

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, et al.,

Plaintiffs,

75 Civ. 3073
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

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ERNESTO MALDONADO, et al.,

Plaintiffs,

76 Civ. 2854
(MEL)

- against -

WILLIAM CIUROS, JR., et al.,

Defendants.

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

Plaintiffs,

79 Civ. 4913
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

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DETAINEES OF THE QUEENS HOUSE OF
DETENTION FOR MEN, et al.,

Plaintiffs,

79 Civ. 4914
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

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IOLA FORTS, et al.,

Plaintiffs,

76 Civ. 101
(MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

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GUY ZEPH AMBROSE, et al.,

Plaintiffs,

76 Civ. 190 (MEL)

- against -

BENJAMIN J. MALCOLM, et al.,

Defendants.

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The court has had jurisdiction, since 1979, over a set of Partial Final Judgments by Consent (Consent Judgments) in these cases that require, inter alia, that defendants have in place a system which assures that property and money belonging to members of the plaintiff classes are properly receipted, safely stored and returned to class members when they are released, or transferred with them when they are transferred out of their institution.

In 1981 plaintiffs brought a motion to hold defendants in contempt for numerous violations of the Consent Judgments, including the provisions regarding the confiscation of property;

the factual allegations of plaintiffs' motion were not substantially disputed by defendants.

Since 1982 the Office of Compliance Consultants (OCC), a neutral third party established by agreement of the parties to monitor defendants' compliance with the Consent Judgments and assist the defendants in achieving compliance, has been monitoring defendants' compliance with the property provisions and has found significant non-compliance.

On March 3, 1991 the Court ordered the adoption of a work plan formulated by OCC, in consultation with the parties, which set forth a schedule for the implementation of measures to bring defendants into compliance with the property provisions of the Consent Judgment. Pursuant to that schedule, and working with OCC and plaintiffs' counsel, the Department has issued a number of directives and operations orders, and taken other steps, including the hiring of professionally trained staff, intended to facilitate its compliance with the terms of the Consent Judgment.

OCC and the parties agree that additional steps are necessary to ensure that property belonging to members of the plaintiff class is properly handled, receipted, stored and returned to its owners, as required by the relevant provisions of the Consent Judgment. In addition, the March 1991 work plan provided that OCC and the parties would determine schedules for drafting directives and institutional orders and implementing a new property inventory system; conduct a survey of property storage areas; develop a budget for any necessary modifications; and implement the use of tamper-proof bags and other measures

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obligations set out in the initial property work plan adopted by order of March 3, 1991, shall be considered as continuing obligations of the defendants except to the extent that they have been revised or superseded by obligations of the supplemental work plan.

2. Defendants, including officials and agents of the Department of Correction and all other agencies of the executive branch of New York City, shall strictly adhere to all deadlines in this supplemental work plan except as otherwise authorized by the court.

3. Unexcused noncompliance with this supplemental work plan shall subject the defendants to monetary penalties pursuant to the court's separate Order re: Compliance with Work Plan Deadlines, entered July 10, 1992.

4. On Wednesday of each week, defendants shall certify to the Office of Compliance Consultants and to the Court that they have complied with each work plan deadline falling due during the previous week, or alternatively shall state that they have failed to comply with one or more deadlines and shall further state both the reasons for their failure to comply and the measures that they have taken promptly to remedy such failure. These certifications shall actually be delivered on Wednesday of each week to the Office of Compliance Consultants, which shall promptly transmit them to the Court and plaintiffs' counsel. The Commissioner or her designee shall identify to the Court a responsible official within the Department of Correction who shall be personally responsible for making all notifications

required by this paragraph. The obligations of this paragraph extend to all work plan deadlines required to be performed by defendants, including those that require action or cooperation by city agencies other than the Department of Correction.

SO ORDERED.

