

12/22/87
3:15 P.M.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ENTERED
ON THE DOCKET
ON 12-23 1987
WILLIAM T. WALSH, CLERK
By *[Signature]*
(Deputy Clerk)

703 H

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
COUNTY OF ESSEX; NICHOLAS AMATO,)
County Executive, JAMES A. CAVANAUGH,)
THOMAS P. GIBLIN, CARDELL)
COOPER, ADRIANNE DAVIS, JOSEPH C.)
PARLAVECCHIO, PEARL BEATTY, MONROE)
JAY LUSTBACDER, ARTHUR L. CLAY,)
PHILIP THIGPEN, Essex County Board)
of Chosen Freeholders; YOUTH SERVICES)
DIVISION: RONALD MANZELLA, Director,)
)
Defendants.)

Civil Action No. 87-75

FILED

DEC 22 1987
AT 8:30 315 M
WILLIAM T. WALSH
CLERK

CONSENT DECREE

Introduction

1. This case was instituted by the United States ~~et~~ *1967*, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997 et seq.
2. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. 1345.
3. Venue is appropriate pursuant to 28 U.S.C. 1391(b).
4. The United States is authorized to institute this civil action by 42 U.S.C. 1997a and has met all prerequisites for the institution of this civil action prescribed by that statute.
5. The Defendants are the County of Essex, New Jersey; the Honorable Nicholas Amato, County Executive; James A. Cavanaugh,

Attachment B

U.S. v. Essex County



J1-NJ-0002-0002

Thomas P. Clin, Cardell Cooper, Adrienne Davis, Joseph C. Parlavecchio, Pearl Beatty, Monroe Jay Lustbader, Arthur L. Clay, Philip Thigpen, Essex County Board of Chosen Freeholders; the Essex County Youth Services Division; Ronald Manzella, Director; and are sued in their respective official capacities.

6. The Defendants have authority and responsibility for the operation of the Essex County Youth House and are officers of the Executive Branch of the County of Essex.

7. On January 6, 1986, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, Wm. Bradford Reynolds, notified the Essex County Executive, the County Counsel and the Director of the Essex County Youth House, of his intention to commence an investigation of conditions of confinement at the Essex County Youth House, Newark, New Jersey, pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997.

8. Following a thorough investigation, on July 23, 1986, the Attorney General, by and through the Assistant Attorney General, Civil Rights Division, informed the Essex County Executive, the County Counsel, the Director of the Youth Services Division and the Manager of the Essex County Youth House that the Attorney General had reasonable cause to believe that juveniles residing in or confined to the Essex County Youth House were being subjected to egregious or flagrant conditions that

deprived them of their rights, privileges, and immunities secured by the Constitution and laws of the United States.

9. The parties agree that the care, confinement, and training of juveniles housed at the Youth House implicate rights of these juveniles that are secured and protected by the Constitution of the United States. The parties entering into this Consent Decree recognize these constitutional interests, and for the purpose of avoiding protracted and adversarial litigation, agree to the provisions set forth herein.

10. In entering into this Consent Decree, the Defendants do not admit any violation of law and this Consent Decree may not be used as evidence of liability in this or any other proceeding.

11. The provisions of the Consent Decree are a fair and appropriate resolution of this case.

12. This Consent Decree shall be applicable to and binding upon all of the parties, their officers, agents employees, assigns, and successors.

I. Purposes and Objectives

The County of Essex and the United States stipulate and agree that the purposes and objectives of this Consent Decree are to establish as promptly as practicable the following conditions at the Essex County Youth House in order to ensure that juveniles at the facility are not being deprived of rights, privileges or

immunities secured to them by the Constitution of the United States:

1. Security and staff supervision shall be provided which is sufficient to protect all juveniles from unreasonable risks to their personal safety both by the conduct of staff and of other juveniles.

2. Punishment shall not be administered in an arbitrary or capricious manner or absent a legitimate governmental objective.

3. Restraint, when appropriate, must be administered safely pursuant to professional judgment by a qualified professional.

4. The physical environment of the facility shall be maintained so as to ensure that it poses no unreasonable risks, including fire safety risks and health risks, to the personal safety of juveniles.

