



Mr. Jeffrey A. Apperson

This and other Judicial conference papers will be made available at
www.judiciarzambia.com



**just
imagine...**

We want to be better. Dream Big, Set a goal, Never give up. The future generations will thank us.



NCSC- NCSC is the organization courts turn to for authoritative knowledge and information, because its efforts are directed by collaborative work with the Conference of Chief Justices, the Conference of State Court Administrators, and other associations of judicial leaders.





Definition of Governance

- Morocco, Trinidad, South Africa, China, Kenya, Mongolia, Honduras
- The need for governance exists anytime a group of people come together to accomplish an end. Though the governance literature proposes several definitions, most rest on three dimensions: authority, decision-making and accountability
- Governance determines who has power, who makes decisions, how other players make their voice heard and how account is rendered.
- Ultimately, the application of good governance serves to realize organizational and societal goals
- Consensus orientation – good governance mediates differing interests to reach a broad consensus on what is in the best interest of the group and, where possible, on policies and procedures

Direction

Strategic vision – leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded



Performance

- Responsiveness – institutions and processes try to serve all stakeholders.
- Effectiveness and efficiency – processes and institutions produce results that meet needs while making the best use of resources-
Productivity Engineer



Accountability

- Accountability – decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organizations and whether the decision is internal or external.
- Transparency – transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them



Fairness

- Equity – all men and women have opportunities to improve or maintain their well-being.
- Rule of Law – legal frameworks should be fair and enforced impartially, particularly the laws on human rights

Treating others with
fairness and dignity
is the “rain” that
helps them to grow
and be fruitful.

RESTART: COMPASSION AND JUSTICE

Governance models

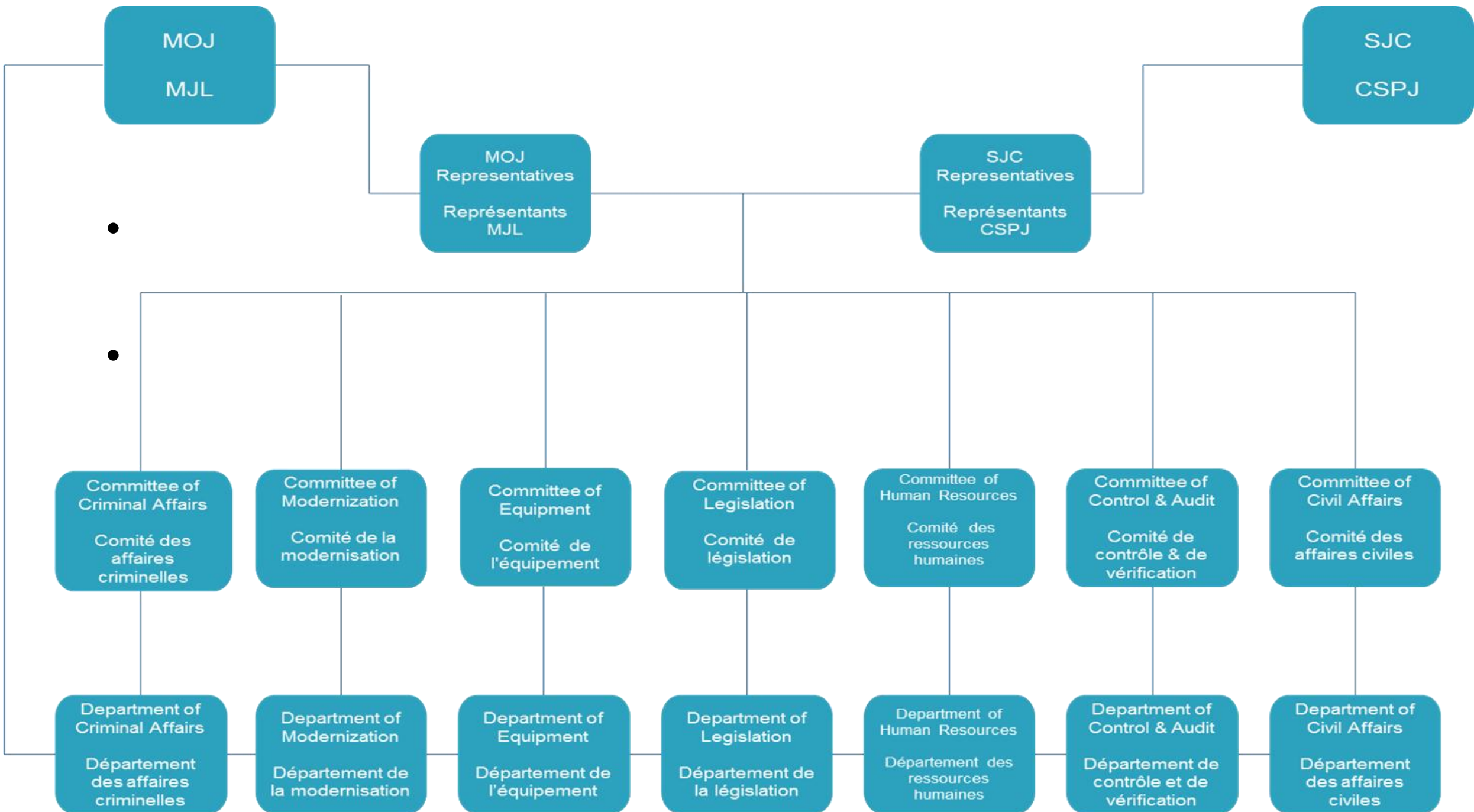
- Judiciary Controlled
- Justice Councils/Commissions- Combined Institutional Representation
- Shared Models with MOJ

