

## Multiple Documents

Part	Description
<u>1</u>	4 pages
<u>2</u>	Exhibit

UNITED STATE DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

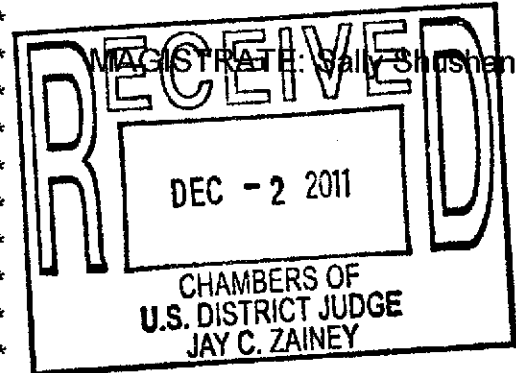
PRISON LEGAL NEWS and  
HUMAN RIGHTS DEFENSE CENTER,  
Plaintiffs

VERSUS

MARLIN N. GUSMAN, Sheriff, Orleans  
Parish, CARLOS LOUQUE, Warden,  
House of Detention, KEVIN WINFIELD,  
Warden, Old Parish Prison, CHARLES  
EZEB, Warden, Temporary Jails, JERROD  
SPINNEY, Warden, Conchetta, BONITA  
PITTMAN, Warden, Templeman V,  
J. Doe 1, Mailroom Supervisor,  
OPSO and J. Doe 2,  
Mailroom Employee, OPSO,  
Defendants

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\* NUMBER: 11-2277  
\*  
\* SECTION: "A"  
\*  
\* JUDGE: Jay Zainey  
\*  
\* MAG. SECTION: 1



**CONSENT JUDGMENT FOR INJUNCTIVE RELIEF ONLY**

IT IS HEREBY STIPULATED by and between the undersigned counsel for  
plaintiffs and defendants, as follows:

1. On September 9, 2011, plaintiffs filed suit in the above-captioned  
matter seeking injunctive and declaratory relief, damages, attorneys fees and costs,  
against the named defendants. The Complaint alleged an unlawful policy, practice  
and custom regarding failure to deliver incoming publications addressed to prisoners  
who were held at the Orleans Parish jail, in violation of the First and Fourteenth  
Amendments to the U.S. Constitution and 42 USC 1983. The Complaint also  
alleged violations of due process of the law due to the failure to give notice and an  
opportunity to respond, to the plaintiff publishers and distributors whose publications  
were denied access to their subscribers.

2. On October 11, 2011 plaintiffs filed a Motion for Preliminary

Injunction, with attached Memorandum and Exhibits. On October 26, 2011 the Court issued a Minute Entry noting that the parties were working to resolve the issue amicably and referred the parties to U.S. Magistrate Shushan for scheduling of a settlement conference.

3. The parties, with the assistance and oversight of the U.S. District Court Judge and Magistrate, have engaged in on-going negotiations in an attempt to amicably resolve this matter. The defendants deny liability. However, in order to put an end to this phase of the litigation and to avoid unnecessary expense and the uncertainties of future litigation regarding the plaintiffs' request for injunctive relief, the parties have agreed to the following terms and conditions: (1) The defendants have consented to the distribution of plaintiffs' monthly publication, Prison Legal News, along with copies of Protecting Your Health and Safety, a prisoner self-help guide distributed by plaintiffs, to plaintiffs' subscribers at the Orleans Parish jail. (2) The defendants have agreed to adopt and implement a new written policy and procedure, which the parties agree is constitutional, regarding "Incoming Publications" for prisoners at the Orleans Parish jail, attached hereto as Exhibit A and incorporated herein. This policy and procedure will be in effect regarding all future incoming publications to prisoners in custody of the Orleans Parish Sheriff's Office, including but not limited to those published and distributed by plaintiffs.

4. The parties agree, and the Court so orders, that defendant Sheriff Marlin N. Gusman, his agents, assigns, employees, wardens, deputies and successors, will establish, implement and enforce the policy and procedure set forth in Exhibit A, incorporated herein.

5. It is further agreed and ordered, that within 30 days of the date of entry of this Consent Judgment, the defendant Sheriff Marlin N. Gusman will (1) insure that this new policy and procedure is disseminated to all employees of the Orleans Parish jail as well as to all persons in custody at the jail and will be fully implemented and (2) make appropriate changes to the Orleans Parish Sheriff's Office website, OPSO Policy Index #1401.2 and the OPSO Inmate Orientation Form to reflect the policies and procedures adopted herein. Defendants' counsel will furnish the Court and plaintiffs' counsel with written confirmation of same.

