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Shadd Maruna, Dean Dabney and Volkan Topalli

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# Putting a price on prisoner release: The history of bail and a possible future of parole

**Shadd Maruna**

Queen's University Belfast, UK

**Dean Dabney**

Georgia State University, USA

**Volkan Topalli**

Georgia State University, USA

*Punishment & Society*

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## Abstract

In this article, we argue that the history of bail foretells the future of parole. Under a plan called the Conditional Post-Conviction Release Bond Act (recently passed into law in three states), US prisoners can secure early release only after posting 'post-conviction bail'. As with pre-trial bail, the fledgling model would require prisoners to pay a percentage of the bail amount to secure their release under the contractual responsibility of a commercial bail agency. If release conditions are breached, bounty hunters are legally empowered to seize and return the parolee to prison. Our inquiry outlines the origins of this post-conviction bond plan and the research upon which it is based. Drawing on the 'new penology' framework, we identify several underlying factors that make for a ripe advocacy environment and set the stage for widespread state-level adoption of this plan in the near future. Post-conviction bail fits squarely within the growing policy trends toward privatization, managerialism, and actuarial justice. Most importantly, though, advocates have the benefit of precedent on their side, as most US states have long relied on a system of commercial bail bonding and private bounty hunting to manage conditional pretrial release.

## Keywords

bail, bounty hunters, new penology, parole, privatization

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## Corresponding author:

Shadd Maruna, Director, Institute of Criminology and Criminal Justice, School of Law, Queen's University Belfast, 29 University Square, Belfast, BT9 5FU, UK.

Email: s.maruna@qub.ac.uk

In 2007, the actress Lindsay Lohan famously lost control of her Mercedes-Benz convertible and ran the vehicle up a curb. Police found cocaine in the car and arrested Lohan for driving under the influence. Her bail was set at \$25,000 (Van Gelder, 2007). Subsequent arrests (a public altercation with a member of her personal staff, possession of cocaine, driving with a suspended license) produced additional arrests and monetary bail stipulation ranging from \$20–40,000. In February 2011, the actress was caught stealing a \$2500 necklace. This time, her bail was set at \$40,000 (Cieply, 2011). In each of the above cases, Lohan had no problem posting bail and securing her freedom pre-trial.

Despite these personal troubles, the young celebrity was certainly lucky in one regard: 70 percent of defendants subject to monetary bail between \$25,000 and \$50,000 are not able to post bail and end up serving their pretrial detention period in jail. One in five of such persons are ultimately acquitted of the crime or have their case dismissed but serve jail time anyhow (Cohen and Reeves, 2007). In other words, 'Those with financial means are able to purchase their freedom, while those without financial means lose their liberty during a period when they are presumed innocent' (Clark, 2007: 31).

The primary option for people in trouble with the law who do not have access to Lohan's personal wealth and connections is to turn to commercial bonding agencies. Such third party entities can issue a bail bond whereby the individual secures his/her freedom in exchange for a non-refundable fee of around 10 percent of the bail amount plus collateral (real estate, automobiles, etc.). Under this contractual arrangement, the bonding agent makes a 'guarantee' to the court that the accused will attend his or her court date(s). The standard contract grants the bonding agent near total control over the accused person's freedom, authorizing the agent or his/her designee to monitor, detain, and/or terminate the arrangement (i.e. re-incarcerate) at will. In the event of a breach of contract, the bonding agent usually relies on a network of private 'bounty hunters' to locate and return to government custody those who try to abscond. Only two other countries in the world (Philippines and Liberia) have comparable systems of commercial bail bonding (Devine, 1991).

The US system of commercial bail has numerous domestic critics, however. Both the American Bar Association and the National District Attorney's Association have long advocated its abolishment. Forty years ago, the legal scholar Ronald Goldfarb (1965: 4) wrote:

The [US] bail system is to a great degree a socially countenanced ransom of people and of justice for no good reason. It is an unworkable and unreasonable abortive outgrowth of historical Anglo-American legal devices which worked once in a far different time and place and in a far different way.

Scandals involving collusion between commercial bonding agencies and members of the criminal justice system have led four states – Illinois, Kentucky, Oregon and Wisconsin<sup>1</sup> – to abandon their commercial system of bail (Liptak, 2008). Nonetheless, the use of commercial bail bonding is increasing in those jurisdictions

that still allow it. In 2004, around 42 percent of pretrial releases resulted from the payment of surety bonds through commercial bail agents (compared to 22 percent in 1992). There are now an estimated 14,000 commercial bail agents nationwide in what has become a lucrative business in trying economic times (Cohen and Reaves, 2007).

We posit that it is likely that this system of commercial bonding and private bounty hunters will become the model for community corrections more generally within the next decade. In fact, if advocates get their way, probation<sup>2</sup> and parole systems in every US state could be replaced by a structure almost identical to the modern, commercial bail establishment. Under this proposed model, a judge or paroling authority would set a price for every prisoner's early release from prison. If a prisoner wants to be released before the completion of his or her entire sentence, s/he will have to find the sum to put up as collateral to insure his or her good behavior. Those with financial means would simply put up the requisite amount from their personal finances as collateral and collect it back again after their time on parole. The majority, however, will have to rely upon the system of bail bondsmen. These commercial entities will employ financial coercion and a search and seizure authority to ensure that individuals adhere to all the conditions of their release, terminating the contract at will, and/or sending bounty hunters out to return them to prison.<sup>3</sup> Many prisoners will not get this chance, of course, as they will be rejected by the private companies as bad risks. The rest will not be able to afford the fee that agencies charge or will have lost any contact with friends or family who could. In these circumstances, persons will have to serve out their complete sentence behind bars – not because they are necessarily deemed 'high risk', but because they are poor.

Such is the future for parole if a conservative lobbying group called the American Legislative Exchange Council (ALEC) is successful – and ALEC often gets its way (see Nichols, 2011). ALEC is a non-profit organization, comprised of over 2400 state legislators representing all 50 states, nearly 100 former members of the US Congress, and more than 250 corporate or foundation sponsors; it uses a multi-million dollar budget to advance a conservative legislative agenda. The group's impact to date has been substantial; its website ([www.alec.org](http://www.alec.org)) claims responsibility for nearly 1000 bills annually based upon ALEC generated model legislation, with 20 percent eventually becoming law.

The parole scenario above is a paraphrase of a piece of model legislation ALEC (2007) has drafted known as the 'Conditional Post-Conviction Release Bond Act' introduced in their report entitled, *A Plan to Reduce Prison Overcrowding and Violent Crime*. Under the plan, states rely on performance bonds, and security or indemnity agreements to keep released ex-prisoners from committing new crimes and 'assure their prompt return to custody should they misbehave' (2007: 3). When the ALEC plan was recently introduced as a bill in California, the proposal set the maximum amount of post-conviction bail at \$100,000 and the minimum at \$15,000. As with pre-trial bail, the individual pays a percentage of this amount as a non-refundable charge in order to be released to the responsibility of a

commercial bail agency. Persons in the participant's release environment, such as parents and guardians, voluntarily sign 'agreements of indemnity' whereby they, along with the individual, would have a monetary incentive as indemnitors to the surety (2007: 3). Upon the 'breach of any single condition of release', the bond 'could be revoked by the court, a warrant issued' and bounty hunters can be legally empowered to bring the individual back to prison (or else the surety would be penalized). Assuming that the structure of post-conviction bail would replicate that of the current pre-conviction release system, a dozen or so multi-billion dollar surety insurance companies would indemnify the bonding agent and serve to insulate the local agent (and for practical purposes the corporate indemnifier) from having to reimburse the court in the event of offender non-compliance. Versions of this piece of model legislation have already been passed into law in Mississippi, South Dakota and Michigan, and are pending discussion in numerous others.

