



Teaching Case Management: A Perspective from the United States

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Case management is a fundamental judicial skill. Effective case management enables judges to facilitate the fair and expeditious resolution of disputes. Although there are a myriad of ways to organize a court system and structure civil litigation, judges of all nations and legal traditions will agree that justice delayed is justice denied. For this reason, training in case management is an essential component of judicial education.

I have been a judge on a first instance court of the United States federal judiciary for over twenty years and currently serve as the Director of the Federal Judicial Center in Washington, D.C. The Center is the education and research agency for the U.S. federal judiciary, providing orientation programs for new judges, continuing judicial education, and management training for court staff. The Center also conducts empirical studies of court operations, judicial administration, and issues in complex litigation, the findings of which often inform the development of its educational programming. Case management figures prominently in both the education and research efforts of the FJC because these techniques have come to assume a very prominent role in the work of U.S. judges.

This paper will begin with a brief overview of case management in the United States and then review the principle features of effective case management, as they have evolved in the federal court system. While some of the methods discussed may reflect the particulars of litigation in the United States, they are based upon a conception of a judge's fundamental role and responsibilities that transcends jurisdictional borders. The paper will also discuss strategies for teaching judges how to manage their caseloads effectively, emphasizing a pedagogical approach that relies upon experienced judges sharing their know-how with recently appointed judges to distill 'best practices' relevant to the specific challenges and possibilities posed by their court system.

Case Management in the United States: the history

In the U.S. experience, the study of both the litigation process and the management practices judges adopted over time led to the evolution of methods for teaching case management. The United States Federal Rules of Civil Procedure, first codified in 1939, set forth the procedural requirements for litigation and also provide the statutory foundation for judicial case management. The animating principle of these rules is fairness: the just, speedy, and inexpensive disposition of cases. Rule 1 states:

These rules ... should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

Case management is an essential judicial responsibility not simply because expediting proceedings will result in greater efficiencies, but because when individual litigants are well served by the courts, the credibility of the judicial system as a whole is reinforced. This principle was recognized by those who designed and first implemented the governmental and judicial structures of the United States:

[T]he ordinary administration of criminal and civil justice ... contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem and reverence toward the government.

Alexander Hamilton, *The Federalist #17* (1787).

Although efficiency of operations was understood early on to be a necessary feature of judicial administration, deliberate case management strategies were not widely embraced by U.S. judges until the late 1970's. Prior to these efforts, attorneys dictated the scheduling of court proceedings, leaving the system vulnerable to the unpredictable and sometimes fee-driven needs of practitioners. As the United States experienced significant growth in the number, complexity, and expense of litigation, the public expressed frustration with rising costs and the amount of time required to resolve cases. Much of this expense and delay was the result of attorneys exercising control, often unchecked by judges, over the gathering of evidence, a process referred to in the U.S. as 'discovery.' In common law systems, evidence is collected by attorneys, not the judge. The discovery phase of litigation in the United States is more expansive than in most other countries, posing a unique set of challenges.

As part of its work to assist the U.S. federal courts, the Federal Judicial Center undertook a research project in 1977 designed "to determine what procedures are associated with the greatest possible speed and productivity, consistent with the highest standards of justice."¹ This study examined the case management practices employed in ten courts and involved

¹ Steven Flanders, Fed. Judicial Ctr., *Case Management and Court Management in United States District Courts* ix (1977).

extensive review of court records, discussions with judges and court personnel, and observation of a wide variety of proceedings. The Center's resulting report concluded that when judges assert control over "the timing of the civil litigative process through pretrial conferences, discovery cutoff dates, and through insisting early in the case on rapid progress toward trial," cases are resolved more expeditiously and with less expense to the parties.²

The era of judicial case management in the United States was launched, with the Federal Judicial Center informing the judiciary of the utility of case management practices and integrating case management training as part of its judicial education curriculum.³

Integrating Case Management into a Judicial Education Curriculum

Judicial Educators around the world face a common challenge: an overabundance of important topics to cover in their training curricula. The difficulty of prioritizing topics is matched only by the task of finding the necessary time and resources to create lesson plans and develop materials. Judicial training in civil law systems often includes a complete review of law and procedure to meet the needs of recent graduates of law faculties. Common law judiciaries typically train judges who have been practicing attorneys for many years, but may have worked in specialized fields or may be unfamiliar with litigation flow and management.

