

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CORRI DITTIMUS BEY, MELVIN
CLARK, MARK ELLIOTT and DONALD
RUDD on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

CAMDEN COUNTY CORRECTIONAL
FACILITY, CAMDEN COUNTY
DEPARTMENT OF CORRECTIONS,
CAMDEN COUNTY, WARDEN ERIC
TAYLOR, DEPUTY WARDEN FRANK
LOBERTO, and JOSEPH RIPA.

Defendants.

CIVIL ACTION NO. 05cv0063

Hon. Jerome B. Simandle, U.S.D.J.

SECOND CONSENT DECREE

I. INTRODUCTION

1. This Second Consent Decree is entered into as of the 19th day of August, 2009, by Plaintiffs Corri Dittimus Bey, Melvin Clark, Mark Elliott and Donald Rudd, as representatives of the Class, as defined below, and Defendants Camden County Correctional Facility, Camden County Department of Corrections, Warden Eric Taylor, Deputy Warden Frank Loberto and Joseph Ripa (collectively "Defendants"), by and through their respective undersigned counsel.

2. This Second Consent Decree is intended to supplement an Interim Consent Decree entered between the parties on December 17, 2007 and approved by the Court on January 22, 2008, and is not intended to fully, finally, or forever resolve, discharge or settle any and all claims against the Defendants.

3. This Consent Decree is narrowly drawn to meet the applicable constitutional and statutory standards and the following terms and conditions are to serve as the basis for the injunctive relief encompassed herein.

4. The parties recognize that while certain aspects of this Consent Decree are aspirational, all short term, intermediate and long-term decision making must follow an established set of guiding principles that meet the letter and spirit of this Consent Decree. Those principles are set forth herein.

5. It is expressly agreed and understood that this Second Consent Decree does not constitute an admission by any party and may not be admitted into evidence in any action involving any party except an action to enforce the terms hereof.

6. This Consent Order shall be governed by the laws of the State of New Jersey.

II. DEFINITIONS

7. "Certified Class" is defined pursuant to Court Order dated July 31, 2007, and includes: all individuals incarcerated at Camden County Correctional Facility, as either pretrial detainees or as convicted prisoners, from the inception of this lawsuit on January 6, 2005, until its termination.

8. "Criminal Justice Coordinating Committee" refers to a committee created by the County of Camden in 2005, consisting of representatives from each of the criminal justice system stakeholders including but not limited to the Superior Court (Criminal Division); Municipal Courts; Superior Court (Family Division); Camden County Prosecutor's Office, Office of the Public Defender; Probation Department; County Administrator's Office; Camden City Police Department; Camden County Sheriff's Department; and Camden County Department of Corrections (Jail).

9. "County Corrections Information System" or "CCIS" serves as the statewide automated information system for the entry, retrieval and exchange of data related to the management of county jail populations. *See* N.J.S.A. 2B:6-6.

10. "Defendants" refers to Camden County Correctional Facility, Camden County Department of Corrections, Camden County, Warden Eric Taylor, Deputy Warden Frank Loberto and Joseph Ripa.

11. "Effective Date" means the date this Second Consent Decree is entered by the Court.

12. "Implement" and any form of the form means to give practical effect and ensure actual fulfillment by concrete measures, including but not limited to staffing, appropriate training of relevant staff and funding.

13. "Include" or "including" means "include, but not be limited to" or "including, but not limited to."

14. "Jail" means the Camden County Correctional Facility located in Camden, New Jersey.

15. "Named Plaintiffs" include plaintiffs Corri Dittimus Bey, Melvin Clark, Mark Elliott and Donald Rudd.

16. "Plaintiffs" include the Named Plaintiffs as well as members of the certified class.

17. "Train" means to instruct in necessary skills, such that the trainee has the demonstrated proficiency to implement those skills as and when called for in the training.

"Trained" means to have achieved such proficiency.

III. FACTUAL BACKGROUND

18. This class action was filed on January 6, 2005, by nine *pro se* complainants incarcerated at the Camden County Correctional Facility, located in Camden, New Jersey (“the Jail”) under 42 U.S.C. §1983 alleging violations of the Sixth, Eighth, and Fourteenth Amendments of the Constitution by various municipal defendants. *See generally* PACER Docket Entry No. 1. The Complaint alleged, among other things, that these inmates were forced to live in overcrowded conditions at the Jail, which included up to four individuals living in a cell designed for a single inmate. *See id.*

