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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
UNITED STATES COURT HOUSE  
NEW YORK, N. Y. 10007

RECEIVED

CHAMBERS OF  
JUDGE MORRIS E. LASKER

October 23, 1987 NOV 4 A.M.

TO: Theodore H. Katz, Esq.  
Leonard Koerner, Esq.  
Marcia Goffin, Esq.  
Kenneth Schoen, Esq.

OFFICE OF  
COMPLIANCE CONSULTANTS

RE: Benjamin v. Malcolm and related cases  
75 Civ. 3073(MEL)

I have today signed and filed the proposed order contained in Mr. Katz's letter of October 23, 1987.

I have signed the order with the understanding that the City defendants have expressed concern that the application of the provisions of Appendix A relating to preconstruction review of new or expanded facilities by OCC may prove unreasonably burdensome on the City or administratively obstructive.

This is to confirm that if, in the operation of Appendix A, the City defendants do hereafter conclude in good faith that the provisions have become burdensome or obstructive as described above, they should be free to seek a modification of the provisions of the Appendix.

A copy of this letter has been attached to the filed order.

Very truly yours,



MEL/cw

file  
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# THE LEGAL AID SOCIETY

CRIMINAL APPEALS BUREAU • PRISONERS' RIGHTS PROJECT  
15 Park Row - 7th Floor, New York, N.Y. 10038 (212) 577-3530

Executive Director and  
Attorney-in-Chief  
Archibald R. Murray  
Attorney-in-Charge of the  
Criminal Appeals Bureau  
Philip L. Weinstein

Project Director  
Theodore H. Katz

October 23, 1987

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OCT 23 A.M.

OFFICE OF  
COMPLIANCE CONSULTANTS

Re: Benjamin v. Malcolm  
and related cases

BY HAND

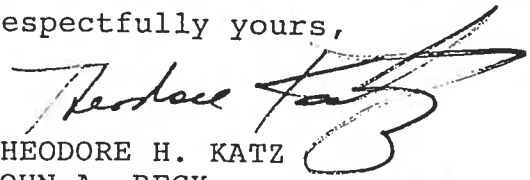
Hon. Morris E. Lasker  
United States District Judge for the  
Southern District of New York  
United States Court House  
Foley Square  
New York, New York 10007

Dear Judge Lasker:

Enclosed for your approval and entry is a revised Proposed Order that renews the OCC Order for a twenty-four month period, effective July 1, 1987. Plaintiffs' revised Proposed Order contains the provisions included in defendants' proposed order concerning the extension of the order for a second year and the commensurate increases in salary for the OCC staff. It contains our original provision for OCC review of new construction. In other respects it is identical to the order plaintiffs submitted to the Court earlier this week. We would request that Your Honor approve this order so as to resolve the procedural barriers to OCC's operation; we hope with these matters settled the parties and OCC now can proceed as expeditiously as possible to address the serious and difficult substantive issues which were raised by the Quarterly Report.

We thank you for your cooperation in this matter.

Respectfully yours,

  
THEODORE H. KATZ  
JOHN A. BECK  
JONATHAN S. CHASAN  
Attorneys for Plaintiffs

cc: Leonard Koerner, Esq.  
✓ Marcia Goffin, Esq.  
✓ Kenneth Schoen

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
BENJAMIN v. MALCOLM, 75 Civ. 3073 :  
FORTS v. MALCOLM, 76 Civ. 101 :  
AMBROSE v. MALCOLM, 76 Civ. 190 : PROPOSED ORDER  
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 defendants' 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; 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 1982 through June, 1987; the parties having been unable to resolve a renewal of said Stipulation for the continuation of the operation of the Office of Compliance Consultants; 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 shall continue for another twenty-four months, commencing July 1, 1987, 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 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 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 open new housing areas and/or new jails 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 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 \$300 per day in the first year and \$350 in the second year of the contract, 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 staff supervisor and assistant to that supervisor, 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 supervisor and assistant, with such rates of compensation not to exceed \$60,000 and \$36,000 per annum, respectively in the first year of the contract, and \$66,000 and \$39,600 per annum 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 supervisor and his/her assistant shall meet employment criteria which Mr. Schoen shall set in his own discretion; they shall not be City employees; they 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 business with the Department of Correction for a period of at least two years following the termination of their employment as OCC staff; shall not perform other work for the Department of Correction; and their continued employment 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, two additional full-time staff members from the ranks of persons who are presently employed by the Department. These staff members 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 staff be subject to the defendants' control. These individuals shall be subordinate in salary to the supervisor described in paragraph 7 above and subordinate in responsibility to both the supervisor and his/her assistant. 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 provide to Mr. Schoen \$50,000 per annum 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 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.

11. Defendants shall provide Mr. Schoen \$309,600, \$150,000 in the first year of the contract and \$159,600 in the second year, which shall be used to: 1) compensate the OCC supervisor and assistant and any experts and/or consultants that Mr. Schoen employs pursuant to paragraphs 7 and 9; and 2) pay any clerical expenses incurred relating to OCC bookkeeping, payroll records and maintenance and disbursement of salaries and 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 which is covered by this Order, Mr. Schoen shall make an accounting of the disbursement of funds.

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.

SO ORDERED.

Dated: New York, New York

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UNITED STATES DISTRICT JUDGE

## 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 the these cases, and effects 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. As expeditiously as possible after the formulation of plans to create new jail space (i.e. new jails or new jail housing areas), 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.

2. 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 ¶ 1, such plans shall be provided as expeditiously as possible after their formulation but, in any event, by a time sufficiently in advance of any proposed opening of new housing areas so that, prior to such opening, 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.

3. 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.

4. 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 plans to add 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.