STATE OF LOUISIANA	:	JUVENILE COURT FOR
	:	
IN THE INTEREST OF	:	THE PARISH OF ORLEANS
	:	
S.D.	:	STATE OF LOUISIANA
	:	
NO. 00-147-04 QF, 00-172-05 QF	:	_____
		DEPUTY CLERK OF COURT

FILED: _____

PETITIONER'S BRIEF IN SUPPORT OF MOTION TO MODIFY

On July 11, 2001, Petitioner S.D., through undersigned counsel, sought a modification of his disposition.[1] Testimony and documentary evidence adduced at evidentiary hearings[2] prove that the State of Louisiana ("State"), through its Department of Public Safety & Corrections ("DPS&C") and its agents at the Swanson Correctional Center for Youth – Madison Parish Unit in Tallulah, Louisiana ("Tallulah"), violated Petitioner's rights guaranteed him under the state and federal constitutions. In addition, the State violated our Children's Code by failing to provide a safe environment, protect Petitioner from harm and by failing to adequately investigate the physical and emotional abuse of Petitioner at the hands of the State. This Court should find that the State violated Petitioner's rights, modify his disposition[3] and issue an order prohibiting the State from placing Petitioner in Tallulah in the future without a showing by the State that the facility is safe for children, including Petitioner.

INTRODUCTION

Tallulah is a facility with a legacy of abuse and corruption so complete that the State felt compelled to change its name - twice.[4] A notoriously unstable facility, it has had no less than four operators - the private, for-profits GRW Corporation, Trans-American Development Corp.,

[1] The record indicates that on Sept. 21, 2000, this Court adjudicated Petitioner delinquent for unauthorized use of a motor vehicle, reckless use of a motor vehicle and flight from an officer. The Court Ordered that petitioner be placed in the custody of the La. Department of Public Safety & Corrections, with a recommendation of secure care, until Jan. 21, 2004. *Petitioners' Exh. # 14.*

[2] Three days of hearings were held on Petitioner's motion: Aug. 6, Sept. 10 and Sept. 24, 2001. There are 2 volumes of transcripts, with the first containing testimony from the Aug. 6, 2001 hearing and the second encapsulating September's testimony. Because the volumes are not numbered consecutively, the hearings will be cited herein as "V. I, p.__" and "V. II, p.__." Exhibits will be cited as "Petitioner's Exh. __" and "State's Exh. __."

[3] Although the Court has not formally modified Petitioners' disposition, it did Order that Petitioner be removed from Tallulah. Petitioner is currently being held in the local detention center pending placement, hopefully with his family in either New Orleans or California.

[4] Originally named the A.Z. Young Center for Youth, the formerly private, for-profit facility's name was changed to the Tallulah Correctional Center for Youth at some point before 1999. While still privately owned, the state assumed operational control of the facility in September of 1999. It is unclear whether DPS&C Secretary Richard Stalder ordered the name change at that time. Nonetheless, the name has been changed to the current name, even though it is confusing (due to its similarity to its namesake – Swanson Correctional Center for Youth – Monroe) and unwieldy. For ease of reference, Petitioner will simply refer to the facility as Tallulah, as it certainly remains in that town and retains all of its dangerous conditions.

and Correctional Services Corporation, and the State – and at least ten wardens since it opened in 1994. *See The Advocate, Feb. 3, 2001, p.4B (DPS&C officials estimate that there have been 10 wardens at Tallulah in the 6 1/2 years of operation).* Petitioner, who in 1991 watched as his father stabbed his mother to death and has suffered further abuse at the hands of an aunt and uncle, is a seventeen year old youth with a history of delinquent behavior. Why the State would place him at a facility with a reputation for violence and instability is hard to fathom. A brief history of Tallulah shows that the facility not only has never been a safe place for troubled youth, its resistance to change prohibits the placement of Petitioner in the facility ever again.

