

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

ESSEX COUNTY JAIL ANNEX INMATES, et als., : CIVIL NO. 87-871  
:   
Plaintiffs, :   
:   
v. : Hon. Harold A. Ackerman  
: U.S..D.J.  
NICHOLAS AMATO, County Executive, et :   
als., :   
: Robert DelTufo, Special Master  
and : Bennet Zurofsky, Special Master  
:   
WILLIAM H. FAUVER, Commissioner, N.J. :   
Department of Corrections, :   
:   
Defendants. :   
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ESSEX COUNTY JAIL INMATES, et als., : CIVIL NO. 82-1945  
:   
Plaintiffs, :   
:   
v. : Hon. Harold A. Ackerman  
: U.S..D.J.  
NICHOLAS AMATO, County Executive, et :   
als., :   
: Robert DelTufo, Special Master  
and : Bennet Zurofsky, Special Master  
:   
WILLIAM H. FAUVER, Commissioner, N.J. :   
Department of Corrections, :   
:   
Defendants. :   
:   
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THIS MATTER BEING OPENED to the Court in conjunction with the Order entered in Civil No. 82-1945 on November 27, 1989, finding the County defendants in contempt and imposing sanctions in the amount of \$1,905,300 for population violations and \$1,521,300 for recreation violations, and in conjunction with plaintiffs' application of November 22, 1989, for payment of the sanctions imposed in Civil No. 87-871 under the Court's Order Finding County Defendants in Contempt and Imposing Sanctions for Violation of Fire Safety Requirements, filed July 28, 1989 and entered on the docket on August 3, 1989, and

WHEREAS, the parties' have agreed as herein set forth to resolve the issues underlying the Order of November 27, 1989 in Civil No. 82-1945, and underlying plaintiffs' application for sanctions under the Court's Order of July 28, 1989 in Civil No. 87-871, and

WHEREAS, the County recognizes that its facilities for inmate housing and services continue to be insufficient to meet the terms of the previous consent orders in these cases; and

WHEREAS, the County's Jail Initiative program has not succeeded in reducing the number of inmates confined at the Essex County Jail to 594 or less; and

WHEREAS, the County has determined that there is no viable alternative to the installation of the fire safety improvements required by the previous orders in Civil No. 87-871; and

WHEREAS, this Order shall continue to require compliance with the maximum capacity of 594 inmates established for the Essex County Jail by the Court's prior orders, and

WHEREAS, this Order shall continue to require compliance with the requirements of prior orders for providing services and programs to EJC and ECJA 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, in Civil No. 82-1945 the October 18, 1982 Consent Judgment [CJ], the Feb. 4, 1985 Supplemental Consent Order Modifying and Amending Consent Judgment of October 14, 1982 [SCO1], the April 22, 1987 Supplemental Consent Order Modifying and Amending Consent Judgment of October 14, 1982 [SCO2], and the Third Supplemental Consent Order filed Dec. 27, 1988 [SCO3], and in Civil

No. 87-871 the November 23, 1987 Consent Order [CO], the April 17, 1989 Second Consent Order [CO2], the July 6, 1989 Schedule of Sanctions [SS], and the July 26, 1989 Order Finding the County Defendants in Contempt and Imposing Sanctions, shall remain in full force and effect, except as herein modified;

IT IS THEREFORE AGREED, as follows:

GENERAL PROVISIONS AND OBJECTIVES

1. In order to permit the County defendants to implement measures as described below which the County believes will provide the means to achieve an expeditious and permanent reduction of the County Jail population to 594 inmates, the expedited installation of fire safety improvements at the Jail and Annex, the complete and permanent closing of the New Wing of the Jail Annex as required by the CO2, the implementation of required recreation programs at the Jail and Annex, and which should assist the County in achieving substantial compliance with other provisions of the prior Orders of the Court, counsel for the plaintiff class agrees, for a period commencing on January 1, 1990 and ending on December 31, 1990,

a. to defer prosecution of an application on behalf of plaintiffs to require payment of the sanctions imposed by the Court's Order of November 20, 1989 (entered on the docket on November 27, 1989); and,

b. to defer further applications to have the County defendants held in contempt and to have additional sanctions imposed in Civil No. 82-1945 for violation of the population and recreation provisions of the Court's prior orders and in Civil No. 87-871 for violation of the fire safety requirements of the Court's prior orders.