DATED: January __, 1993

United States District Judge

SUPPLEMENTAL INMATE PROPERTY WORK PLAN

Introduction

On March 3, 1991, the Court entered an order incorporating the provisions of a work plan designed to bring the New York City Department of Correction into compliance with the inmate property terms of the consent decree. These terms state:

[The Department shall] log all property taken from detainees on admission to the institution and shall provide a method with which to identify and return such property. The procedure for identification of such property shall include provision of a receipt to the detainee describing the property seized and the circumstances under which and by whom it was taken ... No seized property shall be destroyed or otherwise disposed of so long as a detainee whose property has been seized remains at the institution and so long as the seized property is not lawfully turned over to another law enforcement agency for use in a criminal proceeding. Property ... shall be stored by the institution unless or until the detainee requests that it be forwarded at his own expense to whomever he chooses ... When the detainee is released or transferred from the institution, any stored property shall be returned to him or transferred with him.

1991 Inmate Property Work Plan

The 1991 plan consisted of eleven separate but related elements, including:

- hiring couriers to transfer property within 24 hours of inmate transfers among the system's 17 jails¹;

¹The consent decree requires that inmate property be transferred "with" the inmate. Because inmates are sometimes pulled from buses and given different facility assignments, the Department believes that the 24 hour lapse is necessary to allow staff to deliver property to the jail where he/she is to be housed. Legal Aid agreed to allow the Department 24 hours to effect property transfers pending the successful demonstration of the property transfer plan and resolution of other issues related to inmate property and accounts.

- handling property for inmates who are sentenced and sent to state prisons;

- defining when property can be considered abandoned by the inmate and outlining procedures for disposing of abandoned property;

- hiring a business manager in each facility and establishing a central office business management unit;

- upgrading cashier positions and extending coverage of cashiers' offices to seven days/week;

- handling inmate accounts; and

- improving the inventory system for inmate property, providing safe and secure storage and accurate recordkeeping, so that upon inmates' release from the system, their property is returned intact and in a timely fashion.

Department's Performance: 1991 Plan

As OCC has reported to the Court, the Department has a mixed record of implementing the 1991 property work plan's elements. Complaints about accounts and property continue to top the list of the Department's monthly inmate grievance reports.

Staffing - In compliance with the plan, the City hired two couriers dedicated to transferring property, which is helping to move it through the system more efficiently than before. However, inadequate supervision of the couriers and the failure of some jail staff to follow procedures contributed to delays, so that the Department is not yet meeting the 24-hour transfer requirement for all inmate property.

Each jail now has a business manager in place. Although

initially meeting with both formal² and informal resistance by the uniformed staff whom they replaced, the business managers have since settled in and have become largely accepted. Each jail has also appointed a head cashier and has scheduled seven-day coverage as mandated by the work plan. In accordance with the plan, the Department has established a two-person Business Management Unit, although the precise mix of property-related and other duties for this Unit needs to be more clearly defined.

Abandoned Property - Many of the jails faced a critical shortage of property storage space. The 1991 plan mandated a survey of storage areas in each of the jails. The Department conducted a survey, but noted that until the large quantities of abandoned property could be cleaned out, no accurate assessment of space needs was possible. Pursuant to the 1991 property work plan, the parties agreed upon a directive that laid out a uniform procedure for identifying and disposing of abandoned inmate property.

As of December 1992, the Department's abandoned property task force has identified and cleared out approximately 26,000 pieces of abandoned property, some dating back to the mid-1980's. The task

²In October 1991, the Court granted a request from the Correction Captains' Association to hear their objection to switching these positions, formerly held by captains, to civilian posts. The Court denied the Association's request, at that time supported by the Department of Correction, to cease or delay hiring civilian business managers.

force's efforts have resulted in a substantial increase in space for the jails, which, in turn, has improved the orderliness of the storage systems. In November 1992, OCC conducted spot checks in two of the system's largest jails and in the women's jail. We chose, at random, the names of five inmates in each of the jails and asked the business manager and cashier to locate property for those inmates. In each case, it took just five to seven minutes per jail for Department staff to locate and pull the property for all five inmates. For the Department to maintain this level of efficiency, it is imperative that the abandoned property directive be fully implemented.

