

**SETTING PEOPLE FREE:**  
**OR SECURING RELEASE OF YOUR HUMANIZED CLIENT**

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**SETTING PEOPLE FREE:**  
**OR SECURING RELEASE OF YOUR HUMANIZED CLIENT**

1. Cash Bail Bond System/Industry
  - a. People Held for Minor and Non-Violent Offenses
    - i. Lose Jobs
    - ii. Lose Home
    - iii. Lose Private/Civil Medical Providers and Medications
    - iv. Plead Guilty to Get Out Even If Not Guilty
2. The Laws (Bills) are Changing.
  - a. Especially for Misdemeanor and Non-Violent Felonies.
  - a. Different Experiences in Different Jurisdictions
  - b. More Similar to Federal Release/Detention Structure
    - i. Presumption in Favor of Release?
    - ii. Unsecured Bond; Partially Secured Bond
    - iii. Treatment then Release
    - iv. Pretrial Supervision
    - v. Electronic Tracking
  - c. Change Ain't Always Good for Everyone.
    - vi. Nominal Bail
    - vii. Charitable Bail Organizations
    - viii. Free 'em or Keep 'em?
      1. Kneejerk: Uh...I'll Keep 'em.
3. Humanize First
  - a. Hardest Truth
    - i. To Represent Someone Else, You Have to Know Yourself.
      1. What Are Your Own Strengths and Weaknesses?
      2. What do you have to offer them?
    - ii. To Represent Someone Else, You Also Have to Know Them.

- iii. Discovering the Person.
  - 3. Shut Up and Listen
  - 4. Don't Interrupt
  - 5. They may hand you the defense or the keys to release.
  - 6. I Don't Bring Charging Documents to First Meeting
    - a. I want to know what you want to tell me first.
      - i. That's more important to me now.
      - ii. Background, not the case, brings release.
    - b. We'll get to what others say soon enough.
  - 7. May be first time someone ACTUALLY listened to their story.
  - 8. May be first time someone tells their story.
    - a. Fully
    - b. Honestly
    - c. Remember: It's a story, not a speech.
- 4. Theory Will Follow Story. Theme Will Follow Theory...All the Way to Verdict.
  - a. Discovering the Story.
    - 1. Spence Article attached.
    - 2. Every Client and Every Case is a Story.
    - 3. The Story is Already There
      - a. You are a reporter, not an author.
    - 4. Hardwired for Stories
      - a. Movies to Commercials to Songs
      - b. Best Teaching is Through Stories
        - i. Old Jewish Teaching: Truth, naked and cold, had been turned away from every door in the village. Her nakedness frightened the people. When Parable found her she was huddled in a corner, shivering and hungry. Taking pity on her, Parable gathered her up and took her home. There, she dressed Truth in story, warmed her and sent her out again. Clothed in story, Truth knocked again at the doors and was

readily welcomed into the villagers' houses. They invited her to eat at their tables and warm herself by their fires.

c. Release may be its own Chapter in the Story of Your Case

5. Best to Make the Strongest Arguments Irrespective of Changes in the Law.

a. It will take a while to adjust Judicial and Prosecutorial Thinking

6. There's a Statute for That

a. CPL §510.30 (2):

2. To the extent that the issuance of an order of recognizance or bail and the terms thereof are matters of discretion rather than of law, an application is determined on the basis of the following factors and criteria:

(a) With respect to any principal, the court must consider the kind and degree of control or restriction that is necessary to secure his court attendance when required. In determining that matter, the court must, on the basis of available information, consider and take into account:

(i) The principal's character, reputation, habits and mental condition;

(ii) His employment and financial resources; and

(iii) His family ties and the length of his residence if any in the community; and

(iv) His criminal record if any; and

(v) His record of previous adjudication as a juvenile delinquent, as retained pursuant to [section 354.2 \[FN1\] of the family court act](#) , or, of

pending cases where fingerprints are retained pursuant to section 306.1 of such act, or a youthful offender, if any; and

(vi) His previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution; and

(vii) Where the principal is charged with a crime or crimes against a member or members of the same family or household as that term is defined in [subdivision one of section 530.11](#) of this title, the following factors:

(A) any violation by the principal of an order of protection issued by any court for the protection of a member or members of the same family or household as that term is defined in [subdivision one of section 530.11](#) of this title, whether or not such order of protection is currently in effect; and

(B) the principal's history of use or possession of a firearm; and

(viii) If he is a defendant, the weight of the evidence against him in the pending criminal action and any other factor indicating probability or improbability of conviction; or, in the case of an application for bail or recognizance pending appeal, the merit or lack of merit of the appeal; and

(ix) If he is a defendant, the sentence which may be or has been imposed upon conviction.

