

**Ninth Quarter Report of the
Court Monitor
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JAMES N. HATTEN, Clerk
By: *J. Reed* Deputy Clerk

RE: Harper, et al. v. Fulton County et al
CIVIL ACTION NO. 04-CV-1416-MHS

Introduction

This quarterly report covers the period from November through December, 2008. It is based on reading and re-reading Consent Decree documents, other relevant materials and inmate letters; meeting with all parties involved in the class action suit case, including various inmates and Fulton County Jail detention officers; meeting with the Court Auditor; attending a jail strategic management meeting; reviewing jail reports on complying with Consent Decree orders; and e-mails, telephone conversations and correspondence from all parties, including Fulton County Jail inmates. It is submitted in accordance with requirements of Section V of the Consent Decree in the above cited case. However, because the eighth quarter report covered the previous four months (July, August, September, and October, 2008) specifically relevant to orders connected to the show cause order issued to the Sheriff by Judge Marvin Shoob, the ninth quarter report covers two months. The show cause order date of November 21, 2008 was replaced by a meeting of all Consent Decree parties in Judge Shoob's Chambers on November 17, 2008. Resulting from that meeting was a commitment by Sheriff Freeman to Judge Shoob that during the newly elected Sheriff's transition to the Fulton County's Sheriff's office, there would be a smooth transition without problems and that no Fulton County Jail changes and decisions would be initiated or made during this period. However, if a change or decision becomes necessary, the Court Auditor would be notified and such change or decision would be determined by him. After hearing the Sheriff's commitment, Judge Shoob decided not to have the show cause order hearing that was scheduled for November 21, 2008. The Sheriff was advised that if he went back on his commitment, the show cause hearing date would be reactivated.

The only visit to Fulton County during the Court Monitor's ninth quarter report was November 12, 13, and 14, 2008. Throughout this visit, the Monitor conducted or participated in meetings and tours with the following parties:

- Plaintiff's Counsel to discuss the Monitor's eighth quarter report;
- Weekly strategic management meeting at the Fulton County Jail on Consent Decree compliance issues;
- Chief Jailer for update briefing on compliance with the Consent Decree;

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- Fulton County Department of General Services to discuss and tour MEP projects in the Fulton County Jail;
- Gwinnett County Jail tour with Fulton County Department of General Services, Fulton County Jail's Chief Jailer, and Court Auditor;
- Fulton County Defendant's Attorneys to discuss the Monitor's eighth quarter report;
- Fulton County Manager to discuss the Monitor's eighth quarter report;
- Fulton County Superior Court Chief Judge to discuss future inmate alternatives to incarceration programs that can be implemented in Fulton County;
- Federal Court Auditor to discuss the eighth quarter report and the Sheriff's lack of compliance with items within the Consent Decree;
- Fulton County Sheriff, Chief Jailer, Consent Decree Attorney, and staff to discuss the Sheriff's responses to the Monitor's eighth quarter report; and
- Federal Judge Marvin Shoob, Staff member Michael Robinson, and Court Auditor to discuss the Sheriff's failure to comply with many of the items in the Consent Decree as presented in the Monitor's and Auditor's reports.

During this reporting period (November and December, 2008) the Sheriff has basically adhered to the commitment that he made to Judge Shoob on November 17, 2008, in Judge Shoob's chambers with all Consent Decree parties in attendance to make an easy transition of Sheriff's responsibilities to the new Fulton County Sheriff who was elected in the November general election. No significant Fulton County Jail decisions or changes occurred. The Monitor maintained continuous communications with the Court Auditor and parties to the Consent Decree.

