

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 3, 2018
Phoenix, Arizona**

Unnecessary Delay

The Enemy of Justice

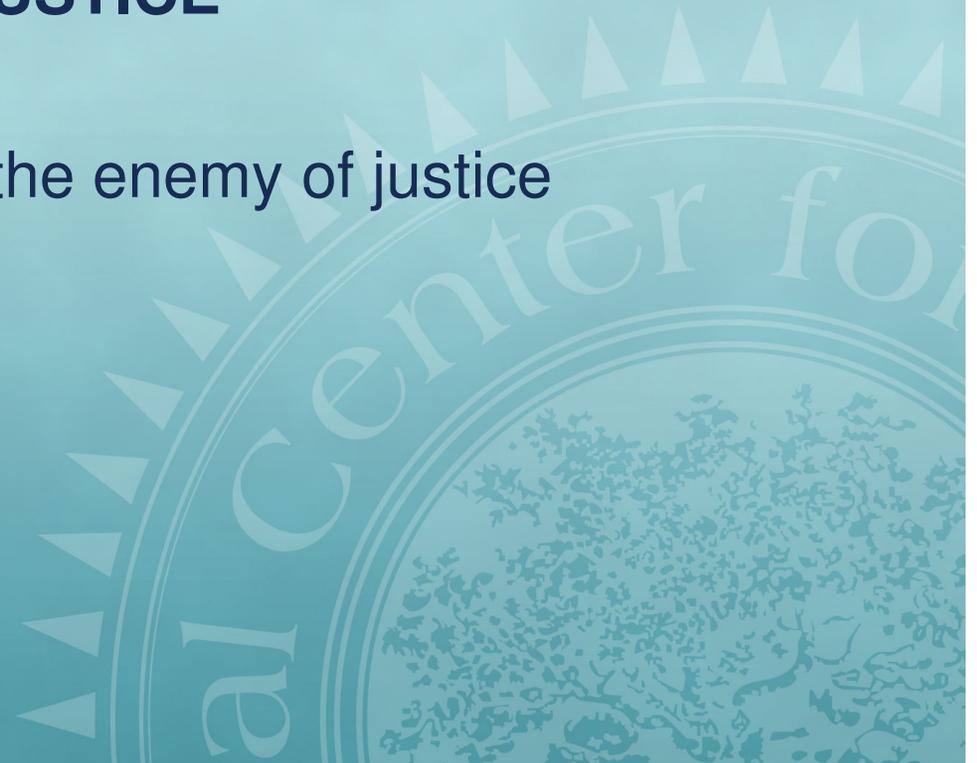
NCSC
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Underlying Purpose of CFM

The objective of caseflow management
is not faster and faster and more and more

IT IS JUSTICE

Needless delay is the enemy of justice



Delay Diminishes Purposes of Courts

- Doing justice in individual cases
- Appearing to do justice
- Providing a forum for peaceful resolution of disputes
- Protecting individuals from the arbitrary use of govt. power
- Provide a record of legal status
- Protect the vulnerable; those that can't protect themselves
- Deter criminal behavior
- Rehabilitate persons convicted of a crime
- Separate convicted persons from society

Central Themes in Early Caseflow

- Simplify court structure & jurisdiction
- Streamline rules of procedure
- Reassign judges to reduce backlog
- Reduce case volume
- Increase court resources
- Use procedural steps & “crash programs” to reduce delay

“New” Conventional Wisdom on Delay

- Court delay cannot be ascribed *solely* to court size, caseload, case mix, or trial rate.
- Solutions based on court resources or formal rules and procedures are *not sufficient* to reduce delay.
- To avoid delay, court leaders must have a long-term commitment to *active management* of the pace of litigation.

Caseflow Management

Coordinate court processes and resources to move cases in a timely fashion from filing to disposition, regardless of the type of disposition

Objective

Create a predictable system that sets expectations and helps assure that required action is taken

