THE BONDSMAN'S RIGHT TO ARREST

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An odd byway of arrest law which arouses the curiosity of the professional law enforcement officer is the right of a bondsman to arrest a person who has been admitted to bail pending trial. The reason it stirs his interest is plain for in the words of the Supreme Court of the United States:[i]

> "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference, unless by clear and unquestioned authority of law."

To find the origin and nature of the bondsman's right to arrest under authority of law, we must go back, as in so many other aspects of arrest law, to the Common Law of England.[ii]

Purpose of Bail

The principle of bail is basic to our system of justice and its practice, as old as English law itself. When the administration of criminal justice was in its infancy, arrest for serious crime meant imprisonment without preliminary hearing and long periods of time could occur between apprehension and the arrival of the King's Justices to hold court. It was therefore a matter of utmost importance to a person under arrest to be able to obtain a provisional release from custody until his case was called. This was also the desideratum of the medieval sheriff, the local representative of the Crown in criminal matters, who wore many hats including that of bailing officer. He preferred the conditional release of persons under arrest to their imprisonment for several reasons. For example, it was less costly and troublesome; the jails were easy to breach and under then existing law the jailer was hanged if a prisoner escaped;[iii] the jails were dangerous to health and, as there was no provision for adequate food, many prisoners perished before trial was held.[iv] Influenced by factors such as these, the sheriff was inclined to discharge himself of responsibility for persons awaiting trial by handing them into the personal custody of their friends and relatives. Indeed, in its strict sense, the word "bail" is used to describe the person who agrees to act as surety for the accused on his release from jail and becomes responsible for his later appearance in court at the time designated.[v] As surety, the bail was liable under the law for any default in the accused's appearance.

Between the 13th and 15th centuries the sheriff's power to admit to bail was gradually vested, by a series of statutes, in the justices of the peace. In the case of a person committed for a felony, the justices of the peace had authority to require, if they thought fit, his remaining in jail until the trial took place; but, on the other hand, a person committed for trial in a misdemeanor case could, at common law, insist on being released on bail if he found sufficient sureties.[vi] Writing in the mid-1700's, Blackstone described the arrest-bail procedure of his day in the following passage;[vii]

> "When a delinquent is arrested...he ought regularly to be carried before a justice of the peace...If upon...inquiry it manifestly appears that either be committed to prison or give bail; that is, put in securities for his appearance to answer the charge against him. This commitment, therefore, being only for safe custody, wherever bail will answer the same intention it ought to be taken...(B)ail is...a delivery or bailment of a person to his sureties, upon their giving (together with himself) sufficient security for his appearance; he being supposed to continue in their friendly custody, instead of going to gaol."

The notion of bail pending trial has not changed over the centuries. for instance, Mr. Justice Robert II. Jackson of the Supreme Court in discussing its purpose said:[viii]

> "The practice of admission to bail, as it evolved in Anglo-American law, is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. On the contrary, the spirit of the procedure is to enable them to stay out of jail until a trial has found them guilty. Without this conditional privilege, even those wrongfully accused are punished by a period of

> imprisonment while awaiting trial and are handicapped in consulting counsel, searching for evidence and witnesses, and preparing a defense....Admission to bail always involves a risk that the accused will take flight. That is a calculated risk which the law takes as the price of our system of justice."

The possibility that the accused may flee or hide must, of course, be squared with the traditional right to freedom pending trial. In order to reconcile these conflicting interests, therefore, his release on bail is conditioned upon his giving reasonable assurance in one form or another that he will appear at a certain time to stand trial. In this regard, the Supreme Court has remarked:[ix]

> "Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as an additional assurance of the presence of the accused."

Modern statutes, which regulate bail procedure in detail today and vary from jurisdiction to jurisdiction provided that an accused may be set at liberty pending trial in several ways.[x] For example, he may be released without security by agreeing in writing to appear at a specified time and place, i.e., "on his own recognizance:[xi]; or he may execute a bond with a deposit of cash or securities in an amount equal to or less than the face amount of the bond; or he may execute a bail bond which requires one or more sureties.

The Bail Bond

A bail bond, with sureties, is essentially a contract between the government on the one side and the accused and his sureties on the other. Under the contract the accused is released into the custody of the sureties on their promise to pay the government a stated sum of money if the accused fails to appear before the court in accordance with its terms.

