

IN THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2011-10638

DIVISION: "L"

SECTION: 6

ORLEANS PUBLIC DEFENDERS

VERSUS

MARLIN N. GUSMAN,
IN HIS OFFICIAL CAPACITY AS SHERIFF FOR THE PARISH OF ORLEANS

FILED: _____

DEPUTY CLERK

MOTION FOR PRELIMINARY INJUNCTION

Movant, the Orleans Public Defenders ("the OPD") seeks a preliminary injunction directing Sheriff Marlin N. Gusman, in his official capacity as Sheriff for the Parish of Orleans ("Sheriff Gusman"), to immediately cease infringing upon the Constitutional and Codal rights of the detainees of Orleans Parish Prison ("the Prison") and respectfully represents as follows:

1.

Sheriff Gusman is responsible for the condition, operation, maintenance, policies, and procedures of the Prison.

2.

The Prison is a complex of five facilities housing approximately 3,200 detainees on any given day.

3.

The Prison consists of five facilities: the House of Detention, South White Street, Conchetta, Old Parish Prison, and Templeman V.¹

4.

Movant, the OPD, represents indigent persons accused of city and state criminal charges, many of whom are held at the Prison.

5.

Each of the Prison facilities suffers from conditions that unreasonably and unlawfully impinge on Prison detainees' right to counsel.

6.

Each of the Prison facilities lacks adequate areas for confidential and private meetings between detainees and their attorneys.

¹ On or about March 1, 2012, some 200 pretrial detainees were moved to a new facility, Temporary Detention Center ("TDC"). TDC is located adjacent to Templeman V on South Salcedo Street. TDC has its own attorney – client visitation area which will be discussed in the attached Memorandum.

7.

Each of the Prison facilities has unreasonably limited visitation hours during which attorneys can meet with Prison detainees, resulting in unreasonably long wait time before attorneys can meet with their client-detainees.

8.

Each of the Prison facilities lacks adequate areas in which attorneys can have contact visitation with their client-detainees.

9.

These conditions violate the detainees' right to the assistance of counsel guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 13 of the Louisiana Constitution of 1974.

10.

These conditions further violate Article 511 of the Louisiana Code of Criminal Procedure, which states:

The accused in every instance has the right to defend himself and to have the assistance of counsel. **His counsel shall have free access to him, in private, at reasonable hours.**

(Emphasis added).

11.

The conditions at the Prison facilities have prevented attorneys employed by Movant from visiting and/or openly communicating with their clients detained at the Prison.

12.

These conditions negatively impact Movant, the OPD, by hindering effective attorney-client relationships, inhibiting effective legal representation in Orleans Parish, and wasting attorney time and resources.

13.

Accordingly, the OPD has brought this lawsuit, seeking a ruling that the conditions at the Orleans Parish Prison facility violate the Sixth and Fourteenth Amendments of the United States Constitution; Article I, Section 13 of the Louisiana Constitution of 1974; and Article 511 of the Louisiana Code of Criminal Procedure. The OPD further seeks a ruling requiring Sheriff Gusman to make permanent improvements to the facilities to remedy the above-described conditions.

14.

A preliminary injunction should be granted if the moving party establishes: (1) the likelihood of success on the merits; (2) entitlement to the relief sought; and (3) a threat of irreparable injury. *General Motors Acceptance Corp. v. Daniels*, 377 So.2d 346, 348 (La. 1979).

15.

Movant, the OPD, is likely to succeed on the merits of this case, because the current conditions at the Prison violate the rights of the detainees housed there.

16.

Movant, the OPD, is entitled to the relief it seeks because the government may not create conditions which violate the Constitutional rights of its citizens.

17.

Both the Prison detainees and their attorneys suffer irreparable injury when they are unable to develop an effective attorney-client relationship and when effective assistance of counsel is impeded, a violation of both federal and state Constitutional rights and state Codal rights.

18.

This matter is not yet set for trial.

19.

Movant anticipates that there will be testimony in support of this Motion.

WHEREFORE, for the above-stated reasons, and for the reasons stated in the accompanying Memorandum in Support, the Orleans Public Defenders moves this Court for a preliminary injunction directing Defendant, Sheriff Marlin N. Gusman, to cease infringing upon

the Constitutional and Codal rights of Orleans Parish Prison detainees, and to make permanent improvements to the Orleans Parish Prison facilities.

Dated: March ___, 2012

Respectfully submitted,

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Attorneys for Orleans Public Defenders

CERTIFICATE

I hereby certify that a copy of the foregoing Motion for Preliminary Injunction has been served upon counsel of record by placing same in the United States mail, postage prepaid and properly addressed, this ____ day of February, 2012.

IN THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

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MARLIN N. GUSMAN,
IN HIS OFFICIAL CAPACITY AS SHERIFF FOR THE PARISH OF ORLEANS

FILED: _____

RULE TO SHOW CAUSE

IT IS HEREBY ORDERED that Marlin N. Gusman, in his official capacity as Sheriff for the Parish of Orleans, appear on the ____ day of March, 2012 at _____ and show cause why the Motion of for Preliminary Injunction should not be granted.

New Orleans, Louisiana this ____ day of _____, 2012.

JUDGE

PLEASE SERVE:

Sheriff Marlin N. Gusman
through his attorney of record,
Blake J. Arcuri, Esq.
Usry, Weeks & Matthews, APLC
1615 Poydras Street
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DEPUTY CLERK

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Movant, the Orleans Public Defenders ("the OPD"), through undersigned counsel, respectfully submits this Memorandum in support of its Motion for Preliminary Injunction. The OPD seeks a preliminary injunction that prohibits Sheriff Marlin N. Gusman, in his official capacity as Sheriff for the Parish of Orleans ("Sheriff Gusman"), from permitting conditions in the Orleans Parish Prison facilities that violate the Sixth and Fourteenth Amendments of the United States Constitution; Article I, Section 13 of the Louisiana Constitution of 1974; and Article 511 of the Louisiana Code of Criminal Procedure.

BACKGROUND

The Orleans Parish Prison ("the Prison") is a complex of five facilities housing detainees in Orleans Parish.¹ The five facilities include the House of Detention/Tents, South White Street², Conchetta, Old Parish Prison, and Templeman V. Each of the facilities suffers conditions that infringe on a Prison detainee's right to counsel as guaranteed by the United States and Louisiana Constitutions. The Prison facilities lack confidential and private meeting areas in which attorneys may meet with their clients. The Prison facilities also have unreasonably limited visitation hours and unreasonably long wait times for attorney-client meetings. Further, the Prison facilities fail to provide sufficient meeting areas for contact visitation between attorneys and client-detainees. Sheriff Gusman is responsible for the condition, operation, maintenance, policies, and procedures of the Prison facilities that create an unconstitutional burden on a detainee's right to counsel.

¹ On or about March 1, 2012, some 200 pretrial detainees were moved to a new facility, Temporary Detention Center ("TDC"). TDC is located adjacent to Templeman V on South Salcedo Street. TDC has its own attorney – client visitation area which will be discussed below.

² South White Street is no longer being used as a facility to house female pretrial detainees. The women detainees were moved to Templeman V on or about May 25, 2011.

A. HOUSE OF DETENTION/TENTS

The House of Detention ("the HOD") is the largest facility of the Prison. It consists of a ten-story concrete building and eight windowless tent-like structures that were built by FEMA after Hurricane Katrina (known as "the Tents"). The entire population at the HOD/Tents must meet with attorneys in one attorney visitation area. That area consists of just four rooms along a hallway.

1. The HOD Lacks Private Meeting Spaces.

The HOD lacks any private meeting spaces for attorneys and their client-detainees. The attorney visitation rooms are not soundproofed in any meaningful fashion, and the thick and opaque partition separating the client-detainees and their attorneys requires them to speak loudly to each other through the barrier in order to be heard. Consequently, anyone waiting outside the visitation rooms and Prison deputies and other detainees waiting on the other side of the visitation rooms can clearly hear the client-detainees' conversation with their attorney. *See* Exhibit B to Petition, Affidavit of Aaron Clark-Rizzio.

Additionally, it is rare for all of the four attorney visitation rooms to be unlocked and available for use. Typically, only one or two rooms are unlocked and accessible to attorneys and their client-detainees. Indeed, it is not unusual for all of the rooms to be locked. *See* Exhibit B to Petition.