2. Within the period referenced above, however, plaintiffs' counsel shall be permitted to resume prosecution of any contempt application in the manner provided by the SC03 and the CO2, and to seek sanctions as previously awarded or as may be warranted by violations of the Court's Orders, including but not limited to those authorized by this Order,

a. if any of the terms or dates of the purchase and construction schedule set forth in this Order are not met by the County defendants, or,

b. if the total jail population by April 1, 1990, is not reduced to or thereafter exceeds 594 inmates, or

c. if the County fails to abide by the terms of this Order or fails in a timely manner to implement and maintain the programs required by this Order.

3. The County defendants recognize that a failure to meet the timetables for implementation of the programs required by this Order or 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 initiatives should be available to serve as a contingency plan to deal with either a shortfall in the objectives of the programs or other unforeseen or unanticipated circumstances.

4. In light of the 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 require-

ments for services and programs to be met by the County in maintaining the safety, health, and security of inmates at the jail.

#### POPULATION CONTROL INITIATIVES

##### Trailers

5. The County agrees to purchase trailers for temporary inmate housing sufficient to provide temporary housing for 192 inmates (with 16 trailers to be used for housing) during installation of fire safety improvements in the East Wing, West Wing, and Women's Building at the Jail Annex, to accommodate the permanent relocation of all inmates from the New Wing dormitories at the Jail Annex to permit closing of the New Wing, and to permit the replacement of the existing trailer units at the Annex with more secure facilities.

6. Schedule -- The County defendants agree to follow an expedited schedule to construct facilities in which to locate 192 inmates, including, if and when necessary to meet the schedule herein set forth, the declaration of an emergency by the County Executive, as follows:

a. Within 10 days from the date of the signing of this agreement by the parties, the County defendants agree to hire an engineering consultant and all other necessary professionals to prepare a site plan within 21 days for temporary trailer facilities providing 192 bedspaces;

b. Within 30 days from the date of the signing of this agreement by the parties, the County defendants agree to let a contract to lease, lease-purchase, or purchase the trailers;

c. Within 90 days from the date of the signing of this agreement by the parties, the County defendants agree to complete construction of the trailer facilities and to have the units ready for occupancy.

7. Description — The trailer units acquired by the County shall meet state requirements for inmate occupancy, including but not limited to the provision of showers, bathroom facilities, dayrooms, eating areas, and recreation areas, sufficient for the 192 occupants that the facilities are planned to hold.

8. Annex Maximum Capacity — With regard to any new housing units that meet the above terms, the County or the plaintiffs may apply to the Court to adjust the Jail Annex's maximum capacity upward by the number of beds which the trailer units provide or downward by the number of beds allocated by prior consent orders to housing units which are to be closed or are otherwise unused.

9. Disposition of Sanctions — Completion of the program for trailers as specified above shall result, upon application of a party to the Special Masters and upon approval of the Court, in the dismissal of the \$1,905,300 in sanctions imposed by the Court for population violations. If the County fails to proceed with or timely complete the program for trailers as specified above, then the County agrees that plaintiffs may seek an order requiring the County immediately to deposit \$1,905,300 in an interest bearing account to be established and administered by the Special Masters and any additional sanctions the Court may impose for violation of this Order.

