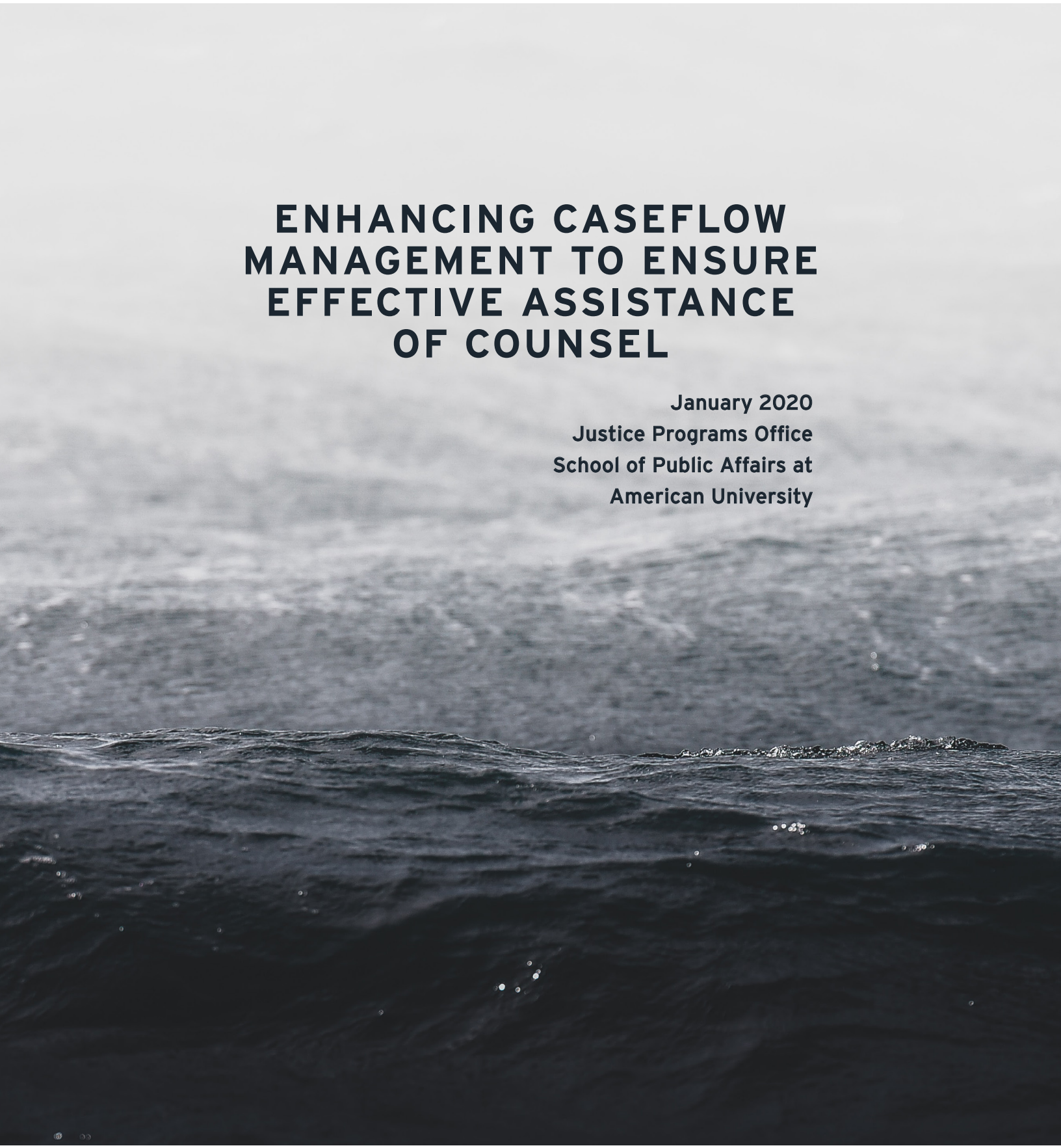

ENHANCING CASEFLOW MANAGEMENT TO ENSURE EFFECTIVE ASSISTANCE OF COUNSEL

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Justice Programs Office
School of Public Affairs at
American University

JUSTICE PROGRAMS OFFICE
SCHOOL of PUBLIC AFFAIRS

R2C
RIGHT TO COUNSEL

Enhancing Caseflow Management to Ensure Effective Assistance of Counsel

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TABLE OF CONTENTS

"If you can collaborate with people across the nation, you should be able to cooperate with people in your backyard."

- Keith Lamar, former Community Prosecutor in Fulton County.

FOREWORD

In 2015, with seed funding from the US Department of Justice's Bureau of Justice Assistance, the Justice Programs Office (JPO), a center in the School of Public Affairs at American University, launched the Right to Counsel (R2C) National Campaign. R2C is a public awareness initiative that uses values-based communication tactics to inform policymakers, criminal justice stakeholders, and the public about the importance of carrying out the Sixth Amendment right to counsel, the ways in which this right is not being implemented, the roles everyone from law enforcement officers to prosecutors to judges and court managers can play in ensuring the constitutional right to counsel is upheld, and how to reform the public defense system with low-cost or no-cost policy solutions.

R2C recognizes that to make sustainable change requires the active involvement of all criminal justice system actors and the public and has designed its activities accordingly. R2C comprises a national consortium of multi-disciplinary members, representing all criminal justice system actors and the public, who are committed to ensuring the fulfillment of the Sixth Amendment right to counsel and the effective delivery of public defense services.

R2C takes into account the need for structural changes to public defense systems that promote and ensure the right to counsel and other accompanying Sixth Amendment provisions and the equivalent need for cultural changes that deepen understanding and promote the Sixth Amendment right to counsel.

In 2016, R2C embarked on a yearlong public opinion research study to determine what the public understands about the role of public defenders and the right to counsel and what motivates individuals to support reform.

Following this effort, R2C conducted six roundtables with system actors to explore what professionals inside the system understand, what they are and are not doing to ensure the constitutional right to counsel, and to identify system actor specific action items to ensure the right to counsel is implemented as intended by the US Constitution.

Two of the groups of individuals we spoke with included judges and court managers. Both groups recognized the challenges public defense providers face, especially in light of heavy defender caseloads and scarce resources, and expressed passion for reform. Both groups also emphasized that caseflow management and the effective assistance of counsel are values not designed to be in conflict but are required to be in balance to ensure a fair and just adjudication system. While both groups shared strategies they could adopt in their professional roles to address the problem, though, including voicing support for improving public defense systems and increasing funding for essential resources, we repeatedly heard about overburdened attorneys that restrict attorneys' ability to allow for enough time for each case and negatively impact the administration of justice. Specifically, court managers felt pulled in multiple directions regarding caseflow management and ensuring the right to counsel. Court managers expressed feeling limited in their abilities to take actions to slow down case proceedings when problems arise. They expressed feeling constrained to act unless they had support from presiding judges. However, they expressed that improving public defense should be one of the top priorities in criminal justice reform as it is essential to providing justice. Their comments presented a real opportunity and highlighted the need to explore this apparent tension between caseflow management and ensuring the constitutional right to counsel.

To explore the tension between caseflow management and ensuring the constitutional right to counsel, JPO, in partnership with R2C consortium member, the National Association for Court Management (NACM), held a day and a half long meeting with practitioners to take a closer look at court practices that may prevent, resolve, or mitigate this tension and to develop strategies to implement that enhance caseflow management to ensure effective assistance of counsel.

