

I. Court Watch NOLA's Mission

Court Watch NOLA (CWN) is a nonprofit¹ whose mission is to promote greater efficiency, transparency, and procedural fairness in Louisiana criminal courts through citizen involvement and courtroom observation. CWN is objective in its approach, neither siding with the prosecution nor the defense. Instead, CWN is people-centered, ensuring that Orleans Parish Criminal District Court (CDC) and those that work within it are accountable to the people of Orleans Parish.

In 2015, CWN worked with over 200 volunteers, making 985 general observations on over 10,000 cases. Community members sink hours of their lives into ensuring that CDC provides public safety and fairness to the people of New Orleans. CWN volunteers come from all walks of life. In 2015, CWN had volunteers from the following post-secondary education institutions: Dillard University, Delgado University, Tulane University, Tulane Law School and Loyola Law School.

Stakeholders are integral to CWN's modeling method, and CWN has encouraged institutional stakeholders to meet with CWN, as a means to produce more educated and informed solutions to problems, as well as to enhance the transparency and accountability of the institutional stakeholder and that of the CDC. CWN commends the following public stakeholders (listed in alphabetical order) for officially meeting with CWN's new executive director in 2015: Orleans Chief Public Defender Bunton, District Attorney Cannizzaro, Sheriff Gusman, New Orleans Police Department (NOPD) Chief Harrison, Judge Herman, Judge Hunter, Judicial Administrator Kazik, Clerk of Court Morrell, Judge White, and Judge Ziblich.

Committed to its mandate of transparency, CWN's 2015 Annual Report centers on the major news events that affected

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¹ CWN consists of a staff of three: the Executive Director, a part-time Program Coordinator, and a part-time Development Director. CWN's new Executive Director began her tenure in August 2015; CWN's Program Coordinator began in September 2015.

² CWN's 2015 Annual report concentrates less on efficiency than procedural fairness, transparency, preparedness and public safety; CWN's Second Half of 2014 report reported on the efficiency of CDC.

³ Simerman, John. "Federal Lawsuit Claims Orleans Parish Judges Create Debtors Prison by Illegally Jailing People for Failure to Pay Fees and Fines Without Hearing." September 2015. *The Advocate*. Accessed April, 16, 2016.

⁴ McClendon, Robert. "Mitch Landrieu has Authority over Arthur Morrell's Budget but Not Too Much, 4th Circuit Rules." October 2014. *NOLA.com | The Times-Picayune*. Accessed April 06, 2016.



2015 Court Watch NOLA Annual Report

CDC, the different actors that work within CDC, and whether those criminal justice actors were observed by CWN to have enhanced procedural justice, transparency, and efficiency.²

II. High Profile Legal Cases

A. 2015 Civil Lawsuits

- Fines & fees lawsuit- On September 17, 2015 a federal class action lawsuit was filed, accusing the CDC, all 12 Criminal District Court Judges, Clerk of Court Morrell, Judicial Administrator Kazik, Magistrate Cantrell, the City of New Orleans, and Orleans Parish Sheriff Gusman of using illegal warrants to arrest the City's poor for failing to pay court fines and fees.³
- Clerk's lawsuit- In October 2013, the Fourth Circuit Court of Appeals found the City of New Orleans had authority over Morrell's budget and had to "provide adequate funding."⁴ On June 23, 2015, a civil district court ruled that Mayor Landrieu must pay \$141,000 toward the Clerk's budget.⁵

B. Criminal Cases vs. Criminal Justice Officials

- In 2015, Desmond Pratt, an NOPD officer of 10 years who was already in jail for sexual assault, was investigated by the FBI for offering illegal witness incentives for making false statements on a murder involving convicted defendant Telly Hankton.⁶
- On March 2, 2015, Ananie Mitchell, a 5-year veteran NOPD Officer, was arrested and charged by the Orleans Parish District Attorney's (OPDA) with sexual battery, malfeasance in office, and two counts of soliciting prostitution.⁷
- On October 21, 2015, Wardell Johnson, a 12-year veteran NOPD Officer, pled guilty to malfeasance in office and two counts of obstruction of justice for disposing of evidence in a case against NOPD accused murderer Travis Boys.⁸

⁵ Simerman, John. "City of N.O. Loses Appeal over Funding of Criminal Court Clerk Arthur Morrell's Office." March 2016. *The Advocate*. Accessed April 06, 2016.

⁶ Simerman, John. "Sources: Feds Investigating Imprisoned Former NOPD Detective who Once led Hankton Probe." December 2015. *The Advocate*. Accessed April 06, 2016.

⁷ Simerman, John. "Orleans DA Ups Ante with Charges Against NOPD Officer Accused of Soliciting Sex." December 2015. *The Advocate*. Accessed April 06, 2016.

⁸ Daley, Ken. "Ex-NOPD Officer Jailed, Not Yet Sentenced for Dumping Evidence in Accused Cop-Killer's Case." April 2016. *NOLA.com | The Times-Picayune*. Accessed April 09, 2016

- On December 5, 2015, a 28-year veteran OPSO Deputy, Gregory Degruy was convicted by CDC Judge Hunter of aggravated assault against a 17-year-old victim in an off-duty incident.⁹
- On December 15, 2015, Michael Thomassie, a 12-year veteran NOPD officer was sentenced by CDC Judge Flemings-Davillier to life in jail without probation or parole for aggravated rape against his stepdaughter.¹⁰

C. High Profile Cases in Orleans Parish Criminal District Court

- On January 29, 2015, George Toca, who maintained his innocence throughout the proceeding, took an Alford plea to attempted armed robbery and manslaughter after OPDA vacated Toca's murder conviction. Toca's attorneys were scheduled to argue in front of the US Supreme Court (SCOTUS) that SCOTUS's 2012 decision in *Miller v. Alabama* barring mandatory life sentences for juveniles was retroactive. However, with Toca's release shortly after his plea, his SCOTUS hearing was canceled.¹¹
- On March 12, 2015, Hakim Shabazz and Kevin Johnson entered a plea of not guilty to a perjury charge filed against them by OPDA after both witnesses recanted identification testimony in a 20-year-old murder case against Jerome Morgan. CDC Judge Derbigny granted Morgan a new trial in 2014 after the two witnesses testified that their statements had been coerced.¹²
- On November 10, 2015, Willie Littleton, a 63-year-old Algiers pastor, pled guilty to aggravated battery for firing on a vehicle and shooting a passenger in the head after Littleton spotted a copper thief raiding an air-conditioning unit at his church.¹³
- On November 17, 2015, Judge Flemings-Davillier sentenced Tyron Harden, 21 and Demond Sandifer, 19 to two life sentences and Sam Newman, 19, to three life sentences for killing 5-year-old Briana Allen and passing motorist Shawanna Pierce.¹⁴

