



Detainees are housed at Cermak in one of three “wings.” Each wing has nine rooms, one of which is intended to be “ADA compliant.”

Plaintiffs’ expert inspected the “north wing” in 2007 and found that the purportedly “ADA compliant” room did not have appropriate grab bars around the toilet, and that the clearance on the sinks was slightly less than what is required for the sink to be fully accessible to a wheelchair bound detainee. (Schoonover Report, October 22, 2007 at 12, filed as Document 167-3 at 12.) Defendants’ expert agrees with these findings. (Graham Dep., 2/25/08, 103-04, filed as Document 167-9 at 471-472.)

Plaintiffs’ expert found that the sinks and toilets in the other rooms on the wing did not come close to being accessible to wheelchair bound detainees. (Schoonover Report, October 22, 2007 at 12, filed as Document 167-3 at 12.) Defendant’s expert agrees. (Graham Dep., 2/25/08, 74, 95-96, filed as Document 167-9 at 442, 463-64.)

Defendants do not consider the need for disability accommodation in making room assignments at Cermak. (Salazar Dep., 2/27/08, 48, filed as Document 167-10 at 347.) Class members have been assigned to the totally non-ADA compliant rooms, while able bodied prisoners were in the “ADA” room. (Courtney Dep., 1/13/09, 34-35, filed as Document 167-9 at 48-49.)

Defendants did not provide any accommodation for wheelchair bound detainees who were assigned to the non-accessible rooms.

Plaintiffs' expert also found in 2007 that the showers at Cermak were not ADA compliant, primarily because a wheelchair bound detainee would not be able to reach the shower controls or nozzle. (Schoonover Report, October 22, 2007 at 12, filed as Document 167-3 at 12.) (The standard for ADA accessibility is that shower controls be 48 inches above the finished floor ("AFF"). The shower controls in Cermak were 63 inches above the finished floor.) Defendants' expert agrees that this height is not ADA compliant. (Graham Dep., 2/25/08, 80-82, 87, filed as Document 167-9 at 448-50, 455.)

Defendants began to change the height of the shower controls in March of 2010, shortly before the original scheduled trial date. Plaintiffs' counsel observed that construction was underway on one of the shower rooms when Cermak were re-inspected on March 3, 2010. As depicted in the photographs set out below, it appeared that defendants were finally lowering the shower head and shower controls.

## Shower Room Construction, Viewed March 3, 2010



Defendants have not as yet come forward with any evidence to show that the shower controls in Cermak are now fully ADA compliant.

## II. RTU and Division II

Until the summer of 2008, all wheelchair bound detainees not held at Cermak were housed in the “RTU,” a facility constructed in 1984.<sup>3</sup> Defendants’ expert has conceded that the “RTU” did not comply with either the

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<sup>3</sup> The regulations implementing the ADA require that “[a] public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.” 28 C.F.R. §35.150(c). The regulations also require that when structural changes are necessary to comply with the ADA, those changes must be made “within three years of January 26, 1992,” the effective date of the ADA. 28 C.F.R. §35.150(c). *Cooper v. Weltner*, 1999 WL 10000503 (D.Kan. 1999).

The regulations implementing the Rehabilitation Act impose a higher duty. 28 C.F.R. §42.521(a) requires that facilities in existence when the act became effective must become “readily accessible to and usable by handicapped persons,” 28 C.F.R. §42.521(a), within the three year period after the regulation was adopted in 1980. 28 C.F.R. §42.521(d).

ADA or the Rehabilitation Act because it did not have sinks, toilets, or showers that were accessible to wheelchair bound detainees. (Graham Dep., 2/25/08, 87, filed as Document 167-9 at 455.)

Defendants knew as early as 2004 that the toilets in the RTU did not comply with the ADA. (Graham Dep., 2/25/08, 13-14, filed as Document 167-9 at 381-82.) Defendants would not have incurred any undue financial expense if they had attempted to make the toilets in the RTU accessible for wheelchair bound detainees. (Graham Dep., 2/25/08, 87, filed as Document 167-9 at 455.) Defendants did not provide any accommodation for wheelchair bound detainees assigned to the “RTU.”

Defendants closed the “RTU” in the summer of 2008 and reassigned wheelchair bound detainees to Dorms “M” and “N” of Division 2. Plaintiffs’ expert inspected these dorms on October 17, 2008 and found that the sinks, toilets, and showers were not accessible for wheelchair bound detainees. (Schoonover Report, October 22, 2008, 6-9, filed as Document 167-5 at 6-9.) Defendants’ expert agrees. (Graham Dep., 4/14/08, 7-13, filed as Document 167-9 at 513-529.)

Defendants made some changes to the sinks and toilets starting in March of 2009 and continuing through June of 2009. Plaintiffs re-inspected dorms “M” and “N” on March 3, 2010. The re-inspection revealed that de-

fendants had not corrected the inadequate grab bars around the ADA accessible toilets. Plaintiffs have been advised by class members that this grab bar problem continues to the present time.

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## CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of April, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Jamie Melissa Sheehan, Ass't State's Atty, 50 W Washington St, Room 500, Chicago, IL 60602, and Daniel Francis Gallagher, Esq., Querrey & Harrow, Ltd., 175 W Jackson Blvd, Ste 1600, Chicago, IL 60604-2827, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: none.

/s/ Kenneth N. Flaxman

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