



Everything New Orleans

Initial court appearances for New Orleans criminal suspects often short on information, researchers say

By Cathy Hughes, The Times-Picayune

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Defendants coming through Orleans Parish criminal court often don't receive an informed determination of whether police had evidence to justify their arrest, as required by federal and state law, the **Center for Constitutional Rights** argued in a **brief filed this week at the Louisiana Supreme Court.**

In a **survey conducted this spring**, law students monitoring 60 initial court appearances during a five-week period found that in almost 40 percent of cases, the magistrate judge or commissioner didn't read or have read out loud to them the police affidavit explaining the circumstances of the arrest, according to the legal brief.

As a result, the center argued, bail and probable cause determinations appear to be occurring without the magistrates' considering all the facts of the arrest.

Lawyers for the center highlighted the research in connection with a case that will be heard next month by the state's high court. Justices will consider the appeal of a New Orleans man arrested for crack cocaine possession who did not receive a probable cause evaluation by Magistrate Judge Gerard Hansen within the 48 hours required by the U.S. Supreme Court in a 1991 case.



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Magistrate Judge Gerard Hansen

The Orleans Public Defenders' Office filed the appeal, saying Hansen should have released Bruce Wallace without a bail obligation when he was brought to court a full day later than required. Public defender Thomas Nosewicz asked the state Supreme Court to order the magistrate court to promptly rule on whether arrests were lawful, as well as require the court to keep records of probable cause rulings.

"Mr. Wallace deserves to have the law applied equally to him as it would anywhere in the country, " said Derwyn Bunton, head of the public defender's office.

The appeal cited several recent decisions by the 4th Circuit Court of Appeals, which found that other magistrates erred in not taking the step of releasing defendants on their own recognizance after failing to rule on probable cause within the two-day time limit. The 4th Circuit, however, denied the public defenders' writ in the Wallace case, which is why it is now before the Supreme Court.

The Orleans Parish district attorney's office, in a two-page filing with the 4th Circuit earlier this summer, agreed that Wallace did not have a probable cause hearing within the mandated 48 hours. He therefore should have been released without bond, the DA's office concluded.

In a brief filed for the **Louisiana Association of Criminal Defense Lawyers**, Edward King Alexander Jr. chastised several of the appointed commissioners who serve as magistrates, saying they have repeatedly misunderstood the mandates of the Supreme Court decision requiring the 48-hour hearings.

The Center for Constitutional Rights, a New York-based legal nonprofit group, emphasized in its brief findings from the law students' survey. In 38 percent of 1,438 cases studied, the judge or commissioner didn't appear to read the "gist" provided by arresting police officers with a defendant's paperwork, the students found. In another 23 percent of the cases, the magistrate appeared to only read or have read part of the gist, they found.

In cases where police officers have not previously obtained arrest warrants -- the majority of cases that come through magistrate court -- that gist would be the evidence judges would use to determine whether there was

sufficient grounds for the arrest.

"The numbers are significant ... They suggest a pattern of constitutional violations, " said Alexis Agathocleous, a staff attorney for the center.

Hansen, the only elected judge who serves in magistrate court, said he could not address specifics of the Wallace case, as it is currently before the Supreme Court. But he disputed the center's broad findings, saying that during his court sessions, the prosecutor always reads the entire gist.

If the assistant district attorney neglects to do so, the public defender speaks up and makes sure it is read, Hansen said. The same thing likely happens during court sessions overseen by the four appointed commissioners, he said.

Answering the center's assertion that magistrates spend an average of less than two minutes on each first-appearance hearing, Hansen said many cases involve simple marijuana possession charges that don't require much time. He said more complicated cases get more attention.

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