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BAIL REFORM: UPDATE AND AFTER EFFECTS

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INTRODUCTION

One of the most consequential powers of the judiciary is the ability to exercise judgment and discretion; for example, when making decisions whether to: grant a motion to suppress evidence, admit evidence at trial or grant a motion to dismiss criminal charges. When it comes sentencing, judicial discretion is dictated in the first instance by the level of offense and, in the case of felonies, limited by mandatory minimums for violent felonies (PL 70.02), predicate felony convictions (PL 70.06) and the nature of the crime (e.g., sex offenses [PL Art. 130) or sexually motivated felonies [PL130.91]).

Recently, in January 2020, judges saw their discretion in one of the most important areas of decision making, the setting of bail, severely curtailed by new rules that limited the availability of cash bail to violent felonies, some non-violent felonies, and a few misdemeanors that are designated as QUALIFYING OFFENSES. (CPL 510.10[4]).

In most cases (including some violent felonies like Burglary 2d degree [not in the living area] and Robbery 2d degree [aided by another person actually present], judges are now constrained to release defendants either on their own recognizance (O.R.), or under supervision upon the LEAST RESTRICTIVE NON-MONETARY CONDITIONS (LRNMC) that will ensure their return to court.

And, in cases where cash bail is an option, the court must determine whether the defendant is a flight risk and then set bail in at least three forms (including a non-secure or partially secured bond), taking into account the defendant's financial ability to make bail.

WHY THE CHANGE?

The impetus behind the change was the State Legislature's conclusion that the old bail laws were utilized by courts and prosecutors in a way (i.e., advocating for and setting unreachable cash bails) that resulted in far too many defendants, (mostly minorities and poor people), sitting in jail awaiting trial on account of their inability to raise and post the funds necessary to secure their release.

Over the years, it has not been unheard of for some prosecutors to use pretrial detention as leverage in plea negotiations and for some judges to set bail on some offenses and not others and then insist that any plea be entered to an offense for which there was no bail so that the defendant would not get the benefit of good-time credit.

According to the Brennan Center for Justice, 70 percent of the United States jail population consists of pre-trial detainees (brennancenter.org), and in New York City, for example, while 82 percent of all criminal cases are misdemeanors or violations, 80 percent of the arrestees are minorities. (See 1/4/22 NY Post Article, "Manhattan D.A. to Stop Seeking Prison Sentences in a Slew of Criminal Cases, by Larry Celona, Tamar Lapin, Tina Moore, Reuven Fenton and Bruce Golding, nypost.com).

NEW MANHATTAN DISTRICT ATTORNEY MAKES DEFENDANT-FRIENDLY MOVES:

According to Alvin Bragg, the Manhattan District Attorney (D.A.), blacks and Hispanics are two-to-four times more likely than white defendants to be incarcerated for misdemeanors. The DA'S Office, per Bragg's "Day One" Memo, has, among other things, declined to prosecute most petty offenses and misdemeanors including: turnstile jumping, (which he describes as a crime of poverty), trespass, driving with a suspended license, consensual sex trade crimes, fortune telling, adultery, obscenity, resisting arrest on a violation and obstructing governmental administration. (NY Post Article 1/4/22, supra).

In his memo (which has come under fire from police, business owners and NYC'S new mayor, Eric Adams), Bragg announced that his prosecutors won't seek "carceral" sentences except for homicides and a few select felonies including those involving domestic violence, sex offenses and public corruption.

Sounding more like a social worker or defense attorney than a "law-and order" prosecutor, Bragg stated that prosecutors must keep in mind the impact of incarceration on an offender's future employment and housing opportunities. Consequently, persons charged with robbery not involving serious injury will be prosecuted for petit larceny, felony weapon charges based on prior convictions will be reduced to misdemeanors, burglars who steal from residential storage areas (e.g., garage) will only be charged with a D felony burglary, low-level drug dealers will be charged with misdemeanors and principal dealers will be charged with a felony only if caught in the act.

Prosecutors are also instructed to consider whether a defendant suffers from a mental illness, homelessness and poverty that contributed to the crime.