In this article, we draw on a 'new penology' framework (Feeley and Simon, 1992) to argue that ALEC's plan for release bonds is likely to become a reality for many more states in the near future. We make this case on several grounds familiar to the new penology literature, in particular: the trends toward privatization, managerialism and actuarial criminal justice and crisis of legitimacy for paroling agencies and authorities arising from the lack of a purposeful narrative for this work (see especially Simon, 1993). Most importantly, however, we argue that the ALEC plan is likely to succeed because in 46 US states parallel situations already exist. In these states commercial bail bonding is perceived as a legitimate business and even so-called 'bounty hunting' has become a popular, respectable, and even glorified pursuit. In short, we will argue that the history of bail foretells the future of parole.

In making our case, we begin with the future, outlining ALEC's proposal and its origins. We then provide a history<sup>4</sup> of commercial bail in the United States, demarcating four, distinct eras, to demonstrate how bureaucratic and commercial interests have shaped bail practices over time. Our goal with this history is a Foucauldian one: to make the familiar appear strange (Garland, 1990). Malcolm Feeley (2002a: 325) argues that: 'Money bail has become such an integral feature of the criminal process that its private nature is all but invisible.' In other words, we have learned to take commercial bail for granted in the United States.<sup>5</sup> Our hope is that the juxtaposition of our discussion of the future of parole alongside a history of bail will allow both to be understood in a new light – as the newest and oldest exemplars of the 'new penology' (Feeley and Simon, 1992).

## **The future of parole? Free market reintegration**

In February 2008, two Rhode Island state senators introduced a bill titled 'The Conditional Post Conviction Release Act' (S 2734). The exact same bill had been introduced in California by State Senator Ray Haynes<sup>6</sup> (SB 441) years earlier, and similar bills have been introduced in state houses of representatives and state

senates of South Dakota, North Carolina, South Carolina, Florida, Texas, Hawaii, Rhode Island, New Hampshire, Arizona, and Maine.<sup>7</sup> To date, Mississippi in 2008 (§99-5-39), Michigan (HB 4437) in 2009, and South Dakota (SB 110)<sup>8</sup> have all successfully passed conditional post-conviction release acts, while North Carolina (HB 1338) and Indiana (HB 1354) have bills pending at the time of writing.<sup>9</sup> On their introduction, these bills are almost identical in text and intent. This is no remarkable coincidence but rather the result of a concerted effort by ALEC to gain widespread adoption of the concept even though these origins were virtually unknown by voters in the states where these bills have been promoted.<sup>10</sup>

Indeed, ALEC has been referred to as ‘one of the nation’s most powerful – and least known – corporate lobbies’ (Olsson, 2002: 1) and ‘the most powerful lobby you’ve never heard of’ (Dolovich, 2005: 523). It was founded by the late Paul Weyrich, a conservative activist who also founded or co-founded the Heritage Foundation, the Moral Majority, and the Free Congress Foundation and is considered by some to be the ‘father of the religious right’ (Luo, 2007: 1). Unlike his other high-profile organizations, however, ALEC has managed to operate stealthily and in near secrecy. Indeed, no mention is made of the group in Weyrich’s recent *New York Times* obituary (Weber, 2008). This lack of recognition is ‘just the way ALEC likes it’ (Penniman, 2002: 12) and is said to be the secret behind the group’s power and success. In his article ‘What makes ALEC smart?’ Greenblatt (2003: 30) writes, ‘You don’t hear too much about this right-leaning state pressure group. Maybe that’s why it wins so often.’ The organization’s critics – most notably the group called ‘ALECWatch’ consisting of the directors of Defenders of Wildlife and the Natural Resources Defense Council – largely agree, referring to ALEC as a ‘Trojan Horse’ for rightwing corporate interests (Schlickeisen and Adams, 2002).<sup>11</sup> In the first section below, we highlight the origins of ALEC’s plan to privatize community corrections on the bail model. This is followed by a discussion exploring the logic behind the argument and the core premises on which it is based.

### *Tracing the origins of an idea*

The specific origins of the Conditional Post-Conviction Release Act (hereafter, CPCRA) are obscure, to be sure. The published release date of ALEC’s *Plan to Reduce Prison Overcrowding and Violent Crime* is 2007, but post-conviction bail is an idea that has been pushed by ALEC’s state senators and representatives, as well as various conservative think tanks, for at least a decade. Nonetheless, the 2007 ALEC proposal presents the idea as a novel one, and contains only 15 citations to previous research and discussion of this idea. Four key footnotes refer to a paper by Morgan O. Reynolds (2000).<sup>12</sup> Critically, Reynolds’ (2000: 3) paper is cited for the blanket claim, ‘The private sector appearance bond system is a well proven workable model.’ Although not explicitly stated, the ALEC report makes it clear that Reynolds is the intellectual author of the idea behind ALEC’s post-conviction bond act,<sup>13</sup> the entire proposal being little more than a paraphrase of Reynolds’ (2000) paper *Privatizing Probation and Parole*.

Reynolds is an established libertarian thinker whose work brought him to the attention of the neo-conservatives in the George W. Bush Administration, earning him a post as the Chief Economist for the Department of Labor between 2001 and 2002.<sup>14</sup> His essay 'How to reduce crime' (1996b), circulated to members of Congress during the 1994 crime bill debates (Greene, 2002), advocates dispensing with 'socialistic' community corrections altogether and privatizing policing, prosecution, and correctional services. Reynolds' later paper *Does Punishment Deter* (1998)<sup>15</sup> argues in favor of incarceration as a means of reducing crime, and *Factories Behind Bars* (1996a) advocates the repeal of all restrictions on convict labor and the introduction of schemes through which prisoners would be forced to pay tax-payers back for their 'upkeep'.

Several of these arguments overlap with positions taken by ALEC (see especially the group's links to privatization efforts and legislation promoting prison labor in Elk and Sloan, 2011), and the organization has particular, long-standing interests in the commercial bail industry. In 1988, the 12 major insurance companies responsible for underwriting the nations' multibillion dollar commercial surety bond industry came together to form the National Association of Bail Insurance Companies (NABIC). In the early 1990s, NABIC reached out to ALEC and formed a partnership organization called 'Strikeback!'. Utilizing a 'get tough' ideology and privately funded research, the partnership pushed for the expansion of commercial bail options as a way to purportedly enhance effectiveness and efficiency of the services delivered to taxpayers.

Who or what is ALEC? ALEC consists of two main types of members (see Nichols, 2011). The first are the politicians, almost all at the state level (not incidentally, where there is less scrutiny of lobbying activity). These 'legislator members' do the work of introducing and pushing for ALEC bills in their states and are therefore its 'public face'. According to the group's own 'Leaders in the States' brochure, ALEC's legislator members have included governors such as George Pataki, Zell Miller, and Frank Keating, as well as dozens of Senate Presidents, Senate Majority and Minority Leaders, and House Majority and Minority Leaders from various states. The impressive roll call is overwhelmingly, but not entirely, drawn from the Republican Party. The 2400+ legislator members pay a nominal fee of around \$25 per year, in exchange for which they are able to:

avail themselves of perquisites that can include junkets to prime tourist destinations in the United States, free or heavily subsidized trips that resemble vacations for their spouses and children, and an assortment of other fringe benefits that range from no-cost child care and medical tests to free Broadway theater tickets and dinners at expensive restaurants. (Schlickeisen and Adams, 2002: 6)

The second type of ALEC member, the 'corporate sponsor', pays a great deal more for membership and yet is largely shrouded from the public gaze. In what critics refer to as a 'pay-to-play' arrangement (Schlickeisen and Adams, 2002),



corporations and corporate interest groups can become ALEC members for a fee of up to \$50,000. Members paying these more substantial corporate dues are rewarded with legislative influence, securing the privilege of sitting on ALEC's various committees that draw up and approve 'model bills' such as the CPCRA.

