

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BENJAMIN v. MALCOLM, 75 Civ. 3073 :

FORTS v. MALCOLM, 76 Civ. 101 :

AMBROSE v. MALCOLM, 76 Civ. 190 :

ORDER  
75 Civ. 3073 (MEL)

MALDONADO v. CIUROS, 76 Civ. 2854 :

DETAINEES OF THE BROOKLYN HOUSE OF :  
DETENTION FOR MEN v. MALCOLM,  
79 Civ. 4913 :

DETAINEES OF THE QUEENS HOUSE OF :  
DETENTION FOR MEN v. MALCOLM,  
79 Civ. 4914 :

ROSENTHAL v. MALCOLM, 76 Civ. 4854 :  
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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 defendant's cross-motion to be relieved of the terms of certain provisions of the judgments be adjourned and that a neutral third

party shall be secured to assist defendants in achieving compliance with the Consent Judgments; and the parties having agreed to a series of Stipulations continuing the operation of the neutral third party consisting of Mr. Kenneth Schoen and the Office of Compliance Consultants ("OCC"), from June 1983 through June 1987; the Court having entered Orders on October 23, 1987, September 5, 1989, and July 12, 1991, extending the operation of OCC through, respectively, June 1989, June 1991, and June 1993; and the Court having concluded that in order to secure compliance with the Court's orders in these cases it is necessary that the Office of Compliance Consultants expand its resources and continue for another twenty-four months, commencing January 15, 1993, to assist defendants in achieving compliance with the Consent Judgments;

IT IS HEREBY ORDERED AND DECREED that the following shall be entered as an order in these cases:

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 informally to 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) have unlimited access to 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 that 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 directly and promptly to all oral or written inquiries and/or 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 frequently than at four-month intervals, submit written reports that:

- a) assess the current state of compliance with the Judgments, including whether progress has been made and whether compliance<sup>7</sup> has been maintained for a substantial period of time;
- b) summarize any compliance problems that persist;
- c) summarize his efforts informally to 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 that he believes necessary to secure compliance with the terms of the Judgments.

Copies of the reports shall be provided to an individual designated by each of 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. As part of their compliance responsibilities, Mr. Schoen and his staff shall:

- a) pursuant to the procedures set forth in the disengagement plan agreed to by the parties and submitted to the Court on May 21, 1987, evaluate, certify and verify Consent Judgment issues as to which OCC disengagement from active monitoring has been sought; and
- b) assess the Department's plans to add new detainee space as defined in Appendix A and the impact that such plans will have on the Department's compliance with court orders and

the provision of basic services to all inmates in the affected facilities. The specific procedures for addressing issues related to new detainee jail space are set forth in Appendix A to this Order.

6. Mr. Schoen shall serve in the above-described position for a minimum of twenty-four months. Mr. Schoen's compensation, at the rate of \$500 per day, and expenses shall be provided by defendants and shall be paid within thirty days of his submission of appropriate documentation. If defendants require the entry of a contract in order to compensate Mr. Schoen and/or to implement the staffing and consultant provisions of this Order, such contract shall be finalized and approved expeditiously, but in no event more than 60 days from the entry of this Order.

7. Mr. Schoen shall select and employ a full-time deputy director and, as he deems necessary, two staff analysts, whose compensation shall be paid at rates set by Mr. Schoen based upon what Mr. Schoen considers reasonably commensurate with the skills, experience and responsibilities held by the deputy director and staff analysts. For the deputy director, the annual rate of compensation, including fringe benefits, shall not exceed \$91,000 for the first year and \$95,550 for the second year. For each of the staff analysts, the annual rate

of compensation, including fringe benefits, shall not exceed \$58,500 in the first year and \$61,425 in the second year. Such compensation shall be provided by defendants through funds given to Mr. Schoen to pay out as set forth in paragraph 11 below. Mr. Schoen's deputy director and his/her staff analysts: shall meet employment criteria which Mr. Schoen shall set in his own discretion; shall not be City employees; shall be responsible only to Mr. Schoen; shall not be hired from the ranks of current employees of the Department of Correction; shall not be employed by the Department of Correction or by any other City agency or employee having substantial business with the Department of Correction for a period of at least two years following the termination of their employment as OCC staff and, if employed by any City agency or employee, shall not have responsibilities or involvement for any matter concerning the Department of Correction for two years following the termination of OCC employment; and shall not perform other work for the Department of Correction. The continued employment of the deputy director and staff analysts shall be subject only to Mr. Schoen's control.

