AMERICAN Bail Coalition

NEWSLETTER

October 2010

AMERICAN Bail Coalition

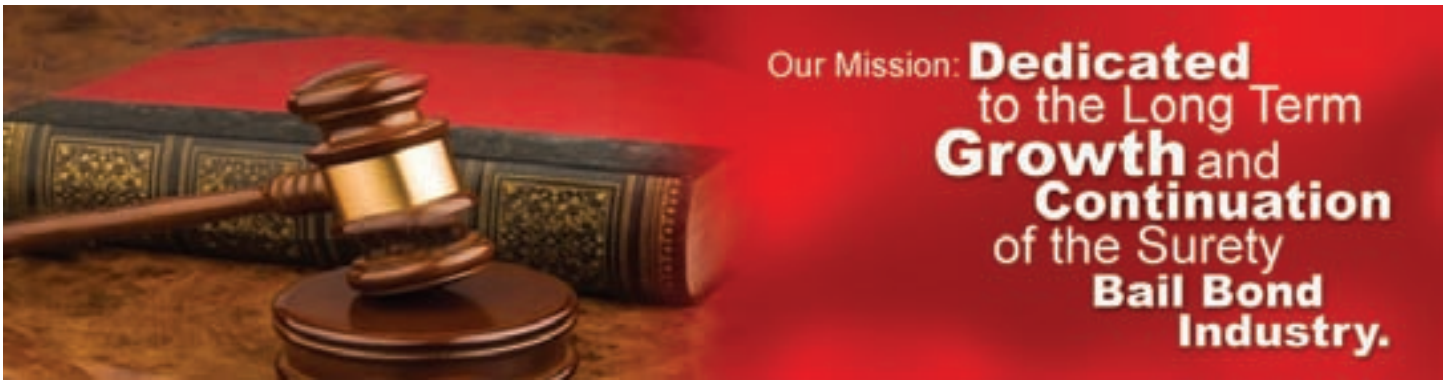
Contents

OCTOBER 2010

We would like to give a special thanks to AIA for helping us design and put our newsletter together.

The American Bail Coalition's Iliad

Red Dawn



While the druidic gray of a Florida early morning in mid 1992 was misting away to a reddish blush, a handful of executives representing a small number of corporate surety bail insurance companies gathered at a hotel in St. Petersburg. They were worried. The industry was under assault. Government pretrial service agencies (PTS) had made deep inroads into the corporate surety market. These tax-dollar supported institutions were the off scouring of the so-called bail reform movement of the Sixties, conceived during the haut baroque period of the criminal as victim of society. Zealots of PTS had an agenda. At first, it was laudatory -- to help the first time non-violent indigent offender to get out of jail pending trial rather than languish in a cell until his case crept up the docket.

But government agencies are infected with an incurable AIDS-like virus called serpo officii, mission creep. Hence, the PTS community expanded its mission to get defendants out of jail period, regardless of their offense or ability to purchase a bail bond. From the beginning PTS' performance was not flattering unless it operated with a prohibitively costly high staff to cherry-picked defendant ratio. Regardless, PTS, emboldened by the then defendant-as-national- treasure/victim ethos declared a jihad against commercial bail, preaching its total extinction nationwide. Indeed, this effort to "governmentize" a centuries old private function had metastasized nationwide, leading four states to eliminate commercial bail. One of these states, Kentucky, even made writing bail a felony.

NABSU the Killer Whale?

In the face of this threat, these founders formed a national association of bail insurance companies, called the National Association of Bail Surety Underwriters -- NABSU. At a subsequent meeting, the association was formed, hammered together, a corporation formed, officers selected, a legislative committee appointed, all with the purpose to stop and the turn back the offensive by publically funded PTS. NABSU wanted PTS to be on the defensive. This was articulated as follows:

(1) Stop the growth of publically funded bail and deposit bail,
(2) Retake the ground lost to the above two categories, and
(3) Re-establish commercial surety bail and its benefits in the eyes of federal state, and local governments.

An Alphabet Soup Interlude

NABSU was soon changed to the National Association of Bail Insurance Companies – NABIC -- until it morphed into the American Bail Coalition in early 2001 and then expanded again in January 2010. Herein after for the sake of simplicity, it will be referred to as ABC although many of the initiatives took place under the companies then flying the NABIC flag.

Life Preserver -- The American Legislative Exchange Council

How was the association to affect its goals? Any idea, including a great idea, stagnates unless reduced to specific, practical tasks. ABC's decision to join ALEC in 1993 pushed the ABC agenda down the road to fulfillment of its objectives. ABC policy goals meshed neatly with those of ALEC. A non-partisan association of individual state legislators and the private sector, ALEC endorsed the Jeffersonian principles of individual liberty, free markets, and private enterprise. The ALEC criminal justice policy agenda had been crafted from a study published by the department of Justice under the direction of then Attorney General Bill Barr on practical measures the states could take to curb and defeat crime on the local level. The first principle on the ALEC agenda was based on Barr's statement that:

Private bail has done an excellent job of insuring that defendants get to court…and they do it at no cost to the taxpayer. It's a system that has a long history of success.

Within two years of joining ALEC, a member of the ABC board, Jerry Watson, was invited in 1995 to join the ALEC private enterprise board where he would ultimately become Chairman. Watson served until August 2010 when he stepped down to become Chairman Emeritus of the private enterprise board. Another ABC member, Bill Carmichael, was appointed to the ALEC private enterprise board.

