Orleans Criminal District Court, Magistrate Court, & Municipal Court: 2017 Review

Table of Contents

SPECIAL DEDICATION

Court Watch NOLA dedicates its 2017 report to:

Lynne Goldman

This annual report is dedicated to Lynne Goldman, who passed away on January 24, 2018. Court Watch NOLA is grateful to the Goldman family for their long-time support and commitment to Court Watch NOLA. Both Lynne and her husband Jerome are considered the founders of Court Watch NOLA. It was through their philanthropy and their strong belief that the criminal court be transparent and all its actors accountable to the public, that Court Watch NOLA is as strong an organization as it is today. Five years ago, Court Watch NOLA initiated the Lynne and Jerome Goldman Criminal Justice Reform Award. The award honors organizations and individuals who are leaders in promoting criminal justice reform measures. Lynne Goldman was instrumental in the success of the Awards Reception, and Court Watch NOLA remains eternally grateful to the Goldman family for spearheading this prestigious award. As a small gesture of our gratitude, we dedicate this report to her.

I. Executive Summary

Court Watch NOLA (CWN) is a non-profit organization with the mission of promoting reform in the Orleans Parish criminal court system through civic engagement and courtroom observation. This report encompasses the data collected and the observations made by CWN volunteers from January 1, 2017 to December 31, 2017 in Criminal District, Magistrate and Municipal Courts. CWN volunteers observed a total of 779 court sessions in Criminal District Court, Magistrate Court, and Municipal Court. This report explores the topics of constitutional rights and the experience of both victims and the public at large in the Orleans Parish criminal courts and the larger criminal justice system during 2017.

Constitutional Rights: the Right to Counsel & the Attorney-Client Privilege

The attorney-client privilege is one of the oldest evidentiary privileges in the common law[1] and exists to incentivize lawyers and their clients to have forthcoming conversations, which in turn furthers the truth-seeking function of the legal system.[2] Every state recognizes an attorney-client privilege,[3] and the federal judiciary includes the privilege in the Federal Rules of Evidence.[4] An inmate's right to speak privately with counsel during a legal proceeding has been recognized as a "fundamental right."[5] Before CWN's intervention, all calls made by incarcerated inmates to their attorneys were recorded by the jail. At the end of 2017, upon CWN's request, the Orleans Parish Sheriff's Office (OPSO) agreed to set up a program where, upon the attorney's filing of a sworn affidavit, calls made to the attorney's land-line are no longer recorded.[6] Despite opposition from CWN, the OPSO does not allow calls to an attorney's cellular phone to be exempted from recording.[7] All attorney-client calls made by incarcerated defendants to their attorney's cell phones continue to be recorded in violation of attorney-client privilege.

> **Recommendation 1: All attorney-client calls made from the jail should be unrecorded. The Orleans Parish Sheriff's Office should allow inmates to make unrecorded calls to their attorneys, whether these calls are made to an attorney's cell phone or to his or her landline. Often private defense attorneys do not have landlines and thus must use cell phones for their attorney-client conversations. Where the attorney-client privilege is subverted, so too is the truth-seeking function of the legal system.**

Constitutional Rights: the Right to Counsel in New Orleans Municipal Court

Under the Sixth Amendment of the US Constitution, criminal defendants are guaranteed the assistance of counsel "where the person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony."[8] According to the U.S. Supreme Court, unless counsel is afforded to the defendant at the time of a plea or trial, the judge is prohibited from imposing any amount of jail time – even if the jail time is as a result of the defendant failing to complete a condition of the sentence (i.e. community service, paying a fee, etc.).[9] The defendant's right to counsel can be waived but the waiver must be knowing, voluntary and intelligent.[10] An intelligent waiver of

counsel depends on many factors including the individual circumstances of the criminal case.[11] The Louisiana Rules of Professional Conduct dictate that prosecutors (such as the City Attorney Prosecutor in Municipal Court) should make reasonable efforts to assure the accused has an opportunity to obtain counsel.[12] Further, the American Bar Association prohibits a prosecutor at first appearances from speaking to a defendant without counsel or before the defendant has waived counsel.[13]

Recommendation 2: There should be a case study conducted on Right to Counsel practices in the New Orleans Municipal Court. The Sixth Amendment Center, a not-for-profit dedicated to providing courts with best practices on the Right to Counsel has indicated interest, contingent upon funding, to perform such a case study for the New Orleans Municipal Court.

Commendation 1: CWN commends the New Orleans Municipal Court Judges, the City Attorney's Office, and the Orleans Public Defenders Office for embracing CWN's recommendation to allow a Right to Counsel case study to be performed on the New Orleans Municipal Court by the Sixth Amendment Center. Furthermore, CWN commends the Municipal Court judges for applying for the necessary funding to perform said case study.

Constitutional Rights: the Right to an Interpreter

The right to an in-court interpreter for those who have limited English proficiency (LEP) is implicitly recognized by the Fifth,[14] Sixth[15] and Fourteenth Amendments[16] of the U.S. Constitution. Additionally, the Louisiana Code of Criminal Procedure dictates that where a non-English-speaking party requests an interpreter, the judge must appoint one.[17] By April 2018, 170 certified and/or registered interpreters in 16 languages were listed on the Louisiana Supreme Court website.[18] Despite the availability of interpreters, Orleans Parish criminal courts still face challenges in providing interpreters for court proceedings. CWN has found that the greatest problems in conjunction with appointing court interpreters for LEP defendants occurred during first appearances in Magistrate Court.

Recommendation 3: The Orleans Parish Sheriff's Office should alert the Magistrate Court of any Limited English Proficiency (LEP) defendant at the time the LEP defendant is booked at the Orleans Justice Center. With enough notice, the Magistrate Court should be able to request an interpreter that will arrive in time to interpret for the LEP defendant for first appearances in Magistrate Court.

Constitutional Rights: Fines and Fees in New Orleans Municipal Court

The due process and equal protection clauses of the Fourteenth Amendment of the U.S. Constitution prohibit imprisoning a person for the failure to pay court fees, where the court fails to make an inquiry into ability to pay or where the person has established a lack of ability to pay.[19]

In *Cain v. City of New Orleans,*[20] the Federal Court for the Eastern District of Louisiana found it unconstitutional for an Orleans Parish Criminal District Court Judge to incarcerate a defendant on a warrant for failure to appear in court to pay a court fine, where the court originally failed to ask a defendant about his or her ability to pay at the time of the plea.[21]

Recommendation 4: Before imposing a fine or fee, a New Orleans Municipal Court judge should always inquire into the defendant's ability to pay. Without an inquiry into the defendant's ability to pay, it is unconstitutional for the court (1) to issue a warrant for failure to appear in court or (2) to pay the court fine or to incarcerate the defendant for failure to pay the court fine.

Victim Rights: Witness and Victim Intimidation

Where criminals routinely succeed in deterring testimony, the criminal justice system withers, and laws can be broken with impunity.[22] Witness intimidation lowers public confidence in the criminal justice system and creates the perception that the criminal justice system cannot protect its citizenry.[23] It is difficult to determine the extent of the witness intimidation problem in New Orleans and whether it has improved since Hurricane Katrina without baseline data to compare from year to year.[24] CWN volunteers observed or learned of an incident where a victim or witness had allegedly been harassed, threatened, or intimidated in 5% of all total Criminal District Court observations. To understand the degree of witness intimidation in a community, the problem should be measured by law enforcement; measurement will allow the community to learn if previous efforts have worked, the extent of the problem, and what future solutions should be employed.[25]

Recommendation 5: The New Orleans Police Department and the Orleans Parish District Attorney's Office should gather data relating to the number of witnesses who report intimidation or report fearing intimidation. While no one measure can completely define or explain witness intimidation, neither can it be fully understood without obtaining strong baseline data. The New Orleans Police Department and the Orleans Parish District Attorney's Office should continue to cooperate and share information relating to witness intimidation to identify any trends in the hopes of finding a proper response strategy.

Victim Rights: Material Witness Warrants

If a judge issues a material witness warrant, a victim can be arrested for failing to come to court to testify when subpoenaed.[26] With some crimes, such as sexual assault and domestic violence that are already serially underreported, there is extensive research that the arrest of non-cooperative victims may have a chilling effect on survivors already reluctant to report the crime to law enforcement.[27] Since CWN has begun to collect data last year, there has been a marked decrease in the number of material witness warrants seen by CWN. In 2017, CWN found seven material witness warrants issued against victims; one of those victims was a victim of domestic violence,

and none of the victims were sex crimes victims. These numbers compare to the 19 material witness warrants CWN found were issued against victims in 2016, one of them issued against a victim of domestic violence and three issued against victims of sex crime. In 2017, three victims were arrested on material witness warrants, with one victim incarcerated for seven days in jail and the other two victims incarcerated for a day. In 2016, seven victims were incarcerated on a material witness warrant, with one victim incarcerated for 179 days in jail.[28]

Recommendation 6: The District Attorney should issue a policy discontinuing the incarceration of domestic violence victims and sex crime victims for failing to testify. In non-domestic violence and non-sex offense cases, the District Attorney should, at a minimum, publicly release a protocol that includes the different factors an Assistant District Attorney should consider before applying for a warrant to arrest a victim for failing to testify. For example, this protocol may include weighing the competing goals of victim safety and emotional trauma to the victim, as well as offender accountability, public safety and the significance/necessity of the victim's testimony.

Treatment of the Public: Public Accessibility to the Court Docket

In the criminal justice system, minor adjustments like helping court users navigate the courthouse have been found to translate into increased compliance with court orders and stronger respect for the court's legitimacy.[29] Posting dockets or court calendars in a public location is integral to court users being able to navigate the court.[30] The Orleans Parish Clerk of Court's Office does not post a master court calendar for the Orleans Parish Criminal Court or Magistrate Court in a central location. At the end of 2016, the New Orleans Municipal Clerk of Court had agreed to post the daily court docket. However, New Orleans Municipal Court has failed to consistently post the docket in a publicly accessible location during at least 40% of court observations in 2017. This is particularly problematic because individual New Orleans Municipal courtrooms also fail to post their dockets in a public location. Thus, court users are often confused about which courtroom they should go to when arriving in New Orleans Municipal Court.

Recommendation 7: The Municipal Clerk of Court and the Orleans Parish Clerk of Court should daily post a master court docket in a public location or assign a court employee to direct court users as they immediately arrive in court, to the court room where they are required to appear. It is particularly important for the Municipal Clerk of Court to post the docket as none of the separate courtrooms in the New Orleans Municipal Court post individual dockets.

According to principles set by the Conference of State Administrators: (1) the public has a qualified right of access to court records and (2) the judiciary is obligated to provide access to public court records and to improve the convenience of that access.[31] While criminal courts across the country are moving to ensure the public has electronic access to court records,[32] the New Orleans Municipal Court still has no publicly accessible online system for even the most basic

court information. Additionally, in 2017, the New Orleans Municipal Clerk consistently placed obstacles in the way of the public even receiving a paper docket upon request.

Recommendation 8: The Municipal Clerk of Court and its employees should be trained in procedural fairness concepts to ensure a more user-friendly clerk of court's office. As Municipal Court adopts and transitions to a new case management system, the Municipal Court Judicial Administrator's Office should prioritize online access to case dockets for the general public to promote greater transparency and efficiency.

Treatment of the Public: Timeliness of Judges

Courtrooms with regular, substantial delays waste the time of victims, defendants, witnesses and family members who often must take time off from work or find childcare they can often hardly afford in order to go to court. Delays become costly as public servants, including prosecutors, public defenders, sheriff deputies, court staff, and law enforcement have salaries funded by taxpayers. For New Orleans Police Department officers, court delays mean officers are that much more unavailable to patrol the streets and perform other duties integral to public safety.

Recommendation 9: Judges should make every effort to be timely to the bench and should consider the inconvenience to the public in making them wait and the cost to the taxpayer in making public servants wait for the judge's untimely arrival. If the judge has an obligation that consistently delays the judge arriving timely to the bench, the judge should change the court subpoena time, so both the public and public employees are not regularly forced to wait in court for the judge's arrival.

II. Introduction

Court Watch NOLA (CWN) is a non-profit organization whose mission is to promote reform in the Orleans Parish criminal court system through civic engagement and courtroom observation. One of CWN's goals is to empower individuals through legal education to demand transparency and accountability of public officials. As legal scholar Bibas Stephanos wrote in the New York University Law Review,

> "A great gulf divides insiders and outsiders in the criminal justice system. The insiders who run the criminal justice system-judges, police, and especially prosecutors-have information, power, and self-interests that greatly influence the criminal justice system's process and outcomes. Outsiders-crime victims, bystanders, and most of the general public-find the system frustratingly opaque, insular, and unconcerned with proper retribution…The gulf clouds the law's deterrent and expressive messages, as well as its efficacy in healing victims; it impairs trust in and the legitimacy of the law; it provokes increasingly draconian reactions by outsiders; and it hinders public monitoring of agency costs. The most promising solutions are to inform crime victims and other affected locals better and to give them larger roles in criminal justice. It also might be possible to do a better

> job monitoring and checking insiders…Finally, the gulf imposes procedural costs. It leads insiders to use subterfuge to subvert democratically enacted laws. It also impairs outsiders' faith in the law's legitimacy and trustworthiness, which undercuts their willingness to comply with it. In short, the gulf impedes the criminal law's moral and expressive goals as well as its instrumental ones."[33]

CWN is objective in its approach, neither siding with the prosecution nor the defense. Rather, CWN tries to increase public confidence in the Orleans Parish Criminal Courts by examining aggregate trends in the Orleans Parish criminal justice system and bringing transparency to court practices largely hidden from public view. Through its extensive legal training of volunteers, CWN seeks to shorten the gulf between insiders and outsiders, teaching outsiders the language of court, so that outsiders can bring accountability and help to solve some of the problems that insiders have so regularly lived with and that they often no longer see as problematic.

III. Methodology

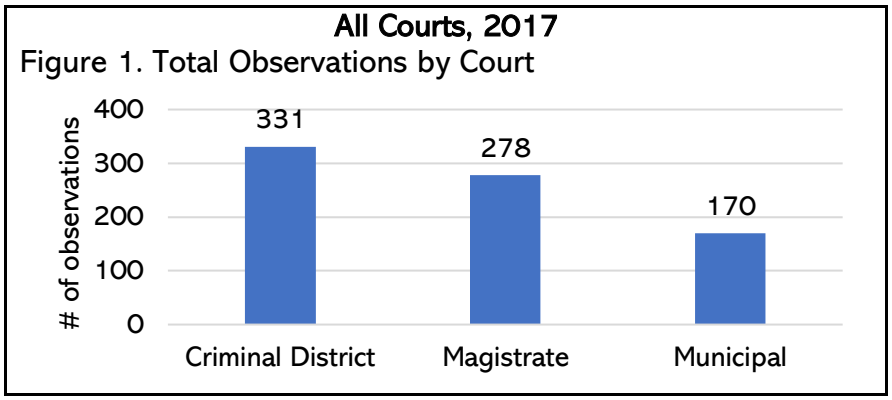
In 2017, CWN collected the observations of 130 volunteers in three different Orleans Parish criminal courts: Criminal District, Magistrate, and Municipal. All observers participated in a two-day training before they began independent observations, and some observers received refresher trainings upon request.

Four physical data collection tools were used to record the data in the courtrooms: one for each court plus an additional data collection tool for Municipal Court first appearances. These data collection tools covered a wide variety of information, drawing primarily from the CWN volunteers' in-court observations, and from the individual court dockets of cases. Court dockets were provided to CWN volunteers by the Orleans Parish Clerk of Court and the New Orleans Municipal Clerk of Court.

The data recorded on the data collection tools was then entered into an on-line database using Survey Monkey survey development cloud-based software. Data was exported to SPSS (Statistical Package for the Social Sciences, V20) for data cleaning and analysis.

Data was collected from January 1, 2017 to December 31, 2017. Across all three courts, a total of 779 court session observations were conducted. During these sessions, approximately 13,000 case appearances were observed, and key data was recorded. Details on the total observations by court are presented below. The data encompassed in this report and collected by the CWN volunteers is both quantitative and qualitative in nature.

Figure 1 shows the number of court session observations (hereafter referred to as "observations") conducted in 2017 in each of the three courts. Hereinafter, "all courts" refers to all criminal courts that Court Watch NOLA currently monitors, namely Orleans Parish Criminal District Court, Orleans Parish Magistrate Court, and New Orleans Municipal Court.