When none of the attorney visitation rooms are available, attorneys are left with no choice but to meet with their client-detainees in the visitation area's open space, which is separated by plexiglass. Attorneys and their client-detainees must use the telephone to understand each other through the plexiglass. Other detainees and prison deputies stand or sit immediately next to the detainee who is speaking with his attorney, while other attorneys or law enforcement personnel waiting in the adjacent open space can clearly hear the attorney's side of the conversation. *See* Exhibit C to Petition, Affidavit of Daniel Engelberg.

2. Attorneys Must Wait Unreasonably Long Times To See Their Clients.

As a general rule, attorneys must wait extremely long times to meet with their client-detainees at HOD. Wait times exceeding an hour are typical, and it is not unusual for wait times to exceed two hours. Frequently, the long wait times result in an attorney not being able to see his or her client, either because the attorney has another appointment or because the visitation hours end before the client-detainee is brought to the visitation area. *See* Exhibit A to Petition, Affidavit of Sandra Mayson; Exhibit D to Petition, Affidavit of Meredith Angelson.

The HOD's limited visiting hours, which are not always honored by Prison deputies, exacerbate these problems. Although the official hours of visitation are 7:00 a.m. to 10:00 a.m., 1:00 p.m. to 6:00 p.m., and 7:30 p.m. to 10:00 p.m. seven days a week, the reality is that evening and weekend visits are only occasionally permitted. When visits are permitted on the weekends, they are limited to between 5:00 and 6:00 p.m. only. Furthermore, on weekdays, deputies begin turning attorneys away at 9:30 a.m. and after 5:00 p.m. *See* Exhibit E to Petition, Affidavit of Lisa Parker; Exhibit F to Petition, Affidavit of Gregory Carter.

Collectively, these conditions waste countless hours of valuable attorney time and disproportionately affect the OPD's staff, whose indigent clients are the most likely to be confined pre-trial because of their inability to post bail.

3. The HOD Does Not Allow Contact Visitations.

The HOD provides no mechanisms—such as pass-through slots—that would allow attorneys to share and review documents with their client-detainees. Furthermore, the thick, dirty plexiglass and metal grid that separate client-detainees from their attorneys make it extremely difficult, if not impossible, for an attorney to show his or her client a document while he or she is in the attorney visitation room.

Because of these conditions, attorneys often must depend on Prison deputies to deliver potentially sensitive legal documents to client-detainees. The typical arrangement is for the attorney to meet the deputy who is escorting the client-detainee at a wire-mesh window near the attorney visiting area after the visit is over. The client-detainee is not brought to the mesh window. Instead, the attorney must hand the deputy the document and rely on him to deliver it to the client-detainee. If the deputy is held up handling another matter, he will tell the attorney to leave the document for the detainee at the window and that he will pick it up later to hand it to the client. Often, the document is never delivered to the client-detainee. *See* Exhibit H to Petition, Affidavit of Ariel Test; Exhibit I to Petition, Affidavit of Russell Barksdale.

After Movant filed its petition in the instant matter, thin "pass-through" slots were cut into the plexiglass and wire partitions at the HOD. However, these "pass-through" slots are inadequate because they are so thin that it is difficult to share even a single sheet of paper with a client, much less a police report that may be ten to twenty pages.

B. WOMEN DETAINEES AT SOUTH WHITE STREET - TEMPLEMAN V

Prior to May of 2011, women detainees were held at the South White Street facility, where attorney visitation hours were 8:00 a.m. to 5:00 p.m. and 7:00 p.m. to 10:00 p.m. seven days a week. There was no privacy for attorney-client meetings in this facility. Additionally, there were no pass-through slots to facilitate the review of documents. Instead, similar to the conditions at HOD, attorneys were forced to rely on Prison deputies to deliver important and sensitive legal documents to their client-detainees. *See* Exhibit J to Petition, Affidavit of Mariah Holder.

Beginning on or around May 25, 2011, women detainees were moved and are currently being housed at the Templeman V facility. There, attorney-client visits take place in a visitation room on the second floor. The visitation room is similar to the South White Street visitation room, containing a phone bank with a plexiglass divider with no pass-through slots. Visitation "booths" have been created with half-ceiling-high cinderblock walls.

All of the problems associated with attorney visitation at South White Street persist at Templeman V, with the addition of significantly longer wait times. At Templeman V, private conversation is impossible when multiple people are attempting to conduct visits in the room. To ameliorate this absolute lack of privacy, in May of 2011, Sheriff Gusman implemented a policy allowing only one attorney-client visit at a time. This policy functionally created one attorney visitation room for all of the women held at the Prison and led to excessive and unreasonable wait times for attorney-client visits. Under this policy, attorneys experienced wait times for meeting with their client-detainees ranging from forty-five minutes to an hour and a half. *See* Exhibit K to Petition, Affidavit of Aaron Clark-Rizzio.

The single attorney visitation policy has since changed, and multiple attorneys, probation officers, and investigators once again visit with client-detainees at the same time. *See* Exhibit K to Petition. While this change has decreased wait times, there is still absolutely no privacy when multiple people are visiting with detainees. Additionally, the Templeman V visitation room still has no pass-through slots. As contact visits are not allowed, attorneys are forced to continue the practice of passing confidential legal documents to their client-detainees through Prison deputies. *See* Exhibit 1, Affidavit of Carlotta Lepingwell.

C. CONCHETTA

The Conchetta facility is located on Tulane Avenue and houses pre-trial detainees and detainees serving short sentences in the Department of Corrections system. The Conchetta attorney visitation area is located at the end of a long row of phones and seats for visitors, where attorneys are separated from client-detainees by plexiglass. There are two designated attorney visitation areas located at the end of the phone bank, which are partially separated from each other by only two half-ceiling-high cinderblock walls. The attorney visitation area is not enclosed in any meaningful manner.

There is generally no privacy afforded to attorneys and their client-detainees for meetings at Conchetta. Visitors and other attorneys or law enforcement officers present in the visitation area can clearly hear what is being said by anyone using the phone bank "room" next to him or her. *See* Exhibit M to Petition, Affidavit of Carlotta Lepingwell. Members of the general public visiting a detainee can also hear the attorney's side of conversations. Likewise, detainees and deputies on the other side of the plexiglass can clearly hear what the client-detainee is saying to the attorney. Here, too, there are no pass-through slots, preventing attorneys and their client-detainees from reviewing documents together. *See* Exhibit N to Petition, Affidavit of Irene Joe.

D. OLD PARISH PRISON

The 80-year-old Old Parish Prison is annexed to the Criminal District Court at 2700 Tulane Avenue. It houses approximately 200 detainees who are charged with more serious felonies. The posted visiting hours for Old Parish Prison are 8:00 a.m. to 10:00 a.m., 1:00 p.m. to 5:00 p.m., and 7:00 p.m. to 11:00 p.m. seven days a week. However, on weekends, attorneys are only allowed to meet with client-detainees between 5:00 p.m. and 6:00 p.m. Wait times at Old Parish Prison are not as consistently unreasonable as those at the HOD; however, when several attorneys are at Old Parish Prison to speak with their client-detainees, wait times can still exceed an hour due to the lack of attorney visitation rooms.

Old Parish Prison has only two attorney visitation rooms. While these rooms do allow for contact visitation between attorneys and their client-detainees, there is no soundproofing on these rooms. When attorneys and client-detainees speak at a normal volume, it is possible to hear them in the hallway outside.

When the two Old Parish Prison attorney visitation rooms are full, attorneys and their client-detainees are forced to meet in two small "confessionals." The confessionals are

small booths into which client-detainees enter. The booths have walls with a mesh grate through which client-detainees can speak to their attorneys, who sit or stand on the side in a hallway near the attorney visitation rooms. The design of the confessionals does not allow any privacy for attorney-client meetings, as Prison deputies and other detainees are always in the area and can easily hear what is said by either person in the confessional. *See* Exhibit O to Petition, Affidavit of Colin Reingold.