Past co-chairs of ALEC's Criminal Justice Taskforce (recently renamed the Public Safety and Elections Taskforce) have included senior executives from the Corrections Corporation of America, Wackenhut Security, and other private prison providers. NABIC, recently renamed American Bail Coalition (ABC), has also been an active private-sector participant in ALEC's Criminal Justice and Public Safety and Elections Taskforces. The NABIC/ABC Executive Director and General Counsel have both served on that Taskforce and spoken at ALEC's annual conferences in favor of post-conviction bail and presumably had a hand in drawing up the CPCRA legislation. In a brochure for its membership, NABIC/ABC is explicit about how the relationship with ALEC worked and what the insurance companies gained from it:

In 1995, within two years of joining ALEC, a member of the NABIC Board sat on the ALEC Board, ALEC had approved several model bills in support of commercial surety bail, and, furthermore, had completed a study on the failure of government-funded pretrial release programs (to be followed by a similar additional study two years later, in 1997). (cited in Schlickeisen and Adams, 2002: 9)<sup>16</sup>

Not only does this corporate membership buy influence, then, it also purchases research, including that which ALEC has subsequently recycled in support of post-conviction bail. The NABIC/ABC brochure makes clear that this was money well spent:

For many years NABIC has given considerable financial support to ALEC and to the ALEC Criminal Justice Task Force . . . Through ALEC, NABIC has had a channel to express its interests to a majority of the states' speakers of the house and presidents of the senate. (cited in Schlickeisen and Adams, 2002: 9)

### *How the post-conviction bail argument works*

The argument developed by ALEC and Morgan O. Reynolds (1994, 2000) is highly compelling in its promise for reform. The ALEC (2007: 4) proposal suggests that the introduction of post-conviction bail would 'guarantee low recidivism' while simultaneously cutting spending on corrections in a win-win formula. To understand the logic behind these claims, one needs to appreciate a small number of key 'new penological' assumptions made by the plan's advocates: the current system of parole release is failing; parole primarily involves surveillance and supervision; and the free market has a unique ability to discipline citizens.

*Parole in crisis.* Using data compiled by the Manhattan Institute and, unusually, the conservative blogger Joseph Farah's website [www.worldnetdaily.com](http://www.worldnetdaily.com), Reynolds (2000: 1) argues that community corrections are in crisis and that 'legislators are disgusted with the disrespect for the unsecured probation and parole system displayed by criminals'. Likewise, in a newsletter for the bail bonds industry, a representative of the industry decries the 'early release problem' in the USA, and argues that, 'society will not tolerate the wholesale early release of convicted felons to be supervised by an already overburdened parole system' (Whitlock, 2007: 1).

Yet, what is the prisoner release 'crisis' that so disturbs citizens and legislators? ALEC's proposal reviews the usual findings of prisoner release research, including well-known statistics about the numbers of released prisoners who are rearrested for a felony or serious misdemeanor within three years. High caseloads of probation and parole bureaucracies and the levels of prison overcrowding facing states are also cited. However, advocates argue that the worst 'crisis' in parole is the number of individuals under supervision who abscond and are not found.<sup>17</sup> Reynolds (2000: 8) writes,

Pursuit of those who violate probation or parole would be more effective because unlike police, bounty hunters have strong incentives to recover fugitives – they get paid only if they get their man. In addition, they can go freely to any jurisdiction and use any lawful means to apprehend a fugitive.

These lawful rights granted to bondsmen (and transferred to bounty hunters) include the right to 'enter a fugitive's house without a warrant' (Reynolds, 2000: 8). Of course, if this is a more efficient means of detecting parole violators (and there is doubt here, see Feeley, 2002b), there is a logical contradiction in regard to how this will lead to cost savings, as presumably such recalled parolees would increase prisoner numbers.

*Probation/parole work as purely enforcement of rules.* The second, notable assumption of the ALEC proposal is that the work involved in ex-prisoner reintegration is primarily surveillance-oriented. The proposal states:

Failure of the releasee to meet numerous requirements such as house arrest, regular drug testing, recovery program involvement, mandatory check-in requirements, non-interference with witnesses or victims, maintenance of gainful employment, payment of restitution, and no subsequent arrests or any additional requirements would obligate the surety to promptly return the releasee to custody thus safeguarding the community. Failure to so perform would subject the surety to full financial penalty under the bond. (ALEC, 2007: 3)

Note that, according to this hypothetical scenario, the commercial bonding agency would not lose its investment if the individual violates the conditions

of parole. So long as the parolee is promptly returned to custody after the violation, the bonding agency is not held responsible. Clearly, then, bondsmen have little incentive to promote desistance from crime, as both a return to custody and desistance count as community 'safeguarding' and the former is surely easier to 'guarantee' than the latter. In such circumstances, it is not at all clear how the plan would reduce prison overcrowding, and it is easy to imagine the opposite.

After all, the sole function envisioned for the commercial bonding agent is an enforcement one. Unlike the traditional parole officer, the bonding organization apparently would not assume responsibility for helping the person find employment or assisting with the struggles of reintegration. All that bounty hunters would have to do is monitor the individual and bring them to jail if they fail to live up to any of the notoriously difficult conditions associated with parole. The premise is a pure 'tail 'em, nail 'em and jail 'em' model of supervision (Skeem and Manchak, 2008) or what Simon (1993) describes as a 'waste management' model. If more work is required in the reintegration process, then this will have to be delivered by another agency. In their position statement on ALEC's proposal, the American Probation and Parole Association (APPA) (2009) argues that since 'actual supervision... involves substantially more than appearing in court' it is likely that the bonding companies would have to charge substantially more than the 10 percent of the bail amount typically charged for pretrial commercial bond to truly replace traditional forms of parole.

*Markets and responsabilization.* 'Free market' ideology plays a role in both the arguments for cost savings as well as the claims for recidivism reduction, and both claims are based on unchecked assumptions. At its most fanciful, the argument is sometimes made that the bail program would 'pay for itself', or in other words: 'To the greatest extent possible,' the ALEC (2007: 3) proposal states, 'the program's costs should be borne by criminals'. However, this is contradicted in the details of the plan itself. As prisoners are unlikely to be able to afford to pay for their own bail on prison wages, the ALEC report clearly indicates that it would be their families and supporters who will be expected bear this burden. Reynolds (2000: 7) argues that 'There is ample precedent for payment of such fees since a majority of the states already allow local probation departments to collect fees from probationers.' However, critics of these fees argue that levying them against the financially strapped families of prisoners, already overburdened with the costs associated with visitation and prison phone calls, would be an impediment to successful reentry (Goodman, 2008).

