

# FROM THE BENCHES AND TRENCHES CASE MANAGEMENT INNOVATION IN A LARGE, URBAN TRIAL COURT: THE CRITICAL IMPORTANCE OF LEGAL STAKEHOLDER ATTITUDES

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*This article, based on research conducted in the Circuit Court of Cook County (Chicago) from June 2006 through March 2007, addresses the challenge of a large, urban felony court in reducing delay through the introduction of a Differentiated Case Management (DCM) system. The research design incorporates an empirical data analysis of caseflow and an opinion survey of over 500 legal stakeholders. While the court demonstrated a positive clearance rate, there was evidence of considerable case delay and backlog in the active pending caseload. In stark contrast, the survey findings indicate a lack of stakeholder awareness of case delay, a low level of acceptance of felony time standards, and a general concern that an expedited pace of case management, through the introduction of a DCM system, might cause injustice. The implications of these findings for the future success of Differentiated Case Management in this court are discussed, as is the relevance of the findings for other jurisdictions interested in improving case management.*

If management is about dealing with complexity, then caseflow management in a large, urban felony court presents a unique set of challenges. While the principles of good caseflow management may remain constant across jurisdictions of all sizes, the challenges of implementing a fair and efficient court process in a high-volume felony court increase with the size of the court. The sheer number of cases, multiplicity of relationships, mix of interdependent agencies and organizations, and intense media scrutiny present court administrators in large, urban felony courts with a daunting task. In spite of this, there has never been a better time for high-volume courts to develop a tight, efficient, and, most important, fair caseflow process than the present. As the literature shows, our understanding of caseflow management, the development of standards, and the measurement of caseflow process have all reached a very sophisticated level. At the same time, technological advances have now given high-volume courts the tools with which to create a “level playing field” with other jurisdictions by virtue of the availability of good statistical data reporting that enable even very large courts to monitor and evaluate their complex caseflow processes, practices, and performance.

Cook County has a population of 5.5 million people, making it the second largest county by population in the United States. It funds three public services, including a major urban hospital for the indigent, a Forest Preserve District, and the Circuit Court of Cook County, whose Criminal Division serves the city of Chicago with a population of 2.3 million. In 2006 Cook County faced what was perhaps the greatest fiscal crisis in the history of the county. It needed to reduce a deficit of one-half billion dollars on

a total budget of 3 billion dollars. In December, all county operations, including the Circuit Court of Cook County, were asked to cut their budgets by 17 percent (Stroeger, 2007:33). The present research project and the introduction of a new Differentiated Case Management system were implemented during a time of immense financial pressure in the county and within an atmosphere anticipating a very significant reduction in resources and services. The subsequent cuts have been particularly hard on the criminal-justice system.

The Circuit Court of Cook County, the largest unified trial court system in the country, is organized into three major departments and has over 400 full-time judges. The Criminal Division of the County Department has a total of forty-five full-time judges, thirty-seven of whom are located in the Criminal Court Building. These judges hear only felony cases, handle on average 650 dispositions a year, and account for about 28,000 felony filings a year, making it one of the busiest felony trial courts in the country. The Criminal Court Building sits on a large campus, which houses the original Cook County Jail and ten other jail buildings, which, during the past three years, have had an average daily population of 8,500 to 10,500 inmates, almost all awaiting trial (John Howard Association, 2005-06). The pressure on the county to manage jail overcrowding with a population of this size has been considerable, and the county has sought more-effective ways to reduce the jail population. The successful implementation of a systematic case management system, such as Differentiated Case Management (DCM), would be a valuable asset in addressing overcrowding at the Cook County Department of Corrections and in effectively managing the thousands of felony cases that come into the system each year.

The purpose of the research project reported here was to develop a baseline understanding of the current caseload process of the Criminal Division of the Circuit Court of Cook County, determine the attitudes of judges and attorneys toward the introduction of a new case management system, and assess how far the court has to go to implement Differentiated Case Management successfully.

## PAST RESEARCH

There is a rich body of knowledge developed over the past 100 years concerning the caseload process in our court system. There seem to be three distinct generations of inquiry into the subject. The first generation took place during the first three-quarters of the last century. As early as 1906, in speaking about public dissatisfaction with the courts, Roscoe Pound, dean of the Harvard School of Law, stated that “too much of the current dissatisfaction has a just origin in our judicial organization and procedure” (Pound, 1906:395). Over the next seventy years, the “conventional wisdom” about court delay and caseload was developed primarily with an emphasis on addressing resource and structural issues in the court, such as caseload per judge, court size, and proportion of cases requiring a jury, as a way of dealing with court delay.

The second generation of court delay and caseload management research took place between 1975 and 1989 and resulted in a fundamental reassessment of the exist-

ing “conventional wisdom.” This era began with Maureen Solomon’s work on caseload management (Solomon, 1973) and the ABA’s trial court standards (American Bar Association, 1975). Over the next fifteen years, there was a vigorous reassessment of the principles of caseload management starting with a major study by Church et al. (1978) and ending with another large-scale, urban-court study of twenty-six trial courts (Goerdt, Gallas, and Mahoney, 1989). Church et al. found, despite prior belief, that “few formal elements of court structure or procedure were found to be linked to disposition time” (1978:58). Instead of structural elements such as size of the court, caseload of judges, or pretrial procedures, the informal system of relationships among judges, defense attorneys, and prosecutors was shown to be very significant in reducing case delay, suggesting that issues around organizational culture may be as important in criminal-case delay as issues involving court structure (Church et al., 1978:54). However, the structural variable of caseload composition was found to be associated with case-processing time. The 1989 Goerdt, Gallas, and Mahoney study echoed Church et al. in finding that structural issues, such as the size of the court and caseload per judge, were not related to the pace of felony-case litigation; instead, “a firm trial date policy was the best predictor of faster case processing times.” What was called “early and continuous control” by judges, early resolution of pretrial motions, and a high percentage of jury trial cases starting on the first scheduled trial date were seen as critical elements in the pace of litigation (Goerdt, Gallas, and Mahoney, 1989:101).

