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AN ANALYSIS OF THE POWERS OF BAIL BONDSMEN AND POSSIBLE ROUTES TO REFORM

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NOTES

An Analysis of the Powers of Bail Bondsmen and Possible Routes to Reform

"The professional bondsman is an anachronism in the criminal process"[1]

This Note focuses on abuses of the powers of the bail bond system and an analysis of reforms that could possibly be implemented to make the system conform to our modern notions of constitutional rights.[2] Specific attention is paid to the system's use of bounty hunters in apprehending accused criminals who fail to appear at scheduled court dates.[3]

Over the past several decades, citizens have been increasingly harmed by abuse of the broad powers of the bail bondsman and his agent, the bounty hunter;[4] reform is strikingly needed.[5] Part one of this note discusses the history of the development of the powers of the bonding industry and its use of bounty hunters in this nation. Part two outlines several factors contributing to the need for reform. These factors include: that the broad powers conferred to the bondsman under the common law have resulted in widespread violation of

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[1] Ford v. Hendrick, 257 A.2d 657, 667 (Pa. Super. Ct. 1969) (quoting A.B.A. Standards Relating to Pretrial Release).

[2] *See id.* (citing "the anomalous role of the bondsman in an era when procedural rights of criminal defendants are so carefully protected."). As modern constitutional doctrines have been developed by the Supreme Court, there have been consistent trends toward greater constitutional limits over the powers exercised by the Government. *Cf.* Oregon v. Epps, 585 P.2d 425, 429 (Or. Ct. App. 1978) (indicating that "[t]he bondsman's powers conflict with the traditional safeguards that protect all criminally accused during the process of extradition."); *see also Frontier Justice: Bounty Hunters are Lethal Anachronism*, TELEGRAM & GAZETTE (WORCESTER, MA), Sept. 9, 1997, at A8 [hereinafter *Frontier Justice*] (noting that "[i]n a nation founded on the principles of due process and individual rights, there is no place for such a dangerous throwback to shoot-first-ask-questions-later vigilante actions.").

[3] *See infra* notes 23-173 and accompanying text.

[4] *See infra* notes 114–173 and accompanying text.

[5] *See infra* notes 114–173 and accompanying text.

citizen's civil rights and constitutional rights;[6] that the bondsman industry is an outdated relic of the past ruled by mobsters and rackets which exercise more control over a suspect's freedom than a judge does;[7] and that commercial bonding has led to needless death and injury and should be considered contrary to pubic policy.[8] Part three examines the outlawing of criminal bonding in several states, the reform of the system in other states, and finally how some states have viewed the Uniform Criminal Extradition Act as a scheme for reformation of the system.

I. HISTORY OF COMMERCIAL BONDING IN THE UNITED STATES

Today's commercial bail bond business is a product of the English system of bail brought to this country over 200 years ago.[9] Under the British system, when a person was arrested and accused of a crime, someone close to the accused, such as a family member, would pledge land in exchange for the release of the accused until trial.[10] The accused is known as the "principal." If the accused failed to appear in court at the date set for the trial, the party who pledged responsibility for the principal could be forced to forfeit the property he placed in the custody of the court, or perhaps face even harsher penalties.[11] The party accepting responsibility for the principal is

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[6] *See infra* notes 114–136 and accompanying text.

[7] *See infra* notes 137-155 and accompanying text.

[8] *See infra* notes 156-173 and accompanying text.

[9] The United States, as well as many other common law nations, inherited their bail systems from England. *See* F. E. DEVINE, COMMERCIAL BAIL BONDING 5-6 (1991); RONALD GOLDFARB, RANSOM 22 (1965) (indicating that "scholars have suggested that modern bail comes from the old English laws governing debt"); Note, *Bail: An Ancient Practice Reexamined*, 70 YALE L. J. 966 (1961) (explaining that bail is derived from the English common law).

[10] *See* DEVINE, *supra* note 9, at 5 (stating that bail was "a type of deed which was used to encumber and later to discharge *property*") (emphasis added); GOLDFARB, *supra* note 9, at 93 (stating that in England, "fear of forfeiture of land was a strong incentive against jumping bond and fleeing").

[11] *See* Thomas A. Sheehan, Note, *Bail Bondsmen: An Analysis of Private Remedies and State Action*, 25 WASHBURN L. J. 437, 438 (1986) (explaining that "[u]nder early English law, if the accused did not appear at his court date . . . the bondsman

known as the "surety."[12] The burden of assuring that the principal appeared at his trial date therefore passed from the court to the surety.

The evolution of bonding followed a very similar path as it developed in this country.[13] Instead of land being pledged in return for release, a system reliant on monetary bail was created.[14] When a person is charged with an offense, the accused is placed in jail until a judge can determine the most effective type of recognizance,[15] if one is to be provided at all.[16] The purpose of bail is to allow the charged to go free to prepare a defense[17] while concurrently assuring that he or she will be present at the trial date.[18] If it is determined that the accused is eligible for monetary bail, there are two options available. The accused can either place a sufficient sum of money or property in the custody of the court or, resort to the services of a bail bondsman. By charging a fee,[19] the bondsmen will put up the necessary cash to

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himself sometimes was required to suffer any punishment which would have been inflicted upon the principal, had he appeared.").

[12] The person who pledges responsibility for the accused is known as the 'surety,' defined as "[o]ne who undertakes to pay money or perform other acts in the event that his principal fails to . . . ." BARRON'S LAW DICTIONARY 499 (1996).

[13] *See infra* notes 14–22 and accompanying text.

[14] GOLDFARB, *supra* note 9, at 93 (stating that "America was a young nation, geographically far-flung, possessed of relatively unknown frontiers, and a potential haven for fugitives from justice. The economic basis of American society was not land based like that of the English feudal system.").

[15] *See* Stack v. Boyle, 342 U.S. 1, 5 (1951) (holding that the amount of bail proscribed should be relevant to assuring that the accused appears at trial). "The practice of admission to bail . . . is not a device for keeping persons in jail . . . . The spirit of the procedure is to enable them to stay out of jail . . . ." *Id.* at 7-8 (Jackson, J. dissenting).

[16] *See id.* at 6-7 (holding that "Federal law has unequivocally provided that a person arrested for a non-capital offense shall be admitted to bail.").

[17] *See* Sheehan, *supra* note 11, at 438 (providing that other objectives of our system of bail include: "insur[ing] society's interest in having the accused answer to a criminal prosecution; to preserve the presumption of innocence; to permit the unhampered preparation of a defense and to prevent the infliction of punishment prior to conviction."); *see also* McCaleb v. Peerless Insurance Co., 250 F. Supp. 512, 515 (D. Neb. 1965) (reasoning that "[o]ne purpose of allowing a person his liberty by the use of a bond is to prevent such person from being imprisoned for an unnecessary length of time without the Court losing the assurance that such person will appear in court at the appointed time.").

[18] *See* DEVINE, *supra* note 9, at 2-5.

[19] The fee paid by the principal on the bond is *usually* 10% of the total cost of the bond. *See, e.g.*, Schlib v. Kuebel, 404 U.S. 357, 359 (1971) (prior to Illinois'

satisfy bail and release the accused until trial.[20] While the bondsman is financially liable should the principal fail to appear,[21] she is armed with vast powers that can be used to recapture the principal and return him to the custody of the court.[22]

One of the first cases to address these broad rights and privileges afforded to the professional bondsman was *Nicolls v. Ingersol.*[23] Nicolls was arrested in New Haven, Connecticut and released on bail by Pierpoint Edwards.[24] After the parties entered into this contractual relationship,[25] Edwards deputized the defendant and others to capture the plaintiff at his home in New York.[26] The bounty hunters arrived at Nicolls' residence at approximately midnight[27] and proceeded to break down the door.[28] Upon capturing Nicolls, the defendant returned him to Connecticut.[29] Nicolls thereafter filed suit claiming trespass, assault and battery, and false imprisonment.[30]

The *Nicolls* Court first examined whether the powers of the surety to recapture a principal can be delegated to deputies or bounty hunters. The court adhered to the rule that deputizing agents is within the power of the bondsman.[31] It next determined that the bondsmen

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enactment of the State's code of Criminal Procedure in 1964, the maximum bond fee allowed by statute was 10% of the bond); DEVINE, *supra* note 9, at 8 (stating that "the accused is charged a nonrefundable fee, commonly 10-15 percent of the amount of bail.").

[20] *See* Maynard v. Kear, 474 F. Supp. 794, 801 (N.D. Ohio 1979). "The bondsman, in exchange for a fee and according to a contract, provides a service, obtaining the principal's release from imprisonment." *Id.*

[21] *Id.* ("The bondsman . . . owes a duty to the court and must suffer financial penalty for failure to perform that duty.").

[22] *See infra* notes 23-51 and accompanying text.

[23] 7 Johns. 145 (N.Y. Sup. Ct. 1810).

[24] *Id.* at 146.

[25] *Id.* at 154 (noting that, when examining the right of the surety to remove the principal from the state, the right to surrender is not grounded in "judicial process, but results from the nature of the undertaking by the bail."); *see also* Fitzpatrick v. Williams, 46 F.2d 40 (5th Cir. 1931).

[26] Nicolls v. Ingersol, 7 Johns. 145, 146-47 (N.Y. Sup. Ct. 1810).

[27] *Id.* at 147.

[28] *Id.*

[29] *Id* at 148.

[30] *Id.* at 145.

