



# THE LEGAL AID SOCIETY

CRIMINAL APPEALS BUREAU • PRISONERS' RIGHTS PROJECT  
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May 8, 1992

Honorable Morris E. Lasker  
United States District Judge  
U.S. Courthouse, room 1905  
Foley Square  
New York, N.Y. 10007

Re: Vega et al. v. Mitchell et al.  
82 Civ. 6475 (MEL)

Dear Judge Lasker:

Enclosed for your signature is an order in accordance with the Court's April 22, 1992 decision. After extended negotiation, the parties have agreed on this language.

Very truly yours,

A handwritten signature in black ink, appearing to read "Beatrice Dohrn".

BEATRICE DOHRN  
DALE A. WILKER  
JOHN BOSTON

cc: Leonard Koerner,  
Chief Assistant Corporation Counsel  
June Binney,  
Assistant Commissioner, Department of Health  
Robert Daly,  
General Counsel, Department of Corrections

Vega v. Ward



JC-NY-013-003

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X  
ERIC VEGA, et al.,

Plaintiffs,

82 Civ. 6475 (MEL)

- against -

ORDER RELATING TO  
MEDICAL PLACEMENT  
AND ISOLATION  
OF PATIENTS WITH  
CONTAGIOUS DISEASES

ALLYN SIELAFF, et, al.,

Defendants,

-----X

On September 26, 1988 the Court approved a Stipulation and Order in this case which provided, in part, that patients with symptoms of tuberculosis or other communicable diseases "shall be isolated in a medically appropriate manner from the rest of the inmate population." Stipulation and Order at ¶B (1)(a).

On May 3, 1990, the Court toured the defendants' contagious disease isolation facilities at George Motchan Detention Center (GMDC). It was undisputed that these facilities did not comply with the said Stipulation and Order. Report of May 3, 1990 Visit by the Court to Rikers Island ("Court Visit Report") at 3-5. The defendants stated that they would prepare additional isolation facilities at George R. Vierno Center (GRVC), then known as "Nursery Beacon."

On May 22, 1990 the Court entered a decision in this case "ordering that all steps be taken to assure the completion of the [Nursery Beacon contagious disease isolation unit] project" and further urged that the project be completed as rapidly as possible and in a manner that when completed "will do the job." Decision of the Court (oral transcript) at pp. 7-9.

The Court also temporarily permitted the defendants to operate a six-bed Contagious Disease Unit at the North Infirmary Center within the Dormitory Four housing module area "until the Nursery Beacon facility. . . is completed" and under the condition that it house only "so-called low suspicion patients" and "provided that the City furnishes evidence to assure that the ventilation system will produce the required number of air exchanges per hour and will be failsafe." Decision of the Court at pp. 3-4.

At the time of the Court's decision, in May 1990, the defendants had represented that the Nursery Beacon project was scheduled to be completed a few months later in September of 1990. Court Visit Report at p. 5, fn. 6.

By letter dated November 14, 1991 Corporation Counsel informed plaintiffs' attorneys, the Legal Aid Society, that "the isolation unit at GMDC has not opened because of noise problems" and that another consultant had been hired to study conditions at GRVC but "at this point [the defendants] cannot predict how long it will take the consultant to complete the assessment of GRVC."

Subsequently the defendants have determined that neither the facilities at GMDC nor those at GRVC are serviceable for contagious disease isolation, and that they must start over in order to comply with the September 26, 1988 Stipulation and Order and with the intent of the Court's May 22, 1990 decision. They have informed the Court and the parties that they have abandoned the GMDC and GRVC projects and now intend to convert part of the West Facility for contagious disease isolation.

On January 24, 1992, upon plaintiffs' application for immediate relief, the Court entered an interim order requiring the defendants to seek a declaration of emergency and to complete forty-two contagious disease isolation rooms on Rikers Island as soon as possible and in any event no later than May 1, 1992.

On April 22, 1992, upon written submissions of the parties and oral argument, the Court issued an additional Memorandum Decision. On April 28, 1992 the Court conferenced the matter further with the parties to discuss the terms of an order to carry out the conclusions set forth in the April 22, 1992 Memorandum Decision.

