

## Chicago-Kent College of Law Scholarly Commons @ IIT Chicago-Kent College of Law

---

All Faculty Scholarship

Faculty Scholarship

---

January 2007

# A Report on Chicago's Felony Courts (Chicago Appleseed Fund for Justice Criminal Justice Project, December 2007) (member of advisory board).

Daniel T. Coyne

*IIT Chicago-Kent College of Law*, [dcoyne@kentlaw.iit.edu](mailto:dcoyne@kentlaw.iit.edu)

Follow this and additional works at: [http://scholarship.kentlaw.iit.edu/fac\\_schol](http://scholarship.kentlaw.iit.edu/fac_schol)

 Part of the [Courts Commons](#)

---

### Recommended Citation

Daniel T. Coyne, *A Report on Chicago's Felony Courts (Chicago Appleseed Fund for Justice Criminal Justice Project, December 2007) (member of advisory board)*, (2007).

Available at: [http://scholarship.kentlaw.iit.edu/fac\\_schol/189](http://scholarship.kentlaw.iit.edu/fac_schol/189)

This Article is brought to you for free and open access by the Faculty Scholarship at Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in All Faculty Scholarship by an authorized administrator of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact [dginsberg@kentlaw.iit.edu](mailto:dginsberg@kentlaw.iit.edu).

# **A Report on Chicago's Felony Courts**



## **Chicago Appleseed Fund for Justice Criminal Justice Project**

**December 2007**

**This project was supported by a grant from the Chicago Community Trust.**

## **Criminal Justice Advisory Board**

Thomas F. Geraghty (co-chair),  
Director, Northwestern University's Bluhm Legal Clinic

John P. Heinz (co-chair),  
Professor, Northwestern University School of Law and  
Research Fellow, American Bar Foundation

Susan Bandes,  
Professor, DePaul University College of Law

Sean Collins-Stapleton,  
Assistant Defender, Office of the State Appellate Defender

Daniel T. Coyne,  
Clinical Professor, Chicago-Kent College of Law

Hon. Gino DiVito,  
Attorney at Law, Tabet DiVito & Rothstein and  
Former Judge, Illinois Appellate Court and Cook County Circuit Court

Robert Graham,  
Attorney at Law, Jenner & Block

Hon. Michael Howlett, Jr,  
Judge, Circuit Court of Cook County and Former Counsel to the Cook County State's  
Attorney

Richard Kling,  
Clinical Professor, Chicago-Kent College of Law

Randolph Stone,  
Clinical Professor, University of Chicago Law School and  
Former Cook County Public Defender (1988-91)

Malcolm Young,  
President, John Howard Association

### **Chicago Appleseed Criminal Justice Project Staff**

Julie Dona, Principal Research Associate  
Malcolm Rich, Project Manager and Executive Director

Melissa Derr  
Mollie Hertel  
Peter Huh  
Kristin Lewis  
Marisa Pines  
Matthew Satchwell  
Nicole Martorano Van Cleve

### **Reed Smith Sachnoff & Weaver Pro Bono Support**

Randall Lehner  
Thomas M. Levinson  
Jodi F. Manko  
Daniel E Morrison  
Jonathan Polish  
Bina Sanghavi

### **DLA Piper Pro Bono Support**

Anne H. Geraghty  
Emily S. Schlesinger

### **Court Observers**

Brian Appel  
Aisha Bunton  
Katie Chudnovsky  
Justin Cruz  
Chad Diamond  
Dana Drexler  
Ashley Fretthold  
Victoria Holland  
Elizabeth Levine  
Devin McComb  
Jeff Oudsema  
Jazmine Preston-O'Neill  
Rachel Rondy  
Shneur Nathan  
David Stevens  
Elizabeth Turillo  
Sam Vreeland  
Neal Walker  
Vincent Waller

### **Additional Support**

Susan Burrington, Administrative Support  
Carli Kierny, Research Support  
Maxwell Kampfner, Research Support  
Jason Luczak, Research Support

## Table of Contents

	Page
Table of Graphs and Tables	5
FOREWORD	6
<u>I. Introduction</u>	7
<u>II. Background</u>	9
<u>III. Methodology</u>	10
<u>IV. Access to Justice: The Public's Perception of Justice at 26<sup>th</sup> and California</u>	15
<u>V. Judging and Case Management in the Felony Courts</u>	26
<u>VI. The Quality of Public Defense in Cook County</u>	34
<u>VII. Public Defense in Bond Court</u>	60
<u>VIII. The Quality of Prosecution in Cook County</u>	63
<u>IX. Alternative Treatment Programs I: Narcotics Cases and Cook County's Drug Courts</u>	79
<u>X. Alternative Treatment Programs II: Mental Illness and Cook County's Mental Health Courts</u>	89
<u>XI. The Role of the Legislature</u>	97
<u>XII. Findings and Conclusions</u>	99
<u>References</u>	

(Interview instruments are available upon request)

## **Graphs and Tables**

Table 5.1: Occupational Satisfaction Levels Among Judges at 26<sup>th</sup> Street

Table 5.2: Satisfying Aspects of Being a Judge

Table 5.3: Least Satisfying Aspects of Being a Judge

Graph 5.1: Audibility in Felony Courtrooms

Table 6.1: Reasons Frequently Given for Joining the Public Defender's Office

Table 6.2: Satisfaction Levels Among Assistant Public Defenders

Table 6.3: Most Satisfying Aspects of Public Defense

Table 6.4: Least Satisfying Aspects of Public Defense

Table 6.5: Job Expectations—Where Will Public Defenders Be in Ten Years?

Table 6.6: Adequacy of Special Resources for Juveniles Tried in Felony Court

Table 6.7: Perceived Importance of Various Factors in Receiving Promotion

Table 8.1: Assistant State's Attorney's Motivations for Joining the Office

Graph 8.1: Typical Route of a Prosecutor Through the State's Attorney's Office

Table 8.2: Prosecutors' Perceptions of Ongoing Trainings

Table 8.3: Most Satisfying Aspects of Prosecutorial Work

Table 8.4: Dissatisfying Aspects of Prosecutorial Work

Table 8.5: Prosecutor Satisfaction With Salary

Table 8.6: Job Expectation—Where Will Prosecutors Be in Ten Years?

Table 8.7: Perceived Importance of Factors in Receiving Promotion

Table 8.8: Qualities Inspiring Disrespect in the State's Attorney's Office

Table 9.1: Do You Believe that Drug Cases are Being Handled Effectively?

Table 10.2: Do You Think that the Mental Health Needs of Defendants are Handled Effectively?

## FOREWORD

At Chicago's Criminal Courts Building at 26<sup>th</sup> Street and California Avenue, the sheer volume of felony cases has overwhelmed the judges, the prosecutors, and the public defenders. The jail houses nearly 10,000 inmates awaiting trial. It is estimated that at least 20% and perhaps as many as 50% of these inmates suffer from untreated mental illness. The courtrooms hear more than 28,000 cases per year, half of which are non-violent, drug-related charges. Each judge at 26<sup>th</sup> Street has on average 275 pending cases at any one time. The adult probation department seeks to handle more than 23,000 felony offenders at any one time. Many improvements have been made as the courts struggle to adapt to the realities of operating beyond capacity, but patchwork adaptations are not good enough.

This report is a result of unprecedented collaboration among leaders with a commitment to reform. Presiding Judge Paul Biebel, State's Attorney Richard Devine, and Public Defender Edwin Burnette opened their offices to this study and provided both advice and data. An advisory committee of local experts served to identify issues and review findings.

Ultimately, the public gets the criminal justice system that it chooses. The choices are made in elections and in decisions on legislation, enforcement priorities, and taxes. The resulting system may not be chosen consciously, but it is chosen nonetheless.

Because we disapprove of conduct that we consider immoral, our instinct is to punish it. This may be the case even if the conduct does not directly touch our own lives. But we often do not consider the costs of imposing punishment. Some money is well-spent - - the incapacitation of harmful offenders is necessary to the maintenance of an orderly society. Every person put in jail, however, requires that money be spent for police, prosecutors, judges, public defenders, and jailers, and money to house and feed the offender. The public, therefore, needs to decide how much the incapacitation is worth. Punishment is purchased at a price, often a high one. Public policy decisions involve tough choices: we want safety, moral rectitude and, at the same time, low taxes, but in criminal justice, as in so much else, we cannot have all we want. We may hope, however, to make informed choices, based on fact. It is our objective here to provide recommendations based on facts and on the informed observations of those most familiar with the criminal justice system.

The costs we should take into account are not limited to the expense of operating the criminal justice system; citizens and institutions outside the system bear much of the burden. Imprisonment removes workers from the labor force - - in many cases, not just during the period of their imprisonment but permanently. Dealing with drug offenders on a "revolving door" basis, processing their cases but failing to rehabilitate them, produces ruined lives and neighborhoods infested with drug dealers. Misallocation of scarce law enforcement resources imposes costs on the business community because of lost productivity and increased security and healthcare costs, and it imposes

costs on the working poor because of lost wages and because the poor are likely to be victims of crime.

We can continue to devote our resources to the processing of minor drug cases, with little effect on the markets for drugs, or we can provide more resources aimed at drug and mental health rehabilitation and treatment – and target the criminal justice system on serious crime. If the problems described in this report are not addressed, Cook County’s criminal justice system will continue to be unmanageable, costly, and inefficient. It will be a system that fails to do justice fairly and effectively.

This report offers recommendations for achieving justice through *accountability, independence, diversion, and rehabilitation*. *Accountability and independence* require funding, political insulation, and legislative restraint. *Diversion and rehabilitation* keep defendants away from the criminal justice system entirely and stop the proverbial “revolving door” of justice through treatment services.

There is almost universal acknowledgment among the major players at 26<sup>th</sup> Street that the Cook County criminal justice system needs significant improvement. Moreover, public opinion data suggest that the majority of the public supports restorative justice. For nonviolent offenders, there is considerable support for “intermediate sanctions” and for “restorative justice.”<sup>1</sup> There is not, however, a consensus on what can be done to improve the system. The gap between support for action and necessary action looms large. This study, along with the collaboration of the system’s major stakeholders, is a step toward reform and change that is long overdue in Cook County.

---

<sup>1</sup> A 2003 Pew Research Center poll found that 72% of survey respondents mostly agreed or completely agreed with the idea that America’s criminal justice system should work to rehabilitate individuals—not just punish them. See also, Francis T. Cullen, Bonnie S. Fisher, Brandon K. Applegate “**Public Opinion about Punishment and Corrections**” *Crime and Justice*, Vol. 27, 2000 (2000), pp. 1-79



## **I. Introduction**

The Criminal Courts Building at 26<sup>th</sup> Street and California Avenue in Chicago provides a striking contrast to the more modern, hospitable courthouses found throughout Cook County. Visitors to the courthouse, including victims, witnesses, defendants out on bail, and relatives of defendants, are faced with inadequate parking and a security line that sometimes snakes down the outside steps of the building. When they finally locate their courtrooms, they too often receive little information about the process in which they are participating. Judges, prosecutors, and defense lawyers are too often impatient and fail to interact respectfully with these participants, according to our interviews.

The Sixth Amendment guarantees a public criminal trial; yet, the courthouse facilities and culture at 26<sup>th</sup> Street ensures that these public proceedings appear inaccessible to the participants. American criminal courts should be seen as accessible, authoritative, rational and unbiased. In fact, in the words of the Supreme Court: “justice must satisfy the appearance of justice.”<sup>2</sup> Instead, 26<sup>th</sup> Street too often appears threatening, chaotic and hostile through the eyes of the public it serves.

It is important to note that under the administration of Presiding Judge Paul Biebel, improvements have been made in the administration of justice at 26<sup>th</sup> Street, and more improvements are being planned. The physical facilities have improved, and mental health and drug courts have been created. But there must be more steps taken toward systemic reform, more coordination sought out, and new funding sources must be found.

---

<sup>2</sup> Offutt v. United States, 348 U.S. 11, 14 (1954).

## **II. Background**

### **A. The Criminal Justice System in Cook County**

#### *The Court*

The Circuit Court of Cook County is organized into three departments: County, Municipal, and Juvenile Justice and Child Protection. Each division within the department has a presiding judge who oversees all activities within that division. The County Department is home to the Criminal Division of the Circuit Court of Cook County, which hears all felony cases filed in Chicago.

This study is focused solely on the Central Criminal Courts Building at 26<sup>th</sup> and California, where 80% of the Criminal Division's courtrooms are housed.<sup>3</sup> Each year, 36 Criminal Division judges at 26<sup>th</sup> and California hear more than 28,000 felony cases.

#### *State's Attorney's Office*

The State's Attorney's Office serves as Cook County's legal representative in criminal and civil matters. There are over 900 prosecutors in the State's Attorney's Office. The office is divided into eight bureaus: Criminal Prosecutions, Juvenile Justice, Narcotics, Special Prosecutions, Public Interest, Civil Actions, Investigations and Administrative Services. The Criminal Prosecutions Bureau is divided into three divisions: Felony Trial (FTD), Sexual Crimes, and Municipal.

At the Central Criminal Courts Building, 126 Assistant State's Attorneys work in the Felony Trial Division, which focuses solely on felonies committed in Chicago. Additionally, 38 prosecutors in the Special Prosecution Bureau and 22 prosecutors in the Narcotics Bureau work on felony cases at 26<sup>th</sup> and California. A small number of prosecutors in the Sex Crimes Division, Special Litigation Unit, and Felony Domestic Violence Unit work on felony cases in the Chicago felony courtrooms.

The Cook County State's Attorney is elected by residents of Cook County, and the county's Board of Commissioners control the office's budget.

#### *Public Defender's Office*

A judge appoints a public defender when an individual is not able to afford an attorney<sup>4</sup>. At an individual's first court appearance, the court provides an Affidavit of Assets and Liabilities to determine the person's financial status and ability to pay a private attorney. If a judge determines that a defendant cannot afford to pay for legal counsel, a Public Defender will be appointed.

---

<sup>3</sup> Judge Paul Biebel was named presiding judge of the criminal division in December 2000.

<sup>4</sup> 55 ILCS 5/3-4006

The Cook County Public Defender is appointed by the President of the Cook County Board of Commissioners, and then confirmed by the Board of Commissioners. The Public Defender is the Chief Executive and Chief Attorney of the Law Office of the Cook County Public Defender, the second largest public defender office in the United States. The Public Defender's Office is funded solely by Cook County, and its budget is controlled by the Cook County Board of Commissioners.<sup>5</sup> In 2005, the Office of the Public Defender's staff consisted of 742 authorized positions: 551 attorneys and 191 support staff.

Most felony cases are handled by the 92 attorneys assigned to the Public Defender's Felony Trial Division. Felony Trial Division defenders have cases ranging in severity from drug possession to first degree murder. In addition to lawyers in the Felony Trial Division, 34 Homicide Task Force public defenders represent indigent defendants accused of first degree murder, and 26 Multiple Defendant Division attorneys represent defendants throughout the county in cases where there is more than one accused.

The Public Defender's Office represents between 22,000 and 23,000 indigent defendants at 26<sup>th</sup> street each year. Those who can afford legal representation hire private defense counsel.<sup>6</sup>

### **III. Methodology**

#### **Overview:**

This study took a multi-method approach to its investigation of system-wide issues affecting the criminal courts at 26<sup>th</sup> and California. The study is based upon intensive interviews, the results of written surveys, and observation of courtroom proceedings. The use of a variety of methods to gather information permitted the authors of this report to gather information from a variety of sources and in different ways. Researchers conducted 104 intensive interviews with judges, prosecutors, public defenders, private attorneys, victims and defendants. Another 45 interviews were conducted with legal and criminal justice scholars, advisory board members and leaders from the key stakeholders at 26<sup>th</sup> street and other jurisdictions. Quantitative data was also collected through an anonymous survey of prosecutors, public defenders, and judges. Finally, the research staff gathered courtroom observation data amounting to 160 hours of observations of 550 hearings in 25 courtrooms.

In formulating the initial list of issues for investigation, the research staff gathered information from exploratory interviews and academic literature. As a result, this report is informed by previous policy and academic studies on criminal justice systems including specific studies of Cook County's criminal

---

<sup>5</sup> Illinois is one of 9 states that does not fund public defense (except capital cases). Source: Task Force on Professional Practice in the Illinois Justice Systems – Summary Analysis of the Survey of the Illinois Public Defenders

<sup>6</sup> Estimates of the percentage of defendants represented by the Public Defender's Office vary since caseloads are not counted consistently across offices. The State's Attorney's Office reports that the Public Defender's Office represents 53% of criminal defendants. Other estimates are higher – up to 75%.

justice system. The following explains the details of each aspect of this Report's multi-method approach:

### **Exploratory Interviews**

Chicago Appleseed staff and members of the Criminal Justice Advisory Board conducted 45 informal, exploratory interviews with various participants in the Cook County Criminal Justice System. These respondents were identified as experts in the practice of criminal justice in Cook County, and they were encouraged to speak candidly about the weaknesses and strengths in the current system. The notes of these interviews remain confidential, but the recurring themes were noted and incorporated into the subsequent research instruments.<sup>7</sup> These interviews helped the staff and Advisory Committee to identify key issues for further exploration and research.

### **Structured Interviews**

To investigate the issues identified through the exploratory interviews, research staff conducted 112 interviews with random samples of Judges, Assistant State's Attorneys, Assistant Public Defenders, and Private Defense Attorneys working in the Criminal Division. These interviews averaged 65 minutes.

Presiding Judge Paul Biebel, Public Defender Edwin Burnette, and State's Attorney Richard Devine each distributed memos in their respective offices introducing the project and encouraging participation. Interviewees were told that their participation was voluntary and confidential.

The interview schedules were reviewed by advisory committee members and pre-tested with six interviews.

Research staff drew random samples from lists of Assistant Public Defenders and Assistant State's Attorneys assigned to courtrooms in the Criminal Division at 26<sup>th</sup> Street. The Public Defender's Office supplied Chicago Appleseed with a list of all attorneys in the Felony Trial Division, Multiple Defendant Division, and the Homicide Task Force, with their direct phone numbers. The State's Attorney's Office provided Chicago Appleseed with an organizational map of the office and a telephone directory with all assistant state's attorney's direct numbers. Prosecutors were drawn mainly from the Felony Trial Division, Special Prosecutions Bureau, and Narcotics Prosecutions Bureau, as well as two smaller units that handle some felony cases.

Twenty-six of the thirty-three sampled assistant public defenders (APDs) gave interviews, giving a response rate of 79%. Twenty-seven of the thirty-three

---

<sup>7</sup> Interviewees included the following individuals: the Presiding Judge of the Criminal Division, the Cook County State's Attorney, the Cook County Public Defender, two current prosecutors, one former prosecutor/private defense attorney, one current law clerk at the Public Defender's Office, one former public defender, three private defense attorneys, and one member of a related nonprofit organization. Each interview lasted between 30 minutes and two hours.

sampled assistant state's attorneys (ASAs) were interviewed, which gave a response rate of 82%.

Twenty-six judges working in the Criminal Division agreed to be interviewed. Twenty-two of these judges preside over courtrooms at 26<sup>th</sup> and California, and four interviews with Criminal Division Judges in Skokie and Bridgeview were included for comparison. In total, 33 judges were sampled, and researchers received a response rate of 79%.

The research staff conducted 25 interviews with private defense attorneys. 22 of these attorneys were identified in one of two ways: through Martindale-Hubbell's Directory of Chicago lawyers practicing criminal law<sup>8</sup> as their primary specialty, or in Sullivan's Law Directory as attorneys who had recently left the State's Attorney's or Public Defender's Office and were currently practicing criminal law. Forty potential respondents were found this way, 22 of whom agreed to do interviews, giving a response rate of 55%.

### **Court-Watching**

The court watching initiative was developed as part of this study to provide information about how the judges, prosecutors, public defense lawyers, and private defense counsel behave. The court watching initiative was designed and implemented to provide a perspective independent from the views and information gathered through the interviewing effort.

#### *Court Watching Instruments*

Court observers were given four different forms to record information about specific activities occurring in the courtroom. The forms allowed court watchers to provide open-ended responses of their impressions and observations in court. The forms also asked more structured questions of our observers. Court watchers were required to rank and quantify the performances of the individuals in the courtroom.

Chicago Appleseed trained and received completed forms from 19 law students who served as court observers.<sup>9</sup> Students were required to attend a comprehensive two-hour training.

Court watchers spent approximately 160 hours in the courthouse and observed 550 hearings in 25 different courtrooms.

### **Information Requests**

A total of six information requests (two each) were sent to the offices of the State's Attorney and Public Defender, as well as the office of the Presiding

---

<sup>8</sup>Specialties excluded white collar criminal defense.

<sup>9</sup> One individual attempted to go into the courthouse with a laptop (laptops are not permitted) and was turned away and could not complete the assigned court watching. The remaining three individuals did not respond to email requests for their materials.

Judge. Chicago Appleseed received written responses from the State's Attorney and Public Defender; Judge Biebel and Court Administrator, Peter Coolson, met with research staff, provided the information requested, and referred research staff to the Clerk of the Circuit Court for select questions.

### **Interviews with Former Defendants**

The study's staff also gathered information from persons who at one time were criminal defendants. Interview schedules were designed to gather information about their experiences in the Cook County Criminal Court.

Former defendants in the study were required to meet the following criteria: they must have been charged with a felony crime in Chicago in the last 10 years, have had court proceedings at the 26<sup>th</sup> and California Courthouse, have no pending cases, and appear mentally fit. Their case must have been closed either by virtue of a judgment of guilt or innocence, or by a dismissal.<sup>10</sup> In all, 20 interviews with former defendants were conducted.

### **Interviews with Victims and Witnesses**

We sought interviews with victims and witnesses because they tend to have significant emotional investment in criminal cases, and they often work with system participants, especially prosecutors. We hoped that we could gain useful information about their experiences in the courthouse and working with the State's Attorney's Office. We attempted to reach victims and witnesses in three ways:

First, we tried to reach them through the State's Attorney's office. The office declined to provide contact information for victims and witnesses, however, citing privacy concerns. They later provided contact information for employees in the Victim Services Unit, who gave us basic information on their programs.

Second, we attempted to reach police witnesses through the Chicago Police Department (CPD). Police officers routinely serve as witnesses for the state, and we thought that many would be able to share insights about the strengths and weaknesses of the court system. We attempted to contact the CPD through a letter and repeated phone calls to the Superintendent and one of his assistants. Unfortunately, we did not receive a response from the Chicago Police Department.

Third, we distributed flyers to a social service organization and the housing organization through which we had successfully reached former defendants.

---

<sup>10</sup> Interviewees signed consent forms which stated that they understood that their participation was voluntary and that their responses would be treated as confidential. Respondents were informed that the information that participants gave to Chicago Appleseed would not be shared with any other organization. If they were quoted in the report, the report authors would use a pseudonym and would not reveal identifying information about the case. Under no circumstances did Appleseed research staff request information from the social service organization about specific clients and Chicago Appleseed staff did not share any information about participants with staff at these non-profit organizations.

The research staff also posted flyers on community bulletin boards. These flyers provided information about the project and contact information. Unfortunately, few victims or witnesses responded.

### **Survey Questionnaires**

The research staff distributed questionnaires to all Assistant Public Defenders and Assistant State's Attorneys working on felony cases at 26<sup>th</sup> and California. The purpose was to capture additional information on attorneys' assessments of trainings, resources, and caseloads. We also wanted to provide individuals with an opportunity to share information anonymously and ensure that we did not miss specific problem areas because of a reluctance to speak openly during an interview.

Thirty-three Assistant Public Defenders returned questionnaires, as did 61 Assistant State's Attorneys, resulting in response rates of 28% and 36%, respectively. Because these response rates are low, we have not treated the questionnaire responses as "representative" of the views of all Assistant Public Defenders and Assistant State's Attorneys. Rather, we treat the the information provided by respondents as information provided by key informants.

### **Interviews with Experts in Other Jurisdictions**

To place our findings in a national context, Chicago Appleseed collected information on criminal courts across the country. The research staff developed interview schedules to obtain information on the policies and procedures of indigent defender's offices, prosecutor's offices, and court systems in comparable jurisdictions.

Information was collected regarding public defender's offices in Miami-Dade County, Washington D.C., Los Angeles County, Maricopa County (Phoenix), and New York City (Manhattan); prosecutor's offices in Hennepin County (Minneapolis) and New York (Manhattan); and circuit courts in Miami-Dade County and New York (Manhattan). Several interviewees provided policy manuals on their offices. Research staff used the data from these interviews to compare practices in Cook County to those in other large urban areas.

#### **IV. Access to Justice: The Public's Perception of Justice at 26<sup>th</sup> and California**

A criminal justice system must *be fair, efficient, accountable*, and it must be accessible to the public. Accessibility means that all who come into contact with the system are treated with respect, that they are provided with relevant information that will inform and guide their interaction with the system, and that they have meaningful access to proceedings, including the ability to hear and to comprehend court proceedings that affect them, their fellow community members, and members of their families. It is important for the integrity of the rule of law, that the public trust and value the work of the criminal justice system. The public's perception of a criminal justice system will be influenced to a great extent by how accessible the system is and how the public is treated by the system.

##### **A. Public Trust and Confidence: Implications for the Quality and Integrity of Justice**

###### *Accessibility*

It is important that visitors and participants feel comfortable in the courtroom, and that they understand what is occurring. Court observation data revealed that court proceedings were often difficult for the public sitting in the audience to hear and to understand. Inaudibility and lack of clarity was driven by the speed of the court proceedings.

###### *Speed of Court Proceedings*

The sheer speed of a criminal hearing is daunting to newcomers in the system. Such was the case for many of the courtroom observers as well as the defendants interviewed in this study. Thirty percent of the hearings that our court watchers observed took place in a minute or less; over half lasted about two minutes or less; and over 75% lasted five minutes or less. Most hearings, particularly the shorter ones, resulted in continuances. Many of the hearings observed by our court watchers involved entry of pleas of guilty by defendants. These proceedings also moved quickly, many in 5 minutes or less.<sup>11</sup>

Former defendants told us that they understood only some of what the judges and lawyers said while they were before the bench. They were able to comprehend the gist of what was said, but had difficulty grasping the total significance of what was happening to them as they stood before the judge. The judge only some Defendants frequently complain on appeal after a guilty plea that they did not understand what their lawyers and what the judge, said to them prior to entering their pleas. While some of these contentions may be self-serving, the observations of our court watchers confirmed that many pleas were

---

<sup>11</sup> 15, or 34%, of 44 plea hearings (in which length was record) took place in five minutes or less – one lasted one minute; 5 lasted two minutes; 4 lasted four minutes; and five lasted four to five minutes. Most –24, or 55% -- lasted between six and ten minutes. Four lasted 11 to 30 minutes, and one was over 31 minutes.



taken quickly, with some judges speaking so fast that they (our law student court watchers) had difficulty following what the judge was saying.

On the positive side, our court watchers noted that many judges did an excellent job explaining court proceedings to defendants (or witnesses). When a defendant or a witness became confused, the judge slowed the proceedings to ensure that everyone concerned understood what was going on.

During interviews with former defendants, it became clear that some believed that they were prohibited from asking questions during the proceeding. In part, this may have been due to the fact that their lawyers instructed them not to speak during the proceeding. In many, or even in most, cases, this is good advice. But some defendants we interviewed felt that they were never permitted to ask questions (of the judge or of the lawyers) about issues of concern to them.<sup>12</sup>

### *Accessibility and Judicial Temperament*

The problem of quick, inaudible hearings was widespread through the courthouse. Less frequent, but still concerning was a few judges who yelled at attorneys, defendants, and visitors. Some stories revolved around a few “problem” judges – one attorney called them “yellers” – who consistently engaged in unprofessional behavior. In the 25 courtrooms monitored, court observers noted temperament issues in only three.<sup>13</sup>

## **B. Ex Parte Communications**

It is a basic tenet of judicial and legal professional responsibility and ethics that lawyers and judges should not talk about a case unless all parties (the judge, the prosecutor, and the defense lawyer) are present. This rule against ex parte communications ensures that undue influence cannot be exerted on a judge by any one party to the proceedings. The rule also guarantees the right of a defendant to be present in person or through his attorney whenever his case is discussed with the judge.

The legal community at 26<sup>th</sup> & California is close-knit. Many of judges, public defenders, and prosecutors have known each other and have worked together for years. Prosecutors, public defenders, and judges frequently see each other in social settings. Given this environment, the potential for ex parte communication about cases is significant. A substantial number of prosecutors and public defenders told us that ex parte communications regarding cases sometimes occurs. The public defenders reported a higher incidence of such conversations than did prosecutors. This situation is sometimes exacerbated when an attorney for one side sees an attorney for the other side in chambers with the judge without the other side being present.

---

<sup>12</sup>Of 445 hearings, defendants spoke in 164, and did not speak in 281. There were 105 hearings in which the relevant information is missing.

<sup>13</sup> Each of these courtrooms was monitored for 3-8 hours.

### **C. Courthouse Facilities**

The National Center for State Courts emphasizes the importance of a courthouse's physical plan and characteristics as important elements of accessibility. The following details the physical plan and characteristics of the 26<sup>th</sup> Courthouse.

Built in 1929, the courthouse at 26<sup>th</sup> and California, on Chicago's West Side, has a dignified and imposing exterior of Greco-Roman columns and sculptures. Our court watchers found that the Court's dignified exterior created an unjustified expectation of conditions inside the building.

The criminal courts complex at 26<sup>th</sup> & California consists of the 1929 building that houses all of the courtrooms, the criminal courts administration building, and the Cook County Jail. On the second and third floors, the courtrooms are commonly referred to as the "fish bowl" courtrooms because of the fact that public is isolated from the proceedings inside the courtroom by glass partitions that give those courtrooms a fish-bowl-like appearance. Sound is piped via a speaker system to the audience. Floors four to seven of the courthouse house larger courtrooms whose design is nearly the same as in 1929 when the courthouse was opened. The larger courtrooms allow the public to hear (or attempt to hear) proceedings without being walled off by a glass partition.

The criminal courts administration building, accessible to the court house via an interior hallway on the first floor of the criminal courts complex, is an office tower. It houses the offices of the State's Attorney's office, the Public Defender's office, the Court Clerk's office, a jury assembly room, a law library, adult probation, and the court reporter's office.

For those who take public transportation to the 26<sup>th</sup> & California courthouse, bus service is available. Public parking is available, although the facility is located some distance away from the courthouse. This public parking lot is a multi-storied structure. It is poorly maintained and inhospitable, especially at night when jurors are sometimes sent home after a day of testimony or deliberations. There is limited free parking on the street.

Access to the Criminal Courts building is through an entry way on California. All who enter, except for court personnel and lawyers with identification, must pass through a metal detector and must submit to a search if required by the deputy Cook County Sheriffs who staff the security check point. Court observers and interviewers noted that security guards conducting searches of all who enter the building through metal detectors yell directions at jurors, witnesses, and defendants from the moment they enter the doors.

Lines of people waiting to enter the courthouse stretched around the door regardless of the weather. Our court watchers repeatedly reported that the deputy Cook County sheriffs who are in charge of security screening yelled at and mocked visitors who did not comply with their demands to take off their belts or to remove all metal objects from their pockets.

Judges and attorneys who were interviewed for this study were critical of the physical conditions of the courthouse: 43% of judges and attorneys said that the courthouse was usually or always inadequate.<sup>14</sup> They expressed two primary concerns. The first was that the building was dirty and that it was not properly maintained. Attorneys and judges reported that visitors' washrooms were filthy and sometimes closed because they were so unacceptable (We note that through the efforts of Judge Biebel, progress is being made on this front). Many attorneys and judges also complained of poor ventilation in the halls and in the courtrooms. Some attorneys who were interviewed for this study mentioned that conditions in the 26<sup>th</sup> & California Courthouse had recently improved due to the efforts of Presiding Judge Biebel, but that there is a long way to go to bring the physical state of the courthouse to acceptable standards comparable to those in other courthouses in Cook County.

Attorneys also criticized the poor quality of the courtrooms on the second and third floors of the building – the so-called “fishbowl” courtrooms. They complained about the design of the interior of those courtrooms that requires that the lawyers, the judge, and the jurors sit too close together, and about the jury rooms, which are small, windowless, and not conducive to length and well-considered deliberations.

### 1. Acoustics in Large Courtrooms

Judges and attorneys were generally positive about the conditions in the large courtrooms. The one recurring complaint, however, was that the acoustics are poor. A small number of judges complained about this problem. Several court observers confirmed that it was very difficult to hear conversations between the lawyers and the judge from the audience.

### 2. Design of Small Courtrooms

Judges, attorneys, and court observers said that the design of the “fishbowl” courtrooms is dysfunctional. These complaints included the problematic aspects of the glass partition between the audience and the courtroom and the size of the jury rooms. Because of the importance of the issue of the impact of design of these courtrooms on the fair administration of justice at 26<sup>th</sup> & California, we take examine these design issues in some detail below.

#### **The glass partition**

In the small “fish bowl” courtrooms, the audience is partitioned off from the courtroom by bullet-proof glass. Visitors, including family members of defendants, must view and hear the proceedings separated from the courtroom by bullet-proof glass. They are not allowed to enter the courtroom even when their family members’ cases are called before the court.

---

<sup>14</sup> Six interviewees said that the courthouse was “always adequate,” 33 said “usually adequate,” one said “sometimes adequate,” 20 said “usually inadequate” and 10 said it was “always inadequate.”