BIG BLOWBACK IN THE MEDIA

Local NYC media outlets, in particular the New York Post, have not been bashful about pointing out cases involving defendants being arrested for violent crimes after being released on charges that could have resulted in cash bail under the old rules. For example, in a 2/9/22 article, "Robbery Suspect Who Caught a Break from DA Bragg Arrested Again Over Attack on Sanitation Worker, (nypost.com), the authors cite the case of a defendant who was charged with Assault 2d degree for cold-cocking a 55-year-old garbage man who was on the street doing his job. At the time, the defendant reportedly had 19 open cases (and multiple failures to appear) including burglary, theft at knife point and a recent robbery at a TJ Maxx store which the DA charged as a petit larceny even though the defendant brandished a pair of scissors.

Other cases cited include an 18-year-old alleged gang banger who, while on probation for robbery, fatally shot a 21-year-old person whom he'd allegedly mistaken for a rival; a serial shoplifter (arrested and released 50 times, had 23 open cases and 74 arrests since 2015) who finally had bail set on a felony assault charged in June 2021; the so-called "Teflon Burglar" who was released on a burglary charge (despite 30 arrests on his rap sheet) in August 2021, only to be sought several days later in other burglaries after police found several stolen laptops in his apartment; a Honduran homeless man who was released on a burglary charge after which he got arrested for sexually abusing a ten-year-old girl in her home; and a 17-year-old alleged gang member who persuaded a judge to lower his bail on a gun charge after which he was arrested for firing a gun into a crowd of people, killing an innocent bystander.

After releasing a defendant (who had 12 prior arrests) on three hate crimes for shoving an Asian police officer onto subway tracks (saying, "I will fuck you up. This is my house"), the judge remarked, "my hands are tied because under the new bail rules, I have absolutely no authority or power to set bail…for this alleged offense." The defendant later pled guilty to a violation and his record for this arrest was sealed.

More recently, on 2/14/22, a 25-year-old man who resided in a homeless shelter and was out on supervised release since January 2022 for Criminal Mischief (disabling MetroCard machines) and Escape (a qualifying offense for cash bail), was charged with Murder 2d degree in connection with the fatal stabbing of a 35-year-old Asian woman (creative producer for a music platform) whom he allegedly followed into her sixth-floor apartment in Lower Manhattan.

Police could hear the woman screaming as they tried to break in the door. Things went quiet, they finally gained entry and discovered the victim who was stabbed 40 times in her bathtub. The defendant was found under a bed and a bloody knife was recovered under a dresser. The defendant denied killing anyone and said he didn't know what was going on. (See 2/15/22 New York Times article by Ashley Southall, Ali Watkins and Jeffrey Singer, "Screams That Went Silent: Prosecutors Account for China Town Killing," [nytimes.com]).

DANGEROUSNESS NOT A PERMISSIBLE BAIL CONSIDERATION IN NEW YORK STATE

New York's new Mayor, Eric Adams, has publicly called upon state legislators to modify the bail laws to permit judges to consider (like every other state) whether a defendant is dangerous and presents a threat of harm to public safety in making decisions with respect to bail. (See 2/8/22 New York Times article by Luis Ferre-Sadurni, Grace Ashford and John Bromwich, "Adams Wants Tougher Bail Laws. Can He Get Others to Agree?" (nytimes.com).

Speaking for the New York State Judiciary, Chief Administrative Judge, Lawrence K. Marks noted that "many judges...would like to have more discretion in making determinations about bail and release of people accused of crimes" on a case-by-case basis. (See 1/25/22 NY Post article by Bernadette Hogan and Bruce Golding, "New York Judges Agree with Mayor Adams on Fixing Bail-Reform Law…" [nypost.com]).

STATE LEGISLATURE DOESN'T SEEM EAGER TO CHANGE THE BAIL LAWS A SECOND TIME

After declining to include a provision for a "dangerousness" consideration in the original reform and again in the amended version of July 2020, legislative leaders appear disinclined to revisit the law for such purpose. Assembly Speaker Carl Heastie expressed concern about a potential disproportionate adverse impact on people of color, and others (e.g., Senate Majority Leader Andrea Stewart-Cousins) suggested that the mayor and other leaders focus instead on improving pre-trial supervision and release services lest the underlying purposes of bail reform (eliminating the adverse effects of pre-trial detention on minorities) be undermined. (See 1/28/22 NY Post Article by Post Editorial Bd, "State Leaders Resisting Mayor Adams on Bail Reform Don't Have a Leg to Stand On," [nypost.com]).

For her part, Governor Kathy Hochul appears to be treading deliberately but cautiously, acknowledging the importance of public safety and expressing a willingness to work with the legislature to address their constituents' concerns. (See 11/15/21 article by Dan Clark, "Hochul Opens the Door to Bail Reform Changes," (nynow.wmht.org).