E. TEMPORARY DETENTION CENTER (“TDC”)

On or about March 1, 2012, some two hundred pretrial detainees previously housed in one of the five existing jail facilities were moved to a new facility, the Temporary Detention Center (“TDC”) located at South Salcedo Street. OPD attorneys were not informed by Sheriff Gusman of the opening of this new facility, its location, or its hours of visitation. For five days, from Thursday, March 1st to Monday, March 5th, attorneys could not visit their clients relocated to TDC because the facility was not ready for attorney-client visitation. At this time, no official visitation hours have been announced; however, OPD staff has been told by sheriff deputies at the facility that hours of visitation are 8:00 a.m. to 11 a.m., 1:00 p.m. to 6:00 p.m, and 7:00 p.m to 9:00 p.m. daily. However, attorneys have already been denied visitation when they have attempted to conduct an evening visit. *See* Exhibit 2, Affidavit of Barksdale Hortenstine.

TDC has two attorney visitation rooms. The rooms do not allow for contact visitation, rather all visits are via video. In each of the visitation rooms, there is a video screen and a phone attached to the wall. A deputy sitting directly outside of the visitation room must activate the video screen and the phone system. When the system is activated, the attorney can see the client on the video screen and must use the attached phone receiver to communicate. On the detainee side, the detainee also has a video screen where he can see his attorney and a phone to use to talk to his attorney. Whereas the attorney is sitting in a fully enclosed, private room, the detainee is not sitting in an enclosed space. Rather, the detainees’ visitation space is at one end of a large open room used for recreation (watching TV) and dining for all TDC inmates. The video screens for visitation is on the same wall as the television. Detainees watching television can see who is conducting an attorney visit.

The detainees sit on a bench facing the wall and short aluminum dividers separate the detainee from the open space. These dividers do not stretch from floor to ceiling. In fact, while talking to the detainees, the attorneys can see other detainees and sheriff deputies walking

around in the background and within earshot of their conversation. *See* Exhibit 3 and 4, Affidavits of Jill Pasquarella and Daniel Hoesterey. There are two spaces designated for attorney visitation on the detainee side as well. These two spaces are separated by an aluminum divider that does not fully stretch from floor to ceiling. Detainees sitting in these designated attorney visitation areas can overhear each other's conversations with their respective attorneys. There is absolutely no privacy for attorney-client conversations on the detainee side.

Additionally, the video and phone system is on a timer. After 15 minutes, the video screen and the phone goes dead. Attorney must then request the sheriff deputy to reactivate the system. The attorneys cannot directly share documents and other legal materials with their clients. Much like HOD, attorneys must provide confidential legal documents to sheriff deputies who must walk the documents to the detainees on the other side of the building. *See* Exhibit 3, Affidavit of Jill Pasquarella.

LAW AND ARGUMENT

Movant herein seeks a preliminary injunction directing Sheriff Gusman to immediately cease infringing upon the Constitutional and Codal rights of Prison detainees by allowing the conditions, described above, to go unremedied. In order to obtain a preliminary injunction, the moving party must establish that it is likely to prevail on the merits of the claim, that it is entitled to the relief sought, and, in some instances, that it will suffer irreparable harm without the injunction. *General Motors Acceptance Corp. v. Daniels*, 377 So. 2d 346, 348 (La. 1979). A showing of irreparable injury is not required when the action to be enjoined is unlawful. *Miller v. Knorr*, 553 So. 2d 1043, 1045 (La. App. 4 Cir. 1989).

The OPD is likely to succeed on the merits of the case, because the conditions at the Prison facilities are in violation of their client-detainees' fundamental Constitutional rights. As the attorneys for many affected detainees, whose services to their clients are hindered due to the unlawful conditions at the Prison, the OPD is entitled to relief. Further, although no showing of irreparable injury is required because the conditions of the Prison facilities violate the law, the OPD and its clients suffer irreparable harm due to the lack of privacy and time afforded attorney-client meetings at the Prison facilities, which restricts the detainees' right of access to the courts.

A. THE OPD IS LIKELY TO PREVAIL ON THE MERITS OF ITS CLAIM

The OPD is likely to succeed on the merits of its claim in this case, because the current conditions at Orleans Parish Prison facilities restrict detainees' meaningful access to the

courts by placing unreasonable restrictions on meetings with their attorneys. The conditions at the Prison violate the detainees' Constitutional and Codal rights.

1. Defendant Gusman Has A Clear Duty To Provide Facilities That Ensure Privacy For Attorney-Client Meetings.

Both Louisiana state law and the United States Constitution require the Sheriff to provide attorneys and their detained clients meeting areas that will permit privacy in attorney-client conversations. Article 511 of the Louisiana Code of Criminal Procedure plainly requires that counsel for an accused must be permitted a private place in which to meet with his or her client:

The accused in every instance has the right to defend himself and to have the assistance of counsel. **His counsel shall have free access to him, in private, at reasonable hours.**

La. Code Crim. Proc. art. 511 (emphasis added).

The Sixth and Fourteenth Amendments of the United States Constitution also guarantee that detainees and their counsel can speak in private. Numerous courts have recognized the right to privacy in attorney-client communications. In *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1052 (8th Cir. 1989), for example, the Court considered pre-trial detainees' claim that they were forced to meet with their attorneys in public spaces where guards or other people might overhear. The Court found that this practice violated the clearly established Constitutional right to counsel and due process:

Detainees' right to counsel and due process can also be compromised by a lack of privacy in consultations with counsel. Forcing prisoners to conduct their meetings with their attorneys in the open or to yell over the phone obviously compromises the consultation. Detainees might be hesitant to disclose names and information relevant to the attorney's investigation and necessary to the advice sought. Often pleas are changed in the months before trial based on counsel's assessment of the strength of each side's case. The right to an attorney would mean little if it did not effectively attach until the hushed whispers at the defense table the morning of trial, after counsel has selected her strategy and witnesses. **Thus, as we already stated, it is clear that an accused does not enjoy the effective aid of counsel if he is denied the right of private consultation with him.**

Johnson-El, 878 F.2d at 1052 (emphasis added, citations and quotations omitted).

Similarly, in *Ching v. Lewis*, 895 F.2d 608, 609-10 (9th Cir. 1990), the Ninth Circuit declared unconstitutional conditions that prevented an inmate from conferring with his attorney in private. In reaching that conclusion, the Court held that the "opportunity to communicate privately with an attorney is an important part of . . . meaningful access [to the courts]." *Id.* at 609. All other federal courts to address this issue have held the same. See *Dreher v. Sielaff*, 636 F.2d 1141 (7th Cir. 1980) (right to counsel and access to courts includes

right to private meetings); *Mastrian v. McManus*, 554 F.2d 813, 820-21 (8th Cir. 1977) (holding that Sixth Amendment encompasses a right to private consultation with attorney); *United States v. Rosner*, 485 F.2d 1213, 1224 (2nd Cir. 1973), cert. denied, 417 U.S. 950 (1974) ("[T]he essence of the Sixth Amendment right is . . . privacy of communication with counsel."); *Martin v. Lauer*, 686 F.2d 24, 32 (D.C. Cir. 1982) ("The right to confer with counsel would be hollow if those consulting counsel could not speak freely about their legal problems."); *Coplon v. United States*, 89 U.S. App. D.C. 103, 191 F.2d 749, 757 (1951) ("It is well established that an accused does not enjoy the effective aid of counsel if he is denied the right of private consultation with him."); *Jones v. City and County of San Francisco*, 976 F. Supp. 896, 913-14 (N.D. Cal. 1997) (holding that lack of privacy for attorney-client conferences violated both Sixth and Fourteenth Amendments).

As described in detail above, the facilities of the Orleans Parish Prison system do not offer privacy for attorney-client meetings. Attorney-client conversations can be overheard because the meeting areas lack sound barriers or because attorneys are required to speak with their client-detainees in public areas. These conditions violate the principles set forth in *Johnson-El*: that the right to counsel implicates a right to private consultation with that counsel. 878 F.2d at 1052. Therefore, the conditions at the Prison infringe on detainees' right to assistance of counsel in violation of their Sixth Amendment rights.

2. Defendant Gusman Has A Clear Duty To Reduce Unreasonable Attorney Wait Times And Increase Visitation Hours.

Article 511 of the Louisiana Code of Criminal Procedure also guarantees that counsel for the accused "**shall have free access to him . . . at reasonable hours.**" (Emphasis added). The evidence in this case shows that the attorney wait times and restricted visitation hours at some Prison facilities, most notably at the HOD/Tents, are unreasonable and in direct violation of Article 511.

