

# COURT WATCH NOLA 2012 REPORT



Court Watch NOLA, established in June 2007, began as a pilot program with start-up funding from the Business Council of Greater New Orleans, Common Good and Citizens for 1 Greater New Orleans. Since its inception, Court Watch NOLA has continued to grow and is currently a strong organization that has earned the respect of all groups represented in the New Orleans criminal justice system. Originally watching just 37 cases with a volunteer base of 15 citizens, Court Watch NOLA now has a large, diverse volunteer base tracking over 1,000 felony cases. In 2011 Court Watch NOLA volunteers made their 10,000<sup>th</sup> observation, and in 2012 Court Watch NOLA had 100 volunteers observing and recording data for the 12 sections of Criminal District Court, in addition to the numerous other volunteers that assist in supporting our organization.

Court Watch NOLA volunteers, identifiable by their bright yellow clipboards, are in court every day of the week. The consistent daily presence of volunteers in the courtroom reinforces the notion that transparency and accountability can produce a more efficient criminal justice system, a cornerstone in the foundation for a safer city.

*The mission of Court Watch NOLA is to promote efficiency in the New Orleans criminal justice system by bringing accountability and transparency to the proceedings held in Criminal District Court. It is not the intent of Court Watch NOLA to in any way compromise or interfere with the rights of the victims or the accused, or the ability of the courts to act in a fair and just manner.*

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Following the all-time record delays that our volunteers observed in 2011, Court Watch NOLA expected and hoped that the criminal justice system’s 2012 performance would improve. After all, many of the 2011 delays were attributable to a sharp, but temporary, rise in the number of trials. Moreover, District Attorney Cannizzaro’s early 2012 decisions to accept more guilty pleas and move state misdemeanor prosecutions to Municipal Court dramatically lowered the workload of Orleans Parish Criminal District Court’s twelve judges. For instance, 7,035 new cases were filed in 2011 but that number dropped to 4,195 in 2012. These changes should have allowed the court system to handle the remaining felony cases more quickly and efficiently.<sup>1</sup>

Unfortunately, the rate of delays remains at a record high in Criminal District Court. While the Court has been able to slightly shorten the average duration of these delays from 35 days in late 2011 to 30 days in early 2012, the overall continuance rate remained at 63% throughout 2012. This means that when a Court Watch NOLA volunteer went to observe a scheduled hearing last year, it was continued – delayed – almost two-thirds of the time.<sup>2</sup>

Court Watch NOLA has also pinpointed for the first time where delays are most likely to cause “breakdowns” in the criminal justice process, specifically, at motions hearings and trial settings. 70% of first time trial settings were continued in the second half of 2012, and the same is true for almost 80% of first time motions settings.<sup>3</sup>

According to the observations of Court Watch NOLA’s volunteers, there is no single reason that the Court’s continuance rate remains elevated.

Instead, Court Watch NOLA’s data and observations suggest that a “Culture of Continuances” is prevalent at Orleans Parish Criminal District Court, allowed, perhaps, by many of the Judges, and certainly aided and abetted by problems producing defendants who are in custody, but primarily driven in 2012 by defendants and their attorneys. Whereas the percentage of continuances requested by the State dropped slightly last year, those requested by the defense increased from 28 to 33. Defendants who are not in custody also regularly fail to appear for their hearings. And the number one reason for continuances as

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<sup>1</sup> Overall, the Court’s workload dropped from 7,035 cases filed in 2011, Supreme Court of Louisiana Annual Report 2011 at 13, to 4,195 in 2012. *See also* Ex. 4 (regarding the increase in guilty pleas accepted); Ex. 5 (the percent of continuances requested due to trials in progress fell from 17% in the second half of 2011 to 8% in the second half of 2012). Due to rounding, the percentages listed in this Report may not always equal exactly 100%. The observations, data, and statistics listed in this Report are for 2012, and thus cover Judge Lynda Van Davis’ last year in Section B, as well as the results for Retired Judge Jerome Winsberg, who filled in for Judge Davis on an *ad hoc* basis for much of the last three months of the year. This report does not include any observations or data for Judge Flemings-Davillier, who is newly elected to Section B.

<sup>2</sup> *See* Ex. 13 (re: average number of days between settings for all matters, including continued ones); Ex. 3 (re: overall continuance rate in 2012).

<sup>3</sup> *See* Exs. 9-10 (re: first-time motion and trial settings).

observed by Court Watch NOLA volunteers in the second half of 2012 was that the defense attorneys themselves were not present in the courtroom when their cases were called.<sup>4</sup>

While some of these defense delays may be attributable to the high workloads our public defenders carry, especially in the wake of their office's budget problems early last year, and the need to farm out indigent defense cases to inexperienced civil attorneys as a result of those budget cuts, the "Culture of Continuances" is not limited to public defenders or even just to defense attorneys. Judges not only grant the defense continuance motions, but unscheduled courtroom closures and some Judges' lateness in taking the bench causes delays to attorneys, the public, and testifying law enforcement officers. Similarly, prosecutors are sometimes slow to produce documents to the defense, and members of the private criminal bar are often missing in action when their case is called, because they know that, in most cases, the Court will continue the matter without issuing substantial sanctions.<sup>5</sup>

These delays cost New Orleans dearly. After all, the longer a case takes the more likely that key evidence and witnesses are lost. And for defendants awaiting trial, justice delayed is justice denied – an unfair and expensive proposition as taxpayers are usually paying for their pretrial incarceration. The system's "Culture of Continuances" must end.

Fewer delays can also lead to smaller court dockets and smaller court budgets. New Orleanians are currently paying for the salaries, staff, and courtrooms of twelve criminal court judges. 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>6</sup>

Our volunteers also rated the Judges, prosecutors, defense attorneys, and testifying police officers in a variety of categories throughout 2012. The volunteers generally rated the Judges' ability to pay attention to the cases before them well at 4.6 out of 5.0, but rated their ability to handle cases with transparency at only 4.2 out of 5.0. They rated the preparation and organization of the prosecutors slightly higher than that of the defense attorneys they observed, and reported that testifying police officers were usually, but not always, able to clearly recall the facts at issue when on the stand in 2012.

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<sup>4</sup> See Ex. 5 (re: percent of continuance requests made by party); Ex. 6 (re: top reasons for continuance requests).

<sup>5</sup> See Orleans Public Defenders 2012 Annual Report at 3 (re: 27 OPD staff laid off and reliance on *pro bono* civil attorneys in 2012); Ex. 6 (re: top reasons for continuances); Ex. 15 (re: time on the bench).

<sup>6</sup> 4,195 cases were filed in the Court in 2012. Assuming for the purposes of this calculation that all were felonies, the Judicial Council's formula suggests the need for 5.2 judgeships. Because a currently unknown number of the cases filed were misdemeanors, the results of the final calculation should be even lower. Reasons that the formula may undercount the number of judges needed in Orleans Parish include the city's relatively high trial rate, our adoption of resource-intensive specialty courts (see p. 30 of this Report), and that a case with multiple defendants is counted as one case in Orleans Parish but multiple cases elsewhere.

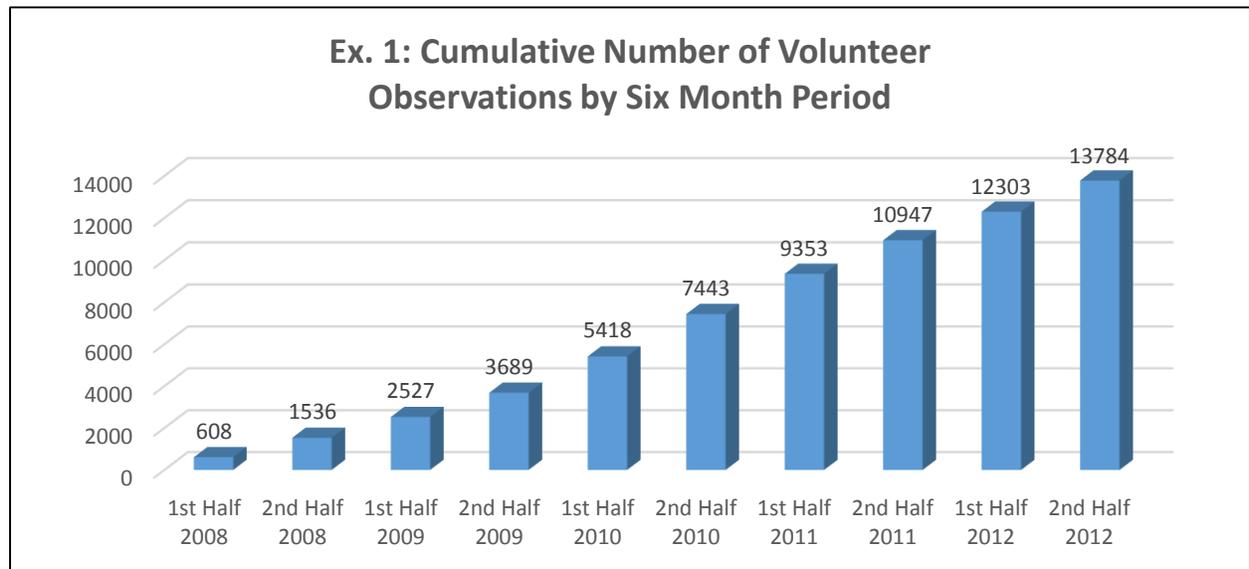
**COURT WATCH NOLA VOLUNTEERS SET TO MAKE THEIR 15,000<sup>TH</sup> OBSERVATION IN 2013**

After making their 10,000<sup>th</sup> observation ever in 2011, Court Watch NOLA volunteers worked hard in 2012 – reporting on almost 3,000 hearings and setting the organization up to pass another milestone in early 2013. Court Watch NOLA is proud to announce that it expects to be making our 15,000<sup>th</sup> volunteer observation in New Orleans’ criminal courts soon after this Report is released!

