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# **DUI Case Management in the Scottsdale City Court: Applying the High Performance Court Framework**

*Final Report*

Brian J. Ostrom, Ph.D.  
Matthew Kleiman, Ph.D.  
Shannon Roth

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## **Introduction**

Scottsdale City Court is a high performing court. That statement doesn't mean they do everything perfectly. Rather, it means they take seriously the ideas of systematic problem solving and continuous improvement. By evaluating their current conditions in light of past performance and with an eye to where they'd like to be in the future, the judges and court administrative leaders are able to jointly set a course that allows them to effectively respond and adapt to changing circumstances.

Becoming a high performance court is a process, not an event. Without a doubt, if a court tackles their issues methodically--rather than in a hurried or haphazard way--they increase the odds of success. Why? Because a major change initiative requires sustained attention as it moves through multiple, interrelated stages. And it can take many months or even years to reach sustained improvement. When pressured to move fast, managers often skip steps and soon learn the hard lesson that shortcuts don't work.

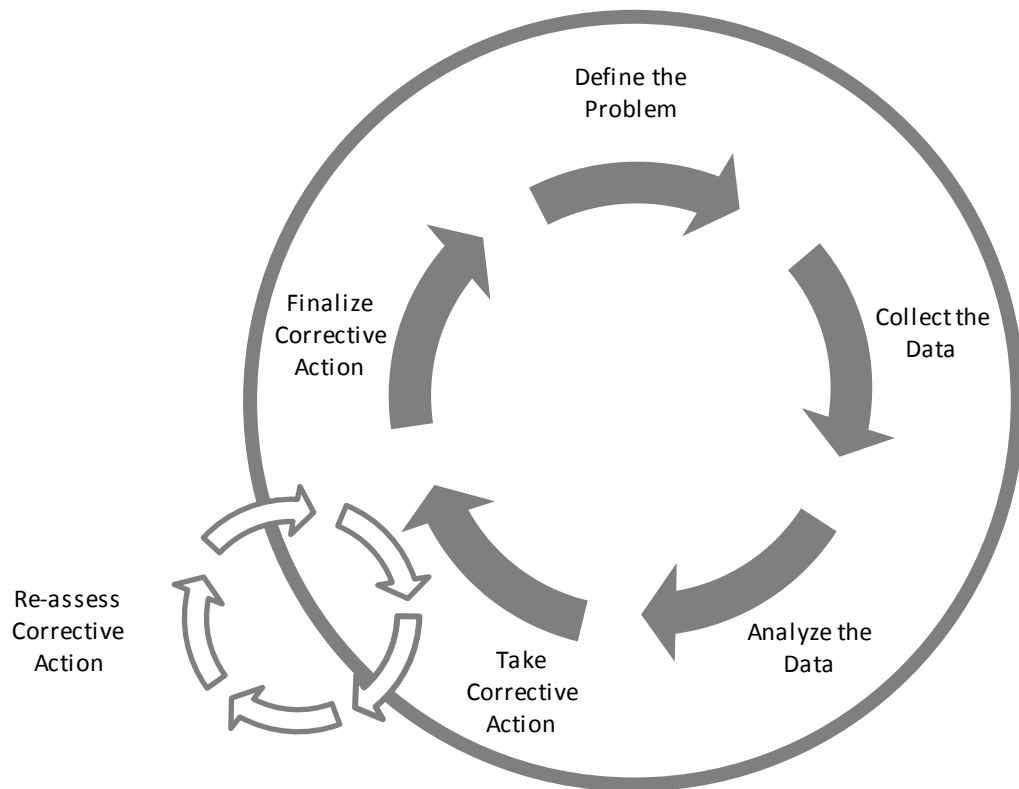
In the Scottsdale City Court, Driving Under the Influence (DUI) cases were backlogged. Senior managers certainly had ideas on the source of the problem, but didn't want to jump in without a definite plan of action. As a first step, court leaders made a concerted effort to understand the stages of a successful change initiative and where each can go wrong. In designing its approach to improving DUI case processing, Scottsdale drew on the High Performance Court Framework (HPCF), which suggests a series of flexible steps a court can take to integrate and implement performance improvement into its ongoing operations.<sup>1</sup> The steps include focusing on key administrative principles that clarify high performance, understanding how a court's managerial culture can promote common goals and collegial cooperation, developing the capacity to measure performance and learning to use the results for procedural

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<sup>1</sup> See Achieving High Performance: A Framework for Courts

improvements. In fact, the pieces of the Framework form a functional system called the quality cycle. The quality cycle consists of five main steps: problem identification, data collection, data analysis, taking action, and evaluation (see Exhibit 1). In this problem-solving context, an additional step taken by court leaders was to delve more deeply into diagnosing their organizational culture so as to clarify and resolve certain issues that arose midway through their improvement efforts. This article describes the controlled process of analytic and creative thinking skills used by Scottsdale to improve its handling of DUI cases.

Exhibit 1: HPC Quality Cycle



As the Scottsdale City Court embarked on the HPCF's quality cycle approach to problem solving, they took the bold step of agreeing to let us look under the hood at actual court practices and document through multiple performance measures their efforts to improve the handling of DUI cases. The willingness to share their story is notable because it is not one of easy success

and quick solutions. Rather, the path was marked by numerous twists, uncertainty, and unexpected downturns prior to emerging at a better place. The real story of the court's achievement is persistence; the drive to both initiate reform and to then sustain it through regular effort to evaluate, refine and adjust the plan. The timing of the study is particularly important for the Court given new court leadership (including the presiding judge, court administrator, deputy court administrator, and hearing officer) and the related urge to reaffirm the shared values and priorities held by the court, rebuild trust, and enhance communication.