#### Pre-trial Supervision and Services Program

10. The County agrees to provide funding over a 30 month period commencing July 1, 1990, for a jail population management program that provides pre-trial supervision and services [PSS]. The PSS programs shall be operated as a non-profit bail bond agency by the Vera Institute of Justice [hereafter Vera] to accommodate a minimum of 60 persons, as determined by the Vera program, who

otherwise would remain detained at the Essex County Jail or Essex County Jail Annex pending trial.

11. The PSS program shall operate in general conformance with the program described in the "Preliminary Report on the Establishment of the Nassau Bail Bond Agency," which is attached to, and by reference made a part of, this Order. In addition to the surveillance supervision and service referral aspects of the PSS program described in the Nassau County project, the program to be funded by the County also shall provide direct outpatient drug treatment services through a relapse prevention program to be operated by Vera staff.

12. The PSS program shall be operated by the Vera Institute of Justice, under a contract developed in consultation with appropriate county administration officials. The County agrees to review and execute the contract within 10 days of its receipt from Vera. In the event that the County and Vera are unable to agree upon any term of the contract, the County agrees that plaintiffs may apply to the Special Masters to resolve the dispute or disagreement and the County agrees to be bound by the contract terms as determined by the Special Masters.

13. Costs for a program to accommodate 60 detainees to be bonded, supervised, and served by the Vera program shall be in accordance with an Estimated Budget Schedule, at an estimated per capita cost of \$50 per day, with a budget as follows:

a. Planning, Development and Initial Start-up Phase -- This phase shall commence on or about July 1, 1990 and continue to Dec. 31, 1990. Funds required for this phase shall be \$260,000. This phase shall include screening of the detainee population, locating and securing office space and housing, hiring core staff, and beginning the bonding out of detainees.



b. Incremental Development and Full Operations -- This phase shall commence on or about January 1, 1991 and continue to December 31, 1991. Funds required for this phase shall be \$780,000. This phase shall proceed with the bonding out of detainees to reach and maintain the target of 60 persons in the PSS program.

c. Annualized Costs -- This phase shall commence on or about January 1, 1992 and continue to December 31, 1992. Funds required for this phase shall be \$1,500,000. This phase shall maintain full operation of the program for one year for a target population of 60 persons in the PSS program.

14. The County agrees to provide funding for the PSS program at the levels set forth in the Estimated Budget Schedule above.

15. The County agrees within 30 days of the signing of this agreement by the parties that it will present Vera with a letter of agreement to pay Vera for the Planning, Development and Initial Start-Up Phase of the program within 10 days of receipt of an executed contract and invoice from Vera specifying services to be performed.

16. Additional funding for the PSS program shall be provided by the County in advance of each phase of the program as may be required by the Vera Institute. Required funding dates shall be as determined by the County administration officials, plaintiffs' counsel and Vera representatives. In the event of disagreement and upon application by a party, the Special Masters shall determine the funding dates. In determining required funding dates, the Special Masters shall consult with the Vera Institute, County officials, and plaintiffs' counsel. The County agrees to be bound by the funding dates to be determined by the Special Masters.



17. By the required funding dates, funds sufficient to operate the program in accordance with the above estimated budget schedule shall be paid to the Vera Institute by the County to be expended in accordance with and for the purposes set forth in the Budget Schedule established in this Order.

18. If sufficient funds to operate the program are not timely paid by the County, then the County agrees that plaintiffs may seek an order requiring the County immediately to deposit the full amount of all remaining funds due and to come due in the future under the Estimated Budget Schedule above into an interest bearing account to be established and administered by the Special Masters and any additional sanctions the Court may impose for violation of this Order.

#### Custodial Drug and Alcohol Treatment Program

19. The County agrees to provide funding for a custodial drug and alcohol treatment program to accommodate a minimum of 50 persons who otherwise would remain detained at the Essex County Jail or the Essex County Jail Annex pending trial. This program shall commence immediately and shall be in full operation by March 1, 1990. The County shall enter into all contracts necessary to effectuate such a program.

20. By Feb. 1, 1990, the County shall attempt to identify 50 inmates currently incarcerated in the Jail or Jail Annex who are actually able to be transferred to such a program.