[31] *Nicolls*, 7 Johns: at 153 (upholding the rule established by earlier cases that "the general principle, [is] that the right to surrender results from the relation between the

and his or her agents had the authority to remove the principal from one state to return him or her to the jurisdiction where the bail was issued[32] because the surety has total control over the principal.[33] Finally, the court upheld the power of the bondsman to break and enter the house of the principal to effect an arrest.[34]

Approximately sixty years after the New York court's ruling in *Nicolls*, the United States Supreme Court contemplated the powers of the bail bondsman in a pair of influential cases.[35] The first case, *Reese v. United States*,[36] held that a surety is discharged from his obligations when the government allows the principal to leave the territory of the United States.[37] This is why the bondsman is given powers to prevent his principal from leaving the jurisdiction and may arrest and return him at any time.[38]

The second case is arguably the more influential of the two,

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bail and principal; that it is to be effected as circumstances shall require, and is not a personal power or authority, to be executed by the bail only.").

[32] *See id.* at 155 (ruling that examining previous cases "will render it obvious, that the power with which he [the bondsman]is clothed is not one restricted in its exercise to any particular place.").

[33] *See id.* (remarking that "bail [referring to the surety] . . . are said to have their principal upon a string, which they may pull whenever they please, and surrender him in their own discharge." The court also noted that this authority derives from the fact that "bail [the surety] are their principals' *gaolers* (sic), and that it is upon this *notion* that they have an authority to take them.").

[34] *See Nicolls*, 7 Johns. at 156. "That the bail may break open the outer door of the principal, if necessary, in order to arrest him, follows as a necessary consequence, from the doctrine, that he has custody of the principal; his power is analogous to that of the sheriff, who may break open an outer door to take a prisoner, who has escaped from arrest." *Id.*

[35] *See* Reese v. United States, 76 U.S. (9 Wall) 13 (1869); Taylor v. Taintor, 83 U.S. (16 Wall) 366 (1872).

[36] 76 U.S. (9 Wall.) 13 (1869).

[37] *See id.* at 22 (reasoning that "[t]here is an implied covenant on the part of the principal with his sureties, when he is admitted to bail, that he will not depart out of this territory without their assent. There is also an implied covenant on the part of the government, when the recognizance of bail is accepted, that it will not in any way interfere with this covenant between them.").

[38] *See id.* at 21 (arguing that "he [the principal] is so far placed in their [the bondsman's] power that they may at any time arrest him upon the recognizance and surrender him to the court, and, to the extent necessary to accomplish this, may restrain him of his liberty.").

due to the fact that it has been successfully cited numerous times in support of the broad powers afforded bondsmen.[39] In *Taylor v. Taintor*,[40] the principal was arrested in Connecticut on charges of grand larceny.[41] After being released on $8,000 bond, he returned to his home in New York.[42] Upon returning home, he was arrested by the authorities and extradited to Maine where he was imprisoned on charges of burglary.[43] While the holding of this case, like *Reese*, focused on when the liability of the bondsman is discharged,[44] it also stated that the bondsman has extraordinary discretion in his power to arrest and return the principal to the jurisdiction where he or she stands accused.[45] Several years after the decision in *Taylor*, the Western District of Pennsylvania, in *In re Von Der Ahe*,[46] reaffirmed the powers of the criminal surety.[47]

Most modern courts have upheld the bondsmen's common-

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[39] *See, e.g.*, Strand v. Schmittroth, 251 F.2d 590, 597 (9th Cir. 1957); Hayes v. Jeff Goldstein/ABC Bail Bonds, 1997 WL 840894, *1 (Ohio App. 1997); Umatilla County v. Resolute Ins. Co., 493 P.2d 731, 732 (Or. App. 1972); Cosgrove v. Winney, 19 S. Ct. 598, 599 (1899); Jackson v. Pantazes, 810 F.2d 426, 429 (4th Cir. 1987); Golla v. State, 135 A.2d 137, 139 (Del. 1957).

[40] 83 U.S. (16 Wall.) 366 (1872).

[41] *See id.* at 368.

[42] *See id.*

[43] *See id.*

[44] *See id.* at 369-71 ("They may doubtless permit him to go beyond the limits of the State within which he is to answer but it is unwise and imprudent to do so; and if any evil ensue, they must bear the burden of the consequences . . . .").

[45] When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the rearrest by the sheriff of an escaping prisoner.

Taylor, 83 U.S. (16 Wall) at 371.

[46] 85 F. 959 (W.D. Pa. 1898).

[47] *See id.* at 960-62 (indicating that the *Von Der Ahe* court explicitly relied on the reasoning set forth in *Nicolls* and *Taylor* in coming to its decision).

law right to arrest his principal.[48] These courts have followed the established common-law and stated that, because the powers of the bondsman are created by contract,[49] a bondsman has a contractual right to apprehend the principal in any state. Several courts, however, have imposed some minor limitations on the actions of bondsmen,[50] such as requiring that they act reasonably in executing their arrest powers.[51] Because these powers arise from the contract between the surety and the principal, the accused has traditionally had a poor chance of recovering damages from the bondsman for civil rights abuses[52] or state criminal violations like false imprisonment.[53] These

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[48] *See, e.g.*, Shifflet v. State, 560 A.2d 587, 590 (Md. 1989) (stating that "under the law, the person who is in the position of serving as custodian of someone out on bail, in other words the bail bondsman, has a contractual right to return that person to the court."); Akins v. United States, 679 A.2d 1017, 1025 (D.C. App. 1996) ("[T]he Court held long ago that a bail bondsman may seize the person without a warrant or other legal process."); *Fitzpatrick*, 46 F.2d at 40-41 (holding that *Taylor*, *Reese* and *In re Von Der Ahe* set out the bondsman's power to recapture his or her principal and carry him or her across state lines without process to the jurisdiction where the charges stand); Curtis v. Peerless Ins. Co., 299 F. Supp. 429, 435 (D. Minn. 1969) (reaffirming the powers of the bondsman but holding that these powers are subject to a reasonableness requirement).

[49] *See Fitzpatrick*, 46 F.2d at 40-41 (holding "[t]he right to recapture his principal is not a matter of criminal procedure, but arises from the private undertaking implied in the furnishing of the bond.").

[50] *See Maynard*, 474 F. Supp. at 802 (N.D. Ohio 1979) (holding that "[t]he seemingly absolute powers granted to bondsmen at common law are not without restriction and must be interpreted in light of modern common law and constitutional principles.").

[51] *See id.* at 802 ("[T]he common law right of recapture is limited by the reasonable means necessary to effect the arrest."); *Curtis*, 299 F. Supp. at 435 (upholding the bondsman's common law powers of arrest but subjecting these powers to "the bounds of reasonable means needed"); Smith v. Rosenbaum, 333 F. Supp. 35, 39 (E.D. Pa. 1971) ("So long as the bounds of reasonable means needed to effect the apprehension are not transgressed . . . sureties will not be liable for returning their principles to proper custody.").

[52] *See, e.g., Maynard*, 474 F. Supp. at 802 (holding that constitutional rights are not violated if actions of bondsman are reasonable); Hunt v. Steve Dement Bail Bonds, 914 F. Supp. 1390 (W.D. La. 1996) (holding no violation of civil rights because bondsmen are not acting under 'color of state law'); Landry v. A-Able Bonding, 1994 WL 575480, *4 (E.D. Tex. 1994) (stating there is no fourth amendment violation because the amendment does not "proscribe arrest by a private citizen").

[53] *See, e.g., Curtis*, 299 F. Supp. at 435(finding no liability for false imprisonment because recapture of the principal was within the powers of the bondsman,

are but two of the reasons why there is a pressing need to reevaluate the powers granted to the bondsman in our modern society.[54]

II. BONDSMAN AS STATE ACTORS

Aside from the limited state law actions which have been brought against bondsmen and bounty hunters, [55] there has been a general lack of consensus in the courts of whether the abuse of the powers and privileges granted to criminal sureties are actionable under federal civil rights law.[56] Because this point of law is generally unsettled, citizens are being searched and arrested by other private citizens, which has traditionally been a power of the sovereign, without access to procedural safeguards provided by the Constitution.[57]

The Constitution of the United States provides the safeguards of the Fourth Amendment to protect the people from overzealous agents of government invading their privacy.[58] These protections are applicable to the states as well through the Incorporation Clause of the Fourteenth Amendment. Additionally, Congress has enacted legislation to protect citizens' civil rights.[59] All of these protections,

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assuming the arrest was effected by reasonable means).

[54] *See infra* notes 114-75 and accompanying text.

[55] *See infra* notes 192-97 and accompanying text.

[56] *See infra* note 66 and accompanying text.

[57] *See infra* notes 58-175 and accompanying text.

[58] The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

[59] Section 1983 of Title 42 of the United States Code provides a remedy for citizens who have had their civil rights violated. The statute provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any

however, apply solely to the government and its agents. "A private individual's actions, no matter how egregious will not be held to have violated the injured party's constitutional rights."[60]

Under a federal civil rights claim, there are three elements that must be satisfied to prove that a plaintiff's civil rights have been violated.[61] The first factor is that "the [bondsman's] intentionally committed acts . . . violated one or more of [the principal's] federal rights."[62] Secondly, the plaintiff must show that "in doing so, [the bounty hunter] acted 'under color' of authority of state law."[63] Finally, the injured party (i.e., the principal) must show that the "[bondsman's] acts were the legal cause of [the] . . . damages."[64] Elements one and three are the easiest to fulfill, and evidence of their violation is usually apparent on the face of the case.[65] The second element, however, is much more difficult to establish.[66]

State action is necessary for a civil rights action to stand. Its presence is also necessary to find a violation of the Fourth Amendment. There is usually no question that state action is present when an agent of the government, such as a police officer or elected official, commits a violation. Problems arise, however, when it is unclear whether a party's actions can be fairly attributed to the state, such as when a bondsman arrests a principal who fails to appear in court.[67] "In order to determine if the actions of bail bondsmen

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citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

[60] Sheehan, *supra* note 11, at 448.

