

CRIMINAL RESEARCH MEMORANDA

Research Memorandum #68: Bail

Strack v. Burns, 143 Maj. App. 2d 401 (20XX-28): “The traditional right to freedom before convictions both permits an unhampered preparation of a defense and serves to prevent the infliction of punishment prior to conviction. Without this right to bail, the presumption of innocence would lose its meaning. . . . The right to release before trial is conditioned upon the accused giving adequate assurance that he will stand trial and submit to sentence if found guilty. The purpose of bail is to provide this assurance. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is ‘excessive’ under the 8th Amendment of our Constitution. . . .”

Milburn v. State, 272 Maj. 3d 272 (20XX-4): “Petitioner has been charged with kidnapping the son of a respected civil official for ransom. The case has received a great deal of publicity and engendered a substantial amount of community hostility against the crime and the accused. The Petitioner has pled not guilty, and is thereby cloaked in the presumption of innocence. . . . At the hearing on bail, the trial court set bail at one million dollars, stating, ‘The community wouldn’t tolerate less.’ For Petitioner, a million dollar bail is the equivalent of no bail. . . . Petitioner argues that the trial court applied the wrong standard for bail and didn’t consider relevant factors such as Petitioner’s ties to the community and prior record of appearing in court. While Petitioner concedes that the nature of the crime as well as any prior criminal record may be considered inasmuch as these factors bear upon the likelihood of Petitioner’s appearance for trial and possible sentencing, *Strack v. Burns*, 143 Maj. App. 2d 401 (20XX-28), he contends that the bearing of these factors upon the general community attitude is not relevant. We agree. Bail is to assure a defendant’s appearance, not to assuage the moral mood of the community. *Strack v. Burns*, supra. We remand with instructions that the trial court consider Petitioners (1) community ties; (2) prior record of appearances; (3) present crime; and (4)

prior criminal record inasmuch as these factors bear upon the likelihood of Petitioner’s appearance at trial.”

Major Const., Art. 8: “. . . and no excessive bail shall be set or required.”

Major Penal Code §1019: “Every person charged with an offense may be bailed by sufficient sureties, or placed upon his own recognizance [O.R.] if the court sees fit. The amount of bail in each case shall be determined by the Court in its discretion and may from time to time be increased or decreased as circumstances may justify.”