



Court Watch NOLA

10 Oldest Cases Report—Part 2

October 2, 2008

The ability to move a case efficiently through the court system is crucial to effective judicial management. A case which is allowed to stagnate becomes difficult to prosecute, as witnesses move, evidence is lost, or attorneys are replaced. First- and second-class cases—serious felonies which are often crimes of violence—are particularly prone to delay and vulnerable to age.

In September 2007, Court Watch NOLA initiated its 10 Oldest Cases Project, identifying and tracking the ten oldest first- and second-class cases pending in each section of court to gain insight into how each member of the judiciary manages the court's most backlogged cases. Court Watch NOLA's first Ten Oldest Cases Report, released in December 2007, detailed activity on its subject cases from September 1 through November 30, 2007. This report follows up on those cases still awaiting disposition on December 1, 2007.

Court Watch NOLA's December 2007 10 Oldest Cases Report identified significant disparities among the judges in the three docket management indicators it recorded: processing time from institution of prosecution, number of continuances granted, and number of cases closed. While this follow-up report shows general improvements in nearly every section of court, the inconsistency in efficiency remains apparent, with some judges having closed most of their oldest cases while others have made little progress since the first report.

An Overview of The Study

The 10 Oldest Cases Project follows the ten oldest first- and second-class felony cases in each section of Criminal District Court. First- and second-class felonies are defined as crimes necessarily punishable by death or imprisonment at hard labor. Mainly crimes of violence, these charges range from capital murder to aggravated battery; they also include serious narcotics charges such as distribution and possession of large quantities of drugs.

A case that has been accepted for prosecution by the District Attorney's office is assigned to a section of court by random allotment. This process results in each section of court receiving its fair share of the same types of cases, with comparable levels of difficulty.

It is axiomatic that more serious cases linger longer on a court's docket than those of lesser consequence, primarily because probation is not a sentencing option for first- and second-class

cases, but also because charges which carry significant penalties require significant preparation. While the right to a fair, well-prepared trial is essential to both defense and prosecution, unnecessary delays can thwart that right, with the ability to adjudicate a case fairly becoming increasingly difficult as the case ages. A judge's capacity to manage older cases is one gauge of the efficiency of the courtroom as a whole, and is a general indicator of the judge's ability to maintain caseload momentum.

As several of the 10 oldest cases involve multiple defendants whose charges may be resolved at different times, Court Watch NOLA examined the charges against each defendant separately, so that, while the cases in each section of court identified for study number 10, the actual number of defendants studied in each section of court range from 11-19. Also, the year-long succession of ad hoc judges in Section E, following the retirement of Judge Calvin Johnson, led to a decision to eliminate Section E's statistics from this report. As a result, the total number of "cases" (i.e., defendants) followed for Court Watch NOLA's second 10 Oldest Cases Report is 157.

Court Watch NOLA's 10 Oldest Cases study focused on three data points: Processing Time, Continuance Rate, and Disposition. This second report updates the data for those indicators.

Processing Time

The average number of days cases remain open in each section is an important reflection of the efficiency of that court. The 10 Oldest Cases Report computed the Processing Time, per defendant, for each of the cases studied. Processing Time begins tolling when the District Attorney's office accepts charges by filing a bill of information or indictment against a defendant, and ends at adjudication—by dismissal, plea, or verdict—or at the study's end date of August 31, 2008, whichever came first. In order to reflect more accurately the efficiency of each court, three types of delays were eliminated from the calculation to account for factors largely beyond the court's control:

- 1) Time "at large" – A defendant's flight from justice is beyond the court's control. A defendant on bond is deemed "at large" when he fails to appear at a court setting for which he has been notified. When this occurs, the judge will issue a warrant for the defendant's arrest. This study excludes the time between the defendant's disappearance and his re-arrest from the total Processing Time.
- 2) Time on writs - The time it takes for the appellate court to hand down a ruling is beyond the trial court's control. If the state or defense files a supervisory writ to contest an adverse ruling by the trial judge, the time from the filing of the writ to the time the matter is resolved is subtracted from the total Processing Time.
- 3) Time Incompetent - A defendant's mental capacity to participate in the proceedings against him is beyond the court's control. If a defendant is adjudicated incompetent, the court orders the proceedings stayed and the defendant treated in an effort to restore his competency. During this time, the court will conduct periodic hearings on

the state of the defendant’s competency. The time from the decree of incompetence to such time as the court finds the defendant has regained the mental competency to proceed is subtracted from the total Processing Time.