The unreasonable attorney wait times and restricted visitation times at the Prison also violate detainees' Constitutional right to counsel and due process. In *Procunier v. Martinez*, 416 U.S. 396, 419-20 (1974), the U.S. Supreme Court established that "[r]egulations and practices [at detention facilities] that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid." *Id.* at 419. Furthermore, "inmates must have a reasonable opportunity to seek and receive the assistance of

attorneys." *Id.* Forcing an attorney to wait two hours or longer to see his or her client-detainee is clearly an unreasonable burden on the right to counsel.

In *Benjamin v. Frazer*, the federal Second Circuit upheld a district court's factual finding that delays at the New York City jail ranging from forty-five minutes to two hours, and sometimes even longer, substantially impinged on the attorney-client relationship by discouraging attorneys from going to visit their clients. 264 F.2d 175, 179-181 (2d Cir. 2001). These delays were not due to any institutional security needs, but rather seemed to result from poor management and planning. *Id.* at 180. As a remedy for the violation, the district court ordered the jail to implement new regulations that would reduce wait times to forty-five minutes or less. *Id.* at 180-81.

The Louisiana Supreme Court has also held that when an attorney has been retained for a detainee, the "governmental authorities cannot deny the lawyer reasonable access to his client." *State v. Jackson*, 303 So. 2d 734, 737 (La. 1974).

Here, the wait time for attorney-client meetings at the Prison facilities, as well as the facilities' restricted visitation hours, are clearly unpredictable and unreasonable. Accordingly, this Court should find these conditions to be in violation of Louisiana Code of Criminal Procedure article 511 and Prison detainees' Constitutional right to counsel.

3. The Sheriff Has A Clear Duty To Provide Facilities Where Attorneys And Clients Can Review Documents Together.

Courts have also held the right to counsel and due process encompass a right to "contact visits" with counsel, meaning private visits where client and counsel are not separated by plexiglass or other impediments. In *Ching v. Lewis*, for example, the Ninth Circuit held that "a prisoner's right of access to the courts includes contact visitation with his counsel." 895 F.2d at 610. Similarly, in *Mann v. Reynolds*, 46 F.3d 1055, 1061 (10th Cir. 1995), the Tenth Circuit invalidated prison regulations that denied prisoners contact visits with their attorneys, because the regulations burdened a fundamental right and were unsupported by legitimate institutional needs. Accordingly, this Court should find that the lack of contact visitation at HOD, Templeman V, and Conchetta, as discussed above, violates a detainees' right of access to the courts by interfering with attorney-client visitation.

B. THE OPD IS ENTITLED TO THE RELIEF SOUGHT

The OPD is the largest full-time public defender office in the state of Louisiana and represents indigent persons accused of city and state criminal charges. Its staff attorneys

represent more than eighty percent of defendants in the Criminal District Court of Orleans Parish, where OPD attorneys handled nearly 9,000 felony cases in 2011.³ The OPD is entitled to the relief sought herein because its attorneys must contend with the unlawful attorney visitation conditions at the Prison facilities under the control of Sheriff Gusman on a daily basis. The conditions violate the Constitutional and Codal rights of the OPD's clients, harm and hinder the development of effective attorney-client relationships, inhibit the delivery of effective legal representation in Orleans Parish, cause immense waste of valuable attorney time, and thus negatively effect the OPD's operations and finances. The OPD and its clients have real and important interests in remedying the attorney visitation conditions at issue in this suit and are entitled to such relief.

Louisiana law allows for injunctive relief to prevent the violation of Constitutional rights. *See Jurisich v. Jenkins*, 99-0076, (La. 10/19/99) 794 So. 2d 597, 599. Once the plaintiff makes a *prima facie* showing of a threat to his Constitutional rights, he is entitled to a preliminary injunction without the need to show the absence of other legal remedies. *See id.* The OPD has shown a continuing violation of Constitutional and Codal rights and is entitled to the relief it seeks.

C. **THOUGH THE OPD IS NOT REQUIRED TO MAKE A SHOWING OF IRREPARABLE INJURY, SUCH INJURY NEVERTHELESS EXISTS**

Sheriff Gusman's policies and procedures are in clear violation of the Constitutional and Codal rights of the detainees housed in the Prison facilities, and thus the OPD need not demonstrate the final requirement sometimes necessary for a preliminary injunction. The Louisiana Supreme Court has held that "[a] petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, *i.e.*, . . . a violation of a constitutional right." *Jurisich v. Jenkins*, 99-0076 (La. 10/19/99) 794 So. 2d 597, 599 (*citing South Central Bell Tel. Co. v. Louisiana Public Service Comm'n*, 555 So. 2d 1370 (La. 1990)).

The Louisiana Fourth Circuit has also held that a petitioner seeking to enjoin an illegal act is not required to make a showing of irreparable harm. *International Marine Terminals Partnership v. Port Ship Service, Inc.*, 2003-0629, p. 7 (La. App. 4 Cir. 12/30/03), 865 So. 2d 199, 204. Because the conditions at the Prison facilities violate the Constitutional

³ OPD attorneys also handled over 20,000 municipal, traffic and state misdemeanor cases in 2011 in Criminal District Court of Orleans Parish, the City of New Orleans Municipal Court and Traffic Court.

and Codal rights of the detainees and prevent the detainees from having meaningful access to the courts and to the services of the OPD, the OPD need not make a showing of irreparable harm.

That said, irreparable harm is readily apparent here. Irreparable injury is a loss "which cannot be adequately compensated in money damages or for which such damages cannot be measured by a pecuniary standard." *Terrebonne Parish Police Jury v. Matherne*, 405 So. 2d 314, 319 (La. 1981). Injunctive relief is proper and necessary when the violation of a constitutional right is before the court. *See Jurisich*, 794 So. 2d at 599. The OPD and its clients detained in the Prison facilities have and will continue to suffer irreparable harm without the issuance of a preliminary injunction.

Without such relief, the OPD will be unable to provide an effective level of service to its clients who are housed at the Prison facilities. Further, the detainees at these facilities will continue to have their access to the court restricted because of their inability to meet with their attorney in a private setting or inability to meet with their attorney at all. The infringement on their federal and state Constitutional right to counsel cannot be measured by a pecuniary standard—injunctive relief is necessary to remedy this wrong.

CONCLUSION

The operational policies implemented by Sheriff Marlin N. Gusman in the Orleans Parish Prison facilities infringe upon the Constitutional and Codal rights of the detainees of the Prison by preventing their attorneys—including the OPD—from providing them with meaningful assistance of counsel and access to the courts. This Court should, therefore, enter a preliminary injunction directing Sheriff Marlin N. Gusman to immediately cease infringing upon the rights of Orleans Parish Prison detainees and to make permanent improvements to the Orleans Parish Prison facilities.

Dated: March __, 2012

Respectfully submitted,

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Attorneys for Orleans Public Defenders

CERTIFICATE

I hereby certify that a copy of the foregoing Memorandum in Support of Motion for Preliminary Injunction has been served upon counsel of record by placing same in the United States mail, postage prepaid and properly addressed, this ____ day of March, 2012.

AFFIDAVIT

STATE OF LOUISIANA §
§
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

AARON CLARK-RIZZIO, DOB: 7/12/1980, who after being duly sworn did depose and state the following:

1. My name is Aaron Clark-Rizzio. I am an attorney at the Orleans Public Defenders' office, and licensed to practice law in the State of Louisiana (Bar No. 32394).
2. During the 1.5 years I have spent in my current position, I have had several dozen clients who are housed as inmates at either the House of Detention ("HOD"), the Temporary Jail Facility (informally known as the "Tents") or Central Lock-up ("CLU").
3. There are four designated attorney-client visitation rooms at the HOD visitation facility.
4. During the first eight months of my employment, all of these rooms would generally be unlocked for use.
5. However, all four rooms would often be simultaneously occupied by visitors and inmates, resulting in a backlog of visitors.
6. Since then, there have been several long periods of time where only one of these rooms has been unlocked for use, making the backlog of visitors even worse.
7. Currently, only two of these rooms are unlocked for use.
8. The uncertainty of whether these rooms are available for use at a given time, the reduction of space available for attorney visitation, and the frequent backlog of visits at the facility all make it difficult to know whether or when I can visit my clients on a given day.
9. Furthermore, although these rooms are enclosed, they fail to give me and my clients a suitable space to conduct a confidential and privileged conversation.
10. On numerous times, while I was waiting to use the room with one of my clients, I could easily overhear the conversation taking place between the attorney and his/her client within the room.
11. For example, on one occasion, I recall overhearing a conversation between my colleague, Ariel Test, and her client within one of the rooms. The conversation concerned a


potential plea bargain and was contentious, as the client was frustrated with the deals offered by the State.