court

Collegiality

- -A Judge is not a

- As Chief Justice Warren E. Burger stated, "There can, of course, be no disagreement
- among us as to the imperative need for total and absolute independence of judges
- in deciding cases or in any phase of the decisional function. But it is quite another
- matter to say that each judge in a complex system shall be the absolute ruler of his
- manner of conducting judicial business. . . . Can each judge be an absolute monarch
- and yet have a complex judicial system function efficiently?" (quoted in Clifford,
- 1998: 56-57). . . . *there continues to be a dynamic tension between judicial*
- *officers and those responsible for the administration of the court*
- *over what judicial independence can and should mean as it relates*
- *to the effective and efficient administration of justice*



Building National Institutional Capacity

- -Studying Best International Practice
- Building Professional Management Capacity
- Train staff to manage technical and political challenges. Hire registrars as a career position and pay them equally. Judge Administrator, CEO, etc.
- Problems of Brazil, Central America, Africa
- Minds are resources. Build smart power and keep it for as long as possible.
- Create modern policies that reflect the learning of practice and procedure
- Managing IT – It is Hard. Regional as well and national management is important- Nigeria

What is your performance baseline

1. Assess each Factor
2. Utilize Survey Methodology
3. Study Practices from other Judiciaries

- The ten CourTools performance measures were designed by the National Center for State Courts to answer that call. Measuring court performance can be a challenge. Understanding the steps involved in performance measurement can make the task easier and more likely to succeed. CourTools supports efforts toward improved court performance by helping:
 - Clarify performance goals
 - Develop a measurement plan
 - Document success

What is Caseflow Management?

The particular way a court chooses to control the legal process by scheduling, arranging, and conducting key procedural events.

The manner in which a court carries out its choices defines the nature of the legal process for the parties and their attorneys.

The Bottom Line

The COURT, not the lawyers or the litigants,
should control the pace of litigation.

