The implementation of consent decrees in correctional institutions: a case study of Fulton county jail, Georgia

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THE IMPLEMENTATION OF CONSENT DECREES IN CORRECTIONAL INSTITUTIONS: A CASE STUDY OF FULTON COUNTY JAIL, GEORGIA

A DEGREE PAPER
SUBMITTED TO THE FACULTY OF ATLANTA UNIVERSITY IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF PUBLIC ADMINISTRATION.

BY

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The Implementation of Consent Decrees in Correctional Institutions: A Case Study of Fulton County Jail, Georgia.

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The primary intent of this paper is to examine the problems that impede the implementation of Consent Decrees in correctional institutions, with a primary focus on the Fulton County Jail, Georgia. In the process, recommendations are offered to address the problems confronting the implementation process.

Overcrowded conditions and dilapidated physical structures, as well as other inhumane conditions in prisons or jails have drawn attention to correctional institutions. The inaction of officials concerning these problems has led to a preponderance of suits being filed in an attempt to solve these problems. These suits in turn result in Consent Decrees that mandate change in the correctional institution in question. The implementation of these mandated changes is hindered by: (1) the social and political climate, (2) budgetary constraints, and (3) the
commitment of a number of individuals who have committed minor and less violent crimes.

The main sources of information were obtained from interviews with the Chief Jailer of Fulton County Jail (Ellis Brownlee), officials of Georgia Department of Corrections (Sam Austin and Michael Spradlin), and the former monitor of Pambro v. Fulton County Consent Decree (Fritz Byers). Also, a wide variety of secondary information, books, pamphlets, government documents, articles, and case studies were used.
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I. INTRODUCTION

Looking into the history of corrections in the U.S., one would find that the state and federal courts took a "hands off" approach to penal problems by disclaiming expertise and authority in the area. A 1954 court ruling, *Banning v. Looney*, stated flatly that the court was without power to supervise prison administration or interfere with the ordinary prison rules or regulations.¹ Gradually this began to change in the late 1960s, and the Attica Prison bloodbath in 1971 is credited with bringing an increased public awareness in this heretofore neglected segment of the criminal justice system. Court decisions, which exercised control over federal, state and local prisons (jails), suddenly flooded the legal landscape. Such court activities prodded local government officials into action once they felt threatened. The National Association of County Officials sponsored two national jail crisis conferences (Kansas City, MO, 1977; Minneapolis, MN, 1978) to inform elected office holders of their vulnerability to legal action and what could be done to upgrade the jails. Limited federal funds were available for jail construction

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The 1970s and 80s have been the predominant period when consent decrees were issued by the courts to effect change in the United States' correctional institutions. Inmate suits against city, county and state governments have forced (via the judicial system) officials to closely evaluate physical plant conditions, food service, medical care, dental care, psychiatric services, security arrangements, legal assistance, recreation availability, policies and procedures, library services and other specialties in an effort to improve overall conditions.

Quite often, offenders in correctional settings experience situations and conditions that may be grounds for a federal suit. If they communicate their fears, problems, and situations to their attorneys or private legal services, groundwork may be established to uncover the deeper problems that may exist. Grievance procedures are the normal first method of dealing with problems. If, after efforts to gain satisfaction from the dilemma fail, the attorneys for the offender then can move toward filing suit in federal court to resolve the problem.

Under situations involving the rights of incarcerated individuals, the federal judge presiding over the case has great power to request information to make appropriate decisions. If the evidence of failure to provide adequate
attention to offender complaints is verified, attorneys for the plaintiff and defendant may enter into an agreement that can be sanctioned by the court and called officially a "Consent Decree." The decree basically states that both sides have entered into an agreement. A Consent Decree by definition is a court ordered agreement between a plaintiff and a defendant sanctioned by the judicial system that specified actions are to take place.\(^2\) In corrections, the plaintiffs are generally inmates who voice their concerns against the government or government representatives about conditions, treatment, services, needs, cooperation, request, or a variety of subjects that affect them while being incarcerated in any particular institution or detention facility.

As a precautionary measure, both the plaintiff and defendant can, in conjunction, select a representative to monitor the proceedings for the life of the decree. A special monitor is selected, approved by the presiding judge, and begins to monitor all activity involving aspects related to the Consent Decree. Regular reports are sent to the judge, plaintiff's attorney, and defendant's attorney.

