

1/13/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, et al.,

Plaintiffs,

75 Civ. 3073

-against-

MEMORANDUM

BENJAMIN J. MALCOLM, et al.,

Defendants.

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APPEARANCES:

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Attorneys for Plaintiffs
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Of Counsel: DONALD J. TOBIAS, ESQ.
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LASKER, D.J.

By order dated July 11, 1975, defendants were preliminarily enjoined "forthwith [to] take all practical necessary steps to provide facilities for contact visits to all class members, and all personal visits to class members shall be contact visits as soon as such facilities have been provided." (§1(a))

In February, 1976 defendants submitted a plan to the court for a permanent contact visit facility, the projected completion date of which is May 15, 1977. In the meantime, the City has opened a temporary contact visit facility which, however, is not large enough to assure that all visits are contact visits.

Plaintiffs now seek an order modifying the order of July 11, 1975 to require that every visit at HDM be a contact visit immediately. The plaintiffs recognize that a certain amount of time will be needed to build a permanent facility. Their motion is, therefore, directed to the present facilities and schedules and proposes alternative procedures for the period until the permanent facility is completed:

- 1) to knock out the glass partitions in the non-visitation area which is a holdover from the past and
- 2) to expand the visiting schedule applicable to the new temporary contact visit facilities.

The court visited HDM on July 6, 1976 to make findings as to the conditions in the temporary facilities and as to the feasibility of providing further contact visits by knocking out the glass partitions in the present non-contact visitation area.

While the defendants have not responded to the plaintiffs' suggestion that visiting hours in the temporary contact visit facilities be expanded, they have strongly objected to knocking out the glass partitions on the ground that to do so would create a critical security problem. After a studied consideration of the papers and of the facilities at HDM as of July 6, 1976, we find that the plaintiffs have not established that it would not jeopardize security at the institution to knock out such partitions. The long, straight, narrow corridors which the booths form, dotted at regular intervals with seats for detainees on one side and visitors on the other, are constructed so that the vision is severely limited when the facilities are in use with the result that security governance would be difficult in the extreme if the partitions were removed.

On the other hand, the temporary contact visit facilities now in existence are of excellent quality and could be utilized to provide significantly more visits if the present schedule of visiting hours was expanded. A detainee's constitutional right to contact visits is well

established as the law of this Circuit. While it is understandable that the City cannot create permanent facilities overnight, it is responsible during the period until permanent facilities are completed to assure that as large a percentage of visits are contact visits as is reasonably possible in the circumstances. From the evidence of record in this and earlier proceedings, a shortage of personnel to supervise visits is the sole obstacle to the expansion of visiting hours. The limitation of contact visitation rights cannot be justified on the basis of such a shortage which is remediable by limited additional expenditure.

Accordingly, the motion is granted to the extent of modifying the order of July 11, 1975 to specify that the temporary contact visitation facility be utilized on all weekdays from 9:00 A.M. to 5:00 P.M.

Moreover, it is proper that the City should be on notice that the court expects that the permanent facility shall be completed by the date specified in the plans heretofore submitted by the defendants themselves, that is, on or before May 15, 1977.

Submit order on notice.

Dated: New York, New York
July 13, 1976.

MORRIS E. LASKER

U.S.D.J.