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file
OCC



File # 22

THE LEGAL AID SOCIETY

7/68/85

Criminal Appeals Bureau

Prisoners' Rights Project

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DEPARTMENT OF CORRECTION
RECEIVED

June 27, 1985

JUN 28 1985

General Counsel

Hon. Morris E. Lasker
United States District Judge for
the Southern District of New York
United States Court House
Foley Square
New York, New York 10007

Re: Benjamin v. Malcolm
and related cases

Dear Judge Lasker:

Enclosed for your approval and entry as an Order is a Stipulation agreed to by the parties extending the term of the Office of Compliance Consultants.

This Stipulation has three provisions, not present in prior versions, that were added at the request of the defendants. The first, contained in paragraph 4, is self-explanatory.

The second addition is in paragraph 5. The parties have widely divergent views on the subject of OCC's and the Court's disengagement from the supervision of the Consent Decrees, as well as the appropriate time for resolution of that issue. As you know, we will be submitting papers to the Court on this topic at the end of July. Consequently, paragraph 5 of the Stipulation provides for the possibility of an agreement by the parties or an order of the Court establishing a procedure for OCC's disengagement from its role. This provision is not intended to suggest either that there is a deadline for establishing such a procedure or that such an agreement or order is required.

The third change in the Stipulation, contained in paragraph 6, is that the Stipulation's duration has been altered from eighteen to twelve months. This change was

Hon. Morris E. Lasker
June 27, 1985
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incorporated purely to accomodate defendants' administrative concerns relating to their budgetary process and is not intended to suggest that the parties expect that OCC's work will be completed within the next twelve months.

Respectfully yours,

THK/na

THEODORE H. KATZ
The Legal Aid Society
Counsel for Plaintiffs



LEONARD KOERNER
Assistant Corporation Counsel
Counsel for Defendants

cc: Kenneth Schoen
Michael Cleary
Office of Compliance Consultants

"MM"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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<u>BENJAMIN v. MALCOLM</u> , 75 Civ. 3073	:	
<u>FORTS v. MALCOLM</u> , 76 Civ. 101	:	STIPULATION AND ORDER
<u>AMBROSE v. MALCOLM</u> , 76 Civ. 190	:	
<u>MALDONADO v. CIUROS</u> , 76 Civ. 2854	:	
<u>DETAINEES OF THE BROOKLYN HOUSE OF DETENTION FOR MEN v. MALCOLM</u> , 79 Civ. 4913	:	
<u>DETAINEES OF THE QUEENS HOUSE OF DETENTION FOR MEN v. MALCOLM</u> , 79 Civ. 4914	:	

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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 defendants' cross-motion to be relieved of the terms of certain provisions of the Judgments be adjourned and that a neutral third-party be secured to assist defendants in achieving compliance with the Consent Judgments for a period of eighteen

months; and the parties having agreed that in the interest of all parties the neutral third-party shall continue for another twelve months to assist defendants in achieving compliance with the Consent Judgments;

IT IS HEREBY STIPULATED by and between the undersigned attorneys for the plaintiffs and the defendants herein, and subject to approval by the Court, that the following agreement be entered by consent as an order in this case:

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 to informally 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) inspect 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 which 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 to all inquiries and 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 than at four-month intervals, make written reports which:

a) assess the current state of compliance with the Judgments, including whether progress has been made and whether or not compliance has been maintained for a substantial period of time;

b) summarize any compliance problems which persist;

c) summarize his efforts to informally 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 which he believes necessary to secure compliance with the terms of the Judgments.

Copies of the reports shall be provided to an individual

designated by 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. At such time as the parties and OCC are able to agree to a method for OCC's disengagement from its role or, a procedure for disengagement is prescribed by the court, the procedure for disengagement shall be incorporated in this stipulation.

6. Mr. Schoen shall serve in the above-described position for a minimum of twelve months, at which time the terms of this stipulation shall either expire or be renegotiated. Mr. Schoen's compensation, at the rate of \$250 per day, and expenses shall be provided by defendants.

7. Mr. Schoen shall select and employ a full-time assistant/staff supervisor whose compensation shall be provided by defendants. Such compensation shall be assured and regularly paid and shall be at rates which Mr. Schoen and defendants consider reasonably commensurate with the skills, experience and responsibilities held by the supervisor. Mr. Schoen's assistant/supervisor shall be responsible only to Mr. Schoen, shall not be hired from the ranks of current employees of the Department of Correction or perform other work for the Department of Correction, and his/her continued employment shall not be subject to defendants' control for the duration of this agreement. It is understood that the assistant/supervisor shall, if

requested, provide such documentation necessary to obtain renumeration on the City payroll.

8. Defendants shall provide Mr. Schoen with necessary secretarial and clerical help and shall also permit Mr. Schoen to select, subject to plaintiffs' consent, two full-time staff assistants from the ranks of persons who are presently employed by the Department. These assistants shall be responsible only to him and not the defendants; they shall not perform any other work nor shall their continued employment as Mr. Schoen's assistant be subject to the defendants' control. These assistants shall be subordinate, in both salary and responsibility, to the assistant/supervisor described in paragraph 6 above. 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.

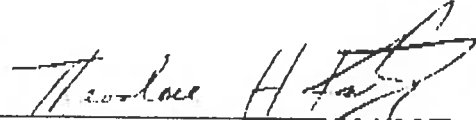
9. Mr. Schoen may, as he deems necessary, and at defendants' expense, consult, select and hire appropriate independent specialists, at rates which he deems reasonable, to aid him in investigating and helping achieve compliance. Defendants shall set aside a fund of \$5000 per year out of which such specialists shall be compensated. It is understood that Mr. Schoen shall notify the parties of his intent to employ independent specialist and that documentation of their services, necessary to receive compensation, shall be provided. To the extent that Mr. Schoen's need for independent specialists exceeds the \$5000 yearly fund, approval for their employment and compensation shall be sought from defendants and such approval shall not be unreasonably withheld.

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.

11. 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 noncompliance or modify the Consent Judgments remains solely with the Court.

12. Upon agreement of both parties and with the approval of the Court, this agreement may be terminated.

Dated: New York, New York
June 27, 1985



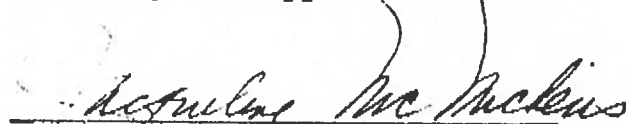
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FREDERICK A.O. SCHWARZ, Jr.
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City of New York
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100 Church Street
New York, New York 10007

By:



Leonard Koerner, Esq.
Assistant Corporation Counsel
in Charge of Appeals Division



JACQUELINE MCMICKENS
Commissioner, New York City
Department of Correction

SO ORDERED.

Dated: New York, New York
June , 1985

UNITED STATES DISTRICT JUDGE

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Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BENJAMIN V. MALCOLM, 75 CIV. 3073
and five other actions

STIPULATION AND ORDER

FREDERICK A. O. SCHWARZ, JR.

Corporation Counsel,

Attorney for Defendants

100 Church Street,

New York, N. Y. 10007

Due and timely service of a copy of the
within
is hereby admitted

New York, 19

Attorney for

To

Attorney for

, Esq.