More individuals than the offenders are affected by a Consent Decree. Among those affected are: (1) government officials, (2) security chain of command, (3) all groups

named in the suit, and (4) all employees associated with
the correctional facility in any way. 3

Consent Decrees can be classified as expensive
propositions to be dealt with. Great financial considera-
tions must be considered, dependent upon the nature of the
complaint(s). While agencies realize that they are in
charge of the physical maintenance of offenders, the least
amount spent on inmates, the better off financially they
may think they are. This is definitely not the case when a
Consent Decree is issued by the courts. Financial obliga-
tions may occur in which case the institution in question
is obligated to provide even if it does not have the
resources.

In past years, grievances made by inmates were largely
ignored. Such acts by officials in charge in themselves
have led to a preponderance of suits being filed in an
attempt to solve existing problems in the jails and prisons
across the country. Of course, it must be recognized that
jail and prison officials can only work within the
boundaries granted to them (facility, supplies, salaries,
special assistance, etc.). Without full support from
government officials and the internal standards implemented
by the administration of the facility, failure to provide
constitutional care is eminent.

3Interview with Roy Moore, Administrator of
Correctional Medical Systems Inc., Fulton County Jail,
The implementation process in Consent Decrees can be intricate and extended, and securing compliance with complex Judicial Decrees requiring major modifications poses problems of some kind. Implementation, for example, ordinarily creates substantial budgetary obligations. The courts have approved court orders imposing heavy financial obligations on defendant institutions. But where the financial burdens are massive and their constitutional basis relatively tentative, encroaching on areas previously left to state discretion, Appellate Courts may be less supportive. The trial judge may impose the burdens, threaten to alter the state's budget if compliance is not forthcoming, but find that he is actually powerless to take such action. Instead, the judge may be forced simply to make threats and hope to bluff the defendants into compliance.4

The writer, having served as an intern with Correctional Medical Systems, Inc. at the Fulton County Jail is of the opinion that there are crucial problems confronting correctional institutions as far as the implementation of Consent Decrees is concerned. Therefore, the ultimate purpose of this paper is to examine the problems that impede the implementation of the Consent Decrees in Fulton County and to offer recommendations to address these problems.

II. THE PROBLEM AND ITS SETTING

A. Agency and Unit Description

The writer served as an intern with The Correctional Medical Systems, Inc. (Georgia) at the Fulton County Jail for a period beginning February 17, 1986 and ending May 31, 1986.

Correctional Medical Systems, Inc. (CMS), is a growing, private, profit-making organization that contracts with prisons to manage their health care services. Currently, Georgia has nine facilities under medical management contracts. So rapidly has contract medical care grown that the National Institute of Corrections in late 1981 dispatched a team of national prison health care experts to examine the phenomenon. CMS has contracts with thirty-five prisons in seven states with 30,000 inmates, making it the country's largest prison health care management firm.\(^5\)

Correctional Medical Systems, Inc. evolved from a service oriented corporate family. CMS originated as a division of Spectrum Emergency Care, Inc., the nation's largest supplier of emergency care physicians. ARA Services, Inc. is the parent company of both CMS and Spectrum Emergency

Care. ARA Services is internationally recognized as a leader in contract management services.

CMS is part of a family dedicated to contract management services and the delivery of quality health care. The organization of CMS within ARA permits full operational flexibility, thereby allowing personalized attention to each contract. Yet, always available to CMS are the resources and support of ARA Services and Spectrum Emergency Care.

CMS obtained a contract with the Fulton County Jail as a result of a lawsuit that came to be known as the Fambro v. The Fulton County suit. Inmate Fambro and many other inmates at the Fulton County Jail filed separate suits in the Atlanta Area Federal District Court. The complaints voiced were in the areas of (1) visitation, (2) food service, (3) medical, dental and psychiatric services, (4) fire protection, (5) additional security, (6) sanitation, (7) legal services, and (8) overcrowding.

Correctional Medical Systems, Inc. provides health care services for Fulton County Jail in accordance with the American Medical Association Standards For Health Service In Jails. The Detention Facility Health and Sanitation Standards adopted pursuant to Act 448, Georgia Laws 1973, Section 11, state: "Provisions shall be made by the detention facility authority for routine and emergency medical
care of inmates." And the American Public Health Association maintains that:

The intent of health care standards for inmates is not to promote special treatment for this population, but rather to insure that their incarceration does not compromise their health care, and, health care for inmates becomes a public responsibility to be borne jointly by the criminal justice and health care systems.

