

2011-10638
Div L
Sect. 6

IN THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NUMBER: DIVISION: SECTION:

ORLEANS PUBLIC DEFENDERS

VERSUS

MARLIN GUSMAN,
in his official capacity as Sheriff for the Parish of Orleans.

FILED: _____
DEPUTY CLERK

PETITION FOR DECLARATORY JUDGMENT, INJUNCTION,
AND WRIT OF MANDAMUS

NOW INTO COURT, through undersigned counsel, comes the Orleans Public Defenders (“OPD”), who files this Petition for a Declaratory Judgment, Injunction, and Writ of Mandamus against Marlin Gusman in his official capacity as Sheriff of the Parish of Orleans. This Petition seeks a court judgment declaring certain conditions at jail facilities under the control of Defendant Gusman unconstitutional and contrary to the laws of Louisiana because they unjustifiably impinge on detainees’ right to legal counsel. The conditions impinge on the right to counsel in one or more of the following ways, depending on the facility:

1. Near total lack of privacy for attorney-client meetings;
2. Unreasonably restrictive visiting hours for attorney-client meetings, unreasonable wait times, and frequent, unpredictable scheduling changes;
3. Lack of facilities that would enable attorneys and clients to review documents together.

Individually and collectively, these conditions violate detainees’ right to counsel under the federal and state constitutions, as well as their statutory right to counsel under Article 511 of the Code of Criminal Procedure. This Court should enter appropriate orders directing that the conditions be changed and improved to remedy these violations.

PARTIES

1. Petitioner, the Orleans Public Defenders (“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 more than 13,000 new state cases were accepted for prosecution in 2010. OPD has standing to bring this action because its attorneys must deal with the unlawful attorney visitation conditions at the jail facilities under the control of Defendant Gusman on a daily basis. The conditions harm and hinder the development of effective attorney-client relationships, inhibit the delivery of effective legal representation in Orleans Parish, and cause immense wastes of valuable attorney time. The conditions thus negatively effect OPD operations and finances. OPD therefore has a real and important interest in remedying the attorney visitation conditions at issue in this suit.

2. For example, on January 25, 2011, Sandra Mayson, an attorney at OPD, tried to meet with one of her clients detained in the post-Katrina, “temporary jail” facility at OPD, informally known as the “Tents.” Ms. Mayson arrived at 2 P.M. at the House of Detention (“HOD”)—where attorneys are required to meet with clients held in the Tents—and requested to see her client, who was scheduled for trial the next day. Guards told Ms. Mayson that her client would be brought to see her, but after Ms. Mayson waited an hour and a half, she was informed that there were insufficient personnel to transport her client. Ms. Mayson was thus denied access to her client that day. *See Attached Exhibit A, Affidavit of Sandra Mayson.* On January 31, 2011, Ms. Mayson returned to HOD to see the same client. She arrived at 3:30 P.M.; however, she was not actually able to see her client until 9:40 P.M. that night. *Id.* As more fully described below, what Ms. Mayson experienced is a common occurrence at the jails.
3. Made defendant herein is Marlin Gusman, in his official capacity as the Sheriff of Orleans Parish. As Sheriff, Mr. Gusman is responsible for the condition, operation, maintenance, policies and procedures of the Orleans Parish Prison (“the Jail”). He is the final policy maker.

FACTUAL ALLEGATIONS

4. The Orleans Parish Prison (“the Jail”) is a complex of five facilities housing approximately 3,200 inmates on any given day. The substantial majority of these inmates are pre-trial

