

# COURT WATCH NOLA 2013 REPORT



“It is desirable that the trial of causes of action should take place under the public eye... because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.”

Justice Oliver Wendell Holmes, *Cowley v. Pulsifer*, 137 Mass. 392, 394 (Mass. 1884).

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## SPECIAL DEDICATION

Court Watch NOLA dedicates its 2013 Report to:

**Jerome L. Goldman**

**1923 - 2013**

Court Watch NOLA would not be here without the inspiration and support of the Goldman family. In addition to being a successful businessman, loving family member, and active community member, Mr. Goldman helped found New Orleans' original court monitoring program in the 1980s and, since its founding in 2007, has been Court Watch NOLA's single biggest individual supporter. His passing last year was a loss for the Court Watch NOLA family and the entire New Orleans community, though Court Watch NOLA benefits from the continuing support of his family, including Lynne Weinberger Goldman, his wife, and Hope Goldman Meyer, his daughter and past Chair of Court Watch NOLA's Board of Directors from 2011 to 2014. As a small gesture of our appreciation for Mr. Goldman's amazing legacy, Court Watch NOLA dedicates this 2013 Report to his memory.

Court Watch NOLA continued its efforts to make New Orleans' criminal justice system more efficient, transparent, and accountable throughout 2013. In fact, 2013 was Court Watch NOLA's busiest year ever, as over 100 volunteers from all walks of life made 2,647 separate observations of violent felony cases in Orleans Parish Criminal District Court, including the organization's 15,000<sup>th</sup> observation since its founding in 2007. Highlights from Court Watch NOLA's 2013 Report ("Report"), based on the data collected by these volunteers, include:

### **1. Criminal District Court Became Substantially More Efficient in 2013**

Unnecessary court delays pose a danger to public safety, taxpayer dollars, and basic fairness. The longer criminal cases take, the more likely evidence and witnesses are to be lost. And for innocent defendants, justice delayed is justice denied, an unfair and expensive proposition when the City must pay to incarcerate many of the defendants awaiting trial. Fortunately, the Court's overall continuance rate dropped from 63% in 2011 and 2012 – when almost two-thirds of the scheduled hearings Court Watch NOLA volunteers tried to observe were continued to another day – to 60% in the first half of 2013 and 57% in the second half of the year.<sup>1</sup> Nevertheless, some Judges' late start times remained a concern in 2013.<sup>2</sup>

### **2. The Top Observed Reasons for Continuances in 2013 Parallel Those from 2012**

The most-often observed reasons for continuances in 2013 include that a trial was in progress (such that no other hearings could be held), failure to produce a defendant who is in custody, the defense attorney being unavailable and/or absent, and unscheduled, non-holiday courtroom closures. Additional frequently observed reasons included: the unavailability of state (often NOPD) witnesses; the failure of defendants who have been released or are out on bond to appear for their court dates; and the failure by the state to timely provide the defense with discovery (such as police reports). These reasons largely parallel (albeit in a slightly different order) those listed in previous reports.<sup>3</sup>

### **3. The Length of Delays Also Decreased in 2013**

Not only the rate but also the length of delays decreased from 2012 to 2013, with the number of days between settings (across all sections of Court) dropping from an average of 33 in the second half of 2012 to a median of 26 in the second half of 2013.<sup>4</sup> This is important because

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<sup>1</sup> See *infra* at 11-12; see also *infra* at 13 (continuance rates for each section of Court).

<sup>2</sup> See *infra* at 22-24.

<sup>3</sup> See *infra* at 15-16.

<sup>4</sup> See *infra* at 17-19.

short delays of a day or a week do not have the same negative impact on time to disposition as delays of a month or six weeks, for instance.

#### **4. Several Factors Contributed to 2013's Efficiency Gains**

While myriad elements affect the rate and length of courthouse delays, three of the key factors contributing to 2013's efficiency gains were: 1) smaller dockets allowed the Court to focus on complex, violent felony cases; 2) the State and defense continued to agree to more plea deals and go to trial less often than in some recent years; and 3) anecdotal observations suggest that the Court was more focused on reducing delays and increasing efficiencies in 2013, possibly in part due to the additional scrutiny the Court was under following Court Watch NOLA's description of the "Culture of Continuances" plaguing the system in 2012.<sup>5</sup>

#### **5. Defense Delays Were Disproportionately Caused by Private Defense Attorneys**

As in 2012, the defense requested more continuances in 2013 than the State or Court. Court Watch NOLA therefore examined which defense attorneys were doing so, and discovered that defense continuances and defense attorney "no shows" are disproportionately caused by private criminal defense attorneys, as opposed to public defenders. While public defenders represent roughly 80-85% of all defendants in Criminal District Court, about two-thirds of observed defense continuances in 2013 were requested by the private bar.<sup>6</sup>

#### **7. Court Watch NOLA Volunteers Continue to Rate and Observe Our Judges, Prosecutors, Defense Attorneys, and Law Enforcement Officers**

Court Watch NOLA volunteers continue to provide subjective ratings and narrative observations regarding our public servants at Tulane and Broad. This Report includes more of these "snapshot" observations than ever before, because while they are not the opinions or position of Court Watch NOLA, they can sometimes tell the story of what occurred in a courtroom better than an objective data point can.

#### **8. There is Still Room for Improvement**

While Criminal District Court became significantly more efficient and slightly more transparent in 2013, plenty of room for improvement remains, and elected officials must always be held accountable to and by the public for their performance. This Report therefore includes ten specific recommendations – based on the data and observations listed in this Report and national judicial best practices – that, if acted upon by the Court, could lead to systemic improvements to New Orleans' criminal court system.

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<sup>5</sup> See *infra* at 18-20.

<sup>6</sup> See *infra* at 20-21.

## BACKGROUND AND METHODOLOGY

Court Watch NOLA's mission throughout 2013<sup>7</sup> was to promote greater efficiency, transparency and accountability in New Orleans' criminal justice system.<sup>8</sup> This Report includes data, ratings, and narrative observations related to each of these critical issues.

Court Watch NOLA's focus on **efficiency** through the reduction of courtroom delays promotes public safety, fairness, and taxpayer savings. After all, the longer a case takes the more likely that key evidence and witnesses are lost. Reducing delays also allows police officers to spend less time in court and more on patrol. And defendants awaiting trial deserve their day in Court – especially when the City is usually paying the bill for their pretrial incarceration.

Like efficiency, **transparency** is more than just a buzz word to Court Watch NOLA, because the public deserves to know what kind of justice is being administered in its name. Court Watch NOLA therefore also monitors the courts to make sure that public courtrooms do not become smoke-filled backrooms.

Court Watch NOLA promotes **accountability** among our public servants by recruiting and training a diverse group of volunteers – who range from students in the fields of law, legal studies, and criminal justice, to working professionals with flexible schedules, to seniors and retirees – to observe felony cases in Orleans Parish Criminal District Court, where they are a daily and visible presence thanks to the bright yellow clipboards many carry.

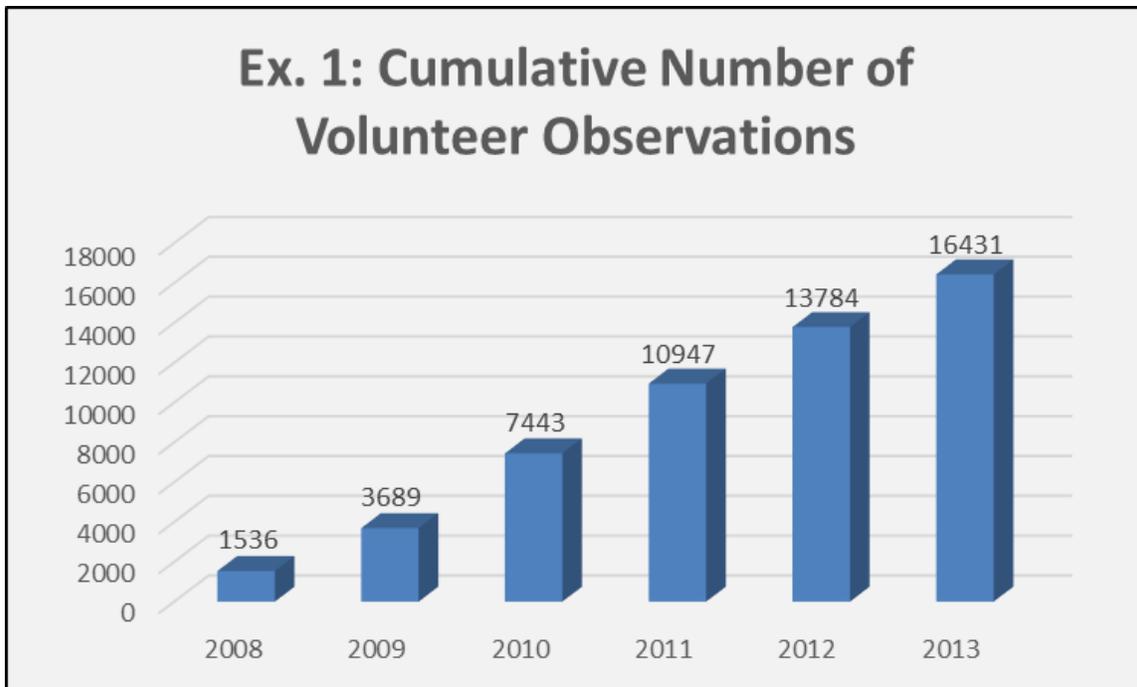
Court Watch NOLA was founded by the Business Council of New Orleans and the River Region, Citizens for 1 Greater New Orleans, and Common Good in 2007, and was originally watching just 37 cases with a volunteer base of 15 citizens. Since then, as illustrated in **Exhibit 1**, Court Watch NOLA volunteers have made 16,431 courtroom observations, with over 2,500 in 2013 alone! This represents tens of thousands of hours donated by our committed volunteers, as well as the financial support of our committed patrons.<sup>9</sup>

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<sup>7</sup> Court Watch NOLA expanded its mission statement in early 2014. Court Watch NOLA's current mission is to “promote greater efficiency, transparency and procedural fairness in Louisiana criminal courts through citizen involvement and courtroom observation.” Court Watch NOLA will therefore be collecting and reporting on even more information in future reports.

<sup>8</sup> It is not the intent of Court Watch NOLA to in any way compromise or interfere with the rights of victims or defendants, or the ability of the courts to act in a fair and just manner.

<sup>9</sup> Lists of Court Watch NOLA's 2013 volunteers and donors are included in the Acknowledgments section of this Report.

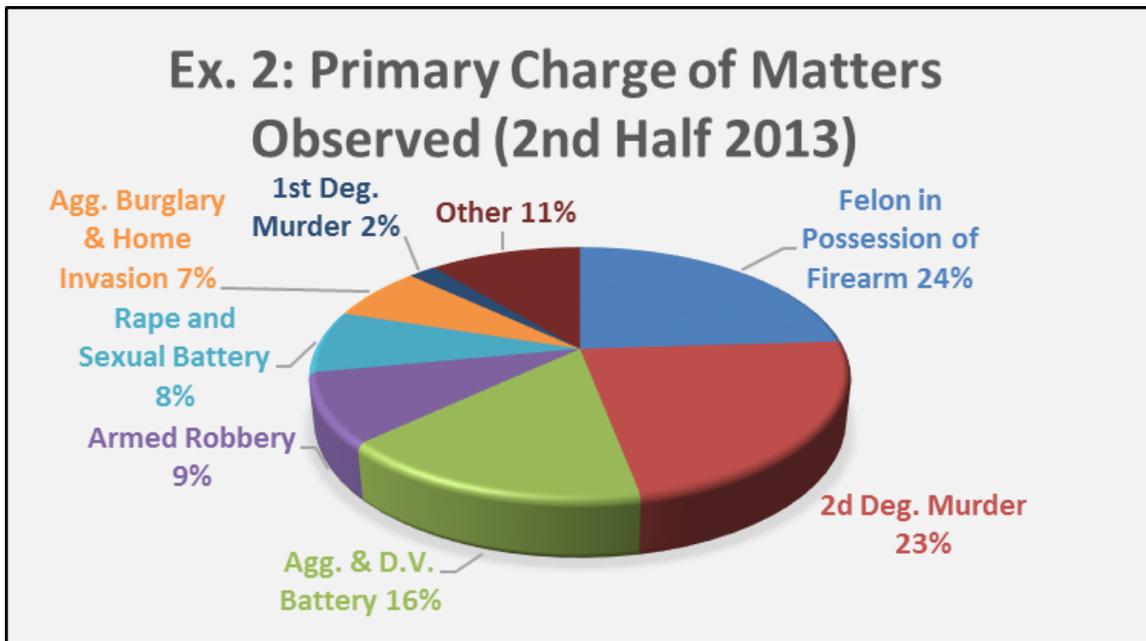


Court Watch NOLA tracks crimes of violence against the person, special circumstances crimes, crimes at the community’s request, and high profile media cases. Due to their complexity, these cases often take longer to resolve than a smaller, non-violent case might. The data contained in this Report therefore may not be representative of the entire caseload of the Orleans Parish Criminal District Court.

**Exhibit 2**<sup>10</sup> shows what the category of primary charge (*i.e.* the charge with the longest or most serious potential sentence) was for all matters observed by Court Watch NOLA volunteers during the second half of 2013. Each category displayed includes related charges such as attempt, conspiracy, and derivative crimes (so, for example, the “Armed Robbery” category includes, *inter alia*, La. Rev. Stat. § 14:64.3, armed robbery with a firearm). As the exhibit indicates, and consistent with prior years, the three most common categories of primary charges in observed matters were felon in possession of a firearm and other firearm-related offenses (La. Rev. Stat. § 14:94(f), 14:95.1, etc., and related), second degree murder (La. Rev. Stat. § 14:30.1 and related), and aggravated and domestic violence-related battery (La. Rev. Stat. § 14:34, 14:35.3, etc.). Additional categories of primary charges in observed matters include armed robbery (La. Rev. Stat. § 14:64 and related), rape and sexual battery (La. Rev. Stat. § 14:42, 14:43, etc.), aggravated burglaries (La. Rev. Stat. § 14:60, 14:62.2, 1462.8, etc.), and first degree murder (La. Rev. Stat. § 14:30, etc.). The “Other” category includes primary charges such as cruelty to juveniles and the infirm, purse snatching,

<sup>10</sup> Sample size: 1540 observations.

extortion, negligent homicide, aggravated incest, and hit-and-run crimes. The felony cases that Court Watch NOLA does not watch primarily involve drugs, theft, and less-violent – though no doubt still serious in some cases – charges such as simple battery and assault.