The third generation of inquiry, starting in the early 1990s, but slowing over the past ten years, produced a heightened level of research activity on court delay and caseload process. Particularly important were large-scale empirical studies incorporating meta-analysis of cross-jurisdictional data and built on two primary research projects (Hewitt, Gallas, and Mahoney, 1990; Goerdt, Lomvardias, and Gallas, 1991). The findings of the most broadly based analysis of the pace of litigation to date suggested that larger pending caseload per judge was one of the strongest correlates of longer felony-case-processing times. Early resolution of pretrial motions and firm trial dates were found to be significant predictors of shorter felony-disposition times. As in earlier studies, caseload composition, more specifically lower percentages of violent criminal cases, was also seen as a significant predictor of shorter case-processing times (Goerdt, Lomvardias, and Gallas, 1991:1).

Four concepts addressed in the literature are of particular importance here: 1) the critical role that attorney and judicial attitudes play in the court process; 2) the court system as a unique organization with its own culture; 3) the development of standards and the measurement of court processes; and 4) case differentiation as a means of reducing delay in the courts. As noted above, the importance of stakeholder attitudes in reducing court delay was an earlier major finding (Church et al., 1978). More recently, Ostrom and Hanson tested a hypothesis, derived from the earlier Church et al. study, that “attorneys in more expeditious court systems have distinctively different views toward possible determinants of timeliness (such as resources, management, attorney competency and court and attorney practices) than the attorneys in

in the less expeditious court systems” (Ostrom, and Hanson, 1999:78). They concurred that the views of attorneys toward a number of critical issues, including the adequacy of legal resources in the court, leadership and management in the court, and the performance level of peers, are of particular importance to the pace of litigation (Ostrom and Hanson, 1999:xvii).

The notion of the existence and importance of organizational culture in the criminal-court system has been a subject of discussion and debate for some time, but serious attention to organizational development within courts emerged only in the past thirty years. Church et al. referred to a series of related factors, such as judges’ and lawyers’ established expectations, practices, and informal rules of behavior as determining the speed of case disposition. They called these factors “local legal culture” (Church, et al., 1978:54). At about the same time, Friesen, identifying broad cultural factors affecting court delay, which he called the “socio-legal-political culture,” stated that “the needs and attitudes which make change difficult in the litigation process are as much social, political and economic as they are legal” (Friesen, 1979:35). The term “county legal culture” further expanded the scope of influence to legal stakeholders throughout the county (Eisenstein, Fleming, and Nardulli, 1988:27). Recently, Ostrom and Hanson, more focused internally on the relationships between judges and court administrators, developed an instrument for measuring “court culture” (Ostrom and Hanson, 2005:14-23), but this concept has a much more narrow focus than that used in earlier research on local legal culture. (See Gallas, 2005-06 for a response.)

In 1975, driven by issues of delay and increasing cost, the American Bar Association’s Commission on Standards of Judicial Administration developed standards relating to trial courts. A few years later, the National Conference of State Trial Court Judges and the American Bar Association jointly developed standards relating to court delay reduction (Solomon and Somerlot, 1987:viii). It was not until the late 1980s, however, that the profession systematically addressed issues regarding the measurement of these performance standards. Over ten years starting in 1987, the Trial Court Performance Standards Project, initiated by the National Center for State Courts and the Bureau of Justice Assistance, developed and field-tested a measurement system, which would serve as a self-assessment resource for state trial courts. In 1997 the Bureau of Justice Assistance released its comprehensive Trial Court Performance Standards and Measurement System, which presented over twenty performance standards for general-jurisdiction trial courts grouped into five areas of performance: Access to Justice; Expedition and Timeliness; Equality, Fairness and Integrity; Independence and Accountability; and Public Trust and Confidence (Bureau of Justice Assistance, 1997:4). The area of Expedition and Timeliness incorporates three performance standards. Of particular relevance to this research project, and applied and discussed later in this article, is Standard 2.1, relating to Case Processing, which requires that “the trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload” (Bureau of Justice Assistance, 1997:11).

One of the most critical issues regarding trial court performance standards is the relationship between efficiency and fairness. Some view a structured system of case-flow management, aimed at reducing delay, as being merely about time management or efficiency. Ostrom and Hanson argue that efficiency and fairness in criminal-case resolution are, indeed, compatible, and report that their study of criminal trial-court systems in nine states refutes “the traditional notion that the two values are in conflict so that a gain in one comes only at a loss in the other” and “suggests that well-performing courts should be expected to excel in terms of both timeliness and quality” (Ostrom and Hanson, 1999:xiii).

