

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

TORREY BROWN

Plaintiff,

-versus-

SHERIFF NEWELL NORMAND,  
Sheriff, Jefferson Parish, in his  
official and individual capacity;  
DEPUTY CHIEF SUE ELLEN  
PENOUILH, Correctional  
Administrator, Jefferson Parish  
Community Correctional Center, in  
her official and individual capacity;  
TIM VALENTI, Legal Advisor,  
Jefferson Parish Sheriff's Office;  
MAJOR H. LAVIN, Deputy  
Administrator, Jefferson Parish  
Correctional Center,

Defendants.

NUMBER

JUDGE

MAG

CIVIL RIGHTS ACTION  
42 U.S.C. §1983

DECLARATORY AND INJUNCTIVE  
RELIEF

**COMPLAINT**

Plaintiff Torrey Brown, by and through undersigned counsel, for his complaint against Sheriff Newell Normand, Jefferson Parish Sheriff, Deputy Chief Sue Penouilh, Correctional Administrator of Jefferson Parish Community Correctional Center, Tim Valenti, Legal Advisor, Jefferson Parish Sheriff's Office, Major H. Levin, Deputy Administrator of Jefferson Parish Community Correctional Center (collectively, "Defendants"), alleges as follows:

**NATURE OF THE CASE**

1. Plaintiff Torrey Brown is a prisoner at Jefferson Parish Community Correctional Center ("JPCC"). Mr. Brown brings this suit against Defendants based on Defendants' policy

and practice of denying him his constitutional right to have a confidential legal visit with an attorney.

2. Defendants have repeatedly denied Mr. Brown and his counsels' requests for a confidential legal visit. Defendants' position is that counsel in non-criminal matters can only visit with prisoners at JPCC in the prison's regular visiting area, which is a non-confidential setting. The complete bar on confidential legal visits does not serve a compelling or legitimate state interest.
3. Mr. Brown seeks a confidential legal visit to advance, develop, and file a claim that he was beaten by JPCC staff such that he sustained injuries that required him to be taken to the hospital and receive surgical staples in his head.
4. By denying Mr. Brown's First Amendment right to a confidential legal visit, Defendants are effectively preventing Mr. Brown from pursuing a claim based on the conditions of confinement at JPCC.
5. Accordingly, Mr. Brown brings this action against Defendants for violations of the First and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. § 1983. Mr. Brown seeks declaratory and injunctive relief and nominal damages for Defendants' violations of his constitutional rights.

#### **JURISDICTION AND VENUE**

6. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1331 and 1343, because this civil action arises under the Constitution and the laws of the United States.

7. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in Jefferson Parish, Louisiana, which is located in this district.

#### **THE PARTIES**

8. Plaintiff TORREY BROWN is, and at all relevant times was, a prisoner at JPCC in Gretna, LA.
9. Defendant NEWELL NORMAND is, and at all relevant times was, the Sheriff of Jefferson Parish. Defendant Norman is sued in his individual and official capacities.
10. Defendant SUE PENOUILH is, and at all relevant times was, the Correctional Administrator for Jefferson Parish Correctional Center. Defendant Penouilh is sued in her individual and official capacities.
11. Defendant TIM VALENTI is, and at all relevant times was, the Legal Advisor and Sheriff's designee for Jefferson Parish Sheriff's Office. Defendant Valenti is sued in his individual and official capacities.
12. Defendant H. LAVIN is, and at all relevant times was, a Major at Jefferson Parish Correctional Center. Defendant Lavin is sued in his individual and official capacities.

#### **BACKGROUND AND FACTS**

13. Mr. Brown has been in the physical custody of JPCC since at least March 1, 2009.
14. On Saturday, March 14, 2009, a relative of Mr. Brown contacted the ACLU Foundation of Louisiana because Mr. Brown's family learned that day that Mr. Brown was beaten by Jefferson Parish Correctional Center staff. Exhibit A. The relative reported that before the beating, Mr. Brown complained to prison official about at least one of the staff members who beat him. Id.

15. The family reported that they were especially worried because ranking officers at Jefferson Parish Correctional Center would not answer any of the family members' questions. *Id.* Most troubling, the family member wrote that they could not determine if Mr. Brown was safe. *Id.*
16. In order to determine if Mr. Brown was safe, Katie Schwartzmann, Legal Director of the ACLU Foundation of Louisiana, ("Ms. Schwartzmann") travelled to Jefferson Parish Correctional Center that same day. *Id.*
17. Ms. Schwartzmann was able to see Mr. Brown, and they briefly discussed what occurred and what injuries he sustained. Exhibit B. Ms. Schwartzmann saw that Mr. Brown has surgical staples in his head, as well as various lesions and bruising. *Id.* The visit with him was brief because she was concerned about the confidentiality of the visit and it was late on a Saturday evening. *Id.* Mr. Brown made clear to Ms. Schwartzmann that he had been attacked by Jefferson Parish Correctional Center staff. *Id.*
18. Subsequent to this incident, the ACLU Foundation of Louisiana received a written request from Mr. Brown for a legal visit. Exhibit A. In response to this request, Barry Gerharz, staff attorney at the ACLU Foundation of Louisiana, ("Mr. Gerharz") attempted to visit Mr. Brown. *Id.* When Mr. Gerharz traveled to Jefferson Parish Correctional Center on March 31, 2009, he was told by Jefferson Parish Correctional Center staff that because he was not visiting Mr. Brown in regards to a criminal matter, policy dictated that he would not be able to have a confidential legal visit. *Id.* He was not allowed to visit Mr. Brown that day. *Id.*
19. Mr. Gerharz was also told that he would only be allowed to visit Mr. Brown in the area used for a prisoner's regular visits ("regular visitation area"), not in the area used by

criminal defense attorneys to meet privately with their clients (“attorney-client visitation area”). *Id.* He was told he could only visit with Mr. Brown in the non-confidential regular visitation area during the prisoner’s regular visitation time. *Id.* Prisoners are only allowed the thirty minutes per week for visits. Exhibit F. Finally, Mr. Gerharz was told he would have to sign an Attorney Visitation Certificate in order to meet with Mr. Brown. Exhibit A.

20. The regular visitation area is a row of booths, one directly next to the other. Exhibit N. Prisoners are placed on one side of thick glass, visitors are placed on the other, and they must sit at the same booth and use a telephone headset to speak to one another. *Id.* The only thing separating one prisoner’s booth from another prisoner’s booth is a thin board. *Id.* The design of the regular visiting area allows a visitor to hear another visitor’s conversation and a prisoner to hear another prisoner’s conversation. *Id.* The regular visitation area booths are not soundproof, nor are they closed off from others. *Id.*
21. The ability of others to hear the contents of any conversation between attorneys for the ACLU Foundation of Louisiana and Mr. Brown has a chilling effect on any prospective litigation. Additionally, because the regular visiting room will not allow either party to speak freely, attorneys for the ACLU Foundation of Louisiana have been unable to learn the identity of all witnesses, collect evidence, discuss theories with Mr. Brown, get a detailed description of what occurred, or learn of staff members that could provide a favorable recollection of what occurred. This is all the more serious considering that on May 20, 2009, Mr. Brown was arraigned on charges of La. R.S. 14:34.2, Battery of a Police Officer, for the incident where the guards beat him. Therefore, counsel cannot

elicit information not only because its implication on a conditions of confinement claim, but also because the information could potentially be inculpatory.

22. In order to visit Jefferson Parish Correctional Center an attorney must sign an Attorney Visitation Certificate, which states:

*I serve as an attorney for the prisoner with respect to the listed criminal matters. Unless other purposes are disclosed in 3(b) the purpose of my visit is limited to providing the prisoner with legal services directly related to one or more of the criminal matters disclosed hereinabove. I understand that the special prisoner access privileges granted to me as a lawyer are not available to me if the purpose of my visit is not directly related to one or more of the criminal matters listed. Furthermore, I understand that if my visit also includes a purpose other than to provide legal services directly related to the listed criminal matters, then Sheriff Newell Normand considers my special prisoner access privileges as a lawyer to be unavailable. I am not visiting with the prisoner for any purpose related to any commercial or business enterprise or activity. I understand that any misrepresentation of the purpose of my visit renders invalid the permission granted by Sheriff Newell Normand to visit the prisoner. I understand that Sheriff Newell Normand considers any visit granted as a result of any misrepresentation of the purpose of my visit to be an unauthorized entry, and trespass, of the Jefferson Parish Correctional Center.*

Exhibits D, E. (emphasis added).

23. According to Jefferson Parish Correctional Center's policy, attorneys who visit for criminal matters can visit prisoners any day between 8:30 a.m. and 11:00 p.m. and do not have to be placed on a prisoner's visitation list. Exhibit G.

24. On April 6, 2009, after learning that the prison would not allow him to have a confidential legal visit with Mr. Gerharz, Mr. Brown filed an Administrative Remedy Procedure grievance stating:

*That regular visit area will not give me enough privacy to speak freely to Barry Gerharz. If I spoke to him there, it would adversely affect the attorney-client privilege confidentiality.[sic]I would like to be able to meet with Barry Gerharz for a legal visit in a confidential setting at the same hours as attorneys visit for criminal matters.*

Exhibit H.

25. On April 21, 2009, Deputy Chief Sue Penouilh replied to Mr. Brown's grievance, stating:

The Jefferson Parish Correctional Center have [sic] established policies and procedures in place which govern criminal and civil visits. All civil visits are permitted during inmates [sic] visitation times. Whether or not your Attorney [sic] chooses to visit during this designated time is his/her choice.

Id.

26. Mr. Brown appealed the denial of his grievance. On May 7, 2009 Mr. Brown exhausted all avenues of the administrative remedy procedure process when the Sheriff's designee, Tim Valenti, concurred with the results. Id.

27. Additionally, Mr. Brown has also fully exhausted an Administrative Remedy Procedure grievance accusing Jefferson Parish Correctional Center staff of brutally attacking him on March 14, 2009 and for denying him appropriate medical care. Exhibit I. The prison's response stated, "A investigation [sic] was conducted and there was probable cause that lead to you being the aggressor in the event and you were charged accordingly." Id. As stated, Mr. Brown is currently charged with battery.

28. In the past months, Mr. Brown wrote to the ACLU Foundation of Louisiana that he continues to feel threatened and abused by Jefferson Parish Correctional Center staff and that letters sent from the ACLU Foundation of Louisiana stamped "Confidential" and "Legal Mail" were read outside his presence. Exhibit A.

29. Additionally, communication by mail is also impracticable because Mr. Brown cannot convey facts suitably on paper in a way that helps develop a claim. Id.

30. On May 14, 2009, Mr. Gerharz sent a fax and letter to Deputy Chief Penouilh with a general request for a "confidential legal visit with Mr. Brown." Mr. Gerharz wrote:

“I have previously attempted to visit Mr. Brown, but was told that because my visit would not be related to a “criminal case,” I would not be permitted to visit in the confidential attorney visit setting, but would instead have to visit in a general visiting area...[p]lease inform me if I can have a confidential legal visit with Mr. Brown.”

Exhibit J.

31. In response, counsel for the ACLU Foundation of Louisiana received a voicemail<sup>1</sup> from a Major Lavin stating “as far the visit to see your client, that will be denied.” Exhibit A, K.
32. However, Jefferson Parish Correctional Centers permits legal visits for attorneys representing prisoners on criminal matters every day of the week, from 8:30 am to 11:00 pm.<sup>2</sup> Exhibits F, G. Criminal defense attorneys can walk into the Correctional Center without calling or faxing ahead of time to set up an appointment. Exhibits F, G.
33. Prior to the incidents described above, Defendants and staff at JPCC have denied prisoners’ and attorneys’ request for confidential legal visits regarding non-criminal matters. *See* Exhibit L, M.
34. Myriad alternatives exist to the Sheriff’s current prohibition on confidential legal visits for non-criminal matters.
35. As explained below, each Defendant individually took direct action, or failed to take direct action, that resulted in Mr. Brown being unable to have a confidential legal visit.
36. Defendant Normand is the Sheriff of Jefferson Parish. As Sheriff of Jefferson Parish, he determines the policies and practices for Jefferson Parish Correctional Center. *See* Exhibit F, G, O. Defendant Normand promulgated, adopted, ratified and endorsed the attorney visitation policy as the policymaker for JPCC. Defendant Normand is the head

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<sup>1</sup> An electronic copy of the voicemail is available at: <http://2.recordertheapp.com/e73f9dhd2dce73656f17>

<sup>2</sup> JPCC-4.29 states: Attorneys conferring with their clients on criminal matters may visit with one or more inmate(s) any day of the week from 0830 hrs to 2300 hrs excluding the following time periods: Between 1100 hrs & 1200 hrs daily (Inmate feeding), 1345 hrs and 1445 hrs daily (Change of shift), 1700 hrs & 1800 hrs daily (Inmate feeding).



of the Jefferson Parish Sheriff's Office, where there is a permanent, widespread, well-settled practice and custom of denying civil attorneys confidential legal visits, including attorneys wishing to visit prisoners regarding conditions of confinement claims. This practice or custom constitutes the Sheriff's standard operating procedure. Additionally, Defendant Normand, through his designee, denied Plaintiff's request to have a confidential legal visit with counsel. Exhibit H. At all relevant times he was acting intentionally and in performance of his official duty as Sheriff of Jefferson Parish. *See generally*, Exhibit O, Organizational Chart for the Jefferson Parish Sheriff's Office, available at: [http://www.jpso.com/ORG\\_CHART/org\\_cht.htm](http://www.jpso.com/ORG_CHART/org_cht.htm).

