

Access Denied:
Pre-Katrina Practices in Post-Katrina
Magistrate and Municipal Courts

A Report of Court Observations and Interviews with Detainees
Submitted by
Students of the Domestic Disaster Practicum, Northwestern University
School of Law: A class aimed at exploring and addressing the social and
legal consequences of Hurricane Katrina

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Access Denied: Pre-Katrina Practices in Post-Katrina Magistrate and Municipal Courts (New Orleans Parish)

PROJECT DESCRIPTION

Eleven students from Northwestern University School of Law, Chicago, Illinois, traveled to New Orleans over their Spring Break to assist in hurricane relief efforts.¹ The principal project on which the students worked, in collaboration with Loyola Law School, New Orleans, was the New Orleans Magistrate Court Watching Project. Pursuant to an Order entered by the Honorable Judge Calvin Johnson, Chief Judge of the Orleans Parish Criminal District Court, students attended court and / or conducted interviews of detainees over the course of five days. This is a report of their findings.

SUMMARY OF FINDINGS

Staff working in the temporary misdemeanor court face a number of challenges. Space is limited. Hearings that are supposed to be open are closed to the public, defendants are forced to sit on the floor, and the proceedings are chaotic. The judges and the court staff seem to be trying to make the best out of a difficult situation, but may inadvertently be compromising the rights of the detained men and women who appear in court.

Court is conducted in an assembly line fashion. Except in rare cases, the Court is not provided with relevant information about the detainees and consequently does not engage in a meaningful individualized bond determination. Instead, the Court appears to base its bond decision exclusively on the nature of the charges and the criminal history of the detainee.

Defendants frequently appear in court without the assistance of an attorney. Although the judges typically announce at the start of court that the Public Defender will be appointed for those who cannot afford a lawyer, in practice, there is rarely a formal appointment. While a Public Defender may be present in court during the proceedings, he rarely participates in the proceedings, rendering his presence meaningless. Public Defenders typically do not obtain information from the detainees to present to the court, they do not make arguments to the court, and they do not explain the process to the detainees. Many detainees reported that they did not know what happened in court and were unaware of what to expect next.

An overwhelming majority of the cases we observed were minor drug possession or public intoxication cases. Bonds were usually set at \$500 or \$1000. Each bond hearing usually lasted less than a minute. As one observer explained, “The judge would call the defendant’s name. An inmate would slowly make his way towards the Public Defender’s

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desk. As the inmate walked, the DA would call out the charge and any prior convictions. Oftentimes, the bond would be set before the inmate arrived at the Public Defender's desk. The inmate would then walk back towards the door where he first entered the courtroom. The average length of time for bond setting was less than a minute."

Most of the detainees we interviewed reported that they:

- did not have a lawyer during their bond hearings
- have never spoken to a lawyer
- did not understand what happened in court, other than that the judge set their bond
- did not have any idea what was going to happen next in their cases

The detainees can be classified into two main groups: residents and non-residents. Both have challenges to posting bond. Many residents reported that their family members are displaced and thus they cannot reach them. Non-residents who came to New Orleans to work reported that the bail bondsmen require them to post 100% of the bonds because they are from out of town, despite the fact that they were employed and have local addresses. Several of the detainees interviewed reported that they could post bond, but had not been in contact with any family members because cell phones do not accept collect calls.

The result is that a significant number of people who have not even been formally charged (and who may never be charged) are being held in custody on relatively minor charges.

OBSERVATIONS AND FINDINGS

Magistrate and Municipal court is currently being held in one of two rooms at the House of Detention ("HOD"): on the first floor in a room where mug shots are taken and line-ups are conducted and on the second floor in what is usually the waiting room of the HOD. In the small lobby of the HOD there are two tables which are manned with one to four people (depending upon the time of day). Behind them is a stairwell covered in peeling blue paint, which leads up to one of the temporary courtrooms. The floor beneath the stairwell is covered in gravel.

When a person comes in, a sheriff asks him what he is there for. Despite the fact that the proceedings are supposed to be open, the sheriffs will not allow the public to attend magistrate court. For example, one elderly black couple came in and explained that they were there for their grandson's case. The sheriff told them that they could not come in and would have to call to find out what happened.

The staircase from the lobby climbs to a large room with 10 foot high ceilings, dull off-white walls and linoleum floors. There are two slit windows that allowed in a limited amount of natural light. This room, which usually serves as a waiting area for people visiting detainees, is one of the temporary magistrate courtrooms.

