

NOTES

From Rights of the
Person, 1986, 1987

LISA AND GREGORY GRANT et al v.

MARIO M. CUOMO, et al

No. 25168/85
May 21, 1986

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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LISA and GREGORY GRANT and their :
children GREGORY JR. and MASON LEE; :
ELIZABETH CRUZ and her children ISMAEL, :
DAISY and YOLANDA; DEMETRIA BANKS and :
her children LAMAR, DAVONN, DEMETRIUS :
and BOBBY; STEPHANIE OCAMPO and her :
child SAIDAH; CITIZENS' COMMITTEE FOR :
CHILDREN OF NEW YORK, INC.; ASSOCIATION :
TO BENEFIT CHILDREN; COALITION FOR THE :
HOMELESS; on behalf of themselves and :
on behalf of all others similarly :
situated, :

Plaintiffs, :

-against- :

COMPLAINT

MARIO M. CUOMO, as Governor of the :
State of New York; CESAR A. PERALES, as :
Commissioner of the New York State :
Department of Social Services; :
EDWARD I. KOCH, as Mayor of the City :
of New York; GEORGE GROSS, as :
Administrator of the New York City :
Human Resources Administration and :
Commissioner of the New York City :
Department of Social Services; :

Defendants. :

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Plaintiffs, on behalf of themselves and other simi-
larly situated persons, by their undersigned attorneys, for
their complaint herein, allege:

Preliminary Statement

1. Plaintiffs bring this action for declaratory and injunctive relief, as well as damages, arising from defendants' ongoing failure to provide to plaintiffs, a group of children and their families in New York City, the protective and preventive services mandated by state and federal law. In addition to the named minor plaintiffs, tens of thousands of other children, primarily poor children, go unprotected from serious dangers because of the defendants' failure to provide these children with the services to which they are entitled.

State law specifically requires that investigations of reports of maltreatment of children be commenced within 24 hours. This past year over 6,000 children went completely without this protection because defendants failed to respond in any timely way to reports they received of the abuse or neglect of children. When investigations of abuse reports did begin within 24 hours, some 60 percent of those investigations consisted of nothing more than a phone call. Defendants also fail to complete the most rudimentary elements of an investigation of child abuse. In 30 percent of the investigations conducted by defendants, the children who were the subject of the reported maltreatment had not even been seen at the 40-day point of the investigation. The harm suffered by many of these children, who are left unprotected, is severe and irreparable.

Further, state and federal law mandate that defendants provide families -- as a matter of right -- with a host of services designed to prevent the placement of children in foster care. These preventive services include day care, homemakers to assist in the care of children and various forms of counselling. According to a recent report prepared for the legislature pursuant to the Child Welfare Reform Act, defendants fail to provide the mandated preventive services to 49 percent of the families eligible for and in need of support. As a consequence, many children are needlessly removed from their families and placed in foster care. Aside from the irreparable damage a child suffers by an inappropriate removal from his or her family, studies indicate that actual abuse of children in foster care is nearly double the city-wide rate of child abuse.

Plaintiffs seek an order requiring defendants to meet their duty, imposed by the state and federal legislatures, to provide the plaintiff children with the protective and preventive services to which they are specifically entitled.

The Parties

Plaintiffs

2. Lisa and Gregory Grant are the parents of an eighteen month old child, Gregory Jr., and are expecting their second child. Their children are at risk of being placed in foster care. Plaintiffs Grant have requested and have been denied preventive services by defendants.

3. Elizabeth Cruz is the mother of three children, Ismael, Daisy and Yolanda, ranging in age from 3-1/2 years to one year. Her children are at risk of being placed in foster care. Plaintiff Cruz has requested and has been denied preventive services by the defendants.

4. Demetria Banks is the mother of four children, Lamar, Davonn, Demetrius and Bobby, ranging in age from ten years to three years. Her children are at risk of being placed in foster care. Plaintiff Banks has requested and has been denied preventive services by the defendants.

5. Stephanie Ocampo is the mother of a four year old child named Saidah Ocampo. Plaintiff Saidah Ocampo is in danger of being placed in foster care. Plaintiff Ocampo has requested and has been denied preventive services by defendants.