6. The parties to this Consent Judgment agree that the provisions herein fully and fairly accommodate the interests of the parties hereto regarding the issue of injunctive relief only in this matter, that the Court should adopt and approve this agreement as a Consent Judgment, and that this Consent Judgment is a full and final judgment between the parties with regard to permanent injunctive relief only.

7. All remaining claims are specifically reserved by plaintiffs and denied by defendants. The Magistrate is ordered to schedule a settlement conference with the parties in an effort to explore possible amicable resolution of the remaining issues of damages, declaratory relief and reasonable attorneys fees and costs.


8. This Court retains jurisdiction of this action in order to enforce the terms of this Consent Judgment, to determine reasonable attorneys fees and costs and the remaining issues relating to plaintiffs' claims for damages and declaratory relief, to resolve any disputes regarding the implementation and enforcement of this Consent Judgment and all other issues of this lawsuit not otherwise covered by this Consent Judgment.


WHEREFORE, having fully read and considered the provisions set forth above, plaintiffs and defendants having stipulated and agreed to the above terms and conditions, and the Court having approved the entry of this Consent Judgment, IT IS SO ORDERED.

New Orleans, Louisiana this 2<sup>nd</sup> day of December, 2011.

  
\_\_\_\_\_  
U.S. DISTRICT COURT JUDGE JAY C. ZAINEY

AGREED TO BY:

  
\_\_\_\_\_  
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Attorney for Defendants

**SHERIFF MARLIN N. GUSMAN**  
**ORLEANS PARISH SHERIFF'S OFFICE (OPSO)**

**INCOMING PUBLICATIONS POLICY**

**1. Purpose and Scope**

Except when precluded by law, the Orleans Parish Sheriff's Office (OPSO) permits an inmate to subscribe to or to receive publications without prior approval and has established procedures to determine if an incoming publication is detrimental to the security, discipline, or good order of the institution or if it might facilitate criminal activity.

The term publication, as used in this subpart, means a book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, plus such other materials addressed to a specific inmate such as advertising brochures, flyers, and catalogs.

The Sheriff of Orleans Parish is the final policymaker. The Sheriff has delegated to the Chief Deputy the final authority for decision-making regarding implementation of this policy. All grievances or requests for reconsideration of a decision to reject a publication are complete upon the rendering of a final decision by the Chief Deputy.

**2. Program Objectives.** The expected results of this program are:

- a. Inmates will be permitted to receive and retain publications which do not threaten security, good order, or discipline of the institution or that may facilitate criminal activity, or are otherwise prohibited by law.
- b. Publications determined detrimental to the security, good order, or discipline of the institution or that may facilitate criminal activity, or are otherwise prohibited by law, will be excluded from OPSO facilities.
- c. A safer environment for staff and inmates will be provided by strengthening procedures designed to prevent the introduction of contraband.

**3. Application.** Procedures in this Incoming Publication Policy apply to all correctional facilities under the jurisdiction and control of the Orleans Parish Sheriff's Office.

**4. Procedures**

- a. At all Orleans Parish Sheriff's Office (OPSO) institutions, an inmate may



receive soft-cover publications (for example, paperback books, magazines, and other similar items) only from the publisher, a distributor, a book club, or a bookstore.

- b. The Chief Deputy may make an exception to the provisions of paragraph 4(a) if the publication is no longer available from the publisher, a distributor, book club or bookstore or is only available in hard-cover. An inmate requesting an exception to paragraph 4(a) shall provide the Chief Deputy with written documentation that the publication is no longer available from these sources or is only available in hard-cover. The Chief Deputy shall review all requests for exceptions within 10 days and make reasonable accommodations to make the requested publication available to the inmate. Any response to a request for exceptions shall be documented, in writing, and provided to the requesting inmate within 10 days. The decision of the Chief Deputy on any exception to paragraph 4(a) is a final decision for purposes of administrative review.
- c. The Chief Deputy may reject a publication only if it is determined detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity. The Chief Deputy may not reject a publication solely because its content is religious, philosophical, political, social or sexual, or because its content is unpopular or repugnant. Publications which may be rejected by the Chief Deputy include but are not limited to publications which meet one of the following criteria:
  - (1) It depicts or describes procedures for the construction or use of weapons, ammunition, bombs or incendiary devices;
  - (2) It depicts, encourages, or describes methods of escape from correctional facilities, or contains blueprints, drawings or similar descriptions of Orleans Parish Sheriff's Office institutions;
  - (3) It depicts or describes procedures for the brewing of alcoholic beverages, or the manufacture of drugs;
  - (4) It is written in code;
  - (5) It depicts, describes or encourages activities which may lead to the use of physical violence or group disruption;
  - (6) It encourages or instructs in the commission of criminal activity.
  - (7) It is sexually explicit material which by its nature or content poses a threat to the security, good order, or discipline of the institution, or

facilitates criminal activity.