Following the approach taken by the court, the five steps in the quality cycle structure how this article is organized. At the outset, court leaders spent time building support and a sense of urgency among judges and staff to tackle the major initiative of improved DUI case processing. The problem awareness phase is key to the first step in the quality cycle and, in Scottsdale, ended with a clear statement of the specific problem with DUI caseflow. Second, court leaders then assembled a comprehensive empirical profile of current DUI case processing practice drawing on multiple performance measures, including time to disposition, age of pending caseload, and trial date certainty. In the third step, senior administrators completed a thorough analysis of the performance results that provided unequivocal evidence that DUI cases were taking longer to resolve, including holdups at the trial stage. After digesting the results, the fourth step taken by the court was to design and implement an expedited jury trial calendar to ease the backlog. In many ways, the Scottsdale Court had embarked on a textbook approach to problem-solving that rightfully serves as a model for all courts. However, despite the best efforts and intentions, sought after improvements in jury trial scheduling were not immediately forthcoming.

Many times the first stab at solving a problem just doesn't work as expected. For Scottsdale, corrective action that seemed obvious was received differently by administrative staff and judges. Identifying the source of disconnect over the right course of action and the effort to eventually overcome and resolve the issues is captured in the language of the quality cycle by the move between taking action (step 4) and re-assessing action (step 5). In the real-life of the court, this phase focuses on how judges and administrators respond to news of weakening outcomes and how they choose to marshal their creative capacity to make the best use of performance results in refining and improving practices. The Scottsdale City Court worked to achieve a deeper consensus on what they hoped to accomplish as a group by looking more closely at their court culture and how judges and administrators communicate and interpret what is going on. Success in innovation and problem solving in courts is largely determined by how this effort to develop a common language as well as develop and maintain a set of internal relationships among members is managed. A virtue of viewing court improvement efforts in the dynamic terms of the quality cycle is that it encourages courts to remember that becoming a high performance organization doesn't happen overnight and implicates many aspects of the court as an organization.

## **Context**

The Scottsdale City Court is the fourth largest municipal court in Arizona, with four judges, two hearing officers and about 50 staff receiving more than 70,000 criminal and civil filings in 2013. Of the nearly 12,500 criminal cases filed, more than 21% (about 2,700) are DUI cases. Arizona has a statutory requirement that entitles a person charged with a DUI to request a

jury trial. With DUI cases requiring multiple court appearances and comprising over 95% of the court's jury trials, they tend to be the major part of the workload.<sup>2</sup>

Exhibit 2: Criminal and DUI filings, FY 2010-2013

Fiscal Year	Criminal Cases Filed	DUI Cases Filed	DUI Percent of Total
2010	13,713	2,247	16.4%
2011	12,616	2,446	19.4%
2012	13,028	2,843	21.8%
2013	12,512	2,715	21.7%

Most DUI charges are filed in the court by complaint from the Scottsdale Police Department as the defendant is typically released after being cited for the charge. Prior to release, blood is taken from the suspect to determine the blood alcohol content (BAC). The results of the blood draw may result in DUI (.08-.149 BAC), Extreme DUI (.15-.199 BAC), or Super Extreme DUI (.20 and above BAC) charges being filed by the prosecutor.

The court does not have a DUI specialty court. DUI cases are processed similar to any other criminal case and are assigned to all four criminal courtrooms. Once charges are filed, the first step is an initial appearance/arraignment and the defendant is asked how they plea. If the plea is guilty, the case is set for sentencing. A plea of not guilty leads to the case being scheduled for a pre-trial conference (PTC) where the defendant meets the prosecutor and learns of any plea offer. If the PTC ends with no agreement, the case is next set for a trial readiness conference (TRC) at which all parties and legal counsel are required to be present. At the TRC, the court will set the case for change of plea, jury trial or bench trial. While the expected process is

<sup>2</sup> 72 of the 75 jury trials held (96%) in 2011 are for DUI offenses.

standardized on paper, actual DUI caseflow doesn't always follow the script. And court leaders felt a more in-depth look at DUI case processing was warranted.

## **Getting Started**

To create interest and resolve in the DUI caseflow reform effort, senior administrators proceeded simultaneously down three paths. The first was gaining an in-depth perspective on the elements of high performance as laid out in the HPCF. The HPCF builds on previous efforts in court excellence and introduces new ideas on how to achieve continuing improvement in administrative practices. Toward that end, the HPCF provides a comprehensive set of organizing concepts that describe what a high-performing court seeks to accomplish, demonstrates how a court's objective are affected by managerial culture, identifies measurable categories of performance and suggests approaches on how to assemble and use performance information. Scottsdale court leaders drew on the HPCF to set strategy and implement their improvement plan with reference to the quality cycle.

Second, the court administrator asked all judges and court staff to complete the HPCF Self-Assessment survey.<sup>3</sup> For Scottsdale, senior administrators knew that getting the DUI change effort underway was going to require strong cooperation from many individuals--including the judges--so they decided to investigate how all court personnel view present operations. The purpose of the HPC Self-Assessment survey is to familiarize a court with the success factors in becoming a high performance court in relation to its own current practices, and to help court leaders identify specific areas where they believe they are doing well or areas where they believe improvement is needed. It is intended to gauge how well a court thinks it is doing in meeting performance goals and responding to problems.

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<sup>3</sup> Cite to survey

Court leaders in Scottsdale are rightfully proud of their court's proven performance in many areas, and the overall survey results reflect this. However, in line with the court administrator's concern, judges, managers and supervisors agreed that targets of opportunity exist, and if addressed, could help reduce the DUI backlog. For example, there was widespread agreement among judges and staff that the court would benefit from additional time spent (a) reviewing performance results during judges' meetings; (b) examining current caseload management practices at judges' meetings; and (c) increasing training opportunities for all court personnel and judicial officers in case management practices.

In other areas, the views of judges and professional staff diverged. For example, managers and supervisors saw inconsistency in the court's effort to limit continuances in criminal cases, while the judges believed there was more steady and standard enforcement. With respect to reform efforts, professional staff believed that the "local legal culture" is supportive of reducing delay in case processing, while the judges expressed strong doubts. The Self-Assessment survey helped jumpstart the conversation about DUI caseload reform, while also making clear that there was not always complete agreement among court leaders on the sources of problems or the most sensible steps for both judges and professional staff to take.

The third path was a thorough DUI case evaluation to identify case processing issues. The court committed to take a hard look at current DUI caseload processes, including time to disposition, age of pending caseload, calendar settings, and jury trial settings.



