CRIMINAL DEFENSE TECHNIQUES

CIPES

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Cumulative Supplement

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VOLUME 1

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CHAPTER 1

Bail and Pretrial Release

§ 1.01 Introduction

[1]—Policy Favoring Pretrial Release

PAGE 1–6:

[b]—Constitutional Considerations

[*Add new Footnote 5.1 at end of first sentence:*]

5.1. Reeves v. State, 548 S.W.2d 822 (Ark. 1977); County of Champaign v. Anthony, 356 N.E.2d 561 (Ill. 1976) (to hold defendant liable for cost of county providing victim 24 hour protection while defendant was free on bail would violate defendant's state constitutional right to be bailable).

PAGE 1–7:

N. 9. *See* Illinois v. Allen, 397 U.S. 337, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970), N. 95.1 *infra,* this Supplement.

PAGE 1–8:

[*Add new Footnote 11.1 at end of first sentence, second paragraph:*]

11.1 *Ex parte* Branch, 553 S.W.2d 380 (Tex. 1977); State *ex rel.* Hutzler v. Dostert, 236 S.E.2d 336 (W. Va. 1977).

N. 12. The Pennsylvania Supreme Court has refused to consider a habeas corpus petition for original jurisdiction, seeking to raise the constitutionality of the money-bail system as practiced in that state. Commonwealth *ex rel.* Hartage v. Hendricks, 439 Pa. 584, 268 A.2d 451 (1970). See generally Commonwealth *ex rel.* Ford v. Hendrick, 215 Pa. Super.

(Rel.23–V.1 Pub.202)

206, 257 A.2d 657 (1969) (dissenting opinion of Hoffman, J.); *Shakur* case, N. 87 *infra*, this Supplement.

PAGE 1–9:

N. 15. *Cf.* Tate v. Short, 401 U.S. 395, 399, 90 S. Ct. 668, 28 L. Ed. 2d 130 (1971) ("Since Texas has legislated a 'fines only' policy for traffic offenses, that statutory ceiling cannot, consistently with the Equal Protection Clause, limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the means to pay his fine.")

In United States v. Cook, 442 F.2d 723 (D.C. Cir. 1970), appellant challenged bail set at a $100,000 surety bond. Although indicating that it was not clear whether Cook was truly indigent, the court brushed aside with broad strokes the argument that monetary conditions may not be imposed upon an indigent defendant.

The case was remanded, however, for further consideration of the proper amount of a monetary surety bond, taking into account appellant's statement concerning the amount he was able and willing to put up. And see Simmons v. Warden of Baltimore City Jail, 16 Md. App. 449, 298 A.2d 199 (1973). *See* footnote 170.1 *infra*.

[c]—*Negative Effects of Pretrial Detention*

N. 18. In Kinney v. Lenon, 425 F.2d 209, 210 (9th Cir. 1970), it was held that "in the peculiar circumstances of this case, failure to permit [the juvenile defendant's] release for the purpose of aiding the preparation of his defense unconstitutionally interfered with his due-process right to a fair trial":

> "The ability of an accused to prepare his defense by lining up witnesses is fundamental, in our adversary system, to his chances of obtaining a fair trial. Recognition of this fact of course underlies the bail system. Stack v. Boyle, 342 U.S. 1, 4, 72 S. Ct. 1, 96 L. Ed. 3 (1951). But it is equally implicit in the requirements that trial occur near in time, Klopfer v. North Carolina, 386 U.S. 213, 87 S. Ct. 988, 18 L. Ed. 2d 1 (1967), and place (U.S. Const. Amend. VI) to the offense, and that the accused have compulsory process to obtain witnesses in his behalf. Washington v. Texas, 388 U.S. 14, 87 S. Ct. 1920, 18 L. Ed. 2d 1019 (1967). Indeed, compulsory process as a practical matter would be of little value without an opportunity to contact and screen potential witnesses before trial.
>
> "This is not a case where release from detention is sought simply for the convenience of the appellant. *There is here a strong showing that the appellant is the only person who can effectively prepare his own defense.* We may take notice, as judges and lawyers, of the

difficulties often encountered, even by able and conscientious counsel, in overcoming the apathy and reluctance of potential witnesses to testify. It would require blindness to social reality not to understand that these difficulties may be exacerbated by the barriers of age and race. [Appellant is black, his attorneys white.] Yet the alternative to some sort of release for appellant is to cast the entire burden of assembling witnesses onto his attorneys, with almost certain prejudice to appellant's case.