The bullet-proof glass partition is soundproof, so visitors can hear the proceedings in the courtroom only if the microphone at the judge's bench is on and is working properly. Court watchers reported that the sound was often turned off. Sometimes this was because court personnel forgot to turn the microphones on. Sometimes the sound was turned off by the judge when holding conversations that were not intended for the audience or for the jury. When the judge decided to turn off the microphone, there was no effort to explain why the microphone was being turned off, even when sound was restricted for a proper purpose, such as, for example, a conference on the admissibility of evidence. When the microphone was working, it was not always appropriately placed; in one courtroom, it was near the judge, and sometimes attorneys' voices were not audible over the rustling of the judge's papers. In another courtroom, the microphone picked up the voices of attorneys sitting in the jury box waiting for their cases to be called.

One court watcher was struck by the sense of division created by the partition, noting that "the partition served as an "us" v. "them" barrier." The glass partition takes on more unfortunate significance when one considers that there is such a distinct separation between the public on one side of the barrier and courtroom "insiders" on the other side of the partition. Court observers noted that most of the judges and attorneys are white and that most observers on the other side of the barrier are black or Hispanic. The judges, attorneys, and court staff know each other, know how the system works, and appear comfortable and often informal. In contrast, visitors in the gallery are outsiders.

Our interviews of judges revealed that many do not like the glass barrier in the fishbowl courtrooms. One observer witnessed a judge asking the deputy to open the glass door so that voices could flow from the courtroom to the gallery. "I don't care for the glass partition," said another judge. "It is supposed to be for safety, but it prohibits me from seeing who is out there so it actually impedes safety."

### 3. Jury Rooms

Each courtroom has its own jury room, accessible through the courtroom. Jury rooms contain a table around which the jury sits during breaks from testimony and during deliberations. Each jury room has washroom facilities that vary in degrees of cleanliness. The jury rooms in the large courtrooms have windows. The jury rooms in the "fish bowl" courtrooms sometimes do not. The jury rooms in the "fish bowl" courtrooms are substantially smaller than those in the larger courtrooms, and many consider them too small comfortably to accommodate 12-14 people for any lengthy period of time.

Juries perform a crucial function in our criminal justice system. They decide the guilt or innocence of fellow citizens charged with the most serious crimes. A jury's decision means the difference between freedom and incarceration, and sometimes the difference between life or death. Our harsh sentencing laws often require judges to impose sentences after a jury's verdict that will result in

a lifetime of incarceration. It only make sense then, that juries be provided with a place to which to retreat during breaks from testimony, and a place to deliberate that is clean, comfortable, and otherwise conducive to a thoughtful, non-hurried process. Unfortunately, the jury rooms at 26<sup>th</sup> & California, in particular the jury rooms attached to the “fish bowl” courtrooms, do not meet these standards. Several judges expressed frustration with their jury rooms – 42% described their jury rooms as usually or always inadequate. Several mentioned that the rooms were too small, and the furniture was inadequate. Judges in the “fishbowl” courtrooms were particularly critical of their jury rooms, because of the limited size.

#### 4. Lock-Ups

Each courtroom has a “lock-up” behind it in which defendants who cannot make bond (who are presumed to be innocent), and who have been detained in the Cook Count Jail, are held when they are called to court. These “lock-ups” are pens with bars. Some contain benches; most do not. If seating room can be found, it is on the floor. The floors are concrete. There is a toilet that is semi-private. Depending on the size of a individual court’s daily court call, the “lock-ups” can be extremely crowded, especially those adjacent to the smaller courtrooms. There is no space provided in or adjacent to the “lock-ups” in which defendants can talk to their lawyers with any degree of privacy.

The caseloads of public defenders, and the cumbersome procedures for visiting defendants in the Jail, makes it almost impossible for public defenders to see all of their clients at the Jail. Thus, most defendants who are incarcerated prior to trial see their lawyers only when attending their court appearances. Conversations between defense counsel and their clients is through the bars of the detention pen. These conversations occur while other lawyers and other defendants attempt to speak to each other and while the inmates not being interviewed chat with or yell at each other. In some of the smaller courtrooms, the sheriff’s office has been enforcing a policy of restricting attorney access to their clients to a small window.

### **D. Resources**

#### *Courtroom Staff*

##### 1. Deputy Sheriffs:

The deputy sheriffs are employed by the Cook County Sheriff’s Office and report to the Cook County Sheriff. Two deputy sheriffs are assigned to each courtroom in order to maintain order, security and to escort detained defendants in and out of the lock-up located behind each courtroom. Deputy Sheriffs are also responsible for maintaining order in the courtooms and in the building at 26<sup>th</sup> Street generally. Because it is difficult for defendants, for defendants’ families, and attorneys to communicate with each other, especially in the fishbowl courtooms, deputy Sheriffs sometime relay brief verbal inquiries or messages.

According to the judges, attorneys, and court observers, the deputy sheriffs in the courtroom usually perform their jobs professionally and competently.<sup>15</sup> While reported occasional instances of rudeness on the part of deputy Sheriffs, interviewees and court observers found most of the deputies to be courteous and conscientious.

However, some defense attorneys said that deputy sheriffs sometimes made speaking to defendants in the lock ups behind the courtrooms very difficult. As mentioned earlier, the sheriff's office has been enforcing a policy of restricting access in some lock-ups to a small window.

The deputy's role in maintaining order among courtroom spectators (mostly families of defendants and of victims) was rarely mentioned by attorneys or judges most probably because lawyer and judges spend little time in the section of the courtroom reserved for the audience. But variation in deputies' roles became apparent when analyzing court observation data. In some courtrooms, deputies did little besides escorting detained defendants between the courtroom and lock-up. In other courtrooms, deputies also maintained order in the gallery and provided information to confused visitors.

## 2. Clerks

The Clerk of the Circuit Court of Cook County manages the files that contain the court records of each case—the indictment or information, all motions and briefs filed in the case, the record of what occurred on each court date, and, where cases have been appealed after conviction, the transcripts and exhibits that were introduced into evidence.<sup>16</sup> Although some progress has been made in computerizing the Clerk's function, the record-keeping at 26<sup>th</sup> & California is still a "paper-based" system in which court files of completed cases are kept in a central location and files of pending cases are kept in the courtrooms in which the cases are pending. Data from the court files are entered into a computerized system, so that basic information, such as the record of past and pending court dates, can be accessed by computer.

There is one clerk assigned to each courtroom. Clerks sit near the judge. They hand the judges the court files as each case is called, and manage and make entries in the court files. Clerks also "call" the cases; that is they announce the case under consideration and in response, the lawyers involved walk to the

---

<sup>15</sup> Of 74 judges, public defenders, and prosecutors, 35% (26) said that deputy sheriffs were always adequate; 53% (39) said that they were usually adequate; 5% (4) said they were usually inadequate; and 7% invented the category of "sometimes adequate" to describe deputy sheriffs. Court watchers also tended to rate the courtroom deputies favorably. A majority rated them as "good", with several going a step higher and saying "excellent" and several a step lower to "acceptable." Only 1 deputy was rated as "inadequate", and none were evaluated as "poor."

<sup>16</sup>According to the website of the Clerk of the Circuit Court, "the Clerk of the Circuit Court of Cook County is the keeper of the records for the Court. The Clerk is responsible for serving the court, the legal profession and the general public. In this role, the Clerk records court decisions and events, handles fines, bail bonds and other financial transactions and provides the court system with supportive services such as record storage, microfilming and automation." The Clerk's office employs over 2,300 people and manages a budget of \$74 million. See <http://www.co.cook.il.us/agencyDetail.php?pAgencyID=23> for more information.

bench to discuss the case with the judge. Because in most courtrooms, clerks call the cases (there are a few cases in which the judge calls the cases), they have considerable influence over the way business is conducted in the courtroom.

Most attorneys and judges said that the performance of court clerks was “always adequate” (18%) or “usually adequate” (60%). Another 13% the category, “sometimes adequate” to describe court clerks, while 10% described court clerks as “usually inadequate.”<sup>17</sup>

### 3. Court Reporters

Each courtroom is assigned a court reporter who makes a verbatim transcript of all proceedings in the courtroom. Ideally, everything that is said concerning a case is recorded by the court reporter. Such verbatim transcripts are required in order that a complete record can be made of the pre-trial and trial proceedings if there is a conviction and an appeal. Court reporters keep their recordings of proceedings and will transcribe their notes upon request for a fee. Indigent defendants are entitled to free transcripts of their hearings and trial for purposes of appeal and sometimes to aid them in preparation for trial.<sup>18</sup>

Attorneys and judges evaluated court reporters highly; with 85% describing the reporters as always or usually adequate.<sup>19</sup> A small number of attorneys mentioned that they did not always receive court transcripts as soon as needed. Some attorneys said that court reporters were among the hardest-working employees in the building. However, there is a shortage of court reporters. During the spring of 2006, for example, the shortage of court reporters resulted in some judges having to delay their calls until proceedings in other courtrooms were completed. One court watcher reported that an entire day’s docket in one courtroom had to be postponed because there was no court reporter available.

### 4. Court Interpreters

Spanish and Polish-language interpreters work at the Central Criminal Courts Building; interpreters for other languages must be requested from the

---

<sup>17</sup>Almost all judges evaluated their clerks positively, and their few complaints focused on poor performance of substitute clerks. A majority of prosecutors and public defenders also rated clerks as always or usually adequate, but 30% of prosecutors and public defenders rated clerks below “usually adequate” and about one-quarter of prosecutors, public defenders, and judges had experienced problems in the previous six months that “made it more difficult for them to do their jobs.” Complaints focused on occasional lost cases and personality conflicts. Many attorneys, particularly defense attorneys, noted the importance of developing rapport with the court clerks, since they generally decided whose cases were heard first.

<sup>18</sup>According to the website of the Circuit Court of Cook County, “the Office of Official Court Reporters employs fewer than 300 court reporters licensed by the State of Illinois. An official court reporter uses a stenographic machine to record verbatim each and every word spoken in a court proceeding.” verbatim from <http://www.cookcountycourt.org/about/non-judicial.html>. For more information about the Court Reporter’s function, see the Court Reporters Act, 705 ILCS 70/1-9

<sup>19</sup> 25% of judges, public defenders, and prosecutors evaluated court reporters as “always adequate.” 59% evaluated them as “usually adequate.” 7% said that they were “sometimes adequate” and 9% said that they were “usually inadequate.”

downtown office of the Circuit Court. Court interpreters are assigned to a courtroom when they have been notified that a defendant or witness does not speak English adequately. Most respondents felt that court interpreters were adequate, but 22 lawyers and judges – 29% of the sample – said that there was an insufficient number of court reporters. Respondents also said that they had to wait for court reporters to attend proceedings because they were in such demand.

As the immigrant population in Chicago continues to grow, the need interpreters will likely increase. Between 2002 and 2004, Cook County's annual budgets showed an 11 percent increase in demand for court interpreters; during the same period, however, the office's budget for interpreters increased only 3 percent (Homan 2005).<sup>20</sup>

## **E. Defendants**

### 1. Demographics

It is important to examine the demographic regarding the composition of the population of defendants who are the subject of court proceedings at 26<sup>th</sup> & California. Not surprisingly, this population is overwhelmingly male, overwhelmingly minority, and overwhelmingly poor. One only has to walk into the building to notice the stark reality of these characteristics.

According to the Clerk of the Circuit Court of Cook County, 86.2 of felony defendants in 2004 were male. In that same year, 69.2% were African-American, 17.1% were Caucasian, and 11.2% were Hispanic/Latino.

### 2. Unequal Treatment of Defendants

Attorneys were asked if they believed that defendants were treated fairly in court regardless of class or race; judges were asked if they felt defendants were treated fairly by attorneys regardless of class or race?

Most judges said that attorneys treated defendants fairly regardless of race or class. Most judges said that attorneys—prosecutors and defense lawyers—did not discriminate against minority defendants.

Few prosecutors or judges said that they felt that there was discrimination against minority defendants. On the other hand, virtually all public defenders and many private defense attorneys did believe that discrimination occurred during court proceedings.

Several public defenders said that their clients were not treated respectfully in court. Many told us that judges and prosecutors have become de-sensitized to the individual circumstances of their clients, in part because of the fact that their clients are overwhelmingly from minority communities. The assistant public defenders to whom we spoke believed that the de-personalization of

---

<sup>20</sup> Source: Medill News Service. Timothy R Homan, June 02, 2005. "Interpreters translate language, law."



defendants resulted in the failure of the system to give adequate, individualized, attention to each case.

### 3. Differences in the Quality of Representation

Defense attorneys were united in their view that poor defendants receive less justice than those who have financial resources. There was a consensus among all concerned that defendants who are jailed prior to trial because they cannot make bail are at a clear disadvantage in preparing their cases for plea or trial. A defendant on bond is able to help with the preparation of his defense and to consult with his lawyer. A defendant who is detained is not able to do so. Moreover, a defendant who is detained is under pressure to plead guilty and to accept “time served” for a relatively minor case rather than waiting in custody for a lengthy period of time waiting for trial.

## **F. Jurors**

### 1. Demographics

Citizens of Cook County are summoned periodically to serve as jurors in criminal and civil cases. The objective is to create a pool of citizens representative of a cross section of the community from which a fair and impartial jury in individual cases may be selected. For the most part, lawyers and judges were satisfied that the jury pools represent a fair cross section of the community. However, there was less consensus that the juries actually selected to serve were as diverse as they should be. In part, this debate is attributable to the way in which jurors who are summoned to court are selected to actually serve as jurors.

### 2. Selection

The selection of jurors for criminal cases is governed by a process called “voire dire,” a process during which jurors are questioned about their qualifications and background and about their ability to be fair and impartial. Both the judge and the lawyers are permitted to ask jurors questions during voire dire. The defense and prosecution are permitted to exclude a certain number of jurors without providing a basis for the challenge (peremptory challenge) and an unlimited number of challenges for “cause” when it can be demonstrated that the juror cannot be fair and impartial. Despite the fact that the purpose of jury selection is ostensibly to choose the most fair and impartial jurors, the defense and prosecution naturally have different views about who will be the “most” fair and impartial. Often, choices made by the defense and prosecution boil down to who they think will be most favorable to their side of the case.

### 3. Race

Inevitably, one criterion kept in mind by all participants in the jury selection process is race. There can be little doubt that the race of the defendant and the race of jurors is taken into account in their decision making when selecting

jurors. However, the United States Supreme Court has ruled that neither prosecutors nor defense counsel may exclude jurors from service simply on the basis of race. Despite these rulings, there is a clear consensus among lawyers and judges at 26<sup>th</sup> Street that race still plays a significant role in the decision making of lawyers (both prosecution and defense) in the jury selection process.

Almost all judges and lawyers who were interviewed for this study, said that both prosecutors and defense lawyers used the *voire dire* process to select jurors they expected to be sympathetic to their side of the case. Defense lawyers reported that prosecutors employ race as a basis for excluding jurors whom they believe will be unfavorable to their case. Seventy-five percent of prosecutors interviewed told us that race-based jury selection does occur, but that much of it is the result of defense counsel excluding white jurors. Prosecutors pointed out that they were very careful not to engage in race-based jury selection because of the clear Supreme Case law that prohibits it.

## **V. Judging and Case Management in the Felony Courts**

### **A. Introduction**

Judges are powerful figures in our justice system. In Cook County’s criminal courtrooms, they manage their daily court calls, they rule on pre-trial motions, they decide the fate of defendants in bench trials, and they set and enforce the rules that apply to trial by jury. They also have the power to manage their court calls to see that cases are tried promptly, and that precious time is not wasted in their courtrooms. Perhaps most importantly, judges set the tone for the behavior of all of the actors—clerks, deputy sheriffs, prosecutors, defense lawyers, victims, and witnesses. A judge who through his/her actions is fair, firm, polite, and who conveys a sense of caring about the job of being a judge, will inevitably foster an atmosphere that is conducive to the fair and efficient administration of justice.

The 36 judges who hear felony cases at 26<sup>th</sup> and California have tremendous influence over the functioning of criminal justice in Chicago, as most of the serious crimes committed in Chicago are prosecuted in their courtrooms.<sup>21</sup>

This chapter explores the quality and control of the central figure in all of 26<sup>th</sup> Street’s courts: the judge. Among their duties, judges are obligated to conduct courtroom proceedings in line with national standards: they must conduct the proceedings so that they are clear and understandable, and they must be sensitive to the functions of court participants and interests of stakeholders .<sup>22</sup>

To explore the different factors affecting the quality of judging, we conducted structured interviews of 23 judges at 26<sup>th</sup> street,<sup>23</sup> observed 550 hearings in 24 courtrooms, and collected data from the offices of the Clerk of the Circuit Court and the Presiding Judge of the Criminal Division.

### **B. Structure of the Court**

Thirty-two full-time Criminal Division judges hear cases at the Central Criminal Courts Building at 2600 South California Avenue in Chicago, and four “floater” judges hear cases as needed. Eight additional judges hear Criminal Division cases at two suburban courthouses (located in Skokie and Bridgeview).

On average, each judge (excluding the floaters) receives more than 800 new cases each year. Nine judges at 26<sup>th</sup> and California, as well as one judge in Bridgeview, primarily hear narcotics cases. Because these cases are less complex, the number of cases of narcotics calls tend to be higher.

---

<sup>21</sup> Federal crimes are, of course, handled by the U.S. Attorney’s Office.

<sup>22</sup> See American Bar Association. 1999. *Criminal Justice Section Standards: Special Functions of the Trial Judge*. <http://www.abanet.org/crimjust/standards/trialjudge.html>

<sup>23</sup> In addition to these structured interviews, we conducted pre-test or exploratory interviews with two additional criminal division judges at 26<sup>th</sup> street and five judges working in the criminal division courtrooms in Skokie and Bridgeview.

There are also a small number of therapeutic court calls run by judges in their courtrooms at 26<sup>th</sup> Street. In 1997, the Criminal Division began running a therapeutic “drug court” which provides specialized services to defendants who have recurring arrests for drug possession. Each year, about 90 defendants graduate from the program. In April 2004, the Division began another therapeutic “mental health court” for defendants charged with nonviolent felonies who have identifiable/diagnosable mental health illnesses. As of October 2007, 70 defendants were enrolled in the two-year program, which was just beginning to see its first graduates. In 2007, two Criminal Division judges heard cases in the therapeutic courts on a part-time basis.

### **C. Characteristics of Criminal Division Judges**

Criminal Division judges are generally drawn from the attorneys who have prosecuted or defended cases at 26<sup>th</sup> Street. This means that they are experienced in felony cases and know how the system functions, but it also means that the Division is fairly homogeneous, and judges often know the attorneys practicing there. Generally, Criminal Division judges tend to be white and male, graduates from one of Chicago’s regional law schools, and former Assistant State’s Attorneys or Assistant Public Defenders.

In early 2006, 82% of Criminal Division judges were male, and 18% were female. Roughly 70% of the judges were Caucasian and 30% non-white, mainly African-American. The vast majority of Criminal Division judges attended regional law schools: 30% received law degrees from John Marshall, 25% from DePaul, 14% from Chicago-Kent and 11% from Loyola. 7% received degrees from Northwestern, and 14% received degrees from schools outside of Chicago.

Only one judge had not worked in either the State’s Attorney’s Office or Public Defender’s Office. Three-quarters had been prosecutors and one quarter had served as public defenders. Almost all of them had trial experience in the felony courts. Moreover, 50% had also worked in private practice, while the rest had worked solely in government.<sup>24</sup>

Attorneys and judges were asked how one’s experience in a particular office might shape their performance as a judge. Most said that one cannot predict how judges will lean based on previous occupation. Attorneys believe that some judges can be oriented toward their former office; but three-quarters of attorneys interviewed said that it could work the other way – that often, former public defenders are less lenient with defendants than former prosecutors are. Many attorneys repeated the half-joke that “former prosecutors know that police lie, while former public defenders know that defendants lie.” A few attorneys explained that by the time an attorney becomes a judge, she has

---

<sup>24</sup> We found that 21 judges had worked in firms or as solo practitioners; 21 had never worked in private practice, and two had no available data regarding their previous employment. Seven of nine former Assistant Public Defenders had worked in private practice, and two had worked only in the Public Defender’s Office. Eleven of 31 former Assistant State’s Attorneys had worked in private practice, while 20 had worked only in the State’s Attorney’s Office. Additionally, one judge had worked in the Public Defender’s Office, the State’s Attorney’s Office, and private practice, and one judge had worked only in private practice.

already heard every story; the cases they hear as judges can seem like repeats of cases that they worked on as a prosecutor or defense attorney.

Most judges had served many years on the bench. Criminal Division judges had, on average, served on the Circuit Court for 14 years.<sup>25</sup> One judge had joined the Circuit Court in 1964; the newest judge had joined the bench in 2000. Almost all had served in First Municipal Court, Juvenile Justice Court, or both, before joining the Criminal Division.

### *Satisfaction*

The longevity of judges reflects a high level of satisfaction with their work. In fact, nearly all judges interviewed reported that they felt “very satisfied” in their current job.

**Table 5.1: Occupational Satisfaction Levels among Judges at 26<sup>th</sup> Street**

<b>Satisfaction Level</b>	<b>Frequency</b>	<b>Percent</b>
Very Satisfied	21	91.3
Satisfied	2	8.7
Neutral	0	0
Dissatisfied	0	0
Very Dissatisfied	0	0
Total	23	100

Judges articulated a number of sources of satisfaction in their work. When asked what aspects of their work were most satisfying, many said that they enjoyed the intellectual work – “the challenge of thinking on your feet,” as one judge said. Others mentioned the sense of public service, in restoring crime victims or rehabilitating defendants. Several judges mentioned that they enjoyed working with lawyers and their courtrooms staff, and others emphasized the knowledge that they were effectively managing their caseload. The responses to these questions are aggregated and included in appendix D.

**Table 5.2: Satisfying Aspects of Being a Judge**

<b>Aspect</b>	<b># Judges who mentioned that aspect</b>	<b>% of Judges who mentioned aspect</b>
Working with Lawyers, Staff	8	35%
Intellectual Rigor	8	35%
Public Service	7	30%
Disposing of Cases	6	26%
Contact with Defendants	4	17%
Being in Control	2	9%

<sup>25</sup> The mean length of service was 13.8 years; the median length of service was 12 years.

Though no judge claimed that the financial income was the most satisfying aspect of their job, the salary was perceived as sufficient. Circuit judges earn \$162,000, and associate judges earn \$154,000 annually, not including benefits.<sup>26</sup>

### *Frustrations*

Judges also expressed that the job can be very difficult. A small number of judges explicitly mentioned the emotional wear-and-tear that comes from seeing difficult cases. When speaking about the most satisfying aspects of the system, one judge explained that he had resorted to focusing on moving the process along, rather deriving satisfaction from case outcomes, stating:

“[the most satisfying aspects are] being productive, contributing to the efficiency and efficacy of the system itself ... There is no great happiness, the victim has still been raped, it’s not like civil.”

Some judges mentioned that the “revolving door” aspects of the system and the chronic recidivism could be very depressing. Sentencing, while essential, was a specific step that several judges described as the least satisfying aspect of their job.

**Table 5.3: Least Satisfying Aspects of Being a Judge**

<b>Aspect</b>	<b># of Judges who mentioned aspect</b>	<b>% of Judges who mentioned aspect</b>
Case delay	6	26%
Sentencing defendants	6	26%
Sadness –Victims or Defendants	4	17%
Building Conditions	3	13%
Frustrations with IL Legislature	3	13%
Dealing with incompetent people (lawyers/staff/defendants)	3	13%
Large Caseloads	2	9%
Public Misconceptions of the Role	2	9%

A number of judges also voiced frustration with the slow pace of the system. While they could push cases along, there was little they could do when lab results were not available for trial or a court reporter was not available. While most participants are motivated to pursue resolution, having a case timely proceed depends on a number of elements falling into place. All of the lab results and psychological tests have to be completed; both the prosecution and

<sup>26</sup>See <http://www.state.il.us/court/General/Funding.asp>

defense must be prepared; the subpoenaed witnesses and the defendant have to show up; a court reporter must be available; and a court interpreter might be necessary. If one piece is missing, the case is delayed.

#### **D. Caseloads and Workloads**

Experts suggest that the judicial staffing needs of court systems can best be assessed through a weighted caseload analysis.<sup>27</sup> In 1993, the Cook County Court Improvement Project and the National Center for State Courts performed such an assessment for the Criminal Division. They calculated that, in order for the Criminal Division to be able to fairly and expeditiously process the more than 28,000 cases filed in the Division annually,<sup>28</sup> the division needed 65 judges. They also estimated that, in order for a judge to meet established time standards, he or she could handle about 104 pending cases at a time.<sup>29</sup>

The judges, however, have found ways to adjust to their substantially higher caseloads. The Criminal Division has been chronically overstretched, so most judges tried cases in courtrooms that were similarly overloaded. About half of judges at 26<sup>th</sup> street say their caseload is “easily manageable”, while the rest said that caseloads were difficult to manage.

#### *Judicial Support Staff*

At the 26<sup>th</sup> Street Criminal Courts building, there are 17 judicial staff members supporting 36 judges. One court administrator and three court coordinators (one of whom is part-time) run the courthouse. One office administrator, five secretaries (one in a part-time position), and two data entry assistants provide administrative support. Five staff attorneys and one law clerk provide legal research support. In general, judges evaluated their support staffs highly, and they did not express a need for additional support service.

#### **F. Judicial Training**

New judges to the Circuit Court attend a two-week long, mandatory “new judge training”. There are no specific trainings for new judges to the felony courts, but all judges are required to attend a two to three day training sponsored by the Illinois Supreme Court once every two years. During the training they can choose to attend relevant seminars, generally taught by other judges. All judges

---

<sup>27</sup> For an overview, see the National Center for State Courts at <http://www.ncsconline.org/WC/Events/WorkLdView.htm>

<sup>28</sup> During Calendar Year 1992, 29,307 cases were filed in the Criminal Division. Source: Clerk of Circuit Court, as cited on page 4, Judge Workload and Judgeship Needs Assessment. Based on the most serious offense charged, 727 of these cases were murder cases; 3,625 were class X cases; 12,140 were narcotics cases; and 12,815 were other felonies.

<sup>29</sup> Page 21, Steelman, David C. and Jeffrey M. Arnold. 1993. *Circuit Court of Cook County, Illinois: Criminal Division Judge Workload and Judgeship Needs Assessment*. Prepared under the Cook County Circuit Court Improvement Project.

at 26<sup>th</sup> Street are required to obtain certification to hear capital cases, which involves additional trainings. There are also regular, optional seminars on various issues that seem to be frequently attended. All judges interviewed reported that they had attended trainings within the last year. During the time of our interviews, judges were beginning to participate in additional trainings on caseflow management and mental health issues.

In general, judges rated both their initial and ongoing trainings highly: 81% rated their “new judge” trainings as always adequate, and 19% rated them as usually adequate; 83% rated ongoing trainings as always adequate, 13% rated ongoing trainings as usually adequate.

### **G. Case delay**

Case delay has also been an issue of increasing concern for the courts. Although case delay is the shared responsibility of judges, prosecutors, defense attorneys and support resources, judges have a leadership role in managing some of the issues contributing to system-wide case delay.

Much interest was triggered by a crisis in the Cook County Jail. In April 2002, the *Chicago Tribune* reported that Sheriff Michael Sheahan had threatened to place inmates in tents over the summer if the jail population reached 12,000; at that point, there were 11,300 inmates, which was 1,500 over the jail’s capacity.<sup>30</sup> Sheahan claimed that the average inmate stay had increased in recent years, which he attributed in part to a slow judicial process.

Three years later, in April 2005, *Chicago Lawyer* reported a high number of defendants waiting lengthy periods of time for their trial. Over 30 inmates in Cook County Jail had been there for five years or more; 175 had been waiting three to four years, and 336 people had been there between two and three years, according to Cook County Sheriff.<sup>31</sup> The average daily population had decreased, but still ran 500 to 1000 people over its capacity of 10,000.

In January 2005, the Presiding Judge, State’s Attorney, and Public Defender began meeting to review the cases that were over three and one half years old, and the court invited the Criminal Courts Technical Assistance Project (CCTAP) at American University to examine the factors affecting delay in the courts.<sup>32</sup>

CCTAP identified a number of key problems that led to case delay and jail overcrowding. They noted that there was a culture that fed into case delay. Judges, prosecutors, and defense attorneys had common expectations about how quickly (or slowly) cases should move, and there was a culture of

---

<sup>30</sup> Ciokajlo, Mickey. May 10, 2002. *Chicago Tribune*, Metro:page 2. “Judges to address jail crowding options – Court changes may ease woes.”

<sup>31</sup>From Tom McCann, April 2005, *Chicago Lawyer*, “Justice delayed: Jail Bursting as Hundreds of Defendants wait Years to Go to Trial”:

<sup>32</sup> The Cook County State’s Attorney reports that as of August 31, 2007 over the past five years the number of cases over two years old and over three and one half years old has been reduced from 1509 to just over 750. Correspondence from Richard Devine to Chicago Appleseed, October 11, 2007.



“continuance by agreement”. There was a general expectation that in serious cases several continuances would be granted before any significant movement on the case would take place. CCTAP estimated that 16,000 continuances were given each month, generally without the written request that is required by statute.<sup>33</sup> Discovery could be very slow, and defense attorneys generally did not devote substantial time to case preparation or investigation until discovery was tendered. Based on the above results, CCTAP made a number of recommendations, such as providing trainings for all judges on promoting efficient caseload, and implementing a differentiated case management program.

In our data collection, we focused on the issue of case delay, specifically, the great difficulty of trying to move cases quickly within such a large system. Several elements must convene before a case can move forward, and attorneys and judges often have little control over the speed at which these things occur. Several factors can delay the prosecution in obtaining evidence. When discussing problems with the police department, several Assistant State's Attorneys mentioned that the biggest problems were coordinating efforts in a timely fashion. Some prosecutors claimed that it could take months to get all of the police reports, and it could also be difficult finding and bringing in the relevant officers for questioning and on the court. Improved communication with the Chicago Police Department has the potential to speed things up. CCTAP recommended increased DNA lab testing; many prosecutors, however, said that DNA lab services were inadequate because of the long delays, understaffing, and occasional quality control problems.

There are also issues regarding mental health evaluations. Judges and prosecutors complain that forensic clinical services can take too long. Public defenders widely perceive forensic clinical services staff as biased towards the state; consequently, they hire outside psychiatric experts to do their own evaluations, which again takes time.

A number of other factors can affect time to dispositions. Several attorneys, particularly those in the Homicide Task Force, mentioned that the mandatory minimum and truth-in-sentencing measures passed by the Illinois General Assembly during the 1990s have resulted in a higher percentage of serious cases proceeding to trial. Accordingly, due in relevant part to these measures, case dispositions occur more slowly than before.

Judges tended to vary in case management skills, with some being able to move cases along and achieve timely dispositions, while others moved slowly. This observation was echoed by a number of our interviewees, who identified certain judges as being skilled in moving cases through. CCTAP has provided trainings for all judges in case management.

The volume of felony cases processed through the Criminal Division dwarfs the numbers handled by any other county in Illinois, and there are only a handful of jurisdictions nationwide that handle comparable volumes of cases. As noted

---

<sup>33</sup>Page 5, CCTAP.

earlier, the high volume results in large caseloads that exceed standards. Because of the size of the system, there also is a certain amount of bureaucratization that takes place.

Slowness or inefficiency in one part of the system affects the rest of the system, as well. We discuss these inefficiencies in other sections of this report, but it is important that, when discussing case management systems, to recognize that judges do not have complete control of the speed in which cases are resolved, regardless of their level of case management skills . However, continuances are routinely granted by most judges, without the written motion required by statute.

In its study on case management in the Criminal Division, the CCTAP report noted that a specific “local legal culture” fed into case delay: judges, prosecutors, and defense attorneys had common expectations about how quickly (or slowly) cases should move, and there was a culture of continuance by agreement. In serious cases, there was a general expectation that judges would grant several continuances before any significant movement on the case would occur. Discovery could be very slow, and until the prosecution tendered discovery, defense attorneys generally did not devote substantial time to case preparation or investigation. CCTAP researchers estimated that 16,000 continuances are given each month, generally without the written request that is required by statute.

## **VI. The Quality of Public Defense in Cook County**

### **A. Introduction**

An Assistant Public Defender's function is to serve as the accused's counselor and provide effective, quality representation.<sup>34</sup> These attorneys perform a critical role in maintaining a high quality of justice in the courts, and the Assistant Public Defenders (APDs) with whom we spoke in all divisions expressed great passion for their work and their clients' interests. Yet, high caseloads and limited facilities damage the Assistant Public Defenders' ability to be available to their clients or provide adequate counseling throughout the process.

Standards established by the American Bar Association and the National Legal Aid and Defender's Association on defense, particularly indigent defense, guide our analysis and recommendations. Assistant Public Defenders have an obligation to act with reasonable diligence and promptness in representing their client, avoiding unnecessary delay in the disposition of cases.<sup>35</sup> In order for the court system to maintain independence and accountability, the Public Defender's Office and its individual Assistants must not be affected by undue political pressures, either through the judiciary or by way of other government organizations.<sup>36</sup>

We investigated the factors that promote or inhibit the ability and willingness of Assistant Public Defenders to provide high-quality counsel and advocacy in the felony courts. We were interested in the characteristics of public defenders, such as their educational and professional experience, their satisfaction levels, and their future plans. We sought to explore the resources available and the structure of the office, as well as the resources and structure of the court and their effects on office culture.