12. On another occasion, I recall overhearing a conversation between another colleague, Barksdale Hortenstine, and one of his clients concerning witness names, testimony and trial theory about an upcoming trial.
13. And, on other occasions, I have been told upon exiting the room by colleagues that my conversation in the room with my client could be overheard by them.
14. Now, I am hesitant to discuss anything of a privileged nature during my visits with clients at HOD, as anything might be heard by third parties, including other inmates, other attorneys, or deputies.
15. This significantly hinders my representation of clients, as having a fully confidential conversation regarding the details of my clients' cases is crucial to effectively representing them.

That these statements are true and correct to the best of my knowledge, information and belief.


AARON CLARK-RIZZIO

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 28 DAY OF MARCH, 2011


NOTARY PUBLIC
JEE PARK
31522

AFFIDAVIT

STATE OF LOUISIANA §
§
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

DANIEL ENGELBERG, DOB: 1/12/1973, who after being duly sworn did depose and state the following:

1. My name is Daniel Engelberg. I am an attorney at the Orleans Public Defenders' office, and licensed to practice law in the State of Louisiana (Bar No. 31451).
2. I have had many clients who could not pay their bond amount detained pending trial in the Tents, HOD and CLU. For these clients, I have visited them at HOD to discuss plea offers, trial strategy, defense theories, and others issues.
3. On numerous occasions, when I have arrived at HOD for an attorney visit, all of the available attorney visitation rooms would be occupied. Sometimes, my clients would be produced close to the end of the visitation time. Instead of waiting for one of the attorney visitation rooms to open up, I would speak to my client in the open room using the telephones attached to the plexiglass that separates my client and I. I do this because if I wait for an attorney visitation room to become available, I may not be able to speak to my client at all because the visitation time would have ended.
4. Other attorneys, investigators, inmates and deputies have been present when my client and I speak to each other in the open room using the telephones. Because I do not want to leave without speaking to my client after having waited for him for some time, I speak to him within earshot of others. Because I know others are listening, our conversation is stilted and we cannot speak freely to each other about the case. This hinders my representation of my client and makes it additionally difficult to establish a good working relationship.

That these statements are true and correct to the best of my knowledge, information and belief.



DANIEL ENGELBERG

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 28 DAY OF MARCH, 2011



NOTARY PUBLIC

JEE PARK
31522

AFFIDAVIT

STATE OF LOUISIANA §
§
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

MEREDITH ANGELSON, DOB: 7/17/1981, who after being duly sworn did depose and state the following:

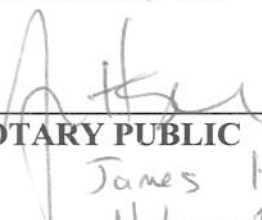
1. My name is Meredith Angelson. I am an attorney at the Orleans Public Defenders’ office, and licensed to practice law in the State of Louisiana (Bar No. 32995).
2. On November 4, 2010, I attempted to visit my clients Courtney Taylor, Eric Doucet, and Reginald Brown, each of whom was an inmate at the Temporary Jail of Orleans Parish (informally known as “the Tents”).
3. I arrived at the House of Detention (“HOD”) visitation facility at or about 7:45 A.M., and requested that the deputy call for my clients to be brought over to the visitation area.
4. I was accompanied by my colleagues, Anna Fecker and Verity Gentry, who arrived at the same time as I did to visit clients of their own.
5. Ms. Fecker, Ms. Gentry and I were the only people present for visitation.
6. After waiting for almost an hour, I inquired with the front desk downstairs as to the progress of our clients being brought over to HOD.
7. Deputy Cooper said she would call over to the Tents ask about the status of the transfer.
8. I returned up the stairs, and waited to listened if Deputy Cooper ever made a call, which she never did.
9. I returned back down stairs and asked Deputy Cooper whether she had made the call.
10. Deputy Cooper replied, “Oh, they’re coming in a few minutes.”
11. I went back upstairs to relay this response to Ms. Fecker and Ms. Gentry.
12. Confused, Ms. Fecker went back down the stairs to ask Deputy Cooper to call over, who replied, “No, I just called.”
13. Ms. Fecker walked back up the stairs, and as she reached the top, she overheard Deputy Cooper say to a friend standing at the desk, “I ain’t called nobody.”
14. Because I needed to appear in court, I left the HOD shortly after 9:00 A.M. without seeing my clients.

- 15. Later that day, I arrived at HOD at or around 12:55 P.M. for another attempt to visit my three clients.
- 16. Once again, my clients were not brought over to visit before approximately 2:20 P.M., when I had to return to court.
- 17. On January 31, 2011, I visited my client David Parker, an inmate at Orleans Parish Prison ("OPP").
- 18. We met in one of the unenclosed holding cells, where instead of a wall, there are open bars.
- 19. These cells do not afford any privacy, as they do not contain sound and are within earshot of the common area, where deputies, other inmates and other attorneys are often present.
- 20. Further, it is possible to overhear conversations in adjacent cells, as well as any conversations taking place in the common area.
- 21. I often have to raise my own voice to be heard over the other loud conversations which are taking place nearby.
- 22. In fact, on this occasion, there were three deputies talking loudly close by, and who also could have been able to overhear my conversation with Mr. Parker.
- 23. Being forced to carry out a conversation in these non-private booths significantly hindered my ability to conduct a full, frank and privileged conversation with my client, Mr. Parker.

That these statements are true and correct to the best of my knowledge, information and belief.


 MEREDITH ANGELSON

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 31st DAY OF FEBRUARY, 2011


 NOTARY PUBLIC
 James Harper
 Notary #90407

AFFIDAVIT

STATE OF LOUISIANA §
§
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

SANDRA MAYSON, DOB: 10/14/1980, who after being duly sworn did depose and state the following:

1. My name is Sandra Mayson. I am an attorney at the Orleans Public Defenders' office, and licensed to practice law in the State of Louisiana (Bar No. 32580).
2. On January 25, 2011, I attempted to visit my client James Scott (Inmate Folder No. 2206646) an inmate at the Temporary Jail of Orleans Parish (informally known as "the Tents").
3. I arrived at the House of Detention ("HOD") visitation facility at or about 2:00 P.M., and requested that my client be brought over from Tents.
4. After waiting for approximately an hour and a half, I asked the deputy at the front desk to again check with the Tents to see when my client would be brought over.
5. At that point, the deputy called the Tents and relayed to me that they did not have sufficient personnel to bring my client over.
6. I was unable to meet with my client at all that day.
7. Mr. Scott's case was scheduled for trial the next day, January 26, 2010. It was therefore crucial that I speak with him that day in a timely manner in order to prepare for trial.
8. My inability to do so hindered and prejudiced my representation of my client by preventing me from discussing Mr. Scott's potential testimony with him before the trial setting.
9. Ultimately, the State requested and was granted a continuance on that date. Trial was re-set for Tuesday, February 1, 2011.
10. On Monday, January 31, 2011, at approximately 1:30 P.M., I attempted to visit Mr. Scott once again at HOD to prepare for trial.
11. When I arrived at HOD and asked for my client to be brought from the Tents, I specifically asked the deputy to confirm that the Tents had adequate personnel to bring him over that day.