For each case Court Watch NOLA follows, our volunteers collect the data compiled in this report, including metrics related to courtroom efficiency and transparency. Because Court Watch NOLA volunteers are not attorneys, and because they are not able to observe all aspects of a case’s development – in part due to a lack of transparency in some courtrooms, as explained later in this Report – however, they do not have access to as much information about the court system and individual cases as attorney or Judges might.

Court Watch NOLA then reviews the official docketmaster in conjunction with our volunteers’ reports to confirm, when possible, the accuracy of the information recorded by each court watcher. Thus, while the statistics included in this report are subject to some inevitable degree of human error, efforts have been made to limit this margin. All percentages have been rounded to the nearest whole number, such that totals may not always add up to exactly 100%. Statistics in this report were tabulated only for case settings actually observed by Court Watch NOLA volunteers.

## EFFICIENCY

Court Watch NOLA's focus on efficiency through the reduction of courtroom delays promotes public safety and fairness. After all, the longer a case takes the more likely that key evidence and witnesses are lost. Reducing delays also allows police officers to spend less time in court and more on patrol. And defendants awaiting trial get their day in court sooner.

The length of time it takes to close cases is also directly related to the issue of how large Orleans Parish Prison, which houses defendants who are awaiting trial and who have not been released or posted their bond, needs to be. Put simply, the faster the court system is able to close cases, the faster innocent defendants can return to their families and work, and the faster guilty defendants can be transferred to the state prison system, where the City of New Orleans is not (directly) financially responsible for their room, board, and health care.<sup>11</sup>

## CONTINUANCES - BACKGROUND

While some delays are to be expected in court, especially in serious and complex cases like first degree murders, Court Watch NOLA closely tracks the rate and number of continuances in an effort to make Orleans Parish Criminal District Court more efficient. In general, "a 'continuance' is the rescheduling of a court event that did not happen on the scheduled date, whether it is granted by the court at the request of a party or is necessary because the court could not reach the case on its calendar."<sup>12</sup> Court Watch NOLA counts any hearing in which substantive matters are discussed and any forward progress is made on the case to have been "held" and not continued.

These delays matter. According to the Bureau of Justice Assistance,

Routine granting of continuances, without requiring a showing of exceptional cause, signals a lack of judicial supervision of case progress and often results in case delays and backlogs. In courts where the widely held view is that dates are not credible and continuances are easily obtained, lawyers are less likely to meet deadlines.

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<sup>11</sup> See Metropolitan Crime Commission, *Orleans Parish Prison Inmate Population Snapshot* at 3 (Aug. 27, 2013), available at <http://metrocrime.org/wp-content/uploads/2013/05/MCC-OPSO-Inmate-Population-Snapshot-7.24.13.pdf> (last visited March 11, 2014) (of 2437 total OPP inmates, 1009 are "state pretrial unsentenced").

<sup>12</sup> Steelman, David C., *Time Standards as A Court Management Tool: The Experience in American State and Local Trial Courts*, *Int'l Journal for Court Administration*, April 2010 at 7 n.28; see La. Code Crim. P. art. 708 (defining a continuance as "the postponement of a scheduled trial or hearing."); see also La. Code Crim. P. arts. 707-15 (regarding continuances generally).

In addition, continuances waste resources and may increase costs by creating extra work for the court's administrative staff and the parties. The time devoted to processing continuances and resets could be better spent on activities that help move a case to disposition. Continuances often cause victims, witnesses, attorneys, and defendants to make unnecessary trips to the courthouse. In sum, the routine granting of continuances creates disorganization and inconvenience.<sup>13</sup>

Excess continuances are a danger to public safety, the administration of justice, and the public's pocketbook. After all, the longer a case takes the more likely that key evidence and witnesses are lost or stop coming to Court. One Court Watch NOLA volunteer, for instance, observed the following in 2013: "*The witnesses in this case became very angry because they have been coming to court for a while. Every time they come [the case] has been continued. One of the witnesses is pregnant. She is eight months [pregnant] right now.*"

And for defendants awaiting trial, justice delayed is justice denied – an unfair and expensive proposition as taxpayers are usually paying for their pretrial incarceration. Continuances also affect the Court's ability to meet the well-established criminal court case disposition standard of adjudication within one year of arrest.<sup>14</sup>

Louisiana law recognizes this reality, requiring that motions for continuances generally be made in writing and seven days in advance,<sup>15</sup> though oral, day-of (hearing and/or trial) motions to continue are the norm, and not the exception, in many sections of Criminal District Court. When surveyed regarding what customs or practices were hampering case processing or overall court efficiency, meanwhile, Louisiana District Court Judges noted the need to further reform state continuance laws.<sup>16</sup> Louisiana's Fourth Circuit Court of Appeal has nevertheless repeatedly held that Judges must grant joint motions to continue made by both the State and the defense.

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<sup>13</sup> Bureau of Justice Assistance and American Univ., *Improving Criminal Caseflow* at 8 (Oct. 2008); see also Bureau of Justice Assistance, *August 17, 2009 Memorandum to Chief Judge Hunter* at 5 (percent of matters continued and the reasons for the same are "objective, accurate caseload and case processing information.").

<sup>14</sup> See Nat'l Center for State Courts, *Judicial Efficiency, Accountability and Case Allotment in ... Orleans Parish* at 4 (Jan. 2011).

<sup>15</sup> See La. Code Crim. P. art. 707 ("A motion for a continuance shall be in writing and shall allege specifically the grounds upon which it is based.... It shall be filed at least seven days prior to the commencement of trial. Upon written motion at any time and after contradictory hearing, the court may grant a continuance, but only upon a showing that such motion is in the interest of justice.").

<sup>16</sup> Supreme Court of Louisiana, *Report to the Louisiana Legislature in Response to House Concurrent Resolution No. 143 of the 2011 Regular Legislative Session* at 31 (Feb. 14, 2014).

For all of these reasons, Court Watch NOLA closely monitors continuance rates at Criminal District Court. “One measure of the effectiveness of a jurisdiction’s caseflow management system is the percentage of events that take place on the date scheduled.... Continuance rates can be calculated for particular events (e.g., trials, motion hearings, pretrial conferences); for a day, week, month, or year; and for individual judges or for the court as a whole.”<sup>17</sup> The percentage of first trial dates that are held versus continued is a particularly important statistic, as “[a] court’s ability to hold trials on the first date they are scheduled to be heard ... is closely associated with timely case disposition.”<sup>18</sup>

#### CONTINUANCES - DATA

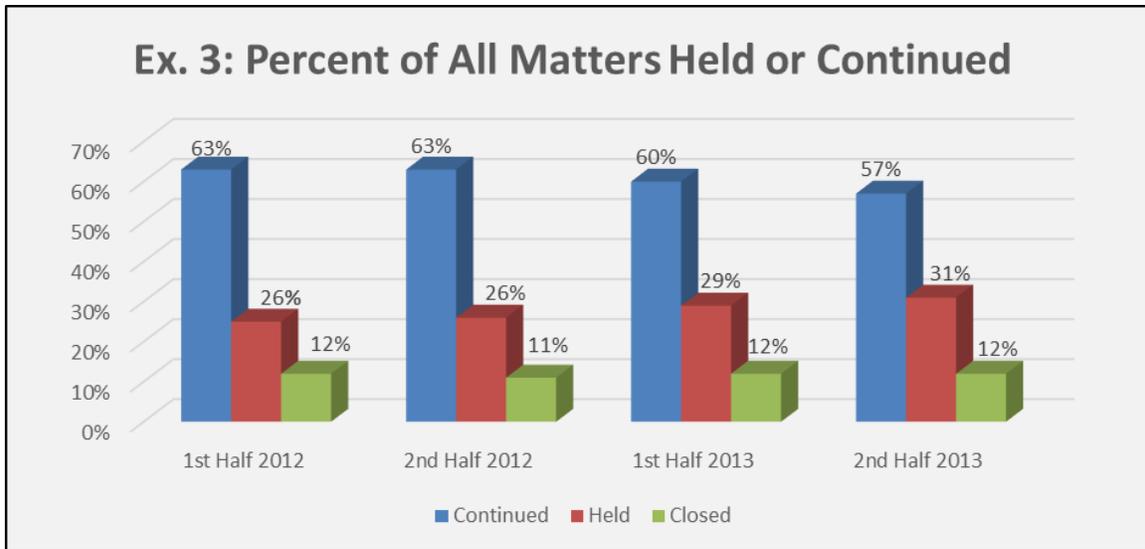
**Exhibit 3**<sup>19</sup> reflects the results of volunteer observations for the last two years. The overall continuance rate in Criminal District Court has significantly improved from 63% throughout 2011 and 2012 (an all-time high) to 57% in the second half of 2013. The all-time low rate of 43% was recorded by Court Watch NOLA during the first half of 2009. While some continuances are undoubtedly justified and necessary – attorneys and judges get sick, and complex cases take time to prepare for trial – too many continuances can lead to a backlog and waste the time of those attorneys, witnesses, defendants, family members, and law enforcement officers who are present and prepared for court.

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<sup>17</sup> The Justice Management Institute (for the Bureau of Justice Assistance), *Improving Your Jurisdiction’s Felony Caseflow Process*, at 17 (Apr. 2000).

<sup>18</sup> The PFM Group, *A 21<sup>st</sup> Century Criminal Justice System for... New Orleans* at 55 (Oct. 2012), citing The National Center for State Courts; see also Bureau of Justice Assistance, *August 17, 2009 Memorandum to Chief Judge Hunter* at 5 (percent of trials held on the first trial date is “objective, accurate caseload and case processing information.”).

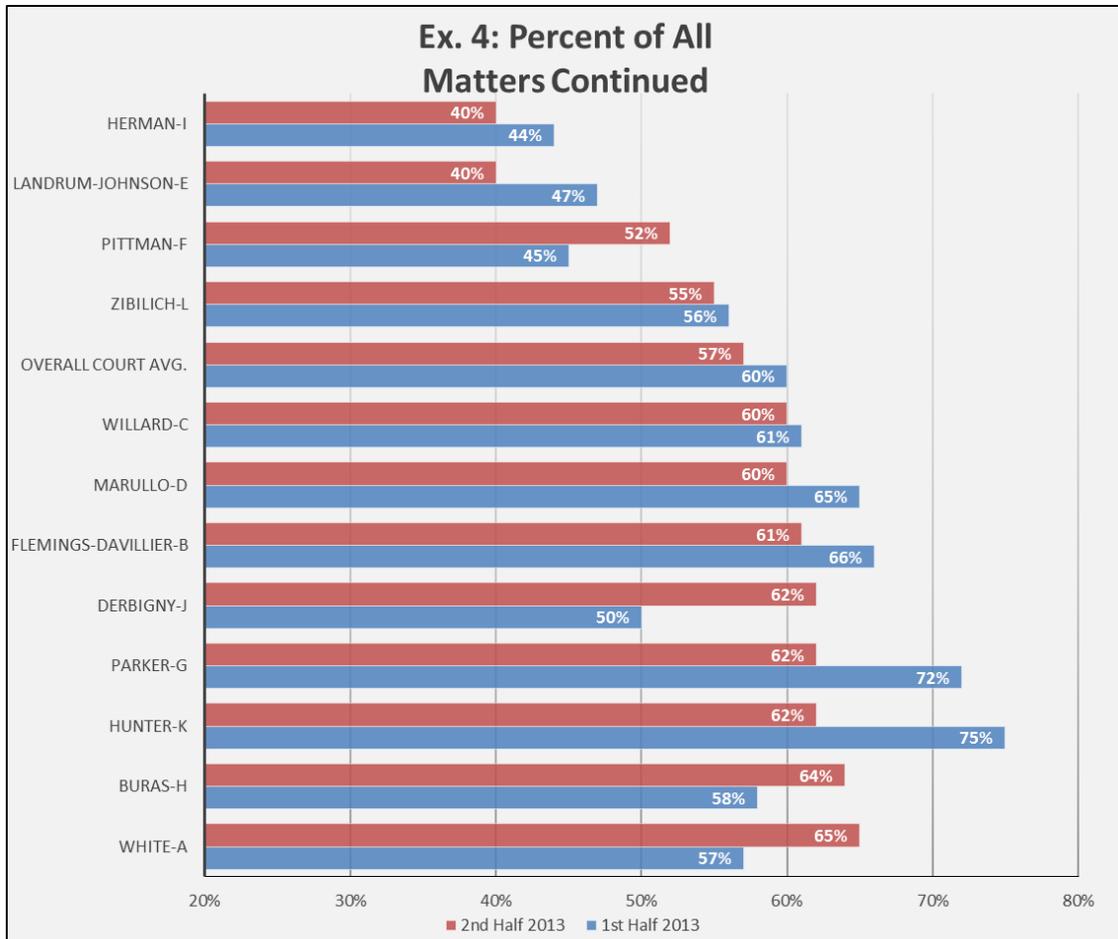
<sup>19</sup> Sample size: 877 (first half of 2013); 1336 (second half of 2013).



As discussed in more detail in Court Watch NOLA’s 2012 Report, trial settings, motions hearings, and mental competency evaluations were continued at higher rates than other types of settings (such as arraignments, discovery hearings, or sentencings) in 2013. This is likely because the former often involve witness testimony, making scheduling and preparing for the hearing harder, whereas the latter often do not.

**Exhibit 4<sup>20</sup>** reflects the percentage of all scheduled proceedings that Court Watch NOLA volunteers observed in 2013 that were continued. The percentages are listed for each section, and the data reflects all continuances in that section, whether attributable to the Court, state, and/or the defense. For the second half of 2013, Judges Herman and Landrum-Johnson had the lowest continuance rate at 40%, and Judges Pittman and Zibilich also had better-than-average continuance rates. The other Judges’ rates for the same time period were tightly bunched between 60 and 65%, and thus close to the overall court average of 57%.