In 1987 the Bureau of Justice Assistance launched a demonstration program to pilot-test the application of what it called Differentiated Case Management, now widely used across the country. The basic premise of a DCM system is that cases vary in the amount of time necessary to prepare them for a fair and just decision, so that different types of cases may, in the ordinary course of events, require special handling and organization (Bureau of Justice Assistance, 1993:1). Differentiated Case Management includes 1) establishment of case-processing tracks with early screening and case assignment; 2) development of appropriate time frames and events within each track; 3) early judicial control incorporating time limits for major events, regular monitoring, and reporting on excess; 4) continuous judicial control, meaning that a case is never without a review date and is monitored by the court along with consequences for failure to meet time limits; 5) short scheduling of continuances, meaning that, when granting continuances, the court should schedule the minimum time needed by attorneys to complete the requested task; 6) reasonable accommodation of the parties in that cases are scheduled with input from all parties involved; and 7) a clear expectation within the court that events will occur when scheduled (Friesen, 2006).

## METHODOLOGY

This research project utilized two methods, an empirical data analysis and a stakeholder opinion survey, to provide a balance between hard factual data on caseload and opinion data obtained from the court system’s legal stakeholders.

**Statistical Data Analysis.** The statistical data analysis of key indicators of caseload process applied multiple performance measures from *CourTools*, a set of ten performance measures for use in trial courts (National Center for State Courts, 2005), including *CourTools* no. 2 (Clearance Rates), no. 3 (Time to Disposition), and no. 4 (Age of Active Pending Caseload). These three indicators used together provide a broad picture of the status of the caseload process in the Criminal Division. Computing a clearance rate requires a count of incoming cases and outgoing cases during the reporting period. The number of outgoing cases (i.e., dispositions), including entry of judgment, reopened dispositions and cases placed on inactive status, is divided by the number of incoming cases (i.e., assignments), defined as new filings and reopened and reactivated cases. The goal for the court is to achieve a clearance rate of 1.0 or higher, which would indicate a positive caseload.

The Time to Disposition analysis looks at the median time it takes for the court to process different types of cases. For purposes of this project, we will define Time to Disposition as “the number of days it takes for cases to move from arraignment to disposition.” This computation takes into account periods of inactivity beyond the court’s control, such as warrants issued before the case disposition, appellate remands, and cases involving a commitment to a mental-health facility before a trial or disposition. In addition to the median, the Time to Disposition report used here also determines the age of the cases at the upper end of the cohort (the 90th percentile) at the point of disposition.

The Age of Active Pending Caseload is the age of the active cases that are pending before the court, measured as the number of days from filing (or, for purposes of this project, “assignment”) until the date that the report takes place. This measure incorporates a breakdown of active pending cases by type of case and by age grouping. In essence, it is a “point in time snapshot” of the cases still pending and indicates the relationship of active pending cases to the standards. It is important because it helps the court determine the extent of backlog, if any, in the pending case system, with backlog defined as “cases that have been pending longer than the time that the court has adopted as its standard” (Steelman, Goerd, and McMillan, 2000:79).

**Legal-Stakeholder-Opinion Survey.** Earlier research indicates that “the efficient resolution of criminal cases is an interactive process requiring the cooperation and coordination of judges, prosecutors and defense attorneys” (Ostrom and Hanson, 1999:50). For this reason, a survey assessing the attitudes of respondents toward a number of key concepts, which have been shown to be of importance to the success of a DCM system in a felony court, was directed at those same stakeholder groups in the criminal courthouse, all of whom play a major role in the caseload process: judges, prosecutors, and defense attorneys who practice regularly at the felony courthouse in Chicago. Defense attorneys included both public defenders (who handle the great majority of felony cases at the court) and members of the private bar. With the exception of private attorneys, almost all respondents are assigned full-time to the felony courthouse.

**Survey Respondents.** The 557 respondents surveyed included a census of judges (N=33), assistant state’s attorneys (N=182) and assistant public defenders (N=148), and a selection of members of the private bar (N=194). (One judge, on medical leave, was not included.) A list of 2,035 members of the private bar was compiled to identify those private attorneys who have the greatest presence in the Criminal Courts Building and, therefore, it was assumed, whose opinions about caseload and the pace of litigation have the greatest influence on practice at the courthouse. These attorneys appeared at the felony courthouse between January 2004 and October 2006. Those who made twenty-five or more appearances at the Criminal Courts Building during the twenty-two-month period were surveyed; there were 194 of these “regulars,” almost 10 percent of all private attorneys who appeared at the courthouse during this time period.

The legal stakeholder survey was administered over a four-week period during December 2006 and generated 274 responses, for an overall response rate of 49 per-

cent giving a margin of error of  $\pm 2$  percent. The return rate for public defenders was lower, 36 percent, making the margin of error for their data higher ( $\pm 7.5$  percent).

*Questionnaire.* To determine respondent opinions about issues of importance to the pace of litigation in criminal courts, a ten-question, multiple-choice questionnaire was administered by mail to the legal stakeholders. The survey was meant to act as a barometer and, thus, to determine just how sympathetic stakeholders are to recognizing and reducing delay and how supportive they are to instituting fair and expedient case processing through a differentiated case management system. The ten multiple-choice questions, constructed on a Likert Scale, were grouped into five sets of questions, about 1) human resources within the court, that is, attorney competence and sufficiency of legal resources; 2) the extent and causes of delay in the criminal courthouse; 3) the respondent's level of understanding and agreement with the concepts of Differentiated Case Management; 4) the respondent's acceptance of specific time standards that the Criminal Division has set for felony cases; and 5) the potential fairness of an expedited pace of case processing.