"The appellee suggests that appellant is properly detained in view of what are claimed to be previous instances of harassment of the state's witnesses. But the Juvenile Court is not without power to take appropriate measures to prevent any such misconduct, and our order so provides. *Cf.* 18 U.S.C. § 3146(a)." [Emphasis supplied.]

In an identically styled case, the Ninth Circuit upheld the dismissal of an action challenging the constitutionality of an Oregon statute which declared that bail provisions were inapplicable to children. Kinney v. Lenon, 447 F.2d 596 (9th Cir. 1971). Although indicating the statute presented substantial constitutional questions, the court found that the appellant's application for a writ of habeas corpus was moot and that his suit for a declaratory judgment and injunctive relief was barred by 28 U.S.C. § 2283 and the comity doctrine, as articulated by Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed 2d 669 (1971). *See also* State v. Webb, 132 Vt. 418, 320 A.2d 626 (1974).

[2]—Forms of Pretrial Release

[a]—Summons or Citation

N. 27. For judicial employment of the ABA Standards, *see* Appendix A, *infra.*

[c]—Nonmonetary Release

PAGE 1-18:

N. 52. Fed. Rule Crim. Proc. 46(a) was amended, effective October 1, 1972, to provide explicitly that the Bail Reform Act of 1966 controls release on bail prior to trial.

The California Supreme Court held the San Francisco pretrial release system to be unconstitutional under the due process clause of the state constitution (with a plurality holding the federal constitution also applicable). Under the system, three methods of release are possible: bail, citation, or own recognizance [OR] release. Where the former two methods cannot be used by a detainee, he may seek release by the latter method, which requires an interview and evaluation of the likeli-

hood that the detainee will appear in court. There is a presumption against OR release, and the detainee bears the burden of showing the merit of his application, with totally unfettered discretion as to release in the hands of the trial judge, and no requirement of written findings or reasons for decision on the record. At the hearing, the court must consider three factors: the detainee's community ties, record of appearance at past court proceedings, and severity of the sentence he faces. The court held that the burden of going forward with evidence of community ties is on the detainee, because he is clearly the best source of such information. As to the other two factors, however, the prosecution must bear the burden of going forward because of the relative ease and inexpensiveness of procuring such information from the detainee's "rap sheet" and the complaint. Furthermore, the court held that due process requires the prosecution to bear the burden of proof in proceedings which may deprive an individual of his freedom, especially where the decision is "predictive" in nature, and where "distortion" in the fact finding process is prevalent (*e.g.*, detainee cannot effectively marshall tangible evidence of community ties when he is incarcerated). Putting the burden of proof on the prosecution, the court stated, "helps to preserve the respect for the individual's liberty and the presumption of innocence that lies at the foundation of our judicial system, to maintain the respect and confidence of the community in the uniform application of the law and to systematically correct certain biases inherent in the OR decision-making process," and will achieve these goals without significant harm to governmental interests. However, the court refused to require a written statement of reasons from a judge who denies such a release, because such a requirement would unduly burden the judges, especially in light of available alternatives, such as an oral statement of reasons and a statutory right to automatic review of the bail decision. Van Atta v. Scott, 166 Cal. Rptr. 149, 613 P.2d 210 (Cal. 1980).

[3]—Relation of Release or Detention to Other Questions

[b]—Speedy Trial and Calendar Questions

[Note: *See generally* Chapter 19 *infra* dealing with speedy trial.]

[Add new Footnote 69.1 at end of last full paragraph:]

69.1. Fed. Rule Crim. Proc. 5(b) now requires the magistrate at the time of the initial appearance of the defendant before him, to inform the defendant of the general circumstances under which he is entitled to pretrial release.

