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COURT WATCH NOLA 2011 REPORT



COURT WATCH NOLA

Court Watch NOLA, established in June 2007, began as a pilot program with start-up funding by the Business Council of Greater New Orleans, Common Good and Citizens for One Greater New Orleans. Since its inception, Court Watch NOLA has continued to grow. Court Watch NOLA is 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 had over 60 volunteers in court 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.

Court Watch NOLA tracks crimes of violence against the person, special circumstances crimes, crimes at the community's request and high profile media cases. These cases represent more than half of pending second-class felony cases at Criminal District Court.

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.

Contact: Brad Cousins (504) 421-1736 or courtwatchnola@yahoo.com.

SPECIAL DEDICATION

Court Watch NOLA dedicates its 2011 Report to:

Joseph David Nelson

March 14, 1950 – September 5, 2012

David was one of Court Watch NOLA's most dedicated volunteers and board members. He was known throughout the courthouse for his interest in the criminal justice system, his loyalty to his fellow veterans, and his passion for the New Orleans Saints. In addition to volunteering for Court Watch NOLA and serving on its Board of Directors, David also volunteered for the Veterans Court, mentoring veterans with mental health, substance abuse, or other problems who had become involved in the criminal justice system. As a small gesture of our appreciation for David's countless hours of volunteering, Court Watch NOLA dedicates this 2011 Report to his memory. He will be missed.

EXECUTIVE SUMMARY

In 2011, Court Watch NOLA volunteers were a daily presence in Orleans Parish criminal courts, making over 3,000 observations. Unfortunately, they observed a system under stress, due largely to the increased number of trials being conducted. 329 bench and jury trials were held in Orleans Parish Criminal District Court in 2011, an increase of 18% from 2010. “Orleans Parish Conviction Rates in Jury Trials Hold Steady, and Relatively Low,” *New Orleans Times-Picayune*, Jan. 16, 2012, http://www.nola.com/crime/index.ssf/2012/01/orleans_parish_conviction_rate.html.

Court Watch NOLA volunteers observed at least part of 296, or 90%, of the 329 trials in 2011. This increase in the number of trials and the court’s workload has caused the statistical gains made by the court from 2007 to 2010 in the efficient handling of its dockets to be erased.

63% of all matters observed by Court Watch NOLA volunteers in 2011 were continued, matching the all-time high that we have recorded.¹ This means that almost two-thirds of the time our volunteers were in court, the matter they were observing was continued rather than held, a delay that prevents our Judges, prosecutors, public defenders, police officers, and other public servants from timely addressing the matter and moving on to other work. Matching this trend, in 2011 the Judges’ individual continuance rates also climbed, as did the percentage of court-requested continuances due to trials already in progress, which set new records at 64% and 54% in the two halves of 2011.

The increased trial load had other collateral effects, as well. The percentage of observed continuances requested either by the state – 21% and 27% in the first and second halves of 2011, respectively – or by both parties – 15% and 16% – increased significantly. Likewise, the percentage of closed cases due to dismissals by the District Attorney (*Nolle Prosequi*) matched recent highs at 18% and 16% in the first and second halves of 2011, respectively. These statistics suggest that attorneys may have also been struggling in 2011 to keep up with the aggressive trial schedule.

Due to the increased workload, the average number of days between settings jumped from 30 days throughout 2010 to 35 days in the second half of 2011. In fact, in 2011 only one

¹ Due to rounding, the sum of any given set of percentages in this report may not equal 100%.

Judge had an average number of days between settings in cases observed by Court Watch NOLA volunteers was below 30.

Our volunteers also rated the Judges, prosecutors, defense attorneys, and testifying police officers in a variety of categories throughout 2011. The volunteers generally rated the Judges' ability to pay attention to the cases before them and handle them with transparency very highly, giving the Judges average ratings of 4.8 and 4.7/4.6 out of 5.0 in those categories. They rated the preparation and organization of the prosecutors slightly higher than that of the defense attorneys they observed, and gave testifying police officers relatively low ratings of 4.2 and 3.7 out of 5.0 for their ability to clearly recall the facts at issue in a matter during the first and second halves of 2011.

