An Assessment of Criminal Case Management in the Superior Court of New Jersey, Essex Vicinage

Institute for Court Management
Court Executive Development Program
2007-2008 Phase III Project
May 2008

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ACKNOWLEDGEMENTS

The culmination of this research, akin to other milestones, was possible because of the encouragement, support, and guidance that I have had the fortune of having along the way. This acknowledgement is but a small gesture of my appreciation because the difference that they have made in my pursuit of this endeavor has left a far more lasting impression than what can be mentioned here. I am especially grateful to my advisor, Dr. Geoff Gallas, for his guidance throughout this project and the assistance of Dale Kasparek, Toni Grainer, and Joan Cochet of the National Center for State Courts.

I thank the New Jersey Judiciary for the support to pursue this fellowship. Within Essex Vicinage, a warm thank you is extended to the Trial Court Administrator, Collins E. Ijoma, for his ongoing counsel and encouragement. I am indebted to the support afforded by the Assignment Judge, the Honorable Patricia K. Costello, the Criminal Division Presiding Judge, the Honorable Donald J. Volkert, Jr., and Criminal Division Manager, Sonya Noyes. I am thankful for the advisement of Superior Court Judges, the Honorable Harold W. Fullilove and the Honorable Betty J. Lester, Assistant Criminal Division Managers, Howard Beckford, Matthew Izzo, and Ellen Quinn, Municipal Division Manager, Alfred Restaino, Information Technology Division Manager, Kaz Lobaza, and Records Manager, Thomas Dibble. I am also deeply appreciative to the Criminal Division Judges, Assistant Prosecutors, and Assistant Deputy Public Defenders participating in this study. This study could not have been possible without their willingness to take part.

I am appreciative for the review and suggestions provided by Dr. John Collins, Dr. Elaine Walker, and Mary Ellen Landolfi. I express my profound thanks to my parents, Michael and Antonietta, sister, Maria, and brother-in-law, Stephen, for their perpetual guidance in *all* things. This research is dedicated to the memory of my mother, who, in the course of wanting my success more than any other (including myself), serves as my role model and enabled me to travel this journey. Sincere appreciation is extended to my father-in-law and mother-in-law, Vincent and Filomena, who devoted many hours caring for my children while I worked on this project. Finally, but most importantly, a special thank you is offered to my wife, Maria, and our twin boys, Michael and Vincent. Indeed, the greatest sacrifice came from them because they afforded me the most precious of commodities – time – to complete this research.

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ABA ..... American Bar Association
AJ ..... Assignment Judge
ANOVA ..... Analysis of Variance
AOC ..... Administrative Office of the Courts
AP ..... Assistant Prosecutor
CJP ..... Central Judicial Processing
COSCA ..... Conference of State Court Administrators
DCM ..... Differentiated Case Management
DM ..... Division Manager
DYFS ..... Division of Youth and Family Services
ECPO ..... Essex County Prosecutor's Office
EV ..... Essex Vicinage
EVCD ..... Essex Vicinage Criminal Division
NACM ..... National Association for Court Management
NCSC ..... National Center for State Courts
NJ ..... New Jersey
NJCDSC ..... New Jersey Criminal Division of the Superior Court
OPD ..... Office of the Public Defender
PDC ..... Pre-indictment Disposition Conference
P/G ..... Promis/Gavel
PJ ..... Presiding Judge
PSI ..... Pre-sentence Investigation
PSU ..... Pre-trial Services Unit
PTI ..... Pre-trial Intervention
TCA ..... Trial Court Administrator

ABSTRACT

The New Jersey Judiciary was unified in 1995 along 15 districts referred to as vicinages. Essex Vicinage is the most voluminous of the vicinages in terms of criminal case filings comprising, on average, more than 16 percent of pre-indictment and 14 percent of post-indictment filings in the state. The purpose of this study was to assess case management performance in the Essex Vicinage Criminal Division including a critical analysis of cases that required the most time to reach disposition. Research supports the notion that case management impacts justice more than any other factor; as such, is sine qua non to ensuring that justice is properly administered. The literature was reviewed extensively focusing on key questions relating to caseflow management, case management measurements (CourTools), and complex criminal cases.

This study was guided by a four-prong analysis juxtaposing case management outcomes to perceived performance held by legal stakeholders. Archival data was used to examine case management outcomes. The data, which included approximately 75,000 pre-indictment dispositions and 29,000 post-indictment dispositions, was bifurcated to measure performance over the past four court years in accordance to CourTools 2, 3, 4, and 5. Complex cases, identified as the oldest ten percent of post-indicted filings (totaling 755) that reached disposition during the 2006-07 court year, were evaluated on the basis of selected criteria. Survey data was likewise divided with a total of 37 variables measured. Data was elicited through a series of Likert scale (four and five degree differential) and knowledge-based questions pertaining to case management performance in Essex Vicinage as measured by the foregoing CourTools. Stakeholders' perceptions of case management performance and complexity elements were contrasted

to archival data using group affiliation as the predictor variable. The datasets were analyzed using several statistical methods including cross-tabulation, measurements of central tendency, chi-square, Cramer's *V*, one-way analysis of variance, and post hoc test. Stakeholders included Judges, Assistant Prosecutors, and Assistant Deputy Public Defenders practicing in the Essex Vicinage Criminal Division at the time the survey was distributed in July 2007. The response rate was 97 percent with a total of 83 stakeholders participating in the study.

The archive data results showed that the vicinage generally clears as many cases as are filed. Time to disposition demonstrated that cases which do not proceed to indictment by and large meet the pre-indictment standard. The median for all other timeframes was considerably over standard. The age of active pending caseload for pre-indicted backlogged cases ranged between 56 and 59 percent during the past four court years. Post-indicted backlogged cases ranged between 28 and 33 percent during the same time period. An evaluation of trial date certainty revealed that less than a third of defendants originally scheduled for trial proceeded to trial. Close to 90 percent of trial defendants had more than one trial event before it commenced. The oldest post-indicted dispositions had a median time to disposition (from indictment) of 361 days. Almost two-thirds of the caseload was comprised of one-defendant cases. More than half of the defendants were ultimately disposed by plea. Two-fifths of the defendants were indicted with second degree crimes and almost 30 percent of defendants had narcotics as the most serious charge. The survey data illustrated that stakeholder perceptions of case management outcomes were generally not in accord with actual performance.

Perceptions of case complexity varied between judges and attorneys, with each group elaborating on other factors that can potentially create delay.

The results showed that while Essex Vicinage has exhibited success in managing its caseload, there has been a downturn in efficiency. There appears to be a lacuna in the training curriculum for newly-appointed judges and a lackluster attitude among many attorneys about the importance of caseflow management. Although the vicinage is faced with a host of challenges specific to the state's legislation and bureaucratic pitfalls, the data implies other aspects of the process, apart from the aforementioned, that hamper caseflow. Recommendations included strategic planning, developing collaborative partnerships, instituting case management education, exploring the use of case tracking, and specific suggestions for improving caseflow in Essex Vicinage.

INTRODUCTION

This study was conducted to assess case management performance outcomes in the Criminal Division of the Superior Court of Essex Vicinage (EV), New Jersey (NJ). The study was designed along the following four-prong framework examining both archive and survey data: 1) the entire inventory of case filings during the past four court years in the EV Criminal Division (EVCD) was evaluated using the National Center for State Court's (NCSC) CourTools 2, 3, 4 and 5[1]; 2) a survey of EV stakeholders was analyzed contrasting their perceptions of case management performance to actual outcomes; 3) the oldest post-indicted cases reaching disposition during the 2006-07 court year were examined to determine complexity along selected criteria; and 4) stakeholders were surveyed to assimilate their perceptions and experiences regarding complex variables impacting post-indicted dispositions (post-indictment process specific to NJ is described in the Case Management Standards subsection).

New Jersey Judiciary

The NJ Judiciary, which began statewide unification in 1995, is partitioned into four levels (see Appendix B). The courts of general jurisdiction (superior court) established in the state's 21 counties are grouped into 15 districts called vicinages and include four case management divisions – criminal, civil, family, and municipal. Vicinage meaning vicinity, neighborhood, or district, is derived from the Latin word *vicinus*. Four vicinages include more than one county because of the region's population and case volume. The superior court's Criminal Division handles all indictable cases and

[1] National Center for State Courts. 2005. *CourTools: Trial court performance measures*. Williamsburg, VA: Author.

appeals from misdemeanors and disorderly person convictions rendered in municipal court (limited jurisdiction court).

Each vicinage is headed by an Assignment Judge (AJ), who is appointed by the state's Chief Justice. The AJ serves as the chief executive officer and is responsible for overall vicinage affairs. The Trial Court Administrator (TCA) serves as the chief operating officer and oversees nine divisions including criminal, civil, family, municipal, probation, human resources, finance, information technology, and general operations. Together the AJ and TCA form the executive component of the court. The case management divisions are headed by a Presiding Judge (PJ) and Division Manager (DM). Like the AJ and TCA, the PJ and DM comprise the executive component of their respective division. Depending on the scope and workload of the division, the DM may have one or more assistant managers. Although specific responsibilities vary between vicinages and divisions, assistants generally have oversight over several court teams and personnel groups.

Essex Vicinage Criminal Division

Background

Essex County is the second most densely populated county in the state and has the second largest total population. The court complex comprises five buildings with a complement of approximately 60 judges and 1,000 employees. Together they serve almost 800,000 citizens of Essex County living in 22 municipalities in an area of more than 127 square miles. The U.S. Census Bureau recorded the county's racial makeup as follows: 44.5 percent Caucasian, 41.2 percent African-American, 0.2 percent Native American, 3.7 percent Asian, 0.1 percent Pacific Islander, 6.9 percent from other races,

and 3.4 percent from two or more races. The median household income was 44,944 dollars with approximately 15 percent of the population below the poverty line[2].

The city of Newark (the state's largest city with a population of 278,000), together with Irvington, Orange, and East Orange make up the lion's share of criminal filings in the county. Table 1 shows the statewide pre-indictment and post-indictment filings compared to those filed in EV during the last ten years. The data supports the widely-held notion that EV is the most voluminous district in the state with respect to its criminal caseload. Over the past ten years, EV comprised more than 16 percent of the state's pre-indictment caseload and more than 14 percent of the post-indictment inventory. EV, in this respect, is akin to other urban jurisdictions plagued with a high crime volume. Therefore, it is not unexpected that the vicinage has had the largest inventory given the other more rural and suburban districts of the state.

Table 1. Criminal Division Inventory between 1998 and 2007 for New Jersey and Essex Vicinage

Court Year	Statewide Filings		Essex Vicinage Filings		Statewide Filings comprised of Essex Vicinage	
	Pre-indicted (N)	Post-indicted (N)	Pre-indicted (N)	Post-indicted (N)	Pre-indicted (%)	Post-indicted (%)
1998	111,229	49,807	17,912	8,265	16.10	16.59
1999	104,038	49,075	15,466	7,471	14.87	15.22
2000	105,040	46,000	16,140	8,553	15.37	12.72
2001	104,728	51,225	16,888	8,154	16.13	15.92
2002	111,428	53,295	19,286	7,996	17.31	15
2003	110,087	53,222	18,266	7,476	16.59	14.05
2004	115,682	53,478	20,249	7,189	17.50	13.44
2005	112,528	53,762	18,495	5,498	16.44	10.23
2006	113,633	54,671	17,841	6,539	15.70	11.96
2007	111,702	55,962	18,046	7,519	16.15	13.43
Total	1,100,095	520,497	178,589	74,660	16.23	14.34

[2] U.S. Census Bureau. 2000. *Census 2000*. Retrieved September 23, 2007, from U.S. Census Bureau Website: http://www.census.gov.

Structure

The Criminal Division's structure is organized by team and centered around 16 judges. Each judge is responsible for an individual calendar, which is coordinated with the Assistant Prosecutors (AP) and Assistant Deputy Public Defenders (ADPD) assigned to the court. Appendix C diagrams the caseflow process relative to the EVCD. Judges are generally accountable for three primary functions: 1) calendar/caseflow management, which includes trial scheduling, calendaring, noticing, adjournments, coordination, resolution of attorney conflicts, enforcing scheduling orders, municipal court appeals, post-conviction relief applications, writs, and warrants; 2) report preparation, which comprises interviews, investigations, assessments, report writing and reviewing, and secretarial support; and 3) records management, which includes case file records, data entry, and statistical analysis.

The team model was endorsed some time ago by Criminal Division PJs because organizing the team around the court's caseload presents (at minimum) the following advantages:

- Quality is increased because of familiarity with the cases and expectations of the team, particularly the judge.
- Accountability is clear – everyone is responsible for the judge's caseload.
- Staff morale is improved because they are empowered to perform their function, and have an appreciation of their role in the overall work of the court[3].

Team leaders generally have three broad responsibilities including coordinating the judge's calendar, supervising the court's staff, and overseeing reports generated by probation officers. Among other things, the team leader assists the judge by coordinating

[3] McCarthy J. P., and M. DeLeo. 1992. *Realizing quality management of the New Jersey Criminal Courts – The human approach*. Trenton, NJ: Administrative Office of the Courts, page 13.

court events, attorneys' schedules, and information contained in discovery, pre-trial intervention (PTI), and pre-sentence investigation (PSI) packages. Probation officers are responsible for investigating and preparing court reports on defendants from which the judge will make a decision. Court clerks are responsible for data entry and filing including reconciling calendar conflicts and ensuring an even distribution of court events throughout the week. Each judge is assigned a secretary and law clerk. Among other responsibilities, secretaries type and proofread correspondence, prepare requisitions, and coordinate the judge's non-bench schedule. Law clerks are hired by the judge for a one-year appointment and assist the court with scheduling events, researching legal issues for a host of motions, including post-conviction relief, drafting sentencing memoranda, and coordinating specialized programs.

Case Management Standards

The NJ Criminal Division of the Superior Court (NJCDSC) is guided principally by Court Rules and uniform standards of operation (see Appendix D). In accordance with these guidelines, backlog per 100 filings (a figure specific to NJ) and backlog percentage of no more than 30 percent with cases going into backlog 60 days for pre-indicted cases and 120 days for post-indicted matters are broadly relied upon in determining the organizational health of the division. Backlog per 100 filings is calculated as follows:

> The total filings from the previous court year are divided by 12. The current monthly backlog is then divided by that average monthly number and multiplied by 100. Therefore, if A = current monthly backlog and B = total filings of the previous court year, the formula would be as follows: (A/ (B/12)*100. To illustrate, if the July 2007 backlog was 600 and the total filings from court year 2005-06 was 3000, the backlog per 100 filing would be (600/(3000/12)*100 = 240.

Although the calculation is arcane relative to other case management measurements, it is used on a statewide basis because it allows the court to compare backlog to other vicinages despite differences in population and caseload.

Following up on an earlier study, Mahoney and Bakke reviewed EV caseflow management and noted it as:

> "one of the most dramatic improvements in the handling of serious criminal cases that has taken place anywhere in the United States in the past 30 years" [4].

The total pending caseload in April 1990 was 17,815 and was reduced to 5,235 by April 1994 – a reduction of more than 70 percent. While the authors mentioned that the vicinage utilizes some of the concepts and practices associated with differentiated case management (DCM), they recommended that judges and administrators do more to implement the strategies of the approach. In particular, the EV program should include the following features:

- Creation of multiple tracks or plans for case disposition, with differing procedural requirements and time frames geared to the processing requirements of the cases that will be assigned to that track.
- Provision for court screening of each case shortly after initial filing in the Central Judicial Processing (CJP) court and, for cases that result in indictment, again shortly after indictment. The purpose of the screening is to assign each case to a track that will bring it to resolution within an acceptable time frame that is within the New Jersey time standards, using agreed-upon criteria. There should be opportunity for input from both prosecution and defense in selection of the track.
- Continuous court monitoring of case progress within each track to ensure that track deadlines are met.
- Procedures for changing the track assignment in the event the management characteristics of a case change during the pretrial process[5].

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[4] Mahoney, B., and H.C. Bakke. 1995. *Criminal caseflow management improvement in Essex County (Newark, New Jersey), 1990-1994*. Denver, CO: The Justice Management Institute, page 1.

[5] See Note 4 supra, page 47.

The Backlog Subcommittee of the Conference of Criminal DMs considered instituting a DCM program to manage backlog, but opted for the 30 percent backlog standard instead because it provided the court greater flexibility with respect to complex case-types. More simply, the standard allowed the court to determine which cases could be expected to exceed the 60 and 120-day time frame given the myriad of issues that can engender delay[6]. Having had knowledge of the aforesaid suggestions, this study attempted to determine the extent to which EV could benefit from DCM in light of more recent archive and survey data findings, in addition to the feasibility of implementing such a program.

As already noted, a major aspect of this research focused on the complexity of post-indictment cases that aged the most before reaching disposition. All of these cases were backlogged at the time of disposition. Post-indicted backlogged cases include those that are older than 120 days between the time of indictment and disposition. The indictment process in NJ is overseen by a grand jury of 23 randomly selected citizens residing in the county. A criminal case which has not been downgraded, diverted, dismissed, or accepted for plea will be presented before the grand jury by an AP. The grand jury is considered an arm of the court and serves as an independent body. The primary function of the grand jury is to review *prima facie* evidence to determine what criminal charges, if any, may be brought against an individual. *Prima facie*, meaning on its first appearance, demonstrates first, that a crime has been committed and second, the accused committed that crime. Essentially, the grand jury is responsible for screening the prosecutor's cases for probable cause; that is, sufficient evidence is present to have the

[6] Conference of Criminal Division Managers. 2004. *Backlog subcommittee recommendations*. Trenton, NJ: Administrative Office of the Courts.

case proceed to trial if the defendant pleads not guilty at arraignment[7]. An indictment is filed if 12 grand jurors vote that enough evidence has been presented to warrant the defendant to answer the alleged charges.

Problem Statement and Significance

This research is both a descriptive and exploratory study into case management outcomes (performance) of the EVCD. With regard to the former, archival data was examined in determining the current landscape of the division's case management performance. Particular focus on the oldest ten percent of post-indicted cases to reach disposition during the 2006-07 court year was examined to uncover the common complex characteristics. The two key questions that were addressed included: First, what are the criminal case processing trends in EV and second, what are the outcomes vis-à-vis the CourTools' case management measures? Greater detail with respect to these measures is provided in the methodology. The latter was guided by two critical questions using a survey instrument. First, do the key legal stakeholders (judges, APs, and ADPDs) view case processing similarly (or differently)? The responses were compared against the empirical data to determine if perceptions were in accord with actual outcomes. Second, what determinants do stakeholders consider make the case more (or less) complex? That is, what case factors, in their estimation, require more time before the case can reach a disposition?

Gallas believed that there must be three basic assumptions underlying court administration. First, courts do not exist for administrators to manage them. Second, justice *is* the overarching goal of the court, and therefore if ever a conflict exists between

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[7] Dorne, C. K. 2008. *Restorative justice in the United States: An introduction*. Upper Saddle River, NJ: Pearson Education Inc.

justice and management, the ultimate goal must always take precedence[8]. Previously, Friesen argued that "administrative processes are subordinate to the judicial processes that apply the rules to particular cases" [9]. These first two assumptions and the implications directed at management are buffered by the third conjecture wherein Gallas stated that justice is immeasurably more the result of management than case law, statutes, or constitution. Plato is noted similarly in *Laws*:

> "It is obvious to anyone that legislation is a tremendous task and that when you have a well constructed state with a well framed legal code, to put incompetent officials in charge is a waste of good laws, and the whole business degenerates into farce. And not only that, the state will find its laws are doing damage and injury on a gigantic scale" [10].

This research addresses these assertions by scrutinizing case processing performance to assess the division's management of cases.

The complexity of criminal cases generally and those specific to EV continues to be an elusive concept in the criminal justice system. The literature cites a variety of factors that make a case complex. Given the diversity of jurisdictions, however, broad-based conclusions are speculative, at best, when applied to one's own court. Just as empirical data has contradicted the one-size-fits-all approach (a unified judiciary) in structuring the court by showing that it is not the panacea for all state systems because of the distinct nature of these environments, so too it is purported that case complexity in

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[8] Gallas, G. 2007. The justice discipline. Lecture at the phase II, leadership and management in the courts and justice environment of the court executive development program of the Institute for Court Management, Williamsburg, VA.

[9] Friesen, E. C. 2002. Court leaders: Survivors or agents of change? In *The improvement of the administration of justice*, 7th ed., ed. G. M. Griller, E. K. Stott. Jr., and J. Fallahay. 31-47. Chicago, Il: American Bar Association, Judicial Division, page 40.

[10] Plato. 360 B.C.E. *Laws, book VI*. Trans. B. Jowett. Retrieved September 23, 2007, from Massachusetts Institute of Technology Website: http://classics.mit.edu/Plato/laws.html

one district may not be construed in the same vein by another court. Profound differences, some of which are beyond the reach of the court, are driven by resources, internal and external personnel, organizational policies, procedures, and culture, legislation, and politics and can impact stakeholders' ability to manage complex issues.

Drawing from the work of Friesen, the National Association for Court Management (NACM) Core Competency Curriculum Guidelines enumerated the following purposes of the courts:

> 1) individual justice in individual cases; 2) the appearance of individual justice in individual cases; 3) provision of a forum for the resolution of legal disputes; 4) protection of individuals from the arbitrary use of governmental power; 5) a formal record of legal status; 6) deterrence of criminal behavior; 7) rehabilitation of persons convicted of crime; and 8) separation of some convicted people from society[11].

The findings presented in this study vet the outcomes of the Criminal Division and in so doing hones in on the processes that lack their intended effectiveness. To varying degrees, the processes that judges and administrators choose to adopt when developing policy impinge upon each of the said purposes with the possible exception of purpose 3 (provision of a forum for the resolution of legal disputes), which is more of a focal point in civil and family-related matters. It is through these practices that largely make the difference between a court that merely exists and one that meets its intended mission. As Zorza asserted:

> "Without the protection of courts, the core of our society dies. Without courts that are practically and effectively accessible, our society still dies, but more slowly and less obviously. The shell remains, but the essence is gone" [12].

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[11] National Association for Court Management. 2004. *Core competency curriculum guidelines: What court leaders need to know and be able to do*. Williamsburg, VA: Author, page 12.

[12] Zorza, R. 2002. *The self-help friendly court: Designed from the ground up to work for people without lawyers*. Williamsburg, VA: National Center for State Courts, page 135.

Perceptions should be juxtaposed against empirical data so that policies and procedures are developed and analyzed objectively. Judges and court administrators are not unlike other working professionals who have a tendency to view their performance in a more positive light than what is realistic. An Arizona judge cited by Peak expressed this notion succinctly:

> "Judges and court administrators are not likely to view themselves in a negative light. As part of an organization that creates a certain amount of respect and awe for itself, it is not surprising that the [judge] and the court administrator may believe that they are better than they actually are. As a result, their top members frequently believe that the awe displayed toward them is intrinsic to their person, and not to the office" [13].

The binary analysis (archive and survey) offered in this research provides a clearer assessment of the court' s performance and more importantly, will prove to be advantageous when formulating and implementing a strategic plan to enhance and improve current practices of case management.

On a more practical end, the results were used to provide insight into the state's year-end goal with suggestions on how to attain it consistently. Further, it is intended that this research, through its evidence-based[14] conclusions, be a catalyst in developing improved practices of identifying and tracking complex cases. The findings will be used to develop a variable worksheet to gauge the complexity of cases. The expectation is for judges to use the worksheet during the initial stages of case processing, preferably at the Pre-indictment Disposition Conference (PDC) or Arraignment/Status event, so that it can assist them in managing the case more efficiently. Ultimately, the purpose is to provide

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[13] Peak, K. J. 2004. *Justice administration: Police, courts, and corrections management*. Upper Saddle River, NJ: Pearson Education Inc, page 181.

[14] Pfeffer, J, and R. I. Sutton. 2006. Evidence-based management. *Harvard Business Review* 84 (1): 1-11.

the court with a tool to expedite the handling of non-complex cases that ostensibly saturate the system while concurrently providing them with the pertinent information so that a disposition can be more readily reached.

Research Questions

The principal questions guiding this study were as follows:

1) In accordance with the CourTools' case management measures, what are the case processing trends in the EVCD during the past four court years?
2) What case characteristics, if any, are demonstrated by the oldest post-indicted cases that reached disposition during the 2006-07 court year?
3) What perceptions of case management performance emerge among legal stakeholders' (judges, APs, and ADPDs) with regard to differences from actual performance in the EVCD?
4) What perceptions do legal stakeholders have of each others' efforts to reduce backlog?
5) What association exists between legal stakeholder status and knowledge of case management performance?
    a. If an association does exist, what is the strength of the relationship?
6) What influence does legal stakeholder status have on knowledge of case management performance?
    a. If a significant difference does exist, to what extent do the groups differ?
7) What factors do legal stakeholders perceive as generating complexity?

The first facet of the study was based on the CourTools' case management measures including clearance rate, time to disposition, age of active pending caseload, and trial date certainty and tested whether a significant difference existed between the perceptions held by legal stakeholders (judges, APs, and ADPDs) assigned to the Criminal Division and actual case processing performance. The second major aspect of the research was grounded on the notion of complex criminal cases. Presumably, cases that are complex will take a longer period of time to reach disposition; therefore, the oldest cases that reach disposition should demonstrate (more than any other faction of the caseload) the most salient characteristics of case complexity. This study also examined stakeholder perceptions of complex variables that were both within and outside the scope

of the survey.

LITERATURE REVIEW

The following is a review of the empirical research on court administration as it pertains to this study. The chapter is divided into three parts and is guided by questions that were raised in accord with this project's objectives. The first section provides a brief review of the caseflow management discipline. Specifically, the following four questions were addressed: 1) What is caseflow management? 2) How are cases "managed"? 3) What are some of the challenges in managing the caseload? 4) Why is caseflow management important? The second section reviewed the CourTools' case management measurements, including how they are defined. The final part synthesized the research examining complex criminal cases and considers two questions. First, what are the case management strategies in handling complex cases and second, what are the parameters of case complexity?

Caseflow Management

Defining Caseflow

Solomon, Cooper, and Bakke defined caseflow management as:

> "The coordinated management by the court of the processes and resources necessary to move each case from filing to disposition, whether that disposition ultimately is by settlement, guilty plea, dismissal, trial, or other method" [15].

Caseflow management is cited by the NACM as one of the ten core competencies for court leaders. Put succinctly, case management is "the process by which courts convert

[15] Solomon, M., Cooper, C. S., and H. Bakke. 2002. Building public trust and confidence through effective caseflow management. In *The improvement of the administration of justice*, 7th ed., ed. G. M. Griller, E. K. Stott. Jr., and J. Fallahay. 111-129. Chicago, Il: American Bar Association, page 111.

their inputs (cases) into outputs (dispositions)"[16]. NACM's Professional Development Advisory Committee remarked on its importance:

> "The quality of justice is enhanced when judicial administration is organized around the requirements of effective caseflow management…and is the process by which courts convert their "inputs" (cases) into "outputs" (dispositions). The quality of this process determines how well courts achieve their most fundamental and substantive objectives and purposes. Properly understood, caseflow management is the absolute heart of court management" [17].

Research in the field has provided administrators with copious amounts of data from which policy and procedure has been developed and monitored. For instance, Goerdt and associates found in their analysis of case processing time that more improvement was made between 1976 and 1987 in handling felony matters than civil cases[18]. Today, both judges and court administrators are educated in the lexicon and methods of case management and progress undoubtedly continues to be made.

The term "caseflow" is somewhat misleading in that it insinuates cases moving through the judiciary at an uninterrupted pace. Clearly, this is not what happens in reality. Rather than resembling a suggestive river running downstream, once filed, cases are in "stop-and-go" traffic until they reach their destination (disposition). The type of disposition reached governs the destination's distance. For instance, the exit out of the traffic for a plea or dismissal is much closer than one which is scheduled for trial. Local factors such as, resources, personnel, and leadership dictate whether the congestion is moving through two lanes or six lanes, if the weather is inclement, or whether there are

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[16] See Note 11 supra, page 12.

[17] Steelman, D. C., Goerdt, J. A., and J. E. McMillan. 2000. *Caseflow management: The heart of court management in the new millennium*. Williamsburg, VA: National Center for State Courts, page 12.

[18] Goerdt, J., Lomvardias, C., Gallas, G., and B. Mahoney. 1987. *Examining court delay: The pace of litigation in 26 urban trial courts, 1987*. Williamsburg, VA: National Center for State Courts.

any "accidents" on the road. A factor contributing to delay may be acceptable in one jurisdiction, but not in another[19]. The life of a case consists of a series of events that are separated by varying lengths of time. Managing the caseflow involves an assurance that these events are meaningful; that is, the activity and preparation required for the event to take place on the scheduled date is completed before that date by all involved stakeholders.

The idea of managing the courts and specifically its cases began shortly after World War II when the Chief Justice of NJ, Arthur Vanderbilt, established an administrative office to carry out the court's policy. In 1948, he appointed Edward B. McConnell to head the organization. McConnell, the nation's first state court administrator, later went on to become the president of the NCSC in 1973 and served in that capacity until 1990[20]. The NJ model that began during the late 1940s, however, did not catch on to other states until the 1960s. Court administration, therefore, remained a relatively new profession for many years[21]. During that time, 26 states followed NJ's lead and established administrative offices[22]. Between 1970 and 1980, the number of court administrators with management training grew from 50 to more than 500[23].

Caseflow management, as an area of study, is still in its infancy, although with the pioneering efforts of the NCSC and professional court associations, progress has been

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[19] Mahoney, B., and L. Sipes. 1985. Zeroing in on court delay: The powerful tools of time standards and managed information. *Court Management Journal* 8.

[20] Tobin, R. W. 1997. *An overview of court administration in the United States*. Williamsburg, VA: National Center for State Courts.

[21] See Note 9 supra.

[22] See Note 17 supra.

[23] Solomon, H. E. 1987. The training of court managers. In *Court administration: Issues and responses*, ed. C. R. Swanson and S. M. Talarico, 15-20. Athens, GA: University of Georgia.

relatively rapid. Considering the early phase that the field finds itself, training in and knowledge of caseflow is critical to the court's success. Gathering information from different stakeholders offers a wider perspective of the challenges that delay dispositions. Moreover, the fact that case management is central to the court's purpose, succeeding in this realm of the organization can bolster judges' and administrators' ability to effectively manage other, more supportive aspects of the court[24].

Management Strategies

Delay is not inevitable and research in support of this statement is clear. Moving a case from filing to disposition is a robust test of the court's effectiveness. Quite simply, the prevalence of delay is correlated with the court's commitment to reduce it. Goerdt et al., inter alios, concluded that the pace of litigation is associated with the court's caseflow management. Three findings substantiate this argument. First, the best predictor in efficient disposition was the court's control (early and continuous) of events. Second, caseload per judge was inconsequential to the speed of disposition. This was echoed by Church et al., who found that criminal case delay is generally not caused by large caseloads or a limited number of judges. There was, however, a threshold to this second point whereby the caseload per judge cannot grow ad infinitum without it impacting even the best managed courts[25]. For instance, when asked about the cause of delay, judges and court administrators, irrespective of jurisdiction, rated the increase in drug-related cases as a serious problem. At some point increases in caseload must be tempered by adding more judges. Third, effective screening and monitoring of defendants was associated

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[24] See Note 17 supra.

[25] Church, T. Jr., Carlson, A., Lee, J., and T. Tan. 1978. *Justice delayed: The pace of litigation in urban trial courts*. Williamsburg, VA: National Center for State Courts.

with efficient caseflow management[26]. These findings are encouraging because unlike court size and caseload, establishing and maintaining a protocol for moving cases through the system is within the control of the courts.

Church et al. proposed that despite the entrenched values and norms of the local legal culture, it is not immutable. Delay, they argued, is not an inescapable flaw of the system[27]. For instance, Mahoney et al. found that some of the urban trial courts were quite efficient in managing their caseload. Eight of the 18 districts examined handled more than half of the caseload in less than three months and with the exception of two districts, all of them handled them within six months. The research also suggested that delay is mitigated by judges, who must be willing to set reasonable expectations for attorneys to adhere to when scheduling court events and trials[28]. Delay most often occurs when the judge and attorneys accept it as an ordinary expectation of case processing. While the court is charged with controlling the pace of litigation, the consensus among judges and attorneys must be that unnecessary delay is first, a problem and second, unacceptable, before any strategy to reduce it will have long-term effects[29]. Aikman asserted that it *is* the judge who is responsible for managing cases. Staff and administration, albeit essential, are ancillary regarding this role[30]. He noted:

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[26] See Note 18 supra.

[27] Ibid.

[28] Mahoney, B., Aikman, A. B., Casey, P., Flango, V. E., Gallas, G., Henderson, T. A., Ito, J. A., Steelman, D. C., and Weller, S. 1988. *Changing times in trial courts: Caseflow management and delay reduction in urban trial courts*. Williamsburg, VA: National Center for State Courts.

[29] American Bar Association. 1986. Defeating delay: Developing and implementing a court delay reduction program. Chicago, IL: Author.