PAGE 1–23:

N. 76. *See* United States *ex rel.* England v. Anderson, 347 F. Supp. 115 (D. Del. 1972); Cooper v. Morin, 398 N.Y.S. 2d 36 (1977); People v. Von Diezelski, 355 N.Y.S.2d 556 (1974); State v. Webb, 132 Vt. 38, 320 A.2d 626 (1974). As to the detriment suffered by detained offenders in being compelled to submit to lineups, *see* United States v. Scarpellino, 431 F.2d 475, 479-480 (8th Cir. 1970) (no equal protection issue since even released defendants may be compelled to submit to identification procedures as a condition of bail). *But see* Rigney v. Hendrick, 355 F.2d 710 (3d Cir. 1965) (dissenting opinion).

[c]—Credit for Time Served

PAGE 1–24:

N. 82. In Davis v. Attorney General, 425 F.2d 238 (5th Cir. 1970), creatively applying 18 U.S.C. § 3568, time spent in state confinement was counted for credit against a federal sentence where a "federal detainer was responsible for [the defendant's] confinement because the state officials relied on the detainer warrant to refuse to release him on bail." *Id.* at 240.

§ 1.02 When Bail or Release Conditions Fixed

[1]—Cases Bailable as of Right

PAGE 1–25:

N. 86. This subject is now covered by N.Y. Crim. Proc. L. § 530.20 (1970).

N. 87. Covington v. Caparo is reported at 297 F. Supp. 203. *See* Mastrian v. Hedman, 326 F.2d 708 (8th Cir.), *cert. denied* 376 U.S. 965 (1964); United States *ex rel.* Shakur v. Comm'r of Corrections, 303 F. Supp. 303 (S.D. N.Y.), *aff'd* 418 F.2d 243 (2d Cir. 1969) *cert. denied.* 397 U.S. 999 (1970). See also N. 97 *infra,* this Supplement.

[2]—Cases Not Bailable as of Right

[a]—Capital Cases

PAGE 1–26:

N. 89. Petitioner, charged with several felonies punishable by life imprisonment, sought habeas relief from the trial court's denial of pre-trial bail. The District Court of Appeal of Florida affirmed denial of relief. Under the Florida constitution and rules of criminal procedure, a

defendant facing life imprisonment has no *right* to bail if the proof of his guilt is evident and the presumption great. Rather, the trial court has discretion to decide the issue upon a consideration of all the circumstances. Here the record on appeal supports the trial court's conclusion that petitioner "has no substantial ties to the community and would be a substantial bail risk." Hence, there was no abuse of discretion in the denial of bail. Arthur v. Harper, 371 So.2d (Fla. Dist. Ct. App. 1978).

N. 90. People v. District Court, 529 P.2d 1335 (Colo. 1974).

[*Insert text at end of second paragraph:*]

In such cases, the prosecution carries the burden of proving that the probability of conviction is great.

90.1 Primm v. State, 293 So. 2d 725 (Fla. App. 1974).

PAGE 1–27:

[*Add to text following reference to N. 92:*]

In Furman v. Georgia[92.1] capital punishment was held unconstitutional, at least as applied to the cases pending before the Court. Nine separate opinions were authored in the *Furman* decision, three Justices dissenting, and the composite holding left open the possibility of the future use of capital punishment, as only two members of the Court viewed it as unconstitutional *per se.* Lower courts have split as to the impact of *Furman* on state constitutional provisions providing a right to bail in all but capital cases where "the proof is evident or the presumption great." Some courts have concluded that the right to bail now applies in all cases.[92.2] In such jurisdictions, when capital punishment has been reinstated, presumably in compliance with constitutional standards, the same offense occurring prior to the reinstatement of the penalty is not a capital offense for purposes of determination of eligibility for bail.[92.3]

Other jurisdictions have ruled that the limitation on bailability is attached because of the danger posed to the public by the perpetrators of certain usually violent crimes, a reality which has not been altered by the elimination of capital punishment. Thus offenses which are designated as capital offenses in the code re-

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main subject to the limitation on bail, notwithstanding the constitutional prohibition against capital punishment.[92.4]

92.1. 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972).

