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Justice Delayed: The Complex System of Delays in Criminal Court

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Justice Delayed: The Complex System of Delays in Criminal Court

*Kat Albrecht, Maria Hawilo, Thomas F. Geraghty & Meredith Martin Rountree**

While federal and state constitutions and statutes guarantee criminal defendants a speedy trial, in practice these rights are exceedingly difficult to enforce. Felony criminal cases can be tied up in court for years. Defendants and victims return to court repeatedly, but progress in resolving their cases is slow.

This Article uses unique data from Cook County, Illinois, to illuminate a complicated and path-dependent system of delay in the Criminal Division of the Circuit Court of Cook County. Our analysis demonstrates that delay is not only pervasive, but also central to how this criminal court system functions.

The Article first reviews prior work on case-processing delays. Second, the Article uses theories of path dependency to explain case delay in the Cook County criminal courts, one of the largest criminal courts in the world. Third, the Article brings to bear three dimensions of system-wide and nuanced observational data to describe felony case-processing delays in Cook County's criminal courts. Fourth, the Article analyzes these data to differentiate types of delays, demonstrate inertia in the face of these delays, and finally, show how courts depend on delays to keep the system running. The Article concludes by discussing strategies to eliminate specific types of delays, but underscoring how the relationships among different court actors must change to address the problem of

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delay.

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I. INTRODUCTION

On May 15, 2010, sixteen-year-old Kalief Browder was accused of stealing a backpack.¹ Charged with robbery, grand larceny, and assault,² Browder plausibly insisted on his innocence.³ No reliable evidence or

1. Jennifer Gonnerman, *Before the Law*, THE NEW YORKER (Sept. 29, 2014), <https://www.newyorker.com/magazine/2014/10/06/before-the-law> [<https://perma.cc/J57R-TLYV>].

2. *Id.*

3. *Id.*

testimony was ever produced to suggest that he had committed the crime.⁴ Browder would spend the next three years in New York's Rikers Island jail, most of the time in solitary confinement.⁵ One could reasonably ask why even a guilty sixteen-year-old would ever be imprisoned at Rikers. But this Article takes up a different question: Why was he there for three years?

When he entered Rikers Island as a high school sophomore, Kalief Browder joined the 85% of Rikers Island inmates who were presumed innocent and awaiting trial.⁶ His was also one of 5,695 felony cases prosecuted that year by the Bronx District Attorney's office.⁷ The Bronx courts were and continue to be exceptionally backlogged, leaving thousands of presumed-innocent defendants incarcerated with little power to influence the slow churn of the courts.⁸ Browder faced a system in which defense attorneys strategically delayed their cases and prosecutors were unprepared to move forward, all the while asserting his innocence and his right to trial, for three years.⁹ At his thirty-first court appearance, on May 29, 2013, Browder was told his case was being dismissed due to lack of evidence.¹⁰ After 961 days in Rikers Island, Kalief Browder was finally released.¹¹

The story ended tragically. Browder entered Rikers Island as a normal teenager, enjoying video games and spending time with his friends.¹² While incarcerated he faced violence, mistreatment, and malnutrition.¹³ After numerous attempts both in custody and after his release, Kalief Browder committed suicide on June 6, 2015.¹⁴

4. *Id.* In the case proceedings, the victim testified inconsistently about the circumstances of the robbery and the date it occurred. *Id.* Browder also offered himself up for search at the time of his arrest, and no backpack was found on his person or among his possessions. *Id.*

5. *Id.*

6. MICHAEL REMPEL ET AL., CTR. FOR CT. INNOVATION, CLOSING RIKERS ISLAND: A ROADMAP FOR REDUCING JAIL IN NEW YORK CITY 7 (2021), https://www.courtinnovation.org/sites/default/files/media/document/2021/Roadmap_for_Reducing_Jail_NYC_07192021_0.pdf [<https://perma.cc/UF29-XW4G>].

7. Gonnerman, *supra* note 1.

8. In 2016, New York commissioned the Excellence Initiative to improve case-processing speeds across the state, with focus on felony cases, particularly in New York City. JOANNA WEILL ET AL., CTR. FOR CT. INNOVATION, FELONY CASE DELAY IN NEW YORK CITY: LESSONS FROM A PILOT PROJECT IN BROOKLYN 1 (2021), https://www.courtinnovation.org/sites/default/files/media/document/2021/Case_Delay_Policy_Brief_3.29.2021.pdf [<https://perma.cc/K6AU-TQQM>]. Despite these efforts, the average time to felony trial verdict in the Bronx in 2019 was still 708 days (almost two calendar years). *Id.* at 2.

9. Gonnerman, *supra* note 1.

10. *Id.*

11. *Id.*

12. *Id.*

13. Jennifer Gonnerman, *Kalief Browder, 1993–2015*, THE NEW YORKER (June 7, 2015), <https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015> [<https://perma.cc/7468-2SZY>].

14. *Id.*

While Kalief Browder's story helped catalyze efforts to make crucial changes to juvenile incarceration, the fact that it took New York's criminal courts three years and thirty-one court appearances to adjudicate his case has not prompted comparable action focused on delay in criminal courts.¹⁵ National research demonstrates New York is hardly an outlier. The National Center for State Courts surveyed twenty-one states and concluded that none of those states' courts met its national timeliness standard, and the courts averaged 256 days to process a felony case.¹⁶

In this Article, we use history and recent data from one of the largest criminal court systems in the United States, Cook County, Illinois, to examine and understand the court processes that delay felony case adjudication in Cook County.¹⁷ We find that these processes are so deeply embedded in daily court practices that they have become necessary to prop up Cook County criminal case adjudication.

The Cook County Criminal Division is no stranger to journalistic and

15. In 2014, New York City Mayor Bill De Blasio cited Browder's story when announcing the ban on solitary confinement for sixteen- and seventeen-year-olds. Benjamin Weiser, *Kalief Browder's Suicide Brought Changes to Rikers. Now It Has Led to a \$3 Million Settlement*, N.Y. TIMES (Jan. 24, 2019), <https://www.nytimes.com/2019/01/24/nyregion/kalief-browder-settlement-lawsuit.html> [https://perma.cc/W3PY-RT3E]. In 2016, United States President Barack Obama also referenced Browder's case in his writings on solitary confinement and his decision to ban it entirely for juveniles and limit its use for low-level infractions. Barack Obama, Opinion, *Barack Obama: Why We Must Rethink Solitary Confinement*, WASH. POST (Jan. 25, 2016), https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html?utm_term=.dbc4375be5ec [https://perma.cc/6WJ4-QWEJ]. In October 2019, Mayor De Blasio committed to closing Rikers Island entirely by 2027. REMPEL ET AL., *supra* note 6, at 3.

16. BRIAN J. OSTROM ET AL., NAT'L CTR. FOR STATE CTS., *TIMELY JUSTICE IN CRIMINAL CASES: WHAT THE DATA TELLS US* 7–8, 13 (2020), https://www.ncsc.org/_data/assets/pdf_file/0019/53218/Timely-Justice-in-Criminal-Cases-What-the-Data-Tells-Us.pdf [https://perma.cc/QQ28-UQBU]. In their study *Timely Justice in Criminal Cases: What the Data Tells Us*, Ostrom et al. "collected a standardized set of case-level data from 1.2 million felony and misdemeanor cases from over 136 courts in twenty-one states" and "analyzed the data to determine factors most directly shaping criminal case-processing time." *Id.* at 3. The study provided the following national timeliness standards with respect to felony cases: 75% of such cases should be resolved within ninety days, 90% of cases should be resolved within 180 days, and 98% of cases should be resolved within 365 days. *Id.* at 4. But the study found that, on average, the courts studied as part of this project resolved 83% of felony cases within 365 days. *Id.* at 6.

17. This work is an extension of the scholarly trajectory undertaken by these authors on dysfunctions in Cook County courts. The first paper in this work used rich ethnographic observations to develop two themes that characterize courtroom culture in Cook County courts. In it we argued that Cook County court culture is characterized by both micro-level and structural-level failures. The former may be conceptualized as "mistakes," while the later are systemic functioning errors. That work makes use of legal-cynicism theory to explain how this court culture impacts the most vulnerable. This Article significantly differs from the first in that it takes an in-depth look at case-processing delays using a unique triplicate of data and economic theories of path dependency to ultimately make arguments about the normalization of felony case processing. Therefore, we position this Article as a useful addition to the world of the first but also a substantial advance its own right. See generally Maria Hawilo et al., *How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System*, 112 J. CRIM. L. & CRIMINOLOGY 171 (2022).

scholarly scrutiny regarding case delay.¹⁸ Multiple sources document how, at least with respect to delay, *plus ça change, plus c'est la même chose*. Delay has plagued the Cook County criminal courts for almost a century.¹⁹

The 1929 Illinois Crime Survey, perhaps the most comprehensive study of justice in Illinois ever conducted, found that continuances in criminal cases were routinely granted without cause, frustrating the efficient and fair administration of justice.²⁰ In 1967, a *University of Chicago Law Review* article examined

the complaints of some observers that the volume of continuances in the Cook County criminal courts is excessively high; that defendants use continuances to defeat or delay prosecution; and that more stringent control of continuances on the part of the courts would yield both an increase in convictions and a reduction of costs in terms of police, witness, and court time.²¹

Importantly, as the authors concluded, “[c]ontinuances also entail some sacrifice of the objective of speedy trial.”²² They noted too, that “[d]elay is especially costly to defendants detained for long periods of time awaiting trial,” but that these extended proceedings also produce

18. See, e.g., Laura Banfield & C. David Anderson, *Continuances in the Cook County Criminal Courts*, 35 U. CHI. L. REV. 259, 259 (1968) (examining effects of excessively high volume of continuances in Cook County criminal courts); CHARLES D. EDELSTEIN ET AL., BUREAU OF JUST. ASSISTANCE, REVIEW OF THE COOK COUNTY FELONY CASE PROCESS AND ITS IMPACT ON THE JAIL POPULATION I (2005) (“The objective of the review was to determine if the criminal case process was itself contributing to jail population pressures that the Board of Commissioners was under legal obligation to bring under control and into compliance with the terms of a Consent Decree in a long-standing case in the U.S. District Court for the Northern District of Illinois, known as the *Duran* case, alleging unconstitutional conditions of confinement in the Cook County Jail.”). See generally STEVE BOGIRA, COURTROOM 302: A YEAR BEHIND THE SCENES IN AN AMERICAN CRIMINAL COURTHOUSE (2005); NICOLE GONZALEZ VAN CLEVE, CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA’S LARGEST CRIMINAL COURT (2016) (detailing racial abuses and due-process violations in Cook County criminal courts). Following Van Cleve’s work, some have analyzed the role of the United States court system itself in embodying and perpetuating a racist justice system. See, e.g., Matthew Clair & Amanda Woog, *Courts and the Abolition*, 110 CAL. L. REV. (forthcoming 2022) (manuscript at 4) (“Our central argument is that courts—with a focus here on the criminal trial courts and the workgroup of actors within them—function as an unjust social institution; we should therefore work toward abolishing criminal courts and replacing them with other institutions that do not inherently legitimate police, rely on jails and prisons, or themselves operate as tools of racial and economic oppression.”). In this Article, we acknowledge and describe system-wide dysfunction in case processing in Cook County that has disparate impacts on individuals and communities of color.

19. See ILL. ASS’N FOR CRIM. JUST., ILLINOIS CRIME SURVEY 216 (1929) (finding that Cook County criminal courts frequently granted continuances in 1929). See also Banfield & Anderson, *supra* note 18, at 259 (examining delays in Cook County criminal courts in 1968); DANIEL T. COYNE, CHI. APPLESEED FUND FOR JUST., A REPORT ON CHICAGO’S FELONY COURTS 31–33 (2007), http://chicagoappleseed.org/wp-content/uploads/2012/08/criminal_justice_full_report.pdf [<https://perma.cc/J3YZ-D32M>] (examining factors causing delays in Chicago’s felony courts).

20. ILL. ASS’N FOR CRIM. JUST., *supra* note 19, at 216.

21. Banfield & Anderson, *supra* note 18, at 259.

22. *Id.* at 262.

costs to the larger legal system.²³ In 1988, the Chief Judge of the Circuit Court of Cook County appointed a commission to investigate the causes and effects of a corruption scandal involving several Cook County judges and lawyers. The commission compared the then-current situation to the 1929 Illinois Crime Survey and concluded “conditions in the criminal branch courts . . . were almost identical . . . almost 60 years later.”²⁴

The Chicago Reader newspaper returned to the subject in 2016, following the experience of Jermain Robinson. In the summer of 2012, twenty-one-year-old Chicago native Jermain Robinson began what would be a four-year journey through the Cook County courts.²⁵ Arrested on suspicion of having a weapon, and believing there to be no material evidence, Robinson refused to plead guilty.²⁶ He would spend the next 1,507 days in jail awaiting a resolution in his case.²⁷ He poignantly described going to court as going before the judge for a couple minutes or less, only to have the judge decide the case could not move forward. “Then it would be another continuance,” Robinson sa[id]—and another month or two in jail.”²⁸ After waiting months for the arresting officer to respond to a subpoena to appear, the judge found that there was insufficient evidence to have arrested Robinson in the first place. After over four years of waiting, he was finally freed.²⁹ Robinson’s experience is not so different from thousands of other defendants in Cook County criminal courts. In 2016, for instance, more than one thousand individuals incarcerated at Cook County Jail waited more than two years for their trials to

23. *Id.*

From the standpoint of retribution, speedy trial is an adjunct of the need for finality; in order to maintain public confidence that the guilty are punished, the tension of incomplete determinations must be resolved as quickly as possible. A deterrence rationale also requires that delay be minimized; the deterrent efficacy of criminal sanctions is presumably diluted when their application is postponed and consequently made less certain. Even the rehabilitative ideal is best served when treatment of the offender is begun as soon as possible after commission of the offense.

