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Research Brief

The American Legislative Exchange Council (ALEC)

by

Randall G. Shelden, M.A, Ph.D
Senior Research Fellow, Center on Juvenile and Criminal Justice

Introduction

The Center on Juvenile and Criminal Justice (CJCJ) briefly mentioned the American Legislative Exchange Council (ALEC) in a recent publication called *The Prison Industry* (Shelden, 2010). This report provides a closer examination of ALEC, focusing especially on the leadership within the organization, along with recent legislative proposals. Additionally, the report will include a discussion of some of the most important special task forces that examine a wide variety of public issues, with a special emphasis on a task force titled “Public Safety and Elections.”

It is important to state at the outset of this report that conservatives tend to be significantly more punitive than liberals (Shelden, 2011). Since virtually all members of ALEC are conservatives it is only logical that their legislation would be punitive, which has been historically demonstrated by this organization.

ALEC is one among several hundred think tanks in the United States (plus many more in foreign countries). According to Source Watch (2011) “There are twice as many conservative think tanks as liberal ones, and the conservative ones generally have more money.” Indeed, as one writer stated “there is a big imbalance in the amount of cash that goes into left and rightwing think tanks. Over the past two years, [-] think tanks pushing the conservative agenda had received \$295 million, while leftwing institutions were given just \$75 million” (Teather, 2005). Most think tanks, both left and right-leaning, have “resident experts” with titles such as “senior fellow” or “adjunct scholar.” However, in the case of right-leaning think tanks this does not always indicate that they have an academic degree in their claimed area of expertise. While it is certainly true that outside funding can corrupt the integrity of academic institutions, this is even more prevalent with think tanks.

A problematic aspect of think tanks is that they “are like universities minus the students and minus the systems of peer review and other mechanisms that academia uses to promote diversity of thought. Real academics are expected to conduct their research first and draw their conclusions second, but this process is often reversed at most policy-driven think tanks” (Source Watch, 2011). One writer has noted that the term “think tank” is really a misnomer, saying “They don't think; they justify” (Source Watch, 2011).

Conservative think tanks have been successfully disseminating their message. The linguist George Lakoff has noted that:

Over the last 30 years their think tanks have made a heavy investment in ideas and in language. In 1970, [Supreme Court Justice] Lewis Powell wrote a fateful memo to the National Chamber of Commerce saying that all of our best students are becoming anti-business because of the Vietnam War, and that we needed to do something about it. Powell's agenda included getting wealthy conservatives to set up professorships, setting up institutes on and off campus where intellectuals would write books from a conservative business perspective, and setting up think tanks. He outlined the whole thing in 1970. They set up the Heritage Foundation in 1973, and the Manhattan Institute after that. [There are many others, including the American Enterprise Institute and the Hoover Institute at Stanford, which date

from the 1940s.]

And now, as the New York Times Magazine quoted Paul Weyrich, who started the Heritage Foundation, they have 1,500 conservative radio talk show hosts. They have a huge, very good operation, and they understand their own moral system. They understand what unites conservatives, and they understand how to talk about it, and they are constantly updating their research on how best to express their ideas (Lakoff, 2003).

Think tanks are indeed powerful in today's society. ALEC is one among many examples.

Historical Overview

An integral part of lobbying in the United States is that of conservative organizations established to assist policy makers in passing legislation. One such organization is known as the American Legislative Exchange Council or ALEC (ALEC, 2011).¹ The website homepage presents a clear picture of their purpose, stating "Limited Government, Free Markets, Federalism." ALEC was formed in Chicago in 1973 by a small group of State legislators and conservative policy advocates who envisioned "A nonpartisan membership association for conservative state lawmakers who shared a common belief in limited government, free markets, federalism, and individual liberty." The meeting was attended by Henry Hyde (then an Illinois State Representative), a little known (at the time) conservative activist, Paul Weyrich, and Lou Barnett who had been involved in Ronald Reagan's 1968 presidential campaign. Others who became involved in the beginning of ALEC included Tommy Thompson (former governor of Wisconsin), John Engler (soon to be governor of Michigan), and several members of Congress including Jesse Helms of North Carolina and Jack Kemp of New York.

Paul Weyrich eventually became most famous as co-founder of the conservative Heritage Foundation (2011) and before his death in December 2008, was the head of the Free Congress Foundation (2011), a far right conservative group currently directed by Texas Republican Congressman Ralph Hall (Hall, 2011). In his obituary it was noted that he believed very strongly that his conservatism represented a "cultural war," noting that:

It may not be with bullets and . . . rockets and missiles, but it's a war nonetheless. It is a war of ideology, it's a war of ideas, and it's a war about our way of life. And it has to be fought with the same intensity, I think, and dedication as you would fight a shooting war (Woo, 2008).

