
AN INTRODUCTION TO DRUG NIGHT COURT

Cook County Circuit Court's drug night court program, the only one in the Nation, began as an emergency measure to cope with rapidly expanding caseloads. In 1975, 6,000 felony cases were filed in the court. Two years later that number had more than doubled—to 14,000. In another 10 years, filings had doubled again to 28,000—largely due to increased narcotics arrests (half of the 28,000 cases in 1989

PRINCIPAL FINDINGS

This assessment of the feasibility of establishing night courts for narcotics cases drew heavily on the experience of Cook County, Illinois, Circuit Court. To summarize the findings:

- Night operations can be quite efficient. Coincident with setting up its drug night courts, Cook County cut processing time for narcotics cases dramatically.
- Those wishing to set up drug night courts need to be vigilant to ensure that the quality of justice in narcotics cases is not compromised. In Cook County, research found that the establishment of drug night courts coincided with more lenient sentences, fewer trials, and a lower rate of representation by private attorneys for narcotics defendants. All but the last consequence likely resulted from segregating narcotics cases with greater emphasis on productivity, rather than from evening operations per se.
- Quality staff can be successfully found for evening hours. Cook County has shown that there are a number of innovative ways to recruit motivated people to staff night courts.
- To maintain high morale and efficiency, jurisdictions considering evening operations must be alert to special problems their staff members may encounter when working at night.

were narcotics arrests). That represents a caseload-to-judge ratio of 500 to 1. Still, the county board was reluctant to add courtrooms or additional staff.

Presiding Judge Thomas Fitzgerald and Administrative Director Jeffrey Arnold decided upon a dual strategy to cope with the crisis. First, Chief Judge Harry Comerford invited the National Center for State Courts to do a thorough analysis of current resources and caseloads for the entire Cook County court system. Officials are confident that, when the results of the 4-year investigation are in, they will adequately document for the county board the need for additional courtrooms.

The second part of their response to the strains placed on the system by the increased caseload was to extend the court's hours of operations to an evening shift. Physical plant resources were made to do double duty. Personnel had to be added to staff the evening courtrooms, but expensive capital construction costs were indefinitely postponed.

The idea of evening court operations was not new to Cook County. For years the county has run night bond courts. The success of the night bond court helped convince officials that the court could handle other types of matters at night as well.

Early on, a decision was made to limit the evening caseload to narcotics cases. That made sense from several perspectives. First, narcotics cases seldom involve civilian witnesses. That was important because officials believed many citizens would be afraid to venture at night into the neighborhood where the court is located. Moreover, when narcotics cases are part of a general felony calendar, they tend not to compete well with violent crimes for the court's attention. They are, as one official put it, the "runt of the litter." Hearings and trials in narcotics cases are often postponed repeatedly as officials attend first to more pressing business.

Yet, in a segregated calendar, motions usually can be disposed of efficiently, and narcotics cases can be swiftly adjudicated. Also, as staff focus on these

types of cases, their expertise would likely grow. Thus, the new night courtrooms seemed the perfect environment for handling narcotics cases.

Initially, the public defender's office opposed the concept. The Cook County public defender at the time—Randy Stone—worried that specialized drug courts would induce an “assembly-line mentality.” If specialized drug night courts were to be created, he would want four public defenders per courtroom (he ultimately got two). He also endorsed a plan in which each court would be assigned a treatment professional qualified to assess defendants' needs for treatment so that those convicted could be helped instead of just processed. This battle he lost (a full discussion of the concerns of the public defender's office appears later in this report).

Eventually, the public defender's office was persuaded to go along with the plan, and five drug night courts were opened on October 16, 1989. An additional three courts opened a year and a half later.

The county board was persuaded to authorize \$2.6 million for the first year of drug night court operations. The county funds were used to offset the costs of the new prosecutors, public defenders, clerks, deputy sheriffs, and security officers that various criminal justice agencies were asked to contribute.

Probation received a large share of the county money (\$600,000). It turned out to be much needed because the night courts greatly increased the disposition rate and the probation caseload began growing by an average of one probation call (about 80 new probationers) each week to the Probation Department's caseload.¹

The drug night courts open at 4 p.m., Monday through Friday, adjudicating drug sale arrests and possession cases involving large amounts of a controlled substance. Some cases remain in day courts when the night calendar becomes too crowded, but the preferred route is night court. Cases are assigned to the drug courts after probable cause is established at a preliminary hearing. About a quarter of narcotics arrests are dismissed at the preliminary hearing, but plea bargaining is saved for drug court. Defense attorneys prefer to wait to negotiate until cases are bound over to drug court, at which time full discovery occurs.

Not only were drug cases reassigned to the newly created night courts, but a decision was made to change the way the courts did business. To speed adjudication, a time line is applied to the drug night

court cases. Instead of considering motions on trial dates, as is the practice in day court, judges set hearings to consider motions within 30 days of assignment. Trial dates are normally set within the subsequent 30 days. Judges in the drug courts enforce these dates; accordingly, officials are confident that the vast majority of narcotics cases can be adjudicated within 60 days, many at the first hearing date.

Although bench trials are held at night, jury trials are scheduled during the day, and holding a jury trial requires the night court prosecutor, defense attorney, and judge (and sometimes the judge's clerk) to come in early to conduct the trial and then remain to fulfill their night court duties, thus requiring them to work a double shift.

HOW THE DRUG NIGHT COURTS OPERATE

Each night court judge carries hundreds of active cases on his or her docket. At least 50 cases are on the calendar each evening, compared to 20 or fewer for day court. The heavy caseload forces night court to move at an extremely fast pace.

The first hour or two of the session is spent rapidly going through all the cases on the court calendar. Generally the defendants who have private attorneys are called first. If it is a new case, the judge arraigns the defendant quickly and either sets a hearing date or sets the case aside for a “402 conference” where the judge and attorneys will try to work out a plea bargain—all in less than 5 minutes.

If the case is scheduled for a motion or trial, the judge will ask the attorneys if they are ready to proceed.

Usually they are not, because of missing information, witnesses, or similar problems, and the case is continued. Some cases that are up for hearings are passed and set aside for a 402 conference. Other cases are passed because defendants, attorneys, or witnesses are not present at the first call. Sometimes a judge will take time during the first call to hear motions, hand out sentences, or accept guilty pleas, but most of these are left until after the first call. In general, judges are done with their first call of 50 or more cases in less than 2 hours.

After the first call, the judge usually recesses to handle the 402 conferences. These conferences take

place in the judge's chambers and are relatively informal. After the conference, the defense attorney presents the plea bargain to his or her client, and most seem to accept them. If the defendant accepts the agreement, the judge hears his or her guilty plea when court is back

in session. Any other cases that were passed are recalled—again, most are continued—and the judge begins to hear motions and finally conducts any bench trials that are still left to be heard that night. To repeat, drug cases are fairly simple; it is not unusual for a judge to hear several motions or bench trials in a single night. On occasion, sessions may last until midnight or even later.

The pace of day felony court stands in stark contrast to the pace of drug night court. If there is no jury trial scheduled for that day, the judge proceeds through his or her first call at a somewhat leisurely pace. Usually fewer than 20 cases are scheduled for 1 session, and many of these are probation terminations and other cases that can be dealt with quickly. Long pauses

occur between cases. The attorneys spend time preparing their notes and reading files, and the entire session can be over in as little as 3 hours.

The public defenders and State attorneys who work in the drug night courts are often seriously challenged by the pace of the courts. They have little time to prepare cases or confer with clients. Often they request continuances to have extra time for case preparation.

Notes

1. Probation's workload also increased because the court's sentences began to shift away from incarceration to a heavy reliance on probation for drug offenders.

HOW PARTICIPANTS MET THE CHALLENGE

To start and maintain the drug night courts, all key participants in the system—judges, prosecutors, defense attorneys, probation officers, clerks, and security personnel—had to gear up and maintain staff for the night courts and implement strategies to extend their usual day routine into the nighttime hours.

In the beginning (October 16, 1989), this meant operating five courtrooms, but that number increased to eight courtrooms just a year and a half later. Not all participants were eager to undertake the new experiment. Objections had to be overcome, compromises hammered out, and strategies developed to turn the concept into reality.

All key participants were faced with a common challenge—running night courts—but that challenge proved more or less difficult for each of the departments involved and was welcomed with more or less enthusiasm. Therefore, how the night courts affected *each* component of the system will be described in some detail, with an eye toward developing a model others can replicate and suggesting improvements learned from Cook County’s groundbreaking experience.

DRUG NIGHT COURT JUDGES—WHAT WAS DONE

Given the relative independence of judges, compared to line staff in offices of the prosecutor, public defender, clerk, and probation officers, finding judges to work at night proved surprisingly to be the easiest scheduling task. The explanation for this phenomenon is that a move to night court represented an *upward step* for the judges and that the judges were hand-selected by the presiding judge. Judge Fitzgerald had previous experience overseeing these judges in other parts of the system and thus had prior knowledge of their criminal law experience, their work ethic, and their desire to handle more interesting cases than the minor criminal or traffic cases over which they had been

presiding.