Meeting attendees were limited to twenty-five individuals to allow for focused and in-depth dialogue. Attendees included subject-matter experts in the areas of right to counsel, caseflow management, and court governance, and seven judge-court administrator pairs. By inviting judge-court administrator pairs, meeting experts were able to explore specific, realistic problems that exist in courtrooms across the country and develop practical, team-oriented solutions that can be replicated in other jurisdictions. To encourage full participation and authentic responses, we spoke with attendees as an entire group with judge-court administrator pairs as well as separately as a group of judges and as a group of court administrators to ensure all perspectives were shared. Further, to ensure full transparency attendees were allowed to remain anonymous if they chose to do so. The meeting findings have been incorporated into this white paper, which serves as a management document for courts, outlining the issue, summarizing the meeting, and sharing practical action items that judges and court administrators can take into their jurisdictions to ease the tension between caseflow management and ensuring the constitutional right to counsel.

At JPO, we recognize that to make sustainable change requires the inclusion and active involvement of all criminal justice stakeholders. While we wanted the meeting focus to be on the roles judges and court managers can play to ensure effective assistance of counsel, we ensured all perspectives were included by establishing a multidisciplinary advisory board co-chaired by JPO and NACM. The board represented the perspectives of judges, court managers, defense attorneys, and prosecutors.[1]

Thank you to the State Justice Institute and Jonathan Mattiello, Executive Director, for supporting this project; advisory board members for their insight, meeting preparation, and report review; and meeting attendees for taking the time out of their busy schedules to attend this meeting and to actively and candidly participate.

1 For a list of meeting experts, see Appendix A. For a list of the advisory board, see Appendix B.

INTRODUCTION

Caseflow management is defined as the coordination of court processes to ensure court proceedings progress in a timely and efficient manner.[2] It is not about "more and more" or "faster and faster" directed solely at clearing dockets or meeting pre-determined time and performance standards whether set by a court or state court system. It is directed at reducing unnecessary or needless delay – essentially waiting time when nothing happens to move a case toward resolution – that can damage or diminish the just resolution of a case.

In criminal matters, caseflow management is neither intended to erode or undermine the effective assistance of defense counsel in representing an accused nor negatively infringe on the sound, legitimate prosecution of a case by the government. Admittedly, however, in the desire by judges and court professionals to reduce unnecessary delay, pressure to process cases quickly in order to clear a docket or meet time and performance standards can occur without a thorough, detailed understanding of both necessary and unnecessary delay points in a criminal justice system. For example, prompt discovery exchange may not take place as it should,[3] forensic evidence results may be delayed, pretrial hearings may not meaningfully move a case forward, or other adjudication problems may impede the efficient flow of cases. For these reasons, and to guard against injustice, it is important to ensure a reasoned approach to the pace of litigation. Since each party involved in a case has a vested interest in its outcome, it falls to the court as the principal overseer of the caseflow system to ensure the processes are fair and timely. The single and most important interest of the court in managing this process is… justice.

The purpose of this white paper is to examine and determine how to ensure a responsible balance between the need for a prompt, efficient resolution of criminal cases and adequate time, resources, and information to permit the effective assistance of defense counsel. Competing interests may emerge between supporting prompt resolution of cases and supporting effective assistance of counsel. If these interests are not adequately addressed, a tension may emerge for judges and court administrators, the tension can be labeled the "right to counsel tension." These interests need not be in competition; however, they do need to be in balance to ensure a fair and just criminal adjudication system. In doing so, it provides a way to protect the individual from the arbitrary use of government power, one of the fundamental purposes of a trial court. The day-to-day guardians of that balance are trial court judges and court administrators, and by re-thinking the concept of caseflow management, ensuring effective assistance of counsel can increase timeliness and efficiency and enhance case processing.

On May 22-23, 2019, the Justice Programs Office (JPO), a center in the School of Public Affairs at American University, hosted a convening in partnership with the National Association for Court Management (NACM) and with support from the State Justice Institute (SJI) to discuss enhancing caseflow management to ensure effective assistance of counsel. Meeting attendees included seven criminal judge-court administrator pairs from across the country. The gathering also included representatives from the project's multidisciplinary advisory board.

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2 "Caseflow Management: Resource Guide," National Center for State Courts, accessed November 1, 2019, https://www.ncsc.org/topics/court-management/caseflow-management/resource-guide.aspx.

3 The American Bar Association guidelines encourage three principles in discovery practices: (1) Open File Discovery granting the defense access to all unprivileged information known to the prosecution, law enforcement, or forensic testing labs working with the prosecution; (2) Automatic Disclosure of police reports, witness statements, results for physical or mental exams and evidence related to any aggravating or mitigating factors that could affect a plea or sentence; and (3) Early Exchange of evidence when it initially becomes available.

The purpose of the meeting was to explore the "right to counsel tension." It involved a discussion of:

- the challenges that impede effective assistance of counsel and caseflow management and
- the identification of solutions to overcome that impediment.

In considering this, meeting experts defined effective representation with the assumption that public defense representatives have the time, resources, and expertise to advise and represent their clients, protecting their rights and advocating for their best interests.

The issues discussed at the meeting are summarized in this paper, and what follows is a comprehensive list of action items that jurisdictions can adopt to reconcile this tension and enhance caseflow management by ensuring effective assistance of counsel.

KEY ACTION ITEMS

1. Timely Discovery
2. Collaboration and Culture
3. Systemic Thinkers
4. Meaningful Hearings
5. Trainings and Educational Opportunities
6. Pretrial Reforms Incorporating Public Defense
7. Public Awareness

WHY JUDGES AND COURT MANAGERS?

Sustainable change in the criminal justice system requires buy-in and active involvement from every system actor, which is why JPO established a multidisciplinary advisory board to provide input for this project, *Enhancing Caseflow Management to Ensure Effective Assistance of Counsel*. The involvement of key actors in reforming the criminal justice system is integral for securing sustainable change. Judges and court managers play essential leadership roles in the criminal justice system and are uniquely positioned to lead when caseflow management practices are a central requirement of reform. Judges in leadership positions often derive their authority from statute or rule. Leadership is the hallmark of the profession of being a court manager,[4] and with leadership comes the power and capacity to effect change.

Judges and court managers work in paired relationships to administer justice.[5] Together, the chief (or presiding) judge and court manager set a tone that helps drive policy and impact culture. Consequently, these pairs exert a significant amount of power not only in each courtroom but also throughout the courthouse. By providing a vision for everyday activities, they can directly impact how justice is administered. As leaders, judges and court managers are central to addressing the "right to counsel tension." Judges and court managers can support each other as change agents, working together to manage caseflow that promotes and ensures the accused's constitutional right to counsel.

As members of court leadership teams and being responsible for responding to the public and court users, court managers are often the faces of and liaisons between the court and the public. Their actions, or inactions, shape the way the court is perceived, which impacts the way it operates. Additionally, court managers help develop court policies and procedures, develop and implement court goals, recognize changes in caseloads, and increase access to justice and services for court users. These functions are critical for a successful leadership team and set court managers up to be effective at easing the tension between caseflow management and ensuring the right to counsel.

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4 Ibid.

5 National Association for Court Management, *The Court Administrator, Court Administration: A Guide to the Profession* (Williamsburg, Virginia, 2016).
https://nacmnet.org/sites/default/files/publications/Guides/The_Court_Manual_Colorization_2016.pdf.

MEETING OVERVIEW

The convening was structured as a full day and a half working meeting. Judges and court managers first explored the "right to counsel tension" as one group. Following, meeting experts broke into two separate working groups based on profession to identify and explore challenges and solutions to courtroom efficiency, caseflow management, and effective assistance of counsel. Finally, judge-court administrator pairs created work plans to implement in their jurisdictions.

The issues discussed can be grouped as institutional, cultural, and financial barriers and solutions.

CHALLENGES

"When I saw the title of the event, I immediately envisioned "conflict." I've worked in different size jurisdictions that have struggled with this issue; we need to stop people, including court officers, attorneys and litigants, from believing we're sacrificing either. Clients measure what we do through the lens of procedural fairness, and by ensuring both effective representation and efficient case management we increase the satisfaction and performance of our system." - Raymond Billotte, Judicial Branch Administrator, Superior Court of Arizona in Maricopa County

Meeting experts acknowledged a variety of challenges, including competing priorities, cultural norms, and confusion about caseflow management and ensuring the right to counsel as complementary.

