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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, MIGUEL GALINDEZ, BRUCE
HAYES, JOSE SALDANA and ROBERT ESCHERT,
detainees of the New York City House
of Detention for Men, individually and
on behalf of all other persons similarly
situated,

Plaintiffs,

75 Civ. 3073

-against-

MEMORANDUM

BENJAMIN J. MALCOLM, Commissioner of
Correction of the City of New York;
LOUIS C. GRECO, Warden of 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, individu-
ally and in their official capacities,

Defendants.

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LASKER, D.J.

On November 18, 1975 an order was entered preliminarily enjoining the defendants from involuntarily confining any detainee at the House of Detention for Men at Rikers Island (HDM) in a cell with another detainee for a period in excess of 30 days. The order was entered under the authority and instruction of the ruling of the Court of Appeals in Detainees of Brooklyn H. of Det. for Men v. Malcolm, 520 F.2d 392 (2d Cir. 1975) (Valvano) and in tandem with the interim ^{1/} action of the District Court for the Eastern District on remand in Valvano limiting double celling at the Brooklyn and Queens Houses of Detention (BHD and QHD).

The order of this court was to have become effective November 28, 1975. On November 23, 1975 inmates at HDM engaged in a seventeen hour riot which caused significant damage including in particular damage to guard rails on catwalks on upper tiers of the cell blocks, walls in shower rooms, all locking devices and some individual cells.

On December 3, 1975 the defendants moved to modify the order of November 18 1) by granting the defendants a period of sixty days to commence implementation; 2) giving the defendants an extension of time in which to determine which inmates had been double celled thirty days or more; and 3) ^{2/} eliminating the provision of the November 18 order

which included double cell time served earlier at another city institution in computing the thirty day limit. The request for an extension of time in which to comply with the order of November 18, 1975 rested exclusively on the physical damage and logistical problems caused by the riot of November 23.

Because of the importance of the issue both to the correction officials and to the inmates the court met extensively with representatives of the parties in chambers on December 9, 16 and 23, 1975, and held an evidentiary hearing on December 30, 1975 at which Francis R. Buono, Supervising Warden of Rikers Island; Louis C. Greco, Warden of HDM; and Joseph D'Elia, Director of Operations for the Department of Corrections, testified for the defendants, and nine inmates testified for the plaintiffs. The purpose of the discussions in chambers and of the evidentiary hearing was to determine the extent to which the damage caused by the riot prevented the defendants from carrying out the order of November 18, 1975. No other basis for granting relief would be justified in the light of our finding (see Memorandum of November 18, 1975) that immediately prior to the riot the defendants were obligated, under the Court of Appeals' ruling in Valvano, supra, to limit double celling at the least to a maximum of thirty days.

Although HDM has a stated capacity of 1,880, the

figure is misleading for at least three reasons, all of which applied before the riot: first, one cell block at a time (with a capacity of 240) had been shut down for refurbishment -- primarily to improve lighting and to install new windows; second, approximately 100 cells were inoperative; third, certain cell blocks such as those used for administrative or punitive segregation, are almost universally underutilized. ^{3/}

Thus, immediately prior to the riot the Board of Correction -- a Mayoral agency which observes and reports on conditions in the City institutions -- reported that only 1,289 of the 1,897 cells at HDM were usable. (See Board of Correction survey annexed to Supplemental Affidavit of Joel Berger sworn October 3, 1975 in support of motion for preliminary injunction barring double celling)

It is no surprise that with a pre-riot population of approximately 1,682, 692 of whom were double celled at the time (that is 346 cells each housing 2 detainees), the Board of Correction had a short time earlier described the situation at HDM as:

"... critical and deteriorating. It is, in our judgment, the most serious and potentially explosive prison atmosphere to exist in New York City in recent years. If potentially tragic problems are to be avoided, changes should be implemented before the expected summer upsurge in arrests and tensions multiply existing difficulties." (Board of Correction Report of June 30, 1975)

To its credit the Department has, since the riot, substantially reduced both the total population at HDM and the number of persons double celled to approximately 1,013 and 394 respectively. (Testimony of Joseph D'Elia on general population count as of December 26 and investigation of HDM by New York City Board of Correction as to double celling count on December 11, 1975) This has been accomplished by transfer of detainees to the reopened Bronx House of Detention and to the Ossining Correctional Facility where the city has contract rights to house inmates.

In spite of this improvement, however, approximately 394 inmates continue to be double celled, and the question remains whether the City's claimed inability to cell these men separately is caused by the riot. We are persuaded that, real as the City's problems are, they do not result from the riot but rather from a combination of programs of refurbishment which existed prior to the riot, some past neglect in failing to repair and maintain cells and washrooms inoperative before the riot, and failure to do what is necessary to make closed facilities, such as the Manhattan House of Detention (MHD) and the former Adolescent Remand Shelter (known in the trade as C-71) usable.

To be sure the riot did put some cells, even whole tiers of cells in some blocks, out of commission tempor-

arily. However, the question is not whether that is so, but whether the number of cells damaged in the riot is so great as to make proportionately less cells available for HDM's present population than were available for its then population at the time of the order of November 18. An analysis of the evidence establishes that the damage caused by the riot was not so great as to prevent the defendants from complying with the order of November 18.