In 1981, President Ronald Reagan formed a national Task Force on Federalism, which was headed by U.S. Senator Paul Laxalt (R-Nevada). This task force came to rely heavily on the work of members of ALEC for expert testimony. ALEC established seven Task Forces (called Cabinet Task Forces), which worked directly with the administration on policy development issues. That same year ALEC published and distributed 10,000 copies of a report called *Reagan*

¹ Unless otherwise noted, information herein is taken from their website:
<http://www.alec.org/AM/Template.cfm?Section=Home>.

and the States, which discussed various methods for decentralizing government from the federal to the state level. This was part of what came to be called the “privatization movement.” In 1983 ALEC published a two-part report on education which placed the blame for the problems in the nation's educational decline on “centralization, declining values, and an increasingly liberal social agenda that had pervaded schools since the 1960s” (ALEC, 2011). They offered what at the time seemed like “radical” ideas, such as a voucher system, merit pay for teachers, and higher academic and behavioral standards for students.

In 1986, the idea of task forces became prevalent within ALEC resulting in additional task forces to work on policies covering virtually every responsibility of state government. Within a year, several task forces had been formed, including a “Civil Justice Task Force” which was touted as a response to the nation's “frivolous litigation explosion” (which in fact did not exist; *see* Lieberman, 1983; Goldstein, 2007; Haltom and McCann, 2004). Also included were a “Health Care Task Force” and a “Telecommunications Task Force.”

After the end of the Reagan Administration, these Task Forces began to shift directions, going from mere “clearinghouses of ideas” to “freestanding think tanks and model bill movers” (ALEC, 2011). They began to seek more input from big business based upon their philosophy that the private sector should be a close ally of government in developing policies. To date, these task forces “have considered, written and approved hundreds of model bills on a wide range of issues, model legislation that will frame the debate today and far into the future” (ALEC, 2011). Each year, close to 1,000 bills, based at least in part on ALEC model legislation, are introduced in the states, of which about 20% become law.

The Conservative Agenda Continues

Over the years ALEC has become self-congratulatory about their success. This is demonstrated by their current website:

For more than 35 years, ALEC has been the ideal means of creating and delivering public policy ideas aimed at protecting and expanding our free society. Thanks to ALEC's membership, the duly elected leaders of their state legislatures, Jeffersonian principles advise and inform legislative action across the country. Literally hundreds of dedicated ALEC members have worked together to create, develop, introduce and guide to enactment many of the cutting-edge, conservative policies that have now become the law in the states. The strategic knowledge and training ALEC members have received over the years has been integral to these victories (ALEC, 2011).

The website lists some of the bills ALEC has been involved in getting passed, plus indicates some very important keynote speakers during the past three annual meetings. It is noted that the policies it has supported include mandatory minimum sentencing. Among the notables giving speeches include Attorney General John Ashcroft, Secretary of Health and Human Services Tommy Thompson, Secretary of Housing and Urban Development Mel Martinez, President and CEO of American Home Products Robert Essner, Chairman and CEO of Pfizer Hank McKinnell, Florida Governor Jeb Bush, former Secretary of Labor Elane Chao, and conservative syndicated

columnist Cal Thomas (ALEC, 2011).

Despite some relatively liberal approaches to crime the bulk of their activities reflect a traditional conservative agenda. For example, among their most recent publications is a report called *The State Legislators Guide to Repealing ObamaCare*. The general overview indicates some of the key conclusions of this report as they note that this legislation will result in “overburdened Medicaid programs, higher taxes, an unconstitutional requirement that individuals purchase health insurance, and a federal takeover of health insurance regulation” (ALEC, 2011f, p. ii). They also note that “As a state legislator, you know that any health reform legislation should mirror the Hippocratic Oath that guides the practice of medicine—“First, do no harm.” The best health care is patient- and market-driven, not government-driven—and ObamaCare embodies neither of these qualities” (ALEC, 2011f, p. ii). Related to this is their report called *2010 State Legislators Guide to Health Insurance Solutions* produced along with the Council for Affordable Health Insurance (CAHI).² In their press release they note that these are “State-Based, Free Market Reforms that Will Work” (ALEC, 2011). Similarly, several different reports about climate change reflects a pro-business and free market agenda, with one report claiming that the Kyoto Protocol would “produce no environmental benefits” and “would entail great economic costs” (Simmons, 2007, p. 6).³

One of their most popular publications (currently in its third edition) is *Rich States, Poor States*. The subtitle is instructive: *ALEC-Laffer State Economic Competitiveness Index*. It is co-authored by Arthur B. Laffer, Stephen Moore, and Jonathan Williams (2010). According to their press release the authors of this report have concluded that “states with a high and rising tax burden are more likely to drive away individuals and business, while those with lower and falling tax burdens are more likely to attract businesses and create jobs” (ALEC, 2010, p.1). It is based upon the mostly discredited “Laffer” theory – also known as “supply-side” or “trickle-down” economics (this will be discussed below). In the preface to this report the authors place the blame of state fiscal crises on high taxes and, giving Missouri as an example, state that state income taxes have “long been a hindrance to economic growth and state prosperity” (Laffer, Moore, and Williams, 2010, p. ix).⁴ As has been noted numerous times this heavy reliance on the market is what resulted in the United States’ worst recession since the Great Depression (*see* among others Scheer, 2010; Reich, 2010; Krugman, 2009; Stiglitz, 2010).

