

Consent  
Decree

# BRIEF BANK

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

M. WAYNE BATES, JR., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 89-65-B
	)	Magistrate Stephen Riedlinger
BRUCE LYNN, et al.,	)	
	)	
Defendants.	)	

**CONSENT DECREE**

This cause of action originated with the filing of a complaint on January 25, 1989. Plaintiffs alleged in their complaint that they have suffered and are suffering violations of their rights under the sixth and fourteenth amendments to the United States Constitution. Defendants denied that any violations of plaintiffs' constitutional rights have occurred. On August 23, 1990, the Court denied plaintiffs' motion for class action status but further ordered that it will treat this case as in the nature of a class action.

Desiring an amicable settlement of this matter, the parties have agreed to the entry of this decree without trial, the taking of any evidence, adjudication, or the admission of liability by any party with respect to any claim or allegation made in this action.

Bates v. Lynn



PC-LA-002-003

WHEREFORE, upon the consent of the parties it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I.

This Court has jurisdiction over the subject matter of this action and of all parties hereto.

II.

A. Plaintiffs

The plaintiffs consist of (1) all inmates presently confined under sentence of death at the Louisiana State Penitentiary (LSP) and (2) all inmates who may in the future be confined under sentence of death and in the physical custody of the Louisiana Department of Corrections (LDOC).

B. Defendants

Defendants are the Secretary of LDOC and the Warden of the LSP.

Pursuant to Rule 25(d), F.R.Civ.P., the successors in office of the above-named defendants will automatically be substituted as parties in this suit and in this decree.

III.

A. TERMS

1. Legal Visits

a. Death row inmates shall be entitled to contact legal visits subject to the terms below.

b. A legal visit shall be defined as a visit between an inmate and an attorney, paralegal, or law clerk. A paralegal or law clerk must have a letter from his/her supervising attorney

accepting personal responsibility for the conduct of the paralegal or law clerk during the contact legal visit.

c. Legal visits shall be private and confidential unless waived by the inmate and subject to the provisions of Department Regulation, 30-19B, April 20, 1986.

d. At the request of the attorney, paralegal or law clerk, inmates shall not be handcuffed during contact legal visits. However, the LDOC may require an inmate to wear handcuffs during a contact legal visit if he has committed a Schedule B offense within the past 30 days. Schedule B offenses are enumerated in Disciplinary Rules and Procedures for Adult Prisoners; Louisiana Department of Public Safety and Corrections, (February 5, 1986, as amended by memorandum entitled Changes To Disciplinary Rules and Procedure For Adult Prisoners, Dated 2/5/86, effective January 1, 1991, provided that no new Schedule B offenses are added).

e. Conditions for contact legal visits shall be such that at least two can occur simultaneously. In the event of an emergency (as defined by an attorney working on a post-conviction matter), which requires more than two simultaneous contact visits, and if the attorneys cannot work it out, then the warden shall accommodate the request.

f. The LDOC may deny a contact legal visit only for the following two reasons:

1. the contact visit may be denied in the absence of 24 hour notice; or
2. it may be denied for up to 90 days in the event of specific security risk behavior of either party during a

previous contact legal visit. Security risk behavior occurs when prison staff must intervene immediately during the visit to prevent harm, or when the inmate is caught with contraband coming in or out of the visiting room. Contraband is described as weapons, drugs, alcohol, currency, syringe, tattoo machine, tattoo paraphernalia or unauthorized medication. In the event of a legal emergency during the time the inmate is denied a contact legal visit, the inmate's attorney can request a hearing before this Court to obtain a contact legal visit.

g. Any restrictions on contact legal visits as provided for above may be overridden by the Warden.

h. Contact legal visits for current death row inmate's shall begin immediately. An incoming death row inmate must be free of Schedule B offenses for 30 days before he may have contact legal visits.

## 2. The Legal Assistance Program

### a. Paging System

1. Death row inmates must be allowed regular and timely access to necessary law books and legal materials. This requires at least daily exchanges, except weekends and holidays for non-emergencies, between the inmate and inmate counsel substitute of sufficient duration for the inmate to be able to request law books and legal materials including copies of cases, statutes, annotations, regulations, forms, secondary sources research guides, and law library inventories.

2. Inmate counsel substitutes shall be permitted to have private conferences with death row inmates.

3. Upon request and the recommendation of the independent attorney supervisor, LDOC must allow an inmate to meet at least three hours each week with an inmate counsel substitute for a private legal conference; additional time shall be permitted to meet a filing or other legal deadline.

4. Private legal conferences between an inmate and inmate counsel substitute shall be contact visits subject to the limitations in Section III. Para. A.

b. Law Library

The minimal collection of the death row law library shall include the following:

- Louisiana Constitution
- Louisiana Code of Civil Procedure
- Louisiana Code of Criminal Procedure
- Louisiana Revised Statutes and Supplements
- Southern Second Louisiana Series
- Louisiana Digest (1809 to present)
- Louisiana Rules of the Court
- United States Code Annotated.

