IMPROVING CRIMINAL CASEFLOW MANAGEMENT IN THE ALASKA SUPERIOR COURT IN ANCHORAGE

Final Technical Assistance Report

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Table of Contents

List of Figures and Tables

Page

OVERVIEW

In 2008, the efficiencies committee of a Criminal Justice Working Group, co-chaired by Alaska Lieutenant Governor Sean Parnell and Alaska Supreme Court Justice Walter Carpeneti, found that the average elapsed time to disposition for felony trial cases in Anchorage had nearly quadrupled – from 173 days to 669 – between 1987-88 and 2007.[1] This finding amounted to a "call to arms" for improvements in Anchorage.

In October 2008, the Administrative Director of the Alaska Court System requested technical assistance from the National Center for State Courts (NCSC) on Superior Court criminal caseflow management in Anchorage. NCSC assigned David C. Steelman to provide the requested technical assistance.

Mr. Steelman was one of the faculty members in a workshop on caseflow management in Phoenix on November 10 and 11, 2008, during which he worked with a team from Anchorage. (See Part One.) After the conclusion of the workshop, he conducted telephone interviews with members of the Anchorage team and other Anchorage stakeholders in November and December 2008.

Meanwhile, state and local court and criminal justice officials provided data on criminal case processing in Anchorage. Based on the observations of stakeholders in the seminar and the interviews, as well as his analysis of data, Mr. Steelman presented an initial technical assistance report in January 2009. (See Part Two, with attachments.)

Even before the Alaska team went to the caseflow management workshop, the Superior Court in Anchorage had drafted a proposed pretrial discovery report as a tool to help guide and promote the timely completion of discovery by prosecution and defense in criminal cases. The Court subsequently made two separate versions of the report – one for prosecution and one for defense. In addition, based on recommendations in the initial NCSC technical assistance report, the Court prepared a proposed continuance policy. These proposed documents (see Part Three) were reviewed by the members of the "Phoenix Group" when Mr. Steelman visited Anchorage in the first week of February 2009.

During that week, Mr. Steelman met on three afternoons with the group members, leading to the development of a criminal caseflow management improvement plan. The plan and summary information about those meetings are presented in Part Four.

[1] See Alaska Judicial Council, Criminal Justice Working Group, Memorandum from Larry Cohn, Executive Director, to Efficiencies Committee, November 2008, re: "Needs Assessment – Electronic Discovery," p. 4.

PART ONE
THE "PHOENIX GROUP" AT THE NCSC WORKSHOP ON REDUCING DELAY IN METROPOLITAN COURTS

November 10-11, 2008

PART ONE
THE "PHOENIX GROUP" AT THE NCSC WORKSHOP ON REDUCING DELAY IN METROPOLITAN COURTS

In support of efforts to improve felony case processing in the Superior Court in Anchorage, Alaska, a team from Anchorage attended a caseflow management seminar held by the National Center for State Courts and other organizations in Phoenix, Arizona on November 10-11, 2008. Subsequently named the "Phoenix Group," the members of the Anchorage team included:

Ms. Adrienne Bachman
Hon. Walter Carpeneti
Ms. Sharon Derksen
Ms. Windy East Hannaman
Ms. Christine Johnson
Hon. Patrick McKay
Mr. Douglas Moody
Mr. Quinlan Steiner
Mr. Richard Svobodny
Hon. Phillip Volland

Among the faculty members for the workshop was David C. Steelman of NCSC. Mr. Steelman met with Alaska's Phoenix group twice as part of the workshop agenda, and then again in the afternoon of November 11, after the conclusion of the workshop. In that third meeting, it was agreed that Mr. Steelman would conduct individual telephone interviews with the members of the group. In addition, further information about criminal case processing would be provided to Mr. Steelman by Ms. Bachman, Ms. Derksen, and Ms. Johnson. Mr. Steelman would then prepare a brief technical assistance report before visiting Anchorage in early 2009.

Reducing Delay in Metropolitan Courts

Agenda
Participant Roster
Faculty Biographies

November 10-11, 2008
Phoenix, Arizona

A National Center for State Courts sponsored workshop in collaboration with

Institute for Court Management
National Judicial College
National Conference of Metropolitan Courts
National Association for Court Management
Supreme Court of Arizona
Trial Courts of Arizona in Maricopa County
Administrative Office of the Courts for Arizona

WORKSHOP AGENDA

DAY 1 – Monday, November 10, 2008

Time	Topic	Facilitators
8:00-8:30 AM	*Registration and Continental Breakfast – Seminar Room* Upon Arrival: Participants Please Plot Your Self Assessment Questionnaire Results on Your Jurisdiction's Graph in the Classroom	Judicial Education Staff
8:30- 9:15 AM	Welcome, Introductions	
	• Chief Justice, Arizona Supreme Court	Hon. Ruth McGregor
	• Sponsoring Organizations: NCSC, NJC, NCMC, NACM, AZ Courts	Hon. Robert Myers
	• Workshop Purpose and Objectives	Gordy Griller; David Steelman
	• Participant Introductions and Expectations	Hon. William Dressel; Phil Knox
9:15 – 10:15 AM	Unnecessary Delay: The Nemesis of Justice	Professor Ernie Friesen
10:15 –10:45 AM	Trial Court Self Assessment Results: Plenary Discussion[2]	Steelman; Dressel
10:45 -11:00 AM	Break	
11:00 –12:15 PM	Basic Principles and Truths of Caseflow Management	John Greacen
12:15 – 1:15 PM	*Working Lunch (provided)* Problem Scenario Building in Teams facilitated by Faculty Members	All
1:15 – 1:30 PM	Break	
1:30 – 3:00 PM	Problem Discussion and Diagnosis by Jurisdiction	
	• Alaska Judicial Branch	Steelman
	• Court of Common Pleas for Pennsylvania in Allegheny County	Friesen; Myers
	• Superior Court of Arizona in Yuma County	Greacen; Knox
	• Circuit Court of Illinois in Cook County	Dressel; Myers
	• Municipal Courts of Ohio and Arizona	Griller; Song Ong
3:00 – 3:15 PM	*Break*	
3:15 – 4:30 PM	Socratic Panel: Can Caseflow Management Promote Good Lawyering? • Efficiency and Quality: Are They Mutually Exclusive • Judge Shopping – What's a Lawyer to Do • Continuances – What are Workable Policies and Practices • How Do You Build Trust Built Between Adversaries	Dressel; Friesen

[2] Prior to attending the workshop, each participant was requested to anonymously complete a self-assessment questionnaire answering 65 questions about case processing in their court. During this session, we will discuss the overall results including the jurisdiction graphs.

- Prepared Lawyers Settle Cases – How Do Courts Prompt Preparation

4:30 – 5:00 PM ?

5:00 PM Adjournment

DAY 2 – Tuesday, November 11, 2008 (Veterans Day)

Time	Topic	Facilitators
8:00 – 8:30 AM	*Continental Breakfast – Seminar Room*	Judicial Education Staff
8:30 – 10:30 AM	Develop Action Plans by Jurisdictions	All
10:30 –10:45 AM	*Break*	
10:45 – 12Noon	Closing Comments	All

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PROFESSOR ERNEST C. FRIESEN, JR

Ernie Friesen consults and teaches with judicial systems throughout the world. He retired from law school teaching in 1995 and was the founding Dean of the National College of State Trial Judges (now The National Judicial College) in 1964, and has served as Dean and professor at Whittier College School of Law and California Western School of Law. His teaching career, which spans nearly 40 years, also includes years at the University of Cincinnati and the University of Denver where he taught civil procedure, conflicts of law and federal courts. He served as Assistant Attorney General of the United States Department of Justice from 1965-1967. He was appointed Director of the Administrative Office of the United States Courts by United States Supreme Court in1967 where he served until 1970, when he resigned to start the Institute for Court Management at the University of Denver. In 1974-1975, Professor Friesen served as Senior Fulbright Fellow at the University of Birmingham, England. He was elected to the American Law Institute in 1965 and to the National Academy of Public Administration in 1968. In 1988 he was the first visiting scholar at the National Center for State Courts. Professor Friesen resides in Silverthorne Colorado.

HON. WILLIAM DRESSEL

Bill Dressel is the president of The National Judicial College; appointed to that position by the Board of Trustees in 2000. He obtained his B.A. from Cornell College, Mt. Vernon, Iowa, and his J.D. from the University of Denver Law School. From 1966-1978 he was in private practice, in both Denver and Fort Collins, Colorado, specializing in trial practice. In July 1978, he was appointed a judge to the 8th Judicial District, state of Colorado, and retained in the 1980, 1986, 1992, and 1998 general elections. Judge Dressel was licensed to practice law in the state of Colorado in April 1966 and has been admitted to practice before the Supreme Court of the State of Colorado, 10th Circuit, and the U.S. Supreme Court. Judge Dressel has been president of the Colorado District Judges' Association and chair of the Colorado Trial Judges' Council, which represents both district and county judges in the State of Colorado. From August 1992 to August 1993, Judge Dressel was chair of the National Conference of State Trial Judges, and from 1987 to 1993 was chair of the Court Delay Reduction Committee of the National Conference of State Trial Judges. In 1991, Judge Dressel was appointed by Colorado Chief Justice Rovira to be the Judicial Department's representative on the Colorado Legislature's Criminal Justice Commission, and was reappointed for a second term in 1993. He is the principal author of the Trial Management Standards adopted by the American Bar Association House of Delegates in 1992. He has also served as adjunct professor of law at the University of Denver, teaching criminal procedure and trial tactics; a consultant to the National Center for State Courts, the Center for Effective Public Policy, the Justice Management Institute, and a member of the Colorado Judicial Faculty. He served as a member of the faculty of The National Judicial College from 1989-1993, and in June 1993 was appointed to its Board of Trustees, where he served as vice-chair from 1999-2000. He was the 1998 recipient of the Justice Management Institute's Ernest C. Friesen Award of Excellence, presented in recognition of his vision, leadership, and sustained commitment to the achievement of excellence in the administration of justice.

HON. ROBERT D. MEYERS (ret)

Bob Myers has had a long and distinguished career in both public and private practice in Arizona, retiring from his last position as General Counsel, Arizona Department of Corrections in October 2006. Previously, Judge Myers served as Chief Deputy, Office of the Arizona Attorney General (2002-2003); Presiding Judge for all Trial Courts in Maricopa County (1995-2000); Superior Court Probate and Mental Health Department Presiding Judge (1992-1995); Superior Court Civil Department Presiding Judge (1991-1992); and civil trial judge (1989-1991). He was appointed to the Superior Court Bench in July, 1989. Prior to 1989, Judge Myers was a founding principal in his own firm specializing in civil litigation in the Greater Phoenix area. He is an Adjunct Professor of Law at Arizona State University's Sandra Day O'Connor College of Law, and a faculty member of the Arizona College of Trial Advocacy and the Arizona Judicial College. He has served as the President of the National Conference of Metropolitan Courts (NCMC), the Maricopa County Bar Association and the Arizona Trial Lawyers Association. He continues as a member of the Board of Directors of NCMC. Judge Myers has lectured and written on court delay reduction, jury trial reform, science in the courtroom, trial practice, and mental health issues. He was instrumental, through committees and study groups, in modernizing many of Arizona's court rules, including new approaches to civil litigation promoting disclosure as opposed to discovery, and changes in jury rules permitting greater juror involvement at trial. Many of these Arizona reforms have subsequently been endorsed by national groups. Judge Myers was admitted to practice in Arizona in 1963, having graduated from Boston University School of Law and the University of Massachusetts.