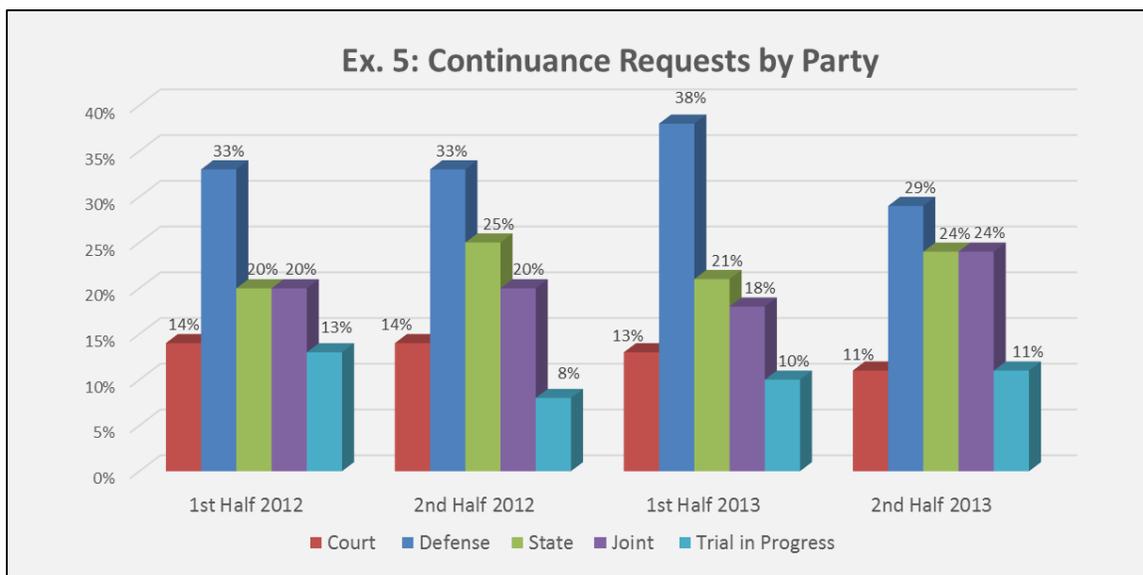
<sup>20</sup> Sample sizes: Section A: 30 (first half of 2013), 78 (second half of 2013); Section B: 145 (first half of 2013), 194 (second half of 2013); Section C: 59 (first half of 2013), 109 (second half of 2013); Section D: 51 (first half of 2013), 52 (second half of 2013); Section E: 68 (first half of 2013), 106 (second half of 2013); Section F: 42 (first half of 2013), 124 (second half of 2013); Section G: 109 (first half of 2013), 130 (second half of 2013); Section H: 80 (first half of 2013), 134 (second half of 2013); Section I: 75 (first half of 2013), 89 (second half of 2013); Section J: 54 (first half of 2013), 161 (second half of 2013); Section K: 99 (first half of 2013), 92 (second half of 2013); Section L: 63 (first half of 2013), 66 (second half of 2013).



**Exhibit 5<sup>21</sup>** shows who requested the continuances observed over the last two years. While the overall continuance rate has decreased, the makeup of who requested these continuances remains relatively consistent with previous years. As in 2012, 53% of the time that a Court Watch NOLA volunteer was present for a continuance in the second half of 2013, for example, the defense requested the continuance on its own motion or jointly with the state. The percent of continuances by state motion alone, on the other hand, held relatively steady in the low twenties. The percent of continuances required because a trial was already in progress – and therefore no other matters could be heard at that time – remained low, as would be expected given the decrease from 2011 to 2012 and 2013 in the number of trials

<sup>21</sup> Sample size: 504 (first half of 2013), 750 (second half of 2013).

held.<sup>22</sup> While a Judge must grant a joint continuance request, these only accounted for 18-24% of the observed continuances in 2013.



Court Watch NOLA described in our 2012 Report a “Culture of Continuances” “primarily driven in 2012 by defendants and their attorneys.” In order to provide greater insight into the nature of these delays, Court Watch NOLA volunteers gathered information throughout 2013 on the degree to which private defense attorneys and public defenders were responsible for these delays. The results may be surprising to some. Despite facing regular budget shortfalls and an overworked staff, the Orleans Public Defenders represent approximately 80-85% of all defendants in Criminal District Court.<sup>23</sup> They nevertheless account for only 29-33% of the defense continuances observed by Court Watch NOLA volunteers in 2013.<sup>24</sup> Thus, the defense delays observed by our volunteers are mostly and disproportionately attributable to the private defense attorneys practicing at Tulane and Broad, and not their public defender counterparts.

<sup>22</sup> Simerman, John, *The New Orleans Advocate*, “In New Orleans, Jury Trials Plummet While Conviction Rate Rises” (Jan. 8, 2014), available at <http://www.theneworleansadvocate.com/home/8007281-172/in-new-orleans-jury-trials> (last visited Mar. 11, 2014).

<sup>23</sup> Data provided to Court Watch NOLA by the Orleans Public Defenders in April of 2013.

<sup>24</sup> Data: % of all defense continuances in 1h2013 (2h2013) requested by... OPD 33% (29%); OPD Conflict 5% (3%); Private 62% (67%). Sample size: 183 (first half of 2013), 209 (second half of 2013).

**Exhibit 6** shows the most commonly observed reasons for which matters were continued in the first and second halves of 2013, ranked from most to least frequent.<sup>25</sup> The vast majority of the listed reasons are carry-overs from Court Watch NOLA's 2012 Report.

The number one observed reason for continuances in the second half of 2013 was that a trial was in progress in the courtroom, which generally requires the continuance of all other matters. While the number of trials was lower in 2013 than in previous years, this is usually one of the most commonly observed reasons for continuances, likely in part because it is easy for the public to observe that a trial is taking place, whereas other reasons may only be discussed at sidebar.

Tied for the second-most commonly observed reason for continuances in the second half of 2013 was the failure to bring a defendant who is in custody to court for the hearing. This can occur for a variety of reasons, including the failure of the assistant district attorney to file a transport request, or the failure of the custodial agency, such as the Orleans Parish Sheriff's Office in the case of Orleans Parish Prison, to transport the defendant.

Another commonly observed reason for delay in 2013 was the defense attorney not being available to participate in the hearing when his or her client's case was called. This category encompasses "no shows" as well as where an attorney appears briefly to explain that he or she cannot participate due to another hearing or trial in another section or Court. The reasons for "no shows" range from the excusable, such as attorney illness, to the organizational, such as the Orleans Public Defenders' practice of assigning its attorneys to courtroom "clusters" such that a public defender could have three hearings in three different courtrooms at the same time, to the inexcusable, such as private attorneys scheduling multiple trials that are set to proceed in different parishes on the same day.

Unscheduled, non-holiday courtroom closures continue to be a problem in some sections of Criminal District Court. While some of these closures are no doubt due to last-minute illnesses or family emergencies, the Court should provide substitute *ad hoc* Judges and/or better public notice when a courtroom will be closed and this is known in advance. Every week Court Watch NOLA confirms that any section to which its volunteers are sent to observe cases has matters scheduled for the assigned day, yet our volunteers – as well as witnesses, families, and the public at large – regularly arrive only to find that their courtroom is closed for business.

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<sup>25</sup> Because many continuances are only discussed by the judge and attorneys at sidebar – that is, off the record and out of the hearing of the public – or never mentioned in open court at all, there are many cases for which Court Watch NOLA's volunteers were not able to determine the reason for the continuance.

Other frequently observed reasons for continuances include: the unavailability of state (often NOPD) witnesses; the failure of defendants who have been released or are out on bond to appear for their court dates; the failure by the state to timely provide the defense with discovery information, such as police reports; prosecutor – particularly those that handle complex cases and may have multiple hearings in multiple courtrooms on the same day – unavailability; that the parties are in the midst of plea negotiations; a request by a new defense attorney for more time to prepare; that the matter has been set in error; and the filing of new motions, requiring more time for the non-moving party to respond to such motions.

<b>Ex. 6: Most Frequently Observed Reasons for Continuances</b>	
<b>1st Half 2013</b>	<b>2nd Half 2013</b>
1. Defense attorney unavailable	1. Trial in progress
2. Trial in progress	2. (tie) Defendant in custody, not produced
3. Defendant in custody, not produced	2. (tie) Defense attorney unavailable
4. Non-holiday court closure	4. Non-holiday court closure
5. Defendant released, does not appear	5. State witness unavailable
6. State witness unavailable	6. (tie) Defendant released, does not appear
7. Plea negotiations ongoing	6. (tie) State has not produced discovery
8. State has not produced discovery	8. State attorney unavailable
9. Set in error	9. Plea negotiations ongoing
10. New motion(s) filed	10. Change in defense attorney

Court Watch NOLA also examined the percentage of continuances due to defense attorney unavailability attributable to public defenders versus private criminal defense attorneys in 2013. And once again, private defense attorneys were disproportionately responsible for these delays, with 67 / 54% of them being attributable to the private bar while only 30 / 38% were attributable to the Orleans Public Defenders in the first and second halves of 2013, respectively.<sup>26</sup>

#### MEDIAN NUMBER OF DAYS BETWEEN SETTINGS

Many factors influence how long it takes the Court to resolve a case, including not only the rate of delays, but also the length of time between hearings. A continuance of a day or a week does not have the same negative impact on time to disposition as a continuance of a month or six weeks, for instance.

<sup>26</sup> Sample size: 81 (first half of 2013), 78 (second half of 2013).

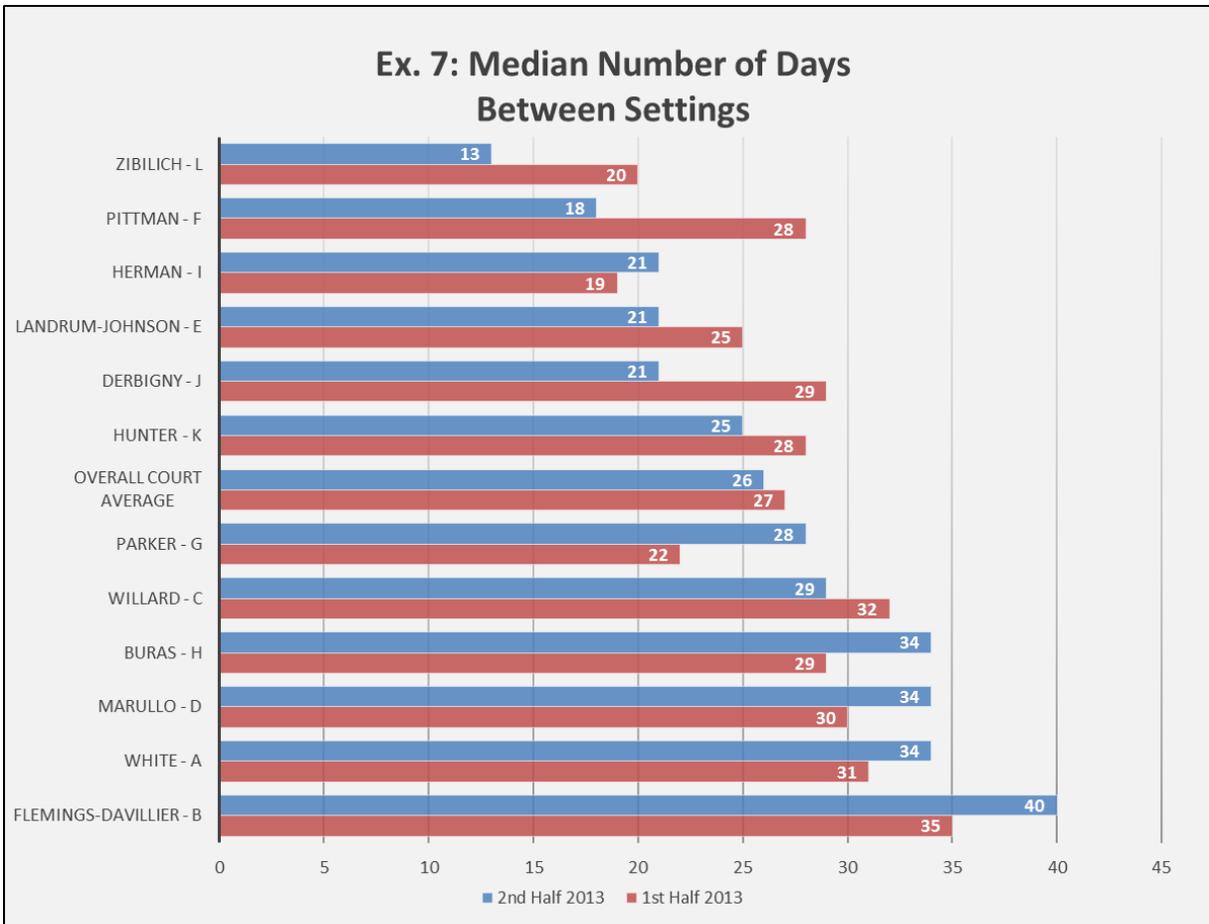
Therefore Court Watch NOLA historically tracked the average number of days between settings for each section of Court. The average across all sections of Court in the second half of 2012, for instance, was 33 days, or just over one month. In order to better account for outliers, such as a complex case where the Court sets trial several months in advance, however, for 2013 Court Watch NOLA is switching from reporting on the average number of days between settings to the median number of days between settings.

Regardless of whether the average or median is used, of course, this length of time depends not only on the Court, but also on the schedules of attorneys, witnesses, and others, such that sometimes the Court may push for an earlier date but be stymied.

**Exhibit 7<sup>27</sup>** therefore reflects the median number of total days, including weekends and holidays, between settings for all matters observed by Court Watch NOLA volunteers in 2013. The median number of days between settings, averaged over all twelve trial sections of Criminal District Court, was 27 in the first half of 2013 and 26 in the second half of 2013. In the second half of 2013, Judges Zibilich and Pittman had the lowest median number of days between settings, with Judges Herman, Landrum-Johnson, Derbigny, and Hunter also scoring above-average marks in this category. While Judge Flemings-Davillier had the largest observed median number of days between settings, it should be noted that not only was 2013 her first year on the bench, but she also inherited an enormous backlog of cases from her predecessor.

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<sup>27</sup> Sample size: Section A: 24 (first half of 2013), 73 (second half of 2013); Section B: 128 (first half of 2013), 175 (second half of 2013); Section C: 54 (first half of 2013), 93 (second half of 2013); Section D: 42 (first half of 2013), 42 (second half of 2013); Section E: 59 (first half of 2013), 86 (second half of 2013); Section F: 33 (first half of 2013), 107 (second half of 2013); Section G: 102 (first half of 2013), 117 (second half of 2013); Section H: 70 (first half of 2013), 120 (second half of 2013); Section I: 70 (first half of 2013), 74 (second half of 2013); Section J: 48 (first half of 2013), 149 (second half of 2013); Section K: 89 (first half of 2013), 80 (second half of 2013); Section L: 56 (first half of 2013), 52 (second half of 2013).



