

AN OPEN RESPONSE BY JUDGE TOMIE GREEN TO THE CITIZENS OF HINDS COUNTY

As Senior Circuit Judge, I have been tasked with the heavy responsibility of addressing matters regarding hundreds of Detainees held in our jails for months without indictment of criminal resolution.

As you are aware, there are restrictions that prevent judges from discussing the details of pending criminal cases. This is especially so when minors are involved and charged as adults. But let me say, unequivocally, that District Attorney Robert Smith has misrepresented the policies, practices and procedures under our new Mississippi Rules of Criminal Procedure. Law enforcement is responsible for enforcing our law. Judges are responsible for interpreting the law. Law officers arrest and charge Defendants. Miranda Rights are read and in 48 hours, a Detainee is brought before a judge for his initial appearance, where he is appointed a lawyer (if he can't afford one) and bond/bail is set. If the Defendant has financial means, he or she posts bond and continue about his or her life until their next court date. If a Defendant is indigent, a lawyer is appointed and a bond is set. Generally, if the Defendant cannot post bail/bond, he or she goes to jail and remains there for days, months or even years. If a prosecutor delays bringing forth an indictment based on the charges, and no lawyer ever appears on behalf of the Defendant because no one delivered the order appointing the public defender, a constitutional crisis arises and a swift remedy must be put in place by the Court. That remedy may require releasing the Defendant on his personal recognizance or releasing him on a reduced bond, with conditions and/or house arrest. It is the duty of the District Attorney to timely indictment persons charged with a felony. In addition, the District Attorney never loses the right to seek indictment and continue his prosecution of the Defendant's case on behalf of the citizens. As a caution, please know that this Court, nor any other circuit judge, will release any Defendant who genuinely poses a safety risk to the community or if the Defendant poses a risk of flight from our jurisdiction. Of course, in any case where a Defendant is released on bail/bond and commits another crime, he usually remains in jail until his case is completed because he has become an unbailable Defendant.

As the result of suits by the U.S. Department of Justice, the Hinds County Board of Supervisors and the Sheriff of Hinds County are under two (2) separate consent decrees. Both consent decrees cite constitutional violations at the Henley-Young Youth Detention Center and all Hinds County jails, as it relates to excessive force, unreasonable bonds, inadequate staff, poor evaluation and treatment of drug users and persons with behavioral, mental and other health

problem. In addition, the consent decrees reveal constitutional violations resulting from delays in securing timely indictments and timely disposition of cases by prosecutors. The Department of Justice and the Mississippi Supreme Court have worked with stakeholders in the Hinds County criminal justice system to foster compliance with the U.S. and Mississippi constitutions.

I cannot directly respond to each of District Attorney Smith's outlandish and untrue allegations without violating my oath and duties as a circuit judge. I can however provide to you the rules and law that govern any Defendant's release or reduction in bail. Under the U.S. and Mississippi constitutions, a person charged with a crime is innocent until proven guilty. The burden of proving a Defendant guilty lies on the shoulder of the District Attorney. Under our law, A DEFENDANT DOES NOT HAVE TO PROVE HIS INNOCENCE. Everyone arrested and charged with a crime MUST BE DEEMED INNOCENT, and is entitled to a reasonable APPEARANCE bond, unless charged with an unbailable offense. An Appearance Bond/Bail cannot be set to PUNISH a Defendant, because he IS PRESUMED innocent UNTIL he or she is found guilty by a jury or he admits his or her guilt. In all cases, a Defendant must be provided a speedy trial by the prosecution.

Under the Mississippi Supreme Court Rules of Criminal Procedure, Senior Circuit Court Judges throughout the State of Mississippi are required to "review" all persons in jail to ensure compliance with our constitutional mandates.

Under Rule 8.5c, when our jails or courts are out of compliance with the constitution, it becomes the duty of the Senior Circuit Judge to remedy the malfeasance. The Senior Judge's decision is not always popular, especially when it includes the release of a Defendant. It is illogical for a prosecutor to encourage fear, anger and unrest in our community, without regard to the fact that he has been afforded the same constitutional rights and privileges of which he complains.

This Court has no friends to reward, nor enemies to punish. Be assured that for the past 20 years I have and will continue to serve as a fair, impartial and just jurist.

Attached are the documents that will remove any doubt about my character and integrity in this regard.

Justice is not just an option in our courts. It is an obligation.

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