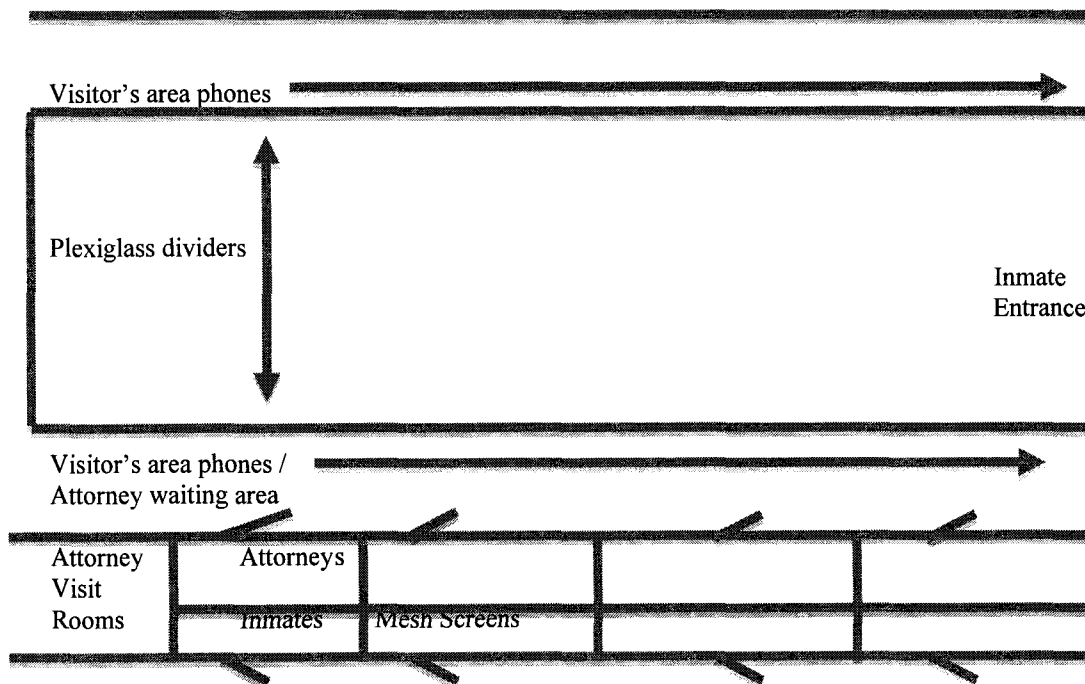
detainees who are presumed innocent under the law and guaranteed the right to counsel to assist in the defense of their criminal cases.

5. The five facilities at the Jail are:
 - a. House of Detention/Tents
 - b. South White Street
 - c. Conchetta
 - d. Old Parish Prison
 - e. Templeman V
6. Each of the Jail facilities suffer from conditions that unreasonably and unlawfully impinge on detainees' right to counsel. Specifically, each of the five facilities suffer from some combination of the following three conditions:
 - a. Lack of confidentiality and privacy for meetings between attorneys and clients
 - b. Unreasonably limited visitation hours and unreasonably long wait times
 - c. Lack of contact visitation between attorneys and clients
7. Both singularly and in combination, these conditions unlawfully impair pretrial detainees' constitutional rights to counsel and to due process, as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and by Article I, Section 13 of the Louisiana Constitution of 1974.
8. The conditions also violate Article 511 of the Louisiana Code of Criminal Procedure, which provides that:

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).
9. The current attorney visitation conditions at the Jail are neither required nor justified by institutional security needs.
10. The particular conditions in each of the facilities are described below.

A. House of Detention/Tents

11. The HOD/Tents is the largest facility at the Jail. It consists of a ten-story concrete building (the HOD) and eight windowless tent-like structures that were built by FEMA after Hurricane Katrina (informally known as the Tents).
12. On any given day, the HOD/Tents hold approximately one-half of the total Jail population of 2,600. The facility houses male detainees facing state misdemeanor and felony charges and state inmates serving sentences of less than ten years. The facility also has a mental health unit on the 10th floor of the HOD.
13. The entire population at HOD/Tents must meet with their attorneys in the attorney visitation area at HOD. That area consists of just four rooms along a hallway. The doors to the rooms are on one side of the hallway; on the other is a row of stools and a plexiglass wall with telephones. Inmates are generally brought down in groups to meet with attorneys. Along with the sheriff's deputies escorting them, the inmates congregate in the hall on one side of the plexiglass.
14. Inside the attorney visitation rooms, there is another divider consisting of plexiglass and heavy wire mesh. Inmates enter this room through a door from another hallway. A deputy usually stands in that hallway while the detainee meets with his or her lawyer.
15. Below is a schematic of the HOD attorney visitation area:



16. As described below, the HOD has some of the worst visiting conditions at the Jail: It lacks privacy, has extremely long wait times, and has no facilities to exchange and review documents.

i. Lack of Privacy

17. The HOD lacks private meeting spaces for attorneys and clients. The attorney visitations rooms are not soundproofed in any meaningful fashion, and the thick and opaque partition separating the clients and the attorneys requires them to speak loudly to each other through the barrier in order to be heard. Consequently, anyone waiting outside the visiting rooms can distinctly hear the attorneys' conversations with their clients. Deputies and other inmates waiting on the other side of the rooms can also distinctly hear any conversation in the rooms.

