

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL W. BOWDEN,

Defendant.

NO. CR17-002 RAJ

**UNITED STATES'
SENTENCING MEMORANDUM**

On five separate occasions, defendant Bowden, a Washington State Correctional Officer at the Monroe Correctional Complex ("MCC"), smuggled harmful contraband, including methamphetamine, into the MCC in exchange for cash. By smuggling contraband into the prison, defendant Bowden perpetrated and encouraged significant criminal behavior inside the MCC. This criminal behavior elevated the risks within the facility to all the inmates and other MCC staff in direct contravention of defendant Bowden's duty to protect those in his care. Given the seriousness of the defendant's corrupt conduct, the need to promote respect for the law, and the need to deter others from committing similar crimes, the United States respectfully requests that the Court

1 sentence the defendant to a term of imprisonment of 30 months, as it is sufficient, but not
2 greater than necessary, to meet the goals of sentencing.

3 I. PROCEDURAL HISTORY

4 On September 28, 2016, Special Agents with the FBI arrested defendant Bowden
5 pursuant to a federal criminal Complaint. Presentence Investigation Report ("PSR") ¶ 4.
6 On January 9, 2017, defendant Bowden pleaded guilty to a one-count Information
7 charging Extortion Under Color of Official Right, in violation of Title 18, United States
8 Code, Section 1951(a). PSR ¶ 1. Defendant Bowden's sentencing hearing is scheduled
9 for 10:00 a.m. on March 31, 2017.

10 II. FACTS

11 From July 2013 through September 29, 2016, the defendant worked as a
12 Correctional Officer at the MCC, a Washington State prison facility operated by the
13 Washington State Department of Corrections ("DOC"). PSR ¶ 7. The MCC has five
14 primary facilities for state criminal offenders with different custody levels, including
15 maximum, close, and minimum. Dkt. 1, Complaint ¶ 12. During his employment, the
16 defendant worked in three of those units that housed inmates under all three custody
17 levels. Dkt. 1, ¶ 12. As a Correctional Officer, the defendant was responsible for
18 enforcing DOC rules and regulations within the MCC in order to ensure the safety and
19 security of inmates and staff within the facility. PSR ¶ 7. As part of his employment,
20 defendant agreed to abide by DOC policies designed to protect those within MCC,
21 including the ethics requirements and the limitations on contacts and financial dealings
22 with inmates or associates of inmates. PSR ¶ 7; Dkt. 1, ¶ 17-22.

23 In December 2015, MCC staff identified the defendant as someone who may be
24 smuggling contraband, including tobacco and illegal narcotics, into MCC for the benefit
25 of inmates. PSR ¶ 8. According to MCC staff, there had been a significant increase in
26 the number of inmates testing positive for the use of controlled substances in 2016, from
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1 approximately 7 positive tests in 2015 to 56 positive tests in 2016. Dkt. 1, ¶ 29. As a
2 result, the FBI began investigating defendant Bowden for engaging in Extortion Under
3 Color of Official Right, in violation of the Hobbs Act, Title 18, United States Code,
4 Section 1951(a).

5 During its investigation, the FBI used a confidential human source (“CHS”) in
6 order to determine if Bowden was in fact smuggling contraband into the prison in
7 exchange for cash payments. PSR ¶ 9; Dkt. 1, ¶ 30. On July 12, 2016, the FBI
8 conducted an operation with the CHS in which defendant Bowden accepted \$500 cash in
9 exchange for smuggling five cans of smokeless tobacco into the MCC. PSR ¶ 9. During
10 the July 12th meeting, defendant Bowden told the CHS that inmates were “snitching” on
11 him after they used the illegal narcotics the defendant had smuggled in for them, and that
12 defendant Bowden was being “treated like an inmate now, bag search, pocket checks and
13 pat down.” Dkt. 1, ¶ 31, 33. Despite these clear efforts of MCC staff to stop the
14 introduction of illegal narcotics and other contraband into the MCC, the defendant was
15 undeterred. In fact, the defendant acknowledged that his conduct was criminal, but that
16 he was willing to take the risk, by telling the CHS that he makes \$17.50 per hour as a
17 Correctional Officer, so he did not really care if the MCC fired him “as long as [Bowden
18 does not] get any time for it.” PSR ¶ 11; Dkt. 1, ¶ 36.

