UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JERRY VALDIVIA, ALFRED YANCY, and HOSSIE WELCH, on their own behalf and on behalf of the class of all persons similarly situated,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor of the State of California, et al.,

Defendants.

/

NO. CIV. S-94-671 LKK/GGH

O R D E R

The court HEREBY FINDS that defendants have demonstrated substantial compliance with the following requirements:

- All provisions of the Stipulation and Order Regarding Remedial Sanctions, dated April 4, 2007; and
- The return to custody assessment step of the revocation process for all facilities, including Los Angeles County Jail.

These requirements will therefore no longer be a primary focus of Plaintiffs' or the Special Master's monitoring unless they

are inextricably linked with review of the hearing process, the remedial sanctions obligations of the Permanent Injunction, or arise in the course of investigating an individual parolee's situation. These items will remain in this status unless and until it comes to the parties' or the Special Master's attention that there has been a significant decline in compliance. To allow for such attention, defendants SHALL report the status of these requirements to all parties every six months, beginning on July 8, 2011.

The court FURTHER FINDS that defendants are in violation of this Court's November 13, 2006 Order concerning information system changes. For the foregoing reasons, the court ORDERS as follows:

1. Defendants must conduct a comprehensive review of the integrity of the data in RSTS and how it is displayed in reports. This will include reviewing the RSTS coding to identify precisely how the data is being defined, the assumptions on which the system operates, and how each report is collecting, categorizing, and reporting data, including which populations are included and excluded from each report and according to what variables. This review shall be led by the Office of Audits and Court Compliance and the Board of Parole Hearings, and must be completed within 90 days of this Order.

    a. The results of this review must be recorded in detail, written in language meaningful to non-technical

professionals, and provided to the Special Master within 120 days of this Order.

2. Within 120 days of this Order, Defendants shall execute an external contract to ensure that adequate ongoing technical support is available for RSTS.

3. Within 180 days of this Order, Defendants must complete a comparative analysis to determine whether RSTS can be revised in a timely fashion to meet Defendants' obligations to demonstrate compliance with the various components of the Permanent Injunction, whether the relevant portion of the anticipated replacement information system ("SOMS") can fulfill this obligation, or whether another system is needed.

4. Defendants must produce a plan to address any data integrity issues identified in the review described in requirement #1, and to complete the creation of, or changes to, the 40 reports previously identified through the efforts of the RSTS user project manager workgroup and the Special Master.

a. To the extent that Defendants' comparative analysis determines that another system is preferred, this plan must identify with specificity the intended replacement system, the steps necessary to implement it, the strategies for obtaining funding, and feasible timelines for implementing it expeditiously.

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b. The plan must include feasible timelines for completing these report changes on a regular schedule.

c. The legends for each report must be updated to reflect the more detailed information generated under requirement #1 above as they are built or revised.

d. The plan must be submitted to the Special Master within 240 days of this Order.

e. To the extent the intended solutions do not resolve the problems, Defendants will continue to work on solutions until the Special Master determines that the problems are addressed.

f. If other substantial issues surface with the accuracy, completeness, and utility of RSTS reports, Defendants will amend the plan to include the plans for addressing the newly identified issues within 15 days of the Special Master or Defendants discovering those issues.

5. In the course of designing the new reports and changes described herein, Defendants will augment their effort with routine input from representatives of the affected divisions who are currently using RSTS in daily field operations, representatives of their management, and CalPAP.

6. Defendants will complete the remedies for any data integrity problems, new reports, and report changes, on the schedule they set forth in their plan.

The court NOTES that the parties discussed a potential dispute related to the Ninth Report. Plaintiffs and defendants do not seek any orders or changes in recommendation due to this potential dispute. If this dispute becomes relevant, plaintiffs shall file a motion before the court.

IT IS SO ORDERED.

DATED: December 1, 2010.

LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY VALDIVIA, et al.,

Plaintiffs,

vs. **No. CIV S-94-671 LKK/GGH**

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

_____/

NINTH REPORT OF THE SPECIAL MASTER ON THE STATUS OF CONDITIONS OF THE REMEDIAL ORDER

Background

On May 2, 1994, the lawsuit now known as *Valdivia vs. Schwarzenegger* was filed. On July 23, 2003, the Court ordered the Defendants to submit a remedial plan consistent with the rights provided by *Morrissey v. Brewer*, and the Stipulated Order for Permanent Injunctive Relief ("Permanent Injunction") entered on March 8, 2004 memorialized the ordered plan.

In December 2005 and January 2006, the Office of the Special Master was established. The Mastership has filed eight reports in this action, noting progress and deficiencies in compliance with this Court's orders.

Issues requiring further court orders to remedy – resulting either from the Master's reports, Plaintiffs' motions, or the parties requesting dispute resolution through a fact-finding hearing – appear below. None has been fully satisfied to date. These were:

- remedial sanctions (June 2005 and April 2007)
- improvements to Defendants' information system (November 2006)
- establishment of internal oversight mechanisms (November 2006)
- due process for parolees who appear too mentally ill to participate in revocation proceedings (November 2007)
- preserving confrontation rights consistent with current case law (March 2008)
- timely access to inpatient psychiatric hospitalization, and psychiatric evaluation pursuant to California Welfare and Institutions Code § 5150 (August 2008)

The October 2008 Special Master Report also recommended that Defendants:

1. Address the practice of Deputy Commissioners failing to expressly consider and make findings concerning probable cause during probable cause hearings
2. Investigate the causes of myriad deficiencies in revocation proceedings at Los Angeles County Jail and consistently work toward remedying them
3. Pay strict attention to the requirement to maintain staffing levels sufficient to meet all obligations of the Permanent Injunction
4. Investigate the cause for delay in transfer of parolees from jails and institutions to community-based ICDTP programs"

Since entry of the Permanent Injunction, there have also been orders concerning designating information as confidential; parolee attorney access to information in clients' field files, witness contact information, and mental health information; interstate parolees; and civil addicts. Orders concerning a challenge to the Victims' Rights and

Protection Act of 2008, which significantly alters the terms of the Permanent Injunction, have been reversed and remanded to this Court.

Beginning with the Seventh Report, the Special Master began to find items in substantial compliance. Detailed below, these included four evidentiary issues, a step in the revocation process, and most aspects of the April 4, 2007 Stipulation and Order Regarding Remedial Sanctions.

For more detail concerning the litigation history of this action, please see the prior reports of the Special Master.

Special Master Activities

During this Round, the Special Master visited jail-based and community-based ICDTPs in Sacramento, Galt. Elk Grove, Stockton, French Camp, San Diego, and Chula Vista. The Special Master also visited parole offices in Stockton, San Diego, and Chula Vista, interviewing staff involved in the *Valdivia* process including parole officers, parole supervisors, clerical staff, and District Administrators. The team also observed hearings at Robert Presley Detention Center.

The team met on several occasions with a variety of CDCR executive staff members personally and telephonically, and was briefed on a variety of initiatives including parole reform, non-revocable parole, reentry courts, and information systems.

The team worked with the parties to develop, implement and refine systematic oversight mechanisms and a joint monitoring process, including multiple site visits at Richard J. Donovan Correctional Facility and Santa Rita County Jail. The team assisted the parties in negotiating substantial compliance definitions and developing more

effective information systems. Team members also observed the *Valdivia* task force, the information systems work group, and trainings for Board and Paroles Division staff.

Scope and Approach for This Report

In contrast to other recent reports, this report will *not* discuss every area of compliance. Rather, it focuses on those compliance issues that can best be described as either (1) the high impact issues that must be addressed before compliance in the lawsuit can be considered, or (2) those requirements nearing compliance that, with a concerted effort, Defendants could accomplish in the short term. The Special Master strongly encourages Defendants to concentrate on the issues emphasized in this report.

Following that discussion, this report comments on requirements previously found in substantial compliance, and concludes with recommendations for court orders.

This report discusses observations and activities spanning March through August 2010, collectively referred to as "the Round." Where data is employed, it is data the Special Master received during that period, commonly covering February 1 through July 31, 2010, or a subset of that period, depending on data availability.

This report also uses some language conventions. To the extent it characterizes progress and compliance, these are often discussed separately, indicating that movement is significant, even where results may be less evident. In assessing either, this report uses the terms "substantial compliance," "good," "adequate," and "poor." "Good" performance is a high bar, and it takes sustained Rounds at that level to reach "substantial compliance." When discussing problems, descriptors progress in severity from "minor" to "substantial" to "significant," and then stronger terms are used for issues of greatest concern.

References to the Special Master's activities frequently include the actions of one or more members of his team. The term "monitoring reports" refers collectively to reports generated by Plaintiffs' monitoring and by Defendants' self-monitoring, unless otherwise specified.

Overview

Defendants have certainly made achievements during each Round, including this one. Some will be cited herein, while others will not. Rather, this report concentrates on critical features that remain to be addressed before Defendants can show substantial compliance with the *Valdivia* orders. In broad terms, Defendants must:

- Demonstrate that the system provides due process
- Establish the reliability of information systems that demonstrate compliance
- Demonstrate that the key features of the Permanent Injunction and subsequent orders are met to an adequate degree
- Provide indications that CDCR will sustain a system providing due process without court oversight

Demonstrating that the system provides due process

Of course, the central purpose of the Permanent Injunction is to assure the provision of due process in revocation actions. In order to satisfy the obligation to provide due process, Defendants have not yet, and must, demonstrate that each of the following components of due process consistently occurs:

- Notice gives adequate information in sufficient time to prepare a defense.
- Defendants have jurisdiction to hold the parolees facing revocation[1]

- Probable cause is assessed (including whether there is evidence for each element of the violation, if argued) and a factual basis is given for the findings.

- For cases continuing to revocation hearing, hearing officers determine whether there is probable cause to continue the hold or decide to release the parolee until the revocation hearing, much like determining whether the parolee could be released on his own recognizance.

- Parolees are allowed to subpoena and present evidence, to testify, and to cross-examine adverse witnesses (subject to certain limits).

- Probable cause and revocation hearings are held within a reasonable time.

- Parolees receive a complete written record, including the factual basis for findings and rulings on all objections made

Due process, of course, entails more than these practices. Defendants are likely to be able to demonstrate they provide these aspects of due process: (1) evidence to be used against the accused is provided in time to assert a defense, (2) hearings are conducted by neutral and detached officers, (3) waivers and disposition offers are taken knowingly and without coercion, and (4) reasonable care is taken to ensure parolees understand the proceedings.

As a matter of fairness, the Special Master also encourages CDCR to consider providing remedies when the system failed and the parolee was harmed.

Establish the reliability of information systems that demonstrate compliance

Longstanding issues of incomplete reporting from Defendants' main revocation-related information system have gone unaddressed; indeed, with each successive Round,

apparent problems *increase* and questions of data accuracy h ave more recently surfaced. There is no clear plan or demonstrated will to remedy these issues.

Likewise, the Permanent Injunction requires Defendants to ensure that parolees receive effective communication throughout the revocation process, but the information system for tracking the need for these measures and their provision has consistently been found to be flawed and must be addressed.

Demonstrate that the key features of the Permanent Injunction and subsequent orders are met to an adequate degree

At a minimum, Defendants must:

- Identify items CDCR believes are in substantial compliance, compile supporting data and narrative, and present them to the Special Master for consideration
- Sustain work toward definitions of adequacy
- Sustain work toward identifying and resolving the highest priority disputed policy issues (*i.e.,* those with significant impact on due process, Permanent Injunction requirements, or the sustainability of the system)

Provide indications that CDCR will sustain a system providing due process without court oversight

Key indicators of this ability would include:

- Independently identifying major compliance issues and initiating resolutions
- Demonstrating that the system of internal oversight results in effective solutions for the revocation process problems identified
- Memorializing key policies and procedures in regulation
- Performance management systems that are integrated into normal operating procedures

In the sections that follow, the Special Master will discuss these issues in more detail and in the context of specific Permanent Injunction requirements.