To begin the conversation, we defined key terms. For the purpose of the convening, efficiency in the courtroom was defined as balancing the need to ensure all parties are heard in every case with the need to move at a steady pace to complete the calendar as scheduled. To ensure our courts run smoothly, achieve the purpose of their creation, and administer justice, we must be proactive to identify and overcome impediments to delivering effective public defense services and operating in a "business as usual" environment. Experts voiced the need to be proactive and vigilant.

What impedes US courts from effectively and efficiently administering justice and ensuring effective assistance of counsel?

The primary and immediate challenge to address was the underlying misconception that caseflow management and ensuring effective assistance of counsel are in conflict rather than complementary. To do so, courts must first acknowledge it and then act affirmatively, and cooperatively, to address it. Experts then discussed implementation challenges, which fell into the following categories:

1. Defined Terms and Training
2. Collaboration and Culture
3. Meaningful Hearings
4. Discovery
5. Technology
6. Funding

"It won't be easy to break habits, but it is critical and incumbent upon our profession to act when we witness impediments to administering justice." - Anonymous Court Manager

Without a clear, agreed-upon definition of the problem, realistic solutions cannot be developed and progress toward reform goals is likely to be frustrated.

Defined Terms and Training

According to the meeting experts, there seemed to be a lack of uniformity in key definitions, raising questions about "what is efficiency," "what is effective representation," and "what is effective caseflow management"? Without a clear, agreed-upon definition of the problem, realistic solutions cannot be developed and progress toward reform goals is likely to be frustrated.

Meeting experts first discussed and clarified efficiency (see above) while simultaneously addressing the challenges associated with the lack of a clear, agreed-upon definition of effective assistance of counsel and effective caseflow management.

Effective Assistance of Counsel

The answer to the question of what constitutes effective assistance of counsel has eluded the defense community for decades. There is consensus that it constitutes more than a warm body,[6] but there is debate about what the larger definition is. Does it incorporate holistic defense practices, zealous courtroom advocacy and negotiation, or something else?

To address this, it is important to look back at how public defense emerged in our country. Fifty years ago, public defense services developed around the noteworthy US Supreme Court case of *Gideon v. Wainwright*[7] in an ad hoc fashion, and the predominate model for securing counsel was through appointments of counsel. As the criminal justice system grew, there was an insufficient number of public defense lawyers to meet the demand, and the private sector could not provide enough attorneys. Further, with this expansion, the role public defenders needed to play enhanced as well, but systemic changes were not made along the way.

According to the perspective of one meeting expert, law school predominantly does not prepare lawyers to be systemic thinkers; it prepares them to focus on the client-attorney relationship and to be trial attorneys, not even plea negotiators. More than 95 percent of cases result in a plea deal and never go to trial,[8] thereby not utilizing the key skills public defenders and prosecutors learn in school. So how can caseflow management practices be reengineered to recognize these systemic realities, and what does it mean to provide effective representation in this current climate?

Effective representation assumes that public defense representatives have the time, resources, and expertise to advise and represent their clients, protecting their rights, and advocating for their best interests. Effective representation combines zealous advocacy plus zealous negotiation.

6 "Effective Assistance at Critical Stages," Sixth Amendment Center, accessed December 19, 2019, https://sixthamendment.org/the-right-to-counsel/effective-assistance-at-critical-stages/.

7 Gideon v. Wainwright. 372 U.S. 335. 1963.

8 US Department of Justice Bureau of Justice Assistance, *Plea and Charge Bargaining Research Summary* (Arlington, VA, 20011), https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf.

In San Francisco, there are checklists for attorneys per case type regarding what they need to do. Workload studies examine how much time competent attorneys would spend on certain cases and the American Bar Association (ABA) said to refuse new cases if one has too many, but it gave no direction as to how to determine how many cases is too many.[9] Further, the ABA has stated that public defense should be reviewed for quality[10]; however, meeting experts expressed that only makes sense in large public defender offices with management structure and levels of experience. In assigned counsel systems, there is often no built-in oversight; therefore, how do you review quality without imposing judicial interference and without running afoul of confidentiality? It was discussed by meeting experts that private attorneys should supervise private assigned counsel, but that has not been agreed upon or institutionalized. The lack of agreement on how to define, measure, and review quality, limits the justice system's ability to ensure quality, effective representation.

Effective Caseflow Management

Judges and court administrators have a unique and, arguably, the primary role in ensuring that cases proceed timely to disposition. It has been said that none of the other administrative responsibilities courts must perform are as closely related to the basic purposes of courts as caseflow management and the reduction of unnecessary delay.[11] According to NACM:

> Caseflow management is the process by which courts carry out their primary function of moving cases from filing to disposition. The management of caseflow is critical because it helps guarantee every litigant receives procedural due process and equal protection. Caseflow management involves the organization and coordination of personnel and other resources to promote the fair and timely resolution of all cases filed.[12]

Delay reduction and the benefits of establishing case management goals and targets and measuring compliance with them have long been issues of interest to both those who study the courts and to the judges and administrators who manage them. This interest has produced relevant, readily available, and easy-to-use resources that can help courts assess their case processing performance and develop or improve plans to make the process more efficient.[13]

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9 In 2006, ABA made case refusal an "ethical obligation" for public defenders, as a tool to ensure that their workload allows them to be competent and diligent. American Bar Association Standing Committee on Ethics and Professional Responsibility, *Ethical Obligations of Lawyers Who Represent Indigent Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, (Chicago, 2006), https://www.in.gov/publicdefender/files/ABA.Ethics06-441.pdf.

10 American Bar Association Standing Committee On Legal Aid And Indigent Defendants, *Ten Principles of a Public Defense Delivery System* (Chicago, 2002), https://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/the-aba-ten-principles-a-compilation-of-national-standards/.

11 David C. Steelman, John Goerdt, and James E. McMillan, Caseflow Management: *The Heart of Court Management in the New Millennium* (Williamsburg, VA: National Center for State Courts), xviii.

12 "Competency: Caseflow and Workflow," NACM Core, accessed January 22, 2020, https://nacmcore.org/competency/caseflow-and-workflow/?module=practice.

13 See US Department of Justice Office of Justice Programs Bureau of Justice Assistance, *Differentiated Case Management Implementation Manual* (Washington, DC: Bureau of Justice Assistance, 1993), https://www.ncjrs.gov/pdffiles1/Digitization/142416NCJRS.pdf. See also: Barry Mahoney, *How to Conduct a Caseflow Management Review: A Guide for Practitioners* (Washington, DC: National Center for State Courts, 1994), https://cdm16501.contentdm.oclc.org/digital/collection/ctadmin/id/5. See also: "Trial Court Performance Measures," CourTools, National Center for State Courts, accessed January 22, 2020, http://www.courtools.org/Trial-Court-Performance-Measures.aspx.

Among these resources are promulgated national time standards which have been endorsed by the Conference of State Court Administrators, the Conference of Chief Justices, the ABA, and NACM.[14]

A focus on timeliness in adjudication and the application of time standards to case dispositions is not about achieving justice quickly simply for the sake of speed or uniformity. Such practices relate directly to the level of trust and confidence held by the public in the judicial process and the people who administer it, and it should be noted that that the quality of case outcomes is not jeopardized by a commitment to timeliness in adjudication; indeed, just the opposite has been found:

> Expeditious criminal case resolution is found to be associated with court systems in which the conditions also promote effective advocacy. Because effective advocacy underlies due process and equal protection of the law, it is an integral aspect of the broader concept of quality case processing. [E]vidence … suggests that well-performing courts should be expected to excel in terms of both timeliness and quality.[15]

Critical Features of Effective Caseflow Management

Decades of research into court delay and court administration coupled with the practical experience of judges, court administrators, and other justice system actors has established that the following are essential elements of an effective caseflow management system:

- Early and continuous judicial supervision of case progress
  - Regarded as the cornerstone of an effective caseflow management system, the purpose of early judicial involvement in case management is to align the efforts of the necessary parties toward an expectation of timeliness in individual case dispositions.