Constitutional volumes; Title 18 and Federal Criminal Rules; Title 28 (sections 2241-2280) and Federal Rules of Appellate Procedure, Federal Rules of Evidence; Rules of the Supreme Court; Federal Rules of Civil Procedure; Title 42 (sections 1891-2000 d (6)) West.

- Supreme Court Reporter. West 1960-present.
- Federal Reporter 2d series West 1960-present.
- Federal Supplement West 1960-present.  
(Soft bound copies as they become available from main law library.)
- Shepard's United States Citations.
- Shepard's Federal Citations.
- Louisiana Shepards.
- Rules of United States District Court, Middle District of Louisiana.
- West's Federal Practice Digest 3d and West's Federal Practice Digest (4th).
- Wright, Charles A. Federal Practice and Procedure West Volume 1-3A (Criminal 2d) and Volume 21-23, 25 (Wright & Graham's Evidence).
- Criminal Procedure, §1.1-10.6, Vol. 1; §11.1-22.3, Vol. 2; §23.1-End, Vol. 3; Lafave and Israel.
- Federal Habeas Corpus Practice and Procedure by James Liebman; The Michie Co., Charlottesville, Virginia.
- Graham, Michael H. Federal Rules of Evidence in Nutshell West current edition.

- Manville, Daniel Prisoners' Self-Help Litigation Manual 2d ed. Oceana 1983.
- Cohen, Morris L. and Robert C. Berring. How to Find the Law 9th ed. West 1983.
- Legal Research by Stasky
- Black's Law Dictionary West 1979 6th edition or equivalent.
- Corrections and Prisoner's Rights 3 ed. Nutshell.
- Prisoner Assistance Directory published by National Prison Project of the American Civil Liberties Foundation.
- The Rights of Prisoners ACLU Handbook (provided free for prisoners from ACLU National Headquarters).

All items listed in paragraph 2 shall augment the current death row law library and include the current editions, supplements and pocket parts.

3. The death row library shall contain multiple copies of frequently requested cases and statutes.

c. Training and Supervision of Inmate Counsel Substitutes

LDOC must maintain a sufficient number of inmate counsel substitutes who are regularly trained and supervised by an attorney.

1. Within four months of the entry of this order, LDOC shall offer legal training to inmate counsel substitutes who assist death row inmates. LDOC shall report on the details of the development and implementation of this legal training to the plaintiffs and the Court within two months of the order's entry.

In developing the legal training the following elements are required: (a) a minimum of sixty hours of instruction provided every twelve months; (b) lawyer instructors who have experience in the field(s) they are teaching; (c) a hands-on approach, including sessions in the law libraries allowing for immediate instructor student interaction; (d) a major focus on the fundamentals of legal research and writing, including use of basic reference books and materials; (e) regular written exercises required and returned with comments during each legal research and writing course; (f) a major focus on relevant doctrinal coverage of 42 U.S.C. Section 1983 and other major civil rights statutes, prison practices including disciplinary and classification measures, relevant tort law, and relevant areas of post conviction including appeals, collateral attacks and Habeas Corpus; (g) a mechanism for evaluating the inmate counsel's progress in each course; (h) a six month probationary period (for the most recent two and all future inmate counsel substitutes) prior to final approval based on a satisfactory evaluation by an independent attorney supervisor relying on the trainees' class record and quality of work during the probationary period; (i) continuous case review with inmate counsel substitutes by the independent attorney



supervisor or his/her certified paralegal or law student with demonstrated competence in post-conviction and civil right law; and (k) provision for certified paralegals and law students at all times to work under the direction of a supervising attorney.

2. Subjects covered in the legal training shall include but not necessarily be limited to the following:

A. Taught by Attorneys

- |     |  |        |
|-----|--|--------|
| 1.  | Legal research   | 6 hrs. |
| 2.  | Legal writing<br>(briefs and pleadings)  | 6 hrs. |
| 3.  | State post-conviction<br>(substantive issues)  | 6 hrs. |
| 4.  | State post-conviction<br>(procedural issues)   | 6 hrs. |
| 5.  | Federal habeas corpus<br>(substantive issues)  | 6 hrs. |
| 6.  | Pardons and clemency   | 3 hrs. |
| 7.  | Law of prisoners rights  | 3 hrs. |
| 8.  | Federal civil rights<br>litigation<br>(42 U.S.C. Section 1983<br>and other major civil<br>rights statutes) | 6 hrs. |
| 9.  | State and Federal civil<br>procedure; Administrative<br>remedy procedure; 42 U.S.C.<br>Section 1997e       | 6 hrs. |
| 10. | Relevant Tort law  | 3 hrs. |

B. Taught by LDOC Personnel

- |    |   |        |
|----|---|--------|
| 1. | Prison disciplinary system<br>and grievance procedure | 6 hrs. |
| 2. | Prison classification system                          | 3 hrs. |

### 3. Selection

Inmates are eligible to become inmate counsel substitutes by successfully completing the legal training and obtaining approval by the Director of Legal Programs, and by agreeing to assist inmates and abide by the procedures governing inmate counsel substitutes. Inmates are eligible for legal training if (a) they have a high-school or GED diploma, or (b) pass a basic literacy skills test to the satisfaction of the instructor, or (c) are currently an inmate counsel substitute. Persons in this last category may continue as counsel substitutes during the implementation phase of this agreement, but must successfully complete the legal training when it first becomes available.