² The Council for Affordable Health Insurance “is a research and advocacy association of insurance carriers active in the individual, small group, HSA and senior markets.”
http://www.cahi.org/cahi_contents/about/

³ The author of this report, Daniel Simmons has a B.A. in Economics from Utah State University and a J.D. from George Mason University School of Law. As far as can be determined, he is not a trained scientist. Prior to his work with ALEC he worked for the Competitive Enterprise Institute where he specialized in urban sprawl, property rights, and public lands issues.
<http://www.ncpa.org/environment/daniel-r-simmons>.

⁴ Space does not permit a complete review of this study. However, as an example, the authors of this report ranked Nevada as number 11 as far as the 10-year economic performance (1998-2008). Nevada has no state income tax and is known as a very conservative libertarian state, yet the past couple of years it has dropped to the bottom in just about every important economic indicator (especially unemployment and foreclosure rates).

As for criminal justice policies, ALEC has been fairly consistent over the years in advocating get tough legislation and supporting the use of commercial bail. However, many of their most recent recommendations are consistent with traditional liberal approaches (e.g., reducing prison populations, providing drug treatment). This subject will be covered in more detail below.

Membership Reflects Corporate and Conservative Ideas

Currently membership in ALEC consists of State legislators, private corporation executives and criminal justice officials. More than one-third of all state lawmakers in the country (2,400) belong and they are mostly Republicans and conservative Democrats, despite the association’s nonpartisan status. Corporate membership dues range from \$5,000 to \$50,000 annually. Corrections Corporation of America is a member of this group, along with a veritable “who’s who” of the Fortune 500, such as Ameritech, AT&T, Bayer, Bell Atlantic, Bell South, DuPont, GlaxcoSmithKline, Merck & Co., Sprint, Pfizer, to name just a few. Among the companies that have supported ALEC through various grants include Ameritech, Exxon Mobil, Chevron and several corporate foundations, including the Proctor and Gamble Fund, Exxon Educational Foundation, Bell Atlantic Foundation, Ford Motor Company Fund, among many others (Capital Research, 2011). Among the former members of ALEC include the Speaker of the House John Boehner who recently wrote a publication called *What Every State Should Know About the President's Budget* (ALEC, 2011).

The leaders of this association have a corporate and conservative outlook, starting with the Board of Directors, who are all Republicans. This contradicts their claim to be a nonpartisan organization. The most important members are the Board of Directors. The current Board of Directors consists of the following people:

Officers

National Chairman	Rep. Noble Ellington, R	Louisiana
First Vice Chairman	Rep. Dave Frizzell, R	Indiana
Second Vice Chairman	Rep. John Piscopo, R	Connecticut
Treasurer	Rep. Linda Upmeyer, R	Iowa
Secretary	Rep. Liston Barfield, R	South Carolina
Immediate Past Chairman	Rep. Tom Craddick, R	Texas

Board Members

Sen. Curt Bramble, R	Utah	Sen. Chip Rogers, R	Georgia
Rep. Steve McDaniel, R	Tennessee	Sen. Billy Hewes III, R	Mississippi
Rep. Harold Brubaker, R	North Carolina	Sen. William Seitz, R	Ohio
Rep. Ray Merrick, R	Kansas	Speaker Bill Howell, R	Virginia
Sen. Jim Buck, R	Indiana	Rep. Curry Todd, R	Tennessee
Sen. Bill Raggio, R	Nevada	Sen. Owen Johnson, R	New York
Sen. Kent Cravens, R	New Mexico	Sen. Susan Wagle, R	Kansas
Sen. Dean Rhoads, R	Nevada	Sen. Michael Lamoureux, R	Arkansas
Rep. Jim Ellington, R	Mississippi		

ALEC also has a “Private Enterprise Board” which consists of representatives of some of the most powerful corporations in America.

Officers

National Chairman	Mr. Jim Epperson Jr.	AT&T Services
First Vice Chairman	Mr. W. Preston Baldwin	Centerpoint360
Second Vice Chairman	Mr. Pat Thomas	UPS
Treasurer	Ms. Sandy Oliver	Bayer Corporation
Secretary	Mr. John Del Giorno	GlaxoSmithKline

Board Members

Ms. Sano Blocker	Energy Future Holdings	Mr. Bernie McKay	Intuit Inc.
Mr. Don Bohn	Johnson & Johnson	Mr. Mike Morgan	Koch Industries Inc.
Mr. Jeff Bond	PhRMA	Mr. Kevin Murphy	ExxonMobil
Mr. Bill Carmichael	American Bail Coalition	Mr. David Powers	Reynolds American Inc.
Mr. Derek Crawford	Kraft Foods Inc.	Ms. Maggie Sans	Wal-Mart Stores Inc.
Mr. Matt Echols	The Coca-Cola Company	Mr. Ron Scheberle	Chairman Emeritus
Mr. Michael Hubert	Pfizer Inc	Mr. Russell Smoldon	Salt River Project
Ms. Teresa Jennings	Reed Elsevier	Mr. Toby Spangler	Altria Client Services Inc.
Mr. Ken Lane	DIAGEO	Mr. Roland Spies	State Farm Insurance Co.
Mr. Kelly Mader	Peabody Energy		