92.2. *In re* Tarr, 109 Ariz. 264, 508 P.2d 728 (1973); Baumgarner v. Hall, 506 S.W.2d 834 (Ark. 1972); People v. Superior Court, County of Orange, 35 Cal. App. 3d 219, 110 Cal. Rptr. 581 (1973); State v. Aillon, 295 A.2d 666 (Conn. 1972); People *ex rel.* Hemingway v. Elrod, 60 Ill. 2d 74, 322 N.E.2d 837 (1975); McLaughlin v. Warden of Baltimore City Jail, 16 Md. App. 451, 298 A.2d 201 (1973); State v. Johnson, 61 N.J. 351, 294 A.2d 245 (1972); Edinger v. Metzger, 32 Ohio 2d 263, 61 Ohio Op. 2d 306, 290 N.E.2d 577 (1972); Commonwealth v. Truesdale, 449 Pa. 325, 296 A.2d 829 (1972); *ex parte* Contella, 485 S.W.2d 910 (Tex. 1972).

Cf. Escandar v. Ferguson, 441 F. Supp. 53 (S.D. Fla. 1977) (Florida's bail procedure absolutely denying bail to capital offenders denies due process of law).

92.3. Upton v. Graves, 509 S.W.2d 823 (Ark. 1973).

And see St. Pierre v. Sheriff, Washoe County, 524 P.2d 1278 (Nev. 1974), holding the making of a noncapital crime nonbailable constitutionally impermissible.

See also Ex parte Dennis, 334 So.2d 369 (Miss. 1976).

92.4. *Ex parte* Bynum, 312 So. 2d 52 (Ala. 1975); Dunbar v. District Court, 500 P.2d 358 (Colo. 1972); State v. Flood, 269 So. 2d 212 (La. 1972); Hudson v. McAdory, 286 So. 2d 916 (Miss. 1972); Jones v. Sheriff, Washee County, 509 P.2d 824 (Nev. 1973); Roll v. Larson, 516 P.2d 1392 (Utah 1973); State v. Haga, 81 Wash. 2d 704, 504 P.2d 787 (1972).

And see People v. Anthony, 57 Ill. 2d 222, 311 N.E.2d 689 (1974).

Louisiana maintained the system of classification for bail purposes "at least until the legislative process has reorganized the criminal law and procedure in view of Furman." State v. Holmes, 263 La. 685, 269 So. 2d 207 (1972). Following such "reorganization," the Louisiana Supreme Court accepted the new de facto list of capital offenses. State v. Washington, 294 So. 2d 793 (La. 1974).

[*b*]—*Where Trial Might Be Obstructed*

PAGE 1–29:

N. 94. *See* Dorman v. United States, 435 F.2d 385, 397-398 (D.C. Cir. 1970) (en banc) (dictum):

"We think the trial judge might have given a more complete statement of his reasons for revoking bail; likewise, he might have taken measures to minimize the impact on the jury of the fact that the defendants were now in custody—for example, there seems to be no clear reason why marshals had to be stationed right next to the defendants. We can envisage situations where action of this type by a judge might be assumed to be prejudicial. For example, if the jury had been sitting for a good part of a month on several criminal cases, and in cases where defendants were in custody marshals were *not* placed near the defendants, then if the trial judge, in the middle of a trial and without compelling reasons, revoked a defendant's bail and placed a marshal right next to him, the jury might well assume that some terrible piece of information had been revealed to the judge indicating that the defendant was either very dangerous or very guilty. . . . "

As to the effect of detention on the conduct of the defense, *see* Kinney v. Lenon, N. 18 *supra,* this Supplement.

N. 95. While the court has inherent power to revoke bail in the case of a defendant who attempts to obstruct the trial (e.g., by threatening a witness), such power "should be exercised with great care and only after a hearing which affords the defendant an ample opportunity to refute the charges. . . . " United States v. Gilbert, 425 F.2d 490, 492 (D.C. Cir. 1969).