#### Bail Program

21. The County agrees to continue to provide funding, on an as needed basis, for the Overcrowding Bail Fund established and operated under the Court's Order of July 28, 1989 (entered on the docket on August 3, 1989) in Civil No.

82-1945, sufficient to restore the Fund's account to a ceiling of \$150,000.00 (one hundred and fifty thousand dollars) whenever the Fund's account reaches a floor of \$75,000.00 (seventy-five thousand dollars).

22. The County shall provide the required Funds within 48 hours of a request (excluding Saturdays, Sundays and holidays), which may be made by telephone call from the Fund Administrator. Notice of any request for funds also shall be communicated by written Notice to the County Counsel, the Special Masters, plaintiffs' counsel, and the Court.

23. The Bail Fund otherwise shall continue to operate under terms of the Court's orders in Civil No. 82-1945.

#### FIRE SAFETY INITIATIVES

24. Smoke alarms -- Within 30 days of the date of this agreement between the parties, the County shall take whatever steps necessary to insure that all smoke alarms required under previous orders in Civil No. 87-871 and Civil No. 82-1945 shall be installed, repaired and maintained in working order. By Feb. 15, 1990, the County shall submit a report from the state Bureau of Fire Safety or its designated fire safety official indicating the extent of compliance and any non-compliance, if any, relating to the installation, location, or operation of smoke alarms.

25. Fire Suppression System and Second Exits -- The County shall take whatever steps necessary, including but not limited to, letting a contract to insure intallation and construction no later than August 1, 1990 of an automatic fire suppression system and second exits for the Jail and Annex buildings as required to comply with the minimum standards established by prior orders in Civil No. 87-871 and Civil No. 82-1945.

26. Reporting — The County shall submit a report to plaintiffs' counsel and the Special Masters by Feb. 1, 1990, and weekly thereafter, which report shall include a construction schedule, copies of contracts or reports, and other matters that set forth the ongoing status of the fire safety projects required by this Order, the CO in Civil No. 87-871 and the SC03 in Civil No. 82-1945.

27. Sanctions — If the County fails to file a timely report with the Special Masters, or if any report filed with the Special Masters shows that progress or contractual terms are not sufficient to complete installation and construction of the fire safety improvements by the dates required by this Order, then plaintiffs may apply for an order seeking impositions of sanctions as due under the Court's Order of July 28, 1989, in Civil No. 87-871, with any sanctions imposed to be expended by plaintiffs' counsel to complete the fire safety improvements by the dates, or as close to such dates as is physically possible, as are set forth in this Order.

#### HOUSING INITIATIVES

28. The closing date for the New Wing at the Jail Annex shall be extended from January 1, 1990 to August 1, 1990, at which time it shall be permanently closed and the housing of inmates in that building shall forever cease. The New Wing closing date may be extended by the Court on application of the County defendants upon a showing that the closing date cannot be met because of circumstances beyond the control of the County defendants, excluding increases in the jail population.

## EXERCISE AND RECREATION INITIATIVES

29. Schedule — By Feb. 1, 1990, 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 and the Jail Annex with access to a gymnasium area outside their housing units and dayrooms for a minimum of one hour each day. A sufficient number of hourly gym periods shall be scheduled to insure that all inmates receive a meaningful opportunity to use a gymnasium area for a full hour on a daily basis.

30. Supplemental Equipment — Access to the supplemental exercise equipment on housing unit floors as required by prior orders in Civil No. 82-1945 shall continue to be available during regular dayroom periods for supplemental recreation, but in no case shall use of the supplemental equipment constitute a substitute for daily access to a gymnasium area.