5. Means will be implemented to prevent and reduce the effects of overcrowding at the facility.

These purposes and objectives shall be achieved at Essex County Youth House by implementing the requirements set forth in Part III and by developing and implementing the plans described in Part IV of this Consent Decree. These purposes and objectives shall not be construed as establishing any requirement beyond implementing the requirement set forth in Part III and developing and implementing the plans described in Part IV of this Consent Decree.

II. Definitions

As used in this Consent Decree, the following definitions

shall apply:

1. "Juvenile": A person legally confined to the Essex County Youth House, regardless of status of commitment or duration of commitment.

2. "The County": The Executive Branch of the Government of the County of Essex specifically including the administration of the Youth House and any and all of their officials, agents, employees, or assigns, and the successors in office of such officials, agents, employees or assigns.

3. "Qualified Professional": A person competent, whether by education, training, or experience, to make the particular decision at issue.

4. "Professional judgment": A decision by a qualified professional that is not such a substantial departure from accepted professional opinion, practice, or standards as to demonstrate that the person responsible did not base the decision on such professional opinion, practice, or standards.

5. "Punishment": Any restriction or prohibition placed upon a juvenile for misconduct.

6. "Restraints": Any physical or mechanical device used to restrict the movement of a juvenile or the movement or normal function of any portion of a juvenile's body, excluding those devices used only to provide support for the achievement of functional body position or balance and devices used for specific

medical and surgical (as distinguished from behavioral) treatment.

7. "Board of Chosen Freeholders": The Legislative Branch of Government of the County of Essex which has legislative and investigative powers as granted by the Executive Plan of the Optional County Charter Law N.J.S.A. 40:41A-1 et seq.

III. Conditions Requiring Immediate Correction

In order to eliminate conditions which pose an immediate and unlawful threat to the life, health, and safety of juveniles at the Essex County Youth House, the County agrees to meet the following requirements:

1. Immediately upon entry of this Consent Decree, county officials will ensure an adequate means of emergency evacuation.
2. Immediately upon entry of this Consent Decree, county officials will ensure that the fire alarm system at the facility is fully operational.
3. Within 10 days after entry of this Consent Decree, county officials will remove and/or properly store all flammable and combustible materials at the facility.
4. Within 10 day after entry of this Consent Decree, county officials will recharge and correctly position all fire extinguishers.
5. Within 30 days after entry of this Consent Decree,

county officials will remove all polyurethane or toxic mattresses and replace with appropriate mattresses.

6. With 30 days after entry of this Consent Decree, county officials shall insure adequate bedding and personal hygiene measures for all juveniles housed at the facility.

7. Within 45 days after entry of this Consent Decree, county officials shall take all reasonable steps to ensure that punishment is not arbitrarily imposed.

IV. Plans

In order to establish compliance with this Consent Decree, the County shall file with the Court and the Plaintiff, on or before December 31, 1987, its plan(s) for implementing this Consent Decree. Such plan(s) shall set forth:

1. The procedures that will be utilized to provide that juveniles shall be protected from unreasonable risks of bodily harm to their personal safety by the conduct of other juveniles. Said procedures should include requirements for adequate surveillance, including hourly rounds of all housing areas.

2. The procedures that will be utilized to provide that juveniles shall be protected from unreasonable risks of harm by the conduct of staff, including requirements to report alleged incidents of harm or unreasonable risk of harm. Said procedures should include requirements for investigating such allegations, disciplinary rules and procedures, and sanctions to be followed.

upon any findings of harm or unreasonable risk of harm.

3. The policies and procedures to govern punishment at the facility, including written rules specifying infractions and appropriate penalties. Said policies and procedures shall provide that the decision to punish a juvenile and the justification therefore shall be recorded promptly in the juvenile's records and that these records shall be reviewed periodically by appropriate professional staff.

4. The policies and procedures to govern the administration of physical restraints to ensure that such restraints are administered safely and pursuant to the professional judgment by a qualified professional.

5. The procedures that will be utilized to maintain the facility in a sanitary manner sufficient to protect juveniles from unreasonable risks of bodily harm.

6. The enforcement mechanisms to be used, including disciplinary measures and sanctions where appropriate, to provide for staff compliance with all policies, rules, and standards of job performance and behavior.