7 Fundamentals Leadership and Vision



Caseflow Management

Leadership and Vision

Consultation w/ Stakeholders

Court Supervision

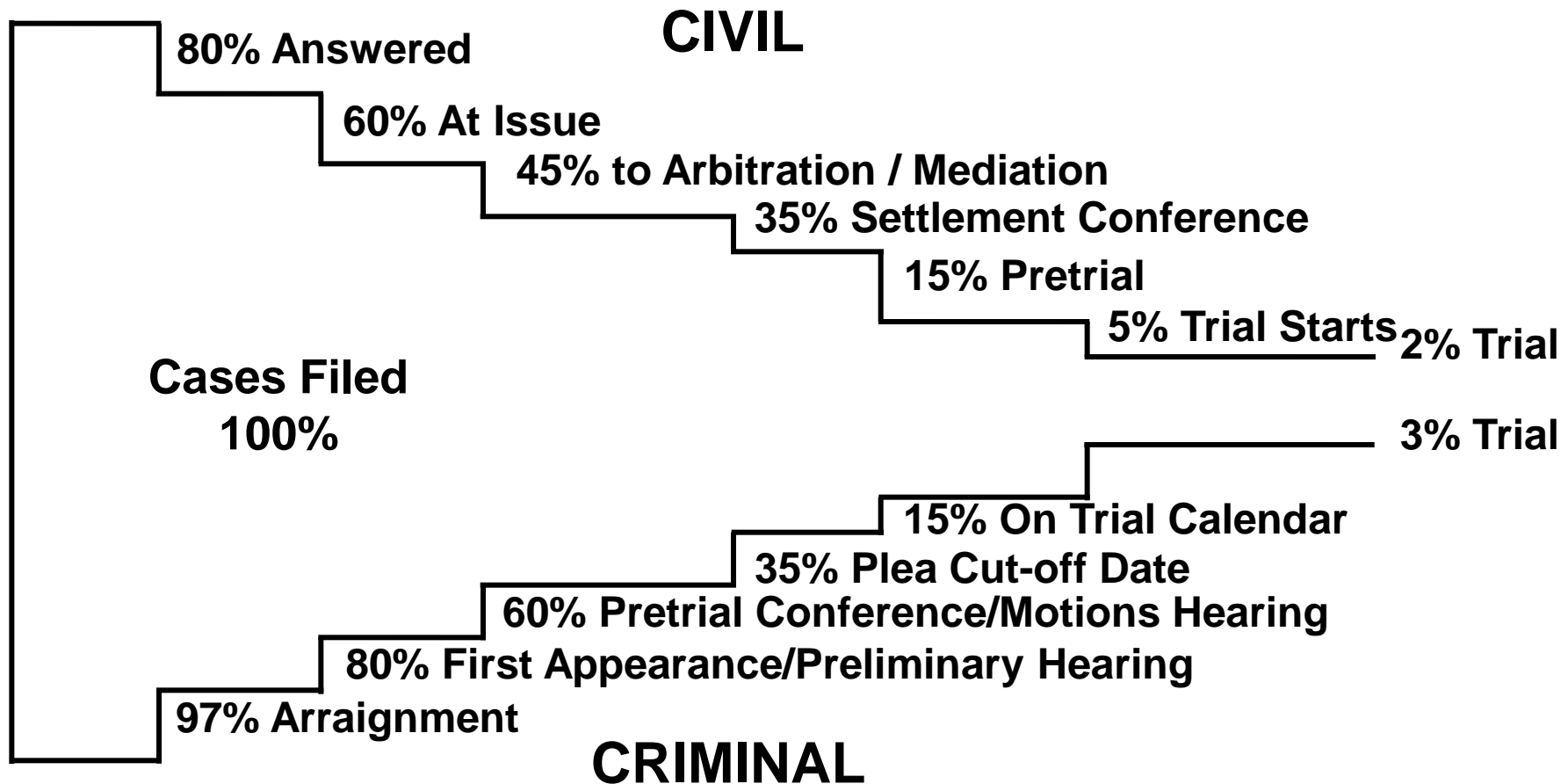
Standards and Goals

Control Continuances

Early Dispositions

Information Systems

Reverse Telescope



Fundamental #2

Court Consultation with Stakeholders

- Effective caseflow management concerns the Court, the Bar and all justice partners, including court staff
- Meetings should be regularly scheduled
- Purpose is to have dialogue and gain input, not to obtain reaction

Court Supervision of Case Progress

Four Practices

1. Early court control
2. Continuous court control
3. On a short schedule
4. Create the expectation and the reality that events will happen when scheduled

Create Meaningful Case Events

Manage Time Between Events:

- *Long Enough* to allow preparation
- *Short Enough* to encourage preparation

Create a Predictable System that:

- Sets expectations
- Ensures that actions occur when they need to occur
- Attorneys and the court are equally accountable

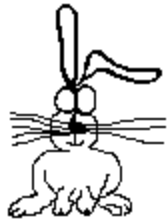
Fundamental #4 - Standards and Goals

- For system as a whole
- For individual cases
- For intermediate steps in the system
- For interim progress in individual cases

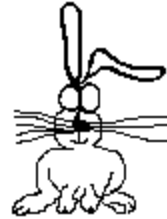
Implementation Strategies of Model Time Standards

- Adoption and Use of the Model Time Standards
- Measurement of Court Compliance with Time Standards
- Steps to Promote Compliance with Time Standards
 - Statewide Actions
 - Individual Court Actions
- Resources for the Provision of Prompt and Affordable Justice

How to Multiply Your Workload



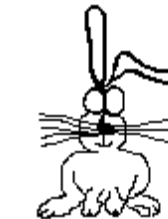
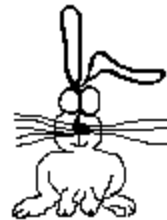
**1st
TRIAL DATE**



**2nd
TRIAL DATE**



**3rd
TRIAL DATE**



THESE CONTINUANCES AFFECT ...

Files	Prisoner Transportation
Computer Entries	Jail Population
Forms	Prosecutor
Scheduling	Judge
Defense	Staff

Findings From NCSC Study of Felony Cases in State Trial Courts

- Where the court actively controls case progress, times to disposition are **shorter** without sacrificing quality-
Kenya Example, Service of process
- In faster courts, there are **fewer complaints** about resource shortages than there are in slower courts
- Court control of case progress requires better use of existing resources and **lowers the perceived importance of resource shortages**

Ostrom & Hanson, 1999

Efficiency, Timeliness, & Quality: A New Perspective from Nine State Criminal Trial Courts

Features of Expeditious Courts

- Judges are committed to early and continuous judicial control over case scheduling, including firm trial and hearing dates
- Courts are serious about following case processing time standards or goals
- There is a regular process through which the court, prosecutors, and defense attorneys communicate and coordinate their activities to address case management issues & problems

Attacking an Existing Backlog

- Determine the active pending caseload
 - Administratively review all cases
 - Formally close ‘dead’ cases
 - Announce the results
- Determine status of remaining cases
 - Send notices and determine if still active
 - Case review by highly efficient judge