With the above parameters in place, Court Watch NOLA calculated the Processing Time for each section of court. Exhibit 1 shows the average Processing Time for all courts during the study was 839 days. In other words, it took, on average, close to 28 months, or about two years four months, for the cases studied to be resolved, or to remain unresolved at the close of the study on August 31, 2008.

As Exhibit 1 illustrates, Section I reported the shortest processing time at 417, and Section J reported the longest at 1122. This result essentially mirrors the December 2007 report, with the wide range in the ages of the ten oldest cases in each section continuing to indicate disparities in the judges’ efficiency in moving their oldest and most difficult cases to conclusion.

Exhibit 1: Average Case Processing Time Per Section

Judge	Average Age of 10 Oldest Cases (In Days)
Section I - Judge Raymond Bigelow	417
Section F - Judge Dennis Waldron	684
Section D - Judge Frank Marullo	690
Section L - Judge Terry Alarcon	767
Section H - Judge Camille Buras	834
Section A - Judge Laurie White*	875
Section G - Judge Julian Parker	878
Section K - Judge Arthur Hunter	927
Section C - Judge Benedict Willard	928
Section B - Judge Lynda Van Davis	1037
Section J - Judge Darryl Derbigny	1122
Total	839

* Following the retirement of Judge Charles Elloie, Section A was presided over by ad hoc judges during the entire first study period, and until December 17, 2007 of the second study period.

Continuance Rate

As Court Watch NOLA found in its first 10 Oldest Cases Report, continuance requests granted by the judge played a major factor in a the speed of case’s progression through the court.

As Exhibits 2 and 3 explain, the average number of continuances in the courthouse was about 16 per case, with the combined number of continuances granted for the cases studied totaling 2,553. Section J had the highest average number of continuances granted

with 21 per case. The lowest average number of continuances granted occurred in Section I, with 6 of its settings continued per case.

EXHIBIT 2: Average Number of Continuances Per Case

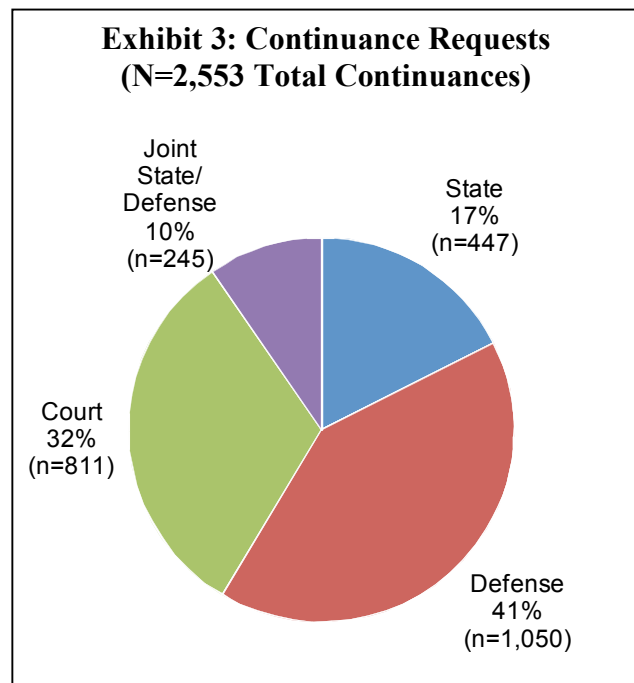
Judge	Average Number of Continuances
Section I - Judge Raymond Bigelow	6
Section G - Judge Julian Parker	14
Section K - Judge Arthur Hunter	16
Section L - Judge Terry Alarcon	16
Section D - Judge Frank Marullo	16
Section A - Judge Laurie White*	16
Section H - Judge Camille Buras	17
Section B - Judge Lynda Van Davis	18
Section F - Judge Dennis Waldron	19
Section C - Judge Benedict Willard	20
Section J - Judge Darryl Derbigny	21
Total	16

* * Following the retirement of Judge Charles Elloie, Section A was presided over by ad hoc judges during the entire first study period, and until December 17, 2007 of the second study period.

The correlation between average Processing Time and Continuance Rate is clear, with Section I recording the shortest Processing Time and the lowest Continuance Rate, and Section J recording the longest Processing Time and the highest Continuance Rate.