19. On November 4, 2005, the Court granted Plaintiff Corri Dittimus-Bey’s Motion for the appointment of counsel under 28 U.S.C. § 1915(e). *See* PACER Docket Entry No. 35. In this same Order, the Court appointed Lisa Rodriguez of Trujillo, Rodriguez and Richards, LLC to represent Plaintiffs. *See id.*

20. On March 31, 2006, Plaintiffs, through their newly appointed counsel, filed an Amended Class Action Complaint (“Amended Complaint”) against Defendants. *See* PACER Docket Entry No. 60. In their Amended Complaint, Plaintiffs alleged that the policies and practices of Defendants have created unconstitutional conditions that both pretrial detainees and convicted prisoners are forced to endure while incarcerated at the Jail. *See generally id.* at ¶¶ 13-35. These include, *inter alia*, overcrowded cells and inadequate sleeping and living arrangements. The Amended Complaint also alleges that the correctional personnel are understaffed. *Id.* Plaintiffs sought both declaratory and injunctive relief. *Id.*

21. By Order dated July 31, 2007, this Court certified a class pursuant to Federal Rule of Civil Procedure 23(b)(2), consisting of:

all individuals incarcerated at [the Jail], either as pretrial detainees or as convicted prisoners, from the inception of this lawsuit on January 6, 2005 until its termination.

See PACER Docket Entry No. 80; and

22. Plaintiffs' overcrowding expert, Steve Martin, opined in his June 29, 2007 report:

It cannot be overemphasized that the conditions of confinement that currently exist at [the Jail] are a manifestation of larger more systemic problems related to the county criminal justice system. While there certainly may be short term strategies that provide some reduction of the overcrowding, such as temporary or fast-track housing in combination with maximizing/expanding existing diversion and release mechanisms, the magnitude of such systemic problems that face county officials will require a total systems approach from professional criminal justice planners for long term solutions.

See Exhibit A, p. 16.

23. Mr. Martin rendered a Supplemental Report dated September 28, 2007 in which he specifically recommended the retention of a criminal justice planner. *See* Exhibit B.

24. In accordance with Mr. Martin's recommendation to retain criminal justice planning firms, and pursuant to the Court's January 22, 2008 Order, the parties retained two criminal justice planning firms, one of which was Pulitzer Bogard & Associates, LLC.

25. Pulitzer Bogard & Associates, LLC was initially retained for the purpose of determining the Jail's operational capacity and staffing needs. Pulitzer Bogard issued initial reports, "Camden County Correctional Facility Capacity Analysis" and "Camden County Correctional Facility Staffing Plan" on or about April 14, 2008. *See* Ex. C and D.

26. Although the State of New Jersey initially assessed the Jail's capacity at 1267 inmates, Pulitzer Bogard's capacity analysis assessed the Jail's capacity to be a maximum of 1083 inmates. *See* Ex. C, p. 49.

27. Pulitzer Bogard's staffing report referenced ideal staffing levels within the Jail. *See Ex. D, p. 48.*

28. Thereafter, pursuant to Resolution of the Camden County Freeholders and the agreement of the parties, Plaintiffs retained Pulitzer Bogard for the additional purpose of providing a comprehensive analysis and improvement plan for managing the population at the Jail, including analyzing and preparing a comprehensive population management growth plan; describing Camden County's case flow and arrest process and identifying interim solutions for immediate needs at the Jail to effectively reduce the population. Pulitzer Bogard partnered with Luminosity, Inc. for this purpose.

29. Pulitzer Bogard and Luminosity, Inc. issued their study to the parties and various stakeholders on April 29, 2009. The report included twenty-two recommendations for improvements or changes within the criminal justice process that would reduce the demand for secure adult pretrial detention and/or the use of the County Jail as a sanction for convicted offenders. The Bogard Report was finalized and issued on May 15, 2009. A copy of the Bogard Report is attached hereto as Exhibit E and is incorporated herein (hereinafter "The Bogard Report")

30. While not intended as a blue print for solving all of the overcrowding problems, the Bogard Report addresses potential remedies that can be tailored to alleviate the overcrowding. The Bogard Report served as the basis for extensive informal negotiations between the Parties and key players within the criminal justice system who are not parties to this litigation, including the Camden County Prosecutor's Office, the Office of the Public Defender, and the Superior Court of New Jersey, Criminal Division.

31. The Parties' presented The Bogard Report with an accompanying power point presentation to the Criminal Justice Coordinating Committee on April 29, 2009.

32. Thereafter, the parties engaged in informal discussions with the Courts, the Prosecutor's Office, the Public Defender's Office and private defense counsel, for the purpose of soliciting their opinions with respect to the report, procuring their voluntary support and participation in assisting in the implementation of some of the recommendations contained within The Bogard Report.

