



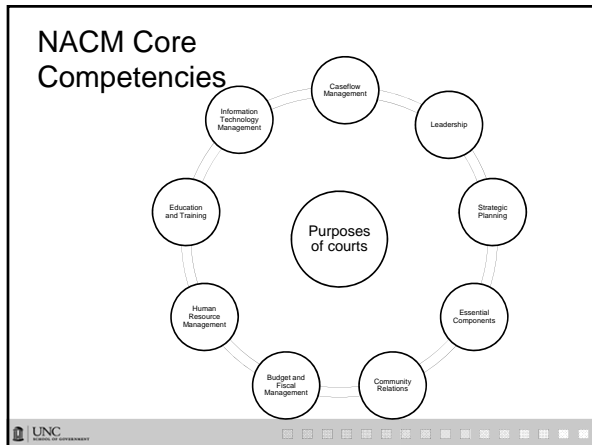
Calendar and Trial Management

Jim Drennan
UNC School of Government




The Court's Job

- **Magna Carta:** *To no one will we sell, to no one deny or delay right or justice.*
- *In the 1660's the English Crown instructed the Lord Proprietors to build a system of courts 'to do equal justice to all men to the best of their skill and judgment, without corruption, favor or affection'.*
- **N C Constitution:** Right and justice shall be administered without favor, denial and delay.
- **Court's mission statement:** *To protect and preserve the rights and liberties of all the people, as guaranteed by the Constitutions and laws of the United States and North Carolina, by providing a fair, independent, and accessible forum for the just, timely, and economical resolution of their legal affairs.*

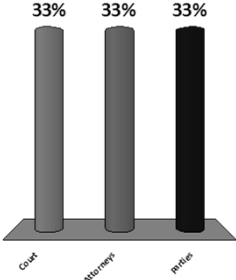



Whose case is it?




Who has responsibility to have cases disposed of in a timely manner, in order of priority?

1. Court
2. Attorneys
3. Parties




| Entity | Percentage |
|-----------|------------|
| Court | 33% |
| Attorneys | 33% |
| Parties | 33% |



BEDROCK PRINCIPLE

THE COURT IS RESPONSIBLE FOR SUPERVISING CASE PROGRESS.



ABA STANDARDS RELATING TO COURT DELAY REDUCTION

Standard 2.50

Case flow Management and Delay Reduction: General Principle

From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery, and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

There's never enough time to do it right first time but there's always enough time to go back and do it again.



SAMPLE CASE-SPECIFIC TIME STANDARDS

Table 2
AMERICAN BAR ASSOCIATION TIME STANDARDS*

| Case Type | Time Within Which Cases Should be Adjudicated or Otherwise Concluded | | |
|----------------------|--|-----------|-----------|
| | 90% | 98% | 100% |
| Civil | 12 months | 18 months | 24 months |
| Criminal Felony | 120 days | 6 months | 365 days |
| Criminal Misdemeanor | 30 days | --- | 90 days |
| Domestic Relations | 3 months | 6 months | 12 months |



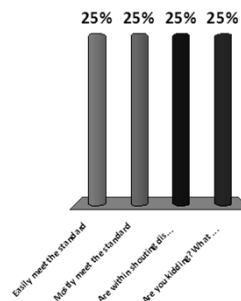
Supreme Court Timelines—1996 and CPMS

- Non capital felonies and misdemeanors
 - 50% disposed in 120 days of filing
 - 75% in 180 days
 - 90% in 365 days
 - 100% in 545 days
- Misdemeanor appeals
 - 100% disposed in 180 days of transfer to superior court



The misdemeanors and felony pleas I handle

1. Easily meet the standard
2. Mostly meet the standard
3. Are within shouting distance of the standard
4. Are you kidding? What planet are you on?



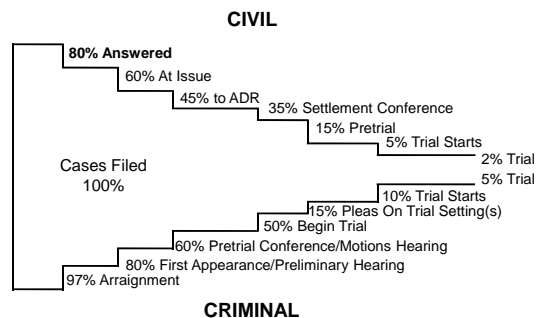
Supreme Court Timelines—1996 and CPMS

- Civil
 - 90% disposed in 365 days from filing
 - 98% in 545 days
 - 100% in 730 days

The sooner you get behind schedule, the more time you have to make it up.



REVERSE TELESCOPE



The civil cases I dispose of

1. Easily meet the state standard; it should be more stringent
2. Meet it most of the of the time
3. Are within shouting distance
4. Are you kidding? What planet are you on?

| Category | Percentage |
|---|------------|
| Easily meet the state standard; it should be more stringent | 25% |
| Meet it most of the of the time | 25% |
| Are within shouting distance | 25% |
| Are you kidding? What planet are you on? | 25% |

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THREE AXIOMS

1. Lawyers settle cases, not judges
2. Lawyers settle cases when prepared
3. Lawyers prepare for significant events

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FIVE PRINCIPLES

1. Early control
2. Continuous control
3. On a short schedule
4. Be reasonably arbitrary
5. Create the expectation and reality that events happen when scheduled

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Public Perception of Courts

- The [court system's] negative image centers on perceived inaccessibility due to cost and complexity, delays, unfairness in the treatment of racial and ethnic minorities, leniency toward criminals, and a lack of concern about the problems of ordinary people.