### **B. Background & Structure of the Public Defender's Office**

In the Office of the Cook County Public Defender, there are 150 Assistant Public Defenders in three units. They represent indigent defendants in over 22,000 felony cases at 26<sup>th</sup> street each year, representing the majority of individuals accused of felony crime in Chicago.<sup>37</sup> The 84 line attorneys in the Felony Trial

---

<sup>34</sup> See the American Bar Association's Criminal Justice Section Standards for Defense: Standard 4-1.2. [http://www.abanet.org/crimjust/standards/dfunc\\_toc.html](http://www.abanet.org/crimjust/standards/dfunc_toc.html), accessed December 7, 2006.

<sup>35</sup> Ibid, Standard 4-1.3(a) and (b)

<sup>36</sup> The first principle in the ABA's "Ten Principles of a Public Defense Delivery System" is "The public defense function, including the selection, funding, and payment of defense counsel is independent." See American Bar Association, 2002.

<sup>37</sup> In Fiscal Year 2005, 21,503 felony cases were assigned to public defenders in the Felony Trial Division and 182 were assigned to public defenders in the Homicide Task Force, both of which are housed at the Central Criminal Courts Administration Building at 26<sup>th</sup> and California. 1,713 cases were assigned to attorneys in the Multiple Defendant Division, which handles felony cases throughout the county (more often at 26<sup>th</sup> street than anywhere else.) According to the Clerk of the Circuit Court's records, 29,943 felony cases were filed at 26<sup>th</sup> and California in the same year, which suggests that public defenders represented between 74% and 77% of the

Division (FTD), each of whom are assigned to specific courtrooms at 26<sup>th</sup> Street, handle most felony cases that reach the building.<sup>38</sup>

Most first-degree murder cases, however, are handled by the Homicide Task Force (HTF), a unit comprising 32 experienced attorneys who have received capital case certification. A third division, the Multiple Defendant Division (MDD), is composed of 24 attorneys who often but do not exclusively represent defendants at 26<sup>th</sup> Street. This division was formed to resolve cases that involve multiple defendants and conflict-of-interest issues; in a case involving multiple defendants, one defendant is represented by an HTF or FTD attorney, while the other is represented by an MDD public defender.

#### *Horizontal Assignment System*

Once a judge has determined that he or she is unable to pay for a private attorney, the Public Defender's Office is charged with representing an indigent defendant. Representation by the office begins during the preliminary hearing process.

Most cases are handled through a “horizontal assignment” system, in which Assistant Public Defenders are assigned to particular courtrooms and handle the cases that flow through these courtrooms only for that particular part of the process.<sup>39</sup> Consequently, a defendant will first meet an Assistant Public Defender during the preliminary hearing, will have a different public defender during his bond hearing, and will have yet another public defender after his case is assigned to a trial courtroom. Two or three public defenders are assigned to each courtroom. While they may assist each other on particular cases, each defender’s caseload is his own. Because public defenders rotate from courtroom to courtroom periodically, a defendant may have different felony trial attorneys working on his case before it is disposed. A small number of cases are handled “vertically” by attorneys in the Homicide Task Force or Multiple Defendant Division, who follow a case from the preliminary hearing to disposition.

In some smaller courthouses in Cook County, courtrooms do not have assigned attorneys; rather, all attorneys handle cases vertically for their duration in front of several different courtrooms. However, attorneys and judges at 26<sup>th</sup> Street see several advantages to working on cases in the same courtroom. Judges particularly remarked on its crucial role in maintaining efficiency in such a high-volume courthouse. Many felt it would be chaotic trying to get through the call if all cases were handled by “vertical” attorneys. As attorneys and judges learn to work with each other, they can move through cases more quickly. As one judge said, “You get to know people...they know what to expect

---

defendants in the building (depending on the frequency of MDD cases at 26<sup>th</sup> street.) Indigent defendants with cases in Criminal Division courtrooms in Skokie and Bridgeview are represented by Municipal District Assistant Public Defenders, who handle a variety of felony and misdemeanor cases.

<sup>38</sup> These 84 FTD attorneys are supervised by 5 senior attorneys. There are also two supervisors each in the Homicide Task Force and the Multiple Defendant Division. Each division is headed by a chief.

<sup>39</sup> An extensive academic literature exists on the positive and negative aspects of a horizontal system – sometimes referred to as a courtroom workgroup.

[and] it makes things move smoother...yesterday I had 25-26 court sheets [and] it only took my staff 3 hours...like anything else the more you get to know each other the more efficient you are.” Furthermore, it is more efficient for the attorneys: there is less waiting, and all of their witnesses, clients, and concerned relatives are located in one place, making it easier to communicate about what is occurring on each case.

Another advantage is that prosecutors and public defenders become familiar with a particular judge, increasing their ability to strategize effectively for each case. All FTD prosecutors and public defenders said that they get to know how the judge will act in certain situations; most said that they sometimes modify their behavior accordingly.<sup>40</sup> Some said that they adjust the style of their lawyering – whether or not to explain their objections, for instance. Others said that they learn how a judge will interpret facts. One prosecutor gave the example of “knowing the judge is not going to convict someone on a single [witness], but he won’t believe a defendant who accuses a cop of battery.” They also learn the type of work a judge is willing to do: “this judge doesn’t like to read case law, so if it’s a decision he’s made before, I don’t bother with memos, etc. The same judges make the same rulings on what type of evidence they will allow.”

Several participants discussed the horizontal assignment system’s disadvantages, as well. Some felt that the predictability could breed complacency, as everyone settled into delivering only what was expected of them. Prosecutors and public defenders could quickly look at the basic facts of the case and assess the most likely outcome, without considering a case’s nuances.

Most defendants viewed the working relationships in the courtroom with suspicion. Almost all noticed that their attorney knew the prosecutor and judge. A few said that they thought this was positive; for example, one defendant reported that the public defender was able to handle a very difficult judge. Another said it was good, “because they have a lot of insight on what’s going on.” Most, defendants, however, saw the relationships in a more sinister light. Several mentioned the word “setup.”

In a horizontal representation system, there is also the possibility that the need to get along with one’s courtroom colleagues can undermine the zealotry of a defense attorney’s advocacy. A few public defenders hinted that there was a relative power imbalance between them and the prosecutor and the judge and that they had to be careful not to annoy them, or otherwise their clients would receive poor deals in the plea bargaining process.

The horizontal system can also present negative consequences for prosecutors. A felony trial division prosecutor, for example, explained that he had to “pick his battles” in court in order to maintain his reputation. One public defender said, “I’ve been trained to make my record, but not to conquer the world,

---

<sup>40</sup>All 16 felony trial division public defenders said that they adjusted their behavior based on their knowledge of the judge; 9 of 16 said they adjusted their behavior based on their knowledge of the prosecutor.

because it's going to have a bad effect." Private attorneys and "vertical" public defenders in the Homicide Task Force and the Multiple Defender Unit said that they found it beneficial to their clients that they could make decisions regarding the representation of their clients without having to consider the effect of those decisions on a day-to-day working relationship with the judge.

Some of those interviewed for this study felt that only over combative attorneys suffered from poor working relationships with judges. One veteran public defender, when asked if she had ever suffered negative consequences in court for fighting too zealously for a client replied, "no, I haven't seen that; I'm sure people will tell you they have. I've worked in courtrooms where everyone gets along. No one is criticized for doing their job; there's been a degree of professionalism. Sometimes people pick a fight just to fight, and that doesn't do anyone any good."

*The Impact of Court and Jail Facilities on the Adequacy of Representation of Defendants at 26<sup>th</sup> Street*

Inadequate court and jail conference facilities make it difficult for an attorney to have a private conversation with a defendant on the day of the defendant's hearing. In the Central Criminal Courts Building, the courtroom and courthouse hallways become the meeting places for defense attorneys and their clients and, to a lesser extent, prosecutors and victims and witnesses. Public defenders often meet with clients for a few minutes before and after court. With clients who were released on bond, their conversations were often whispered in public spaces.

Defense attorneys meet their clients who are in custody in the "lock-up," attached to each courtroom, where detained defendants were held during court proceedings. In the larger lock-ups areas, defense attorneys and their clients can sometimes have semi-private conversations whispered through the bars; in the smaller lock-ups, access is often restricted to a small hole through which attorneys can speak with detained clients. Both defendants and public defenders reported that these courthouse meetings were the only conversations they had. While 60% of public defenders interviewed said that they had ample time to speak with their clients, but only 13% said that they had ample space and conditions.

### **C. Hiring and Characteristics of Public Defenders**

In 2005, the office received 367 applications for 15 new attorney positions. Though they receive a high volume of applicants, their ability to fill these positions is undermined by a highly inefficient hiring process. Once an application is approved by the Public Defender's Office, it must then be reviewed by the Cook County Board. Offers of employment are made to applicants only after they have passed the Illinois State Bar – long after many applicants have accepted employment elsewhere. The defect in this process is

that it is exceedingly difficult for law school applicants to wait from May, when most graduate, to the following October, when they are admitted to the bar after taking the bar examination, to secure employment. This process deprives the Public Defender’s Office of the services of many well-qualified applicants why may want to work for the Public Defender’s Office, but who receive offers of employment that are effective immediately upon graduation.

The Public Defender’s Office has recruited attorneys diverse in gender and race. The educational background of its attorneys is very homogeneous. The gender ratio in the Public Defender’s Office is evenly split and throughout the office, 67% of the Assistant Public Defenders are white; 3% are Asian, 25% are African-American, and 6% are Hispanic.

Similar to the State’s Attorney’s Office, the office draws the majority of its attorneys from Chicago’s regional law schools – 80% of public defenders interviewed attended one of Chicago’s local law schools – DePaul, Chicago-Kent, Loyola, or John Marshall.<sup>41</sup> About 75% had worked somewhere else (and often multiple places) between law school and their arrival at the Public Defender’s Office. Many did not keep their previous jobs for long; half had joined the office within 18 months of graduation, and 80% had joined within 4 years of graduation.<sup>42</sup>

Assistant Public Defenders expressed a variety of reasons for joining the office. Many public defenders were drawn to criminal law, particularly criminal defense. Many also mentioned a desire to serve the public, particularly to serve members of society who are disenfranchised or marginalized by a larger system. The opportunity for trial experience provided by the office was also mentioned. Some Assistant Public Defenders said that they applied to the office because of its predictable hours, steady employment, and predictable pay.

**Table 6.1: Reasons Frequently Given for Joining the Public Defender's Office**

<b>Reason for Joining</b>	<b># of Public Defenders (of 29)<sup>43</sup></b>	<b>% of Public Defenders</b>
Interest in Criminal Law/Criminal Defense	12	41%
Opportunity for Public Service	10	34%
Opportunity for Trial	5	12%

<sup>41</sup> A third of interviewed public defenders had attended Chicago Kent, with the rest split evenly between DePaul, Loyola, John Marshall, and out-of-state schools. As with prosecutors, we did not interview any attorneys who attended Northwestern University or University of Chicago.

<sup>42</sup> 73% reported another job before entering the office. 14 had been involved in private practice; some focused on criminal defense, some civil, some had a mix. 5 had practiced public defense in another county. 2 had clerked, 3 had worked in non-legal positions, and 3 did some other type of work.

<sup>43</sup> Responses from pre-test interviewees are included here.

Work/Trial Experience		
Practical Concerns	5	12%

#### **D. Training in the Public Defender’s Office**

The Public Defender's Office provides a number of trainings to new and experienced attorneys. The office has a Chief of Training at its downtown offices.

##### *Initial Training*

All recently hired Assistant Public Defenders are required to attend a “New Attorney Training.” In 2005, the new attorney training lasted for a full week and covered various issues, including the following: interviewing techniques, code of criminal law and procedure, search and seizure law, and understanding medical records. There were a small number of workshop exercises, covering a range of issues, including juvenile law, civil, and criminal proceedings, as well as general issues working with clients.

Lawyers recently hired by the office said that these initial trainings were insufficient. Of the eleven APDs hired since 2000, only one rated the initial trainings positively; almost all rated initial trainings as inadequate because they received the training several months (even over one year) after they had joined the office and had already been in the courtroom. They described a “sink-or-swim” environment in which they had to determine on their own how to do things for themselves.

According to the Public Defender’s Office, budget issues have had a significant impact on the amount of training the office can provide. Training sessions scheduled within the last two years have had to be postponed or cancelled because of funding shortfalls precipitated by Cook County government.

##### *Ongoing Training*

Ongoing trainings were viewed more positively. The Office had a training budget of \$160,000 in 2005, and much of this is spent seeking out training opportunities for its attorneys.<sup>44</sup> According to the Public Defender’s Office, in 2005 all public defenders were provided with the opportunity to attend 245 training courses offered by the Law Office and 84 other outside vendors<sup>45</sup>, and

---

<sup>44</sup>The training budget for FY 2006 was \$180,000. The training budget for FY 2004 was \$210,000.

<sup>45</sup>These vendors include various organizations: for example, the National Legal Assistance and Defenders’ Association; IICLE; LEXIS-NEXIS; New Horizons; Cook County Board of Ethics; National Association of Criminal Defense Lawyers; Chicago Bar Association; Career Track; Skills Path; Illinois State Bar Association; Office of the State Appellate Defender; Illinois Public Defenders’ Association; and the National Criminal



411 attorneys participated in 81 courses during that year. In most situations, attorneys must submit an application to participate in a particular program. According to the office, this number is lower than it had been in previous years because of new fiscal restraints. For example, 1,548 attorneys participated in 165 courses in 2004 and 649 attorneys participated in 90 courses in 2003.

Almost 75% of the public defenders interviewed had attended at least one training within the last year. Several had attended multiple trainings, but generally no more than 5 or 6 during the year. These ranged from short seminars on specific issues, such as motions to quash arrests, to conferences on management or death penalty issues. Several attorneys reported attending out-of-state conferences. A majority<sup>46</sup> described their on-going trainings as usually or always adequate. A few public defenders raved about the trainings available; “There are tons of trainings in-house,” said one public defender, “and you can apply for trips to other trainings.” Some public defenders rated trainings poorly, mainly because they were unaware of available trainings.

With the exception of training for those attorneys who try capital cases, general trainings are not required within the office, so an attorney’s participation depends upon their own initiative. “They used to always give you a pass [if you didn’t participate],” said one Public Defender, although this will likely change with the new laws mandating continuing legal education.<sup>47</sup> While trainings were available to attorneys, there were not regular, obligatory trainings that would ensure exposure to new legislation, case law, or advanced trial techniques.

Formal training is only one component of continuing legal education. In most law offices, the mentoring of less experienced lawyers by more experienced lawyers is an essential element of efforts to improve professional competence and skill. However, mentoring is not a central part of the office culture. Each felony courtroom is assigned two to three Assistant Public Defenders<sup>48</sup>, usually a combination of grade 2 and grade 3 attorneys. While a mentoring relationship can form between the attorneys working in the same courtroom, the more senior attorney generally does not have any formal obligation to oversee the work of junior public defenders.

Newly-hired Assistant Public Defenders should receive prompt, intensive training upon arrival at the office. It would also be useful for the Public Defender's to also have specialized trainings at the 26<sup>th</sup> Street Courthouse when attorneys enter the felony trial division. Finally, the office should consider establishing additional opportunities for mentorship, to help cultivate both talented attorneys and talented supervisors.

---

Defense College Trial Practice Institute. A public defender must receive permission from the office to receive funding for an outside training.

<sup>46</sup> (62%, or 16/26)

<sup>47</sup> The Illinois Supreme Court recently mandated 15 hours, annually, of continuing legal education.

<sup>48</sup> 6 APDs in the Felony Trial Division are assigned to Preliminary Hearings Courtrooms at 26<sup>th</sup> Street.

## E. Caseload and Workload

At the close of 2005, Felony Trial Division attorneys each had an average of 67 pending cases each.<sup>49</sup> The attorneys we interviewed said that their caseloads ranged from 50 to 100 pending cases.<sup>50</sup> According to the Public Defender's Office, on average each public defender in the division achieved resolution in 229 cases in 2005—well above the nationally-mandated caseload. Homicide Task Force attorneys had, on average, resolved 10 cases each in 2005 and had 16 pending cases at the end of the year;<sup>51</sup> the small number of Homicide Task Force attorneys we interviewed had primary responsibility for 10 to 18 pending cases<sup>52</sup>. Multiple Defendant Division (MDD) attorneys each disposed of 88 cases in 2005 and had 32 pending cases at the end of the year; MDD attorneys interviewed had between 20 and 58 pending cases.<sup>53</sup>

National public defender standards indicate that each defender should take on no more than 150 felonies per year.<sup>54</sup> Public defenders regularly exceed these established standards. If public defenders are expected to manage cases in a timely fashion *and* maintain adequate communication with their clients, they must have more lower caseloads. In order to achieve caseloads that are consistent with effective representation, the office must have the ability to decline representation when caseloads exceed national standards.<sup>55</sup>

Public defenders did express frustration with their caseloads, particularly attorneys in the Felony Trial Division and Multiple Defendant Division. Over half felt that it was difficult to manage the volume of cases they were assigned.<sup>56</sup> Several felony courtrooms were staffed by only two public defenders, rather than three. Attorneys in these courtrooms expressed that the workload was excessive.

Large caseloads undermine an attorney's ability to move quickly on cases or maintain adequate communication with all clients. According to a recent opinion issued by the American Bar Association, "if a lawyer believes that her workload is such that she is unable to meet the basic ethical obligations

---

<sup>49</sup> According to the Public Defender's Office, for the end of fiscal year 2005. Unless noted, all years refer to fiscal, not calendar years.

<sup>50</sup> This corresponds to statistics provided by the Public Defender's Office that, at the end of FY 2005, FTD attorneys had, on average, 67 felony cases pending. HTF attorneys averaged 16 pending cases, while MDD attorneys averaged 32 pending cases.

<sup>51</sup> According to the Public Defender's Office.

<sup>52</sup> Most of these cases were homicide cases; a small number (usually two or three) might be felonies that their homicide clients had picked up. We were not able to disaggregate homicide and minor felonies.

<sup>53</sup> The attorneys with fewer cases tended to have more serious (primarily homicide) cases, with the attorney with 58 cases had less serious (primarily drug crimes and robberies) cases. It should be noted that the MDD attorneys handle cases at various courthouses throughout the county and consequently can handle fewer cases at a time.

<sup>54</sup> National Advisory Commission on Criminal Justice Standards and Goals, Report of the Task Force in the Court: Standard 13.12 (cited from p E52 of the Compendium of Standards for Indigent Defense Systems, Dec. 2000).

<sup>55</sup> Compendium of Standards for Indigent Defense Systems, E51.

<sup>56</sup> Only 43% said that their caseloads were easily manageable, and only 7 of 18 FTD attorneys said they were easily manageable; and no MDD attorneys responded affirmatively.

required of her in the representation of a client, she must not continue the representation of that client or, if representation has not yet begun, she must decline the representation.”<sup>57</sup> This opinion was greeted with amusement by public defenders in the office.<sup>58</sup> There is no system in place through which overwhelmed attorneys can decline cases.

It should be noted that some Assistant Public Defenders did feel that caseloads had improved in the last two decades, and some felt that they had learned how to better manage the caseload. It appears, though, that caseloads in the felony trial division are only manageable if public defenders commit to working very long hours, seek repeated continuances, or resign themselves to not having private conversations with each client. As one public defender explained, “It’s not ideal, it’s manageable -- but not if we do our jobs effectively.”

Caseloads in the Felony Trial Division exceed caseload standards for public defenders in most states.<sup>59</sup> For example, there is an annual caseload standard of 150 felony cases in Arizona, 100-120 in Minnesota and 150 in New York City. It should be noted, however, that many public defenders’ offices exceed their home state standards. In Maricopa County, Arizona, the average annual felony caseload is 204 per trial division attorney. The Miami Public Defender’s Office has developed standards of no more than three capital felony cases per year, or more than 200 non-capital felony cases per year, but in reality, most public defenders’ caseloads regularly exceed these recommended limitations.<sup>60</sup>

However, some urban Public Defender’s Offices are able to maintain reasonable caseloads. A representative from the Public Defender Service for the District of Columbia noted that attorneys handling serious felony cases (e.g. homicide, rape, armed carjacking, armed kidnapping) may have 15-25 cases at one time. (D.C. public defenders typically do not take less serious felony cases.) New York Legal Aid Society attorneys might have 80 cases at a time, but they worked on both misdemeanor and felony cases. In Los Angeles, felony public defenders receive about 144-180 cases per year.<sup>61</sup>

Assistant Public Defenders reported working, on average, about 47 hours weekly. Felony Trial Division attorneys reported higher time estimates than Homicide Task Force and Multiple Defendant Division attorneys, though there was substantial variation within each division.

---

<sup>57</sup> ABA Standing Committee on Ethics and Professional Responsibility. May 13, 2006. Formal Opinion 06-441: Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation

<sup>58</sup> Chicago Sun-Times. Pallasch, Abdon. July 24, 2006. “Call to limit cases amuses public defenders”

<sup>59</sup> See attachment: pages 12-13 from “Keeping Defender Workloads Manageable” prepared by The Spangenberg Group for Bureau of Justice Assistance. Jan 2001.

<sup>60</sup> Interview with Carlos Martinez, Miami Public Defender’s Office

<sup>61</sup> Personal interviews

## F. The Professional Experience of Public Defenders at 26<sup>th</sup> Street

Before reaching the felony courts, each Assistant Public Defender worked in various departments. There is not a uniform path that each public defender takes through the office – of those interviewed, about half started in juvenile courts (abuse/neglect and delinquency). Several others started in misdemeanor (1<sup>st</sup> Municipal/Traffic) court or in post-conviction appeals.

According to the Office’s records, the average length of service among current Felony Trial Division attorneys is seven years. Homicide Task Force attorneys have an average of 18 years, and in the Multiple Defendant Division, attorneys’ experience ranges from 16 years to more than 30 years of experience.<sup>62</sup>

### *Compensation and Satisfaction*

The substantial experience of staff attorneys may be the result of high rates of satisfaction in the office. A strong majority described themselves as being “very satisfied” or “satisfied” with their jobs. Only 12% - or three interviewees - described themselves as being dissatisfied or very dissatisfied with their jobs.

**Table 6.2: Satisfaction Levels Among Assistant Public Defenders**

<b>Level of Satisfaction</b>	<b># of Respondents (of 29)</b>	<b>% of Respondents</b>
Very Satisfied	11	44
Satisfied	9	36
Neutral	2	8
Dissatisfied	2	8
Very Dissatisfied	1	4

Public defenders overwhelmingly cited working with and helping clients as the most satisfying aspect of their jobs. When asked “What’s the most satisfying aspect of your job?” 80% mentioned the sense that they were doing good for their clients – that they were representing individuals who were marginalized and who the entire system was up against. In addition they enjoyed contact with clients. One attorney explained,

“[It’s] when my clients smile at the success of [my work] . . . when they are put in a better position than when we met. It comes from the client -- when they use what little money they have to mail me a card. It’s those few who you have positive experiences with that make it worth it helping people that need help or legal assistance.”

Only a small number of public defenders mentioned this sentiment in the context of innocent clients. Most felt that they were performing a moral good by

---

<sup>62</sup>Among our interviewees, the average length of service in the FTD (non-supervisors) was about 6.5 years.; in the HTF, 19.5 years; our MDD interviewees averaged about 19 years of experience.

providing legal representation to someone who would not otherwise be able to afford it, regardless of the defendant’s guilt or innocence. As one attorney responded, “[it is] knowing that I am part of the criminal justice system – that the system won’t work if I don’t do everything that I can.” During their interviews, many spoke about the structural injustices their clients face, suggesting that this sense of helping a societal “underdog” was a strong component of their job satisfaction.

**Table 6.3: Most Satisfying Aspects of Public Defense**

<b>Aspect of Public Defense</b>	<b># of Public Defenders Mentioning Aspect as “Most Satisfying” (of 25)</b>	<b>% of Public Defenders Mentioning Aspect as “Most Satisfying”</b>
Helping Clients	20	80%
Trial Work	14	56%
Camaraderie	4	16%
Flexible Hours	2	8%

The other factor mentioned regularly was the satisfaction and enjoyment in the practice of law, particularly succeeding at trial – about half of the respondents mentioned things like the thrill of the trial or the intellectual stimulation of constructing and dismantling legal arguments. A smaller number mentioned camaraderie within the office or the flexible hours as satisfying aspects of their jobs.

Yet beneath the positive figures for satisfaction levels, it is clear that work as a public defender can be emotionally tumultuous. Although this was a close-ended question, six public defenders explained that the job involved many ups and downs. As one attorney stated, “On a good day, there’s no better job. It’s wonderful to feel you are helping people. On a bad day, you never want to come back.”

While helping clients was a consistent source of satisfaction, interviews frequently mentioned that frustrations with clients was one of the *least* satisfying aspects of the job. Over one-third of interviewed public defenders said that they were aggravated or disheartened by clients who lied to them, didn’t respect them, or didn’t appreciate them. Working with clients was viewed as rewarding, and, at the same time, discouraging; almost all of those who discussed frustrations with clients had mentioned clients as one of the most satisfying aspects of their jobs.

Several other issues were mentioned as being the “least satisfying” aspects: almost one-third described various frustrations within the public defender’s office. These frustrations varied: a few public defenders mentioned what they considered an arbitrariness in “merit” promotions, while others described a stifling bureaucracy. Others mentioned the lack of sufficient, high-quality support staff or the physical conditions of the office.

One quarter mentioned experiencing frustrations with aspects of the criminal justice system that they cannot control (such as jail conditions or police practices); and one fifth mentioned frustrations with judges. A small number also mentioned issues such as having difficult cases, horizontal representation, losing cases, and heavy caseloads.

**Table 6.4: Least Satisfying Aspects of Public Defense**

<b>Aspect of Public Defense</b>	<b>Number of Public Defenders Mentioning Aspect (of 25)</b>	<b>Percentage of Public Defenders Mentioning Aspect</b>
Frustrations with Clients	9	36%
Office Bureaucracy, Resources, or Politics	8	32%
Systemic Problems in Criminal Justice	6	24%
Problems with Judges	5	20%

Public defenders were also were asked about their level of satisfaction with their salaries. Public defender’s low pay is often blamed for resulting in high turnover and difficulties recruiting talent. One-third described themselves as being satisfied or very satisfied with their salaries; one third were neutral; and one third said they were dissatisfied or very dissatisfied. Predictably, satisfaction with one’s salary was positively linked to how much one earned.

Despite a third being critical of their salary levels, pay was not mentioned during other parts of the interview, suggesting that it was not considered to be a critical factor in public defenders’ minds.<sup>63</sup> Whereas prosecutors often attributed relatively low salaries to high turnover, the same sentiment was not expressed in the Public Defender’s Office.

*Job Expectations*

More than 40% of interviewed public defenders said that they expected to still be in the office ten years from now; several mentioned being in a different position, such as Homicide Task Force or a supervisor. An additional 31% said that they could see themselves still in the office ten years from now, but also mentioned the possibility of moving to another job that appealed to them (such as a judge, teaching, or working in private practice). Twenty-seven percent expected to leave the office within 10 years, generally for private practice.<sup>64</sup> Only two public defenders mentioned retirement; it appears that most of the public defenders who were interested in retiring took advantage of the early retirement option offered by the County a few years ago.

<sup>63</sup> This is in contrast to Assistant State's Attorneys, who discussed the issue of pay at various points throughout the interview.

<sup>64</sup> 11/26 expected to stay in the office; 7 expected to leave; and 8 considered options within and out of the PDO.

**Table 6.5: Job Expectations—Where Will Public Defenders Be in Ten Years?**

<b>Where Respondent Will Be</b>	<b># of Respondents(of 29)</b>	<b>% of Respondents</b>
In Public Defender's Office	11	42.3%
Not in Public Defender's Office	7	26.9%
Maybe in Public Defender's Office	8	30.8%

## **G. Office Resources**

### *Support Staff*

A total of 40 administrative support positions and 30 investigators support the 124 attorneys in the Felony Trial Division and Homicide Task Force. This includes seven administrative assistants, two interpreters, 18 stenographers, and 13 clerks. Another five administrative positions and five investigators assist attorneys in the Multiple Defendant Division.<sup>65</sup> About 40 unpaid law students volunteer as law clerks each year.

Effective case management is possible only with adequate support staff. According to national standards, the office should employ one paralegal, one secretary, and one investigator for every four felony trial attorneys.<sup>66</sup> The quality of the administrative support appears to be adequate.<sup>67</sup> The absence of paralegal support, however, reflects a lost opportunity to improve defense services in an economically responsible fashion. With high caseloads, it is difficult for attorneys to meet with all of their clients and conduct legal research. While 40 unpaid law students volunteer as law clerks each year, these students work only on a temporary basis and are generally inexperienced. Paralegals, who can be hired at lower cost than additional attorneys, could substantially reduce the workload burden in the office.

Other serious complaints concerned the investigations unit. 80% of public defenders interviewed said that that investigators were less than adequate.<sup>68</sup> Public defenders repeatedly expressed that investigations were often delayed or inadequate, if they were done at all. Some felt that this resulted from

<sup>65</sup> This includes 2 administrative assistants, two stenographers, and 1 clerk, although it should be noted that the main MDD offices are located at the head office at 69 W Washington, and may receive some supplementary support from the staff at that office.

<sup>66</sup> Page 10 in Spangenberg Group, 2001. "Keeping Defender Workloads Manageable."

<sup>67</sup> About two-thirds of public defenders described their administrative support staff as "usually adequate" or "always adequate," with 28% describing it as "usually inadequate." A few attorneys complained that the quality was mixed, and several attorneys did most of their own clerical work, but there did not seem to be any major problems.

<sup>68</sup> 20% of public defenders said that the investigators were always or usually adequate. 28% said they were sometimes adequate, 36% said they were usually inadequate, and 16% said they were always inadequate.

insufficient staffing, while others felt that it had to do with the quality of investigators themselves.

Investigators in the Felony Trial Division are assigned to one or two courtrooms each. An investigator can be working with up to six public defenders, each of whom has 50 to 100 cases. There is only one investigator for every four or five attorneys in the Homicide Task Force, which is known for dealing with highly complex cases.

“People ask if I have too many cases,” said one attorney in the Homicide Task Force. He explained, if there were enough investigators, his answer would be negative. “If I can just get all of my witnesses interviewed, then no . . . each investigator is working with several lawyers . . . it’s a huge challenge, it’s an unnecessary challenge.”

### *Resources for Special Needs Clients*

The Public Defender’s Office represents clients with special needs. These clients include defendants who are mentally ill, juveniles transferred or excluded from the jurisdiction of the Juvenile Court, and clients who, in addition to their criminal cases, have uncertain immigration status.

#### 1. Defendants with Mental Health Problems

The ‘special resources’ area in which there appeared the greatest consensus was the need for additional resources for mentally ill defendants. An overwhelming majority of public defenders viewed the resources available for dealing with mentally ill clients as inadequate.<sup>69</sup> Public defenders often had difficulties communicating with mentally ill clients. Assistant Public Defenders were unaware of how to access meaningful mental health services for these clients. Some lawyers suggested that there be a separate unit for mentally ill defendants, composed of attorneys with specialized training in how to interact with mentally ill clients. Others felt that there were not adequate referral mechanisms. Some public defenders can feel that they are doing a disservice to their client by referring them to mental health probation, but they see few other opportunities to steer clients to treatment.

Public defenders consistently expressed skepticism concerning the quality of evaluations from the Forensic Clinical Services Unit, the division of the Circuit Court of Cook County that provides mental health evaluations upon request. Instead of requesting an evaluation from that unit, they often sought access to mental health experts.

#### 2. Juveniles

The office has no social workers to assist with the representation of juvenile defendants who are transferred to the felony courts. About one-half of public

---

<sup>69</sup> In 18 of 22 interviews and 28 of 32 questionnaires, public defenders described resources for the mentally ill as “usually inadequate” or “always inadequate”.



defenders interviewed said that they needed, and did not have, resources to deal with juveniles. One public defender said that it was a challenge to work with young defendants and to make them understand the seriousness of the charges against them. The office had once had a social worker who specialized in assisting with the representation of juvenile defendants. Several public defenders mentioned how useful this social worker had been; unfortunately, the program lost funding several years ago.

**Table 6.6: Adequacy of Special Resources for Juveniles Tried in Felony Courts**

<b>Level of Adequacy of Resources</b>	<b># of Respondents</b>	<b>% of Respondents</b>
Always Adequate	1	5.3%
Usually Adequate	5	26.3%
Usually Inadequate	4	21.1%
Always Inadequate	9	47.4%

### 3. Immigration Issues

Defendants who are immigrants also can be in particularly vulnerable positions during criminal proceedings. Many charges at 26<sup>th</sup> Street are considered to be “aggravated felonies,” which means that both legal permanent and undocumented residents are subject to automatic deportation if they are found guilty to these crimes.

