

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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JIMMY (BILLY) McCLENDON, et al.,

Plaintiffs,

vs.

CIV 95-24 MV/DJS

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.

**SUPPLEMENTAL ORDER TO ENFORCE PREVIOUSLY ORDERED
POPULATION LIMITS AT THE BCDC MAIN FACILITY**

THIS MATTER comes before the Court after a status conference on May 7, 2001.

1. THE COURT FINDS that the measures set out in the Court's previous Order of September 25, 2000, although partially successful, have nonetheless failed to achieve the population limit previously ordered by this Court.

2. The Court's Order of September 25, 2000 and the November 5, 1996 Order Regarding the Prison Litigation Reform Act require that the average BCDC daily population at the main facility be no greater than 586.

3. Since the entry of the Court's September 25, 2000 Order providing for the appointment of a pro tem state district judge, the Defendants, with the assistance of the pro

tem judge, have taken a number of significant steps which have reduced the overcrowding at BCDC by approximately 100 individuals. Although population levels have substantially declined, monthly average population levels at the BCDC main facility have exceeded the cap of 586 in seven of the last eight months, as follows:

- (1) October 2000 - 714.9
- (2) November 2000 - 611.9
- (3) December 2000 - 593.6
- (4) January 2001 - 580.1
- (5) February 2001 - 592.8
- (6) March 2001 - 615.8
- (7) April 2001 - 617.9
- (8) May 2001 - 651.9

4. Despite the considerable efforts of the Defendants and the pro tem judge, compliance with the Court's orders regarding population caps has not been achieved. Moreover, the population of the jail typically increases during the summer months and usually peaks around the time of the September State Fair. Accordingly, additional measures are necessary to achieve compliance with the Court's orders with respect to overcrowding.

5. Despite the efforts to date of the parties and the Court, 244 persons were brought into the jail by arresting officers in the month of March, 2001 and booked on petty misdemeanors, including, *inter alia*, shoplifting under \$100, excessive sun screen material on vehicle windows, and unreasonable noise. Issuing citations for such non-violent petty

offenses and using the jail's "walk through procedure" for persons charged with such offenses would likely reduce unnecessary incarceration at BCDC.

6. As of May 1, 2001, 140 persons accused of a probation or parole violation were incarcerated in BCDC. Generally, those individuals are held in custody on "no-bond holds," without any opportunity for release while awaiting adjudication of their alleged probation or parole violation. Thirty-five of those individuals have been incarcerated under those circumstances for over six months and nine of them have been incarcerated for more than a year. Their lengthy incarceration without adjudication has constitutional implications as well as significantly impacting the Defendants' ability to comply with the population cap.

7. The Defendants operate a Community Custody Program which confines individuals to house arrest and/or to other forms of closely supervised community custody. However, the program does not permit persons who do not have both a permanent address and a telephone to be placed into community custody. A number of class members and sub class members are affected by this practice. As a result, poor people are sometimes incarcerated behind bars, while people with greater economic resources are permitted to be incarcerated in the Community Custody Program. The practice of denying community custody to otherwise eligible individuals, based solely on their lack of a permanent address and a telephone, increases overcrowding at the jail.

8. Many disabled persons who are incarcerated are unable to gain access to needed treatment programs either because of the unavailability of appropriate treatment programs for them and/or because they are not currently receiving SSI and/or Medicaid benefits for which they are eligible. Treatment programs and modalities which have

proven effective in other communities for the safe, cost-effective and beneficial treatment of individuals with mental disabilities are not available in Bernalillo County in sufficient quantities to serve sub class members who could end or avoid incarceration by participating in such treatment programs. Effective jail diversion services for mentally disabled sub class members are needed in Bernalillo County to reduce jail overcrowding. Increased intensive mental health case management, crisis housing, and detox services, as well as a drop-in center for psycho-social rehabilitation, would reduce overcrowding at the jail.

9. Many communities reduce jail overcrowding by disposing of certain criminal cases quickly through the use of an “early disposition program.” Such programs enable prosecutors and public defenders to resolve many criminal cases within weeks, rather than months, thereby reducing jail crowding. In Bernalillo County, such a program has begun; however, few incarcerated individuals have been able to participate in it. The expansion of the program in Bernalillo County to include incarcerated individuals would reduce jail overcrowding.