19 After hearing defendant Bowden describe his previous conduct smuggling illegal
20 narcotics into the MCC, the FBI decided to conduct additional investigation to see if he
21 would smuggle in illegal narcotics. Dkt. 1, ¶ 40. At the outset, the FBI used the CHS to
22 determine if Bowden would smuggle in a Subscriber Identity Module (SIM) card into the
23 MCC. Dkt 1, ¶¶ 40-41. Inmates often use SIM cards inside prison facilities to activate
24 and utilize cellular telephones smuggled into or left behind in the facility. Dkt. 1, ¶ 40.
25 Leading up to the meeting between defendant Bowden and the CHS, they exchanged text
26 messages. Dkt. 1, ¶ 41. In those text messages, Bowden again described how MCC staff
27 was trying to stop him from introducing contraband, including telling the CHS the MCC

1 staff "said they know it's me but they can't catch me. I didn't give them any info and just
2 laughed at them and told them I didn't know what they were talking about." Id.

3 On August 3, 2016, defendant Bowden met the CHS and took \$200 in cash and a
4 SIM card to smuggle into the MCC. PSR ¶ 9. In the recorded meeting on August 3rd,
5 the defendant and the CHS again discussed "snitches," and the defendant described the
6 culture inside the MCC:

7 "that whole place [the MCC] is full of fucking snitches, it's horrible, it's so bad ...
8 if this were any other prison, people would be stabbed every fucking day ... even
9 when guys come to me and they snitch, I'm like, I don't want to fucking hear it. I
don't deal with snitches." Dkt. 1, ¶ 47.

10 The defendant also said that the illegal narcotics he was smuggling into the MCC were
11 not for the personal use of the inmates with whom he was dealing, but rather for
12 distribution. Dkt 1, ¶ 51.

13 On September 20, 2016, the defendant again met with the CHS to accept illegal
14 contraband to smuggle into the MCC in exchange for cash. PSR ¶ 9. In that meeting, the
15 CHS gave the defendant a half ounce of a substance made to look like methamphetamine,
16 one can of smokeless tobacco, and \$1,000 in cash. Id.

17 On September 28, 2016, FBI Special Agents arrested defendant Bowden at the
18 MCC. Immediately after his arrest, defendant Bowden waived his Miranda rights and
19 fully confessed to his criminal conduct, including telling the FBI that he had smuggled
20 methamphetamine into the MCC on two occasions prior to July 12, 2016. PSR ¶ 9.

21 III. SENTENCING GUIDELINE RANGE

22 The Sentencing Guidelines are advisory. *United States v. Booker*, 543 U.S. 220,
23 245-46 (2005). However, "the district courts still must consult [the] Guidelines and take
24 them into account when sentencing[.]" *United States v. Cantrell*, 433 F.3d 1269, 1279
25 (9th Cir. 2006) (internal citation omitted, internal quote omitted). "The appropriate
26 guidelines range, though now calculated under an advisory system, remains the critical
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starting point for the imposition of a sentence under § 3553(a).” *United States v. Mashek*, 406 F.3d 1012, 1016 n.4 (8th Cir. 2005) (quoted approvingly in *Cantrell*, 433 F.3d at 1279).

A. Stipulated Guideline Provisions

Pursuant to the Plea Agreement, the parties agreed that the following Sentencing Guidelines provisions apply in this matter.

- (a) A base offense level of 14 pursuant to U.S.S.G. § 2C1.1(a)(1) because the defendant was a public official;
- (b) A 2-level upward adjustment pursuant to U.S.S.G. § 2C1.1(b)(1) because the offense involved more than one bribe or extortion; and
- (c) A 2-level increase pursuant to U.S.S.G. § 2C1.1(b)(1)(A) because the value of the benefit received by the inmates in the correctional facility was more than \$6,500 and less than \$15,000.

Plea Agreement ¶ 10. In addition, the United States agreed to make a motion for a 3-level decrease to the defendant’s offense level pursuant to U.S.S.G. § 3E1.1(a) for acceptance of responsibility. The Probation Office has included these calculations in the PSR. PSR ¶¶ 16, 17, 18, and 25.

