

951008
UNITED STATES DISTRICT COURT
BOSTON, MASSACHUSETTS 02109

CHAMBERS OF
JUDGE MORRIS E. LASKER

February 14, 1995

John Boston, Esq.
Legal Aid Society

Leonard Koerner, Esq.
Corporation Counsel

Ernest Marrero, Esq.
Acting General Counsel

Kenneth Schoen, Director
Office of Compliance Consultants

Mrs. Claire Wasserman

Re: Benjamin v. Malcolm
75 Civ. 3073 (MEL)

I have today signed and mailed to Mrs. Wasserman in New York for filing the order continuing the provisions for the funding of the Office of Compliance Consultants.

I understand that a report meeting has been scheduled for Monday, March 20, at 10:30 a.m., in the meeting room of the Pearl Street Courthouse and look forward to seeing you at that time.

Sincerely,

Monroe Eisen

Office of Compliance Consultants

225 Broadway - 13th Floor, New York, NY 10007
Tel 212 608 0572 Fax 212 608 0586

Kenneth F. Schoen
Director

Bethany Gertzog
Deputy Director

February 8, 1995

BY MAIL

The Honorable Morris E. Lasker
United States District Judge
8 Devonshire Street, Suite 1302
Boston, Massachusetts 02109

Re: Benjamin v. Malcolm

Dear Judge Lasker:

Enclosed please find a proposed order of reference for the Office of Compliance Consultants. This order has been reviewed and approved by the Department of Correction and the Legal Aid Society. There are no substantive changes from the prior order, which expired on January 15, 1995.

If you have any questions, please call me.

Very truly yours,

Kenneth F. Schoen
Kenneth F. Schoen

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Enclosure

cc: Leonard Koerner, Esq., Corporation Counsel
Ernesto Marrero, Jr., Esq., Department of Correction
John Boston, Esq., Legal Aid Society

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BENJAMIN v. MALCOLM, 75 Civ. 3073 :

FORTS v. MALCOLM, 76 Civ. 101 :

AMBROSE v. MALCOLM, 76 Civ. 190 :

ORDER
75 Civ. 3073 (MEL)

MALDONADO v. CIUROS, 76 Civ. 2854 :

DETAINEES OF THE BROOKLYN HOUSE OF :
DETENTION FOR MEN v. MALCOLM,
79 Civ. 4913 :

DETAINEES OF THE QUEENS HOUSE OF :
DETENTION FOR MEN v. MALCOLM,
79 Civ. 4914 :

ROSENTHAL v. MALCOLM, 76 Civ. 4854 :
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Plaintiffs having moved for an order adjudging defendants to be in contempt of numerous provisions of the Partial Final Judgments By Consent in the above-captioned cases ("Consent Judgments") and for further relief to remedy the alleged violations of the Consent Judgments, including the imposition of a monetary fine and appointment of an independent monitor; defendants having cross-moved to be relieved of the terms of certain provisions of the Consent Judgments; the Court having approved on June 18, 1982 a Stipulation of the parties providing that in the interest of securing compliance with and achieving the objectives of the Consent Judgments it is in the best interests of all the parties that plaintiffs' motion to hold defendants in contempt and defendant's cross-motion to be relieved of the terms of certain provisions of the judgments be adjourned and that a neutral third

party shall be secured to assist defendants in achieving compliance with the Consent Judgments; and the parties having agreed to a series of Stipulations continuing the operation of the neutral third party consisting of Mr. Kenneth Schoen and the Office of Compliance Consultants ("OCC"), from June 1983 through June 1987; the Court having entered Orders on October 23, 1987, September 5, 1989, July 12, 1991, and January 19, 1993 extending the operation of OCC through, respectively, June 1989, June 1991, June 1993, and January 1995; and the Court having concluded that in order to secure compliance with the Court's orders in these cases it is necessary that the Office of Compliance Consultants continue for another twenty-four months, commencing January 15, 1995, to assist defendants in achieving compliance with the Consent Judgments;

IT IS HEREBY ORDERED AND DECREED that the following shall be entered as an order in these cases:

1. Mr. Kenneth Schoen shall serve as a neutral third party to advise and assist the defendants in achieving compliance with the Consent Judgments and informally to assist the parties in resolving disputes as to compliance with the Consent Judgments.

