

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, MIGUEL GALINDEZ, BRUCE
HAYES, JOSE SALDANA and ROBERT ESCHERT, :
detainees of the New York City House of
Detention for Men, individually and on :
behalf of all other persons similarly
situated, :

Plaintiffs,

75 Civ. 3073
(MEL)

-against-

:
STIPULATION FOR
ENTRY OF PARTIAL
: FINAL JUDGMENT

--- BENJAMIN J. MALCOLM, Commissioner of Cor- :
rection of the City of New York; ARTHUR
RUBIN, Warden, New York City House of Deten- :
tion for Men; GERARD BROWN, Deputy Warden, New :
York City House of Detention for Men; and :
ABRAHAM D. BEAME, Mayor of the City of New :
York, individually and in their official ca- :
pacities, :

Defendants. :

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Plaintiffs having brought this action on June 24, 1975,
challenging certain conditions of confinement and practices
at the New York City House of Detention for Men as
violative of their rights under the United States Constitu-
tion; and defendants having denied that plaintiffs' rights
under the Constitution have been violated; and the Court
having certified this case as a class action on September
26, 1975, the class consisting of all detainees who are or
will be incarcerated at the House of Detention for Men; and the case
having been tried before the Court; and the parties now having agreed
that it is in the best interests of all the parties that
certain issues concerning conditions at the House of Detention for Men
and the annex known as C-71 (hereinafter "HDM") be resolved by consent;

IT IS HEREBY STIPULATED by and between the undersigned
attorneys for the plaintiffs and the defendants herein, and
subject to approval by the Court after notice is given to
the plaintiff class, that the following agreement will be
incorporated in a partial final judgment by consent in this

case:

A. POSSESSION AND RECEIPT OF CLOTHING ITEMS

1. Defendants shall permit all detainees to receive clothing by the following means:

- a. Visitors shall be permitted to bring clothing to the institution for detainees during regular visiting hours.
- b. Clothing also may be hand-delivered to the institution by any person at any regularly scheduled visiting hour or, if necessary for a court appearance on the following day, at any hours between 8 A.M. and 9 P.M., and at any additional hours deemed appropriate by defendants; and, by a date yet to be determined in accordance with the terms set forth in paragraph EE, infra, clothing may be mailed to the institution or delivered there by package delivery service.
- c. Defendants shall provide a receipt for each personally delivered package.
- d. Defendants shall deliver such clothing to the intended recipient within 48 hours of its delivery to the institution, unless needed more promptly for a court appearance or other emergency.
- e. Defendants shall not require prior notification or approval for receipt of clothing, nor shall they require any written or printed form to accompany incoming clothing.

2. Defendants shall permit detainees to wear all items of clothing which are generally acceptable in public and which do not constitute a threat to the safety of the institution. Such clothing shall include, among other items, shorts, cut-off long pants, neck-ties, belts, hats, worn and new shoes; and items

- a. worn by the detainee upon admission to the institution;

- b. received by the detainee, after admission, from any source.

3. Nothing in this stipulation shall be construed as addressing the question of whether defendants are required to provide clothing to detainees or the question of whether defendants at a future date may require detainees to wear uniforms.

B. INSPECTION OF CLOTHING

Defendants shall maintain the following practices with respect to the inspection of clothing received by the institution for delivery to detainees:

1. In the course of inspection of such clothing for contraband, the clothing may be ripped, torn or cut only if such action is authorized in writing by a captain or higher-ranking officer based on his/her assessment that there is reasonable suspicion to believe contraband is concealed in the article of clothing, and that such procedure is necessary in the particular case for adequate inspection and that a less destructive means of inspection will not suffice; the written authorization shall set forth the basis for the decision.

2. Where ripping, tearing, or cutting of clothing is authorized according to subparagraph 1 above, clothing shall be taken apart in the least destructive manner required to accomplish the inspection found to be necessary.

3. In each case where clothing is ripped, torn, or cut in the course of inspection, and not thereafter lawfully retained by the defendants, defendants shall promptly and adequately repair or have repaired each affected item of clothing prior to delivery to the intended recipient.

4. Defendants shall promptly deliver each repaired article of clothing, together with a copy of the written authorization which permitted it to be ripped, torn or cut, to the intended recipient.

C. INMATE JEWELRY

Defendants shall permit detainees to wear and to receive

wedding rings and other jewelry and watches, except that defendants may prohibit the wearing of a particular article of such jewelry if it is expensive or if there is a reasonable likelihood that it will be used as a weapon; provided that wedding rings and religious jewelry of a size and type typically worn in civilian situations, including those made of gold, silver and small stones, shall not be prohibited.

D. LAUNDRY FACILITIES

1. By a date yet to be determined in accordance with the terms of paragraph EE, infra, defendants shall provide free laundry service sufficient to provide all detainees with a neat, clean change of clothing and a clean towel at least twice per week.

2. Until laundry service is provided as required by subparagraph 1, and thereafter, defendants shall permit detainees to wash and dry their own laundry in the housing areas.

E. RECEIPT OF PACKAGES

1. Defendants shall permit detainees to receive packages from, and send packages to, any person.

2. Detainees shall be allowed to receive, through delivery by a visitor or any other person to the institution during visiting hours and any other hours agreed upon by the parties or deemed appropriate by defendants, packages containing clothing, publications or any other item which a detainee is currently permitted to receive; further, by a date yet to be determined in accordance with the terms of paragraph EE, infra, detainees shall be allowed to receive packages containing the above items and other additional items yet to be determined, through the above means of delivery as well as through the mail; provided that nothing herein shall be construed to limit detainees' existing rights to receive publications through the mail as provided in paragraph F, infra. Incoming packages may be opened and inspected for contraband and shall be delivered to the recipient within 48 hours of receipt by the Department of Correction ("Department").

3. Detainees shall be allowed to send packages from the institution through the mail at their own expense, and by hand-delivery to institutional personnel for pick-up by the addressee.

4. Nothing in this stipulation resolves the issues of the permissible contents or quantity of packages, and in the event that those issues cannot be resolved, they are reserved for determination by the Court.

F. POSSESSION AND RECEIPT OF PUBLICATIONS

1. Defendants shall permit all detainees to receive from any source any publications, including books (hard and soft cover), periodicals and other reading material. Such publications shall not be censored nor shall their delivery be delayed unless they contain specific instructions on the manufacture or use of dangerous weapons or explosives, or plans for escape.

2. Books, periodicals and other reading material may be hand-delivered by a visitor or any other person to the institution at any time during the normal visiting hours and during any additional hours deemed appropriate by defendants; these publications also may be mailed to the institution. Defendants shall not require that any written or printed form accompany incoming publications in order for such publications to be delivered to the institution. Defendants shall deliver such publications to their intended recipients promptly and shall make their best efforts to do so within 24 hours of delivery of the publications to the institution.

3. Defendants shall keep posted in the visitors' waiting areas notices which inform visitors that they may mail or bring books, periodicals and other reading material to detainees and which inform them of the procedures for doing so.

G. CORRESPONDENCE

1. Defendants shall not open any detainee's incoming

correspondence except in the presence of the intended recipient or pursuant to a lawful search warrant.

2. Defendants shall not maintain any records of correspondence received by any detainee, including sources or amounts of correspondence; except that nothing herein shall preclude defendants from maintaining, in a place separate from the detainee's institutional file and for the sole purpose of assuring efficient mail delivery, their own records of mail received; provided, however, that such records shall not be used in any way to affect any terms or conditions of a detainee's subsequent confinement nor shall they be released to any party other than the detainee except upon court order or subpoena issued by a governmental agency which, by law, is authorized to inspect Department of Correction records and then only after notice to the party affected, which notice in no event shall be less than 24 hours before the return date of the application for the court order or subpoena.

3. Defendants shall not read or censor any detainee's incoming or outgoing mail unless defendants are authorized to do so by a lawful search warrant.

4. Defendants shall forward mail received at the institution for a detainee who has been transferred to another institution or who has been released.

5. Both personal and legal mail shall be delivered by defendants to detainees in punitive segregation, administrative segregation, and any other special status as promptly and with the same frequency as such mail is delivered to detainees in general population.

6. All procedures, guidelines and restrictions issued by defendants concerning the searching and censoring of mail received by detainees in general population as well as any changes in these procedures, guidelines and restrictions, also will apply to mail received by detainees in punitive segregation, administrative segregation, and any other special

status.

7. Any detainee shall be permitted, on request, to send correspondence by certified mail, at his own expense; provided, however, that where the detainee is indigent and as a matter of law, rule or regulation such correspondence is required to be sent by certified mail, such expense shall be paid by the defendants.

H. CONFISCATION OF PROPERTY

1. Property taken on admission. Defendants 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.

2. Property taken at all other times. The procedure outlined in subparagraph 1 above shall apply when any detainee's property, other than controlled substances as defined in New York Penal Law § 220.00, guns, knives, or other weapons, is taken by defendants at any time other than on admission.