B. Defendant Bowden was a Public Official in a Sensitive Position

In addition to the stipulated enhancements, the United States agrees with the Probation Office that an additional four-level enhancement pursuant to U.S.S.G. § 2C1.1(b)(3) is warranted because the defendant was a public official in a sensitive position. PSR ¶ 19.

Under U.S.S.G. § 2C1.1(b)(3), the offense level is increased four-levels “if the offense involved ... any public official in a high-level decision-making or sensitive position.” Application Note 4(A) to U.S.S.G. § 2C1.1 defines “high-level decision-making or sensitive position” as a “position characterized by a direct authority to make

1 decisions for, or on behalf of, a government department, agency, or other government
2 entity, or by a substantial influence over the decision-making process.” The Application
3 Note also lists examples of public officials in a sensitive position, including “a law
4 enforcement officer ... and any other similarly situated individual.” U.S.S.G. § 2C1.1,
5 Application Note 4(B).¹

6 Defendant Bowden was a Correctional Officer at the MCC, a Washington State
7 prison facility run, overseen, and subject to Washington State DOC regulations. In
8 Washington State, Correctional Officers are uniformed, badge-wearing personnel who
9 are responsible for operating the prison pursuant to DOC regulations, including managing
10 the day-to-day operations of the facility and ensuring the security and safety of inmates in
11 the prison. While on duty, a DOC supervisor gives the Correctional Officer a specific
12 assignment where the Correctional Officer works largely autonomously.

13 In arguing that this enhancement should not apply, defendant Bowden argues, “a
14 correctional officer does not meet the definition of ‘law enforcement personnel’” under
15 Washington law. Defense Objections to Draft PSR, page 2. The United States agrees
16 with the Probation Office that “although a Correctional Officer may not meet the
17 statutory definition of a ‘law enforcement officer,’” the enhancement should still apply.
18 As noted above, U.S.S.G. § 2C1.1 Application Note 4(B) specifically lists a “law
19 enforcement officer” or “*any other similarly situated individual*” as examples of public
20 officials holding a sensitive position (emphasis added). Correctional Officers in
21 Washington State make a number of decisions every day concerning the operation, safety
22 and security of the facilities in which they work. Thus, it is clear that the four-level
23 enhancement applies in this context.

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25
26 ¹ U.S.S.G. § 2C1.1(b)(3) was amended in 2004. Prior to that date, the commentary listed a
27 “supervisory law enforcement officer.” The amended commentary removed the terms
28 “supervisory,” thus, making it clear that law enforcement officers (and others similarly situated)
need not have supervisory power to be in a sensitive position.

Furthermore, while it does not appear that the Supreme Court or Ninth Circuit have addressed this issue, other Circuit courts have held that a Correctional Officer or jail guard does hold a sensitive position under U.S.S.G. § 2C1.1(b)(3). The Fifth Circuit, in holding that a prison guard at a county facility held a sensitive position for purposes of the Guideline, stated that a person in a sensitive position “is one that has power to affect the integrity and workings of the judicial and law enforcement system. A prison guard has the authority and the ability to directly and significantly influence inmates’ lives and the entire facility’s safety with the decisions he or she makes.” *United States v. Guzman*, 383 Fed. Appx. 493, 494-95 (5th Cir. 2010) (unpublished). Months after it decided *Guzman*, the Fifth Circuit reaffirmed its holding in a case involving another correctional officer: *See United States v. McCowan*, 464 Fed. Appx. 213, 216-17 (5th Cir. 2010) (unpublished). The Third and Fourth Circuits have similarly held that a prison guard or correctional officer is a public official in a sensitive position under U.S.S.G. § 2C1.1(b)(3). *See United States v. Grosso*, 2016 U.S. App. LEXIS 14120, at *6-7 (3d Cir. 2016) (unpublished); *see also United States v. Dodd*, 770 F.3d 306, 312 (holding “private correctional officers working under the authority of the Federal Bureau of Prisons occupy a sensitive position for the purposes of U.S.S.G. § 2C1.1(b)(3).”).