Methods

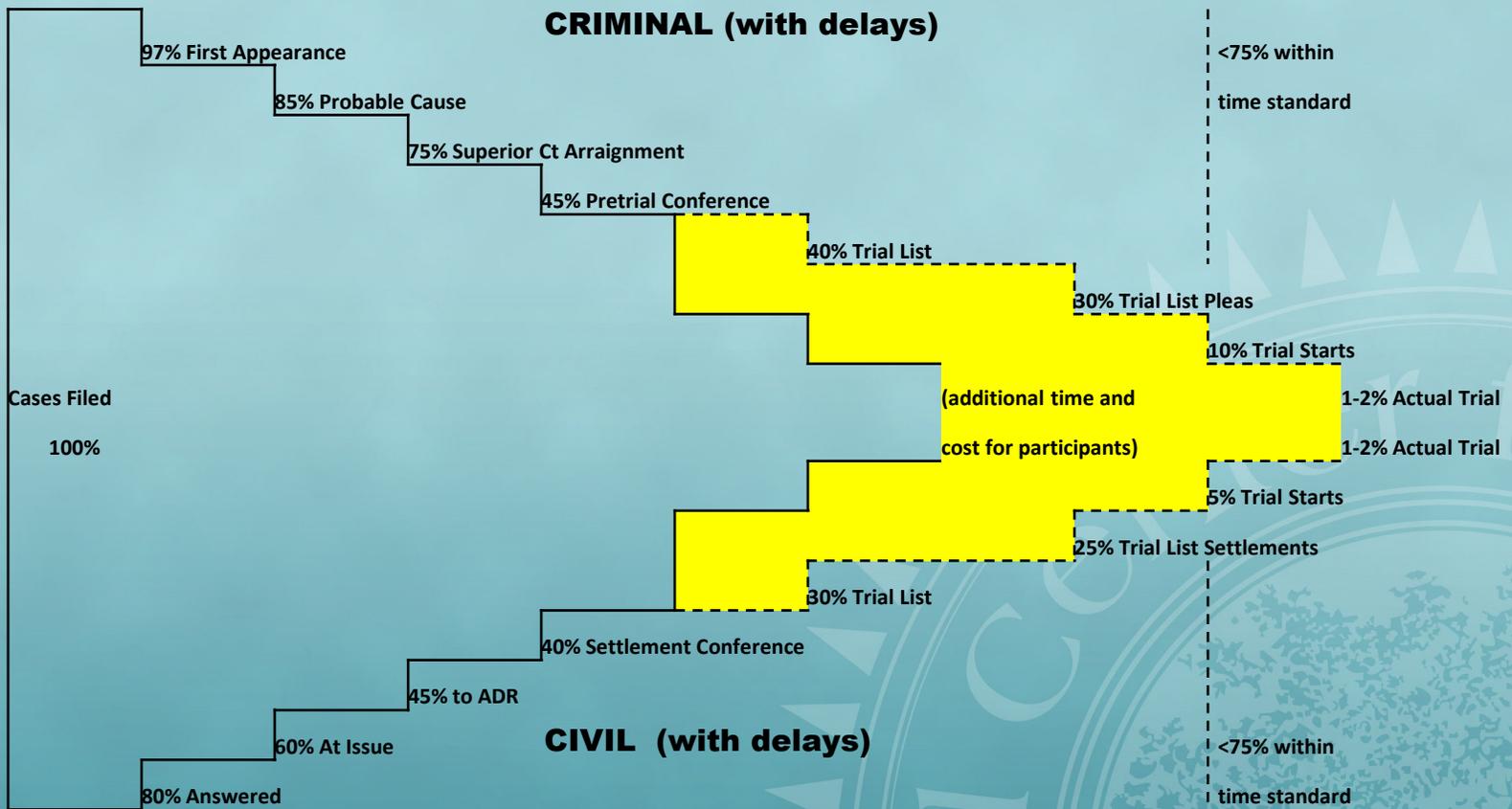
1. Create meaningful events

BUT MOST IMPORTANTLY...

2. Manage unnecessary delay between events
3. Provide certainty that events will occur as scheduled and deadlines will be enforced.

Case Fallout if Case Progress is NOT Managed

 = reduced availability for other cases



The Continuance Conundrum



Source: Maureen Solomon, Caseflow Management in the Trial Court

Why Is There Case Delay?

- **Local legal culture** often conditions the pace of litigation (e.g. customs and traditions followed by lawyers and judges about the way work is done)
- A belief that **control is a bad cure** because due process of law will suffer
 - Efficiency is equated with assembly line justice, some lawyers and judges concluding justice will suffer if it's "rushed"
 - If efficiency goes up, quality is assumed to go down
 - Lawyers know more about their cases than the court and are better able to determine how the case should advance.
- The opinion that **court and public lawyer resources are not adequate**, and case delay would decrease if there were more judges, staff, public lawyers, technology, space, etc.
- The viewpoint that **delay is not bad**. "The wheels of justice are structured to move slowly" Delay is necessary in the search for justice.

