



HARRIS COUNTY CRIMINAL LAWYERS ASSOCIATION

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July 12, 2020

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. Jack Cagle, Harris County Commissioner Precinct 4

VIA EMAIL

RE: Supplemental Notice of a Public Meeting dated July 10, 2020

To the Honorable County Judge Hidalgo and the Commissioners of the Court:

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.

HCCLA thanks Commissioners’ Court, and specifically Judge Hidalgo, for the efforts to ensure the safety of those accused of crimes. HCCLA recognizes throughout this crisis, Judge Hidalgo has demonstrated a commitment to public safety for all residents, including those accused of crimes, even in the face of political backlash. HCCLA recognizes the difficulty in doing what is right in the face of political expediency. HCCLA is profoundly grateful.

HCCLA has significant concerns regarding the Court's Agenda Item 15 set for Tuesday, July 14, 2020. Due to the COVID-19 pandemic, HCCLA cannot be assured a speaker will be available to express the concerns of HCCLA, its members, and the clients represented by HCCLA's members. Therefore, HCCLA expresses, in writing, HCCLA's greatest concern.

Agenda Item 15:

Request by the County Judge that Commissioners Court approve funding in the amount of \$1,937,049.60 from the Public Improvement Contingency Fund for temporary security operations provided by Harris County Constable Precinct One to support the COVID-19 Jury Selection Project at NRG Arena (NRG Plan) over a six-month period.

HCCLA respectfully requests this item be tabled and not considered at this time. HCCLA, for reasons set forth below, calls upon Commissioners Court to demand answers HCCLA and the public have been presently denied. HCCLA understands the Harris County Constable Precinct One is not responsible for the NRG Plan, but HCCLA sees this as the most practicable means of being good stewards of the County.

It is HCCLA's understanding the NRG Plan was developed and designed almost entirely by the 11th Administrative Judicial Region of Texas over several weeks, if not months. The regional administrative judge has asserted felony district court judges were consulted and agreed to the NRG Plan. Multiple felony district court judges deny this occurred. These denials continue after the regional administrative judge asserted differently.

Further, HCCLA is concerned there was no communication with HCCLA nor the Harris County Public Defenders Office (HCPDO) before the NRG Plan was adopted. HCCLA was rather bluntly informed the defense bar's concerns are not statutorily required despite being a stakeholder in a time of crisis. This is quite different than the natural disasters of Tropical Storm Allison and Hurricane Harvey, where all stakeholders were informed throughout those crises of the thought processes.

Further, HCCLA has now learned at least one member of the Harris County District Attorneys Office (HCDAO) was present during several of the NRG Plan meetings. Even if HCDAO's presence was merely for observation, fundamental fairness and transparency would dictate an invitation to the defense bar should have followed. It most certainly did not.

The NRG Plan does not protect the rights of the accused to a fair trial and due process of law. Administrative judges simply determining it is so with no input from all stakeholders does not protect these important Constitutional rights. The NRG Plan compromises the safety of the judges, court staff, prosecutors, defense attorneys, defendants and jurors who are called upon to participate in this process.

As Commissioners Court is no doubt aware, the Texas Medical Association released a chart on or about July 8, 2020 detailing acceptable and unacceptable risky behaviors. This chart¹ (*attached*) is widely praised nationally for its detail and accuracy.

Among the most risky behaviors are attending a movie theater, a sports stadium, or a bar. A movie theater, complying with COVID-19 distancing requirements, seats fewer than 60 people for approximately 2 hours. NRG Arena, a sports stadium by any definition, seats more people usually for a longer period of time, even with COVID-19 distancing requirements. Most bars, while smaller, will see more than 60 visitors on any given day.

The NRG Plan calls for seating 5 groups of 60 potential jurors (plus court staff, bailiffs, attorneys, investigators, defendants, family, etc.) twice daily for at least 2 hours, or about 900-1000 people. HCCLA cannot get any answers to what, if any, medical association or medical professionals approved the NRG Plan. HCCLA believes Commissioners Court can and must demand such answers.