## The Quality Cycle

### *Defining the Problem*

In September 2011, court management conducted a detailed examination of DUI case processing to identify issues that slow the timely disposition and termination of these cases.<sup>4</sup> Five interconnected findings emerged from the evaluation alerting the Scottsdale City Court to declining performance in the handling of DUI cases in the 12 months between January and December 2011:

1. Only 84% of DUI cases were disposed within 180 days, a rate that falls short of the Arizona case processing time standards (see box out).
2. The inventory of pending cases increased by 23%.
3. The proportion of active pending cases over 120 days grew from 19% to 34% and cases pending over 180 days grew from 5% to 13%.
4. The number of pending jury trials over 120 days increased from 54 to 138.
5. The majority of scheduled jury trials had at least one continuance.

In summary, an increase in the time to disposition, a growing and aging inventory of pending DUI cases, an increase in the number pending jury trials, and a rise in jury trial continuances contributed to a growing backlog of these cases in the Scottsdale City Court.

**Problem statement:** *The court's DUI cases appear to be backlogged, with an increase in pending cases and pending jury trials.*

### *Collect and Analyze Data*

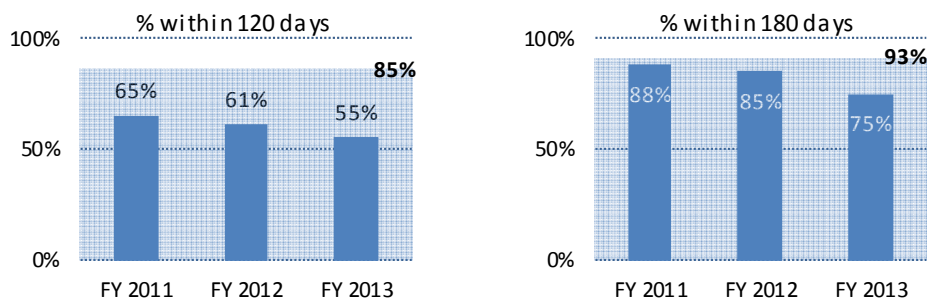
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<sup>4</sup> The DUI evaluation consisted of an in-depth analysis of 1,384 DUI cases filed and resolved between November 1, 2009 and April 30, 2010. The date range chosen was to ensure enough time had passed for the case to have either successfully or unsuccessfully terminated.

The 2011 analysis served as a baseline to evaluate the court's DUI improvement efforts going forward. Because the court fully implemented all ten NCSC *CourTools* measures in December 2010, they were able to effectively monitor the status of DUI caseflow management using trend data (2011 through 2013) for three *CourTools* measures: time to disposition (Measure 3), age of active pending cases (Measure 4), and trial date certainty (Measure 5).<sup>5</sup>

Exhibit 3 reveals that the percentage of DUI cases resolved within 120 or 180 days had been steadily declining and falls short of the recommended case processing time standards of 85% and 93% set by the Administrative Office of the Courts [see Box Out]. By 2013, 55% of cases were resolved within 120 days and 75% of cases were resolved within 180 days. During this three year period, the average (mean) number of days to disposition rose from 104 days to 135 days.

Exhibit 3: Percent of DUI cases disposed of within 120 days and 180 days [Time to Disposition]



<sup>5</sup> All annual performance measure results are based on the court's fiscal year.

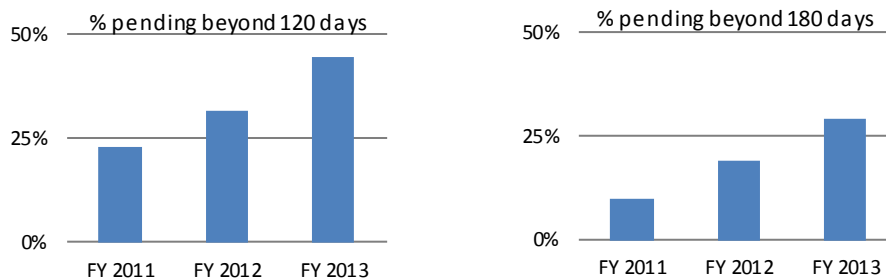
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*The Arizona Administrative Office of the Courts recommends the following case processing time standards for DUI cases:*

- *85% of DUI cases be resolved within 120 days from the date of filing to disposition*
  - *93% of DUI cases be resolved within 180 days from the date of filing to disposition*
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Further, the inventory of cases pending that were 120 or 180 days or older continued to rise. In 2011 only 104 pending DUI cases (10% of all pending cases) were over 180 days; by end of 2013 that number had risen to roughly 300 (29%). These values exceed the Arizona case processing time standard that less than 7% of all active pending cases be older than 180 days in age. Between 2011 and 2013 the number of pending DUI cases rose from 963 to 1,033 and the median age rose from 60 days to 111 days.

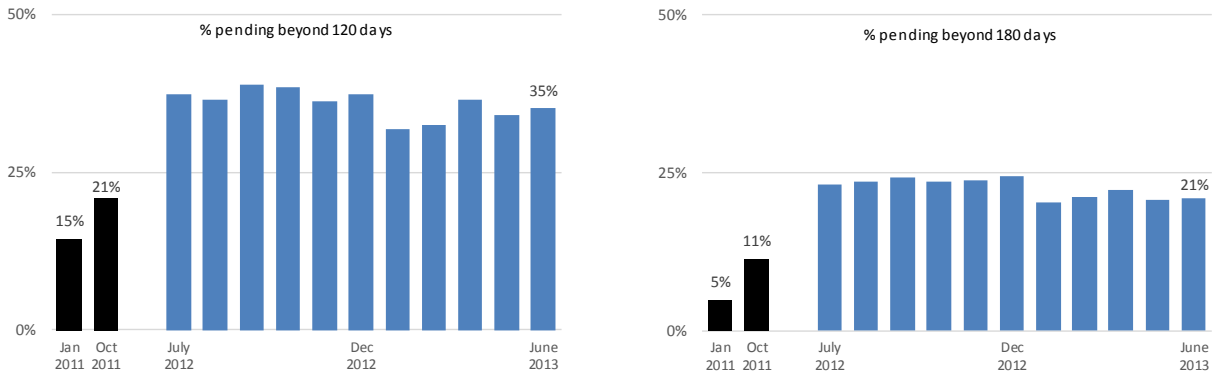
Exhibit 4: Percent of pending cases older than 120 and 180 days [Age of Active Pending Cases]



