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Second Quarterly Report Of the Court Monitor

OCT 11 2006

RE: *Harper, et al. v. Fulton County et al.*
CIVIL ACTION NO. 04-CV-1416-MHS

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By:  Deputy Clerk

Introduction

This report covers the period from late May through September 2006. It is based on a visit to the jail on June 28 and 29 and another during the week of September 18 to 22. It also relies on e-mails, telephone calls, and correspondence from prisoners, attorneys, jail staff and Fulton County officials and a review of various documents provided to me. It is submitted in accordance with the requirements of Section V of the above-cited Consent Order.

The report, like the first one, will be organized around the major topics contained in the Consent Order but it will have a chronological dimension as well. My understanding of the strengths and weaknesses of the jail's organizational structure evolved during this period and this has led me to conclusions that were not so apparent three months ago.

During my first inspection of the jail in late March 2006, I had a long meeting the Sheriff, his attorney, and the jail's management staff to discuss frankly how we would work together to meet the reporting and compliance requirements of the consent order. At the end of the meeting two things were clear. Having a court monitor could be helpful, but *only* if there were candor and complete honesty; acknowledging problems would be a necessary step in solving them. Secondly, we agreed that we would have to experiment with the mechanics of collaborating, most of the time from a distance.

We began with a fairly unstructured process of telephone calls and e-mails about various reporting and compliance issues, mostly between the court monitor and Charles Felton, the Chief Jailer, although several other staff members also called directly to report problems or seek advice. It was quickly apparent that more structure was required so first a weekly, and then a monthly, e-mailed written report from the Chief Jailer, sent through the Sheriff's attorney, became the vehicle.

When a report was received, I would respond with comments or questions, sometimes with criticisms, and frequently with long and fairly detailed "how to" suggestions about particular problems. The purpose of the responses was to encourage a more disciplined way for the jail to report progress but also to help sharpen their own problem-solving skills. A pattern had emerged of just describing problems without moving toward solutions.

It was hoped that the "dialogue" created by reports from the jail and responses from the monitor would involve jail staff in finding solutions and quicken progress toward compliance. Whether it did that at all is far from certain, but it may have shed light on impediments to compliance that are broader and require different strategies to surmount. In evaluating compliance with major components of the consent order, I will, from time to time, refer to the dialogue that has occurred, whether in written reports and comments or in actual discussions and observations. I hope this will add flesh to the skeleton of the report's conclusion.

Overcrowding and Population Management

The Consent Order requires the Sheriff to manage the inmate population in such a way that no inmate is required to sleep on the floor and no more than two inmates are housed to a cell. It also imposes a capacity of 2250 at the main facility on Rice Street, 200 at Bellwood and 100 at Marietta. During this reporting period the jail managed to eliminate housing more than two inmates to a cell and much of the time has remained below capacity, if barely. I am not aware that any inmate was required to sleep on the floor.

Outsourcing, or boarding prisoners at other facilities, remains the main component of the jail's population management "plan". On a given day somewhere between 300 and 400 of Fulton County's roughly 3,000 inmates are housed in jails in Cook, Decater and DeKalb counties, the Pelham city jail or in the Atlanta city jail, the latter accounting for nearly half of the current outsourcing capacity.

There has been only a small increase in the use of outsourcing in the last several months and getting more beds in the existing jails seems

unlikely. The possible expansion of outsourcing has been raised frequently, but a real plan has never emerged. For example, a June compliance report to the monitor announced the encouraging news that, in addition to existing outsourcing counties, Clayton County was expected to provide an additional 200 beds. In my comments on that report, I suggested that an analysis was needed to determine the feasibility of using the Laramore jail (which had also been discussed) or the old Clayton County jail, including estimates of potential bed capacity, additional staffing requirements, possible operating problems etc. The next report on June 20 did not mention the Laramore jail but indicated that a "very productive" meeting had been held with the Sheriff of Clayton County about housing an additional 192 prisoners in the *main* jail but "... not the old jail that was previously discussed."