## ANALYSIS OF EFFICIENCY METRICS

### 1. Criminal District Court Was Demonstrably More Efficient in 2013 than in 2012.

In our 2012 Report, Court Watch NOLA noted a decrease in the number of new cases being filed in Criminal District Court, thanks in part to the District Attorney’s decision to prosecute non-violent misdemeanor cases in Municipal Court, and expressed disappointment that the Court’s smaller dockets and lower trial numbers did not improve the Court’s record-high continuance rate of 63%, which held steady throughout 2011 and 2012.

In 2013, however, Criminal District Court appears to have turned the corner. The overall continuance rate is down from 63% to 57%, and the number of days between settings has decreased from an average of 33 in the second half of 2012 to a median of 26 in the second half of 2013. In other words, not only were Court Watch NOLA volunteers seeing fewer delays in 2013, but the delays they did observe were of a shorter duration.

While dozens of elected officials, agencies, laws and policies impact the criminal justice system and the time it takes Criminal District Court to bring a case to disposition, at least three factors appear to have made significant contributions to this improvement: smaller caseloads, a lot of plea deals, and the Court's own performance.

First, Criminal District Court handled a smaller number of cases in 2013 than in many of the previous years, allowing the Court to reduce delays by focusing more intently on the complex felony cases that remained. For instance, while 7,035 new cases were filed in Criminal District Court in 2011, only 3,909 were allotted in 2012 (when the D.A. started prosecuting new state misdemeanor cases in Municipal Court), and only 4208 were allotted in 2013.<sup>28</sup> Shorter dockets in 2013 often allowed Judges to "wait out" a delay that on a busier day may have led to a continuance. For instance, Court Watch NOLA observers reported that Judges were often able to wait out tardy defense attorneys or police officers rather than continuing the case to another day.<sup>29</sup> Similarly, smaller dockets allowed some Judges to be more aggressive in calendaring upcoming hearings that were in the near future – and not the distant future – thereby also reducing the length of delays.

Second, and as in 2012, the State continued to agree to an elevated number of plea deals with defendants in 2013. While a defendant has a right to go to trial and call and cross-examine witnesses, plea deals are generally a more efficient means of resolving cases.<sup>30</sup> And in 2013, 84% (first half) to 86% (second half) of all closed cases observed by Court Watch NOLA volunteers ended in a guilty plea.<sup>31</sup> This speaks both to the strength of the cases brought by the District Attorney, as well as his willingness to make a deal in the right circumstances.

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<sup>28</sup> Supreme Court HCR 143 Report Exhibit 8 at 86 (regarding 2011 new case filings); 2012 & 2013 data provided by the Orleans Parish Criminal District Court Judicial Administrator's Office.

<sup>29</sup> Judge Flemings-Davillier, it should be noted, did not have the benefit of a smaller docket due to the significant caseload she inherited from her predecessor in Section B.

<sup>30</sup> Plea agreements do not necessarily prevent defendants or victims from having their days in court, and having their voices heard, as one Court Watch NOLA volunteer observed: *[The defendant] was about to have a jury trial, but the Judge strongly... encouraged him to take the plea, and at the last minute, he decided to take the State's plea offer of 40 years in prison.... [A]bout 30 members of the victim's family came to see the defendant plead guilty. Obviously, it was a very emotional moment for the family of the deceased. After [he] plead guilty, the victim's mother [took] the stand to address [the defendant]. She spoke about the traumatic impact [his] actions had on her family. It was very difficult to watch, but I'm glad his mother had th[is] opportunity.*

<sup>31</sup> Sample size: 101 (first half of 2013), 159 (second half of 2013). In the first half of 2013, 58% of all closed cases observed by Court Watch NOLA volunteers ended with the defendant pleading guilty to lesser charges, while 26% pled guilty as charged. For the second half of 2013, these numbers were 60% and 26%, respectively.

Unlike in 2011, trials are therefore not clogging dockets and preventing other cases from being heard.<sup>32</sup>

Third, anecdotal observations by Court Watch NOLA volunteers suggest that some Judges began to more heavily scrutinize continuance requests in 2013, possibly contributing to the improved performance. Following the publication of Court Watch NOLA's 2012 Report – published in April of 2013, and which described a “Culture of Continuances” at Criminal District Court that was contributing to the record-high delays – for instance, some volunteers recorded observations like the following:

*The state and defense wanted to push the proceedings back a whole month [but the Judge] said "You guys need to pick a closer date. I will not let my court play a part of the culture of continuances," and then asked if there was anyone from Court Watch in the courtroom.*

*[W]hen the State requested a continuance because they didn't have some report, [the Judge] upbraided the senior ADA for the delay, noting (again th[is] quotation is very approximate) that, "We've got Court Watch here and they're going to be checking that 'delay' box, and it doesn't matter what excuse you have, they're going to check that box and the Metropolitan [Crime] Commission is checking that box showing a delay in my courtroom, and I'm going to be the one accountable for it."*

Regardless of these comments and factors, none of the Court's 2013 improvements would have been possible without the Judges' determination and influence. If Judges are ultimately responsible for the problems that occur in their courtrooms, they must also be responsible for the improvements. Court Watch NOLA therefore applauds the Criminal District Court Bench for a more productive 2013.

## **2. Private Defense Attorneys Are Disproportionately to Blame for Defense Continuances**

Court Watch NOLA's 2012 Report stated that Criminal District Court's “Culture of Continuances” was “primarily driven in 2012 by defendants and their attorneys.”<sup>33</sup> Because defense attorneys come in two distinct stripes at Tulane and Broad – private criminal defense attorneys who represent those who can afford to hire an attorney and public defenders who represent the indigent – Court Watch NOLA developed more precise

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<sup>32</sup> See Simerman, John, *The New Orleans Advocate*, “In New Orleans, Jury Trials Plummet While Conviction Rate Rises” (Jan. 8, 2014), available at <http://www.theneworleansadvocate.com/home/8007281-172/in-new-orleans-jury-trials> (last visited Mar. 11, 2014); Court Watch NOLA, 2011 Report at 4-5 (effect of trials on efficiency).

<sup>33</sup> Court Watch NOLA, 2012 Report at 3.

information throughout 2013 on how often these two groups of defense attorneys were causing delays.

Public defenders perform about 80-85% of the defense work at Criminal District Court.<sup>34</sup> Private attorneys therefore perform only 15-20%, but may handle a slightly larger percentage of the violent and often complex felonies that Court Watch NOLA tracks.

Despite the smaller number of cases they handle, private criminal defense attorneys were responsible for 67-71% of the defense continuances observed by Court Watch NOLA volunteers in 2013. Moreover, they were responsible for 54-67% of the continuances due to defense attorney unavailability.

Thus, while the “Culture of Continuances” remains at Criminal District Court to the extent that all parties contribute to delays – for instance, three of the top ten observed reasons for continuances in 2013 were purely state-related,<sup>35</sup> unscheduled court closures persist,<sup>36</sup> and the tardiness of public defenders, who cover multiple sections of court, continues to be a concern – defendants and their attorneys still drive the remaining delays,<sup>37</sup> and private criminal defense attorneys are disproportionately to blame for that.

Between 2009 and 2012, private criminal defense attorneys were also among the largest donors to the campaigns of some of the Judges of Criminal District Court.<sup>38</sup> While it is common for attorneys who appear before a Judge to also donate to that Judge’s campaign, and to do so is neither illegal nor unethical, this practice is less than ideal because it may create the appearance of impropriety or bias even where none exists, and thus decrease public faith in the criminal justice system. This potential is even greater when the private bar is not only disproportionately responsible for the delays that persist in Criminal District Court, but is also providing significant financing to some judicial campaigns.

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<sup>34</sup> Data provided to Court Watch NOLA by the Orleans Public Defenders in April of 2013.

<sup>35</sup> *See supra* at Ex. 6.

<sup>36</sup> *Id.*

<sup>37</sup> *See supra* at Ex. 5.

<sup>38</sup> *See* Court Watch NOLA Facebook Page, *Fun with nola.com’s New Campaign Finance Tool*, Nov. 6-13, 2013, available at <https://www.facebook.com/pages/Court-Watch-NOLA/134956949943208> (last visited Mar. 11, 2014).

## TRANSPARENCY

Like efficiency, transparency is more than just a buzz word to Court Watch NOLA. Our elected officials are administering justice in the public's name, and therefore the public generally has a right to know what kind of justice is being done.

Court Watch NOLA's vision of a transparent court is one in which business is conducted – with some exceptions – in the courtroom (not in chambers), on-the-record (and not in sidebars), and so that the public can hear and follow along. Court Watch NOLA therefore also monitors the courts to make sure that public courtrooms do not become smoke-filled backrooms.

## TIMELINESS

According to the American Bar Association, “[a] judge should be evaluated on his or her... [p]unctuality and preparation for court.”<sup>39</sup> Not only do citizens have a right to know that their public servants are prompt and hard-working, but Court being held timely in open session in a public courtroom is a prerequisite to the kind of transparent justice system that Court Watch NOLA seeks.

Every day each section of Court issues subpoenas to witnesses, attorneys and defendants, ordering them to appear at a particular date and time for the next hearing in their case, and each Judge can choose the court start time listed on his or her section's subpoena. Subpoena recipients are then legally obligated to be present in court at the court start time. Most sections have a subpoena start time of 9:00 a.m.

Yet some Judges sometimes fail to take the bench until long after the subpoena start time. In the meantime, unfortunately, public servants, including prosecutors, defense attorneys, deputies, court staff, and testifying police officers must wait for the Judge's arrival. Thus, even if the judge is doing administrative work in chambers, or attending a conference or legislative meeting, as many do, this delay wastes valuable time and taxpayer money, in the form of those public servants' salaries and overtime pay.

One volunteer explained how this occurred in a section with a subpoena start time of 9:00 a.m.: *[T]he [J]udge... did not take the bench until 9:50 and then left the bench and went back to his chamber at 10:04! Before he left, he made a comment trying to be funny about how if the*

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<sup>39</sup> Am. Bar Ass'n, *Black Letter Guidelines on Judicial Accountability* at 5-5.1 (Feb. 2005); see Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“Court session should begin promptly at the time scheduled to demonstrate respect of defendants' time. You can thank the audience members for being on time to show mutual respect. If court does not start on time, court staff may [/] should update audience members of when they expect court to start.”).

*attorneys were just going to be speaking on the record [than] he didn't need to be there for it. After he left, he did not return until 11:01 and by 11:46, court was in recess.*

Another volunteer described how many police officers were affected by a late Court start time on another date: *[The Judge] did not take the bench for over two and a half hours.... [so] some 30-40 people wasted over two and a half hours. Many--including 4 NOPD officers--were public employees, whose idleness came at the expense of city taxpayers. Others were private citizens, many of whom had presumably taken time off from work. Again, no explanation (or apology) was forthcoming.*

Nor is this unusual. Volunteers counted at least 55 instances in 2013 when multiple police officers were waiting in Court for the Judge to take the bench – sometimes in these instances Court began on time, and sometimes it did not – showing the potential negative impact on police officers when Court starts late.<sup>40</sup>

**Exhibit 8**<sup>41</sup> therefore reflects the median<sup>42</sup> delay (in minutes) between each section's subpoena start time and the time Court Watch NOLA volunteers observed the Judge in that section take the bench throughout 2013. Court Watch NOLA encourages those sections with a substantial median delay to consider changing the start time on their subpoenas to better reflect when court actually starts.<sup>43</sup> Staggering start times should give attorneys more time to prepare (and hopefully reduce continuance rates), enable testifying police officers to spend more time on the streets, and reduce the courthouse security screening delays that often occur around 9:00 a.m.

Court Watch NOLA emphasizes that its volunteers record the time the Judge takes the bench and not the time the Judge may arrive in court. The Chief Judge, in particular, has additional administrative duties to which he or she must attend.<sup>44</sup> Each section's subpoena start time,

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<sup>40</sup> For more volunteer observations of how late courtroom start times affect police officers, *see infra* at 40.

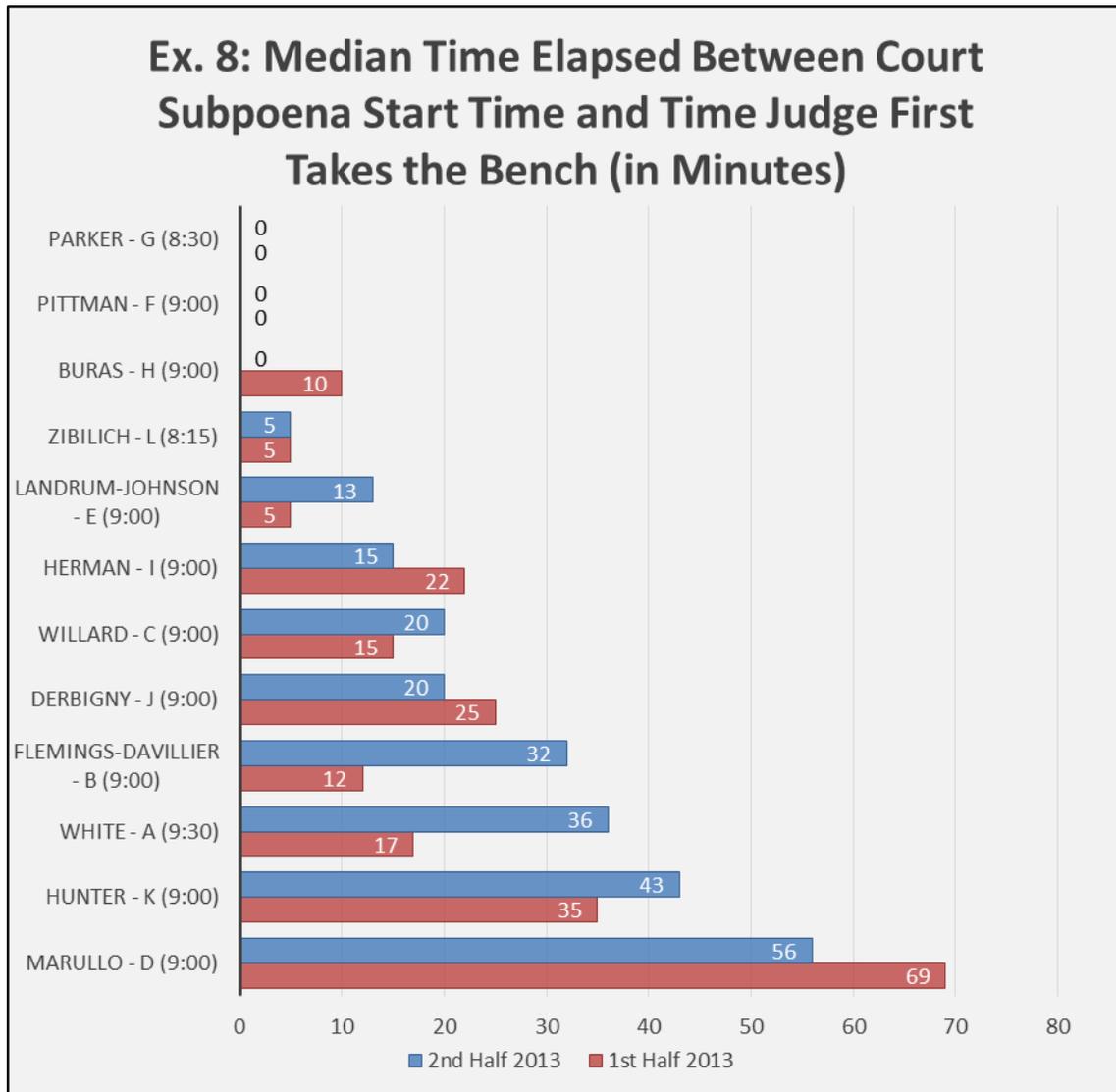
<sup>41</sup> Sample size: Section A: 15 (first half of 2013), 20 (second half of 2013); Section B: 40 (first half of 2013), 43 (second half of 2013); Section C: 20 (first half of 2013), 41 (second half of 2013); Section D: 18 (first half of 2013), 22 (second half of 2013); Section E: 28 (first half of 2013), 32 (second half of 2013); Section F: 14 (first half of 2013), 29 (second half of 2013); Section G: 27 (first half of 2013), 20 (second half of 2013); Section H: 25 (first half of 2013), 36 (second half of 2013); Section I: 19 (first half of 2013), 31 (second half of 2013); Section J: 15 (first half of 2013), 37 (second half of 2013); Section K: 35 (first half of 2013), 27 (second half of 2013); Section L: 20 (first half of 2013), 25 (second half of 2013).