6. Plaintiff Citizens' Committee for Children of New York, Inc. ("Citizens Committee") is a not-for-profit organization dedicated to protecting the rights and interests of children. Among other things, the Citizens' Committee monitors the provision of services to children by state, local and nongovernmental agencies. In particular, the Citizens' Committee works extensively to insure the adequacy of foster care programs and related services.

7. Plaintiff Association to Benefit Children ("ABC") is a not-for-profit corporation dedicated to the protection of children in New York. ABC expends substantial resources assisting children who have suffered from abuse or neglect.

8. Plaintiff Coalition for the Homeless is a not-for-profit corporation dedicated to alleviating the suffering of the poor in New York. The Coalition expends substantial resources assisting children who have suffered from abuse or neglect.

Defendants

9. Defendant Mario M. Cuomo is the Governor and Chief Executive Officer of the State of New York. He is responsible for the faithful execution of the law.

10. Defendant Cesar A. Perales is the duly appointed Commissioner of the New York State Department of Social Services and, pursuant to the Social Services Law, is responsible for the administration of public assistance programs, including protective and preventive programs, throughout the State of New York.

11. Defendant Edward I. Koch is the Mayor and Chief Executive Officer of the City of New York. He is responsible for the faithful execution of the law.

12. Defendant George Gross is the duly appointed Administrator of the New York City Human Resources Administration (HRA) and is the Commissioner of the New York City Department of Social Services. As such, Defendant Gross is responsible for the welfare of children who reside within New York City and are in need of public assistance, care, support or protection.

Class Action Allegations

13. Plaintiffs bring this action on behalf of themselves and on behalf of a class consisting of (a) children residing in the City of New York who are (i) the victims of or threatened with abuse, or (ii) at risk of being placed in foster care and entitled to receive the services necessary to

avoid their removal from their families, or (iii) in foster care but unable to return to their families because appropriate preventive services are not provided, and (b) the parents of all such children.

14. The number of children and parents in the class is so numerous as to make joinder impracticable. The precise number of class members fluctuates; to the extent that the number is known at any given time, such information is in the control of defendants.

15. Questions of law and fact common to members of the class predominate over any questions affecting only individual members.

16. There are questions of law and fact common to all members of the class in that defendants have systematically failed to make available to children and their parents the required services and programs under the New York Social Services Law and implementing regulations, the Social Security Act, the Code of Federal Regulations, and the United States Constitution.

17. The claims of the representative parties are typical of the claims of the class.

18. The representative parties will fairly and adequately protect the interests of the class.

19. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

Venue

20. Each of the defendants has facilities involved in this action in New York County.

Statutory Framework

Defendants' Obligations Under State Law to Investigate In a Timely Manner Reported Cases of Child Abuse and to Provide Protective Services

21. Pursuant to New York Social Services Law § 424 (McKinney 1983), defendants must:

"6. upon receipt of a report [of suspected child abuse or maltreatment], commence or cause the appropriate society for the prevention of cruelty to children to commence, within twenty-four hours, an appropriate investigation which shall include an evaluation of the environment of the child named in the report and any other children in the same home and a determination of the risk to such children if they continue to remain in the existing home environment, as well as a determination of the nature, extent, and cause of any condition enumerated in such report, the name, age and condition of other children in the home, and, after seeing to the safety of the child or children, forthwith notify the subjects of the report in writing, of the existence of the report and

their rights pursuant to this title in regard to amendment or expungement;

"7. determine, within ninety days, whether the report is 'indicated' or 'unfounded'

* * *

"9. based on the investigation and evaluation conducted pursuant to this title, offer to the family of any child believed to be suffering from abuse or maltreatment such services for its acceptance or refusal, as appear appropriate for either the child or the family or both; provided, however, that prior to offering such services to a family, explain that it has no legal authority to compel such family to receive said services, but may inform the family of the obligations and authority of the child protective service to petition the family court for a determination that a child is in need of care and protection."

22. Section 432.2(b)(3)(ii) and (iii) of the Social Services regulations mandates that a complete child protective investigation shall include:

"(ii) (a) face-to-face interviews with subjects of the report and family members of such subjects;

"(b) the obtaining of information from the reporting sources and other collateral contacts such as hospitals, schools, police and social service agencies;

"(c) an evaluation of the environment of the child named in the report and any other children in the home and a determination of the risk to such children if they continue to remain in the existing home environment;

"(d) a determination of the nature, extent and cause of any condition enumerated in such report and any other condition that may constitute abuse or maltreatment;

"(e) obtaining the name, age and condition of other children in the home; and

"(f) after seeing that the child or children named in the report are safe, notifying the subjects of the report in writing, no later than seven days after receipt of the oral report, of the existence of the report and their rights pursuant to title 6 of article 6 of the Social Services Law concerning amendment or expungement of the report.