10. Despite the considerable efforts undertaken by the defendants, the state pro tem judge and counsel the monthly head count has again begun to rise. Implementation of the activities set forth in ¶¶ 5-9 above would likely reduce the population of BCDC.

THE COURT HEREBY INCORPORATES the factual findings and procedural history recounted in its September 25, 2000 Order.

THE COURT FURTHER FINDS that the relief set forth below is proper and that the relief:

- (A) is narrowly drawn;
- (B) extends no further than necessary;
- (C) is the least intrusive means necessary to protect the federal rights of class members;
- (D) will have no adverse impact on the public safety or the operation of the criminal justice system; and
- (1) is in compliance with the requirements of the Prison Litigation Reform Act.

THE COURT DETERMINES that further relief is necessary in order to bring Defendants into compliance with its prior Orders regarding population caps.

IT IS THEREFORE ORDERED that in order to achieve compliance with the Court's prior Order Regarding the Prison Litigation Reform Act, entered November 5, 1996, requiring a population limit of 586 residents at the main facility of BCDC, and the Court's September 25, 2000 Order, the Defendants shall:

1. Provide direction to law enforcement officials under the control of the City and/or the County to issue citations where appropriate and to use the "walk through procedures," rather than incarcerating individuals, where appropriate.
2. Within two weeks, the Defendants shall schedule a meeting or meetings, inviting counsel for the Plaintiffs and for the Plaintiff Intervenors, the state pro tem judge, officials of the state Second Judicial District Court, officials of the Metropolitan Court, as well as representatives of probation and parole offices, the district attorneys' office and the public defenders' office, to plan how to reduce the number of incarcerated individuals at BCDC who are awaiting resolution of probation or parole violation proceedings. The meeting


will be held as soon as is practicable and the parties are to report the results of the meetings to the Court within two weeks of the meeting.

3. Within two weeks, the Defendants shall schedule a meeting with counsel for the Plaintiffs and for the Plaintiff Intervenors, and shall invite to the meeting the state pro tem judge, officials of the state Second Judicial District Court, officials of the Metropolitan Court, as well as representatives of probation and parole offices, the district attorneys' office and the public defenders' office, and other appropriate officials of the Defendants' choosing, to plan how to include persons who do not have both a permanent address and a telephone in the Community Custody Program. The Defendants shall convene the meeting as soon as is practicable and the parties shall report to the Court the results of the meeting within two weeks of the meeting.

4. Within two weeks, the Defendants shall schedule a meeting or meetings concerning the provision of mental health services in Bernalillo County. The Defendants shall invite counsel for the Plaintiff Intervenors, the state pro tem judge, officials of the state Second Judicial District Court, officials of the Metropolitan Court, officials of the New Mexico Department of Health, as well as representatives of probation and parole offices, the district attorneys' office and the public defenders' office, and other appropriate stakeholders of the Defendants' choosing, to plan how to implement an effective jail diversion program for persons with psychiatric or developmental disabilities. At the meeting the participants shall address at least those topics set forth in ¶ 8 above. The parties shall report the results of the meeting to the Court within two weeks of the first such meeting.

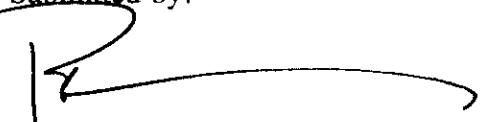
5. Within two weeks, the Defendants shall schedule a meeting or meetings, inviting counsel for the Plaintiffs and for the Plaintiff Intervenors, the state pro tem judge, officials of the state Second Judicial District Court, officials of the Metropolitan Court, as well as representatives of probation and parole offices, the district attorneys' office and the public defenders' office, to plan how to expand the program for early resolution of criminal cases.

The Defendants are to convene the meeting as soon as is practicable and the parties shall report the results of the meeting to the Court within two weeks of the first such meeting.

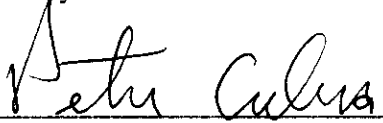


HONORABLE MARTHA VAZQUEZ
UNITED STATES DISTRICT COURT JUDGE

Submitted by:

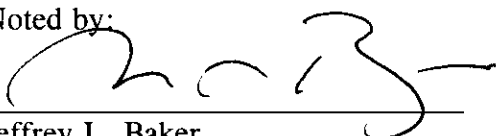


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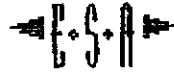


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FROM : Judge Rebecca Sitterly

SENT BY : Jeanette Brionez

DATE : June 29, 2001

RE: *McClendon v. City of Albuquerque*

No. of pages transmitted: Twenty-seven (27)
(Including this page)

MESSAGE

Dear Counsel:

June 29, 2001, update attached. Thank you.