In this vein and within the spirit of the Consent Decree that was signed in April 1984, CMS provides the following health care services for the Fulton County Jail:

I. Inpatient Care -- Fulton County Jail has a twenty-two-bed infirmary to provide inpatient care.

II. Medical Staff -- Fulton County Jail is staffed with licensed medical personnel to provide sick call and general medical services. The medical staff consists of: licensed physicians, physician assistants, registered nurses, licensed practical nurses, and the necessary ancillary support staff.

III. Specialty Services

Dental Services -- Dental services are available to inmates of Fulton County Jail and are provided by two dentists and a dental assistant.

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7 Ibid.
Psychiatric Services -- Psychiatric services are available to inmates through the services of a mental health team. The mental health team consists of a psychiatrist, psychiatric nurse, and psychiatric social workers.

B. Internship Duties

The writer served mostly in the Division of Mental Health which is responsible for all psychiatric services. The unit falls under preventive and curative care; social service; pretrial release consultation-liaison service; forensic and other court ordered psychiatric evaluations.

The writer's first project was to collect and evaluate data for 1985 State and Superior Court ordered forensic evaluations. The objective was to determine how many pre-trial inmates were competent to stand trial and how many were responsible for the crime.

Upon the request of an attorney for the defendant, the court orders that the Sheriff of Fulton County permit a psychiatric evaluation by a psychiatrist from the Correctional Medical Systems, Inc., of the Fulton County Jail, of the defendant, who may be incarcerated at the Fulton County Jail, for the purpose of determining:

(a) Whether the defendant was mentally competent at the time of the alleged offense.

(b) Whether the defendant is competent to counsel with his or her attorney and is competent to stand trial.
It may further be ordered that a psychiatric report be made available to the court, to the attorney of the defendant, and to the District Attorney, Atlanta Judicial Circuit.

The writer was also involved in the administration of Preventive and Curative Care Service whereby medication is dispensed to inmates with psychiatric problems. In the medical records section, the writer prepared charts for the inmates who requested medical attention. The charts consisted of a progress history, problem list, the doctor's order list, physical examination sheet, and screening form used when an inmate is due for an examination.

C. The Statement of the Problem

The implementation of Consent Decrees has a variety of unanticipated limitations that affect the implementation process. The purpose of this study therefore is to examine the problems that impede the implementation of Consent Decrees in correctional institutions. Specifically, these problems are related to:

A. The Social and Political Climate
B. The Budgetary Constraints
C. The Commitment of a Number of Individuals Who Have Committed Minor and Less Violent Crimes
III. REVIEW OF LITERATURE

In recent years there has been growing attention to the question of prisoners' rights and to problems relating to discretion in prison administration. The Attica Prison Bloodbath in 1971 greatly increased the concern over conditions and inadequacies in the nation's correctional institutions.8

According to Engel and Rothman, legal activism among prisoners reflects an overall growth in litigation in society. It is not surprising that the prisoner, who is increasingly a young, urban, minority male, would bring consciousness-raising attitudes with him into prison. This consciousness has provided inmates with a sense of power, which has in turn inspired prison-related litigation.9

In 1979 Fair stated that since 1969 there has been substantial effort to reform prisons through constitutional law. He noted that in that year, the first federal court decision to hold an entire prison system in violation of the Constitution was handed down in Holt v. Sarver. The suit was brought by inmates in the state of Arkansas.

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requesting the court to declare conditions and practices in the state prison system unconstitutional. The decision rendered by the court held that the Arkansas Penitentiary System violated the cruel and unusual punishment clause of the Eighth Amendment. Subsequently, prisons in nineteen states and numerous counties, cities, and territories have run afoul of the same provision.\(^\text{10}\)

In 1981 Fair further ascertained that, in relation to the judicial impact on the prisons which courts have attempted to reform, courts have the capacity to perform better in prison conditions litigation, and that although courts have had somewhat limited impact, they have made a difference, perhaps about as much difference as any external policymaker could have made with respect to a close, complex bureaucratic organization such as a prison.\(^\text{11}\)

An article entitled "Judicial Process", that appeared in The Criminal Law Reporter, 1978, stated that:

According to a 1977 report by the Federal Judicial Center's Prisoner Civil Rights Committee, one in every seven cases in Federal District Courts throughout the country was filed by a prisoner seeking some form of relief from the conditions of his confinement. The explosion in prison litigation during the past 10 years has placed a tremendous burden on the federal courts both in terms of sheer numbers and in terms of complexity. Not the least of the problems facing


\(^\text{11}\)Ibid., p. 149.
the federal court in handling one of these cases is the difficulty of ensuring compliance with court orders directing reforms.\textsuperscript{12}

