

⊕ BAIL REFORM: A PANACEA FOR JUSTICE REFORM

ALL WELL-INTENTIONED I'M SURE, BUT ORGANIZATIONS AND AGENDAS AIMED AT BETTER PRISON CONDITIONS AND SENTENCE REFORM DO LITTLE TO STOP THE FLOW OF PEOPLE INTO PRISON IN THE FIRST PLACE. THERE IS NO REASON TO NEGLECT THESE AND OTHER ASPECTS OF THE JUSTICE SYSTEM, SO LONG AS THE PRIMARY FOCUS LAYS, NOT WITH PREVENTION, BUT WITH LEVELING THE PLAYING FIELD. ("PREVENTION," AS DISTINGUISHED FROM RECIDIVISM, BELONGS IN THE SPHERE OF EDUCATION AND ECONOMICS, AS WELL AS SOCIAL SAFETY NETS.)

A CRIMINAL TRIAL SHOULD NOT BE AKIN TO A POLITICAL CAMPAIGN, WHERE THE PARTY WITH THE BIGGEST WARCHEST WINS. AND FOR ALL THOSE JUDGES WHO ENDORSE PUBLIC ATTORNEYS AS PROVIDING NO LESS ZEALOUS...

... OR EFFECTIVE REPRESENTATION, THAN
PRIVATE-PAID COUNSEL, PUT THE ASSERTION
TO THE TEST: FORCE ALL DEFENDANTS TO
BE REPRESENTED BY PUBLIC COUNSEL. IS
THERE SOME SORT OF PROBLEM WITH THIS?
NO?? THEN WHAT'S THE HOLD-UP??? THAT'S
WHAT I THOUGHT.

IN A JUSTICE SYSTEM THAT SENDS AFFLUENT
PEOPLE TO PRISON AT THE SAME RATES AS
POOR PEOPLE, THINGS WOULD INSTANTLY
CHANGE. FOR ONE, CONDITIONS OF CONFINEMENT
IN PRETRIAL DETENTION AND PRISON
WOULD CERTAINLY IMPROVE. THE UPPER
CLASSES NOT ONLY EXPECT AND DEMAND
MORE, BUT THEIR SOCIAL CONNECTIONS AND
ECONOMIC RESOURCES ARE PRONE TO
INFLUENCE CONDITIONS IN CUSTODY FROM
WITHOUT. I DIDN'T SAY THE "RICH" COULD
NOT UTILIZE THEIR MONEY AND INFLUENCE...

... AT ALL, ONLY THAT FOR THE SAKE OF DUE PROCESS AND THE TRIAL THEY BE STUCK WITH THE SAME LEVEL OF REPRESENTATION THE REST OF US GET. THEY MIGHT HAVE AN ADDITIONAL PRIVATE-PAID ATTORNEY PERHAPS, FOCUSING ON ALL OF HIS GRIEVANCES AND RIGHTS VIOLATIONS WHILE AWAITING TRIAL, ASSUMING HE IS ALSO HELD WITHOUT BAIL OR BOND THAT IS. YOU SEE, THE RICH MUST NOT ONLY SHARE IN OUR REPRESENTATION, BUT ALSO IN OUR PRETRIAL DETENTION TO MAKE THIS THEORY REALLY WORKS. OTHERWISE, THERE ARE TOO MANY LOOPHOLES.

SINCE THE BUSINESS OF BAIL OR BOND IS FAR TOO UNRELIABLE, AND BEING RELIABLY APPLIED MORE OFTEN AND IN GREATER AMOUNTS, THE ONLY EQUITABLE SOLUTION IS TO TAKE THIS OFF THE TABLE AS WELL.

REMEMBER, THE COURTS HAVE SAID TIME AND TIME AGAIN WHEN DENYING INDIGENTS APPEALS THAT, WHILE SOME INEQUITIES MAY OCCUR, THEY DON'T RISE TO THE LEVEL OF A CONSTITUTIONAL DEPRIVATION; AND THEN GO ON TO BLAME THAT INDIGENT FOR BEING WEAK-WILLED, OR FOR NOT BEING SMARTER THAN HIS OWN ATTORNEY - TRUST'S SUPPOSED TO BE ASSISTING HIM (!) SO YOU SEE, THE RICH SHOULD FIND COMFORT THAT THEIR DUE PROCESS IS ASSURED, BAIL OR NO BAIL. IT'S JUST A MINOR "INCONVENIENCE."