[30] Aikman, A. 2007. *The art and practice of court administration*. Boca Raton, FL: Taylor & Francis Group.

> "Caseflow management consumes a significant portion of a court's resources…and those responsible for generating statistical reports to advise judges about the status of their caseloads, should be deemed mission critical to the caseflow management function" [31].

Active caseflow management is fundamental to a successful program. This relies in part on research from which the manager can make an informed decision. Some of this data includes generic caseload statistics, impact studies, and longitudinal reports[32]. There exist several techniques to managing the caseflow; however a few concepts have been universally accepted and proven to be successful in managing the caseload. The ten essential ingredients were first identified in *Changing Times in Trial Courts* and included: leadership, goals, information, communications, caseflow management procedures, judicial responsibility and commitment, administrative staff involvement, education and training, mechanisms for accountability, and backlog reduction/inventory control[33]. More recently, Solomon, Cooper, and Bakke highlighted seven characteristics of an effective caseflow management system:

1) Judicial leadership and commitment to court management of the pace of litigation.
2) Consultation by the court with the organized bar and criminal justice agencies regarding caseflow policies, procedures, and performance.
3) Court supervision of case progress from filing to final disposition.
4) Time standards and operational goals for case processing.
5) A case monitoring and information system to monitor the caseload and to identify any cases that are in danger of exceeding established time limits and goals.
6) A credible scheduling system that assures that court events occur on the first scheduled date.

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[31] Ibid, page 214.

[32] Saari, D. J., Planet, M. D., and M. W. Reinkensmeyer. 1993. The modern court managers: Who they are and what they do in the United States. In *Handbook of court administration and management*, ed. S. W. Hays and C. B. Graham, Jr. 237-261. New York, NY: Marcel Dekker, Inc.

[33] See Note 28 supra.

7) Court control of continuances[34].

The American Bar Association (ABA) described effective case management systems similarly purporting that, inter alia, the court must have early and continuous control of the case, events must be predictable and scheduled over short timeframes, and case processing standards should be established and maintained through a performance monitoring system[35]. Ostrom and Hanson submitted that in order to achieve efficiency, timeliness, and quality (the main heading of their text), the court should adopt a three-step strategy comprised of self-diagnosis (processes are examined and goals are set), communication (goals are clarified), and education (training programs for court participants emphasizing efficiency, rather than delay reduction) [36].

In an ongoing effort to manage their caseload more effectively, courts have experimented with different types of calendaring systems including individual, master, and hybrid. Goerdt et al. found that data does not support one method of calendaring over another[37]. Likewise, research conducted by Mahoney et al. and Church et al. found no analogous relationship between a calendaring system and the pace of litigation for criminal cases[38]. They favored, nonetheless, individual over master calendaring because the former compares individual judge activity[39]. Given the competitive nature of the profession, they argued that it served as an incentive for judges to be more productive in

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[34] See Note 15 supra, pages 113-115.

[35] See Note 29 supra.

[36] Ostrom, B. J., and R. A. Hanson. 1999. *Efficiency, timeliness, and quality: A new perspective from nine state criminal trial courts*. Williamsburg, VA: National Center for State Courts.

[37] See Note 18 supra.

[38] See Note 28 supra.

[39] See Note 26 supra.

their day-to-day activity thereby reducing delay. Zorza also favored individual calendaring particularly for self-represented clients because of the continuity that it establishes in the process[40]. When cases are assigned to individual judges for the life of the case, individuals become more acquainted with the court, the personnel, and their practices. This familiarity makes them feel less isolated and the process less ambiguous. Tobin showed support for the individual scheduling method, but mentioned that a master calendar system gives the PJ the most latitude in matching cases with the strengths and expertise of particular judges[41]. The drawback is obviously overburdening the most efficient judges, who may feel that they are being punished for performing well. Because the evidence does not support one system over another, the most successful approach may have more to do with what works best in a particular court given individual conditions.

Saari and associates noted that among other data, courts evaluate the number of filed, pending, and disposed cases in relation to established goals to effectively manage the caseload[42]. Another key area of case processing is the procedure by which one is charged with a crime. While some courts use a grand jury, others use an information-based system. Findings with respect to which is more efficient have been mixed. For instance, while Goerdt et al. noted research indicating that the latter approach was somewhat faster, their study of 26 urban trial courts showed no relationship between

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[40] See Note 12 supra.

[41] Tobin, R. W. 1999. *Creating the judicial branch: The unfinished reform*. Williamsburg, VA: National Center for State Courts.

[42] See Note 32 supra.

charging procedure and total case processing time[43]. Mahoney and associates concluded that jurisdictions using information over an indictment-based system processed their felonies more readily. They advised, however, that the pace of litigation was linked to the organization and management of the court and prosecutor as opposed to the charging document[44].

Management Challenges

Delay results when the process of moving the case from filing to disposition is protracted by the assigned attorney (not the court). Research shows that speed and backlog were both determined by the "expectations, practices, and informal rules of behavior of judges and attorneys"[45]. The suggestion here, also supported by Mahoney et al., is that disparities in backlog and pending cases may have more to do with the organizational culture than differences in resources[46]. This finding is supported by research in both domestic and foreign courts[47]. In particular, the literature emphasized "norms, relationships, and incentives of criminal court participants" [48] as having the most significant impact on case processing. Ostrom and Hanson concluded that caseflow rate was the end product of the attitudes and expectations of judges and attorneys[49].

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[43] See Note 18 supra.

[44] See Note 28 supra.

[45] See Note 26 supra, page 54.

[46] See Note 28 supra.

[47] Weatherburn, D., and J. Baker. 2000. Delays in trial case processing: An empirical analysis of delay in the New South Wales District Criminal Court. *Journal of Judicial Administration* 10 (1).

[48] See Note 26 supra, page 58.

[49] See Note 36 supra.

Despite the local legal culture, recognizing the right course of action does not elude the bench. Rather, the greatest impediment seems to be in the choices they make. Judges in one study overwhelmingly believed that it was the responsibility of the bench to control the length of the trial. In courts where trials were the longest, both judges and lawyers were more likely than in venues where it was shorter to report that trial time was, in fact, too long[50]. More recently, Aikman purported that while contemporary courts have shown modest interest in controlling delay, there is a lackluster response in developing a case management program to support these efforts. He noted, "there appears to be some slippage across the nation toward a more passive role regarding caseflow management"[51].

While delay corrodes the basis of the courts, it is not always viewed as detrimental by attorneys. Glick asserted that justice delayed is not necessarily justice denied in the perspective of attorneys, who use delay strategically to reach a settlement, prepare more meticulously for the case, and to acquire more clients than they would otherwise have time to counsel[52]. This can be especially advantageous for the defense attorney whose client is not in custody. Consider, for instance, that memories fade, victims may become less inclined to testify, and witnesses are more likely to relocate with the passage of time – all of which foster reasonable doubt. Munsterman and associates indicated that adjournments particularly those in criminal cases tend to benefit the defendant. Apart from this, they contended that repeated postponements cause the

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[50] Sipes, D. A., and M. E. Oram. 1988. *On trial: The length of civil and criminal trials.* Williamsburg, VA: National Center for State Courts.

[51] See Note 30 supra, page 214.

[52] Glick, H. R. 1982. The politics of state-court reforms. In *The politics of judicial reform*, ed. P. L. Dubois, 17–33. Lexington, MA: D.C. Heath & Co.

court to lose their ability to manage the case[53]. Defense attorneys also resist speedy dispositions in some cases because expediting the matter results in not being fully compensated by their client. At the same time, the prosecutor may not seek a speedy disposition if the case is a 'dog' – denoted as a matter lacking the necessary evidence from which a jury would convict the defendant – wherein the defendant is in custody awaiting trial. While the case will ultimately get dismissed, the defendant spends an indeterminate period of time in jail providing the state its pound of flesh.

When Mahoney and Bakke[54] and Mahoney and Clear[55] compared criminal case management in EV during the 1980s to the practices of the early 1990s, they found that defendants were more likely to receive custodial sentences in the 1990s when delay was significantly reduced. Despite the advantages to the defense, their discussions with defense counsel revealed that by and large they preferred the efficiency that was achieved by 1995 over the lack of order that existed during the previous decade. Tobin, however, purported that while attorneys may display their support for caseflow management publicly, their feelings about it is quite different behind closed doors. Many of them harbor deep reservations about caseflow management because of the implications it has on their ability to control the pace of litigation; in some cases, the extent to which they control the pace dictates whether their objectives are met[56]. Mahoney et al. research

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[53] Munsterman, G. T., Loveland, G. K., Hannaford, P. L., and T. R. Murphy. 1998. *Managing notorious cases*. Williamsburg, VA: National Center for State Courts.

[54] See Note 4 supra.

[55] Mahoney, B., and T. Clear. 1990. *Criminal caseflow management in the Essex County Superior Court (Newark, NJ), 1988-1989*. Williamsburg, VA: National Center for State Courts.

[56] See Note 41 supra.

supported these findings noting that even in districts where case management was successful, there was chronic pressure from some attorneys to relax standards[57].

The limited number of attorneys practicing in the criminal courts can also bolster a culture not attuned to caseflow efficiency. In such instances, a professional courtesy develops among adversaries resulting in a high tolerance quotient for continuances. For instance, motions to disallow adjournments are less frequent or taken less seriously in courts with an elevated quotient. Abandisky purported that lawyers and judges become socialized into the traditions of the organization[58]. Once comfort settles in, attorneys, in particular, have a stake in the status quo because of the advantages reaped from an organization with which they have rapport and familiarity. Therefore, in order to make significant progress towards reducing delay, the behavior patterns of both the court and attorneys must be analyzed[59]. Once problem areas have been uncovered, reform measures to enhance efficiency do not come effortlessly. Arthur Vanderbilt was mindful of this challenge stating "court reform is not a sport for the short winded"[60].

Peak examined court administrators' perceptions regarding sources of conflict in their profession. The research found that a major source of conflict was, in fact, caseflow management. Participants in the study mentioned, among other things, backlogs and

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[57] See Note 28 supra.

[58] Abadinsky, H. 2008. *Law and justice: An introduction to the American legal system 6th ed*. Upper Saddle River, NJ: Pearson Education Inc.

[59] Sipes, L. L., Carlson, A. M., Tan, T., Aikman, A. B., and R. W. Page, Jr. 1980. *Managing to reduce delay*. Williamsburg, VA: National Center for State Courts.

[60] See Note 4 supra, page 4.

judges' calendaring and adjournments of matters as critical areas[61]. These findings are in accord with results of other studies. One reason for the consistency is due to the importance that PJs generally attach to this function. Many of them view caseflow management as judicial in nature and consequently are reticent in delegating it to an administrator. Moreover, these same studies showed that caseflow management is one of the ten *least*-delegated responsibilities among PJs. Research cited by Dubois and Boyum proposed the PJ take a more assertive role in handling cases so as to induce their disposition[62]. A clear paradox thus exists, wherein while caseflow management is typically identified as one of the primary duties of court administrators, it is not an area that they have complete or in some cases even partial control over.

Administrators' range of caseflow authority can vary from one court to another. For instance, Aikman noted that while in some courts administrators have "explicit responsibility for overseeing…caseflow management processes" [63], administrators in other districts have no such purview to the extent that judges will not even consider their recommendations let alone delegate decisions to them. This suggests in very obvious ways that the court's leadership and organizational culture can profoundly affect administrator functions including those fundamental to the position.

Apart from the role ambiguity that administrators face in their position, they can also be challenged by judges' resistance to performance evaluations. While some court reforms have attempted to emulate a business model, they remain considerably different

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[61] See Note 13 supra.

[62] Dubois, P. L, and K. O. Boyum 1993. Court reform: The politics of institutional change. In *Handbook of court administration and management*, ed. S. W. Hays and C. B. Graham, Jr. 27-51. New York, NY: Marcel Dekker, Inc.

[63] See Note 30 supra, page 167.

from other types of organizations. In courts, for instance, hierarchal lines of authority are blurred and the tension on the manager to effectively function with this role ambiguity is inherent to the position[64]. The institution of courts is in some ways akin to higher education and hospital environments. In courts, judges frequently identify with the profession whereas administrators identify with the organization. Colleges and universities have a similar dynamic between professors and administrators and the same can be said of doctors and administrators in hospitals. Because their sources of legitimacy and performance standards differ from that adopted by management, it makes accountability particularly as it relates to case management tenuous[65].

In instances when appropriate, control over case management is completely delegated to them by PJs, administrator efforts to move cases may still be futile. Some data revealed that cases are generally disposed of by attorneys, and not judges, juries, or for that matter, administrators because much of the activity for a case to reach disposition, including exchanging and reviewing discovery, interviewing witnesses and victims, motions, and trial preparation, is handled by attorneys. Tobin found that while factors such as indiscriminate scheduling, relaxed continuance standards, and lack of accountability and case information contribute to delay, the most significant cause was the court's lack of control over *actual* case processing[66]. Mahoney et al. also found that

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[64] See Note 58 supra.

[65] See Note 17 supra.

[66] See Note 41 supra.

with regard to criminal matters, the procedures employed by the prosecutor's office and police department has a significant impact on case processing time[67].

Indeed, trial courts are unique and complex because, inter alia, they operate with limited control over individuals (jurors, law enforcement, attorneys, witnesses, corrections, etc.), who can significantly impact caseflow. This loosely-coupled system incorporates individuals and groups whose competing interests and objectives do not necessarily correlate with efficient caseflow. Fetter described the structure as a fragmented one[68]. The fragmentation makes prospective analysis (policy futures) especially challenging because of interagency reliance on resources. Etizioni denoted the trial court as a

> "large, complex social unit in which many social groups interact. While these groups share some interests…they have other incompatible interests"[69].

Because of differences in influence and resources, the local conditions and culture of the court must be considered when formulating policy and procedure. Gallas argued that in light of varying dynamics and factors that pervade the court from one district to another, there is no universal approach in managing all court environments[70].

The Importance of Caseflow Management

Delay is defined as either necessary or unnecessary. Much of what is involved in case management is distinguishing between the two. In so doing, managers are primarily

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[67] See Note 28 supra.

[68] Fetter, T. J. 1993. Planning for court management. In *Handbook of court administration and management*, ed. S. W. Hays and C. B. Graham, Jr. 483-496. New York, NY: Marcel Dekker, Inc.

[69] Etzioni, A. 1964. *Modern organizations*. Englewood Cliffs, NJ: Prentice-Hall, Inc, page 41.

[70] Gallas, G. 1976. The conventional wisdom of state court administration: A critical assessment and an alternative approach. *The Justice System Journal* 2 (1): 35-55.

responsible for developing and implementing policy and procedure to mitigate unnecessary delay. As noted in the Trial Court Performance Standards, unnecessary delay "causes injustice and hardship…and is the primary cause of diminished public trust and confidence in the court"[71]. The ABA submitted that unnecessary delay constitutes any elapsed time that falls outside that which can be reasonably expected for court events to occur[72].

Managing the caseflow effectively is important because it is critical to reducing delay. In *The Art and Practice of Court Administration*, Aikman enumerated the benefits of proactive case management. The advantages, in relevant part to this research, include:

- Time standards for postdisposition matters, with the standards and processing differentiated by case type and type of matter.
- Firm commitment to the credibility of assigned dates for both hearings and trials (there is no such thing as a "first" date).
- Macro and micro statistical reports providing a full picture of the pending, active caseload and the cases that have been disposed, with individual "early warning" reports for each trial judge identifying cases assigned to the judge that are close to missing a preset checkpoint in case processing[73].

Ensuring that individual justice is given to individual cases is the raison d'etre of the trial court. Caseflow management coordinates the activities and resources (including the human capital) so that this underlying purpose of the court is not compromised or otherwise not attained due to unnecessary delay. Delay, perhaps more than any other single factor, vitiates all other efforts made by the court to achieve justice. Hewitt and associates described it as "a disease…and a symptom of unhealthy conditions"[74]. Indeed,

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[71] Bureau of Justice Assistance. 1997. *Trial court performance standards with commentary*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, page 10.

[72] See Note 29 supra.

[73] See Note 30 supra, pages 353-354.

developing methods to reduce and eliminate delay is a fundamental responsibility of court managers because besides discrediting the purpose of the court, it is destructive to its existence. Ernest Friesen explained the importance of delay reduction in this way:

> "The study of delay is not the study of inefficiency, but is the study of the very purposes for which courts exist…Justice is lost with the passage of time…No matter how you look at it, whether it's a civil or a criminal matter, time destroys the purposes of the courts. We study case management because case management is the way we get rid of the waiting time, [by] which we control delay, [and by] which we enhance the purposes of courts. Case management is what we're about in controlling delay"[75].

The CourTools

The NCSC recently promulgated ten trial court performance measures, referred to as CourTools[76]. The NCSC highlighted five reasons why managers should utilize CourTools in evaluating the court's performance. First, the empirical data offered by the measurements allows the court to develop policy and procedure based on outcomes that are consistent with reality, rather than perceptions or anecdotal information, which may not be entirely accurate. Second, the measurements focus on aspects of the operation that have the greatest impact on court users thereby ensures that resources are gauged toward these areas. Third, given that the methods focus on outcomes, it fosters creativity among court staff in developing innovative means to achieve desired ends. Fourth, it allows the court to articulate its budgetary needs while maintaining accountability through evidence-based data. Lastly, since courts operate from a budget funded by taxpayers, the public is

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[74] Hewitt, W., Gallas, G., and B. Mahoney. 1990. *Courts that succeed*. Williamsburg, VA: National Center for State Courts, page vii.

[75] See Note 17 supra, page 16.

[76] See Note 1 supra.

entitled to objective data by which they can evaluate performance[77]. Furthermore, when the court assesses its own performance and acknowledges its accomplishments and areas of needed improvement, its ability to autonomously govern the role and responsibilities of the third branch of government is strengthened.

Measures 2, 3, 4, and 5 provide a methodology by which court managers can examine their management and processing of cases. The measures include clearance rates (measure 2), time to disposition (measure 3), age of active pending caseload (measure 4), and trial date certainty (measure 5). Ostrom and Kauder suggested that while measuring success in the court can be elusive given goals such as justice and equality, CourTools can be used to assess the court's effectiveness in achieving its fundamental objectives[78].

Clearance rate is defined as "the number of outgoing cases as a percentage of the number of incoming cases"[79]. The purpose is to determine:

> "Whether the court is keeping up with its incoming caseload. If cases are not disposed in a timely manner, a backlog of cases awaiting disposition will grow. This measure is a single number that can be compared within the court for any and all case types, from month to month and year to year, or between one court and another. Knowledge of clearance rates by case type can help a court pinpoint emerging problems and indicate where improvements may be made. Courts should aspire to clear (i.e., dispose of) at least as many cases as have been filed/reopened/reactivated in a period by having a clearance rate of 100 percent or higher"[80].

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[77] National Center for State Courts. 2006. *Future trends in state courts: Performance measurement gains momentum through CourTools*. Williamsburg, VA: Author.

[78] Ostrom, B. J., and N. Kauder. 2007. Measuring court performance. In *Ten trends impacting state courts*, NCSC, 20-21. Williamsburg, VA: National Center for State Courts.

[79] See Note 1 supra, page 1.

[80] Loc. Cit.

Time to disposition is defined as the "percentage of cases disposed or otherwise resolved within established time frames"[81]. The measure is intended to be used in conjunction with clearance rates and age of active pending caseload, to assess "the length of time it takes a court to process cases"[82]. The court's performance is compared with local, state, or national guidelines in determining "timely case processing…and provides a framework for meaningful measurement across all case types"[83]. Figure 1 illustrates the ABA, Conference of State Court Administrators (COSCA), and NJCDSC processing standards for criminal case-types.

Figure 1. Criminal Case Processing Standards

COSCA Case Processing Standards	ABA Case Processing Standards	NJCDSC Standards
➢ Felony – 100 percent within 180 days ➢ Misdemeanor – 100 percent within 90 days	➢ Felony ▪ 90 percent within 120 days ▪ 98 percent within 180 days ▪ 100 percent within one year ➢ Misdemeanor ▪ 90 percent within 30 days ▪ 100 percent within 90 days	➢ Pre-Indicted Cases ▪ 100 percent within 60 days of arrest (backlog not to exceed 30 percent of caseload) ➢ Post-Indicted Cases ▪ 100 percent within 120 days of indictment (backlog not to exceed 30 percent of caseload)

The age of the active cases' measure refers to the cases that are filed, but are not yet disposed. It is measured as the number of days from filing until the time of measurement. The NCSC states:

> "Having a complete and accurate inventory of active pending cases as well as tracking their number and age is important because this pool of cases potentially requires court action. Examining the age of pending cases makes clear, for example, the number and type of cases drawing near or about to surpass the court's case processing time standards. Once the age spectrum of cases is

[81] Loc. Cit.

[82] Loc. Cit.

[83] Loc. Cit.

> determined, the court can focus attention on what is required to ensure cases are brought to completion within reasonable timeframes"[84].

The fourth measure, trial date certainty, examined in this study is defined as:

> "The number of times cases disposed by trial are scheduled for trial. Specifically, the measure evaluates…the effectiveness of calendaring and continuance practices for both jury and non-jury trials. According to the NCSC, timely case disposition is correlated with the…court's ability to hold trials on the first date they are scheduled to be heard"[85].

Complex Criminal Cases

Strategies

The notion of complex criminal cases and the strategies employed by managers in handling them is probably best understood within the context of DCM. In its simplest terms, a DCM program tracks cases in accordance to their level of complexity. This implies that all cases are not managed the same with respect to the rate by which they are expedited[86]. DCM involves the court and attorneys addressing three questions. First, approximately how much time will this case require to reach disposition? Second, how much effort will the attorney need to invest in disposing the case? Third, how much court supervision will be needed for a just and timely resolution? [87] When it was first introduced, many courts were operating under a "FIFO" (first in, first out) approach. Under this case processing system, all cases are treated alike and disposition is mostly driven by both filing date and level of complexity[88]. Solomon and Somerlot suggested

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[84] Loc. Cit.

[85] Loc. Cit.

[86] Bureau of Justice Assistance. 1993. *Differentiated case management: Program brief.* Washington, D.C.: Author.

[87] See Note 15 supra.

that while all cases must be managed, the amount of time afforded to managing the case should be centered on its characteristics[89].

Henderson and others noted that DCM has the potential of saving the court costs in the following areas: prisoner transportation, jail, juror, police/witness, and indigent defense days, number of processing events (including cost of issuing and delivering notices, motions, court appearances, grand jury presentations, etc.), and judge "down time". The authors were careful in drawing cost-benefit conclusions because the expenses that were directly attributable to DCM were difficult to determine. Nonetheless, the study did show that DCM reduced the time to disposition and the total number of aged cases in the system for two of the counties studied[90].

Some courts have used a summary jury trial to expedite the disposition of complex cases. In a summary jury trial, which, are used exclusively for civil case management, a judge or magistrate presides over the matter and, much like a typical trial, attorneys present the jury with an opening argument, but synthesize the evidence without witness testimony. The "trial" is much shorter, typically lasting about a half day, and offers both sides insight into the strengths and weaknesses of the case. Keilitz (1993) found that approaches which evaluate cases on this basis help to reduce the burden on court resources while eliciting a more timely resolution[91]. Verdicts are only advisory and

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[88] Bakke, H. C., and M. Solomon. 1989. Case differentiation: An approach to individualized case management. *Judicature* 73 (1): 17-21.

[89] Solomon, M., and D. K. Somerlot. 1987. *Caseflow management in the trial court: Now and for the future*. Chicago, Il: American Bar Association.

[90] Henderson, T. A., Munsterman, J., and R. W. Tobin. 1990. *Differentiated case management: Final report*. U.S. Department of Justice, Office of Justice Programs, page 3.

provide the parties with an objective evaluation of the case to compel one of the sides to be more flexible in their plea negotiations[92].

Complex cases typically require intensive judicial oversight and a greater amount of resources and time. Solomon and Somerlot contended that these case-types should be assigned to a judge once the determination has been made that the case is complex so that a disposition plan can be immediately developed. Likewise, simple cases should also be tracked so that a disposition timeline can be tailored accordingly. The speed at which a case reaches disposition should be based on its level of complexity (to be determined early in the process) rather than its filing or arrest date[93].

There are generally three case management tracks, albeit research has supported the position that the number of tracks should reflect the requirements of the individual court rather than some arbitrary figure. The first level is often referred as *expedited* because they tend to be the most simple. These cases often move through the system with relative ease, require minimal judicial intervention, and should be expected to not go into backlog. The second level is regarded as *standard*. These cases are more difficult than expedited because while there is nothing exceptional or unique about them, they require more of the court's time for motions and conferences to resolve disputed points. The third level and a principal focus of this research is the *complex* track. For a number

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[91] Keilitz, A. L. 1993. Alternative dispute resolution in the courts. In *Handbook of court administration and management*, ed. S. W. Hays and C. B. Graham, Jr. 383-403. New York, NY: Marcel Dekker, Inc.

[92] See Note 29 supra.

[93] See Note 89 supra.

of reasons, cases are tracked into this category because of the time and difficulty that the matter is expected to engender[94].

Notorious or high profile cases, in particular, have a tendency to be complex, but setting a reasonable (but firm) trial date is the most important factor in managing the case. The trial date sets the tone from which the attorneys are expected to schedule and complete all other events leading up to the trial[95]. Goerdt's et al. research was consistent with this finding in that

> "a firm trial date policy (i.e., a high percentage of jury trial cases starting on the first scheduled trial date) was the best predictor of faster case processing times"[96].

Apart from high profile cases, the literature suggested that designating cases into a complex track is a highly individualized process. It does not cite any particular formula that can be universally applied to all courts. In fact, scholars advocate quite the opposite. Steelman and associates stated that "a court might determine that its cases need even further differentiation than can be accommodated within this simple three-part scheme"[97].

Several factors impact the court's ability to process both simple and complex case types. The NACM enumerated the following issues:

- Court system and trial court organization and authority relationships, including the management of judges by judges
- The identification, development, selection, and succession of chief judges and court managers, chief judge/court manager executive leadership teams, and the best use of these and other multi-disciplinary executive teams
- Allocation of court resources: judges, managerial, technical and administrative staff; budgets; technology; and courthouses, courtrooms, and other facilities across courts, court divisions, case types, and particular types of hearings

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[94] See Note 17 supra.

[95] See Note 53 supra.

[96] See Note 18 supra, page 14.

[97] See Note 17 supra, page 5.

- Application of court technology and the court's research, data, and analytic capability
- Coordination with the judiciary's justice system partners[98]

Parameters

The methods by which DCM is instituted have varied because, among other reasons, joint assessments by the court, prosecutor, and defense are based on local conditions. For instance, when DCM was first introduced in Camden Vicinage, NJ, administrators used the PDC event to determine whether the case would be pleaded, diverted, or assigned to one of three tracks. In Pierce County, Washington, DCM was originally used only for drug cases. Screening guidelines were developed in classifying each drug case to a specific track[99]. Zorza noted a triage model for cases with self-represented litigants. While the model discussed is designed for civil and family-related matters, the definition and criteria used in identifying complex cases are noteworthy. The model defined complex cases as those "more likely to cause delay and injustice"[100]. These cases would be tracked separately and supervised more intensely. The criteria used to determine the level of complexity included: number of claims and counterclaims, number of parties, type of case, prior history of litigation, quality of pleadings, amount of money at stake, interpersonal history between the litigants, and the likelihood that the relationship will continue into the future.

Cooper et al. suggested that tracking cases by their makeup is important because complexity is not always determined by case-type alone[101]. For instance, a drug case,

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[98] See Note 11 supra, page 12.

[99] See Note 88 supra.

[100] See Note 12 supra, page 70.

which is ostensibly simple and can be readily disposed, can be delayed given the characteristics of the case. A buy-and-bust drug case with a single defendant, a single buyer, and a police witness are relatively routine matters. Conversely, a drug kingpin case with several defendants that involves wiretapping is quite different and will obviously require more time to reach disposition. Research into nine criminal trial courts showed that all of the courts took a longer period of time to resolve complex cases compared to more simple cases. In particular, murder and rape cases took longer to adjudicate than other case-types. The time to disposition was, nonetheless, shorter in efficient courts. The relationship between caseload composition and time to disposition is not clear, however. The authors cited several studies wherein strong correlations emerged in some jurisdictions while weak in other districts[102]. Total processing time may be the result of the court's individual practices in handling its caseload, as suggested by other scholars.

Tobin asserted that differentiating cases in accordance to complexity has been one the greatest contributions of caseflow management. He found, however, that tracking cases as simply a misdemeanor or felony was not conducive to effective management. Other categories in differentiating criminal cases included: seriousness of charges, likelihood of plea, diversion alternatives, drug involvement, case complexity with regard to parties, issues, and witnesses, jail status of defendant, and constitutional issues such as

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[101] Cooper, C., Bakke, H., and M. Solomon. 1993. *Differentiated case management: Implementation manual*. Washington, D.C.: Bureau of Justice Assistance.

[102] See Note 36 supra.

search-and-seizure[103]. Analyzing the length of criminal jury trials in nine jurisdictions, Sipes and Oram compared the complexity of cases using the following indicators: number of defendants, number and type of attorneys, number of and time for witnesses, and quantity of exhibits[104]. Figure 2 illustrates the complexity criteria considered by the Berrien County Court in tracking its criminal cases[105].

Figure 2. Criminal DCM Tracking Criteria in Berrien County, Michigan

Complexity Criteria		
Low Complexity Factors	Medium Complexity Factors	High Complexity Factors
➢ Police witness only ➢ Simple motions (two or fewer) ➢ Motions requiring evidence hearing of less than a half day ➢ Less than five or six witnesses (total prosecution and defense)	➢ Multiple motions (three or more) ➢ Expert witnesses necessary (other than drug analyst) ➢ Out-of-state witnesses ➢ Motion(s) requiring evidence hearing of a half day or longer	➢ Psychiatric defense/issue of competency to stand trial ➢ Multiple motions involving complex legal issues ➢ Extraordinary number of witnesses to be called ➢ Defendant under interstate complaint or in prison

Ostrom and Hanson found that the confluence of a violent felony charge, the issuance of a bench warrant, pre-trial release on bond, and the resolution by trial increased the time to disposition significantly for all of the courts they examined[106]. Luskin offers a list noted in Figure 3 of case and court characteristics that affect case processing time. The final report showed that some of the variables had different effects on the courts examined[107]. For instance, the defendant's prior record and status, motions,

[103] See Note 41 supra.

[104] See Note 50 supra.

[105] See Note 101 supra, page 34.

[106] See Note 36 supra.

[107] Luskin, M. L. 1981. *Describing and analyzing case processing time in criminal cases: Suggestions for administrators*. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

and disposition of the case by trial were generally influential. However, charge-type and the seriousness of the offense were more critical in some jurisdictions than in others.