18. For example, Aaron Clark-Rizzio, a staff attorney with OPD, while waiting for his clients to be produced, has overheard numerous conversations between private, conflict division, and panel attorneys and their clients taking place inside the visitation rooms. Because the visitation rooms are not soundproofed and the attorneys and clients must raise their voices to be understood by each other, being overheard by other attorneys, inmates, and sheriff's deputies is the norm and not the exception. Mr. Clark-Rizzio recalls hearing his colleague Ariel Test explaining to a client his plea options. *See Attached Exhibit B, Affidavit of Aaron Clark-Rizzio.* The conversation was tense and personal as Ms. Test laid out her client's choices and her client expressed dismay and frustration at the offers tendered by the state. On another occasion, Mr. Clark-Rizzio heard conversations between OPD attorney Barksdale Hortenstine and his client. They were discussing witness names and testimonies, and the trial theory for an upcoming case. Based on comments made to him by other attorneys when he has come out of a visitation room, he knows that his confidential, private conversations with his clients about trial theory, witness statements, medical conditions, mental health issues have all been overheard by persons sitting outside the visitation rooms waiting for an inmate. *Id.*

19. Additionally, it is rare for all of the four attorney visitation rooms to be actually unlocked and available for visitation. Typically, only one or two rooms are unlocked and accessible to attorneys and their clients. Indeed, it is not unusual for all of the rooms to be locked.

20. When none of the attorney visitation rooms are available, attorneys are left with no choice but to meet with their clients in the open space separated by the plexiglass. Attorneys and their clients must use the telephones to understand each other through the plexiglass. In this very common circumstance, there is not even the semblance of privacy. Other inmates and sheriff's deputies stand or sit immediately next to the inmate who is speaking with his attorney, while other attorneys or law enforcement personnel waiting in the same open space can clearly hear the attorney's side of the conversation.
21. For example, Daniel Engelberg, a supervising attorney at OPD, has spoken to his clients in the open space using the telephones within earshot of other attorneys, investigators, inmates, and sheriff's deputies when all of the visitation rooms were occupied by other attorneys and their clients. He spoke to his client under these conditions because he believed that was the best choice in a difficult situation: If he had waited for a "private" room to open, it was very possible visitation would have ended before he could speak with his client. *See Attached Exhibit C, Affidavit of Daniel Engelberg.* Unfortunately, because of the current attorney visitation conditions at HOD, Mr. Engelberg is not alone in sacrificing privacy in order to seize on the opportunity to speak to his incarcerated clients.

ii. Limited Visiting Hours/Wait Times

22. Extremely long wait times for deputies to bring detainees to meet with their attorneys is the rule rather than the exception at HOD. Typically, an attorney will wait at least forty-five minutes or more, often up to two hours, before his or her client is brought down for a meeting, and delays of two hours or more are not unusual. These wait times are most pronounced when trying to see a client who is housed in the Tents. 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 visiting hours end before the client is brought down.
23. For example, on November 4, 2010, Meredith Angelson, a staff attorney with OPD, arrived at HOD at 7:45 A.M. to meet with a client. She was forced to wait for over an hour and fifteen minutes, and the sheriff's deputies never produced the client. Ultimately, Ms. Angelson had to leave for court without seeing her client. *See Attached Exhibit D, Affidavit of Meredith Angelson.*

