

# **Exhibit 3**

## **EXPERT ANALYSIS OF DR. STEPHEN DEMUTH<sup>1</sup>**

### **I. Introduction**

1. I have conducted a preliminary analysis of the data Defendants have produced in discovery in the above-captioned case. My analysis has focused on the data showing bond forfeitures and the judges' assertion that bond-forfeiture rates have dramatically increased since the injunction went into effect.<sup>2</sup> The County and judges have not produced all the data necessary to analyze bond forfeitures and failures to appear throughout the entire 11 months since the injunction went into effect. I am awaiting updated data and will continue my analysis when I receive it. My analysis therefore is ongoing.

2. This report sets forth my preliminary findings, which I am continuing to update. My preliminary analysis of the judges' bond-forfeiture statistics suggests that they are deliberately manipulating the system in an effort to produce a desired result: to suggest that people released on unsecured bonds supposedly evade justice.

### **II. A "bond forfeiture" is not a one-to-one proxy for "failure to appear"**

3. I have reviewed Exhibit A, filed by the Fourteen Judges in the Fifth Circuit Court of Appeals on May 3, 2018, which includes a declaration by Ed Wells and a chart purporting to show bond failure rates, including the bond-forfeiture rates for four different bond types. The Judges report that between June 6, 2017 and April 30, 2018, the "raw" bond forfeiture rates by bond type were as follows:

- a. Cash: 15.82%
- b. "Secured" (surety bonds): 10.02%
- c. Personal: 26.67%
- d. "Sheriff's" bonds (unsecured bonds issued pursuant to the federal court injunction): 49.30%

4. These raw bond-forfeiture statistics do not provide meaningful information about comparative *appearance* rates for people released on different bond types.

5. Court Manager Ed Wells states in his declaration that each of the above-listed bond-forfeiture rates "represents a failure-to-appear rate." That is incorrect for several reasons discussed

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<sup>1</sup> Submitted in *ODonnell v. Harris County*, Case No. 16-cv-01414 (S.D. Tex. 2016), No. 17-20333 (5th Cir. 2017).

<sup>2</sup> I am aware of the judges' claim that bond-forfeiture rates have "skyrocketed while the preliminary injunction has been in place," but the judges do not identify a baseline against which they are comparing current rates. To the extent the judges are comparing bond-forfeiture rates for each bond type from the months immediately following June 7, 2017 (when the injunction went into effect) to the bond-forfeiture rates they now report for the full 11 months since the injunction went into effect, *the increase is to be expected*: as time passes, more court dates are scheduled and there are more opportunities for each person to not appear and for a bond to be forfeited. To the extent the judges are comparing bond-forfeiture rates post-injunction to bond-forfeiture rates pre-injunction, the comparison is meaningless because there is an entirely new category of bonds post-injunction (the unsecured bonds issued pursuant to the injunction), and because this type of comparison can only be made if an identical time period were identified, which the judges do not do.

in this declaration. Among them: the bond-forfeiture statistics count *bonds* not *people*. The data show that many people have multiple bonds and that a single missed court date can result in numerous bond forfeitures.

6. Jurisdictions that rigorously monitor and evaluate their pretrial systems track failures to appear clearly by person and court date, not by the number of total cases. They follow them prospectively, as opposed to just lumping them all together.

7.

8. I used the data to analyze the relationship between bond forfeitures and failures to appear. My preliminary analysis (which involved cases with arrest dates between June and September 2017 because I have not received data for the full 11 months since the injunction has been in effect) shows that:

- a. There are numerous cases involving people released on unsecured bond who, according to the County's data, appeared in court for their first court date, *but their bonds were forfeited anyway*;
- b. There are numerous cases involving people released on surety bonds who, according to the County's data, missed multiple court appearances, but whose bonds were *never forfeited*;
- c. Among people released on *unsecured bonds* who, according to the County's data, missed their first two scheduled court dates, 36% had their bonds forfeited.
- d. Among people released on *surety bonds* who, according to the County's data, missed their first two scheduled court dates, only 6% had their bonds forfeited.

9. Although there are inconsistencies in the data that I will continue to explore during my ongoing analysis, these systemic patterns suggest that people released on unsecured bonds are treated differently—and more harshly—than people released on surety bonds. Based on the available data, it is likely that differential treatment by the Judges explains the different forfeiture rates between unsecured and surety bonds in these cases.

### **III. The Elevated Bond-Forfeiture Rate for People Released on Unsecured Bond Can Be Explained by Additional Factors**

#### **A. People Released on Unsecured Bond Belong to a Group of People Who, According to the County's Pretrial Assessment Tool, Are More Likely to Miss Court Than People Released on Other Bond Types And Are Not Receiving Pretrial Services or Supervision**

10. I analyzed the data from the County's pretrial assessment tool to determine the average assessed risk of failure-to-appear (FTA) on a 6-point scale among people released on different types of bonds. Between July 28, 2017, and January 31, 2018, people released on unsecured bonds pursuant to the federal court's order presented, on average, a substantially higher risk score (2.51)

than people released on surety bonds (1.64) or personal bonds (1.85). That is, the FTA risk score for people released on unsecured bonds was 53% higher than the score for people released on surety bonds and 36% higher than for people released on personal bonds.