As required by the Arizona Supreme Court, the Court collects and reports monthly pending DUI data to the Administrative Office of the Courts. Exhibit 5 displays the percent of pending DUI cases beyond 120 and 180 days, by month, for the reporting period July 2012 and June 2013. When compared to the percent pending in the two previous periods (January 2011

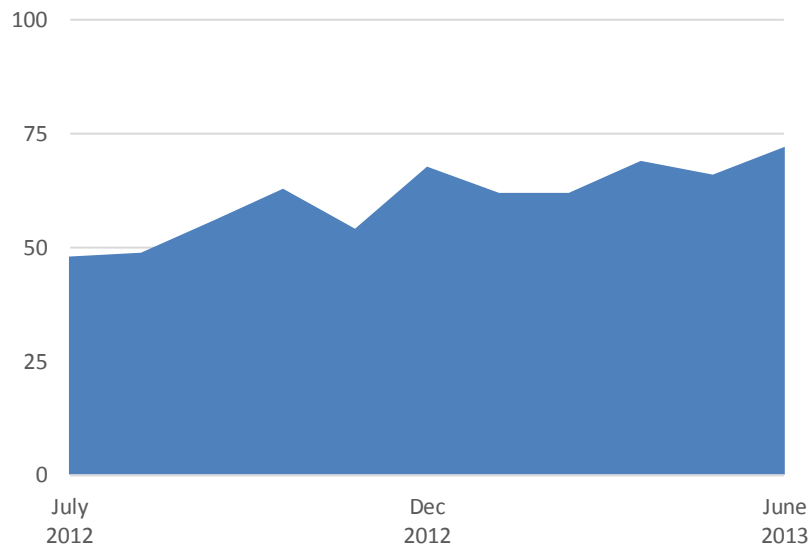
and October 2011), both monthly series show a significant increase in pending caseloads. On the plus side, the numbers have remained relatively constant during fiscal year 2013.

Exhibit 5: Percent of pending cases older than 120 and 180 days, July 2012 – June 2013



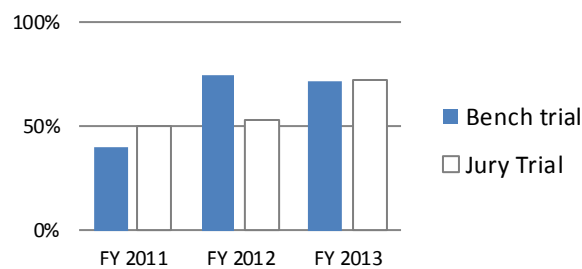
Looking at the oldest cases, Exhibit 6 shows that during this time the number of pending cases older than 365 days increased by 50 percent, from 48 to 72 cases.

Exhibit 6: Number of pending cases older than 365 days [Age of Pending Cases]



In addition to exploring measures associated with the timely disposition of cases and backlog, the Court examined trial date certainty and the efficiency of calendaring practices for DUI jury trials. With respect to trial date certainty, Exhibit 7 displays the percent of DUI cases with 3 or more bench or jury trial settings. For both, the percent of cases that exceed the Court’s goal of 2 or less trial settings per case has increased from about one-half of the cases to close to three-quarters of cases. Between 2011 and 2013 the average number of bench trial settings rose from 1.8 to 3.2 per case. For jury trials the average increased from 3.2 to 3.8 settings per case.

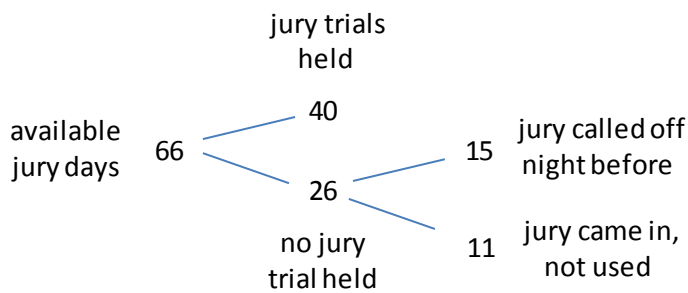
Exhibit 7: Percent of DUI cases with 3 or more trial settings [Trial Date Certainty]



The baseline for DUI jury trial calendaring practices was established in the 2011 evaluation. In the last six months of 2011, there were 66 jury calendar days available in the four criminal courtrooms, with only 40 (61%) jury trial days used. Of the 26 cancelled jury trial days, there were 11 days when a jury was brought in and not used, and 15 instances when the trial was called off the night before. Court staff took the next step to determine *why* the jury trial days weren't used and discovered: the defendant pled guilty on the day of trial 8 times; 2 jury trials were continued on the scheduled day of trial; and in the remaining 16 instances, the trial was postponed for reasons such as vacation, conferences, or attorney not available. The evidence suggests more than half of the cancelled days could have been eliminated through firmer

scheduling practices. A year later in December 2012, the rate at which jury trial days were used stood at 56%.

Exhibit 8: Use of Jury Days During Six Month Timeframe



### ***Take Corrective Action***

Drawing on experience and measured performance, senior administrators decided to focus on improving jury calendaring practices as the centerpiece of the court's DUI caseflow management improvement effort. The expedited jury trial calendar project (or jury blitz) was designed to reduce the backlog of DUI cases by increasing the number of available jury days. Key to the initiative was opening a fifth courtroom, staffed by pro tem judges, with an initial focus on cases older than 365 days that had been set for trial with no special action or evidentiary issues. The goal was to add 8 days a month for DUI jury trials in the fifth courtroom.