8. Defendants shall provide Mr. Schoen with necessary secretarial and clerical help and shall also permit Mr. Schoen to select, subject to plaintiffs' consent, three additional full-time staff members from the ranks of persons who are presently employed by the Department. Pursuant to a

Supplemental Order, signed by the Court on February 20, 1991, the principal duties of one of these staff members shall be monitoring defendants' compliance with the Court's orders concerning receiving room processing. These three staff members shall be responsible only to Mr. Schoen and not the defendants; they shall not perform any other work nor shall their continued employment as Mr. Schoen's staff be subject to the defendants' control. These individuals shall be subordinate in salary to the deputy director described in paragraph 7 above and subordinate in responsibility to both the deputy director and his/her staff analysts. 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, and/or interns, at rates that he deems reasonable, to aid him in investigating and helping achieve compliance. Defendants shall provide to Mr. Schoen \$43,000 for the first year and \$45,000 for the second year, which shall be used to compensate such specialists, as set forth in paragraph 11 below. It is understood that Mr. Schoen shall notify the parties of his intent to employ independent specialists and may request comments from the parties on proposed specialists, but that such specialists shall be hired solely at Mr. Schoen's



discretion and with such qualifications as he deems appropriate.

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. Defendants shall also make available to OCC staff a vehicle to be used solely for the purpose of visiting Department facilities and conducting other business pursuant to this Order. This vehicle shall be a safe, mechanically reliable vehicle and shall be of a model and vintage no more than one step below the vehicle assigned to the Commissioner of the Department of Correction.

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11. Defendants shall provide Mr. Schoen \$262,500 in the first year of the contract and \$274,900 in the second year, which shall be used to: 1) compensate the OCC deputy director and staff analysts and any interns, experts and/or consultants that Mr. Schoen employs pursuant to paragraphs 7 and 9; 2) pay up to \$4,500 per annum for a secure parking spot within the vicinity of OCC's offices for the vehicle assigned to OCC, as described above in paragraph 10; and 3) pay up to \$6,000 per annum, to be used for any clerical expenses incurred relating to OCC bookkeeping, payroll records and maintenance and disbursement of salaries and expenses, requisite travel, or any other reasonable administrative expenses. Accurate records

shall be maintained of the disbursement of funds and shall be made available to the Court and parties on a monthly basis. At the time the contract is registered with the Comptroller's office the City shall, upon receipt of a written request, advance Mr. Schoen a sum of \$50,000 for the purpose of commencing payment of staff and consultants. Additional funds will be paid monthly upon receipt of the accounting of expenditures. At the end of the period covered by this Order, Mr. Schoen shall make an accounting of the disbursement of funds. Should OCC find these resources inadequate, nothing within this Order shall preclude OCC from requesting additional resources, subject to notification of the parties and approval by the Court.

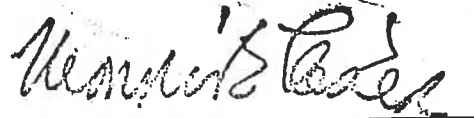
12. The parties agree that plaintiffs' motion to hold defendants in contempt and defendants' cross-motion to be relieved of certain provisions of the Consent Judgments will, with the Court's approval, be adjourned sine die. However, nothing herein shall be construed to preclude either party from seeking 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 non-compliance or modify the Consent Judgments remains solely with the Court.

At any time after January 19, 1994, either party may move to modify any provision of this order including the period of time for which it shall remain in effect. The criterion for granting such a motion shall be the showing of good <sup>o</sup>cause and the moving party shall not be obligated to meet any other requirement of proof of the Federal Rules of Civil Procedure or of judicial decisions establishing standards for the modification of consent decrees.