BAIL CRITERIA

Pursuant to CPL 510.30 (2)(a), when exercising their discretion with respect to bail or recognizance release, judges are expected to consider the kind and degree of control or restriction to secure the defendant's appearance when required, taking into account:

(i) The PRINCIPAL'S CHARACTER, REPUTATION, HABITS AND MENTAL CONDITION.
(ii) His/her EMPLOYMENT AND FINANCIAL RESOURCES.
(iii) His/her FAMILY TIES and the LENGTH OF RESIDENCE IN THE COMMUNITY.
(iv) His/her CRIMINAL RECORD, if any.
(v) Any previous ADJUDICATIONS AS A J.D. (per FCA 354.2), pending cases where fingerprints are retained (FCA 306.1) or as a Y.O.
(vi) Previous record, if any, of RESPONDING TO REQUIRED COURT APPEARANCES or of FLIGHT TO AVOID CRMINAL PROSECUTION.
(vii) Where the principal is charged with a CRIME AGAINST A FAMILY/SAME HOUSEHOLD MEMBER (CPL 530.11), the court mist consider:
(A) Any VIOLATION OF AN ORDER OF PROTECTION whether or not such order is still in effect.
(B) The principal's history of USE OR POSSESION OF A FIREARM.
(viii) The WEIGHT OF THE EVIDENCE in the pending criminal action and any other factors affecting the probability (or improbability) of conviction, or in the case of an APPEAL, the merit or lack of merit thereof.
(ix) The SENTENCE that may be (or has been) imposed.

(b) With respect to a pending appeal, the LIKELIHOOD OF ULTIMATE REVERSAL.

(3) If D is charged with a FELONY, the court must inform him/her that release is CONDITIONAL.

The court must advise D that the order of release may be revoked if D commits a new felony.

NEW ARRESTS WHILE OUT ON RELEASE:

According to data recently released by the NYS Unified Court System (as required by Bail Reform laws) and the Department of Criminal Justice Services (DCJS), out of roughly 100,000 defendants released between July 2020 and June 2021 under the new law, one-third of them (who were cash-bail eligible under the old law) were re-arrested for new crimes and/or violations. In that same time frame, 3,460 defendants were arrested on a new violent felony. This data included those who were arrested AFTER their case was concluded. (See 1/13/22 Albany Times Union article by Joshua Solomon and Brenda J. Lyons, "New Data Shows Nearly Four Percent of People Out Due to Bail Changes Were Rearrested for Violent Felonies. [timesunion.com]).

Considering only those who were rearrested between release and disposition of their case, the numbers were reported as 20%, (new arrests at every level), and two percent (violent felonies). The numbers did not include arrests of juvenile offenders nor defendants charged in the town and village courts.

Those focusing on percentages tend to view this information as supporting bail reform and those who look at the raw numbers see it as cause for concern. (See 1/5/22 article by Rebeca C. Lewis, "New Data Proves Bail Reform Worked and Failed, Depending on Whom You Ask." (nymedia.com).

SOME JUDGES NOW TAKING A HARDER LINE

At the recent arraignment of a 16-year-old first time arrestee on charges of Robbery and Grand Larceny, a NYC criminal court judge recently remanded the defendant despite a recommendation from the prosecutor for supervised release. The judge said that she could not understand the People's position considering the allegations that the defendant and four co-defendants (including one also accused of shooting a police officer in the foot in an unrelated case), lured the victim (a fellow student) into stairwell, where one presented a gun, and another hit the victim in the head with a gun. They stole his wallet, phone and clothing including a Canada Goose coat which one of the defendants was later found to be wearing.

Apparently, defense counsel was not able to persuade the judge that the defendant's participation was less than that of the others, nor was the court sufficiently moved by the plaintive tears of the defendant's mother who mentioned that he was a good student whom she hoped to take on some upcoming college visits. (See 2/12/22 article by George Roberts and Kathianne Boniello, "Manhattan Judge Rejects No-Bail Bid, Sends Accused Teen Robber to Jail." [nypost.com]).