Figure 3. Characteristics Affecting Case Processing Time

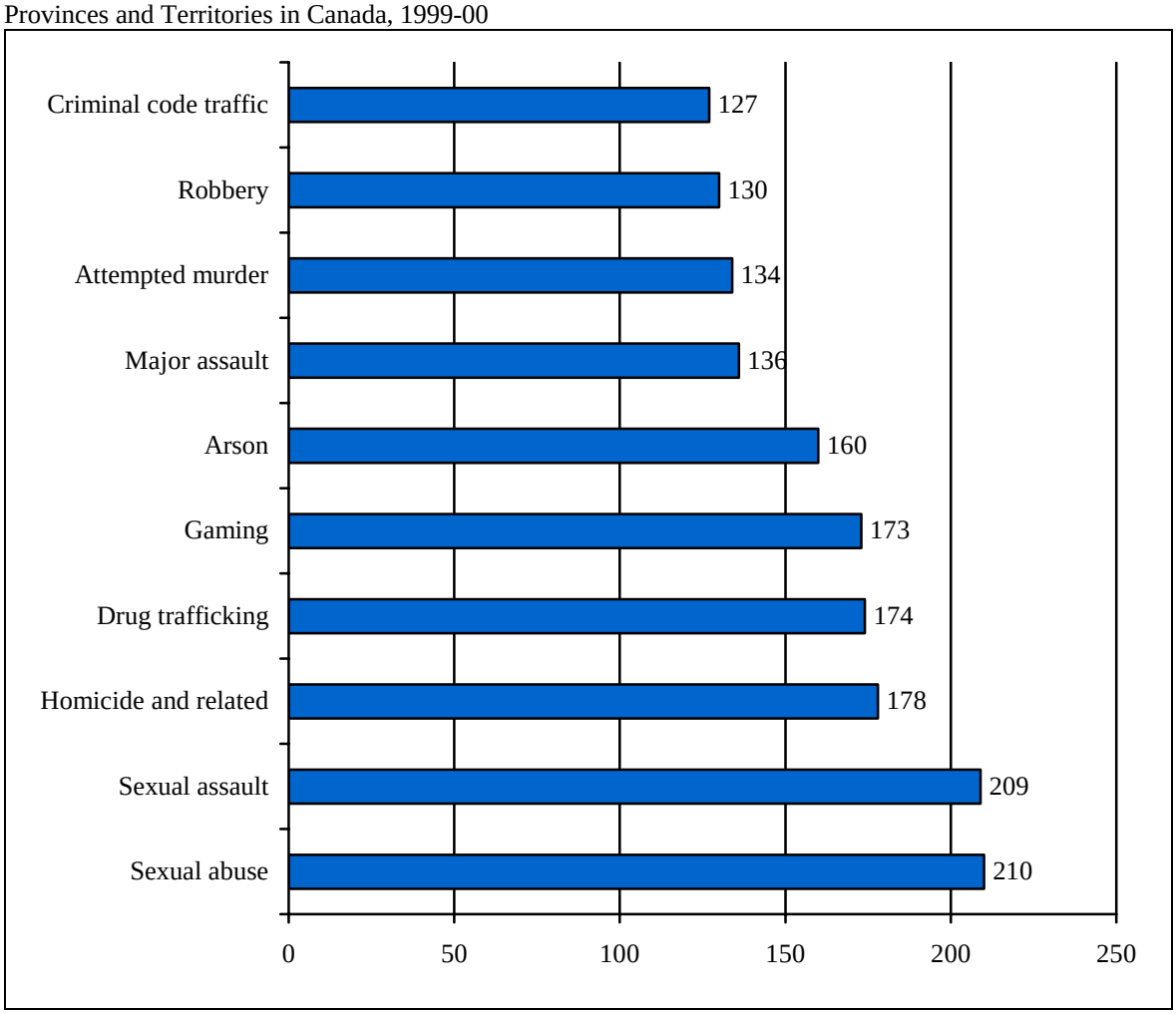
Case Variables	Court Variables
➢ Defendant's age, sex, and race ➢ Number of co-defendants ➢ Type of crime ➢ Statutory maximum of most serious count ➢ Habitual offender prosecution ➢ Pre-sentence report ➢ Prior record ➢ Pre-trial release status ➢ Plea offer ➢ Disposition type ➢ Type of defense attorney ➢ Judge ➢ Number of motions ➢ Indictment/information ➢ Days defendant fails to appear ➢ Days psychiatric commitment/evaluation ➢ Number of continuances ➢ Number of counts charged ➢ Strength of evidence ➢ Physical evidence	➢ Number of new filings ➢ Number of cases on each judge's docket ➢ Average case processing time in preceding time period ➢ Number of cases pending ➢ Number of judges on the bench ➢ Delay-reduction innovations affecting all cases (e.g., change of calendaring system) ➢ Other changes in court structure/operation

Goerdt et al. found that courts with a higher proportion of serious criminal cases (murder, rape and robbery), drug sale cases, and bench warrant cases had longer disposition times. Interestingly, however, neither court size nor caseload per judge were related to time to disposition[108]. In an adult criminal court survey, the Canadian Centre for Justice Statistics found that cases dealing with persons took 50 percent longer compared to cases involving only property. Figure 4 depicts the median elapsed time from first to last adult criminal court appearance by case type. The data showed that sex-related crimes and homicide took the longest to reach disposition. The research found that between 1995 and 2000 the number case filings decreased, but complexity among cases filed increased. For instance, the average number of charges per case increased

[108] See Note 18 supra.

from 2.04 in 1995-96 to 2.14 in 1999-00. Multiple-charge cases required an average of 5.2 appearances compared to 4.4 appearances for single-charge matters. Taken as a whole, the proportion of cases with multiple charges increased from 45 to 48 percent during the same time period[109].

Figure 4. Median Elapsed Time (in days) from First to Last Adult Criminal Court Appearance Among Nine Provinces and Territories in Canada, 1999-00



Bakke and Solomon believed that no case is presumptively complex. They posited that attorneys have the burden of distinguishing the case as complex and must

[109] Pereira, J., and C. Grimes. 2002. Case processing in criminal courts, 1999/00. *Juristat* 22 (1), page 3.

justify the classification to the court before additional time is granted[110]. Heise purported that cases generally *become* complex for three reasons: 1) evidence is technical in nature or difficult to obtain; 2) legislation relevant to the case is unclear; and 3) characteristics of the trial produce difficulties. Aside from this, case complexity is perception-based. In basic terms, there is a "scaling effect" in what constitutes a complex case based on the stakeholder's level of experience in the criminal justice system[111].

Summary

The foregoing review addressed the relevant questions pertaining to the major themes of this study. The concept of caseflow management is well researched and while admittedly scholars show that no universal approach can be applied to courts in managing their filings, there are fundamental tenets that have been proven to be generally effective. Courts vary in their calendaring systems and charging procedure. Research has shown that, by itself, an individual, master, or hybrid system or a grand jury or information-based procedure does not significantly affect total case processing time. Delay is not inevitable despite variations in court size, resources, or the aforementioned organization structures. Differences in backlog and overall efficiency are gauged pari passu with the values and norms of the local legal culture. On a number of levels, therefore, caseflow management is an amorphous undertaking and presents a host of challenges that can elude the administrator given their limited span of control and influence. To assist managers in administering the more concrete aspects of the work, however, the

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[110] See Note 88 supra.

[111] Heise, M. (2004). Criminal case complexity: An empirical perspective. *Journal of Empirical Legal Studies* 1 (2): 331-369, page 349.

CourTools provide the methodology by which they can operationalize and assess the court's performance in relation to backlog goals.

Determining complexity with precision was to no avail because a review of the literature suggested that all cases cannot be tracked based solely on select criteria. Cases denoted complex generally require greater judicial oversight, time, and resources than what is necessitated by a majority of filings. DCM is the prevailing approach used to filter cases where delay is expected. Although variations exist, given local circumstances, in how DCM is instituted, cases are ordinarily distinguished along three tracks including expedited, standard, and complex. Differentiating a complex case from a non-complex one is a multidimensional task. Some of the variables used in making this distinction included: number and type of charges, likelihood of plea, diversion alternatives, dynamic between parties, issues, motions, and witnesses, and custody status of defendant.

METHODS

Delimitations and Assumptions of the Study

This research is a case study, cross-sectional analysis focusing on recent case processing trends in the EVCD. Although every effort was made to ensure that an adequate number of complex cases were included, the results may not be entirely representative. For instance, there may have been instances wherein cases demonstrating the same complex variables reached disposition at an earlier time than what was included in this study.

There were two data entry issues that were uncovered when dispositions were sorted by age. The first related to defendants admitted into the PTI program. PTI cases that had aged to the extent that they were incorporated into the sample had only done so because the actual disposition date was not entered at the time the matter was disposed. The second discrepancy pertained to pre-2002 filings – one of which dated as far back as 1980. Most of these cases were dismissed by motion of the prosecutor in a large scale effort to vet the system of cases no longer deemed substantive. Most of these cases, albeit old, were not placed in inactive status at the time the bench warrant was ordered. Consequently, cases continued to age until they were ultimately dismissed in the 2006-07 court year. In order to eliminate the adverse effects that these dispositions would have on research findings, defendants with an indictment filing date prior to July 1, 2002 or submitted into the PTI program were excluded.

Case processing performance was examined for the previous four court years. Consequently, it does not provide any assurances in relation to forecasting future

caseload trends. This is particularly noteworthy given the fluctuation of filings illustrated in Table 1 in that such variations could be found statistically significant.

This study also examined perceptions of case processing performance among judges, APs, and ADPDs. This particular group of stakeholders were selected given environmental (assigned courtroom) and intergroup dynamics (professional relationships which may have developed) that they had in common while processing cases. Complexity was narrowly defined considering the following three parameters: 1) stakeholder feedback; 2) review of the literature; and 3) factors that could be extracted from the automation system.

Similar to the Church et al. study[112], this research examined the pace at which cases were processed in the EVCD. It did not evaluate whether dispositions were reached justly. It is assumed that justice was not compromised in the effort to dispose of cases more expeditiously. In their study of comparing fast courts to slow ones, both judges and attorneys in the most efficient districts indicated that the process did not operate at the expense of justice. When the slower courts were queried on the same issue, they believed justice could *not* be achieved because of their inefficient practices. Therefore, while it is possible that processing cases expeditiously can have a negative impact on justice outcomes, research findings show the opposite to be more likely. Solomon quoted one judge, who observed that "while it may be true that 'faster' is not always better, 'slower' is almost always worse"[113].

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[112] See Note 26 supra.

[113] Solomon, M. 1993. Fundamental issues in caseflow management. In *Handbook of court administration and management*, ed. S. W. Hays and C. B. Graham, Jr. 369-381. New York, NY: Marcel Dekker, Inc, page 370.

There were three main assumptions underlying this study. First, the data entered into the automation system is assumed to be accurate to the extent that the results and conclusions are not significantly impacted. Data entry in the automated system is demarcated by case processing stages. Initial filing information (e.g. defendant, arrest, and charge data) were entered by the prosecutor's office of the county where the complaint originated. If the case is remanded or dismissed, the prosecutor's office will close the case and then notify the appropriate municipality of its decision through a disposition letter generated by the system. If the case is indicted, the criminal courts assume responsibility for data entry related to disposition and sentencing. Second, it was accepted that the self-reported responses by the legal stakeholders are sufficiently free of error. Third, it is assumed that the most complex cases that reached disposition in the 2006-07 court year were also the oldest in the system, and were therefore captured in this analysis when the oldest ten percent of dispositions were included.

Limitations

Due to the short duration of this project, the scope of this assessment is narrow insofar that conclusions were extrapolated from the findings of the measured time period. As previously noted, this research focused exclusively on the EVCD for the said time period; consequently, findings are not universal to the NJ Judiciary even in those vicinages that have a similar makeup to EV much less urban courts in other states. Another important limitation was related to the automated system. The witness and motion data were not entered on a consistent basis; therefore, while the information available is accurate, it is not comprehensive. The time constraints of this study did not allow for an in-depth review of each case to determine the veracity of these variables.

Archive Data

CourTools 2, 3, 4, and 5

Instrument

The methodologies noted in the CourTools' case management measures were used to calculate the clearance rate, time to disposition, age of active pending caseload, and trial date certainty of all criminal cases filed in EV. Promis/Gavel (P/G), an automated criminal case tracking system supported by the NJCDSC and Information Technology Office of the Administrative Office of the Courts (AOC), was used to generate the data required for the said measures. Generally, P/G captures information concerning defendants who have been charged with indictable offenses and tracks the processing of those defendants from initial arrest through appellate review. P/G provides the function of docketing, indexing, noticing, calendaring, statistical documentation, and case management reporting. Currently, the statewide criminal caseload is administered entirely through the P/G system and apart from serving the needs of the Prosecutor's Office and the criminal courts, numerous other agencies utilize P/G to research defendant status information.

The EVCD generates local case management reports referred to as focus reports. With the exception of trial date certainty, the AOC also collects case processing data from P/G and promulgates statewide case management statistics on a monthly basis. These reports were reviewed and customized to the methods cited in CourTools 2, 3, 4, and 5. The P/G fields that were used included the charge/disposition screen, complaint issue date, charging document, and disposition date.

Analysis Framework

The data used in this analysis included all filings from the most recent four court years. Table 2 illustrates the number of pre-indictment and post-indictment case filings for the EVCD during the relevant time period.

Table 2. Number of Essex Vicinage Criminal Division Filings by Court Year

Court Year	Pre-Indictment Filings N	Post-Indictment Filings N
2004	20,249	7,189
2005	18,495	5,498
2006	17,841	6,539
2007	18,046	7,519

The data was analyzed using measurements of central tendency depicted in frequency distribution charts and shown in aggregate. The actual performance outcomes were also tested for association against the perceived outcomes noted by the stakeholder groups. In some instances, EV data was cross-tabulated with statewide findings. For the clearance rate, the sum of outgoing cases was divided by the sum of incoming cases for the most recent four court years. The time to disposition was calculated using the mean and median for the 2005-06 and 2006-07 court years. With regard to the age of active pending cases, the number of cases in backlog (beyond 60 days for pre-indictment and 120 days for post-indictment) was divided by the number of pending cases for the four court years. Trial date certainty was measured for the previous court year wherein the number of scheduled trial events was cross-tabulated with the number that actually culminated in trial.

Complex Case-Types

Instrument

The P/G system was used in analyzing the oldest post-indicted cases that reached disposition during the 2006-07 court year. The oldest cases disposed during the said

year, not submitted into the PTI program, and had an indictment filing date no earlier than July 1, 2002 were collected and analyzed. A focus report was created within P/G to extract the selected criteria of the caseload. Cases were reviewed through the Case Related Inquiry module using the following successive screens: case detail, case notes, defendant list, defendant detail, warrant, and event. The data was subsequently transferred into an Excel spreadsheet and then imported into the Statistical Package for the Social Sciences program for analysis.

Analysis Framework

In *Describing and Analyzing Case Processing Time in Criminal Cases*, Luskin recommended that in order for a case manager to examine the effects of delay, they must define and measure case processing time[114]. Case processing time (the life of the case) must include a filing and disposition date that can be applied to each sampled case. The author also noted that the selected cases should be representative of the population of cases under analysis. In this study, the oldest ten percent of non-PTI cases with an indictment filing date no earlier than July 1, 2002 and disposed between July 1, 2006 and June 30, 2007 (inclusive) were selected. The beginning date was defined as the date the complaint was indicted. The disposition date was governed by the date the case was disposed; that is, the date when the defendant was either convicted, acquitted, or dismissed.

The data was analyzed using measurements of central tendency. The complex factors were displayed in accordance to their frequency distribution. During the 2006-07 court year, there were a total of 7,523 post-indicted cases that reached disposition in EV.

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[114] See Note 107 supra.

The total number of dispositions decreased considerably after removing all PTI matters and cases with an indictment filing date prior to July 1, 2002. In the interest of obtaining a sizable sample of cases, the modified total was not considered an alternative to the original total when the oldest cases were selected. Cases were ranked in accordance to age (from date of indictment). The oldest ten percent of cases were selected based on the total number of recorded dispositions (7,523 filings). The total sample included 755 filings (slightly more than ten percent) because the age of the 752nd filing (267 days) matched three additional filings.

The variables used in examining the dispositions included the following: judge, AP, defense counsel (which may or may not have been an ADPD), indictment or accusation number, prosecutor number, number of defendants, defendant name, number of witnesses, number of motions, case-type, degree of charge/crime, days over goal, filing date, and case disposition (trial, plea, dismissal, etc.) including reason and date. The NJ Judiciary tabulates dispositions by filing, meaning that they are calculated by defendant. For instance, a disposed case with three defendants would account for three dispositions. In light of this distinction, variables including the number of defendants and the number of witnesses were evaluated as cases (N = 602). The remaining variables were assessed by filing/defendant (N = 755). The Hierarchy Rule was used for filings that included more than one case-type or crime degree. In accordance with the guideline, the most serious of case-types and highest degree were selected. Only post-indicted motions and witnesses whose testimony was identified as either grand jury or trial court were included.

The list of variables used to examine case complexity is not exhaustive. There are certainly other factors not examined here, however mentioned in the literature, that may impact the pace of litigation. For instance, Luskin mentioned the "strength of evidence" as having a possible affect[115]. This data and the like were excluded from analysis due primarily to the difficulty in obtaining it on a large scale, given this study's constraints of time and resources. While recommended that court administrators consider intangible criterion, this research focused on those factors that were more definable for two reasons. First, in the interest of time, it was not feasible to cross-reference the cases to examine the more abstract causes creating delay. Second, given the purpose of this research, that being to serve as an initial step in understanding criminal case processing in EV, conducting such an analysis would extend beyond the scope of this project.

Survey Data

Instrument

The survey instrument used in this study was developed logically from the empirical findings of previous research. The predictor variables included role and years of experience in that role. The criterion being tested was stakeholder perception and knowledge. The questionnaire consisted of 37 questions regarding participants' current role and experience and perceptions related to case processing performance and complex case criterion. Data pertaining to some of these perceptions were elicited through a series of Likert scale questions (four and five-degree differential) including an open-ended question. Other questions followed a multiple choice format designed to be compared against case management archive data based on the CourTools.

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[115] See Note 107 supra, page 6.

Appendix E is a copy of the questionnaire distributed to court stakeholders. The instrument was piloted to a nonrandom group of stakeholders consisting of three judges and three court administrators. The judges included the Criminal Division PJ and two other Superior Court Judges, who had previously served in this capacity. The judges were requested to take part in pre-testing the instrument using the solicitation letter noted in Appendix F. Feedback was used to substantiate the efficacy of the questionnaire design, sampling procedures, and administrative protocol, as well as clarify any ambiguities therein. Although the instrument was developed specifically for this study, it was guided by the questionnaires devised by Mahoney and associates in *How to Conduct a Caseflow Management Review*[116] and Coolsen in *Differentiated Case Management in Cook County, Illinois: Stakeholder Perceptions and Empirical Data*[117].

The instrument was designed to encourage participants to respond to each question and statement. As already mentioned, the EVCD is structured along a team model. This approach is somewhat mirrored in attorney assignment; albeit assignments are periodically rotated. Each judge has a designated number of prosecutors and public defenders assigned to their court. In an effort to maximize the rate of response, it was decided that the surveys be delivered and collected in person by the researcher. An equal number of surveys (including the judge) were forwarded to each court to be completed, sealed, and collected. Each questionnaire was accompanied by a cover letter signed by the Criminal Division PJ urging their participation in the study, as well as requesting that

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[116] Mahoney, B., Bakke, H. C., Bonacci-Miller, A., Maron, N. C., and M. Solomon. 1994. *How to conduct a caseflow management review: A guide for practitioners*. Williamsburg, VA: National Center for State Courts.

[117] Coolsen, J. P. 2007. *Differentiated case management in Cook County (Chicago), Illinois: Stakeholder perceptions and empirical data*. Williamsburg, VA: National Center for State Courts.

the survey be returned by the end of the month (see Appendix G). Participant names were not asked, only specific background information, namely their current role in the court and their range of experience (measured in years) that they served in that capacity. Participation in the study was voluntary whereby individuals were provided the opportunity to refuse to take part or discontinue their involvement at any time. An estimated ten minutes was required to complete the questionnaire.

Population

The participants surveyed for this study were drawn solely from EV and were currently practicing in the EVCD. This study was based on a cross-sectional method, which involves the collection of data from different groups at one point in time. Cross-sectional designs do not afford the research any degree of likelihood that the results will remain consistent over time as is estimated through longitudinal data.

Participants were surveyed regarding their perceptions of two case processing facets. First, participants were asked about their knowledge of case processing outcomes (clearance rate, age of active pending caseload, time to disposition, and trial date certainty) and the relative impact court participants have on these outcomes. Second, the sample was asked to grade factors that delay the pace of litigation; that is, makes the case more (or less) complex. The factors were selected on the basis of what was cited in the literature as complex, as well as what could be reasonably extracted from the local automated system. The study included three groups totaling 86 participants, 83 of whom responded. Given the remarkable response rate, no follow-up letter from the PJ was needed. The survey was administered over a six-week period commencing July 1, 2007 and ending August 15, 2007. Table 3 illustrates the composition of the sample together

with the response rate for each stakeholder group. The largest group sampled was prosecutors who made up almost half of the sample followed by public defenders, who comprised close to a third of respondents.

Table 3. Composition of Sample by Stakeholder Status and Response Rate

Stakeholder	Population	N of Respondents	Response Rate
Judge	16	16	100
Assistant Prosecutor	40	40	100
Public Defender	30	27	88.8
Total	86	83	96.5

Analysis Framework

The derivation of the research was centered on the need to compare perceptions of case processing to actual performance so as to appropriately develop and target policy and procedure to adhere to established guidelines and meet year-end goals. The research findings are based on the experiences of the groups selected. The methodology described herein was selected on the basis of the case study approach and for the specific purposes of assessing case management performance in the EVCD. Accordingly, Sipes and associates submitted:

> "Case processing statistics should be supplemented by information obtained from judges and lawyers concerning actual operation of the litigation process. This qualitative information when combined with the quantitative information produces a profile of the local legal culture. More specifically, what is learned from participants in the litigation process often explains the pace of litigation, particularly between important events, and helps the court to assess where improvement is needed and feasible"[118].

In examining stakeholder perceptions of case management performance as noted in the instrument, the conditional effects were the focal point of analysis. Conditional effects pertain to outcomes of similar experiences (working in the criminal trial court) on different groups (judge, AP, and ADPD).

[118] See Note 59 supra, page 7.

The data was analyzed using several statistical methods. Comments on the open-ended question were reviewed using a content analysis framework. The purpose of the question was to address the notion of complexity in a historically relevant and comprehensive way. Stakeholder observations were analyzed along syntactical units and then categorized into general groups that were mutually exclusive. Word frequency was not material to the analysis. Stated plainly, as long as one stakeholder mentioned the complex factor, it was included in the findings. Frequency distribution charts were used to describe the distribution of perceptions drawn from the Likert scale questions. Chi square was utilized to test for statistical significance between stakeholder status and perceptions of case processing. If a relationship existed, the strength of the association was evaluated using Cramer's *V*. The one-way Analysis of Variance (ANOVA) was used to test for significant differences in perceptions among the three stakeholder groups. Stakeholder perceptions that were not in accord with actual performance were coded "0" and those consistent with actual outcomes were coded "1". ANOVA results were subsequently localized using a post hoc test to compare mean distribution and determine where the significance lied for those measures rejecting the null hypothesis. The .05 alpha level of significance was the benchmark value used in the analysis.

FINDINGS

Results of the study are presented in accordance to the four-prong framework. As noted in the introductory chapter, the case processing in the EVCD was assessed using both archive and survey data in rendering the conclusions and recommendations. With respect to the archive data, CourTools 2, 3, 4, and 5 were utilized to examine EVCD performance outcomes for the previous four court years totaling almost 75,000 pre-indictment dispositions and close to 29,000 post-indictment dispositions. This was followed by an analysis of the oldest ten percent of filings (N = 755), which reached disposition in the 2006-07 court year to determine gradations of complexity defined by a selected set of variables. A similar two-part analysis was conducted in evaluating survey responses. The survey was designed to match that which was evaluated in the archive data; that is, first to elicit perceptions of case management performance and second to gauge their perceptions regarding elements which make a case more (or less) complex.

The findings revealed that with the exception of two case management measures, stakeholders' perceptions did not differ significantly from one another. But, and very important, perceptions of performance were not consistent with actual performance. A review of the oldest dispositions revealed a pattern of complex factors selected for this study. Data pertaining to witnesses and motions were noted, but could not be relied upon due to inconsistencies in data entry. Perceptions of case complexity, in accordance with the specified elements, varied more between judges and attorneys than between the two types of attorneys. Finally, several variables that were not enumerated in the survey instrument were reiterated among stakeholders as engendering complexity.

Archive Data

CourTools 2, 3, 4, and 5

Clearance Rate

Table 4 compares the pre-indictment clearance rate for EV to the state during the four most recent court years. Figure 5 demonstrates the clearance rate for the current court year. The data indicates that the vicinage did not meet its clearance goal for the previous two court years, but most recently passed the 100-percent mark. Compared to the rest of the state, EV has generally kept pace with disposing of as many cases as were filed.

Table 4. Pre-Indictment Clearance Rate, 2004-07

Court Year	Essex Vicinage Clearance Rate			Statewide Clearance Rate		
	N Filings	N Dispositions	% Clearance	N Filings	N Dispositions	% Clearance
2004	20,249	21,003	104	115,682	116,752	101
2005	18,495	18,152	98	112,528	115,088	102
2006	17,841	17,666	99	113,633	114,966	101
2007	18,046	18,140	101	111,702	113,823	102

Figure 5. Essex Vicinage Pre-Indictment Clearance Percentage, 2006-07

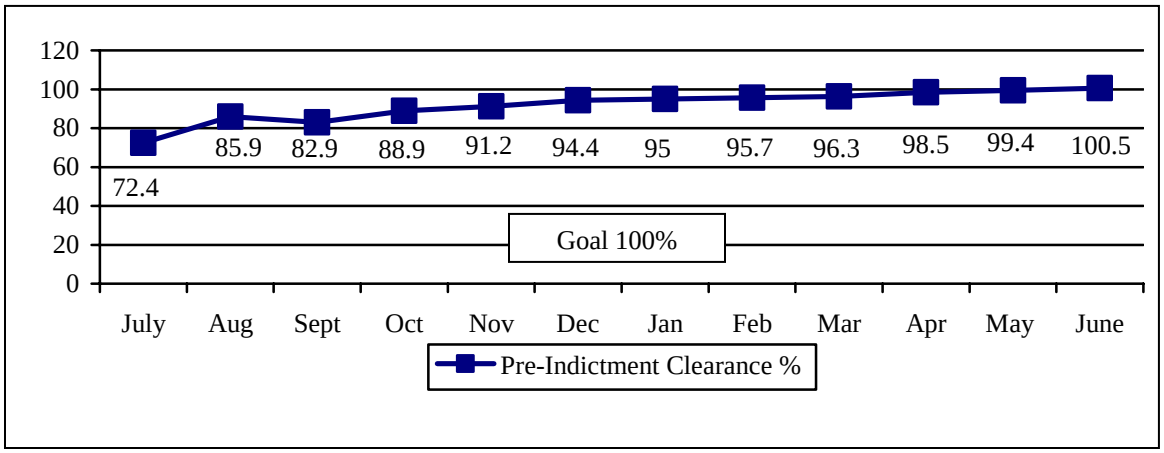


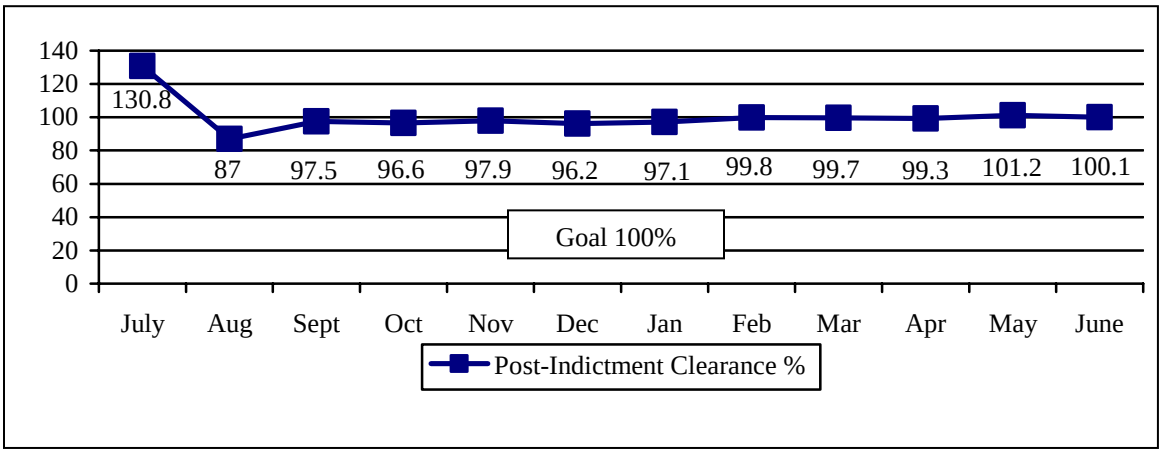
Table 5 compares the post-indictment clearance rate for EV to the state during the four most recent court years. Figure 6 demonstrates the clearance rate for the 2006-07 court year. The data indicates that the vicinage attained its clearance goal for the most recent court year. The data also shows that performance in EV has slowed considerably

in comparing the last two court years when the clearance rate was 98 and 100 percent to the two preceding court years when the rate reached 110 and 123 percent.

Table 5. Post-Indictment Clearance Rate, 2004-07

Court Year	Essex Vicinage Clearance Rate			Statewide Clearance Rate		
	N Filings	N Dispositions	% Clearance	N Filings	N Dispositions	% Clearance
2004	7,189	7,939	110	53,478	55,171	103
2005	5,498	6,766	123	53,762	56,722	106
2006	6,539	6,437	98	54,671	55,960	102
2007	7,519	7,523	100	55,962	56,097	100

Figure 6. Essex Vicinage Post-Indictment Clearance Percentage, 2006-07



Time to Disposition

Tables 6 through 8 show the time to disposition for each stage in the caseflow process. The median number of days to disposition is distributed monthly by the AOC. The data can also be organized by the vicinage to examine the mean, 70th, 80th and 90th percentile number of days for a case to reach disposition. For instance, the data indicates that 90 percent of EV defendants who were arrested and not indicted reached a disposition within 142 days. Table 8 combines the pre and post-indictment filing processing time for defendants whose indictments are disposed of by way of trial or other outcome (i.e. plea, dismissal, etc.). The data reveals that for individuals where the process ended in a verdict, there was a median of 426 days for the filing to reach disposition. The system time from arrest to disposition showed that 90 percent of the

filings were disposed within 467 days. This far exceeds COSCA guidelines, which specify a 180-day timeframe for *all* cases from arrest to disposition, as well as ABA standards that stipulate a 120-day timeframe for 90 percent of the caseload (see Figure 1).

Table 6. Time Intervals for Pre-Indictment Filings Disposed in Days

Essex Vicinage Time Interval	Complaint Filing to Pre-Indictment Disposition		Arrest to Indictment Filing	
	July-06 – June-07	July-05 – June-06	July-06 – June-07	July-05 – June-06
Median	9	7	124	110
Mean	54	-	145	-
70th Percentile	45	-	161	-
80th Percentile	77	-	191	-
90th Percentile	142	-	243	-
Statewide Median	28	27	97	87

Table 7. Time Intervals for Post-Indictment Filings Disposed in Days

Essex Vicinage Time Interval	Indictment Filing to Disposition		Indictment Filing to Trial Date	
	July-06 – June-07	July-05 – June-06	July-06 – June-07	July-05 – June-06
Median	88	74	268	253
Mean	125	-	303	-
70th Percentile	149	-	351	-
80th Percentile	195	-	388	-
90th Percentile	276	-	466	-
Statewide Median	79	74	294	291

Table 8. System Time Intervals for Filings Disposed in Days

Essex Vicinage Time Interval	Arrest to Indictment Disposition		Complaint Filing to Trials Completed	
	July-06 – June-07	July-05 – June-06	July-06 – June-07	July-05 – June-06
Median	226	186	426	349
Mean	259	-	465	-
70th Percentile	304	-	521	-
80th Percentile	365	-	561	-
90th Percentile	467	-	715	-
Statewide Median	188	172	441	435

Age of Active Pending

Tables 9 and 10 demonstrate the age of the active pre-indictment caseload. The EV backlog remained relatively steady during the previous four court years with the backlog ranging between 56 and 59 percent. A snapshot of the data following the conclusion of 2006-07, showed that while almost 60 percent of the caseload was over goal, close to three-quarters of the inventory was less than four months old.

Table 9. Age of Active Pre-Indictment Pending Filings, 2004-07

Court Year	Essex Vicinage Pending Caseload			Statewide Pending Caseload		
	N Total Pending	N Backlog Beyond 60 days	% Backlog	N Total Pending	N Backlog Beyond 60 days	% Backlog
2004	2,388	1,340	56	19,988	10,314	52
2005	2,824	1,659	59	18,955	9,304	49
2006	3,140	1,776	57	19,629	9,662	49
2007	3,123	1,767	57	19,508	9,797	50

Table 10. Age of Essex Vicinage Active Pending Pre-Indictment Filings in Months (as of 8/7/07)

	Age (months)	N of Cases	% of Cases	Cumulative %
Current	0-2	1,.274	40.7	40.7
Backlog	Over 2	973	31.1	71.8
	Over 4	399	12.7	84.5
	Over 6	358	11.4	95.9
	Over 12	95	3	98.9
	Over 24	34	1.1	100
	Total	3,133	100%	-

Figures 7 and 8 depict the percentage of the pre-indictment caseload that was over goal. During the month of June 2007, 57 percent of the caseload was more than two months old and 31 percent was more than four months old. As of August 8, 2007, close to 30 percent of the caseload was older than four months with 16 percent older than six months. When compared to nationally-held standards, the pre-indictment backlog was not on equal footing with almost 16 percent of the caseload older than six months and more than four percent over a year old (see Figure 1).

