

Differentiated Case Management in Cook County (Chicago), Illinois:
Stakeholder Perceptions and Empirical Data

Institute for Court Management
Court Executive Development Program
2006 – 2007 Phase III Project

April 6, 2007

James Peter Coolsen
Court Administrator
Criminal Division
Circuit Court of Cook County
Chicago, Illinois

ACKNOWLEDGEMENTS

This research project was not a singular effort. There are many individuals who contributed to it. Special thanks should be given to the Honorable Timothy C. Evans, Chief Judge, Circuit Court of Cook County for his generous support of my participation in the Court Executive Development Program (CEDP). Also, of great importance to me personally has been the support of Judge Paul P. Biebel, Jr., Presiding Judge, Criminal Division, Circuit Court of Cook County. In addition to appreciating the importance of this project, Judge Biebel has been both a mentor and a friend who, over the past few years, has taught me a great deal about the justice discipline.

Three individuals who played a central role in helping me develop an understanding of the implications of delay in a Criminal Courthouse are Ernest Friesen, Joseph Trotter and Caroline Cooper of the Justice Programs Office, School of Public Affairs, American University. I am particularly honored by having the opportunity to work with Ernie Friesen, one of the pioneers in the field of case management, and I am indebted to him for assisting our court and for sharing the remarkable depth of his expertise with myself and others who work at the Criminal Courthouse in Chicago.

Also, I express my deep gratitude to Dr. Geoff Gallas, Senior Faculty, Institute for Court Management (ICM), National Center for State Courts, who served as my advisor on this research project, for his consistent enthusiasm, encouragement and support and for the stewardship he generously provided to the Court Executive Development Program Class of 2007.

There are a number of other people at the National Center for State Courts who were particularly helpful to me including Don Cullen, Director of Special Projects, Dale Kasperek, Director of National Programs, Mary Sammon, Senior Court Management Consultant, ICM, Joan Cochet, Library Specialist and Toni Grainer, Education, Specialist as well as other members of the Institute for Court Management faculty.

Rich Petronio, Ph.D., President, Surcon International, provided invaluable assistance with the planning and implementation of the legal stakeholder opinion survey. Michael McGowan, Electronic Information Director, Office of the Chief Judge, Circuit Court of Cook County, Dennis McNamara, Associate Clerk and Karen Landon, MIS Project Manager, Office of the Clerk of the Circuit Court of Cook County, worked diligently in helping us develop high quality statistical data reports upon which much of this research is based.

Lisa Feldman Braude, Ph. D., Director of Policy and Research and Lorena Roque, Research Associate, TASC were very helpful in reviewing the initial legal stakeholder questionnaire. Also, LaTonya Dandridge, Research Assistant, Criminal Division provided invaluable assistance in conducting the case file reviews.

I would like to personally thank Edward Haley for his insight, moral support and encouragement. Finally, my thanks goes to my daughter, Sarah Elizabeth Parker, and other members of my family and friends who were consistently supportive to me while I was working on this project.

TABLE OF CONTENTS

I.	ABSTRACT	1
II.	INTRODUCTION	3
A.	CONTEXT OF THE PROBLEM	3
B.	DESCRIPTION AND SIGNIFICANCE OF THE PROBLEM.....	5
C.	GOAL OF THE RESEARCH: HOW FAR IS IT FROM HERE TO THERE?	6
D.	OUTLINE OF THE REPORT	6
III.	LITERATURE REVIEW	8
A.	HISTORICAL OVERVIEW: SUMMARY OF PAST RESEARCH	8
B.	CONCEPTS, FINDINGS AND METHODS TAKEN FROM THE LITERATURE REVIEW	11
C.	IMPACT OF THE LITERATURE REVIEW ON FOCUS AND METHODS.....	17
D.	MATERIALS FROM OTHER PROJECTS	17
IV.	METHODOLOGY.....	20
A.	LEGAL STAKEHOLDER OPINION SURVEY.....	20
B.	STATISTICAL DATA ANALYSIS OF CASEFLOW INDICATORS	28
C.	CASE FILE REVIEW	32
V.	RESEARCH FINDINGS	35
A.	INTRODUCTION.....	35
B.	STAKEHOLDER OPINION SURVEY	35
C.	STATISTICAL DATA ANALYSIS OF CASEFLOW INDICATORS	51
D.	CASE FILE REVIEW	60
VI.	CONCLUSIONS AND RECOMMENDATIONS	62
VII.	END MATERIALS	73

LIST OF ILLUSTRATIONS

GRAPH #1	Percentage of Pending Cases over Time Standards in the Criminal Division, Circuit Court of Cook County.....	57
GRAPH #2	Percentage of Backlog in the Criminal Division, Circuit Court of Cook County.....	59

LIST OF TABLES

TABLE #1	Survey Return Rates and Margin of Error by Total Population and Subgroup.....	26
TABLE #2	Percentages of Respondents Who Submitted Comments, by Subgroup.....	27
TABLE #3	Most Frequent Causes of Delay as Perceived by Respondents	40
TABLE #4	Time Standards for Felony Cases in the Circuit Court of Cook County, Criminal Division	43
TABLE # 5	Four Month Clearance Rate	51
TABLE #6	Time to Disposition Report.....	53
TABLE #7	Age of Active Pending Caseload Report	55
TABLE #8	Active Pending Cases over Time Standards	56
TABLE #9	Backlog of Active Pending Cases.....	58
TABLE #10	Recommended Time Standards for Felony Cases in the Circuit Court of Cook County, Criminal Division	68
TABLE #11	Recommended Felony Case Time Standards for the Criminal Division Compared To National Standards.....	69

LIST OF APPENDICES

1. Bibliography	74
2. Survey Cover Letter	76
3. Follow-up Letter from Judge Biebel.....	77
4. Questionnaire	78
5. Graphic Survey Reports	
A. Total Population.....	82
B. Comparison by Role in the Courthouse	97
C. Judges Compared to Total Population	119
D. Assistant Public Defenders Compared to Total Population.....	135
E. Assistant State’s Attorneys Compared to Total Population.....	152
F. Private Attorneys Compared to Total Population.....	169
G. Prosecutors Compared to Defense Counsel.....	186
6. Content Analysis of Stakeholder Comment Sheets	201
7. Criminal Case Data Collection Form.....	204
8. Executive Summary, Statistical Data Reporting System, Criminal Division, Circuit Court of Cook County	206

I. ABSTRACT

In September, 2005, the American University, Criminal Courts Technical Assistance Project, in response to overcrowding in the Cook County Jail, issued a report recommending, among other things, that the Criminal Division, Circuit Court of Cook County develop a Differentiated Case Management (DCM) System. The purpose of this research project was to ascertain both the attitudes of legal stakeholders concerning the introduction of a DCM approach and to understand the realities of the current caseload process at the felony courthouse in Chicago.

It is important to point out that this project and the introduction of a new Differentiated Case Management system were implemented during a time of immense financial pressure on the county and within an atmosphere anticipating a very significant reduction in resources.

The project methodology incorporated three elements; (1) a legal stakeholder opinion survey, (2) a statistical data analysis and (3) a case file review. The three methods were thought to provide a balance between hard factual data about the current caseload and opinion-based data about the introduction of a new case management system in the Criminal Court system.

In late 2006, an opinion survey was developed and administered to 557 legal stakeholders (judges and attorneys) who practice at the Criminal Courthouse. At the same time, a statistical data analysis was conducted of the key indicators of caseload process in the court. This method utilized three performance measures including an analysis of data on Clearance Rates, Time to Disposition and Age of Active Pending Caseload. In addition, a case file review was conducted of a sample of cases which had reached disposition in October 2006 and November 2006.

The project results indicate that the Criminal Division, Circuit Court of Cook County will have to do considerable work with legal stakeholders in the courthouse in order for a Differentiated Case Management system to succeed.

The survey findings present a very mixed picture of stakeholder attitudes about a number of pivotal issues related to DCM success including; the lack of acknowledgement of the existence of delay, mixed attitudes about DCM strategies aimed at reducing delay, a fairly low level of acceptance among legal stakeholders of the time standards set down for felony cases in the Criminal Courthouse and a general concern by most legal stakeholders that an expedited pace of case management might cause injustice.

The statistical data analysis indicates that, while the court has had a positive clearance rate over a four month period, a significant number of cases show high time-to-disposition rates and it is apparent that considerable backlog exists in the active pending case inventory.

Based on this research, the project recommends that the court take a number of steps that would address the above issues including; simpler and more flexible time standards, which would begin a multiple year effort to implement tighter standards in the future, education of legal stakeholders to build understanding and support for the time standards, development of short-term strategies which could be used to reduce the backlog of active pending cases and a court-led, strategic planning session, with key representatives of the agencies involved in the Criminal Courthouse, to develop cooperative strategies to address the realities of the current fiscal crisis and determine the best use of judicial and legal resources in this environment.

II. INTRODUCTION

If management is about dealing with complexity, then caseload management in a large, urban felony court presents a unique set of challenges. While the principles of good caseload 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 the intense scrutiny of the media 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, felony courts to develop a tight, efficient and, most importantly, fair caseload process than the present. As the following literature review shows, our understanding of the subjects of caseload management, the development of standards, and the measurement of caseload process has 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 caseload processes, practices and performance.

A. Context of the Problem

This project focuses on addressing the challenges of a large, urban felony court, in building a fair, efficient and manageable caseload process through the introduction of a Differentiated Case Management system. The task began two years ago when the Circuit Court of Cook County and the Cook County Criminal Justice Coordinating Council, invited the Criminal Courts Technical

Assistance Project, a U.S. Department of Justice/Bureau of Justice Assistance-sponsored program housed at American University in Washington, D.C., to conduct a review of the felony case adjudication process in Cook County, Illinois.

“The objective of the review was to determine if the criminal case process was itself contributing to jail population pressures that the Board of Commissioners was under legal obligation to bring under control and into compliance with the terms of a Consent Decree in a long-standing case in the U.S. District Court for the Northern District of Illinois, known as the *Duran* case, alleging un-constitutional conditions of confinement in the Cook County Jail.”¹

In September, 2005, the American University, Criminal Courts Technical Assistance Project issued a report outlining six major recommendations to the Circuit Court of Cook County, the first of which was “to initiate a Circuit Court-led interagency process to develop and adopt appropriate time goals and events for disposition of various categories of cases – i.e., a Differentiated Case Management (DCM) System.”²

This research project is aimed at developing insight, along with a baseline of information, which will assist the Criminal Division in its efforts to successfully implement a Differentiated Case Management system.

Cook County, Illinois

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 Forrest Preserve District and one of the largest Circuit Courts in the country whose Criminal Division services a city with a population of about 2.2 million residents.

¹ Charles D. Edelstein et al., *Review of the Cook County Felony Case Process and Its Impact on the Jail Population* (Washington, D.C.: American University, September, 2005), 1.

² *Ibid.*, 43.

Cook County currently faces what is, perhaps, the greatest fiscal crisis in the history of the county. It needs to reduce a deficit of ½ billion dollars on a 3 billion dollar budget for fiscal year 2007. In December, 2006, all county operations, including the Circuit Court of Cook County, were asked to cut their budgets by seventeen percent.³ It is significant to point out that this 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. These cuts have been particularly hard on the criminal justice system.

Circuit Court of Cook County

The Circuit Court of Cook County is the largest unified trial court system in the country. It has over 400 judges organized into three major departments including the County Department, Municipal Department and the Juvenile Justice and Child Protection Department.

The Criminal Division of the County Department has a total of 40 full-time judges, 35 of whom are located in the Criminal Courts Building of the Circuit Court and account for about 26,000 felony filings a year, making it one of the busiest felony trial courts in the country. The Criminal Courts Building, an art deco building constructed in 1929 to hold 15 felony trial courtrooms, was expanded during the 1970's to accommodate a total of 31 trial and one grand jury courtroom.

B. Description and Significance of the Problem

The Criminal Courts 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 averaged a daily population

³ Todd H. Stroeger, "The 17 Percent Solution," *Chicago Tribune*, 15 January 2007, 33.

of between about 8,500 inmates to 10,500 inmates, almost all awaiting trial.⁴ The pressure on the county to manage a population of this size has been considerable and, through the Cook County Criminal Justice Coordinating Council of the Cook County Judicial Advisory Council, the County has sought more effective ways to reduce the jail population. The successful implementation of a systematic case management system, like Differentiated Case Management, would be a valuable asset in addressing overcrowding at the Cook County Department of Corrections and in managing the thousands of felony cases which come into the system each year.

C. Goal of the Research: How far is it from here to there?

The fundamental purpose of this project is to develop a baseline understanding of the caseflow process of the Criminal Division of the Circuit Court of Cook County, determine how far the court has to go to develop a high functioning, high quality and highly expeditious caseflow process and identify strategies that may be helpful in getting the Division from where it is to where it wants to be in terms of its case management system.

D. Outline of the Report

This report begins with a review of the literature on caseflow process in the court system, addresses the implications of the literature for this research project, lays out a three-part methodology used in the research design (i.e. a legal stakeholder opinion survey, a statistical data analysis and a case file review) and presents and summarizes the findings from each of the three methods.

⁴ “Population and Capacity Summary of the Cook County Department of Corrections,” *Monthly Update* (Chicago: John Howard Association, January 2005-December 2006).

The last part of the report integrates the findings and develops strategic conclusions and recommendations for action on the part of the Criminal Division, Circuit Court of Cook County. Finally, the report incorporates in the appendix detailed graphic reports of the data from the legal stakeholder opinion survey, as well as other supportive material.

III. LITERATURE REVIEW

“Despite the constant exhortation in Law Day speeches that justice delayed is justice denied, practitioners persist in the contrary belief that court delay is not bad, that, in some mysterious way court delay works for the betterment of mankind. As is often the case, the burden is placed on the advocates of change to demonstrate that there is something wrong with the status quo.”

*Ernest C. Friesen*⁵

A. Historical Overview: Summary of Past Research

There is a rich body of knowledge developed over the past 100 years concerning the caseflow process in our court system. As we review the literature, there seem to be three distinct generations of inquiry into the subject, each one bringing the scholarly discussion to a higher level of understanding.

First Generation: Foundations of Caseflow Management (1900–1975)

The foundation principles of caseflow process were set in 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 in his historical address, that “too much of the current dissatisfaction has a just origin in our judicial organization and procedure”.⁶

Over the next seventy years, the “conventional wisdom” about court delay and caseflow was developed primarily with an emphasis on addressing resource and structural issues in the court (e.g. caseload per judge, court size, proportion of cases requiring a jury etc.) as a way of dealing with court delay.

⁵ Ernest Friesen, “Effect of Delay on Courts,” *Case Management Seminar* (Charleston, S.C.: The National Judicial College, 12-17 November, 2005), 1.

⁶ Roscoe Pound, “The Causes of Popular Dissatisfaction with the Administration of Justice,” (Chicago: American Bar Association, Reprint from 29 ABA Reports, 1906), 395.

Second Generation: Re-assessment of Conventional Wisdom (1975-89)

The second generation of research on court delay and caseload management moved the research to a higher level of understanding, the result being a re-assessment of the “conventional wisdom” of the time. This began with the completion of the groundbreaking work by Maureen Solomon, *Caseflow Management in the Trial Court*,⁷ and the publication of *Standards Relating to Trial Courts* commissioned by the American Bar Association in 1975.⁸

During the fifteen years that followed, there was a vigorous re-assessment of the conventional wisdom about caseload management starting with the landmark study by Thomas Church, *Justice Delayed: the Pace of Litigation in Urban Trial Courts*, conducted in 1978⁹ and ending with another large scale, urban court study, *Examining Court Delay: the Pace of Litigation in 26 Urban Trial Courts*, conducted in 1989.¹⁰ The central concept set down in the Church study, stated that, in spite of prior belief, “Few formal elements of court structure or procedure were found to be linked to disposition time”.¹¹ Instead of structural elements such as size of the court, caseload of judges or pre-trial procedures, the study identified the informal system of relationships among judges, defense attorneys, and prosecutors as being very significant in reducing case delay, suggesting that issues around organizational culture may be as important in criminal case delay as structural issues of the court.¹² (One exception to this was the issue of caseload composition which was found to be associated with case processing time).

⁷ Maureen Solomon, *Caseflow Management in the Trial Court* (Chicago: American Bar Association Press, 1973).

⁸ Commission on Standards of Judicial Administration, *Standards Relating to Trial Courts* (Chicago: American Bar Association Press, 1975).

⁹ Thomas Church, Jr. et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg, VA: National Center for State Courts, 1978).

¹⁰ John Goerdt, Geoff Gallas and Barry Mahoney, *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts* (Williamsburg, VA: National Center for State Courts, 1989).

¹¹ See Note 9 *supra*, 58.

¹² *Ibid.*, 54.

In their 1989 study of 26 large, urban trial courts, Goerdt, et al. echoed the Church study 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, the researchers found that “a firm trial date policy was the best predictor of faster case processing times”. What they called “early and continuous control” by judges, including early resolution of pre-trial motions and a high percentage of jury trial cases starting on the first scheduled trial date, were seen as the critical elements in the pace of litigation.¹³

Third Generation: Large Scale Empirical Studies (1990–2005)

There was a heightened level of research activity on court delay and caseflow process starting in the early 1990’s. This inquiry was earmarked by large scale empirical studies incorporating meta-analysis of cross jurisdictional data and built on two primary research projects, *Courts That Succeed*¹⁴ and *Reexamining the Pace of Litigation in 39 Urban Trial Courts*.¹⁵

In the later study, the most broadly based analysis of the pace of litigation to date, the findings suggested that larger pending caseload per judge was one of the strongest correlates of longer felony case processing times. *Early resolution of pre-trial motions* and *firm trial dates* were other 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.¹⁶

¹³ See Note 10 *supra*, 101.

¹⁴ William E. Hewitt, Geoff Gallas and Barry Mahoney, *Courts That Succeed: Six Profiles of Successful Courts* (Williamsburg, Virginia, National Center for State Courts, 1990).

¹⁵ John A. Goerdt, Chris Lomvardias and Geoff Gallas, *Reexamining The Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, Virginia, National Center for State Courts, 1991).

¹⁶ *Ibid*, 1.

In spite of the major studies which were conducted during the early 1990's, it seems that the pace of research has slowed somewhat over the past 10 years, with much of the attention of the research community being paid to applied research such as the use of CourTools, performance standards measures developed by the National Center for State Courts.

B. Concepts, Findings and Methods Taken from the Literature Review

There are four concepts of particular importance to this research project which are specifically addressed in the literature. These include: (1) the recognition of the role which attorney and judicial attitudes play in the court process, (2) the notion of the court system as a unique organization with its own culture, (3) the development of standards and the measurement of court processes and (4) the concept of case differentiation as a means of reducing delay in the courts.

Stakeholder Attitudes in Reducing Court Delay

As was pointed out earlier, one of the major findings of the research by Thomas Church concerned the importance of stakeholder attitudes in reducing court delay. In a more recent study, Ostrom and Hanson build on the earlier work concerning attorney attitudes. They suggest that the views of attorneys towards a number of issues are of particular importance to the pace of litigation. These issues include attorney attitudes towards: (1) the adequacy of legal resources in the court, (2) leadership and management in the court and (3) the performance level of their peers.¹⁷

¹⁷ Brian J. Ostrom and Roger A. Hanson, *Efficiency, Timeliness and Quality: A New Perspective from Nine State Criminal Trial Courts* (Williamsburg, VA, National Center for State Courts, 1999), xvii.

Their test hypothesis, reflecting the earlier Church study, is 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 the less expeditious court systems.”¹⁸

The Impact of Culture in the Court System

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. Although the field of organizational development emerged well over 70 years ago, serious attention to the organizational development view of courts emerged only in the past 30 years with the work of Thomas Church in *Justice Delayed: the Pace of Litigation in Urban Trial Courts*. Church referred to a series of related factors such as established expectations, practices and informal rules of behavior of judges, as determining the speed of case disposition. “For want of a better term, we have called this cluster of related factors the local legal culture”.¹⁹

“Local legal culture” is a concept primarily about an internal culture which exists within the court system itself. Around the same time as the Church study, Ernest Friesen identified much broader cultural factors impacting court delay which he called the “socio-legal-political culture”. He 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”.²⁰ This broadened the notion of

¹⁸ Ibid., 78.

¹⁹ See Note 9 *supra*, 54.

²⁰ Ernest Friesen, et al., *Justice in Felony Courts: A Prescription to Control Delay* (Los Angeles, California: Whittier College School of Law, 1979), 35.

organizational culture beyond the court to the external system within which the court functions.

Eisenstein, Fleming and Nardulli used the term “county legal culture”, again expanding the scope of influence beyond the court to legal stakeholders throughout the county.²¹ The discussion around court culture was brought into renewed focus by the work of Brian Ostrom and Roger Hanson and their recent development of a fairly elaborate *Court Culture Assessment Instrument*.²²

In an article responding to Ostrom and Hanson, Gallas brings the concept of court culture back into perspective arguing for a more balanced view of the concept. He cautions against the “premature acceptance and promotion of the new court culture concept as an explanatory variable” for case processing time, as opposed to the more concrete and measurable variables of judicial leadership, case processing time standards and accurate, timely and well-presented information.²³

Standards Development and the Measurement of Court Processes

About thirty years ago, driven by issues of delay and increasing cost, the field of court administration began to develop formal standards. In 1975, the American Bar Association, Commission on Standards of Judicial Administration, developed Standards Relating to Trial courts.²⁴ A few years later, the National Conference of State Trial Court Judges and the

²¹ James Eisenstein, Roy Fleming and Peter Nardulli, *The Contours of Justice: Communities and Their Courts* (Boston: Little and Brown, 1988), 27.

²² Brian Ostrom, et al., *Court Cultures and Their Consequences* (Court Manager, Vol 20, No 1, Spring, 2005), 4-25.

²³ Geoff Gallas, *Local Legal Culture, More Than Court Culture* (Court Manager, Vol. 20. No.4, Winter 2005-2006), 24.

²⁴ Commission on Standards of Judicial Administration (Chicago: American Bar Association, 1975).

American Bar Association jointly developed Standards Relating to Court Delay Reduction.²⁵

In spite of the development of formal trial court standards in the early 1970's, it was not until the late 1980's when the profession systematically addressed issues regarding *the measurement* of performance standards. In 1987 The National Center for State Courts and the Bureau of Justice Assistance initiated the Trial Court Performance Standards Project and, over the following ten years, the project developed and field tested a measurement system which would serve as a self-assessment and self-improvement resource for state trial courts.

In 1997 the Bureau of Justice Assistance released its' Trial Court Performance Standards and Measurement System which presented 22 performance standards for general jurisdiction trial courts. The standards are grouped into 5 areas of performance including: (1) Access to Justice; (2) Expedition and Timeliness; (3) Equality, Fairness and Integrity; (4) Independence and Accountability; and (5) Public Trust and Confidence.²⁶

Expedition and Timeliness (Standard 2.1)

The area of Expedition and Timeliness incorporates three performance standards, of which Standard 2.1, relating to Case Processing, is of particular relevance to this research project.

Standard 2.1 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.”²⁷

²⁵ Maureen Solomon and Douglas Somerlot, *Caseflow Management in the Trial Court Now and for the Future* (Chicago: American Bar Association, 1987) p. viii.

²⁶ *Trial Court Performance Standards with Commentary* (Bureau of Justice Assistance, Washington, D.C., 1997), 4.

²⁷ *Ibid.*, 11.

This performance standard will be applied in the statistical data analysis component of this research project.

Expedition of the Caseflow Process: Are Fair and Efficient Compatible?

One of the most critical issues to emerge in addressing the concept of trial court performance standards is the issue of the relationship between efficiency and fairness in setting standards for courts. Some view a structured system of caseflow management, aimed at reducing delay, as merely being about time management or efficiency.

In a recent comprehensive study of nine state criminal trial court systems, Ostrom and Hanson examine the relationship between timeliness and quality and refute “the traditional notion that the two values are in conflict so that a gain in one comes only at a loss in the other”.²⁸

“Timeliness and the quality of justice are not mutually exclusive either in theory or in fact. Expeditious criminal case resolution is found to be associated with court systems in which the conditions also promote effective advocacy...the evidence from this study suggest that well-performing courts should be expected to excel in terms of both timeliness and quality”.²⁹

Differentiated Case Management

If trial courts act in a purely intuitive manner by treating all cases that come into the court in the same way, some cases will be hurried and others unnecessarily delayed. Differentiation of cases is one way of dealing with this problem. The differentiation of cases is a technique courts use to tailor the case management process and the allocation of judicial system resources to the needs of individual cases, thereby avoiding delay in the system.

²⁸ See Note 17 *supra*, xiii.

²⁹ *Ibid.*, xiii.

In 1987, the Bureau of Justice Assistance (BJA) launched a demonstration program to pilot test the application of what it called Differentiated Case Management (DCM), now widely used by jurisdictions across the country. The basic premise of a Differentiated Case Management system is that cases vary in the amount of time necessary to prepare them for a fair and just decision. In broad categories different types of cases may, in the ordinary course of events, require special handling and organization.³⁰

The basic concepts of Differentiated Case Management include:

1. Establishment of Case Processing Tracks with early screening and case assignment.
2. Development of Appropriate Timeframes and events within each track.
3. Early Judicial Control incorporating time limits for major events, regular monitoring, reporting on excess and consequence for failure to meet time limits.
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. Often this may be a matter of a day or a few days to a few weeks.
6. Reasonable Accommodation of the Parties meaning that cases are scheduled with input from all of the parties involved.

³⁰ *Differentiated Case Management Implementation Manual*, (Washington, D.C.: Bureau of Justice Assistance June, 1993), 1.

7. A Clear Expectation within the court that events will occur when scheduled.³¹

C. Impact of the Literature Review on Focus and Methods

A main theme in the literature review, which helped shape the focus of this inquiry, is the importance of examining both hard data (i.e. statistical data analysis) and soft data (i.e. attitudes and opinions of attorneys and judges) when understanding issues around delay and caseflow process.

As such, the methodology of this project was influenced by the opinion survey work of Ostrom and Hanson,³² by the performance measurement tools developed by the National Center for State Courts³³ and by the case file review work of Barry Mahoney, in particular the Criminal Case Data Collection Form in *How to Conduct a Caseflow Management Review*.³⁴

D. Materials from Other Projects

Performance Standards Measurement: CourTools

The National Center for State Courts has developed a composite of ten performance measures, called CourTools, and made them available to jurisdictions across the country. These performance measures give trial courts the fundamental tools they need in order to measure success.

³¹ Ernest C. Friesen, *A Programmed Approach to Controlling Court Delay* (Silverthorne, Colorado, photocopy, 2006), Chapter II.

³² See Note 17 *supra.*, xvii.

³³ *CourTools* (Williamsburg, VA, National Center for State Courts, 2005) 1.

³⁴ Barry Mahoney, *How to Conduct a Caseflow Management Review: A Guide for Practitioners* (Williamsburg, VA: National Center for State Courts, 1994) 28.

The CourTools relate directly to the five major areas of the Trial Court Performance Standards and will be used in the project methodology and described in more detail in the methodology and findings sections of this report.

Statistical Data Reporting System, Criminal Division, Circuit Court of Cook County

For two years, beginning in January, 2005, the Criminal Division and the Clerk of the Circuit Court worked together to develop a set of statistical data reports which would serve as a caseload management tool and as a data baseline for a DCM system. This work included the development of consistent definitions, identification of key data, construction of reporting formats and tailoring the data reporting system to accommodate a Differentiated Case Management track system.

The outcome of this work is a reporting system (consisting of ten monthly and quarterly data reports) intended to help guide the Presiding Judge, Supervising Judges and other criminal court judges through the complexities of caseload management. This set of reports constitutes the foundation upon which this research project was able to gather the data used in its' methodology. (See appendix #8).

Opinion Surveys: Surcon International

Surcon International is a Chicago-based survey research company which provides opinion surveys for major corporations, non-profit organizations and governmental entities. It has developed a proprietary, customized data analysis software program and reporting format for opinion surveys.

This research project utilized the Surcon, International analytical software and survey format in the legal stakeholders' survey data analysis and in the development of the graphic reports in the appendix at the end of this report.

IV. METHODOLOGY

This project incorporates a three-part research design including; (1) an opinion survey, (2) a statistical data analysis and (3) a case file review. All three methods were informed by the literature review and incorporate concepts, design elements and instruments derived from earlier research studies on caseload management. The main reason for choosing a multiple methodology research design is that the methods selected provide a balance between hard factual data about current caseload and opinion-based data from the legal stakeholders in the court system and that both are important in understanding the jurisdictional foundation of a new case management system.

A. 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”³⁵ For this reason, the project survey was directed at those same key stakeholder groups in the Criminal Courthouse all of which play a major role in the caseload process.

The legal stakeholder survey assessed the attitudes of respondents towards a number of key concepts that have been shown to be of importance to the success of a differentiated case management system in a felony court. The survey was sent to judges, prosecutors and defense attorneys who practice regularly at the felony courthouse in Chicago, Illinois. Defense attorneys included both public defenders (who handle more than 75% of all felony cases at the court) and those members of the private bar who “practice regularly” at the courthouse.

³⁵ See Note 17 *supra*, 50.

Survey Respondents (N=557)

The population of respondents surveyed included a census of judges assigned to the Criminal Courthouse (N=33), a census of assistant state's attorneys assigned to the Criminal Courthouse (N=182), a census of assistant public defenders assigned to the courthouse (N=148) and a sampling of members of the private bar who practice regularly at the courthouse (N=194) for a total of 557 respondents.

The total numbers of assistant state's attorneys, public defenders and judges were small enough to conduct a census of each subgroup. Almost all of these respondents are assigned full time to the felony courthouse in the City of Chicago. The exceptions are the prosecutors and public defenders that belong to special teams (e.g. multiple defendant teams, murder task force etc.) and who practice in a number of courthouses in the greater Chicago area, but whose caseload came primarily from the Criminal Courts Building in the city.

All assistant state's attorneys and assistant public defenders and their immediate supervisors were included in the survey. Administrators above the direct supervisory level were not included, as their presence in the felony courtrooms is limited. All 35 judges assigned to the Criminal Courthouse were included in the survey with the exception of one judge who was on medical leave and not available at the time. These judges hear only felony cases and handle an average of between 750 and 800 dispositions a year.

The Private Bar

The selection of members of the private bar to be included in the survey presented a unique challenge to the project. There are thousands of attorneys practicing in the City of Chicago (e.g. the Chicago Bar Association alone has twenty-two thousand members) and as a group they range from having little or no contact at the felony courthouse to those who handle felony cases on an almost exclusive basis. In essence, no one really knows what the exact population is of private attorneys who handle cases at the felony courthouse in Chicago at any one time.

Earlier surveys at this courthouse which included members of the private bar did so by building a list of regular practitioners from key informants or used lists of committees of the various private bars which addressed issues related to criminal justice.³⁶ This project sought to identify and survey those members of the private bar who have the greatest presence in the Criminal Courts Building and, therefore, it was assumed, whose opinions about caseflow and the pace of litigation have the greatest influence on practice at the courthouse. The project accomplished this by requesting the Clerk of the Circuit Court to print out a list of all members of the private bar who appeared at the felony courthouse between January, 2004 and October, 2006, along with the number of appearances which they had during this timeframe. (Whenever an attorney appears at the Criminal Courthouse, he/she must submit his/her attorney license number, making it feasible to identify the private attorneys who have appeared over any given period).

The total number of private attorneys who appeared from January, 2004 through October, 2006 amounted to 2035 attorneys. The project surveyed a sample of private attorneys who practice regularly at the Criminal Courthouse, i.e., those who made 25 or more appearances at the

³⁶ Julia Donna, *Letter* (Chicago: Chicago Appleseed Fund for Justice, 2 November 2006).

Criminal Courts Building during this twenty-two month period. This sample of “regulars” amounted to 194 private attorneys or almost 10% of all private attorneys who appeared at the courthouse between January, 2004 and October, 2006.