The upward step was accomplished by reassigning judges for the drug night courts from a pool of associate judges presiding over misdemeanor court and traffic cases. No additional funds were provided by the State to replace the associate judges in the courts from which they were reassigned. However, a new traffic diversion program that coincided with the creation of the drug night courts helped ease the loss of the reassigned judges.¹

The decision to use associate judges to staff the drug night courts was seen as key in finding enthusiastic candidates for night court duty. Circuit court judges already assigned to daytime felony courtrooms would have had little interest in working at night. But for associate judges, the promotion assured a group of eager participants.

Hand-picking the judges helped ensure that their enthusiasm was matched with prior experience in criminal law (for example, some had worked with the State attorney or public defender’s office) and a judicial commitment to expediting cases and managing their caseload.

At first among the five—and now eight—night court judges, there was the expected range of work and management styles. Some judges routinely finish their calendars by 7 or 8 p.m., while others are rarely done until 10 or 11 p.m. Much depends on how much time they take with each case, especially in terms of conferencing time. Each judge holds conference calls throughout the night to discuss possible dispositions with the defense attorney and prosecutor. Some judges conference more cases than others, and some hold much lengthier discussions than others. The consequence for the clerks, public defenders, prosecutors, and probation officers assigned to particular judges is that some line staff finish court early each night—those assigned to “fast” judges—while others finish court late each night—those assigned to “slow” judges.

Line staff are required to stay and complete paperwork even if their judge finishes early. Administrators claim that those assigned to judges who routinely sit

until late into the night are not really disadvantaged when compared to their colleagues who are assigned to judges who routinely finish court early in the evening.

DRUG NIGHT COURT PROSECUTORS—WHAT WAS DONE

Each of the night courts has assigned to it three assistant State's attorneys—a senior member who serves as “first” chair, a more junior member who serves as “second” chair, and the newest member who serves as “third” chair. Overseeing the assistants in all the night courtrooms is a single supervisor. Cook County footed the bill for the assistant State's attorneys, first for the five courtrooms and then later for all eight.

The prosecutors assigned to night court are not volunteers; they are assigned by the State's attorney. The first chair is staffed by an experienced narcotics prosecutor from the day division (Cook County has a special Narcotics Prosecution Unit) while the second and third chairs are entry-level positions. The general practice in the office is for attorneys to begin in traffic court, graduate to municipal court, proceed into the felony review unit, then in turn to preliminary hearing court, night court, and finally the felony trial division.

The chief of the Narcotics Unit (and person in charge of the drug night court prosecutors), Al Tomasco, explained that new recruits to the office are aware of this practice. Thus, from the beginning they know they are likely to work night court at some time. He believes this well-established path results in few complaints about the night court assignment, since it is regarded as a natural—and necessary—step up the ladder. Besides, working at night is also required for the felony review unit; therefore, night work is not totally unexpected for the assistants.

Rotation of assistant State's attorneys through night court results in the first chair serving about 4 months, while the second and third chairs remain for longer periods and are moved as the needs of the office dictate. All the assistants in drug night court receive special narcotics training and are given an office manual that provides a step-by-step guide to the preparation of narcotics cases and the nuances of search-and-seizure law.

There is no pay differential for prosecutors who work

at night, nor is there any overtime or compensation time granted. Night court prosecutors are expected to report to work at 2 p.m. and work until 11 p.m. (unless the judge continues past 11, in which case they must stay until court closes). If a defendant in night court requests a jury trial, the prosecutor must report at 10 to 11 a.m. to conduct the trial and then stay through his or her night court shift.

When asked whether this proves a disincentive for holding jury trials (perhaps resulting in better offers to encourage the defendant to plea), Tomasco said no, there are just as many jury trials out of the night division as there are out of the day division. If a night court prosecutor has a jury trial scheduled for the day, he or she will be assisted by a prosecutor from the day trial division who serves as second chair.

Everyone interviewed raised the issue of security for night court personnel, especially in leaving the court and getting to their cars safely at the end of the evening. The court is in what is generally described as a “bad” neighborhood.

This concern has resulted in an informal buddy system among the prosecutors, defense attorneys, judges, clerks, and probation officers whereby they escort each other to their cars. They may also request the sheriff to escort them, but they have to wait until he or she is available; as a result, most use the informal system and head for home as soon as possible.

Despite concerns about safety, there have been no incidents since the court began operating. Courtroom security appears not to be a problem; it was seen as every bit as good as it is during the day.

Access to information does not appear to be a problem at night. The State's attorney's office is open 24 hours, and lab report information is available from the computer throughout the night. PROMIS™ (prosecutors' information management system) is also operational

at night, and access is available to the evidence room. Whenever information is needed in the courtroom that cannot be located in the file or by talking with a police officer, the third chair is available to go to the office on the 14th floor and use the computer or check the evidence room; therefore, prosecuting cases at night presents no problems of efficiency.

From Tomasco's perspective as chief of the drug

night courts, night court cases are not relegated to a lower standard of justice, nor is there any more of an “assembly-line” justice system than is found during the day. He doesn’t believe dispositions are overly pressured, nor does he see the sentences as unduly lenient. Tomasco views the fact that probation is the most frequent outcome as appropriate, given the prior history of most defendants and the amount of drugs typically charged in the indictments.

Assistant State’s attorneys do get involved in setting conditions of probation, such as home confinement, community service, curfews, fines, and treatment. When asked about the small proportion of defendants being sentenced to treatment, Tomasco had several explanations. First, he noted that many defendants have no desire for treatment and cannot be forced into it. Second, TASC (Treatment Alternatives to Street Crime) applies stringent conditions on who qualifies for treatment.² One of those conditions is that TASC will not accept anyone for treatment who has been convicted of drug *sales*. In Cook County, there are few simple possession cases—most have a sales charge attached. Thus many defendants fail to qualify for TASC for this reason alone.

Third, Tomasco acknowledged, cutbacks in available treatment positions in both inpatient and outpatient centers limit the number of defendants who might be sentenced to treatment. The county is currently reviewing treatment and diversion issues with an eye toward adding more treatment alternatives.

Fourth, many ideal candidates for treatment are filtered off early in the adjudication process. The State’s attorney’s office runs its own “drug school.” Those caught with small amounts of drugs are diverted at the preliminary hearing stage and sent for five sessions of education and counseling. Last year 2,087 defendants went to this school. Those who remain in the system and are assigned to night court are likely to be those caught with more drugs or those who have lengthier records than those who are diverted into treatment early in the process.

DRUG NIGHT COURT DEFENSE ATTORNEYS—WHAT WAS DONE

Without question, public defenders were the most outspoken critics of night court. When the idea was

first proposed, they were strongly opposed, fearing it would lead to “assembly-line justice.” The private defense bar also resisted the concept, contending that its members would have to work two shifts—the day shift for their clients in day court and the night shift for their clients in night court. The public defender at the time—Randy Stone—foresaw that this burden would result in pushing the private bar out of night court and, as a consequence, compromise defendants’ rights to select an attorney of their choice.

Despite vigorous protest, the public defender’s office was compelled to accept the night court. Although the defenders tried to have a treatment specialist in each courtroom, they lost this battle. They wound up with half the county funds they sought—enough to support two public defenders per courtroom plus one supervisor, one investigator, and one support person to cover all five night courts.

When the first five courtrooms opened, the public defender’s office asked for volunteers to staff them. Because the office is unionized, it was constrained from pressing attorneys into night duty. The office was able to get the volunteers it needed for a variety of reasons—some attorneys had child care responsibilities that fit nicely into night work; some wanted to do felony trial work and saw the night courts as a step up from their day misdemeanor work; some liked the narcotics specialty; and so on.

Although one might speculate that the volunteer route would only yield junior personnel, this did not happen, and the defenders were fortunate enough to obtain a mix of junior and senior attorneys. When the night courtrooms expanded to eight, the volunteer route again scored the same success. Currently a total of 16 assistant public defenders (2 per courtroom), 2 supervisors, 4 investigators, and 3 support personnel staff the 8 night courtrooms.

Like the prosecutors, public defenders receive no pay differential for working at night, nor do they receive compensation or overtime. They arrive for work at 2 p.m. and work until 11 p.m. (If court finishes early, they are supposed to remain in the office and catch up on paperwork.) Between 2 and 4 p.m., they either go to the Detention Center (located next to the courthouse) to consult with their clients or schedule interviews with those not in custody.

In their minds, this is far too little time, and they find they have to come in earlier to do their jobs effectively. Of course, if a jury trial is requested, they must

come in about 10 or 11 a.m. and work a double shift—like their counterparts in the State’s attorney’s office—without compensation.

The defenders do not see this double shift as a disincentive to try cases, as the new attorneys are eager to obtain trial experience. They do, however, believe it is a disincentive for the judge, who consequently offers more attractive deals to avoid trials. As the defenders put it, “As we get closer to trial, the judge’s offer gets better and better.”