It is instructive to note that one of the members, Bill Carmichael, represents the American Bail Coalition (2011) which is “Dedicated to the Long-Term Growth and Continuation of the Surety Bail Bond Industry.” The coalition consists of nine associations representing the states of California, Florida (two different associations are in this state), Georgia, Arizona, Indiana, Michigan, Oklahoma, Tennessee, and Texas. The member companies include the following: Accredited Surety and Casualty Company, Allegheny Casualty Company, American Surety Company, Associated Bond & Insurance Agency, FCS - Financial Casualty & Surety, International Fidelity Insurance Company, Lexington National Insurance Corporation, Palmetto Surety Corporation, Safety National, Underwriters Surety, United Surety Agents, and Universal Fire & Casualty Insurance Company. As will be shown below, ALEC has just recently released a brief report claiming that the increased use of commercial bail has led to the recent drop in the jail population around the country.

ALEC also has a “Board of Scholars,” whose “distinguished work and dedication to market-based policy innovations have been, and continue to be, invaluable to ALEC and its membership” (ALEC, 2011). More specifically, this group represents a “convergence of ALEC with the great policy thinkers [that] will further ALEC’s mission of expanding free markets, limited government, and individual liberty” (ALEC, 2011). These are as follows: Kay Coles James, Dr. Arthur B. Laffer, Stephen Moore, Victor Schwartz, Dr. Richard Vedder, and Bob Williams.

Most of these individuals would not be considered “scholars” in the usual meaning of the term. Of these, only two (Laffer and Schwartz) have published books or articles. For example:

Kay Coles James - currently affiliated with J.C. Watts Companies, founded by the former Republican Congressman from Oklahoma. This company is a consulting, lobbying and marketing association that represents “Fortune 500, mid-market and small businesses, professional associations, athletic organizations, colleges and universities, health care providers, foreign governments, and non-profits to accomplish specific corporate and government relations assignments” (Watts Consulting Group, 2011). Prior to this she was the Dean of the School of Government at Regent University, a Christian university founded by Pat Robertson in 1978 (Regent University, 2011). She was also Associate Director of the White House Office of National Drug Control Policy in the George H.W. Bush administration, and was assistant secretary for public affairs at the U.S. Department of Health and Human Services (ALEC, 2011).

Arthur B. Laffer - called the “Father of Supply Side Economics” (also known as “trickle down economics”) he is most famously associated with the “Laffer curve.” He served on Reagan’s Economic Policy Advisory Board throughout both of his terms in office. This theory became the basis of the tax cuts implemented during the Reagan years and the George W. Bush administration in that it argues that if you lower taxes on the very rich then they will create jobs, a theory that has been largely discredited.⁵

Stephen Moore - resume includes membership on the editorial board and senior economics writer for *The Wall Street Journal*, starting in May, 2005. He was the founder and former president of an organization called the “Club for Growth,” a group that raises money for political candidates who favor free-market economic policies and also was president of the Free Enterprise Fund. Additionally, he once was a senior economist on the Congressional Joint Economic Committee. Also, he is closely affiliated with two of the largest conservative think tanks, the Heritage Foundation and the Cato Institute.

Victor Schwartz - currently a lawyer and was once a professor and acting dean of the University of Cincinnati College of Law. He is the co-author of the most widely used torts casebook in the United States, *Prosser, Wade and Schwartz’s Torts* (currently in its 10th edition). He has also written on litigation issues, including a leading text called *Comparative Negligence*. He is the co-chair of ALEC’s Civil Justice Task Force (see below) and also serves as general counsel to the American Tort Reform Association.

Dr. Richard Vedder - a Distinguished Professor of Economics at The Ohio University in Athens, Ohio. He has written extensively on labor issues, authoring such books as *The American Economy in Historical Perspective* and, with Lowell Gallaway, *Out of Work: Unemployment and Government in Twentieth-Century America*. Vedder has written more than 100 scholarly papers published in

⁵ For more information see the following: Rice (2010), Laffer (2004). For critiques see: Media Matters (2010) and Fox (2007).

academic journals and books, and his work has also appeared in numerous newspapers and magazines including the National Review, The Wall Street Journal, The Washington Post, Investor's Business Daily, Christian Science Monitor and USA Today. Vedder has been an economist with the Joint Economic Committee of Congress, with which he maintains a consulting relationship. He has served as the John M. Olin Visiting Professor of Labor Economics and Public Policy at the Center for the Study of American Business at Washington University in St. Louis and has taught or lectured at many other universities.

Bob Williams - the Founder of the Evergreen Freedom Foundation, which is a public policy organization located in Olympia, Washington.⁶ This is a conservative foundation "dedicated to the advancement of individual liberty." He once worked as a GAO auditor of the Pentagon and Post Office before moving to Washington State. Here he has served five terms in the Washington state legislature and was the 1988 Republican nominee for governor. (ALEC, 2011)

Thus, all members of the ALEC hierarchy have invested self-interest in driving policy support towards conservative free market ideology, and are all Republican, contributing to the conservative agenda.