IV. Constitutional Rights

A. The Right to Counsel and Attorney-Client Privileged Communications

It is widely and commonly understood that a conversation between an attorney and his or her client is protected.[34] In fact, the attorney-client privilege is one of the oldest evidentiary privileges in the common law, dating back to at least 1654.[35] This privilege exists to incentivize lawyers and their clients to have forthcoming conversations, which in turn furthers the truth-seeking function of the legal system.[36] The privilege also exists to ensure an open and free exchange of information between attorneys and their clients that allows an attorney to provide the best legal counsel possible.[37] Every state recognizes an attorney-client privilege,[38] and the federal judiciary includes the privilege in the Federal Rules of Evidence.[39] A violation of the attorney-client privilege can implicate the Sixth Amendment Right to Counsel[40] and the Right of Access to the Courts[41] when the government interferes with the relationship between a criminal defendant and his or her attorney. The Sixth Amendment provides a shield for the attorney-client privilege in criminal proceedings.[42] It is hard to imagine how the Sixth Amendment Right to Counsel could effectively exist without the protections afforded to the attorney-client relationship by the privilege of non-disclosure.[43]

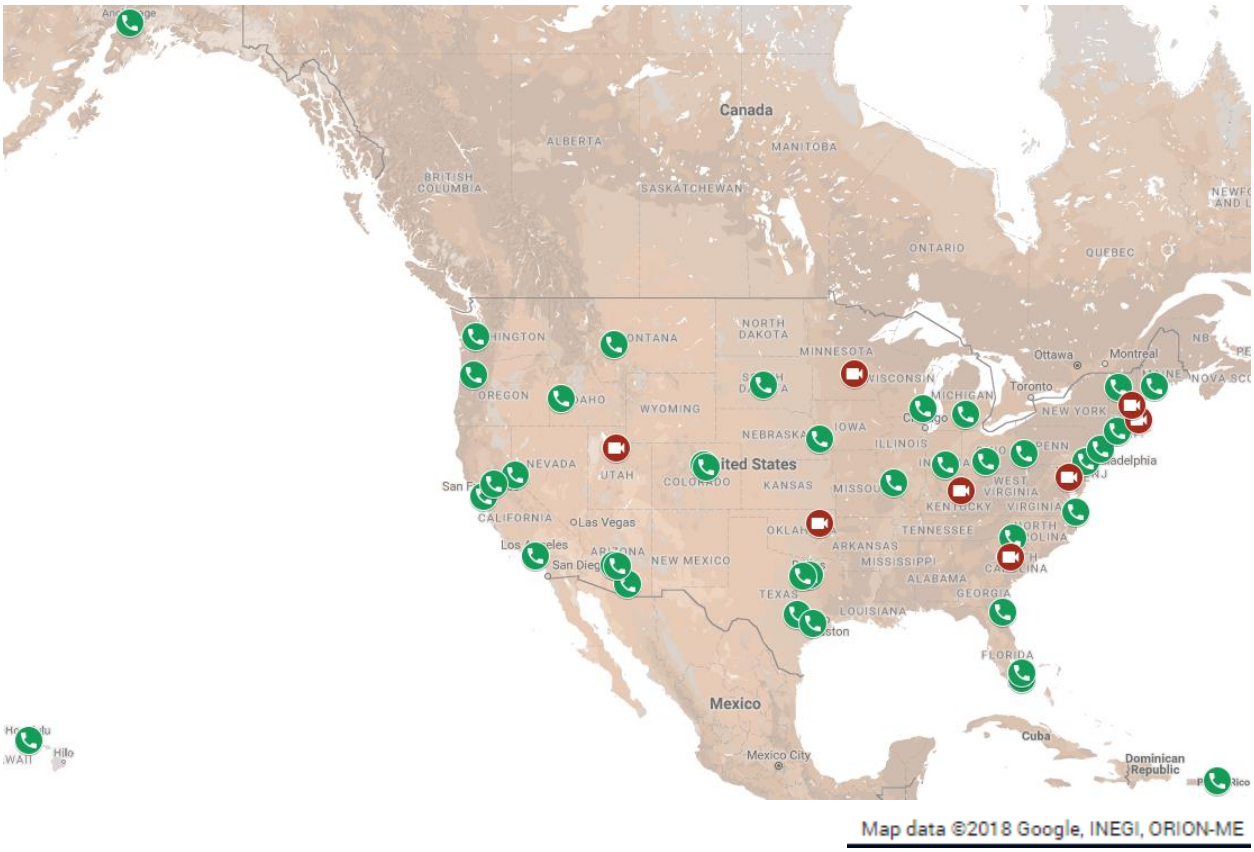
Attorney-client communications are privileged where the communication is intended by the attorney and client to be confidential[44] and is not in furtherance of future illegal conduct.[45] Where criminal activity between the attorney and the client is suspected, federal law enforcement and occasionally state law enforcement have instituted a separate "taint team" that has reviewed attorney-client privileged material but not divulged privileged material with the law enforcement team investigating the underlying alleged criminal activity. In one Louisiana case, the Louisiana Supreme Court determined a defendant would not receive a new trial where the jail had recorded an attorney-client call but certain protections were put in place to preserve the attorney-client privilege. These protections included a prosecutorial taint team and an alternative means by which the defendant could have had an unmonitored telephone call with his attorney but failed to use it.[46] The "taint-team" has met with controversy[47] and sometimes a court will appoint a special master, preferring an independent third party over law enforcement, to review attorney-client privileged material.[48]

The attorney-client privilege is integral for incarcerated inmates, who otherwise have diminished capacity to communicate privately, free from government surveillance.[49] Many correctional facilities record phone conversations between criminal defendant inmates and those non-lawyer parties to whom the inmate makes calls.[50] These electronic recordings of phone calls to non-lawyers are often provided to prosecutors' officers from the jail and can serve as strong tools in the prosecution of the defendant.[51] Prosecutors will listen to the recordings of phone calls between incarcerated defendants and non-lawyers and determine if they can use the recordings as evidence in the defendant's underlying case or perhaps initiate a new prosecution for other criminal acts evidenced via the phone call.[52]

An inmate's right to speak privately with counsel during a legal proceeding is a separate issue and has been recognized as a "fundamental right."[53] As David Fathi, Director of the ACLU's National Prison Project has said, "A lot of prisoner rights are limited because of their conviction and incarceration, but their protection by the attorney-client privilege is not."[54] Historically speaking, inmates have enjoyed the attorney-client privilege in conjunction with in-person attorney visits,[55] letters[56] and phone calls.[57] In situations where the government records attorney-client calls and there is no taint team or special master in place, the U.S. Supreme Court has found that the prejudice is too great, the defendant's conviction should be vacated and he or she should be provided a new trial.[58] In fact, the U.S. Supreme Court has loudly stated, "inmates must have a reasonable opportunity to seek and receive the assistance of attorneys. Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid."[59]

Thus, legally a problem arises where calls made by the incarcerated defendant to his or her attorney are recorded by the jail, handed over to the prosecution, no mechanism exists to exclude attorney-client calls, and the defendant has no opportunity to have an unmonitored call to his or her attorney. These calls recorded by the jail can contain defense strategy including observations of the prosecution's behavior and approach as well as embarrassing or damaging information from the defendant, intended by the attorney and the defendant to have remained confidential.[60] It should not be incumbent upon a prosecutor's office to face the financial burden of somehow separating attorney-client privileged calls from those calls made to defendants' mothers, girlfriends, fathers and brothers, the latter category that can be listened to without fear of violating the attorney-client privilege.[61]

City jails that allow attorneys to have unrecorded calls, both landline and mobile, with their clients are illustrated in the below map by the telephone icon, and city jails that record attorney-client landline or mobile calls are illustrated below by the camera icon.[62] New Orleans has intentionally been left blank since it is the only jurisdiction found in CWN's investigation that records all calls to an attorney's cell phone but allows for unrecorded calls to an attorney's landline.



In 2017, CWN had several meetings with the Orleans Parish Sheriff's Office (OPSO) requesting that OPSO no longer record attorney-client privileged calls made from the jail. At the end of 2017 and upon CWN's request, OPSO agreed to allow unrecorded calls made by inmates to their attorneys' landlines *but not to the same attorneys' cell phones*. OPSO only allowed non-recorded calls to attorneys' landlines upon an attorney's filing of a sworn affidavit.[63] As part of the program, OPSO did not allow investigators, or paralegals to be a part of or initiate any such unrecorded landline calls (normally parties that share the attorney-client privilege) [64] after an affidavit has been filed.[65] OPSO contends that it has the right to continue recording attorney-client calls made to attorneys' cell phones as long as it allows unrecorded attorney-client jail visits and provides a verbal warning that the call is being recorded on all recorded attorney-client calls.[66] OPSO also contends that it is concerned that criminal defense attorneys will make the attorney-client phone call a three-way call and the attorney will conspire to commit criminal acts with their clients and the additional party added to the call. For this reason, OPSO is unwilling to allow calls to attorneys' cell phones to go unrecorded.[67] OPSO believes it can remotely detect a third-party call being connected to the attorney's landline but cannot do so when a jail call is made to the attorney's cell phone.[68] This belief was contradicted by Securus, the company who runs OPSO's phone services in the Orleans Justice Center. Steve Viefhaus, the Vice President of Sales for Securus, confirmed after speaking to the national Securus technology team that it was impossible for a correctional institute to detect when a third-party joined to the call on a landline if in fact the call was not being recorded.[69]

Additionally, according to CWN observations, attorneys are unable to have a confidential conversation with their incarcerated clients in Orleans Parish Criminal District Court or Municipal Court unless allowed by a judge the special privilege of sitting in a back room, since neither court has attorney-client booths. Troubling by constitutional standards,[70] attorneys are unable to have a confidential conversation with their incarcerated clients in the Orleans Justice Center Jail since some if not all attorney-client booths have video cameras.[71] Additional obstacles that have been placed in the way of attorneys attempting to access their incarcerated clients are long wait times[72] and a dress code placed on female attorneys entering the jail, relating to the female attorney's skirt length that was only abolished in 2013.[73] Without unrecorded calls to their clients, attorneys have little left of the attorney-client privilege to hold onto.

RECOMMENDATION 1: All attorney-client calls made from the jail should be unrecorded. The Orleans Parish Sheriff's Office should allow inmates to make unrecorded calls to their attorneys, whether these calls are made to an attorney's cell phone or to his or her landline. Often private defense attorneys do not have landlines and thus must use cell phones for their attorney-client conversations. Where the attorney-client privilege is subverted, so too is the truth-seeking function of the legal system.

B. The Right to Counsel in the New Orleans Municipal Court

According to the Sixth Amendment of the U.S. Constitution, "in all criminal prosecutions, the accused shall enjoy the right…to have the Assistance of Counsel for his defense."[74] The Sixth Amendment includes the right to counsel during critical stages of the criminal case[75] including but not limited to the setting of bail in many cases,[76] custodial interrogations,[77] arraignments,[78] plea negotiations,[79] guilty pleas,[80] trial,[81] and sentencing.[82] Criminal defendants are guaranteed the assistance of counsel in all cases resulting in incarceration whether classified as petty, misdemeanor, or felony.[83] The U.S. Supreme Court further explained in *Alabama v. Shelton*,[84] "a suspended sentence that may 'end up in the actual deprivation of a person's liberty' may not be imposed unless the defendant was accorded 'the guiding hand of counsel' in the prosecution for the crime charged."[85] Thus, unless the defendant has retained or validly waived an attorney at the time of a plea or a trial, the judge is prohibited from *ever* imposing jail time – even if the jail time is due to the defendant's failure to complete a condition of the sentence (i.e. community service, paying a fee, etc.).[86]

The defendant's right to counsel can be waived but the waiver must be knowing, voluntary, and intelligent.[87] An intelligent waiver of counsel depends on the individual circumstances of each criminal case,[88] including the education and sophistication of the defendant, the complex or easily grasped nature of the charge, and the stage of the proceeding at which the waiver is mentioned.[89] Before the defendant can knowingly waive counsel he or she must be aware of the "usefulness of counsel [to the accused] at the particular proceeding, and the dangers [to the accused] of proceeding without counsel."[90] The defendant must be competent to waive counsel: the court must determine the defendant has the "sufficient present ability to consult" with a lawyer "with a

reasonable degree of rational understanding" and a "rational as well as factual understanding of the proceedings against him."[91] Where a defendant pleads guilty without an attorney, the standard is even higher since a defendant has to, at the very least, freely and voluntarily waive his or her constitutional rights against self-incrimination and to confront his or her accusers.[92] Thus, it is not a simple, expedited process for a court to receive a valid waiver of counsel at the time of a plea. In the words of the Court of Appeals for the Fifth Circuit in *Louisiana v. Jones*,[93] "the determination of a valid waiver of counsel during a guilty plea depends on the entire record and not just on certain "magic" words used by the trial judge."[94]

The Louisiana state constitution entitles an individual to the appointment of counsel if the charge brought against him or her would have the potential of imprisonment and that person is indigent. The Louisiana Constitution states in part: "At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense *punishable* [emphasis added] by imprisonment."[95]

Well-established national associations such as the Conference of Chief Justices and the Conference of State Court Administrators have included Right to Counsel as a priority in the two groups stated list of principles:

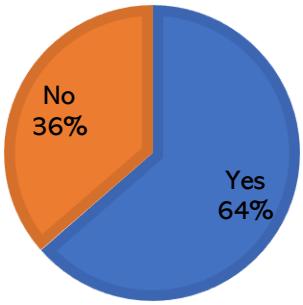
> "Principle 4.2. Right to Counsel. Courts should be diligent in complying with federal and state laws concerning guaranteeing the right to counsel as required by applicable law and rule. Courts should ensure that defendants understand that they can request court-appointed counsel at any point in the case process, starting at the initiation of adversarial judicial proceedings. Courts should also ensure that procedures for making such a request are clearly and timely communicated."[96]

From the outset of its monitoring of the New Orleans Municipal Court in late 2016, CWN became concerned with Right to Counsel problems. CWN raised with two separate chief judges of the New Orleans Municipal Court its concerns that (1) defendants are often unrepresented while speaking on the record and (2) when offered the right to counsel, the offer of counsel is often paired with strong pressure to waive the offered public defender and face criminal charges alone and without an attorney.[97] After raising concerns, CWN has observed at least one judge, Municipal Court Judge Landry, consistently inform all defendants before the start of court, of their right to counsel. CWN applauds Municipal Court Judge Landry for having translated the public's right to counsel concerns, into actions.

Although the New Orleans Municipal Court hears misdemeanor and thus more minor cases than the Orleans Parish Criminal District Court, the constitutional right to counsel is still applicable.[98]Additionally, pleading guilty to a misdemeanor has collateral consequences of which an unrepresented defendant would rarely be aware. Guilty pleas result in criminal records and criminal records can result in a defendant losing the ability to live in public housing in New Orleans,[99] the ability to use food stamps,[100] the ability to live legally in the United States depending on their immigration status,[101] and to receive federal aid money for higher education.[102]

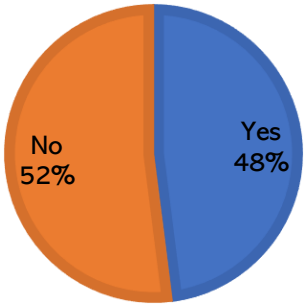
Municipal Court, 2017

Figure 2. Did a Defendant Speak on the Record or in front of the Judge without Counsel Present?



n = 118 court sessions

Figure 3. Did an Unrepresented Defendant Plead Guilty?



n = 109 court sessions

CWN tracked the number of court sessions that occurred where an unrepresented defendant spoke on the record in front of a judge and found that unrepresented defendants spoke on the record more often than represented defendants. CWN found that defendants pled guilty without a defense attorney present in 48% of Municipal Court observations. CWN did not collect the number of times the defendant was asked or in fact did waive his or her right to counsel. Anecdotally, where court observers observed a defendant waive the right to counsel, the waiver of counsel was quick and not detailed. Defendants who pled guilty without counsel were typically sentenced to pay a fine, and some were sentenced to community service in addition to a fine. If they failed to appear to pay the fine, the defendant was subject to arrest and imprisonment on an attachment (warrant). In 2017, the most common criminal offense to which unrepresented defendants pled guilty was possession of marijuana.

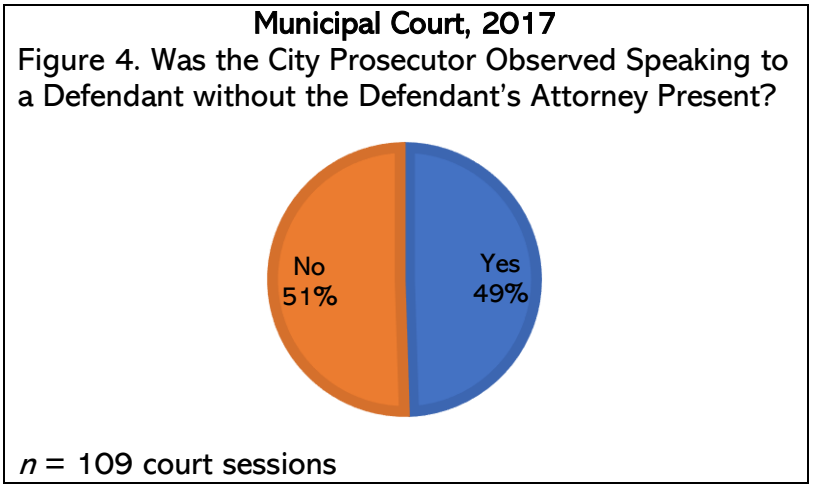
Prosecutors too have a duty to ensure the defendant has obtained counsel. The American Bar Association's (ABA) Model Rules of Professional Conduct and the Louisiana Rules of Professional Conduct both dictate that prosecutors should make reasonable efforts to assure the accused has an opportunity to obtain counsel. [103] Additionally, *the American Bar Association's Criminal Justice Standards for the Prosecution* prohibit a prosecutor from speaking to a defendant without defense counsel or before the defendant has waived counsel. To wit:

> "Standard 3-3.10 Role in First Appearance and Preliminary Hearing
> (a) A prosecutor who is present at the first appearance (however denominated) of the accused before a judicial officer should not communicate with the accused unless a waiver of counsel has been entered, except for the purpose of aiding in obtaining counsel or in arranging for the pretrial release of the accused. A prosecutor should not fail to make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel."[104]

In 2017, the City Attorney was the primary prosecutor working in the New Orleans Municipal Court.[105] CWN has worked with the City Attorney's Office on discontinuing its practice of

speaking to defendants without defense counsel present.[106] In fact, it is often the case that a confused defendant, finding no general court information desk that could direct the defendant on where the defendant should appear, will approach the city attorney prosecutor's desk which is conveniently located in the front of the court, and is often the only desk where a member of the court can be found. After a defendant has approached the city attorney prosecutor's desk, CWN volunteers often observed a city attorney prosecutor talking to defendants about the merits of their case. Listening to CWN's concern with city attorney prosecutors speaking to unrepresented defendants, the City Attorney's office has at varying times:

(1) required its prosecutors to sit in back rooms of the courthouse before court has started so to avoid inadvertent conversations with a defendant seeking general direction about court proceedings. This practice was discontinued however, as often municipal court judges had expected the city attorney prosecutor in the courtroom before the start of court.[107]
(2) ordered prosecutors to always mention the availability of counsel before speaking to an unrepresented defendant.[108]



Despite precautions taken by upper management, CWN volunteers have still observed city attorney prosecutors speaking with unrepresented defendants in nearly half of courtwatcher observations of Municipal Court.[109] While city attorney prosecutors spoke to mostly unrepresented non-incarcerated defendants, CWN volunteers have also observed instances where city attorney prosecutors have spoken to unrepresented defendants who were incarcerated. CWN observers did not collect data on whether the city attorney prosecutor informed the defendant of his or her right to counsel before the prosecutor spoke to the defendant.

CWN compiles research on best practices, the U.S. Constitution, the Louisiana Constitution, and statutory law to better educate the public and ensure criminal justice actors are abiding by the best and most effective standards. CWN is fortunate to have a partner in the Sixth Amendment Center, a not-for-profit organization that provides best practice and legal standards relating to Right to Counsel on both its website as well as upon request.[110] On occasion, and in partnership with judges and/or prosecutors, the Sixth Amendment Center will visit a jurisdiction's courts and perform an in-depth analysis of the court's right to counsel practices.[111] In late 2017, the Sixth Amendment

Center informed CWN of its willingness, contingent on sufficient resources and the agreement of the necessary court actors, to perform such a case study for the New Orleans Municipal Courts.[112]

RECOMMENDATION 2: There should be a case study conducted on Right to Counsel practices in the New Orleans Municipal Court. The Sixth Amendment Center, a not-for-profit dedicated to providing courts with best practices on the Right to Counsel has indicated interest, contingent upon funding, to perform such a case study for the New Orleans Municipal Court.