Figure 7. Percentage of Pre-Indictment Filings Over Goal for June by Year

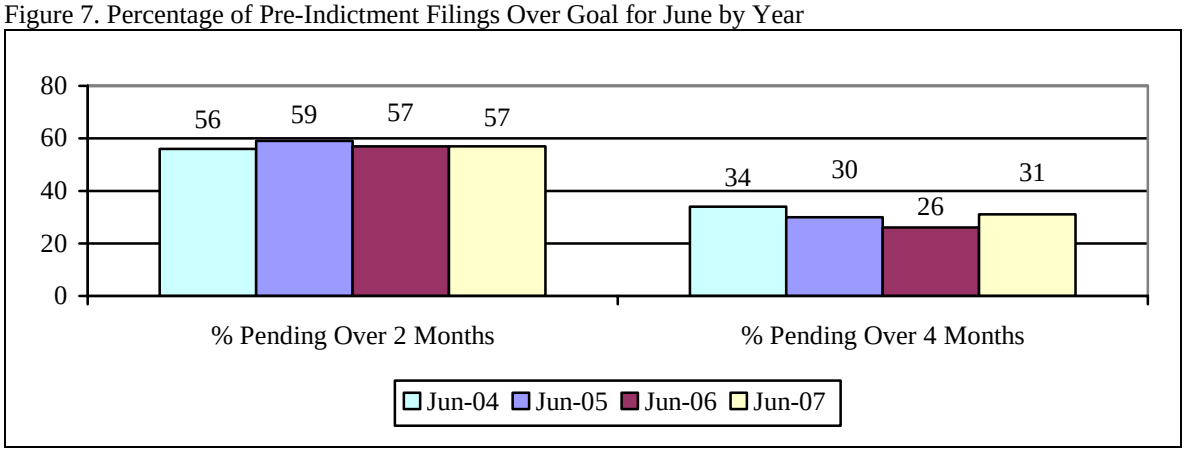
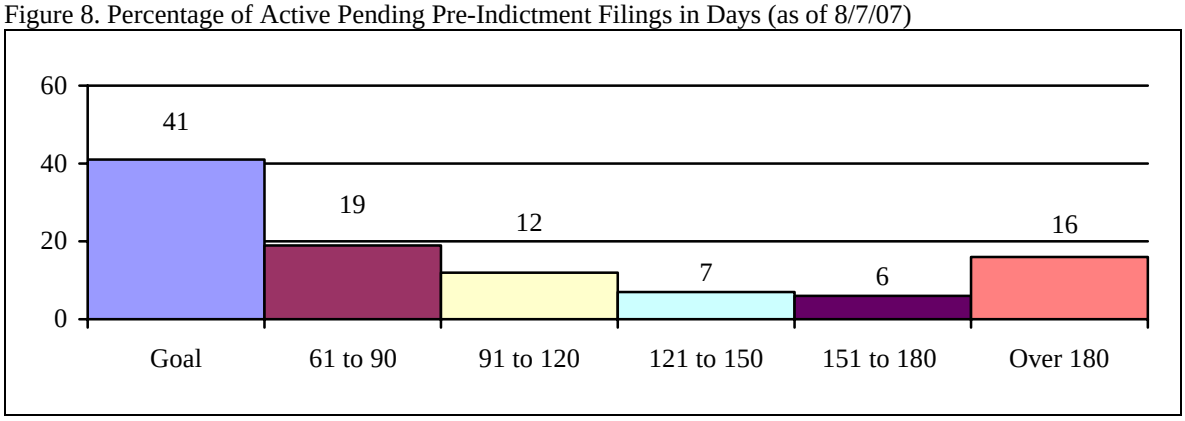


Figure 8. Percentage of Active Pending Pre-Indictment Filings in Days (as of 8/7/07)



Tables 11 and 12 demonstrate the age of the active post-indictment caseload. Similar to pre-indictment, post-indictment backlog remained relatively steady during the previous three court years. The backlog for the most recent court year, however, increased by approximately five percent from last year.

Table 11. Age of Active Post-Indictment Pending Filings, 2004-07

Court Year	Essex Vicinage Pending Caseload			Statewide Pending Caseload		
	N Active Pending	N Backlog Beyond 120 days	% Backlog	N Active Pending	N Backlog Beyond 120 days	% Backlog
2004	2,000	561	28	14,593	4,878	33
2005	1,450	437	30	13,752	4,604	33
2006	2,103	592	28	14,377	4,713	33
2007	2,525	839	33	15,532	5,793	37

Table 12. Age of Active Pending Post-Indictment Filings in Months (as of 6/30/07)

	Essex Vicinage				Statewide			
	Age - months	N of Cases	% of Cases	Cumulative %	Age - months	N of Cases	% of Cases	Cumulative %
Current	0-4	1,686	66.8	66.8	0-4	9,739	62.7	62.7
Backlog	5-12	702	27.8	94.6	5-12	4,485	28.9	91.6
	13-18	118	4.7	99.3	13-18	806	5.2	96.8
	19-24	11	0.4	99.7	19-24	247	1.6	98.4
	25-36	8	0.3	100	25-36	154	1	99.4
	Over 36	0	0	100	Over 36	101	0.7	100
	Total	2,525	100%	-	Total	15,532	100%	-

Figures 9 and 10 depict the percentage of the post-indictment caseload that was over goal. During the month of June 2007, 33 percent of the caseload was more than four months old (120 days) and five percent was more than 12 months old – failing to meet the local, less stringent standards, as well as guidelines promulgated by the COSCA and ABA (see Figure 1). Year-old cases in 2007 showed a slight increase compared to 2006. As of June 2007, most of the over goal cases (28 percent) were between four and 12 months old.

Figure 9. Percentage of Post-Indictment Filings Over Goal for June by Year

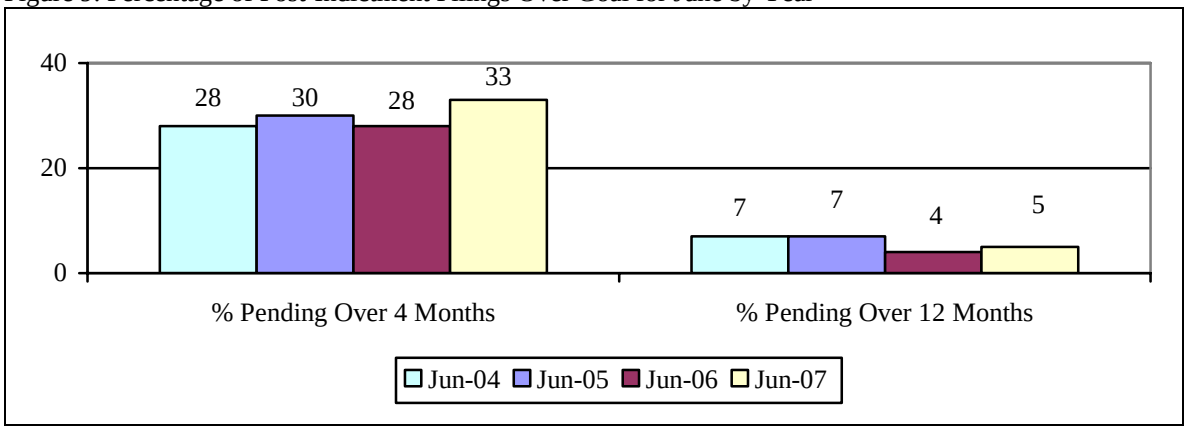
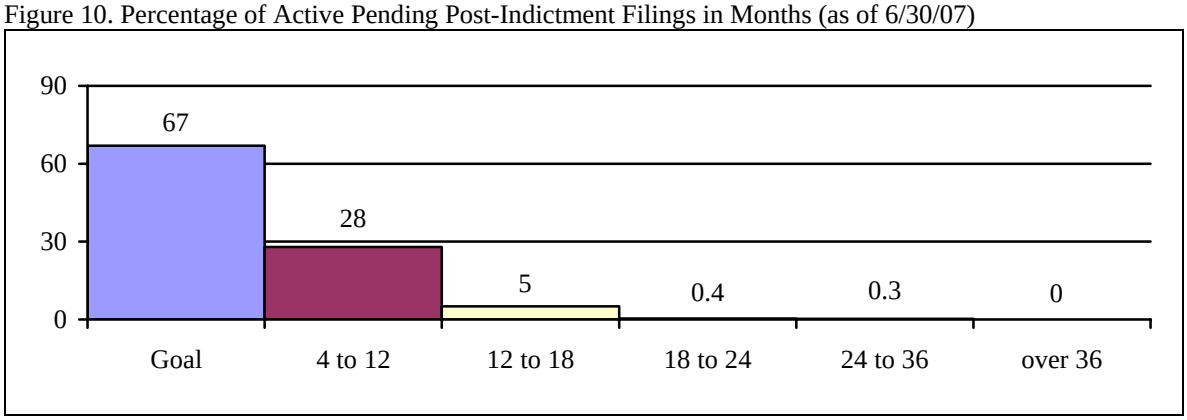


Figure 10. Percentage of Active Pending Post-Indictment Filings in Months (as of 6/30/07)



Trial Date Certainty

Table 13 illustrates the number of events and defendants that were scheduled for trial together with the outcome of those proceedings. The data indicates that in 2006-07, there were 2,431 events that were originally scheduled for trial of which about 38 percent or 914 events were ultimately attributed to an actual trial. Events involving continuing trials were removed from analysis. With respect to defendants, the data showed that of the 728 defendants scheduled for trial, 221 of them proceeded to trial. More than two-fifths of defendants pled and close to a quarter of them were dismissed.

Table 13. Scheduled Trial Outcomes by Event and Defendant, 2006-07

Disposition	Scheduled Trial Events	Scheduled Trial Defendants	
	N	N	%
Trial	914	221	30.4
Dismissal	506	177	24.3
Plea	963	314	43.1
PTI	12	7	1
Other	36	9	1.2
Sum Outcomes	2,431	728	100%

Table 14 shows the number of trial events associated with defendants who actually proceeded to trial. The data shows that more than three-quarters of the defendants had had less than five or fewer trial events before the trial commenced. By

and large, however, most defendants have more than one trial event with the largest faction having two events.

Table 14. Number of Trial Events Scheduled to First Trial Day by Defendant, 2006-07

N of Trial Events	N of Defendants	% of Defendants	Cumulative %
1	23	10.4	10.4
2	69	31.2	41.6
3	31	14	55.6
4	25	11.3	66.9
5	22	10	76.9
6	18	8.1	85
7	8	3.6	88.6
8	5	2.3	90.9
9	6	2.7	93.6
10 or more	14	6.3	100
Total	221	100%	-

Complex Case-Types

Table 15 illustrates the central tendency measures for the 755 cases selected for this study. For the oldest cases disposed during the 2006-07 court year, the average age was 418 days. There was 1,410 days separating the oldest case disposed (1,677 days old) from the earliest disposed case (267 days old). The median time was slightly less than a year with 361 days noted.

Table 15. Age of the Oldest Filing Dispositions by Central Tendency Measure, 2006-07

Central Tendency Measure	Age (in days)
Mean	418
Median	361
Minimum	267
Maximum	1,677
Range	1,410

Table 16 shows that most of the oldest cases disposed during the most recent court year resulted from indictments. Slightly more than a tenth of the dispositions were from direct indictments. When combined, accusations and superseding indictments comprised three percent of the caseload.

Table 16. Frequency Distribution of the Oldest Filing Dispositions by Document Type, 2006-07

Document Type	N	Valid %
Accusation	3	0.4
Direct Indictment	83	11
Indictment	649	86
Superseding Indictment	20	2.6
Total	755	100

Table 17 demonstrates that almost a third of the cases involved a crime of the first degree. Figure 11 depicts the percentage of filings comprising each crime degree. The greatest proportion of cases involved a crime of the second degree comprising more than two-fifths of the caseload. Cases that included a crime of the fourth degree were marginal incorporating less than two percent of the dispositions.

Table 17. Frequency Distribution of the Oldest Filing Dispositions by Crime Degree, 2006-07

Degree of Crime	N	Valid %	Cumulative %
First	238	31.5	31.5
Second	322	42.6	74.2
Third	184	24.4	98.5
Fourth	11	1.5	100
Total	755	100	-

Figure 11. Percentage of the Oldest Filing Dispositions by Crime Degree, 2006-07

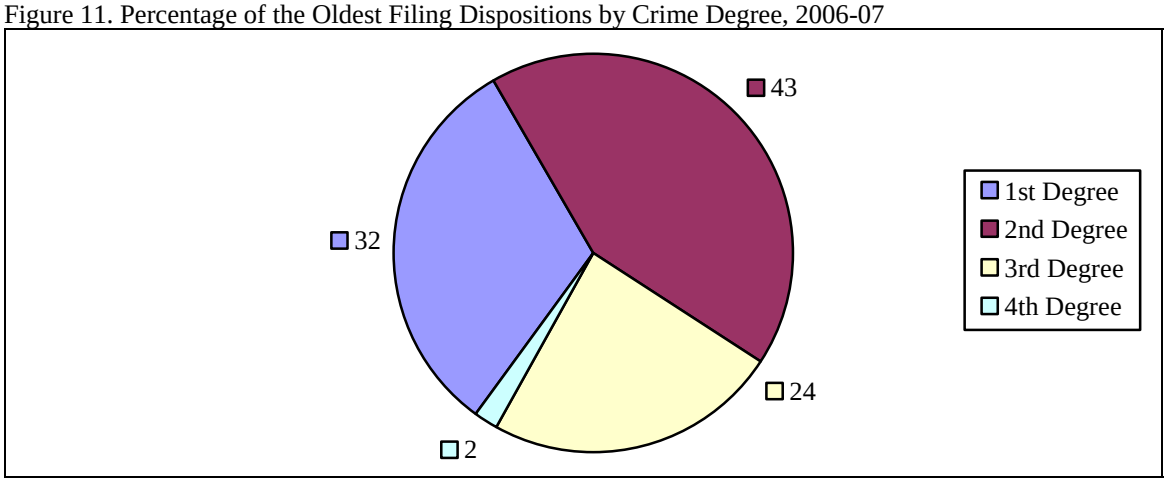


Table 18 shows that more than half of the dispositions resulted in a plea with approximately 43 percent of the defendants pleading to the crime as charged. Figure 12 illustrates the percentage of filings comprised by the three disposition types. Almost a third of dispositions were ultimately dismissed. More than a fifth of the dispositions

were the result of a dismissal by the motion of the prosecutor. Two-thirds of all dismissals resulted from prosecutor motions. The data demonstrated that the court rarely dismissed matters either over the objection of the prosecutor or by order of its own motion. Filings disposed by way of trial incorporated the fewest number of dispositions. These outcomes slightly favored the prosecutor wherein 62 percent of them resulted in some type of guilty disposition.

Table 18. Frequency Distribution of the Oldest Filing Dispositions by Disposition Type and Reason, 2006-07

Disposition Type/Reason	N	Valid %
Dismissals		
Dismissed – motion of prosecutor	160	21.2
Dismissed – plea bargain	56	7.4
Pending dismissal	10	1.3
Dismissed – motion of court	10	1.3
Defendant deceased	1	0.1
Dismissed – objection of prosecutor	1	0.1
Dismissal Subtotal	238	31.5
Pleas		
Guilty plea as charged	328	43.4
Guilty plea lesser indictment	53	7
Defendant plead to disorderly persons	15	2
Plea to accusation	1	0.1
Plea Subtotal	397	52.6
Trials		
Guilty by jury	54	7.2
Not guilty by jury	34	4.5
Not guilty by non-jury	11	1.5
Guilty by non-jury	10	1.3
Guilty by jury lesser included indictment	5	0.7
Guilty plea – partial jury	3	0.4
Not guilty by non-jury by reason of insanity	1	0.1
Guilty by jury lesser included DP	1	0.1
Guilty by non-jury lesser included indictment	1	0.1
Trial Subtotal	120	15.9

Figure 12. Percentage of the Oldest Filing Dispositions by Disposition Type, 2006-07

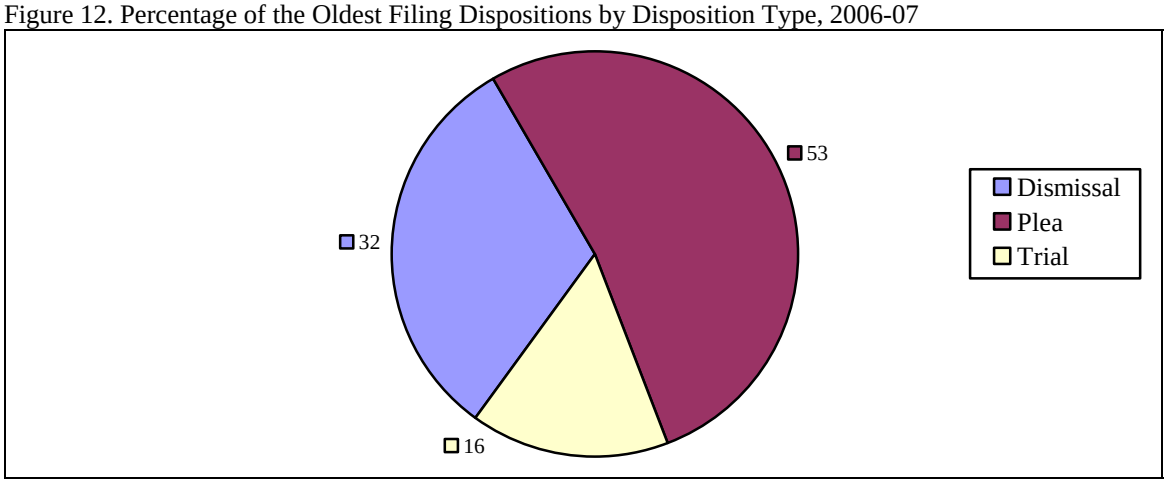


Table 19 displays the distribution of the caseload by case-type. The data revealed that close to 30 percent were drug cases. Together, homicides and sexual assault comprised slightly more than 12 percent of the dispositions. Assault cases accounted for approximately 20 percent of the cases followed by robberies and weapon possession matters at more than 12 percent and ten percent, respectively.

Table 19. Frequency Distribution of the Oldest Filing Dispositions by Case Type, 2006-07

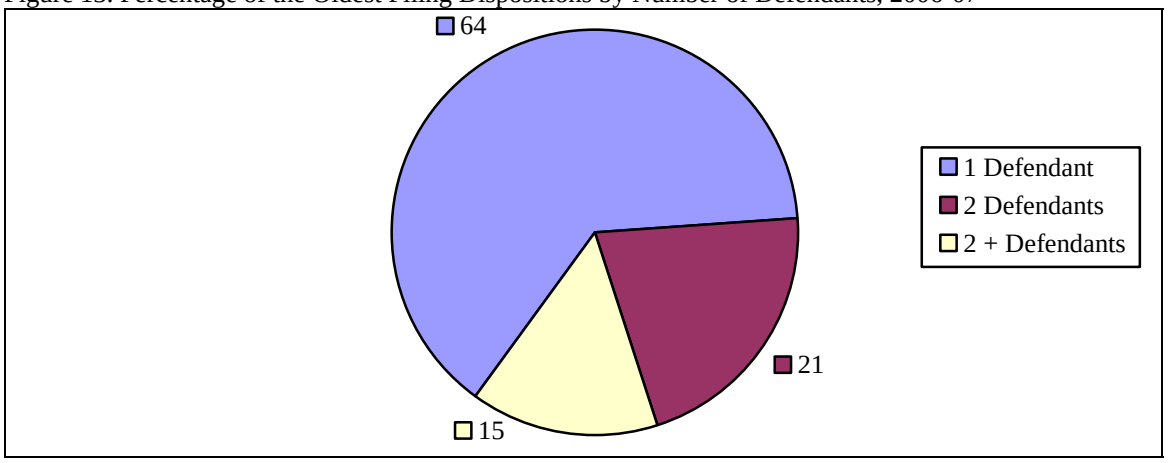
Disposition Type	N	Valid %
Narcotics	219	29
Assault	149	19.7
Robbery	91	12.1
Possession of a Prohibited Weapon	76	10.1
Criminal Homicide	63	8.3
Theft by Unlawful Taking	45	6
Sexual Assault	29	3.8
Arson Offense	19	2.5
Obstructing Government Operations	15	2
Burglary	13	1.7
Perjury	8	1.1
Forgery	7	0.9
Megan's Law	4	0.5
Endangering Welfare of Child	3	0.4
Kidnapping	3	0.4
Official Misconduct	3	0.4
Death by Auto	2	0.3
Drug Court Transfer	2	0.3
Conspiracy	1	0.1
Criminal Attempt	1	0.1
Manslaughter	1	0.1
Receiving Stolen Property	1	0.1
Total	755	100

Table 20 shows that almost two-thirds of the oldest dispositions were one-defendant cases. Figure 13 depicts the data along three categories: single defendant, two defendants, and more than two defendants. Eighty-five percent of the matters were cases involving two or fewer defendants. With the exception of the two cases involving eight and nine defendants, the number of defendants was negatively correlated with case frequency. Cases involving more than three defendants comprised less than seven percent of the caseload, including one 28-defendant case.

Table 20. Frequency Distribution of the Oldest Case Dispositions by Number of Defendants, 2006-07

Number of Defendants	N	Valid %	Cumulative %
1	387	64.3	64.3
2	124	20.6	84.9
3	52	8.6	93.5
4	20	3.3	96.8
5	10	1.7	98.5
6	1	0.2	98.7
7	1	0.2	98.8
8	2	0.3	99.2
9	2	0.3	99.5
11	1	0.2	99.7
12	1	0.2	99.8
28	1	0.2	100
Total	602	100	-

Figure 13. Percentage of the Oldest Filing Dispositions by Number of Defendants, 2006-07



Tables A1 and A2 illustrate the distribution of data regarding the number of motions and witnesses, respectively, for the oldest dispositions. As noted in the

methodology, motions were calculated by filing, whereas witnesses were drawn on the basis of disposed cases. Although the data presented is not comprehensive, the information that was available in P/G showed that close to 70 percent of the dispositions did not have any motions and almost 97 percent of them had two or fewer. More than a third of the cases disposed did not have any witnesses listed. Thirty-seven percent of the cases had one witness listed and more than a fifth of the cases enumerated two witnesses. Both motion and witness data was negatively correlated with filing and case frequency; as the number of motions or witnesses increased, the number of associated filings and cases decreased.

Survey Data

Perceptions of Case Management Performance

Tables 21 through 23 show the distribution of stakeholders' responses regarding the question: [Judges, APs, ADPDs] make a concerted effort to reduce backlog. When the question was asked of themselves, all of the judges either agreed or strongly agreed with the statement. More than 80 percent of judges perceived the APs in the same light whereas only half of them believed that ADPDs put forth the same effort. APs perceived both the judges and themselves as attempting to address the backlog, but observed efforts by the ADPDs in the same way judges noted them; that being, more than 50 percent of APs disagreed or strongly disagreed with the notion that their counterparts endeavor to reduce backlog. ADPDs believed judges make a collective effort to decrease backlog. Their opinions of their own group and APs practically mirrored each other with approximately a third of them either disagreeing or strongly disagreeing with the statement. The data revealed that stakeholders were perceived most positively by their

own group. Taken wholly, the responses clearly show that stakeholders believe that judges make an attempt to address the backlog. More than 96 percent of them either agreed or strongly agreed with the statement when it questioned judges' effort. The percentage of responses for the same categories of agreement dropped to 84 percent when directed at APs and fell further to 52 percent with respect to ADPDs' effort.

Table 21. Frequency Distribution of Judges' Responses to Stakeholders' Effort in Reducing Backlog

Level of Agreement	Judges' Effort		Assistant Prosecutors' Effort		Public Defenders Effort	
	N	Valid %	N	Valid %	N	Valid %
Strongly Agree	10	62.5	2	12.5	0	0
Agree	6	37.5	11	68.8	8	50
Disagree	0	0	2	12.5	2	12.5
Strongly Disagree	0	0	1	6.3	6	37.5

Table 22. Frequency Distribution of Assistant Prosecutors' Responses to Stakeholders' Effort in Reducing Backlog

Level of Agreement	Judges' Effort		Assistant Prosecutors' Effort		Public Defenders Effort	
	N	Valid %	N	Valid %	N	Valid %
Strongly Agree	17	44.7	15	38.5	4	10.3
Agree	18	47.4	23	59	14	35.9
Disagree	3	7.9	1	2.6	13	33.3
Strongly Disagree	0	0	0	0	8	20.5

Table 23. Frequency Distribution of Public Defenders' Responses to Stakeholders' Effort in Reducing Backlog

Level of Agreement	Judges' Effort		Assistant Prosecutors' Effort		Public Defenders Effort	
	N	Valid %	N	Valid %	N	Valid %
Strongly Agree	12	44.4	5	18.5	5	18.5
Agree	15	55.6	13	48.1	12	44.4
Disagree	0	0	8	29.6	8	29.6
Strongly Disagree	0	0	1	3.7	2	7.4

Table 24 revealed that a greater percentage of APs and ADPDs than judges believed that trial memoranda (plea cutoff document) are strictly enforced. For instance, 40 percent of judges indicated that the cutoff dates are imposed less than 30 percent of the time, whereas less than 25 percent of APs and approximately 15 percent of ADPDs felt the same way. Collectively, more than 62 percent of stakeholders believed that trial memoranda were enforced at least half the time.

Table 24. Frequency Distribution of Stakeholder Responses to the Statement: Trial Memoranda are Strictly Enforced

Range	Judge		Assistant Prosecutor		Public Defender		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Less than 10%	3	20	1	2.7	2	7.7	6	7.7
10 to 30%	3	20	8	21.6	2	7.7	13	16.7
31 to 50%	2	13.3	4	10.8	4	15.4	10	12.8
51 to 70%	1	6.7	10	27	5	19.2	16	20.5
71 to 90%	5	33.3	4	10.8	7	26.9	16	20.5
More than 90%	1	6.7	10	27	6	23.1	17	21.8

Table 25 shows the distribution of perceptions regarding attorneys' trial readiness. The data indicated that a greater majority of judges believed that attorneys are ready less than 50 percent of the time (56 percent compared to 44 percent). Judges' perceptions varied considerably from attorneys surveyed wherein almost two-thirds of the APs and close to 90 percent of ADPDs stated that attorneys are ready more than 50 percent of the time.

Table 25. Frequency Distribution of Stakeholder Responses to the Statement: Attorneys are Ready to Proceed on the Scheduled Trial Date

Range	Judge		Assistant Prosecutor		Public Defender		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Less than 10%	2	12.5	0	0	1	3.8	3	3.8
10 to 30%	3	18.8	3	8.1	1	3.8	7	8.9
31 to 50%	4	25	10	27	1	3.8	15	19
51 to 70%	2	12.5	9	24.3	10	38.5	21	26.6
71 to 90%	4	25	13	35.1	7	26.9	24	30.4
More than 90%	1	6.3	2	5.4	6	23.1	9	11.4

A chi square analysis was conducted for each case processing stage to test for the existence of an association between stakeholder status and their knowledge regarding case management performance. In instances where a relationship was evident, the Cramer's *V* measure was employed to determine the relative strength of the association. The series of chi square tests generally revealed that knowledge of case management performance was statistically independent of one's occupational status. Tables A3 through A9 show the performance perceptions among stakeholders that were not

statistically significant when compared against actual performance. With the exception of the data noted in Tables 26 and 27 where the relationship was albeit weak, no distinction materialized among the stakeholder groups regarding perceived performance. Tables 26 and 27 demonstrate the chi square results where an association exists. Table 26 shows the chi square results measuring time to disposition perceptions for arrest to indictment filing. The chi square value was significant at the .018 level. These findings indicate a relationship between stakeholder status and knowledge about the time between arrest and indictment filing. Forty percent of judges were correct in their assessment compared to eight percent of APs and 28 percent of ADPDs. The Cramer's *V*, however, demonstrated that the strength of the relationship was relatively weak at .322. Table 27 shows the chi square results measuring perceptions for the active pending post-indictment caseload. The chi square value was significant at the .031 level. A relationship was therefore noted between stakeholder status and knowledge of this performance measure. More than 81 percent of judges had accurate perceptions compared to 42 percent of APs and 52 percent of ADPDs. Similar to the time to disposition measure for arrest to indictment filing, the Cramer's *V* showed the relationship to be a modest one at .297.

Table 26. Chi Square Results for Arrest to Indictment Filing by Stakeholder Role

Response	Role			Total
	Judge	Assistant Prosecutor	Public Defender	
120 days or less				
Observed Count	9	35	18	62
Expected Count	11.9	30.2	19.9	62
% of Total	60	92.1	72	79.5
Std. Residual	-0.8	0.9	-0.4	-
More than 120 days				
Observed Count	6	3	7	16
Expected Count	3.1	7.8	5.1	16
% of Total	40	7.9	28	20.5
Std. Residual	1.7	-1.7	0.8	-

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	8.064*	2	.018
Cramer's *V*	.322		

Note. Data retrieved from survey instrument. 1 cell (16.7%) has an expected count less than 5. The minimum expected count is 3.08.

Table 27. Chi Square Results for Post-Indictment Active Pending Caseload by Stakeholder Role

Response	Role			Total
	Judge	Assistant Prosecutor	Public Defender	
Other Responses				
Observed Count	3	22	12	37
Expected Count	7.5	17.8	11.7	37
% of Total	18.8	57.9	48	46.8
Std. Residual	-1.6	1	0.1	-
31 to 50%				
Observed Count	13	16	13	42
Expected Count	8.5	20.2	13.3	42
% of Total	81.3	42.1	52	53.2
Std. Residual	1.5	-0.9	-0.1	-

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	6.949*	2	.031
Cramer's *V*	.297		

Note. Data retrieved from survey instrument. 0 cells (0%) have an expected count less than 5. The minimum expected count is 7.49.

Table 28 illustrates the results for the one-way ANOVA test of stakeholder perceptions for each case processing measure. As noted in the chi square test, the ANOVA revealed a significant outcome for the "arrest to indictment filing" and "post-indictment active pending caseload" measures. With regard to the former measure, the *F* score of 4.324 was significant at .017, well below the .05 alpha level, indicating that

stakeholder perceptions for this performance criterion are significantly different from one another. The latter measure, although not as compelling, had an *F* score of 3.665 and was significant at .030. Stakeholder perceptions for the remaining measures did not differ significantly from one another.

Table 28. One-Way ANOVA Results for Stakeholder Perceptions of Case Management Performance

	Sum of Squares	df	Mean Square	F	Sig.
Sum of Case Management Measures					
Between Groups	3.378	2	1.689	1.807	.174
Within Groups	52.327	56	.934		
Total	55.705	58			
Arrest to Pre-Indictment Disposition					
Between Groups	.378	2	.189	1.564	.216
Within Groups	9.071	75	.121		
Total	9.449	77			
Arrest to Indictment Filing					
Between Groups	1.315	2	.657	4.324	.017*
Within Groups	11.403	75	.152		
Total	12.718	77			
Indictment to Post-Indictment Disposition					
Between Groups	.399	2	.199	1.653	.198
Within Groups	9.050	75	.121		
Total	9.449	77			
Indictment to Trial Start Date					
Between Groups	.062	2	.031	.120	.887
Within Groups	19.323	75	.258		
Total	19.385	77			
Arrest to Trial Completion					
Between Groups	.500	2	.250	1.615	.206
Within Groups	11.615	75	.155		
Total	12.115	77			
Trial Date Certainty					
Between Groups	.902	2	.451	2.317	.106
Within Groups	13.619	70	.195		
Total	14.521	72			
Clearance Rate					
Between Groups	.035	2	.017	1.156	.321
Within Groups	.950	63	.015		
Total	.985	65			
Pre-Indictment Active Pending Caseload					
Between Groups	.349	2	.174	1.011	.369
Within Groups	12.946	75	.173		
Total	13.295	77			
Post-Indictment Active Pending Caseload					
Between Groups	1.730	2	.865	3.665	.030*
Within Groups	17.941	76	.236		
Total	19.671	78			

Table 29 depicts the post hoc results of stakeholder perceptions for each case processing measure. The post hoc test confirmed that judges and ADPDs were significantly more knowledgeable than APs with regard to time to disposition for arrest to indictment filing. Although the ANOVA results did not exhibit significance with regard to the "trial date certainty" measure, the post hoc test showed that APs' perceptions were statistically more accurate to actual outcomes than the perceptions conveyed by ADPDs. With respect to the "active pending post-indictment caseload" measure, the results showed a mean difference of .3914 between judges and APs, signifying that judges' perceptions were statistically more accurate to actual performance than APs' perceptions.