- On November 18, 2015, Reverend Kevin Boyd Sr.'s criminal case involving the molestation of a member of his church congregation ended in a mistrial. OPDA stated it intends to retry the defendant.¹⁵
- On November 20, 2015, Rico Newman pled guilty to conspiracy to commit murder for the killings of Brian Thicksen in November 2008, Cornelius Williams in February 2009 and Keith Berry in January 2011. Newman was the last state court defendant to be convicted in the 110'ers gang racketeering case.¹⁶
- On November 20, 2015, Robert Jones was released by Judge Hunter on \$36,000 bond pending a retrial, after his conviction and life sentence were vacated by the Louisiana 4th Circuit Court of Appeals. The Court of Appeals found that OPDA withheld exculpatory evidence during Jones' trial and in post-conviction appeals. On October 6, 2015 OPDA invited Robert Jones to plead guilty to lesser charges to ensure his freedom, but Robert Jones refused.¹⁷

III. Orleans Parish District Attorney's Office (OPDA)

A. Respect Toward Others in the Courtroom

Part of CWN's mission is to monitor procedural justice. The community has high expectations for how they will be treated during their encounters with the judicial system. In particular, people value fair procedures because they are perceived to "produce fair outcomes."¹⁸ If a defendant feels like the court process was fair and the defendant was treated with respect, even if this process led to the defendant's conviction, then he or she is more likely to trust the criminal justice system and less likely to commit more crimes.¹⁹ Procedural fairness relates to etiquette of court actors, NOT whether the court actor will allow a defendant to plead to a lighter sentence or decrease the defendant's bail amount, etc.²⁰ The American Bar Association (ABA) Standard 3-6.2 (a) states:

"As an officer of the court, the prosecutor should support the authority of the court and the dignity of

⁹ Simerman, John. "Orleans Sheriff's Deputy Convicted on Misdemeanor Count of Aggravated Assault." December 2015. *The Advocate*. Accessed April 06, 2016

¹⁰ Daley, Ken. "NOPD Officer Sentenced to Life Without Parole for Raping a 7-year-old girl." December 2015. *NOLA.com | The Times-Picayune*. Accessed April 06, 2016.

¹¹ Freund, Helen. "Imprisoned for 30 years, Angola Inmate to be Released After New Orleans DA Cuts Deal." January 2015. *NOLA.com | The Times-Picayune*. Accessed April 06, 2016.

¹² Simerman, John. "Orleans Judge Allows New Jury to Hear Since-Recanted Testimony in Retrial of Jerome Morgan for 1993 murder." April 2016. *The Advocate*. Accessed April 06, 2016.

¹³ Simerman, John. "Algiers Pastor Pleads Guilty in Shooting Leaving Alleged Copper Thief with Bullet in Skull." November 2015. *The Advocate*. Accessed April 06, 2016.

¹⁴ Fox8Live.com Staff. "3 Gang Members Sentenced to Life in Prison for Murders of Briana Allen, Shawanna Pierce." November 17, 2015. Fox 8 Live News. Accessed April 07, 2016.

¹⁵ Simerman, John. "Jury Deadlocks over Molestation Allegations against New Orleans Pastor Kevin Boyd Sr." November 2015. *The Advocate*. Accessed April 06, 2016.

¹⁶ Simerman, John. "Leader of New Orleans '110'ers' Gang Pleads Guilty, Gets 47 Years, Closing Out High-Profile Racketeering Case." November 2015. *The Advocate*. Accessed April 06, 2016.

¹⁷ Simerman, John. "Judge Rescues Colleague from Retrial of Robert Jones in 1992 Kidnapping and Rape Case." January 2016. *The Advocate*. Accessed April 06, 2016.

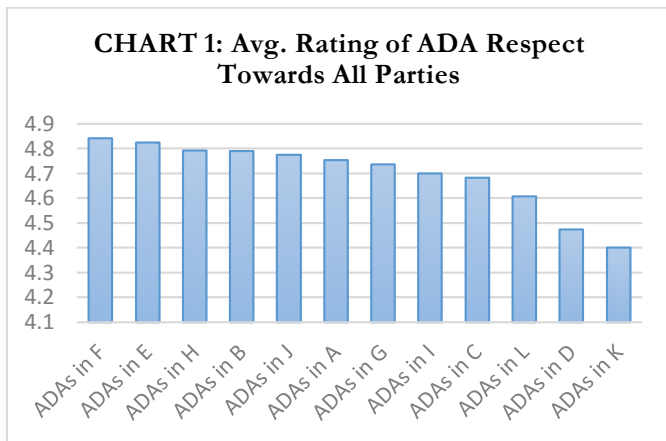
¹⁸ Burke and Leben, at 5.

¹⁹ *Id.*

²⁰ Balko, Radley. "The Untouchables: America's Misbehaving Prosecutors, And The System That Protects Them." August 2013. *The Huffington Post*. Accessed April 06, 2016

the courtroom by adherence to codes of professionalism and civility, and by manifesting a professional and courteous attitude toward the judge, opposing counsel, witnesses, defendants, jurors, court staff and others.²¹

OPDA ADAs are typically assigned to handle all cases in one section. For every day of courtroom observation, CWN volunteers were asked to rate, on a scale of 1 to 5, how respectfully²² Section ADAs acted toward all parties (not just defendants), where 5 is “always;” 4 is “usually;” 3 is “sometimes;” 2 is “rarely;” and 1 is “never.” Chart 1 below indicates the Average Respectfulness Rating that CWN volunteers gave ADAs in each section. ADAs in Section F were observed to be the most respectful, with an Average Respectfulness Rating of 4.8428. ADAs in Section K were observed to be the least respectful, with an Average Respectfulness Rating of 4.4.²³



²¹ American Bar Association, Fourth Edition of the Criminal Justice Standards for the Prosecution Function, 4th Edition.