Only the Chief Deputy may reject an incoming publication. If a Warden or Mailroom Supervisor questions the suitability of an incoming publication, pursuant to the criteria set forth in this policy, the publication must be referred to the Chief Deputy within three (3) days of receipt of the incoming publication at the jail. In the absence of the Chief Deputy, the Acting Chief Deputy may perform this function.

- d. The Chief Deputy may not establish an excluded list of publications. The Chief Deputy shall review the individual publication in question prior to the rejection of that publication. Rejection of several issues of a subscription publication is not sufficient reason to reject the subscription publication in its entirety.
- e. The Chief Deputy shall make a preliminary finding as to the suitability of the incoming publication within three (3) days of receipt of the publication.
- f. If the Chief Deputy makes a preliminary finding that a publication is unacceptable, pursuant to the criteria set forth in this policy, the Chief Deputy shall promptly advise the inmate in writing of the preliminary rejection and the reasons for it. The notice of preliminary rejection must refer to the specific article(s) or material(s) considered objectionable, the reason(s) for the rejection and advise the inmate of his or her right to request a re-consideration of the finding. The Chief Deputy shall permit the inmate an opportunity to review the publication for purposes of filing a request for re-consideration unless such review may provide the inmate with information of a nature which is deemed to pose a threat or detriment to the security, good order or discipline of the institution or to encourage or instruct in criminal activity. In questionable cases, the Chief Deputy should consult with legal staff.
- g. The publisher/sender of a publication preliminarily rejected by the Chief Deputy shall also be furnished with a copy of the notice of preliminary rejection provided to the inmate, by promptly mailing a copy of the notice to the publisher/sender. The Chief Deputy shall advise the publisher/sender that he or she may obtain re-consideration of the preliminary finding by writing to the Chief Deputy of Orleans Parish within 30 days of receipt of the notice of preliminary rejection.

See Notice to Inmate and Publisher/Sender of Preliminary Rejection of Incoming Publication (Attachment A) for a sample notice to inmate and publisher/sender.

- h. A copy of the Incoming Publications Policy of the Orleans Parish Sheriff's



Office shall be furnished to the inmate and publisher/sender along with the notice of preliminary rejection.

- i. A request by an inmate for re-consideration of the Chief Deputy's preliminary rejection of an incoming publication, must be in writing and is to be forwarded by OPSO staff directly to the Chief Deputy.
- j. The Chief Deputy must retain the publication in question throughout the time periods allowed for re-consideration and final decision. At the end of the re-consideration period, the rejected publication may be disposed of as provided in Section 5(n) herein.
- k. If a request for re-consideration is filed by either the inmate and/or the publisher/sender, the Chief Deputy shall wait until the entire time period for filing requests for re-consideration has expired, before issuing his or her final decision.
- l. The inmate and the publisher/ sender must be promptly notified of the final decision of the Chief Deputy. If the final decision is made to reject the publication, written notice of the final decision and the reasons for it, shall be furnished to the inmate and the publisher/sender.

See Notice to Inmate and Publisher/Sender of Final Decision Rejecting Incoming Publication (Attachment B) for a sample notice to inmate and publisher/sender.

- m. If the final decision is to permit the incoming publication, the inmate and publisher/sender shall be promptly notified and the publication shall be promptly furnished to the inmate.

See Notice to Inmate and Publisher/Sender of Approval of Publication (Attachment C) for a sample notice to inmate and publisher/sender

- n. If no request for reconsideration is timely submitted by either the inmate or the publisher/sender after the time periods for requesting re-consideration have lapsed, or if after re-consideration, the Chief Deputy issues a final decision upholding the rejection, the Chief Deputy shall provide the inmate with the following options of disposing of the rejected publication:

- (1) return to sender;
- (2) send to person or entity designated by the inmate to receive rejected publications, or
- (3) any other mutually agreeable disposition.

