

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES RHEM, ROBERT FREELY, LEO ROBINSON,
and EUGENE NIXON, individually and on
behalf of all other persons similarly
situated,

Plaintiffs,

-vs-

BENJAMIN J. MALCOLM, Commissioner of
Correction, City of New York; PETER
SCHAEFER, Deputy Warden-in-Command,
Manhattan House of Detention for Men;
JOHN V. LINDSAY, Mayor, City of New York;
RUSSELL G. OSWALD, Commissioner of
Correctional Services, State of New York;
NELSON A. ROCKEFELLER, Governor, State of
New York; and HAROLD A. STEVENS,
Presiding Justice, New York State Supreme
Court, Appellate Division, First
Department, individually and in their
official capacities,

Defendants.

70 Civ. 3962

MEL

ORDER

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Plaintiffs above-named having brought suit in the
United States District Court for the Southern District of
New York on behalf of all inmates of the Manhattan House
of Detention for Men, against Benjamin J. Malcolm, Commis-
sioner of Correction of the City of New York; John V.
Lindsay, Mayor of the City of New York; Peter Schaefer,
Deputy Warden-in-Command, Manhattan House of Detention for
Men; and Nelson Rockefeller, Governor of the State of
New York; Russell G. Oswald, Commissioner of Correctional
Services of the State of New York; and Harold A. Stevens,
Presiding Justice, New York State Supreme Court, Appellate
Division, First Department; and

The complaint having alleged that conditions and prac-
tices in the Manhattan House of Detention for Men deprive
them of their rights to due process of law, to equal pro-

tection of the laws, and to be free from cruel and unusual punishment, guaranteed by the United States Constitution; and

The defendants Malcolm, Lindsay, and Schaefer having denied that conditions and practices in the Manhattan House of Detention for Men violate plaintiffs' rights under the United States Constitution, but desiring to improve conditions in said institution, and believing that it is in the best interests of all the parties that the claims contained in paragraphs 24, 25, 26(b), 28 [except for the allegations that plaintiffs are denied the specific rights referred to in sub-paragraph (a), other than the right to call witnesses in one's own behalf], 29 and 30 [except for the allegations that plaintiffs receive insufficient physical exercise] of the complaint be resolved without further litigation or trial; and

Counsel for plaintiffs and defendants Malcolm, Lindsay and Schaefer having entered into stipulations dated January 16, 1973 and January 24, 1973, settling the above-enumerated claims; and

The Court having ordered that notice of the stipulations of settlement be distributed throughout the Tombs, and having received and considered letters from plaintiffs to the Court in response to said notice; and

The Court having determined that there is no just reason for the delay of entry of final judgment of the settled claims, as hereinafter set forth,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants Malcolm, Lindsay and Schaefer shall:

1. Reduce the population of the Manhattan House of Detention for Men permanently so that as of the date of entry of this order, no more than one inmate shall be housed in any cell, subject to the following conditions:

A. Temporary doubling will be allowed in cells only when, because of cell breakage due to normal wear and tear, negligence, or vandalism, existing cells cannot be used, or because of other extreme emergency.

B. Such temporary doubling in cells will continue only for so long a time, not to exceed sixty days for the repair of any individual cell, as is required to repair the broken cells or to deal with the emergency. All repairs shall be made as quickly as possible.

C. In the event of permanent doubling for administrative or medical reasons, cells with a floor area of at least twice the floor area of existing cells will be provided.

2. Undertake and complete renovations of the Manhattan House of Detention for Men as follows:

A. The roof recreation area shall be enclosed for year-round inmate use no later than December 31, 1973.

B. Plans for renovation of the roof shall be submitted to counsel for plaintiffs upon entry of this order.

- C. Cells will be removed from one-half of the eighth floor and one-half of the fifth floor to provide additional space for inmate programs and quiet recreation no later than June 30, 1974.
- D. Plans for renovation of the fifth and eighth floors shall be submitted to plaintiffs' counsel upon entry of this order.
- E. The basement recreation area shall be used for inmate recreation upon entry of this order.
- F. The entire institution shall be re-wired and the existing lights replaced with fluorescent fixtures no later than March 1, 1974.
- G. All windows which have been welded shut on inmate housing floors shall be opened, and security screening installed for each such window, no later than August 1, 1973.
- H. Either party may petition the Court for either shortening or lengthening the time limits in this section of the order on the basis of the plans submitted to the plaintiffs' counsel or on the basis of unforeseen and unavoidable delay in the construction.