"(iii) Prior to making a determination that a report of abuse and/or maltreatment should be indicated or unfounded, the investigation to be conducted by the child protective service or the appropriate society for the prevention of cruelty to children shall include, but not be limited to:

"(a) one home visit with one face-to-face contact with the subjects of the report so as to evaluate the environment of the child named in the report as well as other children in the same home;

"(b) an assessment of the current risk to the child(ren) in the home; and

"(c) a determination of the nature, extent and cause of any condition enumerated in the report." 18(B) N.Y.C.R.R. § 432.2(B)(3)(ii), (iii).

Defendants' Obligations Under State Law to Provide Preventive Services

23. Pursuant to New York Social Services Law §§ 11, 17, 20 and 34 (McKinney 1983), defendant Perales is responsible for: (a) the development of the policies and principles upon which public assistance is to be granted; (b) the recognition of the health and welfare needs of state residents who lack the

necessaries of life; (c) the supervision of all social services work undertaken by any local governmental unit, including the City of New York; (d) the adoption of rules and regulations to carry out the provisions of the New York Social Services Law; and (e) the enforcement of the New York Social Services Law and regulations promulgated pursuant thereto.

24. The City of New York is a social services district pursuant to the provisions of New York Social Services Law § 56 (McKinney 1983). Pursuant to New York Social Services Law §§ 56 and 77 (McKinney 1983), defendant Gross is responsible for the administration of public assistance and care to the needy.

25. Section 409 of Title 4 of the New York Social Services Law (McKinney 1983) defines the preventive services which are to be provided pursuant to that Title as follows:

"As used in this title, 'preventive services' shall mean supportive and rehabilitative services provided, in accordance with the provisions of this title and regulations of the department, to children and their families for the purpose of: averting an impairment or disruption of a family which will or could result in the placement of a child in foster care; enabling a child who has been placed in foster care to return to his family at an earlier time than would otherwise be possible; or reducing the likelihood that a child who has been discharged from foster care would return to such care."

26. Under § 409-e of the New York Social Services Law (McKinney 1983), for each child who is identified by SSC as being considered for placement in foster care, SSC shall perform an assessment of the child within thirty days after such an identification.

This assessment shall include:

"(a) a statement of the specific immediate problems which appear to require some intervention by the social services officials;

"(b) a description of the long term family relationships, an assessment of trends in the stability of the family unit, and of the likelihood that specific preventive services will increase family stabilization sufficiently to prevent placement or to reduce the duration of a necessary placement; and

"(c) an estimate of the time period necessary to ameliorate the conditions leading to a need for placement, and a description of any immediate actions that have been taken or must be taken during or immediately after the conclusion of the assessment."

Once this assessment is completed, SSC, after consulting with the child's parent or guardian, is required to "establish and maintain a child service plan" based on this assessment.

27. At a minimum, child service plans must, under the foregoing section, include the following:

"(a) time frames for periodic reassessment of the care and maintenance needs of each child and the manner in which such reassessments are to be accomplished;

"(b) short term, intermediate and long range goals for the child and family and actions planned to meet the need of the child and family and each goal;

"(c) identification of the services required by the child and his family, and a description of the availability of such services and the manner in which they are to be provided;

"(d) any alternative plans for services where specific services are not available, and any viable options for services considered during the planning process;

"(e) where placement in foster care is determined necessary, specification of the reasons for such determination, the kind and level of placement, any available placement alternatives, an estimate of the anticipated duration of placement, and plan for termination of services under appropriate circumstances."

28. Section 409-a(1)(a) of the New York Social Services Law (McKinney 1983) defines the circumstances in which preventive services must be provided as follows:

"1. (a) A social services official shall provide preventive services to a child and his family, in accordance with the child's service plan as required by section four hundred nine-e of this chapter and the social services district's child welfare services plan submitted and approved pursuant to section four hundred nine-d of this chapter, upon a finding by such official that the child will be placed or continued in foster care unless such services are provided and that it is reasonable to believe that by providing such services the child will be able to remain with or be returned to his family. Such finding shall be entered in the child's uniform case record established and maintained pursuant to section four hundred nine-f of this chapter."