Format and Distribution of the Survey

The project considered mail, on-line and telephone survey formats. A mailed questionnaire was thought to be the most effective format because experience tells us that respondents in the Criminal Courthouse vary greatly in their comfort with online surveys and because telephone surveys would be both time consuming and expensive. The questionnaires given to judges, assistant state’s attorneys and assistant public defenders were distributed by internal mail within the courthouse or were given to unit supervisors in the building for distribution to individual respondents. The questionnaires for private attorneys were sent by US Postal Service to the office of each attorney. All respondents received a stamped, self-addressed return envelope with the survey, along with an optional comments sheet which allowed them to add additional comments to the multiple choice questionnaire.

The Legal Stakeholder Questionnaire

A 10 question (37 item), multiple choice questionnaire was developed, pre-tested and administered to 557 legal stakeholders who practice at the Criminal Courthouse (See appendix # 4). Included in the pre-test were a criminal division judge recently transferred to another assignment, a private attorney and an administrator from the Public Defender’s office. Because

of time constraints, we were not able to include anyone from the office of the State’s Attorney in the pre-test.

The purpose of the legal stakeholder survey is to determine respondent opinions about issues of importance to the pace of litigation in criminal courts. In essence, *the survey was meant to act as a barometer* and, as such, 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, can be broken down into five major areas; (1) questions about human resources within the court (i.e. attorney competence and sufficiency of legal resources), (2) questions about the extent and causes of delay in the Criminal Courthouse, (3) questions which reflect the respondents’ level of understanding and agreement with the concepts of Differentiated Case Management, (4) questions about the respondent’s acceptance of specific time standards which the Circuit Court of Cook County, Criminal Division recently set for felony cases and (5) questions about the fairness of an expedited pace of case processing. (See appendix #4)

Logic of the Questionnaire

The ten survey questions were based on a number of prior assumptions:

- The Criminal Division, Circuit Court of Cook County, while perceived as having “one of the hardest working benches in the country“, is currently experiencing significant delay.³⁷

³⁷ See Note 1 *supra*, 32.

- Reasonable time standards are an integral part of a highly functioning felony court.
- Judicial and attorney support for the standards set down by the Criminal Division is essential to the success of a Differentiated Case Management program.
- A faster pace of litigation, using standards and strategies set down by the court, does not have to compromise justice. On the contrary, it has the potential to enhance justice.

Survey Implementation Strategies

A number of survey implementation strategies were developed to encourage respondents to be candid and to develop a good response rate. These included the decision to make the survey anonymous, the distribution of the survey with a *personalized cover letter* signed by the Presiding Judge of the Criminal Division, provision of a self-addressed, stamped envelope to an off-site data processor and sending out a personalized follow-up letter, two weeks after the questionnaire was distributed, also signed by the Presiding Judge of the Criminal Division.

Administration of the Survey: Returns, Response Rate and Margin of Error

The survey was administered over a four week period from December 1, 2006 through December 29, 2006. Two weeks through the survey administration, 185 questionnaires had been returned. The follow-up letter from the Presiding Judge helped produce additional returns and when the survey was closed on December 29, 2006, 274 surveys had been returned giving an *overall response rate for the survey of 49% with a margin of error of +/- 2%.*

The returns, survey response rate and margin of error for all respondents and for each subgroup of stakeholders are presented below in Table #1.

**TABLE #1 SURVEY RETURN RATES AND MARGIN OF ERROR BY
TOTAL POPULATION AND SUBGROUPS**

GROUP	POPULATION	RETURNS	RESPONSE RATE	MARGIN OF ERROR
All Respondents	N=557	274	49%	+/- 2%
Judges	N=33	27	82%	+/- 3%
Private Attorneys	N=194	96	49%	+/- 4%
Prosecutors	N=182	93	51%	+/- 4%
Public Defenders	N=148	53	36%	+/- 7.5%

It is important to note that, with the exception of public defenders, all of the subgroups have a fairly low margin of error (3% - 4%) which allows us to breakout their data from the aggregate data and make reasonable predictions to the entire subgroup. However, the survey return rate for Public Defenders (36%) is lower and the margin of error on their data is fairly high (+/- 7.5 %). Although this limits our ability to predict to the total population of Public Defenders, the survey data still provides insight into the overall direction of the opinions of Public Defenders in the Criminal Courthouse.

Additional Comments Sheet

There was one open-ended question on the questionnaire inviting respondents to make additional comments. There were 116 respondents, 42% of all stakeholders who sent in a questionnaire, who filled out additional comment sheets. Most of the comments were hand written, but a few respondents chose to type their comments on one or two extra pages. The percentage of each stakeholder group who chose to write additional comments, summarized below in table #2, was very uneven among the survey groups. Defense Counsel was over-represented in the written

comments. Assistant public defenders and private attorneys had the highest rate of returned comments and assistant state’s attorneys and judges had the lowest rate of comment.

**TABLE #2 PERCENTAGE OF RESPONDENTS WHO SUBMITTED COMMENT SHEETS BY
SUBGROUP**

ROLE IN THE COURT	WRITTEN COMMENTS
Assistant Public Defenders	59% of their returns
Private Attorneys	50% of their returns
Assistant State’s Attorneys	30% of their returns
Judges	15% of their returns

Analysis of Comments by Survey Respondents

A content analysis of the comments received from respondents was conducted and broken down into major themes. This analysis is summarized in the Findings section of this report. (See appendix #6 for a full description.)

Problems with Methodology

One problem emerged during the administration of the survey. Due to an error in transposing the questionnaire to a final format, one word was misspelled. The word “arraignment” was misspelled as “arrangement” on question #9. This was not caught in the proof reading process and the final survey was sent out with this error on it.

The word “arraignment” is spelled correctly in all other parts of the survey, including the question just prior to question #9. Our assumption is that virtually all of the respondents either did not notice this error or, if they did notice it, fully understood the meaning of the word in its context.

B. Statistical Data Analysis of Caseflow Indicators

“The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload”.

Standard 2.1, Trial Court Performance Standards³⁸

The second method used in the research project is the statistical data analysis of key indicators of caseflow process. This method utilizes the CourTools trial court performance standards measures developed by the National Center for State Courts. The project applied multiple performance measures including CourTools #2 (Clearance Rates), #3 (Time to Disposition) and #4 (Age of Active Pending Caseload). These three indicators used together provide a broad picture of the status of the caseflow process in the Criminal Division.

Clearance Rate (CourTool #2)

Computing a clearance rate requires a count of incoming cases and outgoing cases during the reporting period. A clearance rate is the number of outgoing cases as a percentage of the number of incoming cases. In essence, it asks the question “does the court dispose of as many or more cases than come into the system?”

The formula for determining clearance rate is the division of the number of outgoing cases (i.e. dispositions) by the number of incoming cases. Incoming cases are defined as new filings, reopened and reactivated cases, while outgoing cases include entry of judgment, reopened dispositions and cases placed on inactive status. The goal for the court is to achieve a clearance rate of 100% or higher (i.e. 1.0 or better) which would indicate a positive caseflow.

³⁸ See Note 26 *supra*, 11.

Time to Disposition (CourTool #3)

This measure is defined as the percentage of cases disposed or otherwise resolved within established timeframes. In essence, it looks at *the average time it takes for the court to process cases*. In this research project the median is used as a measure of the average. The median is determined by arranging the number of days from arraignment to disposition for each case, from lowest to highest, and selecting the value that falls into the middle of the array.

For purposes of this project, we will define Time to Disposition as the average number of days it takes for cases to move *from arraignment to disposition*. (In the Criminal Division, the court takes jurisdiction of felony cases at the point of assignment and arraignment which usually takes place on the same day.) This computation takes into account periods of inactivity beyond the courts control such as warrants issued prior to the trial or disposition, appellate remands and cases involving a commitment to a mental health facility prior to a trial or disposition

The Time to Disposition analysis in this report utilizes a quarterly data report recently developed by the Criminal Division (See appendix #8). It should be noted that, at the time of this research project, we were not able to segregate the data from track #5, (i.e. complex cases) from the aggregate data. As a result, complex cases are absorbed within the other four tracks.

In addition to the median, the data report used in this study can determine the age of the cases at the upper end (i.e. the 90th percentile) at the time of disposition. These two indicators give us an understanding of how well the court has done against its own standards and can be used to compare the court's performance with state or national guidelines for timely case processing.

Age of Active Pending Caseload (CourTool #4)

The Age of Active Pending Caseload is defined as *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 groupings. 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 which have been developed. It is an important measure because it helps the court determine the extent of backlog, if any, which exists in the pending case system. Backlog here is defined as “cases that have been pending longer than the time that the court has adopted as its standard”.³⁹

It is important to point out that the standards for felony cases developed by the Circuit Court of Cook County, Criminal Division, have two elements including a time standard *and an exemption* of a percentage of cases from that time standard. In this situation, 15% of the total pending cases are exempt from the time standards. In essence, the court recognizes that a percentage of cases will go over standard either due to their unusual complexity or because of events which are beyond the control of the court.

Multiple Measures

The three measures taken from CourTools and used in the statistical data analysis are summarized below:

³⁹ David C. Steelman, John A. Goerdts and James E. McMillan, *Caseflow Management: the Heart of Court Management in the New Millennium* (Williamsburg, VA: National Center for State Courts 2000) 79.

PERFORMANCE MEASURES USED IN THE DATA ANALYSIS

COURTOOL	WHAT IT MEASURES
#2 Clearance Rate	Ratio of Case Intake to Output
#3 Time to Disposition	Case Disposition Times against Standards
#4 Age of Active Pending Caseload	Cases Over Standards and Backlog

C. Case File Review

The third method used in the research project is an exploratory study of a sampling of dispositions which occurred during the two month period from October 1, 2006 through November 30, 2006. The purpose of the case file review was to gather more detailed information about case delay from a sampling of dispositions.

Approach

The project considered two alternative approaches to reviewing case files. First, it could examine delay by looking at a sampling of all cases which were disposed of during the months of October and November, 2006. Secondly, it could examine the top 10% oldest cases, by tracks, i.e. those cases which took the greatest time to get from arraignment to disposition. It was decided to conduct the latter approach because this would give us a good idea of cases at the extreme and, perhaps, cases where the most initial gains could be made in the expedition of case processing. In essence, the case file review methodology was intended to answer the following question, “when delay is clearly evident, what are the underlying causes of that delay?”

The project worked with the Clerk of the Circuit Court and developed a computer list of all dispositions which occurred at the Criminal Courthouse from October 1, 2006 through November 30, 2006. It then extracted a list of the top 10% oldest cases, by track, and requested those files for review. Two staff members were utilized in examining the entire sample.

Sample

The case file review sample consisted of 192 cases which were disposed of during October, 2006 and 183 cases which were disposed of during November, 2006. The total sample was 375 cases out of a total of about 4,000 total dispositions which occurred during the two months of the project focus.

Data Collection Instrument

A data collection instrument called the Criminal Case Data Collection Form was adapted from *How to Conduct a Caseflow Management Review* by Barry Mahoney.⁴⁰ The form was altered somewhat to conform to the structure and language of the Criminal Division, Circuit Court of Cook County.