This has been made possible by the continued dedication of our community volunteers, who tirelessly devote their free time and their retirements to court watching, and our partnerships with Tulane University and Delgado Community College. While not reflected in the 2012 data, Court Watch NOLA is pleased to have recently renewed our partnership with Loyola University’s College of Law as well.

**NUMBER OF COURTROOM OBSERVATIONS**

**Exhibit 1** identifies the number of courtroom observations by Court Watch NOLA volunteers since 2008 – a total of 13,784! This represents tens of thousands of hours donated by our committed volunteers who are working to keep the public informed of the activities that occur on a daily basis at Orleans Parish Criminal District Court.



The community’s continued strong interest in court watching creates many opportunities, and a few challenges, for Court Watch NOLA. Because our volunteers are so dedicated, we are able to follow and report on a larger number and variety of cases. Assisting our

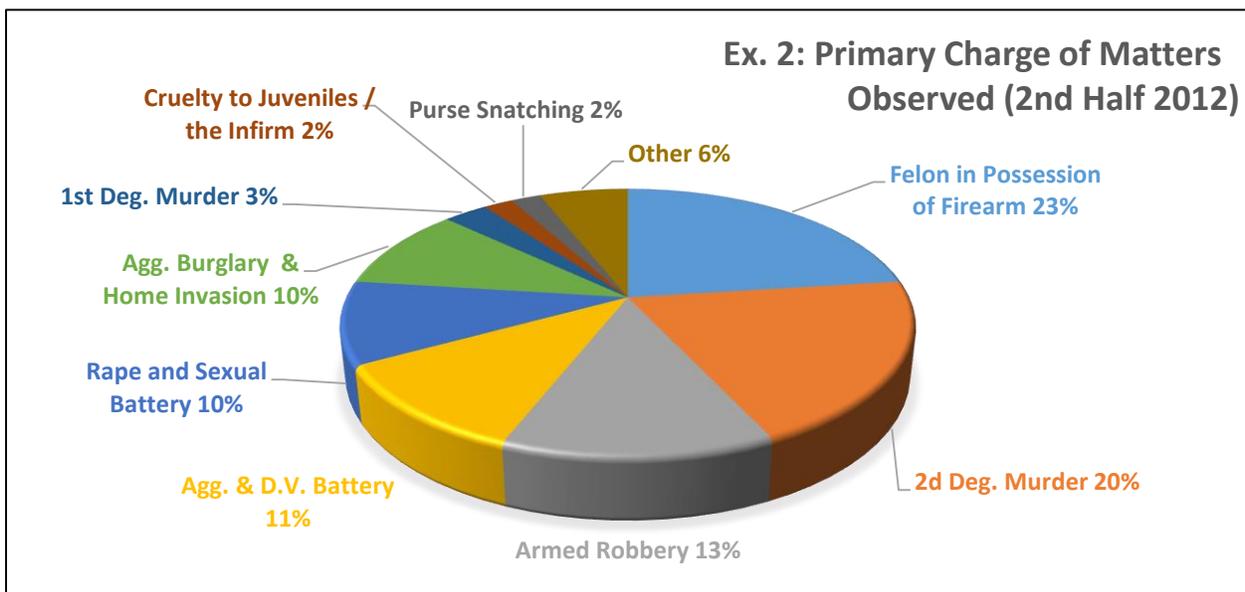
volunteers and tracking so many cases, on the other hand, also presents administrative and financial challenges.

For each case Court Watch NOLA follows, our volunteers collect the data compiled in this report, including metrics related to court efficiency, transparency, and effectiveness. Court Watch NOLA then reviews the official docket master in conjunction with our volunteers' reports to confirm 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, all efforts have been made to limit this margin. Statistics in this report were tabulated only for case settings actually observed by Court Watch NOLA volunteers.

## PRIMARY CHARGES FOR OBSERVED CASES

Court Watch NOLA tracks crimes of violence against the person, special circumstances crimes, crimes at the community's request, and high profile media cases. **Exhibit 2** 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 2012. 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, the three most common categories of primary charges in observed matters were felon in possession of a firearm (La. Rev. Stat. § 14:95.1 and related), second degree murder (La. Rev. Stat. § 14:30.1 and related), and Armed Robbery (La. Rev. Stat. § 14:64 and related). Other categories of primary charges in observed matters include aggravated and domestic violence-related battery (La. Rev. Stat. § 14:34, 14:35.3, etc.), 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.), first degree murder (La. Rev. Stat. § 14:30, etc.), cruelty to juveniles and the infirm (La. Rev. Stat. § 14:93, etc.), and purse snatching (La. Rev. Stat. § 14:65.1, etc.). The "Other" category includes primary charges such as 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.



## "CULTURE OF CONTINUANCES" CAUSES RECORD-TYING DELAYS

While some delays are to be expected, 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. According to the Bureau of Justice Assistance, the "[r]outine 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."<sup>7</sup>

These delays harm the public's pocketbooks and the administration of justice. After all, the longer a case takes the more likely that key evidence and witnesses are lost. And for defendants awaiting trial, justice delayed is justice denied – an unfair and expensive proposition as taxpayers are usually paying for their pretrial incarceration. One Court Watch NOLA volunteer saw this problem from the victim's perspective late last year:

*The judge was tired of this being rescheduled and wanted to set the trial date for the NEXT DAY. No one was ready and they told the judge that, but he set the date for tomorrow anyway. I was sitting behind the victim and his family who all appeared for court, and they were all very frustrated with how long this trial was taking. The prosecutor came up to them and told them to not even worry about coming to court tomorrow because it would not go to trial then either. These poor people have been coming back to court and wondering what's going to happen with this case since January.*

As explained in the Executive Summary and Analysis, *see infra*, Court Watch NOLA had hoped that the record continuance rate its observers recorded in 2011 would ebb in 2012 based on the Court's lower caseload and reforms and decisions made by the District Attorney. Unfortunately, the record 63% continuance rate remains unchanged.

There is no single reason that the Court's continuance rate remains elevated, though the failure of defendants and their attorneys to be on time and prepared for court substantially contributed in 2012. Instead, Court Watch NOLA's data and observations suggest that a "Culture of Continuances" has become entrenched at Orleans Parish Criminal District Court.

While all parties may contribute to these delays – far too frequently Judges will close their courtrooms without public notice and despite full dockets, or prosecutors will fail to give police reports and other discovery to the defense in a timely manner, for example – only one party has the power to stop the delays: our elected Judges.

Another Court Watch NOLA observer comment shows that some Judges take more forceful approaches to this issue:

*The defense attorney told the Judge that the State called him to say that the State would not be ready for trial (as they were unable to get some of their witnesses) and so the defense attorney*

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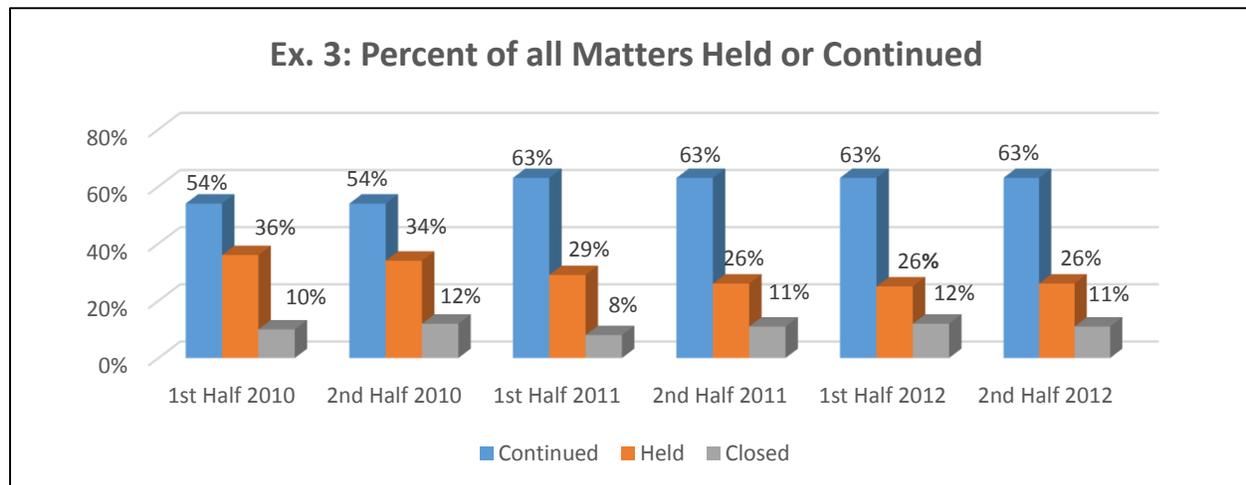
<sup>7</sup> Bureau of Justice Assistance and American Univ., "Improving Criminal Caseflow" at 8; *see also* Bureau of Justice Assistance August 17, 2009 Memorandum to Chief Judge Hunter at 5 (percent of matters continued and the reasons for the same are "objective, accurate caseload and case processing information.").

*did not prepare for trial. The Judge seemed to get a little angry and told him that this was not an acceptable excuse – that just because the State was going to ask for a continuance doesn't mean that he (the Judge) would grant one. The Judge continued the matter only after the State assured him that it would get the witnesses to commit to a date and be ready.*

Within the four walls of their courtrooms Judges have immense power, and Court Watch NOLA encourages our Judges to expect more from the attorneys in Criminal District Court, and for the attorneys to live up to those expectations.