1

https://www.texmed.org/uploadedFiles/Current/2016_Public_Health/Infectious_Diseases/309193%20Risk%20Assessment%20Chart%20V2_FINAL.pdf

In short, the NRG Plan calls for hundreds of citizens of Harris County to be compelled to leave their homes (contrary to the wise orders of the Harris County Judge and the Governor of Texas) to congregate together in an enclosed area for several hours. The NRG Plan has proposed several “safety measures” creating the illusion COVID-19 can be contained as long as every single participant follows these measures. Yet, based on the information available, the NRG Plan is contrary to the recommendations of medical experts.

The NRG Plan will draw participants from across the County together, increasing the chances of transmitting COVID-19. This is contradictory to every principle and recommendation for the control COVID-19, as well as the orders of the Harris County Judge, Houston Mayor, and Texas Governor. If the NRG Plan is followed, Harris County will be mandating so-called “super spreader” events twice daily, five days a week, at taxpayer expense.

Additionally, the NRG Plan is not conducive to the selection of a fair and impartial jury. Given socioeconomic disparities across the County, and the resulting disparities in access to effective medical treatment, it is unreasonable to have any hope a cross-section of the community will appear for a venire panel in the first place. COVID-19 disproportionately affects African Americans, women, and the poor. HCCLA and our colleagues in the criminal defense bar have fought too long and too hard to ensure the right to a jury of peers - a fight that continues daily in every courtroom in America - to support endangering the lives of the community like the NRG Plan.

In the July 2, 2020 edition of the *Houston Chronicle*, Mark Curriden of *The Texas Lawbook* wrote an article entitled “*Harris County juries projected to be whiter, more conservative as pandemic persists.*”². The article cites a survey by the Tillotson Law Firm of 650 potential jurors in Houston and Dallas and found two-thirds would refuse to serve, and those who did agree to serve were “more white people, more men, and people with more wealth.” Furthermore, “the survey found that 21 percent of prospective jurors . . . ‘felt that there were “no measures” that could be taken that would make them feel safe.’”

Even if a proper venire panel could be assembled, the NRG Plan makes jury selection impossible. Social distancing which must be maintained between each individual venire member will mathematically require panels to be so spread out neither a judge, a prosecutor, nor a defense attorney can adequately canvass the area while asking questions in the manner required to select a fair and impartial jury. Furthermore, the NRG Plan for face masks and/or shields required of venire members will make it virtually impossible to hear answers to questions or judge facial expressions in response to those questions. The idea of a Constitutionally guaranteed fair and impartial jury with due process of law under these circumstances is completely absurd.

The Right to a Speedy Trial, Due Process of Law, and a fair and impartial jury has no greater champion than HCCLA. It is largely clients of HCCLA members stranded in the Harris County Jail, a nationally recognized COVID-19 "hotspot", most affected by the inability to get to trial quickly.

2

<https://www.houstonchronicle.com/business/article/harris-county-jury-white-male-conservative-covid-15380341.php#:~:text=Harris%20County%20juries%20projected%20to%20be%20whiter%2C%20more...&text=Many%20potential%20jurors%20in%20Houston,according%20to%20a%20new%20study>

Unfortunately, these are extraordinary times and the only way to ensure justice is working together towards a solution. It is far more important a trial be fair than it is for a trial to be speedy.

HCCLA respectfully requests Judge Hidalgo and Commissioners Court continue its commitment to public safety and the Constitutional Rights of the Accused by tabling Item 15 until such time as appropriate answers can be ascertained and the NRG Plan, or a more workable plan, can be safely revisited. Furthermore, HCCLA appeals to Commissioners Court to do all within its power to prevent the implementation of the NRG Plan until such a process can be done fairly and safely.

Respectfully,

A handwritten signature in black ink, appearing to read 'Mark Thiessen', with a stylized flourish extending to the left.

Mark Thiessen

President

Harris County Criminal Lawyers Association

Cc: The Honorable Susan Brown, 11th Administrative Judicial Region of Texas
The Honorable Judges of the Harris County Criminal District Courts
The Honorable Judges of the Harris County Criminal Courts at Law
Members of the Press

COVID-19

CORONAVIRUS DISEASE

BE INFORMED:

Know Your Risk During COVID-19

On a scale of 1 to 10, how risky is...

Ranked by physicians from the TMA COVID-19 Task Force and the TMA Committee on Infectious Diseases.

Please assume that participants in these activities are following currently recommended safety protocols when possible.