### 4. Number

LDOC shall ensure that there are an adequate minimum number of inmate counsel substitutes for death row inmates. Appropriate legal assistance must be made available to death row inmates who can not speak English.

### 5. Retention

An inmate counsel substitute must demonstrate at least minimal competence. Once a year, and at any other time that a counsel substitute's work receives complaints, his work will be evaluated. This may be done by submitting sufficient recent legal writings, including pleadings and memoranda, to the independent attorney supervisor for review. If necessary, the supervisor may require that the inmate counsel substitute complete an exercise or examination from the legal training course for

evaluation. A determination to remove an inmate found not minimally competent must be made by the attorney supervisor in writing with specific reasons and examples, and the relevant work products attached (with identifying contents deleted). A copy of this determination shall be provided to the Director of Legal Programs. LDOC legal staff makes the final determination of termination. LDOC shall provide the inmate counsel in writing with the reasons for the termination. An inmate so terminated shall be reinstated upon successful completion of the training course.

6. Responsibilities

An inmate counsel substitute should not undertake or continue to assist another death row inmate if, because of workload, inexperience, conflict of interest or any other factor, he cannot do so in an effective and timely manner. Prior to refusing to assist a death row inmate, the inmate counsel substitute must present his reasons in writing to LDOC legal staff for approval. Absent the inmate's permission, an inmate counsel substitute should not disclose information about the inmate's legal issues.

d. Photocopying

LDOC shall provide the necessary copies of eligible legal papers and court related documents within three working days of the receipt of a request by a death row inmate, unless more rapid service is necessary to meet a legal deadline.

Eligible legal papers and documents include petitions, complaints, answers, motions, affidavits, exhibits,

memoranda and briefs, including attachments and appendices, required under Federal and State rules and materials necessary for discovery, including interrogatories and freedom of information requests. LDOC shall advise staff that inmate legal materials are confidential and may not be read. Legal materials submitted for copying may be initially examined, but not read, to determine eligibility. Copying shall be provided free of cost only if the prisoner is indigent as defined by LDOC's indigency standard.

B. An indigent death row inmate who has a retained or court appointed counsel shall not be entitled to free photocopy services for filing pleadings in only the case for which he has a retained or appointed counsel with the following exceptions:

- (1) to petition the court to dismiss his appointed counsel.
- (2) to send a copy of an original document to the attorney of record.
- (3) to send a copy of an original document to an attorney upon the representation that it is for the purpose of seeking a new attorney.

#### IV.

##### IMPLEMENTATION

1. Within one month of signing this order, the defendants shall provide the Court and plaintiffs with written progress reports detailing the steps taken to comply with the respective provisions of this agreement. The reports shall be made every three months thereafter until the Court's jurisdiction over this

case ends. Plaintiffs' counsel must respond in writing within 30 days of receipt of this report.

2. Plaintiffs' counsel and their paralegals shall have reasonable access to L.S.P. documents, facilities, personnel and death row inmates in order to monitor the progress of implementation.

3. Within two months of the date this agreement is approved by the Court the defendants will explain the terms of this agreement to their agents, servants, representatives, and employees (professional staff, correctional officers and other personnel), in order to ensure their understanding of the requirements of this agreement and the necessity for strict compliance. Defendants shall thereafter periodically review the terms of the agreement with the above persons. Plaintiffs' counsel shall have responsibility for explaining the terms of this agreement to their clients as long as the court maintains jurisdiction over this matter.

4. By entering into this agreement, members of the plaintiffs' class are not waiving any right they might otherwise have to pursue individual claims for damages against defendants or LDOC personnel.

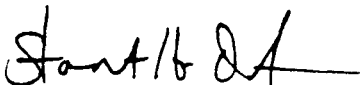
5. The parties to this agreement shall promptly submit it to the Court for its approval and entry of a consent decree.


6. The parties shall attempt to negotiate a settlement on attorney's fees and costs. However, should the parties be unable to reach a settlement as to attorneys' fees and costs within 60 days of entry of the decree, the matter shall be submitted to the

Court for its determination; provided, however, that this time period may be extended by stipulation of the parties if approved by the Court.


Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

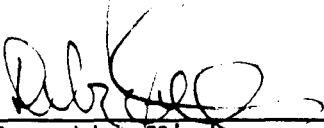
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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

M. WAYNE BATES, JR., et al.,	)	
	)	
Plaintiffs,	)	
	)	Civil Action
	)	No. 86-897-B
v.	)	
	)	Magistrate Stephen Riedlinger
BRUCE LYNN, et al.,	)	
	)	
Defendants.	)	

ORDER

IT IS ORDERED that the Consent Decree signed by the opposing parties in this case is approved and entered.

Magistrate Stephen Riedlinger

Dated: