



METROPOLITAN CRIME COMMISSION, INC.

ORLEANS PARISH JUDICIAL ACCOUNTABILITY REPORT

January – June 2007

In our ongoing efforts to promote transparency and accountability of the New Orleans criminal justice system, the Metropolitan Crime Commission (MCC) presents this analysis examining the felony docket management of judges in Orleans Parish Criminal District Court.

To better understand the context of these results, it is important to note that, like the rest of the criminal justice system, Orleans Parish Criminal District Court had to overcome significant hardships in the aftermath of Hurricane Katrina. The court was completely non-operational until December 1, 2005 when temporary space was provided for limited activities to resume. A portion of the court house reopened in June of 2006, and judges rotated in temporary court rooms with only half of the judges able to convene court at a single time. All 12 sections of court fully reopened in October 2006, more than a year after the storm. Much of the evidence for cases pre-dating Hurricane Katrina was damaged by floodwaters and had to be cleaned by disaster recovery experts. Witnesses were displaced and sometimes unavailable to provide testimony. Orleans Parish residents were displaced and many were unable to serve jury duty. In addition, the New Orleans Police Department and District Attorney's (DA's) Office lost large numbers of staff and were similarly incapacitated in their ability to participate in the criminal justice process.

Orleans Parish Criminal District Court has 12 elected judges, each overseeing a section of court. When the DA's Office accepts a felony case, it is randomly assigned to one of these twelve sections of court. This random allotment process theoretically provides that, over time, judges will receive an equal number of cases and similar types of cases. The role of the judge is to serve as an independent and objective arbitrator and to ensure that legal proceedings are properly conducted and conform with due process protections.

The overriding goal of this research is to measure judicial performance in an effort to promote equitable and efficient

administration of justice. While it is unquestionable that the criminal justice system is still struggling to overcome the devastation of Hurricane Katrina, the Katrina-effect alone does not explain performance disparities within the judiciary.

This study examines three measures of case processing: the number of open cases in each judge's inventory, the age of open cases, and the time it takes for cases to close. The MCC is not advocating placing greater value in the speed of justice over fairness. Rather, we believe that applying these measures established by the National Center for State Courts and the American Bar Association provides a meaningful basis for evaluating judicial performance and determining efficiency.

Primary research findings from this examination of judicial performance include:

- Comparing judges' case processing statistics reveals wide disparities in judicial efficiency and performance.
- The average number of open felony cases in each judges' section of court has risen to 190, which is an increase from the average of 115 open cases per section in 2000.
- An average of 38% of each judges' open felony cases at the end of the second quarter were more than one year old, and 29% of all open felony cases pre-date Hurricane Katrina.
- The median time that it took to close a felony case was 293 days, and only 56% of closed cases achieved the American Bar Association standard of closing in less than one year.
- Approximately half (47%) of felony convictions resulted in incarceration sentences, compared to 28% before Hurricane Katrina.

As the court progresses in its recovery, the MCC will continue to track trends in judicial performance to keep the public, policy makers, and the judiciary informed and engaged about felony case processing within Orleans Parish Criminal District Court.

JUDICIARY RANKINGS

Exhibit 1 shows judges' rankings from most to least efficient. These rankings are based upon their numbers of open cases, percent of cases that are over one year old, and the time it took for cases to close in their sections of court.

The three judges most efficient at processing cases in the first six months of 2007 are Judges Dennis Waldron, Raymond Bigelow, and Terry Alarcon. Each of these judges ranks in the top four for case inventories, age of caseloads, and the time it took for cases to close.

The three lowest performing judges are Darryl Derbigny, Frank Marullo, and Arthur Hunter. Judge Derbigny is ranked lowest for having the largest inventory of open cases. Over half of his cases were more than one year old, and his section had the third longest case processing time. Judge Marullo's low ranking results from his high inventory of open cases and lengthy case processing time. Judge Hunter is the third lowest ranked judge for having a high number of cases more than a year old in his open case inventory. He also had an average inventory of open cases and longer than average case processing time.