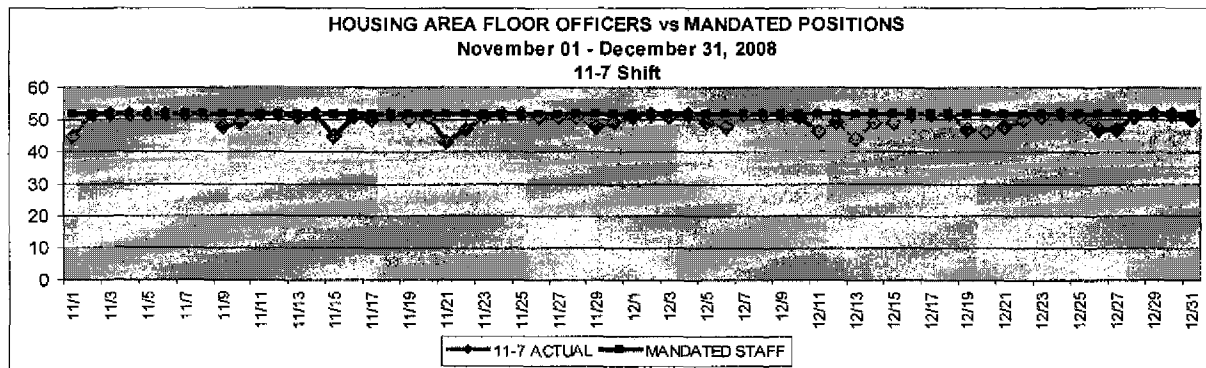
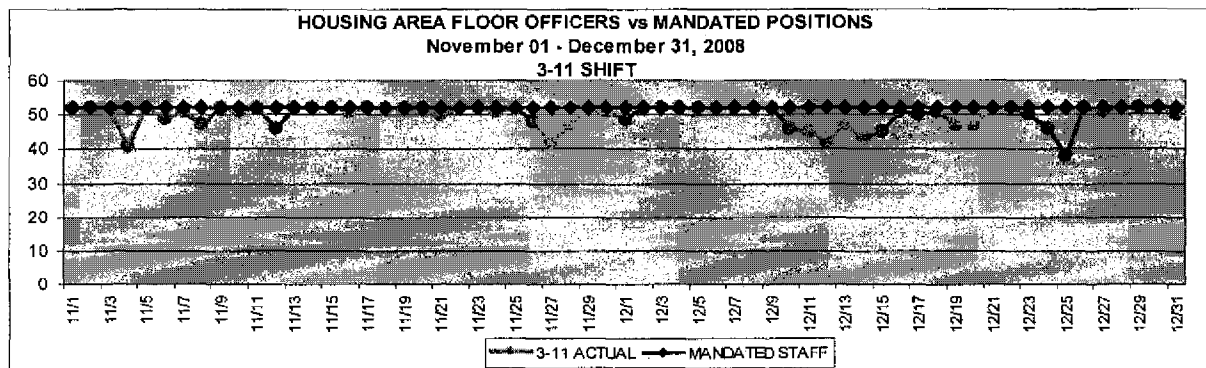
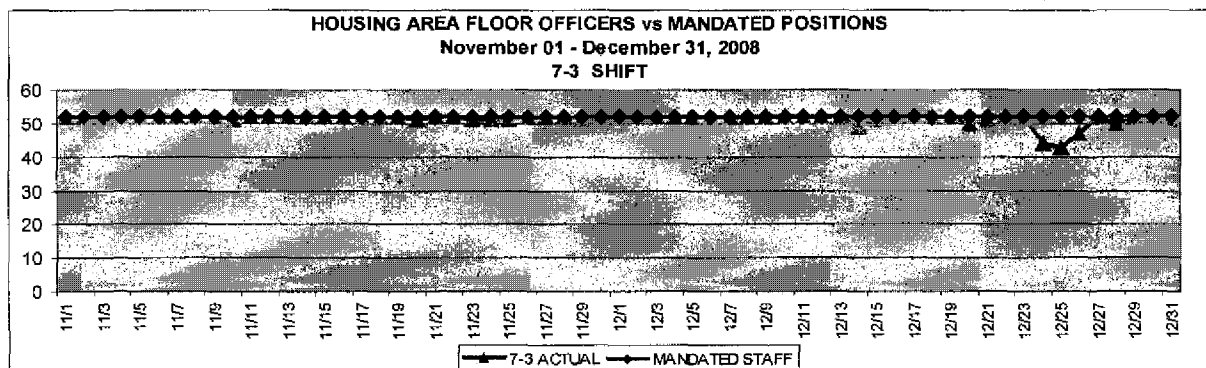
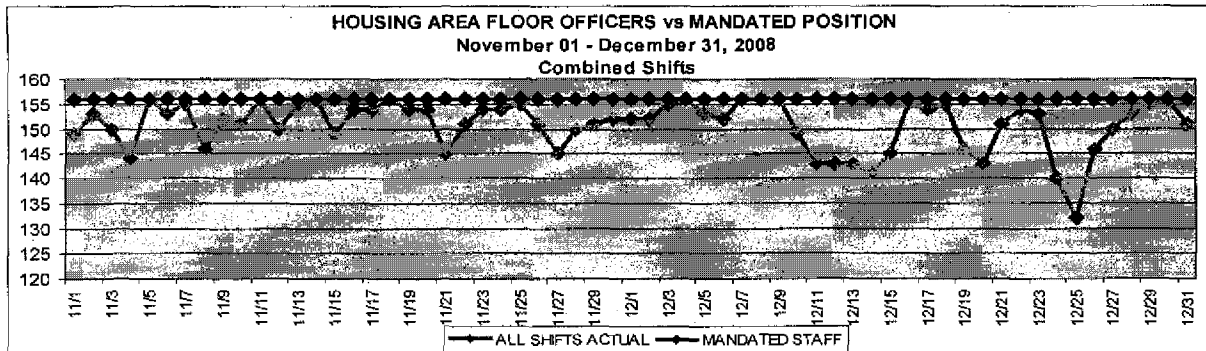
The Auditor submitted his November and December, 2008, monthly reports to the Monitor for his information, comments, and recommendations. The summary of those reports is presented in the following section.

