



Fox Rothschild Podcast

The Presumption of Innocence

Episode 69: Unpacking Cashless Bail: Equity vs. Public Safety

Featuring Matt Adams of Fox Rothschild, Ken Good and Chanel Rhymes

Matt: Welcome back to "The Presumption of Innocence," a podcast brought to you by the White-Collar Criminal Defense and Regulatory Compliance Practice at Fox Rothschild.

Cash bail has become one of the most debated and potentially contentious issues in criminal justice in our country. There are strong opinions on both sides of this issue. Many critics of cash bail systems say it unfairly punishes people who can't afford to pay, while supporters of cash bail say it's a necessary tool to ensure accountability and public safety. Building on his tough-on-crime rhetoric, President Donald Trump signed Executive Orders in recent days aimed at what he called ending the cashless bail system.

Cashless bail has become a criminal justice reform that advocates say actually increases public safety, while its opponents say increases crime and takes away accountability. No matter which side of the spectrum you land on, bail reform has become a political punching bag in this country. But few people actually really understand what it means beyond the often irresponsible and sometimes uninformed political soundbites.

Today we're going to step beyond the political realm and talk about it from the legal perspective. Politicians and activists, many without legal training or experience with the criminal justice system, are out there espousing various forms of beliefs about this particular issue. There are studies empirically discussing what cash bail does and doesn't do. But on today's episode of the program, we're going to unpack this contentious issue from all angles with some very knowledgeable guests.

Today we have Chanel Rhymes and Ken Good. Chanel is the Director of Advocacy for the Northwest Community Bail Fund, whose stated mission is to reduce the harm caused by the cash bail system for community members who cannot afford it. The Northwest Community Bail Fund champions those unable to make as little as \$100 in bail in order to avoid poor people accused of crimes in Washington state having to face the stark choice of staying in jail to fight a case or pleading guilty even if they're innocent and going home. According to her organization, this creates a situation in which innocent people simply plead guilty to get out of jail because they can't afford to pay the bail.

Ken Good is a Texas lawyer specializing in representing the cash bail industry. He's a board member of the Professional Bondsman of Texas and has argued cases before the Supreme Court of Texas and the Fifth Circuit Court of Appeals related to bail law. He is the author of *Goods on Bail: A Practice Guide for the Bail Industry*, and has published numerous articles about bail reform, and as he would



argue, its negative implications. He's a frequent commentator on bail reform with a focus on the risks that he claims are associated with certain reforms.

Ken and Chanel, welcome to "The Presumption of Innocence." We have a lot to unpack today, so let's get right after it. Let's let our audience get to know a little bit about you and why you come from the perspectives on this contentious issue that you do. So Chanel, I'm going to start with you and I think it's safe to say that you are my anti-cash bail panelist for the day. Why did you get into this work advancing the elimination of cash bail?

Chanel: I got into this work one, I myself am somebody who was formerly incarcerated. I grew up in a community where I saw lots of folks become incarcerated, arrested by the police. And I really got into this work because everybody deserves the chance to defend themselves from a position of freedom. When you're arrested, you're just arrested, you haven't been convicted of a crime.

And I think it really, you know, is about people having a fair chance to do that. And in today's day and age, especially with the cost of everything, cash is very hard to come by for most folks. Not only that, but when you don't have cash or you do need to go to a bail bondsman, it's not just cash that you need, you also need collateral, which a lot of people don't have in order to, you know, back up that bond.

So I got into this work because I want to help my community and I think, you know-- well, not even I think, I know --the studies show that when people are removed from their homes, it doesn't make your community safer. People lose their housing. They lose their jobs. It disrupts families. It really impacts children, which is another thing that I think gets missed in this conversation of reform, is that we're doing all this punishment to the adults. What are the effects going to have on the children of these adults later on down the line?

Matt: Ken, I'm going to present the similar question to you, but from the opposite perspective: Why have you dedicated so much of your professional life to defending the cash bail system that we see in Texas and other places?

Ken: Well, I guess, let me start by saying thank you for having me. I was trying to think about that question: what got me involved, what got me to be so involved in answering this issue? I think it was probably a couple of things, but I started out as an attorney representing doctors in hospitals and medical malpractice cases. I did a lot of appellate work. I argued a lot of appellate cases. But, and so it was through my appellate background I kind of got into bail issues. And so I, I did some appeals, just, I was in a big firm, and so a couple of my appeals involved bail.