24. These problems are exacerbated by the limited visiting hours at the HOD. Although the official posted hours are 7:30 A.M. to 10 A.M., 1:00 P.M. to 5:45 P.M. on Monday, Tuesday, Thursday and Friday. On Wednesdays, visiting hours are limited to 7:30 A.M. to 10:00 A.M. On weekends, posted hours allow for visits from 7:30 pm to 10:00 pm with an advance appointment. However, the reality is that evening and weekend visits are only occasionally permitted. Furthermore, when visits are permitted on the weekends, they are limited to between 7:30 pm and 10:00 pm. On weekdays, deputies start turning attorneys away at 9:30 A.M. and after 5 P.M. Additionally, within the last four months, attorneys have been turned away during posted visiting hours on Tuesday afternoons, as well as Wednesday afternoons, reportedly because family visits are taking place.
25. Given the schedules of attorneys working in Orleans Criminal Court, especially public defenders, these limited visiting hours are unreasonable. For example, on September 28, 2010, Lisa Parker, a staff attorney at OPD, went to HOD to meet with a client. She arrived at 8:33 A.M. and requested to see her client. The client was not produced until 9:50 A.M. Then, the sheriff's deputies terminated the meeting at 10 A.M. because that was the end of the visitation period. *See Attached Exhibit E, Affidavit of Lisa Parker.*
26. On March 27, 2011, Gregory Carter, a staff attorney with OPD, attempted to visit his client, who was being held in the Tents. On that day, Mr. Carter called the Tents to verify the weekend visiting hours. The deputy who answered the call informed Mr. Carter that there are no visits – attorneys or otherwise – to inmates in the Tents on the weekends. Mr. Carter was surprised by this information because the weekend attorney visitation hours at HOD/Tents had been posted as 7 A.M. to 10 A.M. and 7:30 P.M. to 10 P.M., and he was informed by other attorneys in the office that attorney visits generally can occur between 5 P.M. and 6 P.M. on weekends. Because the deputy apparently arbitrarily denied weekend attorney visits on this occasion, Mr. Carter was not able to speak to his client about a plea offer prior to the scheduled trial date. *See Attached Exhibit F, Affidavit of Gregory Carter.*
27. Attorneys with female clients held on the tenth floor of HOD have even less opportunity to visit with their clients. The tenth floor of HOD is the psychiatric unit where both men and women are housed. The Jail's policy requires that no other male prisoners be in the visiting

area when women are brought down for visits, functionally giving attorneys who represent these women two very narrow time frames each day to see their clients. Attorneys must arrive at HOD promptly at 7:30 AM or at 1:00 PM in the hopes that no other male inmates have been called for a visit.

28. For example, Elizabeth Coe, a staff attorney at OPD, has repeatedly been turned away from visiting her female client housed on the tenth floor of HOD. Ms. Coe has attempted to visit her client at HOD only to wait for hours for male inmates to be finished with their visits and leave the visiting area so that her client can be brought down. On other occasions, deputies have told her that they will not even bring her client down for a visit because there were simply too many male inmates partaking in or waiting for their attorney visits. *See Attached Exhibit G, Affidavit of Elizabeth Coe.*

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

iii. No Contact Visits/Inability to Review Documents Together

30. There are no facilities—such as pass-through slots—at HOD that would allow attorneys to share and review documents with clients. Furthermore, the thick, dirty plexiglass and metal grid make it extremely difficult, if not impossible, for an attorney to show a client a document while he or she is in the attorney visitation room.

31. Because of these conditions, attorneys often must depend on sheriff's deputies to deliver potentially sensitive legal documents to clients. The typical arrangement is for the attorney to meet the deputy who is escorting the client at a wire-mesh window near the attorney visiting area after the visit is over. The client is not brought to the mesh window. Instead, the attorney will hand the deputy the document and rely on him to deliver it to the client. If the deputy is held up handling another matter, he will tell the attorney to just leave the document for the inmate at the window and he will pick it up shortly to hand it to the client. Oftentimes, the document is never delivered to the client.