Justice is Transitional

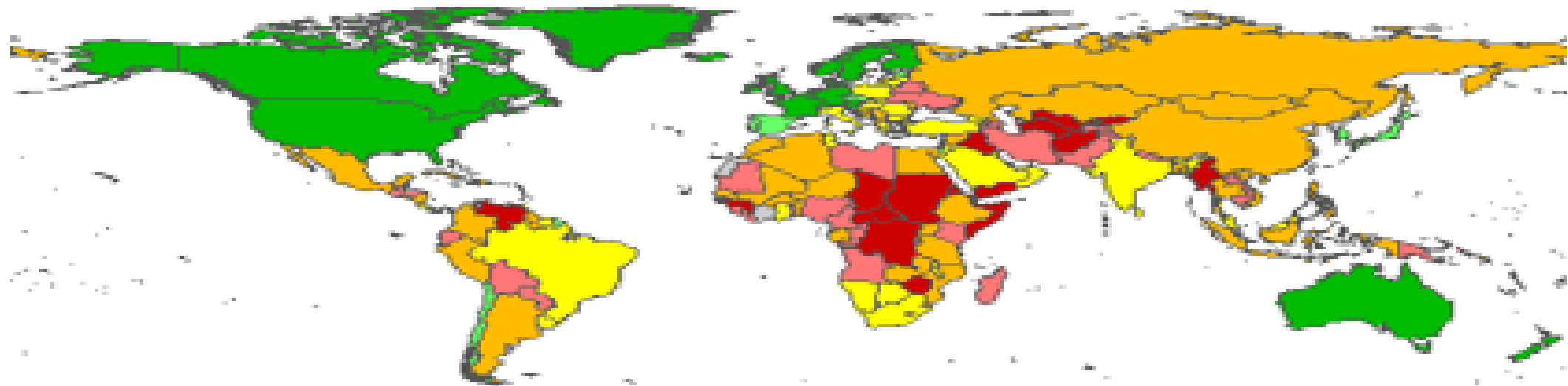
- Generations
- Communications
- The Code of Hammurabi
- Plato
- Mao
- Polybius
- Montesquieu
- Napoleon
- Jefferson

Important Foundations for Justice Administration

- 1. Use of Time
- 2. Developing Intellectual Capacity
- 3. Building Public Trust and Confidence
- 4. Building a Baseline of Performance Indicators
- 5. Leadership
- 6. Strategic Planning
- 7. Timely, Considered and Just Opinions
- 8. Protection of the Process
- 9. Judicial Accountability and Independence
- 10. Utilization of Resources

<http://data.worldjusticeproject.org/#groups/HND>

Rule of Law (2011)



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), The Worldwide Governance Indicators: Methodology and Analytical Issues

Note: The Worldwide Governance Indicators (WGI) are a research dataset summarizing the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, international organizations, and private sector firms. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

Court Responsibilities

- • Provide proceedings that are affordable in terms of money, time, and procedures.
- • Process cases in a timely manner while keeping current with its incoming caseload.
- • Adhere faithfully to relevant laws and procedural rules.
- • Provide a reasonable opportunity for litigants to present all necessary and relevant evidence.
- • Allow participation by all litigants, witnesses, jurors, and attorneys without undue hardship or inconvenience, including those with language difficulties, physical or mental impairments, or lack of financial resources.
- • Provide facilities that are safe, secure, accessible, and convenient to use.
- • Make a complete and accurate record of all actions.
- • Provide for inclusive and representative juries

Court Administrative Organizations

- 1. The need for organization charts
- 2. General Secretary/Secretary Model
- 3. Professional Court Administrator Model
- 4. Manual for Court Administration

Common Attitudes Toward Change

- When something isn't working, we tend to *do it harder and with greater determination*
- Our first reaction to change is to insist that it *doesn't apply to us*
- We *underestimate* how tough it is to change

The Purposes of Courts

1. To do individual justice in individual cases
2. To appear to do justice in individual cases
3. To provide a forum for the resolution of legal disputes
4. To protect citizens against arbitrary use of government power

The Purposes of Courts

(continued)

5. To make formal record of legal status
6. To deter criminal behavior
7. To help rehabilitate those convicted of crimes
8. To separate persons convicted of serious offenses from society

Passage of time destroys the purposes of courts

Planning for Successful Caseflow Management

- Develop a vision of the future
- Develop a mission and goals statement
- Establish objectives
- Set performance targets and indicators
- Formulate implementation plans and strategies for
ACCOUNTABILITY

Case Management Stakeholders

Court Staff	Public Bar: DA, PD, etc.
Private Bar groups	Mayor's Office
County Administration	Probation
Law Enforcement	Jailer
State AOC	Bailiffs / Security
Unions	Business Community
Press / Media	Legislature
Child Protective Svcs	Social Service Agencies
Funding Authority	Title Companies
LITIGANTS	<i>who else ????</i>

Steps to Promote Compliance with Time Standards - Statewide Actions

- Dissemination of state's time standards to the public
- Provision of annual reports on court system performance with regard to those standards
- Promulgation of statewide administrative rules or guidelines calling for the adoption of caseflow management plans to provide early and continuous court control of case progress from initiation to conclusion