CASE AND HEARING OUTCOMES: CONTINUANCES AND CLOSED CASES

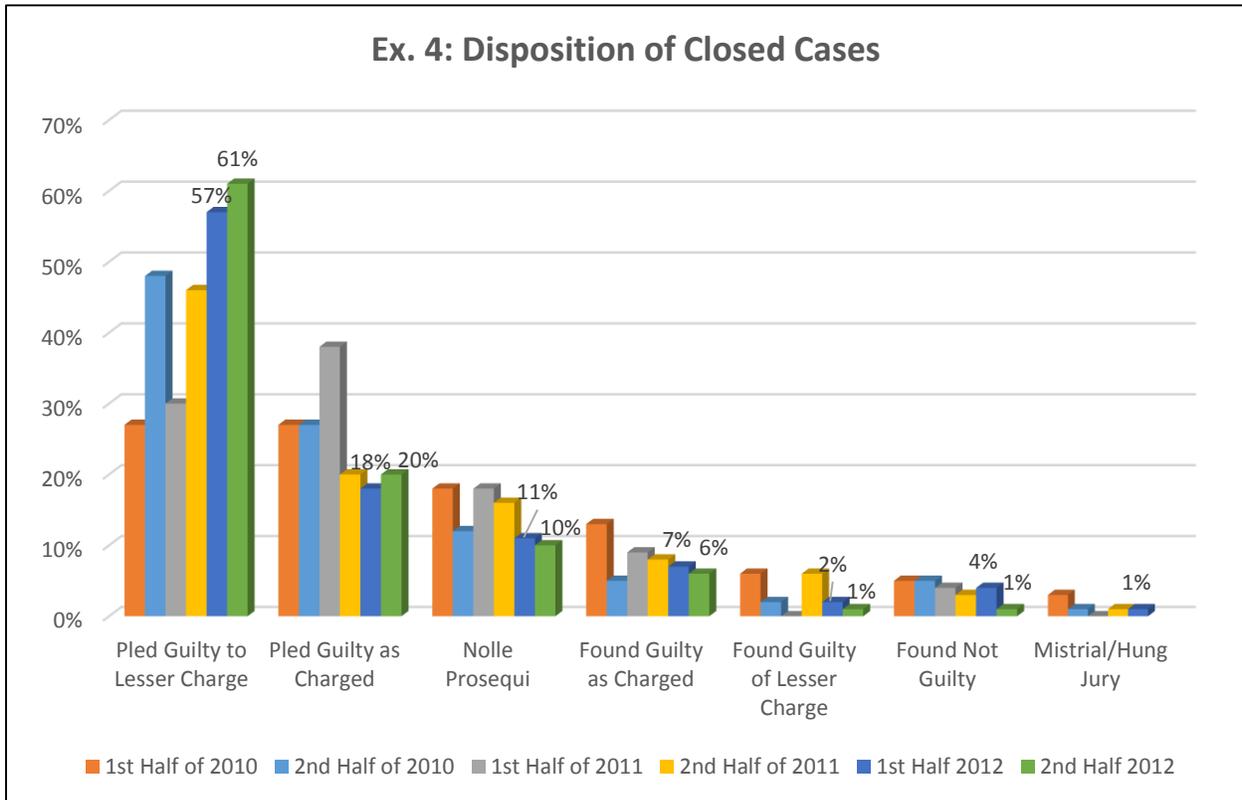
**Exhibit 3** reflects the results of volunteer observations for the last three years. The overall continuance rate in Criminal District Court has held steady at 63% throughout 2011 and 2012, matching the all-time high recorded by Court Watch NOLA in 2008. This is also 20 points higher than the all-time low rate of 43%, recorded by Court Watch NOLA during the first half of 2009. The rates of proceedings that were held without closing the case and proceedings that were held and resulted in a closed case, meanwhile, remained relatively steady from 2011 to 2012. While some continuances are undoubtedly justified and necessary – attorneys and judges get sick, and complex cases take time to prepare for trial – this volume of delay is inefficient. The overall 63% continuance rate means that almost two-thirds of the time that a Court Watch NOLA volunteer was present in the courtroom for a scheduled hearing, the hearing was continued.



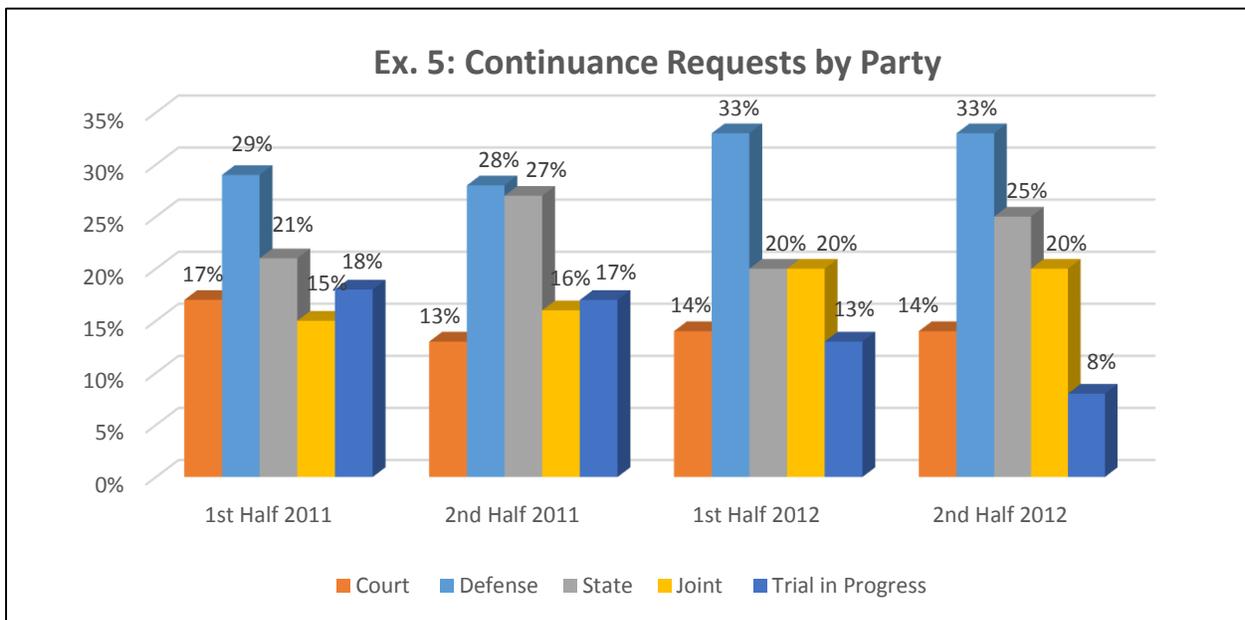
**Exhibit 4** (next page) compares the results of observed cases that closed during the past three years. As usual, the most prevalent method of closing cases in 2012 was by guilty plea. The percentage of cases closed by defendants pleading guilty to a *lesser charge* increased dramatically over the last three years to 57% and 61% in the first and second halves of 2012, respectively. For a defendant to plead guilty to a lesser charge, the District Attorney must amend the charge to allow the plea. This increase is therefore partially the result of more aggressive charging decisions by the District Attorney's office, which not only put more pressure on defendants to accept pleas because they face a higher possible sentence if found guilty at trial, but may also create more room for the attorneys to compromise by having defendants agree to plead guilty to lesser charges with less onerous potential sentencing ranges. For example, for a case in the gray area between aggravated battery and attempted second degree murder, the District Attorney may charge the defendant with the latter but agree to reduce the charge to the former in return for a guilty plea.

The second most common method for closing cases in 2012 was for the defendant to plead guilty as charged. This category includes cases in which a defendant plead guilty as charged in return for the State's agreement not to request that the Court sentence the defendant as a multiple offender subject to (sometimes strict) mandatory minimum sentences. The third most frequent method of closing cases was the dismissal of the case by the District Attorney (*Nolle Prosequi*), which occurred between 10% and 11% of the time in 2012. It should be noted that the District Attorney is free to reinstitute a case that has been dismissed.

The remaining cases our volunteers observed in the second half of 2012 were closed by the defendant being found guilty as charged – 6%; found guilty of a lesser charge – 1%; and found not guilty – 1%.



**Exhibit 5** shows on whose behalf a request for continuance was made for the last two years. This exhibit shows that 53% of the time that a Court Watch NOLA volunteer was present for a continuance in 2012, the defense requested the continuance on its own motion or jointly with the state. The percent of continuances by state motion, on the other hand, held relatively steady compared to 2011, and perhaps showed a slight decline. And the percent of continuances required because a trial was already in progress – and therefore no other matters could be heard at that time – declined substantially in 2012, as would be expected given the decline in the number of trials held. While a Judge must grant a joint continuance request, these only accounted for 20% of the observed continuances.



**Exhibit 6** (next page) shows the most common reasons that matters were continued in the first and second halves of 2012, ranked from most to least frequent.<sup>8</sup> In the second half of 2012, for example, the most common reason for delay was the defense attorney not being present in court when his or her client’s case was called. The reasons for these “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

<sup>8</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.

public defender could have three hearings in three different courtrooms at the same time, to the inexcusable, such as private attorneys scheduling multiple trials in different parishes on the same day. Public defenders committed 56% of the observed “no shows,” and 44% were committed by private defense attorneys.

The second most common reason for continuances in the second half of 2012 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 – more commonly – 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.