Legal Aid requested and the Department agreed to attempt to locate as many inmates as possible who are either back in the Department's system or who are serving time in upstate prisons, to give those inmates an opportunity to arrange collection of their property before it is disposed of in accordance with procedure.³

Upstate Bound Inmates/New York State Department of Correctional Services - In 1990 the New York State Department of Correctional Services issued a policy that broadly restricted the personal property that can be transferred with an inmate to state facilities. The effect of these restrictions for the inmate is to

³Under the New York City Charter, the Department must turn over property that is abandoned and identified as valuable to the New York Police Department, which auctions the property and donates the proceeds to NYPD's Pension Fund.

force the inmate to dispose quickly of property or have it confiscated; for the New York City Department of Correction, the effect is to place it in the position of violating the Court's order. The 1991 Inmate Property Work Plan included a provision that gives inmates the option of pre-packaging property while in the City jails and, upon assignment to a state prison, sending for that property package. Based upon a representation made by the Department, it was our understanding that the State had agreed to accept this property. This is not the case. We plan to meet with City and State representatives to resolve this issue.

Automated Transfer of Accounts - The Department relies on manual systems for handling inmate account deposits and withdrawals. In addition, when groups of inmates are transferred between jails, staff from the sending jails write checks for the sum of the transferees' accounts which are then deposited at the receiving jails, where staff open a new account for each inmate. It is an outdated, inefficient and cumbersome system that is not feasible for the numbers of inmates moving through the Department's system.

The 1991 plan included a schedule for automating this system. Under that plan, the Digital Equipment Corporation (DEC) was to design and implement a system that would employ the use of bar coding for the automatic transfer of inmate account balances between jails and the automatic deduction of charges for commissary

purchases. These account-related functions were added to a \$10 million contract with DEC to upgrade the telephone system, so that inmate calls would also be automatically deducted from accounts. Under the 1991 plan, the integrated commissary and telephone inmate account systems were to be pilot tested by April 1992; the project is now about 18 months behind schedule. In this case, however, the delay is the fault of the vendor, which was not completing the interim technical tasks in a satisfactory or timely manner. The Department is now working closely with DEC to ensure satisfactory performance. A revised schedule is included within the attached 1992 Supplemental Inmate Property Work Plan.

Coordination of Work Plan Tasks - Since the 1991 plan's entry, five different people in various units (e.g., Operations, Compliance) within the Department have been assigned responsibility for implementing the work plan's tasks. In each case, these persons had considerable additional duties. Following a plea by OCC to the Commissioner in October 1992, the Department appointed a full-time Director of Inmate Property. This appointment has already realized gains in improved supervision of staff and in enhanced security in handling property.

Auditing of Inmate Property Work Plan

The Department failed to conduct adequate audits of the 1991 plan's elements, including the extent to which those elements were effecting the timely transfer and proper handling of inmate

property. The parties agree that, as with other consent decree issues, the development of an effective internal monitoring mechanism for property is critical for the successful attainment of consent decree standards. In keeping with the schedule to achieve substantial compliance for all consent decree issues, the Department will be developing and implementing an overall monitoring plan, including procedures and schedules for auditing property.

1992 Supplemental Inmate Property Work Plan

The 1991 work plan included many of the elements -- in the form of developing well-considered policies and hiring professionally trained staff -- required to implement a system that would meet the inmate property terms of the consent decree. It has become apparent, however, that these elements are necessary but not sufficient for ensuring that all of the property for the system's inmates is properly handled, receipted, stored and returned to its owners.

Attachment I: Secure Inventory Systems - The 1992 supplemental plan consists of four schedules. The first is a timetable for the acquisition of new storage systems for valuable and bulk property. The schedule includes a pilot test of tamper-resistant packages at the Brooklyn House of Detention for Men to

begin in March 1993⁴ and an expansion of this packaging system to all of the Department's jails by 1995. The Court will note that the Department plans to achieve substantial compliance before this system is in place in all jails.⁵ It is the parties' belief that given the size of this system, if the Department is to sustain compliance, it will need to acquire the kind of accessible and secure inventory system outlined in Attachment I.

