

JUDGES LET CASES LAG [Corrected 04/17/2023]: Many courthouse leaders fail to push the pace on slow-moving murder prosecutions

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FULL TEXT

For years, two veteran Cook County judges presided over fifth-floor courtrooms just down the hall from each other, sitting on identical carved wooden benches and presiding over identical types of cases.

For murders, though, that's where the similarities end.

Until his retirement late last year, Courtroom 500 belonged to Circuit Judge Vincent Gaughan: temperamental, bombastic and exacting. Over the past eight years, a typical murder case in his courtroom took about two years to resolve.

Courtroom 504 has long been the domain of Associate Judge Lawrence Flood: poker-faced, quiet and dry. A murder defendant assigned to him likely waited twice as long for resolution.

In a court system that is taking longer than ever to resolve murder cases, the Tribune found the pace of justice can depend on who is wearing the robe.

State law and local rules give judges the power to impose and enforce deadlines, hold to account a no-show witness or an unresponsive record-keeper, and actively inquire about what needs to be done and how long it will take to do it.

Or they can do none of those things, and face no apparent repercussions, while cases limp along month after month, year after year.

The Tribune's review of court files, hearing transcripts, academic research and available data found that judges vary widely in how long they take to complete murder cases. While some typically finish closer to the court's official two-year goal, others see many of their cases last twice as long.

And those are just the veteran judges at the main courthouse. Cases completed by newer judges, and those in suburban courthouses, can take even longer, although the court did not release enough data to more precisely determine how long each judge took.

It is a long-standing reality in Cook County criminal courts: Each courtroom is its own little kingdom, controlled by a judge with license to run their docket however they please. Every day, every judge gets to choose how aggressively to push for progress in a deeply dysfunctional system.

They can stay hands-off and work at an excruciatingly slow pace. At the other extreme, they can berate attorneys for every perceived misstep in an attempt to keep cases from dragging.

"Many people talk about there being one criminal justice system (in Cook County)," Public Defender Sharone Mitchell Jr. once told county officials. "Actually, there are probably hundreds of criminal justice systems."

To see how these differences play out in court, the Tribune observed multiple hearings in two courtrooms on opposite ends of the spectrum.

DIFFERENT STYLES, DIFFERENT SPEED

On a typical day before Judge Flood, the courtroom was calm and quiet. Attorneys trickled in at a leisurely pace, and the judge would often leave the bench for long stretches with no explanation. When attorneys requested delays, he rarely pushed back.

For years, national court researchers have recommended that judges set timetables for attorneys to complete tasks. But, while Flood would sometimes comment on the age of a case, he rarely set deadlines for when certain milestones should be reached and rarely gave attorneys suggestions about how to move things forward. Down the hall, Judge Gaughan moved his docket with lightning speed, barking orders at weary lawyers. He set tight deadlines, gave attorneys explicit tasks, and threatened to hold anyone and everyone in contempt if they didn't comply.

For instance, a hearing on a gun case in August: Two Chicago police officers had been asked to come testify before Gaughan. Only one showed up. The other, it turned out, was in northern Wisconsin, taking a scheduled day off. No-show police officers are common, and in some courtrooms the issue can delay a case for months or even years. Even for legitimate absences, prosecutors rarely learn ahead of time that officers won't be available. Other judges brush off the absences, but Gaughan was noticeably irritated.

Before even being asked, a prosecutor gave Gaughan a rundown of her efforts to figure out what went wrong -- two trips to print out the master list of officers expected to show up that day, phone calls with a sergeant and lieutenant in the district where the missing officer was assigned, and an attempt to reach a different sergeant who had apparently excused the court appearance because of the previously scheduled day off.

Gaughan was not appeased. He complained loudly and at length that when an officer fails to show up in court it's nothing less than a violation of the Constitution -- the executive branch running roughshod over the judicial.

"A potential charge, what would that be? ... Official misconduct. Maybe make them aware of that," he told the prosecutor, then gave her strict instructions: Write up a proposed petition asking the police to explain why they should not be held in contempt, and fax it to the department.

"Whoever the sergeant (is), put his name on there, and put the lieutenant's name, and if they say anything, put the commander's name," he said. "We'll get some accountability."

The hearing went forward about a week later, records show.

The day before, down the hall in Flood's courtroom, the atmosphere was far less tense.

There were at least two murder trials scheduled. Neither one proceeded. Flood, like many judges, schedules more than one trial for some days, on the assumption that at least one of them won't happen.

In the case of Dion Marshall, charged four years earlier with a fatal shooting in Altgeld Gardens, prospective jurors were in the wings waiting to be selected. Marshall's attorney had brought civilian clothes for Marshall to wear, so jurors wouldn't have to see him in jail scrubs.