STATISTICAL STAFFING REPORT SUMMARY

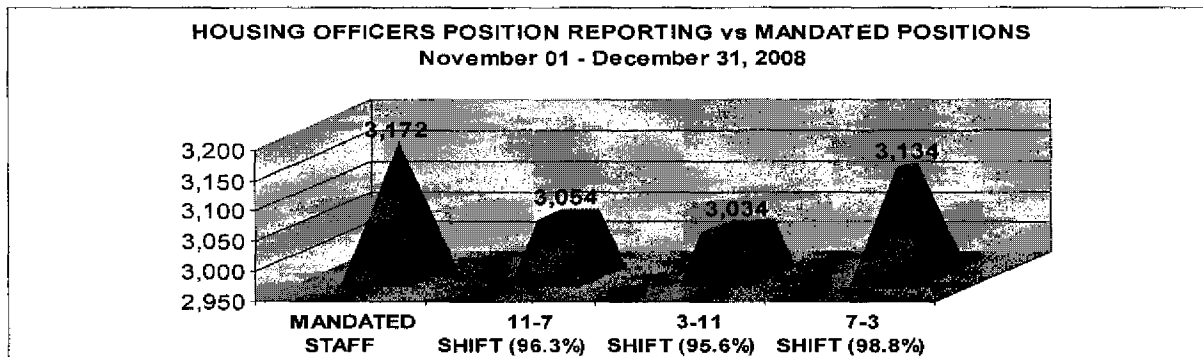
11/01/2008 through 12/31/2008 (Quarterly Report November – December 2008)

HOUSING OFFICER STAFFING DEPLOYMENT REPORT

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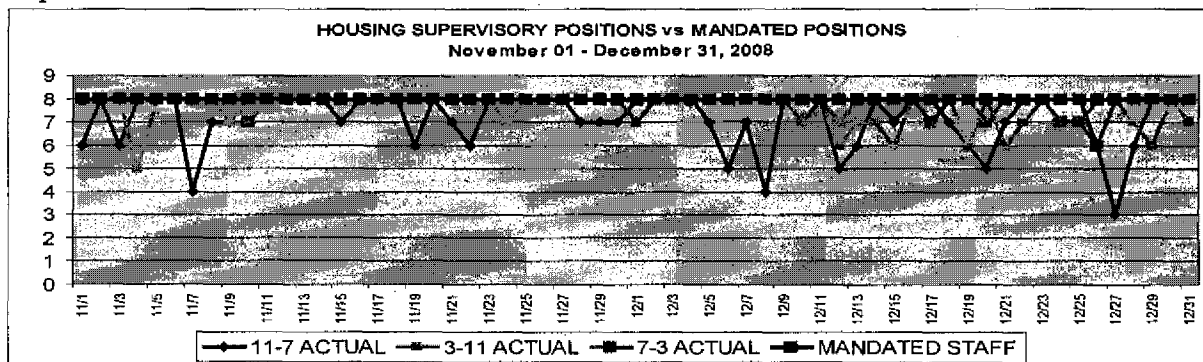


