

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

SEP 23 2014

JIMMY (BILLY) MCCLENDON, et al.,

Plaintiffs,

vs.

MATTHEW J. DYKMAN

CLERK

No. CV 95-24 JAP/KBM

CITY OF ALBUQUERQUE, et al.,

Defendants.

vs.

E.M., R.L., W.A., D.J., P.S., and N.W., on behalf
of themselves and all others similarly situated,

Plaintiff-Intervenors.

**ORDER INSTRUCTING COURT-APPOINTED MENTAL HEALTH EXPERT
JEFFREY METZNER, M.D. TO EVALUATE MENTAL HEALTH SERVICES
AT THE BERNALILLO COUNTY METROPOLITAN DETENTION CENTER**

1. This action was commenced on January 10, 1995 by Plaintiffs on behalf of all persons who are or who will be confined at the Bernalillo County Detention Center.

2. Plaintiffs alleged in their complaint that conditions at the Bernalillo County Detention Center violated the United States Constitution, the statutory laws of the United States, the New Mexico Constitution, and the statutory laws of the State of New Mexico. Plaintiffs sought Declaratory and Injunctive Relief on behalf of the class.

3. After the suit was filed, a group of individuals with mental and/or developmental disabilities who are or will be confined at the Bernalillo County Detention Center intervened

("Plaintiff-Intervenors"). *[Doc. No. 113]*. The Court granted Plaintiff-Intervenors permission to intervene on October 26, 1995. *[Doc. No. 137]*.

4. The Bernalillo County Detention Center was located in downtown Albuquerque, and is no longer used for the incarceration of Plaintiff or Plaintiff-Intervenors. The inmates in the Plaintiff class and Plaintiff-Intervenor subclass are now housed at the Metropolitan Detention Center ("MDC") located at 100 Deputy Dean Miera Dr., SW, Albuquerque, NM 87151.

5. On July 11, 2003, the Court entered an order, clarifying the class and sub-class to include inmates incarcerated at the MDC. *[Doc. No. 416]*.

6. On December 7, 2011 the Court appointed Jeffrey Metzner, M.D. as the Court's expert to continue his evaluation of the mental health services provided at MDC. *[Doc. No. 909]*.

7. Pursuant to the December 7, 2011 Order, the Court directed Dr. Metzner "to evaluate whether MDC is in compliance with the standards described in the Plaintiff Intervenors' SSA (that currently are applicable) regarding mental health care services at MDC. In making his evaluation, Dr. Metzner may confer with Dr. Roberta Stellman, who has recently evaluated and monitored the mental health care services at MDC." *[Doc. No. 909, pp. 2-3]*.

8. To ensure compliance with this Court's orders, Dr. Metzner will evaluate Defendants' compliance with the provisions of the Court's extant orders. Those provisions include the following:

A. Screening and Assessment

- 1) Whether MDC has developed and implemented policies and

procedures for appropriate screening and assessments of inmates with serious mental health needs.

- 2) Whether MDC has developed and implemented an appropriate screening instrument that identifies mental health needs and ensures timely access to a mental health professional when inmates present symptoms requiring such care.
- 3) Whether MDC screens all inmates with Qualified Medical Staff upon booking at MDC, but no later than four (4) hours after booking, to identify the inmate's risk for suicide or self-injurious behavior.
- 4) Whether MDC's Qualified Medical Staff conducting intake screening receive adequate training on identifying and assessing suicide risk, are assigned appropriate tasks and guidance, and properly conduct intake screening.
- 5) Whether MDC Qualified Medical Staff, based on the screening, develop and implement an acuity system or triage scheme (P1, P2, or P3) to ensure that inmates with immediate mental health needs are prioritized for services.
- 6) Whether MDC provides "sufficient psychiatric services to assure that a psychiatrist will evaluate no later than the business day after a resident's admission, any resident who: 1) reports being on any

psychoactive medication when taken into custody, 2) requests any psychoactive medication or other psychiatric service, or 3) has been identified by any mental health or health professional at the jail as appropriate for a psychiatric assessment.” [Doc. No. 256, III(C)(1-3)].

a) Whether MDC provides adequate and timely psychiatric services to assess any inmate who:

- (1) reports being on any psychiatric medication when taken into custody,
- (2) requests any psychiatric medication or other psychiatric service, or
- (3) has been identified by any mental health or health professional at the jail as appropriate for a psychiatric assessment.

b) Whether a psychiatrist assesses (no later than the business day after an inmate’s admission) any inmate who:

- (1) reports being on any psychiatric medication when taken into custody,
- (2) requests any psychiatric medication or other psychiatric service, or
- (3) has been identified by any mental health or health

professional at the jail as appropriate for a psychiatric assessment.