GORDON GRILLER

Gordy Griller is Director of Trial Court Leadership Programs for the Institute for Court Management at the National Center for State Courts. He assumed this newly created job in July 2006. Prior to his current position, Griller held numerous private and public positions dedicated to court improvement and reform, including Vice President for Justice Practices (2003-2006), State and Local Solutions Group, Affiliated Computer Systems (ACS, Inc.), a global, *Fortune 500* business process outsourcing (BPO) and information technology (IT) company. Additionally, Mr. Griller has served in a variety of court executive positions, including Administrator for all Trial Courts (2001-2003) and the Superior Court (1987-2001) of Arizona in Maricopa County (Phoenix); Judicial District Administrator (1978-1987) for the Second Judicial District of Minnesota in Ramsey County (St. Paul); and Court Administrator (1976-1978) for the Municipal Court of Hennepin County (Minneapolis), Minnesota. He served as President of the National Association of Trial Court Administrators in 1983 and 1984, and co-chaired the Special Commission that created the National Association for Court Management (NACM), the largest professional association in the world dedicated to court management reform. Griller has consulted, taught, and written on caseflow management (trial court delay), leadership, self-represented litigants, jury reform, visioning, strategic planning, budgeting, and systems and procedures to numerous audiences. In 1988, he received the Warren E. Burger Award for outstanding contributions to court administration, and in 2000, NACM presented him with its highest accolade, the Award of Merit. He has a BA in Political Science and MA in Public Administration from the University of Minnesota (Minneapolis). He is a Graduate Fellow of the Institute for Court Management (1976), a founding member of the Urban Court Managers'

Network, and has served on the governing boards of the National Center for State Courts and the American Judicature Society. As part of his National Center duties, he currently serves as the Executive Director of the National Conference of Metropolitan Courts.

DAVID C. STEELMAN

David Steelman has been with the National Center for State Courts since 1974. In over 30 years with the National Center, he has led hundreds of projects for courts in dozens of states and foreign countries, in such areas as court organization; court performance measurement; trial and appellate court caseflow management; drug courts; family and juvenile courts; management of court reporting services; and management of traffic courts. His book entitled, *Caseflow Management: The Heart of Court Management in the New Millennium,* is the National Center's most in-demand publication and had its third printing in a revised format in 2004. He wrote the *Court Business Process Enhancement Guide* (COSCA/NACM Joint Technology Committee, May 2003, http://www.ncsconline.org/WC/Publications/KIS_ReengiBPEGuide.pdf), and he was co-author of *Traffic Court Procedure and Administration* (2d ed., American Bar Association, 1983). In April-May 2004, he was a visiting scholar at the Research Institute on Judicial Systems at the University of Bologna in Italy. From September 1987 through August 1992, Mr. Steelman was the director of the National Center's Northeastern Regional Office. From 1977 through 1983, he was an adjunct professor in the Evening Division of Boston College. He graduated Phi Beta Kappa from the University of New Hampshire (BA 1967), before being a Ford Foundation Teaching Fellow and earning a graduate degree (MA 1970) there. After serving as a US Army officer in Vietnam, he then received his law degree from the Boston University School of Law (JD 1974). He is admitted to the practice of law in Massachusetts and New Hampshire.

JOHN M. GREACEN

John Greacen is the Principal in Greacen Associates, LLC, a consulting firm concentrating in process improvement, performance measurement, caseflow management, customer service, and leadership development for courts and other justice organizations, since November 2001. He served for 21 years as a court administrator in appellate and trial courts in both federal and state court systems, including state court administrator for New Mexico from 1996-2001. Prior to his career as a court executive, Mr. Greacen was Deputy Director for Programs at the National Center for State Courts, Program Director of the Police Foundation, Director of the National Institute for Juvenile Justice and Delinquency Prevention, Deputy Director of the National Institute of Law Enforcement and Criminal Justice, Reporter for the Arizona Rules of Criminal Procedure, Visiting Associate Professor, Washington College of Law at American University and Assistant Professor and Assistant Dean at the University of Arizona College of Law. He also has had experience as a litigator at the Washington D.C. firm of Kirkland & Ellis. Mr. Greacen is admitted to practice law in Arizona, Colorado, District of Columbia, New Mexico and the United States Supreme Court. He is a former chair of the American Bar Association's Criminal Justice Section as well as the ABA's Judicial Division Lawyers Conference. His distinctions include the Award for Excellence in Leadership from the Administrative Office of the United States Courts and the Award of Merit from the National Association for Court Management. Mr. Greacen has a Bachelor of Arts Degree from Princeton University and a JD from the University of Arizona.

PHILLIP KNOX

Phil Knox is Administrator for the General Jurisdiction (Superior) Court of Arizona in Maricopa County having been appointed to that position in 2003. Previously, in Maricopa County, he served as the Family Court Administrator from 1998-2003, a principal court operations administrator in the Superior Court, and Deputy Court Administrator for the Justice Courts, twenty-three limited jurisdiction courts scattered throughout the community. His introduction to courts took place when he served both as Pretrial Director in Yuma County, Arizona and as a supervisor with the Pretrial Services Program in Harris County, (Houston) Texas. Mr. Knox is a graduate Fellow of the National Center for State Courts, Institute for Court Management Court Executive Development Program (May 1999). He is the recipient of the ICM Director's Award of Merit for Applied Research for his study: *Internal and External Barriers to the Implementation of an Integrated Family Court: A Look at Family Courts that Work.* Mr. Knox attended law school in Texas and holds master's degrees in public administration and criminal justice management.

PART TWO
INITIAL NCSC TECHNICAL ASSISTANCE REPORT

January 30, 2009

PART TWO
INITIAL NCSC TECHNICAL ASSISTANCE REPORT

Introduction

Felony filings in Alaska courts more than doubled between 1986-1987 and 2007, and this has contributed to increased times from filing to disposition. In Anchorage, where felony filings almost tripled during that time period, times to disposition have increased dramatically.

This part of the report presents the NCSC consultant's initial assessment of circumstances in Anchorage. It includes observations from interviews and analysis of data, followed by specific recommendations for improvement. It is important to note that these recommendations are provisional, and that they are intended to serve as a point of departure for further discussions leading to the development in early 2009 of a caseflow management improvement plan for criminal cases before the Superior Court in Anchorage.

Issues and Themes Expressed by Stakeholders

When the NCSC consultant met in Phoenix with the team from Alaska, the following issues and concerns were prominent:

- There are significant concerns between prosecution and defense counsel about discovery issues.
- There is a perceived need to gain control of continuances at pre-indictment hearings, pretrial conferences, and the call of the trial list.
- There is a perceived lack of accountability.
- There are perceived resource problems.

During the course of the NCSC consultant's telephone interviews with judges and others after the seminar in Phoenix, the following themes were expressed:

- Trial courts in parts of the state other than Anchorage do not use pre-indictment hearing procedures; there is a perception that the pre-indictment hearing procedures should either be reformed or discontinued altogether.
- There are many continuances (with discovery being one of several reasons), leading to a "culture of continuances."
- Defense attorneys perceive that discovery is sometimes provided by prosecution just before or even after the commencement of trial.
- Many say that judges do not impose sanctions enough for delays, and accountability is a big problem. In other Alaska trial jurisdictions, it appears that cases are sometimes dismissed for discovery problems.

- The "flip side" of discovery problems is a delayed motion practice for defense attorneys.
- Continuances multiply the number of appearances that lawyers must make, and yet lawyers do not typically perceive the culture of continuances to be a source of increased work to be done on each case.
- Because prosecution plea offers seem to get better with the passage of time, defense attorneys perceive that "justice delayed is justice achieved."
- Conflicts in the representation of criminal defendants apparently are often not identified early in the process, and the need to appoint conflict counsel adds to delays in case processing.
- The court's trailing trial list is seen as unfair to both prosecutors and public defenders.

Electronic Discovery Needs Assessment

During the last year, two groups have been actively working on solutions to the discovery problems identified above. The Anchorage Superior Court, working collaboratively with prosecutors and defense attorneys, developed a new pretrial discovery report for use in all cases effective November 1, 2008. Members of the Criminal Justice Working Group's Efficiencies Committee have also identified the discovery process as a potential contributing factor to increased disposition times, and they are exploring the prospect of providing a web-based system by which felony prosecutors and defense attorneys in Anchorage and Fairbanks would have more immediate access to routine discovery materials.][3]

NCSC Observations from Meetings and Interviews

On the basis of meetings and interviews, the NCSC consultant offers the following qualitative observations:

- The web-based system under consideration has great promise for improving the provision of discovery. Yet this should not be seen as a "magic bullet" that will solve the problems in Anchorage. First, the problems in Anchorage go beyond what can be resolved through information technology. Second, the new system will not be implemented immediately, and steps should be taken before that.
- Criminal delay in Anchorage is in many ways the result of the "local legal culture" – the informal attitudes, concerns and practices of the court, the district attorney's office, and the public defense lawyers.[4]
- The "culture of continuances" in Anchorage creates delay that undermines and defeats the purposes of courts. (See Attachment A.)

[3] See Alaska Judicial Council, Criminal Justice Working Group, Memorandum from Larry Cohn, Executive Director, to Efficiencies Committee, November 2008, re: "Needs Assessment – Electronic Discovery."
[4] See Thomas Church, et al.., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (NCSC, 1978). p. 52.

- The local legal culture in Anchorage can and must be changed. For change to happen, it is critical for the Court to exercise leadership. It is also critical for both the district attorneys and the public defense attorneys to make a demonstrable commitment to change.
- There is a troublesome level of distrust expressed by prosecutors and public defense attorneys in Anchorage. To address this problem, it is critical for the district attorney's office and the public defense offices to cease blaming one another and endeavor to show trustworthiness to other institutional participants in the local criminal trial court process.
- Especially in a time of economic difficulty, judges and public-sector lawyers (both prosecutors and defenders) must recognize that they all share a responsibility to make prudent use of the finite public resources provided by taxpayers – especially their time. If there is indeed a "culture of continuances" in Anchorage, it wastes time and resources and may add dramatically to the amount of work per case that must be done by judges, prosecutors, public defense attorneys, and their support staff members.[5]
- Exercise of more active court management of case progress to disposition will result in better use of prosecution and public defense resources, while promoting quality in the trial court process.[6]

NCSC Observations from Data

During the meetings by the NCSC consultant with the Alaska group in Phoenix, there was agreement that more information should be prepared in support of the effort to develop improvements in Anchorage. Tables 1-5 below present the results of NCSC analysis of some of the data. Highlights from the data analysis include the following:

- The average time to disposition for cases closed in the first nine months of 2008 was 140 days (4.6 months); almost one-fourth of all cases took longer than six months, and 8.5% took longer than a year. (See Table 1.)