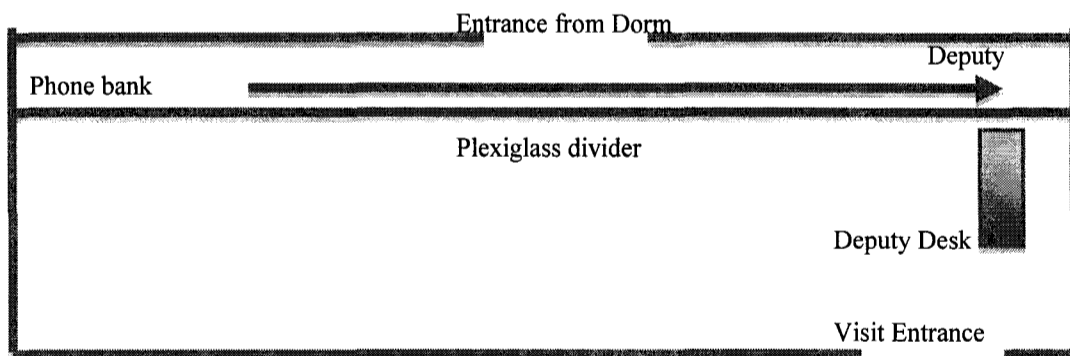
32. For example, Ariel Test, a staff attorney with OPD, has experienced serious difficulties in providing her business card and legal documents to her clients at HOD. Despite leaving legal

materials to be delivered to her clients by the window as instructed by deputies, upon talking to her clients later, she learned that the legal papers never reached her clients. *See Attached Exhibit H, Affidavit of Ariel Test.* Ms. Test has seen documents simply piled up by the window where attorneys are instructed to leave the documents for their clients. *Id.*

33. Additionally, March 23, 2011, Russell Barksdale, a paralegal with OPD, went get a client to sign a HIPAA release form. *See Attached Exhibit I, Affidavit of Russell Barksdale.* As instructed by a deputy, Mr. Barksdale left the form in the window and waited for a deputy to pick up the form, bring it to the client, have the client sign the form, and then return it to Mr. Barksdale. After waiting for some time, Mr. Barksdale asked another inmate whether he saw his client sitting around the corner. The inmate told him that his client was no longer there. The release form was never delivered nor signed. This is a common occurrence.

B. Women at South White Street or Templeman V

34. Until four months ago, South White Street was the general population facility for women. The attorney visitation area here consists only of a bank of telephones fronting a plexiglass divider. There are guards posted on both sides of the divider. A schematic is below:



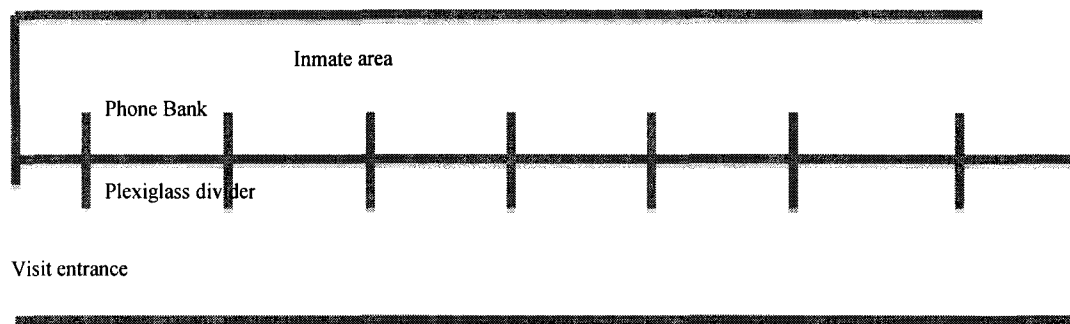
35. The visitation times at South White Street were 8 A.M. to 5 P.M. and 7 P.M. to 10 P.M. Sunday through Saturday.

36. As the schematic above suggests, there was absolutely no privacy for attorney-client meetings at South White Street. Additionally, there were no pass through slots to facilitate review of documents. Instead, similarly to HOD, attorneys were forced to rely on sheriff's deputies to deliver important and sensitive legal documents to their clients.