Table 29. Post Hoc Test Results for Stakeholder Perceptions of Case Management Performance

Dependent Variable	(I) Role	(J) Role	Mean Difference (I-J)	Std. Error	Sig.	95% Confidence Interval	
						Lower Bound	Upper Bound
Arrest to Pre-Indict. Dsp.	Judge	AP	-.1842	.10604	.086	-.3955	.0270
		PD	-.1600	.11358	.163	-.3863	.0663
	AP	Judge	.1842	.10604	.086	-.0270	.3955
		PD	.0242	.08956	.788	-.1542	.2026
	PD	Judge	.1600	.11358	.163	-.0663	.3863
		AP	-.0242	.08956	.788	-.2026	.1542
Arrest to Indict. Filing	Judge	AP	.3211*	.11890	.009	.0842	.5579
		PD	.1200	.12735	.349	-.1337	.3737
	AP	Judge	-.3211*	.11890	.009	-.5579	-.0842
		PD	-.2011*	.10041	.049	-.4011	-.0010
	PD	Judge	-.1200	.12735	.349	-.3737	.1337
		AP	.2011*	.10041	.049	.0010	.4011
Indict. to Post-Indict. Dsp.	Judge	AP	-.1495	.10633	.164	-.3614	.0623
		PD	-.0103	.11263	.928	-.2346	.2141
	AP	Judge	.1495	.10633	.164	-.0623	.3614
		PD	.1393	.08889	.121	-.0378	.3164
	PD	Judge	.0103	.11263	.928	-.2141	.2346
		AP	-.1393	.08889	.121	-.3164	.0378
Indict. to Trial St. Dt.	Judge	AP	-.0198	.15537	.899	-.3293	.2897
		PD	.0436	.16457	.792	-.2843	.3714
	AP	Judge	.0198	.15537	.899	-.2897	.3294
		PD	.0634	.12989	.627	-.1954	.3222
	PD	Judge	-.0436	.16457	.792	-.3714	.2843
		AP	-.0634	.12989	.627	-.3222	.1954

Dependent Variable	(I) Role	(J) Role	Mean Difference (I-J)	Std. Error	Sig.	95% Confidence Interval	
						Lower Bound	Upper Bound
Arrest to Trial Cmptn.	Judge	AP	-.2036	.12046	.095	-.4436	.0364
		PD	-.0872	.12760	.497	-.3414	.1670
	AP	Judge	.2036	.12046	.095	-.0364	.4436
		PD	.1164	.10071	.251	-.0842	.3170
	PD	Judge	.0872	.12760	.497	-.1671	.3414
		AP	-.1164	.10071	.251	-.3170	.0842
Trial Dt. Certainty	Judge	AP	.0042	.14007	.976	-.2752	.2836
		PD	.2371	.14724	.112	-.0565	.5308
	AP	Judge	-.0042	.14007	.976	-.2836	.2752
		PD	.2329*	.11621	.049	.0012	.4647
	PD	Judge	-.2371	.14724	.112	-.5308	.0565
		AP	-.2329*	.11621	.049	-.4647	-.0012
Clearance Rate	Judge	AP	.0000	.04021	1.000	-.0804	.0804
		PD	-.0500	.04375	.257	-.1374	.0374
	AP	Judge	.0000	.04021	1.000	-.0804	.0804
		PD	-.0500	.03480	.156	-.1195	.0195
	PD	Judge	.0500	.04375	.257	-.0374	.1374
		AP	.0500	.03480	.156	-.0195	.1195
Pre-Indict. Active Cases	Judge	AP	.1754	.12669	.170	-.0769	.4278
		PD	.0933	.13569	.494	-.1770	.3636
	AP	Judge	-.1754	.12669	.170	-.4278	.0769
		PD	-.0821	.10699	.445	-.2952	.1310
	PD	Judge	-.0933	.13569	.494	-.3636	.1770
		AP	.0821	.10699	.445	-.1310	.2952
Post-Indict. Active Cases	Judge	AP	.3914*	.14480	.008	.1031	.6798
		PD	.2925	.15555	.064	-.0173	.6023
	AP	Judge	-.3914*	.14480	.008	-.6798	-.1031
		PD	-.0989	.12512	.432	-.3481	.1502
	PD	Judge	-.2925	.15555	.064	-.6023	.0173
		AP	.0989	.12512	.432	-.1502	.3481

Note. * The mean difference is significant at the .05 level.

Perceptions of Complex Case-Types

Figure 14 depicts the percentage of stakeholders who responded "often" or "very often" to the extent that the noted number of defendants adds to the complexity of the case. The complete set of responses is noted in Tables A10 through A14. The data shows that as the number of defendants within a case increases, so do the perceptions of complexity among stakeholders. With the exception of two-defendant cases, there was little difference in perceptions. Twenty-seven percent of judges believed that these cases

were more likely to complicate the matter, whereas 45 percent of APs and 54 percent of ADPDs believed that it increased the likelihood of complexity.

Figure 14. Percentage of Stakeholders' Perceptions of Case Complexity by Number of Defendants

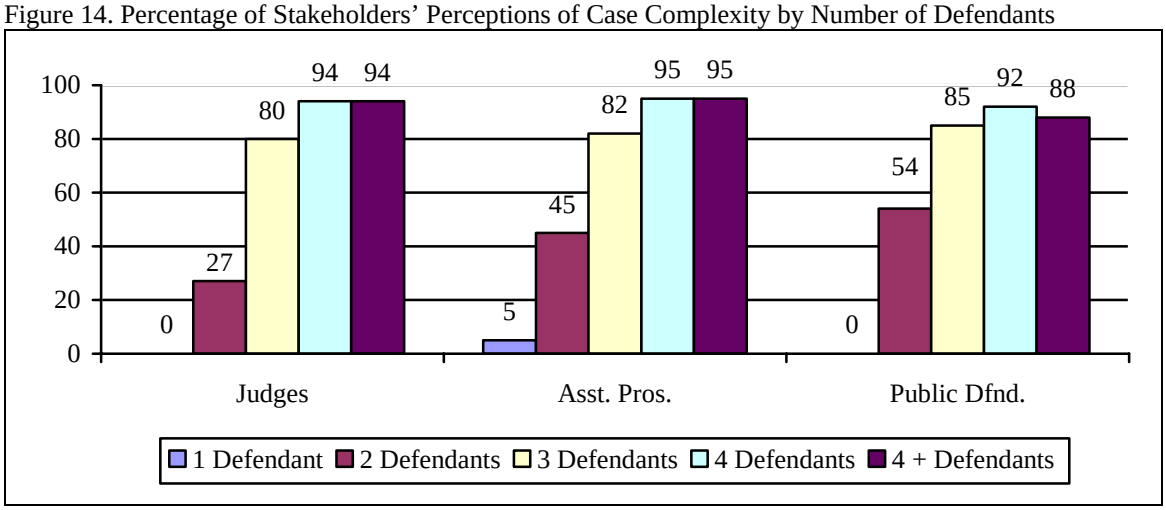


Figure 15 represents stakeholders' perceptions with respect to cases involving a homicide. The breakdown of responses is noted in Table A15. All of the judges believed that homicide cases (by virtue of the crime itself) frequently create delay. The findings were more varied among attorneys, albeit the opinions of almost 90 percent of ADPDs and close to 75 percent of APs were in accord with judges. A fifth of APs, however, believed that homicides rarely increase case complexity.

Figure 15. Percentage of Stakeholders' Perceptions of Complexity for Cases involving a Homicide

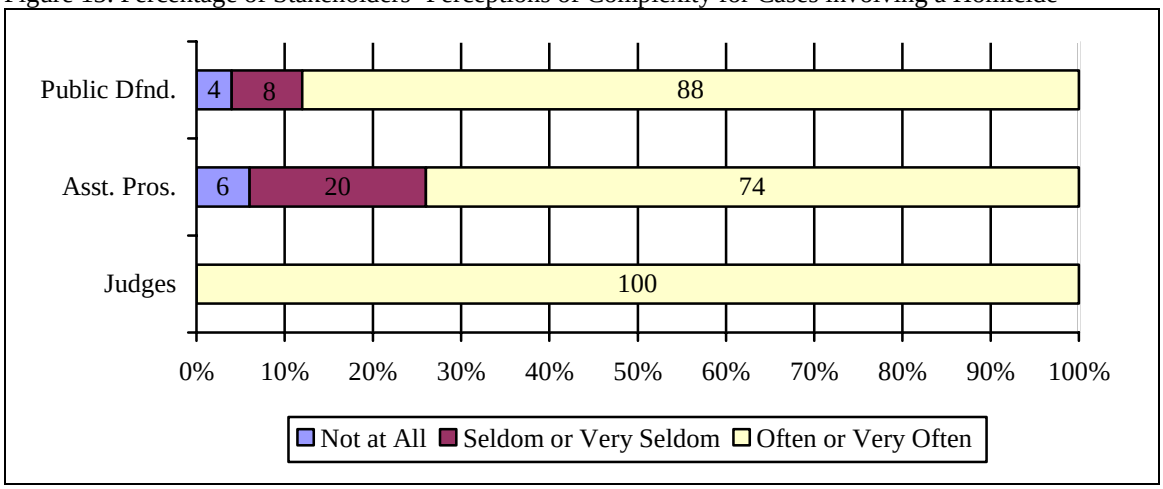


Figure 16 represents stakeholders' perceptions of complexity with respect to sex-related cases involving a child (see Table A16 for the complete set of responses). Likewise to beliefs about delays inherent in homicides, the entire sample of judges believed that sex crimes involving minors more often than not perpetuates delay. Again, the findings were more varied among attorneys in that more than 80 percent of ADPDs and almost 75 percent of APs were in accord with judges. Almost a quarter of APs and 15 percent of ADPDs believed that these case-types alone rarely cause delay.

Figure 16. Percentage of Stakeholders' Perceptions of Complexity for Sex-Related Cases involving a Child

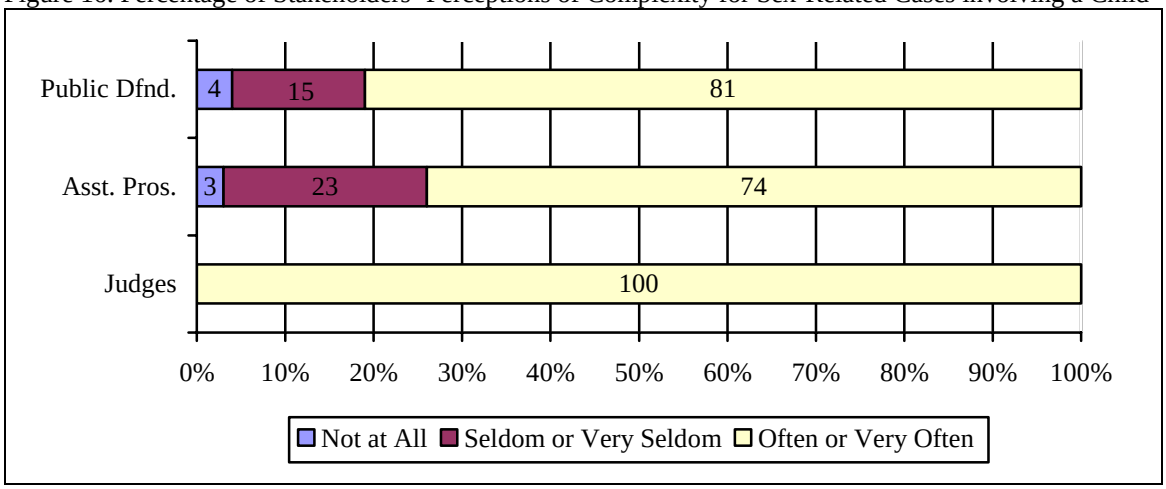


Figure 17 demonstrates stakeholders' assessment for sex-related cases that involve only adults (see Table A17 for the complete set of responses). The percentage of all stakeholders who believed that these case-types are prone to delay decreased considerably when compared to perceptions of cases that included juveniles. For instance, although more than four-fifths of judges expected these cases to commonly cause delay, this represented a 19 percent decline when compared to the preceding illustration. Judges' estimations were the most conservative indicative by the fact that none of them responded "not at all". Their perceptions are unlike ADPDs and APs

insofar that a percentage of them, albeit a small proportion (eight and three percent respectively), believed that these cases do not engender complexity.

Figure 17. Percentage of Stakeholders' Perceptions of Complexity for Sex-Related Cases involving only Adults

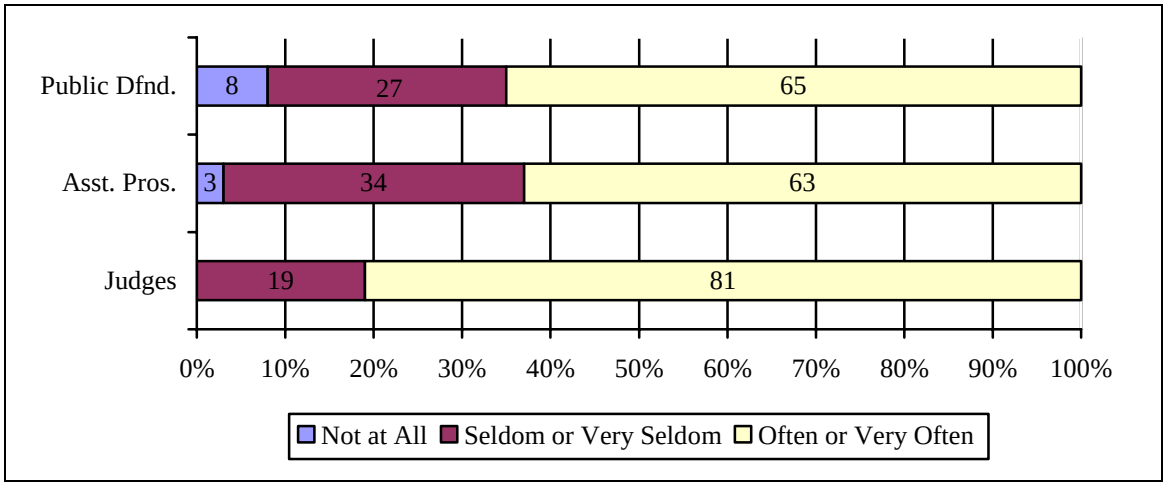


Figure 18 illustrates the perceptions of stakeholders regarding their feelings of violent offense cases (excluding homicides and sex assaults; see Table A18 for the complete set of responses). More than half of ADPDs, close to two-thirds of APs, and 94 percent of judges believed that violent offense cases bolster complexity. The remaining sample of judges chose the "seldom" or "very seldom" categories whereas attorneys were divided among all three of the remaining categories with some responding "not at all". As was determined in sex assault cases involving only adults, attorneys responding "not at all" comprised the smallest proportion of the sample with only eight percent of ADPDs and five percent of APs maintaining this perception.

Figure 18. Percentage of Stakeholders' Perceptions of Complexity for Cases involving a Violent Offense (Other than Homicide and Sex Assaults)

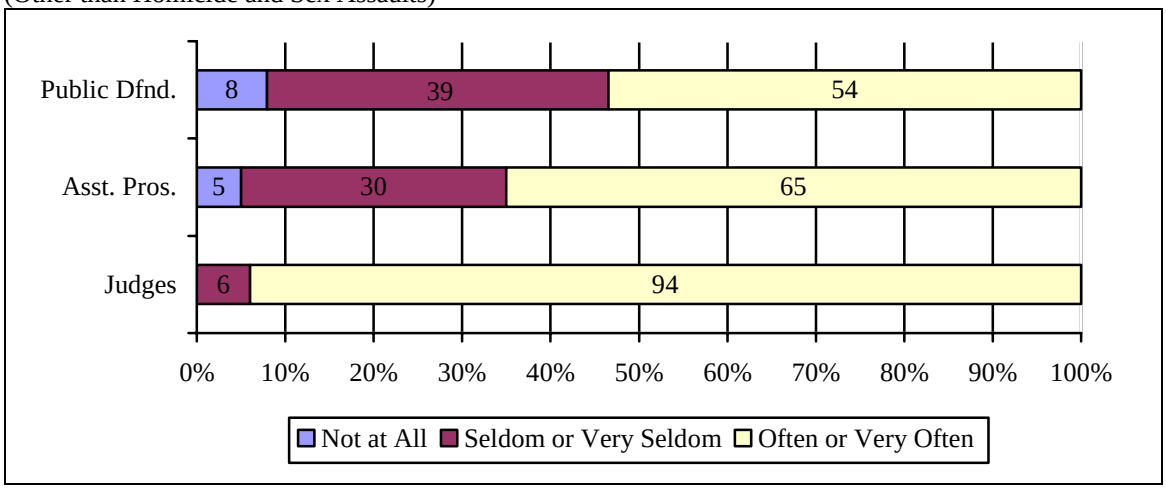


Figure 19 depicts the percentage of stakeholders who responded "often" or "very often" to the extent that the noted crime degree increases case complexity. The complete set of responses is noted in Tables A19 through A22. The data shows that a larger percentage of judges than APs or ADPDs perceive the crime's degree as having an impact on the complexity of the case, wherein all of them perceived this to be the case for first degree crimes compared to 58 percent of APs and ADPDs. With regard to second degree crimes, only 42 percent of APs and ADPDs perceived it as being influential whereas 75 percent of judges believed it had an impact. Perceptions by APs and ADPDs were practically identical for each of the categories, with the exception of fourth degree crimes where the difference was three percent.

Figure 19. Percentage of Stakeholders' Perceptions of Case Complexity by Degree of Crime

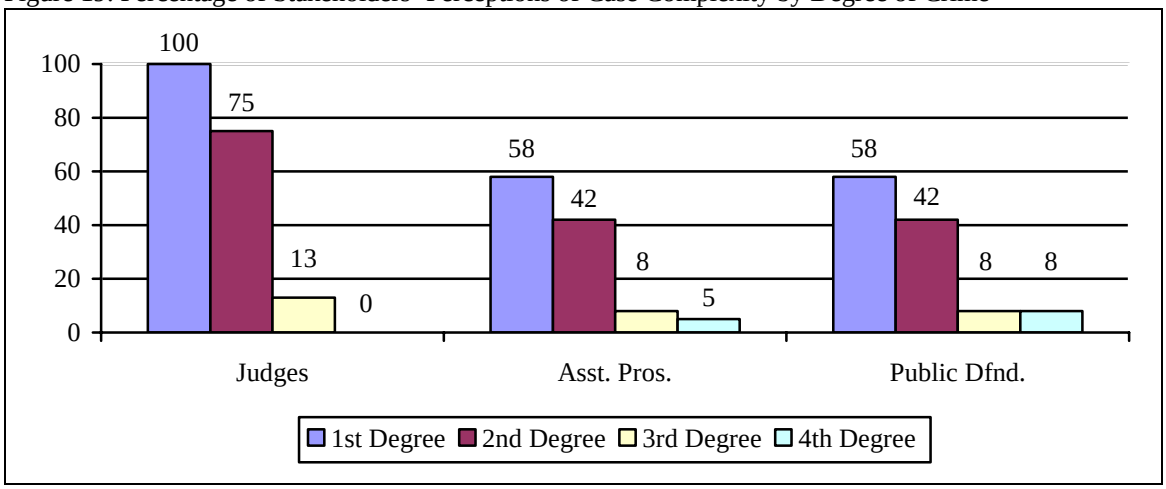


Figure 20 depicts the percentage of stakeholders who responded "often" or "very often" to the extent that the number of witnesses augments complexity. The entire set of responses is noted in Tables A23 through A27. The data demonstrated a similar trend noted in Figure 14; that is, as the number of witnesses increases, so do the perceptions of complexity among stakeholders. As opposed to those perceptions, however, there was a greater disparity between judges and attorneys than between APs and ADPDs. All of the judges expressed that witnesses are not likely to impact case complexity until the number extends beyond three. Less than a third of judges indicated that cases with four witnesses bolster complexity and only half of them believed this to be true for matters with more than four witnesses. These findings varied from attorneys in that a portion of them noted that *any* number of witnesses affects case complexity. Moreover, 66 percent of APs and 62 percent of ADPDs believed that cases with more than four witnesses accentuated the likelihood of delay.

Figure 20. Percentage of Stakeholders' Perceptions of Case Complexity by Number of Witnesses

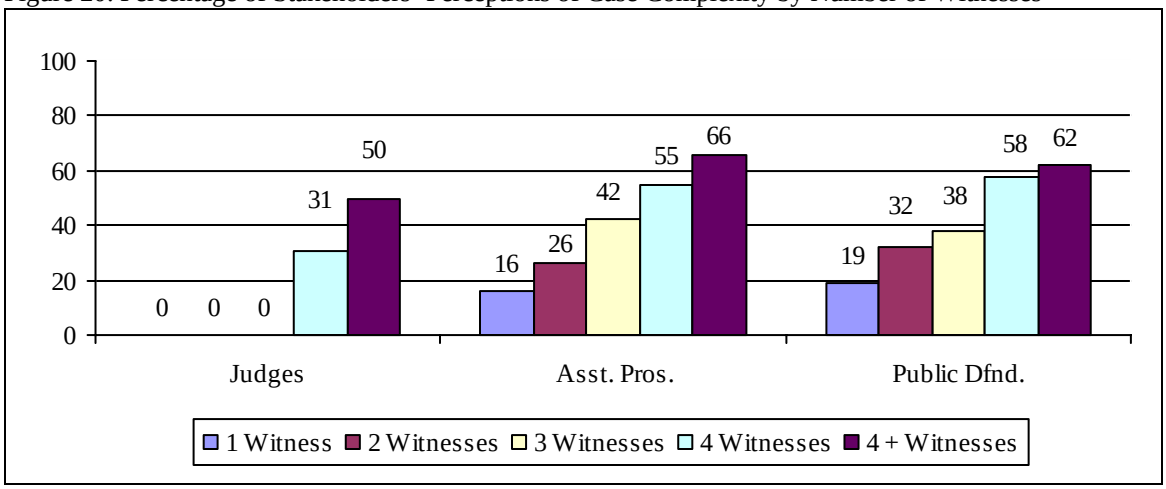
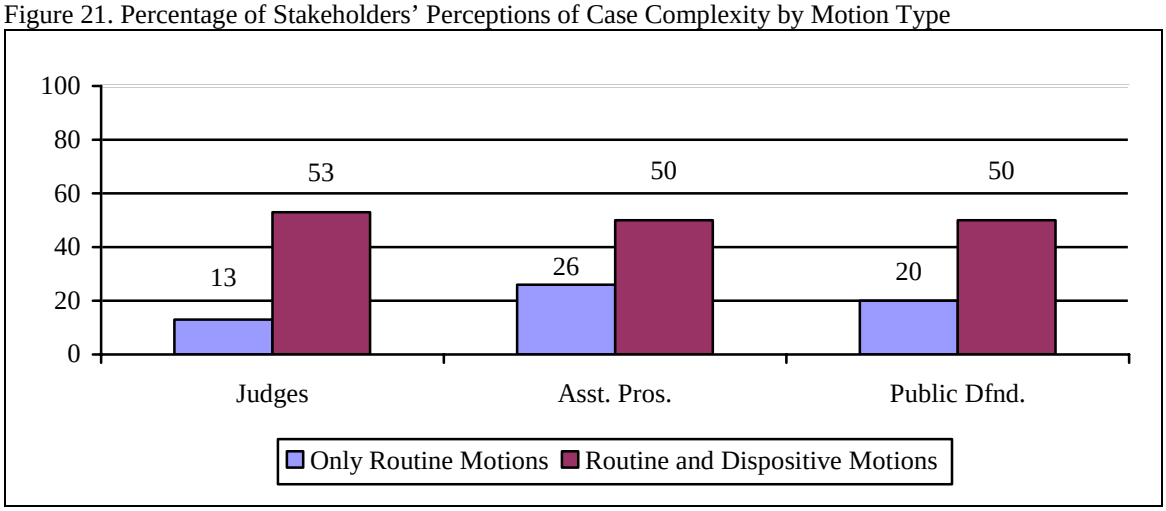


Figure 21 depicts the percentage of stakeholders who responded "often" or "very often" to the extent that routine and dispositive motions delays a case's disposition. The complete set of responses is noted in Tables A28 and A29. With regard to dispositive motions, at least half of each stakeholder group stated that these types of motions tend to add to case complexity. Respondents were more varied in their perceptions with respect to matters that solely involve routine motions. Whereas 13 percent of judges believed that cases with only routine motions are susceptible to delay, 20 percent of ADPDs and 26 percent of APs perceived the same to be true.

Figure 21. Percentage of Stakeholders' Perceptions of Case Complexity by Motion Type



The final question of the survey asked stakeholders to share their comments, if any, about their experience with complex cases. Specifically, they were asked to expound upon other "complex factors" not enumerated in the questionnaire that, to their knowledge, prevented a matter from being expedited. A third of the stakeholders responded to the open-ended question. Figure 22 outlines the comment categories that were established and the word identifiers from which they were based. As noted in the literature, there were a number of complex factors, such as scientific evidence and mental health issues, cited by stakeholders that were not extensively analyzed in this study. Stakeholders, however, did reiterate that cases with multiple defendants or motions have a greater propensity in being complex than cases with a single defendant or fewer motions.

Figure 22. Content Analysis of Stakeholder Comments regarding Complex Case Factors

Category	Word Identifiers
Science-based	• Scientific evidence, such as collection and analysis of DNA and fingerprints
Health-based	• Obtaining the medical records of victim(s) • Psychiatric or mental health issues of the defendant and/or victim
Technology-based	• Wiretap cases
Other Case-types	• Cases involving economic crimes or Division of Youth and Family Services' (DYFS) records
Multi-case Defendants	• Cases with defendants, who have other pending cases (spider cases)
Repeated Factors	• Multiple defendant cases including those with contingent pleas • Cases with multiple motions (i.e. special discovery issues)

CONCLUSIONS AND RECOMMENDATIONS

The conclusions herewith are outlined in accordance with the study's framework using an iterative problem-centered policy analysis. Specifically, case management performance and practices were evaluated using both the retrospective, in which current practices were monitored and evaluated, and prospective analysis, wherein forecasting and recommendations were made based on the findings. The expectation is that these methods of analysis continue to be operationalized into the future so that progress can be sustained by remaining adaptable to change and obviating some of the problems confronting caseflow. Recommendations are based on these conclusions and grouped into five general categories. The suggestions are presented in a general-to-specific format beginning with a strategic plan (the catalyst for change) and concludes with more substantive caseflow propositions for the vicinage to consider.

EV has made enormous strides from the late 1970s when case management was fragmented and delay was rampant and unchecked. At that time, under the leadership of Chief Justice Robert N. Wilentz, the NJ Judiciary began to assess its time to disposition for criminal cases and developed a strategy to significantly reduce delay. Since then, progress has indeed been made. For instance, over the past ten years the post-indictment backlog across the state decreased by 22 percent – from 6,075 in June 1996 to 4,713 in June 2006[119]. More recently, however, this study's findings support Aikman's conjecture that some "slippage"[120] is apparent in actively managing cases and thus, much

[119] Greacen, J. M. 2007. Backlog performance measurement – A success story in New Jersey. *The Judges' Journal* 46 (1).

[120] See Note 30 supra, page 214.

improvement is still needed if the EVCD is to reach the ne plus ultra of case management that administrators and leadership judges envision.

Archive Data Conclusions

An interview with the PJ was conducted to draw his insight on the study's findings. The points of discussion were centered on causes of post-indictment delay and are highlighted below pursuant to the appropriate court rule.

> Prearraignment Conference. NJ Court Rule 3:9-1
> "After an indictment has been returned…a copy of the indictment together with the discovery for each defendant named therein, shall be…delivered to the criminal division manager's office or be available at the prosecutor's office…The defendant shall be notified in writing by the criminal division manager's office to appear for a prearraignment conference which shall occur within 21 days of indictment… Prior to the arraignment/status conference the prosecutor and defense attorney shall discuss the case, including any plea offer, and any outstanding or anticipated motions and discovery issues and report thereon at the arraignment/status conference. Any plea offer to be made by the prosecutor shall be in writing and forwarded to the defendant's attorney"[121].

The meaningfulness of the pre-arraignment conference hinges upon defendant notification, attorney assignment, and exchange of discovery. The court has speculated that the high volume of cases in EV precludes it from noticing all defendants timely because the indictments and discovery cannot be prepared and forwarded within the stipulated timeframe. Some attorneys are not retained until the defendant is notified, which in some instances poses scheduling conflicts for those with prior engagements. In other instances, notices are mailed in accordance to the time standard, but are forwarded to the defendant's last known address which does not correspond with where they are currently living. For many defendants who do receive the notice and appear on the

[121] Pressler, S. B. 2006. *Rules governing the courts of the State of New Jersey, 2007 ed.* Newark, NJ: Gann Law Books, pages 808-809.

scheduled date, do so without representation, which mitigates the meaningfulness of the event because it stalls plea negotiations. Defendants represented by private attorneys average only five percent of the caseload. Therefore, delays associated with attorney assignment are by and large derivative of the Office of the Public Defender's (OPD) policies and practices.

Multiple defendant cases are particularly troublesome as one attorney remarked, "adjournments are inevitable because of the likelihood in multiple defendant cases where all defendants and attorneys scheduled do not appear". A comprehensive discovery package is often not available because it consists of materials that are typically not available at the time of pre-arraignment. Discovery and the lack thereof prevent defense counsel from negotiating. Substantive colloquy between the judge and defendant is likewise precluded. This was echoed by both APs and ADPDs who mentioned that discovery "still delays cases" because it is "neither comprehensive nor timely". These discovery problems, however, are issues that should be addressed and handled through the Essex County Prosecutor's Office (ECPO) given their responsibility over such matters. For the reasons mentioned above, plea offers are often not extended or for that matter discussed. In reality, this event is utilized to establish or confirm representation and reviewing the available discovery, if any.

> Arraignment/Status Conference. NJ Court Rule 3:9-1(c)
> "The arraignment/status conference shall be conducted in open court no later than 50 days after indictment. The judge shall advise the defendant of the substance of the charge and confirm that the defendant has reviewed with counsel the indictment and the discovery. The defendant shall enter a plea to the charges. If the plea is not guilty counsel shall report on the result of plea negotiations, and such other matters, discussed pursuant to R.3:9-1(b) which shall promote a fair and expeditious disposition of the case. At that time, the dates for hearing motions and a further status conference, if necessary shall be scheduled according

> to the differentiated needs of each case. Each status conference shall be held in open court with the defendant present"[122].

The main contention regarding delays at this stage involves many of the same discovery issues that were not resolved at the pre-arraignment conference. At the time of arraignment, much of the discovery remains unresolved. Because the court must sometimes rely on external agencies, which are unable to provide documents, such as psychiatric reports, lab reports, and DYFS records, in accord with speedy trial standards, discovery remains incomplete. Accordingly, an ADPD commented that "cases wherein defendant and/or witnesses have competing issues or emotional problems are complicated" and as a result, consume more time. The percentage of cases involving such instances, however, was not investigated in determining their relative impact.

> Pretrial Hearings. NJ Court Rule 3:9-1(d)
> "Hearings to resolve issues relating to the admissibility of statements by defendant, pretrial identifications of defendant, sound recordings, and motions to suppress shall, unless otherwise ordered by the court, be held prior to the pretrial conference and, upon a showing of good cause, hearings as to admissibility of other evidence may also be held pretrial"[123].

Judges have asserted that the number of motions has increased dramatically since the speedy trial standards were implemented statewide. Some of the motions filed regularly include evidence suppression, pre-trial identifications, statements, and prior criminal convictions. Moreover, pursuant to evidence Rule 104, more pre-trial hearings that address issues such as witness qualifications, the sources and veracity of testimony, Rape Shield laws, audibility of tapes, and Rule 404b must be handled before trial. Consequently, more time must be allocated for attorneys to file respective briefs, the

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[122] Ibid, page 809.

[123] Loc. Cit.

court to review those briefs, schedule the hearings, listen to the arguments, and decide the issue. As is the case with complete disclosure of discovery, defendants are unlikely to accept a plea offer until the appropriate motions have been exhausted.

> Pretrial Conference. NJ Court Rule 3:9-1(e)
> "If the court determines that discovery is complete; that all motions have been decided or scheduled in accordance with paragraph (d); and that all reasonable efforts to dispose of the case without trial have been made and it appears that further negotiations or an additional status conference will not result in disposition of the case, or progress toward disposition of the case, the judge shall conduct a pretrial conference. The conference shall be conducted in open court with the prosecutor, defense counsel and defendant present…and the court…shall address the defendant to determine that the defendant understands: (1) the State's final plea offer, if one exists; (2) the sentencing exposure for the offenses charged, if convicted; (3) that ordinarily a negotiated plea will not be accepted after the pretrial conference and a trial date has been set; (4) the nature, meaning and consequences of the fact that a negotiated plea will not be accepted after the pretrial conference has been conducted and a trial date has been set and (5) that the defendant has a right to reject the plea offer and go to trial…If the case is not otherwise disposed of, a pretrial memorandum shall be prepared…The pretrial memorandum shall be reviewed on the record with counsel and the defendant present and shall be signed by the judge who, in consultation with counsel, shall fix the trial date"[124].

Once discovery and motions have been resolved, the case may be stymied by an interlocutory appeal. Judges have contended that these types of appeals are being filed with greater frequency among attorneys adversely affected by the court's decision. If for no other reason, the appeal is used to procure additional time in preparation for trial. The timely resolution of these appeals is contingent upon the caseload volume of the appellate court, which akin to discovery provided by external agencies is beyond the judge's purview. In other instances delaying the case, one ADPD mentioned:

> "The defendant seeks to hire a private attorney after a public defender has done the lion's share of the work and has knowledge of the case…time then needs to be afforded to the private counsel to acquaint themselves with the facts of the case".

[124] Ibid, pages 809-810.

CourTools 2, 3, 4, and 5

Clearance Rate

The data suggests a pre-indictment disposition rate that was relatively sluggish during the initial month of the court year. With the exception of the period between August and September, the pace of disposition increased steadily throughout the remaining part of the year. Most recently, the year-end goal of 100 percent was met – an improvement from the last two court years when the goal was not attained. Clearance, by itself, however is not a reliable indicator of backlog control. The significant dip in clearance during the month of July may in part be attributable to a proportionally larger number of individuals who take vacation during that time. For instance, fewer prosecutors may be available to present matters to the grand jury. The extraordinary number of grand jury witnesses (both layperson and police) who are not available to testify during the summer months may also impact the pace of litigation. The fact that this is occurring during the summer especially impacts clearance because filings tend to increase with warmer climates. As the caseload increases and dispositions decrease, the courts must work at an increased pace during the balance of the year to dispose of both pending and incoming cases.

