postverdict support (which might include psychological counseling) as a result of the intense emotional impact of a notorious trial.

c. Security arrangements

High-visibility trials often present special security issues. Trials vary in terms of the level and kinds of security planning that they require. Several lessons have been learned about security issues in such trials:

- The judge, security personnel, and court manager should plan in advance to respond to the level of security risk presented by the trial by reviewing the adequacy of current security measures; determining the security needs of jurors, judges, and parties; and assessing the location and size of the courtroom in terms of security.
- Public and media access to the courtroom should be reviewed with regard to matters such as seating arrangements, courtroom entry screening, times when media and public may enter and leave the courtroom, and the possibility of making courtroom access for the media different from that for the public.
- In the absence of compelling security concerns, there should be no preferential parking or special entrances to the courthouse for media, parties, lawyers, or witnesses.
- If necessary to deal with security issues beyond the courthouse itself, there should be collaboration with law enforcement agencies, private security staff in adjacent buildings, and other security personnel.

THE IMPACT OF POSTJUDGMENT CASE EVENTS ON JUDGE-TIME NEEDED FOR DIVORCE CASES

The time of judges is the most critical internal resource to be managed in a court. In an automobile accident case, the entry of judgment is usually the last case event requiring any substantial amount of judge-time in a trial court. Similarly, in a felony burglary case, little trial judge-time is typically required after the imposition of a sentence. Divorce cases are different, however. After entry of an initial divorce judgment, a trial judge may often have to commit considerable time to hearings on attorney fees or on motions to enforce or modify orders relating to support, maintenance, custody, or visitation.

Effective and efficient caseflow management for divorce cases therefore requires that scheduling practices permit the allocation of enough judge-time to hear postjudgment matters. The problem is to determine how much time should be set aside for this purpose. In an assessment of judge workloads in the domestic relations division of the Circuit Court of Cook County in Chicago, Illinois, an analysis of all cases in the division in which there was any court activity in calendar year 1992 provided such information for that court. The finding from that analysis was that about ***35 percent of all judge-time*** needed for divorce cases was for postjudgment events. Postjudgment events in contested divorce cases consumed an estimated 47 percent of all the judge-time needed for such cases. Even in uncontested cases, about 18 percent of the time spent by judges was for postjudgment matters.

Source: NCSC, unpublished data in the files of David Steelman (1995) (developed in part with funding from the State Justice Institute under grant numbers SJI-91-08W-A-099 and SJI-91-08W-C-A-P94-1).

- The security plan should be sufficiently flexible to accommodate unexpected developments.
- Security personnel, court staff members, and news media representatives should know one another and be aware of their respective roles. Court staff and the media liaison should know about security arrangements in order to avoid inadvertent interference with them.

7. Nonjury Trials

Nonjury trials (court events in which evidence is taken and issues of both fact and law are determined by a judge without a jury in order to reach a judgment)[48] are common in criminal and general civil cases, and they are often the sole mode of trial in family cases. The trial management techniques described above (with the obvious exception of those relating to jury selection) apply as much to nonjury trials as to jury trials. With special attention to nonjury matters, proven trial management techniques are to:

- Resolve pretrial motions before the trial date is scheduled
- Hold a trial management conference shortly before trial
- Reduce unnecessary and repetitive evidence at trial
- Hold continuous-day trials
- Avoid interruptions and, if necessary, extend the trial day
- Avoid interruptions of momentum, as by having the testimony of a witness be completed on a Friday afternoon rather than being interrupted by the weekend and resumed on the following Monday[49]
- When possible, rule from the bench at the close of trial, putting findings of fact and conclusions of law on the record

Despite the fact that nonjury trials consume a great deal of judge-time and other resources, many courts do not routinely gather and maintain as much information about them as they may for jury trials. In the case management information systems of many courts, nonjury trials may be indistinguishable from extended pretrial or postdisposition evidentiary motion hearings.

To monitor the firmness and credibility of a court's nonjury trial dates, the court's case management information system should record first-scheduled trial dates, trial continuances, and actual trial commencement dates for nonjury trials. To provide information in aid of trial management, the court should record the incidence and duration of nonjury trials in its information system.

F. MANAGEMENT OF COURT EVENTS AFTER INITIAL DISPOSITION

Most of the research and writing on caseflow management to date has focused on felonies and general-jurisdiction civil cases, in which the trial court often has relatively little work to do after the entry of a judgment. Yet a large array of proceedings in a trial court occur after the entry of an initial disposition. Examples include:

- Postdecree motions in divorce cases to enforce or modify custody, visitation, and support
- Placement review, permanency planning, termination of parental rights, and adoption proceedings after findings of abuse or neglect
- Proceedings in probate, guardianship, and conservatorship cases after contested or uncontested appointment of a fiduciary
- Criminal violations of probation (which often involve arrest for new offenses)
- Criminal petitions for postconviction review[50]
- Violations of probation in juvenile delinquency proceedings (which, like adult criminal matters, often involve arrest for new offenses)
- Child support enforcement proceedings after paternity or divorce decisions
- Proceedings to enforce civil judgments[51]
- Collection of judgments in small claims cases

48. See the definitions of "trial" and "nonjury trial" in Conference of State Court Administrators and National Center for State Courts, *State Court Model Statistical Dictionary, 1989* (Williamsburg, Va.: National Center for State Courts, 1989), pp. 47, 63.

49. Telephone conversation with Geoff Gallas, May 1999.

50. For an assessment of criminal postconviction review proceedings and other post-adjudication matters in criminal and civil cases in Pennsylvania general-jurisdiction trial courts, see David Steelman, *Post-Adjudication Procedures in the Pennsylvania Courts of Common Pleas: Final Report* (North Andover, Mass.: National Center for State Courts, Northeastern Regional Office, 1982).

51. Although postjudgment activities have not been measured in national studies of the pace of litigation in urban trial courts, a study of case processing and delay reduction in rural courts found that about 25 percent of the civil cases investigated in 10 rural courts had postjudgment activity. Median times from disposition to last postjudgment activity in these courts ranged from around 1 1/2 months to almost 10 months. See Frederick Miller, "Delay in Rural Courts: It Exists, But It Can Be Reduced," *State Court Journal* 14 no. 3 (summer 1990):23 at 26 and 29.

- Enforcement of fine and fee periodic payment schedules in criminal and traffic cases[52]

Events such as these can consume a great deal of time for parties, judges, court personnel, and attorneys. In fact, some types of proceedings demand a significant percentage of all the time that a court devotes to a case (such as postjudgment motions in divorce cases and the placement review, permanency planning, and possible termination of parental rights in child protection cases). To ensure that timely justice is done in these cases, as well as to allocate court resources effectively and efficiently, appropriate caseflow management attention should be given to postjudgment court events. Much less is known about the dimensions of posttrial or postdisposition delays than about those of pretrial delay,[53] but certain steps should help a court manage cases after judgment.

1. *Monitoring Cases in a Postdisposition Status*

A court must look closely at the amount of time that elapses and the amount of resources needed to address proceedings in cases after the entry of a judgment, but before the conclusion of all court work in the trial court. The status of cases in which an initial disposition has been entered, but for which all work by the trial court has not yet been concluded, should be periodically reviewed. The court should develop methods to ensure that cases in which the court must hold periodic postdisposition review hearings (such as those in which a child has been found abused or neglected) are automatically scheduled.

2. *Exercising Court Control over the Pace of Postdisposition Events*

Postdisposition management of cases follows the same principles as pretrial management, including the exercise of continuous control and the realistic scheduling of meaningful court events. In cases in which periodic postdisposition reviews are required, for example, the court should take management steps to ensure that lawyers, parties, and other case participants will be adequately prepared beforehand so that such hearings are meaningful. Other postdisposition proceedings may not be so predictable in specific instances, such as motions to modify custody and visitation in a divorce case, petitions to terminate parental rights in child protection cases, or petitions for postconviction relief. For proceedings such as these, the court should control case progress just as in pretrial matters. Time standards should be developed for such proceedings, and the proceedings should be monitored to ensure their timely progress to determination.

3. *Managing the Postdisposition Link to Other "Cases"*

To monitor court operations and to aid in management decisions, judges and court managers typically think of a "case" largely in terms of a single sequence of events or court proceedings between initial filing and disposition, without reference to whether any party is or has recently been involved in any other "case" before the court.[54] In situations in which one person or family may have more than one "case" before the court at or near the same time, however, it may be important for the court to look beyond a narrow definition of a "case" to address the situation of a party or a family, especially if doing so will help the court impose sanctions quickly or address a person's need for services. Addressing the situation of a party or a family will usually have the additional benefit of making more efficient use of judge-time and other valuable court resources.

In criminal and juvenile delinquency cases, a probationer may often violate conditions of probation by committing a new offense. Rather than having such new offenses heard by one or more judges in addition to the judge who imposed the sentence with probation conditions that were violated, some courts seek to achieve efficiency by consolidating the new "case(s)" and the "case" with the probation violation for hearing by one judge, who can then deal with the defendant's situation more quickly and efficiently.

Other examples have to do with family matters. There may be complex interrelations among matters involving the same family and being heard in different forums. Before or after the entry of judgment in a divorce case, a family may appear in a court's civil docket, criminal domestic violence docket, or both, or in its abuse and neglect docket, or one of the children in the family may be

52. See John Matthias, Gwendolyn Lyford, and Paul Gomez, *Current Practices in Collecting Fines and Fees in State Courts: Handbook of Collection Issues and Solutions* (Denver, Colo.: National Center for State Courts, Court Services Division, 1995). See also, James Economos and David Steelman, *Traffic Court Procedure and Administration*, 2d ed. (Chicago: American Bar Association, 1983).

53. The problem of postjudgment delay and costs was one of the themes identified in 1997 in meetings of a National Working Group on Prompt and Affordable Justice, funded by the State Justice Institute. See Douglas Somerlot and Barry Mahoney, "What Are the Lessons of Civil Justice Reform? Rethinking Brookings, the CJRA, RAND, and State Initiatives," *Judges' Journal* 37, no. 2 (spring 1998): 4 at 62.

54. See the definition of "court case" in Conference of State Court Administrators and National Center for State *Courts, State Court Model Statistical Dictionary, 1989*, p. 17.

arrested for delinquency. In a case in which a court has found a child to be abused, the parents' lack of success with steps necessary to rehabilitate and reunify the family leads to the institution of proceedings to terminate parental rights. A single parent with a substance abuse problem may have parental rights terminated with one child and appear with a child born later in separate abuse or neglect proceedings associated with the parent's continuing substance abuse. A common circumstance in many courts is for a mother to have children by different fathers; consequently, half-siblings may have different last names, although they live with the same mother. Still another scenario might involve guardianship proceedings in probate court for a child who has been found abused or neglected. In each of these examples, a "family file," a one family/one judge policy, or both may promote better and speedier protection of children and service to families, while making more efficient use of court resources. (For more discussion of how to coordinate family cases, see Chapter III, section F.)

4. *Determining When All Court Work Is Done*

A final element of management after initial disposition involves determination of the point at which all court work is done in a case. In a civil case, final closure may depend on the filing of a notice that the matter has been "settled and satisfied." Divorce or probate cases may linger for years; the court's continuing jurisdiction could be evoked. Periodic review of such cases can help the court to determine if any further action is possible, permitting it to ascertain the point in which cases no longer have the potential to be pending further decisions by the court.

G. RURAL COURTS VERSUS URBAN COURTS

In 1992, the 75 largest counties in the United States had about one-third of the total population of the country, but their general-jurisdiction trial courts (with an average of about 37 judges per court) handled about 46 percent of all civil cases in state general jurisdiction courts.[55] The remaining general-jurisdiction civil cases in about 3,050 other counties were heard in 2,441 trial courts (with an average of about 2.8 judges per court).[56] About 850 counties in the country have a population less than 10,000 people, and the judicial systems in these counties typically consist of a small court staff, a small private bar, a part-time prosecutor, and only one judge (who may sit as well in one or more other counties).[57] In part because trial courts in urban areas serve large populations, have a large number of cases, and often have more publicized problems of delay, much of the literature on caseflow management is based on studies of urban trial courts. Yet trial courts serving more rural areas must also provide timely justice, and they may also face problems of delay. Although they may have to be applied in a somewhat different fashion, caseflow management techniques are every bit as suitable for rural courts as they are for urban courts. Discussion here of the application of caseflow management methods in a more rural setting anticipates the manner in which their application in civil, criminal, family, and probate cases is discussed in Chapters II and III.

State trial courts handle an overwhelming portion of the court business in the United States, and nowhere is the influence of state trial judges on administration of justice greater than it is in rural areas where only one- or two-judge courts exist.[58] The very visibility and accessibility that gives rural judges an importance in their communities unknown to their urban colleagues presents a challenge, however. Moreover, rural judges are typically isolated from colleagues, peer feedback, and opportunities to address day-to-day or longer-term problems in a collegial fashion.[59]

1. *Research Findings on the Pace of Litigation in Rural Courts*

Although most of the research on caseflow management and delay reduction has focused on urban trial courts, at least two multi-jurisdictional studies have focused specifically on rural trial courts. A study by the National Center for State Courts (NCSC) examined case-processing times in 10 rural trial courts of general jurisdiction in 5 different states.[60] It involved 1986 and 1987 dispositions in courts with no more than two full-time judges. For reasons of statistical analysis, each court had to have at least 100 dispositions per year. Another study, by the Rural Justice Center (RJC), assessed the reasons and cir-

55. For the percentage of civil cases heard by courts in the nation's 75 largest counties, see John Goerdt et al., "Litigation Dimensions: Torts and Contracts in Large Urban Courts," *State Court Journal* 19, no. 1 (1995): 11. The average number of judges in the general-jurisdiction trial courts for the 75 largest counties was calculated with information from Marie Finn et al., eds., *The American Bench: Judges of the Nation*, 7th ed. (Sacramento, Calif.: Foster-Long, 1993-94).

56. Information on the number of counties is from the U.S. Census Bureau. In 1992, there were 2,516 state general-jurisdiction trial courts in the country, with 9,602 judges. See Brian Ostrom et al., *State Court Caseload Statistics: Annual Report 1992* (Williamsburg, Va.: National Center for State Courts, 1994), p. 9. Figures for courts outside the 75 largest counties were reached by subtracting those for the largest counties from the totals reported by Ostrom et al.

57. See Kathryn Fahnestock and Maurice Geiger, "We All Get Along Here: Case Flow in Rural Courts," *Judicature* 76, no. 5 (February-March 1993): 258.

58. See Leo Whinery, "Rural Courts in America: What We Can Learn from Them: An Overview," *Judges' Journal* 30, no. 2 (spring 1991):2 at 4, and Byron White, "The Special Role of State Trial Judges," *Judges' Journal* 30, no. 2 (spring 1991): 6.

59. See Whinery, "Rural Courts in America," 4, and Kathryn Fahnestock, "The Loneliness of Command: One Perspective on Judicial Isolation," *Judges' Journal* 30, no. 2 (spring 1991): 12.

60. Miller, "Delay in Rural Courts," 23.

cumstances behind times to disposition in 19 rural trial courts of general jurisdiction in 4 states.[61] RJC staff conducted on-site research in each of those courts, and their results were augmented by a limited sample of 12 self-reporting counties selected for the study by the American Bar Association. When compared to the findings of studies of 1987 civil and criminal dispositions and 1990 divorce dispositions in urban trial courts, the findings of these rural court studies are particularly helpful in augmenting understanding of the similarities and differences between urban courts and rural courts.[62]

a. Civil cases

The NCSC study and the RJC study each found wide variation in civil case-processing times among the courts. The fastest rural courts were faster than the fastest urban courts, whereas only one rural court (a court in the RJC study) had a median civil disposition time longer than the slowest urban courts. This finding reflects, in part, the fact that the case mix in the rural courts differed from that in the urban courts in that more than half (51 percent) of the urban court civil case mix consisted of tort cases (which take longer to dispose than contract cases) and only about one-fourth (27 percent in the NCSC study and 26 percent in the RJC study) of the rural court non-domestic civil cases were torts.

The proportion of murder, rape, robbery, and other serious cases in rural courts approached that in urban courts…

In each rural court study, only two of the courts met the ABA standard that 90 percent of all civil cases be disposed within 12 months of filing. Two rural South Carolina courts had both the fastest disposition times *and* the most filings among the courts in the NCSC study, due in significant part to the fact that their judges ride circuit extensively and that significant attention to efficient caseflow management in the trial courts is consequently given by the state court administrator's office.

The NCSC rural court study also addressed *postjudgment* proceedings in civil cases, finding that about 25 percent of the cases in the sample had activity after judgment. Median times from disposition to last postjudgment activity ranged from 51 to 297 days. Some courts had cases in which the last postjudgment activity did not occur until more than two years after disposition.

b. Criminal cases

The fastest rural courts in the two studies were as fast or faster than the fastest urban courts, whereas the slowest rural courts disposed of cases sooner than the slowest urban courts. Case mix may well contribute to some of the differences. The proportion of murder, rape, robbery, and other serious cases in rural courts approached that in urban courts, but the percentage of drug-related cases in rural courts (16 percent in the NCSC study and 15 percent in the RJC study) was much lower than that in urban courts (26 percent, according to the urban court study).

When researchers compared times to disposition in rural courts with ABA time standards, they found that only 1 of the 29 courts in the two studies approached the standard that 90 percent of cases be disposed within 120 days. On this finding, the lead NCSC researcher wrote:

> It is alarming that rural courts with smaller caseloads cannot dispose of felony cases more quickly, but it is in the area of criminal case processing that the limited resources in rural communities become most evident. Prosecutors and their assistants often must cover very large territories; investigators are limited both for prosecution and defense; legal defense services offered by appointed or contract counsel in all the rural court project states, except to a limited degree in Nebraska, operate without formal quality control; alternatives to incarceration and substance abuse programs are limited or nonexistent; juvenile facilities are inadequate; and mental health experts are sometimes unavailable.[63]

Those interviewed for the NCSC study said resource problems hindered criminal case processing, but the RJC researchers concluded that perceptions about limited resources as a reason for delay were not borne out by the evidence from the cases that they studied:

> Lengthy criminal case disposition times for the courts studied were not caused by attorneys filing numerous motions. . . . The lack of court and social

61. Fahnestock and Geiger, "We All Get Along Here," 258.

62. In his *State Court Journal* article "Delay in Rural Courts," Miller compares the civil and criminal results from the rural court study to those for urban courts in Goerdt et al., *Examining Court Delay*. The NCSC rural court study also reports findings for divorce cases, so that it is possible to compare them here with the findings for urban courts in John Goerdt, *Divorce Courts: Case Management Procedures, Case Characteristics, and the Pace of Litigation in 16 Urban Jurisdictions* (Williamsburg, Va.: National Center for State Courts, 1992), which were not available when the NCSC rural court study was completed. The Fahnestock and Geiger article "We All Get Along Here," does not give separate elapsed-time data for domestic cases.

63. Miller, "Delay in Rural Courts," 27-28.

> service resources also cannot explain the majority of untimely criminal case dispositions in the rural courts studied. Before this fieldwork, the authors and others believed that rural criminal case delay was caused by this scarcity and by the long distance between these services and many courthouses. Yet more than 85 percent of the criminal cases studied required no resources for disposition other than the court, prosecution, defense attorney, and jail.[64]

c. Domestic relations cases

Almost one-third of the cases filed in the courts in the NCSC study and 50 percent of the non-criminal cases in the RJC study were domestic relations matters. The fastest rural courts in the NCSC study had average times to disposition for divorce cases that were almost a month longer than the fastest courts in a separate NCSC study of such cases in 16 urban trial courts, and the slowest rural courts tended to have somewhat longer disposition times than the slowest urban courts.

ABA time standards place a high priority on expeditious treatment of domestic relations matters, requiring that 90 percent of all such cases be disposed within 3 months of filing. None of the jurisdictions in the NCSC rural court study came close to meeting this standard. In this respect, they were like the urban courts in divorce matters—although several urban courts were close to the ABA standard that 100 percent of all domestic relations cases be disposed within 12 months, none came near the standard for 90 percent of the cases. Mandatory minimum waiting periods were one reason why urban courts were unable to approach the shorter time standard; they may have been one reason why rural courts were unable to meet this standard. In addition, rural courts may lack the resources to develop programs to identify uncontested cases and apply expedited dissolution procedures.

2. *Caseflow Management Techniques Especially for Rural Courts*

The authors of the RJC study concluded that the "dominant driving force in rural court systems is comity:"

> Attorneys accommodate each other to survive economically. Prosecutors are often unwilling to screen out weak cases because they do not want to offend law enforcement. Defense attorneys and part-time prosecutors often earn most of their income from civil practice, so that the ongoing relationship with the bar may be more important than the facts or outcome in a given case. Court managers often see their job as "keeping peace in the family." And judges are often pressured to accommodate attorneys and court staff. "We all get along here" is the chorus sung in court after court.[65]

Although the nature of a closely knit legal community in a rural area may yield resistance to change equal to or greater than that in urban courts, the small size of a rural court may also mean that successful efforts to introduce change can have greater and more immediate results. Comity or other factors specific to rural courts can affect case-processing times, but research on rural courts suggests that the elements of effective caseflow management in urban courts are equally valid in rural courts. Several techniques will improve case disposition times in a rural court:

- Make a firm and ongoing commitment to disposing of the court's business as promptly as the circumstances of each case require or permit.
- Communicate to the bar in an appropriate fashion that the court is serious about not having cases linger on the docket, and (recognizing that "keeping a good relationship with the only judge in town is the first rule of rural legal practice")[66] use comity as a force to dispose of cases quickly.
- Enlist the support of the bar and court support staff in development of case-processing rules by which the court can actively control the progress of cases.[67]
- Use overall and intermediate case-processing time goals as a tool for managing and monitoring all cases coming before the court.
- With the aid of the state court administrator's office and bodies such as the bar association and the state clerks' association, provide training programs to help lawyers and support staff develop an understanding of and commitment to the goals of caseflow management and the application of caseflow management techniques.

64. Fahnestock and Geiger, "We All Get Along Here," 259.
65. Ibid., 258.
66. Ibid., 263.
67. Although the judge in a small community may feel a need to accommodate local practitioners in terms of scheduling convenience, the rural court research shows that reasonable efforts by judges to provide fair and expeditious procedures and to monitor and enforce compliance with those procedures does not result in the alienation of bench and bar. In fact, rural practitioners may be every bit as concerned as urban lawyers about the need to reduce and avoid delay. See Miller, "Delay in Rural Courts," 31.

- With the aid of a manual or automated information system, actively monitor the age and status of cases from initiation through disposition and the completion of all court work, measuring case progress against appropriate time standards.[68]
- Develop mechanisms to identify and process cases (such as uncontested divorces) that are suitable for expedited disposition.
- By rule, set reasonable timetables for completion of discovery and progress to trial readiness without need of a party motion or request for a trial date.
- Adopt a policy limiting continuances and apply it in a reasonable but consistent and firm manner.
- Use technological options such as filing by facsimile transmission and telephone conferencing to overcome the delay and cost of travel for witnesses and attorneys.[69]
- Recognizing that most cases are disposed without trial, promote firm trial dates (thereby encouraging earlier negotiated settlements in cases that can be resolved without trial). Avoid problems of trial delay arising from judge unavailability by developing and implementing practices and procedures for judges sitting in the same or adjacent communities to provide support for one another.

H. CONCLUSION

Caseflow management involves court assumption of control over the pace of litigation before it. Together, early court intervention and court provision of reasonably firm trial dates constitute the "hammer and anvil" of pretrial caseflow management. Managing this part of cases is critical because 95 percent or more of all cases are resolved by nontrial means. When trials occur, however, they are very demanding on court resources. Trials must therefore be managed as well. Finally, court leaders must be aware that all of a court's work is very often not done when a judgment is entered. As a result, it is important to give caseflow management attention to cases when they are in a postdisposition status.[70]

Much of what we know about caseflow management has been developed on the basis of research and practice in urban trial courts. But courts in more rural areas need management and timely dispositions every bit as much as urban courts. The basic methods of caseflow management are therefore just as applicable in more rural courts as they are in large urban courts.

68. For an example of the effect on case processing and the pace of litigation of a simple manual case management information system in a rural court, see Rachel Doan, "Rural Misdemeanor Court Management: A Study of One Court's Exercise of Greater Case Control," *Justice System Journal* 6, no. 1 (spring 1981): 73.

69. See Frederic Rodgers, "The Rural Judge Can Always Be Found! Judicial Orders by Fax and by Phone," *Judges' Journal* 32, no. 3 (summer 1993): 34.

70. Attention to managing all the dimensions of postdisposition proceedings may involve critical changes in how we think about caseflow management. As Robert W. Tobin has written, "The main limitation of caseflow management is that it is case oriented, not person oriented" (*Creating the Judicial Branch: The Unfinished Reform* [Williamsburg, Va.: National Center for State Courts, 1999], p. 231). Effective management of postdisposition matters may require much more attention to the persons involved in cases.

CHAPTER II

CIVIL, CRIMINAL, AND TRAFFIC CASES

Superior Court of Butte County Judge Stevens reviews the file of a drug court client.

An important way to develop further understanding of caseflow management is to consider the manner in which such management can be applied in different kinds of cases. In this chapter, the use of caseflow management in civil, criminal, and traffic cases is discussed. The caseflow management fundamentals presented in Chapter I are revisited in this chapter to illustrate their application in these types of cases.

A. CIVIL CASES

Resolution of civil disputes, such as those arising in tort, contract, and real property matters, is a significant part of the work of trial courts. National research has identified the factors affecting times to disposition in civil cases. And experience in many trial courts has shown that specific steps can be taken to reduce and avoid delay in civil cases. This is so for both routine and complex civil litigation, and it is even true for small claims cases.

1. *Factors Affecting Civil Case Processing Times*

National research on the pace of civil litigation in urban trial courts has addressed factors of court size, case mix, resources, and caseflow management.[1] Court size does not have a direct relationship to civil case processing times, although it does relate to resource levels (larger courts tend to have more cases per judge) and case mix (larger courts tend to have a higher percentage of torts, which often take longer to dispose than contract cases). The following caseflow management factors were all found to be related to shorter civil case processing times:

- Firm trial dates
- "Backup judge" system for trials
- Early court control
- Individual calendars
- Case-processing time goals

Early court control of the pace of litigation is the factor most strongly correlated with shorter times to disposition. Having shorter case-processing time goals is also strongly related to shorter case-processing times.

A trial court's handling of its civil cases does not necessarily exist in a vacuum. Courts hearing civil matters must usually also hear criminal matters, which typically take precedence over civil matters. National research in urban trial courts has found correlations between felony and civil case processing times.[2] Courts with firm trial dates and shorter case-processing times for felonies also tend to deal more expeditiously with their civil cases. On the other hand, courts that experienced a sharp increase in drug cases in the 1980s, and that had a higher percentage of drug sale cases, tended to find themselves with larger pending civil inventories and longer civil case processing times.

2. *Proven Techniques in Civil Cases*

Trial courts have taken steps to deal with the pace of their civil litigation. On the basis of the experience in these courts, a set of techniques for successful caseflow management can be distilled.

a. Early court involvement

It is important for the court to give attention to cases at the earliest possible point in their progress. Such attention by the court prompts parties and lawyers to be more prepared, resulting in earlier settlements. One important element of early court control is measurement of the progress of cases from the time of filing against applicable intermediate and overall time standards. A court's automated case management information system can be particularly helpful in this regard, providing periodic reports to judges and court managers about cases pending longer at a stage than the established time standard for the stage. (See Chapter V, page 74, and Chapter VI, pages 91-92.)

A second important element of early control is monitoring of case progress during the pleadings stage, particularly monitoring of the filing of an answer or other responsive pleading by a defendant. If a defendant has not responded within 30-60 days after the filing of a complaint, the court should give notice to counsel for the plaintiff, directing the plaintiff to seek alternate means of service on the defendant or file for a default judgment.

A third important element of early court control is the holding of early case conferences. Such conferences may not be necessary in

1. See John Goerdt et al., *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1989), pp. 38-41.

2. See John Goerdt, Chris Lomvardias, and Geoff Gallas, *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1991), pp. 63-65.

cases that have simple issues, lack other elements of difficulty or complexity, and can be put on a timetable for early disposition by trial or settlement. For other cases, however, an early conference (held by a judge, a referee, or a court manager, and it might efficiently be held either at the courthouse or by telephone) can allow let the court to perform several valuable management functions. First, it can serve as a means for the court to enter a case management scheduling order, in appropriate cases, to govern such matters as completion of discovery and referral to alternative dispute resolution (ADR). Second, if conducted by a judge it can provide an opportunity for the court to address pleading or potential discovery problems with counsel. It can also provide an early opportunity for counsel to discuss the possibility of settlement. Finally, it can permit the court to make a DCM track assignment if counsel contests a tentative track assignment made by court personnel or cannot agree on an appropriate DCM track assignment.

b. Case screening and DCM track assignment

As part of a civil DCM program, it is helpful for the court to require that attorneys attach a "case information sheet" to their initial pleadings. Such a sheet should give the court information about the nature of the case to assist in assignment of the case to a DCM track and should provide an opportunity for counsel to show why it has requested a specific track assignment.

The tracks for civil cases might consist simply of:

- Expedited cases, such as contract matters with liquidated damages, in which there is little or no need for discovery and cases can be given a trial date within a few months after filing
- Complex cases, such as mass torts or difficult asbestos or professional malpractic e cases, which need special attention from a judge to aid closure of the pleadings and discovery and preparation for trial (see "Managing Complex Civil Litigation" below)
- Standard cases, such as auto accident cases that require discovery but can otherwise proceed to trial or settlement without the level of attention by judges needed by more complex matters.

The court may find additional track assignments, each with appropriate timetables for discovery completion and other procedural requirements, desirable.

WASHINGTON, D.C., SUPERIOR COURT CIVIL CASE MANAGEMENT PROGRAM[a]

In 1987, 25 percent of the general civil cases disposed in the Superior Court in Washington, D.C., were more than 24 months old, and 10 percent were more than 40 months old. In April 1989, the court established a task force to begin planning a new civil case management system. The system that the task force developed was patterned after a successful program that had previously been introduced in the Wayne County Circuit Court in Detroit, Michigan.[b] After a pilot effort with two judges in 1990, all civil judges in the D.C. Superior Court adopted the new system in 1991.

Before 1991, the court used a master calendar system, waiting for an attorney to file a trial-readiness document before the court scheduled any events in a case. The court did not set time limits on service of process; did no monitoring of cases before they were at issue; and had no case-processing time goals.

In the new program, the court adopted the ABA time standards; introduced individual calendars; introduced differential case management with time standards for intermediate case events; and integrated alternative dispute resolution (ADR). There were key philosophical changes under the program.

- Court monitoring of case events, court control over the scheduling of case events, and a requirement that parties comply with established schedules, have all changed the expectations of both judges and lawyers.
- Meaningful pretrial conferences before judges have permitted them to assess the likelihood of trial or settlement and to schedule realistic trial dates.
- Adoption of the ABA time standards not only changed expectations, but it has also provided a means to monitor court performance.

By 1992, the court found a 73 percent reduction in the number of cases continued because of judge unavailability. Even though civil filings had increased, the pending civil caseload was 30 percent lower. And during 1992, the court had virtually met the ABA time standards for civil cases: 90 percent of its cases were one year old or less, and 99.9 percent were two years old or less. By the end of 1996, there had been some deterioration—among disposed cases, 8-10 percent were more than two years old. Yet the court's case-processing times remained significantly shorter than they were in 1987.

a. This is a summary of John Goerdt's description of the Washington, D.C., program in "Slaying the Dragon of Delay: Findings from a National Survey of Recent Court Programs," *Court Manager* 12, no. 3 (summer 1997): 30 at 34.

b. The Wayn e County program is described in Kent Batty et al., *Toward Excellence in Caseflow Management: The Experience of the Circuit Court in Wayne County, Michigan* (Williamsburg, Va.: National Center for State Courts, 1991).

c. Management of pretrial events

After issue is joined in a civil case, the court must give appropriate management attention to several other pretrial activities. These include discovery, pretrial motions, and ADR.

Civil cases vary in the amount of discovery they require. A study of discovery in five state trial courts found that tort cases are much more likely to have discovery than contract, property, or other civil cases. Overall, 42 percent of the cases in the study had no discovery; in cases with discovery, 37 percent had three or fewer pieces of discovery. Litigation with discovery proceeds at a significantly slower pace than that without discovery. Moreover, greater discovery activity offers greater opportunity for conflict and therefore is associated with greater motion activity, which in turn places greater burdens on a court to rule on such motions.[3] Court management of discovery thus promotes expedition and helps conserve court resources.

In the view of practicing attorneys, problems in the discovery process arise more because of the behavior of individual attorneys than because of specific case characteristics. Practitioners support the direct involvement of the court in the control of the discovery process through an early discovery conference or establishment of a discovery plan, through consistent application of the rules, and through the imposition of costs and sanctions for abuse.[4] Active court control of discovery is one of several steps advocated by the Court Delay Reduction Committee of the National Conference of State Trial Judges. Other measures recommended by the committee for the management of discovery include:[5]

- Automatic pre-discovery disclosure of all relevant information by all parties
- A mandatory early discovery conference (before any discovery is permitted) to resolve disclosure disagreements and develop a binding written discovery plan that tailors discovery to the specific requirements of each case
- Otherwise limited discovery except on court order after party motion
- Good-faith efforts by counsel to resolve discovery disputes before the court entertains any discovery motions
- Control by counsel of unnecessary discovery expense and delay
- Imposition of court sanctions when a party fails to comply with its disclosure obligations
- Encouragement of counsel to use ADR mechanisms to resolve all substantive issues in civil litigation

3. See Susan Keilitz, Roger Hanson, and Henry Daley, "Is Civil Discovery in State Courts Out of Control?" *State Court Journal* 17, no. 2 (spring 1993): 8.

4. See Susan Keilitz, Roger Hanson, and Richard Semiatin, "Attorneys' Views of Civil Discovery," *Judges' Journal* 32, no. 2 (spring 1993): 2 at 38.

5. National Conference of State Trial Judges, Court Delay Reduction Committee, "Discovery Guidelines Reducing Cost and Delay," *Judges' Journal* 36, no. 2 (spring 1997): 9. For the results of a RAND study of the effects of such discovery management practices as these on case-processing times and attorney work hours under the federal Civil Justice Reform Act, see James Kakalik, "Analyzing Discovery Management Policies: RAND Sheds New Light on the Civil Justice Reform Act Data," *Judges' Journal* 37, no. 2 (spring 1998): 22.

CIVIL CASEFLOW MANAGEMENT IN TWO RURAL SOUTH CAROLINA COURTS[a]

In Pickens and Sumter Counties, South Carolina, rural courts of common pleas (courts of general jurisdiction) disposed of 90 percent of all their civil cases in 1987 in less than 12 months. These courts thus both met ABA standards for the timely disposition of civil cases. Timely case processing in these courts reflects successful caseflow management under statewide civil case processing requirements mandated by state court leaders for all common pleas courts.[b]

After civil cases are initiated, a copy of the civil docket sheet is sent to South Carolina court administration (SCCA) to be entered on a case list that is used to monitor cases in each county. If a plaintiff cannot make service on a defendant, there may be efforts to accomplish service by publication. If a defendant fails to file a timely answer, the plaintiff can apply for a default judgment.

Active cases more than 120 days old that have not been settled or withdrawn are placed on a trial roster and called in order of filing. Once called, a case is continued only for exceptional circumstances. If a case is not tried or continued when called, options include voluntary nonsuit, settlement, or dismissal under rule 40(c)(3) and placement on a special inactive docket monitored by SCCA. After judgment, a copy of the docket sheet is annotated with the disposition and sent to SCCA to update the case list. Civil cases nearing or over a one-year time limit are given special attention by the clerk's office, the circuit administrative judge, SCCA, and the chief justice.

Key elements in South Carolina's civil case processing include:

- The case list produced by SCCA
- Addition of cases to the trial roster after 120 days
- Cases called for trial in chronological order
- Limitation of continuances
- Dismissals under rule 40(c)(3)
- 365-day time standard for completing civil cases

a. See Frederick Miller, "Delay in Rural Courts: It Exists, But Can It Be Reduced?" *State Court Journal* 14, no. 3 (summer 1990): 23 at 37.

b. Because all general jurisdiction judges rotate geographic assignments in South Carolina, a high degree of central management by SCCA is needed. A result is that a trial judge is attentive to completing his or her work in a given location, rather than leaving it for the next judge who will be sitting there.

6. See Susan Keilitz, Roger Hanson, and Henry Daley, "Civil Motion Practice: Lessons from Four Courts for Judges and Lawyers," *Judges' Journal* 33, no. 4 (fall 1994): 3 at 3-4.

7. See Federal Judicial Center, *Manual for Complex Litigation*, 3d ed. (St. Paul, Minn.: West Publishing, 1995); New Jersey Supreme Court Committee on Civil Case Management and Procedures, "Civil Case Management and Procedures Report," *New Jersey Law Journal* (March 28, 1985):1; ABA, *Standards Relating to Trial Courts* (Chicago: American Bar Association, 1992), Sections 2.51D and 2.79.5; and Elizabeth Lipscomb, "Taming the Beast: Management of Complex Litigation," *Court Manager* 10, no. 2 (1995): 49.

8. See, for example, "Handbook of Recommended Procedures for the Trial of Protracted Cases," 25 F.R.D. 351 (1960).

9. See "Civil Case Management and Procedures Report," p. 14. The committee estimated that complex cases, although constituting no more than 10 percent of all civil cases, might consume as much as 40 percent of available trial time in the New Jersey Superior Court.

If parties file pretrial motions (either before or after the completion of discovery), early court decisions on these motions will promote faster case dispositions. Whenever possible, the court should decide pretrial motions before the date set for trial commencement. This action will permit parties to settle cases earlier and eliminate an element of uncertainty in the firmness of trial dates.

In a study of civil motion practice in four general jurisdiction trial courts,[6] researchers found that real property cases have few motions, that the vast majority of motions occur in contract and tort cases, and that a typical case has three motions (most of which are uncontested). Faster motion processing does not necessarily result in faster case processing. Yet average case-processing times are longer in cases with motions than in those without them, probably more because of case complexity than as a result of motions practice. The researchers recommended measures that judges and court managers:

- Schedule contested and uncontested motions separately to increase judicial time for hearing and deciding motions that substantively affect the resolution of a case
- Require attorneys to attach the motion a stipulated order or a certification that the matter is uncontested to identify an uncontested motion
- Place motions that are ultimately likely to be uncontested, but that could not be so identified when they were filed, at the beginning of the court's motion calendar to ensure that they are reached and to reduce the amount of time attorneys must wait in court
- Require replies to be filed by a specified date just before the setting of the motion calendar to identify motions that will not be contested at hearing
- Set shorter time limits on filing reply briefs to accelerate motion-processing time

An important pretrial event in many courts is pretrial mediation, arbitration, or another form of ADR. ADR should be scheduled so that it does not delay the progress of cases to completion of discovery and readiness for trial if they are not settled or resolved by ADR. The timing of ADR can be critical, both in terms of ADR effectiveness and costs to the parties. It should not come before counsel and the parties have had a chance to learn what a case is about, but it *should* come before they have incurred the expense of deposing expert witnesses.

After the completion of discovery, many courts schedule pretrial conferences to explore prospects for settlement. In cases for which trial management conferences are needed, they should be scheduled about two weeks before trial to permit parties to prepare for trial or to settle cases without undue disruption of a court's trial calendar.

THE CIVIL DCM PROGRAM IN CAMDEN, NEW JERSEY*

The civil DCM program for the Superior Court of New Jersey in Camden was introduced in 1988. The program is aided by computer support, uses a case-scheduling order, and uses a track coordinator to provide management support. Cases are screened at joinder, using information provided by attorneys on a case information statement, and assigned to one of eight tracks:

- ***Complex:*** Cases that need customized and early judicial management and a pretrial discovery scheduling order
- ***Standard:*** The "average" cases, usually involving personal injury or multiple defendants, which are given 200 days for discovery, with interrogatories and depositions limited
- ***Expedited:*** Cases that require little or no judicial attention before trial, which are given 100 days for discovery, with interrogatories limited and no depositions without leave of court
- ***PIP Expedited:*** Claims for personal injury protection under the no-fault provisions of auto insurance polices, which are allowed 130 days for discovery, and with depositions of parties and experts permitted
- ***Declaratory Judgment Expedited:*** Declaratory judgment actions, which are assigned to a single judge for management, with a case conference 30 days after track assignment and 100 days for discovery
- ***Prerogative Writ Expedited:*** Prerogative writ actions are assigned to a single judge at filing, with a case management conference 45 days later, 100 days for discovery, and a pretrial conference 60 days after joinder
- ***Complicated Standard:*** Medical malpractice, products liability, construction accident cases with serious injuries, and any other cases demonstrating a need for 300 days of discovery and a management conference within 150 days after track assignment
- ***Asbestos Standard:*** Asbestos cases are allowed 300 days for discovery, and a management conference is held within 210 days after track assignment

After a favorable evaluation by a committee of the New Jersey Supreme Court, the Camden DCM program was recommended to be a model for civil case management throughout the state.

* See Linda Torkelson's program description in "Beyond Delay: Using Differentiated Case Management," *Court Manager* 8, no. 2 (spring 1993): 12 at 15-18. See also, Judge Rudolph Rossetti, "Special Civil Tracks," *Judges' Journal* 33, no. 1 (winter 1994): 34.

d. Effective trial scheduling

In caseflow management, firm and credible trial dates have been described as "the engine that drives the system." The certainty of trial and implementation of a realistic setting policy can be enhanced if the court sets the actual trial date only after settlement possibilities have been exhausted and keeps trial calendars as small as possible to keep up with its pending cases. Once a case is set for trial, trial date continuances should be granted in only the most unusual circumstances. If a case does go to trial, the judge should effectively manage the progress of the trial to conclusion.

3. *Managing Complex Civil Litigation*[7]

Long before differentiated case management came into vogue, courts recognized a need to give special management attention to cases that were much more complex than most other civil litigation.[8] Although relatively small in number, complex cases can consume a disproportionate amount of the time of judges, court personnel, and attorneys. They are usually distinguishable by the number of parties and attorneys involved, the number of claims and defenses raised, the amount of money at issue, and the legal or factual difficulties involved.[9]

a. Early identification

Early identification of cases needing special attention from the court is important. To conserve court resources, no category of cases should be presumed to be complex. Instead, cases should be screened to determine whether they do indeed require more intense management from the court. Especially if they have the aid of a case information sheet accompanying a complaint (as might be required by the court's DCM program), experienced court staff under a judge's direction can identify cases that are likely to be designated as complex.

b. Early judge assignment and case supervision

Judges should be notified as early as possible that a potentially complex case has been filed. In a large multijudge court, the chief judge or civil presiding judge should assign the case or cases to a single judge who has the requisite experience and ability.

CIVIL DCM IN ENGLAND AND WALES

In 1994, Great Britain's Lord Chancellor appointed Lord Woolf, Master of the Rolls (the Chancellor's senior subordinate in Chancery and administrative head of civil matters in the Court of Appeals), to study the system of civil procedure in England and Wales. The purposes of the study were (a) to improve access to justice and reduce the costs of litigation; (b) to reduce the complexity of the rules and modernize terminology; and (c) to remove unnecessary distinctions of practice and procedure.[a] In 1996, the Lord Chancellor's Department published Lord Woolf's final report, which called for more active case management by the courts, including the introduction of DCM tracks for civil cases.[b] The changes recommended by Lord Woolf are reflected in new civil procedure rules that went into effect on April 26, 1999.[c]

In his report, Lord Woolf sees case management by judges as an essential means of dealing justly with cases, involving identification of issues; summarily disposing of some issues and deciding the order for others to be resolved; fixing timetables for case progress; and limiting discovery and expert evidence.[d] To make case management proportionate and limit active judicial intervention to cases that require it, the new rules provide for the allocation of cases to "management tracks" that govern the pace at which they must progress to trial and the degree of "hands-on" judicial management:[e]

- **The *small claims* track** is the normal track for claims with a financial value not exceeding £5,000. When a case is allocated to this track, the court fixes a final hearing date and issues practice directions (the equivalent of a scheduling order in American trial courts). A preliminary hearing will normally not be held, and the final hearing procedure is informal and flexible. The right of appeal is severely restricted on this track.
- **The *fast track*** is for most defended claims worth between £5,000 and £15,000. When a case is allocated to the track, the court gives practice directions governing disclosure of evidence, witness statements, and expert evidence. The directions also include a timetable for progress to trial, which is to be held within 30 weeks. The duration of trial generally is not to exceed one day.
- **The *multi-track*** is the one to which claims in excess of £15,000 will normally be allocated. On the allocation of a case to this track, the practice directive issued by the court may schedule a case management conference; the filing of listing questionnaires (on such issues as completion of discovery, availability of witnesses and likely length of trial); a pretrial review; and a three-week period within which trial should be held.

The court allocates a case to a track on the basis of information provided by the parties in "allocation questionnaires." When a defendant files a defense, each party must complete such a questionnaire before a date specified by the court.

a. See Adrian Zuckerman and Ross Cranston, eds., *Reform of Civil Procedure: Essays on 'Access to Justice'* [Lord Woolf's interim report to the Lord Chancellor] (New York: Oxford University Press, 1995), preface.

b. See Lord Woolf, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (London: Stationery Office, 1996).

c. See Ian Grainger and Michael Fealy, *An Introduction to the New Civil Procedure Rules* (London: Cavendish Publishing, 1999).

d. See Lord Woof, *Access to Justice*, p. 14.

e. See Grainger and Fealy, *New Civil Procedure Rules*, pp. 10-21.

In a smaller court, the judge who takes a complex case should make arrangements with colleagues on the bench and with court staff to prevent that case from unduly delaying other cases on the docket. The assigned judge should actively manage proceedings, holding early conferences with counsel, consolidating cases if necessary, issuing case management orders, ruling on pretrial motions, and overseeing the completion of discovery.

c. Allocation of sufficient resources

Complex litigation may make extensive demands on a court's support staff and on a court's capacity to store documents and exhibits and to seat a large number of attorneys and parties. It will be necessary for the assigned judge and the court manager to assess case needs and take appropriate management steps. Computer support may be needed to help manage information in a complex case.

d. Management of the trial

Before trial, it may be possible to narrow issues and reduce the number of case participants through such means as decisions on summary judgment motions and settlement of certain issues. One or more conferences for trial management should be held to deal with such matters as consolidation or separation of trials, bifurcation or even trifurcation of trials, special verdicts and interrogatories to help jurors focus on the proper issues; technology for remote witness testimony or for presentation of exhibits; and procedures to expedite presentation of evidence.[10] Once trial has begun, active management by the judge can significantly shorten trial duration.

4. Small Claims

In 1994, small claims cases made up a larger percentage of the civil caseload in limited-jurisdiction and general-jurisdiction trial courts than any other type of case.[11] It is thus fair to say that citizens may form more of their direct, firsthand impressions of the American justice system from small claims cases than from any other kind of case except traffic cases.

Small claims procedures provide relatively inexpensive and expeditious means for citizens and businesses to resolve disputes involving smaller amounts of money.[12] In contrast to the "procedural adjudication" that courts apply to general civil cases and felonies, case processing in small claims cases can be described as "decisional adjudication:"[13]

> Decisional adjudication is designed to establish the facts in a case so that the law can be applied as quickly and directly as possible. Its most striking characteristics are the simplified rules and procedures followed in hearings. . . .
>
> The simpler procedures serve several functions without necessarily infringing upon the rights of the litigants. The cases involve simpler fact situations than those commonly heard in the court of general jurisdiction and an elaborate procedure is less critical. The decisions are made to be highly routinized.

Caseflow management procedures in civil cases can be modified for small claims cases. As with all cases, the court must exercise early and continual control of small claims cases, monitoring their status and age and pay attention to whether there was service on a defendant. Early court control will prompt parties to be better prepared sooner, resulting in earlier settlements. Given the simplicity of the fact situations in most small claims cases, time needed for discovery is minimal. It is important for the court to schedule an early and firm trial date, keeping continuances to a minimum. Trials are likely to be short, and the court's attention to post-adjudication collection of judgments by winning litigants may be very important.[14]

A 1992 study of 12 urban small claims courts yielded several findings that bear significantly on caseflow management practices in small claims cases:[15]

- Although businesses file most small claims complaints, cases with individual plaintiffs are more likely to go to trial. Therefore, limiting the number of business filings will not substantially reduce the number of cases on the small claims trial calendar.
- Small claims mediation programs, many of which use volunteer mediators, successfully settled from 50 percent to 95 percent of all mediated cases, and mediation participants (especially plaintiffs) were more likely to be

10. See G. Thomas Munsterman, Paula Hannaford, and G. Marc Whitehead, eds., *Jury Trial Innovations* (Williamsburg, Va.: National Center for State Courts, 1997), especially chapters IV, V, and VI.

11. See Brian Ostrom and Neal Kauder, *Examining the Work of State Courts, 1994: A National Perspective from the Court Statistics Project* (Williamsburg, Va.: National Center for State Courts, 1996), p. 23. For limited-jurisdiction courts in 13 states that provided data, civil caseload composition was small claims (32 percent), real property (31 percent), contract (6 percent), tort (4 percent), domestic relations (3 percent), estate/mental health (2 percent), and other (22 percent). For general jurisdiction courts in 17 states, it was small claims (21 percent), contract (19 percent), tort (14 percent), estate (12 percent), property (12 percent), mental health (4 percent), civil appeal (3 percent), and other (15 percent).

12. See Steven Weller and John Ruhnka, "Small Claims Courts: Operations and Prospects," *State Court Journal* 2, no. 1 (winter 1978): 6. Issues discussed in that article are addressed in greater detail in John Ruhnka, Steven Weller, and John Martin, *Small Claims Courts: A National Examination* (Denver, Colo.: National Center for State Courts, 1978).

13. See Thomas Henderson and Cornelius Kerwin, *Structuring Justice: The Implications of Court Unification Reforms* (Washington, D.C.: National Institute of Justice, 1984), pp. 8-13.

14. See ABA Trial Court Standards, Section 2.75 and commentary. In a 1978 study of small claims courts, researchers suggested ways that a court can improve the collection process for winning small claims litigants: "We would recommend that the judges be empowered to conduct an examination of assets immediately after judgment, so that a winning litigant need not take the extra step of bringing the losing party back into court if he refuses to pay. Court personnel should be trained in the collection process so that they can tell litigants the steps that need to be taken" (Weller and Ruhnka, "Small Claims Courts," p. 41).

15. John Goerdt, "The People's Court: A Summary of Findings and Policy Implications from a Study in 12 Urban Small Claims Courts," *State Court Journal* 17, no. 3/4 (summer/fall 1993):38. Those findings are discussed in more detail in Goerdt's monograph *Small Claims and Traffic Courts: Case Management Procedures, Case Characteristics, and Outcomes in 12 Urban Jurisdictions* (Williamsburg, Va.: National Center for State Courts, 1992).

satisfied with case outcomes than parties who went to trial.[16]

- None of the 12 courts studied were closing small claims cases within 30 days of filing as recommended by the ABA time standard.[17]
- A smaller number of small claims trials actually conducted per small claims calendar hour in 1990 was correlated with faster median case-processing times for all small claims cases.
- Among small claims litigants surveyed in four courts, satisfaction with court procedures was significantly influenced by the length of waiting time on trial day and by the perceived helpfulness of clerk's office staff.

B. CRIMINAL CASES

Criminal cases may be the most publicly visible matters that trial courts must decide. Because of constitutional and statutory speedy-trial requirements, criminal cases were one of the first areas in which caseflow management techniques were implemented. The experience of many trial courts has yielded information about techniques that help courts provide prompt justice in criminal cases.

1. *Factors Affecting Felony Case Processing Times*

Expeditious treatment of criminal cases can have a direct and positive effect on quality of justice. In a 1999 study of criminal case processing in nine state trial courts, researchers from the National Center for State Courts found that the fastest courts had clearly stated policies governing the pace of litigation. The fastest courts also had the highest measures of overall case-processing quality as perceived by both prosecutors and criminal defense attorneys. In contrast, the slowest courts had the lowest measures of overall quality.[18]

National research on the pace of litigation in urban trial courts has identified a number of factors that relate to case-processing times in felony cases.[19] The relationship of court size to elapsed times was not statistically significant. Caseflow management factors that researchers found to be related to shorter felony case processing times were:[20]

16. See also, Goerdt, "How Mediation is Working in Small Claims Courts," *Judges' Journal* 32, no. 4 (fall 1993): 12.

17. See the discussion in Chapter V of small claims time standards in states that have them—only one of these states has adopted the ABA time standard for small claims cases.

18. Brian Ostrom and Roger Hanson, *Efficiency, Timeliness and Quality: A New Perspective from Nine State Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1999), pp. 104, 110.

19. See Goerdt et al., *Examining Court Delay*, pp. 86-90, and Goerdt et al., *Reexamining the Pace of Litigation in 39 Urban Trial Courts*, pp. 21-24.

20. Although Goerdt et al. studied felony case processing times in 37 urban courts, they had an insufficient number of courts with comparable data on pending felony cases to perform meaningful statistical analyses of the correlation between pending felony cases per judge and felony case processing times. In the analysis of civil case processing times in the same study, 24 courts had comparable data on pending civil cases, and the researchers found that a larger number of pending civil cases per judge was the strongest correlate of longer civil case processing times, even after controlling for other factors. Had the researchers been able to do a similar analysis of the pending felony caseloads and case-processing times, they might have reached similar conclusions.

CRIMINAL CASEFLOW MANAGEMENT IN A LARGE URBAN AREA: LOS ANGELES COUNTY SUPERIOR AND MUNICIPAL COURT FELONY DELAY REDUCTION PROGRAM

Los Angeles is one of America's largest urban centers. In 1995, after the introduction of a "three strikes and you're out" state law imposing heavy prison sentences for a third serious felony conviction, the central district of the Los Angeles County Superior Court had the largest pending felony caseload in its history, with about half of the pending cases being third-strike cases. From 1994 to 1996, the average length of a criminal jury trial increased from four days to six days. To deal with the growth in the number of felony jury trials, the court reallocated judicial resources, with the result that there was a significant increase in case-processing times on the civil calendar. To address the impact of the three-strikes law on the civil and felony trial dockets, the superior and municipal courts began a felony delay reduction program in the central district in March 1995.

Under the first part of the program, the court began an early disposition effort in June 1995 in the Los Angeles Municipal Court, under which less serious felonies that are likely to settle are identified at the police station soon after arrest. At municipal court arraignment, these cases are referred to the early disposition program, where defendants are offered the best deals they will get. In 1995, 60 percent of the cases referred to the program were disposed by plea. Early resolution of less serious programs has taken some pressure off the preliminary hearing and felony trial dockets. Under the second part of the program, judges were given weekend training sessions in July 1995, and then again a few months later, on the fundamentals of effective case management and delay reduction. Pending felony caseloads began to decline soon after these training sessions.

The third part of the program was begun in July 1996, and it involved strict enforcement in the central superior court of four rules: (1) attorneys unable to proceed to trial within 60 days after arraignment will not be appointed; (2) continuance motions must be in writing and submitted two days before trial; (3) pretrial motions and responses must be in writing; and (4) discovery must be disclosed at least 30 days before trial. While many attorneys (and even some judges) strongly opposed these new stringent measures, pending trial caseloads declined dramatically between March 1995 and August 1996. The number of requests for continuances, discovery-related motions, and pretrial conferences declined. After having reached an all-time high in mid-1995, the court's pending felony caseload by August 1996 was at its lowest level in 20 years! Both prosecutors and public defenders report that they now like the scheduling certainty that the new system gives them.

Source: This is a summary of the Los Angeles program description offered by Goerdt in "Slaying the Dragon of Delay: Findings from a National Survey of Recent Court Programs," *Court Manager* 12, no. 3 (summer 1997): 30 at 33-34.

21. See Barry Mahoney and Dale Sipes, "Toward Better Management of Criminal Litigation," *Judicature* 72, no. 1 (June/July 1988): 29

22. On the performance of indigent defense counsel in meeting these two constitutional objectives, see Roger Hanson et al., *Indigent Defenders Get the Job Done and Done Well* (Williamsburg, Va.: National Center for State Courts, 1992), Chapters III and IV.

- A higher percentage of jury trials
- Early pretrial motions
- Firm trial dates
- Assignment of both civil and criminal (but not specialized felony) cases to each judge
- Use of a master calendar

The factor most strongly correlated with felony case processing times was a high percentage of firm trial dates. Two other factors strongly correlated with such times were a low percentage of serious cases and early pretrial motions.

Criminal Caseflow Management in a Smaller Court:
SUPERIOR COURT CRIMINAL CASE PROCESSING IN FLAGSTAFF, ARIZONA

Flagstaff is the county seat of Coconino County, Arizona. The county is much less populous than either Maricopa County (county seat, Phoenix) or Pima County (Tucson). In 1994, the four judges of the Coconino County Superior Court felt themselves heavily burdened by the size of their criminal calendar. Prosecutors and criminal defense lawyers were frustrated by uncertainty about which cases would go to trial next. Court clerks faced time-consuming tasks preparing court orders, and the county faced the expense of jail overcrowding with defendants in cases taking 12-18 months from filing to disposition.

To address its problems, the court engaged the services of Maureen Solomon, a nationally recognized court management consultant. It created a task force with members representing judges, the clerk's office, the probation department, defense lawyers and prosecutors. Task force members agreed that judges should assume early and continuing responsibility for case progress, issuing immediate arrest warrants for defendants who fail to appear for superior court arraignment; verifying that an early discovery exchange is made between prosecution and defense; and limiting the grant of continuances. Prosecutors agreed to provide all prosecution discovery findings, as well as a proposed plea agreement, at the time of arraignment. Defense attorneys would then have about 21 days to review prosecution materials, conduct their own investigations, and either accept or reject the plea agreements proposed by prosecutors. For the clerk's office, forms were redesigned and checklists were created to streamline procedures.

When the task force was formed, each judge had an average of 175 cases more than 120 days old. By late 1996, the average number of cases older than 120 days had been reduced to less than 20 per judge. In September 1994, only 28 percent of cases were resolved within 90 days. In April 1996, the number of criminal cases resolved within 90 days had been increased to 74 percent.

Reducing the court's criminal backlog placed a heavy strain on the resources of criminal case participants. The court found itself giving less attention to civil and domestic cases. And while a fifth judge joined the court in 1996, limitations on court space have created new scheduling challenges. Yet the presiding judge of the court is proud of the team approach that has produced such positive results. Because everyone shares in the "ownership" of cases, he believes, everyone benefits from the overall success of the criminal caseflow-management improvement effort.

Source: "Holistic Remedy Treats Case Processing Overload," *Bench Press* (November/December 1996):6.

2. *Proven Techniques for Speedy Processing of Criminal Cases*

In criminal cases, successful caseflow management generally requires the commitment of both the court and the prosecutor's office to speedy case processing.[21] Because most criminal defendants are unable to afford retained counsel, public defenders and others representing indigent defendants (contract attorneys or appointed counsel) must be committed not only to providing effective assistance of counsel but also to resolving cases expeditiously in recognition of speedy trial requirements.[22] The following techniques are generally applicable to both misdemeanor and felony cases.

a. Early assembly of key case participants and critical case information

Expeditious handling of criminal cases begins with an early determination of defendants' eligibility for counsel at public expense, so that defendants can be represented by counsel as soon as possible after arrest and preliminary arraignment or bail hearing. Having defense counsel appear early in a case permits early assessment of the prosecution's case to determine if the defendant's interests are better served by going to trial or negotiating a plea.

To provide effective representation at an early stage, defense counsel must have a realistic picture of the prosecution case. Arrest reports, fingerprints, and other police information should be supplied promptly by law enforcement officers, giving both prosecutors and defense counsel early access to the information on which prosecution charges are based. To avoid problems that may arise *after* cases have been filed in court, the court may have to work with prosecutors and law enforcement officials to address *pre-filing* issues associated with police and prosecutor activities immediately after arrest.

Prosecutors may have a practice of "overcharging"—making initial criminal charges as high as possible in hopes of reaching a negotiated outcome more favorable to the prosecution. If the evidence does not support

more serious charges, defense counsel may attenuate proceedings. As a result, more cases may have to be set for trial because experienced defenders would know that their clients were unlikely to be convicted of the more serious charges. Realistic charging by the prosecutor avoids such problems, permits early assessment of negotiation prospects, and helps to expedite disposition of cases.

Prosecutors' provision to defense counsel of an early "discovery package," with information such as arrest reports and drug laboratory test results, serves to promote meaningful early discussion of disposition options between prosecutors and defense counsel. This end is further served by early provision by the defense of any information to be given the prosecution under reciprocal discovery requirements.

b. Early and continuing court attention to the management of case progress

The court should set the tone for criminal case processing by insisting that cases move expeditiously from arrest and initial arraignment or bail hearing through plea or trial to sentencing and resolution of any post-sentence matters in the trial court. To ensure that dates are always assigned to events in every case, the court should enter a case-scheduling order early in every case. If both prosecution and defense lawyers have had early access to the evidence in a case, the court can schedule case events at short intervals and insist that counsel meet deadlines for case preparation.

A management goal of the court, the prosecutor, and the defense counsel should be to be fully prepared for each court hearing. If that goal is met, every case event, including arraignment, can be a meaningful opportunity for disposition of a case. Counsel who are adequately prepared are in a position to consider what must be done to make cases ready for trial or for disposition by plea or other nontrial means.

c. DCM case screening by court with prosecution and defense counsel

With the involvement of the prosecutor's office and the public defender's office, the court should establish criteria to distinguish the case-processing requirements of different cases and thereby establish DCM tracks and the means by which to make track assignments. "Priority" and "complexity" criteria are used in Berrien County, Michigan (see Table 1), to strike a balance between the need for priority or expedited handling, as determined by the court and counsel, and relative case complexity, as indicated by the likely number of pretrial events or other factors likely to cause delay.[23]

Experienced attorneys in the prosecutor's office and public defender's office should screen cases for track assignments at the earliest opportunity and then make a joint track assignment recommendation to the court. Experienced attorneys can make quick and accurate screening case assessments. Early screening provides an opportunity for these attorneys to identify cases that can be disposed promptly, as well as those that are likely to require an unusual level of attention from the court and counsel.

d. Management of plea negotiations

In view of the fact that about 95 percent of all criminal cases are disposed by plea or other nontrial means, criminal caseflow management should focus on ways to provide for meaningful plea discussions between prosecutors and defense counsel at an early stage of proceedings. Prosecutors should be prepared to make realistic plea offers as early as possible. Defense counsel, in turn, should be prepared to negotiate, balancing the best interests and constitutional rights of their clients.

The court should establish and be prepared to enforce a "plea cutoff date" policy. Under such a policy, the court in a scheduling order might establish a date for prosecutors and defense counsel to meet to discuss the possibility of a plea, at which the prosecutor's office would be prepared to make its best offer to the defendant. A plea cutoff date, perhaps a week after that conference and one or two weeks before the scheduled trial date, would be the last date on which the defendant could accept the prosecution's best offer. If the defendant sought to plead guilty after that date, he or she would have to plead to the original charge filed by the prosecutor. The defendant would gain no benefit by waiting, because the prosecutor's offer would not "get better" from a defense perspective.

23. See Caroline Cooper, Maureen Solomon, and Holly Bakke, *Bureau of Justice Assistance Differentiated Case Management Implementation Manual* (Washington, D.C.: American University, 1993), p. 33.

24. See John Goerdt and John Martin, "The Impact of Drug Cases on Urban Trial Courts," *State Court Journal* 13, no. 4 (fall 1989): 4 at 8.

25. See Brian Ostrom and Neal Kauder, eds., *Examining the Work of State Courts, 1996: A National Perspective from the Court Statistics Project* (Williamsburg, Va.: National Center for State Courts, 1997), pp. 86-87.

26. See Goerdt and Martin, "Impact of Drug Cases," p. 9.

e. Early decisions on motions and realistic trial scheduling

Enforcement of the plea cutoff date policy is in the court's interest, because it helps the court preserve the credibility of its trial dates by encouraging pleas in advance of trial scheduling. Rendering early decisions in pretrial motions, and in advance of trial whenever possible, is another critical means to promote firm trial dates. These decisions include those on admissibility of evidence, most notably regarding defense motions to suppress evidence. The court's decision on a suppression motion is often dispositive of a case because a ruling for the defendant may cause the prosecution to enter a nolle prosequi, whereas a ruling for the prosecution may encourage a defendant to plead guilty. Holding off until the scheduled trial date to hear a suppression motion increases the number of cases to be scheduled for trial and reduces the certainty of timely trial commencement. Particularly for suppression motions that are likely to be dispositive, it is better for the court to hold a motion hearing and enter a decision before a trial date is scheduled.

By trying to make all pretrial case events meaningful opportunities for disposition, by promoting early and meaningful plea discussions, and by ruling early on suppression and other motions likely to be dispositive, the court should be able to dispose of many cases well in advance of trial. Trial dates should be set only for cases that need them. A smaller number of trials on the trial calendar should enhance the court's ability to provide trials consistently on the first-scheduled trial date.

f. Postdisposition management of probation violations that involve new offenses

A probation violation that is a new offense can engender two separate proceedings—one on the violation and one on the new offense. Particularly for a substance abuser, there may be a repetition of two or more arrests, all reflecting the same underlying pattern of illegal behavior. The defendant may be scheduled to appear before two or more separate judges, and the judicial system's response to the violation of probation may be delayed as the formalities of criminal procedure are applied to the new offense.

For caseflow management purposes, it is preferable to consolidate violation proceedings and new criminal proceedings before a single judge (whether the original sentencing judge, the judge randomly assigned the new case, or a judge specially assigned to hear such matters)—either manually at the earliest opportunity or with automated screening with the assistance of the court's case information system when criminal charges are filed and a case number on the new offense is assigned.

TABLE 1
CRIMINAL DCM TRACKING CRITERIA IN BERRIEN COUNTY, MICHIGAN

PRIORITY CRITERIA

Low Priority Characteristics
- Defendant on Bond
- All Charges Other than Those for Medium or High Priority

Medium Priority Characteristics
- Habitual Offender
- Offense Committed on Felony Probation
- Assault and Drug Charges Other than Those for High Priority
- Multiple Charges Pending (not same case as that under screening)

High Priority Characteristics
- Charged Offense
- Criminal Sexual Assault Against Child
- Delivery or Possession of Dangerous Drug with Intent to Deliver
- Life Maximum Assault Offenses
- Habitual Offenders (2 or more prior felony convictions)
- Offense Committed While on Parole or in Correction Center

COMPLEXITY CRITERIA

Low Complexity Factors
- Police Witness Only
- Simple Motions (2 or fewer)
- Motions Requiring Evidence Hearing Less than 1/2 Day
- Less than Five (Six) Witnesses (Total Prosecution and Defense)

Medium Complexity Factors
- Multiple Motions (3 or more)
- Expert Witnesses (other than drug analyst) Necessary
- Out-of-State Witnesses
- Motion(s) Requiring Evidence Hearing of 1/2 Day or Longer

High Complexity Factors
- Psychiatric Defense/Issue of Competency to Stand Trial
- Multiple Motions Involving Complex Legal Issues
- Extraordinary Number of Witnesses to Be Called
- Defendant Under Interstate Complaint or in Prison

Source: Caroline Cooper, Maureen Solomon, and Holly Bakke, *Bureau of Justice Assistance Differentiated Case Management Implementation Manual* (Washington, D.C.: American University, 1993), p. 34.

If the violation and the new offense(s) are assigned to one judge, that judge can assess the case with the prosecutor, defense counsel, and a probation officer to determine if the threat to society posed by the new offense is better met by prompt action on the violation or by initiation of new criminal proceedings. A court's choice to impose sanctions for the probation violation (for which the prosecution has a lower evidentiary burden than proof beyond a reasonable doubt) can lead to swift punishment, earlier access to treatment for substance abusers, earlier dispositions, fewer hearings, and less demand on the time of judges, court staff, prosecutors, public defenders, and probation officers.