During its two decade involvement with ALEC, ABC has written 12 model bills fortifying the commercial bail industry. In addition to the model bills ALEC has issued ABC sponsored State Factors, Legislative Briefs, and studies related to the bail issue. The major reason behind this focus was to offset the threat posed to commercial bail. Bail is a benefit to both defendants and courts in the criminal justice system – for Eighth Amendments rights, public safety, and tax dollar savings.

Witches on the Blasted Heath of Criminal Justice Policy

For decades the American Bar Association's Criminal Justice Section has called for the abolition of commercial bail, what they term "compensated surety", aspiring to replace it with nationwide system of government funded PTS agencies .The ABA did not want to abolish bail, but only commercial bail. In other

words government bureaucrats would take over the bail business from the private sector and create a genre that is as different from commercial bail as fools' gold. PTS denizens even formed their own special interest group, the National Association of Pretrial Release Agencies (NAPSA). They also founded the Pretrial Services Resource Center, one of the leading purposes of which was to undermine commercial bail. It has devolved into the Pretrial justice Institute (PJI) which in reality is merged with and runs the day to day operations of NAPSA. These associations parrot the ABA's push for excising commercial bail to be replaced by PTS agencies nationwide with tax payers picking up the tab. In short, the ABA and NAPSA aspire to replace a private sector system of proven efficiency which furthermore pays its own freight. It's the criminal justice equivalent of Obama care.

Ancient Risk Assessment Instrument

> *He that goes bail for a stranger will suffer for it; He that shuns it will sleep soundly.*
> *Proverbs, 11:15*

The history behind the ABA's adoption of what appears to have been a short sighted and frankly, irrational policy, is the fruit of flawed ideological assumptions prejudiced in favor of exaggerated rights for the defendant. It got its push with the bail reform movement that spawned to life in the Sixties as a reaction to alleged abuses in the bail industry that appear to have originated in the courts or were the results of regulatory negligence. But regardless of the cause, the bottom line for the ABA and their NAPSA faithful was that in letting people out of jail pending trial, the government could do it better and more fairly that the private sector, and the public PTS employee would be a better steward than the private bail bondsman.

This was the high-minded assumption, a sacred cause. Over the decades is has become badly frayed by several years of statistics and a number of key studies that prove that PTS agencies not only are a fiscal drain on the community, but constitute a hazard to public safety as well. PTS has more skips than bail agents and recover them less. And when PTS fails to recover their skips, do they pay for their failures like the bail agent? BJS shows that the reverse of what the ABA hoped is true. Indeed, never in the world of criminal justice, has so little been imparted to so many at such great expense as with pretrial services.

ABC Legislative Fixes

ABC proposed the following model bills to the ALEC criminal justice task force, which were subsequently approved by both the task force and also by the ALEC board.

1. Alternative Method of Court Appearances Act. This bill designated that certain crimes would have bail restrictions. Serious felonies such as murder, kidnapping, arson robbery, etc., would either be denied bail or if bail was allowed it could only be under the following conditions: (1) full cash, (2) secured by real property, or (3) surety bond.

2. Anti-Crime (Secured Release) Act. This act was similar to the above. Defendants arrested for an offense other than a misdemeanor could only be released pending trail by means of a secured release that is cash deposit, real property, or a surety bond. If the defendant is indigent, a hearing is required to authorize his release on own recognizance.

3. Bail Agent Education and Licensing Act. This establishes a state bail bond regulatory board to monitor and

license bail agents. (In many states this function is purview of the department of insurance.)

4. Bail Bond Expiration Act. This provides that a bond expires 36 months after posting unless in the interim it has been declared forfeited.

5. Bail Forfeiture Notification Act. This act requires the court to send prompt notice of bail forfeiture to the surety, depositor of money, and bail agent posting the bond.

6. Bail Forfeiture Payments Notification Act. This Act requires a bail agent to pay all forfeiture judgments in a timely manner. No further bonds may be accepted from that agent anywhere in the state until the judgment is satisfied. This legislation intends to eliminate fly-by-night bonding practices.

7. Bail Forfeiture Relief and Remission Act. This Act grants a bail agent a remission period to recover a fugitive that has skipped bail, even after the time deadline for a bail agent to recover that person has passed and the bail agent has paid the forfeiture judgment. If the bondsman recovers the fugitive during the remission period, the bondsman can recover all or part of the forfeiture judgment paid. This bill is designed to enhance public safety by giving the bail agent a financial incentive to locate and recover the fugitive thereby serving both the interests of the courts and of public safety.

8. Bail Fugitive Recovery Persons Act. This bill sets qualifications, requirements, and standards for those who are operating as bail recovery agents.

9. Crimes with Bail Restrictions Act. The purpose of this act is to enhance public safety. The Bureau of Justice Statistics has shown that defendants released on unsecured bonds were the most likely not to show and thus end up as fugitives. Around 60% of those arrested on a felony charge are released pending trial either by means of commercial bail or by other less effective methods. In turn, about one third of these released defendants will be rearrested for a new offense. The data also shows that re-arrest rates are highest for those released on their own recognizance (ROR). Because of this and in order to enhance public safety, courts should increase the use of surety release and backtrack on the number of ROR's, especially for more serious crimes. The act would prevent those more inclined to commit crimes from being released except on a surety bond. BJS studies also show that those released via the surety bond are less like to fail to appear and while awaiting trail less likely to commit additional crimes.

