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CASE LOAD PRESSURE AND FELONY TRIAL COURTS: COOK COUNTY

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The effects of heavy case loads upon the operations of criminal courts in Illinois, as well as in almost every other state in the nation, have been the subject of much concern for over fifty years. Indeed, much of the existing empirically oriented research on criminal courts attempts to outline the effects of case load pressure upon various aspects of court operations: Criminal court practitioners (judges, prosecutors, public defenders, and other courtroom personnel) are usually portrayed as overworked officials adapting to adverse conditions and doing the best they can to administer criminal justice fairly and efficiently. As pervasive as the notion of case load pressure has been, however, the effects of variations in this pressure on the operations of criminal courts have not been examined rigorously and systematically. Coupled with this situation are recent challenges to traditional views on criminal courts. Many contemporary criminal justice researchers question the relationship between case load pressure and criminal court malfunctioning, as well as the utility of resolving criminal court problems by simply increasing court manpower. In their view, case loads provide a convenient explanation — a "nonreactive cause" — for what takes place in criminal courts. That is, unlike judges or prosecutors, case loads cannot respond to accusations.

Here, elements of this controversy are addressed. First, a brief overview of the historical development of the case load controversy is given, with particular emphasis upon Illinois and Cook County. Then, the results of a limited empirical examination of the effect of variations in case load pressure upon the operations of Cook County felony trial courts are reported. These results show that variations in case loads have no impact upon some of the most important aspects of trial court operations. An explanation for these findings is presented which focuses upon several unique institutional features of criminal courts. Some empirical evidence is also offered for this view of trial courts. Finally, implications of these analyses for court reform are considered.

Historical Perspective

The first serious examination of criminal courts in Illinois was the *Illinois Crime Survey*, first published in 1929 by the Illinois Association for Criminal Justice. The major focus of the case load problem as discussed in this work was on Cook County courts. In the county system at that time, trial court cases often took over three months to complete; only 19.7 percent of all defendants initially charged with felonies were convicted. Over 81 percent of these convictions were the result of guilty pleas. Of

those convicted, 21 percent were given probation, while another 25 percent were given sentences of less than one year in confinement. To the crime survey researchers, these figures indicated gross inefficiency and massive malfunctioning in the criminal court system — due, at least in part, to the volume of cases it processed. In 1928, trial court judges handled an average case load of 750. The researchers argued that this work load was far too high to process cases effectively. Many potentially culpable defendants had their cases dismissed by prosecutors because of insufficient resources. In addition, case load pressures forced judges and prosecutors into plea bargaining with defendants. This, it was argued, accounted for the high guilty plea rates and relatively light sentences.

The *Illinois Crime Survey* was just one of many such studies conducted during the 1920s. Most reported similar results and advocated similar reforms, prominent among them proposals to increase criminal justice resources to combat the case load problem. Since these ground-breaking crime surveys, other studies have reached similar conclusions. Their major contentions were aptly summarized in the 1968 report of the President's Commission on Law Enforcement. It stated: "The final and most serious problem of urban and suburban courts is the enormous volume of the crime and delinquency cases that come before them. . . . Partly in order to deal with volume, many courts have routinely adopted informal, invisible, administrative procedures for handling offenders." The commission, along with most other contemporary students of criminal courts, advocated large increases in criminal court resources to combat the problems attributed to volume.

More recently, similar conclusions were drawn by the Chicago Bar Association in its 1975 Program for Action. A study of the criminal justice system in Cook County led the association to advocate major reforms. It found that because case loads were high, trial preparation by prosecutors and public defenders was hasty and inadequate. Moreover, while some guilty defendants went free when delay discouraged witnesses, other defendants remained incarcerated for many months, only to be found not guilty at trial. In short, the system was ineffective, inefficient, and undignified. These observations were followed by recommendations that the number of judges, bailiffs, clerks, prosecutors, public defenders, and probation officers be increased sharply.

As is evident, the bar association's proposals and the state legislature's actions are clearly within the mainstream of traditional thought on criminal justice reform. It must be recognized, however, that while traditionally much reliance has been placed upon increases in court resources to reduce plea bargaining and dismissal rates, the effect of increased resources upon courtroom operations has

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never been documented. In fact, there is scattered evidence which indicates that significant increases in resources have little influence upon courtroom operations. If the *Illinois Crime Survey* data and those of crime surveys in other states are examined, it is clear that, as far back as the 1920s, dismissal rates, guilty plea rates, and court delays have been similar in urban and rural jurisdictions — despite vastly different case load problems. One study showed that in Connecticut, trial rates (the proportion of cases disposed of by trial) of about 10 percent have been relatively constant since the late 1880s.