High impact issues that must be addressed before compliance in the lawsuit can be considered

Notice of Charges

To provide due process, CDCR must provide notice of the allegations to the parolee, giving adequate information in sufficient time to prepare a defense. The Permanent Injunction requirement reads:

> If the hold is continued, the parolee will be served actual notice of rights, with a factual summary and written notice of rights, within 3 business days (¶11(b)(iii))

Factual summary: The frequency with which the Charge Report ("1502b") does not communicate the basis for the charges is troubling. The Special Master reviewed 205 charge reports, evenly distributed across all regions, and found that **30% in the study did not give basic facts** about the conduct alleged for some or all of the charges. For the parole units associated with Los Angeles and Santa Rita county jails, the failure rate for this basic notice was **47%**.[2]

Defendants note the difficulty in meeting *Valdivia*'s mandate to serve parolees notice in a short time, when Defendants are relying on other arresting agencies to provide the substance of the charge report. This is undoubtedly true. In the Mastership's study, however, half of the problematic charge reports were finalized immediately, forgoing the time allowed to gather this very information. It is not reasonable not to give parolees fair warning to prepare a defense without more effort to gather the basic facts about the conduct alleged.

Monitoring reports have examined this issue long-term. In the current Round, they collectively found at least 21% of 368 charge reports had insufficient factual summaries, and some reviewers thought the rate was higher.[3]

Charges after notice: Additionally, there is an issue raised by serving a parolee notice of his or her charges and adding charges afterward. One dispute has centered on whether notice is sufficient when the added charges are contained in the materials the attorney receives at appointment. Plaintiffs have contended that the right to notice belongs to the parolee, not the attorney; whether adding charges in this fashion compromises the ability to prepare a defense is likely situation-specific – particularly based on whether the behavior underlying the new charges was already described in the original notice – since attorneys typically meet the parolees the day before the probable cause hearing. The Special Master has not been made aware of any significant incidence of charges being added later than the attorney receiving the materials.

The need to add charges will certainly arise when reports from another arresting agency become available only after notice has been served. However, the parties measured the charges that the Paroles Division knew, or should have known based on a file review, with the expectation that these must be included in the original notice. Monitoring reports reviewed 383 charge reports with this in mind, and found that **14% added charges based on information that parole agents had available to them as of the original notice and should have been included**.[4]

Defendants have been aware of deficient charge reports as a system wide problem going back at least to early 2007. [5] They have attempted to address this issue through

trainings and self-monitoring. **As these study numbers demonstrate, greater efforts are needed in the interest of fundamental fairness**.

Timeliness: Defendants' information system shows a particularly high rate of data integrity flaws at the notice service step – the summaries often do not match the underlying material, for example – and all data sources omit significant subsets of cases.[6] The sources suggest that timeliness may be as high as 96%, with a substantial number completed within an additional day. However, with the known data flaws and the uncertainties, while the notice may be timely, the accuracy of the information cannot be discerned with any confidence.

Jurisdiction

One of the core tenets of due process is ensuring that there is jurisdiction to hold the parolees facing revocation.[7] Defendants train hearing officers to consider this issue at the beginning of hearings. It is the Special Master's impression that jurisdiction is generally handled well. A recent development carries the potential of a jurisdiction problem, and developing more information would be worthwhile to demonstrate that this potential problem is not actually compromising due process for some parolees.

Shortly before the Round, California law went into effect instituting "Non-Revocable Parole,"[8] a status in which a group of people previously on parole, defined as lower risk, are no longer supervised or subject to parole revocation, but are subject to a few requirements, most importantly warrantless search.

Paroles Division, the Board, and Division of Adult Institutions adopted major procedural changes before and during this Round to implement this law. Parole staff reestablished caseloads, and all divisions negotiated, communicated and carried out

extensive policies. Substantial staff resources were devoted to determining the implications of the law and policies, and to screening for eligibility the parolee population and those exiting prison.

For *Valdivia* purposes, the key question is whether the Board has jurisdiction to conduct revocation actions if parolees allege that they qualify for Non-Revocable Parole. This question has arisen in two ways. Initially, there were parolees who were held for possible revocation and had not yet been screened for eligibility for this status. Defendants' policy is to postpone the probable cause hearing and arrange for an expedited screening; depending on the results, the parolee would return to probable cause hearing in a few days or would be released. The Special Master observed this occurring during field visits and has not been informed of any instances of failure to follow this policy. While the Special Master has not conducted a broad review, it is his impression that this policy is being carried out well and that occurrences have been rare in recent months.[9]

Allegations that the screening results were incorrect, and that the parolee should not be subject to any revocations, are the second source of challenges. Defendants treat all other jurisdictional challenges as a threshold question and do not proceed with a hearing until it is answered. In this case, however, Defendants' policy is to proceed with the hearing and, if the parolee is returned to custody, he or she is instructed to address the concern through the grievance process. [10] The principal rationale offered is that hearing officers do not have available at the hearing the information necessary to make a good judgment.

There is an expedited screening process for those who reach hearing without screening. Defendants do not, however, use that mechanism where the parolee is raising a challenge to the accuracy of the determination. The routine grievance mechanism requires decisions within as little as 10 working days or up to 60 working days if the parolee takes additional grievance appeals. There is an emergency grievance procedure available, which is designed to reach a decision within five working days, or ten if appealed.[11]

Defendants report there were 537 grievances filed related to Non-Revocable Parole, of which 39 were granted at least in part. [12] The Special Master and parties do not currently know whether parolees and their attorneys are aware of the emergency grievance system and have been effective in using it.

Because of the sensitive nature of the potential of holding in custody those over whom Defendants have no jurisdiction, this issue bears watching. The parties might continue to address their efforts to ensuring the greatest likelihood that any meritorious claims can be addressed expeditiously.

Probable Cause Hearings

Probable cause hearings arguably are the core function protecting due process in the revocation process. To deliver on that promise, probable cause must be assessed -- including whether there is evidence for each element of the violation, if argued -- and a factual basis must be given for the findings. If the cases proceed to revocation hearing the probable cause hearing must also include an assessment of probable cause to continue the hold or to decide to release the parolee until the revocation hearing, much like determining whether the parolee could be released on his or her own recognizance.

Defendants have begun the important step of reviewing practice during probable cause hearings to identify any needs for training and support, and to ensure that due process is delivered.[13] This is necessary in that, to date, a wide range of hearing practices have been observed – in addition to strong practice among some hearing officers, there have been others whose response to legal arguments was unsophisticated or who did not entertain probable cause argument. During those times, the risk is high that due process was not provided, and CDCR has an obligation to address and reduce this risk.

The Board designed an excellent tool, applying well-defined criteria, to assist supervisors in a thorough review of the key components of a fair hearing.[14] Supervisor observations are in the early stages, with reviews involving 40 deputy commissioners – about 1/3 of the relevant cadre -- for a total of 1% of the hearings held during the three months of review. Supervisors found an impressive 93% of the cases reviewed to have met CDCR standards.[15]

The Special Master also conducted a study of 200 hearing records. As discussed *infra* in Revocation Hearings, *Morrissey* requires a detailed written record so that the parolee is apprised of the factual basis for finding probable cause to detain him or her. Of course, the hearing record also gives a picture of the due process provided during the hearing to those who were not present. The study did not assess every hearing requirement; rather, it concentrated on core due process practices only. In the Special Master's review, **81% of the sample described in factual terms the basis for their findings**, a good foundation for the overall system to build upon.[16]

Defendants should continue with the excellent review practice they have initiated, and bring attention to these issues that they and the Special Master are identifying.

Providing evidence: An additional component of due process bears comment. As described in the Permanent Injunction:

> At the time of appointment, counsel shall be provided with all nonconfidential reports and documents the state intends to rely upon; if the state learns of additional evidence, it shall be produced as soon as practicable before the hearing (¶ 14)

CalPAP documented 52 objections on these grounds, affecting about 1% of the revocation hearings but nearly double the rate of the most recent two Rounds.[17] The Special Master takes no position on the validity of these objections, but the increasing number is a signal to Parole Division to review more closely the practices of providing evidence, and for the Board to be mindful of this issue, and whether hearing officers are following policy when it arises, during supervisory reviews of probable cause hearings.

Reasonable time to hearing

To promote this due process requirement, the Permanent Injunction reads:

> Probable cause hearings shall be held no later than 10 business days after service of charges and rights (¶11(d))

Defendants must bring attention to measures not routinely reviewed that indicate there are lengthy times to hearing that are not being addressed.

In all reports of their compliance, Defendants cite a revocation database report titled Closed Case Summary – ***Valdivia* Timeliness Rules**. After painstaking review, it appears that **this report omits about 17% of the relevant data** at this process step.

Correct analysis must include the cases contained in Closed Case Summary – *Valdivia* Timeliness Rules, including cases closed at optional waiver review; the actual time to hearing for postponed cases; extradition cases, and open cases. The information

system must be improved to make this possible; in its present state, the best it allows is to spot examples of problems to investigate.

Postponements: Although the timeliness of many probable cause hearings has been high-performing long-term, the rate is overstated by an anomaly of programming. For any hearing postponed, the information system treats the case as timely in perpetuity, regardless of when the hearing is actually held.[18] For probable cause hearings, this could **affect as much as 10% of the hearings**.[19]

The state of the information system does not permit a comprehensive assessment of the timing of postponed hearings, but indicia of problems easily surface. After a few days of examination, it was not difficult to identify **345 probable cause hearings that appeared unreasonably delayed**; at least an equal number not yet examined hold that same potential.[20]

Probable cause hearings held more than 1 week later and as much as 17 days later[21]	244
Parolee time waivers heard later than the amount of time waived[22]	101

While there are a number of factors that render it impossible to identify all problem cases in the space of a Special Master's review period, and to translate the issues spotted into reliable percentages, the point remains: this is an indication that Defendants must closely examine postponements and time waivers for very lengthy cases that do not meet Defendants' obligations under the Permanent Injunction. Upon examination, Defendants may determine that some number of apparently delayed cases are, in fact, reasonably explained. However, accurately reporting the timeliness of these cases, their

impact on the aggregate timeliness numbers, and any explanations remain Defendants' burden to demonstrate.

Extradition: Timeliness of probable cause hearings for extradition cases also chronically lags behind that of the mainstream population. During this Round, 92% appeared timely; this was a return to prior levels after a precipitous drop in the last Round. Few of the late cases were close in time, with some taking as much as **30 to 126 days to hearing**.[23]

Missing cases: The information system indicates in report totals that substantial numbers of cases took place but are not displayed in the reports' detail in the same way as all other cases. For this reason, the existence of these cases can be identified but timeliness cannot be discerned for them. In this Round, it appeared this applied to 24% of the open cases at any given time.[24]

Optional waiver reviews: As described in earlier reports of the Special Master, a substantial number of parolees take "optional waivers" of their revocation proceedings and return to complete them after charges in criminal court have been determined. This initially involves an "optional waiver review," a proceeding much like a probable cause hearing. It appears that about 7% of the probable cause hearing population close their cases at this step. No timeframe has been set for its completion. No major timeliness issues are apparent from an initial review; only a handful exceeded the deadline that applies to the subsequent revocation hearing, and a reasonable time to optional waiver review has not been determined.[25]

The above-described issues, taken together with about 1,900 probable cause hearings the information system displays as late,[26] make it clear that Defendants must investigate and improve timeliness for probable cause hearings.

Revocation Hearings

As discussed above, due process demands of revocation hearings that:

- Parolees are allowed to subpoena and present evidence, to testify, and to cross-examine adverse witnesses (subject to certain limits).
- Revocation hearings are held within a reasonable time.
- Parolees receive a complete written record, including the factual basis for findings and rulings on all objections made

To ensure that the law is applied fairly and correctly at CDCR hearings, a few core issues require heightened attention. While these generally arise at revocation hearings, some may also affect probable cause hearings; both will be discussed here.

Constitutional conditions of parole: Attorneys commonly objected to the constitutionality of special conditions that parolees were accused of violating. With 90 such objections,[27] Defendants would do well if Parole s Division were to review more closely the construction of special conditions to ensure that they both protect the public and comport with the law. Likewise, the Board will want to build on its training on-point to ensure that hearing officers are applying the law correctly in this regard, including the ability to decide this question at the probable cause hearing.

