

1989 WL 52365

Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

James BENJAMIN, et al., Plaintiffs,
v.
Richard KOEHLER, et al., Defendants.
Eric VEGA, et al., Plaintiffs,
v.
Richard KOEHLER, et al., Defendants.

Nos. 75 CIV. 3073(MEL), 82 CIV. 6475(MEL). | May
5, 1989.

Opinion

LASKER, District Judge.

*1 On April 19, 1989 the plaintiffs moved for an Order to Show Cause as to why the defendants should not be held in contempt of the Partial Final Judgement in *Benjamin v. Malcolm*, as amended, and the order of September 26, 1988 in *Vega v. Koehler*, as well as for an order restraining the defendants from housing any inmates at the Rikers Island Hospital building ("RIH") "until it is made safe for human habitation pursuant to a plan submitted by the defendants and approved by the Court".

For some time past the use of RIH for hospital and medical purposes has been discontinued by the defendants. Upon discontinuance of its use for medical purposes the building was vacated to allow its conversion to a facility for general housing. It was the intention of the defendants not to house inmates at RIH until the conversion was completed. As a result of rapid increases in arrests, the defendants altered their plans sometime prior to April and commenced to receive and house prisoners at RIH. A visit to the facility was made on April 6th, 1989 at which time the conditions in which the inmates were held were observed to be deplorable. Construction was in process, housing areas were not clean, toilets were malfunctioning or clogged, showers were inadequate, beds were not yet available for all of the inmates, asbestos removal was in progress or contemplated and fire hazards existed as a result of the absence of fire doors or fire escape routes.

The existence of these conditions understandably prompted the present motion. In answer to the motion, the defendants have submitted the Affidavit of Commissioner Richard Koehler, sworn to April 26, 1989, outlining the steps then being taken and proposed to be taken to eliminate the conditions described above to which is annexed a letter of the Commissioner of Health of the

City of New York, dated April 25, 1989 to the Commissioner of Correction, concluding that "there would be no hazard or risk to the health of the inmates and staff if they were allowed to occupy the 1st, 4th, 5th and 6th floors while the asbestos removal was being done provided the contractor follows the applicable requirements of the Department of Environmental Protection, the Environmental Protection Agency and Local Law 76." The defendants have also submitted the Affidavit of Joseph M. DeMeo, Chief of the Bureau of Fire Prevention of the New York City Fire Department, specifying conditions which, according to Chief DeMeo, "provide a sufficient level of fire protection and safeguards and, in my opinion, renders the facility [Rikers Island Hospital] fire-safe." In his affidavit, Commissioner Koehler represents that the steps required by the Commissioner of Health and Chief DeMeo for their respective approvals of use of the premises are and will continue to be observed at all times during the renovation of RIH. In addition, at a conference with the court and parties on April 26, 1989, the Commissioner, assisted by members of his staff, repeated these reassurances with a detailed explanation of how they would be carried out.

*2 On May 1, 1989 I revisited the RIH and observed radical and impressive improvement in the conditions in which inmates are being held. Although construction is continuing, no inmates are being held on any floor on which construction is taking place or where asbestos is being removed. The parties agree that the asbestos removal process is being conducted in accordance with the requirements of law and the representations made in Commissioner Koehler's affidavit. The dormitories have been impressively cleaned by removal of peeling paint, repainting walls and ceilings and polishing floors. All inmates have beds and bedding, and each is afforded 60 square feet. Toilet and bathing facilities have been cleaned and made operable and will be replaced in the process of rebuilding as it continues. Fire doors are being installed and fire escape routes are planned as part of the reconstruction.

On May 2, 1989, Deputy Commissioner Peter Seitchek informed the court by letter of the alternate schedules which the Correction Department intended to follow in the completion of construction at the RIH. A copy of that letter is attached.

Based on the conditions which existed at Rikers Island Hospital on April 6, 1989 it was a responsible act for the plaintiffs to move for the relief indicated above. However, as a result of the focusing of attention on the facility by the plaintiffs, the defendants and the court, conditions at the facility have improved so markedly that it is not presently necessary to grant that relief.

Benjamin v. Koehler, Not Reported in F.Supp. (1989)

Accordingly, the motion is denied on condition that (1) no inmate at Rikers Island Hospital shall be housed on any floor where construction, reconstruction or removal of asbestos would constitute a health hazard; (2) reconstruction of the facility be completed in accordance with the conditions specified in the affidavit of Commissioner Koehler sworn to April 26, 1989, the letter of the Commissioner of Health to the Commissioner of Correction dated April 25, 1989, the affidavit of Joseph M. DeMeo, sworn to April 25, 1989, and the representations made by Commissioner Koehler and members of his staff at the conference with the parties and the court on April 26, 1989.

It is so ordered.

APPENDIX

THE CITY OF NEW YORK

DEPARTMENT OF CORRECTION

60 HUDSON STREET

NEW YORK, N.Y. 10013-4393

May 3, 1989.

PETER SEITCHIK

FIRST DEPUTY COMMISSIONER

RICHARD J. KOEHLER

COMMISSIONER

May 2, 1989

The Honorable Morris E. Lasker

United States District Judge

Southern District of New York

40 Foley Square—Room 1903

New York, New York 10007

Dear Judge Lasker:

Enclosed you will find two schedules for the renovation of Rikers Island Hospital. [Editor's Note: Schedules are not in displayable format].

Option 1 assumes construction is proceeding on only one floor at a time, except for the early May period. Under this option, we will be able to house between 210 and 232 people if the population demands it. The housing area renovations will be completed in the second half of August and we will be able to house a total of 270 people in the renovated structure.

*3 In Option 2, the assumption is our Support Services crews can work on more than one floor at a time. Under this schedule we can house between 150 and 180 inmates for most of the construction period. The final housing area is scheduled for completion by July 21 and we are confident it will be available by the end of the month if we are able to keep two floors simultaneously vacant.

We prefer and we are proceeding with the Option 2 schedule. However, the volatility of the population requires that we be prepared to switch to the Option 1 pace, if necessary.

Under either option we will house as few inmates as possible over the course of the construction project. (Today's census is 94.) The actual census will depend on our overall population-capacity situation on a week to week basis. It is possible that we will end up with an amalgam of the two schedules as the population ebbs and flows over the months ahead.

As to fire safety enhancements, sprinkling of the core will be completed on a floor by floor basis under either schedule. The system will be activated when the last floor is done. The contractor is scheduled to complete the fire doors, with full glazing, by the end of June. By agreement with the Fire Department, there is a dedicated fire brigade officer around the clock on each floor. This officer makes an inspection of both housing areas every 15 minutes and checks the status of firefighting equipment at least once each tour.

Please let us know if you need any additional information about the schedules.

Very truly yours,

/s/Peter Seitchik

Enclosures

Benjamin v. Koehler, Not Reported in F.Supp. (1989)

cc: Richard J. Koehler

Theodore Katz

Dale Wilker

Leonard Koerner

Dan Turbow

Julie O'Neill

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