[5] In a study done for the Allegheny County Court of Common Pleas in Pittsburgh, PA, researchers found that each criminal trial-date continuances cost the court alone (excluding other case participants) the equivalent in 2008 dollars of $200-250. See Conti, Popp and Hardenbergh, *Finances and Operating Costs in Pennsylvania's Courts of Common Pleas* (NCSC, 1980), pp. 66-81. For the US Bureau of Labor Statistics inflation adjustment calculation using the Consumer Price Index, see http://www.bls.gov/cpi. In another study, researchers found that continuances in criminal cases add 12-24 percent more work for prosecution and public defender officers, adding labor costs ranging in 2008 dollars from $159,000 to $2.25 million, depending on the size of the agency. See Joan Jacoby, et al., *Some Costs of Continuances – A Multi-jurisdictional Study* (National Institute of Justice, 1986). More recently, NCSC consultants found that reduction of just one scheduled court event per case in an eight-judge trial court would improve court staff efficiency so much that it would be the equivalent of adding four full-time people to a court support staff of 36 people. See Steelman and Macoubrie, *Staff Efficiency and Court Calendars for the District Court in Duluth, Minnesota: Final Report Summary* (NCSC, November 2008).

[6] See Brian Ostrom and Roger Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Trial Courts* (NCSC, 1999), http://www.ncsconline.org/WC/Publications/Res_CasMan_EfficiencyPub.pdf.

- Two-thirds of all disposed cases were Class B and Class C felonies. Murder cases had the longest average time to disposition, but they represented only a small percent of all disposed cases. (See Table 1.[7])

Table 1. Time to Disposition (Final Judgment) for Anchorage Superior Court Criminal Cases Closed January 1 through September 30, 2008[8]

Case Category	Number of Cases	Cumulative Percent				Percent	Mean Days
		<120 Days	<180 Days	<365 Days	<730 Days	>730 Days	
Murder	13	15.4%	23.1%	46.2%	61.5%	38.5%	566
Other Unclassified Felony	35	31.4%	40.0%	60.0%	88.6%	11.4%	346
Class A Felony	80	30.0%	38.8%	75.0%	88.8%	11.3%	323
Class B Felony	349	59.0%	72.5%	90.5%	97.7%	2.3%	148
Class C Felony	1041	63.7%	76.6%	92.1%	98.3%	1.7%	135
Felony Conversion	8	75.0%	75.0%	75.0%	75.0%	25.0%	547
Class A Misdemeanor	488	77.5%	88.7%	96.7%	99.8%	0.2%	88
Class B Misdemeanor	29	69.0%	89.7%	96.6%	100.0%	0.0%	101
Unclassified Misdemeanor	8	87.5%	100.0%	100.0%	100.0%	0.0%	41
Under-Age Consuming	1	100.0%	100.0%	100.0%	100.0%	0.0%	17
Totals	**2052**	**64.2%**	**76.6%**	**91.5%**	**97.7%**	**2.3%**	**140**

[7] Also shown in Table 1 are "felony conversion" cases, which are felony cases that were filed before the Anchorage trial courts converted to "CourtView," the current statewide trial court case management information system.
[8] Source: NCSC analysis and tabulation of data from Alaska Court System report on time to disposition for felony cases in the Anchorage Superior Court, provided by Christine Johnson, Deputy State Court Administrator, in electronic mail message dated December 2, 2008.

- Average time to indictment in the first three quarters of 2008 was almost three months, and 15% of all cases took longer than six months to reach indictment. Average time to indictment for the most serious cases (murder, other unclassified felonies, and class A felonies) was a month less than that for less serious cases. (See Table 2.)

Table 2. Time to Indictment for Anchorage Superior Court Criminal Cases with Defendants Indicted January 1 through September 30, 2008[9]

Case Category	Number of Cases	Cumulative Percent				Percent	Mean Days
		<120 Days	<180 Days	<365 Days	<730 Days	>730 Days	
Murder	13	84.6%	84.6%	100.0%	100.0%	0.0%	64
Other Unclassified Felony	34	79.4%	94.1%	97.1%	100.0%	0.0%	66
Class A Felony	103	83.5%	91.3%	100.0%	100.0%	0.0%	62
Class B Felony	190	76.3%	84.2%	97.4%	99.5%	0.5%	91
Class C Felony	562	73.5%	83.6%	98.2%	99.8%	0.2%	91
Class A Misdemeanor	20	90.0%	90.0%	95.0%	95.0%	5.0%	93
Totals	**922**	**75.9%**	**85.1%**	**98.2%**	**99.7%**	**0.3%**	**87**

- One-third of all cases pending as of January 13, 2009, were older than the Alaska Supreme Court's 270-day time standard, and almost one-fourth were more than a year old. (See Table 3.[10])
- Over three-fourths of all cases in pretrial conferences from mid-November to mid-December 2008 were continued. (See Table 4.) Two-thirds of all trial-list cases from May through November 2008 were either continued or carried over with no action to a subsequent call of the list. (See Table 5.)
- Although rules of criminal procedure provide that all discovery is to be provided from prosecutors to defense attorneys soon after indictment, at least 11% of pretrial conference continuances were continued at defense request explicitly because of late provision of discovery by the prosecutor. (See Table 4.) Even some cases on the trial list had to be continued at defense request because of problems with provision of discovery by the prosecution. (See Table 5.)
- Changes in defense attorney changes were a common reason for continuances of pretrial conferences. (See Table 4.)

[9] Source: NCSC analysis and tabulation of data from Alaska Court System report on time to indictment for felony cases in the Anchorage Superior Court, provided by Christine Johnson, Deputy State Court Administrator, in electronic mail message dated December 2, 2008.

[10] As in Table 1, Table 3 includes "felony conversion" cases, which are felony cases that were filed before the Anchorage trial courts converted to "CourtView," the current statewide trial court case management information system.

- Unavailability of defense attorneys was a common reason for continuances on the trial list. Continuances at prosecution request were far less common than at defense request. Witness issues were the most common reason for granting trial-list continuances to the prosecution. (See Table 5.)
- In late January 2009, the Office of the Administrative Director was about to complete a study of the number of scheduled court events in Anchorage cases closed in the fourth quarter of 2008. Among about 400 cases, there were several cases with more than 70 scheduled court events.[11]

[11] Source: Office of the Administrative Director of the Alaska Court System, preliminary information reported by Christine Johnson in electronic message to David Steelman, January 26, 2009.

Table 3. Age of Pending Felony Cases in Anchorage Superior Court, by Degree of Most Serious Offense at Reporting (as of January 13, 2009)[12]

Days Pending	Felony Conver-sion	Murder Unclass Felony	Other Unclass Felony	Class A Felony	Class B Felony	Class C Felony	Class A MD	Class B MD	Not Classified MD	Totals	Percent	Cumulative Percent
0-90	0	4	15	41	102	272	16	1	1	452	36.4%	36.4%
91-180	0	2	8	30	56	114	5	0	0	215	17.3%	53.7%
181-270	0	1	10	30	32	81	3	0	0	157	12.7%	66.4%
271-365	0	4	10	19	26	53	6	0	0	118	9.5%	75.9%
366-450	0	3	10	15	14	34	0	0	0	76	6.1%	82.0%
451-540	0	2	7	14	13	24	0	0	0	60	4.9%	86.9%
541-630	0	4	7	6	8	12	0	0	0	37	3.0%	89.9%
631-730	0	5	10	3	2	9	1	0	0	30	2.4%	92.3%
Over 730	11	12	12	16	20	25	0	0	0	96	7.7%	100.0%
Totals	**11**	**37**	**89**	**174**	**273**	**624**	**31**	**1**	**1**	**1241**	**100.0%**	**100.0%**

[12] *Source: Office of the Administrative Director of the Alaska Court System, as reported in electronic mail message from Christine Johnson to David Steelman, January 29, 2009.

Table 4. Continuances in Anchorage Superior Court Pretrial Conference Dockets, November 17 to December 17, 2008[13]

Description	Number	Percent
Total Cases	207	100.0%
Total Continuances	157	75.8%
▪ New Attorney	40	19.3%
▪ "Status Quo"	33	15.9%
▪ Motions	30	14.5%
▪ Investigation Needed	19	9.2%
▪ New Agency	19	9.2%
▪ Defense Attorney Not Ready	18	8.7%
▪ Discovery	18	8.7%
▪ Change Of Plea	17	8.2%
▪ Defense Expert Issues	7	3.4%
▪ Defendant in Treatment	2	1.0%
▪ State unavailable	1	0.5%
Average Days Cases Continued	29.4	--

[13] Source: NCSC analysis of data on Anchorage Superior Court pretrial conferences held in criminal cases, as reported in a December 17 memorandum from Adrienne Bachman, Anchorage District Attorney's Office to David Steelman, NCSC, transmitted by electronic mail message dated Friday, December 19, 2008.

Table 5. Anchorage Superior Court Criminal Trial List Results, May 30 to November 20, 2008[14]

Date List Called	Cases on List	Sent for Trial	Case Cont'd [b]	R 45 Tolled	Judge Disq'd	PTH or PTC	Change of Plea	Other [c]	No Action [d]
May 30	39	2	13	6	5	1	1	7	8
June 13	45	4	8	6	11	5	0	0	16
July 3	54	2	11	0	11	0	2	1	30
Aug 8	46	2	21	5	8	0	3	1	14
Sep 12	60	4	20	8	6	4	4	3	17
Oct 9	63	2	19	0	12	0	1	3	30
Nov 6	61	2	7	13	7	4	5	11	28
Nov 20	78	4	8	8	5	1	1	9	54
Totals	446	22	107	46	65	15	17	35	197
Pct [a]	100.0%	4.9%	24.0%	10.3%	14.6%	3.4%	3.8%	7.8%	44.2%

a. Note on Percentages. Trial call results are not mutually exclusive and may total more than 100% of cases listed.

b. Continuance Requester/Reason (may be more than one per case):

1. Stipulated by Attorneys (19)
2. Requests by Prosecution Attorney
   a. Witness issue (10)
   b. Discovery (2)
3. Requests by Defense Attorney
   a. Attorney unavailability (30)
   b. Negotiations in progress (16)
   c. Motions pending (11)
   d. Defendant absent (5)
   e. Conflict/change of counsel (4)
   f. Discovery (4)
   g. Attorney conflict (2)
   h. Co-defendant severance motion (1)
   i. Difficulty communicating with client (1)
   j. Interpreter needed (1)
   k. Need evidence view (1)
   l. Witness issue (1)
4. Requester not specified
   a. Attorney unavailable (1)
   b. Defendant indicted on new charges (1)
   c. Expert unavailable (1)

c. Other Trial Call Results

1. Removed from trial call (9)
2. SQ (5)
3. Dismissal motion (4)
4. Rep hearing (4)
5. NOU before trial call (2)
6. In camera review (1)
7. Mistrial – petition to appeal filed (1)
8. Notice of entrapment defense (1)
9. Pre-plea PSR motion (1)
10. Request for date certain (1)

d. "No Action" Cases. For any case on the Court's trailing trial-list, "no action" means that it is remains listed for trial until the next call of the list. In essence, this can be interpreted to mean that each such case must be continued because the Court cannot reach it for trial on the current call of the list.