37. Defendant Penouilh is the Corrections Administrator at JPCC, making her head of the Jefferson Parish Sheriff's Office, Corrections Bureau. As such, she supervises and manages all staff at JPCC. *See generally*, Exhibit P, Organization Chart for the Corrections Bureau of the Jefferson Parish Sheriff's Office Corrections Bureau, available at: [http://www.jpso.com/ORG\\_CHART/corrections.htm](http://www.jpso.com/ORG_CHART/corrections.htm). Defendant Penouilh also has the discretion to amend or supplement the visitation policy at JPCC, and enforces the attorney visitation policy. *See* Exhibit F. At JPCC there is a permanent, widespread, well-settled practice and custom of denying civil attorneys confidential legal visits, including attorneys wishing to visit prisoners regarding conditions of confinement claims. Additionally, Defendant Penouilh personally denied Plaintiff's request to have a confidential legal visit with counsel and through internal policy and directives ordered her staff to deny counsel's request for a confidential legal visit. Exhibit H. At all relevant times she was acting intentionally and in performance of her official duties as Chief Administrator for JPCC.

38. Defendant Lavin is a Legal Advisor for the Jefferson Parish Sheriff's Office and Sheriff Newell Normand's designee. As such, he personally denied Mr. Brown's request for a confidential legal visit. Exhibit H. At all relevant times he was acting intentionally and in performance of his office duties as Legal Advisor and Sheriff's designee.

39. Defendant Valenti is a Deputy Administrator for JPCC. *See generally*, Exhibit P, Organization Chart for the Corrections Bureau of the Jefferson Parish Sheriff's Office Corrections Bureau, *available at*: [http://www.jpso.com/ORG\\_CHART/corrections.htm](http://www.jpso.com/ORG_CHART/corrections.htm). Defendant Valenti personally denied counsel's request to have a confidential legal visit with Mr. Brown. Exhibit A, K. At all relevant times he was acting intentionally and in performance of his official duties as Deputy Administrator for JPCC.

40. Plaintiff has suffered, and will continue to suffer, immediate and irreparable harm in the event that defendants are allowed to continue to deny his access to counsel.

41. Accordingly, temporary, preliminary and permanent injunctive relief is hereby requested pursuant to Federal Rules of Civil Procedure, Rule 65, and in accordance with the Civil Rights laws of the United States.

#### **CAUSE OF ACTION**

#### **Claims for Violations of First Amendment and Fourteenth Amendments to the United States Constitutions Against Defendants in Their Official Capacities for Declaratory and Injunctive Relief and Individual Capacities for Nominal Damages**

42. At all relevant times, Defendants acted intentionally and under the color of law within the meaning of 42 U.S.C. §1983, *et seq.*

43. Defendants have repeatedly denied Mr. Brown his rights to free speech and association, petition the government for redress of grievances, and access to courts.

44. Defendants allow prisoners to meet with attorneys on criminal matters on a daily basis in a setting that permits confidential legal communication.
45. The restrictions imposed by Defendants on Mr. Brown's rights are not reasonably related to any legitimate penological interest in direct violation of the First and Fourteenth Amendments to the United States Constitution. Mr. Brown has redress for the deprivation of his rights guaranteed under the United States Constitution pursuant to 42 U.S.C. §1983.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Torrey Brown prays that the Court enter judgment against Defendants and issue an order:

- (a) Enjoining Defendants from prohibiting attorneys from having confidential legal visits with Plaintiff at Jefferson Parish Correctional Center;
- (b) Enjoining Defendants from limiting a Plaintiff's legal visits on non-criminal matters to thirty minutes per week;
- (c) Enjoining Defendants from interfering with Plaintiff's right to confidential communication with counsel;
- (d) Declaring the practice of Defendants' to be unconstitutional;
- (e) Awarding Plaintiff nominal damages;
- (f) Awarding Plaintiff's attorneys' fees pursuant to 42 U.S.C. §1988 and costs; and
- (g) Granting Plaintiff all other relief that this Court deems just and proper.

Respectfully Submitted,

Ron Wilson (#13575)(TA)

Katie Schwartzmann (#30295)  
Barry Gerharz (#29207)

Cooperating attorney for the American  
Civil Liberties Foundation of Louisiana

Attorneys for the American Civil  
Liberties Union Foundation of Louisiana

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

TORREY BROWN

Plaintiff,

-versus-

SHERIFF NEWELL NORMAND,  
Sheriff, Jefferson Parish, in his  
official and individual capacity;  
DEPUTY CHIEF SUE ELLEN  
PENOUILH, Correctional  
Administrator, Jefferson Parish  
Community Correctional Center, in  
her official and individual capacity;  
TIM VALENTI, Legal Advisor,  
Jefferson Parish Sheriff's Office,

Defendants.

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CIVIL RIGHTS ACTION  
42 U.S.C. §1983

DECLARATORY AND INJUNCTIVE  
RELIEF

**MOTION FOR A TEMPORARY RESTRAINING  
ORDER**

Plaintiff hereby moves, pursuant to Rule 65 of the Federal Rules of Civil Procedure and for the reasons set forth in his Complaint and Memorandum of Law in Support of Motion for Temporary Restraining Order ("TRO"), for the entry of a restraining order, pending decision on the merits in this case, restraining and enjoining Defendants and/or any of their agents, representatives, or anyone acting on their behalf, from denying Plaintiff the ability to receive a confidential legal visit with counsel, in violation of the First and Fourteenth Amendments of the U.S. Constitution, as described in the attached Memorandum. In support of this Motion Plaintiff states:

1. This relief is warranted, as Plaintiff is likely to succeed in his legal claim.

Defendants' blanket denial of Plaintiff's request to have confidential legal visit

violates the First Amendment. Defendants have not justified the denial, nor have they made any reasonable time, place or manner accommodations to Plaintiff's simple request for a confidential legal visit.

2. Unless this Court issues a TRO restraining Defendants from enforcing the unconstitutional restrictions on Plaintiff's right to be free from government interference with confidential communication between citizens and their legal counsel, Plaintiff will suffer an irreparable harm to a claim based on physical injuries he suffered after being beaten by Jefferson Parish Correctional employees.
3. The potential harm to Plaintiff far outweighs any burden to Defendants that will result from an order to provide a confidential legal visit at a reasonable time and place. Defendants provide space and time for confidential legal visits for prisoners to meet with their criminal defense lawyers on a daily basis. Providing visits for a civil rights attorney to meet privately will cause no burden to Defendants.
4. Immediate action is needed, as Plaintiff has a viable claim that he was beaten by Jefferson Parish Correctional Center employees that needs immediate attention in order to not impair the claim any further.
5. The injunctive relief sought would not disserve the public interest, but would affirmatively forward it.
6. Plaintiff and his counsel have made good faith efforts to resolve this issue with Defendants. Specifically, counsel has visited the prison in order to have a confidential legal visit and was denied. Counsel wrote the prison to request a

confidential legal visit and was denied. Plaintiff wrote a grievance to the Jefferson Parish Correctional Center requesting a confidential legal visit and was denied. Counsel called and faxed Defendants notice that he would seek a Temporary Restraining Order.

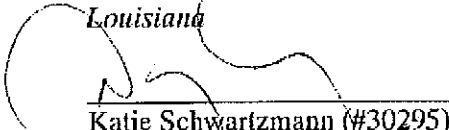
7. Because Plaintiff is harmed by Defendants current conduct, Plaintiff asks this Court to consider Plaintiff's Motion at the earliest practicable date, and thereafter to enter a TRO, restraining Defendants, their agents, assigns, officers, employees and successors, and each of them, to permit a confidential legal visit between Plaintiff and attorneys Barry Gerharz and Katie Schwartzmann.

Respectfully submitted,

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Ronald L. Wilson (#13575)

*Cooperating Attorney for the American  
Civil Liberties Union Foundation of  
Louisiana*



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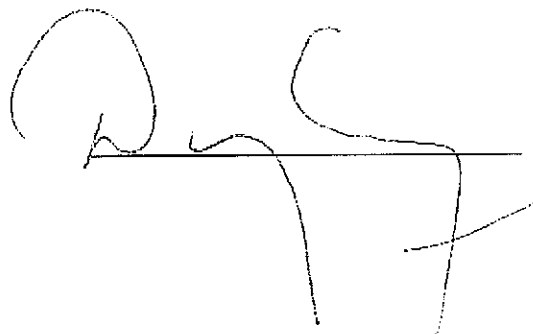
Katie Schwartzmann (#30295)  
Barry Gerharz (#29207)

*Attorneys for the American Civil Liberties  
Union Foundation of Louisiana*

*Attorneys for Plaintiff*

**RULE 65.1 CERTIFICATION**

I hereby certify that Defendants have been provided a copy of the Motion for TRO and supporting documentation, this 9 day of June, 2009.

A handwritten signature in black ink, appearing to be "R. S. F.", written over a horizontal line. The signature is stylized and cursive.



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

TORREY BROWN

Plaintiff,

-versus-

SHERIFF NEWELL NORMAND,  
Sheriff, Jefferson Parish, in his  
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DEPUTY CHIEF SUE ELLEN  
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Administrator, Jefferson Parish  
Community Correctional Center, in  
her official and individual capacity;  
TIM VALENTI, Legal Advisor,  
Jefferson Parish Sheriff's Office;  
FNU LAVIN, Major, Jefferson  
Parish Correctional Center,

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CIVIL RIGHTS ACTION  
42 U.S.C. §1983

DECLARATORY AND INJUNCTIVE  
RELIEF

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR A  
TEMPORARY RESTRAINING ORDER**

**INTRODUCTION**

Plaintiff seeks an injunction from this Court enjoining Defendants to permit attorneys from the American Civil Liberties Union Foundation of Louisiana ("ACLU") to have a confidential legal visit with Plaintiff. Defendants have both in policy and practice prohibited Mr. Brown from receiving a confidential legal visit with attorneys from the ACLU. Plaintiff seeks relief from this Court to protect his First and Fourteenth Amendment rights of freedom of speech, association, petition, and access courts.

Plaintiff is entitled to relief because (1) the denial of any confidential legal visits between Plaintiff and civil rights attorneys violates the First Amendment, (2) the Plaintiff will suffer irreparable harm by not being allowed to have a confidential legal visit, (3)

enjoining the Defendants to allow a confidential legal visit, which they already provide on a daily basis to criminal defense attorneys, would not substantially harm Defendants or others, and (4) the public interest would be served by such an injunction allowing civil rights attorneys to visit with prisoners who have claims that they were beaten by prison staff.

