

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID ROSENTHAL, DOLPH ROSOFF, :  
WILLIE LYNCH, FELIX RIVERA, RAMON :  
MONAGES, CLIFFORD WILSON, NATHANIEL :  
BELL, SANTOS CEPEDA, GREGORY CHURCHILL :  
and JOE EDMONSON, Jr., individually, :  
and on behalf of all other persons :  
similarly situated, :

Plaintiffs, :

-against- :

BENJAMIN MALCOLM, Commissioner of :  
Correction of the City of New York, :  
JACK BIRNBAUM, Deputy Commissioner :  
of Correction of the City of New :  
York, LOWELL E. BELLIN, Health :  
Commissioner and Health Services :  
Administrator of the City of New :  
York, individually and in their :  
official capacities, :

Defendants. :

FINAL JUDGMENT

74 Civ. 4854  
(RJW)

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Plaintiffs having brought suit on November 20, 1974 alleging that the closing of the Branch Queens House of Detention ("Branch Queens") or the failure to provide plaintiffs with treatment and services equivalent to those available at Branch Queens, violates plaintiffs' rights to protection from harm under the United States Constitution, and praying for injunctive relief for the class;

and defendants having denied that plaintiffs' rights under the United States Constitution have been violated;

and the Court having entered a preliminary injunction of November 24, 1974, requiring that plaintiffs receive the same level and type of medical treatment, and the same or equivalent therapeutic programs and services as they received at Branch Queens, and that the same level

and the Court having issued a supplemental order on November 28th, and December 23, 1975, specifying a procedure for contact visits at the Adult Mental Health Center (C-71) and requiring that defendants maintain the therapeutic programs and services then in effect at the Adult Mental Health Center unless they obtain Court approval to change such programs and services;

and the parties having agreed that it is in the best interests of all the parties that all issues in this case be resolved without further litigation;

and counsel for plaintiffs and defendants having entered into a stipulation dated October 25, 1976, settling the plaintiffs claims on all issues except telephone usage;

and the Court having ordered that notice of this stipulation of settlement be posted at all public places throughout the Adult Mental Health Center for sixty days, and opportunity having been given for members of the plaintiff class to express their opinions in response to said notice;

and plaintiffs having moved for Summary Judgment on the issue of telephone usage and the Court having ruled on January 20, 1977 that in the event the parties are unable to reach agreement on this issue, an order would be made requiring defendants to provide plaintiffs with the opportunity to make at least one phone call each day;

and plaintiffs' counsel having conferred with defendants' counsel and with all available members of the plaintiff class concerning the issue of telephone usage;

and counsel for plaintiffs and defendants having entered into a further stipulation dated February 15, 1977 settling the issue of telephone usage in accord with the wishes of the plaintiff class;

and the parties having stipulated that nothing in either stipulation be construed as an admission of any allegation of fact or conclusion of law set forth in the complaint, nor deemed to be a constitutional requirement;

and the parties having stipulated that nothing in either stipulation shall be used against any party in litigation of any other case;

and the Court having determined that there is no just reason for the delay of entry of final judgment in accordance with the settlement stipulations of the parties as hereinafter set forth;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants and their agents and employees be and hereby are enjoined to provide the following services to plaintiff class:

1. Contact Visits.

a. Contact visits shall continue to be provided to plaintiffs according to the current procedure, described below, until such time as a program is established at the House of Detention for Men whereby every visit is a contact visit, pursuant to the Court's orders in Benjamin v. Malcolm, 75 Civ. 3073. At that time, plaintiffs will receive contact visits in the same manner, by following the same procedures and under the same or equivalent cir-

cumstances as will be provided to detainees at the House of Detention for Men, except that in the event that a detainee at the Adult Mental Health Center is so agitated or assaultive when his visitor arrives that it is determined by a psychiatrist or a psychologist that a contact visit would pose a serious threat of physical danger to his visitor, then a contact visit can be denied and a booth visit substituted on that occasion. Written records of such determinations will be kept by the medical staff, and will include a description of the patient's state leading to denial of the contact visit and the signature of the psychiatrist or psychologist making the determination.