There was one open-ended question inviting additional comments. Such comments were provided by 116 respondents, 42 percent of all respondents. The percentage of each stakeholder group who chose to write additional comments was very uneven. Defense counsel had the highest rate of comment, over one-half, while assistant state's attorneys had a much lower rate (30 percent), and judges had the lowest rate of comment (15 percent). A content analysis of the comments was conducted, and responses were categorized into a few major themes.

## RESEARCH FINDINGS

*Statistical Data Analysis.* The statistical data analysis, providing a baseline against which stakeholder attitudes and opinions can be contrasted, applied three fundamental performance measures from *CourTools*, including Clearance Rate computation, Time to Disposition analysis, and Age of Active Pending Caseload analysis.

*Clearance Rates.* The Clearance Rate in the Criminal Division for the five-month period from October 2006 through February 2007 was 1.06 (see Table 1), which indicates that the felony division is slightly ahead in disposing of as many cases as come into the system, no small accomplishment given the high volume of felony cases the court receives. However, while a positive clearance rate in four out of five consecutive months is encouraging, a critical question remains concerning the age of cases that are still pending and their potential for backlog in the future.

In early 2006, the court developed standards covering the time from arraignment to disposition for all felony cases. Using a Differentiated Case Management approach, the judiciary developed five tracks, based on the anticipated complexity of the case, and assigned time standards for each track (see Table 2). These standards are used in both the Age of Active Pending Caseload analysis and the Time to Disposition analysis.

*Age of Active Pending Caseload.* There were about 10,000 active pending cases in the criminal courthouse at the time of this study (see Table 3). The Age of Active

**Table 1**  
**Five-Month Clearance Rate, Criminal Court Building**

Month	New Assignments	Dispositions	Clearance Rate
October 2006	1,798	1,942	1.08
November 2006	1,629	1,677	1.03
December 2006	1,416	1,263	.89
January 2007	1,421	1,770	1.25
February 2007	1,349	1,400	1.04
Total Cases	7,613	8,052	1.06

**Note:** A later analysis of clearance rates was very consistent with the above findings, indicating a clearance rate of 1.11 for the year 2007.

**Table 2**  
**Time Standards for Felony Cases in the Circuit Court of Cook County, Criminal Division**

Track	Expected Completion Time for 85% of Cases
Track 1 Class 3 and 4 Felonies	90 days or less
Track 2 Class 1 and 2 Felonies	180 days or less
Track 3 Class X Felonies	365 days or less
Track 4 Murder Cases	1½ years or less
Track 5 Complex Cases*	2 years or less

\* Complex cases are defined as including capital and multiple defendant cases.

Pending Caseload, a “point in time snapshot” of all pending cases, is measured as the number of days from filing to the time that the report takes place. This measure helps the court determine the extent of its backlog, if any, and analysis of the data allows us to determine the number and the percentages of active pending cases in each track that exceed their time standard.

Almost two-fifths (39 percent) of all cases pending in the Criminal Division as of February 2, 2007 were already over their time standard at this time, which suggests significant delay, but the percentage of cases over standard varies considerably by track. Track 1 (Class 3 and 4 felonies) and track 4 (Murders) have the greatest percentage of active pending cases over standard. More than half of the pending cases in track 1 (57 percent) and somewhat less than half of pending cases in track 4 (44 percent) are over the time standards. However, as track 1 is composed primarily of low-level drug cases and track 4 is composed of murders, the implications differ for the two tracks. One would be concerned about the high percentage of cases over standard in

**Table 3**  
**Active Pending Caseload: Cases Over Time Standard**

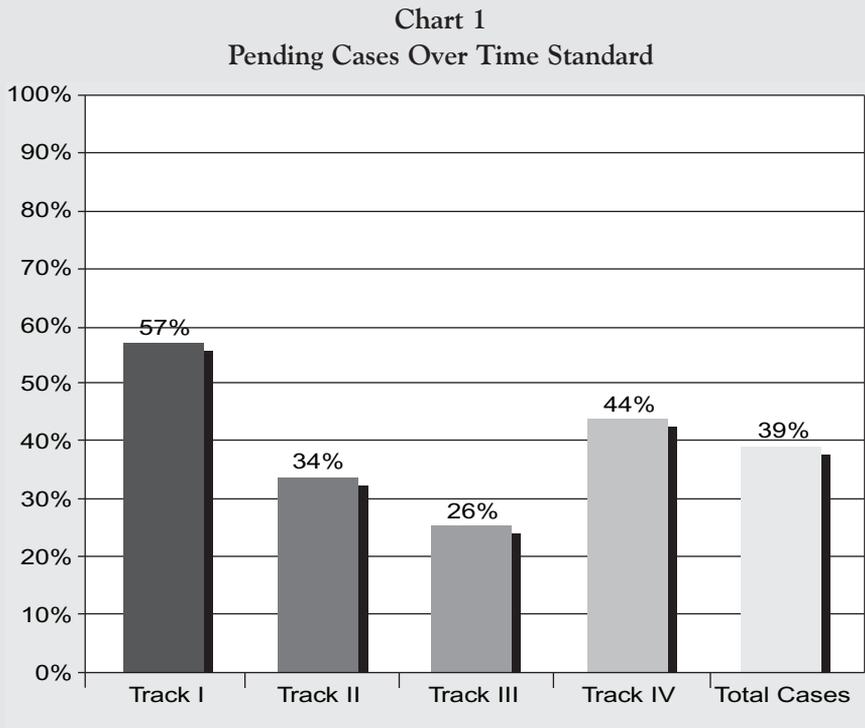
<b>Track</b>	<b>Standard for Each Track</b>	<b>Cases in Each Track</b>	<b>% Active Pending Caseload</b>	<b>Cases Over Time Standard</b>	<b>% Cases Over Time Standard</b>
Track 1	90 days	2,816	28	1,616	57
Track 2	180 days	3,798	38	1,291	34
Track 3	365 days	2,698	27	688	26
Track 4	547 days	736	7	322	44
Totals		10,048	100	3,917	39