In early 2018, the Sixth Amendment Center and Judge Shea on behalf of Chief Municipal Court Judge Sens verbally agreed, contingent on funding, to a case study performed by the Sixth Amendment Center.[113] In April 2018, Chief Judge Shea applied for funding on behalf of the New Orleans Municipal Court with the Federal Department of Justice, to complete the case study.[114] In April 2018, the Orleans Public Defenders Office agreed to embrace a Sixth Amendment's Right to Counsel case study in New Orleans Municipal Court.[115] In May 2018, the City Attorney's Office agreed to embrace a Sixth Amendment's case study in New Orleans Municipal Court.[116]

COMMENDATION 1: CWN commends the New Orleans Municipal Court Judges, the City Attorney's Office and the Orleans Public Defenders Office for embracing CWN's recommendation to allow a Right to Counsel case study to be performed on the New Orleans Municipal Court by the Sixth Amendment Center. Furthermore, CWN commends the Municipal Court judges for applying for the necessary funding to perform said case study.

C. Right to an Interpreter in Magistrate, Criminal District and Municipal Courts

The right to an in-court interpreter for those who have limited English proficiency (LEP), which includes those who need a sign language interpreter, is implicitly recognized by the Fifth,[117] Sixth[118] and Fourteenth Amendments[119] of the U.S. Constitution. The rights to an attorney with whom the defendant can confer, to a fair trial, to equal protection under the law and to due process is fundamentally denied if a defendant is unable to understand the nature of the charges against him and the meaning of the criminal proceeding itself.[120] A criminal defendant cannot confront witnesses or have effective assistance of counsel if he or she is unable to understand the witnesses or the attorney.[121] The right to an in-court interpreter has also been implied under Title VI of the Civil Rights Act since Title VI prohibits discrimination based on national origin.[122] The American with Disabilities Act and the Rehabilitation Act also require that all municipal, state and federal courts provide reasonable accommodations, including interpreters CART FM systems, and other auxiliary aid systems for defendants who rely on sign language as their first or only language.[123] The 1978 Court Interpreters Act ensured court interpreters were provided to LEP criminal defendants in federal court.[124] The majority of states also have laws allowing for criminal court interpreters where a defendant is considered a LEP.[125]

In 2010, the Louisiana Supreme Court adopted guidelines and standards for the use of interpreters in Louisiana state courts.[126] These guidelines included a code of professional responsibility for

court-appointed interpreters and set forth requirements for interpreters, circumstances warranting the court's appointment of an interpreter, qualifications for interpreters, and methods for appealing the denial of an interpreter.[127] In 2012, the Governor signed into law, Louisiana Code of Criminal Procedure Article 25.1 which states in part:

> "A. If a non-English-speaking person who is a principal party in interest or a witness in a proceeding before the court has requested an interpreter, a judge shall appoint, after consultation with the non-English speaking person or his attorney, a competent interpreter to interpret or to translate the proceedings to him and to interpret or translate his testimony. B. The court shall order reimbursement to the interpreter for his services at a fixed reasonable amount."[128]

In 2013, the Louisiana Supreme Court developed a certification-based court interpreter training and listed certified and registered interpreters on its website.[129] Also on the Louisiana Supreme Court website are "Bench cards" that were developed to inform and guide judges on court interpreter protocols.[130] By April 2018, 170 certified and/or registered interpreters in 16 languages were listed on the Louisiana Supreme Court website.[131] According to Robert Gunn, spokesperson for the Louisiana Supreme Court,

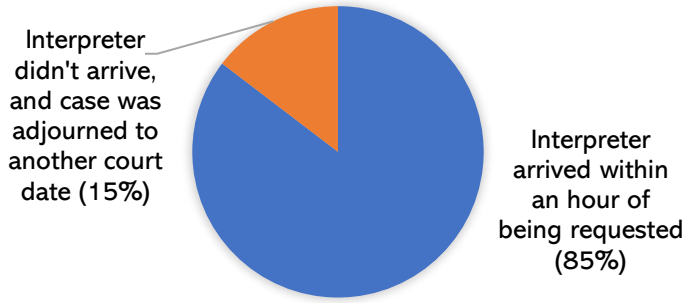
> "All of the courts have access to the list of registered and certified interpreters. If a court cannot locate an interpreter, or if there is a need for a language not covered by the program, the courts can call the Supreme Court for assistance."[132]

Despite the availability of interpreters, all Orleans Parish criminal courts still face challenges in using interpreters for court proceedings.

In 2017, CWN tracked the number of times that a courtwatcher observed the need for an interpreter in criminal court. In Criminal District Court, an interpreter was needed in 13% percent of court observations.[133] In Criminal District Court, when an interpreter was requested during the courtwatcher's observation, an interpreter either arrived within an hour of the request (this occurred in 85% of observations),[134] or an interpreter did not arrive during the courtwatcher's observation (15% of observations), and the case was adjourned to a different court date.[135]

Criminal District Court, 2017

Figure 5. Interpreter Availability

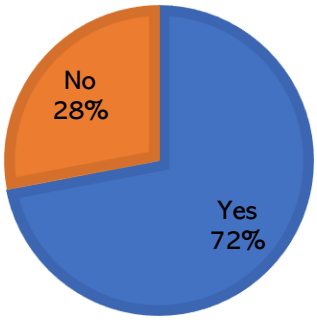


n = 41 court sessions

In Municipal Court, courtwatchers reported that an interpreter was needed in 7% percent of observations.[136] One courtwatcher observed that a Spanish interpreter was needed, but no interpreter was requested by the Municipal Court. Rather, an Orleans Public Defender translated for the defendant.

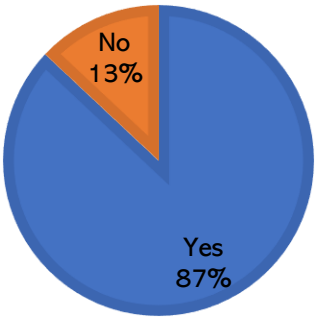
Magistrate Court, 2017

Figure 6. Was an Interpreter Requested when Needed in Court?



n = 54 court sessions

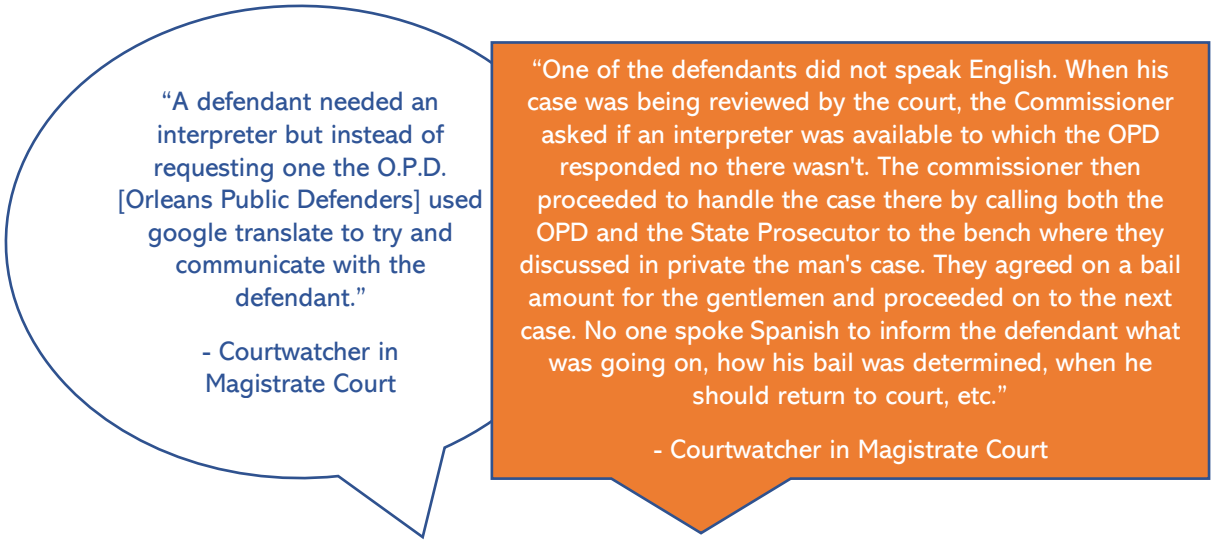
Figure 7. Did the Magistrate or Commissioner Rule in a Case without an Interpreter Present when One was Needed?



n = 15 court sessions

According to CWN observations in 2017, the court that had the most considerable problems in appointing court interpreters was Magistrate Court. CWN volunteers observed that an interpreter was needed in 21% of court observations.[137] When presented with a defendant who required an interpreter, the Court requested an interpreter in 72% of Magistrate Court observations.[138] In 87% of court sessions in which an interpreter was needed but not requested, CWN volunteers found that the Magistrate or the Magistrate Commissioner nonetheless ruled in a case in the absence of an interpreter.[139] According to conversations with the Magistrate Court[140] and OPSO,[141] there is no protocol in place for the Orleans Parish Sheriff's Office to

notify the Magistrate Court that there is a LEP defendant coming soon to Magistrate Court. Thus, Magistrate Court will often determine only at the very moment of first appearances that a defendant needs an interpreter.[142] If Magistrate Court calls an interpreter at the point of first appearances, there is often not enough lead-time for the interpreter to make it to court in time.[143] Once the Magistrate or Commissioner is faced with the reality that an interpreter is needed but no interpreter is coming in time, the Magistrate Court is faced with a difficult choice. The Magistrate or Commissioner can delay a statutory timed deadline (to appoint defense counsel or determine probable cause, for example) and thus violate the law and the constitution, in order to wait for an interpreter. Alternatively, the Magistrate or the Commissioner can violate the law and the constitution and determine pretrial release or alternatively bail and bond without having an interpreter present in court.[144] Without an interpreter, a LEP defendant is placed in a terrifying situation, robbed of his or her liberty without potentially having a notion of how it happened and without being given any meaningful opportunity to defend himself or herself.



RECOMMENDATION 3: The Orleans Parish Sheriff's Office should alert the Magistrate Court of any Limited English Proficiency (LEP) defendant at the time the LEP defendant is booked at the Orleans Justice Center. With enough advance notice, the Magistrate Court should be able to request an interpreter that will arrive in time to interpret for the LEP defendant for first appearances in Magistrate Court.

D. Due Process and Equal Protection for Municipal Court Defendants Incarcerated for Failing to Pay Fines & Fees

Where the court fails to make an inquiry into ability to pay or where the person has established a lack of ability to pay a court fine, the due process and equal protection clauses of the Fourteenth Amendment of the U.S. Constitution have long prohibited imprisoning a person for his or her failure to pay court fees. Under *Bearden v. Georgia*,[145] the U.S. Supreme Court ruled that a court cannot incarcerate the defendant for failure to pay a criminal debt when the debtor has made sufficient bona fide efforts to pay. Additionally, the court must consider whether alternative

sanctions such as a restructured payment schedule or community service could meet the state's interest in punishment and deterrence before resorting to incarceration.[146] In Louisiana, entering civil judgement on a court fine or fee is almost always a possible option, allowing indigent defendants to be civilly liable (like a lien) instead of requiring them to return again and again to municipal court to pay fines they cannot afford.[147]

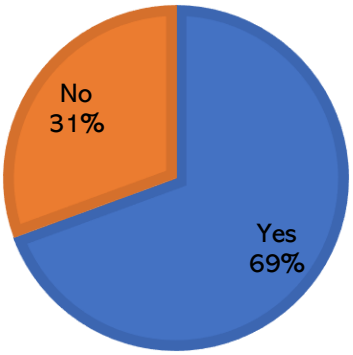
The Eastern District of Louisiana Federal District Court ruled in *Cain v. City of New Orleans*[148] that the jailing of any poor individuals without prior notice and an opportunity to be heard on their ability to pay, violates the Fourteenth Amendment. The court determined that where a judge initially fails to ask a defendant about his or her ability to pay and the defendant subsequently fails to come to court, it is unconstitutional for the court to incarcerate the defendant on a court warrant.[149]

While the New Orleans Municipal Court is certainly subject to the decision in *Cain*, the New Orleans Municipal Court was never a defendant in *Cain.* Thus, the New Orleans Municipal Court never enjoyed the direct pressure the Orleans Parish Criminal Court felt to ensure they were complying with the law and the constitution in conjunction with fines and fees. National experts have also pointed out the general importance of observing and monitoring criminal courts to ensure the courts are following the law on fines and fees.[150] Experts point out that generally where courts conduct "ability-to-pay-hearings" at all, such hearings are often conducted when the defendant does not have an attorney present, or such hearings are often inadequate and extremely short in duration.[151]

CWN volunteers observed Municipal Court judges order defendants to pay fines or fees in 69% of Municipal Court observations.[152] When so ordered, defendants were unable to pay their fines and fees in 20% of Municipal Court observations.[153]

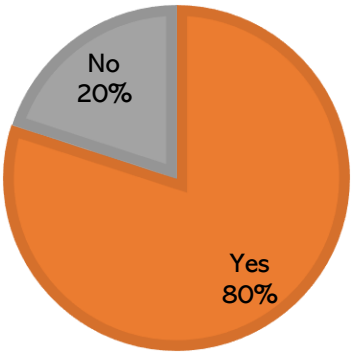
Municipal Court, 2017

Figure 8. Frequency that Judges were Observed Ordering Payment of Fines/Fees



n = 121 court sessions

Figure 9. Were Defendants Able to Pay their Fines and Fees?

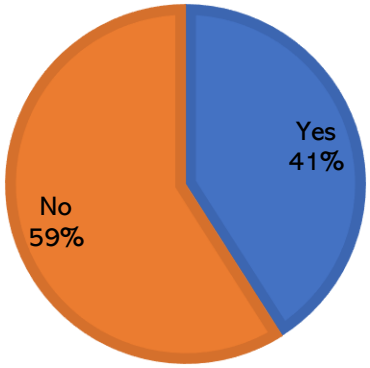


n = 80 court sessions

CWN volunteers observed defendants' first appearances in Municipal Court following defendants' arrests on attachments (warrants). Defendants appeared in court on attachments in 41% of Municipal Court first appearance observations.[154] Of those arrested and incarcerated on attachments (warrants), 59% were arrested for failing to appear to a scheduled court appearance; 32% were arrested for both failing to pay a fine or fee and failing to appear to a scheduled court appearance; and 9% were arrested for an alternative reason. As noted above in *Cain*, where a judge initially fails to ask a defendant about his or her ability to pay and the defendant subsequently fails to come to court, it is unconstitutional for the court to incarcerate the defendant on a court warrant.[155]

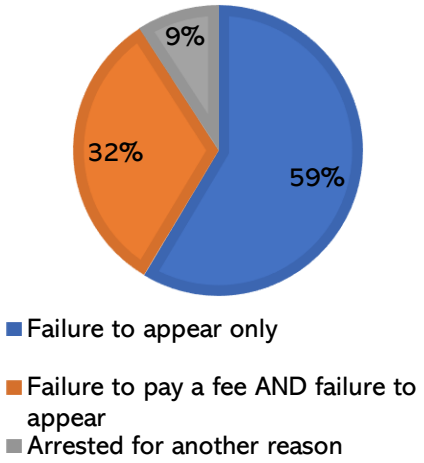
Municipal Court, 2017

Figure 10. Frequency that Defendants were Observed on Attachments



n = 37 court sessions

Figure 11. Reasons why Defendants were Arrested on Attachments



n = 53 defendants

RECOMMENDATION 4: Before imposing a fine or fee, a New Orleans Municipal Court judge should always inquire into the defendant's ability to pay. Without an inquiry into the defendant's ability to pay, it is unconstitutional for the court (1) to issue a warrant for failure to appear in court to pay the court fine or (2) to incarcerate the defendant for failure to pay the court fine or.

V. Victim Rights

CWN had contact with thirty-three victims in 2017. Thirty-three victims reached out to CWN to complain about their treatment in Orleans Parish Criminal Courts, inquire about their rights, or request that CWN monitor their case. These victims believe, as does CWN, that the activities and attitudes of all courtroom actors transform when CWN monitors a criminal case; prosecutors, judges, defense attorneys, and police all act differently when they know they are being watched.

A. Witness & Victim Intimidation

Witness intimidation is essentially a threat to the rule of law.[156] Where criminals routinely succeed in deterring testimony, the criminal justice system withers, and laws can be broken with impunity. Without anyone testifying against an offender or other evidence, the case will not and cannot be upheld in court.[157] Witness intimidation lowers public confidence in the criminal justice system and creates the perception that the criminal justice system cannot protect its citizenry; if the witness refuses to testify due to intimidation, dangerous offenders can and will go free.[158] During Hurricane Katrina, New Orleans became infamous for the "misdemeanor murder" phenomenon; in 2006, over 3,000 defendants were released after 60 days, due to missing evidence and missing witnesses.[159] In 2007, Special Agent in Charge of the FBI in Louisiana at the time, Agent Bernazzani, testified to this phenomenon in front of the Subcommittee on Crime, Terrorism, and Homeland Security of the United States House of Representatives:

> "Part 1, the violence continues because these violent guys that are let back on the street are violent people to begin with. Two, the community won't cooperate because if I finger you as that violent felon I know in a few days you're back on the streets and I become the next victim, and I don't want that. And when the community senses a failure in the State Judicial System--and the revolving door is a failure--a second judicial system kicks in: Street justice. And the killings beget the killings, beget the killings."[160]

It is next to impossible to determine the extent of the witness intimidation problem in New Orleans and whether it has improved since Hurricane Katrina without baseline data (how many witnesses are intimidated, how many witnesses fail to testify and why, etc.) to compare from year to year. Baseline data on witness intimidation is essential because perceptions of the likelihood and severity of intimidation can often become amplified with members of the community theoretically hosting fears that reliable information can calm. Thus, with reliable information about the reality of witness intimidation, more witnesses can be encouraged to testify.[161] It can be difficult to collect baseline data because it is often difficult to determine the prevalence of witness intimidation. For example, when intimidation is successful, often the crime is not reported to law enforcement at all.[162] Even when the police department or a district attorney's office does collect data relating to intimidation, data is rarely collected from witnesses who vanish before a suspect is charged or before the case goes to court.[163]

While there have been few New Orleans-based studies on witness intimidation, national studies shed light on general trends that have applicability in New Orleans.[164] Witness intimidation includes both implicit threats such as looks and gestures as well as explicit threats of violence.[165] Witness intimidation can go beyond threats to include physical violence and property damage.[166] The manner in which witness intimidation is carried out is varied. Intimidators confront witnesses verbally, send notes and letters, make nuisance phone calls and park or loiter outside the homes of witnesses.[167] Intimidators damage witnesses' houses or property, threaten witnesses' children, spouses, parents, or other family members, and assault and murder witnesses or their family members.[168] Witness intimidation can be case-specific where threats or violence are intended to

discourage a person from providing information to police or from testifying in a specific case.[169] Witness intimidation can also be community-wide intimidation with acts that create a general sense of fear and an attitude of non-cooperation with police and prosecutors within a community.[170] Both types of witness intimidation can also be at play simultaneously.[171]

Witness intimidation is often perpetrated by those involved in the original offense, but the offender's friends, family members, and criminal associates can also threaten or harm witnesses.[172] Intimidation is more rare in cases of property crime, such as burglary or car theft,[173] and more prevalent in cases involving gang-related offenses, domestic violence, bias crime, harassment, murder and sex offenses.[174] Witness and victim intimidation is often prevalent in domestic violence cases where the perpetrator violates a no-contact order in order to intimidate the victim.[175]

Figure 12 shows a 94% increase in the number of individuals arrested in the City of New Orleans for violation of protective orders from 2011 to 2017. Those charged with the violation of protective orders throughout this time period were 84% men.