## 7. Apply in Writing Whenever Possible

### a. District Attorney Never Responds in Writing

- b. In Bail Application tell the Story of Client's History, Background and Circumstances
    - i. Don't Sound Like a Lawyer
  - c. Address Each Statutory Factor Seriatim
  - d. Support with Documentation Available
    - i. Family
    - ii. Letters of Support and Character
    - iii. Education
    - iv. Medical
    - v. Treatment
    - vi. Employment
8. Bring People to Hearing
- a. Visible Support
  - b. Can Testify or Otherwise Be Heard on:
    - i. Willingness to Post
    - ii. Willingness to House
    - iii. Willingness to Employ
    - iv. Verify Facts of Application
    - v. Speak to Release Factors Within Personal Knowledge

9. Example of Application to Be Admitted to Bail or Recognizance:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

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**THE PEOPLE OF THE STATE OF NEW YORK,**

-against-

**CARL CLIENT,**

Defendant.

**APPLICATION TO BE  
ADMITTED TO BAIL  
OR RECOGNIZANCE**

Indictment No.:  
Index No.:

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**STATE OF NEW YORK     )**  
**COUNTY OF ONONDAGA ) SS.:**

**ROBERT G. WELLS**, an attorney admitted to practice before the Courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. That I am the attorney of record for **CARL CLIENT** and am fully familiar with all of the facts and proceedings heretofore had herein.

2. That this Application is made to admit **CARL CLIENT** to bail or recognizance during the pendency of this prosecution pursuant to Criminal Procedure Law §510.30 (2) (a).

3. That **CARL CLIENT** voluntarily and willingly waived extradition from his life-long home state of Georgia to appear before this Court and defend against these charges.

5. An application is pending before this Court to admit pro hac vice, **HERBERT LAWYER, ESQ.**, who is **CARL CLIENT**'s counsel in Georgia, to be co-counsel in the instant matter.

6. That annexed hereto, fully made a part hereof as if fully set forth here at length, and marked Exhibit "A", appears a letter from **HERBERT LAWYER, ESQ.** wherein he relates and represents to this Court his familiarity with the character of **CARL CLIENT** and sets out the experience he has had with **CARL CLIENT** in representing him. It appears, upon information and belief, that **CARL CLIENT** stands before this Court with no convictions for any crime, except for an ancient conviction for driving under the influence of alcohol in or about 1998, some twenty-one years ago.

7. **Mr. LAWYER** reports no history of failure to appear in Court by **Mr. CLIENT**, nor the issuance of any bench warrant to require **Mr. CLIENT'S** attendance at any court proceeding at any time. On the contrary, **Mr. CLIENT** has appeared willingly, voluntarily, and without fail at each and every court appearance every time. This is irrespective of whether the charge was small, or grave in nature and consequence. It is simply not **Mr. CLIENT's** nature to abscond in the face of charges. It is provably demonstrated from his history.

8. **Mr. LAWYER** further has provided information and documentation regarding nine separate parcels of real property owned by **Mr. CLIENT'S** parents in Georgia which are of considerable value and are offered to secure his release, or to secure any bail or bond as ready collateral for such release. **Mr. CLIENT's** parents will gladly pledge these properties without any fear that **Mr. CLIENT** will abscond or fail to appear.

9. **Mr. LAWYER** states: "I unhesitatingly assure Your Honor that it would be condign to enlarge **Mr. CLIENT** on reasonable bond. I leave to the court, as I must, to its sole determination the amount." **Mr. LAWYER** stands ready to answer any questions the Court wishes to pose to him.

10. I referred the Court back to **Mr. LAWYER'S** letter with the attached real property documentation.

11. **Mr. CLIENT** is employed. He maintains and manages the subject real properties from the top down. He rents them. He collects rent. He repairs and maintains the properties and grounds. He attends to payment of taxes. Any and all matters related to these properties are done and accomplished by **Mr. CLIENT**.