Additional savings could conceivably emerge from the dismantling of the publicly run probation and parole bureaucracies, as 'a private bonding system would reduce, though probably not eliminate, the need for probation and parole officers on the public payroll', according to Reynolds (2000: 8). Advocates also point to savings achieved by releasing offenders into the community from costly terms of

incarceration (*Collateral*, 2010), ironically sometimes borrowing the language of criminal justice reform efforts on the political Left (see Maruna, 2011a). However, it is not clear that individuals would serve less time in prison than they currently do.

The key premise around recidivism reduction involves the ability of financial incentives to discipline and responsabilize a population (Feeley, 2002b):

Best of all, the program would rely on the proven success of the bail bond industry, rather than the proven dysfunction of the government-run parole and probation system, by requiring families and communities to take some responsibility for future acts of the person who is displaying signs of trouble. (ALEC, 2007: 3)

Accordingly, if there is a violation of the bond, ‘the family as well as the offender would be drawn into the circle of responsibility’ (2007: 3). Under their proposal, the always fraught calculus of risk or dangerousness is conveniently replaced with what Reynolds (2000: 7) refers to as a ‘market mechanism for deciding whom to release’. He argues: ‘If no intimate of the criminal or any private bondsman cared enough to risk their own money on the candidate for probation or parole, why should the general public risk that person on the streets?’ As the bail model is premised on the ability of financial incentives to control behavior, those without adequate finances become automatically too risky to release.

Considerable evidence suggests this would rule out a sizable proportion of individuals currently released on parole. Maryland, for instance, has experimented with a ‘supervision fee’ for parolees, charging them just \$40 per month to finance their own supervision in a populist effort to save the state money and ‘get tough’ on prisoners. Yet, research suggests that the fees are ‘largely uncollectible due to the dire financial situation in which parolees find themselves’ and that the debts that accumulate ‘do more harm than good’ by impeding the reintegration process (Diller et al., 2009: 1). New research details the considerable financial and social strain that a family member’s imprisonment has on families (Christian, 2005; Travis and Waul, 2003). Forcing such innocents to pay for their family member’s release on top of all the other hardships they face could be seen as a form of collective punishment.

For insurance companies to make a profit from such circumstances will be seen as unfair to many (see, for example, APPA, 2009), but supporters of post-conviction bail appear unconcerned about such consequences. In a glowing profile of post-conviction bail in the bail industry magazine *Collateral*, Dennis Bartlett – the Executive Director of the American Bail Coalition and a member of ALEC – is quoted as saying:

I would make the argument, ‘So what if they’re making money off of it? You hire food service and have competitors bid on it. That provider’s not going to do it for free. You just want to get the one who does it the way you want.’ (*Collateral*, 2010)

## What might the future hold? Learning from bail's history

In many ways, ALEC's arguments all boil down to one core claim: that pretrial commercial bail in the United States has itself been a clear success,<sup>18</sup> so why not import the model into parole?

Privatization is not a radical concept; it would involve little more than transferring the principles of the commercial bail bonding system, used successfully for criminal defendants, to those found guilty of crimes but eligible for early release on probation or parole. (Reynolds, 2000: 4)

In this section, therefore, we review this history in order to help understand the future of parole.

In many ways, pre-trial bail has been an institution ahead of its time – it embodied the 'new penology' before the new penology was 'new'. Today, despite changes in ideology, variations in usage levels, and a host of programmatic alterations, the unique US system of bail has retained its core principles of privatization, managerialism, and actuarial justice for two centuries (Feeley, 1983; Goldfarb, 1965; Thomas, 1976). There are identifiable eras within this history, most notably a formative era of definition and clarification (1800–1950), a liberal era of due process reforms (1950–1975), a conservative era of law and order reforms (1975–1990), and recently (1990–present) a managerial era stressing bureaucratic efficiency. Although each era is discernable by the significant events, judicial rulings, legislation, empirical inquiries, and public accounts occurring during the period, considerable continuities can also be found across all eras (Dabney et al., 2005). That is, we make the case that the more things have changed, the more they have stayed the same.

Presented with a potential market, profit-minded companies have long stepped forward to serve the role of commercial bondsmen. This entrepreneurial impulse is routinely interrupted by crises – usually in the form of scholarly and media inquiries that reveal corruption and injustices in the system. Yet, repeatedly, the bail bond industry has reemerged more capable and influential. Below, we describe the resilience of commercial bail practices against a century of legal challenges, legislative reforms, and public critiques. Given the similarities between the proposed post-conviction conditional release model and the longstanding commercial bail system, we posit a similar fate for the US system of parole once privatization is introduced.

### *The resilience of commercial bail*

State authorities have encouraged the promise (or payment) of assets in exchange for pretrial release for at least 1500 years. From its early days in the seventh century, the English common law system of bail has been based on the concepts of recognizance and liability. Originally, the surety and the accused were bound 'body to body' during the adjudication process, with the understanding that the final

punishment could be meted out against the surety if the principal was not present in court at the time of sentencing (DeHaas, 1940; Duker, 1977). Personal ties inspired the surety to use his/her own assets to gain the release of the accused and vouch for that individual's future appearance at trial. The currency of this promissory contract evolved from one's own life and liberty, to land forfeiture, and eventually a monetary sum.

The transient nature of the American frontier quickly rendered ineffective a bail system based on private promissory contracts. Most offenders had few willing sureties available to them and often chose pretrial flight over the prospect of a harsh term of incarceration. A commercial bail system, based on monetary obligation rather than moral or land-based obligation was thus cast as a uniquely American solution.

The seeds of this commercial bail industry can be traced back to the late 19th century when part-time attorneys, 'loan sharks', and saloon owners utilized upon their resources and connections to provide for-profit release to needy defendants (Chamberlin, 1998). Soon thereafter, full-time private bail bondsmen emerged. Bondsmen learned that it was advantageous to foster good relationships with the court clerk, desk sergeant, prosecutor, defense attorneys, and even the judge as a means of funneling low risk, high yield defendants their way. Given the reciprocal nature of the relationship between bondsmen and justice authorities, common goals and biases emerged.

By the end of the Great Depression, all 50 states and the federal government had adopted statutes regulating the judicial practice of bail (Hayes, 1937). While statutory variation existed, most granted the judge discretion to consider the defendant's character, criminal history, current charge severity, the weight of the evidence against him/her, and so on, as related to the probability of appearance at trial. Each law specified the types of bail that were accepted by the trial court. The list usually included private money bail (a deposit provided by the accused or his/her family/friends), property bail (property used as collateral for the bail amount), commercial bail (recognizance pledge provided by a third party), and release on one's own recognizance. From the outset, legislators generally adopted a minimalist approach when codifying bail processes, choosing to define only those structures and processes identified within existing judicial precedents (Friedman, 1976). Bail laws contained few provisions governing the conduct of bondsmen, surety insurers, or bounty hunters.

The cozy relationships between bondsmen and members of the court and law enforcement community prompted some criticism and several social scientific inquiries into the administration of bail (Beeley, 1927; Pound and Frankfurter, 1922). These inquiries produced damning reports of bondsman corruption, collusion with criminal justice authorities, and abuses against indigent defendants (Goldfarb, 1965; Thomas, 1976). Moreover, they directed attention to the underlying structure of the bail system and its propensity to produce bias against poor defendants. Local (e.g. New York City) and national inquiries (e.g. Wickersham Commission) confirmed biased judicial bail setting practices and collusion and

prompted modest reforms. Instead of confronting head on the constitutional abstractness of the right to bail and/or judicial application thereof, reformers sought to maintain the core ideals of a commercialized system but reign in the bail bond industry (Thomas, 1976).