3. *Drug Cases and "Drug Court" Programs*

One consequence of the wide use of drugs by Americans and of public efforts to wage a "war on drugs" has been a significant influx of drug-related cases (drug possession, drug sale, and possession with intent to sell) in our courts. A study of the pace of litigation in urban trial courts revealed that such cases increased by 56 percent from 1983 to 1987 in 17 courts for which data were available.[24] Among nine states with court systems that have data to describe drug case filings in a manner that allows for cross-state comparisons, four states saw an increase of more than 200 percent in felony drug filings in the 11-year period from 1986 through 1996, and only one of those states saw its filings level off over a substantial portion of that period.[25]

Researchers studying the urban trial court data for 1983 to 1987 concluded that a large increase in drug cases and a large percentage of drug sales cases are probably not causes of delay. In the study, the courts with the greatest drug case increase from 1983 to 1987 had been among the *slowest* courts *before* the drug-case influx; moreover, the drug caseload in these courts was virtually the same as that for some of the fastest courts in the study.[26] This finding suggests that caseflow management techniques may be helpful in dealing with drug case increases or high drug-case volume.

Although drug cases can be decided expeditiously, their volume unquestionably presents serious problems for judges and court

SUCCESSFUL CRIMINAL DCM PROGRAMS

Examples of successful criminal DCM programs are those in Tacoma, Washington; St. Joseph, Michigan; and Philadelphia, Pennsylvania.

The DCM program of the **Pierce County Superior Court** in Tacoma, Washington, was developed to promote speedy disposition of drug cases and reduce jail crowding. The prosecutor and public defender make a joint recommendation for a DCM plan designation, with a schedule for all anticipated events, including trial, for court review and approval. Plan "A" cases are to be disposed within 30 days; Plan "B" cases, within the statutory speedy-trial requirements of 60 days (in-custody defendants) or 90 days (out-of-custody defendants); and Plan "C" cases are complex matters that require waiver of the speedy-trial requirements and are assigned to an individual judge for monitoring. Despite a 53 percent increase in criminal cases from 1985 to 1990, average time to disposition in the court has dropped from 210 days to 90 days.

The DCM program in the **Berrien County Circuit Court** in St. Joseph, Michigan, involves the assignment of felony cases to one of three tracks to allow for more individualized handling of cases based on degrees of complexity and relative priorities as established by the court. The assigned trial judge makes track assignment after initial evaluation by counsel and the original arraigning judge. "Fast track" cases are those with high priority and low or medium complexity, and time from circuit court arraignment to trial should be less than 90 days. (For the court's criteria for priority and complexity, see Table 2 below.) "Complex track" cases are those with low priorities and medium to high complexity, and they are to be tried within 210 days after circuit court arraignment. All other cases are in the "normal track," which has a time to trial of 150 days. As a result of its DCM program, the court was able to maintain expeditious case processing from arrest to disposition despite a 40 percent increase in filings in the late 1980s and early 1990s. The program permitted increased productivity without increases in court staff or judicial resources. Pending criminal cases make up a much smaller portion of the court's total inventory than they did before the program began.

In the **Philadelphia Court of Common Pleas**, DCM was phased in from 1988 through 1991. It began with the less serious felony cases in the court's "waiver division" (which has about 70 percent of the court's criminal caseload). The tracks act as a sifting mechanism. Track A is for nonviolent offenses and seeks to provide for their disposition by plea or diversion at arraignment. Track B provides a trial-readiness conference for cases with defendants in custody, scheduled 21 days after arraignment and about two weeks before trial. Track C is designed to consolidate all pending cases of one defendant before a single judge. Track C is the standard track for bail cases and those not resolved through Track A or Track C procedures. DCM was subsequently expanded to the court's "major felony program," with all cases but homicides assigned to one of three tracks based on complexity. The program has enabled the court to bring all cases under administrative control and oversight, with better allocation of resources in proportion to the demands that cases present.

Sources: The description of the Tacoma program here is based on that by Beverly Bright in "Beyond Delay Reduction: Using Differentiated Case Management," *Court Manager* 8, no. 1 (winter 1993):24 at 25-27, as well as the article by J. Kelley Arnold, "Transferring Criminal Case Management Functions from the Prosecutor to the Court," *Judges' Journal* 33, no. 1 (winter 1994): 5. For St. Joseph, it is based on Caroline Cooper, Maureen Solomon, and Holly Bakke, *Bureau of Justice Assistance Differentiated Case Management Implementation Manual* (Washington, D.C.: American University, 1993), Appendix B, and Ronald Taylor's program description, "A Three-Track Criminal Program," *Judges' Journal* 33, no. 1 (winter 1994): 36. The information on Philadelphia is derived from David Lawrence's program description in "Beyond Delay Reduction: Using Differentiated Case Management," *Court Manager* 8, no.3 (summer 1993) at 25-27, and on the article by Legrome Davis, "Developing Felony Tracks," *Judges' Journal* 33, no. 1 (winter 1994): 9.

27. See Robert Lipscher, "The Judicial Response to the Drug Crisis: A Report of an Executive Symposium Involving Judicial Leaders of the Nation's Nine Most Populous States," *State Court Journal* 13, no. 4 (fall 1989): 13 at 15.

28. See Goerdt et al., *Reexamining the Pace of Litigation in 39 Urban Trial Courts*, p. 64. Courts that had the greatest increases in drug cases from 1983 through 1987 and that had a higher percentage of drug sale cases in their felony case mix in 1987 tended to be courts with longer civil case processing times.

29. There is a growing body of literature on drug courts. See National Association of Drug Court Professionals, *Defining Drug Courts: The Key Components* (1997); Jeffrey Tauber and Kathleen Snavely, *Drug Courts: A Research Agenda* (Alexandria, Va.: National Drug Court Institute, 1999); Tauber, Snavely, and Jeffrey Hunt, *Drug Court Publications: A Resource Guide* (Alexandria, Va.: National Drug Court Institute, 1999); Tauber and C. West Huddleston, *Development and Implementation of Drug Court Systems* (Alexandria, Va.: National Drug Court Institute, 1999); and Tauber and Huddleston, *DVI/Drug Courts: Defining a National Strategy* (Alexandria, Va.: National Drug Court Institute, 1999).

30. This summary is derived from Caroline Cooper and Joseph Trotter, "Recent Developments in Drug Case Management: Re-engineering the Judicial Process," *Justice System Journal* 17, no. 1 (1994): 83 at 86-93.

31. In a 1993 study of the effect of substance abuse on trial courts in New Hampshire, for example, it was found that 83 percent of all felony offenders assessed by probation officers had some level of drug- or alcohol-abuse risk. See David Steelman and Linda Walker, *The Impact of Cases Involving Substance Abuse on Court Workloads in New Hampshire* (Denver, Colo.: National Center for State Courts, Court Services Division, 1993), pp. 24-28.

EXPEDITED DRUG CASE MANAGEMENT (EDCM) IN MIDDLESEX COUNTY, NEW JERSEY

The Superior Court of New Jersey for Middlesex County was one of four jurisdictions participating in a program begun by the Bureau of Justice Assistance in 1988 to aid local jurisdictions in applying DCM techniques to drug cases as a way to deal with a substantial increase in drug filings. The program was coordinated with two previously existing grant programs: (1) a program developed by the New Jersey Administrative Office of the Courts to enable the trial court to conduct its own drug abuser assessments; and (2) a program to involve community groups in the postdisposition supervision of drug offenders.

The EDCM program introduced early case screening, case differentiation, use of case management orders to ensure event certainty, a tight monitoring system to assure expedited disposition and minimal delay, and close coordination with pretrial and probation functions. It has three case-processing tracks, each with its own procedures and timetables. Track A cases are the more serious cases involving mandatory or presumptive incarceration, with a disposition goal of 90 days. Track B is for less serious cases in which incarceration is neither mandatory nor presumptive, such as possessory offenses and those with nonrecidivist offenders, with a 30-day disposition goal. Track B cases not settled before indictment are assigned to Track C, which has the same time goals as Track A. If not disposed by plea at a "five-day conference" (held five days after the filing of a complaint in superior court), Track A and C cases are referred to a grand jury for indictment. Events from arraignment on the indictment through plea or trial to sentencing are then subject to a timetable, with case progress monitored by the court.

An important element of the EDCM program is that senior attorneys from the prosecutor's office and the public defender's office perform early case screening and take charge of cases. Full discovery is provided at the five-day conference. Indictments are to be returned within 21 days in cases not settled at the conference. Like the prosecutor, the public defender commits senior attorneys to negotiate pleas, and the public defender's office limits motions to suppress to those in which genuine issues exist. In cases for which suppression motions could be dispositive, the public defender and prosecutor also agree to seek rulings on the motions before grand jury referral.

Source: See the descriptions of the Middlesex County program by George Nicola, "A Community Approach to Drug Abuse," *Judges' Journal* 33, no. 1 (winter 1994): 32, and by John Chacko in Alliegro et al., "Beyond Delay Reduction: Using Differentiated Case Management," *Court Manager* 8, no. 1 (winter 1993): 24 at 27-29.

managers and has created an enormous strain on existing court resources.[27] Because criminal cases generally take priority over civil matters, increased numbers of drug cases have led courts to reassign judges from civil cases to criminal cases. As a result, civil case processing times can lengthen.[28]

To deal with drug cases more effectively, courts have introduced "drug court" programs of two broad types. *Management* programs are aimed at expediting the conclusion of drug cases. Programs emphasizing *treatment* of defendants' substance abuse problems are aimed at breaking the cycle of drug-related crimes that keep defendants coming continually before the courts. (In some courts, both "fast track" and "treatment" elements are present.)[29]

a. Management programs to expedite drug case processing[30]

The different approaches that courts have taken to manage their drug caseloads all share the objective of disposing of drug cases more expeditiously by giving them scheduling priority and by trying to deal with defendants who commit new drug offenses (and who consequently may have multiple unrelated cases pending at the same time). The courts attempt to use judicial resources more efficiently by "fast tracking" simple drug cases; providing management continuity for cases that are more complex or require multiple court hearings; and dealing more effectively with probation violators.

One approach that many courts have taken has been to develop DCM tracks for all criminal cases, including drug cases. (This is the case in each of the "successful criminal DCM programs" described in a sidebar above in this chapter.) In recognition of the fact that substance abuse is prevalent in all criminal offenses, and not just in those with drug charges,[31] DCM programs often seek to evaluate all offenders for substance abuse treatment or supervision needs.

A second approach is to establish special drug dockets or divisions, thereby giving scheduling priority to drug cases that would not be possible if they were competing for court time with other criminal matters. Most such divisions use expedited procedures not necessarily used for other criminal cases, and some also use special drug treatment

intervention strategies. An example is the "drug night court," operated by the criminal division of the Circuit Court of Cook County in Chicago, to which narcotics cases not requiring a jury trial are assigned. Most defendants are given probation, and limited drug treatment programs are available.[32]

A third approach is to dispose of certain kinds of felony drug cases at the limited-jurisdiction court level or to consolidate limited- and general-jurisdiction court processes. This approach is an effort to deal with the fact that felony cases in most states are handled at two levels of trial courts: bail hearings and probable cause determinations are made in a limited-jurisdiction court, after which cases are bound over for general-jurisdiction arraignment and prosecution. Because many drug cases are ready for disposition by plea or dismissal soon after filing, and because treatment intervention may have greater success if it begins soon after arrest, programs like the New York City "N Parts" seek to dispose of cases before indictment:

> All drug felony cases, regardless of the charge severity or the defendant's prior criminal record, are adjourned to an "N Part" 5-10 days after the initial arraignment for possible disposition by plea. The prosecutor's "best" plea offer is made at that time, and the defendant usually must accept the plea offer that same day or face possible indictment and felony trial through regular felony court processing routes. If the defendant accepts the plea offer, he or she waives the right to a grand jury hearing, and pleads guilty to a [general jurisdiction] information, usually within 2 or 3 weeks after the arrest.[33]

A fourth management approach to dealing with drug cases focuses on post-sentence efforts to improve responses to probation violations by drug offenders. Drug offenders placed on probation often fail to meet probation conditions that they avoid further abuse, with the result that probation violation charges (either technical violations after urinalysis or violations based on arrest for new offenses) are filed against them. The primary focus of program activities in this area is on prompt judicial response to violations that are new offenses and active monitoring of compliance with probation conditions relating to participation in treatment and rehabilitation programs. In San Diego and Brooklyn, for example, probation-violation hearings are held promptly after an offender's arrest on new charges. Instead of prosecuting the new offense, the court might revoke and impose penalties for the earlier charge. Unless the subsequent offense is more serious than the one for which the defendant is on probation, prompt revocation of probation is perceived to be more beneficial than initiation of new criminal proceedings because the time and cost of a new prosecution is avoided.

b. Treatment-oriented drug court programs[34]

Although drug-testing and drug-treatment activities have long been part of the conditions of pretrial release and probation, many courts have placed much more emphasis on drug treatment by the creation of special treatment-oriented drug calendars (usually called "drug courts"). These calendars are typically non-adversarial, and a judge (generally with support from both prosecution and defense counsel) exercises active and ongoing supervision of a defendant's involvement in a treatment program:

> Essentially, these "drug courts" are not courts at all, but diversion-to-treatment programs, which are supervised through regular (usually monthly) quasi-judicial status hearings at which the drug court judge enters into a dialogue with each defendant about his or her progress in the treatment/rehabilitation program. Through in-court review of reports of the defendant's urinalysis, treatment program attendance, and face-to-face discussion about factors inhibiting or indicative of the defendant's progress at becoming drug free, the judge tries to reinforce progress, sanctioning "slippage" in a nonpunitive manner designed to enhance the offender's assumption of responsibility for his or her rehabilitation, and to augment treatment services, as needed. In those situations in which the defendant clearly does not or cannot conform with the requirements of the drug court program, the drug court terminates his or her participation, and the case is reassigned to the conventional adjudication process.[35]

Some see treatment-oriented drug court programs as a widespread application of "therapeutic jurisprudence" in the criminal justice system. Proponents of therapeutic jurisprudence observe that the actions of judges and lawyers in court proceedings have significant emotional as well as legal

32. See Barbara Smith et al., "Burning the Midnight Oil: An Examination of Cook County's Night Drug Court," *Justice System Journal* 17, no. 1 (1994): 41, and *Bureau of Justice Assistance Monograph: Assessment of the Feasibility of Drug Night Courts* (Washington, D.C.: U.S. Department of Justice, 1993).

33. Steven Belenko and Tamara Dumanovsky, *Bureau of Justice Assistance Program Brief: Special Drug Courts* (Washington, D.C.: Department of Justice, 1993), p. 19. For more detailed discussion of "N Parts," see Belenko, Robert Davis, and Dumanovsky, *Drug Felony Case Processing in New York City's N Parts: Interim Report* (New York: NYC Criminal Justice Agency, 1992).

34. See generally, Cooper and Trotter, "Recent Developments in Drug Case Management" at 93-96.

35. Ibid. at 93.

36. See Peggy Fulton Hora and William Schma, "Therapeutic Jurisprudence," *Judicature* 82, no. 1 (July-August 1998): 8 at 10-12.

37. Although most of the discussion of "drug courts" has to do with the abuse of controlled substances such as cocaine or heroin, many substance abusers have problems of alcohol abuse. See the description of the Las Cruces, New Mexico, "DWI Drug Court" in the sidebar on drug court programs. See also, G. Michael Witte and L. Mark Bailey, "Pre-Adjudication Intervention in Alcohol-Related Cases," Judges' Journal 37, no. 3 (summer 1998): 32.

38. See Elizabeth Deschenes and Peter Greenwood, "Maricopa County's Drug Court: An Innovative Program for First-Time Drug Offenders on Probation," *Justice System Journal* 17, no. 1 (1994): 99.

EXAMPLES OF TREATMENT-ORIENTED "DRUG COURT" PROGRAMS

Drug treatment calendars or "drug courts" seek to treat nonviolent drug-dependent defendants by providing them with an opportunity to participate in a treatment or rehabilitation program. Upon successful completion of such a program, defendants' charges may be dropped or their sentences reduced. Examples of such programs are those in Miami, Florida, Oakland, California, and Las Cruces, New Mexico.

Begun in 1989, the drug court in the **Dade County Circuit Court** in Miami was the first treatment-oriented program and has served as a model for others throughout the country. Under the program, felony drug-possession defendants were put in a one-year diversion and treatment program providing treatment services and strict monitoring through urinalysis and regular court appearances. If defendants successfully completed the program, their cases were dismissed.[a]

In the **Oakland-Piedmont-Emeryville Municipal Court in Oakland**, less serious felony drug offenders are diverted within two days after release from custody into "FIRST" (Fast, Intensive, Report, Supervision, Treatment), a probation-administered treatment program that can last up to two years. The program uses progressive sanctions to reward program compliance and punish noncompliance. Successful program completion may mean a dismissal of charges or reduction in penalty.[b]

In New Mexico, the **Las Cruces Municipal Court** instituted a pilot program applying the drug court concept to persistent driving-while-intoxicated (DWI) offenders with a substantial problem of alcohol abuse. DWI arrestees identified as "probably alcoholic" in pre-arraignment screening were offered an opportunity for diversion to "DWI Drug Court," a 12-month treatment program with regular status hearings by a judge. If clients successfully completed the program, DWI and related pending traffic citations are dismissed. Those who relapsed were given graduated sanctions (two-, four-, or six-day jail sentences) and placed in a special "relapse" group. Those with repeated noncompliance were dropped from the program and prosecuted on original charges.[c]

a. See Belenko and Dumanovsky, *BJA Program Brief: Special Drug Courts*, p. 17. For more details, see Peter Finn and Andrea Newland, *Miami's "Drug Court": A Different Approach* (1993), and Michael Prendergast and Thomas Maugh, "Drug Courts: Diversion That Works," *Judges' Journal* 34, no. 3 (summer 1995): 10 at 1-12.

b. See Belenko and Dumanovsky, *BJA Program Brief: Special Drug Courts*, p. 19. See also, Jeffrey Tauber, *The Importance of Immediate and Intensive Intervention in a Court-Ordered Drug Rehabilitation Program: An Evaluation of the FIRST Diversion Project After Two Years* (Oakland, Calif.: Municipal Court, Oakland-Piedmont-Emeryville Judicial District, 1993), and Prendergast and Maugh, "Drug Courts," at 12-13.

c. See G. Larry Mays, Stephen Ryan and Cindy Bejarano, "New Mexico Creates a DWI Drug Court," *Judicature* 81, no. 3 (November-December 1997): 122.

consequences for defendants, and that courts should take advantage of defendants' court appearances by using the skills of mental health professionals to help improve the psychological well-being of defendants, thereby reducing their potential threat to victims and society as well.[36] The treatment-oriented drug court approach can promote important therapeutic values, in part by helping substance abusers face their denial of addiction and its impact on their own lives and the lives of those around them.

The most common approach in treatment-oriented drug court programs is pretrial diversion of drug defendants within a few days of arrest, deferring prosecution if they agree to participate in treatment.[37] Charges are dismissed if an offender successfully completes the prescribed treatment program. If the court terminates a defendant's assignment to a treatment program for repeated failure to participate, the case is transferred back to the criminal calendar for adjudication and sentencing. Among the earliest drug court programs were those in Miami, Florida, and Oakland, California (see sidebar above). Programs such as these seek to introduce treatment intervention soon after a defendant has been arrested, and they offer defendants the opportunity to avoid felony convictions if they successfully complete treatment.

In some jurisdictions, where the operation of a pretrial diversion program has not been feasible, *post-adjudication* drug treatment calendars have focused on defendants whose cases have already been adjudicated. These programs involve active probation supervision of defendants. In the District of Columbia, the "drug court" operates after conviction but before sentencing. Deferral of sentencing provides a rehabilitation incentive for the defendant, and progress toward rehabilitation is considered at sentencing. In Phoenix, a superior court judge holds periodic status hearings with defendants in a program administered by the probation department.[38]

C. TRAFFIC CASES

Among offenses involving highway traffic safety, some (such as vehicular homicide and DWI) are felonies or misdemeanors for which caseflow management is like that for other crimes, although evidentiary issues

associated with chemical test results in DWI cases make them more technical than most other kinds of criminal misdemeanors. More numerous by far in terms of sheer case volume are speeding and other moving traffic violations, which have been partially decriminalized or even made civil infractions in a number of states.[39] Parking violations are the third category of traffic cases, and states vary in terms of court jurisdiction of such cases. In some jurisdictions, all parking violations are handled administratively by non-court agencies; in other states, contested matters are heard in the courts; and in a number of states, courts are responsible for both uncontested and contested parking violations.[40]

Although traffic caseloads in the state courts have declined while other caseloads have increased,[41] traffic cases remain the most common means, other than small claims cases, of personal contact that most people have with the courts (see pages 30 and 31). In 1996, at least 52 million traffic cases were filed in state courts—more than all other case types combined and almost 60 percent of all filings in those courts.[42] In view of these facts, the management of traffic cases assumes great significance in terms of public trust and confidence in the courts—the perception among citizens that the courts are accessible, expeditious, fair, independent, and accountable.[43]

1. *Fair and Efficient Disposition of Uncontested Cases*

An overwhelming majority of parking violations and non-hazardous moving violations are disposed without need of a court appearance through fine payment by mail or at a traffic or parking violations bureau.[44] The court should ensure that each motorist is fully informed of his or her rights and of the consequences of entering a guilty plea or admission (including assignment of "points" or application of habitual offender statutes) so that he or she can make a knowing and intelligent waiver of rights.[45] This task can be accomplished through a well-worded statement on the traffic citation.

After providing means for motorists to be properly advised of their rights, courts or other forums hearing traffic matters should provide accessible and efficient means for those who choose to admit responsibility to dispose of their cases. Accessibility and efficiency promotes public trust and confidence in the courts; and efficiency in the handling of high-volume uncontested traffic matters not only reduces waiting time for citizens but also helps conserve clerical staff resources in the court.[46] Computerized citation preparation by law enforcement officers, automated case information systems, and optical scanning and image processing for traffic citations are means by which technology has critically aided case processing for traffic cases.[47]

Where it is possible to concentrate resources, some states have developed ticket-processing centers serving more than one traffic court location. Motorists receiving citations complete an acknowledgment of rights and return pleas by mail to a processing center. If a motorist admits responsibility and pays a fine, all case processing and distribution of receipts is done at the processing center. Any contested matter is referred for hearing to the court location with geographic jurisdiction.[48]

2. *Scheduling and Deciding Contested Matters*[49]

Unlike felonies and general-jurisdiction civil cases, in which judges and lawyers emphasize procedural issues, traffic cases epitomize "decisional adjudication," in which the court process is designed to promote the quick and direct establishment of facts and application of law, without substantial investment of time or money by litigants to sustain their positions. Although procedures and decisions may be highly routinized, the high volume of cases to be handled may mean that the judge or hearing officer is the only guarantor of real fairness in contested proceedings, ensuring that motorists or law enforcement officers have not overlooked critical issues.[50] For purposes of caseflow management, the scheduling of trials or hearings in traffic cases must not only permit dispositions to stay abreast of filings but (more importantly) also permit the judge or hearing officer sufficient time to see that justice is done in individual cases.

A critical part of scheduling for traffic cases is to control appearances of police officers in court. Such appearances present a scheduling dilemma: if police officers appear in court while they are on duty, they are not "on

39. See James Economos and David Steelman, *Traffic Court Procedure and Administration*, 2d ed. (Chicago: American Bar Association, 1983), pp. 17-21.

40. See National Center for State Courts, Court Statistics Project, *State Court Caseload Statistics, 1996* (Williamsburg, Va.: National Center for State Courts, 1997), Table 11.

41. See Ostrom and Kauder, *Examining the Work of State Courts, 1994*, p. 13.

42. See Ostrom and Kauder, eds., *Examining the Work of State Courts, 1996*, p. 14.

43. See Bureau of Justice Assistance (BJA) and National Center for State Courts (NCSC), *Trial Court Performance Standards and Measurement System Implementation Manual* (Williamsburg, Va.: National Center for State Courts, July 1997), Standards 5.1, 5.2 and 5.3.

44. On the development of traffic violations bureaus, see Economos and Steelman, *Traffic Court Procedure*, pp. 15-17.

45. See ABA, *Standards for Traffic Justice* (Chicago: American Bar Association, 1974), Section 3.2.

46. See BJA and NCSC, *Trial Court Performance Standards with Commentary* (Williamsburg, Va.: National Center for State Courts, 1997), Standard 5.1 ("The trial court and the justice it delivers are perceived to be accessible") and Standard 4.2 ("The trial court responsibly seeks, uses, and accounts for its public resources").

47. See Goerdt, *Small Claims and Traffic Courts*, p. 111.

48. For a description of Connecticut's experience with a ticket-processing center, see Joseph D'Alesio, "Creating a Centralized Infractions Bureau: One State's Experience," *State Court Journal* 13, no. 2 (spring 1989): 18.

49. See generally, Economos and Steelman, *Traffic Court Procedure*, pp. 116-121.

50. See Henderson and Kerwin, *Structuring Justice*, pp. 10-11.

the street" to protect the community. (This is particularly vexing in rural areas that may have only a small handful of officers.) If officers appear in court only when they are off duty, however, public costs for overtime pay can be significant. Those scheduling court appearances of police officers must seek to optimize the benefits to the court, the community, and the law enforcement agencies. This task requires coordination among the court, the prosecutor, and the law enforcement agencies.

An important contribution to effective and efficient police appearance scheduling can come from the court's own caseflow management practices. The court should establish firm and credible trial dates and limit continuances, because extensive rescheduling wastes the resources of both the court and the law enforcement agencies if police officers must appear and then reappear. Prosecution practices also have a significant impact on police appearances. Because police are prosecution witnesses, the prosecutor's office must contribute to effective police appearance scheduling by minimizing continuances and dismissals on dates set for trial.

In large urban areas, and increasingly in smaller courts hearing traffic cases, scheduling is done with the aid of the scheduling module of an automated information system. Especially for a large urban court hearing traffic cases, such a module should reflect each officer's shift schedule, the frequency of shift changes, and the overall length of a police department's entire rotation plan. The module should use programming edits to avoid shift depletions to the appearance of so many officers in court that an unacceptable percentage of officers in any sector will be "off the street." Dates when officers are not available for court appearances because they are on vacation, sick leave, in training, or in travel status should be blocked in the automated system and not available for scheduling. Whenever possible, police should be scheduled to appear in court only once for two or more cases, and the time for a second case should be set close to that for the first case in which the officer must appear.[51]

According to ABA standards, multiple appearances for motorists in a single traffic case should be avoided, to minimize costs of appearance for motorists and police and to make efficient use of finite court resources.[52] In recognition that most traffic cases (even those in which motorists have not admitted responsibility but have paid a fine by mail or to a violations bureau) will be disposed by nontrial means, courts seeking to manage caseflow may seek to avoid scheduling of all "not guilty" cases for trial. Instead, they have scheduled a pretrial conference or "docket call" (see the sidebar on the "docket call" program in Austin, Texas). Combined with a firm trial date and continuance policy, a meaningful pretrial event can lead to more and earlier pleas, thereby reducing the number of cases that must be set for trial. In addition to providing for earlier case dispositions, a meaningful pretrial event can dramatically reduce the cost of police appearances.[53] With a smaller trial calendar,

51. These areas are identified by Ron Zimmerman, court clerk for the Austin Municipal Court in Texas, in his article "Police Officer Scheduling in Metropolitan Traffic Courts: Managed Process or Crap Shoot?" *Court Manager* 13, no. 1 (winter 1998):40.

52. See ABA, *Standards for Traffic Justice* , Section 3.1.

53. In Portland, Oregon, a case management program, including pretrial conferences for misdemeanors and DWI cases, yielded an increased number of settlements before trial and a significant reduction in police appearance costs. See Goerdt, *Small Claims and Traffic Courts*, p. 119.

CASEFLOW MANAGEMENT FOR TRAFFIC CASES IN AUSTIN, TEXAS

The Austin Municipal Court is a limited-jurisdiction court that hears city ordinances and state misdemeanors punishable by fine only. Nearly half of the matters in its caseload (about half a million charges per year) are civil parking violations. In 1991 and 1992, the court had serious difficulties with trial backlogs. While over 45,000 cases were set for trials after entry of not-guilty pleas in fiscal year 1992, the court held only 729 trials (about 1.6 percent of the cases scheduled for trial). It became common knowledge that responsibility for violations could be avoided by pleading "not guilty" and forcing the court to reschedule or dismiss massive numbers of cases in order to deal with its trial calendar backlog.

The court decided in 1992 to deal with this problem by developing a program for early disposition of cases, limited continuances, and smaller trial calendars with firm trial dates. Under the program, the court scheduled all cases with "not guilty" pleas for a pretrial "docket call," which would be a motorist's only opportunity to plea bargain, to enroll in driving safety school (discretionary with the court), or to ask for deferred prosecution. Early experimentation with the docket call program confirmed that it provided an effective opportunity for the court to achieve early disposition of cases by nontrial means. As a growing number of cases were disposed at docket calls, more space became available on trial calendars, even as a growing number of trial calendars were converted to docket calls.

The results were dramatic. Times to disposition for cases with initial "not guilty' pleas declined. The trial backlog fell from 6,800 cases in Fall 1991 to 578 cases in Spring 1993. Dismissals because of failures to appear by police officers fell from over 500 in June 1992 to only 57 in April 1993. Because most cases are disposed at docket calls, trial continuances have dropped dramatically (from 1,111 in May 1992 to 310 in April 1993), and because "not guilty" pleas have dropped by one-third, there is much greater certainty that trials will actually occur on the first-scheduled trial date.

Source: Ron Zimmerman, "The Magic Bullet: Case Management in a Limited Jurisdiction Court," *Court Manager* 9, no. 3 (summer 1994): 29.

the court can give more attention to cases that are actually contested.

3. *Postdisposition Fine and Fee Collection*[54]

The independence of the judiciary requires that traffic tribunals be free of political influences, not be subject in their operation to revenue production requirements, and provide impartial judges and hearing officers.[55] Once fines and fees have been imposed, however, respect for the dignity of the law and maintenance of the court's integrity require that the court take appropriate steps to ensure that fines and fees are collected.[56] Within the range of discretion allowed the court, a valuable way to promote increased compliance is for the judge at the conclusion of a contested matter to base fine and fee amounts not only on the severity of an offense but also on the financial means of the motorist.[57] After fines and fees have been imposed, it is important for the court to monitor compliance with its order imposing sanctions. The aid of computer automation to monitor compliance is particularly valuable. The ability to identify delinquent cases and generate delinquency notices is an important feature of fine administration.[58]

D. CONCLUSION

When the United States Supreme Court made criminal proceedings in state courts subject to Sixth Amendment speedy-trial requirements as a matter of Fourteenth Amendment due process in 1967,[59] speedy trial became an integral part of criminal processes in state courts throughout the country.[60] Attention to civil matters came more slowly, but the significance of civil litigation in the day-to-day lives of citizens and the day-to-day operations of large and small businesses had made prompt resolution of civil matters an important matter as well for courts by the 1970s and 1980s. The greatest part of the literature on caseflow management has arisen from the study of the pace of litigation in criminal and civil matters. Caseflow management for these cases remains a key concern for judges and court managers in courts around the country.

Much less attention has been paid to managing the pace of proceedings for moving and parking violations in traffic courts. Yet the volume of these kinds of cases is greater than that of any other kind of case for courts. Moreover, traffic matters and small claims cases are often the only contact with courts that most citizens experience in their lives. Managing such cases well to provide prompt and fair outcomes is therefore an important way for courts to establish and maintain public trust and confidence in the judiciary branch of government.[61]

54. For a more detailed exploration of issues associated with fine and fee collection, see John Matthias, Gwendolyn Lyford, and Paul Gomez, *Current Practices in Collecting Fines and Fees in State Courts: Handbook of Collection Issues and Solutions* (Denver, Colo.: National Center for State Courts, Court Services Division, 1995).

55. See ABA, *Standards for Traffic Justice*, Sections 2.0 and 3.0. See also, BJA and NCSC, Standard 4.1.

56. See BJA and NCSC, *Trial Court Performance Standards*, Standard 3.5 (reproduced in Appendix B). See also, discussion of "late payments" in Economos and Steelman, p. 176.

57. See Barry Mahoney and Marlene Thornton, "Means-Based Fining: Views of American Trial Judges," *Justice System Journal* 13, no. 1 (spring 1988): 51.

58. See Karen Wick, "Evaluating Three Notification Strategies for Collecting Delinquent Traffic Fines," *Justice System Journal* 13, no. 1 (spring 1988): 64, and Jan Tait, "A Court-Based Notification System for Traffic Defendants," *Justice System Journal* 13, no. 1 (spring 1988): 73.

59. See Klopfer v. North Carolina, 386 U.S. 213 (1967), and Barker v. Wingo, 407 U.S. 514 (1972).

60. See ABA, Standards for Criminal Justice, 2d ed. (Chicago: American Bar Association, 1980), Chapter 12.

61. See BJA and NCSC, Trial Court Performance Standards, Standard 5.2.

Caseflow management . . . remains a key concern for judges and court managers in courts around the country.

CHAPTER III

FAMILY AND PROBATE CASES

Keeping cases on track is particularly important when families are involved to avoid any further emotional or physical harm, especially to children and victims of abuse.

Almost all of the initial research on caseflow management addressed civil and criminal cases in general-jurisdiction trial courts. Yet a growing portion of the work that trial courts do has been in other areas, such as "family" and "probate" matters. As discussed here, "family" cases include juvenile delinquency, child protection, divorce, and domestic violence matters; and "probate" cases include estates, trusts, guardianships, and conservatorships. Although these kinds of cases are different in certain ways from civil and criminal cases, caseflow management is just as important. This chapter shows how the basic methods presented in Chapter I can be applied to these kinds of cases.

A. FAMILY CASES IN GENERAL

Across the United States, there has been growing interest in recent years in courts that serve children and families. A number of national court standards have advocated the establishment of a family division of the trial court of general jurisdiction. These standards urge that such a division have authority to hear a wide variety of child and family proceedings, such as marital dissolution, juvenile delinquency, abuse and neglect, termination of parental rights, and adoption, as well as paternity, custody, support, and visitation proceedings separate from divorce cases.[1]

Between 1984 and 1996, total population in the United States increased by 12 percent. During that time the number of civil cases filed in state courts increased by 31 percent, while the number of criminal filings increased by 41 percent. Growing fastest of all, however, were juvenile case filings, which increased by 64 percent, and domestic relations filings, which increased by 74 percent. In 1996, domestic and juvenile cases represented about 20 percent of all non-traffic filings in state courts.[2] On the incidence of child maltreatment throughout the country, the Children's Bureau of the U.S. Department of Health and Human Services reported the following statistics for 1996:[3]

- Three million children were reported as alleged victims of maltreatment.
- After investigation, about one million children were determined to be victims of maltreatment. Based on data from 36 states, 16 percent of victims were removed from their homes.
- On the basis of data from 26 states, juvenile abuse, neglect, or dependency proceedings were initiated for 14 percent of the victims.

The style of adjudication for family cases can generally be distinguished from that for felonies and general civil cases (with their emphasis on rules of procedure), as well as from that for traffic cases and small claims (with their emphasis on establishing the facts so that the law can be applied as quickly and directly as possible). Instead, family cases are dominated by what has been called "diagnostic adjudication":

> Diagnostic adjudication is adjudication in name only. It is not predicated on determining guilt or innocence. Nor is there an assumption that a just decision will emerge from a regulated conflict between opposing sides. Instead, the objective of diagnostic adjudication is to identify the problems which are the source of the dispute before the court or require court action for the protection of both the persons before the court and the broader societal interests at stake. The key characteristic of diagnostic adjudication is, therefore, its focus on the proactive role of the court in defining the issues and fashioning appropriate remedies.[4]

…it is important for the court to avoid delay, especially if delay would cause a child to remain in an uncertain status…or a victim of domestic violence to remain in a dangerous situation…

This difference in the essential character of family adjudication has important implications for caseflow management. In each of the family case types discussed in this section—delinquency, child protection, divorce, and domestic violence—it is important for the court to avoid delay, especially if delay would cause a child to remain in an uncertain status without permanency planning or a victim of domestic violence to remain in a dangerous situation because of ineffective judicial protection. Particularly in marital dissolution cases, however, concern for expedition alone must be tempered by concern that the court should not force a "life-altering decision upon parties who are psychologi-

1. See H. Ted Rubin and Victor E. Flango, "Courts and Families: A Time of Change," *State Court Journal* 17, no. 3/4 (summer/fall 1993): 27 at 28.

2. See Brian Ostrom and Neal Kauder, eds., *Examining the Work of State Courts, 1996: A National Perspective from the Court Statistics Project* (Williamsburg, Va.: National Center for State Courts, 1997), pp. 10-11.

3. Marvin Ventrell, "Evolution of the Dependency Component of the Juvenile Court," *Juvenile and Family Court Journal* 49, no. 4 (fall 1998): 17 at 30. The article describes the Third National Incidence Study of Child Abuse and Neglect (1996) by U.S. Department of Health and Human Services, Administration for Children and Families.

4. Thomas Henderson and Cornelius Kerwin, *Structuring Justice: The Implications of Court Unification Reforms. Policy Summary* (Washington, D.C.: National Institute of Justice, 1984), pp. 11-12.

cally unprepared or incapable of participating in mediation or settlement discussions. Important decisions made while emotionally handicapped may cause unfair results and unintended consequences."[5]

Family cases are often attended by a level of emotional stress (in judges, quasi-judicial officers, and court staff members as well as in the parties) that calls for caseflow management to be applied in a different fashion than it would be applied in civil or criminal cases.

B. JUVENILE DELINQUENCY CASES

Delinquency cases involve proceedings against minors who have violated criminal laws. Although these cases are technically noncriminal, they are much more like criminal proceedings than child protection or divorce cases (both of which are clearly noncriminal in nature.) Since the U.S. Supreme Court's decision in the case of *In re Gault*, 387 U.S. 1 (1967), requiring procedural protections such as the presence of attorneys for children charged with serious offenses, there has been a general trend toward treatment of delinquency cases like criminal matters. Yet proceedings in delinquency cases have not yet been fully converted to the "procedural adjudication" that characterizes adult felony cases. An important element of delinquency matters is still "diagnostic"—to identify problems that have led to a juvenile's behavior and to provide a suitable remedy in the juvenile's best interest.[6]

1. *Approaches to Delay Reduction in Three Juvenile Courts*

In a national study of juvenile delinquency case processing, detailed attention was given to three urban juvenile courts. The different approaches taken to delay reduction in these three courts are instructive.[7]

The juvenile court in Baltimore City, Maryland, serves an intensely urban population and has a high volume of delinquency cases. Long delays were a result of the fact that the time from juvenile arrest to first contact with the juvenile justice intake process often exceeded six months. In response to this situation, the state legislature passed a law in 1995 requiring that the police refer cases to the juvenile justice system within 15 days of arrest. Under previous legislation, the juvenile justice intake process was to be completed within 25 days.

In Cleveland, Ohio, the juvenile court addressed problems of delay by introducing caseflow management mechanisms to move cases through the court process more quickly after they had been referred for formal court proceedings. The system was designed to provide continual monitoring of case progress (see the sidebar below), albeit without an automated case information system, implementation of which was prevented by budgetary constraints.

In Phoenix, Arizona, the juvenile court has developed automated tools to support efficient case processing. The court's Juvenile On-line Tracking System (JOLTS) plays a central role in the court's day-to-day case processing, aiding case assignment and calendaring and providing automated case reports. In addition, the system serves the prosecutor and public defender in juvenile matters.

2. *Techniques for Effective Management of Juvenile Delinquency Caseflow*

As part of a national study of juvenile delinquency case processing, juvenile justice professionals from 123 U.S. counties answered questions about delays in their juvenile courts.[8] Common among the problems considered "moderate" or "serious" by those answering the survey were lack of sufficient funds, lack of courtroom space, insufficient court staff, and increases in juvenile case filings. Beyond such difficult general problems of workload and resources, it is possible to identify areas in which the application of caseflow management principles would be worthwhile. A set of steps can address what are perceived by juvenile justice professionals to be some of the most significant factors contributing to delay in juvenile delinquency cases.[9]

- *Increase commitment to achieving timely case processing.* One-third of the respondents to the national survey indicated that it is a "moderate" or "serious" problem that timely case processing is not of sufficient concern

5. James Garbolino, "Case Management in Family Law Courts," in Working Group on a Courts Commission, *Report on Case Management Conference* (Dublin: Government of Ireland, 1997), 142 at 149-150.
6. See Henderson and Kerwin, *Structuring Justice*, p. 12.
7. See Jeffrey Butts and Gregory Halemba, *Waiting for Justice: Moving Young Offenders Through the Juvenile Court Process* (Pittsburgh, Pa.: National Center for Juvenile Justice, 1996), pp. 72-112.
8. Ibid., pp. 55-71.
9. For an example of the proposed application of many of these ideas in an actual court setting, see David Steelman and Samuel Conti, *Improving the Pace of Litigation for Juvenile Delinquency Cases in Hudson County, New Jersey: A Technical Assistance Report* (Denver, Colo.: National Center for State Courts, Court Services Division, 1997).

to defense attorneys. In addition, 26 percent said that such processing is not of sufficient concern to prosecutors. Without commitment by prosecution and defense counsel to timely case processing, it is difficult for the court to be successful with caseflow management.

- *Take early control of case progress.* This step can involve not only continual oversight of cases when they are filed but also attention to *pre-filing* considerations that can affect timeliness and achievement of suitable outcomes. As the Baltimore experience described above indicates, prompt filing of cases by the police can significantly shorten time from arrest to disposition. Another *pre-filing* consideration of great importance may be aggressive efforts to increase diversion resources. Along with intake screening, diversion is a critical function in delinquency cases. To the extent that the court can work with other agencies, service providers, state and local government leaders, and members of the community to increase available diversion options, the quality of the court's work with delinquents will be greatly enhanced. More than 50 percent of the judges and 61 percent of the defense attorneys in the national survey indicated that lack of diversion options is a "moderate" or "serious" contributor to delay in their courts.

- *Improve the quality and timeliness of case investigations.* Overall, 42 percent of the respondents in the national survey indicated that poor quality of evidence in police investigations is a "moderate" or "serious" problem. It may be necessary for prosecutors and law enforcement officials to give special attention to educational needs in this area. In addition, 32 percent said that delays in court-ordered investigations are a problem. This problem may in part be a problem of the availability and management of probation department resources.

- *Provide appropriate information on the age and status of cases.* Caseflow management information is a key means of monitoring the progress of cases and the overall status of the court's inventory. Of survey respondents, 30 percent (including 34 percent of judges and 32 percent of administrators) identified lack of such information as a significant problem.

CASEFLOW MANAGEMENT FOR DELINQUENCY CASES IN CLEVELAND

The juvenile division of the Cuyahoga County Court of Common Pleas in Cleveland, Ohio, saw an increase of 21 percent in its juvenile delinquency filings from 1990 to 1994. Cases involving violent offenses increased by 50 percent, and drug offenses increased by 424 percent. In 1991, an internal study found that the average disposition time was 226 days for cases with formal petitions.

To deal with the case-processing delays found in the 1991 study, the court introduced a revised caseflow management system. Critical elements of the changes introduced were:

- A centralized processing unit was created to coordinate all case-processing activities once a case was scheduled for court hearings. A courtroom coordinator was assigned to each courtroom to work with the judge or magistrate and court clerk to facilitate the flow of case files to and from the courtroom and the timely scheduling of all future hearings.

- Time expectations were established for each case-processing step and made part of court procedures and rules.

- Assignment of cases to judges and magistrates was centralized, as was responsibility for scheduling arraignments.

- The date and time for the pretrial hearing in a case was tied to that for the arraignment in the case, thereby ensuring that all parties present at arraignment knew the future pretrial hearing date.

- Judges and magistrates were encouraged to schedule all future adjudication and disposition hearings in the courtroom prior to the conclusion of the current hearing whenever possible.

- Timelines were established for the scheduling of all types of hearings, and measures were taken to monitor compliance with those timelines.

- Rules were established to govern the grant of continuances, and means were provided to monitor compliance with the rules.

These changes had a dramatic effect on case-processing times. Within six months, the average time to disposition for cases referred to formal court hearings was reduced from 221 days to 88 days—a reduction of 61 percent. Further improvements have been hampered by the court's antiquated case information system; lack of courtroom accountability for timely case processing; a need for greater judicial involvement in caseflow management; and inconsistencies in the application of the court's continuance policy.

Source: Butts and Halemba, *Waiting for Justice* (1966), pp. 79-85.

- *Designate specific court staff members who have the primary responsibility of monitoring caseflow.* In addition to having information on caseflow, a court must have personnel to help the judges use that information to manage cases. Assigning specific responsibility to court staff is a means to promote accountability and staff commitment to timely case processing. To the extent that absence of personnel to monitor caseflow is a resource problem for courts, it should be given priority.
- *Develop guidelines to limit continuances and apply them consistently.* A critical way to assure firm adjudicatory hearing (trial) dates is through the limitation of continuances. Among survey respondents, 38 percent (including 42 percent of administrators) said that too many court continuances are granted. Another 29 percent indicated that no guidelines cover continuances.
- *Manage postdisposition probation violations that are new offenses.* Especially in urban areas, juvenile offenders may receive probation after adjudication and then be continually "recycled" through the juvenile justice system as they are arrested for new offenses while still on probation. To break the cycle of delinquency that may otherwise end only when such juveniles are killed, "waived" from the juvenile process to adult court, or reach majority and be come adult criminals, court leaders may have to work with the community and with state and local agencies to optimize available sanction alternatives to permit meaningful escalation of sanctions for repeat probation violators. To provide swift response to probation violations, it is desirable that violations and new charges be assigned to the same judge, as with probation violations in criminal proceedings.

C. CHILD PROTECTION CASES

Child abuse and neglect, once thought to be a problem involving only a few thousand children each year, has come to be viewed by some as "nothing less than a national emergency."[10] Child victims of abuse and neglect come to juvenile or family court proceedings seeking protection from further harm and timely decisions about their future, which may include decisions relating to services for families to promote reunification or to provision of permanent alternative child care. If the court finds a child to be abused or neglected, the judge will be involved in the exercise of continuing jurisdiction, often for a year or more after the entry of an initial disposition. Beyond postdisposition permanency planning, this jurisdiction may lead to additional proceedings for the termination of parental rights and for adoption.

1. *Requirements of the Adoption and Safe Families Act*

Federal legislation applicable to child protection cases in state courts—the Adoption and Safe Families Act of 1997 (ASFA, Public Law 105-89)—provides that a child's health and safety are paramount concerns, although reasonable efforts to preserve or reunify the family are also required.[11] If reasonable efforts to preserve or reunify the family will not result in a permanent living situation for the child, ASFA requires expedited steps to achieve this goal. If a court determines that a parent has subjected a child to aggravated circumstances such as abandonment, torture, chronic abuse, or sexual abuse, the requirement for reasonable efforts to reunify the family may be excused, after which a permanency hearing must be held within 30 days and a petition to terminate parental rights must be promptly filed.[12]

For children otherwise found to be abused or neglected, ASFA further requires that the court hold a permanency hearing within 12 to 14 months of a child's "original placement" (that is, from the time of the first court finding of abuse or neglect, or 60 days after the child's removal from the home, whichever is earlier). In addition, in the absence of compelling reasons why it would not be in the child's best interest, ASFA requires that a petition to terminate parental rights be filed if a child has been in foster care for 15 of the last 22 months. The petition to terminate must also be filed if the court finds that the child has been abandoned or that aggravated circumstances are present.

10. Ventrell, "Evolution of the Dependency Component," 17 at 30.
11. See Amy Printz Winderfeld, "An Overview of the Major Provisions of the Adoption and Safe Families Act of 1997," *Protecting Children* 14, no. 3 (1998): 4
12. See David Steelman, *Effects of Adoption and Safe Families Act of 1997 on Wisconsin Proceedings in "CHIPS" Cases* (Those Involving "Children in Need of Protections or Services") (Denver, Colo.: National Center for State Courts, Court Services Division, 1999).

The implications of ASFA are significant for the application of caseflow management principles to cases involving child victims of abuse or neglect. A court system cannot afford to treat abuse and neglect, termination of parental rights, and adoption proceedings as unrelated matters. Judges and court managers must be prepared from the time children are removed from their homes and placed in shelter to manage cases not only to ensure prompt progress toward adjudication and disposition of abuse or neglect issues but also to provide timely permanency hearings, termination proceedings, and adoption proceedings.

2. *Caseflow Management Techniques for Child Protection Cases*

Given the need for courts to make prompt and appropriate decisions to promote the health and safety of children, the application of caseflow management techniques is especially appropriate for cases involving abused or neglected children.[13] Although approaches may vary, the following general techniques will help courts manage these cases with success.

- *Establish comprehensive time standards linking abuse and neglect case progress to that in postdisposition proceedings to terminate parental rights.* Courts should have specific time standards for the progress of abuse and neglect cases from the time of a child's removal from the home to shelter hearing, adjudication hearing, and disposition hearing. In keeping with ASFA, there should also be standards for permanency hearings and the filing of petitions to terminate parental rights. In addition, courts should have standards governing the progress of termination proceedings from petition through hearing and decision.
- *Exercise court control over case progress from case initiation through completion of all postjudgment court work.* The court should monitor the status of cases from the time of a child's removal from the home through intermediate case events to disposition hearing, permanency hearing, petition to terminate parental rights, termination hearing and decision, initiation of adoption proceedings, and entry of adoption decree or completion of all court work by other means (such as family reunion or achievement of the age of majority by all children in a case).
- *Implement a "family file" and consider a one judge/one family policy.* It is important that court orders relating to matters such as custody and visitation not be at odds if a family is simultaneously involved in both dissolution and abuse or neglect proceedings. Similarly, it is important for a court to know if a family appearing in one child protection case has previously appeared in other such cases. Where it is feasible, implementation of a one judge/one family policy can help to achieve these ends. How ever cases are assigned to judges, courts should seek to coordinate efforts with the child protection agency and other forums hearing family matters to create the functional equivalent of a "family file" (which may be simply a cross-referencing system in the court or agency's case information system) to identify families that have had appearances in more than one forum for related matters. This file should give the judge or judicial officer hearing any case fuller information about family dynamics and the means by which the court can best serve the interests of children and families.
- *Routinely make full "reasonable efforts" determinations.* At every hearing in an abuse or neglect proceeding, the court should make explicit findings on the record concerning whether reasonable efforts have been made and what those efforts were. These findings are particularly important for permanency planning and for subsequent proceedings on petitions to terminate parental rights because they help document steps that have been taken to rehabilitate or reunify the family.
- *Provide for early representation of children.* Capable representation of children in a child protection case

13. See National Council of Juvenile and Family Court Judges, *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, Nev.: National Council of Juvenile and Family Court Judges, 1995). See also, David Steelman, Jeffrey Arnold, and Karen Gottlieb, *New Orleans Collaborative on Timely Adoptions: Removing Barriers to Prompt Completion of Child Protection Cases* (Denver, Colo.: National Center for State Courts, Court Services Division, 1998). In addition, see Krista Johns, *Guidebook on Adoption and Other Permanent Homes for Children* (Reno, Nev.: National Council of Juvenile and Family Court Judges, 1999).

(when possible, both counsel to represent a child's legal interests and a guardian ad litem or court-appointed special advocate ["CASA"] can be critically important. Representatives of children are in a more direct position than the judge to ensure that the interests of the children are recognized, that the attorneys for the state and the parents perform their appropriate functions, that caseworkers from the child protection agency carry out their responsibilities, and that all suitable alternatives for services to the children and family are explored.

- *Screen cases for differentiated case management.* Under ASFA, courts are to take prompt steps toward achieving a permanent living situation for children if it becomes apparent that reasonable efforts to preserve or reunify the family will not result in such a situation. In certain cases ASFA excuses the state from reasonable efforts at which point permanency hearings must be promptly held. In other situations, ASFA requires the filing of a petition to terminate parental rights. These provisions implicitly suggest that the court and the child protection agency must screen cases and ensure that they proceed in timely fashion to appropriate outcomes. To meet ASFA requirements, there should be track designations for cases in which children are returned to the home after shelter hearings and those in which children are removed from the home pending adjudication but in which no special ASFA requirements must be met. Another significant area for differentiated management attention involves cases with American Indian Children. The Indian Child Welfare Act (ICWA, P.L. 96-272) provides that "active efforts" must be made to provide remedial services and rehabilitative programs for Indian children and their families. State and local courts should screen cases for early identification of those with Indian children. They should work with tribal leaders and tribal court officials to see that the best interests of Indian children are served.[14]

…the application of caseflow management techniques is especially appropriate for cases involving abused or neglected children.

- *Provide early and firm dates for adjudication hearings and hearings on petitions to terminate parental rights.* Firm trial dates are a central feature of a successful caseflow management program. In child protection cases, effective scheduling of adjudication hearings and hearings on termination petitions, supported by consistent application of a policy limiting continuances, should serve greatly to ensure prompt case progress.
- *Hold timely and full permanency hearings.* If the case plan is reunification, ASFA requires that permanency hearings be held not later than 12 to 14 months after a child's removal from the home. If the court finds that reasonable efforts to reunify are not required, a permanency hearing must be held within 30 days of that determination. In the permanency hearing, the court should take evidence and make findings reflecting careful consideration of the most appropriate and safe permanent placement option for a child.[15]
- *Exercise caseflow management control over termination proceedings.* During abuse and neglect proceedings, the court can take steps to ease the progress of any termination proceedings that may subsequently be initiated. The making of "reasonable efforts" findings at every court hearing will provide a record of the state's efforts to rehabilitate and reunite the family, thereby avoiding extended discovery or challenges by parents during termination proceedings. In any case in which termination is a real possibility, findings by the higher civil standard of "clear and convincing evidence" (typically applicable in termination proceedings, but not abuse and neglect proceedings) should simplify evidentiary issues at the termination stage of a case.

14. For discussion of the relation between ICWA and ASFA, see National Indian Child Welfare Association, *Issues for Tribes and States Serving Indian Children: Adoption and Safe Families Act of 1997* (P.L. 015-89) (Washington, D.C.: U.S. Department of Health and Human Services, Children's Bureau, 1999).

15. See Johns, *Guidebook*, pp. 13-28. See also Mark Hardin, *Improving Permanency Hearings: Sample Court Reports and Orders* (Washington, D.C.: American Bar Association, Center on Children and the Law, 1999).

To meet the ASFA requirements for the filing of petitions to terminate parental rights, the court should track the age and status of cases from the time that a child is removed from the home at the commencement of abuse or neglect cases through the initiation of termination proceedings. The court should establish a timetable for the progress of termination cases from petition through any "pretrial" case activities to hearing on the petition to terminate parental rights.

D. DIVORCE CASES

In 1996, more than a million divorce cases were filed in state courts. Divorce cases were the most common kind of domestic relations matters, making up 29 percent of the total. By comparison, separate custody proceedings and miscellaneous cases (such as name changes and petitions to terminate parental rights) each represented 20 percent of such matters; domestic violence, 16 percent; paternity, 9 percent; interstate support, 4 percent; and adoptions, 2 percent.[16] Many of these other kinds of domestic relations proceedings (such as custody and interstate support cases) arise from divorce cases.

1. *Characteristics of Divorce Cases That Distinguish Them from Other Cases*

In a multi-jurisdictional study of case management, case characteristics, and case-processing times in divorce cases, researchers found case features that bear on caseflow management.[17] First, the researchers found that more than half of the cases in the study involved children. In about 37 percent of these cases, there were motions for custody, support, or visitation; in 20 percent there were motions for temporary restraining orders. Because a court must resolve issues in a way that serves the interests of children, capable court handling of divorce cases, both before and after entry of a divorce decree, is critical to the health and safety of a large number of children each year.

Researchers also found that one or both parties appeared without counsel in a great majority (72 percent) of the cases studied. Divorce cases are thus an area in which courts must give particular attention to the manner in which they deal with pro se litigants (see Chapter VIII, pages 121 through 124, for further discussion of the management of cases with pro se parties).

Finally, the researchers confirmed what many judges and court managers know about divorce cases—most of them are not contested, in that no answers or motions are filed. Although the proportion of uncontested cases varied considerably (from 12 percent to 47 percent) from one court to another in the study, overall only 27 percent of these cases had a responsive pleading from the defendant.

2. *Factors Affecting Case-Processing Times in Divorce Cases*

The study mentioned in the previous section involved divorce cases in 16 urban trial courts.[18] Although six of those courts nearly met the ABA standard that 100 percent of cases be disposed within 12 months after filing, only two nearly met the ABA standard that 98 percent should be disposed within 6 months. Many of the courts in the study have a minimum waiting period, intended as a "cooling off" period during which some marriages might be saved. Although a long waiting period would prevent a court from meeting ABA's 6-month standard, some of the courts in the study nearly met the ABA's 12-month standard, despite waiting periods.

Beyond the effect of a waiting period on the pace of litigation in divorce cases, the researchers examined the effects of court organization, judicial assignment practices, and case management procedures on disposition times. In some of the jurisdictions in the study, divorce cases are heard in general-jurisdiction trial courts, whereas in others they are heard in limited-jurisdiction courts. Judges hear only domestic relations cases in some courts, whereas in others they have mixed caseloads or rotating assignments. The study found no correlation between these factors and case-processing times. It did find, however, that courts in which judges specialize primarily in hearing contested divorce trials (rather than hearing all types of divorce-related matters) tend to have shorter median disposition times.

Researchers also examined the impact on case-processing times of two caseflow management fundamentals—disposition time

16. See Ostrom and Kauder, eds., *Examining the Work of State Courts, 1996*, p. 37.

17. See John Goerdt, *Divorce Courts: Case Management Procedures, Case Characteristics, and the Pace of Litigation in 16 Urban Jurisdictions* (Williamsburg, Va.: National Center for State Courts, 1992). The findings from that study are summarized in Goerdt, "Divorce Courts: A Summary of the Findings from a Study of the Pace of Litigation in Sixteen Urban Jurisdictions," *State Court Journal* 16, no. 4 (fall 1992): 14.

18. In addition to the monograph and the article cited in the note above, see Goerdt, "The Pace of Divorce Litigation: Why Some Courts Are Faster than Others," *Judges' Journal* 16, no. 1 (winter 1996): 18.

goals and court control over the scheduling of case events. They found that five of the six fastest courts in the study have time goals, whereas five of the six slowest courts do not have time goals. In addition, they found that four of the five courts that nearly met the ABA 12-month standard set trial dates on their own initiative, without waiting for a party motion or a request to set a trial date. In contrast, none of the five courts with the lowest percentage of cases disposed within 12 months set trial dates on their own initiative.

Finally, the study addressed whether divorce case processing times are shorter in "individual calendar" than in "master calendar" courts (see Chapter VIII, pages 111 through 115, for a discussion of case assignment systems). Although individual calendar courts appeared to have shorter disposition times, the researchers were unable to distinguish the effects of individual calendars from those of time goals. For this reason, they concluded that "the combination of individual calendars and case processing time goals is likely to be an especially effective case management strategy."[19]

19. Ibid., 18 at 25.

PROCEDURES FOR EXPEDITING UNCONTESTED DIVORCE CASES IN COLORADO AND CALIFORNIA

Colorado

1. ***Joint petition with no children.*** Parties must wait 90 days, and then they may file an affidavit for dissolution. No court hearing is required, and a divorce decree will be issued immediately.
2. ***Joint petition with children, and both parties have attorneys.*** No appearance is required to obtain a final decree. If at least one party is pro se, a court appearance is required.
3. ***Default.*** If no answer is filed, the initiating party may proceed by affidavit, without a court hearing.

California

1. ***Summary dissolution.*** If there are no children and the property involved is worth $5,000 or less, the parties can file a joint petition and everything can be done by mail. A judgment of dissolution can be entered shortly thereafter, and it will automatically become final six months after the filing of the joint petition.
2. ***Regular uncontested case.*** If the parties have children or property worth more than $5,000, a petition and separate response must be filed. A temporary judgment of dissolution can be obtained any time thereafter without a court appearance if an acceptable divorce agreement is presented. It will automatically become final six months after the service of the complaint on the defendant.

Source: This sidebar is based on Table 1.8 in Goerdt, *Divorce Courts*, p. 30. In a modified format, the same table appears as Table 3 in Goerdt, "The Pace of Divorce Litigation," 18, at 24.

3. *Caseflow Management Techniques for Divorce Cases*

Ways in which caseflow management principles can be applied productively to divorce cases can be identified on the basis of research findings and the experience of courts that have been effective in the expeditious treatment of these cases. The following techniques will promote more prompt justice in divorce matters:

- *Recognize emotional issues.* Divorce cases often present difficult emotional circumstances, not only for litigants and their children, but also for judges, quasi-judicial officers, and court support staff hearing such matters. The scheduling and caseflow management practices of the court should take into account the heightened emotional tension of these cases and the social service needs of some parties.
- *Adopt and follow time standards.* A clear finding from the research on the pace of divorce litigation is that courts with time standards consistently tend to have shorter disposition times than those without such standards. The development of disposition time goals tends to promote commitment to a reasonably expeditious court process, and those goals provide expectations against which to compare information about actual case-processing times.
- *Adopt appropriate measures for pro se litigants.* The majority of divorce cases are likely to have one or both parties unrepresented by counsel. The court should work with the domestic relations bar to consider development of simplified forms, instructions for pro se parties, and means for their questions about the court process to be answered without undue burden on court support staff. (See Chapter VIII, pages 121 through 124, for further discussion of pro se litigants.)
- *Exercise control over the scheduling of case events.* A second major finding from the research on the pace of

divorce litigation is the importance of court control over case progress through the scheduling of trial dates on the court's own initiative, without waiting for a request or motion from the parties.

- *Develop simplified procedures to expedite uncontested cases.* If an overwhelming majority of divorce cases are uncontested, the court need not force the parties to face procedural requirements designed for contested cases. Even when social policy requires a mandatory waiting period, procedures can be developed to reduce court appearances for parties and reduce the amount of time that judges must spend on cases. (Expedited procedures for uncontested cases do not alone guarantee a faster overall pace of divorce litigation, however.)[20]

- *Screen cases early for assignment to DCM tracks.* Case differentiation is particularly valuable as a means to distinguish among divorce cases according to the time and court resources that they need. Uncontested cases without children or any substantial property can be disposed promptly and efficiently after the passage of any mandatory waiting period. Cases with contested issues relating to children need the court's attention to ensure that the best interests of the children are recognized. In addition to a "standard" track with contested property issues, the court may find a need for a separate track for cases with particularly complicated equitable distribution questions.

- *Give careful attention in divorce decrees to property, custody, visitation, and support questions*. In many contested divorce cases, there may be heated differences between the parties over custody, visitation, support, and equitable distribution of property. To reduce the incidence of continuing postdisposition disputes over these matters, the court should exercise great care in its determination as part of the judgment of dissolution.

- *Give management attention to contested postdisposition matters.* Postdisposition motions to enforce or modify divorce orders relating to custody, visitation, and support should be decided promptly. The court should establish time expectations and monitor progress from motion filing to hearing and decision. These proceedings can consume an inordinate amount of judges' time. Hearings on contested postdisposition motions can sometimes take as long as nonjury trials. The scheduling of judges' time should reflect a realistic appreciation of the time that these matters demand.

20. Even with procedures to expedite and simplify uncontested divorces, two California courts were among the courts with the longest median case processing times in the study of divorce in 16 urban trial courts. See Goerdt, "Pace of Divorce Litigation," at 24.

DCM FOR DOMESTIC RELATIONS CASES IN KENT COUNTY, MICHIGAN

In Michigan, divorce cases are heard in circuit court, the county's trial court of general jurisdiction. Under recent legislation (1996 Michigan Public Act 388), effective January 1, 1998, family divisions of circuit court were created throughout the state to hear both juvenile and domestic relations matters.

The circuit court in Kent County exercises early control of case progress. The clerk's office monitors service and dismisses a case if there is no service within 91 days after case initiation. The clerk's office also monitors the filing of responsive pleadings. If there is no responsive pleading within 28 days after service, a notice is sent to a petitioner to take a default judgment, or else the court will dismiss the case.

Under the court's DCM program for divorce cases, there are five tracks:

TRACK 1: Simple cases with children (uncontested custody)—to be disposed within 7 months from filing.

TRACK 2: Complex cases with children (contested custody likely)—to be disposed within 10 months from filing.

TRACK 3: Simple cases without children or paternity/support issues (no outside property valuation needed, no paternity filing or family support issues)—to be disposed within 4 months from filing.

TRACK 4: Complex cases without children (outside property valuation needed)—to be disposed within 8 months after filing.

TRACK 5: Postjudgment custody cases (custody issues after divorce decree)—custody evaluation to be filed within 56 days of request; conference (to discuss settlement and set hearing date) to be held 14 days after evaluation due date; and hearing to be held 28-56 days after conference.

Track designations are made by court staff members on the basis of requests made in case information sheets filed by parties with their pleadings. If parties request different tracks, a judge or referee makes the track designation in an early status conference.

Source: Maureen Solomon, "Circuit Court of Kent County, Michigan: Differential Management of Domestic Cases," *Fundamental Issues of Caseflow Management* (Institute for Court Management Workshop, Flagstaff, Arizona, June 9-11, 1998).

E. DOMESTIC VIOLENCE CASES

During the last decade, the volume of domestic violence cases in the state courts has grown dramatically. Between 1985 and 1996, the number of domestic violence cases increased by 216 percent, so that in 1996 about one-sixth of all domestic relations cases were domestic violence matters.[21] Such matters may be presented to the courts as criminal proceedings or as civil petitions for restraining orders, and they may be initiated in general-jurisdiction courts, limited-jurisdiction courts, or family courts.

In 1993, the Bureau of Justice Assistance presented findings from nationwide studies of 11 demonstration courts, concluding that there are 10 essential elements for effective intervention in domestic violence:[22]

- There must be *program leadership* from within the court system, which may effectively be provided by a domestic violence coordinating council made up of representatives of the major court process participants.
- *Early case identification and prompt response* must be provided—for example, through expedited docketing, pretrial supervision of offenders, case coordination, early identification of unfounded allegations, and early services to victims and families.
- The court, the prosecutor's office, law enforcement agencies, and social service agencies should each have *designated personnel* assigned to deal with domestic violence cases.
- Because most violent families may have multiple actions, including divorce, delinquency, custody, child abuse, orders of protection, and drug abuse, pending at the same time within a court system, there should be coordination of court records to permit a flow of information among courts. (See section F in this chapter for further discussion of court *coordination* of family matters.)
- Each organization participating in the court process for domestic violence cases should have *written practices* for dealing with such cases, and these practices should be shared with other organizations.
- There must be a vigorous, *affirmative prosecution effort*, perhaps with advocates to assist prosecutors with information gathering and provision of support to victims.
- Because most offenders are not jailed but are instead placed on probation or under restraining orders, there must be means for *formal monitoring and strict enforcement* of compliance with court orders.[23]
- Court systems should assess the effectiveness of *batterers' treatment programs* now mandated in many states for those who engage in domestic violence.
- All persons working with domestic violence must receive comprehensive *training* on the nature of domestic violence.

The fact that a domestic violence episode can either be prosecuted as a criminal matter or be the subject of a civil or family petition for a protective order can create missed opportunities and might at times jeopardize the safety of domestic violence victims. The processing, whether simultaneously or sequentially, of domestic violence cases with the same parties in both criminal and family courts, might result in the following problems:[24]

- Conflicting protection orders issued by separate courts
- Inadvertent release of chronic domestic violence offenders
- Risk to children and parents through inappropriate custody and visitation decisions by a family court without knowledge of a parent's criminal record of domestic violence
- Difficulties for victims and offenders required to make multiple court appearances
- Administrative inefficiencies for the court system because of duplication of effort

To avoid problems such as these and to reduce the risk of inconsistent orders that

21. See Ostrom and Kauder, eds., *Examining the Work of State Courts, 1996*, p. 37.

22. Bureau of Justice Assistance, *Family Violence: Interventions for the Justice System* (Washington, D.C.: U.S. Justice Department, 1993), as cited with commentary in National Association for Court Management (NACM), *The Courts' Response to Domestic Violence* (Williamsburg, Va.: National Association for Court Management, 1997), pp. 5-11.