MAGISTRATE COURT

Magistrate court is held daily in the mornings. Although the start time is listed on-line as 11:00 a.m., court starts at anytime between 9:00 and 11:00 a.m. When we asked what time court starts, a sheriff replied, "whenever the judge gets here." One attorney who was trying to get her client released (because he had been ordered released three days earlier) complained to the judge that she had come to court the day before at 11:00 only to learn that it had ended just before 10:00. The judge replied, "these are hard times...smile, do it, and don't bitch about it."

Walking into magistrate court on the first day of observations, the first impression was of noise. Various people were talking and moving around. People were continuously traveling through the room. The judge frequently answered his cell phone and had conversations during the proceedings.

The judge was at the front of the room, at a desk on a make-shift stage. There were two desks directly in front of the judge's. The first day we were in the courtroom there was only one table that was used by the prosecution. Halfway through the session, a second table was brought in for defense attorneys. During the time that the Public Defender was present, he usually remained seated behind this desk, fiddling with his glasses and pen, reading papers, and on one occasion, sleeping. We only observed the Public Defender speak to one inmate -- that conversation lasted less than a minute. The Public Defender later left the room while the proceedings were still underway.

In the upper right hand corner of the room sat the bailiff or clerk. Three or four sheriffs were leaning against the right wall. Seven or eight other sheriffs were in various locations throughout the room.

The inmates were in orange jumpsuits, shackled and / or handcuffed, sometimes to each other. Inmates either stood against the wall or sat on the floor. They were not given chairs. Several of the inmates did not have shoes. There were benches against the back wall and the left wall, where we were allowed to sit. There were no clocks in the room.

March 16, 2006 (Judge Hansen)

Our first full day of court observations was on Thursday, March 16, 2006. Shortly after we walked into the room, private attorneys, the DA and the judge entered the room. The DA was white male in his 30s. The judge was an older white male who said he had been serving on the bench for over 30 years. There was not a Public Defender present. Later on during the court proceedings, the judge appointed two private attorneys to serve as Public Defenders for the day for some, but not all, of the detainees.

The mood of the room before the detainees arrived was light and casual, with people joking around with one another. One private attorney pulled the judge aside and began talking about a case. The sheriffs, however, acted upset and ornery the entire time.

When the detainees arrived, the mood changed quickly. A group of 37 people (80% black; 34 men and 3 women) was led into the room by sheriffs. They were all wearing

orange jump-suits and had their legs shackled. They were formed into three lines of about 10 people each. The three females were allowed to sit on a bench in the back of the room. The guards told the detainees to be quiet and not to make a fuss. The judge quickly stepped forward and explained to the inmates that they were in court for a bond hearing. He told them that they have a constitutional right to an attorney and a right to remain silent. He suggested that the detainees not speak, as everything that was said could be used against them at a later time. Throughout the proceedings it became clear that the judge was concerned for the detainees, but did not have the time to think of them as individuals.

While the judge was talking with the detainees, one man was making grunting noises asking to sit down. As soon as the judge finished admonishing the defendants, he asked the man his name. The judge said that this man's case should be the first one considered because of his difficulty standing up.

After the judge admonished the detainees, the court began bond proceedings. These proceedings were extremely fast and chaotic. It was very difficult to follow what was happening, as many of the bonds were set after only about 20-60 seconds of consideration. For example, the judge would call a case name. The detainee would make himself known (rarely did a detainee come to the front of the line). The judge would ask what the charge was. The DA would state the charge. The judge would ask about the criminal history of the defendant and the DA would answer. The judge would usually set the bond after this, although he would occasionally ask further questions about the defendant's job status and address. As there was no official Public Defender in the room, the judge occasionally appointed two private attorneys in the room to serve as Public Defenders.² This typically happened when one of the detainees tried to speak to the judge. The judge would instruct the detainee to be silent and appoint a Public Defender. When an attorney was appointed, he would briefly confer with the detainee and seemed to apprise the detainee of his legal options and repercussions before stating that the detainee did not wish to speak further. As noted above, the average length of consideration given to each defendant was less than a minute, although a few bond hearings lasted for approximately 5 minutes.

Throughout the proceedings, the judge would answer his cell phone. Even when he was in the middle of asking a question or listening to an answer, the judge would suddenly pick up his cell phone and begin talking. One phone conversation, which took place just before a bond was set, lasted over 5 minutes. One can only imagine how nerve-racking it would be to sit and wait for a judge to set your bond while he talked on the phone.

² One of the private attorneys was a 30 something black male named Mr. Hawkins. The other private attorney was Mr. King, a 50 something white male. Another man came into the courtroom to represent a private client. He explained to one of the students that he had been a Public Defender before the Hurricane Katrina, but was laid off afterwards. Although the Orleans Indigent Defender Program does not have the funds to pay defenders, the DA's office does; he was recently offered a job by the DA, which he turned down.