Immigration law is dynamic and complex, making it difficult for anyone who does not specialize in immigration law to assess consequences of a guilty plea or verdict. For example, at the time this report was first drafted, the U.S. Department of Homeland Security was treating simple drug possession crimes as aggravated felonies. Just recently, the U.S. Supreme Court decided that this policy was an incorrect interpretation of the Immigration and Naturalization Act.<sup>70</sup>

Public defenders receive packets explaining the basics of immigration law and most have attended at least one seminar on immigration issues. However, over half of the attorneys interviewed said that the level of training on immigration issues was inadequate.<sup>71</sup> Several said that they did not feel confident advising their clients on the immigration consequences of plea deals. One attorney explained:

“They have given us packets, but I still don’t know what to do. A guy’s illegal, what are the consequences of a plea? And you can’t rely on the client to know [their immigration status.] And immigration law changes

<sup>70</sup> See Lopez v. Gonzalez No. 05-547.

<sup>71</sup> 17, or 52%, of the 33 public defenders who returned questionnaires also rated information on immigration issues as “always inadequate” or “usually inadequate.”

all the time, and the packet is limited. We need more seminars, or maybe a part-time person who can be a sole resource on this.”

Language barriers can also complicate the provision of services to defendants who may have immigration problems. The public defender’s office employs two Spanish-speaking interpreters. These interpreters were evaluated highly; several attorneys noted that they often went beyond the call of duty, staying late or coming in on weekends. Many attorneys in the Public Defender’s Office speak Spanish, but it appears that most rely on interpreters for dealing with Spanish-speaking clients. Two interpreters seem to meet the needs of the office when both are present. However, when one is ill or on vacation, attorneys noted that the level of staffing in this important area was insufficient. The need for interpreters should be monitored, since many practitioners expect the number of immigrants facing felony charges to rise in the next few years.<sup>72</sup>

### *Equipment and technology*

The office has recently seen an improvement in its technology resources. Each attorney, and most support staff, has his/her own computer, that are equipped word processing, internet access, and access to Lexis-Nexis <sup>73</sup> There were consistent complaints about the poor quality of the copiers, but other office equipment was perceived as adequate.<sup>74</sup> Everyone in the Public Defender’s Office has a voicemail account and email account, though most prefer private email accounts that they can check outside of the office. The lack of an effective email system undermines the ability of the office to build an effective electronic communication network; it may be worthwhile to invest funds in providing a more usable email system.

### *Office Space*

Public Defenders occupy two floors (the seventh and eighth) at the 26<sup>th</sup> Street Criminal Courts Administration Building. While many Homicide Task Force attorneys have their own offices, the majority of attorneys share offices with one or two other public defenders. Assistant Public Defenders complained of desks that were scotch-taped together, insect infestations, and broken water fountains. Said one Assistant Public Defender about the conditions in the office: “it makes it so you don’t want to be here; it’s not a conducive environment to work in.”

---

<sup>72</sup> The expected rise in charges against immigrants stems from recent legislation that makes certain DUI crimes felonies, such as a DUI while driving without a license; non-citizens are disproportionately represented in these cases.

<sup>73</sup> There are 167 computers in the FTD/HTF, and 45 in the MDD. These computers are also linked to the Public Defender’s Expert Witness Data Base, and will be connected to the Legal Edge Case Management System in the future.

<sup>74</sup> The MDD has 2 copy machines, 18 printers, and 2 fax machines.

## H. Management and Supervision

The quality of supervision seems to vary considerably in the office. A number of public defenders mentioned supervisors who excelled at management and mentoring, while others viewed their supervisors as uninterested and unsupportive.

Many defenders said that they would appreciate more support from supervisors. While more than half said that supervisory support was always or usually adequate, 8 of 25 respondents said that supervision is less than adequate.<sup>75</sup> Attorneys seemed to talk to their supervisors about work, generally, a few times a week, but a full third of our respondents reported talking to their supervisors about work less than once a week. There was a positive correlation between how often someone talked to her supervisor about work and how satisfied she was with her job. One attorney explained, “more mentoring is needed. A lot [of attorneys] haven’t been here a long time and they are thrown in ...”

During the interviews one supervisor was consistently mentioned as a positive model. This supervisor actively sought out information about what each of her attorneys were doing on a daily basis, and knew when they were trying a case. She regularly observed her attorneys in court, particularly newer attorneys. This supervisor continued to try cases with attorneys working under her supervision. She also held regularly meetings with attorneys in her unit to discuss issues they had all encountered – case law, resources, technology issues, mental health issues. She initiated disciplinary proceedings against one of her supervisees, and the problem was resolved before proceedings took place. What was most striking about this more active mentoring approach was that several public defenders went out of their way during interviews to talk about how useful it was.

Several Assistant Public Defenders gave examples of supervisors' failures to provide adequate support. Several interviewees said that they had supervisors who rarely observed them in court, who did not observe them in the courtroom, and who did not even give them annual performance evaluations. A number of public defenders recalled specific instances in which their supervisors failed to provide support when the public defender clashed with a judge, prosecutor, or defendant.

One factor influencing the quality of supervision in the Office of the Cook County Public Defender is the unacceptable number of vacancies that exist among supervisory positions. In responding to this issue, the office issued the following statement for this report:

“There are many factors causing some attorneys to feel that supervision is sometimes lacking in the Public Defender’s Office.

---

<sup>75</sup> 5 APDs described the supervisory support as always adequate; 10 described supervisors as usually adequate. 6 said “usually inadequate” and 1 said “always adequate”, which were choices given to them; 2 said that it was “sometimes adequate” and 1 described the support as “almost always inadequate.”

One clear problem is that supervisors have left the office in significant numbers without being replaced; remaining supervisors are stretched too thin. For example, in the Felony Trial Division at 26<sup>th</sup> Street, there are six units or “Wings.” Each unit has in the past, had a supervisor overseeing six or seven courtrooms, and the twelve to eighteen attorneys assigned in those courtrooms. In 2007, only two of the six supervisory positions were filled.

This left two supervisors attempting to do the work of six. In contrast, the “Wing” supervisor positions in the State’s Attorney’s Office are filled. In addition, in the State’s Attorney’s Office each felony trial courtroom is also led by an experienced ASA [Assistant State’s Attorney] who serves as first chair, a position that provides additional mentoring and supervision. In the Public Defender’s First Municipal District, which handles misdemeanor cases in Chicago, all supervisors in the four branch courts in police stations have left without replacement. Every parallel court call is supervised by an on site supervisor in the State’s Attorney’s Office.

There are a number of factors contributing to the shortage of qualified supervisors in the Public Defender’s office. Many supervisors have left the office, and recruiting and maintaining experienced, qualified supervisors has become more difficult. First, the spots must be budgeted by the Cook County Board, because state statute grants the Board the power to set the number of Cook County assistant public defenders and their compensation. 55 ILCS 5/3-4008.1. However, even when supervisory spots have been budgeted, the County Executive has not allowed the Public Defender to fill vacant supervisor jobs. In 2007, the County Executive filled two supervisory positions, allegedly with political appointees without the approval of the Public Defender. State statute, however, specifically grants the Public Defender of Cook County, and no other statutory officer, the power to appoint assistant public defenders. These assistants serve at the pleasure of the Public Defender. 55 ILCS 5/3-4008.1. The power to hire supervisors is now the subject of litigation in state and federal courts.

Another obstacle to filling supervisory positions with qualified individuals was raised in late 2006, when the County Executive attempted to classify many Public Defender supervisors as subject to political hiring and firing, a matter now the subject of litigation in federal court. Supervisors have also seen their pay erode relative to union members, and relative to State’s Attorney supervisors. Some supervisors now supervise attorneys who make more money than they do. It is challenging to persuade an experienced, qualified assistant public defender attorney to leave his or her a job as an assistant to apply for a supervisory position

when to do so they would give up union protection, step increases, and job security, for a position that may pay less, and be subject to termination, possibly even for political reasons.

### *Effects of the Union*

Attorneys in the Public Defender's Office formed a union during the late 1980s, which reportedly altered the dynamic in the office substantially. While unionization of public defenders in Illinois has been ruled illegal by an Illinois Appellate Court, it remains a legitimate and powerful force in the Cook County Public Defender's Office. The union bargains with the Cook County Board for a contract covering all non-supervisory personnel. It has the ability to file grievances on behalf of its members when it feels that they have been unfairly treated by the office's administration. It plays a significant role in how promotions and transfers within the office are processed.

Almost all Assistant Public Defenders in non-supervisory positions belong to the union, although membership in the union is optional (non-members have to pay "fair share dues," which account for about 85% of union dues.) Most APDs view the union as both a positive and negative force. Some interviewees claim that the union has made it more difficult for management to implement reforms. But most of the APDs we interviewed credit the union with substantially increasing salaries and making the promotion and transfer process less political. One attorney expressed a common sentiment when saying:

"The Public Defender's office is not the revolving door that it used to be; it should be taken as a professional career, and seniority should be valued, and the unions protect seniority. Does the union also protect people who should be reprimanded? Yes, but I wouldn't have it [like how it was before]."

## **I. Accountability in the Office**

### *Incentives for High-Quality Performance*

In general, Assistant Public Defenders felt that trial experience, particularly jury trial experience, was the most important criterion applied in the promotion process. Before the office was unionized in the 1980s, many viewed social and political connections as the determinative factor in professional advancement. The rationalizing influence of the union made promotions less arbitrary, and though some have complained that there is an overemphasis on seniority, there was still a widespread perception that merit was the primary criterion influencing promotions in the office. While the promotion from grade 1 to grade

2 is assured after one year, promotions to grades 3 or 4 are based on merit.<sup>76</sup> In practice, merit is often translated as jury trial experience.

There were other factors considered to be important for promotions. Several attorneys felt that getting along well with supervisors went a long way in achieving favorable courtroom assignments, which in turn could yield the jury trials necessary for promotion. Seniority was considered important because the collective bargaining agreement between the County and the union provides that if two similarly qualified individuals apply for the same position, the applicant with greater seniority should receive it. Many attorneys noted that there was also an intangible quality – something like charisma or creativity in the courtroom – that influenced whether an attorney received a promotion.

**Table 6.7: Perceived Importance of Various Factors in Receiving Promotion**

<b>Factor</b>	<b>Percentage of public defenders who evaluated the factor as “very important”</b>
Trial Experience	69%
Connections to Powerful People	35%
Seniority	31%
Formal Evaluation Ratings	21%
Number of Cases Won	13%
Number of Hours Worked	8%
Number of Dispositions	8%

While trial skills and professionalism in the courtroom were highly valued, there were few external incentives for working long hours or visiting clients in jail next door. Although public defenders reported working, on average, 47 hours a week, a number of attorneys and judges, including former public defenders, reported that many attorneys leave the Public Defender’s Office before 5 pm. When asked about the importance of hours worked for promotions, just over

---

<sup>76</sup> When we requested information about the differences between grade 2 and grade 3 attorneys, the Public Defender’s Office responded: “Unlike Grade 2 attorneys, who automatically attain that grade after a year of employment under the terms of the collective bargaining agreement, Grade 3 attorneys attain their grade through a rigorous selective process that ensures that only the most qualified applicants will be considered for promotion. The process involves convening a promotion board that considers, *inter alia*, the applicants’ pre-trial motion practice, examination of expert witnesses, participation in training events, demonstrable trial advocacy in the number and types of cases litigated, sentencing advocacy, juvenile or appellate experience.

The job description for Grade 3 attorneys requires them to assume primary responsibility and provide technical and legal direction and assistance in cases of advanced difficulty and complexity requiring a high order of original and creative legal thought. In practice, this means that cases of increased complexity, such as non-capital murders (Grade 4 attorneys have primary responsibility for capital murders), other felonies that may qualify the client for natural life sentencing upon conviction, or cases with complicated issues, including controverted DNA forensics, are reserved for Grade 3 attorneys. Grade 2 attorneys may handle all other felonies not specifically reserved for Grade 3 attorneys.”

half of respondents said that this was only “slightly important” or “not important at all.”<sup>77</sup>

### *Consequences of Poor Performance*

Many attorneys said that there were few consequences imposed by the office for poor performance. However, one consequence mentioned by interviewees was loss of respect by Assistant State's Attorneys and judges. Several others mentioned that there were consequences within the office, such as not being promoted or being relegated to an assignment where less is expected of them. No attorney interviewed said that poor attorneys were fired; in fact, some believe that poorly performing attorneys were never actually removed from the office.

While most public defenders do seem to care about their clients, about their own professional advancement, and about their reputations, there are some public defenders who lack the motivation and skills necessary to perform their jobs adequately. One public defender told reporter and author Steve Bogira that “some PDs keep their head above water by routinely advising their clients to plead guilty.”<sup>78</sup> Several public defenders expressed the same sentiment during interviews: that there are some public defenders who encourage pleas even when it is not in the client’s best interest. For example, when asked what qualities are least respected in the office, one public defender responded:

“Laziness, but there is a diversity of opinion in the office. Some people don’t think it is a problem to be a “penitentiary deliverer” because it is the easy way out. Sometimes you enter a plea out of laziness. I’m not saying most people, but some.”

### **J. Defendants’ View of Public Defenders**

As noted earlier, public defenders expressed ambivalence about their clients as a whole. While the vast majority described their work with clients as one of the most satisfying aspects of their jobs, nearly one-third also mentioned certain aspects of client contact as one of the least satisfying aspects of their work.

Light was shed on this dynamic during discussions with former defendants, most of whom felt that their public defenders had not truly been on their side. This common perception stems from a number of factors, some of which are beyond the office’s control, but some of which result directly from the policies of the office or the actions of individual Assistants. This subsection explores the ways in which the public defender-client relationship can be improved.

Poor communication can lead to defendants who feel slighted by the office and disserved by the criminal justice system. High levels of antagonism and a de-emphasis on interpersonal relations can cause public defenders to focus solely

---

<sup>77</sup> Two of 22 attorneys said that hours worked were “very important;” eight said they were “somewhat important”; six said they were “slightly important” and six said they were “not important at all.”

<sup>78</sup> Bogira, Steve. Courtroom 302.(124)

on obtaining positive case outcomes, rather than more holistic service to the client, such as guiding the defendant through the system. Antagonism can also lead to high levels of dissatisfaction and “burnout” among public defense attorneys, weakening the office’s ability to provide high-quality legal services.

While confrontational relationships appear to be common, both attorneys and defendants remember the notable exceptions. The research staff interviewed one former defendant, “Tony,”<sup>79</sup> who had only praise for the public defender who represented him on a drug possession charge. From the description Tony gave, it was clear that his attorney did several things to promote a positive relationship. When Tony first met his public defender, the attorney was already familiar with his case, which he noted as comforting. Tony met with his attorney for the standard 10 minutes at each court date, but was particularly impressed when his attorney came and visited him at the jail. The attorney also assisted him obtain his medication. They developed a strong rapport; when asked to describe his attorney, Tony said, “Understanding. Mainly he was a listener. It wasn't always about the case.”

Tony did end up having to serve time, but he believed that his attorney did a very good job. He had worked with a private attorney on a previous case, but said that the public defender’s performance was superior:

“This attorney worked harder than the first one I had, who I paid 1200 dollars. He did an excellent job for a PD. Lots of people say that they work against you, that the more people they lock up, the more money they get. Even after I got out, we stayed in touch. The day I got out, he met me, and that's way beyond his job.”

Unfortunately, this type of rapport is difficult to develop. The relationship can seem doomed from the start. Indigent defendants often have little faith in their attorneys even before their first meeting – there is a common perception that public defenders are not “real lawyers.” In the mid-1980s, many Cook County Assistant Public Defenders reported that the lack of respect and not being seen as a “real lawyer” were the most disheartening aspects of their jobs.<sup>80</sup> Two decades later, public defenders repeated the same sentiment and the same phrase.

Interviews with former defendants confirmed this impression. There was a strong sentiment that a private attorney would have fought harder for them, would have gotten them a better deal, or would not have made them plead guilty.

Interestingly, the defendants did not appear to doubt the abilities of the public defenders. Complaints centered on the *motives* of the attorneys, not their *competency*. Specifically, defendants believed that public defenders performed worse than private attorneys because of one of two reasons: either they perceived public defenders as having too many cases to provide individual

---

<sup>79</sup> A pseudonym is used here.

<sup>80</sup> McIntyre, Lisa, page 87.



attention, or they perceived that public defenders were beholden to the system and worked directly with the prosecutors or received higher salaries when defendants went to jail. Public defenders and prosecutors “deal back and forth in defendants,” said one defendant. Some scholars have noted that the idea that “you get what you pay for” colors defendants' expectations of attorney performance,<sup>81</sup> and while few defendants expressed this sentiment explicitly, it appears probable that this sentiment fed into their mistrust.

Defendants' initial doubts are exacerbated by stories they hear from other defendants. Most clients of public defenders do not make bail and must spend time in the Cook County Jail waiting for their case to be resolved. They are often in jail for three weeks before meeting their trial attorney. All interviewed defendants reported that conversation in the jail includes discussion about cases. Said one defendant, “Everyone is a lawyer in there.” They discuss the names of private attorneys who can be hired and what defendants should do with their cases. Many defendants claimed that they disregarded much of the feedback they received, but it appeared that some took jailhouse advice seriously. In this environment, stories of disservice by public defenders spread quickly, and the popular wisdom is that public defenders will not provide high-quality representation.

This sentiment is reinforced by popular conceptions of public defenders as incompetent. Public defenders are often saddled with a “stigma of ineptitude” in the popular media.<sup>82</sup> It also may result from the inherent difficulty in promoting indigent defense services – they are often seen as being counterproductive to “law-and-order.” Furthermore, it can be difficult to assert the need for legal defense services without criticizing another element of the criminal justice system, such as the police department or the prosecutor’s office.<sup>83</sup>

#### *Amount of Contact with the Assistant Public Defenders at the Felony Trial Level*

Public defenders usually meet with their clients in two settings: in the lock-up facility attached to the courtroom on the day of their hearing, or in a visitation room in one of the Cook County Jail’s 11 divisions, some of which are not immediately adjacent to the courthouse. It did not appear unusual for a defendant with a lower class felony charge to have spent no more than 30 minutes total with her attorney before pleading guilty, and this often was not in private.

---

<sup>81</sup> For discussion on misconceptions of public defenders, see Chapter 2, McIntyre.

<sup>82</sup> See McIntyre, Chapter 2, for discussion.

<sup>83</sup> As McIntyre notes on page 72: “The public defender's situation is complicated by the fact that its every legitimate victory undermines the legitimacy of the rest of the system. If a public defender does win fairly, then it can mean only one of two things: (1) the defendant was actually innocent and ought not to have been arrested in the first place and prosecuted in the second or (2) the police and/or prosecutor failed to properly handle the case such that a conviction could be won. From the point of view of everyone, the startling conclusion must be that in a system where everyone is doing his or her job properly, the public defender *does not win* cases.”

A jail visit was more uncommon. Most of the former defendants interviewed said that they did not receive visits from their public defenders, and consequently never spoke to their attorneys in private. Defendants in some divisions may receive very few visits: during June 2006, the 848 inmates in the two medical divisions of the jail received a combined total of 19 attorney visits.<sup>84</sup> In Division V, there had been 15 attorney visits between July 1<sup>st</sup> to July 17<sup>th</sup> for 1158 defendants.<sup>85</sup>

Public defenders reported spending up to ten hours per week talking to their clients outside of court, and several reported that they spent two or three hours each week doing jail visits or meeting non-detained clients in their offices.

Public defenders suggested several reasons for failing to visit their clients more often: some felt overloaded by cases, others mentioned that they rarely needed to speak with the defendant for case preparation, and many expressed frustration with the visitation procedures at the Cook County Jail.

Those in high-volume courtrooms have even less time to speak with clients. One public defender in a drug courtroom reported that the judge expected that “you should dispose of a case in three months.” Cycling through over 100 cases over three months leaves little time – even if a public defender visited a client every weekday afternoon, he would not meet with every client before some of these cases would be resolved.

#### *Perception of Public Defenders as Accomplices*

Public defenders assigned to certain courtrooms generally develop working relationships with the judges and prosecutors also assigned there. The extent of these relationships varied – a few sets of public defenders and prosecutors got along well and would occasionally lunch or grab a drink together, others were simply cordial, while others reported acrimonious relations.

The relationships were seen differently by defendants, however. Most saw public defenders as being too entrenched in the system. Some sensed that they were all friends – that they were “lunch buddies” or they “partied together.” One defendant described his public defender as being “too buddy-buddy with the prosecution.” Others felt that public defenders actively worked with the prosecution to achieve high conviction rates. Two defendants said that it felt like a “set-up.” A few seemed to believe that public defenders received pay increases when a defendant spent more time in jail.

Even defendants who were pleased with their case outcomes carried an impression of impropriety. One defendant who was happy that her charge was reduced to a misdemeanor said that the whole process was a “numbers game.”

---

<sup>84</sup> This includes both private and public defense attorneys, but it was expressed that most of the inmates are represented by public defenders.

<sup>85</sup> It must be noted, however, there there likely is a higher per capita visitation rate in the higher-security divisions. Division V houses a proportionally high rate of low-level offenders, which tend to be less complex and involve less work by attorneys.

She got off, but someone else might not have. The public defender worked with the prosecutor and judge to determine how many people they were going to find guilty, how many people they were going to get off, she explained. “They don’t care about the individual; it’s not about what someone needs.”

One judge, when asked if he had experienced any recent problems with public defenders, explained:

“Not directly. The biggest problem is some of their ability to relate to the client. They get burnt out. [It is] "come on, take the plea, I got you a great deal"...they've been doing it so long that they can evaluate the case quickly, [but the defendant just sees it as the PD not working for them].”

Indeed, most of the defendants interviewed felt that their public defenders pushed their recommendations to plead. Some defendants reported that their attorneys did not explain what was going on, or anything regarding the substance of the case; they merely explained possible outcomes in relation to a plea deal. A small number of court observers witnessed this type of dynamic in the courthouse, when public defenders were discussing cases with defendants, who were trying to explain more than the attorney was interested in hearing.

### *Emotional Exhaustion*

There are a number of factors that can cause a public defender to limit his contact with certain clients, such as caseload pressures or burdensome visitation procedures. There are often emotional reasons. Public Defenders often receive verbal attacks from clients; sometimes their clients are simply uncooperative. Too often their clients have complicated histories of substance abuse or mental disorders that complicate provision of legal services.

One Assistant Public Defender stated,

“You can go to the jail any time. The thing about time is that it’s very draining to talk to some clients. Some have difficult personalities; it’s very emotionally draining.”

One judge noted that public defenders “put up with a lot of abuse” from their defendants. Some public defenders explain this matter-of-factly, almost excusing some defendants for it. “We bear the brunt of the unhappiness that a defendant has. It’s difficult to yell at anyone but your lawyer when you are in custody,” explained one public defender. This problem is not unique to Cook County public defenders. As one scholar notes, “as a Legal lawyer . . . half the time you are also fighting with your own clients. . . . Your client is hostile and angry at you, funneling all of the frustrations which he feels about the 'system,' about being incarcerated in a disgusting environment, at you, the one person who is trying to help him.”<sup>86</sup>

---

<sup>86</sup> Paula S. Deutsch, Gideon v. Wainwright's *Application in the Courts Today: Gideon's Effect on a Legal Aid Trial Attorney*, 10 PACE L. REV. 387, 388 (1990).

Attorney-client friction is often a primary component of burnout that drive public defenders to leave the office. Some former public defenders interviewed said that conflicts with clients drove them to private practice:

“I got tired of people, doing my best job for people...[who] have a sense of entitlement...you work hard and they treat me like a jerk.”

“You would always hear, "I want a real lawyer." You would work your tail off, get a great result, and no one would thank you.”

## **VII. Public Defense in Bond Court**

Indigent defendants' first contact with the public defender's office is at bond court. Defendants usually have little time – often less than two minutes – to speak with an Assistant Public Defender before their bond hearing, barely enough time to get the defendant's basic history and certainly insufficient time to discuss their case.<sup>87</sup> The bond hearing itself generally lasts less than a minute,<sup>88</sup> and is conducted via closed circuit television. Defendants are located in the basement of the Criminal Courts Building and the judge who sets bond is located on the first floor of the same building – viewing the defendant on a television screen.

The Chicago Council of Lawyers and the Chicago Appleseed Fund for Justice have issued a public statement criticizing the use of closed circuit television to conduct bond hearings because the way in which closed circuit television is used presently to conduct bond hearings in Central Bond Court results in an unnecessary violation of bond applicants' right to a full and fair determination of the appropriate level of bond in their cases. The Chicago Council of Lawyers and the Chicago Appleseed Fund for Justice base this conclusion on the fact that closed circuit television bond hearings foster assembly line justice and do not afford the defendant the right to appear in person before the judge who is making the very important decision on the amount of bond.

### *Results of the Criminal Courts Assistance Project (CCTAP) Concerning Closed Circuit Television Bond Court*

The CCTAP report submitted in September of 2005 was critical of Central Bond Court:

As noted above, the initial stages of the judicial process in criminal cases bound for the Criminal Division of the Circuit Court do not now permit fully informed bond and release decisions to be made by the judges assigned to these hearings for a number of reasons.

“First, these decisions are made at the Criminal Courts Building by judges assigned from the First Municipal District of the Circuit Court, not the Criminal Division judges who will be responsible for cases that proceed past the initial bond-release hearing.

Second, these judges receive no information from a disinterested interviewer as to the relevant facts about the defendant (e.g., verification of residence, length of time at the address, family and other ties to the community, etc.) that would support either release or suggest that strict conditions should be set for release. This is precisely the information that an effective Pretrial Services Agency provides to the judiciary. Instead,

---

<sup>87</sup> Bogira, Steve. Courtroom 302., page 12

<sup>88</sup>From Tom McNamee, “50 Minutes and 113 people = 26.55 seconds per case; Court system forces attorneys through fast and furious pace, with hardly a hint of justice.” Chicago Sun-Times, June 20, 2005

the Assistant State's Attorney present normally provides a criminal history (rap) sheet and a record of any failures to appear by defendants.

Third, the hearings are a mass production operation. Large numbers of defendants are "brought before the court" through video link-up with the cell block in the basement of the courthouse. The defendants may not have had the opportunity to meet with a public defender prior to the hearing, or had time to communicate more than the most limited information about their eligibility for release, and the public defender assigned to the courtroom therefore may attempt through communication with a defendant in the cell block to make any possible arguments for the defendant's release."<sup>89</sup>

The CCTAP report goes on to point out that the elimination of the Pre-trial Services Agency by the Adult Probation Department has severely restricted the ability of judges to make appropriate decisions regarding pre-trial release. Moreover, inadequate bond hearings result in few defendants being released on bond, thereby adding to jail overcrowding and the resulting additional costs of operating the jail.

The existing structure of Central Bond Court does not allow for family members to have input concerning the criteria for setting bond set forth by the Illinois Code of Criminal Procedure. Indeed, the video-conference aspect of the process prohibits the accused from having any communication whatsoever with his or her attorney during the bond hearing.

The CCTAP report also addressed the fact that following the abbreviated Central Bond Court hearings, it is often not possible to have an effective review of the initial bond decision:

“Another shortcoming of this process, in addition to the rendering of the release bond decision without adequate information about the defendant, is the lack of effective review of the release-bond decision. At the bond hearing, cases are scheduled for their preliminary hearings, also before the First Municipal District judges. Both the judges at the preliminary hearings and the judges of the Criminal Division who will assume responsibility for the cases when they are arraigned, normally three weeks after the preliminary hearing, have made it clear to defense counsel that bond review applications are not favored and will rarely be granted. This situation is also complicated by the varying way in which different trial judges interpret the meaning of new information, which is what is required for a new bond motion to be heard. The Criminal Division judges also appear to hold the view that these decisions are best made by the judges at the initial hearing and should not be reconsidered. Consequently, public defenders are discouraged by these conditions from making applications for bond review and, reportedly, relatively few are

---

<sup>89</sup> CCTAP Report at p. 21

filed, as compared with prevailing practice in other large urban jurisdictions.<sup>90</sup>

The sum total of these deficiencies is devastating to an accused: the defendant is saddled with a de facto unreviewable result of a thirty second hearing wherein no effort was made to put forth evidence on his behalf or defend against evidence introduced by the prosecution.

Following the May 2006 forum co-sponsored by the Chicago Council of Lawyers and the Cook County Bar Association, a lawsuit was filed in federal court by Locke Bowman, on behalf of the MacArthur Justice Center challenging the use of televised hearings.

In February 2007, the Council and the Chicago Appleseed Fund For Justice called for an immediate end to videoconferencing of bond hearings and for a change in the hearings themselves so that the court will have the information necessary about the defendants such that the judge can make an informed decision about bond. The Council and Chicago Appleseed have been in negotiations with the Circuit Court of Cook County, calling for the use of a courtroom on the first floor of 26<sup>th</sup> Street for bond, thereby eliminating the need for videoconferencing. We have recommended during these negotiations that either the probation department or a program utilizing the services of trained and supervised students to gather the necessary background information in time for bond hearings. Noting the work of the CCTAP report, we noted that the resulting increase in the setting of bond will result in fewer defendants in the Cook County Jail.

---

<sup>90</sup> CCTAP Report at p. 22.

## **VIII. The Quality of Prosecution in Cook County**

### **A. Introduction**

199 Assistant State's Attorneys (ASAs) prosecute over 28,000 felony cases at the Central Criminal Courts Building each year. They are charged with prosecuting the case, but their role transcends the adversarial system; since their client is the state (and society as a whole), they have a broader duty to seek justice. The ability of prosecutors to bring cases to disposition in a timely fashion has been compromised by high caseloads, inefficiencies and "bottlenecks" throughout the system, and a culture that allows for repeated continuances.

When examining the quality of prosecution, we rely on the prosecutorial standards developed by the National District Attorneys Association and the American Bar Association to articulate the particular components of these five aspects for which prosecutors are responsible: As much as possible, the staff should represent the diversity of the local community and the statewide legal community.<sup>91</sup> Prosecutors must bring cases to disposition and complete restitution in a timely fashion.<sup>92</sup> A prosecutor should file only those cases that he or she reasonably believes can be substantiated in court,<sup>93</sup> and the office should work to maintain consistency in their prosecution efforts. Unfair charging or sentencing disparities should be avoided. Prosecutors should avoid personal animosity, act with professionalism at all times, and display respect to opposing counsel, defendants, judges and witnesses.<sup>94</sup>

One goal of our study was to determine the ability and willingness of Assistant State's Attorneys to meet the above standards. Through our research, we explored many aspects of Assistant State's Attorneys serving in the felony courts, including but not limited to their backgrounds, their satisfaction levels, and their goals for the future. We examined the policies and practices of the office in hiring and cultivating talented attorneys. We looked at the influence of courtroom dynamics, as well as the resources available to Assistant State's Attorneys. Additionally, researchers explored the complex and delicate relationship between the State's Attorneys Office and the Chicago Police Department.

To investigate these topics, Chicago Appleseed researchers conducted hour-long interviews with 27 Assistant State's Attorneys, collected questionnaire data from 61 Assistant State's Attorneys, and received data from the State's Attorney's Office. We supplemented this information with court observations of 550 hearings and interviews with other participants in the system.

---

<sup>91</sup> See standard 8.8, page 32, National Prosecutions Standards.

<sup>92</sup>See standard 3-2.9 Prompt Disposition of Criminal Charges, Prosecution Function General Standards, American Bar Association.

<sup>93</sup>See Standard 43.3, pages 129-131, National Prosecutions Standards

<sup>94</sup>See section six, standards on professionalism, pages 19-22 in National Prosecution Standards.



## **B. Background and Structure of the State's Attorney's Office**

One hundred prosecutors work in the Felony Trial Division, in which attorneys are assigned to specific courtrooms and handle most of that courtroom's cases. The other half of the prosecutors assigned to 26<sup>th</sup> Street work in specialized units, which handle particular types of cases "vertically" – from start to finish – and prosecute cases before various judges. Fifty-two Assistant State's Attorneys work in the Special Prosecutions Bureau, prosecuting cases such as arson, gang crimes, and crimes committed by public officials. Twenty-seven work in the Narcotics Prosecutions Bureau. Additionally, there are four Assistant State's Attorneys in the Sex Crimes Division, 13 in the Special Litigation Unit, and three in the Domestic Violence Unit prosecute felony cases at 26<sup>th</sup> Street.

## **C. Hiring and Characteristics of the Assistant States Attorneys**

The State's Attorney's Office receives approximately 1400 applications annually for Assistant State's Attorney positions, which is indicative of the fact that employment by the Cook County State's Attorney is much sought after. In the past five years, the office hired between 60 and 150 new attorneys each year, with an average of 92 attorneys annually.<sup>95</sup> A majority (61%) of the prosecutors interviewed said that they knew other prosecutors in the office before they were hired. One half of these attorneys had clerked at the office, while the other half mentioned having contacts from law school.

Prosecutors expressed a number of reasons for applying to and joining the office. One half mentioned an interest in public service, often describing the pleasure in helping a victim or keeping someone dangerous off the street. Almost half spoke of a desire to do trials – either because they loved doing trial work or because they wanted trial experience for professional enhancement. About 30% mentioned an interest in criminal justice issues, citing either their criminal law school classes or personal experiences growing up around police officers. Finally, just over one-third said that they enjoyed the work itself or camaraderie in the office.<sup>96</sup>

Many traced these motivations to prior experiences with prosecutors. Almost one-third mentioned their positive experiences clerking in the office, and several mentioned that they applied to the office after having conversations with prosecutors who described the office positively.

---

<sup>95</sup> The exact figures follow: 2001:119 new assistants were hired; 2002:59; 2003:152; 2004:73; 2005: 64.