37. For example, on October 26, 2010, Mariah Holder, a staff attorney with OPD, went to South White Street to meet with two clients. Both clients were brought down at the same time, and

one client waited next to the other while Ms. Holder spoke to the first client. Because Ms. Holder was not permitted to pass documents to her clients, one of whom suffers from a mental illness, the meetings were unnecessarily prolonged and difficult. Further, other inmates, deputies, and even detainees' family members frequently come and go from the same room as where the attorney-client meetings are held. These third parties can overhear the attorney-client conversations. *See Attached Exhibit J, Affidavit of Mariah Holder.*

38. Beginning on or around May 25, 2011, the women were moved and are now currently being housed in Templeman V. The visits take place in a visitation room on the second floor of Templeman V. The room is similar to the South White Street visiting room, with a phone bank and a plexiglass divider with no pass through slots. The Templeman V visitation area does feature several half cinderblock walls dividing the room into visiting booths. Below is a schematic:



39. All of the problems associated with visiting at South White Street persist at Templeman V, with the addition of significant wait times. As over at South White Street, private conversation is impossible when multiple people are attempting to conduct visits in the room. To ameliorate the absolute lack of privacy, the Sheriff had implemented a policy that only allows for one visit at a time, functionally creating one attorney visit room for all of the women held at OPP. This policy has led to excessive and unreasonable wait times. Since this policy was instituted in late May, attorneys have experienced wait times ranging from 45 minutes to an hour and half.

40. For example, on May 25, 2011, Aaron Clark–Rizzio, a staff attorney at OPD, attempted to visit a female client at Templeman V. Mr. Clark-Rizzio arrived at Templeman V at around 2:15 pm with another colleague from OPD. Both attorneys submitted the client names they wanted to see and were told that they would have to wait because there was already an attorney visiting with a client in the room. After approximately forty-five (45) minutes, Mr. Clark–Rizzio’s colleague was permitted to visit. Mr. Clark–Rizzio was forced to wait an hour and fifteen minutes before he could see his client at approximately 4:45 pm. Five minutes into the visit, a deputy informed Mr. Clark–Rizzio that visiting would be ending in ten (10) minutes, only giving Mr. Clark–Rizzio fifteen minutes total to speak with his client. *See Exhibit K, Affidavit of Aaron Clark–Rizzio.*

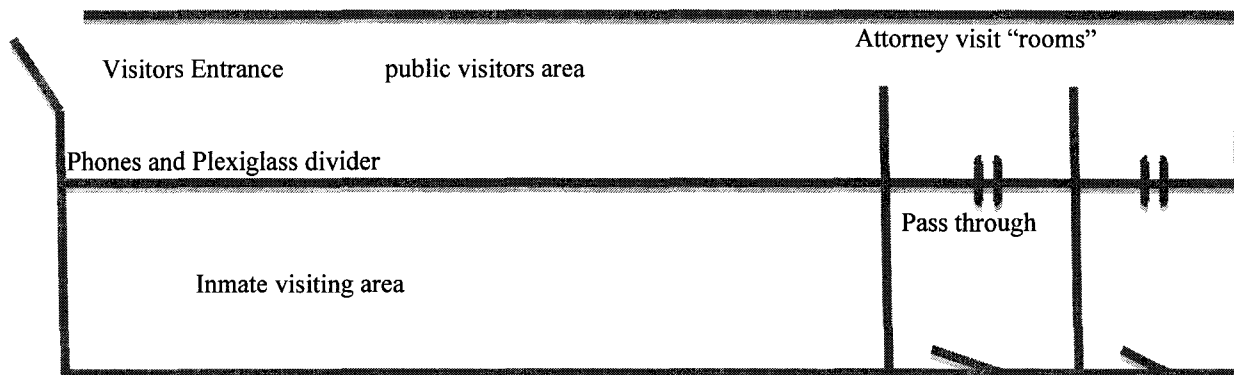
41. The single attorney visitation policy has since changed. Under the current policy, multiple attorneys, probation officers, and investigators are able to visit clients at the same time. While this change has cut down on wait times, there is absolutely no privacy when multiple people are visiting with clients. *Id.*

42. In addition, the Templeman V visitation room does not provide for contact visits or pass through slots, forcing attorneys to continue the practice of passing confidential legal documents through deputies. *See attached Exhibit L, Affidavit of Stu Weg.*

C. Conchetta

43. Conchetta is a small facility located on Tulane Avenue. It houses prisoners serving short sentences in the DOC system and pre-trial inmates.

