

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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[ ]  
RANDOLPH OUTLAW, HAROLD SCOTT, ALVIN DAVIS,  
ANDRE COMBS, TERENCE WEBSTER, WILLIAM WALKER,  
ANTHONY McDONALD, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

-against

JOSEPH D'ELIA, Director of Operations of the  
NEW YORK CITY DEPARTMENT OF CORRECTION;  
BENJAMIN J. MALCOLM, Commissioner of the  
NEW YORK CITY DEPARTMENT OF CORRECTION; JACK  
BIRNBAUM, Deputy Commissioner of the NEW YORK  
CITY DEPARTMENT OF CORRECTION; ALBERT JACKSON,  
Inspector General of the NEW YORK CITY DEPART-  
MENT OF CORRECTION; WILLIAM RITHOLTZ, Director  
of Legal Affairs of the NEW YORK CITY DEPART-  
MENT OF CORRECTION, FRANCIS BUONO, Supervising  
Warden of Rikers Island; MORRIS OSLYN, former  
Warden of the ADOLESCENT RECEPTION AND DETEN-  
TION CENTER; FRANCIS LETOUR, Warden of the  
ADOLESCENT RECEPTION AND DETENTION CENTER;  
CHARLES McELHONE, Assistant Deputy of the  
ADOLESCENT RECEPTION AND DETENTION CENTER;  
BEVOLI WELLS, Assistant Deputy Warden of the  
ADOLESCENT RECEPTION AND DETENTION CENTER;  
JAMES HART, Assistant Deputy Warden of the  
ADOLESCENT RECEPTION AND DETENTION CENTER;  
TIMOTHY SWEENEY, Captain, ADOLESCENT RECEPTION  
AND DETENTION CENTER; WILLIAM SMITH, Captain,  
ADOLESCENT RECEPTION AND DETENTION CENTER;  
REGINALD THORNE, Captain, ADOLESCENT RECEPTION  
AND DETENTION CENTER; W. COGDELL, Captain,  
ADOLESCENT RECEPTION AND DETENTION CENTER;  
JAY GOGGINS, Captain, ADOLESCENT RECEPTION  
AND DETENTION CENTER; T. McQUEEN, Captain,  
ADOLESCENT RECEPTION AND DETENTION CENTER;  
NICOLAS BASILE, Correction Officer, ADOLESCENT  
RECEPTION AND DETENTION CENTER; JOHN DONOVAN,  
Correction Officer, ADOLESCENT RECEPTION AND  
DETENTION CENTER; IRVING LYONS, Correction  
Officer, ADOLESCENT RECEPTION AND DETENTION  
CENTER, SAINZ LOPEZ, Correction Officer,  
ADOLESCENT RECEPTION AND DETENTION CENTER;  
RAPHAEL MERCADO, Correction Officer, ADOLESCENT  
RECEPTION AND DETENTION CENTER; LARRY HILL,  
Correction Officer, ADOLESCENT RECEPTION AND  
DETENTION CENTER; JAMES LUTZ, Correction  
Officer, ADOLESCENT RECEPTION AND DETENTION  
CENTER; ARTURO MEYERS, Correction Officer,  
ADOLESCENT RECEPTION AND DETENTION CENTER;  
KONOVITCH, Correction Officer, ADOLESCENT  
RECEPTION AND DETENTION CENTER; JOHN DOES  
A through X, Correctional Personnel at the  
ADOLESCENT RECEPTION AND DETENTION CENTER;  
ALBERT BERKOWITZ, Chairman of the NEW YORK  
STATE COMMISSION OF CORRECTION; ABRAHAM BEAME,  
Mayor of NEW YORK CITY, individually and in  
their official capacities; the NEW YORK CITY  
DEPARTMENT OF CORRECTION; THE NEW YORK STATE  
COMMISSION OF CORRECTION; and the CITY OF NEW  
YORK,

Defendants.  
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BRUTALITY

Consent Decree -  
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75 Civ. 3487  
(GLG)

ORDER

WHEREAS, on July 17, 1975, plaintiffs commenced the above-entitled action alleging a pattern and practice of inmates' constitutional rights being violated at the Adolescent Reception and Detention Center, a detention facility operated by the City of New York; and

WHEREAS, on March 17, 1976, this Court, on plaintiffs' motion, entered an order providing, for purposes of declaratory and injunctive relief, that the action be maintained as a class action under Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, and that the class be defined as all inmates at the Adolescent Reception and Detention Center, including those who enter that institution during the pendency of the action; and