[14] Source: NCSC analysis and tabulation of Anchorage Superior Court trial call results provided by Sharon Derksen, Judicial Assistant to Deputy Presiding Judge Philip Volland, in electronic mail message dated Friday, November 21, 2008.

NCSC Recommendations for Improvement

Based on what the NCSC consultant has learned to date, the following 12 recommendations suggest steps toward the improvement of criminal caseflow management in Anchorage. It is important to emphasize that these recommendations are offered as a starting point for work on a plan for improvement that will have the support of judges, prosecutors, public defense attorneys, and other important stakeholders.

1. The Alaska Court System, Alaska Department of Law, Public Defender Agency, and Office of Public Advocacy should endorse the following propositions:
    a. Unnecessary delay in the criminal justice process undermines and defeats the purposes of courts.
    b. Except when required in the interest of meaningful progress to just resolution of cases, unnecessary rescheduling of criminal court hearings undermines and defeats the prudent use of public resources.
    c. Full and free discovery should be provided at the earliest reasonable opportunity in criminal cases to provide adequate information for informed pleas, expedite trial, and otherwise meet the requirements of due process.
2. The Superior Court in Anchorage should agree to be accountable for its performance in criminal cases through appropriate performance measures,[15] which might include the following:
    a. Reducing delay through criminal backlog reduction;[16]
    b. Reducing excess workload for judges, attorneys and support staff by reducing the number of court settings required to proceed from initiation to just disposition of criminal cases;
    c. Reducing the number of continuances granted for discovery and other reasons; and
    d. Improving the certainty of early trial or non-trial disposition for criminal cases once they have been listed for trial.
3. The Anchorage Offices of the Alaska Department of Law, Public Defender Agency, and Office of Public Advocacy should agree (a) to be accountable for compliance in individual cases with the orders of the Superior Court in Anchorage, and (b) to be accountable to their respective state-level leaders for meeting expectations in Recommendations 1 and 2 above.
4. Working with the Office of the Administrative Director and the Anchorage Offices of the Department of Law, Public Defender Agency, Office of Public Advocacy, law enforcement officials and other stakeholders as necessary, the Superior Court in

[15] See Conference of State Court Administrators, "White Paper on Creating a Culture of Accountability and Transparency: Court System Performance Measures" (adopted December 2008), http://cosca.ncsc.dni.us/WhitePapers/2008%20White%20Paper-Performance%20Measurement-Final-Dec5-08.pdf.

[16] See John Greacen, "Backlog Performance Measurement – A Success Story in New Jersey," 46 *Judges' Journal* 42 (Winter 2007).

Anchorage should take steps to meet the expectations in Recommendations 1 and 2 above through the development and implementation a criminal caseflow management improvement plan. The criminal caseflow management improvement plan should include provisions for ongoing to evaluate of plan implementation by the Office of the Administrative Director and the Anchorage Superior Court in terms of Recommendations 1 and 2, so that the Superior Court and other stakeholders can make any necessary refinements and revisions.

5. The criminal caseflow management improvement plan should have separate sections that provide for
    a. Reduction of backlogged cases (those older than applicable time standards) in the Court's existing inventory of pending criminal cases; and
    b. A new approach to the management of new cases filed on and after July 1, 2009 (or another appropriate date), implementing the following basic elements of effective caseflow management:[17]
        (i) Early and continuous judicial supervision of case progress;
        (ii) Assurance of credible trial/hearing dates and control of continuances;
        (iii) Intermediate time goals governing the elapsed time between major case events; and
        (iv) Early case differentiation to establish an appropriate timetable for each case, based on case complexity.
6. For all criminal cases (including those now pending or backlogged and any new filings), the caseflow management improvement plan should promote meaningful court events and credible trial dates by providing for the development, adoption and consistent reasonable application of a court policy on the grant of continuances, with features consistent with those in Attachments B and C.
7. In keeping with the Alaska Supreme Court's 270-day time standard, the criminal caseflow management improvement plan should provide for early and continuous judicial supervision of case progress by including intermediate time goals governing the time between major case events, and reports from the court's case management system should regularly provide information on the status of pending cases in terms of such intermediate time goals.
8. The backlog reduction section of the criminal caseflow management improvement plan should include such features as the following:
    a. Court review of the current pending inventory to identify the specific steps that must be taken to bring backlog cases to just dispositions;
    b. Entry of a scheduling order for backlog cases on a suitable timetable to prepare them for trial or disposition by non-trial means;
    c. For all other cases, entry of scheduling orders with case differentiation to establish an appropriate timetable based on case complexity; and
    d. Temporary state-level infusion of additional judges and other resources to expose backlog cases to trial.

[17] See David Steelman, with John Goerdt and James McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg, VA: National Center for State Courts, 2004 edition).

9. The section of the improvement plan dealing with all new cases filed on and after July 1 or another appropriate date should provide for early and continuous judicial supervision of case progress through
    a. encouragement of early exchange of appropriate pre-indictment discovery;[18]
    b. identification of cases suitable for negotiated disposition at pre-indictment hearing;
    c. entry of pre-indictment orders at the conclusion of the pre-indictment hearing identifying cases that will go directly to a grand jury for prosecution by indictment;
    d. for all other cases, entry of pre-indictment orders at the conclusion of the pre-indictment hearing, governing the length of time within which defendants can waive prosecution by indictment and enter a pre-indictment plea to an information; and
    e. for cases prosecuted by indictment, entry at felony arraignment of a case scheduling order setting a timetable for completion of discovery, filing and hearing of any suppression motion, pretrial conference, plea cutoff, and trial.
10. For all new cases filed on and after July 1 or another appropriate date, the improvement plan should provide for case differentiation during pre-indictment to identify cases that should go directly to a grand jury and for post-indictment differentiated case management (DCM) through the entry of a case scheduling order at felony arraignment that distinguishes complex cases requiring special judicial attention from other felony cases (see Attachment D).
11. To enhance credibility of trial dates by promoting early non-trial disposition of cases, the criminal caseflow management improvement plan should provide for the adoption and consistent application of a "plea cutoff" policy with such features as those suggested in Attachment E.
12. The criminal caseflow management improvement plan should emphasize the critical importance of having credible trial dates.[19] To this end, the plan should call for the Court
    a. to reduce the number of cases to be tried by achieving early non-trial dispositions through such means as those recommended above;
    b. to create the expectation of certainty and credible trial dates through the consistent application of a policy controlling continuances;
    c. to monitor the number of scheduled events per case closely, with the goal of having an average no more than 1.5 settings per case for trials and other court events, thereby creating an expectation among judges, attorneys and parties that trial or hearing is more likely than not to occur on or very near the first-scheduled date; and
    d. to optimize trial schedules by setting the smallest number of cases to ensure trial of matters at or near the first-scheduled trial date and within applicable time standards, while accommodating cases that "fall out" by plea or continuance for good cause shown.

[18] This part of the recommendation reflects the view that prompt justice and more efficient use of the time of judges, prosecutors and defenders will be promoted through the exchange of as much discoverable information as possible ***before*** indictment, viewing discovery provisions in the rules of criminal procedure and the new discovery reports as the ***latest*** point by which discovery ***should*** be exchanged rather than as the ***earliest*** point by which the bulk of it ***must*** be provided.

[19] Steelman, *Caseflow Management: The Heart of Court Management in the New Millennium* (2004), pp. 6-11.

Conclusion

The increase in the number of cases on the Anchorage Superior Court trial list (from 39 in May 2008 to 78 in November, as Table 5 shows) might be seen as a reflection of a criminal court process that is spinning out of control. Tendencies in that direction can be reversed, however, if appropriate steps are taken under court leadership and with the commitment of judges, prosecutors, defense attorneys and other stakeholders. The NCSC consultant is confident that this can be achieved through such steps as those suggested in this brief report.

ATTACHMENTS

ATTACHMENT A.
HOW DELAY UNDERMINES THE PURPOSES OF THE COURTS AND THE CRIMINAL CASE PROCESS*

Purpose	Effects of Delay
1. To do individual justice in individual cases	The American method of ascertaining the facts – the adversary system – is memory dependent. Memory diminishes with time. The longer the period between the commission of an offense and the trial or other case disposition, the less reliable the fact-finding process (and thus the less likely that individual justice will be done in individual cases).
2. To appear to do justice in individual cases	When delays are lengthy, people lose confidence in the courts and question their capacity to find facts and apply the law consistently and fairly. People understand that lengthy delays undermine the courts' capacity to provide justice.
3. To provide a forum for the resolution of legal disputes	When lengthy delays exist, the people involved in a case – the defendant, the victim, the witnesses, and others whose lives are affected by the case – cannot put the case behind them and get on with their lives. Delay in resolving the case prolongs the anxiety and uncertainty that is part of every criminal case.
4. To protect against the arbitrary use of government power	When cases drag on because of attorney unwillingness to proceed or because of the court's inability to schedule and hold a trial promptly, there are several negative effects on the lives of such people as (a) defendants held longer in jail than necessary, or (b) victims and witnesses who must wait longer than necessary for case outcomes.
5. To make a formal record of legal status	The longer a case drags on, the longer the period of uncertainty regarding the defendant's legal status.
6. To deter criminal behavior	To be most effective in deterring both the defendant and others, a sanction must be imposed reasonably close in time to the commission of the offense. Even if a defendant is ultimately found (or pleads) guilty, a sentence imposed long after the fact will be less likely to deter future criminal behavior.
7. To help rehabilitate persons convicted of crime	The potential for rehabilitation diminishes as time passes. Just as with deterrence, the swiftness with which adjudication is made is important if we are serious about trying to rehabilitate offenders when that would serve the interests of society.
8. To separate persons convicted of serious offenses from society	Lengthy delays mean that some offenders who will ultimately be sent to the state prison either (a) remain at large in the community or (b) are locally detained while they await trial or plea, and convicted felons may remain in a local jail while they await sentencing and transfer to prison.

