

Santa Fe Domestic Violence Court Watch

Final Report

August, 2011

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INTRODUCTION

This report summarizes and analyzes the data compiled for the Santa Fe Domestic Violence Court Watch Project from October 1, 2009, through June 30, 2011. Program funding originated with a U.S. Department of Justice, Office of Violence Against Women grant through a New Mexico Crime Victims Reparation Commission state sub-grant. The City of Santa Fe Police Department was the official sub-grant recipient.

Santa Fe Court Watch's observations are presented in this report in three main sections:

1. General Observations: Domestic violence arraignments, pretrial hearings, trials and order-of-protection hearings are viewed from a broad perspective as to courtroom decorum, victim recognition/validation and defendant release conditions.
2. Case Studies: Four specific domestic-violence cases are individually chronicled from start to finish and then examined for their significance to the Santa Fe County judicial system's treatment of domestic violence on the whole.
3. Conclusions: Recommendations for the Santa Fe County judiciary as well as suggested program improvements for future Court Watch initiatives.

PROGRAM GOAL

The primary goal of the Court Watch Project was to observe hearings within the First Judicial District of New Mexico, to identify areas where the legal system's response to domestic violence could be strengthened. Under those guidelines, Court Watch Monitors, a group of volunteer citizens, recorded facts and impressions of proceedings in both Santa Fe County Magistrate and First Judicial District Court. Points of focus included the comportment of court personnel, the activities of victim advocates, defendant behavior, judicial demeanor, case disposition and identifying the long-term causality in domestic violence cases.

ACHIEVEMENTS

The initial responsibility for the Domestic Violence Court Watch Project was program development and volunteer recruitment and training. Coordinator Jenna Yanez, an attorney, studied statutes relevant to domestic violence crimes, examined the methodologies of existing monitoring projects throughout the United States, and designed a training curriculum for volunteers based on successful aspects of those programs. Ms. Yanez developed printed program materials including the Court Watch brochure, volunteer job description, volunteer application, and courtroom monitoring forms. All volunteers received training in the following areas:

- Dynamics of domestic violence
- Common legal terminology
- Court procedures
- Domestic violence statutes
- Victim's rights
- Defendant's rights
- Judicial response
- Law enforcement response
- Probation response
- Prosecution response
- Orders of Protection

Upon completion of training, volunteers began monitoring cases in Santa Fe Magistrate and First Judicial District Courts in December, 2009.

Monthly volunteer meetings were held to provide on-going training. Guest presenters included a Magistrate Court Judge; a detective from the Santa Fe Police Department; a Public Defender, a Domestic Relations Hearing Officer, the City of Santa Fe's Domestic and Sexual Violence Prevention Coordinator, among others. Volunteers were also invited to attend meetings of the Santa Fe Coordinated Community Response Council (CCRC), whose membership includes representatives of victim advocacy, social service, medical care, behavioral health care, law enforcement and the community.

Court Watch volunteers monitored over 200 domestic violence cases. Monitoring was restricted to cases involving charges of criminal domestic violence, a misdemeanor, at Magistrate Court and felony assault and/or battery against a household member in District Court, as defined by the

New Mexico Criminal Code. Additionally, monitoring included cases involving petitions for Orders of Protection and violations of Orders of Protection.

Crimes of domestic violence are fraught with emotion, and the feelings and the trauma suffered by all involved should not be lost in the complexities of the legal system. It is important to note that the statistics here represent people, and how the legal system has helped or hindered their lives. Plainly stated, the Court Watch Project gathered objective data on domestic violence proceedings, but also documented human perspectives and observations.

