

IMPROVING FELONY CASEFLOW

National Center for State Courts

**Judicial Branch of Arizona in Maricopa County
National Association for Presiding Judges and Court Executive Officers**

**December 4, 2018
Phoenix, Arizona**

Making the Pretrial Process Meaningful

Creating a Culture of Predictability

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Principles of Case Oversight by the Court

- Apply the principle that the adjudication process must be controlled by the court from start to finish
- Court's only interest is justice, all others have a parochial interest
- Court has a systemwide, operational perspective and responsibility
- Emphasize the need for distributive justice by treating cases proportionally based on importance, complexity, and priority (triage / DCM)
- Exercise early intervention and continuous control over case progress
- Demonstrate procedural justice (look at process from users' perspectives)
- Be reasonably arbitrary in granting discretionary delay
- Create the expectation and reality that events will happen when scheduled

Establish an Expectation of Preparedness

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Things are Supposed to Happen when Hearings are Set....So what can the Court do when a Lawyer says:

“I have a matter in another court and that judge insists that I be there or be held in contempt.”

“We are close to a plea agreement your honor, but we both stipulate to a continuance to work out the details.”

“I’m not the attorney of record; I’m just filling in for her. She’s in a trial in Judge Smith’s courtroom.”

“The lab reports are not back yet and the defense refuses to negotiate until the chemical substance is confirmed.”

“I know the pretrial management order required all witnesses to be interviewed by today, but I have had major difficulties find two witnesses.”

Why Meaningful Hearings do not Occur

- Parties are not prepared
- Attorney / advocate conflicts
- Cut-off dates for motions and evidentiary appearances are too early
- Poor scheduling of hearings
- Other?

Early in the Case

Individual Judge

- Motion practice
 - Oral / written motions
 - Prompt in-limine rulings
 - Motion cut-off
- Case-related questions
 - What's happening in the case?
 - How old is it?
 - What should happen next?
 - By when?

Courtwide Operations

- Identify & address delays in arrest reports; witness & forensic data
- Realistic charging
- Early discovery exchange
 - Push toward e-discovery
 - Promote a disclosure focus
- Plea cut-off

Identify Delays and Remedies in Processing Arrest Reports, Witness and Forensic Evidence

- You don't want to manage the DA's discovery process...or do you?
- Can you institute electronic sharing
- CDs or DVDs instead of GJ transcripts
- Is it "just" \$?
- Prelim lab reports in certain cases (field tests v. full labs)

Take Responsibility to Lead Collaboration Among Justice Stakeholders Beyond the Court

↓ *Includes* ↓

- Prosecutors
- Public Defenders

↓ *But don't forget* ↓

- Private defense bar/Bar Association
- DV advocacy groups
- Victim Advocacy groups
- Funding sources
- Jail/Corrections

Discovery and Disclosure Guidelines

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Criminal Discovery Guidelines / Principles (American Bar Association)

- ***Open File Discovery*** granting the defense access to all unprivileged information known to the prosecution, law enforcement or forensic testing labs working for the prosecution;
- ***Automatic Disclosure*** of police reports, witness statements, results of physical or mental exams, and evidence related to any aggravating or mitigating factors that could affect a plea or sentence; and
- ***Early Exchange*** of evidence when it initially becomes available.

Early Resolution of Motions

Delay Problems in Motion Practices

- Motions for discovery
- Motion to suppress
- Motions in limine
- Motion for change of judge
- Motion to determine accused mental capacity to proceed

Best Practice

Standard and Special Case Management Orders

Plea Cut-Off and Continuance Policies

Plea Cut-Off Policy Features

- Court and Prosecutor's Office must both be committed to making a plea cut-off program work;
- Best-and-Final plea offer should occur after defense counsel has...
 - Met with defendant enough to have attorney-client credibility;
 - Reviewed the case to identify any potential suppression issues
 - Received sufficient discoverable evidence to assess the strength of state's case;
- Best-and-Final offer must be a "worthy submission" – that is, a credible one based on the evidence and what a reasonable defense attorney would expect to happen if the case went to trial;
- After the cut-off date, the best-and-final offer should no longer be obtainable; and
- Although the court cannot be expected to reject a defendant's guilty plea, even on the day of trial, the court must be firm in its enforcement of the plea cut-off date.