Historically, the contract of bail, traced to a gradual increase of faith **in** the honor of a hostage and the consequent relaxation of actual imprisonment, **constitutes one of the first appearances of the concept of contract in our law**.[xii] The early contract of bail differed from the modern bail bond in its mode of execution as it was simply a solemn admission of liability by the sureties made in the presence of an officer authorized to take it. No signature of the bail was required, and it was not necessary for the person bailed to bind himself as a party. The undertaking to forfeit a particular sum in a written bail bond came later in the course of time.[xiii]

The purpose of a bail bond with sureties is to insure that the accused will appear in court at a given time by requiring others to assume responsibility for him on penalty of forfeiture of their property. In times past, especially, when the sureties were friends and relatives of the accused, it was assumed that due to this personal relationship the threat of forfeiture of the surety's property would serve as an effective deterrent to the accused's temptation to break the conditions of the bond by flight. On the other hand, it

was assumed that this threat would also inspire the surety to keep close watch on the accused to prevent his absconding.

On a bail bond, the accused and the sureties are the obligors, the accused being the principal, and the government is the obligee. In the event the conditions of the bail bond are satisfied, the obligation is void: The accused and his sureties are exonerated; and any cash or other securities deposited are returned to them. If there is a breach of the bail bond's conditions, however, the obligation remains in full force, and the accused and his sureties are liable to the government for the sum stated. A forfeiture of the bond will be declared on default; but in the interests of justice the forfeiture may be set aside or, if entered, its execution may be stated or the penalty remitted. For example, the surrender of the principal after forfeiture does not discharge the surety but nevertheless the court may receive the surrender and remit the penalty in whole or in part.

As in the past, the sureties on a bail bond in England are still the friends and relatives of the accused. Consequently the relationship between them remains personal and the accused's natural sense of moral obligation to satisfy the conditions of the bond is strong. As a result the English experience has been, on the whole, that very few persons admitted to bail fail to appear for trial. In the United States, however, this close relationship has generally yielded to a distant impersonal connection and the moral obligation has become in the main a financial one. More often than not the sureties on a bail bond are surety companies and professional bail bondsmen who operate on a broad scale and charge fees for their services which may not only be large but also irretrievable regardless of whether the accused appears.

Under the traditional view taken in England, bail is not a mere contract of suretyship and the accused is not allowed to indemnify the bail.[xiv] In fact is has been held that any arrangement between the accused and his sureties to the effect that he will indemnify them if he absconds is to contrary to public policy that it is void as an agreement and, moreover, is indictable as a conspiracy to pervert the course of justice.[xv] This view contrasts with that taken in the United States where an express agreement by the principal to indemnify the surety on forfeiture of a bail bond is not so regarded. Thus, in a Supreme Court case, where the argument was made that it was contrary to public policy to authorize a principal to contract to indemnify his surety in a criminal case since it would destroy the effective safeguards provided by the interested watchfulness of the bail, Mr. Justice Oliver Wendell Holmes stated:[xvi]

> "The ground for declaring the contract invalid rests rather on tradition than on substantial realties of the present day. It is said that...nothing should be done to diminish the interest of the bail in producing the body of his principal. But bail no longer is the 'mundium,' although *a trace of the old relation remains in the right to arrest.* The distinction between bail and suretyship is pretty nearly forgotten. The interest to produce the body of the principal in court is impersonal and wholly pecuniary. If, as in this case, the bond was for $40,000, that sum was the measure of the interest on anybody's part, and it did not matter to the Government what person ultimately felt the loss, so long as it had the obligation it was content to take." (Emphasis added.)

Despite the tenor of the foregoing passage, courts still stress the need for a moral as well as financial assurance of the accused's appearance in court. For example, in a case where the bail offered was a certified check from an individual, the Federal Court of Appeals for the Second Circuit in requiring disclosure of the source of funds on which the check was drawn declared:[xvii]

> "The giving of security is not the full measure of the bail's obligation. It is not the sum of the bail bond that society asks for, but rather the presence of the defendant....If the court lacks confidence in the surety's purpose or ability to secure the appearance of a bailed defendant, it may refuse its approval of a bond even though the financial standing of the bail is beyond questions."

Origin, Basis, and Scope of Right To Arrest

What is the origin and basis in the law for the bondsman's right to arrest a person admitted to bail pending trial--in Mr. Justice Holmes' phrase this "trace of the old relation" between accused and surety which still remains? It is bottomed on the common law principle that the accused is transferred to the friendly custody of his sureties and is at liberty only by their permission.