Id.

24. SPECIAL COMM’N ON ADMIN. OF JUST. IN COOK CNTY., FINAL REPORT 65–66 (1988), <https://jenner.com/system/assets/assets/SpecialCommissionAdminJusticeSolovyReport1988.pdf> [<https://perma.cc/H2NJ-FCN6>].

25. Spencer Woodman, *No-Show Cops and Dysfunctional Courts Keep Cook County Jail Inmates Waiting Years for a Trial*, CHI. READER (Nov. 16, 2016), <https://chicagoreader.com/news-politics/no-show-cops-and-dysfunctional-courts-keep-cook-county-jail-inmates-waiting-years-for-a-trial/> [<https://perma.cc/WCA7-3VG3>]. See also Sarah Staudt, *Waiting for Justice: An Examination of the Criminal Court Backlog in the Age of COVID-19*, CHI. APPLESEED (Jan. 29, 2021), <https://www.chicagoappleseed.org/2021/01/28/long-waits-for-justice-cook-county-criminal-court-backlog/> [<https://perma.cc/FX95-2835>] (noting how systemic problems predating COVID-19 contributed to delays in resolution of cases).

26. Woodman, *supra* note 25.

27. *Id.*

28. *Id.*

29. *Id.*

begin.³⁰ People of color made up 93% of these detainees.³¹

The Jermain Robinson story reflects a culture of delay facilitated by an unregulated granting of continuances.³² As we discuss, such delay stems from prosecutors'—not judges'—control of court calls, from a historically disorganized public-defender system, or from the economics of private criminal-defense practice. Further, a lack of cooperation between the Chicago police department and the courts and prosecutors creates delays, as the police fail to share crucial police reports and to show up in court. Delays caused by this lack of cooperation and collaboration plague the system. Additionally, the chief judge of the Circuit Court of Cook County has been unable to take the drastic measures necessary to exert control over the system and to insist that criminal court judges take control of the management of their caseloads. The result, historically, as demonstrated above, is a system that victimizes all participants.³³

Most are familiar with the adage that “justice delayed is justice denied;” others may recognize that some stakeholders, including defense lawyers, may see an advantage in delaying adjudication.³⁴ This Article makes a different argument. By providing quantitative and qualitative information about *how* justice in Cook County criminal courts actually works, with particular focus on case delay, this Article demonstrates not only that case delay is a significant social and legal problem, but also that the leadership of the Circuit Court of Cook County must be more aggressive in gathering data, observing the conduct of courtroom proceedings, promoting transparency, and rethinking the way in which Cook County's criminal courts conduct business.

In Part II, we review the law and literature relevant to felony case-processing delays. In Part III, we consider a theoretical explanation for why the problem of felony case-processing delays in Cook County is so hard to tackle. In Part IV, we turn to our tiered data structure to examine different contributors to case-processing delays in Cook County felony courtrooms. In Part V, we argue that these data demonstrate that court delays constitute a complex and insidious system. Through this analysis, we can distinguish different types of delays, identify the types of delays that dominate time in court with little substantive legal progress, and then reveal how these delays become standard operating procedure. In Part VI,

30. *Id.*

31. *Id.*

32. This is despite the fact that the Illinois Code of Criminal Procedure requires that motions for continuance be in writing and be granted only for good cause shown. *See* 725 ILCS 5/114-4 (2013). The court observations set forth below demonstrate that this provision of the Illinois Criminal Code is ignored in the daily practice in Cook County's criminal courtrooms.

33. *See* Stoudt, *supra* note 25 (describing steps that should be taken to reduce case delay in Cook County's criminal courtrooms).

34. *See generally* WEILL ET AL., *supra* note 8.

we argue that at least one important reform undertaken by Cook County can succeed only if it eliminates the system's reliance on status checks and understands how different court actors have made delay functional for them, if not for case processing. In Part VII, we briefly conclude.

II. LAW AND LITERATURE REGARDING CASE-PROCESSING DELAYS

Any discussion of case delay begins with an overview of constitutional and statutory speedy-trial rights. As noted above, while case delay affects all criminal justice stakeholders, the law ostensibly protects the accused from lengthy pretrial incarceration. Even those defendants released to the community on bail have a keen interest in resolving their cases. Pretrial supervision and monitoring can impair a defendant's ability to, e.g., hold a job and generally contribute to the defendant's sense of living a life on hold.

A. *The Right to Speedy Trial*

The Sixth Amendment states that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.”³⁵ Speedy-trial rights have “a rich historical lineage”:

Beginning with the Magna Carta (1215), and even as far back as the Assize of Clarendon (1166), the defendant's right to speedy justice was deemed central to the English legal system's notion of fairness. In the United States, the Virginia Declaration of Rights of 1776, as well as other state constitutions, embraced the right to a speedy trial. Given its importance, therefore, the framers of the United States Constitution incorporated the right to a speedy trial in the Sixth Amendment.³⁶

While its inclusion in the Bill of Rights suggests how fundamental the speedy-trial right is to the protection of the accused, in practice it has never received a comparable venerated status. Garcia observed that “[a]lthough its historical basis and inclusion within the Sixth Amendment indicate its intended significance, the Speedy Trial Clause receded into relative obscurity, overshadowed by other provisions of the Bill of Rights.”³⁷ The right to a speedy trial is “generically different” from any of the other rights enshrined in the Constitution.³⁸

35. U.S. CONST. amend. VI.

36. Alfredo Garcia, *Speedy Trial Swift Justice: Full-Fledged Right or “Second Class Citizen?”*, 21 SW. UNIV. L. REV. 31, 34 (1992).

37. *Id.*

38. *Barker v. Wingo*, 407 U.S. 514, 519, (1972). The Court continued:

In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused. The inability of courts to provide a prompt trial has contributed to a large backlog of cases in urban

The Supreme Court's jurisprudence on speedy trial has employed a balancing approach to determine whether there has been a violation of this Sixth Amendment right. This may stem, in part, from the fact that the remedy for a speedy-trial violation is dismissal of charges. The Supreme Court has indicated that such dismissal may be with or without prejudice, thus weakening the remedy.³⁹

In describing the right to a speedy trial, the Court has simultaneously characterized it as "relative," "amorphous," and "slippery" but also "fundamental" to both the defendant and society.⁴⁰ In *Barker v. Wingo*, for instance, the Court grappled with on the one hand, its insistence that the Sixth Amendment does indeed provide the accused procedural protections via speedy-trial rights, and on the other hand, its resistance to allowing speedy-trial rights to stand in the way of a conviction.⁴¹

In *Barker*, the Supreme Court addressed the following facts: Willie Barker and Silas Manning were accused of murdering an elderly couple,⁴² and the case against Barker relied in part on Manning's testimony.⁴³ The prosecution sought *sixteen* continuances in Barker's trial over the course of nearly *five* years.⁴⁴ Not until the twelfth continuance did Barker file a motion to dismiss. Nearly twenty months passed between the first time Barker moved to dismiss and when he was tried.⁴⁵ The Court noted the closeness of the case.⁴⁶ Despite the strategic nature of the State's continuances, the Court noted defendants might "manipulate the system," and inferred Barker "did not want a speedy trial" because he failed to insist on a trial from the outset.⁴⁷ The Court affirmed the conviction, despite a seemingly long delay between indictment and trial.⁴⁸ In reaching its conclusion, the Court rejected any bright-line approach for determining speedy-trial violations. Instead, it adopted a four-factor test to be used in determining whether a speedy-trial violation has occurred.⁴⁹ The Court's test is one subject to nearly boundless discretion by trial and reviewing

courts which, among other things, enables defendants to negotiate more effectively for pleas of guilty to lesser offenses and otherwise manipulate the system.

Id.

39. *Id.* at 522.

40. *Id.* at 522, 533.

41. *See id.* at 519, 522 (emphasizing defendant's fundamental right to speedy trial, but also critiquing "unsatisfactorily severe remedy of dismissal" if right not accorded). For a historical and contemporary summary of the Court's speedy-trial jurisprudence, see Garcia, *supra* note 36, at 34.

42. *Barker*, 407 U.S. at 516.

43. *Id.*

44. *Id.* at 516, 533.

45. *Id.* at 519.

46. *Id.* at 533 ("The difficulty of the task of balancing these factors is illustrated by this case, which we consider to be close.")

47. *Id.* at 519, 534.

48. *Id.* at 536.

49. *Id.* at 530.

courts. What the accused gambles, implied the Court, the accused may not then decry if his strategy fails.⁵⁰ Through *Barker* and other speedy-trial cases, the Supreme Court relegated the speedy-trial right to second-class status.⁵¹

Illinois, like nearly all state jurisdictions, has provided the accused with both a constitutional⁵² and a statutory right to a speedy trial.⁵³ Following the U.S. Supreme Court decision in *Barker*, the Illinois Supreme Court, however, made clear that the Illinois constitutional right to a speedy trial is malleable and amorphous.⁵⁴ The Illinois Supreme Court rejected any suggestion of a specific time limit that would trigger the constitutional speedy-trial right. Instead, it applied essentially the same four-factor test used by the United States Supreme Court in making judicial determinations of constitutional speedy-trial violations.⁵⁵ In Illinois, statutory and constitutional speedy-trial rights are not co-extensive,⁵⁶ yet compliance with the statutory timelines typically prevent the constitutional violation.

The speedy-trial right is fundamental, but empirical research has demonstrated that its consistent enforcement have been notoriously difficult.⁵⁷ In his seminal study on case processing in lower criminal courts in New Haven, Connecticut, Malcolm Feeley observed:

Although the Sixth Amendment to the Constitution guarantees the right to a speedy trial, seemingly simple cases dragged out endlessly. Cases in which there was no trial, no witnesses, no formal motions, no

50. *See id.* at 536 (observing that Barker did not object to delay until after he “lost his gamble” on a failed trial strategy).

51. *See Garcia, supra* note 36, at 33–34 (arguing that despite its reach, the Court has relegated speedy-trial right to second-class status, and its statutory counterpart, the Speedy Trial Act of 1974, to similar second-class status). *But see Doggett v. United States*, 505 U.S. 647, 657–58 (1992) (holding that government’s negligence in bringing an out-of-custody defendant to trial over an 8.5-year period violated defendant’s Sixth Amendment right to speedy trial).

52. U.S. CONST. amends. VI, XIV; ILL. CONST. art. I, § 8.

53.

(a) Every person in custody in this State for an alleged offense shall be tried by the court having jurisdiction within 120 days from the date he or she was taken into custody unless delay is occasioned by the defendant; . . . Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record. . . .

(b) Every person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant demands trial unless delay is occasioned by the defendant. . . . The defendant’s failure to appear for any court date set by the court operates to waive the defendant’s demand for trial made under this subsection. . . .

725 ILL. COMP. STAT. 5/103-5.

54. *See generally* *People v. Bazzell*, 369 N.E.2d 48 (Ill. 1977).

55. *Id.* at 50.

56. *See* *People v. Kilcauski*, 62 N.E.3d 352, 358–59 (Ill. App. Ct. 2016) (discussing tests for speedy-trial rights).

57. *See generally* Timothy J. Searight, *The Sixth Amendment Right to a Speedy Trial: Applying Barker v. Wingo after United States v. Doggett*, 22 W. STATE U. L. REV. 61 (1994) (detailing evolving standards of Sixth Amendment and changes in its application over time).

pretrial involvement from the bench, and no presentence investigation still required as many as eight or ten different appearances spread over six months.

Conversely, many complex cases were cut short because the accused had agreed to plead guilty at arraignment after the prosecutor advised him to “be smart and get it over with today.”⁵⁸

Feeley painted the picture of a court system that perhaps aspires to conduct speedy trials, but does little to achieve that goal. Feeley argued that for a criminal defendant, the process of moving through the lower courts is really the primary punishment, rather than any ultimate sanction that may be imposed by the court.⁵⁹ Further, Feeley concluded that case-processing delays are not coincidental; rather, they are inherent in the way adversarial processes in court are structured.⁶⁰

Ostrom, Hanson, and Kleiman wrote that “a well-functioning court system is expected to provide due process through decisions and actions based on individual attention to each case using consistent court-wide practices operating within predictable time frames.”⁶¹ Courts, however, have not implemented this normative preference for consistency and predictability. Some scholars have argued that rigorous insistence on speedy trial may not take into account the more nuanced process of doing individual justice within a backlogged system. Scholars Roy Flemming, Peter Nardulli, and James Eisenstein argued that “doing justice” can take a substantial amount of time and that this perhaps explains why judges, prosecutors, and defense attorneys are not exclusively focused on shortening case-processing times.⁶²

Even with an interpretation of speedy-trial rights as literally invoking a need to move with speed, courts are unlikely to conceptualize certain types of continuances or delays as violating speedy-trial rights. Courts do not generally find that delays caused by a defendant or defense counsel violate speedy-trial rights.⁶³ Courts may require defendants to

58. MALCOLM M. FEELEY, *THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT* 10 (1979).

59. See generally MALCOLM M. FEELEY, *The Process Is the Punishment*, in *CRIME, LAW, AND SOCIETY* 139, 139–88 (2013) (elaborating further on Feeley’s argument from his 1979 book that process serves as primary source of punishment, particularly analyzing how decisions made in pre-trial phases necessarily determine eventual outcomes).