11. Despite their higher “risk” of nonappearance—and greater need for pretrial assistance to get to court—people released pursuant to the federal court’s order during this time period were *much less likely* to be supervised or to have non-financial conditions imposed. Using data showing bond supervision and conditions for cases released between June 7 and November 20, 2017, I found that only 5.6% of people released on unsecured bonds were supervised by pretrial services and only 4.4% had additional non-financial conditions. In contrast, 67% of people released on personal bonds were supervised, and roughly 13% had additional non-financial conditions.

#### **B. People Are Routinely Released From the Jail in the Middle of the Night**

12. Data showing release times reveal that people are often released from the jail in the middle of the night.

#### **C. People Released on Unsecured Bond Are Typically Required to Return to Court the Next Day And Have More Court Settings Scheduled Close in Time**

13. For people released on *unsecured or personal bonds* between June 7, 2017 and December 31, 2017, the median time between bond-approval and first-setting was *one day*. About 25% of people released on unsecured bond had less than 12 hours between the bond-approved time and first-setting time; 57% had less than 24 hours between the bond-approved time and first-setting time.

14. For people released on *cash or surety bonds* during this time period, the median time between bond-approval and first-setting was *five days*. Only 4% of cash releasees and 5% of surety releasees had less than 12 hours between bond-approved time and first-setting time; about 26% of cash and surety bond releases had less than 24 hours between bond-approved time and first-setting time.

15. The data also show that people released on unsecured bonds are scheduled, on average, for more court settings than are people released on surety bonds, and that those court settings are scheduled closer in time for people released on unsecured bonds as compared to surety bonds. These practices dramatically increase the chances for a person to not appear.

#### **D. Summary**

16. What these findings mean is that the County and Judges are releasing the people most in need of services without any services or support and often in the middle of the night within hours of their first hearing before a County Criminal Court at Law Judge. People released on unsecured and personal bonds have considerably less time after release until their first court date than people released on surety or cash bonds. Moreover, the County and the Judges have chosen not to require additional non-financial conditions designed to reduce nonappearance for precisely the category of arrestees that their own risk assessment tool suggests should receive those conditions. On top

of all that, the Judges' apparently have a policy or practice of treating people released on surety bonds much more leniently than they treat people released on unsecured bonds with respect to bond forfeiture and appearance. Each of these factors on its own makes it much more likely that a person will miss a court date. Together, they make appearance extremely difficult. As such, comparisons made by the Judges and the County between the forfeiture rates of unsecured and surety bonds are dubious, especially given that the data is replete with errors suggesting flaws in its integrity.

#### **IV. Bond-Forfeiture Rates Vary Dramatically Among the Judges**

17. I was able to analyze bond approval and forfeiture data for June 7, 2017 through April 30, 2018. Bond forfeiture rates vary dramatically among the various judges. For example, I observed bond-forfeiture rates in certain courts that are two or three times greater than the bond-forfeiture rate in other courts. Further analysis is necessary to determine the cause of the variations, but the initial findings are surprising given my understanding that cases are assigned "randomly" across the 16 courts which would make the average characteristics of caseloads the same across the 16 courts.

18. Unless there is some other difference in the nature or timing of cases across the courts, another possible explanation for differences in forfeiture rates is that judges have different practices for setting court dates or use different standards in deciding when to forfeit bonds.

#### **V. People Who Miss Court Are Not Evading Prosecution**

19. Based on my analysis of the data involving thousands of cases, I do not believe that people released on unsecured bonds who do not appear for their initial court dates are evading justice.

20. To get a sense of what happens to these cases, I examined cases in which people were released on unsecured bonds and surety bonds between June 7 and August 15, 2017 and did not appear for their first two court dates. My preliminary analysis shows that about 2/3 of people released on unsecured bonds had returned to court and resolved their cases by January 31, 2018. (The data show that a similar percentage of people released on surety bonds appeared by January 31, 2018.)

21. My data analysis is consistent with the research literature, which shows that only a very small portion of FTAs are "willful," meaning that the person is actively evading justice. More likely explanations are that people lacked transportation or childcare, could not take off work, were confused about the right court date, were told to go to the wrong courtroom or courthouse, or were afraid to appear because of possible outstanding warrants caused by an earlier nonappearance for one of the above reasons.


22. My analysis of case outcomes is ongoing and will become more robust as I receive data for the rest of the post-injunction time period.

**VI. Conclusions**

23. The judges' bond-forfeiture rates for people released on unsecured bonds are seriously inflated by their and the County's policy decisions and practices. This inflation fatally undermines any conceivable utility from them.

24. The elevated bond-forfeiture rate in Harris County, to the extent that it exists, does not reflect that unsecured bond is ineffective or any less effective than secured bond. The data does not provide a basis for drawing the conclusion that the Judges suggest in their Motion about the federal court order having any negative effect on nonappearance. The statistics suggest a deliberate manipulation of the numbers and the post-arrest system to attempt to produce a desired outcome.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

  
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Stephen Demuth, Ph.D.

5-14-18  
Date