#### **STATEMENT OF FACTS**

On Saturday, March 14, 2009, a relative of Plaintiff Torrey Brown (“Mr. Brown”) contacted the ACLU Foundation of Louisiana because they learned that day that Mr. Brown was beaten by Jefferson Parish Correctional Center staff. Exhibit A. They reported that before the beating, Mr. Brown complained to prison official about at least one of the staff members who beat him. *Id.* The family reported that they were especially worried because ranking officers at Jefferson Parish Correctional Center would not answer any of the family members’ questions. *Id.* Most troubling, the family member wrote that they could not determine if Mr. Brown was safe. *Id.*

In order to determine if Mr. Brown was safe, Katie Schwartzmann, Legal Director of the ACLU Foundation of Louisiana, (“Ms. Schwartzmann”) travelled to Jefferson Parish Correctional Center that same day. Exhibit B. Upon arriving, Ms. Schwartzmann was presented with a form to sign indicating that she represented Mr. Brown on a criminal matter. *Id.* She indicated on the form that she was not his attorney for a criminal matter, and that she was there on a potential civil matter. *Id.* She noted that the form indicated that she could be subject to criminal charges for not complying with the terms thereon. *Id.*

Ms. Schwartzmann was able to see Mr. Brown, and they briefly discussed what occurred and what injuries he sustained. *Id.* Ms. Schwartzmann saw that Mr. Brown has surgical staples in his head, as well as various lesions and bruising. *Id.* The visit with him was brief because she was concerned about the confidentiality of the visit and it was late on a Saturday evening. *Id.* Mr. Brown made clear to Ms. Schwartzmann that he had been attacked by Jefferson Parish Correctional Center staff. *Id.*

Subsequent to this incident, the ACLU received a written request from Mr. Brown for a legal visit. Exhibit A. In response to this request, Barry Gerharz, staff attorney at the ACLU Foundation of Louisiana, (“Mr. Gerharz”) attempted to visit Mr. Brown. *Id.* When Mr. Gerharz traveled to Jefferson Parish Correctional Center on March 31, 2009, he was told by Jefferson Parish Correctional Center staff that because he was not visiting Mr. Brown in regards to a criminal matter, policy dictated that he would not be able to have a confidential legal visit. *Id.* He was not allowed to visit Mr. Brown that day. *Id.*

Mr. Gerharz was also told that he would only be allowed to visit Mr. Brown in the area used for a prisoner’s regular visits (“regular visitation area”), not in the area used by criminal defense attorneys to meet privately with their clients (“attorney-client visitation area”). *Id.* He was told he could only visit with Mr. Brown in the non-confidential regular visitation area during the prisoner’s regular visitation time. *Id.* Prisoners are only allowed the thirty minutes per week for visits. Exhibit F. Finally, Mr. Gerharz was told he would have to sign an Attorney Visitation Certificate in order to meet with Mr. Brown. Exhibit A.

In order to visit Jefferson Parish Correctional Center an attorney must sign an Attorney Visitation Certificate, which states:

*I serve as an attorney for the prisoner with respect to the listed criminal matters. Unless other purposes are disclosed in 3(b) the purpose of my visit is limited to providing the prisoner with legal services directly related to one or more of the criminal matters disclosed hereinabove. I understand that the special prisoner access privileges granted to me as a lawyer are not available to me if the purpose of my visit is not directly related to one or more of the criminal matters listed. Furthermore, I understand that if my visit also includes a purpose other than to provide legal services directly related to the listed criminal matters, then Sheriff Newell Normand considers my special prisoner access privileges as a lawyer to be unavailable. I am not visiting with the prisoner for any purpose related to any commercial or business enterprise or activity. I understand that any misrepresentation of the purpose of my visit renders invalid the permission granted by Sheriff Newell Normand to visit the prisoner. I understand that Sheriff Newell Normand considers any visit granted as a result of any misrepresentation of the purpose of my visit to be an unauthorized entry, and trespass, of the Jefferson Parish Correctional Center.*

(emphasis added). Exhibit A, B, C, D, E.

According to Jefferson Parish Correctional Center's policy, attorneys who visit for criminal matters can visit prisoners any day between 8:30 a.m. and 11:00 p.m. and do not have to be placed on a prisoner's visitation list. Exhibit G.

On April 6, 2009, after learning that the prison would not allow him to have a confidential legal visit with Mr. Gerharz, Mr. Brown filed an Administrative Remedy

Procedure grievance stating:

*That regular visit area will not give me enough privacy to speak freely to Barry Gerharz. If I spoke to him there, it would adversely affect the attorney-client privilege confidentiality.[sic] I would like to be able to meet with Barry Gerharz for a legal visit in a confidential setting at the same hours as attorneys visit for criminal matters.*

Exhibit H.

On April 21, 2009, Deputy Chief Sue Penouilh replied to Mr. Brown's grievance, stating:

The Jefferson Parish Correctional Center have [sic] established policies and procedurs in place which govern criminal and civil visits. All civil visits are permitted during inmates [sic] visitation times. Whether or not your Attorney [sic] chooses to visit during this designated time is his/her choice.

Id. Mr. Brown appealed the denial of his grievance. On May 7, 2009 Mr. Brown exhausted all avenues of the administrative remedy procedure process when the Sheriff's designee, Tim Valenti, concurred with the results. Id.

Additionally, Mr. Brown has also fully exhausted an Administrative Remedy Procedure grievance accusing Jefferson Parish Correctional Center staff of brutally attacking him on March 14, 2009 and for denying him appropriate medical care. Exhibit I. The prison's response stated, "A investigation [sic] was conducted and there was probable cause that lead to you being the aggressor in the event and you were charged accordingly." Exhibit I. As stated, Mr. Brown is currently charged with battery.

In the past months, Mr. Brown wrote to the ACLU Foundation of Louisiana that he continues to feel threatened and abused by Jefferson Parish Correctional Center staff and that letters sent from the ACLU Foundation of Louisiana stamped "Confidential" and "Legal Mail" were read outside his presence. Exhibit A.

On May 14, 2009, Mr. Gerharz sent a fax and letter to Deputy Chief Penouilh with a general request for a "confidential legal visit with Mr. Brown." Exhibit J. Mr. Gerharz wrote: "I have previously attempted to visit Mr. Brown, but was told that because my visit would not be related to a "criminal case," I would not be permitted to visit in the confidential attorney visit setting, but would instead have to visit in a general visiting area...[p]lease inform me if I can have a confidential legal visit with Mr. Brown." Id. In response, counsel for the ACLU Foundation of Louisiana received a voicemail<sup>1</sup> from a Major Lavin stating "as far the visit to see your client, that will be denied." Exhibit A, K.

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<sup>1</sup> An electronic copy of the voicemail is available at: <http://2.recorderhcapp.com/c73f9d8d2dccc73656f17>

## **THE APPLICABLE LEGAL STANDARD**

It is well settled that a party must prove four elements to be entitled to preliminary injunctive relief: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not issued; (3) that the threatened injury to the movant outweighs any harm that may result from the injunction to the non-movant; and (4) that the injunction will not disserve the public interest. *Byrum v. Landreth*, 2009 WL 1068435 (5<sup>th</sup> Cir. April 22, 2009) citing *Speaks v. Kruse*, 445 F. 3d 396, 399-400 (5<sup>th</sup> Cir. 2006). “When analyzing the degree of ‘success on the merits’ that a movant must demonstrate to justify injunctive relief, the Fifth Circuit employs a sliding scale involving the balancing the hardships associated with the issuance or denial of a preliminary injunction with the degree of likelihood of success on the merits.” *McWaters v. Federal Emergency Mgmt. Agency*, 408 F. Supp. 2d 221, 228 (E.D. La. 2006). “Moreover, when the other factors weigh in favor of an injunction, a showing of some likelihood of success on the merits will justify temporary injunctive relief.” *Id.* As set out below, Plaintiff easily meets the relevant standard.

## **ARGUMENT**

### **I. PLAINTIFF WILL PREVAIL ON HIS CLAIM THAT DEFENDANTS’ DENIAL OF A CONFIDENTIAL LEGAL VISIT CONSTITUTES A VIOLATION OF THE FIRST AMENDMENT.**

#### **The First Amendment Protects a Prisoner’s Ability to Have a Confidential Legal Visits with an Attorney**

Nearly 40 years ago, courts noted that the right to confer confidentially with counsel has never been questioned. *Morales v. Turman*, 326 F. Supp 677, 679 (D.C. Tex. 1971) citing *Turner v. State*, 91 Tex.Cr.R. 627, 241 S.W. 162 (1922); *Sanderson v. State*,

105 Tex.Cr.R. 198, 287 S.W. 251 (1926); *McBride v. State*, 121 Tex.Cr.R. 549, 51 S.W.2d 337 (1932); *Coplon v. United States*, 89 U.S.App.D.C. 103, 191 F.2d 749 (D.C.Cir.1950). A citizen's ability to have confidential communication with an attorney has a considerable and exceptional place in our law. The Supreme Court has stated:

[t]he attorney-client privilege is the oldest of the privileges for confidential communications known to the common law. Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client...which assistance can only be safely and readily availed of when free from the consequences or the apprehension of disclosure.

*Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981) cited in *Al Odah v. United States*, 346 F. Supp. 2d 1, 10 (D.C. Cir. 2004).

The First Amendment offers protection from government interference with confidentiality of communications between clients and their legal counsel:

The right to hire and consult an attorney is protected by the First Amendment's guarantee of freedom of speech, association, and petition... Because the maintenance of confidentiality in attorney-client communications is vital to the ability of an attorney to effectively counsel her client, interference with this confidentiality impedes the client's First Amendment right to obtain legal advice.

*Denius v. Dunlap*, 209 F.3d 944, 953-54 (7th Cir. 2000) citing *DeLoach v. Bevers*, 922 F.2d 618, 620 (10th Cir. 1990) ("The right to retain and consult an attorney . . . implicates not only the Sixth Amendment but also clearly established First Amendment rights of association and free speech."); See generally *United Mine Workers v. Illinois State Bar Ass'n*, 389 U.S. 217, 88 S.Ct. 353, 19 L.Ed.2d 426 (1967); *NAACP v. Button*, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

This right clearly extends to prisoners who wish to have a confidential legal visit with counsel in non-criminal matters. *McClendon v. City of Albuquerque*, 272 F. Supp. 2d 1250, 1259 (D.N.M. 2003) (Granting preliminary injunction to allow attorneys access to correctional facility to interview prisoners); *Massey v. Wheeler*, 221 F. 3d 1030 (7<sup>th</sup> Cir. 2000) (recognizing attorney's right to unmonitored communication between attorney and client, but declining attorney's claim to unrestricted and unlimited private telephone contacts); *Williams v. Price*, 25 F. Supp. 2d 623 (W.D. Pa. 1998) (holding prisoners have a First Amendment right to confidential oral communications with their attorneys).

Also, the United States Supreme Court has clearly established that a prisoner cannot be denied meaningful access to the courts by the states. *Bounds v. Smith*, 430 U.S. 817 (1977). See also *Wolff v. McDonnell*, 418 U.S. 539 (1974); *Procunier v. Martinez*, 416 U.S. 396 (1974); *Younger v. Gilmore*, 404 U.S. 15 (1971); *Johnson v. Avery*, 393 U.S. 483 (1969); *Ex parte Hull*, 312 U.S. 546 (1941). Attorney visitation has been recognized as falling within the ambit of the right of meaningful access to courts. *Al Odah v. United States*, 346 F. Supp 2d 1 (D.C. Cir. 2004) (holding that the United States could not monitor Guantanamo Bay detainee's conversation with counsel due to its chilling effect.); *Ching v Lewis* 895 F.2d 608, 610 (9th Cir. 1990); *Barnett v. Centoni*, 31 F.3d 813, 816 (9th Cir. 1994); *Mann v. Reynolds* 46 F.3d 1055, 1061 (10th Cir. 1995); See also *McWright v. Gerald*, 2004 WL 768641 (E.D. Mich 2004). A prisoner's right of access to the courts clearly applies beyond criminal litigation and explicitly includes "civil rights claims about the conditions of their confinement." *Lewis v. Casey*, 518 U.S. 343, 353 n. 3 (1996) (Scalia, J., majority opinion) ("depriving someone of an arguable



(though not yet established) claim inflicts actual injury because it deprives him of something of value-arguable claims are settled, bought, and sold.”).