23. As the ABA Commission on Domestic Violence has observed, "Strict enforcement of court orders and strong sanctions demonstrate that the judicial system will not tolerate any form of domestic abuse, a message that must be sent to the community." Christopher Griffith and Marna Tucker, "A Cry for Help: The Need for a Judicial Response to the Threat of Domestic Violence," *Judges' Journal* 36, no. 2 (spring 1997): 22.

24. See "Criminal-Family Court Coordination Urged," *Court Communiqué* 1, no. 1 (March 1999): 1.

25. Ibid. This conclusion is drawn from a study sponsored by the State Justice Institute, addressing domestic violence cases in the family and criminal courts in the New York City metropolitan area.

26. Susan Schecter et al., *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice* (Reno, Nev.: National Council of Juvenile and Family Court Judges, 1999), pp. 108-112.

could increase victims' vulnerability, information about domestic violence matters must be shared between criminal and civil or family courts.[25]

Domestic violence episodes do not involve only adult victims. Studies show that in families where women are abused, many of their children are also abused. Experience in courts hearing child protection cases had led to the identification of best practices in cases involving child maltreatment and domestic violence.[26]

- The petitioner in child protection proceedings should allege in petitions or pleadings any domestic violence that has caused harm to a child.
- Juvenile court jurisdiction should be established on the sole basis that the children have witnessed domestic violence only if the evidence demonstrates that they suffered significant emotional harm from that witnessing and that the caretaker or nonabusing parent is unable to protect them from that emotional abuse even with the assistance of social and child protection services.
- The juvenile court should prioritize removing any abuser before removing a child from a battered mother.
- The juvenile court should work with child welfare and social service agencies to ensure that separate service plans for the perpetrator and the victim of domestic violence are developed.
- Juvenile courts should know what batterer intervention services are available in the community and the quality of those services and should be able to track the progress of any parent who is ordered to participate in those services.
- The juvenile court should work with child protection and other social service providers to identify extended family members and resources as early as possible in domestic violence cases.
- Generally judges should not order couples' counseling when domestic violence has occurred.

DOMESTIC VIOLENCE PROGRAM IN QUINCY, MASSACHUSETTS, AND EASTERN LOS ANGELES COUNTY, CALIFORNIA

In the Quincy Division of the District Court Department of the Trial Court of Massachusetts, an integrated program was begun in 1993 to promote communication and give prompt handling and specialized attention to domestic violence cases.[a] The following systemic changes were made in order to make the program more effective:

- The clerk's office established a separate "restraining orders" office to answer questions and provide one-on-one assistance to requesting parties with the completion of paperwork.
- The prosecutor's office provided increased service by creating positions for full-time domestic violence staff members.
- The court established a "fast track" for domestic violence cases. Judges hear requests for restraining orders in twice-a-day special sessions, and domestic violence cases are otherwise moved ahead of other types of cases.

Finally, an array of services was provided. Services include a tracking system for all family disturbance calls, the involvement of victim/witness advocates, enhanced education programs, and mandatory intensive treatment for batterers.

A large portion of eastern Los Angeles County is served by the Citrus Judicial District of the Los Angeles County Municipal Court. In 1994 the court was faced with an increasing number of domestic violence criminal filings and prosecutions for willful disobedience of domestic violence court orders; lack of uniformity in the approach that judges took to these cases; and a "strict prosecution" policy in the district attorney's office. To address the problem, court leaders developed a program to concentrate all such cases in one courtroom and to provide frequent court monitoring of both pre-conviction grants of diversion and post-conviction grants of probation.[b] With the consent of his colleagues on the bench, the court's presiding judge developed the program in coordination and communication with the district attorney, public defender, probation department, and local approved batterers' treatment programs.

Under the program, one entire courtroom is devoted exclusively to misdemeanor and felony domestic violence cases, with all misdemeanors handled through trial and sentencing and all felonies handled through preliminary examination or certified plea of guilty. An experienced public defender staffs the courtroom, and the district attorney's office allows some deviation from its "strict prosecution" policy. Eligible defendants suitable for diversion are referred to the probation department and required to participate in an approved batterers' treatment program. Because of probation staffing limitations, the judge himself monitors the progress of post-conviction defendants ordered to enroll in counseling or to be tested (at their own expense unless indigent) for drug or alcohol abuse as conditions of probation.

The court considers the program to be extremely successful in providing uniformity and predictability, maintaining continuity in case processing, allowing frequent court monitoring of persons in diversion or on probation, and providing helpful information to domestic violence victims and their families.

---

a. See NACM, *The Court's Response to Domestic Violence*, p. 21.

b. See Dan Thomas Oki, *Citrus Judicial District Domestic Violence, Courtroom Pilot Project* (Los Angeles: Los Angeles County Municipal Court, 1995).

27. 42 U.S.C. §§51101-51107 (1974).

28. Rubin and Flango, "Courts and Families," 27.

29. See H. Ted Rubin and Victor E. Flango, *Court Coordination of Family Cases* (Williamsburg, Va.: National Center for State Courts, 1992), pp. 26-29.

30. In a similar study, researchers found that children or families in 14% of the delinquency, neglect and abuse, guardianship, domestic violence protection orders, and child support cases in two southeast Michigan counties near Detroit had appeared previously in other family-related matters. The difficulties in obtaining relevant information suggest that the actual incidence may be greater than that found. See David Steelman et al., *Children's Docket Assessment: Multiple-Forum Appearances by Children and Families in Michigan Trial Courts* (Denver, Colo.: National Center for State Courts, Court Services Division, 1997), p. 40.

- The juvenile court should require that safe visitation and visitation exchange locations be used so that supervised visits and exchanges will be safe for the child and for the battered woman.
- Judges should appoint separate attorneys for each parent in dependency cases involving domestic violence. In compliance with the Child Abuse Prevention and Treatment Act,[27] a guardian ad litem or attorney should be appointed for the child as well. The court should set standards for competent, well-trained attorneys.
- The juvenile court should encourage the use of a domestic violence advocate for the battered mother in all dependence cases involving allegations of domestic violence and encourage the contribution of advocates to the development of service plans.

F. COORDINATING FAMILY CASES

In day-to-day court operations, particularly in urban areas where there are fewer opportunities for case participants to encounter one another outside the courthouse, each case is typically treated for administrative purposes as a discrete set of events, unrelated to those in other cases. This practice may not be the best way to handle matters involving families, however, if members of the same family are involved in different types of cases in different dockets or divisions (or even different courts serving the same area) at about the same time.

The same set of family difficulties may precipitate separate domestic violence, divorce, abuse and neglect, or juvenile delinquency proceedings. If these matters are all heard in separate forums by separate judges, children and families may find themselves engaged in a host of separate court appearances leading to different (and perhaps conflicting) court orders. The court system may unknowingly commit a significant amount of its resources in a fashion that does not serve a family and that lacks coherence and efficiency. This kind of a scenario supports the argument that courts ought to seek greater coordination of family cases if there are in fact a number of situations in which families appear in multiple forums for family-related issues.[28] In many ways, as the discussion at the end of the domestic violence section above suggests, coordination involves the sharing of information by judges and court staff members involved in different kinds of cases.

1. *Incidence of Prior Appearances in Other Family-Related Matters*

Do families in fact appear sufficiently often in different court proceedings to warrant coordination of family matters? To answer this question, a study in three trial courts in different states examined how often families appearing for divorce, delinquency, or child abuse and neglect proceedings have been to court before on a family-related matter.[29] Court records for a sample of cases showed that 41 percent of all parties had been involved in another family matter in the past five years. In delinquency cases, 48 percent had a companion case; in abuse and neglect cases, the figure was 64 percent; and in divorce cases, it was 16 percent.

There was considerable variation among the courts, however. For delinquency cases, the percentage of families that court records showed had previous family-related matters ranged from 30 percent to 71 percent; for abuse and neglect, from 42 percent to 70 percent; and for divorce, from 3 percent to 28 percent. Overall, for all three case types, percentages ranged from 25 percent to 53 percent.[30] Even with such variation, however, it is clear that families often appear in more than one forum, emphasizing the need for coordination to serve families, make effective and efficient use of court resources, and manage caseflow.

2. *Techniques to Increase Coordination*

Although the research mentioned above yielded substantial information about how cases involving families interrelate, it did not lead to definitive recommendations that might be applied to other courts. The researchers therefore conducted a survey of 150 courts around the country to learn how domestic cases are handled and to identify innovative practices and procedures that could be used to manage these cases more effectively and

efficiently.[31] Many survey respondents confirmed that their jurisdictions had established a family court or a family division to improve coordination of family matters. In addition, they suggested needed steps having to do with calendaring procedures, specific coordination procedures, and records management procedures:[32]

Calendaring Procedures

- Establish a policy to bring family members before the same judge, regardless of case type.
- Establish individual dockets to allow the same hearing officer to receive any petition filed on a family member and to conduct any subsequent hearings.
- Assign divorce cases and domestic violence protective orders to one judge and merge the files.

Coordination Procedures

- Create interagency coordination teams.
- Establish a centralized screening oversight team that includes representatives from the courts, corrections, human services, and public health.
- Assign cases involving family members to the same counselor in the in-court service unit.
- Provide information sharing between criminal and civil or family courts hearing domestic violence cases.[33]

Records Management Procedures

- Require assignment of a unique family file number to each family.
- Require lawyers to list other cases dealing with the family that are filed in another court or court division.
- Require the court clerk to cross-reference dependency and delinquency cases.
- Use automated case information systems and other court technologies to ease information sharing among different offices and among information systems for different kinds of family cases.[34]

Some courts may find that approaches other than those above are more suitable for their circumstances. It appears appropriate, however, that each court system seeking to address family matters give attention to court organization, calendaring procedures, coordination procedures, and records management procedures as an overall way to approach more effective and efficient coordination of family matters.

G. PROBATE CASES

Twenty-one states and the District of Columbia have specifically designated "probate" or "surrogate" courts or court divisions. The remaining states have no formal probate court structure at a statewide level, although individual multijudge courts may have separate probate divisions or calendars. Although "probate" subject-matter jurisdiction varies from state to state, probate cases generally consist of wills, trusts, estates, guardianships, and conservatorships.[35] In 1996, estate cases made up 14 percent of the civil caseload of unified and general-jurisdiction trial courts in 17 states—up from 10 percent in 1990.[36]

1. Managing Contested Cases

National probate court performance standards provide that the probate court should actively manage the progress of cases to disposition, establishing timetables to govern all proceedings.[37] When there is a will contest or a contest over the appointment of a guardian or conservator, probate proceedings are much like other nonjury civil proceedings for caseflow management purposes. The court should monitor and control case progress from initiation, establish time expectations for completion of discovery and progress toward initial disposition, make an early appointment of counsel for a respondent when appropriate, use pretrial conferences and ADR to promote early nontrial resolution, and set an early date for trial or hearing.[38]

Although trials occur in only a small percentage of probate cases, they can consume a great deal of a judge's time. A trial management conference shortly before the scheduled trial date can help ensure effective use of trial time. Once trial has commenced, the judge should manage it by controlling unnecessary and repetitive evidence, maintaining trial mo-

31. See Victor E. Flango and H. Ted Rubin, "How Is Court Coordination of Family Cases Working? *Judges' Journal* 33, no. 4 (fall 1994): 11 at 36-38. See also Carol Flango, Victor E. Flango, and H. Ted Rubin, *How Are Courts Coordinating Family Cases?* (Williamsburg, Va.: National Center for State Courts, 1999), chaps. 3-5.

32. Flango and Rubin, "How Is Court Coordination of Family Cases Working?" 38; Flango et al., *Coordinating Family Cases*, pp. 39-56.

33. See "Criminal-Family Court Coordination Urged," 1.

34. See Chapter VII. On the use of imaging technology to aid information sharing for family cases, see Sharon Pizzuti, "Third Circuit Friend of the Court Gets a New Image," *The Pundit* 12, no. 3 (January 1999): 1.

35. See Commission on National Probate Court Standards, *National Probate Court Standards* (Williamsburg, Va.: National Center for State Courts, 1993), pp. 4-6.

36. See Ostrom and Kauder, eds., *Examining the Work of State Courts*, 1996, p. 18.

37. See *National Probate Court Standards* (1993), Standards 2.2.1 through 2.2.4.

38. Ibid. See also, Standards 2.5.1 and 2.5.2 (ADR), 3.3.1 through 3.3.8 (contested guardianship cases) and 3.4.1 through 3.4.8 (contested conservatorship cases).

mentum by holding trials on consecutive court days and using the full day without interruptions for other business, and other means.[39]

2. Ensuring Performance of Fiduciary Obligations

Many probate matters are not contested proceedings in the same manner as civil, criminal, or other types of cases. In fact, an event that may have the greatest prospect of being contested—the court's appointment of a fiduciary—may occur early in proceedings, without a contest, and may be followed by months or years of "postdisposition" court oversight of fiduciary activities. The person designated or approved by the court to be administrator or executor of a decedent's estate must typically inventory the estate, settle claims against the estate and pay taxes, distribute the estate to beneficiaries in keeping with a will or the laws of intestacy, and (at least for court-supervised estate administration) give a final accounting to the court. After appointment, the guardian of a person or the conservator of an estate must usually exercise responsibility for personal or property matters and account to the court from time to time. In most circumstances, statutes or rules govern the timetable for the fiduciary to report to the court.

A court should control the progress of probate matters, despite their differences from other kinds of cases, from case initiation through completion of all court work.[40]

…different kinds of family cases represent a growing portion of the workload of trial courts.

It should provide for all decedents' estates to be administered with reasonable expedition and to be closed at the earliest opportunity.[41] Therefore, the court should establish rules for when filings associated with supervised estates should be submitted to it. Although unsupervised administration typically does not require an accounting to the court, some document should be filed with the court to give notice that the estate has been closed.

The court should monitor compliance by the fiduciary (with the assistance of an automated case information system when possible) within the timeframe that the court establishes to ensure performance of fiduciary responsibilities and to protect the interests of beneficiaries.

Although the appointment of a guardian or conservator may at first be contested, there may be a long period after the court's initial disposition, during which the guardian or conservator oversees the person or property of a minor or a legally incompetent adult. This "postdispositional" court oversight of the guardianship or conservatorship may go on until a minor reaches adulthood or continue for decades in the case of an adult respondent.

The court should actively monitor compliance with requirements that guardians or conservators give periodic accountings to the court and file reports on performance of their responsibilities to those for whom they are responsible.[42] A guardian or conservator who is tardy or delinquent in the filing of such accounts or reports frustrates the court in the performance of its responsibility to ensure the appropriate performance of fiduciary responsibilities to the ward. Effective and efficient court monitoring of accountings and filings reminds the fiduciary that the court is overseeing his or her performance in keeping with the trust that has been imposed. It also gives the court an opportunity to ascertain whether there have been abuses by fiduciaries.[43] The court should be prepared to enforce its orders by means such as sanctions, and it should take immediate action to ensure the safety and welfare of a respondent if it learns of abuse or neglect.[44]

H. CONCLUSION

Family matters are becoming an increasingly visible responsibility for courts, and different kinds of family cases represent a growing portion of the workload of trial courts. Managing these cases can be very different from managing civil and criminal cases for at least two reasons. First, the court must be attentive to the best interests of children and the

39. See David Steelman, "Managing Probate Workload and Dockets," *Probate Law Journal* 11, no. 3 (1993): 273 at 303-304.

40. *National Probate Court Standards* (1993), Standard 1.2.1. See also, Steelman, "Managing Probate Workload and Dockets," at 298-300.

41. *National Probate Court Standards* (1993), Standard 3.2.3.

42. Ibid., Standards 3.3.15 (guardians), 3.4.15 and 3.4.16 (conservators).

43. See David Steelman, *Service to Citizens by the Probate/Mental Health Department of the Superior Court of Arizona in Maricopa County: A Technical Assistance Report* (Denver, Colo.: National Center for State Courts, Court Services Division, 1997), p. 8.

44. See *National Probate Court Standards* (1993), Standards 3.3.17 (guardians) and 3.4.18 (conservators).

needs of children and families for services. Second, family cases are often subject to the continuing jurisdiction of the court for months or years after an initial disposition has been entered.

The management of contested probate cases is much like that for general civil matters, with pleadings, discovery, and trial. But the overwhelming majority of probate matters are uncontested. The court must oversee the activities of fiduciaries to ensure that they serve the interest of their beneficiaries. The court's responsibility to oversee the activities of a fiduciary may continue for years—until a child beneficiary reaches majority or as long as a disabled adult beneficiary is alive.

Postdisposition proceedings in divorce cases, oversight of permanency planning in child protection cases, and oversight of fiduciaries after their appointment in probate cases move at a pace much different from that for ordinary civil or criminal matters. As a result, family and probate matters may need even more caseflow management attention than felonies and torts.

…family and probate matters may need even more caseflow management attention than felonies and torts.

PART TWO

ELEMENTS OF SUCCESSFUL PROGRAMS

CHAPTER IV

BASIC MANAGEMENT CONDITIONS FOR SUCCESS

Superior Court of Riverside County Presiding Judge Robert Gregory Taylor and Judge Ronald L. Taylor hold an impromptu conference on the sidewalk between court buildings.

Contemporary approaches to caseflow management build on experience, insights, and conclusions from hands-on work with courts by experts such as Ernest Friesen, Maureen Solomon, Barry Mahoney, and Holly Bakke in the past 25 years, supported by groundbreaking research such as that of Thomas Church and Steven Flanders. Since 1980, an impressive body of multijurisdictional research has confirmed that application of the basic caseflow management methods described in Chapters I, II, and III can indeed help a court to reduce delay and provide prompt justice.[1]

At the same time, however, research shows that no single approach to caseflow management will serve as a "magic bullet" to ensure success. Many courts fall short of the caseflow management objectives of delay reduction and prompt and affordable justice. Some of the courts that have failed to achieve success in caseflow management have faced problems such as an inordinately high proportion of difficult, complex matters in their case mix and inadequate resources to deal with the growing volume of work that they face. Yet other courts appear to have achieved caseflow management success while facing similar circumstances of difficult cases and limited resources in relation to work volume. What distinguishes the courts that are successful from those that are not?

The success of some courts suggests that they have strengths even more basic than successful application of the fundamental techniques of caseflow management described in Chapters I, II, and III. These strengths have much in common with the attributes of successful organizations everywhere, whether in the public sector, private for-profit sector, or nonprofit sector.[2] They involve basic concepts of general organizational management; and they go to the heart of successful court management in general. Although these strengths may ultimately not be sufficient to permit a court to overcome problems such as inadequate resources to deal with a burgeoning workload, they represent necessary conditions without which a court's caseflow management program has a greatly diminished likelihood of success.

In addition to considering the basic methods of caseflow management and their application to specific kinds of cases, it is therefore critically important to consider four underlying court management features that provide the foundation for effective caseflow management programs. These are leadership, involvement and commitment to a shared vision, communications, and provision of a learning environment.

A. LEADERSHIP

Experts on caseflow management have found in their assessment of courts around the country that leadership is fundamental to the success of a caseflow management program.[3] The leader in an effort to improve caseflow management is one who must motivate others to invest themselves in the proposed program. He or she might do this by (1) articulating a vision of how changes will improve the system, (2) showing how individual persons will benefit from them, and (3) showing ongoing commitment to the effective operation of the proposed program through dissemination of information on program progress and rewards to those who

1. See, for example, American Bar Association (ABA), Lawyers Conference Task Force on Reduction of Litigation Cost and Delay, *Defeating Delay: Developing and Implementing a Delay Reduction Program* (Chicago: American Bar Association, 1986); Carl Baar, "Reducing Litigation Cost and Delay: Ideas and Lessons from Beyond the Borders" (1997); John Goerdt, Chris Lomvardias, and Geoff Gallas, *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1991); John Goerdt et al., *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1989); John Goerdt and John Martin, "The Impact of Drug Cases on Case Processing in Urban Trial Courts," *State Court Journal* 13, no. 4 (1989): 4; John Goerdt et al., "Litigation Dimensions: Torts and Contracts in Large Urban Courts," *State Court Journal* 19, no. 1 (1995): 1; J.S. Kakalik et al., *Research Brief: Just, Speedy, and Inexpensive? An Evaluation of Judicial Civil Case Management Under the CJRA* (Santa Monica, Calif.: Rand Institute for Civil Justice, 1996); Susan Keilitz, Roger Hanson, and Henry Daley, "Civil Motion Practice: Lessons from Four Courts for Judges and Lawyers," *Judges' Journal* 33, no. 4 (1994): 3; Barry Mahoney, Larry Sipes, and Jeanne Ito, *Implementing Delay Reduction and Delay Prevention Programs in Urban Trial Courts: Preliminary Findings from Current Research* (Williamsburg, Va.: National Center for State Courts, 1985); David Neubauer et al., *Managing the Pace of Justice: An Evaluation of LEAA's Court Delay-Reduction Programs* (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1981); Larry Sipes et al., *Managing to Reduce Delay* (Williamsburg, Va.: National Center for State Courts, 1980); and Douglas Somerlot, Maureen Solomon, and Barry Mahoney, "Straightening Out Delay in Civil Litigation: How Wayne County Took Its Program from Among the Worst in the Nation to Among the Best," *Judges' Journal* 28, no. 4 (1990): 10. See also Mary Lee Luskin and Robert Luskin, "Case Processing Times in Three Courts," *Law and Policy* 9 (1987): 207; and David Neubauer and John Paul Ryan, "Criminal Courts and the Delivery of Speedy Justice: The Influence of Case and Defendant Characteristics," *Justice System Journal* 7 no. 2 (1982): 213.

2. Over 20 years ago Ernest Friesen observed that courts are unique and complex institutions, which do not necessarily lend themselves to the application of management techniques that might be appropriate elsewhere ("Constraints and Conflict in Court Administration," in *Managing the State Courts*, ed. Berkson, Hays, and Carbon [St. Paul, Minn.: West Publishing, 1977], pp. 38-44). More recently, Paul Wice has identified factors unique to courts that are not found in other bureaucratic organizations, and which tend to inhibit court reform ("Court Reform and Judicial Leadership: A Theoretical Discussion," *Justice System Journal* 17, no. 3 [1995]: 309, at 310-311).

It is clear, however, that the underlying conditions necessary for the success of a caseflow management program are not unique to caseflow management. Indeed, they reflect issues critical to the management of courts generally. Moreover, they involve ideas critical to the effective management of virtually all organizations. In the Second National Symposium on Court Management, Ronald Stupak observed that "individuals in every organization I enter, either as a consultant or a researcher, tell me that their institution is unique, different, or special. And then, when I begin to conduct one-on-one interviews, and analyze the processes of performance, I always am reminded of how much effective and productive organizations have in common. But even more critical is how totally similar ineffective and poorly performing organizations are in their leadership lethargy, conceptual vacuousness, managerial rigidity, and operational dysfunctions, whether they be public, private, nonprofit, academic, or judicial institutions." ("Court Leadership in Transition: Fast Forward Toward the Year 2000," *Justice System Journal* 15, no. 2 [1991]: 617, at 617-618.)

3. One of the essential contributions by the leader of an organization is to establish and promote continuing pursuit of goals. For discussion of goals, see Chap. V, pages 73-83.

help the program achieve its goals. Finally, the advocate of the new program has to exercise leadership by building consensus and organizational support for it among the members of the court community who are essential to the program's success.[4]

The significance of leadership as a critical foundation for caseflow management success is reinforced by its recognized importance in the more generic management literature. It is a central theme in effective overall court management. It has been a necessary feature of efforts to transform government generally to deliver more public service in cost-effective ways. And it has been consistently identified as a critical component of successful innovations in the private sector.[5]

1. *Leadership by Chief or Presiding Judge*

In their study of caseflow management and delay reduction in urban trial courts, Barry Mahoney and his colleagues found that the leadership ability of the chief judge was often a critical factor in a court's ability to reduce or minimize delay.[6] This ability is illustrated in the profiles prepared by the National Center for State Courts in 1990 of judges in six metropolitan courts that have historically been successful in management of problems of delay.[7]

Circumstances in many trial courts may make it difficult for a chief or presiding judge to exercise the level and kind of leadership necessary to bring about success in a caseflow management program. Many of the key participants in the court process (including private attorneys, prosecutors and public defenders, elected clerks of court, probation officers, child protection caseworkers, and social service providers) have their own priorities and professional responsibilities, which can differ from those of court leaders. The position of chief judge may be short term and largely honorific, affording little management responsibility for or authority over the court's other judges. Finally, the chief or presiding judge in a moderate-sized court often has a full caseload in addition to his or her administrative responsibilities. This caseload can limit the amount of time and effort that the judge can give to oversight of a caseflow management program, even if she or he has the interest and skill needed for effective leadership.[8] Given the constraints that a chief or presiding judge may face in many jurisdictions, it is important that there be sufficient leadership from whatever sources to create, sustain, revise, and refine the caseflow management program over time.

2. *State-Level Leadership*

Many effective caseflow management programs have been introduced through local court initiatives The need for capacity to address day-to-day local issues argues for the importance of local leadership for the design, implementation, and continued success of a caseflow management program. But state-level initiatives can often provide an important impetus to delay reduction efforts, as is suggested by:

- The experience of Ohio courts since the 1970s under the Ohio Supreme Court's Rules of Superintendence addressing backlog and delay in trial courts.[9]
- The experience of Kansas courts under the statewide caseflow guidelines and procedures promulgated in 1980 by the Kansas Supreme Court.[10]

Leadership from the chief justice and the state supreme court is critical to development of a statewide consensus that timely justice is a high priority. Commitment to prompt justice in the court of last resort alone cannot be a substitute for strong day-to-day leadership in each trial court. Without strong leadership and commitment to caseflow management from the state court leadership, however, there is a real possibility of dramatic differences from one trial court to the next in the quality of caseflow management. One or more trial courts in a state may be very effective with caseflow management and may even have chief judges who are nationally prominent for the success of their caseflow management programs. Yet other courts in the same state may be much less attentive to caseflow management, leaving citizens and trial lawyers frustrated by the general lack of caseflow management across the state.

4. See Barry Mahoney et al., *Planning and Conducting a Workshop on Reducing Delay in Felony Cases. Volune One: Guidebook for Trainers* (Williamsburg, Va.: National Center for State Courts, 1991), pp. P8-2 to P8-4.

5. Regarding general court management, see Stupak, "Court Leadership in Transition"; Wice, "Court Reform and Judicial Leadership," at 309; and Mark Zaffarano, "Understanding Leadership in State Trial Courts: A Review Essay," *Justice System Journal* 10, no. 2 (1985): 229. As for the relationship between caseflow management and general court management, one commentator has suggested that the link between leadership effectiveness and basic organization performance in a trial court might most easily be investigated by looking at leadership in courts with demonstrated success in addressing the problem of delay. See Geoff Gallas, "Judicial Leadership Excellence: A Research Prospectus," *Justice System Journal* 12, no. 1 (1987): 39, at 48.

6. "It is clear that most of the successful courts have had the benefit of leadership by a chief judge with the vision, persistence, personality, and political skills necessary to develop broad support for court policies and programs aimed at reducing delay" (Barry Mahoney et al., *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* [Williamsburg, Va.: National Center for State Courts, 1988], p. 198).

7. See William Hewitt, Geoff Gallas, and Barry Mahoney, *Courts That Succeed: Six Profiles of Successful Courts* (Williamsburg, Va.: National Center for State Courts, 1990).

8. See Wice, "Court Reform and Judicial Leadership," 310; Mahoney et al., *Changing Times in Trial Courts*, p. 198; and David Rottman and William Hewitt, *Trial Court Structure and Performance: A Contemporary Reappraisal* (Williamsburg, Va.: National Center for State Courts, 1996), p. 85.

9. The Ohio Rules of Superintendence mandate individual calendars, provide guidelines to limit continuances, set time guidelines for civil and criminal cases, and call for monthly reports on the status of each judge's pending inventory. For a discussion of the effect of the Rules of Superintendence on caseflow management in the Montgomery County Court of Common Pleas in Dayton, Ohio, see Hewitt et al., *Courts That Succeed*, p. 6.

10. See Howard Schwartz and Robert Broomfield, "Delay: How Kansas and Phoenix Are Making It Disappear," *Judges' Journal* 23, no. 1 (1984): 22. On the effect of the statewide time standards in the Sedgwick County District Court in Wichita, Kansas, see Hewitt et al., *Courts That Succeed*, pp. 132-134.

3. *Leadership from Other Sources*

Maureen Solomon and Douglas Somerlot have observed that successful caseflow management programs have benefited significantly from the leadership of one or more key judges (who might not be the chief or presiding judge).[11] An influential member of the bench or a coalition of key judges may initiate changes or improvements. In many courts, leadership responsibility might be exercised effectively by a caseflow management committee, chaired by the chief or presiding judge and made up of other members of the bench, the court manager, and the heads of court administrative units.[12]

Leadership from members of the bar is important. Busy trial practitioners have often initiated civil caseflow management reforms, and prosecutors have similarly played a leadership role in criminal matters. In juvenile abuse and neglect cases, the involvement of key representatives from the state child protection agency, as partners with the leaders of the court, can be critical to caseflow management success.

4. *Chief Judge-Court Manager Executive Team*

Another critical dimension in the caseflow management process is the relationship between the chief or presiding judge and the court manager. The notion is no longer new that a court is better administered when the executive role is shared by the chief judge and the court manager working together as a managerial team.[13] Solomon and Somerlot emphasize the importance of the judge-manager team, blending their skills and perspectives in both policy development and administrative caseflow procedures to convert ideas into caseflow management reality.[14] And in a recent report on trial court consolidation and court performance, David Rottman and William Hewitt write that a court's capacity to deliver results, such as expeditious handling of cases, "depends on the chief judge and court manager forming a team that can serve as a link between line staff and the bench and between the court and the outside world."[15]

Continuing day-to-day attention by the chief judge and court manager to the court's performance in light of its caseflow management goals and objectives is a powerful way to enhance the likelihood of court success. If the chief judge and the court manager meet regularly to review reports on the court's caseflow management performance (such as those in Appendix C), they will be able to identify and deal promptly with any emerging problems. Moreover, their regular and continuing attention to caseflow performance sends an important message to judges and court staff that effective caseflow management is a matter of ongoing importance for the court.

Success in caseflow management for a judge-court manager team calls for the development and application of specific knowledge and skills.[16] Judge leaders and professional court managers must recognize that they may have different leadership styles and skills and that they must then build effective teams around the specific experience, capabilities, and interests of particular people. They must have the ability to create not only an effective chief judge-court manager executive team but also effective caseflow management teams consisting of judges and court staff. Furthermore, they must be able to build consensus, use data effectively, argue persuasively on behalf of proposed solutions, assess the capabilities of individual judges, and make decisions.

11. Maureen Solomon and Douglas Somerlot, *Caseflow Management in the Trial Court: Now and for the Future* (Chicago: American Bar Association, 1987), pp. 8-9.
12. See Rottman and Hewitt, *Trial Court Structure and Performance*, p. 86.
13. For an early expression of this notion, see E. Keith Stott, Jr., "The Judicial Executive: Toward Greater Congruence in an Emerging Profession," *Justice System Journal* 7, no. 2 (1982): 152, at 159. See also, Richard Hoffman, "Beyond the Team: Renegotiating the Judge-Administrator Partnership," *Justice System Journal* 15, no. 2 (1991): 652, at 658.
14. Solomon and Somerlot, *Caseflow Management in the Trial Court*, p. 10.
15. Rottman and Hewitt, *Trial Court Structure and Performance*, p. 86.
16. For attention to this issue in the NACM Caseflow Management Curriculum Guidelines, see Appendix A, pp. 150-151.

EDUCATION AND TRAINING IN DAYTON, OHIO

Dayton, Ohio, is served by the Montgomery County Court of Common Pleas, a 13-judge court of general jurisdiction. Over the years, the court's general division has consistently been able to manage its civil and criminal caseload with great success. Part of its success is due to its emphasis on education and training.

The court operates an annual training program for lawyers in Montgomery County that includes indoctrination and information about the court's caseflow management system. The court provides both an extensive orientation program and a wide variety of professional development and skills-training programs to help maintain and improve the capabilities of all staff members.

A tuition reimbursement program is available to employees who wish to continue their formal education by attending classes at colleges and universities in the area. These are important elements that contribute to strong communication and accountability.

Note: This description is from William Hewitt et al., "Montgomery County Court of Common Pleas," in Hewitt, Gallas and Mahoney, *Courts That Succeed* (1990) 5, at 21.

17. David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector* (New York: Penguin Books, 1993), p. 327.

18. For reference to this in the NACM Caseflow Management Curriculum Guidelines, see Appendix A, pp. 149-150.

19. See Clement Bezold, Beatrice Monahan, and Wendy Schultz, "Moving State Courts Consciously and Creatively into the 21st Century: Using Vision to Point the Way," *State Court Journal* 17, no. 2 (spring 1993): 28, at 32.

> Peter Senge . . . emphasizes that two conditions must be met for a vision statement to effect positive change. First, the vision must be a shared vision to which members of the organization are committed. They will stretch themselves and the organization to make it happen, creating the conditions necessary. Second, the organization members must, in fact, believe that they can make it happen: "vision becomes a living force only when people truly believe they can shape their future."

20. See Stupak, "Court Leadership in Transition," pp. 621-623.

21. See Bureau of Justice Assistance (BJA) and National Center for State Courts (NCSC), *Trial Court Performance Standards and Measurement System* (Program Brief), and *Trial Court Performance Standards and Measurement System Implementation Manual* (Monograph) (July 1997).

22. Ibid., Standards 2.1 and 2.2, reproduced in Appendix B.

23. Ibid., Standard 3.5, reproduced in Appendix B.

B. COMMITMENT TO A SHARED VISION

As is indicated above, one of the contributions of a leader to the development, implementation, and continued success of a caseflow management program is an ability to articulate a vision of how the program will improve the system and benefit those affected by it. As David Osborne and Ted Gaebler write in *Reinventing Government*, "It is not enough that a leader has a vision of change; he or she must get other community leaders to buy into that vision. The key element is a collective vision of a city or state's future—a sense of where it's headed. . . . If you can't put that together, it's very difficult to make these innovative approaches work, because people . . . become confused about why government is changing."[17] Vision is one of the critical aspects of caseflow management, in the judgment of the Professional Development Advisory Committee of the National Association for Court Management. One of the ways that judge leaders and court managers facilitate caseflow management is by "promoting action throughout the court and justice community based on an understanding of how caseflow management contributes to justice, and why acceptable court performance is impossible without effective caseflow management."[18]

For a caseflow management program to work, there must be involvement and commitment to the program and the vision that it reflects. One critical element is commitment to the program by the bench, and another is the involvement and commitment of court staff members. Investment by others outside the court can also be essential to the program's ongoing success. In addition, it is important that those with an interest in the court process believe that they can in fact make the program work.[19]

1. *Prompt and Affordable Justice as Part of a Vision of What the Court Should Be*

In recent years, courts and other government entities have been faced with an ongoing injunction to "do more with less." Leaders in effective courts have had to undertake strategic planning to set strategic priorities based on a vision of the court's mission.[20] To help state court systems stretched to the limits of their capacity, the Bureau of Justice Assistance and the National Center for State Courts initiated a project that led in 1990 to the publication of 22 trial court performance standards. Helping to define a court's mission, these standards address five performance areas: (1) access to justice; (2) expedition and timeliness; (3) equality, fairness, and integrity; (4) independence and accountability; and (5) public trust and confidence.[21]

Under "expedition and timeliness" is the standard that a court should "establish and comply with recognized guidelines for timely case processing while, at the same time, remaining current with its incoming caseload." Another standard indicates that a court should "provide reports and information [such as presentence investigation reports] according to required schedules, and respond to requests for information and other services [such as court-annexed mediation or court-sponsored social services] on an established schedule that ensures their effective use."[22] See Appendix B for commentary on these standards and ways recommended by the Trial Court Performance Commission to measure performance under these standards.

Under "equality, fairness, and integrity," another standard addresses responsibility for enforcement of court orders: "The trial court takes appropriate responsibility for the enforcement of its orders."[23] This standard has more to do with caseflow management, and particularly the management of cases after initial disposition, than it would at first appear to have. As Appendix B shows, measurement of a court's ability to perform in keeping with this standard involves the means by which the court monitors compliance with its orders and has procedures for enforcement of those orders in areas that include the following:

- Measure 3.5.1: Payment of fines, costs, restitution and other orders by probationers
- Measure 3.5.2: Child support enforcement
- Measure 3.5.3: Civil judgment enforcement
- Measure 3.5.4: Enforcement of case processing rules and orders

Even before initial promulgation of the performance standards in 1990, expeditious case processing was recognized by one commentator as one of the best indicators (if not the best indicator) of organizational performance for courts.[24] These standards now serve to make effective caseflow management one of several indicators of optimum trial court performance.

A shared vision of effective caseflow management—for example, that the court can and should provide prompt and affordable justice—serves three specific purposes in keeping with the spirit of the trial court performance standards on expedition and timeliness. First, it provides a focus for strategic planning (including determination of a mission, setting of goals and objectives, formulation of strategies, and evaluation of results). Second, it serves as a source of motivation for those engaged in the implementation of a caseflow management program.[25] Third, it helps judges address organizational and authority relationships, such as the management of judges by judges, that are crucial to success in caseflow management.[26] It can thus serve to promote and maintain judges' commitment to caseflow management and the involvement and commitment of court staff members as well.

2. Judge Commitment

Although leadership is critical for the initiation of a caseflow management program, its success over time requires that there be a strong and continuing judicial commitment to reducing delay and providing prompt and affordable justice.[27] One of the fundamental concepts of caseflow management is that the court should take affirmative and primary responsibility for the progress of cases from initiation to conclusion and that this responsibility should not be ceded to counsel, parties, child protection caseworkers, or other case participants (see Chapter II). In courts with successful caseflow management programs, the majority of the judges consider it to be their responsibility to make sure that cases proceed in timely fashion to appropriate outcomes.

Although there are many differences between courts and private businesses, judges are nonetheless like the "top management" in a private corporation in that they have responsibility for governance and guidance of the organization. In courts with successful caseflow management programs, judges have been able to work together as a team in the strategic development and implementation of the improvement effort.[28] For example, judges in most such courts have participated in the development and adoption of specific procedures and policies for implementation of caseflow management programs. Commitment to many of these programs has been maintained by keeping judges' attention focused on the age and status of cases by providing caseflow management information (see Chapter II), regularly discussing such information in judges' meetings, and other means.[29]

3. Court Staff Involvement

When Barry Mahoney and his colleagues studied caseflow management and delay reduction in urban trial courts, they found that the successful courts were those that involved "court staff members at all levels—from court managers through the secretaries and courtroom clerks"—in their efforts to address problems of delay.[30] This finding is fully consistent with other management studies in the public and private sectors. In their study of excellence in government organizations and private businesses alike, Tom Peters and Nancy Austin found that in the best organizations there was a realistic feeling of ownership and control over day-to-day operations among the line staff of an organization.[31] Studying governmental organizations that have succeeded in providing better public service with available resources, David Osborne and Ted Gaebler found that leaders in organizations achieving the greatest payoff "view their employees as genuine partners who share responsibility for all aspects of the organization's productivity and quality of work life."[32]

Successful courts have recognized that there are innumerable ways that caseflow management affects the day-to-day work of court staff members—for example, scheduling of court events, design and use of court forms, recording of court events in individual cases, availability of files, and entry of case information in the court's information system. Caseflow management by the court is in turn affected by court staff members' investment in

24. See Gallas, "Judicial Leadership Excellence," at 48.

25. Ingo Keilitz, "The Development of Tomorrow's Leaders in Judicial Administration," *Justice System Journal* 17, no. 3 (1995): 323, at 326-327.

26. The significance of judges managing judges is noted in the NACM Caseflow Management Curriculum Guidelines. See Appendix A, pp. 148-149.

27. As part of the recommendation that every trial court should have a caseflow management program, the ABA *Standards Relating to Trial Courts* identify "a strong judicial commitment to delay reduction" as one of the essential elements of a caseflow management program (*1992 Edition* [Chicago: American Bar Association, 1992]). See Sec. 2.54.A.1 and commentary.

28. On the role of top management in an organization generally, see Peter Vaill, *Managing as a Performance Art* (San Francisco, Calif.: Jossey-Bass, 1990), chap. 11, "What Should the Top Team Be Talking About?"

29. See Solomon and Somerlot, *Caseflow Management in the Trial Court*, p. 9, and Mahoney et al., *Changing Times in Trial Courts*, p. 202.

30. See Mahoney et al., *Changing Times in Trial Courts*, pp. 202-203.

31. Tom Peters and Nancy Austin assert that the best customer-service organizations they have observed—from Marriott to IBM to the U.S. Air Force's Tactical Command (TAC)—overinvest in the welfare and morale of their support personnel (*A Passion for Excellence: The Leadership Difference* [New York: Warner Books, 1986], pp. 56-57). They point to the means by which Gen. Bill Creech and those under his command dramatically transformed TAC from 1978 to 1983, based on principles that included the following (pp. 281-282):

Create leaders at many levels throughout the organization

- Match authority and responsibility and instill a sense of responsibility
- Create a climate of pride
- Create a climate of professionalism
- Educate, educate, educate
- Communicate, communicate, communicate
- Create organizational discipline and loyalty
- Provide everyone with a stake in the outcome

32. Osborne and Gaebler, *Reinventing Government*, p. 266.

its success. Ways in which successful courts have involved court staff members include:[33]

- Regular communications and interplay between court staff in the central assignment office and those in judges' offices (Montgomery County Court of Common Pleas in Ohio and Wayne County Circuit Court in Michigan)
- Routine involvement in committees and working groups designed to document the nature and scope of problems and contribute to new plans and solutions (Montgomery County Court of Common Pleas in Ohio)
- Schedule setting and data entry by courtroom clerks, secretaries, or central staff in keeping with manuals or directives prepared for them by the court's leaders (Detroit Recorders Court in Michigan, Maricopa County Superior Court in Arizona, and Sedgwick County District Court in Kansas)
- Monitoring by central staff of the court's case management performance (Detroit Recorders Court and Wayne County Circuit Court in Michigan, Maricopa County Superior Court in Arizona, and Sedgwick County District Court in Kansas)
- Court manager work with chief judge and trial judges' committees on matters of policy, procedure, and interagency coordination (Fairfax Circuit Court in Virginia and Maricopa County Superior Court in Arizona)

…communication is critical to the improvement of caseflow management.

4. Support from Others with an Interest in the Court Process

The court must deal with many individuals and organizational representatives whose objectives and priorities are different from those of the court. In such an environment, it is highly desirable that the advocates of a caseflow management program take steps to promote support from other key stakeholders in the goals and objectives of the program. Bar support and lawyer cooperation can greatly enhance the likelihood of program success.[34] Commitment and participation from the state child protection agency may be critical to expeditious litigation in abuse and neglect cases, termination of parental rights proceedings, and resulting adoption proceedings. To the extent that additional resources may be needed for the long-term success of a caseflow management program, it may be strategically important to have the active support of state-level court leaders and state or local funding authorities for the court's effort to provide prompt and affordable justice. To introduce a program to make significant changes in caseflow management, the court may need outside resources. As the authors of *Reinventing Government* have observed, "Fundamental change is difficult and painful, fraught with uncertainty and risk. Most organizations that embark on the journey need outside help—from foundations, consultants, civic organizations, even other governments."[35] To this end, involvement and commitment to the program will depend on ongoing attention to effective communications.

C. COMMUNICATIONS

One of the problems of trying to improve caseflow management is that the court does not operate in a simple and uncomplicated setting. Instead, the day-to-day operations of a court involve not only a large number of individual citizens but also the coordination of activities among a number of separate institutional actors. Judges usually are selected and operate independently of one another. Clerks of court and sheriffs are generally independently elected local officials with their own constituencies. Prosecutors and public defenders are independent of the court, as are members of the private practicing bar. Especially in juvenile and family matters, caseworkers and social service providers often represent state or local organizations, both public and private, that are separate from the court. Moreover, to obtain funding support for innovative programs, court leaders must typically deal with county or city officials at the local level or legislators and executive-branch officials at the state level. Courts operate in a governmental environment with other institutions that "do not share

33. See Hewitt et al., *Courts That Succeed*, pp. 20-21, 42, 77, 99, 123, 153.
34. See ABA, *Standards Relating to Trial Courts*, Sec. 2.54.B.1.
35. Osborne and Gaebler, *Reinventing Government*, p. 327.

identical concerns or see the same world," and each institution "perceives its own purpose as central, as an ultimate value, and as the one thing that really matters."[36]

In this setting, communication is critical to the improvement of caseflow management. The likelihood of success in the change effort is greatly enhanced if the court provides for good communication between judges and court staff, as well as broad consultation among court leaders, members of the practicing bar, and the key representatives of other institutional participants in the court process. Through a process of active communication, the court promoting improvement can undertake to modify attitudes and expectations in the "local legal culture"[37] by providing information about the need for change, building motivation to carry it out, and establishing broad organizational support for it.

Research on the best-run companies in America suggests that these companies have organizational fluidity that permits them to make effective changes in their operations. Rich ways of communicating informally are a key mechanism associated with such fluidity.[38] Courts, like other units of government, cannot be "run like a business." Yet, like well-run private businesses, they need effective communication to succeed in their efforts to achieve prompt and affordable justice in the environment in which they operate. Communication is critical if the proponents of improved caseflow management are to overcome the "tunnel vision" of a variety of professional participants in the court process: judges who may see their jobs as solely to decide cases; lawyers whose sole professional focus may be on their clients' position; and the representatives who appear in court each day on behalf of other institutions, each of which "speaks its own language, has its own knowledge, its own career ladder, and, above all, its own values."[39]

The level and scope of communication that may be needed to establish and maintain support for implementation of a successful caseflow management improvement program are broad. Communication in several dimensions is required.

1. *Communication among Judges*

Many American trial judges operate in one-judge courts. Even in multijudge courts, trial judges often work alone with little contact with colleagues on the bench. The development of shared commitment to a caseflow management improvement program depends on the availability of opportunities for judges to discuss the advantages and disadvantages of different approaches. Effective implementation of such a program calls for an appropriate level of consistency among judges in procedures, treatment of continuances, and handling of attorney scheduling conflicts. Capacity to provide credible trial dates calls for judges to be available to help one another with trial dockets. Finally, avenues for communication permit sharing of ideas about how to handle problem situations in the management of cases.

2. *Communication among Court Leaders and Court Staff Members*

Changes in the structure, operation, and management of courts are often "top down" events driven by the perspectives of court leaders. Court staff members responsible for day-to-day case processing responsibilities may feel unappreciated and misunderstood if court leaders have not taken the time for consultation about the causes and consequences of the changes that are being implemented. If court leaders have not engaged in adequate prior consultation with court staff about anticipated changes, the "best case" scenario will be that staff members will feel stress and unhappiness in their work while the operational problems caused by the changes are being resolved. The "worst case" scenario will be that implementation of good ideas will fail because court leaders have not foreseen and addressed their operational impact on day-to-day court support operations.

3. *State and Local Communications Within the Court System*

In a locally initiated caseflow management improvement effort, support from state court leaders may be critical. Temporary infusion of additional resources, such as those needed to address a backlog situation, may require the aid and approval of the high court or the state court administrator's office. Technical

36. Peter Drucker, *The New Realities: In Government and Politics/In Economics and Business/In Society and World View* (New York: Harper & Row, 1989), p. 84.

37. Presenting a theory of court delay based on a study of the pace of litigation in 21 urban trial courts, Thomas Church and his colleagues concluded that delay in civil and criminal cases is less a function of court structure, procedures, and caseload than it is of a jurisdiction's "local legal culture"–the established informal expectations, practices, and behavior of judges, attorneys, and others in the court process (*Justice Delayed: The Pace of Litigation in Urban Trial Courts* [Williamsburg, Va.: National Center for State Courts, 1978], pp. 53-54). Church's theory helps to explain the resistance one might find to any efforts to change the existing pace of litigation, as well as the importance of communications as a means to address such resistance.

38. See Thomas J. Peters and Robert H. Waterman, *In Search of Excellence: Lessons from America's Best-Run Companies* (New York: Warner Books, 1983), pp. 121-122:

> The nature and uses of communication in the excellent companies are remarkably different from those in their nonexcellent peers. The excellent companies are a vast network of informal, open communications. The patterns and intensity cultivate the right people's getting into contact with each other, regularly, and the chaotic/anarchic properties of the system are kept well under control simply because of the regularity of contact and its nature.

39. Drucker, *New Realities*, pp. 84-85.

support from the state court administrator's office in matters such as the improvement of computer technology or outside funding from a source such as the State Justice Institute may be particularly valuable. Finally, state court leaders may be especially helpful in dealings with state or local government funding sources or with members of the bar association.

State-led initiatives are equally dependent for their success on the effectiveness of state-local communications.[40] In many states, the "upstate/downstate" relationship between one or more large urban areas and the rest of the state calls for special attention to the implementation issues to be faced in the state's largest trial courts. In the more rural areas of the state, problems of distance and resource distribution create problems very different from those of urban courts. Any successful statewide effort to improve caseflow management must address issues such as these in significant part through effective communications.

4. Communication with Members of the Private Bar

In some jurisdictions, caseflow management efforts may come at the initiation of state or local court leaders. Lawyers who have active trial practices and who have developed the capability to "work the process" to the benefit of their clients, may resist changes in the informal set of expectations about the pace of litigation.

In other jurisdictions, it may be the members of the private bar who seek improvement in the pace of litigation and its management by the courts. Lawyers may perceive that the efficiency and effectiveness of practice in the state courts compares unfavorably with that in the federal district court; or they may see great differences from one county to the next in the caseflow management practices of state trial judges.

In either case, reasonable accommodation of the practicing bar by the courts is one of the universal concepts that must be recognized in order for a caseflow management improvement program to succeed.[41] Court leaders must find ways for bar members to express reasonable concerns to them about the need for improved management of cases by judges.[42] In the design of an improvement program, the court should be attentive to the practical impact of changes on lawyers' practices and costs to their clients. And in the day-to-day management of individual cases, judges should communicate honestly with lawyers about scheduling issues, counsel changes, and trial management.

5. Communication with Representatives of Court-Related Agencies

In many states, a county clerk who is a separately elected constitutional officer of local government maintains court records. In felony proceedings before a general-jurisdiction trial court, the prosecutor (and often the public defender as well) is a key government participant who is independent of the courts. The sheriff in most counties is keeper of the jail, the provider of courthouse security, and the official whose deputies serve process in many civil cases. In traffic or misdemeanor proceedings before a limited-jurisdiction trial court, state and local law enforcement officers must be scheduled for appearances as key witnesses for the state. In child protection cases, caseworkers from the state's child protection agency are deeply involved in court proceedings relating to abuse and neglect or termination of parental rights.

Representatives of these and other court-related agencies are critical to the effective and efficient operation of the court process but have institutional objectives separate from those of the courts. Court leaders must therefore be attentive to the institutional concerns of the different public and private organizations that are involved each day in the court process if caseflow management improvement efforts are to have support.

6. Communication with Others Interested in the Courts

Funding support from state or local sources may be necessary for changes (such as the upgrading of court automation) considered important to the effective implementation of a caseflow management improvement program. In such cases, it would be important for court leaders at the state or local level to articulate the costs and benefits of the planned changes to promote support for the effort.

40. Among the first states to identify delay as a serious problem and to initiate major programs on a statewide basis were Ohio, Kansas, and New Jersey. By producing "docket consciousness" among judges and other participants in the court process, their programs led to significant reductions in case-processing times and in the size and age of pending inventories. Their experiences also show that successful implementation of statewide delay reduction programs requires cooperation over time from a great many institutions and individuals. Mahoney et al., *Changing Times in Trial Courts* (1988), p. 187.

41. As one distinguished caseflow management expert has observed, "The litigation process is not served if lawyers can't make a reasonable living from litigation. Programs of calendar management that increase the cost of appearance or that force an attorney to choose between clients in court appearances are dysfunctional. The reasonable accommodation of lawyers involves a continuing honest communication link between the courts and the active litigators." Ernest Friesen, "Cures for Court Congestion," *Judges' Journal* 23, no. 1 (winter 1984): 4, at 7.

42. This is particularly so in view of the fact that individual litigators may have justifiable anxiety that the articulation of such concerns might evoke negative responses from the judges before whom they practice, which might be detrimental to the interests of clients in individual cases.

As the Commission on Trial Court Performance Standards has observed, "Compliance with law is dependent to some degree upon public respect for the court."[43] Significant support for a caseflow management improvement program may come from a community group or from a community's opinion leaders if court leaders outline the features of the program and explain the importance of its objectives. Regular reports to the community about the design, implementation, and progress of the program can be one way for a court to instill public trust and confidence that court functions are expeditious, fair, and reliable.[44]

7. *Caseflow Management Committees*

One important way to promote communications in this complex environment is through the creation of one or more *caseflow management committees* made up of court representatives and other key participants in the court process. In a one-judge court, a single committee may be sufficient to provide an opportunity for both formal and informal contacts *outside the normal court process* among the different participants with an interest in that process. Even in a one-judge court, juvenile or family matters may involve such a different set of actors that more than one such committee is needed if the court seeks to improve the flow of more than one type of case. In a larger trial court, it may be desirable to have separate caseflow management committees for different types of cases if there are significant differences in the people who regularly participate in the court process.

Members of a caseflow management committee should include all the key institutional participants in the court process. In a typical committee for felony matters, members might include the chief judge and one or more of his or her colleagues; the court manager; the prosecutor, the public defender, and a member of the private defense bar; the sheriff or keeper of the local jail; the chief of police; and the chief probation officer. For civil matters, the committee might include judges, the administrator and clerk, members of the civil trial bar, and the sheriff. For juvenile matters, caseworkers and social service providers would probably be committee members with judges, the administrator and clerk, juvenile probation officers, and members of the bar.

A caseflow management committee provides an important forum for court leaders to learn about the concerns of other participants in the court process. In development of a caseflow management improvement program, committee meetings can be a setting to identify problem areas and sources of resistance to change. At the point of implementation, the committee can address and resolve unforeseen difficulties. Over time, committee meetings can be a forum for communication about caseflow management goals and performance. The committee can monitor implementation with the court, and it can be a body to which evaluations of program implementation are presented and by which further program refinements are considered.

43. BJA and NCSC, *Trial Court Performance Standards with Commentary* (July 1997 Monograph), p. 20.
44. Ibid., see Standard 5.2.

LEADERSHIP IN THE DETROIT RECORDER'S COURT

Until it was abolished as a separate court, the Detroit Recorder's Court was a general jurisdiction trial court whose judges heard all felonies arising in the City of Detroit. From the late 1970s, it had been one of the leading courts in the nation in terms of criminal caseflow management. Michigan legislation passed in 1996 provided for the court to be merged into the Wayne County Circuit Court.

The Recorder's Court was fortunate in having exceptionally able individuals in the two key leadership positions—chief judge and trial court administrator—for almost two decades. From the late 1970s until 1998, there were only two chief judges and one court administrator. While the personal styles of the two chief judges were different, the working relationship between the court administrator and each chief judge exemplified the concept of an executive team in a multi-judge court. The chief judge had primary responsibility for external relations (for example, with the legislature, the bar, the prosecutor, the public defender and the media) and for contacts with the judges. The court administrator (who was also the clerk of court) supervised the staff, monitored the data produced by the court's information system, initiated special small-scale research projects focused on aspects of the court's operations, and negotiated with senior managers in other agencies. The chief judge and the court administrator met every morning to deal with any problems affecting that day's work and frequently met one or two other times during the day to address short-term or long-term problems. They had different (though somewhat overlapping) lines of communication with persons involved in the work of the court, and they shared a great deal of information acquired through these channels. Both were involved in problem identification, policy development, and policy implementation.

Note: This is a slightly modified version of the description given by Barry Mahoney, William Hewitt, and Alice Larkin in Hewitt, Gallas, and Mahoney, *Courts That Succeed* (1990), p. 36.

45. Peters and Austin, *A Passion for Excellence*, p. 403.
46. National Association for Court Management, Professional Development Advisory Committee, "Core Competency Curriculum Guidelines: History, Overview, and Future Uses," *Court Manager* 13, no. 1 (winter 1998): 6, at 7.
47. See BJA and NCSC, *Trial Court Performance Standards with Commentary* (July 1997 Monograph), commentary to Standard 4.3.
48. Mahoney et al., *Changing Times in Trial Courts*, p. 203.

D. A LEARNING ENVIRONMENT

The authors of *A Passion for Excellence* write that education "is the bedrock for sustained creative contributions" to the success of an organization. They assert that an organizational leader should provide education when:

- A newcomer—at any level—is introduced to an organization, philosophy, and way of doing business
- People need specific information that will enable them to contribute as fully involved partners day to day
- Performance expectations are unclear
- People need information about changing goals, strategies, roles, or responsibilities
- People want to expand their ability
- People need to learn a specific skill
- Company business values are misinterpreted, ambiguous, or unobtrusive[45]

Courts that are successful with caseflow management put a high value on education generally and provide specific training in their caseflow management improvement programs.

1. *Emphasis on Learning in the Court*

Just as in private companies, education is critical in courts. The curriculum guidelines of the National Association for Court Management are in part premised on recognition that courts cannot operate efficiently or effectively without competent court managers "who understand that continuing personal and professional development is a necessity, not a luxury."[46] This recognition is consistent with the spirit of the trial court performance standards, which provide that a court's personnel practices and decisions should, among other things, establish the highest standards of competence among its employees and provide fairness in the development of court personnel.[47]

2. *Education on and Training in Caseflow Management*

Within the narrow and specific area of caseflow management, education and training are also critical. Their value for the success of a caseflow management improvement program has been set forth in a recent report on the national study of caseflow management and delay reduction efforts:

> If courts are to manage their caseloads successfully, both the judges and the court staff need to know why and how to do it. Since the whole notion of caseflow management is of relatively recent vintage, this is not an area in which there is a great deal of knowledge and experience in most courts. Training is essential to familiarize judges, staff members, and members of the bar with the purposes and fundamental concepts of caseflow management and with the specific details and techniques essential to effective case management in the court on a day-to-day basis.[48]

Education about and training with a specific jurisdiction's caseflow management improvement program are important factors in enhancing the likelihood of the program's success. They help those in the court process understand the reasons that the program is being introduced and the purposes of the justice system it is intended to address. They also should provide detailed information on *how* the program is to operate. As means for communicating the nature and details of the program to judges, court staff, attorneys, and other institutional participants in the court process, they engender greater commitment to the purposes and success of caseflow management in the court.

E. CONCLUSION

On the basis of two decades of caseflow management research, this chapter presents the conclusion that successful caseflow management requires the presence of basic elements of court management in general—leadership, involvement, and commitment to a vision; communications; and a learning environment. On the one hand, this conclusion can mean that the courts most likely to be successful with caseflow management

programs are those that are well managed in general. This is undoubtedly the case in a number of courts.

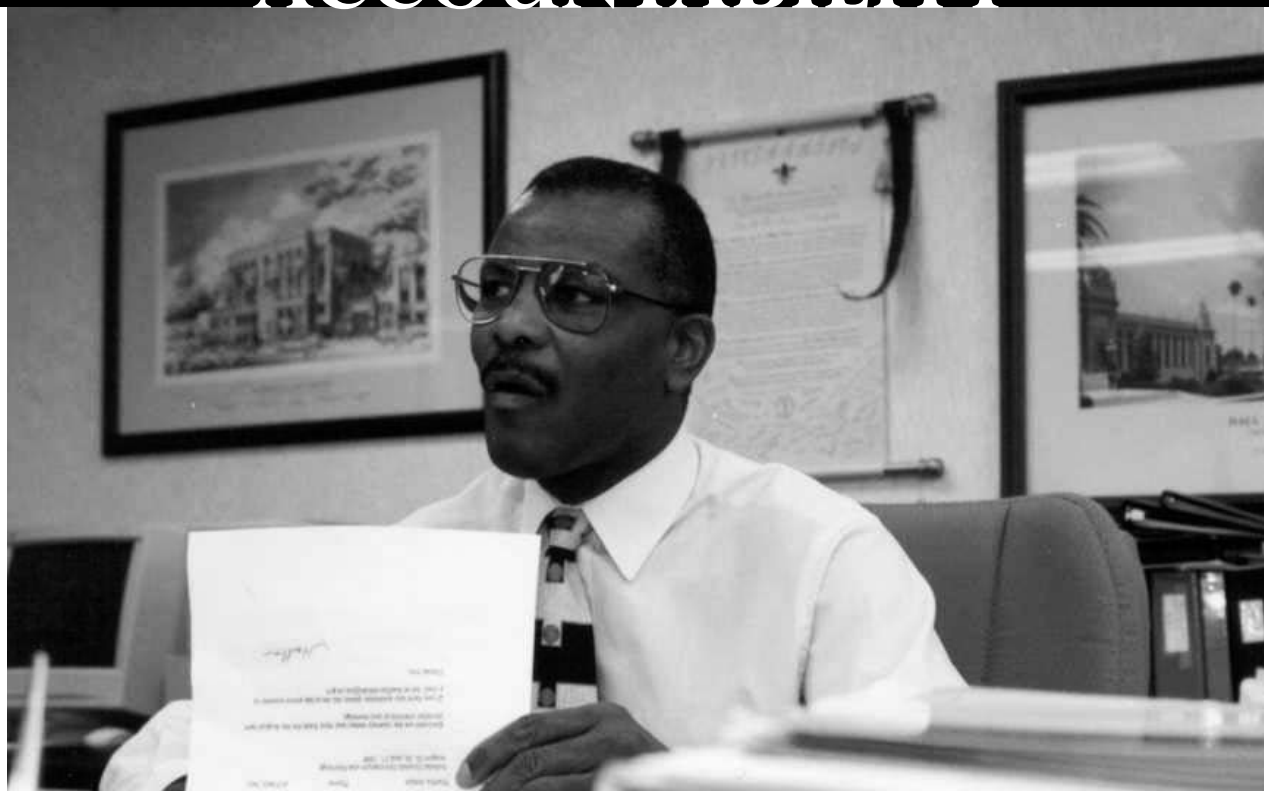
Yet it does not necessarily follow that a pre-existing framework of strong case management is a necessary condition for success with the implementation and maintenance of a successful caseflow management program. Instead, court leaders may be able to use the development and implementation of a caseflow management program to build capacity for successful *general* court management. If there is sufficient leadership capacity in the court to bring about the effective implementation of a caseflow management improvement program, the experience of success in the arena of caseflow management may provide the basis for judges and court managers to succeed in other important areas of general court management.

The point at which the general court management conditions discussed in this chapter intersect operationally with the caseflow management techniques discussed in Chapters I, II, and III is the day-to-day process of management—which involves goals, monitoring, and accountability. This *process* of managing—judges managing judges and leaders ascertaining how people are doing—is the subject of Chapter V.

Courts that are successful with caseflow management put a high value on education…

CHAPTER V

GOALS, MONITORING, AND ACCOUNTABILITY



Superior Court of Riverside County Executive Officer Arthur Sims reviews records on court employees' customer service performance.

If a court has the elements (described in Chapter IV) of a general court management environment conducive to the successful introduction of caseflow management improvement efforts, the next step is to undertake actual management of cases. This management involves the creation of goals and expectations about what constitutes "success," monitoring and measurement of the court's actual performance to determine if it meets those goals and expectations, and acceptance of responsibility and accountability for court performance. This chapter addresses these issues.

A. SETTING TIME STANDARDS

If one of the objectives of caseflow management is to promote "prompt" justice, measures of such justice are desirable. That a court should establish and comply with recognized guidelines for timely case processing, while at the same time keeping current with incoming caseload, is one of the standards offered by the Commission on Trial Court Performance Standards.[1] The American Bar Association, the Conference of Chief Justices, and the Conference of State Court Administrators have all urged the adoption of time standards for expeditious caseflow management.

Courts with successful caseflow management programs know what they are trying to accomplish because their goals are reflected in the case processing time standards that they have adopted. Time standards or guidelines should not be established on the basis of the events that transpired in the most difficult and complex cases that judges can remember from their own experience as lawyers or on the bench. Nor should they be set at a level that simply reflects what can easily be accomplished given current circumstances and practices among judges and the practicing trial bar. Rather, case-processing time standards or guidelines should reflect what is reasonable for citizens to expect concerning the prompt and fair conclusion of most cases of a given type. In determining what is reasonable for citizens to expect, court officials setting time standards should keep in mind the general principle set forth by the American Bar Association: "From the commencement of litigation to its resolution, . . . any elapsed time other than reasonably required for pleadings, discovery and court events, is unacceptable and should be eliminated."[2]

The adoption of case-processing time standards reflects a commitment to timely completion of cases as an important goal. In operation, time standards serve several other important ends:

- Motivation
  By providing goals for judges and other participants in the court process to seek to achieve, both in managing caseloads and with regard to individual cases, time standards are motivators.
- Measurement
  Time standards provide yardsticks for measuring management effectiveness, serving as benchmarks for determining whether the pace of court proceedings is acceptable.
- Management
  Time standards provide a starting point for developing specific procedures to meet the goals they set forth.
- Information System Development
  Time standards are useful only if judges and other participants in the court process receive information on the extent to which they are being achieved; such standards should lead to the development of systems for monitoring caseload status and progress toward caseflow management goals.[3]

Adoption and implementation of time standards is also likely to affect assessment of the court resource needs of judges and nonjudge personnel. There is ample evidence that case-processing times do *not* relate to the size of a court or its caseload per judge[4] and that adding new permanent judgeships is not the only possible cure for court delay.[5] Yet even fast courts can reach a "saturation point" at which they cannot absorb and process more cases without additional judicial or nonjudicial staff resources.[6] When the court is managing its caseflow, time standards help to highlight the level of its judicial and nonjudicial personnel needs.

…case-processing time standards or guidelines should reflect what is reasonable for citizens to expect…

1. Bureau of Justice Assistance (BJA) and National Center for State Courts (NCSC), *Trial Court Performance Standards and Measurement System Implementation Manual* (1997), Standard 2.1. This standard is reproduced below in Appendix B.

2. American Bar Association (ABA), *Standards Relating to Trial Courts, 1992 Edition* (Chicago: American Bar Association, 1992), Section 2.50.

3. See Barry Mahoney et al., *Planning and Conducting a Workshop on Reducing Delay in Felony Cases. Volume One: Guidebook for Trainers* (Williamsburg, Va.: National Center for State Courts, 1991), page P5-3.

4. National research on court delay reduction has consistently shown that disposition times are unrelated to the size of a court or the number of filings per judge. See Thomas Church et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1978), pp. 21-24; Mahoney et al., *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1988), p. 46; and John Goerdt et al., *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1989), pp. 26-30 and 71-75.

5. Barry Mahoney, Larry Sipes, and Jeanne Ito, *Implementing Delay Reduction and Delay Prevention Programs in Urban Trial Courts: Preliminary Findings from Current Research* (Williamsburg, Va.: National Center for State Courts, 1985), p. 30.

6. See Goerdt et al., *Examining Court Delay*, p. 30.

1. Time Standards for Intermediate Case Events

To focus on the progress of cases from initiation and ensure that no case is "lost between the cracks," courts should have time standards for the progress of each major type of case through each of its key intermediate stages, from filing through disposition and the completion of all postdisposition court work.[7] Elapsed time between key events in cases is what judges and court managers customarily see and count from day to day. How long ago was the last court event in this case? Has today's scheduled event been continued from a previous date? When is the next scheduled event?

Intermediate standards might be adopted for civil, domestic relations, felony, juvenile delinquency, and abuse and neglect protection cases:

- Caseflow management of general civil cases or domestic relations cases is aided by intermediate standards for the time from filing to the completion of the pleadings, completion of discovery, and trial start or nontrial disposition.
- For felony cases, intermediate time standards might include those for time from arrest through key court events, including bail hearing, probable cause determination, felony arraignment, and trial start or nontrial disposition.
- For juvenile delinquency cases, elapsed times from arrest to detention hearing, adjudication hearing, and disposition hearing should be subject to time standards for the purpose of caseflow management.
- In an abuse and neglect case, intermediate standards might address time from when a child is removed from the home to temporary custody hearing, adjudication hearing, disposition hearing, and permanency hearing. (To avoid "foster care drift" in child protection cases,[8] standards in appropriate circumstances should also address time from the removal of a child from the home to events *after* the abuse and neglect proceedings, such as a petition to terminate parental rights and a petition for adoption.) (See the discussion of child protection cases in Chapter III.)

