Journal of Criminal Law and Criminology

Volume 112
Issue 2 *Spring*

Article 1

Spring 2022

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0091-4169/22/11202-0171
THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY Vol. 112, No. 2

CRIMINAL LAW

HOW CULTURE IMPACTS COURTROOMS: AN EMPIRICAL STUDY OF ALIENATION AND DETACHMENT IN THE COOK COUNTY COURT SYSTEM

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Courtrooms operate as unique microcosms—inhabited by courtroom personnel, legal actors, defendants, witnesses, family members, and community residents who necessarily interact with each other to conduct the day-to-day functions of justice. This Article argues that these interactions create a nuanced and salient courtroom culture that separates courtroom insiders from courtroom outsiders.

The authors use the Cook County courts, specifically the George N. Leighton Courthouse at 2650 S California Avenue in Chicago, Illinois, to investigate courtroom culture and construct a thematic portrait of one of the largest criminal court systems in the United States. Using this newly constructed data source of rich ethnographic observations, this Article draws

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out a series of themes that illuminate two types of failures that characterize courtroom culture in Cook County: micro-level failures and structural-level failures. While micro-level failures may fall into the category of "mistakes," when aggregated they impede the effective functioning of the criminal legal system. Structural-level failures, by contrast, threaten the fair and efficient operation of courts even in the absence of individual errors. This Article uses examples of real court interactions gathered through observational research to illustrate both categories of failures in the Cook County criminal courts.

This Article then situates these observations in the context of legal cynicism theory to explain the impact of courtroom culture on those most directly impacted by the system. This Article concludes with recommendations for courtroom culture reform, looking for positive examples in our data and considering new possibilities for courts in the era of COVID-19.

INTRODUCTION

It's raining as a new day begins at Chicago's main felony courthouse. As lawyers, police, and court personnel stride swiftly through the front doors and a metal detector's perfunctory check, others line up outside, patiently waiting in the rain and enduring the security officers' shouted orders to stay in line. The water drips onto a soaked mat at the entrance. The people waiting in line will eventually make their way through the doors and metal detector, where they will be reminded that cell phones cannot be brought into the courthouse and must be checked into a locker by the entrance. These people are the outsiders, the bystanders to the criminal legal system. A status the courthouse will continuously underscore.

Once inside, these outsiders will head past the designated area for press conferences, through a series of grand hallways toward a bank of elevators. Here, they will wait in groups to get onto the elevator that will take them to one of the thirty-three courtrooms. By now, it is likely about 9:00 or 9:30 in the morning. Many judges order people to appear by 9:00, and so many do. But unless they are going to a courtroom run by one of the few judges who starts at 8:30 or 9:00, they will usually find that the courtroom to which they must report is locked. So, they fill the areas around the courtroom doors, waiting for them to open. At about 10:00, the courtrooms finally open and visitors file into the gallery. The judge is likely not yet on the bench, though the lawyers—at least some lawyers—are probably present. Depending on the time of day, the presence of the lawyers is uneven. The court reporter, the courtroom clerk, the Assistant Public Defenders, and the Assistant State's Attorneys are generally assigned to particular courtrooms, and in some courtrooms, a sense of a "company break room" is hard to miss.

A clerk named Diane calls the white female court reporter "Brainiac" in an affectionate manner and asks her what she remembers from last week.[1]

[1] The three following paragraphs draw directly from Amy Smekar's ethnographic notes, Cook County Criminal Division Courtroom Observance Data 2 (Nov. 6, 2018) (on file with authors) [hereinafter referred to as Ethnographic Observation]. Ms. Smekar, the ethnographer we trained to observe criminal proceedings at the George Leighton Courthouse, recorded her observations from June 19, 2018, to November 6, 2018. The only edits of these notes, including of specific courtroom numbers and individuals' names, were made for anonymity and subject clarity, and are indicated by brackets. The ethnography is stored securely and on

Courtroom 305 had a murder jury come out with a verdict this past Monday. They then get to talking about their lives outside of work, like children's clothing swaps.[2] Later, an Assistant District Attorney enters the courtroom, fresh from her vacation. She starts telling the courtroom staff about her dogs and their training.[3] Then, several lawyers start to joke with her and look at pictures and videos of the dogs on her phone.[4]

The judge comes onto the bench at around 10:00. Suddenly, things are happening quite fast. While there are a lot of cases called, the proceedings in each are generally very short. The docket call is often punctuated by recesses, stretches of five to thirty minutes when the judge steps off the bench. The morning call is over anytime from about noon to 2:00 in the afternoon, and for most judges, this is the end of the court day. Trials certainly demand more time, but in Cook County, as elsewhere, trials represent only a fraction of the case dispositions.[5] Occasionally, a judge explicitly references courtroom work norms. One judge commented to his clerk and the deputies, "Can you believe that one guy who wanted the 22 of November? [. . .] No, we won't be here. That's two days before Thanksgiving," he scoffs.[6]

On the whole, Cook County felony court judges spend most of their time in court holding hearings that take less than two minutes, but which require the participants, especially the lay participants, to spend hours waiting in the courtroom for their case to be called, or for their loved one to appear, or waiting to confront the person who has harmed them.

This raises a significant question: what impact do these experiences with the criminal legal system have on people—particularly, the people who are outside the courtroom system?

A. COOK COUNTY IN PERSPECTIVE

Each year, thousands of people walk through the George N. Leighton Criminal Courthouse's doors where most of Cook County's felony cases are

file with the authors. Specific quotes from the ethnography are cited here with page numbers back to the original transcript. Please contact the first author for more information.

[2] *Id.*

[3] *Id.* at 4.

[4] *Id.*

[5] In 2020, for instance, of the more than 14,000 felony cases resolved in the Cook County criminal legal system, more than 7,000 were resolved by way of plea. In contrast, fewer than 300 were resolved by jury trial or bench trial. *See Felony Dashboard*, COOK CNTY. STATE'S ATT'Y, https://www.cookcountystatesattorney.org/about/data-dashboard (last visited Feb. 13, 2021).

[6] Ethnographic Observation, *supra* note 1, at 236.

adjudicated.[7] Colloquially known as "26th and Cal," the courthouse is located six miles from Chicago's downtown Loop. Its physical distance from the city's skyscrapers, government offices, museums, and restaurants serves as a reminder of its distance from the seat of Chicago's money and power.

To get to the courthouse via public transportation from downtown Chicago is to resign oneself to nearly an hour-long commute. For those who drive, parking is a challenge. Once at the courthouse, lawyers, police, and court personnel pass swiftly through the entrance. By contrast, defendants, witnesses, and family members line up outside to hurry up and wait. Most of those who are waiting are Black or LatinX. They are the outsiders, the ones who are not formal actors in the criminal legal system, but whose lives are impacted by it in ways large and small.

Though the Article focuses on Cook County criminal courts, the need to understand courtroom culture extends beyond any single court system. Cook County courts might be unique in their caseloads,[8] but they are not entirely unique[9] in their problems nor in the role they play in the lives of the

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[7] The Leighton Courthouse's Criminal Division contains 80% of Cook County's Criminal Division courtrooms. Each year, thirty-six judges handle more than 28,000 felony cases. CHI. APPLESEED FUND FOR JUST., CRIM. JUST. PROJECT, A REPORT ON CHICAGO'S FELONY COURTS 1, 9 (2007), http://chicagoappleseed.org/wp-content/uploads/2012/08/criminal_justice_full_report.pdf [https://perma.cc/J3YZ-D32M] [hereinafter APPLESEED REPORT]. *See also Felony Dashboard*, *supra* note 5 (indicating, based on data provided by the Cook County State's Attorney's Office, that in 2020 there were more than 28,000 felony cases initiated in Cook County criminal courts, the vast majority of which were handled by the Leighton Courthouse's Criminal Division).

[8] The Circuit Court of Cook County is one of the largest unified court systems in the world. *Organization of the Circuit Court*, STATE OF ILL., CIR. CT. OF COOK CNTY., https://www.cookcountycourt.org/ABOUT-THE-COURT/Organization-of-the-Circuit-Court [https://perma.cc/D8JM-AXWW]. Approximately 400 judges serve on the Circuit Court, serving more than 5 million residents of Cook County. One million cases are filed yearly. *Id.*

[9] Though no two court systems are entirely similar, other court jurisdictions also suffer from systemic failures, delay, difficulty in resolving cases, and failure to provide justice. In Philadelphia, for example, a 2009 newspaper investigation found a criminal court system overwhelmed by exploding caseloads, resulting in failures in securing convictions, protecting witnesses, and pursuing justice. Craig R. McCoy, Nancy Phillips & Dylan Purcell, *Justice: Delayed, Dismissed, Denied*, PHILA. INQUIRER (Dec. 13, 2009), https://www.inquirer.com/philly/news/20091213_Justice__Delayed__Dismissed__Denied.html [https://perma.cc/8YAV-F9S4]. A national news investigation uncovered thousands of instances in which judges around the country violated ethics laws or failed to uphold laws, and remained on the bench despite these violations, leading to systemic abuses. *See* Michael Berens & John Shiffman, *Thousands of U.S. Judges Who Broke Laws or Oaths Remained on the Bench*, REUTERS (June 30, 2020), https://www.reuters.com/investigates/special-report/usa-judges-misconduct/ [https://perma.cc/Q84E-JVHQ].Indeed, the investigation uncovered scores of judges—and, thus, the courts in which they sit—who had engaged in nepotism, corruption, and racist practices, with little to no consequence. *Id.*

community and courtroom workers. Courts are a central feature of the American criminal system. To be viewed as legitimate by their constituents, courts must, this Article argues, be viewed as fair and capable of delivering justice in an organized, coherent, transparent, and predictable way.

This Article uses Cook County as a case study to illuminate common problems within criminal courthouses. This Article then specifically examines how Cook County felony courts operate—the continual churning of cases, the lack of respect for people's time, the inefficiency of the process and, for many, the indignity of the experience. This Article argues that organizational culture and a long history of racism infect almost every aspect of how the Cook County criminal legal system produces a courtroom culture of detachment and alienation. The authors found, too, positive interactions that provide a roadmap for cultural change. Among those positive findings, the authors found evidence of individual judges holding the correct actors accountable, improving the transparency of the courtroom, and encouraging a positive culture. Using detailed ethnographic observations, this Article draws out a series of themes that illuminate two types of failures that characterize courtroom culture in Cook County: micro-level failures and structural-level failures.

Part I summarizes earlier studies on courtroom culture and organization, including research and commentary on Cook County's criminal legal system. Part II then describes the qualitative methods used to develop an observational dataset that illustrates the many ways in which everyday courtroom practices—the waiting, informality, and opacity of proceedings—alienate participants and undermine confidence in the fairness and efficiency of the system by which justice is dispensed in the Cook County felony courts. Part III places the observational study's research and findings in a larger theoretical context of legal cynicism. Previously applied in analyses of police practices, legal cynicism is the product of systematic alienation from criminal legal processes and can change how ordinary people rely on and interact with the law and legal systems. Part IV concludes with a discussion of how recent changes in Cook County court practice—and perhaps applied more widely to other court systems—combined with the impact of the COVID-19 pandemic on the administration of justice, may finally disrupt Cook County's long-entrenched culture of marginalization in the courtroom.

I. STUDIES ON COURTROOM CULTURE AND RACIAL INEQUALITY

A. THE ROLE OF COURTROOM CULTURE

This Section provides an overview and summary of the study of court culture, a description of court culture, and defining characteristics of different cultures. Courts are complex organizations that have correspondingly complex cultures.[10] These cultures embody beliefs and behaviors that shape how courtrooms operate.[11] One scholar, James Wilson, described organizational culture as "a patterned way of thinking about the central tasks

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[10] MALCOLM M. FEELEY, COURT REFORM ON TRIAL: WHY SIMPLE SOLUTIONS FAIL 12 (2013). *See generally* EDGAR H. SCHEIN, ORGANIZATIONAL CULTURE AND LEADERSHIP (5th ed. 2017). Schein developed a method for explaining the impact of company culture on an organization. Based on his observations, Schein believed that culture was more complex than what could superficially be described. *See also* Brian J. Ostrom & Roger A. Hanson, *Understanding and Diagnosing Court Culture*, 45 CT. REV. 104, 104 (2008). Ostrom and Hanson review the role culture plays in shaping court systems. *Id.* They also undertake a review of the literature describing and studying court culture. *Id.* at 104–07. Four different cultures are described: communal, networked, autonomous, and hierarchical. *Id.* at 105. Ostrom and Hanson note that:

> The study of culture provides a way to understand the most fundamental administrative concerns and goals that are shared by most of the people in a court, that tend to shape judge and staff behavior, and that often persist over time. Culture is not just a set of views, beliefs, and perspectives. It is the grounds for how work gets done. Each culture reflects alternative ways that responsibilities can be carried out and provides a means to compare and contrast actual operations among individual courts. A court's payoff in conducting its own culture analysis is a deeper understanding of how its culture manifests itself in the observable world of how work gets done. Each culture—and the values it espouses—shapes in a distinctive manner the way cases are handled, how the court responds to its environment, how the court uses staff members, and the overall direction of the court.

