

FILED

DEC 22 1999

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,
Plaintiffs,
v.
GRAY DAVIS, et al.,
Defendants.

No. C 94-02307 CW
PERMANENT
INJUNCTION

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ef

Based on the Findings of Fact and Conclusions of Law filed
herewith, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

Defendants Gray Davis, as Governor of the State of California,
Robert Presley, as Secretary to the California Youth and Adult
Corrections Agency, James Nielsen, as Chairman of the California
Board of Prison Terms (BPT), and the BPT, and their agents,
employees, successors in office and all persons acting in their aid
or in participation with them are advised, enjoined and ordered as
follows:

A. Introduction

1. Terms not expressly defined in this injunction shall have
the meaning given to them by Title II of the Americans with
Disabilities Act (ADA), 42 U.S.C. § 12131 et seq., and its
implementing regulations, or if no meaning is provided therein, the
meaning given to them by Section 504 of the Rehabilitation Act of
1973 (Section 504), 29 U.S.C. § 794, and its implementing

1 regulations. Where no definition is provided by the ADA, Section
2 504 or their implementing regulations, terms shall be construed in
3 accordance with ordinary principles of law, and particularly with
4 reference to the record in this case.

5 2. "Prisoners and parolees with disabilities" refers to all
6 current and future California State prisoners and parolees with
7 mobility, hearing or sight impairments, or with developmental or
8 learning disabilities, that substantially limit a major life
9 activity.

10 3. "Parole proceedings" shall mean all hearings conducted by
11 the BPT to determine whether and/or when a prisoner or parolee
12 should be released on parole or involuntarily confined, including
13 parole revocation and revocation extension hearings, life prisoner
14 hearings (documentation hearings, progress hearings, parole
15 consideration hearings, parole date rescission hearings and parole
16 board rules hearings), mentally disordered offender hearings and
17 sexually violent predator hearings. Parole proceedings also
18 include any events related to the hearings that occur prior to or
19 after the hearings, including, but not limited to, screening
20 offers, psychological evaluations, central file reviews and
21 administrative appeals.

22 B. Self-Evaluation and Transition Plan

23 4. Within ninety days of the date of this injunction, the
24 BPT shall evaluate, pursuant to 28 C.F.R. § 35.105, all of the
25 facilities in which parole proceedings are conducted to determine
26 whether each facility complies with the ADA and its implementing
27 regulations. The analysis shall not be limited to facilities owned
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1 and operated by the BPT, but shall include all facilities in which
2 parole proceedings are conducted. The evaluation shall include:

3 a. An accessibility survey of all parole facilities for
4 which a complete accessibility survey has not been conducted. The
5 accessibility survey need not duplicate the surveys of other
6 governmental entities as long as the BPT takes reasonable steps to
7 ensure that such surveys are accurate and reliable.

8 b. An analysis of the accessibility of each parole
9 facility.

10 5. Immediately following its analysis of these facilities,
11 the BPT shall provide to all relevant BPT and California Department
12 of Corrections (CDC) personnel a list of the facilities that are
13 not fully accessible. The list shall describe those parts of the
14 facility that are not accessible and the disabilities that the
15 facility cannot accommodate. Updated lists shall be distributed as
16 changes occur.

17 6. The BPT shall thereafter draft a Transition Plan pursuant
18 to 28 C.F.R. § 35.150(d). The Transition Plan must include the
19 following:

20 a. For each facility in which parole proceedings are
21 conducted, a description of any structural modifications that will
22 be completed to make the parole proceedings conducted at that
23 facility accessible or another accessible location in which the
24 proceedings will be held.

25 b. A schedule for providing accessible proceedings for
26 prisoners and parolees with disabilities at each facility, or at
27 another, accessible location, as expeditiously as possible, but no
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1 later than sixty days after the Transition Plan is submitted.

2 7. Parole revocation hearings shall be conducted at a
3 location within fifty miles of the alleged violation that is
4 readily accessible to and usable by parolees with disabilities

5 8. Postponement of a parole proceeding due to the
6 inaccessibility of a facility is not an acceptable alternative,
7 except in extraordinary circumstances.

8 9. Within 150 days of the date of this injunction,
9 Defendants shall submit their Transition Plan to Plaintiffs'
10 counsel. Plaintiffs shall thereafter have thirty days to submit
11 written comments and the parties shall negotiate in good faith to
12 resolve any disagreements. If any disputes remain, Plaintiffs
13 shall file a regularly noticed motion regarding the disputed issues
14 within 210 days of the date of this injunction.