* The eight purposes of courts listed here are the most consistently prominent among those that have been identified over the years by judges attending courses offered by the National Judicial College in Reno, Nevada. See Barry Mahoney, et al., *Planning and Conducting a Workshop on Reducing Delay in Felony Cases, Volume One: Guidebook for Trainers* (NCSC, 1991), Part 2, Unit P2.

ATTACHMENT B.
MODEL CONTINUANCE POLICY*

It is the policy of this Court to provide justice for citizens without unnecessary delay and without undue waste of the time and other resources of the Court, the litigants, and other case participants. For all of its case types and dockets, and in all of its courtrooms, the Court looks with strong disfavor on motions or requests to continue court events. To protect the credibility of scheduled trial dates, trial-date continuances are especially disfavored.

Except in unusual circumstances, any continuance motion or request shall be in writing and filed not later than [48 hours] before the court event for which rescheduling is requested. Each continuance motion or request shall state reasons and be signed by both the attorney and the party making the request.

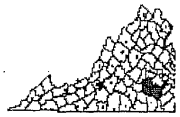
The Court shall grant a continuance only for good cause shown. Continuances on agreement of counsel or the parties shall not be automatically granted. Any grant of a continuance motion or request by the Court shall be made on the record, with an indication of who requested it and the reasons for granting it. Whenever possible, the Court shall hold the rescheduled court event not later than [7 days] after the date from which it was continued.

Information about the source of each continuance motion or request in a case and the reason for any continuance granted by the Court shall be entered for that case in the Court's computerized case management information system. At least once a quarter, the chief judge and other judges of the Court shall promote the consistent application of this continuance policy by reviewing and discussing a computer report by major case type on the number of continuances requested and granted during the previous period, especially as they relate to the incidence and duration of trial-date continuances. As necessary, the Court shall work with bar representatives and court-related agencies to seek resolution of any organizational or systemic problems that cause cases to be rescheduled, but which go beyond the unique circumstances of individual cases.

* This model policy was originally developed by David C. Steelman, Principal Court Management Consultant, National Center for State Courts, at the request of Hon. John L. Collins, Presiding Judge, Yamhill County Circuit Court, McMinnville, OR, in March 2006, as part of a caseflow management technical assistance program with the Oregon Judicial Department.

ATTACHMENT C. CONTINUANCE POLICY, 11TH JUDICIAL CIRCUIT OF VIRGINIA

Petersburg
Circuit Court
11th Judicial Circuit of Virginia



Virginia's Judicial System
Virginia Courts
Circuit Court
Divorce Docket Procedure
Civil Docket Procedures
Continuance Policy
Criminal Docket Procedures
Commissioners in Chancery
Jury Service
Grand Jurors Handbook
More About Circuit Court
Circuit Forms
Circuit Case Information
General District Court
Juvenile & Domestic Relations Court
Magistrates
Certified Mediators
Interpreters
Guardians Ad Litem For Adults
Guardians Ad Litem For Children
Frequently Asked Questions

Docket Control Procedures regarding Continuances

A continuance will be granted if a case with priority is still scheduled within seven days of trial. Otherwise, once a case has been set for trial, a continuance of that trial date will be granted only for good cause. All requests for continuances should be made at the earliest possible time in advance of the trial date.

Grounds for Continuances Generally Deemed Sufficient

a. sudden medical emergency (not elective medical care) or death of a party, counsel, or material witness who has been subpoenaed;
b. a party did not receive notice of the setting of the trial date through no fault of that party or that party's counsel;
c. the case was inadvertently set on a religious high holy day, if the continuance request is made substantially in advance of the trial date;
d. in the case of a defendant's trial where the existence of a plea agreement calls for the defendant to testify against a co-defendant at the co-defendant's trial;
e. facts or circumstances arising or becoming apparent too late in the proceedings to be fully corrected and which, in the view of the Court, would likely cause undue hardship or possibly miscarriage of justice if the trial is required to proceed as scheduled.

Grounds for Continuance Generally Deemed Insufficient

a. the case has not previously been continued;
b. the case probably will settle if a continuance is granted;
c. discovery has not been completed;
d. new counsel has entered an appearance in the case or a party wants to retain new counsel;
e. unavailability of a witness who has not been subpoenaed;
f. plaintiff has not yet fully recovered from injuries when there is no competent evidence available as to when plaintiff will be fully recovered;

http://www.courts.state.va.us/courts/circuit/Petersburg/continuance.html 5/25/2006

ATTACHMENT D.
OVERVIEW OF DIFFERENTIATED CASE MANAGEMENT[20]

Introduction

A specific means for ongoing court control of case progress is through "differentiated case management" (DCM). This is an approach by which a court distinguishes among individual cases in terms of the amount of attention they need from judges and lawyers and the pace at which they can reasonably proceed to conclusion. It is a more refined approach than the distinctions that may provide a basis for the allocation of jurisdiction between a general- and a limited- or special-jurisdiction trial court (as between a traffic case and a felony, or between a small claims case and a civil case in which more than $25,000 is at issue).

In the absence of case differentiation, it has been customary for courts to apply the same procedures and timetables to all cases of a given type. Typically, courts would give attention to cases in the order they were filed, maintaining that older cases must be disposed before those filed later. Such an approach fails however to recognize the differences among individual cases, however. Treating all cases alike may mean that some cases are rushed while others are unnecessarily delayed. Some cases needing little attention from a judge may appear on calendars for more appearances than they need, restricting the judge's ability to give more attention to cases that need it.

Origin of DCM

Courts have long recognized that certain cases may be so complex that they need special judicial attention and a departure from procedures typically applied to all cases. Since at least 1960, federal courts have used special procedures for the management of complex litigation.[21] In 1978, the Superior Court of the District of Columbia introduced a case management system that differentiated general civil cases into two tracks -- complex and routine -- for purposes of case processing.[22] Then, in a 1984 law review article reviewing almost 50 years of experience with the Federal Rules of Civil Procedure, Professor Maurice Rosenberg wrote that judicial management of cases might be made more effective by having different modes of supervision for different kinds of cases. This would permit "simple, streamlined procedures to be used in cases that do not need the more elaborate process" provided by existing procedural rules; and in particular "it would allow paring down pretrial discovery in appropriate cases."[23] With the recognition that a procedural and caseflow management distinction might be made for simpler cases as well as for more complex cases, the concept of DCM was born.

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[20] Source: David Steelman, with John Goerdt and James McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (2004 edition), pp. 4-5 and 33-35.

[21] See "Handbook of Recommended Procedures for the Trial of Protracted Cases," 25 FRD 351 (1960), and Federal Judicial Center, *Manual for Complex Litigation, Third* (1995).

[22] See Michael Planet, et al., "Screening and Tracking Civil Cases: A New Approach to Managing Caseloads in the District of Columbia," 8 *Justice System Journal* (No. 3, Winter 1983) 338.

[23] Maurice Rosenberg, "The Federal Civil Rules After Half A Century," 36 *Maine Law Review* 243, at 248 (1984). The first effort in a state court to put Rosenberg's suggestion into practice was the 1986 experimental DCM program in the Bergen County Superior Court in Hackensack, New Jersey. See Rudolph Rossetti, "Special Civil Tracks," 33 *Judges' Journal* (No. 1, Winter 1994) 34.

DCM Basics

In its simplest terms, a DCM plan might thus operate to put cases into three categories:

(1) cases that proceed quickly with only a modest need for court oversight;
(2) those that have contested issues calling for conferences with the judge or court hearings, but that otherwise do not present great difficulties; or
(3) matters that call for ongoing and extensive judge involvement, whether because of the size and complexity of the estate involved, the number of attorneys and other participants, or the difficulty or novelty of legal issues presented.

Through an early screening process involving court-counsel communications soon after case filing, cases falling into these three categories would be divided into three "tracks" reflecting their respective case management requirements. First, there would be an *expedited* track, for cases that move quickly with little or no judge involvement. Next would be a *standard* track for those that do require conferences and hearings, but are otherwise not exceptional. Finally, there would be a *complex* track, for those requiring special attention.

A court might determine that its cases need even further differentiation than could be accommodated within this simple three-part scheme. In that circumstance, the court could develop a management system with four or more tracks. As experts on DCM have observed, "There is no magic number [of DCM tracks]; the number should reflect realistic distinctions in case-processing requirements."[24]

Within an overall set of time standards, the court would establish different overall time expectations for each track. If the three-track model described above were applied to general civil cases, for example, the time from case initiation to disposition might be six months for cases assigned to the expedited track, 12 or 18 months for those in the standard track, and 24 months for the small number in the complex track.

DCM Operation in General

The operation of a differentiated case-management program depends on early court cognizance of each case – at the moment of filing (or even before in some kinds of cases, such as delinquency cases and many criminal matters). Based on case information sheets filed by parties, the judge or a court staff member would then screen cases for complexity based on criteria established by the court. Based on the case-screening assessments, cases would be assigned to different case-management tracks. Each track would have its own specific intermediate event and time standards, as well as different management procedures.

DCM for pretrial matters has a particular effect on the time allowed for completion of discovery. For cases assigned to an "expedited" track, little or no discovery might be needed. At the other end of the continuum would be complex cases, needing an individually tailored timetable for discovery completion. "Standard" track cases would generally be subject to a uniform discovery timetable.[25]

[24] Caroline Cooper, Maureen Solomon and Holly Bakke, *Bureau of Justice Assistance Differentiated Case Management Implementation Manual* (1993), p. 21.

[25] See Figures 1 and 2.

Under a DCM system, there would be continuous court monitoring of case progress. The court would also want to monitor compliance with deadlines by parties and counsel. The level of judge involvement in any particular case would be determined by its specific track assignment.[26]

DCM in Criminal Cases

With the involvement of the prosecutor's office and the public defender's office, the court should establish criteria to distinguish the different case-processing requirements of cases, in order to establish DCM tracks and the means by which to make track assignments. An example of screening criteria is the set of priority and complexity criteria used in Berrien County, Michigan. (See Figure 3.) The purpose of these criteria is to strike a balance between the need for priority or expedited handling, as determined by the court and counsel, and case complexity, as indicated by the likely number of pretrial events or other factors likely to cause delay.[27]

Screening for track assignments should be done at the earliest opportunity by experienced attorneys in the prosecutor's office and public defender's office. Counsel should then make a joint track assignment recommendation to the court. Having experienced prosecution and defense attorneys screen cases for track assignment has at least two important benefits. First, experienced attorneys can make quick and accurate screening case assessments. Second, early screening provides an opportunity for the experienced attorneys to identify cases that can be disposed promptly, as well as those that are likely to require an unusual level of attention from the court and counsel.

[26] See Holly Bakke and Maureen Solomon, "Case Differentiation: An Approach to Individualized Case Management," 73 *Judicature* (No. 1, 1989) 17.
[27] See Caroline Cooper, Maureen Solomon and Holly Bakke, *Bureau of Justice Assistance Differentiated Case Management Implementation Manual* (1993), p. 33.