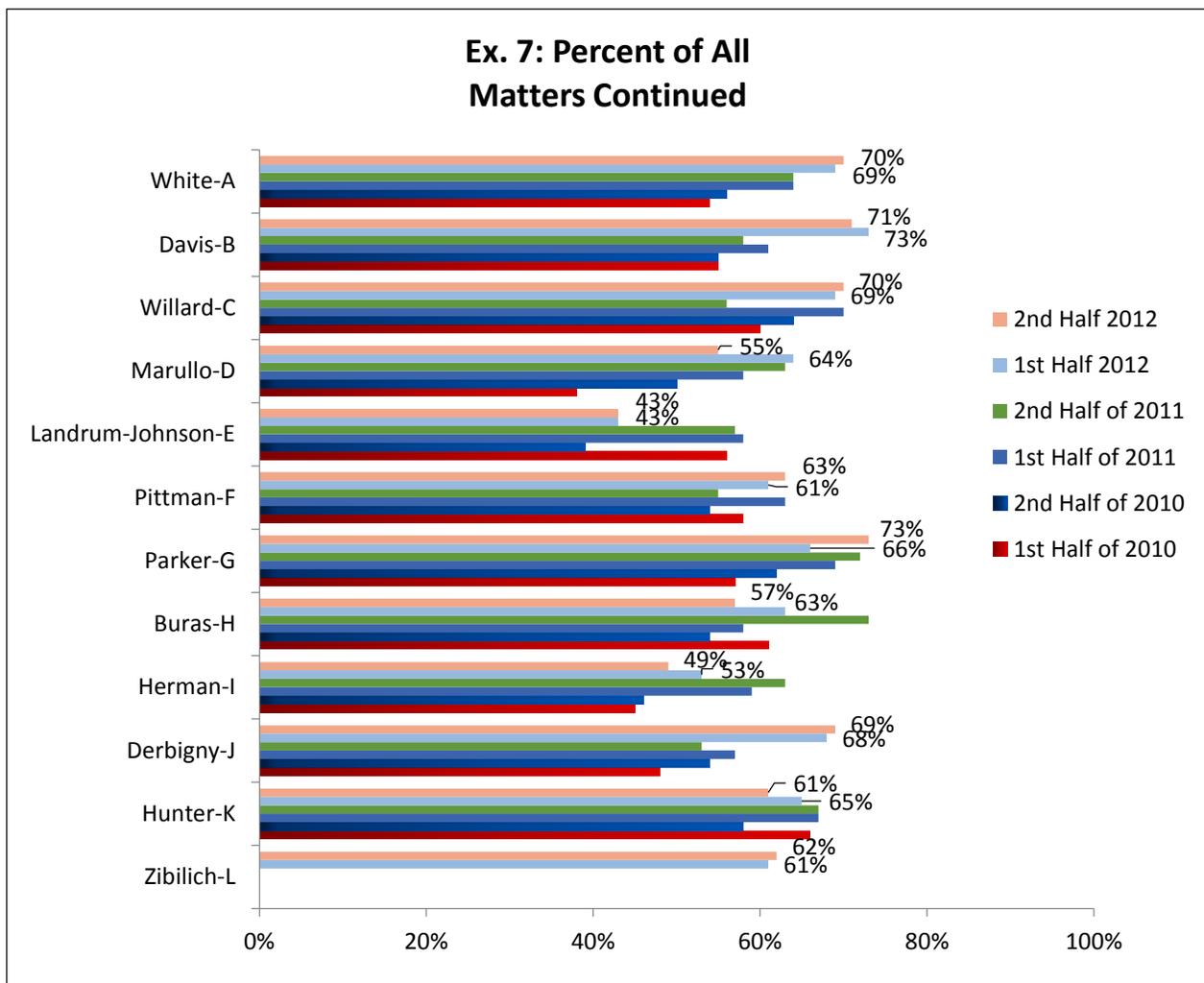
Unscheduled, non-holiday courtroom closures are also a persistent problem in Criminal District Court.<sup>9</sup> While some of these closures are due to illness or family emergency, many are not. Every week Court Watch NOLA confirms that any section to which its volunteers are sent to observe cases has matters scheduled for the assigned day, yet our volunteers – as well as witnesses and the public at large – constantly arrive only to find that their courtroom is closed for business.

Other frequently observed reasons for continuances include: that a trial is in progress in the courtroom, which requires the continuance of all other matters; the failure of defendants who have been released or are out on bond to appear for their court dates; the unavailability of state (usually NOPD) witnesses; the failure by the state to timely provide the defense with discovery information, such as police reports; and that the matter has been set in error.

<b>Ex. 6: Most Frequently Observed Reasons for Continuances</b>	
<b>1st Half 2012</b>	<b>2nd Half 2012</b>
1. Defendant in custody, not produced	1. Defense attorney not present
2. Trial in progress	2. Defendant in custody, not produced
3. Defense attorney not present	3. Trial in progress
4. Non-holiday court closure	4. Non-holiday court closure
5. Defendant not in custody, does not appear	5. Defendant not in custody, does not appear
6. State witness unavailable	6. State witness unavailable
7. State has not produced discovery	7. State has not produced discovery
8. Set in error	8. Set in error

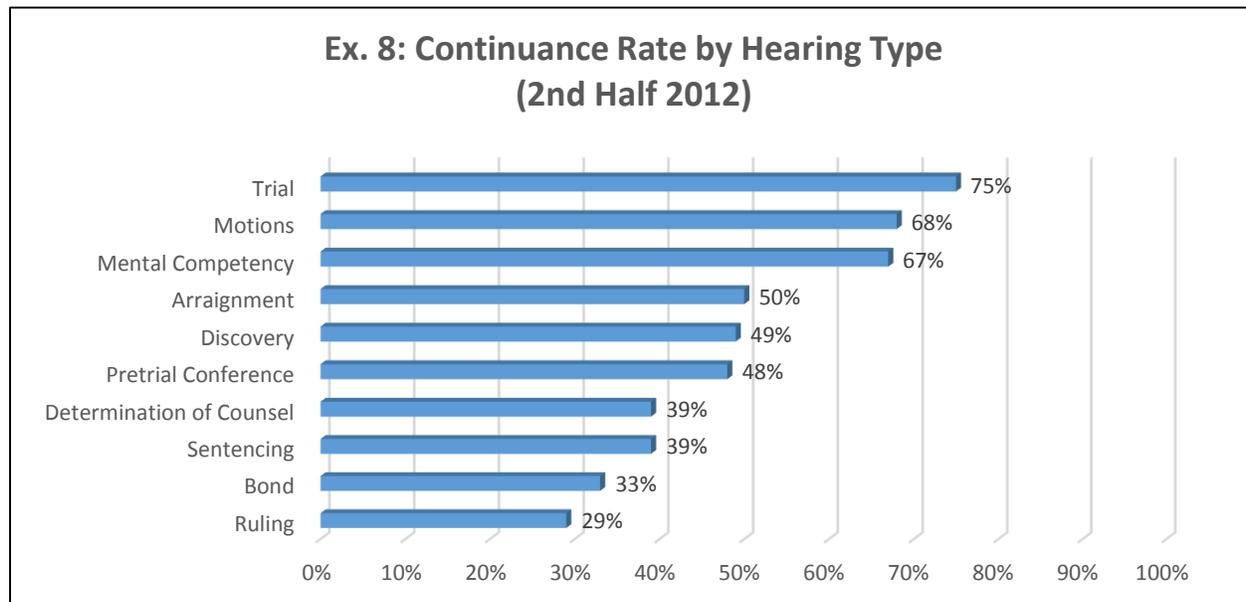
<sup>9</sup> Delays and court closures due to Hurricane Isaac are not included in these rankings nor, indeed, in any of this Report’s data as the courthouse was closed during this time.

**Exhibit 7** reflects the percentage of all scheduled proceedings that Court Watch NOLA volunteers observed that were continued during the past three years. The percentages are listed for each section, but the data reflects all continuances in that section, whether attributable to the Court, state, and/or the defense. For the second half of 2012, Judges Landrum-Johnson and Herman had the lowest rates of continuances at 43% and 49%, respectively. Judge Parker and the combination of retiring Judge Davis and *ad hoc* Judge Winsberg in Section B had the highest rates of continuances for the second half of 2012 at 73% and 71%, respectively. The other Judges' rates for the same time period ranged from 55% to 70%. And in his first year on the bench Judge Zibilich continued approximately 61-62% of all observed matters.



**Exhibit 8** pinpoints where in the criminal court process delays are most likely to occur, i.e. the system's "breakdown" points. Perhaps not surprisingly, trials, motion and mental competency hearings were more likely to be continued during the second half of 2012 than

any other type of hearing, with continuance rates of 75%, 68% and 67% respectively. The continuance rate for all other types of hearings and matters observed by Court Watch NOLA volunteers, meanwhile, was at or below 50%.

