

Why it's so hard to move cases

By David Swanner

When I sit down and review cases with my staff we have a lot of cases that are right on the edge of being resolved, but have *one* thing hanging. My friend [Todd O'Malley](#) calls that *Ligitation Constipation*, where the cases come in, but they don't go out. That's a real apt description. What is that one thing that is left undone? See if these sound familiar:

- **Waiting on Records from a Doctor's Office** – They've sent 2–3 letters and called and called, but can't get a response or records from that office.
- **Waiting on Bills from an Office** – The doctor's office uses a third party billing service halfway across the country and they can't get anyone to respond. (This one, I really don't understand because the bills are on the computer and they can print and fax them to you, and it helps them get paid).
- **Waiting on an Expert's Report** – an FCE, IME, vocational consultant or other experts report. Where the client has gone for an evaluation, but the report isn't in yet.
- **Waiting for a Specific Medical Report** – We have the medical records in for that doctor, but when we've compared the medical records to the medical bills, there are a few dates of treatment missing.

So what do we do about it? Why does it seem like there are so many cases with just a loose thread hanging before we can put together the demand package? Is it the lawyer? Is it the staff? Or is it just a matter of timing? It turns out it's none of those, it's a law of physics.

If you have 4 events that each take about two weeks, you would expect the time to resolve those four events would be 8 weeks. You would think that any delays would average out. It turns out that the delays don't even out, they accumulate. There's a principle of mathematics that says when there are dependent events (things that have to be done in a sequential order) the variations (delays) are cumulative.

So what does that mean for lawyers? Last week I sat down with my staff and we played a little game. For those that want to play along, all you need is a big bag of peanut M & M's, 2 bowls, and a number of cups. Here's what I told them:

We have a magical law firm where we have as many cases as we want and there is an unlimited supply of cases where the people have finished medical treatment. This big bowl of peanut M & M's is our supply of cases. Each M & M is a case. We can help as many people as we can get out the door.

I have a six sided dice here. Each person is going to roll the dice and they 'move' or produce as many cases as they roll. 5–6 is a good week. 1–2 is a bad week. 3–4 is an average week. Now we all know all of the possible reasons for having a non-productive week, some of them are within are control and some are not.

Our goal here is not to be judgmental about good reasons or bad reasons, or productive vs. non-productive time. That's what the dice is for. A high number is a good week and a low number is a bad week.

Each roll of the dice is a 'week'. We'll run through 10 weeks, which is going through the whole team in sequence ten times. Halfway between one and six is 3.5 (I know your first thought is 3, but that's halfway between 0–6). My expectation for my staff at the end of ten weeks is that we will have moved 35 cases.

Every turn, I want my staff member to roll the dice and then take that many 'cases' from the cup to the left. The first person in the chain has an unlimited supply of cases. Each person down the lline from there can only take as many cases as they roll, or as is actually in the cup. Okay, let's go.

I then put my staff into the following four stations (you can use more or less):

- **Get Medical Records** – This means ordering and getting them in
- **Get IME** – This means anything needed for the IME, FCE, permanent impairment rating, statements of future medical treatment, and/or vocational assessments
- **Get Future Medical Costs** – Determine costs of the treatment recommended above.
- **Write Demand Package** – I put my lead paralegal on this task.

Then we went with the first station rolling the dice and whatever number she rolled, she picked from bottomless pit of cases to put together. Our office manager, Christie, was in this position and I think in 10 turns she averaged rolling a 5.3. Talk about a curve buster. At the end of ten 'weeks' Elaine had rolled a 38, which is right about where she should be. 35 is statistically smack dab in the middle of the road and a 38 is pretty close to that. Guess how many cases we moved? 31.

What Happened to the Other Seven Cases?

She was ready to produce 38 cases, but only 31 cases were done during that time period. What happened to the other 7 cases? It has to do with the relationship between dependent events and statistical variation, a subject I've [talked about before](#). When there are sequential (dependent) events, any delays (statistical variation) will be an accumulation of delays rather than an *average* of delays.

So this means, if a staff member rolls a '2' they only move 2 cases. If they roll a '5' and there are only 2 cases in the cup to their left, they still only move 2 cases. Hmmm.....

It was interesting to watch the M & M's move down the line from station to station, their would be times they would bunch up in one station and another station would be totally empty. Watching the progression of 'cases', we could actually see how it mirrored putting a case together.

What happens if we add events to the 4 already there? Then the process slows down even more.

What is the Moral of the Story?

The moral of the story is that it's a natural phenomenon to have 'one more thing' that needs to be done on the case. It's not a problem with the paralegal, it's not a problem with the lawyer, it's not a problem with the secretary or other staff. It's a matter of physics. It also needs to be guarded against and fought at every turn. We need to watch the cases with just 'one more thing' and make certain we knock those out, so we can keep them moving.

I now have a sign above every staff members desk saying 'Remember the Other 7 Cases'.

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[ABOUT: David Swanner](#)

David Swanner is a sole practitioner in Myrtle Beach, South Carolina. He is a plaintiff's attorney with a civil litigation and workers compensation practice. David has been an attorney since 1994 and started his own practice straight out of law school.

Technology has been a recurring theme throughout David's career. He is the author of '[Winning with PowerPoint](#)' a collaborative collection of over 100 PowerPoint examples from plaintiff's attorneys throughout the country. Plaintiff's attorneys can get a copy of the disk for free by contributing an example, or promising to contribute an example when you have one. David developed and teaches "PowerPoint for Trial Lawyers" a class showing attorneys how to use PowerPoint effectively in a legal setting.

David is also the author of the [South Carolina Trial Law Blog](#), which was the second legal weblog in the country to write about trial tips and techniques. Before becoming a trial lawyer, David was a custom programmer and computer consultant.

Education is another theme in Dave's career. He taught interrogation for the U.S. Army and did course development for interrogation for U.S. Marine Corps Reserve courses. He is retired from the U.S. Army and was a qualified Hungarian and Arabic Linguist. David gives presentations, seminars and classes on trial techniques, use of technology and practice management. He has given presentations in seven states during 2006. Dave also developed the class "Comedy Workshop for Trial Lawyers: Building Trial Skills Through Stand-Up Comedy" with professional comedian [Manny Oliveira](#).

David is fascinated by how things work, the mind and why people do what they do. David has focused on cognitive psychology, neuro-linguistic programming, framing, heuristics, communication styles and other disciplines that show how people learn, how they retain information and how they make decisions.

David is a member of [ATLA](#), the [Southern Trial Lawyer's Association](#), and the [South Carolina Trial Lawyer's Association](#). He is currently co-chair of the Public Education Committee for SCTLTA.

In addition to reading, his hobbies include comedy, which he performs stand-up comedy part-time. David also has a lovely wife Jennifer, and a three year old daughter [Jessica](#), with another child on the way.