FIGURE 1. CIVIL AND CRIMINAL DCM PROGRAMS IN ST. PAUL, MINNESOTA[28]

Minnesota's Second Judicial District Court is a general-jurisdiction court serving St. Paul and other municipalities in Ramsey County. In April 1988, the court introduced a DCM program for all civil cases. Because of the success of the civil program, it added a criminal DCM program in 1990 and a special fast track for drug cases in 1991.

In each civil case, parties file a joint information statement within 60 days after filing, to give the court information about discover and complexity and to request a track assignment. The court uses an *expedited track* for simpler cases (18-20% of the total), which receive a trial date 6-8 months from filing, and in which there is no further court action before trial. Most cases (65-70%) are assigned to a 10-12 month *standard track*, for which the court issues a scheduling order for completion of discovery and motions, with dates for a dispositional conference, a pretrial conference, and trial. Cases that do not fit the criteria for the expedited track but do not need the discovery time provided in the standard track (around 10% of cases) are put in a *modified standard track* and are scheduled to take 1-2 months less to reach trial. A small number (3-8%) of cases require the attention of an individual judge because of complicated claims or defenses, the number of parties, or the amount of discovery, and with the approval of the chief judge these cases are assigned to a *complex track.*

In an omnibus hearing held 14 days after arraignment, felonies and gross misdemeanors are assigned to one of three tracks based on whether there are contested issues relating to suppression of evidence. *Track A* cases are those with no suppression issues, and they are set for a pretrial conference 30 days later. *Track B* cases are those with suppression issues that are not considered likely to be dispositive; if not resolved at the omnibus hearing, they are set for a pretrial conference and any unresolved issues are heard on the trial date. *Track C* is for cases in which contested hearings are needed to resolve suppression issues. A second, contested omnibus hearing is set for 14 days after the first, and any rulings in that second hearing are binding on the trial judge. If not resolved at the contested hearing, a case is set for a pretrial conference 14 days later. In addition to these tracks, a special *fast-track drug calendar* is held to expedite certain targeted drug-related offenders into treatment or supervision programs.

DCM results in St. Paul have been substantial. The number of pending cases has been sharply reduced. Disposition times for both civil and criminal cases have been reduced, and jail crowding has been reduced as a result of the criminal program. Because of increased judge availability, only 5% of trial continuance requests in civil cases are granted, and only 8% are granted in criminal cases.

[28] This description is based on those given by Suzanne Alliegro in "Beyond Delay Reduction: Using Differentiated Case Management," 8 *Court Manager* (No. 2, Spring 1993) 12, at 13-15, and by Thomas Mott, in "Reducing Delay and Trial Continuances," 33 *Judges' Journal* (No. 1, Winter 1994) 6.

FIGURE 2. SUCCESSFUL CRIMINAL DCM PROGRAMS[29]

Examples of successful criminal DCM programs are those in Tacoma, Washington; St. Joseph, Michigan; and Philadelphia, Pennsylvania.

The DCM program of the ***Pierce County Superior Court*** in Tacoma, Washington was developed to promote speedy disposition of drug cases and reduce jail crowding. The prosecutor and public defender make a joint recommendation for a DCM plan designation, with a schedule for all anticipated events including trial, for court review and approval. Plan "A" cases are to be disposed within 30 days; Plan "B" cases, within the statutory speedy-trial requirements of 60 days (in-custody defendants) or 90 days (out-of-custody defendants); and Plan "C" cases are complex matters that require waiver of the speedy-trial requirements and are assigned to an individual judge for monitoring. Despite a 53% increase in criminal cases from 1985 to 1990, average time to disposition in the court has dropped from 210 days to 90 days.

The DCM program in the ***Berrien County Circuit Court*** in St. Joseph, Michigan, involves the assignment of felony cases to one of three tracks to allow for more individualized handling of cases based on degrees of complexity and relative priorities as established by the court. The assigned trial judge makes track assignment after initial evaluation by counsel and the original arraigning judge. "Fast track" cases are those with high priority and low or medium complexity, and time from circuit court arraignment to trial should be less than 90 days. (For the court's criteria for priority and complexity, see Table 2 below.) "Complex track" cases are those with low priorities and medium to high complexity, and they are to be tried within 210 days after circuit court arraignment. All other cases are in the "normal track," which has a time to trial of 150 days. As a result of its DCM program, the court was able to maintain expeditious case processing from arrest to disposition despite a 40% increase in filings in the late 1980s and early 1990s. The program permitted increased productivity without increases in court staff or judicial resources. Pending criminal cases are a much smaller portion of the court's total inventory than they did before the program began.

In the ***Philadelphia Court of Common Pleas***, DCM was phased in from 1988 through 1991. It began with the less serious felony cases in the court's "waiver division" (which has about 70% of the court's criminal caseload). The tracks act as a sifting mechanism. Track A is for nonviolent offenses and seeks to provide for their disposition by plea or diversion at arraignment. Track B provides a trial-readiness conference for cases with defendants in custody, scheduled 21 days after arraignment and about two weeks before trial. Track C is designed to consolidate all pending cases of one defendant before a single judge. Track C is the standard track for bail cases and those not resolved through Track A or Track C procedures. DCM was subsequently expanded to the court's "major felony program," with all cases but homicides assigned to one of three tracks based on complexity. The program has enabled the court to bring all cases under administrative control and oversight, with better allocation of resources in proportion to the demands that cases present.

[29] The description of the Tacoma program here is based on that by Beverly Bright in "Beyond Delay Reduction: Using Differentiated Case Management," 8 *Court Manager* (No. 1, Winter 1993) 24, at 25-27, as well as the article by J. Kelley Arnold, "Transferring Criminal Case Management Functions from the Prosecutor to the Court," 33 *Judges' Journal* (No. 1, Winter 1994) 5. For St. Joseph, it is based on Caroline Cooper, Maureen Solomon and Holly Bakke, *Bureau of Justice Assistance Differentiated Case Management Implementation Manual* (1993), Appendix b, and Ronald Taylor's program description, "A Three-Track Criminal Program," 33 *Judges' Journal* (No. 1, Winter 1994) 36. The information on Philadelphia is derived from David Lawrence's program description in "Beyond Delay Reduction: Using Differentiated Case Management," 8 *Court Manager* (No.3, Summer 1993) at 25-27, and on the article by Legrome Davis, "Developing Felony Tracks," 33 *Judges' Journal* (No. 1, Winter 1994) 9.

FIGURE 3. CRIMINAL DCM TRACKING CRITERIA IN BERRIEN COUNTY, MICHIGAN[30]

PRIORITY CRITERIA

Low Priority Characteristics

- Defendant on Bond
- All Charges Other than Those for Medium or High Priority

Medium Priority Characteristics

- Habitual Offender
- Offense Committed on Felony Probation
- Assault and Drug Charges Other than Those for High Priority
- Multiple Charges Pending (not same case as that under screening)

High Priority Characteristics

Charged Offense:

- Criminal Sexual Assault Against Child
- Delivery or Possession of Dangerous Drug with Intent to Deliver
- Life Maximum Assault Offenses

Habitual Offenders (2 or more prior felony convictions

- Offense Committed While on Parole or in Correction Center

COMPLEXITY CRITERIA

Low Complexity Factors

- Police Witness Only
- Simple Motions (2 or fewer)
- Motions Requiring Evidence Hearing less than ½ Day
- Less than Five (Six) Witnesses (Total Prosecution and Defense)

Medium Complexity Factors

- Multiple Motions (3 or more)
- Expert Witnesses (other than drug analyst) Necessary
- Out-of-State Witnesses
- Motion(s) Requiring Evidence Hearing of ½ Day or Longer

High Complexity Factors

- 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

[30] Source: Caroline Cooper, Maureen Solomon and Holly Bakke, *Bureau of Justice Assistance Differentiated Case Management Implementation Manual* (Washington, DC: American University, 1993), p. 34.

ATTACHMENT E.
ELEMENTS OF A SUCCESSFUL "PLEA CUT-OFF" POLICY FOR CRIMINAL CASES[31]

Introduction[32]

In view of the fact that about 95% of all criminal cases are disposed by plea or other non-trial means, criminal caseflow management should focus on ways to provide for meaningful plea discussions between prosecution and defense counsel, beginning at an early stage of proceedings. Prosecutors should be prepared to make realistic plea offers as early as possible. Defense counsel, in turn, should be prepared to negotiate, balancing the best interests and constitutional rights of their clients.

The court should establish and be prepared to enforce a "plea cut-off" policy. Under such a policy, the court in a scheduling order might establish a date for prosecution and defense counsel to meet to discuss the possibility of a plea, at which the prosecutor's office would be prepared to make its best offer to the defendant. A plea cut-off date, perhaps a week after that conference and one or two weeks before the scheduled trial date, would be the last date on which the defendant could accept the prosecution's best offer.

If the defendant sought to plead guilty after that date, he or she would have to plead to the original charge filed by the prosecutor, unless it is clear that the original prosecution filing constitutes "over-charging." There would be no benefit for the defendant to wait, since the prosecutor's offer would not "get better with the passage of time" from a defense perspective.

Necessary Features

In order for a plea cut-off policy to be successful, there are certain features that must be present. They are the following:

- The court and the prosecutor's office must both be committed to making the program work.
- Commitment by the prosecutor's office must include the adoption and consistent application in practice of a charging policy that is reasonable in view of what the evidence in each case will support, and that avoids what eventual case outcomes would show to be "over-charging."
- The program must provide an opportunity for a "best-and-final" prosecution plea offer after defense counsel has (a) received sufficient discoverable evidence to assess the strength of the prosecution's case, and (b) met the defendant enough to have attorney-client credibility in discussion of the prosecution offer.
- The prosecutor's office avoid over-charging and must make a best-and-final plea offer that is really a "good offer" – that is, one that is credible based on the evidence and what a reasonable defense attorney would expect to happen if the case went to trial.

[31] This document is a revised version of one originally prepared by David Steelman, Principal Court Management Consultant, National Center for State Courts, on September 13, 2008, in response to a technical-assistance request from Suzanne H. James, Court Administrator for the Circuit Court for Howard County in Ellicott City, Maryland.

[32] See David Steelman, with John Goerdt and James McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (NCSC, 2004 edition), p. 33.

- There should be a plea cut-off date after which the prosecution's best-and-final plea offer is no longer available.
- Even though the court cannot be expected to reject a defendant's guilty plea, even on the day of trial, the court must be firm in its enforcement of the plea cut-off date. This means that in almost all circumstances, absent unforeseen developments, most or all of the criminal judges must require the defendant to "plead straight up" or "make a naked plea," without the benefit of the best offer made by the prosecutor.

