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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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ESSEX COUNTY JAIL INMATES,
RUSSEL WATSON, et als.,

Plaintiffs,

v.

ALBERT T. COLLIER, Warden,
et als.,

and

WILLIAM H. FAUVER, Commissioner
New Jersey Dept. of Corrections,

Defendants.

Civil Action No. 82-1945

(Harold A. Ackerman, U.S.D.J.)

SUPPLEMENTAL CONSENT ORDER
MODIFYING AND AMENDING
CONSENT JUDGMENT OF OCTOBER 14, 1982

THIS MATTER being opened to the Court jointly by David H. Ben-Asher, Essex County Counsel, Attorney for County Defendants, et als., and Joseph H. Rodriguez, New Jersey Public Advocate and Public Defender, Attorney for Plaintiffs, Essex County Jail Inmates, et als., (T. Gary Mitchell, Director, Office of Inmate Advocacy, appearing), and on notice to Irwin I. Kimmelman, Attorney General of the State of New Jersey, Attorney for Defendant William H. Fauver, Commissioner, New Jersey Department of Corrections (Joseph T. Maloney, Deputy Attorney General, appearing), and upon the parties' agreement to amend the October 14, 1982 Consent Judgment previously entered in this action, as provided for below; and

WHEREAS, the Essex County Jail's facilities for inmate housing and services are presently insufficient to meet the terms of the October 14, 1982 Consent Judgment, and

WHEREAS, the County will be exploring ways to develop and implement a plan to provide additional inmate housing space and to take necessary steps to improve services for inmates to be held in the Essex County Jail, and

WHEREAS, under the terms of this Order the County Jail population will temporarily exceed the maximum capacity established by the October 1982 Consent Judgment in this matter, thereby necessitating additional safeguards to insure minimum requirements for safety, health, security and services; and

WHEREAS, the County defendants will implement to the fullest extent possible programs for community service and intensive supervision probation as alternatives to incarceration to reduce the county jail population; and

WHEREAS, the County defendants and plaintiffs have agreed through their respective attorneys to the following interim provisions to adjust their present differences about the steps necessary to resolve continued overcrowding at the Essex County Jail, as well as matters concerning compliance with and interpretation of the October 1982 Consent Judgment; and

WHEREAS, the following provisions shall be binding upon the parties and shall be enforceable as such, subject to the approval of this Court; and

WHEREAS, the aforesaid Consent Judgment shall remain in full force and effect, except as herein modified;

NOW THEREFORE, it is on this 4th day of February, 1985,
ORDERED as follows:

Maximum Capacity and Temporary Increase in Permissible Population

1. In order to allow the temporary housing of additional county inmates at the Essex County Jail, Paragraph 11 of the October 14, 1982 Consent Judgment is hereby modified to read, as follows:

The County agrees to maintain the population of the Essex County Jail at, or below, a maximum capacity of 594 inmates, except that:

(a) throughout the period of February 1, 1985 to August 31, 1985, the Essex County Jail population may exceed the stated capacity by 42 inmates;

(b) throughout the period of September 1, 1985 to December 31, 1985, the Essex County Jail population may exceed the stated capacity by 42 inmates, upon the certification of the County that there is a continued necessity for this temporary increase above the Jail's maximum capacity and that Essex County has made substantial progress within the previous eight months in developing and implementing a plan to provide additional inmate housing to alleviate continued overcrowding in the Essex County Jail; and

(c) throughout the period of January 1, 1986 to April 30, 1986, the Essex County Jail population may exceed the stated capacity by 42 inmates, upon either a summary finding by the Special Masters or a conclusion by plaintiffs' counsel that there is a continued necessity for this temporary increase above the Jail's maximum capacity and that Essex County has made substantial progress within the previous fourteen months in developing and implementing a plan to provide additional inmate housing to alleviate continued overcrowding in the Essex County Jail.

2. In order to provide appropriate housing for the number of inmates that under paragraph 1 above may be held at the Jail in excess of the Jail's maximum capacity, paragraph 10 of the October 14, 1982 Consent Judgment is hereby amended to read as follows:

(a) Beginning February 1, 1985 and ending no later than April 30, 1986, the population of the jail as may be permitted by paragraph one above to exceed the Jail's maximum capacity shall be maintained in accordance with paragraph 10 of the October 1982 Consent Judgment, except that

the South-side and North-side second floor dormitories may each house up to 64 people (rather than the limit established previously of 50 and 48 people, respectively, for each dormitory), that each of the five cubicles in the twelfth floor civil area dorm may house four people (rather than the previous limit of two people in each cubicle), that eight people (rather than the previous limit of six people) may be housed in the 12th floor "tier man" dorm, and that one person may be housed in each of the nine (rather than in only five of the nine) 12th floor detention cells; and

(b) This paragraph amending paragraph 10 of the October 14, 1982 Consent Judgment shall expire in accordance with the timetable established under paragraph one above, and on that date paragraph 10 of the October 14, 1982 Consent Judgment shall become operative again as originally written.