3. Defendants shall devise a procedure by which a detainee may contest the taking of personal property and which shall provide the following:

- a. a brief statement to the detainee setting forth the basis for the seizure
 - b. notice to the detainee of the right to respond in a reasonably simple and convenient manner, and to assert grounds, if any, on which the seizure is claimed to be unwarranted;
 - c. a suitable opportunity to contest evidence thought to warrant seizure;
 - d. if the seizure is upheld, a written statement of the reason for such decision.
4. 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 which is other than controlled substances as defined in New York Penal Law §220.00, guns, knives, other weapons or perishable food, and which is not turned over to another law enforcement agency for use in a criminal proceeding, shall be stored by the institution unless or until the detainee requests that it be forwarded at his own expense to whomever he chooses. A detainee shall be permitted to return or forward, at his own expense, seized perishable food 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.

I. PROCEDURES FOR CELL SEARCHES

1. Detainees shall be permitted to observe all searches of their cells, except that should a detainee attempt to disrupt the search of his cell or remove anything from his cell during the search, that detainee may be moved from the area of the search and the search may be continued without that detainee's presence.

2. Notwithstanding the requirements of subparagraph 1 above, individual cells to which detainees are or may be assigned may be searched, without the presence of the detainee, upon a showing of good cause approved in each instance in advance, in writing, by a captain or higher-ranking officer; provided, however, that in a case of imminent danger of bodily harm such a search may be performed without such authorization, in which event a written report explaining the reason for the search and the justification for conducting it without first obtaining authorization shall be made to a captain or higher-ranking officer as soon after the search as possible.

3. Defendants shall conduct routine searches of housing areas only at times when most detainees are present in those areas.

4. Each detainee whose cell has been searched outside his presence shall, at the time of any such search or as promptly thereafter as practical, be given written notice of the reason for conducting the search in his absence.

5. During any search of a detainee's cell, the detainee's property may be moved only to the extent necessary to facilitate the search. The detainee's property may not be otherwise disturbed, and, to the extent possible, at the termination of the search property must be returned to the same place and condition in which it was prior to the search.

J. LINENS and BEDDING

1. Defendants shall provide each detainee, upon admission, with an issue of linens and bedding, including but not limited to:

- a. two sheets;
- b. one towel;
- c. one pillow;
- d. one pillowcase;
- e. one mattress with cover; and
- f. sufficient blankets to provide comfort and warmth.

2. Defendants shall provide for all bedding items, prior to being issued, to be checked for damage, repaired, if necessary, and cleaned.

3. Defendants shall regularly provide detainees with clean linens and bedding in the following amounts and according to the following schedule or more often as necessary:

- a. Two sheets and one pillowcase - once each week;
- b. one towel - twice each week;
- c. sufficient blankets to provide comfort and warmth - once every three months.

In addition, pillows and mattresses shall be cleaned

once every six months or more often as necessary.

4. Defendants shall provide detainees with mattresses constructed of fire-retardant material and covered with material that is both water-resistant and easily sanitized.

5. Defendants shall provide for storage of all mattresses, bedding and towels in a safe and sanitary manner.

K. BODY CAVITY SEARCHES

Defendants shall not examine the genitals or anal cavity of any detainee, except that defendants may require a visual inspection of the genitals or anal cavity of a detainee either upon admission of the detainee to the institution or when a correction officer of the rank of captain or above has reasonable cause to believe that the detainee is concealing contraband in his genital or anal area. Such reasonable cause must be recorded in writing by that officer upon sworn statements of the underlying basis for the search, with a written record of the reasons, results and circumstances of each such search. A copy of such written record shall be given to the detainee, and a copy shall be maintained and preserved by the defendants. Any such examination shall be conducted in the most dignified and least obtrusive manner possible and in private by medical personnel, who shall be of the same gender as the detainee whenever possible. No one else shall be present at such examinations except those correctional personnel, of the same gender as the detainee, who are essential for security reasons. Notwithstanding the above, the parties agree that the provision of this paragraph of this stipulation and the subsequent judgment concerning who shall conduct any visual inspections shall not take effect until the resolution of discussions between the Department and medical personnel, such resolution to be achieved no later than 6 weeks from the date of the signing of this stipulation; in the event that the Department and the medical personnel agree as to this provision, they shall so

notify plaintiffs' counsel and the Court shall be notified that the provision shall be immediately implemented by defendants as provided above; in the event that the Department and the medical personnel cannot agree as to this provision, then the issues of who shall conduct body cavity searches and who shall be present at such searches shall be resolved between the parties or shall be presented to the Court for determination in this case and on a city-wide basis.

L. COMMISSARY COSTS

1. Items for purchase at the HDM commissary shall be sold to detainees at cost. For purposes of this stipulation, cost shall be defined as the price paid by defendants for the items for purchase and all other expenses necessarily and directly incurred only in the course of the operation and management of the commissary.

2. Nothing in this agreement resolves the question of what items shall be available for purchase in the commissary or the amount of such items which detainees may purchase or the question of the schedule for detainee attendance at commissary.

M. DAYROOM ACCESS

Defendants shall permit every detainee who is not in punitive segregation to have access to a dayroom during all lock-out periods.

N. EATING OUTSIDE OF CELLS

Defendants shall permit all detainees, except those in punitive segregation, to eat all meals communally in dayrooms or similar areas suitable for dining designated by defendants. Detainees shall not be locked into dayrooms and shall be permitted to return to the lock-out corridor at any time during the meal period; further, detainees shall be permitted to return to their cells during the meal period in accord with the institutional lock-in/lock-out schedule to be determined by the Court if not agreed upon by the parties.

O. ATTORNEY VISITING

1. Defendants shall permit attorneys to visit detainees

at any time between the hours of 8 A.M. and 8P.M. daily.

2. If an attorney arrives at HDM for a visit with a detainee while a count of detainees is in progress, defendants shall not be required to permit such visit until the count is completed.

3. Defendants shall permit attorneys to arrange such visits in advance by calling the Department or HDM to inquire as to whether a particular detainee will be available at a particular time and to leave a message informing that detainee of the time of the attorney's intended visit.

4. Defendants shall permit any attorney visiting a detainee at any institution on Rikers Island to go directly to any other institution on Rikers Island in order to visit another detainee without first returning to the bridge control building or any other central processing facility.

5. Nothing in this stipulation resolves the issue of obstacles to attorney access to institutions located on Rikers Island and in the event that issue cannot be resolved, it is reserved for determination by the Court.

P. INMATE COUNCIL PARTICIPATION

BY SPECIAL STATUS DETAINEES

Detainees in all special status categories other than punitive segregation shall be represented on the institution's Inmate Council in the same manner as are detainees in general population; detainees in each such special status category shall have one representative who shall be elected by and drawn from the category which he represents; provided, however, that defendants may prohibit the attendance of any detainee whose presence at the Inmate Council meeting is determined to constitute a threat to the safety and security of the institution; and provided further that detainees in any category comprised of fewer than five persons shall be permitted to select a representative from their own category, as provided above, or, at the option of defendants, to consult with and be represented by a council delegate not in that category but acceptable to a majority of the detainees in that category.

Any category comprised of five or more persons shall be represented by a person in that category, except that, in any exceptionally unusual instance where every inmate in a category is a person whose presence at the Inmate Council meeting is determined to constitute a threat to the safety and security of the institution, detainees in such category shall be permitted to consult with and be represented by a council delegate not in that category but acceptable to a majority of the detainees in that category.

Q. COMMUNAL RELIGIOUS SERVICES FOR
SEGREGATED DETAINEES

1. Defendants shall permit any detainee confined in punitive segregation, administrative segregation or any other special status category to attend any religious services which detainees in general population may attend, except in the following circumstances: a detainee who has been found, in a procedure with adequate due process safeguards, to pose a threat to the safety and security of the institution because of the likelihood that he will actively disrupt a particular religious service or services attended by the general population, may be denied permission to attend the service or services in question. Adequate due process safeguards shall include but not be limited to the following:

- a. notice to the detainee, at least 48 hours prior to a particular religious service or services, that he has been determined to pose a threat to the safety and security of the institution because of the likelihood that he will actively disrupt such service or services; such notice shall include the reasons underlying such determination;
- b. a suitable opportunity to be heard personally, by an impartial board or an officer of the rank of captain or above, in opposition to such determination;
- c. in instances in which the determination is upheld,
 - (i) a written decision, with a copy to the detainee, setting forth the basis for upholding the determination and specifying the length of time for which the detainee shall be denied permission to attend particular religious services; (ii) a weekly opportunity to request and receive reconsideration of the determination and to submit a statement in support of such reconsideration, and written notice to the detainee of the basis for any continuing denial of permission to attend the religious service or services in question; such reconsideration

shall be by an impartial board or by the warden.

In an instance where the facts sufficient to support a denial of permission for a detainee to attend a religious service are not known to correctional personnel 48 hours prior to that service, defendants shall afford the detainee the due process safeguards described in subparagraphs (a), (b), and (c) above within a shorter period prior to the religious service, or, at the option of the detainee, after the service but within 48 hours of the determination that the detainee poses a threat to the safety and security of the institution because of the likelihood that he will actively disrupt the service; provided that nothing in this stipulation shall be construed to require defendants to provide the due process safeguards described in subparagraphs (a), (b), and (c) prior to a service in situations where the facts sufficient to support a denial of permission for a detainee to attend a religious service are not known to correctional personnel more than 12 hours prior to that service.

