



court over the years. Most of them would break your heart. What these arguments have told me is that the people who have gone out on a limb for the friend or loved one they bailed out are far from rich. Like the majority of Americans they are simply hard-working folk trying to do the right thing by such friend or loved one. Indigent, no. But not rich, either.

No, the real reason for “bail reform” can be found in *State v. International Fidelity Insurance Company*, 355 P.3d 624 (Ariz. Ct. App. 2015). In that case the State (Pima County) was able to enter into evidence (in violation of the disclosure rules, incidentally) its request that it be reimbursed for a post-surrender incarceration of a bailed defendant who had absconded, and was later caught and returned. The amount requested for that defendant was calculated by Pima County at \$7,039.12 for 84 days—approximately \$84 a day in 2013 dollars (*cf. State v. Int'l Fidelity Ins. Co.*). I understand that other counties which have done similar studies have determined a “per diem cost” in the same neighborhood as Pima County. N.B.: This “aggravating factor” ploy was too much even for Division II, as it reversed the trial court’s determination for taking the per diem cost into account when it forfeited a giant portion of the bond.

Nevertheless, one can see how much a “tab” an alleged felonious indigent can run up on an Arizona county’s nickel during a pre-trial detention, or that of a political subdivision of this State which seeks to house its defendants in a county jail and reimburses the county for such per diem rate.

At this point it should be noted that the Task Force which was set up to come up with the “let-the-indigent-be-released-from-jail-before-trial-for-little-or-nothing-and-with-no-monitoring” was made up completely of persons in the public sector; some with advanced degrees to be sure, but all government employees nonetheless. No one in the private sector, be it someone like me or anyone who has ever written

even one bail bond, was invited to be on the Task Force.

Admittedly, I did have the opportunity to present to a small subcommittee of the Task Force my revenue-neutral solution to release indigents and still have them monitored by a bondsman. However, I was figuratively “patted on the head” by Mr. Byers, the Task Force Chair, and told, essentially, “Oh, the indigent defendants will show up to court even if a very small or no bond is required.”

Maybe, but probably not. Maricopa County is different than most all of the other counties in this State in that if the bond is put in jeopardy of forfeiture (by the defendant failing to appear) the trial judge in the underlying criminal cause does not handle the matter. Rather, all bond matters are directed to one “Bond Division,” which has its hearings every Tuesday afternoon.

The Bond Division notifies everyone in the local bonding community with an email blast of its calendar every Monday. What I have noticed in the calendars which I have been recently receiving are trending with more and more of these “low cost bonds” on the calendar. I do not know whether or not the bonds on the Bond Division calendar represent just an unfortunate few of the many responsible indigents, but I believe this trend is like the canary in the coal mine.

Oh well, it’s all sunshine and lollipops, until it’s not; when Arizona is overrun by indigents with bench warrants who had no financial incentive to appear in court, nor anyone, like a professional bondsman, contractually obligated to search for them. This could be what happens when a group of Arizona bureaucrats decide, in their collective wisdom, that they can improve upon a bail system which worked without their help for the past 750 years.

—Cliff Sherr,
Phoenix

FROM THE EDITOR

Bailing out justice



If you're like most people, you think of bail—when you think of it at all—as an accepted fact of legal existence, one that's probably been around since time immemorial.

Cash-bail strikes most of us as an old-timey thing, quaint in a way, and entirely necessary to ensure the appearance of defendants at their scheduled trials. Most believe that it's administered in an even-handed way, and therefore it remains one of those rare corners of the criminal justice system that is without controversy.

Now, what if it turns out none of that is true? What if that under the radar administrative tool has a relatively recent history? What if it leads to inequitable results? And what if bail—and other court-imposed fees, fines, and penalties—helps simply to jail the poor and release the rich, all without making the public safer? These are all questions our own Arizona Supreme Court is willing to ask, and the resulting answers could cause deep changes to our justice system.

A January summit held at the Court communicated the problems and possible solutions to state legislators and members of supervisory boards. A packed room listened to experts describe the recommendations of a task force created at the direction of Chief Justice Scott Bales.

The Task Force on Fair Justice for All turned a hard light on all judicial operations, and on how they affect those who interact with the judicial branch. National news stories have revealed how some communities have been decimated by an overreliance on court fees as a counterbalance to declining municipal budgets.

Ferguson, Missouri, may have been a police shooting, but the events laid bare an economic war waged on the poorest residents. There, the courts were complicit in a revenue-generation strategy—which led to decreased trust in those same courts and the broader justice system.

Chief Justice Bales awaited no violent flapdoodle to look at our own state's processes.

You can read the complete Task Force report here: www.azcourts.gov/justice-for-all

What you'll see is an impressive document that marches readers, step by step, through a logical series of assumptions. The sturdiest opponent of change may find himself agreeing, item by item, with the Task Force's 11 broad principles. It is a persuasive document, ever mindful of its audience of experienced court personnel, lawyers, and elected officials. Whether its 65 recommendations eventually get across the finish line is another matter, but congratulations to Task Force Chair Dave Byers for a remarkable document. A package of resultant bills is wending its way through the current legislative session.

And thank you to Chief Justice Bales and our Court for seeking a proactive outcome. As visiting speakers at the Summit pointed out, other states now view Arizona as a leader on these important topics. They—and we—look forward to what just results emerge from the Court's deep commitment to change.



Tim Sigo

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Editor
TIM SIGO
Tim.Sigo@azbar.org
602-345-7370

Art Director
KAREN HOKUS
Karen.Hokus@azbar.org
602-345-7302

Production Manager
MICHAEL PEEL
Michael.Peel@azbar.org
602-345-7371

Advertising Manager
LISA BORMASTER-FOUNTS
Lisa.Bormaster@azbar.org
602-345-7230

Advertising Coordinator
MIRYELA CORDEIRO
Miryela.Cordeiro@azbar.org
602-345-7350

Communications Assistant
JILLIAN KINGSLEY
Jillian.Kingsley@azbar.org
602-345-7322

Editorial Board
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Addresses
4201 N. 24th Street, Suite 100 Phoenix, AZ 85016-6286 (602) 252-4804
2701 N. Church Avenue Tucson, AZ 85701-1113 (520) 623-9944

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