An article appearing in \textit{The Criminal Law Reporter}, on "Court Decision," stated that in the litigation over conditions of confinement in the Alabama Prison System, which had spanned numerous court opinions since 1971, the court issued an omnibus opinion disposing of five appeals from various orders of the District Court. In a Consent Decree entered in 1980, state officials who were about to leave office agreed to stop housing state inmates in county jails, to provide a stated amount of living space to inmates in multiple occupancy areas, and to bring all the prison facilities into compliance with earlier court orders. The new State Attorney General argued that the decree should not have been signed over his objection, but the court did not agree.\textsuperscript{13}

Another study cited in \textit{The Criminal Law Reporter}, in 1985, showed that release of pretrial detainees posed a danger to the public and persuaded a majority of the U. S. Court of Appeals for the Seventh Circuit to modify a Consent Decree entered into three years ago by a county and a class of pretrial detainees. According to the majority,


\textsuperscript{13}\textit{The Criminal Law Reporter} 36, Court Decisions (October 1984):2056-57.
the study amounted to changed circumstances that empower the court to modify the decree.\textsuperscript{14}

According to Harris and Spiller, Jr., 1976, noncompliance with Judicial Decrees seems to be a function of two factors: (1) unwillingness or inability to comply on the part of one or more necessary actors, and (2) lack of judicial determination to compel compliance. Inability to comply encompasses lack of understanding, lack of money or other resources, lack of management or administrative skills, lack of authority, and lack of influence over the action of important others. Unwillingness to comply reflects attitudes, priorities, and values. When compliance does not occur spontaneously from the issuance of a decree, its attainment depends on alterations in the stance or ability of the necessary actors. Such alterations sometimes occur as a result of changes or interactions in the setting of the case and sometimes as a result of judicial action. Judicial resolve that compliance be achieved seems to assure that it will be. Conversely, when judicial determination is less firm, or at least less evident, even apparently willing parties may fail to comply fully. Thus, both extra-judicial and judicial factors are capable of

\textsuperscript{14} The Criminal Law Reporter 37, Court Decisions (June 1985): 2187.
significantly influencing the decree implementation process.\textsuperscript{15}

Ney supported settlement as:

\ldots the wave of the future in prisoners' rights lawsuits\ldots it's far better to settle than to fight losing battles in the courts, because if the state ultimately loses a court fight, it may be forced to pay the Prison Project Attorneys' fees, which can be considerable\ldots another advantage of settling is that the state retains a role in crafting the settlement decree, instead of being shut out of the decision-making process in the event of a court ruling.\textsuperscript{16}

Ney also noted that the use of Consent Decrees may increase, especially in areas where courts have detailed the rights of inmates, and where court fights would likely be futile. But Consent Decrees calling for a wide range of reforms must be negotiated very carefully by corrections officials to avoid promises the department cannot afford. Consent Decrees have often been entered into, but almost as often regretted, because officials often agree to things they cannot do.\textsuperscript{17}


\textsuperscript{17}Ibid.
IV. METHODOLOGY

The writer employs a descriptive method of research to assess Consent Decrees in correctional institutions as well as the problem of implementation.

The descriptive method of research enabled the writer to provide an in-depth description of some of the major problems that impinge on the implementation of Consent Decrees in corrections.

In this study, primary data were obtained by utilizing the following data collection techniques: (1) participatory observation (which gave the writer a chance to develop sensitivity and a personal concern about Consent Decrees); (2) personal interviews with the inmates, the Chief Jailer of Fulton County Jail (Ellis Brownlee), officials of the Georgia Department of Offender Rehabilitation (Sam Austin and Michael Spradlin), and the former monitor or special master of Pambro v. Fulton County consent decree (Fritz Byers). These personal interviews provided an opportunity to understand and determine the extent of implementation.

Secondary data were obtained from a variety of sources that includes pamphlets, books, government documents, reports, articles, journals, and case studies.
V. AN ANALYSIS OF THE PROBLEMS

The presence of inmates in an institution established for the purpose of incarceration (be it a jail or prison) is the responsibility of the government agency of the jurisdiction in question. It can more truthfully be stated that the government body must carefully weigh the quality of life, safety and well-being of all the inhabitants. Any reversal from quality care constitutes grounds for cruel and inhumane treatment.