2. Nothing in the procedures set forth in this section of this stipulation shall require disclosure of information that would reveal the identity of persons supplying, on a confidential basis, information to the defendants or other law enforcement agencies.

3. If any detainee is denied permission to attend a particular religious service or services attended by detainees in the general population, defendants shall provide that detainee with an opportunity to attend a similar communal religious service apart from the general population, but in a dayroom, or an equivalent area away from the lock-out corridors, which shall be equipped with appropriate furnish-

ings and religious articles.

4. Under no circumstances shall any detainee in punitive segregation, administrative segregation or any other special status category be denied expeditious access, on request, to any religious adviser to whom detainees in the general population have access.

R. DUE PROCESS AND PROGRAMS FOR
DETAINEES IN HIGH SECURITY
CATEGORIES

1. Defendants shall accord the following due process safeguards to any detainee who is involuntarily placed in any of the most restrictive security categories, including those determined to be high security risks, escape risks or in need of protective custody;

- a. Prior to or immediately upon placement in any of such categories, the detainee shall be given written notice of:
 - (i) the reasons for such security designation;
 - (ii) the evidence relied upon by the institution's administration for such security designation;
 - and
 - (iii) the right to a hearing.
- b. The written notice to the detainee shall inform him of the rights which he must be accorded at the hearing; such rights shall include but not be limited to the following:
 - (i) the opportunity to appear personally and to be fully informed of the evidence against him;
 - (ii) the opportunity to make a statement, to call witnesses, and to submit documentary evidence, subject to the hearing officer's right to keep the hearing within reasonable limits;
 - (iii) the opportunity to confront and cross-examine

witnesses whenever the hearing officer cannot rationally determine the facts without cross-examination; and

(iv) if the detainee is illiterate or if the complexity of the issues makes it unlikely that he otherwise can collect and present the evidence necessary for an adequate presentation of his case, the right to the assistance of a counsel-substitute or, at the option of the defendants, the assistance of retained counsel.

- c. Unless the right to a hearing is waived by the detainee, such hearing shall be held between 24 and 48 hours after the detainee is given the notice required by subparagraph 1(a) above; or, if a holiday or weekend falls within the 24 to 48 hour period, then, at the option of the defendants, such hearing shall be held on the first business day after the notice required by subparagraph 1(a) above is given. In the event that the detainee waives his right to a hearing, he may request one at a later time, and following such a request, a hearing shall be held within the time period specified above.
- d. The hearing officer shall keep notes adequate to reflect the content of the proceedings and to furnish a basis for his/her decision.
- e. In the event that the hearing officer determines that the decision to place the detainee in one of the most restrictive security categories was justified, he/she shall set forth his/her reasons and findings of fact in writing and submit such reasons and findings to the warden within 24 hours of the conclusion of the hearing. Within 24 hours thereafter, the warden shall, in writing, with a copy to the detainee, approve or

disapprove the hearing officer's decision.

- f. In the event that the hearing officer determines that the decision to place the detainee in one of the most restrictive security categories was not justified, the detainee shall immediately be transferred out of the restrictive security housing, and the Department shall expunge from the detainee's records any and all references to his period of classification and housing in that security category. Nothing herein shall preclude defendants from maintaining, in a separate place and for internal and administrative purposes, their own records containing a brief reference to the location and period of the detainee's housing in such restrictive security category and to the alleged reasons for such housing, including the determination that such housing was not justified; provided, however, that such records shall not be released to any party, other than the detainee, or be used in any way to affect any terms or conditions of a detainee's subsequent confinement.
- g. For the purpose of subparagraph 1 of this section of this stipulation, the term "hearing officer" shall refer either to a disinterested person, appointed by the warden, who shall have taken no part in the determination to place the detainee in any of the most restrictive security categories, or to the institution's classification board, which shall not, prior to the hearing provided for in this stipulation, have taken any part in the determination of the detainee's security status or housing assignment.
- h. The status of any detainee held in any of the most restrictive security categories shall be reviewed by the warden or by a classification board at intervals not to exceed 4 weeks, for the purpose of

determining whether any change of circumstance warrants releasing him from such status; and the detainee shall be notified of the results of the review.

- i. With respect to those detainees currently housed in any of the most restrictive security categories, the Department shall take steps to implement the hearing process forthwith. All such detainees shall be provided with the notice and hearings required by subparagraphs (a) and (b) above within one week of the entry of the partial final judgment incorporating the terms of this stipulation.
- j. Nothing in the procedure set forth in this section of this stipulation shall require disclosure of information that would reveal the identity of persons supplying, on a confidential basis, information to the defendants or other law enforcement agencies.
- k. The punishment for similar institutional infractions may not be harsher for detainees in any of the most restrictive categories than for other detainees simply because the former are in such security categories.

2. Detainees who have been voluntarily or involuntarily placed in any of the most restrictive security categories, including those determined to be high security risks, escape risks or in need of protective custody, and detainees under mental observation, shall:

- a. be permitted to attend all "special shows" unless defendants make a good faith finding that the level of tension in the institution is such that their attendance at a particular show would endanger the safety and security of the institution;
- b. be permitted to watch all movies which the general population is shown; restrictive security category detainees, however, may be shown movies in a separate location and in groups comprised only of persons similarly classified;

- c. receive the same amount and type of indoor and outdoor recreation as is afforded detainees in the general institutional population;
- d. have the same access to social service programs, counselling and mental health services as detainees in general population; such services may be provided in an area designated by defendants;
- e. have access to publicly funded classes and programs, such as reading skills, music and art, which are reasonably similar to those classes and programs which are provided to detainees in general population; for purposes of this provision, reasonably similar classes and programs shall mean classes and programs equivalent in variety, structure, character, value and purpose; these classes and programs may be provided in a separate location and in groups comprised only of persons similarly classified.

3. Defendants shall use their best efforts in good faith to make available to detainees in the most restrictive security categories all private volunteer programs which operate within the institution. Whenever such programs are not available to detainees in any of the most restrictive security categories, defendants shall promptly submit a written report to plaintiffs' counsel setting forth what efforts have been made and the reasons why they have been unsuccessful.

4. Nothing in this provision of the stipulation shall be construed to preclude defendants from providing a detainee under mental observation, if a psychiatrist treating that detainee so directs, with appropriate programs different from those provided to detainees in the general population.

5. The number and quality of resources devoted to programs currently or hereafter in effect in the institution shall not be diminished for any reason related to defendants' obligation to comply with the terms of this agreement.

6. This paragraph of this stipulation does not resolve the following issues: the number and quality of programs which defendants are to maintain at the institution; access to the general and law

libraries and the commissary; and the due process and activities to which detainees in categories of segregated confinement other than those specified in subparagraphs 1 and 2 above are entitled.

S. ENVIRONMENTAL HEALTH

1. Defendants shall maintain the institution in a condition which is clean, healthful, safe, free of vermin and insect infestation and which satisfies all applicable health laws and regulations. By January 1, 1979, defendants shall make a comprehensive inspection and evaluation of all environmental conditions at HDM and prepare and make available to plaintiffs' counsel a detailed plan for maintaining the environmental quality of the institution as required by this stipulation and a detailed plan for correcting any existing deficiencies, including all of those cited by the Department of Health, as promptly as possible and, in any event, by December 1, 1979.

2. Defendants shall assign a person at the executive staff level of the Department to oversee the establishment and maintenance of environmental conditions, at HDM and all other institutions maintained by defendants, in compliance with the terms of this stipulation. Under the direct supervision of such person, defendants shall also assign at HDM a person, who shall be either a civilian or a correction officer of the rank of captain or above (who shall for purposes of this stipulation be referred to as an "environmental health officer") and who shall have direct responsibility for maintaining environmental conditions in compliance with the terms of this stipulation throughout HDM and shall be provided with adequate staff and supplies to carry out that responsibility. The environmental health officer shall have had or shall receive appropriate training and experience in environmental health and maintenance. The environmental health officer shall make a thorough inspection of the entire institution in the course of each week and shall make more frequent inspections when necessary to

respond to particular problems. The environmental health officer shall submit, to the warden and to the person on the executive level responsible for environmental health and maintenance, reports of all such inspections, including a description of any ameliorative actions taken, planned or recommended. The records shall be preserved and made available to plaintiffs' counsel at their request.

3. The Department of Health of the City of New York shall thoroughly inspect HDM at least once every month and at more frequent intervals when necessary to monitor the correction of particular conditions in the institution. Copies of all reports of these inspections shall be forwarded to the warden, to the person on the executive staff level of the Department responsible for environmental health and maintenance and to the environmental health officer at the institution, and shall be available, upon request, to plaintiffs' counsel.