10. Uniform Bail Act. This Act would set standards for commercial bonds, cash bonds, and personal bonds. In addition, this Act would eliminate pretrial release agencies. The Act would set restrictions on the use of personal bonds.

11. Conditional Early Release Bond (Post Conviction Bond). This Act would create a means whereby a State can, after conviction, release a person. The Act would also establish how conditions on the release may be set and how the private sector may be used in determining whether or not those conditions are met.

12. Citizens Right to Know Act. This requires a pretrial release agency to be accountable for its record on releasing defendants. It must prepare a registry of information (updated periodically) regarding cases and defendants recommended for release by the agency. The data is to be available to the public in the office of the clerk of the court.

Working with ABC, ALEC published two studies on pretrial release. The first, *Evidence of a Failed System*, tracked the poor performance of pretrial release agencies in California. It concluded that private commercial

bail is much more effective than government non-secured release mechanism. The second study, *Runaway Losses*, focused on the cost to the public for no-shows in court. Using data from Los Angeles County, the study calculated that each failure to appear cost the county almost $1,300 in wasted court time, police overtime, and so forth. Given that government funded agencies have more skips than commercial bail, the conclusion is that the latter constitutes a better fiscal fix for the public.

"Rasslin'" With the BJS Angel

In October 2007, Dr. Brian Reaves, a statistician from the Bureau of Justice Statistics, called ABC executive director Dennis Bartlett. "Guess what?" he said. "Our study is going to press". The BJS study finally emerged in November 2007, over four years after Dennis Bartlett and Jerry Watson, then ABC president, camped on BJS' door step on October 23 2003, and after more than 120 reminder calls, countless emails, letters, and after at least two interventions with the Attorney General by Texas Congressman Ted Poe. The study entitled, *State Court Processing Statistics, 1990-2004 Pretrial Release of Felony Defendants in State Courts*, proved to be exceedingly important for commercial bail industry. An official imprimatur based on almost two decades of data was given by the government for what people in the bail industry all knew and had been proclaiming for decades: commercial bail does it better!

The 2007 BJS study was the descendent of a long line of publications from BJS' National Pretrial Reporting system. BJS, starting in 1998, published every two years a study entitled *Pretrial Release of Felony Defendants [year]*. What were these studies? They were based upon data on the pretrial phase of the criminal justice system. Data were collected from the 75 largest counties in the US. Each study devoted an analysis to the comparative effectiveness of the various kinds of pretrial release programs used: ten percent deposit bail, full cash, ROR, and surety bond. Included was a table which compared each release in terms of failures to appear (FTA) attributable to each, how many crimes FTA's committed while out awaiting trial, and recovery rates for skips. A higher percentage of those released on surety bonds made it back to court than by means of the other methods. Furthermore, while awaiting trial, those on surety bonds committed less crimes, and if they absconded, more of them were returned to custody.

Judges, magistrates, and others charged with setting bail were using these studies in order to make release decisions not only fair to defendants, but properly balanced with concerns for public safety. Based on the BJS material, a judge knew that if a felon was released on a commercial bond, he was more likely to make it to court, not commit a crime while back on the streets, and get caught if he skipped, than if he was out on another method of release. It's no exaggeration to say that judges were using this information to save lives.

The 2007 study, however, was an anomaly. It was a kind of a comprehensive mega study. Instead of analyzing two years of data, it treated the entire corpus of data from the beginning of the project through 2004. It also was the first of these studies to appear since 1994. The traditional studies had been replaced by a bi-annual publication entitled *Felony Defendants in Large Urban Counties [year]*. These studies did **not** compare the track records of the different kinds of release. Why? Why did BJS stop one and replace it with the other? BJS' data collector for the program was the Pretrial Resources Center [now the Pretrial Justice Institute (PJI)]. PJI was on record as endorsing standard V of the National Association of Pretrial Service Agencies (NAPSA),

which calls for a the nationwide elimination of commercial bail. (BJS recently awarded the data collection contract to Rejis rather than PJI.) About the time the studies changed, the pretrial services community had suffered some bad publicity and reverses due to the efforts of an ABC sponsored organization called Strikeback! and the American Legislative Exchange Council. These organizations put the heat on pretrial services for lapses in public safety by invoking BJS data. Could it have been that he embarrassment suffered by the pretrial community and PJI prompted the Clinton/Reno Justice Department's BJS to change their format? Were they burying the incriminating data by ignoring it?

Jerry Watson, then ABC president, accompanied by Dennis Bartlett, ABC executive director, decided to clear the air and confront BJS. In October 2003, they met the director of BJS, the head of the pretrial statistics program. BJS denied that the reporting format had been changed to cover PTS's six and vouched for the integrity of the data even if it had collect by the anti-bail PJI. BJS maintained that the switch was made for reason unrelated to ABC's concerns. Watson pressed the BJS chief that the demise of the earlier type of report leads to uniformed release decisions, the direct result of which was to undermine public safety. He encouraged BJS to return to the earlier format. After a pause, BJS countered by suggesting a standalone study which would include all their years of data, and include a comparison of the performance of the different methods of release. End of story. Watson and Bartlett colored up, cleaned their chips off the table, and bid BJS a courteous goodbye.