<sup>96</sup> These reasons are not mutually exclusive; many respondents mentioned several reasons for joining the office

**Table 8.1: Assistant State’s Attorneys’ Motivations for Joining the Office**

<b>Reason for Joining</b>	<b># of Prosecutors</b>	<b>% of Prosecutors</b>
Opportunity for Public Service	14	50%
Opportunity for Trial Work/Trial Experience	13	46%
Positive Experience Clerking	8	29%
General Interest in Criminal Justice Issues	8	29%
Enjoyment of the work	7	25%
Enjoyment of Office Environment	6	21%

1. Gender in the Office

Slightly more than half of the attorneys in the State’s Attorney’s Office, and about half of the attorneys serving at 26<sup>th</sup> street, are female<sup>97</sup>. The presence of female attorneys in the office has grown from 23% in 1984 to 52% in 2005. Approximately one-third of first chair positions in the Felony Trial Division and one-third of the supervisory positions are held by female ASAs.

A small number of respondents mentioned that women were likely to experience prejudice and sexism twenty years ago, but no respondent reported overt discrimination continuing. In fact, several women spoke about receiving fair, even favorable, treatment in the office. “It’s another reason that I took this job, the office hires who they believe can be good attorneys.”

2. Race in the Office

The office has been less successful in diversifying racially – 85% of prosecutors are Caucasian; only 7% are African American, 4% are Hispanic, and 4% are Asian-American. According to the State’s Attorney’s Office, “This year 10% of the new attorneys hired were African American. Our last two recruiting classes were 45% minority and 37% minority.”<sup>98</sup>

There are compelling reasons to have greater racial diversity in the office. Chicago’s population is 58% non-white, and minority representation in the

<sup>97</sup> (54%, as of November 2005, letter from Mr. Nora, Special Assistant for Policy, to Chicago Appleseed)

<sup>98</sup>Correspondence from Cook County State’s Attorney, Richard Devine, to Chicago Appleseed, dated October 11, 2007. Mr. Devine also notes that in an effort to encourage minority prosecutors to remain with the office, the office is initiating diversity training for supervisors, beginning in November, 2007.

criminal justice system (as defendants and victims) is even higher.<sup>99</sup> However, increasing the office's diversity will be difficult to implement. According to a recent survey, minority associates make up only 15.5% of associates at medium- and large-sized law firms in Chicago.<sup>100</sup> The incoming classes at the four law schools from which prosecutors and public defenders graduate are between 16 and 22% minority.<sup>101</sup> In order to increase racial diversity, the office has enhanced its out-of-state minority recruitment efforts through interviewing at a larger number of law schools as well as at job fairs.

### *Educational and Professional Background of the Office*

Although the office interviews candidates at a number of different law schools, the vast majority of ASAs that we interviewed attended one of Chicago's regional law schools. 79% of the interviewed prosecutors had attended DePaul, Kent, Loyola, or John Marshall;<sup>102</sup> the rest attended school outside of the city.

About 40% of interviewed prosecutors began working at the State's Attorney's Office immediately after law school. 60% spent time doing other work: a few had spent several months in non-legal positions; a number had done clerkships or worked in prosecutions in another county or state, and several had worked in private practice. Almost all had joined the office within five years of graduating law school.

Prosecutors had several years of trial experience before they reached the felony courts. According to the State's Attorney's Office,<sup>103</sup> virtually all ASAs have 6 years of experience in the office before working at 26<sup>th</sup> Street, though some attorneys were more quickly assigned to the Narcotics Unit. In our interview sample, non-supervising attorneys in the Felony Trial Division had, on average, 10 years of experience in the office; non-supervisors in the Special Prosecutions and Special Litigations Units averaged 13 years of experience, and the three interviewed Narcotics Unit attorneys averaged 6 years of experience.

Before reaching the Felony Trial Division, most had begun working on criminal appeals, served in juvenile or traffic court, then worked in felony review, preliminary hearings, and/or the narcotics unit before reaching the Felony Trial Division.<sup>104</sup> After spending a few years in the Felony Trial Division, many attorneys served as supervisors in the Felony Review.

---

<sup>99</sup>Chicago population numbers from the U.S. census. <http://www.december.com/places/chi/census.html>. Of the felony hearings observed by court observers, only 6.5% included white defendants. 77.6% included African-American defendants, and 16.9% included Hispanic defendants.

<sup>100</sup> Kantzavelos, Maria. July 2006. "Adding Diversity to the bottom line: Corporate clients eye firms' progress." *Chicago Lawyer*.

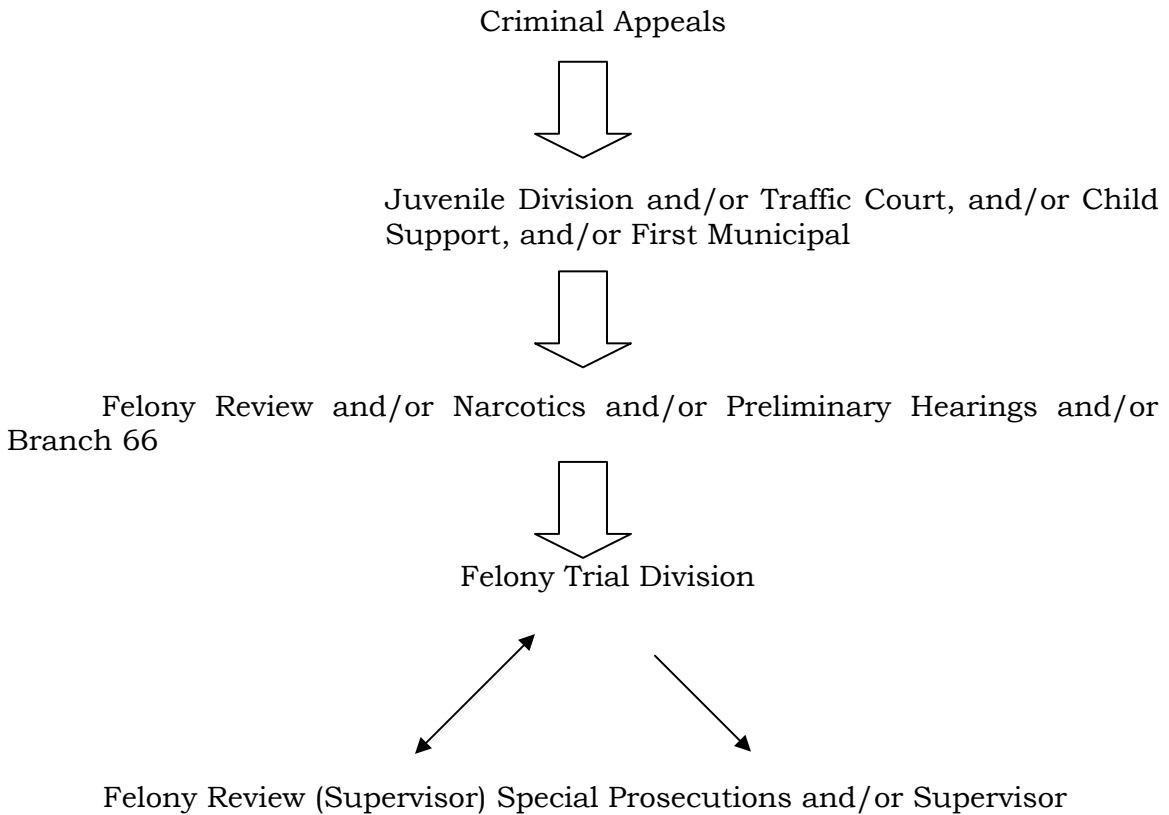
<sup>101</sup> According to the Law School Admissions Council, each school has the following percentages of minority students: John Marshall: 19.9%; Loyola: 16.5%; Chicago-Kent: 21.7%; Depaul: 20.1%.

<sup>102</sup> The numbers break down as follows: DePaul: 5; Chicago-Kent:5; Loyola:5; John Marshall:7; other:6

<sup>103</sup> In correspondence, Mr. Nora to Ms. Dona

<sup>104</sup> 19 of 28 ASA began in Criminal Appeals (others began in the traffic, for example). Provide more number about office flow.

**Graph 8.1: Typical Route of a Prosecutor through the State’s Attorney’s Office**



**D. Trainings**

*Initial Trainings*

Every November, the State’s Attorney’s Office conducts a three-day orientation for newly hired ASAs. The first day’s training provides new ASAs with an overview of the office. The second day’s training is spent at the Illinois State Police Forensic Science Center (the “crime lab”) in Chicago, where prosecutors are introduced to the basic fields of forensic science. On the third day, new hires review various topics, including insurance and personnel policies, computer training, career advice, a history of the office, and an overview of the office’s investigations and victim witness assistance units.

Two months later, new ASAs attend a trial advocacy training program, which consists of six hours of lecture and two days of trial advocacy exercises. The lectures and exercises are run by supervisors and experienced ASAs in the office, and are based on theoretical cases.

When ASAs reach the felony trial division for the first time, they are given an office orientation. They also complete an extended trial advocacy training

program, which consists of four hours of lecture followed by three days of trial exercises in the courtroom. The new ASAs are provided with a hypothetical murder case; they must then develop an opening statement, a closing argument, direct and cross examinations. They are videotaped and critiqued by experienced ASAs.<sup>105</sup> About 75% rated the initial trainings as generally adequate.

### *Ongoing Trainings*

All prosecutors said that they had attended trainings within the previous 12 months. All prosecutors are required to attend the general training sessions, which the office’s training committee holds once or twice annually to review recent developments in the law and other relevant issues.

In addition to these general training sessions, the office provides courses regarding the veracity of confessions, ethics training, and holds semimonthly training meetings on Wednesday afternoons at 26<sup>th</sup> Street. The sessions last one hour and are open to all ASAs; they are considered mandatory for new ASAs, unless the attorney is on trial in a courtroom or is working on a case assignment that cannot be deferred. Experienced ASAs often attend. Many attorneys also reported attending capital litigation training, which is required to try capital cases. Assistant State’s Attorneys generally perceived these trainings positively; and they consistently noted the high volume of available in-house trainings available. One noted, “Tonight is a Wednesday training; it’s good, it’s a huge benefit. Their training budget is horrible, but they do a heck of a job.” In fact, in other sections several attorneys noted that the office is known for training attorneys well, and that this was a primary draw for applicants.

The office does provide a few opportunities for experienced prosecutors to attend national training programs, although funding for these programs is limited. A number of prosecutors expressed dissatisfaction with the lack of outside training opportunities. One experienced prosecutor said that ongoing trainings were “tending towards inadequate . . . We don’t have the funds to send people to seminars. I put in a request to go to my first seminar in 3 years, and I probably won’t get it.”

**Table 8.2: Prosecutors Perceptions of Ongoing Trainings**

<b>Rating</b>	<b>Frequency</b>	<b>Valid Percent</b>
Always Adequate	9	33.3
Almost always adequate	1	3.7
Usually Adequate	13	48.1
Sometimes Adequate	1	3.7
Usually Inadequate	3	11.1

<sup>105</sup> Information on trainings was provided by the State’s Attorney’s Office.

## **E. Caseload and Workload**

Approximately 103 prosecutors are assigned to specific courtrooms at 26<sup>th</sup> Street. Each courtroom has a 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> chair prosecutor; they work together on cases. The 1<sup>st</sup> chair acts as a de facto supervisor of the team. The vast majority of these prosecutors come from the Felony Trial Division unit, but about 9 ASAs are officially in the Narcotics Bureau, and are assigned to courtrooms that hear only narcotics cases.<sup>106</sup>

Prosecutors routinely handle hundreds of cases each year. Of the prosecutors we interviewed, about 36% said that their caseloads were not easily manageable; others said that they could manage all their cases but their workloads were “at the limit.”<sup>107</sup> Another prosecutor said, “I have absolutely no down time. At times I might work at night or on weekends.” Prosecutors reported that they worked between 40 and 60 hours weekly, with an average around 49 hours.

The sheer number of drug cases seems to undermine individual attention to any single case. One prosecutor said, “I don't know if the system affords a drug case to get a huge amount of attention . . . so we look at them, and make them an offer that they'll accept to get it off our call.” Another claimed that “people charged with small amounts of possession usually are dismissed because of the number of cases, and those are the cases that should be getting treatment alternatives. They get lost in the midst of violent crimes cases,” he said. A judge complained that the prosecutors in his courtroom treated drug cases “like glorified misdemeanors.” Only in the special RAPP courts – the rehabilitative courts which have much lower court calls – are drug cases given individual attention.

## **F. Satisfaction and Job Expectations**

Assistant State's Attorneys seemed to be overwhelmingly positive about their jobs – over 70% described themselves as “very satisfied” with their positions.<sup>108</sup> Most of the remaining attorneys said that they were “satisfied.”

---

<sup>106</sup> The median salary of prosecutors that we interviewed was \$75,000-80,000 (who had, on average 12 years of experience), though it ranged between about \$50,000 to \$100,000. The median salary of public defenders was also \$75,000-80,000 (who had, on average, 11 years of experience.) This can hide substantial diversity, however. Some of the supervising ASAs were interviewed earned over \$100,000, while no APDs (including supervisors) earned this much. However, Felony Trial Division prosecutors appear to earn less than FTD public defenders. We were unable to run a proper regression analysis, however.

<sup>107</sup>The Cook County State's Attorney, Richard Devine, in correspondence to Chicago Appleseed, dated October 11, 2007, notes: “. . .caseloads of prosecutors in Cook County are among the highest in the country. Cook County prosecutors are handling 600.17 cases each compared to Los Angeles, California, where the average number of cases handled by a single prosecutor is 184.11. The number of filings per prosecutor in Cook County is 533. The closest jurisdiction is Miami with 322 filings per prosecutor.”

<sup>108</sup> 20, or 71.4%, said that they were very satisfied; 6 (21%) said that they were satisfied; 1 responded as “neutral”, and one said that she was very dissatisfied. The attorney who said that she was dissatisfied noted that this was due to how current case law applied to her current cases; previously she had been very satisfied.

When asked to name the most satisfying element of their jobs, ASAs focused on the following four aspects: satisfaction from helping victims; camaraderie in the office; belief that they have put away a defendant who should not be on the streets; and enjoyment of legal research and trial work.

**Table 8.3: Most Satisfying Aspects of Prosecutorial Work**

<b>Aspect of Prosecutorial Work</b>	<b>% (# of 27) of Prosecutors Naming Aspect as Satisfying</b>
Work with Victims	56% (15)
Camaraderie in the Office	41% (11)
Justice for Criminals	41% (11)
Interest in Trial Work/Criminal Law	33% (9)

When asked about the least dissatisfying aspects of their jobs, the most frequent answers addressed the low salaries received by prosecutors or the office politics or bureaucracy.

**Table 8.4: Dissatisfying Aspects of Prosecutorial Work**

<b>Aspect of Prosecutorial Work</b>	<b>% (and # of 28) of Prosecutors Naming Aspect as Dissatisfying</b>
Poor pay	29% (8)
Office Politics/Bureaucracy	29% (8)
Losing Cases	18% (5)
Slowness of putting on a case	14% (4)
Bad Judges	11% (3)

Assistant State’s Attorneys expressed more dissatisfaction with their salaries than Assistant Public Defenders. Only 14% said that they were satisfied with their salaries; 18% said that they were “neutral” about the salaries; well over one-half said that they were “dissatisfied”, and a small number said that they were “very dissatisfied.” Not only did prosecutors respond less favorably when asked directly about their level of satisfaction with their salaries, but the issue of inadequate pay came up in other parts of interviews with prosecutors, whereas public defenders rarely mentioned it.

The State’s Attorney’s Office recently conducted a study that found that prosecutors on average earn approximately \$9000 less annually than their

counterparts in the public defender’s office. Prosecutors’ starting salaries – about \$49,300 – are greater than the average \$45,000 initially earned by public defenders; however, through their union, public defenders have bargained for better pay increases than those afforded to the non-unionized prosecutors.<sup>109</sup>

**Table 8.5: Prosecutor Satisfaction with Salary**

<b>Level of Satisfaction</b>	<b># of Respondents</b>	<b>% of Respondents</b>
Satisfied	4	14.3
Neutral	5	17.9
Dissatisfied	16	57.1
Very Dissatisfied	3	10.7

When asked what job they expected to have 10 years from now, one-quarter said that they planned to be with the State’s Attorney’s Office, although some expected to be in a different position than they currently occupied. Only a small percentage – 14% -- said that they planned to leave the office (either for retirement or for a judgeship.) 61% were not sure.

**Table 8.6: Job Expectation—Where Will Prosecutors Be in Ten Years?**

<b>Where Respondent Will Be</b>	<b># of Respondents</b>	<b>% of Respondents</b>
States Attorney’s Office	7	25
States Attorneys Office or somewhere else	17	60.7
Somewhere else/retired	4	14.3

## **G. Office Resources**

### *Support Staff*

Approximately 300 Administrative Assistants aid ASAs at 26<sup>th</sup> Street in reception, data entry and word processing, court reporting, etc. At least 35 law clerks work with prosecutors in the Spring and Fall, with 75-200 working during the summer. The office has 3 system analysts at 26<sup>th</sup> Street. It does not employ any paralegals.

The administrative support staff generally received positive ratings, with 15% describing them as “always adequate” and 59% evaluating them as “usually adequate.” Similar to the Public Defender’s Office, there seemed to be a mix of excellent and fair administrative assistants.

---

<sup>109</sup> Id.



There are approximately 139 investigators in the Investigations Bureau of the State's Attorney's Office, many of whom work on cases at 26<sup>th</sup> Street. They were generally rated highly – 89% said that the investigators were always or usually adequate, and the only (and infrequent) complaint was that there were not enough.

Seventy-two percent of prosecutors said that office interpreters were always or usually adequate, although some respondents indicated that there are shortages at times; some utilize bilingual secretaries for assistance, despite the fact that interpretation is not a job responsibility of the administrative staff.

#### *Lab Services*

Most evaluated the substance analysis lab services as adequate, though many prosecutors seemed to assume that the services are slow. The quality of the services, however, seemed to be respected, with 88% rating the services as always or usually adequate.

One exception was the DNA lab services which were noted as taking too long. While 52% said that they were usually adequate, and 9% said always adequate, a majority of respondents also mentioned that processing takes far too long.

#### *Office equipment and Technology*

At 26<sup>th</sup> Street, 305 computers are available to the Felony Trial Court Unit, so that each attorney has access to a computer with internet access, word processing, and access to the legal database Lexis-Nexis. Prosecutors generally seemed to find their office equipment adequate.

#### *Office space*

The State's Attorney's Office occupies floors 11 through 14 at the 26<sup>th</sup> Street Administration Building. Supervisors have their own offices, but all other interviewed ASAs share offices with one or two other prosecutors.

Prosecutors were highly critical of their office building. Only 19% said that their offices were either always or usually adequate; 41% said that the building was always inadequate, and 37% described it as usually inadequate. Problems included heating and air conditioning. In addition, there is inadequate space for private conversation: 93% of interviewed prosecutors said that they did not have adequate conditions and space to confer with witnesses. We note that the prosecutors' office space is now being renovated.

## **H. Management and Supervision**

#### *Supervision Structure*

In the Felony Trial Division, five supervisors each oversee six or seven courtrooms, or 18 to 21 Assistant State's Attorneys each. Each felony trial

courtroom is led by an experienced ASA who serves as first chair. Although the first chair does not have disciplinary capacity, he or she is expected to provide mentoring and oversight to junior assistants. The Special Prosecutions Bureau has several units that deal with specific crimes, including the following: Auto Theft, Gang Crimes, Gun Trafficking, Governmental and Financial Crimes, Organized Crime, Cold Cases, and Professional Standards.<sup>110</sup> These different units often consist of 3 or 6-person teams, headed by a supervisor, or larger 12-person teams headed by a supervisor and deputy supervisor(s).

The Narcotics Prosecutions Bureau has three units at 26<sup>th</sup> Street: a nine-person Felony Trial Unit/Specials (supervised by one person); the three-person Narcotics Courtroom Unit (led by a first chair) and the Complex Prosecutions Unit (which has 10 attorneys and 1 supervisor).

Other units, such as the Domestic Violence Unit and the Sex Crimes Unit, have small 3-person teams working in 26<sup>th</sup> Street's felony courtrooms (each with a supervisor).<sup>111</sup> The 13-person Special Litigation Unit is also housed at 26<sup>th</sup> street and includes one supervisor and two deputy supervisors.

### *Quality of Supervision*

Prosecutors, in general, ranked their formal supervisors highly; 96% evaluated the supervisory support in the office as "usually adequate" or "always adequate." A full third said that their supervisors were always adequate, while about 63% said that their supervisors were usually adequate. The one attorney who rated her supervisor poorly said that she was able to obtain advice from other Assistants in the office.

Over half of the Felony Trial Division (FTD) attorneys that we interviewed described supervisory support as "always adequate," and all other ASAs in the division described supervisory as "usually adequate". In the Narcotics and Special Prosecutions Bureaus, almost all attorneys said that their supervisors were "usually adequate." When asked how often they spoke with their supervisors, most prosecutors responded that they discussed work several times a week.<sup>112</sup>

Both current and former prosecutors spoke of supervising ASAs as being skilled mentors. Several attorneys said that demonstration of the ability to lead was important in advancing to a supervisory position. One prosecutor explained, "As you get higher, you're responsible for more people. The best first chairs I've seen who have become supervisors [have] the ability to cultivate and nurture talent."

---

<sup>110</sup> An Arson Unit was recently eliminated due to budget cuts.

<sup>111</sup> Many serious domestic violence cases are now heard at a separate courthouse at 555 W Harrison; these cases were not reviewed for this study.

<sup>112</sup> Of 24 attorneys who were asked, 2 attorneys said that they discussed work more than once a day with their supervisor; 8 said "about once a day"; 10 said "not daily, but more than once a week"; 2 said "about once a week" and 1 said "less than once a month."

## I. Accountability

Prosecutors were asked which factors appeared to be most important in determining advancement within the office. Interviewers asked about the importance of several factors, and just as in the public defender’s office, trial experience (particularly jury trial experience) was perceived as the critical factor in achieving promotions.

**Table 8.7: Perceived Importance of Factors in Receiving Promotion**

<b>Professional Asset</b>	<b>% (and # of 28) of Prosecutors Who Ranked Asset as “Very Important”</b>	<b>% (and #) of Prosecutors who Ranked Asset as “Very Important” or “Somewhat Important”</b>
<i>Trial Experience</i>	71% (20)	90% (26)
<i>Formal Evaluations</i>	29% (8)	68% (19)
<i>Ability to Manage Caseload</i>	25% (7)	79% (22)
<i>Hours Worked</i>	25% (7)	60% (17)
<i>Seniority</i>	14% (4)	64% (18)
<i>Connections to Powerful People (within office)</i>	14% (4)	52% (15)
<i>Number of Cases Won</i>	4% (1)	22% (6)

Formal evaluations were also rated highly, as were numbers of hours worked.<sup>113</sup> An ability to manage one’s caseload, seniority, and connections were also perceived as somewhat important; interestingly, just as in the Public Defender’s Office, the number of cases won was not generally perceived as important.

During interviews, prosecutors said that there were a number of consequences that an ASA could face if he or she performed poorly in a case. The most probable consequences were demotion or lack of promotion; several attorneys said that prosecutors could get fired, but most said that such occurrences were rare.

The State’s Attorney’s decision to assign cases to three prosecutors working as a team work not only to help train younger attorneys, but it may serve as a

<sup>113</sup> An emphasis on hours worked marks a key difference from the Public Defender’s Office.

mechanism for motivating all assistants in the courtroom. During interviews, it was evident that “being a good partner” was an important factor in the office. When asked to name the qualities of prosecutors not respected in the office, the most common response was laziness. Half of those interviewed said that being a bad partner was one of the worst qualities one could have in the office.

**Table 8.8: Qualities Inspiring Disrespect in the State’s Attorney’s Office**

<b>Quality</b>	<b>% (# of 27) of Prosecutors who named this quality</b>
<i>Laziness</i>	85% (23)
<i>Being a bad partner</i>	48% (13)
<i>Incompetence</i>	37% (10)
<i>Unwillingness to “pay dues”</i>	19% (5)

## **J. Interactions with the Chicago Police Department**

Assistant State’s Attorneys at 26<sup>th</sup> Street are highly dependent upon the Chicago Police Department. Most felony cases require the assistance of police officers in providing evidence for the case, including police reports and police testimony in court. The relationship, however, can be compromised by miscommunications, as well as by the prosecutor’s duty to examine the all evidence critically. The problems reported by prosecutors in dealing with police fall into two basic categories: logistical problems, and problems concerning false or mistaken reports and testimony.

### *Providing Necessary Documents*

Most prosecutors (about 85%) said that they had experienced problems with the police department in the last six months. The frustrations experienced generally fell into two categories: police witnesses not appearing in court and police witnesses failing to timely provide the prosecutors with the case paperwork in a timely fashion.

Specifically, almost half of the interviewed ASAs said that they had experienced excessive delays in obtaining police evidence in the last six months.<sup>114</sup> “Getting the reports is a big pain; it should take a month, but it takes six to eight in big cases,” said one prosecutor.

### *Coming to Court*

Prosecutors, judges, and defense attorneys also expressed frustration with delays caused by police witnesses failing to appear. About one-third of interviewed judges said that they had experienced problems with police officers in the last six months, including a failure to appear. Almost half of the

<sup>114</sup> 12 of 28 ASAs brought up this issue.

prosecutors reported that at least one police witness in the last six months did not appear, despite having been subpoenaed.

A positive relationship between the police department and the State's Attorney's Office is, according to those interviewed, essential to the successful prosecution of crimes. "It's so much easier, once they trust you with their cases, because it is their case first."

### *Fabrications in Police Reports and Testimony*

Most interviewees – almost all defense attorneys and judges, and more than two-fifths of prosecutors – said that they believed that police perjury sometimes occurs.<sup>115</sup>

Defense attorneys were particularly alarmed at what they perceived was a high rate of "shading" by police officers. Shading was a term used by a number of attorneys to describe the practice of casting information to make a case more compelling. These modifications, allegedly sometimes made by police in their reports, can range from altering an offender's height or weight on a police report to misrepresenting ways in which evidence was obtained. For example, many defense attorneys reported that clients accused of drug possession would frequently admit having a small bag of cocaine at the time of arrest, but they would describe the search in a different way from the way in which the police described it in reports and/or in testimony in court. One defense attorney claimed that he had had revealing conversations with police officers: "You talk to them [the police] in a bar and they'll admit . . . they'll swarm the neighborhood and make all the guys line up on a fence and they'll search all of them, and they can get away with that in Englewood; 80% of them do it, not huge fudges." This comment is consistent with studies of similar jurisdictions, and with a study on this court system in the 1980s, which found that judges and prosecutors believed that police misstatements on search and seizure issues were prevalent.<sup>116</sup> Most agreed that police perjury tended to have one of two functions – to protect police after they (or their partners) have made a mistake, or to "get the bad guys."

However, defense attorneys, judges, and prosecutors reported different impressions of the frequency of police perjury. According to defense attorneys, the practice of "shading" in police officers' stories is widespread. Many say that it occurs in over half of narcotics cases. Judges, on the other hand, tended to respond that, yes, some police witnesses lie, but it should be remembered that all types of witnesses can lie. Most prosecutors told interviewers that police perjury is more a case of a few bad apples, rather than a systemic problem.

---

<sup>115</sup> All 24 public defenders who were asked said that police perjury occurred; 12 of 27 prosecutors said that police perjury sometimes occurred, 7 did not directly respond, and 8 said that it did not; 20 of 27 judges said that it did, 6 did not directly respond, and 1 said that it did not.

<sup>116</sup> Myron Orfield's survey of the Chicago criminal justice system found that defense attorneys, prosecutors, and judges estimated that police perjury at Fourth Amendment suppression hearings occurs in twenty to fifty percent of the cases. Also see Slobogin at 3, Dripps at 698.

The allegedly frequent practice of shading places prosecutors in a difficult position. As one prosecutor explained, their job is dependent upon the witnesses. They may raise their eyebrows when reading the police report, but unless there is a compelling reason *not* to trust the police officer, they believe that they are obligated to move forward with the case. Their work is dependent upon witnesses, and they cannot disbelieve everyone, he said. Furthermore, scholars have observed that police misstatements or perjury are sometimes evident only when taking a macro-level view of the system.<sup>117</sup> Surely not all of the defendants dropped a packet of drugs in plain view of police officers, but how does one decide which police officer is being honest and which is not?

The Cook County State's Attorney was provided with a draft copy of this Report and expressed concern about the issue discussed above. These concerns about the Report's discussion of police shading and perjury were expressed in the following portion of an October 11, 2007 letter to Chicago Appleseed:

“..there are many systems we have instituted to ensure charges are supported by sufficient evidence. First, our Felony Review Unit, a team of prosecutors who review every non-drug felony that is charged by police, require sufficient evidence before charges are approved. It is commonplace for our felony review ASA's to inform police officers that the evidence does not support a particular charge. Indeed, statistically, we average a 15% rejection rate on felony charges. We meet regularly with the police to provide training regarding changes in the law and evidentiary and procedural issues.

Second, to address the symbiotic tendencies that can occur between prosecutors and police because of close working relationships, we have created a group of ASAs whose sole job is to investigate and prosecute police misconduct. These ASAs serve in a “watchdog” role and do not interact or depend upon local police for the prosecution of their cases.”

A private defense attorney who had left the State's Attorney's Office recently told us:

“Sometimes the Chicago police detective doesn't like to hear a negative response . . . And there's the whole culture thing that I was telling you about [police regularly bending the truth.] A couple of times, I dismissed cases when it was clear that they were lying, but I was also younger, I didn't have perspective, and I was working on their side, so I'd let them look at their police reports for ten minutes before [questioning them about a case]

### **K. Seeking Justice: Prosecutors' Higher Duty**

“It's the one place you can be a lawyer and do what's right. If you can't prove a case you can dismiss it, and if you really think they're guilty, you

---

<sup>117</sup> See Cunningham at 28.

can fight...[we are] held to a standard of doing what's right and that's where I want to be." -- current Assistant State's Attorney

The State's Attorney's Office came under fire in the late 1990s when exonerations from DNA evidence highlighted instances of prosecutorial misconduct.<sup>118</sup> Between 1977 and 1999, the appellate court reversed 207 convictions because of prosecutorial misconduct; about half of these were for homicide convictions. It is important to note what the term "prosecutorial misconduct" means in the context of an appellate court review of a criminal conviction. The most highly publicized of cases of alleged "prosecutorial misconduct" involved overzealousness in closing argument – using language that the courts find inflammatory or characterizing the evidence in a way that does not square with the record. Some of these cases had to be retried, which cost time, money, and emotional energy for everyone involved.<sup>119</sup> However, very few cases have actually been reversed because of prosecutorial misconduct, despite the fact that such allegations are routinely made by defendants on appeal. According to the State's Attorney's Office, of the approximately 1,500 criminal appeals filed in 2006, 500 alleged some form of prosecutorial misconduct. "Out of those 500 cases, only one instance of misconduct was found by an appellate court."<sup>120</sup>

### *Changing perspective*

In discussing prosecutorial misconduct, several more experienced prosecutors noted the importance of "evolving perspective." They concluded that allegations of misconduct more often than not involve younger prosecutors – that younger prosecutors are less flexible or have less "perspective."

Several prosecutors and former prosecutors discussed a shift that occurred in how they viewed their cases as their careers progressed in the office. One former prosecutor mentioned that he enjoyed working for the prosecutor's office particularly at first when "you definitely had the feeling that you were keeping the streets safer." After awhile, he said, you start to "see the other side".

---

<sup>118</sup> See Maurice Possley and Ken Armstrong. 1999. Chicago Tribune. "The Verdict: "Dishonor"" Chicago Tribune. "The Flip Side of a Fair Trial" 1/11/1999

<sup>119</sup> Maurice Possley and Ken Armstrong . Chicago Tribune. "The Flip Side of a Fair Trial" 1/11/1999

<sup>120</sup> Correspondence from Richard Devine to Chicago Appleseed, October 11, 2007

## IX. Alternative Treatment Programs I: Narcotics Cases and Cook County's Drug Courts

### **A. Introduction**

Large volumes of drug cases are overwhelming the Cook County's Criminal Justice System. There is near-universality of frustration with drug cases within the Judiciary, Public Defender's Office, State's Attorney's Office, and the private bar. When we asked whether drug cases were being handled effectively by the criminal justice system, only one in ten respondents said "yes". Judges and attorneys, citing the sheer volume of offenders, particularly repeat offenders, exhibited anger, weariness and disillusionment with the current mode of operation.

In this section, we first review the prevalence of drug cases in the criminal justice system. We then discuss the views of the attorneys and judges on the effectiveness of the criminal justice system in handling drug cases.

### **B. The frequency of drug cases in the system**

In 1984, a quarter of all new felony cases filed in Cook County were drug cases. Policymakers and participants in the system had begun noticing the heavy presence in the system,<sup>121</sup> but the number and percentage of drug cases continued to grow. In 1995, more than 50% of all felony charges in Cook County were drug-related, and many of these were simple possession cases.<sup>122</sup> In 1996, the Chicago Crime Commission recommended de-felonizing certain simple possession crimes, stating that "the concentration of our police, courts, corrections and other forensics resources against the lowest level drug charges deludes the public into thinking that we are making progress in fighting crime by overwhelming us with minor cases."<sup>123</sup> Many respondents estimated that over half of the cases in the court system were narcotics cases.<sup>124</sup> The impact of illegal drugs in crime is likely higher: in 2003, 82 percent of all male arrestees and 61 percent of all female arrestees in Chicago tested positive for at least one illegal drug.<sup>125</sup>

Judges, private defense attorneys, public defenders, and prosecutors agreed that the court system, with its current resources, could not handle so many cases effectively. Because many of the problems in the court system are related to a lack of resources, many expressed frustration that so many resources were

---

<sup>121</sup> *Final Report on the Felony Courts* Special Commission on the Administration of Justice in Cook County

<sup>122</sup> Making Room for Justice: New Priorities for the Criminal Justice System. March 1996. Chicago Crime Commission.