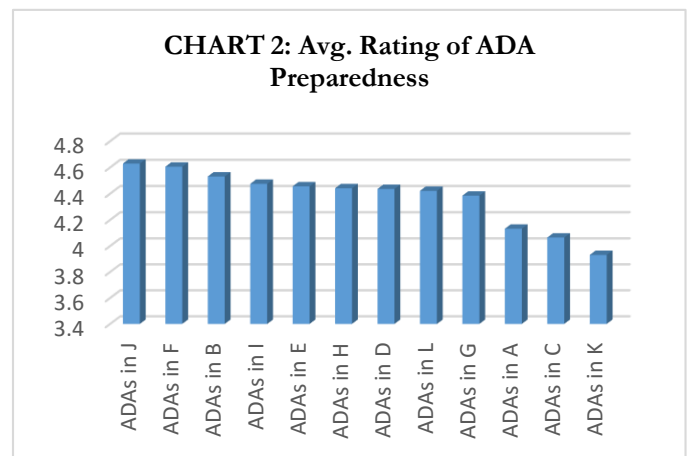
²² Observations relating to respect are a subjective metric. This subjective metric can take one sole factor into consideration or a host of factors into consideration.

²³ Out of a total 878 observations, Section ADAs were rated as “5” (always respectful) 685 times, “4” (usually respectful) 147 times, “3” (sometimes respectful) 30 times, “2” (rarely respectful) 13 times, and “1” (never respectful) 3 times.

ADAs in Section	Average Respectfulness	# of Observations
A	4.75362	69
B	4.79012	81
C	4.68354	79
D	4.47436	78
E	4.825	80
F	4.8428	70
G	4.73626	91
H	4.79221	77
I	4.7	80
J	4.77419	62
K	4.4	55
L	4.60714	56

B. Preparedness

CWN volunteers also rated Section ADAs on preparation and organization²⁴ for each day of courtroom observation on the same scale of 1 to 5. Chart 2 below indicates the Average Preparedness Rating that CWN volunteers gave ADAs in each section. ADAs in Section J were observed to be the most prepared, with an Average Preparedness Rating of 4.62903. ADAs in Section K were observed to be the least prepared with an Average Preparedness Rating of 3.93103. With the exception of Section K, Section ADAs had average ratings within the “4” range, i.e., usually prepared for the day’s proceedings²⁵



IV. Defense Attorneys and Orleans Public Defenders (OPD)

Three years ago, OPD cut approximately a third of its attorneys due to a steep budget shortfall. OPD made national news in 2015 over a lack of funding to finance its office.²⁶ In

²⁴ Observations relating to preparation and organization are a subjective metric. This subjective metric can take one sole factor into consideration or a host of factors into consideration.

²⁵ Out of a total 879 observations, Section ADAs were rated as “5” (always prepared) 473 times, “4” (usually prepared) 297 times, “3” (sometimes prepared) 85 times, “2” (rarely prepared) 20 times, and “1” (never prepared) 4 times.

ADAs in Section	Average Preparedness	# of Observations
A	4.13235	68
B	4.53086	81
C	4.06494	77
D	4.4359	78
E	4.4557	79
F	4.60563	71
G	4.38462	91
H	4.44156	77
I	4.475	80
J	4.62903	62
K	3.93103	58
L	4.42105	57

²⁶ “Mayor Says he Warned about NOPD Funding Problems.” May 2015. *The Louisiana Weekly*. Accessed April 06, 2016.

June 2015, OPD announced it would put an austerity plan into place that would involve furloughs, cutbacks, or a combination of both.²⁷ OPD's hiring freeze began in July 2015, and by year's end had lost 14 attorneys who had not been replaced by years end and a total of 14 investigators, client advocates and administrative staff.²⁸ In November 2015, at a hearing held by CDC Judge Hunter, several experts (Ellen Yaroshesky, Robert Boruchowitz and Barry Scheck) found that OPD attorneys were not and could not provide adequate, constitutional representation to its clients, and that OPD should decline appointments. On December 11, 2015, OPD announced it would stop taking cases in January 2016.²⁹

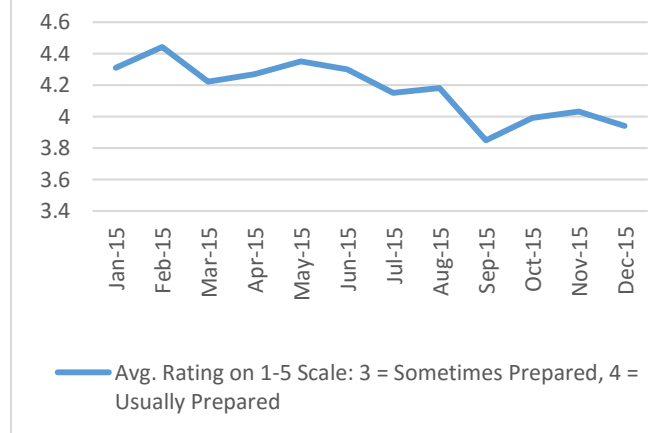
Wrongful conviction has been documented as one of the results of an inadequate public defense system.³⁰ CWN also has concerns that an inadequately resourced public defender's office will lead to a more inefficient system, where attorneys fail to appear timely or at all on their cases.³¹ In 2015, although CWN volunteers did not distinguish in their observations between OPD and private attorneys, OPD represented approximately 80 percent of criminal defendants in CDC.³² While there are a few factors that may account for a decrease in defense preparedness at the time OPD began its hiring freeze and began to lose staff, such as office morale for example, the data does show a drop in defense preparedness at the same time OPD's budget problems were reported to have worsened.

"It's frustrating for court and defendants when PD's are not there, but they are usually in another court part or trial. Without more resources and more attorneys, I'm not sure this problem can be remedied." CWN volunteer comment mid-November 2015

CWN volunteers were asked to rate, on a scale of 1 to 5, how prepared and organized³³ defense attorneys appeared to be for each day of courtroom observation, where 5 is "always;" 4 is "usually;" 3 is "sometimes;" 2 is "rarely;" and 1 is "never." In January 2015, CWN volunteers rated defense attorneys' preparation as 4.31, within the "usually prepared" range. In July of 2015 (when OPD began their hiring freeze) defense preparedness slipped to 4.15. Finally, in December of 2015

(when OPD announced they would stop taking cases in the next month) defense preparedness further fell to 3.94.³⁴

CHART 3: Defense Attorney Avg. Rating of Preparedness



V. Criminal District Court (CDC) Judges

Court can often be a confusing process, not only for the public, but also for the defendants whose liberty is at stake, the victims who are often in the audience trying to understand the proceedings and the family of both groups. The community has high expectations on how they will be treated in their encounters with the criminal justice system. Procedural justice depends on defendants understanding the decisions that are made and whether defendants perceive that the decision-making process is trustworthy.³⁵ In order for defendants to understand what is happening on their case, and in order for victims and community members to believe their concerns are being fairly presented by the courts, the courts must be transparent and notify the public and the defendant of decisions affecting their case.