[*Add to text following reference to N. 95:*]

In *Illinois v. Allen,* the Supreme Court upheld, over Sixth Amendment confrontation claims, the power of a trial judge to exclude a disruptive defendant from his own trial. Without referring to the power to revoke bail, the Court approved the following alternative procedures for dealing with trial disruption, though recognizing inherent disadvantages in each procedure:

"It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country. The flagrant disregard in the courtroom of elementary standards of proper conduct should not and cannot be tolerated. We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations. We think there are at least three constitutionally

permissible ways for a trial judge to handle an obstreperous defendant like Allen: (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; (3) take him out of the courtroom until he promises to conduct himself properly."[95.1]

95.1. N. 9 *supra,* this **Supplement** (Black, J.). In a concurring opinion Justice Douglas discussed the possible motives behind courtroom disruption:

> "*Second* are trials used by minorities to destroy the existing constitutional system and bring on repressive measures. Radicals on the left historically have used those tactics to incite the extreme right with the calculated design of fostering a regime of repression from which the radicals on the left hope to emerge as the ultimate victor. The left in that role is the provocateur. The Constitution was not designed as an instrument for that form of rough-and-tumble contest. The social compact has room for tolerance, patience, and restraint, but not for sabotage and violence. Trials involving that spectacle strike at the very heart of constitutional government." [Footnote omitted.]

PAGE 1–30:

N. 96. *And see* Blunt v. United States, 322 A.2d 579 (D.C. App. 1974). Protection of witnesses is not sufficient basis for resort to an *ex parte* hearing. United States v. Wind, 527 F.2d 672 (6th Cir. 1975).

[*Add to text at end of subsection:*]

Fed. R. Crim. Proc. 46(b) was amended, effective October 1, 1972, to provide as follows:

> "(b) RELEASE DURING TRIAL. A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions or termination of release are necessary to assure his presence during the trial or to assure that his conduct will not obstruct the orderly and expeditious progress of the trial."

The note of the Advisory Committee contained the following explanation:

"Subdivision (b) deals with an issue not dealt with by the Bail

Reform Act of 1966 or explicitly in former rule 46, that is, the issue of bail during trial. The rule gives the trial judge discretion to continue the prior conditions of release or to impose such additional conditions as are adequate to insure presence at trial or to insure that his conduct will not obstruct the orderly and expeditious progress of the trial."

[c]—*After Conviction*

[*Add new Footnote 96.1 at end of first sentence:*]

96.1. State v. Flowers, 330 A.2d 146 (Del. Super. 1974); Rogers v. Leff, 45 A.D.2d 630, 360 N.Y.S.2d 652 (1974); State v. Smith, 84 Wash. 2d 498, 527 P.2d 674 (1974).

N. 97. *See also* the following:

Third Circuit: Defendants, both Teamsters Union officials, were convicted of racketeering, in violation of 18 U.S.C. §§ 1961–63. Immediately following imposition of sentence, the district judge, acting upon the Government's motion, remanded the defendants into custody without bail on the ground that, if left free, each would constitute a danger to the community. The Third Circuit affirmed. Under the Bail Reform Act of 1966, 18 U.S.C. § 3148, the district court has discretion to order detention of a convicted defendant pending disposition of his appeal if it appears that the appeal lacks requisite legal merit or is taken for delay, or that the defendant poses an unreasonable risk of flight or danger. The district court's decision is, in turn, entitled to "great deference" when the Court of Appeals, acting on a Fed. R. App. P. 9(b) application for release, undertakes its "obligation to assess independently an applicant's motion for release as well as the trial judge's decision thereon." United States v. Provenzano, 605 F.2d 85 (3d Cir. 1979).

Indiana: While Indiana does permit the setting of bail pending appeal for persons convicted of offenses other than murder, there is no constitutional right to bail pending appeal. Here, the trial court did not abuse its discretion in increasing the bail after conviction on an attempted rape charge. Keys v. State, —Ind. —, 390 N.E.2d 148 (1979).

PAGE 1-31:

N. 98. United States v. Stanley, 469 F.2d 576 (D.C. Cir. 1972). Note that 18 U.S.C. § 3148 was amended in 1970 to apply to defendants awaiting special sentencing review (under 18 U.S.C. § 3576).

[*Add new Footnote 98.1 at end of first sentence following (1):*]

98.1. United States v. Miranda, 442 F. Supp. 786 (S.D. Fla. 1977); United States *ex rel.* Walker v. Twomey, 484 F.2d 874 (7th Cir. 1973); United States v. Stanley, 469 F.2d 576 (D.C. Cir. 1972); United States v. Warwar, 57 F.R.D. 645, 648 (D.P.R. 1972) ("[T]he record shows defendant to be an alien born in Haifa, Palestine, and a citizen of Jamaica, without any ties to this community. Under this condition the possibility of flight is real and apparent, warranting the motion for bail pending appeal to be denied."); State v. Davis, 244 N.W.2d 540 (N.D. 1976); State v. Olmstead, 242 N.W.2d 644 (N.D. 1976); State v. Abbott, 322 A.2d 33 (R.I. 1974).