33. The successful implementation of this Consent Decree will require the voluntary participation of many departments, including the Superior Court of Camden County, the Camden County Prosecutor's Office and the Camden Office of the Public Defender's Office.

IV. GUIDING PRINCIPLES

34. The Jail is grossly overpopulated with a current population that far exceeds its current rated capacity of 1267, resulting in the triple and quadruple bunking of cells.

35. The parties recognize that the Jail can not, by statute, refuse admission to any inmate regardless of the Jail's current population levels.

36. The parties recognize that the Jail does not operate in a vacuum and any long-term, effective remedy to the overcrowding population must involve the criminal justice system as a whole.

37. The Parties and their respective counsel agree to cooperate fully with one another in seeking court approval of this, and related future, Consent Decrees and agree to work in good faith to prepare any additional documents that may be required otherwise to effect the timely consummation of the Second Consent Decree and the Order Approving the parties' Second Consent Decree.

38. Sections V (B) and (F) of this Consent Decree include terms that contemplate the good faith voluntary participation and cooperation of third parties who are key players within the criminal justice system and whose actions, directly or indirectly, impact the jail population.

39. The parties recognize that implementation of this Second Consent Decree will not immediately result in the reduction of the Jail Population. The parties agree to have monthly status conference calls with the Court that shall be transcribed by a court reporter for the purpose of providing updates on the status of the implementation and the overall reduction of the population.

V. IMPLEMENTATION OF SELECT BOGARD RECOMMENDATIONS BY DEFENDANTS

40. In accordance with the findings and recommendations set forth in The Bogard Report, the parties agree that implementation of the Recommendations will not occur at once. Accordingly, for purposes of this Second Consent Decree, the parties have agreed to proceed with implementation of Recommendations 2, 6, 16, 20, 21 and 22 of The Bogard Report, as detailed further below. Sections V (A), (C), (D), (E), (G), (H), and Section VI of this Consent Decree include terms that will be carried out by the Defendants as the terms contained therein are within the exclusive control of the Defendants. With respect to Sections V (B) and (F) of this Consent Decree, the parties will seek the voluntary participation of the Prosecutor's Office, the Public Defender's Office, the Courts, and others.

A. Defendants Shall Hire Luminosity, Inc.

41. The Bogard Report, which was prepared by Pulitzer Bogard and Luminosity, Inc., includes complex strategies that will require the assistance of a firm with specialized skills, education and training for purposes of implementation.

42. The Defendant has agreed to retain Luminosity, Inc. for the purpose of assisting in the implementation of select recommendations contained in The Bogard Report. Luminosity has the specialized expertise, extensive training and a proven reputation that is needed to implement the comprehensive strategies set forth in The Bogard Report to reduce jail crowding while maintaining public safety and the integrity of the judicial process.

43. By Resolution of the Camden County Board of Chosen Freeholders, Luminosity was retained for a total cost of \$179, 708 for a term of one year, commencing on July 1, 2009.

44. In particular, one or more Luminosity consultants will be onsite approximately one week each month for 9 months and will provide services including, but not limited to, the following:

- a. Develop and implement a web-based application that will allow authorized users to access and analyze a subset of data extracted from CCIS. The application will be an ASP.NET application accessible via an Internet Explorer web browser and will provide authorized users with predefined views of jail population management data gathered once daily from CCIS.
- b. Lead a CCIS data quality improvement initiative. Work with CCCF staff to identify and correct custody status and other coding errors. Training on custody coding will be provided to all staff that enters data into CCIS. Data quality checks will be completed to ensure that the proper status is entered following any court proceeding. Work with CCCF staff to reconcile the CCIS daily report with the in-house head count to ensure the quality of the CCIS data. (Bogard Report, Recommendation No. 21). *See also* Paragraph 62 below.
- c. Facilitate the CJCC jail population reduction sub-committee meetings, identified in Section B (Creation of a Sub-committee) below, and provide subject matter expertise in order to implement the selected recommendations in the Bogard Report.
- d. Develop a jail population manager position and serve as the jail population manager until one is hired and trained during the first quarter of 2010, subject to the recommendations of the sub-committee referenced in Paragraph V (B). (Bogard Report, Recommendation No. 22). *See also* Paragraph 63 below.