Judges cannot be transparent if they are silently handling the majority of court business in meetings at the bench or in chambers, outside of public earshot. Sidebars are discussions between the judge and attorneys off the record and outside earshot of the jurors or spectators.³⁶ There is no requirement that sidebars be recorded by a court stenographer, and often sidebars go unrecorded and are not made part of the court

²⁷ Simerman, John. "Orleans Public Defender Announces Austerity Plan that May include Furloughs, Layoffs." June 19, 2015. *The Advocate*. Accessed April 06, 2016.

²⁸ Park, Jee. "Court Watch NOLA's 2015 Annual report" Message to Simone Levine 28 April 2016. Email.

²⁹ Simerman, John. "Orleans Public Defender Announces Austerity Plan that May include Furloughs, Layoffs." June 19, 2015. *The Advocate*. Accessed April 06, 2016.

³⁰ Taylor, Katie. "System Overload: The Costs of Under-Resourcing Public Defense." July 2011. *Justice Policy Institute*. Accessed April 06, 2016.

³¹ Court Watch NOLA. "Fair, Functional, & Friendly: Citizen Suggestions for Making Orleans Parish Criminal District Court More User-Friendly and Procedurally Fair for Witnesses, Families, and the General Public." October 2014.

Court Watch NOLA. Accessed April 06, 2016.

³² Hortenstine, Lindsey. "Courtwatch Query" Message to Simone Levine 3 April 2016. Email.

³³ Observations relating to organization and preparation are a subjective metric. This subjective metric can take one sole factor into consideration or a host of factors into consideration.

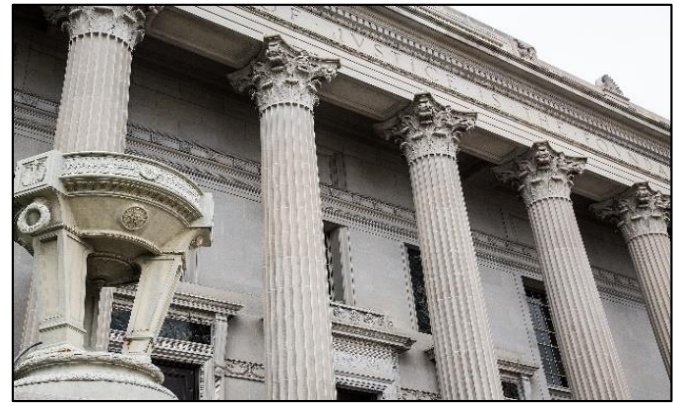
³⁴ These numbers are out of a total 890 observations

³⁵ Burke and Leben, at 5

³⁶ Sidebar [Def.2] (ND) *The Free Dictionary in the Free Dictionary: Legal Dictionary*; from <http://legal-dictionary.thefreedictionary.com/sidebar>, Retrieved April 5, 2016.

record. Orleans Parish judges are elected by the people of Orleans, and it is integral that elected judges are transparent and exude the appearance of propriety, especially when the judge is on the bench. The public should not be left to wonder why a judge is continually talking off the record and without having the conversation either heard by the public or recorded by the stenographer. Considering the real concerns of wrongful conviction and rights to appeal to a higher court, it is essential that the written record of a criminal case is complete and includes all exchanges that occurred in the criminal proceeding.

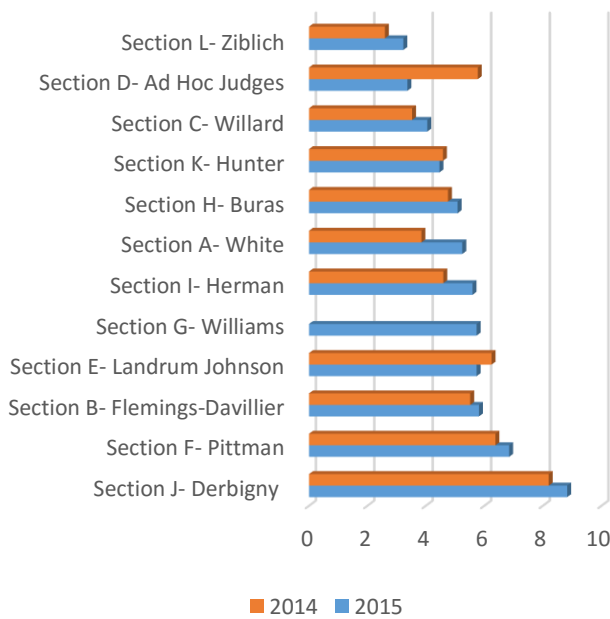
Chart 4 below reflects the average number of sidebars each judge has during CWN observation periods from 2014³⁷ and 2015.³⁸ The top five judges with the fewest sidebars in 2015 are (from lowest to highest): 1. Judge Ziblich, 2. Section D Ad Hoc Judges,³⁹ 3. Judge Willard, 4. Judge Hunter, and 5. Judge White. Two judges successfully decreased the average number of sidebars in their courtroom from 2014 to 2015: Judge Hunter and Judge Landrum-Johnson.



Some judges have informed CWN that sidebars are necessary because courtroom acoustics are bad. Judges have also

informed CWN that sidebars are necessary where an attorney must inform the Judge of confidential information relating to the criminal case or defendant; sometimes the confidential information relates to public safety. CWN agrees that the acoustics of some courtrooms are poor and urges that all parties use the microphones installed in every courtroom. CWN understands that a minority of the information in the criminal case is confidential. In that instance, CWN advises judges to inform the public that a sidebar was called to discuss confidential information that is not a matter of public record. At the very least, if a sidebar is taken to discuss non-confidential information, the judge should inform the public and the defendant of the resulting decision from the sidebar.

CHART 4: Avg. No. of Sidebars Per Observation



“Thirteen sidebars is the headline of the day. I had a hard time following what was going on in the room because the judge would handle almost everything by speaking to people in private close to his bench. Disgrace of a courtroom.”- Court watcher comment mid-November 2015

Chart 5 illustrates the frequency in which sidebars were observed with no reason discussed on the record.⁴⁰ Judges who failed to explain or discuss their sidebars the most are (in sequential order): 1. Judge Hunter, 2. Judge Willard, 3. Judge Landrum-Johnson, 4. Judge Herman, and 5. Judge White.