Guidelines for Firm Continuances

- ✓ Continuances granted for extraordinary circumstances only
- ✓ Strict written court policy
- ✓ Requests for continuances must be in writing
- ✓ Orders continuing trials endorsed to presiding judge
- ✓ Track continuances by judge, lawyer (parties), case type, length, and stated reason.
- ✓ Trial date continuances granted only in emergencies
- ✓ Continuance not automatic, even if both parties stipulate
- ✓ Consistent application of policy by all judges
- ✓ Restrict authority to continue certain cases

Triaging Cases by Complexity & Time to Resolve

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Triage (DCM) Principles

1. Not all cases require the same judicial resources or time to resolve the issues, facts and law in them
2. Case management should be tailored (right-sized) to the specific circumstances of the case
3. Cases should be placed on “tracks” or “pathways” based on their complexity and a reasonable assessment as to the time it will take to resolve them
4. The discovery process should be kept proportional to the needs of the case. Courts should require mandatory disclosures as an early opportunity to clarify issues. And judges should actively oversee the discovery process.

Simple 3-Track Case Triage System

- Purpose of System: To assign cases to processing tracks by balancing the relative degree of complexity against established priorities for disposition as agreed between Court and counsel:
- “A” Track (Fast Track): Cases characterized by high established priorities and low to medium amount of complexity. No more than 90 days from initial appearance to disposition by trial (if needed);
- “B” Track (Standard or Normal): Cases not in either track “A” or “C”. Disposition by trial within 150 days of initial appearance;
- “C” Track (Complex): Cases having low priorities and/or medium to high amount of complexities. Disposition by trial within 210 days from initial appearance.

Three-Track Criminal DCM Program: Matrix (Example)

Complexity

Priority

	Low	Medium	High
Low	B	C	C
Medium	B	B	B
High	A	A	B

Criminal Scheduling Order Timetable (From first appearance date)

Event	A (Expedited)	B (Normal)	C (Complex)
Supplemental Filings	14	14	14
Preliminary Transcript Filing	30	60	60
Name added Witnesses	40	75	90
Discovery Completion	45	90	120
File Procedural Motions	50	100	130
Filing Substantive Motions	60	125	150
Completion-Psych. Review	---	90	120
Status Conference	83	143	196
Trial (Month)	3	5	7 to 9

Criminal Case Management Data

Motivating Judges with the Help of Data

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Use Data to Monitor Calendars

Individual judge

- Ask these questions...
 - What's the overall status of my calendar?
 - How many pending cases?
 - What's their age 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?

Courtwide operations

- Ask these questions...
 - How many old cases are there?
 - What is the tolerable backlog?
 - Are there problems with certain types of cases?
 - Are there procedural bottlenecks?
 - Are particular judges having calendar difficulties? Why?
 - Are there systemwide delays that should be addressed (i.e. lab reports, mental health evals.)?

How Do You Motivate with CFM Data?

- Ultimate question: How do leaders lead leaders?
- Judges don't buy into caseflow improvement initiatives because of a leader's personality, charisma or vision

NCSC Basic CourTool Performance Measures

Case clearance: # of outgoing cases as a % of the number of incoming cases.

Time to disposition: % of case disposed / resolved within established time frames.

Age of active pending caseload: age of active cases pending before the court (judge) measured as the # days from filing until time of measurement

Trial date certainty: # of times cases disposed by trial are scheduled for trial

Develop accurate, worthwhile statistics

- Reports regarding caseflow management performance measures should be produced by major case type and by judge, and must be...
 - Timely
 - Understandable
 - Graphic
- Caseflow decisions should be data driven
- “One off” studies should be conducted to gather factual data where discrepancies or computerized information is confusing or absent.

Calendar

07:55 AM 08:00 AM - Temporary date
INTAKE WEEK 1

08:15 AM 08:45 AM - Temporary date
APPOINTMENT OF COUNSEL HEARINGS

08:15 AM 08:30 AM - Review hearing
[2013CF000404](#) [Docs\(11\)](#) State of Wisconsin vs. Grace M. Pink

08:15 AM 08:30 AM - Review hearing
[2014CF000075](#) [Docs\(5\)](#) State of Wisconsin vs. Ofelia R. Welsch

08:30 AM 09:00 AM - Temporary date
ARRAIGNMENTS

09:00 AM 09:15 AM - Review
[2013CF000015](#) [Docs\(33\)](#) State of Wisconsin vs. Mark A. Steinbach

09:00 AM 09:30 AM - Status conference
[2013CF000331](#) [Docs\(20\)](#) State of Wisconsin vs. Travis J. Link
In Person - Possible P&S

Search

Cases Case Documents Juvenile Cases

County: Case No: Statewide:

Dodge

Last / Business Name: First Name:

Date of Birth:

Documents to Sign

To Sign (2) Proposed Orders (7) Held

Dodge Review/Sign Search:

<input type="checkbox"/>	Case	Document Name
<input type="checkbox"/>	2014CT000048	GF-142B Bench Warrant
<input type="checkbox"/>	1999CF000345	GF-142B Bench Warrant

What am I doing?

How am I doing?