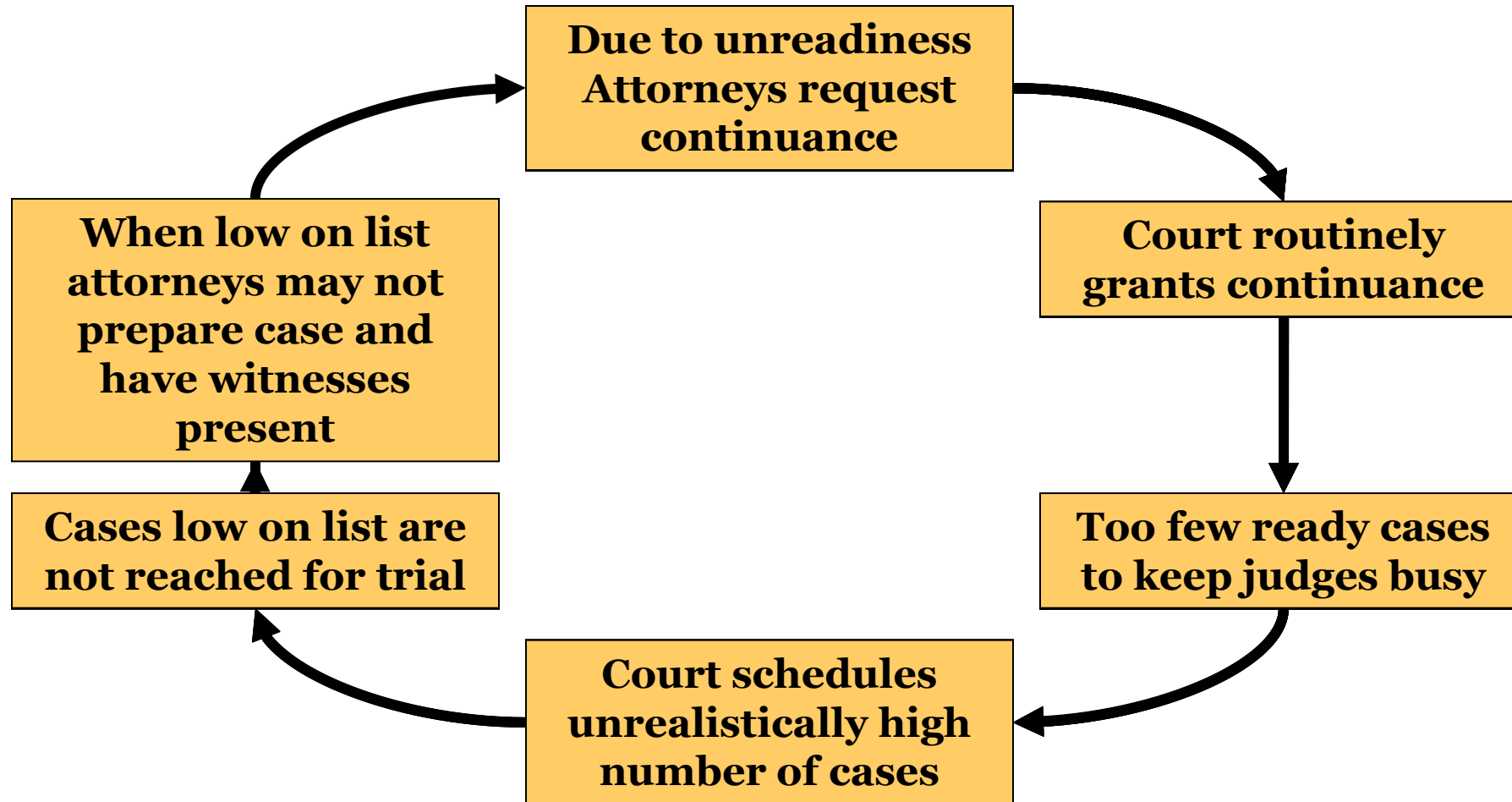
Steps to Promote Compliance with Time Standards – Individual Court Actions

- In each judicial district or individual trial jurisdiction, caseflow management and compliance with time standards should be a matter of court policy and accountability through:
 - Adoption/publication of caseflow management plan developed in consultation with lawyers and other key justice partners
 - Provision of local education programs
 - Regular reports to state court leaders and the public on performance under the plan in terms of the time standards

Resources for the Provision of Prompt & Affordable Justice

- To dispose of the court's caseload within established time standards, it must have:
 - Sufficient judicial officers/admin/court staff
 - Facilities, equipment and technology to schedule, hear, monitor and dispose of cases
- Courts should be funded so that cases can be resolved in accordance with recognized time standards by judges and court personnel functioning in accordance with adopted workload standards