Housekeeping

4. Defendants shall provide for the following:

a. Shower facilities, janitors' closets, laundry areas, and toilets, washbasins, sinks and other personal hygiene and sanitation facilities in common areas throughout the institution, shall be thoroughly cleaned and sanitized at least once daily and more often if necessary.

b. All floors in common areas throughout the institution shall be swept and washed daily and kept dry and free of hazardous material; all floors in common areas of the housing blocks shall be swept and washed three times a day.

c. Each entire housing block and every common area in the institution shall be thoroughly cleaned by washing at regular, frequent intervals, and in no event, less frequently than once every two weeks. All surfaces, including bars and windows, shall be cleaned and washed regularly, and in no event, less frequently than once every three months.

d. Every cell shall be thoroughly cleaned and sanitized upon becoming vacant and shall be maintained in that condition until it is again occupied.

e. All surfaces shall be well maintained and provision shall be made for repair of scaling paint, broken or loose plaster or other deterioration.

f. Receptacles for ashes shall be provided throughout the institution, including all common areas, and apart from ... containers of other refuse; the ash receptacles shall be emptied and cleaned daily.

g. Each housing area shall have a well-ventilated janitor closet equipped with a sink and an adequate supply of cleaning implements and supplies, accessible to all detainees. Such implements and supplies shall include brooms, dust pans, mops, mop wringers, buckets, sponges, toilet and other brushes, soap, disinfectant, and other cleaning agents. All such supplies shall be available in sufficient number and quantity so that each detainee can clean his cell daily and so that the common areas of the housing blocks can be cleaned according to the terms of this stipulation; supplies shall be replaced promptly when needed.

h. All cleaning implements shall be cleaned thoroughly after each use and stored in a clean, well-ventilated place.

Refuse

5. Defendants shall provide for the removal, in a safe and sanitary manner, of all refuse in the institution. Except as specifically provided elsewhere in this stipulation with regard to sanitation in food storage, preparation and service areas, all refuse shall be removed at least daily, immediately after night-time lock-in begins, and whenever a refuse container is full or whenever removal is otherwise necessary to maintain sanitary conditions.

6. Defendants shall provide and maintain a sufficient number of refuse containers throughout the institution, in-

cluding containers distributed in each housing area, tier, lock-out corridor, dayroom and every other common area. All containers used to store, transport or dispose of refuse shall be

a. durable, non-porous, water-tight, rust-resistant, inaccessible to insects and vermin, easily cleanable and fitted with fly-tight covers; and

b. thoroughly cleaned and dried, after being emptied, and in areas apart from food storage, preparation and service facilities and facilities used for laundry..

Vermin and Insect Control

7. Defendants shall take all necessary measures, consistent with detainees' health and safety, to eliminate vermin and insect infestation within the institution and on the grounds adjacent thereto. For the purpose of this stipulation, infestation shall not be considered to mean the random or occasional presence of an insubstantial number of vermin and insects.

8. Defendants shall retain the full-time services of qualified professional exterminators who, in coordination with the environmental health officer, and with the assistance of all necessary and properly trained correctional and/or civilian personnel, shall

a. conduct continuous inspections for the detection of any evidence of vermin and insects anywhere within the institution or on the grounds adjacent to the institution; and shall canvass inmates to determine any particular problems of infestation noted by them;

b. at the first indication of the presence of vermin or insects, take appropriate measures to eradicate these vermin or insects and shall continue appropriate measures until they are eradicated;

c. report in writing to the warden the results of such inspections and all measures taken to prevent or eradicate vermin and insect infestation; such reports shall be available to plaintiffs' counsel upon request;

d. take proper precautions in the use of all insecticides, rodenticides, traps and other materials for the control of vermin and insects, to prevent food contamination, fire hazard or injury or illness to inmates.

9. Defendants shall take all necessary steps, including those listed below, to eliminate all vermin and insect breeding and nesting areas inside and adjacent to the institution and to close vermin and insect entryways into the institution.

a. Throughout the institution, all openings, cracks, and holes in the walls, floors, doors, and around pipes and conduits shall be properly sealed and/or closed. Leaky pipes shall be repaired.

b. All openings to the outside shall be effectively protected against the entry of vermin and insects. Close fitting screens that are fly and mosquito tight and free of breaks shall be provided and maintained on all windows during the seasons when flies and mosquitoes prevail in any area infested by flies or mosquitoes.

c. Each inmate shall be provided with a suitable food storage cabinet or container, with tight-fitting drawers or cover, in his cell.

Plumbing

10. Defendants shall maintain the plumbing system throughout the institution in a sanitary and serviceable condition.

a. The plumbing system throughout the institution shall be inspected at regular, frequent intervals in order to detect the presence of any defects, sanitary or otherwise, leaks and clogging; maintenance shall be prompt, and dated records shall be kept of any malfunctions, both reported or discovered upon inspection, and of all remedial measures taken, and such records shall be provided, upon request, to plaintiffs' counsel.

b. Plumbing complaints from inmates shall be investi-

gated immediately upon receipt; repairs shall be made promptly; no inmate shall be locked even temporarily in a cell which lacks a properly functioning sink or toilet.

c. All plumbing fixtures throughout the institution shall be made of durable, rust-resistant, smooth, non-absorbent materials, and shall be free from concealed fouling spaces; all plumbing fixtures shall be trapped.

d. All shower areas shall be constructed so as to provide proper drainage, and all drains shall be cleaned daily in order to prevent clogging and defective drainage.

Food Preparation, Service and Storage Areas

11. The environmental health officer at HDM shall, in coordination with the food services manager at the institution, inspect daily all food program facilities and equipment and maintain a written description of all daily inspections, including remedial action taken in order to assure the following:

a. The institution is in compliance with all environmental health requirements provided for elsewhere in this stipulation with regard to food services, and all deficiencies and malfunctions are reported and corrected promptly.

b. Any failure to meet relevant health standards shall be remedied immediately.

c. Food storage, preparation, and service facilities, including floors, walls and ceilings, and equipment within such facilities, shall be kept well-maintained, sanitary and free of dirt, dust, vermin, insects, grease, food waste and other contamination.

d. In the food storage, preparation, and service areas, including all dayrooms and dining areas where food is served, refuse shall be collected and removed in a safe and sanitary manner, according to the requirements of subparagraph 6 of this provision of this stipulation, after each meal and more

often if necessary to maintain sanitary conditions.

e. All cleaning procedures shall be conducted in a manner which prevents food contamination.

f. All food service, preparation and service areas shall have proper drainage.

g. All surfaces to which food or drink are exposed shall be kept clean and in good repair, free from breaks, corrosion, open seams, cracks or chipped places.

h. After each use, all kitchenware, utensils, food-contact surfaces, and equipment which is used in the preparation, serving, display, or storage of food, shall be thoroughly cleaned.

i. All multi-use eating and drinking utensils shall be thoroughly cleansed, rinsed, and sanitized in dish-washing machines at appropriate temperatures, after each use.

j. No articles, polish, or other substance containing any poisonous material shall be used for cleaning or polishing utensils. Poisonous materials shall not be used in any way so as to contaminate working surfaces, food, equipment, or utensils, or to constitute a hazard to inmates.

k. Sufficient ventilation shall be provided so that all food storage, preparation and service areas are kept free from excessive heat, steam, condensation, vapors, smoke or fumes. Grease or condensate shall be prevented from dripping into food or onto food preparation surfaces.

l. Toilets and washrooms with fly-tight partitions and doors shall be sufficient in number and conveniently located for use of inmates or others assigned to any work involving the handling of foods.

m. Hot and cold running water under pressure, and adequate supplies of soap and sanitary towels, shall be provided, and hand-washing signs shall be posted, in each washroom. Basins, taps, and dispensers shall be in good repair.

n. Food supplies shall be stored on clean surfaces, protected from dust, dirt, splash, or other contamination,

and resting at least six inches above the floor.

C. Food handlers shall not use tobacco in any form while engaged in food preparation or service, or while engaged in equipment and utensil washing, except in designated locations for smoking where no contamination hazards will result. The garments of all food handlers must be clean and sanitized; aprons or uniforms and hairnets shall be worn by all food handlers. Food handlers shall maintain a high degree of personal cleanliness and conform to good hygiene practices during all working periods.

12. All individuals, correctional, inmate or civilian, employed to carry out any responsibilities for environmental health and maintenance in the institution shall perform such functions under the direct supervision of properly trained personnel.

13. Nothing in this stipulation resolves the issues of heat and ventilation, and in the event that those issues cannot be resolved, they are reserved for determination by the Court.

T. PERSONAL HYGIENE

1. On admission to the institution, each detainee shall be provided, at Department of Correction expense, with an issue of personal hygiene items, including but not limited to:

- a. soap;
- b. toothbrush;
- c. toothpaste or tooth powder;
- d. drinking cup;
- e. toilet paper;
- f. towel;
- g. mirror, unless this is permanently available in each detainee's cell; and
- h. a comb.

2. All personal hygiene items issued pursuant to subparagraph 1 shall be replenished or replaced, as needed,

by defendants at Department expense.

3. The Department shall provide a procedure by which each detainee will be able to shave daily with sanitary and properly maintained equipment, including depilatories where requested.