WHEREAS, counsel for plaintiffs have conducted comprehensive investigations of the facts and circumstances involved in this action and counsel for the parties have conducted extensive discovery, including inspection of numerous records, documents and papers and examination by deposition of numerous parties and witnesses; and

WHEREAS, counsel for plaintiffs and counsel for defendants have met on numerous occasions to conduct discussions aimed at developing new official procedures and standards to remedy on behalf of the class the alleged constitutional deprivations complained of;

NOW THEREFORE, the parties having agreed to the terms of this Order and the Court, having been fully advised in the premises, having conferred with counsel for all parties, having reviewed all aspects of this case to date, having fully considered the desirability of disposing of the matters contained herein by means of a consent order and being satisfied that said order has been freely agreed to by the plaintiffs and defendants herein,

it is hereby

ORDERED, that the following judgment be, and the same hereby is, made and entered as the final judgment as to defendants Joseph D'Elia, Benjamin J. Malcolm, Jack Birnbaum, Albert Jackson, William Ritholtz, Francis Buono, Morris Oslyn, Francis Letour, Charles McElhone, Bevoli Wells, James Hart, William Cogdell, Theodore McQueen, Irving Lyons, Reginald Thorne, William Smith, Albert Berkowitz, Abraham Beame, the New York City Department of Correction, the City of New York and the New York State Commission of Correction in this action subject to the notice and hearing provisions set forth infra:

I. DEFINITIONS

A. "ARDC" refers to the Adolescent Reception and Detention Center of the New York City Department of Correction, located at 11-11 Hazen Street, East Elmhurst, New York, in which adolescent males are detained pending trial or transfer after sentencing.

B. "CIU" refers to the Central Investigations Unit, a component of the New York City Department of Correction established pursuant to the State of New York Office of Crime Control Planning Grant Award #C64440 (effective October 9, 1972) and extended pursuant to the Amendment to Grant Award #C64440 (DCJS #942B) dated April 24, 1975, whose functions are outlined in attachments to the above grant documents; or any other division of or person(s) within the Department of Correction that in the future will perform the functions outlined by Department of Correction Directive No. 20, dated May 3, 1971; the functions outlined by Department of Correction Directive No. 15, dated August 13, 1974; and the functions imposed on the CIU by the terms of this decree.

C. "Commissioner" refers to the Commissioner of the New York City Department of Correction.

D. "Correctional personnel" or "officer" refers to all uniformed staff of the New York City Department of Correction, including correction officers, captains, assistant deputy wardens, deputy wardens, wardens and supervising warden and any other rank hereafter created.

E. "De novo investigation" means: (a) interviews by CIU personnel of inmates and correctional personnel who have allegedly been involved in or witnessed "an incident" as defined in Part IJ; (b) examination by CIU personnel of all ARDC documents relevant to the incident; (c) where appropriate releases can be obtained, examination by CIU personnel of all medical records relevant to the incident; and (d) written findings of fact by CIU personnel.

F. "Department" refers to the New York City Department of Correction, its agents and employees; "departmental" means of or pertaining to the Department.

G. "Disciplinary charges" are formal departmental charges brought against members of the Department for violations of departmental rules and regulations or dereliction in the performance of duties, as prescribed by Rule 3.50.060 of the Department's Rules and Regulations.

H. "Disciplinary trials" are hearings on disciplinary charges conducted pursuant to Rules 3.25.050 and 3.25.060 of the Department's Rules and Regulations and the terms of this decree.

I. "Emergency response system" refers to the system established by personnel at ARDC for summoning assistance and responding to summons for assistance by correctional personnel.

J. "Incident" means any occurrence in ARDC which involves or appears to involve any of the following: an assault

by any officer(s) against any inmate(s); an assault by any inmate(s) against any officer(s); the use of force against any inmate(s) by any officer(s); or exchange of force between any inmate(s) and any officer(s).

K. "Inspector General" refers to the director, head or senior staff person, or acting director, head or senior staff person of the CIU who performs or in the future will perform the duties imposed on the Inspector General by the terms of the documents set forth in Part IB, or by the terms of this decree.

L. "Involvement" in an incident or "involved" in an incident means direct participation in an incident, whether by initiation or response thereto.

M. "Trial commissioner" refers to staff of the Division of Legal Affairs of the Department who perform hearing officer functions at departmental disciplinary trials pursuant to Rules 3.25.050 et seq. of the Department's Rules and Regulations and the terms of this decree.

N. "Unusual occurrence report" refers to the written report of an inquiry by ARDC personnel (which report is submitted to the Office of the Director of Operations within ten days of the occurrence) into the occurrences enumerated in sections (a) through (f) of Rule 6.05.010 and sections (a) through (h) of Rule 6.05.030 of the Department's Rules and Regulations.