72 Hour Emergency Capacity

3. In addition to the Jail's maximum capacity or the Jail's increased permitted population under paragraph 1 of this Order, during periods of emergency and on immediate notice by telephone to plaintiffs' counsel and subsequent notice in writing to the Special Masters and all parties, the County defendants may house additional inmates at the Essex County Jail for periods of no more than 72 hours and for no more than four times in any month, as follows:

(a) twenty (20) additional inmates over the population of the jail permitted during the periods fixed by paragraph 1(a)-(c) above; or

(b) thirty-five (35) additional inmates over the maximum capacity of 594 inmates after the periods fixed by paragraph 1(a)-(c) above.

Adjustments to Maximum Capacity

4. The capacity of each floor or housing unit at the jail shall be reduced by the number of cells or bunks which for health, safety, security, or other reasons cannot be used, or are otherwise inoperable, including, but not limited to, any cell in which the sink or toilet has been inoperable for an unreasonable period of time, unless other suitable access to sink or toilet facilities has been arranged. The Jail's maximum capacity or permitted population may remain unchanged if the number of inmates that are appropriately housed in the Jail's infirmary or detention areas equals or exceeds the number of cells or bunks which cannot be used. When any cells or bunks cannot be used or are otherwise inoperable for periods in excess of 30 days, the County shall provide written notice to plaintiffs' counsel and to the Masters every 30 days identifying these cells, the reduced capacity of the particular floor(s) or unit(s), and the number of inmates held daily in the Jail's infirmary and detention areas during the previous 30 day period.

Waiver of Future Population Increases and Agreement on Alternate Remedies

5. The parties recognize and acknowledge that the increased population over the maximum capacity of the jail as permitted by paragraphs 1 and 2 above shall be only temporarily maintained as provided for therein. Plaintiffs consent to this increase in partial consideration for the assurance that the county defendants hereby absolutely waive any right to seek or to implement, at any time and for whatever reason or duration, even if presented with unanticipated, emergent or unforeseeable circumstances, any further increases in the population fixed for the jail by this Order or the October 14, 1982 Consent Judgment.

6. The terms of this Order and the October 1982 Consent Judgment are intended to concern only the conditions, practices and population limits at the

Essex County Jail in Newark, New Jersey.

7. The County shall submit a report, by July 1, 1985 and December 1, 1985, to be filed with the Special Masters and the Court, and distributed to the parties, which shall set forth the steps being taken to meet any present and future needs for additional inmate housing to reduce overcrowding at the Essex County Jail as set forth in this agreement. This report shall provide a clear summary of existing plans and expected timetables, as well as identify the basis for these plans.

Condition of the Physical Plant

8. The County agrees to the following measures to insure jail fixtures and facilities are adequately maintained, repaired, or replaced:

Replacements

(a) The County pursuant to the County's normal 1985 Capital Budget Process agrees to undertake, and complete in a prompt fashion thereafter, replacements of the following items where routine maintenance and repairs have been, or are, unable to correct damaged or non-working fixtures and facilities, as follows:

- (1) water closets, as required, not to exceed 510 units;
- (2) faucets and lavatories, as required, not to exceed 30 units;
- (3) escutcheons on showers and temperature regulating valves, as required, not to exceed 50 units;
- (4) metering units, as required, not to exceed 30 units; and
- (5) damaged ceilings and lighting fixtures.

This sub-paragraph is not intended to limit the extent of replacements that may be subsequently required where facilities cannot be repaired or maintained.

Repairs and Maintenance

(b) By April 1, 1985, the County defendants shall establish and utilize procedures to log and investigate all reports of damaged or inoperable jail fixtures and facilities, and shall establish and utilize procedures to monitor the completion of all necessary repairs. Plaintiffs' counsel shall be provided with a copy of the procedures and forms to be used or developed in accordance with the requirements of this paragraph. Fixtures and facilities shall include, but are not limited to, ceilings, pipes, toilets, urinals, sinks, or showers. All repairs and maintenance shall be completed promptly. Maintenance and repairs for purposes of this agreement shall mean work other than replacements.