He didn't end up needing them. Marshall's attorney, Michael Clancy, explained to Flood that there had been a mix-up: A year earlier, police had arrested someone with a gun, tested it, and linked it to the 2018 shooting that Marshall is charged with. But nobody alerted prosecutors or defense attorneys.

It was "only by chance" that they found out about the possible murder weapon, right before the four-year-old case was supposed to go to trial, Clancy said. He asked for more time to get further forensic testing done on the gun. Prosecutor Michelle Spizzirri said she believed she could get the results more quickly than usual, though she did not give a specific timeline, and Flood did not request one. "Let the jurors go," he told the courtroom deputy.

The other trial scheduled in Flood's courtroom that day in August was for Ed Rush, charged with killing his ex-girlfriend's new boyfriend in late 2019. Spizzirri was not ready for Rush's trial, she said, since she had been preparing instead for Marshall's -- which took precedence since it is older.

Flood was understanding, but insisted -- calmly -- that the trial would happen on the next date they set since Rush's case was nearly three years old in its own right.

And so they slogged through the tedious process of trying to figure out, between the courtroom schedule, the defense attorneys' schedule and the prosecutor's schedule, when they might actually be able to set a trial.

Rush began to protest. In response, for the first and only time that morning, Flood raised his voice.

"Mr. Rush, why don't you just keep your comments and your grunting -- " Flood told him.

"I'm concerned!" Rush interrupted.

"I understand that. You know what, everybody here is trying to work to get you a trial date, OK? So just bear with it,"

said the judge, noticeably annoyed.

"It keeps getting pushed back," Rush said.

"You're in the same boat as everybody else getting a trial scheduled," Flood said.

'AN ADULT IN THE ROOM'

When asked why cases can take so long, judges uniformly declined to discuss the topic publicly. Requests for interviews with Cook County Chief Judge Timothy Evans and Criminal Division Presiding Judge Erica Reddick were denied.

In November, Tribune reporters sent surveys to nearly 50 Cook County judges, asking basic questions about their workload, common reasons for delays and whether they see delays as a problem.

Not one judge answered. A handful spoke to reporters but would not go on the record. Generally, they acknowledged that judges should exercise power to move cases along, but said their caseloads can be crushing and expressed frustration with what they saw as a lack of urgency from the attorneys in front of them.

In essence, they said they were often handcuffed by the bureaucracy that they are supposed to be able to control. That bureaucracy can be suffocating. On a typical morning in Cook County criminal court, the huge majority of time is spent not on legal arguments or witness testimony but on logistics: waiting for the right prosecutor and the right defense attorney and the right defendant to arrive in the right room at the right time. (Sometimes judges take breaks for 20 or 30 minutes at a stretch because attorneys, who often have obligations in many different courtrooms on the same day, have not yet shown up. Spectators in the gallery groan.)

Each defendant's hearing usually only lasts a few minutes, and much of that time is spent on figuring out when everyone can be available to come back for the next one.

Apart from the systemic problems that contribute to stalled-out cases, some delays, attorneys speculate, are on purpose: Prosecutors drag things out to pressure someone to plead on a defective case, or the defense stalls in hopes that the evidence will weaken or that burned-out prosecutors will offer a sweetheart deal.

That's another place where a diligent judge can step in: to figure out which delays are necessary to protect a defendant's rights and the integrity of the case.

Unassertive judges get little sympathy from Jonathan Lippman, the former chief judge of the state of New York. Lippman, who spearheaded an aggressive push to reduce delays in that state, noted that the criminal justice system is "notorious" for pointing fingers.

"But the judge is the central player," Lippman told the Tribune. "The judge has to exercise leadership, firm appearance dates, firm trial dates, and you can't just throw up your hands."

Cook County Sheriff Tom Dart, who has long railed against the delays that keep people in his jail for years on end, recalled noticing the power of judges during his days as a prosecutor in the early 1990s. Some were brisk and hardworking; others presided over courtrooms where "nothing ever got done."

"And there was no rhyme or reason; everyone got paid the same amount of money, you know, everyone got called 'Judge.' But yet you saw this wild disparity," he said. "And it just screams out that the system's broken, and that there needs to be an adult in the room to say, 'No, no, no, there needs to be this consistent way that we dispense justice.'"

When asked about judges' power to mitigate delays, longtime attorneys noted that certainly some judges expect cases to move faster than others. Lawyers must prioritize cases assigned to judges who expect quick movement, and, as a result, their other cases might have to linger -- a cycle that only increases the distance between fast courtrooms and slow ones.