4. Defendants shall permit each detainee to shower each day in shower facilities providing sufficient water at appropriate temperatures, and shall permit detainees scheduled for a court appearance to shower and shave on the day of and at a time prior to the appearance.

5. Defendants shall employ in HDM the services of at least one full-time licensed barber or hair-stylist and a sufficient number of other persons trained in hair-cutting and working under the supervision of a licensed barber or hair-stylist so that each detainee may have his hair cut and styled within five days of his admission to HDM and thereafter regularly as needed by the detainee. Defendants shall permit each detainee to have his hair cut in whatever style that detainee chooses.

6. Defendants shall provide adequate supplies of properly functioning equipment in order to comply with the foregoing provisions and shall maintain such equipment in a safe, sanitary condition as required by applicable laws and regulations.

U. PUNITIVE SEGREGATION

1. Defendants shall provide each detainee in punitive segregation with at least the following:

a. access to showers, laundry services, medical care, the law library, and visiting, in the same amount and frequency, and under the same conditions, as that provided to the general population; and

b. the same amount and frequency of access to those personal hygiene articles and services specified in paragraph T of this stipulation. In addition, deodorant may be brought by detainees with them to punitive segregation and may be purchased as needed from the commissary by detainees during the period of their punishment.

2. Defendants shall permit each detainee in punitive segregation to possess and receive reading material, in the same amount and frequency and under the same conditions as that provided to the general population, from any source other than another inmate, including reading material on a regular basis from the HDM general library.

3. Nothing in this stipulation resolves the issues of (a) the amount of personal property detainees in punitive segregation shall be permitted to possess except as provided in subparagraphs 1 and 2 above, (b) the amount and nature of commissary items which detainees in punitive segregation shall be permitted to purchase and the frequency with which purchases shall be permitted, except as provided by subparagraphs 1 and 2 above, (c) the amount of telephone access which shall be permitted to detainees in punitive segregation, and (d) the amount and frequency of outdoor and indoor recreation which shall be provided to detainees in punitive segregation. This stipulation also does not resolve whether it is constitutionally permissible to impose punitive segregation upon members of the plaintiff class and, if so, the permissible duration of such punishment. The parties reserve the right to litigate these issues.

V. FOOD SERVICES

Nutrition and Menu Planning

1. Defendants shall provide each detainee with three meals per day which meet or exceed, on a daily basis, the standards stated in the Recommended Daily Dietary Allowances (RDA) of the Food and Nutrition Board, National Academy of Sciences and the United States Department of Agriculture's Daily Food Guide, including the following adjustments:

a. appropriate adjustments for age and sex and for those determined to have been suffering from nutritional deficiencies;

b. supplementation, as required by the Daily Food Guide, for energy and calories.

2. Defendants shall provide all detainees with salads or raw vegetables daily and with fresh fruit at least once each week, and by January 1, 1979, fresh fruit shall be provided twice each week.

3. Defendants shall provide all detainees, at each meal, with the choice of a hot or cold beverage.

For at least the breakfast meal, defendants shall provide coffee as a hot beverage; tea bags shall also be provided. Neither coffee, tea nor milk shall be pre-sweetened; however, sugar shall be available for individual use.

Defendants shall equip each housing area with a mechanism which provides hot water, which shall be available to all detainees during meal periods and between meals for, among other purposes, preparation of their own beverages. In addition, the commissary shall be stocked with instant coffee, tea and hot chocolate available for purchase by detainees.

4. Defendants shall have all menus planned by a trained and certified nutritionist. Such menus shall:

a. be planned in advance, dated and posted for detainees' information;

b. respond to the ethnic, religious and social needs and tastes of the detainee population;

c. provide food variety and avoid frequent repetition of particular menu items; at each meal food shall be varied in color, texture and flavor;

d. take advantage of the seasonal availability of different foods and respond to the seasonal preference for different foods.

5. Substitutions in planned menus shall be made only by or with the approval of a trained nutritionist, and such substitutions shall be equal in nutritional value to the items replaced.

6. Defendants shall provide therapeutic diets to every detainee who has been prescribed such a diet by a physician. Such diets shall conform as closely as possible to the food served other detainees, shall be prepared in the institutional kitchen, and shall be provided in the regular food service facilities, unless a detainee requiring a therapeutic diet otherwise requires special housing in a medical facility; provided, however, that nothing in this subparagraph shall prevent defendants from assigning a detainee requiring a therapeutic diet to a particular housing area in the facility so long as that assignment does not affect the detainee's security classification, program opportunities or any other terms or conditions of his confinement.

7. Defendants shall provide special diets to those detainees whose religious beliefs require their adherence to dietary rules. If, for religious reasons, a detainee does not eat particular foods, he shall be provided with substitutes of comparable nutritional value.

8. Defendants shall never withhold food nor vary the standard menu as a disciplinary sanction or as a reward for good behavior.

9. Defendants shall maintain written records of all meals actually served to detainees, published menus and substitutions in planned menus. Plaintiffs' counsel shall be allowed access to such records on request.

Food Preparation and Service

10. Defendants shall provide every detainee with food which is properly prepared so as to preserve vitamins, minerals, and nutrients and which is palatable in terms of color, flavor, texture and aroma. Defendants shall:

a. utilize standardized recipes in the preparation of all meals;

b. store, cook, serve and maintain food under sanitary conditions and at appropriate temperatures. Food shall be served expeditiously after preparation, and where food transportation is necessary, it shall be accomplished in carriers which have functioning heating and cooling mechanisms which maintain cold foods at below 40 degrees F. and hot foods at above 140 degrees F.;

c. provide adequate quantities of appropriate condiments, such as salt, pepper, ketchup and mustard, for individual detainee use at each meal.

11. Defendants shall provide all meals on schedule and at times which parallel the hours at which meals are generally eaten in civilian life. In no event shall the last meal of the day be served before 4:30 P.M.

12. Defendants shall provide at every meal sufficient and equitable quantities of all foods to each detainee, without the need to send for additional quantities of food before each detainee is fully served.

13. Defendants shall provide each detainee at every meal with sufficient quantities of appropriate eating utensils, glasses, cups, and non-metal dishes and trays, at the time the food is

ready to be served. The above items shall be clean, sanitized in dish-washing machines at appropriate temperatures, and made of material which produces a minimal amount of noise.

14. Defendants shall provide and maintain sanitary dining areas which are designed to provide comfortable communal eating. Seating shall be available for all detainees.

15. Defendants shall provide to detainees returning or admitted to the institution after the last regularly scheduled meal has been completed, the same meal as was provided to all other detainees. Such meals shall be served at appropriate temperatures.

16. Personnel, both at the departmental level and at the institution, who are responsible for menu planning, food preparation and service, shall be kept regularly apprised of the quality of food service in the institution by at least the following means:

a. regular canvassing of detainees to obtain their reactions to the food services program;

b. a procedure by which detainees can make known daily, to those responsible for food services, including specified personnel in the Commissioner's office, their complaints regarding food services, and by which supervisory personnel will respond regularly to detainee complaints;

c. personal observation, sampling and evaluation, on a regular basis, of meals served to detainees; and

d. plate waste studies on a regular basis.

Records of evaluations by all of the above methods shall be maintained in writing and shall include, among other things, all studies and evaluation reports, as well as detainee concerns and actions taken in response to those concerns. Plaintiffs' counsel shall be allowed access to such records on request.

Food Services Personnel

17. Defendants shall have all food which is served to detainees prepared in each institution under the direct supervision

of a trained nutritionist or dietitian and a professional food services manager who is employed within the institution. The trained nutritionist or dietitian shall be employed in the institution within eight months of the date of the signing of this stipulation. The food services manager shall have had experience and training in institutional or commercial food preparation, management and service, including training in the prevention of bacteriological contamination and in the safe and sanitary use of kitchen equipment, and knowledge of city and state health standards.

18. Defendants shall employ a sufficient number of paid, skilled cooks in each institution.

19. Defendants shall employ detainees who are adequately trained in food preparation to assist in the preparation of food. However, such detainees shall not serve as substitutes for professional staff.

20. Defendants shall have all meals distributed and served to detainees under the direct supervision of non-inmate personnel, trained in food services.

21. Defendants shall assure that all food services personnel, including detainees, comply with applicable health laws and regulations, and that each day such personnel are clean and free of illness and infection.

22. Defendants shall provide all food services personnel with an orientation program and adequate structured training in the safe and sanitary handling of food and of equipment for preparation and storage of food, in food preparation techniques, in personal hygiene, and in the responsibilities of the position the employee will hold.

23. Defendants shall provide all food services personnel with written work descriptions, in addition to oral instructions as to their responsibilities.

24. Nothing in this stipulation resolves the issues of excessive noise levels in the dining areas and the location of meals served to detainees returning or admitted to the institution after the last regularly scheduled meal has been completed. In the event that these issues cannot be resolved, they are reserved for determination by the Court.

W. MOVEMENT

By January 1, 1980, on the basis of a rational system which classifies detainees individually, detainees shall be permitted to travel unescorted between housing areas and activity locations, except where, on the basis of that system, designated detainees are required to be escorted between designated locations.