N. 99. United States *ex rel.* Walker v. Twomey, 484 F.2d 874 (7th Cir. 1973); United States v. Stanley, 469 F.2d 576 (D.C. Cir. 1972); State v. Olmstead, 242 N.W.2d 644 (N.D. 1976); State v. Azure, 241 N.W.2d 699 (N.D. 1976); State v. Abbott, 322 A.2d 33 (R.I. 1974). Compare N.Y. Crim. Proc. L. § 510.30, Subd. (b) (1970):

> "Where the principal is a defendant-appellant in a pending appeal from a judgment of conviction, the court must also consider the likelihood of ultimate reversal of the judgment. A determination that the appeal is palpably without merit alone justifies, but does not require, a denial of the application. . . . "

Applied: People v. Surretsky, 67 Misc. 2d 966, 325 N.Y.S.2d 31 (1971).

N. 100. United States v. Miranda, 442 F. Supp. 786 (S.D. Fla. 1977). For a decision in which Justice Douglas carefully considers and then rejects a claim that bail pending appeal should be denied because the appeal raises no substantial questions, see Harris v. United States, 404 U.S. 1392, 92 S. Ct. 10, 30 L. Ed. 2d 546 (1971).

PAGE 1–32:

[*Add new Footnote 103.1 at end of first sentence of last complete paragraph:*]

103.1. Riggins v. State, 134 Ga. App. 941, 216 S.E.2d 723, 725 (1975) ("[T]he trial court's decision to revoke an appeal bail bond should be accompanied by at least minimal due process protection.").

PAGE 1–33:

N. 105. *See generally,* and as to exhaustion of state remedies issue, Bloss v. People of State of Michigan, 421 F.2d 903 (6th Cir. 1970). As to

exhaustion, *see* § 44.03[2][c][i] *infra.* As to release pending, or pending review of, probation or parole revocation, *see In re* Whitney, 421 F.2d 337 (1st Cir. 1970) (probation); Baker v. Sard, 420 F.2d 1342 (D.C. Cir. 1969); Nuccio v. Heyd, 299 F. Supp. 939 (E.D. La. 1969). In *Baker* the court stated, *supra* at 1343-1344:

> "When an action pending in a United States court seeks release from what is claimed to be illegal detention, the court's jurisdiction to order release as a final disposition of the action includes an inherent power to grant relief pendente lite, to grant bail or release, pending determination of the merits. This principle is not rendered inapplicable by the circumstance that the action in this case before us is civil in nature, and not a direct criminal appeal.
>
> "Release is available in a habeas corpus action, which is a civil collateral attack, and also in an action under 28 U.S.C. § 2255 (1964).
>
> "However, when the attack is collateral, the release request ordinarily must be measured against a heightened standard requiring a showing of exceptional circumstances. A forceful special circumstance is the likelihood of succes on appeal." [Footnotes omitted.]

Compare Liistro v. Robinson, 365 A.2d 109 (Conn. 1976) (no denial of equal protection to grant bail to alleged probation violators and not to parolees pending parole revocation proceeding) *with* Tucker v. Kotsos, 368 N.E.2d (Ill. 1977) (parole violator entitled to reasonably prompt revocation hearing). *See also In re* Berry, 142 Cal. Rptr. 86 (App. 1977) (probationer entitled to revocation hearing).

[*Add to text at end of subsection:*]

Fed. R. Crim. Proc. 46(c) was amended, effective October 1, 1972, to provide as follows:

> "(c) PENDING SENTENCE AND NOTICE OF APPEAL. Eligibility for release pending sentence or pending notice of appeal or expiration of the time allowed for filing notice of appeal, shall be in accordance with 18 U.S.C. § 3148. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant."

The note of the Advisory Committee contained the following explanation:

> "Subdivision (c) provides for release during the period between a conviction and sentencing and for the giving of a

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