Bondsmen grew comfortable as the reform efforts of the 1930s died down. They once again began to collude with criminal justice practitioners and indigent defendants began to suffer en masse (Goldfarb, 1965). This prompted another spate of social science research and commentary depicting practical and legal limitations in bail administration. The Philadelphia Bail Study, for instance, found biases against indigent defendants; bail amounts were generic in nature, inversely related to release rates, and placed poor defendants at the highest risk of detention. Conversely, judges used bail levels to punish defendants and high failure-to-appear rates and low forfeiture rates suggested that the system was profitable for bondsmen who bore little risk but plenty of reward. Follow-up studies (Foote et al., 1958; Rankin, 1964; Suffet, 1966), partisan critiques (see, for example, Goldfarb, 1965), media exposés (see, for example, Davis, 1982 or Thomas, 1976), and multiple official inquiries and investigations at the state and federal levels (DeRhoda, 1979) yielded equally damning results and suggested that little had changed since Beeley's 1927 inquiry.

Around this time, liberal reforms shifted the focus toward due process protections for the accused individual. Release on recognizance (ROR) programs enacted structured screening by private volunteers and evidence-based release recommendations to be made to judges. The Bail Reform Act of 1966 (18 USC § 3146) soon established ROR as the preferred form of pretrial release for the federal court system. These programs reduced judicial discretion and cut into the business of commercial bondsmen, but often proved to be more restrictive than traditional bail, as states rigidly imposed the stated criteria for release and revocation (Feeley, 2002a).

ROR programs were not the only liberal reform initiative introduced during the 1960s. In 1963, Illinois enacted into law a 10 percent deposit bond program under which defendants could gain pretrial release by pledging one-tenth of their bail amount directly to the court (Bowman, 1965). Here, the court assumed the position of bondsman and became much more user-friendly to defendants, especially indigent ones. Numerous state and local jurisdictions passed 10 percent deposit bond laws.

Such reforms however were directly challenged by the commercial bail community who sought to roll back government-funded 'public bail' models in favor of 'private bail'. The bonding industry made the case that government programs were overly rigid in their application, led to higher failure to appear rates, and placed an undue burden on taxpayers.<sup>19</sup> In some cases, local action was undertaken to stem the impact of reforms. For example, New York City bondsmen, in 1961 and again in 1964, responded to threats posed by the Manhattan Bail Project and tightened forfeiture enforcement by carrying out a strike of sorts. Bondsmen began limiting bonds to those defendants who could cover the full bail

amount through cash or collateral. This led to jail overcrowding and concessions on the part of city officials.

These organizational efforts spread to the national level. In 1962, the National Association of Insurance Commissioners proposed the Uniform Bail Bond Act which required member surety insurers to license and regulate bondsmen and subagents with whom they contracted. The Act also served as model legislation calling for bondsmen to be regulated under state insurance commissioners' offices. It contained provisions for licensure qualifications, standardized premium rates, and sanctions against specified offenses committed by bondsmen. By 1971, seven states enacted laws modeled after this act. Bondsmen also formed the American Association of Professional Bail Agents in the mid-1970s. This organization identified 5000 bonding companies nationwide and coordinated lobbying efforts to define and defend its legitimacy as a privatized arm of the criminal justice system.

Despite numerous reform efforts, then, the 'liberal era' of bail's history also demonstrates the resiliency of the commercial bail industry in the face of threat. In the mid-1960s, Goldfarb (1965) estimated that 10–12 million defendants (70 percent of all felons and 90 percent of all misdemeanants) were still procuring release via commercial bail bonds each year. This translated into annual industry profits in excess of \$20 million.

The 1980s witnessed another cycle of entrepreneurialism–crisis–reorganization. The 'War on Drugs' produced spikes in arrests and prosecutions and took away judges' flexibility to make deliberate and personalized bail decisions and led to increased numbers of defendants in need of bail. Commercial bail bonding entities responded by streamlining their bureaucratic structure, standardizing administrative processes, and reinventing the industry using a corporate model. Over time, the need to write more bonds with smaller commissions led to a reduction in entrepreneurial bondsmen and an increase in the market share controlled by indemnity insurance companies (Chamberlain, 1998) who were able to address bail as a 'high volume/low profit margin' business model.

Most recently, the crisis for the commercial system of bail has come in the form of a decrease in crime rates and tight governmental budgets in the 1990s and first decade of the 21st century. The customer base from which commercial bondsmen can draw has decreased significantly as of late. Kennedy and Henry (1996) note that reliance on commercial surety bail decreased 15 percent in 1990 and 13 percent in 1992. They further report that 17 percent of felony defendants in these jurisdictions were ineligible for bail under prescribed preventive detention laws. In many jurisdictions (e.g. Illinois), commercial bail has neared extinction, and there have been important developments at the federal level and in states like Virginia to rationalize pretrial risk assessment processes (Lowenkamp and Whetzel, 2009). Chamberlain estimated that there existed no more than 8000 commercial bonding firms and 1000 full time bounty hunters in 1998. Members of the commercial bail industry are now concentrated in select jurisdictions that remain friendly to their brand of pretrial release (Toborg et al., 1985).



Faced with this growing crisis, however, the commercial bonding industry has increased the nature and extent of its political lobbying efforts. New 'grassroots' organizations have formed to guide the debate over how to best deal with defendants awaiting trial. In 1988, the 12 major insurance companies that underwrite the commercial surety bond industry came together to form a lobbying entity, the National Association of Bail Insurance Companies (NABIC). The Professional Bail Agents of the United States (PBUS) was formed to advocate on behalf of commercial bail bondsmen to lobby on behalf of local bondsmen.<sup>20</sup> The National Association of Bail Enforcement Agents (NABEA) emerged to lobby in favor of private fugitive recovery,<sup>21</sup> and the National Institute of Bail Enforcement and other regional training academies have been formed to enhance the skills and professionalism of local bounty hunters. Through ALEC and other legislative channels, these groups have been able to maintain the profitability of commercial bail against great odds (see Kennedy and Henry, 1996).

### *Judicial endorsement of commercialized justice*

The commercial bail industry has proven to be as resistant to judicial obstacles as it has been to legislative efforts. Indeed, as Feeley (1983: 77) points out, legal challenges to current bail practices have met primarily with 'numbing defeats'. Starting in the early 19th century, appellate courts began handing down decisions that consistently supported the monetary-based system of conditional pretrial release. *Leary v. United States* (1912), *Nicholls v. Ingersoll* (1810) and *Taylor v. Taintor* (1872) each contributed to a judicial precedent that by virtue of a signed bail contract granted a third party surety full custodial rights over the accused, afforded the bondsman broad powers of arrest, custody, and retrieval over the accused (that far exceeded those of law enforcement agents without any of the due process restrictions), and legitimized the bondsman's hiring bounty hunters as subagents. Even appellate reviews of the commercial bail system by the a liberal Supreme Court headed by Earl Warren (1953–1969) yielded only minor limits on the broad common law authority granted to bonding agents and bounty hunters (*Curtis v. Peerless Insurance Co.*, 1969; *Livingston v. Browder*, 1973; *Ouzts v. Maryland National Insurance Co.*, 1974).