Unscheduled Cases

Search:

Case No.	Days Since Last Event	Age
2014GN000021	26	87
2014CV000029	75	143
2014CV000009	76	155
2014CF000000	84	153

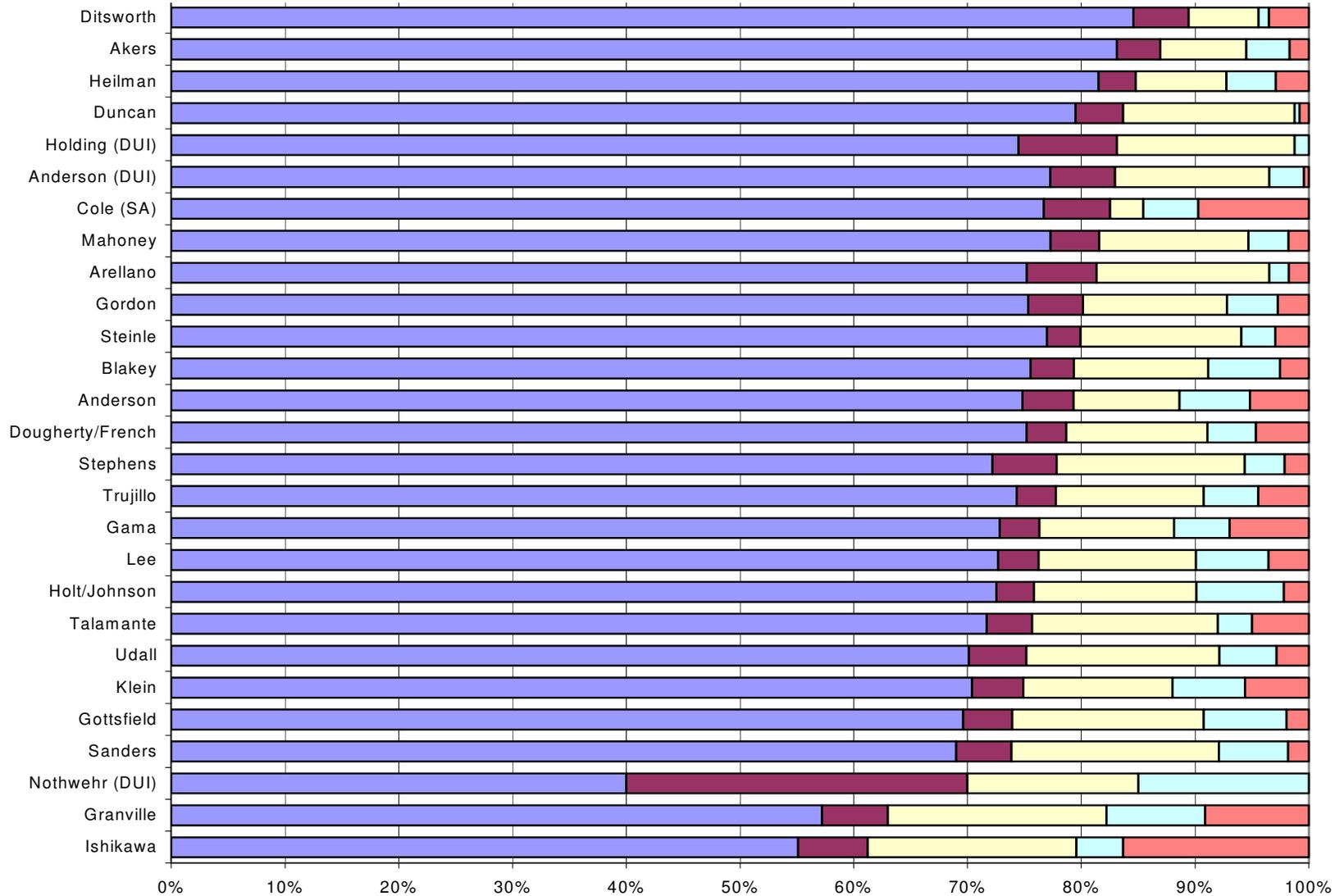
Quick Links

- [Email](#)
- [Messenger](#)
- [WCCA](#)
- [MS Word](#)
- [Tax Calc 2014](#)
- [Gam Calc 2014](#)
- [Child Support Calc](#)
- [VINE](#)
- [Drivers Eligibility](#)