IN FACT, EVEN IF WE LOCKED UP THE RICH WITH THE POOR, AND EVEN IF WE GAVE THEM BOTH PUBLIC COUNSEL, IT'S FORSEEABLE THAT INFORMAL SIDE-AGREEMENTS WOULD BE ESTABLISHED, SUCH AS FUTURE WORK OR PAYMENT UPON A FAVORABLE DISPOSITION OF THE CRIMINAL MATTER. SUCH IS LIFE; BUT...

... THE FACT OF INCREASED LIVING CONDITIONS
IN PRETRIAL DETENTION AND A GREATER
OBSERVANCE OF DETAINEES RIGHTS BY THE
VERY PRESENCE OF THE AFFLUENT WOULD
HAVE A DETRIMENTAL EFFECT ON THE
STATE'S ABILITY TO COERCE PLEAS. THE
HARSH PRETRIAL CONDITIONS FOUND IN
ALMOST EVERY AMERICAN JAIL ARE A
PROSECUTOR'S MOST EFFICACIOUS AND RELIABLE
TOOL FOR BRINGING INNOCENT AND GUILTY
DEFENDANTS TO THE NEGOTIATING TABLE,
- OR JUST TAKE WHATEVER IS OFFERED,
- ANYTHING TO END THE TORTURE OF
PRETRIAL DETENTION. IT HAS BEEN WELL
ESTABLISHED THAT PRETRIAL DETAINEES
OUGHT HAVE AT LEAST AS GREAT OF
RIGHTS AND CONDITIONS AS A CONVICTED
PRISONER, YET, EXCEPT FOR ANOMALIES
LIKE BURNLEY HILLS, ALMOST EVERY SINGLE,

... JURISDICTION IN AMERICA FAILS TO MEET CONSTITUTIONALLY MINIMAL STANDARDS, - WHICH ARE MINIMAL.

THERE ARE VARIANCES AMONGST THE STATES AND BETWEEN THE STATE AND FEDERAL JURISDICTIONS, BUT APPROXIMATELY 5% OR MORE DEFENDANTS ELECT TO GO TO TRIAL. SOME 95% COP A PLEA. IF EVEN TWICE AS MANY PRETRIAL DETAINEES INSISTED ON THEIR RIGHT TO TRIAL, WHICH DEFENDANTS RELEASED ON BAIL/BOND ARE PRONE TO DO, OUR JUSTICE SYSTEM WOULD OVERLOAD IN A MONTH OR TWO.

THERE AREN'T ENOUGH PROSECUTORS; NOT ENOUGH CAPACITY IN THE COURTS; AND NOT ENOUGH MONEY IN THE BUDGET TO HANDLE SUCH AN INCREASE. IF EVEN 1 IN 10 DETAINEES WENT TO TRIAL, THE SYSTEM OF COERCED PLEAS WOULD COLLAPSE.

There is more to mention, such as "PAY-TO-STAY", i.e. THE FINANCIAL INCENTIVE GIVEN FOR LOCAL SHERIFFS TO SECURE A CONVICTION OR ELSE FORFEIT REIMBURSEMENT; AND THE OPEN RETALIATION BY THE COURT ITSELF FOR DARING TO REJECT A PLEA AND "MAKING THEM" CONVICT YOU. THIS IS THE INSTITUTIONALIZED REPRISAL FOR EXERCISING ONE'S RIGHT TO TRIAL, NO LESS. IT DOES NOT MATTER IF WE TAKE THE UNSAVORY PRACTICE FOR GRANTED, OR HOW COMMON IT IS OR HOW LONG IT HAS BEEN GOING ON? IT IS IN BLATANT VIOLATION OF THE NOTION OF VOLUNTARINESS AND THE GUARANTEE TO BE FREE FROM PUNISHMENT FOR EXERCISING ONE'S RIGHTS. THIS IS A PATNETIC SITUATION WE HAVE HERE IN AMERICA.

THERE IS MUCH TO BE SAID IN ADDITION ...

... TO THAT WHICH I'VE BRIEFLY TOUCHED UPON HERE, BUT THIS IS NOT ROCKET SCIENCE OR SO OVERLY TECHNICAL THAT A LAY MAN CANNOT UNDERSTAND IT.

THE PROBLEM IS THAT NO ONE HAS ATTEMPTED TO EVEN TRY TO EXPLAIN IT, FROM START TO FINISH; NOT OUR SCHOOLS, OR MEDIA, OR POLITICIANS.