EXHIBIT 1: Case Processing Efficiency Rankings

Ranking	Judge
1	Judge Dennis Waldron, Section F
2	Judge Raymond Bigelow, Section I
3	Judge Terry Alarcon, Section L
4 – Tie	Judge Benedict Willard, Section C
4 – Tie	Judge Camille Buras, Section H
6 – Tie	Judge Lynda Van Davis, Section B
6 – Tie	Judge Calvin Johnson, Section E
8	Judge Julian Parker, Section G
9	Judge Arthur Hunter, Section K
10	Judge Frank A. Marullo, Jr., Section D
11	Judge Darryl Derbigny, Section J

NOTES: Section A of Criminal District Court was vacated by the suspension and subsequent retirement of Judge Charles Elloie. The seat has been filled with temporary ad hoc judges and is not part of judicial rankings. Results for Judge Arthur Hunter do not include 71 felony cases whose prosecution was halted because Judge Hunter ruled that the public defenders' office was unable to represent these defendants in his section of court.

CASE PROCESSING EFFICIENCY

The three measures of judicial efficiency examined by the MCC are the inventory of open cases, the percent of cases more than one year old, and case processing time. Largely based upon standards put forth by the American Bar Association (ABA), these performance and management measures are recognized by the National Center of State Courts as valid and reliable indicators of judicial performance. Assessing court performance in these areas provides important information for judges to more effectively and efficiently manage felony cases assigned to them and serves as an educational tool for the public to assess the performance of their elected judiciary.

Many factors affect the time it takes to process a particular case, including the severity of charges against defendants, whether a trial or an appeal is involved, and the number and types of pretrial motions in a case. Due to the random allotment of cases in the court, however, these factors do not determine the long-term performance of an individual judge. Solid judicial performance results from good docket management practices, such as timely scheduling of court events and well-defined continuance policies. Adopting such practices establishes a judicial culture of productivity and efficiency within a courtroom.

Docket Size – Inventory of Open Cases

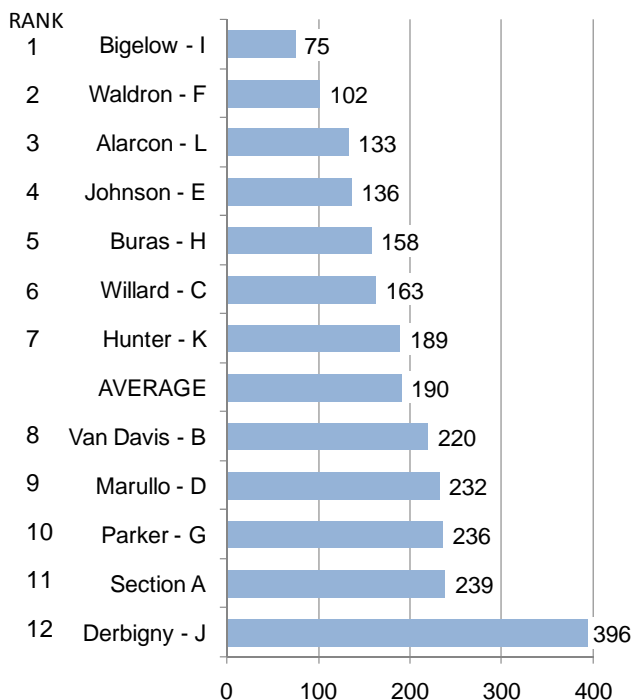
The open case inventory is comprised of defendants waiting to learn final dispositions or outcomes of their criminal cases. Final dispositions include guilty pleas, trial verdicts, or dismissals.

Judges are allotted essentially the same number and types of cases. Therefore, over time, the number of open cases before each judge is an appropriate indicator of judicial performance and management skills. Smaller numbers of open cases indicate that a judge is efficient in managing his/her docket.

Exhibit 2 shows each judge's average number of open felony cases at the end of the first and second quarters of 2007. The total court average of 190 open cases is 65% higher than the average of 115 open cases found by the MCC in 2000.¹

The number of open cases before judges varies widely from a low of 74.5 to a high of 396. This range of 320 open cases indicates large disparities in judges' case management practices. The lower case inventories of Judges Bigelow, Waldron, and Alarcon may indicate that these judges apply case management techniques that other judges in Criminal District Court could replicate in order to reduce their own felony case inventories.