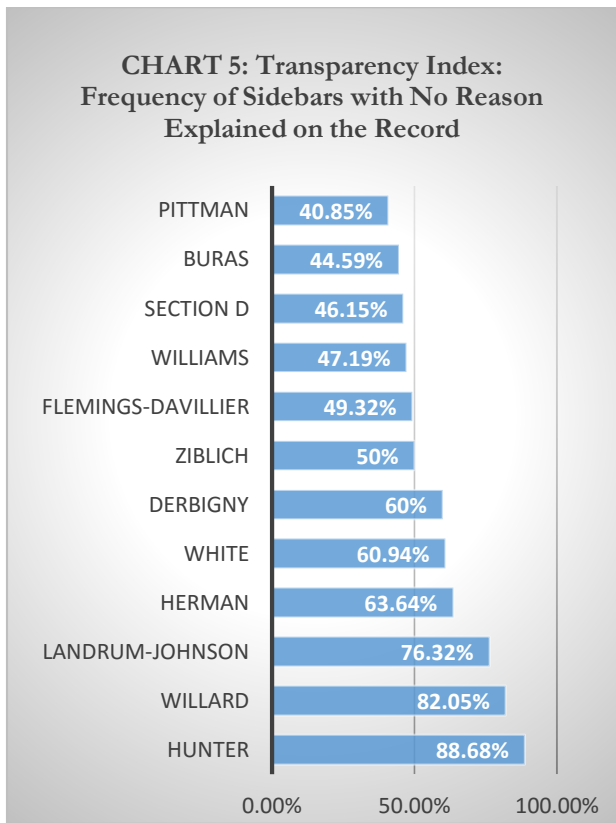
I	4.6	5.6
J	8.2	8.83
K	4.59	4.47
L	2.6	3.23

³⁷ Since Judge Byron Williams (Part G) was not presiding for all of 2014, CWN could not compare his sidebar record in 2015 to his record in 2014.

Courtroom Section	Sidebars Avg. in 2014	Sidebars Avg. in 2015
A	3.85	5.25
B	5.52	5.82
C	3.53	4.05
D	5.78	3.37
E	6.25	5.74
F	6.38	6.85
G	N/A	5.74
H	4.76	5.09

³⁹ From 1/15 to February 2/22/15, Judge Marullo presided in Part D. However, Judge Marullo was asked to step down from his bench by the Louisiana Supreme Court pending an investigation into whether he was above the age allowed to serve as Judge. Judge Dennis Waldron presided in Part D as the ad hoc judge from 2/23/15 to 3/31/15 and 7/1/15 to 9/30/15. Judge Calvin Johnson presided in Part D as the ad hoc judge from 4/1/15 to 6/30/15 and 7/21/15 to 12/31/15.

⁴⁰ These numbers are out of a total 960 observations.



By October 7, 2015, the number of transferred inmates had increased to nearly 250 inmates. The good majority of these transferred inmates were pre-trial defendants unable to pay bail or bond.⁴³

Since mid-September, court staff has complained to CWN about the failure of incarcerated defendants to be produced for their court appearances. Chart 6 below illustrates the number of cases observed by CWN volunteers that were continued as a result of the defendant failing to be produced by either OPSO or the Louisiana Department of Corrections (in the few cases where a defendant had already been sentenced in one case but had another case open). In September 2015, CWN volunteers observed 132 case continuances because the incarcerated defendant was not produced. By December 2015, that number had decreased to 52 case continuances. While it is difficult to transfer a large number of inmates from one jail facility to another facility, CWN numbers show the number of continuances to have decreased by December and encourages OPSO to continue its efforts in this area.

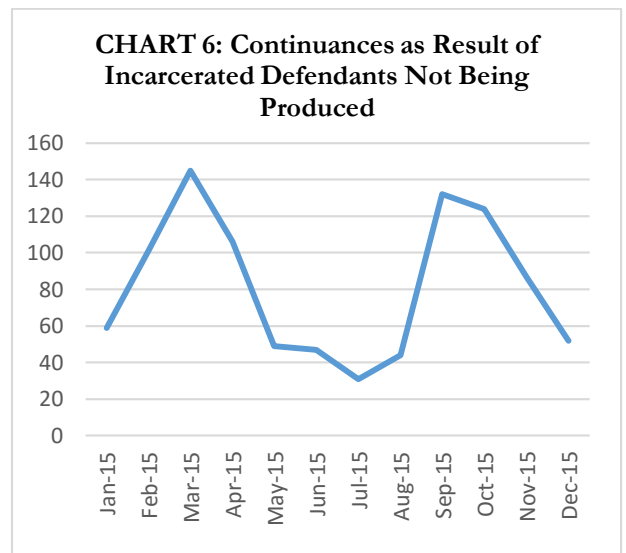
VI. Orleans Parish Sheriff's Office (OPSO)

A. Inmate Transport to Court

In mid-September 2015, the Orleans Parish Sheriff's Office (OPSO) moved into the new jail facility. The new jail facility has been a 10-year construction process. It is approximately 433,409 square feet and can house close to 1,500 inmates.⁴¹ At the same time as the move to the new jail occurred, OPSO also transferred 180 inmates to East Carroll and Franklin Parishes, over 60 miles and 260 miles away, respectively. OPSO attorneys cited a decrease in beds as the reason for the transfer.⁴²

“Today in court, there was a continual theme of missing defendants. Multiple defendants could not be found. The system said they were located in one prison, and when the attorneys called them, they said the defendant was no longer located there and they weren't sure where they were.” Court watcher quote late September 2015

⁴¹ Davis, Kelsey. “Orleans Parish Sheriff's Office completes inmate transfer to new facility,” September 15 WDSU Accessed April 07, 2016.
⁴² Grimm, Andy. “Orleans Sheriff's Transfer of 180 Prisoners Hurting Inmates, Lawyers Say, September 2015 Times Pic, Accessed April 07, 2016.