Id. at 107.

[11] BRIAN J. OSTROM, CHARLES W. OSTROM, JR., ROGER A. HANSON & MATTHEW KLEIMAN, TRIAL COURTS AS ORGANIZATIONS 22–23 (2007) (reviewing the history of private sector organizational culture analysis and setting forth an argument about how such organizational analysis should be applied to the courts). Ostrom et al. describe court culture as the beliefs and behaviors shaping "the way things get done" by the individuals—judges and court administrators—who have the responsibility to ensure cases are resolved fairly and expeditiously. They hypothesize that if multiple and competing cultures are a hallmark of government agencies, public organizations are characterized by both complementary and competing cultures. Ostrom et al. argue that it is important to understand and identify the competing and complementary cultures in the court, and their relationship to performance, in order to understand courtroom management. *See also* JAMES EISENSTEIN & HERBERT JACOB, FELONY JUSTICE: AN ORGANIZATIONAL ANALYSIS OF CRIMINAL COURTS (1977). Eisenstein and Jacob used quantitative and qualitative methods to study courtrooms in three cities. They studied how the organizational makeup of the working group—the traits that bound them to one another—determined how cases were disposed in the courtroom.

of and human relationships within an organization,"[12] analogous to an individual's personality. Organizational culture "is a set of values and assumptions that underlie the statement, 'This is how we do things around here.'"[13] This is, of course, not the same as saying: "This is the best way to do things." Instead, "culture is a pattern of shared basic assumptions that was learned by a group as it solved its problems of external adaptions and internal integrations that has worked well enough to be considered valid, and therefore, to be taught to new members as the correct way to perceive, think, and feel in relation to those problems."[14]

In his seminal study of court processes, Malcom Feeley drew on his close observation of the Court of Common Pleas in New Haven, Connecticut to explore criminal case adjudication and its connection to punishment.[15] In a wide ranging survey of over 1,600 criminal cases, Feeley found that not a single defendant insisted upon a jury trial, that only half of defendants had an attorney through the criminal process, and that justice continued to be dispensed *en masse*.[16] Feeley concluded that courts are neither bureaucracies organized to pursue goals, nor institutions capable of disciplining their members.[17] Instead, Feeley described the criminal court as a marketplace with a complex system of bargaining and exchange, characterized by competing goals and interests.[18] Though Feeley rejected the theory of courts as bureaucracies with hierarchical structures, he concluded that courts are indeed organizations, or at least can be understood as such.[19]

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[12] JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT ix (1st ed. 1989). Wilson sets out to understand and explain bureaucratic behaviors and inefficiencies. *Id.* He explains bureaucracies are subject to different incentives and constraints than non-government businesses, and that these different constraints explain why bureaucracies are said to be inefficient. *Id.*

[13] *Id.* (internal citations omitted).

[14] SCHEIN, *supra* note 10, at 17.

[15] *See generally* MALCOM FEELEY, THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT (2d ed. 1992).

[16] *Id.* at 9–10.

[17] *Id.* at 12. As Feeley further elaborates, "To describe the court as a bureaucracy is to ignore the excessive hypertrophy of the criminal process, its decentralization of authority, its deference to professionalism, and the virtual absence of any real hierarchical structure." *Id.* at 13.

[18] *Id.*

[19] *Id.* at 18–19. Feeley argues courts must be understood as organizations and are best characterized as an open system: exposed to unpredictable influences from its environment. *See id.*

Other studies focused on how cultural orientation shapes case resolution in criminal cases.[20] Those studies, beginning in the 1970s, used a comparative approach to examine why some courts resolved cases more efficiently than others.[21] Additional studies looked at the impact of perceived culture versus preferred organizational culture in a court setting.[22] Most studies concluded that organizational culture can exert a powerful effect on individuals and on performance.[23]

Alternatively, many studies concentrate on the link between case processing and court delay, with many of the differences among courts attributed to the issue of culture. Thomas Church and his colleagues, for example, observed how local legal culture affects case processing times

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[20] Though this paper will not detail all of the culture studies conducted, a brief overview is presented here: John Paul Ryan, *Adjudication and Sentencing in a Misdemeanor Court: The Outcome is the Punishment*, 15 LAW & SOC'Y REV. 79 (1980) (describing and analyzing the Columbus Municipal Court and positing that differences in sanction severity are attributed to local political cultures that influence court culture); Xia Wang & Daniel P. Mears, *Sentencing and State-Level Racial and Ethnic Contexts*, 49 LAW & SOC'Y REV. 883 (2015) (analyzing how the interaction between county-level decision making and state-level decision making influences courtroom communities); OSTROM, OSTROM, JR., HANSON & KLEIMAN, *supra* note 11, at 4 (2007) (explaining the core dimensions of court culture, including developing a systematic culture analysis). Ostrom et al. also argue that culture is as much a part of institutional character as structure, resources, and technology. *Id.*

[21] *See, e.g.*, Thomas W. Church, Jr., *The "Old and The New" Conventional Wisdom of Court Delay*, 7 JUST. SYS. J. 395 (1982) (summarizing studies of court delays before and after 1976, and concluding that later studies showed that court delay was better understood as an outcome of court culture rather than court resources); Salmon A. Shomade & Roger E. Hartley, *The Application of Network Analysis to the Study of Trial Courts*, 31 JUST. SYS. J. 144 (2010). According to Shomade and Hartley, "[i]n the late 1960s, scholars began studying trial courts as organizations." *Id.* at 144. However, "[t]he literature on trial courts has not yet addressed how reforms, like specialized courts, alter trial courts as organizations." *Id.* Shomade and Hartley argue that "studies of trial courts could also profit from the application of other methods for analyzing organizations." *Id.* The article "explores the use of network analysis to examine the organizational linkages and structure of trial courts." *Id.* The authors conclude that scholars should test assumptions about court organization using network analysis as a technique. *Id.*; *see also* Neil R. Vance & Ronald J. Stupak, *Organizational Culture and the Placement of Pretrial Agencies in the Criminal Justice System*, 19 JUST. SYS. J. 51 (1997) (examining whether different organizational cultures of the courts produce similar or different effects in pretrial agencies, and concluding different organizational cultures produce different effects).

[22] *See* KAREN J. BROWN, INST. FOR CT. MGMT., COURT CULTURE: MEASURING AND ANALYZING THE IMPACT OF JUDICIAL/ADMINISTRATIVE CULTURE IN THE 16TH JUDICIAL CIRCUIT COURT 16–27 (2006), https://www.ncsc.org/__data/assets/pdf_file/0031/16789/brownkarencedpfinal0506.pdf [https://perma.cc/44AU-4QS7] (reviewing the literature of organizational culture and its application in the context of courts, describing local court culture in one local court, and investigating the nature between perceived and preferred court culture).

[23] *Id.* at 23 (citing OSTROM, OSTROM, JR., HANSON & KLEIMAN, *supra* note 11).

(though not ultimate disposition).[24] Judges, administrators, and practitioners who believed cases could be resolved efficiently acted in ways to ensure efficient resolution of cases.[25] Indeed, Church and his colleagues found that a shared culture among stakeholders mattered more than other objective factors, such as how many cases a judge was assigned, or the procedural rules in any system.[26]

More recent studies rely on survey assessments that compare different courts in different jurisdictions. Ostrom and colleagues, for instance, sought to explain, frame, and develop the core dimensions of court culture to better analyze larger system functioning.[27] They concluded: (1) courts must incorporate cultural understanding to run more efficiently; (2) organizational relationships are key to organizational change, and effectively managing those organizations require leaders who understand culture; and (3) understanding a court's culture often helps to improve the provision of justice.[28] Finally, Ostrom and his colleagues showed how court culture can be improved by using metrics such as timeliness to improve court performance.[29]

Studies also examine how "courtroom workgroups" influence courtroom culture. In their 1977 book, *Felony Justice: An Organizational Analysis of Criminal Courts*, James Eisenstein and Herbert Jacob defined courtroom workgroups as the cooperative working relationship between courtroom actors to resolve, rather than dispute, the cases in criminal courts.[30] Feeley described the "courthouse workgroup" as the "prosecutors; defense

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[24] THOMAS W. CHURCH, JR., ALAN CARLSON, JO-LYNNE Q. LEE, & TERESA TAN, JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS 1–2, 23–24 (1978). Church et al. undertook an extensive study of criminal and civil case processing of twenty-one metropolitan courts across the United States. *Id.* at 23–24. As Church et al. note, the public held a low opinion of local and state courts, in part due to case delay. *Id.* at 1. Church et al. began their study to better understand what contributed to such delay. *Id.*; *see also* JAMES EISENSTEIN, PETER F. NARDULLI & ROY B. FLEMMING, THE TENOR OF JUSTICE: CRIMINAL COURTS AND THE GUILTY PLEA PROCESS (1988) (analyzing data from nine counties in three areas of the United States and finding the consensus model theory best explains the plea process).

[25] Church, *supra* note 21, at 403–04.

[26] *Id*.

[27] OSTROM, OSTROM, JR., HANSON & KLEIMAN, *supra* note 11, at 4.

[28] *Id.* at 6–7.

[29] *Id.* at 18–19. Ostrom et al. argue that timeliness—how long it takes courts to process and resolve cases—is best understood as a cultural issue, and that the concept of culture extends beyond simply decreasing delay.

[30] *See* EISENSTEIN & JACOB, *supra* note 11, at 19–38 (examining the factors that impact case processing and dispositions in three felony courts (Baltimore, Chicago, and Detroit) and demonstrating how the interaction among and the decision-making processes of the courtroom workgroups impact case processing, efficiency, and outcomes).

attorneys; judges; defendants; and frequently the bail bondsmen and police; and a set of auxiliary personnel."[31] The courtroom culture—composed of these primary actors—make decisions based on factors such as their relationships with one another, how they value their work, and how they value particular cases.[32]

Although judges, defense attorneys, prosecutors, and court staff all play different roles in the criminal courts, Eisenstein and Jacob and later scholars demonstrated that these primary actors work together in cooperation, not in a theoretical adversarial fashion, to dispose of cases, expedite case processing, and achieve goals.[33] As one scholar noted:

> Several scholars have highlighted important aspects of courtroom workgroup interaction that are supposed to make cooperation among the actors easier, and thus facilitate negotiation strategies. According to Eisenstein and Jacob . . . , uncertainty in negotiating is reduced by familiarity among the actors. The more workgroup members are familiar with one another, the better they can negotiate and avoid the formalities of adversarial proceedings. The actors most familiar with one another are the lawyer-regulars, or repeat players, who engage in many similar cases over time and have more opportunities to develop informal relations with the other court actors. . . . Longer, established relationships between the actors can reduce the likelihood of formal case processing through adjudication and litigation.[34]

The observational study that follows uses this understanding of the courtroom working group to conceptualize two distinct groups: courtroom insiders (the working group), and courtroom outsiders. The study uses these groups to explain how the culture created by courtroom insiders, and the court system itself, affects outsiders and the way they perceive and interact with the court. Importantly, racial disparity pervades the processes that

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[31] FEELEY, *supra* note 15, at 20.

[32] *Id.*

[33] *See* EISENSTEIN & JACOB, *supra* note 11, at 19–38; *see also* Albert W. Alschuler, *The Prosecutor's Role in Plea Bargaining*, 36 U. CHI. L. REV. 50, 71 (1968) (describing the flexibility of plea negotiation); Albert W. Alschuler, *The Defense Attorney's Role in Plea Bargaining*, 84 YALE L.J. 1179, 1308 (1975) ("[T]he ideal attorney client relationship should rest upon an informal give and take"); Albert W. Alschuler, *The Trial Judge's Role in Plea Bargaining, Part I*, 76 COLUM. L. REV. 1059, 1060 (1976) (describing how plea bargaining may operate in a fairer manner when judges take part in the process); JAMES EISENSTEIN, ROY B. FLEMMING & PETER F. NARDULLI, THE CRAFT OF JUSTICE: POLITICS AND WORK IN CRIMINAL COURT COMMUNITIES 4 (1992) (reporting research focused on the "learned and adaptive knowledge that guides practitioners in getting things done within the courthouse"). *See generally* JAMES EISENSTEIN, ROY B. FLEMMING, & PETER F. NARDULLI, THE CONTOURS OF JUSTICE: COMMUNITIES AND THEIR COURTS (1988).

