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Participant Observation of a Broome County Court Arraignment

Broome County has the highest incarceration rate in New York State. For every 10,000 residents, 38 people are incarcerated.¹ This number has grown 720 percent since 1970, when the incarceration rate was only 5 per every 10,000 residents.² The purpose of my visit to Binghamton City Court was to try and better understand the processes that lead to Broome County having this designation. I spent a morning watching court arraignments, which is typically the first time that a defendant goes before a judge. I chose to observe this procedure because it is, for many, the place where the process of their incarceration begins. What I observed during my time at the court gave me insight into how the criminal justice system functions in Broome County, and how the major players in that system—the judge, the prosecutors, and the public defenders—contribute.

In a two-hour span of a Monday morning in October, over 30 people were arraigned in Binghamton City Court. The court was made up of about 5 court officers, a judge, a prosecutor, a public defender, and a few private attorneys who came in and out depending on which clients they were representing. The majority of people who were being arraigned required the counsel of a public defender, of which there was one who represented all clients who required her counsel.

Figure 1
Binghamton City Court



Note. Provided by NYCOURTS website.

¹ Vera Institute of Justice, 2017

² Ibid.

Most of the people facing the judge this morning were there to set up a court date, but there were a few people who were already incarcerated, dressed in bright orange jumpsuits and sitting in a gated area near the front of the room. All of the incarcerated people were unable to afford private counsel, and thus spoke directly with the public defender. All but 3 of the approximately 30 people who I saw arraigned pleaded not guilty. The majority of charges were nonviolent. There was one assault case, but most were drug possession or disorderly conduct charges. Most cases ended in the prosecutor suggesting pretrial supervision (a type of probation), and the judge almost always concurred with little pushback despite suggestions from the public defender.

As previously mentioned, almost every single defendant was unable to afford private counsel. It was humbling to hear these stories of poverty first-hand. One man had been on probation for 5 years for the crime of property damage. Despite never violating the terms set in his probation, he was facing incarceration due to the fact that he owes around \$7,000 in restitution fees for the property he damaged 5 years ago. He lives at his parents' house with his pregnant wife and 3 children, and he has a severe learning disability for which he receives a Supplemental Security Income (SSI) check of \$750 each month. He is unable to work, but he uses part of his monthly SSI income to make payments on his \$7,000 debt. But, since he has not paid enough of the \$7,000 to satisfy the court, the next step for him will likely be a jail sentence. He begged for leniency, referring to his good behavior and attempts at payment, and explaining the negative impact that his incarceration would have on his family, but the judge told him that it was out of his hands and that the defendant would have to work something out at another time with his probation officer.

For many of the defendants that came to court directly from Broome County Jail, their bail was set at these arraignments. Most defendants received a bail of around \$1000 cash, \$2000 property, and judging by the few stories that I heard about income levels for inmates, this bail would effectively keep these people in jail even though they have not been convicted of a crime. When people are unable to afford their bail, they have no choice but to wait in jail until their trial date. Most of these trial dates were set around a month out from the day I observed, meaning that the defendants would have to stay in jail until that date for no reason other than they are too poor to pay their bail.

The relationship between incarceration and poverty is well-documented,³ and by no means unique to Broome County. In 1996, President Bill Clinton implemented welfare reform legislation, which essentially ensured that nobody who was receiving government assistance could “cheat the system” by receiving more benefits than the state saw fit. As a result, many poor people were arrested and criminalized because of their perceived violation of government assistance. In her book *The Criminalization of Poverty*, Kaaryn Gustafson writes that “as a result of the [welfare] reforms, the federal government and the states instituted a host of policies and practices that equated welfare receipt with criminality; police[d] the everyday lives of poor families, and wove the criminal justice system into the welfare system.”⁴

In 2017, Broome County District Attorney Steve Cornwell and County Executive Jason Garner announced a crackdown on welfare fraud, claiming that they would be pushing for stricter penalties in these situations.⁵ As Gustafson⁶ puts it, “while lawmakers and the public seem unwilling to devote tax dollars to providing cash benefits to the poor, there seems to be

³ Looney, 2018

⁴ Gustafson, 2011, p. 51

⁵ Briga, 2017

⁶ Ibid. p. 59

great willingness to spend money to police the poor—even when doing so appears to be economically inefficient or ineffective. By instituting these programs, states signal that crime control takes priority over relieving poverty.” While Broome County does not provide data about how many people charged with welfare fraud are incarcerated, the fact that the District Attorney and County Executive are so committed to prosecuting welfare fraud speaks volumes about the attitude and priorities of the county’s law enforcement agencies.

Another way in which the poor people of Broome County are unjustly impacted by the criminal justice system is evident in the number of incarcerated people who have not been convicted of a crime. In 2019, there were an average of 441 people in Broome County Jail each day. Of those 441 people, only 110 had been convicted of the crime that they were arrested for. That is approximately 25 percent. 75 percent of people in the jail, 334 people, had not been convicted of the crime that they were arrested for.⁷ They had been arrested and charged, but they had not been found guilty or sentenced by a jury or a judge. The majority of these people remained in jail (even though they had not been found guilty) because they were too poor to pay their bail. Some people can afford to pay a \$1,000 bail, and those are the people who do not have to stay in jail without being found guilty of a crime. For the majority of people in Broome County Jail, this is not the case.

My visit to Binghamton City Court showed me how important money is in the criminal justice process. If one has access to money, one may just be able to post one’s bail and not sit in jail for no reason other than a lack of funds. Most people that I saw enter Binghamton City Court did not have access to money. They, like so many others across the county, are simply out of luck. They are trapped in a system that demands money for freedom, even if one has not been convicted of a crime. Until this issue is taken seriously by lawmakers, Broome County will have

⁷ NY State Division of Criminal Justice Services, 2020

to reckon with the fact that they put more of their residents behind bars than any other county in the state, and instead of helping the worst off among them—the poor, the addicted, the struggling—they lock them up.

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