

DEC 27 1983

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

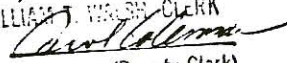
ESSEX COUNTY JAIL INMATES, : CIVIL NO. 82-1945
et al., :
Plaintiffs, : Hon. Harold A. Ackerman
: U.S.D.J.
v. :
: Robert Del Tufo, Special Master
NICHOLAS AMATO, County : Bennet Zurofsky, Special Master
Executive, et al., :
and :
: ADDENDUM TO THIRD SUPPLEMENTAL
WILLIAM H. FAUVER, Commis- : CONSENT ORDER
sioner, New Jersey Depart- :
ment of Corrections, :
Defendants. :

The parties to this case having agreed in Paragraph 20d of the THIRD SUPPLEMENTAL CONSENT ORDER that the Special Masters shall set an amount of a fine as a population sanction in the event of certain violations of said THIRD SUPPLEMENTAL CONSENT ORDER; and this Court having reviewed and approved said THIRD SUPPLEMENTAL CONSENT ORDER; and the Masters having recommended the amount of \$100.00 per prisoner per day as the proper sanction;

IT IS ON THIS 27th DAY, OF December 19 88,

ORDERED that in the event of violations of the THIRD SUPPLEMENTAL CONSENT ORDER as set forth therein in Paragraph 20, the sanction to be imposed, as referred to in Paragraph 20d, shall be calculated at the rate of \$100.00 per prisoner per day.


HONORABLE HAROLD A. ACKERMAN, U.S.D.J.

THE CLERK
on 15 19 89
WILLIAM T. WALSH, CLERK
By 
(Deputy Clerk)

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

ESSEX COUNTY JAIL INMATES, : CIVIL NO. 82-1945
et als., :

DEC 27 1988

Plaintiffs, :

v. :

Hon. Harold A. Ackerman
U.S..D.J.

At 8:30
WILLIAM T. WALSH

NICHOLAS AMATO, County :
Executive, et als., :

Robert DelTufo, Special Master
Bennet Zurofsky, Special Master

and :

WILLIAM H. FAUVER, Commis- :
sioner, New Jersey Depart- :
ment of Corrections, :

THIRD SUPPLEMENTAL CONSENT ORDER

Defendants. :

FILED
ON
THE DOCKET
on 1 5 1989
WILLIAM T. WALSH CLERK
By *William T. Walsh*
(Deputy Clerk)

THIS MATTER BEING OPENED to the Court in conjunction with the Order entered on the docket of the Court on September 19, 1988, directing defendants County Executive Nicholas Amato, Essex County Director of the Department of Public Safety Joseph Santiago, and Essex County Jail Warden Robert Cottle (hereafter "County defendants" or the "County"), to Show Cause why an Order should not be entered finding the County defendants in contempt and imposing sanctions, as specified in the Report of the Special Master dated July 26, 1988, and

WHEREAS, the parties' have agreed as herein set forth to resolve the contempt application underlying the Order of September 19, 1988, brought by plaintiffs in June 1988 to enforce provisions of the October 18, 1982 Consent Judgment ["CJ"], the Feb. 4, 1985 Supplemental Consent Order Modifying and Amending Consent Judgment of October 14, 1982 [SC01], and the April 22, 1987 Supplemental Consent Order Modifying and Amending Consent Judgment of October 14, 1982 [SC02]; and

WHEREAS, the County's facilities for inmate housing and services continue to be insufficient to meet the terms of previous consent orders; and

WHEREAS, the County defendants have recently organized and funded a program known as the "Jail Initiative", in cooperation with the County judiciary and other criminal justice agencies, to expedite the processing and disposition of criminal proceedings pending against individuals who remain incarcerated in Essex County jail facilities with the objective over a period of 120 days

beginning on November 28, 1988, of reducing the number of inmates confined at the Essex County Jail to 594 or less; and

WHEREAS, the County defendants recently have proposed, organized and funded, in cooperation with the County judiciary, the County Prosecutor and local municipal authorities, a pre-screening program in the City of Newark and will by Feb. 1, 1989, expand the pre-screening program to the cities of Irvington, Orange and East Orange, to review criminal charges against detainees at the earliest possible opportunity in order to assess the appropriateness of the charges and with the objective of eliminating unnecessary incarceration at the county jail where such confinement is not warranted; and,