But as a result of that, I was asked one time when I was in Houston to attend a hearing on a case that became very important for the bail reform movement. It was called *O'Donnell v. Harris County*. And I answered that question. I mean, I went to that hearing. I was very, upset. I thought the judge was applying the law incorrectly. I thought she was going in the wrong direction. And so I came outta that hearing very upset and, and worried for the bail industry, and that nobody was telling their story and that the judge was applying the law incorrectly. I think over time I've been proven correct. I think that judge and in that case has been overturned six, seven, eight times now. The Fifth Circuit



ultimately ruled in a later case that case should have never been filed or accepted in federal court. And so I think that's what got me started, in looking at these types of issues. And then I just decided, look, if, if we are not going to become experts on these issues, then our story's not going to be told.

And you just heard a very compelling argument from the other side. But what, what the response is, I think when you look at that issue is what they're really arguing is we have to put up with more crime. I mean, that's really the heart of their argument. We should put up with more crime. And I think that is false. That's not a, a, a choice that we should put up with. And I think time has proven that to be their argument in our urban areas over and over again.

Matt: All right, so I promise you that that is the last softball question I'm going to ask either one of you. And we're going to really get to the heart of the matter right now. And Ken, I want to start with you. In 2010, Ken, a New York teenager named Kalief Browder was accused of stealing a backpack, a fairly low-level criminal offense.

His family was unable to afford bail and that young man spent almost three years imprisoned on Rikers Island, which is one of the most notoriously abhorrent correctional facilities in the United States. About two years of his time there was spent in solitary confinement, those charges against him were ultimately dropped, and two years later, Mr. Browder killed himself. He died by suicide.

How is such a horrific failure of the cash bail system not cause to reconsider it altogether?

Ken: Well, first of all, I would say, I don't believe that's a failure of the cash bail system. That's a failure of the criminal justice system. Like in Texas, I mean, on a misdemeanor, a low-level misdemeanor, you have the ability to be released on either a, I mean a low-level bond or a personal bond, if from delay. So, I mean, and in a misdemeanor it's like 60 days, 30 days you've got. So in Texas there would be an example of someone who was in jail not because well, because they were lost in the system. And I have a feeling New York has similar laws. And so that was not a failure of the cash bail system, that was a failure of the criminal justice system from tracking somebody.

But worse, and even worse, as a result of this case, they have changed the law so that they've taken away the discretion of the judges. So on a whole host of cases, their hands are tied and they have to release somebody on no bond or on zero bail if it's California, on a personal bond if it's in New York. And so judges no longer have the discretion to even address gangs, career criminals or organized crime. So because of incidents like that, we end up making the system a lot worse. And instead of setting up systems for tracking people who are in jail, which is what they're already supposed to be doing, on is their case delayed? Should they be released because of the delay? And that's where the failure took place.

Matt: Chanel, respond to that incident, and respond to what Ken has to say about it. Against the backdrop of the fact that there's a young man dead, right? And Ken says that it was not a failure of the cash bail that he could not post, but it was instead a failure of the system as a whole. What do you say?



Chanel: I agree there is a fail of the system as a whole. The cash bail system is a part of the criminal legal system. While, Mr. Good did say that, you know, well, in Texas, you know, they're going to release you with no bail hold or, you know, whatever it is, or that you PR'd no bail hold, nothing.

At the Northwest Community Bail Fund, we've paid bail for folks that has been \$50. People don't have \$50 to get out of jail. Then they run the risk of losing their home, they run the risk of losing custody of their children, a whole host of other things. And the fact that somebody is languishing away for a misdemeanor crime in a jail is ridiculous. It's a waste of tax dollars. It's a waste of money. It's a waste of time, and it's not in the interest really, of judicial economy. And I would also say that 73% of all jail bookings are for nonviolent crimes. So this whole thing about having to, you know, accept more crime is not really true. Because overall, historically crimes levels are low.

And most of these things are not violent crimes. Here in the state of Washington, bail-- not even in the state of Washington-- bail is to ensure that you come back to court. We have a court rule, Court Rule 3.2. Judges are supposed to release people on the least restrictive means. We do not always see that, least restrictive means. And they're also supposed to take in the consideration of ability to pay. That really doesn't seem to happen, and we have people sitting in there for less than a hundred dollars. I also think that, you know, we, we can't keep saying like, oh, we need to find systems to track people. It's 2025. If you want to find somebody, you can. We've got cameras everywhere. People are being tracked on their phones. This idea that we don't know where people might go and where they might be. It's not like they have a whole bunch of money to leave. They're not having passports. They don't have, you know, airfare. We could really find people if we wanted to. And so I really don't believe that it's, you know, we have to put up with more crime or, you know, this issue.