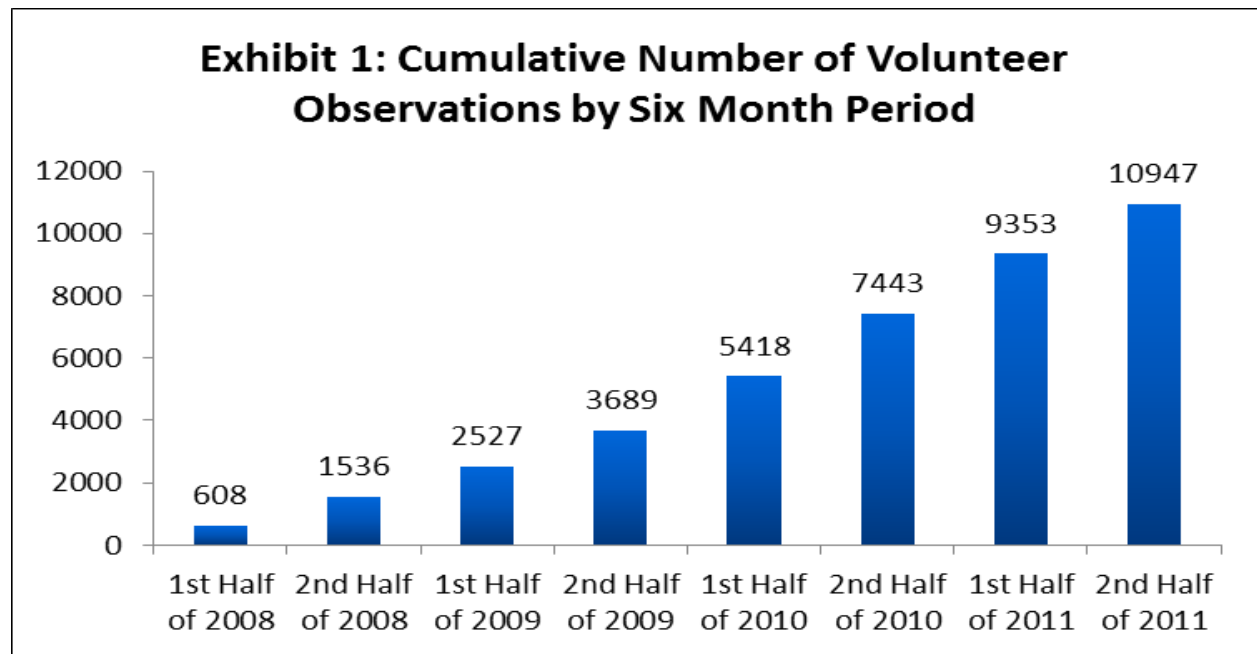
The observations, data, and statistics listed in this Report are for 2011, and thus reflect former Chief Judge Alarcon's last year in Section L. After Judge Alarcon's retirement earlier this year, Judge Zibilich was elected to the Section L seat. This report therefore does not include any observations or data regarding Judge Zibilich.

COURT WATCH NOLA VOLUNTEERS HAVE MADE OVER 10,000 OBSERVATIONS SINCE 2008

In 2011 Court Watch NOLA passed a milestone: our volunteers have now made over 10,000 observations since 2008, including over 3,000 in 2011 alone. This has been made possible by the continued dedication of our community volunteers and our partnerships with Tulane and Loyola Universities. While not reflected in the 2011 data, Court Watch NOLA also recently began a partnership with Delgado Community College’s Criminal Justice Program.

NUMBER OF COURTROOM OBSERVATIONS

Exhibit 1 identifies the number of courtroom observations by Court Watch NOLA volunteers since 2008 – a total of 10,947! 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 data related to court efficiency, including: whether matters set by the court are held, closed or continued; the manner in which matters are brought to closure; who requested continuances, why they were granted and the date for which the matter was re-set; the time at which Judges first take the bench each morning; and the number of unscheduled court closings. 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. Statistics in this report were tabulated only for case settings actually observed by Court Watch NOLA volunteers.

THE VOLUME OF TRIALS IS CLOGGING THE COURTS – CONTINUANCES AT ALL-TIME HIGH

329 bench and jury trials were held in Orleans Parish Criminal District Court in 2011, an increase of 18% from 2010. “Orleans Parish Conviction Rates in Jury Trials Hold Steady, and Relatively Low,” *The New Orleans Times-Picayune*, Jan. 16, 2012, available at http://www.nola.com/crime/index.ssf/2012/01/orleans_parish_conviction_rate.html (last visited Sep. 24, 2012). This increase came on the heels of District Attorney Cannizzaro’s much-publicized goal of increasing the court’s annual number of trials to 600. Based on the data gathered by Court Watch NOLA’s volunteers, however, the increase in the number of trials has prevented the court from handling its workload as efficiently as possible.

RESULTS OF VOLUNTEER OBSERVATIONS

Exhibit 2 reflects the results of volunteer observations from January of 2008 to December of 2011. From 2010 to 2011, the rate at which matters were continued jumped dramatically, from 54% throughout 2010 to 63% in 2011. The 63% continuance rate matches the all-time high recorded by Court Watch NOLA, which occurred during the first six months of 2008. The continuance rate in 2011 is also 20 points higher than the all-time low rate of 43%, recorded by Court Watch during the first half of 2009. The 9% jump in the continuance rate from 2010 to 2011 is matched by a decline in the percent of matters that were held, which fell from 36% during the first half of 2010 to 26% in the second half of 2011. This means that almost two-thirds of the time that a Court Watch NOLA volunteer was present in the courtroom for a matter set, the matter was continued.

