

Success in Criminal Caseflow Management: Lessons from the Field

August 2020

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The Effective Criminal Case Management Project

The results of the extensive data collection, analysis, and policy recommendations that flow from that analysis are published in several reports. These reports, along with tools for court management, an interactive data dashboard, and a cost of delay calculator, are accessible at the Effective Criminal Case Management web site: www.ncsc.org/eccm.

Project Overview

- **Delivering Timely Justice in Criminal Cases: A National Picture** provides a visual summary of the study and its findings.
- **Effective Criminal Case Management: Project Overview** describes the purpose, design, and products of the project.

Results

- **Success in Criminal Caseflow Management: Lessons from the Field** describes the elements of effective caseflow management based on close interaction with seven courts that share success in managing problems of delay.
- **Timely Justice in Criminal Cases: What the Data Tells Us** documents the data collection and provides a detailed analysis of the factors most directly shaping criminal case-processing time.
- **Criminal Case Management Basics: Data Elements, Performance Measures, and Data Presentation Strategies** supplies a step-by-step guide to collecting, analyzing, and presenting data on key indicators for effective management of criminal cases.
- **ECCM Site Summaries** display visual summaries of the criminal caseload data provided by each site in a set of infographics on felony and misdemeanor case processing useful for cross-court comparison.

Data-Driven Tools

- **ECCM Interactive Database** provides access to ECCM data for felony and misdemeanor cases and allows users to interact with the data.
- **ECCM Cost of Delay Calculator** invites users to compute a simple estimate revealing how quickly and significantly the costs of delay across the court and its criminal justice partners accumulate.
- **ECCM Caseflow Management Maturity Model** is a self-assessment instrument for determining the level of implementation of caseflow management principles and practices by a court.

Acknowledgements

We are happy to thank the many individuals who contributed to the ideas developed in this study. First and foremost, we offer appreciation for the substantial contributions of key individuals in the seven trial court systems. Their participation and cooperation enabled us to go deep into the theory and practice of effective criminal case management. We gratefully acknowledge the following individuals:

- The Superior Court in Santa Barbara County, California – The Honorable Gustavo Lavayen and Darrel Parker, Executive Officer
- The Circuit Court in Alachua County (Gainesville), Florida – Honorable James Nilon and Paul Silverman, Trial Court Administrator
- The Circuit Court in Oakland County (Pontiac), Michigan – Honorable Phyllis McMillen and Pamela Monville, Deputy Court Administrator
- The District Court in Ramsey County (St. Paul), Minnesota – Honorable Joy Bartscher and Gwen Upton, Court Administrator
- The Court of Common Pleas, in Allegheny County (Pittsburgh), Pennsylvania – Honorable Jill Rangos and Thomas McCaffrey, Court Administrator
- The Circuit Court in Fairfax County, Virginia – Honorable Bruce White and Honorable Penney Azcarate
- The Superior Court in Pierce County (Tacoma), Washington – Honorable Stephanie Arend; Honorable Bryan Chushcoff; Honorable Garold Johnson; and Chris Gaddis, Court Administrator

We express special thanks to the support of the criminal justice staff at Arnold Ventures who provided encouragement and funding to think big as we developed this project. We extend a special acknowledgment to Kristin Bechtel.

We also want to thank the many NCSC staff who contributed greatly to this phase of the project. These include Ms. Erika Bailey, Ms. Miriam Hamilton, Mr. Tracey Johnson, Mr. Neil LaFountain, and Dr. Susanne Mitchell. This publication benefited greatly from the design and layout of Mr. Neal Kauder and VisualResearch. We very much appreciate their encouragement and support.

Introduction

Delay, especially in criminal cases, has been a longstanding concern for good reason: justice delayed is justice denied. The Effective Criminal Case Management project (ECCM) was designed to discover effective practices in the state courts for processing felony and misdemeanor cases. After collecting a standardized set of case-level data from 1.2 million felony and misdemeanor cases from over 130 courts in 21 states, ECCM staff analyzed the data to determine a range of case outcomes, including time to disposition. A number of important variables about court type (size, structure, process) and case type (severity of offense, type of defense counsel, number of continuances) were examined to determine their influence on case processing time. Seven courts that showed success in managing problems of delay were then selected for site visits designed to discover effective practices that contribute to timely case outcomes.

These seven courts agreed to become open houses for the study and exchange of information on how caseflow management theory is applied in courts on a day-to-day basis. Addressing entrenched problems is a challenge, and many court officials are interested in learning how other courts reduce and avoid delay. The strategies developed by these seven courts offer ideas, encouragement, and possibly even inspiration to court managers who face problems of delay in their courts.

A medical analogy is apt here: delay is a symptom of various maladies. A number of causal factors could result in these maladies, but many courts have been reluctant to investigate the causes because they fear the cure will be worse than the illness itself. It is a well-known psychological phenomenon that “expectancy effects” can impact results.¹ Therefore, even if a cure is well-established, if court leadership introduces it without strong commitment and high expectations for a positive outcome, the results may be poor.

In the seven courts selected for site visits, delay is seen as a disease to treat and prevent from recurring. These courts also see delay as a symptom of other underlying problems: lack of consistent leadership, goal slippage, and poor communication between the court and justice partners. These seven courts have developed management controls involving routine self-assessment. One court, for example, employs detailed management reports generated by a state-of-the-art case management system, while another manages with only a basic spreadsheet. No matter how they do it, the seven courts view delay as a

disease that requires specific treatment, while simultaneously recognizing that overall good health means paying attention to conditions throughout the organization. For the first time, ECCM provides practitioners with a firm empirical basis for understanding sources of and solutions to the problem of court delay.

What was learned from the seven courts suggests they succeed at something more important than just moving cases to disposition quickly. They view timeliness as one factor necessary to effectively carry out their mission. Timely case processing is one sign of an overall organizational health maintenance program that is aligned with the full range of the court’s missions and goals.

Timely justice is not a simple notion of speeding up legal processes in the name of efficiency or maximizing output. The right to due process reflects a deep notion of what is fair and just and is embedded in the notion of an independent, fair, and impartial judiciary. The unique role of every judge is to ensure that justice is done. To translate that into the everyday work of the court, the NCSC’s *High Performance Court Framework*² defines four principles:

- **Every Case Receives Individual Attention.** It is imperative that judges have the appropriate amount of time to allow them to gain requisite information to make the most correct decisions possible.
- **Individual Attention Is Proportional to Need.** More complicated, more difficult, and more serious cases should receive more time than the less complex, less difficult, and less serious cases.
- **Decisions Demonstrate Procedural Justice.** Procedural fairness is determined by the defendant experiencing a process in which the case proceeds as scheduled, the judge receives the most complete information possible and has the opportunity to consider both sides of the case, and the judge ultimately issues and explains the final decision in the case.
- **Judges Control the Legal Process.** Judges contribute to the preparation and performance of attorneys through their control over the process. Effective advocacy—proceedings in which opposing sides act as effective advocates based on a thorough understanding of relevant laws and issues in dispute and a command of the relevant facts—helps a judge to make the best decision possible in a case.