60. MALCOLM M. FEELEY, *COURT REFORM ON TRIAL: WHY SIMPLE SOLUTIONS FAIL* 32 (Quid Pro Books 2013).

61. Brian J. Ostrom, Roger A. Hanson & Matthew Kleiman, *Improving the Pace of Criminal Case Processing in State Trial Courts*, 29 *CRIM. JUST. POL’Y REV.* 736, 737 (2018).

62. Roy B. Flemming, Peter F. Nardulli & James Eisenstein, *The Timing of Justice in Felony Trial Courts*, 9 *L. & POL’Y* 179, 179–80 (1987).

63. See Gregory P.N. Joseph, *Speedy Trial Rights in Application*, 48 *FORDHAM L. REV.* 611, 624 (1980) (“Predictably, courts are seldom receptive to allegations that speedy trial rights have been denied as a result of delays engendered by affirmative action either of the defendant or of defense counsel.”).

affirmatively or proactively state their speedy-trial rights before finding them violated.⁶⁴ Courts also make allowances for circumstances beyond the defendant's control, like a witness being ill or unavailable, that are not generally conceptualized as violations of speedy-trials rights.⁶⁵ Some evidence has suggested that delaying trial may be advantageous to the defense, since extended delays may impact the prosecution's ability to bring evidence.⁶⁶ Interestingly, some recent research found the exact opposite, concluding that increased case-processing time was associated with more severe punishments.⁶⁷

The review of the law clarifies why cases like Kalief Browder's were unaffected by the legal speedy-trial framework. The empirical literature demonstrates how courts have responded to this weak "fundamental" right. Indeed, in Browder's case, we see how the administrative task of court calendaring intersects with the legal mandate. There, the prosecutor requested one-week extensions, but calendar logistics required most appearances to be scheduled extremely far in advance.⁶⁸ This meant that the case's timeline could extend far beyond the six months from arraignment New York requires, while each delay was only counted as one week against the prosecutor's clock.⁶⁹ Because speedy-trial rights do not define what "speedy" means, and because these rights are so full of exceptions case processing is paradoxically heavily, but ineffectually regulated. To consider this complex problem, this Article turns to a review of scholarship on the scope of the problem of case processing delay before considering a theory of path dependency that might help explain the persistence of case delay as a prominent feature of case processing in Cook County criminal courts.

B. A National Snapshot of Case-Processing Delays

In 1987, the American Bar Association (ABA) laid out a series of standards for how long felony case processing should take. These standards asserted that from arrest to disposition, a court should dispose of

64. *See id.* at 634 ("In constitutional practice, however, virtually all courts still decline to discharge a defendant on the basis of constitutional speedy trial deprivation unless the defense has taken affirmative action to obtain a speedy trial, except in extraordinary circumstances.").

65. *Id.* at 640 (noting instances of trial delays not generally considered violations of speedy-trial right).

66. Richard S. Frase, *The Speedy Trial Act of 1974*, 43 U. CHI. L. REV. 667, 668 (1975) (identifying conflicts between defendants' interest in speedy trials and defense strategies).

67. *See* Lin Liu, R.R. Dunlea & Besiki Luka Kutateladze, *Time for Time: Uncovering Case Processing Duration as a Source of Punitiveness*, CRIM. & DELINQ. 1, 17–20 (2021) (discussing the results from empirical studies suggesting that higher case-processing times correlated with higher likelihood of custodial sentences, prison sentences, and lengthy sentences).

68. Gonnerman, *supra* note 1 (highlighting prosecution's requests for one-week extensions because "[t]he People are not ready" resulted in court dates set six weeks or more in the future).

69. *Id.* (noting that as long as a prosecutor filed a Notice of Readiness, delays caused by court congestion do not count toward number of elapsed days).

90% of felony cases in 120 days, 98% in 180 days, and a full 100% within one year, though these standards would be updated several times.⁷⁰ A study of nine felony courts determined that no studied court could meet this original standard without modifications.⁷¹ A newer set of standards—a joint effort by the National Center for State Courts, the American Bar Association, and the National Association for Court Management—was put forward in 2011. Under these new Model Time Standards, 75% of felony cases should be disposed of in 90 days, 90% within 180 days, and 98% within 365 days.⁷² More recently, the Effective Criminal Case Management Project analyzed data from over 136 courts and found that no court met the national time standard.⁷³

Research on case-processing delays generally categorizes two sources of delay: individual case-related factors and organization-related factors.⁷⁴ Numerous studies have been undertaken to try to determine exactly what leads to case-processing delays. The same study from the Effective Criminal Case Management Project attributed improvements in timelines to the number of continuances and hearings, as well as to the amount of control the court has over scheduling.⁷⁵ Other studies and scholars have concluded the difference is whether a trial ends with a plea, as those require less processing time than things like jury trials.⁷⁶ Notably, more than 90% of criminal cases resulting in a conviction are the result of plea bargaining.⁷⁷ In a previous study these authors undertook, we determined there were numerous sources of micro-level and macro-level dysfunctions in the larger court system.⁷⁸ Researchers have also uncovered some factors that may not be related to timeliness. The Effective Criminal Case Management Project study, for example, concluded that organizational

70. STANDARDS RELATING TO TRIAL COURTS AS AMENDED § 2.52(d) (Am. Bar Ass'n 1987).

71. BRIAN J. OSTROM & ROGER A. HANSON, EFFICIENCY, TIMELINESS, AND QUALITY: A NEW PERSPECTIVE FROM NINE STATE CRIMINAL TRIAL COURTS 16 (1999), <https://www.ojp.gov/pdffiles1/nij/178403-1.pdf> [<https://perma.cc/W2BP-L4A8>].

72. RICHARD VAN DUIZEND, DAVID C. STEELMAN & LEE SUSKIN, NAT'L CTR. FOR STATE TRIAL CTS., MODEL TIME STANDARDS FOR STATE TRIAL COURTS 4 (2011), https://www.ncsc.org/_data/assets/pdf_file/0032/18977/model-time-standards-for-state-trial-courts.pdf [<https://perma.cc/D7EV-JQYT>].

73. OSTROM ET AL., *supra* note 16, at 6 (finding that, on average, courts included in study resolved 83% of felony cases within 365 days).

74. *See* Ostrom, Hanson & Kleiman, *supra* note 61, at 738 (“[T]here is a long-standing belief that much of the variation in criminal case processing time ought to be related to (a) *individual* case-related factors and (b) *organization-related* factors.”).

75. *See* OSTROM ET AL., *supra* note 16, at 6 (finding that number of continuances per case and number of hearings per case drive case-processing time).

76. *See* Margaret F. Klemm, *A Look at Case Processing Time in Five Cities*, 14 J. CRIM. JUST. 9, 9 (1986) (noting that trials take longer than pleas).

77. RAM SUBRAMANIAN ET AL., IN THE SHADOWS: A REVIEW OF THE RESEARCH ON PLEA BARGAINING 2 (2020).

78. *See* Hawilo et al., *supra* note 17, at 193 (dividing a number of complicated inefficiencies into two categories).

factors (including the size of the court, the type of calendar, and the number of filings per judge, among other variables) had little effect on case-processing times.⁷⁹

C. *Why Case-Processing Delays Matter*

Case-processing delays matter, whether or not they violate Sixth Amendment rights or statutory rights to a speedy trial; they matter because of the tangible harms done to defendants and victims. Case-processing delays keep presumed-innocent people in custody, exacerbate known contributors to inequality, and ultimately backlog the criminal justice system in ways that frustrate justice both theoretically and practically.

While this Article does not seek to examine the broader field of the philosophy of criminal punishment, here we briefly connect timeliness with theories of effectiveness of criminal punishment. The deterrence theory of crime is based on the premise that a would-be criminal will be deterred from committing a crime due to the certainty, severity, and celerity of punishment.⁸⁰ This means that knowing you will eventually be punished, and perhaps even severely, is not sufficient to deter crime—punishment must also be swift.⁸¹ This aspirational and theoretical intention is wholly at odds with the actual process of felony dispositions, which are not at all swift and leave defendants stuck in limbo.

A majority of individuals currently in jail are presumed innocent. A study from the Prison Policy Initiative concluded that only about one-third of the roughly 720,000 inmates in local jails have actually been convicted of a crime, meaning that pretrial detention is principally responsible for filling jails.⁸² Incarceration in jails is racially disparate to an extreme degree across the United States, with Black Americans bearing a majority of the burden of the negative consequences of both jailing and pretrial detention. Work by the Vera Institute calculated that Black people

79. See OSTROM ET AL., *supra* note 16, at 11 (finding that active case-flow management made biggest difference in case-processing times).

80. See Lawrence Friedman, *The Legal System: A Social Science Perspective* (1975), reprinted in STEWART MACAULAY, LAWRENCE FRIEDMAN & ELIZABETH MERTZ, *LAW IN ACTION: A SOCIO-LEGAL READER* 397, 398 (Stewart Macaulay, Lawrence M. Friedman & Elizabeth Mertz eds., 2007) (outlining deterrence theory).

81. Notably, scholars find that deterrence theory is largely insufficient to explain crime and does not have any deterrent effect. See Travis C. Pratt et al., *The Empirical Status of Deterrence Theory: A Meta-Analysis*, in TAKING STOCK: THE STATUS OF CRIMINOLOGICAL THEORY 367, 385 (Francis T. Cullen, John Paul Wright & Kristie Blevins eds., 2011) (“To that end, the deterrence perspective . . . falls well short of being a theory that should continue to enjoy the allegiance of criminologists.”).

82. Joshua Aiken, *Era of Mass Expansion: Why State Officials Should Fight Jail Growth*, PRISON POLY INITIATIVE (May 31, 2017), <https://www.prisonpolicy.org/reports/jailovertime.html> [<https://perma.cc/2F8S-SDB7>].

are 3.6 times more likely to be jailed in local jails than white people.⁸³ Likewise, pretrial incarceration is intrinsically related to the defendant's ability to afford bail, leaving some defendants to spend the entire lifecycle of their case in jail when a similarly situated defendant with more money would not have remained incarcerated.⁸⁴

This disparity is particularly acute because pretrial detention is bad for both court outcomes and for individuals' lives.⁸⁵ Studies have concluded that even brief jail stays increase the risk of long-term trauma exposure and meaningfully interrupts the lives of presumed-innocent persons.⁸⁶ These harms affect the most disadvantaged members of society and in turn harm their families and their communities.⁸⁷ Studies have also found that pretrial delay predicts worse court outcomes, including higher likelihoods of conviction (based on propensity to plead guilty).⁸⁸ Work by Leslie and Pope netted the disparities and consequences of pretrial detention together, finding that the resultant guilty pleas and, in some cases, more severe sentences are disproportionately affecting poor and minority defendants.⁸⁹ It is clear, then, that case-processing delays, and the effects that accompany them, like pretrial detention and worse court outcomes, are a source of harm perpetuated by the justice system nationally. Next, we refine our focus to Cook County courts in anticipation of making meaning of those delays in particular.

In this Article, we focus on the system mechanics of the court and outcomes for defendants, but criminal defendants are not the only individuals greatly affected by court delays. Scholars have also analyzed how case-processing delays hurt victims. In their study of domestic violence survivors, Bell, Perez, Goodman, and Dutton found that the survivors encountered numerous delays in the courtroom, often having to take time off work or procure childcare to attend multiple hearings that would not

83. RAM SUBRAMANIAN, KRISTINE RILEY & CHRIS MAI, *DIVIDED JUSTICE: TRENDS IN BLACK AND WHITE JAIL INCARCERATION, 1990–2013*, at 22 (2018).

84. See LÉON DIGARD & ELIZABETH SWAVOLA, *JUSTICE DENIED: THE HARMFUL AND LASTING EFFECTS OF PRETRIAL DETENTION* 6 (2019) (highlighting how individuals unable to afford bail often remain in jail for their case's entire pendency).

85. See *id.* at 2 (finding that pretrial detention negatively impacts an individual's court appearance, conviction, sentencing, and future involvement with criminal-justice system).

86. WEILL ET AL., *supra* note 8, at 6.

87. Claudia N. Anderson, Joshua C. Cochran & Andrea N. Montes, *The Pains of Pretrial Detention: Theory and Research on the Oft-Overlooked Experiences of Pretrial Jail Stays*, in *HANDBOOK ON PRETRIAL JUSTICE* 13, 13–14 (Christine S. Scott-Hayward, Jennifer E. Copp & Stephen Demuth eds., 2021).