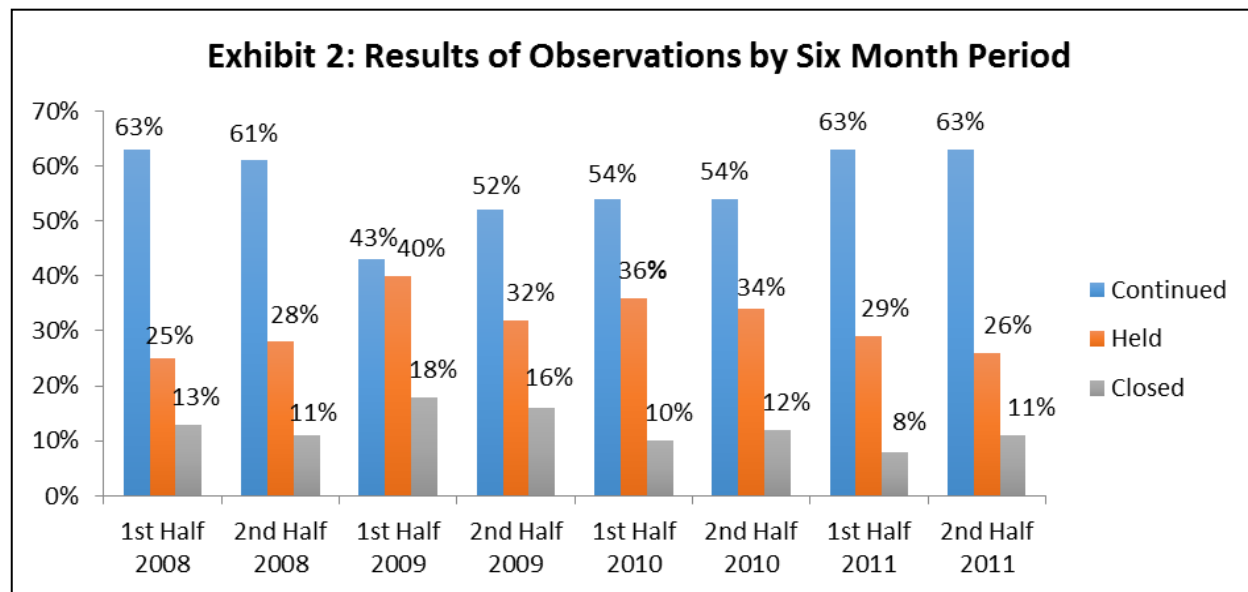
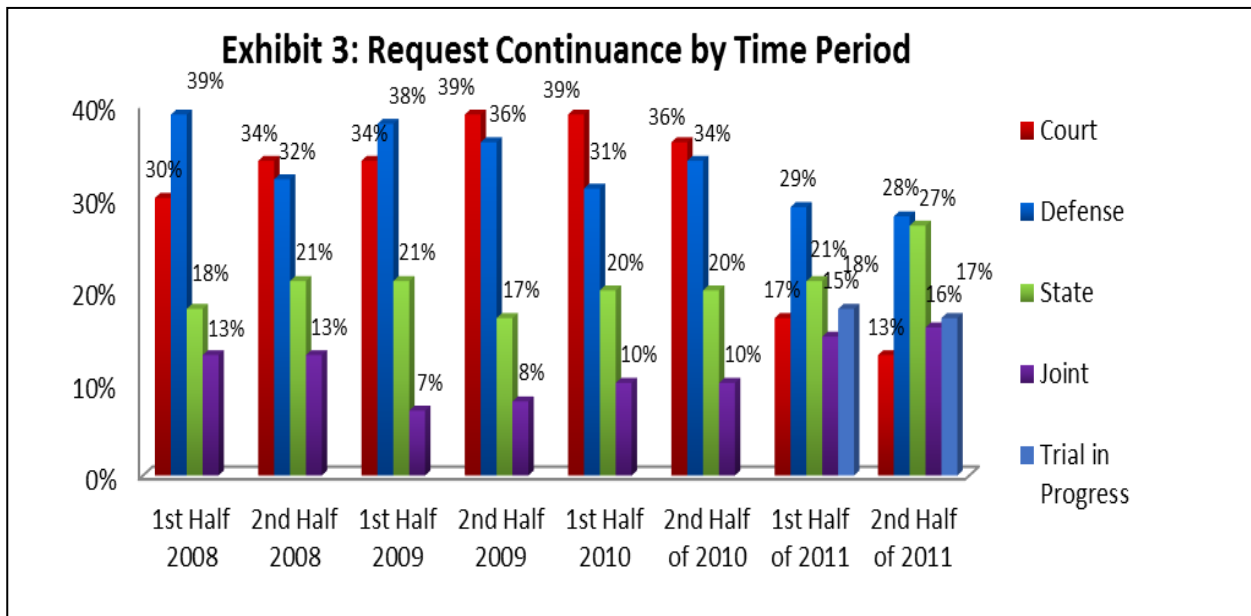


Exhibit 3 shows on whose behalf a request for continuance was made for each six-month period from January of 2008 through December of 2011. This exhibit shows that 30% or more of the time that a Court Watch NOLA volunteer was present for a continuance in 2011, the court continued the matter on its own motion or the matter was continued because a trial was already in progress. (Before 2011, Court Watch NOLA included continuances due to trials in progress within the “Court” category.) While the percent of continuances by defense motion held relatively steady compared to previous years, and perhaps showed a slight decline, those requested by the State, or requested jointly by the State and the defense, both rose to meet or exceed all-time highs in 2011. For instance, the State requested 21% of all continuances in the first half of 2011, matching an all-time high, further increasing to 27% in 2011’s second half. Joint requests for a continuance accounted for 15% and 16% of all continuances in 2011’s first and second halves, respectively, also all-time highs.

