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The Bounty Hunter's Pursuit of Justice

by Alex Tabarrok

When felony defendants jump bail, bounty hunters spring into action. It's a uniquely American system, and it works.

Andrew Luster had it all: a multimillion-dollar trust fund, good looks, and a bachelor pad just off the beach in Mussel Shoals, California. Luster, the great-grandson of cosmetics legend Max Factor, spent his days surfing and his nights cruising the clubs. His life would have been sad but unremarkable if he had not had a fetish for sex with unconscious women. When one woman alleged rape, Luster claimed mutual consent, but the videotapes the police discovered when they searched his home told a different story. Eventually, more than 10 women came forward, and he was convicted of 20 counts of rape and sentenced to 124 years in prison. There was only one problem. Luster could not be found.

Shortly before he was expected to take the stand, Luster withdrew funds from his brokerage accounts, found a caretaker for his dog, and skipped town on a \$1 million bail bond. The FBI put Luster on its most-wanted list, but months passed with no results. In the end, the authorities did not find him. But Luster was brought to justice—by a dog (or at least a man who goes by that name). Duane Chapman, star of the A&E reality TV show *Dog: The Bounty Hunter*, tracked Luster for months. He picked up clues to Luster's whereabouts from old phone bills and from Luster's mother, who inadvertently revealed that her son spoke fluent Spanish. He also gleaned useful information from a mysterious Mr. X who taunted him by e-mail and who may have been Luster himself. Finally, a tip from someone who had seen Dog on television brought Chapman to a small town in Mexico known for its great surfing. Days later, he and his team spotted Luster at a taco stand, apprehended him, and turned him over to the local police.

Most people don't realize how many fugitives from the law there are. About one-quarter of all felony defendants fail to show up on the day of their trial. Some of these absences are due to forgetfulness, hospitalization, or even imprisonment on another charge. But like Luster, many felony defendants skip court with willful intent. The police are charged with recapturing these fugitives, but some of them are chased by an even more tireless pursuer, the bounty hunter.

Bounty hunters and bail bondsmen play an important but unsung role in a legal system whose court dockets are too crowded to provide swift justice. When a suspect is arrested, a judge must make a decision: set the suspect free on his own recognizance until the court is ready to proceed, hold the suspect in jail, or release the accused on the condition that he post a bail bond. A bond is a promise backed by incentive. If the suspect shows up on the trial date, he gets his money back; but if he fails to show, the money is forfeited. We don't want to deprive the innocent of their liberty, but we also don't want to give the guilty too much of a head start on

their escape. Bail bonds don't solve this problem completely, but they do give judges an additional tool to help them navigate the dilemma.

Bail might be a rich man's privilege were it not for the bail bondsman. (Many bondsmen are women, but "bondsperson" doesn't have quite the same ring, so I'll use the standard terminology.) In return for a non-refundable fee, usually around 10 percent of the bond, a bondsman will put up his own money with the court. A typical bond might run \$6,000. If the defendant shows up, the bondsman earns \$600. But if the defendant flees, the bondsman potentially can forfeit \$6,000. Potentially, because when a fugitive fails to appear, the court gives the bondsman a notice that essentially says, "Bring your charge to justice soon or your money is mine." A bondsman typically has 90 to 180 days to bring a fugitive back to justice, so when a defendant jumps bail, the bondsman lets the dogs loose.

Actually, that last image suggesting a massive manhunt is misleading. Bail bond firms are often small, family-run businesses—the wife writes the bonds and the husband, the "bounty hunter," searches for clients who fail to show up in court. Although a bondsman never knows when a desperate client might turn violent, his job is usually routine, as I found out when Dennis Sew volunteered to show me the ropes. Dennis has been in the business for more than 20 years and in 2009 was named agent of the year by the Professional Bail Agents of the United States. Nevertheless, I was apprehensive as I drove to Baltimore early one morning to try my hand at bounty hunting.