- 7) Whether MDC implements policies and procedures, commensurate with the level of risk of suicide or self-harm, that ensure that inmates are protected from identifiable risks for suicide or self-injurious behavior.
- 8) Whether MDC's policies and procedures require that a Qualified Mental Health Professional performs a mental health assessment within the prescribed period of time, based on the inmate's risk.
- 9) Whether MDC security staff monitors inmates who are presumed to be of moderate or high risk of suicide or self-harm with constant supervision until the inmate is seen by a Qualified Mental Health Professional for assessment, and thereafter on the schedule chosen by the Mental Health Professional.
- 10) Whether MDC conducts appropriate mental health assessments within the following periods from the initial screen:
 - a) 14 days, or sooner, if medically necessary, for inmates classified as low risk (P3);
 - b) 8 hours, or sooner, if medically necessary, for inmates classified as moderate risk (P2); and
 - c) Immediately, but no later than four hours, for inmates

classified as high risk (P1).

11) Whether MDC ensures that mental health assessments include the assessment factors described below:

a) Intake screening shall inquire as to the following:

- (1) Current mental health conditions;
- (2) Current psychiatric medications;
- (3) Current suicidal ideation, threat, or plan;
- (4) Past suicidal ideation and/or attempts;
- (5) Prior mental health treatment or hospitalization;
- (6) Recent significant loss - such as the death of a family member or close friend;
- (7) History of suicidal behavior by family members and close friends;
- (8) Any reported observations of the transporting officer, court, transferring agency, or similar individuals regarding the inmate's potential suicidal risk.

12) Whether MDC Qualified Mental Health Professionals complete all assessments, pursuant to generally accepted correctional standards of care.

13) Whether MDC Qualified Mental Health Professionals perform in-

person mental health assessments no later than one working day following notification of any adverse triggering event (*i.e.*, any suicide attempt, any suicide ideation, and any aggression to self-resulting in injury).

- 14) Whether MDC Mental Health Staff conduct in-person assessments of inmates before placing them on suicide watch, clinical seclusion, or segregation and on regular intervals thereafter, as clinically appropriate and defined by MDC policy.
- 15) Whether MDC houses seriously mentally ill inmates in general population without a written evaluation. [*Doc. No. 106, p. 15*].
- 16) Whether MDC notifies its inmates, orally and in writing, that MDC provides mental health services. [*Doc. No. 256, III(F)(3)*]
- 17) Whether MDC notifies all residents of any area intended to provide mental health services, orally and in writing, of their rights and of the methods available to initiate a grievance regarding the possible violation of their rights. [*Doc. No. 256, III(F)(3)*].

B. Treatment plan.

- 1) Whether Defendants provide treatment plans consistent with prevailing professional standards for those inmates requiring a treatment plan.
 - a) Whether treatment plans for inmates in specialized mental

health units are designed by an appropriate treatment team;

and

- b) Whether the plans are reviewed periodically, ordinarily at least every 90 days, and at the request of the resident.
- 2) Whether MDC's policies and procedures ensure that adequate and timely treatment for inmates are continued and further developed for inmates whose assessments reveal serious mental health needs and/or suicidal ideation, including timely and appropriate referrals for specialty care and visits with Qualified Mental Health Professionals, as clinically appropriate. *[Doc. No. 256, III(I)]*.
- 3) Whether MDC's treatment plans adequately address inmates' serious mental health needs and whether the plans contain interventions specifically tailored to the inmates' diagnoses and problems. *[Doc. No. 256, III(I)]*.
- 4) Whether MDC makes available appropriate therapy services by a licensed mental health provider where medically necessary for inmates with serious mental health needs as ordered by their attending psychiatrist.
- 5) Whether MDC completes mental health evaluations as part of the disciplinary process and can demonstrate that the hearing officer incorporates those recommendations into the disciplinary process

for determining whether an inmate's actions should be excused and, if not, for mitigation of sanctions if the inmate's behaviors were a result of a mental or developmental disability. *[Doc. No. 256, IV(A)(1)J.*