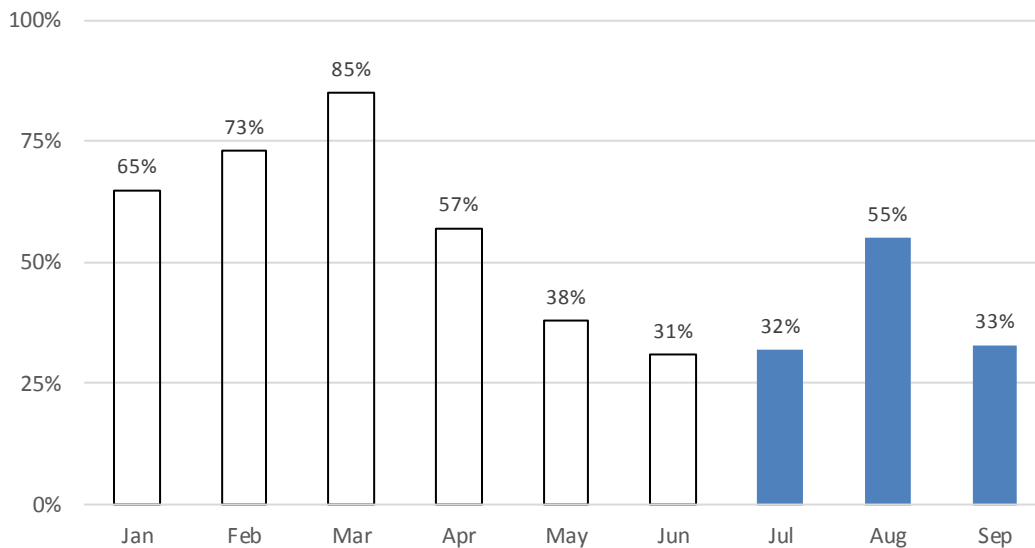
In addition, the court also expanded the number of available jury days in the 4 regular criminal courtrooms from 10 days a month to 14 days per month. The primary goals of the expedited calendar project were to:

- Increase the percent of trials held on available jury trial days to 80% (from 61%)
- Decrease the number of pending DUI cases over 120 and 180 days

- Increase the number of cases resolved within 180 days
- Decrease the average time to disposition
- Decrease the length of time to the next available jury trial setting

Following a three month pilot project during January-March 2013, the program formally began in July 2013. Exhibit 9 shows the average percent of scheduled jury trials held monthly through September 2013.

Exhibit 9: Percent of calendared jury trials held, 2013



Preliminary data for the first three months of the project (July-September 2013) suggest that the increase in jury days had generated mixed results. Between July and September 2013 the court was effective in reducing the number of DUI cases over 120 days with a jury trial set from 184 to 137, a 26% decrease. The court was also successful in reducing the average time to the next jury trial setting in each courtroom to below 30 days. However, during this time period, the percent of trials held on available jury trial days fell to an average of 41%. In addition, the

overall number of pending DUI cases (including cases set and not set for trial) over 120 days and over 180 days continued to rise and the court was unsuccessful in meeting the case processing time standards of 93% of DUI cases resolved within 180 days or 85% within 120 days.

Results from the first 90 days of the jury blitz were not entirely what the court expected. Improving conditions in some areas were tempered by signs of static performance in others. The initial corrective action taken was clearly not sufficient. Other weak spots in the DUI caseflow process must exist, though senior administrators were uncertain as to why their carefully constructed plans were not proving to be a sustainable solution. Then, in follow-up conversation between the judges and management team, it became clear that there was lack of consensus on the specific practices impeding further improvements.

Senior administrators had definite ideas and proposals for reforming DUI caseflow processes, yet they ran up against apparent disagreement and resistance from the judges. Mutual surprise was the primary response to these contrasting viewpoints. What one side saw as obvious steps to take, the other saw as misinformed or shortsighted. To everyone's credit, judges and senior administrators agreed to take a step back and look more closely at each other's opinions and proposed courses of action.

### ***Re-assessing Corrective Action***

This is not an unusual position for a court to find itself in at this point in the quality cycle. New ways of doing business were being tried and it appeared mid-stream corrections were in order. For Scottsdale, they needed a way for judges and senior staff members to deepen their understanding of contending perspectives among the group on the specific nature of improvement efforts. Said somewhat differently, the court needed to explore what their organizational culture agreed was a problem and what efforts would be supported in terms of



change. A common mistake in courts desiring to improve is that they do not take the time to arrive at a common viewpoint among judges and administrators about where the court is starting from and where it needs to go. Courts struggle when they launch a new change program without considering the need to develop a consensual view of the current culture, the need to reach consensus on what change means and doesn't mean, and the specific changes that will be started, stopped, and continued.

### ***Understanding Court Culture***

The NCSC has developed a method to diagnose court culture by undertaking an analysis of what court members see as the primary strengths and weaknesses of current operations and to identify the most promising directions of change. The study of culture provides a way to understand the most fundamental administrative concerns and goals that are shared by most of the people in a court, that tend to shape judge and staff behavior, and that often persist over time. Culture is not just a set of views, beliefs and perspectives. It is the grounds for how work gets done. The NCSC used a previously tested method for assessing court culture through a two-part survey called the *Court Culture Assessment Instrument (CCAI)*. This tool has the practical benefit of assisting a court's administrative leadership in achieving greater clarity on where there is broad agreement among personnel on strategy, where there may be difficulties in coordinating and integrating new processes or activities, and how to manage the change process in light of the views of judges and staff members.<sup>6</sup>

*Purpose in Scottsdale.* Nine months after initiating an expedited jury trial calendaring project, some project goals were not being met and established channels of communication between judges and senior administrators proved ineffective in clarifying the causes of why DUI

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<sup>6</sup> The NCSC drew on its previous research work on court culture and its applications to multiple courts around the country as laid out in *Trial Courts as Organizations* (Temple University Press, 2007).

case management was not improving. The Presiding Judge and Court Administrator agreed to a "reset" by engaging in a structured assessment of court culture. Their goal was to provide a vehicle to obtain "court-wide feedback on how the court is doing and how we can do better in managing DUI caseloads."