44. The Conchetta attorney visitation area is located at the end of a long row of phones and seats for visitors, separated from prisoners by plexiglass. The two designated attorney visitation areas are located at the end of this phone bank; they are partially separated from each other by two half cinder block walls. The attorney visitation area is not enclosed in any meaningful manner. Below is a schematic:



45. There is generally no privacy afforded to attorneys and detainees for meetings at Conchetta.

Visitors and other attorneys or law enforcement using one of the visitation “rooms” can clearly hear what is being said by anyone using the “room” next to him or her. Members of the general public visiting a detainee can also hear the attorneys’ side of conversations. Likewise, detainees and deputies on the other side of the plexiglass can clearly hear what the client is saying to the attorney.

46. For example, on January 20, 2011, Carlotta Lepingwell, a staff attorney with OPD, was required to meet with a client confined at Conchetta in one of the “rooms” while another defense attorney was meeting with his client in the other “room.” Ms. Lepingwell could clearly hear what the other attorney and his client were saying, and they could hear what she and her client were saying. *See Attached Exhibit M, Affidavit of Carlotta Lepingwell.*

47. Although there are pass through slots at Conchetta, the plexiglass divider prevents attorneys and clients from reviewing documents together.

48. For example, on January 24, 2011, Irene Joe, a staff attorney with OPD, was required to meet with a client confined at Conchetta to discuss the possibility of a plea. Ms. Joe and her client were forced to speak to each other over telephones with a partition in between which made it impossible to actively read documents and explain calculations related to the proposed plea. Ms. Joe could not effectively communicate with her client at this critical juncture in his representation because of the partitions. *See Attached Exhibit N, Affidavit of Irene Joe.*

D. Old Parish Prison

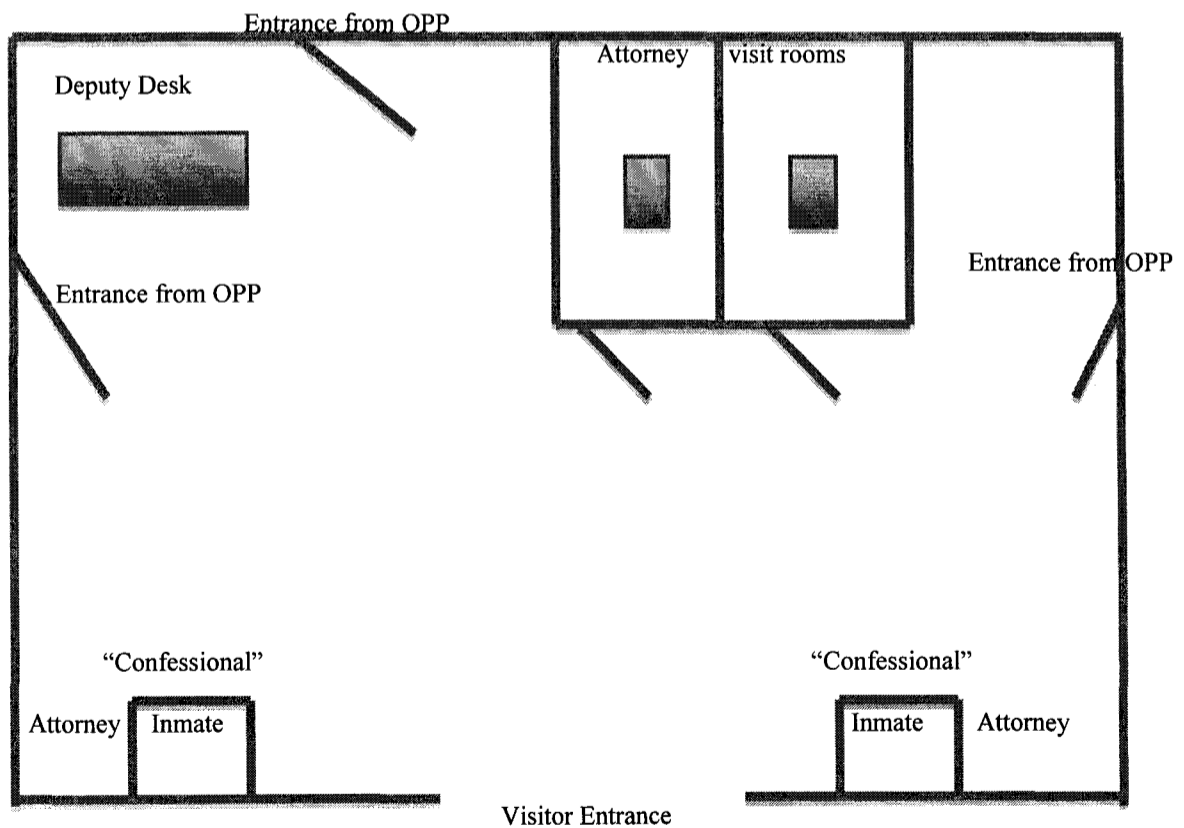
49. The 80-year-old Old Parish Prison (OPP) is annexed to the Criminal District Court at 2700 Tulane Avenue. It houses approximately 200 prisoners who are charged with more serious