3. Make every effort to keep the Manhattan House of Detention for Men in a sanitary condition, and to that end take the following actions:

- A. The New York City Department of Health shall be required to inspect the Manhattan House of Detention for Men monthly, and to issue a report on the sanitary conditions of the Manhattan House of Detention for Men for six months following the entry of this order.

- B. Said reports shall include a list of all health and sanitation violations observed by the inspector, time limits for the elimination of said violations whenever appropriate, and recommendations as to methods for this elimination.
 - C. Said reports shall be furnished to counsel for all parties, and to the Court.
 - D. Defendants Malcolm, Lindsay, and Schaefer shall abide by the rules and regulations of the Department of Health in the operation of the Manhattan House of Detention for Men, and shall follow all recommendations and comply with all time limits in said reports, except where so doing would constitute a danger to the safety and security of the institution.
 - E. At the end of the six-month period, any party may, for good cause, petition the Court for an additional period of monthly inspections by the Department of Health.
4. Submit a plan to the Court, on or before September 30, 1973, for the provision of an institutional means of laundering inmate clothing. In the event that said plan is unacceptable to plaintiffs, plaintiffs shall have the right fully to litigate this issue.
5. Conduct all institutional disciplinary proceedings at the Manhattan House of Detention for Men according to the disciplinary rules in existence at the time. In order to insure that these rules are followed by all concerned, the following steps shall be taken:

- A. The New York City Board of Correction shall, for a period of six months from the entry of this order, monitor disciplinary hearings at the Manhattan House of Detention for Men.
 - B. For the first two months of this period a representative of the Board shall observe all disciplinary hearings.
 - C. For the remaining four months, the Board need not observe all such hearings, but shall observe a representative sample thereof, and shall interview inmates in punitive segregation.
 - D. The Department of Correction shall give the Board at least twenty minutes' notice before conducting any disciplinary hearing.
 - E. The Board shall make monthly reports to the Court and to counsel on compliance with disciplinary rules at the Manhattan House of Detention for Men.
 - F. At the end of the six-month period, any party may request, for good cause, that further monitoring of disciplinary hearings be conducted by the Board.
6. Institute an inmate council at the Manhattan House of Detention for Men, upon entry of this order, as follows:
- A. The council shall consist of elected inmate representatives from each housing floor and of a permanent representative of the New York City Board of Correction.
 - B. The council shall meet at least once every two weeks.

- C. The council shall be empowered to discuss any and all matters of interest and concern to the inmates of the Manhattan House of Detention for Men, and to present any and all requests, suggestions, and grievances to the commanding officer of the Manhattan House of Detention for Men and to the Commissioner of Correction.
- D. Detailed plans for the operation of the council shall be submitted to the Court and to counsel for plaintiffs upon entry of this order.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that defendants Lindsay, Malcolm and Schaefer shall take the following steps to improve medical and psychiatric services at the Manhattan House of Detention for Men (MHDM):

1. The major clinical programs at MHDM, including medical services, psychiatric services, and the dental program, shall be drawn together within a single organizational framework headed by one individual as of the date of entry of this order.
2. The receiving area of MHDM shall be renovated as follows:
 - A. Two of the existing showers shall be converted into individual examination cubicles.
 - B. X-ray equipment shall be installed in the receiving area.
3. Upon admission to MHDM each inmate shall have a medical examination, including X-ray when X-ray equipment has been installed. Upon the basis of this examination, an inmate will be further assigned as follows:

- A. Inmates who are currently addicted to narcotics shall, if they consent, be immediately assigned to the methadone detoxification program.
- B. Inmates who are homosexuals may be immediately assigned to the area of MHDM reserved for homosexuals.
- C. Inmates with psychiatric problems shall be immediately assigned to the full-time psychiatric program at MHDM.
- D. All other inmates shall be placed on the reception ward for a period of forty-eight hours prior to assignment to a housing floor.
- E. The reception ward shall have a separate twenty-four hour medical-psychiatric staff who shall take inmates' medical and psychiatric histories and conduct medical examinations and laboratory tests.
- F. While on the reception ward, each inmate shall be interviewed by a member of the social services staff.
- G. The reception floor shall be in operation as described as of the date of entry of this order.

4. A formal affiliation shall be sought with Bellevue Hospital, whereby residents would be regularly assigned to MHDM on a rotating basis, and residents training in specialties (including an orthopedist, a urologist, an ophthalmologist, an internist, and an otolaryngologist) would be utilized to provide consultative services. In the event that Bellevue Hospital will not agree to such an affiliation, other means will be sought to provide specialty care in MHDM.

5. The Department of Correction will study whether, upon completion of the renovation of the fifth and eighth floors, areas can be set aside on each of those floors for use for medical or psychiatric consultation or other appropriate medical or psychiatric services.

6. On or before December 31, 1973, a special housing area shall be set aside on one of the housing floors for inmates with chronic medical conditions requiring routine medication.

7. As of the date of entry of this order, a new procedure for daily sick call shall be adopted, as follows:

A. All inmates signing up for sick call shall form a line as directed by the officer when the nurse comes on duty on the floor.

B. The nurse shall speak to each inmate who has signed up for sick call concerning his medical or psychiatric problem.

C. When the nurse determines it is necessary, she may do any or all of the following:

(1) Take an inmate's temperature.

(2) Examine an inmate's throat.

(3) Conduct other appropriate examination procedures.

(4) Give the inmate aspirin or cold capsules.

D. The nurse shall refer all inmates who require further medical or psychiatric examination or care to the clinic.

E. If this procedure is discovered not to be practicable after it is first put into operation, it shall be tried again when the medication ward

is set up for inmates with chronic medical problems, and again when the population at MHDM is reduced to one inmate per cell.

8. On or before December 31, 1973, the Health Services Administration shall have a departmental pharmacist who shall be available for consultation at all city correctional institutions, including MHDM, on a circulating basis.

9. As of the date of entry of this order, specimens for all regular laboratory tests required for inmates shall be taken at MHDM and sent to the New York City laboratories for analysis.

10. The capacity of the infirmary at MHDM shall be reduced from eighteen to sixteen beds. Five beds shall be reserved for short-term emergency psychiatric care when no other facility is available.

11. A career ladder shall be established, with three salary levels, for medical and psychiatric paraprofessionals at MHDM.

12. A continuing program of training of all medical and psychiatric personnel shall be instituted, and shall include regular staff meetings and meetings with correctional personnel.

13. As of the date of entry of this order, a plan for improved procedures for a centralized and comprehensive method of handling inmate medical records shall be prepared and submitted to the Court and to counsel.

14. Continuing frequent and in-depth evaluations of the clinical program at MHDM shall be performed by the Quality of Care Committee.

15. A long-range master plan survey undertaken on a system-wide basis to determine needs and priorities for the Prison Health Services System shall be completed and submitted to the Court and to counsel as of the date of entry of this order, or as soon as practicable thereafter but in no event later than August 31, 1973.

16. The City defendants shall submit detailed reports on the implementation of this order to the Court and to counsel no later than August 31, 1973 and on December 31, 1973. After December 31, 1973, plaintiffs may request the Court, for good cause, to order the defendants to submit further reports on the implementation of this order.

At any time the defendants may, for good cause, petition the Court for an extension of any of the above deadlines. If any dispute should arise as to compliance with any of the terms of this order, the parties shall bring the dispute before the Court for resolution prior to the institution of any contempt proceedings.

ENTER:

MORRIS E. LASKEA

United States District Judge

Dated: New York, New York
August 2nd, 1973.