B. Creation of a Sub-Committee.

45. The Defendants, through the Camden County Criminal Justice Coordinating Committee (CJCC), will form a jail population reduction sub-committee. The Federal Court recognizes that the voluntary participation of many departments, including the Camden Vicinage of the Superior Court, the Prosecutor's Office and the Public Defender's Office, is seen as vital to the success of reducing jail crowding. The membership will include representatives from the following:

- a. Camden Vicinage Municipal Division;
- b. Camden Vicinage Criminal Division;
- c. Camden Vicinage Family Division;
- d. Prosecutor's Office;
- e. Public Defender's Office;
- f. Probation;
- g. Private Defense Bar;
- h. County Administrator's Office;
- i. Camden Police Department;
- j. Camden County Sheriff's Office;
- k. Jail Administration; and
- l. Jail County Corrections Information System (CCIS).

46. The sub-committee will be led by two co-chairs and will be staffed by the Jail Population Manager. The committee will meet a minimum of once per month until June 2010 unless extended by this Court. The meetings will consist of multi-hour work sessions with the purpose of identifying and prioritizing viable opportunities to reduce unnecessary detention, some of which are contained in The Bogard Report but may also include newly identified opportunities, and work to implement solutions to the identified opportunities. The committee will also monitor the jail population to measure the impact of the implemented solutions and to continue to identify additional opportunities to reduce unnecessary detention. The representative members should possess local policy-decision making authority. Non-member guests will be invited to the meetings based on the specific topics to be discussed during that meeting.

47. The sub-committee shall report monthly to the Court and counsel with a status update.

C. Time/Day in Custody (Bogard Report, Recommendation No. 2).

48. When individuals are booked into the Jail, standard procedure calls for the time of admission for newly admitted inmates to be time-stamped on their admission sheet immediately upon entry to the booking area. The reality, however, is that many inmates are not booked into the jail until well after the actual time for admission (sometimes longer than 24 hours), resulting in inmates not receiving credit for time already served.

49. Defendants agree to implement a policy whereby jail staffers are trained to override the automatic data entry of the date and time of formal booking to reflect the date and time that the inmate was actually taken into custody by the arresting police department, as reported on the police report.

50. Defendants agree that the policy described in Paragraphs 48 – 49 shall be immediately implemented by the Defendants.

D. Access to Clients (Bogard Report, Recommendation No. 6).

51. At the present time, the jail has limited space and seating available for attorneys (and their staff) to meet with their clients. The inability of defense counsel (and staff) to meet with their clients creates additional delays in the process because counsel is unable to timely speak with their clients. The parties recognize, however, that space for additional seats may not be available within the walls of the CCCF. Accordingly, Defendants have agreed to immediately assess the feasibility of utilizing trailer(s) or some similar temporary solution as rapidly as possible. It is recognized that the Defendants are subject to State Law which may require that the acquisition of such trailer(s) or structure be made through an open, competitive process.

Defendants agree to report back to Plaintiffs' counsel no later than 60 days from the effective date of this Second Consent Decree as to the progress being made to procure space for additional seating on the grounds of CCCF. In the event additional seating cannot be procured on the grounds of the CCCF, the parties agree to meet and confer over other possibilities for additional seating and will report back to the Court at the October 2009 status conference.

E. Electronic Monitoring as Alternative to Incarceration for Sentenced Inmates (Bogard Report, Recommendation No. 16)

52. The necessary steps will be taken to reduce the time between sentencing to the HED program and release on the HED program. The jail should proactively screen inmates for the HED program and make a recommendation to the Court when an eligible inmate is identified.

F. Pretrial Services Program (Bogard Report, Recommendation No. 20).

1. Creation and Staffing

53. Defendants agree to create, fund and staff a pretrial services program, which shall be known as the "Camden County Pretrial Services Agency."

54. Defendants agree to commit the necessary funding to staff the Pretrial Services Agency with a Director and an appropriate number of pretrial officers for a period of one year, subject to renewal upon agreement of the parties.

55. The recruitment, hiring, and training of staff shall begin in January 2010, and the program will be fully operational in April 2010, subject to the recommendations of the sub-committee referenced in Paragraph V (B).

2. Goals

56. It shall be the goal of the Pretrial Services Agency to gather and verify information about certain arrestees, including criminal history, current status in the criminal justice system,

address, employment, mental health history, and drug and alcohol use history, and provide that information, with a recommendation, to the judicial officer making the decision about the terms of the defendant's release.

57. To avoid the unintended consequence of increasing the jail population by imposing conditions on defendants who otherwise would be release on their own recognizance, the Pretrial Services Agency shall conduct evaluations on those inmates not being released on their own recognizance and admitted to the jail.

58. The Pretrial Services Agency shall provide pretrial investigations to judicial officers when bail is being considered or re-considered. The investigations shall, to the extent reasonably possible, be conducted in a manner that is consistent with the American Bar Association Standards on Pretrial Release.