More recently, it has been demonstrated that dramatic changes in the ratio of manpower to case load have not had much impact upon the dispositional process. In Connecticut, for example, a 1971 change in jurisdiction laws almost halved the case load in some superior courts. Even though there was no reduction in manpower in these courts, neither was there an appreciable increase in the trial rate.

Cook County Felony Case Loads

One important aspect of the case load controversy is the effect of case load levels upon guilty plea rates, dismissal rates, and sentences in guilty plea cases. A sample of 816 felony cases disposed of during 1972-73 in the Criminal Division of the Cook County Circuit Court was examined in this light. During this period the size of judges' monthly dockets varied a good deal. These cases were analyzed to determine whether they were processed differently in months when dockets were light from months when dockets were heavy. From January 1972 to June 1973 judges' monthly dockets varied from a low of 109 to a high of 559 cases, with a mean of 283 cases. To simplify the analysis, months in which cases were disposed of during this time were categorized according to whether individual judges' dockets were high, medium, or low. The criteria used in this categorization are reported in Table 1, which also shows the number of cases disposed of in each of the three categories.

Since there was a good deal of variation in case load pressure during the time when the sample of felony cases was taken, one would expect markedly different court outputs in each of the three periods. If the expectations of traditional researchers are correct, dismissal rates and guilty plea rates will be higher in months when case loads are high than in months when they are low. When case loads are low, it would be expected that prosecutors and judges would be under less pressure to secure guilty pleas and more able to pursue cases to trial. Sentences in guilty plea cases during months with low case loads are

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Table 1
JUDGE CASE LOAD AT DISPOSITION
January 1972-June 1973

	Range of Case Loads	Number of Cases in Sample	Cumulative Frequency
Low	109-239	200	33.4
Medium	242-313	198	66.6
High	314-559	200	100.0

expected to be higher than sentences during months with high case loads; presumably, judges and prosecutors have stronger bargaining positions when case loads are lower.

It should be noted that meaningful results cannot be arrived at by a simple comparison of guilty plea rates, dismissal rates, and sentences at different levels of case loads. Many factors other than case load pressure affect the criminal process. The seriousness of the offense, the weight of the evidence gathered, the predispositions of the judge, the type of defense counsel, relevant characteristics of the defendant, and many other factors influence the outcome of a case, and they must be taken into account. By statistical manipulation through multiple regression analysis, extraneous factors can be controlled while analyzing a given factor of prime interest. In this study, multiple regression was used to assess the impact of case load upon case outcomes while controlling for such extraneous factors as case seriousness, weight of the evidence, and type of defense counsel. What will be reported is the impact of variations in case load pressure upon a typical armed robbery case involving a typical defendant and handled by a typical defense counsel, prosecutor, and judge. It should be emphasized that while guilty plea rates, sentences, and dismissal rates would be different if another type of offense were used, the differences attributable to variations in case loads would not vary.¹

The results of the regression analyses are shown in Table 2. With extraneous factors controlled, the effects of different levels of case load pressure upon case outcomes were found to be negligible and statistically insignificant (that is, the observed differences were so small that they could be solely due to chance). Consider the first row of numbers, which reports, for high, medium, and low levels of case load pressure, the probability of a typical

Table 2
IMPACT OF CASE LOAD PRESSURE
ON PREDICTED OUTCOME
OF A TYPICAL ARMED ROBBERY CASE

	Case Load Pressure		
	Low	Medium	High
Predicted proportion of guilty pleas	74%	72%	70%
Predicted proportion of dismissals	18%	18%	18%
Predicted sentence after a guilty plea (months)	55.7	58.5	61.2

armed robbery case's resulting in a guilty plea. These probabilities, expressed as proportions, may be viewed

¹ For a detailed discussion of factors affecting the disposition of cases in Chicago felony courts, see Peter F. Nardulli, *The Courtroom Elite: An Organizational Perspective* (Cambridge, Mass.: Ballinger, forthcoming 1978).

as roughly corresponding to the average guilty plea rates for typical armed robbery cases in each of the three categories. As evident from the figures, differences in these average rates are minimal. Even these slight differences are not in the expected direction — guilty plea rates are marginally higher when case load pressure is low than when it is high.