City of New Orleans, 2011-2017

Figure 12. Number of People Arrested for Violation of Protective Orders

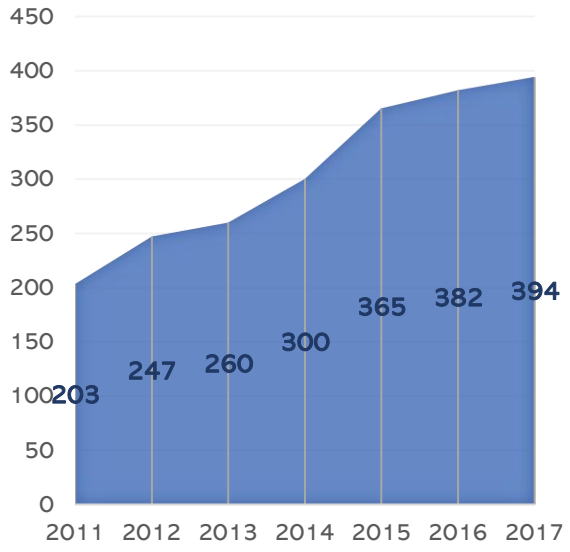
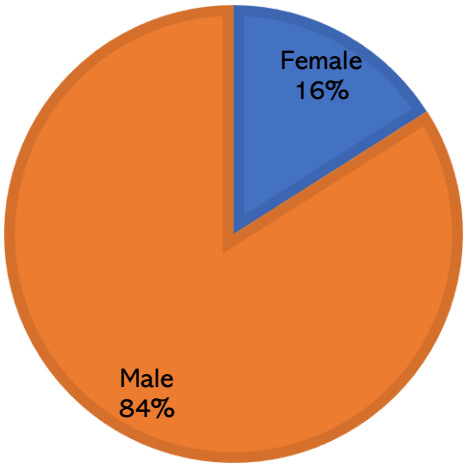


Figure 13. Violation of Protective Order Arrests, Gender of Defendants



n = 2,151 arrestees. Data provided by the New Orleans Police Department.

Studies have shown that victims of intimidation often share similar characteristics:

- Gender and Age. Women and children are at greater risk of intimidation.[176]
- Relationship. Those with closer relationships to the offender are at greater risk.[177] This is certainly the case in domestic violence cases where the victim lives with the offender or is economically dependent on the offender.[178]

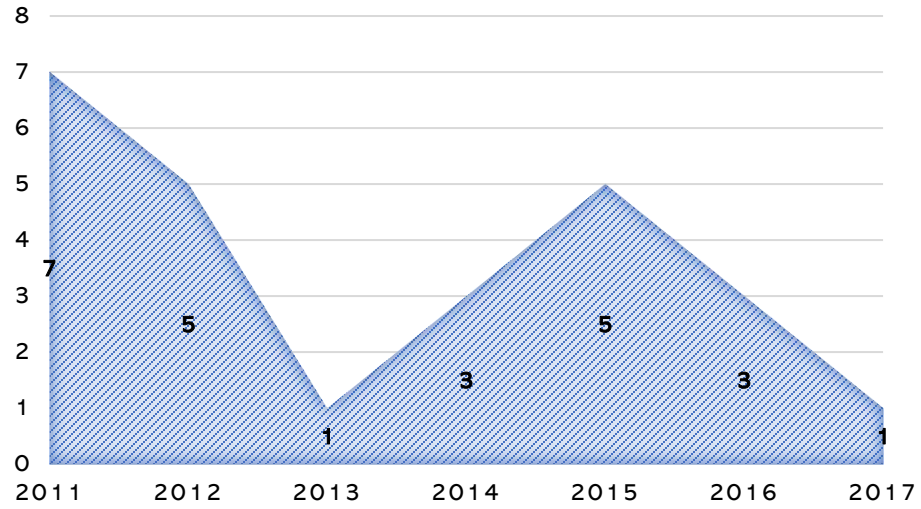
- Proximity. Greater risk of intimidation comes when the victim or witness still lives in the same neighborhood as the offender.[179]
- Immigration Status. A fear of deportation and a lack of understanding of the role of police lends itself easily to intimidation.[180]
- Criminal involvement. Those with criminal records, active warrants, or active parole and probation conditions may be particularly hesitant to provide information to police.[181]

To understand the degree of witness intimidation in a community, the problem should be measured. Measurement will allow the community to learn if previous efforts have worked, the extent of the problem, and what future solutions should be employed.[182]

Below, find the number of New Orleans Police Department (NOPD) arrests for witness intimidation from 2011 to 2017.

City of New Orleans, 2011-2017

Figure 14. Number of People Arrested for Witness Intimidation



n = 25 arrestees. Data provided by the New Orleans Police Department.

Figures 15 and 16 below show the demographics of the defendants arrested on witness intimidation charges from 2011 to 2017. Whereas 80% of the individuals charged with witness intimidation were men and 20% women, only 40% of the victims of witness intimidation were men, 52% were women, and 8% were of unknown gender.

City of New Orleans, 2011-2017

Figure 15. Witness Intimidation: Ethnicity

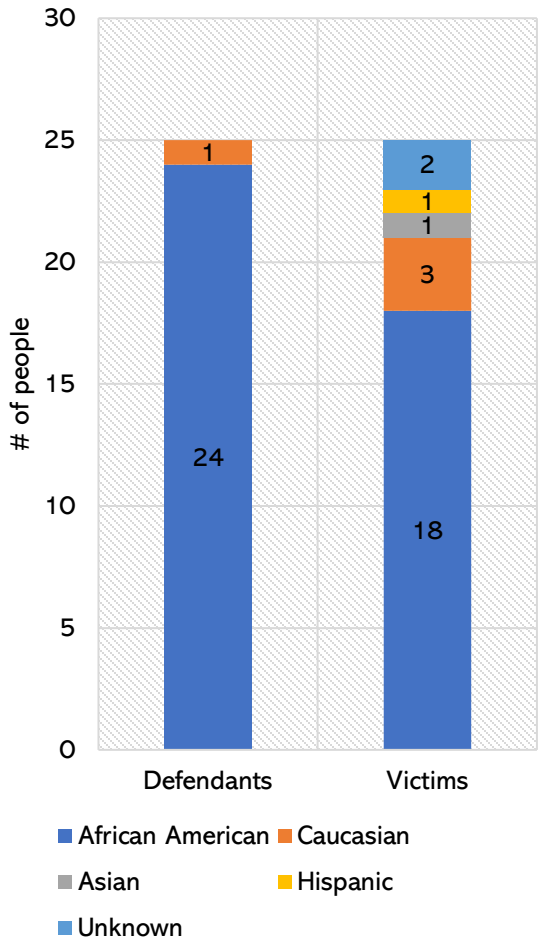
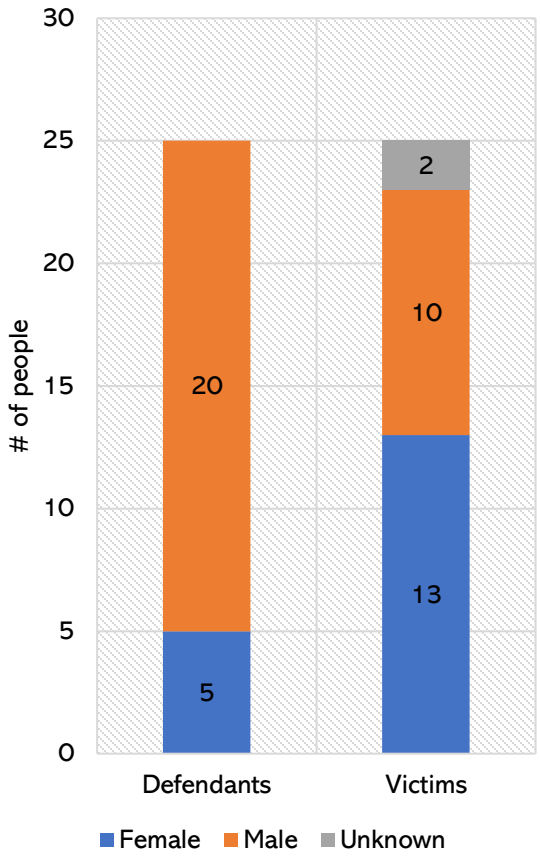


Figure 16. Witness Intimidation: Gender



n = 25 arrests. Data provided by the New Orleans Police Department.

Defendants charged with witness intimidation were 96% African American and 4% Caucasian. Victims of witness intimidation were more diverse: 72% African American, 12% Caucasian, 4% Hispanic, 4% Asian, and 8% unknown ethnicity.

CWN volunteers observed or learned of an incident where a victim or witness had allegedly been harassed, threatened, or intimidated in 5%, or 16 court sessions, of total Criminal District Court observations.[183] During this five percent of court observations, courtwatchers noted that the defendant was responsible for allegedly harassing, threatening, or intimidating victims or witnesses in 60% of observations. During these 16 court observations, the prosecutor reported the intimidating behavior to the Court in 50% of observations.

Criminal District Court, 2017

Figure 17. Who Allegedly Harassed, Threatened, or Intimidated the Victim or Witness?

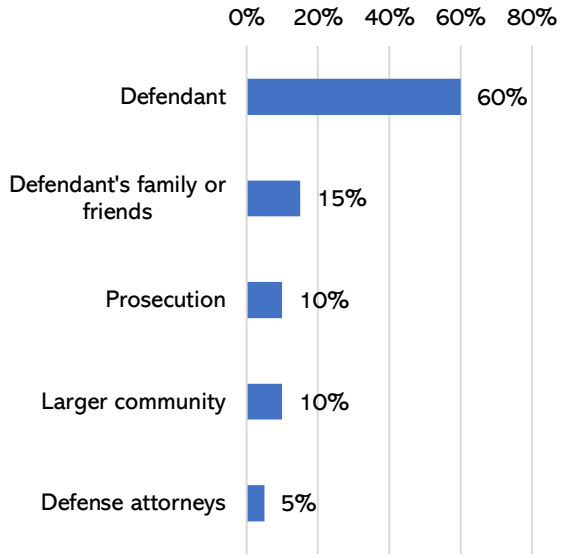
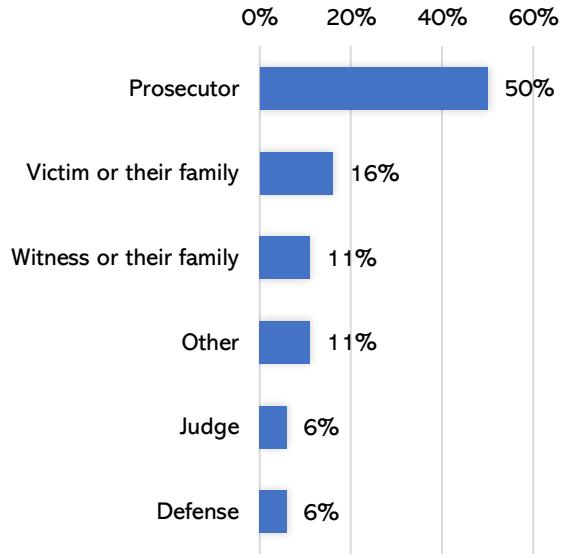


Figure 18. Who Reported that a Victim or Witness had been Harassed, Threatened, or Intimidated?



n = 16 court sessions[184]

More extensive and better-defined data should be collected other than that listed above. In the words of Mary Claire Landry, the Executive Director of the New Orleans Family Justice Center:

> "As advocates we hear from domestic violence and sexual assault survivors every day that they are being intimidated not to participate as witnesses against their partners and exes. They never come forward to speak out because they are successfully intimidated and/or believe nothing will be done. We will never know the full extent of the problem until we begin to measure it, hold intimidators accountable, and truly protect survivors through the criminal process so they feel strong and confident to participate as witnesses."[185]

There are many acts of intimidation for which intimidators are not arrested.[186] Likewise, witness intimidation happens neither primarily nor exclusively in court.[187] In fact, studies have shown that acts of intimidation are most often committed at a witness's home, workplace, or school, or during the normal course of the witness's daily activities.[188] While it is clear that one measurement alone cannot in isolation reveal the extent of witness intimidation, different measurements should be

collected and viewed together to determine trends. The following are potentially useful measures to compare from year to year, in order to better understand the severity of the witness intimidation problem:

- number of witnesses who experience threats or intimidation
- number of witnesses who provide information to police
- number of witnesses who provide statements to police
- number of witnesses who agree to testify in court
- number of crimes reported to police
- number of witnesses who are aware of the protections that are available to them
- number of witnesses who report intimidation
- number of offenders who are charged with intimidation
- public confidence in the criminal justice system and its ability to protect the citizenry.[189]

As previously stated, between 2011 and 2017, there was a 94% increase in the number of people arrested for violating a protective order in New Orleans (Figure 12). However, between 2011 and 2017, there was no similar increase in the number of people arrested for witness intimidation; in fact, these arrests decreased by 86% (Figure 14).[190] Neither the Orleans Parish District Attorney's office nor the New Orleans Police Department routinely track whether witness intimidation or fear of witness intimidation is the reason a witness fails to work with law enforcement.[191] Without knowing the number of witnesses who reported intimidation or who reported fear of intimidation to the NOPD or to the DA's office, it is impossible to determine the extent of the problem. It is unknown whether more resources should be devoted to prosecuting intimidators, supporting witnesses through advocacy and counseling, or both.

"[The victim was] threatened by members of victim's former church. [V]ictim alleged sexual abuse/rape by the pastor of same when victim was a child."

-Courtwatcher in Criminal District Court

"A stay away order was violated-the defendant was calling from prison with threats."

-Courtwatcher in Criminal District Court

Once a jurisdiction determines the extent of the witness intimidation problem, it is in a better situation to determine the most effective response strategies.[192] Response strategies that have been successful in other jurisdictions include but are not limited to: minimizing the risk of identification witnesses face when reporting crime or offering statements;[193] protecting the anonymity of witnesses;[194] reducing the likelihood of contact between witnesses and offenders both in the community and at court;[195] supporting witnesses (through counseling, advocacy, etc.);[196] relocating witnesses;[197] admonishing intimidators;[198] requesting no contact orders;[199] prosecuting intimidators.[200] Several strategies may apply to the problem in any particular jurisdiction. According to experts, the response should always be tailored to reliable analysis of the local on the ground circumstances.[201]

RECOMMENDATION 5: The New Orleans Police Department and the Orleans Parish District Attorney's Office should gather data relating to the number of witnesses who report either intimidation or fear of intimidation. While no one measure can completely define or explain witness intimidation, neither can it be fully understood without obtaining strong baseline data. The New Orleans Police Department and the Orleans Parish District Attorney's Office should continue to cooperate and share information relating to witness intimidation to identify any trends in the hopes of finding a proper response strategy.

B. Material Witness Warrants

After being victimized by a crime, the victim may determine they want to work with law enforcement to investigate the crime. Alternatively, a victim may determine they do not want to cooperate with law enforcement and may fail to contact the police department or the district attorney's office or refuse to share information with either office.[202] Such reluctance may be in response to a perceived or actual threat of retaliation by the offender or his or her associates, or may be the result of more generalized community norms that discourage residents from cooperating with police and prosecutors.[203] For example, a general lack of trust in law enforcement may deter some witnesses from cooperating.[204] Research has shown that the following reasons have also deterred victims from cooperating with police: emotional attachments; economic dependence; a desire for privacy, wanting to protect the offender from criminal prosecution, or wanting to protect children[205]

A prosecutor must determine if he or she can proceed to trial without a victim who has stopped cooperating.[206] While every prosecutor would prefer the victim testify, sometimes an assistant district attorney has sufficient evidence to establish their case beyond a reasonable doubt even when the victim fails to testify. Barring certain circumstances,[207] where it can be proven in court that the defendant engaged in wrongdoing that caused the victim to be absent to court[208] or where the victim "persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so"[209] the judge should allow the victim's previous statements to be entered as evidence to prosecute the case. This evidence may include but is not limited to: a recording of a 911 call made by the victim, a recording of a call made by the aggressor to the victim from jail (for example, threatening the victim if the victim testifies), or a police body-worn camera recording a statement made by the victim.[210] Nationally, some district attorneys have greatly increased the number of domestic violence convictions by making it a practice of prosecuting with other available evidence when victims fail to cooperate.[211]

A number of states have material witness laws that permit the arrest and detention of any person (victim or witness) with knowledge of a crime who refuses to provide information in court.[212] In Louisiana, to obtain a material witness warrant, an assistant district attorney or a defense attorney must apply to a criminal court judge for the warrant.[213] The criminal court judge can grant or deny the material witness warrant based on whether "the testimony of any witness is essential… and it

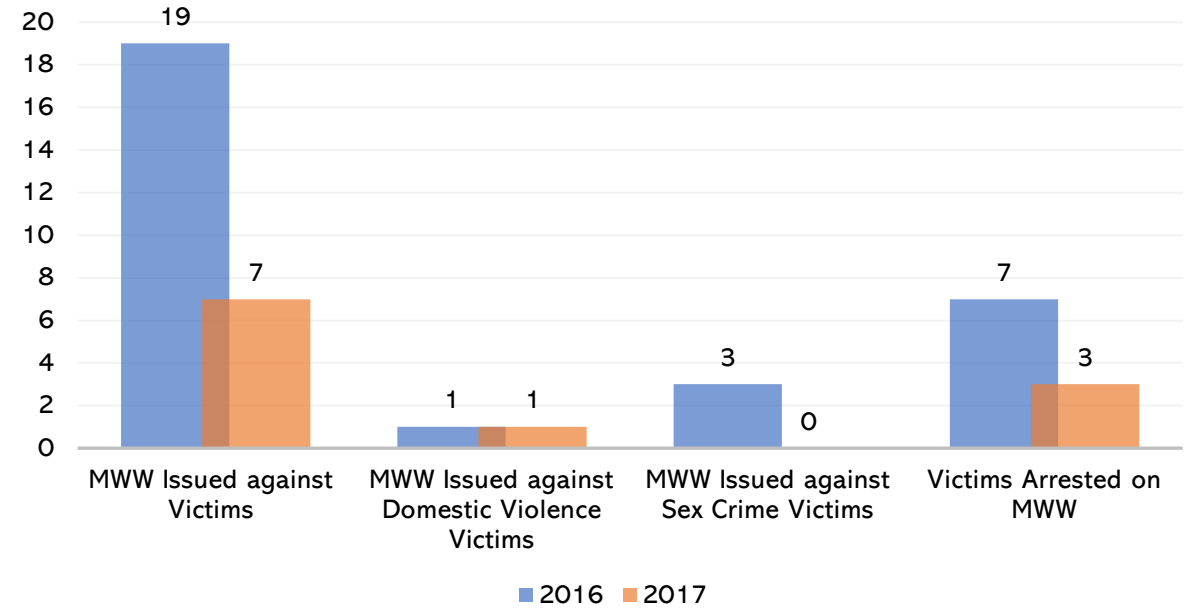
is shown that it may become impracticable to secure the presence of the person by subpoena."[214] If a judge issues a material witness warrant, a victim or witness can be arrested and will remain in jail until she posts bond, her testimony is taken, or the case is otherwise disposed.[215] The victim or witness does not have the guaranteed right to counsel while he or she is incarcerated or subjected to the material witness warrant.