At the time of the Norman Conquest of England, the sureties for the accused were compared to his jailers and were said to be "the Duke's living prison."[xviii] This relationship between them has been described in the cases since those days in like picturesque language. For example, it has been said: "(T)he principal is, in the theory of the law, committed to the custody of the sureties as to jailers of his own choosing";[xix] "The bail have their principal on a string, and may pull the string whenever they please."[xx] Thus, **in legal contemplation, when the accused is released on bail, his body is deemed to be delivered to his sureties.** The contract of bail "like debt as dealt with by the Roman law of the Twelve Tables...looked to the boy of the contracting party as the ultimate satisfaction."[xxi]

In early times, bail implied a stringent degree of custodial responsibility[xxii] and the sanction of the law for any failure on the part of the sureties was harsh. When the accused was released on bail he and his sureties were said to be bound "body for body." As late as the 14th century an English judge, after noting that bail were the accused's keepers, declared that it had been maintained that if the accused escaped, the bail would be hanged in his place.[xxiii] But, on the other hand, it seems that during the previous century sureties who failed to produce their man in court got off with a fine, all their chattels theoretically being at the King's mercy. In a modern case the responsibility of the sureties has been described as follows: "If the defendant had been placed in jail, he could at any time on the call of the case have been brought into court for trial. The bondsmen are as the four walls of the jail, and 'in order to fully discharge their obligations they are obliged to secure their principal's presence and put him as much in the power of the court as if he were in the custody of the proper officer.'"[xxiv] As to the modern sanction of the law, of course, if the accused flees and fails to appear in court at the required time, the bail bond is forfeited and the surety is absolutely liable to the government as a debtor for the full amount of the penalty.

With such a stern responsibility of safekeeping to insure that the accused answered the call of the court, it followed in reason that the law would afford the means to carry it out, as the practical common law did, by recognizing a right of arrest in the bondsman. Although the right arises from the theory of the sureties; custody--i.e., the principal is "so far placed in their power that they may at any time arrest him upon the recognizance and surrender him to the court"[xxv] for exoneration -- it also bears a resemblance to the right of arrest which existed under the medieval frank-pledge system of law enforcement. That system, designed to keep the King's Peace, was one of mutual suretyship with each man responsible for the good conduct of the other nine members of his tithing, and with each having the duty to aid in the capturing of fugitives from justice. The resemblance is close, for up to the early decades of the 13th century prisoners were often handed over to a tithing, and sometimes a whole township was made responsible for their appearance before the court.[xxvi]

The scope of the bondsman's right to arrest the accused, based on the metaphysical link that binds them, was viewed by the Supreme Court of the United States in the course of its opinion in the interesting case of *Taylor v. Taintor.*[xxvii] In this case, which will be discussed below, the Court said:[xxviii]

> "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." *(*Emphasis added*.)*

As to the above mentioned right of a surety to arrest by means of an agent, it has been held[xxix] that the surety, in the absence of statutory limitations, may deputize others of suitable age and discretion to take the prisoner into custody, but the latter authority may not be delegated. Where a statute provides the manner in which the power of arrest may be delegated by the bail bondsman, that provision must be followed or the rearrest is invalid. In some jurisdictions, a statute provides for an arrest by the sheriff on a direction of the bail endorsed on a certified copy of the recognizance. Where the surety on a bail bond procures the rearrest of his principal by a sheriff, or other peace officer, it is the general rule that the officer is empowered to make the arrest as an agent of the surety and not as an officer "per se." Where a statue prescribes the formalities to be followed before an arrest may be made by a peace officer as agent of a surety, compliance with the statue is necessary for a lawful arrest.

As to the above mentioned right of a surety to pursue his principal into another State, it has been held[xxx] that, just as the surety can arrest and surrender the principal without resort to legal process when the latter remains within the jurisdiction, he can pursue him into another State to arrest him, detain him, and return him to the State whence he fled and where the bail bond was executed, and his presence is required. A

surety has the right at any time to discharge himself from liability by surrendering the principal before the bail bond is forfeited and can arrest him for that purpose. **His right to seize and surrender the principal is an original right**, not a right derived through the State, which arises from the undertaking in the bail bond and the relationship between the principal and bail. It is a **private right and not a matter of criminal procedure**; **jurisdiction does not enter into the question**; and there is no obstacle to its exercise wherever the surety finds the principal. The surety's right in such a case differs from that of a State which desires to reclaim a fugitive from its justice in another jurisdiction. In default of a voluntary return, the State can remove a defendant from another State only by the process of extradition and must proceed by way of extradition which can only be exercised by a government.