The problem is, we are harming folks. People are dying in there. And they're not getting the services that we need. We're also using our jails as warehouses for people that have mental health issues. And that is part of also the problem. We just can't keep doing this. It's not sustainable.

And again, what are the impacts of this on our next generations? If we have so many people, 113 million people, adults, have had an immediate family member who's either been to jail or prison. It affects everybody. 79 million people have a criminal record. Like, we can't keep doing this. And just saying that more cash bail is the way to go. So essentially, you're saying even though you haven't been convicted of a crime, you can pay this ransom and we'll let you out. But the thing is, once a judge signs an order of conditions of release that includes bail, that means the judge has said this person is safe to return to the community as long as they pay that dollar amount.

Matt: Chanel, let me play devil's advocate for a moment. What would you say to opponents of bail reform that point to spikes in gun violence that happened in New York City in 2020 among the COVID-19 pandemic just as New York enacted some of its bail reforms in response to the events of 2010, a decade earlier that I mentioned at the outset.

Chanel: I mean, I would say it's kind of an unfair comparison. The whole world was upside down during COVID. Um, crimes were increasing all across the board. Domestic violence rates went up because people are forced to be stuck with their abusers. I don't think comparing 2020 and the whole world being upside down-- people don't have jobs, people are not being fed, people are



suffering from trauma and seeing, you know, people die, close people just dying out of nowhere. So, kind of, putting those two things together, I don't really think that's a fair comparison, because there was just so much going on, you know, in the world at that time. So I think it'd be hard to say like, oh, well this is because of this. Not necessarily. Crime was going up across the way, whether it be gun violence or people just assaulting each other because everybody was going through trauma at the same time.

Matt: Ken, can you point to any empirical studies that demonstrate that cashless bail does in fact increase violent crime?

Ken: Absolutely. During COVID, the, uh, District Attorney of Yolo County in California kept a whole lot of data. And he's issued multiple reports from that data. And, you know, the first report he was criticized for because it didn't have comparison to, uh, people on surety bonds. So a second report compared similarly situated people, each of them on a, a nonviolent offense, one released on what I call simple release, which would be released on no bond, zero bond or a personal bond depending on where you are. And then someone released on a surety bond. So he found that someone released on a simple release mechanism had a 200% greater chance of being arrested for a new violent offense in the next 18 months over someone released on a surety bond.

Matt: Why is it that if that finding is something that a proponent of a cash bail system can point to-- like you are-- what about the cash bail piece allows you to claim that that is a better way?

Ken: Okay, so let me quote a former judge who was on a town hall on NewsNation. She was a, a, a mayor. And she said, uh, as a former judge, you know, until you have an alternative to the private surety bail system that has the same high level of appearance-- so they have a low failure-to-appear rate-- and the same high level of accountability, then you don't have an alternative. And I think with these other things that we are trying-- and I would say most of them are experiments because there's no studies to support them in saying that they're a, a comparable alternative. Now that their failure-to-appear rates are a lot higher. And that the accountability, goes way, way down. When you have that, when you have lots more failures to appear, then that puts lots of pressures on the court to handle their backlogs by dismissing cases. And when you dismiss cases to handle backlogs, that's considered a green light to commit more crime.

Now, not to the first-time offender, which is, you know, like, Ms. Rhymes keeps kind of referring to, but to the organized crime gangs and career criminals, that's a green light to commit more crime. And we all know that a lot of the crime is committed by the same groups of people. Everything that we hear from, you know, the, the reformers, they ignore those groups. They don't have any plan to address gangs, career criminals or organized crime.

Matt: Well, let me stick with you for a second, Ken, because New Jersey's bail reform system, something I'm very familiar with, has adopted a risk assessment scale. And that, statistically and empirically, there are studies that show that New Jersey both incarcerated less people because of their bail reform and violent crime has gone way down. And one of the contributing factors that those empirical studies place on that result is the bail reform measures that been have been enacted. And those risk assessment tools available to those judges making determinations on pretrial release



factor in the very considerations that you're saying are being ignored, namely, danger to the community and risk of flight.

How do you respond to that?

Ken: I'm very familiar with the New Jersey plan and the way they lowered their jail population was substantially increasing the cite-and-release portion of their system. And also they created a statewide system for following people, I would call it a statewide pretrial services department. And they were one of the first states, in this, uh, reform movement to do that. And the problem is the cost was so expensive. They had to do a statewide tax increase and they still ran out of money again. So as a result of that, all of these reforms that have been proposed since New Jersey, none of them have proposed the major cost portion, which is the group following people to make sure they're doing what they're supposed to do.