HOUSING SUPERVISORY STAFFING DEPLOYMENT

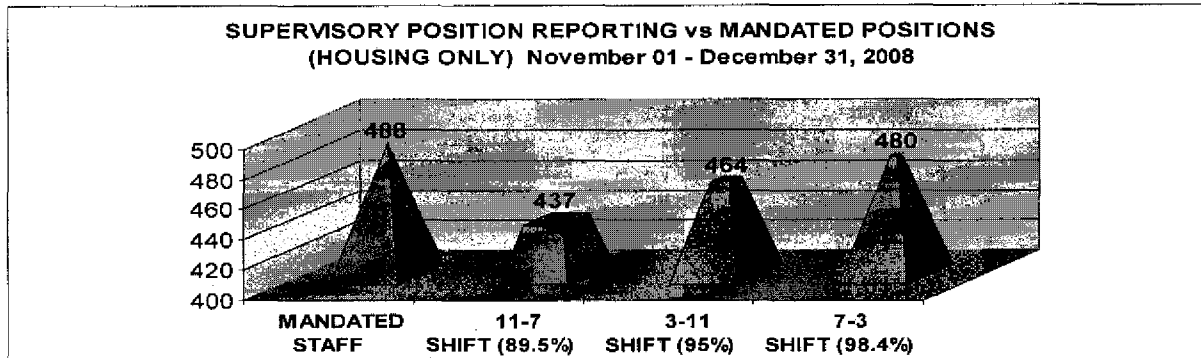
Based upon the staffing analysis that was done using the actual Watch Commanders Staffing and Deployment Reports, the shortage of supervisory staff continues to be dramatic. Of the eight (3-North and 3-South Closed) mandated supervisory posts required by the Consent Decree, the three shifts maintained various averages each consistently operating far below the required mandate of one floor supervisor for each floor in the Main Jail, and one supervisor at the Bellwood and Marietta Blvd. Annex.

11/01/2008 – 12/31/2008

During this 31-day period, there were 1,381 supervisors reporting rather than the 1,464 required to meet the Court Mandate of one supervisor per housing floor and annex facility. The Jail operated with only 94.3% of the Housing supervisors that are required under the Consent Decree.



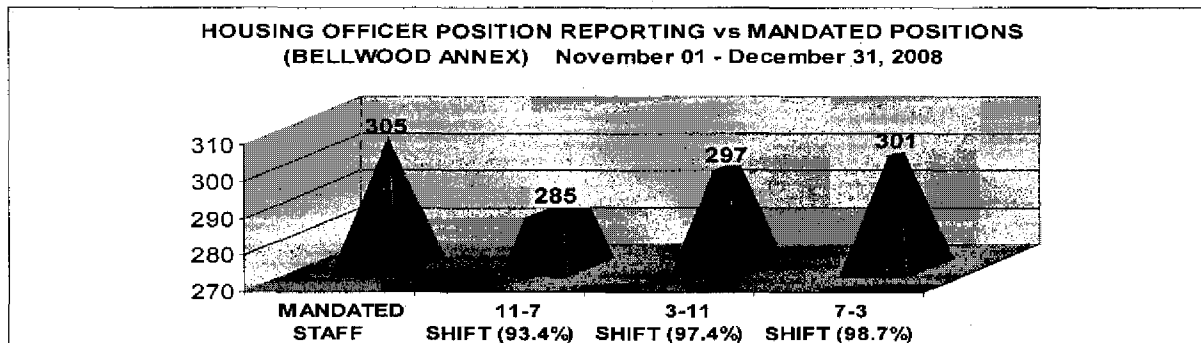
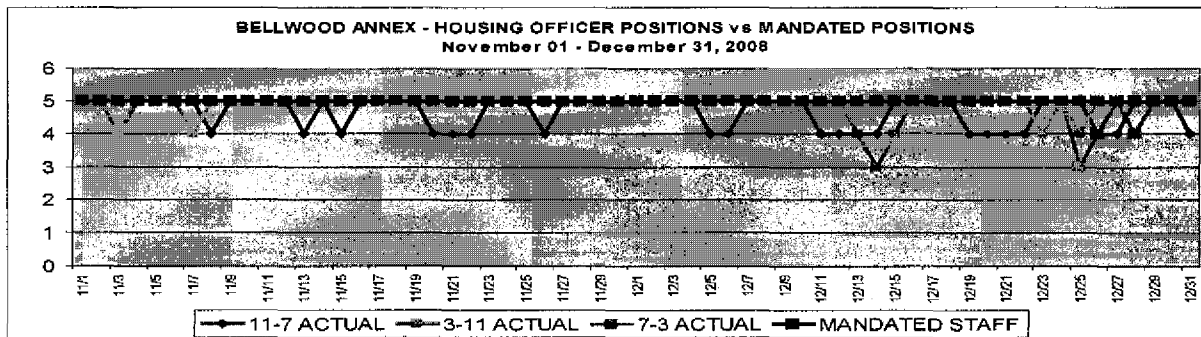
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BELLWOOD ANNEX STAFFING DEPLOYMENT

Housing Unit staffing at the Bellwood Annex has been short of the mandate on each of the shifts during the reporting period, for example:

- 11-7 Shift maintained 93.4% of the mandate
- 3-11 Shift maintained 97.4% of the mandate
- 7-3 Shift maintained 98.7% of the mandate