The customized Criminal Case Data Collection Form records sixteen items of information, in addition to demographic data, on each case being reviewed. The items include the date of arraignment, custody status, number of continuances, moving party and reason for each continuance, the first scheduled trial date, date the trial started and the type and date of disposition. (See appendix #7)

Problems with Methodology

The project encountered difficulty in physically retrieving all of the case files during the project. About 400 files were requested from the office of the Circuit Court of Cook County but, due to human resource limitations in the Clerk's office, we were able to receive only 105 case files for review. Since the files were delivered as they became available, we can not be sure that this is a

⁴⁰ See Note 34 *supra*, 27-30.

truly random sample. (For example, any cases involved in an appeal were not available to us.)

The 105 cases in the sample were distributed as follows:

Track #1 – 58%	Track #3 – 20%
Track #2 – 19%	Track #4 – 03%

Although, given the true percentages of cases in each track, this represents a fair distribution among the various tracks, in this sample the cases from track #1 (mostly low level drug cases) are over-represented and the cases from track #4 (murder cases) are under-represented.

V. RESEARCH FINDINGS

A. Introduction

The findings in this section are reported out by each of the three methods used in the project. The data garnered from each method builds upon data from the other methods. The survey methodology reveals critical opinions of legal stakeholders in the courthouse, the statistical data analysis presents a look at the “health” of the current caseflow status in the Criminal Division by looking at the indicators of good caseflow and the case file review provides insight into one of the major subjects of the survey, court delay. Integration of the findings from all three methods will take place in Section VI.

B. Stakeholder Opinion Survey

The survey questionnaire is structured around 5 categories of stakeholder opinion including; (1) opinions about the legal resources of the court, (2) opinions about delay, (3) opinions about the major principles of DCM, (4) opinions about the feasibility of time standards set down by the Circuit Court of Cook County for felony cases and, finally, (5) opinions about the fairness of an expedited pace of case management. Reporting of the findings will be structured around these categories of data.

Comprehensive data from the survey is reported in the graphic reports which are included in their entirety in the appendix. We will report on the findings below, but refer the reader to the individual reports in the appendices for extensive detail.

1. Core Findings from the Survey

Following are ten of the most significant findings of the stakeholder opinion survey. These findings and others are developed in more detail in the subsequent section on Extended Survey Findings.

a. Perception of Colleagues who Practice at the Criminal Courthouse

Legal stakeholders have a very positive perception of attorneys practicing in the courthouse. The great majority (89%) express agreement that attorneys practicing in the Criminal Courthouse demonstrate “sufficient expertise and skill to achieve high levels of performance”.

b. Extent of Delay

Surprisingly, delay is perceived as a problem in the Criminal Courthouse by less than 1/2 of all respondents. More than 1/3 of legal stakeholders do not perceive delay as a problem in the disposition of felony cases.

c. Causes of Delay

By far, the number one source of delay, as perceived by respondents, is the delay of DNA lab reports. The great majority feel that delay is caused by DNA lab tardiness “often or very often” with almost half of all respondents seeing it as happening “very often”.

d. Knowledge of 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.

e. DCM Principles: Uniqueness of Cases

Support for the basic principles of DCM range from very strong to mixed depending on the particular principle. The overwhelming majority of respondents (over 90%) agree that “all cases are not alike and, therefore should be subject to different processing events and

timetables” and that “different expectations should be set for the time from arraignment to disposition, depending on the complexity of the case”.

f. DCM Principles: Control of the Pace of Litigation

While the majority of respondents (67%) support the notion that “it is the courts’ responsibility to set and control the pace of litigation”, almost one out of four legal stakeholders disagrees with this concept.

g. Role of the Judge in Controlling the Pace of Litigation

Judges are very clear, and almost in unanimous agreement (92%) that it is the courts’ responsibility to set and control the pace of litigation.

h. DCM Principles: Continuances

About half of all respondents support the viewpoint that “the court should limit continuances, that it should request a specific reason for each one and, when granting them, should utilize short scheduling. However, about one out of every three respondents differs with this viewpoint.

i. Time Standards

The level of acceptance of time standards set down by the Criminal Division, among legal stakeholders, is very low. It is striking to note that only about 1/3 of all legal stakeholders believe that the time standards are feasible and more than 1/2 believe that the standards are not feasible.

j. Fairness of Expedited Case Management

Most legal stakeholders in the Criminal Courthouse express serious concern about an expedited pace of case management and its’ potential impact on fairness. The majority of all respondents (67%) are concerned that a faster pace of case management might cause injustice.

2. Extended Survey Findings

A more detailed look at the survey findings is reported here by category of questions. It should be noted that considerable variance of opinion is expressed throughout the survey among the subgroups (i.e. judges, prosecutors, defense counsel). Many of the more revealing insights about the data occur when it is broken down by role of the respondent in the courthouse.

Legal Resources in the Courthouse

Legal stakeholders have a very *positive perception of the expertise and skill of attorneys* practicing in the courthouse. The great majority (89%) express agreement that prosecutors and defense attorneys “demonstrate sufficient expertise and skill to achieve high levels of performance”.

When respondents were also asked about the *sufficiency* of current legal resources in the court, their response was mixed. More than two-thirds of legal stakeholders feel that the *number of prosecutors* is sufficient to handle the felony caseload in a timely and fair manner, but only about half feel that the *number of judges (53%) and public defenders (49%)* are sufficient to handle their caseload in a fair and expeditious manner.

Remarkably, over 80% of public defenders “disagree or strongly disagree” that there are a sufficient number of public defenders to handle the felony caseload in a timely and fair manner. It should be pointed out that more than one of every three judges (36%) and private attorneys (40%) express concurrence with this opinion.

Perception of Delay and Causes of Delay

Respondents were asked if they thought that “delay in the disposition of felony cases is a problem at the Criminal Courthouse”. (Delay was defined in the survey as case processing time beyond that which is needed for a fair resolution of a case.) Strikingly, *less than half of all respondents* (45%) agree that delay is a problem in the courthouse. More than one in three respondents (37%) believes that delay is not a problem in the disposition of felony cases.

The perception of delay, however, *differs dramatically according to the role of the respondent* in the courthouse. Judges and state’s attorneys have the strongest opinion that delay exists (about 60% agree), *while, in contrast, only about 30% of defense counsel (i.e. both private attorneys and public defenders) agree that delay is a problem in the Criminal Courts Building.* This disparity is one of the strongest differences of opinion among subgroups in the entire survey. These are significant findings because an assumption of delay is one of the basic motivators for establishing a DCM case management system.

When given a list of twenty three possible sources of delay in felony dispositions and asked how often they occur in the Criminal Courthouse, respondents identified *four sources of delay which they perceived as happening most frequently.*

These findings are summarized below in Table #3 Causes of Delay Perceived as Happening Most Frequently.

TABLE #3 CAUSES OF DELAY PERCEIVED AS HAPPENING MOST FREQUENTLY

TOP FOUR CAUSES	PERCENTAGE OF RESPONDENTS		
	Often	Very Often	Total
1st Delay of DNA Lab Reports	36%	47%	83%
2nd No Show of CPD Officer or Appearance of Wrong Officer	42%	35%	77%
3rd Missing/Incomplete Progress or Supplemental Reports from CPD	44%	27%	71%
4th Conflicting Engagement of Attorneys	48%	21%	69%

By far the number one source of delay, as perceived by respondents, is the delay of DNA lab reports. The great majority (83%) feel that delay is caused by DNA lab tardiness *with almost half of all respondents* reporting it as happening “very often”.

The second and third highest source of delay identified by respondents both relate to the Chicago Police Department. Over three-fourths of respondents (77%) feel that problems around officer appearance (i.e. the no-show of the Chicago police officer or the appearance of the wrong officer) happens “often to very often”, and almost as many respondents (71%) feel that missing or incomplete progress reports or supplemental reports from the Chicago Police Department account for delay on a frequent basis.

The fourth major source of delay, as identified by over two-thirds of respondents (69%), is the conflicting engagement of attorneys.

Differentiated Case Management

Less than one-third of all respondents (29%) are knowledgeable about the concept of Differentiated Case Management. The *majority of respondents (55%) expressed 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 very early stages of educating legal stakeholders about Differentiated Case Management.

Private attorneys stand out as expressing the least awareness of Differentiated Case Management. Only 7% of the private bar who practice regularly at the Criminal Courthouse are knowledgeable about the concept of Differentiated Case Management. On the other hand, of all respondents, judges express the greatest knowledge of DCM, in that over half (54%) are “fairly to highly knowledgeable” about it. In contrast, only slightly more than 1/3 of prosecutors and public defenders are knowledgeable about this subject.

In spite of their lack of knowledge about Differentiated Case Management, the *overwhelming majority of respondents* expressed strong agreement with three of the principles of Differentiated Case Management. Between 90% and 95% of all respondents “agree to strongly agree” with the following DCM principles:

- ❖ *All felony cases are different* and, therefore, should be subject to different processing events.
- ❖ Different expectations should be set for the time from arraignment to disposition, *depending on the complexity of the case.*
- ❖ Attorney schedules should be accommodated to the extent reasonably possible.

This data is somewhat encouraging because it suggests that legal stakeholders in the Criminal Division are highly accepting of some of the most fundamental principles of Differentiated Case Management. However, agreement concerning two other important principles of DCM, those related to the concept of control in the courtroom and use of continuances, is much lower.

Control of Cases

“A basic tenet arising from caseflow management research in the last 20 years is that the court, and not the other case participants, should control the progress of cases.⁴¹ In the legal stakeholder survey about 2/3 of all respondents (67%) support the statement that “it is the courts responsibility to set and control the pace of litigation”, while about one out of four disagree with this position. Judges (92%) and assistant state’s attorneys (80%) express the strongest support for the role of the court as being in control of the pace of litigation. Private attorneys are only somewhat less supportive of the idea (66%), while public defenders are very unsupportive with only 33% 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 a court appointed or a private attorney. This difference of opinion is reflected, again, in the data concerning defense counsel attitudes towards the time standards set down by the court.

⁴¹ See Note 39 *supra*, 3.

Use of Continuances

About 1/2 of respondents support the concept that continuances should be limited, that a specific reason be given for each one and that the court utilize “short scheduling” whenever granting continuances. Here, again, the opinions of respondents vary greatly among the subgroups. Over 3/4 of judges and prosecutors are in strong agreement concerning limited continuances, giving reasons for continuances and short scheduling. While less than 1/3 of defense counsel are in agreement with these restrictions on continuances.

Opinions about the Feasibility of Time Standards

Respondents were asked what they thought about the feasibility of the time standards, set down by the Criminal Division in 2006 and presented below in table #4.