88. Will Dobbie, Jacob Goldin & Crystal S. Yang, *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 *AM. ECON. REV.* 201, 225 (2018).

89. See Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments*, 60 *J.L. & ECON.* 529, 554–55 (2017) (“The impact of pretrial detention on case outcomes explains a large portion of the systematically worse case outcomes of minority defendants, who are more likely than whites to be detained pretrial.”).

result in meaningful outcomes.⁹⁰ This also led to the survivor feeling unsafe and unprotected because, as one woman put it,

I had . . . gone to court every week for five weeks, just to keep an ex parte going. Reason? Incompetence. They could not locate [my partner] while he was incarcerated, couldn't serve him papers, or get him into court. How in the world could these people protect me?⁹¹

D. Felony Case-Processing Delays in Cook County

Cook County, Illinois, is home to 5.1 million residents, making it the second-largest county in the United States and the largest county in the State of Illinois.⁹² In Cook County, approximately 41.8% of residents identify as non-Hispanic white, while 22.7% identify as Black.⁹³ A further 23.96% of residents identify as Hispanic.⁹⁴ Compared to the national average, there is more wage inequality in Illinois, with poverty concentrated in pockets of the city.⁹⁵ Cook County is also home to 26th and California, one of the largest and busiest criminal courts in the United States, handling over 22,000 cases every year.⁹⁶

The Circuit Court of Cook County has, to put it mildly, a checkered history. The Illinois Crime Survey (1929)⁹⁷ documented organized crime's influence in the processing and resolution of cases, including the delay of cases in which members of the mob were charged with crimes.⁹⁸ The history of the influence of Cook County's Democratic Party is well-documented, including the party's control over the selection of judges to

90. Margret E. Bell et al., *Battered Women's Perceptions of Civil and Criminal Court Helpfulness: The Role of Court Outcome and Process*, 17 VIOLENCE AGAINST WOMEN 71, 79 (2011).

91. *Id.*

92. *U.S. County Populations 2022*, WORLD POPULATION REV., <https://worldpopulationreview.com/us-counties/il/cook-county-population> (last visited Jan. 20, 2022) [<https://perma.cc/6LHK-CDSE>].

93. *Cook County, IL*, DATA USA, <https://datausa.io/profile/geo/cook-county-il> (last visited Jan. 20, 2021) [<https://perma.cc/JD5A-D84U>].

94. *Id.*

95. *See id.* (mapping median household income across Cook County, in which lowest median household income is concentrated on Chicago's south and west sides).

96. Jason Meisner, *26th and Cal Courthouse Rich with History and Charm*, CHI. TRIB. (June 11, 2012, 12:00 AM), <https://www.chicagotribune.com/news/ct-xpm-2012-06-11-ct-met-criminal-courts-building-20120611-story.html> [<https://perma.cc/L29F-3RT8>].

97. *See* John Landesco, *Organized Crime in Chicago*, in ILL. ASS'N FOR CRIM. JUST., *supra* note 19, at 815, 907–17 (describing in particular influence and power enjoyed by John Torrio, a notorious gangster and beer runner during Prohibition).

98. *See, e.g., id.* at 911–12 (discussing long delays following indictment of associates of John Torrio for murder; the charges were eventually *nolle prossed*).

run for office, an unfortunate phenomenon that continues to this day.⁹⁹

The Circuit Court of Cook County, and in particular, its Criminal Division, has historically neglected the best interests of the citizens who come before the court as victims, witnesses, and defendants, as well as community members who are affected by crime. One of these “best interests” is the need to provide fair, efficient, and speedy resolution of cases. As history demonstrates, this has not been even a primary focus of the Circuit Court of Cook County.¹⁰⁰

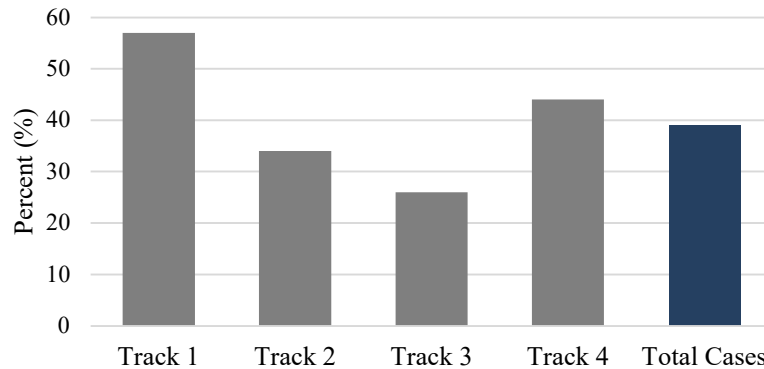
Despite the best efforts of its own expert and committed personnel, Cook County has struggled to meet even its own standards for case-processing times. Peter Coolsen, the Court Administrator for the Criminal Division of the Circuit Court of Cook County for many years, conducted an analysis of over 10,000 cases, subdivided into tracks¹⁰¹ ranging from three to eighteen months. He found that 39% of all pending cases he studied exceeded the Cook County time standard.¹⁰² Figure 1 visualizes Coolsen’s findings as over-time percentages by track, demonstrating that case-processing times are a problem for all levels of felony cases, not just the most severe.

99. Maya Dukmasova & Chloe Hilles, *Judicial Hopefuls Seek Cook County Democratic Party’s Endorsement for 2022 Primary*, INJUSTICE WATCH (Oct. 15, 2021), <https://www.injusticewatch.org/news/judicial-elections/2021/pre-slating-judicial-candidates-2022-primary/> [<https://perma.cc/3SP8-S7XT>] (detailing the obscure “pre-slating” event where prospective candidates for judge seeking party’s nomination present their credentials to Cook County Democratic committee).

100. *See generally*, SPECIAL COMM’N ON ADMIN. OF JUST. IN COOK CNTY., *supra* note 24.

101. JAMES PETER COOLSEN, *DIFFERENTIATED CASE MANAGEMENT IN COOK COUNTY (CHICAGO), ILLINOIS: STAKEHOLDER PERCEPTIONS AND EMPIRICAL DATA* 54–56 (2007). The tracks correspond reasonably well to felony classes: Track #1 consisted of Class 4 and Class 3 felonies; Track #2 consisted of Class 2 and Class 1 felonies; Track #3 consisted of Class X felonies; and Track #4 consisted of Class M felonies. *Id.* at 53.

102. *Id.* at 56.

Figure 1: % of Pending Cases Over Time in Cook County¹⁰³

Stakeholders surveyed in 2010 told the Appleseed Center for Fair Courts that since 1999, more punitive and more complex sentencing changes in Illinois laws have contributed to case delay.¹⁰⁴

More recently, research by Rountree, Hawilo, and Geraghty found that in 76% of court time was allocated to status checks rather than substantive active case processes and that 84% of cases were before the judge for two minutes or less and consisted of little but setting another court date.¹⁰⁵

This literature, taken in sum, presents a grim picture of a universe of harmful court delays in Cook County. In Part III, we introduce path dependency theory as a way of understanding the current stable system of delays and why such a system is so impervious to change.

III. PATH DEPENDENCY AND COURT PROCESSES

We have established that Cook County is very much stuck in a seemingly never-ending cycle of case delays. In this section, we introduce a theoretical framework that offers a useful way of understanding how such a problem can come to exist and how it continues to exist. We will explain this theoretical framework and then apply it to empirical data from Cook County. We then consider what that means for generating solutions.

103. *Id.* at 54.

104. See CHI. APPLESEED, PRETRIAL DELAY & LENGTH OF STAY IN COOK COUNTY JAIL: EXECUTIVE SUMMARY 3 (2013), <http://www.chicagoappleseed.org/wp-content/uploads/2012/06/CAFFJ-Pret-Trial-Delay-and-Length-of-Stay-Executive-Summary.pdf> [<https://perma.cc/CMB3-CY89>] (noting that mandatory minimum sentences and sentence enhancements create “hard bargaining,” which leads to protracted negotiation processes that prolong pretrial detention).

105. Meredith Martin Rountree, Maria Hawilo & Thomas Geraghty, Preliminary Report: Qualitative Study of Cook County Criminal Felony Court Processing 7 (2019) (unpublished manuscript) (on file with authors).

The Cook County courts in our data process cases one step at a time, with each court appearance and each motion coming one after another. Because the steps are not totally separate or independent, we propose looking at the cumulative importance of the adjudication process for each case, replicated in every case the court oversees. Therefore, instead of numerous problematic individual steps, we have a system that is overburdened by cumulative delays produced by many individual steps. A theoretical perspective that considers the unique lifecycles and functions of systems provides a useful framework to understand the origin and continuing nature of case-processing delays in Cook County.

Path-dependence theory is particularly helpful in this regard. In its simplest form, path-dependence theory says that the outcomes of systems can be greatly influenced by what comes before them, even if some of the earlier steps are very distant from the eventual outcome.¹⁰⁶ This is not as simple as saying that “history matters;” instead, it is a more complex understanding of how individual steps or decisions can compound.¹⁰⁷ Here, we use a stricter theoretical conceptualization of path dependence advanced by Schreyögg and Sydow in their book, *The Hidden Dynamics of Path Dependence: Institutions and Organizations*. They asserted that a path-dependent organization is one where a sequence of decisions limits future choices, eventually even creating an imperative where functionally only one choice remains.¹⁰⁸ This means that by the time you near the end of a complicated process, you only have one realistic set of choices to make at the very end.

One consequence of path dependence is that no single individual can break this cycle. Instead, individual court actors and court users become cogs in the machine of the system as the system itself limits their choices. Path-dependency theory refers to this state as a “system equilibrium” or “system lock-in,” where the system becomes dependent on operating in one specific way.¹⁰⁹ As this process repeats itself, it defines a path

106. Paul A. David, *Clio and the Economics of QWERTY*, 75 AM. ECON. REV. 332, 332 (1985).

107. See Scott E. Page, *Path Dependence*, Q. J. POL. SCI. 87, 87–88 (2006) (differentiating between types of path dependence and laying out four related causes of path dependency: increasing returns, self-reinforcement, positive feedback, and lock-ins).

108. See Georg Schreyögg & Jorg Sydow, *Understanding Institutional and Organizational Path Dependencies*, in THE HIDDEN DYNAMICS OF PATH DEPENDENCE: INSTITUTIONS AND ORGANIZATIONS 3, 3–5 (Georg Schreyögg & Jorg Sydow eds., 2009) (recontextualizing past events for future action as foregoing decisions for current and future decision-making).

109. Paul A. David, *Path Dependence, Its Critics, and the Quest for ‘Historical Economics’*, in EVOLUTION AND PATH DEPENDENCE IN ECONOMIC IDEAS: PAST AND PRESENT 15, 25–26 (Pierre Garrouste & Stavros Ioannides eds., 2001). David asserted that he does not take up the term lock-in as an assertion that human actors have no agency or that people are purely rational actors. *Id.* at 25. Rather he asserted that the term simply described the process by which a system comes to a stable equilibrium that will endure unless intervened upon by some external shock. *Id.* at 25–26.

through a self-reinforcing process, thus the name path dependence.¹¹⁰ The ultimate result of this process is a lack of flexibility or ability to chart a different path within the organization. As Schreyögg and Sydow put it,

[o]ne particular choice or action pattern has become the predominant mode; flexibility has been lost. Even new entrants into this field of action have to adopt it. The problem of a lock-in becomes particularly obvious in cases where a more efficient alternative appears but a switch is no longer possible, and the result is actual or potential inefficiency.¹¹¹

This means that even individuals who want to change the way the system works face almost insurmountable roadblocks because of how the system has grown accustomed to—and dependent on—functioning.

Considering the court as a type of path-dependent system has distinct advantages in allowing us to conceptualize case-processing delays as multifaceted and inevitable. To do this we specifically apply path-dependency theory to criminal court processes.

Take, for instance, dispositions as a typical court system outcome measure. Applying Schreyögg and Sydow's definition of path dependency, we hypothesize that a disposition is significantly influenced by the steps that precede it. That is, we propose that decisions made by legal actors, in all corners of the courtroom, determine what happens next in a case. Next, we consider whether decisions made by any stakeholder (be it defense, prosecution, or the court) limit the subsequent choices that other actors can make. This is surely true, whether that decision be something case-related (like a decision to file a motion) or an error that delays or changes court proceedings.

The pivotal question, then, is whether a sequence of decisions can so limit the path forward that it permits only that path. We will examine this question using three sources of empirical data. We argue that these data demonstrate that the universe of choices is so narrowed that the system is all but required to make certain decisions to keep itself stable. In this way, we contend that the system of delays at the Cook County criminal courts at 26th and California is not simply attributable to the decisions of individuals to create delays, but rather to the way justice is carried out in Cook County. If this thesis is correct, we would expect to find the decisions that give rise to felony case-processing delays to be very common and very widely used. That is, we would expect to see the same types of decisions leading to the same types of delayed outcomes over and over again. Further, we would not expect those decisions to be attributable to one individual court actor or even one group of court

110. Schreyögg & Sydow, *supra* note 108, at 5 (identifying drivers of self-reinforcing dynamics as externalities arising from actions of agents or learned individual behaviors, which are adopted by the regime and create a state of equilibrium).