[34] Christi Metcalfe, *The Role of Courtroom Workgroups in Felony Case Dispositions: An Analysis of Workgroup Familiarity and Similarity*, 50 LAW & SOC'Y REV. 637, 640 (2016) (internal citations omitted).

funnel individuals of different races into the criminal legal and court systems in Cook County.[35]

B. THE ROLE OF CULTURE IN COOK COUNTY

Cook County is the second largest county in the country.[36] Approximately 5.1 million people call it home.[37] Of the 5.1 million people who live in Cook County, approximately 56.6% identify as White, while 23.1% identify as Black.[38] Approximately 25.6% identify as Hispanic or Latino.[39] As in other urban communities, poverty is racially and economically segregated. Cook County's poverty rate—slightly higher than the national average—stands at 15%.[40] By race, Black and LatinX individuals are disproportionately impacted.[41] With respect to the criminal legal system, arrests in Cook County have been steadily decreasing.[42] Despite

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[35] *See, e.g.*, JOHN ERIC HUMPHRIES, NICHOLAS MADER, DANIEL TANNENBAUM & WINNIE VAN DIJK, YALE UNIV. COWLES FOUND. FOR RES. IN ECON., DOES EVICTION CAUSE POVERTY? QUASI-EXPERIMENTAL EVIDENCE FROM COOK COUNTY, IL 11–12 (2019), https://cowles.yale.edu/sites/default/files/files/pub/d21/d2186.pdf [https://perma.cc/TW53-KVZ3] (finding black individuals are more likely to have eviction cases than non-black individuals, even in the same neighborhood); *see also* Beth Redbird & Kat Albrecht, *Measuring Racial Disparities in Local and County Police Arrests* 31–32 (Nw. Univ. Inst. For Pol'y Res., Working Paper No. 20-27, 2019), https://www.ipr.northwestern.edu/documents/working-papers/2020/wp-20-27.pdf [https://perma.cc/2SL9-ZVCM] (finding, even controlling for numerous factors thought to be related to commission of crime like poverty and education, Black people have a significantly higher risk of being arrested than whites).

[36] *U.S. County Populations 2021*, WORLD POPULATION REV., https://worldpopulationreview.com/us-counties [https://perma.cc/5RKE-JNVZ].

[37] *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2019*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?q=cook%20county%20illinois&tid=PEPPOP2019.PEPANNRES&hidePreview=false [https://perma.cc/4ADK-YWUB].

[38] *ACS Demographic and Housing Estimates*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?q=cook%20county%20illinois&tid=ACSDP1Y2019.DP05&hidePreview=false [https://perma.cc/7MY2-HT5G].

[39] We use "Hispanic or Latino" here to maintain consistency with the terms as used by the Census. Throughout the rest of the Article we use the term "LatinX."

[40] *Cook County, IL*, DATAUSA, https://datausa.io/profile/geo/cook-county-il [https://perma.cc/9EGH-CUG7].

[41] COOK CNTY. GOV'T, COOK COUNTY POLICY ROADMAP: FIVE-YEAR STRATEGIC PLAN FOR OFFICES UNDER THE PRESIDENT 6 (2018), https://www.cookcountyil.gov/sites/g/files/ywwepo161/files/service/policy-roadmap-full-strategic-plan.pdf [https://perma.cc/D65U-WTG2].

[42] CTR. FOR CRIM. JUST. RES., POL'Y AND PRAC., COOK COUNTY'S CRIMINAL JUSTICE SYSTEM: TRENDS AND ISSUES REPORT 9–13 (2d ed. 2019). Though not all crime is reported, crime is typically measured through a reporting system called the Uniform Crime Reporting program, wherein individual law enforcement agencies report crimes to the Illinois State

a consistent decrease in the last decade, non-whites in Cook County continue to be disproportionately arrested at higher rates.[43] Given the disparities in poverty rates and arrest rates, it should come as no surprise that the defendants, victims, witnesses, and family members in the criminal courthouse are disproportionately Black and LatinX individuals.

Cook County in particular has been the site of significant research, in part because of its immense scale. The Circuit Court of Cook County, now one of the largest unified court systems in the world, employs over 400 judges and 2,600 administrative employees.[44] In 2018, there were 1,463,995 cases pending in the Circuit Court of Cook County, of which 940,753 were new cases.[45] By the end of 2018, criminal felony cases accounted for 24,624 of all pending cases in the Circuit Court of Cook County.[46] The Criminal Division in the Cook County Leighton Courthouse has approximately 40 judges, nearly 200 assistant state's attorneys, and approximately 150 public defenders assigned to handle pending felony cases.[47]

Police. *Id.* at 6. Data describing how much and what types of crimes has been collected through the Uniform Crime Reporting program since 1930. *Id.* Between 2010-2018, the number of property index crimes reported to the police decreased by 29%, while the number of violent index crimes reported to the police in that same time period decreased by 10%. *Id.* at 10. Arrests for property index crime fell by 38%, while arrests for violent index crimes fell by 30%. *Id.* at 6–8.

[43] *Id.* at 12. As the Report states, "[o]verall, from 2015 to 2018, the total number of arrests reported through CHRI in Cook County decreased 20%, whereas the percent decrease for non-whites was 19% and for whites was 24%. However, while the percent change in arrests was similar for non-whites and whites between 2015 and 2018, non-whites accounted for the majority of arrests. Specifically, 82% of the total arrests in 2018 in Cook County were accounted for by non-whites." *Id.*

[44] *About the Court*, STATE OF ILL.: CIR. CT. OF COOK CNTY., https://www.cookcountycourt.org/ABOUT-THE-COURT/Organization-of-the-Circuit-Court [https://perma.cc/B8ZP-DSD2].

[45] ADMIN. OFF. OF THE ILL. CTS., ANNUAL REPORT OF THE ILLINOIS COURTS: STATISTICAL SUMMARY 14 (2018).

[46] *Id.* at 47. In 2018, a total of 164,740 criminal cases, including misdemeanors and felonies, were still pending in Cook County at year's end. *Id.* That is, these cases remained unresolved. Total criminal cases accounted for 11.3% of all cases pending in the Circuit Court of Cook County. *Id.*; *see also* Sarah Staudt, *Waiting for Justice: An Examination of the Cook County Criminal Court Backlog in the Age of Covid-19*, CHI. APPLESEED (Jan. 28, 2021), https://www.chicagoappleseed.org/2021/01/28/long-waits-for-justice-cook-county-criminal-court-backlog/ [https://perma.cc/5QG5-YCD9]. Previous studies show similar pending felony cases. *See* APPLESEED REPORT, *supra* note 7, at 6 ("The courtrooms hear more than 28,000 cases per year, half of which are non-violent, drug-related charges. Each judge at 26th Street has on average 275 pending cases at any one time. The adult probation department seeks to handle more than 23,000 felony offenders at any one time. Many improvements have been made as the courts struggle to adapt to the realities of operating beyond capacity, but patchwork adaptations are not good enough.").

[47] APPLESEED REPORT, *supra* note 7, at 9–10.

Numerous research studies, books, and articles discuss and analyze how the Cook County Criminal Division, particularly its felony division, operates.[48] These works underscore the degree to which the Cook County criminal courts have for decades been plagued by delays in carrying out the court's responsibilities.[49] In 1967, for instance, a University of Chicago Law Review article examined whether "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."[50] Nearly fifty years later, *The Reader*, a Chicago newspaper, wrote about similar trial delay issues in the Cook County Leighton Criminal Courthouse.[51]

These delays have serious consequences for victims, defendants, families, and communities, as well as for other parts of the criminal legal system. In 2016, for instance, more than 1,000 incarcerated individuals at Cook County Jail were waiting for more than two years for their trials to begin.[52] People of color made up 93% of detainees awaiting trials for over two years.[53] Some of the delay results from police officers who do not appear for hearings and trials and then judges and police commanders who fail to

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[48] *Id.* at 10; Laura Banfield & C. David Anderson, *Continuances in the Cook County Criminal Courts*, 35 U. CHI. L. REV. 259, 259 (1968); CHARLES D. EDELSTEIN, ERNEST C. FRIESEN, RICHARD B. HOFFMAN, CAROLINE S. COOPER & JOSEPH A. TROTTER, JR., BUREAU OF JUST. ASSISTANCE, REVIEW OF THE COOK COUNTY FELONY CASE PROCESS AND ITS IMPACT ON THE JAIL POPULATION 1 (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 un-constitutional 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) (describing the lives of the people whose cases are heard in courtroom 302, in Cook County, while exploring the history of criminal justice and crime in Chicago); NICOLE GONZALEZ VAN CLEVE, CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA'S LARGEST CRIMINAL COURT (2016) (detailing racial abuses and due process violations in the Cook County criminal courts).

[49] *See* Banfield & Anderson, *supra* note 48, at 259; APPLESEED REPORT, *supra* note 7, at 31–33.

[50] Banfield & Anderson, *supra* note 48, at 259.

[51] 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/58XX-88LW].

[52] *Id.*

[53] *Id.*

take action against officers who disregard court orders.[54] These delays and inefficiencies contribute to outsiders experiencing both urgency and endless waiting simultaneously. People who are accused of criminal conduct, those facing sentencing revocations, victims, and family members all begin the day anxious to make sure they make it to court and through the metal detectors in time for the court call, just so they can spend the rest of the day waiting for something to happen.

The Cook County court system has been taken to task for more than its inefficient functioning; it has also been sharply criticized for corrupt practices and pervasive racial inequality.[55] Its history includes a pattern of racial biases and abuses,[56] corruption scandals,[57] a reputation for wrongful convictions,[58] a long-standing practice of police torture during interrogations of primarily Black suspects,[59] judicial failure to hold police officers

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[54] *Id.*

[55] Racial disparity and racial discrimination are not problems unique to Cook County. Rather, they permeate the court system and larger criminal justice system across the United States. *See generally* Robert D. Crutchfield, April Fernandes & Jorge Martinez, *Racial and Ethnic Disparity and Criminal Justice: How Much is Too Much*, 100 J. CRIM. L. & CRIMINOLOGY 903 (2010) (reviewing contemporary studies that confirm racial and ethnic disparities are still very much present in the criminal justice system); Darrell Steffensmeier & Stephen Demuth, *Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished More Harshly?*, 65 AM. SOCIO. REV. 705 (2000) (finding LatinX and Black offenders receive worse sentencing outcomes in U.S. federal courts); M. Marit Rehavi & Sonja B. Starr, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320 (2014) (confirming this disparity, and specifically finding that Black defendants receive sentences nearly 10% longer for the same crimes as compared to White defendants, and that much of this disparity is due to prosecutors' charging decisions).

[56] *See* GONZALEZ VAN CLEVE, *supra* note 48, at 51–92.

[57] *See generally* JAMES TUOHY & ROB WARDEN, GREYLORD: JUSTICE, CHICAGO STYLE (1989) (recounting an investigation into corruption by the judiciary in the Cook County courts). The undercover operation—an effort by national and local organizations—culminated in the conviction of sixty-six public officials as of June 1, 1988, including many members of the judiciary. *Id.* at 259–71.

[58] *See* Rui Kaneya, *Report: Cook County Leads Nation in Exonerations, False Confessions*, CHI. REP. (Feb. 7, 2014), https://www.chicagoreporter.com/report-cook-county-leads-nation-exonerations-false-confessions [https://perma.cc/2YTG-HFQT]. Cook County's history of wrongful convictions dates back to the 1980s and is among the highest in the country. *See id.* ("According to a report by the National Registry of Exonerations, 95 people were exonerated in Cook County between January 1989 and December of 2013, almost twice as many as the next highest in the country.").

