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The Abell Report

What we think about, and what we'd like you to think about

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ABELL SALUTES: Uniform Services Academy; " 'Still becoming,' and getting better as we go along."

The Uniform Services Academy (USA), a Baltimore City public high school, offers a unique program: it combines small classes with curriculum content directed to specific careers. It has been designed to "infuse relevance and real life educational experience into the urban education process"— in short, to provide an environment in which students struggling with the problems of urban education will be stimulated to attend school, stay in school, and achieve academically.

USA functions as four schools within one, Walbrook Senior High School. The four schools are Maritime and Transportation, Criminal Justice, Fire and Emergency, and Business and Technology. Graduates are expected to continue their education in college, or to move directly into the field for which they have been preparing. (In fact, they do both, with most electing to go on to college.)

USA was launched in 1998 with high expectations as part of the city's New Schools Initiative program, which contracts with third parties to operate public schools. Four school years have now gone by; results suggest that the expectations

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Every Citizen Is Entitled to Equal Justice Under the Law—But Maryland's Pretrial Release and Bail Practices Fail to Provide It.

Tony L., 21 years old and a resident of Baltimore City, was charged with driving with a suspended license and providing false information to the arresting officer. Within 24 hours of his arrest, Tony appeared before a Maryland commissioner, who set the conditions for Tony's pretrial release. Tony was not represented by a lawyer at this appearance, and the commissioner set bail at $5,000.

The next day, as the law requires, Tony appeared (again without legal counsel) before a judge for a bail review hearing. At this hearing, the judge never invited Tony to speak, presumably to ensure that he would not make any prejudicial statement in the absence of counsel. A pretrial release representative, who should function as a neutral advisor to the judge, was present but provided only information about Tony's charge and prior record. Thus, the judge had no information about Tony's ties to the community. In fact, Tony is a lifelong resident of Baltimore. He lives with his family and, at the time of his arrest, was working part-time as a construction worker, earning $200 a week. The judge left the bail at $5,000.

Tony did not have $5,000 in cash or property, so he and his family secured his release from jail by paying a bail bondsman a non-refundable 10% of the bail amount (the industry standard), so that the bondsman would post his full bail. In doing so, Tony's family spent money that they had planned to use toward their rent payment.

Tony, along with at least 36,000 other defendants in 1999, suffered undue financial and personal hardship because of Maryland's pretrial release practices. Defendants have a right, under Maryland Rules of Criminal Procedure, to pretrial release on the least onerous conditions that will ensure public safety and assure the defendant's reappearance for trial. However, in practice, non-violent defendants often receive bail conditions that far exceed the "least onerous" standard.

These conditions compel low-income defendants and their families to make choices that inflict hardship and have the potential to destabilize their fragile financial stability. Too often, defendants and their families are forced to secure the pretrial release of the accused by spending money that was needed for rent, food, and utilities. This occurs even though most non-violent offenders pose none of the risks for which onerous pretrial release conditions might appropriately be imposed – they present no threat to public safety and have community ties that militate against pretrial flight. The case of Tony L. (and many other defendants like him)

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points to the need for reform, as called for by the Pretrial Release Project in its recent study, "The Pretrial Release Project: A Study of Maryland's Pretrial Release and Bail System," published by The Abell Foundation, June, 2001. This study:

- focuses attention on the inequity of a pretrial release system that, in effect, transfers between $42 million and $170 million a year from low-income Maryland defendants to bail bondsmen; and

- prompts The Abell Foundation to suggest that Maryland consider the model set by other states which have either eliminated or substantially reduced the role of financial bail in their pretrial release practices.

Calling for bail reform is not new. Thirty-seven years ago, at the urging of U.S. Attorney General Robert F. Kennedy, the nation took on the question of the inequities of the bail system and produced reforms which were codified in the Federal Bail Reform Act of 1966. These reforms presumed pretrial release for most defendants and limited the use of money bail. Nearly twenty years later, Congress passed the Bail Reform Act of 1984. Addressing public concern about individuals who had been rearrested while on pretrial release, this act empowered judges to deny bail to defendants who had been newly accused of committing a serious crime while free on pretrial release for an unrelated charge. The 1984 Act called for denial of bail only as a last resort and maintained the overall directive to judges to use non-financial conditions of pretrial release for most defendants awaiting trial.