The Continuance Conundrum



Factors to decide how many cases to put on the calendar

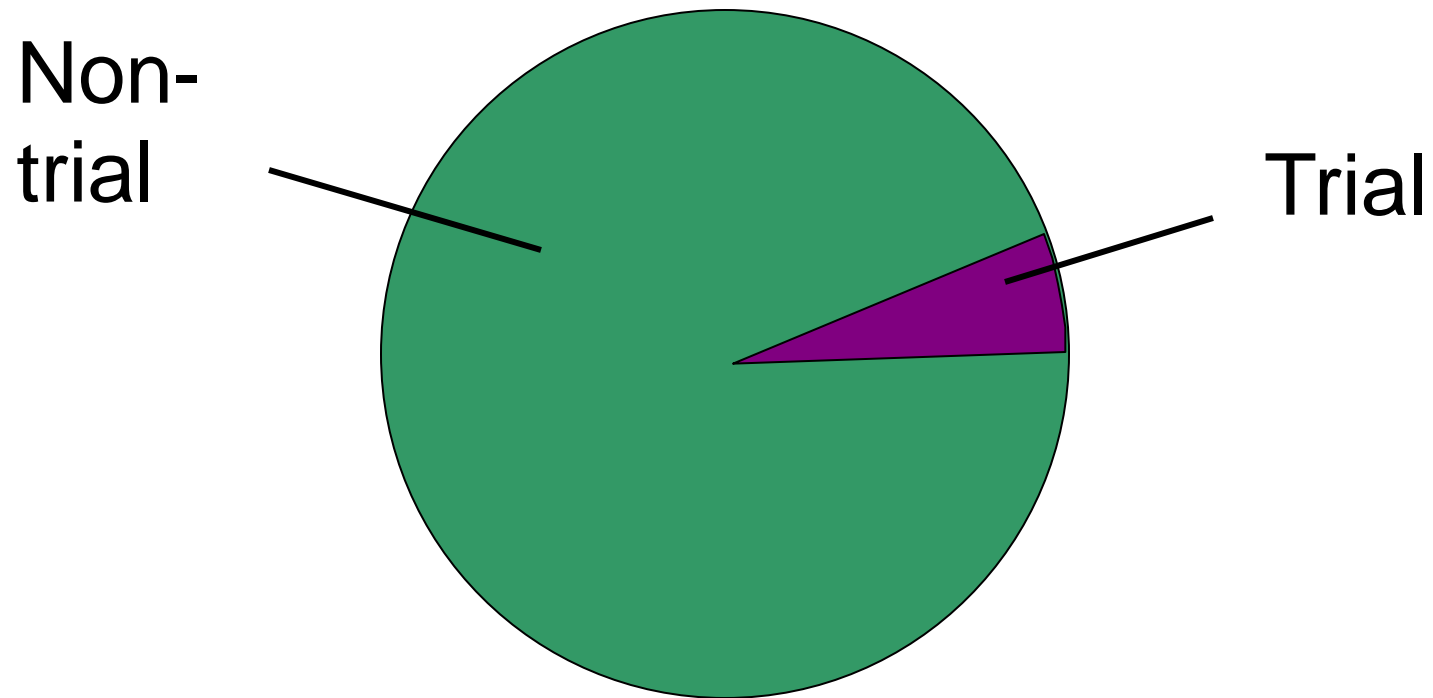
- When trial date is selected
 - how far in advance of the trial date?
- Judge availability
- Fall-out rate after selection date
- Continuance rate that is acceptable to the court

Model Continuance Policy

- Request must be in writing
- Under oath and heard in open court
- With all parties to the litigation present
- For good cause shown
- Must serve the interests of justice