[59] *See* Micah Uetricht, *Accused Torturer Jon Burge Died Last Week, but His Legacy of Brutal, Racist Policing Lives on in Chicago*, INTERCEPT (Sept. 25, 2018, 10:29 AM), https://theintercept.com/2018/09/25/jon-burge-chicago-police-torture/ [https://perma.cc/E9GS-U37Z]. Jon Burge, a Chicago Police Commander, was indicted for police torture and brutality of perhaps more than 200 individuals in custody—mostly Black men. *Id.* Burge was indicted in

accountable for tortured confessions or perjury,[60] and a prosecutor's office that turned a blind eye to allegations of torture, police misconduct, and perjury.[61]

This history of public corruption and abuse is often explicitly attributed to the racialization of the criminal legal system. But even if it is not explicitly racial, it is functionally so because of the disproportionate representation of Black and LatinX persons in Cook County courts and the other areas of the legal system.[62] In her book *Crook County,* Nicole Gonzalez van Cleve moved the focus from injustices in adjudication to a larger critique of how daily practices at 26th and California reflect and generate racialized justice.[63] Gonzalez van Cleve describes a courthouse where courtroom actors witness, accept, and sometimes participate in racism. These everyday racial abuses

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2008 on perjury and obstruction of justice charges related to a civil case involving the torture of mostly Black suspects in police custody from 1972 to 1991. *Id.* These were not the actions of a single man, but rather an "'unremitting official cover-up that has implicated a series of police superintendents, numerous prosecutors, more than 30 police detectives and supervisors, and, most notably, Richard M. Daley,' the city's former longtime mayor and a previous state's attorney." *Id.*; *see also* Aretina R. Hamilton & Kenneth Foote, *Police Torture in Chicago: Theorizing Violence and Social Justice in a Racialized City*, 108 ANNALS OF AM. ASSOC. GEOGRAPHERS 399, 402–08 (2018) (explaining how violence is used in Chicago, and other cities, to enforce racial and spatial boundaries).

[60] *See* John Conroy, *Blind Justices?*, CHI. READER (Nov. 30, 2006), https://www.chicagoreader.com/chicago/blind-justices/Content?oid=923777 [https://perma.cc/3LE9-FM4S]; *see also* G. Flint Taylor, *The Chicago Police Torture Scandal: A Legal and Political History*, 17 CUNY L. REV. 329 (2014) (describing police torture cases from the Burge era). Moreover, and significantly, some of the very people who were complicit in police torture became judges, who later ruled on such torture. In not a single case did any member of the judiciary suppress a confession later found to have been coerced. As detailed by the reporter who broke the Burge scandal:

> If he was right, detectives committed hundreds of acts of torture, because in abusing a victim they almost never stopped with a single act. And as no officer ever admitted to any coercion, those detectives presumably committed hundreds of acts of perjury. In how many of those cases did a skeptical judge suppress a confession because he or she felt it had been coerced? Zero. (Judge Earl Strayhorn once suppressed a confession for the "oppressive atmosphere" in which it was given, but he didn't conclude that physical abuse had taken place.) And not a single judge publicly recommended that any officer be prosecuted for giving false testimony under oath. Nor did the state's attorney's office prosecute a single officer for perjury, misconduct, or assault. And it's from the ranks of those prosecutors that most of today's criminal court judges have come.

Conroy, *supra*.

[61] *See* Conroy, *supra* note 60.

[62] Importantly, the processes by which individuals of different races are funneled into the criminal justice and court systems in Cook County are also overrun with racial disparity. *See, e.g.*, HUMPHRIES, MADER, TANNENBAUM & VAN DIJK, *supra* note 35, at 11–12; Redbird & Albrecht, *supra* note 35, at 30–31.

[63] GONZALEZ VAN CLEVE, *supra* note 48, at 12–13.

ranged from mocking defendants for their speech, to disregarding defendants' legal questions, and determining sentences based on race.[64]

Disparities in criminal sentencing are also well-documented across Chicago. Work by Spohn and DeLone found both Black and LatinX individuals were more likely than Whites to be sentenced to prison in Chicago.[65] These findings confirmed previous work by Lizotte who found that Chicago trial courts had "gross inequality in sentencing practice between occupations and races due to prejudice and economic discrimination."[66] Abrams, Bertrand, and Mullainathan concluded that courtroom actors specifically contribute to this discrimination, with notable findings that at least some judges treat defendants differently because of their race.[67] Specifically, they quantified this difference by grouping judges into percentiles by amount of disparate treatment at sentencing.[68] They further found that the difference between judges at extreme ends of the spectrum was as much as 18%, meaning that there was an 18% racial gap in the rate of incarceration.[69] David Olsen and Don Stemen studied the characteristics likely to influence prison sentence length and found that without accounting for criminal history, race accounts for some sentencing disparities in Illinois.[70] Specifically, without accounting for criminal history and offense type, "Black defendants convicted of a felony were more likely than white

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[64] *Id.* at 131–46. Gonzalez van Cleve writes about the culture of racialized justice: "The narratives that attorneys told in the private spaces of their offices or outside the earshot of other courtroom actors revealed that racism in the Cook County Courts was located not only with the prosecutors, judges, sheriffs. It was an entrenched culture—a legal habitus—and all participants owned and reproduced it, even the defense attorneys." *Id.* at 131.

[65] Cassia Spohn & Miriam DeLone, *When Does Race Matter? An Analysis of the Conditions Under Which Race Affects Sentence Severity*, 2 SOCIO. CRIM. L. & DEVIANCE 3, 3 (2000).

[66] Alan J. Lizotte, *Extra-legal Factors in Chicago's Criminal Courts: Testing the Conflict Model of Criminal Justice*, 25 SOC. PROBS. 564, 564 (1977).

[67] David S. Abrams, Marianne Bertrand & Sendhil Mullainathan, *Do Judges Vary in Their Treatment of Race?*, 41 J.L. STUD. 347, 350 (2012).

[68] *Id.* at 358–60.

[69] *Id.* at 376–77.

[70] DAVID E. OLSON & DONALD STEMEN, ILL. CRIM. JUST. INFO. AUTH., AN EXAMINATION OF FACTORS INFLUENCING THE SENTENCING OF CONVICTED FELONS IN ILLINOIS 17 (2019), http://www.icjia.state.il.us/assets/articles/An%20Examination%20of%20Factors%20Influencing%20the%20Sentencing%20of%20Convicted%20Felons%20in%20IL.pdf [https://perma.cc/S6FP-QWSY].

defendants to be sentenced to prison," at fifty-seven percent and thirty-nine percent, respectively.[71]

Thus, both historically and today, a general culture of delay, court inefficiencies, and racialized inequities suffuse the criminal courts in Cook County.

II. OBSERVATIONAL STUDY

A. BACKGROUND AND METHODOLOGY

Against the backdrop of these studies, and despite the outsized influence that the Cook County court system has on the lives of many Cook County residents, to date there has been limited attention to how Cook County courtroom practices may undermine respect for the criminal legal system. Though this work originally did not intend to collect data on courtroom observers in particular, as it unfolded, it became clear that our data could address gaps in current understandings of how ordinary members of the public interact with other groups present in the courtrooms of Cook County.[72] At its inception, the study examined how Cook County criminal felony courts case processing affected the jail population.[73] The findings mirrored and updated historical research on Cook County case processing delays and made specific recommendations for improvement. In reflecting on the observational data, however, the authors recognized more profound dynamics at work that merited further analysis—namely, the impact of courtroom functioning on system stakeholders outside the courtroom

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[71] *Id.* Other studies have shown racial disparities at arrest, prosecution, and sentencing. *See* Thomas Lyons, Arthur J. Lurigio, Lorena Roque & Pamela Rodriguez, *Racial Disproportionality in the Criminal Justice System for Drug Offenses: A State Legislative Response to the Problem*, 3 RACE & JUST. 83, 86–87 (2013). As Lyons et al. wrote, "African Americans are more likely than Whites to be prosecuted and sentenced to prison . . . . [A]nalysis of Cook County court data from the mid-1990s found that young African American men were more likely to be sentenced to prison (on all charges) than other defendants convicted on similar charges, after controlling for criminal history." *Id.* (citations omitted).

[72] COOK COUNTY JUSTICE AUDIT, https://cookcounty.justiceaudit.org (password: justice2020) [https://perma.cc/GW6V-A7FW] (collecting and analyzing quantitative court data). The aggregated qualitative data did not include observations of courtroom interactions, nor did it include reasons for the data, such as reasons for court delays. Thus, the ethnographic data better addressed those critical gaps.

[73] *See* SAFETY AND JUSTICE CHALLENGE, https://www.safetyandjusticechallenge.org [https://perma.cc/A7DF-457G]. The Safety and Justice Challenge, an initiative of the John D. and Catherine T. MacArthur Foundation, sought to understand and change the ways individuals and system actors think about and use jails. *Id.* Thus, selected local jurisdictions, including Cook County, studied how jails are misused and more effective ways to reduce the misuse of jail, including how to address case delays in trials and pleas.

working group. Ultimately, this Article extends the research on legal cynicism developed around policing issues and places it squarely inside the courtroom.

To accomplish this goal, this Article applies rigorous ethnographic data and a multi-stage coding protocol to generate a series of analytic themes that characterize Cook County's courtroom culture. A trained student observer from the Medill School of Journalism at Northwestern University took detailed field notes.[74] Thirty-three discrete periods of observation were conducted from June 19, 2018 to October 16, 2018, comprising 3,144 minutes of observation across fifteen courtrooms, and covering 215 unique criminal cases.[75] Observations were carefully structured to capture a range of judges across multiple periods of observation to reduce reliance on aberrational courtroom experiences. At the conclusion of the data collection process, the authors designed a rigorous coding procedure to organize and categorize the ethnographic observations into salient analytic categories.[76]

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[74] As one example of the researcher's daily log, she summarized her observations of a courtroom session on June 26, 2018:

> 9:00 AM. [The] courtroom is locked and the 6/22/2018 morning call printout from last week is still posted on his door.
>
> I stand in the hall and listen to the conversations taking place among those waiting: a Latina mother of a defendant, a black mother of an inmate who has been in prison for over 20 years and has a hearing, an older black male/ female couple, and a black woman in scrubs. . . .
>
> 9:42 AM. A black female deputy unlocks [the courtroom] and the two women I'd been listening to at length are whispering about her as she retreats. "It's her job to take their heads off." They say she's tough.
>
> The Latina woman also says she gets here at 9:00 a.m. every time she comes to court for family, even though she knows [this judge] "never opens his doors before 9:45 a.m." She says that she wants to be in the front rows of the audience and "it gets crowded."
>
> Two young black men join the rest of the hallway crowd to find seats in the audience. A young black woman remains outside vomiting into a waste bin. A black male deputy patrols the hall watching her, but does not say or do anything.
>
> 10:10 AM. Judge started morning call at 10:10 a.m. and ended at 11:36 a.m. He called 12 cases/ defendants (at least 6 in custody) during this time. I am unable to account for an addition[al] 5 cases on the docket which appeared to go unheard.

Ethnographic Observation, *supra* note 1, at 48–50.

[75] There would have been 218, but on three occasions the judge passed on one case.

[76] The authors began by separately generating lists of potential themes from the ethnographic data, carefully coding a subset of the raw data to identify themes. Following this pre-coding procedure, the authors reconvened to construct a final data coding strategy, and in doing so reached inter-coder reliability on the requisite themes. An additional checkpoint was built into the coding procedure where after coding approximately one-fourth of the raw data, the research team met to re-examine their interpretation of themes and relevant information. The first one-fourth of the raw data was subsequently rigorously confirmed to follow those updated coding requirements and then the full dataset coding was completed.

The authors designed and maintained the coding protocol as a secure form that captured both count information and textual information from each observation period. An observational period was defined as a sustained period of observation within a single courtroom. If the observer observed more than one courtroom in a single day, the authors counted this as multiple observational periods.[77] Several occurrences of interest happened in more informal spaces, like passing through security or walking through the hallways of the courthouse. These incidents were coded and recorded in a separate document since they differed structurally from courtroom observations.[78]

The authors captured three main types of information from each court session. First, the authors collected information about each case within each observation period, including defendant name and case numbers, information about the type of proceeding, and scheduling information for when the case would appear in court again. Second, the authors gathered information about how different groups of actors in the courtroom interacted with one another. This included members of the courtroom working group, other legal actors, deputies, translators, and members of the public. Third, the authors collected information specifically pertaining to inefficiencies in the courtroom. The authors coded information about delays, expressions of confusion, and other access to justice issues. This coding generated a set of general themes that the authors were able to subdivide and categorize for this analysis.[79]

The authors provide some descriptive figures here to better contextualize how the specific methodology resulted in a cognizable universe of cases. While this data is discussed later in this Article, it is useful to see how the particular types of observed cases informed best methodological practices. The authors were able to confirm from the field notes that persons were present in the gallery a majority of the time (on at least twenty-four out

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[77] The authors deemed this unit of analysis the most logical for characterizing patterns within an individual courtroom, since it allowed courtrooms to take on a flexible form of culture that changed between observation periods. That is, we did not assume that because a judge took many recesses in one observed session, that they would do so in every session. This reduces homogeneity assumptions across the data.