In 1985, the June issue of Corrections Magazine printed a story by Phillip B. Tuft, Jr. which stated that the Director of Central Texas Legal Aid in Austin collected his mail one morning in 1972, and spotted a strange, lumpy envelope. Tearing it open, he pulled out a twisted, dry piece of beef and a short note which read: "This is what we had for dinner today at the jail. See that green spot in the center? Guess what that is?"18 The Director had received dozens of letters bemoaning conditions at the Travis County Jail, but never one like this. Tossing the moldy piece of beef in the trash, he decided to investigate.

What he saw at the jail shocked him. The building was overflowing with inmates. Dozens of them were packed in small, dungeon-like "tanks," at least 30 slept without mattresses or blankets on the floor, sweltering in the hot, foul air. Inmates and guards alike told the Director that they feared for their lives. Standing there listening, the Director would shake first one leg, then the other, trying in vain to keep the cockroaches from crawling up his pants.

The Director immediately took action. He filed *Musgrave v. Frank*, a sweeping class action conditions and overcrowding suit, on December 15, 1972 against the Travis County Sheriff, Commissioners and county executives on behalf of the inmates. It took 11 years, six major court orders and thousands of pages of testimony to change the Travis County Jail through the power of jail litigation.¹⁹

The Fulton County Jail situation is a classic example of problems that may be present in a correctional facility that was in need of serious attention. The facility was built over twenty years ago to hold a maximum population of approximately 800 people but at the time of the *Fambro v. Fulton County* suit, the population was approximately 1450. On the staff were approximately 65 deputies to work three shifts per day, seven days per week. An impossible

¹⁹Ibid.
situation existed which required the utmost patience and understanding on the part of officers and the inmates.

Inmate Fambro and other inmates at the Fulton County Jail filed separate suits in the Atlanta Area Federal District Court. Their complaints were numerous and because they were utilizing the Atlanta Legal Aid Society that in the past had demonstrated competence in matters of this nature, friendly ears were found to hear the cries for help.20 The complaints voiced were in the areas of (1) Visitation, (2) Food Service, (3) Medical, Dental and psychiatric Services, (4) Fire Protection, (5) Additional Security, (6) Sanitation, (7) Legal Services, and (8) Overcrowding.

During the month of April 1984, a Consent Decree was signed by the attorneys representing the plaintiff, the attorneys representing Fulton County and the presiding Federal Judge. The order established a binding pact which states that all participants have a duty to perform. With the establishment of the order, all persons working within the boundaries were given a copy of the order. The purpose of this action, which will continue for several years, is to insure to all parties that full knowledge of the purpose, intent and action of the order exists. Ignorance of

20 Interview with Mr. Fritz Byers, former Monitor for the Fulton County Consent Decree, Atlanta, Georgia, June 9, 1986.
the court order by any of the responsible parties does not free that party from being held in contempt by the judicial system.

In the Alabama prison reform cases, the case of Newman v. Alabama (1972) was a class action suit brought by state prisoners contending that they were deprived of proper and adequate medical treatment in violation of their rights. The officials responsible for the Alabama penal system were required to provide reasonable medical care for inmates in various institutions where failure of the Board of Corrections to provide sufficient medical facilities and staff to enable inmates to enjoy basic elements of adequate medical care constituted a willful and intentional violation of rights of prisoners guaranteed under the Eighth and Fourteenth Amendments.21 In Pugh v. Locke and James v. Wallace,22 which later became known as the Pugh-James suits, inmates Jerry Pugh and Worley James initially were interested primarily in securing monetary damages for alleged rights violations. However, when the former law clerk, M. Nachman, whom U.S. District Judge Frank M. Johnson, Jr. assigned as counsel for Pugh became convinced that Judge Johnson was interested in broad prisoner rights litigation, he persuaded his client to enlarge the case into an


22Ibid.
omnibus class action. By the time Judge Johnson issued his major orders in January 1976, Pugh had already been released from prison. The law professor, Ira DeMent, assigned to represent James also had his client's lawsuit converted into a class action. The Southern Poverty Law Center and American Civil Liberties Union (ACLU) agreed to help underwrite the cases, while the ACLU's National Prison Project, among other prison reform groups, became a friend of the court supporting the plaintiffs.23

For the implementation of the Decrees, Judge Johnson appointed a large lay Human Rights Committee to monitor compliance and provided for appointment of a prison expert as committee consultant. Prison personnel resented the committee, and the Court of Appeals for the Fifth Circuit eventually rejected the lay committee arrangement as an unreasonable intrusion into prison operations.24 Judge Johnson agreed to an arrangement under which George Wallace's successor, Governor Forrest James, conceded the State's substantial failure to comply with the Pugh-James Decree. Alabama's prisons then were placed into receivership and Governor James became receiver, assuming the powers and functions of the State Prison Board. During James' tenure, prison overcrowding remained a serious problem, but the

23Ibid., 389.

24Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977).
Governor made substantial progress in securing something approaching full compliance with other provisions of the Decree.

When Governor James completed his single term as Governor and George Wallace prepared to return to the office, no one, including Wallace, seemed interested in continuing the receivership arrangement. At that point, the plaintiffs and defendants worked out a Consent Decree scheme under which the State agreed to comply with the court's requirements within a designated period and a four-member Implementation Committee was appointed to monitor compliance. In early December 1984, Judge Robert Varner, Judge Johnson's successor in the prison litigation, signed another Consent Decree under which the Implementation Committee, parties, and court agreed that the State was in sufficient compliance with the Constitution that the prison litigation could be brought to an end within three years. The Implementation Committee can initiate further litigation during that period, but the parties cannot. If additional issues are not raised by the committee, a final order disposing of the case could be issued by early 1988.25

The writer, for the purpose of analysis, also refers to the case-study of Collins v. Schoonfield,26 a class

25Ibid.
action suit brought under Civil Rights Act by inmates of Baltimore City Jail against warden, Deputy wardens, president, secretary, and members of City Jail Board for equitable and declaratory relief and for monetary damages with respect to conditions existing at the jail.

A. The Social and Political Climate

In the Alabama cases, prison officials not only represented and challenged the Pugh-James Human Rights Committee's authority, but there were also numerous conflicts between prison personnel and the University of Alabama psychology team ultimately selected by Judge Johnson to establish and implement a system of inmate classification. Particularly since the team had assisted the Pugh-James plaintiffs earlier, prison officials opposed their selection, subjected them to a variety of minor harassments, took no action on the team's classifications of inmates until prodded by Judge Johnson, and allowed the classification system which the team developed to fall gradually into disuse. When the State did not provide the additional facilities necessary to relieve prison overcrowding, Judge Johnson forbade further admissions to State facilities. This decision produced a backup of inmates in local jails, where conditions were frequently worse than those in State prisons, and additional suits challenging conditions in the local units.
Furthermore, the political climate within which a court assumes supervisory powers over an administrative agency is yet another factor affecting implementation. This element has numerous dimensions, including the degree to which responsibility for and power over compliance is fragmented, the perceived political advantages of resistance to the court's orders, the degree of conflict among political bureaucratic actors that the litigation generates, the extent to which judicial intervention is considered legitimate, and the Judge's own political image. The extent to which such factors complicate and delay, or accelerate, the implementation process is difficult to assess precisely, but they clearly affected the pace of compliance in the Alabama cases.

Like many states, Alabama has a highly fragmented political system. At the time the Pugh-James Decree was issued, the Governor appointed members of the State Prison Board. However, the Board appointed the Commissioner of Corrections and supervised institutional operations, and the commissioner could exert an independent influence over the pace of compliance. The Attorney General and other executive officers are elected independently of the Governor, develop their own constituencies, and pursue their own agendas, whatever the priorities of the Governor, the Legislature, or administrative agencies. Furthermore, State policy and revenue are largely in the Legislature's hands,
and those appointed to the Human Rights Committees, Prison Implementation Committee, and other special positions created to secure compliance with the prison orders have pursued their own goals and agendas as well.

The actions and inactions of all these individuals and institutions have exerted an influence over the implementation process. Although Governor Wallace, for example, was a nominal defendant in the cases and was later removed as a Pugh-James defendant by the Fifth Circuit, he was a vehement critic of the Decree. Given his popularity in the State, his attacks, as well as those of other politicians who followed his lead, might have encouraged resistance to compliance among certain prison officials. To bolster his law-and-order image, the Attorney General persuaded a reluctant Judge Varner to make him a defendant in the prison litigation and then used his position to challenge both the court's order and the efforts of the Prison Commissioner to secure compliance. At one point, the Attorney General obtained a state court injunction against an innovative work-release program which the Commissioner had developed to relieve prison overcrowding. Judge Varner promptly overturned the injunction, but the Attorney General continued to obstruct efforts of the court, the Commissioner, and

27Ibid.
Implementation Committee in moving toward a final resolution of the litigation.

Arguably, Judge Johnson's own political image may also have complicated the implementation process. The important civil rights decisions he issued during his more than two decades on the District Court of Alabama made him an extremely controversial figure, a hated symbol of Federal intervention in the State's racial politics, and a favorite target of Wallace and other State politicians. His image and concerns that he had overstepped his authority may have further complicated the Pugh-James implementation process to some extent.