Fundamental #6

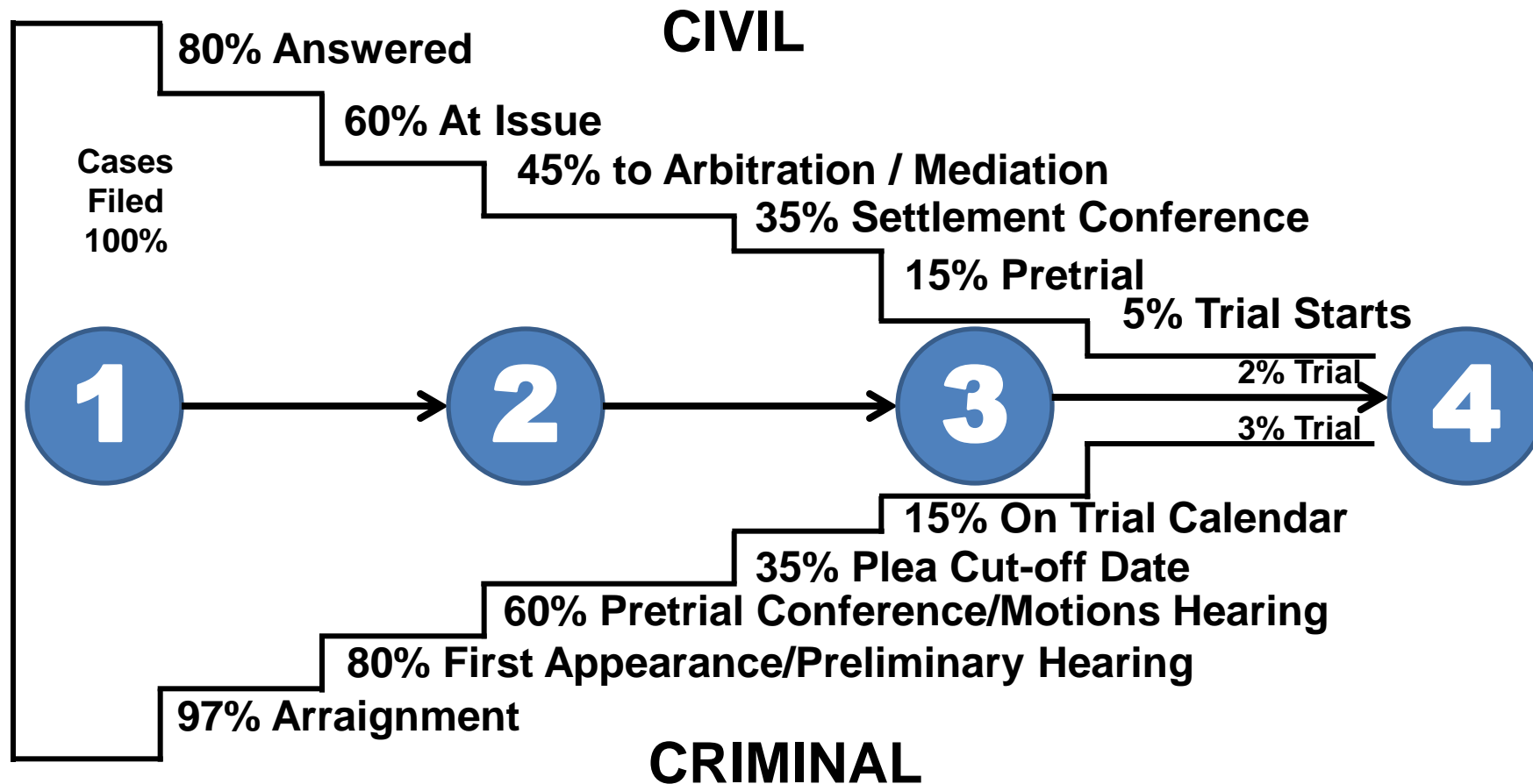
Early Court Intervention and Early Dispositions



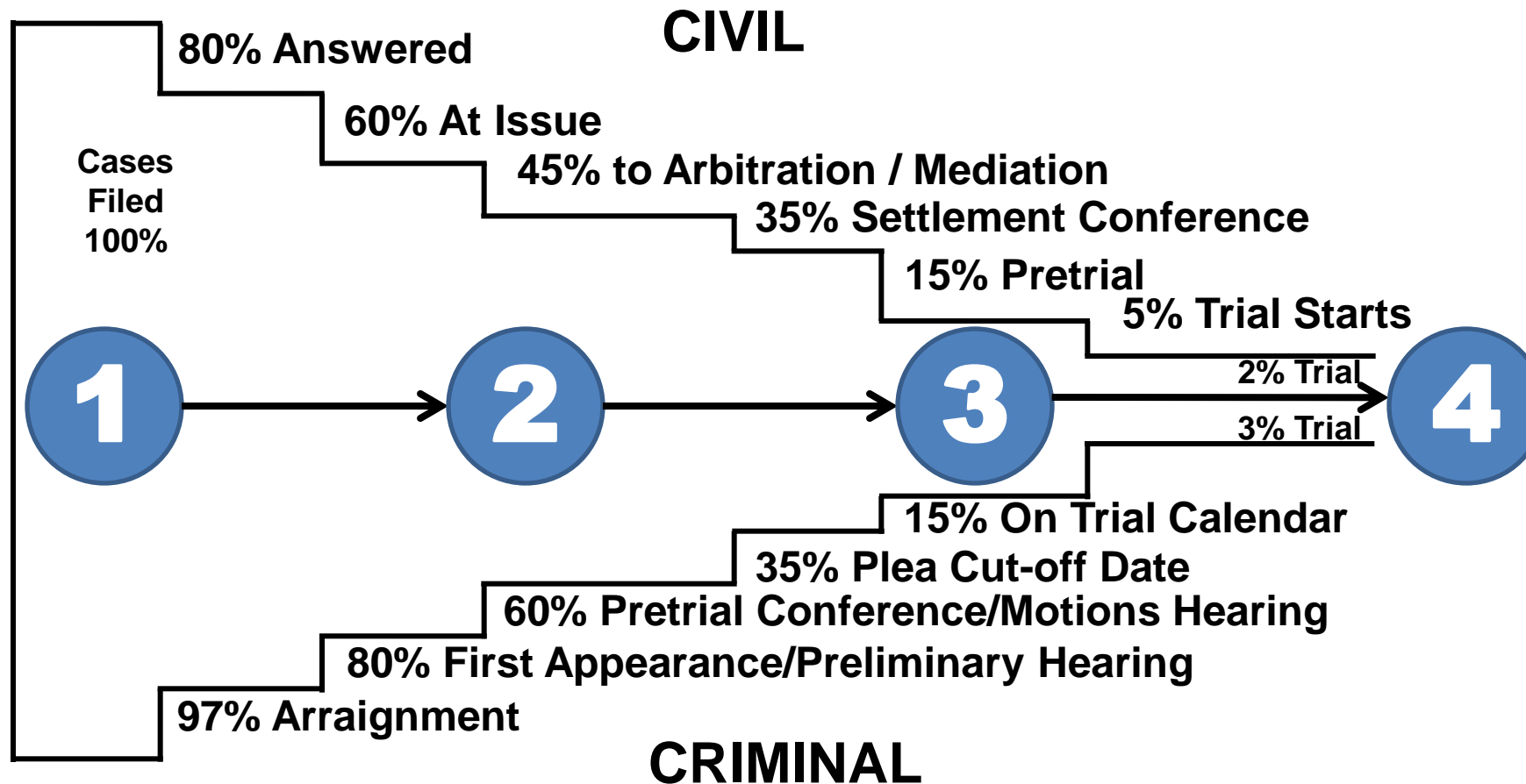
Early & Continuous Court Control of Case Progress