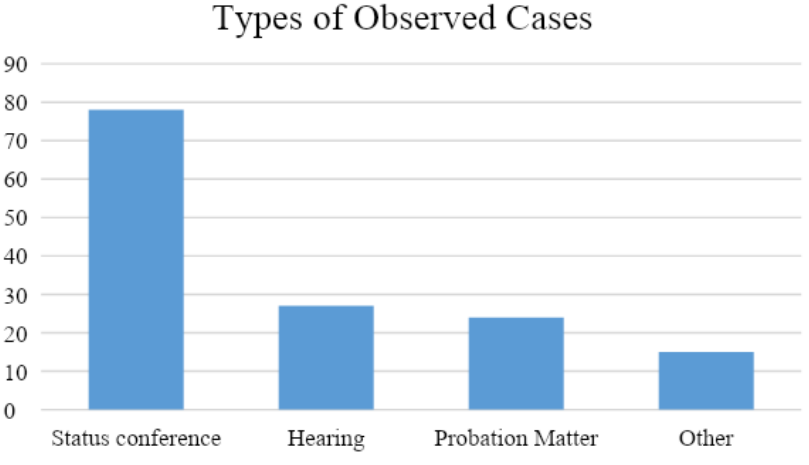
[78] In the analysis below, we explicitly state if a selected quotation pertained to an out-of-court observation. We believe these observations are important as accessibility in the courtroom starts before you enter the specific courtroom. A member of the public has to navigate many other spaces, like security and public thoroughfares, *and* successfully identify the courtroom, which proved to be significant structural barriers, as reflected in the ethnographic data.

[79] We give some descriptive data here, but only for context. The nature of this data (deep ethnographic field notes on words and behaviors in the courtroom) often does not lend itself easily to discrete categorization.

of thirty-three occasions) which underscores how courtroom culture can affect more people than just immediate court actors.

Using the field notes from the ethnographic observer, the authors identified the type of hearing in 144 of 215 cases. In the remaining cases, the proceedings were most commonly inaudible or indecipherable, or a courtroom actor was absent. Status conferences and administrative check-ins accounted for over half of all cases (~54%), as depicted in Figure 1.

Figure 1: Types of Observed Cases

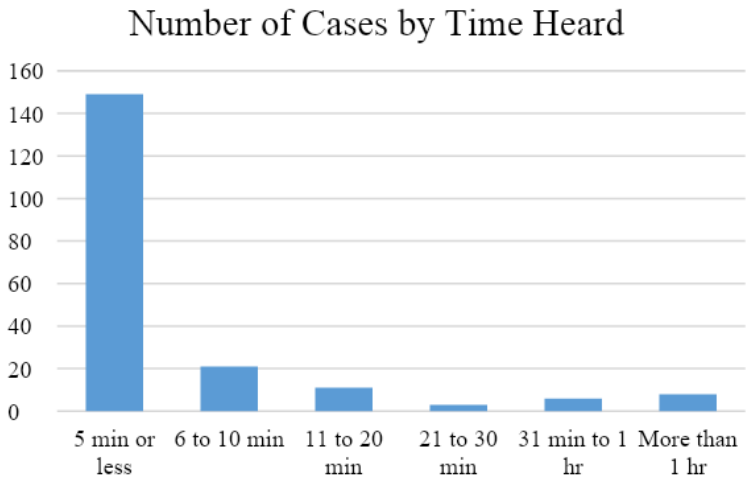


It was generally difficult for the ethnographic observer to ascertain when the court would schedule defendants to return to court, often because the judge was inaudible to those in the gallery. However, the observer did record thirty-three occasions on which a subsequent appearance was not scheduled. In forty-five cases, another appearance was scheduled in less than thirty days, while in forty-six cases the return date was for longer than thirty days. These data points illustrate that a significant number of cases were not resolved during the court call.

The ethnographic observer provided time stamps when each case began and concluded. These time stamps were used to calculate approximately how much time each case was before the judge. The data for 198 cases is shown in Figure 2.[80] This data shows that a vast majority of cases were before a judge for only a matter of minutes. This context becomes important as it details problems and failures within Cook County courtrooms that contribute to a negative courtroom culture.

[80] In the remaining unknown cases, either the observer left before a case was complete (N=3) or missing necessary actors prevented the case from being heard (N=15).

Figure 2: Number of Cases by Time before Judge



The authors selected a non-law student observer to collect the data, reasoning their ethnographic proficiency, including in field note creation, and their unfamiliarity with the Cook County courts and criminal adjudication gave them fresher eyes and limited the assumptions and blind spots one might acquire from being a courthouse regular. The authors brought the research team's legal expertise to bear in coding the data. The authors also developed a multi-stage reliability checking procedure to limit the undue influence of any one author's interpretation of the data. The authors also include the actual words of court actors along with our analysis to help the reader understand the context of the data.

Despite these efforts, it is inevitable that ethnographic field notes are not perfectly representative of any setting. In particular, the authors note that this analysis represents what was in fact observed and does not intend to extrapolate meaning to unobserved phenomena. Nor do the results here completely explore the full sociological context of every actor in the court system. For example, the Article focuses less on the accumulated disadvantage of intersectional demographics, and more on the processes innate to the courtroom. While the Article does not extensively draw out the important social inequalities inherent in these barriers, the authors urge readers and researchers to keep in mind that the accused, people convicted of crimes, and audiences in Chicago courtrooms are disproportionately low income or housing insecure and predominantly belong to racial minority groups. Indeed, in this ethnography often the entire gallery in courtrooms was composed of Black and LatinX men and women. White defendants and audience members were so rare as to make the ethnographic observer often

note her own whiteness in the courtroom.[81] They were not the only one to notice the racial disparity. At one point they overheard two young Black men talking about the lack of White defendants in court in general saying, "They be killing and they be getting away with it. There's just too much racist stuff going on."[82]

B. STUDY FINDINGS

In their thematic analysis, the authors encountered a complicated universe of inefficiencies and barriers to justice in Cook County criminal courtrooms. The authors divided those inefficiencies into two theoretically meaningful categories: micro-level failures and structural-level failures.

Micro-level failures are observed mistakes or decisions by individuals that fall short of current standards or practices in court functionality. Micro-level dysfunction examples include deputies bringing the wrong defendant to a courtroom, absent courtroom actors, or incorrect information posted for the public. The authors view failures in this category as "mistakes" by members of the gallery, the working group, and other legal actors.

The second category, which the authors term structural-level failures, operates somewhat differently. These are breakdowns that occur because the larger system is ill-equipped to deal with systemic problems. In other words, even if the court system were functioning optimally on a micro-level, these issues would nonetheless persist. As things are now, these structural failures reinforce the micro-level failures. Structural failure examples include the court's general inaccessibility to the public, many judges' systems of adjudication, and the consistent lack of accountability broadly across the courthouse.[83]

In the results sections that follow, the Article identifies a thematic finding from the ethnography, contextualized with quotations and direct

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[81] For example, the observer wrote:

> **10:35 General court culture observations:** I am the only white person sitting in the courtroom who is not part of legal staff. There's a striking divide between white people in suits and business attire and the audience filled with people of color, 80% black over the course of the day and 20% Latino. Later today, a single white woman will appear before the judge for drug use on probation.

Ethnographic Observation, *supra* note 1, at 5.

[82] *Id.* at 50.

[83] Admittedly, it is conceivable that there is some overlap in these categories. However, we attempt to analyze them distinctly based on how they differently affect the culture of the courtroom. For instance, no one in the courtroom thinks it is acceptable for an in-custody defendant to be delivered to the wrong courtroom, however opinions across the courtroom might differ in what a "reasonable" amount of time is for a judicial recess or what to expect from a status conference. We will lean into these interpretive distinctions to unpack the impact of each type of courtroom failure on the culture of the court.

courtroom observations, to demonstrate how together they contribute to the larger dysfunction in the Cook County court system.

1. Micro-Level Failure Findings

These micro-level findings include a variety of barriers to justice that even most courtroom participants—in and out of the working group—would condemn. Importantly, the authors do not overanalyze micro-level failures that happened rarely in the observational data. Rather, this Article illustrates micro-level failures that occurred frequently, suggesting that many who interact with the courts share these experiences. These micro-level barriers to justice accumulate to reveal a courtroom culture that marginalizes defendants, victims, family, and friends—and sometimes even other legal actors.

a. Inaccurate or Withheld Information

An early obstacle faced by the field observer was an inability to find accurate lists of in-session courts. This necessarily created a barrier to the most fundamental process of courtroom observation. The observer encountered this difficulty frequently.[84] Courtroom [XXX]'s[85] failure to communicate its operations to the public is one of the ways the courthouse excludes the public. This shuts out those who rely on morning calls—members of the public or parties in cases, not lawyers—to understand the court process that they are legally entitled to observe.. A consistent lack of information in one courtroom would be problematic, but the problem is endemic. In a separate data collection period, the observer, armed with a list of cases to be heard that day, struggled to locate any court in session: "All courtrooms, according to the master court call sent over from Daley Plaza, are supposed to be open and starting their calls [with one noted exception]. No courtroom on the [. . .] floor of Leighton is open or in session."[86] The observer's own struggles to access the courts with the information they provided mirrors the experience of other outsiders—members of the public.

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[84] For example, in one case, the observer noted, "[t]he clerk for Courtroom [XXX] has not posted the daily morning call on the door for public reference since I started observing the Cook County criminal courts in June 2018." *See* Ethnographic Observation, *supra* note 1, at 166.

[85] The specific courtroom number has been changed to [XXX] for the purposes of this article to protect the identity of any potentially vulnerable legal actors or members of the general public.

[86] Insertions in parentheticals are clarifications or edits to protect anonymity by the authors. For example, in this field note, the observer names the exception, which we substitute here with the more general "with one noted exception."

For many, the frustration they experience as they wait to enter the courthouse only increases as they realize that the access they seek is not available.

b. Absent Legal Actors

Legal actors often missed court appearances, including defendants, prosecutors, and defense counsel. An absent attorney is not necessarily a mistake or micro-level failure. It becomes a failure, however, when it interferes with proper adjudication. In one case, the attorney's absence was plainly unexpected and not communicated to other members of the working group.

> [Judge] and the state's attorney who has been dealing with this case . . . are discussing how the state has had difficulties reaching [defendant]'s legal team – who are not present. They do not return the state's attorneys calls or get a hold of him. [Judge] says, "Probably a low-budget operation." The state's attorney replies, "I think high-budget" and a large firm, and then says that he thinks their secretary might be putting him off.[87]

In some cases, defendants were unable to contact their attorneys and had to rely on information from the opposing party to understand the next steps in their legal case. The observer reports: "The Assistant State's Attorney comes to talk to [defendant] in the audience to tell him that his lawyer gave her a call and is unable to make it to court today. The lawyer asked [the Assistant State's Attorney] to ask the judge for a new date."[88] In this case, the legal counsel assigned to this defendant not only failed to appear, but also required the lawyer prosecuting him to relay important information. One can readily imagine not only that a defendant might lose confidence in his lawyer's loyalty, but also that he could understand himself to be peripheral to the activities of the courtroom work group.

In another case, the defendant was unable to come to court for reasons beyond his control—instead of continuing to detain him at the jail, the jail had apparently sent him to the Illinois Department of Corrections—and beyond the comprehension of the judge ("Beats me why they did that.").[89] Resolution of the defendant's case was consequently delayed by another month. Furthermore, this example demonstrates the interconnectedness of the system, where decisions made outside the courtroom hinder its functionality.

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[87] Ethnographic Observation, *supra* note 1, at 41.

[88] *Id.* at 51.

[89] *Id.* at 161–62.

c. Ill-Prepared Participants

Judges also commonly expressed frustration with attorney preparation, a third type of common micro-level failure. Judges particularly voiced concern with attorney record keeping, attendance, and general readiness. This frustration expressed itself as pointed corrections and directives in the courtroom, such as judges announcing that "the defense is not ready today," and pointedly stating, "I want them to know, if they don't want to go to trial, they better be here."[90]

In another courtroom, upon learning that a defense attorney had not made a key phone call, the judge sent her out to do it immediately while the rest of the courtroom waited. When counsel returned, the observer noted:

> "Did you call it?" asks [the judge]. She has not yet. "Well what were you doing back there?" She starts to say she was getting a signature she needed, when [the judge] says she needs to focus on the task at hand, "One thing at a time." He says she was "monkeying around" when she should "get to the point" and stop "wasting everybody's time."[91]

Each of these examples illustrate micro-level failures that court personnel, legal actors, and ordinary people deem unacceptable. In this thematic group, this Article demonstrates that these mistakes are numerous and that collectively they contribute to a negative courtroom culture.