Task Forces and Reports

Presently there are a total of eight task forces. They are as follows: Civil Justice, Health and Human Services, Commerce, Insurance and Economic Development, International Relations, Education, Public Safety and Elections, Energy, Environment and Agriculture, and Tax and Fiscal Policy.

Most relevant for this report would be the Public Safety and Elections Task Force, which was once called Public Safety and Homeland Security (and earlier it was called simply "Criminal Justice"). Why it was renamed is not mentioned on their website. One reason might be the fact that they deal with such issues as voter fraud and ethics reform laws. The following section will focus on the "public safety" portion of this task force.

Public Safety

This task force is divided into a Public and Private Sector, each with two chairs and several executive committee members. The Public Sector Chair is Representative Paul Ray (a Republican state representative from Utah); the Private Sector Chair is Tara Mica of the National Rifle Association (NRA). Ms. Mica has worked in the NRA's Institute for Legislative Action which is the government affairs arm of the NRA, serving as a legislative assistant to several lobbyists before taking over lobbying duties herself. Her husband is Carl Mica, who used to be a

⁶ See the website at: <http://www.effwa.org/main/page.php>.

staff member for U.S. Senator Kay Bailey Hutchison. Currently, he is the Director of Business Relations for the University of Texas System.

The Executive Committee of the Public Sector includes nine people (all of whom are Republicans). A brief biographical statement follows:

Joe Driver - serving his 8th term in the Texas House of Representatives, he is the Chairman of the Law Enforcement committee and has been an agent for State Farm Insurance Companies for 35 years.

Dan Greenberg - represents legislative district 31 in the Arkansas General Assembly and was once affiliated with both the Heritage Foundation and the Cato Institute. He also worked as the policy director for the former governor of Arkansas, Mike Huckabee.

Russell Pearce – currently he is a state senator in Arizona and before this spent 23 years as Deputy Sheriff of Maricopa County in addition to serving as Director of the Governors Office of Highway Safety, and Director of Arizona State Motor Vehicle Division.

Bill Ruppel – a member of the Indiana House of Representatives and Ranking Minority Member of the House Veterans Affairs and Public Safety Committee. He also sits on Indiana’s Counterterrorism and Security Council.

Scott Suder – he is currently serving his 6th term as State Representative for Wisconsin’s 69th Assembly District and he is also serving on active duty as a member of the Wisconsin Air National Guard’s 115th Fighter Wing in his second and third tours of duty to the Middle East.

Gene Whisnant - a member of the Oregon House of Representatives, he is a retired US Air Force Colonel, having served in Vietnam, Germany, and Yugoslavia. Also, he served in the Pentagon on the Air Staff and as a member of the Secretary of Defense staff.

Margaret Flory – a state representative in Vermont and an attorney in Rutland.

Jordan Ulery – a state representative from New Hampshire, he was in the running for the National Republican Chairman. He caused quite a stir in the state with a bill he sponsored which would have required “all New Hampshire businesses to print any non-English sign in the United Nations’ six official languages.” Many Democrats in the state called the comments “hateful” and “anti-Semitic.” Some called for his resignation (Rayno, 2011).

Jerry Madden – a state representative of Texas, Madden was included on a list of “Public Officials of the Year” in 2010. He was a graduate of West Point and served in Vietnam, after which he worked for Texas Instruments, Teledyne

Geotech and in 2000 formed his own insurance company.
(ALEC, 2011).

The Executive Committee of the Private Sector includes ten people. A brief biographical statement follows:

Dennis Bartlett – he is the Executive Director of the American Bail Coalition and was formerly with the CIA.

David Christman – he serves as the Director of State & Industry Affairs for the National Beer Wholesalers Association (NBWA) he formerly worked for Pennsylvania Senator Rick Santorum.

Pat Nolan – he is the Vice President of Prison Fellowship, and leads Justice Fellowship, the criminal justice reform arm of Chuck Colson’s “Prison Fellowship Ministries.” He brings a unique perspective to this committee as he was convicted of engaging in illegal campaign contributions. He pled guilty to one count of racketeering and served 29 months in a federal prison. For 15 years he was in the California State Assembly where he served as the Assembly Republican Leader.

Barbara O’Brien – she served with the Florida State University Police Department as the first woman uniformed police officer in North Florida. Currently and then went on to serve as Senior Executive Assistant to the Florida Attorney General’s office. Presently she is on the board of the National Pawn Brokers Association.

Stacie Rumenap – she serves as the Executive Director of Stop Child Predators (SCP), a non-profit organization based in Washington, DC, that seeks to prevent the sexual exploitation of children. She was Deputy Director of the American Conservative Union (ACU) serves on the Board of Directors for America’s Future Foundation and is on the Advisory Board for OmniLink Systems, a cutting-edge technology company that manufactures GPS monitoring devices.