- Early triage, risk assessment, case differentiation, and entry of scheduling order
- Meaningful court event and decision on disposition by trial or non-trial means
- Credible trial dates and dynamic trial management
- Differentiated post-judgment compliance management

Reverse Telescope



Reverse Telescope



Proven Techniques for Both Civil and Criminal Cases

- Court attention to cases early in process
- Early and continuous case control
- Event deadlines
- Restriction of continuances
- Smaller trial calendars
- Firm trial dates
- Trial management

Sample Plea Cutoff Form

FINAL PRE-TRIAL CONFERENCE SUMMARY AND FIRM TRIAL DATE CONTRACT

THE PEOPLE -- VS -- _____ Case No. _____
 AKA: _____ FINGERPRINT NO. _____

DEFENSE REJECTION OF FINAL SETTLEMENT OFFER

The Prosecutor's Final Settlement Offer of:

_____ Charge _____ Sentence _____ Other (Specify) _____
 is available until the Final Pre-Trial Conference is concluded. I understand that no settlement offers will be made after this date. The only disposition after the Final Pre-Trial Conference will be by plea of guilty as charged or trial.

_____ Date _____ Defense Counsel _____

PROSECUTOR'S CERTIFICATION OF TRIAL READINESS

The merits of the case have been thoroughly reviewed. Pretrial settlement negotiations have been unsuccessful and the case is ready for trial.

_____ Date _____ Assistant Prosecuting Attorney _____

STIPULATIONS

The Prosecutor and Defense Counsel hereby agree to the following stipulations:
 Auto Theft Case: Auto Owner Waived.
 Narcotics Case: Chain of Evidence Waived, and/or Chemist Waived
 Other stipulations _____

TRIAL LENGTH AND DATE

The Prosecutor and Defense Counsel represent that all pretrial motions and discovery have been completed and that all required witnesses are available for trial.

Number of Witnesses: Prosecution _____ Defense _____
 Type of Trial: _____ Estimated Length of Trial: _____
 (Specify in half days)

TRIAL WILL COMMENCE ON _____ AT _____
 Date Time

ACCEPTANCE OF NOTICE AND FIRM TRIAL DATE CONTRACT

Counsel for all parties accept notice of the trial date and waive all matters preliminary to trial except as entered on the record at the Final Conference. Defense Counsel and the Assistant Prosecutor confirm their availability on the trial date. All parties are to sign below.

_____ Counsel for Defense _____ Assistant Prosecuting Attorney _____
 _____ Defendant _____ Judge _____

Whether it is Caseflow or any other management issue...

- You can't manage what you can't measure
- Effective management information can have a profound positive impact on organizational behavior

Question: What Are The Major Obstacles To Implementing Change In Your Court?

Judges' Answers	Administrators' Answers
Vested interest of judges in status quo	Judicial independence
Judges' priorities (judging more important than admin)	Lack of judicial commitment to proposed change
Loss of budget authority	Change mandated without \$\$\$
Reluctance of judges to yield to central authority	Conflict with existing rules or statutes
Protection of turf Impact on existing power base	Poor coordination with those involved in proposed change
Blurred admin/judicial roles	Courts not conducive to change

Strategies for Managing Change in Courts

- Begin with a pilot project
- Develop a strategy for the backlog
- Approach the ultimate goal in stages
- Give feedback of data showing the impact
- Provide extra time for administrative judge
- Provide adequate staff support

Quote From IHT

- Popular dissent has recently galvanized people from the squares of Istanbul and Cairo to the streets of RIO, as emerging middle classes around the globe demand better governance. In a similar spirit of discontent, thousands of mostly young and educated Bulgarians have demonstrated daily over the last 40 days in the capital, Sofia, for a less corrupt and more responsive judiciary.