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Seventeenth Judicial Circuit

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September 2, 2016

Honorable Peter Weinstein  
Chief Judge, 17<sup>th</sup> Judicial Circuit  
Broward County Courthouse  
201 SE 6<sup>th</sup> Street  
Ft. Lauderdale, FL 33301

RE: US Department of Justice Letter

Dear Chief Judge Weinstein:

I am in receipt of your response to my August 16, 2016 letter regarding the Department of Justice bond policy recommendations.

Your response does not offer any solutions to this nationally recognized institutional failure. You continue to ignore the fact that the current bond practices in Broward disproportionately affect minorities and the indigent. By reiterating that judges will continue to divert individuals unable to post bond to the Broward County Sheriff's Pre-Trial Release program, you ignore the disparate treatment this presents. Diverting individuals to the pre-trial release program creates a double standard wherein those with money are not required to be supervised by the Sheriff's Office, while those without money require supervision. Most notably, you did not even mention what the law requires as the first option for release, recognizance.

The Justice Department has argued that "holding defendants in jail because they can't afford to make bail is unconstitutional" and that "bail practices that incarcerate indigent individuals before trial solely because of their inability to pay for their release violate the Fourth Amendment." These are strong words that cannot be ignored by this circuit. Unfortunately, the unconstitutional incarceration of the indigent is the routine practice of the Broward County Judiciary. Individuals are often held in jail following a magistrate hearing for a minor offense simply because they cannot afford to post the bond.

As you are well aware, I was against the bond revision and argued that every individual should be brought through first appearance court to allow for individualized release conditions. My position has always been that every arrestee, regardless of wealth or poverty, should be on equal footing with regard to bond determinations. Individual determinations, however, require a 24 hour magistrate. This circuit has decided not to place such a "hardship" on the judiciary, but instead place the true hardship on the indigent. Your failure to implement 24 hour magistrates has also endangered the people of Broward County by allowing dangerous people with extensive records to bond out without seeing a judge. Meanwhile, poor people remain in jail simply because they are poor.

Your letter invites suggestions with regard to bonds, fines and fees. I have made several suggestions over the years in prior letters, including the ROR release of persons arrested for misdemeanors. On August 16, 2016, I related that the Broward Sheriff's Office advised the Public Safety Coordinating Council (PSCC) that jail overcrowding could be relieved if persons accused of misdemeanors were released at magistrate. BSO found that approximately 4.2% of the jail was populated by people accused of misdemeanors and their release would free up 200 beds.

The PSCC's main purpose is to monitor jail overcrowding. The council meets regularly to discuss solutions to the issue. According to your letter, you "did not provide the Department of Justice's letter to any stakeholder as it was addressed to the courts to assist with review of local practices and procedures." You blatantly disregarded the recommendations of the Department of Justice and failed to advise the council empaneled to deal with this matter. Your failure to provide this information to the council was intentional and disingenuous.

Several other jurisdictions have effectively implemented recognizance release procedures. In January, a federal judge ordered the City of Calhoun, Georgia to release those arrested on misdemeanor offenses on their own recognizance and to make other changes in its post-arrest procedures. See attached the Department of Justice's Amicus Brief in support of fair and nondiscriminatory jail practices in Maurice Walker v. City of Calhoun, Georgia, case number 16-10521.

This jurisdiction's practices have effectively institutionalized racism by disproportionately incarcerating poor minorities for decades. It is time that you step up and ensure that the constitutional rights of the impoverished are protected.

Sincerely,



Howard Finkelstein  
Public Defender