B. OPSO Control over Inmates and the Court

There have been several instances in 2015 where OPSO control over inmates or over the court has come to the public attention:

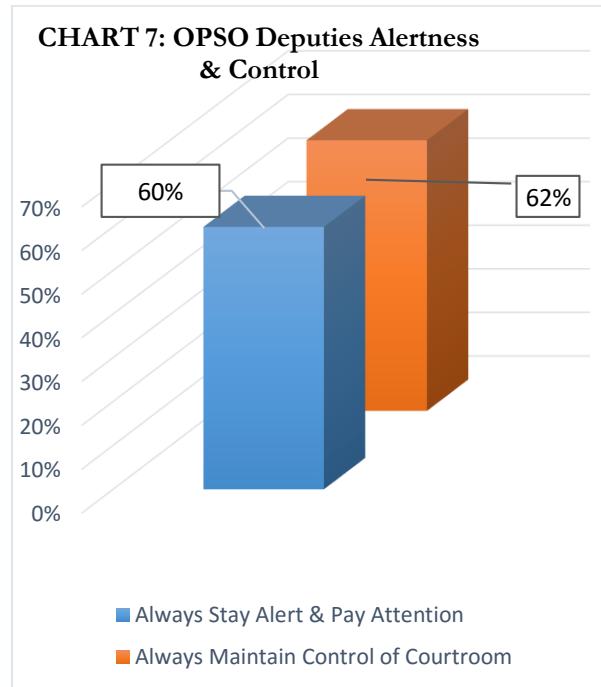
- In 2015, several judges became publicly concerned and/or privately notified CWN about their concern over OPSO control during inmate transfer.⁴⁴ Specifically, in 2015, OPSO had closed the cells,

⁴³ Pearlstein, Mike “Orleans Inmate Transfers Causing Issues for Criminal Justice System, October, 2015, WWL, Accessed April 07, 2016
⁴⁴ Mustian, Jim “Citing Security Concerns, Federal Judge Orders Reopening of ‘Docks’ at Criminal District Court” October 2015, *the Advocate*, Accessed April 7, 2016.

hallways, and tunnels leading from the jail to CDC, also known as the “docks,” due to prior complaints of “deplorable conditions.”⁴⁵ Instead of using the docks, OPSO had reopened part of the prison attached to the courthouse at Tulane Avenue and Broad Street to transport prisoners to court. This required that inmates walk through a public hall into CDC Judge Willard's courtroom. Inmates were then sent into a secured hallway with access to the majority of the courtrooms. The judges’ concern specifically involved whether deputy sheriffs could adequately control inmates during their transport through the public hallways of the courthouse. Inevitably on October 22, 2015, OPSO Federal Consent Decree Judge Lance Africk ordered Sheriff Gusman to reopen the docks to transport inmates (to reduce the frequency of inmate transport through public hallways) and ordered the City to pay OPSO the resources needed to safely transport inmates through the docks.⁴⁶

- On November 9, 2015, OPSO caught a woman bringing a loaded firearm into the CDC.⁴⁷
- According to OPSO, in 2015, OPSO recovered 4 pieces of contraband from people entering CDC; two cases of gun possession and 2 cases of marijuana possession.⁴⁸

CWN volunteers were asked to rate, on a scale of 1 to 5, the degree to which OPSO deputies appeared to maintain control of the courtroom and stay alert and attentive for each day of courtroom observation, where 5 is “always;” 4 is “usually;” 3 is “sometimes;” 2 is “rarely;” and 1 is “never.” Chart 7 illustrates how frequently CWN volunteers rated OPSO deputies as 5, or “always” in control and alert. In 2015,⁴⁹ CWN volunteers found that OPSO deputies “always” maintained control of the courtroom 62 percent of the time and always stayed alert and attentive 60 percent of the time.



VII. New Orleans Police Department (NOPD)

A. Shortage of Officers

In 2015, NOPD continued to complain of a shortage in officers. In October 2015, according to NOPD there were 1,134 police officers on the force, 466 short of the Mayor's goal of a force of 1,600.⁵⁰ NOPD put several measures into place to bolster its numbers in 2015, including but not limited to increasing the number of recruiting classes; streamlining the recruitment process; and moving about 30 officers from administrative-type roles to patrol duties.⁵¹

Ensuring law enforcement officers are available to patrol the streets and perform their other duties is integral to public safety and cannot be understated. CWN volunteers witnessed many more law enforcement officers waiting to testify in court compared to proceedings delayed or continued due to law enforcement absence. In Chart 8 below, a total of 827 law enforcement officers were observed waiting for judges to start court at the start of each courtroom observation. In contrast, only 217 continuances resulting from a law enforcement witness being unavailable were observed.⁵²

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Hauser, Nick, “New Orleans Woman Caught Bringing a Gun into Criminal Court” November 2015, *WDSU* Accessed April 07, 2015.

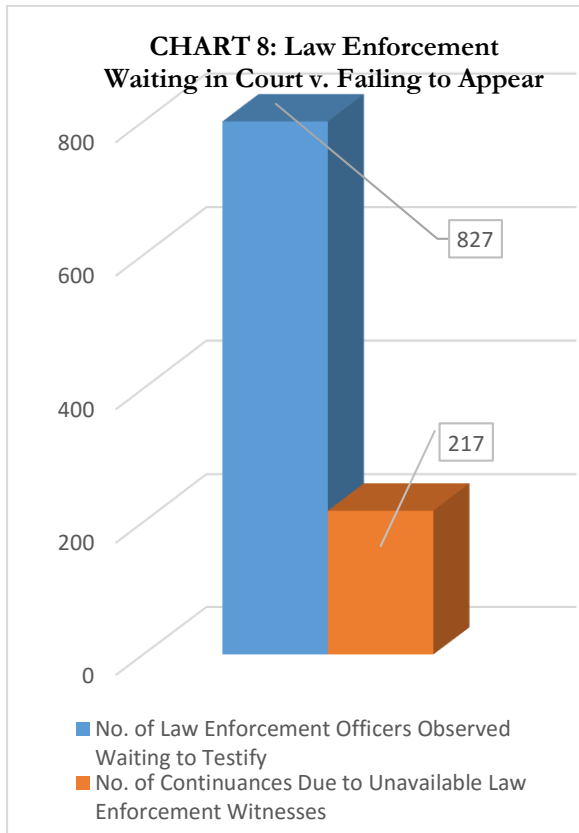
⁴⁸ Barr, Ida. “Meeting” E-mail message to Simone Levine 06 April 2016.

⁴⁹ Out of a total of 890 observations

⁵⁰ Deberry, Jarvis. “Police Shortage isn’t just a New Orleans Problem.” Oct 2015, *Times Picayune*. Accessed April 7, 2016.

⁵¹ Bullington, Jonathan. “What could New Orleans' Police Department do When its Low Staffing is no Longer a Crisis?” November 2015, *Times Picayune*, Accessed April 7, 2016.