The Orleans Parish District Attorney Leon Cannizzaro has refused to stop requesting material witness warrants against sex crimes and domestic violence victims stating, "Asking a judge to detain a victim in any case is a tool of last resort, and is done only when the totality of circumstances show that to proceed otherwise would result in a dangerous defendant walking free to pose a continued threat to the safety of the community we are sworn to serve and protect. Such occurrences are extremely rare in the nearly 7,000 cases we handle per year between Criminal District and Municipal court."[216] Some prosecutors have taken a public stance against incarcerating victims for failure to cooperate with law enforcement.[217] For example, Houston District Attorney Kimberly Ogg promised to never incarcerate a victim for failing to cooperate with the prosecution. This promise came after her predecessor incarcerated a rape victim and the victim had a mental breakdown while testifying against her aggressor in court.[218] The Brooklyn District Attorney's Office has also taken a position against material witness warrants believing that confining witnesses and victims until and unless they testify leads to false testimony and thus wrongful convictions.[219] Other major cities such as Chicago[220] and Philadelphia[221] have also taken similar positions. In some crimes, such as domestic violence[222] and sexual assault cases that are already serially underreported, research shows that the arrest of non-cooperative victims may have a chilling effect on survivors already reluctant to report the crime to law enforcement.[223]

In its 2016 Annual Report, CWN reported on the number of victims and witnesses that the District Attorney's Office applied for and received material witness warrants to arrest. In its 2016 report, CWN stated that its numbers reflected the minimum number of material witness warrants issued in 2016.[224] In fact, the 2016 numbers CWN includes below are different than those numbers listed in its 2016 annual report since additional whistleblowers and victims have revealed their cases to CWN since its last annual report. Below, CWN again presents data on material witness warrants: this time the data includes the number of material witness warrant issued in 2017.[225] The below numbers still represent the minimum number of material witness warrants issued in 2017 and there may be more issued that CWN has been unable to find.

Orleans Parish, 2016-2017

Figure 19. Material Witness Warrants Issued against Victims, and Arrests



n = 26 warrants, 10 arrests.

In 2017, there were seven material witness warrants issued against victims: one of those victims was a victim of domestic violence, and none of the victims were sex crimes victims. These numbers compare to 19 material witness warrants issued against victims in 2016, one of them issued against a victim of domestic violence, and three issued against victims of sex crimes. In 2017, three victims were arrested on material witness warrants, with one victim incarcerated for seven days in jail and the other two victims incarcerated for a day each. In 2016, seven victims were incarcerated as material witnesses, with one victim incarcerated for 179 days in jail in conjunction with a probation violation.[226] In 2017, there were three material witness warrants issued against witnesses, compared to 15 material witness warrants issued against witnesses in 2016.

Orleans Parish, 2017

Figure 20. Material Witness Warrants Issued against Victims, Number of Days Incarcerated, and Type of Case on which the Victim Did Not Cooperate with Law Enforcement

Victim Identifier	*If Incarcerated, Length of Stay*	*Type of Case on which the Victim did not Cooperate with Law Enforcement*
Male Victim #1	7	2nd-degree Battery
Male Victim #2	1	2nd-degree Murder Aggravated Assault with a Firearm Possession of a Firearm
Male Victim #3	1	Attempted Armed Robbery with a Firearm Possession of a Firearm or Weapon by a Felon Attempted Possession of a Firearm by a Felon
Male Victim #4	Not arrested or not found	2nd-degree Battery Simple Battery
Female Victim #1	Not arrested or not found	Aggravated Battery Possession of a Firearm or Weapon by a Felon
Female Victim #2	Not arrested or not found	Armed Robbery with a Firearm Possession of a Firearm or Weapon by a Felon
Female Victim #3	Not arrested or not found	Domestic Abuse Home Invasion False Imprisonment

The number of material witness warrants have sharply declined after a year of public pressure against material witness warrants and "DA subpoenas" (the requests to appear given to victims and witnesses the DA did not have authority to summon).[227] There is still a concern that Orleans Parish District Attorneys are requesting the arrest of material witnesses via other means that are harder to publicly track, when such material witnesses don't appear in court.[228] However, this decline in material witness warrants is a marked improvement for victims and an improvement that should be lauded.

At the start of a case, a prosecutor's office should always attempt to connect the victim to local and state victim services. In Orleans Parish, where public victim resources are often inadequate,[229] the prosecution can (and often does) refer victims to non-profit victim support organizations including but not limited to the New Orleans Family Justice Center, Family Services of New Orleans, and the Eden House.[230] In fact, as of 2018, as part of a commendable new protocol, the New Orleans District Attorney's Office refers all domestic violence victims who are reluctant or unwilling to testify in a criminal case to the Family Justice Center.[231] When a victim is connected to supportive services and badly needed resources at the start of a case, the victim is much more likely to cooperate with law enforcement and testify.[232] Although the law does not require it,[233] the court should make all attempts necessary to ensure an incarcerated victim or witness has

counsel appointed, as often the victim or witness has little to no understanding of why they have been subject to arrest and incarceration and are facing great pressure and trauma even before the arrest.[234]

The decision to apply for a warrant to arrest a non-cooperative victim should not be made lightly.[235] When the victim of an Orleans Parish criminal case is arrested on a material witness warrant, the witness is incarcerated in the same correctional facility as her or his aggressor.[236] Experts have said that before applying for a material witness warrant an assistant district attorney should consider factors including: the seriousness of the offense, the strength of the case, and the public interest in punishing the defendant and deterring others from committing similar crimes.[237] A prosecutor should also consider the trauma and fear that is often associated with being a victim of a crime, the victim's fear of retribution from the aggressor or the community, and the great harm it causes the victim to be arrested and jailed in a corrections facility.[238] As one expert has stated: the tensions for an ethical prosecutor between convicting and punishing a dangerous offender while at the same time recognizing that his victim refuses to be the means to that end, and deferring to his victim's wishes, ultimately will leave one goal unattainable.[239]

RECOMMENDATION 6: The District Attorney should issue a policy discontinuing the incarceration of domestic violence victims and sex crime victims for failing to testify. In non-domestic violence and non-sex offense cases, the District Attorney should, at a minimum, publicly release a protocol that includes the different factors an Assistant District Attorney should consider before applying for a warrant to arrest a victim for failing to testify. For example, this protocol may include weighing the competing goals of victim safety and emotional trauma to the victim, as well as offender accountability, public safety and the significance/necessity of the victim's testimony.

VI. Treatment of the Public at Large

Procedural fairness, also known as procedural justice, is an evidence-based practice endorsed by the American Judges Association, National Center for State Courts, Conference of Chief Justices, and Conference of State Court Administrators.[240] As the latter two groups recently stated in a joint report, "extensive research demonstrates that in addition to providing legal due process, it is important [for courts] to meet the public's expectations regarding the process in order to increase positive public perceptions of the court system, reduce recidivism, and increase compliance with court orders."[241]

As an expert working with the New York City (felony and misdemeanor) Criminal Court to implement procedural fairness standards has stated,

> "A significant part of this project was to step back and take a look at how people are using the courthouse. It's an anxiety-producing visit for everybody, whether a defendant who has been charged with a crime and is facing possible jail time, or a

> victim of a crime who might have to face the person who did something to them. A juror who has no idea what's going on. Witnesses. The only people who are comfortable, maybe, are the people who work there. So how do you redesign it, and give people more information to reduce that anxiety, and possibly reap the benefits of procedural justice?"[242]

Criminal courts across the country are choosing to be part of the procedural fairness trend.[243] In fact, choosing to put pro-active steps together to make those who enter the criminal courts feel more heard and respected has been a priority for many courts already.[244] The reasons are obvious, criminal courts are in the business of ensuring they do not have repeat customers.[245] Research shows that when people feel they have been respected and understand the court process, they are more satisfied and more likely to accept decisions, even ones they might view as unfavorable.[246]For example, after the U.S. Department of Justice (US DOJ) issued a critical report about the Ferguson (Criminal) Municipal Courts, the court put together a procedural justice approach to deal with some of the concerns raised in the US DOJ report. As Missouri Chief Justice Patricia Breckenridge told the state's legislature in her 2017 state of the judiciary address,

> "Do not view . . . calls for action as a condemnation of our judicial system. Our citizens can be proud of our courts, where they go to resolve their disputes peaceably and where their constitutional rights are protected. Day in and day out, in the courtrooms in your communities, hundreds of thousands of cases are adjudicated without fanfare. We, more than anyone, want our courts to live up to their responsibilities to properly administer justice"[247]

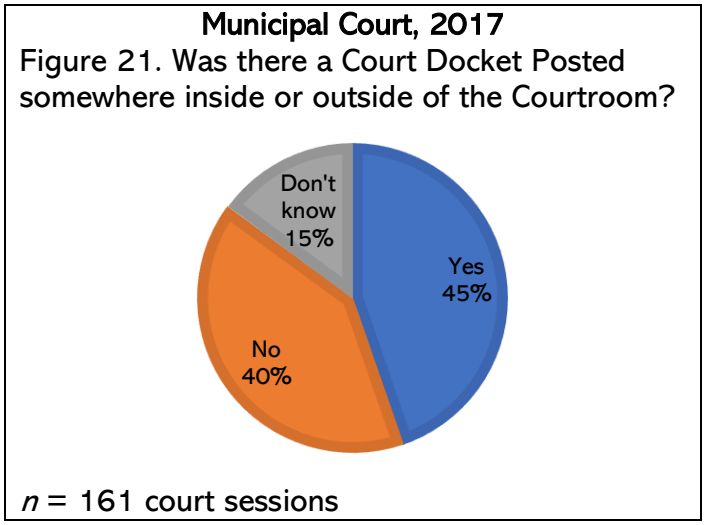
Certainly, Missouri is not the first state to institute procedural justice practices in its criminal courts. Manhattan's felony courts,[248] Minnesota general criminal courts,[249] Delaware misdemeanor courts,[250] Birmingham Criminal Municipal courts,[251] to name a few jurisdictions, have also created a protocol to embrace procedural justice concepts.

A. Dockets

In the criminal justice system, minor adjustments like helping court users navigate a courthouse have been found to translate into increased compliance with court orders and enhanced perceptions of legitimacy.[252] Making a court more user-friendly often translates into ensuring those using the courts understand the process and ensuring they know where they are going.[253] Court signage and the posting of dockets in a public place are key to ensuring court users understand the process.[254] Posting dockets or court calendars is integral for court users to navigate a court house because the posted docket ensures the defendant/victim/witness that he or she is in the correct courtroom. In fact, courts across the country often place substantial resources into ensuring court-users know the proper courtroom where they should be going, from employing court officers who will proactively approach confused court users[255] to sinking tens of thousands of dollars into electronic docket monitors that provide a visual reference for where the different cases will be heard.[256] In the words

of one expert, "Almost every court posts the calendar outside of the door and posts all calendars in the lobby."[257]

Separate Orleans Parish Criminal court sections, notably Section A, Section C, Section D, Section E, Section F, Section G, Section I, and Section J all have posted their daily court calendar in a publicly accessible location. While Sections B, H, and K have promised to post their daily court calendar in a publicly accessible location in the near future, Section L declined to post its docket based on perceived public safety concerns. The Orleans Parish Clerk's Office does not post a master court calendar for the Orleans Parish Criminal Court in a central location. Although the New Orleans Municipal Clerk of Court had agreed to post the daily court docket at the end of 2016, it has failed to consistently post the docket in a publicly accessible location during at least 40% of court observations in 2017. This is particularly problematic because individual New Orleans Municipal courtrooms also fail to post dockets in a public location. CWN observers have often found court users extremely confused about which courtroom they should go to when they first arrive in Municipal Court.



RECOMMENDATION 7: The Municipal Clerk of Court and the Orleans Parish Clerk of Court should daily post a master court docket in a public location or assign a court employee to direct court users, as they immediately arrive in court, to the court room where they are required to appear. It is particularly important for the Municipal Clerk of Court to post the docket as none of the separate courtrooms in the New Orleans Municipal Court post individual dockets.

Providing dockets and court records upon public request is central to the mission of most courts.[258] The court docket or calendar on which defendants' names, case numbers and criminal charges are listed is a public document that must be available to the public.[259] The Conference of State Administrators include as two of its major principles that (1) the public has a qualified right of access to court records and (2) the judiciary is obligated to provide access to public court records and to improve the convenience of that access.[260] Most court clerks have gone way beyond

providing a court calendar or docket to the public when requested. Many courts provide online access to court records.[261] The Conference of Chief Justices and the Conference of State Court Administrators have developed guidelines establishing a list of what court records should be electronically available. This list includes, "calendars or dockets of court proceedings, including the case number and caption, date and time of hearing, and location of hearing." [262] A 2016 Council for Court Excellence/National Center for State Courts survey showed that 21 out of 28 court administrators reported providing remote online access to court records. Records showing court case results, such as opinions, orders and judgments are also commonly available online, and were accessible online in 12 of the 21 states answering the same survey.[263]

"They moved the dockets from the Clerk of Court's office to a different room. When I got to the room, it was pretty chaotic and they didn't seem to know too much about how to get me a copy. They referred me over to the desk of somebody who wasn't there, and after waiting for a while I decided to just go to court and minimize the amount of time that I was late. The male Clerk asked me during court if I needed anything and printed out a copy for me."

-Courtwatcher in Municipal Court

"Court Watch was told that the Municipal Court docket could be obtained at the court's clerk's office. This proved not to work. I asked one person in the office who knew nothing about a docket, then another person who also knew nothing about a docket and then eventually yet another person who told me that the clerk's office doesn't do the dockets anymore and to get the docket from the clerk of the individual judge. When I did this, I was referred back to the clerk's office. When I said I'd been told that that office doesn't do the dockets anymore, everyone seemed at a loss. With a few notable exceptions, my request was treated as a bother. It went back and forth like that for at least a month until I was able to get a docket from the judges' clerks just before the session began. However, this docket does not contain the case numbers or charges, which makes it difficult to obtain the information sought by Court Watch NOLA."

-Courtwatcher in Municipal Court

While criminal courts across the country are moving to ensure the public have electronic access to court records, the New Orleans Municipal Court still has no publicly accessible online system for the most basic court information. Additionally, the New Orleans Municipal Clerk of Court regularly places obstacles in the way of the public receiving a paper docket upon request. In New Orleans Municipal Court during 2017, it was typical for a CWN volunteer to be sent from the Municipal Clerk of Court's office to a courtroom and back to the Clerk's office to receive a copy of the daily docket. It was also common for an employee of the Municipal Clerk of Court to raise their voice or act annoyed when a CWN volunteer requested a daily docket. Only in New Orleans Municipal Court have CWN volunteers regularly reported obstacles in receiving a court calendar and disrespect from the Clerk's office during such an interaction.

RECOMMENDATION 8: The Municipal Clerk of Court and its employees should be trained in procedural fairness concepts to ensure a more user-friendly clerk of court's office. As Municipal Court adopts and transitions to a new case management system, the Municipal Court Judicial Administrator's Office should prioritize online access to case dockets for the general public to promote greater transparency and efficiency.