track 1 because they account for a fairly large percentage (28 percent) of all active pending cases and are often the least complex cases, which should be disposed of more expeditiously. Although cases in track 4 (i.e., murder cases) account for only 7 percent of the active pending caseload, they raise concern because this track already has a high time standard (one-and-a-half years) and, if the cases continued on this course, they might well become the oldest cases in the system. In comparison, track 2 (Class 1 and 2 felonies) and track 3 (Class X felonies) do much better in the analysis, as considerably fewer of their active pending cases are over time standard (see Chart 1.)

Backlog refers to the percentage of cases that have been pending longer than the court-adopted time standard. In the Circuit Court of Cook County, Criminal Division, backlog incorporates two components: time standards and an exemption of 15 percent of the total cases from the time standards for cases that represent “tolerable delay” for this court. The formula for backlog is the number of cases in each track over the time standard minus tolerable delay.

Backlog in the Criminal Division accounts for almost one out of four (24 percent) of all active pending cases (see Table 4). Again, the percentages of cases that are backlogged differ considerably by track. Low-level felonies (track 1) have the highest percentage of cases considered to be backlogged (42 percent), murders (track 4) have a moderately high percentage of backlogged cases (29 percent), and track 3 and track 2 have the lowest percentage of cases considered backlog (11 percent and 19 percent, respectively) (see Chart 2).

*Time to Disposition.* Finally, 5,578 dispositions, which occurred from October 1, 2006 through December 31, 2006, were examined to determine the median time for cases to move from arraignment to disposition and the age of cases at the upper end of the cohort at the point of disposition (i.e., 90th percentile) (see Table 5). In track 1 and track 4, half the cases were disposed of in somewhat less than the standard, and about half the cases in these two tracks were over their time standard, suggesting considerable delay in these two tracks. The cases in track 2 and track 3 were much better positioned by the time they reached disposition, with half of the cases in

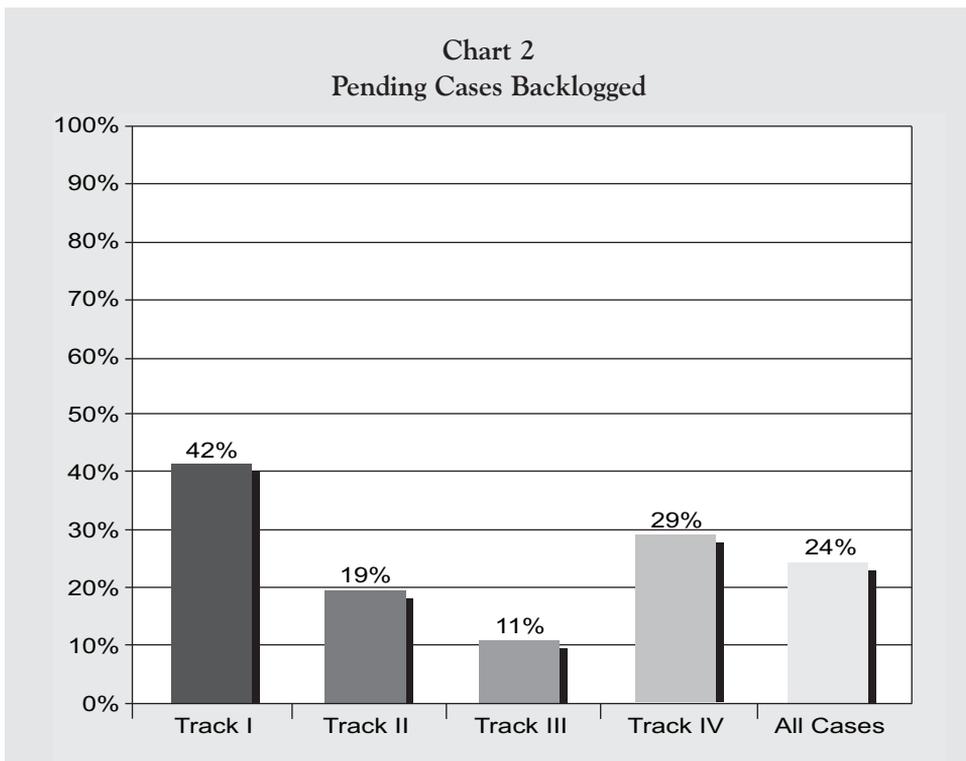


**Table 4**  
**Backlog of Active Pending Cases**

Track	Standard for Each Track	Number of Cases Over Time Standard	Tolerable Delay 15 % of Cases	Backlog (cases over standard minus tolerable delay)	% of Backlog
Track 1	90 days	1,616	422	1,374	42
Track 2	180 days	1,291	570	1097	19
Track 3	365 days	688	405	585	11
Track 4	547 days	322	110	274	29
Track 5	<i>Not reported.</i>				
Totals		3,917	1,508	2,410	24

these two tracks disposed of well under the time standard. In fact, cases at the median and below, in these two tracks, had only reached about half of their allotted time at the point of their disposition.