Accepting the figures submitted by the Department at the evidentiary hearing (defendants' Exhibit A), the sole differences between the pre-and post-riot count of usable cells is as follows:

<u>Usable Cells at HDM</u>		
<u>Cause</u>	<u>Before the Riot</u>	<u>After the Riot</u>
Block Refurbishment	240	240
Electrical Repair (Block 1A)	75	150 *
Broken Cells	100	150 **
Underutilized Segregation Cells, etc.	190	190
Broken tier railings		80 ***

* Addition of 75 not caused by riot

** Excess of 50 caused by riot

*** All 80 caused by riot

The City thus claims that 130 cells were directly knocked out by the riot. This figure must be increased, however, by the addition of 100 cells (for reducing lengths of time) because while repairs are made on the broken tier rails a whole cell block side must be evacuated;^{4/} and 60 - 120 cells must be emptied in order to repair showers, depending on whether the contractor repairs one or two shower rooms at a time. There is, however, real doubt as to whether the need for shower repair is as acute as indicated, and in any event whether it was significantly affected by the riot. All nine of the inmate witnesses testified that showers and toilet facilities functioned as well today as before the riot. While the credibility of these witnesses may be impaired because all but one had prior convictions of serious crime, and perhaps because they were interested witnesses (but they are also interested in decent shower and toilet facilities) the tone and content of their testimony was persuasive.

Moreover, even the City does not assert that the need for repairs of showers and toilets was caused in any large part by the riot. The damage caused to shower rooms by the riot appears to have been substantially restricted to breaking holes (from one cell block to another) in the walls. These have already been repaired.

If the added maximum number of these two items,

100 for rail repairs and 60 - 120 for shower room repair, is deducted from the figures shown in the table above it would leave 850 - 910 usable cells. Finally, the defendants claim a last deduction must be made of 60 - 120 cells for soil line repairs which seem clearly necessary in Block 6, but which no one claims resulted from the riot -- rather they appear to be the cumulative result of past neglected maintenance.

While this would leave a rock bottom number of 730 - 790 cells (out of an institution with a rated capacity of 1,800!), the determining factor for the issue presented is not how many cells are available, but how many are not available because of the riot.

The sum of the exercise above is that of the total number of cells which the City asserts to be unusable, the causes were as follows:

	<u>Riot Caused</u>	<u>Non-Riot Caused</u>
Block Repair	0	240
Electrical Repair	0	150
Broken Cells	50	100
Underutilization	0	190
Broken Tiers	80	0
Extra (Temporary) Shutdown for Rail Repair	100	0
Shower Rooms		60-120
Soil Line Repair		60-120
	230	800-920

While the riot thus reduced the number of usable cells at HDM by 230, this fact must be balanced against the reduction of population by 569 ^{5/} resulting from transfers to the Bronx House of Detention and Ossining Correctional Facility.

It is thus demonstrated that whatever obstacles the City faces in complying with the order of November 18 were not significantly caused by the riot damage, or, put another way, are soluble in spite of the recognized but limited damage which occurred.

We have already noted that after the riot the City reopened the Bronx House of Detention whose earlier closing had been a cause of overcrowding at HDM itself. It is significant that the City has available other facilities which it has chosen to close and whose closure has also contributed to overcrowding at HDM itself. In particular, the Manhattan House of Detention has been empty for a year because the City declined to improve it to meet constitutional standards. While press reports since the HDM riot and informal advice by the Department to this court have indicated that the City is seeking federal funds to bring MHD up to constitutional conditions, no application has been made to the court for approval of its use as of the time of writing this Memorandum. Moreover, the former Adolescent Remand Shelter (C-71),

adjacent to HDM on Rikers Island, is also altogether unused. While the City persuasively asserts that its construction is not suitable for maximum security purposes, it is apparently the fact that C-71 was used to house large numbers of MHD inmates after 1970 riots, and the plaintiffs argue that it could at least be made available for low risk inmates on a temporary basis. We recognize that utilization of MHD and C-71 present real problems of expense for refurbishing and hiring of additional staff, and make no judgment as to how significant a burden that would impose on the City at this time of financial crisis. Nevertheless, the Supreme Court and Courts of Appeal have constantly enjoined that constitutional rights cannot be denied for fiscal reasons; and most recently the Court of Appeals of this Circuit observed in this very case:

"We are not unaware of the financial difficulties presently confronting the city defendants. [But] ... an individual's constitutional rights may not be sacrificed on the ground that the city has other and more pressing priorities. To do so would be to discriminate grievously against poor persons who cannot afford bail. Presumed innocent in the eyes of the law, they are incarcerated solely to insure their appearance at subsequent proceedings. This limited deprivation of their liberty cannot be extended to justify the denial of other unrelated rights for budgetary reasons. Denial

of the presumptively innocent detainee's constitutional rights represents an impermissible price to pay for his retention in custody." Benjamin v. Malcolm, Rhem v. Malcolm,
Docket Nos. 75-2098, 75-2104
(December 5, 1975) Slip op. at 924-25. (citations omitted)

For the reasons stated, the motion of the defendants must be denied, except that the November 18 decree shall become effective ten days from now to ensure that the required reduction of double celling can be carried out on an orderly basis.

It is so ordered.

Dated: New York, New York
January 6, 1976.

MORRIS E. LASKER

U.S.D.J.