The Continuance Rate breakdown that Court Watch NOLA observed in its first 10 Oldest Cases Report remained virtually unchanged in the second report, with defense continuances outnumbering prosecution requests 41% to 17%, and court continuances—the reasons for which ranged from other trials in progress to court closings—averaging 32%.

NOTE: When a docket master reflects that a proceeding was not held due to the absence of a defendant incarcerated in OPP, this study charged the continuance to the court. Where the defendant was incarcerated at another facility and no paperwork had been filed to



facilitate the defendant’s transfer to Criminal District Court, the continuance was charged to the state, which bears the responsibility of securing the defendant’s presence. Where the defendant was on bond and not present, the continuance was charged to the defense.

Disposition

Court Watch NOLA recorded whether each of the subject cases was actually adjudicated during the 10 Oldest Cases study period. As described above, adjudication comprises three categories: guilty pleas, trial verdicts, and dismissals. While none of the twelve sections were able to dispose of all ten of their oldest cases, several sections reported progress.

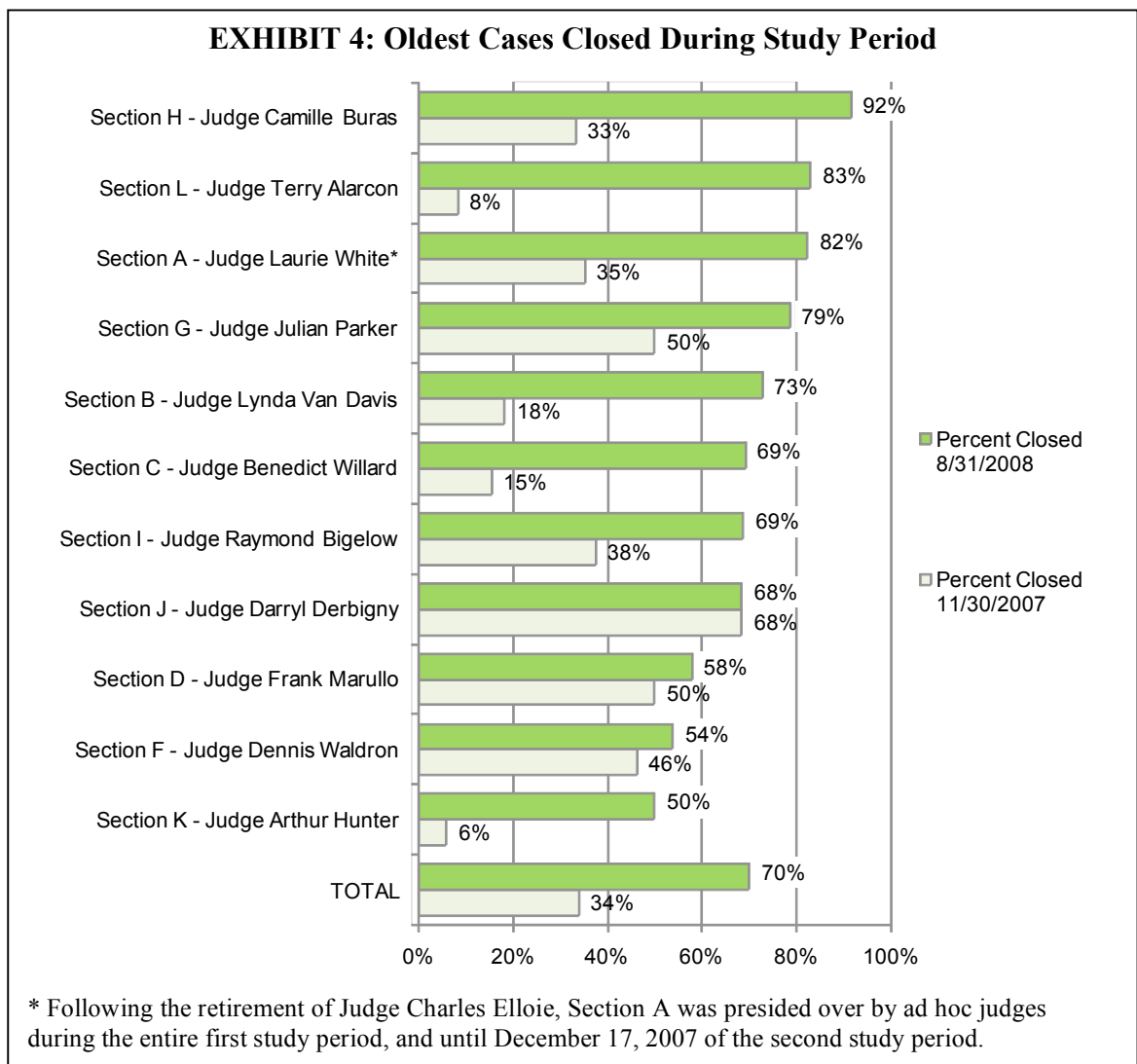
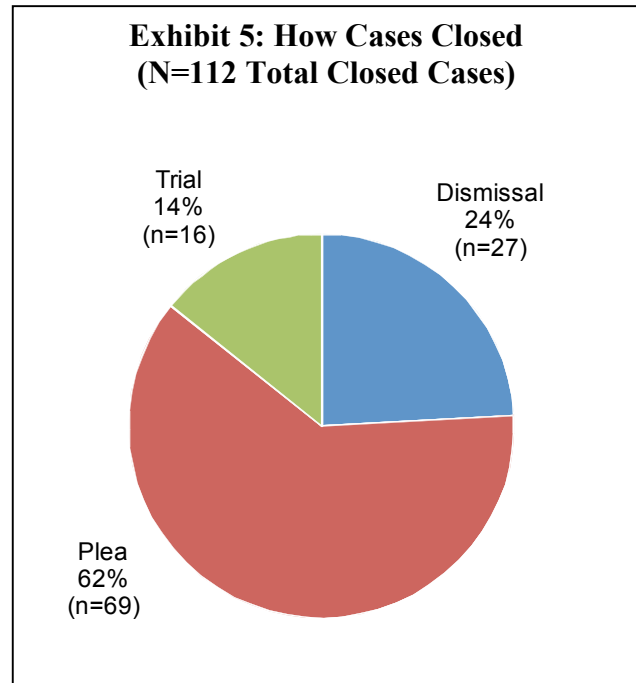