¹ Michael, Robert, Maryanne Garry, and Irving Kirsch. 2012. “Suggestion, Cognition, and Behavior”. *Current Directions in Psychological Sciences*. Volume: 21 issue: 3, page(s): 151-156.

² See the *High Performance Court Framework* at <https://www.ncsc.org/information-and-resources/resource-centers/resource-centers-items/high-performance-courts/high-performance-court-resources>

Understood in this context, timeliness is a vital indicator of the health of a court and signals attention to the above principles. Further, this perspective should provide comfort to those who fear that an emphasis on timely disposition of criminal cases is at the expense of “doing justice.”

What the Data Tells Us

In general, ECCM found that differences in time to disposition cannot be explained by court structural type (single tier or two tier), type of calendar system (master, individual, or hybrid calendar), method of selecting judges (elected or appointed), or any of the administrative characteristics captured in the survey data (e.g., elected or appointed clerk of court, court administrator, division of labor among courts and within courts). Similarly, ECCM found that differences in case composition (e.g., person, property, or drug crimes) and the manner of disposition (e.g., trials, dismissals, guilty pleas) do not explain why some courts are consistently more timely than others.

What the data *do* show is that the active management of cases matters. The expected relationship between timeliness and average number of continuances is supported. Over the life of a case, more timely courts tend to schedule and hold fewer hearings and to permit fewer continuances. Effective management of events over the life of a case—the heart of caseflow management—drives timeliness. With this firm empirical foundation, site visits to seven courts were designed to explore how this idea was put into practice.

Why These Courts

NCSC staff sifted through the vast array of data assembled during ECCM to identify a set of courts for closer examination that were timely and also showed variation in style, structure, and caseflow management practices (e.g., calendaring). Comparative information and the collective experience of NCSC staff were considered in answering two guiding questions:

- Are the courts timely in a way that enhances the quality of justice?
- Have the courts been active in efforts to control delay?

Using the quantitative and qualitative data, the following seven courts were asked to participate through multi-day visits conducted by NCSC staff from September 2018 through March 2019:

- **California:** The Superior Court in Santa Barbara County is a single-tier court with 21 judges that disposed 2,030 felony cases and 10,995 misdemeanor cases in 2016.
- **Florida:** The Circuit Court in Alachua County (Gainesville) is a two-tiered court

with exclusive felony jurisdiction in the upper court and all misdemeanors disposed in the lower court. The 11 judges in this court disposed 1,963 felony cases in 2016.

- **Michigan:** The Circuit Court, Oakland County (Pontiac) is a two-tiered court in which felonies commence in the lower court and are bound over to the upper court (with a minimal number being resolved in the lower court). The court’s 20 judges disposed 4,216 felony cases in 2016.
- **Minnesota:** The District Court in Ramsey County (St. Paul) is a single-tier court, whose 29 judges disposed 2,599 felony and 11,493 misdemeanor cases in 2016.
- **Pennsylvania:** The Court of Common Pleas, in Allegheny County (Pittsburgh) is a two-tiered court in which felony cases are bound over from the lower court and both felony and misdemeanor cases are disposed in both court levels. In 2016, the court’s 43 judges disposed 6,482 felony and 6,611 misdemeanor cases.
- **Virginia:** The Circuit Court in Fairfax County is a two-tiered court in which felonies commence in the lower court and are bound over to the upper court (with a minimal number being resolved in the lower court) and misdemeanors are resolved in the lower court. The 15 judges here disposed 1,378 felony cases and 19 misdemeanor cases in 2016.
- **Washington:** The Superior Court in Pierce County (Tacoma) is a two-tiered court with exclusive felony jurisdiction in the upper court and all misdemeanors disposed in the lower court. In 2016 the court’s 22 judges disposed 4,557 felony cases (2016).

These seven courts were selected because of their willingness to participate in national delay reduction research and share the results, making it possible to recognize their success.

The ECCM Workshop, held in October 2019, was designed for project collaborators from the seven courts to meet and compare experiences and practices. Following a presentation by the leaders of each court regarding their experiences with caseflow management, the discussion focused on each of the main principles of caseflow management and how these principles are furthered in each court. An important workshop outcome was consensus on the five key elements of caseflow management most important to achieving and sustaining timely criminal case processing, including leadership, goals, and collaboration with justice partners. Workshop participants also noted features of their environment that helped or hindered case management efforts that are not necessarily part of the caseflow management literature, such as facilities and jail population. A list of participants is included in Appendix A.

NCSC staff believe that judges and court managers from across the country will identify with the circumstances and problems in these seven courts and will find ideas and strategies useful for their own courts. The seven courts are diverse in geographic location and in the size and character of the populations they serve. They differ in their court structure and in their organizational practices and systems of case assignment. Some are relatively affluent, while others work with limited budgets and crowded conditions. In sum, there is something to be learned about how delay can be avoided in a range of contexts, enhancing the generalizability of these findings.

The Elements of Effective Caseflow Management

The past 50 years have seen the development of an extensive literature describing essential criteria for success in caseflow management. The seminal period for this work began in the 1970s and culminated with David Steelman's volume on *Caseflow Management* in 2000. Steelman's book summarized the history of case management and listed dozens of recommended elements of effective caseflow management practices across many different types of cases, including criminal, civil, and family. Research on caseflow management has slowed considerably in recent years, giving the impression to some that the problem has largely been solved. However, while the theory may be sound, results from ECCM makes clear criminal court delay remains a live issue.

The development of caseflow management theory has always built on the active involvement, experience, and insight from hands-on work with courts. ECCM applies this approach to revisit and examine the ongoing relevance of recommended elements of criminal caseflow management and their current application in contemporary courts. This step also provides the opportunity to illustrate how the theoretical language of case management plays out in practical efforts to diagnose and fix problems that contribute to delay. The hope is to offer some insight into how abstractions like "systems of accountability" translate into actual practice in the complex environment of a few real courts.

Five elements of effective caseflow management emerged during the site visits and were confirmed as essential during the workshop. These elements serve as the framework for understanding timeliness in the courts:



These elements, described in more detail below, provide a structure that may suggest a greater sense of similarity among the seven courts than actually exists. Within the common framework, each court has variously adapted or developed each element in light of its own particular situation, needs, and resources. Therefore, the ways each element is manifest in each of the seven courts is not necessarily similar or equally robust. The workshop provided an opportunity for a more in-depth discussion of these elements and practices among leaders of the participating courts. In general, the on-site assessments and subsequent workshop discussions support the importance of these elements, but the discussion will reveal some variation in practice.