Attachment II: Policies and Procedures for Property Safekeeping - In 1992, the parties successfully negotiated a detailed policy that spells out who has responsibility for handling, receipting, storing and returning inmate property, how those tasks are to be effected, and who is accountable when the procedures are not followed. This policy was never effected. Attachment II lays out an implementation schedule that allows the Department's Director of Inmate Property time to train the business managers and other Department staff in the new procedures.

Attachment III: Lost and Stolen Property - At Legal Aid's request, in July 1992 the Department issued a report on the number

⁴The March 1993 pilot at the Brooklyn House is currently on schedule despite the Department's recent discovery of a potentially crippling error made by an independent consultant in recording measurements of available space. The Department has developed an alternative plan and, thus, believes that it will meet the March 1993 deadline, (if there are no unforeseen delays beyond its control.)

⁵Schedule for Achieving Consent Judgment Compliance. Final version to be submitted to Court in early January 1993.

and resolution of claims regarding lost or stolen property. The results underscore the need for the tamper-resistant packaging systems, for the safekeeping policies described above, and for the assignment of responsibility for adequate investigations of incidents in which inmate property is lost or stolen. Between 1987-91, over 1,300 missing inmate property claims were filed with the Comptroller's Bureau of Law and Adjustment, the City agency that handles these claims. As of July 1992, 160 claims were settled in favor of the inmates, 911 were disallowed or withdrawn, and 191 are still pending. Legal Aid notes that it is not unreasonable to assume that many inmates whose property was lost or stolen did not file claims with the Comptroller's Bureau.

Under current policy, the recourse for an inmate whose property is missing is to file a grievance with the Department's Inmate Grievance Resolution Program. If that is unsuccessful, the inmate can file a claim with the Comptroller's Bureau, but the chances for successful resolution are slim. Legal Aid stressed the need for the Department to promulgate policies and procedures with investigatory teeth to handle these cases; OCC endorses this approach. Attachment III lays out a schedule for the development, review and implementation of such a policy.

Attachment IV: Automated Inmate Accounts: Commissary and Telephone - As described above, the Department encountered substantial problems with the quality and timeliness of the

vendor's work on this project. Attachment IV represents the Department's best estimate for integrating the commissary and telephone automated systems, testing the integrated system, and expanding it to all of the jails. The Department notes that although it is working very closely with the vendor to get the project back on track, it cannot control future vendor defaults.

Attachment I

1992 INMATE PROPERTY WORK PLAN Implementation Schedule: Secure and Accessible Storage Systems¹

Description	Start Date	End Date
A. PILOT PROJECT		
1. Submit inmate property proposal to OMB. Discuss preliminary commitment for funding; determine capital eligibility	8/14/92	10/1/92
2. Prepare BKHDM for implementation of pilot project	8/20/92	10/1/92
3. Revise draft Inmate Property Directive to reflect new pilot project	8/20/92	11/18/92
4. Procurement process for pilot project	8/20/92	3/5/93
5. Itemized receipt forms prepared by DOC print shop	10/1/92	1/29/93
6. Formal presentation to BKHDM warden	3/5/93	3/5/93
7. BKHDM staff trained on new directive	3/8/93	3/12/93
8. Transfer existing property to new containers, inventory current system and update computer database	2/5/93	3/5/93
9. Pilot project begins	3/15/93	----
10. Evaluate system-wide implementation options	----	7/13/93
11. Submit request for funding to OMB based on preliminary evaluation	4/12/93	8/10/93

