

Armstrong salt

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 PETER J. SIGGINS, Senior
Assistant Attorney General
3 GEORGE D. PRINCE, #133877
JAMES M. HUMES, #147927
4 Deputy Attorneys General
50 Fremont Street, Suite 300
5 San Francisco, California 94105-2239
Telephone No. (415) 356-6037

6 Attorneys for Defendants

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 JOHN ARMSTRONG, et al.,) No. C-94-2307 CW
11)
12 Plaintiffs,)
13)
14 v.)
15)
16 PETE WILSON, et al.,)
17)
18 Defendants.)

**STATEMENT OF STIPULATED
FACTS** (For Settlement
Purposes Only)

Armstrong v. Davis



PC-CA-001-001

*not entered
in log*

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. GENERAL FACTS 1
II. MISCELLANEOUS ADA PROVISIONS 2
III. 1824 GRIEVANCE PROCEDURE 3
IV. COMMON FEATURES OF CDC PRISONS 3
V. CONSTRUCTION PROJECTS 5
VI. RECEPTION CENTERS 6
VII. EMERGENCY PROCEDURES 7
VIII. CLASSIFICATION AND INMATE ASSIGNMENTS 8
IX. ADMINISTRATIVE SEGREGATION AND SHU 10
X. INMATES WITH MOBILITY IMPAIRMENTS 11
XI. INMATES WITH HEARING IMPAIRMENTS 12
XII. INMATES REQUIRING DIALYSIS 14
XIII. INMATES WITH VISION IMPAIRMENTS 14
XIV. INMATES WITH LEARNING DISABILITIES 15
XV. PAROLE 17

1 The parties, through their respective attorneys, hereby
2 agree that the facts set forth below are undisputed and
3 constitute the settled facts in this case.

4 I.

5 GENERAL FACTS

6 1. The California Department of Corrections (the
7 "CDC") operates over 31 prisons housing in excess of 130,000 male
8 and female inmates.

9 2. For the last several years, CDC's requests for
10 specific funding to implement Title II of the Americans with
11 Disabilities Act ("ADA") have been denied at various phases of
12 the funding process.

13 3. Some programs of the CDC receive federal financial
14 assistance.

15 4. CDC's total budget for fiscal year 1995-96 is
16 approximately 3.8 billion dollars.

17 5. CDC has conducted various surveys to identify
18 certain inmates with disabilities, the most recent of which
19 occurred in January 1995 and January 1996. Inmates with learning
20 disabilities were not included to be identified or counted in
21 these surveys.

22 6. In its survey of January 1996, CDC counted 1375
23 inmates with mobility, sight, hearing or speech impairments out
24 of a total inmate population of 131,632. The survey reflected
25 that ~~345 inmates use wheelchairs due to a permanent disability.~~
26 ~~The survey reflected that 650 inmates had a permanent lower~~
27 ~~extremity mobility impairment which substantially limited walking~~
28 and which may have required the use of an assistive device such

1 as a cane, prosthesis, or walker.

2 7. The survey reflected that 15 CDC institutions
3 housed at least one inmate who used a wheelchair due to a
4 permanent disability. Almost all institutions house prisoners
5 with other mobility impairments.

6 8. The survey reflected that 141 inmates are deaf or
7 have a hearing impairment such that their hearing, even when
8 augmented with a hearing aid, did not enable them to hear
9 effectively or to hear emergency warnings.

10 9. The survey reflected that most CDC institutions
11 housed at least one inmate with a hearing impairment.

12 10. The survey reflected that 219 inmates are blind or
13 have vision that cannot be corrected to 20/200 even with
14 corrective lenses.

15 11. The survey reflected that most of the inmates who
16 are blind or who have severe vision impairments are housed in one
17 of four prisons and that most prisons house some prisoners with
18 vision impairments.

19 12. CDC has clustered and continues to cluster other
20 specialized inmate populations. HIV-positive inmates are placed
21 in various units in facilities throughout the system. Inmates
22 with mental health concerns are clustered and frequently
23 separated from other inmate populations.