9. The authority for the temporary population increases set forth in paragraphs 1 and 2 above may be suspended by a finding of the Masters' that repairs and maintenance at the Jail are not in substantial compliance with this agreement. Any such suspension by a finding of the Masters shall be lifted upon the County's substantial compliance with the items upon which the suspension was based. Compliance requires the following:

(a) by May 1, 1985, the County defendants shall provide written certification that all necessary repairs and maintenance (other than replacements) have been completed to correct damaged or otherwise inoperable fixtures and facilities existing as of February 28, 1985 in ceilings, pipes, toilets, urinals, sinks, showers and other fixtures and facilities; and

(b) by the first day of each month beginning June 1, 1985 and thereafter the County defendants shall provide plaintiffs' counsel and the Special Masters with a written certification that all repairs and maintenance have been completed to correct damaged or inoperable fixtures and facilities (referred to in ¶9(a)) above reported as of 60 (sixty) days

earlier, except where such repairs or maintenance are extraordinary in nature. The certifications shall specifically identify any repairs or maintenance considered extraordinary in nature and shall contain a statement to explain the reason(s) for this designation and the County's plans with respect to the particular item(s).

Minimum Safeguards for Dormitories

10. Plaintiffs' counsel shall be provided copies of all incident and disciplinary reports, and maintenance requests and repair completion records, involving the second floor dormitories and dayroom, and the twelfth floor civil area, from January 1, 1984 to whatever date the Jail population returns to 594 inmates. The reports and records for the period January 1, 1984 to December 31, 1984 shall be supplied by March 1, 1985, and the reports and records for each successive monthly period (e.g., January 1985) shall be supplied by the first day of the third following month (e.g., April 1, 1985).

11. By March 1, 1985, or as otherwise required by this paragraph, the following requirements shall establish minimum safeguards to insure safe and sanitary conditions and fair and reasonable practices in the second floor dormitories and twelfth floor civil area of the jail:

(a) Officers shall assign and maintain bunk spaces (not to include cots) individually for each inmate, and record such assignments in a log, to establish an orderly, fair, and safe process in allocating sleeping accommodations and living space for inmates; and

(b) Any inmate assigned to, or housed in, the second floor dormitories for more than 45 (forty-five) days shall be offered the assignment of appropriate single cell housing; and

(c) Officers shall record and maintain a log of all dorm housing assignments which shall indicate for each inmate (1) the day received in the dorm, (2) each day housed in the dorm, (3) the day transferred out of the dorm, and (4) the location of the transfer; and

(d) A minimum of four officers shall at all times be assigned to the second floor of the jail to insure inmate safety in the dormitory units. Separate posts shall be maintained for each of the two dorms, the dayroom, and the control center. All steps necessary shall be taken to insure that these four posts are staffed at all times.

(e) In order to improve lighting during appropriate daytime and early evening hours the County shall take steps to remove any improper obstructions on light fixtures, where necessary insure that bulbs are used to the present maximum wattage of all existing fixtures, and shall replace inoperable lighting fixtures within the time period fixed for repairs and maintenance by ¶ 9 above; and,

(f) Visitation for inmates shall be conducted in accordance with ¶16(h) of the October 1982 consent judgment; provided, however, if visits cannot be accommodated in regular visiting areas for inmates on the second floor, visitors shall not be turned away, nor shall visit periods be shortened, but rather visits shall be held on other floors if space is available or visiting hours shall be increased to effectuate full visitation opportunities as set forth in the October 1982 consent judgment; and

(g) By June 1, 1985, all bunks which are abutting or touching shall be separated by a solid partition to protect inmates from exposure to unhealthy or unsanitary conditions resulting from close contact with others.

General Conditions, Practices, and Programs

12. Paragraph 16 of the October 14, 1982 Consent Judgment shall remain in full force and effect, except as modified or supplemented herein:

(a) Notwithstanding that the population of the County Jail exceeds the jail's maximum capacity at any given time, except during a 72 hour emergency period invoked under ¶ 3 above, the County shall continue to provide the services or programs referred to in ¶ 16 of the October 14, 1982 Consent Judgment and as required by this Order. During a 72 hour emergency period invoked under ¶ 3 above, the County may reduce services only to the extent reasonably necessary in light of the additional inmate population; and

(b) By April 30, 1986, the County agrees that the daily exercise and recreation program required by ¶ 16(a) of the October 1982 Consent Judgment shall provide a schedule for each inmate to obtain an opportunity to engage in exercise and recreational physical activity for a minimum duration of one hour per day; and,

(c) The County agrees to begin to meet the requirements for a regular daily program of exercise and recreation as established by the October 1982 Consent Judgment and subparagraph (b) above as follows:

(1) as of February 15, 1985, an opportunity for recreational physical activity and exercise outside of living areas and dayrooms shall be provided to each inmate three days a week, for a minimum of one hour per day; and

(2) as of August 1, 1985, a program of exercise and recreational physical activity outside of living areas and dayrooms shall be provided to each inmate at least five days a week, for a minimum of one hour per day; and

(3) by June 1, 1985, the County agrees to install and maintain three items of exercise equipment outside of each dayroom at the jail to facilitate additional opportunity for active physical exercise by inmates. An opportunity to use this equipment is not intended to reduce but rather to supplement the daily exercise and recreation program to be available for each inmate under this agreement; and,

(4) by March 1, 1985 and until the population of jail is reduced to 594 inmates in accordance with ¶11 of this Order, dayroom hours for inmates (excluding meals) shall be increased from the present 3½ hours per day to a minimum of 4 hours per day. Each housing unit shall be provided the minimum of 4 hours of dayroom time as may be administratively convenient.