WHEREAS, the County defendants recently have agreed to fund and authorize an expanded home confinement program as an alternative to incarceration in appropriate cases to assist in reducing the county jail population; and

WHEREAS, under the terms of this Order the County Jail population temporarily will continue to exceed the maximum capacity of 594 inmates established by the Court's prior orders, and there will temporarily continue to be substantial non-compliance with the requirements of prior orders for providing services and programs to EJC inmates, and,

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

WHEREAS, the aforementioned CJ, SC01 and SC02 shall remain in full force and effect, except as herein modified;

IT IS THEREFORE AGREED, as follows:

GENERAL PROVISIONS AND OBJECTIVES

1. Counsel for the plaintiff class agrees to defer prosecution of the application on behalf of plaintiffs to have the County defendants held in contempt for a period commencing on December 1, 1988 and ending on May 31, 1989, in order to permit the County defendants to implement measures as described above which the County defendants believe will result in a substantial and swift reduction of the County Jail population to 594 and which similarly will permit the County defendants to achieve substantial compliance with other provisions of the prior Orders of the Court; provided, however, that within the period referenced above plaintiffs' counsel shall be permitted to resume prosecution of

the contempt application in the manner provided by this Order and to seek sanctions as authorized by this Order if the total jail population by February 15, 1989, is not reduced to or thereafter exceeds 700 inmates, or if the total jail population by April 15, 1989, is not reduced to or thereafter exceeds 650 inmates, or if the total jail population by June 1, 1989, is not reduced to or thereafter exceeds 594 inmates.

2. The County defendants recognize that a failure to meet the timetable for a reduction of the jail population as set forth in this Order will result in prompt proceedings to impose and compel payment of sanctions for continuing non-compliance with this Order and other consent orders, and, therefore, the County defendants are on notice that other alternatives to the County's Jail Initiative should be available to serve as a contingency plan to deal with either a shortfall in the objectives of the Jail Initiative or other unforeseen or unanticipated circumstances.

3. The County defendants further recognize that the reduction of the jail's population and improvements in jail programs which were promised to plaintiffs in the prior orders of the Court, as previously agreed to by the County, have been long delayed and will continue to be delayed as a result of the entry of this Order.

4. In light of the above referenced delays in obtaining relief for plaintiffs and the continued overcrowding at the jail, the County agrees that the interests of justice and extant conditions at the County's jail warrant additional efforts, as hereafter shall be described, to comply with the requirements for providing services and programs to plaintiffs, as well as to clarify the minimum requirements for services and programs to be met by the County in maintaining the safety, health, and security of inmates at the jail.

5. The County agrees that for purposes of any further proceedings that may be necessary to secure compliance with this Order or prior orders of the Court, the findings of fact in this matter shall be drawn from or comprised of the following:

a. observations of the Special Masters as set forth in a transcript of proceedings conducted on November 28, 1988, during the course of the Special Masters' inspection of the Essex County Jail;

b. documents submitted by plaintiffs to the Special Masters as set forth in the Appendix filed with plaintiffs' brief of November 21, 1988;

- c. documents and records maintained by the County which have been or will be submitted to plaintiffs; and
- d. the stipulations set forth herein.

STIPULATIONS

6. For nearly every day of 1988 to the present, the county defendants have housed substantially more than 594 inmates at the Essex County Jail.

7. During 1988 the county defendants regularly have exceeded the maximum capacity limits fixed for the second floor dormitories, the 12th floor civil area, and the 12th floor "tier man" dorm.

8. During 1988, the County defendants have failed to follow the remedial procedures required under paragraph 14 of the CJ.

9. During 1988 the County defendants regularly have caused the dayrooms of the jail to be used to house inmates for longer than 72 hours.

10. The County defendants have failed to provide a schedule for daily recreation and exercise that would provide each inmate with an opportunity to engage in exercise and recreational physical activity for a minimum of one hour per day.

11. The County defendants have failed to install and maintain three items of exercise equipment outside of each dayroom at the jail.

12. During 1988 the County defendants have not provided hours for visitation on weekends to permit inmate visits to last at least 20 minutes in duration.

13. Smoke detectors and alarms at the jail have been allowed to become inoperable.

14. Many mattresses in use by inmates at the jail are cracked, torn or otherwise in need of replacement to insure that they are fire retardant and sanitary.