Examination of cases at the extreme of an active pending caseload can be very revealing. When we look at the upper end of dispositions by age (the top 10 percent



of the oldest dispositions), we see that cases in track 3 and track 4 were about 1.5 times their set standard; track 2 cases were about two times their set standard; and track 1 cases were at a troubling three to four times their set standard. This means that, among the very oldest cases, lower-level felonies (track 1) were significantly beyond their time standard at the point of disposition compared to the others, suggesting serious delay and backlog in the lower-level felony case track.

**Stakeholder Opinion Survey.** We organized the survey findings around the five types of stakeholder opinions from the questionnaire. Subgroups demonstrated considerable variation of opinion throughout the survey, many of the more revealing insights about the data occur when we look at the respondent's role at the courthouse.

**Legal Resources.** Legal stakeholders have a very positive perception of the expertise and skill of attorneys practicing in the courthouse. The great majority (89 percent) express agreement that prosecutors and defense attorneys "demonstrate sufficient expertise and skill to achieve high levels of performance," a finding cited in the literature as one of the key attitudes of attorneys in more-expeditious court systems (Ostrom and Hanson, 1999:83). However, response about the sufficiency of current legal resources in the court was mixed. Although more than two-thirds of legal stakeholders feel that the number of prosecutors was sufficient to handle the felony caseload in a timely and fair manner, only about half felt that way as to the number of judges and public defenders. Over 80 percent of public defenders "disagreed or strong-

**Table 5**  
**Time to Disposition: October 1-December 31, 2006**

<b>Track</b>	<b>Number of Dispositions</b>	<b>Time Standard for 85% of Cases</b>	<b>Median Time to Disposition</b>	<b>90th Percentile of Cases</b>
Type of Felony				
<b>Track 1</b>				
Class 4	1,675	90 days	63 days	302 days
Class 3	567	90 days	89 days	442 days
<b>Track 2</b>				
Class 2	1,317	180 days	86 days	373 days
Class 1	1,083	180 days	69 days	345 days
<b>Track 3</b>				
Class X	866	365 days	168 days	562 days
<b>Track 4</b>				
Class M	70	547 days	522 days	882 days
<b>Track 5 (not included)</b>	0			
Other	5			
<b>Total Dispositions</b>	<b>5,578</b>			

ly disagreed” that there are a sufficient number of public defenders to handle the felony caseload in a timely and fair manner, and they were supported by the more than one-third of judges and private attorneys who concurred as to the need for more public defenders.

*Case Delay.* Did respondents think that “delay in the disposition of felony cases is a problem at the Criminal Courthouse,” with delay defined in the survey as “case processing time beyond that which is needed for a fair resolution of a case”? In striking contrast to the results of the statistical data analysis, which indicated significant delay, less than half of all respondents (45 percent) perceive delay as a problem in the courthouse. However, the perception of delay differs dramatically according to the respondent’s role. Far more judges and state’s attorneys (about 60 percent) believe that delay exists while, only about 30 percent of defense counsel agree that delay is a problem in the Criminal Courts Building, one of the strongest differences of opinion among subgroups in the entire survey. These findings are significant because belief in the existence of delay is one of the basic motivators for establishing a DCM case management system.

Respondents identified four sources of delay as happening most frequently, out of a list of twenty-three possible sources of delay in felony dispositions. By far the number-one source of delay, as perceived by respondents, was the delay of DNA lab reports. The great majority (83 percent) feel that delay is often caused by DNA lab tardiness, and almost half of all respondents report it as happening “very often.” The second- and third-highest sources of delay both relate to the Chicago Police Department. Over three-fourths of respondents (77 percent) feel that problems concerning officer

appearance happen “often to very often,” and almost as many respondents (71 percent) feel that missing or incomplete progress reports or supplemental reports from the Chicago Police Department account for frequent delay. The fourth major source of delay, identified by over two-thirds of respondents (69 percent), is attorneys’ conflicting engagements. It is very interesting to note that, in spite of evidence to the contrary, only about one-third of respondents listed “lack of control by the court of the pretrial movement of cases” and “lack of enforcement of case processing standards” as accounting for delay “often or very often.”

*Differentiated Case Management.* Knowledge of Differentiated Case Management is low among legal stakeholders in the Criminal Division. Less than one in three respondents reported that they were knowledgeable about the subject, and the majority (55 percent) reported that they were not knowledgeable or that they had very little knowledge of the concept. This finding is not surprising since, at the time of the survey, the court was in the early stages of educating stakeholders about DCM. Judges are the most knowledgeable, in that over half (54 percent) are “fairly to highly knowledgeable” about DCM. In contrast, only slightly more than one-third of prosecutors and public defenders are knowledgeable about this subject, and only 7 percent of the private bar indicated being knowledgeable about DCM.

Despite their lack of knowledge, the overwhelming majority of respondents expressed strong agreement with three of the primary DCM principles. Over 90 percent of all respondents “agree to strongly agree” that

- all felony cases are not alike and, therefore, should be subject to different processing events and timetables;
- different expectations should be set for the time from arraignment to disposition, depending on the complexity of the case; and
- attorney schedules should be accommodated to the extent reasonably possible.

