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June 13, 2016

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Pretrial Detention/Speedy Trial
Rules (Criminal)
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037

Re: Court Rules to Implement Bail Reform Part 2
Pretrial Detention and Speedy Trial

Your Honor:

One of the beauties of the Constitutional Right to Bail was that a middle class person who committed a crime in his middle age could be arrested on a Friday and be bailed out within 24 hours, thus losing no work time and avoiding getting fired. He later could quality for PTI or accept probation or be declared innocent, all without losing any of his rights, including the right to a speedy trial. The public threw all this out by removing that constitutional right to bail on the partial premise that under new laws a judge could keep a dangerous person in jail. Unfortunately, the prosecutors are now recommending all kinds of presumptions for all kinds of crimes and scenarios which end up keeping people in jail until trial. If the Court goes along with the prosecutor's recommendations and presumptions, innumerable numbers of defendants will lose their jobs and have their families disrupted, and not being able to work will have their defense thrust upon the Public Defender's Office. Our Supreme Court should reject recommending any of these presumptions. Let it be debated in full in the

Legislature where the people have a chance to be heard. By recommending changes in rules or statutory legislation apart from impinging on the separation of powers doctrine will place the Supreme Court in the position of having a horse in the race when these matters are challenged, which they surely will be. The Supreme Court is far better off not making any recommendations or statutory changes. Leave it to the people who can decide through their representatives what laws to pass. Let them debate it without the Supreme Court weighing in.

One should not forget that:

> "The consequences of pretrial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defense. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family. Moreover, there is strong evidence that a defendant's failure to secure pretrial release has an adverse effect on the outcome of his case. Studies in Philadelphia, the District of Columbia and New York all indicate that the conviction rate for jailed defendants materially exceeds that of bailed defendants. For example, of defendants charged with grand larceny forty-three percent of those on bail pending trial were convicted while seventy-two percent of those in jail were convicted. [Citation omitted] In terms of the sentence imposed on convicted persons, the bailed defendant is far more likely to receive probation; his jailed counterpart, having been unable to demonstrate his reliability under supervision, more frequently goes to prison. ...a recent study which attempted to hold other causative factors constant indicates that there is a strong relationship between detention and unfavorable disposition." [Citation omitted]

American Bar Association Standards Relating to Pretrial Release (Approved Draft 1968) at 2-3 cited in State v. Fann, 289 N.J.Super. 507 at 513.

If the baby is the presumption of innocence, and the bath water the right to bail, we may have thrown out the baby with the bath water.

Very truly yours,

/s/ Joseph S. Murphy, Esq.
Joseph S. Murphy, Esq.

JSM:dl

cc: Joseph E. Krakora, Public Defender
Hon. Martin Cronin, J.S.C.
John McMahon, Public Defender