15. The County defendants have not provided a physical examination by medical personnel to each inmate within 72 hours of admission to the jail.

16. Newly admitted inmates are housed in general population prior to completion of a physical examination on the inmate.

17. The County defendants have not routinely administered laboratory or clinical tests on newly admitted inmates to determine whether the inmate may be

suffering from or has been exposed to tuberculosis, gonorrhea, hypertension or diabetes.

18. In the second floor dormitories, bunk spaces are not individually assigned to each inmate with the assignments recorded in a log, inmates are not offered assignment of single cell housing after being housed for more than 45 days in the second floor dorms, a log is not maintained of all dorm housing assignments indicating for each inmate the day received in the dorm, and days housed in the dorm, day transferred out of the dorm, and location of transfer.

SERVICES AND PROGRAMS

19. The County defendants agree immediately to take action to implement fully the requirements of prior orders including but not limited to those items referenced below, and to implement fully the following requirements to supplement or clarify the standards to be met under prior orders in defining minimum requirements for services, safety, health, and security at the jail, including but not limited to the following:

a. Fire Safety

(1) Smoke alarms -- Within 90 days of the date of this agreement between the parties, the County shall take all steps necessary to insure continuing compliance with paragraph 16g of the CJ, including whatever steps that may be necessary to insure that all smoke alarms shall be repaired and maintained in working order.

(2) Fire Suppression System -- To insure that jail living areas are maintained in a safe condition as required by paragraph 16k of the CJ, the County agrees by October 15, 1989, to install an automatic fire suppression system at the jail to comply with the minimum standards established by N.J.A.C. 5:18-4.7(d), and as required by the July 5, 1988 report of a fire safety inspection conducted by the Newark Fire Department. The County will submit a report to plaintiffs' counsel and the Special Master by April 1, 1989, and monthly thereafter, which report shall include a construction schedule and the ongoing status of the project. To facilitate installation of a fire suppression system under this paragraph, the County may cause the population of individual housing units to exceed the maximum unit capacity limits otherwise fixed by paragraph 10 of the CJ.

b. Exercise and recreation

(1) Schedule -- By Feb. 1, 1989, the County shall submit to plaintiffs' counsel and the Special Masters a proposed ~~gym~~ schedule that will fulfill its obligations under prior orders to provide each inmate at the jail with access to an exercise and recreation area for a minimum of one hour each day. The County shall take all steps necessary to implement this schedule so that inmates shall receive the required daily opportunity for exercise by April 15, 1989, including but not limited to physical construction of facilities, acquisition of equipment, and hiring of additional staff.

(2) Supplemental Exercise Equipment Outside Dayrooms -- Within 30 days of the date of this agreement, the County shall obtain the items of exercise equipment previously required by paragraph 12(c)(3) of the SC01.

c. Dayroom Time Log -- In order to monitor the provision of dayroom time to inmates, the County defendants shall insure that a daily log is maintained of each housing unit's movements to and from dayrooms.

d. Visitation

(1) Duration of Visits -- The County shall immediately take all steps necessary to insure continuing compliance with paragraph 16h of the CJ, including, but not limited to, the requirement for all visitation opportunities to be at least twenty minutes in actual duration. Steps taken by the County shall include, but not be limited to, any necessary expansion of visitation hours, physical construction of facilities, acquisition of equipment, and hiring of additional staff.

(2) Visitation Increases As Needed -- If all visitors cannot be accommodated during fixed visiting hours within regular visiting areas, visitors shall not be turned away, nor shall visit periods be shortened, but rather visits shall be held in visiting areas on other floors if space is available or, if space is not available, corrections staff shall be provided to continue visiting hours for any visitors waiting to visit with inmates at the close of visiting hours; a notice to this effect shall be posted in waiting areas for visitors.