Staff tend to stay in night court for 9 to 10 months on average and then transfer into day court—although some attorneys prefer the night work and elect to remain. Night court is generally seen as a good route to felony day work; as a result, many young attorneys vie for night court openings when they are announced.

The public defenders continue to worry that the private bar is being pushed out of drug cases because they refuse night work. Private attorneys willing to take on night cases are given priority on the calendar and are called *before* the public defenders’ cases. This causes some discontent among the assistant public defenders, but the rationale is that they are obligated to stay until 11 p.m. anyway, whereas the private attorneys may leave as soon as their cases are done.

The defenders saw no differences between the efficiency of day and night court or their ability to obtain missing elements in the file. However, they remain opposed to the night court concept for several reasons.

First, they do not believe that it is a good idea to segregate narcotics cases into specialized courtrooms (they said they would have the same objection to concentrating drug cases in day courtrooms). They argue it leads to “tunnel vision” and doesn’t allow judges to evaluate the worth of a case in light of all the other cases heard. It also leads to “canned” offers (routinely packaged, nonindividualized bargaining offers) and works against individual attention to cases. To quote the defenders, “They are just shuffling people through the system with no thought given to what the sentence should be.”

Second, public defenders contend that the constant pressure to “move the calendar” results in very light sentences. They believe police officers count on defendants snatching these light sentences, so the police make bad arrests knowing that issues of

probable cause and search and seizure will almost never be raised. (The defenders say that when drug cases were in day court more cases were thrown out for lack of probable cause and for bad search and seizure than in night court.)

In their opinion, “The lenient offers given in night court just make clients’ rights go away.” Probation is the norm, and their clients are all too eager to accept this sentence so they can walk out of the courtroom that evening. (This is especially true for those in custody.) The problem is that there are alarming rates of violation of probation, and their clients wind up back in court facing jail sentences. As the defenders put it, “They give them just enough rope to hang themselves.”

Public defenders would like to see a much greater emphasis on drug treatment to help their clients clean up their acts and stay out of the system. They would also like to see more pretrial drug diversion so that their clients could be spared a criminal record.

They noted differences among night court judges in the care taken with cases, but said these differences exist in the day session as well. There was no difference in the atmosphere in night and day court, just differences from one judge’s courtroom to another’s.

On a positive note, they believe there are fewer bench warrants issued at night than during the day, as their clients are more likely to meet their night court dates. To sum up their position, acting public defender Rita Frye said, “If I had my druthers, there would not be a night court. If there is a night court, then it should not be assembly-line justice.” (Neither the chief of the

State’s attorney night court unit nor the administrative judge characterized the night courts as administering “assembly-line justice.”)

DRUG NIGHT COURT PROBATION OFFICERS—WHAT WAS DONE

In terms of creating continuing work, the drug night courts affect the Probation Department the most because of their very heavy reliance on probation sentences. Each week approximately 80 new probation cases emerge from the 5 night courts. With the addition of 3 more courts, that number has increased

to 125 cases per week. Not only must probation officers be available at night to staff the courtrooms, but officers must monitor the rapidly expanding number of new probationers.

As a consequence, probation has been hit the hardest in terms of long-term workloads. The Probation Department also received a greater share of the county money allocated to night court—\$600,000 of the \$2.6 million awarded.

The heavy reliance on probation is of some concern to the department. Its assistant chief, Jim Cunningham, expressed some apprehension that probation is routinely being ordered without attention to the individual offender's appropriateness for probation. He also expressed concern that night court judges were not ordering special conditions of probation, such as treatment and home confinement, as often as judges in the daytime courts. Cunningham worried that offenders were not receiving the treatment they needed and, as a result, were frequently violating the conditions of their probation. He estimated that twice as many persons sentenced to probation in night court violated their probation as those sentenced to probation in day court.

When the first five night courtrooms were opened, probation officers were pulled from among a new class of trainees, all of whom had been informed that they might be assigned to night duty when they signed up. There is no pay differential for night work. If the officer works more than 40 hours, compensation time is granted at the rate of an hour per week-day and 1 1/2 hours per weekend for every hour worked over 40.

Volunteers for the night court were recruited for the initial five courtrooms and later for the additional three. Although night court generally has a "bad rep" in the office, according to supervisor Tom Quinn, most officers adjust and bond with each other. Since the courts have opened, only one officer has requested a transfer out of night into day court (officers are not eligible to request a transfer until they have been in the position for 1 year).

That situation may soon change, as the department plans to add 12 more officers to handle the burgeoning caseload being generated by the courts. Because the department has run out of volunteers, new night

court officers will be pressed into service from their day divisions. In line with the union contract, they will be recruited from the least senior officers from each of their divisions; inasmuch as some divisions tend to have offices with more senior officers than others, some fairly senior staff will be reassigned from day into night court. The deputy chief suspects this will result in grumbling and discontent among those selected, but the department has no other option at this time.

Probation officers assigned to night court work from 12:30 until 8 p.m. Two officers are assigned to each night courtroom, and two supervisors oversee the eight night courts (two more supervisors will be added next month). Both officers work from 12:30 to 4 p.m., seeing probationers and taking care of paperwork. At 4, one of the two officers (on a weekly rotating basis) is stationed in the courtroom while the other remains in the office and continues with administrative duties. That officer is also available to help the officer in court with needed files or information on probationers.

When night courts began, the Probation Department had problems getting needed information on probationers, but that has been solved with access to the computer and file room being made available during night hours. Probation officers are given no special training on the handling of drug cases, but soon the department will create a new intensive drug unit with specialized officers, smaller caseloads, and much more intensive supervision.

The most frequently ordered condition of probation for those coming out of night court is home confinement, in which probationers are restricted from leaving their homes except for work and other necessities. Of the 12,000 cases in which defendants were ordered to probation, 841 individuals have been placed on home confinement, 9 have been placed in residential treatment programs, 19 have been evaluated by TASC, and another 1,437 have been placed in a special treatment program, the Focused Offender Program, funded by the county. The Focused Offender Program has recently ended, shutting down the primary treatment road.

Surprisingly few offenders are evaluated or given treatment, but that primarily results from large numbers of offenders being ineligible for TASC. Offenders deemed ineligible for treatment programs are those charged with a drug sales offense or those who do not make a commitment to being treated; combined, these reasons preclude treatment for many offend-

ers. Judges could, of course, order a TASC evaluation and force the offender to be tested, but they are understandably reluctant to order the evaluation when the offender acknowledges up front that he doesn't want treatment. Judges know offenders with that attitude will not be accepted even if the evaluation indicates a need for treatment. The evaluation takes 6 to 8 weeks to be completed—6 to 8 weeks of wasted time and delay.

DRUG NIGHT COURT CLERKS—WHAT WAS DONE

The clerk's office received no new funds to staff the night court; it had to draw from existing sources. When the five courtrooms opened, the clerk's office looked for volunteers, inasmuch as the office is unionized and the union opposed forcing people to work at night.

The union also insisted that the clerks receive a clerk's courtroom pay, which is higher than that of some clerks who work outside the courtroom. This helped provide an incentive to volunteer because it meant a pay increase, but volunteers were still hard to find. The office just "squeaked by," according to Gerald Sciaraffa, acting chief deputy clerk of the Circuit Court, Criminal Division. With five volunteer clerks, they had no backup when someone became sick, but fortunately they found a dedicated, and healthy, group and kept the courts adequately staffed.

Clerks work from 3 to 11 p.m. or until the judge is finished. If they work late or are required to be there during the day for jury trials, they receive time-and-a-half compensatory time. (Normally, another day clerk handles the trials, but in a particularly complicated case the judge may request his or her clerk to handle the trial.)

Should the judge finish before 11 p.m., the clerks are required to stay and do paperwork. Since some judges routinely finish early while others almost always finish late, we asked if clerks assigned to judges who work late were routinely disadvantaged. We were told no. When a judge finishes early, it is because a fast pace was set between cases, and the clerk will have lots of paperwork to complete at the end of court. When a judge finishes late, it is because

a slower pace was set between cases, and the clerk can usually keep up with the paperwork throughout the night and be done when court ends. Because all the judges handle about the same number of cases, the clerks have about the same amount of work to do; only the pace varies.

When the number of courtrooms was expanded to eight, clerks were again recruited on a volunteer basis, and just enough were found to staff the courtrooms.

In the opinion of Sciaraffa, the night court experience works because "they didn't force people to come in. They are here because they really want to be."

Supervisors, however, are not volunteers. When no supervisor wanted night duty, the clerk's office decided to rotate the position among senior staff. Each member takes a week at a time every few months so that no one feels too put upon.

Efficiency at night was assessed as being just as good as during the day. At first the night courtrooms did not have their own computer. This was a problem, but now that they do have one, clerks have ready access to warrant and other information vital to a case. Also, the file room is open until 9 at night should a clerk need to retrieve a file. (Judges almost always will know by 9 p.m. if they need a file, since they would have gone through at least the first call.) If a file is needed, a student intern runs the files back and forth from the vault to the courtroom.