▪ NCSC, 2010

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BUT . . .

- The stereotype of local courts also contains a strongly positive image. The core of that image is a perception that judges are honest and fair in case decisions and well-trained, that the jury system works, and that judges and court personnel treat members of the public with courtesy and respect.

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COMMON ELEMENTS OF SUCCESS

- Collective Responsibility By Court Personnel
- Continuing Consultation
- Standard Procedures
- Restrictive Continuance Policy
- Central Control and Coordination
- Time Standards Filing to Disposition
- Measurement of Performance

Source: Maureen Solomon, *Case flow Management in the Trial Court*, ABA, 1973.

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PROVEN TECHNIQUES FOR BOTH CIVIL AND CRIMINAL CASES

- Court attention to cases at earliest possible moment
- Early and continuous case control
- Event deadlines
- Restriction of continuances
- Smaller trial calendars
- Firm trial dates
- Trial management
- For all but the most complex court cases, do not schedule trials until all other settlement options have been tried



PROVEN TECHNIQUES SPECIFICALLY FOR CIVIL CASES

- Control time from filing to service
- Monitor receipt of answer or responsive pleading
- Case differentiation for track assignment and management
- Early case scheduling conferences
- Trial date selected after all settlement options explored for all but the most complex cases (1-2% max)



PROVEN TECHNIQUES SPECIFICALLY FOR CRIMINAL CASES

- Realistic Charging
- More dispositions at early stage
- DA, PD, court consultation on appropriate processing track
- Every event meaningful
- Minimize churning



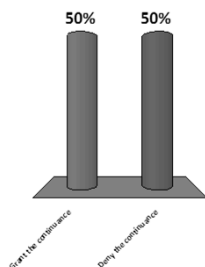
CONTROLLING CONTINUANCES

No system will work if continuances are allowed.



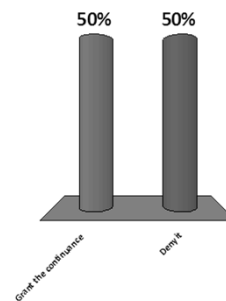
You have a request for a continuance; the case can be heard reasonably well without it, but it would cause great inconvenience to a party. What do you typically do?

1. Grant the continuance
2. Deny the continuance



Same question but the inconvenience is to a lawyer.

1. Grant the continuance
2. Deny it



Same question but the party is acting pro se.

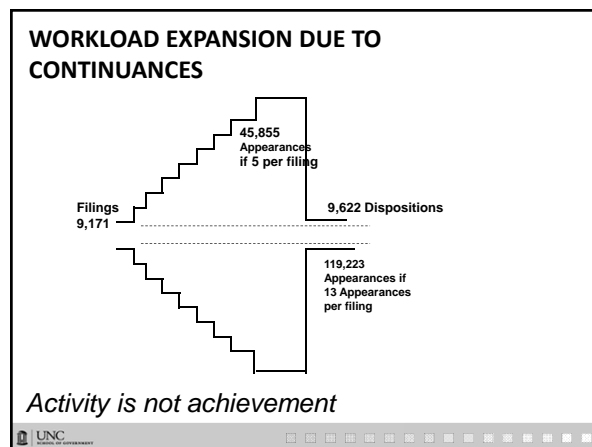
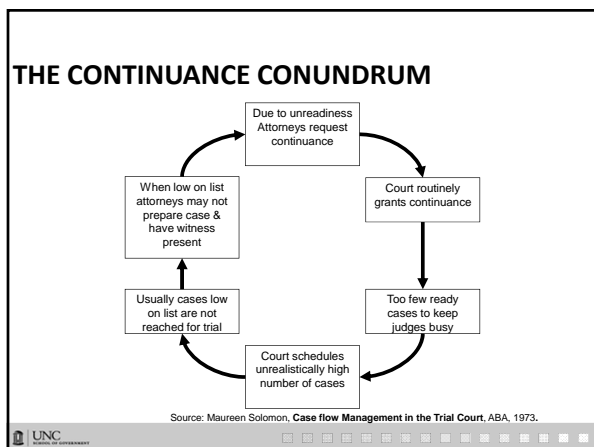
1. Grant the continuance
2. Deny the continuance

A bar chart with two bars. The left bar is labeled 'Grant the continuance' and has '50%' written above it. The right bar is labeled 'Deny the continuance' and also has '50%' written above it. The bars are dark grey and sit on a light grey base.

If a decision about whether to grant a continuance is 50/50 on the merits, I

1. Grant it
2. Deny it

A bar chart with two bars. The left bar is labeled 'Grant it' and has '50%' written above it. The right bar is labeled 'Deny it' and also has '50%' written above it. The bars are dark grey and sit on a light grey base.