31. Implementation of Schedule — The County shall take all steps necessary to implement the required schedule so that inmates at the Jail and the Annex shall receive the required daily hour-long opportunity for exercise by Feb. 15, 1990 and continuously thereafter. These steps shall include, but not be limited to, physical construction of facilities, acquisition of equipment, and hiring of additional staff, as follows:

a. Program Director — By March 1, 1990, the County shall have as full-time staff two persons to serve as Director of Inmate Recreation Programs, respectively, at the Jail and at the Jail Annex. Each Director shall be responsible for the design, implementation and maintenance of the recreation schedule and recreation equipment, respectively, at the Jail and at the Jail Annex. Each Director of Inmate Recreation Programs shall have appropriate training in physical education equal either to a college degree

in physical education or equivalent year-for-year experience in a recognized area of physical education instruction or management.

b. Staffing -- By March 1, 1990, the County shall hire or reassign sufficient staff necessary to insure that inmates are transported to the gymnasium and recreation areas of the Jail and the Jail Annex in accordance with the schedule required by this Order. Staff assigned to insure compliance with the recreation requirements of this Order shall report to the respective Directors of Inmate Recreation Programs at the Jail and Jail Annex. Gym periods shall not be cancelled due to the unavailability of staff, except for a documented emergency of which plaintiffs' counsel and the Special Masters are notified. The County shall submit a report to plaintiffs' counsel and the Special Masters by March 1, 1990, and monthly thereafter, which report shall include a report and daily statistics on the inmate recreation programs, including, but not limited to, an inventory of equipment in each recreation area, a listing of any broken equipment or repairs made, and the number and percent of inmates from each housing unit attending each scheduled recreation period.

c. Elevator -- By October 1, 1990, the County shall construct a third elevator for the Jail in order to facilitate the transportation of inmates to recreation areas. The County shall submit a report to plaintiffs' counsel and the Special Masters by Feb. 1, 1990, and weekly thereafter, which report shall include a construction schedule, copies of contracts or reports, and other matters that set forth the ongoing status of the project.

32. Sanctions -- If the County fails to complete the recreation requirements specified in this Order, including, but not limited to, the hiring of

staff or the timely filing of reports with the Special Masters, or if any report filed with the Special Masters shows that progress or contractual terms are not sufficient to complete the requirements of this Order by the dates set forth in this Order, then the County agrees that plaintiffs may, upon application to the Court, seek collection of the sanctions for recreation violations imposed by the Court's Order of Nov. 27, 1989 in Civil No. 82-1945, with any funds paid by the County to be deposited into an interest bearing account designated by the Special Masters to be expended by plaintiffs' counsel upon approval of the Special Masters to complete the recreation hiring and improvements by the dates, or as close to such dates as is physically possible, as are set forth in this Order.

#### Project Coordination

33. By Feb. 1, 1990, the County Executive agrees to designate or hire a Project Manager whose sole responsibility shall be to coordinate and to track all work necessary for the timely completion of the projects specified in this Order. The Project Manager, also, shall prepare all reports on the various projects specified in this Order and shall recommend any steps necessary to insure that these projects are completed in a timely manner. The Project Manager shall have the authority to coordinate the work of all county departments involved in and necessary to the timely completion of these projects and shall report directly to the County Executive.

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

Date: 1/2/90

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

By: T. Gary Mitchell  
T. Gary Mitchell  
Director, Office of Inmate Advocacy

Date: 1/2/90

H. CURTIS MEANOR  
ACTING COUNTY COUNSEL  
Attorney for County Defendants

By: Henry DeLoe

Date: 1-3-90

JOSEPH BRENNAN  
DEPUTY FREEHOLDER COUNSEL  
Attorney for County Freeholder Defendants

By: Joseph Brennan

Date: \_\_\_\_\_

PETER PERRETTI  
NEW JERSEY ATTORNEY GENERAL  
Attorney for Defendant Fauver

By: \_\_\_\_\_  
Catherine Brown, Esq.  
Deputy Attorney General

IT IS ON THIS 3<sup>rd</sup> DAY, OF January, 1990, SO ORDERED:

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