

The New York Times<http://nyti.ms/1Kj26Fi>

For Victims, an Overloaded Court System Brings Pain and Delays

Alfredo Allen had irreversible brain damage after being stabbed at his Brooklyn high school, and it took 41 court dates for the case against his attacker to be closed.

By STEPHANIE CLIFFORD JAN. 31, 2016

It had gone on for almost four years, Maxima Allen said as she sat on a hard bench in State Supreme Court in Brooklyn over the summer.

She did not need notes to remember the date — Dec. 20, 2011 — that her son Alfredo was stabbed with scissors on the basketball court of Erasmus Hall High School, causing irreversible brain damage.

Ms. Allen just wanted the case to end. Once the criminal case against Chevoy Nelson, the boy accused of stabbing her son, was over, she could sue the city and the Department of Education for money to help pay for Alfredo's care, which comes to roughly \$1,000 a day.

But the case, like so many others, had been delayed.

It is not news that cases can take a long time to wind their way through the court system in New York, or that lawyers use delay tactics. But to look closely at the Nelson case is to see this phenomenon played out to an extreme, and to understand the pain it can cause to a victim's family.

This is a story of an overloaded system, where the schedules of judges and lawyers, records requests, medical examinations and simple errors can stretch cases out over years.

For victims, family members and defendants, the obligatory court appearances and inevitable postponements create "incredible pressure," said Jocelyn Simonson, an assistant professor at Brooklyn Law School and a former public defender in Brooklyn.

She ticked off a list of how multiple court dates can affect those involved: lost wages, lost jobs, losing a place in drug-treatment programs because of missed sessions, child care issues. For defendants, open cases can cause problems with housing, child custody and professional licenses. And for defendants in jail, a postponement is devastating, Ms. Simonson said.

In Brooklyn, where Alfredo was assaulted, the State Supreme Court is trying new ways to address the backlog. It took an average of 307 days in Brooklyn last year from the time a felony indictment was handed up to the end of the case, up 26 percent from 243 days in 2012.

In Brooklyn and the other boroughs, once there is an indictment, a case requires an average of 11 court appearances to come to a close, according to the state's Office of Court Administration.

Mr. Nelson's case, which required 41 court dates, provides an up-close look at what goes wrong — why delays stretch from weeks to years, and how little delays can build to big ones.

A History of Violence

Ms. Allen, now 55, was at work as a home health aide the day of the attack. When she heard that Alfredo, who was then 15, had been stabbed, she assumed it was in his arm.

“I never thought, for a moment, that it would’ve caused so much damage, because it happened in a school,” she said, speaking through a Spanish interpreter. But when she arrived at Erasmus, police officers and the principal walked toward her. “I became aware of just how bad the situation was,” she said.

Alfredo had already been sent to Kings County Hospital Center. He had multiple fractures, he was hemorrhaging and his brain, according to medical records, was “actively oozing out” from his skull.

She said doctors told her Alfredo would “have a 50-50 chance of life or death.” He would require six brain surgeries.

Before the attack, Alfredo, the baby of six siblings, was mischievous and physically confident. He started playing football at 6 and, after his mother became worried about gangs at his school, he transferred to Erasmus for its football program.

He was always up to something: He would buy sneakers at flea markets and resell them online at a premium. Once, when his mother was visiting Honduras, he begged her over the phone for a dog. She said no way. “When I came home the next morning, he said, ‘Mommy, I’ve got a surprise for you,’” she said, and there was a Yorkie mix, Siki, that he paid for by selling an Xbox online.

That December day at Erasmus, everything changed.

Mr. Nelson, who was 16, said he had been called into the dean’s office that day and reprimanded for “play-fighting,” according to police reports and court filings. He headed to the gym, where Alfredo and some other boys were playing basketball.

According to the Allens’ lawyer, Laura Gentile, Mr. Nelson, a special-education student in the 10th grade, was assigned to a different section of Erasmus and was not supposed to be in Alfredo’s area. While he had an aide assigned to him during classroom hours, he did not have one during the lunch break.

He had a history of violent and aggressive behavior, Ms. Gentile wrote in a lawsuit, including writing “Kill Them All” on his hand in September of that year and fighting. He was barred from a social studies class earlier in December because the teacher “felt intimidated,” according to the lawsuit.

In the gym, the boys would not let Mr. Nelson join their game, and Mr. Nelson said he and one of the boys — apparently Alfredo — pushed each other.

“I said iz does not end here in my mind,” Mr. Nelson wrote in a statement to the police, titled “My story,” which was full of grammatical and spelling errors. “So I went into the hall way and saw some guys I ask them If they had any wepon they said No so I went in the science lab and asked for some acid the teacher said he did not have any.”

The teacher did not ask why Mr. Nelson wanted acid, and no staff members or teachers appear to have asked what Mr. Nelson was doing in the wrong part of Erasmus, which would become a key point in the civil case. Mr. Nelson wrote that while the teacher was distracted, he took a pair of scissors. He “went back to the gim and I wated unt the boy was two feet away from me and then I stab him repeatedly,” he wrote.

It was a quick case for the police. Mr. Nelson was pulled away by onlookers, confessed immediately to school safety officers, and gave videotaped and written statements at the Police Department’s 70th Precinct station house. He was arraigned the next day on charges of second-degree attempted murder and first-degree assault, and indicted two days later.

Then everything slowed down.

