



70 Million S1 E9 Transcript

How New Orleans Could Set a New Course for Bail Reform

New Orleans could become the battleground for bail reform. The city has one of the highest per capita incarceration rates in the world. And most people are there because they can't pay their bail. The current arrangement with the local bail industry gives the impression that judges there could have a financial conflict of interest when setting bail. In this episode, Sonia Paul digs into how an ongoing lawsuit, pretrial consequences of bail, and poverty, bias, and algorithms come into play.

Mitzi: 70 million adults in the United States have a criminal record. I'm Mitzi Miller and this is 70 Million -- an open-source podcast about people, and communities, taking on the broken criminal justice system. This season, we'll chronicle how local jails compound the problem, and what residents are doing about it.

Montage: "Here I am with the judges and attorneys and, you know, police officers..."

"You can have the most beautiful resume and they're still going to label you as a felon."

"I wanted to be able to, to dig in, roll up my sleeves and figure out what could be done about this issue."

"You're not letting us be human, like, you're not letting us just be regular girls."

"For 20 years all I heard was shut up inmate. And now all of a sudden I have a voice."

Mitzi: We've all heard of bailing out of jail...

Montage: "A white Dallas police officer is free on bond this morning after being charged with..."

"Harvey Weinstein, the once powerful Hollywood producer, is wearing a monitor and is out on a million dollars bail this morning..."

"...3D gun printed blueprints quickly posted the \$150,000 bond at the Harris County jail..."

Mitzi: On its own, “bail” refers to the conditions you have to meet to be released before trial. It can be financial, like paying a bond, or non-financial, like checking in with court officials, or appearing for drug tests. But over time, as paying your way out has become normal practice, bail itself has become synonymous with money. If you have it, you can await your trial in the comfort of your own home. If you don’t, you stay behind bars, even if you technically haven’t been convicted of any crime. A [2017 report](#) found that some 450,000 people in the US — 70 percent of all jail inmates — are in this predicament.

So this question -- who can afford to buy their way out of jail -- is why bail reform has become a linchpin in the broader struggle for criminal justice reform in the U.S. Places like [Washington, D.C.](#), [New Jersey](#), [Alaska](#), and now [California](#), either rarely impose cash bail, or have proposed to eliminate it. But changing the system is complicated, and critics don’t always agree on alternative solutions. In this episode, we’ll go to New Orleans, where residents pay nearly [six and a half million dollars](#) every year into the money bail system -- and a [recent lawsuit](#) has brought the issue into sharp focus. Reporter Sonia Paul takes us there. And just a note to listeners -- this episode contains mature language.

Sonia: What are you guys doing here standing outside the public defender’s office?

Reynard: Oh I was coming from the store. I’m going inside.

Anthony: Man, I’m just talking. I actually have drug classes for 4:30. Class is actually not that bad, to be honest with you. Uh, we talk more about life.

Sonia: I meet Reynard Oliver and Anthony Collar near the corner of Tulane and South Broad avenues in New Orleans. This spot is basically where criminal justice breathes out in the city. Nearby is a public defender’s office, courthouse, city jail, and your choice of bail bonds agencies. There’s a hospital nearby too, so the streets have a certain soundtrack.

Sound of ambulance sirens

Sonia: I tell them what I’m up to — that I’m here reporting on the criminal justice system — and immediately they want to get in front of the mic. Reynard has the most to say.

Reynard: We have one of the highest murder rates down here. And every time I go to jail, I don’t never see no murderers in there.

Sonia: Who’s in there?

Anthony: [Laughs]

Sonia: That's Anthony laughing. He chimes in.

Anthony: Petty, petty crimes, nonviolent offenses, uh...foolishness like that.

Sonia: Up [until just this year](#), Louisiana incarcerated more people per capita than any other state in the U.S. New Orleans, its largest city, had the unfortunate reputation of being the most incarcerated city, in the most incarcerated state, in the most incarcerated country in the world. It's also poor: [More than a quarter](#) of its residents live in poverty. And [over eighty percent](#) of the accused who appear before New Orleans court judges are considered indigent. Reynard says this goes back to what people here are able to earn.