15 C. Policies and Procedures

16 10. The BPT shall develop and implement sufficiently specific
17 policies and procedures that will ensure continuous compliance with
18 all of the requirements of this injunction. Among other things,
19 the policies and procedures will ensure that prisoners and parolees
20 with disabilities are able to participate, to the best of their
21 abilities, in any parole proceedings.

22 11. The policies shall include detailed procedures for
23 identifying prisoners and parolees with disabilities prior to or at
24 the initiation of any parole proceeding.

25 12. The policies shall include detailed procedures for
26 accommodating and effectively communicating with prisoners and
27 parolees with disabilities at all parole proceedings.

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1 13. A draft of the policies and procedures required by the
2 preceding paragraph shall be submitted to Plaintiffs' counsel
3 within sixty days of the date of this injunction. Plaintiffs shall
4 thereafter have thirty days to submit written comments on the
5 policies and procedures, and the parties shall negotiate in good
6 faith to resolve any differences. If any disputes remain,
7 Plaintiffs shall file a regularly noticed motion regarding the
8 disputed issues within 150 days of the date of this injunction.
9 The briefing of any such motion shall be consolidated with the
10 briefing of any motions filed pursuant to paragraphs 21 and 23.

11 D. Training

12 14. Within 120 days of the date of this injunction, all BPT
13 Commissioners, BPT Deputy Commissioners, BPT executive officers,
14 BPT ADA coordinators, BPT appeals analysts, CDC District Hearing
15 Agents, CDC correctional counselors and other BPT and CDC personnel
16 who have direct or supervisory responsibility for communicating
17 with or making decisions affecting prisoners and parolees in
18 connection with parole proceedings shall receive adequate training
19 in the general requirements of Title II of the ADA, disability
20 awareness, the appropriate method of determining whether a prisoner
21 with a disability adequately understands written and verbal
22 communications, the circumstances that gave rise to this
23 injunction, its requirements and the BPT's policies and procedures
24 developed pursuant to this injunction that are relevant to the
25 individual's responsibilities.

26 E. Identification and Accommodation

27 15. The BPT shall create and maintain a system for tracking
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1 prisoners and parolees that the BPT identifies as having
2 disabilities.

3 16. Prior to meeting with a prisoner or parolee about a
4 screening offer, and prior to parole revocation, parole revocation
5 extension, life prisoner parole date rescission, life prisoner
6 parole consideration, serious offender, mentally disordered
7 prisoner or sexually violent predator probable cause hearings, the
8 BPT shall take reasonable steps to identify prisoners and parolees
9 with disabilities. Such steps shall include, but not be limited
10 to:

11 a. Checking the system described in paragraph 15 to
12 determine whether the BPT has previously identified the prisoner or
13 parolee as having a disability.

14 b. Reviewing all relevant and reasonably available
15 information in the prisoner or parolee's central and medical files.

16 c. Verifying the disability when the BPT disputes the
17 extent or existence of the disability. The prisoner or parolee
18 shall be expected to cooperate with all verification efforts, but
19 the BPT shall be responsible for verifying the disability.

20 17. The BPT shall provide accommodations to prisoners and
21 parolees with disabilities at all parole proceedings. The prisoner
22 or parolee's request for a particular type of accommodation shall
23 be given primary consideration and shall be granted unless the
24 request is unreasonable for specific, articulated reasons allowable
25 under the ADA, or unless other effective accommodations are
26 available.

27 18. The BPT shall hire at least one full-time ADA coordinator
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1 with expertise in Title II of the ADA, the identification of people
2 with disabilities and the needs of people with disabilities, and
3 shall ensure that this person is generally available during normal
4 business hours to answer questions from and provide advice to
5 District Hearing Agents and other BPT and CDC personnel. This
6 person shall not be given duties that are not related to ADA
7 compliance. If the BPT determines that employing a full-time ADA
8 coordinator is unnecessary, it may seek relief from the Court by
9 way of a regularly noticed motion, but in no event shall it file
10 such a motion until the newly hired ADA coordinator has been
11 employed for at least one year. The BPT shall bear the burden of
12 demonstrating that other staffing methods are sufficient to ensure
13 compliance with this injunction.

14 F. Forms

15 19. All BPT forms used by prisoners and parolees shall be
16 revised so that they are written in simple English. Whenever
17 prisoners or parolees with disabilities are given BPT forms that
18 they cannot understand due to their disabilities, they shall be
19 provided an accommodation to enable them to understand the forms to
20 the best of their abilities.