<sup>42</sup> Once again, Court Watch NOLA has switched from the average (in the 2012 Report) to the median delay in order to better neutralize the effect that an outlier, such as a Judge starting Court hours late only one time, may have on the data.

<sup>43</sup> Section A, for example, did this on its own initiative years ago.

<sup>44</sup> Judge Buras of Section H was the Chief Judge of Orleans Parish Criminal District Court in 2013.

listed next to the Judge’s name, was provided by the Judicial Administrator’s office, and sections A, C, F, H & K separately confirmed the accuracy of their respective subpoena times.



The time Court ends for the day, meanwhile, depends on a variety of factors, including how early Court starts, how quickly hearings are held, and, perhaps most importantly, whether a trial – especially a jury trial – occurs. While fewer trials were held in Criminal District Court in 2013,<sup>45</sup> when they do occur Court can stretch into the evening. Thus, while Court Watch NOLA volunteers collected information on when court adjourns for the day – and the median

<sup>45</sup> Simerman, John, *The New Orleans Advocate*, “In New Orleans, Jury Trials Plummet While Conviction Rate Rises” (Jan. 8, 2014), available at <http://www.theneworleansadvocate.com/home/8007281-172/in-new-orleans-jury-trials> (last visited Mar. 11, 2014).

time across all sections in 2013 was noon<sup>46</sup> – this does not include information on what time court ends when a trial is in progress (because the volunteers cannot usually stay into the evening), and therefore undercounts the actual median time. Nevertheless, this information does demonstrate that on the majority of court days, when trials do not occur, Court is often only in session for about half of the day.

## AUDIBILITY

Court Watch NOLA closely monitors whether its observers can hear what is said in the courtroom because the Bill of Rights guarantees criminal defendants a public trial, and the public's ability to hear what is said on-the-record is central to its ability to follow and understand the justice that is being administered in its name. Plus, court is simply not as interesting to watch if you cannot hear what is going on.

And Court Watch NOLA volunteers rated Criminal District Court highly in this regard in 2013, stating that the hearings they observed were audible 88% of the time in the second half of the year.<sup>47</sup> Observers rated the Judges as best at using microphones, followed by the prosecutors and then defense attorneys.<sup>48</sup>

Nevertheless, Criminal District Court's aging infrastructure can sometimes make hearing more difficult – due to poor acoustics, loud air conditioning, or squeaky benches, for example. Some Court Watch NOLA volunteers described a few of the challenges to making courtroom hearings more audible:

*The noise of the air conditioner [in Section I] distracted the witness and jury several times.*

*The Judge had a lapel microphone instead of one at his bench so it was extremely difficult to understand what he was saying. The attorneys were even having to ask him to repeat himself because it was so difficult to hear.*

## SIDEBARS

Being able to hear what is said on-the-record does not make a courtroom transparent if too much court business is being conducted at sidebar or in chambers – and thus off-the-record. Court Watch NOLA therefore continues to track the number of sidebars that occur during any given volunteer observation period (typically 2-3 hours) for each section of court.

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<sup>46</sup> Sample size: 57.

<sup>47</sup> Sample size: 941 (second half of 2013).

<sup>48</sup> Volunteers recorded that the Judges used a microphone 84% of the time in the second half of 2013 (sample size 700), whereas prosecutors and defense attorneys used a microphone 73% and 70%, respectively, of the time in the second half of 2013 (Sample size: 678, 663, respectively).

Court Watch NOLA encourages the Court, when possible, to conduct its business in the open and on the record, and, in the relatively rare times when sidebars are required, to at least announce on the record the reason for and/or result of the sidebar. In fact, following the release of Court Watch NOLA's 2012 Report, which highlighted this issue, the rate at which the Court announced the reasons for and/or results of sidebars dramatically improved.<sup>49</sup>

Court Watch NOLA is not publishing all of its data regarding sidebars in 2013 because sidebars are sometimes necessary, and Court Watch NOLA has no way of determining which are necessary and which are not (because they are all off-the-record). Legitimate reasons for sidebars may include, for example, the need to discuss a victim's personal information in private, or discussions about some plea negotiations. Nevertheless, the average number of sidebars per observation period – as in 2012 – varied considerably by courtroom, with some sections of Court allowing over twice as many sidebars as the most transparent sections (the latter being sections A, C, H, and L). This disparity suggests that not all of the sidebars observed in some courtrooms are necessary, and that many of these discussions could occur on-the-record if the Court so urged.

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<sup>49</sup> Volunteers recorded that the percentage of time that Judges (collectively) announced the reasons for and/or results of sidebars rose from 27% to 43% from the first to the second halves of 2013. Sample size: 45 (first half of 2013), 429 (second half of 2013).

## ACCOUNTABILITY

Court Watch NOLA believes that our public servants, including Judges, attorneys, and law enforcement officers, must be accountable to all citizens, and not simply to their colleagues and the bench and bar. Therefore, and in addition to the objective data already presented in this Report, Court Watch NOLA volunteers also make more subjective observations regarding the Judges, prosecutors, defense attorneys, and law enforcement officers who are present for or testify at hearings and trials.

These more subjective observations include ratings and narrative observations. For the ratings, volunteers were asked to rate these parties on a scale of 1-5, with one signifying that the practice at issue “never” happened during the observation period, three signifying that it “occasionally” happened, and five signifying that it “always” happened. The narrative observations, meanwhile, are snapshots of one volunteer’s personal opinion regarding one particular day in court, and do not represent the position or opinion of Court Watch NOLA, its officers, or its directors. Court Watch NOLA attempted to select three positive narrative observations and one representative critique for each section of Criminal District Court. Some of the narrative observations were edited for grammar, spelling and/or length, but not for substance.

## OVERALL COURT RATINGS

For these ratings, volunteers were asked to rate each Judge they observed on a scale of 1-5, with one signifying that the practice at issue “never” happened during the observation period, three signifying that it “occasionally” happened, and five signifying that it “always” happened.

**Was the Judge paying attention at all times?**<sup>50</sup> Criminal District Court Judges were almost always paying attention to Court proceedings, according to our volunteers, who gave the Judges ratings of 4.5 and 4.6 in this category in the first and second halves of 2013, respectively.<sup>51</sup>

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<sup>50</sup> See Tyler, *Procedural Justice and the Courts*, Court Review, vol. 44 at 31 (“Authorities can provide evidence that they are listening to people and considering their arguments by giving people a reasonable chance to state their case [and] by paying attention when people are making that presentation.”); Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, The Judges Journal, Vol. 51, No. 2 at 22 (“Judges who make eye contact and appear alert, engaged, and knowledgeable about the case before them demonstrate greater respect for the defendant and the process.”).

<sup>51</sup> Sample size: 399 (first half of 2013), 678 (second half of 2013).

**Was the Judge professional and courteous at all times?**<sup>52</sup> Observers also gave the Judges strong ratings of 4.4 and 4.5 during the first and second halves of 2013, respectively, in this category.<sup>53</sup>

**Was the Judge ready at all times to call the next case?**<sup>54</sup> Court Watch NOLA volunteers gave the Judges ratings of 4.3 and 4.4 during the first and second halves of 2013, respectively, meaning that the Judges were “usually” moving the docket quickly by calling the next case as soon as the previous hearing was complete.<sup>55</sup>

**Did the Judge conduct the Court's business on-the-record and in a transparent manner?**<sup>56</sup> Our volunteers gave the Judges slightly lower ratings for their transparency, with an average of 4.2 during the second half of 2013. As usual, the tendency of some judges to not use a microphone or to handle matters at sidebar likely affected this ranking.<sup>57</sup>

#### SECTION “A” NARRATIVE OBSERVATIONS

*Even though [the Judge] started court an hour late, once she was there she was pretty efficient. She had control of the courtroom - she would call cases, and speak to defendants a lot of the time. She seemed to be really involved in making sure they're staying on the right path.*

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<sup>52</sup> See Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, The Judges Journal, Vol. 51, No. 2 at 21-22 (“Appearing approachable and accessible is a key component of procedural justice. Judges should consider addressing defendants by name and thanking them and audience members for their cooperation while court is in session.... Judges who make eye contact and appear alert, engaged, and knowledgeable about the case before them demonstrate greater respect for the defendant and the process.... Treating courtroom staff and attorneys courteously can also reinforce the impression that the courtroom is a place of mutual respect.”); Center for Court Innovation and National Judicial College, *Enhancing Procedural Fairness: Draft Menu of Best Practices* (“Greet each defendant by name and with eye contact.... You may choose to thank the defendant for appearing on time... Make eye contact. Consider your body language and reduce intimidating behaviors. Engage in active listening.”).

<sup>53</sup> Sample size: 383 (first half of 2013), 662 (second half of 2013).

<sup>54</sup> See Berman and Gold, *Procedural Justice from the Bench: How Judges Can Improve the Effectiveness of Criminal Courts*, The Judges Journal, Vol. 51, No. 2 at 22 (“Calendaring cases in a way that minimizes wait times demonstrates respect for the busy lives of defendants, witnesses, family members, and jurors.”).

<sup>55</sup> Sample size: 389 (first half of 2013), 663 (second half of 2013).

<sup>56</sup> See Burke and Leben, *Procedural Fairness: A Key Ingredient in Public Satisfaction* at 6, 16, American Judges Association, 2007 (“Neutrality: consistently applied legal principles, unbiased decision makers, and a ‘transparency’ about how decisions are made.... [T]he parties had no voice and could not see that the procedures were neutral because there was no transparency in the process. They did not see any evidence that their concerns were being taken seriously because they had minimal contact with the judge.”). [emphasis removed]

<sup>57</sup> Sample size: 644.

*I was favorably impressed by [the Judge], who generally kept things moving and seemed impatient of delay; at one point she even denied a motion for a continuance (the first time I have seen this happen).... The number of sidebars was not excessive, and the Judge was very good about using her microphone, as were (most of) the attorneys before her. When addressing defendants the Judge made an effort to ensure they understood things. At the same time, the courtroom could feel rather informal and even somewhat chaotic on occasion. This was due in part to the judge's tendency to move quickly and sometimes to jump from one matter to another without preamble, and in part to the fact that the scrum of attorneys at the front sometimes showed little restraint about socializing with each other while the proceedings went on.*

*She was a hardcore judge. If there was a continuance needed she needed a good reason why. She kept all cases moving along.*

*The judge seemed to interrupt and argue with everyone.*

#### SECTION "B" NARRATIVE OBSERVATIONS

*Overall, [the Judge] had really good control of her courtroom. At one point the defense attorney was getting kind of out of line, and she gave him a warning that he was walking on thin ice. After he made another rude comment to a NOPD detective... she called all of the attorneys to her chambers in order to make sure it didn't go any further. I was really impressed with her poise and how she handled [some] pretty intense/crazy attorneys.*

*It was interesting the way the jury was picked. The Judge was clear in her questioning and explained every aspect of the process to the jurors. I felt like the process ran smoothly and all of the people were aware of each specific portion of the trial, how it would run, and if they had any reason not to serve.*

*In this case, the female defendant was unaware that she would possibly lose [government assistance] by pleading guilty.... The Judge was very nice about making sure the defendant knew the possibility of this happening, and practically insisted the defense lawyer explain to her what may happen.*

*The Judge was 45 minutes late taking the bench, while prisoners, counsel, [and] witnesses were waiting, and did not explain the delay. A good deal of chatting went on in the courtroom[; it was] not well controlled. Most matters were handled in bench conference, and the Judge did not give reasons for rulings following these conferences.<sup>58</sup>*

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<sup>58</sup> Judge Flemings-Davillier asked that we print the following response to this narrative observation: "Thank you for a copy of the draft of the Court Watch NOLA 2103 Report. I appreciate the opportunity to speak with you candidly about some of the substance of the report. As discussed, I wanted to have the opportunity to

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review the report in more detail and to respond to and/or to comment on observations noted in the report. I appreciate that Court Watch recognized and noted that Section B. has a very large docket, which I inherited upon taking the Bench in 2013. I also appreciate Court Watch's efforts to discuss various issues in terms of evaluating all of the different parties that play a role in the criminal justice system and the myriad of reasons that may impact the Court's overall operation and case management. Nevertheless, I think that it is worth responding to and commenting on the following:

SECTION "B" NARRATIVE OBSERVATIONS - While I note that the first three observations were positive, the fourth observation stated that I took the bench 45 minutes late, keeping those in court waiting and did not provide any reason for my delay, that a good deal of chatting went on, the courtroom was not well controlled, most matters were handled at sidebar and I did not give written reasons for my rulings.