7. The procedures the Youth House will utilize to survey the facility and steps it will take to protect all juveniles there from unreasonable fire safety risks and risks to health.

8. The procedures to be used to maintain the population below levels constituting unconstitutional overcrowding and the mechanisms that will be used to alleviate the effects of temporary, emergency periods of crowded conditions.

9. The recordkeeping systems that shall be utilized to maintain and make available in each juvenile's record appropriate information regarding administration of discipline, punishment, and physical restraint; and monthly reports of the daily population at the facility.

10. The number and categories of staff that will be utilized to implement plans required by Paragraphs 1 to 9 above.

11. All plans shall state in specific terms and reasonable detail the actions to be taken by the Defendants, the dates of such actions, the text of the procedures, regulations, or protocols to be promulgated and issued by the Defendants, and the name and qualifications of the professional consistent with whose professional judgment the plan has been prepared and submitted.

12. All plans shall state the specific date or dates by which each shall be implemented in toto but in no event shall the final implementation date of any plan be later than January 2, 1989.

V. Construction and Implementation

In construing and implementing the terms of this Decree, the following are agreed to by the parties:

1. a. The Defendants shall file the plan(s) with the Court and the Plaintiffs on or before December 31, 1987. The United States shall have sixty (60) days from receipt of the plan(s) in which to file a response to the plan with the Court. If the United States objects to any plan or portion thereof filed by the County, County and Federal officials shall meet in a good

faith effort to resolve their differences. If the County and Federal officials are unable to resolve their differences through negotiation, the adequacy of the contested portions of the proposed plan to achieve the purposes and objectives set forth in Part I of this Consent Decree shall be determined by the Court. Defendants shall have the burden to persuade the Court that the plan is adequate under this standard.

b. If, after a plan is approved, County officials decide to modify that plan or any portion thereof, County officials shall notify the Court and the United States of the proposed modification. The United States shall have sixty (60) days from the receipt of any proposed modification in which to file a response to the modification with the Court. If the United States objects to the modification sought, County and Federal officials shall meet in a good faith effort to resolve their differences concerning the proposed modification. If County and Federal officials are unable to resolve their differences through negotiation, the adequacy of the proposed modification to achieve the purposes and objectives set forth in Part I of this Consent Decree shall be determined by the Court. The Defendants shall have the burden to persuade the Court that the modified plan is adequate under this standard.

c. Plans, including modifications of plans, to which the United States does not timely object, shall be deemed approved by the Court.

d. All plans required under this Decree, if approved, shall be issued as orders of the Court and enforceable as such.

2. a. The County shall submit periodic compliance reports to the United States and the Court. The reports shall be filed quarterly beginning on January 15, 1988, and continue until such time as this Consent Decree is terminated.

b. The compliance reports shall describe the County's progress towards implementation and compliance with the provisions of this Consent Decree and the plan(s) submitted pursuant thereto. The format of the compliance reports shall be set out in the County's plan of implementation.

3. The United States and its attorneys, consultants, and agents shall have reasonable and complete access to the facilities, records, residents, and employees of the Youth House upon reasonable notice to the County for the purpose of ascertaining compliance with the Decree. Such access shall continue until this Consent Decree is terminated.

4. All parties shall bear their own costs, including attorney fees.

5. The Board of Chosen Freeholders shall have no liability or responsibility under this Consent Decree other than taking reasonable measures to obtain funds reasonably necessary for the County to effectuate the conditions required herein.

VI. TERMINATION OF DECREE

1. The parties contemplate that the defendants shall have full and faithfully implemented all provisions of this consent

Decree, and plans herein required to be submitted and approved by the Court, on or before January 2, 1989.

2. The Court shall retain jurisdiction of this action for all purposes under this Consent Decree until the defendants shall have fully and faithfully implemented all provisions of the Consent Decree and plans submitted pursuant thereto and until the judgment be discharged.