In the 1980s, a more conservative Supreme Court issued decisions such as *Schall v. Martin* (1984) and *United States v. Salerno* (1987) that articulate the judiciary's endorsement of preventive detention and the use of dangerousness assessments in bail decision-making processes. The courts have consistently displayed a willingness to endorse the privatization of a critical function of the criminal justice system and afforded judges, bondsmen, and bounty hunters considerable leeway in their respective decision-making capacities. Given the parallels in the ideology and proposed administrative structures, we submit that these rulings provide advocates of conditional post-conviction release with an important judicial footing upon which to justify and defend their proposed reforms to parole.

## Conclusion: The future of parole?

At the close of the first decade of the 21st century, the US system of commercial bail remains integral to the day-to-day functioning of our justice system. Practically speaking, sureties are expected to perform some of the same functions as probation or parole officers but do so from a privileged legal position (i.e. few due process limits or government oversight and minimal risk of liability). Private entities have always been afforded loose due process obligations, limited governmental surveillance, and weak models of accountability when contract terms are not met. For about 100 years, this commercial system of bail has consistently exhibited the same benefits and limitations. It provides numerous pretrial release options for defendants with financial means, protecting the presumption of innocence, alleviates jail overcrowding, increases levels of non-state social control and monitoring of criminal defendants, assists the courtroom workgroup in managing caseloads, and theoretically provides cost savings for US taxpayers. On the downside, the US system of bail has been accused of discriminating against the poor, injecting profit motive into a public service function, breeding corruption and abuse of power, and increasing the risk of wrongful imprisonment. Today more than half a million individuals are in US jails – at a cost of around \$9 billion to taxpayers – because they cannot afford to post bail. These shortcomings continue to trigger occasional bursts of public outrage (see, for example, Sullivan, 2010), yet, none of these criticisms have significantly altered the core of the commercial system in many US states. Despite a history of reform efforts from the political Left and Right, privatization and managerial ideals have held sway over competing principles of justice and fairness (see Feeley and Simon, 1994).

This history of bail does not necessarily foretell the future for parole. There is every chance that what has worked, politically, in the area of pretrial release will not hold the same sway in terms of post-conviction release. The release of prisoners is a fraught and emotive process, and the frightening connotations of the phrase ‘early release’ can politically doom even the most logical reforms (see Maruna, 2011b for a discussion). It is possible that post-conviction bail will fail politically because of the insinuation that it would allow those with means to ‘buy’ their own early release putting the public at risk. Moreover, although both parole and pretrial detention are characterized by strong actuarial forces (calculating the likelihood of an individual’s posing a risk to society), parole also has been associated with desert. There is, after all, a long-standing idea that one should ‘earn’ one’s release from prison, unlike jail (Padfield, 2007). Finally, there has been a renewal of interest in prisoner reintegration efforts in the past decade under the banner of ‘reentry’ and the Second Chance Act (see Travis, 2005). This might represent a fight-back against a decade of simplistic ‘tail ’em, nail ’em and jail ’em’ approaches to parole work that opened the door to the de-professionalization of community corrections departments in the first place.

Nonetheless, we argue that once privatization is introduced into the parole equation, it is likely to grow – even if these efforts do not reduce crime and (remarkably) even if they do not save the states money. If nothing else, the history

of pre-trial bail in the United States demonstrates that once a profit motive is introduced, the industry emerging around the issue begins to take on a life of its own and issues of 'effectiveness' and efficiency become clouded. Feeley (2002a: 322), for instance, argues persuasively that: 'When successful, private efforts have increased not decreased the reach of government. In the long run they have expanded, not contracted public social control. They have increased not decreased public expenditures.' In short, the commercial bail industry has survived not necessarily because it reduces crime or saves money, but rather thanks to friends in high places, like ALEC. Those same friends with money may soon decide who does and does not get released from prison.

## Notes

1. These states moved to a 'deposit bonds' system paid directly to courts. Maine, Nebraska and the District of Columbia also have little commercial bail activity due to regulations in those states (Cohen and Reaves, 2007).
2. We focus primarily on the use of commercial bail in the context of parole. However, parallel efforts exist to incorporate commercial bail principles into probation. Under this model, individuals without monetary means would be denied community correction options and default to a term of incarceration.
3. See Drimmer (1996) and Kaufman (1999) for thorough analyses of the legal landscape pertaining to bounty hunters and bonding entities.
4. The subject of bail has received relatively little scrutiny or structured empirical inquiry in this historical work. This is particularly troubling considering the highly discretionary nature of bail practices and the tension between individual rights and public safety inherent in the bail bonding system. The historical analysis provided here relies primarily on secondary sources and serves to review and organize existing observations more so than provide new ones.
5. Non-commercial pre-trial bail bonding is a common but not universal feature in criminal justice systems internationally, and comparative international research is badly needed in this area, especially comparative work outlining divergences between US and British practices.
6. Haynes is the former Senate Republican Whip for California and also served as National Chairman of ALEC.
7. See the following link for legislative updates: <http://www.collateralmag.com/post-conviction-bonds-a-promising-solution-to-prison-overcrowding/> Other states are active in their preparation efforts according to recent ALEC conference proceedings: <http://www.youtube.com/watch?v=mWf3U-Rky6s&feature=related>.
8. It is worth noting that the text of these three pieces of legislation is nearly identical.
9. Other states such as Georgia have constitutional provisions forbidding judicial intervention in parole matters but have used administrative guidelines that allow for the Board of Pardons and Parole to contract with electronic monitoring companies to serve as sureties for inmates released under terms of home confinement (§17-6-1.1).

10. Online proceedings of the organization's 2008 Annual Meeting (<http://www.youtube.com/watch?v=O8nUeJmdf0g>) and 2009 States and Nation Policy Summit (<http://www.youtube.com/watch?v=mWf3U-Rky6s&feature=related>) capture legislative members and representatives from the commercial bail industry providing debriefings on the plan for the legislators in attendance.
11. When passing 'truth in sentencing' legislation in the 1990s, states relied on the model legislation developed by ALEC. Former head of Wisconsin's prison system, Walter Dickey, told reporters that 'There was never any mention that ALEC or anybody else had any involvement in this' (Olsson, 2002: 2).
12. For instance, ALEC (2007: 1) cites Reynolds' (2000) paper to defend the claim that '15 murders a day are committed by people under government supervision'. This statistic is indeed asserted in Reynolds paper, but it is not referenced. Additionally, ALEC cites Reynolds to make the claim that 53 percent of prison inmates were on probation, parole, or pretrial release at the time of their incarceration, yet this statistic does not appear in the version of Reynolds' (2000) paper that is available online.
13. In a footnote, Reynolds (2000: 13) writes, 'It was the late bail bondsman Gerald Monks of Houston, Texas, former executive director of the Professional Bail Agents of the United States, who originally brought this idea to my attention.'
14. Today, Reynolds is best known as one of the leading 'conspiracy theorists' regarding the terrorist acts of 11 September 2001, arguing that the official accounts of the towers' collapse are 'bogus' and that the deaths resulted from a 'controlled demolition' (Landis, 2005; Levitt, 2005; see also Reynolds' 'official website' at <http://nomoregames.net/>).
15. The National Institute of Corrections keeps an online copy of the paper on file in its 'library' archive at <http://www.nicic.org/Library/014974>.
16. Similar claims are captured in online video footage of NABIC/ABC officers presenting at ALEC conferences: <http://www.youtube.com/watch?v=O8nUeJmdf0g> and <http://www.youtube.com/watch?v=mWf3U-Rky6s&feature=related>.
17. Here, ALEC (2007) and Reynolds (2000) use a report by the Manhattan Institute for Policy Research, a free market think tank established by William Casey.
18. Interestingly, as evidence of this huge claim, the ALEC (2007) proposal cites Reynolds's (2000) research, who in turn cites unpublished studies funded by ALEC. This 'hired gun' quality characterizes much of the research purporting to prove the superiority of commercial surety bail over other forms of pretrial bail (see especially Kennedy and Henry, 1996).
19. In 1986, Gerald Monks, the Executive Director of the Professional Bail Agents of the United States, testified before Congress that \$30 billion went unpaid to the Government annually due to ROR forfeitures, with an average cost of \$800 for each skip recovery (Monks, 1986).
20. The PBUS website claims that their membership has grown to over 15,000 and nearly half of all states have produced their own local organizations comprised of owners/operators of local bail bond firms.