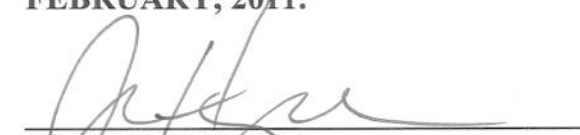
- 12. After speaking with someone at the Tents, the deputy informed me that she had been told they did not have sufficient personnel to bring my client over at that time.
- 13. The deputy informed me that there might be sufficient personnel to bring him over later in the afternoon, and that I could wait for an hour or so to find out.
- 14. I did wait for approximately two hours to hear if there would adequate personnel.
- 15. At approximately 3:30 P.M., the deputy again called the Tents and informed me that she had been told that my client could not be brought over that afternoon, but that I could try again during night-time visiting hours.
- 16. That night, I returned to HOD at approximately 8:30 P.M., and asked if Mr. Scott could be brought over from the Tents.
- 17. The deputy called the Tents, and informed me that he would be brought over.
- 18. Mr. Scott was finally brought over at approximately 9:40 P.M.
- 19. At 9:50 P.M., the deputy on duty told us that our visit was finished because visitation hours ended at 10 P.M.
- 20. All told, I waited for more than four hours over two days for a total of ten minutes of visitation time with Mr. Scott.
- 21. Because of these difficulties, my co-counsel and I were unable to adequately prepare for trial with Mr. Scott prior to each setting.

That these statements are true and correct to the best of my knowledge, information and belief.



 SANDRA MAYSON

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 4th DAY OF FEBRUARY, 2011.



 NOTARY PUBLIC
 James Harper
 Notary 90407

AFFIDAVIT

STATE OF LOUISIANA §
 §
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

LISA PARKER, DOB: 10/10/68, who after being duly sworn did depose and state the following:

1. My name is Lisa Parker. I am an attorney at the Orleans Public Defenders' office, and licensed to practice law in the State of Louisiana (Bar No. 31281).
2. On September 28, 2010, I attempted to visit five of my clients who were inmates at the Temporary Jail of Orleans Parish (informally known as "the Tents"). The five clients were: Reginald Davis (Inmate Folder No. 2237275), Jason Williams (No. 2238867), Benny Hamilton (No. 2254588), Anazo Landry (2265874), and Roshaudd Stewart (No. 2240638).
3. I arrived at the House of Detention visitation facility at or about 8:33 A.M., and requested that the deputy call for my clients to be brought over to the visitation area.
4. At 9:50 A.M., Deputy Harris arrived with my clients.
5. After visiting with clients Williams and Hamilton, and before I could meet with my remaining clients, Deputy Harris informed me that I had two minutes before my clients had to be returned to the jail for lock down, which started at 10:00 A.M.
6. I went to the front desk to complain, and spoke with Sergeant Hudson, who indicated that the Sheriffs needed to transport inmates to court in the morning.
7. I responded to Sergeant Hudson that the facility had established the posted visiting hours, and that I should not be forced to wait for, and then rushed to finish, client visitation if I have arrived during those hours.
8. Sergeant Hudson indicated that he would contact Warden Charles Ezeb regarding the posted visiting hours.
9. On October 4, 2010, I arrived at the House of Detention facility to visit clients Landry and Hamilton, with whom I was unable to complete visits on September 28.
10. That morning, Deputy Joe Green informed me that he could not separate the clients, and that I had to speak to them both on the phones.


11. I explained to Deputy Green that it was an attorney visit, and that each had a right to a separate, private and privileged conversation with their attorney.
12. Since Deputy Green refused to separate the two inmates, I requested he place them both in the same room.
13. After my clients each then complained about not being able to have a private, privileged conversation with me, Deputy Green then separated my clients.
14. After this, I spoke with another deputy downstairs who informed me that Deputy Green does this all the time, and that Deputy Green is "old school" and does not "believe in" separating inmates on transport.

That these statements are true and correct to the best of my knowledge, information and belief.



LISA PARKER

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 28th DAY OF FEBRUARY, 2011



NOTARY PUBLIC
James Harper
Notary 90407

AFFIDAVIT

STATE OF LOUISIANA §
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

GREGORY CARTER, DOB: __4/16/1984__, who after being duly sworn did depose and state the following:


1. My name is Gregory Carter. I am an attorney at the Orleans Public Defenders' office, and licensed to practice law in the State of Louisiana (Bar No. __32835__).
2. On Sunday, March 27, 2011, I wished to visit my client Johnnie Kelly, an inmate at the Temporary Jail Facility in Orleans Parish (informally known as the "Tents").
3. The weekend attorney visitation hours at the House of Detention (HOD) visiting facility are posted as 7 a.m. to 10 a.m. and 7:30 p.m. to 10 p.m.
4. Through experience, however, attorney visits are generally only allowed during the hours of 5 p.m. to 6 p.m. on weekends.
5. However, on March 27, I called the Tents to verify that I had the correct visiting hours for that Sunday.
6. The guard on duty told me there are no visits—attorney or otherwise—to inmates in the Tents on the weekends.
7. Thus, I was unable to have access to my client, Mr. Kelly. The visit was especially pertinent as client was offered a plea deal on the evening of March 25, 2011 for his trial scheduled to commence on March 28, 2011. Due to the restrictive, or in this case nonexistent, visiting hours I was unable to confer with Mr. Kelly about this plea offer prior to the trial setting.

That these statements are true and correct to the best of my knowledge, information and belief.



GREGORY CARTER

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS __28__ DAY OF MARCH, 2011



NOTARY PUBLIC *JEE PARK*
31522

AFFIDAVIT

STATE OF LOUISIANA §
§
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

ARIEL TEST, DOB: 6/15/82, who after being duly sworn did depose and state the following:

1. My name is Ariel Test. I am an attorney at the Orleans Public Defenders' office, and licensed to practice law in the State of Louisiana (Bar No. 32720).
2. During my 1.5 years in my current position, I have had several dozen clients who are housed as inmates at either the House of Detention ("HOD"), the Temporary Jail Facility (informally known as the "Tents") or Central Lock-up ("CLU").
3. Every time I have visited with a client at the HOD visitation facility and tried to share a document with my client, I have experienced serious difficulty in doing so.
4. Attorneys attempting to share documents with clients, or obtain their signatures on release forms, cannot do so directly.
5. Instead, attorneys must place any documents in the custody of the deputy who is on duty by placing them under a slot into the room where the deputy is located.
6. These documents are often not delivered to the inmate forthwith; instead, deputies will deliver the documents, if at all, upon leading the entire group of inmates out of the visitation facility.
7. Thus, attorneys usually never see whether their client has received a document, and I have reason to believe that many of these documents are never delivered.
8. I have seen stacks of other attorneys' documents, such as business cards, pile up, apparently never delivered to their intended recipient.
9. Further, I have confirmed with many of my clients that they never received my business card or other document upon their exit from the facility.
10. Special difficulty arises when I need to obtain a client's signature on an important document, such as a HIPAA release form, or other release form.
11. In those cases, the document and a pen is delivered to the inmate by the deputy, and the document is signed with the deputy watching over the inmate's shoulder.
12. Further, because of the glass separation between myself and the client, I must explain over the telephones how to navigate and sign these complex documents.

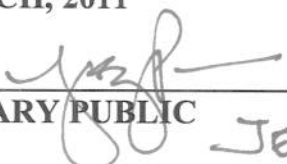
- 13. This process by which I am forced to share documents with my clients is extremely cumbersome, often ineffective, and often lacks privacy.
- 14. Because of this, it is extremely difficult to share basic and vital information with my clients – such as my contact information listed on my business card – with any certainty that they ever receive it.

That these statements are true and correct to the best of my knowledge, information and belief.



ARIEL TEST

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 28 DAY OF MARCH, 2011



NOTARY PUBLIC JEE PARK
31522

AFFIDAVIT

STATE OF LOUISIANA §
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

RUSSELL BARKSDALE, DOB: 5/11/1977, who after being duly sworn did depose and state the following:

1. My name is Russell Barksdale. I am a paralegal at the Orleans Public Defenders' office.
2. On March 23, 2011, I visited Timothy Carter, a client of our office, and an inmate on the 10th floor psychiatric facility at the House of Detention ("HOD").
3. Mr. Carter represented to me that he was diagnosed with AIDS a little over a decade ago.
4. I brought three release forms for Mr. Carter to sign so our office could gather information about his medical condition.
5. I asked the deputy present during our meeting if I could give the form to Mr. Carter to sign. The deputy instructed me to leave the form in a window in an adjacent room.
6. I left the form in the window. Mr. Carter sat in a hall, out of my view, while he waited for the deputy to bring him the forms.
7. After time went by, I eventually asked a different inmate to see if Mr. Carter was still there. The inmate told me that he was not. Therefore, I was unable to get the release forms from Mr. Carter.
8. This is a common occurrence, as our office's lack of ability to share documents with our incarcerated clients – especially those requiring signatures – often presents a significant hindrance to our effective representation.