Reynard: Why is minimum wage still \$7.25 in the 21st century?

Anthony: Man, you right!

Reynard: Let me repeat that...

Sonia: And that, he says, is has to do with history that goes back even further.

Reynard: Because it's a slave state! It promotes slavery, everything that it do.

Sonia: Reynard tells me he's just posted bail the other day. And that in his view, injustice comes from deep within the court system.

Reynard: The first thing they do is they set your bond too high. And the law states that, when a person is arrested, he's innocent until proven guilty. So therefore he should be given a bond that he's capable of making. I mean, you wouldn't give uh, uh, a homeless man a million dollar bond now, would you? Think about that.

Sonia: The city jail, Orleans Parish Prison, is a five minute walk away from where Reynard, Anthony and I part ways. The holding room at the jail where inmates emerge once they're released is open 24 hours a day, seven days a week. With its rows of chairs, clerks behind windows, and silent air of anticipation, it kind of resembles a county hospital waiting area.

It's early evening. In the back of the room, a private attorney in a dark suit is sprawled on a chair, waiting to visit one of his clients. A tense father from Baton Rouge is staring with his arms folded at a mounted TV screen playing CNN. He came prepared to bail his daughter out, but he doesn't know yet whether he *does* have to pay.

Woman: Can I ask you a question, ma'am?

Sonia: One woman comes to transfer money to her granddaughter in what looks like an ATM machine off to the side.

Woman: I can't put no more than 200 in her account, no more than that?

Sonia: Every inmate has an account they can use to purchase snacks from the commissary, the restaurant in the jail. For a three-dollar fee, friends and family can transfer money to their accounts through these machines.

Isabel Cossart was here until three o'clock in the morning last night, and is back again now, 15 hours later. She has a friend in jail, who's been arrested on a domestic battery charge. He's a native Spanish speaker, and was assigned a public defender.

Woman speaking Spanish on a phone call.

Sonia: Isabel goes back and forth between trying to receive her friend's calls through Securus, an app jail inmates can use to place collect calls, to asking the clerk about her money.

Isabel: It's not fair!

Sonia: Her shoulders slump as she tells me what happened. She and her husband paid her friend's bail, \$2300 -- but then the judge *reduced* it after the fact. Now, she says she's not only stressed about her friend, but also about where her money went, if she'll be able get it back, and if her paying it even means anything.

Isabel: It's in the system, but our friend is still in jail. Even though we did everything, so, uh, you know...And he doesn't speak English, so that's why everything was delayed. Cuz they had to wait until they had an interpreter.

Sonia: After another conversation with the clerk, she and her husband approach a bondsman named Troy, who's sitting near the front of the room. He asks what happened.

Troy: Well, well, what was the situation.

Isabel: Well, we paid the bond of \$2,300, and today, the judge reduced it to \$240, and so who knows.

Troy: Oh, you should go back to the bondsmen and they should refund your money—

Isabel: We don't have a bondsmen! They didn't let us have one.

Troy: So you paid...

Isabel: Cash, yesterday.

Troy: Well, you should get a refund.

Isabel: Yeah, I agree sir, thank you very much!

Sonia: She zips up her purse as her husband continues talking, then adds a final thought.

Isabel: So we feel sorry we didn't use a professional like you.

Musical interlude.

Sonia: [97 percent of New Orleanians](#) who post bail go through a professional bail bonds agency. If you're able, you could pay the full amount up front, and get that money back if you show up to all your court dates. But if you can't make bail in any way, you stay in jail.

So say you find yourself arrested, and a judge orders a \$1,000 bond. To purchase a commercial bail bond, you'd have to pay a percentage of that \$1,000 — a non-refundable fee — to a bondsman, who guarantees the court they'll pay the full bond amount if you fail to show up to your hearings. Different jurisdictions have different percentage fees. In most places in the US, it's about 10 percent. The law in Louisiana states it should be 12 percent, but in New Orleans, in practice, it's typically 13.