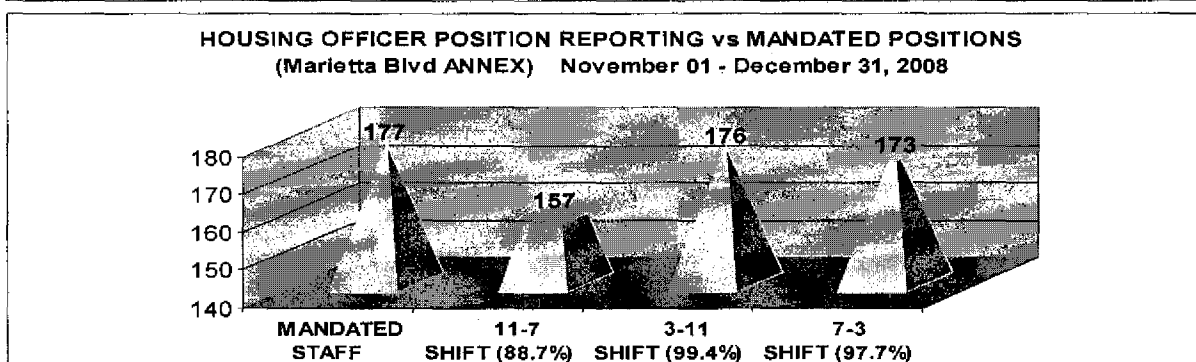
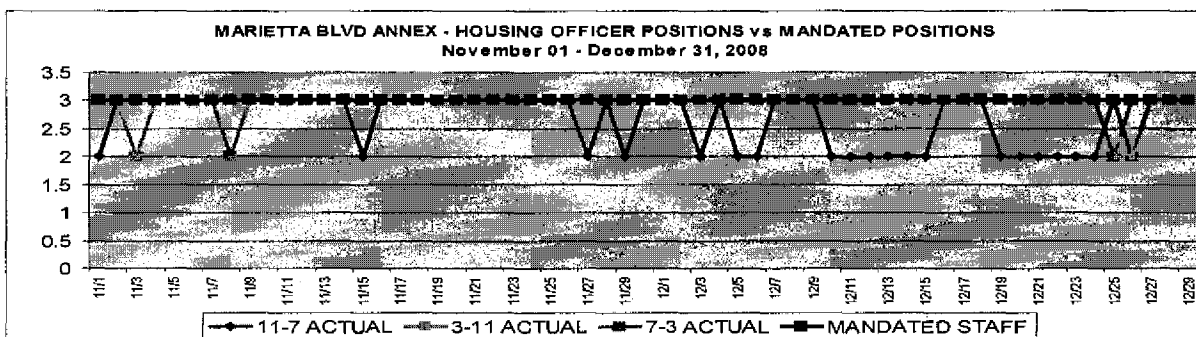
MARIETTA BLVD. ANNEX STAFFING DEPLOYMENT

Housing Unit staffing at the Marietta Blvd. Annex has been short of the mandate on each of the shifts during the reporting period, for example:

- 11-7 Shift maintained 88.7% of the mandate

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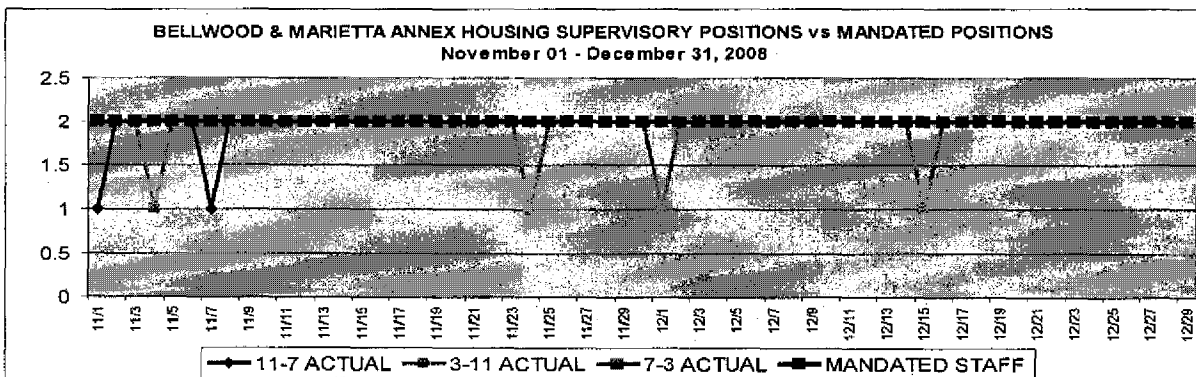
- 3-11 Shift maintained 99.4% of the mandate
- 7-3 Shift maintained 97.7% of the mandate