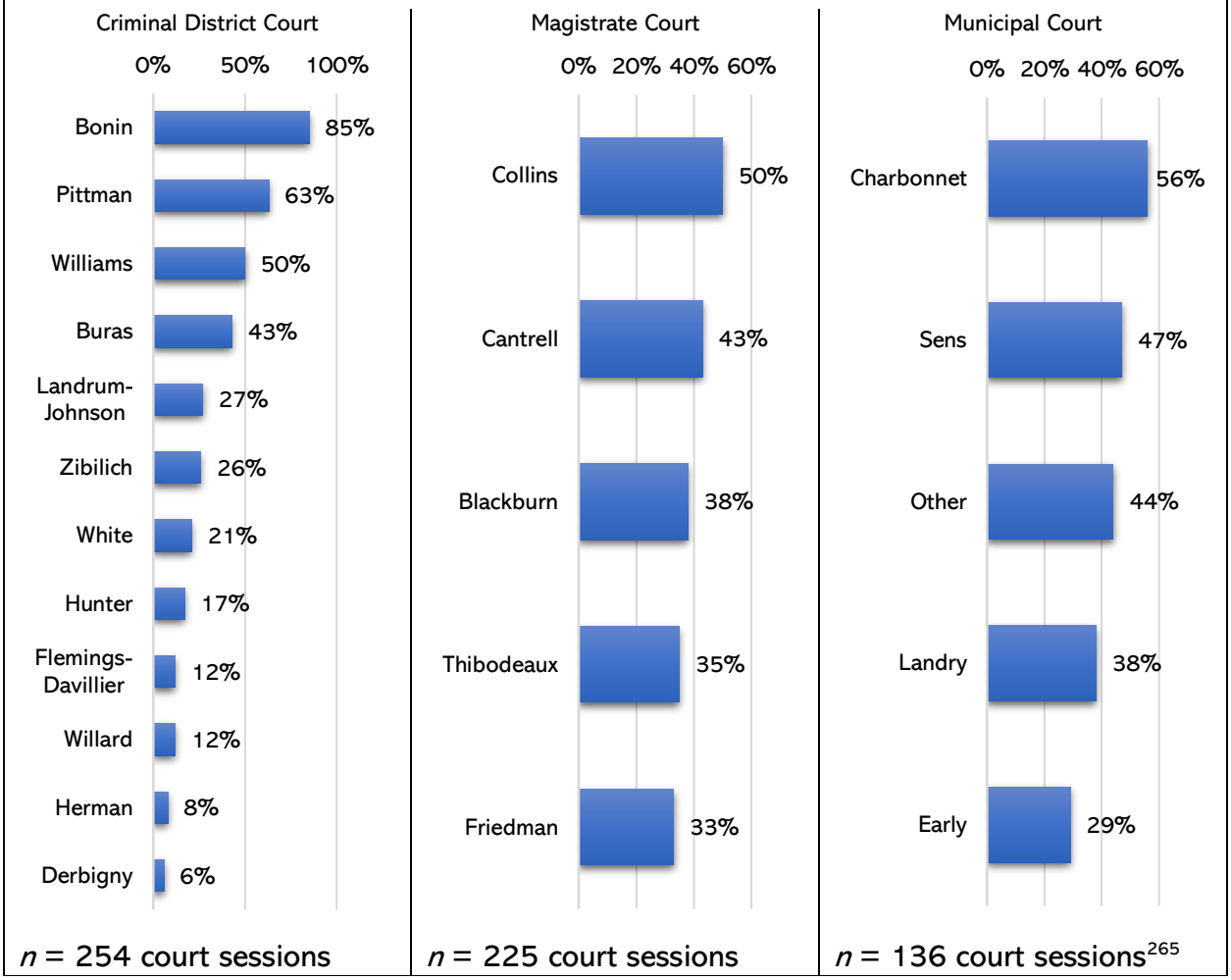
B. Timeliness of Judges

CWN, on behalf of all courtroom users, including attorneys, law enforcement, and the public, has been recording what time each judge takes the bench for over ten years. Courtrooms with regular, substantial delays waste the time of the victims, witnesses, defendants, and family members who often must take time off from work or find childcare they can usually hardly afford in order to go and wait in court. Delays become costly as public servants, including prosecutors, public defenders, deputies, court staff, and law enforcement have salaries funded by taxpayers. Some court sections also lock the public out until court starts, forcing visitors to wait in hallways with insufficient seating and no climate control. For New Orleans Police Department officers, court delays mean officers are that much more unavailable to patrol the streets and perform other duties integral to public safety. In fact, Federal Judge Susan Morgan who presides over the NOPD consent decree, focused a portion of one of her public hearings on the amount of time NOPD officers must wait for criminal court judges who arrive late to the bench.[264]

CWN volunteers record the time the judge takes the bench and not the time the judge may arrive in court. CWN data does not capture the considerable time that many judges may spend working in chambers, attending meetings, and performing administrative tasks. CWN nevertheless tracks the time of arrival on the bench 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 wait before the Judge takes the bench.

All Courts, 2017

Figure 22. Frequency of On-time Court Starts



CWN did not observe all judges for the same number of court observations, and the sample size per judge is broken down in the endnotes below.[266] The judges most frequently on time were Judge impoBonin, Commissioner Collins, and Judge Charbonnet,[267] while the judges least frequently on time were Judge Derbigny,[268] Commissioner Friedman,[269] and Judge Early.

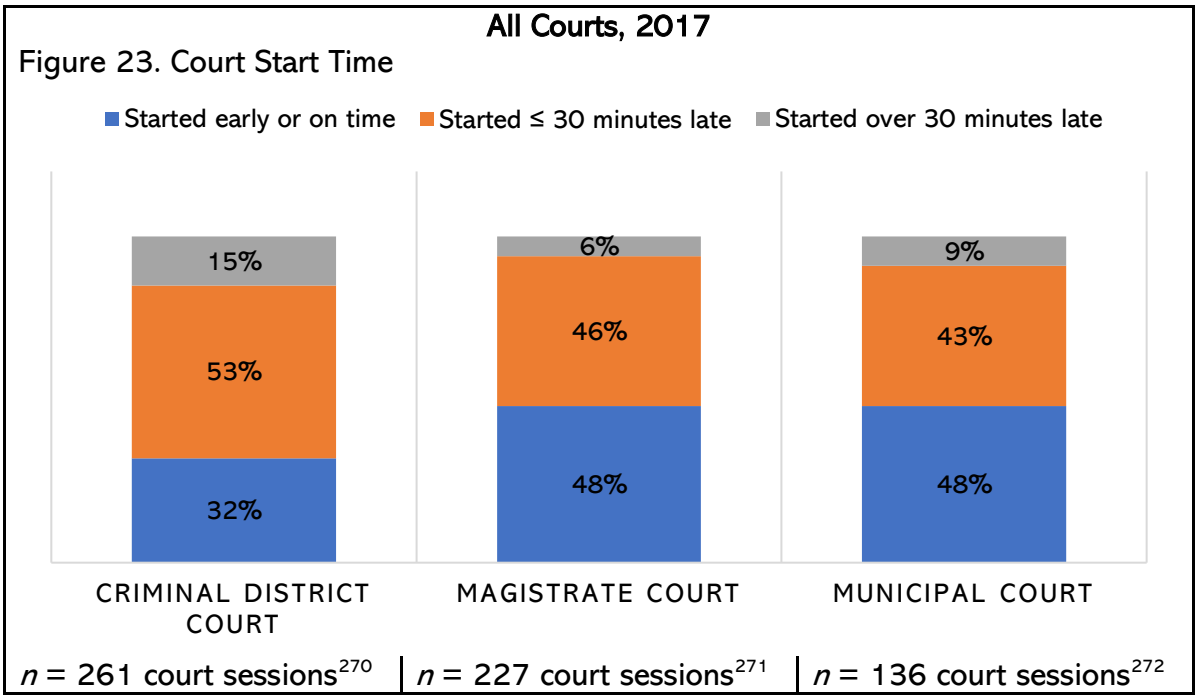


Figure 23. Court Start Time

RECOMMENDATION 9: Judges should make every effort to be timely to the bench and should consider the inconvenience to the public in making them wait and the cost to the taxpayer in making public servants wait for the judge's untimely arrival. If the judge has an obligation that consistently delays the judge arriving timely to the bench, the judge should change the court subpoena time, so both the public and public employees are not forced to regularly wait in court for the judge's arrival.

VII. Acknowledgements

CWN thanks its 2017 volunteers and donors,[273] who were generous with their time and resources, and without whom this report would not have been possible. CWN thanks the New Orleans Police Department, the Vera Institute of Justice, the Family Justice Center, the Orleans Parish District Attorney's Office, the Orleans Public Defenders, the Criminal District Court Clerk of Court, the Municipal Court Judicial Administrator, the New Orleans City Attorney's Office, Securus Technologies, Rikers Island Correctional Facility, the Orleans Parish Sheriff's Office, the Louisiana Supreme Court, and the Southern Poverty Law Center for providing data for this report. CWN also thanks the Sixth Amendment Center and Tulane law student Benjamin Rosenfield for providing legal research for this report.

---

[1] *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981) (citing 8 JOHN H. WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 2290 (McNaughton rev. ed. 1961)) ("Confidential disclosures by a client to an attorney made in order to obtain legal assistance are privileged").

[2] *Id.* ("The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client").

[3] William P. Matthews, *Encoded Confidences: Electronic Mail, the Internet, and the Attorney-Client Privilege*, 45 U. Kan. L. Rev. 273, 283 (1996)(noting that most codifications of the attorney-client privilege "offer the same protection the common law afforded").
[4] FED. R. EVID. 501. 14. See *Gennusa v. Shoar*, 879 F. Supp. 2d 1337, 1349 (M.D. Fla. 2012) (dealing with visits); *United States v. Korbe*, 2:09-CR-05, 2010 WL 2776337, at *3 (W.D. Pa. July 14, 2010) (regarding phone calls); *Mitchell v. Untreiner*, 421 F. Supp. 886, 902 (N.D. Fla. 1976) (covering mail communications).
[5] *Coplon v. United States*, 191 F.2d 749, 758–59 (D.C. Cir. 1951). The Coplon court held: The sanctity of the constitutional right of an accused privately to consult with counsel is generally recognized and zealously enforced by state as well as federal courts. The court said in Ex parte *Rider*: "The right of an accused, confined in jail or other place of detention pending a trial of the charge against him, to have an opportunity to consult freely with his counsel without any third person, whose presence is objectionable to the accused, being present to hear what passes between the accused and his counsel, is one of the fundamental rights guaranteed by the American criminal law—a right that no Legislature or court can ignore or violate." Ex parte *Rider*, 1920, 50 Cal. App. 797, (citation omitted); See also Ex parte *Snyder*, 1923, 62 Cal. App. 697, 217 P. 777, (a failure to allow a defendant confined in jail to have private consultation with his counsel violates his constitutional rights); Ex parte *Qualls*, 1943, 58 Cal. App. 2d 330, 331, 136 P.2d 341, 342, ("Their right to private consultations with their counsel is a corollary of the constitutional right to be represented by counsel in their defense."); *People v. Shiffman*, 1932, 350 Ill. 243, 182 N.E. 760; *Hughes v. Cashin*, 1945, 184 Misc. 757, 54 N.Y.S.2d 437, 440-441 ("It is also equally true that the right to a private interview by a person accused of crime with his lawyer prior to trial is a valuable right, and it is the duty of the court to jealously guard the accused from deprivation thereof."); *State v. Collett*, Ohio App. 1944, 58 N.E.2d 417; *McBride v. State*, 1932, 121 Tex.Cr.R. 549, 51 S.W.2d 337; *Snook v. State*, 1929, 34 Ohio App. 60, 170 N.E. 444; *Ford v. State*, 1929, 121 Ohio St. 292, 168 N.E. 139; *Thomas v. Mills*, 1927, 117 Ohio St. 114, 157 N.E. 488, 54 A.L.R. 1220; *Sanderson v. State*, 1926, 105 Tex.Cr. 198, 287 S.W. 251; *Turner v. State*, 1922, 91 Tex.Cr. 627, 241 S.W. 162, 23 A.L.R. 1378; State ex rel. *Tucker v. Davis*, 1913, 9 Okl.Cr. 94, 130 P. 962, 44 L.R.A.,N.S. 1083.
[6] Meeting with Gary Maynard, Orleans Parish Compliance Director and Blake Arcuri, Orleans Parish Sheriff's Office Counsel, in New Orleans (Feb 1, 2018).
[7] Maynard, *supra* note 6.
[8] *Scott v. Illinois*, 440 U.S. 367, 369 (1979).
[9] *Id*.
[10] *Iowa v. Tovar*, 541 U.S. 77, 77 (2004).
[11] *Johnson v. Zerbst*, 304 U.S. 458, 464, 465 (1938).
[12] ABA STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE FOR THE PROSECUTION FUNCTION, Standard 3–3.10(a) (3d ed. 1992).
[13] ABA STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE FOR THE PROSECUTION FUNCTION, Standard 3–5.1(e) (4th ed. 1992).
[14] Iryna Dasevich, *The Right to an Interpreter for Criminal Defendants with Limited English*, JURIST April 15, 2012.
[15] *United States ex rel. Negron v. New York*, 434 F.2d 386, 390–91 (2d Cir. 1970).
[16] Williamson B. Chang & Manuel U. Araujo, *Interpreters for the Defense: Due Process for the Non-English-Speaking Defendant*, 63 Cal L. Rev. pg 801-815 (1975) (discussing the due process right to a court interpreter).
[17] La Code Crim Pro§ 25.1.
[18] LOUISIANA SUPREME COURT, https://www.lasc.org/court_interpreters/court_interpreters.asp (last visited May 6, 2018).
[19] *Bearden v. Georgia*, 461 U.S. 660 (1983); *Williams v. Illinois*, 399 U.S. 235 (1970); and *Tate v. Short*, 401 U.S. 395 (1971).
[20] *Alana Cain, et al. v. City of New Orleans, et al.*,184 F. Supp. 3d 536 (E.D. LA. 2016).
[21] *Bearden*, 461 U.S at 660.
[22]Brenden O'Flaherty & Rajiv Sethi, *Witness Intimidation*, 39 J. Legal Stud pp. 399-432 (2010).
[23] Kelly Dedel, Witness Intimidation, Center for Problem-Oriented Policing (2006), http://www.popcenter.org/problems/witness_intimidation/print/.
[24] *Id*.
[25] *Id*.
[26] La.Rev.Stat.Ann.§15:257.
[27] Daniel Victor, *Texas Rape Victim Was Jailed for Fear She Would Not Testify, Lawsuit Says*, N.Y TIMES (Jul. 22, 2016) https://www.nytimes.com/2016/07/23/us/texas-rape-victim-was-jailed-for-fear-she-would-not-testify-lawsuit-says.html; *Prosecuting Attorney-Charging Decisions, Charging Decisions in Domestic Violence-Related Crimes*, Praxis International, Chapter 5 (2016), http://praxisinternational.org/wp-content/uploads/2016/02/BlueprintChapter5.pdf (last visited May 9, 2018) (Do not threaten to or place a victim in custody to ensure witness availability).
[28] Orleans Parish Sheriff's Office Docketmaster, accessed May 18, 2018; Telephone Interview with Aaron Rowe, Staff Attorney Orleans Parish Defenders (May 18, 2018). This victim was also held in jail on a probation violation caused in most part by his reluctance to testify for the prosecution. According to his defense attorney and supported by Docketmaster, the prosecution would not support the court lifting the material witness warrant that would then allow the victim to be sent via corrections to the other parish where he could conclude the probation violation process. The material witness warrant was issued on November 20, 2015 but the defendant was only arrested on November 22, 2015. The victim was arrested on a non-related drug charge November 22,

2015. Later (January 12, 2016), this arrest was found to be unsupported by probable cause and the victim pled guilty to Disturbing the Peace on March 23, 2016. Defense attempted to get the victim released from the material witness warrant so the victim could be sent to probation on March 24, 2018 but the prosecution opposed this motion and the judge refused to lift the material witness warrant. The victim was finally released on June 3, 2016 although the prosecution agreed to allow the court to lift the material witness warrant on May 19th, 2017. Although the victim was incarcerated on a material witness warrant from November 22, 2016 to May 19, 2017, (179 days) the prosecution finally determined on May 19, 2016 that they did not need him to testify after all and later dismissed (nolle prossed) the attempted second-degree murder and robbery case that the victim was supposed to testify on.

[29] Raphael Pope-Sussman, *Improving Courthouse Signage*, 1-16 (Center For Court Innovation) https://www.courtinnovation.org/sites/default/files/documents/Red%20Hook%20OctoberFinalProofed_REDUCED%20%281%29.pdf.

[30] *Id*.

[31] CONF. OF STATE COURT ADMIN'S, CONCEPT PAPER ON ACCESS TO COURT RECORDS, National Center for State Courts (Aug., 2000), https://cdm16501.contentdm.oclc.org/digital/collection/accessfair/id/311/rec/29.

[32] Remote Access to Court Electronic Records (RACER) Committee of the Council for Court Excellence, Remote Public Access to Electronic Court Records: A Cross-Jurisdictional Review for the D.C. Courts (April 2017), pg 1-4. http://www.courtexcellence.org/uploads/publications/RACER_final_report.pdf (Twenty out of 21 states responding, reported online access in civil and criminal cases, with slightly fewer permitting such access in criminal cases).

[33] Stephanos Bibas, *Transparency and Participation*, 81 NYU L Rev 911, 916 (2006).

[34] Lance Cole, *Revoking Our Privileges: Federal Law Enforcement's Multi-Front Assault on the Attorney-Client Privilege (and Why It Is Misguided)*, 48 Vill. L. Rev. 469, 474-5 (2003) (explaining that the attorney client privilege exists in both the federal jurisdiction and all state jurisdictions, and that it is rooted in the idea that the lawyer owes his client loyalty and cannot testify against his client).

[35] *Upjohn*, 449 U.S. at 389 (1981) (citing 8 JOHN H. WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 2290 (McNaughton rev. ed. 1961)) ("Confidential disclosures by a client to an attorney made in order to obtain legal assistance are privileged").

[36] *See id*. ("The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client").

[37] *Hunt v. Blackburn*, 128 U.S. 464, 470 (1888) (explaining that a client has a privilege of "secrecy upon communications between client and attorney" to facilitate the "administration of justice").

[38] Matthews, *supra*, note 3.

[39] FED. R. EVID. 501.14. *See also Gennusa v. Shoar*, 879 F. Supp. 2d 1337, 1349 (M.D. Fla. 2012) (dealing with visits); *United States v. Korbe*, 2:09-CR-05, 2010 WL 2776337, at *3 (W.D. Pa. July 14, 2010) (regarding phone calls); *Mitchell v. Untreiner*, 421 F. Supp. 886, 902 (N.D. Fla. 1976) (covering mail communications).

[40] In *Weatherford v. Bursey*, 429 U.S. 545 (1977), the government conceded that "the sixth amendment's assistance-of-counsel guarantee can be meaningfully implemented only if a criminal defendant knows that his communications with his attorney are private and that his lawful preparations for trial are secure against intrusion by the government, his adversary in the proceeding." *Id.* at 554 n.4 (quoting Brief for the United States at 71, *Hoffa v. United States*, 385 U.S. 293 (1966) (quoted in Brief for the United States as Amicus Curiae at 24 n.1, 3).

[41] *Procunier v. Martinez*, 416 U.S. 396, 419 (1974). ("[The right of access to the courts] means that inmates must have a reasonable opportunity to seek and receive the assistance of attorneys. Regulations and practices that unjustifiably obstruct the availability of professional representation … are invalid.") (overturned on other grounds).

[42] *Greater Newburyport Clamshell Alliance v. Public Serv. Co. of New Hampshire*, 838 F.2d 13, 19 (1st Cir. 1988).

[43] *The Attorney-Client Privilege: Fixed Rules, Balancing and Constitutional Entitlement*, 91 HARV. L. REV. 464, 485-86 (1977) (importance of the attorney-client privilege to the Fifth and Sixth Amendments).

[44] *In re Colton*, 201 F. Supp. 13, 17 (S.D.N.Y. 1961) (stating that the attorney-client privilege only exists for communications that the parties intend to be confidential). In *United States v. Fisher*, the court said that the privilege applies when, (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client. *United States v. Fisher*, 692 F. Supp. 488, 491 (E.D. Pa. 1988) (citing *United States v. United Shoe Mach. Corp.*, 89 F. Supp. 357, 358–59 (D. Mass. 1950)).