29. Pursuant to Section 409-a(1)(a), the circumstances in which preventive services are mandated are defined by departmental regulation Sections 423.2(d) and 430.9 thereof.

Section 423.2(d) provides:

"(d) Mandated preventive services shall mean preventive services provided to a child and his family whom the district is required to serve pursuant to section 430.9 of this Title." 18(B) N.Y.C.R.R. § 423.2(d).

30. The provisions of Section 430.9 are set out in Annex A to this complaint and are incorporated here as if fully set forth.

Section 430.9(a) provides:

"(a) For cases authorized for mandated preventive services for the first time after April 1, 1982, the provision of preventive services shall be considered mandated if one of the following standards, as set forth in subdivision (c), (d), (e) or (g) of this section is met: the standard for the provision of mandated preventive services to clients at risk of placement; the standard for the provision of mandated preventive services to clients at risk of replacement in foster care; the standard for the provision of mandated preventive services to return children to their parents; or the standard for recertification of mandated preventive services. For cases receiving mandated preventive services before April 1, 1982, the standard for recertification of mandated preventive services, as set forth in subdivision (g) of this section, shall be met. In all other cases, the provision of preventive services shall be considered nonmandated and the decision to provide such services shall be made solely by the local social services district." 18(B) N.Y.C.R.R. § 430.9(a).

31. The remainder of Section 430.9 defines a variety of circumstances in which preventive services are mandated to prevent a child's placement in foster care or to expedite the child's return home, including circumstances relating to parent unavailability due to illness, imprisonment or death; parental refusal to maintain the child; a need by the child for special intensive services which the parents cannot provide, and the like.

Federal Law Requirements With
Respect to Preventive Services

32. Defendants participate in federal foster care and child welfare service programs created and funded under Title IV-E of the Social Security Act, 42 U.S.C. §§ 670 et seq. (1982) and Title IV-B of the Social Security Act, 42 U.S.C. §§ 620 et seq. (1982).

33. The United States Department of Health and Human Services reimburses New York State and City for a large part of their costs in providing foster care, child welfare services and other related services and programs.

34. As a condition of federal financial reimbursement, defendants must comply with the requirements of Title IV-B and IV-E.

35. Under Title IV-E, defendants must have a plan for compliance with the requirements of the act which has been approved by the Department of Health and Human Services.

36. The State of New York has submitted a plan to HHS certifying it has complied with all the requirements of Title IV-E.

37. Pursuant to Title IV-E, defendants must, inter alia, make:

"reasonable efforts . . . (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home. . . ." 42 U.S.C. § 671(a)(15) (1982).

Causes of Action

38. Defendants frequently fail to commence the investigation of reports of child abuse or neglect within 24 hours of receiving such reports. In fiscal year 1985, some 11 percent of the reports received by defendants were not investigated in a timely manner. That means over 6,000 children at risk went without any protection whatever for at least 24 hours.

39. In most cases defendants' commencement of an investigation offers virtually no real protection to children in

danger. In 60 percent of the cases where a timely investigation is commenced, contact with someone -- not necessarily the children, the reporting source or the subject of the complaint -- is merely by telephone.

40. Defendants' own guidelines require that a home visit be made within 48 hours of the report of child abuse or neglect.

41. Defendants routinely fail to carry out even the most rudimentary elements of the 90 day child protection investigation. Frequently, the children about whom the report was made are not even seen.

42. Children who have been the victims of abuse or neglect routinely are denied the most basic services.

43. Plaintiffs Lisa and Gregory Grant and their children, eighteen month old Gregory Jr. and newborn baby Mason Lee, presently live with Lisa's mother at 110-10 164th St., Jamaica, Queens.

44. The Grants were forced to leave their prior residence when plaintiff Gregory Jr. contracted lead poisoning from the house's paint and the landlord refused to remedy the danger.

45. Defendants have threatened to place plaintiff Gregory Jr. and Mason Lee in foster care because of the family's inadequate housing.