TABLE #4 TIME STANDARDS FOR FELONY CASES IN THE CIRCUIT COURT OF COOK COUNTY, CRIMINAL DIVISION (ARRAIGNMENT TO DISPOSITION)

TRACK	EXPECTED COMPLETION TIME FOR 85% OF CASES
Track I Class 3 and 4 Felonies	90 days or less
Track II Class 1 and 2 Felonies	180 days or less
Track III Class X Felonies	365 days or less
Track IV Murder Cases	1 ½ year or less
Track V Complex Cases*	2 years or less
<i>*Complex cases are defined as including capital and multiple defendant cases.</i>	

The level of acceptance of these time standards among legal stakeholders in the Criminal Division is very low. When asked their opinion about the feasibility of the standards,

remarkably, only about 1/3 of respondents feel that the standards are realistic or feasible. *More than half (59%) of all legal stakeholders question the feasibility of these standards in the Criminal Courthouse.*

The variance of opinions among subgroups was greatest regarding track I (Class 3 and 4 felonies). Prosecutors and defense counsel differ significantly towards the 90 day standard for Track I. While about 1/2 of prosecutors (54%) feel that this standard is feasible, only a very small minority of the defense counsel (19%) feel that this is a feasible standard. In addition, in spite of their support for DCM, only a minority of judges (37%) see the 90 day standard for Track I as feasible.

Opinions of the Private Bar towards Time Standards

It is interesting to note that defense counsel (private attorneys and public defenders) 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, at this point, the private bar becomes much more open to time limitations. In fact, concerning any standard over one year (i.e. track III, IV and V), among all of the legal stakeholders, private attorneys are the group most open to the time limitations.

Opinions about the Fairness of Expedited Case Management

In one of the most significant findings of the survey, legal stakeholders in the Criminal Division express considerable concern about an expedited pace of case management and its' potential impact on justice. The clear majority (67%) are concerned that a faster pace of case management

in the Criminal Courthouse might cause injustice. Only a small minority (22%) are unconcerned that an expedited pace of case management might compromise justice.

This data is even more remarkable when it is broken down by subgroup. Defense counsel expresses very strong concern (more than 90% of public defenders and 75% of private attorneys) about the potential fairness of an expedited pace of case management, whereas slightly less than half of prosecutors (49%) express concern. Judges split almost evenly in their opinion about fairness, with almost half of the judges expressing concern (46%) and slightly less than half (42%) are unconcerned that an expedited pace of case management might cause injustice.

3. Survey Findings: Profiles of Subgroups

In looking at the survey data, we can identify brief profiles of legal stakeholders based on the role that they play in the Criminal Courthouse.

Judges

Judges are the most knowledgeable of all legal stakeholders about Differentiated Case Management and the strongest advocates for DCM. They are much more likely to perceive delay as a problem in the Criminal Courthouse than any other subgroup, with the exception of the Assistant state's attorneys. In addition, judges are very clear, and *almost in unanimous agreement that it is their responsibility to set and control the pace of litigation.*

Judges split evenly in their opinion on the sufficiency of judicial resources at the Courthouse (40% feel that there are enough judges to handle the felony caseload in a timely and fair manner and 40% disagree with this opinion). In fact, on a number of responses to the survey, the data on

judicial attitudes tends to form a bifurcated curve indicating that judges in the Criminal Division could be split evenly on either side of some of the most central case management issues.

Assistant State's Attorneys

Assistant state's attorneys express consensus that delay is a problem in the Criminal Courthouse and are strong supporters of the principles of Differentiated Case Management. While they agree with the judiciary that it is the responsibility of the court to control the pace of litigation, they feel the strongest, among all of the subgroups, that the lack of control by the court of the pre-trial movement of cases is a frequent cause of delay.

The opinions of prosecutors align closely with judges on a number of critical issues: including their perception that delay is a problem, their acceptance of limitations on the use of continuances and their more moderate concern that an expedited pace of case management might cause injustice.

Private Attorneys

The majority of private attorneys practicing at the Criminal Courthouse feel that the court has a *sufficient number of judges* and prosecutors to handle the felony caseload in a timely and fair manner. However, only a minority of members of the private bar believe that there are a sufficient number of public defenders.

Most private attorneys believe that delay in the disposition of felony cases is not a problem. They have very little or no knowledge of Differentiated Case Management and show only modest support for the DCM concept of limiting continuances (only 1 out of 3 is in agreement).

Private attorneys disagree strongly with the lower end time standards for felony cases (90 days and 180 days), but express fairly strong support for the longer time standards (365 days or more). Finally, a clear majority of private attorneys (75%) are concerned that an expedited pace of case management might cause injustice.

Public Defenders

Most public defenders do not see delay as being a problem in the disposition of felony cases. The exception to this, however, is that most feel that *hindered attorney access to defendants in the jail* account for delay in felony dispositions “often or very often”.

In terms of legal resources in the courthouse, the opinions of public defenders are close to the other subgroups with the exception of their strong consensus (82%) that there are an insufficient number of public defenders to handle the felony caseload in a timely and fair manner.

Of all of the subgroups, public defenders are significantly less likely to agree with the concept that “it is the court’s responsibility to set and control the pace of litigation” and, like private attorneys, they show only modest support for the DCM concept of limiting continuances.

The great majority of public defenders believe that the time standards are not feasible and more than half of public defender respondents go further and report that the time standards are highly unfeasible. Public defenders are similar to members of the private bar in their strong concern that “an expedited pace of case management in the criminal division might cause injustice”.

4. Survey Findings: Written Comments by Respondents

There were 116 respondents (42% of all of those who sent in their questionnaire) who also sent in additional comments. As opposed to the quantitative nature of the multiple choice questions, the data from respondent comments is qualitative data, but it still provides valuable information about the concerns which respondents chose to make in their written comments.

The percentage of each stakeholder group who chose to write additional comments was very uneven among the groups. Defense Counsel had the highest rate of comment (50% to 59%) while assistant state’s attorneys had a much lower rate of comment (30%) and judges had the lowest rate (15%).

In all, more than two dozen categories of responses were identified in the content analysis. We will only report on the five most consistent themes which were expressed throughout the responses, all but one of which is directly related to Differentiated Case Management. (A more complete listing of the categories can be found in appendix #6.)

a.) DCM Timelines are not Feasible

By far the greatest number of written comments related to the opinion that use of timelines (“hard and fast rules”) on felony cases would be “misguided, rigid and arbitrary” and that, in the opinion of the respondents, the specific timelines given in this survey are unfeasible.

b.) Justice will Suffer

The second greatest concern expressed in the comments of respondents is that “forcing attorneys to trial” by setting specific time limits on cases (what some respondents referred to as “assembly line justice”), will only result in injustice.

c.) Each Case is Unique

Respondents emphasized, in many different ways, 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 identified, that might require additional time include financial crimes, violent felonies, multiple defendants, mental health related cases and cases where foreign language and the need for interpreters comes into play.

d.) Case Differentiation Should Not Be Based on Class of Felony

Respondents also echoed the theme that case differentiation should *not be based on the class of felony*. (Although the tracks created by the Circuit Court of Cook County are not based entirely on class of felony, they do correspond very closely to them.) Respondents felt strongly that cases vary too much to use the same time standard for all cases in the same class.

e.) Handling of Felony DUI's

In January, 2006 the Illinois state legislature expanded felony DUI cases to include first time offenders driving without a license and/or driving without insurance. As a result, the Circuit Court of Cook County is receiving a few thousand new DUI felonies a year, a considerable addition to the 26,000 felony filings which the court receives on an annual basis. Respondents feel that DUI felonies are clogging up the system and some of them expressed the opinion that a separate calendar should be created for these traffic cases.

Tone of the Written Comments

It should be noted that many of the written comments were stated in strong language, suggesting that respondents are passionate about the opinions which they expressed. (We do not know, however, if these comments reflect the opinion of the majority of respondents who, in fact, chose not to submit written comments.)

While one has to be careful when interpreting qualitative data, the major ideas expressed by those who chose to make comments on their survey 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*.

C. Statistical Data Analysis of Caseflow Indicators

The statistical data analysis applied three fundamental performance measures from CourTools. Each measure reveals different data which, when put together, provide a broad foundation for understanding the current caseflow in the Criminal Division.

Clearance Rates

A clearance rate is the number of outgoing cases as a percentage of the number of incoming cases. The project examined the clearance rate in the Criminal Division for the four month period from October 1, 2006 through January 30, 2007. The data is summarized in table # 5 below.

TABLE #5 FOUR MONTH CLEARANCE RATE

MONTH	NEW ASSIGNMENTS	DISPOSITIONS	CLEARANCE RATE
October 2006	2,629	2,776	1.04
November 2006	2,207	2,305	1.04
December 2006	2,311	1,934	.84
January 2007	2,265	2,612	1.15
Total Cases	9,412	9,627	1.02

Analysis

The Clearance Rate in the Criminal Division is 1.02 for the four-month period from October, 2006 through January, 2007. This indicates that the felony division is slightly ahead in disposing of as many cases as come into the system. The fact that the court had a positive clearance rate in three out of four consecutive months is encouraging, but the critical question remaining concerns

the age of cases which are still pending and their potential for backlog in the future. The age of the Active Pending Caseload analysis, discussed below, will assist in determining this issue.

Time to Disposition

Time to Disposition is defined as the percentage of cases disposed or otherwise resolved within established time frames. An analysis was done on this data for dispositions which occurred during the period from October 1, 2006 through December 31, 2006.

The Time to Disposition analysis reports on a number of variables including the total dispositions per track during the quarter, the median time it takes from arraignment to disposition and the age of cases at the upper end at the point of disposition (i.e. the 90th percentile).

A statistical analysis was done, by track, of the 5,578 dispositions which occurred during the last quarter of 2006. The results are summarized below in table #6.

TABLE #6 TIME TO DISPOSITION (10/01/06-12/31/06)

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

Analysis of Time to Disposition Data

In track #1 and track #4, about half of the cases were disposed of slightly under the given time standard. This means that close to 50% of the cases in these two tracks were over their time standard at the time of their disposition.

The cases in track #2 (Class 1 and 2 felonies) and track #3 (Class X felonies) were much better positioned by the time they reached disposition. Half of the cases in these two tracks were disposed of well under the time standard. In fact, the cases at the median and below had only reached half of their allotted time at the point of their disposition.

When we look at the upper end of dispositions during the quarter, we see that track #3 and track #4 cases were about 1.5 times their set standard at the 90th percentile, track #2 cases were about 2 times their set standard at the 90th percentile and track #1 cases had reached 3 to 4 times their set standard by the time they reached the 90th percentile.

Age of Active Pending Caseload

The Age of Active Pending Caseload is defined as *the age of the active cases that are pending before the court*, measured as the number of days from filing (for purposes of this project “assignment”) to the time that the report takes place.