Exhibit 4, the average percentage of defendants whose cases have closed, encompasses the entire time span of both reports. As Exhibit 4 illustrates, the average percentage of the oldest first- and second-class cases which closed during Court Watch NOLA’s year-long study was 70. Of the ten oldest cases in each section of court, approximately 30% remained unresolved at the end of the study period.

At 92% closed, Section H had the highest percentage of cases to reach disposition. Sections L and A were next with 83% and 82%, respectively. Section K had the lowest percentage of cases to reach disposition, 50%.

It must be noted that the factors outlined above which were not included in the Processing Time can play a substantial role in a court’s ability to close out a case. When a defendant absconds during the study period and remains at large, for example, the court is prevented from efficiently and effectively disposing of that case.

Exhibit 5 illustrates the manner in which each closed case was adjudicated: by dismissal (*nolle prosequi*), plea, or verdict after trial. As Exhibit 5 reflects, the percentage of adjudicated cases closed by dismissal—in other words, where the district attorney’s office simply dropped the case—was 24%. On average, these cases were open for approximately two years and five months, and were ultimately dismissed without further prosecution.



Conclusions

The conclusion of Court Watch NOLA’s 10 Oldest Cases study showed mixed results in the three data points used to monitor judicial efficiency. Comparing the results of the first report to the second, several courts showed significant improvement in the percentage of their 10 Oldest Cases which had closed. Most improved was Section L, which jumped from ninth-ranked to second in percentage of cases closed. Section H, which came in sixth in cases closed at the end of the first report period, ranked first in this report. Although Section K again ranked last in percent of cases closed, its increase from 6% to 50% cases closed showed improvement from the first report.

Nonetheless, the disparity among the sections of court for Processing Time, Disposition, and Continuance Rate persists. The random allotment procedure in place at Criminal District Court

ensures an even workload for all sections. All judges face the challenges of multiple-defendant cases, absconsions, writ applications, and competency issues. While these circumstances vary, and are typically beyond the control of the court, they have been largely discounted for the purposes of this study.

The granting of continuance requests is clearly the factor which slows docket movement most, and it is the only factor over which the courts exercise exclusive control. A clear correlation exists between the number of continuances a court grants and the length of time its cases remain open. Court Watch NOLA reasserts its recommendation that the courts look carefully at continuance requests, particularly repeated requests in older, more serious cases, in order to more effectively manage the overall inventory of cases.

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Acknowledgements

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