Some surprising findings also emerged, mainly that there is no single "best practice" for implementing each element. Timely courts apply elements in various ways to achieve the same goal. What is important is to define the goal and ensure that the court and its partners share a common vision of that goal.

For example, among the most timely courts, some have a local criminal justice coordinating council that promotes collaboration with justice system partners, while others do not. Some meet regularly with leadership of the prosecutor's and public defender's offices, others almost never.

Leadership & Governance	Early Court Intervention & Control	Predictable & Productive Court Events	Goals & Information Management	Communications & Collaboration
<ul style="list-style-type: none"> •Visible support and commitment from judicial leadership •Active caseflow management •Clear roles for judges and administrative staff •Maintain culture and continuity of court processes (documentation, mentorship, etc.) 	<ul style="list-style-type: none"> •Court manages the progress of cases •Court oversight should be continuous •Effective scheduling and calendaring practices •Control of continuances •Managing exchange of discovery 	<ul style="list-style-type: none"> •Clear expectation that events occur when scheduled •Notice in advance of anticipated absence or potential delay •Firm continuance policy •Early resolution when appropriate •Early appointment of counsel •Firm trial dates 	<ul style="list-style-type: none"> •Implementing meaningful time standards and guidelines •Embrace broader performance goals like <i>CourTools</i> •State sponsorship and local commitment to performance goals •Interim event management •Effective management reports 	<ul style="list-style-type: none"> •Frequent and sustained communication between judges and court staff •Seek to build collegial bench •Develop problem-solving culture •Collaboration with criminal justice partners

While many provide monthly reports to each judge on the timeliness of their own caseload, some provide reports on the court as a whole only on request or not at all. In some courts, the presiding judge does not meet regularly with the court administrator or clerk of court regarding criminal caseflow management, while in others this is a key aspect of collaborative management toward a common goal.

Leadership & Governance

A central theme of ECCM is elimination of delay through attention to the essential elements of caseflow management. However, without *leadership*, the other elements may never develop. Visible support and commitment from judicial leadership has proven to be essential for success. The literature suggests that effective leadership involves the articulation of the anticipated benefits of caseflow management and an on-going commitment to caseflow principles. Judicial advocacy for caseflow management is necessary, as is the ability to build consensus both within the court and with those organizations that do business with the court. In addition, long term success is contingent on continuity of able leadership from the presiding judge and court administrator for many years.

A vital element for successful court leadership is to establish a governance structure that supports effective caseflow management policies and long-term commitment to good practice in day-to-day operations. This can be a challenge, as it involves assigning well-defined roles and responsibilities to

judges and administrative staff. While overarching policy on caseflow management is set by the judges, responsibility for implementation and daily operations belong to the administrative staff. Judges should take steps to avoid micro-management on set policy and to provide clear authority to managers in order to ensure credibility and effectiveness in court governance. Such steps reduce the likelihood of undermining policy at the operational level. Therefore, it is particularly important in court management for the assignments and authority of leaders and managers to be clear, explicit, and included in the general orientation of new judges and staff as well as in the training of new and potential court leaders.

Lessons from Effective ECCM Courts

Active case management

In general, the seven courts are characterized by a commitment by the bench to active case management. Several interviewees in the Florida court noted that the court has a culture which recognizes that judges are in charge of case progress and management. The court credits a prior chief judge for setting the tone for case management. It was acknowledged that the judges take responsibility for managing their cases, and this effort is supported by the chief judge. Additionally, the Washington court is led by judges clearly in charge of the court and effectively so. The court's leadership is viewed by justice partners as activist, outgoing, and committed to court control of criminal caseflow. What appears to set many of the seven courts apart is their effort to

impart these values through the chain of leadership over time.

Visible support and commitment from judicial leadership

The importance of visible leadership was supported by comments during the workshop that cited the need for a unifying authority figure who brings judges and stakeholders to the table. Getting past judicial silos and giving judges a role that includes gathering information or reporting on special efforts promotes involvement and enhances learning. This engagement and learning should extend to staff and practitioners in the caseflow management program. All seven courts have mechanisms for discussions among the bench and with other parties. Judges in the Virginia court participate in monthly judges' meetings where case management decisions and actions of judges are reviewed, and discussions are held on how to better manage cases. One judge noted that "you achieve cultural change when you stick to the process." The Minnesota court has a criminal case management team that meets monthly as well as a calendar committee that helps guide court policy and practice. This court benefits from well-developed and well-documented criminal caseflow practices actively managed by senior court managers who, having earned the respect of the bench, can speak bluntly with individual judges if processes show signs of slipping.

Administrative staff involvement

In all seven courts, administrative staff are major contributors to the success of caseflow management effort. The involvement of court staff in committees and working groups designed to document the nature and scope of problems and to contribute new plans and solutions is routine in these courts. Such explicit attention to building a clear and workable governance structure is proof that having staff actively involved in case management and promotion of court goals need in no way interfere with or undermine the autonomy of the judges.

Maintaining a culture and continuity of court processes

Evidence over the past 20 years confirms sustainability of caseflow management practices remains an ongoing concern. The challenge is how to sustain a commitment to these practices in the face of periodic change in court leadership at the judicial and administrative levels. Several of the courts, including the Minnesota court, have experienced considerable turnover in judicial positions due to retirements. As a result, the Minnesota court has developed an extensive training program for new judges who are assigned a

mentor judge and have a six-month "tune-up" period during which they observe proceedings starting with the misdemeanor and gross misdemeanor³ dockets and expanding to cover all criminal case types. Judges receive four to six weeks of training and orientation on various subject matters. Additionally, the state administrative office offers a two-week new judge school when judges are approximately four to six months into their first term. In the Washington court, training for new judges has been provided by the Criminal Division Presiding Judge and includes approximately two weeks of shadowing for new judges. New judges typically are assigned high-volume, lower-complexity criminal dockets to start.

Documentation of court processes and policies may also contribute to maintaining continuity. The Virginia court has developed a criminal practice manual in collaboration with the local bar association. This detailed guide is updated approximately every two years with bar input, and the bar sponsors a seminar that coincides with updates to the manual. The Washington court took a similar approach by publishing a comprehensive guide titled *Best Practices for Criminal Case Processing* that details all aspects of criminal case processing. The guide, which is continually under review and improvement, is a resource for judges, administrative staff, and practitioners and includes suggested scripts, forms, detailed guidelines and procedures, and resources.

In these effective courts, there is a general expectation that the presiding judge will be a committed activist leader who gives priority to caseflow management. There is also the expectation that the court administrator and other court staff will have recognized and respected roles in implementing and maintaining the caseflow system.