Common Problems and Bottlenecks

PROBLEMS

- Discovery delays
- Unprepared lawyers
- Numerous continuances
- Minimal trial time
- Complicated scheduling
- Meaningless hearings
- Little analytical capacity
- No trial date certainty
- Little team-spirit

CAUSES

- Poor pretrial oversight
- Lawyer control of caseflow
- No real policy or sanctions
- Insignificant pretrial events
- Little judicial uniformity
- Local legal culture problems
- Inadequate caseflow data
- Little backup judge capacity
- War of the parts vs. the whole

Dealing with Your Peers

Is sometimes like herding cats...



What's In It for the Court (Judges)?

- **Efficiency and Accountability**

- Greatest dissatisfaction with courts is trial court delay – the public deserves an efficient court system
- The public and other branches of government have a right to hold the judicial branch accountable

- **Judicial Independence**

- To be independent is to control your own work, **not** to be controlled by others. The public expects the court to manage the pace of litigation once a case is filed.
- Truth-finding, the work of a court, must be centered on a process controlled by a neutral entity charged simply with ensuring a just, fair, timely result

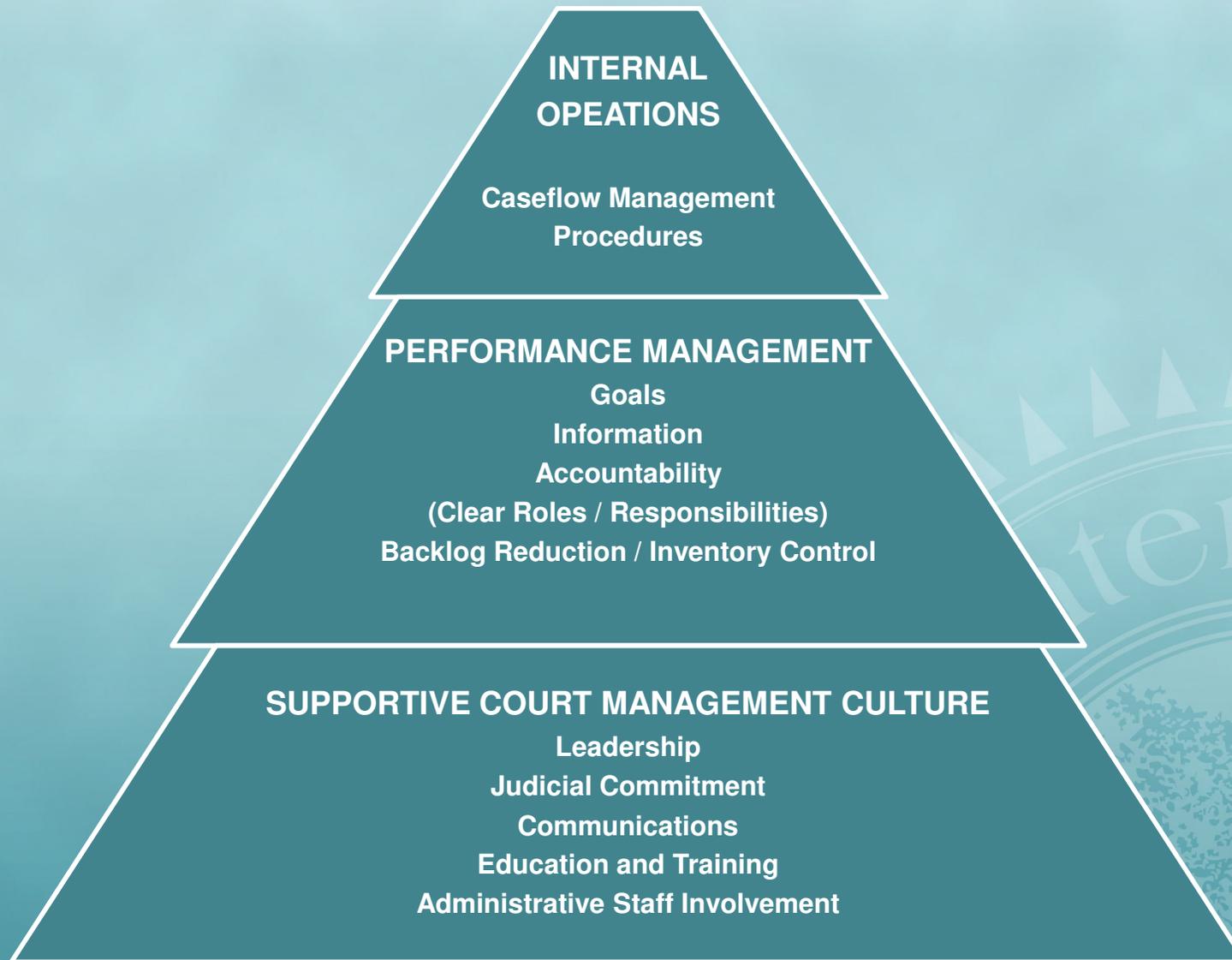
What's In It for Lawyers?