X. SIGNIFICANT FAMILY EVENTS

1. Except where the Commissioner or his designee has determined that a particular detainee's attendance at any of the following events presents a reasonable likelihood of escape or serious danger of bodily harm, and subject to such reasonable rules and regulations as the Commissioner may prescribe respecting the duration of absence from the institution, custody, transportation, care of the detainee and security, defendants shall, upon the occurrence of at least the events described below, permit all detainees the following:

a. Death

Each detainee shall be permitted to attend the funeral in New York City or the viewing in New York City of deceased parents, parents-in-law, grandparents, brothers, sisters, guardians and former guardians, children, grandchildren, children-in-law, spouses, including "common-law" spouses, and in the Commissioner's or his designee's discretion, other people with whom the detainee has had significant

relationships; for purposes of this stipulation, the relationship of "common-law" spouse may be demonstrated, among other means, by either residence at the same address, existence of children in common or history of visiting within the institution. The Commissioner shall consider the detainee's preference between attending the funeral or the viewing but reserves the right to make a final decision, provided that the decision shall not be arbitrarily made and shall be based on legitimate security concerns.

b. Serious Illness

Each detainee shall be allowed to visit with any of the individuals listed above, in subparagraph 1a, when there exists a substantial likelihood of death as a result of an illness or accident.

c. Weddings

i. Each detainee shall be permitted to marry while incarcerated. Such services shall be conducted by any person, of the couple's choice, qualified to perform marriages in the State of New York.

ii. Upon one week's notice, a chapel or other appropriate space shall be made available for the detainee's wedding service.

iii. Defendants shall make whatever provisions are necessary in order for the detainee to obtain the required blood tests and marriage license if the detainee so requests.

2. Attendance at the events described in subparagraph 1 above shall be permitted for a reasonable duration of not less than one hour, except where, in the case of serious illness, the length of the visit is limited by the treating physician or the

rules of the hospital, and shall be subject only to necessary security precautions. Such precautions shall be as minimally intrusive as possible, and defendants shall not handcuff detainees during their attendance at these events, except when, based upon the particular circumstances, there is a specific determination that security considerations require that a particular detainee be handcuffed at these events.

3. Defendants shall be allowed a reasonable amount of time, not to exceed 48 hours, in order to arrange attendance at any of the events described in subparagraphs 1(a) and (b) above and, unless the Commissioner or his designee has determined, according to the requirements of subparagraph 1 above, that the detainee's attendance at a particular event presents a reasonable likelihood of escape or serious danger of bodily harm, the defendants shall produce the detainee at the event. Defendants shall expedite the process in circumstances where it is apparent that the event will occur before 48 hours and in such circumstances, if the request is made at least 24 hours prior to the event, shall complete the process by that time unless in a rare instance, despite every attempt to do so, it is impossible for defendants to complete the process in time. Where the Department wishes to confirm the existence of an event, it may do so by any means, provided that such method is as minimally intrusive as possible and is considerate of the privacy of the detainee and his family. Where the Department requires confirmation of the event by the detainee or his family, it shall be sufficient for the event to be confirmed by telephone or other oral means.

4. Nothing herein is intended to preclude any detainee from seeking a state court order requiring, on such terms as the court may direct, the defendants to transport him to these or other family events.

5. Nothing herein shall preclude defendants, if they so desire, from seeking a state court order facilitating the meeting

of their obligations under this provision of the stipulation, provided that defendants' obligations and plaintiffs' rights as set forth in this provision shall in no way be diminished by defendants' seeking or obtaining such an order.

6. Nothing herein shall be construed as addressing the question of visits by detainees with their new-born children and the child's mother outside the institution. The parties reserve the right to litigate this issue.

Y. HOUSING FOR HOMOSEXUALS, TRANSVESTITES

AND TRANSSEXUALS

1. Defendants shall house any detainee who is a homosexual, transvestite or transsexual, and who requests to be housed apart from the general population, in a special housing unit (hereinafter "separate homosexual housing") set aside solely for those detainees; provided, however, that defendants may, in accordance with the provisions of subparagraph 2, place such a detainee in a restrictive or specialized classification where appropriate and for reasons unrelated to his status as a homosexual, transvestite or transsexual.

2. Defendants shall not deny to any detainee, or remove any detainee from, separate homosexual housing except where, in accordance with the due process safeguards provided in subparagraph 4 of this provision, a finding has been made that an individual is neither a homosexual, transvestite nor transsexual; provided, however, that where appropriate, and in accordance with due process safeguards applicable to the general population, defendants may involuntarily place a homosexual, transvestite, or transsexual detainee in restrictive or specialized housing units which shall be safe and secure and which shall provide conditions of confinement no more restrictive than those imposed upon general population detainees in those units or categories. The sole fact of a detainee's appearance or physical mannerisms shall not be

adequate justification for denying or removing a detainee from separate homosexual housing.

3. Defendants shall not place a detainee involuntarily in separate homosexual housing unless, in accordance with the due process safeguards of subparagraph 4 below, there is a determination, based upon substantial evidence, that there is a reasonable likelihood that the detainee's presence in general population will pose a serious threat to the detainee's safety or to the safety and security of the institution. The fact that a detainee is a homosexual or transvestite shall not of itself constitute substantial evidence or adequate justification, nor shall a detainee's appearance or physical mannerisms alone be adequate justification for involuntarily placing a detainee in separate homosexual housing.

4. Prior to or immediately upon placing a detainee involuntarily in separate homosexual housing, or removing a detainee from or denying separate homosexual housing to a detainee who requests it, defendants shall:

a. Provide the detainee with written notice of

- (i) the reasons for such housing assignment or its denial;
- (ii) the evidence relied upon by the institution for its decision; and
- (iii) the right to challenge the decision at a hearing before the institutional classification board of which at least one member shall be a psychologist, trained social worker or psychiatrist. Unless the right to a hearing is waived by the detainee, such hearing shall be held between 24 and 48 hours after the detainee is given the notice required by this provision, or, if a holiday or weekend falls within the

24 to 48 hour period, then, at the option of the defendants, such hearing shall be held on the first business day after notice has been provided. In the event that a detainee involuntarily placed in separate homosexual housing waives his right to a hearing, he may request one at a later time, and, following such a request, a hearing shall be held within the time period specified above.

- b. At the request of a detainee who has been removed from or denied separate homosexual housing, defendants shall provide protective housing to that detainee at least until a post-hearing finding has been made.
- c. At the hearing before the institutional classification board, the detainee shall have the right to appear personally and to make a statement; to call witnesses and submit documentary evidence, subject to the hearing board's right to keep the hearing within reasonable limits; and the opportunity to confront and cross-examine witnesses whenever the hearing board cannot rationally determine the facts without cross-examination. If the detainee is illiterate or if the complexity of the issues makes it unlikely that he otherwise can collect and present the evidence necessary for an adequate presentation of his case, he shall have the right to the assistance of counsel-substitute or, at the option of the defendants, the assistance of retained counsel.
- d. The hearing board shall keep notes adequate to reflect the content of the proceedings and to furnish a basis for its decision.
- e. In the event that the hearing board determines that the decision to provide or deny separate homo-

sexual housing was justified, it shall set forth its reasons and findings of fact in writing and submit such reasons and findings to the warden within twenty-four hours of the conclusion of the hearing. Within twenty-four hours thereafter, the warden shall, in writing, with a copy to the detainee, approve or disapprove the hearing board's decision.

- f. In the event that the hearing board determines that the decision to impose separate homosexual housing was not justified, the detainee shall immediately be transferred to an appropriate housing area and, if the decision to impose involuntary homosexual housing is reversed, the Department shall expunge from the detainee's records any and all references to his period of classification and housing in that area. Nothing herein shall preclude defendants from maintaining in a separate place, for internal and administrative purposes, their own records containing a brief reference to the location and period of the detainee's separate housing, and to the alleged reasons for such housing as well as the determination that such housing was unjustified; provided, however, that such records shall not be released to any other party, except the detainee himself, or be used in any way to affect any terms or conditions of a detainee's subsequent confinement.
- g. Nothing in the procedure set forth in this section of this stipulation shall require disclosure of information that would reveal the identity of persons supplying, on a confidential basis, information

- to the defendants or other law enforcement agencies.
- h. Any detainee shall have the right to have his classification and housing placement reconsidered in accord with the provisions of subparagraphs 1-4 above, at any time based on a change of circumstances.
5. a. Defendants shall provide each detainee in separate homosexual housing with the same services, recreation, programs not provided in groups, religious services and conditions of confinement, including visiting rights, as those provided to detainees in the general population. Detainees in separate homosexual housing shall be allowed to attend religious services with the general population; however, detainees in separate homosexual housing may be denied religious services with the general population only for the reason specified in paragraph Q, supra, and, in such event alternate religious services shall be provided as set forth in paragraph Q. Recreation and movies shall be provided in groups comprised solely of detainees from homosexual housing.
- b. Defendants shall, on the basis of individual determinations based on legitimate security grounds, allow detainees in separate homosexual housing to attend the same classroom, educational, and other group programs attended by general population detainees or to attend reasonably similar classroom, educational and other programs in groups comprised solely of detainees in separate homosexual housing. Detainees in separate homosexual housing shall also be provided with the same or reasonably similar employment opportunities as those available to detainees in the general population. For purposes

of this provision, reasonably similar programs and employment opportunities shall mean programs and employment opportunities equivalent in variety, structure, character, value and purpose.