[61] *See* 42 U.S.C. § 1983.

[62] *Hunt*, 914 F. Supp. at 1392.

[63] *See id.*

[64] *See id.*

[65] *See, e.g., id.*(satisfaction of elements one and two were obvious by the fact that the defendants broke and entered the plaintiff's house in search of a third party).

[66] *See generally id.* at 1393. The Court stated that "[t]he only pertinent issue is whether the second element is satisfied." *Id.*

[67] *Compare*, Cramblit v. Fikse, 1992 U.S. App. LEXIS 28343 (6th Cir. 1992) (stating bondsmen are not state actors); Easley v. Blossom, 394 F. Supp. 343, 345 (S.D.

constitute state action, [thereby allowing citizens to recover when harmed by bondsmen], it is necessary to analyze their work in light of common law doctrines created by the Supreme Court to test for state action."[68]

Over the past several decades, the modern Supreme Court has developed and revised the requisite criteria necessary to find state action on behalf of a private party and, thus, satisfy the second element of a § 1983 claim. In *Lugar v. Edmondson Oil Co.*,[69] the Court laid out the components of the multipart test that has been used to determine whether state action is present.[70] First, the depravation of the rights of the victim (i.e., the principal) must have been caused by "the exercise of some right or privilege created by the State, or by a rule of conduct imposed by the State or by a person for whom the State is responsible."[71] Next, the victim must show that the actor can be fairly identified as an arm of the state.[72] The showing of a state statute that authorizes the actions of the bounty hunter usually satisfies the first element.[73] The reviewing court must then carefully examine the actions of the defendant[74] by applying four tests to determine

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Fl. 1975) (stating no state action present in the actions of bondsmen); Ouzts v. Maryland Nat'l Ins. Co., 505 F.2d 547, 553 (9th Cir. 1974); *Curtis*, 299 F. Supp. at 443; *with*, Landry v. A-Able Bonding Inc., 1994 WL 575480 (E.D. Tex. 1994) (holding the actions of bondsmen are fairly attributable to the state); Hill v. Toll, 320 F. Supp. 185, 187 (E.D. Penn. 1970) (stating bondsmen act under color of law).

[68] Sheehan, *supra* note 11, at 449.

[69] 457 U.S. 922 (1982).

[70] *See id.* at 937. "These cases reflect a two-part approach to this question of 'fair attribution.'" *Id.*

[71] *Id.* at 937.

[72] *See Id.* ("[T]he party charged with the depravation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State.").

[73] *See Smith*, 333 F. Supp. at 38 (lodging of bail is an act under color of state law); *Maynard*, 474 F. Supp. at 800 (stating the fact that bondsmen possessed and used a bench warrant in apprehending the principal is an act under color of law). *But see Easley*, 394 F. Supp. at 345 (although the actions of bail bondsmen are regulated by state statute, this court elects to follow the precedent, without its own analysis, that the actions of bondsmen are not state action).

[74] *See Lugar*, 457 U.S. at 939 (quoting Flag Bros. v. Brooks, 436 U.S. 149 (1978)) (stating that "[a]ction by a private party pursuant to this statute, without

whether his or her action can be attributed to the state.[75] These tests include: the "public function" test,[76] the "state compulsion" test,[77] the "nexus"[78] or "symbiosis" test and the "joint action" test.[79] The *Lugar* Court, however, did not articulate which of the particular tests are to be used in any given situation.[80] It is unclear whether one or all of the tests apply to a given set of facts.[81] By applying the "symbiosis" test to the actions of bail bondsmen and bounty hunters, the following analysis will demonstrate that "[t]he state has so far insinuated itself into a position of interdependence" with the commercial bail bond system that "it must be recognized as a joint participant in the challenged activity."[82]

The leading case on the application of the symbiosis test to the actions of private actors is *Burton v. Wilmington Parking Authority*,[83] which the Supreme Court heard on *certiorari* to the Supreme Court of Delaware.[84] In *Burton*, the Wilmington Parking Authority, an agency

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something more, was not sufficient to justify a characterization of that party as a 'state actor.' The Court suggested that that 'something more' which would convert the private party into a state actor might vary with the circumstances of the case.").

[75] *See Lugar*, 457 U.S. at 939. "[T]he court has articulated a number of different factors or tests in different contexts." *Id*; *see also* Mary Lee Doane, *Liability of Bail Bondsmen Under Section 1983*, 42 WASH. AND LEE L. R. 215, 228-29 (1985) (outlining the four tests that may be applied to determine whether state action is present).

[76] *See* Doane, *supra* note 75, at 228 (testing whether the power is reserved for the government).

[77] *Sed id.* at 228-29 (testing whether the state coerced or encouraged the action).

[78] *See id.* at 229 (testing whether the state is inexorably intertwined with the actions of the private party).

[79] *See id.* (testing whether the state is acting jointly with the private party).

[80] *See Lugar*, 457 U.S. at 939 (stating that "[w]hether these different tests are actually different in operation or simply different ways of characterizing the necessarily fact-bound inquiry that confronts the Court in such a situation need not be resolved here.").

[81] *See* Burton v. Wilmington Parking Auth., 365 U.S. 715, 722 (1961) (regarding which test to use, the Court stated that "[o]nly by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance").

[82] *Id.* at 725; *see also infra* notes 83-113 and accompanying text.

[83] 365 U.S. 715 (1961).

[84] *See id.* at 715.

of the State of Delaware, leased out portions of its new parking facility in order to generate sufficient revenues to pay back construction bond obligations.[85] One of the tenants of this new facility was Eagle Coffee Shops, Inc.[86] Eagle Coffee refused to extend its service to an African-American customer, who then sued the store claiming that the refusal was a violation of his civil rights.[87] The Supreme Court rejected the lower court's holding that state action was not present.[88] In reaching its conclusion, the court looked to several factors including:

> that the land and the building were publicly owned, . . . [t]he costs of land acquisition, construction, and maintenance are defrayed entirely from donations by the City of Wilmington, from loans and revenue bonds, . . . [u]pkeep and maintenance of the building, including necessary repairs, were responsibilities of the Authority and payable out of public funds, . . . and profits earned by discrimination not only contribute to, but are also indispensable elements in, the financial success of 'the' government agency.[89]

It then concluded that the relationship between the business and the parking facility were so intertwined as to impute the discriminatory practices of the former to the latter.[90] The "intertwined

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[85] *See id.* at 717-19.

[86] *See id.*

[87] *See id.* at 720 (the plaintiff sued under 42 U.S.C. § 1983).

[88] *See Burton*, 365 U.S. at 717.

[89] *Id.* at 723-24.

[90] *See id.* at 723-25 (finding state action on the part of Eagle Coffee, the Court announced that "it cannot be doubted that the peculiar relationship of the restaurant to the parking facility in which it is located confers on each an incidental variety of benefits . . . [t]he State has so far insinuated itself into a position of interdependence with Eagle that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment."); *see also* J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 498 (1983) (stating that "[i]t might be said that where there are sufficient contacts between a private individual and the government, then that the private individual take on at least the appearance of not the actual authority of the state. Where

relationship" between the state and a private party was the critical element in the Court's conclusion that state action was present in the actions of the private coffee shop.[91] By analyzing the actions of criminal sureties under the logic set forth in *Burton*, it becomes apparent that an "intertwined relationship" exists between the government and criminal sureties, necessarily making the actions of bondsmen "state action."[92]

First, the State criminal justice system receives a benefit from the use of bail bondsmen.[93] As our country grows, the costs of imprisoning a person have risen dramatically.[94] Dwindling resources have forced police to look for enforcement alternatives to cut their costs.[95] By using the surety to secure the release of the accused prior to trial, the State is not forced to expend money on incarceration;[96] especially on someone who is possibly innocent of committing a crime.[97] The bounty hunter also plays an important role in retrieving fugitives who fail to appear at their hearings.[98] If they did not perform

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the actions provide some tangible aid to both the alleged wrongdoer and the government, the two have come to be in a type of 'symbiotic relationship.'").

[91] *See Burton*, 365 U.S. at 724-25.

[92] *See infra* notes 93-111 and accompanying text.

[93] *See generally*, Mary A. Toberg, *Bail Bondsmen and Criminal Courts*, 8 JUST. SYS. J. 141 (1983) (discussing many of the benefits offered by State use of bail bondsmen and showing generally poor results in states that have eliminated them).

[94] *See generally* GOLDFARB, *supra* note 9, at 32-91 (outlining the various costs of pre-trial detention).

[95] *See* Toberg, *supra* note 93, at 143 (arguing that "the scarce resources available in many jurisdictions for serving warrants creates an incentive for law enforcement officers to rely on bondsmen as much as possible to return defendants to court.").

[96] *See Ouzts*, 505 F.2d at 557 (Hufstedler, J. dissenting) (arguing that "[b]y permitting a defendant to be released into the custody of a private surety, the state saves the expense that it would otherwise incur in constructing additional jail facilities, feeding and clothing the prisoner, and using its own governmental personnel to guard the defendant and insure his appearance in court."); *see also* Citizens for Pre-Trial Justice v. Goldfarb, 278 N.W.2d 653, 671 (Mich. Ct. App. 1979) (supporting the logic behind Justice Hufstedler's dissent in *Ouzts*).