The case of *Taylor v. Taintor*[xxxi], noted above, which was decided by the Court in 1873, dealt with the problems raised by the interstate travel of the principal on a bail bond and the liabilities of the surety in that regard. The holding of the Court was that where a principal was allowed by his bail to go into another State, and while there, was delivered upon a requisition from a third State upon a criminal charge committed in that State, such proceedings did not exonerate the bail.

The case arose in the following manner: A man named McGuire was charged, by information, with the crime of grand larceny in Connecticut and arrested upon a bench warrant. The court fixed the amount of bail to be given at $8,000. McGuire was released from custody on a bail bond in that sum, with two sureties, conditioned that he appear before the court on a set day the following month. After his release on bond, McGuire went to New York where he lived. While he was there, however, he was seized by New York officers upon the strength of a requisition made upon the Governor of New York by the Governor of Maine charging McGuire with a burglary, alleged to have been committed by him in the latter State before the Connecticut bail bond was taken. Subsequently, McGuire was delivered to Maine officers who removed him against his will to that State where he was later tried and convicted on the burglary charge.

When, due to the New York arrest and removal, McGuire failed to appear before the Connecticut court on the appointed day, his bail bond was forfeited. Neither of his sureties knew when they entered on the bond that there was any criminal charge against McGuire other than the Connecticut grand larceny. The treasurer of the State of Connecticut successfully sued to recover the amount of the obligation of the bail bond and the State high court, and ultimately the Supreme Court of the United States, affirmed the judgment.

In their effort to resist the forfeiture, the sureties contended that it was impossible for them to produce McGuire before the Connecticut court pursuant to the condition of the bail bond since he had been arrested in New York and removed to Maine by force of the Constitution of the United States and the interstate rendition laws enacted by Congress. To this contention the Supreme Court replied that the failure of McGuire to appear was caused by the supineness and neglect of the sureties, not the Constitution and laws of the United States, and held, accordingly, that they were not entitled to exoneration.

In reaching this conclusion, the Court declared at the outset that according to settled law the sureties will be exonerated when the performance of the condition of a bail bond is rendered impossible by the act of God, the act of the obligee, or the act of the law. On the other hand, it is equally settled that if the impossibility is created by the sureties, the rights of the State are in no way affected.

As to exoneration by "the act of the law," the Court explained, the sureties will be exonerated if the principal is arrested in the State where the obligation is given and is sent out of that State by the Governor upon the requisition of the Governor of another State. In so doing, the Governor represents the sovereignty of the State; the State can no longer require the principal's appearance before the court; and the obligation it has taken to secure his appearance loses its binding effect. But if the principal is imprisoned in another State for the violation of a criminal law of that State, the principal and his sureties will not be protected. The law which renders the performance impossible, and therefore excuses failure, must be a law operative in the State where the obligation was assumed and which is obligatory in its effect upon her authorities. The Court stated that where a demand is properly made by the Governor of one State upon the Governor of another, the duty to surrender a fugitive is not absolute and unqualified. It depends upon the circumstances of the case. If the laws of the latter State have been put in force against the fugitive, and he is imprisoned there, the demands of those laws may first be satisfied. The Court noted that bail may doubtless permit the principal to go beyond the limits of the State within which he is to answer. But it is unwise and imprudent to do so because if any evil ensues, the bail must bear the burden of the consequences and cannot case them upon the State.

After laying out the foregoing principles, the Court declared that the sureties in this case were not entitled to be exonerated because:

1. When the Connecticut bail bond was forfeited for the non-appearance of McGuire, the action of the Governor of New York, pursuant to the requisition of the Governor of Maine, had spent its force and had come to an end. McGuire was then held in custody under the law of Maine to answer to a criminal charge pending there against him, a fact which, as explained above, cannot avail the sureties.

2. If McGuire had remained in Connecticut, he would probably not have been delivered over to the Maine authorities, and would not have been disabled to fulfill the condition of his obligation. If the demand had been made upon the Governor of Connecticut, he might properly have declined to comply until the criminal justice of his own State had been satisfied. It is not to be doubted that he would have exercised this right, but had he failed to do so, the obligation of the bail bond would have been released. But here, the sureties were at fault for McGuire's departure from Connecticut, and they must take the consequences. Indeed, their fault reached further for, having permitted McGuire to go to New York, it was their duty to be aware of his arrest when it occurred, and to interpose their claim to his custody.

