

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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double ceiling

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JAMES BENJAMIN, et al.,

Plaintiffs,

75 Civ. 3073

-against-

BENJAMIN J. MALCOLM,

Defendants.

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GUY ZEPH AMBROSE, et al.,

Plaintiffs,

76 Civ. 190

-against-

BENJAMIN J. MALCOLM, et al.,

Defendants.

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APPEARANCES:

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LASKER, D.J.

On November 18, 1976, this Court entered an order in Benjamin v. Malcolm, 75 Civ. 3073, limiting involuntary double celling of pre-trial detainees at the House of Detention for Men at Riker's Island (HDM) to no more than thirty days. An order similarly limiting double celling at the Bronx House of Detention (BxHD) was filed in the companion case of Ambrose v. Malcolm, 76 Civ. 190, on January 27, 1976. Both orders were based on the ruling by the Court of Appeals for this Circuit in Detainees of the Brooklyn House of Detention for Men v. Malcolm and Valvano v. Malcolm, (Valvano) that the confinement of two pre-trial detainees in single occupancy cells "created an unconstitutional deprivation of [the detainees'] due process and equal protection rights." 520 F.2d 392, 399 (1975). The orders in Benjamin and Ambrose conformed with the district court's interim order in Valvano which allowed a grace period of double celling at the Brooklyn House of Detention (BHD) to enable the City to eliminate the practice in an orderly fashion.

On January 8, 1976, Judge Judd entered a Partial Final Judgment in Valvano reducing involuntary double celling from thirty to twenty days effective March 1, 1976, and eliminating double celling entirely as of June 1, 1976. Plaintiffs in Benjamin and Ambrose then moved to amend the orders on double celling at HDM and BxHD to conform to the

time table established in Valvano. Defendants argue that double celling for short periods of time is constitutional and oppose the motion on the ground that granting it would preclude ^{from exercising} /the Department of Corrections/ flexibility in housing the fluctuating population of inmates.

At the time the motions were filed, our initial reaction was that no distinctions existed between BHD and HDM or BxHD which justified any difference in treatment. However, we felt the matter sufficiently important to merit more deliberate consideration. After carefully studying the points raised by defendants, we adhere to our initial view.

Defendants argue, as they did at the time the first injunction in Benjamin was sought, that double celling for short periods of time is not unconstitutional, particularly for recently admitted inmates. By memorandum dated November 18, 1975, we declined to read Valvano so narrowly and stated:

"Neither the trial court's original decision in Valvano nor its affirmance by the Court of Appeals depended in any way on an inmate's length of stay at the institution in question. Indeed, the trial court has ordered the defendants in Valvano, who are the same defendants here, to submit a plan for the elimination of double celling for all inmates, including those just incarcerated. Accordingly, defendants' offer to prove that the average stay of an HDM inmate is shorter than that of a BHD or QHD inmate is irrelevant."
(Memorandum, p. 5)

Defendants have brought nothing to our attention to warrant modification of the view that double celling is any less unconstitutional when limited in duration.

The fact that population levels fluctuate at detention facilities is of concern to the City because in view of its scarce financial resources it asserts that it cannot afford sufficient housing for "peak loads" of detainees. However, the Court of Appeals in Valvano specifically rejected the argument that double celling was "not so constitutionally offensive as to compel the City, given its limited jail facilities and financial resources to build additional facilities to house the [detainees]," and stated:

"Inadequate resources of finances can never be an excuse for depriving detainees of their constitutional rights." 520 F.2d at 399.

We recognize that requiring defendants to eliminate all double celling by June 1st affords them less time than they might wish to make necessary arrangements. Nevertheless, we believe that this deadline is appropriate for several reasons:

1. Defendants themselves have continually stressed the importance of addressing the problem of overcrowding at New York City jails on a uniform basis. (See, e.g., affidavit of Benjamin Malcolm, submitted in response to plaintiffs' motion for a preliminary injunction in Benjamin). To allow

double celling at some institutions and not at others would create an unjust disparity in treatment among detainees.

2. Although the amount of time afforded defendants to implement this injunction may appear to be short, it has been obvious for some time to all involved in this litigation that double celling was to be eliminated at every City institution. The Court of Appeals ruled on the issue over nine months ago and Judge Judd's final judgment was entered over four months ago. In sum, the Court of Appeals' statement in Rhem v. Malcolm is certainly applicable here:

"If the handwriting was not ...
clearly on the wall [until now],
it was at least more than barely
legible to an interested reader."
507 F.2d 333, 339 (1974).

The adverse effects of double celling on inmates is too substantial to permit the practice to continue any longer than allowed at other City facilities.

3. Defendants filed an appeal from the final judgment in Valvano on February 6, 1976, but did not request a stay. On April 20, 1976 that appeal was dismissed because the defendants failed to file their memorandum of law. Since the City has abandoned its intention to challenge the propriety of the time table set for BHD, there is no reason to challenge the appropriateness of the June 1st deadline for other institutions.

For the reasons set forth above, the plaintiffs'

motions are granted and the defendants are ordered to eliminate double celling at HDM and BxHD by June 1, 1976.

It is so ordered.

Dated: New York, New York
May 10, 1976.

MORRIS E. LASKER

U.S.D.J.