Confrontation rights: While Defendants have done well in allowing parolees to present evidence and to testify, the Board has struggled with its duty concerning cross-examination of adverse witnesses. The Permanent Injunction requires that

> Hearsay evidence must be limited by parolees' confrontation rights under controlling law. Defendants are to preserve this balance in hearings and to provide case law-based guidelines and standards. (¶24; Order, March 25, 2008)

Defendants were subject to further orders effective in 2008 [28] to structure their ability to meet this obligation. The history of implementation is well-detailed in the previous reports of the Special Master. Defendants took more steps forward in this Round, with further training and supervision for hearing officers.

Still, parolee defense attorneys name the handling of these objections – a lack of understanding on the part of some hearing officers and substantial inconsistency between hearing officers – as a critical, top-priority concern. This concern is consistent with the impressions of field supervisors and the Special Master. A good foundation is laid; continued attention and direct guidance and are crucial, as sufficient practice will not take hold without them.

As one of many competing demands on supervisors, identifying the range of practices and specific training needs has been a slow evolution. In previous Rounds, central office management designed a good audit mechanism and shouldered the full burden of the reviews. More recently, the tools were revised effectively and the task distributed more widely.[29] These are promising steps.

The result is that supervisors are beginning to develop the needed sense of the practices of a large cadre of hearing officers; during the Round, supervisors reviewed approximately 13% of the hearings in which a confrontation rights challenge was raised.[30]

As to applying this body of law correctly, monitors and the Special Master have observed a greater number of hearing officers gaining facility with applying the balancing

test to the facts. The supervisors – after reviewing both hearing tapes and written records -- found that 79% of the 97 hearings reviewed met CDCR standards as to confrontation rights.[31] The Special Master studied 113 written records, finding that **63% were clear, comprehensive, and accurately applied the law**.[32]

Historically, it has been a problem that hearing officers did not include in the hearing record a significant number of these objections. CalPAP tracking indicates that this has been reduced to 3% of the total, an impressive gain.[33] This may be mitigated by the large discrepancy between the total cases in the two entities' tracking systems;[34] it is presently impossible to distinguish objections that may not have been entered from a programming problem that may not be pulling relevant cases into the reporting. Even without precise numbers, it appears that hearing officers are to be congratulated. The information system issue should be addressed so that it does not hinder demonstrating actual practice.

All of these reviews confirm the impressions that improvement is evident and substantially more is needed to provide due process.

When state witnesses fail to appear: The other common response to the absence of an adverse, state witness is to postpone the hearing. As regulations require providing 10 working days' notice when subpoenaing peace officers, any revocation hearing postponement contributes significant delay to having a final hearing. Frequently, postponement occurs over the objection of parolee defense counsel; during this Round, 175 objections were documented for this reason or other delays in providing a final hearing.[35] Parolee defense counsel find this practice very troubling; both they, and some written records, indicate that these choices are sometimes made when there is no known

justification for the witness' absence, or it is not exigent, contrary to Defendants' policy. CDCR would do well to examine revocation hearing postponements for their fundamental fairness in this regard.

Written record: It is important that the parolee have a complete record of his or her probable cause and revocation hearing, particularly if he or she chooses to appeal. *Morrissey* notes that

> The hearing officer shall have the duty of making a summary, or digest, of what occurs at the hearing in terms of the responses of the parolee and the substance of the documents or evidence given in support of parole revocation and of the parolee's position.

There is wide variability in the clarity and completeness of probable cause and revocation hearing records. Predictably, the Board will need to improve the inclusion of factual bases for good cause findings, just as with probable cause hearing records. Moreover, there is a serious gap in hearing officers recording objections. Of the 619 objections, other than confrontation rights, that CalPAP recorded, **28% were not found in the hearing records.**[36] It may be beneficial for Defendants to apply the methods that brought about improved recording of *Comito* objections.

Timeliness: Timely hearings are also an element of due process and of the Permanent Injunction, which requires Defendants to provide a:

> Final hearing within 35 days of the placement of the parole hold (¶¶11(b)(iv), 23)

By the time cases reach the revocation hearing, there are several divergent but predictable paths that subsets of cases have taken. For this reason, when Defendants depend on Closed Case Summary – *Valdivia* Timeliness Rules to demonstrate timeliness

compliance, this omits a significant portion of the relevant data. Other key reports must be included in the analysis because, while *Valdivia* Timeliness Rules shows only 77 late hearings, examining the other reports reveals that **lateness is likely more than five times that much.**

Optional waivers: Activated optional waivers that proceed to revocation hearing constitute about 13% of the revocation hearings. In this population, at least **15% exceeded the assigned deadline**, 35 days after the waiver was activated.[37] The longest times to hearing were an additional one to two months, an unacceptable length of time absent explanation. In addition to those known to exceed the deadline, ***twice* as many** showed evident data entry or programming errors that make it **impossible for Defendants to demonstrate timeliness.**

Postponements: As noted, revocation hearing postponements require two weeks for rescheduling in most cases. The information systems postponement reports do not distinguish probable cause hearings from revocation hearings. At least **221 cases significantly exceed the regulatory minimum for rescheduling,** [38] which arguably is unreasonable absent explanation. Indeed, among these, **42 were postponed for 30 days or more, without explanation** apparent from the reason code chosen. This does not include serial two-week postponements, which have also been observed but are not readily identifiable as the data is currently reported.

Not in custody: Defendants allow some parolees to remain in the community, or to be released to it, pending revocation hearing. Defendants' policy calls for these hearings normally to be held within 35 days of a hold or discovery of the behavior at issue. In recognition of the lessened liberty interest, the parties have informally accepted

hearings up to 60 days from those dates as within a reasonable range. **About 7% of these hearings exceeded even that dead line**, with most being held two weeks to one m onth later.[39]

Extradition, mainstream open and closed ca ses: Timeliness for these three populations – the others to take into account – looks very strong, and has over the long term.

With these exam ples totaling 415 problem atic cases, and more possible in the unexamined reports, there is indication that De fendants must routinely review the set of reports described, and address or explain the apparent problem s, before they can demonstrate timeliness at this step.

Revocation Extension Proceedings (¶31(b))

As noted in each of the Special Master 's reports, revocatio n extension affects a small population and is consistently the lo west-performing requirement in term s of timeliness. Reviewers have undertaken only a very limited analysis of the due process provided therein until this threshold issue has been addressed. Trem endous amounts of Defendants' staff ti me have been devoted to these 100 cases per m onth, with lim ited results. The seemingly intractable difficulty suggests that Plaintiffs' monitoring and other external measures will be extensive on this topic in future.

Revocation extension is designed with a number of steps and tim elines; eight of them are measured in Defendants' revocation database. Timely cases in the pre-hearing steps are generally in the m inority; compliance is shown ranging from 21% to 70%.

Probable cause hearings and revocation hearings meet their deadlines at rates of 65% and 74%, respectively.[40]

Each of these represents incremental improvement from the preceding period. This is particularly true in the two institutions where the joint monitoring team has concentrated its efforts.[41] In contrast, however, all of these same steps in the regular revocation hearing process are shown generally at 90% or higher.

Monitoring reports reveal lack of timeliness in other steps; inaccurate, internally conflicting, and incomplete documentation in evidentiary packets; insufficient evidence provided; possible failures to provide reasonable accommodations; erratic use of the tracking mechanism; and problems with maintaining the taped hearing records.[42]

While there are indications of inaccuracies in the data reports, clearly they indicate that timeliness compliance is far below an acceptable level. Additionally, as noted, the parties have not yet begun in any substantial way to determine whether due process is delivered during these proceedings.

- There is poor compliance on this requirement.

Information Systems
(Order, November 13, 2006)

In the absence of a reasonably complete information system with demonstrated reliability, Defendants cannot hope to have the Court's confidence that the timeliness requirements of the Permanent Injunction are being met.

To that end, this Court ordered Defendants to complete, by May 12, 2008, information system application changes to improve their ability to manage revocation proceedings and to demonstrate compliance.[43] Defendants have failed to comply with this

Order. Now almost two and one-half years after the Court's deadline, Defendants' responses demonstrate insufficient urgency to addressing the myriad of remaining problems and insufficient recognition that they have been in violation of a Court Order for this lengthy period. Further orders are warranted at this time.

Core issues: At core, there are a few main issues. Since mid-2006, the Mastership has indicated that the practice of excluding certain populations from the main reports used in operations is reasonable so long as those excluded are captured in other reports. This was the central purpose of the November 2006 Order. This has never been accomplished.

Some reports critical to this goal have never been written. Some have been written or augmented, but most of those changes still produce inaccurate or incomplete information.

In addition, over time, staff and the Mastership have determined a number of ways in which the data displayed is inaccurate, which suggests substantial risk that the underlying data may be inaccurate or unstable. Information systems staff have never tested for accuracy in any comprehensive way. Until that is done, the Court can have no confidence in the revocation data Defendants put forward.

Because of the structure of data reporting, and sometimes inaccurate display of the data, to genuinely verify in daily operations that *Valdivia* requirements are being met, managers and quality assurance staff would need to review several-hundred-page reports to spot problem cases, adjust for incorrect display, and recalculate them by hand.[44]

Trends in the problems observed : A great level of detail has already been provided to the Court and the parties and will not be repeated here. Rather, a synopsis follows.

Integrity of data

- Defendants do not appear to know reliably which populations are included and excluded in reports. The legends are generic and uninformative. Discussions of these questions tend to involve prediction with no apparent follow-up to examine the code or otherwise verify the hypotheses. No effort has been undertaken to answer these questions with certainty and comprehensively.
- The difference between the subtotaled steps and the total, in some major reports, is commonly 14%. Defendants have offered anecdotal potential explanations, but the information system cannot yet demonstrate them.
- A similar discrepancy exists as between the most comprehensive report and the reports meant to reflect its component parts.
- With some reports, the underlying material does not match the total in the report.
- Some reports import incorrect dates, resulting in incorrect measurements such as negative numbers.
- The system allows some dates to operate incorrectly. The most dramatic of these is an increasing number of observed instances of the hold date differing from that in other documentation. The hold date is the foundation for nearly all of Defendants' timeliness calculations. If it is inaccurate, or uncertain, that renders suspect all of Defendants' timeliness numbers.
- Data is adversely affected when records are corrected, resulting in false indications of late cases.

Operations unreasonable for the task of demonstrating fulfillment of the Court's orders

- Certain known populations of substantial size are not captured in any report.
- Postponed cases are treated as perpetually timely if they were timely at the time of postponement, regardless of the length of time to hearing.
- A large number of cases are shown in only a partial fashion.
- Limited management and compliance questions can be answered. Several require extensive hand calculations to generate a meaningful answer. Staff cannot include or exclude irrelevant populations, sort by most key variables, or effectively spot many problem cases or duplicates.

Defendants' responses: The details of these issues have been discussed extensively for four years with staff at the Board, Office of Court Compliance, Office of Legal Affairs, the Attorney General's office, Paroles Division, Enterprise Information Services, and the previous information systems contractor. The discrepancies and needed changes were catalogued in the first eight reports of the Special Master, with particular emphasis in the most recent Round when Defendants could not account, in a matter of days, for nearly 10,000 cases.

Shortly after the issuance of that Special Master's report, Defendants convened a multidivision workgroup that met several times per month. This resulted in generating the document RSTS_Reports_Status May 2010.xlsx, which (1) captured all reports the workgroup identified as needing significant change and (2) set priorities among them.

This is a process that has been employed with limited effect in the past. Several of the key data integrity and reporting issues were never identified, and there was no visible follow-through to completion on most of the issues the group did identify that concerned demonstrating compliance to the federal court.

This most recent effort also did not include most of the changes the Special Master had identified multiple times to Defendants. After incorporating the Special Master's observations, that spreadsheet reflects 36 reports needing change and 4 reports that need to be created.[45] These principally concern populations substantially affecting the overall compliance picture and not reflected effectively in existing reports. In addition, the legends for all reports need substantial work to be complete and accurate.