[97] *See* DEVINE, *supra* note 9, at 2 (stating that pre-trial detention is essentially the equivalent of punishment without proof of guilt). Since it naturally follows that some accused are eventually exonerated, pre-trial detention forces the state to expend resources on innocent citizens. *Id.*

this function, it would be the role of the police to discharge this responsibility. These factors lend support to the notion that the act of arresting a fugitive, traditionally a power of the state, takes place under "color of law."[99]

Many courts have likened the role of the surety to that of a jailer.[100] In doing so, the bondsman is once again performing a job that would otherwise be performed by the state.[101] Essentially, the bail bondsman is granted powers traditionally reserved by the sovereign.[102] This grant of power has been viewed as a significant factor in determining state action.[103]

Judges also gain a benefit by using the bondsman. The judiciary is frequently placed in the difficult situation where setting

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[98] *See* Toberg, *supra* note 93, at 142-43. "If a defendant does not appear for court, the bondsman will usually try to locate the individual. Many defendants are easily found and return to court of their own volition . . . . Other defendants are more difficult to locate and may require an extensive search." *Id.*

[99] This is the case when a defendant is released on his or her own recognizance. Since no surety is involved, it is the role of the police to return the fugitive to stand trial. *See* DEVINE, supra note 9, at 9 (noting that police are responsible for fugitive retrieval when there is no bond involved).

[100] *See, e.g., Taylor*, 83 U.S. (16 Wall.) at 371 (stating that when one is released on bail, he is in the "custody of his sureties [who] may seize and deliver him up in their discharge and . . . imprison him until it may be done").

[101] *See Goldfarb*, 278 N.W.2d at 671 (concluding that "[b]y arranging for the pretrial release of the accused, he relieves the state of the onus of caring for a defendant in custody, and in essence continues the original imprisonment"); *see also Ouzts*, 505 F.2d at 562 (Merrill, J., dissenting). "The history of state reliance on private action to assure the return of an accused and the extent to which states have grown to rely on this manner of implementing a system of bail place the bondsman in a position where he 'discharges a function or performs a service that would otherwise in all likelihood be performed by the State.'" *Id.*

[102] *See Goldfarb*, 278 N.W.2d at 670 (holding that "professional bondsmen . . . exercise a power which is clearly a traditional adjunct of the state's sovereignty: the power to arrest. The bondsmen's power extends far beyond the limited power to arrest granted by statute to the ordinary citizen and is free of the procedural safeguards which carefully control civil arrest.").

[103] *See id.* at 669. "The court indicated that the furnishing of services or exercise of powers traditionally with the sovereign, the existence of a symbiotic or interdependent relationship between the state and the private party and the overt or covert approval of the practice by the state, were significant". *Id.*

bail prohibitively high will draw criticism.[104] By having the bondsman simply refuse to write a bond, a judge may keep the accused criminal in jail without receiving any "adverse publicity."[105]

Indeed, many benefits flow to the bondsman as well in our system of commercial bail bonding.[106] Because the courts use commercial bonding as a form of pretrial recognizance, the bondsman is able to exist.[107] For a relatively small amount of risk,[108] the surety is reaping enormous profits from the criminal justice system.[109] By providing them with broad powers of arrest, the state has assured that they will continue to benefit from writing bonds, even at the expense

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[104] *See infra* note 105 and accompanying text.

[105] *See* GOLDFARB, *supra* note 9, at 112 (staing that "[b]ondsmen need the court's cooperation in numerous ways from time to time and will try not to offend a judge before whom they have frequent business. A judge can effectively see to it that bail is denied in a given case without subjecting himself [or herself] to criticism for denying bail."); *see also* Toberg, *supra* note 93, at 143. "By setting bail, a judge shares the responsibility for a defendant's release with both the bondsman and individuals who become parties to the bond, such as the defendant's relatives or friends, who may cosign the bind or provide collateral for it. This furnishes the judge with a "buffer" against any adverse publicity that may arise, if a released defendant commits a heinous crime prior to trial." *Id.*

[106] *See infra* notes 107-111 and accompanying text.

[107] *See Ouzts*, 505 F.2d at 557 (Hufstedler, J., dissenting) (stating that "only through substantial governmental cooperation is it possible to maintain the system of quasi-private bail . . .").

[108] *See* GOLDFARB, *supra* note 9, at 95-102 (exposing that because the bond agents and the companies that insure them require indemnification, "no one from the bondsman up needs run any risk of loss").

[109] *See id.* at 96. "One prominent bond-business figure, an insurance executive, has reported that all companies in the country that are writing bail bonds make a total *profit* of $4,500,000 a year. The agents writing the bonds make a total profit of $22,500,000." *Id.*; Christian Parenti, *'I Hunt Men': Meet the Self-Ordained Officers of the Bail-Bond Industry*, THE PROGRESSIVE, Jan. 1997 at 21.

> In 1994 bounty hunters – in the service of the nation's 8,500 bail agents – arrested more than 24,000 bail fugitives. California has 1,350 such agents employed by 300 bail-bond companies, which make a $110 to $120 million profit annually, according to the California Bail Agents Association. That's 10 percent of the $1.2 billion worth of bail written in California each year. Nationally, bail is a $4-billion-a-year industry, netting $400 million a year in profits, with California, Florida and Texas the national leaders.

Id.

of public safety.[110] The bondsman is inextricably tied into our criminal justice system; one is the product of the other.[111]

Because the criminal justice system and the commercial bonding system are so dependant upon one another, the actions of bondsmen should be imputed to the state for purposes of finding that bondsmen act "under color of law."[112] If this is true, the following discussion will demonstrate that bondsmen violate citizens' civil rights and other protections afforded by the Constitution when they perform arrests and searches without warrants or other process.[113]

III. THE NEED FOR REFORM

A perfect example of bondsmen committing constitutional violations is presented in *Akins v. United States*.[114] The Court of

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[110] *See infra* notes 114-137, 156-171 and accompanying text. The state allows the bondsman to operate at the expense of the public due to the benefits it receives in return. *Id.*

[111] *See* GOLDFARB, *supra* note 9, at 102 (stating that "[o]ur system [of criminal justice] created him [the bail bondman]. Bondsmen are products of our uniquely commercialized administration of justice, just as prohibition created the racketeers who preyed on the society that gave them birth.").

[112] "The relationship between bondsmen and criminal courts . . . has often been a symbiotic one, in which the actions of the courts have enhanced the profitability of bondsmen's operations, which in turn have facilitated the actions of the courts." Toberg, *supra* note 93, at 141.

[113] *See, e.g., Hill*, 320 F. Supp. at 185.

[114] 679 A.2d 1017 (D.C. App. 1996). In *Akins* the Defendant, along with several of his companions were travelling the streets of Washington, D.C. looking for people to rob. *Id.* at 1021. The group found Charles Lawson and proceeded to beat him to the point of unconsciousness; all the events were being videotaped by one of the coconspirators. *Id.* at 1021-22. A bounty hunter was hired several weeks after the incident to locate one of Akin's codefendants, Joel Carrero, who had failed to appear at trial for an unrelated offense. *Id.* at 1022. The search for Carrero led the bounty hunter to an apartment in New York City where the bounty hunter broke and entered the residence. *Id.* at 1022. The bounty hunter, joined by the bail bondsman, stayed in the residence for several days where they ate, slept and watched videos. *Id.* at 1022. With the aid of Carrero's brother who returned to the apartment, the bounty hunters found the videotaped assault and battery of Lawson and turned it into the Metro D.C. police. *Id.* at 1022. The videotape was eventually used to convict the defendants of conspiracy to commit robbery. *Id.* at 1023.

Appeals for the District of Columbia upheld the judgment of the trial court that the plaintiff's Fourth Amendment rights were not violated.[115] Because the bounty hunters were "private actors with a contractual relationship,"[116] damaging evidence retrieved by them while breaking and entering was "not controlled by the evidence-gathering guidelines applicable to state action that have evolved from the Fourth Amendment."[117] *Akins* shows that while bounty hunters and bail bondsmen have an intimate relationship with the state in the form of retrieving fugitives and gathering evidence,[118] they are not held to the same procedural safeguards that police and other traditional state actors must comport with.[119] The court defaulted to the century old logic set forth in *Nicolls*[120] and *Von Der Ahe*,[121] that "bail bondsmen . . . [are] private actors with a contractual relationship . . . and thus were not controlled by the evidence-gathering guidelines applicable to state action that have evolved from the Fourth Amendment."[122]

Had the bondsmen in *Akins* been viewed as acting under color of state law, as the previous argument suggests, the evidence gathered would have been inadmissible due to the fact that it was gathered from the apartment without a warrant. The court erred in refusing to acknowledge that bondsmen are acting under "color of law."[123] "It is myopic of the judiciary, in addressing the scope of the bondsman's authority of retrieval, to emphasize the contractual relationship

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[115] *See id.* at 1036.

[116] *Akins*, 679 A.2d at 1025.

[117] *Id.*

[118] *See id.* The relationship here not only included the arrest of criminal fugitive, but the recovery of evidence which the state used to convict the plaintiff-in-error. *Id.*

[119] *See id.* at 1025. The court stated that it "perceived no authority for departing from the well-established rule that bondsmen are not subject to the Fourth Amendment as it regards the seizure of personal effects." *Id.*

[120] 7 Johns. 145 (N.Y. Sup. Ct. 1810).

[121] 85 F. 959 (W.D. Pa. 1898).

[122] *Akins*, 679 A.2d at 1025.

[123] *See id.* The D.C. Court of Appeals held that the bondsmen were not state actors and that "actions taken by private parties are not limited by the constraints placed on government agents by the Fourth Amendment." *Id.*

between the surety and the principal while simultaneously ignoring . . . the existence of the sovereign as an active party to the contract."[124]

Akins and other courts have held that constitutional rights are violated only if the police are somehow involved.[125] Allowing violations of citizens' Fourth Amendment rights, as demonstrated in *Akins*,[126] seems to go against the spirit of our constitutional democracy.[127] As the court in *Ford v. Hendrick*[128] stated, "on balance with our concern for constitutional rights, we should not sanction professional bounty hunters who are unrestrained by constitutional limitations. Such a task is more properly the concern of the police."[129] The government is granting a private party powers traditionally reserved for the sovereign, while at the same time failing to provide safeguards for the abuse of that power.[130] By realizing that bondsmen are involved in a symbiotic relationship with the government and, therefore, subject to constitutional restraints,[131] society can gain the benefits of commercial bonding while being protected from the evils of the system.