OBSERVATIONS

Monitors from the Santa Fe Court Watch Project attended the following proceedings:

- Arraignments
- Pretrial hearings
- Trials
- Order of protection hearings
- Probation violation hearings
- Sentencings

The most common proceedings, and hence, the bulk of observations, were arraignments and pretrial hearings. The majority of observations pertain to the key elements in these proceedings including:

1. Courtroom environment
2. Victim recognition and consideration
3. Defendant bail-bond reduction and conditions of release

A number of the cases observed were followed through every step in the judicial process, from arraignment to final disposition (see Chart 1 on page 14 of this report). Court Watch made a special effort to do this when the case had a high lethality index or the defendant was a repeat offender. Lethality indicators were based upon the research by Jacqueline Campbell, RN, PhD and included the following items:

1. Has the physical violence increased in severity or frequency over the past year?
2. Does he own a gun?
3. Have you left him after living together during the past year?
- 3a. (If have *never* lived with him, check here____)
4. Is he unemployed?
5. Has he ever used a weapon against you or threatened you with a lethal weapon?

- 5a. (If yes, was the weapon a gun? ____)
6. Does he threaten to kill you?
7. Has he avoided being arrested for domestic violence?
8. Do you have a child that is not his?
9. Has he ever forced you to have sex when you did not wish to do so?
10. Does he ever try to choke you?
11. Does he use illegal drugs? By drugs, I mean "uppers" or amphetamines, Meth, speed, angel dust, cocaine, "crack", street drugs or mixtures.
12. Is he an alcoholic or problem drinker?
13. Does he control most or all of your daily activities? (For instance: does he tell you who you can be friends with, when you can see your family, how much money you can use, or when you can take the car?)
- (If he tries, but you do not let him, check here: ____)
14. Is he violently and constantly jealous of you?
- (For instance, does he say "If I can't have you, no one can.")
15. Have you ever been beaten by him while you were pregnant?
- (If you have never been pregnant by him, check here: ____)
16. Has he ever threatened or tried to commit suicide?
17. Does he threaten to harm your children?
18. Do you believe he is capable of killing you?
19. Does he follow or spy on you, leave threatening notes or messages on answering machine, destroy your property, or call you when you don't want him to?
20. Have you ever threatened or tried to commit suicide?

MAGISTRATE COURT

Arraignments

All arraignments are heard in Santa Fe County Magistrate Court. Domestic Violence cases are distributed among four courtrooms and four different judges. All courtrooms are similar, with the main entrance providing access to the gallery which provides seating for the general public; victims, victim's family or advocate, defendant's family and bail-bond agents. Court Watch volunteers sat in the gallery. The other half of the courtroom situates the judge and clerk on one side, and the jury box on the opposing side, with the tables for prosecutors and defense attorneys in between, near the gallery, and facing the judge. A podium is situated between the attorney's tables, facing the bench. Defendants to be arraigned are seated in the jury box if in custody, or at the table designated for the defense team. Defendants in custody are dressed in orange prison garb and are transported from the detention center to the courtroom by Sheriff's deputies. Before all proceedings, the defendants are made to stand and they are read their rights in English by the judge. The judge asks if any defendant requires an interpreter. If so, an interpreter is summoned, if not already present. The judge then brings defendants to the podium where they and their defense council are read the charges and associated penalties. Defendants may then enter a plea.

Court Environment

The first thing that is obvious at Santa Fe Magistrate Court is the absence of security. There is no metal detector or security check upon entering the building. There is nothing to stop a party from bringing a weapon into the courthouse. There is usually only one Sheriff's Deputy present, though there are transporting officers, who stay in the courtrooms. All parties involved in any case must sign in at the same window and wait in the same small waiting area. One volunteer observed, "The waiting room was very crowded today. I noticed one young woman sitting in the corner, crying, while a group of people two rows away kept looking at her and laughing. When I got into the courtroom, I realized one of the individuals laughing was the defendant in a domestic violence case. I think the girl was the victim." To allow alleged victims and perpetrators to interact in a common area without security precautions may lead to witness intimidation and re-traumatization. In the event of violence erupting, this situation places everyone in the courthouse in danger. Court Watch suggests that Santa Fe County Magistrate Court improve security measures before anyone enters the building. A security officer in the waiting room would also improve safety.