felonies. The posted visiting hours for OPP are 8 A.M. to 10 A.M., 1 P.M. to 5 P.M. and 7 P.M. to 10 P.M. Monday through Friday. However, on weekends, attorneys are only allowed to meet with clients between 5 P.M. and 6 P.M. and after 7:30 P.M.

50. Wait times are not as consistently unreasonable as those at HOD. However, when several attorneys are at OPP to speak with a client, wait times can exceed an hour due to the lack of attorney visitation rooms.

51. OPP has just two attorney visitation rooms. These rooms allow contact visit with clients. There is no soundproofing on these rooms, however, and when attorneys and clients speak in normal volumes it is possible to hear them in the hallway outside.

52. When the two OPP attorney rooms are full, attorneys and clients are forced to meet in two small “confessionals.” The “confessionals” are small booths in the hallway near the regular attorney visitation rooms. They have a mesh grate to speak through and the attorney stands or sits outside the booth. Below is a schematic of the attorney visitation area at OPP:



53. The open design of the confessionals do not provide any privacy for attorney-client meetings, as deputies and other inmates are always in the area and can easily hear what is said by either person in the confessional.

54. For example, on January 13, 2011, Colin Reingold, a staff attorney at OPD, met with a client at OPP. Because both attorney rooms were occupied, Mr. Reingold was forced to meet with his client in one of the confessionals. Deputies and other inmates standing or walking near the confessional could overhear the conversation between Mr. Reingold and his client. *See Attached Exhibit O, Affidavit of Colin Reingold.*

PRAYER FOR RELIEF

55. In light of the above-described deficiencies at the Jail facilities, the facts as described in the Affidavits accompanying this Petition, Exhibits A-O, and the law as more fully explained in the Memorandum in Support of this Petition, OPD requests relief as follows:

A. A declaration from this Court that the attorney-visitation conditions at the described Jail facilities violate detainees' constitutional right to assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and by Article I, Section 13 of the Louisiana Constitution of 1974.

B. A declaration from this Court that the attorney-visitation conditions at the Jail facilities violate detainees' statutory right to assistance of counsel, as guaranteed by Article 511 of the Code of Criminal Procedure.

C. That this Court issue a writ of mandamus and permanent injunction directing defendant Sheriff Marlin N. Gusman to make permanent improvements such that attorneys and clients can have private conversations and review documents together at all facilities under his control, attorney wait times at those facilities are reduced and/or eliminated, and legal visitation hours are extended to include evenings and weekends at all facilities.

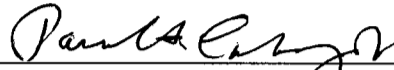
D. That the discovery documents attached hereto as Exhibit P be filed and served on the defendant, and that the defendant answer that discovery within the delays provided by law.

E. That this matter be heard and tried as expeditiously as possible.

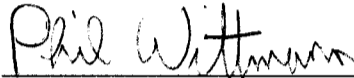
F. All other relief as appears proper after due proceedings on this matter.

This 4 day of OCTOBER, 2011.

Respectfully submitted,



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