With the exception of July and August, the post-indictment clearance rate was more sporadic than pre-indictment ranging between 96 and 101 percent. Given that Essex has historically had a horizontal case-processing system, judges have always been more influential in moving cases to disposition following indictment. The significant number of cases that were disposed in July may be a "carry over" effect from the previous court year when increased efforts are made to dispose of matters before June

30th. As judges go on vacation in August, the clearance rate dips significantly and then is slowly readjusted during the Fall months followed by another drop at the end of December when the court recesses.

The proportion of statewide filings and dispositions comprised of EV is compelling. It behooves EV administrators and judges to monitor clearance because its ability to meet those goals will certainly be focused upon by statewide committees. Because of the volume it generates, EV can determine whether the state, as a whole, meets its goal. While it can be relied upon to buoy results by making up for smaller counties that fail to meet their goals, EV is also subject to intense scrutiny if it fails to meet its individual goal because of the prevailing effect that it can have on the entire state. This can prompt policymakers to exact the effect by monitoring data that is inclusive and exclusive of Essex.

Time to Disposition

The NJ Judiciary has historically focused on disposition time on a pre-indictment and post-indictment basis. System time (arrest to indictment disposition and arrest to trials completed), although available as a dataset, is a more peripheral measurement. The data suggests that the court generally does well in disposing those cases which reach disposition without indictment. The EV median of nine days is considerably less than the statewide median of 28 days. This is indicative of the efficient screening processes conducted by the ECPO together with the EV CJP court. Perhaps, the same types of cases that get screened out in EV continue to get processed in other counties (downgraded later rather than sooner). The CJP court clearly serves a pivotal role in case management with respect to the screening, ADPD assignment, and bail review functions.

In other vicinages where the same process is decentralized to the municipalities, it does not allow for the same advantages of expediting the handling of the case.

For all of the other disposition timeframes, the median time for EV lags behind the statewide median. This suggests that the types of cases filed in EV are more complex than those of other vicinages; therefore, require more time to process. Alternatively, the variation of complexity may be insignificant – cases are simply not being effectively managed (e.g., granting more adjournments than are absolutely necessary). In addition, this implies inefficiencies in police reports, insufficient information, and system impediments to make a decision or refer to grand jury. The findings of this study signify a combination of substandard case management practices with a proportionally greater number of complex cases, which is exacerbated further by the exodus of experienced personnel at all levels. The data demonstrates that cases which are ostensibly more complex take longer to reach disposition. The median time for defendants whose cases are intended for grand jury was remarkable. More than twice the amount of time designated by the pre-indictment standard (60 days) was needed for these filings. Furthermore, the median time for cases that were ultimately disposed by trial was 426 days.

Age of Active Pending

The pre-indictment data suggests that the most complex cases seem to get older – moving from one age category to another. The declining caseload percentage with the sudden increase to 16 percent of cases over 180 days old indicates that there are a core group of cases that continue to age because they are not being managed with exigency. Moreover, the fact that close to 60 percent of the caseload fails to meet the 60-day

standard is suggestive of four points: 1) the period between court events is too long; 2) the appropriate documentation is not available at the time the event is scheduled (conferences lack meaning); 3) grand jury calendaring is not effective, and; 4) attorneys are ill-prepared leading to requests for continuances. The post-indictment findings demonstrated that with the exception of the 2006-07 court year, the vicinage met its goal of 30 percent or less. Since the number of filings has not varied significantly during the last four years and if current trends remain steady into the future, meeting this goal should be satisfied with few modifications to current operations. Surpassing the goal is also conceivable because 28 percent of the caseload was between four and 12 months old at the time of this study.

Trial Date Certainty

Trial date certainty patterns demonstrate that scheduled matters rarely proceed to trial. Rather, cases scheduled for trial are more likely to yield other types of dispositions, namely dismissals and pleas. Among other reasons, these dispositions occur when they do because a decision *must* be made by a given date. It can also be assumed that attorneys take the initial trial date lightly and use it as more of a control date. Almost 90 percent of defendants had their initial trial date postponed and more than a tenth of them had at least seven adjournments before the trial commenced.

Complex Case-Types

The disposition data of the oldest cases revealed several noteworthy conclusions. Second degree crimes comprised the largest proportion of cases. Defendants facing first degree crimes may be more willing to plea given their exposure if convicted whereas those facing second degree charges were less willing. The difference in time between the

plea offer and possible exposure may be negligible causing more second degree defendants to decline the offer. Third and fourth degree crimes which incorporated slightly more than 25 percent of the caseload should be scrutinized to determine what elements, if any, are significantly delaying them. The fact that the median timeframe is approximately one year may speak to the inexperience of attorneys who lack the familiarity with administering cases involving first or second degree crimes.

The findings regarding disposition reason were not entirely surprising. As cases continue to age, they were less likely to be disposed of in a trial forum. The literature has long held this to be true of all cases in all jurisdictions and the EVCD is not an exception. Because cases by and large settle without going to trial, the question is not if, but rather when, with the objective to attain the disposition within standard. More than half of the defendants plead and close to a third of them were dismissed. Some of these dismissals imply that the prosecutor had a genuine or otherwise convincing case, but time deteriorated the case's constructs to the extent that it could no longer be proven to a jury. It also suggests that the AP was not motivated to try the case to meet speedy trial standards.

For those cases that proceeded to trial, verdicts surprisingly favored the AP. This contradicts what is cited in the literature which found that delay tends to benefit defense counsel more so than the state. Sixty-two percent of trial defendants were found guilty in whole or in part. This signifies that the oldest cases which proceed to trial are more often than not sound and compelling to a jury. It may also indicate that these cases tend to be the most complex and are assigned fittingly to the most experienced APs, who happen to be more skilled in their craft of presenting a case than the assigned ADPD.

The amount of time that was allowed to pass for complex cases examined in this study should only be reserved for those matters that most likely can only be resolved by trial. Dispositions that are not reached by trial should occur much earlier in the process. This obviously requires confidence and trust in APs when they compose plea offers so that the amount offered does not diminish with time. Concomitantly, it necessitates firm and meaningful events so that unnecessary delay does not deprive the case of its substantive proofs, among other issues, which in turn makes the initial plea offer less appealing. The defendant should be provided an offer that is reasonable given the nature and proofs of the offense including the level of exposure if convicted. A defendant's decision to decline an offer should not be countered with a better offer several weeks later, but instead should be designated for a speedy trial. As one ADPD remarked:

> "PDs don't care about backlog and they shouldn't. Vertical will only really work when defense attorneys get the real best offer at the earliest date that is not happening. Waiting still benefits defendants – i.e. better deals come along later. The reason for this in my view is unprepared/understaffed prosecutors".

Therefore, the reasonableness of the initial offer should take into account what the AP, as the state's advocate, deems satisfactory. If the offer is rejected, then they should feel equally comfortable taking the matter to trial knowing that the jury may acquit the defendant. Over the course of time, scheduled trials will be more credible (trial date certainty) causing cases to reach disposition sooner. This philosophy belies the AP's strategy wherein they seek to get the most time from the defendant by starting higher than they are willing to accept. While this pre-trial tactic may work with some defendants and counsel, they are certainly in the minority. Offers typically move downward until they reach a threshold, which is permeable depending on how much time has passed. In the

interim, threats to bring the matter to trial are nothing more than pretense because in most instances, neither side seeks to entrust a jury with the decision.

Four case-types (drugs, assaults, robberies, and weapons offenses) encompassed more than 70 percent of the oldest caseload. Narcotic and possession of a prohibited weapon cases comprised almost 40 percent of the inventory. Homicides and sex assault cases which were often characterized as being complex comprised 12 percent of the caseload. This differentiation of case needs is a useful starting point for determining which cases are most often delayed. Certain filings, however, such as homicides and sex assaults, cannot be interpreted as categorically complex *because* of their case-types. Likewise, the opposite assumption cannot be made about non-violent cases such as narcotic and weapon matters. The courts should screen cases early in the process, apart from degree and case-type, based on some of the variables stipulated by stakeholders and cited in the literature but not evaluated in this study to determine which cases are legitimately complex and warrant more time than is allowed by standard.

The number of defendants associated with a case was often mentioned by stakeholders as having a significant impact on processing pace. Cases that had more than two defendants were seen as complicating a matter by at least 80 percent of each stakeholder group. Instances where a defendant has co-defendants coupled with other pending cases can certainly protract the time to disposition. One ADPD commented, "Defendants who have two or more cases pending with co-defendants are difficult to resolve within the timeframe". This was echoed by an AP stating, "Cases where defendant has outstanding VOPs and co-defendants are hard at times to dispose of within timeframe".

The number of defendants should be included among the host of variables considered when screening cases. Although state-of-the-art law enforcement techniques such as electronic surveillance and new partnerships among inter-agencies can potentially increase the number of multi-defendant cases, only 15 percent of the caseload exceeded two defendants and almost two-thirds of the oldest dispositions were one-defendant cases. No suppositions are made with respect to complexity, but the findings are nevertheless compelling, especially given stakeholders' rankings of one and two-defendant cases. One caveat, however, is that the court's failure to meet time to disposition standards can obfuscate cases, which when initially filed were relatively simple. In some instances involving bailed defendants, the longer it takes the case to reach disposition, the more likely they will be arrested with other defendants on other charges. This can become even more complicated if they continue to make bail only to get arrested again with other defendants. In these circumstances, a one-defendant case can *become* complex. These filings are referred to as spider cases (co-defendant cases where some or all of the defendants have other cases with other co-defendants pending at different processing points) – the impression being that they are woven together with the silk threads representing the variety of defendants.

Survey Data Conclusions

Perceptions of Case Management Performance

When asked about their efforts in reducing backlog, stakeholders generally rated themselves better than how their counterparts viewed them. The finding was not surprising given that individuals tend to interpret their own actions and motives positively. Humility, as T.S. Eliot opined, is "the most difficult of all virtues to achieve;

nothing dies harder than the desire to think well of oneself"[125]. Judges were rated as demonstrating the most effort among the stakeholder groups followed by APs and then ADPDs. The findings were congruent with stakeholder gains and accountability. The notion that the defense generally benefits more from delay than the state was supported by the perception data. Even when asked about their own effort, ADPDs rated APs' efforts as slightly stronger. Judges, who are principally responsible for backlog, were perceived as demonstrating the greatest effort because it most accurately reflects reality.

When asked about their perceptions regarding the enforcement of trial memoranda, APs and ADPDs generally mirrored each other. Judges, however, were less inclined to agree with the statement. Judges' perceptions more closely reflect the trial date certainty data and are indicative of their span of knowledge. Attorney responses were manifested by their individual case experience wherein trial memoranda may or may not have been strictly enforced. Conversely, judges' perceptions were more wide-ranging; that being, their recollection of enforcement on all trial-ready cases. The same conclusion could be drawn regarding attorneys' readiness to proceed with a scheduled trial. Whereas attorneys' perspectives were based on their individual readiness, judges likely considered the readiness of all attorneys. Furthermore, a disconnect may exist between attorneys' and judges' notion of readiness. For instance, an investigator for the ECPO, who neglects to produce the appropriate documentation, may prevent a case from proceeding to trial when scheduled. The judge may view this as the AP being ill-prepared. The AP, on the other hand, maintains that they are in fact ready for trial and but for the investigator (who is not ready), the trial would proceed as scheduled. This is

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[125] Eliot, T.S. 1951. *Selected essays*. London: Faber, page 129.

obviously an accountability problem on the part of the AP that, in some courts, is overlooked.

Perceptions of caseflow were compared to actual outcomes using the chi square and one-way ANOVA methods. The results indicated that with the exception of perceptions for "arrest to indictment filing" and "post-indictment active pending caseload," none of the stakeholder groups varied significantly from one another to the extent that one of the groups could be considered more knowledgeable than the other. In both perception questions, being a judge was associated with perceptions that matched recent caseflow performance outcomes. The relationships, however, were tempered by Cramer's *V* findings. This suggests that while judges were collectively more knowledgeable, the disparity was not so appreciable as to make the relationship conspicuous.

The post hoc test showed that judges were more knowledgeable than APs for both measures, but were not statistically different from ADPDs. The test for "arrest to indictment filing" also showed that ADPDs were statistically more knowledgeable than APs. These associations indicate that as more courts were verticalized and judges assumed greater responsibility for pre-indictment case management, more of them became acquainted with the amount of time that cases require to reach indictment. ADPDs may be more observant to the timeframe because of in-custody clients unable to make bail while awaiting the grand jury outcome. In many instances, ADPDs file motions for the court to dismiss the matter for failure to indict; while some APs recognize the 60-day time standard to indict a defendant, their focus is more on investigative

strategies to obtain an indictment and less on the amount of time that has elapsed since arrest.

Post hoc test results also demonstrated that APs were significantly more knowledgeable than ADPDs regarding "trial date certainty" outcomes. What in-custody unindicted defendants are to ADPDs, so too may be trial date certainty outcomes to APs. Because cases that generally take longer to dispose pose greater advantages to ADPDs, APs may be more attentive to the number of trial adjournments. With regard to the "post-indictment active pending caseload" measure, judges were by far the most knowledgeable of this measurement than any other outcome. Incidentally, they were also more knowledgeable as group when compared against APs. The fact that judges were most knowledgeable of pending post-indicted cases was not entirely surprising given that judges have historically been accountable for the movement (or lack thereof) of post-indicted matters. Judges also receive several reports on a weekly basis and attend a variety of committee meetings wherein the number and percentage of current backlog is always highlighted. The inconsistency regarding APs is not clear since they too attend committee meetings and are given access to backlog reports. Committee members representing the ECPO at various meetings may not be disseminating information to other APs, particularly those at the trial level, or if they are, the attentiveness to such reports is lacking when compared to judges and ADPDs.

A frequency distribution analysis of all stakeholder responses showed that perceptions related to "post-indictment active pending caseload" and "indictment to trial start date" had had the largest proportion of stakeholders whose selections were in accord with actual outcomes. More than 53 percent of the sample's responses with respect to the

former and more than 46 percent regarding the latter were supported by performance results. These findings confirm that accountability has an impact on what is retained by approximately half of the sample and, as other conclusions show, accountability must be a requisite in any case management system because without it even the existence of the standard is negated. The active pending caseload was linked to the time to disposition measure for "indictment to trial start date" in that these filings are generally the oldest in the judge's inventory of cases. Moreover, a report of all defendants whose matters exceed 365 days and are subsequently scheduled for trial are provided to respective judges on a weekly basis and promulgated electronically throughout the division. Once a trial date is scheduled, further adjournments must be made before the AJ or PJ.

Perceptions pertaining to clearance rate were the least consistent to actual outcomes with none of judges and APs selecting the correct category and only five percent of ADPDs' responses corresponding to actual data. The lack of understanding in how case management standards are calculated may, in part, explain why an overwhelming number of stakeholders' responses did not correspond to current performance. One ADPD asked, "How can you have more than 100 percent clearance?" Unfortunately, what was most disconcerting was not the dearth of knowledge that apparently exists in that this can be easily provided and attained through training and the like. Regrettably, the data suggests and is validated by attorneys' comments that a lackluster attitude for case management standards and performance is prevalent. The reaction was visceral in some instances when attorneys were asked to provide additional information about the causes of delay. Their responses were misdirected, but palpable. Consider the remarks made by one ADPD:

> "Whatever happened to caring about how well cases were handled by the parties compared to how quickly the cases are "processed"? Using terms such as "New Jersey Standard" and the dreaded "backlog" mean terms such as justice and fairness are de-emphasized for the greater goal of efficiency. Judges are under greater pressure to move cases. That pressure is transferred to prosecutors and defense lawyers. Ultimately, victims and defendants bear the stresses placed upon the system. They become the real losers in any case management system".

An attorney on the other side of the aisle noted:

> "Disposing of backlogged cases pre and post-indictment is important. However, judges and the AOC need to understand criminal cases are the most important. Leeway must be given even on old cases because the eye to resolving cases should be justice, NOT the age of the case".

The chasm between the court's understanding of justice and that of attorneys is noteworthy. An AP, for instance, put it most succinctly, remarking that "there is too much emphasis on backlog not doing justice". The stark difference was expected and is not troubling, but for the disdain some have for case management standards. The impression drawn from the comments is that the backlog insofar as using it as a measurable objective to make policy decisions is the attorneys' bete noire.

Whether it is ignored or not fully understood, speedy trial standards are quintessential of courts. For the courts, the process determines justice *not* the outcome. Gallas remarked that ultimately, case management is about engendering the "same or better justice in a shorter period of time"[126]. The judge should have no interest in the actual disposition so long as the individual was afforded what they are guaranteed by law. Central to this process is time, which is measured in part by the "dreaded backlog". The court's failure to meet time standards equates into a failure to do justice. In light of their interests, attorneys maintain a different position; that being, justice is denoted by what

[126] Gallas, G. 2008. Personal communication. February 4.

benefits the state or their client the most. The problem besetting EV is not so much the laissez-faire posture that some attorneys have adopted with regard to managing cases, but that this ennui seems to have permeated the process and is reflected in both the archive and survey data.

These findings pinpoint issues related to the court culture[127], but also show symptoms of problems that are far more pervasive and incorporated in the local legal culture[128]. Gallas explained local legal culture as "the intervening variable between independent structural and procedural variables and the dependent variables of disposition time"[129]. In short, it validates the norms, values, and behaviors that are held and practiced by all individuals and groups affecting the disposition of cases. The stakeholders in criminal case processing include not only "judges and lawyers, but also the police, various investigators, pre-trial, detention, prison, probation, and court staff among many others"[130]. Realizing the challenges presented by the local legal culture, however, is independent of actually changing it. Gallas observed:

> "Interactions and daily practice among all these parties, even if dysfunctional given the justice-driven goal of timely case processing, are cohesive, invisible to the uncritical eye, and extremely difficult to change"[131].

Furthermore, the author cautioned that notwithstanding its "conceptual power", local legal culture cannot be "readily measured"[132]. Improving the EVCD backlog will,

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[127] Ostrom, B. J., Hanson, R. A., Ostrom, C., and M. Kleiman. 2005. Court cultures and their consequences. *The Court Manager* 20 (1): 14-23.

[128] Gallas, G. 2005. Local legal culture: More than court culture. *The Court Manager* 20 (4): 23-28.

[129] Ibid, page 23.

[130] Ibid, page 24.

[131] Loc. Cit.

nonetheless, require a significant change in the local legal culture and an understanding of what it entails is the initial step to addressing the problem. In fact, Gallas noted just how critical it is stating, "without change in the local legal culture, slow courts will remain slow no matter how hard people work and, in all but the most extreme cases, no matter how many resources are expanded"[133].

Perceptions of Complex Case-Types

Stakeholders were most evenly distributed when asked about the impact of defendant number on case complexity. Generally, cases with only one defendant were not perceived as bolstering delay, but the difference was remarkable among APs and even more so among ADPDs when defendant number was gradually increased. ADPDs are impacted the most when cases involve more than one defendant because of the coordination that must take place with the pool attorney(s) assigned to co-defendants. The impact of co-defendants did not impact complexity as intensely in the estimation of the other stakeholders until the case involved three defendants. Interestingly, the percentage of ADPDs decreased slightly when asked about the complexity of a case with four defendants compared to a case with more than four defendants. Evidently, there is plateau that is reached when cases involve four defendants and any added defendants is not viewed as further impacting complexity. This perspective was also shared by other stakeholders wherein the percentage of responses did not vary between the two categories.

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[132] Loc. Cit.

[133] Ibid, page 26.

All of the judges responding believed that homicides and sex assault cases involving children perpetuate delay. Although a significant percentage of APs (almost three-quarters for both case-types) and ADPDs (88 percent for homicides and 81 percent for sex assaults involving children) concurred, the difference may be explained by assignment. APs and ADPDs are assigned particular cases such as homicides and sex assaults because of their experience in handling these cases; as such, these matters can be less complicated for the small percentage of attorneys who handle them on a frequent basis. The percentage of judges maintaining the same position when asked about sex-related cases that involve only adults decreases by almost a fifth and corresponded to similar declines among attorneys. These cases along with other violent offense cases are perhaps perceived as more complex among judges because of the decisions relating to motions and event scheduling that rest with the court. The opposite effect was demonstrated when stakeholders were asked regarding witnesses. Because an increase in witnesses requires attorneys to spend more time interviewing and investigating, they perceived these cases to be more complex than judges. In light of the perceptions related to the number of witnesses and type of motions, a policy and procedure for entering this data in a more comprehensive fashion so that it is readily available for analysis should be implemented by the EVCD.

The consensus among most stakeholders was that third and fourth degree crimes do not perpetuate delay. Judges' opinions of first and second degree crimes varied considerably from attorneys. Differences may be attributable to those already noted regarding judicial decision-making or may be due to administrative reports that are generated using crime degree as a criteria for statewide rankings. These reports infer that

cases with higher degree crimes are routinely more complex and therefore could have influenced judges' opinions when responding to the survey. These findings matched the study's results wherein case complexity is perceived slightly different depending on who is asked. Distinctions, as suggested in this study, must be made between individual-level and case-level criteria in determining which variables, if any, are commonly perceived by stakeholders as producing complexity. Moreover, the interpretative importance of such perceptions may extend beyond stakeholder status. Other predictor characteristics such as years of experience may account for such differences.

Both judges and attorneys noted several other factors that were not examined in the survey, but can nevertheless impact the timely disposition of a case. Among the variables were defendants, who have several cases in the system. One attorney mentioned:

> "The most common problem arises in cases where a defendant has multiple charges in various stages of preparation – i.e. an indicted case, a pre-indicted case and recent arrests. Top this off with a VOP or probation".

This case element should be considered when devising case tracking strategies that are recommended in the proceeding section.

Recommendations

Strategic Plan

There exist numerous challenges facing today's courts and these findings confirm that EV is not immune from the implications posed by these problems. Some of the trends relate to the increasing pressure (borne from both internal and external sources) to manage a caseload with revenue and resources that, at best, remains static and, at worst, is gradually reduced. Furthermore, courts must administer justice in areas that they have

historically not had the wherewithal to facilitate or for that matter address – such as cases involving mental health and drug addiction issues. The EVCD must reevaluate its distribution of resources to commensurate with their ability to handle surges in filings and backlog that are attributable to local conditions and organization, legislative mandates, police crackdowns on crime, etc. Particular attention must also be paid to motions so that they are realized earlier in the process and scheduled in accordance to speedy trial goals. P/G is useful for analyzing case management data, but only to the extent that staff are entering information which is accurate and complete. The database should be audited on a regular basis to ensure the veracity of information that is relied upon for policy decisions. In light of these developments and present performance outcomes, the EVCD should reassess all of its methods for processing cases to determine which practices no longer apply to current circumstances.

Traditional responses for handling the pre-indictment and post-indictment caseload are not working in part because the major stakeholders either do not have the knowledgebase of what is being measured (what is most important to the courts) or are so entrenched in their own viewpoint that case management standards are trivialized. If the backlog has been exacerbated for this reason, it is because the local legal culture has allowed it to prevail. Although the initiative to address backlog in the EVCD must be comprehensive, any strategy for reducing delay must begin with the culture wherein those who have a stake in the process are inculcated with best practices and standards of caseflow management. The culture is the organization's DNA – implicitly passing from individual to individual and from group to group. If the EVCD expects to reverse the

course of backlog, then the point by which it is viewed (defined, managed, and communicated) must shift.

Steelman and associates noted that before any improvement can be made, a thorough review of the case management practices must be made. The review should include:

> "Documentation of court structure, resources, and operations; gathering statistical information on workloads and case-processing times; administration of a self-assessment questionnaire; interviews of practitioners; and on-site observation of court proceedings and other activities"[134].

Many of the said tasks were accomplished in the period it took to complete this study; however these conclusions serve only as a starting point from which much work remains to be done. To reiterate, the main objective of this research was to juxtapose recent performance to stakeholder perceptions of case management.

The initial, but critical, step that the EVCD must take is to develop a strategic plan, using the three-question framework. First, what is the status quo? Second, what is the vision/goal? Third, what course of action should be employed to achieve this vision/goal? The exercise of developing a strategic plan will compel stakeholders to address many of the challenges confronting the division, namely the local legal culture and resource issues that make year-end goals difficult to achieve. The vision (from the perspective of the judiciary) would reflect a state in which division standards are the foci; as such, recognizes and attempts in earnest to meet or exceed backlog goals. Much of this study centered on the first two questions, the heretofore recommendations speak to the third question.

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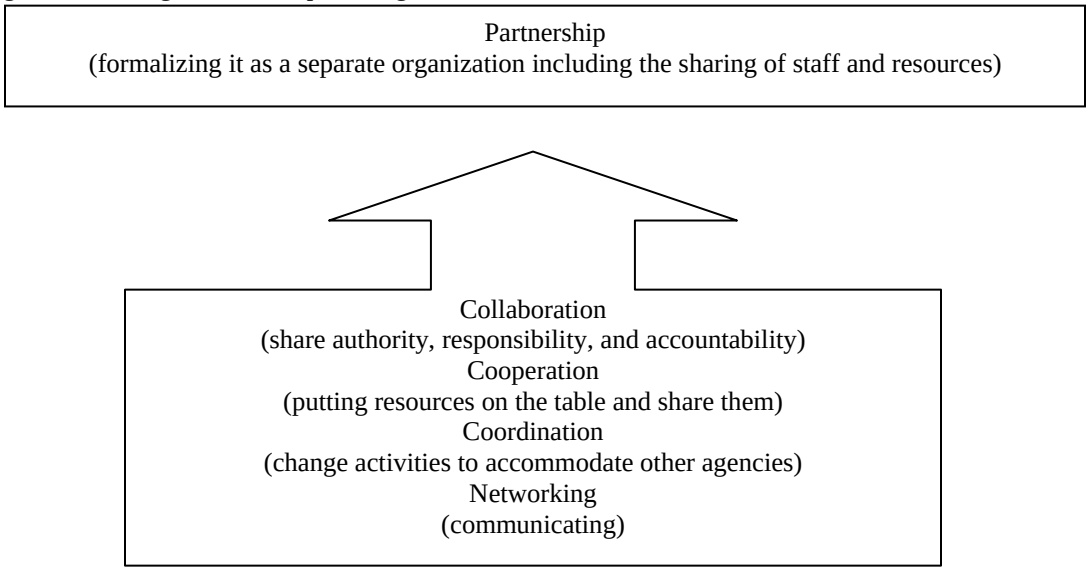
[134] See Note 17 supra, page 128.

Strategic Partnerships

Achieving speedy trial goals requires the active cooperation of non-judicial entities including high-level representatives from the jail, police agencies, ECPO, OPD, and Sheriff. Apart from the Speedy Trial Committee and subcommittees that exist and must be reinvigorated, strategic partnerships for the purposes of collaboration should be forged and managed with all of the said stakeholders. Likewise to committee meetings, partnerships require a forum for discussion but attendance is mandatory. Lack of attendance is indicative of an ineffectual commitment to collaborate.

The process of developing a strategic partnership is complex and time-intensive. Figure 23 cites the metamorphosis by which a group must work together to cultivate the partnership[135].

Figure 23. Strategic Partnership Paradigm



[135] Burrell, W. 2007. Forging and managing strategic partnerships. Lecture at the John Neufeld Judicial Staff College, East Brunswick, NJ.

As noted, the complexity of the relationship increases as organizations come together to foster the partnership. Formalizing an entity of the court as a separate organization with other stakeholders may not be plausible due to budgetary and appearance of impropriety restrictions, but developing collaboration is certainly within the realm of possibility. In *Collaborative Leadership*, Chrislip and Larson defined collaboration as:

> "A mutually beneficial relationship between two or more parties to achieve common goals by sharing responsibility, authority, and accountability for results. The purpose of collaboration is to create a shared vision and joint strategy to address concerns that go beyond the purview of any particular party"[136].

Bona fide collaboration, therefore, exists when stakeholders take the initiative to understand and accommodate the challenges of other stakeholders for the common good. In the course of maintaining the relationship, data should be shared on how handling the caseload in an efficient manner improves society. This is vital in demonstrating the public value of the court. Outcomes should be practical and conveyed without rhetoric and abstract notions (e.g. justice delayed is justice denied) that albeit true is not universally accepted and conceptualized by attorneys practicing in the EVCD.

The criminal justice system is a loosely-coupled organization; therefore, whoever heads efforts to collaborate will be critical for it to succeed. The domain of legitimate authority is highly protected because, inter alia, it is linked to personnel, revenue, and status. Representatives must ensure that any instituted change filters down to the street-level bureaucrats – those who are principally responsible for executing the changes made by the collaboration – of respective organizations insofar as comprehending the rationale for the change. Members of the collaborative council should demonstrate an

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[136] Chrislip, D. D., and C. E. Larson. 1994. *Collaborative leadership: How citizens and civic leaders can make a difference*. San Francisco: Jossey-Bass, page 5.

entrepreneurial spirit, who are not hampered by the malaise that sometimes accompanies bureaucracy and are unafraid to address the cultural choreography impacting time to disposition standards. By virtue of their exalted status and potential to influence policy and strategy, the PJ is in the best position to take the lead role in developing and maintaining the collaboration. Ultimately, for the collaboration to work, the PJ must be an avatar of leadership who combines the fine points of diplomacy with an authoritative mien. Although the PJ is appropriately suited for this status, the roles that they must play while simply stated, are not simply accomplished. Because leadership judges are "insiders"[137], *actual* progress often fails to keep its momentum. Gallas illuminated this point stating:

> "The conflict between consummate insider and questioner of accepted practice and disrupter of existing routines is an important reason why excellent caseflow management is so hard to institute and maintain and so unusual"[138].

Besides establishing strong leadership, expectations and accountability of the group should be clear and information should always be made available and shared. While instituting collaboration is admittedly not a panacea for case management ills, it does provide the court with leverage to do more without the increase in resources. Having said this, the literature confirms that an increase in capital whether in the form of judges, staff, or assets rarely resolves the backlog problem. Aside from addressing the local legal culture concept, Gallas noted three initiatives that courts must institute if they are to succeed in their case management efforts:

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[137] See Note 128 supra, page 27.

[138] Loc. Cit.

- Judicial leadership of the justice system (the court being one component), skilled leadership of judges by judges, and an effective court executive leadership team;
- Case processing time standards from filing to disposition and between events for all case types and case tracks; and,
- Accurate, timely, well-presented information that is reported and, very importantly, used to achieve internal and external accountability. Information educates court leaders and others about justice system and court performance given the time standards and the results actually produced by existing initiatives to improve case processing[139].

Case Management Training

The findings of judges' perceptions of case management performance corroborated the need for training. Although attorneys clearly impact the pace of litigation, ultimate control of case processing rests with the judge and to a lesser extent, the administration. When the process is controlled, it will almost certainly manifest a just outcome. Conversely, when the process lacks direction and is readily influenced by stakeholders other than the court, then it will almost certainly produce an unjust outcome – albeit the interests of the prosecutor or defense counsel may have been served. Greater accountability of all stakeholders should be meted out in order for the standards to be realized and generate the outcomes that they were designed to produce.

The cultural shift should incorporate team leaders in particular because the source of conflict[140] noted by Peak exists among personnel serving in this capacity. Team leaders should be empowered to play more of a major role in managing cases as opposed to their present responsibilities that are almost entirely task-focused. Backlog, as a result, is often perceived as being under the complete domain of the judge from which they

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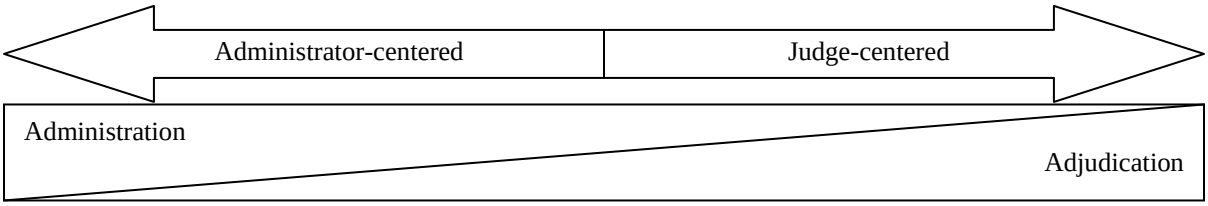
[139] See Note 128, page 27.

[140] See Note 13 supra.

share no accountability. To mitigate this unintended consequence, team leaders should be given the authority to grant and reject most adjournments. In Figure 24, Stott illustrated the span of control for judges and administrators[141]. Interestingly, case processing is a shared role. The EVCD should adopt such a perspective especially as it pertains to team leaders; in so doing, they will become formal advisors to their respective judges rather than idle staff who observe backlog as it "just happens".