Mounting Costs

Ms. Allen and her husband, also named Alfredo Allen, slept on a hospital conference room floor for three months. “You do everything for your kids,” she said, crying, and paused. “This is not comprehensible. He was attacked from behind.”

After a few months, the hospital, saying it could do nothing more for him, discharged the young Alfredo to a nursing home in Queens. “One of the nurses told me they basically sent him there to die,” Ms. Allen said. After three months, he was sent to a Camden County, N.J., nursing home that specialized in children.

For the Allens, who live in East New York, Brooklyn, it was about a two-hour drive each way to the nursing home in New Jersey, which meant Ms. Allen could work only part time as a home health aide. Because she had taken six months off from work to care for Alfredo, her employer required that she start as a new employee when she returned and attend unpaid training again. She earned about \$250 a week working three 10-hour shifts. The nursing home cost about \$825 a day.

In March 2012, the Allens filed a lawsuit against the city and the Department of Education, alleging negligence, among other claims. However, the Brooklyn district attorney’s office asked the civil court to postpone adjudicating the suit until the criminal case was finished, saying a parallel civil investigation by the Allens’ lawyer could interfere with the prosecution.

The Allens’ costs kept rising and their income kept declining. (Alfredo Allen Sr., who is 79, is retired from the United States merchant marine.) The Allens, who could not pay rent for five months, were taken to court by their landlord and had to borrow \$5,000 to stop an eviction lawsuit.

Meanwhile, the criminal case meandered on.

The delays were partly logistical. Mr. Nelson’s lawyer, Frank Paone, wanted to put on a defense arguing mental illness, which takes more time because it requires records and examinations by both sides. Mr. Paone did not respond to multiple requests for comment. It took almost a year to get Mr. Nelson’s medical records from Jamaica, where he had lived until mid-2011. And Mr. Nelson sometimes refused to go to court.

Other delays were because of errors or minor scheduling issues. One hearing was rescheduled because Mr. Paone had a doctor’s appointment. Another was postponed when prosecutors announced that the detective on the case, who was

supposed to testify, was not available. At a third, a psychiatric report that was sent was for an entirely different client.

On some dates, the lawyers would appear in court simply to pick a date for the next hearing. Or they would appear in court to say they were still waiting for reports. Or they would show up to say they were not ready. Some court records offered no explanation and simply noted another date for everyone to appear.

In October 2014, Ms. Allen got Alfredo moved to a nursing home in Harlem. The daily cost increased to \$992, but the shorter distance meant she could return to working seven days a week, doubling her weekly take-home pay to \$530. (She since has scaled back to five days a week.)

After she finishes work at 5 p.m., she takes the train to Harlem to see Alfredo, before returning home to Brooklyn around midnight. She spends her little spare time arguing with insurance companies — it took seven months to get a helmet for Alfredo, which Medicaid would not cover. He still does not have a wheelchair that fits him, and Medicaid covers only two hours of physical therapy a week when he needs two hours a day, according to Ms. Gentile, the lawyer.

Sentencing Day

In an interview, Ms. Allen showed photos and videos of Alfredo today, a beefy 19-year-old with vacant eyes, his tongue between his lips, his mouth moving but no sound coming out. He is on a ventilator for most of the time and does not move from his bed on most days.

“He knows that I’m there because sometimes I’ll drop something and he’ll respond,” she said. “Some days he’s laid back and some days he’s very agitated.”

The wait, Ms. Gentile, said, had been burdensome on the family.

“We were ready to try this case a long time ago, but it was unduly delayed because the defense had to gather medical records and evaluate the defendant’s competency,” among other issues, said Charisma L. Troiano, a spokeswoman for the

Brooklyn district attorney, Ken Thompson. “Despite the delays, justice was done in this case.”

Matthew J. D’Emic, the administrative judge for criminal matters in State Supreme Court in Brooklyn, said he recently began addressing court delays himself in all of the cases older than a year in which defendants were at the Rikers Island jail complex.

He quizzes defense lawyers and prosecutors in his chambers about moving the case to a trial or a plea. “Everybody deserves their day in court at the earliest possible time, and in some ways the system got away from that,” he said.

By January 2015, more than three years after the attack, Mr. Nelson’s case was approaching trial. Records were gathered, motions decided and a judge set a trial date. On May 21, Mr. Nelson pleaded guilty to first-degree assault, agreeing to a sentence of 17 and a half years.

Mr. Paone picked a sentencing date about a month away. “Too long,” Justice Neil Jon Firetog responded, and scheduled an earlier date. But on June 11, the day of the scheduled sentencing, the sentencing reports were not in. On July 7, the reports again were not in. On July 31, Mr. Nelson was sentenced and the case was closed.

Now, legally, the Allens could pursue the civil case. The city made a settlement offer that was made final in September. The Allens accepted.

Ms. Allen hopes to bring her son home someday, with all the medical equipment and the costs that would require. While Medicaid will cover a portion of his care, the Allens will need to pay for much of it. “If there were only some way, some treatment, to someday help the young man have a life,” she said.

The Allens will receive \$9 million, according to court documents. A life planner the Allens hired to review their son’s medical records estimated it will cost \$16.7 million to \$33.3 million to care for Alfredo for the rest of his life.

A version of this article appears in print on February 1, 2016, on Page A1 of the New York edition with the headline: Family Victimized by a Stabbing and Court Delays.

© 2016 The New York Times Company