(3) Log to be Maintained -- Within 7 days of the date of this agreement between the parties, the County shall begin maintaining daily logs of the jail visitation program, with a log to be maintained by the officer responsible for supervising actual visitation opportunities on each floor of the jail. Each log shall preserve a daily record of all visits conducted on each floor, with the log entries to contain the date, the name of each inmate receiving a visit, the time at the beginning and at the end of the visit, and the signature or initials of the officer making the log entry.

e. Dorm safeguards -- By January 15, 1989, the County shall take all necessary steps to comply with the requirements of paragraph 11 of the SC01, including but not limited to the following:

- (1) Assignment and Logging of Bunk Spaces -- SC01 Paragraph 11(a)
- (2) Offer of Transfer to Single Cell Housing -- SC01 Paragraph 11(b)
- (3) Log Requirements -- SC01 Paragraph 11(c)
- (4) Separation of Bunks by Solid Partition -- SC01 Paragraph 11(g)
- (5) Separation of Bunks by Space -- SC01 Paragraph 12(i)

f. Physical Plant Conditions -- To comply with the requirement of paragraph 16k of the CJ to maintain the county jail in a safe and sanitary condition and paragraph 8 of the SC01 pertaining to repair and maintenance, the County agrees to the following measures to insure jail fixtures and facilities are adequately maintained, repaired, or replaced.

(1) Definitions -- Facilities shall include, but are not limited to, ceilings, pipes, toilets, urinals, sinks, showers, and windows; fixtures shall include, but are not limited to, water closets, faucets and lavatories, escutcheons on showers and temperature regulating valves, metering units, lighting fixtures, windows and screens.

(2) Survey -- The County agrees to undertake immediately and complete by February 15, 1989, a complete survey of damaged or non-working fixtures and facilities at the jail identifying the facilities and fixtures which can be repaired and those which need to be replaced. The report shall list all damaged, broken or otherwise inoperable facilities and fixtures at the jail through February 1, 1989. The

County further agrees to supply a copy of the survey report to plaintiffs' counsel and the Special Master no later than February 22, 1989. If the survey is not completed as required above and a copy of the report is not supplied by the above date, then the County shall be responsible for the costs of a survey and related report which plaintiffs' counsel may thereafter obtain to assess the extent of damaged or non-working facilities and fixtures at the jail.

(3) Repairs and Maintenance

(a) Reporting -- A staff member, whose identity shall be made known to plaintiffs' counsel, shall be assigned to receive all reports from staff and inmates of broken or inoperable facilities and fixtures, to post these reports in a central log as required to be maintained under paragraph 8(b) of the SC01, to arrange for staff and/or equipment to facilitate the repair, and to monitor the completion of repairs on all facilities and fixtures.

(b) Schedule -- Within 72 hours of a report, any items in need of repair or maintenance shall be inspected by a person trained in the repair or maintenance of the fixture or facility. The maintenance or repair shall be completed no later than 3 business days of the inspection, subject to the availability of parts and supplies. Maintenance and repairs for purposes of this agreement shall mean work other than replacements.

(c) Parts and Supplies -- To prevent unnecessary delays in effecting major repairs, an adequate inventory of regularly needed parts which are not promptly commercially available shall be maintained. The supply of such spare parts at all times shall be sufficient to provide a backup supply of 90 days, or for whatever longer period a reasonable investigation would disclose would be required to obtain such parts that are not readily available within 90 days.

(d) Monthly Log Reports -- By February 15, 1989, and on a monthly basis thereafter, the County defendants shall provide plaintiffs' counsel with copies of the maintenance and repair logs for the previous month (e.g., December's logs to be supplied by Jan. 15, 1989, January's logs to be supplied by Feb. 15, 1989) showing all reports of

damaged or inoperable jail fixtures and facilities, with a notation indicating the completion date or the status of the repair.

(4) Replacements — By Feb. 1, 1989, the County shall undertake and complete in a prompt fashion thereafter and not later than June 1, 1989, replacements of any fixtures or facilities where routine maintenance and repairs have been for 30 days or more, or are otherwise known to be, unable to correct damage or return the fixtures and facilities to good working condition. Replacements also shall be required on a continuing basis thereafter where routine maintenance and repairs similarly have been, or are, unable to correct damaged or non-working fixtures and facilities. In those instances where parts and supplies have been ordered to make repairs or undertake maintenance, delays not attributable to the County in receipt of parts or supplies shall not require the County to replace the fixture in need of the repair.

g. Health Care

(1) Intake practices — This paragraph shall clarify and supplement the requirements of paragraph 16d of the CJ and paragraph 12(d) of the SC01, which require the County to provide inmates admitted to the jail with a medical screening and a physical examination prior to their housing in general population.