NOTICE OF CONFIDENTIALITY
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DEFENDANT'S EXHIBIT
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McClendon update 6/29/01

To: Hon. Martha Vázquez
CC: Distribution List
From: Rebecca Sitterly

In advance of our meetings today, I wanted to bring you up to date on the initiatives that have been implemented to varying degrees since November 1, 2000. All of these programs are at the systemic level. With the exception of the early releases, I recommend that all of the programs be kept permanently so that we don't quickly end up in the same predicament with the new facility. Barri Roberts of MCJCC is arranging to have statistics run on the various initiatives on a formalized and consistent basis; the statistics referred to in this report are designed to give you, the parties, and participating agencies a preliminary indication.

**Pretrial services walk-through
for misdemeanor warrants**

Per attachment 1, 418 people were walked through rather than booked in the last 90 days.

These people were brought to jail on warrants, and therefore have already failed to appear on more than one occasion. Of these, nearly 80% are showing up at court after walk-through without further problems, which pretrial services feels is an outstanding success.

Per attachments 2A-D, showing pretrial ROR releases and walk-throughs for just the last four weekends, pretrial services has accomplished an average of nearly 100 releases per weekend. Of these, an average of more than 30 per weekend did not have to be booked, thus significantly impacting population.

**Jailhouse bonds - allowing defendants
to post 10%**

The appearance rates for both felony and misdemeanors between the 10% and cash/surety postings are very similar.

Per attachment 3, more of the 10% bonded defendants appeared at court than those who posted regular cash/surety bonds. Statistics for the following period showed 3 more misdemeanor failures to appear from 10% bonded defendants than cash/surety bonded defendants. We are in the process of compiling complete numbers which will compare appearance rates over the entire summer. This program has augmented the bonded releases, and all current indications show that it has been comparably as successful as cash/surety bonds in insuring appearances.

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District Court paperwork pickup

There was a problem with getting hearings set on a number of defendants because the District Court clerks were indicating they were not getting appropriate paperwork from the jail. Pretrial services started keeping track of paperwork pickup for District Court, following up by checking on hearings being set. There was a substantial improvement in this area, but there still remains a lag between the paperwork pickup and the setting for some defendants. I will be addressing this with the criminal division.

Pretrial Services calls to remind people of court dates

Several months ago, Pretrial Services started calling people to remind them of their Metro Court hearing date one day in advance. This program started with 2 judges, expanded to four, then eight, then all of the criminal division judges in Metro Court. Attendance rates have improved significantly, meaning that fewer bench warrants for failure to appear for court dates are necessary. Per attachments 4A-B, the appearance rates for people actually contacted are very high - many times reaching 100%. There are still days where there are failures to appear even among this population, but the relatively high overall appearance rate makes this a very successful program. Both the jail population and police time and effort are reduced with each bench warrant saved.

BCDC post-warrant calls

This program began in March, 2001. Each Friday, a clerk at BCDC gets a list from Metro Court of people for whom Metro Court warrants were issued the previous week. The people are called and informed and given an opportunity to clear the warrant before arrest. Attachment 5 shows that, on average, more than a third of the people contacted took care of their warrant without being arrested. This statistic points to the importance of getting accurate telephone numbers from offenders at the time officers issue citations. Each one of the cleared warrants represents one less person brought to BCDC and booked - approximately 20 fewer bookings per week.

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**Pretrial services walk-through
on open charges**

This program just started three weeks ago; preliminary indications are that it is working as well as the walk-through on warrants.

District Attorney Sunday nolle

Beginning in January, 2001, an assistant district attorney and an APD sergeant have come to the jail each Sunday to decide which cases will be nolle prosequi'd rather than waiting until the following week. Per attachment 6, nolle's for the last three weekends reflect savings of 14-22 people released that do not have to be transported to various Courts on Mondays. Not only did this save substantial wasted time in transporting for cases that were going to be nolle'd anyway, it also relieved jail overcrowding which typically reaches peak levels on Sunday nights.