The Special Master recently requested an update on the status of the efforts to date on these 40 reports and plans for completion. Defendants responded that they had

completed 2 reports and had aspirations, but no firm commitment, to complete 4 more by year's end. There was no mention of plans to address the remaining 85% of the work identified.[46]

Some progress has been made since the 2006 Order and that has been detailed in previous reports of the Special Master. It is well past time for Defendants to address the remaining deficiencies detailed here, and the Special Master is recommending further orders to accomplish that.

Disability Tracking System
Permanent Injunction ¶¶13,18

An additional information system requires attention for Defendants to be able to meet their ADA and Permanent Injunction obligations to ensure effective communication throughout the revocation process.

Defendants have implemented an electronic tracking system for disabilities and effective communication needs. This is complemented by a series of forms, procedures, and expectations for interactive review at most steps of the revocation process. It is intended that the results of all these processes be recorded in the electronic tracking system so that this information is available for any future revocation proceedings and to facilitate the timely provision of reasonable accommodations.

As detailed in previous reports of the Special Master and monitoring reports, despite all of these systems, there remain lapses in key information being carried forward in the electronic system. Defendants have not informed the Special Master of any examination undertaken to determine of the scope of this issue, so it is unknown whether it is limited or more extensive.

Additionally, the reports written to demonstrate provision of accommodations have never operated effectively and need attention to serve their purpose.

To be able to demonstrate compliance as to the requirements concerning reasonable accommodation, Defendants must address these issues. It seems advisable for them to undertake a comprehensive review to identify the scope of the issues and likely causes, as well as an analysis of why the existing procedures do not seem to be as effective as necessary.

Meet periodically regarding policies, forms, and plans; submit policies and procedures to the court no later than July 1, 2004 with full implementation by July 1, 2005
(¶¶10-11(a), 11(e))

The design and implementation of comprehensive policies has followed a rocky, tortuous path in *Valdivia*. A set of policies was filed timely but subject to many objections concerning adequacy and completeness. In the early years, the parties continued to negotiate a variety of new policies, disputed items, and interpretation questions that arose during implementation.

At the Special Master's urging, in early 2008, the parties sought to identify the universe of outstanding issues requiring new policies and negotiation. That effort proceeded in fits and starts with long gaps; the most comprehensive list was generated by Plaintiffs in July 2009 and, although joint teams have recently identified an additional set of disputed items, Defendants have yet to express agreements and disagreements with the items on that 14-month-old list. In the last week, the parties held their first meeting concerning a subset of these issues.

In the meantime, Defendants have generated, and for the most part the parties have negotiated, a small stream of policies responsive to new implementation issues, new laws, or the need for clarification in the field. The Board also undertook a major effort to review, reconcile, and clarify the body of existing policies. This undertaking has stretched out over 10 months and is not near completion, but has picked up pace recently with the introduction of excellent project management techniques.

Both projects – reconciling existing policies and negotiating a very lengthy list of disputed policy items – are extensive. And the process to memorialize *Valdivia* processes in regulation has not yet begun, with the exception of special conditions of parole. These are keys to sustainability of the system, maintaining its functioning through inevitable staff turnover and competing pressures, and demonstrating to the Court that Defendants are prepared to assume full responsibility for the revocation system. The Special Master encourages the parties to sustain productive effort to accomplish these long-needed requirements.

Monitoring by Plaintiffs "as reasonably necessary"
(¶25) / Internal Oversight (Order, November 13, 2006)

In the last Round, the parties reached agreement on and initiated a pilot joint monitoring process. The process began with joint monitoring tours of the Richard J. Donovan Correctional Facility Decentralized Revocation Unit and the Santa Rita County Jail Decentralized Revocation Unit in January 2010. In this Round, several pilot activities took place. The parties met in March to debrief the outcomes of the first joint monitoring tours and to identify lessons learned and to propose any needed changes. Corrective action plans from the first tours were worked on by the operating divisions in preparation

for the second monitoring tours, which took place in June 2010. Parties met and debriefed the pilot project in July 2010. The monitoring reports of the second joint tours were completed in August and September 2010.

At the March 2010 round one monitoring tour debrief, the parties changed the goal of the project from to "help the Decentralized Revocation Unit and parole offices identify ways to improve their outcomes in the *Valdivia* process" to "**To create a fair, legitimate and high performing revocation system."**[47] This seemingly small change is symbolic of a larger change that is resulting from the process. The parties are worrying less about the more narrowly defined legalities of the case and focusing more on what needs to happen to create an effective and fair revocation process. The joint monitoring process has its challenges, not the least of which is modifying the traditionally adversarial roles of the parties into a more collaborative effort to improve processes and systems. The Special Master believes the joint monitoring process is resulting in a deeper understanding of the operational challenges in implementing the revocation process, better working relationships between Defendants' operating divisions and with the Plaintiffs, and a focus on not just meeting the requirements of the lawsuit but developing better correctional practices.

At the March debrief, the parties reviewed what was working well and what required improvement. The parties agreed that they had in part met the objective of getting feedback more quickly to the sites they were monitoring. This was done by an exit interview at the site with staff who represented all stakeholders and an overview e-mail that summarized the feedback. The parties were not able to deliver a timely written report for the first monitoring round. Another objective that has been met is to

reinvigorate the staff who works in the revocation process. Staff members have indicated they feel "seen and heard" in this process. The direct contact with monitors and information sharing on site and after the tours was appreciated by staff. Both the Board and Paroles Division met with their respective staff to discuss and explain the pilot. Monitors did a good job of focusing on what is working well in addition to what needs to change. There has also been identification of statewide issues that has resulted in additional efforts to address these issues in unit and individual training.

The major challenges identified after the first monitoring visit were the report writing process and outcome, the size and composition of the monitoring teams, as well as the operating staff on site and at the exit interviews, the need for clarity in who leads which aspect of the process, and better preparation for the site and the team before a site visit.[48] The most significant concerns expressed were about the report writing process and outcome. The major problems with the report writing process included:

- The report is late and that could impact time frames and the ability to operationally get things done within this fiscal year and it creates a credibility problem
- Report is so long because of the many different positions of the parties
- Staff should not be engaged in the disagreements between parties
- The irony of the monitors not meeting the deadline will not be lost on the field
- The format of the report is not user friendly for the field...what product should the report be and how is it going to be used?
- Assumption that report writing will identify the solutions is not accurate

The parties reached several agreements at this meeting, which included the elimination of a tour, reducing the number of monitors on the final tour, a pre-tour packet review, the creation of a short form of the tour report that does not reference disagreements between the parties but focuses only on the agreed upon areas for desired improvement, a mid-process operations staff report to the parties, and the Office of Court

Compliance would send the corrective action plan to the parties and orchestrate a monthly conference call on progress on the plan. The first three of these items and the sending of the corrective action plan to the parties were accomplished. The remaining items were not implemented.

Data gathered in the second monitoring tours demonstrated that the revocation center and parole offices pilot sites had made significant progress. Once again, the immediate feedback at the exit interview and through the follow-up e-mail appears to be of the greatest value to the staff assigned to make changes in the process. Senior Board and Paroles Division leaders indicated that the process had reinvigorated the staff of the pilot sites to improve their outcomes. The report writing continued to take too long and at the July debrief meeting the operating division staff began to question the usefulness of the report.

The written reports for the site visits were collaboratively written, thorough and provide excellent documentation of progress. They provide a thorough record for the Special Master and the Court. They are less useful for the staff members who are trying to achieve compliance with the Permanent Injunction. The length of time to write the reports makes them untimely for the sites. The analysis is fairly high level and as such does not help line and mid-level staff understand impediments and problems.

The parties have agreed on process changes that the Special Master believes is turning the focus of the monitoring process from just recording current activity to enhancing performance. The written report will be an executive summary that will include relevant data but not a written detailed analysis. Report authors can provide more detailed analysis on as needed basis. The corrective action plan will be a table that

includes a progress measure and will be updated on a regular basis. These changes will help to provide data that is more user-friendly and relevant to the staff in the revocation process.

The audit tool created by the Office of Court Compliance will be revised based on agreements with the Plaintiffs. The parties plan further negotiations with the goal of jointly using this tool. Advance preparation for the monitoring tours will be thorough and include a joint pre-tour review of any new sites. The Board and Paroles Division will identify how to disseminate learning and best practices from the two pilot sites. All of these changes are shifting the monitoring focus from providing only the information believed to be needed to create an accurate record for the Court to including the information needed for the staff in the revocation process to do their jobs better.

The parties are in agreement that the sites have made significant improvement in a short time, and some deficiencies may already be resolved. The pilot sites do have areas they must continue to work on, and it is critical that they continue to receive the support they need to reach compliance. The parties have decided to add another site to the process this year.

The Special Master believes the pilot project:

- Builds on the collective knowledge of the parties;
- Accelerates the feedback process and provides more immediate feedback to the staff providing services in the *Valdivia* process;
- Helps monitors learn about the process practices that are working so the information can be shared with other sites;
- Provides the CDCR operating divisions information to help them identify solutions to process impediments; and
- Engages the operating divisions more directly and consistently in designing solutions to compliance deficiencies and seeing them through.

Objectives that have not been met in the pilot include:

- Sharing information about process improvement measures that have worked in other locations; and
- Clarifying the roles and responsibilities of the operating divisions and the Office of Court Compliance.

While there has been some sharing of information about lessons learned there has not yet been any coordinated method for this process. Perhaps of greatest importance is defining the roles of the oversight entity, the Office of Court Compliance and the Paroles Division and Board operating units. This lack of clarity limits the Defendants from developing a strategic perspective on the entire case. Everyone is working on tactical issues and there is no one entity charting the strategic vision for achieving compliance. This becomes clear in areas of performance management. Many good strategies are being developed by the Board's Workforce Development Unit and the Paroles Division Litigation Compliance Unit, but there does not appear to be anyone looking at the totality of these efforts and identifying both gains and the remaining impediments to achieving compliance. Too often the Special Master has had to point out both activities that can be used to demonstrate compliance and gaps that must be addressed.

The parties are to be commended for the active learning they are engaged in with this project. Both parties have demonstrated flexibility and openness to change. The collaborative relationship between the parties is no doubt in part why the revocation centers and parole offices are showing improvement in their compliance efforts.

- There is good progress and good compliance on this issue.

Los Angeles County Jail
Fifth Report recommendations

As noted in the past four Rounds, achieving compliance in the Permanent Injunction is not possible without dramatic improvement at the Los Angeles County Jail, and its associated parole units, because of the volume of cases processed through the site and the low compliance rates on many of the revocation requirements. The key problems observed over time are summarized here. In most cases, deficiencies have been higher than the system average.

- Parole Agent/Supervisor Conference timeliness
- Notice of rights: methods, conditions, timeliness, serves never completed
- Content of the Notice of Charges, including insufficient description of the violation behavior alleged and failure to include charges known at the time
- Violation report timeliness
- Unit Supervisor review timeliness
- Incomplete revocation packets, including notice documents, conditions of parole, lab results, police reports, and Legal Status Summaries, and excessive redaction.
    - Additionally, there was no mechanism to ensure that attorneys receive documents produced after the packet has been forwarded.
    - In significant numbers of cases, this resulted in insufficient evidence of the charges alleged.
- Incomplete disability information, including missing disability review documents ("1073s") and source documents
- Late attorney appointments, especially "add-ons" with a day or less to prepare
- Missed and late Parole Administrator reviews
- Return to Custody Assessment timeliness

- Delays or jail resistance to providing certain accommodations, particularly phone translation for notice service, a nd wheelchairs and interpreters for hearings, anecdotally

- Probable cause hearing tim eliness and content, including assessing probable cause and recording a factual basis for findings

- High numbers of postponem ents, some of which were avoidable by checking time conflicts and adjusting scheduling practices

- Delayed transportation to drug treatment program ("ICDTP")

- Timeliness of hearings after optional waivers are activated

- Revocation hearing timeliness and content, including ruling on and recording objections and correctly assessing proffered hearsay (" *Comito*" balancing)

- Parole agent, Board clerical s taff, and Deputy Comm issioner recruiting and retention

The Defendants continue to m ake incremental change that shou ld improve outcomes. Changes to the physical plant at the jail and to th e information systems, which can result in the significant change, will not likely begin until early in 2011.