March 17, 2006 (Judge Giarusso)

Bond hearings were presided over by Judge Giarusso on two different days. On the first day (March 17th) we went upstairs around 10:30 a.m. to get settled early and introduce ourselves to the judge prior to the court session. At around 10:45 a.m., three black female DAs arrived and began to prepare for court. One spoke briefly with two police officers who were scheduled to testify in a probable cause hearing. The court reporter, Barbara (white female, 40s), began to set up for court. At about 11:00 a.m., a woman came in and informed those of us upstairs in the courtroom that the judge was holding court downstairs. We all relocated to the courtroom downstairs (for full description of this room, see section on Municipal court below). At about 11:05, Judge Giarusso (white male, 50s) arrived and began the court session.

The courtroom downstairs felt hectic, with lots of foot traffic coming in and out and several people milling around. There were at least three people who appeared to be clerks working in the area near the front of the room at a bank of computers. The judge came in, promptly took the bench (which was directly in front of the lineup window) and appeared to be very business-like and focused. The general atmosphere felt somewhat chaotic and rushed, with several things seemingly happening at once. However, it also felt strangely like “business as usual.” Everyone seemed to be used to this makeshift situation and somewhat comfortable operating within it.

When the detainees arrived, they were shuffled two by two, shackled to one another at their ankles. They moved from one corner of the room (near the court reporter, who was to the judge’s right side), diagonally to the opposite corner of the room. They sat in rows of about 4 or 6 detainees. The detainees moved slowly; many appeared sluggish and some did not seem to know where they were supposed to stand or how they were supposed to get to the other end of the room. Most of the inmates were black men. A few women were brought in at the end. There was also one black male inmate in a wheelchair seated near the court reporter. Another inmate had a cast on his right hand and arm, up to his elbow. There were approximately 46 inmates (32 black males, 11 white males and 3 black females).

Before the Court began calling cases, the Public Defender addressed all of the inmates en masse and quickly gave them a rundown of how the bond hearings would go. The Public Defender informed the detainees: “You are here for bond hearings. Except for four of you who are here for first appearance, you are here for bond hearings - this is nothing more than telling the charge and setting the bond. The DA has 45 days for misdemeanors and 60 days for felonies to file charges, and if no charges are filed, you will be released. When we call your name, come up. You will stand next to my chair and the Judge will tell you the bond. You might want to make a statement, but you should not.” He did not ask if anyone had any questions or provide any further explanation of the process.

The judge then addressed the detainees, informing them that because of an arrest, they were in court for bond setting. He said that they should not make any statements that could later be used against them. He stated that if they could not afford an attorney, a

Public Defender would be appointed for them. He told them that there would be no talking in court.

The court then proceeded with the cases involving the female detainees, followed by the males. The bond proceedings lasted approximately 35 minutes. After the bond hearings, the Court conducted a preliminary hearing and an arraignment.

In general, the first appearances/ bond hearings seemed to be a conversation between the judge and the DA. The judge would call out the inmate's name, the DA would immediately respond with the charge and any prior convictions, and the judge would announce a bond. Once his name was called, an inmate would slowly make his way towards the Public Defender's desk, but often his bond was already set by the time he reached his destination. The inmate would then walk back towards the door where he first entered the courtroom. The average length of time of a bond setting was less than a minute. The judge and DA played an active role in the proceedings, while the Public Defender and detainees appeared to be disengaged. The entire session felt very rushed. Generally, inmates seemed unclear on what was happening, but had little or no opportunity to ask questions or slow things down.

March 19, 2006 – Judge Giarusso

Court was again held in the line-up room on the first floor. When we walked into the room, there were about 10 inmates in orange jump suits sitting on the floor in the back of the room, shackled at the feet. Most of the inmates were either African American or Latino; most appeared to be in their 20s or 30s. Moving from the back of the room to the front, about 5-10 feet in front of the inmates and on the other side of the room, were chairs for visitors/observers, where we sat (along with a few other people). There was also a court reporter, at least one sheriff sitting inside and one standing at the door, and various people scattered around the room. There were 2 tables in the middle of the room: the Public Defender at the left (white man in his late 40s or 50s) and DA at the right (black woman in her late 20s or 30s).

The judge was on the stage behind the desk. He was a white male (short cropped hair, early / mid 50's) and was wearing a black robe. Behind the bench was a wall of clear glass that is used for mug shots and line-ups.