This suggests that legal stakeholders in the Criminal Division are highly accepting of three fundamental principles of Differentiated Case Management.

However, agreement concerning two other very important principles of DCM, those related to the locus of case control in the courtroom and the use of continuances, is much lower. Friesen (Friesen, 2005:1) points out that the doctrine that the court, and not the other case participants, should control the progress of cases, adopted by the American Bar Association as official policy, “reverses the defacto view of the American lawyer” that the pace of litigation should be left to the judgment and convenience of lawyers. However, while the majority of survey respondents (67 percent) support the notion that “it is the courts’ responsibility to set and control the pace of litigation,” almost one of every four stakeholders disagrees with this concept. Judges and assistant state’s attorneys express the strongest support for judicial control. Judges are very clear, and almost in unanimous agreement (92 percent), that it is their responsibility to set and control the pace of litigation. Private attorneys are somewhat less

supportive of the idea (66 percent), while their court-appointed counterparts are very unsupportive, with only 33 percent in agreement that the court should control the pace of litigation. This disparity between public defenders and private attorneys is revealing because it indicates that attitudes about the role of the court may vary considerably among members of the defense counsel depending on their status as either court-appointed or private counsel. This difference of opinion is reflected, again, in defense-counsel attitudes toward the standards set down by the court, with private attorneys being much more open to a number of the time standards.

About half of all respondents support the views that the court should a) limit continuances, b) request a specific reason for each one, and c) when granting them, utilize short scheduling. However, about one out of every three respondents disagrees with this viewpoint. Here again, respondents' opinions vary greatly among subgroups. Over three-fourths of judges and prosecutors are in strong agreement concerning restrictions on continuances, while less than one-third of defense counsel agrees.

*Feasibility of Time Standards.* Respondents were asked to what extent they thought the court standards for each track of felony cases were feasible (see Table 2). Although the standards set down by the Criminal Division are fairly moderate compared to national standards, such as those of the Conference of Chief Judges and Conference of State Court Administrators, which set 180 days or less for the disposition of all felony cases and of the American Bar Association which set 365 days or less for the disposition of all felony cases (Bureau of Justice Assistance, 1997:Figure 1), the level of acceptance of the Circuit Court of Cook County's standards among legal stakeholders is very low. Only about one-third of all respondents feel that they are realistic or feasible, and more than half of all legal stakeholders (59 percent) question the feasibility of these standards. The variation of opinion among subgroups was clearly the greatest regarding the 90-day standard for track 1 (low-level felonies). While about half of prosecutors (54 percent) feel that this standard is feasible, only a small minority of the defense counsel (19 percent) feel that this is a feasible standard. In addition, in spite of their support for DCM, only a minority of judges (37 percent) see the 90-day standard as feasible.

It is interesting to note that public defenders and private defense attorneys are in fairly close agreement about the lack of feasibility of the first two standards. However, when the time standards reach one year or more, their attitudes begin to diverge, and the private bar becomes much more open to time limitations. In fact, concerning any standard over one year, among all legal stakeholder groups, private attorneys are the most supportive of time limitations.

*Fairness of Expedited Case Management.* One of the most significant findings of the survey is that legal stakeholders in the criminal courthouse express serious concern about an expedited pace of case management and its potential impact on fairness. The clear majority of legal stakeholders (67 percent) are concerned that a faster pace of case management in the criminal courthouse "might cause injustice." Only a small minority of respondents (22 percent) do not share this concern that expedited case

management might compromise justice. The subgroup data are even more remarkable. Most defense counsel (more than 90 percent of public defenders and 75 percent of private attorneys) express concern about the potential fairness of an expedited pace of case management, whereas slightly less than half the prosecutors (49 percent) express concern. Judges split almost evenly in their opinion about fairness, almost half the judges express concern about an expedited pace of case management while slightly less than half are unconcerned that it might cause injustice.

Finally, in their written comments, a number of public defenders expressed their opposition to what some respondents referred to as “assembly line justice,” arguing in particularly strong terms that the use of “hard and fast rules would be misguided, rigid and arbitrary.” This suggests that respondents are very passionate about the subject. They also emphasized the belief that “each case is unique” and that the length of the time from arraignment to disposition should be determined by the issues of the case, not by time standards. Special cases were identified that might require additional time, such as financial crimes, violent felonies, multiple defendants, mental-health-related cases, and cases where foreign languages and the need for interpreters came into play. We do not know if these comments reflect the opinion of the majority, who chose not to submit written comments. While one must be careful when interpreting such data, the major ideas expressed by those who did include written comments do reflect a similar message, noted by many in their multiple-choice answers, that DCM does not take into consideration the uniqueness of each case, that the standards laid down by the court are unfeasible, and that there is a general worry that an expedited pace of case management in the Criminal Division of the Circuit Court of Cook County might cause injustice.

## CONCLUSIONS

Managing caseload in a large, urban felony court is a significant challenge. Courts, like most other institutions, tend to resist change. Innovation in case management is no exception to this rule. This study reveals a “serious disconnect” between the realities of caseload in the criminal courthouse and the attitudes and opinions of legal stakeholders concerning this reality. The statistical data analysis reveals a mixed picture of caseload. Although the court has been busy in disposing of as many cases as come into the system, there is both delay and backlog in the active pending caseload. If we look at the statistical data analysis in view of Court Performance Standard 2.1, we find that while the Criminal Division has been doing a good job of “keeping current with its incoming caseload,” it has done only a fair job of “establishing and complying with recognized guidelines” (Bureau of Justice Assistance, 1997:11). That is, while the Criminal Division has established clear guidelines, there is only modest acceptance of them and a fairly high level of noncompliance with the time standards.