BJS first presented its conclusions at an ALEC criminal justice task force meeting in the summer of 2006. At BJS's request, ABC kept the conclusions in house until the spring of 2007 when BJS made the same presentation to the pretrial services community. The BJS study gave PTS a fit of colic. They immediately developed a convoluted spin of such complexity that it put to shame mathematical theses on the elliptical orbit of Venus in the Ptolemaic system. PTS' conclusion? Least effective system: commercial surety bail! But like ABC, PJI/NAPSA was persistent. In March 2010, BJS published a Data Advisory about the BJS 2007 study. The advisory said

1. BJS material was for the use the public, bondsmen, pretrial professional, judges, policy makers, etc.,

2. The BJS study in question concluded that commercial bail did it better, and

3. But you can't say that.

What?

Dennis Bartlett went to BJS for an explanation. He addressed the issue of their advisory in which they state that the BJS study cannot support the conclusion that surety release is the most efficient method, and asked how to reconcile same with the statement in the 2007 BJS report's conclusion that defendants on secured release were more likely to make scheduled court appearances than those on unsecured release. He also asked them what prompted the issuance of the advisory and informed them that PJI and the PTS community was quoting it like scripture. Was it the result of political pressure on BJS?

Duren Banks of BJS wrote the statement and she said wrote it in response to complaints from NAPSA. She denied that they had political pressure put on them from above. She also said that she had reached out to us because BJS had talked to NAPSA. She said that nothing was in the advisory that BJS had not published earlier elsewhere. Dennis showed her a 2007 PJI document similar to the advisory and said that a lot of people in the

commercial bonding community had concluded that the BJS advisory was based on same. She claimed to have not seen the PJI document before.

Back to the question: How can you say that secured release is better at getting defendants to court and at the same time not conclude that it's the most efficient method of pretrial release? Easy for statisticians. They say it is not a contradiction because, the data which led to the BJS conclusions in the 2007 report do not support a valid for all time/places certitude that secured release is the most efficient method of pretrial release. They admitted that this distinction was a fine point and probably lost on the general public. (In other words, if PTS holds out long enough, a criminal justice Bermuda Triangle criminal justice phenomenon might invert reality and PTS would become the most efficient method). Dennis took the opportunity to point out that PJI's use of the BJS data was selective when it was to their advantage in that their BJA-funded, and NACo-disseminated pretrial services guide for county officials on jail overcrowding claims that the reason for jail overcrowding was commercial bail. BJS agreed that there was no evidence of this anywhere and that PJI's simplistic correlation does not equate to causality.

BJS took the opportunity of Bartlett's meeting to ask assistance from the commercial bail community. The main reason for BJS to reach out is that they want commercial surety's help in data collection. Almost nothing is known about the commercial bonding community, and because commercial bonding dwarfs pretrial services in terms of the number of transactions, a study on pretrial release is inadequate without that input. For example, the commercial bail industry employs circa 15,000 bail agents and near 10,000 staff, bonds out over four million defendants a year. This adds up to an average of over 333,000 defendants a month! The total number of PTS employees adds up to less than 3500. Furthermore, the new data shows even more usage of commercial bail than the previous studies show. ABC will continue to foster a relationship with BJS, challenging and working with them, and wrestling them to the ground where appropriate.

ABC's investment in ALEC has reaped rewarding dividends not only for America's commercial bail industry but for all those unnamed folks who never became victims. ABC and ALEC's legacy will continue: the young mother crossing the park with her infant, the senior citizen at the ATM machine, the lithe coed jogging on the bike trail, and thousands of innocent citizens peacefully going about their own business benefiting from a judge requiring a criminal defendant to post a surety bond rather than being let out of jail for free.

Our Track Record

ABC, and its earlier incarnation as NABIC, has been monitoring legislation nationwide and publishing weekly updates to members since 1999. We also get valuable cross referencing and input from the Surety & Fidelity Association of America which conducts its own legislative tracking program. Also individuals alert us to bills that have import. It's far from an exact science, however, complicated by individual state's polices on holding over bills for second year of the session. Virginia and New Jersey hold elections on off years. Their two year session is out of step with the rest of the states. Hence, some of our enactments go back to 2009 if there is relevance to 2010 bills. Also sometimes a state will throw a lot of bills at an issue. A couple of years back, Virginia introduced 14 bills to deny bail to illegal aliens who were arrested. They were consolidated into one bill, which was enacted. In 2010, in response to the Clemmons murders, Washington State introduced around 15 bills and resolutions mostly to authorize judges to withhold bail from dangerous defendants. This klatch of bills was consolidated into a smaller number and enacted.

The 2010 session was busiest we have ever seen. Tracking usually dies off gradually as states march out of session. This year, however, we are still seeing action on bills in a few states. During the 2010 session, we tracked around 300 bills. As of this writing, 66 of these were enacted. Those favorable to the bail industry numbered 30, those harmful numbered four. The balance, 32, was neutral. (These figures are not hard and fast. They do not count bills that were killed or withdrawn. Furthermore they are open to other opinions/ interpretations.) The neutral category mainly consists of insurance bill overhauls, bread and butter regulations, routine licensing requirements, establishment of review committees, and so forth -- stuff that deals with bail, but is neither harmful nor helpful in terms of industry market.

It would take too much space and be too tedious, if not impossible, to recount every major political and legislative move on the 2010 chess board. But here are a few random examples. ABC was involved in some of these actions, but we do not imply that ABC deserves the credit for all the successes. It doesn't. One of the positive elements of the 2010 session was the all-around cooperation and generosity by all parties brought to bear on an issue.