With respect to the actual Magistrate Courthouse building, one volunteer noted the lack of ADA (Americans With Disabilities Act) compliance. As one volunteer approached the building, she encountered a man in a wheelchair waiting outside the exterior courthouse door because there was no means for him to open the door himself.

Courtroom environment varied somewhat, with different judges requiring different levels of quiet and restraint but, in general, court hearings were conducted with dignity and decorum.

The most common observation at Magistrate Court concerned poor acoustics. Volunteers noted their inability to hear arguments, despite the fact that both the bench and the podium are fitted with microphones. Counselors usually do not use the podium, but stand and speak from their respective tables, facing the judge. Persons seated in the gallery are unable to hear the prosecution and defense arguments. Only the judges who spoke both loudly and clearly could be understood. At one hearing, where conditions of release were at issue, a volunteer reported, “The victim and her family were seated next to me. They kept saying they couldn’t hear what was going on. They tried to ask the prosecutor what happened after the hearing was over but she had already moved on to the next case.” It seems fundamentally important that all parties concerned, victims, alleged perpetrators, families and friends, hear what transpires in the courtroom. This problem could be easy to rectify by encouraging counselors and judges to speak clearly and at a volume that allows persons in the gallery to hear. Microphones for voice amplification would also help.

Towards the beginning of the report period, volunteers reported significant problems with scheduling and punctuality at Magistrate Court. Some cases scheduled for early morning were not addressed until afternoon. Reasons noted included transport problems for defendants in custody, absence of defendants not in custody, and lack of preparation or communication on the part of the prosecution or defense. This often caused confusion because cases had to be shuffled on the docket. In some cases defendants and attorneys were not sure which case was being called. As the report period came to an end, volunteers noted a marked improvement in scheduling and punctuality, with less confusion and fewer delays.

Volunteers expressed some concern about the ability of defendants to silently interact with the victims. Several volunteers observed such interactions, where defendants looked menacingly at the victims or distracted them with winks, smiles, or other facial expressions. “The defendant kept turning to smirk at someone in the audience today. I think it was the victim. Nobody seemed to notice.”

Prosecution

Court Watcher monitors frequently mentioned that prosecutors in Magistrate Court seemed somewhat disorganized. In some cases, continuances were requested because prosecutors had "misplaced" case files. “[Prosecutor] was unprepared again today and couldn’t find the file for the case. She seemed very confused.” For clarity, we had District Attorney Angela “Spence” Pacheco present at a monthly Court Watch volunteer meeting to discuss domestic violence cases from a prosecution perspective. Volunteers came away with an appreciation for the increased pressure that “the burden of proof” places on prosecutors. Volunteers wondered what could be done to decrease the number of cases each assistant district attorney is required to handle.

Victims

Court Watch Santa Fe was unable to compile data on the number of victims that attended arraignments simply because they are most often not identified in court. This raised concern among volunteers because New Mexico law clearly states that the court should verify that a victim has been given notice of hearings. NMSA Section 31-26-10.1 states:

A. At any scheduled court proceeding, the court shall inquire on the record whether a victim is present for the purpose of making an oral statement or submitting a written statement respecting the victim's rights enumerated in Section 31-26-4 NMSA 1978. If the victim is not present, the court shall inquire on the record whether an attempt has been made to notify the victim of the proceeding. If the district attorney cannot verify that an attempt has been made, the court shall:

- 1. reschedule the hearing; or*
- 2. continue with the hearing but reserve ruling until the victim has been notified and given an opportunity to make a statement; and*
- 3. order the district attorney to notify the victim of the rescheduled hearing.*

B. The provisions of this section shall not limit the district attorney's ability to exercise prosecutorial discretion on behalf of the state in a criminal case.

C. The provisions of this section shall not require the court to continue or reschedule any proceedings if it would result in a violation of a jurisdictional rule.

Victim presence did not seem to be of concern in Magistrate Court. In some isolated instances, the Court's attention was drawn to the victim only if a Victim's Advocate was present or by the victim personally. That said, the court invariably appeared willing to make concessions and accommodations in response to victim's requests, once their presence was recognized.