Commercial bail is a [two billion dollar industry](#) in the U.S., and a powerful political lobby. In New Orleans, some bondsmen donate to the electoral campaigns of judges. Some critics argue they shouldn't, since that can breed a cozy relationship that opens the door to corruption, or at the very least, gives off that appearance. The higher the bonds the judges set, the more profit bondsmen can reap. And concerns about unreasonably high bond amounts have fueled a federal class action lawsuit in New Orleans.

Brian: I figured I wouldn't be in there long since I was never really in trouble before that.

Sonia: That's Brian Gisclair, one of the plaintiffs in the lawsuit. He's a 34-year old white man, he's shy, and he has the names of his three children tattooed on his right arm. On June 19, 2017, he was arrested on a nonviolent drug charge, and brought to jail.

Brian: It's like being in a place with a bunch of crazy people, pretty much. Everybody's locked and contained into one room.

Sonia: The next morning, Brian entered a courtroom and appeared before Harry Cantrell, the elected judge at Orleans Parish Criminal Court. He was dressed in an orange prison jumpsuit and orange flip-flops, and shackled at the hands and wrists.

Brian: When the judge set my bond at \$2,500, the public defender tried to get it where I was getting released on my own recognizance —

Sonia: Meaning he wouldn't have to pay anything. Brian does home maintenance, but it had been months since he had steady work. He didn't have the money.

Brian: But the judge said no. He said \$2,500 is the lowest bond he sets in his courtroom. And that was that.

Sonia: That same day Brian appeared in court, another man dressed in orange and shackled in chains entered the same courtroom with the grayish-green walls and church-like pews.

Adrian: I felt like, you know, I see how my ancestors felt then and how some animals feel when they in chains.

Sonia: Adrian Caliste, a retired construction worker, had also been arrested on drug-related charges, along with traffic violations. He's 56 years old.

Adrian: I'll tell you, I'm 6'1", 214 pounds. Caramel complexion.

Sonia: And he says he was surprised when he got into court, and realized Judge Cantrell was a black man.

Adrian: Cuz I dunno, years ago when I did went to jail, all of them was white, caucasians.

Sonia: Adrian's the *other* plaintiff. it's *his* name that's on the class-action lawsuit: Caliste v. Cantrell.

Adrian: So he looked like he didn't really didn't give a shit, you know. He's, he's not being lenient to nobody. Like he really, he wasn't concerned, give me the next case. Alright, who's next? All right, y'all going back to the back, send them to the back, I'm through with them.

Sonia: The judge set Adrian's bond at \$5,000.

Adrian: And I looked at myself, like, wow, where I'm gonna get that from, you know? I wasn't working, you know, I'm waiting on my, my retirement and all that. I said, where I'm gonna get this kind of money from, you know.

Sonia: Neither Adrian nor Brian had the money to post their bond, so they went back to jail. And once there, reaching out to someone who could help was a whole other challenge. No one in Brian's family had Securus, the app you have to set up on your phone to take calls from jail.

Brian: Um, my mom, my dad, my girlfriend, my brother, cousins. I wasn't able to get in touch with nobody, really.

Sonia: After a few weeks, Brian's dad finally came to visit. And Brian saw that he was angry.

Brian: He really, he just came there to, excuse my language, but he came there to bitch at me. He let me know that nobody, nobody in the family would be able to afford that. And then nobody could pay to get me out, and I was stuck.

Sonia: All in all, Brian was in jail for about five weeks. He was eventually released on his own recognizance after a bond reduction hearing. While he didn't have to pay in the end, Brian says there was still damage.

Brian: I had a job interview that was for the day after I got arrested. And it would have been a good job that I've been trying to get for a while.

Sonia: Adrian, meanwhile, didn't want to overwhelm his wife or kids. So he called his little sister. He was waiting on a social security check, so he told her to try to sell his truck.

Adrian: And she said, well, they impounded the truck. Because when the police pulled me over I was parked crooked in somebody's yard or whatever. So she said, I know this guy, he say he could get you out for 1,000 dollars, 1100 dollars.

Sonia: The guy Adrian's sister knew was a bail bondsman. When his social security money came through, Adrian funneled that money over to the guy and bailed himself out. He spent a total of about three weeks in jail.

Musical interlude.