21. By 1990, Burton reported that the membership had grown to 100 bounty hunters, plus a dozen bail bondsmen and several surety insurance companies.

## References

- ALEC (2007) *A Plan to Reduce Prison Overcrowding and Violent Crime: Conditional Post-Conviction Release Bond Act*. Washington, DC: American Legislative Exchange Council.
- American Probation and Parole Association (APPA) (2009) Policy statement: Conditional early release program. Available at: [http://www.appa-net.org/eweb/dynamicpage.aspx?webcode=GeneralPosting&wps\\_key=cc90f473-11fa-4b1e-8907-260a9c0a7ff0](http://www.appa-net.org/eweb/dynamicpage.aspx?webcode=GeneralPosting&wps_key=cc90f473-11fa-4b1e-8907-260a9c0a7ff0) (accessed 2 March 2010).
- Beeley A (1927) *The Bail System in Chicago*. Chicago, IL: University of Chicago Press.
- Bowman CH (1965) The Illinois ten percent bail deposit provision. *University of Illinois Law Forum* 1965: 35–41.
- Chamberlin JA (1998) Bounty hunters: Can the criminal justice system live without them? *University of Illinois Law Review* 1998: 1175–1205.
- Christian J (2005) Riding the bus: Barriers to prison visitation and family management strategies. *Journal of Contemporary Criminal Justice* 21(1): 31–48.
- Cieply M (2011) Lohan faces felony theft charge. *New York Times*, 8 February. Available at: [http://www.nytimes.com/2011/02/09/arts/09lohan.html?\\_r=1&scp=4&sq=lindsay%20lohan&st=cse](http://www.nytimes.com/2011/02/09/arts/09lohan.html?_r=1&scp=4&sq=lindsay%20lohan&st=cse) (accessed 28 February 2011).
- Clark J (2007) Solving the riddle of the indigent defendant in the bail system. *Trial Beliefs* October: 31–34.
- Cohen TH and Reaves BA (2007) *Pretrial Release of Felony Defendants in State Courts*. November. Washington, DC: US Department of Justice, Office of Justice Programs.
- Collateral (2010) Post-conviction bonds a promising solution to prison overcrowding. 24 February. Available at: <http://www.collateralmag.com/post-conviction-bonds-a-promising-solution-to-prison-overcrowding> (accessed 4 March 2010).
- Dabney DA, Topalli V and Collins S (2005) *From the hands-off era to today's culture of control: The social construction of bail in the United States*. Paper presented at the American Society of Criminology conference, Toronto, ON, November.
- Davis DS (1982) *Deviance and Social Isolation: The Case of the Falsely Accused*. Princeton, NJ: Princeton University Press.
- DeHaas E (1940) *Antiquities of Bail: Origins and Historical Development in the Criminal Cases to the Year 1275*. New York: Columbia University Press.
- DeRhoda A (1979) Whither the bail bondsman? *National Law Journal* 1: 1+.
- Devine FE (1991) *Commercial Bail Bonding: A Comparison of Common Law Alternatives*. New York: Praeger.
- Diller R, Greene J and Jacobs M (2009) *Maryland's Parole Supervision Fee: A Barrier to Reentry*. New York: Brennan Center for Justice at New York University School of Law.
- Dolovich S (2005) State punishment and private prisons. *Duke Law Journal* 55(3): 437–546.

- Drimmer J (1996) When man hunts man: The rights and duties of bounty hunters in the American criminal justice system. *Houston Law Review* 33: 731–793.
- Duker WF (1977) The right to bail: A historical inquiry. *Albany Law Review* 42: 33–122.
- Elk M and Sloan B (2011) The hidden history of ALEC and prison labour. *The Nation*, 1 August. Available at: <http://www.thenation.com/print/article/162478/hidden-history-alec-and-prison-labor> (accessed 1 August 2011).
- Feeley MM (1983) *Court Reform on Trial: Why Simple Solutions Fail*. New York: Basic Books.
- Feeley MM (2002a) Entrepreneurs of punishment: The legacy of privatization. *Punishment & Society* 4(3): 321–344.
- Feeley MM (2002b) *The Punishment Is in the Process: Handling Cases in the Lower Court*. New York: Russell Sage Foundation.
- Feeley MM and Simon J (1992) The new penology: Notes on the emerging strategy of corrections and its implications. *Criminology* 30: 449–474.
- Feeley MM and Simon J (1994) Actuarial justice: The emerging new criminal law. In: Nelken D (ed.) *The Futures of Criminology*. London: SAGE, pp.173–201.
- Foote C, Roberts JW and Palermo JS (1958) A study of the administration of bail in New York City. *University of Pennsylvania Law Review* 106: 693–730.
- Friedman LS (1976) The evolution of a bail reform. *Policy Sciences* 7: 281–313.
- Garland D (1990) *Punishment and the Modern Society*. Chicago, IL: University of Chicago Press.
- Goldfarb R (1965) *Ransom: A Critique of the American Bail System*. New York: Harper & Row.
- Goodman EJ (2008) On top of jail time, prisoners now face fees and surcharges. *The Nation*, 6 September. Available at: [http://www.alternet.org/rights/97832/on\\_top\\_of\\_jail\\_time\\_prisoners\\_now\\_face\\_fees\\_and\\_surcharges/](http://www.alternet.org/rights/97832/on_top_of_jail_time_prisoners_now_face_fees_and_surcharges/) (accessed 2 April 2009).
- Greenblatt A (2003) What makes ALEC smart? *Governing* October: 30–34.
- Greene J (2002) Getting tough on crime: The history and political context of the sentencing reform developments leading to the passage of the 1994 Crime Act. In: Tata C and Hutton N (eds) *Sentencing and Society: International Perspectives*. Hampshire, UK: Ashgate.
- Hayes JV (1937) Contracts to indemnify bail in criminal cases. *Fordham Law Review* 6: 382–396.
- Kaufman ML (1999) An analysis of the powers of bail bondsmen and possible routes to reform. *New York Law School Journal of Human Rights* 15: 287–322.
- Kennedy S and Henry DA (1996) *Commercial Surety Bail: Assessing Its Role in the Pretrial Release and Detention Decision*. Washington, DC: Pretrial Services Resource Center.
- Landis PJ (2005) A real 9/11 commission. Self-published. Available at: <http://books.google.co.uk/books?id=YgDrpBgxquIC&pg=PP1&dq=Paul+J.+Landis+9/11&cd=1#v=onepage&q&f=false> (accessed 2 November 2006).