- c. Conditions of confinement, services, recreation, religious services, and all programs, whether or not provided separately for homosexual, transvestite, and transsexual detainees, shall be furnished to all detainees, regardless of sexual preference or orientation or personal mannerisms, under conditions which assure their safety and security.

6. Nothing in this stipulation resolves plaintiffs' claims, in the related case of Flowers v. Malcolm, 76 Civ. 2182 (S.D.N.Y.), for damages arising out of transfers and housing assignments in May, 1976. In the event that these claims cannot be resolved by the parties, plaintiffs reserve the right to litigate them.

2. ACCESS TO NEWSPAPERS

Defendants shall provide all detainees with adequate access every day to local newspapers, including Spanish-language newspapers, which are normally read by groups represented in the detainee population. Access to these newspapers shall be provided in the following manner:

- a. Defendants shall continue to furnish one copy of at least one of the three major daily New York City newspapers and at least one copy of the major New York City Spanish-language newspapers to each group of thirty or fewer detainees on the day of publication. Additional newspapers shall also be provided to each group of thirty or fewer detainees on the day of publication. Copies of each of the major New York City English and Spanish-language newspapers shall also be provided on the day of publication to the institutional library for use by detainees.

b. Defendants shall use their best efforts to obtain additional day of publication and day old copies of the major New York City English and Spanish-language newspapers which shall be provided to every dayroom in quantities which assure a reasonable likelihood of access by all detainees; and

c. Sufficient numbers of each of New York City's major English and Spanish-language newspapers shall be made available on the day of publication for daily purchase, in the commissary by detainees scheduled to go to commissary, or in the housing areas.

2. The parties agree to continue negotiations, for thirty days following the signing of this stipulation, for the establishment of a system which, in addition to the provisions for newspaper access agreed upon above, will permit all detainees to purchase day of publication newspapers daily. In the event that the parties reach agreement, they shall sign a supplemental stipulation of settlement. If after thirty days the parties are unable to reach agreement, nothing in this stipulation shall be construed to resolve the issue of whether all detainees are entitled to purchase day of publication newspapers daily and, in such event, plaintiffs reserve the right to litigate the issue.

AA. LAW LIBRARY

1. Defendants shall maintain a properly equipped law library which shall include, among other items:

- a. necessary research and reference materials which shall be kept properly updated and supplemented, and shall be replaced without undue delay when any materials are missing or damaged;
- b. unmarked legal forms which are commonly used by detainees and copies of which all detainees shall be permitted to use or which they shall be permitted to photocopy for their own use;
- c. a photocopy machine available for the free copying of all legal materials;

d. a sufficient number of typewriters in working order which can be used by detainees as well as by trained typists;

e. an adequate supply of legal-size paper.

2. Defendants shall staff the law library with an adequate number of trained legal assistants, some of whom speak Spanish, and with typists, available to assist detainees with the preparation of legal materials.

3. Defendants shall maintain the law library sufficiently free of noise and activity and with sufficient space and lighting to permit sustained research.

4. By a date yet to be determined in accord with the provisions of paragraph EE, infra, defendants shall keep the law library open for detainee use at least eight hours per day during lock-out periods, seven days a week, including at least three hours between 6 P.M. and 10 P.M. on weekday evenings. Defendants shall allow each detainee to have access to the law library for a period of at least two hours per day, seven days a week, and shall allow greater access if a detainee has an immediate need for additional time, such as an impending court deadline; provided, however, that if on a particular day, with maximum use of the law library, defendants must deny access to certain detainees because there is insufficient space to accommodate all detainees who wish to use the law library, those detainees who are denied access on that day shall be provided access on the following day.

5. Effective immediately, the law library shall be open for detainee use at least forty hours per week, including at least eight hours during the weekend and at least three hours on each of two weekday evenings. Each detainee shall be allowed access for a period of at least two hours on each day that the library is in use and, if there is an immediate need for additional time, such as an impending court deadline, detainees shall be allowed greater access; provided, however, that if on a particular day,

with maximum use of the law library, defendants must deny access to certain detainees because there is insufficient space to accommodate all detainees who wish to use the law library, those detainees who are denied access on that day shall be provided access on the next day on which the law library is open.

BB. LOCK-IN/LOCK-OUT TIME

1. Defendants shall not require any detainee who is not in punitive segregation to be confined to his cell except during the following periods:
 - a. by a date to be determined in accord with the provisions of paragraph EE, infra, at night, for no longer than 8 hours, beginning no earlier than 11 P.M.
 - b. during the day, only when essential for institutional business which can be carried out only while detainees are locked in their cells, and, by a date to be determined in accord with the provisions of paragraph EE, infra, in no event for a total of more than two hours in any 24-hour period.
2. Defendants shall permit detainees to lock in or out of their cells halfway through any lock-out period of two hours or more and, by a date to be determined in accord with the provisions of paragraph EE, infra, in any event, at time intervals of no more than one hour during any lock-out period. At each interval in which detainees are permitted to lock in or out of their cells, those detainees who wish to return to their cells to retrieve personal items shall be permitted to do so and shall not be required to be locked into their cells.
3. Nothing in this stipulation shall be construed as resolving the issues of whether in an emergency these procedures may be suspended, what constitutes an emergency or what procedures could be followed in the event of an emergency.

CC. TELEPHONES

1. Defendants shall permit all detainees to receive incoming calls of an emergency nature, as well as calls from an attorney, or for either category of calls, a message may be taken and the detainee shall be permitted to return the call as soon as possible, but in any event during the same day; provided, however, in the event that such incoming call is received after the commencement of the evening lock-in, the return call shall be permitted no later than the following morning. A call made in response to such a message shall be allowed in addition to the detainee's guaranteed daily calls.

2. Nothing in this paragraph resolves any questions regarding telephone service other than the right to receive calls of an emergency nature as well as calls from an attorney; all other questions regarding telephone service remain to be resolved by agreement of the parties or determined by the Court.

DD. OPTIONAL LOCK-IN

1. Defendants shall maintain a policy that any detainee who chooses to remain in his cell shall have the option to do so during all lock-out periods without exception; provided, however, that nothing in this provision shall prevent defendants from denying optional lock-in to a detainee in mental observation status if a psychiatrist treating that detainee determines that optional lock-in poses a serious threat to the safety of that detainee.

EE. IMPLEMENTATION DATES FOR
PORTIONS OF PARAGRAPHS A,
D, E, AA, BB

Within two weeks after the signing of this stipulation, the parties shall meet in an effort to agree upon the date(s) by which full implementation of paragraphs A and E of this stipulation, regarding receipt of packages by mail and package delivery service; paragraph D of this stipulation, regarding the provision of laundry services; paragraph AA, regarding the hours of library access; and paragraph BB, regarding the lock-in/lock-out schedule, shall be achieved. In the event that the parties agree upon the date(s) for the implementation of any or all of these provisions, the parties shall submit a stipulation, which sets forth these date(s), to the Court. In the event that the parties are unable to agree to any or all of the dates for implementation, they shall immediately request the Court to decide upon a city-wide implementation date and to permit the parties to be heard on that issue. Within two weeks of the granting of such permission, defendants shall submit to the Court a plan and date by which they expect to achieve full implementation; plaintiffs shall submit their reply, if any, two weeks thereafter. Provided, however, that whether by stipulation or by Court determination, defendants agree that time shall be of the essence in their performance of all tasks necessary to fully implement the provisions of paragraphs A, D, E, AA and BB, and that such tasks shall be done upon an expedited basis, and in no event shall full compliance with paragraph BB be achieved later than nine months from the signing of this stipulation; nor shall full compliance with paragraphs A, D, E, and AA be achieved later than one year from the signing of this stipulation.

IT IS FURTHER STIPULATED that in order to monitor compliance with the terms of the partial final judgment by consent incorporating the terms of this stipulation, defendants agree:

- (1) to respond to written or oral questions from plaintiffs' counsel relative to implementation of the judgment and, upon request, to supply them with relevant, non-privileged material concerning implementation, including, but not limited to, records, logs and reports maintained in the institution, and rules, regulations, operating procedures and directives issued by defendants;
- (2) plaintiffs' counsel shall be permitted to confer confidentially with any individual detainees and with the inmate council; plaintiffs' counsel shall also be permitted to confer confidentially with other groups of detainees, subject to defendants' right to reasonably limit the number of detainees in any such group and to bar any particular detainees from participating in such group conferences when, in their judgment, it is required for the security of the institution; nothing in this paragraph is intended to resolve or address the issue of plaintiffs' counsel's right to confer confidentially with groups of the plaintiff class as their legal representative and for purposes other than monitoring compliance; (3) in addition, plaintiffs' counsel and/or experts, upon request, shall have access to any area of the institution for the purpose of observing compliance with this judgment whenever they have a reasonable belief that such measure is appropriate and that other sources of information are inadequate; provided, however, that such access may be subject to reasonable security and scheduling conditions established by defendants.