- 6) Whether MDC implemented an adequate scheduling system to ensure that mental health professionals assess inmates with mental illness as clinically appropriate, regardless of whether the inmate is prescribed medications. *[Doc. No. 256, III(I)J.*
- 7) Whether MDC inmates have the opportunity to participate meaningfully in the development of a treatment plan. *[Doc. No. 256, III(I)J.*
- 8) Whether MDC inmates receive appropriate psychotropic medications in a timely manner.
- 9) Whether MDC's use of psychotropic medications is reviewed by a Qualified Mental Health Professional on a regular, timely basis.
- 10) Whether MDC properly monitors and timely adjusts medications.
- 11) Whether MDC has established standards for the frequency of review and associated charting of psychotropic medication.
- 12) Whether a psychiatrist personally assesses every MDC inmate on psychiatric medication at least once every thirty days. *[Doc. No. 256, III(C)J.*

- a) With what frequency should a psychiatrist personally assess every MDC inmate on psychiatric medication who is not seriously mentally ill.
 - b) With what frequency should a psychiatrist personally assess every seriously mentally ill inmate.
- 13) Whether MDC's treatment of suicidal inmates involves more than segregation and close supervision (*i.e.*, providing psychiatric therapy, regular counseling sessions, and follow-up care).
- 14) Whether MDC has housed MDC inmates on the PSU caseload outside of the MDC facility when the inmate has not requested the placement.
- 15) Whether MDC has housed MDC inmates on the PSU caseload, without the approval of a psychiatrist or psychologist. [*Doc. No. 256, IV(A)*].
- 16) Whether Defendants have developed and implemented adequate formal procedures for seeking psychiatric hospitalization or other appropriate residential mental health care for residents who need and would benefit from such care, and who are eligible for such placement, consistent with the court imposed conditions of their confinement; whether Defendants established formal policies and procedures requiring the initiation of civil commitment

proceedings whenever an individual diagnosed as having a mental or developmental disorder requests placement in a residential treatment or evaluation facility, assuming the court imposed conditions of confinement are consistent with such placement; and whether only a licensed and qualified psychiatrist makes the decision not to initiate civil commitment proceedings on behalf of any resident who requests placement in a psychiatric hospital or other residential treatment or evaluation facility

17) Whether Defendants have developed and implemented adequate formal procedures for seeking psychiatric hospitalization or other appropriate residential mental health care for inmates who need and would benefit from such care, and who are eligible for such placement, consistent with the court imposed conditions of their confinement. *[Doc. No. 256, III(M)]*.

a) Whether MDC has sent an inmate to a psychiatric hospital or other appropriate residential mental health care for inmates who need and would benefit from such care, and who are eligible for such placement, consistent with the court imposed conditions of their confinement.

b) Whether MDC has the realistic option of sending an inmate to a psychiatric hospital or other appropriate residential

mental health care for inmates who need and would benefit from such care, and who are eligible for such placement, consistent with the court imposed conditions of their confinement.

C. Suicide Precautions

- 1) Whether MDC's suicide prevention policies, procedures, and practices include provisions for constant direct supervision of actively suicidal inmates, close supervision of special needs inmates with lower levels of risk (*e.g.*, 15 minute checks), and follow-up assessments after the suicide watch is discontinued.
- 2) Whether MDC inmates on suicide watch are monitored by security with constant direct supervision until a Qualified Mental Health Professional conducts a suicide risk assessment, determines the degree of risk, and specifies the appropriate degree of supervision.
- 3) Whether MDC security staff provide the amount of supervision specified by a Qualified Mental Health Professional and accurately document their well-being checks on forms that do not have pre-printed times.
- 4) Whether MDC follows its policy of having a psychiatrist or psychologist evaluate all inmates placed on suicide precautions before they are removed from suicide watch, and whether MDC

assures that its policies are followed.

- 5) Whether MDC conducts all follow-up assessments on all inmates discharged from suicide watch.
- 6) Whether MDC's policies and procedures for suicide precautions set forth the conditions of the suicide watch, including a policy requiring an individual clinical determination of allowable clothing, property, and utensils.
- 7) Whether MDC's policies and procedures for suicide precautions prohibit a revision of the conditions of suicide watch except upon the written instruction of a Qualified Mental Health Professional, under emergent circumstances, or when security considerations require.
- 8) Whether MDC has developed and implemented appropriate policies for the housing of suicidal inmates.
- 9) Whether MDC assures that its policies and procedures in paragraphs 1-8 are followed.