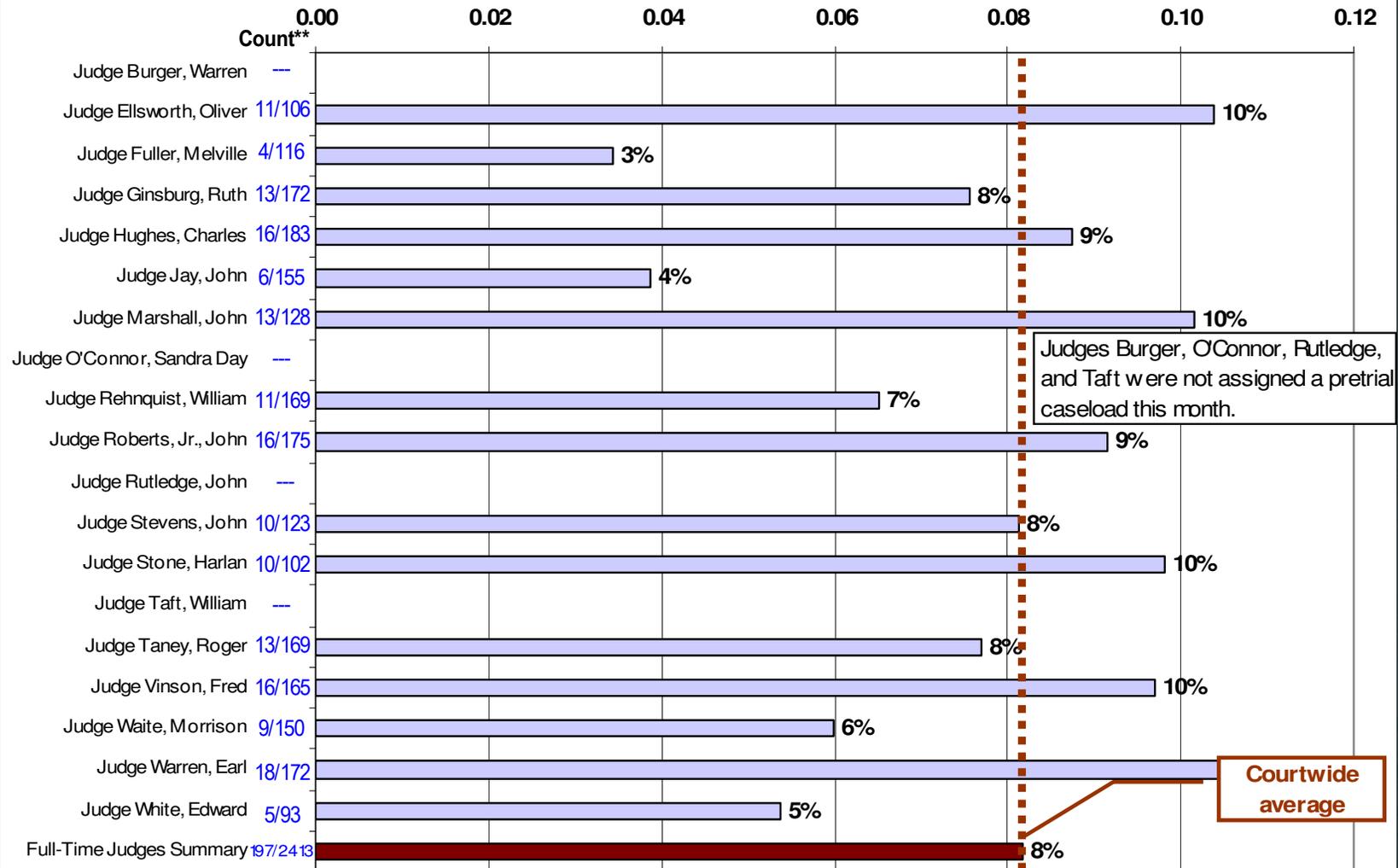


Age (in days) of Active Pending Criminal Cases, as of 4/30/2007

■ 0-150 days
 ■ 151-180 days
 ■ 181-365 days
 ■ 365-545 days
 ■ over 545 days