And --

Matt: So would you agree with me that New Jersey works, or it's just too expensive?

Ken: No, I, I don't agree that it works. I say, number one, it's too expensive and that's why no other state has proposed it. And number two, they have been opaque with their statistics. They refuse to release them. And you've seen politicians, in the last, uh, couple of sessions proposing rolling back and changing it because they're arguing the opposite of what you're saying. And I would end with on on talking about New Jersey is, New Jersey we have the same problem that we have in New York and other areas. We have all these groups that are pseudoscience saying, oh, we, these are reports showing that crime is not going up and you don't have to believe us. You can just look at the FBI statistics. Well, that's what everybody was saying until last October when the FBI statistics were updated and suddenly they showed crime and going up.

And so if you look at these same groups, they also said, had released studies saying crime's not going to increase as a result of illegal immigration, so we shouldn't worry about that. So all, all of those groups that are issuing these types of studies, I think they're just pseudoscience. And we need to look at the academia, which are all behind paywalls, and they're harder to see, to find out what the true, uh, research is showing.

Matt: Chanel, you're chomping at the bit to respond. Go ahead and do it. Use the studies of the New Jersey system as an example in a starting off-point to respond to what Mr. Good said.

Chanel: Well, I would say one, um, we have to look at too, what improved, like the community health effects of that. Like people were maintained their homes, people still maintained connections with their children. But I, I do just need to back up. One, I do not want to get it misinterpreted that I am speaking about somebody that has only been arrested or convicted for the first time. Most of the people that are in jail right now have been there repeatedly. It's a cycle. And part of the reason that they are there --and which most people come in contact with police --is because they don't have access to what they need. People need things. And while Mr. Good is saying things are so expensive for New Jersey to track, you know, what's cheaper? Housing and feeding people, educating people. It



costs less to do all that. But because we are in a society that is so hellbent on punitiveness and punishing and tracking and being authority, like, I need to track you, I've got to watch you, for whatever people have done, this is how it gets expensive. All of these things, if people have their basic needs met, they would not come in contact with law enforcement.

They wouldn't. Because there, there would be no, people would be fine. But to also say that it's pseudoscience when there are academic studies from reputable institutions that do support ending cash bail and not locking people up. Because I also think it's really interesting, most of the people that are against cash bail have never been to jail, never sat at night in there, and it's really easy to say, oh, let's not get rid of something when you've never experienced it.

Nobody's going in there getting help. They're not getting surfaced. We are literally warehousing people at the cost of taxpayer dollars when that money could go better invested in schools, roads, infrastructure, housing, you name it. This country has a lot of things we need to be working on and just locking people up and warehousing them or black sighting them off to somewhere is not the way to go. Especially when most of the people in there, again, are in there for nonviolent crimes. And I think Mr. Good keeps, you know, highlighting these gangs and, you know, gun crimes and all that. That's not who's all really in there. And here in the state of Washington, even though we don't really have the death penalty anymore, if somebody is charged with capital crime, they don't get bail.

So Mr. Good, what about all the people that are in there for nonviolent crimes? We can't keep doing this. It's not helping.

Matt: So, Ken, let's shift gears for a moment. The presumption of innocence, the constitutional right that lends its name to this podcast ensures that an accused is presumed innocent unless or until proven guilty beyond a reasonable doubt.

How does cash bail do a better job of ensuring that a defendant returns to confront his or her charges better than risk assessment tools like the one in New Jersey? And in particular, I'm interested in your perspective as a lawyer. Because, will you not agree with me that the trial preparation process-- putting yourself in the shoes of a defense lawyer for a moment-- the trial preparation process is a lot easier and a lot more effective if you can meet with your client outside an institution, right?

Ken: Well, sure. It, sure it is. But you know, the problem we have is we conflate the presumption of innocence and, and, uh, the right to bail. Because that's been addressed by the courts. I mean, a presumption of innocence has nothing to do with bail. Your bail is solely, uh, what assurance are you going to give the court that you're going to return to answer the charges that are pending against you. I mean, that's all it is, is what assurance. And that you're not going to commit another crime. I mean, that's kind of one of the things that we keep conflating or arguing about, or you know, Ms. Rhymes keep saying that everybody in jail is there for nonviolent offenses. And I'm saying gangs, organized crime and career criminals. I mean, I would like to think that we would agree that we should all be addressing gangs, career, criminal and organized crime. And I would think that we would all agree that the first-time offenders should be treated differently than that. But, you know, the way we do that is we rely upon the judges to exercise their discretion on setting bail. This bail



reform movement, and criminal justice reform movement to a certain extent, has, as its goal, is to remove the discretion of the judges and do cookie cutter. Oh, so --

Matt: How, how? Sure. Tell, tell. Explain that.