When Dennis and I meet, he hands me a photo showing our first fugitive of the day. I'll be honest. I was expecting to see a young African-American male. What can I say? It's Baltimore and I've seen every episode of *The Wire*. But I'm surprised. Taken a few years ago in better times, the picture shows an attractive young woman, perhaps at her prom. She has long blond hair and bright eyes. She is smiling.

We drive to the house where a tip has placed her. It's a middle-class home in a nice suburb. Children's toys are strewn about the garden. I'm accompanied by Dennis and two of his coworkers—a former police officer and a former sheriff's deputy. One of them takes the back while Dennis knocks. A woman still in her nightclothes answers. She does not seem surprised to have four men knocking at her door this early in the morning. She volunteers that we can search the house, and eventually we get the whole story from her.

"Chrissy," our fugitive, is the woman's niece. Chrissy was at the house two days before and may return. The once attractive young woman has had her life ruined by drugs. Or she has ruined her life with drugs—sometimes it's hard to tell. She is now a heroin addict whose boyfriend regularly beats her. The aunt is momentarily shocked when we show her the photo. No, she doesn't look like that anymore—her hair is brown, her face is covered with scabs and usually bruised, and she weighs maybe 85 pounds. "Be gentle with her," the aunt says, even though, she predicts, "she will probably fight."

The aunt gives us another location to scout: a parking lot where Chrissy and her mother are supposedly living out of a car. We are about to leave when the aunt thanks us for being quiet, because there's a child in the house who was scared the last time the police came by. The child is Chrissy's son. We drive to the location and look for the car. Dennis and his deputies see what looks like the vehicle and knock on one of the dirty windows, peering intently into the interior. The car is empty. Dennis and his deputies will return later.

What it takes to be a successful bounty hunter is mostly persistence and politeness. On most days your leads don't pay off, so you need to visit and revisit the fugitive's home, work, and favorite hangouts. Waiting is a big part of the game. Why politeness? Well, where do the leads come from? From people like Chrissy's aunt—relatives and friends who might not talk to the police but who will respond to a kind word. Bounty hunters are

polite even to the fugitives who, after all, are also their customers, and sadly, bounty hunters rely a lot on repeat business. One customer of a firm owned by the same family that runs the one Dennis works for told him proudly, "My family and I have been coming to Frank's Bail Bonds for three generations."

Most fugitives don't fight, and Dennis is eager to avoid confrontation. Cowboys don't last long in this business. Most bounty hunters have a working relationship with police officers and will sometimes call on them to make the arrest once a fugitive has been located.

A bounty hunter also benefits from being prepared. A typical application for a bond, for example, requires information about the defendant's residence, employer, former employer, spouse, children (along with their names and schools), spouse's employer, mother, father, automobile (including description, tags, and financing), union membership, previous arrests, and so forth. In addition, bond dealers need access to all kinds of public and private databases. Noted bounty hunter Bob Burton says that a list of friends who work at the telephone, gas, or electric utility, the post office, welfare agencies, and in law enforcement is a major asset. Today, familiarity with the Internet and computer databases is a must.

Good bond dealers master the tricks of their trade. The first three digits of a Social Security number, for example, indicate the state where the number was issued. This information can suggest that an applicant might be lying if he claims to have been born elsewhere, and it may provide a clue about where a skipped defendant has family or friends.

If at all possible, bail bondsmen get a friend or family member to cosign the bond. The reason is simple. A defendant whose bond is cosigned is less likely to flee. As Dennis told me, "In my line of work, I deal with some mean people, people who aren't afraid of me or the police. But even the mean ones are afraid of their mom, so if I can get Mom to list her house as collateral, I know the defendant is much more likely to show up when he is supposed to." A defendant whose bond is cosigned is also more likely to be caught if he does flee, because the bondsman will remind the cosigner that if the fugitive can't be found, it's not just the bondsman who will be left holding the bag.

Bounty hunters have robust rights to arrest fugitives. They can, for example, lawfully break into a suspect's home without a warrant, pursue and recover fugitives across state lines without necessity of extradition proceedings, and search and seize without the constraint of the Fourth Amendment's "reasonableness" requirement. Just like everyone else, however, bounty hunters must obey the criminal statutes. A bounty hunter who uses unreasonable force or mistakenly enters the home of someone who is not a bail jumper is subject to criminal prosecution.