## II. INVESTIGATION OF INCIDENTS IN ARDC

### A. Reporting to CIU

1. All unusual occurrence reports relating to ARDC shall be transmitted within 48 hours to the CIU.

2. All incidents relating to ARDC shall be reported immediately to the Inspector General or his designee pursuant to a standard operating procedure to be developed and implemented

by the Department within 90 days from entry of this decree.

3. All oral or written complaints made by an inmate of ARDC or by any other person to any member of the Department about any incident at ARDC shall be immediately reported through channels by telephone to the CIU. In addition, a copy of each written complaint shall be immediately transmitted to the CIU.

4. The CIU shall maintain a written record of all unusual occurrence reports and all incidents and complaints reported to it.

B. Investigation by CIU

1. The Inspector General shall order a de novo investigation by the CIU within 12 hours of being notified that the following types of incidents have occurred at ARDC:

- (a) An incident following which any inmate or any officer is given hospital treatment;
- (b) An incident in which any inmate or any officer allegedly suffers any physical injury;
- (c) An incident in which any officer, during his probationary period of employment, is allegedly involved;
- (d) An incident following which any officer arrests any inmate, or requests that he be arrested, as the result of that incident.

2. Nothing in this decree shall be construed as impeding the power of the CIU to investigate any other incident, event or occurrence at ARDC.

3. Before interviewing any inmate, CIU investigators shall:

- (a) ascertain whether the inmate speaks English and, if necessary, assign an appropriate foreign language speaking investigator to interview the inmate, or provide

for a translator;

(b) inform the inmate that the investigators work for the CIU; explain the function of the CIU; and give the inmate a card with each investigator's name, title and agency address;

(c) ascertain whether the inmate was allegedly a participant in the incident under investigation and has counsel representing him with regard to the incident, in which case the CIU shall notify counsel before any attempt is made to interview the inmate; and

(d) if criminal charges have been requested or brought against the inmate as a result of the incident under investigation, inform the inmate of that fact, and warn him that any statement he may make may be used against him in court.

4. Where practicable, the CIU de novo investigation shall be completed within 30 days. If for good cause an investigation is extended beyond 30 days, the Inspector General shall make a written notation of the delay and reason(s) for the delay in the CIU case file on the incident under investigation. Upon conclusion of the investigation, the Inspector General or Deputy Inspector General shall personally review the case file prior to any determination of what action, if any, relevant to the incident shall be taken. When such review results in a determination to close the investigation without further action, the Inspector General shall state in writing his reasons for such determination. When such review results in a determination that further action is warranted, the Inspector General shall state in writing his recommendation that an institutional reprimand be given or corrective or instructive interview be held; or that formal departmental disciplinary proceedings be instituted; or

that the matter be referred to the New York City Department of Investigation or to the appropriate office of the District Attorney for the county concerned or to the Office of the Special Prosecutor for Corruption. In all such cases, the case file shall indicate the action taken both by the Inspector General and by the agency or officials to which the matter has been referred.

Whenever in the judgment of the Inspector General the facts revealed by an investigation of an incident at ARDC indicate the advisability for a change in the institution's orders, procedures, operations, assignments of manpower, or other aspects of the institution's operations, a report recommending such change shall be forwarded to the Commissioner and the Chief of Operations for their approval and, if approved, to the Warden.

C. Institutional and Departmental Actions Following Incidents in ARDC

1. Whenever an incident as described in Part IIB (1) is to be investigated de novo by the CIU, ARDC may conduct any preliminary inquiry it deems appropriate, provided that:

(a) before any inmate is interviewed by any ARDC correctional personnel, the investigating officer shall give the following warning to any inmate who in his judgment has been directly involved in the incident:

"I'm doing an investigation about what just happened. I'd like to talk to you about it. You don't have to speak to me if you don't want to. Whether or not you talk to me now, the Department's Central Investigations Unit will send someone out to talk to you within 12 hours."

(b) before any inmate is interviewed by any ARDC correctional personnel (beyond ascertaining which inmate(s) was (were) directly involved in the incident), the inmate shall be given the opportunity to write a report to the CIU about the incident on a form which the inmate himself will be given an opportunity to seal and deposit in a locked box established pursuant to Part IVC.

2. Within 180 days of entry of this decree, any inquiry made by ARDC pursuant to this Part shall be conducted by an officer of the rank of Captain or above who has completed the program of in-service training prescribed in Part VA, but in no case shall such officer be a person who may have been involved in or witnessed the incident being inquired into.