Defendants

The main reasons for an arraignment are to establish the defendant's position of his/her guilt or innocence, to set a monetary bond for release, and to establish the conditions of release. Judges may set bond in three possible categories:

- A Cash Only bond requires the defendant to post the entire bond amount or remain in custody.
- A Cash Surety bond allows the defendant to secure the services of a bail-bond agent, who guarantees the amount bail. As long as the defendant appears for scheduled appearances, he/she needs only pay the bonding agent a small percentage of the total ordered by the court.

- An Unsecured Bond releases the defendant on their own recognizance and they are monetarily liable only if they evade further proceedings or violate other conditions of release.

Conditions of release vary a little from case to case, but typically include:

- No contact with the victim
- No possession of firearms
- No possession or consumption of alcohol, illegal drugs, or controlled substances
- Random urinalysis
- Alcohol or drug assessment
- Pretrial supervision

Magistrate Court Judges were open to arguments by both defendants and victims for altering the typical conditions of release. Quite often, the victim would request contact for purposes of childcare and financial support. Court Monitors recognized that judges had to make difficult decisions when safety was in conflict with the request for contact by the victim. Most often Magistrate Court Judges would honor a victim's request for contact, but there were times when the judge recognized the danger of the situation and included a no-contact order in the conditions of release despite arguments to the contrary. "The victim asked the judge to lift the order of no contact so the defendant could watch the kids while she is at work. The judge said that the history between these people was too violent and that they could not have contact with each other. This was good because they had been in court for domestic violence several times before and she seemed scared of him."

DISTRICT COURT

The First Judicial District Court hears felony domestic violence cases passed on by Magistrate Court and grants Orders for Protection, Divorces, Custody, Child Support and Alimony. While many of these are issues for victims of domestic violence, Order for Protection Hearings and Probation Violation Hearings were attended by Court Watch volunteers.

District Court provides a safer environment than Magistrate Court. There is a metal detector and several law enforcement officers at the front entrance. Each courtroom has a Bailiff and a Court Reporter.

Like Magistrate Court, the single most common observation by Court Monitors in District Court was the inability to hear the proceedings. Both Prosecution and Defense tables are densely populated during proceedings. Sidebar conversations among legal teams, can drown out what is being said by the principals. Many observers wondered why the installed public address systems were not used. "I couldn't hear today because the lawyers were talking and laughing. The judge asked them once to be quiet but they ignored him." "There was a plea deal discussed but I could

not hear the details because of all the noise in the courtroom.” Even though the judge can usually be heard, the chaotic communication throughout the courtroom made it difficult to keep the statements from the bench in context. At times, monitors could not even be certain which case was being heard. If a Court Monitor cannot hear the proceedings, neither can a victim nor defendant sitting in the gallery.

Orders for Protection

An Order for Protection hearing is difficult for the petitioner, the respondent, and the judge. The parties usually cannot afford attorneys, which leaves the judge walking a fine line between helping conduct the proceeding and giving legal advice from the bench. Volunteers observed that if anyone was represented by counsel, it was usually the respondent. “This is the third hearing where the respondent had a lawyer and the petitioner didn’t. I think this happens because when the petitioner runs from a bad situation she doesn’t have access to the bank account anymore.” The combination of not understanding the process, the intimidation of speaking in court, and the proximity to the respondent can be very traumatic for the petitioner in these cases. “The Petitioner was very scared and could not stop crying. She tried to give her statement but you could not understand what she was saying. She finally just said she couldn’t do this and sat down.” The imbalance of power that exists in abusive relationships is exacerbated in Order for Protection hearings. The only remedy Court Watch can identify to equalize this imbalance is greater access to legal services for pro se litigants and increased sensitivity by judges to the intense emotional trauma being experienced by both petitioners and respondents.