Since then the jail's reports to the monitor have made no further mention of Clayton County. Whatever information I have about further negotiations (and controversy) in Clayton County was not provided by the Sheriff or his staff but gleaned from media reports. The same is true about negotiations for possible beds in Polk County. If the Sheriff has a comprehensive plan for population management I have not seen it.

In mid-August I repeated my concern about overcrowding at the jail. For one thing, during July and most of August when the jail had managed to stay below the cap, it was running at or above 90 percent of the 2250 main jail capacity even with a newly focused effort to process prisoners more quickly. With such a high occupancy rate, the unpredictability of the jail's population caused the jail to constantly risk exceeding the court-mandated capacity. Indeed, on August 29 it did go over the cap and was over it again for several days in mid September. It continues to run precariously close to that edge and it will probably take an additional 200 beds to allow it to operate safely below the court-ordered capacity.

But there is a second, even more pressing need to have a solid population management plan in hand. In less than six months the MEP, a massive reconstruction project also mandated in the Consent Order, will require that one floor of the jail be vacated with a loss of 300 to 400 beds; this shortfall is expected to continue for the next two years. By March of next year, then, Fulton County will need approximately 600 additional beds to comply with the jail's population requirements. Even if expanded outsourcing could compensate for some of the deficit, and even if a site for the rest of these additional beds were identified and authorized today, it would be difficult, in such a short time, to complete the recruitment, hiring,

and training of staff necessary to open what is the equivalent of another good-sized jail

The various pieces of a workable population management plan seem to exist. What is lacking is the capacity to conceptualize the problem and then persistently pursue and assemble the components into a comprehensive solution. This may require a way of thinking and leading that we have not seen thus far, but until it happens efforts to comply with the population requirements of the Consent Order will continue to founder.

Inmate Releases

The timely release of prisoners is obviously one component of managing population but it is also a particular element of the Consent Order and so is dealt with separately here. The first requirement is that the Sheriff provide for the release of inmates from the jail within a reasonable amount of time, not to exceed 24 hours after the inmate becomes eligible for release. The second is a reporting requirement. The Sheriff must report monthly to the court and the parties the names of all inmate detained for longer than 24 hours after becoming eligible for release, how long they were detained after becoming eligible, and the reason the detention exceeded 24 hours. Until recently, the Sheriff failed to comply with both requirements.

As early as the first written report from Chief Charles Felton in May it was evident that a whole range of glitches conspired to slow down the release process. Delays were blamed on inaccurate or incomplete disposition information, disruptions in the GCIC network, shortages of staff in the records room and release station, and a need for additional workstations as well as more GCIC lines and printers. Chief Judge Doris Downs began working with judges and court officials to streamline and standardize procedures.

The report to the monitor indicated that there were eight inmate held beyond 24 hours during the week ending June 3, all but one of them because of untimely processing of information. During the next two weeks, however, it was reported that seventy-five inmates were not released within the 24-hour period, with staff shortages cited as a major reason. The need for changes to the records room and more workstations and terminals were noted once again.

During this time, while a variety of people searched for ways to reduce delays, there were no monthly reports to the court and the parties as required by the Consent Order. In fairness, some staff may have thought that the occasional inclusion in reports to the monitor of information regarding delayed releases would substitute for the formal reporting requirement, but a letter from plaintiffs' counsel complaining about the lack of reports put that misperception to rest. The ongoing efforts of court personnel and jail staff to fix the problem, bolstered by the letter and media reports of long delays, moved the issue to center stage where it is now receiving priority attention.

On September 12 the first comprehensive, monthly report was sent to the monitor and the parties. It listed 36 inmates who had been improperly held beyond 24 hours during August and listed a variety of reasons. Although I have not yet received the monthly report for September, interim reports suggest that the delays have been reduced even more. It was reported that no inmates were improperly held beyond 24 hours during the most recent two weeks for which I have information.

Certainly this improvement needs to be sustained and the results verified but I credit the efforts of the Sheriff, jail staff, court officials and others who are working hard to regain control of this long-standing problem. The results, though long overdue, are nonetheless praiseworthy. Once the problem was identified the Sheriff gave high priority to solving it. The jail's resources were focused so that enough highly motivated staff were assigned to the task, supported, and closely supervised; the remodeling of workspace and the installation of more workstations and GCIC lines was accelerated. The results, thus far, are encouraging.