(d) The requirement for medical screenings under ¶16(d) of the October 1982 Consent Judgment shall include, but not be limited to, an appropriate physical examination by trained medical personnel and any testing necessary to identify the otherwise undetected presence of or exposure to a communicable disease or contagious condition, or the presence of any undetected serious health impairment. Physical examinations and any testing shall be administered within 72 hours of each inmate's admission to the jail and shall be completed prior to the release of any inmate into the general population. If the physical examination required by this paragraph indicates the need for a psychological, psychiatric or dental evaluation, then such inmate shall receive the necessary evaluation within the 72 hour period set forth above;and,

(e) The County shall continue to provide each inmate with an opportunity for access to the jail's library for a minimum of 2 hours each week; and

(f) By January 1, 1985, the County shall install one additional telephone in each housing unit of the jail, or increase the hours of operation of existing telephones to at least 7 a.m. to 10 p.m. daily, in order to provide unlimited legal calls and a minimum of two daily personal calls;

(g) Each inmate shall be provided items of basic necessities to maintain personal hygiene. Where health or sanitary reasons warrant, these items (including, but not limited to, items for shaving) shall be issued individually for the sole use of each inmate and shall be marked, stored, distributed, and replaced in accordance with this practice;

(h) The County shall within 30 days request a current fire safety and prevention inspection for the Jail from the Bureau of Fire Safety of the New Jersey Department of Community Affairs, including, but not limited to, an evaluation of the second floor dormitories when they house the maximum inmate population allowed by this Order. Plaintiffs' counsel shall be furnished with a copy of any inspection report, orders or recommendations from the Bureau of Fire Safety within ten days of receipt by the County and within two weeks thereafter shall be provided a report setting forth the County's response; and

(i) Within 30 days of the the reduction of the jail's population to the maximum capacity of 594 inmates in accordance with the timetable fixed by ¶1 above, or as otherwise provided herein, bunks in the second floor dormitories shall be separated by the maximum distance possible, but by no less than at least 2 feet between each bunk to which inmates are assigned.

13. To the extent permitted by information available to the County, the County shall prepare a report for the Special Masters and the Court, to be distributed to the parties every 90 days, on the status of and the extent of enrollments or participation in the County's Intensive Supervision Probation program and the County's Community Service program. The County shall regularly request all information required for these reports from any relevant county and state agencies and shall append its requests and any material received to the reports filed under this paragraph.

Access and Monitoring

14. Since the effective date of July 1, 1983 for some programs and the maximum capacity of the Jail contemplated by the October 1982 Consent Judgment is delayed by this Order to May 1, 1986, and in order to facilitate a reasonable period of compliance monitoring by plaintiffs' counsel from these new effective dates, it is therefore agreed:

(a) that commencing immediately and continuing until one year from the date on which the jail's population is reduced to the 594 maximum capacity for the Jail by the operation of ¶ 1 of this Order and until one year from the date on which there has been substantial compliance with the services and programs required in accordance with this Order, plaintiffs' counsel and professional consultants, upon reasonable notice to the County, shall be provided reasonable access to the County Jail and to records relevant to the County Jail, this Order and the October 14, 1982 Consent Judgment, or relevant to the preparation of any report by plaintiffs' counsel or professional consultants regarding the subjects of these orders, including the right to inspect all relevant areas and to review documents requested in advance. This provision shall not be construed to grant access by plaintiffs' counsel to the Jail Annex or to

information regarding the Annex, except as may be necessary to measure compliance with ¶¶ 1(c) and 7 of this Order; and

(b) Five copies of this Order and the October 1982 Consent Judgment in this case shall be maintained at all times in the Jail's library for copying and review by inmates.

Date: February 4, 1985

/ Harold A. Ackerman
HAROLD A. ACKERMAN
United States District Judge

The undersigned hereby consent to the form and entry of the within Order.

Date: 1 - 29 - 85

David H. Ben-Asher
DAVID H. BEN-ASHER
Essex County Counsel
Attorney for County Defendants

JOSEPH H. RODRIGUEZ
New Jersey Public Advocate-Defender
Attorney for Plaintiffs

Date: 1-28-85

By: T. Gary Mitchell
T. Gary Mitchell, Director
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Date: 1-28-1985

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