111. *Id.* at 7.

actors.

Despite what seem like satisfying parallels, there is relatively little work applying path-dependency theory to court-system processes, though some scholars have applied it to specific relevant decision-making aspects of law, particularly with analyses of path dependency in constitutional adjudication.¹¹² Ostrom, Hanson, and Kleinman conceptualized this problem of the dependent system somewhat differently, focusing instead on the competing challenges of balancing a caseload with providing the individualized attention to a case across many individuals and timelines.¹¹³ Ultimately, Ostrom et al. were persuaded that the interdependent relationship within the universe of cases takes precedence, advocating that judges allocate their time using a proportionality principle, i.e., prioritize the most complex cases.¹¹⁴ We have found no research contextualizing how the use (or lack of use) of proportionality principles might contribute to the current equilibrium of delays in court. That is, more research should be done to decipher how much emphasis on proportionality would be necessary to release court systems from their current state of lock-in. In the section to follow, we introduce three sources of data that will help shine a light on various stages and outcomes of path dependency at 26th and California.

IV. DATA AND METHODOLOGY

This Article introduces a three-tiered data structure designed to examine macro-level patterns and contextual features of court delays at 26th and California. We refer to these three data tiers as levels, titling them as follows: Level 1: Macro-Level Trends, Level 2: Single-Proceeding Observations, and Level 3: Ethnographic Observations. These levels of data can be conceptualized akin to a funnel, moving from

112. See Jeremy Patrick, *Path Dependency, the High Court, and the Constitution*, 30 J. JUD. ADMIN. 51, 51 (2020) (advancing a path-dependency hypothesis to explain why some elements of Australian constitutional law have remained the same while others have changed). Though notably, the author qualified this hypothesis as tentative. *Id.*; see generally Michael J. Gerhardt, *The Limited Path Dependency of Precedent*, 7 U. PA. J. CONST. L. 903 (2004) (laying out scholarly arguments both for and against readings of path-dependency theory in constitutional adjudication). Gerhardt ultimately concluded that, despite legitimate concerns about the extent of robust path dependency, precedent continues to be relevant to constitutional law. *Id.* at 999. Gerhardt urged scholars to undertake additional empirical research on precedent and engage with more recent empirical findings to illuminate the matter further. *Id.* at 1000.

113. Ostrom, Hanson & Kleiman, *supra* note 61, at 737 (emphasizing that a well-functioning court system is expected to provide due process, which requires individual attention to each case).

114. *Id.* Ostrom et al. suggests here that proportionality principle considers the relationship between a punishment and the complexity of a case. This is meaningful distinct from seriousness of a crime, since hypothetically a serious crime may be less time consuming and require less resources from the court, though there is likely a correlation between seriousness and complexity more generally. The conceptualization of proportionality more realistically allocates limited time and resources.

the broadest type of data to the narrowest. Each type of data serves a different and important purpose, so all are necessary to this analysis. In this section, we briefly provide the methodological details of each level of data before looking at each source of data in detail, and then describe the results and themes emerging from those results.

A. Methodology

Each level of data in this analysis comes from a different author and different methodology, allowing us to combine multiple perspectives into our analysis. Level 1 data comes from the Cook County State's Attorney Open Data Portal. Upon her election as State's Attorney, Kim Foxx committed to increasing the transparency and accessibility of data in Cook County.¹¹⁵ This data portal is one such effort and contains a range of information. In this analysis, we use the Dispositions data, refined specifically to cases that were prosecuted at 26th and California.¹¹⁶ This yielded a dataset containing 480,486 charges. Because our principal interest is not at the charge level, but at the case level, we further restricted our analysis to the primary charge in each case.¹¹⁷ This yielded a dataset of 154,623 cases where dispositions were entered between 2011–21. We further cleaned the data to remove cases that were the result of typographical errors.¹¹⁸ Finally, we created a new variable to measure days from arrest to disposition. This variable was constructed by subtracting the arrest date from the disposition date and storing the resultant number of days. This key variable will constitute the measure of case-processing time from arrest to disposition.

Level 2 data are single-issue-proceeding observational data created by the authors and trained student observers. Professors trained a class of students to collect data by observing court hearings at 26th and California felony courts. Students were provided a worksheet, and instructed to note information such as time of proceeding, length of proceeding, and result of each individual proceeding. This data-gathering resulted in 1,166

115. *The Data-Driven CCSAO*, COOK CNTY. STATE'S ATT'Y, <https://www.cookcountystatesattorney.org/data> [<https://perma.cc/EGC3-GBSV>] (last visited Apr. 2, 2022).

116. *Dispositions*, COOK CNTY. GOV'T: OPEN DATA, <https://datacatalog.cookcountyil.gov/Courts/Dispositions/apwk-dzx8> [<https://perma.cc/M3W8-EXWK>] (last updated Jan. 3, 2022).

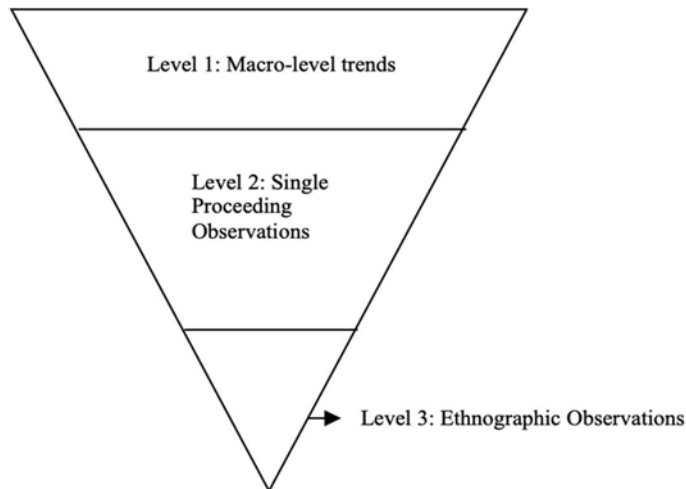
117. This is provided as a variable in the origin dataset and did not require making a methodological decision.

118. This required removing and recoding several variables. We removed data in three instances. First, if a defendant had a disposition date that occurred before their arrest date. Second, if there was no arrest date entered for a given defendant. Third, defendants who had a disposition year that occurred after 2021 (this third scenario was either extremely incomplete data from 2022 or keystroke errors occurring in eight observations). In total, these three cleaning procedures removed 3,999 observations from the data. We also had to recode or collapse several variables including gender, race, and dispositional outcomes. This was done either to fix inconsistent capitalization that prevented categories from merging or to merge small but conceptually similar categories.

unique observations of single proceedings.

Level 3 data are courtroom ethnography data created by the authors and a trained student observer.¹¹⁹ The graduate student from the Northwestern University Medill School of Journalism took observational field notes that constituted raw ethnographic data. From June 19, 2018, to October 16, 2018, the student conducted thirty-three periods of observation, yielding detailed notes about 3,144 minutes of observation across fifteen courtrooms and covering 215 different criminal cases. To process these data, we designed a coding scheme that separated the raw ethnographic quotes into different analytic themes. Some of these themes required us to source quotations from the ethnography that typified different types of delays that the observers saw in different courtrooms. In the current Article, we strategically sampled these quotations to provide on-the-ground context for the observable daily operations of Cook County. This left us with a universe of data as represented in Figure 2 below.

Figure 2: Three-Tiered Data Structure, Levels 1-3



B. Macro-Level Trends Results

The top-level data, Level 1, help identify aggregate trends over time at 26th and California. Analyzing macro-level patterns is particularly useful as a first step due to law's tendency to individualize cases, making it more

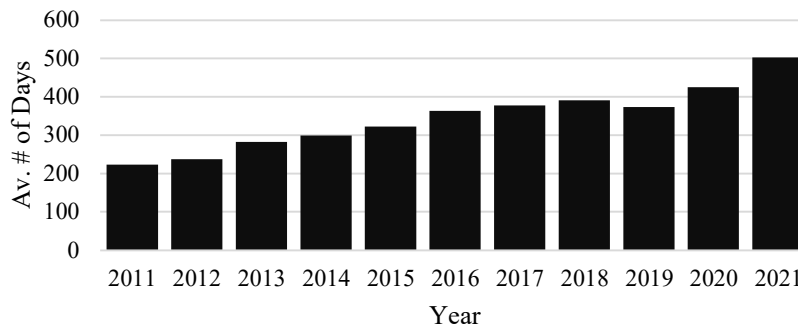
119. See generally Hawilo et al., *supra* note 17.

difficult to see how patterns transcend individual cases. By looking at larger patterns, we see what is consistent in the way the court functions. We plot the number of dispositions and the average case-processing time per year (calculated as days from arrest to disposition) in two visual forms below. Figure 3 is in tabular form, while Table 4 plots the change over time as a series of bars. What these figures clearly show is that case-processing times have substantially increased, even as the number of dispositions has decreased.

Figure 3: Average Time from Arrest to Disposition, 2011–21

	Number of Dispositions	Average Processing Time
2011	15,074	223.11
2012	18,515	237.04
2013	17,675	282.49
2014	18,148	298.97
2015	15,246	322.42
2016	14,105	363.11
2017	13,571	377.05
2018	11,991	390.77
2019	11,380	373.51
2020	5,203	424.78
2021	9,716	502.66

Figure 4: Change in Case Processing Times, 2011–21



Figures 3 and 4 show that average felony case-processing times nearly

doubled from 2011 to 2018 before spiking to a relative maximum during the COVID-19 pandemic in 2020 and 2021.¹²⁰ Figures 3 and 4 also show that the number of felony dispositions had substantially decreased, even in the years before COVID-19. Years 2018 and 2019 had the fewest dispositions of any of the studied year prior to their pandemic-era counterparts.

The Level 1 data also demonstrate that the impacts of felony case processing are felt very unequally by different demographic groups. The average age of defendants was 32.9, though this number had a wide range, beginning at seventeen years of age. The vast majority of defendants were men (88.82%), while substantially fewer (11.18%) were women. The data were also highly disparate along racial lines, with 116,198 (77.26%) of defendants identified as Black or African American, 22,833 (15.18%) as Hispanic or Latino, 10,472 (6.96%) as white, and a much smaller percentage were Asian, American Indian, or some other race or ethnicity.

We also considered predictive relationships between individual demographic characteristics and various case-level features that might substantially affect felony case-processing times. To explore these potential patterns, we predicted case-processing times using a linear regression model, specified to include defendant race, age, and gender as well as disposition year and the several types of disposition outcomes. The reference categories for the model are white race, male gender, and

120. The tail-end of the data distribution in the macro-level trend data (Level 1) of this analysis depicts a ballooning of felony case processing times during the COVID-19 pandemic. There is some explanation for this rapid increase simply by considering court closures during COVID-19. Cook County courts were closed for a majority of 2020 and part of 2021, which also led to the near-extinction of trials during that time period. See Sarah Staudt, *Slowly Returning to Normal: A Look at the Cook County Court Case Backlog in Autumn 2021*, CHI. APPLESEED (Nov. 8, 2021), <https://www.chicagoappleseed.org/2021/11/08/slowly-returning-to-normal-backlog-autumn-2021/> [<https://perma.cc/6STZ-NW9L>] (discussing effects of COVID-19 on case backlog). As of April 2021, more than 2,600 defendants had been in custody at Cook County Jail or on electronic home monitoring for more than a year. Carlos Ballesteros, *Court Backlog Leaves Hundreds of People in Cook County Jail for More Than a Year*, INJUSTICE WATCH (Apr. 28, 2021), <https://www.injusticewatch.org/news/courts/2021/cook-county-jail-court-backlog-coronavirus/> [<https://perma.cc/69DX-RLWH>]. Problems compounded for Cook County when the State of Illinois reinstated speedy-trial rights on October 1, 2021. Staudt, *supra*. Kim Foxx stated her intention to prioritize violent crimes and crimes with victims, but according to the Cook County Sheriff's Office, around 80% of jailed individuals were accused of a violent crime. Ballesteros, *supra*.

Cook County has appeared to turn the tide on rising felony case-processing times, disposing more cases than it initiated beginning in June of 2021. Despite what seems like headway, Cook County cannot forget the consequences of detaining a high number of individuals during a global pandemic. Studies show that Cook County jails served as incubators and spreaders of COVID-19 to such an extent that the Cook County Jail alone was associated with 15.9% of new COVID-19 infections in Chicago. Eric Reinhart & Daniel L. Chen, *Incarceration and Its Disseminations: COVID-19 Pandemic Lessons from Chicago's Cook County Jail*, 39 HEALTH AFFS. 1412, 1412 (2020).

a disposition outcome of *nolle prosequi*. The results of this model are estimated in Figure 5 below. We estimate the model first using all available observations, and next in a subset of cases that only includes homicides. They offer this homicide-specific example for two reasons: 1) to be able to interpret a subset of the data absent the potentially spurious variable of offense type, and 2) because delays for highly punitive criminal categories may be systematically more severe. Indeed, in these data, the 1,144 homicide cases had an average case-processing time of 1110.03 days, far outpacing any yearly average reported in Figures 3 and 4.