*Design.* The court culture process uses structured conversation among judges and senior administrators to uncover and flesh out views on administrative practices that these leaders see as working well and specific issues where there is uncertainty or lack of agreement on how to proceed. Advance survey work on individual views about organizational dynamics in combination with in-person exchange of perspectives provides a robust and sometimes spirited environment to move the change process forward. The goal is to quickly get to the perceived root causes of court business problems and determine how they can best be resolved. The court culture process is designed to help address and move past the following common type of interpersonal dynamics that hold back court improvement efforts:

- Court members individually, but privately, agree about a current problem
- Court members may or may not agree, again in private, about what it will take to deal with the problem
- Court members fail to communicate their desires, feelings, and beliefs to each other
- Based on inaccurate perceptions and assumptions, a decision is made that leads to action that not all court members will (privately) commit to
- Lack of improvement leads court members to experience frustration, anger and dissatisfaction with the organization

Providing a collegial forum for alternative views to be aired and discussed is key to identifying specific issues and concerns that must be settled before the court can move forward. The effort to get clarity on the precise points of contention often leads to actionable steps that will answer particular questions, fill gaps, and help find common ground. This approach to

problem solving seeks to raise awareness on communication styles and thought processes in finding a workable path forward.

*Data.* The study relied on the *Court Culture Assessment Instrument* and a one day off-site meeting with all judges and senior administrators facilitated by NCSC staff. The first part of the CCAI is a survey asking questions on critical managerial challenges, court governance, and court initiatives, while the second part asked individuals to assess how they currently see work carried out and how they prefer to see it happen in the near future.

*Participation.* Overall, all judicial officers and senior administrators as well as most other staff members participated in the surveys. The high response rate by judges and staff mean the results are representative of the views of the Court as a whole.

*Culture Survey Results.* An overarching finding was that both judges and administrators hold generally very positive views on the efficiency and effectiveness of current court operations and management. Yet, the results also show important differences among court personnel on how they view the court's culture or, in other words, how they see work currently getting done and how they wish to see it get done in the future.

The meeting agenda focused on the specifics of DUI case processing by first drawing on the survey results for context on how judges and senior administrators view Scottsdale case management practices generally. Several relevant themes emerged on (1) the perceived commitment to effective caseflow management practices, (2) breadth of inclusion in designing court initiatives, and (3) the opportunity for regular discussion of court business issues. First, judges were more positive than administrators in their belief that timely case processing is "an established priority" and that "judges require a showing of good cause before granting a continuance." In contrast, judges were concerned that they did not have sufficient input on the

identification of "major court policy issues" and that the court management team was not always "open and accessible to hearing issues from me." Finally, both judges and administrators agreed there was a need for more regular meetings to jointly discuss "how to solve court business problems."

The first survey helped sketch the landscape of current organizational behaviors and practices as seen by both judges and senior administrators. The second survey used a more graphical approach to show the degree of overlap in how court personnel see the court currently performing in key work areas like case management, judge-staff relations, and courthouse leadership as well as how they would prefer to see this work carried out going forward. Keeping the focus on case management, their current and preferred views are displayed below in the form of "kites" for judges and senior administrators (Exhibit 10).

Both have fairly similar views on the current style of case management, which is that judges tend to fashion their own approaches (a primarily *Autonomous* style). In addition, going forward, both would like to reduce the degree of autonomy in case management. Where differences emerge is on the direction of change. Whereas the shape of the super-imposed preferred kite for the judges in Exhibit 10 shows a move to a more balanced form of case management, the preferred kite for the managers has its "tail" going in a 90 degree shift from the tail of the current kite and in a strongly *Hierarchical* direction.