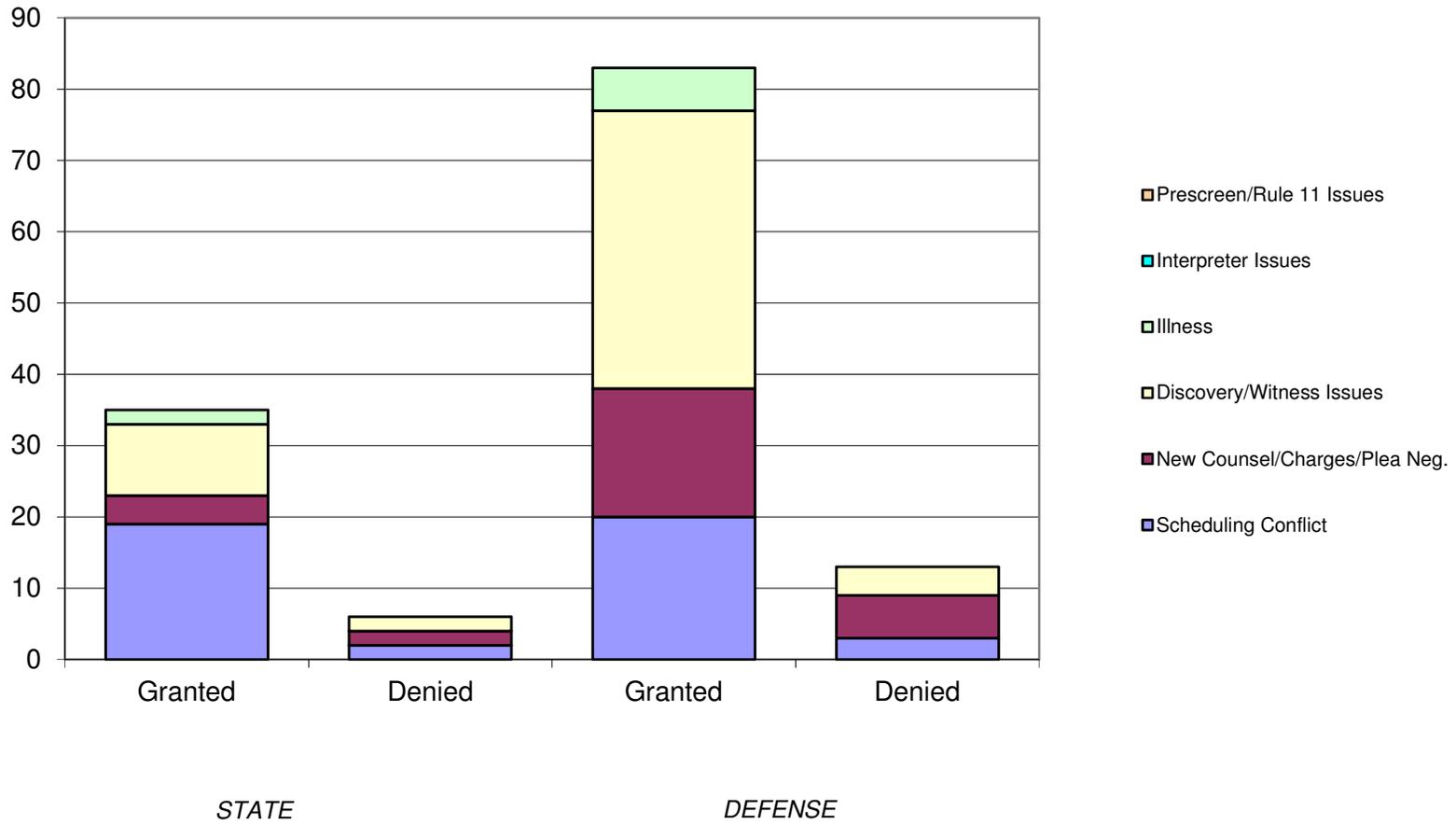
Percentage of Pending (Pretrial) Caseload* Older than 120 Days as of September 30, 2008



*Includes Pending Non-Jury Caseload and Pending Jury-Eligible Caseload, set f for PDC only.