That these statements are true and correct to the best of my knowledge, information and belief.



RUSSELL BARKSDALE

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 25 DAY OF MARCH, 2011



NOTARY PUBLIC
Jee Park
31522

AFFIDAVIT

STATE OF LOUISIANA §
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

MARIAH HOLDER, DOB: 10/14/1980, who after being duly sworn did depose and state the following:

1. My name is Mariah Holder. I am an attorney at the Orleans Public Defenders' office, and licensed to practice law in the State of Louisiana (Bar No. 33184.)
2. On October 26, 2010, I visited my clients Nicole Lee (Inmate Folder No. 2271411) and Jennifer McKenzie (Inmate Folder No. 2271484) both inmates at the South White Street Female Division.
3. I was not allowed to have a contact visit with either client, and my attorney-client conversations had to take place over phone lines across a glass partition.
4. The policy at South White Street, as it has been explained to me, is that no documents may be given to inmates, other than attorneys' business cards.
5. Ms. McKenzie is mentally ill, and her condition requires a hands-on, deliberate and clear conversation for any communication with her to be effective.
6. During this visit, I needed to give to Ms. McKenzie a document that listed various places, including the addresses for probation and for medical treatment, where she needed to go after her release from custody.
7. Because of the document policy, I was unable to pass this important information to Ms. McKenzie, or review it with her, and I had to communicate its contents over the poorly operational phone lines.
8. Because of the nature of Ms. McKenzie's condition, she was unable to understand the substance of what I was trying to explain to her over the phone.
9. To get the information across, I needed to enlist the help of Ms. Lee, who was standing by waiting for her own conversation with me.
10. The confusion of three people trying to communicate over one phone line made effective communication with Ms. McKenzie extremely difficult.
11. Had I been allowed a contact visit with Ms. McKenzie, I could have more effectively shared with her the contents of the document I had in my hands, and I could have avoided

the involvement of a third party (Ms. Lee) in my attorney-client conversation with Ms. McKenzie.


12. On November 4, 2010, I returned to South White Street to visit with Ms. Lee individually.
13. During the visit, I needed to go over with Ms. Lee an intake form that was a condition of her acceptance and transfer into a probation approved in-patient rehabilitation facility.
14. Again, I was unable to pass this document to Ms. Lee, despite the pressing need to have her review it and fill in her personal information.
15. To compound matters, during all of my visits to South White Street, including the ones mentioned above, deputies, other inmates and even family members frequently enter in and out of the visitation room, where they are within earshot of the attorney conversations taking place.
16. This lack of privacy often limits my ability to fully communicate with my clients in South White Street due to the confidential and privileged nature of our communications.
17. During the previous 5 months that I have been practicing as an attorney at Orleans Public Defenders, I have had at least 22 clients who are inmates in the Temporary Jail of Orleans Parish (informally known as "the Tents").
18. I have never been permitted to conduct a contact visit with any of my clients who are inmates at the Tents.
19. Further, never have I waited less than 45 minutes for an inmate to be brought from the Tents to the visitation facility at the House of Detention ("H.O.D.").
20. However, I am informed and believe that probation officers have direct unrestricted access to inmates for contact visits within the Tents facility itself.
21. I base this information and belief on separate conversations I have had with three probation officers in Orleans Parish, as well as several deputies at the H.O.D. front desk.
22. According to each, probation officers never experience a wait time in excess of fifteen minutes to visit with an inmate, and they each expressed that generally they are able to walk in and meet with an inmate immediately.
23. Further, according to each, the visits with probation officers are face-to-face and conducted at a table near the entrance to Tents.
24. During these visits, the probation officer is free to hand anything to the inmate.

That these statements are true and correct to the best of my knowledge, information and belief.



MARIAH HOLDER

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 16th DAY OF FEBRUARY, 2011



NOTARY PUBLIC JEE PARK # 31522

AFFIDAVIT

STATE OF LOUISIANA §
PARISH OF ORLEANS §


BEFORE ME, the undersigned Notary Public, personally came and appeared:

AARON CLARK-RIZZIO, DOB: 7/12/1980, who after being duly sworn did depose and state the following:

1. My name is Aaron Clark-Rizzio. I am an attorney at the Orleans Public Defenders' office, and licensed to practice law in the State of Louisiana (Bar No. 32394).
2. On May 25, 2011, I attempted to visit my client, Monique Garner, an inmate at Templeman V.
3. I arrived at or about 2:15 P.M. At this time, a colleague from my office also arrived to visit clients. We both submitted the names of our clients at the same time.
4. My colleague and I were told by a deputy at the jail that we would need to wait before we could see our respective clients because another attorney was meeting with his client. The deputy informed us that only one attorney could meet with his an inmate at a time.
5. My colleague and I waited for over forty-five minutes. At this time, the other attorney concluded his visit, and my colleague was permitted to meet with his clients.
6. I had to wait more than one hour and fifteen minutes, for a total wait time of over two hours, before I could see my client. At 4:45 p.m., I was finally permitted to visit my client.
7. After five minutes passed, I was told that visitation would be ending in ten minutes and that I needed to end my meeting with Ms. Garner. In sum, after more than two hours of waiting, I was only permitted to meet with Ms. Garner for fifteen minutes.
8. Since this visit with Ms. Garner, the method for visiting female inmates has changed at Templemen V.
9. Currently, more than one attorney is now able to meet with his/her clients at one time. Attorneys and clients seat across from each other separated by a glass wall with telephones.
10. When there are more than one attorney visiting a client, there is absolutely no privacy or confidentiality. It is nearly impossible to speak to clients without being overheard by

others in the room. When I have asked deputies to permit me to meet with my clients in a private room, my requests are routinely denied.

That these statements are true and correct to the best of my knowledge, information and belief.


Aaron Clark-Rizzio

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 9 DAY OF ~~FEBRUARY~~, 2011

September


NOTARY PUBLIC JEE PARK
31522

AFFIDAVIT

STATE OF LOUISIANA §
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

CARLOTTA LEPINGWELL, DOB: 1/29/1982, who after being duly sworn did depose and state the following:

1. My name is Carlotta Lepingwell. I am an attorney at the Orleans Public Defenders office, and licensed to practice law in the State of Louisiana (Bar No. 32554).
2. On February 25, 2012, I visited my client Vanessa Maxwell, an inmate at Templeman V to conduct an initial interview.
3. I cannot directly share any legal documents with my clients detained at Templeman V because there are no pass-through slots to facilitate such sharing of legal documents and papers between attorneys and clients in the attorney-client visitation area.
4. Before going upstairs to see Ms. Maxwell, I informed the sheriff deputy at the front desk of Templeman V that I would like to provide Ms. Maxwell with my business card so that she will have my contact information. I gave the sheriff deputy my card to pass onto Ms. Maxwell after my visit with her. I do not know whether the sheriff deputy brought over the card to her.
5. This is not the first time I have had to give a document to the sheriff deputy to provide to my clients while visiting them at Templeman V. I have provided in the past discovery documents and papers to the sheriff deputy at the front desk to be passed onto my clients. I did so for my client Ms. Yacanette Nixon when she was detained at Templeman V.
6. I typically give to the sheriff deputy at the front desk the documents and papers I would like to provide to my clients before I see my clients because there is a greater chance of my clients actually receiving the documents from the sheriff deputy. Even then, the documents I leave with the sheriff deputy are not always passed onto my clients following the attorney-client visit.

That these statements are true and correct to the best of my knowledge, information and belief.



CARLOTTA LEPINGWELL

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 2 DAY OF MARCH 2012




NOTARY PUBLIC JEE PARK

That these statements are true and correct to the best of my knowledge, information and belief.