21 20. All BPT forms provided to prisoners and parolees shall be
22 readily available in alternative formats, including, but not
23 limited to, large print, Braille and audio tape.

24 21. All revisions to forms required by this injunction shall
25 be submitted to Plaintiffs' counsel within sixty days of the date
26 of this injunction. Plaintiffs shall thereafter have thirty days
27 to submit written comments and the parties shall negotiate in good
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1 faith to resolve any disagreements. If any disputes remain,
2 Plaintiffs shall file a regularly noticed motion regarding the
3 disputed issues within 150 days of the date of this injunction.
4 The briefing of any such motion shall be consolidated with the
5 briefing of any motions filed pursuant to paragraphs 13 and 23.

6 G. Equipment

7 22. The BPT shall ensure that appropriate equipment is
8 available to prisoners and parolees who need such equipment to
9 communicate effectively at parole proceedings. Such equipment
10 shall include, but not be limited to, assistive listening devices,
11 computer readers and magnification devices.

12 23. The BPT shall provide Plaintiffs' counsel with a list of
13 the available equipment and the places it is available within sixty
14 days of the date of this injunction. Plaintiffs shall have thirty
15 days to submit written comments and the parties shall negotiate in
16 good faith to resolve any disagreements. If any disputes remain,
17 Plaintiffs shall file a regularly noticed motion regarding the
18 disputed issues within 150 days of the date of this injunction.
19 The briefing of any such motion shall be consolidated with the
20 briefing of any motions filed pursuant to paragraphs 13 and 21.

21 H. Screening Process

22 24. The screening offer, and all relevant BPT forms, police
23 reports and other written documents, shall be effectively
24 communicated to prisoners or parolees with disabilities at least
25 seventy-two hours in advance of the time at which they must decide
26 whether to exercise any of their rights, including the right to
27 request an attorney, and to accept or reject the screening offer.

1 25. Prisoners and parolees with disabilities shall be
2 provided an accommodation at the screening process when that is
3 necessary to ensure that the prisoner or parolee understands to the
4 best of his or her ability all of his or her rights, the nature of
5 the charges and the consequences of waiving any rights. Before a
6 prisoner or parolee with a disability may waive a parole hearing or
7 the right to an attorney, the BPT must determine that the waiver is
8 knowing and intelligent.

9 26. When necessary to achieve effective communication,
10 appropriate auxiliary aids or assistance must be provided to
11 prisoners and parolees during the screening process. Such aids and
12 assistance shall include, but not be limited to, sign language
13 interpreters, assistive listening devices, readers and persons
14 trained to provide assistance to individuals with cognitive
15 disabilities.

16 27. At its discretion, the BPT may appoint attorneys as an
17 accommodation. In order to suffice as an accommodation, the
18 attorneys must be adequately trained to provide accommodations to
19 persons with disabilities and must receive adequate additional time
20 for providing those services. Attorneys appointed to represent
21 individuals with disabilities shall be informed of their clients'
22 disabilities. If the BPT is aware that a prisoner or parolee
23 requires certain specific accommodations, the BPT shall either
24 instruct an attorney appointed to represent that prisoner or
25 parolee to provide those specific accommodations, or shall provide
26 the prisoner or parolee with those specific accommodations by some
27 other means.

1 28. In lieu of providing assistance at the screening process,
2 the BPT may refer the prisoner or parolee for a hearing with the
3 necessary aids or assistance, provided that, absent any additional
4 charges, the hearing is within thirty days of the parole hold and
5 that any term of imprisonment imposed at a hearing does not exceed
6 a typical screening offer for a similar violation.

7 I. Hearings

8 29. At its hearings, the BPT shall make accommodations for
9 prisoners and parolees with disabilities and provide appropriate
10 auxiliary aids and services necessary for effective communication.
11 Such accommodations and auxiliary aids and services shall include,
12 but not be limited to, sign language interpreters, assistive
13 listening devices, readers and individuals trained to provide
14 assistance to persons with disabilities.

15 30. At its discretion, the BPT may appoint attorneys as an
16 accommodation. In order to suffice as an accommodation, the
17 attorneys must be adequately trained to provide accommodations to
18 persons with disabilities and must receive adequate additional time
19 for providing those services. Attorneys appointed to represent
20 individuals with disabilities shall be informed of their clients'
21 disabilities. If the BPT is aware that a prisoner or parolee
22 requires certain specific accommodations, the BPT shall either
23 instruct an attorney appointed to represent that prisoner or
24 parolee to provide those specific accommodations, or shall provide
25 the prisoner or parolee with those specific accommodations by some
26 other means.