- Predictability
- Better Time Management (i.e. more efficient law practice, better client relationships)
- Reduced Costs in Case Processing
- Improved Attorney Competence
 - Attorneys in slower courts are more likely than their counterparts in faster courts to see the tactics of opposing counsel in a critical light (i.e. significant gamesmanship, low trust levels)
 - Reliability among adversaries is enhanced where processes are efficient because trust is higher (i.e. when trust is higher, organizations function better: speed and quality increase while costs, needless delay, and the times judges and lawyers must touch a case drop)

Participant Survey Results

Caseflow e-Questionnaire

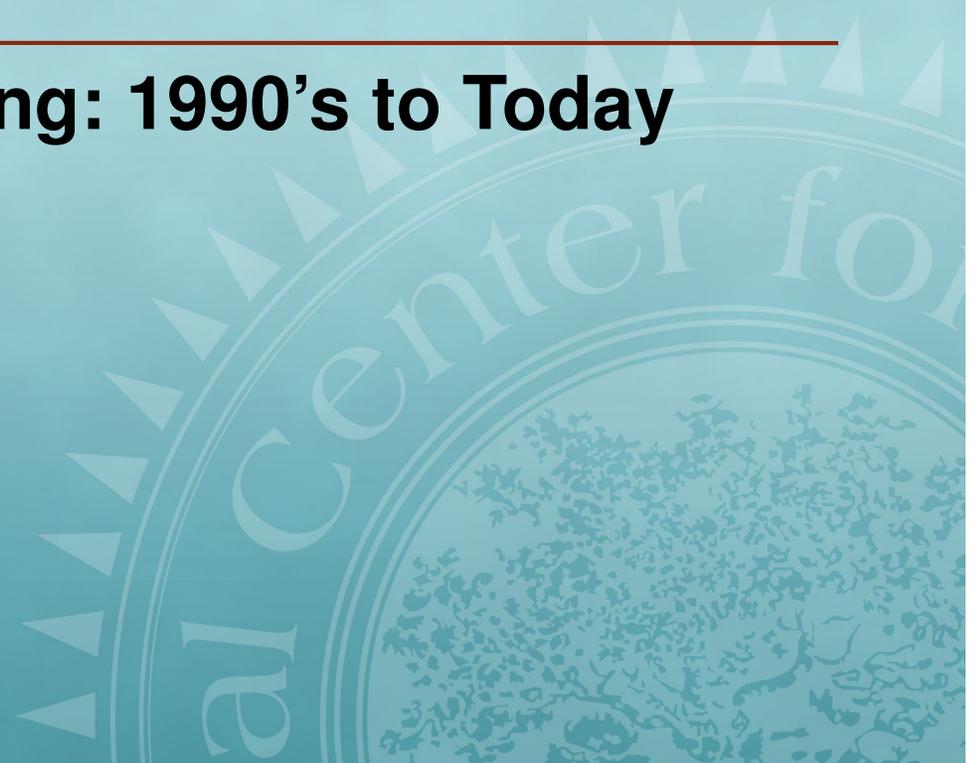
Ten Needed Elements for CFM Success



Basic Principles and Truths

Felony Case Management

Felony Case Processing: 1990's to Today



Felony Caseloads: National Trends

- Felony caseloads have declined from 1993 – 2014
 - Homicide is down - 51%
 - Forcible rape – 35%
 - Robbery – 56%
 - Aggravated assault – 46%
 - Property crimes have also dropped
- Decline was fueled further by the Recession
- Past few years (2014-17), filings have leveled off
- Some slight increases exist due to demographic, policy, and budget changes in scattered states