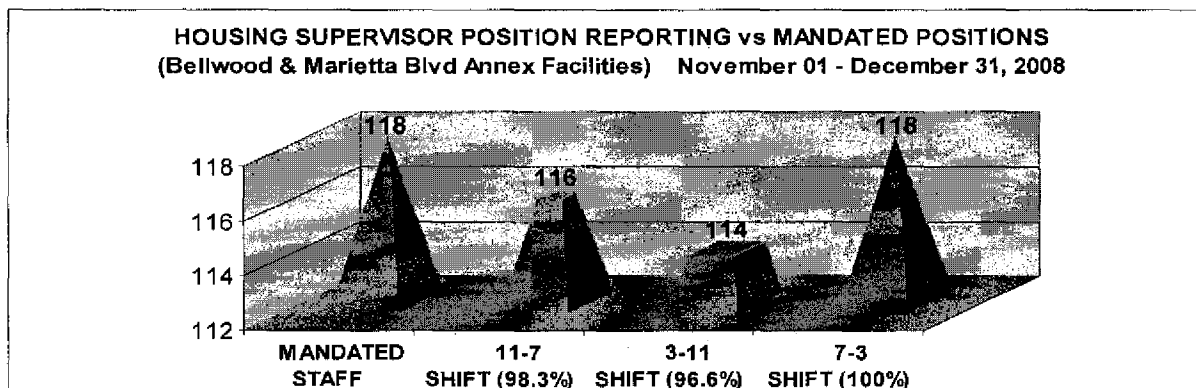
BELLWOOD and MARIETTA ANNEX SUPERVISORY STAFFING:

The following report reflects the percentage of assignments of supervisory officers assigned to both Annex Facilities:

- 11-7 Shift maintained 98.3% of the mandate for supervisory staff
- 3-11 Shift maintained 96.6% % of the mandate for supervisory staff
- 7-3 Shift maintained 100% of the mandate for supervisory staff



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SUMMARY

This summary will highlight various non-compliance sections, subsections, and items of the Consent Decree that are detailed in the appendix sections of this report. However, in the conclusion of this report, a list of all Consent Decree non-compliance items will be presented.

During these final two months of the Sheriff's administration, the Sheriff continued to be unsuccessful in reaching full compliance with a significant number of Consent Decree items. Those items are listed in the conclusion section of this report. Likewise, the Georgia Department of Corrections was unsuccessful in reaching full compliance with the mandated section of the Consent Decree relevant to it. The following section presents the status (compliance or non-compliance) of major Consent Decree items:

MAJOR CONSENT DECREE ITEMS' COMPLIANCE OR NON-COMPLIANCE STATUS

STAFFING

Although, the Sheriff significantly improved staffing Consent Decree mandated posts, during this period, staffing continued to present full Consent Decree compliance problems, in spite of the Jail having the largest contingent of detention officers available for deployment, large amounts of overtime spent, and extra officers working on various shifts. It is the Monitor's and Auditor's opinions that inadequate deployment of staff prevented the Sheriff from achieving full staffing

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compliance as mandated in the Consent Decree. This miss-management of staff deployment existed until and through the last day of the Sheriff's administration. **The staffing item has not reached compliance.**

POPULATION

During this reporting period (November and December, 2008), because the medical section of the jail had to relocate to other parts of the jail to allow the MEP project to proceed with renovations, the main jail's population capacity changed from 1,842 to 1,638. The average daily inmate count in the main jail, during this period, was 1,668. The reduction in inmate population at the Fulton County Jail is attributed to additional beds contracted with other county jails. As a result of the inmate population reduction, the closing of the Marietta facility located on the Fulton County Jail complex was initiated on December 29, 2008. The female inmate population decreased during this period. The reasons for the decrease are unknown at this time.

HOUSING

During this reporting period, Fulton County outsourced Fulton County inmates to Atlanta City Jail, Dekalb County Jail, Union City Jail, Pelham City Jail, Cook County Jail, and Decatur County Jail. Housing inmates in these facilities allowed Fulton County to maintain Consent Decree housing compliance within the Fulton County Jail. **The housing item has reached compliance.**

MEDICAL SERVICES

During this reporting period, because of the MEP project, the Main Medical Clinic, Medical Observation Unit, and the Acute Psychiatric Units were temporarily relocated to the North Tower of the 2nd floor of the Jail. The move has resulted in several challenges to providing health care to the inmates in an environment conducive to appropriately addressing the inmates' medical needs. The challenges are caused by available space, equipment, and facility design. Thus, the dental and x-ray operations have been affected resulting in the number of inmates getting access to dental and x-ray services. These operations have experienced about 20% to 25% reduction in patients brought to the clinic for these services. (For a more detailed review of the Fulton County Jail Medical Clinic move see the Auditor's attached report.)