MINORITIES AND CRIMINAL JUSTICE:

It is difficult to discern whether minority involvement in crimes reflects the adverse effects of poverty, the prevalence of single-parent households (66% in the US, 68% in NYS per actrochester.org), a shortage of positive paternal role models, living in high-crime neighborhoods, insufficient educational and employment opportunities and/or a criminal justice system that for years has targeted them and

punished them more harshly than their non-minority counterparts. (e.g., Historically, the federal penalties for possession of crack cocaine [more commonly connected to minority offenders], have been far more severe than for possession of powder cocaine which is more frequently associated with non-minorities. (See, generally, “Race, Ethnicity, and the Criminal Justice System” by Katherine J. Rosich, 9/07, American Sociological Association, Department of Research and Development (asanet.org).

The above-referenced article points to a 1989 report of the Committee on the Status of Blacks of the National Academy of Sciences that concludes, “as long as great disparities in socioeconomic status of blacks and whites remain, black relative deprivation will continue to involve them disproportionately in the criminal justice system as (both) victims and offenders.”

High rates of violent crime (frequently involving minority offenders and victims) in cities like New York and Chicago seem to suggest that things are not much better. According to an article by Christopher Robbins appearing in the Gothamist on 4/4/21, 299 people were shot in NYC in the first four months of 2021 (a 54% increase over the preceding year) and 92 people were murdered (an increase of 19.5%). In 2020, there were 462 murders (up 45% from 2019).

According to data from the Chicago P.D. and the Medical Examiner’s Office, there were 836 homicides in the city in 2021 (the largest number since 1994). (See 1/3/22 article by Annie Sweeney, “Chicago Reached at Least 800 homicides in 2021, a Level Not Seen in 25 Years.” (chicagotribue.com).

Most of the violence appears to have occurred in the most impoverished neighborhoods where rival gangs run rampant. (See 1/3/22 article by Andy Grimm and Tom Schuba, “Chicago’s Most Violent Neighborhoods Were More Dangerous Than Ever.” (chiacago.suntimes.com).

IN THE CITY OF GOOD NEIGHBORS

Here in Buffalo NY, according to a Buffalo News article by Aaron Besecker, “Shootings Skyrocket in Buffalo So Far in 2021 (updated 12/28/21, buffalonews.com), the number of people shot in the city over the first two months of the year increased 140% compared to the same period from the year before.

Reverend James E. Giles, coordinator of Buffalo Peacemakers, (and director of Back to-Basics Ministries) cited an influx of guns into city streets as a driving force in the increase.

The article notes that in January and February 2021, 43 people were injured and ten were killed in shootings (compared to 16 such shootings in 2020), prompting the Erie County DA to note that “people are getting shot and killed in communities of color here in Buffalo,” in particular on the east and west sides of the city. Nine of those injured were teenagers.

In all of 2021, 355 people were shot compared to 188 in 2019. Among the factors cited (including kids being out of school due to Covid-19), police officials pointed to BAIL REFORM which, in their view, has allowed violent criminals with guns to be released on no or low bail. The deputy commissioner of police stated that judges need to “hold gun defendants accountable to protect the safety of our streets and set appropriate bail.”

In 2020, Buffalo was described as having one of the nation’s highest murder rates in 2020. (See 12/11/21 article by Samuel Stebbins, “Buffalo NY Reported One of the Highest Murder Rates in the US”,

(247wallst.com). While there were 21,570 murders reported nationwide (up 30% from 2019), Buffalo reported 61 murders in 2020 (i.e., 24 for every 100,000 people). This was well above the national rate of 6.5 murders per 100,000 people.

There were 1018 violent crimes reported for every 100,000 people in Buffalo in 2020 (compared to 399/100,000 nationwide).

U.S. BUREAU OF JUSTICE REPORT ON VIOLENT CRIMES:

In 2018, the Bureau of Justice concluded, based on the FBI'S Uniform Crime Reporting (UCR) and a national crime survey of over one hundred fifty thousand households found that whites who constituted sixty percent of the overall population, accounted for 45.9% of people arrested for non-fatal violent crimes (NFVC) including rape, robbery, and aggravated assault. While blacks represented 12.5% of the population, they accounted or 33% of the arrests for such crimes. Hispanics accounted for 18.3% of the population an 17.6% of those arrested for such crimes.

The survey (based on victim perception/description of perpetrators) revealed that white offenders represented 46% of arrestees, blacks represented 29% and Hispanics 16%. (See January 2021 article, Race and Ethnicity of Violent Crime Offenders and Arrestees, 2018 by Allen J. Beck, Ph.D., NCJ #255909 [bjs.ojp.gov]).