3. In all cases in which the CIU investigation of any incident contains the conclusion that any allegations of wrongdoing against any inmate were unfounded, unsubstantiated or not supported by the evidence, or otherwise exonerates any inmate who was charged with an infraction, deprived of any rights or privileges, or otherwise punished as a result of an incident, the institution shall:

(a) correct any infraction report against the inmate resulting from the incident by attaching to or noting on it the exculpatory information, and recording on the report the actions taken to restore the inmate to his former status;

(b) update all other institutional records regarding the incident to reflect the exculpatory information and final disposition of actions taken as a result of the incident; and

(c) whenever possible and where consistent

with the safety and good order of the institution, restore to the inmate institutional jobs or other privileges retained by him before the incident occurred and of which he was deprived as a result of the incident.

4. Whenever any officer assigned to ARDC arrests, expresses his intention to arrest, or requests the institution of criminal charges against any inmate of ARDC as the result of any incident occurring at ARDC the Assistant Deputy Warden assigned as Tour Commander, or his designee, shall notify the Inspector General immediately.

5. No correctional personnel assigned to ARDC shall, without prior notification to and approval from the Warden, or in his absence, the Assistant Deputy Warden assigned as Tour Commander, arrest any inmate of ARDC as the result of any incident occurring at ARDC. Whenever the Warden or the Tour Commander approves a request to make an arrest, the Warden or Tour Commander shall immediately notify the Chief of Operations and the Inspector General. Notwithstanding the foregoing, no arrest shall take place if the Chief of Operations or the Inspector General determines that an arrest would be inappropriate, unless the Commissioner approves the arrest. Whenever an inmate is arrested as the result of an incident occurring at ARDC the CIU shall forward the results of its investigation of the incident to the appropriate District Attorney's office immediately upon completion of the investigation.

6. Inmates of ARDC shall retain the right to a hearing on any infraction within 72 hours. However, whenever any inmate is charged with an infraction as the result of an incident in which a de novo investigation must be conducted by the CIU pursuant to Part IIB(1), the Inspector General shall, within 72 hours, make a determination whether the hearing on the infraction

may be postponed until after conclusion of the CIU investigation. The Inspector General shall communicate his determination immediately to the Warden, or his designee. In all cases where the Inspector General has determined that a hearing may be postponed, the Assistant Deputy Warden serving as hearing officer shall:

(a) inform the inmate that he has a right to a hearing within 72 hours of the incident resulting in the infraction, but may choose to postpone his hearing until after the CIU completes its investigation into the incident;

(b) inform the inmate of the CIU's investigatory timetable;

(c) explain to the inmate that if he chooses to postpone his hearing until after conclusion of the CIU investigation, the CIU's findings will be made available to both inmate and hearing officer when the hearing is held, and will be taken into consideration in determining the disposition of the infraction; and

(d) explain to the inmate which rights and privileges he will lose if he chooses to postpone his hearing, but that he may be required to remain in administrative segregation until such time as the hearing is held.

### III. RECORD MANAGEMENT

A. The CIU shall maintain an alphabetical "officers' file", consisting of separate folders for each officer assigned to ARDC. The folder for each officer shall contain:

1. a copy of all records kept pursuant to Part IIA(4) relevant to that officer;

2. a notation of any action taken by the CIU or the

Department with respect to any incidents, complaints or recommendations memorialized in such records.

B. Every six months, the Inspector General shall prepare and submit to the Commissioner and the Warden of ARDC a summary report on the officers' file, listing the name of each officer whose file contains a reference to that officer's being involved in two or more incidents during the immediately preceding six month period. The report shall include a summary of each incident in which the officer in question was alleged or found to have been involved, a description of any action taken by the CIU or the Department with respect thereto, and any further relevant information. A copy of each such summary report shall be maintained as part of the ARDC Warden's files.

#### IV. INMATE INFORMATION, ORIENTATION AND COMPLAINTS

A. The Department shall, within 120 days of entry of this decree, prepare and distribute a handbook to each inmate upon his arrival at ARDC. Said handbook shall contain a notice informing the inmate of the existence and purpose of the CIU and explaining a confidential procedure for making complaints to the CIU. Such notice shall be submitted to plaintiffs' attorneys prior to issuance.

B. The Department shall, within 120 days of entry of this decree, establish a procedure by which each inmate admitted to ARDC will signify his receipt of the inmate handbook.