Laurie Shanblum – she is the Senior Director of Business Development for the Corrections Corporation of America (CCA). Prior to this she had a thirty-seven year career in juvenile and adult corrections and criminal justice, including both the public and private sectors.
(ALEC, 2011)

The three other members are listed but with no biographical information, except for their current affiliation. These are: Dawson Hobbs (Wine & Spirits – a website says that this is called Wine & Spirits Wholesalers of America and Hobbs is the Vice President of State Affairs⁷); Amanda Hydro (Citizens in Charge – this is a foundation whose goal is “protecting and expanding the

⁷ <http://www.wswa.org/about.php?AboutusID=2>

initiative and referendum process”⁸) and Sean Parnell (Center for Competitive Politics – according to its website the mission of this organization “is to promote and defend citizens' First Amendment political rights of speech, assembly, and petition.” Parnell currently serves as its President⁹).

Thus again, with respect to criminal justice policy in particular, all of ALEC’s recommendations are influenced and driven by the conservative ideology of its members rather than a nonpartisan analysis of best practices.

Public Safety Activities

This task force is “dedicated to developing model policies that reduce crime and violence in our cities and neighborhoods” (ALEC, 2011). The specific issues they have investigated include identity theft, prison privatization, child firearm safety, asset forfeiture reform, standards for bail enforcement agents, and preventing violent youths from committing crimes in school.

Some of the current pieces of legislation this task force is proposing are contained within a category called “Cutting Crime and Budgets.” They include the following: Recidivism Reduction Act, Swift and Certain Sanctions Act, Community Corrections Performance Incentive Act, Community Corrections Performance Measurement Act, and Earned Compliance Credit Act.

Notably, these are proposed model pieces of legislation that will eventually be proposed to legislators. Some are reiterations of already existing legislation and contain little that is new. For example, the intent of the Swift and Certain Sanctions Act is stated as follows (and resembles existing legislation such as Mandatory Sentencing, Truth in Sentencing, and “Three Strikes and You’re Out”):

For states to deliver swift, certain and proportionate responses to violations of probation and parole, they need an array of institutional and community based sanctions as well as the authority to assign—and reassign—offenders to those sanctions. This Act requires community corrections agencies to adopt a set of graduated sanctions and rewards to respond to violations and compliance with the conditions of supervision. This Act also establishes authority for agencies to impose graduated sanctions and rewards through an administrative process (ALEC, 2011e).

On the other hand the proposed Recidivism Reduction Act is consistent with current research. The intent is as follows:

Research and practice over the past 25 years have identified new strategies and policies that can make a significant dent in recidivism rates. Implementing these research-backed programs and procedures is called "evidence-based practice." This Act requires that a to-be-determined percent of offenders be supervised in

⁸ <http://www.citizensincharge.org/about-us/cic>

⁹ http://www.campaignfreedom.org/about_us/

accordance with evidence-based practices within four years, as well as that a to-be-determined percent of state funds for offender programming be spent on programs that are evidence-based within four years. This Act also requires community corrections agencies to improve policies and practices for crime victims, to provide employees training on evidence-based practices, and to set aside a portion of funds for research on program effectiveness (ALEC, 2011d).

Similarly, the Community Corrections Performance Incentive Act may be helpful in reducing crime and recidivism among those on probation. The intent of this proposed legislation is as follows:

The provisions of this act are intended to reduce crimes committed by probationers and the number of probationers revoked to prison by giving probation departments a share of the savings to the state in reduced incarceration costs when they reduce both new offenses by probationers and revocations to prison. By linking funding to performance, this legislation creates a positive incentive for probation departments to improve their supervision practices to enhance public safety and reduce costs to taxpayers (ALEC, 2011c).

One other current initiative is that of prison overcrowding. On ALEC's website an entire section is devoted to this issue. For instance, by clicking on a specific page the reader is presented with three sections: "The Problem," "The Information" and "The Solution."¹⁰ Under the first section it mentions just one reason behind the problem: tough on crime legislation (they give "Three Strikes and You're Out" and "Broken Windows" as examples) which they claim has reduced crime but also has contributed to severe overcrowding nationwide. Within "The Information" section they present an excellent interactive program with a map of the country and by clicking on any state the reader can find relevant information pertaining to overcrowding.¹¹

"The Solution" page provided the reader with four areas to explore. One was "Read About ALEC's Proposed Solutions" and another one called "Public Safety Reform Talking Points." One of the other areas is called "Introduce ALEC's Post-Conviction Bond Legislation" and within this area can be found a proposed piece of legislation called "Conditional Post-Conviction Release Bond Act." This last proposal is supposed to address prison overcrowding. This act "would allow for the early release of legislatively defined participants from prison—primarily non-violent and juvenile offenders—but require that they post a bond. The bond would be revoked if they did not meet all the requirements of the program like keeping gainful employment and staying off of drugs." How these offenders would find work and stay off drugs is not mentioned in this proposed legislation; nor does it specify how they would post a bond.