B. The Budgetary Constraints

As the writer has already stated, implementation ordinarily creates substantial budgetary obligations, and the authority of courts to enforce such demands is far from clear. The Consent Decree that resulted from Collins v. Schoonfield, as in many others including Fambro v. Fulton County, had significant financial implications. Funds were needed in order to attain compliance with a number of the Decrees' provisions. In addition, the general airing of the jail's problems that came about with the suit

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contributed to a commitment from the city to maintain increased funding for the jail.

The total cost of implementing the Decrees is difficult to measure, given the fact that most costs were implied rather than direct. For example, the Decrees did not explicitly require hiring additional security personnel, but a number of the Decrees' requirements made additional personnel necessary. Baltimore's Budget Bureau made an estimate of the costs to the city of implementing the two Decrees as part of a justification for petitioning the court to relinquish jurisdiction. According to a study by Harris and Spiller, the estimate reached a total cost for implementing the Decrees of $1,495,200. That figure included $972,200 in additional personnel costs annually; $84,000 for supplies, services and equipment; and $439,000 for material and construction costs. The total includes some one-time costs and some costs that would be continued annually. On the whole, the Decrees increased the costs of running the jail from several hundred thousand to one million dollars a year.

In addition to costs that followed more or less directly from the Decrees' requirements, the litigation

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30 Ibid., p. 412.
contributed to a general increase in funds for the jail. The jail's budget increased from $5.6 million to $9.3 million. The combination of the suit and changes in the jail board, city officials, and leadership at the jail contributed to significant increase in the budget.

It is the opinion of this writer that a connection exists between the suit and other new funds obtained for jail improvements. After the Decrees, limited funds were obtained from the Law Enforcement Assistance Administration for an on-line information system; a reception, diagnostic, and classification center; and staff training. In fact, compliance reports indicated that some of the new personnel deemed necessary for implementation of the Consent Decrees were supported by funds other than those provided directly by the city, particularly social service and medical personnel. Invariably, money has been a major constraint to significant jail reform.

Prisons are more expensive than other institutions because of the massive quantities of heavy materials involved. In addition to cells, space and equipment for all other services have to be built--kitchen, power plants, sewer lines, factories, infirmaries. Among other things, the result of the Pambro v. Fulton County Consent Decree is the new high-rise, 1,400-bed Fulton County Jail, recently

31 Ibid.
bid at less than $32,000 per bed—much less than the national average of about $45,000.\textsuperscript{32} Construction is expected to be completed in 1988. This should be considered within the context that most prisons are built with borrowed money—bonds, bank loans and the like. At today's interest rates, this can triple the cost.

Reluctance by voters and legislators to authorize the large sums that are necessary for the construction of correctional facilities (or even for conversion from other uses) is not a senseless rejection of the generally expressed desire to impose more severe sanctions. Added to this is the annual cost of maintaining the inmates who are to be housed in the new facilities.

With the economy as it is, there is less and less money available for public works projects interest rates remain high, so capital construction requiring governments to borrow large amounts of money are not popular expenditures. Continued high inflation in this regard makes implementation of Consent Decrees all the more intimidating. State, local and county government will not be able to lay out the cash necessary to build the way out of the ever increasing prison litigation suits.

C. The Commitment of a Number of Individuals Who Have Committed Minor and Less Violent Crimes

Prison population totals at state institutions have varied greatly over the past 35 years. After growing slowly but steadily during the 1950s, the inmate population was fairly stable during the 1960s and early 1970s. From the mid-1970s to the present, however, the number of prisoners has grown at an unprecedented rate. According to the U.S. Justice Department's Bureau of Justice Statistics, the number of people in state and federal prisons passed the half-million mark last year (1985).33

Given what has happened in the past decade, it is not surprising that most state prisons are operating beyond their capacities. State officials have responded in various ways to this unstable and dangerous situation. In the short run, they have adopted such unpopular measures as the mass release of prisoners; for the longer run, they have undertaken massive prison expansion. The American Correctional Association reports that, as of mid-1983, 200 new correction-related buildings were under construction in the United States. In all, 80,000 new beds are to be available by 1990.34