- Assurance of credible hearing/trial dates and control of continuances
  - Unnecessary continuances consume time and other finite resources and can compromise justice. The need for standards setting out the conditions under which continuances will be granted is critical, and the development and administration of institutional policies and procedures designed to support practices associated with their limited use, as appropriate, is key.

- Time standards and goals, both for the times between key case events and for disposition
  - Time standards are a critical point of reference in the planning for and administration of any caseflow management plan, especially when they represent justice system stakeholder consensus and they are used as a basis for assessing compliance with the plan and as a tool for case management plan refinements.

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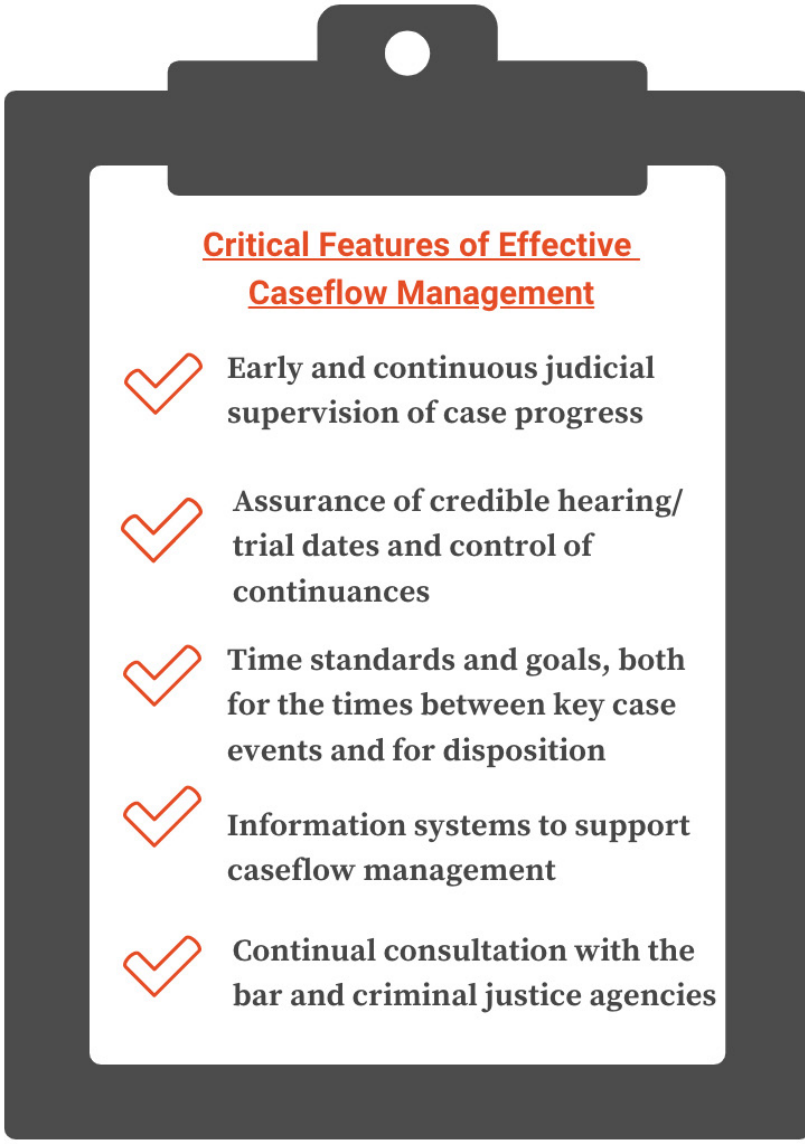
14 Richard Van Duizend, *Model Time Standards for State Trial Courts* (Williamsburg, VA: National Center for State Courts, 2011), https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1836.

15 Brian J. Ostrom and Roger A. Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts* (Williamsburg, VA: National Center for State Courts, 2003), xiii.

- Information systems to support caseflow management
  - Information systems must be able to track individual case progress according to agreed upon and relevant case elements and events. Such systems must also be able to generate information that will help judges and others in identifying areas of system strain and points of unnecessary delay.

- Continual consultation with the bar and criminal justice agencies
  - Stakeholders should be involved in the process of establishing and reviewing caseflow management plans and practices. Broad support for and commitment to the plan is critical, as is the regular and ongoing review of information – done under the leadership of the court – about whether plan targets and goals are being met. Judge and key justice system official turnover; fluctuations in available resources; and changes in law, technology, and policy may call for plan revisions, which can only be properly made with input from all justice system partners.



To change current practices requires an acknowledgement by everyone that change is needed.

Collaboration and Culture

The conversation began and ended with courtroom and courthouse culture and specifically, institutional resistance when discussing challenges. While judges play a crucial leadership role, every actor in the system is independent. To change current practices requires an acknowledgement by everyone that change is needed. Given that parties to court proceedings come to court with different interests and goals (not to mention different levels of resources available to support their efforts to pursue change), it is not surprising that court reform efforts often fail to achieve their desired outcomes. Courts run according to the policies in place and the practices that are consistent with them – generally led by judges. Often, judges have assumed the bench following a career as a lawyer in that courtroom and operate based on their experience, and normalized practices are hard to break.

Without acknowledging that things can be done differently and that the differences will yield results that are beneficial, not only in a collective sense but in an individual sense as well, behaviors may be difficult to change. One meeting expert acknowledged the confusion over authority in the courthouse, stating that at times colleagues are not seen as collaborators or as subject-matter experts. Further, sometimes when courts turn to outside experts for assistance and guidance, the insights and assistance are disregarded or ignored. Therefore, courts, on occasion, can find themselves stuck, unable to institute change as stakeholders find themselves split between wanting to change behaviors and practices and sticking to business as usual. Courts then struggle to gain buy-in, build consensus, develop a shared vision, and create a plan to make change.

To properly develop informed and actionable plans, courts and other justice partners need to collect and evaluate relevant data. The meeting experts, however, expressed that some court professionals have communicated fear about how certain data will be used and highlighted the fear of data as a contributor to institutional resistance to change. Data analysis is imperative and should be used both to establish a baseline and as an accountability – not punitive – measure. In no way were meeting experts blaming their colleagues, rather they were acknowledging the realities that exist. Without a desire to acknowledge and change, reform will not be sustainable.

Another challenge facing court actors and contributing to institutional resistance is the growing pressure of evolving criminal justice reform resulting in rapid fire changes to policies and practices and the weight of public opinion. This presented itself in three ways: reform fatigue, reform for reform sake, and fear of negative reform repercussions. Meeting experts discussed confusion about the purpose of the various reforms, concerns about public opinion and constituents' approval, and the quantity of reforms being introduced. When so many reforms are introduced at once, goals and policies become muddied, and people begin to feel the pressure of reform for reform sake and do not completely buy in to the policy changes.

Another challenge facing court actors and contributing to institutional resistance is the growing pressure of evolving criminal justice reform resulting in rapid fire changes to policies and practices and the weight of public opinion.

Further, judges and court managers expressed concern about implementing a new reform and receiving a negative outcome. For example, one meeting expert mentioned in their courthouse that recently a judge who is skilled in case management gave someone a bond. Two weeks after bonding out, that individual allegedly killed someone. The case received lots of media and social media attention. As a result, other judges are hesitant about changing their behaviors, as are prosecutors and other court system actors. Social media generated pressures that in turn impacted judges' behavior. This is an example of how fear can impact a reform's appeal and its prospects of success.