IMPACT OF DECREASED APPEARANCES PER CASE

119,223 Appearances @ 13 / case
45,855 Appearances @ 5 / case
73,368 Fewer Appearances Mean . . .

- Better use of judicial resources and time
- Less work for court personnel
- Reduced attorney load
- Reduced litigant inconvenience
- Reduced costs

GUIDELINES FOR SETTING FIRM TRIAL DATES

- **Schedule as few cases for trial as possible**
 Goal: Percentage of cases scheduled for trial not more than twice the actual trial rate.
- **Set firm trial dates. Set Trial date when case is trial-ready after all pretrial matters have been resolved.**
 Goal: 15% continuances or less.
- **Do it once**
- **Consider every event a disposition opportunity**

GUIDELINES FOR ACHIEVING FIRM TRIAL DATES

- Schedule as few trials as possible
- Schedule trials late in the process
- Have backup systems
- Gather and review monitoring information

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CAN TRIAL LENGTH BE CONTROLLED?

Judges and attorneys overwhelmingly believe that trial length can and should be controlled

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TECHNIQUES

- Prevent repetitive questioning
- Define areas of dispute before trial
- Set time limits during trial
- Maintain trial continuity
- Use as much of the trial day as possible
- Keep breaks consistent
- Set a high bar for interruptions

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SCHOOL OF GOVERNMENT
THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

ADMINISTRATION OF JUSTICE BULLETIN 2009/02 | JULY 2009

Time Limits on Trials

Michael Crowell

Federal courts impose time limits on trials—restricting the number of hours per side for all examination, cross-examination, and argument—often enough that case law has developed to guide trial judges faced with the need to set such rules. Time limits are less common in state court, however, and there are few North Carolina appellate decisions, none of which directly address time limits that are discretionary and district court judges. Federal case law is useful in

Measurement


- In things like love, beauty, spirituality
 - "Not everything that can be counted counts, and not everything that counts can be counted." Einstein
- In the justice system
 - "You don't know until you measure; you don't measure what you don't value; you don't value what you don't measure" Anonymous
 - "Errors using inadequate data are much less than those using no data at all." Charles Babbage

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The screenshot displays the CourTools interface with two main sections: 'Trial Court Performance Measures' and 'Appellate Court Performance Measures'. The Trial Court section lists metrics such as 'Trial Court Performance Measures' and 'Appellate Court Performance Measures'. The Appellate Court section lists metrics such as 'Appellate Court Performance Measures' and 'Appellate Court Performance Measures'. The website also features a navigation menu and a footer with the NCSC logo and website URL.


COURTOOLS

- Each measure has instruments or measurement techniques online
- Data interpretation guides are available
- Can be adapted to local jurisdictions




COURTOOLS

- Fundamental court values
 - Access, timeliness, and fairness
- Balanced perspective on court work
 - More than just case processing
 - Borrow from other major institutional tools
 - Fiscal responsibility, customer service and internal measures of satisfaction
- Feasibility and sustainability
 - Only 10




Case-Related Measures

- Clearance Rates
- Time to Disposition
- Age of Pending Cases
- Trial Date Certainty




Why Measure Court Performance?

- To provide accurate data, and rebut negative perceptions
- Focuses on areas that leaders think are important
- Court community creativity is targeted
- Budgets may be affected
- Promotes judicial independence



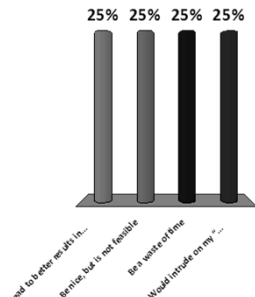
Why Don't We Measure Court Performance?

- No time
- Staff
- Poor data systems
- Fear of what it says
- Fear of misuse




Using measures like Courtools or something similar would

1. Lead to better results in my district, even if it takes resources to do it
2. Be nice, but is not feasible
3. Be a waste of time
4. Would intrude on my "space" as a judge



| Option | Percentage |
|--|------------|
| Lead to better results in my district, even if it takes resources to do it | 25% |
| Be nice, but is not feasible | 25% |
| Be a waste of time | 25% |
| Would intrude on my "space" as a judge | 25% |



What do you
measure in your
work as a trial
judge?

Why?

What are your most difficult
problems in managing a trial
calendar?

What practices have worked
best for you in managing trial
calendars?

If parties, witnesses and
lawyers gave you a
performance appraisal on your
case management
performance, what would it
be?

Hopefully Not This

- Since my last report, this employee has reached rock bottom and has started to dig."
- "Works well when under constant supervision and cornered like a rat in a trap."
- "This young lady has delusions of adequacy."
- "He would be out of his depth in a parking lot puddle."
- "He sets low personal standards and then consistently fails to achieve them."
- "This employee should go far - and the sooner he starts, the better."

Dilbert's Office Meditation

Grant me the serenity to accept the things I cannot change; the courage to change the things I cannot accept; and the wisdom to hide the bodies of those people I had to kill today because they pissed me off. And also, help me to be careful of the toes I step on today, as they might be connected to the butt that I might have to kiss tomorrow.