2. In order to perform this function, Mr. Schoen and/or his designees shall be permitted to:

- a) have unlimited access to all records and documents required to be maintained by the Judgments, and any other records and documents maintained by defendants;
- b) have unlimited access to the facilities that are the subject of the Consent Judgments. Access shall be granted at any time without advance notice;
- c) conduct interviews or arrange informal conferences with all officials, staff members and employees of the New York City Department of Correction and any other New York City agencies whose policies and/or practices affect the provisions of the Consent Judgments, including the Board of Correction and its staff. Such persons shall cooperate with Mr. Schoen and respond directly and promptly to all oral or written inquiries and/or requests related to compliance with the Consent Judgments;
- d) confer privately with any member(s) of the plaintiff classes;

- e) attend formal meetings or proceedings at the subject facilities and the Department's offices.

3. Mr. Schoen shall, as he deems necessary but in any event no less frequently than at four-month intervals, submit written reports that:

- a) assess the current state of compliance with the Judgments, including whether progress has been made and whether compliance has been maintained for a substantial period of time;
- b) summarize any compliance problems that persist;
- c) summarize his efforts informally to achieve compliance, including deadlines set and programs established;
- d) assess requests for changes in the Consent Judgments and set forth recommendations as to whether he deems modification to be justified or appropriate; and
- e) set forth any other recommendations regarding compliance and the need, if any, for

supplementary remedial action, programs and/or deadlines that he believes necessary to secure compliance with the terms of the Judgments.

Copies of the reports shall be provided to an individual designated by each of the parties who shall be given an opportunity to respond informally to, comment on and/or seek modifications of the reports. Subsequent to any comments on or changes in the reports, they shall be provided to the Court.

4. Upon the formal request of a party, OCC shall, as it has in the past, entertain an order of priority for the consideration of compliance issues.

5. As part of their compliance responsibilities, Mr. Schoen and his staff shall:

- a) pursuant to the procedures set forth in the disengagement plan agreed to by the parties and submitted to the Court on May 21, 1987, evaluate, certify and verify Consent Judgment issues as to which OCC disengagement from active monitoring has been sought; and
- b) assess the Department's plans to add new detainee space as defined in Appendix A and the

impact that such plans will have on the Department's compliance with court orders and the provision of basic services to all inmates in the affected facilities. The specific procedures for addressing issues related to new detainee jail space are set forth in Appendix A to this Order.

6. Mr. Schoen shall serve in the above-described position for a minimum of twenty-four months. Mr. Schoen's compensation, at the rate of \$500 per day, and expenses shall be provided by defendants and shall be paid within thirty days of his submission of appropriate documentation. If defendants require the entry of a contract in order to compensate Mr. Schoen and/or to implement the staffing and consultant provisions of this Order, such contract shall be finalized and approved expeditiously, but in no event more than 60 days from the entry of this Order.

7. Mr. Schoen shall select and employ a full-time deputy director and, as he deems necessary, two staff analysts, whose compensation shall be paid at rates set by Mr. Schoen based upon what Mr. Schoen considers reasonably commensurate with the skills, experience and responsibilities held by the deputy director and staff analysts. For the deputy director, the annual rate of compensation, including fringe benefits, shall

not exceed \$95,550. For each of the staff analysts, the annual rate of compensation, including fringe benefits, shall not exceed \$61,425. This provision is without prejudice to an application by Mr. Schoen to increase the salaries of the deputy director and staff analysts in the second year of this order. Such compensation shall be provided by defendants through funds given to Mr. Schoen to pay out as set forth in paragraph 11 below. Mr. Schoen's deputy director and his/her staff analysts: shall meet employment criteria which Mr. Schoen shall set in his own discretion; shall not be City employees; shall be responsible only to Mr. Schoen; shall not be hired from the ranks of current employees of the Department of Correction; shall not be employed by the Department of Correction or by any other City agency or employee having substantial business with the Department of Correction for a period of at least two years following the termination of their employment as OCC staff and, if employed by any City agency or employee, shall not have responsibilities or involvement for any matter concerning the Department of Correction for two years following the termination of OCC employment; and shall not perform other work for the Department of Correction. The continued employment of the deputy director and staff analysts shall be subject only to Mr. Schoen's control.