Meaningful Hearings

Throughout the convening, experts emphasized the number (or high volume) of hearings per case as an impediment to effective caseflow management and effective assistance of counsel. Attorneys may appear unprepared, at times are required to be in multiple courtrooms at the same time, and are forced to spend significant periods of time in the courthouse waiting instead of working on their cases. Further, each hearing has different requirements, impacting workload, preparation, and time. Increased continuance requests and continuances granted for each case further contribute to the increased number of hearings per case.

One of the solutions discussed that had been implemented by some jurisdictions was continuance policies, restricting the number of continuances that can be requested and for eligible reasons. That still may pose a challenge, though, as one judge stated, there is a fundamental difference between a prosecutor asking for a continuance because of a new assignment versus defense counsel; the latter involves constitutional rights and impacts effective assistance of counsel.

Other right to counsel challenges raised included court calendars and scheduling. Court calendars were discussed as both a challenge and a potential solution. For example, one expert discussed how in their current docket, all cases are called at 8:30 am; however, some of those individuals may not be called until 3:00 pm. This set-up prioritizes the court's time; it wastes the individual's time, attorneys' time, and perpetuates inefficiencies and public distrust. Conversely, another expert saw court calendars as a solution. In their jurisdiction, the court calendar is separated into two dockets; one is set at 8:30 am and the other at 11:30 am. Some experts were concerned that by setting a later time for court, individuals could be late, and they preferred court users to have to wait as opposed to having the court wait for court users. To address this concern, one court professional stated that they text individuals a half an hour before their case is called, and so far, this has been working well. By restructuring our concept of case management, efficiency, and justice, we can prioritize the court's, the court user's, and the attorneys' time, enhance effective assistance of counsel and justice, and continue to move cases along. For defense counsel, the number of hearings prioritizes time spent in court as opposed to time spent investigating the case, learning facts, visiting clients, etc. Research by the ABA indicates that effective assistance of counsel requires 25 hours per case for low-level felonies to 229 hours per case for the most serious felonies, excluding death penalty cases,[16] which becomes nearly impossible to achieve if a lawyer must spend extensive time in court.

16 The ABA has conducted four studies in four states (Colorado, Louisiana, Missouri, and Rhode Island) to determine average hours required for effective assistance of counsel in felony cases. The Sixth Amendment Center took the average of these results. The Sixth Amendment Center, *The Right to Counsel in Wayne County, Michigan: Evaluation of Assigned Counsel Services in the Third Judicial Circuit* (August 2019), https://sixthamendment.org/6AC/6AC_mi_waynecountyreport_2019.pdf.

Discovery

Another contributor to the "right to counsel tension" raised by meeting experts is discovery. Showing up to court only to request a continuance due to discovery is an inefficient use of the court's, attorneys', and the accused's time. It encourages unnecessary hearings, uninformed plea-bargaining practices, and delayed resolution of cases. Further, experts noted that in some cases additional charges may be brought against defendants whose cases are delayed.

This time pressure incentivizes quick resolution and plea deals; however, without full discovery disclosure, defense counsel cannot provide completely informed advice. Discovery delays may also result in prosecutorial overcharging practices to encourage plea deals. Without access to this information, defense counsel lacks the intel to recognize and bring attention to this practice. Further, it takes time to develop a trusted defender-client relationship; this pressure-cooker setting does not allow for this to occur and impacts effective assistance of counsel.

Technology

Accompanying, and at times exacerbating, some of these practices is outdated technology and outdated use of technology. Meeting experts acknowledged that the courts in their jurisdictions are generally playing catch-up when it comes to technology. One court manager stated that when they have developed case management systems, defense needs may not be considered generally, let alone effective assistance of counsel, such as requests for and review of discovery, witnesses contacted, time spent with client, and a checklist for essential duties.

Another example of outdated technology practices concerned court reminders; all experts highlighted the variety of appointment reminders they receive on their cell phones for their personal lives (either phone calls, texts, or both) and emphasized how effective they are in promoting the desired behavior. Research shows that text reminders for court increase appearance rates, increase court efficiency, and thereby, assist in effective assistance of counsel as counsel can spend time representing their clients and not ensuring they come to court.[17] Yet, some courts have yet to change. Here is an example of a cost-effective, efficient technology solution, yet culture and lack of information and innovation have limited its use.

Funding

Underlying any effort to address these challenges is funding: both for the court and public defense providers; however, meeting experts specifically focused on the negative impact insufficient funding has on effective assistance of counsel. While caseloads have been declining overall since 2006 according to the National Center for State Courts' "Trends in the State Court" series,[18] public defense providers' caseloads remain high – too high to provide effective assistance of counsel for each client.[19] The only way to effectively address this gap is to reduce the number of clients for each defense attorney, or increase funding to hire additional public defense providers. Without the guarantee of reducing the number of individuals who require assistance of counsel, states and localities must provide additional funding to meet their constitutional obligations. The additional funding is not only needed for additional attorneys, it is also needed to ensure quality attorneys are hired, have the resources they need (investigators, expert witnesses, and others whose services would allow for a full and thorough defense), and are properly compensated to reduce turnover rates and engage in essential criminal justice reform efforts.

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17 "Mission & Purpose," Uptrust, accessed January 22, 2020, https://www.uptrust.co/mission-purpose.

18 Richard Schauffler, *Trends in the State Courts: The Rise and Fall of State Court Caseloads* (National Center for State Courts, 2017).

19 See the following reports by the National Association of Criminal Defense: *The Rhode Island Project: A Study of the Rhode Island Public Defender System and Attorney Workload Standards, State of Crisis: Chronic Neglect and Underfunding for Louisiana's Public Defense System, Summary Injustice.*

SOLUTIONS

Meeting experts identified tangible solutions to the challenges raised that can be broken down into the following categories:

1. Defined Terms and Training
2. Collaboration and Culture
3. Meaningful Hearings
4. Discovery
5. Technology
6. Funding

Defined Terms and Training

To successfully combat entrenched behavior patterns and underscore how caseflow management and effective assistance of counsel can be complementary requires focused attention on raising awareness and enhancing training to ensure that content addresses these challenges. For example, judges who currently go to caseflow management training often attend in order to meet the requirements of their daily job tasks; however, other local and state government partners, especially funders, may benefit from this training as well.

Lawyers may also need to receive different training. As stated by John Gross, Director of Policy & Practice at the Defender Association of Philadelphia, "we don't have a system of trials; we have a system of pleas. We need to re-orient people's thinking about public defenders and associated training." Zealous advocacy now incorporates zealous negotiation; our system has changed yet practices and trainings have not and may not offer trainees opportunities to develop insights that could benefit their system-related work. Public defenders are no longer just trial attorneys; they are also counselors to their clients, requiring them to do more on the front-end, such as addressing housing needs, possible mental illness or substance use, and family ties. That being said, meeting experts acknowledged the difficulties in increasing educational opportunities and wanting to maximize their impact. The team from El Paso County Criminal Court at Law Number One shared how they bring the educational opportunities to their defense bar, bringing speakers to them, providing lunch, and sharing information about collateral consequences, new practices, etc.

Collaboration and Culture

Implementing sustainable system change requires addressing, and possibly changing, system culture. A key factor in this is communication between and amongst all criminal justice system actors. Attorneys alone cannot address culture change; judges and court managers must lead by example. The meeting experts stated specifically that judges in each court division should support, implement, and practice a unified management plan that is implemented by court managers and incorporates input from key stakeholders. Courtroom practices can vary among courtrooms, but there should be some common principles and practices within the jurisdiction to ensure that justice is achieved. Bringing all judges together before implementing any new policies or practices allows all voices to be heard and can help build and secure consensus. Further, court managers are well-positioned to be facilitators and play a key role in enhancing communication channels, encouraging cross-discipline communication and collaboration, and initiating convenings to bring together system actors in a non-adversarial setting.