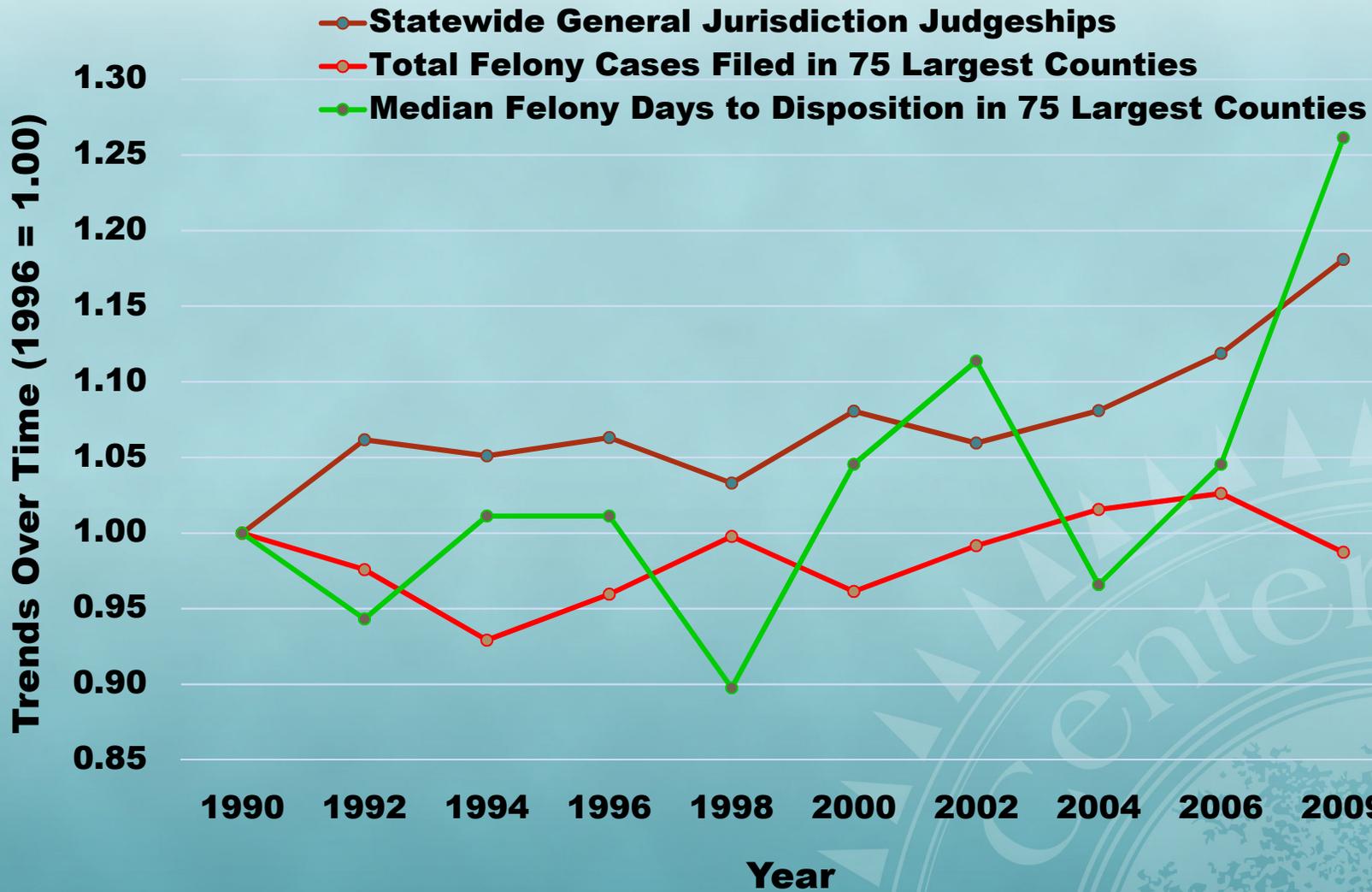
Source: National Center Court Statistics Project, Examining the Work of State Courts (2016)

Felony Judgeships: National Trends

- Nationwide, new general jurisdiction judgeship positions increased by 20% from 1990 to 2009
- Judicial positions declined slightly during the Recession (i.e. vacancy savings, reduced court budgets, Boomers' retirements)
- Legislatures in 2014/15 began looking for ways to reduce judgeships due to long-term case filing declines
 - Cut judicial adjuncts
 - Sunset and transfer judge positions (MN)
 - De-funded vacant judgeships per WCL (CO)
- Limited growth in judgeships likely in the near future.