<sup>123</sup> *Ibid*, page 1.

<sup>124</sup> We attempted to gather data on the current percentage of drug cases in the felony courts; however, neither the Clerk's Office nor the State's Attorney's Office has the software to run this test automatically. It does appear that approximately one-third of all charges are narcotics charges, but since each case (narcotics or otherwise) often contains multiple charges, it is difficult to extrapolate the number of cases from the number of charges.

<sup>125</sup> Metropolis 2020. **2006 Crime and Justice Index**, page 17 (citing the Arrestee Drug Abuse Monitoring Program.) See also <http://www.idoc.state.il.us/subsections/facilities/information.asp?instchoice=she>



being expended on narcotics cases, particularly when they perceived that these resources were not actually solving the problem of substance abuse. One prosecutor expressed the sentiment of many when he said, “drug cases have crippled the system. If we didn't have drug cases, we'd get all our work done and leave by 4 o'clock everyday. They use up way too much time; if you get 8 new cases, 5 or 6 will be drugs.”

The Court and other Cook County offices have tried to deal with the high volume of drug cases in a number of ways. In the 1990s, the Criminal Division began the first night narcotics court in the nation, but they were closed a few years ago. Currently, nine judges at the Criminal Courthouse hear primarily narcotics cases.<sup>126</sup> Additionally, one judge in a Criminal Division court in Skokie hears only Narcotics cases. In April 1998, Judge Lawrence Fox initiated a rehabilitation-oriented narcotics call, which contains many fewer defendants and deals with each defendant in a more intensive manner. As of 2005, the system had over 600 graduates, who experienced significantly lower rates of recidivism.<sup>127</sup>

Other offices have implemented programs that attempt to treat offenders and reduce recidivism. The State's Attorney's Office has instituted a program for first-time offenders. Those caught with small amounts of drugs are diverted at the preliminary hearing stage, and undergo a four-week program of trainings and counseling; 4,000 completed the program in 2005.<sup>128</sup> This program, “Drug School” offers a total of 20 hours of training concerning drug use and the consequences of a criminal conviction. The Cook County Jail has a drug treatment program available to defendants who request treatment, and they also run a “boot camp” intended to teach young non-violent offenders discipline. In January 2004, the Illinois Department of Corrections reopened the Sheridan Correctional Center, which is dedicated to drug rehabilitation.

Each of these programs is limited in scope. Interviews with judges and attorneys indicate that the criminal courts remain overwhelmed by the large volume of drug cases, and that the current drug laws are overly harsh. They also suggest that the courts are not adequately addressing the problem of illegal drug use.

### **C. The Effectiveness of the Current System**

In the first question of the interview of judges, prosecutors, and defense lawyers, respondents were asked to identify three changes that they would recommend to improve the quality of criminal justice in Cook County. The

---

<sup>126</sup> These nine judges have the “narcotics calls,” meaning that they are assigned drug cases and selected murder cases. They occasionally hear other types of cases by special circumstance or if they have unresolved non-drug cases from before their assignment to a narcotics call. Because drug cases generally receive less attention than most other cases, they are processed at a higher rate: This nine-person team handles about 24% of the Criminal Division's cases, which is substantially higher than the other teams at the 26<sup>th</sup> street courthouse.

<sup>127</sup> CCTAP 2005, page 4.

<sup>128</sup> Chicago Tribune. Voice of the People (Letter). “Treatment for some drug offenders works.” Richard A. Devine, State's Attorney, Cook County, and Melody Heaps, President, Treatment Alternatives for Safe Communities.

question was open-ended and elicited a wide range of responses, from police conduct to sentencing guidelines to specific office policies. The need to find a solution to drugs came up repeatedly, however. Ten judges, ten assistant public defenders, six prosecutors, and three private defense attorneys – over one-third of respondents – mentioned some way to handle drug cases more effectively.

One of the final interview questions asked simply, “Do you believe that drug cases are being handled effectively by the [criminal justice] system?” 17% of judges, 19% of prosecutors, no public defender, and only one private defense attorney said “yes.”

**Table 9.1: “Do you believe that drug cases are being handled effectively?”**

	% (and #) who responded “Yes”	% (and #) who responded “No”	% (and #) who responded “I don’t know” or “somewhat” <sup>129</sup>
<b>Judges</b>	17% (5 of 29)	52% (15)	31% (9)
<b>Assistant State’s Attorneys</b>	19% (4 of 29)	41% (12)	45% (13)
<b>Assistant Public Defenders</b>	0% (0 of 26)	92% (24)	8% (2)
<b>Private Defense Attorneys</b> <sup>130</sup>	4% (1 of 25)	92% (23)	4% (1)

The actual responses of each interviewee, stripped of identifying information, are included in proceeding section, and we have summarized the main points expressed.

*Lack of Effectiveness in Treating the Societal Problem*

One of the dominant themes in interviewees’ comments on narcotics was that the broader goal of reducing illegal drug use was not being achieved. Several said that they felt they were losing the “war on drugs.” One judge asked rhetorically:

“How do you put a dent in this? There’s a long debate on the war on drugs, and we know demand doesn’t go away [if you lock people up]; prohibition didn’t stop anyone. And look at who’s been prosecuted, it’s not people making lots of money, it’s local folks.”

<sup>129</sup> Respondents who gave answers such as “yes, given that we have insufficient resources” are coded as “somewhat”

<sup>130</sup> As noted in the methodology, the private defense attorneys interviewed cannot be assumed to accurately represent the population of private defense attorneys practicing in Cook County’s felony courts.

There was not consensus around how to deal with illegal drug abuse, however. A small percentage of respondents – including one judge and several defense attorneys – felt that the entire strategy should be altered entirely and completely removed from the jurisdiction of criminal justice. Others explicitly rejected this view, stating that illegal drug use was behind most violent crime and other societal problems. Many suggested, however, that a first step would be to increase the availability of treatment options.

### *Treatment and Diversion*

The perceived unavailability of effective treatment options was a source of frustration for many judges and attorneys. Many respondents said that there should be more programs. There were mixed opinions about the effectiveness of drug treatments currently in place, such as TASC (Treatment Alternatives for Safe Communities). Some seemed to think this program was good, but that they did not have the resources to deal with the high volume of eligible defendants. “We don't have the resources,” one judge responded. “I sent three people for inpatient TASC and all three didn't get it.” A small number of respondents said that they did not believe that the available drug treatment programs were effective. One judge mentioned that they did not receive enough feedback on treatment programs. There appears to be a need for more information about the effectiveness of current programs, and that information needs to be relayed back to attorneys and judges.

### *Disproportionate Enforcement*

Several respondents told us that the enforcement of existing drug laws was unfair. Some thought that enforcement was targeted users or low-level dealers. For instance, one judge stated, “there is an emphasis on what I call 'user crimes', where you have point-something of a substance on you and you are charged with a class 4 felony.” Some took this a step further and stated that the users targeted were often poor and non-white. One public defender explained, “they get the street dealers and low-level dealers, only in certain neighborhoods does that happen... because of how the laws are enforced, you don't get people with a bulk of drugs, you seldom get white people from the suburbs...they don't find out why [its happening] and deal with it.”

Recent studies support the perception that non-white drug offenders are disproportionately targeted. In 1999, for example, fewer than 30% of illegal drugs users in Illinois were nonwhite, while 70% of drug arrestees were nonwhite.<sup>131</sup>

### *Criminal Code and Restricted Sentencing Options*

Several judges, prosecutors and defense attorneys were critical of the criminal code and sentencing laws that limited judges' abilities to find practical solutions. Two judges and a handful of prosecutors and defense attorneys mentioned that there were unreasonable “add-on” charges, such as the law that

---

<sup>131</sup>see Metropolis 2020, 2006 Crime and Justice Index, page 21.

increases penalties for possession with intent to deliver within 1,000 feet of certain public spaces, such as a park or school. Said one private defense attorney, “there’s nowhere in the city where that’s not true.”

Others spoke more broadly about the sentencing requirements for repeat offenders, and a number of respondents said that there should be de-felonization or decriminalization. Said one judge, “No. I am not in favor of legalizing [drugs], but some decriminalizing should be examined....and maybe provide expungement so they can get back into society. Under a gram should be a misdemeanor; there was a push for that and they knew it wouldn't win, but they couldn't even get anyone to sponsor it.” Nonetheless, because few legislators wanted to be viewed as soft on crime, several recognized the difficulty in repealing tough-on-crime laws, from a political standpoint.

In recent years, the penalties for drug offenses have become harsher. To attorneys and judges who deal with violent and nonviolent crimes on a daily basis, many of the drug laws appear overly harsh and even “draconian.” For example, possession of 100 grams of cocaine, heroin, or methamphetamine carries the same potential sentence as aggravated sexual assault.<sup>132</sup> Although most criminal offenses do not carry mandatory prison sentences, the Illinois State Legislature has created a number of mandatory minimums for drug crimes. As of 2005, an individual found guilty of manufacture, delivery, or possession with intent to deliver *five* grams of heroin or cocaine is subject to a mandatory 4-year prison sentence.<sup>133</sup> The harshness of these sentences provides a strong plea bargaining incentive to individuals charged with manufacture, delivery, or possession with intent, since they are eligible for probation if the charge is reduced to simple possession.

*Diminished Advocacy and the Routinization of Justice:*

Several attorneys said that charges were routinely reduced, generally to avoid time-intensive trials. One prosecutor said, “I don't know if the system can afford to give a drug case a huge amount of attention, [because of the volume] it leads us to just making an offer, because we can't spend [huge amounts of time on cases, or the system would break down]. So we look at them, and make them an offer that they'll accept to get it off our call.”

Several attorneys – both prosecutors and defense attorneys – said that drug cases are often dismissed, particularly for first-time offenders. One judge, for instance, said that prosecutors often treat low-level drug cases as “glorified misdemeanors” -- that is, they do not strenuously prosecute the case. If a police officer does not show up, he said, an ASA will generally just drop the case rather than attempt to reschedule. Others said that the dismissal usually came from the judge. As one private defense attorney explained, “If a client doesn't have a sheet and it's a gram or less, the judge will usually toss it. If they have a sheet, though, not that the judge should know that, their case stays in. There

---

<sup>132</sup>Page 8, “Disproportionate Sentencing of Minority Drug Offenders in Illinois: Report on Changes in Drug Laws 1985-2002”. November 2005. TASC, Inc.

<sup>133</sup>Id., Page 10.

should be treatment, but with treatment, there's always at least one relapse; the person has to be ready." Another prosecutor noted that there is often a failure to provide treatment options at this early stage.

Diminished advocacy may also be occurring among public defenders who are overwhelmed with drug cases. Public defenders in these courtrooms routinely have over 100 cases pending, most of which are plead out within three months of arraignment and are replaced by new cases. The high volume does not allow for rapport to develop between lawyer and client. One public defender who worked in a drug courtroom said that he rarely visited clients at the jail. Almost all of his consultations with his clients occurred at the courthouse, which, as noted earlier, rarely allows for lengthy or private conversation.

#### **D. The Role of Probation**

The Cook County Adult Probation Department operates under the Office of the Chief Judge and administers a variety of programs. The Department has a caseload of more than 23,000 cases stemming from felony offenses. Based on interviews with Department staff, each probation officer has 90-100 cases per caseworker. In 2006, more than 25% of those on probation were age 21 and under. More than half were under 30 years of age. Nearly 80% of clients are either African-American (61.9%) or are Hispanic (17.4%). The Department offers a number of programs and services, including Rehabilitation Alternative Probation (RAP), which during our interviews was particularly praised for its potential benefits:

The RAP program in the Criminal Division targets nonviolent probationers who are subsequently charged with possession of a gram or less of a controlled substance (i.e. a class 4 felony drug charge). If the probationer elects to participate in RAP, the new charge is dismissed and the probationer is sentenced to RAP on the probation violation.

The following description of available probation services was provided by Cook County State's Attorney Richard Devine:

"Under the scheme currently operating in Cook County, all narcotics cases are initially screened by the police when they determine whether or not to charge a case and reviewed again in our preliminary hearing courts. After these screenings, first time, non-violent offenders charged with simple possession are offered the Drug School Diversion Program, which is run by the Cook County State's Attorney's Office. The School requires the offenders to attend classes in which they receive instruction regarding drug awareness and the lifetime consequences of a narcotics record. Successful completion of Drug School results in dismissal of the case and the defendant can have his or her record expunged.

If an individual offends again, he or she can be offered 410 or 710 probation. This one-time felony probation is offered to offenders who have no prior drug convictions. The probation lasts 24 months and includes mandatory treatment and community service. Successful

completion of the program means there is no conviction, and the defendant's record is expugnable after a waiting period. The third level of diversion is the Cook County Offender Accountability Initiative, which is available to those with more extensive criminal backgrounds. It provides for drug testing, assessment and treatment (if warranted by the assessment) as conditions of probation. The fourth level of drug diversion is through our treatment courts. These are specialized drug courts, with court mandated treatment, drug testing and intensive supervision, which are offered to offenders with extensive criminal backgrounds and are provided for offenders who would otherwise be incarcerated. A fifth level of diversion is called the Rehabilitative Alternative Probation (RAP) program. This program assists individuals who commit a Class 4 felony drug offense while on probation.<sup>134</sup>

It is the view of the State's Attorney's Office that "defense attorneys often advise offenders not to participate in a diversion program because of the amount of time and effort the program takes. However, there is an incentive for treatment at each stage, such as the threat of incarceration or a felony record. In many cases, defendants opt to plead guilty, resulting in a criminal record and an untreated addiction."<sup>135</sup>

### **Supplemental Studies on Probation and Recommendations For Cook County:**

Over the past two years, the Cook County Adult Probation Department has been involved in training probation officers regarding a "change-agent" model of probation. In this model, officers work with experts to leverage a "social worker" approach to problem solving for defendants. This is in contrast to a strict "law enforcement" model that merely enforces conditions of probation without addressing the contributing social issues, like addiction or mental illness, that may compromise the defendant's ability to comply with the terms of probation.

While our study did not specifically focus on the policies and procedures of the Adult Probation Department, we heard through dozens of interviews with judges, prosecutors and defense counsel a common theme; there is a need for a probation department that will serve a coordination role in linking vocational training, education, and other social needs to the ever increasing number of individuals convicted of non-violent drug offenses and who often suffer from mental illness.

This approach works to "break the cycle" of addiction and crime through a combination of the following:

- treatment;
- intensive judicial supervision;

---

<sup>134</sup> Correspondence prepared by Cook County State's Attorney, Richard Devine for Chicago Appleseed dated October 11, 2007.

<sup>135</sup> Id.

- a team approach to case management among court personnel and treatment providers;
- mandatory drug testing; and
- an escalating system of rewards and sanctions

In order to address these issues emerging from our interviews, we supplemented our local data by reviewing national and statewide probation studies. The following section reviews the central findings of these studies and provides recommendations for improvements in Cook County. We also provide additional support for the need for probation and the high stakes for its success.

*The High Stakes and Promising Facts of Probation:*

Beyond the consensus from our interviews, studies reveal the growing need for comprehensive probation as well as the high stakes for its success. Probation is the most prevalent sentence handed down by the court- affecting more than 140,000 adults in Illinois.<sup>136</sup>

In 2000, the results of a study of Illinois probation were published. Based upon data from a sample of over 3,300 adult probationers discharged during 2000, it offers a promising view of the strengths of probations as well as areas in need of improvement-specific to Illinois.<sup>137</sup> The following are some of its conclusions:

- **Illinois' probation departments are managing a rising caseload of probationers with diverse risk factors and needs**
  - One-third of the offenders were unemployed at the time of sentencing. when sentenced, almost One-third lacked a high-school diploma or GED
  - Most had annual incomes below \$20,000,
  - The majority has problems with alcohol or drug abuse.
  - Nearly one- half had previously been through the criminal justice system;
- **Adult probationers were also parents with children in the home-** highlighting the high stakes of successful probation outcomes
  - 40 percent of male, and 56 percent of female probationers had children, although females were more likely than males to be living with these children;
- **Statewide, probation in Illinois has a variety of conditions beyond merely being monitored by probation officers.** Conditions include: participating in treatment programs, paying fees and fines to offset the costs of the justice system's operations, community service, and drug testing.

---

<sup>136</sup> Chicago Metropolis 2020. 2006. 2006 Crime and Justice Index. Chicago, IL. Chicago Metropolis 2020.

<sup>137</sup> Olson, D. E., Adams, S. B., & Atkins, R. (2002). Results from the 2000 Illinois Adult Probation Outcome Study. Chicago: Illinois Criminal Justice Authority.

- 70 percent of adult probationers were ordered to pay fees (which averaged \$374 per probationer).
  - Over 50 percent were ordered to pay fines (which averaged \$496 per probationer).
  - Of the 22 percent ordered to perform community service, each was ordered to perform, on average, 90 hours of this service;
- **Probation outcomes are quite positive on a statewide level.** Given the “high risk” factors of this demographic, this is particularly promising.
    - While on probation, only (27 percent) were rearrested for a non-traffic offense; hardly any of these new offenses were violent crimes.
    - Overall, less than 15 percent of the probationers had their sentence revoked due to either a new crime or technical violation, but of those revoked, the justice system responded: 55 percent of those probationers who had their sentence revoked for a new crime were sentenced to prison;

*Based on an analysis of existing research, the following are recommendations for Adult Probation in Cook County:*

**1. Increase the effectiveness and scope of pre-sentencing investigations in order to determine terms, conditions and treatment course of probation.**

*The Adams and Olson research show that there is a deficiency of information about offenders during sentencing. Only 15 percent statewide of probationers in Illinois have a pre-sentence investigation which may assist the courts in determining conditions of probation sentences.*

*Currently, orders to treatment, payment of financial conditions, and other conditions of probation are solely based upon what is “readily available or offered at the time of sentencing by the defense or prosecution, which is usually limited to criminal history information and the current charge.”<sup>138</sup> Probation officers collect a great deal of data after sentencing. As a result, sentences are not always in concert with the challenges and needs of offenders.*

**2. Mandatory screening for drug or mental health conditions in order to improve the ability of probationers to successfully complete their sentence.**

*Research Support: Data in this study demonstrates that how appropriate treatment impacts the potential to reoffend. “Those with substance abuse problems who did not complete treatment were more than twice as likely to get rearrested while on probation than those who completed treatment.” A large portion of probationers’ substance abuse problems go undiagnosed and unidentified by probation officers. In addition, some offenders who*

---

<sup>138</sup> Id. at 5.



were identified as having a substance abuse problem during intake were not ordered or referred to treatment.<sup>139</sup>

### **3. Vocational and educational training for probationers through public/private partnerships**

*Research Support: Data documented a significant amount of vocational/educational needs during the time of sentencing. There is evidence that these needs are not being met. Of those who entered probation unemployed or lacking a high school diploma/GED, very few (20 percent) enrolled in any type of vocational/educational program while on probation. There is an opportunity to engage the community in this need. The offender pays back the community through work while learning valuable skills in order to integrate as a productive member of society.*

### **4. Training officers towards an equal balance their dual roles as “law enforcer and “change agents.”**

*Research Support: Many research studies point to a challenging aspect of probation work- the need to balance enforcement with rehabilitation. With limited resources, officers may merely enforce the court orders rather than problem solve on behalf of the needs of offenders. This may explain the alarming finding that shows that identification of substance abuse problems sometimes goes untreated.<sup>140</sup>*

### **5. Assessing Probation Outcomes vis-à-vis multiple indicators to determine impact and effectiveness.** Isolating the multiple conditions placed on offenders and determining compliance is useful in considering probation holistically-rather than just examining issues of recidivism.<sup>141</sup>

- a. Those ordered to treatment were successful in completing it.
- b. Overall, 60 percent of those ordered to treatment either completed it, or were still enrolled in it, by the end of probation;
- c. Of those with financial conditions ordered, two-thirds paid the full amount by the end of the sentence (an average of \$562 per probationer for all fees, fines and costs);
- d. Of those employed when sentenced to probation, almost all (86 percent) maintained that employment throughout their probation sentence, and
- e. Among those unemployed when sentenced to probation, 33 percent had obtained a job and kept it through the end of their sentence.

---

<sup>139</sup> Id. at 5.

<sup>140</sup> Id.

<sup>141</sup> Id.

## **X. Alternative Treatment Programs II: Mental Illness and Cook County's Mental Health Courts**

### **A. Introduction**

Across the country, criminal justice systems have experienced an influx of mentally ill defendants, placing even more strain on resources already stretched too thin. Scholars have placed estimates of the percentage of persons in correctional populations suffering from a serious mental illness between 15 and 20 percent, which is substantially higher than the rate of mental illness in the general population.<sup>142</sup>

Our data indicates that new therapeutic mental health courts offer promise in dealing with mentally ill.<sup>143</sup> However, the scope of the mental health courts is small. Mentally ill individuals whose behaviors cannot be remedied through criminal processing are still finding themselves in the courts as high rates. Once in the courts, there are few opportunities for adequate treatment or referrals.

Because individuals with mental illness often should not even be in the felony courts, we first describe the typical path of a person with mental illness in the criminal justice system, including a description of the treatment facilities associated with the Cook County Jail. A brief report on the mental health courts follows.<sup>144</sup> The chapter continues with a report and discussion of the findings from interviews with judges and attorneys who work in the Cook County felony courts. Finally, we conclude with a discussion of conclusions from the data and future directions for research in this area.

### **B. The Path of the Mentally Ill**

#### *Police and the Crisis Intervention Team*

When a police officer first comes in contact with an individual displaying signs of a mental illness who has committed a felony, they have two options: they can take that individual directly to the jail, or to the hospital to be stabilized before taking them to the jail.<sup>145</sup> This decision is at their discretion

---

<sup>142</sup>PAGE 1. ARTHUR J. LURIGIO. JUNE 2002. *MENTAL HEALTH COURTS IN THE UNITED STATES: A BRIEF HISTORY AND DESCRIPTION OF THE EARLIEST MODEL PROGRAMS*. NATIONAL SUMMIT ON MENTAL HEALTH COURTS.

<sup>143</sup> According to the Cook County State's Attorney's Office, "Prior to their participation, the 44 people enrolled in the program for at least one year had accumulated 156 total arrests. During the first year after concluding their participation the same group accumulated only 21 arrests. Translating this data into jail time, prior to participation the group had spent a total of 116 days in custody and less than 12 days in jail afterwards. Correspondence from Richard Devine to Chicago Appleseed, dated October 11, 2007.

<sup>144</sup> The information on mental health courts is based on interviews conducted by a Chicago Appleseed intern in the summer of 2005.

<sup>145</sup> (CIT officer, personal communication, June 10, 2006)

In October of 2004, the Crisis Intervention Team (CIT) officer training program was introduced in Chicago.<sup>146</sup> This training program, endorsed by the National Association of the Mentally Ill (NAMI), is intended to increase the awareness of police officers about mental health issues and increase the numbers of mental health consumers who are brought to the hospital rather than straight to the jail.

### *Cermak and the Cook County Jail*

Recent census data indicate that between 300 and 325 people are admitted to the Cook County Jail (CCJ) daily. Of these detainees, approximately 10 percent are referred for mental health services at some point during their stay.<sup>147</sup> Cermak Health Services is responsible for all health care for the CCJ, and mental health services are administered through Cermak and the Isaac Ray Center. The Isaac Ray Center houses the Department of Psychiatry which employs one director, one assistant director, and the equivalent of five full time psychiatrists. The Department of Psychology is also housed in the Isaac Ray Center, and is composed of one director, one associate director, one training director, three full time psychologists, and two psychology fellows. The Isaac Ray Center is a contractor with Cermak and does not fall under the auspices of the Bureau of Health Services.

The Crisis Intervention Team in the Cook County Jail<sup>148</sup> evaluates detainees on an emergency basis in the general population of the jail. This team is composed of mental health specialists.

Once an evaluator determines that the detainee has mental health issues, the detainee is housed in a unit which varies according to the level of care he or she requires. Approximately 900 men and 100 women are involved with mental health treatment daily. Male and female detainees needing the highest levels of care are housed in the acute care infirmaries within the Cermak hospital building in the Jail complex. There are three male acute psychiatric care units with a total of 60 beds. One acute psychiatric care unit with 20 beds is designated for women. Admission and discharge from these units require an order from a clinical staff member and a physician.<sup>149</sup>

The Residential Treatment Unit (RTU) in Division VIII of the Jail has 282 beds for men with intermediate or severe disorders; Division VIII also houses inmates with other medical conditions. Female detainees who are evaluated as needing mental health care are housed in Division III, which has a capacity of approximately 80 mental health beds.<sup>150</sup> Corrections officers who work in the psychological units of Divisions III and VIII undergo a four-week training.

---

<sup>146</sup> NAMI, 2005.

<sup>147</sup> Cermak does not accept exclusive categories of illness, but instead treats anyone who “cannot function in the general population.” (Salazar)

<sup>148</sup> Separate from the CIT police officers

<sup>149</sup> Isaac Ray Center, 2006.

<sup>150</sup> Isaac Ray Center, 2006.

Stabilized and functioning detainees who are mentally ill are housed in the general population and their medication is regulated through daily meetings with a nurse and monthly meetings with a psychiatrist.<sup>151</sup> Cermak will follow defendants and monitor their progress once they have been released from the special needs divisions.

### C. Mental Health Services in the Courts

In response to the question, “Do you think that mental health needs of defendants are dealt with effectively by the criminal justice system?” 53% of our respondents said “no”, 20% of our respondents said “yes”, and 28% of our respondents had a different response.<sup>152</sup>

**Table 10.1: “Do you think that the mental health needs of defendants are handled effectively?”**

	% (and #) who responded “Yes”	% (and #) who responded “No”	% (and #) who responded “I don’t know” or “somewhat”
<b>Judges</b>	56% (15 of 27)	26% (7)	19% (5)
<b>Assistant State’s Attorneys</b>	48% (13 of 27)	19% (5)	33% (9)
<b>Assistant Public Defenders</b>	0% (0 of 24)	79% (19)	21% (5)
<b>Private Defense Attorneys<sup>153</sup></b>	4% (1 of 25)	92% (23)	4% (1)

Just over one-half of judges said that the mental health needs were not being handled effectively. The majority of these judges discussed the lack of staff and resources devoted to this issue.<sup>154</sup> For example, one judge acknowledged, “No way, there are not enough resources there...” and another said, “I’m not sure if there are adequate abilities or funds...” Several judges discussed the inappropriate criminalization of the mentally ill and stated that it would be more appropriate to house the mentally ill in treatment facilities than in jails. Another judge remarked, “There are many people who would have been handled civilly and treated who are now involved in the criminal justice system. Now instead of driving them to Reed [a state mental health hospital] they drive them

<sup>151</sup>(Isaac Ray Center, 2006)

<sup>152</sup> 52 participants of 112 said “no”. Private defense attorney information, not gathered systematically, is included in these numbers. 19 of 112 participants said “yes”. 27 of 112 had a different response.

<sup>153</sup> As noted in the methodology, the private defense attorneys interviewed cannot be assumed to accurately represent the population of private defense attorneys practicing in Cook County’s felony courts.

<sup>154</sup> 9 judges commented out of 29 interviewed.

to Cook County Jail. A great percentage of people who are charged have mental health problems in their backgrounds...” This seemed to reflect a general frustration with a lack of options—for diversion, sentencing, and treatment—available to the court<sup>155</sup>.

A few judges discussed the evaluation process, several stating that the process is effective but doesn’t address the underlying problem of the needs of the mentally ill.<sup>156</sup> Several judges mentioned that the mental health courts were doing a good job, but that there were still many systemic issues that needed to be addressed. Overall, although a few judges mentioned inadequacies in specific court services, most judges seemed to believe that the needs of the mentally ill would only be addressed with widespread, systemic change. Few judges had any specific suggestions of how this change could be made, but commented that a great deal more funding, personnel, and program resources would be needed to address the situation.

Among the public defenders, most believe that mental health needs are not being handled effectively. Seventy-nine percent said “no”, and the remaining 21% said “don’t know” or did not answer with a clear “yes” or “no” response. Many public defenders felt strongly about this issue, making firm statements such as, “Not at all. There is no mental health care. We just decide that everyone is fit to stand trial and get them through the system.” Public defenders had many specific complaints about court services, many stating that the evaluations were biased or inconsistent. Many also felt strongly about the need for systemic change, discussing problems with treatment, resources, and the inappropriate criminalization of the mentally ill<sup>157</sup>

There was a clear difference in opinion between public defenders and prosecutors: about one-half of interviewed Assistant State’s Attorneys said that mental health issues were handled effectively, with 19% saying they were not and one-third stating that they did not know or not answering the question directly. A few prosecutors who said “yes” or who were unclear qualified their responses by saying that the process is dependent on the defense attorney catching the problem and requesting an evaluation<sup>158</sup>. For example, one prosecutor clarified, “In general, yes, to the extent that we are aware of the problems. They are not always brought to our attention...if it is brought to our attention then they address it.” Others felt strongly that the system was working<sup>159</sup>. For example, one prosecutor said, “If they even hint that they need it, they get it.”

While the opinions of private defense attorney informants varied regarding the system’s ability to address defendants’ mental health needs, no private defense

---

<sup>155</sup> 7 judges commented out of 29 interviewed.

<sup>156</sup> 4 judges made positive comments about forensic clinical services, while 2 judges made negative comments about forensic clinical services.

<sup>157</sup> 11 of the 29 public defenders specifically mentioned forensic clinical services as problematic.

<sup>158</sup> 2 of the 13 prosecutors who said yes, 2 of the 9 prosecutors with an unclear response.

<sup>159</sup> 3 of the 13 prosecutors who said yes commented to this effect.

attorney informant stated definitively that those needs were adequately being addressed.

### *Forensic Clinical Services*

If a defense attorney, judge, or assistant state's attorney questions a defendant's mental health status, they can request an evaluation from the Circuit Court's department of Forensic Clinical Services, located on the 10<sup>th</sup> floor of the Cook County Court's administrative building. This office addresses three primary questions: (1) Is the defendant fit to stand trial?, (2) what was the defendant's mental status at the time of the crime?, and (3) when the defendant gave a confession, were they able to understand and waive their Miranda rights?<sup>160</sup> In situations where a defendant has been found guilty by reason of insanity or is unfit to stand trial, the FCS must also determine whether confinement is required under the relevant statutes.

This staff of seven full-time and one part-time psychiatrists, five full-time and two part-time psychologists, and four full-time social workers evaluate the defendant and the defendant's history; they are assisted by approximately 20 administrative support personnel.<sup>161</sup> This office submits clinical opinions and recommendations to the court and expert witness testimony.<sup>162</sup> In 2004, the office estimated that it conducted 325 court appearances, 1,000 psychological exams, 1,500 psychiatric exams, 600 interviews, and 700 clinical social exams.

When asked to rank the effectiveness of forensic clinical services, the average of the judges, public defenders, and prosecutors was 2.37, between 'usually adequate' and 'usually inadequate.' The average for the judges was 1.9, or 'usually adequate.' The average for the public defenders was 3.12, or 'usually inadequate,' and the average for the assistant state's attorneys was 2.08, or 'usually adequate.' Although they ranked the service as usually adequate, judges and prosecutors most frequently made negative comments about the speed of the evaluations, with both groups noting that it takes too long to get the reports.<sup>163</sup> One prosecutor stated simply, "They are having a hard time meeting deadlines." Several judges attributed this delay to the amount of time it takes for the evaluators to receive reports from Cermak.<sup>164</sup> For example, one judge observed, "I believe that they work hard...there are many times that an evaluation request is made and not timely done...they say there is a failure of Cermak to get the records to them so that they can do the evaluation."

### *Sentencing*

---

<sup>160</sup> (FCS employee, personal communication, July 10, 2006).

<sup>161</sup> (Cook Employees.com, 2006).

<sup>162</sup> (Evans, 2005).

<sup>163</sup> 10 of 29 judges,

<sup>164</sup> 3 of 29 judges.

If an individual has been found fit to stand trial, but a judge or jury has found that individual to be mentally ill, the defendant can be found not guilty, not guilty by reason of insanity, or guilty but mentally ill.

Individuals found guilty but mentally ill are eligible for mental health probation. The Mental Health Unit of the Probation Department is responsible for mental health probation. In order to be eligible for this probation, a person must be convicted of a felony and be diagnosed as mentally ill or mentally retarded. Defendants who are diagnosed as pedophiles or who have been found unfit to stand trial are not eligible. Probation officers in this unit carry approximately 50 cases. Mental health probation consists of three phases, each lasting a minimum of three months.