Figure 5: Predicting Case Processing Times

	Model 1 All Cases	Model 2 Homicide Cases Only ¹²¹
	(b/se)	(b/se)
Disposition year	24.658*** (0.4)	93.158*** (7.38)
Race		
Black	-53.610*** (4.7)	133.779 (77.55)
Hispanic	30.868*** (5.44)	123.68 (86.06)
Asian	90.506*** (17.97)	-84.833 (427.01)
Other	103.696** (33.09)	-110.836 (306.83)
Female	-31.524*** (3.78)	-30.09 (62.99)
Other	319.054 (228.34)	
Age	-1.508*** (0.10)	-6.133*** (1.76)

121. Does not include attempted homicides or reckless homicides

Disposition Outcome		
Plead Guilty	-53.816*** (2.67)	-107.787* (45.91)
Find/Verdict Guilty	250.266*** (6.46)	112.314* (48.63)
Find/Verdict Not Guilty	158.018*** (5.69)	-15.314 (63.39)
Other	312.709*** (10.7)	-296.381** (111.73)
Constant	-49265.445*** (810.92)	-186677.961*** (14888.01)
R-squared	0.06	0.157
*p<0.05, **p<0.01, ***p<0.001		

Figure 5 indicates that several factors operate logically to increase case-processing times. First, these statistical results confirm the trends reported in the descriptive statistics, indicating that case-processing times have been increasing significantly over time. Note, for instance, the positive and highly significant coefficients in both models for the disposition year variable, indicating that case processing times are longer in more recent years. Next, the differences between Model 1 and Model 2 generally seem to support previous findings that variation between offense categories helps predicts felony case-processing times. Future research on Cook County felony case processing should carefully create categories of more offenses and more robustly test this conclusion.

Consistent with the descriptive trends in Figures 3 and 4, there is a significant positive relationship between the disposition year and the average case-processing time in both models ($p < 0.00$).¹²² Replicating the findings of work by Klemm, pleas were significantly negatively associated with increasing case-processing times, while trial findings and verdicts were significantly positively associated with increased case-

122. P values are probabilities, ranging between 0 and 1, that are produced by statistical tests (like the linear regression used here). A smaller p value indicates that the observed result is less likely to be due to chance. That is, the p value is a description of how likely it is to find the current result were the null hypothesis proven to be true. Commonly accepted thresholds for p values in the social sciences are $p < 0.05$, $p < 0.01$, and $p < 0.001$ with smaller p values being considered more rigorous. Sufficiently small p values are said to be statistically significant.

processing times.¹²³ For the model using all case data (Model 1), all of these disposition outcomes were highly significant ($p < 0.00$), but in the homicide-only model (Model 2), only pleading guilty ($p < 0.019$) and finding a verdict of guilty ($p < 0.021$) significantly varied from the comparison group.

The models also revealed that there are important relationships between demographics and felony case processing times. In Model 1, women appeared to have significant shorter case processing times than men ($p < 0.00$). Age also had a strong negative relationship with felony case processing times. Race and ethnicity also significantly varied from the white reference group in Model 1. Compared to white defendants, Black defendants had significantly shorter case-processing times ($p < 0.00$), while Hispanic and Asian defendants had significantly longer case-processing times ($p < 0.00$). We run an additional set of models in Figure 6 to make meaning of this distinct finding, this time estimating a logistic regression model with a binary outcome variable for whether or not a defendant ultimately pled guilty.

Figure 6: Predicting Guilty Pleas

	Model 3 All Cases	Model 4 Homicide Cases Only
	(b/se)	(b/se)
Race		
Black	0.090*** (0.02)	-0.800** (0.26)
Hispanic	0.197*** (0.02)	-0.456 (0.29)
Asian	-0.573*** (0.08)	-0.051 (1.45)
Other	0.165 (0.15)	1.235 (1.18)
Female	0.078*** (0.02)	0.487* (0.22)
Other	-0.434	

123. Klemm, *supra* note 76, at 17.

(1.00)

Age	-0.001**	0.003
	(0.00)	(0.01)
Constant	0.343***	-0.255
	(0.03)	(0.32)

*p<0.05, **p<0.01, ***p<0.001

Model 3 reveals important variation by race and gender that may help explain some of the differences in case-processing times in found in Model 1. Model 3 shows that Black, Hispanic, and female defendants were significantly more likely to plead guilty ($p<0.00$), perhaps suggesting that some defendants are more likely to take plea deals that end their cases early. This explanation does not, however, neatly explain the coefficient switch for Hispanic defendants between Models 1 and 3. Differing utilization of plea deals would be consistent with the findings for the homicide-only Model 4, since a more severe offense is less likely to carry an attractive plea deal.

Taken in sum, the Level 1 trend data provide several key insights about felony case-processing times. First, they prove that case-processing times have continued to increase, even as the number of dispositions has decreased. This trend appears to have spiked to new levels during the COVID-19 pandemic. Second, they confirm that differing dispositional outcomes have significant effects on felony case-processing times. Third, they show that there are substantial differences by demographic group for both case-processing times and likelihood of entering a guilty plea. What these data do not tell us is *what* is making case-processing times longer. We are able to ascertain the endpoints, but not any of the steps that come between them. To gain a clearer understanding of what might extend case-processing times, we move to the next level of data using the Single-Proceeding Observations in Level 2.

C. Single-Proceeding Observations Results

The data explored in Level 2 add nuance to the Level 1 data's in-between spaces. These data consist of single-proceeding observations, demonstrating what decisions were being made at the time of observation. We know what the larger system outcomes are from the Level 1 data, but the Level 2 data illuminate how we arrived there.

Figure 7 below plots the types of proceedings identified among the 1,166 observed cases. In order of known types, the most common proceeding types were administrative status checks (53.26%), guilty pleas (6.09%), and arraignments (5.57%). A much smaller number of cases were observed to be sentencings, jury selection, or multiple types of proceedings. Notably, a substantial number of cases fell into the category “other” or “unknown.” These data demonstrate that consistent with previous work, a majority of cases heard were administrative status checks.

Figure 7: Single-Proceeding Types

	Frequency	Percent
Status	621	53.26
Other	178	15.27
Unknown	77	6.6
Guilty Plea	71	6.09
Arraignment	65	5.57
Bench Trial	42	3.6
Jury Trial	39	3.34
Multiple	36	3.09
Sentencing	29	2.49
Jury Selection	8	0.69
Total	1,166	

Of the 1,166 cases observed, 273 (23.41%) were delayed in starting their proceedings. These delays varied in their cause and duration, but nevertheless it is significant to note that delays before beginning to hear an individual case were not uncommon. In an analysis of 578 of the administrative status checks, we concluded that the median time spent before a judge was around two minutes.¹²⁴

124. Some cases could not be tabulated because the observer entered the courtroom when the case was already in progress or left before it was completed. Cases that spent less than one minute in front of a judge were calculated at 0 to differentiate them from the substantial pool that spent one minute before a judge. We offer a median value here in an attempt to lessen the impact of these methodological choices.

The observers also made careful notes about the role of continuances for each case. Continuances were common, observed in 315 of the coded cases. Figure 8 below details which party requested a continuance. The most frequent requestor of continuances was the defense alone (31.95% of requested continuances), though the State and the defense together requested continuances frequently (27.48% of requested continuances), and the State alone requested a continuance in 13.74% of requested continuances. The court itself often requested continuances as well (24.28% of requested continuances). This suggests that the proliferation of continuances cannot be properly attributed to only one court actor; rather, it is a strategy used by all involved parties.

Figure 8: Continuance Requests by Party

	Frequency	Percent
Defense	100	31.95
State and Defense	86	27.48
Court	76	24.28
State	43	13.74
Other, Multiple	5	1.6
Other, Unknown	3	0.96
Total	313	

Objections to continuances were rare; it only happened eleven times (3.51% of the time). Similarly, judges were very unlikely to deny continuances. Denial was noted by the observers only twice (0.64% of the time). In twenty-two cases (7.01% of the time), the judge did attach some limitations or a warning to the continuance.

These data from Level 2 illustrates some important things about actual sources of delay that combine to constitute the macro trends we observed in Level 1. Level 2 data demonstrate that status checks are the most frequent type of court business (among the observed cases) and that delays in beginning a proceeding and continuances to delay resolving a proceeding are both very common. Furthermore, we can conclude that delays are not a strategy exclusively used by one party. Rather they are used by all actors in the courtroom, are rarely objected to, and are more rarely denied. We now proceed to our final level of analysis, moving from macro-level trends to illuminating what is actually happening in proceedings through qualitative data that describes the context in which these delays occur.

D. Ethnographic Observations Results

The Level 3 ethnographic data reflect observations and interpretations of specific interactions in the courtroom. The quotations presented here are transcribed exactly as they were heard in court, redacted only to protect the privacy of individuals named within the observation. In thematically coding these field notes, we identified three categories that typified observations about case-processing delays: 1) differentiating types of delays, 2) a lack of immediate remedies other than delays, and 3) delays as an unremarkable feature of court business.

1. Cases Experience Different Types of Delays

The ethnographic field notes made it clear that there were differentiable sources of delay in case processing, some more intrinsically harmful than others. One kind of delay was not necessarily harmful, as it might relate to the time necessary to prepare a thorough case. This was particularly relevant for cases requiring forensic evidence or additional discovery. In one such case, the observer wrote that

The state's attorney tells Judge that discovery is not finished in this case and they are still working on grand jury scheduling. He also says he does not know the status of the case other than that they are waiting on DNA discovery and "for the case to work its way through the felony court system."¹²⁵

Here we see a scenario closest to what was described by Flemming et al. as sufficient time and considerations needed to fully pursue justice.¹²⁶ Of course, this does not guarantee that this delay was unavoidable, but it is reasonably plausible that in some cases, factors outside the control of court actors might justify such a delay.

A second type of case-processing delay from the observational data was inherently harmful to the lifecycle of the case. These delays often completely derailed a case, causing the case to be significantly delayed in being heard or rescheduled altogether. In one such instance, the court observer recorded the presiding judge's thoughts on the delay. The judge said,

It appears that today he was sent to IDOC. I don't know why they would do that when they knew he was due to appear in court this morning so

125. Amy Smekar, Cook County Criminal Division Courtroom Observance 96 (Nov. 6, 2018) (unpublished research notes) (on file with authors) [hereinafter *Ethnographic Observations*]. Names and other identifying information has been excluded for anonymity and readability.

126. See Flemming, Nardulli & Eisenstein, *supra* note 62, at 179–80 (“[C]ontemporary criminal procedures molded by the ‘due process revolution’ of the 60s do not rest on this goal [of swift justice]. Judges, prosecutors, and defense attorneys . . . are not single-mindedly devoted to disposing of cases as quickly as possible. ‘Doing justice’ holds importance for them and takes time to produce . . .”).

the defendant is not in court. . . . So, that will delay disposition in this case by a month. Beats me why they did that.¹²⁷

Here an error by custodial authorities prevented the court from proceeding, not just for that day, but an entire month. Other justice professionals also precipitated significant delays. One judge was particularly irritated by two absent law-enforcement officers. The courtroom observer described the situation as follows:

State's Attorney tells Judge that the two police officers, whom the court subpoenaed to give testimony today, are not coming.

"Officer told me that his unit was excused."

"Who told him that? Anyone besides me or another judge cannot excuse officers from a subpoena. Who's the officer? Who's the other officer? Okay, I'm issuing a warrant. I want to know who excused them!"¹²⁸

This is another instance of delays outside the control of the court that had great potential to impact the proceedings. The judge in this instance proceeded to ask if the parties had reached a plea deal.

The third type of delay identified in this analysis involved scheduling. These scheduling delays took two forms: those that delayed the present docket,¹²⁹ and scheduling delays choosing a date for the next step in the case. The observer detailed one example of the latter decision below:

Judge is not pleased. [The judge said,] "This case is from 2016, and it sounds like I set this [trial] date long before your schedules filled. So, why can't we do October 1, 2018 [for the trial]? And I usually try to do final pretrial conferences at least three weeks before the trial."¹³⁰

This interaction makes meaning of the volume of continuances viewed in the Level 2 data. Here, the judge commented that the trial date had been long set, so he wanted to know why that date would not continue to stand.

2. Court Actors Lack Contemporaneous Remedies

The ethnographic data also revealed a lack of quick remedies available to judges and other court actors to deal with delays. In one case, a judge and a state's attorney were discussing what to do about a lawyer they could not reach. The state's attorney could not reach the defense attorney, who was not present. The opposing legal team was not returning his calls. The judge and state's attorney speculated as to why, with the state's attorney theorizing that it was a high-budget operation, but that the secretary was putting him off.¹³¹

127. Ethnographic Observations, *supra* note 125, at 156.

128. *Id.* at 171.

129. In one instance the court (and all its observers) waited fifty minutes for an attorney to appear for a two-minute status check and date selection. *Id.* at 159.

130. *Id.* at 167.

131. *Id.* at 39.

Despite their theorizing, neither the state's attorney nor the judge seemed to have an obvious way of contemporaneously prompting contact from the attorney. Even if a remedy existed to compel absent attorneys to appear after a given court session, judges were frequently unable to act in the moment—because any such action would incorrectly harm the defendant. The ethnographic observer detailed one such situation below, with timestamps.

11:42–12:07: The court waits for private defense attorney to arrive. According to Judge she was “on her way two hours ago.” He is annoyed. The women leave the gallery to wait in the hallway.

