

FOID
-ORDN 94/042

UNITED STATES DISTRICT COURT

BOSTON, MASSACHUSETTS 02109

JUDGE MORRIS E. LASKER

December 14, 1994

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Re: Benjamin v. Malcolm

I have today signed the Order re: Consent Decree Compliance During In-House Food Service enclosed in Ken Schoen's letter to me of December 12. It correctly incorporates the changes requested in my letter of December 2.

Simultaneously with the dispatch of this letter, I am forwarding the original Order to the Southern District of New York for filing.

Sincerely,

Memphis Coker

cc: Claire Wasserman
(with enclosure)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
JAMES BENJAMIN, et al.,

Plaintiffs,

75 Civ. 3073
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X
ERNESTO MALDONADO, et al.,

Plaintiffs,

76 Civ. 2854
(MEL)

- against -

WILLIAM CIUROS, JR., et al.,

Defendants.

-----X
DETAINEES OF THE BROOKLYN HOUSE OF
DETENTION FOR MEN, et al.,

ORDER RE: CONSENT DECREE
COMPLIANCE DURING
IN-HOUSE FOOD SERVICE

Plaintiffs,

79 Civ. 4913
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X
DETAINEES OF THE QUEENS HOUSE OF
DETENTION FOR MEN

Plaintiffs,

79 Civ. 4914
(MEL)

- against -

BENJAMIN J. MALCOLM

Defendants.

-----X
IOLA FORTS, et al.,

Plaintiffs,

76 Civ. 101
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

-----X
GUY ZEPH AMBROSE, et al.,

Plaintiffs,

76 Civ. 190
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

-----X

In 1979 this Court and other courts entered consent decrees in the above entitled cases settling plaintiffs' claims that conditions of confinement for pre-trial detainees in the New York City jails were unconstitutional. By consent, these cases were then consolidated before this Court for enforcement purposes. In 1982, the Court entered a further order creating the Office of Compliance Consultants (OCC), a neutral third party intended to assist the defendants in attaining compliance.

The Court has been informed by OCC and the parties of persistent failures of compliance with consent decree provisions governing food service in areas where food is served "in-house," i.e., in the inmates' housing areas rather than in a central dining area. In order to ensure compliance with these provisions, the Court deems it appropriate to enter a further order enforcing the relevant consent decree provisions, specifying certain actions that must be performed and practices that must be avoided in order to ensure compliance, and providing for the formulation of an implementation plan for the substantive terms of the order.

It is ORDERED, ADJUDGED, and DECREED:

1. The defendants shall, by July 1, 1994, ensure that in-house feeding is conducted in compliance with the provisions of the consent decree governing food service and with the further provisions of this order, except as set forth in §16 and §17 of this order.

Food Temperatures

2. Defendants shall comply in the course of in-house feeding with the provision of the consent decree (§ V.10b) requiring them to

store, cook, serve and maintain food . . . at appropriate temperatures. Food shall be served expeditiously after preparation, and where food transportation is necessary, it shall be accomplished in carriers which have functioning heating and cooling mechanisms which maintain cold foods at below 40 degrees F. and hot foods at above 140 degrees F.

In particular, defendants shall take the following actions:

3. Provide each jail with a sufficient number of food transportation carriers with functioning heating and cooling mechanisms to accommodate all in-house feeding in that jail, with sufficient extra carriers to provide replacements as needed. It is understood that for purposes of this provision, carriers

sufficiently insulated and capable of maintaining the required food temperatures may be substituted.

4. All food transportation carriers shall be taken to the point at which the food is to be served as soon as food is placed in them.

5. The officer in charge of the housing unit shall test the temperature of all food to be served in each housing area immediately before such food is to be served. In addition, at each meal, a representative of the Nutritional Services Division shall check the temperature of all food to be served in certain housing areas as set out in § 17 of this order. Any food that does not meet the food temperature requirements of § V.10 of the consent decree shall be returned to the kitchen, where the food service administrator shall ensure that the food is restored to proper temperatures, or properly discarded and replaced with an appropriate substitute at the proper temperatures.