Felony Dispositions: National Trends

- Median felony days to disposition increased in the nation's 75 largest counties by 25% from 1990
- Last 25 years, evidence-based caseflow management practices have been widely known, disseminated and sporadically adopted by courts
- But improvements have been short-lived and not sustained over multiple years due to...
 - Leadership changes
 - New judges and minimal training in CFM
 - Other?



Felony Case Delay vis-à-vis Cases Filed and Number of Judges

State Court Abilities to Manage the Pace of Felony Litigation have Slipped

Sentenced Within	ABA Model Time Standards	Cumulative Percent for All Felony Convictions in State Trial Courts, by Year		
		2000	2002	2006
90 Days after Arrest	75%	30%	26%	14%
180 Days after Arrest	90%	58%	49%	33%
365 Days after Arrest	98%	86%	78%	67%

Source: U.S. Department of Justice, Bureau of Justice Statistics

40 Years of Research: Proven Solutions



Overall Proven Best Practices

- Doctrine of judicial responsibility
- Early and continuous control of the caseflow
- Meaningful events and realistic schedules
- Every hearing provides an option to resolve the case
- Bring expected and actual experiences closer (predictability)
- Triaged / differentiated case management (DCM)
- Develop reasonable time guidelines for case progress
- Continuances rarely sought / rarely given
- Count and internally publish informative statistics

Judicial Issues

- Increase early, active judicial involvement
 - At pretrials
 - At settlement conferences
- More uniform in procedures and processes
- Collective responsibility; individual accountability (i.e. what you count affects behavior)
- Formal resolution of all judges should publicly make a firm and ongoing commitment to dispose of court's business promptly
- Enlist support of bar in delay reduction efforts
- Share what works and what doesn't work
- Every hearing is an opportunity to resolve the case

Lawyer Issues

- Lawyers settle cases, not judges
- Lawyers settle cases when prepared
- Unprepared lawyers should never settle cases
- Lawyers prepare for meaningful events
- Time horizon for a lawyer to prepare meaningfully for a court-scheduled event in a typical case: 2 weeks
- Lawyers will wait for the court to set an event before they prepare for it
- Judicial officers should counsel honestly and privately with lawyers about consistent productivity problems
- It should be harder to practice incompetently than competently (i.e. continuance panel story)

How to Create Meaningful Events

- Set events on a short schedule
 - Long enough to allow preparation
 - Short enough to encourage preparation
- Create realistic expectation that events will happen when scheduled
 - Maximize dispositions before setting trial dates
 - Enforce and monitor continuances
 - Have backup judge capacity



Systemic Issues

- Simplify assignments and calendaring
 - Consider consolidating and lengthening assignments
 - Minimize travel time to rural counties as possible
- Develop workable, reliable backup judge programs, especially for trials
- Deal with infrastructure problems resourcefully.
- Realize judicial resources will not increase anytime soon. Increased efficiency is the key alternative.
- Develop caseflow analytics that are useful in managing and monitoring cases at the judge level

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 competency evals.)?

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?

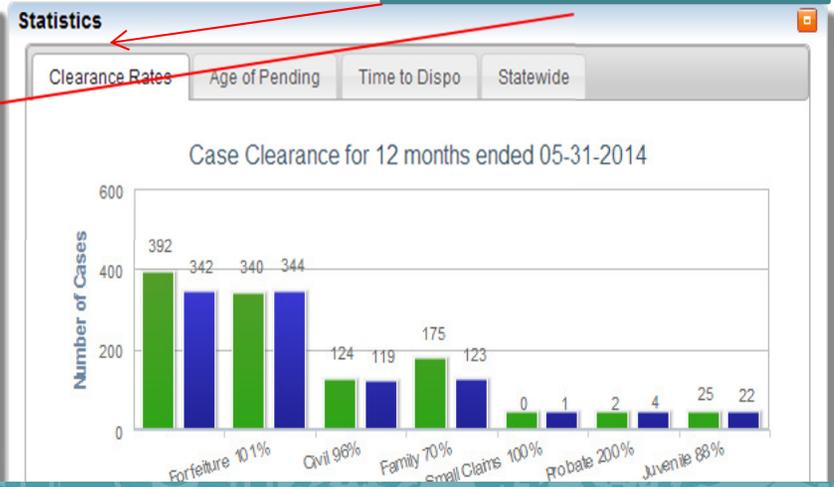
Unscheduled Cases

Search:

Case No.	Days Since Last Event	Age
2014GN000021	26	87
2014CV000029	75	143
2014CV000009	76	155
2014CF000000	84	163

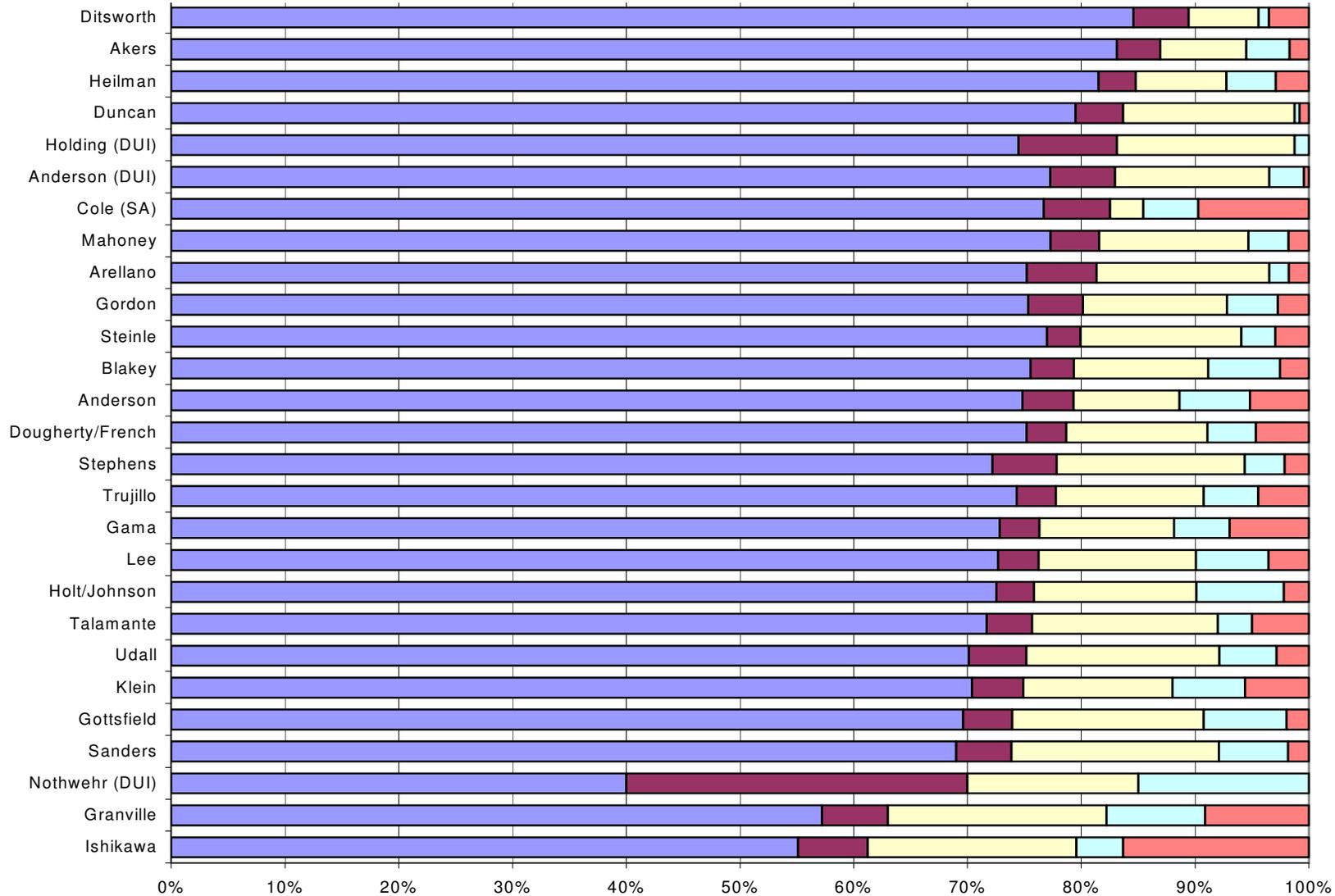
Quick Links

- [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



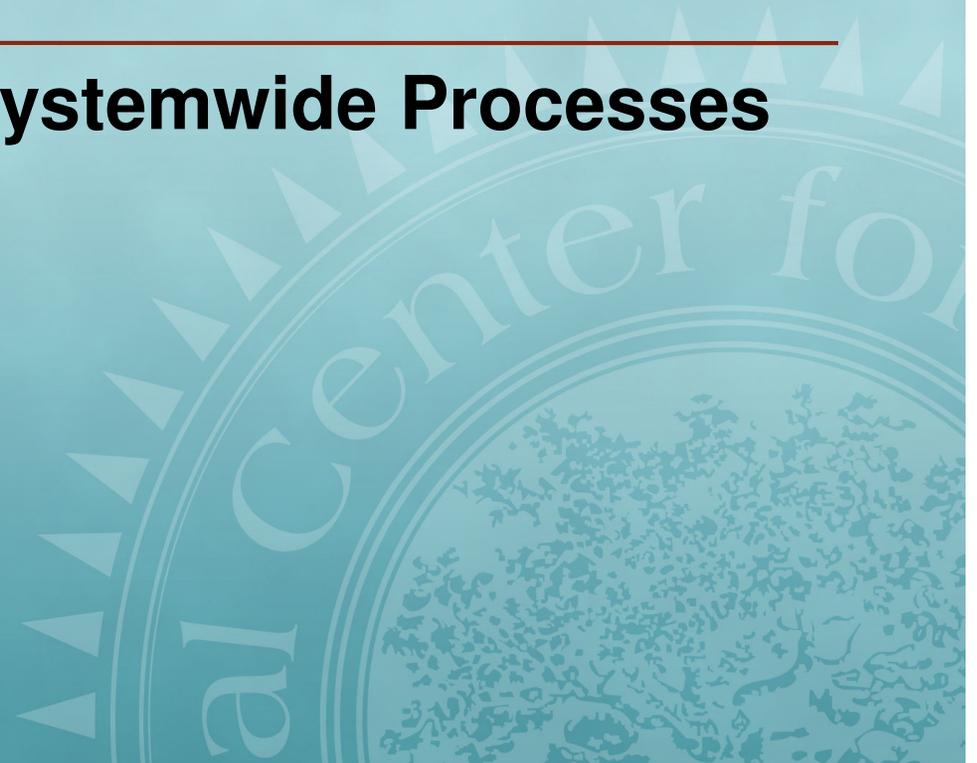
Indications of Good Felony CFM

- Arrest reports and evidence supplied promptly
- Realistic charging by prosecutor
- Prompt filing of charging documents
- Early exchange of discovery
- Every event (including initial appearances) is a meaningful opportunity to resolve the case
- Court assumes control of the case early
- Probation violations are managed effectively

Indications of Good Felony CFM

- Future action dates are always assigned
- Deadlines are enforced consistently
- Cases are screened for complexity and handled on different tracks / time schedules
- Realistic plea offers early + plea cutoff date
- Early disposition of motions
- Trial dates set only if needed
- Continuances given only for reasonable cause and tracked by judge, requester, length, reason.

Judge Autonomy vs Systemwide Processes



War of the Parts against the Whole

- Trial courts are “loosely-coupled” organizations
- Individual elements (i.e. professionals, divisions, factions) display a relatively high level of autonomy vis-à-vis the larger system within which they exist
- Some judges may feel traditional definitions of judicial independence – freedom from control by other branches and from interference in case-related decisions – should include freedom from control by leaders responsible for day-to-day operations of the court system
- Trial court leaders have limited terms; different priorities; and are seen as first among equals
- Effective caseflow improvements require consistency and long-term commitment

Questions raised by Judges

- Isn't caseload management just another term for me working harder?
- What are the biggest changes that judges have to make?
- Why is it the judges' responsibility to lead these changes?
- What can be done if a judge won't follow the plan?



Questions surfaced by Attorneys

- What are the biggest changes attorneys have to make?
- Why should attorneys do it?
- How do attorneys (or the court) address critics who say it is a “rocket docket” and will hurt due process?
- What if an attorney won't comply with a reasonable new plan?



Questions about the System

- What does the court do first? (What's the best approach to designing and implementing a new system?)
- What are the key points of case resolution?
- What should our system look like?
- What are some of the “obstructions” that can kill a new system early on?
- How do we keep the new system going? (Isn't sustainability a problem?)

Luncheon Discussion: Pretrial Release Issues