In order to make bail, low-income defendants spend money that is needed for rent, food, and utilities.

Federal bail reform was prompted by the realization that most pretrial detainees were incarcerated solely because they could not afford bail and by the recognition that pretrial detention translated into loss of jobs, disruption of family life, and interference with the accused individual's ability to prepare a defense. Furthermore, drawing on common law and constitutional principles, Congress concluded that pretrial detention was not consistent with the basic tenets of equality before the law and the presumption of innocence.

Federal bail reform offered a model for state reform of pretrial release practices. In the early 1970s, Maryland rewrote its Rules of Criminal Procedure to follow closely the federal reform acts, entitling most defendants to pretrial release on the least onerous conditions. In sum, the Rules direct that Maryland's judicial officers (commissioners and judges) must first consider whether the defendant should be released on his own recognizance. This is considered feasible if certain conditions are met, such as having community ties, that indicate that the defendant is not likely to flee and can be expected to appear for his or her court date. If personal recognizance is inappropriate, judicial officers are directed to consider non-financial conditions of release, such as supervised or conditional release, before imposing a financial condition for pretrial release.

Following Maryland's "least onerous" rule, the range of financial conditions begins with unsecured bonds, moves to ordering defendants to deposit with the court a 10% refundable cash bond (10% of the full bail amount), and ends with the option to pay the court the full cash amount of bail or to post full collateral in property. Only those detainees assigned the most onerous pretrial release conditions would have to call upon the services of a commercial bail bondsman, who charges a non-refundable fee of 10% of the bail amount. The intention of the Rules is that few would have to pay this price to regain their liberty pending trial.

If the Maryland Rules had been followed in the case of Tony L., he and his family would not have had to surrender their rent money in order to secure his release. Based on his community ties, the financial hardship of full financial bond, and other factors, he was entitled to gain his pretrial release on much less onerous terms. Tony's case is illustrative of the fact that Maryland adopted the bail reform principles as state law, but these standards are not reflected in the everyday practices of commissioners and judges – even now, nearly two decades after they were adopted.

In order to obtain and analyze a significant quantity of data on actual pretrial release practices, the Pretrial Release Project (PRP), housed at the University of Maryland School of Law, conducted a study of five jurisdictions – Baltimore City, Baltimore County, Prince George's County, Harford County, and Frederick County. In addition, the PRP conducted a survey of all Maryland commissioners and compiled information on bail review hearings.

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In short, the PRP found that, in keeping with the Maryland Rules, about half of all defendants were released on their own recognizance while awaiting trial. However, for the other half of defendants for whom financial bail was required in 1998, most Maryland judicial officers imposed financial bail conditions in almost the reverse order from that directed in the rules. When ordering bail, judges opted for full financial bond and rarely used unsecured or percentage cash bonds. As a result, low-income Maryland families paid between $42 and $170 million to bail bondsmen in 1998.

The PRP's study identified the following list of problems associated with Maryland's pretrial release practices and recommendations for improving it.

I. Inadequate Representation at Bail Determination Proceedings

The PRP found that Maryland pretrial release proceedings are usually conducted without a public defender to represent the accused or a pretrial release representative prepared to provide the judicial officer with verified background information about the defendant's community ties and financial ability to pay bail.

- Public defenders do not represent indigent defendants at commissioner pretrial release determinations in any jurisdiction in the state. Furthermore, public defenders currently represent indigent defendants at bail review hearings in only two of Maryland's twenty-four jurisdictions – Baltimore City and Montgomery County.

- In the PRP's survey of bail review proceedings in five jurisdictions, lawyers represented less than one in four (23%) of detainees in the sample group. More than two-thirds of these were Harford County defendants. In the remaining four jurisdictions, it was unusual to see a lawyer speaking on behalf of an accused. (The situation has changed somewhat since the survey was conducted. Harford County public defenders have since discontinued pretrial representation services. Baltimore City defendants, however, now have representation at pretrial release proceedings.)

- In the five surveyed counties, defendants who were represented by counsel at bail review hearings were twice as likely to be released on recognizance as defendants who did not have a lawyer.

