

1992 WL 88146

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United States District Court, S.D. New York.

Eric VEGA, et al., Plaintiffs,

v.

Allyn SIELAFF, et al., Defendants.

No. 82 Civ. 6475 (MEL). | April 22, 1992.

## Opinion

### OPINION

LASKER, District Judge.

\*1 On September 26, 1988 the parties entered into a Stipulation and Order, which the court approved, which provided at Paragraph B(1)(a), entitled "Provisions Relating Solely to AIDS Patients", that patients with symptoms of communicable diseases, including tuberculosis, "shall be isolated in a medically appropriate manner from the rest of the inmate population."

On May 22, 1990 the Court filed a decision in this case "ordering that all steps be taken to assure the completion of the [then contemplated Nursery Beacon contagious disease isolation unit] project" and 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) pp. 7-9.

With this background, and in light of the resurgence of tuberculosis as a health threat in New York City particularly among persons, such as inmates, housed in great numbers in close quarters, the plaintiffs have moved for further relief claimed to be necessary in the present circumstances to carry out the provisions of the September 26, 1988 Order and the May 22, 1990 Decision and Order.

The parties agree that to cope with the resurgence of tuberculosis, as it affects institutions on Rikers Island, infected inmates must be housed in CDUs which must be promptly erected and equipped by the City. The issues which remain for determination by the court relate (1) to the schedule for the building and completion of the CDUs and (2) the degree of detail relating to medical matters that should be included in a court order.

After studying the copious and useful material furnished by the parties and hearing oral argument on several

occasions, I conclude as follows:

1) The proposed schedule of construction contained in the letter of April 13, 1992 from Robert Daly, General Counsel to the Department of Correction, to the court, and supported by the letter of Margaret A. Hamberg, M.D., Acting Commissioner of the Department of Health of the City of New York to the court dated April 14, 1992, is reasonable and is approved by the court subject to the condition that the defendants report (a) on a monthly basis commencing May 1, 1992, the status of the project and the extent of and reasons for any actual or anticipated delay in meeting any part of the construction schedule set forth in the Daly letter and (b) promptly upon the defendants becoming aware of it, the occurrence of any significant obstacle which has or may cause delay in the construction of the CDUs on the schedule specified in the Daly letter.

2) Although the plaintiffs' request that the order to be entered specify in great detail the medical and construction procedures to be followed by the City is understandable in the light of the history of this litigation, I nevertheless conclude that, in the present circumstances, the City officials charged with the responsibility for the execution of this project should be allowed to exercise their professional judgment without detailed court control in the first instance. The situation today, at least on its face, appears to be substantially different from the conditions which existed in 1988 and 1990. The City has committed very substantial resources to the completion of the CDU project. A new Commissioner of Health and a new Commissioner of Correction have only recently taken office. Both of them have indicated their personal commitment to the completion of the project as promptly as circumstances reasonably permit.

\*2 Nevertheless, plaintiffs' arguments in favor of a detailed order are not without merit. Accordingly, in discussions with the parties as to what the precise contents of an order carrying out this decision should be, I will entertain the proposition that the defendants be required to adopt and follow the medical procedures contained in plaintiffs' proposal, unless the Commissioner of Health certifies, in writing, to the court that, in her professional judgment, any particular procedure is unnecessary for the effective isolation of persons suffering from communicable diseases on Rikers Island or for the protection of inmates who are suffering from AIDS.

A conference will be scheduled to discuss the terms of an order which will carry out the conclusions set forth above.