¹See 1991 Inmate Property Work Plan - Activity #110

Attachment I

1992 INMATE PROPERTY WORK PLAN Implementation Schedule: Secure and Accessible Storage Systems Page 2 of 3

Description	Start Date	End Date
12. Final cumulative evaluation of pilot project	8/31/93	9/24/93
13. Internal review of evaluation and determination of system-wide feasibility	9/24/93	10/20/93
14. Report to OCC and LAS on pilot project	----	11/3/93

B. SYSTEM-WIDE IMPLEMENTATION Contingent upon successful completion of the pilot project

1. Develop plan for system wide implementation	10/20/93	11/4/93
2. Procurement process	11/24/93	3/8/95
3. Develop audit/evaluation procedures to monitor system	10/3/94	3/8/95

C. EVALUATION OF SYSTEM ALTERNATIVES

Schedule to be implemented if the pilot project is not successful

1. Evaluate problems with system and develop an alternative system.	10/20/93	11/22/93
2. Develop proposal for pilot for new alternative system.	11/22/93	12/7/93
3. Procurement process for new pilot project	12/7/93	1/14/94
4. Revise draft Inmate Property Directive to reflect new system	11/22/93	1/7/94

Attachment I

**1992 INMATE PROPERTY WORK PLAN
Implementation Schedule: Secure and Accessible Storage Systems
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Description	Start Date	End Date
5. Train BKHDM staff on new directive/system	1/10/94	1/14/94
6. Transfer existing property to new containers, inventory current system and update computer database	1/25/94	2/25/94
7. Pilot project begins	3/9/94	----
8. Final cumulative evaluation of pilot project	8/26/94	9/19/94
9. Submit request for funding to OMB based on preliminary evaluation. Evaluate capital eligibility. (To be determined during Executive Budget process.)	4/19/94	8/1/94
10. Internal review of evaluation and determination of system-wide feasibility	9/8/94	10/7/94
11. Report to OCC and LAS on Pilot Project	----	10/24/94

ATTACHMENT II

1992 INMATE PROPERTY WORK PLAN

Implementation Schedule: Policies and Procedures for Surrender and Safekeeping of Inmate Property

The purpose of this task is to review the previously agreed upon policy for surrender and safekeeping of inmate property to ensure its compatibility with the new secure inventory systems to be acquired pursuant to Attachment I.

Description	Start Date	End Date
1. Submit draft to OCC and LAS		1/22/92
2. OCC and LAS review	1/22/93	2/6/93
3. Directive fully effective		5/1/93

ATTACHMENT III

1992 INMATE PROPERTY WORK PLAN Implementation Schedule: Investigative Management

The purpose of this task is to develop and implement policies and procedures to investigate missing property claims.

Description	Start Date	End Date
1. Submit draft to OCC and LAS		2/1/93
2. OCC and LAS review	2/1/93	2/15/93
3. Directive fully effective		3/1/93

Attachment IV

1992 INMATE PROPERTY WORK PLAN Revised Schedule for Automation of Inmate Accounts: Commissary and Telephone

ACTIVITY	COMPLETION DATE
#98 - Digital Equipment Corporation (DEC) shall complete initial functional specifications of integrated IFCOM-AICM systems. The functional specification identifies what the integrated systems will accomplish (i.e., transfer of account balances between facilities upon transfer of inmates)	9/30/92
#99 - Finalization of acceptance of integrated IFCOM/AICMS system's functional specification by DOC	1/18/93
#100 - All computer hardware will be placed in the George R. Vierno Center (GRVC) by DEC for pilot integration of IFCOM/AICM systems	2/1/93
#101 - DEC will complete encoding functional specification into computer language	2/1/93
#102 - DEC will test integrated IFCOM/AICM systems in a simulated operation and adjust and refine computer program as necessary	2/19/93
#103 - DEC and DOC will initiate pilot integrated IFCOM/AICM systems at GRVC	2/22/93
#104 - DEC and DOC will complete evaluation of integrated IFCOM/AICM pilot and begin phase in of other jails	4/9/93
#105 - DEC and DOC will complete Department wide roll out of integrated IFCOM/AICM systems	5/15/95