D. Suicide Prevention Training Program

- 1) Whether MDC's suicide prevention training program includes the following topics:
 - a) suicide prevention policies and procedures;
 - b) analysis of facility environments and why they may

- contribute to suicidal behavior;
 - c) potential predisposing factors to suicide;
 - d) high-risk suicide periods;
 - e) warning signs and symptoms of suicidal behavior;
 - f) case studies of recent suicides and serious suicide attempts;
 - g) differentiating suicidal and self-injurious behavior;
 - h) mock demonstrations regarding the proper response to a suicide attempt; and
 - i) the proper use of emergency equipment
- 2) Whether all medical and mental health staffs are trained on the suicide screening portion of the mental health intake form and medical intake tool.
 - 3) Whether all MDC staff who work directly with inmates have demonstrated competence in identifying and managing suicidal inmates and have shown comprehension of the training objectives via a performance measure tool such as a pre-and post-test.
 - 4) Whether all security, medical, and mental health staff complete a minimum of four hours of in-service training annually regarding issues related to suicide prevention, to include training on updated policies, procedures, and techniques.
 - 5) Whether all MDC security staff is certified in cardiopulmonary

resuscitation.

- 6) Whether an emergency rescue tool is in close proximity to all housing units.
- 7) Whether all staff coming into regular contact with inmates knows the location of the emergency rescue tool and are trained in its use.

E. Use of Clinical Restraints

- 1) Whether MDC policy requires written approval by a Qualified Medical or Mental Health Professional before the use of four point restraints on inmates with mental health needs or requiring suicide precautions, unless emergency security concerns dictate otherwise. *[Doc. No. 256, III (N)&(I)].*
- 2) Whether the MDC policy requires restrained inmates with mental health needs are monitored at least every 15 minutes by security staff to assess their physical condition. *[Doc. No. 256, III (N)&(I)].*
- 3) Whether the MDC policy requires Qualified Medical or Mental Health staff to complete documentation on the use of restraints, including the basis for and duration of the use of restraints and the performance and results of welfare checks on such restrained inmates. *[Doc. No. 256, III (N)&(I)].*
- 4) Whether MDC follows its clinical restraint policies. *[Doc. No. 256, III (N)&(I)].*

F. Use of Security Four Point Restraints

- 1) Whether MDC ensures that, in the event an emergency results in a four point restraint of an individual identified as having a psychiatric, neuropsychological or developmental disorder, a qualified mental health professional is notified immediately and personally assesses the appropriateness of the restraint and designs a plan to safely end the restraint as soon as possible.

G. Basic Mental Health Training

- 1) Whether MDC provides adequate pre-service and annual in-service basic training to Qualified Medical and Mental Health Staff and security staff that addresses mental health needs. MDC will provide no less than forty (40) hours of specialized training. *[Doc. No. 256, III (L)]*.
- 2) Whether MDC provides adequate specialized training for all security staff working on specialized mental health units.

H. Mental Health Staffing

- 1) Whether the caseload for psychiatrists treating MDC inmates exceeds 100 residents per FTE. *[Doc. No. 256, III(C)]*.
 - a) What caseload allows psychiatrists treating MDC inmates to provide for adequate access to psychiatric care for inmates in need of such treatment.

- b) Whether the current caseload for psychiatrists treating inmates provides for adequate access to psychiatric care for inmates in need of such treatment.
 - 2) Whether MDC's mental health staffing is sufficient to provide all safety precautions (referencing suicide prevention and planned use of force), treatment, and services required by the Court's orders.
 - 3) Whether MDC provides adequate care for inmates' serious mental health needs.
 - 4) Whether MDC's mental health staffing is sufficient to provide adequate care for inmates' serious mental health needs, consistent with generally accepted correctional mental health standards of care.
 - 5) Whether MDC annually reviews staffing patterns based on data of time frames in which staff have completed necessary functions such as response to sick call requests, initial assessments, follow up contacts, and other essential clinical processes during the past year.
 - 6) Whether there is evidence that MDC addressed staffing needs whenever new programming was initiated.
- I. Quality Assurance/Improvement [*Doc. No. 256, III(K)*].
- 1) Whether MDC developed and implemented policies and

procedures that create an adequate quality management system to review suicide and self-injurious behaviors, morbidity and mortality and implementation of its mental health policies and procedures and implemented appropriate corrective action to prevent or minimize future harm to inmates.