b. The current procedure for contact visits, which was established by this Court's order of November 28, 1975 is as follows. Each new detainee at C-71 is informed of the contact visit program by having a notice, which appears in the Court's order of November 28, 1975, read to him. The inmate requests a contact visit by means of an interview slip. Within seven days after the receipt of an interview slip containing the name and address of the visitor with whom the contact visit is requested, the captain assigned to the Mental Health Program or, in his absence, a designated substitute, confers with the inmate team leader or mental health worker, personally interviews the detainee, and informs him whether his request for a contact

test is denied, the inmate is informed of the reasons for the denial.

2. Outdoor Recreation. Plaintiffs shall continue to receive an opportunity to participate in outdoor recreation, if they desire to so participate, at least five days a week for at least one hour each day, if the weather is not inclement. Inclement weather is defined, for the purpose of this order, as falling rain or snow, or heavy winds. Cold or damp weather, or snow on the ground shall not, by themselves or in combination, constitute inclement weather. Defendants will provide plaintiffs with sufficient warm outer clothing to permit the enjoyment of outdoor activity throughout the year.

3. Other Programs.

a. Defendants will continue to provide the following programs at least once weekly:

- (1) art classes,
- (2) movies,
- (3) group meetings,
- (4) community meetings,
- (5) indoor recreation.

b. Defendants shall continue to provide the following facilities: General reading material located on the housing units. Access to a law library available on request.

c. In the event that defendants contemplate equivalent changes in the above-listed programs or facilities, defendants' counsel will so inform plaintiffs' counsel in writing. If plaintiffs consent to such proposed changes, they will notify defendants' counsel within five working days, at which time the changes may be instituted by defendants forthwith. If plaintiffs do not consent to such proposed changes, they may notify the Court of their objections within five working days of receiving notice of the proposed changes, for the Court's determination as to the permissibility of the proposed changes.

4. Personnel. Defendants will maintain a level of correction personnel, mental health workers, nurses, medical doctors, psychiatrists, psychologists, social workers and other staff at C-71 adequate to maintain the life, safety and health of plaintiffs.

5. Telephone Usage. Defendants will afford plaintiffs access to the telephone for at least one telephone call each day. Those members of the class who are in court during the day, and those members of the plaintiff class who request to make their telephone calls during the evening hours, will be given access to the telephone during the evening hours to the extent possible, provided that the telephone will remain available until at least 9:00 P.M. each day; and it is further

ORDERED, ADJUDGED and DECREED, that Paragraphs 3 and 4 above will remain in effect for eighteen months following the entry of this order, and it is further

ORDERED, ADJUDGED and DECREED, that pursuant to the stipulations of settlement dated October 25, 1976 and February 15, 1977, the terms of this judgment shall not be construed as an admission of any allegation of fact, or conclusion of law set forth in the complaint, or <sup>denied an</sup> ~~an indica-~~ <sup>adjudication</sup> ~~tion~~ of any constitutional <sup>rights,</sup> ~~adjudication~~, and it is further

*P.L.W.*

ORDERED, ADJUDGED and DECREED, that pursuant to the stipulations of October 25, 1976 and February 15, 1977, nothing in this judgment shall be used against any party in litigation of any other case, and it is further

ORDERED, ADJUDGED and DECREED, that the Court will retain jurisdiction over this case until further order, for the purpose of enabling the parties to apply for further orders as may be necessary or appropriate for the implementation of or enforcement of or compliance with this Judgment or any of the provisions thereof. Plaintiffs' counsel shall bring any matter to the attention of the defendants before instituting formal contempt proceedings.

Dated: New York, New York

*March 17 1977*

*Robert J. Wood*

United States District Judge

JUDGMENT ENTERED

*CLERK*