NOW THEREFORE, upon application of the plaintiffs and for good cause shown, it is ORDERED that defendants, their agents, successors and assigns and all those in active concert and participation with them are HEREBY ENJOINED to take the following measures:

1. The defendants shall, as soon as possible but no later than May 1, 1993, complete the construction of at least 140 single occupancy contagious disease isolation units (CDUs) for the exclusive use of inmate-patients. Forty-two of these CDUs shall be completed no later than May 1, 1992 and operating on or before May 4, 1992 at the West Facility jail. No later than December 1, 1992, the defendants shall complete the construction of at least forty-two additional single occupancy CDUs at the West Facility jail, which they will begin operating no later than

December 8, 1992. No later than May 1, 1993, the defendants shall complete the construction of at least fifty-six additional single occupancy CDUs at the West Facility jail and will begin operating these by May 8, 1993.

a. When completed, all single occupancy CDUs shall, at a minimum, meet the specifications contained in Appendix I below, unless Margaret A. Hamburg, M.D., as New York City Commissioner of Health, certifies to the court in writing that in her professional medical judgment a particular requirement of Appendix I is unnecessary to accomplish the effective isolation of persons suffering from communicable respiratory diseases on Rikers Island or for the protection of inmates with AIDS. The basis for her judgment shall be stated in the certification.

b. Defendants shall report to the court in writing (1) on a monthly basis commencing May 1, 1992, on the status of the project and the extent of and reasons for any actual or anticipated delay in meeting any part of the schedule set forth in the April 13, 1992 letter to the Court by DOC's General Counsel Robert Daly; and (2) promptly upon becoming aware of any obstacle which has caused or may cause delay in the construction or opening of the CDUs according to the schedule and completion dates specified in the Daly letter.

2. The defendants shall operate the contagious disease isolation areas in a safe manner at all times. Repairs, when needed, shall be done promptly by qualified personnel.

3. Defendants shall acquire and install, in sufficient numbers to meet the need for definitive TB screening and diagnostic testing, tuberculosis sputum induction booths with direct ventilation to the outdoors, or with HEPA filters or their functional equivalent such that they may safely be used for sputum induction. These booths shall be operated under conditions of negative air pressure. Nothing in this paragraph is intended to preclude the Department of Health from performing sputum induction procedures in any other setting that provides respiratory isolation and is safe. If a sputum booth is not used for treatments which should normally be provided in a sputum booth, such treatments shall be done under conditions of respiratory isolation. Defendants shall report by October 1, 1992 or sooner if possible on their progress with regard to the installation of sputum booths.

4. Defendants shall post signs in a prominent manner at all entrances to isolation areas appropriate to warn staff and visitors of the presence of the various types of contagious diseases being treated in the area and to instruct staff and visitors concerning the precautions and procedures to which they must adhere for their own protection and to prevent breaching of the isolation area or compromising its effectiveness. This shall be done immediately for existing isolation units and at the time of opening for those units to be opened in the future.

5. Upon the opening of the first group of isolation areas by May 4, 1992, the defendants shall discontinue the use of areas

within NIC Dormitory 4 for the medical isolation of patients with, or suspected of having, communicable respiratory diseases. Thereafter, defendants shall remove all patients with symptoms of contagious diseases from NIC Dormitory 4 and place any such patients in medically appropriate isolation areas that are physically separated and distant from the Dorm 4 module and/or any other housing area used for the congregate housing of immunocompromised persons. These isolation areas shall be designed and operated in accordance with specifications contained in Appendix I, subject to the certification procedure set out in Paragraph 1(a), above.

6. No later than August 1, 1992, the defendants shall submit to the Court a report detailing the current and future needs for contagious respiratory disease isolation capability and capacity within the city correctional system, including defendant Health and Hospitals Corporation facilities. The report to the Court shall set forth the factual basis and assumptions used to calculate the current and future needs assessment requested by the Court, together with supporting documentation.

7. Where personnel under defendants' control are not competent to perform the work, all new construction or renovation of existing facilities for contagious respiratory disease isolation areas shall be designed and supervised by engineers and architects with experience in the construction of hospitals and hospital-based isolation areas. All CDUs shall be constructed or

renovated in accordance with the specifications contained in Appendix I, subject to the certification procedure set out in Paragraph 1(a), above.

8. In the event of a disagreement over the interpretation of the terms of this Order, the parties and the court shall be guided by the applicable national and conforming New York State standards at the time, including those established by the U.S. Center For Disease Control (CDC), the Joint Commission on Accreditation of Health Care Organizations (JCAHCO), the U.S. Occupational Health and Safety Administration (OSHA), and the National Institute of Occupational Safety and Health (NIOSH) and the New York State Department of Health (NYSDOH).

9. Defendants shall prepare policies and procedures for operating their contagious disease isolation units in a safe manner and in conformity with the requirements of this Order and previous orders in this case. Defendants shall make available to plaintiffs copies of such policies and procedures for review and comment.

IT IS SO ORDERED.