To no great surprise, some victims' rights groups (e.g., Criminal Justice Legal Foundation) view the numbers, in particular the overrepresentation of black offenders in relation to their overall population, as objectively reflecting differences in crime commission rates (among different races) rather than law enforcement bias. (See 1/14/21 article by Michael J. Renfield, "BJS Study Refutes Claim of Overall Bias in Arrest Rates. (cjs.org).

WHAT CRIMES QUALIFY FOR CASH BAIL?

Under CPL 510.10 (4), (as amended in July 2020), the following are designated as QUALIFYING OFFENSES for which MONETARY BAIL is an option:

(a). A VIOLENT FELONY (VF) other than Robbery 2d degree (PL 160.10[1]) and Burglary 2d degree (PL 140.25[2] UNLESS the defendant is charged with entering the LIVING AREA of the dwelling).

(b). A crime involving WITNESS INTIMIDATION (PL 215.15).

(c). A crime involving WITNESS TAMPERING (PL 215.11, 215.12 or 215.13).

(d). A PL CLASS A FELONY (if drugs, only an A-1 Felony).

(e). A SEX TRAFFICKING offense (PL 230.34 or 230.34-a) or a FELONY SEX OFFENSE (PL 70.80) or a CRIME INVOLVING INCEST (PL 255.25, 255.26 or 255.27) or a MISDEMEANOR defined in PL ART. 130

(f). CONSPIRACY 2d degree (PL 105.15) where the object crime is a Class A FELONY defined in PL Art 125 (Homicide).

(g). MONEY LAUNDERING IN SUPPORT OF TERRORISM 1ST DEGREE (PL 470.24), 2d degree (PL 470.23), in support of Terrorism 3d degree (PL 470.22), in support of Terrorism 4th degree (PL 470.21); or FELONY TERRORISM (PL 490 excluding PL 490.20).

(h). CRIMINAL CONTEMPT 2d degree (PL 215.50[3]), 1st degree (PL 215.51 [b][c] or [d]) or AGGRAVATED CRIMINAL CONTEMPT in that the defendant VIOLATED A DULY SERVED ORDER OF PROTECTION where the PROTECTED PARTY IS A MEMBER OF THE SAME FAMILY OR HOUSEHOLD (CPL 530.11).

(i). FACILITATING A SEXUAL PERFORMANCE BY A CHILD WITH A CONTROLLED SUBSTANCE/ALCOHOL (PL 263.30), USE OF A CHILD IN A SEXUAL PERFORMANCE (PL 263.05) or LURING CHILD (PL 120.70[1]), PROMOTING AN OBSCENE SEXUAL PERFORMANCE BY A CHILD (PL 263.10) or PROMOTING A SEXUAL PERFORMANCE BY A CHILD (PL 263.15).

(j). ANY CRIME that is ALLEGED TO HAVE CAUSED THE DEATH of another person.

(k). CRIMINAL OBSTRUCTION OF BREATHING OR BLOOD CIRCULATION (PL 121.11), STRANGULATION 2d degree (PL 121.12) OR UNLAWFUL IMPRISONMENT 1ST degree (PL 135.10) and is alleged to have been committed against a member of the SAME FAMILY OR HOUSEHOLD.

(l). AGGRAVATED VEHICULAR ASSAULT (PL 120.04-a) or VEHICULAR ASSAULT 1ST degree (PL 120.04).

(m). ASSAULT 3d degree (PL 120.00) or ARSON 3d degree (PL 150.10) when charged as a HATE CRIME (PL 485.05).

(n). AGGRAVATED ASSAULT ON A PERSON LESS THAN 11-YEARS-OLD (PL 120.12) OR CRIMINAL POSSESSION OF A WEAPON (CPW) ON SCHOOL GROUNDS (PL 265.01 [1-a]).

(o). GRAND LARCENY 1st degree (PL 155.42), ENTERPRISE CORRUPTION (PL 460.20) or MONEY LAUNDERING 1ST degree (PL 470.20).

(p). FAILURE TO REGISTER AS A SEX OFFENDER (CL 168-t) or ENDANGERING THE WELFARE OF A CHILD (PL 260.10) WHERE D MUST MAINTAIN REGISTRATION UNDER CL ART SIX-C AND IS DESIGNATED A LEVEL THREE OFFENDER (CL 168-l [6]).