Sunday judge for warrants

The judge pro tem and on occasions, a volunteer Metro Judge have been coming in almost every Sunday and taking action on warrants so that the cases are finalized. The offender can be released and the file can be closed if appropriate. This has resulted in a savings of between 16 and 40 people per Sunday that are removed from the population, again relieving overcrowding during peak periods and reducing the typically large caseloads that have to be faced by Metro Judges every Monday morning.

Booking area crowding conditions Beginning in early 2001, BCDC stopped using the booking area to transport people to and from court. Level 4East has been used as a staging area for court transports, completely bypassing the booking area. Before this action, booking was terribly overcrowded at transport times; since this action, the booking area has never again suffered from such overcrowded conditions.

Metro Court - walk-ins

Previously, if a person showed up to pay a ticket and a warrant was found in the computer, the person would be arrested on the spot and taken to BCDC to be booked. The Metro judges have agreed to allow walk-ins so that the person can go directly to the judge's office to get the process started and avoid the arrest and booking.

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- Metro Court - counter authority** Beginning in spring, 2001, Metro Court clerks were given greater authority to deal with offenses and warrants at the counter rather than requiring judge involvement.
- Metro Court - 3rd party pay** Beginning in Spring, 2001, Metro Court clerks were allowed to take payments and pleas from third parties rather than being restricted to dealing only with the named defendant. In addition to saving a great deal of time and increasing efficiency, this action has directly reduced the number of bench warrants that might otherwise have been issued.
- District Court - Speedy J&S** In the fall of 2000, there were approximately 160 defendants at the jail who had been sentenced to the Department of Corrections, but who could not be taken to the penitentiary because the formal judgment and sentence had not yet been filed. Because the District Court judges started using the speedy judgment and sentence form developed by the Court, the District Attorney and the Public Defender, this number has been cut to under 20 in a usual week. The District Court judges have done an excellent job with this, and they are simply now urged to not let the attorneys leave the courtroom without completing the J&S for defendants who have been sentenced to DOC. A consistent, concerted effort by all of the judges will further reduce this segment of the population. In aid of this effort, a system has been set up so that a captain from BCDC has regular email contact with an assistant DA to track and find missing J&S's.
- District Court - Speedy O&C** Beginning in January, 2001, for probation violation hearings, many District Court judges began requiring the attorneys to complete the speedy Order and Commitment form for people remanded to the Department of Corrections after violating probation. Similar to cases involving defendants initially sentenced to DOC, dozens of defendants remanded to DOC after violating probation were waiting in jail for weeks or months while the formal Order and Commitments were prepared. This form (which I developed) has now been used for several months, and it is not nearly as good or user-friendly as the J&S form developed by more people over a longer period. Perhaps because of this, there are still a number of O&C defendants who don't get transported to the Department of Corrections as quickly as

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they should because we are waiting for the attorneys to submit formal paperwork. I am requesting the DA and PD to develop a better O&C form. In the meantime, the District Judges are requested to use the present form in its flawed state or to require the attorneys to submit a completed O&C before the end of the day for any probationer remanded to DOC after violating.

District Court - Grand Jury indictment presentments

Beginning in December, 2000, by operation of a Miscellaneous Order, the District Court began requiring the District Attorney to provide the presentment judge with information on whether an indicted defendant has previously posted bond at the Metro Court level. This allows the presentment judge to immediately apply that pre-existing bond to the indictment, thus saving the issuance of bench warrants with new bonds. This would directly reduce the jail population by reducing the number of people arrested and booked on those warrants, and saves the defendant from having to post a new, additional bond or having to wait in jail until the district court transfers the old Metro Court bond to the newly indicted case. I have not checked on the success of this program in some time, and I do not know if it has been consistently maintained and enforced.

Probation and Parole: 48-hour notification

Beginning in December, 2000, by operation of a Miscellaneous Order, probation officers were required to notify an assigned judge within 48 hours of any arrest and hold of a defendant done by the probation officer. Before this order, there were a substantial number of people who were held on a probation officer's order for several weeks before the assigned judge was notified, thus delaying action and hearings on the probationer to an even greater degree.

Over the last several months, I have not been made aware of many instances in which the probationer is being held in a probation violation case without prompt judge notification.