On August 2, 2010, a pilot project for s canning notice docum ents to the Los Angeles County Jail from the Mid-City Parole District in Region III began.[49] The pilot project is designed to test a process whereby parole no tice agents do not have to travel from their parole of fice to the jail to subm it notice docu ments but rather can s ubmit notices via fax to th e jail. Th e pilot will te st if the fax p rocess reduces travel time for parole notice agents and results in more tim ely notice of violations to parolees at the Los Angeles County Jail. The pilot will also provide an opportunity to refine the process prior to the com pletion of the proposed changes to the physical plant at the jail for the new Notice Service Center.

Space for this pilot was donated by the Board of Paroles. A work station that includes a computer, printer and fax machine was provided by the Paroles Division and located in a board hearing room for notice agent use. Access to the work station has allowed one notice agent to stay at the parole office while the other remains at the jail. This allows for faster transfer of notice documents and thus, faster serving of the documents to parolees.

The Paroles Division and the Board have collaborated on this project and continue to work well together to finalize the contract needed to make changes to the physical plant that will be the location for the permanent Notice Service Center. Defendants and representatives of the Los Angeles County Jail have reached agreement on the contract elements and are in the process of finalizing the contract language.[50] Once completed, the contract will be signed by the parties and construction can begin.

Early process indicators from the pilot project are favorable. Assigned staff members are invested in the pilot. Early indicators are that the serving of notices is taking less time with most taking place in the first or second day. This should result in a higher rate of timely serving of notices for Region III. As predicted, commute time is eliminated for the notice agent that now stays at the jail. In addition, the number of serves performed by this notice agent has increased considerably. The Paroles Division plans to add another notice agent to the pilot this month. A hoped for long-term outcome will be a reduction of the number of notice agents in the visiting room, which should reduce the noise level and enhance communication with parolees.

In addition to their efforts to make changes in the physical plant at the jail and to implement the notice pilot project, the Paroles Division and the Board have continued to

engage in training, monitoring activities and responding to problems.[51] Proposed management information system changes are still projected to be completed by December 2010.[52]

The following summarizes the progress Defendants have shown the Special Master over time:

Issue	Progress	Status
Parole Agent/Supervisor Conference timeliness	Unclear because of introduction of parolees without holds into tracking system	Unclear
Notice of rights and charges: methods, conditions	Some improved communication during service after training in mid-2009 Ground work laid for better space	Unknown Unchanged
Notice of rights and charges: timeliness, serves never completed	Significant improvement in timeliness in each Round since early 2009 Source of many missed serves explained and appropriate	From 76% in 2007 to 93% presently (partial figures)[53] It appears that 119 parolees (1%) were never served in this Round
Notice of Charges: insufficient description	Unknown	In a small study, *half* of the notice descriptions were inadequate
Notice of Charges: adding charges later that were known at the time	Unknown	Unknown
Violation report timeliness	*Declined* over time, both in percentage and absolute numbers	Between 3,128 and 4,114 appear late this Round (77% compliance) Many were completed the next day, but at least 839 were too late for the next

		step to be timely
Unit Supervisor review timeliness	Improvement from mid-2008 on	Between 174 and 410 appear late this Round (96-98% compliance) Many were completed the next day
Incomplete revocation packets and redaction	Incomplete: unknown Redaction: attorneys report is greatly improved	Incomplete: unmeasured Redaction: a few per week remain
Mechanism to ensure that attorneys receive documents produced after the packet has been forwarded	None	Discussions initiated very recently
Missing disability review documents ("1073s") and source documents	Both have fluctuated in the same range throughout 2007-2010	1073s: 95-99% present Source documents: 52% compliance for the Round
Late attorney appointments (add-ons = ≤1 day to prepare)	Improvement from mid-2008 on	1-3 "add-ons" occur daily[54]
Parole Administrator reviews	Late: Major improvement from early 2009 on, slightly better in the last Round than in this one Missed: steady improvement from highs of early 2008, has returned to 2006 levels	Late: from 1,594 in mid-2008 to 171 currently (98% compliance) Missed: 440 reviews (5%) for the Round; 1% most recently
Return to Custody Assessment timeliness	Excellent improvement from mid-2009 on	Between 209 and 412 were late (95-97% compliance) Many were completed the next day
Barriers to providing reasonable accommodations	Notice service: observed to be resolved in late 2009 Hearings: unknown	Notice service: Resolved Hearings: unknown
Probable cause analysis and factual basis	Unknown	Management participates in systemwide requirement to observe these hearings; they

		observed 14 hearing officers and found all to meet standards
Probable cause hearing timeliness	Significant improvement this Round after prior fluctuations	Between 124 and 367 were late (96-98% compliance)
Postponements	Improvement after attention in mid-2009 Dramatically fewer for transportation issues; none for hearing officer availability in 2010	Unknown
ICDTP transportation	Unknown	Unknown
Optional waiver activation timeliness	Cannot be discerned with current state of information system	10% incorrectly entered so timeliness cannot be determined 3% clearly late, up to 68 days
Revocation hearing content	Unknown	Management participates in systemwide requirement to review tapes with *Comito* objections (about 25% of the relevant hearings this Round) Otherwise, management has not looked into whether the practice of LACJ DCs comports with due process
Revocation hearing timeliness	No statistically significant differences in compliance percentages, but absolute numbers improved from early 2009 on Optional waiver activations may be improved	Between 30 and 121 were late (90-97% compliance) Most, however, were *not* close in time Optional waivers: 3% were late and another 10% may be incorrectly entered
Parole agent, Board clerical staff, and Deputy Commissioner recruiting and retention	Deputy Commissioners were added in mid-2009 Overall staffing levels for all three types of staff are unknown	Unknown

Requirements nearing compliance

As discussed at the outset of this report, there are also requirements where the Special Master believes that, with concentrated effort, Defendants could demonstrate substantial compliance in the short-term. This section examines the status of those requirements.

Remedial Sanctions
Stipulation and Order Regarding Remedial Sanctions, April 4, 2007
Order, June 8, 2005
Permanent Injunction Exhibit A – Remedial Plan

Remedial Sanctions requirements are included in the original Permanent Injunction, as well as further court orders in 2005 and 2007. Defendants have continued to make progress and have achieved substantial compliance with the 2007 Remedial Sanctions Order during this Round.

There remain "unresolved subjects" in the Remedial Sanctions Order. The "unresolved subjects" are those where the parties are not in agreement whether and/or to what extent an issue is within the scope of the *Valdivia* Permanent Injunction.[55] The parties were to have met and negotiated over these items. Despite the fact that these negotiations have not occurred, the Special Master finds the Defendants to have made progress on several of the "unresolved subjects." Recognizing that the Defendants do not have to comply with the "unresolved subjects," the Special Master still believes noting the progress made is of value.

The Special Master commends the Defendants for pursuing resolution of some of the "unresolved subjects" when there is not resolution regarding their inclusion in the

case. The Defendants are clearly focusing more on good correctional practice and not confining their efforts to meeting only the minimum requirements of the case. Some of these items also speak to the broader Permanent Injunction.

Despite the continued fiscal crisis, Defendants have maintained remedial sanction programs and refined the systems for both service delivery and compliance measurement. The number of parolees in the ICDTP program has dropped by about 300 to 400 people at any given time. The reasons for this decline remain unclear but there are several factors that could be influencing the number of placements made in ICDTP.

One reason may be what is believed to be an increase in program rejections by eligible parolees.[56] A change in the computation of good time for parolees in jail has resulted in some parolees rejecting ICDTP and choosing to serve their time in jail.[57] In addition, Defendants believe that parole agents, deputy commissioners and other system decision-makers are becoming more knowledgeable about the broader array of alternatives to revocation and thus, are not relying solely on ICDTP. [58] While this has been a trend in past Rounds, data from this Round does not support that conclusion for deputy commissioners.[59]. It is possible that the shift of the non-revocable parole population from parole supervision may be reducing the number of parolees who require or are eligible for remedial sanction programs. On October 14, 2010, of the 108,755 parolees, 15,467 parolees were on non-revocable parole. That is approximately 14% of the total parolee population. This number does not reflect those parolees who have now completed supervision.[60] Defendants have continued to refine placement tracking, provide education regarding remedial sanctions for decision-makers in the revocation process, and create improved compliance measurement tools and systems for remedial

sanction programs. For some issues better documentation of practice has demonstrated compliance while in others new systems or analyses have been implemented and/or provided.

Substantial compliance has been achieved on the following Permanent Injunction and Remedial Sanctions Order items:

- Requirements from the Permanent Injunction
  - Consideration of Remedial Sanctions at Each Step
- Requirements from the Remedial Sanctions Order:
  - Policies and Procedures
  - Interim Remedial Sanctions
  - Expanding Jail and Community-Based ICDTP Programs
  - Determining Availability of ICDTP
  - Electronic In-Home Detention
  - Sharing Information with Parolee Defense Counsel
  - Training about Remedial Sanctions
  - Reporting on the Parole Violation Decision-Making Instrument
  - Female Parolees
  - Out of County Transfers

Remaining Remedial Sanctions Order items that have achieved compliance during this Round and are discussed below include:

- Parolees with Mental Disabilities
- Evaluation

It is the opinion of the Special Master that all of the items being assessed this Round are also relevant to achieving compliance with the Permanent Injunction. Defendants' progress with all of these issues demonstrates progress toward compliance with the Permanent Injunction.

Remedial Sanctions Order Items
That Have Achieved Substantial Compliance

Parolees With Mental Disabilities

Plaintiffs indicate in the Remedial Sanction Order that they believe some programs must address parolees with mental impairments. Defendants have demonstrated that they have exceeded the Remedial Sanctions Order agreement to have 20 beds that address the unique needs of the dually diagnosed parolees per region.[61] They have demonstrated that parolees who would be classified as Enhanced Outpatient Program (EOP) or Correctional Clinical Case Management System (CCCMS) are accepted into ICDTP. In this Round, Defendants are able to demonstrate that dually diagnosed parolees are being served in the programs that are credentialed to provide services to this population.

Defendants have created a tracking system that shows not only are there programs with the capacity to served mentally impaired parolees, but that mentally impaired parolees are being served at the higher level of care in ICDTP programs.[62] By cross-referencing the parolee placement lists by region with the ICDTP provider list by region, it is clear that parolees with mental health and substance abuse issues are being placed in the programs designed to serve this higher need population. Substance Abuse Coordination Agencies are responsible for assessing compliance with the standards for the higher level of care.

Additionally, Plaintiffs asserted at the time of the April 2007 Remedial Sanctions Order that Defendants have further obligations to provide remedial sanctions programs addressing the needs of the severely mentally ill. That was reserved in the Order as an "unresolved subject" and will be discussed below.

- It is the opinion of the Special Master that the Defendants have demonstrated substantial compliance regarding the creation of remedial sanctions that target the needs of parolees with a dual diagnosis of mental illness and substance abuse.

Evaluation of Remedial Sanction Programs

The parties stipulated that the Defendants would evaluate remedial sanction programs and that this commitment did not bring the evaluations themselves within the scope of the Permanent Injunction.[63] During the Remedial Sanctions Order negotiations and at several meet and confers, the issue of whether the quality of the remedial sanctions programs is within the scope of the Remedial Sanctions Order or the Permanent Injunction has been discussed. Both parties agree that it is in the best interest of the Defendants to evaluate remedial sanction programs so improvements and changes can be made as needed. It was also agreed that while evaluation is deemed appropriate and necessary, the Defendants are the subject matter experts and therefore are in charge of interpreting and determining what to do with evaluation data. It was clearly agreed that determining the scope, content and outcome of evaluations is within the purview of the Defendants.

Upon request for a demonstration of these evaluations, the Special Master was provided examples of remedial sanctions evaluations that have been completed. The Special Master received an external evaluation of five parole programs: ICDTP, Parolee Service Centers, Community-based Coalition, Day Reporting Centers and Restitution Centers, as well as An Evaluation of the California Preventing Parolee Crime Program.[64] Both of these external evaluations were done by universities that reviewed the progress of both remedial sanctions and programs that could be described as structured and supervised programs. Recognizing the complexity and length of time that program

evaluation takes to complete, the completion of two external evaluations of remedial sanction programs is sufficient to meet the standard of substantial compliance with this provision of the 2007 Order.