DRUG NIGHT COURT SECURITY PERSONNEL—WHAT WAS DONE

The Cook County sheriff is responsible for security at the courthouse. Currently 42 deputies are assigned to provide security for the drug night and bond courts. There is no pay differential for night duty. The department is unionized, and it was agreed that the night assignment would first be offered to volunteers and then the least senior people would be assigned. At first, night duty was seen as "a nice gig," according to the head of jail operations, Ed Carrick, but now the courts are busier and volunteers are harder to find. This necessitates assignment of least-senior personnel. Carrick states that the security at night is comparable to the security provided for day court.

EFFECTS OF THE DRUG NIGHT COURTS

Officials in Cook County offered many opinions about how the drug night courts had affected case processing in both positive and negative ways. Of course, the primary intended impact of the courts was to speed up disposition of drug cases. The courts would accomplish this by removing narcotics cases from competition with violent felonies in the general felony courts—a competition in which drug cases came up short and were postponed—so that officials could concentrate

on disposing the violent felonies. With the vast numbers of drug cases removed from the general felony calendars, some observers thought court officials would have more time to spend on violent crimes and thus the “quality of justice” in those cases would be enhanced.

Concerns were voiced, however, about possible undesirable effects of the new drug courts as well. Some complained that they promote “assembly-line” justice for defendants accused of narcotics crimes. This apparently manifested itself in several ways. First, said the critics, drug treatment for defendants is rarely given because defendants placed on probation have little incentive to volunteer for treatment, and unless they want treatment they will not be accepted by TASC. (TASC also will not accept offenders charged with drug sales, and according to Judge Fitzgerald, there are few simple possession cases in Cook County.) As a result, most defendants are routinely placed on probation without treatment being made a condition of their probation.

This is a quick way to get rid of cases, some officials claimed, but not necessarily in the best interest of defendants who have serious drug problems and who may, without treatment, simply run afoul of the law again and wind up serving a term in the State penitentiary because of a previous conviction. Inasmuch as acceptance into the TASC program is predicated upon the offender’s willingness to obtain treatment, it is unclear how to encourage less motivated defendants to get the treatment they need.

Officials who believe that the new drug courts are

making decisions too hastily also believe that the rate of jury trials has declined. This was said to result from the fact that jury trials arising from the night courts are held during the day, but by night court staff. To hold a jury trial, night court staff have to come in early and then work their regular night court shift afterward. Critics also speculated that the rapid pace of night court discourages suppression and other motions by defense attorneys.

Some officials believe that private defense attorneys, most of whose cases are on the daytime calendars, dislike night court. These observers fear that private attorneys are representing defendants in fewer narcotics cases since the night courts opened and that private attorneys are more likely to be absent than they previously were. The research design for this study sought to ascertain whether holding court at night might have an opposite effect on the attendance of defendants. Would the night courts encourage defendant attendance by making it easier on those who worked during the day?

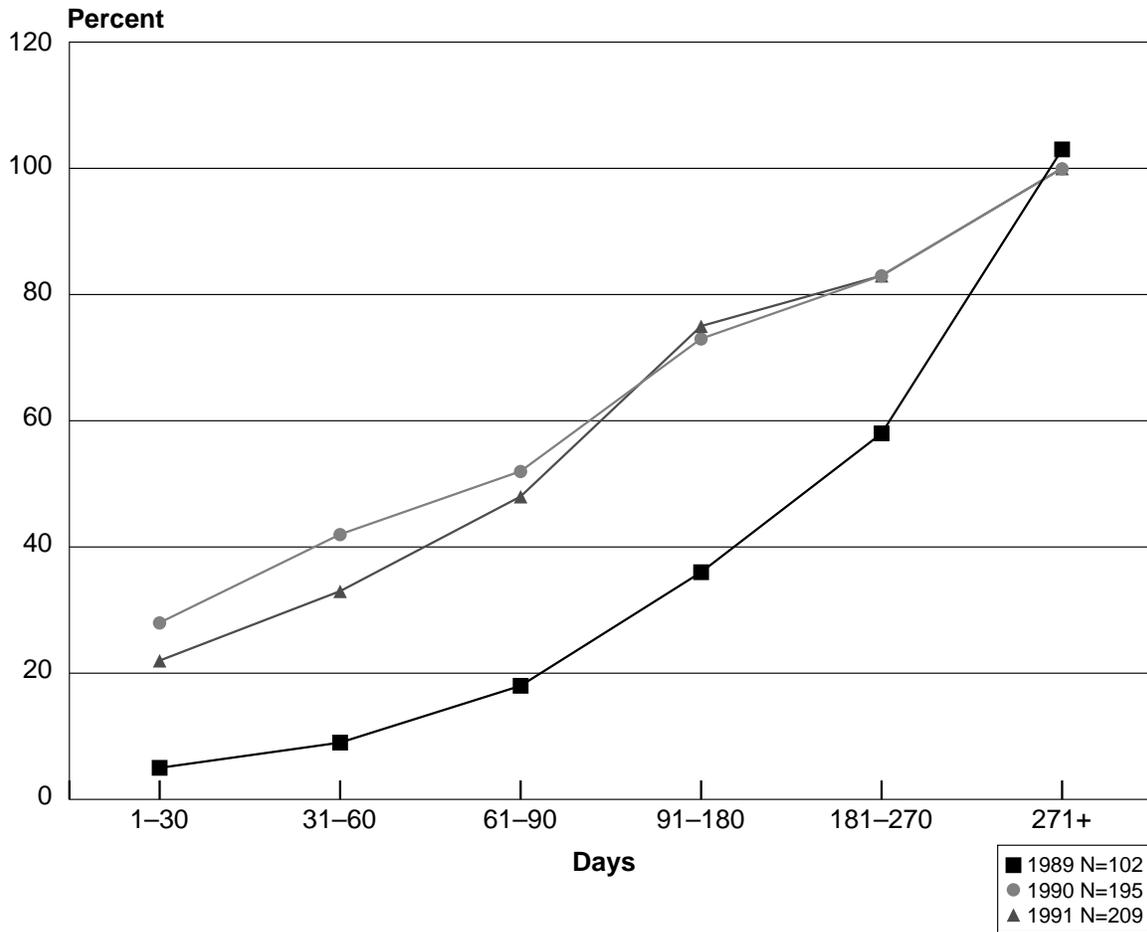
In addition, the research team was concerned with discerning, based on its own observations, whether the night courts lost efficiency when additional information was needed on defendants’ probation or drug treatment histories, on their criminal histories, or on other ongoing cases in another courtroom. During day court such information could be obtained from manual or computer files. But the question arose whether this type of information might be less accessible at night because courtrooms were locked or data clerks unavailable. If that were true, then missing information might be more likely to cause postponements at night than during the day.

Answering these questions required looking at court files of night court cases and of narcotics cases that were disposed in the general felony courts prior to the establishment of the night courts. Three samples were examined:

- 205 narcotics cases assigned to a circuit court

Exhibit 1

Changes in Processing Time, Cook County Drug Night Court



Data in 1989 curve are taken from a sample collected for an earlier study by the ABA for the State Justice Institute. The sample was drawn from a time period similar to that of the 1989 sample in the current study, and methods of selecting cases were also similar.

Differences between samples is significant at the .001 level. Chi-square (χ^2) = 6.89 with 10 degrees of freedom (df).

judge in April and May 1989, 5 to 6 months before the drug night courts opened on October 16, 1989 (1989 sample).

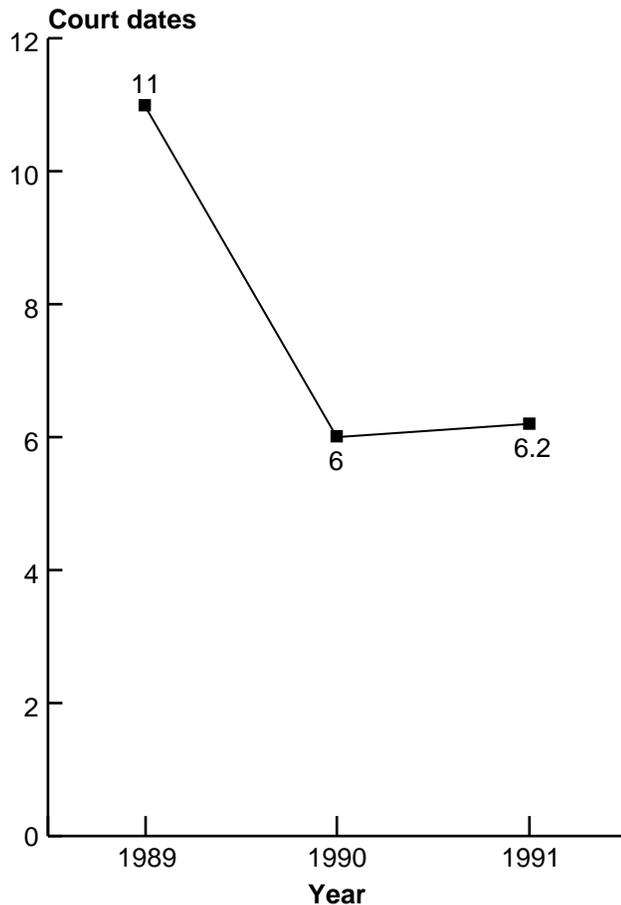
- 195 cases from drug night calendars assigned in April and May 1990, 7 to 8 months after the night courts opened (1990 sample).
- 209 cases from drug night calendars assigned in April and May 1991, 19 to 20 months after the night courts opened (1991 sample).