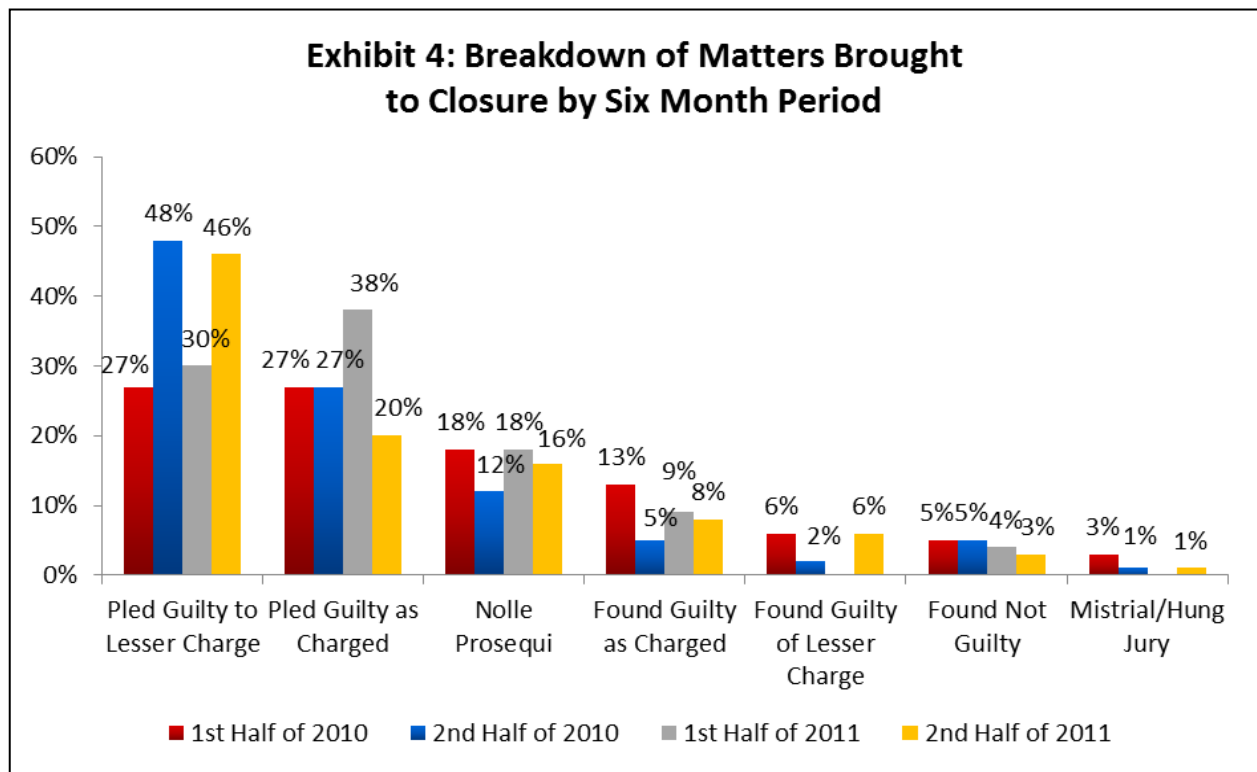


As previously stated, 8% and 11% of the settings observed by Court Watch NOLA volunteers in the first and second halves of 2011, respectively, resulted in the closure of a case.

Exhibit 4 compares the results of cases that Court Watch NOLA volunteers were observing and that closed in 2010 and 2011. The most frequent method of closing cases during 2011 was by guilty plea, with 38% of case closures due to a defendant pleading guilty as charged

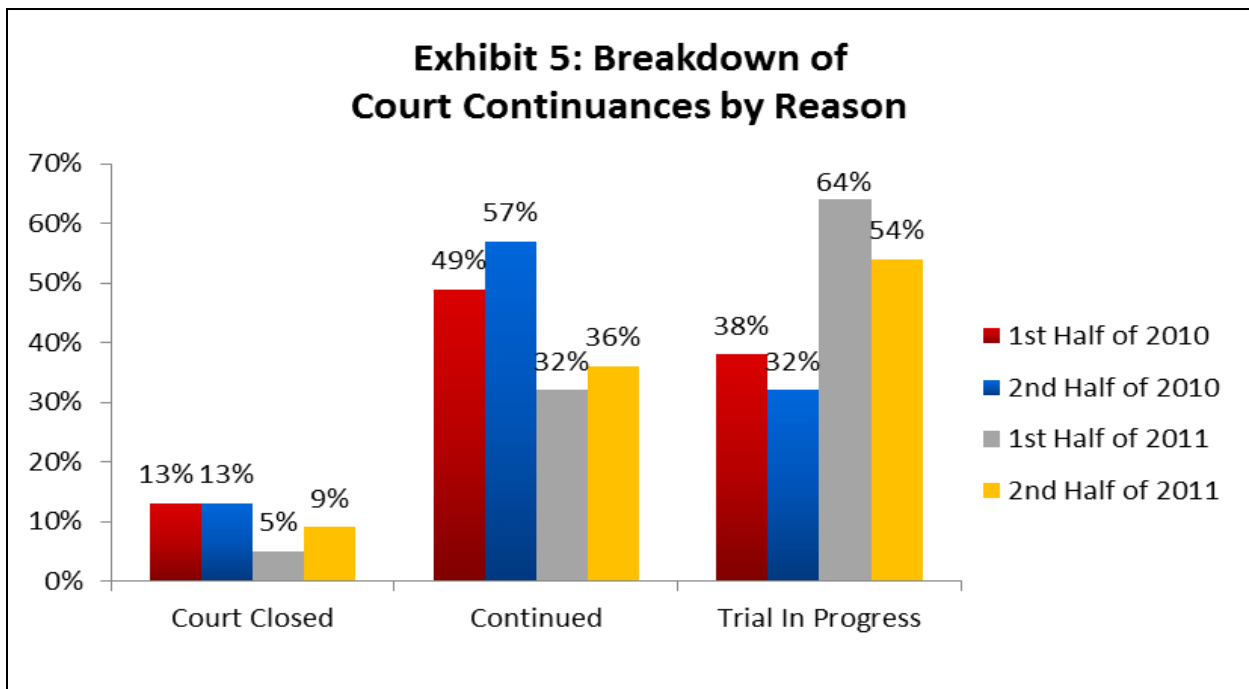
in the first of 2011, and 46% of defendants pleading guilty to a lesser charge in the second half of 2011, both of which set or approach recent highs as observed by Court Watch NOLA. For a defendant to plead guilty to a lesser charge, the District Attorney must amend the charge to allow the plea. The third most frequent method of closing cases was the dismissal of the case by the District Attorney (*Nolle Prosequi*), which occurred between 16 and 18% of the time in 2011. It should be noted that the District Attorney is free to reinstitute a case that has been dismissed.