- The sustained level of compliance leads the Special Master to consider this issue to be in substantial compliance.

Unresolved Subjects in the Remedial Sanctions Order

Equity for Female Parolees

Defendants have demonstrated availability of ICDTP beds for female parolees but there remains the unresolved item in the Remedial Sanctions Order of equity for female parolees. The Plaintiffs contend that female parolees deserve the same or equivalent programs as male parolees in the revocation process. The Defendants have demonstrated their commitment to ensuring gender appropriate programming for female parolees in several ways.[65]

The Office of Substance Abuse and Treatment Services has ensured that there are ICDTP programs in each region that provide services to pregnant women. Programs exist in Regions I, II, III and IV.[66] In addition to ICDTP, female parolees in the revocation process have access to co-ed Residential Multi-Service Centers and Parolee Service Centers. There is also one Female Residential Multi-Service Center (FRMSC) and two Parolee Service Centers that provide gender responsive services. Initially there were hopes to expand the FRMSC program to several regions. There has been no movement regarding the hoped for expansion in several Rounds and the staff positions for that expansion were eliminated.[67] The addition of two all female Parolee Service Centers, Hoffman House in Long Beach and National Crossroads in San Diego, provides

yet two more gender specific remedial sanctions for female parolees.[68] Nine females were placed in these programs as a remedial sanction in the first six months of this year.[69]

The Office of Substance Abuse and Treatment Services is creating options that ensure the unique needs of women are being met in remedial sanction programs. In the last Round, the Office of Substance Abuse and Treatment Services began placing female parolees in Female Offender Treatment and Employment Programs (FOTEP).[70] These programs accept pregnant women and women with children. Female parolees who complete their 90-day residential program can stay in the FOTEP program for up to 15 months. Table 1 shows the weekly population numbers for female parolees from ICDTP placed in FOTEP by region. Women coming out of in-prison treatment programs receive priority placement into FOTEP. Region II FOTEP typically runs at full capacity and thus, ICDTP placements are rare and none occurred in this six-month period.

Table 1[71]
ICDTP Female Parolees Placed in
Female Offender Treatment and Employment Programs FOTEP

Region	March	April	May	June	July	August	Total
I	11	10	7	11	12	2	53
II	0	0	0	0	0	0	0
III	44	72	42	46	39	26	269
IV	59	40	34	44	56	41	274
Total	114	122	83	101	107	69	596

The Defendants have provided equivalent and gender responsive remedial sanctions for female parolees and continue to place some female parolees in gender responsive programs after their release from programs like ICDTP.

Parolees with Disabilities

Also among the "unresolved subjects" in the Remedial Sanction Order is the issue of providing the same or equivalent service to disabled parolees as those provided to the non-disabled parolees. As noted in the eighth report of the Special Master, the Defendants have removed all exclusionary criteria based on disability in community-based ICDTP and have demonstrated that while not all jail or community-based programs can adequately accommodate all disabilities, there are enough programs throughout each region that can serve different types of disabilities that disabled parolees can be placed in remedial sanction programs in each region.

In this Round, the Defendants took additional steps to demonstrate their ability to provide disability information for jail and community-based ICDTP programs and to provide data regarding the actual placement of disabled parolees into ICDTP.

The distribution of internet access cards ,which allows for immediate access to the disability database in remote locations, in combination with the information sent to jails and Substance Abuse Services Coordination Agencies by ICDTP placement coordinators, has greatly enhanced the accuracy of information being provided to program providers. Internet access card distribution was completed in March 2010.[72]

When tracking the placement of dually diagnosed parolees, Defendants used the same system to track disability placements.[73] The tracking data clearly demonstrates the placement of parolees with disabilities in ICDTP. Defendants have demonstrated, through placement data and expenditure data for accommodations [74] that disabled parolees are served in ICDTP.

Despite Defendants' efforts to the contrary, some jail-based ICDTPs continue to exclude parolees with a range of disabilities.[75] Plaintiffs assert that Defendants are obligated to ensure that all jail and community-based programs can serve all types of disabled parolees.[76] The issue of what the responsibility of the Defendants is for disabled parolees in jails has not been fully resolved by the courts.[77]

It is the opinion of the Special Master that while Defendants have not succeeded in removing all exclusionary criteria from some ICDTP providers, there are enough providers in each region that do accept parolees with disabilities that the same or equivalent services are being provided.

Implementation, Training and Supervision

Another item in the Remedial Sanctions Order is that of ensuring that policies and procedures are updated, staff is trained and all decision-makers have information regarding the availability of remedial sanctions.

Availability of ICDTP beds and provider lists that note both specialized capacity, such as the ability to serve the dually diagnosed, female parolees and the disabled, are all readily available on the internet. All decision-makers in the *Valdivia* process have access to this information each day.[78] In addition, a daily e-mail is sent from the Office of Substance Abuse and Treatment Services with the ICDTP available bed counts for each region to all Deputy Commissioners and Parole Administrators.

Training regarding remedial sanctions is routinely done at both the entry level parole agent academy and training for new deputy commissioners. A new academy was created for the Parole Agent III classification and it too focuses on remedial sanctions.[79] Routine training regarding *Valdivia* issues is provided in a variety of forums. Training in

parole units and revocation centers is provided through the annual Paroles Division block training process[80] and on an as-needed basis.[81] Remedial training is provided for units requiring additional assistance and specialized training has been done for various levels of management.[82] ICDTP providers receive training from the Office of Substance Abuse and Treatment Services.

The Board provides training to new deputy commissioners and has provided several *Valdivia* trainings for all working deputy commissioners.[83] The Board has developed and used several new strategies to train Board staff regarding remedial sanctions. On February 2 and 4, 2010, the Paroles Division and the Board conducted webinar training sessions (interactive computer training) for deputy commissioners on the use of electronic in-home detention reservation systems.[84]

Another new strategy is the development of resource documents that are accompanied by self-study modules for deputy commissioners. The Board has created resource documents that include detailed explanations of how a deputy commissioner is to consider and order placement of remedial sanctions as well as providing information regarding an array of remedial sanction options. A very creative and useful addition to the document is a self study training module that provides greater detail about the programs. Both of these efforts complement existing training efforts and are an excellent example of the development of sustainable systems that should enhance performance outcomes over time.[85]

One of the strongest demonstrations of commitment to accurate implementation is the development by the Board of supervisory audit tools that are used to ensure the desired level of performance by deputy commissioners. Each quarter, Associate Chief

Deputy Commissioners, the supervisors of the deputy commissioners, now observe and evaluate a minimum of five probable cause hearings performed by all deputy commissioners and retired annuitants [86] they supervise who conduct probable cause hearings. The audit tool includes observation that remedial sanctions are considered. This level of active engagement by supervisors is the best strategy to ensure that deputy commissioners are considering, and will continue to consider, remedial sanctions.[87]

Compliance Measurement

The issue of compliance measurement in the Remedial Sanctions Order is limited to documenting the consideration of remedial sanctions at each step in the revocation process.[88] In the last Round, the Special Master found the Defendants to be in substantial compliance regarding consideration of remedial sanctions at each stage of the parole revocation process. This finding was based in part upon modifications that had been made to the revocation data base. In this Round, the Board is conducting supervisory reviews of probable cause hearings, which provide yet another ongoing compliance process regarding this issue.[89]

Alternative Placement in Structured and Supervised Environments and Self-Help Outpatient/Aftercare Programs

In this Round, Defendants submitted a discussion paper on the two issues of alternative placements in structured and supervised environments and self-help programs. The parties disagree regarding whether this issue is within the scope of the case. The Defendants' paper provides a thoughtful description of many of the remedial sanction programs that are delivered, subcontracted and/or used by parole agents and other

decision-makers in the *Valdivia* process. Once the Plaintiffs have had adequate time to review the paper, the parties should enter into negotiations to resolve this issue. This issue is part of the larger discussion of what constitutes an adequate array of sanctions to satisfy the requirements of the Permanent Injunction. The Special Master encourages the parties to include this topic in the discussion of substantial compliance for the Permanent Injunction.

Serving the Needs of the Parolees with Severe Mentally Illness

The issue of the level of acuity of mental illness that Defendants must be able to respond to with remedial sanctions has not been agreed upon by the parties. It is an issue that is important to achieve compliance with the Permanent Injunction.

The Special Master finds it unrealistic to expect community programs, be they jail or community-based, to deliver the level of care that an in-patient psychiatric setting would offer. The Court has clearly instructed the Defendants to use the Welfare and Institutions Code § 5150 process for referring paroles in need of acute mental health care to in-patient settings.[90] Defendants are enforcing this order through their Policy 09 09.[91] There is some documentation in monitoring reports that parole agents are familiar with this process and have used it.[92]

Permanent Injunction Requirements

In addition to addressing all of the requirements of the Remedial Sanctions Order, Defendants have also addressed some issues that are necessary for compliance with the requirements of the Permanent Injunction. The most significant question to be answered

regarding remedial sanctions in the Perm anent Injunction is what is a sufficient number and type of rem edial sanctions to achieve substantial compliance? The three issues reserved as unresolved in the 2007 Re medial Sanctions Order all speak to this question and could help to shape the compliance standard.

Defining Substantial Compliance

The Special Master has undertaken several efforts to get the parties to define substantial compliance with rega rd to rem edial sanctions. All ef forts failed to re ach a conclusion. The Special Master has been tolerant of the r easons both the Defendants and the Plaintiffs have of fered regarding why they can not or will not attem pt to def ine substantial compliance. Competing demands, budget crisis, staff turnover and other reasons have certainly been credib le reasons fo r past delays. That said , it is clear that these issues are not on e-time events and to delay any long er because of such issues is equivalent to putting off the issue indefinite ly. The progress in the realm of re medial sanctions is undeniable and the Defendants are to be congratulated for their consistent efforts in the past several Rounds to advance and refine the use of re medial sanctions in the revocation process. Should the parties not wish to meet and negotiate the definition of substantial compliance for remedial sanctions, the Special Master will provide the Court with a proposed definition in the next Round.

Transportation

Critical to the effective f unctioning of remedial sanctions programs is the ability to transport parolees to the program site. Delays in transporting parolees from prison and

jail to jail and community-based ICDTPs have challenged Defendants since the inception of the program. Not all programs require transportation, but clearly transportation is needed for ICDTP. Defendants must demonstrate the capacity to transport parolees in a timely manner. Defendants have made progress in this area this Round.

There has been a noticeable decrease in transportation problems this Round. Monitoring reports, Plaintiffs' inquiries into individual parolees' problems, and observations of parolee defense counsel all indicate fewer delays in transporting parolees to ICDTP this Round. Defendants' data supports these observations.[93]

Eight Parole Service Associates were hired and began work this Round. They assist in tracking parolees from endorsement to placement. They check central files for issues such as medical, mental health and/or outstanding warrants that might be impeding transportation and assist in resolving the issues so the parolee can be transported.[94] Funding to hire 7 parole agents,[95] who will also assist in this area, has been frozen.

The addition of the eight Parole Service Associates has resulted in a steady decline in transportation delays. In June, there were 235 instances of delays in transportation. In July, the number had dropped to 183, and by August, the number had declined to 139.[96] When compared to the number of parolees admitted to ICDTP for June and July, the approximate percentage of cases where there is a transportation delay remains high at 36% for June and 32% for July.[97] Defendants are making steady progress on this issue. The Defendants' continued attempts to resolve this issue demonstrates a commitment to providing meaningful access to remedial sanctions.

Compliance Oversight and Quality Assurance

Essential to achieving substantial compliance in the Permanent Injunction is the ability of the Defendants to demonstrate that they have designed and implemented effective compliance and quality assurance systems. Compliance ensures that the elements of the Permanent Injunction are implemented. Quality assurance systems ensure not only that the legal requirements of the injunction are met but that good correctional practice continues to refine systems and programs long after the requirements of the injunction have been met. Defendants have developed and are beginning to refine both compliance and quality assurance systems in the area of remedial sanctions.