24 II.

25 **MISCELLANEOUS ADA PROVISIONS**

26 13. In April 1995, posted written notice of the ADA
27 was provided to CDC inmates and parolees and was read to some
28 inmates with vision impairments.

1 14. CDC has appointed a system-wide ADA coordinator
2 and has appointed an ADA coordinator at each of its prisons.
3 Some of the institution ADA coordinators have other
4 responsibilities that prevent them from spending significant
5 amounts of time on ADA issues.

6 15. CDC initiated its self-evaluation in 1995, but has
7 not completed it. The CDC is in the process of preparing a
8 transition plan.

9 **III.**

10 **1824 GRIEVANCE PROCEDURE**

11 16. On or about April 15, 1995, CDC established and
12 implemented a new administrative grievance procedure to provide
13 inmates and parolees with disabilities with a special process to
14 submit grievances or requests for accommodations/modifications on
15 matters related to their disabilities. This new procedure makes
16 use of a special form designated as a "CDC 1824."

17 17. Once the form is completed, it is submitted to the
18 appeals coordinator of the facility, bypassing the informal level
19 of the normal appeals process.

20 18. Although the form was available to most inmates
21 soon after the procedure was implemented, some institutions
22 failed to make the form available to all inmates as late as
23 September 1995, and there are still significant problems in
24 implementing this procedure.

25 **IV.**

26 **COMMON FEATURES OF CDC PRISONS**

27 19. Prisons share common features. All contain
28 housing units which are either dormitories (open spaces with

1 bunks or lockers) and/or cells. Cells are equipped with a
2 toilet, sink and bed or bunk. Most cells have a shelf and table.
3 Many housing units have a dayroom area which contains drinking
4 fountains, telephones, televisions and tables. All housing units
5 have shower facilities. Every prison has at least one yard for
6 outdoor recreation. Yards usually have drinking fountains,
7 toilets, sinks, and showers. Yards may have basketball or
8 handball courts, weight piles, and other recreational equipment.

9 20. Each prison has an administrative segregation unit
10 which consists of celled housing. Administrative segregation
11 units typically have their own yards which contain drinking
12 fountains, showers and toilets.

13 21. Each prison has visiting areas. There is
14 generally a large room or patio with tables where inmates have
15 contact visits, and another section where inmates have noncontact
16 visits. Noncontact visits occur in booths, some of which require
17 communications by a telephone. The visiting rooms normally
18 contain attorney visiting areas, both contact and noncontact.
19 Some prisons have family visiting units for overnight visits.

20 22. Each prison has at least one law library.

21 23. CDC inmates who require assistance in the handling
22 of legal matters or use of the law library are provided with
23 clerical assistance from inmate library clerks or library staff.
24 Inmates may also use the services of other untrained inmates to
25 prepare legal documents.

26 24. Each prison has at least one hearing room that is
27 used for hearings before the Board of Prison Terms. Inmates
28 typically wait for their hearings in holding cells which may

1 contain toilets and sinks.

2 25. Each prison has dining halls where most inmates
3 receive their meals.

4 26. Each prison has a canteen where inmates may
5 purchase personal items such as hygiene products and snacks.

6 27. Each prison has chapels for religious programs.

7 28. Each prison has health care facilities for
8 appointments with health care providers. Most prisons have an
9 infirmary.

10 29. Each prison has classrooms for academic education.
11 Many prisons have classrooms and workshops for vocational
12 education in a wide variety of subjects. Many prisons have
13 Prison Industry Authority or Joint Venture facilities. These are
14 manufacturing facilities operated jointly by private companies
15 and the prison system, utilizing inmate labor.

16

V.

17

CONSTRUCTION PROJECTS

18 30. From 1980 to 1992, staff and visitor areas of new
19 CDC prisons were designed and constructed in accordance with
20 state accessibility standards which met or exceeded federal
21 standards.

22 31. From 1980 to 1992, inmate areas of new CDC prisons
23 were not designed and constructed in accordance with any
24 accessibility standards.

25 32. CDC has constructed all its prison facilities
26 where construction commenced after January 26, 1992, in
27 substantial compliance with state accessibility standards.