Early Court Intervention & Control

A fundamental element of caseflow management is that the court, not other participants, controls the progress of a case from filing to disposition. This means that no case should be interrupted or continued without good cause once it has been initiated. Court control should also be continuous, so that as a case passes each milestone, the next event or action is scheduled to prevent the case from being delayed because of inattention by litigants or the court.

Expedient resolution of criminal cases begins with an early determination of a defendant's indigent status so that the defendant can be represented as soon as possible after arrest. Timely appointment

³ A gross misdemeanor in Minnesota is defined as a crime punishable by up to one year in jail and/or a fine not to exceed \$3,000.00.

of counsel allows an early evaluation of the prosecution's case to determine if the defendant is best served by negotiating a plea or going to trial. Early access to the evidence means the court can schedule case events in timely fashion and insist that counsel meet timelines for steady case progress. A management goal for judges is that prosecution and defense should be fully prepared for each court hearing and have clear expectations that court events will proceed as scheduled. When counsel are well-prepared, every court event becomes a meaningful opportunity for effective resolution of a case.

Lessons from Effective ECCM Courts

Calendar management

A key position in criminal case processing in the Washington court is the Criminal Division Presiding Judge (CDPJ), who acts as the main gatekeeper for criminal cases through a well-established master calendar process. This position formerly rotated annually, but the incumbent is currently serving a longer term, as it was felt that a longer term would foster greater ownership of the process. The CDPJ is supported by the criminal administration office, which manages scheduling and calendars and meets with the CDPJ to review morning and afternoon dockets. The office is divided into two units: one serving the public and the other serving attorneys. A primary role of the office is to provide accurate and complete caseflow information on the calendars to explicitly aid and inform the judges each day (e.g., case age, number of and reasons for continuances). Staff screen calendars prior to the next day and enter extensive annotations on the calendars before distribution and before posting in the attorney conference areas. A trial matrix for the upcoming week is prepared on the prior Thursday by criminal administration staff.

One effective practice highlighted in the caseflow management literature is scheduling early and productive case conferences. A conference may not be necessary in a simple case, but in more complex litigation it is an opportunity to ensure preparation by the court and by all parties in the case. The seven courts used a variety of approaches to setting intermediate events. In the Florida court, an initial case management conference is set approximately 30 days out from arraignment. Multiple case management conferences may be set before a pretrial is conducted to assess trial readiness. Throughout the process, defense may enter a plea. Following pretrial conferences, trials are announced, and a trial status conference is scheduled. Trial status conferences are events scheduled one week before trial where lawyers and defendants are present. In the Pennsylvania court, on the other hand, judges may schedule only a single pretrial hearing, and often these are only for the purpose of setting a trial date. In the Virginia court, there are no pre-trial conferences and few intermediate events set before trial, except in

capital cases. Even for cases scheduled for trial, only some will be set for a status hearing.

The Minnesota court employs an individual calendar system, where the criminal calendar is managed centrally by administrative staff who consult extensively with all concerned. Event scheduling is tightly controlled. Cases are scheduled for what is referred to as a Rule 8 hearing when bail is considered; omnibus hearings, where motions are considered, dates are set, and a "best plea" offer is presented; and pre-trials. In reality, the best offer is not necessarily made at the omnibus hearing. Judges have noted that there appears to be a disincentive to settle lower-level cases at the omnibus, and few offers are made on more serious ones. Potential data-informed reforms to this process are now being explored, guided by a team of judges and managers.

In the Virginia court, the court maintains a master calendar system, and judges do not specialize. There is no court administrator position; rather, the chief judge is directly involved in scheduling and calendar management. The following day's docket is set each afternoon with the assistance of the clerk. A chart indicating when each judge has last handled a particular case type/event is used for case assignment by the chief judge to ensure equity. Assignments are updated daily, and judges are advised of the following day's assignments each afternoon. Judges will generally retain cases in which they take a plea in order to continue with the sentencing phase and to handle any future violations of probation.

Addressing continuances

While courts must allow adequate time to accomplish necessary tasks, events should also be scheduled sufficiently soon to make clear the court expects reasonable case progress and will not allow continuances simply because participants are not prepared. Key to successful caseflow management is adopting a policy to limit continuances and applying it in a reasonable but consistent and firm manner. ECCM finds continuances to be the most significant contributors to case delay.

The seven courts exhibited various practices and attitudes about continuances and continuance policies, and not all participants in the criminal justice system regard timeliness as a virtue. Both judges and defense attorneys in several of the jurisdictions expressed concern that too much emphasis is placed on meeting time goals to the detriment of good representation. Defense attorneys in particular were not always supportive of continuance monitoring and objected to the requirement of appearing in court to request a continuance or provide a reason. However, the dominant viewpoint was that continuances should be controlled and, if granted, the source of the request and the reason for granting should be tracked and analyzed.

A unique approach to case and calendar management control is the Calendar Control system used in the Virginia court. Two judges are available at designated times each morning to meet with parties requesting continuances, which are granted only with good cause. Parties appear on a first-come basis and may make an appearance by phone. The Clerk's Office prepares a matrix for continuance dates that is used for setting next events. The court's policies generally discourage continuances, and the establishment of firm trial dates is sacred. A special calendar control system for emergency matters is scheduled in the afternoons. Although most calendar control appearances are for civil matters, the system was noted by attorneys as being useful for ensuring judge availability to hear any matter noted in the system. Judges serve two-week rotations on calendar call. Although guidelines exist for managing calendar control, some variation among judges does exist.

The Pennsylvania court requires requests for continuances to be submitted a week prior to the scheduled court date, and requests are subject to judicial review. In the Minnesota court, judges will grant a continuance if prosecution and defense agree; however, subsequent requests must be written. Several factors were cited as contributing to continuances ordered by the court itself, including recent staff shortages, new discovery challenges, and lengthy trials.

The Michigan court's judges grant continuances for valid legal or personal reasons. Attorneys must stipulate to a continuance, and some regard the requirement to appear in person as excessive.

The granting of continuances was described "fairly lenient" by some in the Washington court. However, the docket is annotated with information on continuances, their reasons, and whether additional continuances will be allowed in a given case. Continuances are discouraged after a case has been scheduled for trial and must be made in person to the Criminal Division Presiding Judge. The court monitors lawyer scheduling to avoid the need for continuances due to appearance conflicts. Criminal administrative staff have some authority to approve continuances within the first 125 days, subject to final approval by the judge. A case may be flagged on the docket and in the computer for no further continuances with the reason noted.

Managing discovery

Judges and court administrators frequently identify completion of discovery as one area of delay. While the exchange of discovery is a process that occurs between the prosecution and defense, the court still plays an important role in facilitating early discovery. Delays in receiving the results from processing drug and forensic materials by state labs are a problem encountered by numerous courts

across the country. In the Virginia court, the prosecution provides basic discovery information at the preliminary examination, though some materials, such as lab tests, may not be available. However, there is often enough discovery available to facilitate early plea negotiations. Virginia practitioners indicated that open file discovery in the lower court has contributed to many cases being resolved before they are bound over to circuit.