27 31. Hearing impaired prisoners and parolees who need sign
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1 language interpreters shall not have their hands and arms
2 restrained in any way during the hearing, unless a written
3 determination is made on an individualized basis that the prisoner
4 or parolee would pose a direct threat if unrestrained and that
5 there are no other reasonable alternatives available to protect
6 against the threat. The Chairman of the BPT or his delegate shall
7 personally approve the use of restraints in each such instance
8 prior to their use.

9 32. The BPT shall make accommodations for prisoners and
10 parolees with disabilities in order to assist them in preparing for
11 parole proceedings. For example, if a prisoner or parolee is
12 entitled to review his or her central file prior to a parole
13 proceeding, and if that prisoner or parolee is unable, due to a
14 disability, adequately to review his or her central file without an
15 accommodation, the BPT shall make such an accommodation. Where
16 other preparation, including but not limited to participating in
17 psychological interviews, obtaining letters of support and
18 developing parole plans, is necessary prior to a parole proceeding,
19 the BPT shall provide reasonable accommodations to prisoners or
20 parolees with disabilities who require such accommodations
21 adequately to complete such preparation.

22 J. Appeals

23 33. Prisoners and parolees with disabilities who cannot use
24 or understand the appeal process or prepare an appeal themselves by
25 reason of their disability shall be provided with effective
26 assistance in preparing a BPT appeal.

1 K. Grievances

2 34. The BPT shall develop and implement a grievance
3 procedure, separate from its current appeal procedure, for
4 processing any complaints of denials of requests for
5 accommodations. All grievances requesting reasonable
6 accommodations at a scheduled hearing shall be decided before the
7 hearing.

8 35. All administrative appeals alleging in substance
9 violations of the ADA or its implementing regulations shall be
10 treated as ADA grievances, and any successive appeal on the non-ADA
11 merits of a decision shall not be deemed barred due to the filing
12 of the ADA-related grievance or grievances. Except as otherwise
13 provided in the immediately preceding paragraph, all such ADA-
14 related appeals shall be decided within thirty days of the BPT's
15 receipt of the appeal form.

16 L. Programs

17 36. The BPT shall provide to all Commissioners and Deputy
18 Commissioners who participate in life prisoner parole consideration
19 hearings a list of CDC programs in which prisoners with
20 disabilities can meaningfully participate, either without
21 accommodation or with appropriate and readily available
22 accommodation. This list shall specify the types of programs
23 available, the particular disabilities the programs can accommodate
24 and the prisons in which they are offered. This list shall be
25 updated every six months.

26 37. At life prisoner parole consideration hearings, the BPT
27 shall not recommend that prisoners participate in programs that are
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1 unavailable to them by reason of their disabilities and shall not
2 rely on the failure of prisoners to participate in programs not
3 available to them by reason of their disabilities as a factor
4 supporting denial of a parole date or a multi-year denial.

5 38. Nothing in this section shall require the BPT to release
6 a prisoner on parole who is otherwise unsuitable for release under
7 California law.

8 M. Monitoring

9 39. The parties shall attempt negotiate a plan to monitor
10 Defendants' compliance with this injunction. If such negotiations
11 are unsuccessful, the Court shall consider the appointment of a
12 Special Master. Within forty-five days of the date of this
13 injunction, the parties shall file a joint and mutually acceptable
14 plan for monitoring this injunction or separate briefs describing
15 each party's position on the need for a Special Master and the
16 Court's authority to appoint one.

17 N. Enforcement


18 40. The Court shall retain jurisdiction to enforce the terms
19 of this injunction.

1 41. No person who has notice of this injunction shall fail to
2 comply with it, nor shall any person subvert the injunction by any
3 sham, indirection or other artifice.

4 IT IS SO ORDERED.

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6 Dated:

DEC 22 1999


CLAUDIA WILKEN
United States District Judge

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10 Copies mailed to counsel
as noted on the following page

United States District Court
for the
Northern District of California
December 22, 1999

* * CERTIFICATE OF SERVICE * *

Case Number:4:94-cv-02307

Armstrong

vs

Wilson

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 22, 1999, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Richard W. Wieking, Clerk

BY:



Deputy Clerk