C. A minimum of three locked boxes for the purpose of enabling inmates to make confidential complaints and statements to the CIU shall be placed in convenient locations within ARDC within two weeks of entry of this decree. The notice set forth in the inmate handbook pursuant to Part IVA shall be permanently posted in a prominent place near each locked box. Access to

the locked boxes shall be limited to CIU personnel, who shall collect the complaints twice weekly for transmission to the CIU.

V. STAFF MANAGEMENT AND TRAINING

A. The Department shall, within 120 days of entry of this decree, institute a program of in-service training for all correctional personnel above the rank of correction officer in the techniques of investigation and reporting of incidents and shall furnish plaintiffs' counsel with an outline of such program which sets forth the subject areas covered and the time devoted to each.

B. The Department shall, within 120 days of entry of this decree, develop a policy and procedures directive on the conduct of the emergency response system throughout the Department. Such procedure shall include a system for recording the circumstances and results of all activations of the emergency response system.

VI. DEPARTMENTAL DISCIPLINE OF PERSONNEL INVOLVED IN INCIDENTS

A. The pendency of civil litigation brought as the result of any incident in which correctional personnel are alleged to have assaulted or used improper force against any inmate in ARDC will not of itself be cause for deferring the preparation, trial, and disposition of any departmental charges brought against any officer as the result of that incident.

B. Disciplinary trials of all personnel charged with violations of departmental rules and regulations as a result of incidents will be given priority over other disciplinary actions.

C. Within 30 days after termination of each disciplinary trial, the trial commissioner shall submit to the Commissioner

a report containing his summary of the evidence received and heard, his conclusions, his recommendations regarding disposition and punishment, and his reasons for such recommendations.

D. Within 30 days after receiving the trial commissioner's report and recommendations, the Commissioner shall confirm, vacate or modify the trial commissioner's recommendations for disposition after personally reviewing all materials submitted by the trial commissioner. The duty to review the entire record and recommendations is a non-delegable duty of the Commissioner. In any case where the Commissioner vacates or modifies the recommendations of the trial commissioner, he shall state in writing his reasons for doing so and his decision as to final disposition.

#### VII. ACCESS TO ATTORNEYS

The Department of Correction shall institute Sections 9.1 through 9.5 as they may be amended from time to time of the Board of Correction's "Minimum Standards for New York City Correctional Facilities" attached hereto as Appendix A and incorporated herein by reference.

#### VIII. LANGUAGE REQUIREMENTS

All notices, handbooks, forms and other written materials required to be posted or given to inmates pursuant to the terms of this decree shall be in Spanish as well as English.

#### IX. MONITORING

The Inspector General shall meet with plaintiffs' counsel quarterly to review the operations of the CIU pursuant to this decree. Prior to each quarterly review, plaintiffs' counsel shall have access to all documents and records required to be

kept pursuant to this decree, except that the Inspector General may in his discretion withhold the portions of any documents or records which reveal the names or identity of confidential sources. Upon a showing of special circumstances, plaintiffs' counsel shall have such access at times other than the quarterly review.

#### X. IMPLEMENTATION AND MODIFICATION

The Court reserves and retains jurisdiction herein for the purpose of construing, modifying or enforcing this decree. The parties shall make a good faith effort to resolve any differences over the provisions of this decree which may arise between them. Prior to institution of any proceeding before the Court to enforce, modify or construe this decree, counsel shall notify opposing counsel, counsel for the Department of Correction, and the Deputy Mayor for Criminal Justice.

Within five days of the receipt of said notice, counsel for the parties shall meet in an attempt to resolve their differences. If counsel fail to effect such resolution, either party within five days of said meeting may then have due recourse to the Court.

#### XI. DISMISSAL

Plaintiffs' claims for injunctive and declaratory relief and monetary damages and counsel fees against defendants Joseph D'Elia, Benjamin J. Malcolm, Jack Birnbaum, Albert Jackson, William Ritholtz, Francis Buono, Morris Oslyn, Francis Letour, Charles McElhone, Bevoli Wells, James Hart, William Cogdell, Theodore McQueen, Irving Lyons, Reginald Thorne, William Smith, Albert Berkowitz, Abraham Beame, the New York City Department of

Correction, the City of New York and the New York State Commission of Correction are hereby dismissed with prejudice. Plaintiffs' claims for injunctive and declaratory relief and attorneys' fees against the "new" State Commission of Correction and its chairman, substituted as parties previously by order, are also dismissed with prejudice. The claims of plaintiffs Randolph Outlaw, Harold Scott, Alvin Davis, Andre Combs and Terence Webster against defendants Nicolas Basile, John Donovan, James Lutz, Raphael Mercado, Larry Hill, and Timothy Sweeney; the claims of plaintiff William Walker against defendants Jay Goggins and Charles Konovitch; the claims of plaintiff Anthony McDonald against defendants Arturo Meyers and Sainz Lopez; and the cross claims of defendants Nicolas Basile, John Donovan, James Lutz, Raphael Mercado, Larry Hill, and Timothy Sweeney against the City of New York are preserved.