During phase 1, a probationer must make one visit to the probation office every two weeks and must be visited at home once every 45 days. Phases two and three require a visit to the probation office once every three and four weeks and a home visit every 60 and 90 days, respectively. Mental Health probationers are “mandated to receive mental health services ranging from outpatient counseling to psychiatric hospitalization.”<sup>165</sup> The Mental Health Probation Officer’s duties include: “conducting clinical assessments; making referrals; completing detailed supervision plans; monitoring compliance with probation conditions, medication requirements and other treatment objectives; helping probationers to obtain disability benefits, Supplemental Security Income, and medical cards; and serving as advocates for probationers in their effort to obtain mental health services.”<sup>166</sup> We did not systematically gather data on the quality of this sentencing option, and there were only a few comments made by our participants about this service, including one public defender who indicated that she thought the quality of this probation was poor.

### *Special Resources*

When asked to rank special resources for the mentally ill, public defenders gave the category an average of 3.33, or usually inadequate. Respondents addressed this question in a variety of ways—some referred to the mental health courts and mental health probation, some to the treatment defendants receive in the jails, some to the inadequacy of the court evaluations, and several mentioned the high percentage of their clients who have mental health issues. Many public defenders reported a need for more resources, training, and information. One public defender pronounced, “It seems like half my clients have some mental health problem. There aren’t any resources. I don’t know if it’s the PD’s job, but there aren’t any services. Many clients are on medications or off medications and they get lost in the system. There’s mental health probation, but I have as much faith in that as in normal probation.” It was common for public defenders to be unclear or unaware of what mental health options were available, or to be distrustful that the utilization of these options would be an advantage to their clients. Some also expressed that they had difficulties relating to mentally ill defendants and drawing out necessary information for the case. Another

---

<sup>165</sup>(Cook County Court, 2006)

<sup>166</sup>(Cook County Court, 2006).

attorney mentioned that it could be difficult to make sense of the medical records.

Assistant State's Attorneys did not express a need for training on mental health issues, but there are signs that members of the office need additional education on the subject. Prosecutors seemed largely unaware of defendants' mental health problems, despite the fact that 1 in 10 detained defendants has mental health problems serious enough to merit his removal from the general population in the jail. Three public defenders reported that they had recently experienced problems with prosecutors' lack of understanding about a mental health issue, and a court observer witnessed two prosecutors making fun of a mentally ill defendant in court.

#### **D. Mental Health Court Calls**

The mental health courts were instituted at 26<sup>th</sup> Street in 2004. The mental health court is split into two calls, one for men and one for women. The mental health court has a current total capacity of approximately 75 defendants, and convenes only on Thursdays. The mental health courts involve two judges, one Treatment Alternatives for Safe Communities (TASC) case manager, one TASC project manager, one TASC case aide, assistant state's attorneys, assistant public defenders, probation officers, and DMH and DASA funded providers.<sup>167</sup>

In order to qualify for mental health court, a defendant must have committed a non-violent felony, have an identifiable or diagnosed mental illness, be able to understand the terms and expectations of the program, and voluntarily participate and sign the program contract. The mental health court has received a total of 220 referrals, 140 of those from Cermak. If the defendant meets all program criteria, the defendant pleads guilty and is placed on twenty-four months of psychiatric treatment probation.<sup>168</sup> The Assistant State's Attorney, Assistant Public Defender, judge, and TASC personnel create a treatment plan for the defendant.<sup>169</sup> This probation involves frequent monitoring and treatment based on the individual's treatment plan. This probation is supervised by the Adult Probation Department's Mental Health Unit. The response to a probation violation is quick in mental health court, "if someone misses an appointment or another aspect of their treatment...Chicago police can get a warrant and can usually bring the person to Cermak Hospital within a few days."<sup>170</sup> Individuals involved with the mental health court frequently receive social services.

Chicago Appleseed research staff conducted approximately 25 interviews with individuals involved with in the administration of mental health courts, 10

---

<sup>167</sup> (Braude, 2005.)

<sup>168</sup> Public Act 95-0606, effective June 1, 2008, authorizes the Chief Judge of each judicial circuit in Illinois to establish a mental health court program and allows the court to dismiss the original charges, successfully terminate the defendant's sentence, or otherwise discharge him or her from the program or further prosecution upon successful completion of the program.

<sup>169</sup> (Press Release, 2004)

<sup>170</sup> (Press Release, 2004).



individuals<sup>171</sup> in Cook County and 15 across the country.<sup>172</sup> Preliminary data indicate that the Cook County mental health court has been saving the County money and reducing the recidivism of its participants.<sup>173</sup> TASC data indicate a per participant average savings of \$11,000 per participant per year and a reduction of three arrests per participant per year.

However, with their small capacity, the courts do not reach all defendants who could benefit from their services. One administrator explained, “We need to expand the mental health court. We’re only dealing with a very small number.”

---

<sup>171</sup> 2 professors, 3 administrators, 1 police officer, 1 social worker, and 2 public defenders

<sup>172</sup> 1 judge, 1 probation officer, and 13 administrators

<sup>173</sup> See footnote 157, *supra*.

## **XI. The Role of the Legislature**

### **A. Introduction**

Through legislation, the Illinois General Assembly determines the framework in which the Cook County Board and the local criminal justice offices operate. The state legislature has been involved in reform of the criminal justice system: particularly in death penalty reforms, restricting sentencing options, and steadily turning misdemeanor offenses into felonies. In 2005, “truth-in-sentencing” reforms took effect, which diminished the amount of time by which a sentence could be decreased as a reward for good behavior in prison. In 2006, several traffic violations, such as driving under the influence without a valid driver’s license became felony offenses.

These laws have a dramatic impact on case proceedings in the felony courts. The research team encountered strong reactions about the changes in sentencing options and the rise in types of felony offenses. When asked open-ended questions about the changes most necessary for a more effective system, one-fifth of government attorneys and judges responded with a suggestion for the legislature.<sup>174</sup> A much higher percentage discussed some frustration with existing law during the interview. In this section, we review the opinions of judges, prosecutors, and defense attorneys in how recent legislation has affected the system.

### **B. Sentencing Restrictions**

There were differing views on the issues of sentencing legislation. Judges and defense attorneys generally took a negative view of mandatory minimum sentences, while prosecutors thought that such sentences enhanced the quality of justice. Fifty-eight percent of judges, 96% of public defenders, but no prosecutors said that mandatory minimum sentences had had a negative effect on the quality of justice. Fifteen percent of judges, no public defenders, and 63% of prosecutors said that mandatory minimums had had a positive effect. Twenty-seven of judges, 4% of public defenders, and 37% of prosecutors said that the effect was both positive and negative or that they didn’t know. Private defense attorneys also tended to have negative opinions of mandatory minimum legislation.

Several attorneys and judges said that mandatory minimums altered the power dynamic in the courtroom since reduced sentences were only possible if the charge itself was reduced, and only prosecutors have the power to reduce charges. Prosecutors gained more control over the possible case outcomes, since reduced sentences were only possible if the charge itself was reduced. Prosecutors thought that this enhanced effective prosecution of a case. Judges, however, disliked the effect of mandatory minimums on their discretion. Many of our respondents had stories of defendants whose special circumstances merited a lesser sentence than what was mandated, and a few complained that

---

<sup>174</sup> Fourteen public defenders, five judges, and four prosecutors discussed the need for legislative change. Eleven private defense attorneys also suggested changes connected to the legislature.

defendants often quickly accepted plea offers when a reduction of a charge was involved. Defense attorneys were adamantly against the mandatory minimums, many described them as “draconian.”

The truth-in-sentencing/mandatory minimum legislation may have had the unintended consequence of increasing the number of trials occurring in the felony courtrooms. Several public defenders reported that indigent defendants charged with homicide (with a firearm) were routinely going to trial, even when they (the defendants) had weak cases. This was because the mandatory minimum for homicide with a gun is 45 years – effectively a life sentence. Thus, unless the state reduces the charge, there is no incentive for these defendants to plead guilty, even if prospects of acquittal are slim. The Criminal Division has seen a rise in jury trials over the last year, although it is unclear whether this is a direct consequence of heightened sentences.

### **C. Increasing Felony Offenses in the Criminal Code**

While incidence of violent crime in Chicago and Illinois has fallen in the last two decades, the volume of cases in the felony courts has not. As noted earlier, much of this is due to increasing number of narcotics cases that flow into the system. However, this is also due to the steady expansion of criminal conduct that the Illinois General Assembly has designated as felony offenses. The Office of the Presiding Judge of the Criminal Division reported that the felony traffic laws passed in 2005 brought approximately 4,000 new felony cases into the Circuit Court of Cook County in 2006.<sup>175</sup> These increases are not generally accompanied by increases in funding for the court system, stretching the resources of the court system even further.

---

<sup>175</sup> Peter Coolson, Court Administrator, Personal Communication, November 2, 2006.

## **XII. Findings, Recommendations and Conclusions**

### **Findings and Recommendations**

#### **Finding 1: The State Legislature Has Overburdened the Criminal Courts by Passing Criminal Laws Without Regard to Cost, Impact, or Resources.**

The Cook County Board is responsible for funding the system, while the State Legislature determines which offenses should be treated as felonies. The two sets of decisions are interrelated, but each body now operates independently, without coordination or acknowledgement of the consequences. Legislators criminalize more offenses and expand the criminal code. This places more cases in an already overburdened system without providing additional funding or legislative accountability. The Cook County Board has too often regarded criminal justice as a source of patronage jobs and has not taken its staffing or its resource needs seriously enough.

#### **Recommendation:**

- **Evaluate the impact of legislation:**

We join the call for a legislative review commission that will attach a “criminal justice system impact statement” to each pending piece of legislation, showing the potential costs. In showing the projected costs of the legislation for the criminal justice system, this commission’s efforts would enable legislators to make more informed decisions regarding revising the criminal code.

#### **Finding 2: The Cook County Board has too often regarded criminal justice as a source of patronage jobs and has not taken its resource needs seriously enough.**

#### **Recommendation:**

- **Appoint an independent oversight commission:**

An independent oversight commission is necessary to provide a buffer between the County Board and the day-to-day operations of court personnel. This oversight commission would also provide a vehicle for future budgeting discussions among the stakeholders at 26<sup>th</sup> Street so that the process is informed by the people who manage the caseload and see the consequences. The Commission would sponsor a principals’ meeting at least semi-annually at which representatives of each of the stakeholder agencies in the criminal justice system discuss ways to balance needs of the system against budgetary constraints. Members of the public should be invited to provide input into this process. This group should issue a detailed set of proposals.

#### **Finding 3: The System must give Greater Attention to the Public it is Intended to Serve.**

It is very important that the courts be seen as authoritative, professional and unbiased. The courts are not social service agencies, but they should treat all members of the public with courtesy and respect, and even with a measure of understanding. Whether one is a defendant, a victim, a witness, or a family

member, a trip to the felony courts is intimidating. To some extent, this is inevitable, but it does not need to be threatening, uncomfortable and hostile. Our observations and interviews demonstrate that, too often, court personnel at 26<sup>th</sup> Street fail to meet acceptable standards of conduct in dealing with the public.

The building at 26<sup>th</sup> Street and California Avenue is a striking contrast to the more modern, more hospitable courthouses found elsewhere in Cook County. Visitors to the courthouse—victims and witnesses, families, defendants out on bail, and jury members—first encounter inadequate parking in a decrepit parking garage, and then a security line that snakes down the steps of the building. When these visitors finally locate their courtroom, they are too often met with little information, impatient judges, and advocates whose morale is at low ebb.

In the courtrooms and in the building's entryway, most of the deputies and clerks behave courteously, but some are brusque and sometimes abusive to public visitors. Some judges, dubbed “yellers” by their colleagues, bark orders to defendants and professionals alike, contributing to the stress and anxiety. Victims and witnesses are often disillusioned or traumatized by their experience with the courts.

The structure of the courtrooms creates barriers.<sup>176</sup> About half are small “fishbowl” courtrooms in which the audience is separated from the proceedings by thick, soundproof glass. Only when microphones are properly used can the gallery, full of victims and family members, hear.<sup>177</sup> Even in the larger courtrooms, acoustics are poor.

Private attorneys are often allowed to sit in the jury box, inside the fishbowl courtrooms, while defendants and others must sit outside. This further creates a division between lawyers and non-lawyers, according to observation and interview data.

Some judges create their own rules and informal norms that families and witnesses must follow. Some do not allow children in their courtrooms, and there is no childcare provided at 26<sup>th</sup> Street.<sup>178</sup>

Court observers and interviewed defendants were troubled by what seemed to be overly cozy relationships among the prosecutor, public defender, and judge. Observers heard defendants and family members on both sides express concern that the cases were not taken seriously. This seemed to be due to relaxed, casual interactions between attorneys and judges, as well as a failure by some judges to make the proceedings understandable to observers. Defendants who

---

<sup>176</sup> The National Center for State Courts notes that barriers to the court can be caused by “deficiencies in both language and knowledge of court proceedings,” as well as psychological barriers from the system seeming “unduly complicated and intimidating.” [http://www.ncsconline.org/D\\_Research/tcps/area\\_1.htm](http://www.ncsconline.org/D_Research/tcps/area_1.htm)

<sup>177</sup> Court observers noted that in 67% of the proceedings witnessed in the “fishbowl” rooms, there were at least “sometimes” problems hearing from the gallery.

<sup>178</sup> Though childcare is provided at 8 circuit court locations in Cook County, it is not provided at 26<sup>th</sup> Street. <http://www.cookcountycourt.org/services/services/rooms.html>.

do not fully understand or do not trust their attorneys become suspicious when they see joking with opposing counsel. Prosecutors have similar problems with victims and their families. Assistant State's Attorneys and defense counsel must confer about case scheduling and plea negotiations but defendants and victims become suspicious when they see joking with opposing counsel.

It is important to note, however, that under the administration of Presiding Judge Biebel, improvements have been made at 26<sup>th</sup> Street, and more are planned. The physical facilities have improved, and mental health and drug courts have been created. But more steps must be taken toward systemic reform, more coordination sought, and new funding sources found.

There is almost universal acknowledgment among the major players at 26<sup>th</sup> Street that the system needs significant improvement. The system now survives day-to-day, but at great societal cost.

### **Recommendations:**

- **Establish a code of conduct:**

A code of conduct should set standards of behavior for both professionals and members of the public, emphasizing civility, order and safety. It should serve as a broader mission statement for professionals in the building, formalizing a standard of conduct toward the public. The code should be created by a task force including judges, prosecutors, public defenders, and deputies, as well as members of the public and advocates for crime victims. The code should require that members of the public be treated with respect and courtesy regardless of race or socioeconomic class. These standards should be clearly posted.

- **Reinstate court watching:**

A pool of volunteers diverse in race, ethnicity and age should evaluate the level of professionalism in the courtroom with a focus on management, temperament, and the overall conduct of the court. Using the code of conduct as the basis for their review, the court watchers should report on the nature and quality of justice in each courtroom.

- **Reinstitute the court information program:**

Informing victims, witnesses, and families about cases and facilities is of utmost importance, but the single information table at 26<sup>th</sup> Street was removed from the lobby due to budget cuts. The program must be reinstated and expanded. Information desks or kiosks, to which sheriffs could direct members of the public, should be easily recognizable in central locations. Though having a paid employee staff the table would be optimal, members of the public might also be recruited to answer questions and direct families and victims to the appropriate agencies, officers or courtrooms.

- **Preparation rooms, annexed to the courtrooms, should be built.**

Because of a lack of rooms in which witnesses and police officers can wait before testifying, police are often seen going into the back rooms of the courtrooms. This sometimes leads people in the gallery to conclude that police

are fraternizing with judges and lawyers in the back rooms and that improper conversations take place among these “insiders.”

- **Judges should observe their peers:**

The presiding judge should initiate a program in which judges observe each other’s courtrooms in order to minimize inconsistency in the way judges address defendants and the gallery. Judges should strive for uniformity of rules and procedures.

- **Improve public access to the proceedings:**

Ideally, the entire 2<sup>nd</sup> and 3<sup>rd</sup> floors at 26<sup>th</sup> Street should be completely redone to eliminate the separation between galleries and courtroom proceedings. Judge Sumner has had the glass removed from his courtroom, and Judge Kirby has had the glass doors in his courtroom removed. Such alterations make proceedings more accessible and understandable to the public. Immediate reforms should include opening the doors in the “fishbowl” courtrooms to allow voices to pass through to the gallery, and using microphones in the larger courtrooms to compensate for the poor acoustics.

Private foundations should be asked to provide childcare services for witnesses and families. The security line for members of the public to enter the courthouse is so long that people must wait outside without shelter from the elements. The entry should be reconfigured to permit people to wait inside or expedited to reduce time spent waiting in rain or snow.

To speed security lines and reduce crowding and confusion in the lobby area, the jury assembly room, now on the 3<sup>rd</sup> floor of the Criminal Courts Administration Building at 26<sup>th</sup> Street should be moved to the first floor of the building, directly behind security. The outdoor patio between the office building and the courthouse could be covered to create this assembly room.

- **The Judges must provide leadership so that the system appears fair and is fair:**

In addition to judicial peer observation (recommended above), there should be greater focus in judicial training courses and presentations on the need to insure that the proceedings both be fair and appear to the public to be fair. Judges should not tolerate *ex parte* communication with counsel. Plea conferences should be in open court and on the record. Judges should take the time to explain the proceedings to participants and observers to enhance perceptions of propriety.

- **After a 26<sup>th</sup> Street state’s attorney or public defender is elected or appointed to the bench, there should be a reasonable period of time before he or she is assigned to that location.**

Almost all of the judges at 26<sup>th</sup> Street were formerly attorneys in the building. About three-fourths are former prosecutors, while the other fourth are former public defenders.

#### **Finding 4: Nonviolent Drug Cases Overwhelm the System.**

The judges are burdened by excessive caseloads—each receiving, on average, 875 new cases each year. This means that the average judge must decide nearly four cases per workday, and then determine the appropriate sentences for those convicted. A 1993 judicial caseload study done by American University indicated that in order to handle the, then, 29,307 cases each year, 26<sup>th</sup> street needed 65 judges. Today, 26<sup>th</sup> Street has only 36 judges, less than half the number needed. This does not leave much room for lengthy trials. Nonetheless, the vast majority of judges said that they were “very satisfied” with their jobs. Although most cited case delay as the “least satisfying” aspect of their job, researchers observed judges freely granting continuances by agreement.<sup>179</sup> The National Center for State Courts recommended in 1993 that continuances be granted only for good cause, not by agreement.

Non-violent, drug-related charges make up more than half of the cases heard at 26<sup>th</sup> Street. In 1996, a year after the number of drug-related felony charges in Cook County reached 50% of all felonies, the Chicago Crime Commission recommended reducing certain possession crimes to misdemeanors.<sup>180</sup>

When asked to identify changes they would like to see in the criminal justice system in Cook County, more than a third of the professionals focused on drug cases. There was nearly unanimous frustration with the way the current system operates.

Drug cases often run through a tiered system of probation options before prosecutors demand incarceration.<sup>181</sup> Although there are a number of probation alternatives, finding the most effective treatment for each defendant can still be difficult, given time constraints or the fact that some defense lawyers reject the probation or diversion. The volume of drug prosecutions is dealt with through assembly-line plea bargaining. There is a feeling of grim reality among courtroom professionals about the system’s inability to rehabilitate addicts, but there is no consensus about how to deal with drug abuse.

It is clear to the professionals who work in the felony courts that the larger social issues involved in drug trafficking are not being addressed by the current system, and that inadequate rehabilitation or treatment is provided to the vast majority of offenders. Many judges believe that current alternative treatment programs are ineffective. Several judges said that, although they sentence

---

<sup>179</sup> The American University study indicated that on average, each case at 26<sup>th</sup> Street received 7.96 continuances.

<sup>180</sup> Making Room for Justice: New Priorities for the Criminal Justice System. March 1996. Chicago Crime Commission, 1. Cook County State’s Attorney, Richard Devine cautions against this approach, claiming that sentence reductions “would remove the major incentive that makes drug diversion programs work.” Correspondence to Chicago Appleseed dated October 11, 2007.

<sup>181</sup> Drug School diversion is the first probationary option for new low level drug offenders. In recent years, the State’s Attorneys Office has expanded Drug School offers from cases involving less than 1 gram to those involving less than 2 grams. The next probationary option is 1410 probation, which, along with Drug School, is expungeable upon completion. Then there is also conventional probation for repeat offenders, and finally the intense RAP probation with increasingly stringent requirements.



defendants to TASC (Treatment Alternatives to Street Crime), they either felt it was ineffective due to a lack of adequate resources, or they were not informed as to whether defendants were successful in completing the program. There is a feeling that the system “has no choice” but to ship offenders to prison, says another prosecutor.

As a result of the inflexibility of drug laws, some judges and prosecutors treat low level drug charges as “glorified misdemeanors,” or completely drop the charge for first-time offenders to avoid the mandatory sentences that increase prison and jail populations. Because of the restricted sentencing options, attorneys and judges alike try to avoid treating these drug cases as felonies. “People charged with small amounts of possession usually are dismissed because of the number of cases,” notes one prosecutor, “and those are the cases that should be getting treatment alternatives.” There is also a strong incentive for individuals to plead guilty to avoid harsh minimum sentences, and this effectively diminishes advocacy for defendants. Rather than focus on the defendants’ individual needs, person after person passes through the court with a routine and ineffective sentence.

Even though reduced charges may allow for probation instead of jail time, many offenders fail probation because the system does not provide the supervision and rehabilitation needed to return these people to productive society. One former probation officer told us, “adult probation that provides only one unsupervised check-in is useless as a way to give real services.” Judges at 26<sup>th</sup> Street vary as to whether they enforce the conditions of probation. Probation cannot work without a well-funded, consistently applied program.

Cost/benefit analyses have found that drug courts save money in the long run because of lower recidivism.<sup>182</sup> Therefore, it makes sense to devote money to keeping participants in the program in order to maximize the desired effects on recidivism rates and budgets. This means that money must be allocated to the probation system in order to increase the accountability of drug court participants. Probation officers must ensure that defendants attend their treatment meetings and court dates.<sup>183</sup>

Many nonviolent drug offenders ages 18 to 25 now in the adult criminal justice system could be rehabilitated.<sup>184</sup> The vulnerability of this age group, their

---

<sup>182</sup> According to a 2005 GAO study, some counties that used drug courts instead of conventional courts for certain non-violent drug offenders saw as much as a 35% decrease in recidivist offenses among participants: Breaking the Cycle Program in Birmingham, AL saw -35% decrease in recidivism one year after participants entered the drug court programming. Additionally, Los Angeles County saw a -27% decrease in recidivism during the same time period. A 2006 NIJ study of 26 different drug courts found that on average, drug courts reduced recidivism rates by 12% over conventional courts.

<sup>183</sup> A 2003 UCLA study entitled “Treating Drug-Abusing Offenders: Initial Findings from a Five-County Study on the Impact of California’s Proposition 36 on the Treatment System and Patient Outcomes,” for example, indicates in its recommendation section that in order for defendants to complete treatment and lower recidivism rates where neither is happening in California, community supervision and treatment options need to be greatly increased.

<sup>184</sup> HB 1517 & 1518 would raise the age of juvenile jurisdiction to 18, first for misdemeanors and then for felonies.

potential for rehabilitation and their potential value as productive members of society argue for providing more flexibility in sentencing and more treatment resources. Left untreated and unguided into adulthood, these high risk defendants will be incarcerated for a significant portion of their lives after three drug charges, or, in the alternative, will end up as violent offenders.

Currently, statutes require imprisonment for many drug offenses. Without an active and reliable alternative drug program in the probation system, judges have no choice but to sentence these non-violent offenders to prison.

### **Recommendations:**

- **Increase funding and oversight for the probation system:**

We need an adequately funded and managed adult probation department that has the resources necessary to provide services similar to those used by the juvenile probation system. A probation department should be a “mission control” of sorts – working to coordinate the availability of new drug and mental health treatment services, education programs, and vocational training. The probation department should build a private/public partnership through which needed funding could be secured from private foundations and corporate sources. Increased funding is necessary to revive the probation system and fulfill of its mission to instill responsibility, provide opportunity, and create a safe community.<sup>185</sup>

Over the past two years, the Adult Probation Department has been training its probation officers to be “change agents” taking a more active role in assisting their clients in seeking treatment, education, and employment. Under this approach, defendants can become contributing citizens and ultimately, this translates into less fiscal and societal costs, overall. We also recommend that a change agent model of probation will allow probation officers to promote compliance by mentally ill defendants with their medication and treatment programs.

Finally, efficient reporting offers promising prospects in New York City. There, a redesigned case management system allows eligible low risk probationers to check in via kiosks that act as reporting stations in all five boroughs. This allows staff to spend more time with high-risk probationers while making check-ins achievable.

- **Expand the use of private, community-based organizations for supervised, rehabilitative probation:**

A system emphasizing drug therapy, counseling and job and life skills should be created with the support of community-based social service agencies and faith-based organizations. TASC, for example, uses community-based programs such as Haymarket and Gateway for treatment beds. The wait for treatment at these facilities is long, and additional partnerships must be sought. These organizations would involve the communities to which many defendants return after their probation, increasing accountability.

---

<sup>185</sup> <http://www.cookcountycourt.org/services/programs/adult-probation/mission.html>.

We also recommend creation of an outside monitoring group including practitioners, criminal justice experts, and others with specialized knowledge of probation, which would annually report on the progress being made by the adult probation system.

- **Redefine young, non-violent offenders as a “post juvenile” category of defendants:**

Shifting the focus from incarceration to rehabilitation would be particularly useful and effective for younger offenders. Treatment options used in the juvenile probation system should be assessed to determine whether they could be applied to 18 to 25 year olds.<sup>186</sup> Current programs targeting 16 to 18 year olds might be extended to teach accountability and life skills to many young men and women who are just beginning to live on their own. Only by rehabilitating young defendants can we hope to decrease the number of repeat drug offenders, reduce the mass incarceration of a vulnerable population, and ultimately break the cycle of non-violent offenders “graduating” to violent crime.

- **Expunge record after successful completion of probation:**

Offenders who successfully complete supervised rehabilitation should have their records expunged. After probation and three years of good behavior, there should be a presumption in favor of expungement for those convicted of nonviolent drug offenses.<sup>187</sup> This will give young offenders a chance to succeed. Felony convictions severely limit employment opportunities, thereby adding to the temptation to deal drugs in order to have an income. Employment is one of the major factors reducing the recommitment of crimes.<sup>188</sup> There is significant support for expungement in the Court. Judge Biebel hears petitions for expungement, and the Court has shown its support for expungement as a means to create better opportunities for ex-inmates.<sup>189</sup>

- **Create up to four new drug courts with a focus on diversion/treatment programs:**

Diversion and treatment programs, combined with a rehabilitation-oriented probation program, are part of the solution to the problem. More judges, prosecutors, and public defenders will be needed to ensure the success of these approaches.

---

<sup>186</sup> Programs such as the Street Dreams Employment Program and the Jump-Start Program have been initiated in the juvenile system, aimed to teach probationers how to function in a productive work environment by providing public and private sector employment. These programs also ensure that participants are enrolled in schooling.

<sup>187</sup> Seven states expunge either misdemeanor or felony convictions; California, Ohio, and Utah have the most liberal expungement policies. Commonly, these states impose a waiting period before a criminal record may be expunged. Ohio, for example, has a three year waiting period for felony convictions. In February 2005, Gov. Blagojevich signed Illinois Senate Bill 3007 into law, which allowed Illinois to also expunge certain misdemeanor and felony convictions, including Class 4 drug possession. Expungement in Illinois is only available for those who have no other felony or misdemeanor convictions.

<http://www.saferfoundation.org/docs/2005CARREPaperSeries3Papers.pdf>

<sup>188</sup> <http://www.saferfoundation.org/docs/2005CARREPaperSeries3Papers.pdf>

<sup>189</sup> [http://198.173.15.31/forms/pdf\\_files/PressKitSummit2007.pdf](http://198.173.15.31/forms/pdf_files/PressKitSummit2007.pdf)

- **Create, through legislation, a station adjustment model for dealing with possession of small amounts of controlled substances**

The criminal justice system would benefit from programs that divert persons from the system and assist them in finding treatment alternatives. We recommend that the station adjustment approach be added to the tools that the system can use to deal with non-violent persons with a drug problem. Station adjustments are limited interventions used primarily in the juvenile court system, that allow police to handle a matter internally, without involving the court system. An informal station adjustment is often a warning. A formal station adjustment involves referral of an individual to a treatment program. The adult criminal justice system is overwhelmed with non-violent offenders who are charged with possession of minimal quantities of a controlled substance. We recommend that the station adjustment approach be added to the tools that the system can use to deal with non-violent persons with a drug problem. These individuals need services and the ability to use station adjustments will allow at least some of them to receive treatment without having to enter the court system.

- **The drug school concept, operated on a deferred prosecution basis by the State's Attorney's Office, should be expanded. The Juvenile Drug School Program, eliminated due to budget constraints, should be re-established.**

Criminal justice needs more deferred prosecution alternatives – programs that, if completed, will allow a person to proceed with his or her life without a felony conviction on record. The State's Attorney's Office has been operating a school-like program for those facing felony charges for drug use. If an offender completes the program, the felony is not charged. Pending legislation would permit this program to handle more defendants. We also recommend revival of the Juvenile Drug School Program, a program similar to the one operated in the adult Criminal Division. This program was eliminated due to budget constraints. Funding such a program in the short-term will reduce longer-term costs.<sup>190</sup>

- **Increase training for defense counsel, prosecutors, and judges about the availability of diversion and treatment programs.**

Some diversion and treatment programs operate at 26<sup>th</sup> Street. While more are needed, it is important that those that do exist are utilized more extensively. We recommend that the Court and the State's Attorney's Office sponsor training sessions to discuss the value to the defendants of taking advantage of existing programs.

- **The Rehabilitation Alternative Probation Program (RAP program) should be expanded into the Second, Third, and Fifth Municipal District courtrooms.**

The RAP program in the Criminal Division targets nonviolent probationers who are subsequently charged with possession of a gram or less of a controlled

---

<sup>190</sup> The Cook County State's Attorney's Office estimates that adding 3,000-4,000 participants to the Drug School Program will cost \$700,000 and creating a Juvenile Drug School Program will cost \$550,000 for 1,000 participants. October 11, 2007 correspondence from Richard Devine to Chicago Appleseed.

substance (i.e. a class 4 felony drug charge). If the probationer elects to participate in RAP, the new charge is dismissed and the probationer is sentenced to RAP on the violation of probation. It was widely praised during our interviews with both prosecutors and defense counsel. It should be expanded to include courtrooms in the municipal districts. This would require additional ASAs to be in these courtrooms.<sup>191</sup>

**Finding 5: The Criminal Justice System has Become the De Facto Community Mental Health System.**

Mental health courts are meant to keep persons with mental illness out of prison and to place them into treatment, preventing the cycle between jail and street. Today, the two mental health courts at 26<sup>th</sup> Street manage only about thirty felony cases at any one time.<sup>192</sup> These courts involve two judges, a TASC case manager, a TASC project manager, a TASC case aide, assistant state’s attorneys, assistant public defenders, probation officers, and DMH and DASA funded providers. Defendants voluntarily participate in this alternative program, and the team of courtroom professionals creates plans tailored to each defendant. The courts work with programs like Crisis Intervention Team Training (CIT) to create a network of assistance and treatment before, during, and after the court process.

Even before mentally ill defendants arrive at the court system, police officers have discretion to take potentially mentally ill persons straight to jail or to a hospital to be stabilized. In 2004, CIT was introduced in an attempt to raise awareness of signs of mental illness. Trained probation officers try to ensure that mentally ill patients get services as an effective alternative to incarceration.<sup>193</sup> This program has received enthusiastic support from mental health officials within the court system.<sup>194</sup>

The CCTAP report, produced by American University in 2005 (also known as the Trotter Report), states that the most immediate fiscal impact of mental health courts has been on the savings in correctional costs (jail and prison) and recidivism reduction. Mental health courts are more cost efficient than conventional court calls for the mentally ill because they save jail days and jail hospital resources. In the year before entering the program, participants spent an average of 115 days in jail; in their first year in the program, they spent an average of 15 days in jail.

---

<sup>191</sup> The Cook County State’s Attorney’s Office estimates that to accomplish this recommendation, three part-time ASAs would be needed at a cost of \$129,360. October 11, 2007 correspondence from Richard Devine to Chicago Appleseed.

<sup>192</sup> The Illinois statutes that encourage the formation of drug courts (730 ILCS 166 and 705 ILCS 410) incorporate “ten key components” of drug courts developed by the Drug Court Standards Committee of the National Association of Drug Court Professionals.

<sup>193</sup> Interview with Lieutenant Jeff Murphy of the Chicago Police Department

<sup>194</sup> National GAINS Center for People with Co-Occurring Disorders in the Justice System/TAPA Center for Jail Diversion, *What Can We Say About the Effectiveness of Jail Diversion Programs for Persons with Co-Occurring Disorders?* (TAPA Center 2004).

Several states have expanded their mental health courts in recent years, and should be looked to as models. For example, as of December, 2004, California had fifteen mental health courts and Ohio had twenty-four.<sup>195</sup>

Today, less than three years after their inception, the mental health courts at 26<sup>th</sup> Street face serious budgeting issues. One public defender said that, due to understaffing, she refuses to refer clients to the mental health court because the client could be out of jail by the time he or she was evaluated by the mental health court.

Jails have become the largest providers of mental health care in our large cities, and this is stretching the criminal justice system.<sup>196</sup> This de facto mental health care system is woefully inadequate. A majority of the judges said that mental health needs are not being handled effectively.<sup>197</sup> Public defenders have especially strong views on the issue, arguing that mental health needs are not met at all: “We just decide that everyone is fit to stand trial to get them through the system,” said one public defender.