CASE STUDIES

The following are observations on cases that were followed closely from arraignment/pretrial hearings to final disposition:

Case Study 1 - Jerry Wood - D-101-CR-200900436

Court monitors first saw the defendant at his arraignment in Magistrate Court. He stood out because he looked very “clean cut” and was “considerably older than the other defendants” and “seemed indignant that he had to be there”. Bond was set at and standard conditions of release were imposed, including no contact with the victim. A week later, an online case lookup revealed that Magistrate Court charges had been dismissed. Four weeks later, the defendant was arraigned on felony aggravated battery against a household member with a deadly weapon in the First Judicial District Court. Court monitors next observed the defendant at a pretrial conference where he again behaved as if it was ridiculous that he had to be there. He had two family members with him; presumably his mother and father. The three of them loudly expressed their feelings about the situation (“This is ridiculous ... what a bunch of crap ... why don’t they have

her here too ... it takes two to fight... ”) in the courtroom both before and immediately after the hearing. The prosecutor mentioned that this case needed to be taken particularly seriously given the manner in which a weapon was employed. Eight months later, a plea agreement was reached and the defendant was given a conditional discharge, which means his sentence was deferred if he complied with the court order to attend batterer re-education classes. The defendant has since been arrested for a probation violation and remains in custody. A search on NMJustice.net revealed that the defendant has been charged with domestic violence crimes more than once.

Discussion:

Binding Over

The process of transferring a case from Magistrate to District Court in order to heighten the charges from misdemeanor to felony occurs frequently. During this “binding over” period, the Magistrate charges are completely dismissed, which means the defendant is no longer subject to the conditions of release, and it is often several weeks before the felony charges are filed. This gap provides a window of opportunity for a perpetrator to re-offend and leaves the victim especially vulnerable. Prosecutors, judges, and victim advocates should engage in a dialogue about what steps we can take to shorten the gap between charges and prevent the escalation of violence within this window.

Courtroom Decorum

Extraneous conversations in the courtroom have been a major concern throughout the court watch project. As previously discussed, the noise and related chaos make it nearly impossible to follow the proceedings. This can be frustrating for court monitors, victims, and interested parties. In this case, allowing the defendant and his family to audibly disparage the proceedings sends the message that it is acceptable to not take the situation seriously. Demanding decorum in the courtroom is a very simple step we can take to convey to offenders that domestic violence is a serious crime.

Case Study 2 –n Jorge Ortega- M-49-VR-201000160

During a particularly busy docket in Magistrate Court, a domestic violence case was called for a bond reduction hearing. The judge granted the defendant’s request for a reduction in bond. The prosecutor did not voice any major objections. The hearing concluded and the defendant, who was in custody, was escorted out of the courtroom. At this point, a young woman stood up in the gallery and explained in Spanish that she was the victim and she did not understand what had happened. She was quite upset. The judge called her up to the bench and explained what had transpired. The next hearing, held weeks later, was a pretrial conference. When the judge asked if discovery was complete, the prosecutor informed the judge that they were having a hard time contacting the victim, who had apparently moved away. Online case lookup later revealed that the prosecutor dismissed the case.

Discussion:

Given the difficulty of prevailing in evidenced-based prosecutions, victim cooperation is vital in domestic violence cases. Prosecutors generally decline to move forward with a case if the victim is not available to testify. The seemingly endless delays and complications can cause even the most willing witness to lose faith in the system and decline to participate. We have little to offer victims in the way of guarantees that justice will be served or that they will be protected from future violence. The very least we can do to make the legal process less traumatic for the victims and encourage their cooperation is to keep them informed about proceedings and acknowledge their presence at hearings.

Case Study 3 - David Bourassa M-49-VR-200900292

In contrast to the case above, court monitors observed a case in which the judge went out of his way to ensure that the victim was informed of a potential plea agreement. The case involved charges of criminal domestic violence in magistrate court. The couple involved was married and had children. Court Watch had followed the case through pretrial conferences. At the plea hearing, the judge asked if the victim was present and was informed that she was not. The judge said that he preferred not to move forward until he was certain the victim had been advised of the agreement and instructed the prosecutor to contact her. The judge was particularly concerned with making sure everyone understood the agreement because there were children involved and “We need to be sure these kids don’t have to see this type of thing anymore.” The defendant was eventually sentenced to 180 days, 175 credited and unsupervised probation. An online query shows the defendant has been charged with domestic violence six times in the past 6 years.