**Count is the number of pending (pretrial) cases older than 120 days / the total number of pending (pretrial) cases.

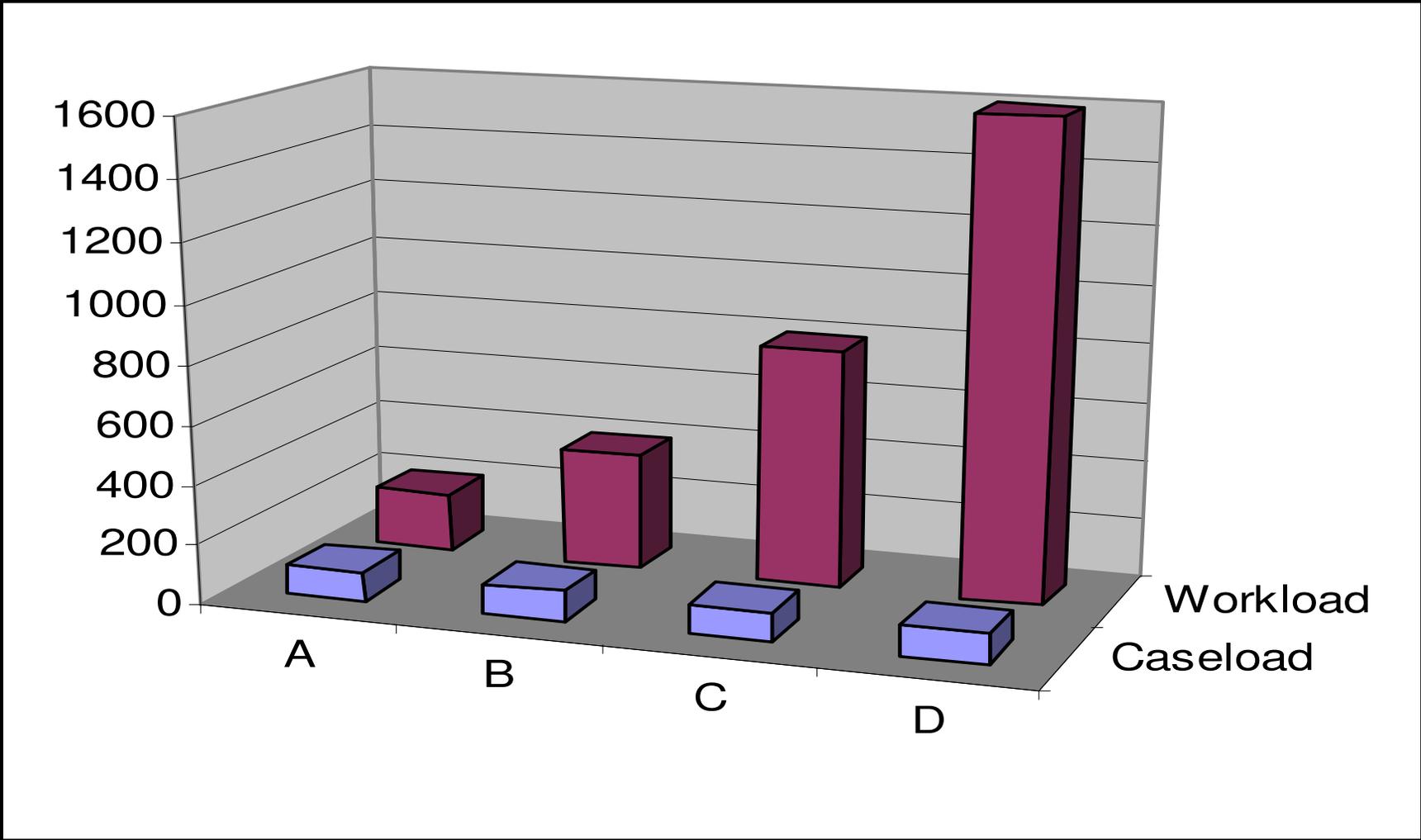
Reason for Continuance Request & Motion Outcome