Jail Admissions

Controlling intake at the jail is another dimension of population management that deserves attention. Many believe that certain minor offenders don't need to be brought to the jail at all. Rather they could be given a copy of the charges and scheduled for a court appearance at a later date. Some contend that no one should be accepted at the jail without a warrant and others that misdemeanants should not go to the jail except those arrested for Driving Under the Influence or domestic abuse and then only with a warrant.

It is not clear how much changes in admissions practices would affect the population at the jail since most minor offenders spend only a short time there in any case, but it would likely have a significant impact on intake and court processing of prisoners. It deserves careful examination.

I would recommend that the Court convene a meeting of the attorneys in this case, representatives of the local judiciary, and others who are concerned and knowledgeable about this issue in order to seek their advice regarding useful and appropriate actions which the Court might take to address the matter.

Maintenance and Physical Plant Issues

General Services staff members, who are responsible for maintenance and physical plant projects at the jail continue to be cooperative and responsive to the requirements of the Consent Order. A new Environmental Health Supervisor has been hired and is conducting fair and objective assessments of physical plant deficiencies that can lead to specific remedial action and establish a verifiable track record.

Work on replacing the grates continues as does the task of repairing the locks and upgrading the CCTV (closed circuit television) system. The contractors' trailers are in place and work is beginning on the MEP (Mechanical, elevator and plumbing) project.

No particular problems were identified in this area during this reporting period. The next Quarterly Report will discuss this area more extensively.

Sanitation and ACA Accreditation

Although these are not specific Consent Order items, it should be pointed out that the general appearance and cleanliness of the jail remain good. Just prior to my last visit the jail hosted a visit from a three-member ACA (American Correctional Association) accreditation team. Accreditation requires the maintenance and updating of policies and procedures that cover most of the function of a jail. The jail received very good scores from the accreditation team and all those who worked hard to prepare for the visit should be congratulated. The jail had been accredited

previously; visits like these are required every three years for the purpose of renewing the accreditation

Staffing and Security

The Consent Order has several provisions that address staffing of the jail. Specifically, it requires that the Sheriff assign at least three officers to supervise inmates in the six cellblocks on each side of each floor. It further directs that one supervisor be stationed on each floor and another officer in the tower. It also requires the Sheriff to report to the Court monthly when there are fewer than three officers and give the reasons for the deficiency. To my knowledge, the jail has never complied with these requirements

The centrality of staffing -related issues in the Consent Order reflects the importance of staffing to the successful operation of the jail itself. From the very beginning there have been vigorous discussions about staffing and the problems related to it. In late May it was reported that John Gibson, the former jail receiver whom the Sheriff had hired as a consultant, had "...developed a staffing program that assigns three officers to the housing floors." The program was originally scheduled to begin on June 15 but was delayed until June 28.

By coincidence, I was visiting the jail on the day the new staffing program was implemented. Even before the program began, there had been complaints from staff that their input was not sought or accepted and that parts of the plan were not workable. I was aware that changes in a tightly structured organization like a jail can cause strong reactions, so a certain level of skepticism did not surprise me. As it turned out, however, many of the concerns were not unfounded.

A stated objective of the new program was to ensure that there would be three officers on the housing floors as the Consent Order required. On the day the program went into effect I visited four housing floors and none of them had the required number of officers. Moreover one of the officers, who was newly assigned to the tower but had never worked the post before, had to repeatedly ask the sergeant how to perform various tasks. We searched the area for a copy of the Post Orders, a set of written instructions that are supposed to be available at all posts, but none could be found. When I visited the kitchen I found supervisory staff that had stayed on for eight hours beyond the end of their regular shift so

that meals could continue to be prepared and delivered even with a group of newly assigned staff who had no food service experience. I visited other areas of the jail where there was confusion and some where I thought there should have been more security.

I understand that problems are to be expected on the first day of a new staff deployment program but, during the days and weeks that followed, it was clear that there were a great many more unintended consequences than anticipated. The jail is still not in compliance with the three officer staffing requirement on the housing floors.