The figures reported in the second row of Table 2 are the predicted probabilities of a typical armed robbery case's being dismissed in each of the three categories. There are no differences at all in these figures, again contrary to what traditional criminal justice researchers would expect. Finally, the third row of the table reports predicted sentences for a typical armed robbery case. Here again the predicted differences are contrary to what traditional researchers would predict, and these differences are too small to be statistically or substantively significant.

The results reported here indicate that, as shown by other recent studies, differences in case loads do not appear to affect case outcomes to any major degree. Cases disposed of during months when case loads are low are apparently disposed of in the same manner as in months when case loads are high.

Levels of Operation

One explanation for these findings has to do with utilization of court resources. Traditional researchers assumed that criminal courts were operating at or beyond capacity levels. Given such overutilization, it is logical that increases in case loads would affect case outcomes. Despite the constant cries of overburdened officials, even the most casual observer in the Cook County felony trials courts in 1972-73 would have noted much idle time. Indeed, a *Chicago Sun-Times* study published in 1973 estimated that a criminal court judge in Cook County spends an average of only two-and-three-quarters hours a day on the bench. During the time of this study, judges worked somewhere between three and five hours per day. Such a situation is not unique to Cook County. Studies in Connecticut and elsewhere have indicated that some judges spend as little as one to three hours on the bench each day.

Courts as Organizations

The observation that, as elsewhere, there is considerable excess capacity in the Cook County criminal court system leads to a second important point. Almost 60 percent of all trial court cases in Cook County result in guilty pleas, and these pleas account for 80 percent of all convictions. If plea bargaining and other less publicized, informal, "administrative" procedures are largely due to case load pressure, why are they so pervasive in times of excess capacity? The answer to this question can be found in a new and different way of looking at criminal courts. Many contemporary scholars are beginning to view criminal court operations in much the same manner as they view the operations of any organization; criminal courts are perceived to handle their case loads much as a welfare agency or health clinic handles its work. Of course, as organizations go, the "court organization" has several unique aspects, which help to explain why administrative shortcuts exist in periods of excess capacity.

Most of the court organization's work is performed by two sets of work groups (courtrooms) — preliminary hearing courts and trial courts. In each work group, cases are processed by a set of criminal justice officials — a judge, a prosecutor, and a public defender or private defense counsel — who, working together over an extended period

of time, develop close ties and common understandings. Unlike most organizations, where power and discretion are vested in the upper levels of a hierarchy, in the court organization, power and discretion are vested in the work groups. The judge, the prosecutor, and the defense counsel control virtually every important aspect of a case's disposition: The prosecutor initiates charges and has the power to drop or amend them, as well as the power to recommend sentences. The judge also has the power to dismiss charges. In addition, he is responsible for ruling on motions, for passing sentence on convicted defendants, and, often, for determining guilt or innocence. Among other powers, the defense counsel can raise and argue legal motions and appeal adverse rulings.

Besides their almost monopolistic power, courtroom work groups have another important characteristic vital to understanding why administrative shortcuts exist during periods of excess capacity. That is, it is in the self-interest of those who control the dispositional process — the judge, the prosecutor, and the defense counsel — to handle their cases expeditiously. A defense counsel generally is paid the same whether a case goes to trial, is dismissed, or a guilty plea negotiated. Generally low fees in criminal cases make it imperative that these attorneys turn over large numbers of cases with minimal expenditure of resources. Most private attorneys could probably not afford to provide every client with a truly adversary defense.

Similarly, judges, prosecutors, and public defenders are interested in expeditious dispositions. Each day they have a set number of cases to handle. The less time they devote to each, the sooner they will be able to complete the daily call. Hence, except for very serious or highly publicized cases, these officials have a built-in incentive to handle cases quickly and informally; this incentive exists whether there are two or two hundred cases on the daily docket. This personal incentive to expeditiously handle cases is reinforced by the view, widely held by most criminal justice practitioners, that most defendants in the trial courts are factually guilty of something. In their view, the question posed by most cases is not, did the defendant do it, but, what do we do with the case now that we have it?