HYGIENE

6. Defendants shall comply in the course of in-house feeding with the provisions of the consent decree requiring them to:

- store, cook, serve and maintain food under sanitary conditions (§ V.10b);
- provide each detainee at every meal with sufficient quantities of appropriate eating utensils, glasses, cups and non-metal dishes and trays, at the time the food is ready to be

served. The above items shall be clean, sanitized in dish-washing machines at appropriate temperatures. . . . (§ V.13);

- provide and maintain sanitary dining areas which are designed to provide comfortable communal eating. Seating shall be available for all detainees. (§ V.14);

Defendants shall comply in the course of in-house feeding with the provisions of the consent decree providing:

All multi-use eating and drinking utensils shall be thoroughly cleansed, rinsed and sanitized in dish-washing machines at appropriate temperatures, after each use. (§ S.11i)

The garments of all food handlers must be clean and sanitized; aprons or uniforms and hairnets shall be worn by all food handlers. Food handlers shall maintain a high degree of personal cleanliness and conform to good hygiene practices during all working periods. (§ S.10o).

In particular, the defendants shall take the following actions:

7. Place the food for each separate area where food will be

served in a separate food transportation carrier or carriers for delivery. The practice of combining the food for two or more housing units, or two or more "sides" where food is served separately, in a single food transportation carrier shall be discontinued.

8. With each meal served in-house, provide suitable and adequate serving utensils for all food and beverage items, and a knife, fork, spoon, drinking glass or cup, or food tray for each inmate. Multi-use serving or eating utensils shall have been sanitized in dishwashing machines at appropriate temperatures since their last previous use. If disposable utensils are used, new disposable utensils shall be provided at each meal. The practice of retaining food service utensils in housing areas between meals shall be discontinued.

9. Ensure that with each meal served in-house, all personnel, staff or inmates who handle food are provided with and wear new sanitary plastic gloves.

10. Ensure that beverages are served from containers with functioning spigots or with a clean ladle.

11. Ensure that Halal and non-Halal utensils used for in-house feeding are maintained, used and stored separately.

12. Ensure that all persons who serve or otherwise handle food, including inmates, are provided with and wear clean aprons or uniforms and hairnets/coverings. The Department shall also ensure that food handlers shall maintain a high degree of personal cleanliness and conform to good hygiene practices during all

working periods.

13. End the practice of placing food or beverage containers designed for table use on the floor before or during the serving of food.

14. Ensure that each communal area where food is served in-house has a chair and adequate table space for each inmate.

15. Ensure that each communal area where food is served in-house is thoroughly cleaned after each meal.

Supervision

16. Defendants shall comply in the course of in-house feeding with the provision of the consent decree that requires:

Defendants shall have all meals distributed and served to detainees under the direct supervision of non-inmate personnel, trained in food services. (§ V.20)

In particular, defendants shall by March 1, 1995 ensure that each officer who supervises meals served in-house has been provided with instruction in the proper supervision of maintaining and distributing food in non-congregate settings in accordance with the requirements of the consent judgments, this order, Department of Health requirements and Department of Correction policy, and in measuring food temperatures. After March 1, 1995 no officer who has not had that training will supervise the service of meals in-house, and no meals shall be served in-house except under the

supervision of an officer who has received this training or an employee of the Nutritional Services Division.

17. In addition, at each meal, representatives of the Nutritional Services Division shall directly observe meal service, including the taking of temperatures of all food items, in accordance with the schedule attached as Schedule 1 to this order. This is to ensure that food is served in compliance with the consent judgements, this order, Department of Health requirements and Department of Correction policy. Housing areas to be observed in this manner by Nutritional Services Division personnel shall be selected so that in each jail, all housing areas in which in-house feeding is conducted shall receive roughly equal scrutiny, but housing area personnel shall not know in advance when a particular housing area will be observed. After September 1, 1994, no meals shall be served in-house except in compliance with the terms of this paragraph.

Implementation

18. Defendants shall by June 1, 1994 provide to OCC a plan for implementing the provisions of this order at all jails in which in-house feeding is conducted. The implementation plan shall include, but not be limited to the following items:

a. A determination of the necessary minimum number of functioning cambros or other food transportation carriers to be maintained at each jail, including sufficient extra

carriers to provide replacements as needed at each jail, and deadlines for providing this equipment to each jail.

b. Promulgation of an internal order governing in-house feeding and consistent with the requirements of the consent judgements and this order.

c. The curriculum and schedule of instruction of the training program described in § 16 of this order, for existing as well as new officer staff.