The other area is called "ALEC Corrections & Reentry Working Group" and this contains a brief

¹⁰ http://www.alec.org/AM/Template.cfm?Section=Prison_Overcrowding.

¹¹ The "California" webpage presents, for instance, information (2008-2009 fiscal year) about the current budget (\$10.6 billion), average cost per inmate (\$49,000) and total prison population (154,561). Additional information is provided, including the recent court ruling that the state must reduce its population by 40,000 within two years. A link to the California Department of Corrections and Rehabilitation is also provided, in addition to links to various media sources.

discussion of the problems associated with the release of an estimated 700,000 offenders this year and the problems associated with it, such as: Reentry planning should start at intake, inmates should be encouraged to participate in faith-based programs (this comes from Pat Nolen), communities should be involved in reentry efforts and, healthy mentorships are the keystone for successful reentry into society (ALEC, 2011).

One other part of the Public Safety and Elections Task Force was a brief summary of their most recent workshop, held in San Diego, California in August, 2010. It was called “Cutting Crime and Budgets--Proven Solutions for Your State,” which included three Power Point presentations, including one on the subject of California Senate Bill 678 (2009) called “Performance Incentive Funding.” This bill addressed the issue of the lack of funding for probation in California. The presenter (retired Judge Roger Warren) noted that only an average of \$1,250 per year is allocated for each person on probation compared to about \$48,000 for a prison inmate. He further noted the high revocation rates which cost the taxpayers about \$1 billion per year. One of the key components of SB 678 was the creation of an “evidence-based community corrections program” in every county (consistent with one of ALEC’s proposals noted above) (ALEC, 2011).¹²

Another Power Point presentation was called “Five Fallacies About Crime and Punishment” presented by Adam Gelb, the director of ALEC’s Public Safety Performance Project. According to Gelb, these fallacies (and the realities) are: (1) Police determine the crime rate (police are important, but corrections plays a huge role), (2) The crime rate drives the incarceration rate (Policy choices are the primary driver), (3) Prisons are full of low-level, non-violent offenders (most inmates are serious or chronic offenders, but a small % can save big \$), (4) Either “everything works” or “nothing works” (well-targeted, well-run supervision programs can cut recidivism by up to 30%), (5) Crime policy is paralyzed by political ideology (state and national leaders from both parties are finding solutions).

The other presentation was by Texas Representative Jerry Madden on the subject of “Evidence-based Policies in Texas.” This Power Point presented some detailed data on prison, parole and probation populations in Texas and included a discussion of some of the factors driving the increase in these populations, such as: failing schools in high stakes neighborhoods, poor service delivery systems for prevention and reentry, and the lack of treatment programs inside the prisons.

As noted above, a recent brief press release by ALEC concerns the news that the jail population has decreased during the past two years, as noted in a recent report by the Bureau of Justice Statistics (Minton, 2010). In the brief report by ALEC called *Jail Population Decreases as the Use of Commercial Bail Increases* (ALEC, 2011b), Michael Hough (resident fellow with ALEC) claims that “This latest study disproves the myth that the use of bail bonds increases the number of people in jail. We now know that this connection cannot be made. The increased use of commercial bail can actually help to alleviate overcrowding in jails.” The press release goes on to claim that “This recent study coincides with an earlier DOJ study that found the percentage of individuals who were released from jail on commercial bail increased by 100 percent since 1992” (ALEC, 2011b). No citation was given here. However, they fail to mention the fact that jail populations increased dramatically throughout the 1990’s and well into the first decade of the

¹² This Power Point is located at: <http://www.alec.org/AM/PDF/publicsafety&elections/warren.pdf>

2000's (see Bureau of Justice Statistics, 2000). The DOJ report noted that from 2000 to 2007 the jail population (and rate of incarceration) increased every year until 2008 (Minton, 2010, table 1).

The ALEC report is problematic on its face since it is engaging in “confirmation bias” whereby one looks for evidence in support of a theory or set of beliefs but ignore evidence to the contrary. If the use of commercial bail causes jail populations to go down, then why have they only gone down for two years? Further, why would they cite the above-referenced DOJ study when the data contained therein contradicts their entire theory? ALEC also criticized a report by the National Association of Pretrial Services Agencies charging that a recent report claimed that “the pretrial jail population was rapidly increasing due to commercial bail.” However, nowhere in that report is such a claim asserted (National Association of Pretrial Services Agencies, 2009). The publication does however, provide evidence that the use of pretrial services is more effective and less costly than the use of commercial bail. One of the possible reasons ALEC supports commercial bail is that it fits perfectly into the “free market” ideology.¹³

There is a much larger fundamental flaw in the writings published by ALEC – and something common to most conservative think tanks – and that is that their reports are not subjected to peer review. Rarely are these publications subjected to critical review from academics or other external sources. For the most part, think tanks are their own reviewers. This is also likely the case with one of their reports called *Disorder in the Court: A Guide for State Legislators* (ALEC, 2007). The central premise of this report is stated in their advertisement for the report (the 3rd edition) which indicates:

ALEC started the Disorder in the Court project in 1999 in response to the efforts of trial lawyers and activist attorneys general to, in effect, legislate through lawsuits and “enforce” retrospective regulations where lawmakers had found regulation not to be necessary. The Disorder in the Court guidebook was first published in 2001 and has served as a toolkit for returning lawmaking powers to legislators. Since the inception of the project, legislators in more than 40 states have introduced nearly 400 bills based on Disorder in the Court model legislation. At least 115 of these bills have been enacted (ALEC, 2007).