C. Applicable Sentencing Guidelines Range

Defendant Bowden has one prior conviction from 2006 for supplying alcohol to a minor for which he received a one year deferred sentence. PSR ¶ 28. Since this conviction does score, defendant Bowden has no criminal history points and is a Criminal History Category I. PSR ¶ 29. With a Total Offense Level of 19 and Criminal History Category I, defendant Bowden’s applicable sentencing guidelines range is 24 to 30 months.²

² If the Court determines that the four-level enhancement under U.S.S.G. § 2C1.1(b)(3) does not apply, the advisory Guideline range is 18 to 24 months, and the United States is bound by the Plea Agreement to argue for a sentence no higher than 24 months.

IV. THE 3553(A) FACTORS SUPPORT A SENTENCE OF 30 MONTHS

Taking into account the advisory Guideline range and the sentencing factors under Title 18, United States Code, Section 3553(a), including the nature and circumstances of the offense, the history and characteristics of the defendant, and the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment, and to afford adequate deterrence, the United States respectfully requests that the Court sentence defendant Bowden to 30 months in custody. Such a sentence is sufficient, but not greater than necessary, to meet the goals of sentencing.

A. The Serious Nature and Circumstances of the Offense

The defendant's criminal conduct was very serious. Public corruption in any form undermines the rule of law, the function of government, and the public's faith in these institutions. Public corruption is particularly significant when it affects the safety and security of a prison facility, a critical component of the American criminal justice system. As a Correctional Officer, defendant Bowden's primary responsibility was to promote safety and security within the prison for both inmates and staff. Indeed, maintaining security and order are essential to the well-being of the inmates and other staff working inside the prison facility. Contrary to his duty, the defendant instead introduced illegal substances, including methamphetamine, into the facility. In fact, the defendant smuggled in the methamphetamine knowing that the inmates to whom he was providing it intended to distribute to other inmates.

In order to promote the opportunity for inmates to rehabilitate themselves within the facility, it is necessary to provide an environment free from trafficking in illegal narcotics. All too often, defendants sentenced to custodial terms struggle with addiction to illegal narcotics such as methamphetamine. Numerous judges in this District and in the State of Washington have surely advised these individuals to use their time in prison to free themselves from the shackles of their drug addiction. By introducing illegal

1 narcotics into a prison facility, the defendant violated his duty to promote a safe
2 environment for inmates and elevated the risk to them and others working within the
3 facility.

4 Michael Obenland, Superintendent of the MCC, best describes the specific danger
5 and concerns within the MCC caused by defendant Bowden's conduct. In his letter to the
6 Court (a copy is attached as Exhibit 1), Superintendent Obenland wrote about the
7 potential and realized harm caused by the introduction of illegal narcotics into the MCC:

8 [W]hile staff introduction [of narcotics] is one of the many ways contraband is
9 entered into the prison facility, it is perhaps the most egregious. Any contraband
10 inside a prison is a serious issue however the specific presence of
11 Methamphetamine inside the prison endangers inmates and staff to additional risk
as trades are made and debts are accrued, which often leads to increased violence.

12 In addition to violence, narcotics in a prison also leads to offender deaths. An
13 example of this is the death of an offender on July 28, 2016, at the Washington
14 State Reformatory Unit (WSRU), who overdosed while attempting to conceal
Methamphetamine.

15 *Exhibit 1, at 1.*

16
17 In addition, the manner in which the defendant engaged in his criminal conduct
18 further demonstrates the egregiousness of his actions. By his own admission, on
19 numerous occasions *during the investigation*, MCC staff tried to stop the defendant from
20 introducing contraband into the MCC by conducting searches of the defendant. In fact,
21 as Superintendent Obenland wrote in relation to the July 28, 2016, overdose death of an
22 offender, "The news of the offender death was known by all staff at MCC and yet Mr.
23 Bowden continued his involvement in introducing Methamphetamine into the Twin
24 Rivers Unit (TRU)." *Exhibit 1, at 2.* Thus, despite the best efforts of MCC staff to stop
25 the introduction of illegal narcotics and an overdose death of an inmate while he was
26 engaged in his corrupt behavior, the defendant plowed ahead undeterred. Disturbingly,

1 the defendant apparently believed that he would simply face termination, instead of
2 prosecution, for engaging in such outrageous conduct.

3 The defendant's corrupt conduct in this case not only erodes the public's
4 confidence in fairness of the criminal justice system, it also weakens the public's trust in
5 all areas of government. The American public entrusts a significant amount of power to
6 public officials like the defendant who oversee individuals that society has deemed need
7 to be punished for their criminal conduct by serving custodial sentences. When an
8 individual like the defendant corruptly uses that power to line his pockets, a tremendous
9 breach of trust occurs.