EXHIBIT 2: Inventory of Open Felony Cases – First and Second Quarters 2007



Source: Judicial Administrator of Criminal District Court, Orleans Parish Criminal Sheriff's Office

NOTES: Section A was headed by rotating ad-hoc judges, the Chief Judge, currently Judge Raymond Bigelow, is not allotted new cases for six months per year

Age of Docket – Percent of Cases Over One Year Old

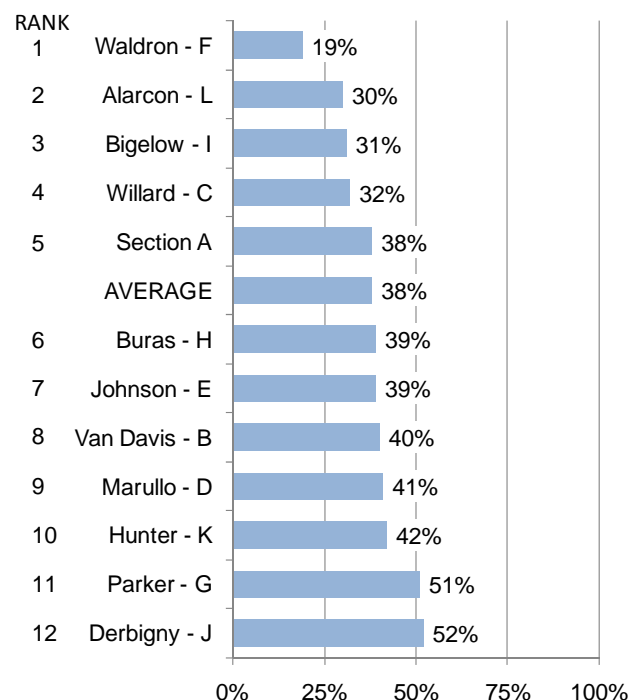
The percent of cases over one year old indicates the age of a judge's inventory and is another indicator of a judge employing effective management practices. ABA standards provide that all felony cases should close within one year of a defendant's arrest. Cases over one year old may be considered "backlogged" and out of compliance with national standards.

Exhibit 3 shows the percent of open felony cases more than one year old at the end of the second quarter of 2007. The MCC measured the time a case was assigned to a judge rather than the time from arrest to disposition cited in ABA standards.

In 2000, the last year the MCC evaluated the courts, 13% of cases were over one year old.² Comparatively, at the end of the second quarter of 2007, the average percent of felony cases over one year old was 38%. **Twenty-nine percent (29%) of all open felony cases pre-date Hurricane Katrina.**

Hurricane Katrina delayed processing of felony cases, but high numbers of cases over one year old, particularly in Judges Parker's and Derbigny's sections, show that some judges are more successful at bringing these oldest cases to conclusion.

EXHIBIT 3: Percent of Felony Cases Over One Year Old – At the End of the Second Quarter 2007



Source: Judicial Administrator of Criminal District Court, Orleans Parish Criminal Sheriff's Office

NOTE: Section A was headed by rotating ad-hoc judges

Felony Case Processing Time

Case processing time is expressed as the median time for cases to close, meaning that one half of cases closed in less than the median time while the other half closed in more than the median time. Time that defendants were at large and unavailable to appear in court is not included in these calculations.

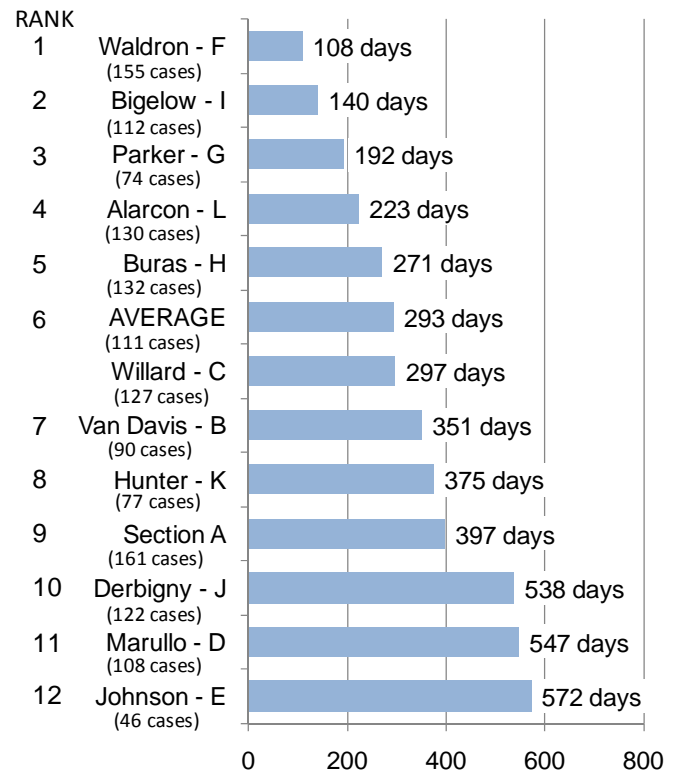
The median case processing time for cases that closed in the first and second quarters of 2007 was 293 days (see Exhibit 4). For cases that pre-date Hurricane Katrina the median case processing time was 697 days, compared to a median case processing time of 165 days for cases that came after the storm.