(a) Initial screening — As required by paragraph 16d of the CJ, a medical screening shall be done upon admission to the jail. This initial screening shall be done by a clinically trained person (at least an LPN or a medical technician). This initial screening shall be available 24 hours per day, 7 days per week, and shall include the following:

i) a directed history of current illnesses and health problems (including mental, dental and communicable diseases), drug and alcohol use (including types, methods, amounts, frequency, date or time of last use and a history of problems which may have occurred after ceasing use, such as convulsions), suicide risk, medications taken, special health problems or requirements (such as allergies and

therapies), and other health problems as designated by the responsible physician;

ii) observation and notation of behavior (including unusual behavior, appearance, conduct, tremors and sweating), body deformities, ease of movement, condition of skin (including trauma markings, bruises, lesions, jaundice, rashes, infestations, needle marks and other indications of drug abuse);

iii) recommended disposition by referral on an emergency basis to an appropriate health care service or provider, by placement in general inmate population and later referral to an appropriate health care service or provider, or by placement in the general inmate population.

(b) Physical exam and diagnostic tests — As required by paragraph 12(d) of the SC01, each inmate admitted to the jail shall receive a physical examination and any testing necessary to identify a contagious condition, communicable disease or serious health impairment that may be asymptomatic or otherwise not detected by a physical examination.

i) The physical examination shall be performed by a licensed physician within 72 hours of admission. As of June 1, 1989, if the County fails to comply with the requirement to house new admissions separately until after performance of a physical examination, then the County shall take whatever steps necessary to insure that each admitted inmate shall receive a physical examination by a licensed physician within 24 hours of admission to the jail, except for weekend admittees who shall have their physical examination no later than Monday.

ii) The physical examination shall, at a minimum, include recording of height and weight, and assessment of vital signs (pulse, blood pressure and temperature), neurological system, heart, lungs, abdomen and recent trauma.

iii) Diagnostic tests to be done on each admitted inmate shall include, but not be limited to: tuberculin skin test and syphilis serology.

(c) Housing -- As of June 1, 1989, housing classification shall not be made until the medical screening and physical examinations are completed. Inmates needing a hospital or emergency room evaluation shall be referred there immediately. Inmates with special medical needs (e.g., wheelchairs) shall be housed in an infirmary. Inmates who are mentally ill shall be placed in observation and/or on a suicide watch or referred to an appropriate psychiatric facility.

(2) Doctor and nursing coverage -- To provide the required elements of the medical screening program under paragraph 12(d) of the SC01, including physical examinations of all newly admitted inmates, and to insure that inmates at the Essex County Jail receive prompt access to adequate health care professionals as required by paragraph 16b of the CJ and basic appropriate medical care as required by paragraph 16c of the CJ, and as required by this order, the County defendants by April 1, 1989, shall at a minimum provide 24 hour on site coverage, as follows:

(a) Physicians -- Physician coverage shall be provided on a full time basis. Full time physician coverage shall, at a minimum, be defined as on site coverage by two medical doctors for at least 6 hours each day during the week. At least one physician shall be available on an on-call basis for at least 4 hours on weekend days and holidays to examine and treat those persons who in the opinion of the health care professional on duty at the jail are in need of a physician's diagnosis and treatment.

(b) Nursing -- Nursing coverage by nurses present at the jail shall be provided 24 hours a day, seven days a week.

(c) Emergency Training -- All nurses, physician extenders and physicians shall have current CPR accreditation with certification kept on file. As of June 1, 1989, at least three correctional officers on each shift shall be CPR trained.

(3) Sick call -- To insure that inmates at the Essex County Jail receive prompt access to adequate health care professionals as required by paragraph 16b of the CJ and basic appropriate medical care as required by paragraph 16c of the CJ, and as required by this order, the County shall take all necessary steps including, but not limited to, renovation of facilities, acquisition of equipment, and hiring of additional staff, to provide the following:

(a) Access -- Inmate requests for attention to health care needs shall be collected daily, and inmates shall receive access to medical staff capable of diagnosing and treating their health care complaints within 24 hours of a request relating to routine or preventive care and immediately for any emergency.

(b) Triage -- Any triage of sick call requests shall be based on a clinical assessment by a trained health care staff member (LPN) that includes a brief history and evaluation of vital signs and physical condition. A record of the assessment shall be maintained.