⁵² CWN volunteers did not distinguish between NOPD and the Louisiana State Police in their 2015 observations.



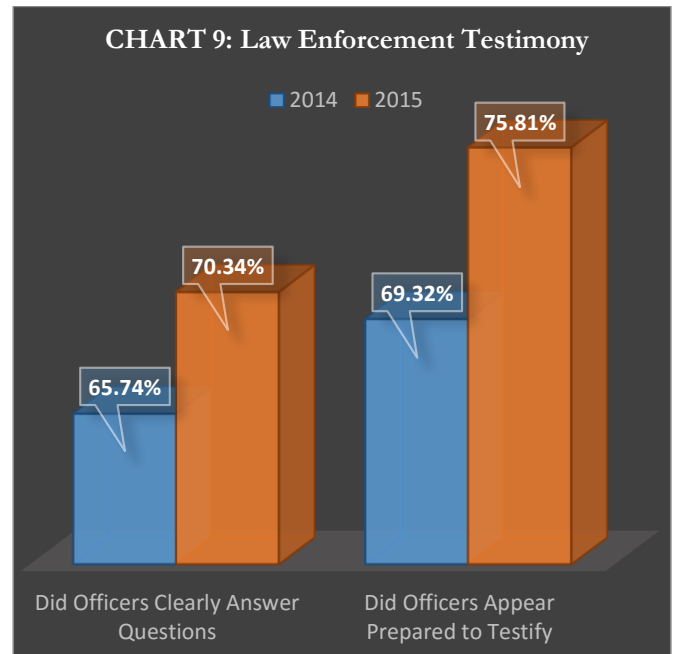
B. Quality of Law Enforcement

The NOPD Public Integrity Bureau finished a review of the NOPD Sex Crimes Unit in August of 2015. The review was in response to the OIG report relating to the NOPD Sex Crimes Unit. The review found no criminal instances of neglect but instead several instances of administrative neglect of duty, cases of supervisory neglect, and cases of improper documentation. Structural remedies implemented included but were not limited to adding new detectives to the Sex Crimes Unit and removing Sex Crime detectives from other duties outside of their unit.⁵³

CWN monitored the quality of law enforcement testimony in CDC in 2015. CWN volunteers’ observations reflect citizen confidence in the NOPD, the Louisiana State Police (LSP), and the law enforcement system as a whole. Such satisfaction is an important reflection when it comes to the weight that civilian juries place on police testimony and the community’s willingness to believe that participation (as in making complaints, participating as jurors, testifying as witnesses, etc.) in the criminal justice system is worthwhile.

CWN volunteers were asked to rate, on a scale of 1 to 5, how clearly law enforcement witnesses appeared to answer

questions and how prepared they were to testify, where 5 is “always;” 4 is “usually;” 3 is “sometimes;” 2 is “rarely;” and 1 is “never.” Chart 9 illustrates how frequently CWN volunteers rated law enforcement witnesses as 5, or “always” able to clearly answer questions and prepared for their testimony. In 2015, CWN volunteers believed that law enforcement witnesses “always” clearly answered questions 70.34 percent of the time and were always prepared to testify 75.81 percent of the time. Chart 9 shows an increase in public confidence in law enforcement testimony from 2014 to 2015.



VIII. Clerk’s Office & Judicial Administrator (JA)

The jurisdiction of the Judicial Administrator and the Clerk of Court is generally understood to entail court facilities and management and court record keeping, respectively. However, the responsibilities of both offices are not publicly well-defined by way of their separate websites. CWN is excited to announce that as a commitment to transparency, the Judicial Administrator has promised to update its website to include a clearer description of its responsibilities. The Clerk of Court promised CWN to do the same if “properly resourced to do so.”⁵⁴ CWN encourages these offices to update their websites to help increase the public accessibility of both offices.

A. Judicial Administrator (JA)

In reviewing the structure and maintenance of the courthouse, CWN had several concerns:

⁵³Simerman, John. “Internal Probe of New Orleans Police Departments Sex Crimes Unit Clear Detectives of Criminal Acts.” August 2015. The Advocate. Accessed April 06, 2016.

⁵⁴(A. Morell, personal communication, April 13, 2016)

- **CDC Elevator between 2nd and 3rd Floors**

The courthouse has a well-maintained elevator that allows access from the basement of the courthouse to the first and second floors. This elevator is in clear sight of the public entrance to the courthouse.

However, the elevator that allows access to the two third-floor courtrooms is not in clear sight of the public, and CWN volunteers have observed individuals with disabilities and the elderly moving quite slowly and with great unease up the steep 30 stairs from the second to third floors of the courthouse. CWN has been informed by the JA's Office that there is a sign placed at the door to the staircase informing the public that those with disabilities may enter the JA's Office to access the third floor courtrooms. The JA's Office also informed CWN that the only sign indicating access to the third floor for those with disabilities is often torn down, and the JA attempts to repost the sign when he sees it is missing.⁵⁵ Furthermore, the sign does not indicate the availability of an elevator. Instead it merely states that the person can access the third floor via the JA's Office.

- **No Confidential Spaces for Attorney-(Incarcerated) Client meetings in any Courtroom**

There are no confidential spaces available in any of the CDC courtrooms for incarcerated defendants to speak to their attorneys. On occasion, an attorney who wishes to have a confidential conversation with his or her incarcerated client asks the presiding judge whether the attorney can use the judge's chambers for this purpose. This solution is untenable, since the judge may deny this request, and the implementation of this request is often unwieldy, as sheriff deputies need to ensure security while the incarcerated defendant enters and exits judicial chambers.

The criminal defendant is guaranteed the right to counsel after arrest under the Sixth Amendment of the Constitution.⁵⁶ Numerous courts around the country have affirmatively ruled that the Sixth Amendment is a toothless constitutional right if the incarcerated defendant is prohibited a space in the courtroom to confidentially speak to his or her attorney.⁵⁷ In addition, where courts lack a confidential space for attorney-client meetings, it leads to further inefficiency in the system. Taking into consideration that defense attorneys are unable to discuss issues with their incarcerated clients by phone because

OPSO records all incoming and outgoing phone calls from its facilities,⁵⁸ and in some cases, attorneys are unable to visit clients who have been transported to a jail facility many miles outside of Orleans Parish,⁵⁹ having a confidential attorney-client conversation with an incarcerated defendant is next to impossible. Instead, CWN has overheard many conversations where defense attorneys have attempted to speak to their clients about potential plea offers in front of the public, other incarcerated defendants, law enforcement, and prosecutors. While there could be multiple reasons why the defendant did not take a plea and needed a court continuance before he or she took said plea, certainly the lack of a confidential space to have a simple discussion with his or her attorney is one of the most obvious reasons for this unnecessary inefficiency.