59. The Pretrial Services Agency shall provide pretrial supervision and services when ordered as conditions of bail by judicial officers. The supervision and services shall, to the extent reasonably possible, be provided in a manner that is consistent with the American Bar Association Standards on Pretrial Release. The supervision should include, but not be limited to:

- a. Differential pretrial supervision including varying frequencies of face to face and telephone contacts;
- b. Electronic monitoring location;
- c. Notification to defendants of upcoming court dates;
- d. Maintenance of a system to track developments in the court system for defendants;
- e. Monitoring of compliance with release conditions and preparation of reports reflecting compliance or noncompliance for appropriate officials;
- f. Maintenance of lists of detained persons and assistance in developing alternative release plans for defendants ineligible for unconditional release on recognizance.

3. Monitoring by Plaintiffs' Counsel

60. Defendants shall provide to Plaintiffs' counsel updates on the progress of the creation of the pretrial services program within 180 days from the effective date of this Consent Decree. Thereafter, Defendants shall provide to Plaintiffs' counsel updates every 30 days.

61. Defendants shall provide to Plaintiffs' counsel access upon request to any policies and procedures developed by the Pretrial Services Agency.

G. Improve CCIS Data Quality (Bogard Report, Recommendation No. 21).

62. Luminosity will lead a CCIS data quality improvement initiative in partnership with CCCF and the CJCC jail population reduction sub-committee. Data quality checks will be completed to insure that the proper custody status is entered following any court proceeding. The CCIS data report will be reconciled with the in-house head count to ensure the quality of the CCIS data. *See also* Paragraph 44(b) above.

H. Hiring of a Jail Population Manager (Bogard Report, Recommendation No. 22).

63. The Defendants agree to hire a Jail Population Manager.

64. The Jail Population Manager will be responsible for monitoring the jail population using data and other methods. This person will take steps necessary to work with system stakeholders to identify and resolve individual and system issues impacting the jail population. This person shall be based in the Jail.

65. Luminosity, Inc. will serve as the Jail Population Manager during 2009 and will assist in the hiring and training of the Jail Population Manager during the first quarter of 2010, subject to the recommendations of the sub-committee referenced in Paragraph V (B). *See also* Paragraph 44(d).

66. Defendants shall cause to be publicly posted a job opening in accordance the requirement for posting employment for a county job within 180 days from the effective date of this Second Consent Decree.

VI. ADDITIONAL SETTLEMENT TERM NOT PROVIDED FOR IN THE BOGARD REPORT

67. It is acknowledged by the parties that since the submission of the Jail Staffing Analysis, Ex. D, there has been, to date, a net increase of twenty-nine (29) correctional officers hired by the Defendants.

VII. FUTURE COURT HEARINGS

68. This Second Consent Decree is not intended to be a final resolution of this litigation and, accordingly, the parties agree that this matter should be set down for a status conference with the Court no later than June ___, 2010. At that time, the parties will update the Court on completion of the terms set forth in this Second Consent Decree, as well as the parties' intent to enter into a Third Consent Decree for the purpose of implementing additional recommendations set forth in The Bogard Report or as otherwise agreed to by the parties.

VIII. COUNSEL FEES

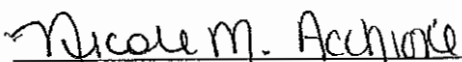
69. Plaintiffs' counsel shall make an application to the Court for an interim award of attorneys' fees not to exceed \$100,000. Defendants agree not to oppose such application for attorneys' fees. The parties agree that an interim award of \$100,000 is reasonable in light of the time, effort, and expense Plaintiffs' Counsel have committed to prosecuting this action to date, and the benefits conferred upon the Certified Class by this Second Consent Decree.

70. The parties agree that this interim award of attorney fees does not fully compensate Plaintiffs' counsel for their attorney fees, costs and expenses, and this Second

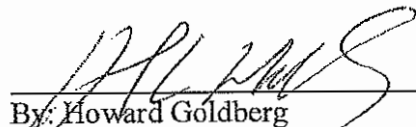
Consent Decree shall not limit Plaintiffs' counsel's right to seek additional fees, costs and expenses in the future.

71. To the extent attorneys' fees are awarded by the Court, Defendants shall provide those funds to the firm of Trujillo Rodriguez & Richards, LLC.

IN WITNESS WHEREOF, the Parties hereto, through their respective attorneys and intending to be legally bound, have executed this Agreement.



By: Nicole M. Acchione, Esq.
Class Counsel for the Plaintiffs



By: Howard Goldberg
Assistant County Counsel
Counsel for Defendants