- 2) Whether MDC developed and implemented a Suicide Prevention Committee that reviews individual and system data about triggers and thresholds, and determines whether these data indicate trends either for individuals or for the adequacy of treatment and suicide prevention overall.
- 3) Whether MDC's Quality Improvement Committee:
 - a) Includes the Medical Director, the Psychiatric and Behavioral Health Directors, related clinical disciplines, Jail Director or the Assistant Chief of Operations, and the Health Services Administrator;
 - b) Conducts analyses of the mental health processes and makes recommendations on changes and corrective actions;
 - c) Provides oversight of the implementation of mental health policies, procedures, guidelines and support plans;
 - d) Reviews policies, training, and staffing levels;
 - e) Monitors implementation of recommendations and

corrective actions;

f) Reports its findings and recommendations to appropriate County officials periodically; and

g) Refers appropriate incidents to the Morbidity/Mortality Committee for review, as necessary.

4) Whether MDC's Morbidity/Mortality Committee reviews suicides, serious suicide attempts, all other deaths of people committed to the custody of the MDC, and other sentinel events occurring at MDC in order to improve care on a jail-wide basis.

a) Whether MDC's Morbidity and Mortality Review Committee conducts an interdisciplinary review, consisting of members of the correctional, medical, and mental health staffs, of all deaths of people housed at MDC, serious suicide attempts and other sentinel events.

b) Whether MDC's Morbidity and Mortality Review Committee's inquiry includes:

(1) circumstances surrounding the incident;

(2) facility procedures relevant to the incident;

c) All relevant training received by involved staff;

d) Pertinent medical and mental health services/reports involving the victim;

- e) Possible precipitating factors leading to the event;
 - f) Recommendations, if any, for changes to policy, training, physical plant, medical or mental health services, and operational procedures; and
 - g) Tracking of whether MDC implements recommendations and, if so, when.
- 5) Whether the review team, when appropriate, develops a written plan (and timetable) to address areas that require corrective action.
 - 6) Whether MDC's Mortality Committee or Suicide Prevention Committee (for review of morbidity only) conducts a preliminary mortality or morbidity review within 30 days of each suicide or serious suicide attempt (*e.g.*, those incidents requiring hospitalization for medical treatment).
 - 7) Whether Mortality Committee or Suicide Prevention Committee's preliminary report of any mortality review is completed within 30 days of each suicide or serious suicide attempt.
 - 8) Whether MDC completes a final mortality review report within 30 days after the pathological examinations are complete.

J. Other Matters

- 1) Whether any individual who has been identified as having a psychiatric, neuropsychological or developmental disorder who was subjected to a, Taser, pepper gas, mace or other chemical agent is assessed by a mental health professional and the circumstances of the event is included in the resident's mental health file.
- 2) Whether Defendants have developed an adequate plan to implement an effective jail diversion program for persons with psychiatric or developmental disabilities. *[Doc. No. 319 at 6 ¶ 4]*.
- 3) Whether Defendants developed, in consultation with Dr. Metzner, a plan for the provision of specialized mental health treatment for both female and male residents who are segregated. May 22, 2013 "Order Resolving Order to Show Cause," *[Doc. No. 1004]*.

With respect to each of the questions asked in paragraph 8, Dr. Metzner will report to the Court and the parties, in writing, whether MDC is in compliance, partial compliance, or non-compliance. Whenever feasible, Dr. Metzner should present his findings in a quantifiable manner, such as numerically or as a percentage.

9. If Dr. Metzner determines that MDC has met a standard set forth in paragraph 8 of this Order, Dr. Metzner will determine, when practicable, the date when compliance began.

