

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 ERIC VEGA, et al.,

5 Plaintiffs,

6 v.

82 Civ. 6475 MEL

7 ALLYN SIELAFF, et al.,

8 Defendants.

9 -----X

10 May 22, 1990  
11 8:45 a.m.

12 Before:

13 HON. MORRIS E. LASKER

14 District Judge

15 APPEARANCES

16 LEGAL AID SOCIETY  
17 Attorney for Plaintiffs  
18 DALE WILKER  
19 Of Counsel

20 CORPORATION COUNSEL  
21 Attorney for Defendants  
22 JULIE O'NEILL  
23 CHLARENS ORSLAND  
24 Of Counsel

25 GEORGE AXELROD  
Appearing for the Department of Correction

DECISION OF THE COURT

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## 1 DECISION OF THE COURT

2 THE COURT: The purpose of my asking you in is so  
3 I can inform you of my decision on the pending application,  
4 because I know that a quick determination is important in  
5 the interests not only of the parties but of the people  
6 affected by the question at hand.

7 It's really not necessary to explain in any great  
8 detail what the question is here, since all the parties know  
9 what it is, but for the record the Legal Aid Society  
10 representing the plaintiffs has made an application for  
11 relief to the court with regard to the provisions of the  
12 consent decree of December 1988, is that correct?

13 MR. WILKER: September 26, 1988.

14 THE COURT: Which provides, in part, for the  
15 isolation of persons in custody, who have AIDS or not, but  
16 who present symptoms of tuberculosis or other contagious  
17 diseases, that is their isolation from AIDS patients in the  
18 City system.

19 Because of the gravity of the subject matter, I  
20 arranged for a crash visit, so to speak, to the facilities  
21 in question so that I could view them and hear the  
22 statements made by the doctors who worked in various  
23 capacities relating to the prisoners affected.

24 As I recall it, some of the doctors made  
25 statements, and I use the word "statements" advisedly

1 because nobody was sworn as a witness. Some were employees  
2 of the Corrections Department, some were employees of the  
3 Health and Hospitals Corporation and some were employees or  
4 at least one was an employee of the Board of Health or the  
5 Health Department.

6 As the attorneys know, I prepared a memorandum  
7 which I suppose could be regarded as findings of fact but  
8 which were intended simply to reflect, as accurately as  
9 possible, the statements made by the various doctors and the  
10 parties have reviewed this and have agreed that it is a fair  
11 representation of the statements made.

12 Now, I'll now announce my decision.

13 The facts as summarized lead to the following  
14 conclusions regarding enforcement of the partial settlement.

15 The use of the six so-called isolation rooms  
16 within the AIDS module to house so-called low suspicion  
17 patients is acceptable for the time being, provided that the  
18 City furnishes evidence to assure that the ventilation  
19 system will produce the required number of air exchanges per  
20 hour and will be failsafe.

21 The City's interpretation of Section B of the  
22 stipulation and order of September 26, 1988, is not  
23 unreasonable. Section B(1)(a) of the stipulation provides  
24 that no patient who presents symptoms of tuberculosis or  
25 other contagious diseases "shall be admitted to or

1 physically placed in" AIDS patient housing, and that such  
2 patients "shall be isolated in a medically appropriate  
3 manner from the rest of the inmate population."

4           Although the stipulation may be construed to mean  
5 that patients exhibiting any symptoms of contagious diseases  
6 must be housed, as the plaintiffs contend, in a physically  
7 separate building from the regular AIDS dormitory, it can  
8 also be construed to permit the present arrangement,  
9 provided that a substantially equivalent level of medical  
10 isolation can be achieved in the six isolation rooms within  
11 the AIDS module. I believe that can be done, provided that  
12 we are assured of the proper air exchange and its failsafe  
13 condition.

14           In such circumstances, the City may use those  
15 rooms for the limited purpose that they are now using them,  
16 namely to house low suspicion patients until the Nursery  
17 Beacon facility, which will provide medically appropriate  
18 isolation I am told for contagious patients, is completed.

19           If necessary, patients may be and should be  
20 confined to the isolation area at all times until they are  
21 determined to be no longer contagious. I make that latter  
22 remark because of the fact that I was reminded on my visit  
23 to Riker's Island, that the patients were being allowed to  
24 leave the isolation area to go to the library and so on.

25           I do not believe that the Constitution requires

1 that even for the maximum of two weeks in which they are  
2 held in isolation they must go to the library. If there are  
3 emergency circumstances affecting their particular cases,  
4 perhaps they can ask for certain books or something of that  
5 nature.

6 Paragraph C of Section B(1) of the stipulation  
7 states that in ruling upon any application to modify the  
8 section of the stipulation pertaining to AIDS patients "the  
9 court shall defer to defendant's position unless said  
10 position represents an unreasonable exercise of medical  
11 judgment."

12 Although this standard does not explicitly apply  
13 to disputes over the proper interpretation of provisions of  
14 the stipulation, it sets what seems to be an appropriate  
15 tone for resolving such disputes.