The remaining cases that our volunteers observed in the second half of 2011 were closed by the defendant being found guilty as charged – 8%; found guilty of a lesser charge – 6%; found not guilty – 3%; and a mistrial or hung jury – 1%.



Court watchers’ observations and data sheets now include more detailed information on why matters are continued. The reasons and observations for continuances requested by the court are reflected in **Exhibit 5**.

Exhibit 5 shows that over 50% of the court-requested continuances observed by Court Watch NOLA volunteers in 2011 were due to another trial that was already in progress, another all-time high. 64% of court-requested continuances in the first half of 2011 were for this reason, and 54% were in the second half of 2011. About a third (32% and 36% in the first and second halves, respectively) of court-requested continuances were due to various other reasons, including an insufficient number of jurors available, the court recusing itself, a subpoena not having been served, or a weather-related closure. While the percentage of court-requested continuances caused by unscheduled court closings dropped this year, 5% and 9% of such continuances in the first and second halves of 2011



(respectively) occurred for this reason.

Exhibit 6 reflects the percentages of all scheduled proceedings that Court Watch NOLA volunteers observed that were continued for each Judge during the past three years. For the second half of 2011, Judges Derbigny and Pittman had the lowest rates of continuances at 53% and 55%, respectively. Judges Buras and Parker had the highest rates of continuances for the second half of 2011 at 73% and 72%, respectively. The other Judges' rates for the same time period ranged from 56% to 67%. Given the overall rate of continuances, it is unsurprising that almost all of the Judges' individual rates of

continuances exceeded their historical levels in 2011. The one exception to this general trend is Judge Willard, whose 2011 rate of continuances, once averaged out, closely approximated his recent historical level.