Other Features Promoting Success

The success of a plea cut-off policy requires that the above features be present. There are other features that can enhance the likelihood of success. These include the following:

- Court capacity to provide credible trial dates.
- Early prosecution screening of cases to assure that charges fit the evidence.
- Early determination of defendant's eligibility for representation by the public defender or otherwise at public expense.
- Early defense counsel contact with the client to develop a working attorney-client relationship.
- Early prosecution provision of a "discovery package" to defense counsel, with sufficient information to allow defense counsel (a) to identify any potential suppression issues, and (b) otherwise to assess the strength of the prosecution case.
- Timing of the final prosecution-defense plea discussion close enough to the trial date for the defendant to take the prosecution's best-and-final offer seriously, but enough in advance of the trial date to allow the court scheduling flexibility if the defendant decides to accept the prosecution offer and plead guilty on or before the plea cut-off date.

PART THREE
ANCHORAGE SUPERIOR COURT DRAFT DOCUMENTS

PART THREE
ANCHORAGE SUPERIOR COURT DRAFT DOCUMENTS

In the discussion of Anchorage felony case processing during the November 2008 caseflow management workshop, problems of continuances and discovery were identified as paramount concerns. The Superior Court in Anchorage has consequently taken steps to address both issues. The results of such efforts are presented in this section.

As the NCSC initial TA report notes (see page 13 above), stakeholders at the workshop reported that "There are significant concerns between prosecution and defense counsel about discovery issues." Even before the Alaska team went to the caseflow management workshop, the Superior Court in Anchorage had drafted a proposed pretrial discovery report as a tool to help guide and promote the timely completion of discovery by prosecution and defense in criminal cases. The Court has subsequently made two separate versions of the report – one for prosecution and one for defense.

The initial report by NCSC (again, see page 13 above) indicates as well that "There is a perceived need to gain control of continuances at pre-indictment hearings, pretrial conferences, and the call of the trial list." Based on discussions at the caseflow management workshop and on information provided in the initial NCSC technical assistance report (see Part Two Attachments B and C, pages 28-29 above), the Court prepared a proposed continuance policy after the workshop. These proposed documents were then discussed by the members of the "Phoenix Group" when Mr. Steelman visited Anchorage at the beginning of February 2009.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT ANCHORAGE

STATE OF ALASKA,)
Plaintiff,)
vs.)
) CASE NO. 3AN-___-_____
CR
_____,)
Defendant.) **PROSECUTION**
DOB _____) **PRETRIAL DISCOVERY REPORT**

Due Date

Discovery to be completed by the 20th day after Superior Court Arraignment.	
Pretrial Discovery Report to be completed and transmitted to the defense by the 30th day.	
Defense to return Pretrial Discovery Report by the 40th day.	
First Pretrial Conference to be held on 45th day after arraignment.	

I. Trial

A. Trial is currently set for

_____

B. The State requests a new trial date for the following reason:

_____

_____

II. Discovery to Defendant

A. The prosecution states that pursuant to CR 16 (b)(1), it has requested and provided what was received for the following categories:

PLEASE INITIAL EACH CATEGORY IF PROVIDED

	1.	The names and addresses of persons known by the state to have knowledge of relevant facts (except in cases of informants)
	2.	Copies of written or recorded statements or summaries of statements by witnesses

	3.	Any written or recorded statements and summaries of statements and the substance of any oral statements made by the accused
	4.	Any written or recorded statements and summaries of statements and the substance of any oral statements made by a co-defendant
	5.	Copies of any photographs taken by the police
	6.	Property and evidence logs documenting the physical evidence seized in the case
	7.	Copies of all Grand Jury exhibits

B. The following discovery from the police agency has occurred:

1. ____ Police reports of the following officers (list by name):

_____

_____

2. ____ CD's/tapes of witnesses/defendant (list by name):

_____

_____

3. ____ 911 CAD printout and recording(s)
4. ____ Copies of any requests for laboratory services:
5. ____Digitally-stored information:

   _____
6. ____ Although listed above, the state has also requested the following materials:

   _____

   on _____.

C. Based on the foregoing, Criminal Rule 16(b)(1) discovery is complete except:

1._____ 3._____

2._____ 4._____

Item(s) listed above will be produced to defense by

_____.

III. The following discovery is disputed:

A. By the State:

_____

_____.

B. By the Defendant:

_____

_____.

Date: _____

_____
Assistant District Attorney
Print Name:
_____

**I certify that on _____
a copy of the above was mailed/
delivered/faxed to:**

_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA AT ANCHORAGE

STATE OF ALASKA, Plaintiff,	)	
vs.	)	
	)	CASE NO. 3AN-___-_____
CR _____,	)	
Defendant.	)	**DEFENSE**
DOB _____	)	**PRETRIAL DISCOVERY REPORT**

Due Date

Discovery to be completed by the 20th day after Superior Court Arraignment.	
Pretrial Discovery Report to be completed and transmitted to the defense by the 30th day.	
Defense to return Pretrial Discovery Report by the 40th day.	
First Pretrial Conference to be held on 45th day after arraignment.	

I. Trial

A. Trial is currently set for: Week of: _____

Date Certain: _____

B. The defense requests a new trial date for the following reason:

_____

_____

_____

_____

C. Defense counsel conducted a conflicts check and no conflicts exist as of:

_____. _____ (Initial)

The defense states that the prosecution has provided to the defense the following:

PLEASE INITIAL EACH CATEGORY IF PROVIDED

1. _____ The names and addresses of persons known by the state to have knowledge of relevant facts (except in cases of informants) _____

2. _____ Copies of written or recorded statements or summaries of statements by witnesses

3. ____ Any written or recorded statements and summaries of statements and the substance of any oral statements made by the accused

4. ____ Any written or recorded statements and summaries of statements and the substance of any oral statements made by a co-defendant

5. ____ Copies of any photographs taken by the police

6. ____ Property and evidence logs documenting the physical evidence seized in the case.

7. ____ Copies of all Grand Jury exhibits

B. The following discovery from the police agency has been received:

7. ____ Police reports of the following officers (list by name):

_____

_____

8. ____ CD's/tapes of witnesses/defendant (list by name):

_____

_____

9. ____ 911 CAD printout and recording(s)

10. ____ Copies of any requests for laboratory services

11. ____ Digitally-stored information:

_____

C. Defendant requests the following additional discovery:

1._____ 4._____
2._____ 5._____
3._____ 6._____

If not received, the defense will file a motion to compel by _____.

D. The defense agrees it has received and reviewed discovery of:

1. ____ Bates-stamped pages _____ to _____.

2. ____CD's numbered: _____.

E. The parties do not oppose *in camera* review of the following materials:
_____
_____

Notice to the affected person/agency was made on: _____

F. Scientific/forensic evidence

The defendant seeks testing of the following:
1.
_____.
2.
_____.

A stipulation regarding chain of custody will be filed by _____, 20___.

III. The following discovery is disputed by the Defendant:

_____
_____

Date: _____ _____
Counsel for Defendant

**I certify that on _____
a copy of the above was mailed/
delivered/faxed to:**
_____

CONTINUANCE POLICY FOR ANCHORAGE FELONY CRIMINAL COURTS

It is the policy of the Anchorage criminal courts to promote resolution of felony cases without unnecessary delay. To this end the court will look with disfavor on unjustified requests to continue court events. In order to preserve scheduled trial dates, requests to continue trial which are not supported by good cause will be especially disfavored.

Requests to continue must be filed in writing and in accordance with Criminal Rules 12(h) and 42. Continuances based on a stipulation by the parties will not automatically be granted absent a showing of sufficient cause. Continuances will not automatically be granted merely because the defendant is willing to waive Rule 45 time.

Whether sufficient cause justifies a continuance will always be evaluated on a case by case basis. However as a guide to practitioners, the following will generally not be considered sufficient cause to grant a continuance:

- A need to further investigate if the case has been pending for more than 90 days.
- A need to further review discovery if discovery has been provided within the preceding 20 days.
- A request to continue trial for further time to negotiate the case, or further time to consider an offer.
- A request to file motions if the motions deadline in the pretrial order has already passed.
- A request for further discovery of items not already identified in the Pretrial Discovery Report
- Counsel is not prepared to proceed with trial.
- Any continuance of trial beyond a second continuance.

The following will generally be considered sufficient cause to grant a continuance:

- Unanticipated absence of a material witness for either party
- Illness or family emergency of counsel.
- Unavailability of counsel due to another trial in progress.
- Change of counsel for the defense within the preceding 30 days.

The court system will maintain information about each requested continuance in the court file, identifying the party requesting the continuance, the reason or reasons given, whether the continuance was granted, and the delay incurred because of the granting of the continuance. Every six months, the chief criminal judge shall report to the Presiding Judge on the number of continuances requested and granted during the previous period as it relates to the application of this policy. As necessary, the court shall work with representatives of the criminal bar to seek resolution of any organizational or systemic problems which cause cases to be continued.

PART FOUR
DEVELOPMENT OF ANCHORAGE SUPERIOR COURT CRIMINAL CASEFLOW MANAGEMENT IMPROVEMENT PLAN

February 2009

PART FOUR
DEVELOPMENT OF ANCHORAGE SUPERIOR COURT CRIMINAL CASEFLOW MANAGEMENT IMPROVEMENT PLAN

After the caseflow management workshop, the Phoenix Group was expanded to include three other members:

Darrel Gardner, Anchorage attorney
John Murtagh, Private Defense Attorney
John Rockwell, Municipality of Anchorage

At the suggestion of Judge Phillip Volland, David Steelman of NCSC included these gentlemen among those with whom he had telephone interviews in November and December 2008.

They were also among the members of the Phoenix Group who met with Mr. Steelman when he visited Anchorage in the first week of February 2009 to meet with the group about possible improvements to the current system for handling felony cases. His initial technical assistance report (see Part Two) was distributed to the members of the group, along with the proposed continuance policy prepared by the Court (see Part Three). Activities that week were in keeping with the following general outline:

- *Sunday, February 1* – Steelman arrival
- *Monday morning, February 2* – Meetings with Ms. Christine Johnson, and the judges as needed and available, to prepare for Monday afternoon session.
- *Monday, February 2, from 2 to 5 p.m.* – Presentation and group discussion of Steelman findings from interviews and data, as basis for identifying areas of consensus on issues to address in criminal caseflow management improvement plan.
- *Tuesday, February 3, and Wednesday morning, February 4* – Individual meetings as needed with stakeholders; meetings with Ms. Johnson and the judges, as needed and available, to prepare for Wednesday afternoon session.
- *Wednesday, February 4, from 2 to 5 p.m.* – Plenary and small group discussions to develop proposed elements of improvement plan.
- *Thursday morning, February 5* -- Meetings with Ms. Johnson and the judges, as needed and available, to prepare for Thursday afternoon session.
- *Thursday, February 5, from 2 to 5 p.m.* – Plenary group meeting to complete full first draft of improvement plan.
- *Thursday night, February 5* – Steelman departure

This part of the report summarizes the results of the three meetings. Then it presents the improvement plan that was completed at the end of the third meeting.

