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Money Bail Criminalizes Poverty

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California's criminal justice system operates on a money-bail system, which pegs the release of the criminally accused to the ability to pay. For decades, arbitrary bail schedules and high money bail in California have meant that poor people remain in custody while wealthier defendants go free regardless of the seriousness of the offense or whether less restrictive conditions are available to ensure future court appearances. The bail schedules in San Francisco, set by the local trial judges, are among the highest in the state. The average felony carries a \$50,000 [price tag](#). That expense is well beyond the means of the vast majority of people caught up in the criminal justice system, all of whom, it bears emphasizing, are presumed innocent.

This unjust and broken system, which enriches the bail bonds industry at the expense of due process, also disproportionately impacts communities of color. It also causes innocent people to plead guilty to crimes [they did not commit](#) because they are desperate to get out of custody to keep their jobs, their housing, and take care of their children.

According to the W. Haywood [Burns study](#), in 2013, black adults in San Francisco were seven times more likely to be arrested than whites and 10 times as

likely to be convicted of crimes in San Francisco Superior Court. Analyzing more than 10,000 cases handled by the San Francisco Public Defender's Office between 2011 and 2014, the Quattrone Center for the Fair Administration of Justice concluded that black defendants were booked on more felony charges, held in custody an average of 30 days longer, convicted of more serious crimes, and received longer sentences than white defendants. Many of the discrepancies, the authors wrote, could not be explained by "age, homelessness, poverty, or crime rates in the neighborhoods in which Black residents reside or routinely encounter police.

The San Francisco Public Defender's Office, led by Jeff Adachi, has challenged the money-bail system through dogged litigation in state and federal court. On January 25, 2018, the California Court of Appeal for the First District ruled In re Kenneth Humphrey that imposing money bail is unconstitutional unless trial judges hold hearings to determine whether it's affordable or whether there are less onerous alternatives, such as electronic monitoring or residential drug treatment. That decision is now under review by the California Supreme Court.

USF School of Law's Racial Justice Clinic (RJC) students are an important part of this effort. Last semester, RJC students worked under the close supervision of Chesa Boudin and Armando Miranda, the two public defenders spearheading the legal challenge within the San Francisco Public Defender's Office. They interviewed clients in the city jail, wrote bail motions, and researched novel legal issues. They have been at the forefront of this important battle learning to be zealous advocates in keeping with USF's mission to "change the world from here."

Resistance to entrenched injustice is hard work. The victims are often poor and without power. Those who help perpetrate the injustice view themselves as following the law, and in this case, they are. So the law must change and with it, human behavior.

Ridding California of money-bail requires perseverance in the face of numerous setbacks. It requires creative thinking that challenges the system's natural default to business-as-usual. It requires the flexibility that comes with shifts in strategy. It requires faith, fierceness, and an implacable will. It is no surprise that the effort was born in the Bay Area, where so much innovation occurs every day in so many industries. Nor is it a surprise that USF School of Law is in the trenches. That is our mission. It is where we belong.

Lara Bazelon is an associate professor at University of San Francisco School of Law where she directs the Criminal & Juvenile Justice Clinic and the Racial Justice

Clinic. Her first book, Rectify: The Power of Restorative Justice After Wrongful Conviction, was published in October of 2018.