Pretrial services: Increased ROR authority

Beginning in early 2001, Pretrial Services was given increased authority to interview and release defendants on their own recognizance after booking. The increased authority included non-violent third degree felonies and Category 2 Metro warrants (where a judge must be seen).

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Pretrial Services: Bond Transfer Beginning in early 2001, Pretrial Services was given authority to transfer bonds posted in Metro Court to District Court grand jury indictments, after interview and verification.

**Pretrial Services:
Failure to appear at District
Court arraignments**

There are many cases where a defendant is indicted on an offense which is months or years old. When the Defendant fails to appear at arraignment after having been noticed in, often the failure to appear is merely a result of an outdated address. Pretrial Services was given authority to release these defendants once they are interviewed and accurate address information is verified.

Metro Court TOTs

"TOT" refers to "transfer over to," a practice of transferring a case back to the originally assigned judge for disposition rather than dealing with the case before the arraignment judge. The Metro Court judges have reduced this practice significantly, saving time and paperwork for the court and saving jail time. There has been a Saturday arraignment process where until recently, there was still a common use of TOT, resulting in double work and keeping defendants in jail until Monday mornings. That judge has agreed to cease the TOT practice, which should further assist in reducing weekend overcrowding.

BCDC: CCP program

The CCP program has been expanded, and all of the metro and district court judges have made much increased use of this program. I have asked that an update on statistics related to this program be done, so that we can see whether our increased utilization of this program has resulted in any increased recidivism while on CCP. This program needs to be considered for increased utilization for probation violation cases being held in jail awaiting hearings. Also, we need to find a way to use this program for people not financially able to have telephones.

BCDC: Nine Point Program

The Nine Point Program has been in the planning stages since January, 2001, and is just now getting really started. The program is directed at the mentally ill incarcerated population and is designed to provide very intensive supervision of difficult inmates who would not be incarcerated except for the effects of their illness. A

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sample Nine Point Plan is attached at attachment 7, and addresses areas of basic survival, treatment and activities of daily living. The program is historic, because it involves only 10 people in the case manager's caseload, and an effort to bill Medicaid for the case manager's time. If the case manager's billings pay the equivalent or close to the equivalent of his/her salary, and if the low caseload and intense involvement with the defendant succeeds over long view, we can see having five to ten Nine Point case managers and being able to release fifty to one hundred mentally ill inmates to a therapeutic plan. The pilot program will last six months and is being very closely watched because of its enormous potential.

Probation and parole: Dual supervision

By Miscellaneous Order, probation and parole have been requested to pursue a parole violation rather than a probation violation, if the person is under the dual supervision of both probation and parole and is alleged to have violation his/her conditions. Parole hearings are much quicker than probation hearings, and it relieves the lengthy delays found in probation violation cases. However, there is a current controversy on this issue, because the state is required to reimburse BCDC for housing parole violators awaiting hearings, but is not required to reimburse BCDC for housing probation violators. Of course, this encourages use of the probation violation track where available. The ramifications of this problem are currently being discussed and explored.

BCDC: Early release

The jail has always had occasions where the assigned judge is asked to allow a few days early release for certain inmates. In the current overcrowding scenario, I have tried to standardize this effort so that all inmates with sentences of four or more months are considered for early releases of up to 7 days. I do not recommend retaining this program after the new jail is built unless it is specifically tied to some sort of incentive program approved by the assigned judge.

BCDC: Transition CCP.

For inmates who have actually served more than five months in jail, we are looking at transferring the inmate to CCP approximately 30 days prior to release. This allows monitoring of the inmate while requiring the establishment of counseling, full-time employment, drug/alcohol rehabilitation support before the sentence is finalized. The theory is that this form of transition will help to reduce recidivism as opposed to

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simply putting the defendant on the street after serving the sentence. The theory has not been tested, and comparison statistics have not been compiled over time.

**District Court: Voluntary
surrender**

In the federal system, sentenced defendants are routinely told which facility they will be detained in and are allowed to turn themselves in to that facility directly. The concept does not have the potential for very wide application in District Court, because most people who are being sentenced to DOC are not out of custody at the time they are sentenced. It would not make much sense in most cases to have the person leave BCDC so he/she can turn themselves in at DOC in Los Lunas. However, I have talked to Nick D'Angelo at DOC, and he informed me that many judges require defendants to turn themselves in. The defendant must have a certified copy of his/her J&S or O&C at the time he/she goes to the facility. The court's clerk must check to make sure the defendant shows up at the appointed time, because DOC has never offered this service to any of the judges around the state. Under present circumstances, this initiative would have only a small impact on jail population, but I am providing directions to DOC in Los Lunas for the clerks to give to defendants who have been ordered to turn themselves in to DOC.