46. Plaintiff Lisa Grant has requested services for her family, including a homemaker and assistance in finding new housing, but defendants have failed to provide them with any services.

47. Plaintiff Elizabeth Cruz (age 18) presently lives at 2080 Grand Avenue, Apt. 1E in the Bronx, in an apartment secured for her by the Coalition for the Homeless. Until September 18, 1985, plaintiff Elizabeth Cruz and her children Ismael (age 3-1/2), Daisy (age 2-1/2) and Yolanda (age 1) were homeless, living in barrack shelters and at times sleeping on the floor of a City welfare office. Defendants did not assist the family in finding suitable living quarters.

48. Plaintiff Daisy Cruz suffers from substantial developmental disorders. Her development in a number of areas is severely retarded. She requires constant attention.

49. Because of Daisy's needs, plaintiff Elizabeth Cruz has requested homemaker services to assist her in caring for Daisy and her siblings. Without assistance, plaintiff Elizabeth Cruz is unable to care adequately for her children.

50. Repeated requests by plaintiff Elizabeth Cruz have been ignored or denied by defendants.

51. Plaintiff Demetria Banks presently lives in a temporary apartment at the Henry Street Settlement.

52. In 1977, plaintiff Demetria Banks voluntarily placed her children, plaintiffs Lamar and Davonn Banks (age 10 and 8, respectively) in foster care when she discovered they were being abused by her brother. Defendants returned the children to Demetria when she found her own apartment, but did not visit or offer any services to the family.

53. Plaintiff Demetrius Banks (age 4) has a severe congenital nervous disorder. Plaintiff Davonn Banks has never attended school and has a history of setting fires, which has impeded Demetria's efforts to find housing. In one of these fires, Davonn's cousin died. In 1983, Davonn tried to kill himself by setting his bed on fire. The Banks family was supposed to be under defendants' supervision at this time, but no services were offered on the grounds that Davonn was not a victim of abuse or neglect. Because of the disruptive effects of Davonn's emotional problems, plaintiff Lamar Banks (age 10) has left home to live with his father's parents, where Demetria visits him and sends support.

54. In July 1985, plaintiff Demetria Banks again contacted defendants, so desperately in need of help that she was prepared to place her children in foster care. Because Demetria was not abusing her children, defendants refused to provide any services.

55. Plaintiff Demetria Banks needs counseling for Davonn and herself, a homemaker to help her care for Davonn and Demetrius and permanent housing for her family. Demetria is not receiving any services from defendants to help her reunite her family.

56. Plaintiff Stephanie Ocampo lives with her daughter Saidah Ocampo (age 2) at 1834 Second Avenue. The mother is physically disabled; her leg was amputated above the knee last year. She supports her family with federal disability payments.

57. Plaintiff Stephanie Ocampo must enter the hospital soon for prosthetic surgery. She has requested that defendants provide her with assistance in caring for Saidah while she is hospitalized. In addition, plaintiff has asked defendants to provide her with homemaker services as she recovers from surgery. Defendants have failed to provide such services.

COUNT I
(Violation of the Requirements of
the New York Social Services Law to
Make Timely Investigation of Reports
of Child Abuse or Maltreatment and
to Provide Protective Services)

58. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 57 hereof.

59. Upon receipt of reports of suspected child abuse or neglect, defendants have consistently failed to commence or cause the appropriate agency to commence the mandated investigation within twenty-four hours, as required by section 424(6) of the New York Social Services Law (McKinney 1983).

60. Defendants consistently fail to determine, within ninety days, whether such reports of child abuse or maltreatment are "indicated" or "unfounded" as required by section 424(7) of the New York Social Services Law (McKinney 1983).

61. Defendants consistently fail to conduct home visits and face-to-face interviews with the subjects of reports of maltreatment as required by 18 N.Y.C.R.R. § 432.2(b)(3).

62. Defendants consistently fail to offer to the families of any children believed to be maltreated services which appear appropriate for either the child, the family or both, as defendants are required to do under section 424(9).

63. As a result plaintiffs have suffered and continue to suffer irreparable injury.

64. Plaintiffs have no adequate remedy at law.

COUNT II

(Violation of the Requirements of the New York Social Services Law and Regulations Promulgated Thereunder to Provide Preventive Services)

65. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 64 hereof.