In the Michigan court, there are generally few problems with discovery or access to evidence, according to both judges and attorneys. In the opinion of judges that were interviewed, criminal discovery rules have helped in this regard. However, delays in obtaining forensic reports are an ongoing problem due to limited resources at the labs, and the court also has had problems with timely production of transcripts from some of the lower courts.

The increasing availability of video evidence from police car and body cameras, as well as street, store, and home surveillance cameras, is creating challenges to completing early discovery. These materials take time to download and review, thereby increasing case preparation time for the parties. As some attorneys noted, however, video evidence in some cases eliminates doubt about the culpability of an alleged offender.

The use of scheduling orders that specify dates for completion of discovery, with agreement of the parties, is useful in keeping cases on track and is often mentioned as a best practice. None of the seven ECCM courts prepare scheduling orders as a standard requirement, though some judges have implemented them on their own. What is more important, perhaps, is having in place a process that ensures that the court and parties set event dates that are achievable, as well as flexible resources to hear motions and accept pleas as soon as parties are ready.

Predictable & Productive Events

Past research suggests that effective courts create the expectation that events will occur as scheduled, knowing that participants will not appear or be prepared at a scheduled hearing if the certainty of their case being called is in doubt. An effective court provides advanced notice in the event of judicial absence or provides a back-up judge if possible. Further, effective court scheduling practices ensure that the calendar is not so over-scheduled as to create delays or continuances. Creating and enforcing firm continuance policies also improves the likelihood that trials will be held as scheduled.

Differentiated case management (DCM) is often cited as an effective practice. The DCM process typically involves the court establishing criteria to

distinguish the case processing requirements of different cases upon filing. Early screening provides an opportunity for the parties to identify cases that can be disposed promptly, as well as those that are likely to require an unusual level of attention. Cases are often assigned to tracks based on an evaluation of their relative complexity by the court, in collaboration with counsel. None of the seven courts employ what might be considered a traditional DCM approach, but many do provide different paths for cases based on established criteria.

Lessons from Effective ECCM Courts

Clear expectations

By implementing and using effective caseflow management policies, the court sets clear expectations for what is expected of attorneys at each event and what a judge will do if the expectations are not met. This plan works best when the court and attorneys establish a clear timetable of future events and the dates on which each will occur. Many courts use processes that establish the dates for all case milestones and the duties of the parties to meet those milestones. This is often accomplished at the equivalent of a pretrial hearing and may include the issuance of a scheduling order that formalizes the timeframes. In some instances, these orders are used in conjunction with a differentiated case management system that defines timelines for cases based on their complexity. While none of the courts visited relied specifically on scheduling orders, the Pennsylvania court has developed interim time goals between events which guide practice and help the court identify where delay occurs.

Early resolution when appropriate

Of the seven courts, the Pennsylvania court had the most visible system for identifying cases for early resolution, which involves screening by the district attorney rather than the court. The district attorney's office screening unit reviews cases for referral to the Phoenix docket. The Phoenix docket is an expedited procedure in which less complex cases are placed on a special docket and assigned to judges who are dedicated to the docket. These cases generally do not involve victims and have sentence outcomes that are fairly predictable. The district attorney's written offer is usually on the low end of the sentencing guidelines and is made at the formal arraignment. About 30 percent of the caseload is resolved on the Phoenix docket, which allows both prosecution and defense to devote more time to more serious matters, in addition to eliminating the need to bring in witnesses.

Also in the Pennsylvania court, and related to the Phoenix docket, is the Expedited Disposition Program (EDP), in which a plea offer is made prior to preliminary hearing in the lower court. Participation is voluntary. The primary offenses

include lower level drug charges, prostitution, and theft. About 1,400 cases a year are processed on the EDP docket. A dedicated public defender is assigned each week to this docket.

If parties file pretrial motions, early court action on these motions will promote earlier case resolution. Whenever possible, the court should decide pretrial motions before the first hearing date. Suggested best practices in this area are scheduling contested and uncontested motions separately to increase judicial time for hearing and deciding motions, requiring attorneys to attach a stipulated order or certification that identifies uncontested motions, and setting time limits for responses to motions.

The Virginia court has an established process for handling motions. Two judges are available every Friday to hear pretrial motions to avoid delay. Attorneys indicated that the motions day system is helpful, as even a complex motion can be heard. Four judges are assigned sentencing calendars on Friday. The court limits time for briefs unless they pertain to evidentiary issues, and attorneys are required to submit their briefs in advance.

Early appointment of counsel

Early attorney contact with clients is an important factor in increasing the productivity of events and reducing average time to disposition. The sooner defense counsel can meet with their client the better prepared they will be to evaluate their case and respond to early offers by the prosecution. An emphasis on early contact was notable in the Washington court. Pretrial staff screen for indigency prior to arraignment, and the assigned attorney attempts contact with the client within 24 hours. Appointments of counsel are usually completed by noon on the day of initial arraignment. Checks for potential attorney conflicts are also completed within 24 hours for reassignment if necessary.

Plea cutoff date practices

Many practitioners have recommended the practice of establishing a plea cutoff date to encourage early settlement. Under such a policy, the court establishes a date for prosecutors and defense counsel to meet to discuss the possibility of a plea, at which time the prosecutor's office is 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, rather than a lesser charge that might have been included in the best offer. Opinions on this practice are mixed.

In the Virginia court, plea negotiations occur throughout the process with no plea cutoff dates.

Some judges in the Michigan court have implemented this practice, although not on a court-wide basis. In the Michigan court, the prosecutor's office rarely offers plea deals. Despite this, jury trials are rare; court administrators cited the conservative nature of the community (and thus the jury pool) as one possible reason that the jury trial rate remains low. An additional factor that facilitates early disposition of cases is a procedural option known as a Cobb's Agreement, which allows judges to provide a non-binding estimate of the anticipated sentence, which takes some of the uncertainty out of entering a plea. In the Florida court, plea and discovery cut-off generally occur at the trial status conference, a week prior to trial. However, while some judges cut off negotiations after the status conference, others will allow plea deals to be reached up to the date of trial.

Scheduling trials

Ensuring trial date certainty has been an elusive goal for many courts. Although only a small percentage of cases filed will be resolved by trial, scheduling trials sometimes seems to be as much art as science. One of the dilemmas that judges face is whether to allow litigants to resolve the case up to the time of trial. From the defense perspective, waiting to see if witnesses appear and motions are resolved at the time of trial may make it more prudent to wait to the last minute to plea. The reality for courts is that the lack of predictability makes it difficult to ensure that adequate judicial resources and jurors are available for trials that do proceed and that time and resources are not wasted when they do not proceed.