- o. The Chief Deputy may set reasonable limits (for fire, sanitation or housekeeping reasons) on the number or volume of publications an inmate may receive or retain in his/her quarters. Inmates will store all publications in the areas provided for personal effects. The Chief Deputy may authorize an inmate additional storage space for storage of legal materials in accordance with the Orleans Parish Sheriff's Office procedures on personal property of inmates.



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Sheriff Marlin N. Gusman,  
Orleans Parish Sheriff

ATTACHMENT "A"

**PRELIMINARY REJECTION OF INCOMING PUBLICATION**

**NOTICE TO INMATE AND PUBLISHER/SENDER OF PRELIMINARY REJECTION OF INCOMING PUBLICATION (TO BE USED WHEN REJECTING A PUBLICATION UNDER THE OPSO INCOMING PUBLICATIONS POLICY)**

Inmate Name: \_\_\_\_\_  
Inmate Number: \_\_\_\_\_  
Institution: \_\_\_\_\_

Re: \_\_\_\_\_ Issue/Publication: \_\_\_\_\_

The above named publication/material from [publisher/sender name] has been preliminarily rejected in accordance with the Orleans Parish Sheriff's Office Incoming Publications Policy, which provides in part:

A publication may be rejected only if it is determined to be detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity.

The above named publication has been rejected because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[provide reference to the specific article(s) or material(s) considered objectionable and the reason(s) for the decision to reject].

A copy of this notice has been sent to the publisher/sender.

**THIS IS A PRELIMINARY FINDING**

**YOU HAVE A RIGHT TO REQUEST RE-CONSIDERATION OF THIS DECISION** by writing to the Chief Deputy \_\_\_\_\_ (Name, Address) within thirty (30) days of your receipt of this notice. A copy of the Incoming Publications Policy of the Orleans Parish Sheriff's Office is enclosed.

\_\_\_\_\_  
Chief Deputy (Name/Address) DATE  
cc: Publisher/Sender Name and Address

ATTACHMENT "B"

FINAL DECISION REJECTING INCOMING PUBLICATION

NOTICE TO INMATE AND PUBLISHER/SENDER OF FINAL REJECTION OF INCOMING PUBLICATION (TO BE USED WHEN REJECTING A PUBLICATION UNDER THE OPSO INCOMING PUBLICATIONS POLICY)

Inmate Name: \_\_\_\_\_

Inmate Number: \_\_\_\_\_

Institution: \_\_\_\_\_

Re: \_\_\_\_\_ Issue/Publication: \_\_\_\_\_

The above named publication/material from [publisher/sender name] has been finally rejected in accordance with the Orleans Parish Sheriff's Office Incoming Publications Policy, which provides in part:

A publication may be rejected only if it is determined to be detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity.

The above named publication has been rejected because \_\_\_\_\_

\_\_\_\_\_

[provide reference to the specific article(s) or material(s) considered objectionable and the reason(s) for the decision to reject].

A copy of this notification has been sent to the publisher/sender.

THIS IS A FINAL DECISION

\_\_\_\_\_  
Chief Deputy  
(Name/Address)

\_\_\_\_\_  
DATE

cc: Publisher/Sender Name and Address

ATTACHMENT "C"

**APPROVAL OF INCOMING PUBLICATION AFTER RE-CONSIDERATION**

NOTICE TO INMATE AND PUBLISHER/SENDER OF APPROVAL OF INCOMING PUBLICATION (TO BE USED WHEN APPROVING A PUBLICATION AFTER RE-CONSIDERATION UNDER THE OPSO INCOMING PUBLICATIONS POLICY)

Inmate Name: \_\_\_\_\_

Inmate Number: \_\_\_\_\_

Institution: \_\_\_\_\_

Re: \_\_\_\_\_ Issue/Publication: \_\_\_\_\_

The above named publication/material from [publisher/sender name] has been APPROVED after re-consideration in accordance with the Orleans Parish Sheriff's Office Incoming Publications Policy.

The above named publication will be promptly furnished to the intended recipient.

A copy of this notification has been sent to the publisher/sender.

\_\_\_\_\_  
Chief Deputy  
(Name/Address)

\_\_\_\_\_  
DATE

cc: Publisher/Sender Name and Address

PLNGusman.OPSOPolicy.17Nov2011

## General Information

<b>Case Name</b>	Prison Legal News et al v. Gusman et al
<b>Docket Number</b>	2:11-cv-02277
<b>Court</b>	United States District Court for the Eastern District of Louisiana
<b>Nature of Suit</b>	Civil Rights: Other