- Bail is initially set by a commissioner. In determining the conditions of pretrial release, bail commissioners usually had information available concerning the charge and possible sentence, and the detainee's past criminal record, including prior convictions (87% of commissioners responding to the survey had this information), failures to appear in court (92%), current parole and probation status (82%), and pending cases (86%). In comparison, commissioners had information less often about the detainee's ties to the community, i.e., employment (75% of commissioners responding to the survey had this information), family (65%), and school status (41%). Such background information was provided by the defendants and was unverified.

Bail is frequently set in the absence of any information about the defendant's financial situation or community ties.

- More than two of three commissioners (71%) responding to the PRP survey indicated that they had no information about the defendant's ability to post the bail amount. Less than 20% of commissioners thought such information was important in setting pretrial release conditions.

- Commissioners confirmed that, in setting conditions of release, they gave greatest consideration to the nature of the charge and past failures to appear in court.

- The commissioner's bail determination is reviewed by a judge. In the PRP's survey of five jurisdictions, four jurisdictions – Baltimore City, Baltimore County, Prince George's County, and Harford County – had pretrial release representatives present at bail review hearings. However, although the pretrial representative always had information about the defendant's past record of arrests, convictions, and failures to appear, s/he had information on the defendant's verified community ties, such as residence, family, and employment, for only two of every five detainees.

- In the absence of other advocates, one might expect the accused to speak for himself or herself. However, this was seldom the case. In Baltimore City, judges made final rulings without having invited nearly four out of five detainees (78%) to say anything. In Prince George's County, more than two of three defendants remained silent and were never asked to provide relevant information to the

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bail review judge. Thus, in most cases, judges did not hear from anyone who might provide information that would support a less onerous pretrial release condition.

Recommendations for Fair Representation

1. Maryland should expand its pretrial release investigative agency statewide, so that it can truly function as a neutral pretrial release service, providing judicial officers with balanced information about each defendant. To achieve this, pretrial release representatives should have sufficient resources to investigate community ties and the defendant's ability to pay bail, as well as his past criminal record. Greater resources should be invested in providing supervision for pretrial detainees, so that supervised release can be considered an adequate condition of release for many defendants. Such supervision has been shown to be highly effective in returning defendants for their scheduled court appearances.

2. The Office of the Public Defender should comply with its statutory duty to represent indigent defendants statewide at their initial appearances before the commissioner and at their bail review hearings. A pilot project in Baltimore showed that when nonviolent offenders had legal counsel, judges were two and a half times as likely to release the accused on his or her own recognizance and to reduce bail for others to affordable amounts, as compared to cases of arrestees without counsel.

3. An assistant state's attorney should be present at the bail review hearing, along with the pretrial release representative and a public defender for indigent clients, so that the presentation of information bearing on release conditions will be as balanced and complete as possible.

In 1998 and 1999, 42 out of 100 Baltimore City arrestees gained pretrial release through bail bondsmen. Only 16 out of 100 Howard County arrestees and 5 out of 100 Montgomery County arrestees used bail bondsmen.

II. Excessive Use of Full Financial Bonds

Despite long-standing rules to the contrary, Maryland judicial officers continue to rely heavily on full financial bonds, that is to say, posting a 100% cash, property, or security bond. Bail amounts far exceed the financial means of low-income people and force them to rely on bail bondsmen to secure their release.

- While Maryland judicial officers released half of arrestees on personal recognizance, they required 93% of the remaining detainees to meet the conditions of a full financial bond. In Baltimore City, judicial officers released three of five defendants on personal recognizance and required 98% of the remaining detainees to meet the conditions of a full financial bond.
- Maryland Rules provide for placing a 10% cash deposit with the court clerk and having it refunded when the case concludes. However, judicial officers virtually ignore this less onerous financial alternative. Statewide, only three out of 100 Maryland arrestees not released on recognizance gained pretrial release by posting a 10% cash alternative. In Baltimore City, only one of 450 did so.

Recommendations for Less Burdensome Conditions of Pretrial Release

1. Maryland Rules should provide an automatic 10% refundable cash bond payable to the court for all bailable criminal or traffic offenses.