3. When McGuire was arrested in New York the original imprisonment under the Connecticut information was continued. The bail had a right to seize him wherever they could find him. The prosecution in Connecticut was still pending and its court's jurisdiction could not be suspended by any other tribunal. Though he was beyond the jurisdiction of Connecticut, McGuire was still, through his bail, in the hands of the law of that State and held to answer for the offense with which he was charged. Had the facts been made known to the Governor of New York by the sureties at the proper time, it is to be presumed that he would have ordered McGuire to be delivered to them and not to the authorities of Maine.

4. The act of the Governor of New York in making the surrender was not "the act of the law" within the legal meaning of those terms. In the view of the law, it was the act of McGuire himself. He violated the law of Maine, and thus put in motion the machinery provided to bring him within the reach of the punishment for his offense. But for this, such machinery, so far as he was concerned, would have remained dormant. McGuire cannot be allowed to avail himself of an impossibility of performance thus created. What will not avail him cannot avail his sureties. His contract is identical with theirs. They undertook for him what he undertook for himself.

5. The constitutional provision and the law of Congress, under which the arrest and delivery of McGuire to Maine were made, are obligatory upon every State and are a part of the law of every State. Every Governor, however, acts separately and independently for himself. In the event of refusal, the State making the demand must submit. There is no alternative. But in McGuire's case no impediment appeared to the Governor of New York, and he properly yielded obedience. The Governor of Connecticut, if applied to, might have rightfully postponed compliance. If advised in season he might have intervened and by a requisition have asserted the claim of Connecticut. It would then have been for the Governor of New York to decide between the conflicting demands.

The court concluded by noting that the State of Connecticut was not in any sense a party to what was done in New York and that if McGuire had been held in custody in New York at the time fixed for his appearance in Connecticut, it would not in any way have affected the obligation of the bail bond.

Statutes Declaratory of Common Law Right

Modern statutes provide for the right of a surety to arrest an accused released on a bail bond, thus preserving by legislation the authority first granted by the medieval common law. Under the Federal statute declaratory of this right,[xxxii] any accused charged with a criminal offense who is released on a bail bond with sureties may be arrested by the surety, delivered to the U.S. marshall, and brought before any judge or officer empowered to commit for such offense. At the request of the surety, such judicial officers may recommit the accused to the custody of the marshal and endorse on the bond the discharge and exoneretur of the surety. Thereafter the accused may be held in custody until discharged in due course of law.

In regard to the bondsman's ancient right to arrest, it is noted that when the State of Illinois enacted new bail Statutes in 1963, aimed at rectifying abuses of the professional bail bondsman system and reducing the cost of liberty to accused persons awaiting trial, the primary argument advanced in favor of retaining the system was that the bondsman would, at his own expense, track down and recapture a defendant who jumped bail. The Illinois Legislature, however, found that this argument had only tenuous support as its "Committee Comments" included the following statement:[xxxiii]

> "As to the value of bondsmen being responsible for the appearance of accused and tracking him down and returning him at the bondsman's expense--the facts do not support this as an important factor. While such is accomplished occasionally without expense to the county, the great majority of bail jumpers are apprehended by the police of this and other states...."

Bail Jumping Statutes

The penalties of the common law designed to insure the appearance in court of an accused out on bail and to deter him from absconding were limited to forfeiture of the bail bond and contempt of court.[xxxiv] These traditional sanctions, however, have been supplemented and bolstered in some jurisdictions through the power of the criminal law by legislative enactment of so-called bail jumping statutes.[xxxv] Under these laws the accused is subjected to the criminal punishments of fine and imprisonment for breaching the conditions of his release by willful failure to appear. Such Statutes are of comparatively recent vintage. For example, the New York law, said to be the first in the country, was passed in 1928; and the Federal statute was enacted in 1954.[xxxvi] The purpose of these penal laws is to improve the administration of justice by creating a personal deterrent to the flight of those who may prefer to forfeit bail; for example, those who desire to purchase their freedom for the price of the bail bond, or those who feel no financial deterrent as they expect the ultimate loss to fall on impersonal sureties.