As discussed during our conversation, comments like these are difficult to address given the lack of information as to the date on which the comment was made; the absence of information regarding the person making the observation and that person's level of understanding of the legal system and experience in a courtroom setting; the lack of information regarding how long that person actually observed the court proceedings that day, among other factors that may have been present. This type of "observation" creates such a negative depiction of the courtroom proceedings that it seems counterproductive, especially in light of the absence of the context in which the court proceedings took place and given that the observation is grossly contrary to the normal courtroom decorum in Section B.

Nevertheless, I reviewed my docket from the date on which you advised the observation was made (November 6, 2013) and determined that I handled approximately 30 matters that day, which included several arraignments; bond hearings; a contradictory hearing on a motion to set aside a bond forfeiture (which was somewhat contentious); several plea agreements, requiring discussion of the terms of the respective agreements (one involving placement of a defendant in the Court's Domestic Violence Monitoring Program - requiring the defendant to be screened (briefly) by a case manager in court); several Rule to Show Cause/Revocation hearings (requiring extensive discussions with counsel for the State and defense and the probation officers - all of which took some time to determine the most productive disposition of each case); and pre-trials on several serious cases, involving such matters as Attempted 1<sup>st</sup> Degree Murder, Attempted 2<sup>nd</sup> Degree Murder and Aggravated Battery. Sometimes in-chamber conferences are necessary for various reasons, including the small court room setting; however, I do believe that I had met with counsel in chambers that morning, and thus, was at court, conducting court business well before taking the bench, as is usual given the physical courtroom setting. So suffice it to say, there were a number of matters handled that day with a variety of attorneys for the State (more ADA's were in court that day than just the two assigned to Section B.), defendants, various parties, probation officers and others in court. Nevertheless, looking at the docket, it appears to have been a productive day. I cannot help the way that the one person who was in court that day perceived the operations, but I wholeheartedly disagree with the picture of chaos created by that observation and unfortunately cannot provide more information given the absence of information concerning what proceedings that person observed.

I conduct myself in a professional manner and require that the lawyers, witnesses and defendants do the same. During my first year at Criminal District Court, many lawyers and other parties have taken it upon themselves to note how impressed they have been with the professional courtroom decorum and the tone of the court. Nevertheless, as can happen in any courtroom setting, the noise level may rise, depending on the number of people in the courtroom (I note that the Section B. courtroom is extremely small); attorneys may need the opportunity to speak with victims, defendants, families and others about cases (and it is not always feasible to do so in the hall outside of the courtroom); or a defendant or another person (a victim, family, etc...)

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may get emotional at times. In addition, there is only one entrance and exit in and out of Section B., which requires all attorneys, defendants (including those in custody), victims, witnesses, doctors, counselors, deputies, staff, and other parties to enter and exit through the same door. All of these factors make it difficult to control the noise level at *all* times. But, even with the current courtroom setting (of which the Report makes mention), I have maintained control over the courtroom and the proceedings.

In addition, given the amount of people in court on any given day, conferences may be necessary to discuss sensitive, private and/or confidential issues. All conferences are conducted with counsel for the State (representing the interests of the citizens) and counsel for the defendant(s). I have made it a practice that after such conferences, counsel goes on record as necessary to place important dates and information on the record. In addition, I always give reasons for my rulings where a reason is warranted, whether I grant a continuance, rule on a motion and/or address some issue raised by counsel. In fact, I often times issue a per curium/written reasons for judgment on complex cases.

While the Assistant District Attorneys typically call the cases on the docket, I take great care to ensure that I have ultimate control over the docket, taking note of defendants, parties and attorneys who are present and those who are not, in which case, I make every effort to locate those attorneys and/or probation officers who are not present and/or to communicate with Orleans Parish Prison to get inmates to court as soon as possible (even though I may be told that an inmate cannot be transported to court for some reason in which case I have worked to get those inmates to court nonetheless) so as to avoid delaying or continuing a case to another date. I have found that my interactive involvement in moving the case docket and calling on lawyers and others to be in court has allowed us to handle matters on the scheduled date, as opposed to delaying cases merely due to absences.

Over the past year and 3 months that I have served on the Criminal District Court Bench, I have thoroughly enjoyed my work as a Judge. I have worked extremely hard to address those cases that have been pending on the docket for some time and to establish immediate control over those cases that have been filed since I took the Bench. Much of my work as a Judge takes place on the bench in court, but a lot of work also takes place off the bench, reviewing cases, motions, legal research, drafting judgments, and other judicial documents. Given my caseload (of which I was fully aware when I ran for the position), I spend many days, evenings and nights working to ensure that I am fully prepared for the large amount of cases I handle daily.

In addition, when I took the Bench in 2013, I agreed to take the Drug Court docket that was previously assigned to Section B. I enjoy working on alternatives to incarceration and rehabilitative programs that improve the lives of others and ultimately improve the quality of life for our community. After becoming a "Drug Court Judge," I volunteered, along with Judge Karen Herman, to serve as an Administrative Judge over "Court Intervention Services" ("CIS"), which includes Drug Court, Mental Health Court and the Domestic Violence (DV) Monitoring program. In that capacity, Judge Herman and I have spent countless hours working on those programs; meeting with supervisors, case managers and counselors; and working on program funding and sustainability (often requiring that we meet at Court at 8 am in the morning and late during the day, as well as work at night on various matters). Drug Court and Mental Health Court, as well as the DV program, have proved very successful for many clients, as evidenced quarterly by those who graduate from the programs or complete the requirements in the case of the DV program. Other Judges are also involved in rehabilitative programs, which require a lot of time and have proved successful to those clients. These successful programs ultimately positively impact the overall functioning and purpose of the Court and the criminal justice system in that they reduce recidivism, reduce court costs and costs of incarceration, among so many other benefits and invaluable gains for the client and community. Without the support and meaningful substantive hard work of the Judges, along with the program staff, such programs would not exist.

## SECTION "C" NARRATIVE OBSERVATIONS

*[The Judge] was good at trying to get things on the docket done today as opposed to continuing them. There was a trial on the docket but the ADA wasn't prepared to go forward, which ticked off the Judge a little.*

*[The Judge] was prompt, professional, and denied a number of sidebars on the basis that the discussions should take place in open court.*

*Today was the most frustrating day of court ever. There were no defense lawyers when the day started, so it was a bunch of waiting. Whenever the Judge was ready to call a case up, someone wasn't there or ready (be it defense lawyer or defendant). [The Judge] took the bench at 9:13, but the first case didn't actually start until 9:50. At one point, the Judge asked [us] what case we were there to see, and pointed out to us that "The Court is just as frustrated with the inactivity as y'all are." You could tell he was very peeved at the [lack of] organization. At one point, the head of the public defenders AND the D.A. were in the court room, all of them doing nothing and just waiting.*

*Above all he generally kept things moving, and did not grant many continuances. And while not the most solemn character, [the Judge] was consistently engaged and polite to participants. My main complaint was that [the microphones] were almost never used by him or anyone else; for most of my time there I was uncertain if they were even on.*

## SECTION "D" NARRATIVE OBSERVATIONS

*The docket moved very quickly once the Judge took the bench. The Judge spoke very loudly and projected his voice well.*

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Finally, I note that serving as a judge also requires a significant amount of time addressing court management and operations, personnel matters, budgetary and funding matters, and building maintenance issues, as well as coordination of various matters with our local, state and federal partners, including the Clerk of Court, the Sheriff's Office, the City of New Orleans and the City Council, State representatives, the Department of Public Safety and Corrections, and many other community and civic organizations. Many of these functions are handled by the Judges via committees and/or individually. Such work is a vital part of managing and operating a productive and efficient court system.

In closing, I appreciate Court Watch's recognition of the good work and improvements by the Judges noted in the report and it is my understanding that Court Watch will be changing the manner in which it provides information in its report. However, I suggest that for purposes of the current report, several of the comments may circumvent Court Watch's ultimate intent in drafting the report. Notwithstanding, I remain fully committed to ensuring that Criminal District Court operates in a fair, efficient and productive manner, and I know that my colleagues share the same goals.

Thank you for your time and consideration."

*The Judge was always ready to call the next case and was extremely efficient, even though he took the bench late. The Judge used a microphone and was very transparent.*

*[The Judge] was very nice and tried to interact more personally with the defendants. He is very straight and to the point and will put lawyers in their place when they are trying to do something they shouldn't be.*

*I am not sure if [the Judge] is commanding or rude. I am not sure if his quick temper is a rational response to the tumultuous proceedings or is completely unnecessary.*

#### SECTION "E" NARRATIVE OBSERVATIONS

*[The Judge] did a good job of keeping everything on track and moving forward at all times. She was prepared, used the microphone, and ensured the defendants understood what was going on at all times.*

*The Judge had a professional demeanor and was very good about identifying her actions and the reasons therefore for the record; she was also good with using her mic (as, for the most part, were the attorneys). [The Judge] took substantive action in nearly every matter that came up, and the courtroom was generally quiet and orderly. However, periods of fairly brisk activity alternated with long lulls. While sidebars were not overly frequent, those that occurred were usually fairly long, and thus proceedings would periodically grind to a halt for significant periods of time.*

*This court room was extremely organized and the Judge was ready and went through the cases at a solid pace. When this particular case was closed and she was reading [the defendant's] rights to him she looked him in the eye and really made sure he understood everything that was going on.*

*It seemed like every five minutes the Judge was asking if the defense wanted to approach the bench with the state. The sidebars took so long that I realized how pretty the ceiling in courtroom E is, although the powder blue ceiling does NOT match those walls at all. There are also 90 octagon and 90 square designs on the ceiling.*

#### SECTION "F" NARRATIVE OBSERVATIONS

*[The Judge] generally ran her courtroom well. Proceedings moved along fairly briskly in the first hour, although less so in the second. Relatively few matters were continued. When a sidebar occurred, it usually became clear afterward what had been discussed (in one or two instances because the Judge explicitly made a point of stating it for the record). [The Judge] herself was generally attentive and courteous, although at times she could be a bit caustic. She was very*

*good about speaking into her microphone and did a good job of ensuring that others spoke into their microphones as well.*

*[The Judge] is a model of excellent judicial demeanor. The Judge puts all reasons for actions on the record, providing transparency and a good record for any reviewing authority. The Judge is polite, professional, and decisive. She was firm but fair in scheduling and moving her docket.*

*The Judge did a very good job about making sure every defendant in front of her understood what was happening in [his or her] case. She made sure they were paying attention, and then even explained to them at the end of it all what exactly happened and what was going to happen.*

*Very quick and to the point, more sarcasm [than other judges] though.*

#### SECTION "G" NARRATIVE OBSERVATIONS

*[The Judge] was great. He had far more control over his courtroom than I've seen in any other New Orleans court. He actually talked to the defendants and kept moving through the docket quickly.*

*[The Judge] was very efficient in getting through the cases. He expected the best of everyone in the courtroom, especially along the lines of their preparedness. The Judge and one defense attorney got into an argument and [he] threatened to have her thrown out of the courtroom because of her disrespectful attitude. [The Judge] retains the respect and authority a courtroom should have.*

*[The Judge] took the time to look up [the exact] wording of statutes during various hearings.*

*[The Judge] was pretty good and kept court moving. The only thing I noticed was that he got pretty aggravated when a defense attorney asked him to consider a number for bail/bond that had already been set by a different judge. He yelled at [the attorney,] saying that [the other] judge has only been there for 3 years so he wasn't going to take anything that (s)he did into account.*

#### SECTION "H" NARRATIVE OBSERVATIONS

*Excellent judicial demeanor. The Judge was clear and very thorough in addressing parties and in the Boykin colloquy. [She was e]fficient, polite, and respectful. Her demeanor with probationers expressed sincere concern for their success on probation.*

*[The Judge] did a very good job of being transparent in the court proceedings. She called defendants on the phone personally in the courtroom if they were not there when the case was*

*presented. She also offered to call the workplace of defendants who were not present to explain why they had to miss work. She was organized, prepared, and professional.*

*[This] courtroom was easily one of the best I've seen at Tulane and Broad. I was favorably impressed from the very beginning, when I walked in at two minutes past nine and saw her already on the bench, and pretty much everything else I observed confirmed that this is a Judge who aims to get things done. She moved through the docket at a fairly brisk pace and was very good about identifying cases and acting clearly and decisively. She did not grant very many continuances overall, and... gave the State a hard time about these requests and seemed very much inclined to deny them if possible. [The Judge's] demeanor was professional throughout, and generally friendly, but she could also assume a forceful and authoritative attitude when the circumstances required. When accepting a guilty plea she did a good job of attempting to ensure the defendant understood his actions as well as the importance of adhering to the terms of his plea deal.*

*I really enjoyed sitting in this court room. [However,] the inmates were continuously turning around to stare... at m[e] and mouth words to their families. I felt uncomfortable... and the Judge didn't seem to notice. I know that in other court rooms, Judges make sure that the inmates are facing forward.*

#### SECTION "I" NARRATIVE OBSERVATIONS

*This was one of the most compassionate Judges I saw – [she] talked to people on probation and told them to call her if they needed support.*

*Court ran smoothly this morning. The judge was very efficient and made sure to call cases on time and promptly. The ADAs were present and on time as well. There were few continuances.*

*The air vent/air conditioning was blowing so loudly in the courtroom that I couldn't hear anything that was being said by any of the parties.*

*I felt like the judge was... way too casual.*

#### SECTION "J" NARRATIVE OBSERVATIONS

*[This] courtroom was very professional and the Judge made a very good effort to try and push through all the cases. The only delays were usually when the attorney or defendant was not present when his/her case was first called. However, the ADA was usually ready to call the next case... and they returned to the previous one once everyone was present. Also, many of the defense attorneys were constantly on their phones.*

*The Judge was polite and respectful to all, including defendants.*

*[The Judge] speaks very fast and it is hard to understand him even though he uses a microphone. On the other hand, he is very nice and courteous. He thanked the parole officer for her time. He was also good at moving through the docket.*

*I think I heard the statement "permission to approach the bench" for every case. The ADA would announce the case, and almost immediately the ADA and the defense counsel would go to the bench. The three of them would have a conversation, off the record, and then they'd come back [to] the microphone and ask for another hearing on another date.*

#### SECTION "K" NARRATIVE OBSERVATIONS

*The defendant in this case was present and his family was there also. [The Judge] took the time out to explain the conditions of his plea bargain.... [and] to explain the consequences of not being able to finish the terms of his sentence.*

*[One defendant] spoke with the Judge about his boxing [so] the Judge [got to know] him on a personal level. [The Judge] took time out to ask about how things were going with the defendants.*