- Levitt SD (2005) One economist who will not be on the short list to replace Greenspan. 3 July. 'Freakonomics blog', *New York Times Online* Available at: <http://freakonomics.blogs.nytimes.com/tag/morgan-reynolds/?scp=1&sq=%22Morgan%20Reynolds%22&st=cse> (accessed 10 January, 2010).
- Liptak A (2008) Illegal globally, bail for profit remains in US. *New York Times*, 29 January. Available at: [http://www.nytimes.com/2008/01/29/us/29bail.html?\\_r=1&pagewanted=2](http://www.nytimes.com/2008/01/29/us/29bail.html?_r=1&pagewanted=2) (accessed May 2008).
- Lowencamp CT and Whetzel J (2009) The development of an actuarial risk assessment instrument for US pre-trial services. *Federal Probation* 73(2): 33–36.
- Luo M (2007) Romney gets major backer on the Right. *New York Times*, 6 November. Available at: <http://www.nytimes.com/2007/11/06/us/politics/06moral.html> (accessed 21 November 2007).
- Maruna S (2011a) Lessons for justice reinvestment from restorative justice and the justice model experience: Some tips for an 8-year-old prodigy. *Criminology & Public Policy* 10: 661–669.
- Maruna S (2011b) Reentry as a rite of passage. *Punishment & Society* 13(1): 3–27.
- Monks GP (1986) Public bail – a national disaster. In: McGuidan PB and Pascale JS (eds) *Crime and Punishment in Modern America*. Washington, DC: Institute for Government Politics of the Free Congress Research and Education Foundation.
- Nichols J (2011) ALEC exposed. *The Nation*, 12 July. Available at: <http://www.thenation.com/article/161978/alec-exposed> (accessed 1 August 2011).
- Olsson K (2002) Ghostwriting the law: A little-known corporate lobby is drafting business-friendly bills for state legislators across the country. *Mother Jones Magazine*, 1 September. Available at: <http://motherjones.com/politics/2002/09/ghostwriting-law> (accessed 1 December 2007).
- Padfield N (ed.) (2007) *Who to Release? Parole, Fairness and Criminal Justice*. Cullompton, UK: Willan.
- Penniman N (2002) Outing ALEC: The most powerful lobby you've never heard of. *American Prospect*, 1 July. Available at: [http://www.prospect.org/cs/articles?article=outing\\_alec](http://www.prospect.org/cs/articles?article=outing_alec) (accessed 4 July 2006).
- Pound R and Frankfurter F (1922) *Criminal justice in Cleveland*. Cleveland, OH: The Cleveland Foundation.
- Rankin A (1964) The effect of pretrial detention. *New York University Law Review* 39: 641–645.
- Reynolds MO (1994) *Using the Private Sector to Deter Crime*. Policy Report No. 181, March. Dallas, TX: National Center for Policy Analysis.
- Reynolds MO (1996a) *Factories Behind Bars*. Policy Report No. 206, September. Dallas, TX: National Center for Policy Analysis.
- Reynolds MO (1996b) How to reduce crime. In: Bidinotto RJ (ed.) *Criminal Justice? The Legal System versus Individual Responsibility*. Irvington-on-Hudson, NY: The Foundation for Economic Education.
- Reynolds MO (1998) *Does Punishment Deter?* Policy Report No. 148. Dallas, TX: National Center for Policy Analysis.

- Reynolds MO (2000) *Privatizing Probation and Parole*. Policy Report No. 223. Dallas, TX: National Center for Policy Analysis. Available at: <http://www.ncpa.org/pdfs/st233.pdf> (accessed 1 March 2006).
- Schlickeisen R and Adams J (2002) Corporate America's Trojan Horse in the states: The untold story behind the American Legislative Exchange Council. Available at: <http://alecwatch.org/11223344.pdf> (accessed 2 May 2009).
- Simon J (1993) *Poor Discipline: Parole and the Social Control of the Underclass, 1890–1990*. Chicago, IL: The University of Chicago Press.
- Skeem JL and Manchak S (2008) Back to the future: From Klockars' model of effective supervision to evidence-based practice in probation. *Journal of Offender Rehabilitation* 47(3): 220–247.
- Suffet F (1966) Bail setting: A study of courtroom interaction. *Crime and Delinquency* 12: 318–331.
- Sullivan L (2010) Bail burden keeps US jails stuffed with inmates. National Public Radio, 21 January. Available at: <http://www.npr.org/templates/story/story.php?storyId=122725771> (accessed 15 March 2011).
- Thomas Jr WH (1976) *Bail Reform in America*. Berkeley, CA: University of California Press.
- Toborg M, Yezer AM, Hatfield T, Fillinger RL, Shouldice KH and Carpenter BL (1985) *Commercial Bail Bonding: How It Works*. Washington, DC: US Department of Justice.
- Travis J (2005) *But They All Come Back: Facing the Challenges of Prisoner Reentry*. New York: Urban Institute.
- Travis J and Waul M (2003) *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities*. New York: Urban Institute.
- Van Gelder L (2007) Lindsay Lohan arrested again. *New York Times*, 16 April. Available at: <http://query.nytimes.com/gst/fullpage.html?res=9C05E5DD113AF936A15754C0A9619C8B63&pagewanted=all> (accessed 21 November 2007).
- Weber B (2008) Paul Weyrich, 66, a conservative strategist, dies. *New York Times*, 18 December. Available at: <http://www.nytimes.com/2008/12/19/us/politics/19weyrich.html> (accessed 19 December 2010).
- Whitlock M (2007) The early release problem rises to the forefront: Post-conviction release bond, bail agents, obvious answer to prison crowding and public safety concerns, 8 October. Available at: <http://www.underwriterssurety.com/Mikenewwebpage/Posted%20Oct%208,%202007.pdf> (accessed 2 January 2010).

## Cases

- Curtis v. Peerless Insurance Co.*, 299 F. Supp. 429 (1969).
- Leary V. United States*, 224 U.S. 567 (1912).
- Livingston v. Browder*, 285 S.Ct. 923 (1973).
- Nicholls v. Ingersoll*, 7 Johns. 145 (1810).
- Ouzts v. Maryland National Insurance Co.*, 505 F.2d 547 (1974).
- Schall v. Martin*, 104 S.Ct. 2403 (1984).



*Taylor v. Taintor*, 83 U.S. 366 (1872).

*United States v. Salerno*, 481 U.S. 739 (1987).

**Shadd Maruna**, PhD is Director of the Institute of Criminology and Criminal Justice at the School of Law in Queen's University Belfast in Northern Ireland. In 2011, he received the inaugural Research Medal from the Howard League for Penal Reform for his research on prisoner reintegration.

**Dean Dabney** is an Associate Professor in the Department of Criminal Justice & Criminology at Georgia State University. His scholarly interests include the organizational culture within law enforcement agencies, forms of deviance and/or criminal behaviors that occur in organizational settings, and qualitative research methods. He has published two books and several dozen articles appearing in such outlets as *Criminal Justice & Behavior*, *International Journal of Offender Therapy & Comparative Criminology*, *Prison Journal*, *Journal of Drug Issues* and *Justice Quarterly*.

**Volkan Topalli** is an Associate Professor in the Department of Criminal Justice & Criminology at Georgia State University. His research interests include offender decision making with a focus on working with active street offenders, the interplay of formal, informal, and quasi-formal social control on criminality, and the implementation of multi-methods (qualitative and quantitative) research approaches. He has received funding from a variety of agencies including the National Science Foundation, the Harry Frank Guggenheim Foundation, and the National Institute of Justice and his research has appeared in such outlets as *Criminology*, *Justice Quarterly*, *Criminal Justice & Behavior*, and the *British Journal of Criminology*.