8. Defendants shall provide Mr. Schoen with necessary secretarial and clerical help and shall also permit Mr. Schoen

to select, subject to plaintiffs' consent, three additional full-time staff members from the ranks of persons who are presently employed by the Department. Pursuant to a Supplemental Order, signed by the Court on February 20, 1991, the principal duties of one of these staff members shall be monitoring defendants' compliance with the Court's orders concerning receiving room processing. These three staff members shall be responsible only to Mr. Schoen and not the defendants; they shall not perform any other work nor shall their continued employment as Mr. Schoen's staff be subject to the defendants' control. These individuals shall be subordinate in salary to the deputy director described in paragraph 7 above and subordinate in responsibility to both the deputy director and his/her staff analysts. Nothing herein is intended to preclude Mr. Schoen, subject to the approval of both parties, from employing additional staff assistants funded from sources other than defendants.

9. Mr. Schoen may, as he deems necessary, and at defendants' expense, consult, select and hire appropriate independent specialists, and/or interns, at rates that he deems reasonable, to aid him in investigating and helping achieve compliance. Defendants shall provide to Mr. Schoen \$43,000 for the first year and \$45,000 for the second year, which shall be used to compensate such specialists, as set forth in paragraph 11 below. It is understood that Mr. Schoen shall notify the

parties of his intent to employ independent specialists and may request comments from the parties on proposed specialists, but that such specialists shall be hired solely at Mr. Schoen's discretion and with such qualifications as he deems appropriate.

10. Office space of adequate size and privacy, and sufficient quantities of equipment and supplies, shall be made available by defendants for use by Mr. Schoen and his staff. Defendants shall also make available to OCC staff a vehicle to be used solely for the purpose of visiting Department facilities and conducting other business pursuant to this Order. This vehicle shall be a safe, mechanically reliable vehicle and shall be of a model and vintage no more than one step below the vehicle assigned to the Commissioner of the Department of Correction.

11. Defendants shall provide Mr. Schoen \$271,900 in the first year of the contract and \$273,900 in the second year, which shall be used to: 1) compensate the OCC deputy director and staff analysts and any interns, experts and/or consultants that Mr. Schoen employs pursuant to paragraphs 7 and 9; 2) pay up to \$4,500 per annum for a secure parking spot within the vicinity of OCC's offices for the vehicle assigned to OCC, as described above in paragraph 10; and 3) pay up to \$6,000 per annum, to be used for any clerical expenses incurred relating

to OCC bookkeeping, payroll records and maintenance and disbursement of salaries and expenses, requisite travel, or any other reasonable administrative expenses. Accurate records shall be maintained of the disbursement of funds and shall be made available to the Court and parties on a monthly basis. At the time the contract is registered with the Comptroller's office the City shall, upon receipt of a written request, advance Mr. Schoen a sum of \$50,000 for the purpose of commencing payment of staff and consultants. Additional funds will be paid monthly upon receipt of the accounting of expenditures. At the end of the period covered by this Order, Mr. Schoen shall make an accounting of the disbursement of funds. Should OCC find these resources inadequate, nothing within this Order shall preclude OCC from requesting additional resources, subject to notification of the parties and approval by the Court.

12. The parties agree that plaintiffs' motion to hold defendants in contempt and defendants' cross-motion to be relieved of certain provisions of the Consent Judgments will, with the Court's approval, be adjourned sine die. However, nothing herein shall be construed to preclude either party from seeking at any time, any form of relief from the Court regarding the Consent Judgments including findings of contempt, modification of the Judgments or termination of the Court's

jurisdiction over the Judgments or any provision thereof. Mr. Schoen's findings and recommendations shall in no way bind the parties, and the power to compel compliance, punish non-compliance or modify the Consent Judgments remains solely with the Court.

At any time after the date this order is signed, either party may move to modify any provision of this order including the period of time for which it shall remain in effect. The criterion for granting such a motion shall be the showing of good cause and the moving party shall not be obligated to meet any other requirement of proof of the Federal Rules of Civil Procedure or of judicial decisions establishing standards for the modification of consent decrees.

It is so ordered.

Dated: New York, New York

_____, 1995

UNITED STATES DISTRICT JUDGE