It is so ordered.

Dated: New York, New York  
January 19, 1993

  
U.S.D.J.

## APPENDIX A

Inasmuch as the opening of new jails and new housing areas in existing jails has implications for the defendants' ability to comply with the Partial Final Judgments by Consent and other orders in these cases, and affects other open issues in the litigation; and because the Office of Compliance Consultants ("OCC") has been given responsibility for helping to address and resolve compliance problems in the short and long-term; it is hereby ordered that:

1. All newly created detainee space in any facility of the New York City Department of Correction falls within the purview of this Appendix. This shall encompass all newly constructed jails or jail housing areas and space previously used for other purposes including the housing of sentenced inmates. Except as set forth in paragraph 3 below, exempted from these provisions is the addition of housing for up to 100 inmates in space that has been converted<sup>2</sup> from sentenced inmate to detainee use in a facility that already houses detainees.

2. As expeditiously as possible after the formulation of plans to create new detainee jail space, as defined in paragraph 1 above, the defendants shall submit to OCC and plaintiffs' counsel a description of the planned new space, its location, its intended capacity, a schedule for occupancy, the

expected impact on the provision of services, and plans for how the additional population will be provided basic services and programs, including all services, programs and rights called for by existing court orders. Among the services for which plans shall be submitted are: food service, medical and mental health care, recreation, law library access, visiting, social services, barbers, school programs and receiving rooms.

3. Service plans to accommodate the population housed in new areas shall include, inter alia, proposed reconfiguration or construction of service areas, including a construction timetable, institutional program schedules and staffing changes (interim and permanent where appropriate). Any changes or updates in such plans shall be provided promptly to OCC and plaintiffs' counsel. As provided in paragraph 2, such plans shall be provided as expeditiously as possible after their formulation but, in any event, normally at least 30 calendar days in advance of utilizing the new housing areas or facilities so that, prior to such utilization, OCC can reasonably make an objective assessment of the adequacy of the Department's plans and the impact the additional population will have on compliance and the provision of services to all inmates in the affected facilities. However, in the instances when housing for no more than 100 detainees is added by converting space from sentenced inmate to detainee use in a facility that already houses detainees, defendants need only provide OCC and plaintiffs' counsel with updated schedules and

other support service plans which have to be modified to accommodate this change in population within 48 hours of the conversion.

4. Under emergency conditions, i.e. when the need to expand into space as defined in paragraph 1 above, is determined to be required less than 30 days before its actual utilization, the Department shall provide the required information as soon as possible and at the latest, when the inmates are being introduced into the added space. The Department shall forward to OCC and plaintiffs' counsel the same information that would be submitted under non-emergency conditions. In addition, when the emergency provisions of this appendix are utilized, the Department shall provide OCC with a written summary of its review of the steps taken to insure that the newly occupied space would be in compliance with the Consent Judgments.

5. As is the case under the OCC Order, in fulfilling their responsibilities with regard to assessing the impact of additional population, OCC staff shall be permitted to inspect all relevant records and documents, have unlimited access to the subject facilities, and conduct interviews or arrange informal conferences with officials, employees and agents of any New York City agencies whose policies and/or practices affect the provision of services within the jails. Such persons shall cooperate with OCC staff and respond to all inquiries and requests for relevant information.

6. After receiving the above-described information from the Department and any additional information it deems necessary, OCC shall assess the adequacy of the Department's plans as well as the impact that the additional population will have on the Department's compliance with court orders and the provision of basic services to all inmates in the affected facilities. OCC shall also set forth any recommendations it has regarding the addition of new housing space. A copy of OCC's evaluation and recommendations shall be provided to the parties. While OCC's findings and recommendations shall in no way bind the parties, either party is free to seek relief from the Court at any time and in doing so, may cite and make reference to OCC's findings. It remains within the discretion of the Court to determine what weight to give to OCC's findings and whether to hear directly from OCC staff on issues that are raised by either party.

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