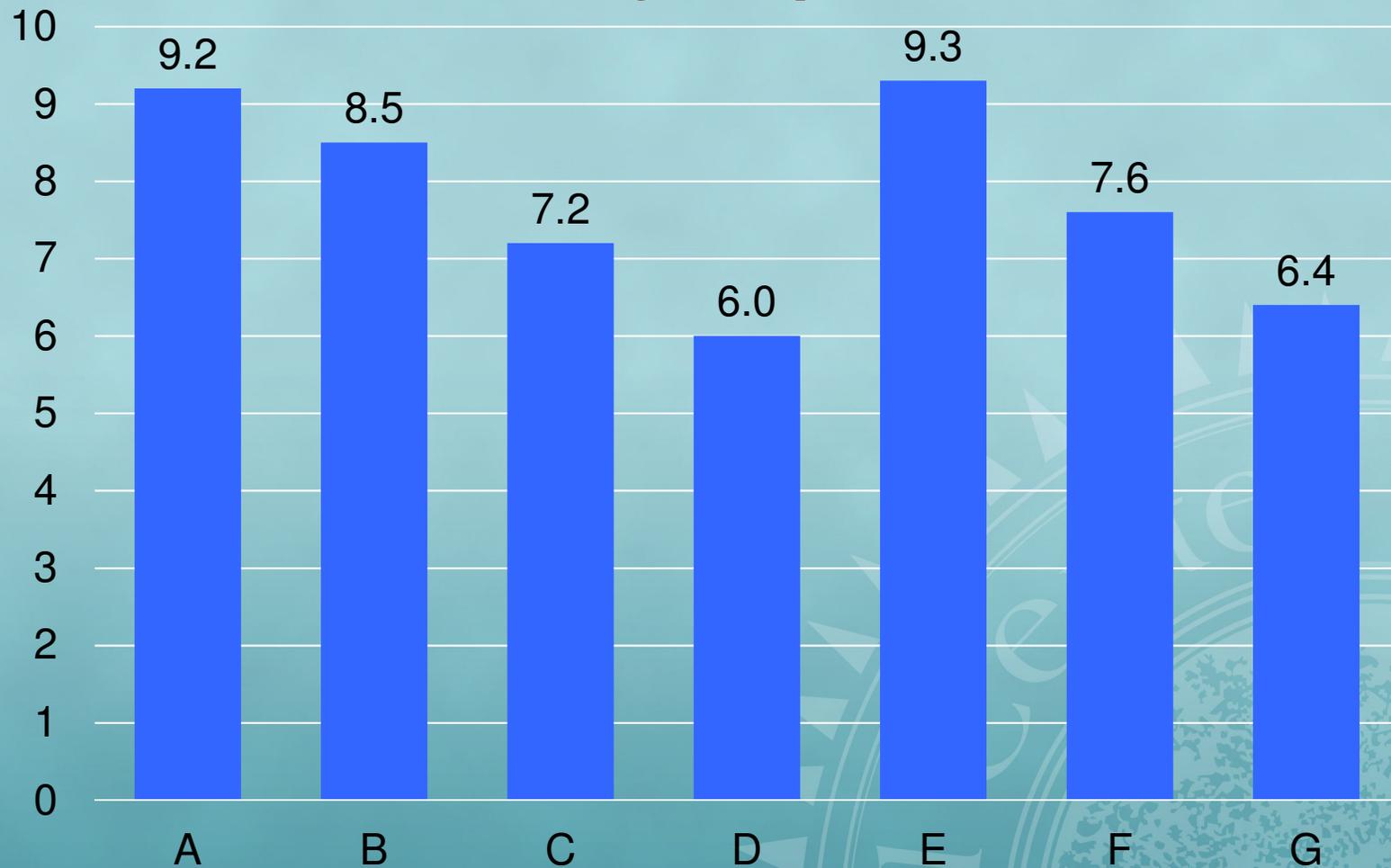
Using CFM Data to Help Lead Change

- Push with trends; Pull with a compelling vision
 - Negotiate the vision
 - Engage judicial colleagues with questions, don't order changes
 - Structure and conduct strategic conversations
- Use data to indicate inefficiencies: number of times the court (judge) touches a case (i.e. holds a hearing) vis-à-vis the caseload
- Draw a random sample of 300 recently closed cases
 - Assess by case type, the elapsed time between major events and final disposition date and proceeding (trial, plea, dismissal, etc.).
 - Analyze by case type the continuance patterns: where a continuance occurred, who requested the delay, the purpose of the delay, and how long the delay was granted.

Difference between Caseload / Workload



Average Number of Hearings per Felony Disposition



Leading Major Caseflow Change

Eight Step Pilot Project Approach

1. Establish a Sense of Urgency

- ✓ People have to believe there is a problem sufficiently serious to require action
- ✓ How do you create a sense of urgency?
 - Compile the data
 - Use war stories
 - Organize it into a compelling presentation
 - Use an outside expert if you need independent credibility
 - Use the current state budget crisis

2. Create a Guiding Coalition

- ✓ A strong team with the right people, expertise, credibility and support from PJ/CA
- ✓ Mistakes to avoid
 - Going it alone: the isolated leader
 - Running on empty: low-credibility committee
 - Including a saboteur: fence sitters are fine
- ✓ Trust among team members is essential
 - Diversity is important – results are better
 - Off-site team retreat – a useful technique
- ✓ Common goal is crucial
 - Sensible to the head
 - Appealing to the heart

3. Develop a Vision and Strategy

- ✓ Paint an inspiring picture of the future
- ✓ Provide focus
 - Point to areas of change
 - Identify clear targets
 - Take advantage of fundamental trends
- ✓ Explain how to get there (strategy)
 - Feasible; grounded in a clear, rational viewpoint
 - Provides logic and first level of detail
- ✓ “Elevator Speech” rule of thumb: You must be able to describe your vision to someone in 1-2 minutes and get their interest