Another example of bondsmen committing unconstitutional acts is *Hill v. Toll*.[132] In violation of the bond contract, bounty hunters

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[124] Jim Hansen, *The Professional Bondsman: A State Action Analysis*, 30 CLEV. ST. L. REV. 595, 611(1981).

[125] *See id.* at 1026.. "[A]bsent specific encouragement or involvement by law enforcement officers to recover evidence while in pursuit of a principal, neither a bail bondsman nor his bounty hunter are bound by the constraints of the Fourth Amendment" *Id.*; *see also Landry*, 1994 WL575480, *7 (E.D. Tex. 1994) (discussing that "[h]ad Burrow [the bounty hunter whose actions are at issue] involved Louisiana or local law enforcement personnel, had he purported to execute the bench warrant, or used it in any way to regain custody of Landry [the principal], the state action issue would be couched in a context more favorable to Landry.").

[126] *See Akins*, 679 A.2d at 1036 (upholding the conviction of Akins even though evidence used at trial was seized by bondsmen without a warrant).

[127] *See Ford*, 257 A.2d at 668.

[128] 257 A.2d 657 (Pa. Super. Ct. 1969).

[129] *Id.* at 668-69.

[130] *See generally* North Carolina v. Carroll, 204 S.E.2d 908, 909 (N.C. Ct. App. 1974) (holding, in part, that when police officers enter private property and act as bounty hunters attempting to retrieve fugitives, their actions are controlled by the Constitution).

[131] *See supra* notes 83-113 and accompanying text.

[132] 320 F. Supp. 185 (E.D. Pa. 1970).

forcibly seized the plaintiff from his home.[133] Upon transporting him to the Philadelphia Detention center, they proceeded to beat him.[134] In examining whether the bondsmen acted under "color of law," the court stated that "the inquiry . . . is not whether the actor is a public official, but whether there is sufficient state involvement in the allegedly unconstitutional conduct."[135] It found that the bondsmen, acting pursuant to state statute, were state actors and liable for the violation of the plaintiff's civil rights under 42 U.S.C. § 1983.[136] This decision allows victims to rightly recover damages for the violation of their civil rights.

Departing from constitutional violations that bondsmen are perpetrating on society, reform is also needed because the current system is an outdated one that is corrupt and infiltrated by criminals.[137] Since commercial bail bonding is such a lucrative and relatively unregulated business,[138] it is a perfect enterprise of aspiring criminals and established rackets alike.[139] When a criminal enterprise becomes involved in the bond business, its members are assured of pre-trial release for a minor fee or no fee at all.[140] In fact, investigation by the *Indianapolis Star* has revealed

> that, in Cleveland, racketeers had organized a twenty-three state bail-bond syndicate that wrote $8 million worth of bail in an eight-month period. This

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[133] *See id.* at 186.

[134] *See id.*

[135] *Id.* at 187.

[136] *See id.*

[137] Many professional bounty hunters are themselves former criminals or ex-convicts. *See, e.g.*, GOLDFARB, *supra* note 9, at 101 (1965) (stating that "many are 'low-lifes' (sic) whose very presence contaminates the judicial process").

[138] *See* Jeff Barker, *U.S. Attorney Looks at Bounty Hunters*, ARIZONA REPUBLIC, Sept. 6, 1997, at B1 (stating there are no federal statutes controlling the actions of bounty hunters).

[139] *See* GOLDFARB, *supra* note 9, at 102 (discussing the extensive criminal infiltration of the criminal bail bonding business).

[140] *See id.* at 103 (discussing the fact that not only does getting involved in bail bonding give criminal enterprises a steady infusion of capital, it "also provides crime syndicates with perfect springboards to freedom for their members").

> syndicate was reportedly run by 'a big time hoodlum' and convicted felon, and a convicted arms smuggler who it was said spared no efforts to gain a monopoly over the bonding business.[141]

Corruption is also present in the relationship between the bondsman and court actors such as judges, clerks and police.[142] Evidence exists that some judges accept bribes from bondsmen and that the corruption has been present for many years.[143] These crimes

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[141] *Id.* at 103.

[142] *See id.* at 109. Various papers throughout the nation over the past several years have revealed other numerous allegations and convictions of bondsmen and police working together in corrupt enterprises. *See, e.g.*, Homer Clonts, *Snowy Search Ended in Sadness in 1970*, KNOXVILLE NEWS-SENTINEL, Feb. 4, 1995, at A12.

> [A] News-Sentinel expose of alleged corruption in law enforcement in Cocke County begun more than six months earlier reached a climax. Eleven officers and a bail bondsman were arrested on federal conspiracy charges. A year long investigation by the FBI and other federal investigators led to the arrest of 16 persons charged with making fraudulent claims to the government in connection with relocating persons from Knoxville's Mountain View Urban Renewal Area.

Id.; John Murawski, *Ongoing Probe Into Court Bribes Snags a Clerk*, LEGAL TIMES, Mar. 8, 1993 at 23.

> A two year long investigation by local law enforcement authorities into alleged payoffs by bail bondsmen to D.C. Superior Court employees has produced a second guilty plea. On March 1, former courtroom clerk Herman Smith, a 25-year veteran of Superior Court, pleaded guilty to a felony charge of forging public records. By forging judges' signatures in the [case] jackets, Smith, who retired in January, set aside $49,500 in forfeited bonds for three surety agents.

Id.; *cf.* Jackson Diehl, *Sen. Broadwater Apparently Lien in Bail Affidavits*, WASH. POST, July 16, 1980, at C1 (discussing how "State Sen. Tommie Broadwater (D-Prince George's), a prominent local bail bondsman, has routinely signed sworn affidavits declaring that he has no bail bond debts when he owes the courts thousands of dollars for clients who jumped bail.").

[143] *See, e.g.*, David Barstow, *Bonanno Investigated in Mid-1980s*, ST. PETERSBURG TIMES, Feb. 13, 1992, at 1B. The article examines the longstanding corruption investigation of Hillsborough Judge Robert H. Bonanno. *Id.* One of the alleged schemes carried out by Judge Bonanno involves accepting "bribes to release defendants from jail on their own recognizance until trial . . . the jail release scheme allegedly involved Bonanno's friend Lenny Perez and a bail bondsman." *Id.* "According

are coming to light as widespread investigation of corruption in the judiciary is being conducted across the country.[144] Several years ago, a Cleveland police sting operation revealed collusion between police and bounty hunters to gain protection for carrying out illegal activities.[145] Questions concerning corrupt relations between authorities and bondsmen have also been raised by the activities of Georgia State Patrol Commander Colonel Bowman. Bowman supervised an inordinate number of roadblocks in Catoosa County where he served as sheriff before moving to the state level.[146] One report states that "Catoosa bondsmen do more business in one night of DUI sweeps than they do during an average week."[147] It appears Colonel Bowman may have been acting in concert with bail bondsmen in deciding when to set up the checkpoints.[148] Another example of corruption is the reportedly frequent, and illegal, practice of bondsmen giving gifts to state officials.[149]

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to complaints received by detectives, Perez would contact Bonanno on the bail bondsman's behalf and arrange the release of certain defendants. Then the three would split the payoff from the defendant." *Id.*; *see also* Jeff Leen, *Bribe Investigation Targets Morphonios*, N.Y. TIMES, July 31, 1992, at A1 (reporting that "[f]ormer Dade County (Fla.) Circuit Judge Ellen Morphonios, nationally renowned for her tough stance on crime, reportedly is under federal investigation for allegedly taking bribes from bondsmen . . . .").

[144] *See, e.g.*, Leen, *supra* note 143, at A1 (explaining that "[o]peration Court Broom, [is a] massive state and federal investigation of corruption in Dade county judicial system . . . .").

[145] *See* Mark Rollenhagen, *Former Informant to FBI Now Fugitive*, PLAIN DEALER, Mar. 8, 1995, at 1B (reporting that "[d]ownie [a former FBI informant] played a key role in the Cleveland police sting by introducing the undercover agents to bail bondsman Reginald Crosby. Crosby then arranged for Cleveland police to protect the undercover gambling operation and a shipment of marijuana.").

[146] *See* John Harmon, *Patrol Chief Says 'Jealousy' Causes Charges of Kickbacks*, ATLANTA J. AND CONST., Dec. 29, 1992, at 3.

[147] *Id.*

[148] *See id.* (stating "the FBI and the Internal Revenue Service are investigating whether Colonel Bowman, while sheriff from 1986 until 1991, took kickbacks from an unnamed local bail bondsman.").

[149] *See* Skip Hess, *Bail Bond Agents Get Warning; Gifts to Officials Can Result in Prosecution, Memo Says*, INDIANAPOLIS NEWS, Dec. 16, 1994, at C1. This article examines the practice of bondsmen giving gifts to police and other public officials in Indiana, which is forbidden under the Indiana Administrative Code. *Id.* The author specifically examines the actions of Johnson County Sheriff Doran Miller, who has an

One of the biggest displays of bondsman sponsored corruption recently took place in Arizona in what has become known as "AzScam."[150] Seeking to weed out corruption in the Arizona State legislature, Maricopa County prosecutors and Phoenix Police detectives enlisted an ex-convict to play the part of J. Anthony Vincent. [151] He acted as a supposed mob-type who was looking to bribe members of the legislature in order to ensure a legalized gambling bill would be passed.[152] He enlisted the aid of a bail bondsman to determine which legislators could be bribed into supporting casinos in the state.[153] The bail bondsman was convicted of leading organized crime, money laundering, offering to exert improper influence on a public servant and six counts of bribery of a public servant."[154] The system of commercial bail bonding has spurred criminal activity and corruption.[155] These are not practices our system of justice should perpetuate. Serious reform is needed if we are to eliminate these criminal elements.