Of course, to ensure policies promote effective assistance of counsel, defense must be included in all planning. One court manager expressed the importance of determining the priorities of each system actor up front and activating court managers and judges' leadership skills and responsibilities in response. Prosecutors and defense attorneys need to be brought into initial conversations and encouraged to have open and direct dialogue. Other suggestions made by meeting experts included more trainings and the increased use of cross-discipline trainings, especially those that incorporate best practices, introduce new innovations from the field, and allow for the structured exchange of insights from all system actors. Trainings should incorporate plea bargaining, negotiations, and the role of defenders in counseling their clients regarding their options during each phase, and they should consider all of these practice areas in the context of their impact on the court's current or planned caseflow management policies and practices.

Culture is also defined by performance evaluations, and meeting experts suggested reviewing and revising current metrics for success. Both prosecutor and judicial performance measures focus on cases disposed, convictions for prosecutors, time to disposition, and number of current open cases. These can promote overcharging and stacking practices[20] and prioritize rapid dispositions over just dispositions. Judges at the convening specifically mentioned the emphasis on clearance rates and suggested that they be regarded as aspirational and used as a training tool but that they not be the sole metric by which judicial performance is measured. To ensure effective assistance of counsel, performance metrics must incorporate associated measures and results should be reweighted to prioritize this.[21] As part of reconfiguring performance metrics, experts suggested that seasoned prosecutors review charges to ensure consistency, eliminate overcharging, and reduce practices that encourage a plea deal at the expense of justice.

Additional attempts to change culture have also been taken through criminal justice reforms. For example, in recent years, there has been a national movement to reform pretrial practice.[22] These reforms have contributed to making the pretrial process fairer and more equitable, however, not all have included input from defenders. These reform efforts are missing an opportunity to further enhance the quality, fairness, and efficiency of pretrial practices. Early appointment of counsel enhances efficient due process. Incorporating defense and providing early appointment of counsel will not slow down the wheels of justice, as feared by some, but rather can help resolve cases quicker and smarter.[23] In addition, there appear to be economic benefits associated with early appointment of counsel, such as jail bed day savings, earlier case resolution and associated cost savings, and individuals' ability to retain jobs. More research is needed, though, to explore the overall fiscal impacts.

20 Charge stacking practices occur when a prosecutor creates a case with numerous charges or numerous instances of the same charge that at times encourage the accused to take a plea deal.

21 CourTools, established by the National Center for State Courts, consists of ten measures to evaluate court performance. The ten measures include: access and fairness, clearance rates, time to disposition, age of active pending caseload, trial date certainty, reliability and integrity of case files, legal financial obligations, jurors, court employee satisfaction, and cost per case. Measures should then be evaluated collectively; however, some may carry different weight in different courtrooms. Additionally, only one of the ten measures emphasizes fairness. For more information on CourTools, visit: http://www.courtools.org/Trial-Court-Performance-Measures.aspx.

22 Susan Keilitz, *Pretrial Justice and the State Courts Initiative: Pretrial Justice Planning Guide for Courts* (National Center for State Courts, Pretrial Justice Institute, and State Justice Institute, 2018), https://ncsc.contentdm.oclc.org/digital/collection/criminal/id/300/.

23 Douglas L. Colbert, Raymond Paternoster, and Shawn Bushway, "Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail," Cardozo Law Review 1719, no. 23 (2002): 101-165, https://digitalcommons.law.umaryland.edu/fac_pubs/291/.

Public defenders provide immediate guidance during a time of trauma, are able to advise individuals of their rights, analyze the facts at hand, interview their client to gain critical information to provide the court, and can identify early on possible candidates for diversion programs. Further, meeting experts stated that immediate appointment of counsel can provide prosecutor accountability and may impact current and future charging practices, a potential secondary outcome of such a policy change.

Experts from Baton Rouge City Court shared that in their desire to ensure that counsel is effective, they are currently exploring how to assign counsel pre-arraignment, to improve caseloads for public defenders, to use technology to make management more effective, and how best to use and fund conflict counsel. *To learn more about Baton Rouge, check out the spotlight section on page 30.*

Meaningful Hearings

Courts conscious of effective case management and effective assistance of counsel ensure that cases only have the number of hearings necessary to resolve the case, and meeting experts emphasized the need for courts to ensure that all court events are meaningful. Meaningful hearings are achieved through realistic court scheduling, communication and clarity about case event expectations. Meaningful hearings can only happen if attorneys are prepared, all necessary actors are present, court dockets provide for the time needed for the event, and that all participants understand the purpose of the event.[24] Many courts have found that having a court-wide, differentiated case management plan helps ensure this.

> Caseflow management includes early court intervention, establishing meaningful events, establishing reasonable timeframes for events and disposition, and creating a judicial system that is predictable to all users of that system. In a predictable system, events occur on the first date scheduled by the court. This results in counsel being prepared, less need for adjournments, and enhanced ability to effectively allocate staff and judicial resources.[25]

Meaningful hearings are supported by efficient court scheduling, managing expectations up front and through transparency, hiring and training policies and practices, final-plea calendars where individuals know that once placed on the final-plea calendar, a plea deal has been reached and will be presented to the court and scheduled for sentencing, blocked scheduling to limit the number of cases on the docket at each time, a master calendar approach that assigns judges as a team based on experience and assigns cases to a judge based on availability and caseload, and continuance policies that hold counsel accountable while recognizing unforeseen circumstances.

Discovery

An impediment to meaningful hearings and effective assistance of counsel and a cause of excessive delay is delays turning over discovery. Meeting experts repeatedly highlighted the need for timely discovery to enhance efficiency and caseflow management and ensure effective assistance of counsel. Utilizing technology, meeting experts identified e-discovery as a means to enhance timely and necessary access to evidence.[26] Defense counsel should never find themselves in a position where they need to advise their client based on incomplete evidence.

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24 National Association for Court Management, *Curriculum Design: Caseflow and Workflow*, https://nacmcore.org/curriculum/caseflow-and-workflow/.

25 Ibid.

26 See Roger Winters, *Controversy and Compromise on the Way to Electronic E-Filing* (National Center for State Courts, 2005), https://cdm16501.contentdm.oclc.org/digital/collection/tech/id/586, and Christopher Crawford, *Emerging Technology Trends that Will Transform Courts* (National Center for State Courts, 2011), https://ncsc.contentdm.oclc.org/digital/collection/tech/id/770.

Timely e-discovery allows public defense providers to review and properly prepare cases, which in turn can reduce delay and uncertainty and enhances a court's ability to effectively administer justice. Regardless of the type of discovery used, judges in attendance also suggested setting a discovery disclosure date early in the process to encourage timely disclosure of discovery and to hold prosecutors accountable.

Technology

Technology presents challenges while also providing opportunities for solutions. As mentioned above, using technology, courts can facilitate timely discovery through e-discovery and use text reminders for court users *and* attorneys to let them know about upcoming court dates and time to appear. Research shows that text reminders can decrease failure to appear rates, increase court efficiency, and assist in effective assistance of counsel by reallocating counsel's time that may have been used to remind their clients about court.[27] Further, proper incorporation of technology can provide accountability metrics and allow courts to monitor reform results.

Funding

Part of implementing these solutions requires sufficient funding for courts and public defense systems. Sufficiently funding public defense systems to ensure effective training and experience, access to investigators, experts, social workers, and other resources, and parity with prosecutors in compensation as well as resources, and strengthening public defense can actually help solve other criminal justice reform challenges and save money in the long run.[28]

- Early appointment of counsel can aid in swift, efficient resolution of cases;
- E-discovery can provide attorneys with essential evidence early on, enhance their ability to effectively advise their clients, and resolve cases more efficiently but will also require more time for public defenders to review all discovery in each case.