[45] *United States v. Frank S. Zolin et al.*, 109 S.Ct. 2619, 2623 (1989).

[46] *State v. Clark*, 220 So.3d 583, 639 (La. 2016).

[47] *In re Grand Jury Subpoenas*, 454 F.3d at 523 (6th Cir 2006); *See also* What is a Taint Team/The Daily Show, Youtube, https://www.youtube.com/watch?v=LTOxnCHdgZs (last visited Apr 15, 2018).

[48] Devlin Barrett and Rosalind S. Helderman, *Federal judge appoints special master to review material seized from Trump lawyer Michael Cohen*, Washington Post (April 26, 2018).

[49] See *Hudson v. Palmer*, 468 U.S. 517, 525–26 (1984), (stating that inmates are not entitled to a "subjective expectation of privacy" in their prison cells); 1 JAMES G. CARR & PATRICIA L. BELLIA, LAW OF ELECTRONIC SURVEILLANCE § 3:6 (2015)

(noting an inmate's "diminished privacy expectation" while incarcerated); see also *United States v. DeFonte*, 441 F.3d 92, 94 (2d Cir. 2006) (explaining that although there is a diminished expectation of privacy for inmates, they still have the protection of the attorney-client privilege).

[50] Susan Candiotti and Sally Garner, *Recorded calls keep inmates locked up*, CNN (March 26, 2011), http://www.cnn.com/2011/CRIME/03/26/jailhouse.calls.recordings/index.html.

[51] *Id.*

[52] *Id.*

[53] *Coplon*, 191 F.2d 749, 758–59 (D.C. Cir. 1951). The Coplon court held: The sanctity of the constitutional right of an accused privately to consult with counsel is generally recognized and zealously enforced by state as well as federal courts. The court said in *Ex parte Rider*: "The right of an accused, confined in jail or other place of detention pending a trial of the charge against him, to have an opportunity to consult freely with his counsel without any third person, whose presence is objectionable to the accused, being present to hear what passes between the accused and his counsel, is one of the fundamental rights guaranteed by the American criminal law—a right that no Legislature or court can ignore or violate." Ex parte *Rider*, 1920, 50 Cal. App. 797, (citation omitted); *See also Ex parte Snyder*, 1923, 62 Cal. App. 697, 217 P. 777, (a failure to allow a defendant confined in jail to have private consultation with his counsel violates his constitutional rights); *Ex parte Qualls*, 1943, 58 Cal. App. 2d 330, 331, 136 P.2d 341, 342, ("Their right to private consultations with their counsel is a corollary of the constitutional right to be represented by counsel in their defense."); *People v. Shiffman*, 1932, 350 Ill. 243, 182 N.E. 760; *Hughes v. Cashin*, 1945, 184 Misc. 757, 54 N.Y.S.2d 437, 440-441 ("It is also equally true that the right to a private interview by a person accused of crime with his lawyer prior to trial is a valuable right, and it is the duty of the court to jealously guard the accused from deprivation thereof."); *State v. Collett*, Ohio App. 1944, 58 N.E.2d 417; *McBride v. State*, 1932, 121 Tex.Cr.R. 549, 51 S.W.2d 337; *Snook v. State*, 1929, 34 Ohio App. 60, 170 N.E. 444; *Ford v. State*, 1929, 121 Ohio St. 292, 168 N.E. 139; *Thomas v. Mills*, 1927, 117 Ohio St. 114, 157 N.E. 488, 54 A.L.R. 1220; *Sanderson v. State*, 1926, 105 Tex.Cr. 198, 287 S.W. 251; *Turner v. State*, 1922, 91 Tex.Cr. 627, 241 S.W. 162, 23 A.L.R. 1378; State ex rel. *Tucker v. Davis*, 1913, 9 Okl.Cr. 94, 130 P. 962, 44 L.R.A.,N.S. 1083.

[54] Jordan Smith & Micah Lee, Not So Secures: Massive Hack of 70 Million Prisoner Phone Calls Indicates Violations of Attorney-Client Privilege, THE INTERCEPT (Nov 11, 2015), https://theintercept.com/2015/11/11/securus-hack-prison-phone-company-exposes-thousands-of-calls-lawyers-and-clients/.

[55] *Black v. United States*, 385 U.S. 26 (1966).

[56] Ex parte *Hull* 312 U.S. 546 (1941).

[57] *Coplon*, 191 F.2d 749, cert. denied, 342 U.S. 926 (1952).

[58] *Black*, 385 U.S. 26 (1966).

[59] *Procunier*, 416 U.S. at 419 (1974).

[60] Associated Press, *Recordings Raise Questions about Inmates Rights*, NBC News (August 4, 2008), http://www.nbcnews.com/id/26013015/ns/us_news-crime_and_courts/t/recordings-raise-questions-about-inmate-rights/#.WvCJe8gvxPZ.

[61] Harvey Rice, *Jails Break the Law When They Record Conversations of Lawyers & Inmates*, Houston Chronicle (Mar 20th, 2012), https://texasjailproject.org/2012/03/2029/.

[62] CWN attempted to reach by phone at least one jail per U. S. state. However, in some circumstances, CWN was unable to reach a jail or receive reliable information from that jail and thus that information is not included in the chart. Jails called by CWN that allow for unrecorded attorney-client phone calls to or from attorney landlines and cell phones include: Montpelier, Vermont; Denver, Colorado; Helena, Montana; Pierre, S. Dakota; Augusta, Maine; Olympia, Washington; Salem, Oregon; Carson City, Nevada; Lansing, Michigan; Indianapolis, Indiana; Honolulu, Hawaii; St. Louis, Missouri; Sacramento, California; Mesa, Arizona; Colorado County, Texas; Centennial, Colorado; Omaha, Nebraska; Anchorage, Alaska; Hartford, Connecticut; Boise, Idaho; Philadelphia, Pennsylvania; Los Angeles, California; Pittsburgh, Pennsylvania; Phoenix, Arizona; Tucson, Arizona; Milwaukee, Wisconsin; Miami, Florida; Virginia Beach, Virginia; Omaha, Nebraska; Oakland, California; Queens, New York: Ft. Lauderdale, Florida; Dallas, Texas; Travis County, Texas; Jacksonville, Florida; Columbus, Ohio; Charlotte, North Carolina; Ft. Worth, Texas and the American Virgin Islands. Jails called by CWN that do record all attorney-client phone calls include: Salt Lake City, Utah; Minneapolis, Minnesota; Tulsa, Oklahoma; Boston, Massachusetts; Frankfurt, Kentucky; Columbia, South Carolina; Annapolis, Maryland; and Concord, New Hampshire.

[63] Maynard *supra*, note 6.

[64] LA CE §506 B (2).

[65] Email from Emily Washington, Staff Attorney, Roderick & Solange MacArthur Justice Center in New Orleans, to Simone Levine, Executive Director of Court Watch NOLA (April 5, 2018, 10:58 AM EST) (on file with author).

[66] *United States v. Lentz*, 419 F. Supp. 2d 794 (E.D. Va. 2005).

[67] Maynard *supra* note 6; Meeting with Marlin Guzman, Orleans Parish Sheriff and Blake Arcuri, Orleans Parish Sheriff's Office Counsel, in New Orleans (April 2, 2018).

[68] Maynard, *supra* note 6; Guzman, *supra* note 67.

[69] Telephone Interview with Steve Viefhaus, the Vice President of Sales for Securus (March 8, 2018).

[70] *Ruiz v. Estelle*, 679 F.2d 1115, 1154-55 (5th Cir. 1982) (affirming injunction prohibiting censorship of attorney-client mail and ensuring confidential attorney-client interviews); *Dawson v. Kendrick*, 527 F. Supp. 1252, 1314 (S.D.W.Va. 1981) (prisoners' right of access to courts "carries with it the right to seek, obtain and communicate privately with counsel;" attorney-client interview area

that does not provide privacy is inadequate); see also *Williams v. Price*, 25 F.Supp.2d 623, 630 (W.D. Pa. 1998) (prison officials' failure to provide facilities for confidential attorney-client conversation violates prisoners' First Amendment free speech and Fourteenth Amendment privacy rights).

[71] Ken Daley, *French Quarter murder trial lurches into allegations of lawyer misconduct*, Nola.com (May 13, 2016), http://www.nola.com/crime/index.ssf/2016/05/french_quarter_murder_trial_lu.html.

[72] Jed Lapinski, *The trials and travails of a New Orleans public defender*, nola.com (March 30, 2016), http://www.nola.com/crime/index.ssf/2016/03/new_orleans_public_defender_trials_and_travails.html.

[73] Telephone Interview with Mary Howell, Private Practioner (April 4, 2018).

[74] U.S. Const. amend. VI.

[75] *Rothgery v. Gillespie County*, 554 U.S. 191, 212 (2008).

[76] *Brewer v. Williams*, 430 U.S. 387, 399 (1977), (The constitutional right to counsel attaches at or before the first appearance, and the first appearance is a proceeding at which the presence of counsel is constitutionally required. The United States Supreme Court has held that the Sixth Amendment right to counsel attaches at "the initiation of adversary judicial criminal proceedings – whether by way of formal charge, preliminary hearing, indictment, information, or arraignment."); *United States v. Gouveia*, 467 U.S. 180, 188 (1984), (quoting *Kirby v. Illinois*, 406 U.S. 682, 689 (1972)).

[77] *See Brewer*, 430 U.S. 387 (1977); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Massiah v. United States*, 377 U.S. 201 (1964).

[78] *See Hamilton v. Alabama*, 368 U.S. 52 (1961).

[79] *See Lafler v. Cooper*, 132 S. Ct. 1376 (2012).

[80] *See id*; *Padilla v. Kentucky*, 599 U.S. 356 (2010); *McMann v. Richardson*, 397 U.S. 759 (1970).

[81] *Alabama v. Shelton*, 535 U.S. 654 (2002); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); In re *Gault*, 387 U.S. 1 (1967); *Gideon*, 372 U.S. 335 (1963).

[82] *Padilla*, 559 U.S. at 356; *McMann v. Richardson*, 397 U.S. 759 (1970).

[83] *Id*.

[84] *Shelton*, 535 U.S. 654 (2002).

[85] *Id*. at 658.

[86] *Id*.

[87] *Iowa*, 541 U.S. at 77.

[88] *Johnson*, 304 U.S. at 464- 465.

[89] *Id*. at 464.

[90] *Patterson v. Illinois*, 108 S.Ct. 2389, 2391 (1988).

[91] *Godinez v. Moran*, 509 U.S. 389, 389 (1993).

[92] *Boykin v. Alabama*, 395 U.S. 238, (1969).

[93] 123 So.3d 758 (La.App. 5 Cir. 8/27/13).

[94] *Louisiana v. Jones*, 123 So.3d 758, 762 (La.App. 5 Cir. 8/27/13) citing *State v. Hinson*, 01–1548 (La.9/14/01), 797 So.2d 32, 32–33 (*per curiam*).

[95] La. Const. art. 1, §13.

[96] National Task Force on Fines, Fees and Bail Practices, *Principles on Fines, Fees, and Bail Practices*, National Center for State Courts (Dec. 2017), https://www.ncsc.org/~/media/Files/PDF/Topics/Fines%20and%20Fees/Principles-Fines-Fees.ashx.

[97] Meeting with Judge Desiree Charbonnet, Chief Judge New Orleans Municipal Court, in New Orleans (July 19, 2016); Meeting with Judge Sens, Chief Judge New Orleans Municipal Court, in New Orleans (September 12, 2016); Meeting with Judge Desiree Charbonnet, Chief Judge New Orleans Municipal Court, in New Orleans (September 29, 2016).

[98] *Padilla*, 559 U.S. at 356; *McMann*, 397 U.S. at 759.

[99] *Housing Authority of New Orleans v. Green*, 657 So.2d 552, 552-55 (La. App. 4 Cir. 6/7/95); *River Garden Apartments v. Horton*, 948 So.2d 396, 399 (La. App 4 Cir. 1/24/07).

[100] David A. Super, Food Stamps & the Criminal Justice System, Champion, November 2001, at 20.

[101] *Zinnanti v. Immigration & Naturalization Service*, 651 F.2d 420, 421 (5th Cir. 1981).

[102] Kelley R. Brandstetter, *Repealing the Drug-Free Student Loan Provision: Would Putting Dope Back into the College Classroom Help Keep Dope Off the Street and Out of the Prison System?*, U. Cin. L. Rev. (2009).; Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, U. Md School of Law (Jun. 6, 2006).

[103] ABA Standards *see supra*, note 12.

[104] ABA Standards *see supra*, note 13.

[105] Email from Edward Walters, Judicial Administrator New Orleans Municipal Court, to Veronica Bard, Program Director of Court Watch NOLA (April 16, 2018, 4:15 PM EST) (on file with author).

[106] Meeting with Chief Deputy City Attorney Charlene Larche Mason and Deputy City Attorney Eusi Phillips, in New Orleans (October 14, 2016); Meeting with Chief Deputy City Attorney Charlene Larche Mason, in New Orleans (June 18, 2017); Meeting with Chief Deputy City Attorney Charlene Larche Mason, in New Orleans (April 17, 2018).

[107]Meeting with Chief Deputy City Attorney Charlene Larche Mason, in New Orleans (June 18, 2017); Meeting with Chief Deputy City Attorney Charlene Larche Mason, in New Orleans (April 17, 2018).
[108] *Id.*
[109] 54 of a total 109 Municipal Court observations.
[110] David Carroll, *Reclaiming Justice*, (Mar. 22, 2013), http://sixthamendment.org/the-right-to-counsel/national-standards-for-providing-the-right-to-counsel/.
[111] *Id.*
[112] Email from Mike Tartaglia, Staff Attorney Sixth Amendment Center, to Simone Levine, Executive Director Court Watch NOLA (Nov 21, 2017 at 1:28 PM EST) (on file with author).
[113] Telephone interview with Judge Mark Shea, David Carroll, Executive Director Sixth Amendment Center, Mike Tartaglia, Staff Attorney Sixth Amendment Center (January 18, 2018).
[114] Email from shealawofficecopier@gmail.com to Simone Levine, Court Watch NOLA (April 4,2018 12:36PM EST) (on file with author).
[115] Telephone Interview with Danny Englebert, Chief of Trial Orleans Public Defenders (April 27, 2018).
[116] Telephone Interview with Chief Deputy City Attorney Charlene Larche Mason, David Carroll, Executive Director and Mike Tartaglia, Staff Attorney (May 9, 2018).
[117] Dasevich *supra*, note 14.
[118] *Negron*, 434 F.2d at 390–91 (2d Cir. 1970).
[119] Chang *supra*, note 16.
[120] *Geders v. United States*, 425 U.S. 80, 91 (1976).
[121] *Terry v. United States*, 21 Ala. App. 100, 105 So. 386 (1925).
[122] Dasevich *supra*, note 14.
[123] American Bar Association Commission on Disability Rights, *COURT ACCESS for Individuals Who Are Deaf and Hard of Hearing A GUIDE*, the American Bar Association, 1, 12.
[124] Kate O. Rahel, *Why the Sixth Amendment Right to Counsel Includes an Out-of-Court Interpreter*, 99 Iowa L. Rev. (2014), 2301-2333, http://ilr.law.uiowa.edu/print/volume-99-issue-5/why-the-sixth-amendment-right-to-counsel-includes-an-out-of-court-interpreter/.
[125] Dasevich *supra*, note 14.
[126] Louisiana Language Access Coalition, *Justice*, (2009), http://www.louisianalac.org/CriminalJustice.html.
[127] *Id.*
[128] La Code Crim Pro§ 25.1.
[129] Maria Clark, *Courts Struggle to Break Language Barriers in Louisiana*, Nola.com (Oct. 20, 2017) http://www.nola.com/crime/index.ssf/2017/10/courts_struggle_to_break_langu.html.
[130]Louisiana Supreme Court, *Bench Card: Court Interpreters*, http://www.ncsc.org/~/media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Language%20Access/LEP%20Resources/Louisiana%20Bench%20Card%20for%20Interpreters-%20Final%20Revision%208%204%2015-%20Legal%20Size.ashx.
[131] Louisiana Supreme Court, *Court Interpreters* https://www.lasc.org/court_interpreters/court_interpreters.asp.
[132] Clark *supra*, note 129.
[133] 41 of 310 total Criminal District Court observations.
[134] 35 of 41 total Criminal District Court observations.
[135] 6 of 41 total Criminal District Court observations.
[136] 11 of 159 total Municipal Court observations.
[137] 54 of 260 total Magistrate Court observations.
[138] 39 of 54 total Magistrate Court observations.
[139] 13 of 15 total Magistrate Court observations.
[140] Meeting with Magistrate Cantrell, in New Orleans (February 22, 2017).
[141] Guzman *supra* note 67.
[142] Cantrell *supra* note 140.
[143] Cantrell *supra* note 140.
[144] Cantrell *supra* note 140.
[145] 461 U.S. 660 (1983).
[146] *Bearden* 461 U.S at 662; The U.S. Supreme Court has struck down imprisonment in both *Williams v. Illinois*, 399 US 235 - Supreme Court 1970 and *Tate v. Short*, 401 U.S. 395 (1971), for failure to pay a fine.
[147] La Code Crim Pro§ CCRP 895.1(2)a.
[148] 184 F.Supp.3d 349 E.D. Louisiana. Case 2:15-cv-04479-SSV-JCW Document 279 Filed 12/13/17 Page 1 of 79.
[149] *Id.* at 60.