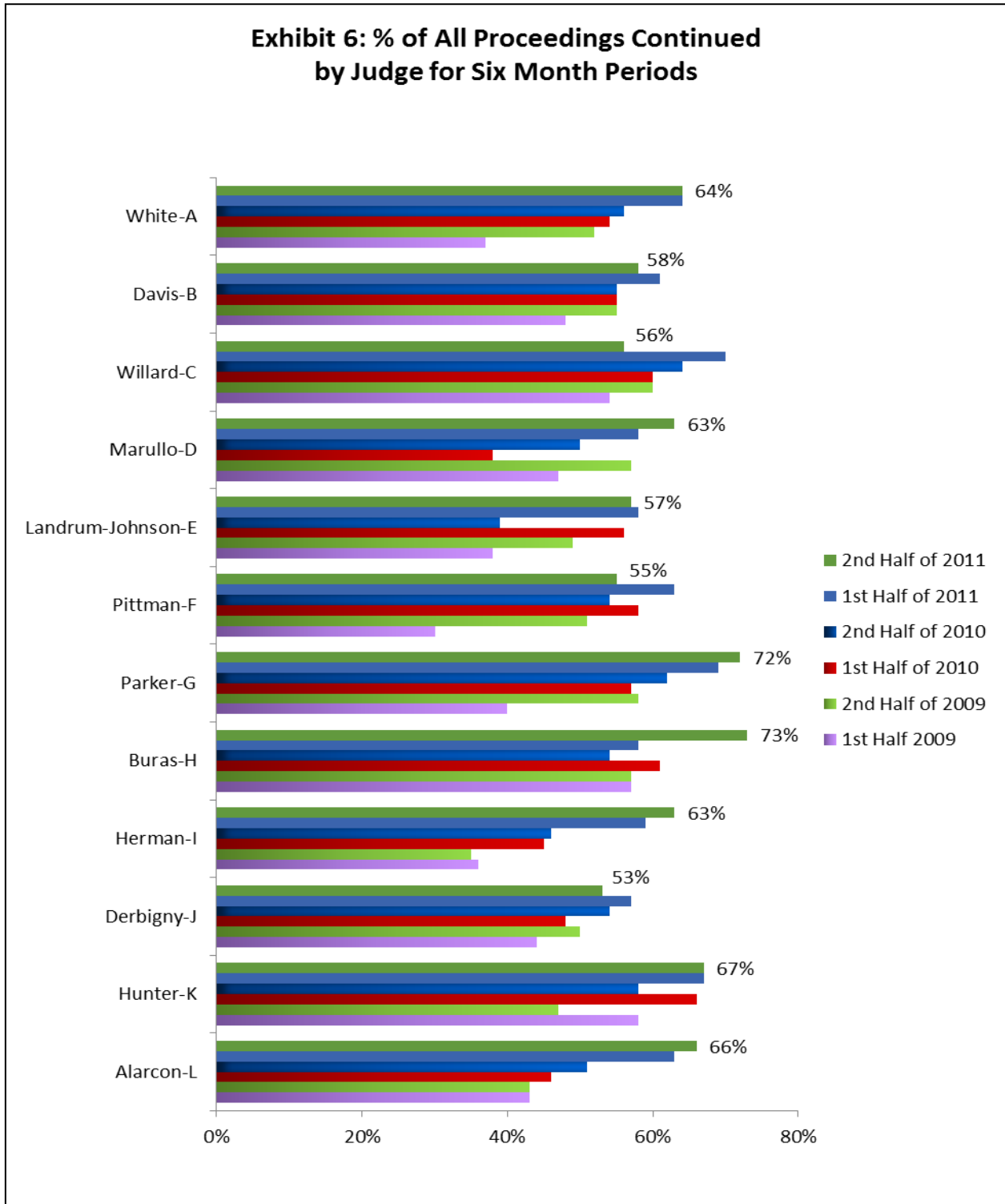
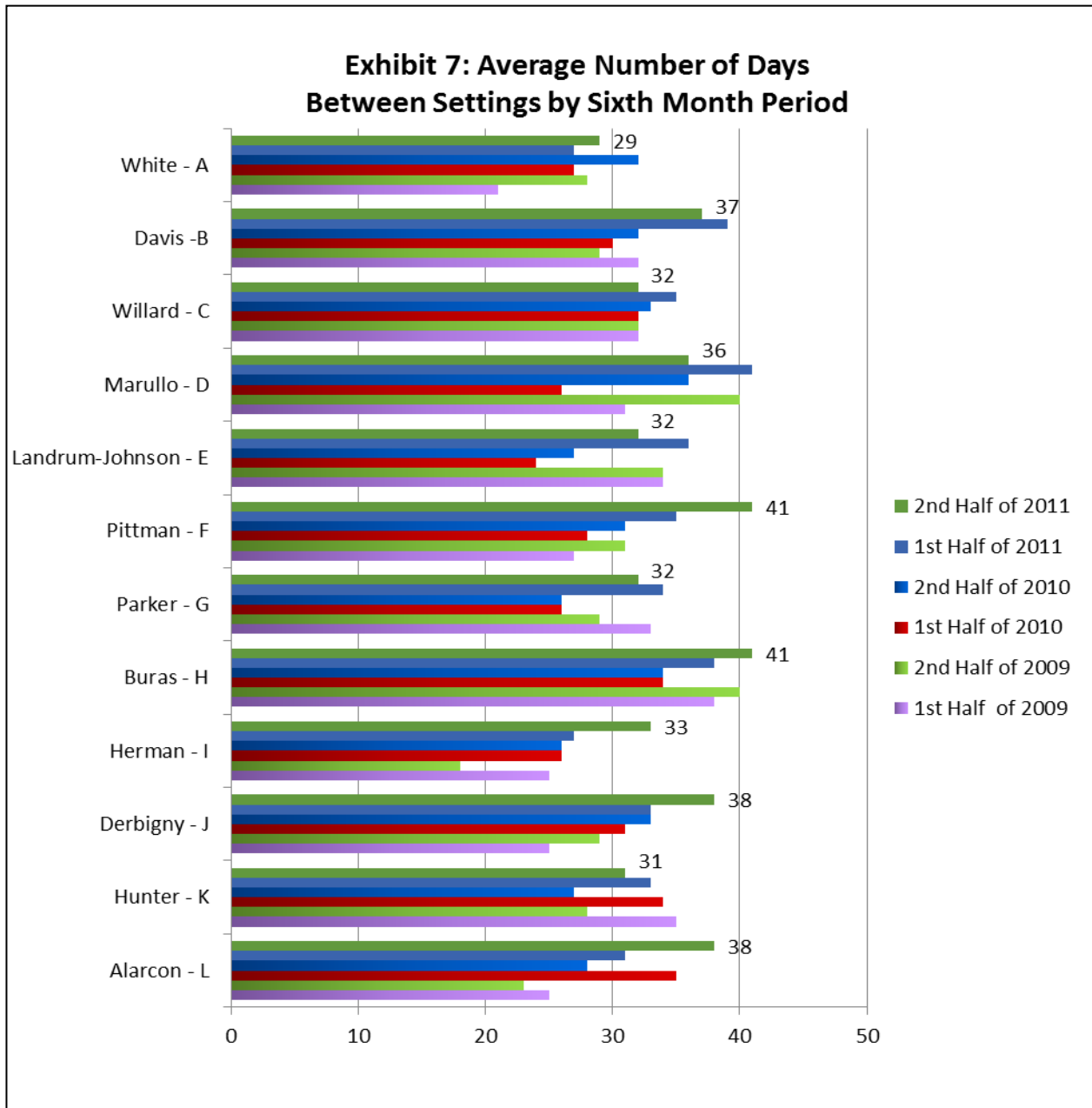
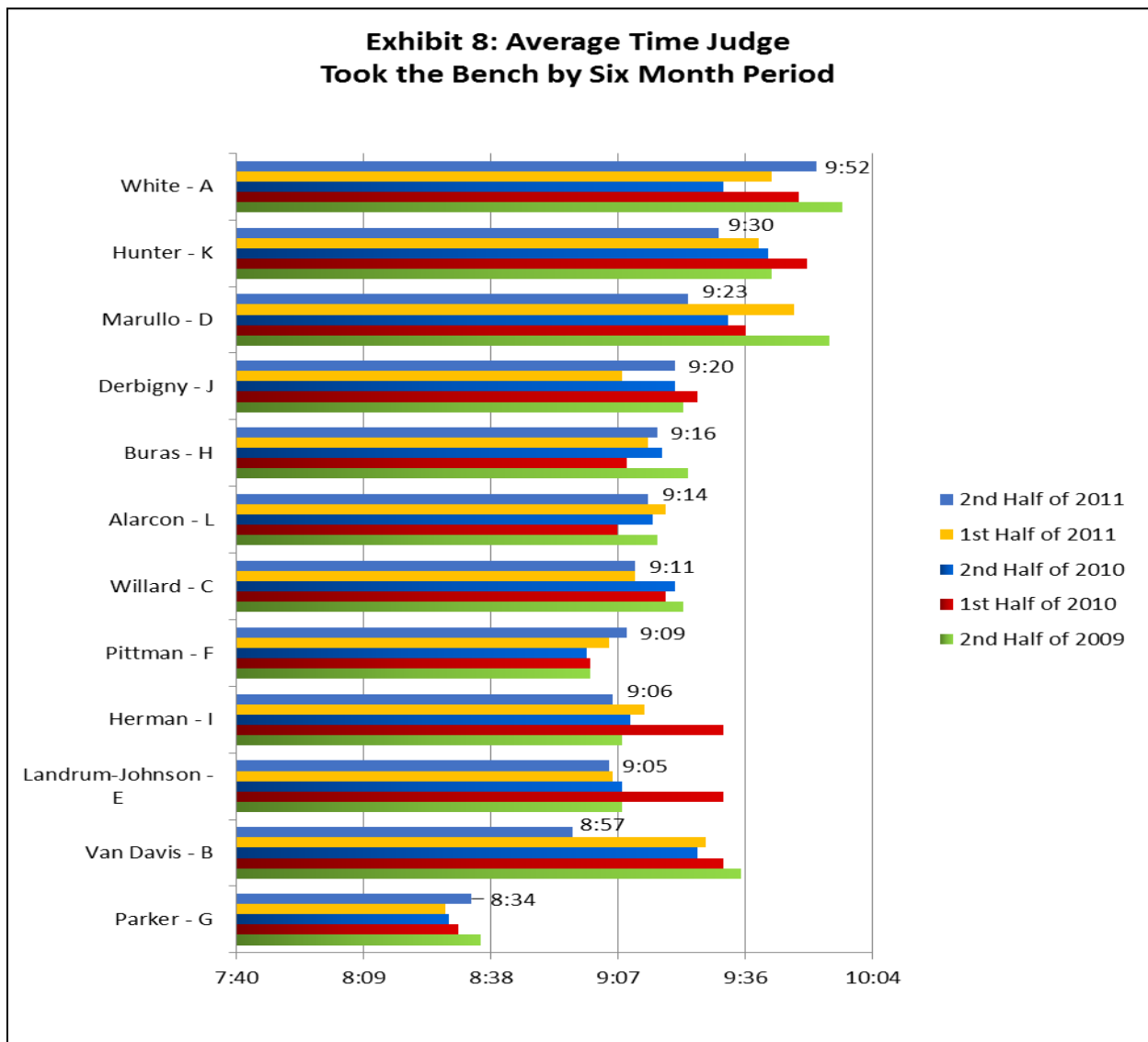