IRENE JOE

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 3 DAY OF MARCH, 2011



NOTARY PUBLIC **JEE PARK**
BAR No. 31522

AFFIDAVIT

STATE OF LOUISIANA §
§
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

COLIN REINGOLD, DOB: 8/14/1980, who after being duly sworn did depose and state the following:


1. My name is Colin Reingold. I am an attorney at the Orleans Public Defenders’ office, and licensed to practice law in the State of Louisiana (Bar No. 33252).
2. On January 13, 2011, I attempted to visit my client, Jeremy Cohea, an inmate at Orleans Parish Prison.
3. I arrived at or about 9:15 A.M., and requested Mr. Cohea be brought out.
4. When the guards brought Mr. Cohea, it was 9:55 A.M., which left just five minutes to visit before the 10 A.M. lockdown.
5. Because the two attorney visiting rooms were in use by other attorneys, I was forced to meet with Mr. Cohea in one of the three “confessional-style” booths.
6. These booths permit only a discussion that is conducted through a lattice-work partition that obscures the view of both attorney and inmate from seeing the other.
7. The partitions of these booths prevented me from actively sharing and reviewing important documents with Mr. Cohea in a meaningful way.
8. Also, these booths do not afford any privacy, as they do not contain sound and are within earshot of the common area, where deputies, other inmates and other attorneys are often present.
9. Such was the case at the time of my visit with Mr. Cohea, as officers were walking outside of the room and were able to hear what I was saying to my client.
10. Because of the officers’ presence and the lack of privacy, I felt unable to fully and frankly discuss the case with Mr. Cohea due to the confidential and privileged nature of our communications.

That these statements are true and correct to the best of my knowledge, information and belief.



COLIN REINGOLD

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 17 DAY OF FEBRUARY, 2011



NOTARY PUBLIC Jee Park
Notary # 90646

AFFIDAVIT

STATE OF LOUISIANA §
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:
BARKSDALE HORTENSTINE, DOB: 08/17/1981, who after being duly sworn did depose and state the following:

1. My name is Barksdale Hortenstine. I am an attorney at the Orleans Public Defenders office, and licensed to practice law in the State of Louisiana (Bar No. 31477).
2. On March 12, 2012, I went to the Temporary Detention Facility (“TDC”) to visit my client Donald Williams. I went to TDC at or about 7:00 p.m. to conduct an evening attorney visitation with him to discuss a plea offer from the state. Mr. Williams’ next court date was scheduled for March 16, 2012, and it was imperative that I speak to him and advise him as to the plea offer.
3. When I arrived at the facility, I was informed by the sheriff deputy at the front desk that attorney visits are not permitted in the evenings. Also, I was also told that no set visitation hours have been established for visiting detainees housed in Building 2 of TDC. I left the facility without visiting with Mr. Williams.

That these statements are true and correct to the best of my knowledge, information and belief.



BARKSDALE HORTENSTINE, Jr.

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 16 DAY OF MARCH 2012.



NOTARY PUBLIC

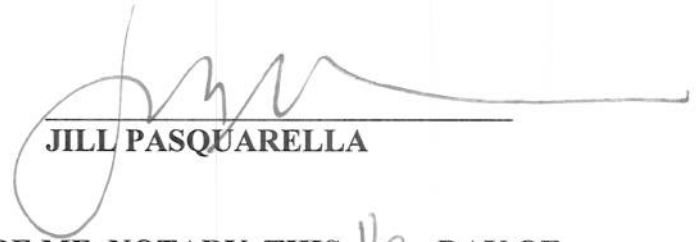
AFFIDAVIT

STATE OF LOUISIANA §
 §
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:
JILL PASQUARELLA, DOB: 11/08/1981, who after being duly sworn did depose and state the following:

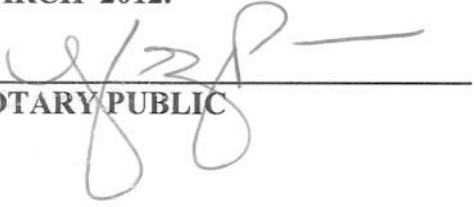
1. My name is Jill Pasquarella. I am an attorney at the Orleans Public Defenders office, and licensed to practice law in the State of Louisiana (Bar No. 33251).
2. On March 13, 2012, I visited my client Kevin Armstrong, an inmate at the Temporary Detention Facility (“TDC”).
3. Attorney visitation is through video conferencing only at TDC. There are two attorney visitation rooms, each with a video screen and a telephone attached to the wall. A sheriff deputy must activate both the video screen and the telephone. Once activated, I could see my client on the video screen and talk to him using the telephone. Only one person at a time can speak to the client.
4. Whereas I was sitting in an enclosed room talking to Mr. Armstrong, he was not in an enclosed, private space. I could see other inmates and sheriff deputies walking around in the open space behind him. Mr. Armstrong could speak to other inmates and other inmates could speak to him. Mr. Armstrong could not talk to me privately. Our conversation could be heard by any inmate or sheriff deputy standing or walking by Mr. Armstrong. I could not have a private, confidential conversation with Mr. Armstrong about his legal case.
5. Mr. Armstrong was sitting on a bench facing a wall with the video screen. I could see that aluminum dividers separated Mr. Armstrong from the large, open space. However, these dividers did not reach the ceiling and only covered the lower half of Mr. Armstrong.
6. I needed to provide Mr. Armstrong with legal documents. In order to do so, I had to give the documents to the sheriff deputy at the front to give to my client. I gave the legal documents to the sheriff deputy following my meeting with Mr. Armstrong.

That these statements are true and correct to the best of my knowledge, information and belief.



JILL PASQUARELLA

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 16 DAY OF MARCH 2012.



NOTARY PUBLIC

AFFIDAVIT

STATE OF LOUISIANA §
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:
DANIEL HOESTEREY, DOB: 10/21/1988, who after being duly sworn did depose
and state the following:

1. My name is Daniel Hoestery. I am a Louisiana Delta Service Corp volunteer at the Orleans Public Defenders office. I assist attorneys on legal teams to provide representation to indigent persons charged with crimes in Orleans Parish.
2. On March 6, 2012, I went to the Temporary Detention Facility (“TDC”) to visit two clients with attorney Jee Park. Ms. Park and I arrived at the facility at or about 9:30 a.m. I told the sheriff deputy at the front desk the names of the two clients we wanted to visit at TDC. The sheriff deputy wrote down our names, called for the two detainees, and instructed us to wait for the clients in the attorney visitation room. She also told us that another sheriff deputy would need to come to turn on the video conferencing.
3. All attorney visitation is through video conferencing at TDC. There are two attorney visitation rooms and in each of the rooms, there is one video screen and one telephone receiver attached to the wall adjacent to the video screen.
4. Ms. Park and I waited in one of two attorney visitation rooms. We waited for nearly an hour before several members of the sheriff’s department appeared and attempted to figure out how to turn on the video conferencing system. It took another 20 minutes before the system came live. After about 15 minutes into our conversation with the first client, the video system automatically turned off. When we told the front desk deputy that the system was off, she informed us that the system is on a 15 minute timer, and she needed to reactivate it. It took her another 5 minutes to figure out how to turn the system back on.
5. Whereas Ms. Park and I were sitting in an enclosed room, the clients we spoke to were sitting at one end of a large, open room. The client informed us that they were in the day room used for recreation, primarily watching TV, and for meals. The client further explained that this day room is in one undivided space with the rest of the building tier

and sleeping bunks. While speaking to the clients, we could see other male detainees in orange walking around in the background.

6. The clients explained that there are two stalls where detainees can “meet” with their attorneys. The two stalls are separated by an aluminum wall. A detainee sitting in the stall cannot look over this aluminum wall, however, this wall does not extend to the ceiling. The other aluminum walls of the two stalls also do not extend to the ceiling. While waiting for my conversation to finish with the first client, the second client could be seen easily looking over the back aluminum wall into the visitation area.
7. The clients were sitting on a bench in the stall facing the wall where the video screen and the telephone receiver are attached. Attached to this same wall are the TV and the other video screens and phones for family visits. While speaking to us, our client was able to talk to the inmates watching television.
8. Because the clients were not sitting in an enclosed space, they often leaned over into the wall with the phone receiver close to their mouths in order to relay private and confidential information. They did not want others who were near the visitation stalls to be able to hear what they were saying to their legal team about their cases. But whenever they leaned into the wall, Ms. Park and I were not able to see them on the video screen and could not understand what they were saying. The sound quality in my receiver speaker was not clear, requiring me to see my client’s mouth to help understand their speech. It was impossible to have a private, confidential conversation with the clients.

That these statements are true and correct to the best of my knowledge, information and belief.


DANIEL HOESTEREY

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 16th DAY OF MARCH 2012.


NOTARY PUBLIC LA# 90281