In both cases, judicial educators must make choices about what areas of law, procedure and judicial practice to cover and, equally important, how to sequence this learning. Case management should figure prominently in training for new and experienced judges alike, as it is an essential skill that judges will rely upon throughout their careers. This training will change over time, as the courts and judges adapt to new developments in the law and the litigation process, as well as the evolution of court management practices and automation.

Although the path and contours of civil litigation may vary from country to country, case management is usually understood as a term of art that refers to a judge's early and active control of the path of a case. Case management consists of strategies and tools judges use to help move a case to resolution. These efforts commence as soon as a complaint is filed and continue through pretrial proceedings and on to trial or resolution by settlement. Judicial time invested early in proceedings pays great dividends.

Case management training in the U.S. federal courts can be broken down into three distinct categories:

- New judge training
- Continuing judicial education
- Manuals and bench books

Before reviewing each of these, some discussion of the case management process is necessary.

² *Id.* at 17.

³ See James G. Apple, *Case Management in the Courts of the United States*, *The Litigator*, 1995, at 373, 373.

Case Management – the techniques

The Federal Rules of Civil Procedure provide judges with the legal authority to control court proceedings. It is up to the individual judge to tailor the available techniques to the needs of each case and to maintain consistency in their application. When implementing case management techniques, judges should keep case management's objectives in mind:

- Just and timely resolution of disputes
- Elimination of unnecessary delay and expense
- Predictability
- Preserving public confidence through transparency and accountability

Judges have at their disposal a broad arsenal of tools to meet these objectives.

➤ ***The Case Schedule: Firm dates for each event***

Perhaps the central technique for case management is the setting of firm, credible deadlines for each event in a case, with the trial date driving the process. Deadlines help ensure attorneys will be prepared; unless a case is scheduled for an event, it will get lost among counsel's many obligations.⁴ Trials should be continuous, heard over a series of days without nonessential breaks in the taking of testimony. Deadlines for various stages of pretrial preparation are critical for insuring that a continuous trial will take place.

In the U.S. federal courts, Rule 16 requires judges to issue an order to counsel soon after a case is filed and served on the defendant. This order puts the parties on notice they must prepare for an initial meeting with the judge – a case management conference. Judges may require counsel to prepare for this conference by meeting together, without the judge present, to discuss the case, focus the issues in dispute, draft a preliminary discovery plan, and broach the possibility of settlement.⁵ The judge may also request counsel to prepare written submissions in advance of the conference that set forth the jurisdictional basis for the case, a brief explanation of the claims, likely defenses, anticipated evidence, need for expert testimony, and a proposed joint scheduling plan.

During the case management conference, a schedule for the proceedings is discussed and set. The judge will then issue a case management order memorializing the schedule agreed to by the parties – including a trial date. The judge may schedule future status conferences. The entire schedule is set to enable counsel and court to adhere to the agreed upon trial date.

Dates are firm; they are not amended without good cause. Attorneys may not appear for a scheduled court event and request a continuance. The Judge must be notified as soon as counsel learns of a problem that will interfere with the case schedule; adjournments will be granted only for good cause. Failure to appear for a scheduled event will result in sanctions

⁴ See, Fed. Judicial Ctr., *supra* note 10, at 12.

⁵ Fed. R. Civ. P. 26(f).

against counsel. Sanctions will depend upon the nature of the deadline missed but may include monetary fines or the suppression of evidence or legal argument.

Throughout the life of the litigation, a deadline is set for every case event – from the gathering of evidence, to the filing of legal arguments (applications and motions), evidentiary and other pretrial hearings, mediation, a final pretrial conference, and trial. This process will have to be adapted for each specific case and will depend on the nature of the case and its complexity.