Originally a private, for-profit facility, Tallulah is owned by three men with ties to former Governor – and recent federal convict – Edwin Edwards.[5] On November 16, 1994, Tallulah accepted its first youth. *See Williams v. McKeithen, No. 71-98-B (M.D. La. 1971) (Nov. 15, 1994 letter from Secretary Stalder to Judge Polozola covering consent decree for the A.Z. Correctional Center for Youth, announcing the DPS&C would place youth there the next day).* Before Christmas of that year, Judge Polozola declared that a "State of Emergency exists at the A.Z. Young Center for Youth," due to riots and an inability of staff to control and protect youth. *Id., Order dated Dec. 22, 1994.* On December 29, 1994, the DPS&C assumed "operational authority" of the facility. Secretary Stalder assured the federal court that DPS&C will "maintain operational authority on an interim basis until a permanent replacement management team is selected, trained by our on-site executive staff, and determined capable by me to continue what we now believe to be a stable and rapidly improving program at the facility." *See id. (Jan. 3, 1995 letter from Secretary Stalder to Judge Polozola).* Secretary Stalder's assurances to Judge Polozola proved to be hollow.[6]

In the spring of 1995, Human Rights Watch toured the facility and found that Tallulah - and Louisiana's three other juvenile prisons - violated international human rights standards. *Children in Confinement in Louisiana (Human Rights Watch, Oct. 1995).* Specifically, Human Rights Watch found the physical environment at Tallulah to be "punitive." *Id. at 21.* Youth complained of physical abuse by guards and Human Rights Watch found that, perversely, the

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[5] On May 16, 2001, the legislative auditor reported that the 3 men have made $8,741,249 in salaries and dividends from the facility since it opened in 1994. *Appendix A.*

[6] This would not be the last time Sec. Stalder's assurances to the Governor and the public that Tallulah had improved would be undermined by the facts. *See, e.g., The Advocate, Dec. 4, 1999, p.1B (Sec. Stalder testifies that, in March of 1999 when he testified in favor of a tax break for Tallulah's owners, conditions at the facility were good enough to warrant the tax break. In September of that year, the State was forced to take the facility over due to mismanagement.).*

system established for youth's complaints of abuse was completely ineffectual. Worse yet, Human Rights Watch found that "there is a strong fear of reprisal among the children" from guards if they complained about physical assaults. *Id. at 34-35.* Human Rights Watch found that Tallulah and the other juvenile prisons inappropriately placed youth in small, bare isolation cells, *id. at 21-25,* and failed to provide adequate education and programming to youth, *id. at 37-40.* The report declared that Tallulah had an atmosphere of "hostility and anger." *Id. at 42.*

A year later, juvenile justice experts from the United States Department of Justice ("DOJ") found that the conditions at Tallulah and Louisiana's other juvenile prisons were "life-threatening and dangerous" to the children confined therein. *See Appendix B at 2 (Oct. 3, 1996 letter from United States to Gov. Mike Foster).* An example of the dangerous level of violence was the sheer numbers of children being injured: in the first twenty (20) days of August of 1996, the DOJ found "28 Tallulah children were sent to the hospital for evaluation and/or treatment of serious injuries, including fractures or suspected fractures and serious lacerations in need of suturing." *Id. at 5.* The DOJ demanded that the State take immediate steps to protect youth from guards and each other. *Id. at 8-10.* In January of 1997, the DOJ returned to Tallulah and found that the conditions had not improved. Later that year, the DOJ formally notified the State that the conditions at Tallulah violated the United States Constitution and that federal law and that, if the State did not take adequate remedial measures to protect children from harm in its juvenile prisons, a lawsuit would be initiated. *See Appendix C (June 18, 1997 letter from United States to Gov. Mike Foster).*

In November of 1998, negotiations between DPS&C and the DOJ failed and the United States, for the first time ever, sued a state because of the conditions at its juvenile prisons. *United States v. Louisiana, et al., Civil Action No. 98-947-B-1 (M.D. La. 1998).* In September of 2000, that lawsuit and one filed by the Juvenile Justice Project of Louisiana were settled as the State promised wide-ranging remedial relief. It was approximately four months later - on January 19, 2001 – that Petitioner was transferred to Tallulah.

Since Petitioner has been at Tallulah, he has been assaulted at least three (3) times – twice by guards, suffering serious injuries both times –and once by another youth. He has been verbally abused by guards whose primary duty is ostensibly to provide treatment, rehabilitation and education. In addition, he spent approximately two months in isolation, where he was arbitrarily denied access to regular schooling. Evidence adduced at trial indicates that not only

did the State and Tallulah conduct an insufficient investigation into the abuse allegation that resulted in Petitioner suffering a broken jaw, but that the perpetrators and members of the investigation team engaged in a cover-up in order to protect the abusive guards. The history of Tallulah and the record in this case prove that, to paraphrase one commentator, Tallulah has not changed its stripes. It was and is a violent, dangerous facility. The State, by placing Petitioner there, violated his rights under the state and federal constitutions as well as our Children's Code.