*I was surprised to see that the Judge was on the phone when the defense attorney was changing the plea of the defendant. But [the Judge] did make sure the defendant knew what was happening and that she understood the consequences of her pleading guilty to the lesser charge.*

*[The Judge's] demeanor was informal, even casual.... [O]n the two occasions that I observed the Judge accept guilty pleas [he was] visibly disengaged [and] rushed through purely rote recitations of the various rights the defendants were surrendering. The tendering of those two pleas was almost the only substantive judicial activity I observed. The Judge did not seem particularly interested in expediting the proceedings, and in fact stepped off the bench three separate times while I was present.*

#### SECTION "L" NARRATIVE OBSERVATIONS

*I liked the way [the Judge] conducted and led the courtroom. He really treated the defendants as human beings and made sure they understood what was going on at all times. When the translator was needed for the defendant who did not speak English he was especially careful in making sure she understood her sentence by having her repeat back in her own terms what specific legal language meant. It appears as though [the Judge] really wants to promote justice through positive changes in the legal system and this is evident in how he conducts the courtroom.*

*The Judge had a very firm grip on the courtroom in general. He made sure to ask everyone (including me) the[ir] reason for being there. Also, the attorneys started talking to each other*

*and he quickly told them to stop. One individual also came in to get the Judge's signature that showed he had completed community service. The Judge told the courtroom what just happened after he signed the document.*

*[One defendant] and his friend actually showed up high and the Judge called them out on that. You could tell the Judge was very dissatisfied. [When that defendant] pled guilty, the Judge gave him a lecture that I found very moving. You could [see] the Judge wanted [the defendant] to take it to heart and grow up[, saying] "Your drug days are over!"*

*[The Judge] is a great judge, but today was just not his day. He kept having discussions in [his] chambers for practically every case. Maybe everyone else knew what was going on, but I didn't. If I didn't, I can assure you all the people in the audience there waiting for cases of family members probably had no clue either.*

#### PROSECUTORS – RATINGS AND NARRATIVE OBSERVATIONS

For these ratings, volunteers were asked to rate the Assistant District Attorneys (“ADAs”) they observed on a scale of 1-5, with one signifying that the practice at issue “never” happened during the observation period, three signifying that it “occasionally” happened, and five signifying that it “always” happened.

**Was the ADA professional and courteous at all times?** Our observers thought that the prosecutors they watched were almost always professional and courteous, giving them ratings of 4.5 and 4.6 in this category for the first and second halves of 2013, respectively.<sup>59</sup>

**Was the ADA prepared and organized at all times?** Court Watch NOLA volunteers gave prosecutors an average score of 4.4 for their preparation and organization in 2013.<sup>60</sup>

**Was the ADA ready at all times to call the next case?** In some sections of Court the ADAs – not the Judge – call the next matter on the docket, thus affecting how efficiently the Court operates. Court Watch NOLA volunteers gave the prosecutors ratings of 4.4 and 4.3 during the first and second halves of 2013, respectively, in this category.<sup>61</sup>

The following themes related to Criminal District Court ADAs were also raised in multiple volunteer narrative observations:

**Effectiveness:** Court Watch NOLA volunteers often noted what impressed – or, sometimes, depressed – them about the ADAs’ work:

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<sup>59</sup> Sample size: 391 (first half of 2013), 646 (second half of 2013).

<sup>60</sup> Sample size: 422 (first half of 2013), 668 (second half of 2013).

<sup>61</sup> Sample size: 528 (first half of 2013), 904 (second half of 2013).

*[The ADA] did an excellent job during the entire time I was observing cases. He was transparent and moved through the cases quickly. I heard his argument in a motion hearing and he was extremely convincing.*

*A couple comments about this court room and the ADA. In the beginning of the morning, [the] ADA checked everyone in (tried checking me in too, but then she saw my yellow clipboard). She was very considerate and efficient.*

*[This] ADA seemed disorganized, and brought the wrong paperwork to cops on a number of occasions.*

*During direct examination of the prosecution's witness, the prosecution was unable to find a document and it took them several minutes to locate it, delaying the trial.*

**Helping the Public:** ADAs will often answer questions about the court proceedings from members of the general public, including court watchers:

*The DA and the other lawyers were really nice and offered to help me with any questions I might have.*

**Lateness:** Because most Assistant District Attorneys are assigned to only one courtroom, they are not tardy or absent as often as defense attorneys. Nevertheless, this occasionally happens:

*[The assigned ADA] was not present (the other two ADAs were) and the Judge asked about her whereabouts a few times and told the other ADAs to have her get here.*

*The Judge took the bench early, but it took a few minutes for the ADAs to get their papers together and actually start calling the cases.*

**Unprofessionalism:** Though not widespread, some volunteers questioned the professionalism of some ADAs in certain situations:

*I also thought the ADA was not very polite to the Judge [because] a couple times she would talk over him or interrupt him.*

*The ADA in this courtroom was not very professional. She had a hole in her pants and waved a huge bag of weed around (not during the hearing that it pertained to, she was just showing people around her). She was also unnecessarily rude to the OPD.*

## DEFENSE ATTORNEYS

For these ratings, volunteers were asked to rate the defense attorneys (both public defenders and private criminal defense attorneys) they observed on a scale of 1-5, with one signifying

that the practice at issue “never” happened during the observation period, three signifying that it “occasionally” happened, and five signifying that it “always” happened.

**Was the defense attorney professional and courteous at all times?** Observers gave defense attorneys strong marks for their professionalism and courtesy – a 4.4 rating on the 1-5 scale – in 2013.<sup>62</sup>

**Was the defense attorney prepared and organized at all times?** As usual, our volunteers generally found that defense attorneys were slightly less prepared than the ADAs, and gave the former an average rating of 4.2 in this category in 2013.<sup>63</sup>

**Was the defense attorney present in the courtroom when the case was first called?** The percent of the time that the Court had to wait for defense attorneys to arrive was 24% in the first half of 2013, and 26% in the second half of 2013, with both numbers being in the same range as in previous years.<sup>64</sup>

As with prosecutors, certain themes related to defense attorneys were raised in multiple volunteer narrative observations:

**Courtroom Disruptions:** Some defense attorneys meet with their clients, colleagues, or co-counsel in the courtroom while Court is in session, causing disruptions and making it hard for the public to follow court proceedings:

*There was just too much going on in the courtroom. The public was whispering and there were 15 lawyers conferencing with each other in the court while all the hearings were going on.*

*There was too much commotion because attorneys kept entering, leaving and re-entering the courtroom. They also kept talking to each other loudly off to the sides or to their defendants behind the barrier and in the crowd.*

**Effectiveness:** Court Watch NOLA volunteers got to see outstanding defense attorneys passionately defending their clients, as well as some less-than-outstanding work:

*OPD was extremely convincing and made a compelling argument.*

*The defense attorney was very effective on cross-examination. She was aggressive towards a female police officer; the police officer seemed extremely nervous and defense counsel definitely flustered the witness, making the police officer seem less credible.*

*When court finally started and the jury was brought in there was a 45 minute hold up due to the fact that the defense did not have their witness ready.*

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<sup>62</sup> Sample size: 302 (first half of 2013), 559 (second half of 2013).

<sup>63</sup> Sample size: 324 (first half of 2013), 565 (second half of 2013).

<sup>64</sup> Sample size: 467 (first half of 2013), 809 (second half of 2013).

*The prosecutor was very well prepared, but the defense seemed unorganized.*

**Lateness:** Defense attorneys' tardiness was a source of concern to our volunteers, ADAs, and, often, to the Court itself:

*As usual, there were delays when everyone was waiting on defense attorneys.*

*Today was "Let's Wait for Defense Attorneys Day."*

*Court moved very slowly today. A lot of the time, there were no defense attorneys in the court at all. The ADA had a hard time calling the next case because the defense was constantly in and out, and the ADA had to shuffle between files and cases many times.*

*On most occasions today the court was at a standstill waiting for defense attorneys. Court recessed for almost an hour to allow them to arrive. Even with that most of the cases I heard were continued with a reference to text or call [the] defense [for] a new date.*

The Orleans Public Defenders generally assign a section public defender to handle small matters, such as arraignments, even when the assigned public defender is unavailable. Private criminal defense attorneys are therefore to blame for many of the delays related to defense attorney tardiness:

*[The defendant] said that his lawyer couldn't come, so the Judge appointed a public defender to him because she said she couldn't be sure his attorney would show up if he picks his own lawyer.*

*When I arrived, there were no defense attorneys present. The Judge would try to move things along but the ADA would remind him that nobody was in the court room. This caused many delays. Also, when the defense attorneys arrived, many of the private attorneys were still not there. This was clearly frustrating to all.*

**Professionalism:** As with the ADAs, there were only a few reports of unprofessionalism on the part of the defense bar:

*The defense attorney wore a t-shirt under his jacket and appeared hungover.*

*Many defense attorneys were also missing, causing further delays. One defense attorney was chewing gum during his client's guilty plea.*

#### NEW ORLEANS POLICE DEPARTMENT

For these ratings, volunteers were asked to rate any testifying police officers they observed on a scale of 1-5, with one signifying that the practice at issue "never" happened during the observation period, three signifying that it "occasionally" happened, and five signifying that it "always" happened.

**If a NOPD officer was present for your case, was s/he present when the case was first called?** According to our volunteers, NOPD officers were in court and on-time 71% and 59% of the time in the first and second halves of 2013, respectively.<sup>65</sup> The fact that officer absence is relatively low on the list of top observed reasons for continuances in 2013<sup>66</sup> suggests that officers are still showing up to court, but merely doing so late in some of these cases. NOPD's continuing efforts to ensure that its officers are on-time and prepared for Court, including electronic subpoenas, random courtroom checks, and investigations into unexcused absences, meanwhile, deserve praise.

**If a NOPD officer was present for your case, was s/he in uniform or otherwise professionally attired?** Court Watch NOLA observers said that 85% to 88% of testifying NOPD officers were professionally attired at Court in the first and second halves of 2013, respectively.<sup>67</sup> Thus, while this may have been an issue in the past, it no longer appears to be a widespread problem.

**Was the NOPD officer prepared for his/her testimony, and did he/she remember the events at issue clearly?** Our volunteers said that testifying NOPD officers were "usually" able to recall the events at issue by giving them average ratings of 4.3 and 4.2 in the first and second halves of 2013, respectively.<sup>68</sup> This is in line with Court Watch NOLA's historical findings for this category and is a testament to both the officers and the ADAs who help prepare their testimony.

**Was the NOPD officer's testimony clear and understandable?** Court Watch NOLA volunteers gave testifying NOPD officers similar ratings of 4.3 and 4.4 in this category in the first and second halves of 2013, respectively.<sup>69</sup>

Multiple Court Watch NOLA volunteers also made remarks on the following themes related to NOPD officer testimony:

**Effective Testimony:** As usual, some pieces of NOPD officer testimony were more effective than others:

*There was a long line of questioning of a NOPD officer who appeared on the scene. The officer was clear about what he remembered and what he didn't. The defense did [its] job [of arguing] against the testimony but was trying to prove something that just wasn't really going to happen.*

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<sup>65</sup> Sample size: 82 (first half of 2013), 158 (second half of 2013).

<sup>66</sup> See *supra* at 15-16.

<sup>67</sup> Sample size: 75 (first half of 2013), 108 (second half of 2013).

<sup>68</sup> Sample size: 51 (first half of 2013), 67 (second half of 2013).

<sup>69</sup> Sample size: 50 (first half of 2013), 61 (second half of 2013).

*The state's case was [weak because] a large chunk of the evidence... had gone missing while in police custody, a fact that was only learned through much pressing by the Judge and the defense.*

*The two police officers [who] took the stand... both had battery cases. [W]hen asked [whether] they t[ook] pictures of the victim[s], they both stated that they did not have a camera.*

*The detectives in the case expressed that there was a lot of confusion on the day of the... arrest. They stated there were many problems with people not knowing who was in charge and who was doing what. The officers were not able to answer many of the questions because they did not remember.*

#### **Officer Lateness:**

*The Judge tried to [proceed with] this case multiple times. However, the state could not get the officer to show up. The officer was in traffic, and could not make it on time. The Judge pointed out this was the third time the state had continued the [case].*

*During one point in the day, there were 6 NOPD officers present, and they waited 2 hours for the [other] NOPD officer. When the last officer did not show up... the 3 officers who were [still] there had to reschedule for another day to come back to court.*

#### **Effect of Court Delays:**

*[The Judge] did not take the bench for over two and a half hours... [so] some 30-40 people wasted over two and a half hours. Many--including 4 NOPD officers--were public employees, whose idleness came at the expense of city taxpayers. Others were private citizens, many of whom had presumably taken time off from work. Again, no explanation (or apology) was forthcoming.*

*[There were] 6-10 officers in the room, depending on the time, [and] all waiting for the Judge.*

*From everything I've seen as a Courtwatcher I feel like it just has to be more organized for the police officers. So many of them get called into court to do nothing.*

#### **ORLEANS PARISH SHERIFF'S OFFICE**

For these ratings, volunteers were asked to rate the Orleans Parish Sheriff's Office ("OPSO") deputies they observed on a scale of 1-5, with one signifying that the practice at issue "never" happened during the observation period, three signifying that it "occasionally" happened, and five signifying that it "always" happened. The OPSO is responsible for courtroom security and transporting inmates to and from Orleans Parish Prison.

**Did the Sheriff's deputies maintain control of the courtroom at all times?** Volunteers rated the OPSO deputies as “usually” maintaining control of the courtrooms at Tulane and Broad, with ratings of 4.3 and 4.4 during the first and second halves of 2013, respectively.<sup>70</sup>

**Were the Sheriff's deputies alert and paying attention at all times?** OPSO deputies remained alert most of the time, garnering ratings of 4.0 and 4.4 in this category from Court Watch NOLA volunteers during the first and second halves of 2013, respectively.<sup>71</sup>

**Were the Sheriff's deputies professional and courteous at all times?** Court Watch NOLA observers gave OPSO deputies their highest marks for being professional and courteous, with rankings of 4.4 and 4.6 during the first and second halves of 2013, respectively.<sup>72</sup>

In addition, multiple volunteers provided narrative observations regarding the following themes related to OPSO deputies in 2013:

**Courtroom Control:** OPSO deputies assist the Judge in controlling the courtroom, and Court Watch NOLA volunteers observed a variety of approaches to courtroom control in 2013:

*I was very impressed with the [deputies] in th[is] courtroom. They were on top of where people sat, bringing inmates in and out, and making sure that the public crowd did not speak to the inmates (which they tried to do).*

*[The deputy] also went around checking defendants in as they arrived, which I find to be very effective and make the courtroom more efficient.*

*The deputies in this Court did not do a good job of keeping order... They were constantly on their phones, did not direct people where to sit, and the Judge had to tell the defendants who were brought from [OPP] multiple times to not look at or talk to their family or friends watching the proceedings, and to not talk to each other.*

*[One] Sheriff's deputy appeared to be sleeping during the motions hearing. [The e]ntire courtroom was very disorganized and loud, and it was incredibly difficult to hear, even though all parties were using the microphone.*

**Inmate Transportation:** The OPSO's ability to safely and quickly transport inmates in and out of the courthouse is crucial to courtroom efficiency, as several volunteers noted:

*[The p]risoners never showed up. They kept announcing that it would be another 30 minutes until they eventually just rolled the docket to the next day.*

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<sup>70</sup> Sample size: 371 (first half of 2013), 602 (second half of 2013).