➤ ***Early Identification of legal and factual issues***

In addition to initiating a schedule of case events, the case management process should facilitate early identification of the legal and factual issues in a case. A streamlined cause of action and clearly articulated set of defenses will insure that valuable time and resources are not wasted during the gathering of evidence, case preparation, and trial. Additionally, the earlier the parties understand each other's claims, the stronger the possibility they may choose to pursue settlement discussions or mediation.

➤ ***Case Monitoring***

A corollary to the principle of firm dates is judicial monitoring of case progress. The essence of monitoring is communication with counsel, whether it occurs through scheduled in-person status conferences, by telephone, or the receipt of written correspondence and legal papers. Many judges put attorneys on notice of their individual protocol for case management and monitoring by distributing an explanatory memo when a case is filed or posting this protocol outside their courtroom or on the court's website.

Judges also develop a series of form orders – documents that clearly set forth the judge's expectations about counsels' obligations during different phases of litigation. These orders aid the case management process by creating a framework for the case timeline. Many of the Federal Judicial Center's publications and case management guides include sample form orders for newer judges to adapt to their own needs and preferences. The following orders, for example, can be found in the Center's Civil Litigation Management Manual (2001): Scheduling Order, Standing Order Establishing Pretrial Procedure, Order Setting Initial Conference, General Case Management Order, Guidelines for Discovery, Motion Practice and Trial, and Form of Pretrial Memorandum for Use in Personal Injury Cases.

➤ ***Final Pretrial Conference***

A final pretrial conference is an important tool for insuring that the actual trial proceeds efficiently and without surprises. During this meeting with the judge, counsel must raise any last minute issues, identify potential trial problems, supply copies of documents and summaries of other evidence, exchange exhibits, and present a list of witnesses, their proposed testimony and availability. The judge will also discuss with counsel suggestions for limiting the length of the trial and may again broach the possibility of settlement.

Teaching Case Management

There are many approaches to teaching judges case management techniques. While workshops and manuals play important roles in this effort, much learning takes place by doing: in court, through the personal experience of each judge based upon his or her unique caseload. The discussion that follows offers some suggestions for structuring classroom based learning and developing materials that judges can refer to during case preparation and trial.

➤ ***New Judge Training***

Judges at the very beginning of their careers face a daunting array of learning needs, from new areas of substantive law and procedure, to opinion writing and judicial ethics. Case management may seem a peripheral concern to the new judge, who may not yet appreciate how quickly a caseload can turn into a backlog.

Case management is best taught in an informal discussion session, with experienced judges serving as mentors to explain the judge's role in the litigation process and share strategies for managing cases in chambers, working with court staff, and interacting with attorneys whose incentives may include encouraging delay. It is helpful to develop separate sessions for managing civil, criminal, and appeals cases. Opening with short presentation-overviews, instructors will use Power Point slides or handouts that list typical case management challenges and also distill essential case management strategies.

At the end of this overview, instructor-judges may want to turn to a series of prepared vignettes – scenarios that reflect a range of case management issues and obstacles. For example: the attorney who repeatedly misses court-imposed deadlines; the prosecutor who appears in court without the case file; an unreasonable request for numerous witnesses or an unrealistic projection for the length of trial; dealing with the unrepresented litigant. As these examples illustrate, an important aspect of case management is effective communication. Communication, both verbal and written, can be essential to manage and control the expectations of attorneys coming to court. A short session on communication skills for judges can be incorporated as part of case management training. Especially for newly appointed judges, establishing a firm but respectful manner with seasoned litigators can be difficult.

Another component of a case management program is calendar and time management. New judges must learn how to assess the amount of time necessary to prepare for hearings, do legal research, and draft opinions on legal motions/applications. Experienced judges can also share their strategies for scheduling cases: how to work their schedules to most economically schedule a variety of matters in a given day or week. A related learned skill is how and what to delegate to support staff and clerks. When initially appointed, judges may be inclined to cover both the adjudicatory and administrative aspects of their jobs; in time they will learn what tasks should be delegated to maximize their efficient use of time.