The immediate case involves requests by Mr. Brown and an attorney for the ACLU Foundation of Louisiana to have a confidential legal visit. The prison’s response to the request was a blanket denial. Exhibits H, K. This provides no alternative means for open and frank communication between counsel and Mr. Brown. The prison will currently only allow one non-confidential, non-contact, thirty minute long visit per week between Mr. Brown and attorneys for the ACLU Foundation of Louisiana. Exhibit F, H. Worse yet, the regular visitation booths are not soundproof by any means, nor are they closed off from others. Exhibit N. The regular visitation room is a row of booths, one directly next to the other. *Id.* Prisoners are placed on one side of thick glass, visitors are placed on the other, and they must sit at the same booth and use a telephone headset to speak to one another. *Id.* The only thing separating one prisoner’s booth from another prisoner’s booth is a thin board. *Id.* The design of the regular visiting area allows a visitor to hear another visitor’s conversation and a prisoner to hear another prisoner’s conversation. *Id.*

The mere ability of others to hear the contents of any conversation between attorneys for the ACLU Foundation of Louisiana and Mr. Brown has a chilling effect on any prospective litigation. Additionally, because the regular visiting room will not allow either party to speak freely, attorneys for the ACLU Foundation of Louisiana have been unable to learn the identity of all witnesses, collect evidence, discuss theories with Mr. Brown, get a detailed description of what occurred, or learn of staff members that could provide a favorable recollection of what occurred. This is all the more serious

considering that on May 20, 2009, Mr. Brown was arraigned on charges of La. R.S. 14:34.2, Battery of a Police Officer, for the incident where the guards beat him. Therefore, counsel cannot elicit information not only because its implication on a conditions of confinement claim, but also because the information could potentially be inculpatory.

Also, Mr. Gerharz and Mr. Brown cannot communicate openly via mail because Mr. Brown reports that Mr. Gerharz's letters clearly stamped "Legal Mail" and "Confidential" have been opened outside of Mr. Brown's presence and were most likely read. Communication by mail is also impracticable because Mr. Brown cannot convey facts suitably on paper in a way that helps develop a claim. Exhibit A.

Mr. Brown has a basic, reasonable request. He is not asking for the ability to make phone calls to counsel on demand or for attorney visits at inopportune hours or in special settings. All that is sought is that at some reasonable time and at some reasonable place, to be determined by the Jefferson Parish Sheriff's Office, Mr. Brown and counsel have a confidential legal visit. Myriad alternatives exist to the Sheriff's current prohibition on confidential legal visits for non-criminal matters. Instead of instituting many ready alternatives, Jefferson Parish Correctional Center simply denies Plaintiff and counsel's simple requests. Finally, Mr. Brown is harmed because a prisoner's freedom to engage in protected communication with an attorney regarding conditions of confinement is a constitutional end in itself.

## II. SHOULD A PRELIMINARY INJUNCTION NOT ISSUE, THE PLAINTIFF'S FACE A SUBSTANTIAL THREAT OF IRREPARABLE HARM

"It is well settled that the loss of First Amendment freedoms for even minimal periods of time constitutes irreparable injury justifying the grant of preliminary injunction." *Wexler v. City of New Orleans*, 267 F. Supp 2d 559, 568 (E.D. La. 2003), citing *Deerfield* 661 F.2d 328, 338 (5<sup>th</sup> Cir. 1981); *Howell v. City of New Orleans*, 844 F. Supp 292, 294 (E.D. of La 1994); See also *Elrod v. Burns*, 427 U.S. 347,374 (1976) ("It is clear therefore that First Amendment interests were either threatened or in fact being impaired at the time relief was sought. The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* §2948.1 (2d ed. 1995).

In *Howell*, fortune tellers were granted a temporary restraining order on First Amendment grounds. *Howell*, 844 F. Supp at 294. Surely, if the loss of the ability to tell fortunes "for a minimal period[] of time" constitutes irreparable harm, then a prisoner who suffered physical injuries by prison guards should be able to get a legal visit from a civil rights lawyer.

Counsel has been prevented from sitting down for an interview with Mr. Brown, prevented from fully documenting Mr. Brown's claims, prevented from collecting evidence, and prevented from communicating frankly with Mr. Brown about preserving his safety and his claim, all of which are made even worse by counsel's inability to send letters that are confidential. Defendant's acts have negative affects on his First Amendment rights, including his right to access courts. In addition to these articulated

and substantial injuries, it has been recognized that a prison policy that limits the ability of a prisoner to have private communication with an attorney is itself actual harm. *McWright v. Gerald*, 2004 WL 768641 (E.D. Mich 2004).

**III. THE THREATENED INJURY TO THE MOVANT OUTWEIGHS ANY HARM THAT MAY RESULT FROM THE INJUNCTION TO THE NON-MOVANT**

Jefferson Parish Correctional Centers permits legal visits for attorneys representing prisoners on criminal matters every day of the week, from 8:30 am to 11:00 pm.<sup>2</sup> Exhibits F, G. Criminal defense attorneys can walk into the Correctional Center without calling or faxing ahead of time to set up an appointment. Exhibits F, G. To permit an attorney from the ACLU Foundation of Louisiana to visit at some point in the twelve and a half hours every day the Correctional Center is open for legal visits will do the prison no harm. They currently have the infrastructure and staff to allow for visits from the attorneys from the ACLU Foundation of Louisiana.

When balancing harms in a case similar to the one at bar, a court noted that:

Indeed, the only potential harm to Defendants is that inmate allegations of constitutional violations will be brought to the attention of this Court. This is not a legitimate concern. By contrast, the lives of [prisoners] may be at risk if their attorneys are prevented from investigating their reports of unconstitutional conditions of confinement.

*McClendon v. City of Albuquerque*, 272 F. Supp. 2d 1250, 1259 (D.N.M. 2003)(Granting preliminary injunction to allow attorneys access to correctional facility to interview prisoners). Like in *McClendon*, Defendants have no legitimate interest in denying civil rights attorneys access to prisoners in their care and custody. Therefore, should this

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<sup>2</sup> JPCC-4.29 states: Attorneys conferring with their clients on criminal matters may visit with one or more inmate(s) any day of the week from 0830 hrs to 2300 hrs excluding the following time periods: Between 1100 hrs & 1200 hrs daily (Inmate feeding), 1345 hrs and 1445 hrs daily (Change of shift), 1700 hrs & 1800 hrs daily (Inmate feeding).

injunction be denied, the harm to Mr. Brown obviously outweighs any asserted “harm” to the Defendants should it be granted.

#### **IV. THE PUBLIC INTEREST WILL BE SERVED BY GRANTING THE REQUESTED RELIEF**

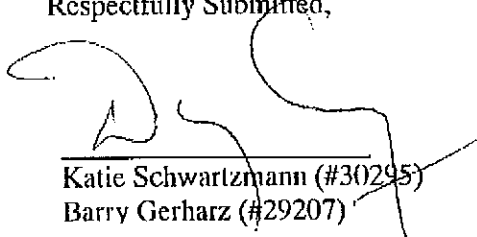
It is well-settled that the public interest is always served by ensuring compliance with the Constitution and civil rights law. See, e.g., *Valley v. Rapides Parish School Board*, 118 F. 3d 1047, 1056 (5<sup>th</sup> Cir. 1997) (finding that public interest would be undermined if unconstitutional actions of a school board were permitted to stand); See also, *G&V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F. 3d 1071, 1079 (6<sup>th</sup> Cir. 1994) (holding that it is always in the public interest to prevent violations of constitutional rights).

Further, any member of the public could find himself or herself detained at Jefferson Parish Correctional Center and has the right to constitutional conditions of confinement while so detained. The public interest is best served by allowing attorneys access to the correctional center so they can gather accurate facts about the operation of the center. *McClendon*, 272 F. Supp 2d at 1259. The public interest is best served by allowing prisoners to meet with attorneys, who can assist them in evaluating their claims, provide guidance on whether claims are meritorious and litigate to ensure that conditions of confinement are constitutional.

**CONCLUSION**

For the reasons set out above, this Court should issue a temporary restraining order permitting Plaintiff to have confidential legal visits with attorneys from the ACLU Foundation of Louisiana at the same time and manner as attorneys representing Jefferson Parish Correctional Center detainees on criminal matters.

Respectfully Submitted,



Katie Schwartzmann (#30295)  
Barry Gerharz (#29207)

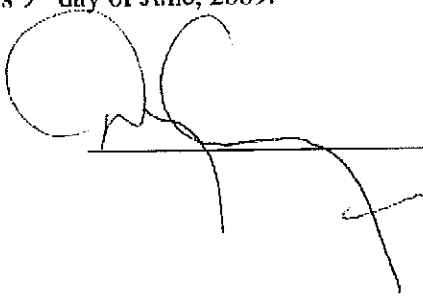
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Ron Wilson (#13575)(TA)  
2009 06 09 09:55:00

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Cooperating Attorney for the American  
Civil Liberties Union Foundation of  
Louisiana

Attorneys for the American Civil  
Liberties Union Foundation of Louisiana  
  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing Memorandum in Support of Motion for TRO has been served on Defendants via facsimile, and by placing same in the U.S. Mail, proper postage prepaid, this 9<sup>th</sup> day of June, 2009.

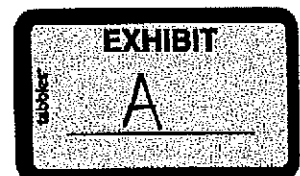


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PARISH OF ORLEANS  
STATE OF LOUISIANA

DECLARATION OF BARRY GERHARZ

1. My name is Barry Gerharz, La. Bar No. 29207, and I am an attorney employed as a Prison Litigation Fellow at the ACLU Foundation of Louisiana.
2. We received a request for assistance from a member of Torrey Brown's family. A member of Mr. Brown's family filed a complaint on our website on March 14, 2009. The complaint was on behalf of Torrey and stated in relevant part: "Since [Torrey Brown] has been in jail, he has made multiple complaints about a particular correctional officer there, yet this particular officer is still able to watch over him. Today, we received a phone call that Torrey had been beaten by guards and was taken to University. Calls to the ranking did not answer any questions and right now we don't know where he is or if he is ok... We are at a loss and don't know what to do."
3. Later, the ACLU Foundation of Louisiana received a letter from Mr. Brown requesting a legal visit.
4. In response, I drove the Jefferson Parish Correctional Center ("JPCC") on March 31, 2009. I entered the visiting area of JPCC, where I spoke to man at the front desk who identified himself as Deputy Shine. I told Deputy Shine that I wanted a confidential legal visit with Torrey Brown. Deputy Shine informed me that because my visit was related to a non-criminal matter, I would have to clear my visit with Chief Penouilh. Deputy Shine told me to go to an adjoining building to make the request to the Chief.
5. I walked to the adjoining building and spoke with Mr. Joe Palermo, who worked the front desk in the adjoining building. Mr. Palermo told me that the Chief was on vacation, so I requested to speak to a person who could authorize a confidential legal visit.
6. Mr. Palermo made a phone call to Ms. Connie Cassard. Mr. Palermo, who still had Ms. Cassard on the phone with him, told me that Ms. Cassard stated that the prison's policy was that legal visits for non-criminal matters had to occur during a



PARISH OF ORLEANS

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prisoner's regular visiting hours and that the prisoner would have to place me on his visitor list.

7. I then asked Mr. Palermo to ask Ms. Cassard if he could have a private attorney-client visit during those hours. Mr. Palermo informed me that Ms. Cassard stated that the visit would be a regular visit and would occur in the regular visitation booth.
8. While at JPCC that day I picked up a copy of a form I was told all attorneys have to sign in order to have a legal visit with a prisoner. A copy of the form is marked as Exhibit E.
9. Since that date, I wrote letters to Mr. Brown, who is occasionally able to respond. Unfortunately, Mr. Brown reports that staff at JPCC tell him that they open and read the mail I send him. I send him mail in sealed envelopes stamped "Confidential" and "Legal Mail."
10. I cannot ethically communicate with him in an open and honest manner because Mr. Brown reports that staff open and read his mail. I cannot be frank with him, nor can I ask questions that may elicit or contain confidential information or elicit of contain potentially inculpatory information.
11. Additionally, I have found that Mr. Brown's does not fully comprehend basic questions I ask him in the letters I send and I find his writing to be difficult to understand. I believe his reading and writing comprehension to be on a low-to-mid range.
12. Mr. Brown wrote to the ACLU Foundation of Louisiana that he continues to feel threatened and abused by Jefferson Parish Correctional Center staff.
13. I have written to Deputy Chief Penoiulli to request a confidential legal visit. A copy of the letter I sent is marked as Exhibit J.
14. The next day I received a voicemail message from Major Lavin of the Jefferson Parish Correctional Center, who stated that "as far as the visit to see your client, that will be denied." An electronic copy of the voicemail is available at: <http://2.recordertheapp.com/e73f9dbd2dee73656f17> until June 12, 2009, and is contained in Exhibit K.