The City acknowledges that the Legal Action Center has performed a valuable public service by commencing and prosecuting this action. The Legal Action Center has been responsible for bringing to public attention matters which the City acknowledges should be remedied in the interests of all present and prospective detention inmates and in the interests of the public. The City also acknowledges that, as a direct result of disclosures made in the course of this action, remedial procedures will be adopted and implemented by the City as set forth in this consent decree and in regulations to be issued by the Department of Correction.

The parties agree that the provisions contained herein regarding dismissal of plaintiffs' claims for the payment of counsel fees and costs to the Legal Action Center shall in no way be construed as a recognition that the award of counsel fees and costs is not appropriate or would not have been directed to have been paid by the City to the Legal Action Center if application for the same had been made to the Court. The parties

further agree that the provisions contained herein regarding dismissal of plaintiffs' claims for counsel fees and costs shall not be introduced or referred to by the City or parties represented by the New York City Corporation Counsel in any legal proceeding.

## XII. NOTICE TO THE CLASS

A. Within 14 days of the entry of this Order, plaintiffs will supply to the Department the necessary copies of the "Notice To All Persons Incarcerated In the Adolescent Reception and Detention Center" attached at Appendix B.

B. Within 21 days of the entry of this Order, the Department will distribute copies of the notice supplied by plaintiffs to all inmates at ARDC in the following manner:

1. By posting it in a prominent place

- (a) in each dayroom on each housing floor on which inmates are housed,
- (b) in the receiving room,
- (c) in the medical clinic, and
- (d) in the inmate law library.

The notice shall be posted for a period of 30 days.

2. By furnishing a copy of the notice to each current inmate and to each inmate who arrives at ARDC for a period of 30 days.

C. A hearing will be held by the Court at            o'clock on            in Courtroom            on the approval or rejection of the final entry of this order. The            day of            , 1978 is hereby fixed as the final date for members of the class to file objections to the final entry of this Order.

The parties consent to the entry of this Order.

Margaret K. Brooks  
DEBORAH M. GREENBERG  
ERIC D. BALBER  
MARGARET K. BROOKS  
CATHERINE H. O'NEILL  
(Legal Action Center of the  
City of New York, Inc.)  
19 West 44th Street, Room 812  
New York, New York 10036  
997-0110  
Attorneys for Plaintiffs

Allen G. Schwartz  
ALLEN G. SCHWARTZ  
Corporation Counsel  
Municipal Building  
New York, New York 10007  
Attorneys for Defendants

Preliminarily approved,

G. Goettel  
U.S.D.J.

Dated: September 26, 1978

Judgment entered  
9/29/78

EXHIBIT A

PART 9 - ACCESS TO COURTS

Section

- 9.1 Policy
- 9.2 Judicial and Administrative Proceedings
- 9.3 Access to Counsel
- 9.4 Access to Co-defendants
- 9.5 Attorney Assistants
- 9.6 Law Libraries
- 9.7 Legal Documents and Supplies
- 9.8 Effective Date

Section 9.1 Policy

Prisoners are entitled to access to courts, attorneys, legal assistants and legal materials.

Section 9.2 Judicial and Administrative Proceedings

(a) Prisoners shall not be restricted in their communications with courts or administrative agencies pertaining to either criminal or civil proceedings.

(b) Timely transportation shall be provided to prisoners scheduled to appear before courts or administrative agencies. Vehicles used to transport prisoners must meet all applicable safety and inspection requirements and provide adequate ventilation, lighting and comfort.

Section 9.3 Access to Counsel

(a) Prisoners shall not be restricted in their communication with attorneys. The fact that a prisoner is represented by one attorney shall not be grounds for preventing him or her from communicating with other attorneys. Any properly identified attorney may visit any prisoner with the prisoner's consent.

(i) An attorney may be required to present identification to a designated official at the central office of the Department in order to obtain an institutional pass. This pass shall remain in effect for a minimum of three years and shall permit the attorney to visit any prisoner under the custody of the Department.

(ii) The Department may require only such identification that is normally possessed by an attorney.

(b) The Department may limit visits to an attorney of record or an attorney with a court notice for prisoners undergoing examination for competency pursuant to court order.