➤ ***Continuing Judicial Education***

Case management information can also be incorporated into programs for experienced judges. The Federal Judicial Center has offered programs for judges of particular levels of experience, for example 4 – 6 years on the bench. These programs offer an opportunity to discuss with their peers from around the country tried and true techniques for disposing of cases. Divided into civil and criminal sessions, more senior judges make presentations on their approach to case management and engage participants in discussion, allowing judges to learn from each other and debate the merits of various strategies. The Center collects and distributes sample

orders shared by the judge-faculty and participants that hopefully will encourage new ideas. Because participants in such programs have judicial experience, it may be helpful to begin the session with the open-ended question: “What case management challenges do you face in your court?” Answers should be recorded on flip charts and saved.

At the conclusion of the program, instructors will lead a brainstorming session to find solutions to the earlier offered challenges. Some of the challenges posed may lead to difficult discussions. For example, in some jurisdiction corruption becomes a case management problem: what should a judge do when she learns that case files are being lost or misplaced if litigants fail to pay a ‘handling fee’ to the file clerk? In judicial systems that do not have automated case filing systems, the loss of paper files can be devastating for the just and speedy resolution of disputes. Should the judges agree that they will begin locking files in special cabinets in their offices? Should a second record of court appearances be kept with the judge?

This final session may also include listing areas of potential judicial reform: suggested amendments to the rules of procedure that can be recommended to the legislature or rules committee, changes in the way the courts hire and use support staff. Participating judges from the same court may decide to work together and attempt to change the local legal culture by meeting with the bar associations and discussing best practices for lawyers and judges.

Another form of more advanced case management training is the inclusion of a session on case management as part of a course on a particular area of law. For example, a program on Intellectual Property Law will include a session focusing on the unique case management issues that IP litigation brings. This approach can be used in courses on Employment Law, Environmental Law, Bankruptcy proceedings, as well as a program on Complex Litigation. The teaching techniques will be similar to general case management instruction: a discussion format that allows for the exchange of experiences, distribution of sample orders, and the use of hypothetical scenarios to aid discussion.

➤ **Written Materials: manuals and bench books**

Written materials that address case management issues can be helpful resources for judges. When a judge is appointed to the U.S. judiciary, the Federal Judicial Center sends the new judge a box of publications and DVDs that includes a modest 22 page guide, “The Elements of Case Management,” as well as the much larger, 463-page, Civil Litigation Management Manual. This box also has the Center’s Benchbook for Federal District Court Judges, a loose-leaf binder for trial level judges with chapters addressing practical issues that emerge at different stages of civil and criminal proceedings. Although it does not focus on case management, the Benchbook includes case management-related references.

One of the most widely used FJC publications is the Manual for Complex Litigation. This publication reviews a variety of issues that emerge in complex litigation, including working with multi-party cases and transnational disputes. The Reference Manual on Scientific Evidence offers guidance with managing cases involving expert witnesses and scientific and statistical

evidence. Other Federal Judicial Center publications addressing case management issues include:

- Patent Case Management Judicial Guide (2009)
- A Guide to the Judicial Management of Bankruptcy Mega-Cases (2009)
- Managing Class Action Litigation: A Pocket Guide for Judges (2009)
- Ten Steps to Better Case Management: A Guide for Multidistrict Litigation (2009)
- Chambers and Case Management (2009)
- Terrorism-related Cases: Special Case Management Challenges (2008)
- Judicial Management of Mass Tort Bankruptcy Cases
- Resource Guide for Managing Capital Cases (2004)
- Guide to Judicial Management of Cases in ADR (2001)
- Case Management Procedures in the Federal Courts of Appeals (2000)
- Chief District Judges' Management of Court Caseloads (1995)

The Center's many published guides and manuals clearly illustrate the central role of case management to both the courts and judicial education.

Conclusion

As with any form of education, case management training must engage the learner. Presentations must be relevant to a court's culture and practice. Workshop sessions must include opportunities for discussion, the sharing of experiences, and a chance to practice what is being imparted. On its face, "case management" certainly sounds like a very dull topic for judicial training. When carefully planned and creatively executed, case management skills training can prove to be engaging and a helpful contribution to the court community.