INMATE GRIEVANCES

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The Inmate Grievances Procedures have been improved significantly and operate effectively. **The Inmate Grievance item has reached compliance.**

INMATE RELEASES

The Inmate Release Process continued to have inmates who are delayed beyond the 24-hour period that is mandated in the Consent Decree. Most of these delays were due to other law enforcement agencies that must be notified by the Sheriff to pick up their particular inmates. Although very little agency contact information was provided by the Sheriff, the Auditor reports that he has experienced that many of these agencies are notified numerous times before they respond, resulting in days and in some cases weeks before pick up. Among the longest delays are those inmates awaiting pick up by Federal law enforcement agencies. Lastly, release delays caused by release paperwork from the courts have greatly been reduced during this period from dozens to typically less than a half dozen per week. More definitive reasons for release delays were made difficult, because of the Sheriff's failure to provide complete data.

EMERGENCY EVACUATION PLAN

Developing an adequate Fulton County Jail inmate and staff emergency evacuation plan continues to be in need. The current evacuation plan as written is not adequate to safely evacuate the inmates to negotiated memorandum of understanding sites that will fully service the category of inmates evacuated to that site. An emergency evacuation proposal was presented to all the Consent Decree parties by the Monitor; however, it has not been accepted by the Sheriff and County defendants. As of this report, no efforts are being made to develop an adequate evacuation plan. At any point in time a disaster could occur that requires full or partial evacuation of the Jail. Also, as mandated, fire drills are not conducted at the main Jail, or Bellwood, Marietta, and Alpharetta facilities. **The Emergency Evacuation Plan item has not reached compliance.**

CAMERAS AND TAPING SYSTEMS

Cameras and taping systems are in serious need of repair and/or replacement. At the present time, many of the cameras fail to meet the mandates of the Consent Decree. Rectifying this problem belongs to both the County and Sheriff defendants. It is primarily a funding issue. It is incumbent upon the Sheriff to have the system assessed for replacement and discontinue funding repairs and replacement of parts.

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He should then prepare a budget request to the County for the purpose of replacing the entire system. **The Cameras and Taping System item has not reached compliance.**

GEORGIA DEPARTMENT OF CORRECTIONS (DOC)

During this reporting period, there has been no significant change from the last Monitor's report in the pick up of inmates who have been sentenced to the Georgia Department of Corrections (DOC). The DOC continues to receive state sentenced inmates according to their protocols and there continues to be no real system of processing or receiving them by which the Sheriff or the Auditor can assess their effectiveness or timeliness in processing and receiving them. There was also no change in the pick ups by the DOC of some inmates who were sentenced to Prison Alternative Programs. The most recent review conducted by the Auditor of this particular category of inmates indicates that approximately half of the inmates being sentenced into these programs are not being picked up by the DOC. Rather, they are being released by the sentencing Judge, because they remain beyond the time period that the Judges allowed for the DOC to receive them. **The Georgia Department of Corrections item has not reached compliance.**

COUNTY DEFENDANTS

It continues to be the opinions of the Monitor and Auditor that the most successful parts of the Consent Decree result from the efforts made by the County Commissioners in the funding of the MEP projects, the outsourced facilities, and staffing the Fulton County Jail. However, there has been a display of insensitivity by the MEP project (Department of General Services) toward the medical clinic's displaced inmates' housing accommodations and general living conditions. In this temporary relocation of medical clinic inmates, line of sight to individual, difficult to observe cells housing serious medical and mental health inmates presents major inmate safety problems. This particular concern was adamantly shared with the Fulton County Department of General Services by both the Monitor and Auditor. It is the Monitor's and Auditor's opinions that continuous observation of these categories of medical inmates is paramount to prevent catastrophic happenings, such as suicides.

INMATE IN-CUSTODY DEATH FOR THIS REPORTING PERIOD

During this reporting period, there was one inmate death under the custody of the Sheriff's office. This inmate death was promptly reported to the Auditor and

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Monitor. The inmate who died was Kenneth Grogan, 0829096. He was pronounced dead some time after arrival at Grady Memorial Hospital on 11/26/2008, at 18:47 hours. According to information provided to the Auditor, inmate Grogan had been playing basketball with other inmates and began to experience shortness of breath. He was immediately taken to the Fulton County Jail Medical Clinic for medical assistance. Emergency Medical Services (EMS) was called and inmate Grogan was transported to Grady Memorial Hospital where he later died. No follow-up information has been provided the Monitor or Auditor by the Sheriff or Chief Jailer on this death.

