

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, et al.,

Plaintiffs,

-against-

75 Civ. 3073 (MEL)

BENJAMIN J. MALCOLM, as Commissioner  
of Correction of the City of New  
York, et al.,

Defendants.

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APPEARANCES:

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LASKER, D.J.

On August 27, 1980, we granted plaintiffs' motion for a judgment "granting relief for unconstitutional crowding" at the House of Detention for Men at Rikers Island (HDM), and by order of September 3, 1980 required that the defendants forthwith

a. reduce and maintain the total population of HDM at a level not exceeding 1200 people; and

b. reduce and maintain the total population of each housing block at HDM at a level not exceeding 150 people.

Familiarity with the facts underlying that decision is presumed (495 F.Supp. 1357).

A factor underlying the decision of August 27th was a stipulation of the parties:

"(1) that the record in Benjamin v. Malcolm established plaintiffs' factual claim that, at the time of trial

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(f) The housing blocks at HDM and the institution at large were overpopulated; such overpopulation resulted in an atmosphere of tension and hostility, a strain on all of the institution's facilities, and interference with supervision, protection and provision of services to members of the plaintiff class."

Defendants now move for an order modifying the judgment of September 3, 1980 to permit them to house 120 inmates each in four cell blocks, 240 inmates in one cell block on a temporary basis and 240 inmates each in two cell

blocks on a permanent basis. One cell block would be closed on a rotating basis for renovation until the program of renovation is completed. If the relief defendants request were granted, then, as of March of this year, six cell blocks would house 120 inmates and two would house 240.

In support of the motion, the Commissioner of Correction, by affidavit of December 19, 1980, emphasizes that the cell blocks are presently architecturally divided at the midway point of their length; that housing 120 inmates to a cell block (the total capacity of which is 240) is therefore feasible; that, however, if only one-half of each cell block is used, there will not be adequate space for the total allowed population of 1,200; and that "having 150 inmates in a cell block involves using the entire length of the cell block and requires as much staff as having 240 inmates in the block." The Commissioner points out that less security coverage would be required in so-called "quartered" cell blocks of 120 inmates than in cell blocks of 150 inmates where, it is claimed, two additional correction officer posts would be necessary to staff the housing areas beyond the half-way point. The annual cost of such additional posts is said to be approximately \$500,000. If the relief requested were granted, the Commissioner represents that blocks of 240 would be classified as medium security and allowed to go out of their housing areas unes-

corted to participate in programs within the institution, such as law library, medical clinic, commissary and visits.

Plaintiffs strenuously oppose the application, making the important point that to grant the relief requested would result in the loss of a substantial benefit of the judgment because one-half of the inmates at HDM would continue to be housed in what the plaintiffs justly describe as "the fully-populated, overcrowded, mammoth blocks." The plaintiffs also stress the fact that in response to an earlier motion to hold the defendants in contempt for their failure to comply with the September 3rd judgment, the defendants committed themselves in October 1980 to be in full compliance by January 1, 1981. (Affidavit of Commissioner, October 9, 1980). The plaintiffs point out that the earlier evidence in this case supports, if it does not compel, the conclusion that reduction of the population of each block to at least 150 is essential for safety, effective supervision and to curb the tension, anxiety and violence which arise when the full block is at or near capacity. There can be no serious dispute about this proposition because, as indicated above, the defendants themselves have stipulated that the record at the time of trial established not only that the institution at large was overpopulated but that the housing blocks themselves were overpopulated and that "such overpopulation resulted in an atmosphere of tension and hostility ... interference

with supervision [and] protection ... [of] members of the plaintiff class."

The defendants admit that whether the reduced population be 120 or 150, security problems will arise with regard to policing of the unused space at the rear of the cell block. They argue, however, that the solution to the security problem would be simpler and less expensive if defendants were permitted to house 120 men rather than 150 in each block because a barrier could then be placed at the natural architectural half-way division of the block. If, on the other hand, 150 men were housed in a block, it is contended that the establishment of a barrier would be architecturally more complex and expensive.

The plaintiffs answer that the defendants have failed to establish that the solution of the security problem would be significantly more difficult if the population of a block were to be 150 and that, in any event, neither that proposition nor the extra expense of correctional personnel justify maintaining 40% of the population (480 inmates) in cell blocks of 240 on a permanent basis.

Because defendants lay such stress on manning problems, the court, at argument on the motion, requested them to furnish an affidavit which would include a breakdown of what staff had been hired recently, where it had been assigned, and why there could not be adequate coverage of the HDM blocks at the population level ordered. In compli-

ance with this request, the affidavit of the Chief of Operations of the New York City Department of Correction has been filed. It indicates that 231 officers have been hired since October 1980 with a net gain, after attrition at normal rates, of 90 officers. Some of this personnel have been assigned to staff housing units newly opened in order to comply with the September 3rd judgment's requirement that the local population of HDM be reduced to 1,200. Others have been assigned to duties unrelated to the court's order. While there are 99 recruits currently in the training academy and 700 new recruits to be hired, the plans of the department do not provide for assigning to the HDM blocks the minimum number of officers which they contend are necessary to meet the terms of the judgment.

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The purpose of the judgment of September 3rd was to alleviate unconstitutional conditions stipulated to exist at HDM both in the institution as a whole and in each of the housing blocks as well. There is no need to recite the litany of opinions in this case and the decisions cited in the decision of August 27, 1980, such as Detainees of the Brooklyn House of Detention for Men v. Malcolm, 520 F.2d 392 (2d Cir. 1975); Ambrose v. Malcolm 414 F.Supp. 485 (S.D.N.Y. 1976), describing the ills of unconstitutional over-population and defining the rights of a detainee to

minimally necessary living space. The principles established by the decisions of this court and of the Court of Appeals of this Circuit apply with equal force whether the custodial unit be an entire institution, a cell block, or a single cell. Moreover, in the case at hand, it would be altogether inconsistent with the earlier findings of this court and with the stipulations of the parties themselves to sanction a plan which would authorize permanent housing of 40% of the institution's population in overpopulated cell blocks.

In the final analysis, the request for modification can be justified solely on the basis that the City's proposal would cost less than the relief ordered in the judgment of September 3rd. While it is understandable that the defendants are anxious to limit the expenditures required for compliance, such an objection cannot validate depriving members of the plaintiff class of the right to be housed in cell blocks not unconstitutionally overpopulated.<sup>1/</sup>

For the reasons indicated, the defendants' motion for an order modifying the judgment of September 3, 1980 is denied.

It is so ordered.

Dated: New York, New York  
March 6, 1981

MORRIS E. LASKER  
U.S.D.J.

#### FOOTNOTE

1. At this late date in the history of litigation as to prisoners' rights, it seems unnecessary to reassert the proposition that cost burden is not a defense to deprivation of constitutional rights. Indeed, the proposition was stressed in our decision of August 27th in relation to this very proposition. See discussion at 495 F.Supp. at 1363 and cases cited there.