The mood was bureaucratic. The inmates looked nervous and did not seem comfortable sitting on the floor. The proceedings were already underway when we entered (approximately 9:07). There were several "typical" bond hearings. The clerk would call the name and the charges and before the inmate even reached the Public Defender the judge would set the bond. The Public Defender was sitting at his desk the whole time; we never once saw him stand and only saw him make eye contact with an inmate once. Occasionally one of the inmates would try to speak. The Public Defender would not say anything, but the judge would admonish the inmate that anything he said would be on the record and could be used to incriminate him. In fact, the Public Defender did not speak at all during the proceedings that we observed.

During one of the hearings a black man who only spoke Spanish came before the judge. The judge reset his hearing for Thursday (when a Spanish translator would be available) and then proceeded to ask the man several questions in Spanish. The judge then translated his answers for the court reporter. While the questions the judge posed seemed fairly innocuous (e.g. where are you from, how long have you been in the US, how long have you lived in NO, which part of NO, where were you working in NO), at no time did the Public Defender advise the inmate about his right not to answer questions, nor did the judge admonish the inmate of his rights in Spanish.

After these very short proceedings were finished, we made our way to the bench to meet the judge. The judge looked up and asked if he could help us. When we introduced ourselves, he said, "Anything I can do to help, although I do find it curious that 22-year-old law students are getting quoted in the papers, criticizing my courtroom, which I have run for 28 years by the books. Two words: professionalism and ethics." [The judge was referring to 2 articles in the Times-Picayune the day before which included quotes from students in the Student Hurricane Network critical of the current state of chaos in the criminal justice system.] The Public Defender then said (in the only words we heard him speak the whole day): "It's offensive." The judge replied, "I don't know if its offensive, but it's exceedingly curious that 22-year-olds who haven't even graduated from law school are getting quoted about my courtroom, and I've given countless lectures about ethics and professionalism."

March 20, 2006 (Judge Russo)

When we approached the door to the courthouse, there were at least a dozen people sitting outside waiting for court (magistrate and municipal) to be called. When we entered the building to go upstairs to the courtroom on the second floor, we caught a glimpse of municipal court: at least 35-40 defendants were lined up in rows waiting to go before the judge. Some were in street clothes, some were in orange jumpsuits.

Court was held in the waiting room upstairs. The inmates stood in the back of the room in 2 rows of about 10 inmates each. They were handcuffed together in pairs. One inmate with swollen hands complained that his handcuffs were too tight and he, along with the man handcuffed to him, was led away by sheriffs. His partner was not happy about missing court. There were a couple of other sheriffs scattered throughout the room. The inmates were all men and mostly African American. The judge, the court personnel (with one exception), the DA, his intern, the Public Defender, and the sheriffs were all white, and were mostly men. The inmates appeared to range in age from 18-50; the average age was about 30 years old. The judge was in his late 50s, the Public Defender looked to be at least 60, and the DA was in his 30s. The court personnel and sheriffs ranged in age.

The atmosphere during court felt chaotic. The proceedings moved very quickly. There was missing paperwork and missing defendants and the Public Defender was only present during a portion of the day. Cell phones rang and were answered loudly, there was noise from other parts of the building, and at times there were several conversations occurring at the same time. It was difficult to imagine that everyone's case was being given a fair hearing.

At the beginning of the proceedings, the judge admonished the first round of defendants present for bond hearings. He told them the purpose of the hearings, and that counsel would be appointed if they couldn't afford one. He also pointed out the Public Defender, explained what the Orleans Indigent Defender Program ("OIPD")³ was, and pointed out the DA, noting that he would use anything they said in court against them and that it was advisable not to make a statement for that reason, even though they had the right to do so. He also said that the room was a makeshift courtroom, but that everyone should accord it the same respect as the normal courtroom. Unfortunately, it was difficult to hear the whole admonition because the judge was losing his voice.⁴

At the beginning of the bond hearings, the Public Defender approached the defendants as a group briefly (about 30 seconds) and told them that all he could do was protest if the bond was excessively high, and then wished them "good luck." For the bond hearings, the judge would read out a name, and the corresponding defendant would raise his hand but stay where he was (the inmates were handcuffed to each other, so they couldn't come to stand before the judge). The DA would read out the charges, prior convictions, and open cases, and the judge would set a bond. In a few cases, the Public Defender spoke, and in one case successfully petitioned the judge to reduce a detainee's bond from \$2500 to \$1000. On a couple of occasions, the Public Defender and DA got into minor arguments. On one occasion, a defendant asked why his bond was so high despite having no priors, and the Public Defender replied, "that's a standard bond." However, most of the time, the Public Defender did not speak.

The Public Defender was present for the bond hearings, although he was sometimes talking to someone else in the room. He also had shown up late to the proceedings, which didn't seem to please the judge. During times when the Public Defender was distracted, defendants sometimes spoke on their own behalf. The Public Defender left the room to attend municipal court after the bond hearings, and was not present for the rule to show cause hearings or the arraignments. Approximately five defendants entered the room just as the Public Defender was leaving.

