



# HARRIS COUNTY CRIMINAL LAWYERS ASSOCIATION

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June 29, 2020

Hon. Susan Brown, Presiding  
Eleventh Administrative Judicial Region of Texas  
301 Fannin Street  
Houston, TX 77002  
VIA EMAIL

**RE: NRG Plan to Resume Jury Trials**

To the Honorable Judge Susan Brown:

The Harris County Criminal Lawyers Association (“HCCLA”) is the largest local criminal defense bar in the United States, with more than 700 active members engaged in defense of those accused of criminal acts. HCCLA has, for 50 years, stood for criminal justice, criminal justice reform, and against government/judicial overreach.

Neither Harris County nor the 11<sup>th</sup> Judicial Administrative Region has shared the details of the NRG Plan with HCCLA or the Harris County Public Defenders Office (HCPDO). Neither HCCLA nor HCPDO was invited to participate in the formulation of the NRG Plan. HCCLA further understands it has been approximately ten (10) days since the Harris County Sheriff Office (HCSO) was notified of the NRG Plan, but HCSO was never consulted prior to the formulation of the NRG Plan. Thus, a necessary stakeholder in our adversarial system has been excluded.

It is troubling to HCCLA that only three criminal district court judges participated in formulating the NRG Plan. HCCLA finds it extremely disturbing that only one criminal district court judge initially participated. HCCLA is reliably informed two other criminal district court judges learned of the process and requested participation. There are 22 criminal district court judges and 16 criminal county courts at law. HCCLA wonders the process for not inviting every criminal trial judge to help formulate the NRG Plan.

HCCLA is reliably informed the judges most active in the NRG Plan are civil district court judges. These civil courts rarely address issues concerning Const. Amends. IV, V, VI, VIII, and XIV on the daily docket, let alone those matters unique to Texas criminal law. We do not believe jury trials can be had at NRG while still preserving the Constitutional mandates to which all individuals accused are entitled.

HCCLA requests the NRG Plan in advance of any effort to implement such plan. The Texas Penal Code tells a lawyer the law. The Texas Code of Criminal Procedure tells a lawyer the procedure. The Texas Rules of Evidence tells a lawyer the rules. The Harris County Local Rules tells a lawyer the local rules of practice. All are written, adopted, and had commentary from a broad spectrum of the legal community, including criminal defense lawyers. Something as serious as attempting to resume jury trials should involve the input of the criminal defense bar. HCCLA is unwilling to move forward in support of a plan to resume jury trials without the actual NRG Plan. No lawyer should be compelled to appear for any trial during this deadly pandemic. No lawyer should be required to explain her private “health risks” to any judge, and no sitting judge in this county, or judicial region, is equipped to accurately assess such risk.

HCCLA is aware the 11<sup>th</sup> Judicial Administrative Region plans to use the Houston Bar Association (HBA) at noon on July 2, 2020 for a one hour CLE to explain the NRG Plan. There is nothing on the Harris County Courts website, there is nothing on the 11<sup>th</sup> Administrative Judicial Region’s page, there is nothing on the Harris County Criminal Courts Facebook page, and there is nothing in Fair Defense Act Management System (FDAMS). The timing, forum, and length of the CLE speaks to checking a box and not actually protecting the rights of the accused or providing meaningful information to attorneys, whose lives and family member’s lives will be put at risk if this plan is implemented.

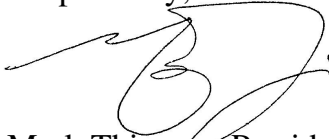
HCCLA does not seek to be obstructionist. Our clients are in the Harris County Jail, unable to make bond or get resolution. When HCCLA was invited to participate in the current federal lawsuit over felony bond practices, HCCLA seized the opportunity and our members have been pushing for bond reviews. We have attended every hearing in federal court since HCCLA’s presence was requested.

This is not the first pandemic, crisis, nor disaster for Harris County or the United States. HCCLA is reminded of the expediency of *Korematsu v. US* which violated the rights and the freedoms of Japanese-Americans in 1944, and was not overruled until last year. To this day, *Batson* and *Randell Miller El* continue to demonstrate the bias in jury selection.

African-Americans are considerably more likely to become infected and die from COVID-19, as are women and the poor. African-Americans are disproportionately as percentage of population embroiled in the criminal justice system. HCCLA will not agree to, nor cooperate with, a system of unknown origin, with scattershot, made-for-show-safeguards that punish people of color, women and the poor for refusing to be exposed to a fatal disease.

HCCLA is prepared to come to the table and work on these issues. HCCLA just needed/s an invitation. HCCLA opposes the NRG Plan.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mark Thiessen', written over a horizontal line.

Mark Thiessen, President  
Harris County Criminal Lawyers Association

Cc: Harris County Criminal Court Judiciary  
Hon. Lina Hidalgo, Harris County Judge  
Hon. Rodney Ellis, Harris County Commissioner, Precinct 1  
Hon. Adrian Garcia, Harris County Commissioner, Precinct 2  
Hon. Steve Radack, Harris County Commissioner, Precinct 3  
Hon. R. Jack Cagle, Harris County Commissioner, Precinct 4  
Mr. Alex Bunin, Harris County Public Defender  
Hon. Ed Gonzalez, Harris County Sheriff  
Hon. Kim Ogg, Harris County District Attorney  
Members of the Press