Current case processing times far exceed what the MCC found in past judicial performance research. The median felony case processing time in 2000 was 45 days.³

Only 56% of closed felony cases were concluded in less than a year and met ABA case processing standards. However, 86% of cases that opened after Hurricane Katrina closed in less than a year. A Bureau of Justice Statistics study of large urban counties found that 87% of felony cases concluded within a year of a defendant's arrest.⁴ Although the MCC measures case processing time from the time the case is assigned to a judge rather than the ABA measure from the time of arrest, the similarity to nationwide case processing statistics shows that the judiciary of Orleans Parish Criminal District Court is working toward processing new criminal cases at a pace similar to their peers nationwide.

Judges with shorter case processing times have employed management practices that result in fewer delays and more efficient resolution of criminal cases. There is a 464-day difference between the most efficient case processing time of 108 days and the least efficient case processing time of 572 days. This high range of case processing times shows once again that prudent judicial docket management techniques can be employed to improve the efficiency of judicial performance.

EXHIBIT 4: Felony Case Processing Time – First and Second Quarters 2007*
(Number of closed cases per section in parentheses)



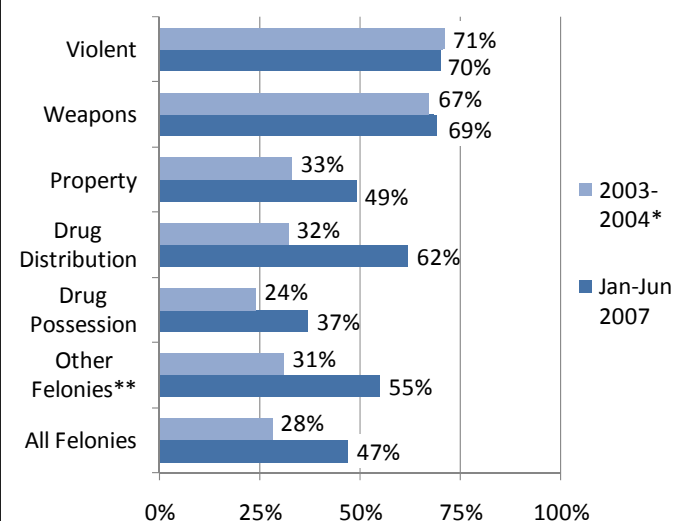
Source: Judicial Administrator of Criminal District Court, Orleans Parish Criminal Sheriff's Office, Orleans Parish District Attorney's Office

NOTE: Section A was headed by rotating ad-hoc judges

* Estimated error rate of up to 5%

FELONY SENTENCING PRE AND POST HURRICANE KATRINA

EXHIBIT 5: Percent Sentenced to Incarceration for Felony Convictions



*Source: Data compiled for "Performance of the New Orleans Criminal Justice System 2003-2004" MCC, August 2005

** "Other Felonies" include offenses such as crime against nature, cruelty to animals, failure to register as a sex offender, etc.

There has been a dramatic shift in sentencing practices post Hurricane Katrina. In the first half of 2007, defendants convicted of felony property, drug, and other crimes in Orleans Parish Criminal District Court were more likely to receive a jail sentence, compared to pre-Hurricane Katrina. Figure 5 shows the percent of individuals incarcerated upon being convicted of different types of felony offenses.

The overall incarceration rate for felony convictions increased to 47% in the first half of 2007 from 28% in 2003-2004. The biggest shift in sentencing practices is seen with drug distribution convictions. **The incarceration rate for individuals convicted of drug distribution nearly doubled to 62% in 2007 from 32% in 2003-2004.** There are also smaller but significant increases in the percent of property, drug possession, and other felony convictions resulting in incarceration.

Incarceration rates for violent and weapons offenses are largely unchanged from before Hurricane Katrina (2003-2004) and the first half of 2007.