Sonia: While Brian and Adrian were in jail — in fact, right after their first appearances before Judge Cantrell — they met with lawyers from the MacArthur Justice Center, a nonprofit law firm, who had been studying bail procedure in New Orleans. A quick note here: The MacArthur Justice Center is a separate organization from the MacArthur Foundation, which provided a grant for this podcast, though they were founded by the same family.

The lawyers from the MacArthur Justice Center had heard reports that Judge Cantrell seemed to be disregarding a person's ability to pay when setting bond. For over six months, they had been researching what litigation around this could look like. Meeting Brian and Adrian solidified their approach.

And so, a week after these two men appeared before Judge Cantrell, on June 27, 2017, lawyers with the MacArthur Justice Center and Civil Rights Corps, another legal nonprofit, filed a class-action lawsuit, with Adrian and Brian as the lead plaintiffs.

Cantrell: Alright, uh, ladies and gentleman, we invoke the Magistrate Court for the Parish of Orleans for the purpose of your initial appearance. One of the functions of an initial appearance is we set bail or bond. Bail or bond is a vehicle for...

Sonia: Caliste v. Cantrell makes two major claims. The first claim is that Judge Cantrell is setting bond amounts that are unreasonable given what arrestees can pay, and that this violates their constitutional rights that guarantee equal protection under the law. Civil rights lawyers are leveling similar charges in jurisdictions across the country.

The lawsuit alleges that Judge Cantrell — who sees anywhere from 100 to 150 arrestees a week — repeatedly sets bonds without making any inquiry into a person's ability to pay. The [complaint](#) lists several instances of this. Like this one, from December 27, 2016.

Cantrell: We don't go any lower than 2500 in this court.

Sonia: In case you couldn't make it out, he said, "we go don't go lower than 2500 in this court."

Cantrell: Probable cause on, uh, simple battery, and we'll set the bond at \$5,000.

Sonia: The second claim in the Caliste v. Cantrell lawsuit is more unique to New Orleans. it's about where exactly a person's bond money goes.

Alec: A judge is supposed to be a neutral judicial officer and they're not supposed to have a financial conflict of interest in the decisions that they make.

Sonia: That's Alec Karakatsanis. He's the founder and executive director of Civil Rights Corps, one of the firms behind the Caliste v. Cantrell lawsuit. They've been filing lawsuits around the country challenging this so-called user-pay system of criminal justice.

Alec: And so when a judge makes a ruling in a case, if she has some kind of financial interest in the outcome of that ruling, then she's violating due process.

Sonia: And that's exactly what this lawsuit argues: that Judge Cantrell, in his position as the magistrate judge, has a financial conflict of interest in this role. Because when he sets a bond amount that often forces people to turn to a bail bonds agency, they have to pay this 13 percent premium to bail out. And that money goes to more than just the bail bonds company.

Alec: In the city of New Orleans, if you were arrested for an offense, the sheriff that brings you into the bail hearing, the public defender who's supposed to be representing you, the prosecutor who's arguing against you, and the judge who is deciding your case, all take a percentage cut of any money bond that's set in your case.

Sonia: Almost 2 percent of the 13 percent premium goes into a judicial expense fund that Judge Cantrell helps to manage — which the Vera Institute for Justice [found brings in](#) over a million dollars every year.

Sonia: I ask Alec, why do we have this system?

Alec: One reason of course is that it's a booming multibillion dollar a year industry and there's tremendous profits to be made off of monetizing the money bail system. The second reason, which I actually think is more foundational and more important is that the money bail system allows the quick, efficient processing of a tremendous volume of arrests.

Sonia: Which is why the rise in mass incarceration parallels the rise of money bail, he says. The sheer number of people being arrested motivated super quick hearings that last only minutes.

Alec: If we actually had a lengthy hearing for every person that we detained, it would actually take quite a long time to process all of the arrests every day in most American jurisdictions. So instead we came up with a system that allowed for a decision to be made in a few seconds, just announcing some amount of money in that the person pays that amount of money, they're released and if they don't pay that amount of money, they go to jail.

Sonia: Greater awareness of how this works is why attention on money bail has skyrocketed over the years, and why litigation is one of many attempts at reform. In the last few years alone, several high profile lawsuits and court decisions have challenged wealth-based detention — in places like [Missouri](#), [Texas](#) and [Alabama](#). And New Orleans' particular funding structure actually came out of its history of litigation, according to Alec.