33 Bureau of Justice Statistics, "BJS: Prisons Have Overflowed," Corrections Digest 17 (June 18, 1986):1

Prison populations will continue to increase as society enforces its get tough attitude towards crime and criminals. One of every 300 Americans is already behind bars. Many states have adopted determinate sentencing to provide a relatively uniform, fixed length sentence; this, likely, means that more people will be behind bars. These numbers could be decreased somewhat by sentencing alternatives such as half-way houses, restitution, or community service, particularly for first time offenders in non-violent crimes, but still the numbers in prison will increase.\(^{35}\)

In Georgia, the Atlanta Constitution reported that according to prison officials, county sheriffs and the State Board of Pardons and Paroles, Georgia prisons and jails are becoming seriously overcrowded.\(^{36}\) By April 1986, there were 1,246 state inmates in county jails. State prisons held 16,686 or 670 more than the system's official capacity (See Table 1). Until two new prisons open in 1987, state officials expect little relief. Instead, prisons and jails will likely grow even more crowded and the parole board will be pressed to release inmates sooner.\(^{37}\)

\(^{35}\)Ibid., p. 683.

\(^{36}\)"Georgia's Jails, Prisons Again Face Serious Overcrowding," The Atlanta Constitution, Atlanta, Georgia, April 1986, p. 15-A.

\(^{37}\)Interview with Sam Austin, Assistant Deputy Commissioner of Corrections, Georgia Department of Corrections, May 29, 1986.
### TABLE 1

OVERCROWDING IN GEORGIA'S PRISONS

<table>
<thead>
<tr>
<th>Date</th>
<th>Inmates in State Prisons</th>
<th>Normal Capacity of State System</th>
<th>State Inmates in County Jails</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan 1984</td>
<td>15,317</td>
<td>15,356</td>
<td>515</td>
</tr>
<tr>
<td>Jan 1985</td>
<td>15,775</td>
<td>15,454</td>
<td>498</td>
</tr>
<tr>
<td>Jan 1986</td>
<td>16,628</td>
<td>16,016</td>
<td>683</td>
</tr>
<tr>
<td>Apr 1986</td>
<td>16,686</td>
<td>16,016</td>
<td>1,246</td>
</tr>
</tbody>
</table>

Source: *The Atlanta Constitution, April 11, 1986, p. 15-A*
The state's last serious episode of overcrowding occurred in 1982, when about 2,900 inmates who should have been in state prisons were packed into county jails awaiting transfer. Three new prison buildings helped solve the problem. So did new parole guidelines, known as the Grid System, that were designed to hold prison population down by releasing inmates considered unlikely to commit violent offenses. But with Georgia courts handing out more and longer sentences, the additional beds and the Grid System couldn't hold off overcrowding forever.

In Fulton County Jail, with 1400 people in a space designed for 800, space was limited to say the least. The Pambro v. Fulton County made it mandatory that Fulton County could not have an inmate who did not have a bed in custody. Results of this action prompted the jail's administration to find ways to keep the population to a minimum. The courts were pressured to move faster in their efforts to hear, try and decide cases. Bonds were lowered on people who had non-severe cases pending to permit their staying at home instead of waiting in jail.

With all these efforts overcrowding has been reduced significantly. But, although improvements have been made, crime continues, the population increases, more arrests are being made and more people are going to jail.
VI. CONCLUSION

A Consent Decree can be a catalyst for change in prison or jail conditions. However, securing compliance with consent decrees presupposes constraints on the implementation process.

Consent Decrees imply changes in correctional facilities and, without consent decrees, it is highly unlikely that there would be progress in changing the inhumane conditions in correctional institutions. The changes mandated by Consent Decrees are filtered through and conditioned by the social and political climate, the budgetary constraints and overcrowding.

It is the opinion of this writer that implementation of Consent Decrees in correctional institutions, though not an impossible task to accomplish, is greatly hindered by the aforementioned factors.
VII. RECOMMENDATIONS

The following recommendations are offered to address the problems that impede the implementation of Consent Decrees in correctional institutions:

1. The community should be involved to garner support for change. The media and community leaders should be urged and invited to visit correctional facilities on special tours to promote education and support for change.

2. Reduce the number of people who committed lesser crimes and are sent to jail by making use of community service programs, halfway houses and prerelease centers; impose less rigorous restrictions on the granting of bail for persons who have not been convicted; shorten the time served by using more lenient parole policies or through other early release devices; and create more space, by constructing new prefabricated structures or conversion of other facilities into places of confinement.
BIBLIOGRAPHY

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Byers, Fritz. Fulton County Jail, Fulton County, Georgia. Interview, 9 June 1986.


Newman v. Alabama, 559 F. 2d 283 (5th Cir. 1977).


