Message from the Chair

"I have found it advisable not to give too much heed to what people say when I am trying to accomplish something of consequence. Invariably they proclaim it can't be done. I deem that the very best time to make the effort."—Calvin Coolidge

As a criminal justice community we are required to re-examine our system to evaluate the current process in light of changing social norms and enlightenment. It's a simple proposition: Change necessitates change! But it isn't so simple. Jurisprudence, by its very nature, is slow to react and adapt, and we must show respect to a history of laws and culture that serves as a foundation of our criminal justice system.

With these considerations in mind, we have embarked on an era of opportunity in our criminal justice world. Last year signaled important improvements in the New York criminal justice system in that our citizens are now afforded even greater protections from the stigma of a criminal record. Thanks to the tireless work of our Section, we saw a new sealing law become effective in October 2017, a statutory scheme that assists certain prior offenders to seek employment and other opportunities without being haunted by the transgression of their youth.

The Section also reacted to society's recognition that our youth were dragged into criminal courts designed for adults. The "Raise the Age" legislation will help redirect our youth to Family Court for a more proper adjudication.

These legislative advancements foreshadowed the improvements we seek to accomplish in 2018. This is, in fact, the best time to make the effort to change and expand our jurisprudence on issues some proclaimed couldn't be done. For example, "Bail Reform" has been an area of concern for this Section for many years. Like the sealing legislation, we continue the fight in recognition of our changing social norms and we finally see change on the horizon.

New York Governor Andrew Cuomo recently released a framework for Bail Reform in New York. I must say that the term "Bail Reform" is a misnomer to some extent because our existing statutory framework already allows for a majority of "reform" the governor seeks to accomplish. We agree that most courts rely solely on cash bail or insurance company bond to secure a defendant's future appearance. This is true despite the availability of multiple alternatives set forth in Criminal Procedure Law § 520.10 (i.e., a secured surety bond, secured appearance bond, a partially secured surety bond, a partially secured appearance bond, an unsecured surety bond, an unsecured appearance bond, or a credit card or similar device).

We believe education of judges, courtroom support personnel and the Bar as to the availability of such existing alternatives would go a long way in accomplishing the stated goal—reduction of jail populations by those *not yet convicted of crime*! Accordingly, "Pre-trial Detention Reform" is the proper name for efforts to change our criminal justice system. Bail is merely one shift in the analysis. We must hone the courts' focus on the presumption of innocence of those arrested but not yet convicted and utilize alternatives to pre-trial detention by setting a new norm that defendants shall be presumed to be released on their own recognizance (R.O.R.) in certain cases. For example, we applaud the governor's proposal to establish such a presumption in misdemeanor and non-violet felony cases. Furthermore, the option of supervised release monitored by a pre-trial services agency should also assist in reaching the stated goal.

I am, however, concerned that some of this change will be a paradigm movement away from "Risk of Flight" as the sole basis for the court's considerations under Criminal Procedure Law § 510.30—application for recognizance or bail. The governor's framework calls for a new era of review that would allow for a shift to "dangerousness" of the accused based on a "current threat to the physical safety of a reasonably identifiable person or persons." This new model of risk analysis, in my view, is rife with opportunity to continue a cultural tradition in this country of bias and discrimination. Implicit bias is a social condition where we develop attitudes or stereotypes that affect our understanding, actions, and *decisions* in an *unconscious* manner. Pre-trial detention reform is progressive thinking and should not be shackled with the same old thinking of the mid to late 20th Century. Indeed, our State Bar president, Sharon Stern Gerstman, aptly states: "The fundamental principles of our justice system include not only the presumption of innocence, but that we do not presume that an individual is a threat to society until and unless he or she has been convicted of a crime."

My message: Pre-trial detention reform can be done and now is the time—let's do it right!

Other reforms are on the horizon. The Section's committees are looking at the State's approach to discovery in criminal cases, as well as a review of the Sex Offender Registration Act (SORA) Risk Assessment Instrument, and issues facing our town and village justice courts. I look forward to continued dialogue on these and other important issues at our next Executive Committee meeting on April 4, 2018, at the Statler Hotel in Ithaca during the Young Lawyers Section Trial Academy at Cornell University.

Tucker Stanclift