Time goals for intermediate stages give the court criteria for monitoring the progress of cases from the time of case initiation. Such monitoring permits the early identification of cases whose progress has been impeded. These are the cases that may need further management attention from the court to reach fair outcomes in a timely manner.

2. Overall Time Standards

In addition to time standards for case progress through intermediate stages, a court should have overall standards for the time from case initiation to trial or disposition by other means. Such standards for total elapsed time provide a basic framework for caseflow management efforts. For example, if 99 percent of all civil cases should be disposed in two years, the court's caseflow management plan should be designed to dispose of a substantial majority of its cases within 12 to 18 months, allowing the last 6 months for those cases that are somewhat more complex.

Furthermore, overall time goals provide the basis for determining the types of information that will be most useful in court caseflow

7. See ABA, *Standards Relating to Trial Courts, 1992 Edition*, Section 2.51C.

8. See the Adoption and Safe Families Act of 1997 (ASFA) (PL 105-89), effective November 19, 1997.

OHIO AND KANSAS: PIONEERS IN STATEWIDE TIME STANDARDS

Ohio was the first state to undertake a comprehensive delay reduction program, as a part of which it adopted overall time standards for civil and criminal cases. In 1971, its Rules of Superintendence for courts of common pleas prescribed mandatory time limits from arraignment to trial in felony cases, and from filing to completion in personal injury and other civil cases. State legislation in 1973 established speedy trial rules for criminal cases, and in 1975, the Supreme Court promulgated Rules of Superintendence with time standards for municipal and county courts.[a]

Kansas was another early adopter of overall time frames for civil and criminal case dispositions.[b] In 1980, the Kansas Supreme Court Standards Committee set caseflow guidelines and procedures for all courts in the state to follow. These standards were not mandatory, but were rather to serve "as a guide for the disposition of cases, with the understanding that the system must have flexibility to accommodate the differences in the complexity of cases and the different problems arising in urban and rural judicial districts."[c]

a. See William O'Neill, "How to Force Faster Litigation," *Judges' Journal* 18, no. 1 (winter 1979): 6. See also, William Hewitt, et al., "Montgomery County Court of Common Pleas (Dayton, Ohio)," in Hewitt, Gallas, and Mahoney, *Courts That Succeed: Six Profiles of Successful Courts* (1990), p. 6. In addition, see Janice Fernette, "State Court Case Disposition Time Standards" (November 1994), p. 34.

b. See Howard Schwartz and Robert Broomfield, "Delay: How Kansas and Phoenix Are Making It Disappear," *Judges' Journal* 23, no. 1 (winter 1984): 22.

c. See Kansas Supreme Court, "General Principles and Guidelines for the District Courts," 230 Kan. 698 (1988).

management reports. For example, if one of the court's goals is to dispose 90 percent of all felony cases within 6 months of arrest, what percentage of the court's disposed or pending cases exceed this time standard? Which individual cases are approaching the longest time standard or various interim goals? Time standards developed by the National Conference of State Trial Judges and approved by the American Bar Association (ABA) are a common point of reference for consideration of overall time standards (see Table 2).

The earliest efforts to introduce time standards in state court systems were made in the 1970s and early 1980s. By the end of the 1980s, more than 20 states had adopted statewide goals for the time required to process cases in the state trial courts. By November 1994, this number had increased to 34 states and the District of Columbia. Virtually all of these jurisdictions have time standards for general-jurisdiction civil cases and felonies, and most also have standards for domestic cases, misdemeanors, and limited-jurisdiction civil cases. There are 21 jurisdictions with standards for juvenile cases, and 12 with standards for probate cases. In 12 states, the time standards are mandatory, whereas in the remainder of the jurisdictions they are voluntary or advisory.[9]

a. Civil cases

Among the states with time standards in 1994, 33 have guidelines for civil matters in general-jurisdiction trial courts. Nine jurisdictions have adopted standards that are identical to or very close to the ABA standards shown in Table 2. Standards in some states provide that cases should be disposed within 6 or 12 months, but the largest number of standards suggests that all cases should be disposed within 18 or 24 months.

ABA time standards do not include guidelines for limited-jurisdiction civil matters (usually torts, contracts, and real property matters with less than a specified dollar amount at stake). Yet 23 states and the District of Columbia have time standards for such cases. Although expectations of case-processing time in limited-jurisdiction matters vary more than those for general-jurisdiction matters, the largest number of standards indicates that all of these cases should be decided within no more than six months.

For civil matters using summary hearing procedures, such as small claims and landlord-tenant cases, ABA standards recommend disposition within 30 days of filing. Seven states and the District of Columbia have time guidelines for these cases, but only one state has adopted the ABA standard. Most of the other states provide that all such cases be disposed within three months of initiation.

b. Criminal cases

In 1994, felony time standards were adopted by the court systems of 32 states and the District of Columbia. Although only three jurisdictions have adopted the full ABA time standards shown in Table 2 for felonies, seven states have adopted a standard that all cases be disposed within a year. Fourteen states have shorter time standards. The largest number of states require that all felonies be disposed within 180 days.

Misdemeanor time standards had been adopted in 28 states and the District of Columbia by 1994. Only one state's time standards agree with the ABA standard that 90 percent of all misdemeanors be decided within 30 days, but eight states agree with the ABA standard that 100 percent be disposed within 90 days. Five states have standards of fewer than 90 days for all cases, and 13 states have longer time standards.

c. Traffic cases

ABA time standards do not include separate standards for traffic cases, but those for misdemeanors—that 90 percent of cases be

9. See Janice Fernette, "State Court Case Disposition Time Standards" (Information Service Report) (Williamsburg, Va.: National Center for State Courts, November 1994). In 9 of the states, time standards are articulated in a fashion like that in the American Bar Association time standards (the time from case initiation within which 90%, 98%, and 100 % of the cases of a given type should be disposed). (ABA, *Standards Relating to Trial Courts, 1992 Edition*, Section 2.52.) Other states have standards that cover only 99% of cases (Arizona and Minnesota), 95% (Utah), or 80% (Vermont), accepting that the remainder will take longer to be disposed. In 22 states, there is either a flat standard (with no percentage specified) or a standard for 100% of all cases of a given type.

TABLE 2
AMERICAN BAR ASSOCIATION TIME STANDARDS

Case Type	Time Within Which Cases Should Be Adjudicated Or Otherwise Concluded		
	90%	98%	100%
General Civil	12 Months	18 Months	24 Months
Domestic Relations	3 Months	6 Months	12 Months
Felony	120 Days	180 Days	365 Days
Misdemeanor	30 Days	—	90 Days

Source: ABA, *Standards Relating to Trial Courts, 1992 Edition*, Section 2.52.

10. See John Goerdt, *Small Claims and Traffic Courts: Case Management Procedures, Case Characteristics, and Outcomes in 12 Urban Jurisdictions* (Williamsburg, Va.: National Center for State Courts, 1992), p. 136.
11. See Fernette, "State Court Case Disposition Time Standards."
12. Discussion of national time standards for juvenile delinquency cases is based on Jeffrey Butts and Gregory Halemba, *Waiting for Justice: Moving Young Offenders Through the Juvenile Court Process* (Pittsburgh, Pa.: National Center for Juvenile Justice, 1996), pp. 20-25.
13. See Fernette, "State Court Case Disposition Time Standards."

disposed within 30 days of initiation and that 100 percent be disposed within 90 days—may be considered applicable to these cases. A study of traffic cases in 12 urban jurisdictions found that none of the courts were close to meeting ABA's 30-day standard for 90 percent of cases, although two nearly met the 90-day standard for disposition of all cases.[10] In 1994 only one state (Wisconsin) had a separate time standard for traffic cases—that 100 percent be disposed within four months of case initiation.[11]

d. Juvenile delinquency cases

Since the 1970s, several organizations have suggested time standards for delinquency cases.[12] One of the earliest was the Joint Commission on Juvenile Justice Standards (a combined effort of the Institute for Judicial Administration [IJA] and the American Bar Association), which issued recommendations in 23 volumes between 1977 and 1980. Another prominent set of standards was issued in 1980 by the National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC), created by the federal legislation that established the Office of Juvenile Justice and Delinquency Prevention (OJJDP). In 1984, following the release of those standards, ABA's National Conference of State Trial Judges included juvenile standards in its court delay reduction standards, which were incorporated in ABA trial court standards that were revised in 1992. Finally, the National District Attorneys Association (NDAA) issued standards for the handling of delinquency cases in 1992. Table 3 shows the time standards offered by these groups.

Court systems in 20 states and the District of Columbia had time standards for delinquency cases in 1994.[13] Many had standards for elapsed time to detention hearing, adjudication, and disposition, distinguishing detention from non-detention cases. Only a handful of states had expectations of case-processing time equal to or shorter than the standards suggested by IJA/ABA, NAC/OJJDP, and ABA for detained juveniles, however. The standards for most of the states were at least

TABLE 3
TIME EXPECTATIONS IN NATIONAL DELINQUENCY STANDARDS

	Maximum Days from Referral to Adjudication	Maximum Days from Adjudication to Disposition	Total Maximum Days from Referral to Disposition
Detained Juveniles			
■ IJA/ABA	15	15	30
■ NAC/OJJDP	18	15	33
■ ABA	15[a]	15	30[a]
■ NDAA	30	30	60
Released Juveniles			
■ IJA/ABA	30	30	60
■ NAC/OJJDP	65	15	80
■ ABA	30	15	45[b]
■ NDAA	60	30	90

a. Time limit begins at point of detention admission rather than police referral.
b. Time limit begins at filing of delinquency petition rather than police referral.
Source: Jeffrey Butts and Gregory Halemba, *Waiting for Justice: Moving Young Offenders Through the Juvenile Court Process* (National Center for Juvenile Justice, 1996), p. 25.

twice as long as those offered by these groups, and those for at least six states were longer than those of NDAA.

e. Child protection cases

ABA time standards for abuse and neglect cases are identical to those for delinquency matters. They provide that shelter hearings be held within 24 hours of admission to shelter, that adjudicatory hearings for children in shelter be held within 15 days of admission to shelter, that such hearings for juveniles not in shelter be held within 30 days of the filing of a petition, and that disposition hearings be held within 15 days of adjudication.

In 1995, the National Conference of Juvenile and Family Court Judges developed "Resource Guidelines" for improving the court process in child abuse and neglect cases.[14] These guidelines were developed in consultation with representatives of the Conference of Chief Justices, the National Center for State Courts, and the American Bar Association. The purpose of the guidelines is to help courts hearing abuse and neglect cases to meet demands placed on them by federal and state laws by conducting proper court hearings, managing court calendars, and dealing with necessary resource demands and costs.[15]

The guidelines offer recommendations on the timing of key events in the court process:

- A preliminary protective hearing should occur within 72 hours after a child has been placed outside the parents' care if removal has not occurred after a completed court hearing and pursuant to a court order.
- When a child is in emergency protective care, adjudication should be completed within 60 days after the removal of the child.
- Disposition should ordinarily be completed within 30 days after adjudication.
- Review of children in foster care must occur at least once every six months to meet the requirements of federal law.[16]
- Permanency planning hearings, which federal law formerly required within 18 months after placement, must now be held within 12-14 months of a child's being taken into care.
- If a petition is filed for termination of parental rights, a termination trial should be set within 60 days of completion of service of process.

In 1997, through the Adoption and Safe Families Act (ASFA) (P.L. 105-89), Congress mandated that states shorten the length of time that children spend in foster care, and that they provide an array of permanency options to provide safe and stable homes for children.[17] Child protection agencies at the state or county level are required by ASFA to give highest priority to the health and safety of children, focusing on permanency from the beginning of a child protection case. Courts hearing child protection cases are called on to ensure that cases progress to permanency in a fair and timely manner. By 1999, almost every state had enacted legislation implementing ASFA, thereby introducing time standards for child protection cases that may have been quite different from prior time expectations. See Figure 2 for a graphic presentation of the time standards under ASFA.

ASFA defines when a child has "entered foster care." Since ASFA indicates that a child is considered to have entered foster care on the earlier of either (a) the date of the court's first finding that the child has been abused or neglected, or (b) 60 days after the child was removed from the home, timetables in cases where there are reasonable efforts to preserve or reunify the family have up to 60 days added to elapsed time from when a child was taken into care.

In 1997,…Congress mandated that states shorten the length of time that children spend in foster care…

If a court finds that reasonable efforts to preserve or reunify a family are required, the court must hold a permanency planning hearing to more than 12-14 months after the child was taken into care. Subsequent review hearings must then be held by the court, with reasonable efforts findings, not less than every 12 months after the previous hearing until a child is adopted or the permanency plan is completed.

ASFA identifies circumstances in which the filing of a petition to eliminate parental rights is mandatory unless doing so would not be in the best interests of the child. One of these

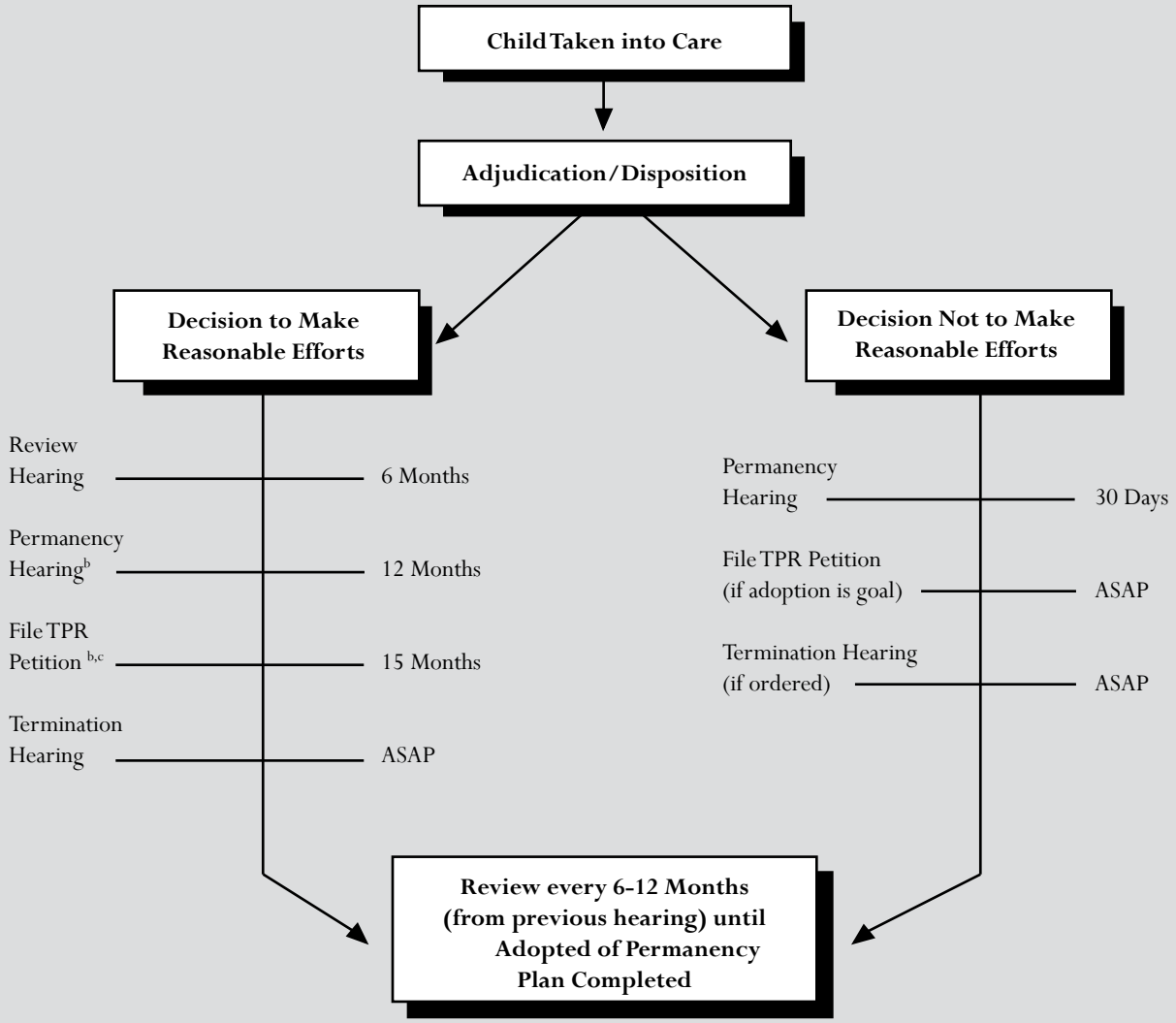
14. National Council of Juvenile and Family Court Judges (NCJFCJ), *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (Reno, Nev.: NCJFCJ, 1995).
15. Ibid., p. 11.
16. See 42 U.S.C. §675(5)(B).
17. See David Steelman, *Effects of Adoption and Safe Families Act of 1997 on Wisconsin Proceedings in "CHIPS" Cases (Those Involving "Children in Need of Protection or Services")* (Denver, Colo.: National Center for State Courts, Court Services Division, 1999).

circumstances is when the child has been in foster care for 15 of the last 22 months.

Proposed federal regulations suggest that a petition to terminate parental rights must in this situation be filed at the end of the fifteenth month. Calculation of when the petition must be filed must consider when the child "entered foster care" and must include up to 60 days from the time the child was removed from the home. In effect, this provision for a mandatory petition to terminate parental rights thus comes into play when the child has been in foster care for 15 months in the last two years.

The second circumstance for a mandatory petition to terminate parental rights is when the court finds that reasonable efforts to reunify the family are not required. In that situation, the court must hold a permanency planning hearing within 30 days after it has found that reasonable efforts to reunify are unnecessary, and then a petition to terminate parental

FIGURE 2
CHILD PROTECTION TIME STANDARDS UNDER THE FEDERAL ADOPTION AND SAFE FAMILIES ACT (P.L. 105-89)[A]



a. Mimi Laver, "Implementing ASFA: A Challenge for Agency Attorneys," *ABA Child Law Practice* 17, no. 8 (October 1998): 113, at 119

b. When calculating when to have the permanency hearing or whether 15 of 22 months have elapsed, use the earlier of the date of adjudication or 60 days after the child is removed from the home.

c. Unless the child is being cared for by a relative, or there is a compelling reason not to terminate parental rights.

rights must be filed as soon as possible. Proposed federal regulations suggest that the court determination that reasonable efforts to reunify must be made within 60 days after the child's removal from the home. The inference is that a permanency hearing must be held within 90 days after removal if the court finds that reasonable efforts to reunify are not required.

f. Divorce cases

Thirty states had time standards for domestic relations cases in 1994. As Table 2 shows, ABA time standards suggest that 90 percent of these cases should have initial dispositions within 3 months of filing, 98 percent within 6 months, and 100 percent within 12 months. Although only one state had completely adopted the ABA standard, the standards in eleven states agreed that 12 months is appropriate for all or most divorce cases. Seven states had shorter time standards for all such cases, and standards in seven states distinguished between contested and uncontested cases in terms of expectations for time to disposition.

g. Probate cases

None of the time standards recommended by ABA are specifically for probate cases. In many states, statutory provisions may provide guidelines for the timely administration of simple and other decedent estates. In 1994, court systems in 12 states had time standards for probate cases, probably intended largely for decedents' estates.[18] In recognition of the fact that most such estates are relatively uncomplicated, the standards in the majority of these states provide that estate administration be concluded within a year. Other states' standards acknowledge the small percent of estates that are more complex, and they generally provide that administration of these estates be concluded within 24 months. Because of their nature, trusts, guardianships, and conservatorships may properly remain open for years, depending on the individual circumstances of beneficiaries or their estates.

B. ESTABLISHING OTHER CASEFLOW MANAGEMENT GOALS AND POLICIES

Time standards are not the only goals relevant to the effectiveness of a court's caseflow management efforts. Relating directly to caseflow management are the size of a court's pending inventory of cases and its continuance policy. Of more general importance are the effects of court practices and procedures on the cost of access to justice and the court's maintenance of equality, fairness, and integrity.

1. Backlog Reduction and Size of Pending Inventory

Keeping current with incoming caseload is an important element of optimal performance by a trial court.[19] The size of a court's pending inventory is a key measure of the effectiveness of the court's caseflow management efforts. National research shows that the size of a court's inventory of pending cases, in relation to the number of dispositions per year, is strongly associated with delay. Slow courts are almost always "backlogged" courts.[20] In contrast, fewer pending civil cases per judge is strongly correlated with shorter times to disposition.[21]

With regard to its pending inventory, a court may have two goals: reducing the size and age of the inventory, and maintaining it at a level that will permit the court to comply with its time standards. If a court's case-processing times are too long, its inventory includes an unacceptable number of cases that are "backlogged"—that is, cases that have been pending longer than the time that the court has adopted as its standard.

If a court has adopted the ABA standard that all but a few exceptional cases among civil cases be disposed within two years of filing (see Table 2), and 30 percent of such cases are more than two years old, it has a "backlog problem." In this circumstance, the court's caseflow management improvement plan must include steps to reduce the backlog. The court must dispose of more cases than are filed until the point at which no more than 1 to 2 percent of its pending civil cases are more than two years old. (For discussion of caseflow management reports on backlog, see Chapter VI, pages 92 through 95. For

18. See Fernette "State Court Case Disposition Time Standards" (1994).
19. See BJA and NCSC, *Trial Court Performance Standards and Measurement System Implementation Manual* (1997), Standard 2.1, reproduced below in Appendix B.
20. Mahoney et al., *Changing Times in Trial Courts*, p. 195; Goerdt et al., *Examining Court Delay*, pp. 36-39, 42.
21. John Goerdt, Chris Lomvardias, and Geoff Gallas, *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1991), p. 55.

22. It is helpful to define what is meant by the word continuance. In some courts, a case is "continued" any time it is scheduled for a subsequent court event, even when the scheduling is done after the conclusion of a court event that occurred on the date it was initially scheduled to happen. That is not what is meant here. For purposes of caseflow management, a "continuance" is the rescheduling of a court event that did not happen on the scheduled date, whether it is granted by the court at the request of a party or is necessary because the court could not reach the case on its calendar. See the definition of "number of continuances" in Conference of State Court Administrators and National Center for State Courts, *State Court Model Statistical Dictionary 1989* (Williamsburg, Va.: National Center for State Courts, 1989), p. 47.

23. Institute for Law and Social Research (INSLAW), *Guide to Court Scheduling* (Washington, D.C.: National Science Foundation, 1976), p. 14.

24. ABA, *Standards Relating to Trial Courts*, 1992 Edition, Section 2.55.

25. Maureen Solomon and Douglas Somerlot, *Caseflow Management in the Trial Court: Now and for the Future* (Chicago: American Bar Association, 1987), p. 29.

26. Maureen Solomon, *Caseflow Management in the Trial Court* (Chicago: American Bar Association, 1973), p. 39.

sample reports on the age of pending cases, see Appendix D, pages 175 through 179. For further discussion of backlog reduction as part of the implementation of a caseflow management improvement plan, see Chapter IX, pages 132 through 133.)

The court must also avoid future backlog and maintain a pending case inventory that is manageable in terms of the workload of judges and court staff members. What constitutes a "manageable" pending case inventory? In simplest terms, it is the number of pending cases that the court can maintain and still meet its time standards without heroic efforts on the part of judges and staff or undue burdens on parties and counsel. If, after having eliminated its backlog, a court disposes of as many cases each year as are filed, the size of the pending case inventory should remain relatively stable and manageable. (The court must not be misled that it can keep its pending case inventory manageable simply by disposing of all its easiest cases, leaving all its more difficult cases unresolved. In that event, the mix of older and more complex cases in the inventory may increase even if the overall size of the inventory does not.)

2. Continuance Policy

To make the progress of cases from initiation to conclusion more predictable and reliable, judges must adhere to a clearly articulated continuance policy.[22] Having established time standards and goals regarding the pending case inventory, the court can establish the kind of continuance policy that will aid meeting those standards and the accomplishment of those goals.[23] As the Court Delay Reduction Committee of the National Conference of State Trial Judges has observed, even the most effective calendar operation cannot (and *should* not, in fairness) eliminate all continuances. Yet continuances can be kept to a minimum by firm adherence to enforcement standards, under which continuances are granted only when good cause is shown and requests for continuances and extensions are in writing and are recorded in case files and the court's case management information system.[24]

A continuance obviously means a delay in a case's conclusion. In the broader context of caseflow management, however, a court's continuance policy and practices also affect attorneys, and other case participants' view of the court's commitment to caseflow management and timely disposition of cases:

> If the court is lenient on continuances, a busy attorney may be less likely to be prepared or likely to be less prepared. Time will be devoted to the most pressing business, and postponements will be requested for less urgent matters, including cases in which a continuance due to unreadiness can be obtained. Each time the court grants such a request, it reinforces counsels' perception of the court's leniency and lack of case management orientation.[25]

Court policy should be to keep continuances to a minimum. In 1973, caseflow management expert Maureen Solomon recommended that a maximum continuance rate be among the management goals in a court's caseflow management system:

> Some judges feel that it is impossible or unrealistic to set a maximum on the number of continuances since each request must be evaluated on its merits. However, experience in both large and small courts of general jurisdiction indicates that when the continuance rate rises above 20 percent of the scheduled cases, the court is failing to be rigorous in evaluating continuance requests. Thus, when the continuance rate rises above the rate determined to be acceptable to the court, special attention should be directed to the continuance problem and steps taken to remedy it.[26]

Whatever the continuance rate deemed acceptable by the court, attorneys and parties must have the expectation that continuance requests are more likely than not to be denied and that any continuance request other than that for a good reason will be denied by the court.

Continuance policy and practices in pretrial matters can be distinguished from those in trials. In its exercise of control over case progress, with or without differentiated case management (DCM), a court may enter scheduling orders soon after case commencement to govern completion of discovery and any referral to alternative dispute resolution (ADR). The court may also set pretrial conferences, trial management conferences, and trial dates. As long as they do not threaten the progress of case to trial, short pretrial

continuances may be granted more freely. Indeed, a short pretrial continuance that demonstrably aids early settlement of a case may be a valuable caseflow management tool. In contrast, given the critical importance of credible trial dates to the success of caseflow management, the court should be very strict about the granting of trial-date continuances.

3. Controlling Costs of Justice

Trial court performance standards suggest that a court should ensure that "the costs of access to the trial court's proceedings —whether measured in terms of money, time or the procedures that must be followed —are reasonable, fair and affordable."[27] As thus defined to include time and procedures as well as money, costs of justice present an additional dimension from which to view courts' management of the pace of litigation.

Reduction of costs for *litigants* may be one of the goals of a caseflow management improvement program. Court leaders might assume that reduction of case-processing times would necessarily reduce costs of litigation. Yet recent research on the Civil Justice Reform Act in federal district courts by RAND suggests that the relationship between a court's management efforts in civil cases and costs as measured by lawyer work hours is complex:[28]

- Early case management by the court decreases time to disposition but tends to increase costs by increasing the hours that lawyers spend to respond to such management. If a court also requires discovery and development of case management plans, the benefits associated with these efforts offset the cost of increased early management efforts.
- Mandatory early disclosure does not appear to significantly decrease the time to disposition or the costs resulting from lawyer work hours.
- For typical cases, limiting of interrogatories appears to reduce litigation costs by reducing lawyer work hours.
- Shortening of the time permitted for completion of discovery significantly reduces lawyer work hours, and thus litigation costs, in addition to reducing time to disposition.

Given that the relationship between caseflow management and costs for litigants may not be a simple one, it is important for courts to be sensitive to ways in which they can strike a balance between meaningful delay reduction and cost reduction.

Faced with pressure to "do more with less," courts may also view caseflow management

27. BJA and NCSC, *Trial Court Performance Standards and Measurement System Implementation Manual* (1997), Standard 1.5.

28. James Kakalik, "Analyzing Discovery Management Policies: RAND Sheds New Light on the Civil Justice Reform Act Evaluation Data," *Judges' Journal* 37, no. 2 (spring 1998): 22, at 25-27.

EFFECTS OF A COMBINED PROGRAM OF ADR AND CASEFLOW MANAGEMENT ON CIVIL COSTS AND CASE-PROCESSING TIMES IN THE NEW HAMPSHIRE SUPERIOR COURT

In the mid-1990s, trial courts in New Hampshire were in the midst of a pattern of significant evolutionary change. With regard to the handling of noncriminal matters, recent developments included the introduction in the superior court of heightened attention to caseflow management, steps toward the institutionalization of alternative dispute resolution (ADR), and experimentation with major structural changes to address family matters. In the context of these developments, the leadership of the New Hampshire court system engaged the National Center for State Courts to assess the effects of ADR and caseflow management for civil matters at law in the superior court (a statewide trial court of general jurisdiction).[a]

By court rule, ADR was made mandatory in 1992 in four counties and voluntary in all other counties based on the availability of ADR neutrals. Parties could choose from four ADR options—early neutral case evaluation; mediation; nonbinding arbitration; and binding arbitration. Most chose mediation by a volunteer from the civil trial bar. At the same time, such caseflow management techniques as pretrial structuring conferences or differentiated case management (DCM) were introduced.

Evaluators found that higher court costs (as reflected by the number of events per case) were incurred in the earlier stages of cases as a result of the introduction of ADR and caseflow management techniques. Cases were disposed sooner (by trial and nontrial means) as a result of ADR and caseflow management techniques, however, and costs to schedule and hold nonjury trials were lower.

Members of the bar with civil litigation practices who had served as ADR neutrals generally indicated in interviews that ADR was less costly for clients than traditional litigation; but their answers were not without qualification. A primary reason given for cost savings was that cases often settle earlier after exposure to ADR, so that more expensive discovery activities (such as depositions of doctors or other expert witnesses) were often avoided. Some attorneys pointed out, however, that ADR had added an additional pretrial event at which counsel and parties were obliged to appear, and that it could therefore add a substantial layer of additional costs for clients if cases did not settle.

a. David Steelman et al., *Superior Court Rule 170 Program and Other Alternative Dispute Resolution Prospects for New Hampshire Trial Courts, Volume One, Findings and Recommendations* (Denver, Colo.: National Center for State Courts, Court Services Division, 1997). It was not possible for evaluators to ascertain what effects were a result of caseflow management as opposed to ADR. Other significant factors complicating the analysis were the fact that the court added judges, opened an additional court location, and saw total civil and criminal filings drop.

29. John Goerdt, "Slaying the Dragon of Delay: Findings from a National Survey of Recent Programs," *Court Manager* 12, no. 3 (summer 1997): 30, at 32.

30. See Susan Keilitz, ed., *National Symposium on Court-Connected Dispute Resolution Research: A Report on Current Research Findings—Implications for Courts and Future Research Needs* (Williamsburg, Va.: National Center for State Courts, 1994), pp. 9, 19, 25, 61-62 and 99.

31. Rosenberg, "Court Congestion: Status, Causes, and Proposed Remedies," in American Assembly, *The Courts, the Public, and the Law Explosion* (Englewood Cliffs, N.J.: Prentice-Hall, 1965), p. 58.

and delay reduction programs as opportunities to reduce the cost of litigation for the courts. In a recent national survey of delay reduction programs, 58 respondents (of a total of 149) indicated that reduction of court costs was at least a secondary program goal.[29]

Alternative dispute resolution (ADR) mechanisms, such as mediation or early neutral evaluation, are now an important part of the delivery of justice in America. (See the discussion of ADR in Chapter VIII.) In conjunction with caseflow management techniques, they might be viewed as means to reduce litigation time and costs for both litigants and the court. Here again, the relationship between delay reduction efforts and the costs of litigation may not be simple and direct. In a national symposium on court-connected dispute resolution research, the cost findings reported in many studies were mixed (for civil case mediation, summary jury trials, small claims mediation, and multidoor courthouses), although family mediation was consistently found to reduce litigant costs.[30]

Continuances are another area in which concern for delay and concern for costs intersect. Continuances have an important cost dimension. In addition to delaying individual cases and affecting case participants' expectations of how serious the court is about caseflow management, continuances cause additional activities in a case for judges and court staff.

Continuances can also involve significant costs for litigants and witnesses. If the continuance means additional court appearances for attorneys that are not offset by demonstrable savings as a result of settlement, the costs of attorney fees can increase. Moreover, parties and witnesses taking time off from work for a hearing or trial that is then continued can experience not only additional out-of-pocket costs but also increased frustration with the court process.

THE COST OF CONTINUANCES FOR COURT, PROSECUTOR, AND PUBLIC DEFENDER

The Allegheny County Court of Common Pleas is a trial court of general jurisdiction that serves Pittsburgh and surrounding communities. In 1979, the court engaged the National Center for State Courts to determine the cost of continuances to the court.[a]

To assess the cost of continuances for criminal trials, the researchers determined the cost per continuance to the court in terms of facilities, equipment, and the time and fringe benefits of judges and their staff; the clerk of court; the court's calendar control and other support staff; and the sheriff's department. In 1979 dollars, each criminal trial continuance cost the court an estimated $79. After examination of the reasons for criminal trial continuances, the researchers estimated that about 47% of the continuances were generally avoidable.

In an assessment of the cost of trial continuances in civil cases, the researchers calculated costs for facilities, equipment, and the time and fringe benefits of judges and their staff; the staff in the prothonotary's (the civil clerk's) office; and the court's calendar control and other support staff. They concluded that each continuance of a civil trial cost the court an estimated $174 in 1979 dollars.

In the early 1980s, the National Institute of Justice funded a study of the costs of continuances to prosecution and defender agencies and witnesses in felony and misdemeanor cases.[b] The study examined costs in Alexandria, Virginia; Mecklenburg County (Charlotte), North Carolina; and Allegheny County, Pennsylvania.

Researchers looked at the total amount of attorney effort spent out of court on case preparation and the time spent in court until a case was continued. They found that continuances added 12-24 percent more work to each prosecution or public defender agency. In fiscal year 1983-84, this increase translated into additional labor costs ranging from $78,000 to $1.1 million, depending on the agency, salary differentials, and court procedures.

a. See Samuel Conti, William Popp, and Don Hardenbergh, *Finances and Operating Costs in Pennsylvania's Courts of Common Pleas* (North Andover, Mass.: National Center for State Courts, Northeastern Regional Office, 1980), pp. 66-81.

b. See Joan Jacoby et al., *Some Costs of Continuances—A Multi-Jurisdictional Study* (Washington, D.C.: U.S. Department of Justice, 1986).

4. Maintaining Equality, Fairness, and Integrity

Attention to expediting the court process must not overshadow attention to fairness and justice in individual cases. Professor Maurice Rosenberg once observed that an obsession with speedy justice without attention to substantive results can erode the integrity of the justice process. He wrote, "Slow justice is bad, but speedy injustice is not an admissible substitute."[31]

But concern for timeliness is hardly irreconcilable with concern for justice. In the American Bar Association's trial court standards, the committee of the National Conference of State Trial Judges that developed delay reduction standards addressed the tension between the competing goals of delay reduction and substantive justice. They wrote that it is only elapsed time in a case "*other* than reasonably required for pleadings, discovery and court events" that is unacceptable and must be eliminated.[32] Professor Ernest Friesen, a leading expert on caseflow management, has observed that all of the essential

functions of courts—such as doing justice in individual cases, *appearing* to do justice in individual cases, and protecting citizens from arbitrary government intrusion in their lives—are all defeated by delay.[33]

Effective implementation of a caseflow management improvement plan can be thoroughly consistent with trial court performance standards for equality, fairness, and integrity.[34] Through the faithful and consistent implementation of its caseflow management improvement plan, the court can help to provide a fair and reliable judicial process. Court decisions and actions in areas such as the granting of continuance requests should be made on the basis of individual attention to cases and without undue disparity among like cases. The court should make clear how compliance with its orders relating to scheduling and other caseflow management issues can be achieved. Finally, the court should take appropriate responsibility for ensuring that case participants actually comply with its orders on scheduling and other caseflow management issues.[35]

C. MONITORING AND MEASURING ACTUAL PERFORMANCE

Successful caseflow management requires that a court continually measure its actual performance against the expectations reflected in its standards and goals. Therefore, the court should regularly measure times to disposition and the size and age of its pending caseload as well as determine whether it is disposing of as many cases as are being filed, and assess the rates at which trials and other court events are being continued and rescheduled. (In Appendix B, see the measures of performance associated with Trial Court Performance Standard 2.1.)

Caseflow management information should be provided as part of the management reports produced with the aid of the court's automated case management information system. (See Chapter VII, pages 99 through 106, for discussion of the use of the court's automated case management information system to support caseflow management.)

Although measuring performance is vitally important for effective caseflow management, it is possible to suffer from "information overload." To avoid such overload, court leaders measuring performance should give attention to the key types of caseflow management information:[36]

- Pending caseload information.
  Operationally, this type of information is of great importance, because it provides a picture of the court's current workload and indicates how many cases are near or exceeding time standards. A good pending caseload report will show the number of cases pending, both in total and within major case types, as well as the age of pending cases, both from initiation and from any key intermediate stage.

- Age of cases at disposition.
  This information should be provided both by case type and by method of disposition. Although information on disposed cases is historical by definition, it is extremely valuable because it provides baseline data at the commencement of a delay reduction program, enables the court to measure its performance in light of time standards, and facilitates planning for efforts such as differential case management.

- Monthly and annual aggregate data.
  Aggregate data from periodic reports on filings, dispositions, and number of hearings per case are particularly helpful if they are available for several years and can yield information on trends and effectiveness of resource utilization. Such data provide information on filing trends, per-panel filing trends, the pace of dispositions compared with that of filings, and increases or decreases in hearings per case.

- Reports on open cases.
  Such reports are basic management aids for judges as they seek to manage their cases effectively, providing more detail on specific cases than the summary reports described above. A good

Successful caseflow management requires that a court continually measure its actual performance against the expectations reflected in its standards and goals.

32. See ABA, *Standards Relating to Trial Courts*, 1992 Edition, Section 2.50.

33. See presentation by Friesen in NCSC's Institute for Court Management videotape, *Caseflow Management Principles and Practices: How to Succeed in Justice* (1991).

34. See BJA and NCSC, *Trial Court Performance Standards and Measurement System Implementation Manual* (1997), Standards 3.1 through 3.6.

35. See Trial Court Performance Standard 3.5 and related performance measures in Appendix B.

36. This listing closely follows the discussion of key management information in Mahoney et al., *Planning and Conducting a Workshop on Reducing Delay in Felony Cases. Volume One: Guidebook for Trainers* (1991), pp. P6-3 through P6-6.

"open cases" report will typically list all of the open cases assigned to a judge in order of chronological age (with oldest cases listed first) and contain other information about each case, such as docket number; party names; case initiation date; case status, including the date and nature of the last action and of the next scheduled action; names of attorneys; and any special case considerations.

With such reports, the judge can appraise the status of the oldest cases on the docket, identify and evaluate problem cases, determine whether there are particular attorneys causing special caseflow management problems, and identify case types that consistently take longer or need special attention.

A novel approach to simplifying the measurement of caseflow management performance is the Caseflow Timeliness and Efficiency (CTE) Index proposed by Dr. Ingo Keilitz (see Appendix C). On the basis of performance measures under Trial Court Performance Standard 2.1 (see Appendix B), Keilitz's CTE index would offer a way to integrate four key measures of caseflow management performance in terms of their relative importance:

- Time to disposition
- Clearance ratio (ratio of dispositions to filings)
- "Backlog avoidance" (the percentage of pending cases not yet older than the established time standard)
- Trial certainty (the frequency with which cases scheduled for trial are actually heard when scheduled)

Judges and court managers should experiment with the CTE index to test its utility as an aid to measuring caseflow management performance.

Measurement by itself does not solve problems. Judges and court administrators must use it as a tool to manage cases and caseflow by asking key questions.[37] The individual judge should be asking questions such as the following on an ongoing basis:

- Case-related questions. What is happening in this case? How old is it? What is its status? What should be happening next? By when?
- Calendar-related questions. What is the overall status of my calendar? How many pending cases are there, and what are their ages and status? What are the oldest cases, and are they beyond the time standards? Why are they old? What needs to be done about them?

To use information effectively to measure caseflow management and delay reduction efforts, state-level court leaders, trial court chief judges, or trial court managers must ask different questions:

- Overall status of calendar. How many old cases are there? That is, how many cases are pending beyond the time suggested by time standards? What is the backlog (the number of cases that cannot be completed within a tolerable time period, as defined by the time standards)?
- Troubleshooting questions. Are there problems with particular types of cases? Are there particular procedural bottlenecks? Are particular judges experiencing difficulties?

Regular attention by the chief judge and court manager to the court's performance in light of its caseflow management goals and objectives is a powerful way to enhance the likelihood of court success. If the chief judge and the court manager meet regularly to review reports and measures of the court's caseflow management performance (such as those discussed in Chapter VI and suggested in Appendices C and D), they can deal promptly with caseflow management problems as they arise.

By measuring performance in such a way with the use of relevant information, the court should be able to identify problems and determine where caseflow management efforts are needed. The steps taken to address problems should be consistent with basic principles of effective caseflow management. (For further discussion and samples of caseflow management reports to monitor and improve court performance, see Chapter VI, pages 91 through 96, and Appendix D, pages 175 through 179.)

D. CREATING ACCOUNTABILITY

The dictionary defines "accountability" as "the state of being subject to the obligation to report, explain or justify something"—to be "responsible or answerable."[38] The authors of *Reinventing Government* urge that govern-

37. Ibid., pp. P6-7 through P6-9.
38. *Random House Dictionary of the English Language* (2d. ed., unabridged, 1987).
39. David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector* (New York: Penguin Books, 1993), pp. 136-165.

ment entities should have a new accountability system: instead of being "accountable for following hundreds of rules and spending every penny of every line item," government officials should be responsible for the results they provide for citizens.[39] A number of factors—including continued budget constraints and increased public pressure for accountability—have made systematic measurement of local government performance a matter of growing importance.[40] The Commission on Trial Court Performance Standards has explicitly recognized the need for courts to be accountable for their use of public resources.[41] In further recognition of this need, the National Association for Court Management has identified resource allocation, acquisition, and management (including budget and finance) as a core competency for court managers, emphasizing the importance of performance measurement and accountability.[42]

1. *The Court as an Accountable Organization*

Judicial independence is one of the greatest safeguards of the rights of citizens that is provided in the American constitutional system. The institutional independence of the judiciary from political influences and the decisional independence of individual judges in specific cases is intended not for the personal benefit of judges but for the benefit of the general public and all those who come before the courts.[43] Moreover, as the Commission on Trial Court Performance Standards has observed, independence of the judiciary is not likely to be achieved if a court does not manage itself, measure its performance accurately, and account publicly for its performance.[44] One important aspect of accountability is reasonable expectations about performance (such as the standards and goals for caseflow management discussed above). Another important aspect is the means to measure actual performance against those expectations. (See the discussion of measurement above and of caseflow management reports and case management information systems in Chapters VI and VII.)

2. *Internal Accountability*

Within the court itself, accountability has to do with the assignment of specific responsibility to particular persons. The results of national-scope research on caseflow management and delay reduction in urban trial courts suggest that courts with successful programs have judges with clearly defined responsibility for case management. Furthermore, nonjudicial court staff members—such as judges' secretaries, in-court clerks, and data-entry personnel—have clear roles and responsibilities in case processing, whereby their effectiveness can be periodically assessed.[45]

3. *External Accountability*

Both judges and court staff can measure their performance against caseflow management standards and goals, as well as the court's caseflow management improvement plan. To the extent that they have been publicly promulgated (as they should be), the standards and goals and the plan can serve as measures for both internal and external accountability. Periodic reports to the general public on the court's progress under its caseflow management standards and goals and improvement plan address three important external accountability goals: (1) they show the court's use of public resources; (2) they show the effects on litigants of the court's caseflow management activities; and (3) they promote public trust and confidence that the court functions are expeditious, fair, and reliable.[46]

E. CONCLUSION

Caseflow management must ultimately be an activity that judges and court managers *actually undertake* on a day-to-day basis. The actual process of managing any operation, whether it be a small business, a large corporation, a law firm, or a governmental organization such as a court, involves establishment of performance expectations, measurement of actual performance against such expectations, and development of mechanisms of accountability. These are the critical activities involved in managing a court generally, and they are necessary to the success of any effort to improve a court's caseflow management.

40. See David Ammons, ed., *Accountability for Performance: Measurement and Monitoring in Local Government* (Washington, D.C.: International City/County Management Association, 1995).

41. See BJA and NCSC, *Trial Court Performance Standards with Commentary* (1997), Standard 4.2.

42. See National Association for *Court Management* (NACM), Professional Development Advisory Committee, "Core Competency Curriculum Guidelines: History, Overview, and Future Uses," *Court Manager* 13, no. 1 (winter 1998): 6 at 12-17. See also NACM Mini-guide, *Holding Courts Accountable. Counting What Counts* (Williamsburg, Va.: National Association for Court Management, 1999).

43. See William Batchelder, "The Independence of the Judiciary in New Hampshire Revisited" (citing U.S. First Circuit Court of Appeals Chief Judge Juan R. Torruella), *New Hampshire Bar Journal* 39, no. 2 (1998): 62.

44. BJA and NCSC, *Trial Court Performance Standards with Commentary* (1997), p. 18.

45. Mahoney et al., *Changing Times in Trial Courts*, pp. 203-204.

46. See BJA and NCSC, *Trial Court Performance Standards with Commentary* (1997), Standards 4.2 and 5.2, and Reginald K. Carter, *The Accountable Agency* (Beverly Hills, Calif.: Sage Publications, 1983), p. 31.

PART
THREE

PROGRAM IMPLEMENTATION

CHAPTER VI

CASEFLOW MANAGEMENT REPORTS

Superior Court of Fresno County Presiding Judge Brad R. Hill consults with Deputy Sheriff Aaron Epperly before going over the court's master calendar.

A person who gets on the Internet can now obtain information on almost anything. But a person who walks into his or her local court may not be able to obtain answers to some basic questions. How many civil jury trials did the court conduct last year? How many felony jury trials? What percentage of civil, felony, divorce, or traffic cases are disposed within the American Bar Association (ABA), Conference of Chief Justices (CCJ), Conference of State Court Administrators (COSCA), or the state's own disposition time standards? (See the discussion of overall time standards in Chapter V, pages 74 through 79.) A court leader might ask, "Can my court answer all these questions? Are my management reports actually used by judges and court managers or simply tossed out or ignored?"

Reports such as those discussed in this chapter are critical to day-to-day caseflow management because they provide the information by which judges and court managers can *measure* their actual performance against expectations and identify problems that need attention. They are thus essential tools for the court in actually *managing* caseflow. (See the discussion of monitoring and measurement in Chapter V, pages 83 through 84, and see the discussion of trial B.) To be meaningful in terms of caseflow management, the court's information and reports must meet at least two criteria. First, they must be accurate. Second, they must permit the court to assess its performance in view of the expectations reflected in its standards and goals. Efforts to implement a caseflow management improvement program should include attention to means by which helpful caseflow management reports can be made regularly available to judges and court managers.

A. DATA ACCURACY AND COMPARABILITY: THE INFORMATION FOUNDATION

Data processing professionals talk about "GIGO"—"garbage in, garbage out." Caseflow management reports are not very useful if the data on which they are based are inaccurate or lack uniformity in the way that they are entered in systems. Substantial problems can be avoided or resolved through staff training. Accurate key entry is very important. But equally important is the effort to train clerks and data entry staff regarding the meaning of various documents and data codes. Periodically, court managers should audit the accuracy of data entry, and supervisors should review the findings of the audit with data entry staff.

Every court and clerk's office should develop a court data manual to serve as a reference for all court staff. The manual should include a list of all codes used on the automated case management system and a definition of each code. After the manual is developed and disseminated, a committee should meet at least annually to consider revisions and updates as laws change or as staff identify problems with the current codes.

The way that a court defines key case events is very important and may be determined by the state's supreme appellate court or administrative office. Some of the fundamental issues regarding data definitions are discussed below.

1. Defining a "Case"

This is such a fundamental issue that it may be taken for granted in some courts, but in some types of cases the way that a court defines a "case" can dramatically change the "caseload" count. At least three factors can affect how courts count criminal cases: the number of defendants, the number of counts, and the number of incidences (for example, convenience store robberies) before the defendant is arrested. Given these three factors, there are theoretically six ways to count a criminal "case." Consider, for example, what might happen if two criminals rob three liquor stores over a two-night period before they are arrested. In each store they beat at least one witness as they escape. So there are two defendants, and each is charged with three robberies and three aggravated assaults. In this example, the situation could be defined as a single case (two defendants and six counts against each). Or it could be

The way that a court defines key case events is very important…

12 cases (one for each charge or count). The most common definition of a criminal case is that it consists of all counts against a single defendant arising from a single incident.[1] With this definition, the example above would produce six cases (two defendants, each with three robberies and related aggravated assaults). But there is substantial variation among courts on this issue.

Similar problems arise in counting domestic and juvenile "cases." Is a post-judgment motion to modify or enforce an original "final" divorce decree a new case, reinstated case, or some other category of case? In abuse or neglect situations, does the court count the family or each child as a case? If a child is found abused or neglected and the parents do not comply with the terms of a court-ordered plan for family reunification, are any subsequent proceedings to terminate parental rights and to place the child for adoption two separate cases? Answers to these questions clearly have a significant impact on a court's caseload statistics for filings and dispositions.

Courts might have to work with the state court administrator's office and others to answer questions such as those above. It is very important, however, that courts within the same state count cases in the same manner so that the caseload statistics within the state can be used to assess the need for judicial and staff resources among various counties or districts. In addition, if a court produces an annual caseload report, the authors should define what they mean by a "case" for each reported case category.

2. *When Is a Case "Pending" or "Disposed"?*

Understanding the volume and nature of pending cases is critical to effective caseflow management. For management purposes, a "pending case" is one that has been filed within the court's jurisdiction and is awaiting a final disposition. Again, criminal cases can create problems on this issue. How does a court deal with defendants who fail to appear for a court event? Typically a warrant is issued for the defendant's arrest. What if the defendant is not rearrested for a year after his or her failure to appear? Or never rearrested? How long does a court consider the case "pending"? Some courts may leave the case in the pending category for several years; others immediately enter an administrative status change (categorizing it as "inactive") until the defendant is rearrested. Others wait for a period of time before entering the status change. The purpose of tracking pending cases is to provide an accurate count of the cases over which the court has authority and control to bring to a conclusion. If a defendant has "skipped bail" and is out of the court's control, the court should not count that case as part of its pending caseload. Courts within a county, and within a state, should make a serious effort to bring uniformity to their statistics on this issue. The pending caseload is an important statistic for assessing the court's productivity and its need for additional resources.

The way that a court defines when a case is disposed affects statistics on pending caseload and is an important issue for courts that monitor their compliance with disposition time standards. In at least one state where the supreme court monitors trial court case processing times, the NCSC found that some courts entered a criminal case as "disposed" when a guilty plea was verbally entered in court. Other jurisdictions in the state waited until the official paperwork had been processed and signed by the prosecutor, which could be a week or more after the guilty plea is verbally entered. Differences in the way that courts define "disposed" have led to differences in the percentage of cases disposed within the state's time standards.

In a similar vein, is a civil case disposed when the verdict is announced in court, when the judgment is filed, or when the judgment has been satisfied? Differences in answers can create significant differences in case-processing times and pending caseload figures. The key considerations are uniformity among courts within a county and also within a state.

3. *Determining Which Data to Record and Report*

With so many types of cases, pleadings, and other events and documents in a court, staff could become overwhelmed by the details of data entry. At some point, as the number of codes increase, the accuracy and uniformity of data entry probably decrease. Decisions about which types of codes or data to enter for caseflow management pur-

1. See the definition of "criminal case" in Conference of State Court Administrators and National Center for State Courts, *State Court Model Statistical Dictionary* (Williamsburg, Va.: National Center for State Courts, 1989), p. 19.

poses will depend on many factors. A court clearly needs data to monitor case-processing times. Thus, a court needs high-quality (accurate, uniform) data on key dates, especially filing and disposition and other interim dates that may trigger certain court events (for example, answer filed, pretrial conference). A court should also have high-quality data on meaningful case categories. As laws and public concerns change, courts may need to modify these categories. For example, with heightened concern about the need for tort litigation reform, courts should be able to provide their legislatures with high-quality data on the number and outcomes of medical malpractice and products liability cases. The public also deserves to know how many domestic violence and drug cases their courts are handling. All these legitimate considerations must be weighed in deciding which types of data to systematically enter and report.

B. EFFECTIVE CASEFLOW MANAGEMENT REPORTS

Court managers need regular caseflow management reports that are useful to judges and themselves. Everyone agrees that courts should be able to accurately count what flows in (filings) and flows out (dispositions) of the court during a given time period. Effective caseflow management, however, requires more detailed information about court performance and at least occasionally some creativity in presentation of this information.

This section will provide guidance on development of useful caseflow management reports. It is the court manager's responsibility, of course, to see that the information is actually used to effectively manage the court's caseload.

Caseflow management reports are of greatest utility when they are generated to monitor court performance that is related to case-processing time standards or goals such as those discussed above. Regular caseflow management reports assessing court performance related to the court's goals can be very powerful management tools. (Sample caseflow management reports are in Appendix C.)

1. *Data on the Status of Individual Cases*

The most important goal of courts is to do justice in individual cases. Attention to individual cases is central to caseflow management. Judges should have information on cases that will come before them at least a week before the parties appear in court. A weekly calendar of cases should indicate litigant names, case number, case type, type of scheduled event, and scheduled time.

In addition, court staff should produce regular (monthly) reports that list cases approaching and exceeding the court's case-processing time goals. If the court uses an individual or direct calendar, these reports can be produced for each judge's caseload. If the court uses a master calendar, they should be produced for the chief or administrative judge(s) responsible for case or calendar assignments. These reports should include the case number, plaintiff and defendant names, case type, and the date and type of next scheduled event. Cases exceeding the time standards, of course, should be given highest priority in scheduling events. Those approaching (for example, within 30 days of) the court's time standard should be given second priority in scheduling events.

The most important goal of courts is to do justice in individual cases.

2. *Data on Courtwide Caseload and Performance*

Several important courtwide statistics should be reported regularly by every court; most courts already report some of them. (See the measures of performance in Appendix B under Trial Court Performance Standard 2.1.)

a. Case filings

Every court should be able to accurately track and report the number of cases filed by general case category (civil, felony, domestic, etc.). Statistics on the five- to ten-year trend in filings by case category are especially useful because they can isolate where increases are occurring.[2] Total court filings may have risen only slightly, but specific trend data may

2. If the court changes the way it counts "cases" the change must be noted in any subsequent reports so readers understand that the new data are not comparable to data from previous years.

show that general civil filings have declined while domestic relations case filings have risen substantially. Trend data on specific case categories, therefore, can help a court identify the need for re-allocation of judicial resources, new facilities or equipment, additional judges or support staff, equipment, or training.

Data on filings can be even more useful if they are combined with statistics on the number of full-time equivalent (FTE) judges.[3] Simply displaying data that shows a large increase in filings may be somewhat misleading if the report fails to show that the court also obtained additional judges during the time period. Conversely, if filings have increased substantially and the court has not received any new judges, showing the number of filings per judge over a 10-year period—especially in a bar or line chart—will dramatically illustrate what has transpired in the court.

Finally, courts should be able to generate ad hoc or special reports that indicate the number of filings for specific types of cases. For example, within the civil case category, the court should be able to report the number of medical malpractice, products liability, and auto negligence cases filed in the past year. Although statistics on these specific case categories might not necessarily assist in the day-to-day management of the caseload, they are of great utility to legislators who must often vote on bills to change laws relating to specific categories of cases. They need to know the volume of these cases and filing trends.[4]

b. Clearance ratio

In addition to understanding the magnitude of—and trends in—the case filings, it is very important to know how well a court is "keeping up" with the incoming caseload. The best quick measure is the clearance ratio, which is the total number of cases (of a given type) disposed during the year (or quarter), divided by the total number of cases of the given type that were filed during a period. For example, if a court had 1,000 civil cases filed in the past calendar year and disposed of 900 during the same period, the clearance ratio equals .90. This means that the court "cleared" or disposed of 9 cases for every 10 that were filed during the year. Ideally, a court should generate a clearance ratio of 1.0 or higher each year. If a court's clearance ratio is continually less than 1.0 over an extended period, the court will develop a larger number of pending cases. As the pending caseload grows, delays will almost certainly follow, which could pose a serious threat to the integrity of the court's dockets. The clearance ratio over a period of five or more years should be tracked to clearly identify trends in the court.

c. Pending caseload

Filings alone are not a very accurate picture of a court's caseload at a particular point in time. A more complete picture of the court's caseload emerges when the court also reports the number of pending cases: those that have been filed but not disposed. The number of *pending* cases is crucial because it is the number of cases that are potentially subject to some court action on a given day. This number may be more or less than the number of cases filed in the past year. Some observers consider the number of pending cases a measure of the court's backlog. (See the sidebar in this chapter called "Measuring Backlog.") Line or bar charts that display changes in the pending caseload for each major case category over the past five or ten years can be an effective way to explain the changing caseload in a court. Combining data on trends in filings and pending cases in one line chart would be very interesting and useful, especially if both have been rising significantly in recent years.

A court that seeks more refined information about its caseload should consider a regular report that examines the *age* of its pending cases. How is the pending caseload spread across the age spectrum? Court managers, for example, should know if an unusually large number of pending cases are approaching or about to exceed the court's case-processing time standards.

The sample report (Figure 3) could be modified to display data on cases according to time periods that are meaningful to the court. If one of the court's goals is to dispose of 75 percent of civil cases within a given time period (for example, 15 months), that time period should be one of the benchmarks in the table.

In the table, the court has a potential problem brewing in the civil division, where an unusually large number of cases are pending

3. To produce meaningful statistics on the caseload per judge, the court needs to identify the number of "full-time equivalent" (FTE) judges that handle each type of case (civil, felony, domestic, small claims, etc.). If a court has separate divisions in which judges handle only specific case types (for example, civil, criminal, domestic), counting of FTE civil judges should be straightforward. However, some courts will have difficulty identifying the number of FTE judges handling a specific case type. First, adjustments must be made for part-time judges. For example, three retired judges (or commissioners, referees, magistrates) each working half time equal 1.5 FTE judges. Second, if a court has no distinct divisions, and the judges handle a mix of case categories during any one assignment period, there are two ways to determine the number of FTE civil judges: (1) Perform a brief survey of the judges in your court to determine the average percentage of time that they spent on each case type during the past year (or quarter). If 10 judges handled civil cases and, on average, they report that they spent 60 percent of their time on civil cases, the court has 6 FTE civil judges. (2) Examine the court's monthly calendars during the past year (or quarter). Determine the percentage of judge days devoted to each case category. For example, if there are an average of 20 workdays in a month and the court has 10 judges, there are 200 judge days per month. If the court had 80 calendar (judge) days assigned to civil case matters in the average month, the court had 4 FTE civil judges.

4. Some jurisdictions require plaintiffs to complete and file a standard cover sheet to accompany the complaint in a civil case; the cover sheet provides a list of specific case types with check boxes that the attorney is required to fill in. This makes data entry easy for court or clerk's office staff.

between 701 and 730 days (just approaching the two-year disposition time standard). In this situation, a court should identify the oldest cases, learn why the large number of old pending cases exist, and determine what can be done to bring them to disposition in a reasonable time. Naturally, if this type of report is produced monthly or bimonthly, the court can probably identify older cases somewhat earlier and avoid waiting until the cases are within 30 days of the time standard to take action.

Data on pending caseload may be the most critical data for caseflow management. Research in 39 large urban courts found no significant statistical correlation between the number of filings per judge in a court and key measures of case-processing time; however, there was a strong correlation between a larger number of pending cases per judge and longer case-processing times.[5] Despite the obvious significance of data on the number and age of pending cases, a surprising number of courts do not track this information. Current case management software makes it easy to monitor the number of pending cases by case category, so every court should routinely track and report its pending caseload.

d. Backlog index

Statistics on pending caseloads, as discussed above, may be among the most important information for effective caseflow management. Another very useful statistic involving the pending caseload is the backlog index, which is one of the quickest and most reliable indicators of courtwide performance relating to case-processing times. It measures the pending caseload against the court's capacity to dispose of the caseload during a given time period. Specifically, it is the number of cases (of a given case type) *pending* at the beginning of the year, divided by the total number of cases (of the given case type) *disposed* during the year. For example, if a court had 1,000 pending felony cases at the beginning of the year and disposed of 2,000 felony cases that year, it would have a backlog index of .5, which is a good backlog index for most courts. This index can

5. See John Goerdt, Chris Lomvardias, and Geoff Gallas, *Reexamining the Pace of Litigation in 39 Large Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1991). Numerous other multi-jurisdiction studies of case-processing times have also found no correlation between filings per judge and case-processing times; see for example, Thomas Church et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1978) (21 courts); and Barry Mahoney et al., *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1988) (18 courts).

FIGURE 3
SAMPLE REPORT: AGE OF PENDING CASES FOR STATE TRIAL COURT OF GENERAL JURISDICTION (ON JANUARY 1)*

Age (days)	CIVIL (n)	%	Age (days)	FELONY (n)	%
0 – 90	500	23	0 – 30	250	12
91 – 180	450	20	31 – 60	230	11
181 – 270	300	14	61 – 90	210	10
271 – 360	220	10	91 – 120	203	10
361 – 450	190	9	121 – 150	200	10
431 – 520	150	7	151 – 180	195	10
521 – 610	115	5	181 – 210	180	9
611 – 700	80	4	211 – 240	150	8
701 – 730	150	7	241 – 270	130	7
Over 730	50	2	271 – 300	100	6
			301 – 330	80	4
			331 - 365	50	2
			over 365	15	1
TOTAL	**2205**	**100**		**2003**	**100**

*This type of table could be produced monthly or quarterly, for the whole court and for each judge's caseload (if the court uses an individual or direct calendar system).

6. We refer to the "*equivalent* of the pending caseload" because some of the cases pending at the beginning of the year may still be pending at the end of the year; we mean that the court simply disposed of an equivalent *number* of cases as were pending at the beginning of the year.

7. See for example, Church et. al., *Justice Delayed; Mahoney et al., Changing Times in Trial Courts*; and Goerdt et al., *Reexamining the Pace of Litigation in 39 Urban Trial Courts*.

8. Thanks to Susan Boynton at the Michigan State Court Administrative Office for her thoughts on the creation and use of continuance reports; her ideas are represented throughout this section.

9. Trial continuances may be the most important continuances to monitor because they are likely to create the most delay and cause the greatest disruption for jurors, judges, and court staff.

be interpreted to mean that the court "turned over" or disposed the equivalent of the pending caseload within six months (0.5 equals a half-year).[6] A backlog index of 1.0 means that the court disposed of the equivalent of the pending caseload in one year. A court should have a minimum goal of achieving a civil backlog index of 1.0 or less. On average, criminal cases should be disposed more quickly than major civil cases, so courts should maintain a lower backlog index for criminal cases than for civil cases.

Research confirms the utility of monitoring the backlog index. At least three major multi-jurisdiction studies of urban trial courts have found that a larger backlog index is strongly correlated with longer case-processing times (for example, median days from filing to disposition) among urban trial courts.[7] This finding is not surprising because, as indicated above, the backlog index is a measure of case-processing time: how long it takes to dispose of the equivalent of the pending caseload at the start of a one-year period.

e. Age of disposed cases

Statistics on the age of disposed cases is the most direct means to monitor a court's performance related to its case-processing time goals. States that have adopted the ABA disposition time standards suggest that their courts should dispose of 98 percent of all felony cases within six months of arrest and conclude all of them within one year. Court managers could produce a very useful quarterly report that includes statistics directly on these measures. What percentage of felony cases disposed in the past quarter were concluded within six months? Within one year? Assuming that the court has disposition time goals for each major case category, court managers could produce the same type of quarterly (and annual) report for each category.

f. Continuance reports

Many judges and court managers believe that one of the primary reasons for excessive case-processing times in their courts is that judges grant too many continuances. To emphasize the need to reduce or minimize continuances, some courts produce and disseminate regular reports on the number of continuances granted by judges.

One problem in this area is defining a "continuance."[8] Generally, a continuance is the cancellation and rescheduling of a scheduled court event. If a court begins a scheduled event but does not complete it and reschedules another similar event on another date or in another courtroom (so that the case is "in progress"), the case did not receive a "continuance" by the standard definition. The court should count only events that were canceled and rescheduled to occur in their entirety on another date.

For courts that choose to collect and report data on continuances, the following factors are important: (1) the type of event continued (trial, motion hearing, or settlement conference),[9] (2) the individual who requested the

MEASURING BACKLOG

When someone asks for statistics on the size of the court's "backlog," what is the court's response? There are at least three ways to respond to this question; each measure has some utility.

To some observers, the total number of pending cases (filed and still awaiting disposition) is synonymous with term backlog. Divide this number by the number of full-time equivalent judges handling the given case type in your court and you have a measure of pending cases per judge, which some consider the backlog per judge.

To other observers the term backlog means the cases that are ready to go to trial (or could be settled) but the court cannot get to them on the calendar. If cases are ready for resolution but the court cannot get them to trial before an available judge, then these cases can reasonably be considered "delayed" or "backlogged." Not every case that has been filed, however, is ready to be disposed; many have not had an answer filed or not had sufficient time for discovery or pretrial motions, so they are not ready to be resolved. Therefore, some courts use the number of cases on the trial calendar (assigned a trial date or week) as their measure of pending caseload or "backlog."

A third way to measure the extent of a court's backlog is to examine the percentage of cases that exceed the state's or the court's disposition time standards. For example, the ABA disposition time standards suggests that 98 percent of all felony cases should be disposed within 6 months after arrest and all felonies should be resolved within one year. If 30 percent of a court's pending cases are over 6 months old, then it would be reasonable to suggest that about 28% of the pending felony cases qualify as "backlogged." If 10 percent exceed one year old, then 10 percent are seriously backlogged. Regular statistics on the percentages of cases that exceed the court's disposition time goals can be a very powerful tool for managing the caseload.

Cases approaching and beyond a court's time standards, of course, should be given high priority on the calendar. Court managers and administrative judges should always know how many cases are backlogged (i.e., exceed case-processing time goals) and use monthly or quarterly reports to identify both those that exceed the time standards and cases that are approaching the standards.

continuance (the court, plaintiff, or defendant), and (3) the reason for the continuance (for example, attorney not prepared, key witness not available, attorney scheduling conflict, or courtroom or judge not available).[10] Quarterly reports (by case category and by judge) containing such information could be very useful for managing a court's dockets and providing incentives to judges and attorneys to minimize continuances.

Gathering good data, however, may be a problem. Chief or administrative judges, court managers, and staff must be committed to monitoring of continuances to make this a worthwhile endeavor.

3. *Statistics on the Performance of Individual Judges*

If the judges in a trial court are committed to effective caseflow management, they must accept some level of accountability for their own performance. One problem, however, is that important circumstances may affect the comparability of case statistics for individual judges. One of the most significant considerations is the manner in which cases are assigned to judges—individual judge statistics are more clearly meaningful in an individual calendar environment.

a. Factors that limit the ability to compare individual judges' statistics

Ideally, courts should be able to monitor and compare statistics on the caseload (filings, dispositions, and pending cases) and performance (case-processing times) of individual judges. But comparing judges' caseloads and performance can be problematic. For example, some judges in rural districts may spend many hours during the week traveling to remote court locations, while other judges in the same district may remain in one location and have more hours each week to hear trials and motions. In less populous districts, one judge may handle only criminal cases while another judge handles only civil cases and a third judge handles a mix of cases. In each of these situations, the judges' caseloads and case-processing times could not be compared in a meaningful way. Their case-processing times, however, could be compared to the court's case-processing time goals.

