

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GUY ZEPH AMBROSE, LUIS GILCES, FRANK
ABDUL GHANI and JOHNNY JOHNSON,
detainees of the Bronx House of
Detention for Men, individually and
on behalf of all other persons
similarly situated,

76 Civ. 190

Plaintiffs,

-against-

MEMORANDUM

BENJAMIN J. MALCOLM, Commissioner of
Correction of the City of New York;
ROBERT KIRTON, Deputy Warden-in-
Command, Bronx House of Detention for
Men; and ABRAHAM D. BEAME, Mayor of the
City of New York, individually and in
their official capacities,

Defendants.

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APPEARANCES:

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LASKER, D.J.

Plaintiffs move on behalf of the class of pre-trial detainees at the Bronx House of Detention for Men for a preliminary injunction requiring defendants to commence forthwith a program of contact visiting. Defendants oppose the motion on a variety of grounds, none of which, for the reasons set forth below, we find persuasive.

A party who seeks preliminary relief must establish either a "combination of probable success and the possibility of irreparable injury or that [it has] raised serious questions going to the merits and that the balance of hardships [tips] sharply in [its] favor." Pride v. Community School Board, 488 F.2d 321, 324 (2d Cir. 1973).

Defendants' argument that plaintiffs have not demonstrated a probability of success ignores the history of litigation in this circuit involving the rights of pre-trial detainees. In Rhem v. Malcolm, we held that detainees housed at the Manhattan House of Detention (Tombs) were constitutionally entitled to contact visits. 371 F.Supp. 595, 625 (1974). That ruling was affirmed by the Court of Appeals, 507 F.2d 333, 338-39 (1974), and again affirmed in the companion suit of Benjamin v. Malcolm, brought on behalf of detainees at the New York City House of Detention for Men at Riker's Island. 527 F.2d 1041 (1975). The fact that detainees in the Bronx may have greater opportunities to

make personal calls than do detainees at other City institutions does not at all compensate for their present inability "to shake hands with a friend, to kiss a wife, or to fondle a child." 371 F.Supp. at 627, cited at 507 F.2d at 337.

Even if the City is correct that the right to contact visiting has not been established in other jurisdictions, the law in this circuit is plain. That plaintiffs are housed in the Bronx and not Riker's Island or Manhattan is a geographical difference without constitutional significance. In rejecting defendants' earlier attempt to resist instituting contact visiting at the House of Detention for Men on Riker's Island, the Court of Appeals stated, "An unconstitutional booth is no less objectionable because it sits on Rikers Island rather than in the Tombs." Rhem v. Malcolm, Benjamin v. Malcolm, supra, 527 F.2d at 1043. Nor does it become so because it sits in the Bronx.

Defendants repeat another argument made when the Benjamin plaintiffs moved for a preliminary injunction on the issue, among others, of contact visiting: that to grant the injunction would constitute an unjustifiable grant of final relief entailing enormous expenditures of capital. We stated in our memorandum of July 11, 1975:

"Ordinarily such an argument would carry great weight, but in view of the historical background this is not an ordinary case. The plaintiffs point out that the record in Rhem v.

Malcolm, including the affirmance by the Court of Appeals, establishes an overwhelming likelihood of success on the merits in the present case, and that any delay in according plaintiffs their constitutional rights would be unjust."

That statement carries even greater weight given the Court of Appeals' affirmance of the grant of preliminary relief on the issue of contact visiting at HDM. Rhem v. Malcolm, Benjamin v. Malcolm, supra.

According to defendants, however, security considerations at the Bronx House of Detention make the institution of a contact visiting program unfeasible. They fear that the location of the institution in the center of a heavily populated area significantly increases the risks of contact visiting. Moreover, they contend that in general the type of individual who is currently incarcerated while awaiting trial presents a greater security risk than did the men who were pre-trial detainees at the time of the trial in Rhem. While a classification system could determine which inmates present unacceptable security risks and allow for contact visiting for the rest of the population, the defendants argue that the transient nature of the population prevents them from making accurate predictions necessary for such a classification system.

Throughout the course of the litigation in Rhem, Benjamin and Ambrose, we have indicated our understanding

that security considerations must be taken into account in devising a contact visiting program. Nevertheless, the Court of Appeals' affirmances of the decision of this court have established as the law of the circuit that while security considerations must be taken into account in determining the scope and implementation of a contact visiting program, they may not act as a bar to that right.

Accordingly, plaintiffs' motion for preliminary injunction is granted. The defendants are ordered within thirty days of the filing of this memorandum to submit a plan for the initiation of contact visits at the Bronx House of Detention. The plaintiffs shall have the option to file a proposed plan with the court within the same period. Either party shall have the right to submit to the court within fifteen days after the filing of a proposed plan, its comments as to such plan.

It is so ordered.

Dated: New York, New York
May 6, 1976.

MORRIS H. LASKER
U.S.D.J.