Each sample was drawn in a way to ensure that

cases were representative of all cases during that time period. For each case sampled, information from court files was recorded on processing time, disposition and sentence, failures to appear by defendants and their attorneys, and motions filed. These data provided a clear look at how narcotics cases were processed just prior to creation of the drug night courts (1989 sample), how cases were processed shortly after creation of the drug night courts (1990 sample), and how cases were processed recently in the drug night courts (1991 sample).

Exhibit 2

Mean Number of Court Dates per Case for Narcotics Cases



$F(2.599) = 60.66, p < .00001$

Structured observations conducted in night as well as day courts sought to determine whether missing information more often led to continuances at night compared to day sessions. Thus, 1,469 cases were observed during 31 night court sessions between January 6 and January 25, 1992, and 212 cases were observed during 10 daytime felony court sessions between January 27 and February 3, 1992.

The observers attended each session from beginning to end and completed a data form for each case. These completed forms contained the following defendant information: name, charge(s), docket number, type of hearing, type of attorney, and custody status.

In addition, the form provided space for recording the date of the hearings; the courtroom number; the time of the first, second, and third calls, and adjournment; the number of attorneys, defendants, witnesses, and police officers; and the action taken on the case during each of the calls. (Detailed information on the day and night samples is presented in the appendix.)

CHANGES IN PROCESSING SPEED

There is no question that processing time of narcotics cases has been dramatically reduced since the drug night courts were established. Presiding Judge Fitzgerald said he had hoped for 5,000 dispositions annually from the new narcotics courts. During 1990 they actually disposed of 9,700 cases.

The sample data showed a large reduction in time from case assignment to sentencing. Before the opening of the night courts, only 18 percent of narcotics cases were adjudicated and sentenced within 90 days of assignment. After the courts opened, 52 percent were disposed within 90 days in the 1990 sample and 48 percent were disposed within 90 days in the 1991 sample (exhibit 1). Median time to disposition fell from 245 days in the 1989 sample to 86 days in the 1990 sample and 95 days in the 1991 sample.

Sharp declines also occurred in the number of court dates per case after the drug night courts began. Exhibit 2 shows that the mean number of court dates per case dropped from about 11 in the 1989 sample (before drug night court) to just over 6 in both the 1990 and 1991 samples.

CHANGES IN DISPOSITION PATTERNS

The sample data showed a statistically significant shift in disposition patterns for drug offenders with the opening of the night courts (exhibit 3). The rate of guilty pleas rose from 56 percent in the 1989 sample to 71 percent in the 1990 sample and to 77 percent in the 1991 sample. At the same time, dismissals fell from 15 percent in 1989 to just 7 percent in 1991. The rate of trials also fell, from 29 percent in 1989 to 20 percent in 1990 and 16 percent in 1991. Surprisingly, the

decrease in trials was primarily in bench trials, not in jury trials as might have been expected. (Recall that officials have to work double shifts in order to hold jury trials.) Jury trials after the inception of the night courts were virtually nonexistent, but they were also very rare events (occurring in just 2 percent of the cases) when narcotics cases were processed in the general felony courts.

Sentencing practices changed as well (exhibit 4). Prior to the opening of the drug night courts, prison was more common for narcotics offenders than probation. In the 1989 sample, 55 percent of offenders

were sentenced to prison and 45 percent to probation. After the drug night courts opened, the reverse was found: In the 1990 sample, only 32 percent of offenders were sentenced to prison, and 68 percent were sentenced to probation. This reversal held up in the 1991 sample, when 33 percent of convicted offenders were sentenced to prison and 67 percent to probation.

Of course, sentencing patterns may have changed for reasons other than segregating cases in night court. Judge Fitzgerald and Deputy State's attorney Al Tomasco believe that sentences became more

Exhibit 3

Disposition Patterns for Narcotics Cases

Excludes open cases and outstanding bench warrants.

	<u>1989 Sample</u> (n = 190)	<u>1990 Sample</u> (n = 183)	<u>1991 Sample</u> (n = 172)
Dismissed/acquitted	15%	10%	7%
Pled guilty	56	71	77
Found guilty, bench trial	27	19	16
Found guilty, jury trial	2	1	0
	<hr/> 100%	<hr/> 100%	<hr/> 100%

$\chi^2 = 22.3$ with 6 df, $p = .001$

Exhibit 4

Sentencing Patterns for Convicted Narcotics Offenders

	<u>1989 Sample*</u> (n = 83)	<u>1990 Sample</u> (n = 155)	<u>1991 Sample</u> (n = 153)
Probation (Mean days)	45% (900)	68% (646)	67% (728)
Incarceration (Mean days)	55% (1,498)	32% (1,103)	33% (1,217)
	<hr/> 100%	<hr/> 100%	<hr/> 100%

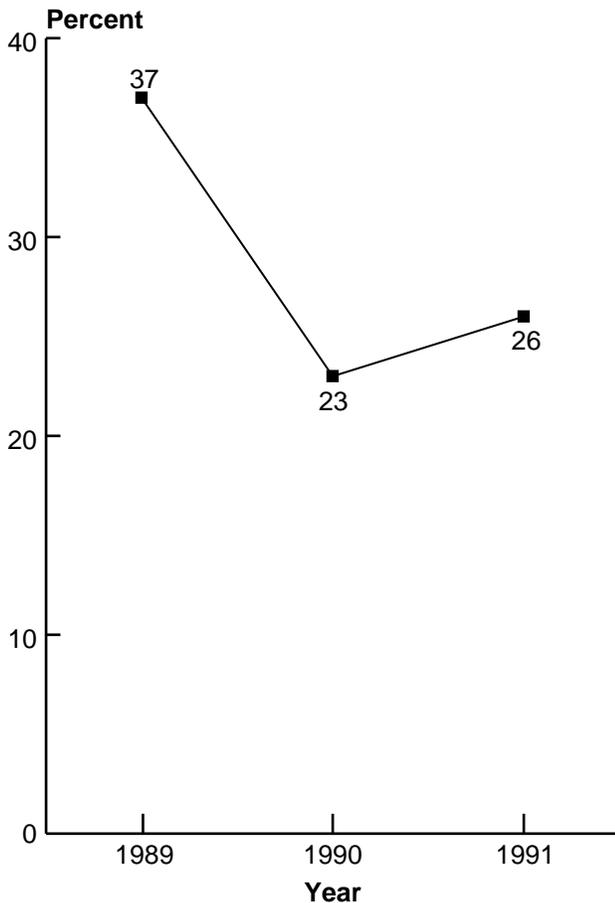
Difference between samples in type of sentence (probation vs. incarceration) is significant at the .01 level ($\chi^2 = 14.72$ with 2 df).

Difference between samples in length of probation terms is significant at the .001 level ($F[2,242] = 9.64$).

*Data in the 1989 column are taken from a sample collected for an earlier study by the ABA for the State Justice Institute. The sample was drawn from a time period similar to that of the 1989 sample in the current study, and methods of selecting cases were similar.

Exhibit 5

Proportion of Defendants Represented by Private Attorneys



lenient because the police began making arrests for those caught with smaller amounts of drugs than in the past. They feel this contributes to more lenient sentences. The willingness of the prosecutor to plea bargain on drug cases may have been a factor as well.

Ultimately, whether the change in sentence disposition is seen as troubling depends on what one thinks is the appropriate sentence for drug offenders. If one believes probation is the best response in many cases, the increased use of probation by the drug night courts can be viewed as a positive move away from the unduly harsh sentences of the past. On the other hand, if one believes heavy reliance on probation is inappropriate for many drug offenders, the increased use

of probation will be viewed as negative and “giving away the courthouse.”

Terms of probation declined significantly after the drug night courts began (exhibit 4). Before the advent of night courts, terms of probation averaged 900 days for narcotics offenders. This dropped to 646 days shortly after the night courts’ creation and 728 days in the most recent sample. No significant decline was observed in prison terms.

Referrals to TASC held constant from the 1989 sample to the 1991 sample. In each year just 4 percent of sampled cases included a provision that offenders report to TASC as part of their sentence.