MORRIS E. LASKER  
United States District Judge

Dated: \_\_\_\_\_, 1992  
New York, New York



## APPENDIX I

In all existing rooms used for the isolation of patients with, or suspected of having, contagious communicable diseases, the defendants shall, on or before April 15, 1992, and thereafter for subsequently constructed or renovated units:

1. Isolate each contagious disease patient in a separate single cell or room.

2. Install working ventilation systems adequate for the control of air-borne infections that conform with the specifications listed in the recommendations of the U.S. Public Health Service Center for Disease Control (CDC) attached hereto that will, at a minimum:

a) directly ventilate to the outdoors through an independent exhaust ductwork which is not interconnected to any other ventilation system or ductwork and which is located at a sufficient distance away from any intake vents to prevent the re-entry of contaminated air into the building;

b) create negative air pressure within each isolation cell or room;

c) directly ventilate dayroom and shower areas to the outdoors;

d) create at least six (6) air changes per hour within each cell or room.

3. Provide a vestibule entry from the common corridor to all areas used for communicable disease isolation that contains facilities to enable staff to maintain aseptic conditions, including:

a) a lavatory or sink with elbow operated faucet controls for handwashing

b) storage spaces for clean and soiled materials and

c) space for gowning

4. If ultraviolet lighting is installed, it shall be safely operated and maintained, in accordance with current standards, guidelines and precautions of the United States Public Health Service. Any ultraviolet lighting fixtures shall be properly and safely positioned. The ultraviolet light tubes shall be shielded so that they are not visible from any normal position within the room.

5. Maintain relative humidity within all isolation areas at 65% or less at all times. All isolation areas shall be air-conditioned.

6. Install sinks, toilets and bathtubs or showers within each isolation room that can be entered directly by the patient without leaving the confines of the isolation room or cell area.

7. As soon as possible, equip all isolation areas with computer-monitored alarm systems to detect malfunctions and failures and provide emergency standby power systems to maintain strict isolation conditions.

APPENDIX II

**PRISON HEALTH SERVICES  
NEW NEEDS PROPOSAL**

**January 1990**

**SPUTUM INDUCTION BOOTHS**

Over the past several years, tuberculosis (TB) has increased dramatically in New York City. This increase is related to the increasing prevalence of HIV infection. Accordingly, there has been an increase in active TB among the Department of Corrections (DOC) inmate population. In 1985, the rate of TB among DOC's inmate population was 21 cases per 10,000 inmates. By 1989, the rate had risen to 76 cases per 10,000 inmates.

Inmates are housed in enclosed, sometimes crowded quarters. The possible spread of this highly contagious disease in these conditions is likely and presents a major public health problem. Early identification of active pulmonary TB may be substantially improved with the addition of "sputum induction booths" in each DOC facility medical clinic.

Sputum induction is a clinical method for collecting sputum samples which are then tested for the presence of TB. This is done to confirm a TB diagnosis and to monitor treatment effectiveness over the 12-24 month regimen. In normal clinical settings, sputum induction is done in a room that is ventilated to the outside. The ventilation carries the TB bacillus to the open air. However, DOC clinic settings do not have such well ventilated rooms.

To resolve this problem, DOH Prison Health Services proposes constructing small booths (see diagram) that will be ventilated to the outside. The booths will also be equipped with ultra-violet lights as an additional sanitizing measure. Each booth will also have a nebulizer (which induces sputum production in the patient). The attached budget reflects the total cost of acquiring, installing, and operating these booths in 21 facilities. We estimate that there will be 3,225 patients annually who will need to have sputum samples tested.

BUDGET

<u>ITEM</u>	<u>UNIT COST</u>	<u># UNIT</u>	<u>TOTAL COST</u>
Nebulizers	\$460.00*	25	\$11,500.00
Light Fixtures w/blower	\$595.00	25	\$14,875.00
Disposable Tubing (100 ft. coil)	\$9.60	25	\$240.00
UV Lights (2 per fixture; 25 back-up)	\$25.00	75	\$1,875.00
Intake Filter (6 per/pkg.)	\$4.25	8,333	\$35,415.25
Cups/lids (48 per/case)	\$35.00	1,042	\$36,470.00
Construction/Installation of Booth	\$4,000.00*	21	<u>\$84,000.00</u>
 TOTAL			<u>\$184,375.25</u>

\* Non-recurring

## ASSUMPTIONS

- o 21 Facilities
- o 4 Backup Nebulizers
- o 50,000 samples collected annually

150,000  
x .9 Projected FY'91 new admissions  
135,000 PPDs implanted  
x .65  
87,750 PPDs read  
x .21  
18,428 PPD +  
x .70  
12,900 X-rays  
x .25  
3,225 Positive x-rays; require treatment

3 samples are collected each time  
1 initial sputum collection  
4 follow-up visits to clinic to monitor treatment

3266L