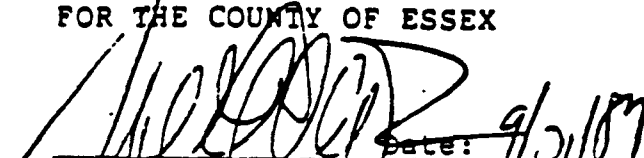
3. On or after the date on which the defendants shall have fully and faithfully implemented all provisions of this Consent Decree and plans submitted thereto, the defendants may move that the injunctions entered herein be dissolved, jurisdiction terminated, and the case closed and dismissed with prejudice on grounds that the defendants have fully and faithfully implemented and maintained all provisions of this Consent Decree and plans submitted pursuant thereto.


4. Dismissal shall be granted unless, within sixty (60) days after receipt of the defendant's motion, the United States objects to the motion. If such an objection is made with particularity, the Court shall hold a hearing on the motion and the burden shall be on the United States to demonstrate that the defendants have not fully and faithfully implemented all provisions of this Consent Decree or any approved plan(s) or any part thereof. If objection is based upon failure to implement any plan or part thereof, the burden shall be on the United States to demonstrate that such plan or part thereof is essential to the achievement of one or more of the purposes and objectives set forth in Part I of this Consent Decree. If the United States fails to meet this burden, the injunctions shall be

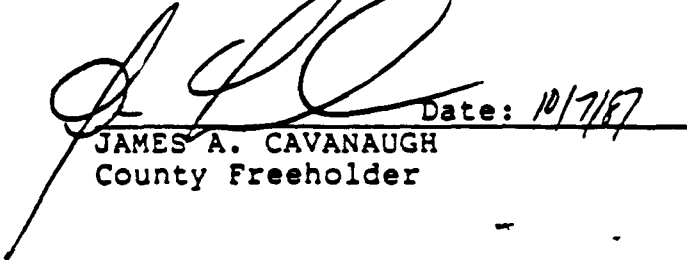
dissolved, jurisdiction shall be terminated, and the case shall be closed and dismissed with prejudice.


CONSENTED TO BY THE UNDERSIGNED:

FOR THE COUNTY OF ESSEX



Date: 9/21/87
NICHOLAS AMATO
County Executive



Date: 9-21-87
CURTIS H. MEANOR
County Counsel
Hall of Records
Newark, New Jersey 07102

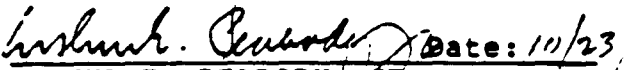

Date: 10/7/87
JAMES A. CAVANAUGH
County Freeholder



Date: 10/7/87
THOMAS P. GIBLIN
County Freeholder

FOR THE UNITED STATES OF AMERICA


Date: _____
WM. BRADFORD REYNOLDS
Assistant Attorney General
Civil Rights Division


Date: 12/81
SAMUEL A. ALITO, JR.
United States Attorney
District of New Jersey


Date: 10/23
ARTHUR E. PEABODY, JR.
Chief
Special Litigation Section


Date: _____
V. COLLEEN MILLER
Attorney
Special Litigation Section
Civil Rights Division
U.S. Department of Justice
Box 37076
Washington, D.C. 20066

Cardell Cooper Date: 10/7/87
CARDELL COOPER
County Freeholder

Adrienne Davis Date: 10/9/87
ADRIANNE DAVIS
County Freeholder

Joseph C. Parlavecchio Date: 10/7/87
JOSEPH C. PARLAVECCHIO
County Freeholder

Pearl Beatty Date: 10/7/87
PEARL BEATTY
County Freeholder

Monroe Jay Dustbader Date: 10/7/87
MONROE JAY DUSTBADER
County Freeholder

Arthur L. Clay Date: 10/7/87
ARTHUR L. CLAY
County Freeholder

Philip Thigpen Date: 10/7/87
PHILIP THIGPEN
County Freeholder

Ronald D. Manzella Date: 10/9/87
RONALD D. MANZELLA
Director
Youth Services Division
Essex County Youth House
Newark, New Jersey 07103

WHEREFORE, the parties to this action having agreed to the provisions in the Consent Decree set forth above, and the Court being advised in the premises, this Consent Decree is hereby entered as the JUDGMENT of this Court.

IT IS SO ORDERED, this 22nd day of October 1987,
at Newark, New Jersey.


WILLIAM K. KUELER
UNITED STATES DISTRICT JUDGE