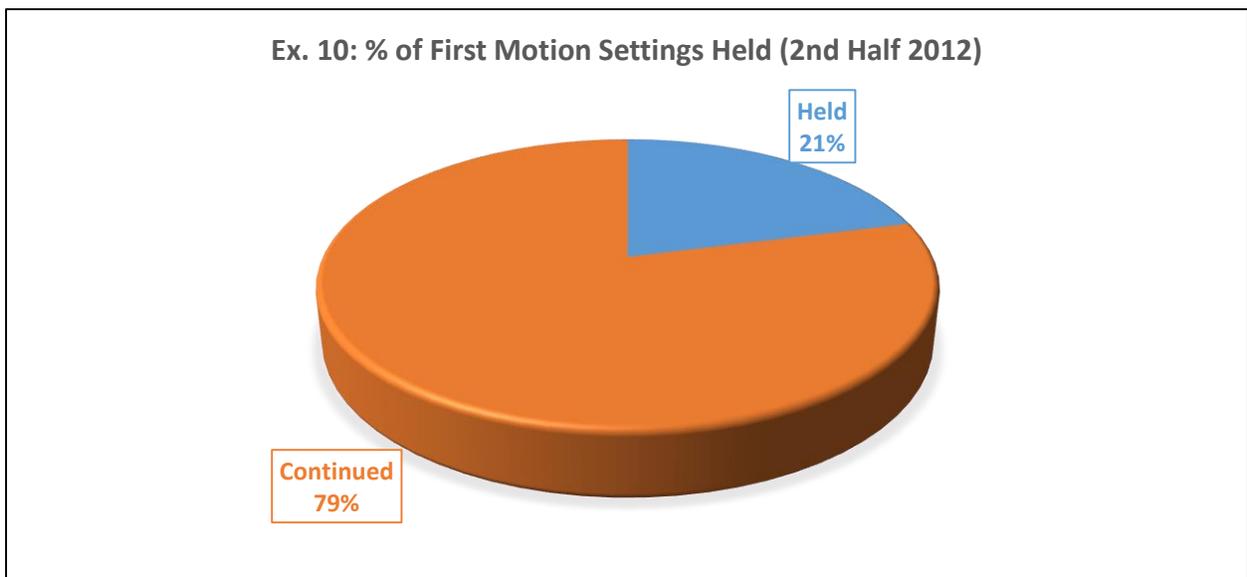
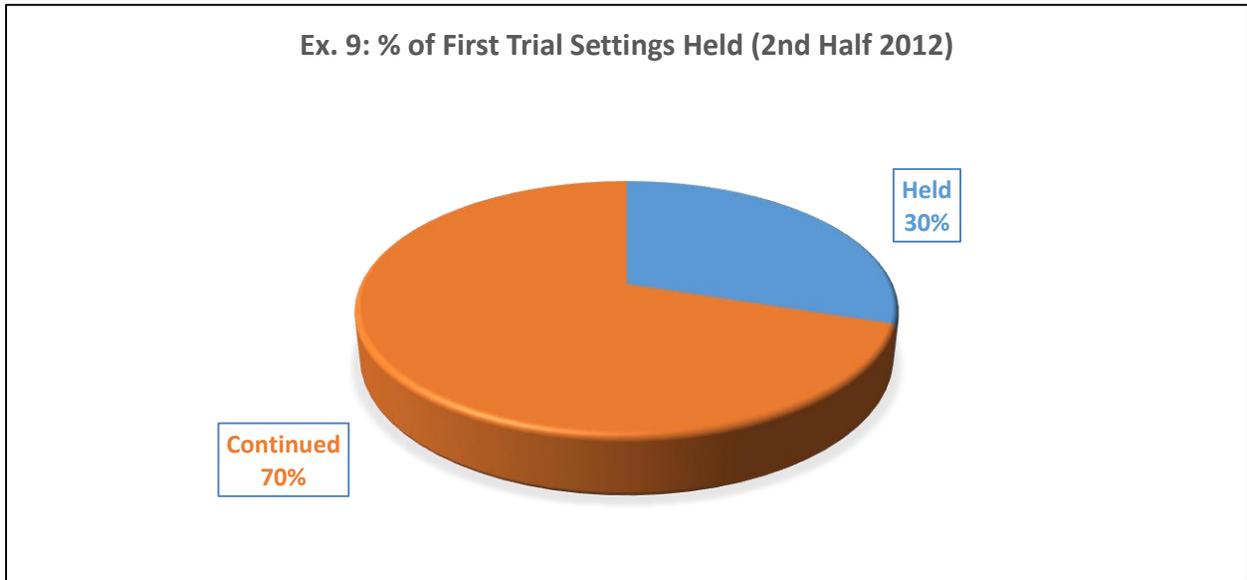


Crucially, trials, motion and mental competency hearings are similar in that – unlike other types of hearings – they alone usually require the testimony of third-party witnesses, including police officers, victims, and doctors (for psychiatric evaluations). The introduction of additional parties to a case certainly complicates scheduling, but in the end the attorney presenting the testimony remains responsible for making sure that both the attorney and his or her witness are on-time and prepared. The data suggests that many attorneys are shirking this responsibility.

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>10</sup> **Exhibits 9 and 10** therefore show the percentage of observed first trial and motion hearing settings that were held in the second half of 2012, 30% and 21%, respectively. Just because a hearing was “held” on a first trial setting does not mean that a trial occurred or even that the case was closed on that date, however Court Watch NOLA counts any hearing in which substantive matters are discussed

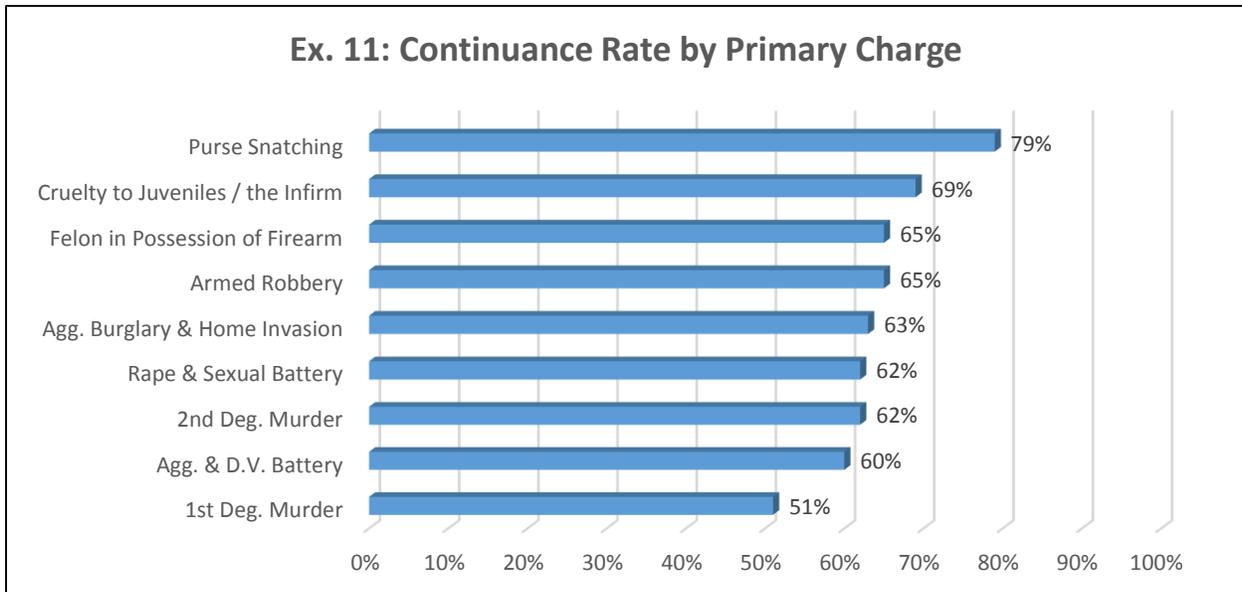
<sup>10</sup> The PFM Group, “A 21<sup>st</sup> Century Criminal Justice System for... New Orleans” at 55, *citing* The National Center for State Courts; *see also* Bureau of Justice Assistance August 17, 2009 Memorandum to Chief Judge Hunter at 5 (percent of trials held on the first trial date is “objective, accurate caseload and case processing information.”).

and any forward progress is made on the case to have been “held” and not continued. The actual rate of trials and motion hearings occurring on their first setting is therefore even lower than these reported rates.



**Exhibit 11** shows the continuance rate in the second half of 2012 across all types of matters and hearings by the type of primary charge in the case, *i.e.* the charge that carries the highest potential sentence. Court Watch NOLA began tracking this information in the last six months of 2012 and will continue to track it over time before drawing any final conclusions.

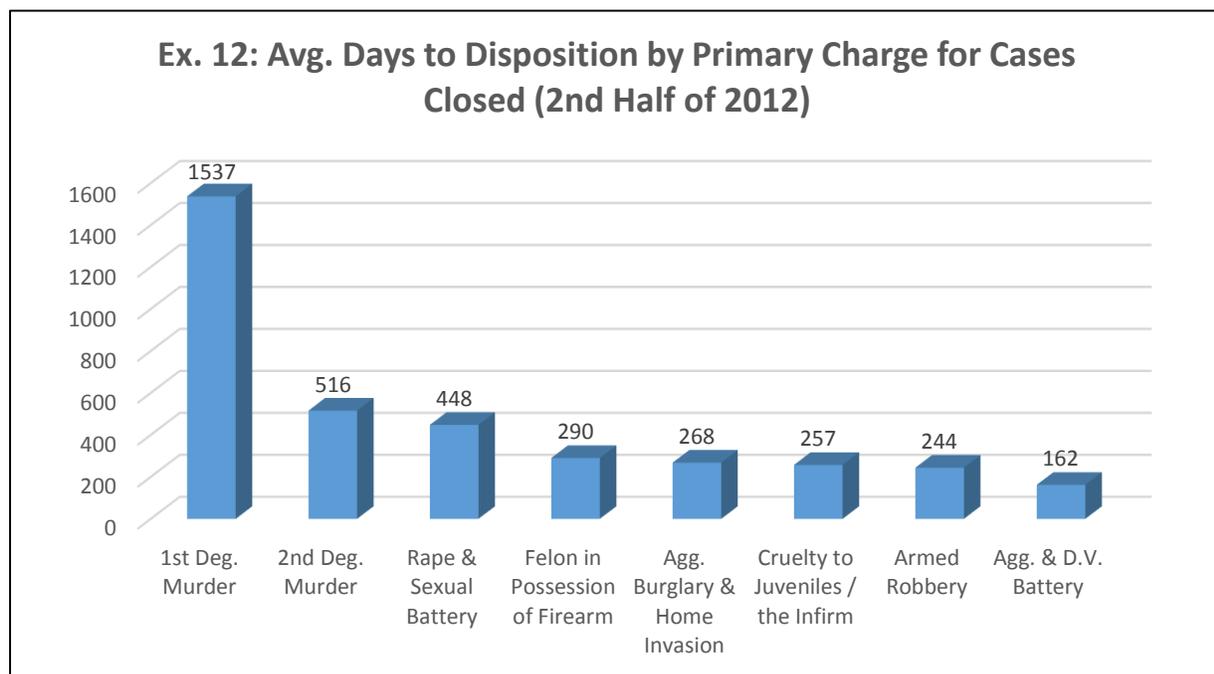
Nevertheless, the initial data suggests that the courts are focusing their energy on the most serious crimes. While the continuance rate for most cases, for example, is at or around the overall average of 63%, the rate for first degree murders – the most serious type of case that Court Watch NOLA tracks – is relatively low at 50% and the continuance rate for purse snatching cases – one of the least serious type of case that Court Watch NOLA tracks – is well above average at 79%. Overall, this data suggests that the courts have prioritized moving the most violent and serious cases towards closure, a welcome development.