There was one veto, California AB 1369. We successfully had worked this bill, which we would have been unable to kill, to effect provisions that would minimize the damage to the industry if it would have been enacted. Now it's dead, vetoed by the governor for reasons unrelated to ours.

One of our most salient victories was GA H 889, introduced by Rep. Len Walker, an ALEC member. The bill requires vendors of GPS devices to be licensed surety bail agents, and pretrial releases on surety are required for certain levels of offenses. A lot of the credit for its enactment should go to Mike Whitlock who kept monitoring the bill and advising the rest of us how to support it. (See his article in this newsletter.) Elsewhere also is an article on the reintroduction of bail into Oregon and a 2009 bill, H 2682, which authorized an Oregon legislative study committee for that purpose.

Perhaps the most impressive legislative performance of 2010 was that of the Louisiana bondsmen, under the leadership of Guy Ruggerio. They got eight bills favorable to the industry enacted with clockwork precision. It

is a case study on how to get your legislative agenda effected.

We are always safe in Mississippi with Gene Newman holding the pulse of the legislature and supported by ALEC Board Member, Senator Billy Hewes, president of the Mississippi Senate. Jeff Kirkpatrick has a slick operation in Michigan and got approval for bondsmen to use GPS devices in tracking defendants. Jeff and Tom Parker worked to make sure the Post-Conviction language was once again contained in this year's Michigan correction budget. Senate Bill 1153 was enacted containing the provision was signed into law by the Governor. Sec. 614 of the bill pertains to posting of bonds to secure a defendant's appearance at any subsequent court proceedings. While the language is not perfect, this allows Jeff and Tom time to draft statutory language to perfect this new book of business. This is the law in Michigan for one year to the end of September 2011. Kansas bondsmen partially supported by ABC killed one bad bill which would have expanded ten percent bail, and passed two favorable bills for commercial bail.

PJI reports that H 728 was defeated in Virginia. We all remember the vigorous battle over it. In fact, it was not defeated. It is pending action in the senate in the 2011 session. If it passes the senate, it will not have to go back through the House. At any rate, much credit for its passage must go to Virginians for the Preservation of Bail. They would not have succeeded, however, but for a key maneuver which took place behind the scenes. The speaker of the Virginia House, Bill Howell, a board member of ALEC and the former ALEC national chair, convinced key members of the positive fiscal impact of the bill thereby ushering the bill through its gravest choke point. He did so at the request of fellow ALEC board member, Jerry Watson.
ABC also assisted in the passage of H 445 through the Florida House, although the bill was unable to prevail in the Senate. This bill was similar to the Virginia bill in that only indigent defendants would be eligible for pretrial services.

ABC will continue to monitor legislation in states and on the federal level also, and has already started focusing on prefilings for the 2011 session.

GAPB Scores Big Victory in Georgia

Written by Michael J. Whitlock, Vice President – American Surety Company

It is no small task getting landmark legislation passed be it at the state or federal level. An effort such as this requires a team of dedicated and tenacious individuals working in concert to achieve a favorable outcome; passing a bill into law.

The Georgia Association of Professional Bondsmen (GAPB) have, in recent years, demonstrated their ability and agility in walking a legislative minefield strewn with dead bills that in some cases never saw the first hearing. To get things moving the GAPB first needed a legislator willing to take up their cause. The cause being to reduce or eliminate the release of criminal defendants charged with aggravated offenses through a taxpayer funded pretrial release agency. Representative Len Walker (R- Loganville) agreed to sponsor H.B. 889 which set forth a list of felonies crimes for which an offender would not be eligible for release on their own recognizance or through taxpayer funded pretrial release. Absent a court order, the offender

must be released on a secured bail bond.

The GAPB did most of the heavy lifting on H.B. 889, spending nearly every day of the 2010 session at the state house meeting with legislators and negotiating with opponents of the bill. At times they would reach out to the American Bail Coalition (ABC) for help in contacting legislators and communicating the merits of H.B. 889.
ABC, a longtime member of The American Legislative Exchange Council (ALEC) contacted Michael Hough, ALEC's Public Safety & Elections Task Force Director, for assistance. Not only did Michael Hough immediately distribute an ALEC "Issue Alert" to all Georgia Legislators, he also testified before committee in support of passing H.B. 889.

The team effort paid off, H.B. 889 was signed by Governor Sonny Perdue on May 20, 2010. It is now the law in Georgia. Offenders charged with one of 16 felony crimes, ranging from aggravated assault to trafficking in cocaine, will be required to post a bail bond.

Fulton County (Atlanta) bail agents have already noticed an increase in business. So, while the enactment of H.B. 889 is clearly good for bail agents, it should be more appealing to taxpaying citizens who will no longer see their tax dollars used to provide free bail to felony offenders. Public safety will also improved with more offenders being released pretrial on a bail bond resulting in significant decrease in failures to appear.

The Willamette Runs Through It

The city of Portland, Oregon sits astride a massive river. Most visitors to the City of Roses think it's the Columbia River nearing the end of its long journey to the Pacific from British Columbia. They are wrong. The river bifurcating Portland is running north to join the Columbia. It drains and takes its name from the Willamette Valley, home to Oregon's capital, Salem, one of the most beautiful and lush pieces of real estate in the world.