Ken: In the New York, in the New York bail reform, they made a list of crimes. If you are charged with this crime, then you will be released on zero bond. No matter how many times you've been charged or arrested for that crime, or convicted for that crime, if you are arrested for this crime. you will be treated this way. And so it's released on zero bond. Now if I'm a first time offender, okay, I agree with you that maybe that's fair for that person. But I don't think a 10-time offender with a substantial criminal history, I think a judge should have discretion to do something different for that person.

And that's what the New York bail reform and bail reforms in other areas where they go to this charge-based release system, that's what they do.

Matt: Yeah, so Chanel, against the backdrop of this presumption of innocence, the idea that this is-- we're talking about pretrial detention here, folks. We're not talking about the detention that occurs after a conviction beyond a reasonable doubt. We're talking about pretrial detention. Address that. Address how the cashless system, from your perspective, does a better job of getting people back into court. And the cashless system and all these things, like the risk assessment that we're talking about in New Jersey-- which I'm intimately familiar with-- how, how they do a better job than just simply saying, okay, post a cash bond or a, you know, whatever the case may be?

Chanel: I would say that one, I think just the ability to just come up with any amount of cash and post it kind of seems like you could get away with whatever you want. Whereas I don't understand what Mr. Good is saying, it's like if somebody has, you know, done something 10 times, the real question is what are they not receiving where they keep doing the same crime over and over again? When you don't have to pay cash to get out of jail, you can maintain your home, you can maintain your employment, which will allow you to continue to have your basic needs met. Then you can actively work with your attorney to help fight your case.

You could potentially help, you know, provide witnesses statements. It's like you said, it's very hard to do when your client is incarcerated. And so if you have the ability to do all that, maintain your connections to community, maintain your connections to family, maintain your connections to employment, housing your neighborhood, that seems like you're kind of on the right track.

Again, just because you were arrested doesn't mean that you have completely done something bad. And I don't see how, well, if we charge you cash and you can't pay that, how is that a good thing? So you're just housing 'em there until they can go to trial because it's going to, and we all know it takes a while. People sit in there and languish away. It's not like, you know, people are holding trials or whatnot. And really, most people plead out anyway because it takes so long to have an actual jury trial. But I, I just, I don't understand the whole, like, you have to pay cash in order to get out for something you haven't been convicted of.



What about all the people who can't afford that, Mr. Good? So if they can't afford to pay this bail, then they just have to stay there and risk losing their housing, their employment? Because in a sense you're making it seem that everybody that goes to jail doesn't have a job, doesn't have community, doesn't have family members.

And this whole idea of like organized crime. I'm not really seeing police out here in my neighborhood really going after organized crime, you know.

And the assurance that somebody's going to show up. How do we assure that these, CEOs and, you know, people on Wall Street who commit crimes are going to show up and not just hop a jet and leave the country? It's not fair. And so it's very odd to me that he can use those talking points for certain people but not apply them to people who actually have the means to do all those things: not show up to court, leave the country, have money to, to get away. Most people that are in jail, they, the reason why they're there 'cause they don't have anything. And if anything, we need to be asking them, what do you need? So you don't have to continue to come here.

Matt: Ken, are there any level of bail reforms that are acceptable to you? You mentioned some things about first-time offenders and, and not believing that they should be perhaps held to the, the strictures of a very rigid bail system that would allow -- if I'm not, you know, misquoting you-- that would allow things like what happened in 2010 to Kalief Browder in New York.

What, if any, bail reforms would be acceptable? Is there a middle ground, or is it all cash or all cashless and we just have to, you know, kind of pit ourselves against one another? Is there a middle ground of things that would be acceptable, from your perspective?

Ken: Well, I think there are some bail reforms that are much needed, and I think that we need to give judges more discretion. I think we also... one that we've proposed, and I think that, uh, some jurisdictions have adopted is this following people after they've had bail set to continue to see if they're in jail. And if they continue to be in jail after 72 hours or so, then they're brought back before the judge to say, hey, why are you still here? Do we need to set your bail again?

But I, I'm going to shock you because one of the reforms that I think that needs to be adopted is we need to get rid of risk assessments. The largest digital companies in the world have said risk assessments should not be used for making pretrial release determinations. And generally, the determination is release or detain, release or detain. And that's not really made for the criminal justice system in most states.