[150] *Debtors' Prisons and Criminal Justice Debt* 129 Harv. L. Rev. 1024, 1031 (Feb 10, 2016), (even tightly written laws, settlements, and resolutions need to be enforced, which requires accountability and monitoring. Abolishing the new debtors' prisons is as much a test of moral and societal conviction as it is of sound drafting).
[151] *Id.* at 1027-1028.
[152] 84 of a total 122 Municipal Court observations.
[153] 16 of a total 80 Municipal Court observations.
[154] 15 out of a total 37 Municipal Court first appearance court session observations.
[155] *Cain*, 184 F.Supp.3d at 60.
[156] OíFlaherty *supra*, note 22.
[157] *Id.*
[158] Dedel *supra*, note 23.
[159] Wikipedia https://en.wikipedia.org/wiki/Misdemeanor_murder (last visited Mar. 25, 2018).
[160]The Katrina Impact on Crime and the Criminal Justice System in New Orleans, Hearing before the Subcommittee on Crime, Terrorism, and Homeland Security, One Hundred Tenth Cong. 77 (2007).
[161] Gaines, C., *Witness Intimidation.* (2003). United States Attorneys' Bulletin 51(1): 5-10.
[162] Davis, R., B. Smith and M. Henley, *Victim/Witness Intimidation in the Bronx Courts: How Common Is It, and What Are Its Consequences?* New York: Victim Services Agency (1990); Maynard, W., *Witness Intimidation: Strategies for Prevention. Crime Detection and Prevention Series*, No. 55. London: Home Office Police Research Group (1994).
[163] Elliott, R. (1998). *"Vulnerable and Intimidated Witnesses: A Review of the Literature."* In Speaking Up for Justice. London: Home Office (1994); Fyfe, N. (2001). Protecting Intimidated Witnesses. Aldershot (United Kingdom), Burlington (Vermont): Ashgate.
[164] Meeting with Harry Blummenthal, in New Orleans (April 11, 2018).
[165] Dedel *supra*, note 23.
[166] *Id.*
[167] *Id.*
[168] *Id.*
[169] Kerry Murphy Healey, *Victim and Witness Intimidation: New Developments and Emerging Responses*, National Institute of Justice (October 1995) http://www.popcenter.org/problems/witness_intimidation/PDFs/Healey_1995.pdf.
[170] *Id.*
[171] *Id.*
[172] Davis, R., B. Smith and M. Henley *Victim/Witness Intimidation in the Bronx Courts: How Common Is It, and What Are Its Consequences?*, New York: Victim Services Agency (1990).
[173] Healey *supra*, note 169.
[174] Fyfe, N. *Protecting Intimidated Witnesses* (2001) Aldershot (United Kingdom).
[175] Jennifer Long, Christopher Mallios, and Sandra Tibbetts Murphy, *Model Policy for Prosecutors and Judges on Imposing, Modifying and Lifting Criminal No Contact Orders*, AEQUITAS http://www.aequitasresource.org/model_policy.pdf.
[176] Elliott, R., *Vulnerable and Intimidated Witnesses: A Review of the Literature*, In Speaking Up for Justice (1998). London: Home Office.
[177] Davis *supra*, note 162; Healey, *supra*, note 169.
[178] Buzawa, E., and C. Buzawa (eds.) *Do Arrests and Restraining Orders Work?* (1996) Thousand Oaks (California): Sage.
[179] Finn, P., and K. Healey *Preventing Gang and Drug-Related Witness Intimidation*. NIJ Issues and Practices Series (1996) Washington, D.C.: U.S. National Institute of Justice; Elliott, *supra* note 176; Healey, *supra* note 169.
[180] Finn, *supra* note 179; Davis, *supra* note 177.
[181] Institute for Law and Justice, *Gang Prosecution in the United States* (1993) Alexandria (Virginia): Institute for Law and Justice; Johnson, C., B. Webster and E. Connors, *Prosecuting Gangs: A National Assessment.* NIJ Research in Brief Series (1995) Washington, D.C.: U.S. National Institute of Justice.
[182] Dedel *supra*, note 23.
[183] 16 out of a total 311 Criminal District Court observations.
[184] Some Court Watch NOLA observations reported more than one option for these two data points. One courtwatcher commented, "The victim was unclear in her statement, but she said she didn't want to be there but that both the defense and prosecution attorneys kept contacting her to come to court." Another courtwatcher commented, "Felt harassed and threatened by the ADA."
[185] Text Message from Eva Lessinger, Director of Program Development, to Simone Levine, Executive Director of Court Watch NOLA (May 9, 2018, 8:23 PM EST) (on file with author).
[186] Davis *supra*, note 162; Maynard, *supra* note 162.
[187] Gaines *supra*, note 161 at 5-10.
[188] *Id.*
[189] Dedel *supra*, note 23.
[190] The small sample size of the number of witness intimidation arrests may affect the percentage change calculation.
[191] Telephone call with Donna Andrieu, Assistant District Attorney, re: Public Records Request (May 8, 2018); Meeting with Danny Cassenave and Eric Melancon, in New Orleans (May 8, 2017).

[192] *Id.*
[193] Elliott *supra*, note 176; Finn, P. *supra* note 179.
[194] Comparet-Casani, J. *Balancing the Anonymity of Threatened Witnesses Versus a Defendant's Right of Confrontation: The Waiver Doctrine After Alvarado*. 39 San Diego L. Rev. (2002). 1165-1252.
[195] Gaines, *supra* note 161 at 5-10.
[196]U.S. Department of Justice, Office for Victims of Crime, *New Directions from the Field: Victims' Rights and Services for the Twenty-First Century* (1998) Washington, D.C.: U.S. Department of Justice; Tomz, J., and D. McGillis, *Serving Crime Victims and Witnesses*, 2d ed. (1997) Washington, D.C.: U.S. Department of Justice, National Institute of Justice; Maynard, *supra* 162.
[197] Finn *supra* note 179.
[198] Healey *supra*, note 169.
[199] Dedel *supra* note 23.
[200] *Id.*
[201] *Id.*
[202] Felson, R., S. Messner, A. Hoskin and G. Deane, *Reasons for Reporting and Not Reporting Domestic Violence to the Police*, Criminology 40(3) (2002) 617-647.
[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] William Glaberson, *Abuse Suspects your calls are taped, speak up*, New York Times (Feb. 25, 2011), http://www.nytimes.com/2011/02/26/nyregion/26tapes.html.
[207] *Crawford v. Washington*, 541 U. S. 36, 53–54 (2004) (The Confrontation Clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross examination."); *Davis v. Washington*, 547 U.S. 813, 821-2 (2006) "These cases require the Court to determine which police "interrogations" produce statements that fall within this prohibition. Without attempting to produce an exhaustive classification of all conceivable statements as either testimonial or nontestimonial, it suffices to decide the present cases to hold that statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution."
[208] CE §804 (B)(7).
[209] CE §804 (A)(2).
[210] *Crawford and Its Progeny*, AEQuitas at 11 (October 2012).
[211] Glaberson *supra*, note 206.
[212] Sarah Stillman, *Why are Prosecutors Putting Innocent Witnesses in Jail*, the New Yorker (October 17, 2017), https://www.newyorker.com/news/news-desk/why-are-prosecutors-putting-innocent-witnesses-in-jail .
[213] La.Rev.Stat.Ann.§15:257.
[214] *Id.*
[215] *Id.*; Although a defense attorney may make a material witness warrant application to the court, CWN has not found any examples of this activity in 2017.
[216] Email from Ken Daley, Public Information Officer Orleans Parish District Attorney, to Simone Levine, Executive Director Court Watch NOLA (May 18, 2018 at 6:38 PM EST) (on file with author).
[217] Joel Gunther, *Why Are Crime Victims Being Jailed?*, *BBC News (*May 6, 2017) http://www.bbc.com/news/world-us-canada-39662428.
[218] Samantha Ketterer, *Ogg says DA's office needs reform to protect rape victims*, Chron, (July 26, 2016), http://www.chron.com/news/houston-texas/article/Ogg-says-reform-needed-to-protect-rape-victims-8423671.php. (In Houston, Texas where the incumbent district attorney had jailed a rape victim for failing to cooperate with the prosecution. The incumbent was voted out of office and replaced by current Harris County District Attorney, Kim Ogg who promised, "I will never put a crime victim in jail to secure a conviction…There are so many other things we can do.").
[219] Telephone Interview with Assistant District Attorney Eric Gonzalez, Chief Assistant District Attorney (April 26, 2017).
[220] Meeting with Cook County District Attorney Kim Foxx, in Washington, D.C. (April 19, 2018).
[221] Meeting with Philadelphia District Attorney Larry Krasner, in Washington DC (April 19, 2018).
[222] *Prosecuting Attorney-Charging Decisions*, *Charging Decisions in Domestic Violence-Related Crimes*, Praxis International, Chapter 5 (2016), http://praxisinternational.org/wp-content/uploads/2016/02/BlueprintChapter5.pdf (last visited May 9, 2018) (Do not threaten to or place a victim in custody to ensure witness availability).
[223] Victor *supra*, note 27.
[224] Court Watch NOLA, Court Watch NOLA Criminal District Court Annual Report 2016, (April 2017) at 4 http://www.courtwatchnola.org/wp-content/uploads/2017/04/2016-CDC-Report-3.pdf.

[225] To obtain the number of material witness warrants issued in 2017, CWN researched the number of material witness warrants in the same manner as it did in its previous report back in 2016. However, in addition CWN examined data provided to the City Council by the District Attorney's Office in November 2017.
[226] Orleans Parish Sheriff's Office Docketmaster supra, note 28
[227] The Lens revealed in April 2016 that the DA was creating and issuing unauthorized "subpoenas" to force victims and witnesses to come to the District Attorney's Office as part of the DA's investigation. The practice which the DA later ended after the revelation, led to a series of lawsuits against the District Attorney as well as a news cycle which has lasted over a year.
[228]In *People v. Gary Burnett*, No. 514542, (Orleans Criminal District Court, May 13, 2018) the Orleans District Attorney requested the Judge arrest a witness under Article 21 contempt for failure to appear. One of the judge's main oral objections in refusing to issue the warrant was that under an Article 22 contempt motion, the witness would not have a separate case number and thus could not be easily found in the system as compared to a material witness warrant where each victim and witness arrested, has a separate case number. Due to the separate case number, a witness or a victim incarcerated can be much more easily found in the system by the court, a good governance group such as Court Watch NOLA or victim rights groups.
[229] Alex Woodward, *Louisiana's domestic violence problem*, The Gambit (Nov. 19, 2013), https://www.bestofneworleans.com/gambit/louisianas-domestic-violence-problem/Content?oid=2278476.
[230] Telephone Interview with Mary Claire Landry, Executive Director of the Family Justice Center (April 5, 2018).
[231] *Id*.
[232] Violence Against Women Act of 1994 (VAWA) P.L. No. 103-322, 108 Stat. 1796 (1994), codified at 42 U.S.C. § 13981 (1994).
[233] *Cooks v. Rapides Parish Indigent Defender Bd*., 1996-811 (La.App. 3 Cir. 12/11/96), 686 So.2d 63, writ denied, 1997-0409 (La. 3/27/97), 692 So.2d 398.
[234] Meagan Flynne, *Senators Unanimously Approve Jenny's Law, named for Jailed Rape Victim*, Houston Press (April 6, 2017); Monica Simmons, *Gov. Abbott Signs 'Jenny's Law' to Keep Prosecutors from Jailing Crime Victims*, San Antonio Current (June 5 2017) "Victims of sexual assault and other crimes will never again be jailed, and their traumas exacerbated, solely by prosecutors willing to sacrifice them for a conviction," said new Harris County DA Kim Ogg in a prepared statement Friday."
[235] Bennett L. Gershman, *Prosecutorial Ethics and Victims' Rights: The Prosecutor's Duty of Neutrality*, 9 Lewis & Clark L. Rev. 559 (2005).
[236] Gunther *supra*, note 217.
[237] Bennett L. Gershman, Threats and Bullying By Prosecutors, 46 Loy.U.Chi.L.J 327 (2014).
[238] *Id.*
[239] Gershman *supra*, note 237.
[240]Conference of Chief Justices & Conference of State Court Administrators, *Resolution 12 In Support of State Supreme Court Leadership to Promote Procedural Fairness*, (2013) 1-2, http://ccj.ncsc.org/~/media/Microsites/Files/CCJ/Resolutions/07312013-Support-State-Supreme-Court-Leadership-Promote-Procedural-Fairness-CCJCOSCA.ash.
[241] *Id.*
[242]Emily Gold-LaGratta, et al., *The Location of Justice: Structures Retrofit for Fairness*, Architectual League of New York (Feb 07, 2018) https://urbanomnibus.net/2018/02/retrofit-for-fairness/.
[243] Emily Gold Lagratta & Phil Bowen, *To Be Fair: Procedural Fairness in Courts*, Criminal Justice Alliance (Oct. 2014) http://criminaljusticealliance.org/wp-content/uploads/2015/02/TobeFair.pdf.
[244] Beth S. Riggert, *Controlling the Message in Times of Court Challenges*, National Center for State Courts (2017).
[245] Tina Rosenberg, *The Simple Idea that Could Transform US Criminal Justice*, The Guardian (June 23, 2015) https://www.theguardian.com/us-news/2015/jun/23/procedural-justice-transform-us-criminal-courts .
[246] Pope-Sussman *supra*, note 29.
[247] D. Smith, C. Campbell, and B. Kavanagh. *Trends in State Courts* National Center for State Courts (2017).
[248]LaGratta *supra*, note 242.
[249] Emily Gold LaGratta, *To Be Fair: Conversations about Procedural Fairness*, Center for Court Innovation, 1, 11 (2017).
[250] *Id.* at 28.
[251] *Id.*at 180.
[252]Pope-Sussman *supra*, note 29.
[253] LaGratta *supra at 28* note 242.
[254] *Id.*
[255] LaGratta *supra at 50* note 242.
[256] LaGratta *supra at 14* note 242.
[257] Alexander B. Aikman, *The Art and Practice of Court Administration*, Taylor & Francis (2007).
[258] *See id.*
[259] Wikipedia https://en.wikipedia.org/wiki/Docket_(court), (last visited Mar. 25, 2018).
[260] Conference of State Court Administrators *supra*, note 31.
[261] Remote Access to Court Electronic Records (RACER) Committee of the Council for Court Excellence, *supra* note 32.

[262] Martha Wade Steketee &Alan Carlson, Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts, National Center for State Courts (Oct 2002).
[263] Remote Access to Court Electronic Records (RACER) Committee of the Council for Court Excellence *supra*, note 32.
[264] Public Hearing – NOPD's Initiatives to Reduce Officer Burden & Maximize Police Resources, Federal Judge Susie Morgan, Federal Court, Eastern District of Louisiana February 22, 2018 2pm.
[265] The "Other" category includes 6 observations of retired Judge Terry Alarcon, 6 observations of Judge Donald Johnson, 4 observations of Judge Robert Jones, 4 observations of judges courtwatchers were unable to identify, 2 observations of multiple judges (Judges Sens and Charbonnet and Judges Early and Sens), and 1 observation each of retired Judge Raymond Bigelow, Judge Mark Shea, and Judge Steven Jupiter.
[266]

Court	Judge/Commissioner	Total Number of Observations
Criminal District Court	Paul Bonin	20
Criminal District Court	Camille Buras	14
Criminal District Court	Darryl Derbigny	17
Criminal District Court	Tracey Flemings-Davillier	26
Criminal District Court	Karen Herman	24
Criminal District Court	Arthur Hunter	23
Criminal District Court	Keva Landrum-Johnson	15
Criminal District Court	Robin Pittman	30
Criminal District Court	Laurie White	29
Criminal District Court	Benedict Willard	17
Criminal District Court	Byron Williams	12
Criminal District Court	Franz Zibilich	27
Criminal District Court	Other	7
Magistrate Court	Robert Blackburn	39
Magistrate Court	Harry Cantrell	75
Magistrate Court	Brigid Collins	50
Magistrate Court	Jonathan Friedman	27
Magistrate Court	Albert Thibodeaux	34
Magistrate Court	Other	2
Municipal Court	Desiree Charbonnet	9
Municipal Court	Sean Early	21
Municipal Court	Joseph Landry	32
Municipal Court	Paul Sens	49
Municipal Court	Other	25

[267] Judge Charbonnet resigned from Section C of Municipal Court on April 21, 2017.
[268] Judge Derbigny did not preside in Section J of Criminal District Court for the dates August 17th through August 29th, and September 11th through October 6, 2017. In his stead, Retired Judges Donald Johnson and Raymond Bigelow presided over Section J.
[269] Email from Commissioner Jonathan Friedman to Simone Levine, Executive Director Court Watch NOLA and Veronica Bard, Program Director Court Watch NOLA (May 14, 2018 at 10:50 PM EST) (on file with author). (Commissioner Friedman has instituted a practice where in situations deemed appropriate by the court, his clerk is able to provide defendants with a subpoena date for their next court appearance, so the defendant can leave the court and not be forced to wait for the Judge to arrive to the bench.)
[270] This *n* includes 7 observations of "Other" judges, i.e., judges who are not listed as one of the twelve judges displayed in Figure 22.
[271] This *n* includes 2 observations of "Other" judges or commissioners, i.e., judges or commissioners who are not listed as one of the five judges or commissioners displayed in Figure 22.
[272] This *n* includes 25 observations of "Other" judges, i.e., judges who are not listed as one of the four judges displayed in Figure 22.
[273] CWN would like to thank all its 2017 donors for their support, including the following donors: Leadership Sponsors ($50,000 and above) Baptist Community Ministries, Open Philanthropy, Public Welfare Foundation; Sustaining Sponsors ($10,000 and above) Eugenie Jones Family Foundation, The Helis Foundation, The Herb Block Foundation, LUSH Cosmetics, Mary Freeman Wisdom Foundation, Namlog Foundation, Thomas Weinreich; Benefactor Sponsors ($5,000 to $9,999): Alliance for Safety and Justice, Keller Foundation, Louisiana Bar Foundation, RosaMary

Foundation; Sponsors ($1,500 to $4,999) Adams & Reese, American Civil Liberties Union, Bland & Partners, Katherine and Robert Boh, Business Council of New Orleans and The River Region, EMR, Entergy Corporation, Canal Barge Company, Inc., First Bank and Trust, Susan and Jimmy Gundlach, Haynie Family Foundation,The Helis Foundation, Keifer & Keifer, Jones Walker L.L.C., Kabacoff Family Foundation, Laitram, L.L.C., Derek Lam, Latter & Blum, Inc., LongueVue Capital, Liz and Poco Sloss, the National Council of Jewish Women, the Southern Poverty Law Center, Jason Rogers Williams & Associates, Miriam and Bruce Waltzer Patrons ($1,000-$1,499) Association of Corporate Counsel America, Louisiana Chapter, Foundation of Louisiana , Goldring Family Foundation, Elizabeth Wheeler, George H. Wilson; Donors ($500-$999) Natasha Arvanitis, AT&T, Gillis Ellis Baker, Ralph Brennan Restaurant Group, Nandi Campbell, Liskow & Lewis, Newell Normand Campaign Fund, Sally and Walter Cockerham, Law Office of Chip Forstall, William and Susan Hess, Patti and Robert Lapeyre, Wayne Lee, Monique and Bob McClesky, Pan-American Life Insurance Group, The Innocence Project, Sidney Pulitzer, Law Offices of Dan A. Robin, Jr. LLC, Barry Scheck, John Seewoester, Vysali Soundararajan, Laurie and Paul Sterbcow, Stewart Capital, Schonekas, Evans, McGoey & McEachin, LLC, Stone Pigman Walther Wittmann, Whitney Bank, Matt Wisdom, and Women for a Better Louisiana.