## OTHER EFFICIENCY AND TRANSPARENCY METRICS

### AVERAGE DAYS TO DISPOSITION

In an effort to complement the more comprehensive information on case disposition times published by the Metropolitan Crime Commission, Court Watch NOLA has begun tracking disposition time data for those select cases that it monitors. **Exhibit 12**, for instance, shows the average number of days to disposition for cases closed in the second half of 2012 (time from charging, *i.e.* an indictment or the filing of a bill of information, to closure) organized by the primary charge in the case.<sup>11</sup> The universally applied and accepted criminal court case disposition standard is adjudication within one year of arrest, but since Court Watch NOLA's data is measured from date of charging, which occurs after (sometimes months after) arrest, it will undercount the average disposition time vis-à-vis that standard.<sup>12</sup> As is to be expected, murder and rape cases take the longest to close, and, at least among the felonies that Court Watch NOLA watches, aggravated batteries are relatively quick to close.

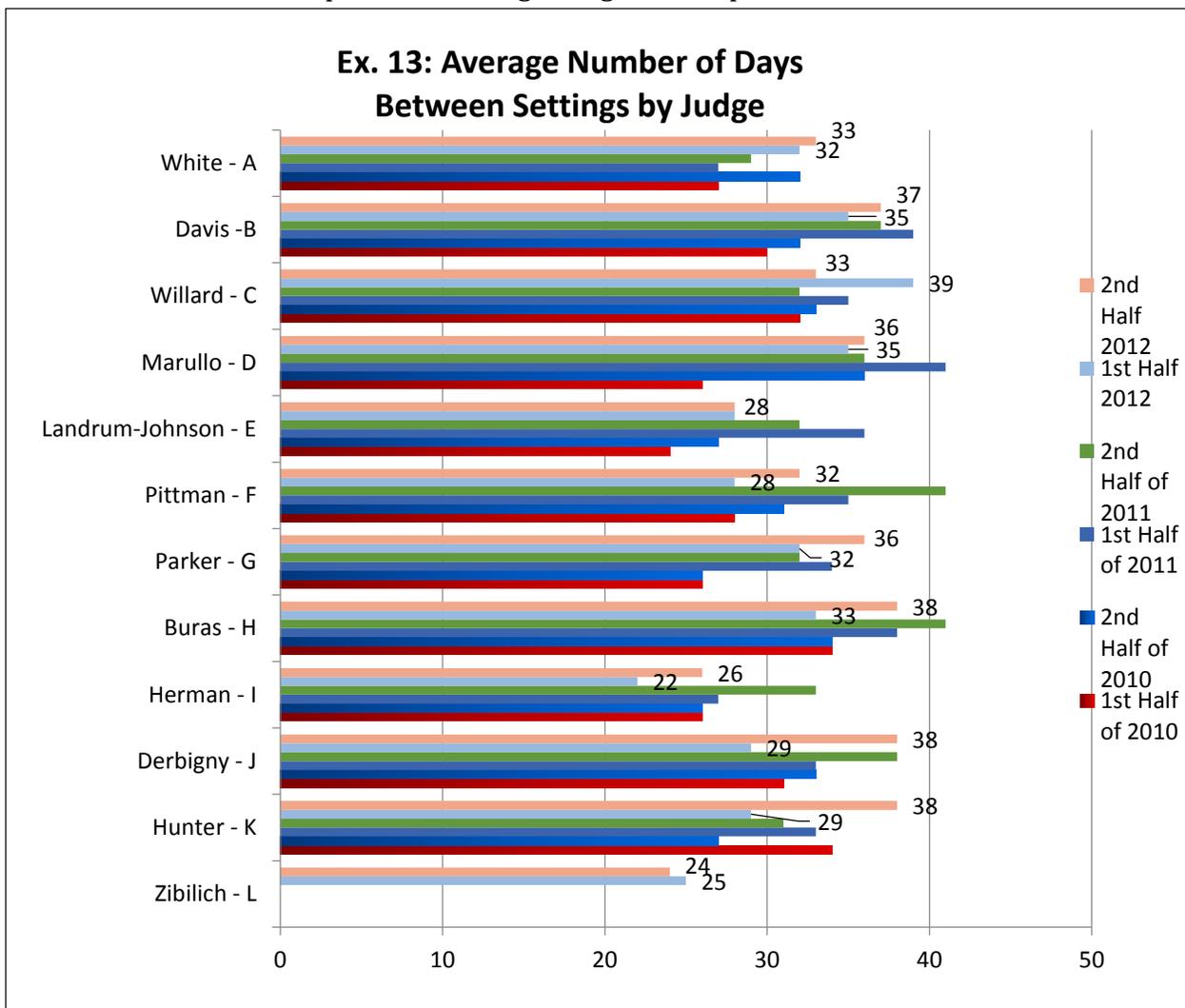


<sup>11</sup> Including time during which the case may be inactive.

<sup>12</sup> See Nat'l Center for State Courts, "Judicial Efficiency, Accountability and Case Allotment in ... Orleans Parish" at 4.

NUMBER OF DAYS BETWEEN SETTINGS

**Exhibit 13** reflects the average number of total days, including weekends and holidays, between settings for all matters observed by Court Watch NOLA volunteers during the past three years. The overall court average declined from 35 days in the second half of 2011 to 30 days in the first half of 2012, and 33 days in the second half of 2012. In the second half of 2012, Judges Landrum-Johnson, Herman, and Zibilich were the only judges who averaged fewer than 30 days between settings, with 28, 26, and 24, respectively. The rest of the judges averaged between 32 and 39 days between settings for the last half of 2012. Court Watch NOLA attributes the reduction in the average number of days between settings largely to the reduction in the court’s caseload as a result of the District Attorney’s office charging misdemeanors in municipal court and agreeing to more plea deals in lieu of trial.

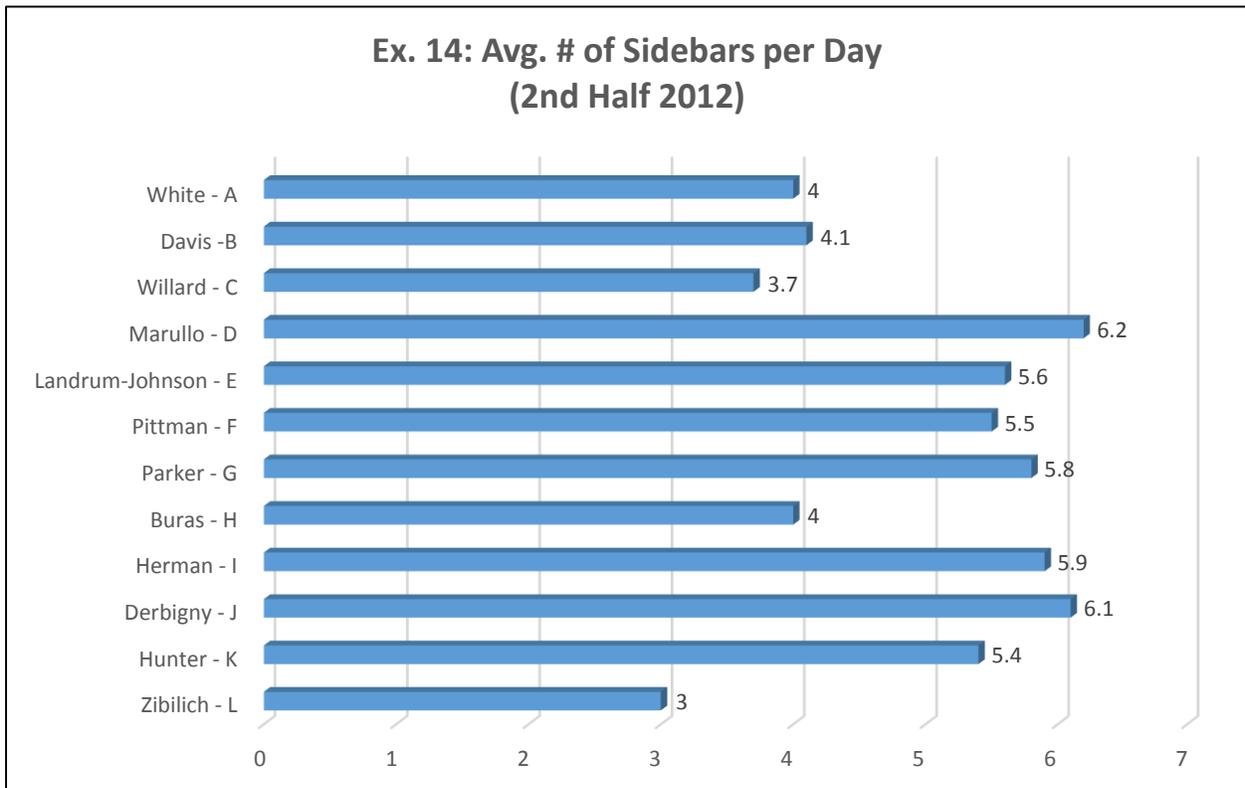


## NUMBER OF SIDEBARS PER DAY

New Orleans' courthouses and courtrooms are public spaces, built and paid for with taxpayer dollars and administering justice in the name of the public at large. The public, therefore, not only has a right to attend and watch court, but also to hear the decisions, deals, and disputes that occur in most cases. Yet, Court business is too often conducted at sidebar or in chambers – off the record and out of the hearing of the public – even when no jurors are present in the courtroom.

