P.I. trouble-calls (4)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, et al.,

Plaintiffs,

-against-

75 Civ. 3073

BENJAMIN J. MALCOLM, Commissioner of Correction of the City of New York; ARTHUR RUBIN, Warden, New York City House of Detention for Men; GERARD BROWN, Deputy Warden, New York City House of Detention for Men; and ABRAHAM D. BEAME, Mayor of the City of New York, individually and in their official capacities,

MEMORANDUM

Defendants.

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LASKER, D.J.

On July 31, 1975, the Court of Appeals of this Circuit filed its opinion in Detainees of the Brooklyn House of Detention for Men v. Malcolm and Valvano v. Malcolm (Docket Nos 74-2427 and 2482) (Valvano) affirming a judgment and order, after trial, of the U.S. District Court for the Eastern District of New York which enjoined, with certain qualifications, the confinement of two pre-trial detainees in single occupancy cells 5'8" large at The Brooklyn and Queens Houses of Detention (BHD and QHD). The court ruled that such double celling "created an unconstitutional deprivation of [the detainees'] due process and equal protection rights" (Valvano at 5292) and remanded the case to the District Court:

> "... to consider a proper remedy equitable to both the City and the detainees, keeping in mind the financial crisis facing the City and the practical considerations necessary to prevent the detainees from being transferred to distant facilities. Both parties should have an opportunity to make suggestions with the understanding that the City must act with reasonable promptness to provide facilities for pre-trial detainees consistent with their constitutional rights. Inaction of course will not be tolerated nor will the present conditions be condoned."

The original (pre-appeal) order of the trial court had enjoined double celling altogether, except that during

a "grace period" double celling was allowed as to any detainee for no more than thirty days. On remand the trial court issued an interim order, still in effect, enjoining double celling of any detainee for more than thirty days and requiring defendants to submit a plan within sixty days for the total elimination of double celling.

The plaintiffs in this suit are detainees at the Manhattan House of Detention for Men (HDM), a sister institution of the BHD and QHD. Defendant Malcolm, Commissioner of Corrections of the City of New York, was a defendant in the earlier cases; and the warden at HDM is a defendant here, as were the wardens of Brooklyn and Queens in the prior litigation. Malcolm had the same authority and responsibility as to BHD and QHD as he has with regard to HDM.

The cells at HDM are the same size as those at Brooklyn and Queens. While the number varies daily, approximately 692[1/] detainees at HDM are presently being held two to a cell. The instant suit seeks declaratory and injunctive relief as to allegedly unconstitutional conditions of confinement at HDM and plaintiffs move for preliminary relief enjoining the double celling of any detainee at HDM for more than 30 days.

The defendants contend that preliminary relief

ought not be granted because (1) the Court of Appeals enjoined double celling at BHD and QHD only in the context of general overcrowding, (2) HDM is not overcrowded, because its lockout corridors and dayrooms are larger than those at Brooklyn and QHD, (3) the needs of detainees at HDM, including their recreation, are being adequately provided for, (4) recent scientific studies show that crowding alone has not adverse effect on human behavior, (5) HDM inmates do not eat their meals in their cells, whereas Brooklyn and Queens detainees do and did, (6) HDM inmates spend less time in their cells than Brooklyn and Queens inmates, (7) large numbers of HDM detainees are held only for short periods of time and (8) the Court of Appeals recognized the City's fiscal crisis as at least some justification for present conditions in the jails. (See Defendant's Offer of Proof, submitted at the request and suggestion of the Court.)

The answers to this superficially impressive array of arguments are:

1. Even though we disagree that the Court of Appeals affirmance as to double celling depended on a finding of general overcrowdedness, the statistical material submitted by the plaintiffs on this motion establishes a high rate of double celling and overcrowding at HDM. Indeed, the data includes a report from the defendants

themselves that HDM is "seriously overcrowded" and that the overcrowding has caused a "highly volatile situation" (Bail re-evaluation Project: Implementation Plan, attached to Plaintiffs' Second Supplemental Affidavit sworn October 27, 1975).