Comparisons of individual judges can also be difficult in urban courts. In courts with a master calendar system, one judge may handle criminal arraignments; another may handle motions and serve as the master calendar assignment judge; and the others may handle only trials. Reports showing data on the caseloads of individual judges would not be very useful in this situation. Where a master calendar system is used, court managers should produce monthly courtwide statistics on at least the following: year-to-date filings and dispositions by case category, number and age of pending cases by case category, and number of pending cases approaching and exceeding the court's disposition time standards. A master calendar court should produce quarterly and annual reports on the age of disposed cases.[11]

b. Advantages of an individual calendar system for reporting judges' statistics

One of the advantages of an individual or direct calendar system in a medium-size or larger urban court is that the court might be able to compare the caseflow management performance of judges, at least within a division (for example, criminal, civil, or domestic). For example, in a civil division with an individual calendar system, each judge is assigned approximately the same number of cases each year. In this situation, a court can produce monthly or quarterly reports on the filings, dispositions, and pending caseloads of individual judges in the division. These reports, if distributed to all judges in the division, naturally create an incentive for judges to effectively manage their caseloads; no judge wants to have the lowest clearance ratio or the most cases pending beyond the court's disposition time goal(s). Some large urban courts that have significantly reduced pending caseloads and case-processing times consider these types of reports on individual judges' performance as critical components of their new caseflow management programs.[12]

If the judges in a trial court are committed to effective caseflow management, they must accept some level of accountability for their own performance.

10. There may be many reasons for a continuance, but the judge or courtroom clerk will have to decide which reason is the primary or most important reason; otherwise, data collection and entry could become very tedious and the quality of the data may decline.

11. Statistics on age of disposed cases should be tied to the court's disposition time goals. For example, if the court aspires to dispose of 90 percent of civil cases within 15 months of filing and 99 percent within two years, the court should report the 90th and 99th percentile case-processing times for disposed cases for each quarter and year.

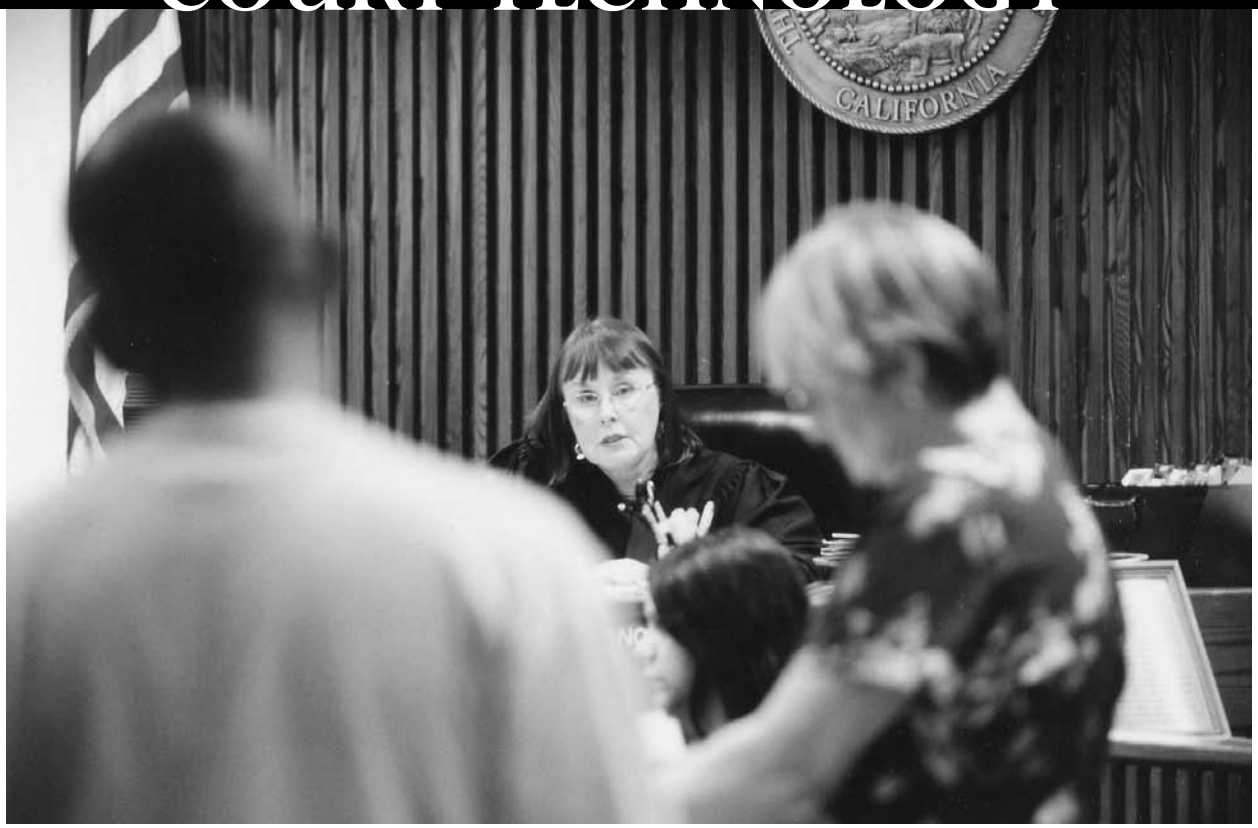
12. See for example, Kent Batty, et al., *Toward Excellence in Caseflow Management: The Experience of the Circuit Court in Wayne County, Michigan* (Williamsburg, Va.: National Center for State Courts, 1991). The Wayne County Circuit Court dramatically reduced delay in civil cases. It switched from a master to an individual calendar and implemented a differentiated case management program with four tracks.

C. CONCLUSION

None of a court's standards and goals, and none of the information or reports suggested in this section, would have an impact on caseflow management unless the chief or presiding judge and key court managers actually use the them to monitor and manage court performance. How can a court manager increase the probability that these reports will be used? First, the presiding or chief judge and court manager must be convinced that reducing litigation cost and delays and meeting case–processing time goals are important court objectives. Second, the reports must be based on high-quality (accurate, comparable) data. Third, the reports must be timely. If a quarterly report lists pending cases that exceed the local disposition time standard as of March 31, but is not generated and disseminated until May 15, it may not be very useful (that is, many of the cases might already be disposed or their status might have changed). Fourth, the data must be presented in a concise manner that is easy to understand. Periodic reports (for example, the court's annual report) should include charts and graphs that present a vivid picture of trends in the court's caseload or performance. Finally, as argued earlier, at least some of the regular reports should directly assess the court's performance in relation to case-processing time goals. Without clear goals regarding court performance, even the clearest and most accurate caseflow management reports will not be very useful because there will be no guideline for what the court's caseload or performance should be. If there are clear goals, the reports will help the court monitor its performance in relation to the goals and identify the cases that need immediate or near-term attention to meet the goals.

CHAPTER VII

COURT TECHNOLOGY*



Commissioner Nancy A. Cisneros sentences a defendant in Fresno County's drug court.

Computers and other technology are important tools for effective caseflow management. In its standards for court organization and trial courts, the American Bar Association urges courts to make effective use of automated information systems and other state-of-the-art technology.[1] The Professional Development Advisory Committee of the National Association for Court Management (NACM) has observed that, working together, judge leaders and professional court managers promote caseflow management by "applying technology to caseflow management, including creating and maintaining records, supporting court management of pretrial, trial and postdispositional events, conferences and hearings; monitoring case progress; flagging cases for staff and judge attention; and providing needed management information and statistics."[2]

Those planning the implementation of a caseflow management improvement program should thus give appropriate attention to the assistance that can be provided by technology. This chapter reviews some of the ways that court technology can be used productively in support of improved caseflow management. It gives primary attention to computerized case management information systems, and it summarizes some of the other technology applications that should be considered.

A. AUTOMATED CASE MANAGEMENT INFORMATION SYSTEMS

An overall court management information system would contain a personnel management subsystem; a budget and accounting subsystem; and a supplies, logistics, and facilities management subsystem. But the heart of such a system would be the case information subsystem to support the court's caseflow management efforts.[3] This subsystem should be designed to support not only case-processing transactions for individual cases but also operational controls, management controls, and strategic planning. A comprehensive automated case management information system should have features supporting the following activities: indexing, docketing, notice preparation, court scheduling and calendar preparation, management and statistical report generation, and integration with the court's automated financial system. Many commercial vendors provide sophisticated case management information systems for courts.

This chapter should serve as a basis for understanding commercially available court case management information systems. Through increasing use of relational SQL compliant databases (by which one can read and manipulate data with many software tools) and with the aid of modern fourth-generation languages, many companies can deliver complete systems to all sizes of courts. Consequently, state or local governments need not undertake expensive software development projects for courts.

1. Relationships

To build or purchase an effective automated court case management information system, one needs to understand the basic structure of court data. Largely because of relationships among data, automation and court professionals find design and development of a case management information system difficult. The model on page 100 depicts the four basic types of data maintained in courts: *person-related data* (defendants, parties, attorneys), *time-related data* (court calendars and remainders), *case data* (history, event statistics, and records), and *financial data* (fees, fines, work, and jail). The difficulty in automating court data is that each of these data types relates to all of the other data types in a "many-to-many" relationship.

2. The Challenge Facing Case Management Information Systems

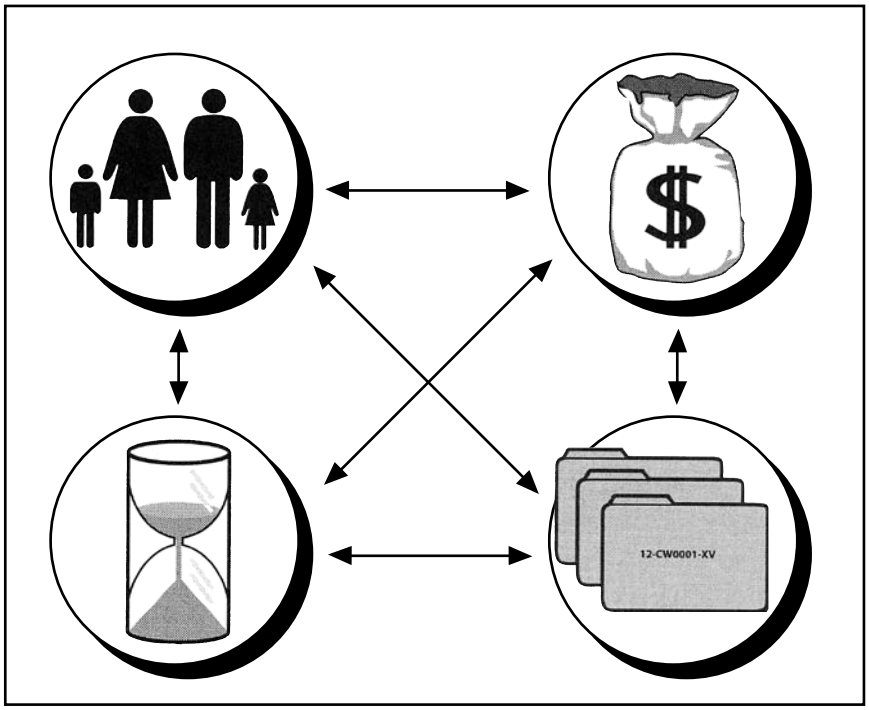
To understand the difficulty of creating an effective case management information system for a court, it is helpful to compare the task with the relatively easy task of managing a single account by a bank. An individual bank account is relatively easy to program. All deposits and withdrawals are tracked by one account number. It is easy to program the computer to search all the records relating to the account, perform calculations, and produce a monthly statement. (Because multiple data are related to a single account, computer specialists have called the relationship a "one-to-many" relationship.)

1. See ABA, *Standards Relating to Court Organization* (1990), Sections 1.60-1.64, and *Standards Relating to Trial Courts* (1992), Sections 2.80-2.83.

2. See Appendix A, p. 149.

3. Throughout this chapter, the phrase "case management information system" is used in place of other phrases that might be used to describe the computer software that provides important information about the status of cases. An automated system that provides case information critical for effective monitoring of the status of individual cases or a court's entire case inventory might be called a "case information system," a "case management system," a "case management application," or a "case management information system." The phrase "case information system" may be inadequate for describing what a well-designed computer system can do to aid clerical supervisors and staff in the management of case processing. Although the designations "case management system" or "case management application" may be sufficient for a court technology expert, they can be dangerously misleading for a judge and a court administrator who believe that a computer system is all that is needed for effective and efficient caseflow management. Management must be undertaken by the judge and others working with the judge; it cannot be done by a computer software system. The three basic aspects of day-to-day management are setting reasonable expectations, measuring meeting of those expectations, and holding people accountable (see Chapter V). An effective information system is an important tool for determining whether expectations have been met. One might thus say that a good information system is no more (and probably much less) than one-third of what is needed for an effective caseflow management program.

* Section A of this chapter was initially prepared by James E. McMillan, based on articles that have previously appeared in different issues of the National Center's *Court Technology Bulletin*. Section B relies in significant part on a paper by Larry Polansky, "Technological Opportunities for Reduction of Litigation Cost and Delay," prepared for a meeting of the Working Group on Developing a *National Agenda to Reduce Litigation Cost and Delay*, Tucson, Arizona, May 2-4, 1997.



Courts maintain four types of interrelated data.

In contrast, one person in a court system may have many different actions, in many different stages, in many different cases. For example, a criminal defendant may simultaneously be involved in a domestic relations case, a civil case, and multiple criminal matters. Each of these cases has multiple events on the calendar and many filings and involves a mix of attorneys and judges. The criminal defendant may also be making payments on previously levied fines and child support. All of these relationships among persons, cases, time, and money can become very complicated very quickly. These many-to-many relationships present difficulties to a computer system designer and programmer who must define the relationships to build a court's case management information system.

In the 1970s, programmers built offender-based tracking systems (OBTS), which use a hierarchical database structure (suitable for the one-to-many relationship presented by a bank account). Now there are relational databases that are more flexible and that allow programmers to build both one-to-many and many-to-many relationships. Unfortunately, relational databases still require programmers to define relationships as they are building a system that will perform well in retrieving and storing information. This is why the first generation of case management information systems built for courts in the 1980s used either a person-centered or case-centered design to provide access to database records. Person-centered systems (those systems using a person's identification number, such as a driver's license number) work best in traffic, criminal, and juvenile systems. Case-centered systems (those using the case number as the primary access point) work best for civil, probate, and appellate systems. In the 1990s, case management information systems allow information to be queried in multiple ways—for example, by judge, attorney, courtroom, courthouse, witnesses or victims, and documents.

The future will bring object-oriented database systems, which will allow programmers to define relationships among data in the way that courts work—dynamically. If a court discovers that a defendant is really part of a gang that is being indicted in another racketeering case, it can establish a link between the two cases. Thus, when actions occur in either case, the other case's records are automatically linked and the reader can easily view all the actions relating to the defendant. The difference between object-oriented databases and relational databases is that links can be easily removed or created if the information proves to be incorrect.

The upcoming sections treat each of the four basic types of data that are kept by courts—person, time, case (including case events), and financial data. They also explore the

PERSON-RELATED DATA LINKING

A unit in the District of Columbia courts has an excellent database for tracking pretrial drug testing. Although a person may be related to several different cases, it is the person and the results of his or her drug tests, even over several years, that are the focus of this database. In an ideal system, this database—although located in a different computer system—would be linked to the master person record and be directly accessible to the court for initial appearance and release hearings.

The Midtown Manhattan Community Court Project offers another good example of effective person-related data linking. The best thing about the Midtown Manhattan system is the way that social service workers compile data from multiple sources, including interviews of an accused person. Such data are then presented to a judge on a single screen, with risk factors highlighted in red and warning factors highlighted in yellow. As a defendant enters a courtroom, the computer screen gives access to police information about the defendant's arrest, the defendant's criminal history, and information from the clerk's office about any outstanding warrants against the defendant.

Source: National Task Force on Court Automation and Integration, "Justice and Technology in the 21st Century: Findings and Recommendations from the Report of the National Task Force on Court Automation and Integration" (SEARCH, Fall 1998).

relationships among data types and the ways that current and future court case management software programs deal with the day-to-day complexities of court operations.

3. The Person

The most complex module in a court's automated case management information system is that dealing with persons. The notion of a "person module" is used here in the most global terms. A "person" in a case management information system is any individual or legal entity that interacts with the court, including, for example, judges, attorneys, clerks, litigants, witnesses, and social service case workers.

A judge can be related to a case in several ways. In an individual calendar case-assignment system, the judge is the sole adjudicating officer. In a master calendar case-assignment system, different judges may be assigned to different portions of the same case. Likewise, a person can be linked with many companies, family members (current and former), and attorneys, as well as with treatment programs, social service programs, court orders, and even warrants. It is the relationship of a person to the case that is important. A case management information system must reflect the complexity of the relationships that arise in legal matters.

If one recognizes the amount and complexity of the system data needed to be related to a "person" rather than to a "case," one begins to understand the amount of work necessary to program a case management information system. One of the criticisms often made of current criminal history systems is their use of hierarchical databases, which tend to simplify data. The information is rolled up into the most serious offense, or category, or the most current data. Using relational databases, courts can collect all the information necessary to identify patterns and practices of individuals and use this information to make better decisions.

To deal with the complexity of the person module, the modern case management information system organizes data in many tables, each relating to a person's master identification number. It is desirable for court systems to track multiple addresses against a person. The ability to store a history of addresses is also important for postjudgment, collection, and warrant processing. Although several persons may live or work at these addresses, the case management information system links the individual to each place.

Creating an accurate master identification number is one of the most daunting problems facing courts today. Courts currently rely on state and regional criminal justice information systems (CJIS) and criminal history systems using fingerprint identification for a person's criminal identification number. If the offense is sufficiently serious, there may be a National Crime Information Center (NCIC) number. In most jurisdictions this identification process takes too long. Often, because fingerprint identification can take a lot of time to obtain, the prosecution does not allege prior convictions. In addition, many criminal identification systems have strict rules concerning acceptance of conviction information with incomplete or smudged fingerprint cards. Consequently, many convictions are not entered into the state and national systems. Finally, for traffic and misdemeanor offenses, only location information is typically used to identify uncooperative persons.

Fortunately, technology will help. Automated fingerprint identification systems (AFIS) are being installed throughout the country. If used in conjunction with "Live Scan" technology (a method of digitizing fingerprints), the process of identifying serious offenders can be greatly shortened, and accurate person identification numbers can be quickly obtained. Some state motor vehicle departments are beginning to photograph drivers digitally and to store these images in central computer systems. With the growth of the "information superhighway," courts can plan to match defendants' faces with their official driver's license records. New technologies such as voiceprint also identify persons quickly. Through good design and planning, an effective person-related module of a case management information system can capture and store this type of data for case-processing and post-adjudication work.

The most complex module in a court's automated case management information system is that dealing with persons.

4. The Case

The most valuable part of a case management information system is probably the case module. Good automation design of this module gives the courts the greatest potential to grow in the future with the greatest benefit.

In simple terms, the case-tracking module is the case history. In a court clerk's office with a manual record system, the case history was traditionally found in the docket book or the register of actions. In some systems, the documents received and activities occurring in the clerk's office were separated from the actions that occurred in the courtroom. These actions were recorded in "minute books."

It is important to understand the historical reasons that courts kept docket books before the introduction of computerized case management information systems. First, the case history in a docket book provided a quick source of information to the clerks about the status of a case and the documents that had been received. Second, the docket book was a "double check" to determine the completeness of a case file. And third, it could be used to quickly review case results without recourse to case files. Any automated case management information system should serve these functions as well as or better than docket books.

For automation purposes, it is best to view the case module as simply a means for tracking events. Events to be recorded and tracked include the date that documents were received, the date that the court issued orders, or the date that the court held hearings or a trial. The date on which an event occurred that concludes all court work on a case may be difficult to track. Examples are the final payment of fines, fees, and costs; the completion of probation by a convicted person; the settlement and satisfaction of a civil money judgment; the attainment of majority by a juvenile; the entry of a final adoption decree after abuse-and-neglect and termination-of-parental-rights proceedings; and the completion of all postdecree activity in a divorce case.

Current automated case modules have several elements for tracking these events. The first is the date of the event. The second is some type of numeric or alphanumeric code assigned to the event. For example, the code "INF" might signify the initial filing event. These codes are convenient for statistical tracking and for streamlining data entry. The computer system will either "look up" the associated text in this case for the initial filing and place it in a text field or dynamically display the text when the case history is viewed on a screen or printed. (Dynamic allocation saves disk space, which was formerly a great concern.) The third is entry of text relating to the event or provision of a link to the related electronic file that contains the description of the event. Very good systems will have word processor-type capabilities for this work. Free text capacity is necessary because the road to justice is not like an accounting system, in which everything must be registered under a single account number. Pre-coded entries, although fine for most events, cannot meet all the requirements of the court (especially for sentences and other judgments). Therefore, an automated system must allow the court to enter accurately what has occurred in each case.

Some case management information systems will provide fields for additional material, such as fees associated with a case event, the name of the judge or clerk who entered the event, and other statistical "flags." With good relational databases, most of this work can be handled through links to other tables. In a large-volume court, however, it is probably best to forfeit some disk space to gain speed in information retrieval.

The future of the case module is in its links to electronic documents (Judicial Electronic Document and Data Interchange—JEDDI) and images. It is important to remember that the case module is the history of the case and the summary of the case file. Those designing a new case system today should make sure that the electronic documents or images are summarized only once in the case module. It does not make sense to keep two distinct systems (a document/imaging system on one hand and a case-tracking system on the other) to index the case file if the court has electronically stored documents. The big payoff-aid with the management of day-to-day workflow-comes after the electronic documents are stored and properly logged and summarized. Case events should be coded so that once an event is logged the next scheduled event and the case file or

document is queued into the calendaring or tickler-reminder system for the judge or other court staff member. When a judge or a court staff person logs into his or her workstation, his or her daily tasks will be presented. Lost files should be eliminated or dramatically reduced. In addition, once the triggering system is in place, work can be evenly distributed. Bottlenecks can be identified and dealt with in a more manageable fashion.

5. Event Statistics and Case Complexity

A good case management information system should help to show the relative complexity of cases. In the early 1980s, a court might be considered fortunate to track the number of cases filed by general category, the number of cases pending, and the number of cases terminated. It might also try to collect data on the number of hearings and trials held. Such statistics do not come close to reflecting the complexity or the amount of work expended by the trial court, however. For example, in standard statistical reports, the O.J. Simpson trial would be recorded as no more than a single case pending for most of the year and one case terminated in a given month.

Today's case management information systems are better at capturing the "event statistics" of cases under adjudication. Every event, from the initial filing to the final payment that is received by the court, should be captured. Each of these events reflects work done in the court. Some are major events, such as trial days, and some are minor events, such as the receipt of a document. The number of events probably has a rough correlation to the complexity of the case. And in the future, courts should be able to assign weights to events to reflect the event complexity of the case.

In the past, statistical fictions, such as counting a case as "terminated" when the judgment was rendered, had to be created. Of course, everyone who works in courts knows that a great deal of work occurs *after* judgment. In criminal cases, there are sentencing reports, records of fine payments, and appeals. Postjudgment motions in divorce cases consume a great deal of court resources. In child protection proceedings, a finding of abuse and neglect means that a great deal of postdisposition work may ensue. (See "F. Management of Court Events after Initial Disposition" in Chapter I.) This work is largely ignored by many older case management information systems. Event statistics reflect all the work that has been done. Therefore, if a new statute or court rule requires the court to perform additional work, event statistics will reflect this change even though the caseload remains unchanged.

With the latest automated case management software, court computers can easily count the number of recorded events during a month. If the case management system has an event table that provides standard codes for each event, the computer can count the type of events occurring during a specific time period. The computer can even count time intervals between events if necessary.

Many judges are nervous about these statistical capabilities because they believe statistics do not accurately reflect their workload. Given the current statistical systems in many courts, these judges are right to be nervous. However, competition for scarce financial resources within government budgets means that courts must be able to "tell their story" using good statistics that reflect the work done in them.

Edwards Deming taught the business community the value of good statistical information in the 1940s and 1950s. Such information has now become the driving force for a powerful global economy. Courts need to follow this example and put statistics to work for them. Use of a good case management information system that reflects event statistics is a step in the right direction.

6. Time

Time is a court's most critical resource. Many judges and court managers have learned to manage their time and that of litigants when they come to the courthouse. Courts have not been as active, however, in the management of staff time and the monitoring of litigants' "out-of-court" time as it bears on the management of cases. A good "time module" in a case management information system will help courts use time more efficiently.

When court officials talk about the "time-tracking" function of their court case management system they are typically referring to a court's calendar system. Many court administrative offices manage the court's formal calendar for courtroom and chambers. A number of courts use standalone calendar-automation, which is not connected to the case management information system, and hence can create problems.

One planning a case management information system should define the time function in global terms. The "time module" should refer broadly to events that will occur in the future. They may be formal events (those appearing on the traditional court calendar) or events that the court staff or the court's computer system need to perform. A system with an ideal time module creates many different calendars, including formal ones for the court and informal ones for staff. Clerks need to know when to produce notices. Judges need to know the cases for which they must prepare. Everyone needs these informal tickler systems, which result in action, whether by judges, court staff, or litigants.

"Action" is a key word in caseflow management and in an automated case management information system. One might think about caseflow management as if the court were a "shark": most sharks have to keep moving to stay alive. So, too, do the cases in a trial court. Every case should have a future date set for either court or clerk action until all court work on it is finally completed. This guideline is especially important for probate, domestic relations, and juvenile cases, in which completion of all court work may require years (or even decades). Courts should schedule some date on which to review the status of these cases. The case management information system should support this important function.

A court manager might complain that a court already has enough to do to keep up with the events on the court's formal calendar. Again, this situation occurs because the time-tracking function is not effectively linked to the remainder of the case management information system. Automatic "triggering" of time events by the court calendar, the financial system, and (to a lesser extent) the person databases is important. For example, receipt of a pleading means that the computer system needs to create a notice (queue number 1), set a hearing (queue number 2), and set a time for the judge to review the pleading before the hearing (queue number 3). If a response is not received from the opposing party, a reminder is sent by the clerk (queue number 4), which may in turn cause a case to be added to a dismissal docket, potentially subject to dismissal for want of prosecution or entry of a default judgment.

Clerks and judges carry this flow of cases around in their heads. They know about the court rules that require a notice to be mailed once a hearing has been held or the time standards required for receipt of a pleading. Because they know this information, a computer can be programmed to take care of it—if the computer is linked to other parts of the case management information system. If not, clerks and judges have to enter the information into some other program on their computer systems or into informal to-do lists. They should just let the computer do it!

These automated work queues will be especially handy as courts implement imaging and JEDDI systems. The computer will be able to look at the work queues of different people and assist them in the preparation of their daily work. It will automatically retrieve the proper documents or files for a judge. If the judge prefers the information on paper, the computer will send it to the laser printer during the night for pickup in the morning. If the judge wants the information on the screen, it will be waiting there. Similarly, the clerk could be presented with a list of cases that require notices and other work.

The best case management information systems present time information in a variety of ways. Of course, they must be able to produce the traditional court calendar with party and attorney information. But these systems should also be able to display the calendar in different graphical views. Several commercial case management information packages summarize the number of actions occurring in a courtroom on an on-screen monthly calendar. This report looks like a page from a monthly calendar and shows the number of actions and the time allocated in the courtroom for each day. It is very easy to see where there might be an opening. A calendar-reporting system (such as that developed in the San Diego Superior Court in

California) uses bar charts to show each day of the week and the number of matters, by type, scheduled for the court. Both of these calendaring methods convey information rapidly and concisely.

7. Financial Receipts and Disbursements

In a court's case management information system, as much as half of the computer code may be for the financial module. The remaining code may suffice for the other three modules—persons, cases, and time. This distribution of code illustrates how complex the financial portion of a case management information system can be.

Issues associated with a typical criminal sentence provide an example of the complexities that must be addressed in designing a suitable financial module. Suppose that a person was sentenced to four weekends in jail (eight days total), a fine of $1,000, 40 hours of work service, and one year of probation. The $1,000 fine does not include the various state surcharges. In this example, suppose that the basic surcharge is 33 percent, but because the defendant was convicted of a particular offense, an additional $50 surcharge is levied. Now the total fine is $1,380. Disbursement requirements provide still another dimension. For the purpose of this example, assume that a state law requires that the first payee is the state, followed by the city.

The defendant begins to serve the sentence and agrees to pay the fine back in $100 increments over the next 14 months. This time payment agreement should be docketed in the case history. From the sentence, four account records need to be created, all linked to the case number and (more important) to the unique personal identifier number used in the court. By linking these records to the person number, all obligations can be consolidated for a global view by someone in the justice system. By keeping these obligations separate, each category such as outstanding fines and persons on probation, can be consolidated in summary reports.

The financial system should record transactions as the sentence is served—that is, reports coming from the jail, probation, and work service as each portion of the sentence is served. Many courts are unable to track these reports because of the extra work involved. To deal with this problem, small modules could be programmed to accept electronic reports from other parts of the system or to provide a simple interface for data entry into the court's system. The system should require monetary payments to be recorded and distributed to the proper accounts. A summary note should be written to the case history for each of the transactions.

As with the time function, the financial function should be defined in a very global manner because courts accept a variety of payments—not just monetary ones. In criminal cases, courts accept payment in terms of days in jail, years in prison, work service hours, and compliance with probation terms. All of these payments are obligations that need to be accounted for by the court. In addition, the court holds money in the form of bonds and trusts, requiring establishment of new accounts and different tracking procedures. Finally, the court tracks and passes moneys through for child support and victim restitution.

Even without identifying all the financial tracking devices used by courts, these examples show that court accounting systems are unique and complex. Given such complexity, it is important that all judges and court administrators understand that development of court accounting systems requires a significant amount of time. Fortunately, modern programming techniques to build table-driven systems have lessened this time.

Consolidations are a concern in the financial area. As defendants are convicted and required to pay fines and serve time for multiple cases, these obligations add up. However, they are relatively simple to track if the financial system is based upon the person's identification number. The larger concern is determining which accounts to pay first. There is no single answer to that question, because it is up to the jurisdiction and laws of the state. In the example above, the payments to the state are allocated first—the first $380 is disbursed to two different state accounts and the remainder goes to a city account. If there are no guiding laws, cases might simply be paid off in chronological order.

4. See Bureau of Justice Assistance and National Center for State Courts, *Trial Court Performance Standards and Measurement System Implementation Manual* (July 1997), Standards 2.2, 3.6, 4.2, and 5.3. Standard 2.2 and related performance measures are reproduced in Appendix B.

5. See Larry Polansky, "Technological Opportunities for Reduction of Litigation Cost and Delay," paper prepared for a meeting of the Working Group on *Developing a National Agenda to Reduce Litigation Cost and Delay*, Tucson, Arizona, May 2-4, 1997.

Security is another major factor in financial systems. Unfortunately, many courts have been victims of embezzlement because they deal in cash. There are ways to combat this problem. For example, in many systems it is easy for court clerks and judges to "adjust" or "forgive" fines. Thus, if a defendant's fine were illegally "forgiven," a court employee could pocket the final $200 on the computer system. One suitable solution would be to require that all adjustments be approved by at least two persons—typically, the chief judge and head clerk. It would be better, however, for approval authority to be given to the chief judge and someone outside the court, like the county administrator, the city manager, or the local head of finance, providing separate accounting controls to two political entities. By giving some thought to this issue, a court can devise a workable plan to provide appropriate safeguards in this area.

Providing for an audit is another important safeguard for the financial module. Whether a court buys or develops its own financial system, it should require an independent audit and certification in the implementation of the system as soon as possible. They will be expensive and time-consuming but in the long run certainly worth it. They will help to ensure that the court is accountable, disburses funds promptly, and is viewed by the public as having integrity, in keeping with applicable trial court performance standards.[4]

TIME AND COST SAVINGS FROM ELECTRONIC CASE FILINGS

Electronic case filing has been around since 1991, when the Superior Court in Wilmington, Delaware, first used such a system to keep track of documents in its growing volume of asbestos-related cases. Since then, dozens of other state and federal courts have introduced pilot electronic case-filing programs.

The Administrative Office of United States Courts has experimented with such a system in four federal district courts and five bankruptcy courts since 1997. The administrative office planned to add eight more courts to the project by the end of 1999 and to make electronic filing available to any federal court that wants it by the end of the year 2000.

New Mexico's 11th District Court, which sits in Gallup, Aztec, and Farmington to serve McKinley and San Juan counties, was scheduled to implement a pilot electronic case-filing program in March 1999. The system will initially be available only to lawyers, but the court administrator hopes within a year to make it available to nonlawyers as well.

The Third District Court of Kansas, sitting in Topeka to serve Shawnee County, compared electronic filing with manual case filing in 1997. On the basis of a clerk's salary and benefits, the court found that electronic filing would save the clerk's office about 9 minutes and $219 for every 100 documents filed. The new technology thus has the potential to provide significant cost savings for courts, in addition to time and cost savings for lawyers and, to the extent it has broader availability, to pro se litigants.

Source: Mark Hansen, "Courts Saving Time and Trees: Electronic Case Filings Gain Ground, but Non-lawyer Use is a Stumbling Block," *American Bar Association Journal* 85 (March 1999): 20.

B. OTHER COURT TECHNOLOGY

Computerized case information systems are not the only technology that can be used to improve caseflow management. Larry Polansky, a noted consultant on court management and the use of technology, has identified 10 technologies by which litigation cost and delay might be reduced:[5]

1. Jury Management Systems

Many computer-based jury management packages are available for courts. These packages can make the process of selecting, qualifying, and summoning jurors simpler and highly cost-effective.

2. Electronic Access to Other Justice System Information Systems

The court system is highly dependent on information from other components of the legal system, such as police, prosecutors, public defenders, private law firms, and state child protection agencies. Cooperative efforts of courts and other justice system organizations to determine the most efficient means for sharing information from automated databases can result in substantial time and cost savings for all participants.

3. Imaging Systems

When properly designed, imaging can be an extremely cost-effective means to store an electronic picture of a document in an electronic case jacket available to everyone with access to the court's computerized case management information system. Optical character recognition (OCR) enhances the effectiveness of imaging by translating the text material in an image into machine-processable information at an accuracy rate of about 90-95 percent.

4. Telephone Systems

To avoid the delay and cost of travel, many courts use speakerphones for remote testimony from distant witnesses, pretrial scheduling, status and settlement conferences, hearings on motions, and other tasks.[6] Interactive voice response (IVR) systems can be used to answer questions about specific cases or accounts, help schedule case activities, and even accommodate credit or debit card payments.

5. Electronic Mail, Internet Communication, and Electronic Filing

In recent years, the interaction of computers and communication technology has dramatically affected the way that individuals, the private sector, and government entities around the world conduct their affairs. Access to the "information superhighway" allows the court and counsel to communicate on many matters, the resolution of which can save time and money for all concerned. Electronic filing of documents is growing in use, and it should have a dramatic effect on court operations.

6. Facsimile (FAX) Transmission

Fax machines are now widely used by courts and law offices. They can facilitate filing of documents, sending of notices, requesting and deciding of arrest and search warrants and protective orders, commitment and release of prisoners, ordering of files from storage, requesting of legal research information, and ordering of lunch to avoid interruption of conferences in chambers.

7. Making the Court Record

Manual and machine shorthand have been augmented in recent years by computer-aided transcription (CAT), "real-time reporting" with the aid of computers, sophisticated audio-recording equipment, and voice-activated video recording. These technologies have significantly enhanced the flexibility of courts in managing court reporting services. If speech-recognition technology (see number 9 below) becomes cost-effective, it will significantly reduce the time and cost of making the court record.

8. Other Uses of Video Technology

Video technology has been found very cost-effective for criminal arraignments. It can be applied to other uses, such as pre-recorded or remote testimony by witnesses.

9. Speech Recognition[7]

This may soon be one of the most cost-effective alternatives for a wide range of data entry in the courts. In the courtroom, it

6. This can be particularly valuable for a rural court. See Frederic Rodgers, "The Rural Judge Can Always Be Found! Judicial Orders by Fax and by Phone," *Judges' Journal* 32, no. 3 (summer 1993): 34.

7. See Larry Polansky, "Speech Recognition for the 21st Century," *Court Communiqué* 1, no. 1 (March 1999): 2.

IMAGING FOR CHILD SUPPORT AND OTHER FAMILY CASES IN PONTIAC AND DETROIT, MICHIGAN

On January 1, 1998, a family division of circuit court was created in every circuit in Michigan. In each circuit court, the "friend of the court" has responsibility for child support enforcement. In 1999, the Third Circuit Friend of the Court (in Detroit, the county seat of Wayne County) expects to join the Sixth Circuit Friend of the Court (in Pontiac, the county seat of Oakland County) as a less-paper court when a new imaging system is introduced.

The friend of the court in Oakland County began integrating an imaging system with its computer system and document management process in 1991. Use of the imaging system has resulted in several benefits:

- Turnaround time for response to litigants' letters and calls has been reduced from 3-4 weeks to 24-48 hours.
- Multiple users can now access the same documents simultaneously.
- More than 70,000 active files are now available to friend-of-the-court staff and other designated departments within 30 seconds of request.
- More than 2,000 square feet of office space was saved when electronic image storage replaced paper files.
- A friend-of-the-court employee can respond to a litigant on the same day that an inquiry is received by using a word-processing software package with "templates" and "macros" that are integrated into the mainframe computer.
- Litigants and friend-of-the-court employees have noticed faster response times and increased productivity.

When the Third Circuit Friend of the Court completes its implementation of imaging, the office hopes to achieve some of the same benefits on a much larger scale. The office has more than 300,000 active cases, and the imaging system is expected to permit every member of the circuit court to have instantaneous access to all friend-of-the-court files. The creation of a family division at the start of 1998 created a need for an efficient method of moving files from one judge to another and underscored the need for a system permitting multiple agencies to review the same information. The imaging system for Wayne County is expected to meet these needs, as well as (a) the requirements of a statewide network for filing of civil domestic violence orders; (b) federal child support enforcement reporting requirements; and (c) requirements of federal, state, and county auditors.

Source: Sharon Pizzuti, "Third Circuit Friend of the Court Gets a New Image," in Michigan State Court Administrative Office, *The Pundit* 12, no. 3 (January 1999): 1.

may be used to record judicial decisions; to initiate the printing of written notices, sentencing documents, orders, or minute entries; or to schedule events that must be continued. At the cashier's counter in the clerk's office, voice data entry and electronic funds transfer may accomplish the posting of receipts for fines, fees, restitution payments, or child support payments. In the judge's chambers, speech recognition technology may aid both legal research and the drafting of correspondence.

10. Legal Research

Computerized legal research services are a major benefit of technology for judges and lawyers. CD-ROM disks can supply court opinions and statutes, thereby providing a very portable aid to legal research and substantially reducing the amount of law library or chambers space needed for storage of law books and the amount of staff time needed for "pocket part" maintenance.

C. CONCLUSION

The number of new technological developments advertised or described in newspapers and journals appears to increase almost each day. Judges and court managers must take advantage of disinterested and reliable sources of information about the latest application of technologies to court and caseflow management. Such sources include the technology staff and programs of the National Center for State Courts, the computer and technology courses and programs of the National Judicial College, the National Association for Court Management (whose annual conference includes meetings of court information technology professionals), SEARCH, the Forum for the Advancement of Court Technology (FACT), the Justice Management Institute, and the Court Technology Committee of the American Bar Association's Judicial Division.[8]

8. See Lawrence Webster et al., "What's New in Court Technology: An Overview," *Judges' Journal* 32, no. 3 (summer 1993): 6.

CHAPTER VIII

IMPORTANT RELATED MATTERS

Superior Court Butte County Judge William R. Patrick presides over a criminal case with the support of Court Reporter Karen Beckwith and Sheriff's Deputy Steve Collins.

In the experience of judges and court managers dealing with day-to-day court operations, other management tools, practices, and programs may bear on a court's management of its cases but are not themselves critical elements of caseflow management. These include (a) the way that cases are assigned to judges, (b) calendar structure and the organization of a court's workweek, (c) effective use of alternative dispute resolution (ADR), and (d) dealing with *pro se* litigants. These matters should be considered when a court seeks to implement a program for improving its caseflow management, and they are discussed in this chapter in terms of their relationship to such management.

A. SYSTEMS FOR ASSIGNING CASES TO JUDGES

Over the years, debate about what kind of system is best for assigning cases to judges for hearings or trials has continued. Yet experts in caseflow management have concluded that a court's case assignment system is not the most important issue to consider in caseflow management. In 1973, Maureen Solomon wrote that "experience in studying caseflow management techniques throughout the United States confirms that the system and procedures used for assigning cases to judges for hearing or trial are not the most important aspect of the overall caseflow management problem. The most important factor is judicial assumption of responsibility and maintenance of commitment to court control of caseflow."[1] In 1988, on the basis of a study of delay reduction efforts in 18 urban courts, Barry Mahoney confirmed this observation, concluding that a court's case assignment system does not appear to be a decisive factor in determining case-processing times: "The key variable may not be the generic type of system, but rather, the way the system is organized and operated."[2] Given the amount of discussion devoted to case assignment systems, it is worthwhile to consider the different systems and their general strengths and weaknesses in terms of caseflow management.[3]

1. *Individual Calendars*

Under an individual calendar system, each case is randomly assigned at filing to a single judge, who thereafter is responsible for all court hearings and case progress. Obviously, this is the approach that is taken in a one-judge court, although assignments are not made in a random fashion. Figure 4 illustrates what happens in an individual calendar system.

Perhaps the greatest strength of an individual calendar is that each judge takes individual responsibility for his or her caseload, is more easily motivated to exercise management control, and is accountable for the timely movement of cases to disposition. The judge becomes familiar with the individual nature of each case and need not "relearn" the facts and issues at each stage of proceedings. Because the case stays with one judge, rulings are consistent, and attorneys cannot "judge shop" to see if they can obtain a more favorable decision from another judge.

An individual calendar system has several weaknesses. One is that judges differ from one another in the management of their workload. Therefore case disposition times can differ and practices in and procedures for the same kinds of cases can vary. In an individual calendar system without central management, each judge is concerned only with his or her own cases. The individual calendar system can exacerbate the isolation that judges may experience, and may offer no incentive to judges to help one another with day-to-day calendar problems. Absent coordination among judges, an individual calendar system can create scheduling conflicts for an attorney, who may be expected to appear before two different judges at the same time. Finally, an individual calendar system may require more support staff and associated resources per judge than a master calendar system, because each judge is responsible for managing his or her own calendar.

In a study of case-processing times in urban courts in 1983 and 1985, researchers found that courts with individual calendars appeared to be consistently faster in handling their civil cases than most master calendar courts. Some master calendar courts were also very fast, however.[4] A study of dispositions in 1987 revealed that courts with individual calendars tend to have faster civil case processing times. Those courts tended to have case disposition time goals and to exercise early control over case progress. Moreover, master calendar courts were

1. Maureen Solomon, *Caseflow Management in the Trial Court* (Chicago: American Bar Association, 1973), p. 6.
2. Barry Mahoney et al., *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1988), p. 194.
3. Solomon's extensive description and analysis of case assignment systems in 1973 served to provide a conceptual framework and agreed set of definitions for the consideration of calendaring systems. See *Caseflow Management in the Trial Court*, pp. 6-30. That effort, along with Solomon's subsequent discussion of calendar systems in Maureen Solomon and Douglas Somerlot, *Caseflow Management in the Trial Court: Now and for the Future* (Chicago: American Bar Association, 1987), pp. 33-44, provide the foundation for the discussion of case assignment systems here.
4. See Mahoney et al., *Changing Times in Trial Courts*, p. 194.

FOOTNOTES REFERNCE PAGES 112 & 113

5. See Goerdt et al., *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1989), pp. 38-39.
6. See John Goerdt, "The Pace of Divorce Litigation: Why Some Courts Are Faster than Others," *Judges' Journal* 35, no. 1 (winter 1996): 18 at 25.
7. Queuing theory suggests the rationale for the potential benefits of a master calendar system. For customers awaiting service at a bank, a post office, or an airport ticket counter, a single waiting line with several counter personnel provides more prompt and efficient service than only one counter person for everyone or separate lines for each counter person. Two or more judges to hear trial-ready cases theoretically offers the same benefit.
8. See Goerdt et al., *Examining Court Delay*, pp. 76-77.
9. Mahoney et al., *Changing Times in Trial Courts*, p. 194.

SUCCESS WITH INDIVIDUAL CALENDARS FOR CIVIL CASES IN WAYNE COUNTY, MICHIGAN

The Wayne County Circuit Court is a trial court of general jurisdiction serving the Detroit area.[a] In 1976 and 1983 civil dispositions, it was the slowest of all the urban trial courts included in two national studies by the National Center for State Courts.

With a goal of meeting the civil time standards of the American Bar Association, the court implemented a delay reduction and caseflow management program with the following elements:

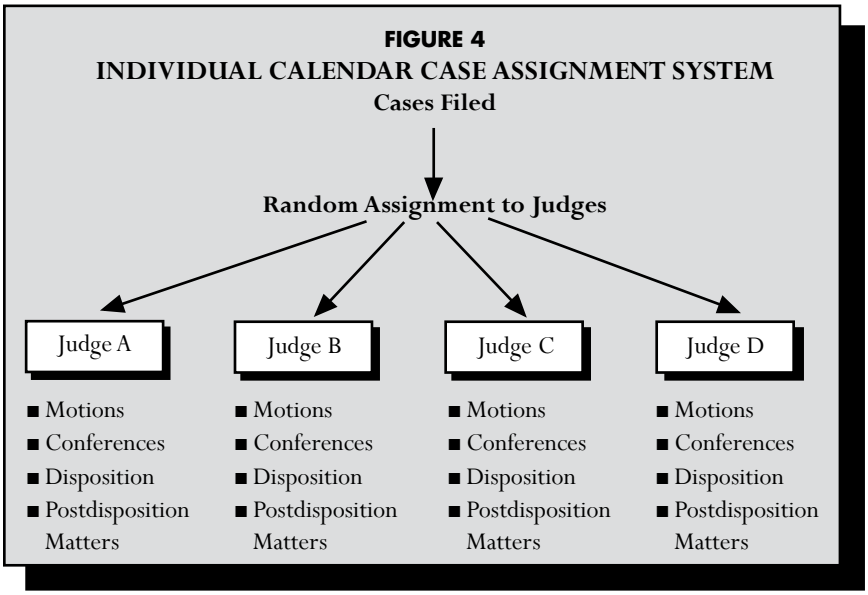
- A records consolidation effort leading to a complete inventory and analysis of pending cases, resulting in the formal "disposition" of a significant number of cases that had already been settled or abandoned
- An "old-case" backlog reduction effort in which active cases more than 30 months old were screened by central docket management staff and assigned to a special settlement conference program before a temporarily assigned judge
- An individual calendar program for pending cases not in the "old-case" category and all newly filed cases, begun with a seven-judge pilot team in 1986 and expanded in phases throughout the court from 1987 through 1989
- Two DCM case tracks, with different timetables for discovery and progress to trial based on relative complexity

As a result of this program, the court took control of its civil caseload, dramatically reduced the size of its pending inventory, and sharply reduced times to disposition. By 1992, it was one of the fastest courts among 45 large urban jurisdictions in a National Center study of civil litigation.[b]

a. This summary is based on the profile of the Wayne County Court by Douglas Somerlot, Maureen Solomon, and Barry Mahoney in Hewitt, Gallas, and Mahoney, *Courts That Succeed* (Williamsburg, Va.: National Center for State Courts, 1990), pp. 107-126. That profile is an edited version of an article by the same authors, "Straightening Out Delay in Civil Litigation," *Judges' Journal* 28, no. 4 (1989). For a more detailed discussion of the program, see Kent Batty et al., *Toward Excellence in Caseflow Management* (Williamsburg, Va.: National Center for State Courts, 1991).

b. See John Goerdt et al., "Litigation Dimensions: Torts and Contracts in Large Urban Courts," *State Court Journal* 19, no. 1 (1995), Appendix 7.

FIGURE 4
INDIVIDUAL CALENDAR CASE ASSIGNMENT SYSTEM



again among the fastest courts. It is thus not clear from the later research that individual calendars, in and of themselves, are a key to faster processing of civil cases.[5]

This finding was echoed in a study of case-processing times for divorce cases. There, individual calendar courts again tended to be the faster courts in the study; but it was not possible for researchers to distinguish the effects of individual calendars from those of case disposition time goals, which these courts tended to have. Researchers concluded that the *combination* of individual calendars and time standards might be an especially powerful caseflow management strategy.[6]

2. Master Calendars

In a master calendar system, judges are assigned to preside over particular court events, rather than having responsibility for all court events in the cases assigned to them. For example, one judge might be assigned to hear civil pretrial motions or pretrial conferences, whereas other judges in the same court are assigned to hold trials; or one judge might be assigned to conduct felony arraignments, whereas colleagues hear felony trials. Cases are put in a pool of cases awaiting action, and when judicial involvement is needed, they are sent to the judge assigned to conduct the required activity. Whereas a judge with an individual calendar might be said to have "vertical" responsibility for all events in a case, a judge with a master calendar might be said to have a "horizontal" responsibility, hearing matters at only one stage of a case's progress. Figure 5 gives an example of how a master calendar might operate.

In effect, a master calendar system pools available judges to maximize the use of judge time to deal with cases that are ready for hearing and minimize delay for parties in trial-ready cases.[7] In a court that seeks to provide firm trial dates, judges work as a team to accommodate any necessary last-minute adjustments in an "overset" calendar. Because not all judges conduct their own separate pretrial proceedings, a master calendar approach tends to promote more uniform application of court policies for matters such as continuances and pretrial activities. It also lets judges become more specialized in activities for which they may be more suited.

For example, judges who feel more comfortable trying cases can hear trials, and those who are effective in promoting settlements can hold pretrial settlement conferences.

Some of these strengths can also be weaknesses for master calendars, however. Success may depend on judges' availability to take case assignments. Too much overscheduling may introduce uncertainty and reduce the firmness of trial dates. Judges may become overspecialized and lose contact with the kinds of problems that judges in other assignments must face.

Research on calendar systems and the pace of felony litigation in urban trial courts reveals that the type of calendar system in a court has a moderate association with disposition times in jury trial cases: master calendar courts tend to be faster than individual calendar courts. Yet there are fast individual calendar courts, and there are slow master calendar courts. The research indicated that neither calendar system was consistently correlated with processing times for all felony cases.[8]

Master calendar systems can be organized and operated in a manner that promotes expeditious civil case processing. As Barry Mahoney has written, "The faster civil master calendar systems are characterized by (1) having a 'permanent' master calendar judge who is also the chief judge of the court or the administrative judge of the civil division; and (2) their utilization of techniques of case management, including early intervention and case scheduling."[9]

3. Team Calendars

A team calendar is a hybrid calendar that combines elements of the individual calendar and master calendar approaches. Under the team approach, the judges of a court or a division are organized in two or more teams. In one kind of team approach for three or more judges for civil cases, one judge would manage pretrial matters and hold pretrial conferences, and any cases not settled would be distributed among the other judges for trial. See Figure 6 for a visual representation of how such a team calendar would operate. Another variation of the team approach is for all judges to manage their own cases in an individual-calendar fashion and

FIGURE 5
MASTER CALENDAR CASE ASSIGNMENT SYSTEM

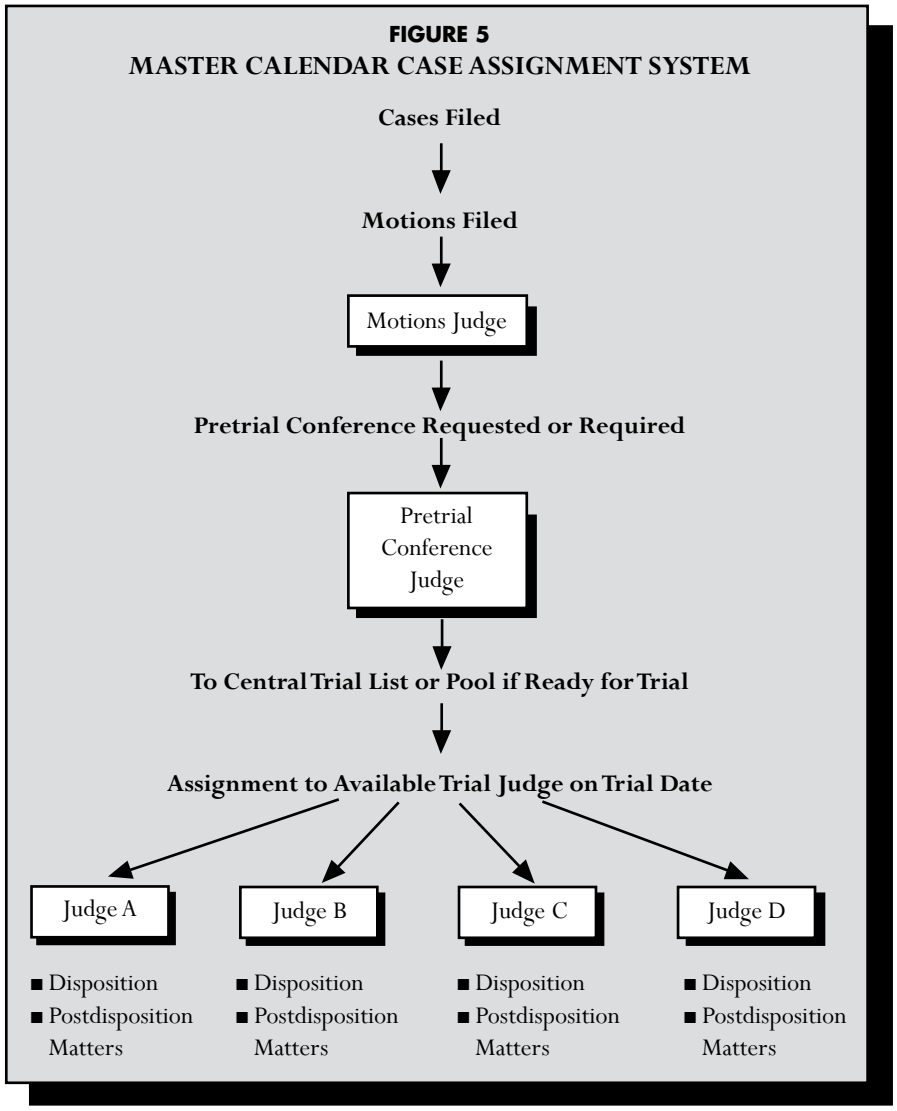
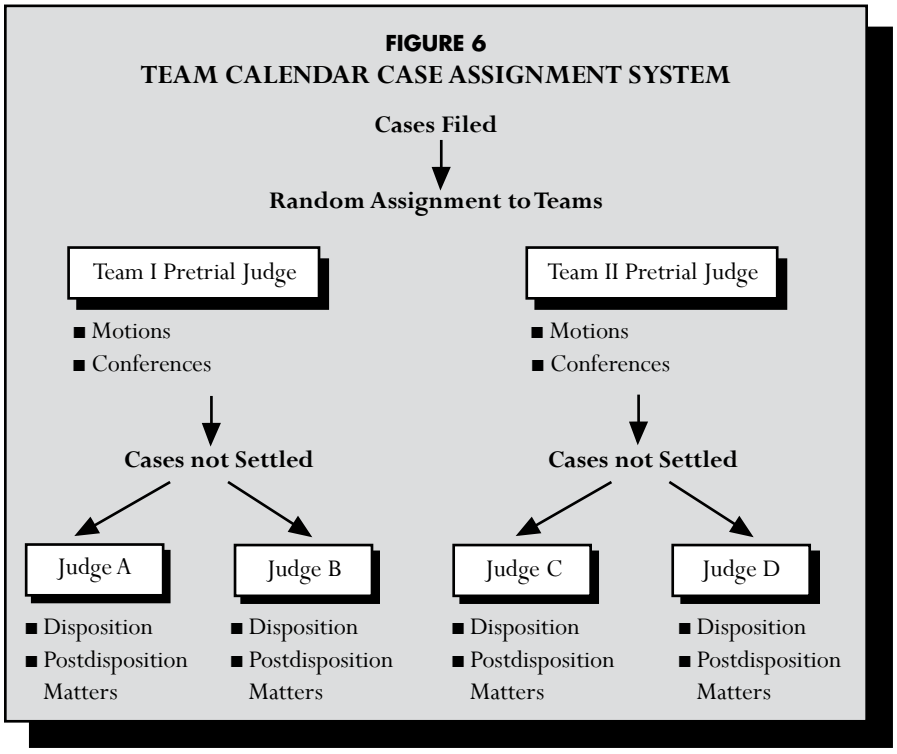


FIGURE 6
TEAM CALENDAR CASE ASSIGNMENT SYSTEM



"back up" one another when any judge's calendar is overscheduled, thereby helping to promote trial date certainty.

Team calendars have some of the benefits of an individual calendar in that they give specific responsibility and accountability for cases to each team and can motivate performance by fostering interteam rivalry and competition. As with a master calendar, they provide backup if a judge is absent, disqualified, or overscheduled. Their need for support staff and associated resources is less than that for individual calendars but more than that for master calendars.

Team calendars also have weaknesses that mirror their strengths. The success of a team may depend on the quality of relations and "team spirit" among the judges who are team members. Moreover, procedures and practices can be inconsistent from one team to another, just as among individual judges, if there is no suitable level of management within and over the teams. And as with individual calendars, team calendars can present scheduling conflicts for busy trial attorneys who have cases before more than one team.

SUCCESSFUL MASTER CALENDAR SYSTEM FOR CIVIL CASES IN WICHITA, KANSAS

The 18th Judicial District Court is a general jurisdiction court that serves Wichita and nearby communities in Sedgwick County. Although it had been known for its expeditious case processing in the 1970s, it became one of the slowest civil courts in the state in the early 1980s, when other courts were improving their civil case management to comply with statewide time guidelines promulgated by the Kansas Supreme Court. A major reason for the slowdown in the 18th District was the resistance of Wichita-area lawyers to the new statewide time guidelines.

Court leaders in Wichita undertook to change the "local legal culture" in Wichita by introducing a civil case management system under which the court assumed early control of civil case progress, set up a system of case scheduling under its master calendar, and eliminated old or inactive cases from its docket. Elements of the program included:

- Computer-supported monitoring of cases from filing and computer generation of notices for a discovery conference in each case within 60-70 days of filing
- Scheduling of discovery completion at the discovery conference and dismissal of cases 90 days after the conference if service has not been perfected
- Scheduling of cases for trial by the discovery judge after completion of discovery and scheduling of pretrial conferences for jury trial cases
- Limitations on trial-date continuances and decisions by the court's administrative judge or civil presiding judge on all continuance requests
- An expedited track for cases valued under $5,000, bypassing discovery and pretrial conferences, and assignment of early trial dates

The introduction of the civil caseflow management system had a dramatic effect on case-processing times. By 1987, the court was not only expeditious by comparison with other trial courts in Kansas but was also the fastest of 37 urban courts in a national study of the pace of litigation by the National Center for State Courts.

Source: This description is taken from the profile of the court by Craig Boersema, William Hewitt, and Brian Lynch in Hewitt, Gallas, and Mahoney, *Courts That Succeed* (1990), pp. 127-159.

4. Other Kinds of Hybrid Calendars

To optimize performance, different courts may try other approaches to combining the elements of individual and master calendar systems. In fact, few courts may operate with either a pure individual calendar or master calendar system. Any individual calendar court seeking to provide firm trial dates is likely to have formal or informal mechanisms for its judges to provide support for one another, thereby introducing elements of a master calendar or team calendar. Other courts may randomly assign cases to individual judges to oversee and manage case progress through all pretrial stages and place trial-ready cases in a pool for trial. Still others may have a single judge hold all felony arraignments after findings of probable cause and assign cases randomly to individual judges if they are not disposed by plea at arraignment.

The effective use of DCM tracks may call for a mix of individual- and master-calendar approaches. Cases on an expedited track may be most suitable for master-calendar treatment. At the other end of the continuum, cases assigned to a complex track almost always require the ongoing attention of an individual judge to oversee progress through pleadings and discovery.

5. Case Assignment Systems and Caseflow Management

As the foregoing discussion suggests, any kind of case assignment system is likely to have both advantages and disadvantages. The challenge for any court is to integrate its calendar system with its caseflow management plan in a way that optimizes results. Maureen Solomon and Douglas Somerlot have offered what they find to be the common elements of successful case assignment systems:[10]

10. Solomon and Somerlot, *Caseflow Management in the Trial Court*, pp. 43-44.

- Leadership of the chief or presiding judge
- Skill and commitment of individual judges to motivate parties and attorneys to prepare their cases
- Efficient allocation and use of court support staff and other resources
- Published rules that state the goals and policies of the assignment system and the mechanisms used to attain those goals
- Means for communications among judges and other participants in the court process
- Specific assignment of responsibility for disposition of a certain number of cases each week or month and for the prompt assignment of the court's business to a judge or judges of the court
- Monitoring systems to measure how well that responsibility is being met and to allow the responsible judge(s) to identify cases that need management attention

These elements are highly reminiscent of those of a successful caseflow management program, as described in Chapters I-V. This suggests that courts that are effective in the use of their case assignment systems are those that have a sound court management foundation, and that can integrate the operation of their calendar systems with the successful application of caseflow management principles.

B. CALENDAR STRUCTURE AND THE ORGANIZATION OF THE COURT'S WORKWEEK

An important issue in many courts is how the workweek is structured. How much time each day should a judge spend on the bench? How much time is needed for work in chambers? How should motions and conferences be scheduled in relation to time needed for trials? Of course, the answers to these questions will vary from one court to the next and from criminal to civil, family, or probate matters. Yet the success of caseflow management may be defeated without attention to specific details of how the court week is organized.

1. Effect of Case Assignment System on Workweek

The manner in which a judge would use his or her time on cases under an individual calendar would differ from that under a master calendar or a team calendar. (For the purpose of simplicity, the assumption of this discussion is that a judge hearing pretrial matters under a master calendar system would have his or her week organized in much the same fashion as a judge hearing such matters under a team calendar and that the same would be true for judges hearing only trials.) Moreover, the activities of the pretrial judge in a master calendar or team calendar system would be different from those of a trial judge in either system. Figures 7-9 below indicate what a judge's workweek might look like under an individual calendar or a team or master calendar, assuming that a judge would have about eight hours per workday available on the bench or in chambers to work on cases, although many judges routinely give more time during the day, at night, or on weekends.

Figure 7 presents a hypothetical standard workweek for a judge who hears both civil and criminal matters under an individual calendar. It provides that a judge would have some flexible time at the beginning of the morning to prepare cases or to hear early motions. The period from 9:00 AM to 10:00 AM allows for arraignments and pleas on Mondays and Wednesdays and for pleas, motions, or sentencing on Tuesdays, Thursdays, and Fridays. Mornings from Monday through Thursday are for civil or criminal trials. Afternoons from Monday through Wednesday are for trials, with time at the end of the day for contested motions. Thursday afternoons and Fridays are for motion hearings, hearings on violations of probation (VOPs), case conferences for scheduling, settlement or trial management, and any meetings that the judge must attend. This type of a weekly work schedule attempts to provide as much time as possible for the judge to be in trial or to hear lengthy motions, while also allotting time for necessary caseflow management activities and short hearings.

Under a master calendar or team calendar, trial time would be split from pretrial activity time. A judge who is particularly effective in pretrial caseflow management would serve as a pretrial judge and make sure that all cases move with reasonable expedition to trial readiness or disposition by nontrial means. Figure 8 shows what a hypothetical week's schedule for a civil pretrial judge might look like. The schedule seeks to allocate time for the judge to perform an array of functions as a "master calendar" judge. It

FIGURE 7
HYPOTHETICAL STANDARD WORKWEEK* FOR AN INDIVIDUAL-CALENDAR JUDGE HEARING BOTH CIVIL AND CRIMINAL CASES

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
8:00 to 9:00AM	Case Preparation or Early Motions	Case Preparation or Early Motions	Case Preparation or Early Motions	Case Preparation or Early Motions	Case Preparation or Early Motions
9:00 to 10:00AM	Arraignments or Pleas	Pleas, Motions, or Sentencing	Arraignments or Pleas	Pleas, Motions, or Sentencing	Pleas, Motions, or Sentencing
10:00 to 11:00AM	Civil Trials	Civil Trials	Criminal Trials	Civil Criminal Trials	Scheduling Conferences
11:00AM to Noon	Civil Trials	Civil Trials	Criminal Trials	Civil Criminal Trials	Scheduling Conferences
Noon to 1:00PM	Lunch	Lunch	Lunch	Lunch	Lunch
1:00 to 2:00PM	Civil Trials	Civil Trials	Criminal Trials	Motion Hearings or VOPs	Settlement or Trial Management Conferences
2:00 to 3:00PM	Civil Trials	Civil Trials	Criminal Trials	Motion Hearings or VOPs	Settlement or Trial Management
3:00 to 4:00PM	Civil Trials	Civil Trials	Criminal Trials	Meetings or Case Conferences	Meetings or Case Conferences
4:00PM to End of Day	Civil Trials or Contested Motions	Civil Trials or Contested Motions	Criminal Trials or Contested Motions	Meetings or Case Conferences	Meetings or Case Conferences

* The actual workweek of any particular individual-calendar judge might vary from what is shown here. This "standard" workweek presents a basic picture, however, of the way in which an individual-calendar judge with a "standard" workday of eight hours on the bench or in chambers might schedule his or her time to comply with time standards under a court's caseflow management improvement plan.

allows flexibility at the beginning of the morning for case preparation, early motions, and other activities, as well as for routine motions, emergency matters, calendar management, and case status conferences. Afternoons are set aside for hearings on contested motions, pretrial settlement conferences, scheduling conferences, and (at the end of the day) any meetings that the judge must attend.

Trial judges in a master calendar or team calendar would want to have as much time

FIGURE 8
HYPOTHETICAL STANDARD WORKWEEK* FOR A CIVIL PRETRIAL JUDGE UNDER A MASTER CALENDAR OR A TEAM CALENDAR

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
8:00 to 9:00AM	Case Preparation or Early Motions	Case Preparation or Early Motions	Case Preparation or Early Motions	Case Preparation or Early Motions	Case Preparation or Early Motions
9:00 to 10:00AM	Motions, Emergency Matters, or Calendar Management	Motions, Emergency Matters, or Calendar Management	Motions, Emergency Matters, or Calendar Management	Motions, Emergency Matters, or Calendar Management	Pleas, Motions, or Sentencing
10:00 to 11:00AM	Uncontested Motions	Uncontested Motions	Uncontested Motions	Uncontested Motions	Scheduling Conferences
11:00AM to Noon	Motions or Case Status Conferences	Motions or Case Status Conferences	Motions or Case Status Conferences	Motions or Case Status Conferences	Scheduling Conferences
Noon to 1:00PM	Lunch	Lunch	Lunch	Lunch	Lunch
1:00 to 2:00PM	Hearings on Contested Motions	Hearings on Contested Motions	Pretrial Settlement Conferences	Pretrial Settlement Conferences	Scheduling Conferences
2:00 to 3:00PM	Hearings on Contested Motions	Hearings on Contested Motions	Pretrial Settlement Conferences	Pretrial Settlement Conferences	Scheduling Conferences
3:00 to 4:00PM	Hearings on Contested Motions	Hearings on Contested Motions	Pretrial Settlement Conferences	Pretrial Settlement Conferences	Scheduling Conferences
4:00PM to End of Day	Meetings or Case Conferences	Meetings or Case Conferences	Meetings or Case Conferences	Meetings or Case Conferences	Meetings or Case Conferences

* The actual workweek of any particular pretrial judge might vary from what is shown here. This "standard" workweek presents a basic picture, however, of the way in which such a pretrial judge with a "standard" workday of eight hours on the bench or in chambers might schedule his or her time to comply with time standards under a court's caseflow management improvement plan.

as possible for continuous-day trials (see Figure 9). To allow these judges to deal with last-minute matters arising before trial, the schedule permits such matters to be heard from 9:00 to 10:00 AM each morning from Monday through Friday. The balance of each day from Monday through Wednesday is set aside for trials, with time at the end of the day for any motions. Thursday and Friday mornings are available for bench trials or completion of jury trials unfinished by the end of the day on Wednesday. Thursday and Friday afternoons allow time for the judge to hear motions or violations of probation, to hold trial management conferences for trials to be held the following week, and to attend any meetings.