2. Structural-Level Findings

Structural-level weaknesses in the system are even more problematic because they are seemingly neither recognized nor acknowledged as fundamental problems by courtroom actors. As a result, these structural problems highlight stark differences between the court experience of courtroom actors as opposed to defendants and gallery members. In particular, the study reveals how a systematic failure of accountability, a lack of access to courtroom business, and substantial delays in case processing reinforce a sense of powerlessness among the outsiders.

a. System Delay

The pace with which cases are adjudicated is one of Cook County's most serious weaknesses. As cases churn through the system, judges get frustrated seeing cases come before the bench with seemingly unprepared

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[90] *Id.* at 121.

[91] *Id.*

attorneys.[92] Attorneys are frustrated by the status checks that keep them from working on active cases. All the while, the accused and victims need resolution. Victims can be left feeling that the criminal legal system is not just ignoring their trauma, but in some cases generating new trauma.[93] And, in many cases and for many months, individuals are accused of crime and presumed innocent await resolution while incarcerated.[94] This impacts the accused's employment opportunities, family connections, relationships with children, housing, and access to mental health or medical services.[95]

The most common use of court time in the Leighton courtrooms is for status checks. Recent evaluations of Cook County have found that 76% of court time is allocated to status checks rather than active case processing.[96] Status checks are generally very short and consist mostly of scheduling the next court date. However, status checks still require all stakeholders to be present. The overwhelming majority of cases (84%) were before the judge for two minutes or less and consisted of little more than setting another court

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[92] *See generally id.* at 169 (providing an example of when a judge notes in two consecutive cases that "the defense is not ready today" and then finds the next attorney to not be present at all, leaving the judge to have to ask the defendant if the attorney asked for a particular disposition date or not).

[93] *See generally* Monica Bell, *The Community in Criminal Justice: Subordination, Consumption, Resistance, and Transformation*, 16 DU BOIS REV. 197 (2019). Professor Bell's research focuses on the fluid relationship between members of marginalized communities and the criminal legal system in describing and defining modalities of community criminal justice engagement. *Id.* at 197. As an example of the subordination modality, Professor Bell notes that "[p]erceived police nonchalance about crimes against residents of struggling communities further alienates the community from the government officials tasked with protecting them, a perceived indifference with deep history and ongoing salience. . . . Residents of Black disadvantaged neighborhoods often suspect that police uses of force are merely displays of power, and are not born of a desire to meet communities' safety needs." *Id.* at 200.

[94] *See* Sarah Staudt, *Waiting for Justice: An Examination of the Cook County Criminal Court Backlog in the Age of Covid-19*, CHI. APPLESEED (Jan. 28, 2021), https://www.chicagoappleseed.org/2021/01/28/long-waits-for-justice-cook-county-criminal-court-backlog/ [https://perma.cc/Y858-Y8G5]. The report notes that more than 90% of people detained at the Cook County jail are awaiting trial—thus, they are presumed innocent. *Id.*

[95] *See* LÉON DIGARD & ELIZABETH SWAVOLA, VERA INST. OF JUST., JUSTICE DENIED: THE HARMFUL AND LASTING EFFECTS OF PRETRIAL DETENTION (2019), https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf [https://perma.cc/ZP59-QMB7] (discussing the impact of pretrial detention on conviction rates, sentencing outcomes, and plea rates, and discussing the harm caused by pretrial detention)*; see also* WILL DOBBIE & CRYSTAL YANG, THE ECONOMIC COSTS OF PRETRIAL DETENTION 4–5 (2021), https://www.brookings.edu/wp-content/uploads/2021/03/BPEASP21_Dobbie-Yang_conf-draft.pdf [https://perma.cc/XWH9-G4SL].

[96] MEREDITH MARTIN ROUNTREE, MARIA HAWILO & THOMAS GERAGHTY, NW. UNIV., PRELIMINARY REPORT: QUALITATIVE STUDY OF COOK COUNTY CRIMINAL FELONY COURT PROCESSING 7 (2019).

date.[97] This perpetuates a system of nearly endless delays as a full slate of court actors, defendants, lawyers, witnesses, police officers, and the public are required to wait, sometimes for hours, only to make no substantive progress on a given case.

Consistent with previous research, this study found that many court processing delays were a direct result of requiring in-person status updates and that the vast majority of cases were before the judge for five minutes or less, with many appearing before the judge for less than even two minutes.[98] In one case, the field observer notes, "We waited 50 minutes for an attorney to appear for a 2-minute status update and court date selection."[99]

Beyond the often-unnecessary practice of requiring monthly in-person case status reviews, these short "check-ins" mean that cases remain on the court's docket, thereby adding to the perception of heavy daily caseloads. This problem rises to a structural-level failure because it happens so often that it is now an expected part of the process rather than an occasional occurrence in unique circumstances. Ironically, the baked-in tradition of status hearings creates an expectation that a court date means days not working, long waiting times and, in the end, another date for another status call rather than the final resolution of the case.

It is true, of course, that judges cannot be held responsible for all courtroom or case delays. Yet, there were several observable instances where delay could fairly be attributed to courtroom judges. For instance, the frequency of judicial recesses, where judges take time away from the bench, delayed case resolution and resulted in negative commentary from other legal actors and gallery members. The field observer transcribed the gallery's reaction in one courtroom when the judge had taken four recesses in a single hour.

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[97] *Id.*

[98] *Id.* at 21–23 (providing data descriptives).

[99] Ethnographic Observation, *supra* note 1, at 163.

> A middle-aged black man in the gallery groans, "Oh my god."
>
> A black man in the audience asks the public defender what's going on with all the breaks.
>
> "Because he's watching the trial in the back" she says of [Judge] with raised brows. "It's been happening all week." Then she returns to the courtroom.[100]
>
> "Like the rest of us got nothin' to do. He's back there watching TV. That's the most fucked up shit I ever heard," says the man after she's gone.
>
> A few minutes later, a private lawyer comes back in to talk to her client. She asks, "Is the Judge in?"
>
> The black man from the audience turns and tells her, "No, he's watching TV." The entire audience laughs.
>
> He turns and addresses me with a knowing smile. "Did you write that down?" I nod yes.
>
> Now other members of the audience pipe up:
>
> A young black man says, "Get his ass disbarred."
>
> A young black woman says, "He won't get my vote."
>
> A minute later, she continues, "He needs to come out. We only got a few more cases to go. Jesus Christ."[101]

These recesses reflect the larger culture of unaccountability and disregard for the people whose fate the judges hold in their hands. As the judge disappears into the chambers, those in the gallery are left to complain to an empty room.

b. Inaccessibility of Courtroom Business

Court proceedings' opacity further marginalizes the public. Judges and clerks often presented information in ways that were inaccessible to gallery members and relevant court actors.[102] The workgroup would often use difficult legal language when communicating with juries and lay people, and with each other, and would mix informal personal conduct with formal court

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[100] The trial in question was that of Chicago Police Officer Jason Van Dyke who was found guilty of second-degree murder and 16 counts of aggravated battery in the killing of 17-year-old Laquan McDonald. The verdict was heralded by McDonald's family who stated, "America was on trial here and people all over America and all across the world have been waiting to see what was going to happen." *See* Ray Sanchez, *Chicago Police Officer Jason Van Dyke Found Guilty of Second-Degree Murder in Laquan McDonald Killing*, CNN (Oct. 6, 2018), https://www.cnn.com/2018/10/05/us/jason-van-dyke-laquan-mcdonald-verdict/index.html [https://perma.cc/UEG7-CDYB].

[101] Ethnographic Observation, *supra* note 1, at 200–03.

[102] *Id.* at 76, 77, 227.

business.[103] Furthermore, some judges would mute or turn down microphones intended to make the court's business audible.[104] Across observational periods, there was a general disregard for how audible court proceedings were, and there was generally no avenue for the public to request improvements to sound quality. In one courtroom, an observer for the Civilian Police Accountability Board was denied her request to use her own resources to make it easier for her to hear the proceedings. "She wears a hearing aid and has a hearing access device from the sheriff's office, but [the judge] is not going to allow her to use it in his courtroom."[105]

Even if there is a rational basis for courtroom rules, the rules go unexplained. Two gallery members expressed frustration:

> Yeah, they don't even let you bring your phone so you can know what's going on [with your lawyer]. Other courthouses let you bring your phone in. I don't know why they don't here. Yeah, they used to let you bring it in. I don't know why they stopped.[106]

This exchange exemplifies two important elements of the problem: first, the courthouse took a resource away from defendants and observers; and second, the courthouse failed to accord them the dignity of an explanation, shielding the court from scrutiny. This lack of transparency is a systemic problem. That is, this is not a case of one single gallery member not understanding the reasoning behind a rule, but an example of a practice that forestalls critique.

Further contributing to this culture of inaccessibility was courtroom behavior that created insiders and outsiders. For example, in one courtroom, "[b]oth [the clerk] and the judge are difficult to hear, and they often chat back and forth during proceedings, the judge making jokes and telling unrelated stories and the clerk laughing."[107]

In this common example, outsiders (defendants, gallery members, and others) could not hear the court business in the first place, and additionally had to contend with jokes and informal conversations during what is likely, for them, a very stressful and high stakes experience. This repeated occurrence not only excludes the public because they cannot hear or understand the proceedings, but also underscores their separation from the court's work by demarcating the line between the courtroom working group and the outsiders who fill the courtroom.

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[103] *Id.*
[104] *Id.* at 76.
[105] *Id.*
[106] *Id.* at 230.
[107] *Id.* at 78.

c. Lack of Accountability

Finally, the study found a systemic failure to hold actors responsible for their actions that create courtroom delay and confusion. Some of the authors encountered, for example, instances of police officers being excused from attendance at a court call, resulting in angry judges demanding to know who had the authority to authorize the excusal, but with no immediate remedy to solve the problem.[108]

Even more problematic, individuals who could not reasonably be held accountable for the problem were admonished. One defendant's lawyer failed to appear in court:

> The deputy comes out and asks where his lawyer is. [Defendant] tells her that his lawyer contacted him to say he was running late. She says to [defendant] that his lawyer must be on time to court each and every time. [Defendant] doesn't seem to know what to say.[109]

In this situation, the defendant had neither the power to compel his lawyer to arrive for his court appearance, nor a realistic ability to ask the judge to sanction his attorney for failure to appear. As a result, the defendant was placed in an untenable position where he was simultaneously the least empowered person in the courtroom and the one responsible for enforcing the court's rules vis-à-vis his lawyer. What might have been a micro-level failure on the part of the attorney becomes a structural-level problem when no protections exist within the current system to hold the correct person accountable.

This is not to say the remedy for the court itself is straightforward. The current system does not seem to afford judges the ability to ensure attorney accountability, short of holding them in contempt. As a result, judges must often balance efforts to control the courtroom without undermining the

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[108] One such incident was observed as follows:

> [The States' Attorney] tells [Judge R] that the two police officers—[Officer A] and [Officer B] from unit [7885]—whom the court subpoenaed to give testimony today, are not coming. "[Officer A] told me that his unit was excused."
>
> "Who told him that? Anyone besides me or another judge cannot excuse officers from a subpoena," asks an aggravated [Judge R], before immediately continuing with his line of questioning: "Who's the officer? Who's the other officer? . . . Okay, I'm issuing a warrant."
>
> [Judge R] asks again, "I want to know *who* excused them!"
>
> [The States' Attorney] says that she couldn't get an answer, but then says, "Your honor, the specific excuse was that they had a mandatory meeting they had to go to."
>
> [Judge R] is angry. He says that the court will be in touch with their superior/unit. Then he moves forward, asking the parties if they have reached a plea agreement.

Id. at 176–77.

[109] *Id.* at 162.

defendant's legal representation. The field note below illustrates this conundrum:

> The court waits for private defense attorney [name] to arrive. According to [Judge X] she was "on her way 2 hours ago." He is annoyed . . . . [Judge X] also note[s] that this is the "third time" [attorney] has extended the timetable she has to file her pre-trial motions. He moves the defendant and [attorney] to Friday, when "she must file all pre-trial motions. That is the last day before trial."[110]

These delays affect every individual waiting in the courtroom for their own case to be heard and the defendant who is continuing to be tethered to the criminal legal system. But these delays also contribute to a larger backlog of cases in Cook County. Despite the compounding problem, there is no clear path forward for an accountability mechanism that actually speeds up the process of the criminal legal system. In an effort to hold an individual convicted of a crime accountable for being unreachable, missing tests, refusing probation checks, and directly contacting the court, one judge threatened to have the defendant taken into custody, but also chastised the lawyer.

