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Eldon Vail
Secretary
Washington Department of Corrections
P.O. Box 41100
Olympia, WA 98504-1100

Re: attorney-client telephone calls

Dear Secretary Vail:

Congratulations on your appointment earlier this year. As attorneys and organizations who represent Washington prisoners on a regular basis, we look forward to working with you and your staff to address issues of concern in cooperative and productive ways.

We are writing today to express concern regarding lawyers' frequent inability to have confidential telephone communications with their clients at DOC institutions. Our understanding, based on conversations with numerous clients and colleagues, as well as personal observations, is that it is difficult or impossible for prisoners to make confidential legal calls because the phones they are required to use are located in areas, such as day rooms and exercise yards, that are not private. On several occasions, clients have been reluctant or unwilling to speak with their lawyers about a sensitive topic because they were worried about being overheard by staff or other inmates. This risk interferes with lawyers' ability to communicate with their clients.

Our second concern pertains to inmates' inability to have confidential legal calls with attorneys whose telephone systems are incompatible with DOC's collect call system. For instance, if an attorney does not have a live person answering his or her phone, but instead relies on an auto-attendant/voicemail system, DOC's telephone technology will not allow the inmate to make a collect call to that attorney. Counselors are sometimes willing to facilitate a call in that situation,

allowing the inmate to use the counselor's office, but as you can imagine, that is an inconsistent, unreliable alternative – one that is disruptive to the counselor's normal work. Further, DOC's system does not allow inmates to contact firms that have established 1-800 numbers to receive client calls.

The right of prisoners to have confidential communications with their lawyers is well established. In 1974 the U.S. Supreme Court held that "inmates must have a reasonable opportunity to seek and receive the assistance of attorneys. Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid." Procunier v. Martinez, 416 U.S. 396, 419 (1974). Reasonable telephone access is an important component of an inmate's right of access to court and counsel. See Divers v. Dep't of Corrections, 921 F.2d 191, 194 (8th Cir. 1990) (holding that district court erred in dismissing inmate's challenge to prison regulation that prevented inmates from phoning attorneys unless they could prove they had a court date set within the next 30 days); Johnson-El v. Schoemehl, 878 F.2d 1043, 1052 (3rd Cir. 1989) (allowing prisoners only one attorney call every two weeks, and counting calls as made when the attorney was not reached, is "patently inadequate"). Further, "[d]etainees' right to counsel and due process can also be compromised by a lack of privacy in consultations with counsel. Forcing prisoners to conduct their meetings with their attorneys in the open or to yell over the phone obviously compromises the consultation." Id. See also, Ching v. Lewis, 895 F.2d 608, 609 (9th Cir. 1990) ("The opportunity to communicate *privately* with an attorney is an important part of [an inmate's] meaningful access [to his attorney and the courts].") (emphasis added).

When prison officials deprive inmates of the means to communicate confidentially with their lawyers, they interfere not only with prisoners' constitutional right of access to the courts, but also with their First and Fourteenth Amendment rights pertaining to free speech and privacy. Williams v. Price, 25 F. Supp. 2d 623 (W.D. Pa. 1998) (granting summary judgment to inmates on First and Fourteenth Amendment claims challenging non-confidential attorney-client visit booths).

Unreasonable restrictions on confidential attorney-client communications also impinge upon the attorney's First Amendment rights. See Sturm v. Clark, 835 F.2d 1009 (3rd Cir. 1987).

Based on clients' complaints and the personal observations of some of the attorneys signing this letter, it appears that DOC does not provide constitutionally adequate means for lawyers to have confidential calls with their incarcerated clients.

We are very interested in resolving this issue cooperatively, without litigation. To that end, we would welcome an opportunity to sit down with you (or someone you designate) to discuss ways to fix the problem. We also would like to discuss ways to allow inmates to have confidential legal calls with attorneys whose phones are not compatible with DOC's system.

Thank you in advance for your anticipated cooperation. We look forward to your response, which may be directed to Hank Balson at Public Interest Law Group, PLLC.

Sincerely,

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cc: Dan Judge, Assistant Attorney General