FIGURE 9
HYPOTHETICAL STANDARD WORKWEEK* FOR A TRIAL JUDGE HEARING CRIMINAL CASES UNDER A MASTER CALENDAR OR A TEAM CALENDAR

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
8:00 to 9:00AM	Case Preparation or Early Motions	Case Preparation or Early Motions	Case Preparation or Early Motions	Case Preparation or Early Motions	Case Preparation or Early Motions
9:00 to 10:00AM	Pleas, Motions, or Sentencing	Pleas, Motions, or Sentencing	Pleas, Motions, or Sentencing	Pleas, Motions, or Sentencing	Pleas, Motions, or Sentencing
10:00 to 11:00AM	Trials	Trials	Trials	Trials	Trials
11:00AM to Noon	Trials	Trials	Trials	Trials	Trials
Noon to 1:00PM	Lunch	Lunch	Lunch	Lunch	Lunch
1:00 to 2:00PM	Trials	Trials	Trials	VOP/ Motion Hearings	Motions/Trial Management Conferences
2:00 to 3:00PM	Trials	Trials	Trials	VOP/ Motion Hearings	Motions/Trial Management Conferences
3:00 to 4:00PM	Trials	Trials	Trials	Meetings or Case Conferences	Meetings or Case Conferences
4:00PM to End of Day	Trials or Motions	Trials or Motions	Trials or Motions	Meetings or Case Conferences	Meetings or Case Conferences

* The actual workweek of any particular trial judge might vary from what is shown here. This "standard" workweek presents a basic picture, however, of the way in which such a trial judge with a "standard" workday of eight hours on the bench or in chambers might schedule his or her time to comply with time standards under a court's caseflow management improvement plan.

2. *Organizing the Workweek to Meet Caseflow Management Needs*

The hypothetical standard workweeks presented in Figures 7-9 reflect several assumptions about how the workweek must be organized to permit a court to manage its cases effectively and efficiently. First, a judge must be on the bench or in chambers eight hours each day, for five full days a week, to deal with the caseload. Time must be allocated for trials to maintain firm trial dates and expose cases to the prospect of trial. At the same time, sufficient time must be available for the court to adequately deal with pretrial matters—to ensure timely progress toward disposition, whether by trial or other means. Moreover, while judges may differ in work styles, there must be general consistency from one judge to the next in order to provide predictability and availability of judges to deal with different developments that may arise each day.

Organization of workweeks in ways similar to those shown in Figures 7-9, along with conscientious efforts by each judge and court staff member, can ensure regular and consistent application of available resources to a court's caseload. If the court finds that it cannot keep up with its workload but meets its caseflow management expectations with a reasonably well-organized workweek, it may need additional resources.

C. ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution (ADR) refers to a variety of means for bringing conflicts to conclusion, either as alternatives or as adjuncts to the traditional court process. In the past 20 years, ADR programs have proliferated in American courts. ADR processes include mediation, arbitration, early neutral case evaluation, summary jury trial, community dispute resolution, and private dispute resolution (or "rent-a-judge") programs. Such programs can be court-annexed (sponsored, funded, and sometimes operated by courts), court-connected (providing services under contract to courts), or independent (administered by nonprofit or for-profit organizations and available to disputants apart from the court, sometimes as a community-based operation).[11] (See Table 4 for brief descriptions of the most common forms of ADR.)

11. See Resa Harris and Larry Ray, "What Judges Need to Know about ADR," *Judges' Journal* 30, no. 1 (winter 1991): 30, at 31.

TABLE 4
COMMON ADR PROCESSES

PROCESS	HOW THE PROCESS WORKS
MEDIATION	A mediator assists parties to reach a mutually acceptable agreement by facilitating discussion of parties' interests and priorities. The mediator has no decision-making power; he or she focuses on the clarification of communications, risk analysis, and development of viable options for settlement. Mediation is especially helpful when: (a) the parties have an ongoing relationship worth preserving, (b) a creative solution is desirable, (c) parties need to express emotions, (d) reality testing from outside will help, or (e) the court outcome is uncertain.
EARLY NEUTRAL EVALUATION	The neutral evaluator hears the core of the evidence from the attorneys, in the presence of the parties, and gives a candid assessment of the strengths and weaknesses of the case. If settlement does not result, the evaluator helps position the parties for resolution of the case by motion or trial. Early neutral evaluation is especially helpful when (a) technical or complex issues require untangling, (b) counsel or parties are far apart in their views of the law or the value of the case, (c) counsel or parties are unrealistic about the weaknesses of their case, or (d) early case planning assistance will be useful.
SUMMARY JURY TRIAL	An advisory jury and judge hear an expedited presentation of evidence that would be admissible at trial, and the jury renders a verdict regarding liability, damages, or both. Attorneys can poll jurors regarding the decision, and the judge often meets with parties to encourage settlement based on the advisory verdict. Summary jury trial is especially helpful when (a) the trial of a complex case will be very long and costly, (b) the opinion of "typical jurors" will be helpful because counsel or parties have different views of the facts and value of the case, or (c) settlement is more likely after a "day in court."
ARBITRATION	An arbitrator or arbitration panel provides parties with an adjudication that is earlier, faster, less formal, and less expensive than trial. The award is nonbinding but can be the basis for settlement discussions or, if the parties agree, the award can be binding. Arbitration is especially helpful when (a) a decisionmaker with specific expertise is desired, (b) there is a definite need for closure (binding arbitration), (c) a "day in court" will be helpful, or (d) confidentiality is a high priority.

Source: Nancy Welsh and Barbara McAdoo, "The ABCs of ADR: Making ADR Work in Your Court System," *Judges' Journal* 37, no. 1 (winter 1998): 11, at 14.

12. See Nancy Welsh and Barbara McAdoo, "The ABCs of ADR: Making ADR Work in Your Court System," *Judges' Journal* 37, no. 1 (winter 1998): 11, at 12.
13. See Susan Keilitz, ed., *National Symposium on Court-Connected Dispute Resolution Research: A Report on Current Research Findings—Implications for Courts and Future Research Needs* (Williamsburg, Va.: National Center for State Courts, 1994).
14. See Mahoney et al., *Changing Times in Trial Courts*, p. 193
15. See Keilitz, ed., *National Symposium on Court-Connected Dispute Resolution Research*, pp. 7-8, 13, 18, 20, 41 and 61-62.
16. Ibid., pp. 8, 12-13, 18, 22-23, 25, 41-42, and 61-61.
17. See Goerdt, "How Mediation Is Working in Small Claims Courts," *Judges' Journal* 32, no. 4 (fall 1993): 12, at 13.
18. See Keilitz, ed., *National Symposium on Court-Connected Dispute Resolution Research*, pp. 9, 14, 19 and 62-63.
19. On the ambiguous nature of costs for litigants in mediation programs, see David Steelman et al., *Superior Court Rule 170 Program and Other Alternative Dispute Resolution Prospects for New Hampshire Trial Courts. Volume One: Findings and Recommendations* (Denver, Colo.: National Center for State Courts, Court Services Division, 1996).
20. See Goerdt, "How Mediation Is Working in Small Claims Courts," at 14.
21. See Keilitz, ed., *National Symposium on Court-Connected Dispute Resolution*, pp. 41-42, 61-62.

1. *Research Findings on ADR and Caseflow Management*

ADR programs are usually introduced for one or more of the following reasons: to reduce backlogs or free up judicial resources, to expedite case dispositions, to reduce costs, or to promote litigant satisfaction.[12] Research on the extent to which specific ADR programs have met goals such as these provides helpful insights about the relative significance of ADR for caseflow management. In 1994, the National Center for State Courts and the State Justice Institute cosponsored a national symposium on court-connected dispute resolution research.[13] The research results reported below are largely from the report, edited by Susan Keilitz, on that conference.

a. Case-processing times

In a study of case-processing times in 1983 and 1985 for 18 urban trial courts, researchers found that the presence of an ADR program was not correlated with the pace of civil litigation.[14] Most of the courts in the study had some form of ADR, and ADR programs were found in both slow and fast courts. A key variable may have been the way that cases referred to ADR were managed by the courts. Those who made early ADR referrals tended to be faster courts. The study did not address a court's ongoing management of cases to ensure proper dispositions, although the researchers acknowledged that this might be important.

Assessments of specific kinds of ADR programs suggest that their impact on times to disposition has been inconclusive. Civil case mediation and court-annexed arbitration programs have had mixed results. Data on summary jury trials and medical malpractice mediation are insufficient. There is some evidence that early neutral case evaluation reduces case-processing times. Yet family mediation appears to have had a mixed effect on times to disposition.[15]

b. Court resources

Studies of small claims mediation indicate that it can have a substantial effect on reducing court workloads. Similarly, studies of civil case mediation have found a decrease in court workloads as measured by the number of pretrial motions and hearings. Court workload effects of ADR in other settings are mixed, however. Data on early neutral case evaluation, summary jury trials, and medical malpractice mediation are insufficient to support conclusions about these effects. As for court-annexed arbitration, reduced court activity (fewer motions, documents, or pretrial conferences) may be offset by increased burdens on court staff to monitor appealed cases and to maintain trial dockets. Family mediation appears to have little impact on court workload, and in fact it may increase the number of postjudgment court appearances by parties.[16]

Evidence about whether civil case mediation or court-annexed arbitration reduces trial rates is mixed. Data on early neutral case evaluation, summary jury trials, and medical malpractice mediation are insufficient to support any conclusions about trial rates. In a study of small claims mediation in 12 urban trial courts, judges and court managers reported that it does reduce the number of trials that judges need to hear.[17]

c. Costs

Litigation costs can be conceived in terms of both costs to private litigants and costs to the court. Research is limited on litigant costs for civil case mediation: savings may depend on whether cases are settled in mediation. Studies have not shown whether early neutral case evaluation reduces litigant costs. One study found that summary jury trials reduced billable hours for attorneys in state court cases, but a federal court study found just the opposite. However, virtually all studies have found evidence that family mediation saves costs for parties.[18]

As for court costs, one study has found that civil mediation with volunteers saves judge's time and associated costs, but that program operations may add costs early in cases.[19] Where mediation is mandatory for small claims, a court may significantly reduce the number of judges and court staff needed for such cases. A study of small claims in 12 urban courts suggested that trial savings make small claims mediation cost-effective for courts.[20] Costs of program coordination may be significant, however.

Limited data on court-annexed arbitration have not shown cost reductions. Data are insufficient to support conclusions about the impact of family mediation on court costs.[21]

d. Litigant satisfaction[22]

Mediation's greatest benefits appear to be in the area of user satisfaction. Both litigants and attorneys find civil case mediation fair, satisfactory, and preferable to the traditional judicial process.[23] Studies consistently find litigants more satisfied with mediation than with the court process in small claims cases. In family mediation, there is a high level of user satisfaction. Such mediation is consistently favored over the adversarial process.

Studies reveal that early neutral case evaluation is viewed more favorably than the traditional judicial process. Limited research in state courts has shown participants to be more satisfied with summary jury trials in state courts than in federal courts. Finally, court-annexed arbitration is consistently viewed as fair and satisfactory, but not necessarily more so than traditional litigation.

2. *Integrating ADR into Caseflow Management*

As the above summary of research suggests, ADR often yields litigant satisfaction, although effects on case-processing time, use of judicial resources, and costs appear to be less clear. ADR has become an important part of dispute resolution in America, however. Judges and court managers should consequently seek ways to make effective use of it. Management of ADR involves the same principles—such as early and continuing court control—as those discussed above in Chapters I-III. Without active management and well-trained neutrals, ADR will not help the court to manage its workload effectively.

Observance of several guidelines can make ADR a more effective part of a court's caseflow management effort.

- Ensure that there are an adequate number of ADR neutrals with sufficient experience and training to promote and sustain high user satisfaction with the program.
- In court-sponsored programs, allocate sufficient support staff for program coordination.
- Exercise early and ongoing court supervision of case referrals to ADR.[24] Screen cases to refer those most likely to benefit from exposure to ADR.
- Refer cases to ADR as soon as possible after the parties have conducted a minimum amount of necessary discovery.[25]
- Within the court's intermediate time standards for caseflow management in general, establish, monitor, and enforce time limits for ADR.
- Make referral to ADR part of an early scheduling order controlling case progress; ensure that referral to ADR does not delay completion of discovery or the scheduling of trial.
- Monitor measures of program effectiveness such as the incidence of settlements in ADR, the appeal rate from court-annexed arbitration, and the incidence of settlements *after* cases have been referred to ADR.

D. LITIGANTS WITHOUT LAWYERS

Since the 1960s, decisions by the U.S. Supreme Court have made lawyers available at public expense to persons who are unable to retain counsel and who are criminal defendants facing the possibility of jail or juvenile delinquency defendants. The Supreme Court has also held, however, that there is no right to counsel under the federal constitution for indigent parties in civil cases.[26] In recent years, there has been growing attention to the manner in which the legal system should deal with *pro se* or *in propria persona* parties—individuals appearing in court without counsel.[27]

1. *Incidence of* Pro Se *Cases and the Effect of These Cases on Case Processing*

In certain kinds of court proceedings—such as divorce, small claims, traffic court, and landlord-tenant cases[28]—the likelihood that one or both sides will be unrepresented by counsel is high. A recent study of general-jurisdiction civil cases in 45 urban trial courts found that 3 percent of the parties appeared without counsel; one jurisdiction found that 30 percent of the actions initiated in 1994 in civil cases valued under $10,000 were filed by *pro se* litigants.[29] In any case in which attorneys would typically appear on behalf

22. Ibid., pp. 9-10, 14-15, 19-20, 25, 42, and 63-66.

23. See Richard Reuben, "ADR: The Lawyer Turns Peacemaker," *ABA Journal* 82 (August 1996): 54.

24. See Roger Hanson, Susan Keilitz, and Henry Daley, "Court-Annexed Arbitration: Lessons from the Field," *State Court Journal* 15, no. 4 (Williamsburg, Va.: National Center for State Courts, 1991): 4, at 8.

25. See John Koski, "Better Late than Never? Timing, ADR, and Litigation Costs," *Court Manager* 9, no. 2 (spring 1994): 16. See also, Margaret Shaw, Linda Singer, and Edna Povich, *National Standards for Court-Connected Mediation Programs* (Washington, D.C.: Center for Dispute Settlement and Institute for Judicial Administration, 1992), Standards 4.4, 4.5 and 4.6.

26. See *Lassiter v. Department of Social Services of Durham County*, 452 US 18 (1981), a case involving termination of parental rights.

27. See Jona Goldschmidt, "How Are Courts Handling Pro Se Litigants?" *Judicature* 82, no. 1 (July-August 1998): 13.

28. In a study of divorce litigation in 16 urban trial courts, one or both parties appeared *pro se* in 72% of the cases. See John Goerdt, *Divorce Court: Case Management Procedures, Case Characteristics, and the Pace of Litigation in 16 Urban Jurisdictions* (Williamsburg, Va.: National Center for State Courts, 1992), p. 43. A study of small claims and traffic proceedings in 12 urban jurisdictions found that one or both parties were without counsel in 98% of the small claims cases, and that defendants appeared without counsel in 64% of the traffic cases (with a much higher percentage in cases other than DWI). See John Goerdt, *Small Claims and Traffic Courts: Case Management Procedures, Case Characteristics, and Outcomes in 12 Urban Jurisdictions* (Williamsburg, Va.: National Center for State Courts, 1992), pp. 54 and 161. In a study of landlord-tenant cases in the Bronx Housing Court, counsel represented 95% of the private plaintiffs, but not one of the defendants had attorneys. See David Steelman, *Orders to Show Cause in the Bronx (NY) Housing Court* (Denver, Colo.: National Center for State Courts, Court Services Division, 1996), pp. 35-36.

29. See Jona Goldschmidt et al., *Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers* (Chicago: American Judicature Society, 1998), p. 9.

PRO SE PROGRAMS IN ARIZONA AND MARYLAND

In recent years, a number of programs have been developed to aid self-represented parties. Among the more comprehensive court-sponsored programs are those developed by the Superior Court of Arizona in Maricopa County[a] and by the Maryland Administrative Office of the Courts.[b]

One of the best-known pro se programs in the country is the Self Service Center operated in greater Phoenix by the Superior Court of Arizona. It was developed by the Arizona Supreme Court's Administrative Office of the Courts, the Superior Court, the Superior Court Clerk in Maricopa County, state and local bar associations, other state and local agencies and organizations, and the State Justice Institute. Physically located in downtown Phoenix as well as in Mesa, the center is also accessible by telephone and computer. It provides court forms, instructions and educational materials about court procedures, with particular attention to domestic relations and probate matters. It also provides access to listings of attorneys and mediators, as well as to state and local social services.

As a result of the program, inquiries from self-represented parties to court staff have dropped significantly. Judicial officers in the court's domestic relations and probate divisions have observed that parties are better prepared, show a better understanding of the court process, and appear to experience less stress in it.

To expand access to the judicial process for persons unrepresented by counsel, the Maryland Administrative Office of the Court developed a multifaceted approach in 1994 to increase services to *pro se* litigants, especially in domestic and family cases. The program has features that include the following:

Standardized form pleadings and instructions

- Support for a toll-free telephone hotline staffed by experienced attorneys who respond to questions relating to form pleadings and who also provide referral assistance
- Courthouse legal assistance to victims of domestic violence
- Funding for legal assistance through contractual paralegal services
- Use of law students to provide direct courthouse assistance to litigants in domestic cases in the state's largest trial courts

From January 1995 through June 1996, the law student program provided over 8,000 student hours and 5,000 supervisory hours of services to clients and performing related on-site functions. Project consumers have been satisfied (usually highly satisfied) with the legal advice and information that students have provided in helping to identify claims and defenses and to file simplified forms in domestic cases.

a. See Superior Court of Arizona, Maricopa County, *Self-Service Center* (1997). In 1985, Arizona statutes regulating the organized legal profession—including provisions against the unauthorized practice of law—were deleted under the state's "sunset" legislation. Because of this development, nonlawyers in Arizona could now perform functions traditionally done only by lawyers, as long as they did not misrepresent themselves as lawyers. Many legal document preparation businesses were consequently started in the state since then, and these companies prepared divorce complaints and other domestic relations documents, as well as bankruptcy petitions, wills, trusts, powers of attorney, and health care powers of attorney. See John Greacen, "Arizona's Agony Over the Unauthorized Practice of Law, or Why We Need to Care About the Public's Opinion of Lawyers," *Judges' Journal* 33, no. 2 (spring 1994): 15. The self-service center in Maricopa County was developed partly in response to these "document preparation" businesses, as a means to provide a single place where citizens could go to obtain accurate and standard forms and instructions.

b. See Nathalie Gilfrich, et al., "Law Students in Service to Pro Se Litigants," *Court Manager* 12, no. 2 (spring 1997): 16.

of clients, the appearance of a *pro se* party forces a court to consider the extent to which justice requires not only attention to rules and procedures but also a "diagnostic" assessment of problems in order to protect "both the persons before the court and the broader societal interests at stake."[30]

The greatest problem that *pro se* litigants present to courts is that they often do not understand the law or court procedures. Therefore they are not prepared to participate effectively in court proceedings, slowing the pace of litigation. Delays in *pro se* litigation arise from:

- Service problems or insufficient evidence leading to continuances
- Inadequate pleadings leading to dismissals and repetitions
- Unpreparedness of parties leading to queries by the judge in an attempt to obtain information sufficient to support a decision[31]

2. *Programs Serving* Pro Se *Litigants*

Despite the difficulties that *pro se* litigants pose for judges and administrative staff in court operations, courts cannot deny them access to the courts or the right to represent themselves. The U.S. Supreme Court has upheld a long-standing right of access to the courts.[32] Trial court performance standards provide that courts should ensure affordable costs of access to court proceedings; be courteous, responsive, and respectful to citizens; and give all who appear an opportunity to participate effectively in the court process without undue hardship or inconvenience.[33] And the Supreme Court has held that a criminal defendant may conduct his or her own defense, without being forced to accept the aid of counsel.[34] Recognizing that court processes are not generally designed to serve *pro se* parties, a committee of Minnesota judges observed in a 1996 report, "Pro se litigation should not be encouraged but must be accepted. The state court system has an obligation to assist *pro se* litigants in order to provide meaningful access to the court system, ensure confidence in our justice system, and make use of staff resources."[35]

Recognizing the rights of *pro se* parties, many courts have developed programs to

aid them. According to Dean Robert Yegge, the successful comprehensive programs:[36]

- Recognize the need to coordinate court, bar, and community resources at the state level, local level, or both
- Seek to reduce the complexity of the law and procedures with which self-represented litigants must deal
- Provide procedural assistance through means such as court-approved forms and instructions and assistance to litigants at the courthouse[37]
- Provide substantive assistance through means such as bar-sponsored clinics, *pro bono* representation, or reduced-fee representation
- Reduce direct and indirect economic barriers by modifying filing fee provisions, offering night court sessions, and relaxing requirements that filings be typed (as long as they are legible), and other means

3. *Strategies for Managing Cases with* Pro Se *Litigants*

To learn more about court policies and practices with regard to self-represented parties, the American Judicature Society and the Justice Management Institute surveyed state trial judges and court managers around the country in 1997. The judges who responded were largely general-jurisdiction judges, although 30 percent were from limited-jurisdiction courts. They were from a mix of urban, suburban, and rural courts. The responses they gave to the survey provide a helpful set of suggestions for dealing with *pro se* litigants:[38]

- *To promote consistency from one judge and one hearing to the next*, develop a courtwide set of policies and protocols for dealing with *pro se* cases.
- *In cases in which one party appears* pro se, balance the need to maintain impartiality and to avoid a perception of judicial bias by the parties against the need to see that justice is done by having all evidence made available.
- *In cases in which both parties appear* pro se, provide an informal setting to promote the resolution of issues, while keeping control and maintaining momentum to bring hearings to reasonably prompt conclusions.
- *In cases that may call for the aid of counsel,* such as serious felonies and cases with complex issues, develop policies for provision of standby counsel.
- *To deal with deficient* pro se *pleadings,* (a) urge parties to seek counsel and suggest means by which this can be done, (b) orally explain the court's expectations and its minimum legal requirements, (c) be flexible in seeking to understand the substantive issues at stake, or (d) provide form complaints and answers.
- *In pretrial conferences with* pro se *parties*, explain court procedures and what needs to be done; consider putting conferences on the record; consider holding additional conferences in appropriate cases to address procedure, deadlines, and trial responsibilities; and consider memorializing conferences in orders drafted by the court. Regarding the possibility of settlement, consider the option of referral to mediation or assume a mediator's role.
- *To deal with problems of notice*, closely monitor the address of *pro se* parties to make sure that they receive proper notice; consider providing notice by both mail and telephone in appropriate situations; and warn parties about the consequences of failure to attend scheduled hearings.
- *In motions and hearings*, explain the motion hearing process, consider providing court forms for motions and allowing them to be handwritten, and allow less formality where possible.
- *In trials*, ask an attorney to assist a party with jury selection; relax the rules of evidence; as time permits, provide a detailed explanation of trial procedures and allow narrative testimony; actively ask questions from the

30. See Thomas Henderson and Cornelius Kerwin, *Structuring Justice: The Implications of Court Unification Reforms. Policy Summary* (Washington, D.C.: National Institute of Justice, 1984), pp. 12 and 14.

31. See Eleanor Landstreet and Pam Robinson, "Pro Se Initiatives for Child Support Modifications and Other Family Court Matters," *Court Manager* 11, no. 1 (winter 1996): 24, at 28.

32. See Goldschmidt et al., *Meeting the Challenge of Pro Se Litigation*, pp. 19-22.

33. See Bureau of Justice Assistance and National Center for State Courts, *Trial Court Performance Standards with Commentary* (1997), Standards 1.3, 1.4 and 1.5.

34. *Faretta v. California*, 422 US 806 (1975).

35. Minnesota Conference of Chief Judges, Committee on the Treatment of Litigants and Pro Se Litigation, as quoted in Goldschmidt et al., *Meeting the Challenge of Pro Se Litigation*, p. 4.

36. See Robert Yegge, "Divorce Litigants Without Lawyers: This Crisis for Bench and Bar Needs Answers Now," *Judges' Journal* 33, no. 2 (spring 1994): 8, at 10-13.

37. An example of a successful program to provide courthouse assistance to *pro se* parties is that in Kitsap County, Wash. There the court hired a courthouse facilitator to assist persons representing themselves in family law matters. Evaluators found that the court needed fewer hearings per *pro se* dissolution case after introduction of the courthouse facilitator program, and that elapsed time from filing to dissolution was reduced by almost a month. See Alison Sonntag, "The Courthouse Facilitator: A Success Story from Kitsap County, Washington," *Court Manager* 11, no. 3 (summer 1996): 16.

38. See Goldschmidt, "How Are Courts Handling Pro Se Litigants?"; for more details, see Goldschmidt et al., *Meeting the Challenge of Pro Se Litigation*, pp. 6-7 and 52-61.

bench; suggest how the evidence might properly be presented; and consider making objections that would normally be made by counsel.

- *In posttrial proceedings*, explain the applicable rules and requirements, consider having court staff assist with preparation of a notice of appeal, and continue to urge parties to obtain counsel.

E. CONCLUSION

Any court can have an effective caseflow management system regardless of the way that cases are assigned to judges. Many courts manage cases effectively, regardless of whether they have individual calendars, master calendars, or hybrid systems. Yet case assignment systems are so integral to the day-to-day operation of a court that any effort to improve caseflow management must include management of the court's case assignment system.

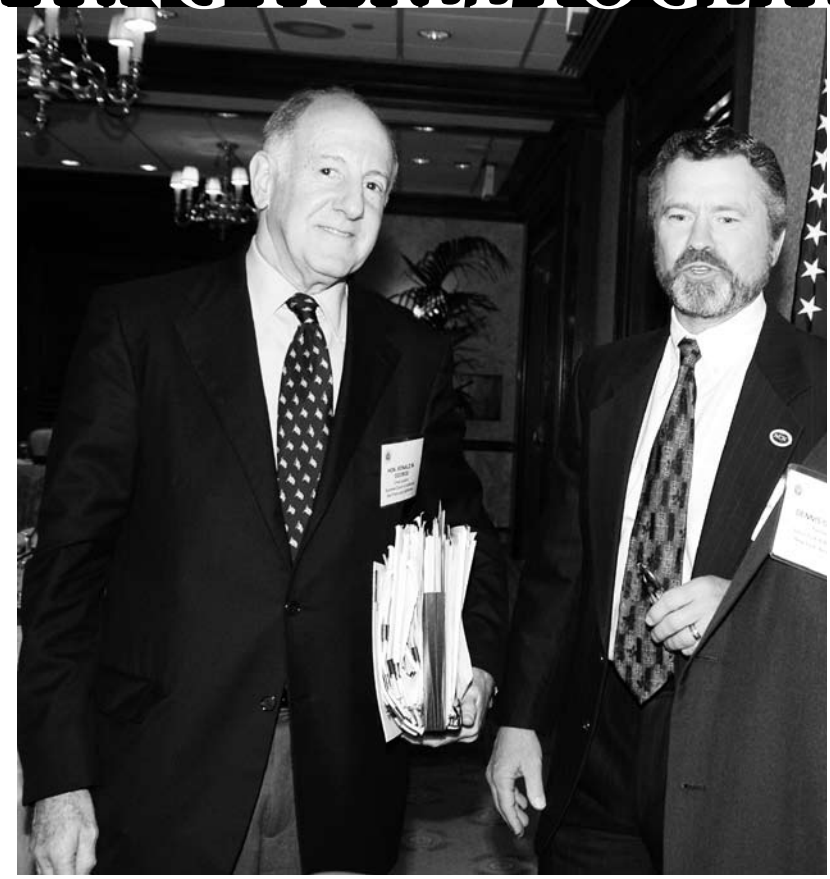
The way that a court organizes its calendars and its workweek is distinguishable from caseflow management principles and methods. Yet it will necessarily affect and be affected by the court's approach to caseflow management. Any effort to improve caseflow management must therefore give due attention to calendar structure and the organization of the court's workweek.

Different forms of ADR have no clear and necessary impact on the quality of a court's management of its cases. Nonetheless, the growth of ADR in recent years has had a profound impact on dispute resolution practices in American courts. Courts must ensure that ADR offers prompt and affordable justice to citizens.

The Supreme Court has affirmed the right of individuals to proceed without counsel. Any effort to manage cases effectively and efficiently must give due attention to the effect on the court process of *pro se* litigants.

CHAPTER IX

PUTTING IT ALL TOGETHER



California Chief Justice Ronald George confers with National Center for State Courts President Roger Warren at a 2003 NCSC conference devoted to improving state court administration.

The introduction of caseflow management improvements can involve dramatic changes in the day-to-day operations of a court and those who participate in the court process. The conditions for a successful caseflow management improvement programs are active exercise of leadership, commitment from key participants to a shared vision, regular and effective communications, assignment of responsibility and maintenance of accountability, and a learning environment (see Chapter I).

Ensuring the presence of these conditions and promoting the application of caseflow management fundamentals to the court's workload calls for careful planning and continuing commitment by judicial leaders and court managers to the objectives of caseflow management. Undertaking the change process to introduce caseflow management improvements will test all of what a chief judge and a court manager should know and be able to do with regard to caseflow management.[1] Those introducing a program to improve caseflow management should take the steps described below to improve the program's chances of success.

A. PLAN FROM A STRATEGIC PERSPECTIVE[2]

It is important that the effort to improve caseflow should be based on a shared vision of what the court's future should be. Judges and court managers can then develop strategies for realizing this vision. The Trial Court Performance Standards provide assistance for strategic planning and management by offering a vision of the results that should be achieved by optimally functioning trial courts. They thereby give courts a strategic mission and purpose, along with objectives and performance targets.[3]

Expedition of case processing is one indicator of a well-functioning court.[4] Developing, implementing, evaluating, revising, and institutionalizing improved caseflow management practices are key steps in a court's strategy to achieve overall optimal performance.

B. SEEK SYSTEMWIDE EFFECTIVENESS WITH CASEFLOW MANAGEMENT

In the day-to-day operations of a trial court, there are a number of regular participants—such as private lawyers, police, prosecutors, public defenders, caseworkers, guardians ad litem, and service providers—whose individual and organizational goals are different from those of the court. Any effort to introduce changes in caseflow management, such as court control of case progress and a policy limiting continuances, will significantly alter established working relations among these regular participants.[5]

A unilateral effort by court leaders to introduce significant changes in the management of cases, without prior consultation with and accommodation of those who will be affected by such changes, will fail. Instead, judge leaders and court managers must work with court staff who must deal with myriad case-processing details each day, with public and private lawyers, with funding authorities, and with others in the court process to achieve success. Advocates of caseflow management improvement must be able to help them understand their respective roles in the larger justice system and to tie caseflow management to systemwide benefits, costs, and consequences.[6]

Given the complex dynamics of a trial court operation, it may be impossible to foresee all the consequences of a change in caseflow management practices. The difference between success and failure may be the result of small issues. One or more of the following approaches can be taken to deal with the complex consequences of change:[7]

1. Limit the actions of some participants in the court process so that they do not undermine caseflow management objectives. For example, maintain a plea cutoff date policy to preserve firm trial dates in criminal cases.

2. Use the systemic interactions in the court process to indirectly accomplish caseflow management goals. If a court is able to provide firm trial dates and meaningful court hearings, for example, it indirectly promotes negotiated settlement of cases.

1. See the NACM Caseflow Management Curriculum Guidelines in Appendix A.

2. See generally, John Martin et al., "Shaping the Future of Justice: Strategic Planning in the Courts," *Judges' Journal* 36, no. 2 (spring 1997): 32, as well as Brenda Wagenknecht-Ivey et al., "Lessons for Successful Strategic Planning," *Court Manager* 11, no. 2 (spring 1996): 12.

3. See Clement Bezold, Beatrice Monahan, and Wendy Schultz, "Moving Courts Consciously and Creatively into the 21st Century: Using Vision to Point the Way," *State Court Journal* 17, no. 2 (spring 1993): 28, at 33.

4. See BJA and NCSC, *Trial Court Performance Standards and Measurement System Implementation Manual* (1997), Standard 2.1, which is reproduced in Appendix B.

5. See Raymond Nimmer, *The Nature of System Change: Reform Impact in the Criminal Courts* (Chicago: American Bar Association, 1978), p. 31.

6. See Appendix A, p. 213.

7. See Robert Jervis, *System Effects: Complexity in Political and Social Life* (Princeton, N.J.: Princeton University Press, 1997), pp. 260-295.

3. Devise a comprehensive approach in which some steps achieve the main goals of caseflow management improvement and others magnify positive results or compensate for negative consequences. For instance, adoption of time standards, early intervention and DCM, a policy to limit continuances and provide firm trial dates, and "backup judge" can reduce or avoid delay while minimizing some of the weaknesses of individual calendars.

C. PAY ATTENTION TO DETAIL

If it is important to see the "big picture"—to plan from a strategic perspective and to understand systemic interrelationships in caseflow management—it is just as important not to overlook the less obvious details. If a caseflow management improvement program has unanticipated negative consequences for a single clerical support staff member who happens to have primary responsibility for storing and retrieving court records, that staff person's support for the program may be diminished, and sudden delays in the availability of case files may result. Increased efficiencies in the scheduling of probable cause hearings for felony cases may reduce police officer overtime, thereby evoking officer resistance. A switch from a master calendar to an individual calendar is likely to significantly affect the work to be done by a judge's secretary. A small error in a new case status report may cause a judge to withdraw quietly from his commitment to court management of case progress.

It is not possible to foresee all possible consequences of any change. Moreover, any change will inevitably make some people unhappy. It is important, however, to give as much attention as possible to avoiding problems that will decrease efficiency and program support.

D. ASSESS THE CURRENT SITUATION

A general caseflow management review can be particularly helpful in gathering information on which to base a caseflow management improvement plan. Because the need for such a plan is likely to reflect the perception that the court is backlogged, analysis of the size, age, and status of the court's current inventory of pending cases is important.

1. Conduct a Caseflow Management Review

It is important for judges and the court manager to test their perceptions of the caseflow management problems that the court faces by gathering data about the movement of cases through the court and by talking to court staff, trial practitioners, and others involved in the court process. Such objective information will provide a different perspective from which to view the problems and "bottlenecks" in the court's current operation.

Working with a committee of participants in the trial court process, perhaps with the help of an independent court management expert, the court may want to undertake a more formal caseflow management review, assessing the court's structure, resources, operations, and environment and focusing on the way that these factors affect the court's capacity to manage its caseload.[8] As now conducted by consultants from the National Center for State Courts as part of its study of trial- and appellate-court caseflow management across the country, such a review would typically include documentation of court structure, resources, and operations; gathering of statistical information on workloads and case-processing times; administration of a self-assessment questionnaire; interviews of practitioners; and on-site observation of court proceedings and other activities.[9] Such a procedure would help ensure a firm information base for the development of a caseflow-management improvement plan.

2. Analyze the Pending Inventory

A court's "backlog" consists of the cases in its pending inventory that are older than the age considered acceptable. If a court or court system adopts a time standard for civil cases like that of the American Bar Association, all pending civil cases that are more than two years old are backlog cases. (See the discussion of backlog in Chapter V, pages 79 and 80, and Chapter VI, pages 93 through 95.) To provide information about the scope and dimensions of a court's backlog, the court should undertake a review of the cases in its inventory—either all cases or just those that can quickly be identified as the oldest.

8. See Barry Mahoney et al., *How to Conduct a Caseflow Management Review: A Guide for Practitioners* (Williamsburg, Va.: National Center for State Courts, 1994).
9. Ibid., pp. 9-16.

A court can undertake such an analysis in several ways. One common way is for judges simply to review case files or the register of actions for pending cases. With cases that are old and show little activity another approach is to write letters or send notices to counsel, calling on them to provide reasons that cases should not be dismissed for want of prosecution. Other approaches are to have counsel attend a calendar call or participate in person or by phone with the judge in a conference to inform the court about the status of their cases.

Assessment of a court's backlog should permit the court to identify the characteristics of the current pending inventory:

What is the age of cases?

- Which cases are active and which are inactive?
- Are there civil or divorce cases for which there has been no activity beyond pleadings?
- Which cases have discovery problems?
- Which cases are ready to be scheduled for trial?
- Are there cases that are actually completed and that require only a final order?

Such an assessment has an advantage beyond simply giving the court information about the status of cases. Courts typically find that a large number of cases may in fact be ripe for disposition, either because they have been settled and satisfied or because the parties are no longer pursuing them. By the mere process of reviewing its inventory, the court may be able to significantly reduce the size of the pending caseload and ensure that other cases progress toward trial or other disposition in a reasonably prompt manner. (See "Deal with Backlog in the Pre-Program Pending Inventory" below, for discussion of steps to address any existing backlog at the time of program implementation.)

E. WEIGH THE COSTS AND BENEFITS OF ALTERNATIVE APPROACHES

In a time of limited public resources, policy decisions in the courts and other public sector organizations must increasingly be made on the basis of cost-benefit analysis. A cost-benefit analysis of two or more alternatives involves an assessment of each option's monetary costs and the monetary value of its benefits, thereby allowing each alternative to be examined on its own merits to determine whether it is worthwhile. A desirable alternative is one for which the benefits exceed the costs; and in a comparison of two or more alternatives, the one that should be chosen is the one with the lowest costs in relation to the benefits that it provides.[10]

It is important for judges and court leaders to carry out a cost analysis of any case-processing changes under consideration. Attention to the "real money" consequences of any change is an important part of a court manager's responsibilities.[11] Trial court performance standards provide that a trial court should responsibly seek resources needed to meet its judicial responsibilities, use those resources wisely, and account for their use.[12] Sound assessment of the cost dimension of caseflow management changes is an important way for a court to make sound decisions and demonstrate its concern for prudent use of public resources to funding authorities.

The costs and benefits associated with a change such as the introduction of a new caseflow management program may not all be measurable in "hard dollar" terms. Relations with the bar, public confidence in the courts, and political repercussions may all be part of the analysis without being quantifiable in dollar terms. If existing practices are well-established, introduction of dramatic changes may be difficult. One way to assess nonfinancial costs against benefits is a "force-field analysis:"[13]

- Identify factors *supporting* change, such as greater court control of case progress by judges, reduced scheduling conflicts for members of the civil trial bar, a state supreme court initiative to reduce delay, or a federal initiative to expedite adoptions in child protection cases.
- Identify the factors that might *hinder* change, such as opposition from some members of the bench or the trial bar or an antiquated case management information system.

10. See Henry Levin, *Cost-Effectiveness: A Primer* (Beverly Hills, Calif.: Sage Publications, 1983), pp. 21-22.

11. See the NACM Professional Development Advisory Committee's core competency curriculum guidelines for "Resource Allocation, Acquisition, Budget and Finance" in NACM Professional Development Advisory Committee, "Core Competency Curriculum Guidelines: History, Overview, and Future Uses," *Court Manager* 13, no. 1 (winter 1998): 6, at 12-17.

12. BJA and NCSC, *Trial Court Performance Standards and Measurement System Implementation Manual* (1997), commentary to Standard 4.2.

13. See R. Dale Lefever, "Effecting Change in the Courts: A Process of Leadership," *National Institute of Justice/ Research in Action* (Washington, D.C.: U.S. Department of Justice, 1987), p. 2.

14. Thomas Church et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1978), p. 54.

15. Successful changes in caseflow management can mean different roles for judges, attorneys, and court support staff. This was the experience in Coconino County, Arizona (a relatively rural county with a much lower population than either Maricopa or Pima counties), where the four-judge superior court changed its approach to felony cases in 1995. Judges agreed to take early responsibility for scheduling cases, giving certainty to the felony calendar, and verifying discovery exchange. Working with counsel, the court began assigning cases to differentiated case management (DCM) tracks. Prosecutors undertook to give the defense discovery and a proposed plea agreement at the time of superior court arraignment. Defense counsel were called on to provide any reciprocal discovery and to be ready to accept or reject the prosecution offer by the time of a case management conference about 21 days after arraignment. Case scheduling was changed to provide two hours each day for criminal matters in each of the court's four divisions. Clerk's office staff members were to use checklists and redesigned forms. See Gary Krcmarik, "Coconino County Criminal Differential Case Management System," *Legal Pad* (Arizona Courts Association, July 1995) 5; see also, "Holistic Remedy Treats Case Processing Overload," *Bench Press* (Arizona Supreme Court, November/December 1996) 6.

16. There are a number of helpful books on managing change in the literature on business management. Two of the most recent are Tom Peters, *Thriving on Chaos: Handbook for a Management Revolution* (New York: Alfred A. Knopf, 1997), and David Nadler, *Champions of Change: How CEOs and Their Companies are Mastering the Skills of Radical Change* (San Francisco, Calif: Jossey-Bass, 1998).

17. Mahoney et al., *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1988), pp. 198-199.

18. Mahoney et al., *Planning and Conducting a Workshop on Reducing Delay in Felony Cases* (Williamsburg, Va.: National Center for State Courts, 1991), Vol. I, pp. P8-4 to P8-6.

19. Ibid., P8-2 to P8-4.

20. Mahoney et al., *Changing Times in Trial Courts*, p. 202.

- Determine whether and how both sets of factors might be subject to change. Can the impact of barriers to change be reduced? For example, can the case management information system be improved?

F. MANAGE THE CHANGE PROCESS

Efforts by judicial leaders and court managers to implement a caseflow management improvement program are usually not easy to undertake. In a major national study in the late 1970s, Thomas Church and his colleagues concluded that the pace of litigation in any court may be less a function of court size, the caseload of each judge, or other structural factors than of the "local legal culture"—that is, the collective attitudes, concerns, practices, and expectations of the judges, lawyers, and other participants in the local case process.[14] Introduction of a new program might well require major changes in the established pattern of relationships and interactions.[15] Court leaders must manage the process of change if change efforts are to succeed.[16]

1. *Build Support for Change*

Like other significant changes, the introduction of caseflow management improvements will require a broad base of support. Planning groups and partnerships should be created to involve judges, court staff, lawyers, and other key persons in development of the improvement program. Establishment of such mechanisms will be time-consuming, but their results in terms of ideas, refinements, and commitment will more than justify the effort involved.

It is important to show that the improvement effort is a priority sufficiently high to have the court system's organizational support. Judges, court staff, and other participants in the judicial process may be reluctant to commit themselves to an improvement effort that does not have support for the addition or reallocation of court support staff members; improvements in the court's case management information system; enlistment of attorney volunteers to serve as temporary settlement masters, arbitrators, or case evaluators for backlog cases; or the temporary assignment of additional judges to settle or try backlog cases. To ensure the availability of such organizational support, judge leaders and court managers may need to enlist the aid of the state court administrator's office. They may also have to work with local funding authorities, explaining the need for improvement and demonstrating that positive results will justify any additional costs to be incurred.

2. *Overcome Resistance*

The court will have to exercise leadership for its caseflow management policies and programs to overcome resistance to change in the pre-existing local legal culture.[17] It is important to accept and understand such resistance. It can be based on fear of the unknown, fear of loss of status or power, stress concerning ability to function effectively in the new environment, changes in the nature of established relationships, or feelings of having been left out of the decision-making process.[18]

To overcome such resistance, the proponents of change must have information that shows the existence and dimensions of a problem and that demonstrates the need for change. In addition, they will have to motivate others to support the change. They can do this by (1) articulating a vision of how change will improve the system; (2) showing how individual persons who will be affected by change will benefit from it; and (3) demonstrating their own ongoing commitment to change by disseminating information on the progress of change and rewarding those who are effective in advancing achievement of its goals. The judge advocating a new program will have to exercise leadership by building consensus and organizational support for the program among those essential to its success.[19] It is critical that the court, the bar, and other institutional participants in the court process recognize the need to change the pace of proceedings and share resolve to meet that need.[20]

3. *Understand the Mechanics of Change Management*

Court leaders and court managers at all levels can employ definable skills and techniques to support and drive the change process. The following ways to successfully promote change are based on insights of-

fered by organizational change expert David Nadler,[21] many of whose ideas are reinforced by those of the management expert Tom Peters:[22]

- *"Own" the change process.* Successful court leaders and court managers openly demonstrate their active involvement in the change process, seizing the opportunity to identify with the change. They invest energy in explaining why maintenance of current practices would be unacceptable, what strategic ideas are at the heart of the change, and how the structure and culture of the court process must change.
- *Align staff members' work with the new directions.* In a well-conceived policy deployment process, court managers and court staff supervisors take the general objectives developed by court leaders and make them specific to their own work unit. Objectives become narrower and more specific at each lower level of the court organization. If the change process is managed well, a direct link to the objectives established by court leaders is maintained.
- *Set expectations.* The chief judge, court managers, and court supervisors must articulate goals that are as explicit as possible. They should clarify expectations about behavior at each level of the organization that will support accomplishment of objectives.
- *Model the desired new behaviors.*[23] As court staff, lawyers, and others in the court process begin to develop a better understanding of the behavior that the court expects of them, court leaders must exhibit that behavior with absolute consistency. For example, a strict policy limiting continuances or a "plea cutoff" policy for felonies must be applied consistently. Day-to-day concern with the age and status of the court's pending inventory must be demonstrated by the chief judge, the court manager, and other court leaders and supervisors.
- *Communicate actively during the change period.*[24] During a period of significant change, court staff and others will be desperate for information, and in its absence they will fill the void with rumors and gossip. Court leaders must give people as much information as possible about the change effort. Moreover, they should make communication a two-way process, so that they are responsive to concerns, feedback, and ideas offered by staff, attorneys, and others in the court process.
- *Engage as many as possible in the change process.* Court leaders should find ways for the participants in court operations and the court process to shape their own environment within the scope of the caseflow management improvement agenda. To the extent that court staff, attorneys, and others can contribute to the shape and texture of the effort, they will be committed to achievement of its objectives.
- *Reward those who act in support of the change agenda.*[25] During a period of change, court staff members are likely to be frustrated, confused, and in need of indicators that they are doing what is expected of them. Visible, positive recognition reinforces the new objectives, demonstrates that they are achievable, and shows appreciation by court leaders of staff efforts. At the same time, court leaders should consider a timely response to those who clearly ignore or openly resist the objectives of the improvement effort.

G. PLAN FOR PROGRAM EVALUATION BEFORE IT STARTS

Evaluation of the improvement program provides objective feedback about whether the program has met expectations and about areas in which adjustments may be needed. Contemplation of an evaluation 6-12 months after commencement of program implementation will give program leaders an incentive to make program goals and objectives explicit. They can engage in discussions with a prospective evaluator about the kind of information that will be necessary and feasible to have available for the evaluation, such as

21. See Nadler, *Champions of Change*, pp. 293-297.
22. See Peters, *Thriving on Chaos*, Chapter V, "Learning to Love Change: A New View of Leadership at All Levels."
23. Peters writes about the importance of managing and leading by example. See *Thriving on Chaos*, pp. 411-420.
24. Peters emphasizes the need for leaders to practice "visible management" on the front line to reduce the risks of information distortion, and also "pay attention" by doing more listening to those in line positions (ibid., pp. 423-440).
25. Peters urges organizational leaders to "put a disproportionate emphasis on the care and feeding of front-line people," ensuring that they know how important their role is in the success of the organization (ibid., pp. 442-448).

26. See American Bar Association, *Standards Relating to Trial Courts* (1992), Section 2.54A.
27. Mahoney et al., *Changing Times in Trial Courts*, pp. 203-204.
28. See generally, Maureen Solomon, "Planning for Change: Analyzing and Disposing of the Pending Inventory," materials for workshop, *Fundamental Issues of Caseflow Management*, sponsored by the National Center for State Courts, Institute for Court Management, and the Arizona Supreme Court (Flagstaff, Ariz., June 9-11, 1998).
29. ABA, *Standards Relating to Trial Courts* (1992), Section 2.54C.

information about delay and the state of the court's dockets before the program began.

Planning for evaluation need not be a difficult task. It should be a natural "spin off" of monitoring the age and status of individual cases in relation to time expectations and monitoring the size, age, and status of the court's inventory of pending cases.

H. PUBLISH A PLAN FOR IMPROVING CASEFLOW MANAGEMENT

When a court has decided on a course to improve caseflow management, it should write a caseflow management plan that is published, perhaps by administrative order of the court. The plan should give details about the caseflow management techniques that will be employed, include any forms (such as information sheets to be filed with cases to facilitate DCM track assignments), provide time standards, and present a transition plan for achieving the time standards if the court has a pre-existing backlog problem.[26] A published plan shows the court's commitment to caseflow management and serves as a reference for the court and other case participants during the implementation effort.

The process of preparing and reviewing drafts of the plan can serve as a means to identify problems and to think through the main tasks, the key individuals and their specific roles and responsibilities, and the target dates for accomplishment of implementation steps. Once completed, the plan can be a key reference for those who seek to understand what the court hopes to accomplish and when and how. Finally, as the document in which the goals and expectations for the caseflow management improvement program are set forth, it can serve as a reference in evaluation of the implementation effort.

The individuals responsible for caseload management must be clearly identified. The plan for caseflow management and its operational implementation should set forth unambiguous lines of accountability. Time standards and goals provide one measure of accountability; specific assignment of responsibility to persons in particular positions is another effective mechanism. If one of the court's problems is a large backlog of pending cases that cannot be addressed within an acceptable period of time, the improvement plan should include steps for backlog reduction. Once the backlog in the court's prior pending inventory is reduced to a more manageable volume, the court's objective should be to keep current pending inventory at a manageable level.[27]

I. DEAL WITH BACKLOG IN THE PRE-PROGRAM PENDING INVENTORY[28]

If a court is experiencing unacceptable delays in pending cases, it may need a transition period, during which it seeks to reduce the size and age of its pending inventory. The court might have interim time standards during this period, after which it would process cases in keeping with the time standards established by the improvement program.[29]

Having analyzed its pending inventory (see "Assess the Current Situation" above), the court would know the steps that it takes to dispose of cases in the pre-program pending inventory. To manage these cases, the court might want to differentiate them by current status, relative complexity, or the action that is needed to close them.

The court should have specific strategies for disposing of these cases. Judicial intervention—holding status or settlement conferences, ruling on motions, and entering orders to promote case progress—might be appropriate for many cases. Entry of scheduling orders for the completion of discovery might be appropriate for others. Referral to ADR, such as early neutral evaluation, arbitration, or mediation, might promote early dispositions. Inevitably, some cases must be tried. The desirable strategy would be to place these cases on a short schedule for trial.

Ultimately, the most powerful mechanism for reducing backlog is to expose cases to trial. The court should determine the percentage of cases that make it to trial. If the number of trials per year is 3 percent of the total filings, for example, the court should block out time sufficient to hold trials not only for that percentage of current filings but also for 3 percent of the total backlog cases. If the court has 2,000 new filings a year and a backlog of 1,000 cases, it will try about 60 of its current cases in a year; if it can try

75 each year over a two-year period, it will eliminate its backlog while staying current with new filings. The fact that the court can actually provide trials for the backlogged cases will cause the great majority of them to settle.[30]

It may not be easy for the court to dispose of older pending cases without temporary additional resources. The plan for dealing with the pending inventory should address the manner in which clerical support resources might be reallocated or temporarily augmented. The court might need the assistance of the state court administrator's office to temporarily assign one or more additional judges to try cases. Attorney volunteers might serve as settlement masters for one or more special "settlement weeks" or as ADR neutrals. After such temporary additional resources had been employed as another alternative to reduce the backlog, one judge might be assigned to handle only backlog cases until the court's inventory reached a more suitable size and age.

J. MANAGE NEW CASES IN KEEPING WITH THE CASEFLOW MANAGEMENT IMPROVEMENT PLAN

The second stage of implementing the caseflow management improvement program is changing the court's approach to the management of cases. The caseflow management improvement plan should describe the overall and intermediate time standards to be applied to cases. The implementation effort involves the application to individual cases of the means by which the court intends to meet those standards—for example, early control of cases, assignment of DCM tracks, exercise of a firm policy limiting continuances, and setting of firm trial dates.

K. MONITOR IMPLEMENTATION AND MAKE MIDCOURSE CORRECTIONS

During the course of program implementation, judges and managers should regularly assess the status of the court's dockets as part of routine caseflow management. They may find that planned approaches did not have the anticipated effects or that new problems have arisen because of the changes made under the program.

Regardless of the care with which program leaders and planning group participants have sought to anticipate and deal beforehand with potential implementation problems, it is likely that difficulties will emerge that nobody could foresee. Particularly in the early stages of the implementation effort, such difficulties will present an important test of everyone's commitment to caseflow management.

It is important for judicial leaders and court managers to see such developments as a learning opportunity; a chance to show that caseflow management has the court system's support; and a means to reinforce the importance of communication and coordination

30. Professor Ernest Friesen has offered this insight on the power of exposing cases to trial as a mechanism for reducing a court's backlog. Mr. Christopher Crawford recently demonstrated this point in a caseflow management workshop for limited jurisdiction courts. See Crawford, "Civil Case Management," in National Center for State Courts, Institute for Court Management, and Seattle Municipal Court, *Caseflow Management in Limited Jurisdiction Courts* (Workshop, Seattle, Wash., Oct. 14-16, 1998).

REDUCING THE BACKLOG OF OLD CASES IN WAYNE COUNTY, MICHIGAN

A detailed analysis of pending civil cases was a critical first step toward developing a modernized caseflow management system in the Wayne County Circuit Court in Detroit, Michigan. The process of assessing the pending inventory alone led to the formal "disposition" of a significant number of cases that had been settled or abandoned but that had been carried as "active" pending cases, thereby reducing the number of total pending cases. Information about the court's pending inventory was sufficient to support detailed planning of backlog reduction efforts and development of an individual calendar experiment.

To dispose of about 1,600 cases that were more than 30 months old, the court implemented two special programs. Under the Trial Backlog Reduction Program, which ran from April 1986 through April 1987, voluntary judges were temporarily assigned to try cases. Cases were screened for trial by a central docket management staff and by a special settlement conference docket run by a temporarily assigned judge. Some of these cases went to trial, but many more settled. This program disposed of about 800.

Under the Trial Acceleration Week Program, all judges in the court not assigned to the criminal docket were required to be available during specially designated weeks to hold trials in cases older than 30 months that had gone through at least one settlement conference and that were presumably ready for trial. During five trial acceleration weeks in 1986 and 1987, a total of 168 trial-ready cases were disposed.

From their commencement, these backlog-reduction programs were regarded only as a short-term effort to deal with older cases that had resisted earlier mediation and settlement efforts and that had experienced trial-date continuances in the past. By dealing with these cases, the court cleared out a large number of difficult cases that had been clogging its trial docket, thereby paving the way for the court to experiment with individual calendars for newly filed and less-old pending cases. In addition, these programs demonstrated the court's commitment to delay reduction and caseflow management.

Source: Douglas Somerlot, Maureen Solomon, and Barry Mahoney, "Straightening Out Delay In Civil Litigation: Wayne County Took Its Program from Among the Worst in the Nation to Among the Best," *Judges' Journal* 28, no. 4 (fall 1989): 10, at 13-14.

among judges, court staff, and other court process participants to achieve the program objectives. If it is predictable that unforeseen developments and complications will require that adjustments be made, all of the participants in the program can work together to make further revisions in day-to-day operations and the caseflow management improvement plan.

L. EVALUATE IMPLEMENTATION AND REFINE CASEFLOW MANAGEMENT OPERATIONS ON THE BASIS OF EVALUATION RESULTS

After implementation of the improvement program has begun, an objective assessment of progress toward program goals and objectives is desirable. The evaluator may conduct an interim assessment of the success of the backlog reduction part of the program and then appraise the manner in which the court has dealt with newer cases. Judges and court managers should use the evaluation as an opportunity to examine the strengths and weaknesses of the implementation effort. The evaluator's conclusions about factors that may have caused the effort to evolve in ways that were different from program goals and expectations can provide information on the basis of which the court can make further refinements in its operations.

M. INSTITUTIONALIZE THE IMPROVED CASEFLOW MANAGEMENT OPERATION

The real test of success for a caseflow management improvement program is whether it can be maintained over time. In the minds of judges, court managers, court support staff, attorneys, and others involved in the court process, caseflow management must be understood as the fundamental work of the court. When caseflow management is no longer viewed as the "pet project" of a single chief judge who has been its primary advocate but rather as a set of activities that benefits individuals, the court, and other organizations, it can be said to have been "institutionalized."

Institutionalization of an improvement program requires that a significant portion of the judges, court staff, attorneys, and other court process participants understand what the program demands of them and make it part of their routine daily work. Dr. Dale Lefever has written that the achievement of such a broad consensus requires socialization, accountability, organizational support, and feedback mechanisms:[31]

- Socialization involves an effort (through orientation, training sessions, and other means) to continually inform people about the court's caseflow management expectations. Because there may be continual turnover in court personnel and in the attorneys who come before the court, this effort must be viewed as critical and never-ending.
- Accountability concerns the setting of expectations and the calling for all participants in the court process to meet them. It is easier for each individual to meet expectations if everyone meets them. The credibility of the court and its leaders suffers if unwarranted or unexplained exceptions—for example, the court's policy on limiting continuances—are made.
- Organizational support concerns allocation of necessary resources. For individuals to continue supporting the caseflow management initiative, the court and other organizations in the judicial process must show their own support by allocating new resources or reallocating existing resources in keeping with the priority to be given to caseflow management.
- Feedback mechanisms are important for monitoring and measuring changes. If those in the court process cannot see any improvements as a result of the introduction of a caseflow management improvement plan, they will begin to question whether the need for the plan was legitimate and the efforts expended were justified.

The ultimate objective of a caseflow management improvement plan is success over time in promoting prompt and affordable justice. Maintenance of a caseflow management effort's long-term success is discussed in the epilogue.

31. Lefever, "Effecting Change in the Courts," p. 4.

EPILOGUE

MAINTAINING SUCCESS OVER TIME

MAINTAINING SUCCESS OVER TIME

Superior Court of Riverside County Judge Dallas Holmes explains proceedings to the defendant in a case involving claims against a contractor.

Why have some courts not been successful in their efforts to improve caseflow management? Why have other courts been able to sustain successful caseflow management programs over time? This last chapter revisits some of the issues raised in Chapters I through IX to offer some answers to these questions.

Having come into its own in American courts in the 1980s, caseflow management is now a mature discipline. As the National Association for Court Management's Professional Development Advisory Committee observed, "Properly understood, caseflow management is the absolute heart of court management."[1] One might ask, however, whether there is evidence to show that caseflow management works consistently in a broad variety of settings. Although there is ample evidence of the successful application of caseflow management techniques to a broad range of case types (see Chapters II and III), research data also reveal areas in which improvement is still needed.

In a 1995 national study of civil litigation in 45 large urban courts, researchers found that the median time from filing to disposition for tort cases was 416 days, or about 14 months, while the median time for contract cases was 254 days, or about 8 months. These findings suggest that courts have indeed been able to address some of the worst problems of delay in civil cases. Yet the same study also found that 26 percent of all torts took longer than two years to be disposed, while almost half of all tort and contract cases tried by a jury took longer than two years. Only 7 of the 45 courts in the study disposed of 90 percent or more of their tort cases within two years, and only 17 disposed of 90 percent or more of their contract cases within two years.[2]

Other data show the case clearance rate (that is, the number of dispositions in a given period of time divided by the number of filings in that same period) and case-filing trends for civil and criminal cases in 36 state court systems in 1994.[3] To keep its pending inventory at a manageable level, a court should dispose of at least as many cases as are filed in a year. But statewide data from 15 states showed that civil or criminal dispositions in 24 of the 36 states were lower than 97 percent of total filings. (Total civil or criminal filings were lower in 10 of these states than they had been in the previous year.)

These findings suggest that the results are mixed. Despite the progress that courts have made with caseflow management, delay is still a national problem.[4] This conclusion brings to mind the memorable title of an article written by Judge Macklin Fleming in 1973: "The Law's Delay: The Dragon Slain Friday Breathes Fire Again Monday."[5] More important, this conclusion leads us to ask why some courts continue to experience backlogs, while others have been consistently able over time to reduce or avoid delay.

A. WHY DO SOME COURTS CONTINUE TO EXPERIENCE BACKLOGS?

No research shows conclusively why delay remains a problem in some courts. There are several possible explanations for the circumstances in which these courts find themselves.

1. *Management Problems*

Some of the courts with continuing delay may have had management difficulties. They may have considered the application of caseflow management improvement programs but failed during development or implementation efforts to overcome resistance to change the local legal culture (see Chapter IX, pages 130 through 131). Or they may have omitted one or more of the "caseflow management fundamentals" from their plans for improvement (see Chapters I, II, and III). The most likely explanation, however, is that they have not had the general court management conditions (leadership, commitment, communications, accountability, and education) that are necessary to create an atmosphere conducive to successful caseflow management (see Chapter IV). These conditions ensure that due attention is paid to the fundamentals of caseflow management and provide a foundation for implementation efforts.

Having come into its own in American courts in the 1980s, caseflow management is now a mature discipline.

1. See Appendix A, p. 147.
2. See John Goerdt et al., "Litigation Dimensions: Torts and Contracts in Large Urban Courts," *State Court Journal* 19, no. 1 (1995): 5.
3. See David Steelman, "What Have We Learned About Court Delay, 'Local Legal Culture,' and Caseflow Management Since the 1970s?" *Justice System Journal* 19, no. 2 (1997) 145, at 156-158, citing data from Brian Ostrom and Neal Kauder, *Examining the Work of State Courts, 1994: A National Perspective from the Court Statistics Project* (Williamsburg, Va.: National Center for State Courts, 1996), pp. 27 and 55.
4. There is a general public feeling that cases in court take too long. In a public opinion survey conducted for the National Conference on Public Trust and Confidence in the Justice System, held on May 14, 1999, 80% of all respondents expressed agreement with the statement, "Cases are not resolved in a timely manner." National Center for State Courts, *How the Public Views the State Courts: A 1999 National Survey* (Williamsburg, Va.: National Center for State Courts, 1999), pp. 27-28.
5. *Public Interest* 32 (1973): 13.

The absence of continuing day-to-day attention by the chief judge and court manager to the court's performance in light of its caseflow management goals and objectives is a certain way to diminish the likelihood of court success. If the chief judge and the court manager do not meet regularly to review reports on the court's caseflow management performance (such as the reports in Appendix D, pages 175 through 179), they will not be able to identify and deal promptly with any emerging problems. Moreover, their lack of regular and continuing attention to caseflow performance will send a message to judges and court staff that effective caseflow management is not a matter of importance for the court.

2. *Resource Problems*[6]

Even though the relationship of jurisdiction size and case mix to case-processing times is a complex one, national research suggests that a larger than average case volume (caseloads per judge) does not explain court delay. Especially in slower courts, the addition of judges is more likely to exacerbate problems than to solve them.

A study of criminal case processing in state trial courts confirms that there is a complex relationship among resources, local legal culture, and timeliness. Although prosecutors and criminal defense attorneys view resources as important, those in faster courts do not see as great a need for more court system resources as their colleagues in slower courts, even when resource levels are the same in fast and slow courts. "The current research demonstrates that the relative importance of resources varies inversely with timeliness. The faster the system, the less the perceived relative importance of resources. Moreover, the more timely courts do not necessarily have more resources than the slower, in accordance with the legal culture notion. Resources are important from the attorneys' perspective, but they are not that important in expeditious courts." The researchers suggest that this is so because attorneys and others in the more expeditious courts have learned to be more efficient in their use of existing resources.[7]

Analysis of long-term trends in case-processing times suggests, however, that courts that manage their cases well cannot continually absorb ever-increasing caseloads. Even courts with the most effective caseflow management may reach a "saturation point": "According to the saturation point hypothesis presented here, a court might have a larger than average judicial caseload and process its cases relatively expeditiously. If a court then experiences a rapid and substantial increase in filings, there will likely be a noticeable increase in overall case processing times. Given this combination of circumstances, a court could justify additional judges to maintain its pace of litigation."[8] Compared with a slower court that experiences a large increase in caseload, a court with a history of fast case processing may have a better chance of getting additional judgeships or other resources approved because it has a proven track record of making effective and efficient use of existing resources through its caseflow management program. A slower court does not necessarily stand in such a strong position. Such a court should instead improve its resource management and caseflow management procedures, perhaps adding administrative or support staff, before seeking additional judges.

The mix of felony cases in a court has been found to affect felony case processing times. Courts with a larger percentage of violent crimes and drug sale cases tend to have longer felony case processing times. During the mid- to late-1980s, a rapid and substantial increase in criminal cases resulting from the "war on drugs" lengthened these times. In response, many courts have shifted judges from civil matters to criminal matters. The result, as one might expect, was that courts with large increases in drug sale cases and a relatively high percentage of such cases also tended to have longer disposition times in civil cases.

Yet courts that were able to handle *other* kinds of criminal cases expeditiously were also able to dispose more quickly of their serious violent crimes, whereas courts that were slow with other criminal cases were also slow with serious cases. The conclusions are much like those for courts that generally faced large increases in caseload. The courts that previously have managed their cases well might necessarily require more resources. A larger number of violent crimes or drug cases might properly be handled, at least in part, through development of special DCM tracks

6. See John Goerdt et al., *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1989), pp. 103-104, and John Goerdt, Chris Lomvardias, and Geoff Gallas, *Reexamining the Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1991), pp. 67-70.

7. Brian Ostrom and Roger Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1999), pp 104-105.

8. Goerdt et al., *Examining Court Delay*, p. 104.

for such cases or other changes in caseflow management practices. Especially in courts with slow case processing, better resource management and caseflow management are better than the addition of resources as initial strategies for handling violent crime or drug cases.

3. Court Size and Case Mix

National studies of the pace of litigation in urban trial courts have analyzed factors such as court size, case mix, resources, and case management practices as they relate to civil and felony case processing times.[9] Analysis of data in these studies addressed statistical correlations bearing on times to disposition.

a. Civil case processing times

Researchers found that court size may affect the pace of civil litigation. Not surprisingly, a court that operates in a jurisdiction with a large population is likely have more civil case filings than a court that operates in a jurisdiction with a small population. The number of civil filings does not have a direct relationship to case-processing times, however. Yet this number is related to case mix (courts with more filings tend to have a higher percentage of tort cases) and caseload per judge (courts with more filings also tend to have more cases per judge), each of which is related to civil case processing times. The relationship of court size to civil case processing times is thus more indirect than direct.

The study found case mix to be related to civil case processing times. Courts with a higher percentage of tort cases tend to have longer times to disposition, while those with a higher percentage of contract cases tend to have shorter disposition times. Courts with a larger caseload per judge were somewhat more likely to have shorter case-processing times. However, these courts tended to have a higher percentage of contract cases, which generally take less time to dispose than tort cases.

Another case mix factor affecting civil times to disposition is a court's felony case mix. Courts that experienced a large increase in drug sale cases from 1983 to 1987 tended to have longer median processing times for civil cases. Those with a higher percentage of drug sale cases in 1987 tended to have longer median processing times for civil cases and a higher civil case "backlog index" (the number of civil cases pending divided by the number disposed). These correlations undoubtedly are a result of the fact that these courts had to shift resources to deal with drug cases, and their civil case processing times consequently suffered.

Court size and case mix were not the most prominent factors affecting disposition times in civil cases. The factors found to be most strongly correlated with civil case processing times were caseflow management factors—early court control of the pace of litigation and fewer pending civil cases per judge.

b. Felony case processing times

Researchers found that the population served by a court and the number of felony cases filed were not related to case-processing times. But greater availability of judges and assignment of a greater number of judges to felony matters were related to longer case-processing times. Therefore court size may have some bearing on disposition times in felony matters.

As with civil cases, the researchers found case mix to be directly related to case-processing times. Courts with a higher percentage of the most serious cases (such as murder, rape, and robbery) tended to have longer disposition times. Similarly, courts with a higher percentage of drug sale cases tended to be slower courts.

9. See ibid., pp. 38-41 and 86-90, and Goerdt et al., *Reexamining the Pace of Litigation in 39 Urban Trial Courts*, pp. 21-24 and 63-66.

…a court with a history of fast case processing may have a better chance of getting additional judgeships or other resources…

A lower percentage of the most serious cases in a court's case mix was found to be strongly correlated with shorter case-processing times. Yet caseflow management factors—a higher percentage of firm trial dates and early resolution of pretrial motions—were found to have the most potential for predicting shorter felony case processing times.

10. See Jerry Harvey, *The Abilene Paradox and Other Meditations on Management* (San Francisco, Calif: Jossey-Bass, 1988).