(q). A crime involving BAIL JUMPING (PL 215.55, 215.56 or 215.57), or a crime involving ESCAPE FROM CUSTODY (PL 205.05, 205.10 OR 205.15).

(r). ANY FELONY OFFENSE COMMITTED BY THE PRINCIPAL WHILE SERVING A SENTENCE OF PROBATION OR WHILE RELEASED TO POST-RELEASE SUPERVISON (PRS).

(s). A FELONY, WHERE D QUALIFIES FOR SENTENCING ON SUCH CHARGE AS A PERSISTENT FELONY OFFENDER (PL 70.10).

(t). ANY FELONY OR CLASS A MISDEMEANOR involving HARM TO AN IDENTIFIABLE PERSON OR PROPERTY, where such charge arose from CONDUCT OCCURRING WHILE D WAS RELEASED O.R. or UNDER CONDITIONS for a SEPARATE FELONY OR CLASS A MISDEMEANOR involving HARM TO AN IDENTIFIABLE PERSON OR PROPERTY.

UNDER THIS SECTION, (which was added in July 2020), THE PROSECUTOR MUST SHOW REASONABLE CAUSE TO BELIEVE THAT D COMMITED THE INSTANT CRIME AND ANY UNDERLYING CRIME (which need NOT be a QUALIFYING OFFENSE).

A RECENT CASE INTERPRETING CPL 510.10 (4)(t):

In People v Franklin, 2021 NY Slip Op 21124 (Criminal Court, City of NY, Bronx County, 5/3/21) the court held that proceedings to determine reasonable cause (which is not required under subsection a-s above) are akin to any other bail proceeding where the court can rely on the allegations in the accusatory instrument (including hearsay contained in a sufficiently detailed misdemeanor complaint) and any other relevant information.

Noting that unlike CPL 530.60 (2)(c) which allows for cross examination of witnesses and presentation of evidence by the defendant at a hearing to review a prior securing order, CPL 510.10 (4)(t) has no such requirements, the court concluded that the Legislature did not intend to create any special evidentiary hurdles to the establishment of reasonable cause. (Citing, inter alia, People v Tychanski, 78 NY2d 909 [1991] and People v Finnegan, 85 NY2d 53 [1995]).

In Franklin, the defendant was previously arrested and indicted for various counts of robbery, assault and weapons possession arising from separate attacks on different victims (usually in concert with a co-defendant) on 7/23/18 (released on $5k cash/$10k bond), March 18, 2019 (released on $20k cash or bond), 10//11/19 (released on $2.5k cash or $5k bond) and 10/11/19 (released on $2.5k or $5k bond) respectively.

In the instant case, the defendant was arraigned in the criminal court on 3/14/21 for a misdemeanor assault upon a teenage girl whom he allegedly punched in the face for refusing to dance with him at a party. After reviewing CPL 510.10 and analyzing it with reference to CPL 530.60 and 100.40 (reasonable cause requirement for local court accusatory instruments), and noting the detailed facts set forth both in the complaint and by the People at the arraignment, the court set bail at $10,000.00 cash/$20,000.00 bond).

FINAL THOUGHT:

In dramatically changing the law to eliminate a long history of bail setting that has resulted in the disproportionate pre-trial incarceration of those who are unable to pay their way out of jail pending trial, the Legislature has pushed the pendulum far in the direction of favoring freedom over confinement except for the most serious of crimes. Even then, the law requires judges to focus on flight risk (but not dangerousness) and find the least restrictive encumbrance that is likely to ensure the accused's return to court.

Whether more violent crimes committed by those already released on pending charges, objections from some elected officials, concerned citizens, and victim advocates over threats to public safety or complaints from the judiciary about constraints on decision-making discretion will lead to further amendments to the bail statutes will remain to be seen and heard.

In the meantime, it is defense counsel's obligation to continue to advocate in the client's best interests, arguing for the least restrictive conditions of release (CPL 510.30 [1]), (with appropriate services or supervision if required), reminding the court of the presumption of innocence (until a jury says otherwise) and making sure that the court, when setting cash bail for a qualifying offense, considers the

defendant's individual financial circumstances, including the ability to post bail without under hardship (as well as the ability to obtain a secured, unsecured or partially secured bond. (CPL 510.30 [1][f]).

In short, while the drama over bail reform plays out in courts of public opinion, lawyers must continue to represent their clients zealously and ethically in courtrooms where cases are tried and decisions are made that have a significant impact upon their liberty.