The prerogatives of bounty hunters flow from the historical evolution of bail. Bail began in medieval England as a progressive measure to help defendants get out of jail while they waited, sometimes for many months, for a roving judge to show up to conduct a trial. If the local sheriff knew the accused, he might release him on the defendant's promise to return for the hearing. More often, however, the sheriff would release the accused to the custody of a surety, usually a brother or friend, who guaranteed that the defendant would present himself when the time came. So, in the common law, custody of the accused was never relinquished but instead was transferred to the surety—the brother became the keeper—which explains the origin of the strong rights bail bondsmen have to pursue and capture escaped defendants. Initially, the surety's guarantee to the sheriff was simple: If the accused failed to show, the surety would take his place and be judged as if he were the offender.

The English system provided lots of incentives for sureties to make certain that the accused showed up for trial, but not a lot of incentive to be a surety. The risk to sureties was lessened when courts began to accept pledges

of cash rather than of one's person, but the system was not perfected until personal surety was slowly replaced by a commercial surety system in the United States. That system put incentives on both sides of the equation. Bondsmen had an incentive both to bail defendants out of jail and to chase them down should they flee. By the end of the 19th century, commercial sureties were the norm in the United States. (The Philippines is the only other country with a similar system.)

Bail was widely admired as a progressive institution when the alternative was jail, but in the 1950s and '60s many judges and law professors began to think that the alternative to bail should be release on a defendant's own recognizance. Bail looked increasingly like a conservative institution that kept people, especially poor people, in jail. Many opinion makers came to support the creation of pretrial services agencies that would investigate defendants and recommend to judges whether they could be safely released on their own recognizance. In essence, the agencies would replace the judgment of bail bondsmen with the judgment of a professional bureaucracy.

In the early 1960s, the Vera Institute of Justice's Manhattan Bail Project in New York City began gathering information about local defendants' community ties and residential and employment stability and summarizing it in a numerical scoring system that it used to identify those who could be recommended for release on their own recognizance. The experiment was successful. The failure-to-appear rate among felony defendants the project recommended for release was no higher than the rate among those released on bail. Largely on the basis of these results, President Lyndon B. Johnson signed the Federal Bail Reform Act of 1966, which created a presumption in favor of releasing defendants on their own recognizance.

Although the new law applied only to the federal courts, the states have widely emulated the reforms. Every state now has some kind of pretrial services program, and four (Illinois, Kentucky, Oregon, and Wisconsin) have outlawed commercial bail altogether. In its place, Illinois introduced the government bail or "deposit bond" system. The defendant is required to deposit with the court a small percentage of the face value of the bond. If the defendant fails to appear, he may lose the deposit and be held liable for the full value of the bond. But while a defendant in a commercial bail system who shows up in court must still pay the bondsman a fee, those who do so in jurisdictions with systems like Illinois's get all their money back (less a small service fee in some cases). And the only people empowered to chase down a defendant who has fled are the police.

The results of the Manhattan Bail Project seemed to support the position of progressives who argued that commercial bail was unnecessary. But all that the findings really demonstrated was that a few carefully selected felony defendants could be safely released on their own recognizance. In reality, the project allowed relatively few defendants to be let go and so could easily cherry pick those who were most likely to appear at trial. As pretrial release programs expanded in the late 1960s and early '70s, failure-to-appear rates increased.

Today, when a defendant fails to appear, an arrest warrant is issued. But if the defendant was released on his own recognizance or on government bail, very little else happens. In many states and cities, the police are overwhelmed with outstanding arrest warrants. In California, about two million warrants have gone unserved. Many are for minor offenses, but hundreds of thousands are for felonies, including thousands of homicides.