Discussion:

The judge's insistence on protecting the victim's statutory right to be present at the plea hearing was not only helpful for this case but also sent the message to the prosecution and defense that victims need to be considered in the disposition of domestic violence cases. This type of inclusion and validation makes the process considerably less frustrating and intimidating for victims and fosters a more cooperative environment and, as a result, more successful prosecutions.

Case Study 4 – case number missing

Court Watch observed a pretrial conference at District Court where it became apparent that the bond amount was likely to be reduced and the defendant, who was charged with aggravated battery against a household member, would be released from custody. The hearing lasted approximately five minutes and included discussion as to whether the defendant was likely to be a danger to anyone if released. Court Monitors heard the victim advocate tell the victim that she should file a petition for a civil Order for Protection before the offender was released. Court Watch was present at the Order for Protection hearing, which took place eight days later. Both the petitioner (victim) and the respondent appeared *pro se* (without an attorney). During the course of the petitioner's testimony, she revealed that the respondent had attempted to "choke" (strangle) her on more than one occasion. The judge, quite appropriately, expressed concern about the attempt to strangle and granted the Order for Protection for a period of five years. Court Monitors continued to follow the related criminal proceedings until a plea agreement was reached. The defendant was credited with jail time served, placed on probation, and required to perform community service.

Discussion:

According to the U.S. Department of Justice Domestic Violence Homicide Risk Assessment, a domestic violence victim's risk of lethality is ten times higher in situations where the perpetrator has attempted strangulation. Court Monitors were encouraged that the Order for Protection judge recognized the danger of the situation. They were concerned, however, that the issue of the strangulation was not considered in the criminal proceedings either for assessing an appropriate bond amount or in the final disposition of the case. It is important that prosecutors make judges aware when red flag indicators for a highly dangerous situation are present. Both judges and prosecutors should use lethality assessment guides to evaluate individual cases and determine what bond amounts, conditions of release, or sentence are appropriate given the indicators for each case.

CONCLUSIONS

The goal of all Domestic Violence Court Watch programs is to determine what actions may be recommended to improve the overall judicial response to the crime of domestic violence. To accomplish this it was necessary to conduct observations and collect data to provide an objective representation of the current state of the court system. The goal was not fault-finding, but fact-finding. A good Court Watch program elevates and illuminates the entire legal system. It is critical that institutions which serve the public remain aware that they are accountable to the public they serve. A Court Watch presence, over time, can help improve accountability within the legal system itself.

Recommendations

After one year of monitoring and compiling case proceedings, dispositions, and volunteer observations in a database, Santa Fe Court Watch Project is prepared to make the following recommendations for promoting a safe and organized approach to domestic violence crimes in the First Judicial District:

- a) Determine whether or not the victim is present at a proceeding, and if not, why not.
- b) Increase security measures at Magistrate Court.
- c) Make Magistrate Court ADA compliant.
- d) Emphasize courtroom decorum to provide a controlled environment in which information is accessible to all.
- e) Provide Domestic Violence Continuing Education for all judges.
- f) Encourage use of lethality assessment guides for evaluating individual cases.

Recommendations for future Court Watch initiatives include:

- a) Focus individual volunteers on specific cases to provide more continuity in observation.
- b) Continue to provide a broad range of training for volunteers including presentations by prosecutors, judges, defense attorneys, victim advocates, community organizations, and survivors of domestic violence.
- c) Increased focus on Orders for Protection.
- d) Consider expanding the scope of the program to include domestic relations cases (custody and divorce) when there is a concurrent domestic violence case.