A third distinct factor contributing to the need for reform is the growing number of people falling victim to needless violence committed by bondsmen and bounty hunters.[156] In addition to

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extensive record of accepting contributions and "tips" from local bondsmen. *Id.*

[150] *See* Pamela Manson and Kris Mayes, *AzScam: Could Scandal Happen Again?; Lessons, Temptations Debated in Aftermath*, ARIZONA REPUBLIC, Feb. 11, 1996, at A1 (noting that "[t]he bribes-for-votes scandal introduced a new word to the Arizona language, AzScam, to describe one of the dirtiest chapters in its political history.").

[151] *See* Dennis Wagner, *AzScam's Flamboyant Stedino Dies*, ARIZONA REPUBLIC, July 23, 1997, at A1.

[152] *Id.*

[153] *See* Manson, *supra* note 150, at A1.

[154] *Last AzScam Figure in Prison Paroled for Final 3 Months of Term*, ARIZONA REPUBLIC, July 29, 1996, at B1. It is interesting to note that while Tapp is still the owner of his bond business, Eagle-American Bail Bonds, he "wasn't planning on returning to work at his company because it would look bad . . . ." *Id.*

[155] *See* Kahn v. McCormack, 299 N.W.2d 279, 283 (Wis. Ct. App. 1980) (stating that "[t]he bail bond business is subject to a variety of allegations of corruption. The charges range from alleged tie-ins with police and court officials, involving kickbacks for steering defendants to particular bondsmen, to collusion and corruption aimed at setting aside forfeitures of bonds where the defendants have failed to appear.").

[156] *See* Jonathan Drimmer, *America's Least Wanted: We Need New Rules To Stop Abuses*, WASH. POST, Sep. 21, 1997, at C6.

Here are some of the highly publicized incidents that have

violating people's civil and constitutional rights,[157] bondsmen have used unreasonable force on their principals as well as innocent victims.[158]

One recent story of bondsmen murdering innocent citizens took place last year. In the early morning hours of August 31, 1997, seven men armed with semi-automatic weapons and body armor broke into a suburban Phoenix home with a sledgehammer.[159] Upon entering the house, a firefight ensued between the bondsmen and the occupants. "[The bounty hunters] held children at gunpoint and killed [a] young couple . . . . Their bedroom was riddled with at least 29 bullet holes."[160] The armed men claimed they were bounty hunters working for a California bond company and were pursuing a fugitive who owed $25,000.[161] After some investigation, however, it was determined not only had the warrant expired months earlier, but the seven men were not even bounty hunters.[162] "The fact that these men chose to disguise themselves as bounty hunters, and that their story

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> occurred over recent years: Bounty hunters in Kansas City broke into the wrong home and shooting (sic) an innocent man three times. They were searching for an African American man; the victim was Hispanic. Bounty hunters in New York arrested an innocent woman and took her to Alabama. Informed of their mistake, they gave her $24 and a bus ticket home. A bounty hunter in Boston fired his gun into the car of the wrong man. Four armed bounty hunters burst into a motel room in Colorado, threw two innocent people to the floor and handcuffed them. They were only released after another motel guest called police. Bounty hunters in Virginia broke into a house and interrogated a woman while standing over her with semi-automatic weapons. Bounty hunters in Kansas City broke down the door of an innocent woman, injured her husband and sprayed her 5- and 10-year-old grandsons with mace during the ensuing confrontation.

Id.

[157] *See supra* notes 114-137 and accompanying text.

[158] *See infra* notes 159-170 and accompanying text.

[159] *See* Drimmer, *supra* note 157, at C6.

[160] *Id.*

[161] *See id.*

[162] *See* Drimmer, *supra* note 156, at C6 (reporting that the "Arizona authorities now say their story [the alleged bounty hunters] was a ruse, concocted to cover a burglary attempt. The men are in jail on first-degree murder charges.").

seemed plausible at first blush, is only further proof of the urgent need to change the archaic system that has left bounty hunters free to operate with almost no oversight from state and federal courts or governments."[163]

An example of bounty hunters not being liable for using excessive force is *Ozuts v. Maryland National Insurance Company*.[164] The Court of Appeals for the Ninth Circuit upheld the district court's decision that the bounty hunters involved in the litigation were not liable under the plaintiff's § 1983 claim.[165] Ozuts was arrested for obtaining money under false pretenses and later released on bail.[166] When he failed to appear, a bounty hunter was hired to return him to Nevada.[167] The bounty hunter forcibly took Ozuts into custody and delivered him to the bondsman who had posted the bail.[168] The court held the defendant was not liable for either the warrantless arrest or the force used in effecting that arrest. What is relevant, however, is that the bail contract allowed the bounty hunter to use force in arresting the plaintiff.[169] This is unconscionable and should be void as being against public policy. By using contracts such as this one, bounty hunters and bail bondsmen are authorized to perpetrate acts of force and violence on the public.

> [A]s demonstrated by the numerous and repeated incidents of misconduct, the threat of civil and criminal liability are ineffective deterrents to bounty hunter abuse. Because of bounty hunters' broad search and arrest powers, criminal liability is an option only in extreme cases. Civil liability also is a hollow threat

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[163] *Id.*

[164] 505 F.2d 547 (9th Cir. 1974).

[165] *See id.* at 555.

[166] *See id.* at 549.

[167] *See id.*

[168] *See Ouzts*, 505 F.2d at 549-50.

[169] The court commented that the defendant predicated his arrest on the private bail contract and not on California statute as argued by the plaintiff. *Id.* at 553. This fact is taken into account in finding no state action. *Id.* Indeed, it appears that the court is allowing this use of force grounded in contract. *Id.*

> because most bounty hunters possess insufficient assets to pay large damage awards, and they are not required to buy liability insurance. (Typically, bounty hunters are hired as independent contractors, so bail bonding companies are not liable for their misdeeds.) Given the common problems that arise, in conjunction with the growth of the profession, allowing bounty hunters to continue to pursue bail jumpers with no governmental oversight places the innocent public at greater risk.[170]

If we view the actions of bondsmen as being acts 'under color of law,' they will be punished for violating the protections of the Constitution.[171] In today's age of advanced telecommunications and an ever-expanding police force, the legitimate authorities are more properly suited to apprehend criminals.[172]

> When the practice of turning to bail bondsmen was first instituted in the 19th century, police departments were inadequate, ill-equipped and ill-trained; . . . there was no body similar to the Federal Bureau of Investigation; . . . and communications between points separated by great distances was poor. Accordingly, there was considerable advantage to making use of the bail bondsmen who would 'track down' those who jumped bail. Conditions and times have changed, as have our views of constitutional requirements, Police today are better qualified than in the past, and are certainly more qualified than is the modern bondsman

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[170] Drimmer, *supra* note 156, at C6.

[171] *Ouzts*, 505 F.2d at 561. This is the position argued in the dissent by Justice Hufstedler who concluded "that [the] defendants acted under color of state law to deprive [plaintiff] of federally protected rights . . . ." *Id.*

[172] *See Ford*, 257 A.2d at 669.

> to locate and recapture an accused who has jumped bail.[173]

Moreover, when police are used to recapture fugitives, constitutional safeguards protect criminals and innocent citizens alike. If we do not curtail the powers of the bondsmen, the violent abuses of the past will continue to be perpetrated on the American public. "With so much room for abuse in their line of work, bounty hunters shouldn't get less state oversight than barbers and manicurists" [174]

IV. ANALYSIS OF POSSIBLE ROUTES TO REFORM

As the above discussion illustrates, the modern bondsman is involved in a 'symbiotic' relationship with the government. When discharging their powers in furtherance of this relationship, i.e., searching for and retrieving fugitives in return for lucrative fees, they should be considered state actors. If their actions are attributed to the state, citizens will be able to rightly recover for violations of their constitutional as well as civil rights under 42 U.S.C. § 1983.[175] Additionally, it also appears that there is criminal infiltration of the business and corruption being carried out by bondsmen.[176] These facts, combined with acts of force being used on fugitives and innocent citizens alike,[177] demands that we bring much needed reform to this vital system on a national scale. Several alternatives are being experimented with throughout the country;[178] including a uniform alternative that could be adopted by all states in the union.[179]

Some states have made the move of simply eliminating the

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[173] *Id.*

[174] *Establish Limits for Bounty Hunters*, ATLANTA J. AND CONST., Sept. 4, 1997, at A14.

[175] *See supra* notes 55-113 and accompanying text.

[176] *See supra* notes 137-149 and accompanying text.

[177] *See supra* notes 159-170 and accompanying text.

[178] *See infra* notes 179-232 and accompanying text.

[179] *See infra* notes 220-232 and accompanying text.

for-profit bail bond system[180] to alleviate the evils it has perpetuated on the American public.[181] In Kentucky, for example, the commercial bail bonding system was outlawed in 1976 (the "Kentucky Act").[182] Several critical pieces of litigation followed the passage of the Kentucky Act.[183] This litigation upheld the statute's constitutionality under the both the United States and Kentucky Constitutions.[184]

In *Johnson Bonding Co. v. Commonwealth of Kentucky*,[185] the plaintiff sought a repeal of the relevant sections of the Kentucky Revised Statutes. He claimed that the act

> violates the Eighth Amendment's prohibition against 'excessive bail'; deprives it [the plaintiff] of liberty and property without due process of the laws; . . .and denies it equal protection of the laws in violation of the Fifth and Fourteenth Amendments; [and] deprives

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[180] *See, e.g.*, Johnson Bonding Co. v. Commonwealth of Ky., 420 F. Supp. 331 (E.D. Ky. 1976) (holding that acts of the legislature eliminating criminal sureties does not violate the Constitution); *Kahn*, 299 N.W.2d at 279; Schlib v. Kuebel, 404 U.S. 357 (1971) (eliminating criminal sureties is a valid exercise of police power).