Under these statutes aimed at the bail jumper the general elements are: That a person has been admitted to bail; that he willfully failed to appear as required; that the forfeiture of his bail has been incurred by reason of his failure to appear; and that he did not appear and surrender himself within the specified period after the forfeiture. The offense may be a felony or misdemeanor in grade depending upon that of the original offense for which the bail was given. Thus, **the Federal statue provides that anyone released on bond who willfully fails to appear as required shall incur a forfeiture of any security given or pledged for his release**. In addition, if he was released in connection with a charge of felony, he shall be fined not more than $5,000 or imprisoned not more than 5 years or both. If he was released in connection with a charge of misdemeanor, he shall be fined not more than the maximum provided for such misdemeanor or imprisoned for not more than 1 year, or both.

Conclusion

Since the flight of the accused condemned by the bail jumping statutes is a criminal offense, the offender is subject to arrest by the professional law enforcement officer just like any other person who violates the penal code of the jurisdiction. But whether the arrest of a person released on bail, who willfully fails to appear in court when required, is made by an officer of the law pursuant to the provisions of the foregoing type of criminal statute, or under the traditional command of the court, or is effected by a bondsman under his ancient right of arrest at common law, the apprehension of the absconded serves the same vital end. Like any proper arrest, it is the initial essential step in the administration of justice ultimately "intended to vindicate society's interest in having its laws obeyed."[xxxvii]

[i] Union Pac. R. Co. v. Botsford, 141 U.S. 250, 251 (1891).
[ii] See Stephen, A History of the Criminal Law of England, 233-234; Orfield, Criminal Procedure from Arrest to Appeal, 101-134; R C.J.S., Reil, 87; 8 Am. Jur. 2nd, Bail and Recognizance, 114-119; 3 A.L.R. 186, 73 A.L.R. 1370.
[iii] Holmes, The Common Law, 249-250.
[iv] Kenny's Outlines of Criminal Law (18th ed.). 571.
[v] The term "bail has other meanings. For example, it is used to refer to the security of obligation given or assumed by the surety and, as a verb, to signify the delivery of an arrested person to his sureties. See 8 C.J.S., Bail, 1.
[vi] Kenny, supra, 119.
[vii] 4 Blackstone, Com. (1769) 296.
[viii] Stack v. Boyle, 342 U.S. 1, 7-8 (1951).
[ix] Stack v. Boyle, supra, 5 (1951).
[x] See, for illustration. Rule 46, Federal Rules of Criminal Procedure and 18 U.S.C. 31-46
[xi] The words "recognizance" and "bail bond" are not synonymous in the law but they are often used interchangeable as they both constitute obligations with the same purpose, i.e., the accused's appearance in court is the condition of nonforfeiture.
[xii] Holmes, supra, 219-250.
[xiii] 2 Pollock & M., History of English Law, 587-588.
[xiv] See Orfield, supra; Kenny, supra, 571-572.
[xv] Kenny, supra, 571-572.
[xvi] Leary v. United States, 221 U.S. 567, 575-576 (1912).
[xvii] United States v. Nebbia, 357 F. 2d 303, 301 (1966)
[xviii] Pollock & M., supra, 587.
[xix] Reese v. United States, 9 Wall. (U.S.) 13, 21 (1870).
[xx] See Taylor v. Taintor, 16 Wall. (U.S.) 366, 372, (1873), quoting old English decision.
[xxi] Holmes, supra, 219-250.
[xxii] 2 Pollock & M., supra, 587.
[xxiii] Holmes, supra, 219-250.
[xxiv] Roberts v. State, 32 Ca. App. 339, 311 (1924).
[xxv] Reese v. United States, supra, 21.
[xxvi] 2 Pollock & M., supra, 587-588.
[xxvii] Taylor v. Taintor, 16 Wall. (U.S.) 366 (1873).
[xxviii] Id., 371-372.
[xxix] See 8 Am. Jur. 2d, Bail and Recognizance, 115; Anno: 3 A.L.R. 186; 8 C.J.S., Bail, 87 c.
[xxx] Fitzpatrick v.Williams, 46 F. 2d 40 (1931).
[xxxi] See supra, footnote 20.
[xxxii] 18 U.S.C. 3112.
[xxxiii] See Note No. 3 to dissenting opinion of Mr. Justice Douglas in Schilb v. Kuebel, 30 L. Ed. 2d 502, (1971).
[xxxiv] See 18 U.S.C. 3151; Brown v. United States, 110 F. 2d 212 (1969); United States v.Green 241 F. 2d 631 (1957).
[xxxv] See Orfield, supra; 8 C.J.S., Bail. 51(2).
[xxxvi] See 18 U.S.C. 3150; 18 U.S.C. 3116.
[xxxvii] Terry v. Ohio, 392 U.S. 1, 26 (1968).