Exhibit 7 reflects the average number of total days, including weekends and holidays, between settings for all matters observed by Court Watch NOLA volunteers during the past three years, broken out by Judge. The overall court average jumped from 30 days in the second half of 2010 to 34 days in the first half of 2011, and 35 days in the second half of 2011. In the second half of 2011, Judges Buras and Pittman averaged the greatest number of days between settings at 41. Judge White was the only Judge who averaged fewer than 30 days between settings at 29. The rest of the judges averaged between 31 and 38 days between settings.



COURT WATCHERS CONTINUE RECORDING JUDGES' ARRIVAL ON THE BENCH

Exhibit 8 reflects the average time each Judge took the bench since 2009 in cases observed by our volunteers. 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. Our data therefore does not capture the considerable time that many Judges spend working in chambers, attending meetings, and performing administrative tasks. Court Watch NOLA nevertheless tracks the time of arrival on the bench in an effort to minimize the amount of time our public servants, including prosecutors, defense attorneys, and law enforcement, as well as members of the public attending court, must sometimes wait before the Judge takes the bench.



OBSERVATIONS BY COURT WATCHERS

Court Watch NOLA volunteers also make more subjective observations regarding the prosecutors, defense attorneys, Judges, as well as the New Orleans Police Department officers who testify at hearings and trials. 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 high marks – 4.8 out of 5.0 for both halves of 2011 – for paying attention to the proceedings in the courtroom.
- **Did the judge handle the case with transparency, keeping the proceedings on the record?** Our volunteers gave the Judges slightly lower ratings – 4.7 and 4.6 out of 5.0 for the first and second halves of 2011, respectively – for their transparency. Volunteers particularly commented on some Judges tendency to not use microphones or to handle matters in off-the-record sidebars.

PROSECUTORS

- **Was the ADA's presentation organized?** On a scale of 1 to 5, Court Watch NOLA volunteers rated the organization of the prosecutors' presentations as 4.7 and 4.5 in the first and second halves of 2011, respectively.
- **Was the ADA prepared for the case?** On the same scale and for the same time periods, our volunteers gave the prosecutors ratings of 4.6 and 4.5 for preparation.