I mean, New Jersey's kind of become a release or detain state, so their jail population is slowly increasing as their pretrial detention increases for the most violent offenders. It's kinda like the federal system. Uh, the federal system is not a good example because about, on average, 70 something percent of pretrial, people in criminal court in the federal system are being held before trial.

So that's not a system we, any state should try to emulate. And so I think there's a lot of reform that we should look at. But I think the reform should really be, let's use the stuff that works. What has the



lowest failure-to-appear rate? And when the lowest failure-to-appear rate is the private sector and there's nothing that else gets even close. Then just trying them is going to create backlogs, create chaos, create the perception that we have to dismiss cases and that that's going to increase crime. And that's what we're seeing in our urban areas. And there's no admission that it's not working. And, and we just keep saying, oh, we need more time.

And that's why you see, uh, the president of the United States coming out and saying, we need to address this.

Matt: Chanel, why is it that advocates like you think that folks held on pretrial detention are particularly vulnerable? How should we explore meaningful bail reforms? And as kind of a loaded question, do you believe anyone should be held pretrial or is it unlimited?

Chanel: No, I don't think anybody should be held pretrial. I don't.

Matt: Even a homicide?

Chanel: A homicide? Held in a jail? No. Do they need to be held in a hospital maybe? Maybe, yes. But in a jail, no. Jails are not places where people get the type of actual services or treatment that they need. And as far as your first question with what do advocates like me think, you know why people shouldn't be held? One, they should not be held so that they can fight their charge. But two, we need to start asking what do people need? What brought you here in the first place? Why are you, you know, having to steal? Why are you being trespassed? Oh, you don't have a place to live? Oh, you stole this 'cause you don't have food.

We're looking at this on a smaller thing of like, oh, it's just cash bail and they need to be held and they have to-- this whole idea of they need to be followed. For what? Okay, you bring them back, they, they, you know, answer their charges. Then what? They're still back in the same situation, if not worse off than what they were then where they started.

It's a never ending cycle. So I still don't see how, you know, holding people with cash bail makes it any better even once they do answer their charges. Then you are going to go pay-- if they are convicted-- then we're going to pay for them to sit in state prison and then we have to pay for their medical there. We have to do all these things. And they may not even be getting the proper medical treatment that they need to. Also, in jail, people are not being treated properly. States are paying lots of money in settlements for harm that is being caused to people in jail.

I just don't see the benefit of the argument of, well, people have to be held accountable versus them dying or coming out worse than what they are. Jail is not a safe space. It's not a clean place. It's not a good place. And the fact that people, it's, well, it's not supposed to be, you haven't been convicted yet. This is not prison. This is jail. People cannot afford to even eat, so what makes you think that they have a hundred dollars to even come out?

And again, Ken, you know the bail bond system. It's not just having the money. You gotta have collateral to back that up, which most people don't. And then the people that are against what we



do, as a community bail fund, we are not even making a profit. And people have a problem with that. That's odd to me that people have a problem with other people helping other people who can't afford to get out, to keep their homes. And they want to do away with that. But I never hear anybody say anything about the bail bond industry who makes millions, millions of dollars off of people's, you know, 10-minute mistake or, you know, bad day that they had. We're not doing that. We're just trying to offer community members a way to keep what they do have intact, and get better. And the only way to change all this, again, I'm going to keep hitting this, people need their basic needs met. Once we start doing that, guarantee crime, we'll even see less crime.

Matt: Ken, there's a stark contrast between New York and New Jersey's cashless bail system and the cash bail system that we've alluded to in places like Texas where you practice law. We have highlighted up to this point that diametric point of contrast. Organizations like the Innocence Project estimate that somewhere between 2% and 6% of Texas's prison population have been wrongfully convicted. In 2024, Texas led the nation in exonerations, according to the National Registry of Exonerations, and one could extrapolate that this points to the presence of systemic issues that contribute to wrongful convictions.

Some proponents of bail reforms suggest that you are left with the untenable decision. In fact, the Northwest Community Bail Fund's website has right on it: "We don't want to have people faced with this no-win situation of plead guilty and pay the bail or get out." Do you believe that Texas' bail system has contributed to the type of miscarriages of justice we've seen that have resulted in the state leading the nation in exonerations or some of these, Innocence Project estimates about the numbers of wrongful convictions that are happening in Texas?

Ken: No, I do not. I mean, I have example after example of members of the bail industry stepping in and diffusing situations. I have a podcast called "The Bail Post." I mean, if you want a great example of that, just go see our episode called "Meet the Coopers," where the police were doing house-to-house searches, expecting a shootout with the defendant, and the bondsman contacted his family, talked to them and eventually met the defendant at the jail and walked him into the jail. And the situation the police were expecting to be a shootout to the death ended up being nothing. And so I, I think the bail industry-- which is responsible for like 86% of all releases in the state of Texas, according to the Office of Court Administration records-- are a very valuable to the, uh, workings of the criminal justice system in Texas.