Local incarceration rates for felony violent, weapons, and drug distribution convictions are similar what is found nationwide. Bureau of Justice Statistics research shows that, for example, 77% of violent felony convictions result in incarceration, compared to 69% sentenced to incarceration in Criminal District Court.⁵

CONCLUSIONS

This report reveals large disparities in the case processing efficiency of the Orleans Parish judiciary. Differences in the number of open pending cases before each judge, the percent of cases more than one year old, and case processing times show the varying levels of efficiency of judges' case management practices. Well managed sections of court have typically adopted clearly communicated and understood case processing time goals. **Reducing the great disparity in performance among Criminal District Court judges can be accomplished by lesser performing judges' adoption of more efficient practices.**

We acknowledge that in some instances, the measures used in this report may be impacted by circumstances beyond a judge's control. However, these variables impact every judge's docket and do not explain the wide differences in case processing efficiency. Some delays are caused when witnesses do not show up, and in some cases defendants might also miss court dates. Continuances sought by defense attorneys and prosecutors are a common source of delay in criminal proceedings. An efficient judge will establish a culture within the courtroom which will limit abuse of continuances that often create docket backlogs.

Judges must be prudent arbitrators of justice and see that cases proceed in an efficient and equitable manner. The old adage "justice delayed is justice denied" applies universally to all participants in the criminal justice process – including victims and defendants. To permit cases to languish in the system results in not only increased backlogs, but it squanders criminal justice system resources, manpower, and tax dollars. Specific costs include rescheduling court events and maintaining case files. Defense attorneys and staff in each court, the Clerk of Court's office, and the DA's Office waste time duplicating preparation when cases are not adjudicated efficiently. Police Officers miss time on patrol when they must be in court, and other witnesses are often needlessly inconvenienced when they must take time off from work only to find that a trial has been postponed. Case delays may also infringe upon defendants'

right to a speedy trial. It is the judge's responsibility to guard against unnecessary case delays.

This report confirms that the court is still struggling to resume operating at pre-Katrina levels of efficiency. On average, 38% of each judges' open criminal cases at the end of the second quarter were more than a year old, including 29% of all of open felony cases that pre-date Hurricane Katrina. Judges with lower pending dockets of pre-Katrina cases are efficiently managing their resources. **The MCC respectfully encourages all members of the judiciary to adopt practices that will bring pre-Katrina cases to their most expedient conclusion.** Targeting these cases for closure will eliminate a majority of the backlogged cases in Criminal District Court.

The MCC commends the judiciary as a whole for its processing of new cases initiated after Hurricane Katrina. Eighty-six percent (86%) of post-Katrina cases that closed in the first half of 2007 were concluded within one year. Comparatively, a study of courts nationwide found that 87% of felony cases closed within a year of arrest.⁶ The national data tracks cases from arrest to conclusion, but MCC research examines only time from when a case is assigned to a judge until it closes, which provides a more conservative estimate. Even with different approaches to measuring case processing time, the MCC believes that these statistics show the judges of Criminal District Court are beginning to process cases at a pace that is consistent with national averages.

Given the adversity faced by the court, it cannot be reasonably expected that the judiciary would have case processing statistics in line with what was found in past MCC research. This report documents many differences between measures taken in the first half of 2007 and before Hurricane Katrina. The purpose of presenting these statistics is to show the difference between case processing efficiency before and after Hurricane Katrina on a judge by judge basis. Future reports will track how well and how quickly the judiciary returns the court to its previous level of functioning and implements further improvements to judicial efficiency.

Acknowledgements

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The Metropolitan Crime Commission is part of a recently established community coalition focused upon bringing accountability and improvements to the New Orleans criminal justice system. The MCC thanks the following organizations for allowing us to join with them in the pursuit of excellence in our criminal justice system: Bridge House, Business Council of Greater New Orleans, Citizens for 1 Greater New Orleans, Common Good, Crimestoppers, Jefferson Business Council, New Orleans Chamber of Commerce, New Orleans Metropolitan Convention and Visitors Bureau, New Orleans Police and Justice Foundation, New Orleans Regional Black Chamber of Commerce, NOLA Court Watch, the Urban League, and Young Leadership Council.

^{1, 2, 3} "Felony Justice in Orleans Parish Criminal District Court" Metropolitan Crime Commission; October 2001

^{4, 6} "Felony Defendants in Large Urban Counties, 2002" Bureau of Justice Statistics, February 2006

⁵ "Felony Sentences in State Courts, 2002" Bureau of Justice Statistics, December 2004