Alec: In the early 1990's, someone filed a similar lawsuit, challenging the financial conflict of interest of the judges and setting monetary bails in New Orleans.

Sonia: The lawsuit, [Augustus v. Roemer](#), challenged the fact that, at the time, the accused had to pay a fee straight back to the court any time they bonded out.

Alec: And that statute, that state law, was struck down by a federal judge, saying essentially the same thing, that state court judges cannot have a financial conflict of interest in the monetary bails that they set.

Sonia: But then a couple of years later, the law basically went backward, as Alec puts it. The Louisiana legislature drafted a new law.

Alec: A new law that essentially re-passed the old law that the federal courts had struck down. But this time it gave a cut not just to the judges, but to the public defenders, the sheriff and the prosecutors so that nobody in the system would have any incentive to challenge that law.

Sonia: Instead of having the accused pay directly to the courts — because that would be unconstitutional — the legislature ruled the bondsmen would have to pay a fee on the bonds they issued. That's why the premium in New Orleans is higher than anywhere else in Louisiana. The bondsmen essentially passed that amount the court charged them on to the accused to pay. [Some argue this is illegal, but it's common practice.](#)

Doug: They got other states trying to get rid of bail bonds.

Sonia: I meet Doug one Sunday at a local parade in New Orleans. He declined to give his last name to protect his privacy. He and his friend are sitting on their wheelchairs on the side of the road waiting for the line of musicians, known as the second line, to come through. Doug has never been in jail. But he knows some people who have, and how bail works.

Doug: Everything works together, you have the courts, the police....it's all in sync on one another. Now, you got the police, the police department, you have courts, you have judges, you have bail, it's all in sync, they all work together, in sync, and all of them make money together. So who wants to give up their big money cash flow? Nobody, even if it's wrong or right. Money's the root of all evil, and money ruins everything around you, so, at the end of the day, politics and money.

Sound of the parade.

Sonia: There's one other aspect of New Orleans history that you can't divorce from the modern history of its criminal justice system: Hurricane Katrina.

Meg: So, yeah, I actually did a lot of work right after Hurricane Katrina and related to Hurricane Katrina.

Sonia: Megan Garvey is an attorney at Orleans Public Defenders office.

Meg: Look, it's a real public defender's office with a thousand La Croix cans.

Sonia: She says a lot of what people are outraged about now, was happening then.

Meg: You had people being held on really low-level charges. And when I say low-level, I mean failing to appear for jury duty, child support, things of that nature. Who remained here during Hurricane Katrina in the jail were put into life-threatening situations as a result of that.

Sonia: At the time, over 6,000 people were housed in Orleans Parish Prison. A third of them were pre-trial, meaning they had not been convicted of any crime. When the storm hit, many were stuck even though [most prison officials](#) — like everyone else in the city who could manage to do so — had left.

[Reports later revealed](#) that sewage water rose to people's chests. Thousands of inmates were left for days without food, water, ventilation and electricity. Many were then transferred to other prisons, including Angola, Louisiana's notorious maximum security prison. It used to be a slave plantation. It's now a prison farm.

Meg: There were pregnant women like sleeping where animals are kept. And these were people who were pretrial, a lot of them who could not afford their bonds. So really a lot of things that were relevant to the bond came to light even back then.

Sonia: Katrina only *spotlighted* what was already a huge problem in New Orleans. Too many people were being incarcerated, often for low-level crimes they couldn't afford to bail themselves out of.

Meg: And so as a result of that, there were a group of lawyers who had to file a special litigation just to have people's cases brought to the attention of judges so that they could be released. A lot of other things came out of that. A lot of reforms came out of that and the existence of our office the way that it is now, I would consider to be a direct result of a lot of the things that Hurricane Katrina uncovered.

Sonia: New Orleans didn't have a formal public defender's office before Katrina. The fact that Brian Gisclair and Adrian Caliste had bond attorneys who were specifically trying to negotiate on their behalf shows how far the city has come since the storm.