Figure 24. Continuum of Judicial-Administrative Activities



Administrator makes the decisions without consulting the judge	Joint decision making or information sharing: "a shared role"	Judge makes the decisions without consulting the administrator
Examples of Activities		
• Budgeting • Training for non-judicial personnel • Purchasing • Accounting • Statistics • Report preparation • Systems analysis and research • Record keeping	• Agency relationships • Legislative relationships • Public information • Planning committees • Research on rules and procedures • Probation • Case processing • Financial policy • Personnel rules	• Case decisions • Directing meetings of judges • Assigning judges • Training for judges • Selecting law-trained support personnel • Supervising screening and instructing of jurors • Record creation

Judges together with administrators should be provided with case management education. To begin with, jurists and administrators new to the division should be familiarized with the standards so that, at minimum, they have rudimentary knowledge of the organization's values and how they are measured. Beyond this initial orientation, ample opportunities for training exist without disrupting the operation of the court. When

[141] Stott, E. K., Jr. 1982. The judicial executive: Toward greater congruence in an emerging profession. *The Justice System Journal* 7 (2): 152-179, page 152.

judges are initially appointed to the bench, they are required to participate in a two-week orientation seminar. Although an evaluation of the curriculum was not conducted at the time of this study, judges who have recently completed the program purported that they were never fully orientated to case management practices or the role of the team leader. Therefore, for newly-appointed judges, caseflow management and associated standards is, for the lack thereof, arcana.

Expecting judges to understand and embrace the purposes and methods of caseflow management without formal training is not realistic particularly because most of them were practicing attorneys before being appointed. Whereas attorneys (particularly criminal defense lawyers) expound upon the exception and anecdotal, court managers, as data analysts, are trained to develop policy and procedure on ordinary cases (the largest segment of the caseload) *not* the anomalies (cases which tend to fill one's recollection). Given the managerial aspects of the work, judges should be afforded with the appropriate training so that the transition is less onerous.

Once judges have completed their initial orientation, they should be assigned a mentor judge – one who has been acknowledged as having exceptional abilities in managing cases, which is not necessarily correlated with years on the bench. Apart from counseling judges on managing the volume of cases, mentor judges can also provide guidance in complying with mandated changes in criminal practice which has significantly increased the number and length of court events including those required for bail source hearings, discovery, motions, guilty pleas, sentences, violations of probations, and jury selection, instructions, and deliberations. Follow-up training that includes the latest technology in monitoring case movement should be offered jointly to judges and

supervisory staff during Thanksgiving recess at the NJ Judicial Staff College. Historically, each group has attended this training at separate venues. Furthermore, few case management workshops are typically offered and attendance is voluntary. This study recommends that the entire two-day symposium be designated to case management at a single location with attendance mandatory. Depending on the need, Staff College could be designated for these purposes on three-year intervals so that other types of training opportunities are not abandoned.

Case Tracking

EVCD has had some aspects reflective of DCM (screening cases for Remand Court, Drug Court, and municipal downgrades), but the management strategy has not been integrated into practice to fully reap the possible benefits. For instance, a large segment of the EVCD caseload is derived from narcotic transactions. In terms of complexity, these cases can vary considerably. Consider, Figure 25 which demonstrates a possible tracking model that can be used to differentiate them. The elements used to track the case need not be exclusive to discovery. Other intangible variables, such as the rehabilitative potential of the defendant, could also be screened and recommended to the judge.

Figure 25. Case Tracking Model for Narcotic Cases

Track 1 (less complex)	Track 2	Track 3	Track 4 (more complex)
• Cases involving only possession	• Small scale distributor outside school and public housing zone	• School or public housing zone distributors • Distributors including juveniles	• Drug kingpin or large scale distributors • Wiretap cases

Factors such as the nature of the offense, potential exposure (i.e. mandatory prison time), and number of co-defendants, should be screened and weighted. Technological applications that can calculate the complexity of a case based on available

information should be explored thoroughly and implemented. In most instances, the data is available, but it is not being utilized in a systematic way that can benefit the division and individual judge in managing the caseload. For example, when reviewing the number of co-defendants, each defendant listed on the case would get one point; thus, the more defendants, the more points or heavily weighted (more complex) the case. Co-defendant criteria would be used in tandem with other variables to determine the overall weight of the case. The EVCD, like a hospital emergency room, should not treat all cases with the same degree of exigency. The results of this study, particularly those related to the oldest dispositions urge, if even on an experimental basis, that a case tracking program be explored.

Preliminarily, a DCM consortium of EV stakeholders should be established to determine the viability and extent to which cases can be tracked. Both judges and attorneys expressed their willingness to experiment with a program to segregate complex cases with one ADPD mentioning, "complex cases should have different standards". Appendix H enumerates the caseflow practices that the group should review when considering implementation. As cited in the literature, case tracking is obviously not a novel idea. In fact, during the early 1990s, Planet suggested that future courts will have screening teams, who will review cases as they are filed and track them in accordance to case-type and notoriety, number of parties, discovery needs, and trial likelihood[142]. The recent verticalization of criminal case processing in EV presents an ideal opportunity to more seriously consider the approach.

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[142] Planet, M. D. 1993. Future directions in the practice of court management. In *Handbook of court administration and management*, ed. S. W. Hays and C. B. Graham, Jr. 497-507. New York, NY: Marcel Dekker, Inc.

In the past, policymakers may have been reticent in fully instituting DCM because such a system would propose a zero percent backlog for expedited-track cases. The present backlog standard for active pending cases provides judges with flexibility to individually consider and exercise discretion on complex matters that cannot be disposed within the 60 and 120-day timeframe. If tracking were to show that far less than 30 percent of the caseload legitimately falls on a complex track, a logical concern is that it can spawn into expecting more in terms of performance than what is currently accepted. Of course, the opposite could also be speculated, that is, far greater than 30 percent of the caseload is complex, in which case judges have been overachieving. Efforts should be made to explore with rigor the constructs of complex cases despite apprehension about what conclusions could be drawn. One inevitable conclusion would be a greater understanding of case complexity, and this should prevail over other findings suspected to be used as a performance yardstick. Moreover, given the considerable variation in backlog between EVCD judges, an exploratory study would be of substantive value to new judges, who could be provided with case management data that are more universal to the actual caseload. Absent an empirical foundation from which to base policy and procedure, it would be foolhardy to address the implications of complexity to determine whether it in fact applies to more than 30 percent of the inventory.

Caseflow Suggestions

Caseflow exists in all courts; the difference among them is the management of those cases, which constitutes the strength or weakness of the current. Likened another way, if a towel saturated with water represented the court's caseload, data-based management enables one to wring the towel to get the non-complex cases out of the

system. Information, hence, is critical in any case management system. Data on the CourTools' case management measures (clearance rate, time to disposition, age of active pending caseload, and trial date certainty) should be organized into a single report and promulgated on a monthly basis to all judges. This would provide the courts with the necessary information to gauge performance. Current reports distributed weekly should be reviewed to determine applicability to current processing realities. The division may conclude that while some reports are no longer needed or used by judges' teams, others may need to be created. Some of the relevant questions[143] that should be considered by judges and administrators in this exercise were noted and organized into Figure 26.

Figure 26. Outline of Required Case-Management Information for Judges and Managers

Individual Trial Judge and Team Leader	PJ and Criminal DM

Case-related questions:
• What has happened in this case?
• How old is it?
• What is the status?
• What should happen next and by when?
Calendar-related questions:
• What is the overall status of my calendar?
  o How many cases?
  o Age and status of pending cases?
• What are the old cases?
  o Why are they old?
  o What is required to dispose them?
	Overall status of division caseload:
	• How many cases are nearing one year?
	• What is the backlog?
	Problem areas:
	• Case-types, procedural issues, particular judges, staff, external agency, etc?

NJ Criminal Division standards while less restrictive than COSCA and ABA case processing standards (see Figure 1), are tempered by the increase in punitive and collateral consequences of criminal convictions. Plea negotiations are often strained due to the length of sentences and requirements subsequent to the term of conviction. During the last decade, for instance, the No Early Release Act was enacted requiring defendants convicted of particular crimes to serve 85 percent of their sentence before being eligible for parole, drug cases that violate school zones and public housing parameters have been

[143] See Note 89 supra.

attached to steeper penalties, and some convictions which implicate Megan's Law, parole supervision for life, and civil commitments discourage plea agreements. Understandably, as the severity of penalties increase, the proportion of cases that progress toward trial also increases. Data comparing disposition outcomes pre and post the said mandates was not scrutinized, but should be reviewed to determine the impact, if any, and if a change in the speedy trial standard is warranted. Additionally, the number of cases involving psychiatric reports or DYFS records should be investigated to determine how much of the caseload is represented by these issues. Some judges have purported that expectations and demands of defendants have prompted defense counsel to be more aggressive in their filings of motions and more thorough in their investigations to gain a greater advantage in plea negotiations – both of which can bolster delay. Again, research was not conducted to support or refute this claim. The recommendations that follow were made in accordance to the chronology of events while bearing these concerns in mind.

Resources in terms of the allocation of human capital should be reassessed to determine how roles and expertise can best suit verticalization. Because verticalization is still inchoate, it presents an ideal opportunity for the executive component of the court to explore innovative policies and procedures to make case management more efficient. A Pre-trial Services Unit (PSU) should be established within the operation of CJP. Assigned personnel would be principally responsible for screening cases. If available, factors that can produce delay such as immigration status, interpreter needs, and psychological evaluations, should be determined with the judge advised accordingly. The PSU would logistically frontload the organization with processes so that less time is squandered and effort exerted on the multiplicity of tasks. This would enable cases that

are genuinely complex in nature to be identified earlier. CJP court has been proven to be an effective vehicle in case processing, but needs to be expanded to effectively meet the demands of verticalization, which requires that cases be filtered for a number of outcomes including dismissal, municipal downgrade, PTI, Drug Court, Remand Court, or grand jury prior to the PDC event. PTI and Drug Court eligibility are particularly important to identify early because the application process and subsequent appeals for those rejected protracts the time to disposition. Through its collaboration with police agencies and the ECPO, the court should ensure that defendant identifiers are handled more thoroughly in order to produce information that can be readily matched against other pending cases that the defendant may have in the system.

EV should evaluate grand jury summoning practices to ensure that witnesses are scheduled to testify for a day which does not pose a conflict for them. Witnesses who blatantly disregard the subpoena should be held accountable by the ECPO (assuming they choose to move forward with the indictment). In the past, however, inducing the ECPO to act on witnesses who fail to appear for grand jury testimony has proven difficult. Despite the interagency reliance that they have with police, the prosecutor must take the lead role in dispelling the "case-closed-by-arrest" mentality that exists among many officers. The alternative for the courts is to dismiss cases without prejudice for failure to indict. Better calendar management must be developed in scheduling grand jury and post-indictment events to ensure that the system does not falter during the summer months when there are fewer prosecutors and judges available due to vacation. One possibility is to couple courts into teams, wherein each team administers the events for the other

whenever on vacation. This would require attorneys to be prepared to dispose cases even in the absence of their assigned judge.

Given that the onus in moving the case toward indictment falls squarely on the ECPO, ADPDs should be resolute in motioning the court to dismiss backlogged cases for failure to indict. Resistance should be expected given what some ADPDs imply is due to the local legal culture. One ADPD commented, "motions to dismiss for failure to indict are not taken seriously by either the court or the state". Motion outcome data should be evaluated to confirm this contention and cases that are significantly backlogged should be dismissed without prejudice (with regularity) by the court. This would prompt the prosecutor to expedite its handling of pre-indictment defendants while concomitantly creating an atmosphere where significant delay is not tolerated. Finally, the time intervals between pre-indictment events should be collapsed so that the 60-day time period to backlog is realized.

In many instances, court events whether PDC, arraignment, or status events, are used by ADPDs as an opportunity to meet and counsel their clients. This ad-hoc consultation congests holding cells (some of which are shared between two courts) already replete with defendants. Given that the ADPD has the ability to interview the defendant by video from the OPD, it is not clear why any lengthy discussion would be necessary while in court. Events should be planned and subsequently conducted with the expectation that counsel come prepared so that either a disposition is reached or that they adhere to a progressive and firm event schedule. Judges, nolens volens, must be conservative when granting adjournments given the detrimental affect that it can obviously have on the rest of the caseload not to mention the cultural tone that it sets. In

accord with tracking, when adjournments are absolutely necessary, the frequency, including reason, should be recorded. An ADPD commented:

> "PDC events are irrelevant on cases involving "special units" (i.e. Megan's Law, child abuse) in that they seldom received a plea offer from the Prosecutor's Office on these cases".

In cases where the prosecutor fails to offer a reasonable plea, PDC should still be held to establish control of the case. Focus must also be brought to bear on all post-indicted defendants that are approaching one year. The short-term objective here is twofold. First, to drive down the 28 percent of defendants, whose cases are between four and 12 months so that the year-end goal is attained and second, to ensure that all post-indicted cases are resolved within a year of indictment.

Pre-arraignment events should be decentralized (verticalized) to each court so that pursuant to NJ Court Rule 3:9-1, issues regarding the plea offer, discovery, attorney assignment, motions, and related reports are addressed prior to arraignment. Instituting this practice would illuminate some of the same issues that the courts are handling at the arraignment conference but are becoming aware of them at the 35-day post-indictment mark rather than 21 days after indictment. At the time of arraignment, the Arraignment/Status Conference Order should be utilized to gain greater control of the case and set expectations on the pace of litigation. Team leaders should ensure that a copy of the order is placed in the indictment file following arraignment.

Trials are generally rare vis-à-vis other dispositions. The system must be structured so that the defendant has an incentive to take a plea early in the process. Having said this, the plea offer should not change in the defendant's favor as the trial date approaches, motions should be resolved prior to the trial date, and cases that are

scheduled for trial should proceed to trial with regularity so that they are viewed and treated with this likelihood in mind Three trials should be scheduled each week. In instances when more than one trial is ready to proceed, ready-trials can easily be transferred to another available judge. Requests for adjournments should be probed by judges to ensure that the request and length of postponement is reasonable and legitimate.

The research indicated that the prospect of 12 jurors making a decision galvanized attorneys to find a middle ground in their negotiations. Judges should therefore, be more steadfast in moving cases to trial. If a disposition is reached on the account that a trial is imminent, then trials should be scheduled sooner; that being, before the 120-day post-indictment standard for at least 70 percent of the caseload. Dispositions that are timelier will only materialize from scheduled trials when greater emphasis is placed on the initial trial date and outstanding issues are resolved, meaning that previous status conferences must be meaningful. Plea cut-off must be enforced to solidify trial date certainty. Only in the rare exception that can be substantiated by either documentation or testimony, defendants and respective counsel should be ready to proceed on the initial trial date. Likewise to other recommendations, this will set an expectation for attorneys to be fully prepared to proceed on the date the event is scheduled.

As an aside, it should be argued emphatically to policymakers that the number of peremptory challenges be reduced especially since attorneys are privy to significantly more information about jurors pursuant to the newly-mandated voir dire. Three consequences result from the current number of challenges. First, it prolongs selection and can delay the resolution of the instant case, in addition to other scheduled matters following the trial. This in turn impacts the number of jurors, who are able to make the

time commitment while concurrently consuming bench time. Second, any delay in jury selection is a further strain to the judiciary's budget. Third, despite efforts to placate juror concerns regarding peremptory challenges, the exorbitant number of challenges together with the prolonged voir dire can leave jurors with a disenchanted or even exclusionary view of the justice system.

Figure 27 summarizes the herein EVCD recommendations together with some of the common elements as noted by Friesen and associates (1991), of successful delay reduction programs[144].

Figure 27. Summary of Recommendations

Element	Recommendations
Leadership	The PJ together with the Criminal DM should take an active role in forging collaborative partnerships with all lead representatives from affected agencies. The partnership should work to ensure that the following caseflow techniques are being conducted: • Early prosecutorial screening and charge decision making • Early and appropriate assignment of defense counsel • Early exchange of discovery • Early resolution of possible motions • Meaningful events (including strict enforcement of plea cutoff and firm trial dates). Attorneys should be fully prepared at the arraignment conference meaning that judges must ensure that PTI eligibility has been assessed, discovery was exchanged and reviewed, and that a plea offer was offered and discussed.
Goals	Time standards for pre-indictment (60 days) and post-indictment (120 days) and pending caseload (no more than 30 percent; zero percent for year-old cases) should be promulgated with the intention that it will be received and understood by affected stakeholders. Gallas offered the following formula that should be considered by the EVCD in calculating a goal for 98 percent of cases actively pending over the course of a six-month timeframe[145]: (N of total filings) 0.25 = target number of active pending cases. The formula could be adjusted to fit the vicinage's pre-indictment two-month goals (N of total filings) 0.08 and post-indictment four-month goals (N of total filings) 0.16.

[144] Friesen, E. C., Mahoney, B., and M. Solomon. 1991. *Caseflow management, principles and practices: How to succeed in justice.* Williamsburg, VA: National Center for State Courts (videotape).

[145] Gallas, G. 2008. Personal communication. February 5.

Element	Recommendations
Information	Select reports should be developed by management and shared with stakeholders to review the four main areas of case management (clearance rate, time to disposition, active pending caseload, and trial date certainty). Arraignment/Status Conference Order and Pre-trial Memorandum should continue to be utilized to move cases toward disposition within the time standards. Coupling judges into teams of two should be utilized to mitigate adjournments during vacation periods.
Communications	One to two team leaders and court clerks should be added to the membership of the Speedy Trial Committee. Subcommittees should be developed in accordance to pre-indictment and post-indictment needs. In particular, a strong working relationship should be emphasized between judges and respective team leaders with trial readiness meetings scheduled and attended on a weekly basis. Team leaders should be empowered to increase their span of authority so that they can take ownership of performance outcomes.
Commitment	Commitment should be demonstrated through action-orientated behavior (i.e. active attendance at committee meetings, meeting deadlines for court-imposed initiatives, etc.).
Case management procedures	Reassess entire process in how cases are processed to determine problems with filing, exchange of discovery, scheduling, attorney assignment, and capacity to meet goals. A case-tracking consortium should be established to explore the feasibility of implementing DCM. Complex cases should be explored further with variables being weighted accordingly.
Mechanisms for accountability	Meetings between executive personnel of the division (PJ and Criminal DM) and individual judges and team leaders should be attended on an ongoing, individual basis to evaluate case management performance. Team leaders should be charged with knowing the status of cases on their list, monitoring time between events, and assisting the judge in setting future dates. Together, they should evaluate cases early to determine complex and most probable backlog cases. Attorneys who are habitually unprepared should be required to return to court sooner than the normal adjournment period.
Attention to detail	Evaluate the work performance of judiciary clerks and probation officers to ensure that the work product is in accord with policy and procedure. The EVCD should institute a data entry quality assurance program to monitor the accuracy and consistency of information. The total number of events and the lapse of time between events should be monitored closely and controlled based on individual case elements.
Education and training	A case management training course should be made available to judges and team leaders with an emphasis on calendar management.
Backlog reduction	Determine what is feasible given the empirical-based data. Substantiate where additional or temporary resources are needed using problem-centered policy analysis.

APPENDIX A

Table A1. Frequency Distribution of the Oldest Filing Dispositions by Number of Motions, 2006-07

Number of Motions	N	Valid %	Cumulative %
0	525	69.5	69.5
1	161	21.3	90.9
2	43	5.7	96.6
3	12	1.6	98.1
4	5	0.7	98.8
5	3	0.4	99.2
6	3	0.4	99.6
7	1	0.1	99.7
8	1	0.1	99.9
9	1	0.1	100
Total	755	100	-

Table A2. Frequency Distribution of the Oldest Case Dispositions by Number of Witnesses, 2006-07

Number of Witnesses	N	Valid %	Cumulative %
0	216	35.9	35.9
1	223	37	72.9
2	123	20.4	93.4
3	25	4.2	97.5
4	9	1.5	99
5	5	0.8	99.8
6	1	0.2	100
Total	602	100	-

Table A3. Chi Square Results for Arrest to Pre-Indictment Disposition by Stakeholder Role

Response	Role			Total
	Judge	Assistant Prosecutor	Public Defender	
More than 30 days				
Observed Count	15	31	21	67
Expected Count	12.9	32.6	21.5	67
% of Total	100	81.6	84	85.9
Std. Residual	0.6	-0.3	-0.1	-
30 days or less				
Observed Count	0	7	4	11
Expected Count	2.1	5.4	3.5	11
% of Total	0	18.4	16	14.1
Std. Residual	-1.5	0.7	0.3	-

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.122	2	.210

Note. Data retrieved from survey instrument. 2 cells (33.3%) have an expected count less than 5. The minimum expected count is 2.12.

Table A4. Chi Square Results for Indictment to Post-Indictment Disposition by Stakeholder Role

Response	Role			Total
	Judge	Assistant Prosecutor	Public Defender	
Other Responses				
Observed Count	14	29	24	67
Expected Count	12.9	31.8	22.3	67
% of Total	93.3	78.4	92.3	85.9
Std. Residual	0.3	-0.5	0.4	-
61 to 90 days				
Observed Count	1	8	2	11
Expected Count	2.1	5.2	3.7	11
% of Total	6.7	21.6	7.7	14.1
Std. Residual	-0.8	1.2	-0.9	-

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.293	2	.193

Note. Data retrieved from survey instrument. 2 cells (33.3%) have an expected count less than 5. The minimum expected count is 2.12.

Table A5. Chi Square Results for Indictment to Trial Start Date by Stakeholder Role

Response	Role			Total
	Judge	Assistant Prosecutor	Public Defender	
Other Responses				
Observed Count	8	19	15	42
Expected Count	8.1	19.9	14	42
% of Total	53.3	51.4	57.7	53.8
Std. Residual	0	-0.2	0.3	-
181 to 270 days				
Observed Count	7	18	11	36
Expected Count	6.9	17.1	12	36
% of Total	46.7	48.6	42.3	46.2
Std. Residual	0	0.2	-0.3	-

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	.249	2	.883

Note. Data retrieved from survey instrument. 0 cells (0%) have an expected count less than 5. The minimum expected count is 6.92.

Table A6. Chi Square Results for Arrest to Trial Completion by Stakeholder Role

Response	Role			Total
	Judge	Assistant Prosecutor	Public Defender	
Other Responses				
Observed Count	14	27	22	63
Expected Count	12.1	29.9	21	63
% of Total	93.3	73	84.6	80.8
Std. Residual	0.5	-0.5	0.2	-
More than 365 days				
Observed Count	1	10	4	15
Expected Count	2.9	7.1	5	15
% of Total	6.7	27	15.4	19.2
Std. Residual	-1.1	1.1	-0.4	-

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.220	2	.200

Note. Data retrieved from survey instrument. 1 cell (16.7%) has an expected count less than 5. The minimum expected count is 2.88.

Table A7. Chi Square Results for Trial Date Certainty by Stakeholder Role

Response	Role			Total
	Judge	Assistant Prosecutor	Public Defender	
Other Responses				
Observed Count	9	22	22	53
Expected Count	10.2	24.7	18.2	53
% of Total	64.3	64.7	88	72.6
Std. Residual	-0.4	-0.5	0.9	-
10 to 30% of the time				
Observed Count	5	12	3	20
Expected Count	3.8	9.3	6.8	20
% of Total	35.7	35.3	12	27.4
Std. Residual	0.6	0.9	-1.5	-

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	4.532	2	.104

Note. Data retrieved from survey instrument. 1 cell (16.7%) has an expected count less than 5. The minimum expected count is 3.84.

Table A8. Chi Square Results for Clearance Rate by Stakeholder Role

Response	Role			Total
	Judge	Assistant Prosecutor	Public Defender	
Other Responses				
Observed Count	13	33	19	65
Expected Count	12.7	32.5	19.7	65
% of Total	100	100	95	98.5
Std. Residual	0.1	0.1	-0.2	-
101 to 125%				
Observed Count	0	0	1	1
Expected Count	0.2	0.5	0.3	1
% of Total	0	0	5	1.5
Std. Residual	-0.4	-0.7	1.3	-

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	2.335	2	.311

Note. Data retrieved from survey instrument. 3 cells (50%) have an expected count less than 5. The minimum expected count is .20.

Table A9. Chi Square Results for Pre-Indictment Active Pending Caseload by Stakeholder Role

Response	Role			Total
	Judge	Assistant Prosecutor	Public Defender	
Other Responses				
Observed Count	10	32	19	61
Expected Count	11.7	29.7	19.6	61
% of Total	66.7	84.2	76	78.2
Std. Residual	-0.5	0.4	-0.1	-
51 to 75%				
Observed Count	5	6	6	17
Expected Count	3.3	8.3	5.4	17
% of Total	33.3	15.8	24	21.8
Std. Residual	1	-0.8	0.2	-

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	2.047	2	.359

Note. Data retrieved from survey instrument. 1 cell (16.7%) has an expected count less than 5. The minimum expected count is 3.27.

Table A10. Perception of Complexity for Cases with 1 Defendant by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	9	56.3	13	35.1	13	50	35	44.3
Very Seldom	6	37.5	12	32.4	5	19.2	23	29.1
Seldom	1	6.3	10	27	8	30.8	19	24.1
Often	0	0	2	5.4	0	0	2	2.5
Very Often	0	0	0	0	0	0	0	0

Table A11. Perception of Complexity for Cases with 2 Defendants by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	1	6.7	2	5.3	3	11.5	6	7.6
Very Seldom	2	13.3	10	26.3	3	11.5	15	19
Seldom	8	53.3	9	23.7	6	23.1	23	29.1
Often	3	20	15	39.5	13	50	31	39.2
Very Often	1	6.7	2	5.3	1	3.8	4	5.1

Table A12. Perception of Complexity for Cases with 3 Defendants by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	0	0	1	2.6	2	7.7	3	3.8
Very Seldom	1	6.7	0	0	1	3.8	2	2.5
Seldom	2	13.3	6	15.8	1	3.8	9	11.4
Often	8	53.3	18	47.4	14	53.8	40	50.6
Very Often	4	26.7	13	34.2	8	30.8	25	31.6

Table A13. Perception of Complexity for Cases with 4 Defendants by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	0	0	1	2.6	2	7.7	3	3.8
Very Seldom	0	0	0	0	0	0	0	0
Seldom	1	6.3	1	2.6	0	0	2	2.5
Often	6	37.5	15	39.5	14	53.8	35	43.8
Very Often	9	56.3	21	55.3	10	38.5	40	50

Table A14. Perception of Complexity for Cases with more than 4 Defendants by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	0	0	1	2.6	2	8.3	3	3.8
Very Seldom	0	0	0	0	0	0	0	0
Seldom	1	6.3	1	2.6	1	4.2	3	3.8
Often	3	18.8	8	21.1	7	29.2	18	23.1
Very Often	12	75	28	73.7	14	58.3	54	69.2

Table A15. Perception of Complexity for Cases involving a Homicide by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	0	0	2	5.7	1	4	3	3.9
Very Seldom	0	0	1	2.9	1	4	2	2.6
Seldom	0	0	6	17.1	1	4	7	9.2
Often	6	37.5	10	28.6	7	28	23	30.3
Very Often	10	62.5	16	45.7	15	60	41	53.9

Table A16. Perception of Complexity for Sex-Related Cases involving a Child by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	0	0	1	2.9	1	3.8	2	2.6
Very Seldom	0	0	1	2.9	1	3.8	2	2.6
Seldom	0	0	7	20	3	11.5	10	13
Often	7	43.8	15	42.9	6	23.1	28	36.4
Very Often	9	56.3	11	31.4	15	57.7	35	45.5

Table A17. Perception of Complexity for Sex-Related Cases involving only Adults by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	0	0	1	2.9	2	7.7	3	3.9
Very Seldom	1	6.3	1	2.9	1	3.8	3	3.9
Seldom	2	12.5	11	31.4	6	23.1	19	24.7
Often	10	62.5	17	48.6	11	42.3	38	49.4
Very Often	3	18.8	5	14.3	6	23.1	14	18.2

Table A18. Perception of Complexity for Cases involving a Violent Offense (Other than Homicide and Sex Assaults) by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	0	0	2	5.4	2	7.7	4	5.1
Very Seldom	1	6.3	1	2.7	2	7.7	4	5.1
Seldom	0	0	10	27	8	30.8	18	22.8
Often	12	75	21	56.8	9	34.6	42	53.2
Very Often	3	18.8	3	8.1	5	19.2	11	13.9

Table A19. Perception of Complexity for Cases involving a 1st Degree Crime by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	0	0	3	7.9	4	15.4	7	8.8
Very Seldom	0	0	1	2.6	5	19.2	6	7.5
Seldom	0	0	12	31.6	2	7.7	14	17.5
Often	10	62.5	18	47.4	12	46.2	40	50
Very Often	6	37.5	4	10.5	3	11.5	13	16.3

Table A20. Perception of Complexity for Cases involving a 2nd Degree Crime by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	0	0	3	7.9	5	19.2	8	10
Very Seldom	0	0	1	2.6	3	11.5	4	5
Seldom	4	25	18	47.4	7	26.9	29	36.3
Often	11	68.8	15	39.5	11	42.3	37	46.3
Very Often	1	6.3	1	2.6	0	0	2	2.5

Table A21. Perception of Complexity for Cases involving a 3rd Degree Crime by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	1	6.3	8	22.2	5	19.2	14	17.9
Very Seldom	5	31.3	6	16.7	7	26.9	18	23.1
Seldom	8	50	19	52.8	12	46.2	39	50
Often	2	12.5	3	8.3	2	7.7	7	9
Very Often	0	0	0	0	0	0	0	0

Table A22. Perception of Complexity for Cases involving a 4th Degree Crime by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	6	37.5	10	26.3	6	23.1	22	27.5
Very Seldom	6	37.5	12	31.6	9	34.6	27	33.8
Seldom	4	25	14	36.8	9	34.6	27	33.8
Often	0	0	2	5.3	2	7.7	4	5
Very Often	0	0	0	0	0	0	0	0

Table A23. Perception of Complexity for Cases with 1 Witness/Victim by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	7	43.8	6	16.2	5	19.2	18	22.8
Very Seldom	8	50	11	29.7	8	30.8	27	34.2
Seldom	1	6.3	14	37.8	8	30.8	23	29.1
Often	0	0	5	13.5	5	19.2	10	12.7
Very Often	0	0	1	2.7	0	0	1	1.3

Table A24. Perception of Complexity for Cases with 2 Witnesses/Victims by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	4	25	4	10.5	3	12	11	13.9
Very Seldom	9	56.3	9	23.7	3	12	21	26.6
Seldom	3	18.8	15	39.5	11	44	29	36.7
Often	0	0	8	21.1	6	24	14	17.7
Very Often	0	0	2	5.3	2	8	4	5.1

Table A25. Perception of Complexity for Cases with 3 Witnesses/Victims by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	2	12.5	2	5.3	2	7.7	6	7.5
Very Seldom	5	31.3	4	10.5	3	11.5	12	15
Seldom	9	56.3	16	42.1	11	42.3	36	45
Often	0	0	12	31.6	7	26.9	19	23.8
Very Often	0	0	4	10.5	3	11.5	7	8.8

Table A26. Perception of Complexity for Cases with 4 Witnesses/Victims by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	1	6.3	1	2.6	2	7.7	4	5
Very Seldom	4	25	4	10.5	4	15.4	12	15
Seldom	6	37.5	12	31.6	5	19.2	23	28.8
Often	5	31.3	14	36.8	10	38.5	29	36.3
Very Often	0	0	7	18.4	5	19.2	12	15

Table A27. Perception of Complexity for Cases with more than 4 Witnesses/Victims by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	0	0	1	2.6	2	7.7	3	3.8
Very Seldom	2	12.5	3	7.9	3	11.5	8	10
Seldom	6	37.5	9	23.7	5	19.2	20	25
Often	6	37.5	17	44.7	10	38.5	33	41.3
Very Often	2	12.5	8	21.1	6	23.1	16	20

Table A28. Perception of Complexity for Cases involving only Routine Motions by Stakeholder Role