To successfully implement these reforms, public defense systems need increased funding to accommodate increased responsibilities and to ensure effective program design and implementation. While this may require an influx of money into the criminal justice system up front, these policies can help our courts run more efficiently and justly, thereby avoiding system costs down the road, avoiding unnecessary court delays, avoiding prolonged involvement in the justice system, reducing recidivism, and restoring faith in our criminal justice system.

"We know that the prosecution is properly resourced, so we need to make sure we're giving the defense what they need too, to level the playing field" - Judge Gayle Williams-Byers, Administrative and Presiding Judge, South Euclid Municipal Court

27 "Mission & Purpose," Uptrust, accessed January 22, 2020, https://www.uptrust.co/mission-purpose.
28 Danielle Soto and Mark Lipkin, *Representation at Arraignment: The Impact of "Smart Defense" on Due Process and Justice in Alameda County* (Oakland, CA: Impact Justice Research & Action Center, 2018), https://impactjustice.org/resources/representation-at-arraignment-the-impact-of-smart-defense-on-due-process-and-justice-in-alameda-county/.


Right to Counsel
Effective Caseflow Management
Effective Caseflow Management
Effective Caseflow Management

TAKE-AWAYS

Overall

Caseflow management and ensuring effective assistance of counsel are indeed complementary and not conflicting goals of our courts and justice system. However, reconciling them does require reframing and restructuring the use of caseflow management and recognizing that *quick* resolution of cases does not necessarily mean *efficient* resolution. As stated by Gordon Griller, Executive Director of the National Association for Presiding Judges and Court Executive Officers, "caseflow management is not about eliminating delay. Just unnecessary and needless delay. Our obligation is not to reduce delay to the point where it affects needed and necessary delay, but you need to find out where unnecessary delay takes place and why."

Judges and court managers are well-positioned to be leaders in this area. They guide court practices, facilitate conversations about new ways of doing business, and they help define the culture of the courthouse. They are independent actors tasked with the role of administering justice. This affords them the opportunity to be systemic thinkers. Many system actors are not trained to think systemically but rather are taught to orchestrate in an adversarial way. To better understand each other's challenges and needs, judges and court managers should receive trainings together as they are a paired team that when working together, can effectively drive change. Under the guidance and with the support of chief judges, court managers, in particular, have the opportunity to assert themselves to work to ease the tension between processing cases in a timely manner while ensuring the right to counsel and due process and thus become leaders in this area.

Court Managers

Court managers typically interact directly with every system actor and court user. They are natural facilitators and often have insight into how operations impact efficiency, caseflow management, justice, and effective assistance of counsel. Further, the position is politically neutral, which allows court managers to navigate as a convener, collaborator, and resource provider. They decide who needs to be involved and may be able to identify a champion judge to lead the charge.

While judges have differing expectations of court managers, court managers can assist judges by connecting them to resources and providing key insights and data. Gaining trust and credibility, court administrators are in a prime position to implement change. In addition, as court managers work with all system actors, they are primed to be recipients of a natural feedback loop and can build a bridge between past and present. They hear what works, what does not, and can then revise and strategize accordingly. Providing such information to a judge can lead to a partnership between the two roles that can result in an impactful, change-oriented dynamic.

Judges

For many, judges are the personification of the justice system. Their actions, or inactions, have a profound impact on individuals and communities. Judges are often seen as (and often are) the local leader of any reform effort and have the ability to speak freely at stakeholder meetings and can set up regular meetings or casual coffees with chief public defenders, district attorneys, and court managers. With that power comes responsibility, and judges must be vigilant, open to feedback, and proactive in recognizing, reviewing, and responding to structural and cultural practices that impede effective assistance of counsel. As stated by Judge Sam Meyers, Presiding Criminal Department Judge in the Superior Court of Arizona in Maricopa County, "If you're willing to change the culture [and practices], you have to be willing to make people uncomfortable, because then after that, the culture is changed." This can be done by reframing the purpose and use of case management to help courts become more efficient, fair, and ensure effective assistance of counsel.

NEXT STEPS

This meeting was one of the first of its kind to explore caseflow management *and* effective assistance of counsel and showcase caseflow management as an aid to ensuring effective assistance of counsel. We hope to hold additional meetings with judge-court administrator pairs to continue to explore the "right to counsel tension" and how we can enhance caseflow management to ensure effective assistance of counsel.

Additionally, we hope to conduct trainings and presentations on this report, help jurisdictions explore their own practices, and devise jurisdiction-specific action plans to enhance court processes and the administration of justice.

To request additional information or training and technical assistance, please contact Genevieve Citrin Ray at the Justice Programs Office at citrin@american.edu or Scott Griffith on behalf of the National Association for Court Management at scott.griffith@vermont.gov.

SPOTLIGHT: SPOKANE COUNTY, WASHINGTON

A team from Spokane County, Washington, Superior Court including the chief criminal judge, court administrator, chief public defender, and county prosecutor, attended the meeting and discussed the "right to counsel tension" from their collective perspectives.

Spokane County Superior Court utilizes an **Early Case Resolution (ECR) docket**, which is a single-judge docket meant for class C felony cases. The program expedites resolution by reviewing cases immediately, facilitating early entry and negotiation of pleas, and improving information sharing. Counsel is appointed at the onset: if the Office of Pretrial Services determines that an individual is eligible, the Office of the Public Defender assigns counsel. The goals of this docket are to increase caseflow, reduce the jail population, and help individuals get resolutions more quickly.

Initial Challenges

Challenge 1: Case build up; the number of cases and the length they remain on dockets have grown where dockets are meant to house simple, short-term cases, due to the lack of enforcement of docket restrictions. This is due in part to Spokane's felony filing rate, which is currently the highest per capita in the state: the rate has increased by 53 percent since 1999, but the Court has not gained any new judges or other felony case processing resources.

- The **Out-of-Custody Early Case Resolution (ECR) docket** is too large to work effectively. As the docket has only one judge and a set number of attorneys, the high volume of cases significantly decreased both caseflow and effective assistance of counsel. Due to public defender workload standards, once these workloads are reached, no new cases can be assigned until the following month. While good for effective counsel, these delays clog up a docket that is meant for quick, simple cases, and lengthen the period of justice involvement for defendants.
- A Friday morning **pretrial docket for non-ECR cases** has become a bottleneck, thanks to the existing continuance practices: in the majority of hearings, attorneys merely request—and are granted—continuances of the pretrial and trial dates. Instead of simplifying the pretrial process, the pretrial docket has become just as clogged as other dockets. This leads to additional adverse effects, similar to those in the ECR docket: the number of hearings per case rises—which increases the opportunity for warrants—without a rise in the number of meaningful hearings, and individuals remain justice-involved for a longer time.

Challenge 2: Due to overcrowded courtrooms and overburdened attorneys, many hearings appear to be meaningless where no concrete action is taken. In fact, pretrial hearings have come to be known as "continuance dockets," with up to 400 hearings scheduled between 9:00 a.m. and noon. Each hearing prolongs a case 30 additional days. This overcrowding creates delays, over-schedules defense counsel, makes case tracking difficult, and because prosecutors refuse to waive presence for defendants, increases the likelihood of a defendant failing to appear (FTA) due to numerous hearings and court appearances.[29]

29 FTAs can further prolong criminal proceedings and keep individuals entrenched in the justice system. An FTA is a crime in 46 states: in Washington, the state allows bail forfeiture for nonappearance. Ethan Corey and Puck Lo, "The 'Failure to Appear' Fallacy," The Appeal, January 9, 2019, https://theappeal.org/the-failure-to-appear-fallacy/.