Another namesake of the valley/river is a liberal leaning Portland based newspaper, the Willamette Week. By chance in early July 2008, there appeared a story, entitled, "Manhunter: Almost Every State Lets Bounty Hunters Chase Down Its Most Wanted. Why Doesn't Oregon?" The essence of the story was: Washington State has a commercial bail bond system. It seems to work very well, both in getting people to court, recovering skips, and enhancing public safety. Why doesn't Oregon have the same system? Wouldn't it help Oregon's broken down criminal justice system?

A group of Washington state bondsmen suggested to ABC that the time might be opportune for the reintroduction of commercial bail into Oregon from which it was banned in 1974. Oregon was not only facing severe budget crunches, its criminal justice system had collapsed. Almost a third of its arrestees never made it to court. Oregon, surrounded by states which have the commercial bail system, was a refuge for fugitives from justice from those states. They found a haven in Oregon, secure in the knowledge that they were untouchable. Oregon had outlawed bail recovery agents along with bondsmen. Those perpetrating crimes in Oregon were pretty certain they could get away with it. If they got caught, they would be let out soon. If they skipped court, who was going after them? Furthermore, if the heat got turned up in Oregon, the skips went to surrounding states equally

secure in the knowledge they were safe from Oregon justice. Who was going to get them? Were Oregon counties, laboring under budgetary constraints and overcrowded jails, going to undertake the expense of tracking, locating, and extradition of such skips? Probably not. Let 'em stay in California.

The Washington bondsmen had done their research. They suggested consultants: The Romain Group. Dennis Bartlett went to Portland the following month to visit with the bondsmen, and with the firm's principals -- Paul and Danelle Romain. Based on this meeting and his own independent investigation showing that the Romain Group might just be the most effective lobbying organization in Oregon, Bartlett signed the Romain Group. Paul and Danelle Romain recommended an initial by-the-month contract to determine if the project was feasible, if the political environment was right for a reconsideration of commercial bail. If not, both sides would walk away early in the game. By the November 2008, it was clear, however, that there was a lot of support for the concept. Legislators involved with the criminal justice system invited ABC to produce legislation which Bartlett wrote and submitted through the Romains to the Oregon legislature's bill drafting shop.

In early 2009 ABC invited other sureties to join the effort during a meeting in Dallas. A strictly voluntary task force was formed to provide financial support and personnel to work the Oregon project. Dennis Bartlett coordinated the effort and made the first trip to Salem to meet with legislative members and testify on March 12, 2009 to the House Judiciary Committee, which had introduced a place holder bill. This was followed up by a number of meetings and working groups with all parties to be affected: state agencies, the courts, insurance department, sheriffs, DA's and even opponents of the bill such as the ACLU and the association of Oregon defense attorneys. Why opponents? They had dropped the ball, missed the hearing. Why let them in? Sooner or later they would have to be heard. We decided to invite them in early to openly debate the issues, agree when possible, and be frank about the matters in which we had differences. Early on also, Aladdin asked to join our effort. They had hired a lobbyist equally astute as the Romains by the name of Jim Gardner. We agreed only on the condition that they join us and not go counter to our agenda. This resulted in a big plus for ABC in that the working combination of the Romains and Gardner was a dream team.

We simply ran out of time in June 2009 to get the bill we wanted. But legislation was enacted, H 2682, which committed the Oregon legislature to studying the feasibility of reintroducing commercial bail into Oregon. In the course of the following year there have been countless meetings and working groups to sort out the issues, eliminate problems, and discover the discover the cost of current system to the public. Oregon's administrative office of the courts sorted through all this material and presented it on two occasions, thereby clarifying the status quo of the state's bail system. One of the main concerns expressed by public officials whose departments currently financially benefit from the status quo is: "Will the introduction of commercial bail eliminate our current revenue stream be it ever so modest?" One public official expressed it: "How much of your success can we tolerate?" ABC's answer? Commercial surety bail would not replace the current system, but only provided another tool for the courts to use where applicable. Forfeitures would more than offset losses.

Where are we now? A bill has been produced (LC 297). It will be prefiled in early December 2010. It will be sponsored by the joint house and senate judiciary committees. Opponents to the commercial bail have tried to posture the issue as an either or proposition: either commercial bail or the current system of OR, ten percent deposit bail, etc. The Senate Judiciary chair, Senator Floyd Prozanski, made clear to all attendees at the September 22 hearing that it definitely was not either/or. The only issue is: Should surety bail be added to the options judges can use in a pretrial release? Furthermore he asked. "Why would anybody have any objection to that?"

Bill Carmichael Joins ALEC's National Private Enterprise Board of Directors

Written by Bill Carmichael - American Legislative Exchange Council

In late July, 2010, I was honored to have been elected to join the American Legislative Exchange Council's (ALEC) National Private Enterprise Board of Directors. My colleague, Jerry Watson, has served in a similar capacity for the past 15 years and it is a tribute to his service that a member of our industry was asked to continue to serve. ALEC's unique ability to provide not only a forum for our industry to interact with leadership of State Legislatures but to allow for us to have a seat at the table and provide input on issues critical to our markets is unparalleled. My hope is for us to continue to prove our worth to the ALEC organization and to continue to herald the merits of our industry to every state legislator I am in contact with.

ALEC's 37th Annual Conference Re-Cap

Written by Melanie Ledgerwood - Accredited Surety and Casualty Company, Inc.