10 **B. The History and Characteristics of the Defendant**

11 A sentence of 30 months is supported by the history and characteristics of the
12 defendant. 18 U.S.C. § 3553(a)(1). The defendant has no criminal history, and he
13 described his upbringing as "good" in his interview with the Probation Office. PSR ¶ 36.
14 Given this backdrop, the defendant's conduct seems aberrant, but when the motivation
15 for his corrupt conduct is considered, it becomes clear that the defendant's history and
16 characteristics support a term of imprisonment. Put simply, the defendant engaged in
17 serious corrupt conduct purely out of greed. As a trained Correctional Officer, the
18 defendant knew the myriad of dangers that cell phones and illegal narcotics create within
19 a correctional facility. Despite this knowledge, the defendant continued his corrupt
20 conduct, putting his personal greed above the safety and security of the inmates and staff
21 at the MCC that he had a duty to protect.

22 **C. To Promote Respect for the Law and to Provide Just Punishment**

23 A sentence of 30 months is also needed "to promote respect for the law and to
24 provide just punishment for the offense." 18 U.S.C. § 3553(a)(2)(A). At its core, public
25 corruption demonstrates a complete disregard for the rule of law and for the democratic
26 ideals of self-government. Here, the defendant continued in his corrupt conduct even
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1 though he acknowledged that other MCC staff was trying to thwart the introduction of
2 illegal narcotics into the facility. In fact, the defendant's own statements show he had
3 little respect for the law the DOC hired him to uphold. In one of the recorded meetings,
4 the defendant stated that he did not mind being fired by the DOC, but that he did not want
5 to "do time" for his corrupt conduct. This statement alone demonstrates an utter lack of
6 respect for the law. Thus, the requested 30-month sentence will promote respect for the
7 law, provide just punishment for the offense, and send a strong message that public
8 corruption is antithetical to the rule of law.

9 **D. To Afford Deterrence**

10 A 30 month sentence is also needed "to afford adequate deterrence to criminal
11 conduct" of others. 18 U.S.C. § 3553(a)(2)(B). A significant sentence is needed to deter
12 other public officials from abusing the power vested in them by government, whether
13 federal, state, or local, in exchange for personal gain. Every day, citizens across the
14 United States rely upon thousands upon thousands of federal and state public employees
15 – whose responsibilities extend to nearly every area of those citizens lives – to exercise
16 their job responsibilities in a fair and just manner and free from undue influence. A
17 strong sentence in this case will put those public employees on notice that should they
18 sell their position in exchange for money or other things of value, a lengthy prison
19 sentence will follow.

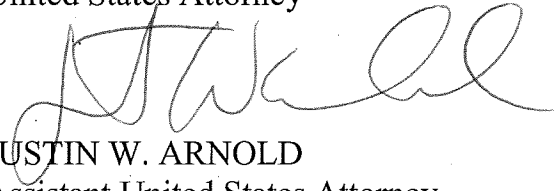
20 More particularly, a significant sentence in this case will send a deterrent message
21 to other Correctional Officers in Washington State. As noted by the Probation Office in
22 its Sentencing Recommendation, the defendant claims this type of conduct was pervasive
23 throughout other correctional facilities. In fact, the defendant believed that at most the
24 DOC would fire him for engaging in this serious criminal offense. A strong sentence will
25 demonstrate to other Correctional Officers that should they chose to sell their position of
26 trust for money their conduct will be justly punished.

V. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court sentence defendant Bowden to a term of imprisonment of 30 months followed by a three-year term of supervised release.

Respectfully submitted,

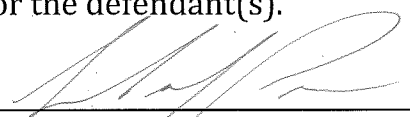
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CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).



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March 24, 2017

The Honorable Richard A. Jones
United States District Court - Western District of Washington
700 Stewart Street, Suite 13128
Seattle, WA 98101

Re: Mr. Michael Bowden Court Case

Dear Judge Jones:

My name is Michael Obenland, I am the Superintendent of the Washington State Department of Correction's Monroe Correctional Complex. The Monroe Correctional Complex (MCC) consists of five independent prison facilities and has the capacity to house 2500 men ranging from minimum to maximum custody. MCC also employs over 1200 full time staff members as well as 200 volunteers.