The court conducted approximately 20 bond hearings. On average, the proceedings lasted less than a minute. Of the 20 bond hearings observed, all but 1 involved drug charges. For marijuana possession with no priors, bond was \$500. For each prior charge involving marijuana (and sometimes for open cases involving marijuana or weapons), bond increased by \$500. Bond for crack/cocaine possession was \$2500 for residue, \$5000 for any other form. Bond for heroine was \$15,000. Bond for drug paraphernalia ranged from \$2000-2500 depending on the drug it was used for (lower for marijuana, higher for everything else). Bond for a concealed weapon ranged from \$2500-5000 based on prior records.

³ The OIPD manages the Public Defender program.

⁴ The observer was sitting directly next to the bench and she had a hard time understanding the judge, which suggests that the inmates, who were across the room, heard even less.

For rule to show cause hearings, the DA and the judge went through a lengthy docket together without anyone else's participation (the Public Defender was no longer present). The judge read out a name, and the DA stated which charges had been accepted and which had been refused. For refused charges, the judge ordered the release of the defendant. For charges which had passed the 60 day point for acceptance, and for which the DA had no report or disposition, the judge either ordered a "701 release" (if the inmate was still in custody) or reset the case. For charges which had been accepted, the judge assigned the case to a magistrate section.

For arraignments, the judge read out defendants' names, most of whom were not present, in part because the clerk had not served notice on them. However, some defendants were present. Upon hearing his name called, one defendant stood and the judge asked if he could afford counsel. He said he could not, and was appointed a Public Defender (who was no longer present in the room). Without asking the defendant anything, the judge entered a plea of not guilty. For another defendant, who was not represented by counsel, the main issue was extradition waivers that he had signed at the beginning of March. Due to clerical delays, his waiver had not been filed, and his case was continued (as it had been numerous times in the past). One troubling aspect of that case was that the arresting officer had not shown up for the hearings twice before, and the defendant was told that he could be released if the officer did not show a third time. Although this was the third time, the judge did not release the defendant, but asked him to be patient with the current crippled state of the justice system. One defendant's lawyer was not present when the defendant's case was called. His lawyer entered the room seconds after the judge continued his case. The judge would not recall the case. Another defendant's lawyer, who had been retained by his parents, was not present. The judge continued the case until the next day and told the defendant to tell his parents to contact counsel.

Public Defenders

As noted above, there was not a Public Defender in court on March 16, 2006. On the four other days that we observed court proceedings, Public Defenders were present for most of the proceedings, although they rarely took an active role. On March 15th, the Public Defender was a white male, approximately 55 years old. He did not speak to the defendants individually and appeared to be sleeping during part of the proceedings. On March 17th, the Public Defender was a white heavy set, 50ish male with slicked back gray hair. On March 19th, the Public Defender was a white man in his late 40s, early 50s with brown and white hair. On March 20th, the Public Defender was Clyde Merritt, a white male in his late 50s, early 60s. None of the Public Defenders wore suits.

It is unlikely that justice is being served because the proceedings are far too brief for any kind of individualized review of bond determination. In most cases, the only individualized information about the defendants that was presented was their prior criminal records. Mitigating details such as dependents, service to the community, or facts like negligible drug amounts, were totally absent. The Public Defenders rarely, if ever, spoke on behalf of their clients.

In a telling contrast, we spoke to a man at court who was awaiting the release of his son, who had been arrested for possessing a small amount of marijuana. The man came to his son's hearing and told the judge about his son's activities: school, involvement in the community, no prior record, etc. The judge released the son on his own recognizance, despite assigning numerous other defendants bonds for similar crimes.

The people with the private attorneys or other advocates appeared to be at an advantage for several reasons. First, the advocates gave the judge relevant information about the individual detainee and made arguments on the detainee's behalf. Second, the detainee had someone who explained the process and reason for the proceedings to him. Finally, it should be noted that on the few occasions where the Public Defender took an active role in someone's case, he succeeded in having the bond lowered or the client released. It seems that even a small amount of personal advocacy has the potential to make the difference between Release on Recognizance ("ROR") and a bond that may be unaffordable. If a man can advocate successfully for his son just by showing up to court and providing basic information, the Public Defender should certainly attempt to do the same for his or her clients.

MUNICIPAL COURT

Municipal court is held twice a day – at 9:00 a.m. and 3:00 p.m. It is held in a room on the first floor of the HOD that appears to be a line-up room. Although we originally did not intend to observe municipal proceedings, because we often had to wait to see the detainees, we observed municipal court twice.