12:01: Judge calls [the defendant] out, although [the defense attorney] has yet to arrive. He explains that the court has waited a significant amount of time for her and the rest of the call for the day is done.

Judge also notes that this is the “third time” [the attorney] has extended the timetable she has to file her pretrial motions. He moves [the case] to Friday, when “She *must* file *all* pretrial motions. That is the *last* day before trial.”¹³²

This pattern of delay from the attorney posed a problem for the judge. The defendant, of course, had nothing to do with it but would have been tangibly harmed if the judge had taken contemporaneous action against the attorney. Therefore, the judge opted to move the proceedings back. This is a common resolution in these cases, though the judge does sometimes admonish the defendant for their attorney's absence or request that the defendant relay a message to their attorney.

3. Delays Are Business as Usual

Finally, and perhaps most importantly, was the observation that delays are not noteworthy in court and are instead completely ordinary. Most of the time, there was no noteworthy interaction when either party would request a continuance, schedule a status check, or even start slightly delayed. This happened so frequently that it was routine. Even when some other form of delay occurred, the procedure of status check and new court date was referred to as the inevitable outcome anyway. The observer described one such situation below:

[T]he Latino man from the front of the gallery approaches the bench without his lawyer. Judge does not chastise him for his lawyer's absence. Instead the Judge implies there wasn't much to be done to today's status update on [defendant's] case anyway and gives him a new court date of November 1, 2018.¹³³

The lack of progress on the case was not due to the lawyer's absence, rather it was the expected result had the lawyer been present. In this

132. *Id.* at 180–81.

133. *Id.* at 225.

particular instance, as happened occasionally, we see that the lawyer's presence was not even necessary to schedule the next status update. It was also clear from various interactions between the judge, the defense, and the State that delays were liberally taken and par for the course. In one observation the extent of delays became clear as the observer noted,

Judge tells the state's attorney and the defense counsel that they *must* be prepared at the next court date. "I believe both sides have received their allotment of delays," he says. The private defense attorney pipes up, "Your honor, I think I've been on time every time, but I respect that." Judge has his records ready. He gives the dates and circumstance of the two separate times that the defense delayed proceedings or did not have the required documents and materials ready. The defense attorney flushes and acknowledges both instances. [The state's attorney] looks satisfied.¹³⁴

In this case, both sides used all delays available to them. The judge even referred to the delays as "allotted" rather than as a remedy for an unforeseen circumstance. Consistent with our findings from data in Level 2, both sides appeared to have made use of delays.

The ethnographic data in Level 3 provide something that the other levels of data do not: contextual richness that details how specific interactions reflect patterns of behavior and consistent functioning in the courtroom. In Part V of this Article, we weave all three levels of data together, before analyzing the workings and consequences of a path-dependent court.

V. DELAY AS A SYSTEM

Much like the system of delays we seek to describe, the data undergirding this analysis are multifaceted and complicated. We chose to include three types of data because all three are necessary to measure system outcome, diagnose system action, and elaborate on the context of those actions. In the section to follow, we make meaning of that data as a whole before turning to the theoretical question of path dependency and the locked-in state of felony case-processing delays.

A. *Synthesizing the Data*

The data in this study confirm and extend previous work on felony case-processing delays. Consistent with other work, this study concludes that dispositional outcomes predict case-processing times, with guilty pleas logically exiting the system early on average.¹³⁵ This study also reveals that Cook County felony case-processing times are substantially higher than averages found in other courts, where, even before the onset

134. *Id.* at 172.

135. Klemm, *supra* note 76, at 9.

of COVID-19, the average time from arrest to disposition in Cook County was 373.51 days.¹³⁶ Further, statistical analysis demonstrates that members of different demographic groups experience case-processing times differently, which necessitates additional research and protections.

This study considers the building blocks of court delay that create these larger patterns. This next level of data reveals that status checks comprise a majority of court cases and that continuances are common. Previous research postulated that it may be advantageous for the defense to delay cases,¹³⁷ but this analysis found that court actors in all roles made use of continuances with rare objection and even rarer denial.

Finally, this study steps into the daily context of Cook County criminal courts via ethnographic field notes that translate the lived experience of court actors navigating this system of delays. It is at this level where we begin to discern a system of expected delays. In short, we find that types of case delays are highly variable, but that status checks and continuances are part of the daily expectation and machinations of the courts at 26th and California.

B. Path Dependency in Cook County Criminal Court

Earlier in this work, we asked whether the path-dependency theory might usefully characterize the current state of Cook County courts as locked into an equilibrium state where delays are inevitable. Here we revisit and attempt to answer that question.

We left our consideration of path dependency as a useful descriptor of Cook County with a series of hypotheticals postulating parallels between Schreyögg and Sydow's definition of path dependency and plausible functions of felony case processing.¹³⁸ Armed with the data and results from Part IV, we can replace those hypotheticals with known evidence from 26th and California.

We begin by reconsidering if dispositional outcomes are affected by what comes before them in sequence. The findings of this study support this assertion, demonstrating at multiple levels of data analysis how scheduling challenges, continuances, status checks, and delays due to factors external to the control of the defendant prolong cases. There is also significant support for the assertion that decisions by stakeholders affect or limit what choices remain. Take, for example, the results from the Level 2 analysis of continuances, demonstrating that stakeholders from both sides make decisions that necessarily determine the next step

136. See, e.g., Ostrom et al., *supra* note 61, at 746 (showing that felony case dispositions in Colorado ranged from approximately 150 days to 315 day).

137. Frase, *supra* note 66, at 668.

138. See Schreyögg & Sydow, *supra* note 108, at 4–5; see also discussion *infra* Part III (discussing Schreyögg and Sydow's work on path dependency).

in sequence.

We return, then, to the most important question: whether the sequence of decision-making may become so entrenched and so reified that it creates a locked-in path that is impossible to deviate from without intervention. The data presented here suggests this is the case in the courts at 26th and California.

Moving in reverse, we can start from Level 3, where we see individual case decisions that seem to have no remedy other than delay. Whether due to missing court actors, schedules so full of other matters that they become intractable, or the inability to provide any contemporaneous sanction or remedy, we see an entrenched system of delays that necessarily compound upon each other. Even when the system is not in a state of duress, status checks with little substantive progress are an expectation, not an aberration. We then move up to Level 2, where we see this system of delays not operating in one case, but in over a thousand. Again, delays, continuances, and status checks are the most common and present features necessarily leading to more of the same. Notably, these continuances are an accepted part of the process. They are rarely objected to and almost never denied, even as we see them frustrating judges in the contextual data only one level below. We then move upwards to the final level, seeking evidence that these patterns of decision and delay at the lower level constitute an intractable force. And we find that evidence in the form of heightened case-processing times, most predictably lessened by off-ramps like guilty pleas rather than an efficient process.

This leaves us with a deeply intertwined system of delays that is no longer being propelled forward by individual decisions, but rather by system-wide expectations. When cases come before the judge, no one expects the case to move further along substantively. Instead, that day's court business will be finding another date to return to court. This necessarily pushes cases down the road, as yesterday's continuances become today's problems. In this way, theories of path dependency are strikingly apt, as the court system struggles to balance its caseload while seeking interventions designed to shock the system into efficiency.

VI. THE COMPLEXITY OF INTERVENTION

On January 27, 2022, Chief Judge Timothy Evans announced one such intervention: Cook County would adopt a differentiated case-management system across the entire Criminal Division.¹³⁹ This system

139. See Press Release, Circuit Ct. of Cook Cnty., Chief Judge Timothy Evans Meets with Representatives of Retail Groups to Discuss Facts and Solutions About Retail Theft Problem (Apr. 4, 2022), <https://www.cookcountycourt.org/MEDIA/View-Press-Release/ArticleId/2924/Chief-Judge-Timothy-C-Evans-meets-with-representatives-of-retail-groups-to-discuss-facts-and->

separates felony cases into four tracks for disposition between six months and two years, depending on severity. The trial court then enters a Case Management Order (CMO) setting out deadlines to accomplish essential tasks such as discovery production.¹⁴⁰ The reform could provide a framework for reducing delay, although, as we argue in this Part, the success of this initiative will depend on acknowledging the perspectives and interests of all the courtroom actors, as outlined below.

A. Case Management Orders and Administrative Status Checks

The CMO is intended to control the lifecycle of a case as it moves through the court system. It is a court order that set dates for discovery, pretrial motions, and the trial. Each CMO contains blank lines that require parties to write (and agree to) a schedule for important case-processing steps. This document is then distributed to the parties and held by the court and used to hold counsel accountable as the case unfolds.

Proponents of CMOs point to them as effective tools.¹⁴¹ Scholars have observed, however, that CMOs are neither an end unto themselves nor foolproof solutions. For example, Cabraser noted that a CMO cannot merely exist; it must be customized, fair, economical, and efficient, requiring investment from the system to ensure it is viable.¹⁴² These customized CMOs therefore require counsel to invest time and effort in determining reasonable deadlines.¹⁴³ As some scholars have also noted,

solutions-about-theft-problem [<https://perma.cc/LW88-LQG2>] (noting earlier announcement of differentiated case-management system). Chief Judge Evans also endorsed an application of deterrence theory in this strategy, asserting that consistency of punishment will deter crime more effectively than severity. Olivia Olander, *Cook County's Top Judge Discusses Chicago Violence, Proposes Solutions in Policy Address*, CHI. TRIB. (Jan. 27, 2022), <https://www.chicagotribune.com/news/breaking/ct-chief-judge-timothy-evans-policy-address-20220128-6eqxqa3xenbzfi73ndoinxmt5i-story.html> [<https://perma.cc/JXE3-6KY2>].

140. A pilot project had been in place since 2010. General Administrative Order 10-3, Implementation of an Active Case Management Program for Trial Judges (Aug. 20, 2010), <https://www.cookcountycourt.org/Portals/0/Law%20Divison/General%20Administrative%20Orders/Law%20-%20General%20Administrative%20Order10-3.PDF> [<https://perma.cc/ZAP9-VL7J>]. The Cook County CMO form was originally designed by 1st Subcircuit Judge Thaddeus Wilson. Practically speaking, the way this document moves through the system is as follows: the clerk gives copies of the CMO to the state, to the defense counsel, and to defendant. When asked about the CMOs during the ethnographic observations, Judge Wilson indicated that he believed CMOs helped keep attorneys accountable to the dates set. While it is impossible to infer causality from this data, at the time of the Ethnographic Observations, Judge Wilson had one of the lowest pending caseloads in the building. Ethnographic Observations, *supra* note 125, at 163.

141. See, e.g., Scott A. Steiner, *The Case Management Order: Use and Efficacy in Complex Litigation and the Toxic Tort*, 6 HASTINGS W.-NW. J. ENV'T L. & POL'Y 71, 72 (1999) (focusing on judicial economy to justify a “detailed, extensive, and thorough” CMO); Elizabeth Joan Cabraser, *How to Streamline Complex Litigation*, THE BRIEF, Summer 1992, at 13, 13 (“Case management orders force counsel to focus on the essentials of their claims and defenses, abandon collateral issues, limit and target their discovery, and simplify the presentation of their positions . . .”).

142. Cabraser, *supra* note 141, at 13.

143. See Steiner, *supra* note 141, at 73.

inflexible case-management procedures can actually encourage inefficiency and delay.¹⁴⁴ Proponents do not deny that CMOs may be burdensome but argue that the benefits of CMOs outweigh problems associated with them.¹⁴⁵ We see similar promise for CMOs, but only if their implementation integrates the perspectives of the different legal actors. As this Article argues, delay forms an essential part of Cook County case processing. The mechanisms and rhythms of delay have become integral of local court culture, to settled expectations of how a case should progress.¹⁴⁶ Because CMOs disrupt this culture—something we see as desirable—it can succeed only by recognizing these settled expectations in implementing this intervention. Examples of these expectations follow.

B. Legal Actors' Positionality with Respect to Case-Processing Delays

1. The Prosecutors' Uneven Control

Cook County prosecutors enjoy remarkable power in controlling the pace of adjudication, while at the same time, their work is also hamstrung by police, at least in the Chicago police.

In Cook County, prosecutors, not judges, control daily court calls and the scheduling of cases to be heard for status and for trial. Because prosecutors' preparedness for adjudication often depends on ongoing police investigation, trial courts in Cook County have by and large ceded control of the pace of adjudication to them. Prosecutors determine which cases are ready for trial and which cases must be delayed because of missing documentation or unavailable witnesses. Prosecutors also keep track of the "speedy trial clock" for each case. In most, if not all, courtrooms, judges may question the prosecutor's progress in readying a case for trial, but such questioning is most often confined to cases in which delay is extraordinary. In Cook County prosecutors exert more control over court calls than judges, which varies from consensus best practices supported by case management scholars in assigning this

144. Michael E. Tigar, *Pretrial Case Management Under the Amended Rules: Too Many Words for a Good Idea*, 14 REV. LITIG. 137, 154–55 (1994). Indeed, a cursory analysis of the Cook County data suggests that CMOs are not necessarily a silver bullet for improving case processing. We allocated nineteen hours and forty-one minutes of observational data across their respective six judges and recorded how often cases were scheduled for status checks in thirty days or less, in more than thirty days, or if no status check was scheduled, comparing the results of the judge who used CMOs with those of the judges who did not. This analysis, while cursory and limited by the available data, did not suggest any dramatic difference in the number of status conferences as between the courtrooms that used the CMO and those that did not. This underscores our overall contention that CMOs can work only with significant buy-in from the lawyers.