#### **Recommendations:**

- **There is a need for improved resources for mental health services and a triage system to make the system more cost-efficient:**

Defendants should receive mental health services as soon as possible after arrest. Increasing mental health services in the jail would reduce recidivism and thereby save money. We also recommend programs that keep mentally ill persons out of the criminal justice system. Community programs keep former defendants from re-entering the criminal justice system and make assistance and treatment available before, during, and after the court process.

In Cook County, monitoring and supervision of participants is primarily performed by community mental health service providers, which makes it essential that these community providers are adequate.<sup>198</sup>

Pretrial services are especially needed for mental health court defendants. Before release or bond hearings, a neutral entity should ensure that all relevant information reaches decision-makers, including a mental health interview. In Phoenix, for example, the local behavioral health authority receives an automatic list of persons booked each day. They cross-reference their databases with private mental health facility lists and notify a defendant's caseworker to assist with medications, history, and discharge planning.

---

<sup>195</sup> Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States. National Drug Court Institute. May 2005. Volume I, Number 2.

<sup>196</sup>For example, cases are often delayed while attorneys wait for test results from Forensic Clinical Services to determine whether defendants are fit to stand trial. Though many Assistant State's Attorneys and Public Defenders said that those services are inadequate, prosecutors were on average somewhat less dissatisfied about this than were defense lawyers.

<sup>197</sup> 92% of private defense attorneys said that the mental health needs of defendants are not being effectively dealt with by the criminal justice system; 72% of public defenders agreed, 56% of judges agreed, and 19% of prosecutors agreed.

<sup>198</sup> Justice Center, Criminal Justice/Mental Health Information Network, *Cook County, Illinois felony Mental Health Court Survey*, available at <<http://cjmh-infonet.org/main/show/2165?tab=2&subtab=1>>.

If these defendants can be identified before serving significant time in jail, not only will prison populations be reduced, but the mentally ill defendants will receive treatment and rehabilitation under community-based supervision. The longer the defendant can be stabilized before his court date, the more likely it is that he can receive a mental health probation sentence that can facilitate more appropriate treatment and rehabilitation.

- **Mental health courts should be adequately funded and expanded:**

Mental health courts only provide needed services to a limited number of defendants. While some lawyers would rather devote the money to jail or community-based programs, the mental health courts are a valuable resource in the court system. We recommend that the mental health courts consider a deferred prosecution agreement option, which would allow defendants to receive proper mental health treatment without having a felony conviction on their permanent record. We also recommend that misdemeanor cases be added to the mental health court program. There is no equivalent for misdemeanors in Cook County, which would allow defendants to receive needed services without pleading guilty to a felony charge that will more adversely affect employment and education opportunities in the future.

- **The Public Defender's office needs additional social work services, including specialists in mental health issues:**

The public defender's office should develop working relationships with local graduate schools of social work and clinical psychology to create an ongoing internship program and bring more social workers into the office.

- **Delays in reports on a defendant's fitness for trial must be reduced:**

More clinicians and more training for the existing clinicians at the Forensic Clinical Services Department are necessary in order to keep cases moving and to determine whether alternative treatment is appropriate for mentally ill defendants. Clinicians are charged with diagnostic clinical services for all courts of Cook County—not just the criminal courts at 26<sup>th</sup> Street. Clinicians should also be trained in accordance with the APA Guidelines to recognize the importance of cultural, ethnic and linguistic diversity.<sup>199</sup> We recommend that the Department be divided into sections that separate its criminal division function from its function involving consideration of child custody issues.

- **The Chicago Police Department's CIT program must be maintained with adequate funding and resources.**

This program helps persons suffering from mental illness to find treatment outside of the criminal justice system. It is an appropriate recipient of resources and funding through a private/public partnership through which private individuals and foundations partner with government agencies to ensure adequate levels of resources.

---

<sup>199</sup> APA Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations (<http://www.apa.org/pi/oema/guide.html>).

**Finding 6: The Offices of the Public Defender and the States Attorney Should Continue to Strive for Improvements in Efficiency and Effectiveness.**

Recent budget cuts underscore the need to have prosecution and defense services that are effective, efficient, and of the highest quality possible. Too often, politics have inappropriately interfered in the operations of both offices. We must have policies and procedures that attract and retain high quality lawyers and, as much as possible, insulate the offices from political influence. We must have a budgeting process that allows knowledgeable, non-partisan individuals and organizations to craft budgets that are lean but allow justice to be served.

***A. The Public Defender's Office***

**Recommendations:**

- **Hiring procedures must be modified so that the office can make job offers when competing employers are making offers:**

The Public Defender's Office should extend job offers when other employers are offering jobs to law school graduates. Only then will the Public Defender's Office be competitive in attracting the most highly qualified law school graduates. This means that the office should abandon its practice of extending offers only after applicants have received notice that they have passed the bar.

- **Resources should be concentrated on attracting and maintaining supervisors who provide hands-on assistance to APDs:**

Emphasis in the office must be placed on the creation and maintenance of a strong supervision program. Currently, the Office of the Public Defender functions too much as a group of solo practitioners; there needs to be more case conferencing and other means of allowing experienced defense lawyers to work with less experienced ones. Seasoned public defenders should evaluate and provide guidance to less experienced PDs while leading "community-building" exercises within the office.

The office should be allowed by Cook County government to fill supervisory slots available in the 2006 and 2007 budgets without political interference. The office should also provide regular management training, and assure that supervisors have a stable career track, free from threats of political hiring, promotion, or firing.

- **Realistic ceilings on monthly caseloads should be established, and the resources necessary to meet these goals should be requested:**

The National Legal Aid and Defender Association <sup>200</sup> states that, in determining whether workloads of the public defenders are excessive, there should be an

---

<sup>200</sup> There are a variety of national public defender standards, such as: The National Advisory Commission on Criminal Justice Standards and Goals, Report of the Task Force on the Court: Standard 13.12. (p E52 of Compendium of Standards for Indigent Defense Systems, Dec 2000): There should be no more than 150 felonies per year and no more than 200 Mental Health Act cases per year.



evaluation and comparison to the workloads of experienced, competent private defense practitioners. When faced with an excessive caseload, public defenders should diligently pursue all reasonable means of alleviating the problem. Currently, APD caseloads exceed national guidelines, and there is no mechanism by which APDs can refuse additional cases. Meeting national caseload standards should be part of budgetary considerations.

- **Additional training is needed in specific areas of law, with mandatory sessions required:**

Private sector lawyers and public interest organizations should be asked to provide this training on a pro bono basis in immigration law, mental health issues, and in other specialized areas that are relevant to criminal practice.

- **Social workers should assist APDs in dealing with defendants with mental health problems:**

Graduate students in social work could provide needed expertise and strategies, including advice on access to mental health services. An externship program could link the Public Defender's office to graduate programs in social work schools in the Chicago area.

- **A unit of the Public Defender's Office should be responsible for initiating reform initiatives, including litigation, relating to issues that affect groups of clients and involve recurring violations of defendant rights, such as jail conditions, caseloads, and discovery compliance:**

This unit of the Public Defender's Office should be responsible for considering legal or legislative action to address issues affecting their clients on a larger scale. For example, in New York, such a unit brought a class action to eliminate lengthy delays in the period between arrest and arraignment. This Public Defender's Office may consider utilizing private sector pro bono legal assistance in implementing this approach.

- **The office should issue an annual report including a discussion of the accomplishments and the needs of the felony trial division.**
- **Better statistical reporting would permit evaluation of performance, allowing the office to identify areas where training or other resources are needed.**

#### ***B. The State's Attorney's Office Recommendations:***

- **There should be pay parity between the ASAs and the APDs, for both trial lawyers and supervisory lawyers. An independent group should collect the appropriate data and issue a public report.**
- **Caseloads should be reduced to levels dictated by national standards. Budgets and diversion programs should be tied to the**

- **Prosecutors need specialized training in dealing with mentally ill and drug-addicted defendants.**
- **The office needs to find ways to maintain training programs:**  
While initial training of prosecutors has been good, there is a need for more continuing education, and budget cuts may require the office to seek training from pro bono sources.
- **DNA lab services should be expedited. They take too long, causing costly delay for prosecutors.**
- **Office space is inadequate and should be upgraded to include additional conference rooms for witness preparation and for meetings with families and police officers.**
- **Funding should be provided to hire an ASA to provide diversity training, and to spearhead recruitment in an effort to increase the number of prosecutors of color.**
- **Community offices, eliminated because of recent budget cuts, should receive the funding necessary to re-open.**

**Finding 7: Vigorous enforcement is necessary and proper, but due process is required by law.**

ASAs are highly dependent upon the police, both logistically and as witnesses, and a positive relationship is essential to successful prosecution. Police often become frustrated by what they see as legal “technicalities,” such as the rule that excludes evidence seized in an improper search. Prosecutors who police the police, however, may find themselves without allies, isolated and ineffective.

Unfortunately, 85% of prosecutors said that they had experienced problems with the police department in the last six months, with police not appearing in court as witnesses or not providing a case’s paperwork in a timely fashion. Moreover, there was a perception among 44% of Assistant States Attorneys surveyed that police perjury sometimes occurs in the courtroom, especially in the form of “shading”—not outright lying, but biasing their testimony in favor of conviction. Nearly all public defenders and judges also reported that they believed police perjury sometimes occurred.

In responding to our data, the State’s Attorney’s Office notes that it does not tolerate police perjury and that “shading” is “contrary to the philosophy and policies” of the office. The State’s Attorney’s Office tells us that “[o]ur training

and supervision stress that our obligation as prosecutors is to see that justice is done and certainly not to keep a scorecard of wins and losses.”<sup>201</sup>

In recent months, the State’s Attorney has investigated and brought charges against dishonest police officers. Prosecutors pointed out that they are trained to report to their supervisors if they have problems with police witnesses. In several ways, the State’s Attorney is taking steps to improve relationships with the police: There is a Court Sergeant from the Chicago Police Department stationed at 26<sup>th</sup> Street to help prosecutors locate officers and documents.

Prosecutors acknowledged the difficulty of striking the proper balance between vigilant enforcement and due process. The *Chicago Tribune* published a series of stories in 1999 focusing on cases where prosecutors overstepped the bounds of law and/or professional ethics in their pursuit of convictions. A search of appellate case reports reveals cases in which prosecutors behaved improperly, particularly in presenting closing argument. But the appellate cases are a very unrepresentative sample of the entirety of the work performed by Assistant State’s Attorneys. Cases that are reversed by appellate courts are likely to be the most problematic ones. They are not typical of the many thousands of prosecutions handled by the criminal courts each year.

Our interviews with prosecutors provide insight into the stresses that influence their decisions and that may compromise the rights of defendants. Assistant State’s Attorneys are often confronted with the details of horrific crimes, and they sympathize with the victims and the families; they are faced with high caseloads and resulting time pressures; and they often perceive that defense counsel are given greater latitude, which some defense attorneys exploit. The overwhelming majority of prosecutors take their commitment to justice very seriously, but some may be too eager to demonstrate trial skills or secure convictions—despite admonishment from supervisors that winning at all costs is not the policy of the office.

Several prosecutors observed that they are, and ought to be, held to higher ethical standards than most attorneys. Their role transcends the adversarial process. Since their client is the State (and society as a whole), they have a broader duty to seek justice.

### **Recommendations:**

- **Improve communication with police about cases and evidence:**

Although there is a sergeant from the Police Department at 26<sup>th</sup> Street, there should be additional coordination of police witness appearances in accordance with national prosecution standards: “The prosecutor should provide liaison and actively seek to improve communication with law enforcement agencies...Each major law enforcement agency should assign at least one officer specifically to the prosecutor’s office when there is mutual consent of the agency and prosecutor to do so...”<sup>202</sup> The Court Sergeant needs to have

---

<sup>201</sup> Correspondence from State’s Attorney Richard Devine to Chicago Appleseed, dated October 11, 2007.

<sup>202</sup> National Prosecution Standards

authority to enforce the accountability of officers who fail to appear for court dates; just as there are sanctions for subpoenaed witnesses who do not appear, officers should be disciplined if they fail to come to court.

- **Prosecutors should increase training of police officers regarding admissibility of evidence:**

“The prosecutor should encourage, cooperate with, and, where possible, assist in law enforcement training...the prosecutor’s office should develop a system, formal or informal, of assisting in the on-going training of officers by conducting periodic classes, discussions, or seminars to acquaint law enforcement agencies with recent court decisions and procedural changes in the law.”<sup>203</sup>

- **The office should increase ethics training:**

The office should reinforce the official policy of the office that winning at all costs is not the goal. Although budget cuts have hampered training, ethics training to shape the lawyer’s approach to the courtroom should be a high priority. It should be clear in the incentive and reward structures of the office that ethics count in promotion decisions.

- **ASA’s Should be Able to File a Complaint Against a Police Officer Confidentially and at a Place Away from the Criminal Courts Building at 26<sup>th</sup> Street**

The unit within the office that investigates complaints against police officers should be housed away from 26<sup>th</sup> Street. The unit should employ investigators who are not former police officers. An ASA should be able to file complaints confidentially regarding police testimony and/or misconduct.

### **Finding 8: The System Lacks Essential Resources, Thereby Increasing Longer-Term Costs.**

When a part of the system is understaffed, such as the public defender’s office and pretrial services, cases are rushed through without individualized attention. Drug addicts and the mentally ill are then routinely sent to prison because the primary goal is to dispose of cases. This fills the jail with nonviolent offenders in need of treatment. The alternative to this routine processing creates “bottlenecks” that bring the system to a halt.<sup>204</sup> Defendants then sit in jail waiting for their hearings or trials, which crowds the jail and denies justice. In addition, many of the attorneys and judges interviewed said that there were too few interpreters, and that this added to misunderstanding and case delay.<sup>205</sup>

Moreover, a bond court system that lacks the resources necessary to determine whether a defendant’s bond request should be granted also results in

---

<sup>203</sup> Id.

<sup>204</sup> As of April 2005, over 30 inmates had been waiting for trial in jail for over 5 years, 175 waiting for 3-4 years, and 336 waiting 2-3 years. Tom McCann, April 2005, *Chicago Lawyer*, “Justice delayed: Jail Bursting as Hundreds of Defendants Wait Years to Go to Trial.”

<sup>205</sup> There are six Spanish-language interpreters and one Polish-language interpreter at 26<sup>th</sup> Street.

unnecessarily overcrowded jails. We also question the due process implications of a bond court system that relies unnecessarily on videoconferencing and that does not permit the defendant to appear in person before the judge who sets the bond.

**Recommendations:**

- **Diversion programs need to be expanded through private-public partnerships:**

Particularly in drug and mental health cases, the expansion of programming will ultimately save money by reducing recidivism. Where budget constraints currently cripple the system, private foundations, corporations and organizations should be asked to supply resources and staff to diversion programs.

- **Judges should improve caseload management by adopting the differentiated case management system to optimize resources:**

Where “bottlenecking” due to repeated continuances is delaying the system, the differentiated case management system should be adopted.<sup>206</sup> This system serves to increase accountability by requiring specific reasons for granting continuances. Appropriate time goals for disposition are adopted based on the nature and complexity of the case. This system provides clear and consistent expectations for the pace of adjudication; its predictability then increases efficiency and transparency among all stakeholders. It relies heavily on the information given to the judge about each defendant, and thus works best in a system that has strong pretrial services. Though some judges have adopted it, not all ascribe to its “efficiency” logic. “It’s not always a number game,” says one of the judges interviewed during our research, meaning that more qualitative factors should be assessed.

- **There must be an adequate number of court reporters and interpreters**

Our research uncovered a substantial need for more court reporters and interpreters. The criminal justice system cannot function without adequate numbers of both.

- **Change the way bond hearings are conducted at 26<sup>th</sup> Street:**

The closed circuit television used presently to conduct bond hearings in Central Bond Court results in an unnecessary violation of bond applicants’ right to a full and fair determination of the appropriate level of bond. We urge Chief Judge Evans to take immediate steps to revise General Order 99-6 of the Circuit Court to resume in- person bond hearings for all defendants. Bond court could be conducted in the Branch 57 courtroom on the first floor, thereby allowing defendants to be with their lawyers and allowing relatives and friends to observe the proceedings.

---

<sup>206</sup> See 2005 CCTAP

- **Establish a pretrial services department that is separate from, but coordinated with, the adult probation department and under the supervision of the Chief Judge:**

A 2005 American University report says that judges who make bond decisions in Cook County do not receive adequate or relevant facts regarding defendants. As observers note, this is one of the reasons that bond hearings average 27 seconds. An effective pretrial services agency would provide information that could allow defendants to post bond; law students and students in social work and related fields could, for nominal pay and/or academic credit, conduct helpful and meaningful interviews and create write-ups to give to the judges before bond hearings. Without the information, far too few defendants are granted parole and, instead, are quickly remanded. Jail populations thus increase unnecessarily.

### **Conclusion**

Criminal justice has become our drug treatment and mental health system. It is expected to punish and to rehabilitate, and to do both without adequate funding. Politicians who want to be re-elected have found that “tough on crime” rhetoric serves that end. Unfortunately, however, the rhetoric does not control crime, promote justice, or balance the budget.

Those who resist change are fond of saying “How are you going to pay for it?” The answer is equally straightforward: Lock up fewer people. Harmful offenders should be sent to prison, but our moral revulsion at other sorts of offenses need not always result in imprisonment. If prison is the standard remedy for all offenses, while we are unwilling to increase taxes significantly, then law enforcement will be deprived of the resources needed to deal with serious crime. Public safety will suffer, and injustice will inevitably follow. Police, prosecutors, and judges who are overwhelmed dealing with petty drug cases and the mentally ill cannot focus on thieves, rapists and murderers.

There have been improvements in the way our criminal justice system deals with an overwhelming caseload. There have been efforts at dealing with narcotics and mental health-related cases that provide treatment options rather than incarceration. But we need to change the system so that the caseloads do not continue to go up so fast that justice cannot be dispensed equitably. We need reforms so that the criminal justice system can operate without judges, prosecutors and public defenders being used as part of political games. We need to find ways to afford more and better treatment options both within and outside of the criminal justice system and to provide incentives so that people take advantage of those options. It is in this spirit that we provide our findings and recommendations.

## References

- United States Census. 2000. "Census Data." Washington: D.C: United States Census Bureau. Retrieved November 28, 2007 (<http://factfinder.census.gov/>)
- Abramson, Marc F. 1972. "The Criminalization of Mentally Disordered Behavior: Possible Side Effects of a New Mental Health Law." *Hospital and Community Psychiatry*, 23: 101-105.
- American Bar Association. 2002. *Ten Principles of a Public Defense Delivery System*. Chicago, IL: American Bar Association, Retrieved November 28, 2007 (<http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf>)
- American Bar Association. 1999. *Criminal Justice Section Standards: Special Functions of the Trial Judge*. Chicago, IL: American Bar Association, Retrieved November 28, 2007 (<http://www.abanet.org/crimjust/standards/trialjudge.html>)
- American Bar Association. 1993. *ABA Standards for Criminal Justice: Prosecution and Defense Function*, 3d ed. Chicago, IL: American Bar Association, Retrieved November 28, 2007. ([http://www.abanet.org/crimjust/standards/dfunc\\_toc.html](http://www.abanet.org/crimjust/standards/dfunc_toc.html))
- American Bar Association Standing Committee on Ethics and Professional Responsibility. 2006.
- "Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation." *Formal Opinion 06-441*. May 13, 2006. Chicago, IL: American Bar Association. Retrieved November 29, 2007 (<http://www.sado.org/publicdefense/ABA%20Formal%20Opinion%2006-441%20on%20excessive%20caseloads.pdf>)
- Armstrong, Ken and Maurice Possley. 1999. "The Verdict: Dishonor." *Chicago Tribune*, January 10, A1.
- Armstrong, Ken and Maurice Possley. 1999. "The Flip Side of a Far Trial." *Chicago Tribune*, January 11, A1.
- Bogira, Steve. 2005. *Courtroom 302: A Year Behind the Scenes in an American Criminal Courthouse*. New York, NY: Random House.
- Bogira, Steve. 2005. "A Jury of Whose Peers?" *Chicago Reader*, May 13. Retrieved November. 28, 2007 (<http://web.lexis-nexis.com/universe/>)

Braude, Lisa. 2005. "The Cook County Mental Health Court: Development, Implementation, and Initial Implications." National Summit on Mental Health Courts, Wingspread Conference Center, June 2005.

Casper, Jonathan D. 1972. *American Criminal Justice: A Defendant's Perspective*. Englewood Cliffs, NJ: Prentice Hall Inc

----- . 1971 "Did you have a lawyer when you went to court? No, I had a Public Defender!" *Yale Review of Law and Social Action* 1:4-9.

Center for Public Representation. 1999. "The Legal Rights of Prisoners with Mental Disorders." Northampton, MA: Center for Public Representation. Retrieved June 29, 2005 [<http://www.centerforpublicrep.org/page/93097>]

Chicago Appleseed Fund for Justice. 2003. "Electing Judges in Cook County: The Role of Money, Political Party, and the Voters." Chicago, IL: Chicago Appleseed Fund for Justice.

Chicago Council of Lawyers and Fund for Justice. 1988. *A Study of the Office of the Cook County Public Defender*. Chicago, IL: Chicago Council of Lawyers, Fund for Justice

Chicago Crime Commission. 1996. *Making Room for Justice: New Priorities for the Criminal Justice System*. Chicago, IL: Chicago Crime Commission.

Chicago Metropolitan 2020. 2006. *2006 Crime and Justice Index*. Chicago, IL: Chicago Metropolitan 2020.

Chicago Police Department. 2007. *Chicago Crime Index*. Chicago, IL: Illinois Retrieved June 29, 2005 ([www.cityofchicago.org/police](http://www.cityofchicago.org/police))

Church, Thomas W., Jr. 1985. "Examining Local Legal Culture," *American Bar Association Research Journal*: 449

Ciokajlo, Mickey. 2002. "Judges to address jail crowding options – Court changes may ease woes." *Chicago Tribune*, May 10, Metro, 2.

Circuit Court of Cook County. 2006. "Non-judicial offices." Chicago, IL: Circuit Court of Cook County, Retrieved December 14, 2006 (<http://www.cookcountycourt.org/about/non-judicial.html>)

Circuit Court of Cook County. 2006. "Adult Probation." Chicago, IL: Circuit Court of Cook County, Retrieved June 6, 2006 (<http://www.cookcountycourt.org/services/programs/adult-probation/probation.html>)

Circuit Court of Cook County. 2004. "Press Release: Chief Judge Evans announces launching of mental health court pilot program. Office of the Chief Judge Honorable Timothy C. Evans." Chicago, IL: Circuit Court of Cook County, Retrieved June 29, 2005



[http://www.cookcountycourt.org/pressreleases/arch\\_view.asp?id=388](http://www.cookcountycourt.org/pressreleases/arch_view.asp?id=388))

Cole, George F. 1993. "Performance Measures for the Trial Courts, Prosecution, and Public Defense." Pp 86-107 in *Performance Measures for the Criminal Justice System*. National Center for Justice.

Commission on Trial Court Performance Standards. 1990. *Trial Court Performance Standards*. Williamsburg, VA: National: Center for State Courts.

Cook County Sheriff's Office. 2006. "Receiving and Booking." Chicago, IL: Cook County Sheriff's Office, Retrieved June 6, 2006  
(<http://www.cookcountysheriff.org/doc/html/receiving.html>)

Cosden, Merith, Jeffrey Ellens, Jeffrey Schnell, and Yasmeen Yamini-Diouf. 2005. "Efficacy of a mental health treatment court with assertive community treatment." *Behavioral Sciences and the Law* 23: 199-214.

Criminal Courts Technical Assistance Project. 2005. *Review of the Cook County Felony Case Process and Its Impact on the Jail Population*. Washington D.C.: American University.

Crimmins, Jerry. 2001. "Time has come for judicial campaign reform: panel." *Chicago Daily Law Bulletin*, November 1. Retrieved November 25, 2006  
(<http://web.lexis-nexis.com/universe/>)

Cullen, Francis T., Bonnie S. Fisher, and Brandon K. Applegate. 2000. "Public Opinion about Punishment and Corrections" *Crime and Justice* 27: 1-79

Cunningham, Larry. 1999. "Taking on Testilying: The Prosecutor's Response to In-Court Police Description." *Criminal Justice Ethics*, Winter/Spring: 26-40.

Deutsch, Paula S. 1990. "Gideon v. Wainwright's Application in the Courts Today: Gideon's Effect on a Legal Aid Trial Attorney," *Pace Law Review* 10: 387-388.

Devine, Richard A. and Melody Heaps. 2006. "Treatment for some drug offenders works." *Chicago Tribune*, Sept 7, Voice of the People (Letter).

DiIulio, John J Jr. 1993. "Rethinking the Criminal Justice System: Toward a New Paradigm." pp. 1-18 in *Performance Measures for the Criminal Justice System*. National Center for Justice

Dripps, Donald A. 1996. "Police, Plus Perjury, Equals Polygraphy." *Journal of Criminal Law and Criminology* 86(3): 693-716.

Egan, Edward J and Robert D Boyle. 2006. *Report of the Special State's Attorney*, Appointed and Ordered by the Presiding Judge of the Criminal Division of the Circuit Court of Cook County, No. 2001, Misc 4. Evans, T.C., Hon. (2005). *Circuit Court of Cook County: An informational guide*.

Eisenstein, James and Herbert Jacob. 1977. *Felony Justice*. Boston, MA: Little, Brown and Company.

Flemming, Roy B. 1989. "If you Pay the Piper, Do you call the Tune? Public Defenders in America's Criminal Courts." *Law and Social Inquiry* 14(2): 393-414.

Friedman, Lawrence. 1993. *Crime and Punishment in American History*. New York: BasicBooks.

Haedicke, Stephen. 2001. "Punishing Democracy: A Political History of the Amendments to the Illinois Criminal Code of 1961, with Recommendations for Change." Unpublished manuscript.

Heinz, Jack and Peter M. Manikas. 1992. "Networks among Elites in a Local Criminal Justice System." *Law and Society Review* 26(4):831-861.

Homan, Timothy R. 2005. "Interpreters translate language, law." Medill News Service, June 02, Retrieved June 6, 2006 ([http://mesh.medill.northwestern.edu/mnschicago/archives/2005/06/intrpret\\_adjace.html](http://mesh.medill.northwestern.edu/mnschicago/archives/2005/06/intrpret_adjace.html))

Illinois Courts. 2006. "State and Local Funding for Illinois Courts." Chicago, IL: Administrative Office of The Illinois Courts, Retrieved December 14, 2006 (<http://www.state.il.us/court/General/Funding.asp>)

Illinois Department of Corrections. "Sheridan Correctional Center." Springfield, IL: Illinois Department of Corrections, Retrieved December 14, 2006 (<http://www.idoc.state.il.us/subsections/facilities/information.asp?instchoice=she>)

Isaac Ray Center. 2005. "Mental Health Services." Chicago, IL: The Issac Ray Center, Retrieved June 6, 2005 ([http://www.isaacraycenter.com/Cermak\\_/body\\_cermak\\_.html](http://www.isaacraycenter.com/Cermak_/body_cermak_.html))

Kantzavelos, Maria. 2006. "Adding Diversity to the bottom line: Corporate clients eye firms' progress." *Chicago Lawyer*, July, Retrieved Nov 29, 2007 (<http://www.lexisnexis.com.turing.library.northwestern.edu/us/lnacademic>)

Lurigio, Arthur J. 2004. "The Effects of Serious Mental Illness on Offender Reentry." *Federal Probation*, 68 (2): 45-52.

Lurigio, Arthur J. June 2002. "Mental Health Courts in the United States: A Brief History and Description of the Earliest Model Programs." National Summit on Mental Health Courts.

Main, Frank and Eric Herman. 2006. "Corruption probe nets 3 more cops." *Chicago Sun-Times*, Dec 5, Retrieved December 6, 2006 (<http://www.suntimes.com/news/metro/160141,CST-NWS-badcops05.article>)

McCann, Tom. 2005. "Justice delayed: Jail bursting as hundreds of defendants wait years to go to trial." *Chicago Lawyer*, April

McIntyre, Lisa J. 1987. *The Public Defender: The Practice of Law in the Shadows of Repute*. Chicago, IL: University of Chicago Press.

McNamee, Tom. 2005. "50 Minutes and 113 people = 26.55 seconds per case; Court system forces attorneys through fast and furious pace, with hardly a hint of justice." *Chicago Sun-Times*, June 20.

Nardulli, Peter. 1979. "The Caseload Controversy and the Study of Criminal Courts," *Journal of Criminal Law and Criminology*, 70(1): 89-101.

Nardulli, Peter, James Eisenstein, and Roy B. Fleming. 1988. *The Tenor of Justice: Criminal Courts and the Guilty Plea Process*. Urbana, IL: University of Illinois Press.

National Association for the Mentally Ill. 2005. "CIT comes to Chicago." Arlington, VA: National Association for the Mentally Ill. Retrieved July 19, 2006 (<http://www.nami.org/issues/criminalization/factsheets/criminal17.htm>)

National Center for State Courts. 2005 "Trial Court Performance Standards" Williamsburg, VA: National Center for State Courts. Retrieved October 1, 2007 ([http://www.ncsconline.org/D\\_Research/tcps/area\\_1.htm](http://www.ncsconline.org/D_Research/tcps/area_1.htm) )

National Center for State Courts. 2004. "Workload and Resource Assessment: Overview" Williamsburg, VA: National Center for State Courts. Retrieved December 14, 2006 (<http://www.ncsconline.org/WC/Events/WorkLdView.htm>)

National Center for State Courts. 2003. *Trial Court Performance Standards Desk Reference Manual*. Williamsburg, VA: National Center for State Courts.

National Center for State Courts. 2003. *Trial Court Performance Standards Implementation Profiles*. Williamsburg, VA: National Center for State Courts.

National District Attorneys Association. 1991. *National Prosecutions Standards, 2<sup>nd</sup> edition*. Alexandria, Virginia: National District Attorneys Association.

Orfield, Myron W. Jr. 1992. "Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts." *University of Colorado Law Review* 63: 75-160.

Pallasch, Abdon. 2006. "Call to limit cases amuses public defenders." *Chicago Sun-Times*, July 24, Retrieved November 29, 2006 (<http://www.lexisnexis.com.turing.library.northwestern.edu/us/lnacademic>)

Pattillo, Mary, David Weiman, and Bruce Western, eds. 2004. *Imprisoning America: The Social Effects of Mass Incarceration*. New York: Russell Sage Foundation Press.

- Pessin, Jamie Levy. 2005. "Stopping the revolving door: New court seeks new ways to provide justice to the mentally ill." *Chicago Lawyer*, Retrieved July 5, 2005 (<http://web.lexis-nexis.com/universe/>)
- Quanbeck, Cameron, Mark Frye, and Lori Altshuler. 2003. "Mania and the Law in California: Understanding the Criminalization of the Mentally Ill." *American Journal of Psychiatry*, 160 (7): 1245-1250.
- Sadovi, Carlos. 2006. "Prosecutors object to lagging salaries" *Chicago Tribune*, Oct 10, Retrieved Nov. 28, 2007 (<http://web.lexis-nexis.com/universe/>)
- Sigurdson, Chris. 2000. "The Mad the Bad and the Abandoned: The Mentally Ill in Prisons and Jails." *Corrections Today* 62 (7): 70-77.
- Slobogin, Christopher. 1996. "Testilying: Police Perjury and What to do about it." *University of Colorado Law Review* 67: 1037-1030.
- Spangenberg Group. 2001. "Keeping Defender Workloads Manageable". West Newton, MA: The Spangenberg Group prepared for the Bureau of Justice Assistance.
- Spangenberg Group. 2000. "Summary Analysis of the Survey of Illinois Public Defenders." West Newton, MA: The Spangenberg Group for the Task Force on Professional Practice in the Illinois Justice Systems.
- Special Commission on the Administration of Justice in Cook County. 1987. *Final Report on the Felony Courts*. Springfield, IL: Illinois Supreme Court
- Steelman, David C. and Jeffrey M. Arnold. 1993. *Circuit Court of Cook County, Illinois: Criminal Division Judge Workload and Judgeship Needs Assessment*. Prepared under the Cook County Circuit Court Improvement Project.
- Teplin, Linda A. 1983. "Criminalizing Mental Disorder: The Comparative Arrest Rate of the Mentally Ill." *American Psychologist*, 39 (7): 794-803.
- Teplin, Linda A. 1983. "The Criminalization of the Mentally Ill: Speculation in Search of Data." *Psychological Bulletin*, 94, 54-67.
- Torrey, E. Fuller. 1997. *Out of the Shadows: Confronting America's Mental Illness Crisis*. New York: John Wiley Press.
- Vock, Daniel. 2005. "Summit will seek better judicial elections." *Chicago Daily Law Bulletin*, May 23. Retrieved November 29, 2006 (<http://web.lexis-nexis.com/universe/>)
- Whitney, Tim. 2005. "Disproportionate Sentencing of Minority Drug Offenders in Illinois: Report on Changes in Drug Laws 1985-2002". Chicago, IL: TASC, Inc, November 17.

Wigmore, John H. 1929. ed. *The 1929 Illinois Crime Survey*. Chicago, IL: Illinois Association for Criminal Justice.