March 16, 2006

The first thing one saw upon walking into the courtroom was a sea of orange jump-suits. Eighteen men and two women were sitting on the floor in the back corner of the room, directly opposite the room's entrance. The women were separated physically from the men by a few feet. Almost every inmate was black. Several did not have shoes. At the very front of the room was a large platform, and on it was a desk at which the judge sat. His voice boomed in the courtroom (although, through all the hustle, he was still difficult to understand), and his demeanor was one of command. Behind him was a row of glass windows, through which one could see a wall used for taking mug-shots.

Several feet in front of the judge, people sat at a table with computers. The clerk of the court stood by this table. In front of this table was another table with two chairs. To the right, attorneys were mingling. Following the wall from mingling attorneys were the inmates: women inmates sat in a line parallel to the stage and the judge's desk, the male inmates lined the wall. On the back wall were non-inmates who were scheduled to go before the judge. In the middle/left of the room were 8 chairs where more non-inmates were sitting. Sheriffs were scattered throughout the room.

People were scurrying between computers. Some were accepting payments for fines, while others were keeping track of the individuals who came before the judge. The room was dull in color – a dirty cream, like dried-out soap. Part of the ceiling had crumbled off,

and a few members of the audience sat under this part of the ceiling in folding chairs. Those who didn't fit in the few folding chairs lined up against the back wall. The sheriffs walked around the room, rearranging the audience members, periodically telling them to take their hats off, or telling the inmates to be quiet. One sheriff told the inmates that if they talked in court "it's 30 more days" added to their sentence. New audience members, some related to inmates, some there to pay fines, filtered into the room continuously.

Morning Proceedings (Judge Shea)

We observed 9 bond hearings in 12 minutes. With each person, a clerk would call the defendant's name, the defendant would get up and shuffle (ankles shackled) to the front of the room to stand next to the Public Defender. Someone would read the charges, though it was unclear who (it was extremely difficult to hear throughout the proceedings, as there was so much activity throughout the room.) The Public Defender did not speak to the defendant or for the defendant.

Each hearing averaged about one minute. There were about twenty individuals in custody: 18 men (all black) and 2 women (one white, one black). There were approximately 25 other defendants in the courtroom who were out of custody – a mix of about 33% female, 67% male. About 75% of the non-custody individuals were black. Ages ranged from early twenties to mid-60s; the majority of people were in their late 20s or early 30s.

Afternoon Proceedings

There were approximately 21 inmates on the floor. At the beginning of the proceedings a private attorney (wearing a suit) spoke to a few of the inmates. The Public Defender was standing by his desk and did not talk to the inmates. The clerk then began to call out names. Inmates raised their hands and non-inmates against the back wall came forward to sign a piece of paper. One inmate began to talk loudly and move around. The sheriffs quickly removed him from the room.

The sheriffs were very gruff, and they were adamant about everyone being close to the walls. The prisoners were reminded often, and sternly, to crowd back towards the wall. Even observers were frequently reminded to push back to the wall.

The proceedings lasted approximately twenty seconds per person. In between cases, the judge read his mail. In a typical proceeding, the clerk called the name and stated the charges. The inmate shuffled over to stand next to the Public Defender. Occasionally the Public Defender turned to the inmate and asked him what his charges were. The Public Defender then asked how the person was going to plead: if it was a guilty plea the Public Defender gave the inmate a form to sign. If it was a not-guilty plea, the inmate was taken directly out of the room. On the whole, the Public Defender said extremely little. If the judge had any questions, he asked the inmates directly. The Public Defender did not participate in the dialogue at all and only approached the bench one time while we were observing.

There were as many as three lawyers in the room – two seemed to be private attorneys and they were much more zealous than the Public Defender, who had what seemed to be a hopelessly lost look on his face. Although the Public Defender was present for the duration of the proceedings, he only spoke to an occasional detainee. One exchange consisted of a detainee whispering in the Public Defender's ear when his name was called, and the Public Defender simply repeating "No" and shaking his head.

DETAINEE INTERVIEWS

We visited detainees at the House of Detention and the South White Street facility. The House of Detention allows attorney visits between 7:30 and 10:00 a.m. and 1:00 and 4:00 p.m. One sheriff (John) proved to be very helpful once we established a system with him for our visits. However, many of the sheriffs appeared to resent the extra work that we were creating for them and were very slow at bringing us detainees. We would not see the first inmate for 30 – 90 minutes after we arrived and often had to wait in between detainees. This was attributed to staff shortages.

The South White Street facility was much more accommodating. Detainees were brought out quickly and there was almost no wait in between each one.

House of Detention (3/15 p.m.; 3/16 a.m. and p.m.; 3/17 a.m. and p.m.)