Unlike other reports on the ALEC website, only members can gain access to this one.

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Few of the above proposals and reports focus on the traditional “getting tough” perspective, which is in direct contrast to earlier reports by ALEC. Rather the focus has shifted to some of the ideas that have been proposed for many years by criminologists (mostly from a liberal perspective), such as “alternative sentences,” “diversion,” “evidence-based policies,” etc. It was interesting to read some of the remarks by Jerry Madden. The mere mention of things like

¹³ The report cites a 2003 study by the Virginia Department of Criminal Justice Services, which was updated in 2009 (ALEC, 2011). There has been a great deal of literature on this subject, too many to mention here, but see the following: Levin (2007).

“failing schools in high stakes neighborhoods” and “poor service delivery systems for prevention and reentry” would have been unthinkable ten years ago by a conservative. Such a change in thinking stems from the fact that the failed “get tough” policies have helped to contribute to the current budget crisis in virtually every state.

Although some proposed legislation reflects traditional conservative approaches, such as their proposed legislation called “Swift and Certain Sanctions Act,” other proposed legislation reflects the changing times given budgetary constraints. Examples include their “Recidivism Reduction Act” and “Community Corrections Performance Incentive Act.” These reflect more traditional liberal orientations. It remains to be seen whether this trend will continue. If the economy improves ALEC may return to conservative approaches.

Conclusion

One of the hallmarks of conservative thinking is the faith in free markets. The belief that the best way to achieve the good society is by letting the market take care of it rather than the government is contradicted by the fact that many conservatives fully support several forms of government intervention. As economist Dean Baker notes, “conservatives do not necessarily desire less regulation, nor do liberals necessarily desire more. Conservatives support regulatory structures that cause income to flow upward, while liberals support regulatory structures that promote equality” (Baker, 2009). One example Baker cites is that “recent change in bankruptcy law, hailed by conservatives, requires much greater government involvement in the economy.”

In the wake of the most recent economic collapse, one of the leading gurus of the free market, Alan Greenspan, was forced to admit that he may have been mistaken, even though he remains faithful to the idea of a free market (Clark and Treanor, 2008). Many of the causes of the most recent collapse of the economic system have been laid on the doorstep of staunch free market supporters. (Clark and Treanor, 2008). Yet ALEC and other conservative think tanks (e.g., American Enterprise Institute and the Heritage Foundation) continue to center every proposal for societal reform around the use of the free market. This includes the criminal justice system; as so many conservatives support free market solutions such as private prisons (Selman and Leighton, 2010) and commercial bail.

In the final analysis, ALEC is like most lobbying organizations: they provide expertise on free market solutions to social problems. Instead of targeting members of Congress however, they target state legislators. In this sense they may have even more influence when it comes to crime control policies since most policies are found at the state level.


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About the Author

Randall G. Shelden, M.A, Ph.D., Senior Research Fellow, Center on Juvenile and Criminal Justice

Randall G. Shelden most notable achievements at the Center on Juvenile and Criminal Justice is his evaluation of the Detention Diversion Advocacy Project, published by OJJDP in 1999. He is Professor of Criminal Justice, University of Nevada-Las Vegas, where he has been a faculty member since 1977. He received his Masters Degree in Sociology at Memphis State University and Ph.D. in Sociology at Southern Illinois University.

Dr. Shelden is the author or co-author of the following books: *Criminal Justice in America: A Sociological Approach*; *Girls, Delinquency and Juvenile Justice* (3rd edition), with Meda Chesney-Lind (which received the *Hindelang Award* for outstanding contribution to Criminology in 1992); *Youth Gangs in American Society* (3rd ed.), with Sharon Tracy and William B. Brown (both of these are third editions with Cengage Publishers); *Crime and Criminal Justice in American Society* (with William Brown, Karen Miller and Randall Fritzler, Waveland Press); *Controlling the Dangerous Classes: The History of Criminal Justice* (2nd edition, Allyn and Bacon); *Delinquency and Juvenile Justice in American Society* (Waveland Press); *Juvenile Justice in America: Problems and Prospects* (Waveland Press, co-edited with Daniel Macallair), and *Our Punitive Society* (Waveland Press).

Dr. Shelden is also the author of more than 50 journal articles and book chapters on the subject of crime and justice. He has also written more than 100 commentaries appearing in local and regional newspapers. He is the co-editor of the *Justice Policy Journal*.

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For more information please visit www.cjcj.org or contact:

Center on Juvenile and Criminal Justice
440 9th Street
San Francisco, CA 94103
(415) 621-5661
cjcj@cjcj.org

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