(c) Procedures -- All sick call requests shall be placed in the inmate's medical folder. If an inmate requests sick call, but then fails to appear, an explanation shall be sought and placed in the folder. A daily sick call list shall be maintained, with a brief notation made of the purpose and outcome for each inmate's visit to the medical department.

(4) Follow-up -- A follow up system shall be implemented for inmates with chronic problems (e.g., hypertension, diabetes), with abnormal laboratory results or with prolonged acute problems. An inmate shall be permitted to refuse a follow-up visit only in the presence of medical staff in the clinic. The inmate shall be required to sign a refusal form, which shall be placed in his or her medical folder. If an inmate is unavailable for the follow-up visit, a chart entry shall be made and the appointment promptly rescheduled.

(5) Specialist, Clinic and Hospital Appointments -- The county shall make all arrangements for timely and appropriate consultations and referrals for inmates in need of care by specialists, or at clinics or hospitals.

(a) Log -- A log shall be maintained in the jail medical department of all specialist, clinic and hospital appointments made for inmates.

(b) Transport -- The County defendants shall take all necessary steps to insure that appointments shall not be cancelled due to the unavailability of either vehicles or corrections staff to transport inmates to their appointments. The County defendants shall either provide sufficient vehicles and staff to facilitate the transportation of inmates to scheduled appointments or shall contract with other appropriate governmental or private agencies to make such arrangements.

(c) Review -- The county shall request that all consultations return with detailed records of what was accomplished. Within 24 hours, a physician shall review the consultation results and state on the chart whether the specialist's or clinic's plan will be followed, and, if not, explain why.

(6) Infirmiry -- By September 1, 1989, an infirmiry shall be re-established for all inmates at the jail in need of convalescence, separate management, or recovery. Any infirmiry shall have 24 hour nursing coverage, daily bedside visitation by a physician or physician extender and an area to do treatment and evaluations.

(7) AIDS and Chronic Illnesses -- The County shall provide diagnostic, counseling and treatment services necessary to preserve the health and reduce the suffering of persons with AIDS and other serious chronic illnesses. Medications deemed appropriate by a treating physician shall be made available in accordance with recognized clinical or professional standards.

(8) Confidentiality -- There shall be uniform management of the treatment and medical records of inmates with AIDS and other illnesses to insure the confidentiality of their medical status and conditions;

(9) Recordkeeping -- At intake, a medical record for each admittee shall be created. This record shall include: admission history and physical examination notes, all laboratory and test results, consultations, progress notes, all clinical encounters, a working problem list, all mental health notes, and a clear notation of

allergies. Each progress note should be entered in a standard format (i.e., "SOAP" -- subjective and objective analysis, assessment and plan). All patient related materials (e.g., mental health, dental, medical) shall be kept in one folder so that all practitioners have access to the findings. Medical records shall be stored in manner so that they are not accessible to correctional personnel.

(10) Medication -- Medication shall be distributed only by qualified medical or nursing personnel;

(11) Surgery -- Timely surgery for conditions resulting in current suffering or pain, or serious physical distress or discomfort shall be available to and arranged, upon the recommendation of a medical doctor, for inmates who are being held at the jail for a period during which such surgery routinely could be scheduled and performed under ordinary medical practices in the community.

(a) Standard -- Under this paragraph, surgery shall be provided for serious medical needs, and shall not be limited to conditions that are life-threatening or that would necessarily lead to permanent disfigurement or lasting discomfort.

(b) Procedure -- The procedure for referring inmates to outside surgery consultations shall not rely simply on categorizing the surgery as elective or necessary, and shall not routinely be denied or delayed irrespective of the discomfort to the inmate; rather the scheduling of surgical consultations shall take into account the inmate's actual physical distress and the probable medical consequences of delayed attention to the medical problem, including continuing pain, suffering, and serious physical discomfort and distress.

h. Mattresses

(1) Survey and Replacement -- To comply with paragraphs 16f and 16k of the CJ, the County defendants by March 15, 1989, and every three months thereafter, shall conduct a survey of all mattresses and mattress covers issued for use by inmates. The survey shall identify the number and location of mattresses with covers that are torn, ripped, or otherwise in poor repair; these mattresses shall be removed

from use and repaired or replaced as soon as practicable, but no later than 30 days after the due date of each quarterly survey.