28 33. Some major renovations to physical facilities used

1 by inmates within the CDC's prisons where construction commenced
2 after January 26, 1992, were built in accordance with state
3 accessibility standards. However, H unit at San Quentin, which
4 is the largest renovation project, was not built in accordance
5 with those standards.

6 **VI.**

7 **RECEPTION CENTERS**

8 34. When an inmate enters the CDC system, he or she is
9 first processed through, and temporarily housed at, a reception
10 center. There are a total of 13 operational reception centers in
11 the CDC system.

12 35. Inmates are processed through particular reception
13 centers depending upon which county they are coming from,
14 regardless of the inmates' ultimate classification score or
15 custody level, and regardless of the presence of any disability.

16 36. The reception center screening process does not
17 include a thorough assessment of prisoners' disabilities.
18 Inmates who are processed through reception centers are screened
19 through a medical examination, psychological testing and an
20 educational grade level assessment.

21 37. Except for the newest reception center, all of the
22 reception centers have received inmates with disabilities, and no
23 reception center may exclude any prisoner.

24 38. As of December 1995, CDC did not have a uniform
25 policy or procedure to identify inmates with disabilities for
26 transfer to designated institutions. However, as of December
27 1995, some reception centers understood that inmates who use
28 wheelchairs could only be transferred to California Medical

1 Facility ("CMF") or Avenal State Prison.

2 39. Some inmates who use wheelchairs and those on
3 dialysis have spent significantly longer periods of time (ranging
4 from several months to a year) in reception centers than the
5 average inmate.

6 40. Inmates in reception centers earn 1/3 sentence
7 credit (one day credit for every two days served). They are not
8 provided with the opportunity to earn 1/2 sentence credit (one
9 day credit for every day served) through participation in work
10 assignments, educational courses or vocational programs. Inmates
11 in reception centers generally do not have the same privileges as
12 inmates in mainline institutions, such as contact visits, family
13 visits and telephone calls.

14 41. Most reception centers are not built to
15 accessibility standards.

16 VII.

17 EMERGENCY PROCEDURES

18 42. The CDC has emergency policies and procedures,
19 such as for evacuation of facilities in the event of fire,
20 earthquake or other disaster, and provides training to its staff
21 in implementing emergency policies and procedures.

22 43. Prisoners with disabilities may require special
23 accommodations in order to ensure that they are evacuated in the
24 event of an emergency.

25 44. Many CDC facilities do not have written policies
26 or procedures that specifically address the evacuation of
27 prisoners with disabilities.

28 45. Prisons are staffed with custodial officers 24

1 hours a day, seven days a week. Custodial staff are trained to
2 evacuate prison facilities in the event of an emergency, but are
3 not specifically trained to evacuate disabled inmates.

4 46. Some CDC facilities do not have visual alarms or
5 strobe lights to warn prisoners with hearing impairments of
6 emergencies.

7 47. The CDC does not have a system-wide
8 process/procedure for visual identification of inmates with
9 disabilities while not in their cells. Emergency situations
10 arise within the prisons in areas other than living units, such
11 as yards. As a result of their disabilities, some inmates may
12 not be aware of, or be able to respond to, an emergency warning
13 or impending danger.

14 VIII.

15 CLASSIFICATION AND INMATE ASSIGNMENTS

16 48. After a classification process that considers a
17 multitude of factors inmates are assigned a custody level and one
18 of four classification levels, with level I being minimum custody
19 and level IV being maximum security. Although an inmate cannot
20 choose where he or she will be incarcerated or the program, if
21 any, to which he or she will be assigned, the inmate's
22 preferences are considered by prison officials when they make
23 these decisions.

24 49. Most inmates who participate in educational
25 classes, vocational training, or who have work assignments,
26 including those inmates with disabilities, earn one-half time
27 sentence credits to reduce their time in custody.

28 50. Health care providers can identify inmates as

1 "totally medically disabled," "medically unassigned," or "light
2 restricted duty." A "totally medically disabled" classification
3 allows the inmate to earn one-half time sentence credits without
4 being required to participate in programming, while a "medically
5 unassigned" classification allows the inmate to earn one-third
6 time sentence credits. A "light restricted duty" designation
7 allows the inmate to participate in programming in accordance
8 with a specified restriction to due a physical or mental
9 condition.

