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**DIRECTOR OF THE FBI CHRISTOPHER A. WRAY SPEAKS DURING THE 2018 SPRING MEETING IN PHOENIX. "THE RULE OF LAW, CIVIL RIGHTS, AND CIVIL LIBERTIES ARE NOT THE FBI'S BURDENS, THEY ARE THE VERY THINGS THAT MAKE US ALL SAFER."**

# “ROLLING REFORM” TO THE BAIL SYSTEM, ONE COUNTY AT A TIME



IN THE SPRING 2017 EDITION OF THE *JOURNAL*, AN ARTICLE FEATURED FELLOW **NEAL S. MANNE**, THE MANAGING PARTNER OF SUSMAN GODFREY IN HOUSTON, TEXAS, AND HIS EXTRAORDINARY PRO BONO WORK. (“TEXAS FELLOW NEAL MANNE SETS THE BAR FOR PRO BONO WORK,” *JOURNAL*, ISSUE 83). ONE OF THE CASES MENTIONED WAS A LAWSUIT CHALLENGING THE CONSTITUTIONALITY OF THE BAIL SYSTEM FOR HARRIS COUNTY, TEXAS. CO-COUNSELING WITH THE CIVIL RIGHTS CORPS, MANNE CLAIMED THAT A SYSTEM THAT ALLOWS FOR LONG-TERM, PRE-DISPOSITION INCARCERATION OF PEOPLE MERELY BECAUSE THEY CAN’T AFFORD TO MAKE BAIL VIOLATES THE U.S. CONSTITUTION.

The district court agreed, making voluminous factual findings and concluding the Constitution was violated in her 193-page decision. Now, the Fifth Circuit also has agreed, unanimously upholding all of her findings and the constitutional violations. As Judge Edith Brown Clement wrote for the Court, “the essence of the district court’s equal protection analysis can be boiled down to the following: take two misdemeanor arrests who are identical in every way—same charge, same criminal background, same circumstances, etc.—except that one is wealthy and one is indigent.”

In the Fifth Circuit’s words:

Applying the County’s current custom and practice, with their lack of individualized assessment and mechanical application of the secured bail schedule, both arrestees would

almost certainly receive identical secured bail amounts. One arrestee is able to post bond, and the other is not. As a result, the wealthy arrestee is less likely to plead guilty, more likely to receive a shorter sentence or be acquitted, and less likely to bear the social costs of incarceration. The poor arrestee, by contrast, must bear the brunt of all of these, simply because he has less money than his wealthy counterpart. The district court held that this state of affairs violates the equal protection clause, and we agree.”

The Fifth Circuit concluded, however, that Judge Rosenthal’s injunction altering Harris County’s bail bond system was overly broad and instructed her to make adjustments to the order, such as requiring that a county employee verify an arrestee’s ability to pay a bond. No-

tably, the Court nevertheless left the injunction in place while the district judge considers how to tailor it. She has not yet done so, as both sides have filed narrow motions for reconsideration.

Manne, who was recognized as Texas Lawyer’s “Attorney of the Year” last year after obtaining the district court’s decision, is thrilled with this “very powerful affirmance.” Two additional Texas counties have already been sued under this new precedent. He will happily provide pleadings and counsel to any Fellow who wishes to challenge a similar bail system as part of the College’s Access to Justice initiative. Congratulations to Neal on a battle well-fought, which can have an enormous impact and, as he puts it, “rolling reform” across the U.S.

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