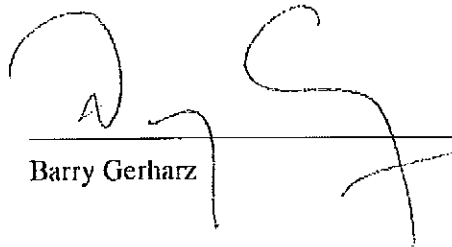
PARISH OF ORLEANS

STATE OF LOUISIANA

15. I also wrote Deputy Chief Penoitlh last year after I was unable to have a confidential legal visit with a different prisoner at JPCC. A copy of that letter is marked as Exhibit L.

I declare this to be true under penalty of perjury, this 4 day of JUNE, 2009,

NEW ORLEANS, Louisiana.

  
\_\_\_\_\_  
Barry Gerharz

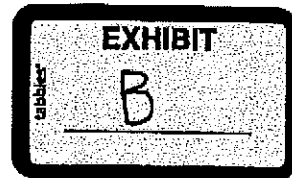
PARISH OF ORLEANS

STATE OF LOUISIANA

DECLARATION OF KATIE SCHWARTZMANN

1. My name is Katie Schwartzmann, La. Bar No. 30295, and I am an attorney employed as the Legal Director for the ACLU Foundation of Louisiana.
2. Part of my job as Legal Director is to monitor complaints received by the ACLU from members of the public. On Saturday, March 14, 2009, we received a complaint from a member of Torrey Brown's family.
3. The complaint was on behalf of Torrey and stated in relevant part: "Since [Torrey Brown] has been in jail, he has made multiple complaints about a particular correctional officer there, yet this particular officer is still able to watch over him. Today, we received a phone call that Torrey had been beaten by guards and was taken to University. Calls to the ranking did not answer any questions and right now we don't know where he is or if he is ok... We are at a loss and don't know what to do."
4. Pursuant to this complaint, and subsequent to receiving additional information from his relatives, I travelled to the Jefferson Parish Correctional Center to attempt to see Mr. Brown. Upon arrival I was made to wait for a long time; I believe it was almost an hour. I was then presented with a form to sign, that stated as follows:

I serve as an attorney for the prisoner with respect to the listed criminal matters. Unless other purposes are disclosed in 3(b) the purpose of my visit is limited to providing the prisoner with legal services directly related to one or more of the criminal matters disclosed hereinabove. *I understand that the special prisoner access privileges granted to me as a lawyer are not available to me if the purpose of my visit is not directly related to one or more of the criminal matters listed. Furthermore, I understand that if my visit also includes a purpose other than to provide legal services directly related to the listed criminal matters, then Sheriff Newell Normand considers my special prisoner access privileges as a lawyer to be unavailable. I am not visiting with the prisoner for any purpose related to any commercial or business enterprise or activity. I understand that any misrepresentation of the purpose of my visit renders invalid the permission granted by Sheriff Newell Normand to visit the prisoner. I understand that Sheriff Newell Normand considers any visit granted as a result of any*



PARISH OF ORLEANS

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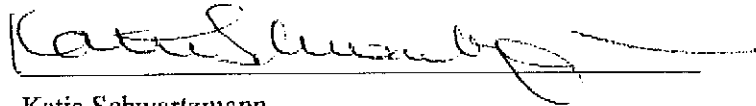
*misrepresentation of the purpose of my visit to be an unauthorized entry, and trespass, of the Jefferson Parish Correctional Center.*

5. In section 3(b) of the form I disclosed that I was there on a civil matter. I verbally reiterated this to the front desk deputy as well.
6. After a delay, I was able to see Mr. Brown. He was obviously significantly injured. His nose appeared to be broken, there were staples in his head, and there was extensive bruising and lesions on his face and person.
7. Because of the form I had completed, I was not sure whether my visit to him was a confidential legal visit or not. Specifically, this language:  
*I understand that the special prisoner access privileges granted to me as a lawyer are not available to me if the purpose of my visit is not directly related to one or more of the criminal matters listed. Furthermore, I understand that if my visit also includes a purpose other than to provide legal services directly related to the listed criminal matters, then Sheriff Newell Normand considers my special prisoner access privileges as a lawyer to be unavailable.*  
indicated to me that although I was able to get in to see him, my visit was not a confidential legal visit due to it not being criminal in nature.
8. Due to this concern, as well as the fact that it was then getting later in the evening, I gathered only very basic information from Mr. Brown.
9. He indicated that he wanted the help of the ACLU to ensure his safety, and to consider litigation on his behalf due to the injuries he had sustained.
10. I advised him that my office would be back in touch with him in the coming days to determine what we could do to assist him.
11. Since that visit, our office has been unable to have any confidential communication whatsoever with Mr. Brown. We are unable to adequately represent his interests, or to determine whether we can represent his interests, due to the refusal of the Defendants to provide us with confidential visits with him.

PARISH OF ORLEANS

STATE OF LOUISIANA

I declare this to be true under penalty of perjury, this 8<sup>th</sup> day of June, 2009,  
New Orleans, Louisiana.

A handwritten signature in cursive script, appearing to read "Katie Schwartzmnn", written over a horizontal line.

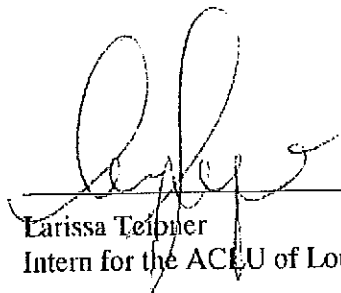
Katie Schwartzmnn

PARISH OF ORLEANS  
STATE OF LOUISIANA

DECLARATION OF LARISSA TEIPNER

1. My name is Larissa Teipner. I am a rising third year law student with a Faculty Merit Scholarship at Louisiana State University, where I am a senior associate of the Louisiana Law Review.
2. I currently work as an unpaid law clerk for the American Civil Liberties Union Foundation of Louisiana (ACLU of Louisiana).
3. On May 19, 2009, as part of my work at the ACLU of Louisiana, I met with Officer Eva Banner at the Jefferson Parish Correctional Center, located at 100 Dolhonde St, Gretna, Jefferson, Louisiana 70053. Officer Banner gave me copies of grievances filed by the prisoner Torrey Brown. Copies of the grievances are attached and marked as Exhibits H-I.
4. On the same day I also retrieved one of the attorney visitation certificate forms from the deputy on duty at the front desk of the visiting area of the Jefferson Parish Correctional Center. A copy of the attorney visitation certificate form is attached and marked as Exhibit D.

I declare this to be true under penalty of perjury, this 8 day of June, 2009, New Orleans, Louisiana.

  
\_\_\_\_\_  
Larissa Teipner  
Intern for the ACLU of Louisiana



# HARRY LEE SHERIFF



## Attorney Visitation Certificate

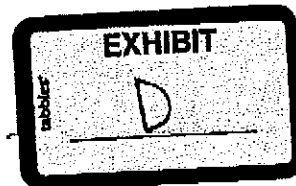
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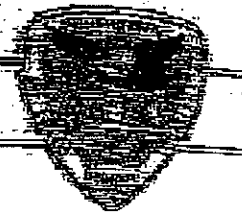
Time:

1. Prisoner Name:
2. Attorney Name:
  - a. Bar Roll #
  - b. Driver's License #
3. Purpose(s) of visit
  - a. Criminal Matter(s) (List all pending criminal cases, charges, or arrests for which attorney represents prisoner):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - b. Other purpose(s):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I serve as an attorney for the prisoner with respect to the listed criminal matters. Unless other purposes are disclosed in 3 (b) the purpose of my visit is limited to providing the prisoner with legal services directly related to one or more of the criminal matters disclosed hereinabove. I understand that the special prisoner access privileges granted to me as a lawyer are not available to me if the purpose of my visit is not directly related to one or more of the criminal matters listed. Furthermore, I understand that if my visit also includes a purpose other than to provide legal services directly related to the listed criminal matters, then Sheriff Harry Lee considers my special prisoner access privileges as a lawyer to be unavailable. I am not visiting with the prisoner for any purpose related to any commercial or business enterprise or activity. I understand that any misrepresentation of the purpose of my visit renders invalid the permission granted by Sheriff Harry Lee to visit with the prisoner. I understand that Sheriff Harry Lee considers any visit granted as a result of any misrepresentation of the purpose of my visit to be an unauthorized entry, and trespass, of the Jefferson Parish Correctional Center.

\_\_\_\_\_  
Signature of Attorney





Date:

Time:

1. Prisoner:

2. Attorney Name:

a. Bar Roll #

b. Driver's License #

3. Purpose(s) for visit

a. Criminal Matter(s) (List all pending criminal cases, charges, or arrests for which attorney represents prisoner):

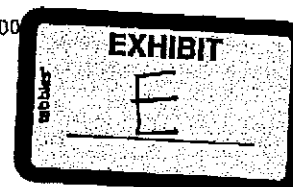
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b. Other purposes(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I serve as an attorney for the prisoner with respect to the listed criminal matters. Unless other purposes are disclosed in 3(b) the purpose of my visit is limited to providing the prisoner with legal services directly related to one or more of the criminal matters disclosed hereinabove. I understand that the special prisoner access privileges granted to me as a lawyer are not available to me if the purpose of my visit is not directly related to one or more of the criminal matters listed. Furthermore, I understand that if my visit also includes a purpose other than to provide legal services directly related to the listed criminal matters, then Sheriff Newell Normand considers my special prisoner access privileges as a lawyer to be unavailable. I am not visiting with the prisoner for any purpose related to any commercial or business enterprise or activity. I understand that any misrepresentation of the purpose of my visit renders invalid the permission granted by Sheriff Newell Normand to visit with the prisoner. I understand that Sheriff Newell Normand considers any visit granted as a result of any misrepresentation of the purpose of my visit to be an unauthorized entry, and trespass, of the Jefferson Parish Correctional Center.

\_\_\_\_\_  
Signature of Attorney



# Newell Normand SHERIFF



July 28, 2008

Deputy Chief Sue Ellen Penouilh  
Jefferson Parish Correctional Center  
100 Dolhonde Street  
Gretna, LA 70053

ACLU  
P.O. Box 56157  
New Orleans, LA 70156

Dear Ms. Schwartzmann,

Per our telephone conversation on Friday July 25, 2008, please find enclosed documentation that you requested regarding the policies and procedures of the Jefferson Parish Correctional Center.

The inmate handbook provided is issued to each inmate upon incarceration. These rules and regulations are also printed in a Spanish version to accommodate the Spanish speaking population.

I hope the information provided will aide you, and should you have any further questions or concerns, or if I may be of additional assistance, please contact me.

With kindest regards,

A handwritten signature in black ink, appearing to read "Sue Ellen Penouilh".

Deputy Chief Sue Ellen Penouilh  
Correctional Administrator

SEP/cbc





JEFFERSON PARISH  
CORRECTIONAL CENTER

**INMATE HANDBOOK**



**JEFFERSON PARISH SHERIFF'S OFFICE**  
NEWELL NORMAND, SHERIFF

# JEFFERSON PARISH COMMUNITY CORRECTIONAL CENTER

## INMATE RULES, REGULATIONS & ALL PROCEDURES

REVISED: 01/23/2008

This handbook is provided to inmates incarcerated within the Jefferson Parish Correctional Center explaining a written set of guidelines, describing behavior expected, and the type of discipline that can be imposed if the Rules, Regulations, & Procedures are not adhered to.

Inmates who understand the rules are less likely to get into trouble thereby providing a safe and secure facility for staff and inmates.

A copy of the inmate handbook Rules, Regulations, & Procedures is to be provided to each inmate incarcerated within the JPCC by the property officer at the time the inmate is "dressed in."

### INTRODUCTION:

The following Rules, Regulations, & Procedures have been formulated for your benefit and for the orderly operation of the institution. Read and understand these rules and regulations, as they will aid you in adjusting to confinement within the facility. The Rules, Regulations, & Procedures are not inclusive and may be amended or supplemented at the discretion of the Correctional Administrator or his / her designee. During emergency situations the Sheriff and / or the

#### INMATE RULES, REGULATIONS & PROCEDURES

You must complete and mail your legal correspondence in a timely manner. When sending out time sensitive legal mail, place a note on the letter stating that it is time sensitive, the mail room personnel will log the date and time that your letter was delivered to the United States Post Office.

#### INDIGENT LEGAL MAIL PRIVILEGES:

Indigent inmates should monitor their amount of mail to legal entities for pending or anticipated legal matters pertaining to their case. It is the inmate's responsibility to provide to JPCC his / her mailing list prior to any legal correspondence being mailed.