FACTS ESTABLISHED AT THE HEARINGS

On Aug. 6, Sept. 10 and Sept. 24, 2001, this Court conducted hearings on Petitioner's Motion to Modify Disposition. Testimony and documents introduced at the hearing established that Petitioner has been incarcerated at Tallulah since January 19, 2001 for the commission of a non-violent offense. *Petitioner's Exhibit 14.* An assessment by the Court's expert – Dr. Cecile Guin of the Louisiana State University School of Social Work - found that Petitioner "has experienced an extensive amount of trauma in his life." *See Appendix D (Sept. 10, 2001 report by Dr. Cecile Guin).* Although only seventeen, he has been exposed to domestic violence - including witnessing his mother murdered by his father - suffered child abuse at the hands of an aunt, sexual abuse by an uncle and been abandoned by the only aunt he felt safe with due to her suffering a heart attack. Dr. Guin found that Petitioner "is clearly suffering from these developmental experiences and needs an inordinate amount of help to work through these issues." *Id. at 5.* Dr. Guin recommended a series of treatment interventions, *id. at 5-6,* but agreed that none of them would work unless Petitioner felt safe. *V. II, p.206.*

Protection From Harm/Use of Force

Evidence at the hearing further established that, rather than provide a place where Petitioner felt physically and emotionally safe, DPS&C placed him in Tallulah, where the unrebuted testimony proved that guards curse at youth "every day." *V. I, p. 18.* Testimony by almost every witness painted an institution that was out of control, with two to three fights occurring before the 8:00 morning school bell, youth walking in and out of their classrooms at will and "pandemonium" reigning. *V. II, p. 146.* Petitioner witnessed fights between youth "everyday" and guards refused to intervene to protect youth or stop the violence. *V. I, p. 9-10.* On at least one occasion, Petitioner appeared at the infirmary reporting that he had been struck on the side of his head by another youth. *Petitioner's Exhibit 19 (Jan. 31, 2001 accident & injury report).* When Petitioner was not fending off attacks from other youth, he was attempting

to protect himself from guards. Although Petitioner testified that he had been injured from assaults by guards four times, *V. I, p. 12,* only two of those assaults occurred at Tallulah.

On July 9, 2001, Petitioner was punched in the face by Lt. Fredrick Fletcher. The evidence established that Petitioner refused an order by Fletcher to go to the infirmary. When Petitioner resisted, without threatening Fletcher, Fletcher hit him in the nose and jaw and bloodied Petitioner's nose. *V. I, p. 12-15; Petitioner's Exhibit 9.* Although the State did not attempt to formally rebut the evidence presented at the hearings, documents provided in response to a subpoena claim that Petitioner injured his face by "punch [sic] himself in the nose and face." *See Appendix E (July 9, 2001 JR-2, issued by Fletcher).* In spite of Petitioner's developmental trauma and depression, he has not ever exhibited self-mutilating behavior. The State never bothered to attempt to rebut Petitioner's testimony and this Court should not give any weight to Lt. Fletcher's farcical explanation for Petitioner's bloody nose.

On May 18, 2001, Petitioner had his jaw broken when a guard punched him because he was not moving into his classroom quickly enough. *See, e.g., Petitioner's Exhibit 7 (hospital intake form indicating mandibular fracture as a result of a trauma from a "hit by another person"*). The testimony established that Petitioner, as he passed Cadet Mitchell's post at the school entrance, joked with her that he was "on detail" and hence did not have to go to school that day. Lt. Col. McCall overheard him and told Petitioner to "carry your f------ ass in class." Petitioner testified that he spoke back to McCall, chiding him for not yelling at another youth while singling out Petitioner. Petitioner testified that, as he went inside the school building, McCall grabbed him by his neck from behind and started to choke him. Petitioner sought to grab McCall to stop him from choking him; Lt. Warren then intervened, striking Petitioner in the jaw after Petitioner did not respond to Warren's order to stop attempting to grab McCall. *V. 1, p. 17-21.* A medical examination revealed Petitioner suffered a broken jaw.

Inadequate Abuse Investigation and Intentional Cover-Up

Petitioner testified that guards at Tallulah immediately began to pressure him to not report the injury as occurring from an assault from a staff member. According to Petitioner, both McCall and Warren told him that if he insisted on reporting the assault, they would "press charges on him," i.e. fabricate an allegation that Petitioner *assaulted staff* and report the allegation to the local District Attorney, who has sought and secured a number of convictions for

such alleged behavior. *Id. at 22.* Hence Petitioner reported to the infirmary that he sustained the injury by running "into a pole."[7] *Id.* The rest of the cover-up quickly fell into place.