Many of the seven courts have been successful in achieving trial date certainty. As with the management of intermediate events, these courts have used a variety of approaches to improve predictability. Trial scheduling in the Virginia court aims to set more lengthy trials to start on Mondays, with shorter trials scheduled on other days of the week. Trials start at 9:00 a.m. The court makes frequent use of visiting judges to ensure that the docket continues to move smoothly. Attorneys indicated that they could hardly recall when a trial was not conducted as scheduled in this court.

The Washington court uses a trial readiness form that solicits information from each side regarding their readiness for trial. This helps in setting a realistic trial date. Trial management by the court is viewed as generally positive. Dates are usually firm, and the court finds a courtroom when the scheduled one is not available. Judges generally

discourage continuances on the day of trial. The Criminal Division Presiding Judge works with the criminal coordinator a week in advance of trials to finalize judge assignments. Court administration believe they maintain a high level of trial date certainty because of strong consensus among the bench to accept a trial assignment if the scheduled judge is busy.

Trial date certainty in the Florida court is also high, according to those interviewed. The court picks juries on Mondays and strives to find a judge to try cases, including county judges (who can serve as acting circuit judges) and visiting judges. The Minnesota court schedules trials in four-week blocks, with parties required to be on call for two weeks of that period. More complex cases may follow a different timeline, and the court may schedule such cases for a trial date certain in the next rotation. A backup system for trials has been developed through the court's Calendar Committee, although opinions on the effectiveness of the system were varied.

Goals & Information Management

A central theme of ECCM is identification of case management strategies that facilitate timely criminal case processing. Time standards assist the court in measuring the timeliness of case processing and represent a goal for achieving final disposition for various types of cases. Time guidelines should not be established based on the most difficult or complex cases, nor should they be set at a level that reflects the status quo for case processing. The adoption of case processing time standards is a commitment by the court to timely resolution of cases as an important goal. Case processing time standards may be reflected in terms of *overall* time standards and *intermediate* case event time standards.

The development of time standards is one area where the court community has been active.⁴ In 2011, new national "Model Time Standards for State Trial Courts" were approved by the Conference of Chief Justices (CCJ), the Conference of State Court Administrators (COSCA), the National Association for Court Management (NACM), and the American Bar Association (ABA). Among the more than 40 states that have adopted time standards, the relative emphasis placed on their use varies significantly, ranging from virtual indifference to regular public release of individual court performance against the standards.

Beyond time to disposition standards, many high-performing courts also employ additional concrete

⁴ The American Bar Association (ABA) first adopted speedy trial standards for criminal cases in 1968, amending the standards in 1976, in 1984, and again in 1992. The Conference of State Court Administrators (COSCA) promulgated national time standards for cases in the state courts in 1983.

measures of performance. Often based on the NCSCs set of ten performance measures called *CourTools*,⁵ relevant measures in assessing effectiveness in caseflow management include clearance rate, age of active pending caseload, and trial date certainty. Many of the seven courts make explicit use of performance measurement and credit the use of good information to support goal-driven case processing as critical to success.

Lessons from Effective ECCM Courts

Importance of state sponsorship for local court improvement

In the Michigan court, weekly reports are generated on case age, next scheduled date, trial date, and pending cases for each judge. The use of performance information is driven by internal demand but also by rules established by the Michigan Supreme Court. The Michigan State Court Administrative Office employs a modified version of *CourTools*, requires each jurisdiction to submit regular status reports, and publishes caseflow performance data for all the courts. The state has established time guidelines, which the judges have come to accept over the years. The friendly competition generated by the transparent sharing of performance data has encouraged ongoing improvement efforts among courts. Consequently, caseflow management performance reports are a regular topic of discussion at judges' meetings in the Michigan court.

The state Administrative Office of the Courts (AOC) in Minnesota, Pennsylvania, and Washington have also embraced statewide performance assessment and make use of *CourTools*. When a state's supreme court and AOC agree to make performance assessment a priority, with results regularly reviewed, discussed, and published, they create a strong incentive for improvement in case management practices. It generates a positive feedback loop between state and local court leaders. Local court leadership understands that improved performance is an acknowledged statewide goal that receives attention at the highest level, making it easier to reach internal court consensus on the need for and value of effective caseflow management.

Addressing interim event time management

Although time guidelines are generally stated in terms of time from filing to disposition, a number of other activities are scheduled and occur between the initiating and disposing events. Being able to identify specific event types (pretrial, motions conference, etc.) and determine the time between events allows diagnosis of problem areas. Most courts do not monitor case event intervals, at least on a formal basis. In addition, many case

management systems lack this type of functionality or courts do not see it as a priority.

However, the Pennsylvania court does place a priority on event time management and has developed interim timelines as goals. In this court, the criminal division judges pay close attention to their case age reports, and several judges noted that they regularly review the oldest pending cases to ensure that these cases continue to move toward disposition.

In the Washington court, all parties receive reports on case progress. The *270+ Report*, provided to judges and all stakeholders, lists pending cases which are over 270 days old. A more detailed internal report, the *Time Performance Standards* report, displays the clearance rate and a comparison of cases resolved in the current and previous year within established time standards. The *Criminal Pending Cases* report indicates the number of cases pending by case age category for each prosecution unit. This report is produced every Friday and is provided to the district attorney, the public defender, corrections, criminal coordinators, and all judges.

Management information reports

All seven courts have automated information systems that produce most of their management reports, though some still rely on manually prepared reports. One consistent feature is that all reports are produced in a timely fashion, using understandable formats. Most importantly, those responsible for management rely on these reports for managing caseflow. The information, which is closely tied to goals, can be used to identify problem areas. Examples of the types of reports used most frequently across the seven courts include: (1) status reports that rank judges on the total number of cases pending of their dockets, case age, bail status, and next action and date; (2) trial reports that show the number of cases in which trial dates have been set, the number held, and the date of last scheduled trial; (3) efficiency reports that show, by judge, the number of and the reason for continuances granted at each stage (e.g., pretrial conference, trial); and (4) case age reports that list, by judge, the cases pending over 90 days since arraignment by age category (e.g., 90-179 days, 180-269 days) to facilitate quick identification of older cases.

Communication & Collaboration

Effective communication is essential to any effort to implement and sustain change in an organization. Chances of success in case management are improved through regular communication between judges and court staff, as well as consultation among judges, prosecution,

⁵ <http://www.courtools.org/>

defense, the private criminal bar, and the sheriff's department. When caseflow management improvements are on the table, communication ensures that all participants have a solid understanding of what the change is, why it is needed, and what participants' respective roles are. Keeping justice system partners informed appears to be an important part of effective caseflow management in the seven courts and takes on several forms. Many courts have regular bench/bar meetings as a forum to discuss issues of mutual concern. Specific caseflow management committees are another venue for these discussions to take place. Additionally, most of the seven courts use a criminal justice coordinating council in their jurisdiction to discuss caseflow management issues.