CONCLUSION

In conclusion, the following list represents the sections, subsections, and items within the Consent Decree with which defendants are not in compliance:

- **Security Rounds** – (Section III, subsection A, item 15) responsibility Sheriff
- **Jail Census** – Population Review (Section III, subsection B, item 21) responsibility Georgia Department of Corrections
- **Processing of Releases** – Delayed Inmate Releases (Section III, subsection C, items 22 and 23) responsibility Sheriff
- **Staffing and Security:** Main Jail Uniform Officers – 96% and Housing Supervisors – 69.5% compliance, Marietta and Bellwood Uniform Officers – 92.9% and Housing Supervisors – 59.1% compliance (Section IV, subsection A, items 25 and 27) responsibility Sheriff
- **Release and Intake** – (Section IV, subsection A, item 29) responsibility Sheriff
- **Population Limits and Housing** – (Section III, subsection B, items 19, 20) responsibility Sheriff
- **Population Limits and Housing** – Classification (Section IV, subsection B, items 32, 35b and 49) responsibility Sheriff
- **Environmental Health and Safety** – (Section IV, subsection E, items 57, 58, 59, 60, 61, and 62) responsibility Sheriff
- **Plumbing** – (Section IV, subsection F, item 65) responsibility Sheriff
- **Laundry** – (Section IV, subsection G, items 70 and 71) responsibility Sheriff

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- **Housing** – (Section IV, subsection H, items 74 and 76) responsibility Sheriff
- **Legal and Family Visits** – (Section IV, subject I, item 77) responsibility Sheriff
- **Medical Care** – (Section IV, subsection J, item 80) responsibility Sheriff
- **Mentally Ill Inmates** – (Section IV, subsection L, items 91 and 92) responsibility Sheriff
- **Safety and Emergency Procedures** – (Section IV, subsection M, items 93, 94, 95, 96, and 97) responsibility Sheriff
- **Emergency Procedures and Preparedness** – (Section IV, subsection M, items 93, 94, and 95) responsibility Sheriff
- **Mass Evacuation and Fire Drills** – (Section IV, subsection M, items 93, 94, and 95) responsibility Sheriff
- **Cameras and Video Tape System** – (Section IV, subsection M, item 100) responsibility Sheriff

The compliance status of all Consent Decree items is reported in the Auditor's monthly reports and the Monitor's quarter reports. The Monitor provides each report to both the Sheriff and Chief Jailer for their review. However, this procedure did not occur during this reporting period, primarily because of the short time remaining in the Sheriff's Administration to effectively comply with the Consent Decree. The Sheriff failed to be re-elected as Fulton County Sheriff in the November, 2008, general election. To this end, Sheriff Myron Freeman and Chief Jailer Edward McNeil were unable to successfully reach full Consent Decree compliance on the previously listed Consent Decree items throughout the entire time that they were in their respective offices of responsibility.

The new Sheriff is Theodore Jackson, retired former Federal Bureau of Investigation (FBI) Special Agent in Charge, Atlanta, Georgia Office. His new responsibilities as Fulton County Sheriff became effective on January 1, 2009. His first major top administrative appointment to the office of Chief Jailer is Riley Taylor, former Federal Court Auditor over this Consent Decree. The Monitor has positive anticipation that Sheriff Jackson's and Chief Taylor's administrations will do what the previous Sheriff and Chief Jailer were unable to do successfully in complying with the many items in the Consent Decree. Chief Taylor served the Federal Court in his capacity as Federal Court Auditor auditing the Harper, et al. v. Fulton County et al Consent Decree in an outstanding manner. His honesty, integrity, and search for the truth, while performing his responsibilities as Auditor, are viewed by the Monitor as of the highest quality and commitment. The

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appointment of Riley Taylor as Fulton County Jail's Chief Jailer is strongly supported by the Court Monitor.

It was recommended by the Monitor to Judge Marvin Shoob that since the Auditor is now the Chief Jailer there will be no need for a Federal Auditor auditing the Consent Decree. The Monitor further recommended that the Chief Jailer continue to submit the Auditor's monthly reports with the same information to the Monitor, as it should have been submitted in the prior Sheriff's administration.

Note: For detailed supportive information, see Auditor's attached report in the appendix section of this report.

Respectfully Submitted,

Calvin A. Lightfoot
Court Monitor

January 9, 2009