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7-7-77
FILED
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IOLA FORTS and FANNIE BRYANT, :
detainees of the New York City :
Correctional Institution for :
Women, individually and on behalf :
of all other persons similarly :
situated, :

Plaintiffs, :

-against- :

BENJAMIN J. MALCOLM, Commissioner :
of Correction of the City of New :
York; ESSIE MURPH, WARDEN, New :
York City Correctional Institution :
for Women; and ABRAHAM D. BEAME, :
Mayor of the City of New York, in- :
dividually and in their official :
capacities, :

Defendants. :
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76 Civ. 101 (CHT)

MEMORANDUM
and
ORDER

APPEARANCES

For Plaintiffs: THE LEGAL AID SOCIETY
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TENNEY, J.

On February 3, 1977, this Court awarded partial summary judgment in this case and ordered the defendants "to make all visits to pretrial detainees at the NYCCIFW contact visits within 30 days of the entry of this order." Forts v. Malcolm, 426 F. Supp. 464, 468 (S.D.N.Y. 1977). On March 7, 1977, in response to the defendants' assertions that immediate and full compliance with the order was physically impossible, the Court granted the defendants' request for 90 additional days in which to make the necessary changes. That time having passed and full compliance not yet achieved, the defendants, by letter dated June 3, 1977, have requested an additional 30 days to effect compliance.

This Court is mindful that considerations of institutional security and administration can make it difficult to implement court orders in settings such as the NYCCIFW. For this reason, the Court has acceded to every accommodation requested by the defendants in the implementation of its order of summary judgment of February 3, 1977. Nevertheless, a reading of the reports supplied to the Court on that implementation leaves some doubt as to the completeness of the defendants' attempts to comply with the Court's directives. On March 7, 1977 the Court ordered:

"As of March 5, 1977 . . . visits by nonfamily as well as family visitors shall be contact visits to an extent consonant with the physical limitations of the facilities as they now exist at the NYCCIFW."

Yet the latest figures submitted by the defendants reveal a total of only 32 "open detention" visits (presumably a category indicating contact visits by adult visitors to detainees) for the entire month of May 1977. In addition there were 26 "open children" visits, a figure which is not broken down by visits to detainees and sentenced inmates. These actual figures contrast markedly with the defendants' assertions that all detainees, who number 198, "have two contact visits a week with family visitors and those inmates who do not have immediate family may have open visits with friends, who pose no security problems to the institution." Letter of Rosemary Carroll, dated June 3, 1977. Furthermore, other figures supplied to the Court by the defendants indicate that the great majority of closed visits to detainees (65%) in April 1977 were from family members, the class of visitors to whom open visits were traditionally accorded and who were alleged by Superintendent Murph to pose no significant security problems. Thus, it is difficult to understand why no significant progress has been made in implementing the Court's directives on an interim basis since some increase in contact visiting would seem to have been easily achievable even with the constraints imposed by the security problems perceived by the Superintendent.

Nevertheless, the defendants have indicated that removal of all institutional obstacles of this Court's orders will be possible if a 30-day extension of the implementation date of the

implementation date of the March 7 order is granted. Thus, the Court will grant one final extension in order to achieve that goal.

One further point must be noted. In their most recent letter to the Court, the defendants state:

"A program of three contact visits per week for inmates confined pending disposition of criminal charges will begin on July 11, 1977." Letter of Rosemary Carroll to Court, dated June 28, 1977.

This total consists of one weekly one-hour visit by children and two weekly one-hour visits by adults. It is the intention of the Court, however, that implementation of the final goal--that all visits be contact visits--should not result in any decrease in the number or in the length of the visits to which detainees at the NYCCIFW are entitled as compared to the visits accorded in the period preceding February 3, 1977. As Judge Lasker of this court has stated in circumstances very similar to those involved here, "the number of hours of visiting should not be reduced solely because of the fact that the visits are contact visits." Transcript of Conference at 13, Benjamin v. Malcolm, 75 Civ. 3073 (S.D.N.Y. June 8, 1977). The comparison of the present visiting schedule with that which prevailed earlier necessitates further factfinding, however. Therefore, the question of comparing the relevant visiting hours will be referred to United States Magistrate Sol Schreiber, to whom this case is assigned for all pretrial purposes, to hear and report. Accordingly,

IT IS ORDERED that the earlier orders of this Court be modified to the extent that all visits to pretrial detainees at the NYCCIFW be contact visits by Monday, July 11, 1977.

IT IS FURTHER ORDERED that the question of comparing those visiting hours which obtain upon implementation of the Court's order that all visits be contact visits and those visiting hours which existed prior to February 3, 1977 be referred to United States Magistrate Sol Schreiber to hear and report.

Dated: New York, New York

July 6, 1977

CHARLES H. TENNEY

U.S.D.J.