#### SMOKING:

The JPCC is a non-smoking facility. The non-smoking ban will include all Sheriff's Office personnel, medical personnel, inmates, and civilians. Cigarettes and tobacco products will be considered contraband. Inmates in possession of or distributing tobacco products will be subject to disciplinary action and / or criminal charges.

#### LEGAL ADVISOR / LAW LIBRARY:

Each inmate has a right to request legal information from the JPCC law library for his / her own use. Female inmates will be allowed on Thursdays only as schedule permits. In lieu of going to the law library inmates will be able to receive information relevant to their legal needs by requesting from the mail officer a legal information request form. The inmate must

fill out the form and return it to the mail officer. The legal advisor will research the information requested by the inmate. The legal advisor will return all researched information within five (5) working days of receipt. If there is a need to do typing or to speak with the legal advisor submit an inmate request for legal information

#### INMATE RULES, REGULATIONS & PROCEDURES

form stating the reason for the request to speak with the legal advisor. The legal advisor will then review the request and if required provide the inmate with copies of relevant materials or with direct access to the law library.

Note: If inmates are requesting photo copies of legal material to view a fee of **5 cents per copy** will be assessed.

Inmates who select not to pay for copies will have the option to handwrite the information.

Indigent inmate's copies will be made with a negative balance until funds are available.

Request for all photo copies must accompany a money release slip from the law librarian. The completed slip will then be submitted to the law librarian for processing.

#### VISITATION CARDS:

Upon being assigned into JPCC, new inmates will be issued a blank visitation card. The inmate should complete the information on the visitation card as soon as possible giving the completed form to the mail delivery person. Inmates can only change their visitors listed once a month. A blank visitation card can be requested at the beginning of each month to inmates in order to make necessary changes. Incorrect filling out of visitation cards will be voided and returned to inmate. Visitation cards received after the first week of the month ends will not be accepted and returned to the inmate. If an inmate does not complete a visitation card, then no visitors will be allowed to visit.

#### VISITATION PERIOD:

Each inmate is allowed **One thirty- (30) minute non-contact visiting period per week** unless security needs of the institution and facility order limit the available time. A visit is limited to a maximum of three adults (adult - thirteen years old or older) and three children (child - twelve years old or younger) which must be

#### **INMATE RULES, REGULATIONS & PROCEDURES**

written on the visitation card. It is the responsibility of the inmate to co-ordinate his visitors arrival for the visiting period.

#### **ATTORNEY VISITATION (CRIMINAL CHARGES):**

Attorneys visiting their client(s) on criminal matters may visit between the hours of 0700 and 2200 hrs providing the visits do not interfere with security lockdown or inmate feeding. Attorney visits for criminal matters other than the hours stated above require the approval of the administration or supervisor on duty.

#### **ATTORNEY VISITATION (CIVIL MATTERS):**

Attorneys requiring visitation with their client(s) on civil matters must visit the inmate on his / her regular visitation day and has to be listed on the inmate's visitation card to be allowed a non-contact visit. Special circumstances would require the approval of the administration or supervisor on duty.

#### **CLOTHING FOR COURT:**

While incarcerated if you have to appear in Court for a trial, and it is authorized by the Court that you appear in civilian clothing the facility will accept civilian clothing for that purpose only. Upon completion of your trial you will have three working days excluding weekends and holidays to have your clothes (worn in court) picked up from this facility or they will be considered abandoned and disposed of accordingly.

#### **REQUEST FORMS:**

Inmates while assigned to the correctional facility from time to time may have a need to request information, ask for help or assistance for varied reasons. Request forms may be obtained from the mail person. Fill out required information stating briefly your problem / situation / request and return to the mail person.

#### **INMATE RULES, REGULATIONS & PROCEDURES**

You shall receive an answer within three (3) to five (5) working days.

#### **PICTURES:**

All photographs are subject to administrative review. Personal photographs showing sexually explicit scenes are prohibited. Photographs may be received if they do not show any nudity or obscenity. Polaroid photographs are unacceptable and will be placed in inmate's property. Photographs, pictures, drawings, etc. of any nature are **NOT ALLOWED** to be attached to any wall, bed or fixture within the facility and will be removed as contraband to be discarded. Inmates are prohibited from drawing or marking on walls, cells, doors, or on any areas within the facility. Violations will result in disciplinary action and / or criminal charges.

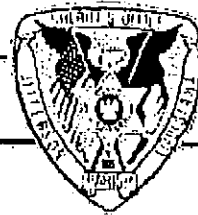
#### **WORK ASSIGNMENTS:**

Sentenced inmates may be assigned to work assignments according to their security classification, special skills and the needs of the facility. At any time, inmates can be removed from assigned work assignments.

#### **GED PROGRAM:**

The Jefferson Parish adult education program will test for G. E. D. applicants at the Correctional Center. Any inmate who desires to be placed on the list for acceptance in the G.E.D. program can obtain a form from the mail officer during mail call. Completed request forms should be submitted to the administration via the outgoing mail. The size of the G.E.D. class will be limited. Inmates may also participate in the LSU correspondence High School Diploma Program. In order to participate in the LSU correspondence you must meet the criteria outlined in their program.

# Newell Normand SHERIFF



Deputy Chief Sue Ellen Penouilh  
Jefferson Parish Correctional Center  
100 Dolhonde Street  
Gretna, Louisiana 70053

December 3, 2008

Barry Geharz  
Prison Litigation Fellow  
P.O. Box 56157  
New Orleans, Louisiana 70156

Dear Mr. Geharz,

Pursuant to Revised Statute 44:31 the Jefferson Parish Sheriff's Office is not obligated to provide your organization with copies of our policies and procedures.

However, as a courtesy, enclosed please find a copy of the Jefferson Parish Correctional Center's policy as it relates to criminal and civil Attorney visits.

Sincerely,

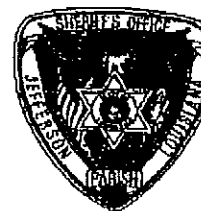
A handwritten signature in black ink, appearing to read "Sue Ellen Penouilh".

Deputy Chief Sue Ellen Penouilh  
Correctional Administrator



# JEFFERSON PARISH

## COMMUNITY CORRECTIONAL CENTER



**JPCC – 4.29**

**SUBJECT:**

**LJS – PART III  
009**

**REVISED: 06/09/2006**

**ATTORNEY, PARALEGAL, PRIVATE  
INVESTIGATOR, BAIL BONDSMAN, &  
SOCIAL SERVICES PROCEDURES**

**POLICY:** It is the policy of the Sheriff's Office to ensure and facilitate the rights of inmates to have access to an attorney.

**PURPOSE:** To have a standard set of guidelines for all attorney's to abide by, ensuring the rights of inmates to legal counsel.

**PROCEDURE:**

A. Attorney visit:

1. All attorneys arriving to confer with their client(s) on criminal matters shall present at the time of the requested visit a bar card (blue or white) with a valid state driver's license. ID's will be held at the window until the visit ends, then returned.
2. All attorney's must complete and sign an attorney visitation certificate before being allowed to visit with their client(s).
3. Attorney's arriving to confer with their client(s) on civil matters must visit their client(s) on the inmate's regular visitation day and the attorney has to be listed on the inmate's visitation card to be allowed to visit.
4. Attorneys conferring with their clients on criminal matters may visit with one or more inmate(s) any day of the week from 0830 hrs to 2300 hrs excluding the following time periods:
  - Between 1100 hrs & 1200 hrs daily (Inmate feeding)
  - 1345 hrs & 1445 hrs daily (Change of shift)
  - 1700 hrs & 1800 hrs daily (Inmate feeding)
5. An attorney, a paralegal, or a private investigator, working for the attorney, are prohibited from bringing a brief case, purse / pocketbook, cell-phone, camera, video camera, tape recorder, or computer with them while they visit. (Special approval is required to bring any of the above items into the facility.)
6. Attorneys may elect to receive a contact or telephone visit.
7. Attorney's, paralegals, private investigators may utilize lockers provided to store personal items not allowed into the facility until completing their visit.
8. JPCC is not responsible for any belongings left in the lobby by an

attorney, a paralegal, a private investigator, or social services.

- B. Paralegal contact visit with an inmate(s):
  - 1. A paralegal may have a contact visit with an inmate if he /she has all of the below listed requirements:
    - a. A court order. Contact the records section to ensure the court order is on file in the inmate's record. If the court order is not on file, make a copy and forward to records section to be placed into the Inmate file.
    - b. A valid state driver's license.
  - 2. A paralegal may have a contact visit if the attorney is present.
  - 3. A paralegal without an attorney present, and no court order, may request and receive a telephone visit only.
  - 4. A paralegal must comply with A.4. above and may utilize A.6 above.
- C. Investigators working for an attorney:
  - 1. May only receive a telephone visit with a valid state driver license and a PI license.
  - 2. May receive a contact visit with the attorney present, a PI license, & a valid state driver license.
  - 3. Must comply with A.4. above and may utilize A.6. above.
- D. Bail bondsman:
  - 1. Telephone visit only.
- E. Social services:
  - 1. Without a court order may have a telephone visit only?

INMATE GRIEVANCE FORM

You must send this form to the Correctional Administrator within thirty-(30) days of the incident complained of. Forward the completed form via the mail officer. Use a separate form for each grievance. DO NOT file duplicate grievances. You will receive a response within fifteen-(15) days. If you do not receive a response within that time, you may file a request for grievance review within the following five-(5) days.

Torrey Brown Inmate's Name 7-26-78 Date of Birth 3rd Flr. I 30. Housing Location  
3-31-09 Date of Incident 79999900 Inmate CCN # 4-6-09 Date Grievance Filed

SUMMARY OF COMPLAINT:

A lawyer, Barry Gerhartz, attempted to visit me after I request a legal visit. When he attempted to visit the Prison on March 31, 2009, at approximately 12:50 p.m. he was told by Dep. Shine that he would have to clear legal visit with Chief Penault. Dep. Shine told Mr. Gerhartz to go to 3rd floor building to make the request to the Chief. Mr. Palermo told Mr. Gerhartz that the prison policy was that legal visits had to occur during regular visitation hours, and that at the Chief was on vacation. Mr. Gerhartz then asked Mr. Palermo to ask Mr. Cassard if he could have a private attorney visit during those hours. Mr. Palermo informed Mr. Gerhartz that Mr. Cassard stated that the visit would be a regular visit in the regular visitation booth. (With No-Exceptions)

STATE YOUR ATTEMPT TO RESOLVE THIS COMPLAINT WITH AN OFFICER

(Failure to complete this section will result in denial of grievance)

Attorneys who visit for Criminal matters can visit the prison any day between 7am and 10pm and do not have to place on a prisoners visitation list. That regular visit area will not give me enough privacy to speak freely to Barry Gerhartz. If I spoke to him there, it would adversely affect the attorney-client privilege confidentiality. I would like to be able to meet with Barry Gerhartz for a legal visit in a confidential setting at the same hours as attorneys visit for criminal matters.

Name of personnel involved: Deputy Shine, Sol Palermo, Mr. Connie Cassard

Name and Location of witnesses: "Barry Gerhartz"; ACLU P.O. Box 56159 New Orleans, La. 70156-6159  
P. (504) 582-0617

I authorize the JPCG Medical Department to release to the first responder any & all medical records relating to the factual basis of this grievance. Signed: Torrey Brown

DO NOT WRITE BELOW THIS LINE:		FOR ADMINISTRATIVE USE ONLY:	
Date Received:	<u>4-01-09</u>	Returned:	Obtain inmate receipt
Grievance #	<u>4-47-09</u>		Multiple complaints: file separate Grievance
Screened by:	<u>Dep. Banner</u>		Vague complaint
Type of complaint:	<u>Administrative</u>		Summarize complaint
Accepted and referred to:	<u>Chief Penault</u>		Other: Specify _____
Policy & Procedure Challenged	Yes/No	Rejected:	Obtain inmate receipt
Hold pending decision on grievance #	_____		Outside scope of procedure
Remarks:	_____		Disciplinary appeal
	_____		Premature
	_____		Duplicate Grievance
	_____		Filed more than 30 days after event
	_____		Other Specify _____

**INMATE RECEIPT OF REJECTED / RETURNED GRIEVANCE**  
Revised grievance must be re-filed within thirty (30) days of the event on, which is the basis for this grievance, whichever is later.