<sup>71</sup> Sample size: 365 (first half of 2013), 594 (second half of 2013).

<sup>72</sup> Sample size: 363 (first half of 2013), 582 (second half of 2013).

*Court is moving so slowly that the ADA was staring out the window for five minutes. There was a twenty-minute delay after Court was called to order at 9:05 due to inmates not being brought.*

#### FACILITIES, SIGNAGE AND TECHNOLOGY

Many Court Watch NOLA volunteers made observations about how the courthouse infrastructure was being, or could be further, improved:

**Lack of Hallway A/C & Seating:** *[The deputies] made everyone, except the attorneys, wait in the hall until the Judge arrived. There are not enough seats and that hall is hot and humid.*

**Lack of Signage:** *People who were sitting around me were talking about how they wished there were more signs on where to sit and what to do.*

#### **Sections B & L (the Courtrooms in the Attic):**

*I did not like how a murder trial was in that small of a courtroom because there was an evidence display on a table where the jury just got up and walked around.*

*The courtroom was really crowded when I first walked in. There was only one empty seat. At one point, the people in the hall got very loud and [we] could not here what was going on inside the courtroom.*

*One unique thing I found was the layout of the courtroom. In most courtrooms the defendants are facing the front like us. However, in this courtroom they are facing the side and are therefore able to see [the public].*

**Security:** *The line was extremely long getting into the courthouse this morning. There were three deputies trying to push us through in a timely manner.*

**Use of New Technology:** *The defendant was not present in court, but they had him there electronically with a video camera and television. There was a delay and the audio was not perfect, but I think that if they keep trying this out it could definitely be a good addition to the court.*

#### CLERK OF CRIMINAL COURT

Some volunteers also noted problems with the Court filing system:

*[The] Judge talked about how she wished they had a better system for locating files because [she] often cannot find [the] old ones.*

*Some of the files were missing information.*

## RECOMMENDATIONS

Based on the above data, observations, and judicial best practices, Court Watch NOLA makes the following recommendations that, if followed, would make Orleans Parish Criminal District Court more efficient, transparent, and accountable. The following recommendations are Court Watch NOLA's alone, and do not necessarily represent the opinions of Court Watch NOLA's volunteers and/or contributors.

### INCREASING EFFICIENCY

#### **1. Enact A Written Policy on Continuances**

Unnecessary delays hurt public safety, prevent defendants from having their day in court, cost taxpayers money, and waste the time of the public servants, witnesses, and family members who attend court. Court Watch NOLA therefore encourages those sections of the Court not already doing so to strictly adhere to La. Code of Crim. P. arts. 707-15, and to implement and enforce a written policy, such as the National Center for State Courts' Model Continuance Policy,<sup>73</sup> explaining the procedure and timeline for filing motions to continue a hearing, as well as the grounds on which such motions may be granted. This policy or policies should be available on the Court's website so that attorneys and members of the public have access to it.

#### **2. Perform A Caseflow Management Study**

Trusted authorities like the National Center for State Courts regularly perform studies to assist courts, including criminal courts in Louisiana, in becoming more efficient.<sup>74</sup> Court Watch NOLA therefore encourages Criminal District Court to seek and obtain funding from government or private sources for, and then hire, the National Center for State Courts' Court Consulting Services, or an equally qualified organization, to perform a caseflow management study with the goal of reducing case backlogs, streamlining court calendaring, and making Criminal District Court more efficient and effective. Of course, for a study such as this to do any good, Criminal District Court must then act upon the study's recommendations.

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<sup>73</sup> Available at <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1484> (last visited Feb. 24, 2014).

<sup>74</sup> See National Center for State Courts, *Lafourche Parish Criminal Caseflow Improvement Final Report* (July 2011); see generally <http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Caseflow-and-Workflow-management.aspx> (last visited Feb. 24, 2014) (general information on the NCSC's Court Consulting Services division).

### 3. Support Right-Sizing the Courts

The criminal justice system must be accountable to the citizens, voters, and taxpayers who pay for it, and the reduction of unnecessary judgeships – to the extent there are any – could result in savings of millions of dollars.<sup>75</sup> Operating fewer courtrooms could also reduce the number of continuances due to attorneys, doctors, and others being in other sections of Court.

Court Watch NOLA is proud to have been among the first organizations to raise the issue of right-sizing the Courts,<sup>76</sup> and our 2013 data continues to suggest that this is a possibility. Anecdotal reports from Court Watch NOLA volunteers, for instance, suggest that most courtrooms are closed on most afternoons, and the median time Court ended for the day, as observed by Court Watch NOLA volunteers in 2013, but likely not including days when jury trials occurred, was noon.<sup>77</sup>

Court Watch NOLA therefore encourages all elected officials, but particularly elected Judges, to support the creation of, fully cooperate with, and act upon the recommendations of an expert and independent study (such as one performed by the National Center for State Courts) to determine how many judgeships are needed in Orleans Parish Criminal District Court, Orleans Parish, and the State of Louisiana.

### 4. Bring the Clerk of Criminal District Court's Office into the 21st Century

During an October 29, 2013 City Council Criminal Justice Committee hearing, the Clerk of Criminal District Court, when asked whether he would accept assistance from the Mayor's "innovation delivery team," made a statement to the effect that "an information technology expert would be a waste of time... because [the] office's operations remain mostly paper-based."<sup>78</sup> This speaks to the technological backwardness of the Clerk of Criminal District Court's office, which should be remedied. With effective leadership, an upfront investment of additional funds dedicated to modernizing and computerizing the Clerk's office would

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<sup>75</sup> See Bureau of Governmental Research, *Benchmarking the Bench: Are Public Dollars Being Wasted on Excess Judgeships in Orleans Parish?* (2013), available at <http://www.bgr.org/reports/are-public-dollars-being-wasted-on-excess-judgeships-in-orleans-parish/> (last visited Mar. 11, 2014).

<sup>76</sup> See Court Watch NOLA, 2012 Report at 4 ("According to the formula that the Louisiana Judicial Council uses to estimate the number of judgeships needed in a given parish, however – a formula that undoubtedly somewhat underestimates the number needed in Orleans Parish due to local nuances, but is nevertheless a good starting point meant to ignite a critical community conversation about the size of our criminal justice system – at most six judgeships were needed in Orleans Parish Criminal District Court during 2012.").

<sup>77</sup> See *supra* at 24-25.

<sup>78</sup> See Rainey, Richard, *The New Orleans Times-Picayune*, "Clerk of Criminal Court Arthur Morrell, Landrieu administration lock horns again in budget battle" (Oct. 29, 2013), available at [http://www.nola.com/politics/index.ssf/2013/10/clerk\\_of\\_criminal\\_court\\_arthur.html](http://www.nola.com/politics/index.ssf/2013/10/clerk_of_criminal_court_arthur.html) (last visited March 18, 2014).

likely save taxpayer dollars in the long run in the form of reduced personnel costs and more efficient Criminal District Court operations.

## PROMOTING TRANSPARENCY

### **5. Encourage Audibility and Transparency in Every Courtroom**

A transparent courtroom is one in which hearings are generally audible and on-the-record. Court Watch NOLA therefore encourages Criminal District Court Judges to continue using their microphones and requiring attorneys to do the same, and to continue to make progress on at least announcing the reason for and/or result of sidebar discussions that are not on-the-record and inaudible to the public. The public generally deserves to be able to see, hear, and follow the justice that is being administered in its name.

### **6. Begin Court Promptly Each Day**

When court is not started promptly at the courtroom's subpoena start time, the result is inefficiency and waste. Public servants such as prosecutors and public defenders may sit idle, police officers are prevented from returning to their other duties, and witnesses and the families of victims and defendants may need to take additional time off from their jobs and families. Court Watch NOLA therefore encourages those Criminal District Court Judges who are not already doing so (and some are) to start court promptly at the scheduled court subpoena start time, and/or to change their courtroom's subpoena start time to better reflect when Court begins. Furthermore, Court Watch NOLA encourages greater use of substitute *ad hoc* Judges /and or better public notice when a courtroom will be closed for the day and this is known in advance, so that attorneys, law enforcement officers, and victims, witnesses, and families need not waste their time and take off work to travel to a closed courtroom.

### **7. Support and Make Effective Use of New Orleans Pretrial Services**

According to national best practices, every criminal court should consult (though not depend exclusively upon) an objective, independent risk assessment instrument when determining when and if to release defendants awaiting trial. These instruments assist courts in identifying defendants who may be released because they pose a lower risk to public safety, as well as those defendants with a heightened risk whose release or bond conditions must be given additional scrutiny. New Orleans Pretrial Services currently performs screening and interviews of defendants, investigates the information presented in these interviews where possible, uses an empirical risk-assessment instrument to guide release decisions, and assists in supervising some defendants who are released.<sup>79</sup> Court Watch NOLA therefore

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<sup>79</sup> See generally Vera Institute of Justice, New Orleans Pretrial Services website, available at <http://www.vera.org/project/new-orleans-pretrial-services> (last visited Mar. 11, 2014).

encourages the Criminal District Court to support the continuation of an independent pretrial services program, and to consider all information submitted through this program when making decisions regarding pretrial release.

### **8. The District Attorney Should Consider Adopting Open-File Discovery**

The State's failure to produce discovery to the defense has been one of the top 10 observed reasons for continuances at Tulane and Broad in both 2012 and 2013, but *this does not have to be the case*.<sup>80</sup> Whereas the State currently weighs each piece of case information gathered against the disclosure standards of, *inter alia*, Louisiana Law<sup>81</sup> and *Brady v. Maryland* (which, for instance, requires the State to produce all relevant exculpatory information to the defense),<sup>82</sup> and does so on a case-by-case basis, other jurisdictions have embraced open-file discovery, in which the defense generally has access to the prosecutor's entire case file. Louisiana District Court Judges recently noted the need to bring this practice to Louisiana.<sup>83</sup>

When combined with already existing mandatory disclosure deadlines, open-file discovery is more fair and efficient than the current case-by-case system for a variety of reasons. First, different people have different definitions of what may be exculpatory, a problem that led to overturned convictions and expensive litigation when previous Orleans Parish District Attorney's offices have refused to produce critical evidence to the defense before trial.<sup>84</sup> Second, defendants can make faster and more informed decisions about plea bargains if they understand the exculpatory *and* inculpatory evidence against them. Finally, the discovery disputes inevitable under the case-by-case approach cause significant delays. "Mandatory and open-file discovery, in which prosecutors make their entire case file available to the defense and disclose particular items at required times," on the other hand, "leads to a more efficient criminal justice system that better protects against wrongful imprisonment and renders more reliable convictions."<sup>85</sup>

While some prosecutors have questioned whether confidential victim and witness information is sufficiently protected using open-file discovery, they can always request that the Court protect specific sensitive information. In other words, an open-file discovery system would not require the release of all information, but would change the legal

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<sup>80</sup> See *supra* at 15-16; Court Watch NOLA, 2012 Report at 13.

<sup>81</sup> See La. Code Crim. P. arts. 716-729.7.

<sup>82</sup> 373 U.S. 83 (1963).

<sup>83</sup> Supreme Court of Louisiana, *Report to the Louisiana Legislature in Response to House Concurrent Resolution No. 143 of the 2011 Regular Legislative Session* at 32 (Feb. 14, 2014).

<sup>84</sup> See, e.g., *Connick v. Thompson*, 131 S.Ct. 1350 (2011).

<sup>85</sup> The Justice Project, *Expanded Discovery in Criminal Cases: A Policy Review* at 2 (2007), available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Death\\_penalty\\_reform/Expanded%20discovery%20policy%20brief.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Death_penalty_reform/Expanded%20discovery%20policy%20brief.pdf) (last visited Mar. 17, 2014).

presumption from concealing information to disclosing it, and make the Court more efficient and transparent in the process. Court Watch NOLA therefore urges the District Attorney to consider voluntarily adopting an open-file discovery system.

## EMBRACING ACCOUNTABILITY

### **9. Implement Performance Measurement Tools**

The criminal justice system must be accountable to the public for the taxpayer dollars it spends and the justice it administers in the public's name. Court Watch NOLA therefore encourages Criminal District Court to complete the National Center for State Courts' CourTools Trial Court Performance Measures on an annual basis.<sup>86</sup> These nationally recognized performance assessment tools measure court performance in areas such as access, fairness, docket management, and financial efficiency.

### **10. Publicize Court Performance Metrics**

Government organizations across the country, including courts, are becoming more transparent and accountable by creating and updating public websites showcasing the organization's performance goals and progress towards those goals.<sup>87</sup> Court Watch NOLA therefore encourages the Court to create an on-line public "dashboard" for the entire Orleans Parish Criminal District Court and/or its individual sections, which would identify the criteria the Court uses to measure success, the Court's goals for improving its results based on this criteria, and publish updated data related to this criteria on a monthly basis. By following this recommendation and becoming its own transparency and accountability watchdog, the Court would make Court Watch NOLA and organizations like it unnecessary, an eventuality that, in those circumstances, Court Watch NOLA would welcome.

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<sup>86</sup> See National Center for State Courts, *CourTools*, available at <http://www.courtools.org/Trial-Court-Performance-Measures.aspx> (last visited Feb. 24, 2014).

<sup>87</sup> See, e.g. Michigan State Court Administrative Office Dashboard, available at <http://courts.mi.gov/education/stats/dashboards/Pages/default.aspx> (last visited Feb. 24, 2014); Michigan 9<sup>th</sup> Judicial Circuit Court Dashboard, available at <https://www.kalcounty.com/courts/dashboard/index.htm> (last visited Feb. 24, 2014).

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