SUMMARY OF PHOENIX PROJECT TEAM MEETING
Monday, February 2, 2009

Introduction

NCSC consultant David Steelman began the meeting by providing an overview of the day's agenda and of the expected activities during the week. With Judge Volland, he emphasized that the goal for the group should be to prepare a plan for the improvement of Superior Court criminal case processing in Anchorage.

Brief Review of NCSC Technical Assistance Report

Mr. Steelman offered a short summary of his initial technical assistance report (Part Two), based on his interviews with members of the group and on data from the court system and other stakeholders. This provided an opportunity for him to explain his concerns about current practices, and to discuss recommendations for the group to consider. He gave particular attention to what he called Anchorage's "culture of continuances."

Data on Settings per Case

Data on the number of continuances in Anchorage criminal cases is not readily available in the Alaska Court System's automated case information system. Reliable information is available, however, about the number of scheduled events per case. Christine Johnson presented the group with tables showing the number of scheduled events per case in Anchorage felony cases closed between October 1 and December 31, 2008. Table 6 summarizes that information:

TABLE 6. SCHEDULED EVENTS PER CASE IN ANCHORAGE FELONY CASES CLOSED OCTOBER – DECEMBER 2008[33]

Description	Median	Mean	Highest
Time to Disposition (Days)	112.5	178.7	1,519
Pre-Indictment Hearings Scheduled per Case	2	3.4	25
Pretrial Conferences Scheduled per Case	0	1.9	37
Status Hearings Scheduled per Case	0	0.1	7
Trial Calls Scheduled per Case	0	0.4	14
Times Trial Week Scheduled per Case	0	1.1	17
Times Change of Plea (COP) Hearing Scheduled per Case	1	1.3	16
Other Events Scheduled per Case	3	3.9	49
Total Number of Scheduled Events per Case	9	12.2	78

[33] Source: Office of the Administrative Director of the Alaska Court System. Excluded from the count of events per case were those calendared in error, as well as duplicate entries.

In relation to the information presented by Ms. Johnson, Mr. Steelman observed that having a high number of court events scheduled per case leads not only to delay, but that it also adds dramatically to the cost of criminal proceedings for both private participants and the State of Alaska. Based on the results of studies of the cost of continuances in other jurisdictions for courts, prosecutors and public defenders,[34] he estimated that each extra criminal court setting in Anchorage probably costs the State of Alaska from $500 to $1,000.

If rules of criminal procedure in Alaska contemplate no more than 5-8 court events from initial appearance through conviction and sentencing to possible violation of probation proceedings, then the case closed in the last quarter of 2008 with 78 scheduled events may have had about 70 extra scheduled events. If court and other criminal justice officials in Anchorage are concerned about having inadequate resources to meet due process requirements in criminal proceedings, said Mr. Steelman, then the extra scheduled events in that one case may have cost the State of Alaska the equivalent of the salary and fringe benefits for at least one support staff person for a year. The extra events in the two cases with the most scheduled events (78 and 72, respectively) may have cost the State of Alaska the full-time equivalent of an extra prosecutor or public defender attorney.

Identification of Areas Needing Attention and Priority

The group then sought to identify the areas in which greatest improvements were needed in the Anchorage felony case process. Based on that discussion, the following areas were given noted for priority attention:

- Discovery Issues
- Pre-indictment Process
- Continuance Policy
- Court Improvements
- Credible Trial Dates

Conclusion

At the conclusion of the meeting, Mr. Steelman proposed that the members of the group use the meeting on Wednesday afternoon, February 4, to refine their views about the areas needing greatest attention, and to move toward consensus on what steps would be most appropriate for improvement.

[34] See note 4 above.

SUMMARY OF PHOENIX PROJECT TEAM MEETING
Wednesday, February 4, 2009

Introduction

To reduce undue demands on public resources and on victims and witnesses in felony criminal cases in Anchorage, the members of the Phoenix Project Team reached the following conclusions in a meeting in Anchorage on February 4, 2009.

Discovery Issues

For brief review in the meeting, Sharon Derksen provided copies of the Court's proposed new "Pretrial Discovery Report" forms for prosecution and defense. Among minor issues raised were: (a) reformat to reduce pages; (b) whether a "Date Certain" for trial in a case (Sec. I.A) is known at the time the form is to be prepared; and (c) have online forms available to agencies in a format allowing incorporation into each agency's case management system.

Pre-indictment discovery was an issue for more extended discussion. John Rockwell reported that the Anchorage Police Department (APD) Captain has informed his officers that recorded statements of defendants or co-defendants are "evidence" that the officer filing the report of an arrest must have entered in the APD information system at the end of a shift. It is likely to take 3-6 months for this policy clarification to become a routine practice. Making copies of evidence for the DA's office presents a staffing issue, and APD is currently understaffed. Automatic APD creation of evidence CD's for every case is not likely to be possible.

The group agreed that the goal should be for APD before indictment to provide all then-available evidence (consisting in average cases of all police reports, photos, audio recorded statements, "911" tapes, and physical evidence) within two weeks after it is requested.

Improvements to the Pre-indictment Process

There was discussion of two alternatives options – either to eliminate pre-indictment hearings (PIH) or to continue current practices with improvements. There was consideration of costs for institutional participants in the felony process, and particularly increased police witness costs from having all cases go to indictment. This led the group to conclude that improving current pre-indictment practices should be tried first. Under this approach, there would be a presumption that the pre-indictment process is to be completed within 45 days, unless there is good cause (e.g., lab results on DNA) for no more than 90 days to be allowed. The group will review the impact of these changes after a suitable period of time.

Continuance Policy

The group discussed a draft "Continuance Policy for Anchorage Felony Criminal Courts," prepared by Judge Phillip Volland. Some of those in the meeting expressed concern about the specific examples identified in the draft policy of what "will generally not be considered sufficient cause to grant a continuance" would become an inflexible norm, and that the evaluation of sufficient cause "on a case by case basis" would not give sufficient recognition to the practical circumstances lawyers face. In support of the draft policy, others asserted that this is a way for the court to give notice to lawyers and promote greater consistency among the

criminal judges, addressing important concerns that there are too many continuances granted and that there is insufficient accountability in the process.

Court Improvements

At the beginning of discussion on this topic, David Steelman suggested that court improvements might include

- Regular provision and active use of caseflow management reports by Judge Volland and the other criminal judges to exert more active control
- An effort for the criminal judges to be as consistent as possible from one courtroom to the next and from one case to the next

As discussion proceeded, other court improvement steps were suggested by members of the team:

- The court should start hearings on time, creating the expectation for lawyers that they should be in court at or before the start of a docket.
- Related to that, address issues of prisoner transport and paperwork delays.
- Through changes in court scheduling or in agency assignment of attorneys, seek to reduce situations in which one attorney is scheduled to be in two different courtrooms at the same time.
- If attorneys have made timely motions and timely discovery, hold evidentiary hearings in a timely fashion and decide motions within 30 days.

Credible Trial Dates

Judge Volland and David Steelman presented thoughts based on review of information provided by Christine Johnson:

- With its current judges, the court can probably try 15-20 more cases each year.
- To expose more cases to trial while recognizing that there will be cases with a continuance granted or last-minute change of plea, Judge Volland could "stack" more cases assigned to each for trial each week.
- In Judge Volland's proposed continuance policy, there is a provision that "In order to preserve scheduled trial dates, request to continue trial which are not supported by good cause will be especially disfavored."
- The court should seek ways to have backup judge capacity, along with backup courtrooms when needed for trials.

Conclusion

The Phoenix Project Team Members agreed to improve felony case processing in Anchorage through the implementation of steps in the above areas. In the meeting on February 5, 2009, they would seek to identify appropriate indicators by which to measure improvements and to develop plans for implementation.

SUMMARY OF PHOENIX PROJECT TEAM MEETING
Thursday, February 5, 2009

Introduction

On the afternoon of February 5, the group met to bring a degree of closure to their discussions. Their purpose was to agree on a statement of expectations and measures of improvement, and to outline a plan for improvement.

Review of February 4 Discussion Results

The group briefly went over the results of their discussion on February 4. They considered what would be necessary to improve the credibility of trial dates. Ms. Bachmann raised the matter of differentiated case management, as recommended in the NCSC initial report (see Part Two, Attachment D). The group agreed to consider the development of a pilot project to "fast track" certain kinds of cases, such as felony DUI matters and domestic violence cases.

Mission Statement

At the end of the afternoon on February 2, Quinlan Steiner expressed concern that discussions to date were not giving sufficient attention to the importance of assuring due process in criminal proceedings. The group had agreed that this issue might be adequately addressed in a "mission statement." Based on communications with Mr. Steelman, Mr. Steiner presented a proposed mission statement at the meeting on February 5. The group then suggested minor changes to the proposed mission statement, which appears as revised on the following page.

Measures of Improvement

Asserting that it is critical to know what constitutes an "improvement" in Anchorage felony case processing, Mr. Steelman urged the group to identify appropriate indicators of improvement. The group developed the following list:

- Reduced time to indictment
- No reduction in number of pre-indictment changes of plea (COP)
- Timely commencement of court events
- Fewer settings per case and per event
- Fewer continuance requests due to discovery issues
- Reduction in number of cases on trailing trial list
- Increased use of judge trial weeks
- Increased number of trials
- Improved trial date credibility

Conclusion

The group then set about to identify tasks that would be necessary to implement the improvement program. To develop a plan for steps to complete those tasks, they determined which person should have primary responsibility for each task and a date by which each task should be completed.

Mission Statement

The Alaska Court System, Alaska Department of Law, Alaska Public Defender Agency, and Office of Public Advocacy are committed to ensuring that the requirements of due process are met in every criminal case while reducing unnecessary delay.

Endorsement

The Alaska Court System, Alaska Department of Law, Alaska Public Defender Agency, and Office of Public Advocacy endorse the following propositions:

A) Unnecessary delay in the criminal justice system undermines due process and the fair resolution of criminal cases;

B) Unnecessary rescheduling of criminal court hearings interferes with the prudent use of resources and employee time, and undermines the mission of each criminal justice agency;

C) Production of discovery at the earliest reasonable opportunity is necessary to provide adequate information for informed pleas, to promote credible trial dates, and to ensure due process;

D) Continuances that promote the fair and timely resolution of cases and ensure that the requirements of due process are met in every case are necessary to establishing and maintaining the credibility of the criminal justice system and achieving the ideals contemplated by the Alaska and the United States Constitutions;

Agreement

The Alaska Court System, Alaska Department of Law, Alaska Public Defender Agency, and Office of Public Advocacy agree to work towards achieving the following goals:

A) To reduce and avoid unnecessary delay through criminal backlog reduction;

B) To reduce and avoid unnecessary court settings required to proceed to the fair resolution of criminal cases;

C) To reduce the number of continuances required for discovery purposes and other foreseeable reasons;

D) To improve the certainty of trial dates;

E) To identify and implement procedures that will promote these goals, while ensuring that the requirements of due process are met in every case.