Finally, the samples were examined as to whether the coming of drug night courts changed the rate at which motions were filed (half of those filed were to suppress evidence). No significant difference was found from one year to the next: 22 percent of the 1989 sample cases had one or more motions filed compared to 27 percent in the 1990 sample and 21 percent in the 1991 sample.

CHANGES IN REPRESENTATION BY PRIVATE ATTORNEYS

The samples next were examined for whether the proportion of defendants represented by private attorneys rather than public defenders changed with the opening of the drug night courts. The rate of representation by private attorneys did indeed decline significantly. In the 1989 sample, 37 percent of defendants were represented by private attorneys. This declined to 23 percent in the 1990 sample and 26 percent in the 1991 sample¹ (exhibit 5).

CHANGES IN DEFENDANT AND ATTORNEY APPEARANCE RATES

The last issue explored was whether scheduling hearings at night rather than during the day had any effect on the likelihood of defendants and their attorneys appearing in court. First noted was a significant decline in the proportion of cases in which defendants failed to appear one or more times, from 39 percent

Exhibit 6

**Dispositions of
Nonnarcotics Cases**

Excludes open cases and outstanding bench warrants

	1989 Sample	1990 Sample
Nolle/dismissal/ acquittal	8%	14%
Suspended sentence/ time served	2%	2%
Probation (Mean days)	30% (793)	27% (748)
Jail less than 1 year* (Mean days)	5% (138)	8% (89)
Incarceration 1 year + (Mean days)	55% (2,049)	49% (2,599)

*Includes offenders sentenced to weekend or evening jail confinement.

Exhibit 7

**Processing Speed of
Nonnarcotic Cases**

	1989 Sample	1990 Sample
30 days or less	5%	6%
31–60 days	5	7
61–90 days	7	17
91–180	25	23
181–270	19	20
271–365	8	9
366 days +	30	18
	100% (n = 100)	100% (n = 100)
Median days	215	170

(Differences between pre and post cases are significant at the .05 level.)

in 1989 to 23 percent in 1990 and also in 1991.² This decline may simply result from the fact that—as observed above—the cases of night court defendants had fewer court dates and, therefore, defendants had fewer opportunities to miss a date.

To determine if there was a difference in defendant attendance due to the scheduling of cases at night as such, the research team considered an attendance *rate*; that is, missed appearances divided by required appearances. In the 1989 sample, defendants missed an average of 7 percent of their court dates, compared with 6.3 percent in the 1990 and 1991 samples. These differences being too small to approach statistical significance, the conclusion was that holding court at night does not in itself affect defendants' willingness to appear.

Also examined were appearance rates for defense attorneys, whose dislike of coming to court at night had been so strongly reported. Virtually no difference was found in the proportion of defense attorneys who missed at least one appearance in the 1989 sample (4 percent) to the 1990 sample (2 percent) to the 1991 sample (3 percent). Nor was there any meaningful difference in *rates* of defense attorney absence, which were well under 1 percent in all 3 years sampled. Last, with public defenders considered unlikely to be absent when they are assigned to a particular court, attendance was examined for private attorneys only. Differences found between the samples in the proportion of private attorneys who missed at least one court date were only slight and nonreliable: 9 percent in the 1989 sample, 5 percent in the 1990 sample, and 6 percent in the 1991 sample.

**CHANGES IN PROCESSING
OTHER FELONY CASES**

Both prosecution and defense representatives agreed that opening the drug courts made it possible to give violent felony cases more time and attention. After the drug courts opened, 48 percent of all felony filings were shunted to them. As a result, caseload-to-judge ratios in the other felony courts were halved.

Exhibit 6 shows no change in patterns of dispositions and sentences in nondrug cases as a result of the drug night courts (data on nondrug felonies were gathered for 1989 and 1990 only). The data do, how-

ever, show a statistically significant decrease in processing time for nondrug cases, from a median of 215 days prior to the drug night courts to 170 days after the drug courts opened. Exhibit 7 depicts processing time for nondrug cases before and after the drug night court operations began.

MISSING CASE INFORMATION

The last issues explored were whether file information was more often missing at night and whether, when information was missing, night cases more often had to be continued to another date because the information could not be readily obtained. Comparing the proportion of cases in night and day courts in which cases had to be recalled because file information was missing at first call revealed only slight differences between them (10 percent night versus 16 percent day).

Day and night courts were compared also in terms of what happens when file information is absent. In the night courts, when file information was missing at first call, 21 percent of cases were ultimately continued to another day compared to a 13 percent continuance rate when no file information was missing. In the day courts 29 percent of cases with missing file information were continued to another day compared to 6 percent when no information was missing. Thus, contrary to our expectations, it seems that missing file information has a more delaying effect on day courts than night courts.

Notes

1. Chi-square (χ^2) = 10.30 with 2 degrees of freedom (df); $p < .01$.
2. $\chi^2 = 13.51$ with 2 df; $p < .001$.

WHAT STAFFS THINK OF CHICAGO DRUG NIGHT COURTS

Earlier this report provided the perspective of supervisors on the problems associated with staffing night court. We turn now to the perspective of those directly working those courts. Those two perspectives are different. Line staff reported more problems and concerns about the night court than did their supervisors.

A survey of key professionals assigned to these courts yielded responses from 6 of the 8 drug night court judges, 21 of the 24 State’s attorneys, 12 of the 16 public defenders, 7 of the 8 clerks, and 12 of the 16 probation officers. In this sample, 19 percent of the respondents had worked the night shift for less than 3 months, 28 percent for 4 to 6 months, 29 percent for 7 to 12 months, and 24 percent for 13 to 36 months (n=58).

PROBLEM AREAS

To learn the concerns of night court staff, the survey

listed 10 problem areas and asked the professionals to circle any they believed were more problematic for night staff than for day court staff. This procedure sought to discern any differences between the groups of professionals as well as any differences in perception among newcomers as contrasted with veterans working in night court.

As depicted in exhibit 8, the most frequently cited problems were fatigue, access to information, security problems, time to interact with family, lack of scheduled breaks (or facilities for breaks), the fast pace of night court, and isolation. Few noted problems with transportation, child care, or other problems.

Fatigue. One would surmise that working the night shift would be tiring, especially in a fast-paced courtroom. Not surprisingly, fatigue was the number one problem cited by night court professionals. Fatigue came from a number of factors. By far the biggest complaint had to do with jury trials, which are conducted during the day and thus require extra hours in

Exhibit 8

Frequency of People Who Acknowledge Problems by Role

<u>Problem</u>	<u>Total</u> n = 58	<u>Judge</u> n = 8	<u>State’s Attorney</u> n = 21	<u>Public Defender</u> n = 12	<u>Clerk</u> n = 17	<u>Probation Officer</u> n = 12
Fatigue	60%	83%	57%	67%	29%	67%
Access	57	17	48	58	43	100
Security	55	67	52	58	43	58
Family ties	52	67	67	42	29	42
Breaks	48	17	43	67	43	58
Pace	47	33	38	75	14	58
Isolation	35	17	33	67	14	25
Transportation	12	17	–	25	14	17
Child care	12	17	14	17	14	–
Other	17	17	19	33	–	8

addition to the regular full evening shift. A second concern is the level of efficiency, which seems to decline late in the evening, and having to work until midnight or later. Others voice the need for breaks (see below). Finally, the fast pace coupled with the other three concerns leads a few night staffers to report feeling “drained,” “fried,” and just plain “burned out.”

Some of their comments illustrate the problem:

- 4 p.m. is when court starts. That is usually the end of the day. It is difficult to be as fresh and energetic as one would be at 9 a.m.
- Even though you may sleep a bit later, you are still functioning 18 hours a day with the last 8 to 12 hours of your day spent at work.
- Working from 3 p.m. to 11 has caused me to suffer from severe insomnia—I am not able to unwind after working 8 hours at an extremely rapid pace.

Access to Information. Over half the respondents in the survey reported problems obtaining needed case file or defendant information. For example, the probation officers noted that while their own file room closes at 4:30 p.m., night court does not even begin until 4. Day courtrooms are locked so they can’t look at the judges’ sheets for case dispositions for defendants with multiple cases. They also complain of a lack of support staff to help locate files, dispositions, and other necessary paperwork at night.

The public defenders also have problems with access, reporting that jail records and records from the clerk’s office cannot be obtained after 4:30 p.m., that the computer is sometimes “down” at night, and that it is very difficult to order preliminary hearing transcripts and contact other attorneys involved with their clients because they work the “day shift” and are gone by the time the defenders arrive to work at night.

Security. Over half the respondents reported concern with security. Judges seemed to be most concerned, but many public defenders, State’s attorneys, clerks, and probation officers also noted security concerns, especially in going to their cars at the end of the night. In an effort to overcome their concerns, staff commonly escort each other out to their cars. As one respondent summed it up, “Going from the court to your car can

be scary, but we usually travel in packs.”

Time With Family. Just over half the respondents cited problems due to the lack of time to see their family. One married staffer with children said, “The only time I can see my family is on weekends, because by the time I get home they are asleep and they are gone before I get up.” A married couple, both on staff, used the cliché “ships passing in the night” to describe the impact on their relationship. A staffer who is single reported isolation from friends as well. Of course, as one person pointed out, these are problems that “anyone would have who works at night regardless of what job they did.”