In many of the seven courts, written policies are commonplace, and judge and employee orientation and education systems contribute to clear communication of court goals. Additionally, judges' meetings tend to be held monthly. However, more than one presiding judge in the seven courts warned that while seemingly inclusive meetings may be held, good communication may be missing because the substance is superficial and tough issues are avoided. These judges believe surfacing problems is a precondition for solving them; conflict avoidance should not obstruct candid conversation.

Lessons from Effective ECCM Courts

Collaboration with justice partners

The Criminal Procedures Committee in the Minnesota court meets bimonthly and includes stakeholders and staff. Membership includes the district attorney, public defense, corrections, law enforcement, private bar representatives, and other invited stakeholders. Issues and proposals are raised at the meetings for comment and then referred to the Criminal Justice Committee for adoption. The California court has a similar Criminal Justice Advisory Board involving agency heads that meets quarterly. In Florida, the court convenes a monthly luncheon with the bar and has frequent interaction between the bench, bar, and law interns from the University of Florida.

Judges are collegial and cooperative

Communication is a long-standing characteristic of the Virginia court, where there is an unusually high level of comradery and cooperation among judges. Regular formal meetings include a monthly judges' meeting with a prepared agenda, which is attended by other court or agency personnel as needed. Success with their master calendar system requires daily communication between the chief judge and the clerk's office to discuss the state of the overall docket and to set judicial assignments for the next day. Equally important is prompt communication between judges and the chief judge involving issues on the judge daily dockets. For example, trial dates

are very firm, and the judges cooperate fully with the chief judge in providing trial coverage if issues arise that prevent the initial judge from starting a trial as scheduled. The communication essential to the court's master calendar system is sustained by each judge's confidence that colleagues are committed to delivering firm trial dates and completing each day's workload as scheduled.

The seven courts exemplify the importance of judicial collegiality and collaboration between judges and key administrative staff. Although judges are masters of their own cases, inconsistent expectations and practices regarding case management can quickly derail efforts to implement an effective caseflow management effort. Collaboration includes information sharing, joint discussion of policy issues, and the public presentation of a united front by the court for the principles and practice of caseflow management.

Other Factors Affecting Criminal Caseflow Management

Facilities

One factor that has not received much attention in the caseflow management literature is the impact of facilities on case management. When defense attorneys are able to meet with their clients at the earliest opportunity, defense counsel will be prepared to discuss a plea agreement or schedule a trial early in the process. This is particularly critical for meeting with in-custody defendants, requiring jails that are designed to facilitate this consultation. Space or facilities that promote easy communication between defense and prosecution increase the likelihood that both sides will efficiently work to resolve issues around discovery and discuss potential plea agreements in a timely manner.

The Washington court has a unique feature which is referred to as the "pit," where defense and prosecution meet to discuss their cases and reach plea agreements. These areas are specifically designated rooms adjacent to the courtrooms that are restricted to practicing attorneys. Interview booths to speak with in-custody defendants who are awaiting their court appearance allows attorneys to speak directly with their clients. This design was included in a 2013 courthouse remodeling based on input from stakeholders. Because of this feature, it is relatively easy for attorneys to consult with their clients before and during court proceedings and to discuss plea offers. In the Minnesota court, two courtrooms are located in the jail where felony, misdemeanor, and probation violation arraignments are conducted. Omnibus hearings are also conducted in these courtrooms for in-custody defendants. Prosecution and public defense staff are present and can more easily meet with clients using this arrangement.

The problems created by inadequate facilities for holding inmates and providing space for attorney client consultation were evident in Santa Barbara, particularly in the Santa Maria facility. Offenders must be transported from the corrections center in Santa Barbara on a daily basis to the Santa Maria court, which has limited holding facilities. A branch jail is under construction in Santa Maria, and the court is planning to implement video arraignments in the near future. For now, attorneys must often step out of the courtroom to speak with their clients in the holding area. In Santa Maria, this may be their first chance to meet in-custody clients in person. A video call-in system is available for attorneys, as well as limited visitation booths which can be scheduled by appointment. The sheriff transports 5-10 inmates from the central jail on Fridays just for interviews and appointments at the Santa Maria branch court, which is over an hour from the county seat.

Jail Population Management

Felony case management, and to a lesser extent misdemeanor case management, can have a significant impact on local jail populations and the costs of pretrial incarceration. Courts play a key role in helping reduce jail costs through improved management of pretrial events and timelines, in addition to bond-setting practices.

It is interesting to note that the impetus for improved management of criminal cases often have origins in local jail overcrowding emergencies. For example, the Michigan court experienced serious jail overcrowding in the early 2000s, prompting greater collaboration between the court and Sheriff's Department that led to significant improvements and reductions in standing jail populations. Largely as a result of continued interest in avoiding a return to jail overcrowding, Court leadership actively participates in the Community Corrections Advisory Board. Addressing jail overcrowding was also an issue in the Washington court during the great recession, which resulted in greater inter-agency collaboration, new case management practices to reduce jail usage, and a reduction of daily jail population that continues to this time.

Impact of Sentencing Guidelines

Six of the seven courts are in states that employ sentencing guidelines (California is the lone exception). During on-site interviews, attorneys noted that the guidelines framework and associated sentencing recommendations provided a common starting point for case negotiations. Prosecutors will often compute a guideline score based on the instant offense and defendant's prior record, giving the defense counsel a clear indication of how prosecution views the case and an estimate of the likely sentence. Defense counsel may or may not dispute the charging decision in light of impact on

the scoring outcome. Because guidelines typically provide a recommended sentence range, this offers clear parameters for guilty plea negotiations. Many attorneys stated that the guideline structure served to jump start discussions and reduced the amount of time necessary for the two sides to settle. One example of this is from the Michigan court where the existence of Cobb's Agreements, as discussed above, allow the judge to signal a willingness to commit to sentencing in the lower third of the guideline range if the defendant agrees to plead guilty. It appears a largely unanticipated outcome from the adoption of sentencing guidelines is a reduction in case processing time.

Diversion and Problem-Solving Proceedings

The expansion of problem-solving approaches to criminal cases is a phenomenon that will need to be taken into consideration as a part of overall caseflow management. All seven courts operate one or more problem-solving courts, such as adult drug court and specialty dockets for veterans and mental health, along with drunk driving offenses. Diversion programs are generally pre-adjudication, while problem-solving programs may be either pre- or post-plea in nature. In the case of post-plea programs, case resolution may be delayed as the defendant is given an opportunity to complete treatment and meet other program requirements to take advantage of adjudication to a lesser offense or dismissal of the charges. Depending on the nature of the program, cases which are supervised pre-plea may fall outside preferred time to disposition goals if participants are to have adequate opportunity to comply. Explicit recognition of problem-solving court practices will need to be taken into account as the next generation of time standards are developed.