11. The story may be summarized as follows: When four family members were playing dominoes on a July afternoon in Coleman, Texas (population 5,607), one suggested that they might go to Abilene for a meal. While none of the others were enthusiastic about the idea, none objected. They all found themselves exhausted, however, by the 106-mile round-trip journey to Abilene through 100-degree weather in an old auto without air conditioning. It was only after their return that they all became aware that none of them really wanted to make the trip, and that none of them had enjoyed the meal.

12. The applicability of the Abilene Paradox to caseflow management programs in courts has been suggested by Barbara Sopronyi, co-leader of a workshop, "Systems That Work: Designing and Implementing Effective Systems," held on Oct. 21, 1996, for the Mid-Atlantic Association for Court Management in Cape May, N.J.

13. Applying their ideas to caseflow management, this section relies on Robert Jervis, *System Effects: Complexity in Political and Social Life* (Princeton, N.J.: Princeton University Press, 1997), and on Stephen M. Walt, "The Hidden Nature of Systems," review of *System Effects*, in *Atlantic Monthly* 282, no. 3 (September 1998) 130.

14. *Jervis, System Effects*, p. 6.

4. *Problems of Commitment*

Judges' commitment to ensuring the timely disposition of cases may be affected by different factors. Judicial assignment systems (such as individual or master calendars) can have different effects on the level of attention that judges pay to specific cases or to a court's caseflow needs. In addition, judicial rotation—changes in assignment from one division to another—can also affect a judge's ability to "see a case through the system."

The continuing presence of pending inventories of unacceptable size and age in some courts might be explained by a theory of organizational dynamics and commitment known as the "Abilene Paradox."[10] This theory, possibly based on an apocryphal story set in a small West Texas town near Abilene,[11] suggests that organizations fall into the Abilene Paradox when organization members:

- Individually agree in private about the nature of the situation or problem facing the organization
- Individually agree in private about the steps required to cope with the situation or problem
- Fail to communicate their desires or beliefs accurately to one another
- Make collective decisions that lead them to take actions contrary to what they want to do, thereby arriving at results that are counterproductive to the organization's intent and purposes
- Experience frustration, anger, irritation, and dissatisfaction with their organization as a result of taking actions that are counterproductive
- Do not take action to deal with their inability to manage agreement, allowing the cycle to be repeated

The application of this theory to the failure of delay reduction and delay prevention programs[12] suggests a reason for the common refrain, "We tried that, but it didn't work!" in response to suggestions for caseflow management improvements. The leaders and staff of courts with unsuccessful delay reduction programs may well have agreed to the program's design and implementation without accurately communicating to one another their private desires, beliefs, or concerns about the programs. As a consequence, they would find implementation difficult and frustrating, and they would subsequently be unable to retrieve their program from a downward course toward failure.

5. *System Effects*[13]

In the last analysis, court efforts may fail to create and maintain an expeditious pace of litigation simply because of the very complexity of the court process. That process is one in which judges in the same court may have very different practices for handling cases, and in which prosecutors, public defenders, private attorneys, elected county clerks and sheriffs, probation officers, child protection caseworkers, and independent treatment service providers may all have institutional objectives different from those of the court. All of these participants in the court process interact with one another every day. In such an environment, predicting the outcome of efforts to change the way in which cases are handled is difficult.

Social scientist Robert Jervis writes that "system effects" are present whenever "(a) a set of units or elements is interconnected so that changes in some elements or their relations produce changes in other parts of the system, and (b) the entire system exhibits properties and behaviors that are different from those of the parts."[14] According to Jervis, there are three related but distinguishable reasons that system effects occur:

1. Any action in a complex system has direct results, and interconnections in the system yield indirect and delayed effects. For example, statutory enhancements in the penalties for criminal offenses can have at least a temporary effect on the number of cases that go to trial and on the character of plea negotiations between prosecutors and defense counsel.
2. In any system with more than two participants, the relations between any two are a result not only of how they relate to one another but also of the manner in which other participants in the system interact. Thus, the relationship in a child protection case between the prosecuting attorney

and counsel for the parents is affected by the court's provision of counsel to represent the children and its relations with the state child protection agency.

3. Actions in a complex system may not lead to an intended result; the outcome depends on how different elements in the system respond. As a result, an otherwise well-conceived initiative by the chief judge and court manager to introduce caseflow management changes may fail if it evokes resistance from influential members of the court community that cannot be overcome.

The stability of a complex system like the day-to-day operation of a trial court can depend on whether interactions among the actors in the process involve what Jervis calls "negative feedback" or "positive feedback." Negative feedback is interactions that serve to diminish the effects of change, thereby tending to preserve pre-existing patterns of interaction. Positive feedback, on the other hand, tends to reinforce and multiply the effects of change. As Jervis points out, both kinds of feedback are important: "Were it not for negative feedback, there would be no stability as patterns would not last long enough to permit organized society. Without positive feedback, there could be no change or growth."[15]

From this perspective, the inability of court leaders to overcome problems of delay can be viewed as a failure to achieve a felicitous balance between positive and negative feedback among the system effects in the trial-court process. Some efforts to improve caseflow management might fail because proponents of change were unable to overcome negative feedback and change existing patterns of interaction. They were unable, in other words, to alter the "local legal culture"[16] and modify the expectations of judges, lawyers, and others concerning the pace of litigation. Or they may have fallen victim to the consequences of positive feedback. The proponents of change may have introduced modifications that had unintended negative consequences. Or the very success of the caseflow management improvement initiative may have sown the seeds of future problems that would prevent its continuing success.

B. HOW CAN COURTS ACHIEVE CONTINUING SUCCESS?

There is ample evidence in the literature that courts can reduce delay and, having done so, continue over time to avoid delay in their proceedings. The courts that have been able to do so are those that have been most able to apply the court and caseflow management principles described in Chapters I-V. The complex dynamics of a trial court are never static, however, and it is worthwhile to give some attention to features that show the greatest promise of ensuring ongoing success in a changing environment.

1. Continuity of Leadership

It has been observed that the success of fundamental change in the effectiveness and efficiency of government depends not just on leadership but on continuity of leadership.[17] Every one of the six trial courts profiled by the National Center for State Courts as an example of long-term success in meeting problems of delay has had the benefit of strong leadership.[18] Each of these courts has succeeded in solving what has been called "the problem of succession": "What happens when a new leader replaces the older one who initiated and developed an innovative program and guided it through its most demanding times?"[19]

The problem of continuity may be minimized if a court has a single chief judge and a single court manager actively leading a caseflow management program for a decade or more. Most courts may not have this luxury, however. It is therefore critical that steps be taken to ensure that there be continuity of commitment to caseflow management on the part of the court leadership. If the court has an assistant chief judge who advances to chief judge, both the chief judge and the assistant chief should be thoroughly committed to making the caseflow management program work.

…the success of fundamental change in the effectiveness and efficiency of government depends not just on leadership but on continuity of leadership.

15. Ibid., p. 125.
16. See Thomas Church et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1978), pp. 53-62.
17. See David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector* (New York: Penguin Books, 1993), p. 326: "When leaders come and go, it is impossible to create fundamental change. In virtually every example we know, the key leaders . . . have made a long-term commitment. . . . No organization is going to risk reinventing itself if it senses that its leader might be gone in a year or two."
18. See William Hewitt, Geoff Gallas, and Barry Mahoney, *Courts That Succeed: Six Profiles of Successful Courts* (Williamsburg, Va.: National Center for State Courts, 1990).
19. Paul Wice, "Court Reform and Judicial Leadership: A Theoretical Discussion," *Justice System Journal* 17, no. 3 (1995): 309, at 316.

20. See Aaron Ment, "An Overview of Case Management: Connecticut's Experience," in Working Group on a Courts Commission, *Conference on Case Management* (Dublin: Government of Ireland, 1997).

21. See the "Resource Allocation, Acquisition, Budget, and Finance Core Competency Curriculum Guidelines" in NACM Professional Development Advisory Committee, "Core Competency Curriculum Guidelines: History, Overview, and Future Uses," *Court Manager* 13, no. 1 (winter 1998): 6, at 12-17.

22. See Ostrom and Hanson, *Efficiency, Timeliness, and Quality*, p. 104.

A more likely approach in most courts, however, may be to ensure a high level of commitment to caseflow management from most or all of the judges on the bench, so that each succeeding chief judge views leadership of such management as an important part of her or his role. This commitment may be promoted in significant part through creation of an environment in which all new judges learn that caseflow management is an intrinsic part of their work. Given broad involvement in and commitment to the vision embodied in the caseflow management program, any successor to court leadership is more likely to be imbued with the value of achieving the program's goals.

Finally, the court manager may be a source of leadership continuity if she or he is a strong manager, has a long tenure, and is well regarded by the members of the bench. Such a court manager can use his or her commitment to caseflow management to define her or his operating relationship with each new chief judge. She or he can promote the participation of judges and court staff in activities that provide education on caseflow management, thereby promoting involvement in and commitment to the caseflow management program.

CONTINUITY OF LEADERSHIP IN PHOENIX

The Superior Court of Arizona in Maricopa County is a trial court of general jurisdiction serving Phoenix and surrounding communities.[a] Excellence in civil caseflow management has been an important goal of the court since the 1970s, and it remains one of the fastest courts in the country.[b]

There is a general expectation in Phoenix that the superior court's chief presiding judge will be a committed, activist leader who gives priority to caseflow management. The current chief and his predecessors since the 1970s all fit this description. All have been active and articulate proponents of an intervention model of caseflow management. There is also an expectation that the court administrator will be an effective leader and manager concerned with the caseflow system. The current administrator and his predecessor are nationally recognized leaders in court administration.

a. This description is essentially that offered by Maureen Solomon et al., in Hewitt, Gallas, and Mahoney, *Courts That Succeed: Six Profiles of Successful Courts* (1990), at p. 95.

b. See Goerdt et al., "Litigation Dimensions: Torts and Contracts in Large Urban Courts," *State Court Journal* 19, no. 1 (1995): Appendix 7.

2. *Continuing Attention to Caseflow Management Principles*

Caseflow management improvements, even when successfully implemented, can probably never be viewed as a comprehensive and final solution to problems of court delay. It is much more realistic to view caseflow management as a continual improvement process. In the Connecticut Judicial Branch, for example, the Office of the Chief Court Administrator views case management as on ongoing cycle of caseload assessment, development of standards and objectives, creation and implementation of improvement plans, caseload measurement, and refinement efforts.[20]

In courts that are successful, caseflow management is a matter of high priority for the chief judge and the court manager. They meet regularly to review the status of the court's inventory. In meetings with judges and court staff, caseflow management is a regular agenda item. Caseflow management works when the court manager has knowledge of the court's calendar at his or her fingertips each day, and everyone in the court focuses on caseflow management as the court's essential management responsibility.

3. *Attention to Adequacy and Management of Court Resources*

Acquisition, allocation, and management of a court's resources are core competencies for any professional court manager. Effective allocation of resources is a critical means for a court to obtain additional resources.[21] If a court is managing cases efficiently and effectively, regular participants in the court process are less likely to believe that more resources are desperately needed than they would in a slower and less well-managed court.[22] Yet at some point a court may still have insufficient resources to deal with its workload. Given the long process that may be involved in obtaining additional judgeships, a court must explore further ways to improve caseflow management, ascertain if existing resources can be reallocated where they are most needed, and seek additional nonjudicial staff resources and technological resources in keeping with a plan for revised operations. Seeking additional judgeships is a final option. Full documentation of the

court's other efforts to deal with its workload should serve to enhance its chances of success.

4. Training Programs and Courts as "Learning Organizations"

Like every other element of society, courts now operate in an environment dominated by computers, mobile citizens, and a global economy. The eminent management expert Peter Drucker observes that ours has become a "knowledge society" in which information and knowledge drive economics and productivity.[23] To survive and thrive in such an environment, individuals and organizations must be committed more than ever before to learning.

At one level, a "learning organization" is an organization that provides periodic training and education on caseflow management for judges, quasi-judicial officers, court managers, court supervisors, and court support staff. This training and education reinforces understanding of the reasons that caseflow management is important and of the fundamentals of caseflow management. It also offers a setting for the exchange of ideas about how to solve current problems.

Efforts before the 1970s to address problems of delay in the courts focused on the introduction of changes in structure or rules of procedure or on the addition of judgeships. Although these measures appeared to be obvious solutions, they did not produce the desired outcome: shorter times to disposition.[24] A new theory of court delay, developed in the 1980s, was that such delay is the result of the "local legal culture"—the expectations and behaviors of judges, lawyers, and others in the court process that bear on the pace of litigation.[25]

A local legal culture may be resistant to change, but other factors may contribute to delay because of the complexity of the court process. Small changes in one area, such as early introduction of court intervention or of a firmer continuance policy, may have widespread and significant consequences for the pace of litigation. On the other hand, the changes introduced under a caseflow management improvement program may have systemic consequences—altered practices among attorneys or changes in the number and kinds of cases filed—that create unanticipated problems after the program has been in operation for several years. Or new problems may arise indirectly because of societal factors totally independent of the changes that a court has made in its management of the pace of litigation.[26]

The complexity of the court process and the differing objectives of its participants suggest that proponents of caseflow management must not expect that the success of their efforts will continue indefinitely of their own accord. They must be prepared to commit to ongoing evaluation, performance measurement, and program refinement in order to stay abreast of continuing changes in the environment.[27]

C. CASEFLOW MANAGEMENT IN AN ERA OF "PERMANENT WHITE WATER"

As the world enters the twenty-first century, court management and caseflow management must operate in an environment of unprecedented change brought about by factors such as the emergence of a global economy and a technology-dominated post-industrial society. Court leaders and court

23. See Peter Drucker, *Post-Capitalist Society* (New York: Harper Business, 1993), pp. 19-47.

24. See David Steelman, "The History of Delay Reduction and Delay Prevention Efforts in American Courts," in Working Group on a Courts Commission, *Report on Case Management Conference* (Dublin: Government of Ireland, 1997).

25. See Church et al., *Justice Delayed*, p. 54.

26. The brief discussion here of the interplay and feedback loops in complex systems is based on that in Peter Senge, *The Fifth Discipline: The Art and Practice of Learning Organizations* (New York: Doubleday, 1990).

27. On the need for continuous learning, Ingo Keilitz writes: "As change accelerates, personal as well as organizational success will depend more and more on the capacity to learn continuously. Continuous improvement requires a commitment to learning. Professor David A. Garvin, . . . at the Harvard Business School, defines a 'learning organization' as an 'organization skilled at creating, acquiring, and transferring knowledge, and modifying its behavior to reflect new knowledge and insights'" ("The Development of Tomorrow's Leaders in Judicial Administration," *Justice System Journal* 17, no. 3 [1995]: 323, at 331).

JUVENILE COURT RESOURCES IN CHICAGO

The Circuit Court of Cook County is a 400-judge unified trial court that hears all trial matters arising in Chicago and nearby municipalities. In 1990, with partial funding support from the State Justice Institute, the court engaged the National Center for State Courts (NCSC) to make a detailed assessment of what the judgeship needs for its juvenile division would be *if* the judges handled all cases in keeping with a caseflow management improvement plan and met reasonable expectations for the timely disposition of its cases. To deal in that manner with the court's then-current level of filings, the NCSC project leader and the court's administrative director concluded that the number of judges in the juvenile division would have to increase from 20 to 50 and that additional staff and other resources would be needed.[a]

Since 1993, the Cook County Circuit Court has made dramatic changes in its juvenile court operations. It has created a separate "child protection division" to hear matters such as abuse and neglect cases and petitions to terminate parental rights. It has amended procedures, created a complete set of new standard forms, and taken steps to improve the case information system for child protection and delinquency cases. And, through internal reassignments, it has nearly doubled the number of judges hearing child protection and delinquency cases.

a. See David Steelman, H. Ted Rubin, and Jeffrey Arnold, *Circuit Court of Cook County, Illinois: Juvenile Division Judge Workload and Judgeship Needs Assessment* (Chicago: Circuit Court of Cook County, 1993).

managers face changes so constant and turbulent that they can accurately be described by the metaphor "permanent white water":

> Most managers are taught to think of themselves as paddling their canoes on calm, still lakes. They're led to believe that they should be pretty much able to go where they want, when they want, using means that are under their control. Sure there will be temporary disruptions during changes of varying sorts—periods when they'll have to shoot the rapids in their canoes—but the disruptions will be temporary, and when things settle back down, they'll be back in the calm, still lake mode. But it has been my experience that you never get out of the rapids! No sooner do you begin to digest one change than another one comes along to keep things unstuck. In fact, there are usually lots of changes going on at once. The feeling is one of continuous upset and chaos.[28]

The environment in which a court's caseflow management system operates is no less dynamic than this. The challenge for court leaders is to maintain the effectiveness of caseflow management in this environment.

This challenge creates what has been called "the Grand Paradox of Management," for a manager must take responsibility for controlling situations and events that are in many ways beyond control. As the pace of change increases, the paradox becomes more intense:

> Strategically, [the paradox] is resolved by declaring that today's executives must be *leaders*. The precedence of leadership over management has never been more imperative than it is today. One can't simply 'manage an existing system,' for the unstable environment continually threatens to render any given structure and set of policies out of sync with its demands and opportunities. Under these conditions, a leadership model is far more appropriate than a managerial model. The leader constantly invents strategies that are intended to improve the system's adaptation to its present and future environment. Strategies that are consciously intended to improve adaptation and that are chosen reflectively with an eye on their futurity are the strategies that a leader or manager can take responsibility for.[29]

Courts cannot design and implement a caseflow management program merely to deal with present-day circumstances. Successful caseflow management calls for ongoing refinement to deal with changing circumstances—refinement that meets the ultimate objective of providing prompt and affordable justice for all citizens coming before the court.

28. Peter Vaill, *Managing as a Performing Art* (San Francisco, Calif: Jossey-Bass, 1990), p. 2.
29. Ibid., p. 16.

APPENDICES

APPENDIX A

National Association for Court Management

(NACM) CASEFLOW MANAGEMENT CURRICULUM GUIDELINES*

*Source: "Core Competency Curriculum Guidelines: What Court Leaders Need to Know and Be Able to Do," *Court Manager* 18, no. 2 (2003):16-20.

INTRODUCTION

What This Core Competency Is and Why It Is Important

Caseflow management is the process by which courts move cases from filing to closure. This includes all pre-trial phases, trials, and increasingly, events that follow disposition to ensure the integrity of court orders and timely completion of post-disposition case activity.

Effective caseflow management makes justice possible not only in individual cases but also across judicial systems and courts, both trial and appellate. Effective caseflow helps ensure that every litigant receives procedural due process and equal protection. The quality of justice is enhanced when judicial administration is organized around the requirements of effective caseflow and trial management.

Crucial issues that impact the effective movement of cases from filing to closure include:

- court system and trial court organization and authority relationships, including the management of judges by judges;
- the identification, development, selection, and succession of chief judges and court managers, chief judge/court manager executive leadership teams, and the best use of these and other multi-disciplinary executive teams;
- allocation of court resources: judges, managerial, technical and administrative staff; budgets; technology; and courthouses, courtrooms, and other facilities across courts, court divisions, case types, and particular types of hearings;
- application of court technology and the court's research, data, and analytic capability; and
- coordination with the judiciary's justice system partners.

Caseflow management is the process by which courts convert their "inputs" (cases) into "outputs" (dispositions). This conversion process, caseflow management, determines how well courts achieve their most fundamental and substantive objectives and purposes. Properly understood, caseflow management is the absolute heart of court management.

SUMMARY

Caseflow Management Curriculum Guidelines

What Court Leaders Need to Know and Be Able to Do

Working as a court executive leadership team, professional court managers and the judge(s) who head court systems and appellate and trial courts facilitate caseflow management. The six areas of needed personal and technical knowledge, skills, and abilities (KSAs) are:

- Court Purposes and Vision
- Fundamentals
- Leadership Teams and System-Wide Effectiveness
- Change and Project Management
- Technology
- Personal Intervention

Court Purposes and Vision

Caseflow management is a justice not an efficiency driven activity. Caseflow management makes possible equal access, individual justice in individual cases, equal protection, and due process—the appearance of individual justice in individual justice—predictability and regularity in case processing. Justice delayed is justice denied because unnecessary delay destroys the purposes of courts. The reasons are straightforward.

Excessive, unregulated time from filing to disposition and from court event to court event does not impact the parties equally. Consequently, once cases are filed, impartial and independent courts and judges must take and maintain control over case progress by managing the time from filing to disposition and from event to event. Related, in a witness dependant adversarial system, undue delay inevitably leads to the loss of memory. When memory is lost, litigants and their advocates can neither remember nor find the facts. When the facts are lost or forgotten, justice is impossible. The objective of caseflow management is not faster and faster and more and more, it is justice.

And moving cases from filing to disposition is the most basic thing courts do. This is what every other court work process supports. Consequently, court leaders must conceive, communicate, and implement vision concerning effective and efficient case processing. Effective court and justice system leadership means organizing and managing the court, its resources, and workflows around caseflow management. Justice and the courts' enduring purposes and responsibilities are served by vision and action concerning caseflow management.

Fundamentals

Understanding the relationship between the purposes of courts and effective caseflow and trial management is a fundamental as are time standards, alternative case scheduling and assignment systems, and case management techniques, including differentiated case management (DCM) and alternative dispute resolution (ADR). While there are underlying caseflow principles, differing case types have differing case processing steps and dynamics. Competent court leaders, both judges and court managers, understand the general principles, all case types, and how the principles apply to each case type. They keep current with the successes and failures of other courts and know how to leverage external resources, current research, and others' experience to case and trial management in their own court.

Leadership Teams and System-Wide Effectiveness

Caseflow management is a team sport that requires an effective court executive leadership team that includes the judge(s) in charge and court managers. Effective case processing is a cooperative effort of judges and court staff and public and private litigants and lawyers, as well as law enforcement, social services, health, detention, and correctional organizations. As court managers and judges in charge work together to improve case processing and jointly lead

their court and justice system, they must understand that while caseflow management requires early and continuous court control of individual cases, the courts are dependent on others who have independent and distinct responsibilities in an interdependent justice system. Competent caseflow management leadership requires recognition of the need for both interdependence and independence throughout the court and the justice system.

Change and Project Management

Effective caseflow is a moving target. While the underlying purposes and case processing principles are constants, so are change and projects to bring about improvements. Techniques and programs that once were innovative and effective do not work forever and require constant monitoring. Caseflow management competency means skillful and continuous evaluation and problem identification. Court leaders must oversee the evaluation of caseflow management problems through qualitative information and quantitative data and statistical analysis. Once problems are identified and solutions are crafted and communicated, court leaders must successfully initiate and manage change.

Technology

Application of technology to caseflow is critical. Tying information technology to caseflow management involves creating and maintaining records; supporting court management of pre-trial, trial and post-dispositional events, conferences and hearings; monitoring case progress; flagging cases for staff and judge attention; tracking trends; and providing needed management information and statistics. To oversee the application of technology to caseflow, court leaders must understand both technology's potential to improve case processing and its limitations. Leading and managing what one does not understand at all is problematic at best.

Personal Intervention

Effective leadership of caseflow cannot be passive. Neither day-to-day routines nor required change are self-executing. Complex and interdependent processes carried out by people, departments, and organizations with independent responsibilities demand skilled and credible leadership. To effectively lead the court, court leaders, especially the judge(s) in charge, must take responsibility for caseflow management and skillfully communicate with and manage others. To do this, personal intervention is mandatory.

CASEFLOW MANAGEMENT CURRICULUM GUIDELINES

COURT PURPOSES AND VISION

Court leaders must understand court purposes and promote vision and action throughout the court and justice community organized around the impact caseflow management has on justice. Acceptable court performance is impossible without effective caseflow management.

- Knowledge of the Purposes and Responsibilities of Courts Curriculum Guidelines and how to apply them to caseflow management;
- Knowledge of the Trial Court Performance Standards, particularly the Expedition and Timeliness and Equality, Fairness, and Integrity Standards;
- Knowledge of the inherent powers of the court, which give courts the authority to set and enforce rules, including rules designed to improve case processing;
- Knowledge of the adversarial system and the values it supports;
- Knowledge of judicial and court manager ethics and their relevance to day-to-day caseflow management;
- Knowledge of the independent responsibilities of the three branches of government and how interactions among the branches impact funding of caseflow management, timely pretrial, trial, and post-disposition case processing, and the enforcement of court orders.
- Ability to conceive, build, communicate, and implement a clear vision

and sense of purpose for the court and the justice system that incorporates caseflow and trial management;

- Skill in developing, communicating, and using caseflow and trial management goals that flow from a court- and justice system-wide vision and mission;
- Ability to translate vision into effective public communications, promotional material, procedural memoranda, and court rules to inform the public and the justice community about how caseflow management improves the quality of justice.

FUNDAMENTALS

Fundamentals include the relationship between the purposes of courts and effective caseflow and trial management, leadership, time standards, alternative case scheduling and assignment systems, and case management techniques, including differentiated case management (DCM) and alternative dispute resolution (ADR).

- Ability to link the broad purposes of courts to the goals of accessible, equal, fair, prompt, and economical resolution of disputes and effective caseflow and trial management;
- Knowledge of how the organization, jurisdiction, and funding of courts impact day-to-day caseflow management;
- Knowledge of how core management functions impact caseflow management, including human resources, budget and finance, information technology, records, and facilities;
- Knowledge of case processing time standards and other caseflow management performance indicators;
- Skill in tying time standards to the number and types of cases that must be processed to meet time to disposition goals for all case types—by year, month, week, day, and judicial division, team and judge;
- Knowledge of basic caseflow axioms and principles such as early and continuous judicial control and how they produce timely and fair dispositions through staff and lawyer preparation and meaningful events;
- Knowledge of all case processing steps, sequences, and dynamics for all case types, including how lawyers, their clients, and pro se litigants make decisions concerning filing, case processing, and settlement; and the economics of the practice of law for criminal, civil, domestic relations, juvenile, traffic, administrative, and appellate cases;
- Knowledge of alternative case assignment and scheduling systems and how to set up and manage daily court calendars by judge, type of case and hearing, day of the week, and time of the day;
- Knowledge of differentiated case management (DCM) and its application to all case types;
- Knowledge of alternative dispute resolution (ADR) and how to integrate ADR into the court's case management system(s);
- Knowledge of psychological factors that impact case processing and scheduling, and active judicial management of pre-trial conferences, trials, and post-dispositional activity;
- Ability to learn from others' CFM successes and failures, to keep current with research findings about effective CFM and the causes and cures for delay, and to leverage available external resources to improve caseflow management.

LEADERSHIP TEAMS AND SYSTEM-WIDE EFFECTIVENESS

Court managers and the judge(s) in charge of the court (including the judges who head specialized court divisions) must work together to improve case processing and jointly lead the court and justice system. Understanding that while caseflow management requires early and continuous court control of individual cases, system-wide caseflow effectiveness is a cooperative effort of public and private litigants and lawyers, law enforcement, social services, health, detention and

correctional organizations, and judges and court staff.

- Ability to create and maintain a court executive leadership team that effectively addresses caseflow management;
- Ability to develop effective CFM teams consisting of judges, court staff, and others throughout the court and the justice system;
- Knowledge of differing leadership styles and skills and how to build caseflow management executive teams around judges and court managers with diverse administrative experiences, interests, and capabilities;
- Knowledge of the agencies and individuals, both inside and outside the court, with whom the court must work successfully to bring about effective CFM, and their independent CFM responsibilities and objectives;
- Skill in establishing and maintaining effective working relationships and finding the right balance between oversight of others with independent case management responsibilities, delegating authority to them, and micro-management;
- Ability to help court officials and others understand their roles in the larger justice system and how they affect others, and to tie CFM to system-wide benefits, costs, and consequences;
- Skill and political acumen when working with funding authorities and the executive branch to improve case processing;
- Skill in allocating available resources and in preparing, presenting, lobbying, and negotiating realistic budgets to improve caseflow management;
- Knowledge of how to ensure the integrity of judicial orders, particularly processes that enhance revenue (fee and fine) collection;
- Ability to maintain effective partnerships among courts, the public and private bar, community groups, and the executive and legislative branches, without a loss of either the required tension between the branches or the adversarial system.

CHANGE AND PROJECT MANAGEMENT

Courts must skillfully and continuously evaluate caseflow with qualitative information and data and statistics, identify problems, and successfully build support for implementing and managing change.

- Ability to forecast and anticipate societal and justice system changes and trends that will impact filings and case processing;
- Knowledge of data needed for both continuous systemic evaluation and day-to-day caseflow management, and how to acquire and analyze needed data;
- Skill in using statistics and objective data as well as anecdotal information when assessing CFM, drawing appropriate conclusions, and differentiating between causes and effects when identifying and diagnosing CFM problems and challenges;
- Knowledge of basic strategic planning techniques, including how to use statistics to draw appropriate conclusions about the current status and the future of the court's caseflow and trial management system;
- Ability to use data to inform and, as appropriate, to influence judges and others about what is and is not working, and to persuade the bench, staff, and justice system partners, when appropriate, of the need to make changes and the feasibility of proposed solutions;
- Skill in mediation, conflict resolution, and creative problem solving when addressing caseflow management challenges and needed change;
- Ability to stimulate action and funding support through appropriate comparisons and analyses and to present data for maximum CFM impact, education, and information;

- Knowledge of the change process, how to plan change, and how to apply sound project management principles and techniques to caseflow management;
- Skill in managing CFM projects personally and through others, including those under and outside direct court control and supervision;
- Ability to conceptualize, gain funding, and oversee court construction, court renovation, and office and office furniture upgrades which enhance caseflow management;
- Skill in bringing about continuous evaluation with the understanding that caseflow problems are never solved once and for all.

TECHNOLOGY

Technology supports caseflow management through creation and maintenance of records concerning case processing and schedules, structuring management of pre-trial, trial, and post-dispositional events, conferences, and hearings; monitoring case progress; flagging cases for staff and judge attention; enabling verbatim records of court proceedings; and providing needed management information and statistics.

- Knowledge of the caseflow functions to which technology can be applied and which caseflow problems can and cannot be solved through technology;
- Ability to translate user information and experience into effective caseflow technology applications and systems and to prepare succinct and focused caseflow functional requirements;
- Knowledge of the case management functional standards being developed by the National Consortium on Court Automation Standards through NACM and the Conference of State Court Administrators;
- Ability to distinguish between fads and unstable hardware and software and reliable caseflow technology;
- Ability to lead technical people supporting caseflow management, whether in-house, central judicial (e.g., administrative office), executive branch, or outsourced and contractual;
- Ability to evaluate contractor responses to caseflow technology RFIs (Requests for Information) and RFPs (Requests for Proposals) and to get the right answers to the right questions before signing a contract;
- Knowledge of the uses and misuses of the Internet and Web pages for caseflow management;
- Knowledge of telecommunication options and their practical impacts on caseflow management;
- Skill in conveying the reasons for changes and technical information to insiders and outsiders, including higher judicial authorities, funding authorities, and those who actually process and manage cases;
- Knowledge of alternative methods to produce verbatim records of court hearings and their potential to expedite trial and appellate processes;
- Knowledge of technology to store, index, and access archival and active court records;
- Ability to convince funding authorities of the need for caseflow technology applications based on cost-benefit or other analysis, and to complete funded projects on time and within budget;
- Ability to stay current with the state of art and to update the court's application of hardware and software, to caseflow management and to respect the fact that today's technology innovation is inevitably tomorrow's tired solution.

PERSONAL INTERVENTION

Court leaders need to personally intervene, communicate, and negotiate to bring about just and efficient case processing for all case types from filing to closure and court event to court event.

- Ability to think strategically about caseflow challenges and to act

proactively to address them by intervening at the right time with the right people;

- Ability to inspire the trust and cooperation that is absolutely necessary to improve caseflow management;
- Ability to assess the needs, demands, desires, skills, and performance of individual judges and to implement caseflow plans and programs that are understood and supported by the judges;
- Ability to model desired behaviors, particularly listening and teamwork with judges, court staff, and justice system caseflow partners;
- Ability to communicate CFM issues and goals clearly and concisely, both orally and in writing;
- Knowledge of the print and electronic media and what they need to cover court processes, cases, and decisions fairly and effectively without interfering with the process itself;
- Skill in gaining positive media coverage of exemplary CFM projects and achievements, and rewarding reporters for positive CFM coverage;
- Ability to make decisions, to act decisively, and to exert leadership with respect to caseflow management.

APPENDIX B

TRIAL COURT PERFORMANCE STANDARDS AND MEASURES RELATING DIRECTLY TO CASEFLOW MANAGEMENT*

* *Source*: Bureau of Justice Assistance and National Center for State Courts, *Trial Court Performance Standards and Measurement System Implementation Manual* (Monograph NCJ 161567) (Washington, D.C.: U.S. Department of Justice, 1997).

STANDARD 2.1: CASE PROCESSING

The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.

Commentary

The American Bar Association, the Conference of Chief Justices, and the Conference of State Court Administrators have urged the adoption of time standards for expeditious caseflow management. Timely disposition is defined in terms of the elapsed time a case requires for consideration by a court, including the time reasonably required for pleadings, discovery, and other court events. Any time beyond that necessary to prepare and conclude a case constitutes delay.

The requirement of timely case processing applies to trial, pretrial, and posttrial events. The court must control the time from civil case filing or criminal arrest to trial or other final disposition. Early and continuous control establishes judicial responsibility for timely disposition, identifies cases that can be settled, eliminates delay, and ensures that matters will be heard when scheduled. Court control of the trial itself will reduce delay and inconvenience to the parties, witnesses, and jurors. During and following a trial, the court must make decisions in a timely manner. Finally, ancillary and postjudgment or postdecree matters need to be handled expeditiously to minimize uncertainty and inconvenience.

In addition to requiring courts to comply with nationally recognized guidelines for timely case processing, Standard 2.1 urges courts to manage their caseloads to avoid backlog. This may be accomplished, for example, by terminating inactive cases and resolving as many cases as are filed.

Measurement Overview

Four measures are associated with Standard 2.1. These measures require using court records and management information to determine the court's compliance with case processing time standards and whether it is keeping up with its incoming caseload. The degree to which needed information is retrievable will affect the time, personnel, and financial commitments required to complete the evaluations. Some of the measures may be undertaken by court staff; others may require the aid of an outside department or agency to assist with analysis of the data and the interpretation of the results.

Measure 2.1.1 evaluates timely case processing from case filing to disposition. Based on a large sample of cases, processing times are calculated by measuring the time between filing and disposition for each case. By comparing its own processing times with recommended standards, the court examines how closely it approximates the standards.

Measure 2.1.2 assesses how well a court is keeping up with incoming cases. Failure to keep up with the incoming caseload increases the pending caseload. An examination of the court's clearance rates (the ratio of disposed to filed cases) over several years will identify trends in reducing or increasing the pending caseload.

Measure 2.1.3 looks at all cases awaiting disposition and determines what percentage of those cases represent a backlog. Pending cases are ranked by age and compared to case processing time standards. The percentage of cases exceeding the standards indicates the size of the court's backlog.

Measure 2.1.4 evaluates the extent to which cases are heard when scheduled. Based on court records that indicate the number of trial settings, patterns of continuances in the court can be determined.

All measures should be used to obtain the most complete picture of how well a court performs with respect to the timeliness of its case processing activities. However, if available time and resources do not permit use of all measures, Measures 2.1.1 and 2.1.2 should be given priority. If the court is in compliance with local or State disposition time standards and there is no evidence of an emerging backlog, court staff might choose to omit Measures 2.1.3 and 2.1.4.

Measure 2.1.1: Time to Disposition

This measure provides information regarding the time it takes to process cases. It compares the court's processing times to local, State, or national standards, and evaluates the degree of compliance with these standards. The court's case processing time is calculated from case processing information collected from a random sample of cases disposed of during the preceding year.

Planning/Preparation

This measure requires careful coordination and supervision. The investment in time and money required for completion depends to a large extent on the court's recordkeeping system. Courts with automated systems may be able to provide much of the necessary data from computer printouts. Courts with manual recordkeeping systems may need to hire, train, and supervise individuals to collect data from case files. In either case, data need to be gathered and analyzed.

The first task is to identify general case categories. At a minimum, the court should measure felony and general civil case dispositions. Misdemeanor, domestic relations, juvenile, or other specialized case types may also be measured using the same methodology. However, because these types of cases may fall within the jurisdiction of limited or special jurisdiction courts, they are not referred to specifically in this discussion.

A felony case is one in which a formal indictment, information, or accusation is filed against a defendant on any charge (or charges) defined as a felony by State law. Count all charges in one indictment against one defendant as one case. Count a case charged as a felony in the indictment or information as a felony case for sampling purposes, even if the defendant is convicted of a misdemeanor. Do not count probation violation alone as a felony case.

A civil case is any action under civil law other than probate, domestic relations, and small claims. Other cases that should be excluded from the civil case sample include appeals from lower courts or administrative agencies, petitions for amendment of orders or decrees, and any case type that is nonlitigious in nature (e.g., name changes, registration of foreign judgments, and transcripts of judgments).

The second task is to compile a list of all cases of each type to be examined that were disposed of in the prior reporting period. (This measure is designed to correspond to the court's yearly reporting cycle. In many cases this will be a calendar year, but some courts operate on a July 1 to June 30 reporting cycle.) The cases should be identified by docket number and, if possible, by case caption.

Disposition in felony cases is defined as the date on which a diversion, judgment of guilt (guilty plea entered or verdict) or acquittal, nolle prosequi, or dismissal of the case is entered regarding all (or the last of) the charges against the defendant. For cases in which adjudication is formally withheld in anticipation of dismissal (a type of diversion), the date on which adjudication is formally withheld (the beginning of the diversion period) should be considered the disposition date. Ideally, data collectors should subtract the amount of time that a defendant was unavailable because he failed to appear, resulting in the issuance of a bench warrant or capias. Subtract the time from issuance of the bench warrant to his subsequent rearrest.

In civil cases not concluded by trial, a case is disposed of when a final order is entered from a default or summary judgment, entry of settlement, voluntary dismissal, or dismissal for lack of prosecution. In cases concluded by trial, the date the verdict or judgment was entered can be considered the disposition date. If a trial verdict is appealed and remanded to the trial court, the case should be considered "reopened" for purposes of determining case processing time (i.e., count from the date of the remand to disposition). The following types of dispositions should be excluded: transfer or removal to another jurisdiction, interlocutory appeal, and a stay (e.g., pending bankruptcy).

The next step is to select the samples of cases. If the court's automated information system can identify the case types targeted for examination and can produce a list of random numbers, docket numbers can be selected electronically. If the automated system does not have this capability or the system is manual, an interval sample (e.g., every fifth case) must be selected manually.

To determine sample size, the following guide for each case type (civil, criminal, etc.) should be used:

Total Dispositions for the Year	Minimum Sample Size
1,000	280
2,000	325
3,000	345
5,000	360
10,000	380

These sample sizes should provide a sampling error of ±5 percent in 95 percent of all samples.[1] Expect to reject some sampled cases because they are not the targeted case or disposition types or because key data are missing. Thus, the initial sample should include about 10 percent more cases than the required minimum sample size.

After the samples have been drawn, prepare the data collection forms. Forms 2.1.1a and 2.1.1c are generic data collection forms for civil and criminal cases, respectively. Forms 2.1.1b and 2.1.1d are sample civil and criminal case code sheets. Items on these forms may require modification to reflect the terminology used in the jurisdiction (e.g., felony entries referring to "information or indictment" may need to be changed to "accusation or true bill"). The generic data collection forms capture the basic information needed to identify cases and to calculate overall case disposition time as well as time periods for intermediate case processing events. Items with an asterisk are those required to calculate the time from case filing to disposition. Additional data elements on the forms will give the court a more refined picture of its case processing situation. To examine other factors influencing timeliness in case processing, additional data elements can be added to the forms (e.g., the number of plaintiffs or defendants, the criminal defendant's custody status, and the number of days in trial).

Before data collection begins, prepare a coding manual to guide data collectors and assure that data recording is consistent among cases and coders. For each item on the coding sheet, the manual should describe what information is to be collected, where it can be found in the data source (e.g., computer printout, case file, docket sheet) and how it is to be recorded. Before data collection begins, review this information with the data collectors.

Data Collection

During this step, data collectors record the appropriate case information on the data collection forms. If the data collectors use a computer printout with all the necessary data, this process may average as little as 3 or 4 minutes per case. If manual case files must be retrieved and reviewed to acquire the necessary information, data collection may average as much as 15 minutes per case.

Data Analysis and Report Preparation

After gathering the data, compute the number of days from case filing (or arrest) to disposition. (The most commonly used statistical software can automatically calculate the number of days between two dates.) Summarize the results by the number and percentage of cases disposed of within the specified timeframes. Compare these results with local or State case processing time standards. If the court has not adopted time standards,

1. A. Herbert and R. Colton, *Tables for Statisticians* (New York: Barnes and Noble, 1963), p. 145.

or if the standards are ambiguous, compare the court's case processing time data with the time standards adopted by the American Bar Association (ABA) or by the Conference of State Court Administrators (COSCA) and the Conference of Chief Justices (CCJ), which are presented in figure 1. For example, the ABA's standards stipulate how long it should take for the 90th, 98th, and 100th percentile cases to be resolved. Consequently, they provide a convenient way to evaluate court performance. The higher the percentage of cases in compliance with the standards, the better the court's performance is on this measure.

FIGURE B-1
CASE DISPOSITION TIME STANDARDS ADOPTED BY THE CONFERENCE OF STATE COURT ADMINISTRATORS, THE CONFERENCE OF CHIEF JUSTICES, AND THE AMERICAN BAR ASSOCIATION*

	COSCA & CCJ	ABA
CRIMINAL**		
Felony	180 days	90% in 120 days 98% in 180 days 100% in 12 months
Misdemeanor	90 days	90% in 30 days 100% in 90 days
CIVIL***		
Jury trials	18 months	
Nonjury trials	12 months	
General civil		90% in 12 months 98% in 18 months 100% in 24 months
Summary proceedings: small claims, landlord/tenant		100% in 30 days
DOMESTIC RELATIONS***		
Uncontested	3 months	
Contested	6 months	
All Cases		90% in 3 months 98% in 6 months 100% in 12 months
JUVENILE****		
Detention/shelter hearings	24 hours	24 hours
Adjudicatory/transfer hearings		
1. In a detention facility	15 days	15 days
2. Not in a detention facility	30 days	30 days
Disposition hearings	15 days	15 days

* COSCA adopted their standards in 1983; CCJ and ABA adopted theirs in 1984.
** Criminal cases: time from arrest to trial or disposition.
*** Civil and domestic relations cases: time from filing to trial or disposition.
**** Juvenile detention and adjudication or transfer hearings: time from arrest to hearing; juvenile disposition hearings: time from adjudicatory hearing to disposition hearing.

These case disposition standards, which have been promulgated by distinguished professional organizations in the field of judicial administration, are provided only for illustration purposes. Each court or State court system that has not already adopted case processing time standards may wish to consider using or modifying these standards as a means of regularly evaluating its case management performance.

Measure 2.1.2: Ratio of Case Dispositions to Case Filings

A court must regularly monitor whether it is keeping up with its incoming caseload. A key indicator of court performance on this issue is the disposition or clearance ratio: the number of cases that are disposed in a given year divided by the number of filings in the same year for identifiable case types. Courts should aspire to dispose at least as many cases as are filed each year (i.e., it should have a clearance ratio of 1.0 or higher). If the court is disposing of fewer cases than are filed each year, a growing backlog is inevitable. Knowledge of clearance ratios for various case categories over a period of 3 to 5 years can help to pinpoint emerging problems and where improvements must be made.

Planning/Preparation

This measure requires information on the numbers of cases filed and disposed each year. It is most valuable to courts if data are available for particular case types for at least 5 years.

Data Collection

The data required for this measure should be available from the clerk's office or court manager's records.

Data Analysis and Report Preparation

For each case type, divide the number of cases disposed of by the number of cases filed. The resulting ratios represent the court's annual clearance rates for those case types. (Form 2.1.2, Ratio of Dispositions to Filings Worksheet, can be used as a guide for calculating the ratios.) Compute the same calculation for the court's total caseload.

Display the data in a graph showing the clearance rates for both individual case types

and the court's total caseload over a 5-year period (see Form 2.1.2). If a court is keeping up with its incoming caseload, all the ratios on the graph will be close to 1.0. A court that is not keeping up with its incoming caseload will plot values less than 1.0, indicating that a backlog is developing or that an existing backlog is increasing.

A consistent trend of 1:1 ratios between case dispositions and case filings is evidence that a court is keeping pace with its incoming caseload. A court that is not performing well on Measure 2.1.2, as evidenced by clearance ratios well below 1.0, should examine the size and characteristics of its pending caseloads. Measure 2.1.3, Age of Pending Caseload, offers a workable procedure to address that issue.

Measure 2.1.3: Age of Pending Caseload

This measure is designed to evaluate the age of cases awaiting disposition in order to establish whether a backlog exists and, if so, to determine its magnitude.

Planning/Preparation

To determine the source of data for this measure, court personnel should identify the best source for information on the total number of cases pending by designated case types (e.g., docket sheets, case files) as well as the means for determining the filing dates for each case so that the age of particular cases can be calculated. The degree to which case type data are kept by the court will determine the number of categories to be measured (e.g., some courts may track only general civil data while others may track specific categories such as tort, contract, and property).

Data Collection

The first task is to compile a list of all pending cases for each case type to be measured. This list should include, at a minimum, the case number and the filing date. Next, arrange the cases according to their filing dates, beginning with the oldest pending case. This arrangement will permit the determination of how many cases fall within specified age categories (e.g., the number of civil cases pending 360 days or more, the number of cases pending 180 days or more). Form 2.1.3, Display Tables—Age of Pending Caseload, can be used as a guide to create tables showing the age of cases in 60-day intervals for civil cases and 30-day intervals for criminal cases. Most courts with automated case records can obtain the necessary data with the help of a programmer. Courts with only manual case records have found data collection to be difficult. A court that has a large number of pending cases and inadequate case record automation might select a sample of pending cases for purposes of this analysis (see the planning/preparation section for Measure 2.1.1).

Data Analysis and Report Preparation

First, determine the existence and magnitude of a backlog (defined here as the percentage of pending cases that exceed the maximum disposition time goal for the case type). Divide the number of pending cases older than a time standard by the total number of pending cases in that case type: the larger the percentage, the larger the backlog. If the court has not adopted time standards, nationally recognized disposition time standards can be used as to determine the maximum allowable time for processing cases (see the data analysis and report preparation section for Measure 2.1.1). Because complex cases might require more time than suggested by these or State disposition time standards, judges should be given the opportunity to explain why some cases exceed the standards.

Measure 2.1.4: Certainty of Trial Dates

This measure evaluates the frequency with which cases scheduled for trial are heard when scheduled. Research has shown that a higher proportion of jury trials that start on the first scheduled trial date is correlated with a more expeditious pace of litigation.[2]

Planning/Preparation

Through interviews with the court manager, gather information on trial settings in individual cases. The most convenient and accurate source for collecting data on the number of times specific cases have been set for trial will vary from court to court (e.g., docket sheets, case summary screens in automated systems, case control cards, case files).

2. J. Goerdt et al., *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts, 1987* (Williamsburg, VA: National Center for State Courts, 1989), pp. 32-35. See also B. Mahoney et al., *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* (Williamsburg, VA: National Center for State Courts, 1988), pp. 81-82.

Jury trials are of particular interest because they require a greater expenditure of resources and impose a greater burden on local citizens (jurors) than do bench trials. Evaluating the degree of jury trial date certainty, therefore, should be given a somewhat higher priority. Ideally, however, the court should evaluate trial date certainty for both bench and jury trials. (Note: A hearing on a motion for summary judgment should not be counted as a bench trial; nor should a default or show cause hearing be counted as a bench trial.) A bench trial is defined as a hearing at which the parties contest the facts in the case and present evidence before a judge in open court and at which the judge renders a decision that disposes of the case. (Note: a summary judgment hearing is not a bench trial because the parties agree on the facts; appropriate application or interpretation of the law is the only issue at a summary judgment hearing.)

Data Collection

All cases disposed during or at the conclusion of a bench or jury trial for each case category during the previous year should be identified through automated or manual case records. If automated case records cannot identify bench or jury trial verdicts, the jury commissioner and courtroom clerks might retain records that could help identify trial cases. If current records allow you to identify only cases that started trial or that had a verdict entered (one or the other), your list will be sufficient for determining trial date certainty.

Sampling

Select separate samples of bench and jury trials. For each type of trial, if there were fewer than 100, obtain data on all trial cases. If the number of trials substantially exceeds 100, randomly sample at least 100 cases or 25 percent of all trials, whichever number is larger. (See also the planning/preparation section for Measure 2.1.1, Time to Disposition, which includes a table for determining sample size.) An interval sample (e.g., selecting every third case) can also be used. Most courts, therefore, will have to collect data on 100 or fewer jury trials and 100 or fewer bench trials for civil cases and about the same numbers of bench and jury trials in criminal cases (or whatever case types you examine). Page 1 of Form 2.1.4a, Civil Jury Trial Settings—Data Collection Form, could be used to collect data on the issue of civil jury or bench trial date certainty. The form can be modified to collect data on any type of trial for civil or criminal cases (simply change the title of the form; for criminal cases you will change item (B) to "Defendant Name"). To simplify data collection, "Number of Trial Settings" could be added as a data item to the form.

Data Analysis and Report Preparation

For each type of trial, prepare a summary table showing the number of cases with one trial setting, those with two, and so on, up to the maximum number of trial settings recorded. Next, calculate the percentage of cases at each level of trial settings (1, 2, 3, and so on) appearing on the table. Finally, calculate the median and average number of trial settings. The closer the average is to one trial setting per case, the better the court's performance on this measure. Form 2.1.4.b is a sample worksheet.

STANDARD 2.2: COMPLIANCE WITH SCHEDULES

The trial court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.

Commentary

As public institutions, trial courts have a responsibility to provide information and services to those they serve. Standard 2.2 requires that this be done in a timely and expeditious manner. The source of the information requests may be internal or external to the court. Services provided to those within the court's jurisdiction may include legal representation or mental health evaluation for criminal defendants, protective or social services for abused children, and translation services for some litigants, witnesses, or jurors.

In addition to adhering to case processing time guidelines, an effective trial court establishes and abides by schedules and guidelines for activities not directly related to case management. Moreover, the court

meets reasonable time schedules set by those outside the court for filing reports or providing other information stemming from court activities. When disbursement of funds is necessary, payment is made promptly. Standard 2.2 requires that regardless of who determines the schedules, once established, those schedules are met.

Timely disbursement of funds held by the court is particularly important. Fines, fees, restitution, child support payments, and bonds are categories of moneys that pass through the court to their lawful recipients. Depending on the category involved and the laws of a given jurisdiction, the recipients may include funding agencies (e.g., State, county, or city), public agencies (e.g., police academies and corrections boards), and individuals (e.g., litigants or victims). In addition, courts oversee disbursement of funds from their budgets. These funds go to other branches and units of government, vendors, jurors, litigants, or witnesses. For some recipients, delayed receipt of funds may be an accounting inconvenience; for others, it may create personal hardships. Regardless of who the recipient is, when a trial court is responsible for the disbursement of funds, expeditious and timely performance is crucial.

Measurement Overview

Four measures are associated with Standard 2.2. They draw upon State and local sources of information to determine whether the court is performing key functions in a timely manner. Each measure addresses one of the four elements of the standard: (1) distribution of funds, (2) provision of reports, (3) provision of information, and (4) provision of services. The specific application of each measure will vary from court to court because the measures are tied to statute, policy, and procedure. Taken together, however, they should indicate how well a court meets the schedules established internally or externally.

The most complete picture of court performance in this area will be accomplished by undertaking all four measures. However, if all cannot be completed for budgetary or other reasons, the court should begin with Measure 2.2.1 and work from there as time and resources permit.

Measure 2.2.1 examines court financial records to assess whether various types of funds are disbursed in a timely manner. All types of funds for which the court is responsible are included (e.g., those they hold in trust such as bail and bond moneys, those that pass through the system such as child support payments, those from their operating budgets such as payments to vendors and jurors). Based on a review of records indicating when payments are made routinely, the time taken to disburse funds is compared to the payment timeframes set by statutory requirements or court policy.

Measure 2.2.2 evaluates how promptly the court provides various services. This measure requires tracking certain events for specific services (e.g., when the service was requested and when it was provided) and determining whether these events occurred within an acceptable time period.

Measure 2.2.3 assesses how quickly the court responds to requests for information from the public. It allows the court to determine whether it is responding to such requests in an acceptable period of time and requires that data be collected through simulations. Courts should enlist outside assistance to conduct the measure. To produce results that more closely represent treatment of the general public, simulations should be conducted by individuals who are neither familiar with court operations nor known by court staff. Although direct observation might appear to be an alternative means of conducting this measure, the observation process itself would likely be so apparent that it would either intrude on the business being conducted or cause court staff behavior to change.

All courts are required to file various reports with other agencies or offices at regular intervals. Measure 2.2.4 evaluates whether these reports are filed routinely in a complete and timely way. Completion of the measure will require an understanding of the court's reporting obligations, a review of a number of the reports, and may require contact with the offices or agencies receiving the reports.

Measure 2.2.1: Prompt Payment of Moneys

This measure is designed to evaluate whether a court promptly disburses moneys, including those held in trust and those due in payment for services rendered, once a determina-

tion has been made that the money should be disbursed. Courts operate in different financial environments. Some courts maintain direct control over all moneys coming into the court, while others work with a local government agency that handles disbursements for the courts. In taking this measure, the lines of authority and degree of control the court has over the actual disbursement of funds must be considered. The measure may have to be adapted to distinguish a court's responsibility in initiating a payment from another agency's responsibility for making the payment. Regardless of who is ultimately responsible for disbursement, it is important that this task be performed promptly.

Planning/Preparation

The first step is to review court policies and procedures for disbursements of funds. Interview the court manager or the person directly responsible for the relevant court policies and procedures. Potential areas for investigation include policies governing the following activities:

- Forwarding collected child support payments or restitution moneys.
- Returning moneys held in trust by the court (e.g., bond).
- Disbursing fines and fees to government agencies.
- Paying moneys to vendors or jurors.

The needed information covers the timeframes required for these payments, the basis for each (e.g., court rule, policy, statute, or local procedure) and the mechanisms utilized to monitor compliance with the schedules. A determination also should be made whether annual financial audits are performed in the court and whether their results are available. A review of these reports will indicate if any deficiencies in the disbursement system were recorded.

Data Collection

Examine records for each selected payment type for the 6 months prior to the time of the evaluation. If more than 100 of the given payment types were made during the period, take a random or interval (e.g., every third case) sample of 100 or 20 percent, whichever is larger. (See also the planning/preparation section for Measure 2.1.1, Time to Disposition.) Record the date payments were ordered/approved and the date payments were actually made. In addition, consider collecting data on interim events between the date a payment was approved and the date payment was made. This data may help to identify where the greatest delay (if any) occurs in the process.

Data Analysis and Report Preparation

The objective is to determine the percentage of disbursements that are made within established timeframes, once disbursement has been ordered. To accomplish this objective, construct a table that displays the amount of time required for disbursement. The table can be constructed with weekly or monthly intervals depending upon the maximum length of time allowed for disbursement. If no timeframe has been specified, the average time for disbursement of each type of payment should be computed. For example, child support disbursements can be compared to the timeframes established under the Family Support Act of 1988. In addition, the child support and other payment data to other jurisdictions or those suggested in the literature can be compared.

Compare the information gathered from disbursement records with the applicable statutory or procedural timeframe. The percentage of payments for each category that are made within the allowable timeframe should also be charted. The higher the percentage of payments within the timeframe, the better the court's performance is on the measure. Courts that have used this methodology have found it relatively easy to implement; they have also found the data to be valid and useful.

Measure 2.2.2: Provision of Services

This measure seeks information on the time required to provide services to appropriate individuals. For this measure, three types of services have been identified: (1) indigent defense services, (2) interpreter services, and (3) mental health evaluations. Others could be added or substituted to reflect the services of concern to a particular jurisdiction. A similar process could be used to assess functions

such as issuing marriage licenses, handling passport applications, or processing name changes.

Planning/Preparation

This measure begins with a review of the procedures used to initiate the following services and the identification of any statutory, case law, or policy requirements that mandate a timeframe within which they must be provided: interpreter services (foreign language and/or hearing impaired), indigent defense services, and mental evaluations. For each service area, first identify the individual with responsibility for coordinating delivery of services. Next, identify the aggregate or individual records that are maintained concerning requests for and the provision of each service. This background information can be gathered through interviews with the court manager.

Data Collection

For each service to be evaluated, draw a sample of cases using that service. The samples for each service should contain no less than 100 cases or 20 percent of the cases (whichever is larger) to allow valid and reliable inferences regarding payment patterns. For each sample, use Form 2.2.2a, Provision of Services Data Collection Form, to gather data to measure the time required to provide the service. Examples of the data elements for three types of services include:

- Presentence investigations—date ordered, date staff assigned to investigation, date completed, and date filed with the court.
- Indigent defense counsel—date indigent defense ordered by court and date counsel was assigned.
- Criminal or mental health evaluations—date evaluation was ordered, date evaluator was designated, date evaluation was conducted, and date of report to court.

Data Analysis and Report Preparation

The basic analytical task is to compute the length of time taken to initiate service provision; the elapsed time to initial service provision; the elapsed time from court order to initial service provision; and, for services for which a report must be filed with the court (e.g., mental health evaluations, home studies) the elapsed time to file reports with the court. National standards such as the American Bar Association Standards Relating to Trial Courts and Standards for Criminal Justice (Form 2.2.2b, Checklist of Services Required in ABA Standards) or State guidelines can be used as benchmarks. For example, if the standards prescribe that services are to be provided in 10 calendar days, a measure of the court's performance is how many cases exceed the 10-day time limit. The smaller the percentage, the better is the court's performance.

Measure 2.2.3: Provision of Information

This measure is designed to assess the promptness with which information is provided to members of the public. The measure involves the use of role players who request various types of information from the court. It is recommended that the court use members of the public (not court employees or attorneys), although the measure could be expanded to include role playing by "courthouse regulars." A comparison of reports from role-playing citizens and court employees would be very useful.

Planning/Preparation

First, court staff identify the types of information to be sought in the simulations. Examples of the types of information that might be included are the location where a specific case is being heard, a request to see a specific case file when only the name of one party is known, a request to have certain documents copied from the case file, and a request to know the status of a particular case (the last/next activity scheduled for the case). It should also be determined, through interviews with the court manager, whether the court has a local policy or procedure that addresses the manner or time within which information requests should be handled when made on a walk-in or phone-in basis in any court office. For each type of information requested by a role player, the performance standard evaluators (research directors) should know in advance approximately how many minutes it should take to provide the requested information.

Second, citizens unfamiliar to the judges and court staff are recruited to be role players who request information in several offices in the courthouse. Court staff should keep in mind that this exercise measures the timeliness and accuracy of information provided in response to a request from a member of the general public, not a special response to a courthouse "regular" or to an outside "evaluator." Provide the citizen role players with a set of questions to ask or items to request, together with any background information needed to allow the simulation to be credible (e.g., if requesting information on the next scheduled event in a criminal case, the citizen should know the defendant's name and the charges involved). The role player should not read the question when doing the simulation but rather "play the part."

An effort should be made to recruit different types of people. Courts that have tested this measure have reported difficulty in recruiting a variety of types of volunteers. Retired people are good candidates. However, it would be best to have volunteers of different ages, racial groups, and gender.

A person's demeanor might also influence the nature and timeliness of the service provided by court staff. It is unrealistic, however, for most courts to systematically examine the influence of age, race, gender, and demeanor on the provision of services. Including demeanor as a factor could seriously complicate the analysis. The minimum expectation in each court should be that citizens of any age, race or ethnic group, or gender asking politely for information should be treated courteously and have questions answered in a timely manner. It is therefore recommended that this measure focus primarily on role players who act politely when requesting information. After each office to be examined has been checked through a sufficient number of observations by courteous role players, the evaluators might decide to have the role players request similar information from the same offices, but to do so in a rude, impatient manner.

Although not described in the following section, an alternative technique for measuring how promptly (and courteously) court or clerk's office staff provide information is the use of an exit survey. A brief questionnaire (one page or less) is constructed and given to citizens who ask for information or assistance after they complete their business in the various court or clerk's offices. This questionnaire is an easy-to-administer and cost-effective alternative which could be conducted periodically to check on staff performance in this area. However, exit surveys do not allow the court to measure the accuracy of the information provided by court or clerk's office staff. Moreover, people who are unhappy about the information they receive or about the way they are treated may be more likely to fill out a questionnaire (as a means of registering their complaint) than are people who are satisfied with the service and information they receive.

Data Collection

Ideally, each office included in the study should receive at least 30 requests for information from role players. Give the volunteer role player a data collection sheet, such as Form 2.2.3, Information Request Data Collection Form, on which to record the time required for the court staff to provide the information sought. Entries on the data sheet should be made after leaving the office in which the request is made. If the requester is referred from one office to another, the referral process and time involved should be recorded in the special notes section of the data sheet. The simulations should be conducted several times during the day or on several days during the week to account for normal differences in work flow.

On the data collection form, the volunteer role player should record the type of information requested, the office in which the request was made, the number of minutes required to obtain a response, and any notes or comments about the nature of the response or interaction with the information provider. It is recommended that the role player rate the accuracy and completeness of the information provided. In addition, this exercise provides an opportunity to collect information relevant to Standard 1.4, Courtesy, Responsiveness, and Respect, and the role player should also rate the courteousness of the information provider.

Data Analysis and Report Preparation

Compare the results of the simulated requests to the court's stated policy or procedure for responding to requests or the predetermined

amount of time that it should have taken to provide the information. The lower the proportion of requests that exceed the prescribed time limits, the better the court's performance. If no policy or procedure prescribing time standards exists, review the results with a committee of court staff members and discuss their views as to the acceptability of the documented level of performance. Evaluators should also examine ratings on the completeness and accuracy of the information provided to the role players. The court should expect to receive a high percentage of "very good" ratings for completeness and accuracy; no ratings should be received that are "unacceptable." The court should also expect a high percentage of "very good" ratings for courtesy.

The performance of courts on this measure can be compared with the responses to appropriate sections of the questionnaire used in Measure 1.2.6, Evaluation of Accessibility and Convenience by Court Users. Staff discussion should focus on understanding the consistencies and inconsistencies between the responses to the two measures.

Measure 2.2.4: Compliance with Reporting Schedules

This measure reviews and assesses the court's level of compliance with established reporting schedules for court activity. Reports required by the judicial system (e.g., statistical reports to the State administrative office of the courts) and by other government agencies (e.g., vital statistics or Equal Employment Opportunity Commission (EEOC) reports) are included. The data collection and evaluation methods will provide the court with information about the timeliness of overall reporting as well of specific reports.

Planning/Preparation

First, court staff must gather specific information on reports the court is required to file. This information can be obtained through discussions with the court manager or the person directly responsible for each report. Form 2.2.4a, Generic List of Court Activity Reporting, is a guide to help organize these discussions and includes questions regarding reporting schedules; the statute, order, directive or policy establishing each schedule; the name of the individual responsible for filing each report; the location of court copies of the reports; and an indication of whether requests for additional or corrected information were made after the reports were filed. Additionally, it should be determined whether regular financial or compliance audits are conducted on court records and, if so, what kinds of records are included.

The first time an assessment is conducted in a State, parallel discussions should be held with the State administrative office of the courts. Information sought from the State administrative office of the courts will include the reports required of trial courts and their relevant reporting schedules and authority for reporting. Information from both local and State sources will help ensure complete coverage of reporting requirements. Compile a single list of reporting requirements from the court and State administrative office of the courts lists, including information on required audits. If discrepancies appear, contact the appropriate individuals to resolve discrepancies.

Second, court staff must locate the data to be collected. Select for data collection and evaluation at least two reports from each of the reporting categories found in the guide (Form 2.2.4a). For each report selected that appears on the audit list, examine the most recent audit reports to ascertain whether that report can provide some or all of the data required for this measure (see Form 2.2.4b, Compliance with Reporting Schedules, for required information). For those not included on the audit reports, or those for which insufficient information is provided, contact the individual responsible for filing the reports. The agency that receives the report(s) should also be contacted to determine whether staff at that agency perceive problems in timeliness, completeness, or accuracy of the reports filed by the court. Depending on the type of report, contact the State administrative office of the courts, EEOC, an employees' labor union, or the State or county comptroller.

The number/period of reports in the evaluation sample will depend on the nature of the reports and the frequency with which they are filed. For monthly reports, review a 1-year period; for weekly reports, review a 3- to 6-month period or, alternatively, the same month over a 5-year period (e.g., all April reports for the past 5 years). For some

personnel matters such as performance evaluations, reporting dates may be keyed to employment anniversary dates. In such cases, draw a sample that includes 50 evaluations or 20 percent of all evaluations submitted during the prior calendar year, whichever is larger.

Data Collection

Record the required reporting date and the actual reporting date of each report in the sample. (See Form 2.2.4b.) Was the report filed on time? Was it late? If so, by how many days?

Examine all report forms to see if all requested information was provided. For reports reflecting individual evaluations (e.g., personnel evaluations), were meaningful responses provided? Are forms individualized in a way that provides useful information for the record and to the employee? If there is a pattern of incompleteness or lack of uniform responses for all employees, the pattern should be recorded in the comments section of the data collection form.

Data Analysis and Report Preparation

For each type of report reviewed, compute the percentage of reports that are filed on time by dividing the total number of reports filed on time by the total number of reports reviewed. The closer this figure is to 100 percent, the more timely is the court's performance. The average number of days late for each type of report reviewed can be estimated by dividing the total number of days late by the total number of late reports. Form 2.2.4b illustrates these calculations.

If a pattern of late reporting emerges on any of the data collection forms, contact the individual responsible for filing the report to determine the type of information that needed clarification and/or the reason(s) for late filing. Record both general reasons (e.g., the court's system does not capture that information; every month the court must wait for xyz information from xxx office to prepare the report) and specific explanations (e.g., "a new staff member was preparing reports at that time" or "in May, I became ill and was not able to prepare the report until the following week") on the comments section of the data collection form.

Prepare a summary report combining results from each sample's data collection sheet. (See Form 2.2.4c, Data Summary Report for Overall Court Compliance with Reporting Schedules for an example.) The summary report should provide the following information: name of report, number of reports in the sample, the number and the percentage of sample that are on time or late, and the average number of days late for that sample. The percentage of all reports sampled that are filed on time and that are filed late should be included along with the general categories of reasons for lateness. The completeness or quality of responses ascertained from interviews and report reviews should also be mentioned. Finally, court personnel should discuss the patterns and trends of reporting timeliness and quality reflected in the summary report.

STANDARD 3.5: RESPONSIBILITY FOR ENFORCEMENT

The trial court takes appropriate responsibility for the enforcement of its orders.

Commentary

Courts should not direct that certain actions be taken or be prohibited and then allow those bound by their orders to honor them more in the breach than in the observance. Standard 3.5 encourages a trial court to ensure that its orders are enforced. The integrity of the dispute resolution process is reflected in the degree to which parties adhere to awards and settlements arising out of them. Noncompliance may indicate miscommunication, misunderstanding, misrepresentation, or lack of respect for or confidence in the courts.

Obviously, a trial court cannot assume responsibility for the enforcement of all of its decisions and orders. Court responsibility for enforcement and compliance varies from jurisdiction to jurisdiction, program to program, case to case, and event to event. It is common and proper in some civil matters for a trial court to remain passive with respect to judgment satisfaction until called on to enforce the judgment. Nevertheless, no court should be unaware of or unresponsive to realities that cause its orders to be ignored.

For example, patterns of systematic failures to pay child support and to fulfill interim criminal sentences are contrary to the purpose of the courts, undermine the rule of law, and diminish public trust and confidence in the courts. Monitoring and enforcing proper procedures and interim orders while cases are pending are within the scope of this standard.

Standard 3.5 applies also to those circumstances when a court relies upon administrative and quasi-judicial processes to screen and divert cases by using differentiated case management strategies and alternative dispute resolution. Noncompliance remains an issue when the trial court sponsors such programs or is involved in ratifying the decisions that arise out of them.