The House of Detention, in general, is a fairly run-down place. When you walk in, there are about 4-5 sheriffs sitting at tables. You go up two flights of stairs to what looks like a waiting room, but is currently being used as the magistrate court. The visiting area is adjacent to that room. It is a narrow hallway with attorney-client rooms on one side and visiting booths (with glass and phones) on the other.

The actual attorney-client rooms are small and stuffy - there is enough room on the attorney side for two chairs. Attorneys talk to a client through two panels of plastic (with holes) and a metal grate. The glass separating the attorney from the client is thick and dirty, making it difficult to completely see/hear one another. The part of the room that the inmates sit in is not lit (or at least not lit well).

When attorney rooms were not available, we conducted interviews in small booths with phones. There was a long row of small wooden seats on each side of a glass partition and black plastic phones to use on either side. The row of booths was in a narrow corridor, and there was really no privacy. Only about 4 of the 15 or so phones were actually in working order.

South White Street (3/16 p.m., 3/17 p.m.)

The South White Street facility is one block from the House of Detention. The visiting area is a narrow corridor with approximately 15 stools and phones. There are no dividers between the stools and on the other side of the glass is a room empty except for the stools.⁵ The stools are nailed down and there is no counter or desk to place notes or a computer. Balancing a legal pad on one's lap, while trying to write and balance the phone between the ear and shoulder, was challenging and led to neck cramping.

Interviewee Profiles

While the majority of interviewees were black men, interviewees also included a number of white and Latino men. Two white women were also interviewed. Interviewees' ages ranged from 18 to 50s. Most of the interviewees were from New Orleans. However, there were a significant number of interviewees who stated that they were originally from other parts of the country but had come to New Orleans after Hurricane Katrina specifically for construction/demolition work.

Dates of detention ranged from about one week to close to one year.⁶ One interviewee stated that he had been in detention since April 6, 2005. Another man had been in custody since July 14, 2005 on possession of crack and a municipal charge; he reported that he had last been in magistrate court on December 22, 2005 and has been waiting ever since.

An overwhelming majority of the interviewees were being detained on drug-related charges (possession of drugs and/or paraphernalia). In a few cases, interviewees stated that they were detained for public drunkenness. There were also isolated charges of assault/domestic violence, weapons, unauthorized use of vehicles, arson, and simple burglary.

Attorney Contact and Awareness of the Process

Virtually across the board, interviewees were confused and uncertain about the process – a direct result of being deprived of any meaningful contact with a lawyer. Even when interviewees knew their next court date, they were often uncertain as to the type of proceeding set for that date. In a few cases, interviewees had a working knowledge of the process only as a result of prior experience in the system.

Most interviewees reported that they had no contact with an attorney in or out of court. A significant number of interviewees did not recognize or did not see the Public Defender in court at their bond hearings. For those that were aware of the Public Defender, many stated that they had no direct verbal communication with him. Even in cases where interviewees did have an opportunity to talk to the Public Defender, such interactions were extremely brief. Almost every interviewee's bond hearing was over in seconds. Interviewees reported that their bond hearings consisted of standing in front of a judge,

⁵ On the second day we went to visit the detainees, sheriffs stood in the hallway just behind the men.

⁶ During one visit, inmates held up toilet paper with the names and i.d. numbers of men who had been in detention for excessively long periods of time and asked that we help them.

raising a hand when their name was called, and having bond set without saying anything or talking to a lawyer. This is consistent with what we observed in court.

Lack of Access to Family Members

Many natives of New Orleans stated that they and their extended family were displaced as a result of Hurricane Katrina and consequently, contact with family members was a tremendous challenge. When asked for their current and prior address information, many stated, “Well, I *had* been staying at...” Some were aware of the city where their family was temporarily residing, but did not know exact address information.

A recurring issue raised by several interviewees related to outgoing phone calls to cell phones. Many interviewees reported that their family members only had cell phones. For the locals, friends and family members’ landlines were no longer functioning due to the hurricane. Several of the interviewees reported that, because cell phones typically do not allow for collect calls, they had not been able to call friends or family members. These interviewees found themselves without the ability to inform anyone about their whereabouts.

Interviewees not originally from New Orleans who had somehow managed to contact family reported that they had a very difficult time coordinating interaction between their family and bond issuers because their families are far away and also unfamiliar with bond issuers and procedures in New Orleans. In some cases, these detainees had a difficult time posting bond because bond issuers insisted that they pay the entire bond amount due to their non-local status, even when they had local employment contacts.