In essence, Age of Active Pending Caseload is a “point in time snapshot” of the cases still pending and a measure of their relationship to the standards which have been developed by the court. This measure helps the court determine the extent of backlog, if any, which it has in the pending case system. The Age of Active Pending Caseload data report is broken down, by track, and by six age groupings ranging from 90 days (3 months) to 730 days (24 months). The report, which was run on February 2, 2007, is presented in table #7 below.

Table #7 *Age of Active Pending Caseloads*
THE CIRCUIT COURT OF COOK COUNTY
AGE OF PENDING CASES
DATE: 2/2/2007

Track	Track Total	Age of Active Pending Caseload in Days and Percentages																	
		0-90	%	CUM	91-180	%	CUM	181-365	%	CUM	366-547	%	CUM	548-730	%	CUM	>730	%	CUM
1	2,816	1,200	42%	42%	700	24%	66%	571	20%	86%	200	7%	93%	94	3%	96%	51	1%	97%
2	3,798	1,539	40%	40%	968	25%	65%	775	20%	85%	311	8%	93%	90	2%	95%	115	3%	98%
3	2,698	701	25%	25%	606	22%	47%	703	26%	73%	357	13%	86%	140	5%	91%	191	7%	98%
4	736	86	11%	11%	73	9%	20%	125	16%	36%	130	17%	53%	78	10%	63%	244	33%	96%
Total Cases: 10,048																			

Cases over Time Standard

The Active Pending Caseload analysis tells us, first of all, how many cases are over their time standard and what the percentage is of cases over time standard in each track. Table #8 summarizes this data below.

TABLE #8 ACTIVE PENDING CASELOAD: CASES OVER TIME STANDARD

TRACK	STANDARD FOR EACH TRACK	# OF CASES IN EACH TRACK	% OF ACTIVE PENDING CASELOAD	# OF CASES OVER TIME STANDARD	% OF CASES OVER TIME STANDARD
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%

Analysis

Almost 40% of all pending cases in the Criminal Division were already over their time standard at the time the Active Pending Caseload report was run. The percentage of cases over standard varies considerably by track.

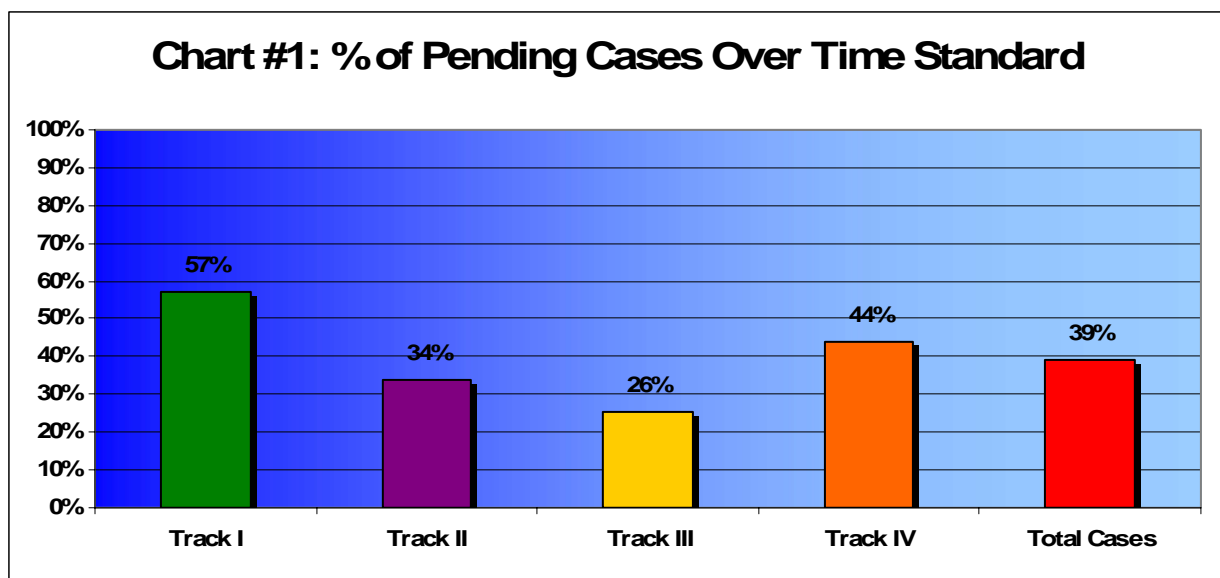
Track #1 and track # 4 have the greatest percentage of active pending cases over standard. More than half of the pending cases in track 1 (57%) and somewhat less than half of pending cases in track #4 (44%) are over the time standards. However, since track #1 is composed primarily of low-level drug cases 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 track #1 because they are often the least complex cases, should be disposed of more expeditiously and because they account for a fairly large percentage (28%) of all active pending cases. The age of cases in track #4 (i.e. murder cases) raise concern, even though they account for only 7% of the active pending caseload, because this track already has a high time standard (1 and ½ years) and, if continued on this course, these cases might well become the oldest cases in the system.

In comparison, track# 2 and track #3 have considerably less of their active pending cases over time standard with only about 1/3 of the pending cases in track #2 and about 1/4 of the pending cases in track #3 being over the time standard.

A comparison of the tracks and their percentage of cases over the time standards are presented in graph #1 below.

GRAPH #1 PERCENTAGE OF PENDING CASES, BY TRACK, OVER TIME STANDARDS



Backlog of Active Pending Cases

Backlog can be defined as “cases that have been pending longer than the time that the court has adopted as its standard”.⁴² In the Circuit Court of Cook County, Criminal Division, backlog incorporates two elements (1) time standards and (2) an exemption of 15% of the total cases from the time standards. In setting the standards, the court recognized that there will always be some cases, which for good reason, will go beyond the expected time to disposition and the court estimated 15% as the portion of cases which meet this definition.

The formula for backlog used here is the number of cases in each track over the time standard *minus the tolerable delay* which is accepted by the court (i.e. %15 of the total cases in that track).

Data on the backlog of pending cases is presented here in table #9.

TABLE #9 BACKLOG OF ACTIVE PENDING CASES

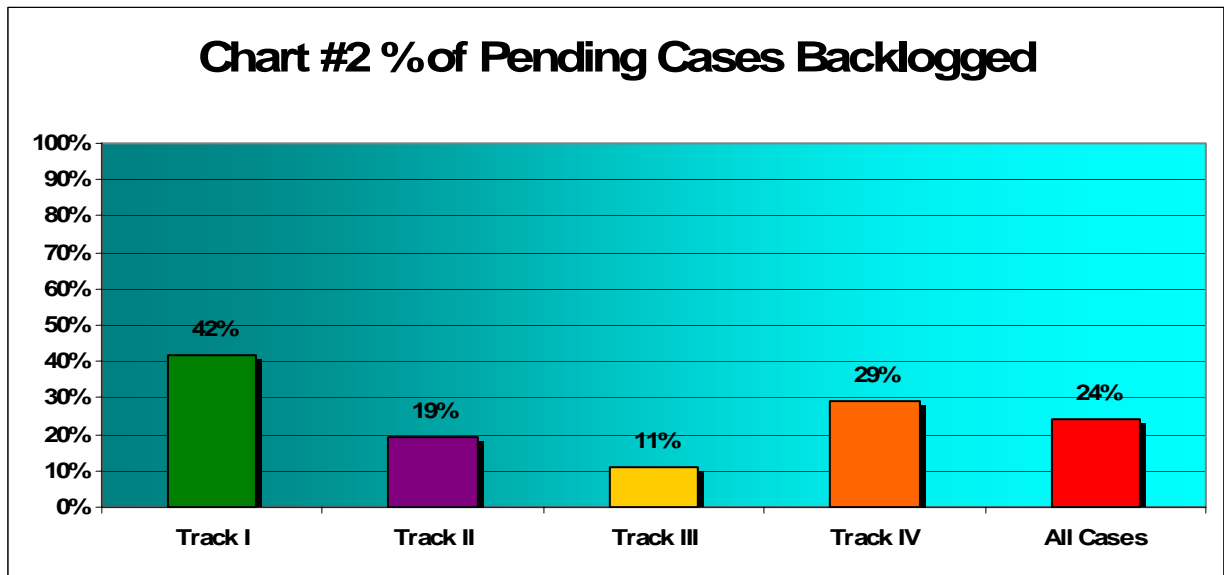
TRACK	STANDARD FOR EACH TRACK	NUMBER OF CASES OVER TIME STANDARD	15 % OF TOTAL ACTIVE PENDING CASES	BACKLOG (cases over standard - 15% of total cases)	PERCENTAGE OF BACKLOG
Track #1	90 days	1,616	422	1,374	42%
Track #2	180 days	1,291	570	1097	19%
Track #3	365 days	688	405	585	11%
Track #4	547 days	322	110	274	29%
TOTALS		3,917	1,508	2,410	24%

⁴² See Note 39 *supra*, 79.

In looking at table #9, we see that backlog in the Criminal Division accounts for *about one out of four of all active pending cases*. Again, the percentages of cases which are backlogged differ considerably by track.

Track #1 has the highest percentage of cases considered to be backlogged (42%), track #4 has a moderately high percentage of cases which are backlogged (29%) and track #3 and track #2 have the lowest percentage of cases considered backlog, 11% and 19% respectively. This data is presented in graph #2.

GRAPH #2 PERCENTAGE OF BACKLOG, BY TRACK, IN THE CRIMINAL DIVISION, CIRCUIT COURT OF COOK COUNTY



D. Case File Review

An exploratory study was done of the 10% oldest cases reaching disposition during the period from October 1, 2006 through November 30, 2006. The purpose of the exploratory study was to gather information about case delay from a sampling of recent dispositions. From a sample of 392 cases, the project conducted 105 case file reviews which are summarized below.

Status of Defendant

In this sample, slightly more defendants were in custody (45%) than were out on bond (34%). Also, a significant number of cases (15%) involved changes from one custody status to another. Most often this reflected a change in the status of the defendant moving from bond to custody.

Attorney of Record

Somewhat surprisingly, the percentage of the oldest cases assigned to members of the private bar was the same as those assigned to public defenders (45%). In view of the proportion of private attorneys on felony cases overall, there were more private attorneys in this sample than usual.

MOST SERIOUS CHARGE OF DEFENDANTS IN THE SAMPLE	
Drug Related – 26%	Burglary – 07%
Felony DUI – 14%	Theft – 05%
Weapons Possession – 14%	Assault – 04%
Criminal Sexual Assault – 11%	Other – 12%
Robbery – 07%	

The fairly high percentage of Felony DUI's in this cadre of oldest cases is somewhat surprising, since some these cases have only entered the felony system less than two years ago.

Continuances

The median number of continuances for all cases in this sample was 21 continuances, ranging from 4 continuances on the low end to 84 continuances on the high end. The overwhelming majority of continuances were By Agreement. When continuances were attributed to either the prosecution or defense, defense attorneys were six times more likely to make the request. There were two primary factors affecting continuances which stood out in this sample. Twenty-eight percent of all cases had bench warrants issued and sixteen percent involved substitution of attorneys. Requests for DNA analysis accounted for only a small percentage of cases (2%-3%).