BCDC emergency response team

The concept of a population emergency response team was contemplated to apply when the population reached a level of 10% over cap. My thought was that the team would be composed of John Dantis, myself, Robert Padilla of Pretrial Services, and Vince Peel of CCP, and that we would work as late into the night as necessary to make appropriate decisions to attempt to reach cap. This concept is really only applicable to the winter months, as every summer day is a constant struggle to approach cap.

APD booking reduction

APD has been convinced to direct its officers to cite and release offenders in the field for misdemeanor activity which is not violent and does not pose a threat to the safety of the community. This action has been seriously undertaken only as of June, but the beneficial effects were felt immediately in terms of jail population. At the same time, we need to track statistics for this type of conduct to see if there is any real or serious increase in crime rate for petty, nonviolent misdemeanors.

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APD: Phone numbers

APD officers have been instructed to obtain every possible phone number from people they stop and arrest or cite and release, and to write the phone number(s) on the face of the arresting/citing document. This will immediately help the efforts of Pretrial Services to call and remind people of court dates, and the efforts of the BCDC clerk to notify people that there is a warrant for their arrest.

APD Booking sergeant

An APD sergeant assigned to BCDC has just started his duties this last Wednesday evening. He works four ten-hour shifts from 6:00 p.m. to 4:00 am Wednesday through Saturday night. He will assist in familiarizing officers with the walk-through program and will make decisions, when necessary, on which cases are appropriate for walk-through as opposed to booking.

As you can see from the obvious results before us, without the implementation of these initiatives, the average summer population would by now have reached 200-300 people over cap. According to Gloria Pena at Metropolitan Court, case filings in Metro Court alone have increased by 21% in the first five months of this year over the first five months of last year. In contrast, we are managing with great effort and continual, conscious awareness of the problem on the part of all of the people who impact the system, to keep the summer population much closer to the cap than we thought possible. It is certainly much better than last summer in spite of increase in case filings and a general increase in Albuquerque's population.

There are a few serious things left that we can concentrate on. First and foremost, we need to figure out a way to get the probation violation hearings resolved more quickly. For those people who are not guilty, it accomplishes an earlier release. For those people who are guilty, it accomplishes an earlier transfer to DOC if remanded there by the assigned judge. This would not affect those probationers who are being concurrently held on new charges which are so serious and which have bonds so high that they would not be released anyway. It would, though, affect a large number of people who are not being held on concurrent charges or whose new charges have been nolle'd by the DA.

Second, we can make more use of DOC at the district court level. I confirmed with Nick D'Angelo that although DOC is not necessarily thrilled with it, they have not challenged a judge's sentence to DOC for less than a year where the potential penalty for the crime is greater than a year. I have gotten awfully familiar with a wide variety of J&S's over the past nine months, and many district judges are already sentencing probation violators to 3-month to 12-month DOC sentences. This approach could be utilized to a greater extent, and DOC has its own programs of halfway house release, work release and the like.

Additional areas for concentration are the mentally ill population, the holding of parole violators/detainees, reducing the time frames (even by a day or two) of each segment of the judicial process, the early disposition program by the District Attorney/Public Defender, and increasing booking efficiency. In the longer term, we need to get the computer systems of the major participants to be able to speak with each other, and to improve the ability of the jail to

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retrieve data so that we can get per-judge custody lists and other information. Judge Grant is spearheading a Homeless Court effort which is truly wonderful, and this needs to be supported in every possible way, as does Judge Fitzwater's initiative for the Mental Health Court. The sobering center gave us thirty beds to use for intoxicated people -- we need dozens more.

I will be gone for the month of July for a one-week teaching program followed by a three-week training program. I have tried to set up procedures that will allow me to take action long distance or have other judges cover for me as necessary. I request that the Metro Court and District Court judges respond quickly to requests from CCP personnel for permission for transition to CCP and early releases, as I have asked BCDC to go straight to the assigned judge in my absence. Also, I can be reached at 238-5151 if any of you have questions, concerns, or requests.

Thank you,

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