

RECOMMENDATIONS

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

INCREASING EFFICIENCY

1. Enact A Written Policy on Continuances

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

2. Perform A Caseflow Management Study

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

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

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

3. Support Right-Sizing the Courts

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

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

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

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

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

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

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

⁷⁷ See *supra* at 24-25.

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

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

PROMOTING TRANSPARENCY

5. Encourage Audibility and Transparency in Every Courtroom

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

6. Begin Court Promptly Each Day

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

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

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

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

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

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

The State's failure to produce discovery to the defense has been one of the top 10 observed reasons for continuances at Tulane and Broad in both 2012 and 2013, but *this does not have to be the case*.⁸⁰ Whereas the State currently weighs each piece of case information gathered against the disclosure standards of, *inter alia*, Louisiana Law⁸¹ and *Brady v. Maryland* (which, for instance, requires the State to produce all relevant exculpatory information to the defense),⁸² and does so on a case-by-case basis, other jurisdictions have embraced open-file discovery, in which the defense generally has access to the prosecutor's entire case file. Louisiana District Court Judges recently noted the need to bring this practice to Louisiana.⁸³

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

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

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

⁸¹ See La. Code Crim. P. arts. 716-729.7.

⁸² 373 U.S. 83 (1963).

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

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

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

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

EMBRACING ACCOUNTABILITY

9. Implement Performance Measurement Tools

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

10. Publicize Court Performance Metrics

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

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

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