To summarize, if one regards courts as organizations, the existence of informal administrative procedures, such as plea bargaining, during times of excess capacity can be explained by the nature of criminal court work groups and participants' perceptions of their clients. It is in the interest of the judge, prosecutor, and defense counsel to informally dispose of *most* cases and, because they have the power to realize these ends, expeditious methods are dominant even during slack periods.

This explanation, however, raises a variety of questions. If in fact criminal courts do operate like organizations, then changes in case loads cannot be irrelevant to court operation. In order to exist over an extended period of time, an organization of any type must be responsive to its environment. General Motors, for example, must respond to changes in demand if it is to remain competitive. Likewise, the court organization cannot be indifferent to the public, and changes in case loads are a loose indicator of demand for services by the public. Increased case loads are evidence of either increased crime or increased public propensity to report crime. Thus, if the criminal court system operates like other organizations, it would be expected to respond to demands for increased services by increasing its output. This is especially true if, as has

been alleged here, the court system can accommodate more cases than it does presently.

Response to External Demands

To analyze whether the court organization responds to external demands for increased services by increasing its output, the average number of indictments each judge disposed of during 1972-73 was examined for each of the three categories of the two case load variables. Regression analysis again was used, this time to determine the number of indictments in a given month that a judge would be expected to dispose of in each of the three case load categories (high, medium, and low). For high case loads, thirty-one indictments were disposed of during the month; for medium, twenty-eight; and for low, twenty-three. These differences were in the expected direction (the greater the case load, the greater the number of indictments disposed of), and they were statistically significant. For example, the predicted number of indictments disposed of by a judge in a month when case loads were considered high was almost 50 percent greater than the number in a month when case loads were considered low. Thus, while guilty plea rates, dismissal rates, and sentencing structures were not affected by changes in case loads, as most traditional researchers had thought, those who control the dispositional process do seem to respond to perceived external demands for increased services by giving the public "more of the same."

Policy Implications

The policy implications embodied in traditional criminal justice research were quite straightforward. To alleviate such problems as plea bargaining, high dismissal rates, and lenient sentences, criminal court resources must be increased. Experience in Cook County and elsewhere, however, shows that the problems plaguing the American criminal court system are not so simple, nor are their solutions.

The analysis undertaken here has no straightforward policy implications, but it does suggest areas where changes might be fruitful. First, the fundamental problem facing criminal courts may be simply one version, albeit unique, of the classical bureaucratic problem. That is, a small cadre of individuals — charged with the responsibility for performing a given task, vested with the power to perform it, and subjected to few external constraints — has utilized the resources under its control for its own self-interest. Increasing the resources of such a system merely

makes the pursuit of this self-interest easier. This is not to say, however, that additional resources will not be needed to bring about a truly adversary criminal justice system. Before such resources will produce favorable results, however, fundamental changes in the power structure within courtroom work groups should be made. More specifically, power needs to be decentralized, and adversary relations among the participants need to be institutionalized.

Although these goals seem very abstract, several steps could be taken to achieve them. First, charging, dismissal, and sentencing powers could be stripped from the courtroom work groups. An independent charging board could be set up to evaluate cases referred by the police. The board could refuse to initiate charges in some cases, utilize diversionary programs in other cases, and send others into the felony court system. Cases sent to the court system would then be assigned to a criminal court. The sole function of these courts would be to decide the guilt or innocence of the defendant. If guilt were determined, the case would be sent to an independent sentencing board which would then impose sentence in accordance with set, though flexible, criteria. Such a process would virtually eliminate plea bargaining and many of the sentencing disparities which result from the bargaining process and the propensities of the participants. To ensure that the determination of guilt or innocence is made in an adversary context, an incentive system could be introduced involving financial inducements to prosecutors and defense counsels for their *successful* handling of a case.

These ideas are, of course, merely rough suggestions for improving the criminal court process. Many problems would need to be worked out and refinements introduced before they could be implemented. Also, their use would require the addition of a significant number of resources. Although these are only tentative suggestions, they have been developed after five years of observation and analysis of the criminal court system in Cook County and elsewhere. During the period of this study it has become very apparent that the greatest impediments to change in the system are the vested interest which criminal court participants have in the present structure and their power to resist external interference. Nothing less than a fundamental restructuring of the power and interest structure within criminal courts will bring about a criminal justice system approximating the ideal embodied in Anglo-American notions of due process.



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