DEFENSE ATTORNEYS

- **Did the court have to wait for the attorney's arrival?** Between 20% (first half) and 25% (second half) of the time in 2011, the court had to wait for the defense attorney's arrival.
- **Was the attorney prepared for the case?** Our volunteers generally found that the defense attorneys were less prepared than the ADAs, and gave them

ratings of 4.5 and 4.2 for their preparation in the first and second halves of 2011, respectively.

NOPD

- **Did the Court have to wait for the police officer's arrival?** Only 17% and 33% of the time in the first and second halves of 2011, respectively, was the Court forced to wait for an officer in order to conduct its business.
- **Was the officer able to clearly recall the police report during testimony?** Our volunteers gave the testifying officers' ability to recall the events at issue ratings of 4.2 and 3.7 out of 5.0 for the first and second halves of 2011.

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 2011. 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 or spelling, but not for substance.

EFFICIENCY

The Judge did an excellent job of moving proceedings along. He was very professional and respectful of everyone in the courtroom and maintained order nicely.

I respect the Judge's efficiency, wisdom, knowledge of the law, and her sense of gravity and humor on the bench.

At 10:05 the Judge still had not taken the bench. All attorneys present. The courtroom is filled, and NOPD officers are present, all awaiting the Judge's arrival. At 10:35 the Judge still had not arrived.

Despite arriving late, the Judge has been the most efficient judge I have seen to date in terms of moving proceedings along. He has a no-nonsense attitude, but handled all proceedings very professionally and fairly.

By contrast to some, the Judge runs an efficient, well organized trial. Her relationship to the other officers of the court is business-like, yet relaxed and friendly (or not) as needed. This judge is a fine example of professional jurisprudence in action.

Today the Judge allowed lots of interruptions to calling the next case, leading to a waste of time.

The Judge handled a very busy docket with speed, grace and fairness. She is a fine jurist!

During the first hour of court the Judge moves quickly through the docket but moves at an increasingly slower rate as time passes. Around 11:00 the courtroom becomes increasingly disorganized.

MAINTAINING ORDER

The Judge observed several people laughing and stopped the proceedings by saying, "There is nothing funny going on in this courtroom. We are dealing with heartbreak and peoples' lives here. If you want something funny, go home and watch television!"

The Judge runs a wonderful court. She keeps order every minute. She actually does a lot that the deputies should be doing: stopping talking between prisoners and others, maintaining quiet.

TRANSPARENCY

There were a considerable number of sidebars and almost no statements on the record. The court knows what was going on, but it was not obvious to the public.

Although some things were happening, much of it was not on the record. The Judge spent a lot of time working with a young man who was kicked out of diversion - looks like the Judge went the extra mile to give the defendant another chance.

SENTENCING

The Judge was very good in sentencing. He advised the defendant on his conduct and choices, and showed personal interest.

The Judge was great in sentencing. He gave the defendant 10 days in OPP to serve over 5 weekends so the defendant can keep job. He was very careful to consider the case and some changing circumstances.

The Judge is efficient, respectful, and she explains the charges, corresponding Louisiana statute, and sentencing range to the audience and defendants.

PROSECUTORS

I am always impressed with this Judge! He reprimanded the ADAs for flipping through papers and cautioned the ADAs to get to court early enough to be able to move cases beginning with the first page and calling cases consecutively.

The DA's office moved through the docket smoothly, and the Judge handled items presented swiftly. It is always a pleasure in this courtroom - efficient. The Judge became frustrated when defense attorneys were not present.

The Judge was in good form - engaged, decisive, and pleasant. The ADA is always very helpful.

The Judge took the bench and the entire prosecution team was not in court. After 6 minutes, the Judge left the bench citing the lateness and attitude of the State. She refused to hear the prosecution until the court received an apology.

DEFENSE ATTORNEYS

Considerable number of "no shows" by defendants and defense attorneys. The Judge stayed on the ADA to keep the cases moving. The Judge was very concerned that defendants completely understand court proceedings.

The Judge was screaming and furious about the public defender not being present. The Judge fined both the ADAs and public defenders for not being present and ready.

ORLEANS PARISH SHERIFF'S OFFICE DEPUTIES

8 police officers were present waiting for the defendants, who, at 10:15, had not yet been brought up.

The deputies do a wonderful job of maintaining order and discipline in this court, as does the Judge. It is always orderly and respectful.

The deputies did not come out and say that court was in session. Deputies standing around texting, eating, and talking. At 9:30 the ADA was waiting on police officers and defense attorneys. This court was unprepared. At 10:10 this court came to a standstill, and the Judge was very upset at both sides.

No deputy was present from about 10 to 10:45 causing the inmates to talk excessively.

NEW ORLEANS POLICE DEPARTMENT

The officer questioned in this case was inaudible and unclear at times. He admitted that he said things to the defendant that he did not put in his report.

The officer is to be commended for his professional demeanor, his clear and direct answers to difficult questions, and his obvious knowledge of the case. I wish that other NOPD officers lived up to his standards.

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

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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*. 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 New Orleans and River Region Business Council; Citizens For One 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.

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AT&T Louisiana

Baldwin Haspel Burke & Mayer LLC

Baptist Community Ministries

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Freeman & Sarver, L.L.C.**

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