The 37th annual meeting of the American Legislative Exchange Council (ALEC) was held August 5-8, 2010 in beautiful San Diego, CA at the Manchester Grand Hyatt, just minutes from Seaport Village and cruises on the Bay, the Gaslamp Quarter, San Diego Zoo and the museums in Balboa Park. A wonderful time was had by all!

ALEC is the nation's largest nonpartisan, individual membership organization of state legislators whose mission is to advance the Jeffersonian principles of free market, limited government, federalism and individual liberty. Over 1,800 individuals attended the conference, to include 600 legislators. Workshops, working groups, subcommittee meetings and task force meetings provided a plethora of topics for conference attendees to choose from, along with approximately 60 exhibitors who were represented from all over the U.S. Jim Epperson, AT&T and ALEC Private Enterprise Board Chairman for 2010 along with Representative Tom Craddick (TX), ALEC National Chairman 2010, moderated each day's keynote sessions and introduced conference speakers, as well presiding over the award ceremonies. Governors Rick Perry from Texas and Joe Manchin from West Virginia gave keynote addresses along with Randall Stephenson, President and CEO of AT&T, Nathan Fletcher, State Assemblyman representing California's 75th district, Greg Babe, President and CEO of Bayer Corporation, John Fund, author and columnist with the Wall Street Journal, Scott Rasmussen, Founder and President, Rasmussen Reports and Lt. Governor Scott Angelle from Louisiana.

Governor Rick Perry received the Thomas Jefferson Freedom Award, ALEC's highest honor given to a current or former public official who has established an exemplary record of advancing the fundamental Jeffersonian principles. Awards were also given for Legislators of the Year, Private Sector Members of the Year, State Chairs of the Year and Volunteers of the Year.

A highlight of the conference was a private evening reception for ALEC attendees aboard the U.S.S. Midway, an aircraft carrier of the U.S. Navy that was the first to be commissioned after the end of WW II. Active in the Vietnam War and in Operation Desert Storm, the Midway was decommissioned on April 11, 1992 and is currently a museum ship.

ALEC received well-deserved recognition for promoting the Jeffersonian principles, which was commented on by many of the speakers . . .

"I applaud the role that ALEC plays in clarifying the essential elements of conservative thought and crystallizing them into the working legislative proposals that we see."
– Governor Rick Perry, TX

"The FCC is proposing to re-classify mobile broadband as a communication service under Title 2, which means for the first time ever, the FCC proposes to regulate the internet. I want to applaud ALEC for recognizing this and for drafting a resolution opposing this reclassification."
– Randall Stephenson, President and CEO, AT&T

"I have no doubt that the members of ALEC will take the information and exchange of ideas gathered at this conference and use it to achieve even better results in your respective states. On behalf of the mountain state, I wish you all the best."
– Governor Joe Manchin, WV

"I am honored to be a member of ALEC; it's a wonderful organization that helps us draw on your ideas and strengths, on successes in other states and it's also a great gathering of collaborative thinking."
– Nathan Fletcher, State Assemblyman, CA 75th District

"I am really honored to have this opportunity to speak to an organization that really has contributed so much over the last three decades to the ongoing debate about the proper role of government and the economic life of America."
– Greg Babe, President and CEO, Bayer Corporation

"I have been coming to ALEC meetings for many years because I meet the most interesting people, all of my sources for state and local government are here; but I have never been to an ALEC meeting where the excitement and optimism level is a high as this one."
– John Fund, author and columnist with the Wall Street Journal

Next year's conference will be held in August in New Orleans, Louisiana. Lt. Governor Scott Angelle invited conference attendees to be a part of the New Orleans's culture and to

experience the state's unique blend of southern living, spiked with Cajun flair, to their rich coastal marsh land and their love of life. All of this is best expressed in their Cajun phrase, "let the good times roll." Lt. Govenor Angelle also thanked ALEC members for inviting him to speak . . .

> *"I appreciate your public service and I'm honored to share my morning with folks who share my passion that a career in public service in America still has and affords us the opportunity to make a difference and to make sure we can improve lives for all of Americans."*

So mark your calendars now for next year's exciting conference in New Orleans where you will enjoy good food, entertainment and most importantly, networking with legislators and attendees from all over the country! See you then!

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The Pretrial Services Mindset: Low on Blood Sugar? High on Sentimentality?

Written by Dennis A. Bartlett - American Bail Coalition

The Pretrial Justice Institute has occasioned a handful of instances in which pretrial services (PTS) have made a comeback or new inroads. Those who support these initiatives see themselves as persons of superior sensibility, pure motives, and compassion: They envision the defendant as victim/national treasure, lament jail overcrowding and descry such medieval barbarisms as "for-profit" "vampire" bondsmen. The reality is that commercial bail has outperformed, and continues to outperform PTS as a pretrial release mechanism. We know it, the Department of Justice's Bureau of Justice Statistics knows it, academia knows it, and, furthermore, PJI, NAPSA and the ABA know it too. I have had people from NAPSA admit to me that commercial bail does it better, but "That's not the point!" What then is the point? NAPSA eyes mist over at the fantasy of a world in which PTS agencies replace commercial bail and financial conditions of release from sea to shining sea (Oh! Wouldn't it be wonderful?!). We and they all know that this is never going to happen. PTS has institutionalized unaccountability. But they insist on holding a candle to this ideal as aspirational, that is, the way things should be even if they never will be or never could be. (No wonder English author Dorothy Sayers says that the first thing principle does is kill somebody.)