Court Watch NOLA therefore tracks, and **Exhibit 14** displays, the number of sidebars that occur during any given volunteer observation period (typically 2-3 hours) in the different sections of court. In the second half of 2012, for example, Judges Zibilich, Willard, White, Buras and Davis ran relatively open courts with four or fewer observed sidebars per day, while Judges Marullo and Derbigny allowed the greatest number of sidebars.

Court Watch NOLA encourages the Court 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 and result of the sidebar.



## COURT WATCH NOLA CHANGES HOW IT RECORDS JUDGES' AVERAGE TIME ON THE BENCH

Court Watch NOLA has historically tracked the average time each Judge takes the bench in the morning. According to the American Bar Association, “[a] judge should be evaluated on his or her... [p]unctuality and preparation for court.”<sup>13</sup> Because Judges’ schedules vary Court Watch NOLA has changed the way in which we track and report this information.

Every day each section of court issues subpoenas to witnesses, attorneys, and those defendants who are not in custody, 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, many judges do not 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.

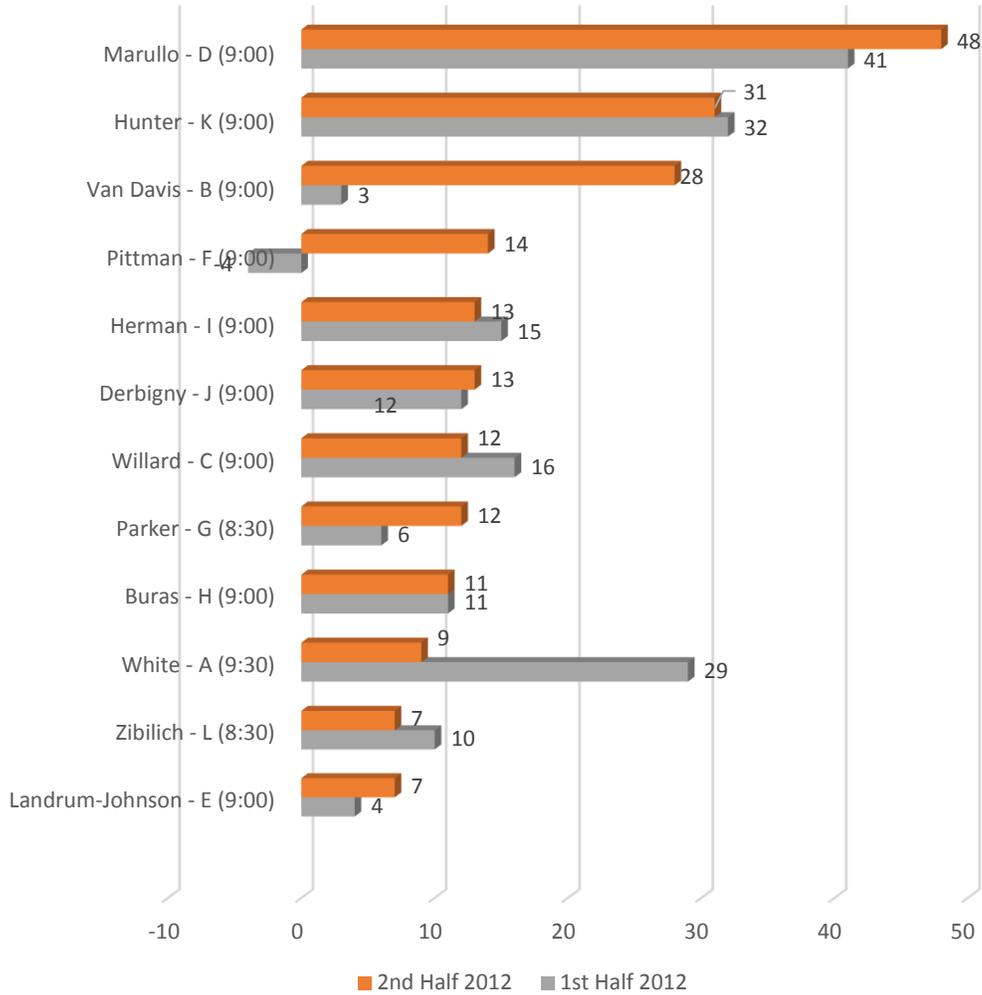
**Exhibit 15** therefore reflects the average delay (in minutes) between each section’s subpoena start time and the average time the Judge in that section took the bench in 2012, as observed by our volunteers. Court Watch NOLA encourages those sections with a substantial average delay to change the start time on their subpoenas to better reflect when court actually starts. 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 occur most days 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. Each section’s subpoena start time, listed next to the Judge’s name, was provided by the Clerk of Court’s office, with the exception of sections C, F and I, which were provided by the Court.

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<sup>13</sup> ABA Black Letter Guideline 5-5.1 on Judicial Accountability (Feb. 2005).

**Ex. 15: Average Time Elapsed Between Court Subpoena Start Time and Time Judge First Takes the Bench (in Minutes)**



## OBSERVATIONS BY COURT WATCHERS

Court Watch NOLA volunteers also make more subjective observations regarding the judges, prosecutors, defense attorneys, and the New Orleans Police Department officers who testify at hearings and trials. Volunteers were asked to rank these parties on a scale of 1-5, with one signifying that the practice at issue “never” happened, three signifying that it “occasionally” happened, and five signifying that it “always” happened. NOPD officers and defense attorneys must frequently be in multiple courtrooms on the same day, sometimes resulting in delays when they are not present. The results of these observations follow:

### JUDGE

- **Did the Judge pay attention while the case was being presented?** Court Watch NOLA volunteers gave the Judges lower marks in this category than in previous years – 4.8 in 2011 but only 4.6 in 2012.
- **Did the Judge handle the case with transparency, keeping the proceedings on the record?** Our volunteers gave the Judges a slightly lower rating for their transparency in 2012, with the average at 4.2. As usual, the tendency of some judges to not use a microphone or to handle matters at sidebar affected this ranking.
- **Did the Judge maintain control of the courtroom?** Almost always, according to our volunteers, who gave the judges an average ranking of 4.6 in this category.

### PROSECUTORS

- **Was the ADA’s presentation organized?** As in 2011, Court Watch NOLA volunteers gave prosecutors an average score of 4.7 for their organization.
- **Was the ADA prepared and on-time?** Prosecutors also continued to score well in this category, garnering average rankings of 4.6 in both 2011 and 2012.
- **Was the ADA ready to promptly call the next matter?** In some sections of court, the ADAs – not the Judge – call the next matter on the docket, and our volunteers gave them slightly lower rankings for their promptness in this area than they did in other categories, with an average ranking of 4.3.

## DEFENSE ATTORNEYS

- **Did the court have to wait for the attorney's arrival?** The percent of the time that the court had to wait for defense attorneys to arrive rose slightly, from 20-25% in 2011 to 27% in 2012.
- **Was the attorney prepared for the case?** As usual, our volunteers generally found that defense attorneys were less prepared than the ADAs, and gave them an average rating of 4.4 in this category in 2012 (after giving them 4.5 and 4.2 ratings in 2011).

## NOPD

- **Did the Court have to wait for the police officer's arrival?** NOPD continues to make strides in its efforts to get its officers to court on time, as the court only had to wait for an officer to appear approximately 7% of the time in 2012, down from 17% and 33% in the two halves of 2011, respectively.
- **Was the officer able to clearly recall the police report during testimony?** Our volunteers said that the officers were "usually" able to recall the events at issue by giving them an average rating of 4.0 in 2012. This is in line with Court Watch NOLA's historical findings for this category.

## COURT WATCHERS' COMMENTS

Court Watch NOLA volunteers are a consistent presence in the Orleans Parish Criminal District Courthouse. Many of our volunteers have years of experience observing the criminal justice system at work. The following are some of their comments from 2012. These comments are the volunteers' personal opinions and observations, and do not represent the position or opinion of Court Watch NOLA, its officers, or its directors. Some of the comments are edited for grammar, spelling and/or length, but not for substance.

### EFFICIENCY

*The Judge was aggressive towards state and defense attorneys, asking them to be on top of their game and to be prepared. She does not like motions to continue or delays in process.*

*The court moved terribly slowly today. Three of the attorneys (on both sides) who were supposed to be in court were not there. The doctors for the mental competency hearings had not shown up as of 12:15.*

*The Judge continuously called for the next case but nothing was ever ready to be heard. The prosecution stated multiple times that they were waiting on other prosecutors or defense attorneys in order to proceed. Because of the long delay the Judge told the prosecution to come get him out of chambers when the next matter was ready to be called.*

*The defense attorney told the court that there had been 5 continuances, 4 on the State's motion. The Judge went over the Docket Master in detail and noted on the record that this was not correct; 4 of 5 continuances of the motion hearing had been made on defense motion, and there were 2 trial continuances on the State's motion. Therefore the Judge granted this continuance on the State's motion.*

*Although I thought that the Judge was very courteous and patient, the court proceedings went very slowly. It was difficult to tell what was going on because of all the sidebars and the fact that the ADA was not calling the cases loudly. Compared to other courts it took a while to get through the docket.*

*The Judge was going through the docket and a lot of lawyers and defendants were late and/or no shows, so she decided to call a jury and proceed to trial for another defendant by clearing the section of anyone who was not a lawyer or a defendant. She did not allow any court watchers to remain in the section because there were not enough seats for the jury and defendants, and we were ushered out.*

*Court moved very slowly and there was a lot of down time where nobody was doing anything.*

*At first the judge denied the joint continuance motion. The judge believed that two and a half months was enough time to prepare for trial. She seemed very angry that the lawyers were not prepared, and the state said something about waiting on DNA testing. The attorneys attempted to come to an agreement, but when they came back later saying they could not reach a plea agreement the judge reluctantly granted the continuance.*