66. Defendants have failed to make available to families with children at risk of removal to foster care the preventive services needed to permit the children to remain with their families.

67. Defendants' failure to provide preventive services to plaintiffs has caused them to suffer irreparable injury.

68. Plaintiffs have no adequate remedy at law.

COUNT III

(Violation of the Requirements of Federal Law)

69. Plaintiffs repeat and reallege each every allegation of paragraphs 1 through 68 hereof.

70. Defendants have failed to make reasonable efforts to prevent or eliminate the need for removing plaintiffs and other members of the class they represent from their homes, as required by 42 U.S.C. § 671(a)(15). The failure of defendants to make such reasonable efforts includes but is not limited to their failure to provide preventive services to plaintiffs and other members of the class as is required by Title IV-B of the Social Security Act, 42 U.S.C. §§ 620 et seq., section 409 of the New York Social Services Law and parts 423 and 430 of Title 18 of the New York Codes, Rules and Regulations.

71. Defendants have therefore violated and continue to violate 42 U.S.C. § 671(a)(15).

72. Defendants' continued violation of § 671(a)(15) has caused plaintiffs to suffer irreparable injury.

73. Plaintiffs have no adequate remedy at law.

COUNT IV
(Constitutional Claim)

74. Plaintiffs repeat and reallege each and every allegation of paragraphs 1 through 73 hereof.

75. By failing to properly administer the New York Social Services Law and by their failure to implement adequate

preventive and protective services programs, as they are tutorily required to do, defendants have denied and continue to deny plaintiffs their rights under Article XVII, Section of the New York State Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and other similarly situated persons, demand:

A. certification of this class as a class action pursuant to Article 9 of the New York Civil Practice Law and Rules;

B. a declaration that defendants' failure to conduct timely or complete investigations of child abuse or neglect and their failure to provide protective services violates section 424 of the New York Social Services Law and the regulations thereunder;

C. a declaration that defendants' failure to provide plaintiffs with preventive services violates section 424 of the New York Social Services Law, Parts 423 and 430 of Title 18 of the New York Codes, Rules and Regulations, 42 U.S.C. §§ 671 et seq., and the Code of Federal Regulations;

D. a declaration that if defendants continue to participate in the child welfare services and foster family home care programs funded under Titles IV-B and IV-E of the Social Security Act, they must comply with the requirements of these provisions, which include providing preventive services to plaintiffs;

E. that, the court should order preliminary and permanent injunctive relief which:

- (1) requires defendants to commence or have commenced within 24 hours of the receipt of a report of suspected child abuse or neglect an investigation pursuant to section 424(6) of the New York Social Services Law;
- (2) requires defendants to determine within 90 days after the commencement of an investigation pursuant to section 424(6) of the New York Social Services Law whether the report is "indicated" or "unfounded;"
- (3) requires defendants to offer, promptly after a determination that a report is

"indicated," to the family of any child believed to be suffering from abuse or maltreatment such services as are reasonably determined to be appropriate for either the child or the family or both;

- (4) requires defendants to cause to be prepared for each child being considered for placement in foster care a child service plan identifying the services required by the child and the family.
- (5) requires defendants (a) to provide preventive services in circumstances where they are mandated by 18(B) N.Y.C.R.R. Sections 423.2(d) and 430.9; and (b) to provide such preventive services as are reasonably determined to be appropriate to prevent, whenever possible, the removal of a child from his or her home or to facilitate the return of a child to his or her home;
- (6) requires defendants to file a written report with the court, and to serve it on all parties, within 90 days after the

entry of the order of preliminary injunction describing the actions taken to comply with this Court's order and the extent of such compliance;

F. damages in an amount to be determined;

G. such other and further relief that the Court deems just and proper.

H. reasonable costs and attorney's fees.

Dated: New York, New York
October 28, 1985

Respectfully submitted,

CAHILL GORDON & REINDEL
(a partnership including
professional corporations)

Of Counsel:

Raymond L. Falls, Jr.
Gary S. Abrams
Ellen L. Weintraub

By: _____
A Member of the Firm
80 Pine Street
New York, New York 10005
(212) 701-3000

and

Robert M. Hayes
Coalition for the Homeless
105 East 22nd Street
New York, New York 10010
(212) 460-8110

Attorneys for Plaintiffs