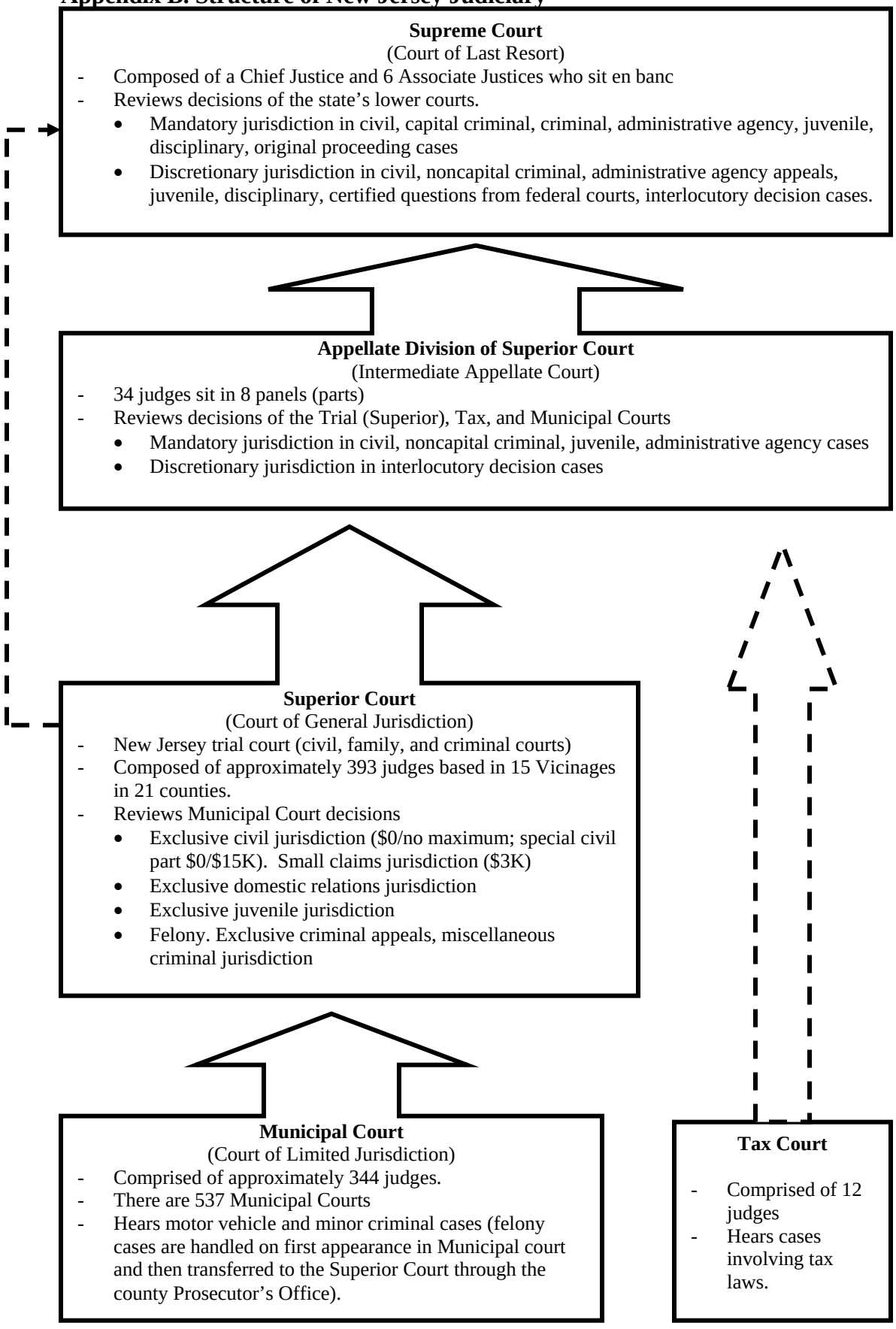
Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	1	6.3	3	7.9	3	12	7	8.9
Very Seldom	4	25	4	10.5	5	20	13	16.5
Seldom	9	56.3	21	55.3	12	48	42	53.2
Often	2	12.5	9	23.7	5	20	16	20.3
Very Often	0	0	1	2.6	0	0	1	1.3

Table A29. Perception of Complexity for Cases involving Routine and Dispositive Motions by Stakeholder Role

Perception	Judges		Assistant Prosecutors		Public Defenders		Total	
	N	Valid %	N	Valid %	N	Valid %	N	Valid %
Not at All	0	0	2	5.3	2	7.7	4	5.1
Very Seldom	3	20	2	5.3	2	7.7	7	8.9
Seldom	4	26.7	15	39.5	9	34.6	28	35.4
Often	6	40	18	47.4	11	42.3	35	44.3
Very Often	2	13.3	1	2.6	2	7.7	5	6.3

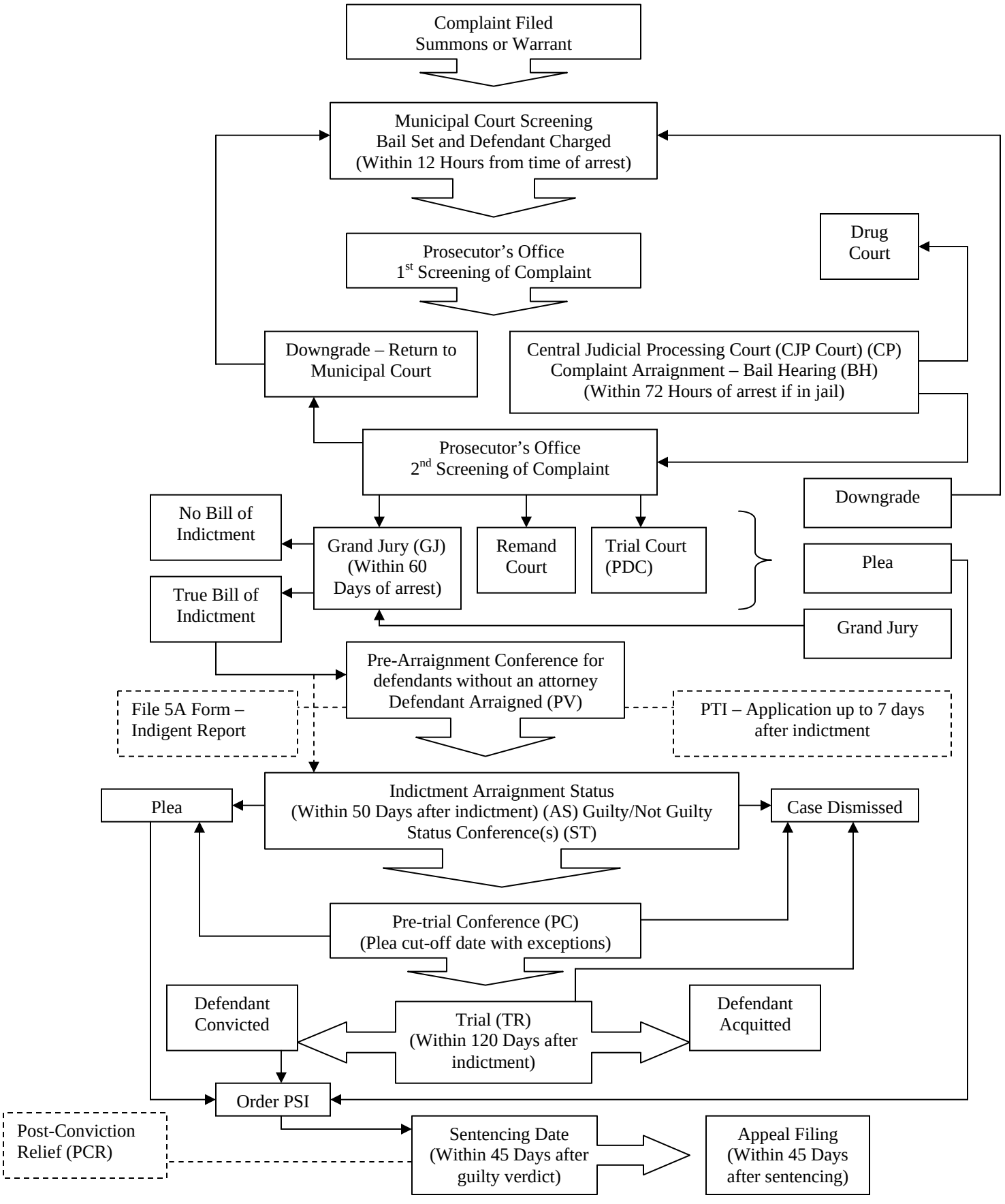
APPENDIX B

Appendix B. Structure of New Jersey Judiciary



APPENDIX C

Appendix C. Essex Vicinage Criminal Division Case Processing Flowchart



APPENDIX D

Appendix D. Approved Standards for the Operation of the New Jersey Criminal Division of Superior Court

APPROVED BY THE NEW JERSEY SUPREME COURT
Approved: October 20, 1992
Modified: June 2, 1998

The following standards arise from review of overall experience in the Criminal Division during the course of the Speedy Trial Program in the 1980's, as found in the various innovative procedures developed amongst the counties and recommended by the Judicial Conferences of 1980, 1986 and 1990. They have been carefully and fully debated by the Conference of Criminal Presiding Judges with representatives from the private bar, the Public Defender and County Prosecutor's offices, and by the Conference of Division Managers and reflect the consensus, but not unanimity, of both groups. Reservations and qualifications of the standards are included in the commentaries.

A brief review of the background to these standards will be helpful. In 1981, during the initial year of the Statewide Speedy Trial Program, the focus was on assembling, for the first time in many counties, the major components of the adversarial system for a mutual planning process. Furthermore, rules were promulgated which ensured that cases receive management attention soon after indictment, rather than late in the process. Time goals were established by the Supreme Court and numerous experimental projects got underway.

After some initial progress, it soon became apparent that planning and early case management could accomplish only so much within the current administrative structure. The Committee on Efficiency found the court system to be "unmanageable" in 1982 due to a fragmented organization. The subsequent Management Structure Program reorganized and focused court support resources according to the major divisions of court and established Criminal Presiding Judges and also the Office of the Criminal Division Manager.

The overall Speedy Trial Program was reviewed by the Judicial Conference of 1986. Many standards were approved at that conference. Some called for a continued rigorous local planning process searching for and resolving causes of delay. They further defined the nature of the planning process, providing for broad participatory management and local flexibility within an overall framework for case flow processing. Standards identified specific objectives which should be accomplished early in the case process and called for central judicial processing and remand courts to accomplish this. The report also recognized the responsibility of the prosecutor to screen cases with an eye toward available judicial resources. Other standards called for streamlining PTI, meaningful pre-trial conferencing, offers of judgment, and date-certain trial lists of 5-7 cases per week per judge.

With the advent of the War on Drugs in 1987, management attention turned to face the sudden and tremendous surge of case filings. The whole system strained under mounting backlogs. The Special Committee to Assess Criminal Division Needs studied resource needs. Their Report called for a rebalancing of resources by adding more public defenders, and then a further general increase of 17 judicial units (judge, prosecutor, defense, support). They suggested performance standards of 500 dispositions per judicial unit. Finally, they called for the statewide adoption of proven management techniques such as CJP (Central Judicial Process), individual calendars, and differentiated case tracking.

Finally, in 1990, a Statewide Task Force on Drugs and the Courts reported to the Judicial Conference on various case processing strategies. Reiterating the work of 10 years of learning under the Speedy Trial Program, its report calls for the system to work harder and smarter. Standards recommend: the greater availability of drug assessments; vigorous prosecutorial screening; case tracking; more resources; individual calendars; future and meaningful court event preparation; plea cut-offs; and performance standards.

A review of this ten year effort by the Speedy Trial Program identifies a number of standards which should govern the operation of the Criminal Division statewide. While diversity gave rise to much learning over the past decade, the call is growing from many quarters to now draw from our experience and add proven procedures to the statewide framework for criminal case processing. The broad differences in productivity from county to county require the implementation of proven systems in all counties.

I. As a general rule, individual calendars are preferable to master or central calendars and should be used. Indictments should be assigned to judges upon presentment for handling of all pre-trial matters through final disposition.

Most counties in New Jersey currently utilize individual calendars. Master calendars seem to work best in situations where an extraordinarily productive judge runs the calendar, however they rely heavily upon that judge for their momentum. They do not promote the opportunity for individual judges to learn how to effectively run a list. In this respect, the talents and managerial abilities of judges are not utilized, and an important resource is lost to the system. There is a significant view that some judges may simply not be able to manage a calendar, although in many counties all judges are currently assigned individual lists of cases. In any event, it is likely that the emergence of case management teams, as described in standard IV, will further assist judges in calendar management. Some judges may need to work closely with the presiding judge in managing a calendar, and the extent of the presiding judge's involvement should depend on the situation. However, in concert with full case management teams, and after sufficient training, this approach will work for nearly all judges who run a criminal list full-time and have adequate defense resources for that list. Accordingly, the implementation of this standard will have to recognize the need for some flexibility. An individual calendar clearly optimizes the organizational values held by the judiciary, particularly the need to promote independence, consistency, familiarity, accountability, productivity, and development of human resource potential. The report of the Task Force on Drugs and the Courts in 1990 recommended that "the most effective organization of resources is one that focuses on individual cases assigned to specific courts."

II. In order to facilitate early case management, each case should be scheduled for a pre-indictment event. On or before that date, the Intake Unit of the Criminal Division should complete the Uniform Defendant Intake Report and must be cautious not to offer any legal advice to defendants.

Traditionally, first appearances have been conducted in Municipal Court and, other than for bail review, the first involvement with a case by the Superior Court occurred subsequent to indictment. This practice began to change in the early 1980's with the advent of Central Judicial Processing (CJP) and other pre-indictment (PIP) programs. These programs provide an excellent forum for screening, intake, diversion, and early case conferences before indictment.

One of the clearest lessons learned during the last decade, heralded in all major Task Forces which address the criminal system, is that it's important to get a good handle on cases at the start. This includes early notice to the prosecutor and court of indictable charges, expeditious receipt of police and investigative reports, exchange of routine discovery, entry of appearance of defense counsel and early contact with the defendant. This enables the prosecutor to screen cases, and to advise the court regarding which cases will be dismissed or remanded.

For cases which will continue as indictable charges, the court should move affirmatively to resolve threshold issues such as defense representation and PTI eligibility. Then, cases which are amenable to a fast track pre-indictment plea conference can be so scheduled. Other cases should be set for indictment, and prepared for post-indictment processing.

This standard recognizes that the particular emphasis of existing pre-indictment programs varies somewhat. In some counties, such as Hudson County, the focus is on prosecutor screening and so the hearing occurs right after arrest. In other programs, such as Camden's and Passaic's, the focus includes case conferencing, and thus the hearing is delayed a bit to accommodate the needs of plea negotiations. Often, selected cases are scheduled for a plea conference. A few counties prefer to await the completion of prosecutor screening in order to conserve resources and handle only those cases which will be presented for indictment. A key to this process is the presence of an experienced prosecutor and public defender who are able to identify those cases which can be disposed at an early date. Private counsel may elect to represent third or fourth degree offenses at these events at a reduced fee if they are not to be inextricably locked into the case at this phase of the process. Thus, this standard endeavors to find a common ground, calling only for a pre-indictment event and an intake to promote case management, but leaving the timing and the focus of the event up to the individual counties.

The implementation of CJP type programs was supported at the Judicial Conferences in both 1986 and 1990, and was strongly urged by the Chief Justice's Special Committee to Assess Criminal Division Needs in 1989. Of course, the implementation of such a program requires some additional resources at first.

III. Upon indictment, the court should schedule an event with counsel present to satisfy arraignment requirements and to inform the court regarding the disposition or future procedural needs of the case. If not previously done, such a conference should be preceded by an intake interview by court staff. Future events should be scheduled, not by rote, but according to the differentiated needs of each case. Reasonable adjournments should be granted to avoid meaningless events.

Before a case is set for trial, a pre-trial conference should be held in open court with the defendant present. Only after discovery has been exchanged, and necessary motions decided, a plea cut-off rule should be implemented and the defendant advised of the offer, the sentence authorized by statute and that negotiations will terminate as ordered by the court. Trial lists must be credible, certain, and limited in number. The priority of cases on the trial list should be set by and enforced by the judge only, and not unduly influenced by either party.

The essence of this standard is that court events must be meaningful, and that the waste of valuable resources for perfunctory or ineffective hearings must stop.

Therefore, the first court event after indictment must be with counsel present. This means that the Judge/Prosecutor/Defense Team must be identified beforehand, as soon as possible, and assigned the case. Indigence issues should be resolved prior to this event. It is also quite important that discovery be previously exchanged. An informal pre-arraignment event soon after indictment, or such as described in standard II, can be quite useful in preparing for the first arraignment/status conference. Support staff should gather the required information at these initial interviews, but should avoid giving any legal counsel to unrepresented defendants.

If the case cannot be disposed at this event, then a pretrial conference will be scheduled. Regarding adjournments, it is important to emphasize the need to avoid unnecessary court events. In some jurisdictions the waste of time for attorneys, judges, and others during court events which do not achieve their purpose, often due to the failure to get something done beforehand, is intolerably high. Therefore, conference and trial lists should be reviewed ahead of time by staff to ensure that each case is truly ready for a scheduled court event. If problems can't be resolved by the scheduled date, adjournment should be granted, but only for enough time to get the job done. At the 1990 Judicial Staff College, the Criminal Division Managers and Team Leaders detailed the services which should be provided to judges in preparing for future court events. These include notating calendars with useful information, correcting errors, ensuring that attorneys are notified, packaging co-defendants or other pending charges, checking on PTI status, checking open warrants, ensuring that motions are resolved, and ensuring that writs are effectuated. When events are not meaningful, precious resources are wasted, and so, great savings can be made by event monitoring. While the judge must still run the calendar, the assistance of a staff coordinator can save everyone a lot of time.

Plea cut-offs have been debated at length in New Jersey. Some people are concerned with the fairness of cut-offs to defendants who may not fully understand the process; others are concerned with forcing unnecessary trials, particularly in smaller counties. The offer of a better plea only prior to motions being heard as a policy would

discredit the process. [However, when fairly applied, plea cut-off is highly effective and is probably the key to the extraordinary efficiency found in several counties. Its fair application first requires 1) that all plea negotiations have been exhausted, 2) that no other action is required, (e.g., the prosecutor has seen witnesses, all necessary motions are resolved), and 3) that the defendant has been fully advised of the effects of the plea cut-off.] Significant training is needed to make the procedure universally effective and fair.

The standard states that the plea cut-off rule should be implemented only after discovery has been exchanged and necessary motions decided. "Necessary" motions are defined as those which need to have been resolved before effective plea negotiations can occur. This standard recognizes that motions deemed significant in one case may be less significant in another. The standard is designed to allow for a determination of those issues that need to be decided prior to effective plea negotiations, without otherwise delaying the implementation of plea cut-offs.

When an exception to the plea cut-off is requested by either attorney, the matter could be referred to the presiding judge as a policy to develop uniformity of the plea cut-off. Unforeseen changes in circumstances evaluated by the judge may allow for a continuance of a case.

The 1990 Task Force on Drugs and the Courts has recommended a three track (diversion, early plea, serious case) approach for drug cases. Other projects have tested the use of fast track/standard track procedures given differentiated case needs. This approach to calendar management is broadly used and merits statewide implementation, at least insofar as cases amenable to early disposition should be tracked to an early conference and the remainder tracked to indictment.

Finally, the use of trial calls to churn large numbers of cases is widely considered counterproductive to efficiency, and wasteful of the time of all those, including police and lay witnesses, who are affected by trial subpoenas. Task Forces reporting to the Judicial Conference in 1986 and again in 1990 stated that the current consensus recommendation for trial lists calls for no more than 7-10 cases listed per week. More than that leads to uncertainty, churning, and wasted effort. Obviously, this can only occur if parties cooperate to resolve cases before trial call, and if a plea cutoff rule is in place and enforced.

IV. The role of the Office of the Criminal Division Manager includes four major functions: the preparation of investigative reports; caseflow management; records management; and general administrative functions. The organizing principle for the structure of the office should be the judge, and those cases assigned to the individual judge. Staff should then be allocated to judges in a team approach with the report writing and caseflow management function primarily located in the teams assigned to each judge.

At the Judicial Staff College, the Criminal Division Managers and Team Leaders identified the following major functions and activities:

1. Caseflow/Calendar Management
    - Assignments
    - Scheduling/Calendaring/Notices
    - Adjournments/Continuances

- Meaningful Event Preparation
- Enforcement of Scheduling Orders
- Resolve Attorney Conflicts

2. Preparation of Reports (Bail, PTI, PSI, Indigence)
    - Investigation
    - Interviews
    - Writing Reports
    - Meeting Deadlines
3. Records Management
    - Dockets/Logs and Indexes
    - Computerization
    - Case File Maintenance
    - Statistics (Reports and Analysis)
    - General Inquiries
4. Administration
    - Budgeting
    - Personnel Management
    - Facilities
    - Collections
    - Training
    - Inter-Agency Coordination
    - Management Planning
    - Jury Coordination
    - Interpreters

Some managers reported a supervision function for bail cases, PTI cases, and sentenced offenders. However, these functions are assigned to the Probation Division in most counties.

It was the consensus, as recommended by the Task Force on Drugs and the Courts, that the team approach, with staff assigned to individual courts, was the most productive and efficient structure. It better develops the talents of staff, and provides for a better quality of administration. Sufficient resources must be available to staff the individual courts in the team structure. Precautions should be made to safeguard the objectivity of the presentence investigation report writers, should such assignment cause report writers to gear their reports to a particular judge's liking.

V. The establishment of divisional policies involving procedural or organizational matters should result from the full participation, and, if possible, consensus of the judges, prosecutors, defense counsel and other interested agencies involved. While the responsibility of the Judiciary is to provide a simple and stable framework for case processing, communication within and without through a formalized and consistent planning framework is necessary. Local Speedy Trial Delay Reduction Committees are to meet regularly, review recent performance, review older cases, identify and resolve problems, and review developments in other jurisdictions. Judges should meet regularly amongst themselves with the

Division Manager, and the Presiding Judge should meet as needed with court support teams or other individual components of the system.

It was reported by the 1986 Task Force on Speedy Trial that no set of programs or procedures will work unless each of the three main components participate in the development of goals, are committed to those goals, and cooperate in their achievement. An essential aspect of cooperation and coordination is a mutual respect for the interests and responsibility of each participant. The relative health of the criminal calendars in most counties seems highly dependent on whether the various components are able to accomplish such coordination on administrative issues. Local Speedy Trial Planning Committees should meet at least quarterly. A critical role for the Assignment and Presiding Judge is to ensure that such dialogue occurs regularly, in an environment conducive to problem solving and conflict resolution. It is important that the Criminal Bench meet every week, if just for a formal luncheon. Such meetings should begin with a discussion of issues related to the week's calendars, and then should focus on general problems. An invitation to guests from relevant agencies can establish a useful communication link.

VI. The administration of justice relies heavily, perhaps more than many institutions, on information, and thus the quality of justice depends on the accuracy and availability of such information. Automated systems such as Promis/Gavel and the County Jail Information System are in place in nearly all counties. Procedures must be in place which assure the integrity, completeness, and accuracy of this information, and its full utilization by all involved. Duplicative manual systems should be eliminated to save resources and promote reliance on the primary information system.

The following is taken from the Report of the Adjudication Committee to the 1990 Task Force on Drugs and the Courts:

Volume increases in the caseload, largely due to the influx of drug cases, have sent the court system reeling. Court personnel, trying to keep their heads above water, are sometimes forced to compromise quality in preparing reports. Computer information is often incorrect, or reports are not available. Contributing to this problem is the fact that criminal histories, generated by the CDR (Court Disposition Report) System, are often incomplete, are received long after court events have occurred or need to be deciphered and retyped before being used in court reports. All of these cause problems in the completeness and accuracy of reports judges receive and in the resultant quality of decision-making.

Computerization, while helpful, is often fragmented with one system unable to talk to another. In some systems the inability to create new reports is a problem and problems have also been noted by judges who call from lists that do not contain up-to-date information, causing needless adjournments and meaningless court events.

Commitments need to be made at the highest levels towards computerization. Computer systems need to be able to communicate with one another and be able to transfer data from one to another. This will enable the elimination of duplicative

manual systems, currently draining scarce resources. Additionally, computer systems need to be user friendly. Getting information from the system should be as easy as entering it.

Until Promis/Gavel automation is fully capable of producing reports on which the courts can completely rely, manual systems will not be disallowed.

APPENDIX E

Appendix E. Criminal Division Survey

We are conducting a study of case processing trends in the Criminal Division of Essex Vicinage. This study includes an opinion survey of Judges and the Assistant Prosecutors and Assistant Deputy Public Defenders assigned to their court. This brief survey should only take about 10 minutes of your time. Your opinions are very important to us and will assist the court in continuing to improve case processing.

Please provide the following information:

Which of the following best describes *your current role* at the Criminal Court in Essex Vicinage? *(Please check 1 box)*

☐ Judge ☐ Assistant Prosecutor ☐ Assistant Deputy Public Defender

How many years of experience do you have *in your current role* as either an attorney or a judge working at the Criminal Court. *(Please check 1 box)*

☐ 0-2 years ☐ 3-5 years ☐ 6-10 years ☐ 11-15 years ☐ More than 15 years

To the best of your knowledge and experience, please complete the following statements *(Please check 1 box).* The median is the number that divides the higher half of cases from the lower half.

Pre-Indictment –
The New Jersey standard from time of arrest to indictment is 60 days or less.

1) The median time from *arrest* to a *pre-indictment disposition* (other than an indictment) is:

☐ 30 days or less
☐ 31 to 60 days
☐ 61 to 90 days
☐ More than 90 days

2) The median time from *arrest* to an *indictment filing* is:

☐ 60 days or less
☐ 61 to 90 days
☐ 91 to 120 days
☐ More than 120 days

Post-Indictment –
The New Jersey standard from time of indictment to disposition is 120 days or less.

3) The median time from *indictment* to a *post-indictment disposition* (other than a trial) is:

☐ 60 days or less
☐ 61 to 90 days
☐ 91 to 120 days
☐ 121 to 150 days
☐ More than 150 days

4) The median time from *indictment* to a *trial start date* is:

☐ 120 days or less
☐ 121 to 180 days
☐ 181 to 270 days
☐ 271 to 365 days
☐ More than 365 days

5) The median time from *arrest* to *trial completion* is:

☐ 120 days or less
☐ 121 to 180 days
☐ 181 to 270 days
☐ 271 to 365 days
☐ More than 365 days

6) Cases scheduled for trial begin on the initial date the case was scheduled for trial:

☐ Less than 10% of the time
☐ 10 to 30% of the time
☐ 31 to 50% of the time
☐ 51 to 70 % of the time
☐ 71 to 90 % of the time
☐ More than 90% of the time

7) Trial memoranda are strictly enforced:

☐ Less than 10% of the time
☐ 10 to 30% of the time
☐ 31 to 50% of the time
☐ 51 to 70 % of the time
☐ 71 to 90 % of the time
☐ More than 90% of the time

8) Attorneys are ready to proceed on the scheduled trial date:

☐ Less than 10% of the time
☐ 10 to 30% of the time
☐ 31 to 50% of the time
☐ 51 to 70 % of the time
☐ 71 to 90 % of the time
☐ More than 90% of the time

9) Clearance is calculated by dividing the number of cases disposed by the number of cases filed. The percentage of cases cleared by the court on annual basis is:

☐ Less than 50%
☐ 51 to 75%
☐ 76 to 100%
☐ 101 to 125%
☐ More than 125%

Pre-Indictment –
New Jersey standards require that no more than 30 percent of the caseload exceeds 60 days for pre-indicted cases. Cases older than 60 days are considered backlog.

10) The percentage of cases generally in pre-indictment backlog is:

☐ Less than 30%
☐ 31 to 50%
☐ 51 to 75%
☐ More than 75%

Post-Indictment –
New Jersey standards require that no more than 30 percent of the caseload exceeds 120 days for post-indicted cases. Cases older than 120 days are considered backlog.

11) The percentage of cases generally in post-indictment backlog is:

☐ Less than 30%
☐ 31 to 50%
☐ 51 to 75%
☐ More than 75%

Please indicate your level of agreement with the following statements:

12) Judges make a concerted effort to reduce backlog.

☐ Strongly Agree
☐ Agree
☐ Disagree
☐ Strongly Disagree

13) Assistant Prosecutors make a concerted effort to reduce backlog.

☐ Strongly Agree
☐ Agree
☐ Disagree
☐ Strongly Disagree

14) Assistant Deputy Public Defenders make a concerted effort to reduce backlog.

☐ Strongly Agree
☐ Agree
☐ Disagree
☐ Strongly Disagree

15) In your opinion, to what extent do the following factors add to the complexity of post-indicted cases; that is, issues that may cause the disposition of the case to be delayed beyond the 120 day or less standard? *(Please check one choice for each item)*

	Not at all	Very Seldom	Seldom	Often	Very Often
Case with a single defendant	☐	☐	☐	☐	☐
Case with 2 defendants	☐	☐	☐	☐	☐
Case with 3 defendants	☐	☐	☐	☐	☐
Case with 4 defendants	☐	☐	☐	☐	☐
Case with more than 4 defendants	☐	☐	☐	☐	☐
Case with a single witness/victim	☐	☐	☐	☐	☐
Case with 2 witnesses/victims	☐	☐	☐	☐	☐
Case with 3 witnesses/victims	☐	☐	☐	☐	☐
Case with 4 witnesses/victims	☐	☐	☐	☐	☐
Case with more than 4 witnesses/victims	☐	☐	☐	☐	☐
Homicide (other than a capital case)	☐	☐	☐	☐	☐
Sex-related offense involving a child	☐	☐	☐	☐	☐
Sex-related offense involving only adults	☐	☐	☐	☐	☐
Violent offense other than a homicide or sex-related offense	☐	☐	☐	☐	☐

	Not at all	Very Seldom	Seldom	Often	Very Often
First degree crime	☐	☐	☐	☐	☐
Second degree crime	☐	☐	☐	☐	☐
Third degree crime	☐	☐	☐	☐	☐
Fourth degree crime	☐	☐	☐	☐	☐
Case with only routine motions*	☐	☐	☐	☐	☐
Case with routine and/or dispositive motions*	☐	☐	☐	☐	☐

*Routine motions refer to those which compel the attorney to file them for "effective counsel" reasons (e.g. search warrants, Wade hearings, Miranda warnings, etc.). Dispositive motions refer to those that are filed because there are reasons that strongly suggest to the attorney and/or judge that a case could be disposed of after hearing the motion (e.g. police stop taxicab to arrest passenger).

Please share any comments you may have regarding your experience with complex criminal cases. For instance, are there other complex factors not listed above that have in your experience complicated a matter?

_____

_____

_____

_____

_____

_____

Thank you for your responses and comments. They will assist our efforts to continue to improve our case management practices for the Essex Vicinage Criminal Division.

APPENDIX F

Appendix F. Copy of Letter of Solicitation to Selected Judges to Review Survey Instrument

Good afternoon Judge.

I am currently enrolled in the Court Executive Development Program with the National Center for State Courts. One of the requirements of the program is to develop and carry out a research project within the participant's court. My study will examine our division's case processing performance utilizing the "CourTools" case management measurements including clearance rate, trial date certainty, age of active pending, and time to disposition. The second, more specific, objective of the study will examine the oldest 10% of cases that reached disposition during the 2006-07 court year to determine what complex factors, if any, these cases had in common. This archival data will be compared to feedback provided by Criminal Division judges and the prosecutors and public defenders assigned to their court. The perceptions will be drawn from the attached survey instrument.

Before distributing the survey to the said participants, it is important to first pilot the questionnaire to ensure that the questions are valid and unambiguous. Given your extensive experience and knowledge as a Judge and former Presiding Judge, [the Presiding Judge] has asked that you be included to review the survey. Please find the survey instrument attached.

[Presiding Judge] would also like to meet as a group to discuss the overarching goals of the research. I will reach out to your secretaries to determine your availability for such a meeting. Thank you for your kind attention regarding this matter.

Sincerely,
Giuseppe M. Fazari, Ph.D.
Assistant Criminal Division Manager
Superior Court of New Jersey, Essex Vicinage

APPENDIX G

Appendix G. Criminal Division Presiding Judge Questionnaire Cover Letter to Prospective Respondents

[Presiding Judge Letterhead]

July 2007

As you know, the Essex Vicinage Criminal Division is the largest in the State, averaging around 17,000 filings a year. Over the last couple of years we have begun phasing in a vertical case processing system. We anticipate that all of the division's courts will be vertical by the end of October.

In an ongoing effort to evaluate our case management practices, we are conducting a survey of Judges, Assistant Prosecutors, and Assistant Deputy Public Defenders who practice in the Criminal Division. I ask that you complete the enclosed questionnaire, place and seal it in the attached envelope and provide it to the judge's secretary on or about July 31, 2007. The sealed envelopes will be forwarded to an Assistant Criminal Division Manager for analysis. Please do not write your name on the survey so that the responses remain anonymous. Data drawn from the instrument will be reported as aggregates.

Your opinions are very important to us and your input will make a significant contribution as the court assesses its case management practices and performance. Thank you for your participation in this survey.

Very truly yours,

Donald J. Volkert, Jr.
Criminal Presiding Judge

APPENDIX H

Appendix H. DCM Committee Review Outline

Areas	Review Points
General	➢ Method for assigning cases to judges ➢ Method for scheduling cases • Formal • Informal ➢ Key intervention points or scheduled events and when they occur ➢ Current procedures for case screening
Criminal caseflow process overview: Major events and timeframes	
Relevant statutory and rule provisions	➢ Delay/speedy trial provisions • Description • Degree of compliance ➢ Mandatory sentencing provisions and frequency of their use ➢ Other provisions that impact on the caseflow process
Judicial system policies	➢ Court policies • Regarding scheduling cases of detained defendants • Regarding continuance requests • Regarding case processing priorities ➢ Prosecutorial policies • Regarding method (use of indictment/accusation/information, etc.) • Regarding plea negotiation • Regarding provision of discovery ➢ Defense policies • Issues relating to indigent defense services ▪ Method for providing defense services ▪ Method for assigning cases to attorneys ▪ Point in case at which attorneys are assigned • Issues relating to private counsel ➢ Special issues affecting caseflow • Obtaining lab reports • Scheduling forensic experts
Case filing and disposition information	➢ Historical information (5 years) • Annual case filings • Average and median case age at disposition by year (and type of case if available) • Method of disposition and average and median age for each case disposition method by year ➢ Management information on the pending caseload • Volume • Age • Stage in caseflow process
Major problems identified by judicial system officials	

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