But I think what you've seen today is a great example of the arguments from the two sides. I mean, you could just narrow this argument down to we want law and order, we don't want law and order. If, if there's no situation where one group thinks someone can be or should be held in jail, then criminals see that as a green light to commit more crime.

And this argument that we can solve all problems, all problems, just by providing services. I mean, it is an argument that has been repudiated over and over again. There are people that have mental health problems. If you provide them with a home, they're going to destroy it. We've got people with drug problems, if you don't have the hammer of the criminal justice system, they're not going to seek treatment. So like in Oregon, you just end up giving them Narcan every night when they overdose so that they can go the next day and get more drugs from the drug dealer. I mean, we



have to have the hammer to help people get straightened out. And this argument that everybody just wants to go to work, I mean, just is absolutely contrary to the reality of our inner cities where we're having these problems. And here's the reality, the very--

Matt: So, so, but Ken, Ken --

Ken: Priorities that they say they're helping are getting hurt the worse.

Matt: Ken, get an answer though to the question. What then is causing those dramatic statistical swings resulting in Texas leading the nation in exonerations?

Ken: Well, first of all, I don't know the statistics that you're talking about, what leading the nation. And also I would say we're talking about over time, so we're talking about people who are in prison for a long period of time. And we're talking, probably, we're talking about the rise of DNA evidence and the use of that. And so, we're talking about trials from years and many years ago where they didn't use it, and now today they're going back and using that technology on the evidence that was taken in at the time. And so I would say that, what does that have to do with the bail industry? It doesn't have anything to do with the bail industry. That is a criminal justice issue. That's not a systemic racial problem, that's a technology issue.

Matt: Chanel, I want you to address what, from a proponent of cashless bail, you believe the impact of cash bail is on wrongful convictions?

Chanel: I believe it's it's a huge impact because one, when people are seen as being sitting in jail, it provides this image of you're automatically guilty.

And since Mr. Good didn't want to touch on it, the reason why Texas leads the state and overturning wrongful convictions is good old-fashioned racism, a systemic issue here in America, period. And now that they do have the science to prove that, oh, it wasn't the Black man who did it, then people are getting out.

But yeah, if you can't get out to fight your case and you're just sitting languishing away in jail, again, you're either probably going to plead guilty. Or if you are in one of these Southern states and you do go to trial, who's to say that you're going to get a fair trial and people aren't just going to automatically convict you because you're Black?

Having the money to get out, it does something. People look at you differently. I mean, there are a lot of the people that get arrested all the time, but don't spend a day in jail because they have money. It's true. and this whole idea of like inner cities, Mr. Good? Do you live in inner city or have you ever been a minority? So to speak on inner cities and for minorities seems a little out of place, and that you really don't have the right to do that. Unless you've experienced or lived there. You can't speak for that community or those people.

Ken: Well, let's talk about that for a moment. So since I'm not a minority, I'm not allowed to talk about criminal justice reform. So when I'm talking, talking about --



Chanel: I said you cannot speak for those people, I didn't say you weren't allowed to talk about it. And that is now the third time that you have misquoted what I said. You, be very clear. I'm very intentional with my words. I said, you cannot speak for those people. I did not say, you cannot speak about criminal--

Ken: Okay.

Chanel: Punishment reform. Just like you said, oh, she wants everybody to get out, everybody's in jail for nonviolent crimes. No, I gave a specific number, 73%. Do not misquote me again. Please.

Ken: I won't misquote you. What you said was nobody should be held pretrial, even someone accused of murder. That's not 73%.

Chanel: I said they should not be held in jail. I said, not held in jail. Once again, sir, Please listen. I said they should not be held in jail, maybe a hospital. So you have to listen fully.

Matt: Let's move to a final point today and close out here with a bit of an exercise. Both of you are very passionate about the various positions that you come from. But at times this even discussion has devolved a little bit, and it's sort of emblematic of the discussion out in our society right now in fact. It's emblematic of what I think we're doing as a nation right now, is we're really just kind of talking at each other as opposed to with each other. So let's bring it back full circle for just a second, and I'm going to give each of you an opportunity to make a bit of a closing statement. But I want to set this hypothetical stage for just a second, okay.