10 51. Some inmates with severe disabilities have been
11 inappropriately classified and identified as medically unassigned
12 rather than totally medically disabled and therefore only earn
13 one-third instead one-half time credits against their sentence.

14 52. Inmates designated as "light restricted duty" may
15 be assigned jobs that are inappropriate for their physical
16 limitations.

17 53. Inmates with disabilities are automatically
18 excluded from prison camps because of their disability.

19 54. Most CDC facilities have waiting lists for work
20 assignments.

21 55. Prison programs are not designed or intended to be
22 available equally to all inmates. Programs vary greatly among
23 institutions.

24 56. Some inmates with disabilities currently
25 participate in at least the following vocational programs:
26 Avenal: computer-related technology, electronics, graphic arts
27 and printing, and mechanical drawing; California Institution for
28 Men ("CIM"): animal grooming, computer repair, drafting, graphic

1 arts and printing, and shoe repair; California Institution for
2 Women ("CIW"): clothing & textile manufacturing; CMF:
3 horticulture and landscaping and office services; CCWF:
4 maintenance, mill and cabinet, office services, and upholstery;
5 Pleasant Valley State Prison ("PVSP"): graphic arts, masonry,
6 mill and cabinet, silk screening, computer technology, office
7 services, landscape, and upholstery. However, the range of
8 programs available to prisoners with disabilities is more limited
9 than the range of programs available to other prisoners.

10 **IX.**

11 **ADMINISTRATIVE SEGREGATION AND SHU**

12 57. Inmates may be placed in an administrative
13 segregation unit pending a disciplinary violation, for protective
14 custody, or for other administrative reasons. Inmates may be
15 placed in a segregated housing unit ("SHU") for a disciplinary
16 infraction, or for other reasons related to the safety and
17 security of the institution.

18 58. CDC's written policies and procedures regarding
19 administrative segregation and SHU do not specifically address
20 inmates with disabilities.

21 59. CDC has no specific written policies or procedures
22 regarding the use, removal, or restriction of auxiliary aids,
23 ambulatory devices, or prosthetic limbs for inmates in
24 administrative segregation or SHU.

25 60. In some instances, auxiliary aids, ambulatory
26 aids, wheelchairs or and prosthetic limbs have been removed from
27 inmates with disabilities while in administrative segregation or
28 SHU without regard to the inmate's medical needs or disciplinary

1 record.

2 61. CDC inmates who require assistance in
3 administrative segregation hearings may request and may be
4 assigned an investigative employee and/or staff assistant. These
5 assistants and employees may provide effective communication in
6 some cases and not in others.

7 X.

8 **INMATES WITH MOBILITY IMPAIRMENTS**

9 62. The CDC currently has at least the same number of
10 accessible beds as there are inmates who use wheelchairs, but not
11 for all inmates with mobility impairments. However, some inmates
12 with mobility impairments, including those who use wheelchairs,
13 are housed in cells that are not built in compliance with access
14 codes, and are not fully accessible to and usable by them.

15 63. Some prisoners cannot fit their wheelchairs into
16 their cells. Some prisoners cannot turn around or maneuver
17 within their cells. Some prisoners with mobility impairments
18 cannot use showers and toilets or cannot use them safely.

19 64. Other inmates are housed in infirmaries or
20 hospitals that offer some accessibility features, but are denied
21 access to programs accorded other inmates because of their status
22 as infirmary/hospital patients.

23 65. Still other inmates are placed in housing units
24 that are in substantial compliance with access standards, but
25 have limited program opportunities because many of the
26 programming spaces are not built to access standards.

27 66. Historically, inmates who use wheelchairs spent a
28 longer time in reception centers than do other inmates because

1 there were not enough accessible placements.

2 67. CDC does not currently have enough wheelchair
3 accessible vehicles, but is purchasing three of them for use in
4 each of the three CDC-designated geographical regions, North,
5 Central, and South. These vehicles are in addition to other
6 wheelchair-accessible vehicles operated or available at the
7 institutional level.