16 It is important to keep in mind that the court's  
17 authority over the conduct of the City in this area only  
18 extends to constitutional questions. In *Estelle v. Gamble*  
19 the United States Supreme Court has ruled that the  
20 appropriate standard for evaluating the constitutionality of  
21 medical care in prisons and jails is one of "deliberate  
22 indifference."

23 Although a consent decree may impose a greater  
24 burden on the City than the Constitution would, when there  
25 is a question as to the meaning or application of the

1 decree, it is appropriate to construe the decree in light of  
2 the constitutional standard.

3 Certainly in the case at hand there has been no  
4 deliberate indifference on the part of the City to the needs  
5 of the patients in custody. The physicians who care for  
6 them and who were present for the tour demonstrated  
7 remarkable dedication and professional competence. Indeed,  
8 no doubts have been raised by any party as to their skill or  
9 level of concern.

10 Although the City's progress in constructing new  
11 facilities has been slower than anyone would like, given the  
12 potentially serious consequences of inadequate medical  
13 isolation, there is no reason to believe at this time that  
14 the particular City officials involved have not made and are  
15 not making their best efforts to complete the facilities  
16 necessary to achieve absolute medical isolation for all  
17 patients needing it.

18 I come now to the question of the facility known  
19 as C-73. All parties appear to recognize that the current  
20 situation at the C-73 contagious disease unit is medically  
21 unacceptable. However, I regret to conclude that no  
22 workable alternative has been presented to the court pending  
23 the completion of the Nursery Beacon facility.

24 Given the serious overcrowding problem already  
25 facing the Health and Hospital Corporation, it would be

1 inappropriate for this court to order that HHC should be  
2 forced to keep inmates who otherwise would not qualify for  
3 hospital level care.

4 I add parenthetically that it seems to me that  
5 any order against HHC to that effect would also raise  
6 serious legal questions about whether patients who were  
7 adversely affected at HHC would not have the right to appear  
8 before the court and oppose the application of the  
9 plaintiffs, which would certainly make this case much more  
10 complicated than it already is.

11 Although as noted above there is no reason to  
12 believe that the City is not working as fast as it can to  
13 complete the Nursery Beacon facility, we note the gravity of  
14 the situation and therefore, although it may be legally  
15 superfluous, I am ordering that all steps be taken to assure  
16 completion of the project and I invite the City to seek the  
17 assistance of the court and the plaintiffs also to insure  
18 that the facility is completed and that when completed it  
19 will do the job.

20 And to formalize my concern about the situation I  
21 will be glad to receive proposed orders from the plaintiff  
22 with regard to this matter. I don't want to pretend that  
23 that will accomplish anything miraculous. It's perhaps  
24 largely of symbolic value.

25 I do want to stress that I am ready to assist in

1 any way that I can to keep the project moving because I know  
2 that there have been times when the assistance of the court  
3 in getting a construction project completed has been of some  
4 value, whether there's something stuck within the City  
5 bureaucratic system or otherwise. I don't know that that's  
6 the case here but I want everybody to know that I am ready  
7 to have anybody who is affecting the system brought into  
8 these discussions so that they can understand the importance  
9 that I attach to it all.

10 Does anybody have any questions as to what this  
11 all means? I hope I've made myself clear.

12 MR. WILKER: You would like us to submit a  
13 proposed order outlining --

14 THE COURT: I'm inviting it. It's up to you. I  
15 say that because it orders the City and in the first  
16 instance I suppose it would be desirable to you to suggest  
17 the language. But obviously the City can make whatever  
18 comments it wishes.

19 MS. O'NEILL: Well, I would like to suggest that  
20 Legal Aid and the City work together on this because we are  
21 working on a plan at the moment which is being passed around  
22 and refined and things of that nature. It's not final but  
23 there are various meetings taking place this week all the  
24 way up to the commissioner level and therefore I think once  
25 we can share the information with the Legal Aid Society, it

1 it may be helpful in resolving this problem.

2 THE COURT: If you can agree that the plan is the  
3 best that the City can do, that's fine with me, of course.  
4 But there are two ways to approach this.

5 One is simply to order the City to take every  
6 step possible, every reasonable step possible I suppose  
7 you'd have to say, to complete this project as rapidly as  
8 possible.

9 And the other is to be specific about what's to  
10 be done which, if Mr. Wilker agrees that your plan is  
11 satisfactory, would be another way to approach it.

12 MR. WILKER: Did the court have any views as to  
13 what it considered "medically appropriate" to be in terms of  
14 this future facility.

15 THE COURT: I can't say offhand because it seems  
16 to me that even the doctors have some disagreement as to the  
17 extent to which isolation necessarily involves a separate  
18 building. I'm personally persuaded that it is possible to  
19 isolate people within the same structure as other people,  
20 but that it requires much more care and assurance that there  
21 will be no contamination than it would if there were a  
22 separate building.

23 Thank you for your cooperation in getting it done  
24 so quickly.

25 (Proceedings adjourned)