IF THE ONLY WAY TO ENSURE EVERYONE GETS A FAIR SHARE IS TO REQUIRE EVERYONE TO BE SUBJECT TO THE SAME HANDICAPS AND DEPRIVATIONS AS EVERYONE ELSE, THEN THIS IS WHAT MUST HAPPEN.

SINCE ITS BEEN DECIDED THAT WE CANNOT AFFORD TO RAISE PRETRIAL CONDITIONS FOR THE MANY, THEN THE FEW [RICH] MUST REVEL IN THEM AS WELL, OR STRUGGLE WITH THEM TO INCREASE THOSE UNCONSTITUTIONAL CONDITIONS. IF ITS BEEN...

... DECIDED THAT WE CANNOT AFFORD TO
PAY A COMPETITIVE, MARKET-BASED FEE
FOR THE FLEET OF PUBLIC DEFENDERS
OVERBURDENED WITH INDIGENT CLIENTS,
THEN WE CAN ADD ONE MORE [RICH]
CLIENT TO HIS DOCKET. ONLY THEN,
WHEN THE WEALTHY AND INFLUENTIAL ARE
FORCED TO STAND WITH THE POOR AND
POWERLESS WILL ANY MEANINGFUL REFORM
COME ABOUT. ONLY THEN WILL THE
CRIES OF THE MULTITUDES NOT FALL ON
DEAF EARS. ONLY THEN WILL PROSECUTORS
THINK DEEPLY ABOUT GOING AFTER PETTY
INFRACTIONS AND VIOLATING DEFENDANTS'
SPEEDY TRIAL DEMANDS. ONLY WHEN A
"SOMEBODY" DIES OF MEDICAL INDIFFERENCE
OR EXCESSIVE FORCE WILL THERE BEGIN TO
BE DILIGENT NEWS COVERAGE ON THE SUBJECT.
ALL THE VARIOUS PRISONER-RIGHTS AND
ANTI-MASS INCARCERATION GROUPS OUT THERE ...

... - MAKING NEXT TO NO PROGRESS, SHOULD CONSOLIDATE AND FOCUS THEIR EFFORTS ON THE SILVER BULLET DESCRIBED HEREIN AS A MEANS TO SIMULTANEOUSLY ADDRESS ALL RELATED ISSUES STEMMING FROM THE BAIL/BOND SYSTEM CURRENTLY IN PLACE.

EVEN THE REAL THREAT THAT SUCH A BILL WOULD BE PASSED, OR THAT THE PROSPECT THAT THE RICH MAY HAVE TO SUFFER ALONGSIDE WITH THE POOR, COULD PROVE SUFFICIENT TO STIMULATE SUCH CHANGE THAT IS REQUIRED.

LAST BUT NOT LEAST, THE FALLACIOUS LOGIC THAT WE CANNOT AFFORD THESE INVESTMENTS TO ENSURE ADEQUATE DUE PROCESS PROTECTIONS IMMEDIATELY FALLS FLAT IN THE FACE OF THE FACT THAT WE PAY BILLIONS TO HOUSE PRISONERS YEAR AFTER YEAR WITHOUT CONTROVERSY. THAT IS, WE QUIBBLE...

... OVER AN EXTRA FEW THOUSAND DOLLARS FOR HOLDING A TRIAL AND HOUSING A PRISONER UNTIL THEN, YET IT COSTS TENS OF THOUSANDS OF DOLLARS TO HOUSSE EACH PRISONER IN PRISON EACH YEAR. WE SHOULD OBVIOUSLY NOT BE HOUSING INNOCENT PRISONERS AT ALL, BUT WE SHOULD NOT EVEN BE HOUSING GUILTY PRISONERS ONE MORE YEAR LONGER THAN THEY OUGHT TO BE. THE FACT IS THAT INDIGENT PRETRIAL DETAINEES REPRESENTED BY PUBLIC COUNSEL RECEIVE HARSHER SENTENCES VIA PLSA OR TRIAL THAN THEIR BONDED, PRIVATELY REPRESENTED COUNTERPARTS. THE DATA FROM 40+ YEARS OF MASS INCARCERATION IS IN. AND THE TREND IN HIGHER BAILS BEING IMPOSED MORE OFTEN ONLY SERVES TO EXAGGERATE THE EPIDEMIC. THIS IS A WAR AGAINST THE POOR, AND [WE] ARE LOSING.

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