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Law School News

‘Injustice Dehumanizes Everyone It Touches’

Robin Steinberg, CEO of The Bail Project, argues that pre-trial detention, fueled by unaffordable cash bail, has created "a human rights crisis" that discriminates by race, status and class.



Robin Steinberg delivers the 15th Annual Rev. Dr. Martin Luther King, Jr. Celebration Keynote Address at RWU Law. Image Credit: RWU Law/Andrea Hansen

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Michael M. Bowden

Though long accepted as a cornerstone of the criminal justice system in the United States, the tradition of cash bail in fact perpetuates injustice and inequity.

This was the message of Robin Steinberg, CEO of The Bail Project – a national nonprofit revolving bail fund that she founded in 2017 – when she delivered Roger Williams University School of Law's 15th Annual Rev. Dr. Martin Luther King, Jr. Celebration Keynote Address to a full house of students, faculty and staff, as well as many representatives of the Rhode Island bar and judiciary.

Steinberg – who first won national recognition in 1997 when she and a small group of criminal defense lawyers established the Bronx Defenders, which she led as executive director for 20 years – began her talk by placing cash bail in the context of a legal system that “gut[s] our most fundamental legal principle that all people are entitled to equal justice under the law.”

The very notion of bail, Steinberg argued, “rests and profits on the myth that it’s money that makes people come back to court. The idea was simple: make people put money on the line, and they will have a financial incentive to come back to court until their case is resolved.”

“A better pretrial system is possible – one that does not rely on cash bail or even incarceration.”

~ Robin Steinberg, CEO, the Bail Project

Unfortunately, she said, for poorer populations it frequently doesn’t work out that way in real life – simply because so many defendants (particularly those who are Black, Hispanic, and/or female) simply don’t have the money to make bail. And that thrusts them into the terrifying, dangerous and dehumanizing world of pre-trial detention.

“Pre-trial detention, fueled by unaffordable cash bail, accounts for nearly 100 percent of all jail growth in the past 20 years,” Steinberg said. “Make no mistake about it, the cash bail system in this country has created a human rights crisis. It is what holds most people in jail regardless of guilt or innocence.”

Moreover, if it means avoiding time in prison, many defendants will “plead guilty whether they did it or not – just because that is the only way to get home to safety, to your family, and to kiss your children goodnight.”

Beyond the immediate physical and psychological dangers of imprisonment, being held in jail “creates a cascade of problems downstream, all building on one another” – including making gainful employment difficult or impossible, breaking up families, leaving children uncared for, often causing expensive health problems – and encouraging recidivism.

To illustrate, Steinberg compared Rhode Island, which has one of the lowest rates of incarceration in the country yet enjoys a violent crime rate well below the national average, with Oklahoma, which – despite having the nation’s highest incarceration rate – nonetheless suffers a violent crime rate 20 percent higher than the national average.

“If jails and prisons are the answer, then Oklahoma should be the safest state in America,” Steinberg asserted.

‘Decarceration Strategy’

The Bail Project was born one night over Chinese takeout in New York City, Steinberg said. She was venting to her husband David over this frustrating state of affairs when he suggested, “Why don’t we just raise a bunch of money and create a fund, and then we can start bailing clients out? Why not?”

The idea was straightforward enough: money would be placed into “a sustainable, revolving bail fund,” used to bail out low-income New Yorkers in the Bronx (where Steinberg’s work centered), and then – since bail comes back at the end of a criminal case – redeposited into the fund to be reused over and over to pay other people’s bail.

In theory, it was “a simple, elegant strategy to equalize the playing field and begin tackling what had seemed, up until then, to be an intractable problem,” Steinberg said. “But we had absolutely no idea what was going to happen. Plenty of people told us that we were nuts.”

Could it work? It could indeed.

“The results were stunning,” Steinberg said. “First, we learned that clients came back 95 percent of the time. It turns out that all you needed were effective court reminders, and support while your case was pending, and people will come back to court.”

Three years later, thanks to more than 5,000 individual and philanthropic donations (and counting), the Bail Project has grown into a national initiative with the goal of posting bail for thousands of low-income people each year.

“We’re taking this decarceration strategy to high-need jurisdictions across America,” Steinberg said. “We’re raising funds for our national revolving fund, and posting people’s bail on an unprecedented scale. As we learn more, we’ve set out to prove with data and facts that a better pretrial system is possible – one that does not rely on cash bail or even incarceration. We call our model, ‘Community Release with Support.’”

‘The Larger Edifice’

Community Release with Support involves three elements, Steinberg explained: (1) effective court reminders, (2) transportation assistance, (“one of the biggest obstacles around the country,” she noted), and (3) individualized needs assessments to determine what voluntary services or community-based programs a client might need (“whether it is housing, food, drug treatment, or mental health services, screening for needs helps us better understand if we can effectively support the client once back in the community,” she explained).

Using this approach, the Bail Project has conducted more than 10,000 bailouts and set up operations in 20 locations across the country.

“Community Release with Support works,” Steinberg said. “It safeguards the presumption of innocence. It yields high rates of return for court appearances. It results in better case dispositions and saves millions of dollars. It also begins to shift the criminal justice paradigm from one of incarceration to one of support and investment in communities.”

Connecting these efforts to the work of Dr. King, Steinberg cited his seminal 1967 “Beyond Vietnam” speech: “True compassion,” King said, “is more than flinging a coin to a beggar; it comes to see that an edifice which produces beggars needs restructuring.”

“Doing this work at scale has given us a unique perspective on the larger edifice,” Steinberg said, “allowing us to see the plethora of systems, large and small, that conspire to push people of color to the margins and keep poor people in poverty.”

‘The Wind is at Our Backs’

The ultimate goal, however, is not an infinite expansion of the Bail Project – but rather, a step-by-step effort to be rid of the bail system altogether.

“If we want to end mass incarceration and create a justice system that works for all, eliminating our current cash bail system is a necessary first step,” Steinberg said. However, such a change is “not going to be easy. Systems and ideologies won’t go down without a fight, particularly ones that have been around as long as cash bail has.”

The upside, she added, is that “there is enormous momentum for change in our criminal legal system. The wind, for the first time, is at our backs.”

Yet she warned against seeking any one perfect answer to the crisis.

“When it comes to our criminal legal system, wisdom has taught me that there is no answer,” she said. “At least, there’s no single thing that will make all the difference forever. It will take every strategy imaginable.”

Most importantly, Americans must confront and question some of their deepest and most long-held beliefs about justice, crime and punishment – and how these concepts relate to race and status and class.

“We have to recognize that the systems of jail and prisons that we have created were not designed to rehabilitate but instead to try to break the human spirit,” she said. “Injustice dehumanizes everyone it touches, from the victims of it to the enforcers of it, and even to the spectators; all of us. So our unforgiving stance must give way to a recognition that we are all complicit in this – complicit in the violence of poverty and inequality, complicit in the violence of incarceration, complicit in the violence of indifference, which, in the face of suffering, slowly erodes our shared humanity.

“It will only end when each of us can finally see – in the faces of those ensnared and imprisoned in our criminal legal system – ourselves,” Steinberg concluded. “When we can see in their children, our own children. So let’s begin today.”

A question-and-answer session followed.