B. Clerk of Court's Office

- **Criminal Case Evidence in the Basement**

CWN was given a tour of the courthouse facilities by the Clerk's Office in early November 2015. CWN staff was impressed by the knowledge of the Clerk's staff during this tour. CWN was given access to the basement area where hard evidence from the majority of criminal cases is held by the Clerk's Office. The Clerk of Court is the keeper of files and evidence in all criminal court cases. CWN made several observations while in the evidence room in the basement. First, evidence rooms are not climate-controlled. So while CWN did not view any mold per se in this basement area CWN remains concerned that certain items such as rape kits that CWN was informed were stored down in the basement⁶⁰ will slowly deteriorate in such an environment. CWN viewed very few cameras in the various rooms and was informed by the Clerk of Court there were only two cameras down in the evidence room of the basement.⁶¹ While CWN has not been informed of any security breaches, given the high stakes involved in inventorying illegal contraband, all evidence rooms should be equipped with sufficient security and cameras.

Finally, although there appears to be an extensive procedure to remove evidence in the case of an oncoming storm CWN remains extremely concerned about the location of the evidence in the basement of the CDC. In 2005, during Hurricane Katrina, evidence from an estimated 3,000 criminal cases was submerged when flood waters deluged

⁵⁵ (R. Kazik, personal communication, April 5, 2016)

⁵⁶ *United States v. Levy*, 577 F.2d, 200, 209 (3d Cir. 1978); *Weatherford v. Bursey*, 429 US 545, 554, n. 4 (1977). See also *Grubbs* 1995 WL 20855 at *7

⁵⁸ Houppert, Karen. "Locked Up Without a Key in New Orleans." August 2012. *The Nation*. Accessed April 06, 2016.

⁵⁹ Mustian, Jim. "Orleans Parish Sheriff Sends 180 inmates to Jails in North Louisiana; Move Upsets Public Defenders, Landrieu administration." September 2015. *The Advocate*. Accessed April 06, 2016.

⁶⁰ (A. Morell, personal communication, April 13, 2016).

⁶¹ *Id.*

the evidence rooms in the CDC basement and the basement of the Police Department.⁶² CWN has informed both the City, as well as the Clerk's Office of its concern over the integrity and preservation of evidence.⁶³

IX. Recommendations

Based on the data, observations, and judicial best practices in this and previous reports, and in order to make Orleans Parish Criminal District Court more procedurally fair, transparent and efficient, CWN recommends that:

1. OPDA give more attention and/or supervision to ADAs in courtroom Section K. While ADAs in all of the parts appear to be performing well in protocols of respect and overall preparedness, CWN volunteers found ADAs in Part K lagged behind their colleagues in preparedness and respect.
2. Judges should minimize the number of sidebars used on a regular basis in their courtroom, confining sidebar use to true occasions where confidential information must be shared and cannot be done so publicly. Where a sidebar is utilized, judges and attorneys should explain the reason for or the resulting decision from the sidebar. Where courtroom acoustics are poor, judges and attorney should utilize already available microphones instead of sidebars.
3. OPSO should continue to implement measures to ensure all incarcerated defendants arrive regularly for their court appearances, regardless of the facility where the inmate is housed while awaiting trial.
4. The Clerk of Court and JA's Offices should follow through with their promises to CWN to expand their websites to properly explain the functions and responsibilities of their offices to members of the public.
5. The JA should affix at least one permanent sign with Braille lettering in a publicly accessible location, so as to comply with the standards of the Americans with Disabilities Act (ADA). Additionally, CWN recommends that OPSO deputies working security at the front of the courthouse call the JA to proactively inform the Judicial Administrator when a person with

disabilities enters the courthouse and needs access to the third floor.

6. CWN recommends that each CDC courtroom be equipped with a soundproof booth, much like the booth in Orleans Parish Magistrate's Court that will allow attorneys a confidential space to have conversations with incarcerated clients. By providing such confidential spaces, CDC will be following the example set by courts across the country, increasing efficiency and safeguarding the constitution.
7. Finally, CWN recommends a working group, including but not limited to members of the Clerk of Court's Office and the City of New Orleans, be convened to discuss alternative above-ground, properly secured and climate-controlled options for criminal evidence preservation and storage.

See CWN's 2014 Reports for more details on these and other recommendations, which are CWN's alone, and do not necessarily represent the opinions of CWN's volunteers, directors, officers, or contributors.

X. Commendations

Court Watch NOLA holds the belief that criminal justice actors are more apt to support change when given adequate support to do so. Part of that support includes public commendations where criminal justice actors go beyond their duties or go against the grain of others their profession to produce quality work or embrace change. CWN commends:

1. OPDA, for having successfully prosecuted numerous public officials at the state level. State prosecutors often shy away from prosecuting these types of defendants for fear of repercussions.⁶⁴ CWN commends OPDA for embracing these prosecutions in 2015.
2. The Clerk of Court's Office for providing CWN with weekly allotment sheets to aid in CWN's assignment of CWN volunteers and for diligently and regularly informing CWN staff of courtroom closings so that CWN did not assign CWN volunteers to monitor closed courtrooms.

Court Watch NOLA thanks its 2015 volunteers and donors,⁶⁵ who were generous with their time and resources, and without whom this report would not have been possible.

⁶² Johnson, Kevin. "Engulfed Evidence Puts New Orleans Court Cases in Doubt." September 2015 *The Nation*. Accessed April 7, 2015.

⁶³ McClendon, Robert. "Arthur Morrell, Mitch Landrieu Once Again at Odds Over \$3.7 Million Budget" Oct. 2015 *Nola.com*, Accessed April 7, 2015.

⁶⁴ Vitale, Alex. "Why Police are Rarely Indicted for Misconduct." Nov 2014, *Aljazeera America* Accessed April 9, 2016.

⁶⁵ ***Court Watch NOLA would like to thank all of its 2015 donors for their support, including the following donors: Sustaining Sponsor*** (\$10,000 and above) Baptist Community Ministries, Lynne Goldman, Mary Freeman Wisdom Foundation ***Corporate Donor*** (\$5,000 to \$9,999): George H. Wilson Fund; RosaMary Foundation ***Senior Partner*** (\$1,500 to \$4,999): AT&T, Business

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