8 **XI.**

9 **INMATES WITH HEARING IMPAIRMENTS**

10 68. Prisoners with hearing impairments have a range of
11 ability to communicate. Some can read and speak English; others
12 do not. Some prisoners can communicate most effectively through
13 American Sign Language ("ASL"), some can communicate through
14 gestures and signs, and a small minority can lip read
15 effectively.

16 69. For some inmates with hearing impairments, hearing
17 aids will enable them to communicate effectively, while for
18 others hearing aids are ineffective.

19 70. CDC does not have a standardized method of
20 identifying and assessing hearing impaired inmates at the
21 reception center.

22 71. CDC does not have any policies or procedures that
23 specifically address the needs of hearing impaired inmates.

24 72. Neither qualified sign language interpreters nor
25 assistive listening devices, such as amplification devices, are
26 normally provided for CDC programs, such as educational and
27 vocational classes, self-help programs such as AA and religious
28 services.

1 73. At some institutions, one or two staff, who may
2 not have formal training as interpreters, know ASL with varying
3 proficiency and are occasionally used as interpreters. CDC has
4 no standardized process for evaluating the proficiency of these
5 staff members.

6 74. The dominant mode of exchanging information at
7 formal hearings and during medical visits for inmates with severe
8 hearing impairments is written communication. For informal
9 contacts, prison officials rely on the prisoner to read lips,
10 respond to gestures, write notes, or use an informal staff or
11 inmate interpreter. Someone who uses ASL may not be able to read
12 in English, unless specifically taught to do so. Typically lip
13 reading is a limited form of communication because even the best
14 lip readers understand only about 40% of the spoken words.

15 75. Prisons have public address systems which are used
16 to make general announcements. With the exception of California
17 Men's Colony ("CMC"), prisons do not have formalized procedures
18 for notifying inmates with hearing impairments of announcements.
19 At these prisons, some efforts may or may not be taken to notify
20 inmates with hearing impairments of announcements but some
21 correctional officers do not know all the inmates who have
22 hearing impairments.

23 76. As of December 1995, one or two prisons in the CDC
24 system did not have a Telecommunication Device for the Deaf
25 ("TDD"). Most prisons do not have volume control phones for
26 inmate use.

27 77. Some prisons do not have televisions in inmate
28 common areas that are closed captioned.

1 inmates with vision impairments by means of audio tape, large
2 print, or braille.

3 85. Computerized assistive devices for inmates with
4 vision impairments are only available at some prisons. Only one
5 prison, CMF, has a "Reader's Edge" computer that scans a printed
6 page and reads it back in a synthesized voice. Most vision
7 impaired prisoners at CMF are unable to use this computer because
8 they have not yet been trained to use it.

9 86. Some inmates with vision impairments have had to
10 rely on other inmates or officers to read or prepare printed
11 documents, including legal materials, medical forms and personal
12 letters.

13 87. Many inmates with significant vision impairments
14 develop their impairment while incarcerated. No prison offers
15 daily living skills courses for inmates with vision impairments.

16 88. At least two prisons have formalized programs in
17 which untrained non-disabled inmates provide assistance to
18 inmates with vision impairments through work assignment
19 positions. Educational materials are not available from the CDC
20 in alternative formats for use by visually impaired inmates.

21 XIV.

22 INMATES WITH LEARNING DISABILITIES

23 89. There are inmates with learning disabilities
24 within the CDC.

25 90. The phrase learning disability is not defined by
26 the ADA or the regulations implementing it. A learning
27 disability is defined by the Individuals with Disabilities
28 Education Act as a disorder in one or more of the basic

1 psychological processes involved in understanding or in using
2 language, spoken or written, which may manifest itself in an
3 imperfect ability to listen, think, speak, read, write, spell, or
4 to do mathematical calculations. The term includes such
5 conditions as perceptual handicaps, brain injury, minimal brain
6 disfunction, dyslexia, and developmental aphasia. The term does
7 not include persons who have learning problems which are
8 primarily the result of visual, hearing, or motor handicaps, of
9 mental retardation, of emotional disturbance, or of
10 environmental, cultural, or economic disadvantage.