The Office of Substance Abuse and Treatment Services, the Board's Workforce Development Unit, the Paroles Division Litigation Compliance Unit and the Office of Court Compliance have all created compliance and quality assurance systems that are being institutionalized to ensure that remedial sanctions are available, understood, considered and used by the revocation process decision-makers. These units would benefit by taking time to reflect on their individual efforts, document their efforts, and outline what remaining steps need to be taken to ensure that these units have collectively created the quality assurance systems needed to institutionalize the changes required by the Permanent Injunction. The collective efforts of these units are impressive, but the lack of a systemic representation of both efforts and remaining steps masks the level of progress being made.

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Forms provided to parolees are to be reviewed for accuracy, simplified, and translated to Spanish (¶19)

The Board recently finalized the translation for 10 key forms and distributed them for use during notices of rights, contacts concerning absconding, and hearings. This is a welcome advance. Plaintiffs have identified an additional 19 forms from the various divisions where they assert that translation is needed. Most forms reportedly also have been simplified as required; two Paroles Division forms remain to be simplified for a lower reading level.

To complete this requirement, the parties must negotiate the scope of the remaining forms to be included, and must shepherd the translation process as they did for the first 10 forms. This appears to be straightforward and attainable in the short term.

Appeals (¶31(a)

While appeals are not subject to a *Valdivia* court order, they were expressly reserved in the Permanent Injunction as an open issue in the litigation that the parties expected to negotiate. That issue remains unresolved. In the meantime, Defendants employ a system they distinguish from appeals. The parties have reached agreement on the Defendants' system of "Decision Review."

The Decision Review policies that the parties have agreed upon were implemented in July 2009. The Board's Quality Control Unit has created a tracking system for decision review outcomes that are initiated by an external source. The Quality Control Unit has tracked data from February 1 through July 31, 2010. [98]

The data indicates that the majority of the requests, slightly over 76%, are due to a perceived error of law, with most of the other requests based on a perceived error of fact, 19%.[99] Most of the requests are generated from the parolee (60%), with most of the remaining requests generated by the parolee's appointed counsel (24%). The data supports the Defendants' contention that most of the requests do not come from the Paroles Division or the Board. 57% of the review requests are the result of an action taken at a revocation hearing and 31% are generated from a probable cause hearing. Out of the 144 cases reviewed, 8% result in an amendment or modification and 8% are rescinded; 84% of the requests result in dismissal or reaffirm the original decision. The Board is also trying to determine if it can track whether a parole hold was placed pending decision review and when the review results in a new hearing the duration from the date of decision review is completed to the date the parolee receives a new hearing.

This data and the Decision Review process needs to be reviewed with Plaintiffs before the parties can reach final agreement that the decision review process is functionally effectively.

- There is progress on developing a way to measure the outcomes in decision review

Defendants shall develop training, standards, and guidelines for state-appointed counsel (¶17)

Parties' counsel negotiated minimum standards for administration of the attorney panel, which reportedly were incorporated in the Request for Proposal let in September 2007, as well as in policies and procedures. The parties intended to continue to negotiate concerning standards and guidelines for individuals representing parolees, including a variety of legal duties, revocation procedures, and *Valdivia*-specific advocacy and

obligations. To the Special Master's knowledge, those negotiations have not taken place. As there is likely to be little controversy in the substance of those standards, this is a topic that the parties likely could bring into substantial compliance in the near term with concentrated and sustained effort.

- There is good compliance with this requirement.

Requirements in Substantial Compliance

As discussed in previous reports of the Special Master, where Defendants' systems have proven highly effective consistently over time, the Special Master will consider those requirements to be fulfilled and they will be termed "substantially compliant." This will generally apply to performance across the system, but an individual Decentralized Revocation Unit may be able to reach this status.

Substantially compliant items will remain within the Permanent Injunction, but the Special Master and the Plaintiffs will discontinue review of such items unless they are inextricably linked with review of the hearing process. Requirements will remain in this status unless and until a significant decline in performance surfaces. Defendants should continue to review these items during quality improvement efforts at regular intervals to prevent such a decline.

Prior Rounds

During prior Rounds, the following items were determined to be in substantial compliance:

Requirements from the Permanent Injunction

- By the tenth business day after the hold, Defendants shall create a Return to Custody Assessment
- Revocation hearings are to be held within 50 miles of the alleged violation
- Counsel shall have access to all non-confidential portions of field files
- Designation of information as confidential
- Consideration of remedial sanctions at each step

Requirements from the April 2007 Remedial Sanctions Order

- Policies and procedures
- Interim remedial sanctions
- Expanding jail- and community-based ICDTP programs
- Determining availability of ICDTP
- Electronic In-Home Detention
- Sharing information with parolee defense counsel
- Training about remedial sanctions
- Reporting on the development of the Parole Violation Decision-Making Instrument
- Female parolees
- Out-of-county transfers

As required, Defendants reviewed and reported on the items that were deemed in substantial compliance during the Seventh Round. The report indicated that Defendants have maintained these items in substantial compliance.

There was a partial exception for return to custody assessments at three institutions, where timeliness fell to 77% to 90%, substantially below the level at which substantial compliance was determined. Defendants initiated closer oversight to assess and address the causes, and to generate more frequent reports to demonstrate whether the solutions were effective.[100] In each case, the solutions improved compliance levels quickly; the most recent figures range from 91% to 96%.[101] One institution bears monitoring longer as its numbers remain lower than expected. This is exactly the

approach the Special Master encourages – monitoring, inquiry and self-correction will help demonstrate Defendants' ability to resume full responsibility for the revocation system.

It is the Special Master's opinion that the requirements found in substantial compliance in the Seventh Round remain in that status.

Current Round

As discussed above, the Special Master considers the remaining two requirements of the Remedial Sanctions Order – evaluation and parolees with mental disabilities -- to have been met. He recommends that the entire April 2007 Remedial Sanctions Order be ruled in substantial compliance at this time.

Additionally, Defendants have greatly improved and sustained the timeliness of return to custody assessments at Los Angeles County Jail. For the past year, this facility has maintained a timeliness rate of 95% as to all cases. A large proportion of the late cases were completed the following day. Although questions remain as to the accuracy of the information system, this rate is equivalent to that shown for the rest of the system. Los Angeles County Jail should join its colleagues in relief from monitoring this topic as it is substantially compliant.

Recommendations

The Defendants have demonstrated compliance with some requirements of the Permanent Injunction and the Remedial Sanctions Order, meeting their essential aim. I therefore recommend that the Court order that the following requirements are

substantially compliant, and that the subjects will therefore no longer be a primary focus of Plaintiffs' or the Special Master's monitoring unless they are inextricably linked with review of the hearing process, the remedial sanctions obligations of the Permanent Injunction, or arise in the course of investigating an individual parolee's situation. These items will remain in this status unless and until it comes to the parties' or the Special Master's attention that there has been a significant decline in compliance.

These orders should apply to the following requirements:

- All provisions of the Stipulation and Order Regarding Remedial Sanctions, dated April 4, 2007
- The return to custody assessment step of the revocation process for all facilities, including Los Angeles County Jail

I recommend that the Court order the Defendants to report the status of these requirements to all parties every six months, beginning on July 8, 2011.

For the reasons detailed *supra*, Defendants are in violation of this Court's November 13, 2006 Order concerning information system changes. Although Defendants' efforts since the issuance of the draft Ninth Report appear promising, it is critical that these efforts be sustained, in contrast to past efforts, and therefore further orders are warranted. The Special Master recommends that the Court order:

1. Defendants must conduct a comprehensive review of the integrity of the data in RSTS and how it is displayed in reports. This will include reviewing the RSTS coding to identify precisely how the data is being defined, the assumptions on which the system operates, and how each report is collecting, categorizing, and reporting data, including which populations are included and excluded from each report and according to what variables. This review shall be

led by the Office of Audits and Court Compliance and the Board of Parole Hearings, and must be completed within 90 days of this Order.

a. The results of this review must be recorded in detail, written in language meaningful to non-technical professionals, and provided to the Special Master within 120 days of this Order.

2. Within 120 days of this Order, Defendants shall execute an external contract to ensure that adequate ongoing technical support is available for RSTS.

3. Within 180 days of this Order, Defendants must complete a comparative analysis to determine whether RSTS can be revised in a timely fashion to meet Defendants' obligations to demonstrate compliance with the various components of the Permanent Injunction, whether the relevant portion of the anticipated replacement information system ("SOMS") can fulfill this obligation, or whether another system is needed.

4. Defendants must produce a plan to address any data integrity issues identified in the review described in requirement #1, and to complete the creation of, or changes to, the 40 reports previously identified through the efforts of the RSTS user project manager workgroup and the Special Master.

a. To the extent that Defendants' comparative analysis determines that another system is preferred, this plan must identify with specificity the intended replacement system, the steps necessary to implement it, the strategies for obtaining funding, and feasible timelines for implementing it expeditiously.

b. The plan must include feasible timelines for completing these report changes on a regular schedule.

c. The legends for each report must be updated to reflect the more detailed information generated under requirement #1 above as they are built or revised.

d. The plan must be submitted to the Special Master within 240 days of this Order.

e. To the extent the intended solutions do not resolve the problems, Defendants will continue to work on solutions until the Special Master determines that the problems are addressed.

f. If other substantial issues surface with the accuracy, completeness, and utility of RSTS reports, Defendants will amend the plan to include the plans for addressing the newly identified issues within 15 days of the Special Master or Defendants discovering those issues.

5. In the course of designing the new reports and changes described herein, Defendants will augment their effort with routine input from representatives of the affected divisions who are currently using RSTS in daily field operations, representatives of their management, and CalPAP.

6. Defendants will complete the remedies for any data integrity problems, new reports, and report changes, on the schedule they set forth in their plan.

Respectfully submitted,

_/s/*Chase Riveland*

Chase Riveland
Special Master DATED: October 21, 2010

[1] Defendants object to mention of jurisdiction on the basis that it is not required in the Permanent Injunction.
[2] See individual 1502bs contained in the electronic file titled NORs-1502bs
[3] See monitoring reports contained in the electronic file titled NORs-1502bs
[4] *Id.*
[5] See Special Master's fourth report (monitoring studies showed 20%) and sixth report (larger studies with better methodology showed 32%)
[6] For example, compare Closed Case Summary and NOR Timeliness, each run for Feb. 1 through Jul. 31, 2010. For greater detail, please see prior reports of the Special Master.
[7] Defendants wish to emphasize that this is not expressly named in the Permanent Injunction.
[8] The source for this Jurisdiction section is informal communications with Defendants' executive staff
[9] Special Master's observations; informal communication with CalPAP and Defendants
[10] Memo re: non-revocable parole dated Jan. 28, 2010
[11] CCR 3084.6(b), CCR 3084.7(a)
[12] Informal communications with Defendants
[13] Probable Cause Hearing Audit Process memo dated May 11, 2010
[14] Probable Cause Hearing Evaluation and score sheet
[15] Probable Cause Hearing Compliance Review Report, Sept. 2010
[16] See RSTS records of all probable cause hearings in the final week of Jul, 2010 and individual records in the electronic folder titled PCH or its subfolders. This study had three components. One set was drawn from a snapshot of the hearings conducted in the most recent week of the data period. Another set was drawn from the reviews conducted by the ACDCs (hearing officers' supervisors). A third set was drawn from hearings CalPAP identified in which attorneys challenged probable cause. Each was an accidental sample.
[17] Other Objections for each month from Feb. through Jul. 2010
[18] Unless the first attempted hearing was itself untimely
[19] The data reports concerning postponements and time waivers totaled 3,637 during the Round, approximately 10% of the 35,454 probable cause hearings shown. However, the postponement reports contain duplicate entries and revocation hearing postponements, so the actual percentage cannot practically be discerned.
[20] Reviewers catalogued the number of cases reheard within one week (treated as a reasonable time for purposes of this study), the number reheard in 8 to 17 days, and the number requiring 18 or more days to rehearing (treated as an unreasonable time for any hearing for purposes of this study). Only the cases in the middle category were examined for certain data points such as type of hearing, as that timeframe was considered reasonable for a revocation hearing but not for a probable cause hearing.