[181] *See, e.g., Johnson*, 420 F. Supp. at 335 ("[B]ail bondsmen have, in large part . . . reaped huge profits . . . to the detriment of the rights of many citizens and have been a major cause of corruption in the administration of justice.").

[182] *See* KY. REV. STAT. ANN. § 431.510 (Michie 1985), which states in part:

> (1) It shall be unlawful for any person to engage in the business of bail bondsmen as defined in KY. REV. STAT. ANN. § 304.34-010(1), or to otherwise for compensation or other consideration :
>
> (a) Furnish bail or funds or property to serve as bail; or
>
> (b) Make bonds or enter into undertakings as surety;
>
> For the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine, imprisonment or death, before any of the courts of this state, including city courts, or to secure the payment of fines imposed and of costs assessed by such courts upon a final disposition.

The statute further states that a bail bondsman, for purposes of preceding section, is one who is "engaged for profit in the business of furnishing bail, making bonds or entering into undertakings, as surety, for the appearance of persons charged with any criminal offense or violation of law . . . ." KY. REV. STAT. ANN. § 304.34-010(1) (Michie 1985).

[183] KY. REV. STAT. ANN. § 431.510 (Michie 1985).

[184] *See infra* notes 182-87 and accompanying text.

[185] 420 F. Supp. 331 (E D. Ky. 1976).

> it of its right to contract as guaranteed by the 14th Amendment [to the]. . . United States Constitution.[186]

The court adjudicated the question of "whether the Kentucky legislature could, in the exercise of its police power, reasonably conclude that 'outlawing' the bailbonding (sic) business would further the public welfare."[187] In reaching its conclusion that the Act was within the power of the legislature, the court looked to the history behind the statute's enactment:

> It [the State legislature] found, inter alia, that 'the people of Kentucky by ratification of the Judicial Article mandated a reform in the administration of justice including the pretrial release of citizens charged with bailable offenses'; that 'bail bondsmen have, in large part . . . reaped huge profits . . . to the detriment of the rights of many citizens and have been a major cause of corruption in the administration of justice'; and that 'the present system has otherwise fostered widespread abuse of the laws and of the rights of the citizens of this Commonwealth through the corruptive influences of the bail bondsman in violation of the spirit of the Kentucky Constitution guaranteeing the equal administration of justice.[188]

The court first resolved that the statute was within the legislature's police power, stating that this power "extends to all the great public needs . . . . It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."[189] The *Johnson* Court then concluded that the plaintiff's constitutional claims (i.e., due process violation, etc.) were

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[186] *Id.* at 333.
[187] *Id.* at 335.
[188] *Id.*
[189] *Id.* at 335.

either foreclosed or without merit.[190]

Another state which has invalidated the powers of bail bondsmen and bounty hunters is Wisconsin. In *Kahn v. McCormack*,[191] Wisconsin bondsmen, like their Kentucky counterparts, challenged a statute which abolished commercial bonding within the state (the "Wisconsin Act").[192] The court here held that the Wisconsin Act, like Kentucky Act, was a valid exercise of the state's police power because there existed a rational basis for the legislation's inception.[193] They stated that "[i]n the exercise of its police power, the state may forbid, as inimical to the public welfare, the prosecution of a particular type of business, or regulate a business in such manner as to abate evils deemed to arise from it's pursuit."[194] The court then concluded that "[l]egislation protecting the integrity of judicial bail determinations, which are designed to assure the appearance of defendants, is clearly in the public interest."[195]

The significance of these cases and their progeny[196] is that there is a device available for the state to effect change in the commercial bonding system. It is within the power of the state to choose to abolish the system of commercial bail bonding as a method of rectifying the evils it has imposed on the public.[197]

Illinois has followed this impetus as well. In 1964, Illinois completely abolished commercial bail bonding and replaced it with a

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[190] *See Johnson* at 336-39. "The Court is of the opinion that the unsoundness of plaintiff's claim that the Act deprives it of property without due process of law 'so clearly results from the previous decisions of this court as to foreclose the subject.' Plaintiff's claim based on freedom of contract is also foreclosed." *Id.* at 335.

[191] 299 N.W.2d 279 (Wis. Ct. App. 1980).

[192] *See* WIS. STAT. ANN. § 969.12(2) (1979). The Wisconsin Act reads in relevant part: "No surety under this chapter may be compensated for acting as a surety." *Id.*

[193] *See Kahn*, 299 N.W.2d at 283-84 (holding that "[b]ecause plaintiffs have not met their burden of proving the non-existence of any rational basis to support sec. 969.21(1) and (2), Stats., as amended, their challenge must fail.").

[194] *Id.* at 281.

[195] *Id.* at 282.

[196] *See* Benboe v. Carroll, 494 F. Supp. 462 (W. D. Ky. 1977) *aff'd*, 625 F.2d 462 (6th Cir. 1980); Stephens v. Bonding Assn. of Ky., 538 S.W.2d 580 (Ky. 1976); *Cf.* City of Paducah v. Johnson Bonding Co., 512 S.W.2d 481 (Ky. App. 1974).

[197] *See supra*, notes 114-173 and accompanying text.

state run bail bond system (the "Illinois System").[198]

> Prior to 1964[,] the professional bail bondsman system with all its abuses was in full and odorous bloom in Illinois. The results [of this system] were that a heavy and irretrievable burden fell on the accused, to the excellent profit of the bondsman, and that professional bondsmen, and not the courts, exercised significant control over the actual workings of the system. One of the stated purposes of the new bail provisions in the 1963 Code was to rectify this offensive situation.[199]

Under this new system, the accused can obtain pretrial release in one of the following three ways: 1) "he may be released on his own personal recognizance;[200] 2) he may execute a bail bond and deposit with the clerk cash equal to only 10% of the bail or $25, whichever is greater";[201] or 3) "he may execute a bail bond and secure it by a deposit with the clerk of the full amount of the bail in cash, or in stocks and bonds authorized for trust in Illinois, or by unencumbered nonexempt Illinois real estate worth double the amount of the bail."[202] Additionally, judges are no longer required to set a minimum level of bail.[203] Instead, the judiciary is given great discretion and provided

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[198] *See* 725 ILL. COMP. STAT. ANN. 5/110-1.

[199] *Schlib*, 404 U.S. at 359; *see* 725 ILL. COMP. STAT. ANN. 5/110-2.

[200] *See Schlib*, 404 U.S. at 360; *see also* 725 ILL. COMP. STAT. ANN. 5/110-7.

[201] *Schlib*, 404 U.S. at 360-61. "When bail is made in this way and the conditions of the bond have been performed, the clerk returns to the accused 90% of the sum deposited. The remaining 10% (1% of the bail) is retained by the clerk as 'bail bond costs'." *Id.*; *see also* 725 ILL. COMP. STAT. ANN. 5/110-8(2)(f).

[202] *Id.* at 361. "When bail is made in this way and the conditions of the bond have been performed, the clerk returns the deposit of cash or stocks or bonds, or releases the real estate, as the case may be, without charge or retention of any amount." *Id.* at 361-62.

[203] [T]he judge's discretion in such respect [i.e., in fixing bail] is not guided by statute, rule of court or any definite, fixed standard; various divers [sic] judges in fact fix the amount of bail for the same types of offenses at various and divers amounts, without relationship as to guilt or innocence of the particular defendant in a criminal charge, and without relationship of the

with a rational set of guidelines.[204]

The Illinois system was eventually attacked. In *Schlib v. Kuebel*,[205] the Supreme Court upheld Illinois' bail statue, noting many of the benefits which have been reaped from the new system.[206] Notably, criminal defendants are now required to pay 1% of the actual cost of the bond,[207] as opposed to 10% of the total cost of the bond.[208] Furthermore, the Court held the 1% retention for court costs did not violate the Equal Protection Clause of the Fourteenth Amendment because "balancing . . . opposing considerations in the way that [the State Legislature] did cannot be described as lacking in rationality."[209]

The Eighth Amendment right to be free from excessive bail[210] and our modern bail system are part of the foundation of our criminal justice system. The underlying benefit of several states moving to dismantle the for-profit bonding system[211] in favor of a state controlled system, is that it is helping achieve reform of this essential part of our criminal justice system.[212] By filling the void left by the absence of bondsmen, the courts can now effectively retake control of

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particular offense charged and the bail fixed.

Id. at 363-64; *see also* 725 ILL. COMP. STAT. ANN. 5/110-1.

[204] *See Schlib*, 404 U.S. at 364.

[205] 404 U.S. 357 (1971).

[206] *See id.* at 366 (stating that "[t]he attack on the Illinois bail statutes, in a very distinct sense, is paradoxical. The benefits of the new system, as compared with the old, are conceded.").

[207] *See id.* at 358 (stating that "the amount so retained was 1% of the specified bail and 10% of the amount actually deposited."); *see also* 725 ILL. COMP. STAT. ANN. 5/110-7 (West 1998).

[208] *See Schlib*, 404 U.S. at 359 (explaining that "the bail bondsman customarily collected the maximum fee (10% of the amount of the bond) permitted by statute . . . and retained that entire amount even though the accused fully satisfied the conditions of the bond").