Comments such as these were common:

- Working nights can be isolating as far as personal life goes because I am off when friends and family are working or in school, and I’m working when everyone else is getting home. Until I worked nights I never realized how much I do in the early evenings.
- If you have children who are in school, it is hard to make time to see them during the week. This is the single biggest problem I have.
- Spouses or significant others often do not like the hours, especially if they work during the day.

Breaks. Close to half the sample reported problems with breaks. Many bemoaned the lack of time for breaks and the fact that snack and sandwich shops are closed at night. Illustrative comments included:

- Everyone in the courtroom is in a hurry to leave, therefore, no one takes lunch hour breaks or breaks.
- I find it difficult to go straight through without a cup of coffee or water.
- By the time we get to court the snack shops, etc., are closed. We go at times for 8 to 10 hours without eating or taking a break.

Pace. Nearly half the professionals working in the night courts reported that the pace is too fast. One attorney characterized the nightly caseload as “staggering.” Some public defenders reported feeling compelled to advise their defendants to “plead guilty or not in 5 minutes.”

The pace questions yielded some of the most colorful

and strongly phrased comments:

- I feel that working 2 years at night is like 5 years during the regular day shift.
- Night court is a production line that is going through the motions and pumping out dispositions without worrying about rehabilitation.
- Night court is like a cattle call. It does not engender any respect for the call.
- This is a mill, not a court of law. The caseload is too high and the expectations for dispositions are unrealistic if you want justice.

Isolation. Over a third reported isolation from their regular court colleagues. Attorneys pointed out that training sessions and meetings are often scheduled during court hours. Also, they cannot contact their day court colleagues in order to discuss ideas and to exchange information. Comments included the following:

- A real problem exists to the point where one wonders if a pox is upon us.
- I feel isolated from the assistants who work all day. There seems to be more of an emphasis on individuality rather than teamwork amongst the assistants.

Transportation and Child Care. Compared with other problems, few noted problems with transporta-

tion or child care. For those who said child care was a problem, it was jury trials that threw a wrench in their carefully constructed child care plans, due to the fact that jury trials are held during the day.

Other Problems. Those surveyed were asked to describe any other problems they have working in night court. Nearly a fifth of the sample listed other problems. Some comments not covered by preceding sections include: “makes a numbers game out of serious crime and no attention toward treatment”; “single-issue courtroom; assembly-line justice”; and “lack of flexibility. . .we would like to be able to work a flex-shift when we are not in court.”

PROBLEMS ASSOCIATED WITH JOB ROLE

The research team examined differences in the frequency with which judges, State’s attorneys, public defenders, clerks, and probation officers cited particular problems working at night. Clerks noted the fewest problems overall—none of the problems elicited a positive concern by more than half the clerks. More than half the judges mentioned fatigue, security, and the lack of time with family. The majority of State’s attorneys noted these problems, plus an access problem. Over half the public defenders and

Exhibit 9

Frequency of Acknowledgment of Problems by Length of Time on Night Court

<u>Problem</u>	<u>Total</u> n = 58	<u>1–3</u> <u>Months</u> n = 11	<u>4–6</u> <u>Months</u> n = 16	<u>7–12</u> <u>Months</u> n = 17	<u>13–36</u> <u>Months</u> n = 14
Fatigue	60%	36%	75%	71%	50%
Access	57	46	50	65	64
Security	55	64	38	65	57
Family ties	52	73	44	59	36
Breaks	48	48	63	59	36
Pace	47	27	38	71	43
Isolation	35	46	25	59	7
Transportation	12	–	6	24	14
Child care	17	36	–	24	14

probation officers added pace and the lack of breaks to the list, while more than half the public defenders also said isolation was a problem (exhibit 8).

Based on the number of problems each group checked, one can determine how problematic it is for persons in their professional role to work in night court. Of the 10 problems about which the survey inquired, the mean number checked was 3.94 (n=58). Public defenders rated the highest on the problem scale with a mean response of 5.08 (n=12), followed by probation officers (4.33, n=12), State’s attorneys (3.71, n=21), and judges (3.50, n=6). Clerks reported the fewest problems (2.43, n=17).

PROBLEMS BY LENGTH OF TENURE

Wondering whether newcomers or veterans had more problems working at night, the researchers found that those with the most problems are in the 7- to 12-month group (5.12, n=17), followed by the new staffers (1 to 3 months, 3.91, n=11), and the 4- to 6-month group (3.38, n=16). Those reporting the fewest problems were those in night court the longest, 3.21 (n=14), although no clear linear relationship was found.

Exhibit 9 reflects the type of problems staff reported by the length of time they worked in night court. There is no clear pattern—some problems increased and some decreased over time.

Job Interference. Respondents were given the op-

portunity to describe the kinds of things they feel interfere with their ability to do their job well. This open-ended question yielded three common responses: a lack of time/too high a caseload (64 percent); a lack of access to information (14 percent); and a lack of resources/lack of support staff (8 percent).

Job Facilitators. Respondents were then asked to list things about night court that made their jobs *easier*. Six categories of facilitators emerged: increased autonomy/lack of interruptions (58 percent); days are free/less commuting time (17 percent); increased efficiency with specializing in drug cases (13 percent); increased pleas (4 percent); feeling that they were making a difference by being part of new experiment (4 percent); and increased access to clients in jail during the day (4 percent).

Comments such as these were common:

- It gives you an opportunity to do other things in the morning. You don’t have many distractions.
- My colleagues have a good blend of youth and experience. They are able to handle this difficult high-volume court call.
- You see the same type of cases. You are able to do one or two things at once very well. It gets to be pretty routine.
- After 4 p.m., it’s quiet in the office and you can concentrate better. And there is no waiting time to get on the computers.

Exhibit 10

Preference for Night or Day Court by Role

	<u>Total</u> n = 58	<u>Judge</u> n = 6	<u>State’s Attorney</u> n = 21	<u>Public Defender</u> n = 12	<u>Clerk</u> n = 17	<u>Probation Officer</u> n = 12
<u>Preference</u>						
Strongly prefer days	46%	33%	62%	50%	43%	25%
Somewhat prefer days	24	50	28	17	–	25
Somewhat prefer night	12	–	5	16	–	33
Strongly prefer night	9	–	–	–	43	17
No preference	9	17	5	17	14	–

Advice for Other Courts. What advice would night court staffers give to a jurisdiction considering initiation of a drug night court? Our respondents came up with four categories (n=40): have enough trained staff at all levels (40 percent); don't start a night court/or start it cautiously (35 percent); offer compensation/or only use volunteers for staffing the night court (13 percent); increase access to information (5 percent); and a variety of "other" responses (7 percent, n=3). The following comments were given:

- Ask for volunteers and give a night court bonus for those who do volunteer. It is definitely a hardship for mothers. There should be some compensation to make up for the hardship.
- Urge legislators to look at the source of this drug epidemic, or you'll soon be having 24-hour drug courts to try and accommodate the volume. We're just spinning our wheels in court—education and better allocation of resources is

the key.

- The drug night program in Cook County is a farce implementing cattle-call justice, half-baked trials, and the inconvenience of choosing a jury trial infringes on defendants' constitutional rights and makes "jury tax" formidable.
- Run your night courts like your day courts. Do not overload them with cases. Do your jury trials at night just as the day court does its juries during the day.

Preference for Night Duty. Finally, given the opportunity to do the same job, would the staff persons prefer night or day court work? In the Cook County sample, 46 percent of the respondents overall strongly prefer days, followed by 24 percent who somewhat prefer days, 12 percent who somewhat prefer nights, 9 percent who state no preference, and 9 percent who strongly prefer nights. Differences by role are reflected in exhibit 10, which shows that most judges, State's attorneys, and public defenders prefer day work, but half the probation officers and four-fifths of the clerks prefer night work.

CONCLUSION

Line staff pointed out many problems with working at night and a few advantages. It is important to note that day court staff were not surveyed. Problems mentioned by the night court staff may well be shared by their colleagues in day court, and day court staff might list problems not experienced by the night staff. The intent was not to compare day and night workers but to ferret out problems associated with night court to help other jurisdictions. Indeed, along with criticisms, some of our respondents had some helpful suggestions for those contemplating implementation of night courts.

NATIONAL SURVEY RESULTS

A national survey sought to determine whether cities other than Chicago had experience with running court sessions at night. Respondents were asked whether they currently operated courtrooms at night, whether they had operated courtrooms at night in the past, and if not, whether they had ever considered nighttime operations. Questionnaires went to the presiding judge, district attorney, and public defender in the Nation's

50 largest counties. Responses came back from 130 officials, representing all the jurisdictions sampled.

Eight courts had current nighttime operations. Six courts replied that they had nighttime hours in the past, and 10 courts said they had considered implementing nighttime hours.