*The Judge was very calm and efficient, with an excellent judicial demeanor. The cases were handled expeditiously, while clearly giving each matter the required attention.*

*A prisoner who was in custody at a remote location was to be present by video link. The TV was set up next to the Judge's bench. However, the inmate's case was not on the docket. The Judge apologized to the inmate (who appeared on the TV screen).*

*The Judge was very efficient and organized and got through his whole docket. His sidebars were very frequent, and one was over 15 minutes.*

## PROFESSIONALISM

*When a defendant told the Judge that he had already paid his attorney, who then died, she asked if he wanted her to dig up the attorney and told the man there was nothing she could do for him. The Judge sat with her chin in her hand, mumbling, and looking like she was bored with the proceedings.*

*The judge appeared to be distracted multiple times by her personal laptop computer and i-Pad.*

*The Judge dealt professionally with a very abusive defense counsel. The counsel raised his voice and talked over the Judge, but the Judge kept his cool and remained courteous and professional.*

*This judge drives a hard bargain, it was great! She really sticks to her decisions and holds everyone to a higher standard.*

*The Judge was on the phone and seemingly not paying attention during the jury questions.*

*The Judge told a defendant who did not want to accept a plea deal, "I respect you not wanting to plead guilty...I know you are adamant that if you didn't do anything you shouldn't plead guilty" but then told him the statistics about how many people are found guilty by juries, and reminded him that there are some innocent people in jail. He then told a story about having to apologize/take blame for something you didn't do.*

*This Judge seems to be one of the more outspoken judges. While this does provide good insight into the judicial thought process, there is a strange discrepancy between the serious tone of court and the jokes he may make with attorneys.*

## TIMELINESS

*The Judge arrived at 10:15. Attorneys and NOPD witnesses had been waiting for her.*

*The Judge then gave a mini lecture about being on time, saying that he “appreciated everyone who managed to show up on time” and that he wanted everyone “to be able to leave here as quickly as possible.”*

*The judge moved very quickly through the docket and was clear about continuances. She had essentially finished her entire docket by 11:00.*

*The Judge came in at 9:48, sat down for 2 minutes, then declared that court was in recess until 11:30. There were long periods of down time when the defendants/defense attorneys were not present.*

## TRANSPARENCY

*The Judge called each case very clearly. He handled the docket in a very orderly manner, by category (e.g., arraignments, motions, trial), and by calling all matters in which a particular defense attorney was involved one after another for the convenience of the attorney. Several preliminary matters were handled at unrecorded bench conferences, following which the Judge announced the dispositions for the record.*

*Twenty-five side bars occurred today in court. Every matter on the docket was continued.*

## SENTENCING

*The Judge ensured that the defendant knew all of his rights [when pleading guilty] and allowed him a few moments with his father before he was transferred back to OPP.*

*The defendant pled guilty and the Judge assigned a 1000-word essay on why he should not smoke and fight with a juvenile in his presence.*

*I did see one man whose sentence was up for reconsideration after he had been in jail for 21 months and completed his GED and several automotive accreditations. The Judge released him early to 5 years active probation. The Judge was genuinely happy for the man and congratulated him, telling him how proud she was of him. The entire court gave him a round of applause and the court reporter took a picture of him. [See the “Specialty Courts” section of this Report for more information on Re-entry Court.]*

## PROSECUTORS

*The DA's office sent over 1000 pages of discovery the night before trial. The defense claimed that they were unprepared and would move for a mistrial. The Judge, however, denied that motion.*

*Neither the state nor the defense realized that the defendant had been transferred from OPP to another jail. Because of this confusion the defendant was not produced.*

*While technically the case was continued because the NOPD officers were absent, this was not their fault. They appeared at 9 a.m., but were told by the prosecutor that the case would not go forward today, and that they could leave.*

*The Prosecutor assigned to the case was not in the building. The Prosecutor who stood in for him asked for a continuance, which was initially denied by the Judge. The Prosecutor was clearly not ready to try the case, stating "I don't even know what the charge is." The Judge was not initially persuaded, telling both lawyers that they had until 11:30, when the Jury would be called in. However with a little more persuasion by the State, the Judge agreed to a continuance.*

*The state was very prepared and was able to answer most of the judge's questions in a timely matter.*

*The fact that a case was filed in April and discovery was not filed until October seemed odd to me. I understand how busy both counsel probably are, but discovery is such an essential, although cumbersome, process.*

#### DEFENSE ATTORNEYS

*The judge was attempting to get 5 defendants and their 5 lawyers in the room for the entire morning. The case wasn't called until 12, when all were finally present.*

*We waited for the defense attorney for about an hour. By the time I left the Judge had ordered the attorney to be fined \$200.*

*The docket moved very slowly all morning, because it seemed as if they ran out of defense attorneys about halfway through.*

*The defense attorney claimed to be eager and ready for trial despite the fact that counsel moved for a continuance. Seemed odd.*

*The defense sat at the defense table discussing the plea deal among themselves for about 30 minutes while the rest of the court was just waiting.*

#### ORLEANS PARISH SHERIFF'S OFFICE DEPUTIES

*The deputy was asleep during the beginning of trial.*

*The Judge had total control of the courtroom, and the two sheriff's deputies were like hawks.*

*The defendant is in the custody of the Orleans Parish Sheriff, but he was not brought to court. No reason was given.*

## NEW ORLEANS POLICE DEPARTMENT

*The Judge mentioned the case and called it a few times but it did not proceed because they were waiting on a police officer. The state said that they were otherwise ready to proceed on the case.*

*The policeman on the witness stand had trouble recalling a lot of facts and had to re-read his report during the proceedings.*

## OTHER COURT PERSONNEL

*Psychiatrist and police were not present. Prosecutor's psychiatrist appeared to be available but not the defendant's. Judge was surprised and was ready to make more progress on the case.*

*There was no court reporter, so the Judge could not take the bench.*

*The defendant's family was very upset because some of the possible jury members were joking and saying that the defendant was guilty, even though the trial had not started.*

*Today the doctor for one of the cases was unable to be found so we just sat there waiting for an hour and a half.*

*Everyone involved in this case is totally nuts.*

## SPECIALTY COURTS

### DOMESTIC VIOLENCE COURT

Domestic Violence Court is designed to improve victim safety and enhance defendant accountability. Domestic Violence Court is held by Judge Hansen.

### DRUG COURT

Drug Court is a four-phase program formed in partnership with the Metropolitan Human Services District that provides counseling and treatment to non-violent offenders who plead guilty and admit to having a drug addiction. Drug Court is held by Chief Judge Buras and Judges Van Davis, Willard, Parker, Herman, Derbigny, and Hansen.

### MENTAL HEALTH COURT

Former Judge Calvin Johnson started Mental Health Court in an effort to bring together government agencies to assist nonviolent defendants with mental health issues. In return for submitting to probation visits, drug tests, and/or other monitoring, the defendants get assistance with their housing, medical treatment, mental health counseling and other needs, and have the opportunity to avoid prison. Dormant after Hurricane Katrina, Judge Herman recently revived the Court.

### RE-ENTRY COURT

This is a voluntary program available to defendants who plead guilty and who are sentenced to a maximum of ten years. Participants study carpentry, auto repair, welding, horticulture or culinary arts while in prison. Judges will order assessments for education, drug counseling, and “life skills,” and check on the inmates’ progress from the time they enter prison until release. Re-entry court is held by Judge White and Judge Hunter.

### VETERANS COURT

Veterans Court is the result of a partnership between Southeast Louisiana Veterans Health Care System and Orleans Parish Criminal District Court. Through this program, Veterans who become entangled in the criminal justice system have a chance to seek treatment through Veterans Justice Outreach Programs. The first session was held in August 2010. The Court is intended for non-violent offenders who have mental health, substance abuse or homeless problems where treatment is a better option than incarceration. Source: *U. S.*

*Department of Veterans Affairs release October 12, 2010,*  
[www.neworleans.va.gov/press\\_release\\_vjo.asp](http://www.neworleans.va.gov/press_release_vjo.asp). Veteran's Court is held by Judge Hunter.

## ACKNOWLEDGEMENTS

Court Watch NOLA would like to thank the Court Watch NOLA volunteers who make this work possible; the Business Council of New Orleans and the River Region; Citizens For 1 Greater New Orleans; Common Good; the Criminal District Court security, staff, and Judicial Administrator's office; the Orleans Parish Clerk of Court; and Carrollton Technology Partners.

*Court Watch NOLA would like to thank all of its donors for their continued support of the organization, including the following major donors:*

**Adams and Reese LLP**

**AT&T Louisiana**

**Baldwin Haspel Burke & Mayer LLC**

**Baptist Community Ministries**

**Barrasso Usdin Kupperman  
Freeman & Sarver, L.L.C.**

**Bari & Edel Blanks**

**Business Council of New Orleans  
and the River Region**

**Ella West Freeman Foundation**

**Galloway Johnson Tompkins Burr  
and Smith**

**Mamie & Kirk Gasperecz**

**Sally & Jay Lapeyre, Jr.**

**LeBlanc Bland, PLLC**

**Leslie Lanusse**

**Hope Goldman Meyer**

**Namlog Foundation**

**Red Bean Realty**

**Rosa Mary Foundation**

**Elizabeth Wheeler**

**George H. Wilson Fund**

**Mary Freeman Wisdom Foundation**

*Court Watch NOLA also thanks:*

Dr. Alan and Sandy Burshell

Wilmer and Marylou Freiberg

Susan and Louis Good, III

Lisa Jordan

Ruth and Larry Kullman

Michael and Nancy Marsiglia

Chaffe McCall, L.L.P.

Ann and Larry Rabin

Flo and Richard Schornstein

Lee and Karen Sher

John C. Williams Architects, LLC

Carol Wise

Ellen and Marc Yellin