2. Lockout corridor - day room space at HDM is nearly identical to that at Queens (see affidavit of Joel Berger sworn November 5, 1975; pages 2-3).

3. The decision in Valvano that double celling in BHD and QHD was unconstitutional was not dependent on or related to "provision for the needs" or recreational opportunities of the detainees.

4. The offer of proof that scientific studies show that crowding alone has no adverse effect seeks merely to relitigate the affirmed finding of the Valvano trial court that double celling was "dehumanizing" and "impermissible." Moreover, we take judicial notice of testimony on the effects of overcrowding by one such expert in Giampetruzzi v. Malcolm, 72 Civ. 4735 in which the expert, testifying for the same defendants as here, admitted that "the first thing I would say is that there is very, very little evidence one way or the other" which "in any way indicates that large numbers of people is either negative or positive in terms of its effect on human behavior." (Giampetruzzi, supra, Tr. 668).

5. While HDM detainees (as contrasted to those at BHD and QHD) do not eat meals in their cells, the Court of Appeals affirmance of Valvano did not rest only on the eating of meals in cells but on other factors as well, such as the "dehumanizing effect" of having to use toilets within sight and presence of cellmates, and the finding that "[t]wo men cannot move about at the same time in the portion of the cell which is not utilized for bunks, table, seat, and toilet" (Valvano, supra at 5285).

6. Detainees at HDM are locked in their cells for substantially the same time as detainees at BHD and QHD (affidavit of Joel Berger sworn November 5, 1975 and testimony of former Warden Thomas of HDM there referred to).

7. Neither the trial court's original decision in Valvano nor its affirmance by the Court of Appeals depended in any way on an inmate's length of stay at the institution in question. Indeed, the trial court has ordered the defendants in Valvano, who are the same defendants here, to submit a plan for the elimination of double celling for all inmates, including those just incarcerated. Accordingly, defendants' offer to prove that the average stay of an HDM inmate is shorter than that of a BHD or QHD inmate is irrelevant.

8. While it is true that the Court of Appeals

recognized the City's financial crisis as a factor which the trial court should keep in mind in fashioning a remedy, the coda to its opinion nevertheless stated:

> "Inadequate resources of finances can never be an excuse for depriving detainees of their constitutional rights. Rhem v. Malcolm, 507 F.2d at 341 (2d Cir. 1974) n. 20; Gates v. Collier, 501 F.2d 1291, 1320 (5th Cir. 1974); Jackson v. Bishop, 404 F.2d 571, 580 (8th Cir. 1968); Hamilton v. Love, supra; Jones v. Wittenberg, supra. On the other hand, as the above authorities indicate, this court is hardly in the position to order the-City to raise the necessary funds to build additional facilities. We can, however, order the release of persons held under conditions which deprive them of rights guaranteed by the Constitution unless the conditions are corrected within a reasonable time! ... Inaction of course will not be tolerated nor will the present condition be condoned."

In sum, we find that the facts relevant on this motion for partial preliminary relief are undisputed. Those facts clearly establish that, under the rule of Valvano, supra, the plaintiffs will probably, if not certainly, prevail on the merits; that their being double celled under conditions existing at HDM constitutes a continuing deprivation of their constitutional rights; and that a preliminary injunction barring the practice is proper.

This memorandum and the remarks made on the

record November 6, 1975, constitute the findings and conclusions of the Court required under Rule 65, Federal Rules of Civil Procedure.

The motion for a preliminary injunction is granted.

Submit order.

Dated: New York, New York
November 18, 1975.

MORRIS E. LASKER
U.S.D.J.

FOOTNOTE

1. See Supplemental Affidavit of Joel Berger sworn October 3, 1975. Defendants' papers do not challenge the figure of 692 stated there.