Enforcement

19. The terms of this order shall be enforceable as follows:

a. All time deadlines in this order shall be considered to be "work plan deadlines" within the meaning of the Order re: Compliance with Work Plan Deadlines, signed by the court on July 10, 1992, and the terms of the order shall apply to them.

b. OCC shall monitor compliance with the terms of this order in accordance with the guidelines attached as Attachment 1 to this order. In the event that defendants or their employees violate any provision of this order, other than violations of the time deadlines referred to in § 19(a), by acting with gross negligence or repetitive disregard of this

order, defendants shall be fined \$100 for each violation. The defendants shall not be fined for non-compliance occasioned by unforeseeable events beyond the control of the agencies and personnel of New York City government. OCC shall compute the amount of any fines owed under this subsection and shall have the discretion to excuse isolated de minimis incidents of non-compliance that are of minor impact. The defendants shall have the right to contest any application for the imposition of fines by Legal Aid or OCC before this court. The defendants shall be given a reasonable period to respond to any allegations of non-compliance prior to OCC or Legal Aid requesting the imposition of fines from the court.

c. No fines shall be imposed under § 19(b) of this order until December 1, 1994.

Dated: New York, New York

_____, 1994

U.S.D.J.

ATTACHMENT 1

Monitoring Protocols for In-House Food Service Order

- Violations that constitute a clear and present health hazard will be reported as finable incidents. These include the handling of food in a way that is clearly unsanitary. Examples are:
 - The serving of perishable foods (including milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid progressive growth of pathogenic microorganisms) under circumstances or at temperatures that pose a potential health hazard. Potentially hazardous foods are those held at temperatures between 45 degrees Fahrenheit and 140 degrees Fahrenheit either for a period of time exceeding that reasonably required for preparation or for more than two hours, the allowed service time.
 - The failure to ensure that beverages are served from containers with functioning spigots or with a clean ladle.
 - The failure to ensure that food is not served from containers on the floor.
 - The provision of dirty or unsanitized multi-use serving or eating utensils at the start of meal service. Dirty or unsanitized means failure to wash the multi-use serving or eating utensils in dishwashing machines at appropriate temperatures since their last use.
 - The failure to ensure that staff or inmate servers who handle food are provided with and wear clean gloves, hair coverings, and aprons.
 - The failure to provide eating utensils and cups for each inmate. Eating utensils are defined as trays, cups, forks and spoons. A "spork" may be substituted for a fork and/or spoon.
- Violations of the in-house food service order that do not present an immediate health hazard, but are part of a pattern of infractions that has been established within a particular jail, will be reported as a finable event. A pattern of infractions is defined as the occurrence of the same type of violation three (3) times within a one year period. Examples of this type of violation include:
 - The serving of food at temperatures that are outside the stated ranges and therefore fail to meet standards of palatability.

- After the Department's training of food service personnel is completed on March 1, 1995, the failure to ensure that meals are served to detainees under the direct supervision of staff trained in food service.
- The failure to maintain, use and store Halal and non-Halal utensils separately.
- The combining of food for two or more sides of a housing area in a single food transportation carrier.

SCHEDULE 1

NUTRITIONAL SERVICES DIVISION
In-House Feeding Temperature Spot Check By Food Service Staff
7/94 (Revised)

FACILITY	# Feeding Areas	# Readings Per Tour	*Readings Per Day	All Areas Read
AMKC	88	6	12	7.3 Days
ARDC	12	2	4	3 Days
BCF	3	1	1	3 Days
BKHDM	16	4	8	2 Days
BXHDM	22	2	4	5.5 Days
CIFM (***)	8	4	8	Daily
GMDC	10	4	8	2 Days
GRVC/ADDITION	10	2	4	2.5 Days
JATC	8	2	4	2 Days
MDC	28*	4	8	3 Days
MTF 3	34	4	8	5 Days
NIC	17**	2	4	4 Days
OBCC/ADDITION	17	4	8	2 Days
QUEENS	28	4	8	5 Days
RMSC	7	1	2	4 Days
WEST	12	2	4	3 Days

- * MDC has 12 housing areas with "A" and "B" sides and 4 single dorms in the South Tower
 ** NIC has 7 housing areas with "A" and "B" sides and 3 single dorms
 *** CIFM DETAINEES ONLY (Non-sentenced Inmates)

NOTE: VISITS BASED ON TWO TOURS TO BE DETERMINED BY THE FOOD SERVICE ADMINISTRATOR IN RESPONSE TO WORK SCHEDULE
 DENOTES ONLY TWO TOURS BEING COVERED PER DAY