In Philadelphia, where commercial bail has been regulated out of existence, *The Philadelphia Inquirer* recently found that "fugitives jump bail . . . with virtual impunity." At the end of 2009, the City of Brotherly Love had more than 47,000 unserved arrest warrants. About the only time the city's bail jumpers are recaptured is when they are arrested for some other crime. One would expect that a criminal on the lam would be careful not to get

caught speeding, but foresight is rarely a prominent characteristic of bail jumpers. Routine stops ensnare more than a few of them. When the jails are crowded, however, even serial bail jumpers are often released.

The backlog of unserved warrants has become so bad that Philadelphia and many other cities with similar systems, including Washington, D.C., Indianapolis, and Phoenix, have held "safe surrender" days when fugitives are promised leniency if they turn themselves in at a local church or other neutral location. (Some safe surrender programs even advertise on-site child care.) That's good for the fugitives, but for victims of crime, both past and future, justice delayed is justice denied.

Unserved warrants tend not to pile up in jurisdictions with commercial bondsmen. In those places, the bail bond agent is on the hook for the bond and thus has a strong incentive to bring those who jump bail to justice. My interest in commercial bail and bounty hunting began when economist Eric Helland and I used data on 36,231 felony defendants released between 1988 and 1996 to investigate the differences between the public and private systems of bail and fugitive recovery. Our study, published in *The Journal of Law and Economics* in 2004, is the largest and most comprehensive ever written on the bail system.

Our research backs up what I found on the street: Bail bondsmen and bounty hunters get their charges to show up for trial, and they recapture them quickly when they do flee. Nationally, the failure-to-appear rate for defendants released on commercial bail is 28 percent lower than the rate for defendants released on their own recognizance, and 18 percent lower than the rate for those released on government bond.

Even more important, when a defendant does skip town, the bounty hunters are the ones who pursue justice with the greatest determination and energy. Defendants sought by bounty hunters are a whopping 50 percent less likely to be on the loose after one year than other bail jumpers.

In addition to being effective, bail bondsmen and bounty hunters work at no cost to the taxpayers. The public reaps a double benefit, because when a bounty hunter fails to find his man, the bond is forfeit to the government. Because billions of dollars of bail are written every year and not every fugitive is caught, bond forfeits are a small but welcome source of revenue. At the federal level, forfeits help fund the Crime Victim Fund, which does what its name suggests, and in states such as Virginia and North Carolina they yield millions of dollars for public schools. Indeed, budget shortfalls around the nation are leading to a reconsideration of commercial bail. Oregon, which banned commercial bail in 1974, is considering a controversial bill to reinstate it, and even Illinois, nearly 50 years after establishing its alternative system, may once again allow bail bondsmen.

Bail bondsmen monitor defendants, guide them through the court process, and help them show up for trial. When defendants skip town, it's the bounty hunters who track them down. But despite the benefits of commercial bail, bondsmen and bounty hunters don't get a lot of thanks. The American Bar Association has said that the commercial bail business is "tawdry," and Supreme Court justice Harry Blackmun once called it "odorous." After Dog Chapman arrested the serial rapist Andrew Luster and delivered him to the Mexican police, Dog was the one who ended up in jail. Bounty hunting is illegal in Mexico, and Chapman was charged with kidnapping despite the fact that (according to him) he had a local police officer with him at the time of the arrest. It surely didn't help Chapman's case that he was not trying to recover a bond that he had posted, since Luster had put up his own money. Luster was quickly extradited by the FBI, which offered Chapman no gratitude or assistance with the Mexican authorities. As if to rub salt in the wound, the judge in the Luster case refused even to reimburse Chapman for his expenses out of the \$1 million Luster had forfeited.

Dog Chapman's television show has brought him and the bail bond industry plenty of fame and notoriety, but Chapman is a controversial figure among bondsmen. The famed bounty hunter's checkered history includes prison time, drug abuse, and charges of racism, and many bondsmen think that "Dog" doesn't do much for their image. Bondsmen don't want to be the dogs of criminal justice; they want to be recognized as professionals working alongside police, lawyers, and judges. They are tired of being called "odorous." Bounty hunters want some respect. The record shows that they've earned it.

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