Excluded from this study was a large number of administrative entries and postponements attributed to causes where a reasonable length of time is situation-specific: mental health crises and quarantines, for example. Many of these were very lengthy, but reasonableness could only be determined case by case through 550 cases. The number of lengthy cases among them, along with cases in other subpopulations treated as facially reasonable where that judgment might not stand up under scrutiny, constitute a total similar to that in text of the instant report.
[21] The parties and Special Master have not defined a reasonable length of time to rehearing for postponed probable cause hearing. By this reference, the Special Master does not intend to endorse any particular standard. Rather, this length of time is a conservative measure that few could argue is too strict of a standard. The ultimate measure may be one week, or it may be a shorter time period. Contents of electronic folder titled PP PCH Study.
[2222] These were determined by examining a large, randomly selected sample (28%) of all time waiver cases closed during the Round; 21% of them extended beyond the time waived. Only the actual cases identified are reported here, rather than the percentage applied to the full population. Because of this extremely conservative approach, the likely number is much higher – this representative sample is likely to yield 3½ times this many case. Closed Case Summary – Good Cause Postponement (run for timeliness waiver reason only), Feb. 1 through Jul. 31, 2010; electronic document titled Time Waiver Study for Special Master 09_10.xls

Additionally, the total includes cases identified by reviewing a small handful of open time waiver reports for cases late at the time the reports were run, controlling for duplicates across reports. Again, there predictably are significantly more to be identified in a more comprehensive review of open case reports.

[23] These are measured from return to California. Closed Case Summary – Extradition, Feb. 1 through Jul. 31, 2010; Closed Case Detail – Extradition, Step PCH for each DRU with late cases

[24] The open case reports display the timeliness of the case for the step in which it is pending at the time the report is run. Case by case analysis is the only way to determine whether prior steps were timely for that case. Thus, one cannot determine the timeliness of the probable cause hearings for those cases currently pending revocation hearing, about 24% of the probable cause hearings on these reports.

[25] Parolee Activated Optional Waiver, Feb. 1 through Jul. 31, 2010, run collectively and for each DRU; Optional Waiver Taken – Open Cases, for each of Mar. 20, Apr. 12, Jun. 25, Jul. 8, Aug. 30, and Sept. 13, 2010;

[26] Closed Case – *Valdivia* Timeliness Rules, Feb. 1 through Jul. 31, 2010; Open Case Summary for each of Mar. 20, Apr. 12, Jun. 25, Jul. 8, and Aug. 30, 2010

[27] Other Objections for each month from Feb. through Jul. 2010

[28] Those orders were upheld on appeal and a petition for rehearing en banc was denied

[29] Memo re: Comito Review Process, Mar. 1, 2010

[30] Comito Objection Summary, Feb. 1 through Jul. 31, 2010; Comito Objections Denied and Comito Objections Granted, run for each of those months

[31] *Id.*

[32] See individual records in subfolder of electronic folder titled Comito and Other Objections; also a sample reviewed from Comito Objections Denied and Comito Objections Granted, each for Jul. 2010

[33] Comito Objections Denied, Comito Objections Granted, and hearsay objections contained in Other Objections, each run for each month from Feb. through Jul. 2010

[34] CDCR's report captures 614 relevant cases for the Round. CalPAP's Comito and Other Objections reports reflect 800.

[35] Other Objections, each run for each month from Feb. through Jul. 2010

[36] *Id.*

[37] 87 cases had two proceedings after activation and were concluded later than 35 days from activation; these two proceedings were likely an optional waiver review and a revocation hearing, but could have included optional waiver reviews that were postponed before concluding at that step. Parolee Activated Optional Waiver, Feb. 1 through Jul. 31, 2010

An additional 16 cases concluded later than 35 days from activation but appeared as only one step, so may have been very late optional waiver reviews.

[38] These are most likely to be revocation hearings, but it was impractical to separate any that occurred at probable cause hearing. Closed Case Summary – Good Cause Postponement, Feb. 1 through Jul. 31, 2010; Closed Case Summary – Not Good Cause Postponement, Feb. 1 through Jul. 31, 2010;

[39] Contents of electronic folder titled NIC and its subfolders

[40] Contents of electronic folder titled Rev extension

[41] See joint monitoring reports for RJD for January and June visits

[42] See, e.g., revocation extension monitoring report issued by Susan Christian dated Jun. 15, 2010

[43] Order of Nov. 13, 2006

[44] See, e.g., Closed Case Summary – Good Cause Postponement and Parolee Activated Optional Waivers, each run for Feb. 1 through Jul. 31, 2010

[45] See RSTS_Reports_Status June 2010 w-OSM observations.xlsx

[46] RSTS Progress Report 6-17-10 to 8-31-10.doc

[47] Taken from the March 15, 2010 meeting minutes that were shared with and approved by the Parties.

[48] See Monitoring Process Notes 3152010.doc

[49] See Cell 41 Pilot Project at LACJ.htm

[50] See BPH update on LACJ.htm

[51] See SKubicekActitities.htm. On August 16, 2010 Parole Administrator Steve Kubicek provided the Special Master a list of activities staff had engaged in that demonstrate continued training and work to improve outcomes at Los Angeles County Jail.

[52] Steve Kubicek, Parole Administrator, Region III has indicated that the changes are still forecast to be completed by December 2010.

[53] Informal communications with CalPAP
[54] Informal communication with CalPAP; based on CalPAP's review of recent mail logs
[55] See Stipulation and Order Regarding Remedial Sanctions, April 4, 2007, Order, June 8, 2005.
[56] ICDTP had a count of 1458 at the beginning of March, dropped to as low as 1331 in April and by the end of August was back at 1493. This is a decrease of approximately 300 from the 1800 funded beds. There has been no change in eligibility and no decrease in the number of referrals accepted. See excel spread sheets 3-1-2010 Continuing Care Weekly Report.xls thru 8-3-2010 Continuing Care Weekly Report.xls. Plaintiffs and Defendants indicated during the focused DRU monitoring tours at Santa Rita that there appeared to be more parolees rejecting ICDTP than in the past.
[57] See Jail Day for Day Comparison for One Third Time on RTC.xls This chart shows the amount of time difference before and after the good time change in jails.
[58] OSATS Staff Services Manager, Kevin Hoffman shared this observation in conversation with OSM Deputy Director, Nancy Campbell on Sept 9, 2010.
[59] Third Prong Remedial Sanctions Report, Sept. 2, 2010
[60] See the NRP sections of the parole tab on the CDCR website. This data is updated and will change over time.
[61] See OSM 4 for description of enhanced criteria for ICDTP services for mentally ill and OSM 7 for further documentation that there are more than 20 beds per region that provide the enhanced services for the dually diagnosed.
[62] See Region I, II, III and IV ADA-EOP-CCCMS.xls. For the Region I report, the password is osats2010. Sometimes programs listed will not show on the list because they are part of a larger umbrella program. For example, in Region IV, Arrow House falls under Inland Valley in San Bernadino.
[63] See Section IV C of the Remedial Sanctions Order.
[64] An Evaluation of Five Parole Programs 2010.pdf; PPPC Evaluation Report.pdf.
[65] It should be noted that best correctional practice is not to provide the same or equivalent programs for females but rather gender responsive programs. That is to say, to provide women only with programs that are equivalent to those designed for men does not meet the unique needs of women.
[66]For a current example see Region II SASCA Providers for Female Clients.xls. For data from all regions see OSM 8.
[67] *Valdivia* Staff Vacancy Report Sept. 2010
[68] See PDU Quarterly July 2010 Issue (2).doc.
[69] See correspondence with Rodney Gray, FW:PDU Quarterly Newsletter - July 2010-Message.html
[70] See FOTEP PHONE LISTupdated 9-8-10.xls
[71] See FOTEP Weekly 3-15 to 8-30 xls. Since the reports are weekly and sometimes include days from other months, the monthly figure is the total from the first weekly report of each month. Thus the numbers represent a reasonably accurate estimate of use but it is not exact.
[72] Distribution was confirmed in a conversation between OSM Deputy Campbell and Kevin Hoffman, OSATS Program Manager.
[73] See Region I, II and III ADA-EOP-CCCMS reports. While the SASCAs were not asked by the OSM to report on the issue of disability three out of four regions did.
[74] See discussion in OSM 8 re: accommodation expenditures.
[75] See Jail-based ICDTP exclusionary criteria ICDTP_Matrix0001(2).pdf
[76] See Sc-Defs Letter re Discrimination in ICDTPs 3-19-10 581-9 letters.pdf
[77] See CountyJailOrder.pdf. This case has just been remanded back to the District Court. The Court of Appeals did agree that the State has responsibility to ensure access for disabled parolees when in county jails.

[78] See ICDTP Jail Exclusionary Criteria - http://www.cdcr.ca.gov/DARS/docs/ICDTP_Matrix.pdf

ICDTP Community Provider Listing - http://www.cdcr.ca.gov/DARS/docs/ICDTP_Provider_List.pdf

ICDTP Daily Bed Availability Report - http://www.cdcr.ca.gov/DARS/docs/ICDTP_Bed_Availability_FINAL.pdf

[79] See PA III 5-10.pdf

[80] The first DAPO Block Valdivia/Armstrong Training took place in September of 2007. See Training Memo 7-20-07.pdf. The training has improved significantly each year and has developed into a more interactive and informative training.
[81] For examples, see LACJ Training Efforts.htm; OSATS Provider Training Invitation March 25 2010.doc
[82] See Valdivia Training for DAPO Executive Staff.htm and LACJ Training Efforts for an example of remedial training.
[83] The first deputy commissioner training was in November of 2006. It was at best adequate. Since then the Board has delivered trainings for current Deputy Commissioners in March and August 2007,April 2008, April, August and November 2009 and March 2010. The August 2010 was deferred until October and now is re-scheduled for Dec. 2010. In addition, two new Deputy Commissioner Academies have been held in Dec 2007 and June 2009. See re: Valdivia Training.
[84] See FW: OSM 9th Report Inquiries.htm
[85] Examples include: RD #9a ICDTP (8-17-10).doc; ICTDP Memo 1-5-10.pdf; IDCTP PPT.pdf; RD #9 Remedial Sanctions RD (9-13-10).doc; RD 9 Remedial Sanction Criteria (9-13-10).pdf; RD#19 PVDMI (9-13-10).pdf
[86] A type of employee who has retired from state service but is available to work for a limited number of hours per year.
[87] See PCH Audit Instrument 2010 (4 fillable pgs).pdf, page 1
[88] The exact language from the Remedial Sanctions Order is : Compliance Measurement: Defendants' plan, including timeline, for the modification of information systems, including RSTS and CalParole, to track the consideration of remedial sanctions at each stage of the parole revocation process. See Remedial Sanctions Order 4-3-07.pdf
[89] The Probable Cause Audit includes checking to see that the deputy commissioner considers remedial sanctions. See PCH Audit Instrument 2010 (4 fillable pages).pdf
[90] See Order re DMH 8-8-08.pdf, Order item 1.
[91] See DAPO Policy 09 09 Treatment for Mentally Ill Parolees.pdf
[92] For example, see Valdivia RJD Monitoring Report 9-16-10.
[93] Mary Swanson, Director of CalPAP, informally surveyed field offices about transportation problems and all said there was significant improvement and where problems occurred they have a contact person for problem resolution. Conversation between Swanson and OSM Deputy Campbell, September 13, 2010.
[94] See ICDTP Placement Coord and PSA Listing.xls
[95] The original funding request of 11 parole agents has been reduced to 7 parole agents.
[96] See e-mails TransportsJuneJuly.htm and TransportsAugust.htm.
[97] See rpt_count_march thru July2010.rtf. This table shows the number of parolees admitted to ICDTP March through July.
[98] See Ex Dec Rev – Data Collection 9-10-10 (2) doc.
[99] See Decision Review (As of 9-15-10) Final Redacted.pdf. All percentages are rounded in the text of the report.
[100] Substantial Compliance Status Report, Jul. 7, 2010
[101] Electronic document titled Follow-up reporting.docx