Vision Example

*We are a Court of Law
dedicated to the*

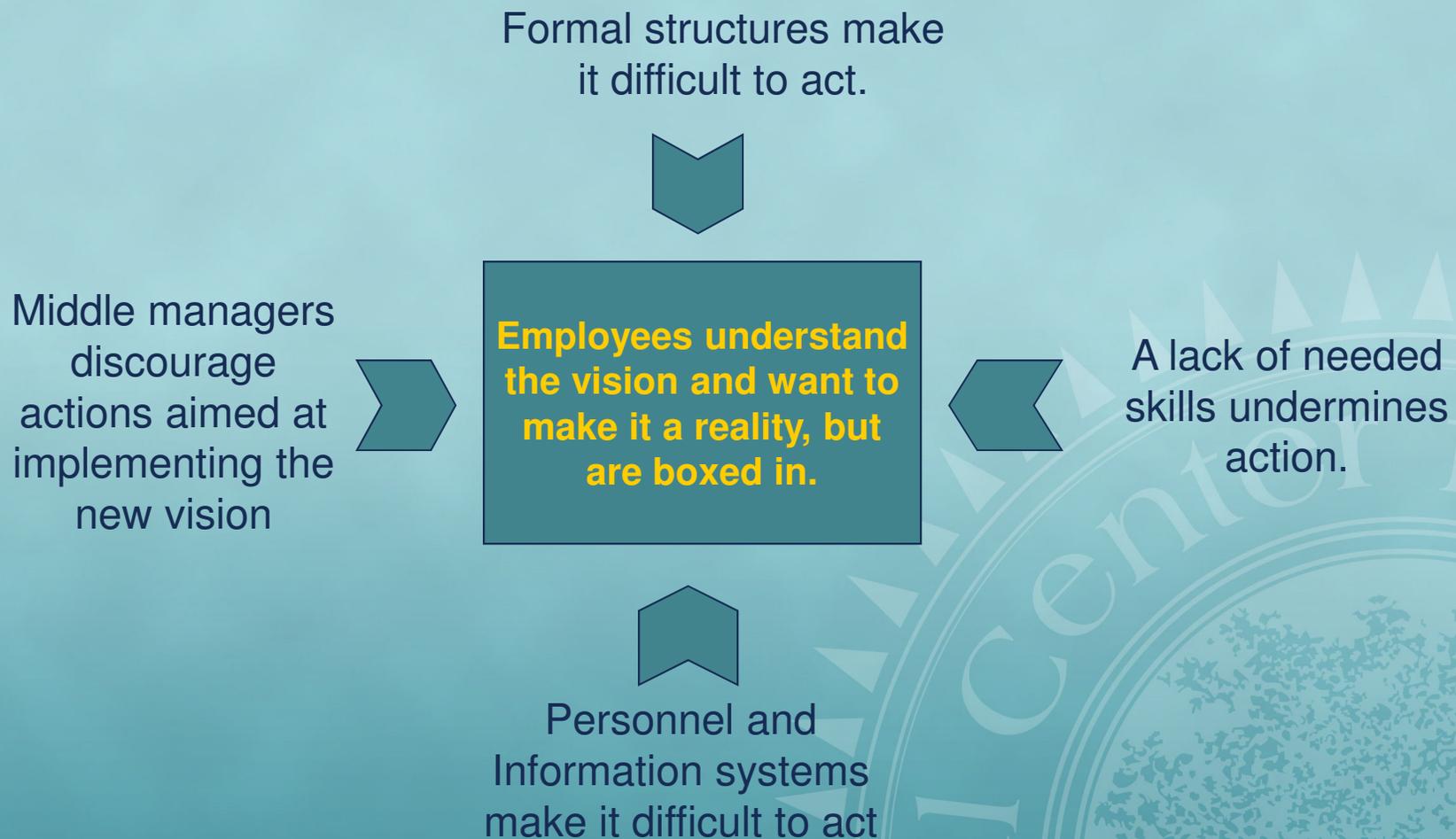
Doctrine of Judicial Responsibility
In Managing all Controversies Brought to Us.

*That Doctrine requires the court to responsibly
govern the pace of litigation to ensure a
predictable, timely and fair result. In doing so, we will
be mindful of the time lawyers and parties need
to adequately prepare and present their case*

4. Communicate the Change Vision

- ✓ Communicate in simple and direct terms
- ✓ Use the power of metaphor, analogy, example or just plain, colorful language.
- ✓ Repeat, Repeat, Repeat
- ✓ PJ/CA must walk the talk; lead by example

5. Empower Employees; Remove Barriers



6. Generate Short Term Wins

- ✓ People want to see clear, early data that changes are working
- ✓ Short-term wins must be visible; clearly related to the change effort
- ✓ Why are they important?
 - Show people that sacrifices are paying off
 - Allow people to celebrate; relieve tension
 - Test vision against concrete results
 - Quiet cynics and major league resisters
 - Help retain essential support of middle managers
 - Generate savings to re-invest in additional change

7. Consolidate Gains; More Change

- ✓ More change, not less
- ✓ Maintain the sense of urgency
- ✓ Create the understanding that change is ongoing; develop the organizational “toughness” to absorb recurring change
- ✓ Encourage spontaneity as judges and staff start to “get the message”
- ✓ Critical momentum can be lost and regression will occur if you let up before the job is done (Resistance is always waiting to reassert itself)
- ✓ Troubling problem with trial courts is passive-aggressive people and work units

8. Anchor New Approaches in the Culture

- ✓ Comes last, not first
- ✓ Depends on results – New approaches sink into the culture only after it's clear they work and are superior to old methods
- ✓ Promote persons whose personal characteristics are consistent with the vision and personify the ability to flourish in a changing environment