11 91. The CDC does not normally undertake particularized
12 efforts to evaluate and assess whether inmates have learning
13 disabilities.

14 92. The CDC prisons have educational programs that
15 include academic and vocational instruction.

16 93. Inmate participation in CDC's educational program
17 is by assignment made by a classification committee from an array
18 of programming options. Assignment to an educational program is
19 not the elective choice of the inmate, although the inmate's
20 preference is considered.

21 94. CDC inmates are given an individualized assessment
22 to determine their grade level upon their arrival at a reception
23 center. When an inmate's grade level is lower than the sixth
24 grade, it is CDC policy to place the inmate in an academic
25 program.

26 95. CDC's educational program is based on a competency
27 based curriculum. CDC has no "special education" programs.

28 96. CDC's competency based curriculum differs from

1 non-competency based programs in that its curriculum is geared
2 toward individualized instruction rather than concentration on
3 traditional group instruction.

4 97. There are varying methods and techniques to treat
5 or remediate a learning disability. There is no one method that
6 is most effective. The effectiveness of any one particular
7 method varies from student to student, from teacher to teacher,
8 and from program to program.

9 98. Some CDC inmates who have learning disabilities
10 attend academic classes or vocational programs.

11 99. In some instances regular classroom teachers can
12 successfully teach students with learning disabilities.

13 100. CDC employs approximately 30 teachers who are
14 special education qualified and/or credentialed. However, they
15 do not teach in special education classes.

16 101. There is no CDC policy or procedure that
17 specifically addresses accommodating inmates with learning
18 disabilities.

19 102. Some CDC inmates have requested specialized
20 accommodations on the basis of a learning disability.

21 103. Various vocational programs and work assignments
22 require a minimum education level for inmate participation.

23 104. Prisoners with learning disabilities may require
24 accommodations to participate in programs and activities and to
25 engage in communications which require reading, writing, speaking
26 and hearing skills.

27 105. A CDC inmate who is unable to attend, or refuses
28 to attend, academic classes is eligible to be assigned to

1 alternative programming through which the inmate acquires 1/2
2 sentence credits.

3 **XV.**

4 **PAROLE**

5 106. The parole and community services division of the
6 CDC is responsible for some community based centers that house
7 inmates and/or parolees. These include community correctional
8 centers and community correctional re-entry centers (commonly
9 called work furlough). There is also a substance abuse treatment
10 unit and a restitution center.

11 107. Although inmates with mobility, sight or hearing
12 disabilities are not excluded by policy, mobility impaired
13 inmates who require a catheter or Foley bag or inmates on
14 dialysis are excluded from programs at community based centers.
15 In January 1996, a CDC survey reflected that there were four
16 inmates with mobility, sight or hearing impairments at any of the
17 community based facilities.

18 108. Most inmates released from incarceration are
19 required to serve a three year parole period. Projections for
20 1996 indicate that there are approximately 90,000 parolees in
21 California.

22 109. Prior to being released on parole, parolees are
23 provided with written notice of their conditions of parole, which
24 they are required to sign. Once released from prison, they must
25 maintain regular contact with their parole officer, usually by
26 going to a parole office or by speaking with their parole officer
27 on the phone. If a parole officer believes a parolee has
28 violated the terms of his or her parole, the parole officer may

1 cause the parolee to be arrested for a parole violation. A
2 parolee receives written notice of the alleged parole violation.

3 110. Written notice commonly provided to parolees,
4 including conditions of parole and written notice of parole
5 violations, are not provided in alternative formats. CDC does
6 not have any policies or procedures that specifically address the
7 communication needs of hearing impaired parolees.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED.

Dated: May __, 1996

PETER SIGGINS, Senior
Assistant Attorney
General

Attorney for Defendants

Dated: May __, 1996

DONALD SPECTER

Attorney for plaintiffs.

The statement of facts set forth above is hereby approved
and accepted for purposes of settlement only.

Dated:

CLAUDIA WILKEN, JUDGE
UNITED STATES DISTRICT COURT