Measurement Overview

This standard requires the court to "take responsibility" for enforcement of its orders. The extent of a court's involvement in the administration of systems for monitoring compliance with court orders and initiating enforcement action varies widely from State to State and, in some States, varies from jurisdiction to jurisdiction. For many kinds of orders, the structure of the law removes the court a significant distance from the system of enforcement. In the detailed measures that follow, therefore, court performance is not measured simply by the level of compliance by those to whom orders are directed. The goal is to first establish and evaluate the context for enforcement and then examine indicators of how the court "takes responsibility" within that context. Although some of the measures do call for statistical analysis of compliance rates, this analysis is only valid for performance evaluation when understood against the contextual background.

When measures for this standard employ quantitative measures of compliance, terms of orders involving money judgments are used almost exclusively. Terms of money judgments are relatively unambiguous and monitoring is possible and relatively free of evidentiary issues.

Measures 3.5.1, 3.5.2, 3.5.3, and 3.5.4 focus on the extent to which particular types of court orders and policies are followed. Measure 3.5.1 considers probationary orders; Measure 3.5.2 considers child support orders; Measure 3.5.3 considers civil judgments; and Measure 3.5.4 considers case processing rules and orders. The methodological approach used for all of them is the same. It calls for the collection, analysis, and interpretation of pertinent data from closed case files. Illustrative data elements, data collection forms, and methods of analysis are provided. Generally speaking, the greater the extent that orders are followed, the higher the court's performance.

Finally, an important contextual variable surrounding each of the measures is the agency responsible for administering the enforcement process. Is probation administered by the court or by an executive agency? Similarly, is child support enforced by the court, an executive agency, or a private agency? Courts should look at their own operations and options for enforcement when enforcement is their exclusive responsibility. On the other hand, the court should work with public and private agencies to identify reasons for less than complete enforcement when enforcement is not the court's exclusive responsibility.

Measure 3.5.1: Payment of Fines, Costs, Restitution, and Other Orders by Probationers

This measure uses summary statistics about compliance with monetary penalties to complement the evaluation of court activities related to enforcement. Relevant data include the amount of money ordered, the amount of money paid, and when money is paid. Analysis will indicate the amount of money paid as a percentage of what was ordered.

Planning/Preparation

An illustrative set of data elements is provided on Form 3.5.1, Illustrative Data Elements for Measuring Enforcement of Probationary Orders. These data can be obtained by separate examination of the order and sentence document and the payment bookkeeping records. In many cases, a bookkeeping record may contain all required data.

A sample of cases will be drawn from the source best suited to capture cases with monetary penalties and cases older than the typical term of probation or cases that have been "closed" on the bookkeeping records due to termination of probation or payment in full. The sample should not be taken directly

from bookkeeping records alone, unless there is evidence that a bookkeeping record is created for all cases in which an order includes monetary sanctions. It is possible, for example, that the bookkeeping agency only creates a record when a payment is made. Sampling from that source would not be representative of all cases.

Data Collection

Data are collected on coded forms. For an example, refer to Form 3.5.1, Illustrative Data Elements for Measuring Enforcement of Probationary Orders.

Data Analysis and Report Preparation

Data analysis will include reports showing averages for total penalty amounts imposed and percentages of amounts collected. The data collected will also allow analysis in subgroups related to total amounts ordered and how long it took for payment.

Review of the summarized data will yield information about compliance rates. In addition, the court will be able to look at the statistics and determine how the total amount imposed relates to percentage of payment, whether the total amount imposed has an important relationship to how long it takes to pay, and whether how long it takes to pay is related to the time allotted for payment. Comparisons among more than one jurisdiction in a State will be constructed where possible as well as comparisons with available compliance rate data found in the literature.

Measure 3.5.2: Child Support Enforcement

This measure is similar to Measure 3.5.1. However, its focus is on child support orders rather than probationary orders.

Planning/Preparation

Illustrative data elements are provided on Form 3.5.2, Illustrative Data Elements for Measuring Enforcement of Child Support Orders. Data of this type can be obtained by examining the order and the payment bookkeeping records separately. In many cases, a bookkeeping record may contain all required data.

Sampling must be from court case disposition records, unless it is demonstrated that records of the bookkeeping agency include all court cases and do not include cases for which enforcement jurisdiction is not with the court. If court case disposition records are used, the sampling technique must allow for cases in which no child support is ordered. The sample should be taken from cases in which a divorce, dissolution, or paternity establishment was entered at least 18 months prior to the sample date, and no more than 36 months prior to the sample date. This restriction will allow adequate time for a payment pattern to develop and for enforcement action to be taken, and it will exclude cases that are so old that they have little relevance to contemporary policy and practice. The sample should include 300 cases.

Data Collection

Data are collected on coded forms. For an example, please refer to Form 3.5.2, Illustrative Data Elements for Measuring Enforcement of Child Support Orders. The data related to the status of enforcement actions taken may prove problematic to collect. However, an effort should be made to collect it. If problems are encountered, they should be described. Specifically, the reasons why particular data elements are not available should be noted. These reasons may have a bearing on the enforcement capacity of the responsible agency.

Data Analysis and Report Preparation

Analysis involves computing summary statistics to describe the amounts ordered and paid, regularity of payment, and enforcement responses.

All States are required to collect and report to the Federal Government information on the volume of Title IV–D child support cases, the amounts of money collected, and other related information. This information should be obtained for each jurisdiction in the State and used to assist in the evaluation of the data for the court. The information can be obtained from the State's official Title IV–D agency, usually a division of the State's health and welfare organization.

The summary results returned to the court will allow it to see the trends in compliance as well as in enforcement by the responsible agency. If it proves difficult to document the enforcement status of the cases, a description

of the reasons for the difficulty may suggest changes in practices that would improve the monitoring capability of the system. Summary results may be compared with information obtained from the State's official Title IV–D agency, as previously described. Results also may be compared with data published for all States by the U.S. Government Office of Child Support Enforcement in its annual statistical report. These comparisons should be focused on States in which the respective roles of the court and other agencies are similar. Although such comparisons should be cautiously approached and their significance interpreted in the most tentative fashion, they may suggest benchmarks for performance.

Measure 3.5.3: Civil Judgment Enforcement

This measure is similar to Measure 3.5.1. In addition to collecting data from case files, it involves collecting interview data.

Planning/Preparation

Samples will be taken from new cases added to the court judgment dockets for a period of at least 6 months prior to the sample date and not more than 12 months after the sample date. (Terminology among courts for "judgment docket" may vary; the source to use is that maintained by law to identify judgment debtors and creditors.) The sample should include all cases with money judgments that were payable before the date of the sample. At least 150 cases should be included. Further work on this measure is needed to consider whether it is appropriate to distinguish certain types of civil money judgments from others. If so, the sample should be taken in a way that ensures sufficient numbers of each type.

Data Collection

The basic data to be collected include the following: judgment amounts, judgment satisfaction, evidence of enforcement actions, type of enforcement action, and type of legal representation. A data collection form, which includes these data elements, should be created.

When the judgment docket shows no evidence of a satisfaction filed, interviews will be required of the judgment creditor or the creditor's attorney. The purpose of the interviews is to verify whether the judgment is satisfied; if not, what action was taken; if none, why not.

If the judgment docket does not contain the information necessary to locate the creditor or creditor's attorney, that information should be obtained from the case record cross-referenced by the judgment docket. Because the sampled cases will be very recent, address and telephone information should be current for most cases.

Data Analysis and Report Preparation

Data analysis should be undertaken to determine (1) the number of judgments for which a record of satisfaction is recorded, (2) the number of judgments for which an interview was required to determine the judgment status and what the status was, and (3) the total number of satisfied and unsatisfied judgments. These figures can then be broken down into subcategories depending on whether the parties had legal representation. It may or may not be possible to use statistical methods to summarize results of two other variables: the number and type of enforcement actions taken and the reasons for not taking enforcement action in cases where judgments were not satisfied. If these variables cannot be analyzed statistically, they should be analyzed qualitatively.

Statistical summaries will provide information to the court on what happens to the civil judgments it enters. Qualitative information will provide some insight into reasons why judgment enforcement action is not taken.

Measure 3.5.4: Enforcement of Case Processing Rules and Orders

This measure addresses the court's performance in enforcing its own rules and orders. For this measure, one area of court activity—caseflow management—has been selected because some policy on caseflow are predictably found in most trial courts. More specifically, the measure focuses on rules governing continuance of trial settings.

Planning/Preparation

The authority (e.g., rule, order, or administrative memorandum) and substance of the court's policies should be documented.

Data Collection

Data collection forms will vary depending on specific court policies. For example, some policies will require that a motion for continuance be made in writing and filed no later than a specified number of days prior to the scheduled trial. A data collection method for this kind of rule should involve an examination of sampled case files to determine: (1) whether such a document is found, and (2) whether it was filed in a timely manner. Other rules may simply state that each party may be granted one continuance upon request and that other continuances will be granted only for "good cause shown." In such cases, data collection would involve sampling summary records or case files and counting the number of continuances associated with each.

Data Analysis and Report Preparation

The structure for data analysis will be determined by the type of court policy in effect and the data collection methods used for evaluating whether the policy is followed. For the first example described above, tables could be generated to show the total number of continuances that occurred for the cases sampled and the percentage of cases in which motions were filed as per the policy. For the second example, in which the court policy calls for simple counts of the number of continuances associated with each case, tables could be generated to show the percentage of all cases that had specific numbers of continuances.

The way in which the results of the analysis will be interpreted will depend on the type of policy and the corresponding data collection method and analysis. In some instances the results may be returned to the court in purely descriptive form. In other instances, a standard may be established prior to data collection and summary results compared to that standard. For example, if continuances are examined, an excellent score might be one in which more than two continuances occurred for 5 percent or fewer of the cases, and an unacceptable score might be one in which more than two continuances occurred for 25 percent or less of the cases.

APPENDIX C

CASEFLOW TIMELINESS AND EFFICIENCY (CTE) INDEX*

"The key to having a successful set of metrics is paring down your database to the vital few key metrics that are linked to your success," advises Mark Brown in *Keeping Score: Using the Right Metrics to Drive World Class Performance* (1996). Multiple measures in a "family of metrics" can be assigned weights according to their importance and combined in an index that is an aggregate statistic.

The CTE Index joins the four measures associated with Standard 2.1, Case Processing, of the *Trial Court Performance Standards and Measurement System Implementation Manual* (July 1997). These four measures of case processing, expressed as proportions, are reduced to one. The CTE Index requires the calculations of the measures as prescribed in the *Standards* with some deviations to accommodate the aggregation of the measures into an index. The formula and explanation for computing a CTE Index follows. A detailed description of the four individual measures comprising the CTE Index, including rationale, required preparation and planning, sampling, data collection, forms and instruments, analyses, and reporting, can be found in the *Standards* (pp. 75-84).

CTE Index = (T x 25) + (C x 35) + (B x 25) + (TC x 15)

Time to Disposition (T) assesses timely case processing from case filing to disposition and is expressed as a ratio of cases disposed within recognized time standards divided by all the cases disposed in a given period of time (i.e., including both the cases disposed within and outside of the standards). For example, T for a court that disposed a total of 10,000 general civil cases in 1998 and 8,970 within the standard of 12 months is 0.897 (8,970 divided by 10,000). In the formula, T is assigned a relative weight of 25 out 100 and multiplied by that weight.

The Clearance Ratio (C), or disposition ratio, assesses how well a court keeps up with its incoming caseflow. It is calculated by dividing the total number of cases disposed in a given period by the total number of cases filed in that same period. Because the clearance ratio of a court is most critical to its efficient functioning, it is assigned the greatest weight among the four measures, 35 out of 100.

Measure 2.1.3, Age of Pending Caseload, in the *Standards* (p. 83), looks at all cases awaiting disposition (pending) and determines what proportion of those cases represent a backlog (i.e., cases that are "older" than the established time standard). The CTE Index uses this same measure, but looks at Backlog Avoidance (B) instead of the backlog, the proportion of all pending cases that are not yet older than the time standard established by the court.

Trial Certainty (TC) evaluates the frequency with which cases scheduled for trial are actually heard when scheduled. To express TC as a proportion similar to the other three measures in the CTE Index, calculating TC requires an independent number or standard that must be established by the court—a desired number (or standard) of trial "settings"—that is then combined with the quotient that results from taking Measure 2.2.4, Certainty of Trial Dates, in the *Standards* (pp. 83-84). A court's desired number or standard trial settings, for example, might be set at 2, meaning that the court considers it acceptable if, on the average, trials are scheduled or set only twice; or, stated another way, if on the average trials are continued only once before they are heard. To calculate TC, the desired number or standard trial settings is then divided by the trial certainty quotient, i.e., the quotient of the number of trials divided by the number of times those trials were actually scheduled. For example, if a court heard 100 trials in 1998 that had to be scheduled a total 278 times (including the time they were heard), the trial certainty quotient would be 100/278 = 2.78. To calculate a TC of 0.72, the standard trial setting of 2 established by the court is divided by the trial certainty quotient of 2.78 (2 divided by the quotient of 100 divided by 278).

APPENDIX D

SAMPLE CASEFLOW MANAGEMENT REPORTS

In chapter VI, the authors discuss caseflow management reports to monitor and improve court performance. Presented here are five examples of reports that might be used by trial courts for this purpose.

Sample Report 1 presents data on caseload trends. This type of table can be created for each major case category. It is clear, concise, and easy to understand. A line chart displaying some of Report 1's statistics is in Sample Report 2, which shows trends in civil filings in a graphic format.

Sample Report 3 presents a monthly pending caseload. For a hypothetical multijudge court, it shows how many pending cases each judge has, including those cases over the court's time goals.

Sample Report 4 presents civil cases approaching and exceeding time standards. In addition to case identification information (case numbers and party names), it indicates the names and phone numbers of attorneys for plaintiffs and defendants. It also indicates case status by showing the last case action and the next expected action.

Sample Report 5 is a quarterly report comparing the status of cases to time standards. For felonies, civil cases, divorce cases, child support, and appeals, it shows the number of dispositions as well as case ages at disposition. Finally, it shows how the age of cases at disposition compares with hypothetical time standards.

APPENDIX D SAMPLE REPORT 1
CIVIL CASELOAD TRENDS, 1993-1999

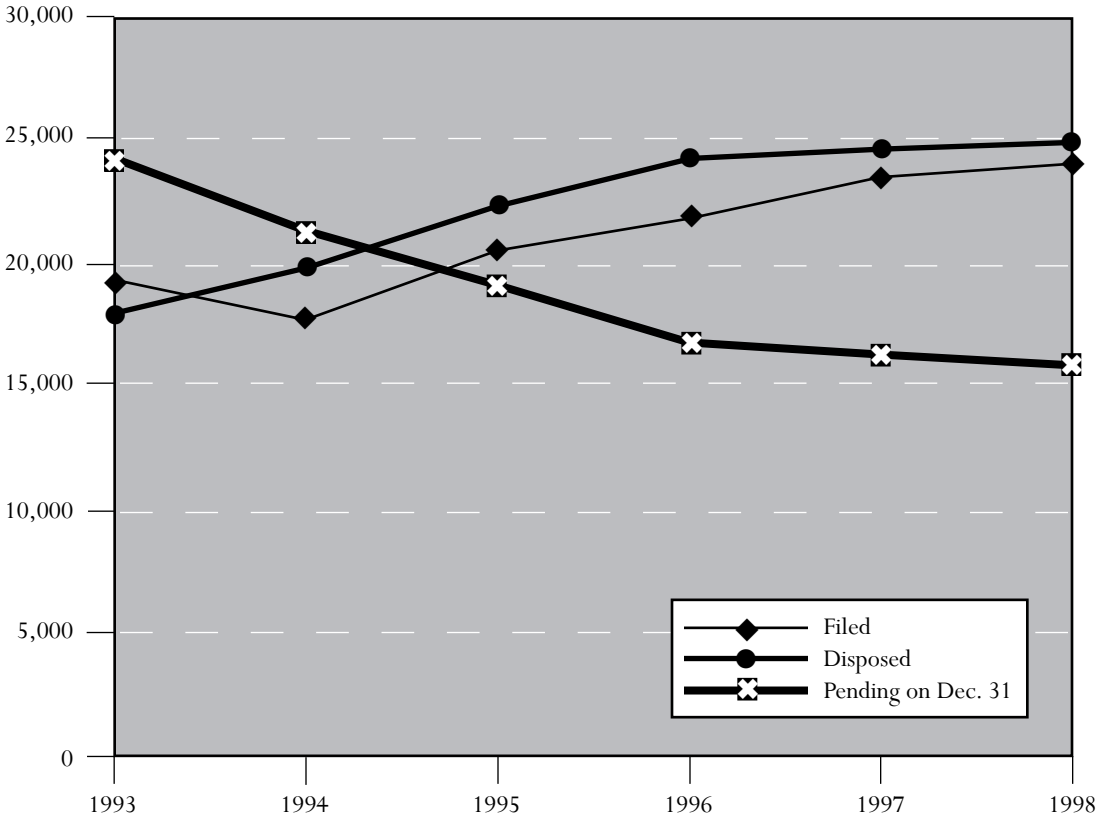
CATAGORY	COURT YEAR						% CHANGE
	1993	1994*	1995	1996	1997	1998	**1993-99**
Pending on Jan. 1	21,443	22,534	21,421	19,143	17,579	16,979	
Filed	19,126	18,787	19,981	21,345	22,987	23,771	**24%**
Disposed	18,035	19,900	22,259	22,909	23,587	25,111	**39%**
Pending on Dec. 31	22,534	21,421	19,143	17,579	16,979	15,639	**-31%**
Pending over 2 years	5,934	4,123	3,144	2,519	1,712	1,025	**-83%**
Clearance ratio**	0.94	1.06	1.11	1.07	1.03	1.06	**12%**
Backlog index***	1.19	1.13	0.96	0.84	0.75	0.68	**-43%**

* Delay reduction program started in 1994.
** Dispositions for the year divided by the number filed during the year.
*** Pending at start of year divided by the number disposed during the year.

COMMENTARY:
"This type of table can be created for each major case category. It is clear, concise and easy to" understand.
A line chart displaying some of these statistics is in the next sample chart.

APPENDIX D SAMPLE REPORT 2

TRENDS IN CIVIL FILINGS DISPOSITIONS AND PENDING CASES, 1993–1999



APPENDIX D SAMPLE REPORT 3
MONTHLY PENDING CASELOAD REPORT*

	Appeals		Civil		Domestic		Totals		
JUDGE	Total	Over 6 mos.	Total	Over 2 yrs.	Total	Over 1 yr.	Pending (n)	Over goals (n)	% over
Allen	8	0	300	8	100	5	408	13	3%
Ball	6	0	350	17	90	1	446	18	4%
Burnett	5	0	312	30	75	0	392	30	8%
Carson	9	1	430	20	99	1	538	22	4%
Cosby	7	1	298	5	89	2	394	8	2%
Crystal	10	2	299	7	74	0	383	9	2%
Dangerfield	9	2	500	55	108	3	617	60	10%
DiGeneres	8	0	454	21	101	4	563	25	4%
Leno	3	0	421	15	77	0	501	15	3%
Letterman	5	0	398	13	57	0	460	13	3%
Murphy	7	0	341	55	97	5	445	60	13%
Seinfeld	2	0	390	17	89	1	481	18	4%
Short	9	1	476	23	83	1	568	25	4%
Van Dyke	10	1	500	4	77	2	490	5	1%
Williams	5	0	495	32	74	0	574	32	6%
TOTALS	**103**	**8**	**5964**	**322**	**1290**	**25**	**7260**	**353**	**5%**

*This report is for courts with an individual or direct calendar system. It assumes the following case disposition time goals: Appeals—100% in 6 months; Civil—100% in 2 yrs; Domestic—100% in 1 yr. It also is based on a court in which each judge is assigned about the same number of "appeals, civil and domestic cases over a one-year period."

APPENDIX D SAMPLE REPORT 4
MONTHLY REPORT ON CIVIL CASES EXCEEDING AND APPROACHING DISPOSITION TIME STANDARDS

PENDING CASES OVER 2 YEARS OLD (on January 1, 1998)

Case number	Pending type	Plaintiff name	File date	Last action	Plaintiff attorney	Phone	Defendant attorney	Phone	Next action	Date	Trial judge
94-01234	CTM	"Smithson, D."	9/3/94	SetConf	"Guillen, O."	555-9876	"Washington, G."	555-4356	TRJ	5/15/98	Kane
94-02004	CTP	"Samual, A."	11/2/94	SetConf	"Bigelow, B."	555-0923	"Arnold, P."	555-7465	TRJ	6/1/98	Able
95-00732	CTX	"Hathaway, J."	2/2/95	PTMot	"Rodriguez, A."	555-1122	"Bearfoot, B."	555-9988	SetConf	1/5/98	Cohen
95-02189	CTM	"Marks, G."	10/5/95	SetConf	"Zigfried, A."	555-9124	"Roy, R."	555-3344	TRJ	7/7/98	Chiang
95-03989	CTS	"Handy, J."	12/24/95	SetConf	"Murray, B."	555-1111	"Short, M."	555-3874	TRN	3/20/98	Ruiz

PENDING CASES 20 - 24 MONTHS OLD (on January 1, 1998)

96-00234	CC	Xenia Corp.	1/3/95	ArbApp	"Orlando, T."	555-0001	Electronic Syst.	555-3330	SetConf	1/9/98	NA
96-00235	CC	Belltone Corp.	1/4/95	ArbApp	"Pandora, B."	555-0002	"Banjo, P."	555-3331	SetConf	1/10/98	NA
96-00336	CTA	"Jeremiah, J."	1/5/95	SetConf	"Jones, J."	555-0003	"Lacey, C."	555-3332	TRN	1/22/98	Able
96-00537	CTS	"Wetsteps, O."	2/6/95	SetConf	"Pettles, B."	555-0004	"Levinson, C."	555-3333	TRJ	2/23/98	Kane
96-00638	CTM	"Angelo, A."	2/8/95	SetConf	"Onofry, C."	555-0005	"Martin, S."	555-3334	TRJ	2/28/98	Kane
96-00839	CTM	"Markus, B."	3/8/95	SetConf	"Benjamin, P."	555-0006	"Bakalova, B."	555-3335	TRJ	3/5/98	Cohen
96-00940	CTP	"Hurt, W."	3/9/95	SetConf	"Zerxes, A."	555-0007	"Sampson, R."	555-3336	TRJ	3/8/98	Chiang
96-00141	CTX	"Huang, D."	3/10/95	SetConf	"Ronaldo, P."	555-0008	"Himelich, M."	555-3337	TRJ	3/15/98	Ruiz
96-00142	CTX	"Jefferson, T."	3/11/95	DiscConf	"Cordova, R."	555-0009	"Jones, P."	555-3338	SetConf	3/20/98	NA
96-02243	CTX	"Cruz, J."	3/12/95	DiscConf	"Minor, A."	555-0010	"Alfred, A."	555-3339	SetConf	4/7/98	NA
96-02344	CTM	"Matthews, J."	3/16/95	SetConf	"Major, E."	555-0011	"Cannister, E."	555-3340	TRJ	4/15/98	Cohen
96-03045	CTA	"Crashcup, C."	3/17/95	SetConf	"Pendelton, T."	555-0012	"Lambier, B."	555-3341	TRJ	4/15/98	Kane
96-03146	CTA	"Fender, B."	4/1/95	SetConf	"Baker, G."	555-0013	"Chamberlain, W."	555-3342	TRJ	4/22/98	Able
96-03247	CTP	"Lancelot, P."	4/2/95	MotHrg	"Friendly, A."	555-0014	"Jabbar, K."	555-3343	SetConf	4/22/98	NA
96-03248	CTM	"Cameron, J."	4/5/95	SetConf	"Greene, M."	555-0015	"Jordan, M."	555-3344	TRJ	5/3/98	Cohen

Note: In a court with an individual calendar system, a list like this could be produced for each judge.

APPENDIX D SAMPLE REPORT 5
QUARTERLY TIME STANDARDS REPORT

		TIME STANDARDS		PERFORMANCE	
	NUMBER OF DISPOSITIONS	AGE AT DISPO	GOAL %	QUARTER: ACTUAL %	YTD: ACTUAL %
FELONY					
Quarter:	512	90 days	75%	60%	62%
YTD:	2500	120 days	90%	75%	76%
		180 days	95%	85%	84%
		365 days	100%	92%	91%
CIVIL					
Quarter:	750	365 days	90%	78%	79%
YTD:	3200	545 days	98%	89%	91%
		730 days	100%	96%	97%
DIVORCE					
Quarter:	400	275 days	90%	85%	83%
YTD:	1250	365 days	100%	98%	96%
CHILD SUPPORT ENFORC/ MODIFY					
Quarter:	450	90 days	100%	95%	94%
YTD:	1700				
APPEALS					
Quarter:	150	180 days	100%	93%	96%
YTD:	620				

APPENDIX E

BIBLIOGRAPHY

The person desiring to read more about caseflow management and delay reduction will find a number of relevant books and articles. Two works reviewing many of those books and articles are *Pretrial Delay: A Review and Bibliography* (1978) by Thomas Church et al., and "What Have We Learned about Court Delay, 'Local Legal Culture,' and Caseflow Management Since the Late 1970s?" (1997) by David Steelman. Classic monographs on caseflow management are Maureen Solomon's *Caseflow Management in the Trial Court* (1973) and her update with Douglas Somerlot, *Caseflow Management in the Trial Court: Now and For the Future* (1987). Two other classics are studies of factors affecting times to disposition that were pivotal in establishing today's "conventional wisdom" about court delay. They are *Case Management and Court Management in United States District Courts* (1977) by Steven Flanders, and *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (1978) by Church et al. These are just a few of the many interesting works on delay, caseflow management, and related management issues, including the titles listed below.

Alliegro, Suzanne, Beverly Bright, John Chacko, Caroline Cooper, George Gish, David Lawrence, Jim. Rutigliano, and Linda Torkelsen. "Beyond Delay Reduction: Using Differentiated Case Management." *Court Manager* 8, no. 1 (1993): 24, no. 2 (1993): 12, and no. 3 (1993): 23.

American Bar Association. *Standards Relating to Trial Courts, 1992 Edition*. Chicago: American Bar Association, 1992.

—. *Standards for Traffic Justice*. Chicago: American Bar Association, 1974.

—. *Trial Management Standards*. Chicago: American Bar Association, 1992.

—. Lawyers Conference Task Force on Reduction of Litigation Cost and Delay. *Defeating Delay: Developing and Implementing a Delay Reduction Program*. Chicago: American Bar Association, 1986.

—. National Conference of State Trial Judges, Court Delay Reduction Committee. "Discovery Guidelines Reducing Cost and Delay." *Judges' Journal* 36, no. 2 (spring 1997): 9.

Ammons, David, ed. *Accountability of Performance: Measurement and Monitoring in Local Government*. Washington, D.C.: International City/County Management Association, 1995.

Anthony, Robert N., and David Young. *Management Control in Nonprofit Organizations*. 3d ed. Homewood, Ill: Richard D. Irwin, 1984.

Arizona Superior Court, Maricopa County. *Self-Service Center*. Phoenix, Ariz.: Superior Court of Arizona, Maricopa County, 1997.

Arnold, J. Kelley. "Transferring Criminal Case Management Functions from the Prosecutor to the Court." *Judges' Journal* 33, no. 1 (winter 1994): 5.

Bakke, Holly, and Maureen Solomon. "Case Differentiation: An Approach to Individualized Case Management." *Judicature* 73, no. 1 (1989): 17.

Baar, Carl A. "Court Delay as Social Science Evidence: The Supreme Court of Canada and 'Trial Within a Reasonable Time.'" *Justice System Journal* 19, no. 2 (1997): 123.

Batty, K. Kent, Robert J. Colombo, Richard C. Kaufman, Terry R. Kuykendall, Sally A. Mamo, Helene White, Maureen Solomon, Barry Mahoney, and Carol Friesen. *Toward Excellence in Caseflow Management-The Experience of the Circuit Court in Wayne County, Michigan. A Guide by and for Practitioners*. Williamsburg, Va.: National Center for State Courts, 1991.

Belenko, Steven, and Tamara Dumanovsky. *Bureau of Justice Assistance Program Brief: Drug Courts*. Washington, D.C.: U.S. Department of Justice, 1993.

—. Robert Davis and Tamara Dumanovsky. *Drug Felony Case Processing in New York City's N Parts: Interim Report*. New York: New York City Criminal Justice Agency, 1992.

Bennis, Warren *On Becoming A Leader*. Reading, Mass.: Addison-Wesley, 1989.

Berkson, Larry, Steven W. Hays, and Susan J. Carbon, eds. *Managing the State Courts: Text and Readings*. St. Paul, Minn.: West Publishing, 1977.

Bezold, Clement, Beatrice Monahan, and Wendy Schultz, "Moving State Courts Consciously and Creatively into the 21st Century: Using Vision to Point the Way." *State Court Journal* 17, no. 2 (spring 1993): 28.

Bureau of Justice Assistance [Barbara E. Smith, Robert C. Davis, Sharon Goretsky, Arthur J. Lurigio, and Susan J. Popkin]. *Assessment of the Feasibility of Drug Night Courts*. Washington, D.C.: U.S. Justice Department, 1993.

—. *Family Violence: Interventions for the Justice System*. Washington, D.C.: U.S. Justice Department, 1993.

— and National Center for State Courts. *Trial Court Performance Standards with Commentary* (Monograph NCJ 161570); *Trial Court Performance Standards and Measurement System* (Program Brief NCJ 161569); *Planning Guide for Using the Trial Court Performance Standards and Measurement System* (Monograph NCJ 161568); and *Trial Court Performance Standards and Measurement System Implementation Manual* (Monograph NCJ 161567). Washington, D.C.: U.S. Department of Justice, 1997.

Butts, Jeffrey. "Necessarily Relative: Is Juvenile Justice Speedy Enough?" *Crime and Delinquency* 43, no. 1 (1997): 3.

—. "Speedy Trial in the Juvenile Court." *American Journal of Criminal Law* 23, no. 3 (1996): 515.

—, and Gregory Halemba. *Waiting for Justice: Moving Young Offenders Through the Juvenile Court Process*. Pittsburgh, Pa.: National Center for Juvenile Justice, 1996.

—. "Delays in Juvenile Justice: Findings from a National Survey." *Juvenile and Family Court Journal* 45, no. 4 (1994): 31.

Carter, Reginald. *The Accountable Agency*. Beverly Hills, Calif.: Sage Publications, 1983.

Chapper, Joy, and Roger Hanson. "The Attorney Time Savings/Litigant Cost Savings Hypothesis: Does Time Equal Money?" *Justice System Journal* 8, no. 3 (winter 1983): 258.

Church, Thomas. "The 'Old' and the 'New' Conventional Wisdom of Court Delay." *Justice System Journal* 7, no. 3 (1982): 395.

—, Alan Carlson, Jo-Lynne Lee, and Teresa Tan. *Justice Delayed: The Pace of Litigation in Urban Trial Courts*. Williamsburg, Va.: National Center for State Courts, 1978.

—, Jo-Lynne Q. Lee, Teresa Tan, and Virginia McConnell. *Pretrial Delay: A Review and Bibliography*. Williamsburg, Va.: National Center for State Courts, 1978.

Commission on National Probate Court Standards. *National Probate Court Standards*. Williamsburg, Va.: National Center for State Courts, 1993.

Conference of State Court Administrators and National Center for State Courts. *State Court Model Statistical Dictionary, 1989*. Williamsburg, Va.: National Center for State Courts, 1989.

Conti, Samuel D, William Popp, and Don E. Hardenbergh. *Finances and Operating Costs in Pennsylvania's Courts of Common Pleas*. North Andover, Mass.: National Center for State Courts, Northeastern Regional Office, 1980.

Cooper, Caroline. "Differentiated Case Management: What Is It? How Effective Has It Been?" *Judges' Journal* 33, no. 1 (1994): 2.

—, Maureen Solomon, and Holly Bakke. *Bureau of Justice Assistance Differentiated Case Management Implementation Manual*. Washington, D.C.: American University, 1993.

—, Maureen Solomon, Holly Bakke, and T. Lane. *Bureau of Justice Assistance Pilot Differentiated Case Management (DCM) and Expedited Drug Case Management (EDCM) Program: Overview and Program Summaries*. Washington, D.C.: U.S. Department of Justice, 1990.

—, and Joseph Trotter. "Recent Developments in Drug Case Management: Re-engineering the Judicial Process." *Justice System Journal* 17, no. 1 (1994): 83.

Covey, Steven. *Principle-Centered Leadership*. New York: Summit Books, 1991.

D'Alesio, Joseph. "Creating a Centralized Infractions Bureau: One State's Experience." *State Court Journal* 13, no. 2 (spring 1989): 18.

Davis, Legrome. "Developing Felony Tracks." *Judges' Journal* 33, no. 1 (winter 1994): 9.

Davis, Robert C., Barbara E. Smith, and Arthur J. Lurigio. "Court Strategies to Cope with Rising Drug Caseloads." *Justice System Journal* 17, no. 1 (1994): 1.

Davis, William. "Strategies to Reduce Trial Court Delay." Discussion paper prepared for the *Judicial Reform Roundtable II* (May 19-22, 1996), with support from the United States Agency for International Development and the Inter-American Development Bank in coordination with the National Center for State Courts.

Doan, Rachel. "Rural Misdemeanor Court Management: A Study of One Court's Exercise of Greater Case Control." *Justice System Journal* 6, no. 1 (spring 1981): 73.

Doerfer, Gordon L. "Why Judicial Case Management Pays Off at Trial." *Judges' Journal* 29, no. 4 (fall 1990): 12.

Dressel, William F., and Charles E. Patterson. "Strategy for a Perfect Trial: Ways to Present and Manage a Trial Effectively." *Judges' Journal* 29, no. 4 (fall 1990): 16.

Drucker, Peter. *Management: Tasks, Responsibilities, Practices*. New York: Harper and Row, 1974.

—. *The New Realities: In Government and Politics / In Economics and Business / In Society and World View*. New York: Harper and Row, 1989.

—. *Post-Capitalist Society*. New York: Harper Business, 1993.

Economos, James, and David Steelman. *Traffic Court Procedure and Administration*. 2d ed. Chicago: American Bar Association, 1983.

Fahnestock, Kathryn, and Maurice Geiger. "We All Get Along Here: Case Flow in Rural Courts." *Judicature* 76, no. 5 (February-March 1993): 258.

Federal Judicial Center. *Manual for Complex Litigation, Third*. St. Paul, Minn.: West Publishing Company, 1995.

Feeley, Malcolm. *Court Reform on Trial: Why Simple Solutions Fail*. New York: Basic Books, 1983.

—. *The Nature of System Change: Reform Impact in the Criminal Courts*. Chicago: American Bar Foundation, 1978.

—. *The Process Is the Punishment: Handling Cases in a Lower Criminal Court*. New York: Sage Publications, 1992.

Fernette, Janice. "State Court Case Disposition Time Standards" (Information Services Report). Williamsburg, Va.: National Center for State Courts, November 1994.

Flanders, Steven. *Case Management and Court Management in United States District Courts*. Washington, D.C.: Federal Judicial Center, 1977.

Flango, Carol, Victor E. Flango, and H. Ted Rubin. *How Are Courts Coordinating Family Cases?* Williamsburg, Va.: National Center for State Courts, 1999.

Flango, Victor E., and Brian J. Ostrom. *Assessing the Need for Judges and Court Support Staff*. Williamsburg, Va.: National Center for State Courts, 1996.

—, and H. Ted Rubin. "How Is Court Coordination of Family Cases Working?" *Judges' Journal* 33, no. 4 (fall 1994): 11.

Fleming, Macklin. "The Law's Delay: The Dragon Slain Friday Breathes Fire Again Monday." *Public Interest* 32 (1973): 13.

Flemming, Richard, Peter Nardulli, and James Eisenstein. "The Timing of Justice in Felony Courts." *Law and Policy* 9 (1987): 179.

Friesen, Ernest. "Constraints and Conflicts in Court Administration." In L. Berkson, S. Hays, and S. Carbon, eds. *Managing the State Courts: Text and Readings*. St. Paul, Minn.: West Publishing, 1977.

—. "Cures for Court Congestion." *Judges' Journal* 23, no. 1 (1984): 4.

—. "The Trial Management Conference." *Judges' Journal* 29, no. 4 (fall 1990): 4.

—, Edward C. Gallas, and Nesta M. Gallas. *Managing the Courts*. Indianapolis, Ind.: Bobbs-Merrill, 1971.

—, Maurice Geiger, Joseph Jordan, and Alfred Sulmonetti. *Justice in Felony Courts: A Prescription to Control Delay*. Los Angeles: Whittier School of Law, 1979.

Gallas, Geoff. "Judicial Leadership Excellence: A Research Prospectus." *Justice System Journal* 12, no. 1 (1987): 39.

—, and Edward Gallas. "Court Management Past, Present and Future: A Comment on Lawson and Howard." *Justice System Journal* 15, no. 2 (1991): 605.

Garbolino, James. "Case Management in Family Law Courts." In Working Group on a Courts Commission, *Report on Case Management Conference*. Dublin: Government of Ireland, 1997.

Gilfrich, Nathalie, Richard Granat, Michael Milleman, and Frank Broccolina. "Law Students in Service to Pro Se Litigants." *Court Manager* 12, no. 2 (spring 1997): 16.

Goerdt, John. *Divorce Courts: Case Management Procedures, Case Characteristics, and the Pace of Litigation in 16 Urban Jurisdictions*. Williamsburg, Va.: National Center for State Courts, 1992.

—. "Divorce Courts: A Summary of the Findings from a Study of the Pace of Litigation in Sixteen Urban Jurisdictions." *State Court Journal* 16, no. 4 (fall 1992): 14.

—. "How Mediation Is Working in Small Claims Courts." *Judges' Journal* 32, no. 4 (fall 1993): 12.

—. "The Pace of Divorce Litigation: Why Some Courts Are Faster than Others." *Judges' Journal* 35, no. 1 (winter 1996): 18.

—. "The People's Court: A Summary of Findings and Policy Implications from a Study in 12 Urban Small Claims Courts." *State Court Journal* 17, no. 3/4 (summer/fall 1993): 38.

—. "Slaying the Dragon of Delay: Findings from a National Survey of Recent Court Programs." *Court Manager* 12, no. 3 (summer 1997): 30.

—. *Small Claims and Traffic Courts: Case Management Procedures, Case Characteristics, and Outcomes in 12 Urban Jurisdictions*. Williamsburg, Va.: National Center for State Courts, 1992.

—, Chris Lomvardias, and Geoff Gallas. *Reexamining the Pace of Litigation in 39 Urban Trial Courts*. Williamsburg, Va.: National Center for State Courts, 1991.

—, Chris Lomvardias, Geoff Gallas, and Barry Mahoney. *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts*. Williamsburg, Va.: National Center for State Courts, 1989.

—, and John Martin. "The Impact of Drug Cases on Case Processing in Urban Trial Courts." *State Court Journal* 13, no. 4 (1989): 4.

—, Brian J. Ostrom, David B. Rottman, Robert C. LaFountain, and Neal B. Kauder. "Litigation Dimensions: Torts and Contracts in Large Urban Courts." *State Court Journal* 19, no. 1 (1995): 1.

Goldschmidt, Jona. "How Are Courts Handling Pro Se Litigants?" *Judicature* 82, no. 1 (July-August 1998): 13.

—, Barry Mahoney, Harvey Solomon, and Joan Green. *Meeting the Challenge of Pro Se Litigation: A Report and Guidebook for Judges and Court Managers*. Chicago: American Judicature Society, 1998.

Grainger, Ian, and Michael Fealy. *An Introduction to the New Civil Procedure Rules*. London: Cavendish Publishing, 1999.

Greacen, John. "Arizona's Agony Over the Unauthorized Practice of Law, or Why We Need to Care About the Public's Opinion of Lawyers." *Judges' Journal* 33, no. 2 (spring 1994): 15.

Gregorio, Carlos. "Case Management and Reform in the Administration of Justice in Latin America." Discussion paper prepared for the *Judicial Reform Roundtable II* (May 19-22, 1996), with support from the United States Agency for International Development and the Inter-American Development Bank in coordination with the National Center for State Courts.

Griffith, Christopher, and Marna Tucker. "A Cry for Help: The Need for a Judicial Response to the Threat of Domestic Violence." *Judges' Journal* 36, no. 2 (spring 1997): 22.

Hansen, Mark. "Courts Saving Time and Trees: Electronic Case Filings Gain Ground, but Nonlawyer Use Is a Stumbling Block." *American Bar Association Journal* 85 (March 1999): 20.

Hanson, Roger, William Hewitt, Brian Ostrom, and Chris Lomvardias. *Indigent Defenders Get the Job Done and Done Well*. Williamsburg, Va.: National Center for State Courts, 1992.

—, Susan Keilitz, and Henry Daley. "Court-Annexed Arbitration: Lessons from the Field." *State Court Journal* 15, no. 4 (fall 1991): 4.

Hardin, Mark. *Improving Permanency Hearings: Sample Court Reports and Orders*. Washington, D.C.: American Bar Association Center on Children and the Law, 1999.

Harris, Resa, and Larry Ray. "What Judges Need to Know about ADR." *Judges' Journal* 30, no. 1 (winter 1991): 30.

Harvey, Jerry B. *The Abilene Paradox and Other Meditations on Management*. San Francisco: Jossey-Bass, 1988.

Hayslett, Jerrianne. "Managing the Notorious Trial." *Court Manager* 8, no. 3 (summer 1993): 5.

Henderson, Thomas, and Cornelius Kerwin. *Structuring Justice: The Implications of Court Unification Reforms. Policy Summary*. Washington, D.C.: National Institute of Justice, 1984.

Hewitt, William, Geoff Gallas, and Barry Mahoney. *Courts That Succeed: Six Profiles of Successful Courts*. Williamsburg, Va.: National Center for State Courts, 1990.

Hoffman, Richard B. "Beyond the Team: Renegotiating the Judge-Administrator Partnership." *Justice System Journal* 15, no. 2 (1991): 652.

Hora, Peggy, and William Schma. "Therapeutic Jurisprudence." *Judicature* 82, no. 1 (July-August 1998): 8.

Hudzik, John. "Symbiotic Evolution: The Relationship of Court Management to Judicial and Management Education." *Justice System Journal* 15, no. 2 (1991): 677.

Hoffman, R. "Beyond the Team: Renegotiating the Judge-Administrator Partnership." *Justice System Journal* 15, no. 2 (1991): 652.

Institute for Law and Social Research (INSLAW). *Guide to Court Scheduling: 1. A Framework for Criminal and Civil Courts*. Washington, D.C.: National Science Foundation, 1976.

Jacoby, Joan, Charles Link, and Edward Ratledge. *Some Costs of Continuances—A Multi-Jurisdictional Study*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1986.

Jervis, Robert. *System Effects: Complexity in Political and Social Life*. Princeton, N.J.: Princeton University Press, 1997.

Johns, Krista. *Judge's Guidebook on Adoption and Other Permanent Homes for Children*. Reno, Nev.: National Council of Juvenile and Family Court Judges, 1999.

Johnson, Charles. "What Can You Do with a 70,000 Case Backlog?" *Judges' Journal* 30, no. 1 (winter 1991): 16.

Kakalik, James. "Analyzing Discovery Management Policies: RAND Sheds New Light on the Civil Justice Reform Act Evaluation Data." *Judges' Journal* 37, no. 2 (spring 1998): 22.

—, Terence Dunworth, Laurel A. Hill, Daniel McCaffrey, Marian Oshiro, Nicholas M. Pace, and Mary E. Vaiana. *Just, Speedy, and Inexpensive? An Evaluation of Judicial Civil Case Management Under the Civil Justice Reform Act*. Santa Monica, Calif.: Rand Institute for Civil Justice, 1996.

Keilitz, Ingo. "The Development of Tomorrow's Leaders in Judicial Administration." *Justice System Journal* 17, no. 3 (1995): 323.

Keilitz, Susan, ed. *National Symposium on Court-Connected Dispute Resolution Research: A Report on Current Research Findings–Implications for Courts and Future Research Needs*. Williamsburg, Va.: National Center for State Courts, 1994.

—, Roger Hanson, and Henry Daley. "Civil Motion Practice: Lessons from Four Courts for Judges and Lawyers." *Judges' Journal* 33, no. 4 (1994): 3.

—, —, and —. "Is Civil Discovery in State Courts Out of Control?" *State Court Journal* 17, no. 2 (spring 1993): 8.

—, —, and Richard Semiatin. "Attorneys' Views of Civil Discovery." *Judges' Journal* 32, no. 2 (spring 1993): 2.

Koski, John. "Better Late than Never? Timing, ADR, and Litigation Costs." *Court Manager* 9, no. 2 (spring 1994): 16.

Krcmarik, Gary. "Coconino County Criminal Differentiated Case Management System." *Legal Pad* (Arizona Courts Association, July 1995): 5.

Landstreet, Eleanor, and Pam Robinson. "Pro Se Initiatives for Child Support Modifications and Other Family Court Matters." *Court Manager* 11, no. 1 (winter 1996): 24.

Laver, Mimi. "Implementing ASFA: A Challenge for Agency Attorneys." *ABA Child Law Practice* 17, no. 8 (October 1998): 113.

Lawson, Harry, and Dennis Howard. "Development of the Profession of Court Management: A History with Commentary." *Justice System Journal* 15, no. 2 (1991): 580.

Lefever, R. Dale. "Effecting Change in the Courts: A Process of Leadership." *National Institute of Justice/Research in Action*. Washington, D.C.: U.S. Department of Justice, 1987.

Levin, Henry. *Cost-Effectiveness: A Primer*. Beverly Hills, Calif.: Sage Publications, 1983.

Lipscher, Robert D. "The Judicial Response to the Drug Crisis: A Report of an Executive Symposium Involving Judicial Leaders of the Nation's Nine Most Populous States." *State Court Journal* 13, no. 4 (fall 1989): 13.

Lipscomb, Elizabeth. "Taming the Beast: Management of Complex Litigation." *Court Manager* 10, no.2 (spring 1995): 49.

Luskin, Mary Lee, and Robert Luskin. "Case Processing Times in Three Courts." *Law and Policy* 9 (1987): 207

Mahoney, Barry, Alexander Aikman, Pamela Casey, Victor Flango, Geoff Gallas, Thomas Henderson, Jeanne Ito, David Steelman, and Steven Weller. *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts*. Williamsburg, Va.: National Center for State Courts, 1988.

—, Holly C. Bakke, Antoinette Bonacci-Miller, Nancy C. Maron, and Maureen Solomon. *How to Conduct a Caseflow Management Review: Guide for Practitioners*. Williamsburg, Va.: National Center for State Courts, Institute for Court Management, 1992.

—, Carol Friesen, Ernest C. Friesen, R. Dale Lefever, Maureen Solomon, and Douglas K. Somerlot. *Planning and Conducting a Workshop on Reducing Delay in Felony Cases. Volume One: Guidebook for Trainers*. Williamsburg, Va.: National Center for State Courts, Institute for Court Management, 1991.

—, Kathleen M. O'Leary, Linda K. Ridge, Ernest C. Friesen, William F. Dressel, and Richard Silver. *Planning and Conducting a Course on "Managing Trials Effectively": A Guidebook for Judicial Educators*. Williamsburg, Va., and Reno, Nev.: National Center for State Courts and National Judicial College, 1993.

—, V. Robert Payant, Richard M. Silver, and Linda K. Ridge. "Manage Trials More Effectively." *Judges' Journal* 29, no. 4 (1990): 35.

—, and Dale Sipes. "Toward Better Management of Criminal Litigation." *Judicature* 72, no. 1 (June-July 1988): 29.

—, Larry Sipes, and Jeanne Ito. *Implementing Delay Reduction and Delay Prevention Programs in Urban Trial Courts: Preliminary Findings from Current Research*. Williamsburg, Va.: National Center for State Courts, 1985.

—, and Marlene Thornton. "Means-Based Fining: Views of American Trial Judges." *Justice System Journal* 13, no. 1 (spring 1988): 51.

Mann, Julian. "Striving for Efficiency in Administrative Litigation: North Carolina's Office of Administrative Hearings." *Journal of the National Association of Administrative Law Judges* 15, no. 2 (1995).

Martin, John, Brenda Wagenknecht-Ivey, Steven Weller, and David Price. "Shaping the Future of Justice: Strategic Planning in the Courts." *Judges' Journal* 36, no. 2 (spring 1997): 32.

Matthias, John, Gwendolyn Lyford, and Paul Gomez. *Current Practices in Collecting Fines and Fees in State Courts: Handbook of Collection Issues and Solutions*. Denver, Colo.: National Center for State Courts, Court Services Division, 1995.

Mays, G. Larry, Stephen Ryan, and Cindy Bejarano. "New Mexico Creates a DWI Drug Court." *Judicature* 81, no. 3 (November-December 1997): 122.

McConnell, Edward B. "Court Management: The Judge's Role and Responsibility." *Justice System Journal* 15, no. 2 (1991): 710.

Ment, Aaron. "An Overview of Case Management: Connecticut's Experience." In Working Group on a Courts Commission, *Report on Case Management Conference*. Dublin: Government of Ireland, 1997.

Miller, Frederick. "Delay in Rural Courts: It Exists, But It Can Be Reduced." *State Court Journal* 14, no. 3 (summer 1990): 23.

Mott, Thomas. "Reducing Delay and Trial Continuances." *Judges' Journal* 33, no. 1 (winter 1994): 6.

Murphy, Timothy R., Paula L. Hannaford, Genevra Kay Loveland, and G. Thomas Munsterman. *Managing Notorious Trials*, rev. ed. Williamsburg, Va.: National Center for State Courts, 1998. (First edition published in 1992 as *A Manual for Managing Notorious Cases*.)

Munsterman, G. Thomas, Paula Hannaford, and G. Marc Whitehead, eds. *Jury Trial Innovations*. Williamsburg, Va.: National Center for State Courts, 1997.

Nadler, David. *Champions of Change: How CEOs and Their Companies Are Mastering the Skills of Radical Change*. San Francisco, CA: Jossey-Bass, 1998.

Nash, Bruce, Allan Zullo, eds., and Kathryn Zullo, comp. *Lawyer's Wit and Wisdom: Quotations on the Legal Profession, In Brief*. Philadelphia, PA: Running Press, 1995.

National Association of Drug Court Professionals, Drug Court Standards Committee. *Defining Drug Courts: The Key Components*. Washington, D.C.: Office of Justice Programs, Drug Courts Program Office, 1997.

National Association for Court Management. "Core Competency Curriculum Guidelines: What Court Leaders Need to Know and Be Able to Do," *Court Manager* 18, no. 2 (2003):16-20.

—. *The Court Administrator: A Manual*. Williamsburg, Va.: National Association for Court Management, 1992.

—. *The Courts' Response to Domestic Violence*. Williamsburg, Va.: National Association for Court Management, 1997.

—. *Holding Courts Accountable: Counting What Counts*. Williamsburg, Va.: National Association for Court Management, 1999.

—, Professional Development Advisory Committee. "Core Competency Curriculum Guidelines: History, Overview and Future Uses." *Court Manager* 13, no. 1 (winter 1998): 6.

National Center for State Courts. *How the Public Views the State Courts: A 1999 National Survey*. Williamsburg, Va.: National Center for State Courts (funded by the Hearst Corporation), 1999.

—, Information Service. *Report on Trends in the State Courts*. 1997-1998 ed. Williamsburg, Va.: National Center for State Courts, 1998.

—, Court Statistics Project. *State Court Organization 1980*. Washington, D.C.: Bureau of Justice Statistics, 1982.

—, Institute for Court Management. *Caseflow Management Principles and Practices: How to Succeed in Justice*. Videotape with instructor's manual and user's guide. Williamsburg, Va.: National Center for State Courts, 1991.

National Conference on the Judiciary. *Justice in the States*. St. Paul, Minn.: West Publishing, 1971.

National Council of Juvenile and Family Court Judges. *Resource Guidelines. Improving Court Practice in Child Abuse and Neglect Cases*. Reno, Nev.: National Council of Juvenile and Family Court Judges, 1995.

National Indian Child Welfare Association. *Issues for Tribes and States Serving Indian Children: Adoption and Safe Families Act of 1997*. (P.L. 105-89). Washington, D.C.: U.S. Department of Health and Human Services, Children's Bureau, 1999.

National Task Force on Court Automation and Integration. "Justice and Technology in the 21st Century: Findings and Recommendations from the Report of the National Task Force on Court Automation and Integration." Sacramento, Calif.: SEARCH, the National Consortium for Justice and Information Statistics, 1998.

Neubauer, David, and John Paul Ryan. "Criminal Courts and the Delivery of Speedy Justice: The Influence of Case and Defendant Characteristics." *Justice System Journal* 7, no. 2 (1982): 213.

—, et al. *Managing the Pace of Justice: An Evaluation of LEAA's Court Delay-Reduction Programs*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1981.

New Jersey Supreme Court Committee on Civil Case Management and Procedures. "Civil Case Management and Procedures Report." *New Jersey Law Journal* (March 28, 1985): 1

Nicola, George. "A Community Approach to Drug Abuse." *Judges' Journal* 33, no. 1 (winter 1994): 32.

Nimmer, Raymond. *The Nature of System Change: Reform Impact in the Criminal Courts*. Chicago: American Bar Foundation, 1978.

O'Neill, C. William. "How to Force Faster Litigation." *Judges' Journal* 18, no. 1 (winter 1979): 6.

Osborne, David, and Ted Gaebler. *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector*. New York: Penguin Books, 1993.

Ostrom, Brian, and Roger Hanson. *Efficiency, Timeliness, and Quality: A New Perspective from Nine Criminal Trial Courts*. Williamsburg, Va.: National Center for State Courts, 1999.

Ostrom, Brian, and Neal Kauder, eds. *Examining the Work of State Courts, 1996: A National Perspective from the Court Statistics Project*. Williamsburg, Va.: National Center for State Courts, 1997.

—, and — . *Examining the Work of State Courts, 1994: A National Perspective from the Court Statistics Project*. Williamsburg, Va.: National Center for State Courts, 1996.

Ostrom, Brian, et al., *State Court Caseload Statistics: Annual Report 1992*. Williamsburg, Va.: National Center for State Courts, 1994.

Peters, Thomas J. *Thriving on Chaos: Handbook for a Management Revolution*. New York: Alfred A. Knopf, 1997.

—, and Nancy Austin. *A Passion for Excellence: The Leadership Difference*. New York: Warner Books, 1986.

—, and Robert H. Waterman. *In Search of Excellence: Lessons from America's Best-Run Companies*. New York: Warner Books, 1983.

Pizzuti, Sharon. "Third Circuit Friend of the Court Gets a New Image." In Michigan State Court Administrative Office, *The Pundit* 12, no. 3 (January 1999): 1.

Planet, Michael D., Saundra Smith, Lynae K. E. Olson, and Paul R. J. Connolly. "Screening and Tracking Civil Cases: A New Approach to Managing Caseloads in the District of Columbia." *Justice System Journal* 8, no. 3 (1983): 338.

Polansky, Larry. "Speech Recognition for the 21st Century." *Court Communiqué* 1, no. 1 (March 1999): 2.

—. "Technological Opportunities for Reduction of Litigation Cost and Delay." Paper prepared for a meeting of the Working Group on *Developing a National Agenda to Reduce Litigation Cost and Delay*, Tucson, Arizona, May 2-4, 1997.

Pound, Roscoe. "The Causes of Popular Dissatisfaction with the Administration of Justice." *American Bar Association Reports* 29 (1906): 395; reprinted, *Journal of the American Judicature Society* 20 (February 1937): 178; and FRD 35 (1964): 273.

Reuben, Richard. "ADR: The Lawyer Turns Peacemaker." *ABA Journal* 82 (August 1996): 54.

Rodgers, Frederic. "The Rural Judge Can Always Be Found! Judicial Orders by Fax and by Phone." *Judges' Journal* 32, no. 3 (summer 1993): 34.

Rosenberg, Maurice. "Court Congestion: Status, Causes, and Proposed Remedies." In American Assembly, *The Courts, The Public, and the Law Explosion*. Englewood Cliffs, N.J.: Prentice-Hall, 1965.

—. "The Federal Rules After Half a Century." *Maine Law Review* 36 (1984): 243.

Rossetti, Rudolph. "Special Civil Tracks." *Judges' Journal* 33, no. 1 (winter 1994): 34.

Rottman, David, and William Hewitt. *Trial Court Structure and Performance: A Contemporary Reappraisal*. Williamsburg, Va.: National Center for State Courts, 1996.

Rubin, H. Ted, and Victor E. Flango. *Court Coordination of Family Cases*. Williamsburg, Va.: National Center for State Courts, 1992.

—. "Courts and Families: A Time of Change." *State Court Journal* 17, no. 3 (summer/fall 1993): 27.

Ruhnka, John, Steven Weller, and John Martin. *Small Claims Courts: A National Examination*. Denver, Colo.: National Center for State Courts, 1978.

Sackville, Ronald. "Case Management: A Consideration of the Australian Experience." In Working Group on a Courts Commission, *Conference on Case Management*. Dublin: Government of Ireland, 1997.

Sanders, Joseph. "Jury Deliberation in a Complex Case: Havner v. Merrell Dow Pharmaceuticals." *Justice System Journal* 16, no. 2 (1993): 45.

Schwartz, Howard, and Robert Broomfield. "Delay: How Kansas and Phoenix Are Making It Disappear." *Judges' Journal* 23, no. 1 (1984): 22.

Schecter, Susan, Jeffrey Edelson, Leonard Edwards, Linda Spears, Ann Rosewater, and Elizabeth Stoffel. *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice*. Reno, Nev.: National Council of Juvenile and Family Court Judges, 1999.

Senge, Peter. *The Fifth Discipline: The Art and Practice of the Learning Organization*. New York: Doubleday, 1990.

Shaw, Margaret, Linda Singer, and Edna Povich. *National Standards for Court-Connected Mediation Programs*. Washington, D.C.: Center for Dispute Settlement and Institute for Judicial Administration, 1992.

Silver, Richard M. "Monitoring the Length of Criminal Trials: A Judicial Perspective on the Problems of Controlling the Length of Criminal Trials (or, A Judge Is Not a Potted Plant Either!)." *State Court Journal* 12, no. 1 (winter 1988): 18.

Sipes, Dale, and Mary Elsner Oram. *On Trial: The Length of Civil and Criminal Trials*. Williamsburg, Va.: National Center for State Courts, 1988.

Sipes, Larry, Alexander B. Aikman, Alan Carlson, Robert W. Page, Jr., and Teresa Tan. *Managing to Reduce Delay*. Williamsburg, Va.: National Center for State Courts. 1980.

Smith, Barbara E., Arthur J. Lurigio, Robert C. Davis, Sharon Goretsky Elstein, and Susan J. Popkin. "Burning the Midnight Oil: An Examination of Cook County's Night Drug Court." *Justice System Journal* 17, no. 1 (1994): 41.

Solomon, Maureen. *Caseflow Management in the Trial Court*. Chicago: American Bar Association, 1973.

—, and Douglas Somerlot. *Caseflow Management in the Trial Court: Now and for the Future*. Chicago: American Bar Association, 1987.

Somerlot, Douglas, and Barry Mahoney. "What Are the Lessons of Civil Justice Reform? Rethinking Brookings, the CJRA, RAND and State Initiatives." *Judges' Journal* 37, no. 2 (spring 1998): 4.

—, Maureen Solomon, and Barry Mahoney. "Straightening Out Delay in Civil Litigation: How Wayne County Took Its Program from Among the Worst in the Nation to Among the Best." *Judges' Journal* 28, no. 4 (fall 1989): 10.

Sonntag, Alison. "The Courthouse Facilitator: A Success Story from Kitsap County, Washington." *Court Manager* 11, no. 3 (summer 1996): 16.

Steelman, David. *Effects of Adoption and Safe Families Act of 1997 on Wisconsin Proceedings in "CHIPS" Cases (Those Involving "Children in Need of Protection or Services").* Denver, Colo.: National Center for State Courts, Court Services Division, 1999.

—. "The History of Delay Reduction and Delay Prevention Efforts in American Courts." In Working Group on a Courts Commission, *Report on Case Management Conference*. Dublin: Government of Ireland, 1997.

—. "Managing Probate Workload and Dockets." *Probate Law Journal* 11, no. 3 (1993): 273.

—. *Orders to Show Cause in the Bronx (NY) Housing Court*. Denver, Colo.: National Center for State Courts, Court Services Division, 1996.

—. *Post-Adjudication Procedures in the Pennsylvania Courts of Common Pleas: Final Report*. North Andover, Mass.: National Center for State Courts, Northeastern Regional Office, 1982.

—. *Service to Citizens by the Probate/Mental Health Department of the Superior Court of Arizona in Maricopa County: A Technical Assistance Report*. Denver, Colo.: National Center for State Courts, Court Services Division, 1997.

—. "What Have We Learned About Court Delay, 'Local Legal Culture,' and Caseflow Management Since the Late 1970s?" *Justice System Journal* 19, no. 2 (1997): 145.

—, and Lorraine Adams. *Civil Case Scheduling in the Trumbull County (Ohio) Court of Common Pleas: Findings and Recommendations*. North Andover, Mass.: National Center for State Courts, Northeastern Regional Office, 1982.

—, and Jeffrey Arnold. "Experimental Civil Caseflow Management Improvement Plan for North Cairo and Ismailia Pilot Courts." Paper presented to the First Assistant to the Minister of Justice, Arab Republic of Egypt (Cairo: Amideast and National Center for State Courts, Administration of Justice Support Project, September 16, 1998).

—, Jeffrey Arnold, and Karen Gottlieb. *New Orleans Collaborative on Timely Adoptions: Removing Barriers to Prompt Completion of Child Protection Cases*. Denver, Colo.: National Center for State Courts, Court Services Division, 1998.

— and Samuel Conti. *Improving the Pace of Litigation for Juvenile Delinquency Cases in Hudson County, New Jersey: A Technical Assistance Report*. Denver, Colo.: National Center for State Courts, Court Services Division, 1997.

—, Karen Gottlieb, and Dawn Rubio. *Michigan Trial Court Consolidation. Volume Two: Final Evaluation of Barry County Demonstration Project*. Denver, Colo.: National Center for State Courts, Court Services Division, 1999.

—, Susan Keilitz, Paul Gomez, and A. Fleischman. *Superior Court Rule 170 Program and Other Alternative Dispute Resolution Prospects for New Hampshire Trial Courts*. Denver, Colo.: National Center for State Courts, Court Services Division, 1997.

—, Frederick Miller, A. Fleischman, and Shaun Zallaps. *Children's Docket Assessment: Multiple-Forum Appearances by Children and Families in Michigan Trial Courts*. Denver, Colo.: National Center for State Courts, Court Services Division, 1997.

— and Linda Walker. *The Impact of Cases Involving Substance Abuse on Court Workloads in New Hampshire*. Denver, Colo.: National Center for State Courts, Court Services Division, 1993.

—, Penelope Wentland, and Jeffrey Arnold. *Caseflow Management and Judge Assignments for Criminal Cases in Minnesota's Fourth District Court* (*Hennepin County*). Denver, Colo.: National Center for State Courts, Court Services Division, 1999.

Stienstra, Donna. "Judicial Perceptions of DCM and ADR in Five Court Demonstration Projects under the CJRA." *Judges' Journal* 37, no. 2 (spring 1998): 16.

Stott, E. Keith, Jr. "The Judicial Executive: Toward Greater Congruence in an Emerging Profession." *Justice System Journal* 7, no. 2 (1982): 152

Stupak, Ronald. "Court Leadership in Transition: Fast Forward to the Year 2000." *Justice System Journal* 15, no. 2 (1991): 617.

Tait, Jan. "A Court-Based Notification System for Traffic Defendants." *Justice System Journal* 13, no. 1 (spring 1988): 73.

Tauber, Jeffrey. *The Importance of Immediate and Intensive Intervention in a Court-Ordered Drug Rehabilitation Program: An Evaluation of the FIRST Diversion Project After Two Years.* Oakland, Calif.: Municipal Court, Oakland-Piedmont-Emeryville Judicial District, 1993.

—, and C. West Huddleston. *Development and Implementation of Drug Court Systems*. Alexandria, Va.: National Drug Court Institute, 1999.

—, and C. West Huddleston. *DUI/Drug Courts: Defining a National Strategy*. Alexandria, Va.: National Drug Court Institute, 1999.

—, and Kathleen Snavely. *Drug Courts: A Research Agenda*. Alexandria, Va.: National Drug Court Institute, 1999.

—, Kathleen Snavely, and E. Jeffrey Hunt. *Drug Court Publications: Resource Guide*. Alexandria, Va.: National Drug Court Institute, 1999.

Taylor, Ronald. "A Three-Track Criminal Program." *Judges' Journal* 33, no. 1 (winter 1994): 36.

Tobin, Robert W. *Creating the Judicial Branch: The Unfinished Reform*. Williamsburg, Va.: National Center for State Courts, 1999.

—, *An Overview of Court Administration in the United States*. Williamsburg, Va.: National Center for State Courts, 1997.

Vaill, Peter. *Managing as a Performing Art*. San Francisco, CA: Jossey-Bass, 1990.

Ventrell, Marvin. "Evolution of the Dependency Component of the Juvenile Court." *Juvenile and Family Court Journal* 49, no. 4 (fall 1998): 17.

Webster, Larry, James McMillan, J. Douglas Walker, and Barbara Kelly. "What's New in Court Technology: An Overview." *Judges' Journal* 32, no. 3 (summer 1993): 6.

Wagenknecht-Ivey, Brenda, John Martin, Steven Weller, and David Price. "Lessons for Successful Strategic Planning." *Court Manager* 11, no. 2 (spring 1996): 12.

Weller, Steven, and John Ruhnka. "Small Claims Courts: Operations and Prospects." *State Court Journal* 2, no. 1 (winter 1978): 6.

Welsh, Nancy, and Barbara McAdoo. "The ABCs of ADR: Making ADR Work in Your Court System." *Judges' Journal* 37, no. 1 (winter 1998): 11.

Whinery, Leo. "Rural Courts in America: What We Can Learn from Them: An Overview." *Judges' Journal* 30, no. 2 (spring 1991): 2.

White, Byron. "The Special Role of State Trial Judges." *Judges' Journal* 30, no. 2 (spring 1991): 6.

Wice, Paul. "Court Reform and Judicial Leadership: A Theoretical Discussion." *Justice System Journal* 17, no. 3 (1995): 309.

Wick, Karen. "Evaluating Three Notification Strategies for Collecting Delinquent Traffic Fines." *Justice System Journal* 13, no. 1 (spring 1988): 64.

Winderfeld, Amy Printz. "An Overview of the Major Provisions of the Adoption and Safe Families Act of 1997." *Protecting Children* 14, no. 3 (1998): 4.

Witte, G. Michael, and L. Mark Bailey. "Pre-Adjudication Intervention in Alcohol-Related Cases." *Judges' Journal* 37, no. 3 (summer 1998): 32.

Woolf, Lord. *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales*. London: Stationery Office, 1996.

Yegge, Robert. "Divorce Litigants without Lawyers: This Crisis for Bench and Bar Needs Answers Now." *Judges' Journal* 33, no. 2 (spring 1994): 8.

Zaffarano, Mark. "Understanding Leadership in State Trial Courts: A Review Essay." *Justice System Journal* 10, no. 2 (1985): 229.

Zeisel, Hans, Harry Kalvin, and Bernard Buchholz. *Delay in the Court*. Boston: Little, Brown and Company, 1959.

Zeliff, Harry J. "Hurry Up and Wait. A Nuts and Bolts Approach to Avoiding Wasted Time in Trial." *Judges' Journal* 28, no. 3 (summer 1989): 18.

Zimmerman, Ron. "The Magic Bullet: Case Management in a Limited Jurisdiction Court." *Court Manager* 9, no. 3 (summer 1994): 29.

—. "Police Officer Scheduling in Metropolitan Traffic Courts: Managed Process or Crap Shoot?" *Court Manager* 13, no. 1 (winter 1998): 40.

Zuckerman, Adrian, and Ross Cranston., eds. *Reform of Civil Procedure: Essays on "Access to Justice."* New York: Oxford University Press, 1995.

INDEX

Superior Court of Fresno County Judge Stephen J. Kane presides over a civil case.