IT IS FURTHER STIPULATED that defendants shall, at a minimum, implement the terms and provisions of the partial final judgment by consent incorporating the terms of this stipulation, and any other outstanding orders, at any new facility(s) that may be

constructed or used in the future by defendants to confine pre-trial detainees who would otherwise have been confined in HDM, if necessary, defendants agree to the entry of a separate order, in this or any other case, to effectuate the terms of this agreement.

IT IS FURTHER STIPULATED that the Court shall retain jurisdiction over the provisions of the partial final judgment by consent incorporating the terms of this stipulation.

IT IS FURTHER STIPULATED that, in the event that a dispute arises as to whether any party is in compliance with the terms of the partial final judgment incorporating the terms of this stipulation, the parties shall proceed as follows:

Both parties shall make a good faith effort to resolve any differences which may arise between them over such terms. Prior to institution of any proceeding before the Court to enforce the provisions of the partial final judgment, plaintiffs' counsel shall notify defendants' counsel, counsel for the Department of Correction, and the Deputy Mayor for Criminal Justice in writing, of any claim by plaintiffs that defendants are in violation of any provision thereof.

Within five days of the receipt of said notice, plaintiffs and defendants shall meet in an attempt to arrive at an amicable resolution of the claim. If the parties fail to effect such resolution, either party, within five days of said meeting, may request a conference with representatives or members of the New York City Board of Correction, and, in such event, both parties and said representatives or members of the Board shall meet, within 10 days of the request to the Board, in an attempt to resolve the matter amicably. If there is no request for such meeting, or if such meeting is not held within ten days, or if after five days following such meeting the matter has not been resolved to plaintiffs' satisfaction, defendants shall be so informed by plaintiffs' counsel and plaintiffs may then have due recourse to the Court.

However, where plaintiffs' counsel asserts a claim that involves a threat to the immediate physical or mental well-being of any member of the plaintiff class, plaintiffs shall have due recourse to the Court within 24 hours of notification to defendants' counsel of such claim.

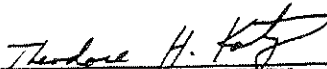
IT IS FURTHER STIPULATED that the term "defendants," as used in this stipulation, shall be understood to include defendants, their employees, agents or those acting in concert with them.

IT IS FURTHER STIPULATED that defendants shall take all necessary steps to conform all departmental rules, regulations, directives and other administrative orders to the terms of this stipulation.

IT IS FURTHER STIPULATED that, in the event a partial final judgment incorporating the terms of this agreement is approved and entered by the Court, counsel for plaintiffs shall prepare a notice to the plaintiff class incorporating the terms of that partial final judgment, and deliver a sufficient number of copies of the notice to the wardens of HDM and the annex known as C-71 for posting. The wardens of HDM and the C-71 annex shall cause a copy of this notice to be kept posted in each housing area and dayroom, the library, attorney and personal visiting areas, the receiving room, program areas and other common areas of HDM and C-71. Copies of the notice shall also be made available to detainees in the library for personal reference and, upon request, copies shall permanently be given to detainees for their own use. In addition, counsel for plaintiffs shall prepare a separate, abbreviated notice for members of the plaintiff class, which indicates, among other things, the entry of the judgment, the issues resolved therein and plaintiffs' counsel's identity and address. A sufficient number of copies of the notice shall be delivered to the wardens of HDM and the C-71 annex, who shall have such notice given by hand to each present detainee. Thereafter,

each detainee, upon admission, shall be provided with either a copy of such abbreviated notice at defendants' expense or equivalent notice contained in an institutional handbook.

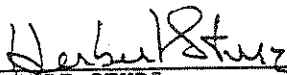
Dated: New York, New York
November 27, 1978



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JAMES BENJAMIN, MIGUEL GALINDEZ, BRUCE HAYES, :
JOSE SALDANA and ROBERT ESCHERT, detainees of the :
New York City House of Detention for Men, :
individually and on behalf of all other persons :
similarly situated, :

Plaintiffs, :

-against- : 75 Civ. 3073
(MEL)

BENJAMIN J. MALCOLM, Commissioner of Correction :
of the City of New York; ARTHUR RUBIN, Warden, : SUPPLEMENTAL
New York City House of Detention for Men; GERARD : STIPULATION
BROWN, Deputy Warden, New York City House of :
Detention for Men; and ABRAHAM D. BEAME, Mayor :
of the City of New York, individually and in :
their official capacities, :

Defendants. :

-----X

Attorneys for the plaintiffs and the defendants entered into a Stipulation For Entry of Partial Final Judgment dated November 29, 1978 ["Stipulation"] in this action. Paragraph EE of the Stipulation requires that the parties meet and attempt to agree on dates for the implementation of certain specified paragraphs of the Stipulation. In addition, paragraph Z of the Stipulation requires the parties to meet and attempt to establish a system by which detainees will be able to purchase day-of-publication newspapers. Attorneys for the parties have met and have reached the following agreements which are set forth in this Supplemental Stipulation.

IT IS HEREBY STIPULATED by and between the undersigned attorneys for the plaintiffs and the defendants herein, and subject to the approval by the Court, that:

I. IMPLEMENTATION DATES FOR ¶¶A AND E, AA AND BB OF STIPULATION FOR ENTRY OF PARTIAL FINAL JUDGMENT DATED NOVEMBER 29, 1978

¶¶A and E. RECEIPT OF PACKAGES AND CLOTHING ITEMS BY MAIL

1. By February 15, 1979, the defendants shall begin a one month experiment at the Brooklyn House of Detention for the receipt and sending of packages

by detainees through the mail. During the experiment detainees will be able to receive clothing and other personal property as specified on an "interim package list" prepared by the defendants.

2. Defendants shall keep records of the number and content of packages received and sent in the mail by detainees at the Brooklyn House of Detention during the experiment. Such records shall include, but shall not be limited to: the number of packages received and sent daily; the number of packages received and sent per inmate; the number of inmates receiving and sending packages; the number of packages and/or items within packages rejected by the defendants and the reason for each rejection; and the amount of time which elapsed between the delivery of each package to the institution and delivery to the inmate. These records shall be provided promptly to plaintiffs' counsel upon request.

3. By April 1, 1979, counsel for the plaintiffs and the defendants shall meet to determine when receipt and sending of packages by mail will be implemented, as well as to determine the list of items which can be sent to detainees through the mail. If an agreement is reached, a second supplemental stipulation shall be submitted to the Court. If no agreement is reached, the provisions as to implementation dates in ¶EE of the Stipulation dated November 29, 1978, will apply, and the issue of what items can be sent to detainees remains for determination by the Court.

¶AA. LAW LIBRARY

1. By August 1, 1979, defendants shall keep the law library open for detainee use at least eight hours

per day during lock-out periods, seven days a week, including at least three hours between 6 P.M. and 10 P.M. on weekday evenings. Defendants shall allow each detainee to have access to the law library for a period of at least two hours per day, seven days a week, and shall allow greater access if a detainee has an immediate need for additional time, such as an impending court deadline; provided, however, that if on a particular day, with maximum use of the law library, defendants must deny access to certain detainees because there is insufficient space to accommodate all detainees who wish to use the law library, those detainees who are denied access on that day shall be provided access on the following day.

BB. LOCK-IN/LOCK-OUT TIME

1. By July 1, 1979, defendants shall not require any detainee who is not in punitive segregation to be confined to his cell except during the following periods:

- a. at night, for no longer than 8 hours, beginning no earlier than 11 p.m.;
- b. during the day, only when essential for institutional business which can be carried out only while detainees are locked in their cells and, in no event for a total of more than two hours in any 24 hour period.

2. By July 1, 1979, defendants shall permit detainees to lock in or out of their cells at time intervals of no more than one hour during any lock-out period.

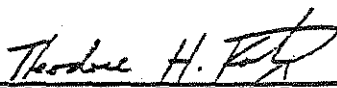
II. ACCESS TO NEWSPAPERS

In accordance with the requirement of ¶2, 2. of the Stipulation, the parties have agreed:

1. By March 1, 1979, defendants shall provide a system which allows all detainees to purchase, daily, day-of-publication copies of The New York Daily and Sunday News and El Diario. Detainees shall also be able to purchase day-of-publication copies of the following weekly newspapers: The Amsterdam News and the Bilalian News.

2. Additionally, the defendants shall conduct an experiment to ascertain the demand for daily purchase of the New York Times and The New York Post. Defendants shall make these two newspapers available for purchase for a trial period. If at the end of that trial period there has been shown to be a reasonable demand for these newspapers, the defendants will continue to make them available for purchase on the same basis as The Daily News and El Diario. If the parties cannot agree, after the test period, as to whether the results support continued sale of these two newspapers, the parties reserve the right to submit the question to the Court for resolution.

Dated: New York, New York
March 14, 1979


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