FINAL DISPOSITIONS

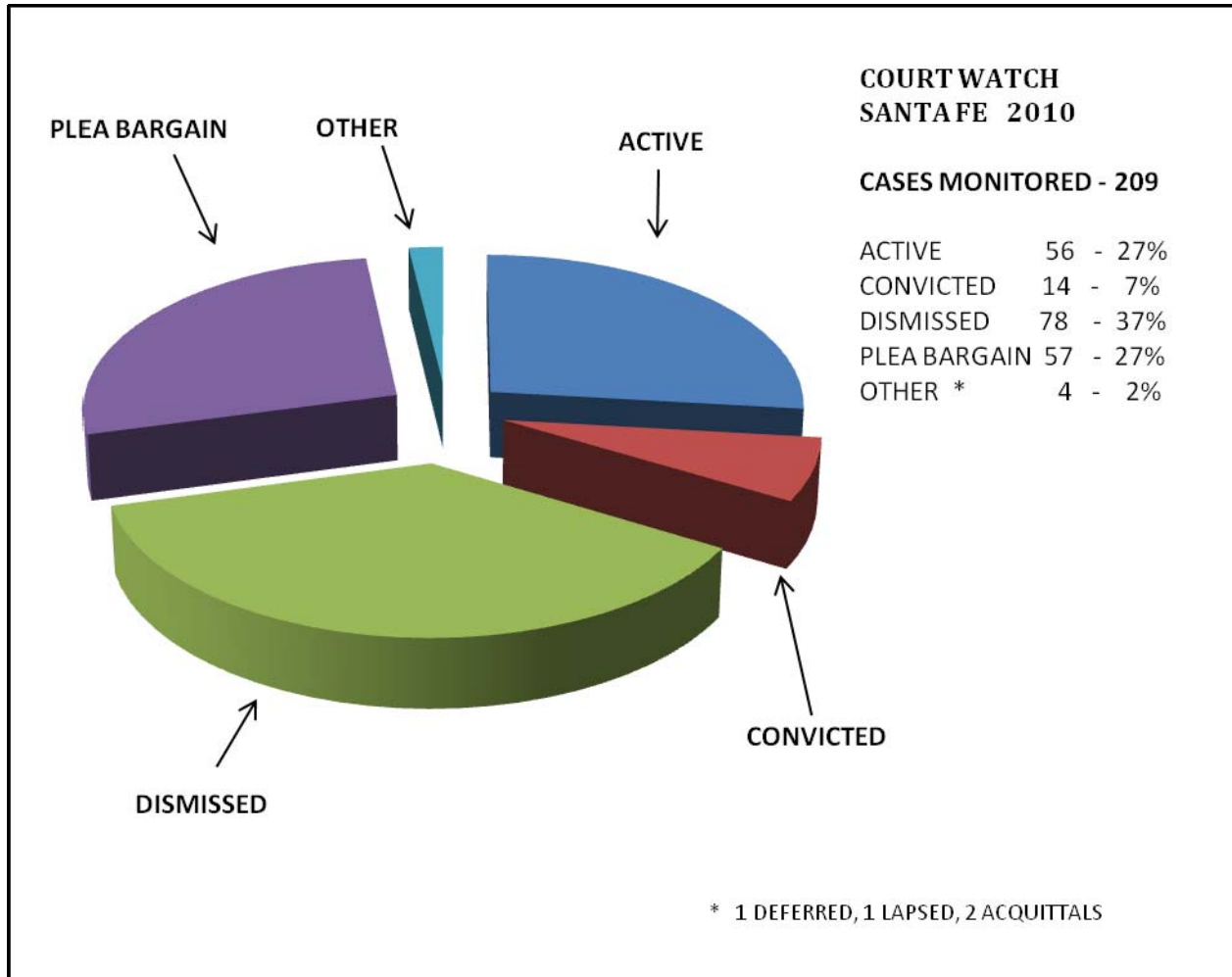


Chart 1: Final case dispositions for cases monitored from January 2010-January 2011.