Jail Conditions

House of Detention; South White Street

Conditions at the House of Detention were described by interviewees as very crowded. One inmate stated there were 18 people in a 10x20 cell; another reported 30 people in the same size cell. Detainees kept “downstairs” were packed into rooms “like sardines” with 20-25 people in a room meant for 10. All detainees reported better conditions upon being moved “upstairs.”

Some interviewees reported being deprived of food or water for extended periods of time. One individual stated that he wasn’t given any food or water for two days, while another stated that he was fed every twelve hours. Still another stated that he went without water for a day and a half because he and more than ten other detainees were required to share a single gallon of water.

Interviewees at the South White Street facility stated that they were not getting enough to eat, and that they were not allowed any time outside. It was reported (and observed) that some of the detainees do not have shoes.

Mental and Physical Health Issues

Interviewees who reported that they had mental health issues stated that they were not receiving treatment or medication. One interviewee who required psychiatric drugs had not received any of them. Two other interviewees indicated that their mental health medications were discontinued while in detention.

On the whole, interviewees who had physical health issues appeared to be receiving treatment, but with some exceptions and sometimes after some delay. One interviewee had a serious wound on his hand that appeared to be infected. He stated that a doctor had looked at it and told him it was okay, but the interviewer was alarmed by its appearance. Another interviewee who required medication for seizures was given medical help for them only after he suffered several seizures in jail. One woman had an abscessed tooth that was not being treated.

RECOMMENDATIONS

After consulting with various criminal justice and indigent defense experts in Louisiana and across the country, we make the following recommendations:

- 1) A Public Defender should be appointed to represent each inmate. The Public Defender should take an active role in the proceedings, obtaining relevant information from the detainees before court to present to the court during the bond hearing.
- 2) The Public Defender should advocate on behalf of his clients.
- 3) Judges should ensure that the detainees have a complete understanding of what is occurring and what they can expect to happen next in their cases.
- 4) Judges should change their bond practices to reflect the reality of post Katrina New Orleans. People with minor offenses and no prior criminal history should be released on their own recognizance.
- 5) The Court should assess the percentage of cases that are refused at the 45 or 60 day deadline. If it appears that there are a substantial amount of cases that are refused, judges should factor that into future bond determinations.
- 6) Detainees should be provided chairs to sit on during court proceedings.
- 7) The Court and the sheriff should reassess the policy of shackling the detainees. The vast majority of people we observed were in custody for minor non-violent offenses, such as possession of marijuana or other drugs, and thus do not appear to be safety risks.

- 8) The public should be allowed to attend bond hearings. Family members can provide important information to the Court to consider when it sets bond and, armed with the bond information, can help attain their family member's release.
- 9) Detainees should be allowed to call family members. The sheriff should allow inmates to use their cell phones to access phone numbers and to call a family member or a friend.
- 10) Detainees who do not have a cell phone should be permitted to make a free call from a phone in the House of Detention.
- 11) Detainees that have been ordered released should be promptly released.
- 12) Out-of-state workers are caught in a double-bind when they are arrested in New Orleans: they often cannot reach their families who are out of state and they face strict bonds issuers who will only settle for the total amount of their bonds. Bond issuers should be more flexible in treating out-of-state workers with in-town employment contacts as locals, and should not demand the whole bond amount from them.

CONCLUSION

The Magistrate courts and jails appear to be operating under post-Katrina conditions with pre-Katrina practices. Detainees routinely appear in court without an attorney. Even when a Public Defender is present, he generally does not play a role in bond court. Detainees are shuffled through the bond hearings in less than a minute. Without the necessary information, judges are not making individualized bond determinations, but instead set bonds almost exclusively according to offense and prior convictions. There is no consideration of individual circumstances, ability to pay, and likelihood of returning to court without re-offending in the interim. The overwhelming majority of cases appear to be non-violent drug cases. However, because they have lost their family or hail from another state, detainees are often unable to make bond.

The Court should consider adapting its bond practices to take into account the effects of Katrina on these pre-trial detainees. Given that these men have not yet even been charged, it seems unconscionable to hold them without giving them any hopes of making bond.

In addition to advocating for their clients, Public Defenders should explain the process to them and inform them of what they can expect in the future. A thirty second group speech is insufficient for this purpose.

The sheriff also needs to institute practices that take into account the effects of Katrina. Requiring detainees to make collect calls to land lines is impractical when phone service has not been restored for many people and the majority of people rely on cell phones.

Detainees should be permitted to make free calls to cell phones or use their own cell phones to make calls.

Throughout the court proceedings that we observed, many judges spoke of the need for people to be flexible while the court system attempts to restore itself in the wake of Katrina. This flexibility should not be a one-way street – the court and the sheriff should exercise flexibility in their approach to the detainees so that people can obtain their release and get back to work.