10. To assist the Court with its determination as to whether MDC is providing constitutionally adequate mental health care, Dr. Metzner will determine the following:

- A. Whether the mental health care provided by MDC to its inmates evidences repeated examples of negligent acts;
 - B. Whether the conduct of MDC mental health staff effectively denies inmates access to adequate mental health care;
 - C. Whether there are systematic deficiencies in staffing, facilities, equipment, or procedures; and
 - D. Whether the inmate population is effectively denied access to adequate mental health care.
11. To assist the Court to determine whether the Defendants are complying with the Americans with Disabilities Act, Dr. Metzner will determine:
- A. Whether the Defendants have made the modifications to their policies, procedures and practices that are necessary to provide to sub class members mental health care which is adequate.
 - B. Whether sufficient communication occurs between MDC administration and treating mental health care professionals regarding an inmate's significant mental health needs that must be considered in classification and housing decisions in order to preserve the health and safety of that inmate, other inmates, or staff;
 - C. Whether MDC security staff is adequately advised of inmates' special mental health needs that may affect housing, work, program assignments, disciplinary measures, and admissions to and transfers from institutions.

- D. Whether mental health care and security staff communicate sufficiently about inmates with special needs conditions.
- E. Whether MDC follows a proactive program which provides care for special needs patients who require close mental health supervision or multidisciplinary care.
- F. Whether individual mental health treatment plans are developed by a psychiatrist or other qualified clinician at the time the condition is identified and updated when warranted.
- G. Whether the mental health treatment plan includes, at a minimum:
 - 1) The frequency of follow-up for mental health evaluation and adjustment of treatment modality;
 - 2) The type and frequency of diagnostic testing and therapeutic regimens; and
 - 3) When appropriate, instructions about diet, exercise, adaptation to the correctional environment, and medication.

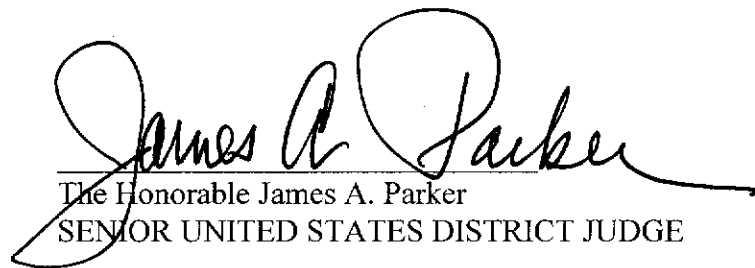
With respect to each of the above questions, Dr. Metzner will notify the Court and the parties whether MDC is in compliance, partial compliance, or non-compliance. Whenever feasible, Dr. Metzner should set forth his findings in a quantifiable way, such as numerically or as a percentage.

12. If Dr. Metzner determines that MDC has complied with the provisions set forth in paragraph 11 of this Order, Dr. Metzner will determine, when practicable, the date when

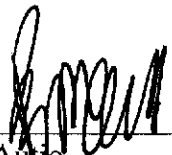
compliance began.

13. For the purpose of preparing a report to this Court and the parties, Dr. Metzner will visit MDC and complete an evaluation of the mental health services provided to MDC class and sub-class members. Within six (6) months of the filing of this Order, Dr. Metzner will submit an initial report of his findings and conclusions, in writing, to the Court and to the parties.


IT IS SO ORDERED.


The Honorable James A. Parker
SENIOR UNITED STATES DISTRICT JUDGE

APPROVED:



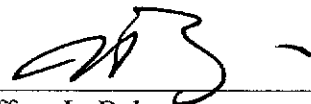
Randy Autilo
Attorney for County Defendants



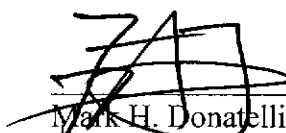
Luis Robles
Marcus J. Rael, Jr.
Attorney for County Defendants



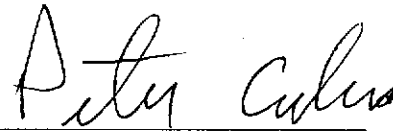
Mark Baker
Attorney for Plaintiffs



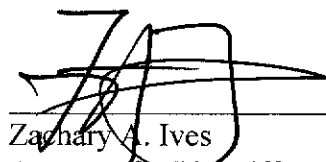
Jeffrey L. Baker
Attorney for County Defendants

 for Mark Donatelli

Mark H. Donatelli
Attorney for Plaintiffs



Peter Cubra
Attorney for Plaintiff-Intervenors



Zachary A. Ives
Attorney for Plaintiffs



Nancy L. Simmons
Attorney for Plaintiff-Intervenors



The Honorable Alan Torgerson
Special Master