> [Judge Z] starts to shout at the lawyer. "And tell your client not to communicate with this courtroom!" He turns to the defendant and shouts, "Do not write me letters. Do not write telling me you don't like your probation officer. I am not Dr. Phil." He also tells her such behavior interferes with the integrity of the court.[111]

While this interaction may be reasonably construed as an individual-level dysfunction, this pattern of behavior across courtrooms rises to a structural-level failure. Since there is no underlying system of accountability in Cook County to prevent these types of delays, the delays then become a consequence of a system that at its core has no ability to direct accountability to the correct actors.[112] Because of this structural-level dysfunction, the same types of problems repeat themselves day after day in court with no actor emerging with the motivation to make changes in courtroom culture.

III. LEGAL CYNICISM AND THE CULTURE OF DISENGAGEMENT

As the observational study illustrates, lack of accountability, transparency, and system delay constitute structural-level failures that create and perpetuate cyclical courtroom dysfunction. These practices have become so entrenched in Cook County felony courtrooms that stakeholders take them for granted. Courtroom delays, for example, are so common that no one can

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[110] *Id.* at 186.

[111] *Id.* at 40.

[112] Important to observe here is that trial judges work independently, with little knowledge of what other judges are doing. This is especially important in Cook County where there is no centralized calendar management.

reasonably expect court to start on time or swiftly resolve cases. Judges are slow to assume the bench because there is no organizational pressure to behave otherwise. Lawyers are likely late to court because they have learned that their tardiness will be accommodated. Cases are continued without complaint, in part because it suits the needs of the courtroom working group.

These structural-level failures contribute to an ever-widening gulf between court working group members and non-court personnel that leaves the outsiders frustrated, confused, and disillusioned with the criminal process. Importantly, dysfunctional courtroom culture also has inherently racist and classist undertones. This is particularly evident in Cook County courtrooms where the majority of defendants, victims, and family members are persons of color.

The Article's findings are not entirely unique, though the classifications are. As two scholars in a wide-ranging study[113] of the Cook County criminal system observed:

> The behavior of some functionaries in the municipal courts suggests that they are unaware that the system exists to serve the public. In some cases, notably where sex crimes are charged, court personnel from throughout the building crowd around to view the participants as if they were exhibits in a zoo. The more common problem is simple indifference or even hostility toward the people the system is intended to serve. This, we suppose is a problem with all who serve the public.[114]

The authors believe that it is helpful to understand the prevailing culture of Cook County felony courtrooms by viewing it through the lens of legal cynicism theory. Legal cynicism provides a framework describing what

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[113] DALLIN H. OAKS & WARREN LEHMAN, A CRIMINAL JUSTICE SYSTEM AND THE INDIGENT: A STUDY OF CHICAGO AND COOK COUNTY 3 (1968). In order to place the problems faced by people who are poor, the authors concluded that a system-wide review of the Cook County criminal system was necessary to examine the impact of the system on the indigent. *See id.* at 2–3. Among its many findings, the authors described the problems with bail, the lack of available data throughout the court system, a failure to resolve cases expeditiously, and lack of uniformity in the criminal system. *See id.* at 86, 95, 150–51. The authors concluded that "[i]n fact, the problems unique to the indigent are pretty hard to find and not simply because indigence is a relative state. Many of those attributes of the criminal justice system that disturbed us affect all who pass through it. The crowded, raucous atmosphere of petty criminal courts and the often rude conduct of court personnel, to cite two examples, probably affect the rich defendant as much as the poor." *Id.* at 3. While this study dates back several decades, we cite it here to note, first, the historical study of the Cook County criminal courts, and second, to draw similarities between historical failures and current system failures. To be sure, much has been addressed in efforts to improve the system in the Cook County felony courts, including bail reforms, random selection of judges, and more. However, as was reflected in our ethnographic observations, some of the problems remain, including the failure to resolve cases expeditiously.

[114] *Id.* at 169.

happens when individuals become cynical about the legal system.[115] As the Article defines it, legal cynicism is a cultural process whereby individuals and communities come to believe that the law will not protect them the way it should and therefore become detached and alienated from the legal system alleged to protect them.

Chicago has been the seminal setting for studying legal cynicism, in large part due to extremely disparate impacts of crime across geographic areas, socio-economic status, and racial groups.[116] The concept emerged in the late 1990s with the work of Robert Sampson and Dawn Bartusch. After a call for historically grounded studies of the dynamic relationship between neighborhoods and crime,[117] Sampson and Bartusch described in their 1998 study of Chicago neighborhoods a theory of legal cynicism derived from the concept of anomie.[118] Sampson and Bartusch defined legal cynicism as a component of "anomie," also referred to as "normlessness," where the dominant social rules are no longer sufficient to bind a particular population together.[119]

David Kirk and Andrew Papachristos made the most significant update to this definition, when they expanded legal cynicism theory into the domain of culture.[120] Kirk and Papachristos defined legal cynicism as "[a] cultural orientation in which the law and the agents of its enforcement, such as the police and courts, are viewed as illegitimate, unresponsive and ill equipped

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[115] For a sample of the literature exploring the legal cynicism framework, see generally David S. Kirk, *Prisoner Reentry and the Reproduction of Legal Cynicism*, 63 SOC. PROBS. 222 (2016); David S. Kirk, Andrew V. Papachristos, Jeffrey Fagan & Tom R. Tyler, *The Paradox of Law Enforcement in Immigrant Communities: Does Tough Immigration Enforcement Undermine Public Safety?*, 641 ANNALS AM. ACAD. POL. & SOC. SCI. 79 (2012); David S. Kirk & Mauri Matsuda, *Legal Cynicism, Collective Efficacy, and the Ecology of Arrest*, 49 CRIMINOLOGY 443 (2011); David S. Kirk & Andrew V. Papachristos, *Cultural Mechanisms and the Persistence of Neighborhood Violence*, 116 AM. J. SOC. 1190 (2011); Robert J. Sampson & Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 L. & SOC'Y REV. 777 (1998).

[116] Kirk, *supra* note 115, at 227–28; Kirk, Papachristos, Fagan & Tyler, *supra* note 115, at 85–86; Kirk & Matsuda, *supra* note 115, at 452–53; Kirk & Papachristos, *supra* note 115, at 1206, 1226; Sampson & Bartusch, *supra* note 115, at 786–87.

[117] Robert E. Kapsis, *Residential Succession and Delinquency: A Test of Shaw and McKay's Theory of Cultural Transmission*, 15 CRIMINOLOGY 459, 483 (1978).

[118] *See* Sampson & Bartusch, *supra* note 115, at 782; *see also* Leo Srole, *Social Integration and Certain Corollaries: An Exploratory Study*, 21 AM. SOC. REV. 709 (1956) (providing a general overview of different interpretations of the concept of anomie and providing a measure of interpersonal alienation, termed 'anomia' which the author uses to find support for their hypothesis of a process that interactively links individual anomia and societal interpersonal dysfunction).

[119] Sampson & Bartusch, *supra* note 115, at 782.

[120] Kirk & Papachristos, *supra* note 115, at 1205.

to ensure public safety."[121] Scholars continue to employ both definitions. Some scholars even more broadly define legal cynicism as something related to the "fundamental distrust 'in the basic intention of the laws' and legal authorities."[122] Kirk and Papachristos' definition, however, marked a transition in the field where both structural and cultural mechanisms were incorporated into models of neighborhood violence, including social factors and interactions with legal actors.[123]

As scholars noted, a paradox occurs when communities with high levels of legal cynicism also experience high levels of crime. Residents in such neighborhoods are both disaffected from the criminal justice system based on their individual experiences and less tolerant of crime and deviance—with community members sometimes advocating for increased law enforcement as a strategy to deal with crime.[124] Concurrently, those who live in areas with high levels of legal cynicism are less likely to report crimes to the police or cooperate with investigations because they anticipate little return,[125] thereby contributing to increased levels of criminal offending.[126]

Several scholars explain how legal cynicism becomes culturally embedded despite anti-crime beliefs, noting "[t]his cynicism often is the product of societal structural conditions (such as concentrated poverty) and resident interactions with the justice system, but also unfair treatment by legal actors."[127] Once negative experiences proliferate in communities at the individual level, interactions across social units embed cynicism into the larger community's culture.[128]

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[121] *Id.* at 1191.

[122] Emily Ryo, *Fostering Legal Cynicism Through Immigration Detention*, 90 S. CAL. L. REV. 999, 1015 (2016).

[123] Kirk, Papachristos, Fagan & Tyler, *supra* note 115, at 84; Kirk & Matsuda, *supra* note 115, at 443; Kirk & Papachristos, *supra* note 115, at 1205.

[124] Patrick J. Carr, Laura Napolitano & Jessica Keating, *We Never Call the Cops and Here is Why: A Qualitative Examination of Legal Cynicism in Three Philadelphia Neighborhoods*, 45 CRIMINOLOGY 445, 461 (2007); Sampson & Bartusch, *supra* note 115, at 777.

[125] Kirk & Matsuda, *supra* note 115, at 460.

[126] *Id.* at 468; Jeffrey Fagan & Alex R. Piquero, *Rational Choice and Developmental Influences on Recidivism Among Adolescent Felony Offenders*, 4 J. EMPIRICAL LEGAL STUD. 715, 740 (2007).

[127] Kirk, Papachristos, Fagan & Tyler, *supra* note 115, at 83. For other examples that include experiential development in childhood, see Jeffrey Fagan & Tom R. Tyler, *Legal Socialization of Children and Adolescents*, 18 SOC. JUST. RES. 217, 231 (2005), lived experience consisting of negative encounters with law enforcement, see Carr, Napolitano & Keating, *supra* note 124, at 445–46, and law enforcement experiences through immigration, see Ryo, *supra* note 122, at 1016–17.

[128] Kirk, Papachristos, Fagan & Tyler, *supra* note 115, at 84.

Researchers also note the intertwined relationship between legal legitimacy and legal cynicism. Legitimacy in this context is defined as "[t]he property that a rule or an authority has when others feel obligated to voluntarily defer to that rule of authority."[129] This definition is particularly applicable to law, which requires some level of majority voluntary adherence to exist as an enforceable set of rules. Legitimacy and legal cynicism move in opposite directions: increases in procedural justice (i.e., making justice processes fairer) decreased legal cynicism, which in turn promoted gains in legitimacy.[130] This is an optimistic avenue for improving entrenched legal cynicism, which is especially widespread among people of color, young people, and people with low socioeconomic statuses. It requires, however, individual and systemic change.[131]

It is now widely acknowledged that the concept of legal cynicism also affects perceptions of legal legitimacy, including court actors.[132] This study points to the need for further research into the links between case processing and community disaffection, detachment, and alienation.

IV. RECOMMENDATIONS

How to move forward when where all justice actors "are viewed as illegitimate, unresponsive and ill equipped to ensure public safety?"[133] How could observations made in Cook County courtrooms chart a path for adopting a new culture and embarking upon a new era in its history?

In Cook County, felony criminal courts need systemic change, particularly a commitment to greater accountability, transparency, and anti-racism. Though this Article does not advance theories of change, this Section puts forth a framework for this improvement in Cook County and offers instances of positive courtroom culture drawn from the data. It then briefly discusses how COVID-19 might impact the creation of a new courtroom culture. This Article concludes by asserting the lessons learned in Cook County might be usefully applied to courts across the United States.

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[129] *Id.* at 83.

[130] Jacinta M. Gau, *Procedural Justice, Police Legitimacy, and Legal Cynicism: A Test for Mediation Effects*, 16 POLICE PRAC. & RES. 402, 402 (2015).

[131] Carr, Napolitano & Keating, *supra* note 124, at 445–46; Sampson & Bartusch, *supra* note 115, at 798.

[132] Kirk & Papachristos, *supra* note 115, at 1191; Ryo, *supra* note 122, at 1017; Sampson & Bartusch, *supra* note 115, at 786.

[133] Kirk & Papachristos, *supra* note 115, at 1191.