Challenge 3: As in many jurisdictions, public defense is under-resourced. When defense is unable to do their job effectively, caseflow suffers along with quality of counsel. See below for specific challenges that public defenders face in Spokane County Superior Court:

- Cases are assigned to a lawyer at different stages due to caseload transfers or substitution of counsel.
- Dual case processing tracks mean that attorneys are often required in multiple courtrooms at once.
- Inflexible state-mandated indigent defense standards make case assignment tedious. Once cases are assigned, the strict adherence to workload standards means that attorneys will hopefully have enough time for each case, but the assignment process is lengthy and there are not enough attorneys to manage all the Court's cases in a timely manner.
- Attorney-client communication is problematic: this includes communicating about court appearances. UpTrust, a program that attorneys use to text defendants about court dates, has helped, but use of this program has been sporadic.
- The drug court program is particularly under-resourced, with only one attorney available compared to the 29 available in traditional court. This leads to delays: when the attorney's schedule is full, eligible defendants must wait until the attorney is available before they can begin to participate in drug court. In this way, both caseflow and the rehabilitative potential of drug court are inhibited.

Action Plan

Solution 1: Eliminate the Friday morning pretrial docket and restructure the ECR docket: as the drug court program expands, some ECR and pretrial attorneys can be reassigned to drug court.

Solution 2: Address the culture of continuances: create a clear new policy that prevents day-of continuances and encourages pre-hearing motions. See table for specific examples:

Acceptable reasons for continuance	Unacceptable reasons for continuance
Sudden medical emergency or death	Stipulation of the parties/counsel
Unanticipated absence of a material witness	Unavailable witness who has not been subpoenaed
Fact or circumstance arising which, in the opinion of the court, would cause a miscarriage of justice	A party is seeking to retain new counsel*
Illness or family emergency of counsel	Continued attempt to negotiate*
Lack of notice of trial setting through no fault of the party or that party's counsel	Counsel unprepared to try the case*
	Training, vacation, or other anticipated absence of a witness within 10 days of trial*
	New charges filed after the case is set for trial*

*These reasons are unacceptable because counsel should settle these issues prior to the hearing, thereby leaving the hearing for meaningful action and reducing the number of hearings that defendants must attend.

Solution 3: Restructure and limit the number of hearings to conserve resources for hearings in which an action other than a continuance occurs. Reducing the number of hearings defendants must attend also lowers the chance of an FTA.

- Schedule an Omnibus Hearing[30] at arraignment for every case: currently, this must take place within 28 days, and it allows attorneys to report realistic trial dates.
- Limit cases to four hearings, not including first appearance. These hearings are Arraignment, Omnibus, Trial Ready, and Trial. If attorneys need to adjust hearing dates, they may do so off-docket prior to the date.
- Add a Trial Readiness docket two weeks prior to trial and do not allow continuances.
- Adopt new time standards: now 98 percent of cases will be resolved within one year of filing, and 100 percent within 18 months.[31]

Implementation Challenges

- The historic backlog makes implementing fundamental change doubly difficult.
  - Running dual tracks as docket changes are phased in has led to frustration for both attorneys and judges about hearing times, subject matter, and scheduling conflicts. This frustration has diminished over time.
- Attorneys have resisted the changes, particularly the new Omnibus Hearings, claiming that they do not have enough time to answer questions about cases.
  - The resistance to Omnibus Hearings has also diminished, but the change has led to attorneys reserving more often. When attorneys do not have the relevant information to answer a question, they reserve, which leads to delays and makes the docket less meaningful than it could be. In response to this, the Court is trying to work in more flexibility, so that attorneys have adequate time for complicated cases.
  - Attorneys have also resisted the new continuance policy. They claim that if counsel is unprepared to try the case, forcing the case to trial impairs effective assistance of counsel. For this reason, implementation of the new continuance policy without parallel changes to public defender workloads would prioritize caseflow over effective counsel. Changing the culture of continuances is a lengthy process intertwined with other systemic issues.
- The Court has not yet gained any resources for additional judges or attorneys.

Implementation Successes

- The Court has successfully gotten rid of its bloated Friday morning pretrial docket.
- The ECR docket is now much closer to a true "early case resolution" docket: the prosecution has agreed to lower some felony charges to misdemeanors when they go to ECR, and since workload standards allow public defenders to take on more misdemeanors than felonies, this enhances caseflow while lowering charges for defendants.
- Hearings have been reduced and consolidated. Within time standards, parties can submit a motion to continue off-docket. Some attorneys have begun setting a motion to continue before the Trial Ready or Omnibus Hearing even takes place. Since attorneys have more time with each case, this increases both efficiency and quality of counsel.
- Whereas defendants could have had five or six (or many more) hearings prior to the Trial Ready hearing under the old system, they now often have one: the Omnibus Hearing. Therefore, defendants' FTA rate has declined due to both the increased communication about hearings and a significant reduction in the number of hearings.

30 An omnibus hearing is set whenever a plea of not guilty is entered. This hearing is scheduled with enough time for counsel to initiate and complete discovery, investigate the case, and continue plea discussions. At the hearing, the court ensures that the above has been completed, ascertains whether counsel has been properly provided and whether any procedural issues need to be considered, rules on any motions, sets a pretrial conference if necessary, and permits defendants to change their pleas.

31 These time standards are based on active days only.

SPOTLIGHT: BATON ROUGE, LOUISIANA

A Baton Rouge City Court Judge and the Clerk of Court/Judicial Administrator attended the meeting energized and looking for ideas to enhance caseflow management to ensure effective assistance of counsel.

> **Jail Callout** is a designated space at Parish Prison in Baton Rouge for those in jail to go before the Duty Court Judge through audio/visual means. Jail Callout deals with: recall of warrants, probable cause determination hearings, the setting of bond, pleas, appointment of counsel, notice of the next court date, and jail sentencing.

Initial Challenges

Challenge 1: Defense counsel is not required at Jail Callout, which impedes effective assistance of counsel. Those who qualify for a public defender do not have the opportunity to speak with counsel until three weeks after they appear before a judge at Jail Callout.

Challenge 2: The process of signing written Notices to Appear unnecessarily slows caseflow.

Challenge 3: There is not a system in place to follow up after Jail Callout. Judges need a way to check in and determine whether individuals have been released from jail or if they need counsel.

Action Plan

Solution 1: Ensure the presence of both a prosecutor and a public defender at Jail Callout.

Solution 2: Replace written Notices to Appear with verbal Notice to Appear, so defendants do not have to wait in court for the Notice. Those who would like a written Notice may still receive one.

Solution 3: Implement Bond Review Hearings one week after Jail Callout to ensure appointment of counsel and review bond.

Implementation Challenges

- Finding funding to bring a prosecutor and a public defender to Jail Callout was a difficult and lengthy process.
- As judges occasionally share responsibility on cases, implementation of the new Notice to Appear system lacks consistency. Some judges have been uncomfortable issuing bench warrants when a defendant misses court without having a signed Notice to Appear in the file.

Implementation Successes

- There is now a public defender and a prosecutor at Jail Callout on a provisional basis. Previously, those who were incarcerated pretrial appeared before a judge at Jail Callout three weeks before they were able to speak to a public defender, if they qualified for one. Now they are able to speak to a public defender and hear their charges from a prosecutor at first appearance. This gives defendants who are incarcerated at the time of their first appearance the same legal opportunities as those afforded to defendants who are released prior to their first appearance.

- Judge Alexander implemented a new system regarding court notices: now defendants may leave court without a written notice. During this trial period, the court developed a faster way of issuing notices, which allowed for faster release.
- Bond Review Hearings have been very successful. In this hearing, the judge reviews the bond and determines whether counsel has been assigned. If the individual is still in jail one week later, the judge reevaluates the bond and appoints counsel if necessary.

APPENDIX A
MEETING EXPERTS

Yvette Alexander
Judge
Baton Rouge City Court

Elzie Alford, Jr.
Clerk of Court/Judicial Administrator
Baton Rouge City Court

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Raymond Billotte
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Justin Bingham
City Prosecutor
City of Spokane Prosecutor's Office

Kyle Bryson
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Keith Lamar
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Yolanda Lewis
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Superior Court of Fulton County

Robert McBurney
Chief Judge
Superior Court of Fulton County

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