Those privileged to have this vision vest themselves with a moral superiority which they lord over untermensch like, say, those mutant pretrial service officers – bail bondsmen. Thomas Aquinas has some advice for this kind of opacity. In the Summa Theologica he wrote that …"an idea to which no reality

corresponds is a vain notion" [ST, I, art.13, q. 4, ad 2.]. In other words, that which works is real; that which doesn't, is false. One distinguishes between beliefs that are true and those not true by performance. Those that are true, display repeatable observable results; those that don't are false. Whence this clinging to such a vain notion on the part of PTS advocates? There is a quip applicable to such idealists: "There are some ideas so stupid that only intellectuals embrace them." Let's find out why.

The history of the human spirit has shown differing attitudes towards reality, namely magic, metaphysics, idealism, and today's sentimental outlook. People, without realizing it, are influenced by the intellectual, emotional stamp impressed upon their epoch. It's in the air they breathe. They uncritically accept it as the norm. Sentimentality requires a steady diet of unreality, the myth of innocence, and most of all, victims. The person who suffers is invested with an inviolable moral and unquestionable authority. "I suffer therefore I'm right." This includes criminals, who have been betrayed by the "system", by the environment. Victimhood appeals to the privileged, to elitists. They too want such authority. They too aspire to be victims. The sacrament of victimhood: you believe that you are a victim, bingo, you become a victim. No objective evidence needed thank you. Ipso facto as victim, you are divested of responsibility, both moral and legal. Hence, the fact that commercial bail is the most efficient method of getting defendants back to court is irrelevant to pretrial service advocates. Why? "Because it's not about that". It's about PTS's primary goal -- to feel good about themselves. Doing the real job of bail is secondary. It's merely a carrier for the virus of self-congratulatory sentimentality.

How did we end up here? The ancient Greeks nudged civilization beyond magic and the gods of sylvan glades by discovering metaphysics, i.e. the analysis of things as they are. The traditional view of truth -- that truth is being, that which is (it is true because that's the way it is) -- lasted up to the high middle ages. St Thomas Aquinas' definition of the truth matched that of Aristotle's. And, also the majority of us subscribe to this notion of the truth. To us knuckle dragging non-philosophers, it's known as common sense.

Aristotle

Truth often is unpleasant. The traditional concept of truth started to erode as man tried to gain control over events. There were two disconnected stages in the intellectual revolution which challenged the ancient learning. Straddling the 17th and 18th centuries, an Italian named Giambattista Vico insisted that the only thing man really could know or could be sure of was that which he makes. Something is true because it was made. This concept of the truth is valid insofar as it goes, but carried to extremes, it meant that if you didn't make it, it isn't true. This is contrary to the traditional concept of truth that a thing is true simply because it is -- it doesn't matter who or what made it or how. This trend represents a crucial transformation in intellectual history because the true is no longer that which just is, but becomes something made, a product of manual skill and thus eventually becomes an historical artifact.

Descartes

Descartes challenged Vico's concept because that which man makes is contingent and changeable. Descartes said that we could never be sure of facts, especially historical facts. For Descartes the only certainty is pure formal intellectual certainty from which all uncertainties related to facts are purged. Furthermore, the only certainty is mathematical certainty which becomes the prototype of all rational thinking. In the second half of the 18th century there was a reaction to the focus on stark reason, a shift towards the feelings of innocence and perfectibility of man. Gee, man is really good. It's bad society

which corrupts him. To correct this, requires social engineering on a massive comprehensive scale across a cradle to grave spectrum.

Hence, among the glitterati, sentiment became the only font of true knowledge. In addition, history swamped the other branches of knowledge to the point where both philosophy and theology became only historical artifacts. Indeed Marx's study of economics was based on history. Hence the world of man became a process constantly moving forward towards perfection and only knowable insofar as it was made by man himself.

For Marx, truth is not that which is, but that which must be made. Philosophy had shifted from contemplating the world as it is to that of changing it. This is the reason behind the Marxist Communist and modern devotion to reality in so far as it is capable of being shaped. This is why they always bank on the future, on aspirations of what should be rather than what is. Despite the fact that communism ignominiously collapsed almost two decades ago, there is a kind of post communist sentimental tristesse among certain ideologues who still believe that truth is that which is still to be accomplished -- like the pipe dream of a sweeping vast ganglia of PTS synapses spread across the land, responsive to a central NAPSA brain. These people are the epistemological tail trying to wag the dog of reality. In other words, for the NAPSA mindset, truth has been turned on its head from the world as it is into something not yet in existence, which may never be in existence, but would be a good thing if it ever happened which most likely it will not.

The antidote for such an abscessed vision is simple: just the acceptance of the facts, Mam'. No need for NAPSA to have a retread session on Aristotelian-Thomistic metaphysics at their next federally funded annual meeting. But will NAPSA ever come around? Will its devotees give up on these pitiful fantasies, what Teilhard de Chardin calls "dingy millenairisms". If you think so, try to visualize whirled peas!

Having pithed the NAPSA frog, let us not forget that the vast majority those who slave in the pretrial community are decent worker bees who are trying to do a good job not only for their charges, but for the sake of public safety as well. Peter Drucker in his classic Management bespeaks of the widow maker job – one doomed to failure regardless of how talented the one doing it. He could have used PTS as a case history.