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Questions Grow About Handling of Waco Biker Cases

by [Terri Langford](#) | June 10, 2015 | [21 Comments](#)

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A general view of the Twin Peaks restaurant where nine members of motorcycle gangs were shot and killed in Waco, taken May 19, 2015.

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and more than a few legal experts — including former prosecutors — are starting to wonder what is going on in McLennan County.

The sluggish process of sorting out the guilty from the innocent

More than three weeks after Waco police arrested 177 bikers following a deadly shootout at a local restaurant, no charges have been filed in the killings, nearly half the bikers remain in jail on unusually high bonds,



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raises civil rights questions, and potentially exposes the county to significant costs for arresting and detaining people who had no involvement in alleged crimes, experts said. So far, one federal civil rights lawsuit has been filed against the city of Waco and McLennan County by one of the bikers.

On Tuesday, Billy Ray Stubblefield, presiding judge of the Third Administrative Region, which includes Waco, met with the two judges handling the bikers' cases to discuss ways to move the pre-trial process along.

"Given the circumstances, this has moved along a lot faster than I thought it had. I mean, these are first-degree felonies," Stubblefield said. "But I think there are ways to speed it up, and that's what I stand ready to do."

As of Tuesday, 99 bikers had paid their bail or were in the process of being bonded out, Stubblefield said. The remaining 78 have been in the McLennan County jail since May 17, when nine people were killed and 18 wounded at a lunchtime shootout involving rival motorcycle gangs and police at the Twin Peaks restaurant. Stubblefield said another 14 of those still in jail would have hearings in Waco on Friday about bond reduction.



Police arrested all of the bikers at the scene and charged them with the same crime: engaging in organized crime. All 177 faced a \$1 million bond.

But the sky-high bond, which has kept most of the bikers in jail for three weeks, and the carbon-copy charge filed against everyone arrested have prompted an avalanche of criticism from legal experts, including former prosecutors.

"Initially, I thought it was understandable because it sounded like a major outbreak of violence by a lot of people," said Sandra Guerra Thompson, a professor at the University of Houston Law Center.

But weeks after the mass arrests, she and other lawyers are surprised so many remain in jail while none have been charged directly with the nine deaths. In that time, Thompson said, police should have been able to sort out who is a witness and

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who is suspect.

“I think it’s been a rather long delay in doing that sorting,” she said. “It seems like you should be able to view footage, talk to them and at least get some of the people out.”

A call to McLennan County District Attorney Abel Reyna was not immediately returned.

Given the confusion of the shootout and number of deaths, the mass arrest might have made practical sense at the time, said Melissa Hamilton, a former Clearwater, Fla., police officer and visiting criminal law professor at the University of Houston Law Center, even if police did not have detailed probable cause to arrest each biker.

“Sometimes people are pragmatic. They’re willing to do things for public safety where there may not be probable cause,” she said. “You can’t read into it that what they did is wrong. ... I don’t think it’s a slam dunk one way or another.”



But sooner or later officials have to either file real charges or let innocent people go, said Gary Smart, a criminal defense attorney in Arlington. Like many of his fellow defense lawyers have in the past week, Smart negotiated to lower the \$1 million bond for his client, Sandra Lynch.

Smart, a former Dallas County prosecutor, said Waco's mass arrest and the lengthy jail hold are virtually unprecedented in Texas. “You see something like this in El Salvador or Iran,” he said.

To arrest anyone, police must have probable cause that each individual committed a crime, lawyers explained.

“In Waco, the situation was a bit different because it was reactionary and it was done in the heat of a catastrophic event,” said Philip H. Hilder, a former federal prosecutor who now works in Houston as a criminal defense lawyer. “But the principle remains, there has to be probable cause to arrest an individual.”

The hefty \$1 million bail contributes to the paralysis of the pre-

trial process, Thompson said.

“It does seem designed to keep them in,” Thompson said. “Bail is not supposed to be set to ensure that people stay in. It’s supposed to be set at a reasonable amount that they can afford to pay and which will guarantee their return to court.”

When [bond for murder in Houston](#) can start at \$50,000, the \$1 million bond for all 177 in Waco appeared excessive to some. “It is weird to have such high bond amounts,” Hamilton said.

If history is instructive, the arrest and prolonged detention of so many can cause not only massive logistical nightmares, but also costly legal ones.

Hilder pointed to a [2002 mass arrest in Houston](#) that ended up costing city officials there more than \$1 million. A botched attempt to crack down on drag racing netted 273 arrests in a Kmart parking lot, though many of those arrested were passers-by and customers. Federal civil rights lawsuits [forced the city to pay up](#) more than \$800,000 in settlements.

But the cost didn’t stop there. The city had to pay \$60,000 for outside attorneys to represent police officers, and the massive internal investigation resulted in 32 officers disciplined and one captain fired. Those costs were in addition to the money spent shepherding the cases through the judicial process.

In 2005, U.S. District Judge Nancy Atlas blasted those behind the Kmart sweep, calling it “almost totalitarian.” She also found that there was “no evidence before the Court that any street racing occurred on the evenings in question.”

Randall Kallinen, one of the lawyers who successfully won settlements for those arrested in the Kmart sweep, has been watching the Waco case with interest.

“Now it may be they have enough information to arrest a few people,” Kallinen said of the Waco arrests. “It’s not plausible that 177 people, there was probable cause to arrest them.”


Calls to both the Waco spokesman and the McLennan County judge to discuss if both the city and county were bracing for additional costs were not immediately returned on Tuesday.

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