(2) Standard -- All mattresses and mattress covers issued for use by inmates shall be constructed with materials approved as fire retardant by the Bureau of Fire Safety in the New Jersey Department of Community Affairs and shall be in good repair sufficient to maintain fire retardancy.

(3) Storage and cleaning -- Mattresses or mattress covers shall be marked by number, stored in a sanitary manner, sanitized before issue, cleaned on a routine basis and maintained in a sanitary condition.

(4) By March 15, 1989, and every three months thereafter, the County shall submit a certification of compliance with this paragraph to plaintiffs' counsel, supported by copies of the survey, purchase orders, requisitions and whatever other documentation may demonstrate compliance.

SANCTIONS

Sanctions with regard to Maximum Capacity

20. The County defendants shall have until the dates set forth in paragraph 1 of this agreement to reduce the population of the jail to the interim levels therein specified and to reach the ultimate maximum capacity of 594 inmates and to otherwise conform jail housing practices to the population limits for individual housing units as established by paragraph 10 of the 1982 CJ. Any failure to meet those requirements or thereafter to maintain the jail population at 594 or less inmates, or any failure thereafter to adhere to the housing unit capacity limits, shall result in the following:

a. If the population of the jail is not 594 or less, sanctions shall, as previously agreed by the County defendants in paragraph 3 of the SC02, attach automatically to any continued non-compliance with the 594 capacity limit;

b. If the inmate population at the jail is housed in violation of the housing restrictions fixed by paragraph 10 of the 1982 CJ, sanctions also shall attach automatically to any continued non-compliance;

c. So that any sanction is commensurate with the extent of any non-compliance, the sanctions authorized by paragraph 3 of the SC02 for violations of the 594 capacity limit and as authorized by this paragraph shall be based on a daily amount for each inmate confined in excess of the overall 594 capacity and for each inmate housed in excess of the individual housing unit limit;

d. The actual daily amount to be imposed as population sanctions under this paragraph shall be determined by the Special Masters within ten days of the signing of this agreement by the parties. The Master's recommendation as to sanctions shall be contained in a proposed addendum to this Order, which, upon approval of the Court, also shall be incorporated by reference in this Order; and,

e. As previously agreed in paragraph 3 of the SC02, and except as set forth in paragraph f below, the County defendants waive any right to be heard on whether or not sanctions should be imposed; the County defendants also agree not to contest the appropriateness of the specific daily sanction amount to be fixed by the Special Master in subparagraph d above. The County defendants, however, reserve the right to be heard before the Master and the Court prior to the imposition of any sanctions, pursuant to paragraph f below, on the question of whether sanctions should be imposed or in mitigation of the total amount to be recommended or imposed as sanctions.

f. Under subparagraph e above, facts pertaining to whether sanctions should be imposed or in mitigation of the total amount of sanctions shall be based on the existence of an emergency situation caused by a sudden, reasonably unexpected and unforeseeable event, or series of such events, as follows:

(1) The type of unexpected or unforeseeable events or incidents contemplated as presenting an emergency situation by this paragraph are intended to include only sudden events such as fires, disasters, or riots, but shall not include any situation caused by fluctuations in inmate population traditionally, commonly or seasonally associated with either criminal justice practices, prosecutorial policies, law enforcement activities, changes in the criminal laws of the State of New Jersey, changes in judicial sentencing patterns, or a reduction in

or the termination of any program operated in the County to provide, or assist in providing, pre-trial release or non-custodial disposition alternatives;

(2) For an emergency to constitute the basis for mitigation of sanctions under this paragraph, the Warden shall provide immediate telephone notice to plaintiffs' counsel of the emergency declared. Within 24 hours thereafter, written notice shall be provided, setting forth the reason for the emergency, its expected duration, the total number of inmates housed at the ECJ, the number of inmates added by the emergency to the ECJ, the locations in which these inmates have been housed, and the expected impact on conditions, services or programs available to other inmates.

(3) For an emergency to constitute the basis for mitigation of sanction under this paragraph, within one week of any declared emergency, the County also shall present to plaintiffs' counsel and the Masters solutions for the violations of the orders of the court created by the emergency. Failure to present a solution capable of achieving substantial compliance with the orders of the court shall bar reliance on the emergency as a basis for mitigation of sanctions.