Let's assume today that our audience is a state legislature that's now contemplating moving to a cashless bail system. And if you've ever testified before a state legislature, you know that you get about two minutes to talk and then they tell you to shut up. And I've been very, uh, gracious as your host today and not used those words, but that's how the state legislatures work. So, in closing, today, I'm going to give you your opportunity to make your most powerful pitch to that, state legislature, our audience.

And, let's hear first from Ken. I want you to make your pitch to, to the hypothetical state legislature audience, that is our, Presumption of Innocence podcast listenership that's out there, listening to this right now, trying to decide where they want to end up on this very, very contentious issue. So, Ken, you have two minutes. You are now on the clock. Go.

Ken: Thank you for having me before your committee to talk about this very important issue.

The state of California looked at doing exactly what you're doing and, uh, Yolo County, the District Attorney released a study. And in reviewing the study, which I've already mentioned earlier today, the numbers were so appalling and so persuasive that the legislature did not do this. If you do what the proponents for change are asking you to do, crime will increase. Your backlogs in your courts will increase. When you have backlogs that will increase pressure to dismiss cases because of the chaos. And when you dismiss cases, criminals will see that as a green light to commit more crime. Our urban areas are suffering from this right now. You can stop it by not doing cashless bail. Thank you.



Matt: Alright, well, Ken, you did it in one minute, so you didn't even get the hook from the keeper of the clock.

Chanel, I'm going to give you the same exact opportunity, but I'm waiting for the clock to sort of wind around to an even number so I don't lose track. You're going to get the same opportunity. When I say go, I want you to give that same pitch to our audience, who is this hypothetical legislative committee that is going to decide this issue. So here's your one and only shot. Go.

Chanel: Cash bail is harmful to our community. It's harmful to the families. It's harmful to our state and our municipal systems. It costs a lot to house people in jails and we could be using that money to provide people with housing, food, benefits. If you don't believe me, you can check out what happened in Illinois. Go look it up. Don't listen to the talking points. Illinois ended cash bail and things are going great. Please listen to folks that are actually involved on the ground and in those communities rather than people that are maybe not even practicing criminal law in one state, but speaking about criminal procedure in three other states such as California, New Jersey, New York. And also a state that has the highest levels of overturned convictions. Cash bail does not make us safe. What makes us safe is people being housed, fed and helped with their mental health, physical health, and all that they need.

Matt: Wow. You both did it in under the two-minute limitation, which is astonishing. I thought I was going to have to give each of you the hook and you both did it in just about a minute. You're obviously extremely passionate, both of you, about what it is you're talking about today. And I, I really can't thank you enough for being with us here on "The Presumption of Innocence."

Our guests have been Ken Good, a Texas lawyer specializing and representing the bail industry, and Chanel Rhymes, who is with the Northwest Community Bail Fund.

I know I said we were winding down our time together and I said that this little exercise of speaking to the hypothetical senate committee was going to be the last question I asked, but I, I, I want to end on a positive note. Because like I said, we have really drawn this dichotomy that has developed throughout the entire country. Each of you have sat here and listened to one another speak today on a very contentious issue, okay. I've done my level best to try to throw some questions at you that were not from my personal vantage point, but just trying to get our audience in tune with both arguments.

I'm going to ask you both the same question. And I'm going to start with you, Chanel. Sitting here listening to Mr. Good today, what can you agree with him on, as opposed to just constantly disagreeing with one another as what? What's going on out in the, out in the country right now?

Chanel: I think I agree with him and we should do away with risk assessments. I don't believe risk assessments are helpful. I'd say that's probably the one thing that he said that I do agree with-- probably not for the same reasons-- but I don't think risk assessments are helpful and, I think that there tends to be bias built into the assessment because of who is developing the assessment.



Matt: Ken, the same question goes back to you. You, you and Ms. Rhymes come from an entirely different position on this issue, but where can you agree? Where is there middle ground in the arguments that you both presented?

Ken: Uh, there is no middle ground, uh, because I believe that there's misrepresentation on that side. The only place that I could probably come to any agreement, it would only be partial. I think first-time offenders should be treated differently than somebody with a criminal history. But I think the way we do that is by giving the judges more discretion, not less. And all the reforms that they're proposed take away the discretion so that they can't address the worst elements of the criminal community. And so as a result, there's probably nothing we can agree on.

Matt: Well, there you have it, folks. You've heard from our two guests today on a very, very contentious issue, and that is bail reform and proponents on both sides of the issue, perhaps like we've never had on "The Presumption of Innocence," making their best case, both for and against cashless bail. I'm your host, Matt Adams, and that's all the time we have for this episode of "The Presumption of Innocence." We'll see you next time. Take care.