(c) Visits between prisoners and attorneys shall be kept confidential and protected, in accordance with the provisions of Part 10. Legal visits shall be permitted at least eight hours per day between 8 a.m. and 8 p.m. During business days, four of those hours shall be 8 a.m. to 10 a.m. and 6 p.m. to 8 p.m. The Department shall maintain and post the schedule of legal visiting hours at each institution.

(d) Mail between prisoners and attorneys shall not be delayed, read, or interfered with in any manner, except as provided in Part 12.

(e) Telephone communications between prisoners and attorneys shall be kept confidential and protected, in accordance with the provisions of Part 11.

#### Section 9.4 Access to Co-defendants

Upon reasonable request, regular visits shall be permitted between a detainee and all of his or her co-defendants who consent to such visits. If any of the co-defendants are incarcerated, the Department may require that an attorney of record be present.

#### Section 9.5 Attorney Assistants

(a) Law students, legal paraprofessionals, and other attorney assistants working under the supervision of an attorney representing a prisoner shall be permitted to communicate with prisoners by mail, telephone and personal visits, to the same extent and under the same conditions that the attorney may do so for the purpose of representing the prisoner. Law students, legal paraprofessionals and other attorney assistants working under the supervision of an attorney contacted by a prisoner shall be permitted to communicate with that prisoner by mail, telephone or personal visits to the same extent and under the same conditions that the attorney may do so.

(b) An attorney assistant may be required to present a letter of identification from the attorney to a designated official at the central office of the Department in order to obtain an institutional pass. A pass shall not be denied based upon any of the items listed in Section 10.8(a).

(c) The pass shall remain in effect for a minimum of one year and shall permit the assistant to perform the functions listed in Section 9.5(a). It may be revoked if specific acts committed by the legal assistant during a visit to an institution demonstrate his or her threat to the safety and security of that institution. This determination must be made pursuant to the procedural requirements of Section 10.8(b)(i), Section 10.8(d), and Section 10.8(e).

#### Section 9.6 Law Libraries

(a) Each institution shall maintain a properly equipped and staffed law library.

(i) By September 1, 1978, the law library shall be located in a separate area sufficiently free of noise and activity and with sufficient space and lighting to permit sustained research.

(ii) By September 1, 1978, the law library shall remain open for prisoner use at least eight hours per day during lock-out periods, including at least three hours between 6 p.m. and 10 p.m. on week-day evenings. Prisoners shall not be unreasonably denied access to the law library.

(iii) The law library hours for prisoners in punitive segregation may be reduced or eliminated, provided that an alternative method of access to legal materials is instituted to permit effective legal research.

(iv) Within 120 days of the effective date of this standard, the Department shall report to the Board detailing the resources available at the law library at each institution, including a list of titles and dates of all law books and periodicals and the number, qualifications and hours of English and Spanish-speaking legal assistants.

#### Section 9.7      Legal Documents and Supplies

(a) Prisoners shall have reasonable access to typewriters for the purpose of preparing legal documents. Legal clerical supplies, including pens, legal paper and pads and carbon paper shall be made available for purchase by prisoners. Such legal clerical supplies shall be provided to indigent prisoners at Department expense.

(b) Prisoners shall be permitted to purchase and receive an unrestricted number of law books and other legal research materials from any source.

(c) Reasonable regulations governing the keeping of materials in cells and the searching of cells may be adopted, but under no circumstances may prisoners' legal documents, books and papers be read or confiscated by correctional personnel without a lawful warrant. Where the space in a cell is limited, an alternative method of safely storing legal materials elsewhere in the institution is required, provided that a prisoner shall have regular access to those materials.

#### Section 9.8      Effective Date

This part shall take effect May, 1, 1978.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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|---------------------------------------------------------|---|--------------|
| RANDOLPH OUTLAW, HAROLD SCOTT, ALVIN                    | : |              |
| DAVIS, ANDRE COMBS, WILLIAM WALKER,                     | : |              |
| ANTHONY McDONALD, on behalf of themselves               | : |              |
| and all others similarly situated,                      | : |              |
|                                                         | : |              |
| Plaintiffs,                                             | : | 75 Civ. 3487 |
|                                                         | : |              |
| -against-                                               | : | (GLG)        |
|                                                         | : |              |
| JOSEPH D'ELIA, Director of Operations of the            | : |              |
| New York City Department of Correction, <u>et al.</u> , | : |              |
|                                                         | : |              |
| Defendants.                                             | : |              |

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NOTICE TO ALL PERSONS INCARCERATED  
IN THE ADOLESCENT RECEPTION AND DETENTION CENTER

Outlaw et al. v. D'Elia et al. is a class action lawsuit brought on behalf of all inmates at ARDC. The case is about incidents of violence between officers and inmates at ARDC and the way in which the staff at ARDC and the Department of Correction investigate those incidents.