2. Monetary bail should be used sparingly, limited to situations when no other conditions of release will reasonably assure the appearance of the defendant as required and the safety of the alleged victim, as currently required by Maryland Rules. Judicial officers should consider an unsecured bond in lieu of a collateral financial bond.

III. Excessive Reliance on Bail Bondsmen

Low-income defendants who are assigned financial bail usually secured their pretrial release by using the services of a bail bondsman. Interviews revealed the economic impact of this situation. Seventy percent of interviewed arrestees reported that the expense of the bondmen's fee resulted in a delay in paying rent and utility bills and in buying less food. The alternative of remaining in jail presents the likelihood of lost income or employment, of falling behind in or dropping out of school, and of unmet family and caretaking responsibilities.

While noting that statewide, half of

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all arrestees were released on their own recognizance, the PRP report finds that the requirement of financial bond drove most of the other half to pay for the services of a bail bondsman.

- Statewide, three out of five arrestees who had financial bail paid the bondsman's non-refundable 10% fee to gain their release from jail.

- Three out of four detainees in Baltimore County, Frederick County, Prince George's County, and in the Eastern Shore counties relied on bondsmen to gain pretrial release.

- Because Baltimore City bail amounts are relatively high, Baltimore City detainees made an average payment ($500) to bail bondsmen that was twice as high as the median average in the five-jurisdiction, pooled sample.

Recommendations for Reducing the Inequity of Pretrial Release Conditions

1. Pretrial release should be equally accessible to all citizens. "Making bail" should not impose greatly disproportionate burdens on people of different financial means. To achieve this, non-financial bail should be used whenever possible. When financial bail is deemed necessary, bail options should be exercised that recognize defendants' limited financial means and which grant access to pretrial release without imposing extreme financial hardship on the defendants and their friends and families.

2. Efforts should be made to change the judicial culture surrounding bail determination. Judicial officers should be educated regarding the directives in the Maryland Rules to consider a defendant's financial means in setting bail and to impose the least onerous bail appropriate.

3. In particular, judicial officers should be encouraged to use the unsecured bond and the automatic 10% refundable bond whenever possible.

4. Maryland should study bail reform as enacted in Illinois, Kentucky, Oregon, and Wisconsin. In these states, the use of commercial bail bondsmen has been entirely eliminated and less onerous non-financial and financial alternatives are in use.

5. In the short term, a community-based revolving bail fund should be established to post 10% cash bond for individuals who are employed, are caretakers, or who otherwise have reliable community ties.

Illinois, Kentucky, Oregon, and Wisconsin have entirely eliminated the use of commercial bail bondsmen.

IV. Particular Inequities in Baltimore City

Almost one-quarter (23.7%) of people in Baltimore City lived below the poverty line in 1997 – that is about $12,802 for a family of three; $16,400 for four. One-half of all Baltimore households (households may include several families) lived on less than $32,500 in 1998. For these individuals and families, a bail amount of $5,000 (the median in the city) is exorbitant. Even a payment of 10% of this amount would create financial hardship.

- The average bail set in Baltimore City after bail review is $13,657. This is more than 2½ times the average in Harford County.

- The Baltimore City median (50th percentile) bail was $5,000. (It was the same in Prince George's and Baltimore counties.)

- Typical bail for non-violent offenders in Baltimore City was $3,250. (Harford County's was $2,500; Baltimore and Prince George's counties' were $5,000; and Frederick County's was $7,500.)

- Baltimore City judges released a higher proportion of arrestees on recognizance than the statewide average, but they also relied on full financial bonds for detainees more than any other Maryland jurisdiction.

V. Onerous Bail Serves No Useful Purpose: Flight Is Rare

The overwhelming majority of Maryland defendants who are free pending trial do return to court when required.

- During fiscal years 1999 and 2000, Maryland District Court's Annual Statistical Reports showed that nearly 94% of defendants appeared on their scheduled District Court date.

- Recent District Court data indicate that defendants who posted a refundable 10% cash bond with the court reappeared at a higher rate than commercially bonded defendants.

- There are public misconceptions not only about the overall reliability of defendants in appearing in court, but also concerning the means by which absconders are located, apprehended, and returned to court. In the vast

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majority of cases, it is the police, not bondsmen, who perform this role, even when defendants had paid bondsmen to secure their release.

