

## Liman Workshop Rationing Access to Justice: Fines, Fees, and Bail

### February 26 Abolish Money Bail?

Judge Rosenthal's April 28, 2017 opinion in *Harris County* highlighted the failures of the current money bail system. This week focuses on reform. As you read below, think about proposals ranging from adding lawyers (Douglas L. Colbert, Ray Paternoster, and Shawn D. Bushway), to shifting to a risk-assessment system based on empirically tested "tools" (The Arnold Foundation and California Pretrial Detention Reform Workgroup), to using electronic monitoring (Samuel Wiseman), to analyzing and recalibrating the utilities of bail (Crystal S. Yang). As you look at the different analyses, consider whether you would want a world in which money bail was not a factor to be used in deciding on pretrial detention.

In addition to opponents of money bail, there are proponents. That approach can be found in the excerpts of the brief by the Professional Trade Association of National Bail Insurance Companies arguing the important role that "commercial sureties" play and therefore seeking to sustain the system of money bail through a class action attacking New Jersey's 2017 reforms that prohibit the use of monetary conditions.

The 2018 California state court opinion provides an example of how long reform measures take to be implemented and begs the question of whether the best venue for bail reform is the courts or the legislature. Jeff Adachi's article helps us consider whether judges should be involved in the reform process. The California pretrial detention recommendations to the Chief Justice provide us with a case study of a state working to reform its bail system to ensure that it does not discriminate against the poor. While you read consider what you, the social planner tasked with revamping the bail system for this state, would recommend to replace the current system.

*Public Safety Assessment: Risk Factors & Formula*, LAURA & JOHN ARNOLD FOUNDATION  
(2016)

Douglas L. Colbert, Ray Paternoster & Shawn D. Bushway, *Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail*, 23 CARDOZO L. REV. 1719 (2002)

Samuel Wiseman, *Pretrial Detention and the Right to be Monitored*, 123 YALE L.J. 1118 (2014)

Crystal S. Yang, *Toward an Optimal Bail System*, 92 N.Y.U. L. REV. 1399-1493 (2017)

Brief for Amici Curiae American Bail Coalition, Georgia Association of Professional Bondsmen & Georgia's Sheriffs' Association in Support of Defendant-Appellant and Reversal of Preliminary Injunction, *Walker v. City of Calhoun*, 2016 WL 3452938, (11<sup>th</sup> Cir. 2016)

Complaint, Brittan Holland (Lexington Nat'l Ins. Corp.) v. Rosen et al, No. 1:17-cv-04317 (D.N.J. filed Jun. 14, 2017)

Eric Westervelt, *Did A Bail Reform Algorithm Contribute to This San Francisco Man's Murder*, NPR: ALL THINGS CONSIDERED (Aug. 18, 2017), <https://www.npr.org/2017/08/18/543976003/did-a-bail-reform-algorithm-contribute-to-this-san-francisco-man-s-murder>

*Pretrial Detention Reform — Recommendations to the Chief Justice*, CAL. PRETRIAL DETENTION REFORM WORKGROUP (Oct. 2017)

Jeff Adachi, *Don't Let Judges Hijack California Bail Reform*, THE SACRAMENTO BEE (Nov. 27, 2017 12:00PM), <http://www.sacbee.com/opinion/oped/soapbox/article186040863.html>

In re Humphrey, No. A152056, 2018 WL 550512 (Cal. Ct. App. Jan. 25, 2018)