Our diverse team is comprised of people from all over the world, who perform various duties such as medical doctors, clerical staff, psychologists, cooks, mechanics and of course our uniformed Correctional Officers. It is my honor to represent all of these employees, but it is from the uniformed officer where I began my career in the criminal justice system, over twenty-five years ago. Many of the problems I encountered as an officer and a supervisor, have their nexus in 'staff compromise'. It is an on-going concern and one in which our agency is ever vigilant in preventing.

Our prevention of staff compromise begins in the officer's academy, but it does not stop there. In addition to yearly training, each of the state's largest prisons have an investigative unit referred to as the Intelligence and Investigative Unit (IIU). One of the many duties of our investigative units, is to investigate all allegations of staff misconduct including staff smuggling contraband into the prison.

IIU's other duties involve the investigation and intervention of narcotics into the prisons, and while staff introduction is one of the many ways contraband is entered into the prison facility, it is perhaps the most egregious. Any contraband inside a prison is a serious issue however the specific presence of Methamphetamine inside the prison endangers inmates and staff to additional risk as trades are made and debts are accrued, which often leads to increased violence.

In addition to violence, narcotics in a prison also leads to offender deaths. An example of this is the death of an offender on July 28, 2016, at the Washington State Reformatory Unit (WSRU), who overdosed while attempting to conceal Methamphetamine. WSRU is also the facility in which former employee, Michael Bowden, regularly worked two days a week.

"Working Together for SAFE Communities"

The Honorable Richard A. Jones

March 24, 2017

Page Two

The news of the offender death was known by all staff at MCC and yet Mr. Bowden continued his involvement in introducing Methamphetamine into the Twin Rivers Unit (TRU).

The introduction, distribution and use of narcotics and other contraband such as cellular telephones does not end with putting just the safety of offenders and staff members at risk. This conduct also puts the community at risk. There are cases of extortion and threats of violence against citizens in the community, typically friends and family of offenders. Furthermore, there are numerous cases where visitors of offenders, often people who have never committed a crime, are compelled to assist offenders in bringing contraband into the prison.

In 2016 at TRU, the rate of positive urinalysis increased by over 600%. TRU is one of the five prisons at MCC and is also the location where the defendant, Mr. Bowden, committed the accused crimes. The impact of positive urinalysis, is a very real threat against citizens, staff and offenders as it not only is it a physical threat to their safety and wellbeing but it also affects the financial burden of those that pay taxes state wide.

Every instance an offender tests positive for a banned substance requires a medical evaluation as well as detailed searches of the offender's cell and property. As this process ensues, the offender is placed in the Administrative Segregation Unit pending an internal investigation. The cost does not end there; every day the offender is housed in Closed Custody is an increase of \$50.00 per day, per offender. The offender will be processed through the prison's internal Disciplinary Process and he will receive an infraction. His case will be heard, which involves more time, cost, and additional manpower to ensure the completion of the process, review, and judgment.

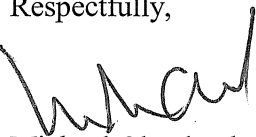
I have only touched upon a few of the measurable ways the introduction of contraband affects the safety and security of prisons. I would like to close with the mention of a few of the unmeasurable ways; specifically how the public perceives the Department of Corrections after such an event, and just as important, how this behavior affects the morale of those both employed and incarcerated at MCC and other state prisons.

Your Honor, I am certain you have received many letters from the friends and family of Mr. Bowden. I am certain these letters were written with the utmost sincerity. I am optimistic for Mr. Bowden's future, and I hope only the best for him and his family. With that said, I would be remiss if I did not show my support and respect for those who so diligently perform their duties at MCC by being their voice in this matter.

While I respect Mr. Bowden's decision to accept a plea bargain and take responsibility for his actions, I believe it sends the wrong message to those who work in the criminal justice system as well as those incarcerated. It is important for Mr. Bowden to be held accountable for his choices, to include a fair and just prison term.

Thank you for your attention and time in this matter.

Respectfully,



Michael Obenland, Superintendent
Monroe Correctional Complex