In mid-September it was reported that John Gibson had completed an "overview and accounting of all personnel assigned to the jail in order to determine immediate and long term staffing needs." I was told that the Sheriff and his attorneys are reviewing the overview and I have not yet seen it. I have received a copy of the new "deployment plan" or roster, but like the last one it does not reflect a relief factor so one cannot determine actual staffing requirements for even the *present* operation. As noted above in the section on population management, a different distribution of inmates over the next two years will make planning for staffing needs even more critical and complex.

There is still no systemic staffing *plan*, which combines an analysis of the tasks to be done with a listing of the number and kind of staff positions needed to accomplish the tasks. Once a relief factor is calculated into those numbers (to account for vacations, sick leave, holidays, military service, training etc.) the analysis forms the basis for recruitment, training, deployment plans and budgeting. Despite repeated requests over the past three months, such a plan has not been forthcoming.

Feasibility Study

For the past several months, The Facility Group, an Atlanta architectural and planning firm, has been working on possible mid and long -term future plans for the Fulton County Jail. While this study is not required by the Consent Order, there are some obvious connections to issues like population management, which are part of the Order's focus.

Specifically, one tentative recommendations, which has been or soon will be presented to the County Commissioners, envisions reducing the population in the towers to about 1,800 and building a group of low rise, lower security dormitory facilities where Bellwood and Marietta are

now located. Without getting into great detail, there appear to be some obvious areas of mutual interest between this planning effort and the jail's attempts to secure "outsourcing" beds for the jail's excess population over the next two to three years.

I would encourage the coordination of these planning activities.

Management and Organizational Issues

While there is no section of the Consent Order with the above title, it would be foolish and dishonest to pretend that these issues have no bearing on the jail's ability to come into eventual compliance. From the beginning, there has been ambiguity about who is "in charge" at the jail. Even projects that have been "successful" like improving the appearance of the building and, recently, reducing release time have been accomplished using a crisis management model that ignores (and therefore weakens) the chain of command, which is at the heart of a jail's organizational structure.

I resist the temptation to analyze the organizational malaise at the jail because such analysis is beyond the scope of this report and, more importantly, is unnecessary. There can be (and is) disagreement about the fairness of personnel decisions or the assigning of blame or the taking of credit. But there can be no disagreement that all the turmoil has left deep and long lasting scars.

I had originally thought that technical assistance and "coaching" could help to unleash enough talent and energy among staff to build the jail's capacity to achieve compliance. Whether I exaggerated my own abilities or underestimated the magnitude of the task, I now realize that I was wrong. In that light, to continue that old strategy would be not just pointless but could interfere with beginning a different strategy, which I suggest below.

The jail has been a dysfunctional organization for so long that it is not possible to fix blame and that is not my intent here. Wherever the blame might lie, it is clear that the jail needs new leadership that can command respect and inspire loyalty without all the baggage of the turbulent past. Unlike assigning blame, it is easier to determining where responsibility lies for taking the next steps. The Sheriff's office is responsible for the jail and whatever the decisions necessary to correct deficiencies, they are his to make.

I was brought to this task because I have had some experience observing what does and does not work in lots of jails and prisons around the country. Bringing that experience to bear on what I have seen over the past six months led me to the recommendation that follows. I offer it as a conclusion drawn, somewhat sadly, from those observations.

Recommendation

It is my recommendation that the Sheriff should initiate a nation-wide search to select a new administrator for the Fulton County Jail. The search should be conducted in collaboration with the Board of County Commissioners and in consultation with representatives of the local judiciary and criminal justice community. The search should seek an individual who is familiar with corrections and detention issues and who has the experience and demonstrated skills to successfully manage a large and complex organization like the Fulton County Jail. Since the operation of the jail is the statutory responsibility of the Sheriff, he would remain the appointing authority. It is important, however, that qualified candidates be confident that they will have enough freedom and political support, not just from the Sheriff but also from the larger community, that they can function productively and in a way that is consistent with accepted professional standards.

October 8, 2006

Respectfully submitted,

Patrick D. McManus
Court Monitor