A. THE FRAMEWORK FOR A PATH FORWARD

Cook County's criminal courts' history, the multiple studies of its courts, and the data collected for this Article make clear that courtroom operations at 26th & California do not comport with anyone's conception of how a court system should operate. What should that system look like? The Supreme Court of Illinois' recently adopted agenda offers one vision. The Core Values of the Strategic Agenda recently adopted by the Supreme Court of Illinois in 2019 are:

> Fairness—impartial in our actions, decisions, and treatment of all.
>
> Accountability—responsible and answerable for our conduct and performance, and transparent in the use of public resources.
>
> Integrity—honest, trustworthy, and committed to the highest ethical and professional standards.
>
> Respect—treat all with dignity, courtesy, and understanding.[134]

Although these Core Values were formally announced and embraced by Illinois' Supreme Court in 2019, the Core Values capture what all would agree should be core values of any criminal legal system, and tenets criminal justice professionals would say they have always believed in. It is also apparent that the courts at 26th & California have historically strayed from these ideals and that they continue to do so with impunity.

Those who study court administration focus on the importance of leadership in improving of justice systems. In their recent report on the performance of Missouri municipal courts in the aftermath of Ferguson, Griller et al. noted:

> Much has been written lately within the national court community on governance and leadership in state and local trial court systems. In many ways, it is a reaction in modern, fast-paced times to the historic operating principle of the American justice system. The set of roles and responsibilities conveying power and control to those in authority over state and local courts are generally so fragmented, consensus-focused, loosely coupled, and laissez-faire driven, that it is both complicated for top leaders to develop binding organization-wide (read state-wide) policies, direction, and strategies.[135]

The evidence demonstrates this is precisely the situation with Cook County's criminal courts. While many may have written or spoken of these goals, , none have enforced or implemented goals such as those announced in the Supreme Court of Illinois' Core Values. Without increased Illinois

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[134] ILL. JUD. BRANCH, STRATEGIC AGENDA 2019-2022 9 (2019), https://courts.illinois.gov/SupremeCourt/Jud_Conf/IJC_Strategic_Agenda.pdf [https://perma.cc/WZ3B-8ALL].

[135] NAT'L CTR FOR ST. CTS. & ST. JUST. INST., MISSOURI MUNICIPAL COURTS: BEST PRACTICES RECOMMENDATIONS 2 (2015), https://www.courts.mo.gov/file.jsp?id=95287 [https://perma.cc/AA47-5L2V].

Supreme Court leadership and oversight of Illinois' lower courts, the chronic historical and present-day failures of Cook County's criminal courts will continue.

The culture of Cook County's criminal courts must be altered through attention to the factors identified in Part III of this Article, along with court leadership that values fairness, efficiency, and transparency.[136]

B. EXAMPLES OF POSITIVE CULTURE CREATION

While the court's culture requires significant changes, instances of positive courtroom culture creation surfaced in the data. This Section presents several avenues for exploration and policy grounded in these examples. These changes in social and cultural norms are especially important because research has found that strategies sensitive to reframing social norms can help alleviate legal cynicism.[137] These examples, which importantly exist in some form in Cook County courts already, have potential to help reframe the failures found at both micro and structural levels. This Section discusses holding the correct actors accountable, improving the transparency of the courtroom, and encouraging a culture of attachment and inclusion before making specific recommendations in light of a new era of justice during the COVID-19 pandemic.

1. Holding the Correct Actors Accountable

Though the results found a pervasive structural-level failure in holding actors accountable, the authors did identify examples of courtroom actors taking special care to ensure undue burdens and blame were not placed on the wrong actors. In one example,

> [Judge Y] finds out that the defendant has been told to go to the juvenile court to pay, and he doesn't understand why, as this is far out of her way and has nothing to do with her case. "Why would you put the people through that kind of aggravation?" he asks of the system. It seems the defendant has run into bureaucracy and difficulty getting to the

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[136] Though we do not set out to provide specific policy prescriptions in this study, the felony courts in Cook County would benefit from leadership at the top. To that end, and if necessary, the Supreme Court should consider taking operational control of the Circuit Court of Cook County's Criminal Division in order to ensure adherence to the Supreme Court of Illinois' Core Values through the injection of new blood into the system, rotation of judges in and out of the criminal division, and implementation of a system for better coordinating the activities of judges, prosecutors, defenders, the Sheriff of Cook County, the Clerk of the Circuit Court, and Chicago community members.

[137] Sampson & Bartusch, *supra* note 115, at 801.

> place she needs to get to pay her fees without missing her work (which she needs to make the money to pay the fees—especially as her income is already very tight).[138]

In this situation the judge learned of the problem, ascertained the defendant was being disadvantaged through no fault of her own, and eventually solved the problem. This represents a conscious reattachment and restoration of agency to a previously detached actor.

2. Improving the Transparency of the Courtroom

There were also several examples of courtroom insiders taking special care to make their courtrooms more transparent and accessible. Different courtroom insiders displayed these behaviors. In one case it was a clerk:

> The clerk calls 3 more defendants: 2 in custody, 1 not in custody. She clearly spells out each defendant last name—something I have not seen other clerks do. It is very helpful for clarity and for ensuring that there are no misspellings on the call list for the courtroom.[139]

Here, the clerk offers clarifying information, benefitting defendant and attorney teams who must respond when called. She also makes clear to the rest of the gallery what legal business will next be at hand.

In another case, the Judge took special care to ensure gallery members were able to hear the proceedings:

> "Is anyone here for Mr. [name]?" asks Judge [name] of the gallery. A late-middle-aged black man stands in the audience and Judge [name] invites him inside the courtroom. "So you can hear," she says. She explains to the court that she allows a member of the family to be inside the courtroom when their loved one is called (this is not a one-off issue about hearing difficulties) . . . She asks each time a defendant is called if family or friends are present, and then she makes the same offer.[140]

By doing this, the judge consciously brings outsiders inside the process, making it clear they matter in the courtroom and functionally making courtroom business more available to them.

3. Encouraging a Culture of Attachment and Inclusion

Finally, there were several examples of courtroom actors consciously creating a culture of attachment and inclusion that were starkly different from general trends in courtroom culture in Cook County. In some cases, this meant courtroom actors acknowledged and engaged with the gallery instead of chastising them or simply pretending they were not there. In one courtroom,

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[138] Ethnographic Observation, *supra* note 1, at 80–81.
[139] *Id.* at 213.
[140] *Id.* at 149–50.

> The Judge starts by saying that this is the small courtroom he has been assigned to play his small role in the justice system . . . .He says, I respect you all. Respect me. And he tells spectators that there will be no emotional outbursts during court today.[141]

In doing this, the judge names the roles of the court and the gallery, but notes mutual responsibility for respect. In other cases, attorneys made special efforts to engage with family and friends they knew were present and stressed in the courtroom.

A private defense attorney . . . walks over to the family and whispers,

> It's nice to see you all. It's likely that James will receive a sentence today. I'm not here to police emotions. I've been working on this case a long time and I've gotten to know James over the past six years . . . It's important for you to know that [I] will keep fighting for him.[142]

This attorney took initiative to acknowledge the family, give them preparatory information about what was to come, and some assurances that there will be more in the future. This act of humanity stood out as another means of giving courtroom outsiders the context they need. Further, by treating all participants as important to the administration of justice, these actors advanced an essential sense of dignity, respect, and inclusion.

4. COVID-19 as an Opportunity to Recreate Courtroom Culture

Finally, the unprecedented and sudden impact of COVID-19 on the criminal legal system has paradoxically opened up the possibility of change at 26th and California. Many daily logistical practices that were once central to culture-building became impossible in light of health and contact restrictions. To be clear, this study has not explored culture in the courtroom in the COVID-19 era. However, changes required by COVID-19 also usher in potential avenues for changes in courtroom culture.

First, in the COVID-19 era, Cook County criminal courts, including felony courts, rely heavily on virtual hearings, especially for status hearings. As a result of barriers to physically meeting, long-standing practices have been informally disrupted. Where previously judges and lawyers expected to use court hearings to transmit discovery, talk about cases, or negotiate pleas, attorneys now communicate electronically,[143] Once court operations return

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[141] *Id.* at 45.

[142] *Id.* at 5.

[143] As a result of virtual hearings, attorneys were required to communicate via electronic means. *See* STATE OF ILL.: CIR. CT. OF COOK CNTY., https://www.cookcountycourt.org/ [https://perma.cc/2T23-E36T]. While a change from physical transmission to electronic transmission of discovery has not been formalized, continued backlogs may indeed inspire a much-needed change to the system. *See* Sarah Staudt, *Waiting for Justice: An Examination of*

to a post-COVID-19 era, maintaining a practice of electronic discovery, communication, and negotiation can free courts to engage in substantive hearings.

Second, and relatedly, court hearings should no longer be held every thirty days as check-in dates. Instead, given the current practices of communication outside of court, hearings should be reserved for litigating court filings and scheduling evidentiary hearings and trials. This will not only ease the burden on the courtroom working groups (and those members of the public who attend) of constant, informal, non-substantive hearings, but will also communicate to courtroom insiders and the public that court hearings are significant events in the life of a case. This in turn would increase the actors' formality and work ethic, and help reduce the public's cynicism.

Third, the use of technology to transmit information, particularly police reports, videos, and discovery, should significantly decrease the number of court delays. If detectives are no longer required to appear in court to present their police reports in person, for instance, court hearings should not be delayed waiting for a detective who may be testifying in a different courthouse.

The success of these changes relies on using technology effectively to share information. Success also relies on developing transparent practices in and around the courtrooms. More study must be conducted to understand the limits of technology, including privacy concerns. Yet, simply moving communication between working group members from the courthouse to other means should result in fewer delays, less disruption, more formality and transparency, and a better experience for the individuals whose lives are most affected by the system.

5. Ongoing Participation of Courtroom Observers

Moreover, the ongoing participation of independent scholars, researchers, and court observers is critical in efforts to improve the culture quality of justice afforded by the Criminal Division of the Circuit Court of Cook County. As this Article notes, there is a long history of research and scholarship on the performance of trial courts in Cook County and around the country. Yet, as this Article makes clear, chronic problems leading to profound injustice remain to be addressed in the Criminal Division of the Circuit Court of Cook County. 26th & California's isolation demands special

the Cook County Criminal Court Backlog in the Age of Covid-19, CHI. APPLESEED (Jan. 28, 2021), https://www.chicagoappleseed.org/2021/01/28/long-waits-for-justice-cook-county-criminal-court-backlog/ [https://perma.cc/T2EC-UT3U] (reporting that delays in the exchange of discovery continue to plague the system, and advocating for increased technical capacity in order to address this significant problem).

attention. Vigorous monitoring by observers independent of the Circuit Court of Cook County offers one way forward, as it both advances a culture of transparency and creates greater accountability. These observers should include trained court watchers, community members, scholars, lawyers, and judges recognized for their leadership in administering excellent court systems. These observers would roam the halls and sit in the courtrooms of and report their findings on an on-going basis to the leadership of the Circuit Court of Cook County and to the public. This effort could help the courts rise to excellence exemplified by the Honorable. George Leighton, a heroic figure in the annals of justice who courageously fought for justice and for whom the building at 26th & California is named.[144]

CONCLUSION

The key contribution of this detailed observational study is its rich description of a culture that promotes alienation and detachment that persists in Cook County courtrooms by separating courtroom insiders from outsiders. In addition, this Article outlined two different types of pervasive failures in Cook County courts: micro-level and structural-level failures. The Article also unpacked how this constructed culture mirrors understandings of legal cynicism in ways that continue to entrench racial and class inequality and alienation. At the same time, some glimmers of hope underscore the importance of analyzing positive court culture construction for the future of Cook County criminal courts, and other court systems across the country.

This study focused specifically on Cook County, in part due to its impact and size, but also so that it might inform courts all across the United States. There is no reason to believe the micro- and structural-level failures observed in Cook County criminal courtrooms are unique to Cook County. Nor is there any reason to believe that Cook County is the only courtroom cultivating and reifying a deeply negative culture that affects both courtroom outsiders and insiders. Future research should take the framework for understanding failures we present here and place it in context of other court systems across the United States, with particular attention to recommendations for cultural reform might help create a new, more positive courtroom culture.

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[144] *See Criminal Courthouse Renamed after Retired Judge and Civil Rights Leader George N. Leighton*, COOK CNTY. GOV'T (June 20, 2012, 12:00 PM), https://www.cookcountyil.gov/news/criminal-courthouse-renamed-after-retired-judge-and-civil-rights-leader-george-n-leighton [https://perma.cc/C37H-TJFT] (noting that the courthouse was renamed after George N. Leighton, a civil rights leader and a retired judge).