Conclusion

The bail system exists to ensure the defendant's reappearance in court and the safety of victims, not to impose pretrial punishment on the defendants and their families. And yet, in order to gain access to the bail system, low-income people often have to take actions that wreak havoc on their lives.

As it operates in Maryland, the bail system violates a basic tenet of our society. It creates a financial barrier to pretrial release – a barrier that affects low-income people much more profoundly than more affluent citizens. Although we may accept wealth-related disparities in other aspects of life, we hold as a basic tenet that all citizens have equal access to all aspects of the legal system. Financial bail is in direct conflict with this principle.

Several factors contribute to maintenance of the discredited system of financial bail. To begin with, bail commissioners and judges do not receive verified information on the community ties of most defendants. This lack of information prejudices their bail determinations in the direction of requiring more onerous bail, increasing the number of detainees assigned financial bail.

In addition, judicial officers appear to be either ill-informed about or heedless of the directives of the Maryland Rules, which require the imposition of the least onerous bail and urge the use of non-financial options and the 10% refundable bond. Commenting on the persistent reliance on full financial bonds, U.S. Magistrate Judge James G. Carr suggested that judges may be acting "uncritically and on the basis of local custom and practice." This explanation – doing what has always been done without much reflection – finds general support among others, including Maryland state court judges.

Some judicial officers may cling to the belief that a bail bondsman is the best guarantor for ensuring that defendants reappear in court and for locating absconders. As noted above, these suppositions do not withstand scrutiny.

Finally, opposition to change comes from the bail bondsmen, who collected between $42 million and $170 million from Maryland defendants in 1998 (exact figures are not available). These factors – inadequate information at bail proceedings, bail imposed without regard to current Maryland Rules, habit, misconceptions, and vested interest – militate against the needed change in the culture of the court.

Although the factors enumerated above account for the state's past failure to embrace reform, they are not insurmountable. The American Bar Association, the Maryland State Bar Association, Chief Judge Robert Bell of the Maryland Court of Appeals and the PRP advisory board appointed by Judge Bell, along with many other leading members of the Maryland legal community, all support the reforms outlined by the PRP Report. In many ways, Maryland is a leader among states in protecting and providing for the well-being of its least affluent and most vulnerable citizens. The legal community should seize the opportunity to add bail reform – realized, not just envisioned – to the state's list of accomplishments.

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The full text of the Pretrial Release Project's report is available on The Abell Foundation's website at www.abell.org. or Write to: The Abell Foundation 111 S. Calvert Street, 23rd Floor Baltimore, MD 21202

ABELL SALUTES:

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have been realized to a degree that warrants recognition. Hard data support a record of modest success.

* **Enrollment:** For the four years, 9th-, 10th-, 11th- and 12th-grade enrollments have increased from 1,341 to 2,032. Of note is that the number of students in the senior class doubled from 169 students in 1997-1998 to 335 students in 2000-2001.
* **Attendance:** Over four years attendance has increased from 72 percent to 81.5 percent. According to Dr. Andrey C. Bundley, principal, the figure is 10 percent higher than comparable City-zoned schools.
* **Achievement:** Pass rates on the Maryland Functional Tests increased for 9th-grade students dramatically. Increases are shown here as a percentage of passing:
  Reading: 83 percent to 91 percent;
  Math: 31 percent to 64 percent;
  Writing: 55 percent to 76 percent.
* **Suspension Rate:** Over three years, the number of suspensions dropped: short term, from 723 to 556; long term, from 60 to 17.

Leadership of the program and much of the energy that enlivens it lie with Dr. Andrey Bundley, a product of Baltimore City inner-city schools who went on to earn his Master's and Doctorate degrees at Penn State University. A committed educator, Dr. Bundley is sensitive, on the one hand, to the special problems the students face, and on the other, to the realistic goals they must meet. Though proud of the school's overall achievement, he recognizes that there is a long way to go.

The Abell Foundation salutes USA, and shares Dr. Bundley's optimism for the program's continued growth and enrichment, justified because, as Dr. Bundley puts it, "We're 'still becoming,' and getting better all the time."