Sanctions with regard to Services and Programs

21. The County defendants shall have until June 1, 1989, or as otherwise set forth in this Order, to comply with other procedures, programs or services required by this Order or prior consent orders. After that date, failure to comply with the procedures, programs or services required by this Order or prior consent orders shall result in the following:

a. Sanctions shall attach automatically to any continued non-compliance; but, the County defendants reserve the right to be heard concerning the appropriateness of the specific sanction to be recommended by the Special Master for any continued violations of the procedures, programs or services required by this Order or prior consent orders;

b. Sanctions also shall be commensurate with the extent of any non-compliance, and, accordingly, shall be measured to the extent practicable by the number of inmates adversely affected on a daily basis by any

continued non-compliance with a procedure, program or service required by this Order or prior consent orders.

Use of Sanctions

22. The parties agree that the Special Masters, or a court-appointed monitor, may expend any monies paid into Court by defendants in whatever manner may be necessary to monitor or to achieve compliance with the provisions of the consent orders in this matter or to compensate or benefit plaintiffs, including, but not limited to,

a. having a Special Master or monitor require the County to arrange for the actual provision of programs or services or of construction necessary to achieve compliance, or

b. authorizing a Special Master or monitor, upon approval of the Court, to use any monies collected to establish a bail fund for inmates confined at the ECJ, with an order of priority to be determined for eligibility to apply to the fund to secure their release on bail, or

c. authorizing the Special Master or monitor to recommend to the Court that sanctions assessed be used to pay plaintiffs' counsel's costs for the hiring by plaintiffs' counsel of experts as may be necessary to document the status of compliance by defendants.

PROCEEDINGS TO BE CONTINUED

23. The Order entered on the docket of the Court on September 19, 1988, directing the County Executive, the Public Safety Director, and the Warden, to Show Cause why an Order should not be entered finding the County defendants in contempt and imposing sanctions, as specified in the Report of the Special Master dated July 26, 1988, shall be continued as an open matter.

24. Any further proceedings to obtain compliance by the County defendants with orders of the Court shall be conducted as follows:

a. A sanction proceeding under this Order may be initiated either sua sponte by the Special Masters or upon application of plaintiffs' counsel to the Special Masters. The Special Masters may recommend, or a party by telephone call or letter may apply for a hearing before the Masters for, findings of non-compliance with the Court's orders and for

entry of an order calculating, assessing and imposing the sanctions authorized by this Order.

b. The County agrees that proceedings on any application by plaintiffs shall be scheduled and conducted expeditiously, and may proceed in the form of a summary action on a return date to be fixed by the Masters. The return date of any application for sanctions shall be 7 days, or as soon thereafter as the Masters' schedule permits, from the date of the application's service on the County defendants and filing by or with the Masters.

c. On the return date of an application for sanctions, if affidavits or documents accompanying plaintiffs' application or submitted in response thereto show that there is no genuine issue of material fact, the Masters may base their recommendation to the Court on the pleadings, supporting documents, affidavits or an inspection of the jail. If there may be a genuine issue as to a material fact, on the return date the Masters shall hear the evidence as to those matters which may be genuinely in issue and render their recommendation.

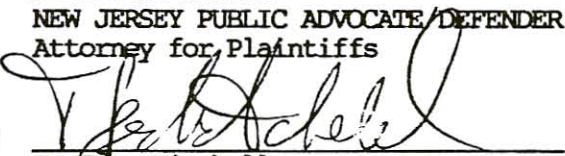
d. Within 14 calendar days from the date that an application seeking sanctions under this paragraph is filed with the Masters, the County agrees that the Masters may file their recommendations with the Court.

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

Date: Dec 12, 1988

ALFRED A. SLOCUM
NEW JERSEY PUBLIC ADVOCATE/DEFENDER
Attorney for Plaintiffs

By:


T. Gary Mitchell
Director, Office of Inmate Advocacy

Date: Dec 14, 1988

H. CURTIS MEANOR
ACTING COUNTY COUNSEL
Attorney for County Defendants

By:



Date: DEC. 12, 1988

W. CARY EDWARDS
NEW JERSEY ATTORNEY GENERAL
Attorney for Defendant Fauver

By:

Joseph T. Maloney
Joseph T. Maloney
Deputy Attorney General

IT IS ON THIS 27th December DAY, OF 19 88, SO ORDERED:

Harold A. Ackerman
HAROLD A. ACKERMAN, U.S.D.J.