Dispositions

The median time it took cases, at the upper end of dispositions, to move from arraignment to disposition was 2 years and 9 months (1,000 days), ranging from 1 year to 4 years and 9 months.

The breakdown of dispositions in the sample was as follows;

Pleas – 68%	Found Not Guilty – 04%
Case Dismissed – 22%	Guilty Verdict – 01%
Found Guilty – 05%	Acquittal – 01%

VI. CONCLUSIONS AND RECOMMENDATIONS

Survey Results

Based on the survey results, it is clear that the Criminal Division, Circuit Court of Cook County will have to do considerable work with legal stakeholders in the courthouse in order for a Differentiated Case Management system to succeed. The findings present a very mixed picture of stakeholder attitudes about a number of pivotal issues related to DCM success including; the perception of delay, attitudes about DCM strategies aimed at reducing delay (e.g. limited continuances) and acceptance of time standards set down for felony cases in the Criminal Courthouse.

On the positive side, there are a number of elements in place which could assist in the development of a DCM system.

- Legal stakeholders have a high regard for each other's ability and skill level. (This will be helpful in trying to build consensus among the subgroups.)
- There is strong support for some of the underlying principles involved in a differential approach to case management; (a) "all felony cases are not alike and, therefore, should be subject to different processing events and timetables" (an argument in support of a track system) and (b) "different expectations should be set for the time from arraignment to disposition, depending on the complexity of the case" (an argument in support of time standards).
- A significant number of judges in the criminal division demonstrate a willingness to change the current method of case management. This is reflected in their perception that delay is a problem at the Criminal Courthouse and their

knowledge about and acceptance of the principles of Differentiated Case Management.

- There appears to be a core group of Criminal Court judges who could serve as DCM “advocates” in the Courthouse, who accept the responsibility to set and control the pace of litigation and who believe that an expedited pace of case management does not have to compromise justice,

In spite of these strengths, there are a number of major challenges which will have to be dealt with before Differentiated Case Management can really take hold in the courthouse. First and foremost among these, is the need to change the popular opinion among legal stakeholders that the court is operating in a “sum-gain environment” and that an expedited pace of litigation might be unfair and might only come at the expense of justice.

Secondly, and equally as important, is the need for the court to develop acceptance of the felony time-standards. This will be a particular challenge in view of the fact that the judges themselves are almost evenly divided in their acceptance of the standards.

However, it seems clear from the stakeholder survey that if judges in the Criminal Courthouse were to develop a “unified voice” about the acceptance of the time standards for felony cases, they could build enough support among legal stakeholders practicing at the Courthouse to outweigh resistance to the standards.

Another major challenge to be addressed is the need to develop balanced legal resources within the courthouse. The question of the sufficiency of resources is a very difficult one given the current financial status of Cook County government. Indeed, lack of legal resources may be one of the greatest challenges to implementing Differentiated Case Management over the short term. Since the legal stakeholder survey was implemented in December, 2006, both the Office of the Public Defender of Cook County and the Office of the State's Attorney of Cook County have experienced significant reductions in their workforce.⁴³

Statistical Data Analysis

The statistical data analysis reveals a mixed picture of the current status of caseflow in the Criminal Courthouse. On the positive side, the court has been very productive in disposing of as many cases as come into the system. However, the data also indicates that there is a fairly high percentage (39%) of active pending cases which are already beyond their given time standard and, in addition, about one out of four of active pending cases can be considered as backlog. This backlog, more than likely, will not be disposed of without a short-term influx of judicial and legal resources.

If we look at the statistical data analysis in view of *Court Performance Standard #2.1*, we find that the Criminal Division has been doing a good job of “keeping current with its incoming caseload” and only a fair job of “establishing and complying with recognized guidelines”. While the Criminal Division has established guidelines, there is only modest acceptance of them and a fairly high level of non-compliance with the time standards.

⁴³ Eric Herman, “Budget Cut Has Justice Bleeding: Prosecutors,” *Chicago Sun Times*, 2 March 2007.

Case File Review

The case file review, although exploratory in nature, provides additional information about the status of caseflow in the court. The cases reviewed (i.e. cases at the 90th percentile at the time of disposition) had a median of 21 continuances and the great majority of these continuances were recorded as “by agreement”. Arguably, one might expect more continuances in this cohort of cases because they are at the high end of time for dispositions. However, the data does suggest that the court needs a much tighter system of scheduling, recording and managing continuances.

In addition, due to the nature of the court files, we were not able to determine the first scheduled trial date. This is a very important piece of information which, for purposes of DCM, must become part of the court record. Also, contrary to the opinion of many legal stakeholders, DNA analysis is not highly important as a factor in delay of the oldest cases. This finding would align with a recent report from the Illinois State Police, Forensic Science Center, that the Circuit Court of Cook County, Criminal Division referred 206 cases for DNA analysis in the year 2006, a very small percentage of all dispositions at the Criminal Courthouse.⁴⁴ This suggests that although DNA cases are small in number, they seem to stand out in the mind of legal stakeholders as having more of an impact on court delay than they may have in reality.

Finally, the case review also found that a significant percentage of the cases were considerably over time standards for reasons which were beyond the control of the court

⁴⁴ Janet M. Girtten, *Telephone Conversation* (Chicago: Forensic Science Center at Chicago, 26 February 2007).

(i.e. warrants and substitution of attorneys). This finding reinforces the practice of exempting a percentage of cases from time standards either due to their unusual complexity or because of events which are beyond the court's control.

RECOMMENDATIONS

Based on the research findings, the following recommendations are made to the Chief Judge and the Presiding Judge, Criminal Division, Circuit Court of Cook County for their consideration.

#1) That the court approve a simpler and more flexible set of standards which would begin a multiple year effort to implement tighter standards in the future once gains have been made in the process of case management.

The recommended standards would be based on case complexity, instead of class of felony, and would include only four tracks, track #1 Expedited Cases, track #2 Standard Cases, track #3 Extended Cases and track #4 Complex Cases.

The tracks would develop more buy-in from the legal stakeholders at the Courthouse who expressed serious concern about automatically assigning cases based on class of felony. Another advantage in avoiding the automatic assignment of cases, based on class, is that it necessitates that the judge, prosecutor and defense counsel agrees upon the designated track for an individual case, early in the proceedings, and that they focus their attention on that goal.

The recommended time standards for the Criminal Division, Circuit Court of Cook County are summarized in table #10 below.

**TABLE #10: RECOMMENDED TIME STANDARDS FOR FELONY CASES IN
THE CIRCUIT COURT OF COOK COUNTY, CRIMINAL DIVISION**

TRACK	EXPECTED COMPLETION TIME FOR 85% OF CASES
Track I Expedited Cases	90 days or less
Track II Standard Cases	180 days or less
Track III Extended Cases	365 days or less
Track IV Complex Cases	2 Years or less

This track system would use 180 days or six months as the *standard* for most felony cases, but would recognize that there are some cases which should be disposed of in 90 days or less and others that will need extended time for completion.

This type of track system necessitates that the court develop and agree upon functional definitions for each track. For example, complex cases could be defined as “cases which involve extensive judicial and court involvement based on the seriousness of the case, the number of defendants and the size and complexity of issues involved”. This would, of course, include most multiple defendant and capital cases. Similar definitions would need to be developed for the other three tracks.

A comparison of the recommended standards for the Criminal Division with the national standards developed by the Conference of State Court Administrators, Conference of Chief Judges and the American Bar Association is made in table #11 below.

**TABLE # 11 RECOMMENDED FELONY CASE TIME STANDARDS FOR THE
CRIMINAL DIVISION COMPARED TO NATIONAL STANDARDS**

DCM Tracks	Circuit Court of Cook County (85% of cases)	Conference of Chief Judges Conference of State Court Administrators	American Bar Association
#1 Expedited	90 days or less		90% of all felony cases in 120 days
#2 Standard	180 days or less	100% of all felony cases	98% of all felony cases in 180 days
#3 Extended	365 days or less		100% of all felony cases
#4 Complex	2 Years or less		

The Conference of State Court Administrators (COSCA), Conference of Chief Judges (CCJ) and the American Bar Association (ABA) felony time standards are measured from the point of arrest to trial or disposition.⁴⁵

It is important to emphasize that the national standards are guidelines and that felony case standards for the Circuit Court of Cook County should reflect the uniqueness, size and complexity of this jurisdiction. However, this approach to case standards does leave room for the Criminal Division to develop tighter standards in the future once gains have been made in the process of case management.

⁴⁵ See Note 27 *supra*, Figure 1.

#2) That the Presiding Judge, Criminal Division, meet with the supervising judges to review the research data on court delay, caseload analysis and backlog in the Criminal Division and amend and/or approve the new time standards for felony cases.

This approach should include follow-up meetings with the judicial teams in the courthouse to discuss the current delay, case backlog and the implementation of appropriate time standards.

#3) That the Criminal Division develop and implement a plan to educate legal stakeholders within the Criminal Courthouse concerning Differentiated Case Management and the court initiated time standards for felony cases.

In addition to educating assistant state's attorneys and assistant public defenders in the Courthouse, we recommend that an effort be made to reach out to members of the private bar who practice at the Criminal Courthouse to educate them about DCM and about the felony time standards. This could be done in conjunction with the Chicago Bar Association, Criminal Justice Committee, with the other bar associations in Chicago or through one or more of the law schools in the area as part of the Continuing Legal Education (CLE) courses required of attorneys who practice in the State of Illinois.

#4) That the Presiding Judge and supervising judges at the Criminal Courthouse meet to develop short-term strategies which could be used to reduce the current backlog of active pending cases.

The backlogged cases could become a significant problem for the Circuit Court. The Criminal Division will most probably need an influx of short-term resources in order to dispose of them within a reasonable timeframe. Strategies to be considered in this discussion include the dedication of new floating judges to help reduce the backlog now being experienced in track #1 and track #4. Other strategies might include expansion of the daily use of the courtrooms in the Criminal Courts Building with the possibility of temporarily creating an afternoon calendar which would address these specific types of backlogged cases.

#5) That the Chief Judge, Circuit Court of Cook County, the Presiding Judge, Criminal Division and the Chairman of the Cook County Judicial Advisory Council sponsor a strategic planning session in the late spring of 2007 with key representatives of the major agencies involved in the Criminal Courthouse around the current fiscal crisis in the county and its implications for the criminal courts.

It is critical to acknowledge that the criminal justice system is a very interdependent system in which cuts and reductions in one area, much less in multiple areas, have a negative affect on the entire system and certainly an impact on the pace of litigation.

The purpose of this strategic planning session is to discuss and develop cooperative short and long-term strategies to be taken by the agencies which relate to the court in order to address the realities of the current fiscal crisis and the best use of judicial and legal resources in this environment.

VII. END MATERIALS