Only 18 percent of respondents believed that officials in their cities would support the idea of nighttime operations. Obstacles that were cited, in order of frequency, included:

- Insufficient resources (80 responses).
- Security concerns (21 responses).
- Insufficient interest (19 responses).
- No need for night court (12 responses).
- Problems with jurors or witnesses (11 responses).
- Reluctance of staff to share office, court, and parking space with night shift (11 responses).
- Not as productive as day court (5 responses).
- Quality of justice likely to be poorer at night (5 responses).

Aside from Cook County, all current night operations were only for arraignments, and therefore not directly relevant to the current research. Two courts that had previously run night operations had relevant experiences, however. **Brooklyn, New York**, had received a Justice Department grant in the early 1980's to hold felony jury trials at night. The project lasted only a year, conducting jury trials between 6 and 11 p.m. Exit surveys with jurors and witnesses showed that

they generally had no objection to coming at night. Most jurors liked it because they were able to continue working at their jobs while they served. Van transport home was provided to both jurors and witnesses to blunt concerns about safety.

The district attorney manned the night part with staff who volunteered for the assignment. The night supervisor was promoted into the slot and was, therefore, happy for the opportunity. The judge was an acting State Supreme (felony) Court judge, and also happy for the assignment. However, there was one major problem encountered with staffing the experiment: the Legal Aid Society did not participate, apparently because its union refused to work at night. The project had to get its cases from private attorneys who volunteered to have their cases tried at night. In spite of strenuous efforts by the district attorney's office to solicit cases from private attorneys in the arraignment parts, the project was never able to establish a sufficient caseflow to justify its existence.

Another serious problem for the project was that the presiding trial judge refused to establish a backup case system. As a result, the court would simply close for the evening on days when the case scheduled for trial was disposed by a guilty plea during jury selection. Staff members considered this a privilege that helped compensate them for working night hours, but going home early further reduced the efficiency of the night operation.

Los Angeles operated a night court from 1985 through December 1991. Three Superior Courts and one Municipal Court (to handle arraignments and preliminary hearings) operated from 2:30 until 10:30 p.m. in their main downtown location. Unlike those in Cook County, these courts handled a variety of cases but excluded death penalty cases, cases with more than three defendants, and sex crime cases because the courts wanted to avoid cases in which lengthy trials were expected.

This variety was critical to maintaining staff for the courts in the opinion of Bob Jordan, the deputy district attorney in charge of night courts. He believes it would have been hard to find staff who would only

get drug cases to handle. In Los Angeles all of the staff were volunteers. Observers believed the duty was welcomed by judges, public defenders, prosecutors, and police officers assigned to night court. There were no reported problems with witnesses, victims, or jurors attending night court. An evaluation performed by Harvey Rose Accountancy Company assessed the night court favorably. Despite this, Superior Court judges resisted the idea from the beginning, fearing that all courts would be scheduled to run double shifts. Eventually these judges were able to stop the night courts by refusing to assign judges to them.

APPENDIX: DETAILED INFORMATION ON THE OBSERVATION SAMPLES

Number of Cases Heard. Night court judges heard a total of 1,469 cases, day court judges a total of 212 over the 3-week study period. Overall, night court was much busier than day court. In night court the range of cases processed per session was 24 to 74. In day court it was only 12 to 27. Exhibit A-1 presents the mean (average) number of cases heard in each of the observed day and night courts. Considerable differences appeared in these averages. There were differences both between and among day and night court judges. Night court judges handled a significantly greater number of cases ($M = 46.97$) when compared to day court judges ($M = 21.20$) [$t(39) = 27.83$, $p < .0001$]. In addition, night court judges were considerably less alike than were day court judges in the number of cases they processed per court session. The variability of the number of cases heard each session among night court judges ($s^2 = 175.50$) was more than four times greater than the variability

among day court judges ($s^2 = 41.07$) [$F(30.8) = 4.28$, $p < .05$].

Types of Charges. The State leveled a total of 2,343 charges against the defendants processed through the observed night ($n = 1,912$ charges) and day court ($n = 431$ charges) sessions. Night and day court differed significantly on the average number of charges pressed per case (M day court = 2.03) (M night court = 1.31) [$t(1679) = 10.54$, $p < .0001$]. As expected, the vast majority (83 percent) of charges against night court defendants were for drug crimes. The most common charge was possession of a controlled substance with intent to deliver (34 percent), followed by possession of a controlled substance (21 percent), delivery of a controlled substance (19 percent), and manufacture and delivery of a controlled substance (9 percent). Other common night court charges were for armed violence (6 percent), unlawful use of a weapon (3 percent), and violation of probation (3 percent) (Exhibit A-2).

Exhibit A-1

Average Number of Cases Heard in Night and Day Court

Night Court		Day Court*	
Courtroom	Average	Courtroom	Average
301	49	204	14
302	39	207	15
303	51	304	27
304	70	305	23
305	51	308	27
306	47	600	12
307	38	602	28
308	39	604	22
		700	16

*Eight of the nine average cases heard in day court were based on a sample of only one judge.

Exhibit A-2

Charges Against Night Court Defendants

Type of Charge	<i>n</i>	% of Total
Possession with intent to deliver	658	34
Possession of controlled substance	402	21
Delivery of controlled substance	360	19
Manufacture and delivery	170	9
Armed violence	113	6
Unlawful use of weapon	62	3
Violation of probation	59	3
Miscellaneous	88	5
Total	1,913	100

Exhibit A-3

Charges Against Day Court Defendants

Type of Charge	<i>n</i>	% of Total
Murder	69	16
Burglary	42	10
Battery	41	10
Sexual assault	40	9
Robbery	35	8
Unlawful use of weapon	30	7
Theft	23	5
Violation of probation	18	4
Possession of stolen motor vehicle	18	4
Armed violence	16	4
Unlawful restraint	13	3
Possession with intent to deliver	12	3
Delivery of controlled substance	8	2
Possession of controlled substance	6	1
Manufacture and delivery	6	1
Possession of burglary tools	5	1
Perjury	4	1
Fraud	4	1
Kidnaping	2	1
Forgery	2	1
Miscellaneous	37	8
Total	431	100

Exhibit A-3 shows that there was a much larger variety of charges brought against day court defendants. Half the day court charges (50 percent) were for crimes against a person such as murder, battery, sexual

assault, robbery, and armed violence. Burglary (10 percent), unlawful use of a weapon (7 percent), and violation of probation (4 percent) were also fairly prev-alent. Less than 10 percent of charges in day court were for drug-related charges.

Defendant Representation and Status. Night and day court defendants were compared on their legal representation (public defender versus private attorney) and their status at the time of the hearing (in custody versus not in custody). The majority of all the defendants (60 percent) were represented by the public defender's office. However, a significantly higher percentage of day court cases had public defenders (71 percent day court versus 59 percent night court) [$\chi^2(1) = 11.65, p < .001$]. In addition, a significantly higher percentage of day court defendants were in custody when their cases were heard (65 percent day court versus 32 percent night court) [$\chi^2(1) = 81.23, p < .0001$].

Types of Hearings. Seven types of hearings were coded (exhibit A-4). The most frequent types of hearings in both courts were for adjudications (47 percent), status checks (19 percent), and arraignments (18 percent). Overall, hearings for sentencing (2 percent) and bail forfeiture warrants (BFW's) (2 percent)

Exhibit A-4

Day and Night Court Hearings

Night Court			Day Court		
Type of Hearing	<i>n</i>	% of Total	Type of Hearing	<i>n</i>	% of Total
Adjudication	726	47	Adjudication	101	45
Arraignment	397	20	Status check	55	25
Status check	290	19	Violation of probation	19	6
Violation of probation	94	6	Arraignment	10	4
Sentencing	31	2	BFW	8	4
BFW	30	2	Sentencing	5	2
Other	79	4	Other	25	12
Total	1,548*	100%	Total	223	100%

*Some hearings had more than one purpose. Hence the total number of "types of hearings" exceeds the total number of observed cases.

were relatively rare. Some significant differences between day and night court emerged on types of hearings [$\chi^2(6) = 49.90, p < .0001$]. Status checks, BFW, and violation of probation (VOP) hearings were more likely to take place in day court. Also, the percentage of “other” types of hearings was three times higher in day court, suggesting a much wider breadth of activities there. The most dramatic difference between day and night court was in the percentage of arraignments. Defendants were substantially more likely to be arraigned in night court than in day court.

The overwhelming majority of night (94 percent) and day (93 percent) court hearings were of a singular variety, which is to say that hearings were conducted for only one purpose, such as adjudication, status check, or sentencing. A small but notable percentage of night (6 percent) and day (7 percent) court sessions were held to achieve two or three purposes. Although night and day court were no more likely overall to conduct dual-purpose hearings [$t(1654) = -.46, p > .60$], there was a difference between the two in the frequency of violation of probation/arraignment hearings, which were significantly more common in night court [$t(1679) = 3.41, p < .001$].

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