The attorneys for the class of all inmates at ARDC and the attorneys for the City of New York have reached agreement on a proposed settlement of the case. A complete copy of the proposed settlement can be obtained from the attorneys for the inmates. Their names are listed at the end of this notice. Summarized below are the procedures that will be followed under the proposed settlement whenever any inmate is injured in any future incident between officers and inmates:

1. Every time an inmate is injured by an officer, within 12 hours, the Central Investigations Unit (also known as the Inspector General) of the Department of Correction must begin an investigation. The Central Investigations Unit is a special division of the Department. It has its office at 100 Centre Street. It is responsible among other things for investigating charges of wrongdoing by members of the Department.
2. The investigation by the Central Investigations Unit will include interviews of all inmates and officers who were involved in or witnessed any incident in which an inmate was injured.
3. An investigation may be done by officers at ARDC before the investigation by the Central Investigations Unit begins. However, before any inmate is questioned by anyone at ARDC about any incident in which an inmate has been injured, the inmate will be given a chance to write a statement for the Central Investigations Unit, seal it himself and put it into a locked box which the Central Investigations Unit alone can open.
4. Whenever anyone who works at ARDC questions any inmate involved in an incident, he must tell the inmate that he need not talk about the incident and that persons from the Central Investigations Unit will be arriving within 12 hours to make their own investigation.
5. The Central Investigations Unit will keep three locked boxes at different places in ARDC. If any inmate wishes to complain to the Central Investigations Unit about any treatment he has received at ARDC, he can write a complaint and place it in one

of the boxes. Only investigators from the Central Investigations Unit will have keys to the boxes.

6. Inmates at ARDC will be permitted to have visits from any attorney they wish to see.

7. If the investigation by the Central Investigations Unit finds that any infraction against any inmate as a result of an incident he had with an officer was not justified, the ARDC staff will correct any infraction report which has been made against the inmate and will make efforts to restore to the inmate all privileges (including his job) which he had before the incident with the officer.

8. If an inmate is given an infraction as a result of an incident between himself and an officer which has resulted in injury to the inmate, he shall have a hearing on the infraction within 72 hours. However, in special cases, when the Central Investigation Unit believes that further investigation would help, the inmate will be given a choice to postpone his infraction hearing. In such cases he may be housed in administrative segregation until he has his hearing.

9. An officer may not arrest an inmate without prior approval from (1) the Warden or the Assistant Deputy Warden acting as Tour Commander and (2) both the Inspector General and the Chief of Operations or the Commissioner. If an inmate is arrested the Central Investigations Unit must send the results of its investigation to the District Attorney.

10. In those cases where the Central Investigations Unit has concluded that an officer used improper or excessive force against an inmate, the Department will expedite disciplinary proceedings against the officer.

11. All complaints to any officer or employee of the Department of Correction of wrongdoing involving the use of force against inmates must be reported to the Central Investigations Unit immediately.

12. A new system of filing reports about incidents between inmates and officers involving the use of force and complaints about officers will be set up. Every six months, the Central Investigations Unit will make a report to the Commissioner of the Department of Correction and to the Warden of ARDC about those officers who (1) have more than one complaint involving the use of force against inmates in their files over a six-month period or (2) have been involved in more than one incident resulting in physical injury to an inmate over a six-month period.

13. The Department will write and distribute to each inmate a new inmate handbook.

14. The Department will begin a new program of training for officers at ARDC who investigate incidents involving the use of force against inmates.

15. All notices, handbooks, forms and other written materials required to be given to inmates in this agreement shall be in Spanish as well as English.

The New York State Commission of Correction has been dropped from the suit.

This notice will remain posted for thirty (30) days.

After thirty (30) days, the Court will decide whether to approve the proposed settlement and will hold a hearing regarding it. The Court will consider any comments on, or objections to, the terms of this proposed settlement by any inmate in ARDC. You should therefore send any comments or objections you may have to Judge Gerard L. Goettel, United States District Court, United States Courthouse, Foley Square, New York, New York 10007. A copy of your comments or objections should also be sent to the attorneys for the class of inmates at ARDC, Deborah M. Greenberg, Margaret K. Brooks, Eric D. Balber at Legal Action Center of the City of New York, Inc., 19 West 44th Street, New York, New York 10036. A complete copy of the proposed settlement can be obtained from these same attorneys. Any comments on or objections to the proposed settlement must be sent to the Court by

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