145. See Steiner, *supra* note 141, at 73 (briefly describing arguments against CMOs, but finding benefits outweigh criticisms).

146. For a discussion of organizational culture, courts, and mistakes, see generally Maria Hawilo et al., *How Culture Impacts Courtrooms: An Empirical Study of Alienation and Detachment in the Cook County Court System*, 112 J. CRIM. L. & CRIM. JUST. 171 (2022).

control predominantly to judges.¹⁴⁷

However, transmission of police reports to the Cook County State's Attorney's Office (CCSAO) is a process fraught with delay and error.¹⁴⁸ In responding to courts' request for information about the status of discovery, prosecutors are often heard to say that there has been a delay in the receipt of police reports. When sets of police reports are finally received by the CCSAO, those sets are often incomplete. Even when subpoenaed for documents, the Chicago Police Department fails to respond or returns unresponsive or incomplete information. This complicates the previously documented problem the prosecution and defense have in coordinating their efforts to resolve a case.¹⁴⁹

2. The Public Defenders' Institutional Weaknesses

The Law Office of the Cook County Public Defender represents four of five individuals accused of crime in the Criminal Division of the Circuit Court of Cook County.¹⁵⁰ The Office was founded in 1930 as part of efforts to address the influence of a corrupt private defense bar, well before the Supreme Court made appointment of counsel to indigent criminal defendants a constitutional right.¹⁵¹ Until recently, the office was plagued by political influence, patronage hiring, and control by the

147. Numerous, books, articles, and reports have described the Cook County Prosecutor's role in Cook County's criminal courts. *See, e.g.*, GONZALEZ VAN CLEVE, *supra* note 18, at 127–55 (identifying the prosecutor's control in the courtroom within context of discussing culture of racialized justice in Cook County State's Attorney's Office). There is a consensus among those who study case management that the judges and not any particular party to proceedings should control case flow. For example, the American Bar Association Prosecution Function Standards provide: "Final control over the scheduling of court appearances, hearings, and trials in criminal matters should rest with the court rather than the parties." CRIM. JUST. STANDARDS FOR THE PROSECUTION FUNCTION § 3-6.1 (AM. BAR ASS'N 2017). Additionally, the ABA Standards for Criminal Justice Special Function of the Trial Judge require judges to use court time effectively. SPECIAL FUNCTIONS OF THE TRIAL JUDGE § 6-1.5 (AM. BAR ASS'N 2000). *See also* MAUREEN SOLOMON, CONDUCTING A FELONY CASEFLOW MANAGEMENT REVIEW: A PRACTICAL GUIDE 3 (2010), https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/AU_FelonyCaseflow.pdf [<https://perma.cc/JNG4-B4PT>] (stressing need for judicial leadership).

148. *See* Staudt, *supra* note 25 ("It is common for attorneys to wait 4–6 months to receive basic police reports, videos, and recordings that constitute the bare bones of cases at trial.").

149. *See id.* (noting problem of delay caused by police failure to appear or produce documents). This problem was also noted in Chicago Appleseed's 2007 report on Cook County's Felony Courts. CHI. APPLESEED FUND FOR JUST., *supra* note 19, at 75.

150. *See* Josh McGhee, *Lack of Statewide Oversight Has Led to Excessive Caseloads for Illinois Public Defenders, Study Says*, INJUSTICE WATCH (June 10, 2021), <https://www.injustice-watch.org/news/2021/illinois-public-defenders-oversight/> [<https://perma.cc/7WZ4-REZ2>].

151. *See* ILL. ASS'N FOR CRIM. JUST., *supra* note 19, at 410 (recommending that a public-defender system be established to eliminate corrupt practices of then-existing criminal-defense bar); *Gideon v. Wainwright*, 372 U.S. 335, 344–45 (1963) (requiring states to provide defense counsel at public expense to indigent clients).

leadership of the Circuit Court of Cook County.¹⁵² While the Defender continues to improve, its progress is hindered by a crushing caseload out of step with national standards, inadequate resources to track and manage that caseload, antiquated hiring practices that reduce their competitiveness for the best new law graduates, and problematic work assignments. This last point is a structural issue. Assistant public defenders are assigned to courtrooms and not clients.¹⁵³ As a result, these assistant public defenders, while representing individual clients, are also necessarily part of courtroom work groups that are beholden to the control of prosecutors and judges, and ultimately to court administrators and county boards. Participating in and being beholden to these workgroups compromises the assistant public defenders' ability to provide zealous representation to their clients, including by demanding that their clients receive speedy trials. Unless assistant public defenders feel free to demand trial, there will be no speedy trial in Cook County's criminal courts.¹⁵⁴

These lawyers also recognize that delay can sometimes help their own clients, so negotiation of the terms of the CMO needs to carefully balance these realities. It is well-understood that delay can help defendants in their cases. Witnesses' memories may fade; the witness may lose interest or become unavailable to testify against the defendant.¹⁵⁵ A court can legitimately press on with resolution in the face of this possible gamesmanship. A nuanced concern, however, warrants attention. With time, tempers can cool. Defendants can change, grow up. Other cases may put this defendant's offense into greater perspective. Sometimes justice is in fact served by some delay.

3. The Economics of the Private Defense Practice

Private criminal defense lawyers depend on fees from their clients. For many, their practices are economically viable only as a volume business. Their clients' cases will be assigned to the various courtrooms at 26th and California and to the outlying criminal courts in Cook County (Markham,

152. See CHI. APPLESEED FUND FOR JUST., *supra* note 19, at 34–62 (documenting history of Cook County Public Defender, noting history of political influence on Office, its lack of independence caused by influence of Circuit Court and County Board); see also SIXTH AMEND. CTR., THE RIGHT TO COUNSEL IN ILLINOIS 41–45 (2021) (documenting challenges faced by Cook County Public Defender). See generally GONZALEZ VAN CLEVE, *supra* note 147.

153. See SIXTH AMEND. CTR., *supra* note 152, at 116 (generally noting lack of an independent body to control public defense in Illinois).

154. *Id.* at 155–56.

155. William Glaberson, *Faltering Courts, Mired in Delays*, N.Y. TIMES (Apr. 13, 2013), <https://www.nytimes.com/2013/04/14/nyregion/justice-denied-bronx-court-system-mired-in-delays.html> [<https://perma.cc/QJ9B-PLWC>] (“Defense lawyers everywhere use delay to foster doubt. They capitalize on memories that grow murky and the holes that are blown in cases when prosecution witnesses go missing.”).

Rolling Meadows, Skokie, Maybrook). On any given day, all cases scheduled to be heard in the various courtrooms in Cook County are scheduled to be heard at the same time—normally 9:30 in the morning. The courts do not schedule court calls at different times, so private attorneys end up with multiple cases scheduled to be heard at the same time. These lawyers must move quickly from courtroom to courtroom, juggling the different hearing times. When lawyers do not appear when their cases are called, the cases must be “passed” while the client, judge, and/or prosecutor attempt to locate the attorney to determine an estimated arrival time. This inconveniences everyone in the courtroom, lengthens court calls, and may result in the postponement of a status to a later date, contributing to the perpetuation of a system characterized by repeated delay.

Historically private counsel have had no reliable means to communicate with judges and prosecutors to alert them to a scheduling conflict. One development occasioned by the COVID-19 pandemic is promising, namely the increased availability of e-mail messaging. Technical solutions for alerting court and counsel, and indeed, for avoiding scheduling conflicts altogether, would enable all to use court time more efficiently, as would reducing the number of status conferences.

4. The Independence of Individual Circuit Court Judges

The chief judge of the Circuit Court of Cook County is elected by the full Circuit Court judges. While the chief judge by rule has the authority to assign and to remove judges, in practice the chief judge is constrained by political considerations from exercising control except under the most notorious circumstances, most commonly when a judge engages in offensive behavior that catches the public eye.¹⁵⁶ Historically, chief judges of the Circuit Court of Cook County have been unable or unwilling to insist upon fair and efficient management of court calls, leaving judges in their assignments whose decisions have been repeatedly reversed by Illinois appellate courts.¹⁵⁷ This lack of control at the top has created a culture of

156. See, e.g., Mark Brown, *Not the First Time 'Lock 'Em Up Judge' Showed Questionable Judgment*, CHI. SUN-TIMES (Mar. 6, 2020, 4:55 PM), <https://chicago.suntimes.com/opinion/2020/3/6/21168544/jackie-portman-brown-cook-county-courts-judicial-conduct> [<https://perma.cc/NQ6L-XVLU>] (discussing discipline faced by a Cook County Circuit Court Judge who locked a child in her courtroom holding cell).

157. See John Seasly, *4 Judges, 6 Years, 98 Reversals—and They Want You to Vote to Keep Them in Office*, INJUSTICE WATCH (Oct. 11, 2020), <https://www.injusticewatch.org/news/judicial-elections/2020/4-judges-98-reversals/> [<https://perma.cc/UB5S-XEN9>] (discussing four Cook County Circuit Court judges whose ruling have frequently been reversed by appellate courts); see also John Seasly, *Appeals Court Reverses This Judge More than Any Other in Criminal Courts Seeking Retention*, INJUSTICE WATCH (Oct. 11, 2020), <https://www.injusticewatch.org/news/judicial-elections/2020/kenneth-wadas-reversals/> [<https://perma.cc/2HMJ-WKBP>] (discussing Cook County Circuit Court judge with most frequent reversals); Emily Hoerner & Casey Toner, *Meet the*

impunity that allows judges to control their courts as jurisdictions functionally independent of any supervisory authority. There is no monitoring of each judge's conduct in the courtroom, including the timing of daily court calls, the number of hearings and trials, and treatment of the courtroom working group and the public who attend court. The chief judge shelters judges from public scrutiny by refusing to release what should be publicly available statistics regarding their caseloads, disposition rates, time spent on the bench, and sentencing practices.¹⁵⁸

VII. CONCLUSION

The data analyzed here and the weight of the literature make clear that administrative status checks are a principal source of delay in felony case processing in Cook County. While the status checks themselves are short, they dominate court time. They require corralling many people into the courtroom for long periods of idle time. They contribute to the backlog of cases. Court time is given over to rote tasks as substantive hearings become the exception.

At the same time, lawyers used status checks, at least prior to the COVID-19 pandemic, to speak about the case with each other, with defendants, and sometimes the judge. Often, the CCSAO requires discovery to be exchanged in person at status hearings. These multiple functions of the status conference suggests that justice would not be served simply by reducing the number of status checks. Instead, court culture should promote alternative venues for these important contacts. Indeed, as COVID-19 precautions reduced attorneys' ability to meet personally, lawyers have been exchanging information electronically to an extent unheard of prior to the pandemic.

This Article analyzes the system of felony case-processing delays in Cook County criminal courts using a novel combination of three data sources that help visualize the ramifications of delay at multiple levels. Those data combine to demonstrate that felony case processing times are high, that administrative status checks dominate daily dockets, and that continuances and delays are common. Further, these data demonstrate that continuances are used by all court actors, just not one side, and that there is a dearth of contemporaneous remedies available to avoid delays on the day an issue is heard. Taken in sum, this paper argues that the current state of felony case processing in Cook County is one where status checks, continuances, and delays are not delays at all—instead they are

Cook County Judge Attorneys Least Want to Appear Before, INJUSTICE WATCH (Oct. 22, 2020), <https://www.injusticewatch.org/news/2020/the-circuit-diane-cannon-soj/> [<https://perma.cc/G9QA-ZUZC>] (discussing some attorneys' negative impressions of a Cook County Circuit Court judge).

158. See Staudt, *supra* note 25 (showing how data can illuminate issues with case-processing times and suggesting all court actors bear responsibility for improving situation).

ordinary daily occurrences that typify and perpetuate the process and the culture of justice in the criminal courtrooms at 26th and California. In this way, the courts find themselves locked-in to a path-dependent system in which status checks and continuances are an immutable feature of the system. The sum of these analyses leads us to advocate for a lessening of administrative status checks and judicial leadership in the management of case-flow management according to national standards. It also requires a court culture that recognizes the responsibility of each individual court-system actor in creating delay, and the will to collaborate to enact the necessary change.

Judges, prosecutors, and defenders act independently of one another, despite an interrelated system of dependent pathways. Intractable delay will not be addressed without first, acknowledging the appropriate role for each system actor, and second, creating collaboration to reduce delay among system actors. The chief judge must promote a culture in which Cook County Circuit Court judges and associate judges assert control of their courtrooms. Judges then must work with assistant state's attorneys and public defenders to ensure that judges manage and dictate schedules in the courtrooms. Assistant state's attorneys and police officers should work together to receive and provide discovery material to which the accused is entitled. And defenders and assistant state's attorneys should communicate about discovery and related matters electronically or before court hearings. Court hearings should be reserved for substantive arguments, not informal information gathering. These are neither easy nor quick fixes, but the rewards would be significant.