Another common refrain: Judges accept delays because if they rush a case along, an appellate court might later reverse a conviction for violating a defendant's rights. But a Tribune analysis of higher-court opinions on murder cases since 2015 found that Gaughan, one of the fastest judges in the county, had not been reversed on that basis. The Tribune also found that Flood and Gaughan were reversed on murder cases at roughly the same rate -- suggesting that a faster judge is not necessarily a reversibly sloppy one in the eyes of the appellate court. Court officials say they assign cases to judges randomly, and if Chief Judge Evans is tracking how efficiently they

perform, he won't say. For a year, the Tribune repeatedly asked his office for its internal performance measurements on the criminal courts, including any information on how quickly judges resolve cases. Evans' office did not provide it.

Instead, the Tribune had to measure judicial performance through data that prosecutors separately keep on felonies. This is the same data that the Tribune previously used to show that, overall, the median time to complete Cook County murder cases -- where half took more and half took less -- had risen from three years a decade ago to nearly five last year.

The data isn't ideal for measuring judicial performance, because the only judge listed is the one who was in charge of a case at the time it was resolved. Some cases get new judges while they are still pending, such as, for example, if the original judge retires or is reassigned.

With that caveat in mind, the Tribune sought to assess the relative efficiency of judges at the county's main courthouse in Little Village by computing the median length of murder cases from an early-stage hearing called an arraignment to their conclusions. The analysis included all judges who were active in 2022 and had handled at least 20 murder cases since 2015.

There was wide variation among the judges. Gaughan was the fastest. Of the 56 murder cases he completed, the median length was 2.1 years. Flood's median length, for 22 murder cases he completed, was 4.1 years. Only two judges, Stanley Sacks and Kenneth Wadas, were slower.

And while the pandemic's slowdowns affected case length for nearly all judges, the data show that Flood, Sacks and Wadas were among the slowest before the pandemic, too, with median lengths for their pre-pandemic murder cases of at least 3.5 years.

The Tribune asked the three judges for comment on how they scored, as well as others still on the bench. None responded.

JUDGING THE JUDGES

On paper, judges are subject to many layers of accountability. They have supervisors. They are subject to an oversight board that investigates claims of misconduct. Some of them are elected and answerable to voters. Others need the backing of elected judges.

But practically speaking, it is hard to stop the person in the black robe from doing precisely what they want to. And for the most part, a judge can keep their robe for as long as they want, once they get it.

For those seeking a circuit judgeship, the biggest hurdle happens before Election Day, when the county Democratic Party chooses whom it will slate in a clout-heavy process that can make or break an aspiring jurist. Since voters often skip the down-ballot judicial races or vote straight party line, a slating gives candidates a significant edge. After that, judges face a "retention" vote every six years to keep their seats. They rarely lose. Only two judges have been voted out in the past three decades.

Another set of judges, associate judges, don't face regular voters at all. They instead are chosen by circuit judges in a secret ballot. They get reappointed the same way.

Circuit judges also have another significant power: They choose their boss.

For more than two decades, they have elected Evans, a fixture in Chicagoland politics whose affable nature belies his political coming-of-age on the City Council in the pugnacious 1970s and '80s. He took the bench after losing his aldermanic seat and became chief judge in 2001, kicking off the longest run of anyone in that role.

Evans has used the time to put his own stamp on the system.

He began innovative "restorative justice" courts and specialty courts focused on mental health. He has advocated for other aggressive measures, such as a "Young Adult Court" for 18- to 26-year-olds, and he's talked up the benefits of cognitive behavioral therapy as a way for perennial defendants to break free from cycles of crime.

And in 2017, in a display of the power of his office, he muscled through significant changes to the county's bail practices -- not only mandating that judges set affordable bonds but bringing in entirely new judges, which helped ensure judges' old habits wouldn't limit progress.

But he's chosen to not use that power to force all judges to better manage their caseloads.

A chief judge holds significant sway over a court's policy, and under state court rules, Evans can reassign judges who aren't performing up to standards. While he's publicly suggested judges should follow the best practice of setting deadlines for different phases of a case, he hasn't demanded it, leaving judges wide latitude on pushing cases toward trial or resolution.

The Tribune repeatedly sent written questions to Evans' office about internal case management tracking and standards for judges. The office largely did not answer, including whether the court had ever taken action against a judge for substandard case management and whether Evans had assigned new judges to the Criminal Division to ease workload, as he announced more than a year ago. The court's website shows there are fewer judges assigned to the Criminal Division now than there were in the months leading up to Evans' announcement last year, suggesting that attrition has blunted the effect of any new recruits.

TRIAL THWARTED -- AGAIN

On the August day that Ed Rush's trial was delayed, Flood scheduled the new trial date for mid-October. He made sure, he said, to set it for a day when no other trials were scheduled, so it would definitely proceed.

It did not proceed.

At the last minute, prosecutors said that October day, they realized they might have had the state forensics lab test the wrong jacket for gunshot residue. They asked for a delay so they could send a different jacket for testing.

It was the second delay in about three months, but if it angered Flood, he didn't show it. His docket had grown so heavy that the next trial date available was not until January 2023. He scheduled it for then and without raising his voice simply noted: "I want to get this case over with."