Date: \_\_\_\_\_ Inmate Signature: \_\_\_\_\_

Copy 1 Administration      Copy 2 Inmate Receipt      Copy 3 Inmate

EXHIBIT  
H



**RESPONSE TO GRIEVANCE**

(STEP 1)

04/16/09

DATE

04-47-09

GRIEVANCE NUMBER

TO: Torrey Brown

LOCATION: 3 - isolation

FROM: Sue Ellen Penouilh TITLE/POSITION/RANK Deputy Chief

GRIEVANCE: \_\_\_\_\_ FOUNDED  X  UNFOUNDED

REASON (S): The Jefferson Parish Correctional Center have established policies and procedures in place which govern criminal and civil visits.

All civil visits are permitted during inmates visitation times. Whether or not your Attorney chooses to visit during this designated time is his/her choice.

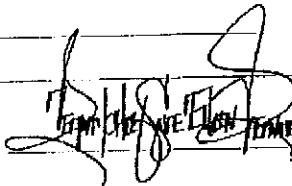
ACTION TAKEN / RECOMMENDED (IF ANY):

NONE

DISPOSITION OF RECOMMENDATIONS:

04/20/09

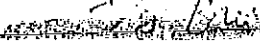
DATE

  
SIGNATURE

**INMATE RECEIPT**

IF YOU WISH FURTHER REVIEW OF YOUR GRIEVANCE YOU MUST SIGN THE BELOW REQUEST FOR ADMINISTRATIVE REVIEW AND SEND IT TO THE CORRECTIONAL ADMINISTRATOR WITHIN 5 DAYS OF RECEIPT OF THIS RESPONSE. YOU WILL RECEIVE THE ADMINISTRATOR'S DECISION WITHIN 45 DAYS OF FILING YOUR GRIEVANCE.

04/20/09  
DATE

  
INMATE'S SIGNATURE

**REQUEST FOR ADMINISTRATIVE REVIEW**

I HEREBY REQUEST REVIEW BY THE ADMINISTRATOR OR HIS DESIGNEE

DATE

INMATE'S SIGNATURE

**RESPONSE TO GRIEVANCE**

(STEP 3)

May 7, 2009

4-47-09

DATE

GRIEVANCE NUMBER

TO: Torrey Brown

LOCATION: 4DR02A

FROM: Tim Valenti, Sheriff's Designee

GRIEVANCE:                      FOUNDED   X   UNFOUNDED

REASON (S): I concur with Deputy Chief Penouilh's findings.

\_\_\_\_\_  
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ACTION TAKEN / RECOMMENDED (IF ANY):

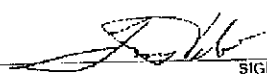
None

DISPOSITION OF RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5-7-09

DATE




SIGNATURE

**INMATE RECEIPT**

YOU HAVE EXHAUSTED ALL AVENUES OF THE ADMINISTRATIVE REMEDY PROCEDURE.

5-19-09

DATE



INMATE'S SIGNATURE

301

INMATE GRIEVANCE FORM

You must send this form to the Correctional Administrator within thirty-(30) days of the incident complained of. Forward the completed form via the mail officer. Use a separate form for each grievance. DO NOT file duplicate grievances. You will receive a response within fifteen-(15) days. If you do not receive a response within that time, you may file a request for grievance review within the following five-(5) days.

Torrey Brown 7-26-78 3flc. Iso.
Inmate's Name Date of Birth Housing Location
3-14-09 79939900 3-16-09
Date of Incident Inmate CCN # Date Grievance Filed

SUMMARY OF COMPLAINT:

At approx. 7:45 a.m., On 4CR dormitory I inmate Torrey Brown #79939900 was exiting my assigned cell 8B for early morning breakfast. While awaiting in single file line to be served my food tray, Dep. Scott gave me inmate Brown a verbal direct order to button up my jumper and I responded by doing so. At least I thought so. Because as soon as I was being served my tray, Sgt. Carter and Sgt. Harris stormed onto the Dayroom area of 4CR dormitory, physically abusing me, without giving me fair warnings or verbal direct orders to be restrained. After being brutally beaten with Mace Stick and sprayed with pepper spray for a couple of minutes until I was almost unconscious. I was then restrained by other deputies and escorted to University Hospital. Treated for Broken nose and other injuries.

(Failure to complete this section will result in denial of grievance)

I would like to be protected from both individuals Sgt. Carter and Sgt. Harris. I would also like to go forward with charges being press on both. I would like you all to do a full fledged investigation previous incidents and if possible both of the jobs taken, and last but not least I am packing out to Civil Lawyers for pain and suffering.

Name of personnel involved: Sgt. Carter, Sgt. Harris, and Deputy Scott

Name and Location of witnesses: Do to my assigned living quarters (3RD floor ISO) I have no positive I.D. of any witness, Except my cellmate Lacroix Sallet # 31653, 4CR 8B. I will try to notify others. But until then investigate the odd 4C Left and Right

I authorize the JPC Medical Department to release to the first responder any & all medical records relating to the factual basis of this grievance. Signed: Torrey Brown

DO NOT WRITE BELOW THIS LINE:

Date Received: 3-20-09
Grievance #: 3-14-09
Screened by: Lt. Cook
Type of complaint: Rejected
Accepted and referred to:
Policy & Procedure Challenged Yes / No
Hold pending decision on grievance #

FOR ADMINISTRATIVE USE ONLY:

Returned: Obtain inmate receipt
Multiple complaints: file separate Grievance
Vague complaint
Summarize complaint
Other: Specify
Rejected: Obtain inmate receipt
Outside scope of procedure
Disciplinary appeal
Premature
Duplicate Grievance
Filed more than 30 days after event
Other Specify

INMATE RECEIPT OF REJECTED / RETURNED GRIEVANCE
Revised grievance must be re-filed within thirty (30) days of the event on, which is the basis for this grievance, whichever is later.
Date: 3-27-09
Inmate Signature: [Signature]
Copy 1 Administration Copy 2 Inmate Receipt Copy 3 Inmate



INMATE GRIEVANCE FORM

You must send this form to the Correctional Administrator within thirty-(30) days of the incident complained of. Forward the completed form via the mail officer. Use a separate form for each grievance. Do Not file duplicate grievances. You will receive a response within fifteen-(15) days. If you do not receive a response within that time, you may file a request for grievance review within the following five-(5) days.

Torrey Brown 7-26-78 3rd flr. Iso.  
 Inmate's Name Date of Birth Housing Location

3-14-09 #79939900 4th Complaint logged on 4/1/09  
 Date of Incident Inmate CCN # Date Grievance Filed

SUMMARY OF COMPLAINT:

On 3/14/09, I inmate Brown, was a victim of a brutal attack, by 2 ranking officers (Sgt. Carter and Sgt. Harris). Prior to this complaint on 4/1, I have already made and (audio) statement which states all details of incident on 3/14. Also, I have submitted 2 grievance forms specifically on this issue, on 3/14. And I also submitted another G-Form on 2/18, which I didn't log and due to my poor mistakes, this complaint was never returned or responded too. So due to a lot of covering and violations of my Constitutional Rights, I have officially hired A Civil Lawyer on this matter. So here today on 4/1/09, I inmate Torrey Brown have submitted another (4th) complaint, with full acknowledgement of all my Inmate Rights, which were violated, and STATE YOUR ATTEMPT TO RESOLVE THIS COMPLAINT WITH AN OFFICER still being violated.

(Failure to complete this section will result in denial of grievance)  
 I would like too go forward with Pressing Charges against both Sgt's, And I would like to be protected from another serious attack like this. Also I would like Punitive Damage for pain and suffering.

Name of personnel involved: Sgt. Carter and Sgt. Harris

Name and Location of witnesses: 4CR and 4CL inmates and Both Deputies who worked the key / on 3/14

I authorize the J.P.C.C Medical Department to release to the first responder my & all medical records relating to the factual basis of this grievance. Signed: Torrey Brown  
 Inmate Signature

DO NOT WRITE BELOW THIS LINE:	FOR ADMINISTRATIVE USE ONLY:
Date Received: <u>4-1-09</u>	Returned: Obtain inmate receipt
Grievance #: <u>09-09-09</u>	Multiple complaints: file separate Grievance
Screened by: <u>H. Cook</u>	Vague complaint
Type of complaint: <u>Sill</u>	Summarize complaint
Accepted and referred to: _____	Other: Specify _____
Policy & Procedure Challenged Yes / No	Rejected: Obtain inmate receipt
Hold pending decision on grievance # _____	Outside scope of procedure
Remarks: _____	Disciplinary appeal
	Premature
	Duplicate Grievance
	Filed more than 30 days after event
	Other Specify _____

**INMATE RECEIPT OF REJECTED / RETURNED GRIEVANCE**  
 Revised grievance must be re-filed within thirty (30) days of the event on, which is the basis for this grievance, whichever is later.

Date: \_\_\_\_\_ Inmate Signature \_\_\_\_\_

Copy 1 Administration      Copy 2 Inmate Receipt      Copy 3 Inmate

**RESPONSE TO GRIEVANCE**

(STEP 1)

04-07-2009

200904008

DATE

GRIEVANCE NUMBER

TO: Torrey Brown

LOCATION: 3-1 Iso

FROM: Dep. T. Kelly

TITLE/POSITION/RANK

SIU/DEPUTY

GRIEVANCE: \_\_\_\_\_ FOUNDED  UNFOUNDED

**REASON (S):**

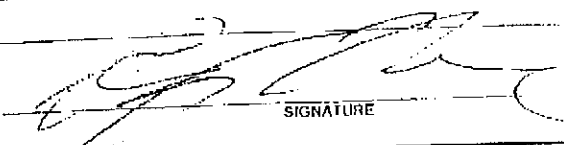
In reference to the grievance that you filed on April 1, 2009 about Sgt. Carter and Sgt. Harris there will be no charges pressed against either Sergeant on this incident. A investigation was conducted and there was enough probable cause that lead to you being the aggressor in the event and you were charged accordingly.

**ACTION TAKEN / RECOMMENDED (IF ANY):**

**DISPOSITION OF RECOMMENDATIONS:**

04-07-2009

DATE



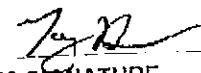
SIGNATURE

**INMATE RECEIPT**

IF YOU WISH FURTHER REVIEW OF YOUR GRIEVANCE YOU MUST SIGN THE BELOW REQUEST FOR ADMINISTRATIVE REVIEW AND SEND IT TO THE CORRECTIONAL ADMINISTRATOR WITHIN 5 DAYS OF RECEIPT OF THIS RESPONSE. YOU WILL RECEIVE THE ADMINISTRATOR'S DECISION WITHIN 45 DAYS OF FILING YOUR GRIEVANCE.

4-8-09

DATE

  
INMATE'S SIGNATURE

**REQUEST FOR ADMINISTRATIVE REVIEW**

I HEREBY REQUEST REVIEW BY THE ADMINISTRATOR OR HIS DESIGNEE

DATE

INMATE'S SIGNATURE

**RESPONSE TO GRIEVANCE**

(STEP 2)

04-09-09

CD-200904008

**3ALI**

04/20/09

DATE

GRIEVANCE NUMBER

TO: Torrey Brown

LOCATION: 3-1 Isolation

FROM: Deputy Chief Sue Ellen Perouilh

GRIEVANCE:            **FOUNDED**             **UNFOUNDED**

REASON (S): I concur with the findings resulting from the investigation conducted by  
The Special Investigations Unit.

ACTION TAKEN / RECOMMENDED (IF ANY):

NONE

DISPOSITION OF RECOMMENDATIONS:

*4/20/09*

DATE

*[Handwritten Signature]*

SIGNATURE

**INMATE RECEIPT**

IF YOU WISH FURTHER REVIEW OF YOUR GRIEVANCE YOU MUST SIGN THE BELOW REQUEST FOR ADMINISTRATIVE REVIEW AND SEND IT TO SHERIFF NEWELL NORMAND WITHIN 5 DAYS OF RECEIPT OF THIS RESPONSE. YOU WILL RECEIVE THE ADMINISTRATOR'S DECISION WITHIN 90 DAYS OF FILING YOUR GRIEVANCE.