[209] *Id. at* 367-68.

[210] *See* U.S. CONST. amend. VIII. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments be inflicted." *Id.*

[211] *See, e.g.*, ALASKA STAT. § 12.30.020 (b)(4) (Michie 1998) (judicial official may request a deposit with the court, not to exceed 10%); D.C. CODE ANN. § 23-1321(a)(3) (1971) (10% deposit sufficient for pre-trial release).

[212] *See generally Stack*, 342 U.S. at 7 (stating that bail allows the accused to prepare an unhampered defense and prevents punishment before being convicted of a crime).

the pre-trial release process.[213]

Other states have opted to create licensing schemes to exercise greater control over the commercial bail bond system.[214] Many of these statutes aim to limit the powers of the bondsman in ways which will ensure the vitality of the bonding system while at the same time protecting the rights of citizens.[215] In New Jersey, for example, there is proposed legislation which requires "bounty hunters to submit to background checks, to 'knock and announce' before entering, and to carry insurance to protect victims who might be injured and want to sue."[216] As far back as 1986, states like Connecticut were experimenting with moderate statutory reform when they provided "for the issuance of a rearrest warrant or mittimus[217] where a bond of $500 or more is ordered forfeited because the principal failed to

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[213] *See Schilb*, 404 U.S. at 359-60 (arguing that before the passage of the Illinois bail reform statutes, the "professional bondsman, and not the courts, [exercised] significant control over the actual workings of the bail system").

[214] *See infra* notes 213-30 and accompanying text. Most states which have regained control of the bond system by stature have elected to curtail the powers of bail bondsmen.

[215] *See Establish Limits for Bounty Hunters*, ATLANTA J. AND CONST., Sept. 4, 1997, at 14A. The author concedes that the bounty hunter fills a vital role in society and admits that last year they returned approximately 23,000 fugitives to justice. *Id.* Although necessary, he demonstrates that control is essential in light of past offenses including the murder of Chris Foote and Spring Wright in Phoenix last September. *Id.* The author suggests several regulations which could be placed upon bounty hunters, including: background checks, licensing, and "if they're stalking someone so dangerous they feel the need to be armed, then they should be required to call police." *Id.*

[216] Jeff Barker, *U.S. Attorney Looks at Bounty Hunters; Federal Charges Being Considered*, ARIZONA REPUBLIC, Sept. 6, 1997, at B1. It is important to note that the discussion on statutory reform has been limited almost exclusively to the states and some legislators feel it should stay that way. *Id.* One Maricopa County District Attorney has been reported to say: "I'm not sure federalizing is the right way [to effect reform] . . . [i]t's generally left to the different states. I agree there needs to be uniformity, but I'm not sure the federal government should step up yet. I think organizations like the National District Attorneys Association should be a driving force here." *Id.*

[217] A mittimus is "the name of a precept in writing, issuing from a court or magistrate, directed to the sheriff or other officer, commanding him to convey to the prison the person named therein, and to the jailer, commanding him to receive and safely keep such person until he shall be delivered by due course of law." BLACK'S LAW DICTIONARY 1002 (6th ed. 1990).

appear in court."[218] The legislature, however, avoided curbing the bondsman's most abusive powers when they failed to "abrogate a bail bondsman's common-law right to apprehend and surrender his principal."[219] What this means is that the bounty hunter only needs to get a declaration from the court stating the accused is wanted for not appearing at trial before he apprehends his principal. While reforms such as licensing and training will give bounty hunters enhanced skills and the state more knowledge of who is hunting fugitives, many problems such as violent arrests and civil rights violations will continue to plague the system.[220]

Alternatively, some states have held that the Uniform Criminal Extradition Act (U.C.E.A.)[221] has effectively abrogated the powers of the bail bondsman.[222] The purpose of this uniform law is to "provide an orderly means of extradition, and to accord procedural due process to persons sought to be removed from this state."[223]

In *Commonwealth v. Wilkinson*,[224] a foreign bondsman attempted to remove his principal from the state of Massachusetts.[225] In doing so, the bondsman was indicted for kidnapping and assault with a dangerous weapon.[226] On appeal, the Supreme Judicial Court of Massachusetts held that the adoption of the Uniform Criminal Extradition Act by the State of Massachusetts effectively abrogated the common-law powers of a bail bondsman to arrest his or her principal.[227] In reaching its holding, the Court did not apply this new

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[218] David Nadvorney, *State Court Roundup: Summaries of Selected State High Court Decisions*, NAT'L L. J., July 14, 1986, at 52.

[219] *Id.*

[220] *See id.* (citing one typical example of a civil rights violation by a professional bail bondsman).

[221] UNIF. CRIM. EXTRADITION ACT §1, 11 U.L.A. 110 (1996).

[222] *See id.* Although this statute does effectively limit the powers of the bondsman and, more importantly, provides for a heightened recognition of procedural due process rights, it effectively only applies to foreign bondsmen, hence its title, the Uniform Criminal *Extradition* Act. *Id.*

[223] State v. Lopez, 734 P.2d 778, 782 (N.M. Ct. App. 1986).

[224] 613 N.E.2d 914 (Mass. 1993).

[225] *See id.* at 915.

[226] *See id.*

[227] *See id.* at 916.

interpretation to the defendant.[228] It reasoned that if "a judicial construction of a criminal statute is unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue, it must not be given a retroactive effect."[229] It further held that this decision was a proper interpretation of the legislature's intention in ratifying the U.C.E.A., namely, the protection of the due process rights of the accused.[230]

The court in *Wilkinson* reiterated the earlier holding of *State v. Lopez*.[231] There, the Court of Appeals of New Mexico also held "that the common law authority of the bondsman to transport a principal out-of-state, without the principal's consent, has been modified by enactment of the Uniform Criminal Extradition Act."[232] The U.C.E.A., by limiting the broad powers of the bondsman, can help alleviate the oppressive and unsavory elements of this system.[233]

It is important to note, however, that there is authority that argues that abridging the rights and powers of commercial bondsman does not solve many of the problems[234] facing the system.[235] It is argued that if a jurisdiction is to allow bondsmen to operate, reform will simply harm citizens accused of committing crimes.[236] Indeed, Mary A. Toberg states that "[m]ore stringent policies regarding the collection of forfeitures will increase bondsmen's operating costs and

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[228] *See Wilkinson*, 613 N.E.2d at 917.

[229] *Id.*

[230] *See id.* at 915-16 (explaining that the Uniform Criminal Extradition Act "permits a person to procure the warrantless arrest of a fugitive through 'any officer authorized to serve warrants . . . upon reasonable information that the accused stands charged in another state with a crime. Therefore, under that statute a fugitive can be surrendered pursuant to the request of a private bondsman and still be afforded the benefit of due process requirements..."); *see also*, *Lopez*, 743 P.2d at 782-83 (arguing that "[t]he legislative action [enactment of the Uniform Extradition Act] was intended to eliminate the bail system and its attendant evils in factor of a more civilized system of apprehension and return of accused and convicted criminals.").

[231] 734 P.2d 778 (N.M. Ct. App. 1986).

[232] *Id.* at 782.

[233] *See id.*

[234] *See supra* notes 114-173 and accompanying text.

[235] *See generally* Toberg, *supra* note 93 at 141 (arguing that greater regulation of the criminal bonding system will only hurt, not help, accused criminals).

[236] *See id.* at 153-54.

should make them less willing to write bonds for riskier defendants. Consequently, unless there are offsetting forces in the jurisdiction[,] . . . detention is likely to rise."[237]

Ms. Toberg's research also indicates that a statewide regulatory environment which is unfavorable to the bondsman, coupled with stringent forfeiture collection practices, will result in longer amounts of time required to dispose of cases, high rates of detention for accused who have bond amounts set as well as high failure-to-appear rates.[238] In Indianapolis, Indiana, just this regulatory environment existed. Detention rates for those where bonds were set was 44%.[239] It is important to realize, however, that although Ms. Toberg points out many of the positive factors of using bail bondsmen, she fails to address many of the appalling acts committed by bondsmen and bounty hunters in exercising their nearly unrestricted arrest powers. The weight of the evidence compels the conclusion that even if there are drawbacks to reform of the commercial bail bond system, the abuses being committed by bondsmen and bounty hunters require a change.

V. CONCLUSION

The modern commercial bail bondsman is performing a service that is vital to our system of criminal justice.[240] In doing so, they enter into a 'symbiotic' relationship with the state.[241] Once this is acknowledged, it is clear that the broad powers of bail bondsman are resulting in widespread violence and violations of the public's constitutional rights.[242] This fact, combined with the widespread corruption within and caused by the business, draws the inevitable conclusion that reform is desperately needed. If we do not act, the abuses of the past will continue to be the abuses of the future. As for

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[237] *Id.*

[238] *See id.* at 147-52.

[239] *See id.*

[240] *See supra* notes 13-22 and accompanying text.

[241] *See supra* notes 55-113 and accompanying text.

[242] *See supra* notes 114-173 and accompanying text.

regulating the industry, several states have chosen to head in different directions in the search for a solution to the abuses committed by bondsmen.[243] Under a system patterned after the Uniform Criminal Extradition Act, a possible "best solution" can be found.[244] By letting sureties perform their necessary function in tandem with providing protection for citizens' constitutional guarantees, we can be more assured that 1) an accused will have a ready vehicle to effect their pretrial release; 2) bail bondsmen will still have a process in which they can retrieve fugitives and return them to justice; and 3) the constitutional and civil rights of citizens will continue to receive the highest protection possible.

Matthew L. Kaufman

[243] *See supra* notes 179-232 and accompanying text.
[244] *See supra* notes 220-232 and accompanying text.