Concluding Comments and Future Directions

Caseflow Management Matters

If there is a single take-away from ECCM, it is that **caseflow management matters**. The outcome data demonstrate that the effective implementation of the key elements of caseflow management is common to all courts that successfully resolve criminal cases in a timely manner. As previously noted, timeliness is not simply a matter of expediting the flow of cases through the legal pipeline. Rather, it is essential for due process and an adequate criminal defense; thus, it is critical for fair and impartial resolution of cases.

The successful courts ECCM studied shared common elements:

Leadership & Governance

Commitment to monitoring and managing the pace of litigation is clearly expressed by court leaders and understood by their colleagues. There is

meaningful input on caseflow management design and policies by judges and administrative staff, while open communication is maintained with justice partners. Successful courts uphold this commitment to transparency and accountability from one leadership team to the next.

Early Court Intervention & Control

Attention to the progress of cases has a direct impact on timeliness. Effective courts make case management a priority, no matter how they go about organizing it in practice.

Predictable & Productive Events

The court sets and enforces clear expectations about case progress. The court's scheduling system ensures adequate time is available to hear all matters placed on the calendar and parties are present and ready to proceed as scheduled. Each event accomplishes its purpose to move matters toward resolution.

Goals & Information Management

High-performing courts rely on sharing detailed information reports. Information provided in the context of the court's stated goals (e.g., time standards), whether in the form of a calendar matrix or statistical reports, allow those responsible for case management to pay close attention to the critical details. Properly understood, time standards are not seeking to meet timeliness goals as the primary objective. Rather, time standards provide a marker to assess whether cases are moving at an appropriate pace, allowing the court to determine where potential problems might lie and ensure that only those cases that require more time and attention are the ones getting it.

Communication & Collaboration

Outstanding collegiality was a hallmark among the judges in all seven courts, as were clearly understood and respected roles for court administrative staff. Most of the seven courts place a premium on collaboration in their dealings with criminal justice partners. Representatives from each stakeholder group discuss case management issues with the court on a regular basis. As a result, decision-making about how the court's criminal caseflow management policies and practices is consultative and achieves its intended results.

Improvement is a Continuous Process

⁶ The NCSC published a series on court governance based on Executive Sessions held at the Kennedy School of Government at Harvard University. Papers available at <https://www.ncsc.org/Services-and-Experts/Court-leadership/Harvard-Executive-Session.aspx>. For court organizational culture and its effect on court management, see writings of Brian Ostrom and his colleagues at <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/2330>

Attention to the craft of caseflow management is a good idea for every court. Management practices and court workflow processes can always be improved. Case processing quality improves with efforts to reduce wasted time, to eliminate errors, and to design services that better meet customer expectations. For example, while few courts are exceptionally slow, all courts have room for progress. Virtually no court in America has "maxed out" on timeliness, as no court has yet to consistently meet the *Model Time Standards*.

A key observation from the seven courts is their willingness to pursue improvement over time. This approach does not necessarily require pinpointing the best practice, just fashioning a better practice that improves upon the current situation. Better practices make a difference both in instances which require a major reworking of existing caseflow practices and in those which call for only a slight tweaking. Continuing enhancement of performance, either marginally or significantly, is the goal.

Multiple Paths to Success

Evaluation of the seven courts confirms that while each is committed to key elements of caseflow management, there is no specific set of business processes that all courts should employ. By no means does this imply court leaders cannot learn and be inspired by success stories from other courts. Indeed, there is much to be learned about what good, better, or best practices appear to offer an answer to perplexing caseflow management problems. It is developing just such a capacity to approach difficult questions from many perspectives and to combine various approaches that holds the greatest promise for fine-tuning a solution that will work in each court's particular context.

Additionally, while the field of court management has identified key elements for improving caseflow management, the trick is in the implementation and follow-through. History shows that just because one court has success with a certain initiative does not mean that another court can seamlessly plug-and-play the same process with the same result. Rather, success in court reform balances the promise of a good idea (or best practice) with a clear understanding of the individual court context.⁶ In most instances, successful caseflow management comes when court

leaders use their experience, subject matter expertise, and creativity to tailor a solution based upon the unique contextual circumstances of the court.

Time for Self-assessment

A common misconception is that when a court starts marshalling results on current caseflow performance, everyone will see and agree on the changes that need to be made and that because results speak for themselves, the easy part is identifying the problem to be solved. In reality, the challenge of problem identification should not be underestimated. Any organization (including a court) operates the way it does because the people in the organization want it that way. To paraphrase Peter Scholtes, “every organization is finely tuned to achieve the results it currently gets.” Even if current practices lead to subpar results, there are people who have a vested interest in maintaining business as usual. What might be an obvious solution to some will be seen as unacceptable by others because the consequences of trying something new can be unpredictable and may upset some judges and managers. In this view, the cure is worse than the problem.

Prior to advocating for particular caseflow improvements, one strategy is to gather input from judges and administrative staff on how they view the current situation. Courts seeking to assess their current caseflow management practices can take advantage of the *Caseflow Management Maturity Model*, a high-level framework that describes the critical elements of caseflow management and includes a self-assessment instrument to determine the level of adoption and institutionalization of caseflow management principles and practices by a court.⁷ There are four business layers in the maturity model that correspond to the elements necessary for effective caseflow management: Leadership and Governance, Effective Practices, Goals and Information, and Communication and Collaboration. Each business layer and the associated key elements are described. Items associated with key elements are described in the model, and judges, court managers, and staff

assess the extent to which they believe each item describes their court. The most recent version of this assessment tool, modified in light of the findings of the ECCM project, is available at the ECCM website.

All Courts Can Improve Right Now

The courts profiled here show that all courts can succeed in effective caseflow management. A major payoff for the seven courts that accompanies their close attention to case management appears to be a heightened sense of collegiality between a court’s administrative leadership and the rest of the bench, and among the bench, managers and staff members. Simply stated, their success is premised on developing agreement on common principles, shared goals, and the open discussion of results. And effectively implementing decisions related to improved caseflow management. Evidence from the ECCM project suggests collegiality reigns in courts that are well organized and well run. That is certainly a result worth replicating.

⁷ The matrix utilized in the ECCM project was originally developed as part of a series of training and technical assistance projects funded by the United States Department of Justice Bureau of Justice Assistance awarded to the National Center for State Courts. For a basic description of a maturity model, see <https://whatis.techtarget.com/definition/maturity-model>.

Appendix A

ECCM Workshop Attendees Denver, CO • October 23-24, 2019

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