Meg: Um, I would say there's been a revolution, rather than an evolution.

Sonia: Litigation and policy changes are taking place throughout the country to attack how money can determine your fate in the criminal justice system. But disagreements about reform are everywhere.

If there's anyone who stands to lose the most from bail reform — whether it's by posting lower bonds or eliminating money bail altogether — it's the people who work directly in the bond industry. And here's what happened when I tried to talk to them: one, at Blair's Bail Bonds on Tulane Avenue, immediately stopped talking and showed me the door as soon as he found out I was a journalist, likely because Blair's Bail Bonds is currently on the receiving end of a lawsuit.

Another down the road, Matt Dennis, who owns Steve's Bail Bonds, said he might be open to an interview. He's been quoted by the AP and local outlets, but he said he wanted to look into *my* background.

Matt: Listen, I looked at a lot of your biography and stuff.

Sonia: And when I got to his storefront for the interview, mic out and ready, he argued my previous reporting on racism and queer rights is part of the media's "division politics." And so he wouldn't trust my reporting on bail.

Matt: We are being attacked by the left and my industry, we're being attacked by a false narrative that is driving my industry into oblivion and it's going to do one thing to our country. It's going to turn us into a socialist, European nation, so.

Sonia: After he finished, he left me standing at the counter while he went to his office in the back.

Matt: But I think...

Sonia: Uh, Matt...

Sonia: But even bail reform advocates don't all agree on how to move forward. Take California, which recently passed a law to eliminate cash bail. The [ACLU](#), [Human Rights Watch](#), and other legal groups actually oppose it. One lawyer told me it's an example of what states *shouldn't* do, because it gives judges too much discretion that might result in even more people being detained. Alternatives to cash bail also include algorithm-based risk assessment scores, which some argue are biased. And since the algorithms are proprietary, others argue they're not transparent enough.

Another attorney told me that when it comes to bail reform, it's easier to be radical than it is practical. A financial conflict of interest is bad, he says, but worse is the courthouse shutting down and people not being able to appear for their hearings — all because there's not enough funding to keep things running.

The Orleans Public Defenders office actually [stopped accepting clients](#) for a period in 2016 because they basically [ran out](#) of money.

Musical interlude.

Sonia: The Caliste v. Cantrell lawsuit reached a [declaratory judgment](#) on August 6, 2018. The judge overseeing the lawsuit ruled in favor of the plaintiffs, Brian and Adrian, stating that Judge Cantrell's bond policy violated the constitutional rights of the accused and presented a financial conflict of interest because of the court's funding structure.

Judge Cantrell has argued the court lacks the power to direct him in the way he practices, and that since the lawsuit was first filed, he's adjusted his bail procedures. There will now be no minimum monetary bail amount, and he will state on the record his reasoning when setting bail. His lawyers are planning to appeal the verdict. I tried to contact a few people at the court who would be authorized to speak on the case, but at the time of this recording, I've been unable to get an interview. Now, both Adrian and Brian are trying to close up their individual cases and move on.

Brian: Now I'm just fishing and looking for other jobs.

Sonia: Once he was out, Brian called the person who had scheduled the job interview he missed while in jail. But the job was already filled.

Brian: And then I called the lady that I used to work for and she put me to work, but it's not like a everyday job, just whenever things go wrong.

Sonia: Adrian, meanwhile, spends two days a week caring for his dad, who's 96. He's also studying to become a minister. We talk about what motivated him to put his name on the lawsuit.

Adrian: I said why not give something back to the community to help the people, you know?

Sonia: He says it goes back to not just how crime and policing and bail works, but how New Orleanians just can't afford this system.

Adrian: Cuz what they doing I think is wrong, and it should be where — if it were somebody could afford something, you know. Because New Orleans is a poor town. This is a poor city, you know. People don't have like in other places. Just the other day I was on my way to church and I looked down on Claiborne and Canal streets, and I saw all these people out here. Which I try my best to feed them or whatever I could do for them. I said but sooner or later, they'll be picking these

poor homeless people up and giving them a high bond. And then people can't get out of there. They can't get out of there.

Sonia: In New Orleans, I'm Sonia Paul, for 70 Million.

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