Exhibit 10: Case Management Style

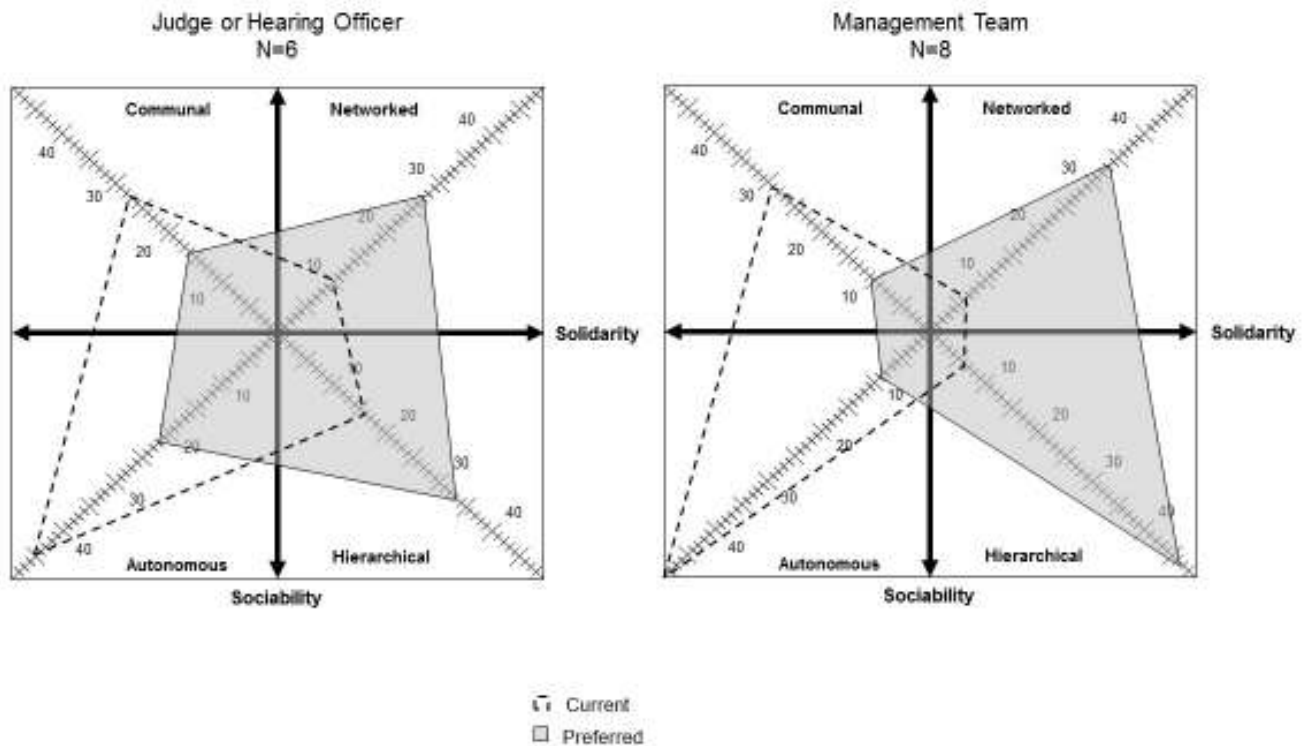


Exhibit 10 shows that court administrators prefer to operate with uniform and established time frames to guide the resolution of cases. They desire a strong *Hierarchical* culture. In contrast, the judges want a more balanced culture, where a less-structured form of case management incorporates some rules while at the same time preserving some flexibility and individual discretion in application. The point is that no ideal type of culture exists. Because case management occupies a central position in the theory and practice of modern court administration, a reconciliation of the seemingly contending cultural perspectives is essential.

*High Performance Court Meeting.* In October 2013, all judges, hearing officers and senior administrative staff met for a one-day meeting, facilitated by NCSC staff, to identify barriers and solutions to improved handling of DUI cases--and determine how this goal fits into the full scope of court operations. In this far-ranging conversation, issues related to all aspects of

organizational structure, practice, behavior and desired outcomes were brought up and discussed. For purposes of this article, we focus on perceived root causes holding the court back from progress in achieving firm trial dates and improved disposition times for DUI cases. As the group drilled deeper into what was inhibiting their DUI case management efforts, an important goal was for them to jointly develop a clear and detailed statement of distinct problems/issues. In some instances, there were differences of opinion about the nature of specific root causes, creating an opening for targeted, follow-up analyses to document actual practices and inform corrective actions.

Generally, all acknowledged that it was time to systematically revisit and revise the existing Scottsdale *Caseflow Management Plan* (Policy #45). Judges were concerned, and senior administrators agreed, that the current plan was developed without sufficient judicial input. Consequently, judges have not uniformly embraced the plan. As one judge put it, "The plan was imposed as a done deal." But the main task for the group was to get beyond acknowledging dissatisfaction with how the initial plan was implemented.

The meeting created, for the first time, an opportunity for judges and administrators together to dig into *why* the current plan was failing. As a first step, and confirmed by the assembled data, everyone agreed that the caseflow management plan was breaking down; cases at each major step in the process--pre-trial conference, trial readiness conference, calendar call, and jury trial--were not keeping to the prescribed schedule. A key factor suggested by staff was the growing number of continuances occurring at each stage and the associated need to re-schedule for a later date.

As the talk turned to the number and type of continuances, the overall counts weren't disputed; rather, differences of opinion emerged over the extent to which continuances were

being granted for "good cause." Judges felt staff were too focused on the numbers and didn't sufficiently understand the dynamics of the courtroom. Besides, they argued, granted continuances were largely the unavoidable result of factors outside their direct control such as (1) delay in receipt of blood analysis from the lab, (2) dawdling on the part of the defendant in securing legal representation, (3) slow exchange of discovery between prosecution and defense, and (4) ongoing scheduling conflicts for a high-demand expert witness. While administrative staff averred that they did indeed have limited time in the courtroom, they also felt that many hearings were being continued for reasons that could have reasonably been hammered out earlier in the process.

In response to this discussion, there was strong consensus by the group to take the following steps in furthering their efforts to improve DUI caseflow management:

- Staff would draft a revised *Caseflow Management Plan* (to replace Policy #45) for consideration by the judges
- Staff would draft a *Case Preparedness Form* to help judges determine the status of each case early in the process by documenting any outstanding issues that need to be resolved on or before the pre-trial conference (e.g., representation, discovery, expert witness, substantive motions)
- Staff would determine the reason for all continuances granted during the past two months

The judges and senior administrative staff agreed to meet regularly to review the status of each suggestion.

### ***Finalizing Corrective Action***

Three meetings were held over the next three months between judges and senior administrators to iron out agreement on the three main issues raised during the High Performance Court meeting. First, they began by seeking to jointly develop a caseflow management plan that would be amenable to all. This was a particularly positive and important step in that it gave the

current judges ownership of the new policy designed to set clear expectations for timely case processing. Taking time to periodically revisit and explicitly consider the structure of a caseflow management policy that best fits the court's current circumstances is a sensible strategy. Honest involvement by the people directly affected increases the likelihood of commitment to following through on agreed upon courtwide policies.

Attorneys practicing in the court are also affected by the new caseflow management policy. Prior to finalizing the draft policy, Scottsdale court leadership decided it was imperative to meet with representatives from prosecution and defense to obtain their feedback on the court's new direction.

Second, a powerful impetus to develop the new caseflow management policy came through a detailed review of the previous two months of continuances granted on jury trial day and reasons given. The data showed that nearly 60% of the reasons for granted motions to continue were for scheduling issues, typically because the defendant was not available (e.g., lives out of town, on vacation, or at work) or the defense attorney was not available (e.g., has another case, on vacation, or at a conference). An additional 13% of jury trial day continuances granted were due to a conflict with an expert witness and a further 5% were due to delay at the lab. The rest were due to pending motions or miscellaneous issues.

Knowing not just the number of continuances, but the reason given by the judge for granting the motion to continue proved particularly compelling to the bench. The results challenged the conventional wisdom among the judges that continuance were primarily granted for delay around receipt of lab results and the scheduling of an expert witness. This deeper level of detail was not directly available from the court's automated system and required staff to search case files for the reason given for the continuance. The extra effort was deemed worthwhile as it



took the conversation beyond statistics to a focus on the actual words used in the courtroom and the specific source of hang-ups leading to delay.