The case did not go to trial in January, either -- the forensic testing was not complete, and, anyway, the prosecutor was tied up handling a different jury trial in a courtroom three floors down.

In response to the delay, one of Rush's public defenders formally invoked Rush's right to a speedy trial -- a legal maneuver that is relatively rare, since it sometimes means proceeding without a complete set of evidence, and some attorneys believe it angers the judge and prosecution. Flood, at prosecutors' request, set the trial for a Tuesday in late February, even though the defense attorney noted she had a trial set that week in a different case -- one that dates all the way back to 2016.

At the next court date, Flood for the first time showed frustration with the pace. The trial was less than two weeks away, and attorneys told Flood they hadn't yet agreed on whether a pathologist had to be called to the stand or the two sides could agree to the findings. "This should have been resolved!" he snapped.

When the trial date finally came, Rush was brought before Flood not in civilian clothes but in his normal jail garb.

One of Rush's attorneys had fallen ill, so the trial could not proceed. And since the defense could no longer say they were ready to go, Rush's formal demand for a speedy trial had to be withdrawn.

That was in late February.

Rush's trial is now scheduled for mid-May -- unless something else comes up.

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Part 4: Monday Long-ignored solutions

Online: Read the series so far at chicagotribune.com/stalledjustice.

CAPTION: Photo: Above: The original lobby of the Leighton Criminal Court Building. BRIAN CASSELLA/CHICAGO

TRIBUNE ; Photo: From this position at the bench, a judge manages the docket of cases in Courtroom 400 at the

Leighton Criminal Court Building, one of the older courtrooms. BRIAN CASSELLA/CHICAGO TRIBUNE ; Photo:

Judge Lawrence Flood, shown in 2020, was one of the slowest judges at the main Cook County courthouse in

handling murder cases, the Tribune found. ANTONIO PEREZ/TRIBUNE ; Photo: Judge Vincent Gaughan, shown

outside the Leighton Criminal Court Building in 2018, handled murder cases the fastest of all judges in the Tribune's

analysis. Gaughan retired late last year. E. JASON WAMBSGANS/CHICAGO TRIBUNE ; Photo: Cook County Chief

Judge Timothy Evans, shown in 2020, became chief judge in 2001. He's held that position longer than anyone else.

E. JASON WAMBSGANS/CHICAGO TRIBUNE\ ; Graphic: DIFFERENT JUDGES, DIFFERENT TIMETABLES; The median length of murder cases -- from arraignment to disposition -- varies significantly among judges at the Leighton Criminal Court Building who have regularly handled such cases.; Judge: Total murder cases, Median length (years); Vincent M. Gaughan: 56, 2.1; Thomas J. Byrne: 20, 2.2; Charles P. Burns: 49, 2.6; James B. Linn: 75, 2.8; Timothy J. Joyce: 27, 2.8; James M. Obbish: 23, 2.9; Carol M. Howard: 28, 3.1; Michael B McHale: 22, 3.4; William H. Hooks: 29, 3.4; Mary Margaret Brosnahan: 28, 3.9; Joseph M. Claps: 40, 4.0; Lawrence E. Flood: 22, 4.1; Stanley Sacks: 41, 4.2; Kenneth J. Wadas: 39, 4.3; Includes judges at Leighton who were active as of 2022 and had disposed of at least 20 murder cases since 2015. Cases are attributed to the judge who had the case when it concluded. Typically that judge handled the case throughout but not always.; Table: Joe Mahr | Source: Tribune analysis of Cook County state's attorney data | Created with Datawrapper
CREDIT: By Megan Crepeau and Joe Mahr | Chicago Tribune

DETAILS

Subject:	Schedules; Official misconduct; Court hearings & proceedings; Shootings; Contempt of court; Attorneys; Bureaucracy; Murders & murder attempts; Trials; Judges & magistrates
Location:	Cook County Illinois; United States--US
Publication title:	Chicago Tribune; Chicago, Ill.
First page:	1
Publication year:	2023
Publication date:	Apr 16, 2023
Section:	News
Publisher:	Tribune Publishing Company, LLC
Place of publication:	Chicago, Ill.
Country of publication:	United States, Chicago, Ill.
Publication subject:	General Interest Periodicals--United States
ISSN:	10856706
Source type:	Newspaper
Language of publication:	English
Document type:	News
ProQuest document ID:	2801495942

Document URL: <http://turing.library.northwestern.edu/login?url=https://www.proquest.com/newspapers/judges-let-cases-lag-corrected-04-17-2023/docview/2801495942/se-2?accountid=12861>

Copyright: Copyright Tribune Publishing Company, LLC Apr 16, 2023

Last updated: 2023-04-17

Database: U.S. Newsstream

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