*4-21-09*

DATE

*[Handwritten Signature]*

INMATE'S SIGNATURE

**REQUEST FOR ADMINISTRATIVE REVIEW**

I HEREBY REQUEST REVIEW BY THE SHERIFF OR HIS DESIGNEE

04/20/09

DATE

INMATE'S SIGNATURE

**RESPONSE TO GRIEVANCE**

(STEP 3)

May 7, 2009

04-09-09

DATE

GRIEVANCE NUMBER

TO: Torrey Brown

LOCATION: 4DR02A

FROM: Tim Valenti, Sheriff's Designee

GRIEVANCE: \_\_\_\_\_ FOUNDED   X   UNFOUNDED

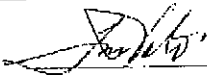
REASON (S): After review of the file, I concur with the Special Investigation Unit's findings.

**ACTION TAKEN / RECOMMENDED (IF ANY):**

None

**DISPOSITION OF RECOMMENDATIONS:**

5-8-09  
DATE

  
SIGNATURE

**INMATE RECEIPT**

**YOU HAVE EXHAUSTED ALL AVENUES OF THE ADMINISTRATIVE REMEDY PROCEDURE.**

5-19-09  
DATE

  
INMATE'S SIGNATURE



BARRY GERHARZ  
PRISON LITIGATION FELLOW

May 14, 2009

COPY

Deputy Chief Sue Ellen Penouilh  
Jefferson Parish Correctional Center  
100 Dolhonde Street  
Gretna, Louisiana 70053

Via Fax (504) 374-7769 & Certified Mail No. 7008 2810 0000 2335 2586

Re: Grievance Records of Torrey Brown, #79939900

Dear Deputy Chief Penouilh:

I am writing to request copies of all administrative remedy procedure grievances, whether formal or informal, filed by Torrey Brown. Please include copies of any responses to the grievances that were sent to Mr. Brown. I have enclosed an Authorization to Use or Disclose Prison Records signed by Mr. Brown. Please send copies to the above listed address, or contact me at bgerharz@laaclu.org, (504) 522-0744 x26, or (888) 533-0919 (fax) with any questions or concerns or if there will be a fee attributed to this request. If you choose to deny this request, please state the reasons why you are denying the request.

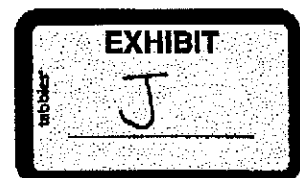
I would also like to request a confidential legal visit with Mr. Brown. I have previously attempted to visit Mr. Brown, but was told that because my visit would not be related to a "criminal case," I would not be permitted to visit in the confidential attorney visit setting, but would instead have to visit in a general visiting area. Additionally, I was told that I would have to sign a form that would make my "special prisoner access privileges as a lawyer [...] unavailable." The form would also potentially subject me to criminal sanctions, including unauthorized entry and trespass, if my visit was for a non-criminal matter. I have written you before about this policy regarding legal visits, which is contrary to a prisoner's, including Mr. Brown's, clearly established rights. See Attached. Please inform me if I can have a confidential legal visit with Mr. Brown.

Additionally, I am deeply troubled that Mr. Brown reports that recent letters we sent to Mr. Brown marked "Legal Mail" and "Confidential" was opened outside his presence. In the future I hope your office respects Mr. Brown's clearly defined rights. I considered all correspondence between the ACLU of Louisiana and Mr. Brown to be confidential and legal in nature.

Thank you very much. If you have any questions, please feel free to contact me at any time.

Sincerely,

  
Barry Gerharz







BARRY GERHARZ  
PRISON LITIGATION FELLOW

November 20, 2008

Jefferson Parish Correctional Center  
Attn: Warden Sue Ellen Penouilh  
100 Dolhonde St  
Gretna, LA 70053

Via: US Mail  
Facsimile to 504.374.7769

Dear Warden Penouilh:

A prisoner currently incarcerated at Jefferson Parish Correctional Center ("JPCC") recently requested a legal visit with our office. On the morning of November 20, 2008, I visited JPCC and was told that because my visit may involve a civil matter, I would have to come back on a Monday between 5:45 pm and 8:00 pm during regular (i.e. non-attorney) visiting hours.

In order to avoid taking a trip in vain, I called JPCC to find out the official policy on legal visits involving what could potentially be a civil matter. After being transferred numerous times, I spoke to a Deputy Banner, who was cordial and instructive. Deputy Banner informed me that because my visit would be civil in nature, I would have to be placed on the prisoner's visitation card and conduct the visit during regular (i.e. non-attorney) visitation hours. I was also told that I would not be allowed to use the regular attorney-client area. Instead I would have to meet with the prisoner in the general visitation area. Curiously, if my visit involved passing legal paperwork back and forth with the prisoner, I would be allowed to use the attorney-client visitation area. I would like to interview this prisoner and will not be passing legal paperwork.

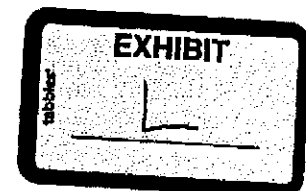
My concern is that an effective and ethical interview involving legal matters cannot occur in the regular visitation area, where there is little or no privacy. It would be unethical for me to meet with a prisoner under these conditions because it may waive the attorney-client privilege and flaunt ethical rules governing confidentiality. By forcing attorneys to either conduct interviews that are unethical or forgo visits due to ethical concerns, JPCC obstructs the prisoner's right to have a reasonable opportunity to seek and receive the assistance of counsel. See Proconier v. Martincz, 416 U.S. 396, 419 (1974) ("Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to courts are invalid"); see also Williams v. Price, 25 F. Supp. 2d 623, 629 (W.D. Pa. 1998);

All we ask is that all attorneys be given the same access to prisoners for legal visits. Please respond to this request in writing.

Please contact my office if I have misunderstood the parish's policy or if you have any questions or concerns. You can easily reach me at 504.522.0744 x.26, bgerharz@laaclu.org, or via fax at 888.533.0919.

Sincerely,

Barry Gerharz



**RONALD L. WILSON**  
ATTORNEY AT LAW

Licensed in:  
Louisiana  
Colorado  
Oregon  
New York  
Washington, D.C.

March 9, 2007

Fax: 834-5409

Daniel Martiny  
Attorney at Law  
131 Airline Drive  
Metairie, Louisiana 70001

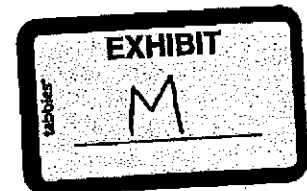
Re: Patrick Barker  
Client Access

Dear Danny:

This letter will serve as confirmation of our conversation this afternoon regarding my visit earlier today to the Jefferson Parish Detention Center. As stated during said conversation, I visited the detention center today, to confer with a client, Patrick Barker, regarding a civil rights law suit that he desires to file. As required, I completed the Attorney Visitation Certificate, copy of which is attached, and was advised that unless I was there on a criminal matter, I would not be allowed to confer with the client. The Certificate specifically provides that the attorney "understand[s] that the special prisoner access privileges granted to [him] as a lawyer are not available to [him] if the purpose of [his] visit is not directly related to one or more of the criminal matters listed."

The policy is patently unconstitutional. As the Supreme Court has made clear, prisoners have a well-established constitutional due process right of access to the courts. *See Bounds v. Smith*, 430 U.S. 817, 821 (1977). It is fundamental that access to the courts for the purpose of challenging confinement, conditions of confinement or violations of civil rights may not be denied or obstructed. *Id.* at 827; *Johnson v. Avery*, 393 U.S. 483, 485 (1969). Restrictions may not be placed upon the attorney-client relationship which effectively diminish a prisoner's access to the courts. *See Souza v. Travisono*, 368 F.Supp. 959, 967 (D.R.I. 1973), *aff'd in part, part, 498 F.2d 1120 (1<sup>st</sup> Cir. 1974)*.

Although the right of court access is not absolute and may be curtailed to accommodate institutional security interests, *Bounds*, 430 U.S. at 830-31, the burden rests with the state to demonstrate the adequacy of the methods it chooses in extending this right. *Bulse v. Hawkins*, 584 F.2d 223, 228 (7<sup>th</sup> Cir. 1978).



MARTINY, Daniel  
March 9, 2007  
Page 1:

Sheriff Lee's policy prohibits visits by attorneys representing clients in civil matter. There is no rational basis for such a policy. In so doing, he is violating First Amendment right of access to the court, and the Fourteenth Amendment right to Equal Protection under the law. His policy irrationally differentiates between similarly situated inmates.

Please contact me after you have had an opportunity to speak to Sheriff Lee so that we may attempt to resolve this matter short of litigation. The policy is facially unconstitutional and needs to be revised.

Thanks for your cooperation in this matter.

Sincerely,

Ronald L. Wilson

RLW:dj  
encl.  
cc: Darlene Barker

PARISH OF JEFFERSON


STATE OF LOUISIANA

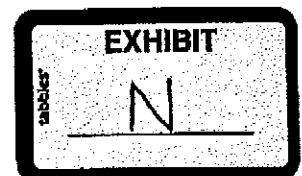
DECLARATION OF KECIA BROWN

1. My name is Kecia Brown. I am Torrey Brown's sister. I was born on February, 15, 1965, am a Certified Nursing Assistant and live at 2617 Colorado Drive, Marrero, LA.
2. I have visited my brother on a Sunday morning at Jefferson Parish Correctional Center's visiting room during his regular visiting time. I was only permitted to visit with him for thirty minutes.
3. The visiting room had rows of booths, one next to the other, with glass between the space for the visitor and the space for the prisoner. Each booth has a phone that a prisoner has to use to talk to the visitor. I had to speak to Torrey over one of these phones.
4. There is only a thin board separating a booth from the booth next to it. If I stood up in the booth, I could see inside the booth next to me. The booths are not closed-off from one another. There is no door or ceiling to the booths.
5. Anyone in the room could hear what I was saying to Torrey. Anyone could hear what a visitor was saying to a prisoner.
6. The booths on the prisoner's side looked just like the booths on the visitors side.

I declare this to be true under penalty of perjury, this 8 day of June, 2009,

Gretna, Louisiana.

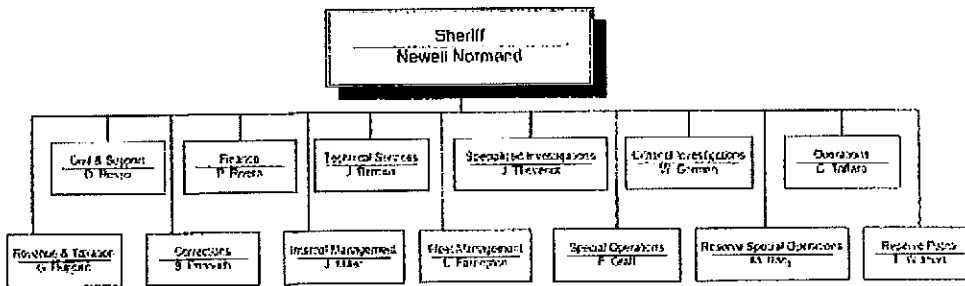
  
Kecia Brown



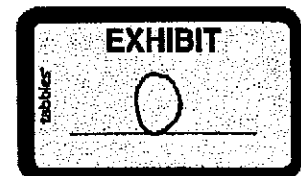


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Jefferson Parish Sheriff's Office Organization Chart  
CLICK ON THE ORGANIZATION BELOW TO VIEW.



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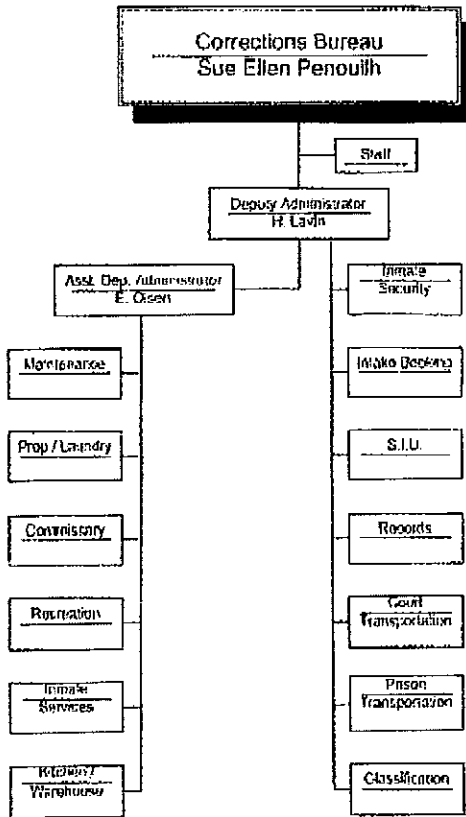




JEFFERSON PARISH  
**SHERIFF**

NEWELL NORMAND

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