Third, recognition that scheduling issues were a major driver of continuances led judges and senior administrators to more readily see the utility of adopting a case status or case preparedness form. As discussed during the High Performance Court meeting, the purpose of a Case Preparedness Form is to determine the status of the case shortly after the arraignment and to provide documentation of any outstanding issues that need to be resolved so that the case can proceed smoothly through subsequent scheduled court events. For example, to ensure the timely exchange of discovery, the form asks for the date of the initial request, the date discovery was received, and, if not yet received, the reason for delay and the anticipated delivery date. The form has similar questions related to laboratory testing, need for an expert witness, and substantive motions.

The goal is to significantly reduce the number of continuances granted for issues that could (and should) be resolved in advance of the upcoming scheduled hearing. At the center of successful caseflow management is the recognition that judges, with the help of court administration, must make a commitment to manage and control the flow of cases through the court. While this responsibility by judges and court managers should be tempered by continuing consultation with attorneys and others on the best means for improvement, a court must lead the effort if it is to succeed. The Case Preparedness Form is integral to the court's efforts to realize several key elements of its new Caseflow Management Plan, including a set of meaningful events, a realistic schedule, clear expectations that events will occur as scheduled, firm control over the granting of continuances, shared information among the parties early in the process, and

the use of data to monitor compliance with established case processing goals. In sum, court control of the process is the basic principle underlying timely case processing.

Once the judges and senior administrators had a complete draft of the proposed Caseflow Management Plan and the Case Preparedness Form, the presiding judge and court administrator convened a meeting with the city prosecutor, a city-contracted public defender, and several local private defense attorneys to discuss the new policies and how they relate to Arizona Supreme Court approved state case processing timelines. Of course, change is never easy and many existing practices had evolved to oblige and promote the interests of attorneys. Pressure to accommodate is significant in Scottsdale as the court has a very high level of DUI defendants represented by privately retained counsel. So as Scottsdale Court leadership floated their new plan, many attorneys voiced concern with the more structured process laid out in the Case Management Plan, and the emphasis on early and ongoing documentation of case progress envisioned in the Case Preparedness Form.

The challenge of attorney resistance should not be discounted and how it is handled by the court will largely shape the ultimate success of caseflow management improvement efforts. Key is strong court leadership in making a defensible and evidence-based case for change coupled with a willingness to listen to attorney and other stakeholder feedback before the plan is finalized. And if suggested adjustments are reasonable, working to reach an acceptable compromise that will further support and encourage commitment throughout the justice community for making improved caseflow management a reality. How this process plays out in any given court will depend on the strength of the case for change, how persuasive the presentation, and the authority and negotiating skills of the parties. In this way, all caseflow management improvement efforts are local.

## **Conclusion**

In the Scottsdale City Court, the meeting with attorneys and subsequent conversation among court leaders led to revisions to both the Case Management Plan and the Case Preparedness Form. Several attorneys balked at the Case Preparedness Form and the requirements to provide the court with a fairly detailed status of case progress at the initial pre-trial conference, the first hearing scheduled after the arraignment. Court leaders held firm on the need for the Form to facilitate steady case progress, reduce continuances, and help ensure more timely case disposition. In the end, a compromise was reached to keep the Form, but streamline the content collected on discovery, interviews, experts, and depositions.

More radical changes are proposed in the revised Case Management Plan. Building on the desire to make early events in the caseload process more meaningful, a DUI Arraignment Court is being designed where the defendant will appear within 30 days of violation (up from 20 days currently so as to provide a more realistic period for the receipt of blood results). At the arraignment, a public defender will be present to act as advisory counsel for unrepresented defendants to help each one assess the severity, strength of evidence, and likely outcome of their case. Individuals wishing to plead guilty will be accommodated at this hearing. Defendants who want to contest the charges will proceed either pro per (self-represented) or represented by an attorney, with the goal to assign interested and eligible litigants a public defender at the arraignment. The new model is shown in Exhibit 11.

Following the DUI arraignment, Scottsdale is moving from a single track model for all cases to a differentiated model with two tracks based on representation. Track 1 is for attorney-represented DUI cases (private and public), while Track 2 is for pro per defendants. If at any time a pro per hires an attorney or requests a public defender, the defendant's case is moved to

Track 1. The major case events are the same for both tracks; the sorting of cases allows for some variation in the intermediate time standards set between each stage in the caseflow process. The main events include:

- *Pretrial conference (PTC)*: The initial meeting between both sides that often includes a plea offer. In addition, the Case Preparedness Form is provided to all parties on or before the PTC, with the request that it be completed before the case management conference
- *Case management conference (CMC)*: All parties must appear and resolve outstanding issues raised on the Case Preparedness Form
- *Trial readiness conference (TRC)*: All parties must appear and if a guilty plea is not forthcoming, a motion to set trial must be completed

Once a case is set for jury trial, it will be scheduled for calendar call within 5 business days of the jury trial to ensure all parties are ready to go and gauge the possibility of settlement. A minimum of three cases will be set on each available jury trial day and all parties must appear in person on the trial date. Another new step is that the setting and outcome of all hearings will be managed by a senior case management specialist, with strong support from the presiding judge.

Almost certainly, the HPCF quality cycle process of refining and adjusting the DUI caseflow management plan will continue in the Scottsdale City Court. The Scottsdale experience underscores that major change initiatives in courts should not be expected to proceed fast and trouble-free. Creative persistence is a necessary prerequisite to becoming a high performance court. Along the way, attention to developing a supportive and engaged culture of ongoing improvement in caseflow management among judges and staff is critical. Part of the cultural shift is recognizing the role of performance measurement in understanding current administrative practices, and the accompanying need to develop a greater level of comfort among court leaders in using data to manage. This is not to say judges need to become statisticians; rather, a key message of the HPCF is that performance metrics have a vital place in illuminating case

processing practices and informing efforts to solve problems. So as new performance data flows in, judges and staff together can more objectively assess the degree of improvement in reaching their clearly stated and agreed upon goals. The result for Scottsdale is both better processing of DUI cases and heightened collegiality throughout the court.

Exhibit 11: **Two DUI** Tracks