Based on the study results, it is anticipated that the Circuit Court of Cook County will have considerable work to do with legal stakeholders over the next few years for a Differentiated Case Management system to succeed. On the positive side,

there are a number of elements in place that could assist in the development of a DCM system.

- Legal stakeholders have a high regard for each other's ability and skill level, which will be helpful in trying to build consensus among groups.
- There is considerable support for two of the underlying principles involved in a differential approach to case management: those supporting a track system and those supporting time standards.
- A significant number of Criminal Division judges demonstrate a willingness to change the current method of case management. This is reflected in their perception that delay is a problem, their knowledge about and acceptance of the principles of DCM, and their agreement with the tenet that the court should be in control of the pace of litigation.
- There appears to be a core group of potential "advocates" among the judiciary who accept responsibility to set and control the pace of litigation and believe that an expedited pace of case management does not have to compromise justice.

In spite of these strengths, there are a number of challenges, which must be addressed before DCM can really take hold. First is the need to change the popular opinion among legal stakeholders that the court is operating in a "zero-sum-game" environment and that an expedited pace of litigation might be unfair and might only come at the expense of justice. Equally as important is the need for the court to generate acceptance of the felony time standards among legal stakeholders. While many respondents accept the notion of time standards, there is serious concern among legal stakeholders about the specific, although relatively modest, standards set by the court. That judges are almost evenly divided in their acceptance of the standards makes the acceptance of standards by the majority of stakeholders a significant challenge. It does seem clear from the survey, however, that if judges were to develop a more "unified voice" about the acceptance of time standards for felony cases, they could build enough support among other legal stakeholders to outweigh attorneys' resistance. A third challenge to be addressed is the need to develop balanced legal resources within the courthouse. The question of sufficiency of resources is very difficult, given the current financial status of county government. Indeed, lack of resources may be one of the greatest challenges to implementing DCM over the short term. As of December 2006, both the Office of the Public Defender and the Office of the State's Attorney of Cook County experienced significant reductions in their work force (Herman, 2007:2). In response to these challenges, a court-initiated short-term effort, adding additional resources to solve the delay and backlog problem, could significantly lower caseload size and greatly reduce the pressure placed on resources currently stretched to their limit. However, to accomplish this, the court will need to implement change strategies involving judicial leadership, collegial persuasion, and stakeholder education.

Finally, the research findings have implications for other jurisdictions interested in improving case management. While an empirical data analysis may provide an

excellent foundation for understanding the status of caseload in a court, it is not always enough. Empirical data supplemented with opinion-based data from primary legal stakeholders provides a much broader view of caseload in the court system. In essence, both hard and soft data are critical to the process of understanding caseload. In the end, we are reminded of what was pointed out over thirty years ago about local legal culture, that “a series of related factors such as established expectations, practices and informal rules” ultimately determine the pace of litigation (Church et al., 1978). If we are to be successful in introducing and implementing case management improvement in any jurisdiction, the focus must be on these attitudes, unwritten rules, and practices. In addition to understanding the local legal culture and its impact on case-processing time, we will need three other components—judicial leadership, case-processing time standards, and accurate, timely, and well-presented information (Gallas, 2005-06:27). The critical challenge in any jurisdiction, therefore, is to bring all of these essential elements together in the justice system at the same time. **jsj**

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9. Recently the Criminal Division, Circuit Court of Cook County set time standards for different kinds of felony cases. It is the intent of the court to follow these standards on felony cases that come into the criminal courthouse.

How feasible do you think it is to meet the following standards for at least 90% of felony cases? (Circle one answer for each track.)

**Track I** (Class 3 and 4 felonies)

**Expected time from arraignment to disposition is 90 days or less**

1	2	3	4	5	6
Highly Feasible	Feasible	Neutral	Unfeasible	Highly Unfeasible	No Opinion

**Track II** (Class 1 and 2 felonies)

**Expected time from arraignment to disposition is 180 days or less**

1	2	3	4	5	6
Highly Feasible	Feasible	Neutral	Unfeasible	Highly Unfeasible	No Opinion

**Track III** (Class X felonies)

**Expected time from arraignment to disposition is 365 days or less**

1	2	3	4	5	6
Highly Feasible	Feasible	Neutral	Unfeasible	Highly Unfeasible	No Opinion

**Track IV** (Murder Cases)

**Expected time from arraignment to disposition is 1½ years or less**

1	2	3	4	5	6
Highly Feasible	Feasible	Neutral	Unfeasible	Highly Unfeasible	No Opinion

**Track V** (Complex Cases)

**Expected time from arraignment to disposition is 1½ years or less**

*Complex cases are defined as including capital and multiple-defendant cases.*

1	2	3	4	5	6
Highly Feasible	Feasible	Neutral	Unfeasible	Highly Unfeasible	No Opinion

10. How concerned are you that an expedited pace of case management in the Criminal Courthouse might cause injustice? (Please circle one answer.)

Very Unconcerned				Very Concerned	No Opinion
1	2	3	4	5	6

Thank you for your participation in the survey. If you would like to add any additional comments to this questionnaire, you may do so on the sheet provided with this mailing.