12. **Mr. CLIENT's** parents, **CAROL PARENT** and **EDDIE PARENT**, are not young people. The income from these properties are important to them. Without their son, these



properties will fall into disrepair and the management of them will become a burden they may not be able to abide. They need their son, in this respect especially. **Mr. CLIENT's** parents state that "We will gladly post, as security, all of the property that we own, every inch of every piece." They state they are confident that he will not flee the jurisdiction. They are willing to risk a lifetime of struggle upon this proposition. They represent that he will appear promptly when required to do so.

13. **Mr. CLIENT's** parents further point out that **Mr. CLIENT's** many children rely upon him for their support and need him to be released as well.

14. A true and accurate copy of the sworn and verified letter from both of **Mr. CLIENT's** parents is annexed hereto, made a part here of, and is marked as Exhibit "B".

15. The Court will next find annexed hereto a letter from **SUSAN SMITH** with whom **Mr. CLIENT** enjoys a stable and long relationship. She relates to the Court that they have seven children together. She is expecting their eighth child on February 9, 2019. I am informed and believe that she is in the hospital at this writing for delivery of that child.

16. **Ms. SMITH** relates that their family is suffering financially and otherwise as a direct result of **Mr. CLIENT's** incarceration in New York State. She represents and believes fervently that **Mr. CLIENT** will follow whatever conditions may be attached to his release. She states that he has shown his reliability in the past whenever required to appear in court. She states under no circumstances would **Mr. CLIENT** abandon her and the children. She states specifically "He will never leave us. He will never flee the jurisdiction."

17. Pursuant to CPL §510.30 (2) (a) (i), the foregoing speaks to **Mr. CLIENT's** character, reputation and habits. Upon information and belief there are no difficulties or problems with **Mr. CLIENT's** mental condition and the same is not at issue.

18. Pursuant to CPL §510.30 (2) (a) (ii), the foregoing speaks to **Mr. CLIENT's** employment and financial resources. He does not have the financial resources with which to abscond, relocate, and hide for a lifetime. Nor would he be able to do that with eight children and their mother.

19. Pursuant to CPL §510.30 (2) (a) (iii), the foregoing speaks to **Mr. CLIENT's** family ties and length of his residence in his community. While **Mr. CLIENT** does not have substantial ties with this community, he does have lifelong and permanent ties to his own community.

20. Pursuant to CPL §510.30 (2) (a) (iv), the foregoing speaks to **Mr. CLIENT's** criminal record, which is nonexistent. He has otherwise offended no law, rule, or regulation even of his home state, except for a driving violation twenty-one years ago.

21. Pursuant to CPL §510.30 (2) (a) (v), upon information or belief we are unaware of any previous adjudication of **Mr. CLIENT** as a juvenile delinquent.

22. Pursuant to CPL §510.30 (2) (a) (vi), **Mr. CLIENT** demonstrably has always appeared, unfailingly and promptly, for court appearances and has no history with respect to flight to avoid criminal prosecution whatever.

23. Pursuant to CPL §510.30 (2) (a) (vii) and (viii) regarding the weight of evidence against **Mr. CLIENT** and the available sentences if convicted, to date, we have been supplied with information from the Attorney General regarding eavesdropping warrants and pen registers. Beyond this, we cannot assess the alleged weight of the evidence. We know that no one factor in this statute is completely determinative. We will certainly not concede any fact, or concede any probability of conviction, and a weighing and balancing of all CPL §510.30 (2) (a) factors continues to militate in favor of ordering bail or recognizance for **Mr. CLIENT**.

24. Not only is the presumption of innocence in his favor, but he has voluntarily waived extradition to appear here and answer the charges. His lack of resistance to coming to New York betokens his intention to appear voluntarily whenever so required.

25. The Court may also impose one or more conditions upon releasing a principal or fixing bail which conditions or combination of conditions will be sufficient to ensure the appearance of **Mr. CLIENT**.

**WHEREFORE**, we respectfully pray this Court to admit **Mr. CLIENT** to bail or recognizance upon such reasonable terms and conditions as this Court deems just and proper.

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