Minutes after Petitioner suffered his broken jaw, Warren and McCall completed written statements "detailing" their contact with Petitioner. Both statements, while sparse in detail, were identical in materials facts: Petitioner was running through the school hallway, McCall grabbed him by his left arm, Warren grabbed him by his right and they held him against the wall. McCall asked Petitioner what his problem was, Warren asked Petitioner what was the matter with his mouth, and they told Cadet Mitchell to escort Petitioner to the infirmary. *Compare Petitioner's Exhibit 12, p. 38 and 43.* Both deny choking and punching Petitioner and testimony from their warden indicated that it is DPS&C policy to terminate the employment of anyone found guilty of punching a youth, giving both guards plenty of incentive to fabricate a story to explain Petitioner's broken jaw. *V. II, p. 240.*

Both of their stories changed when they were interviewed by DPS&C investigators. This time, McCall and Warren remembered that McCall first stopped Petitioner in the school hallway, with Warren coming in to assist. McCall remembered leaving Petitioner with Warren, while Warren stated that he placed Petitioner in a classroom for 20 minutes before ordering Cadet Mitchell to escort him to the infirmary. *Compare Petitioner's Exhibit 12, p. 41 and 46.* Again, both denied ever hitting Petitioner.

Realizing that "hit by a pole" was insufficient to explain a broken jaw, another youth was targeted as the cause of Petitioner's injury. Michael Greely, a youth at Tallulah who was released shortly after Petitioner had his jaw broken, was approached by Warren and asked "to do something for me." *V. II, p. 86.* Although Warren never asked Michael specifically what it was he wanted him to do – because Michael informed Warren that "if it's bad I ain't even much with it" – the push to have Petitioner's injury attributed to Michael proved inexorable.

Two youth – Jerry Mullins[8] and Darrell Franklin – testified that they witnessed Michael break Petitioner's jaw. Both boys apparently witnessed different fights, as their versions of what allegedly happened are not consistent. Jerry, for example, allegedly witnessed Michael hit

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[7] Petitioner testified that the medical staff saw through the explanation and encouraged him to tell what happened. *V. 1, p.23.* While the medical staff did not remember having such a conversation with Petitioner, they did admit that the broken jaw occurred as "secondary to being hit by another person." *V.II, p.185.* It was later that day, when Petitioner was in the hospital, that he first told someone that a guard broke his jaw. *See, e.g., Petitioner's Exhibit 7 (Petitioner tells hospital personnel that he was "hit by another person"); see also Petitioner's Exhibit 6 (nurse's note from the next day).*

[8] Jerry was a particularly unreliable witness. For example, he was unable to recall details of what he allegedly saw no less than six times in response to this Court's questioning. *V. II, p. 24-28.*

Petitioner quickly twice, as he was facing Petitioner from the front, and then kick him. *V. II, p. 23-24.* Darrell swears that he only saw Michael hit Petitioner once, from behind, and that Petitioner and Michael fought on the grass. *V. II, p. 52-56.* Jerry swears that the fight occurred on the concrete. *V. II, p. 14.*

The most important and only credible witness to the alleged fight between Michael and Petitioner is Michael himself. Michael's testimony made it clear that not only did he not fight Petitioner or break his jaw, *V. II, p. 82-85,* the facility's investigators offered perjured testimony in order to further the lie that Petitioner's jaw was broken by Michael and not Tallulah's guards. Kenneth Tramble, a "Project Zero Tolerance" [9] investigator, testified he attempted to interview Michael by telephone. Tramble swore that Michael said "he didn't know anything what [sic] I was talking about," hung up on Tramble and refused to answer the phone when Tramble called back. *Vol. II, p. 72.* Tramble testified that the entire conversation with Michael lasted no more than twenty-five (25) seconds. *V. II, p. 74.*

Michael testified that he had a detailed conversation with Tramble, was specifically asked whether he fought with Petitioner and emphatically denied he ever had a fight with him. The conversation, according to Michael, was civil and thorough, with he and Tramble covering all of the possible options, i.e. not only did Michael not fight Petitioner or break his jaw, he did not witness any fights on the date in question. *V. II, p. 85.* The clearest evidence of Michael's credibility comes from Tallulah's own phone logs and the DPS&C's own investigation into the incident. Phone logs of the date Tramble and Michael spoke proffered by the State to prove that PZT did all that it could to investigate the incident and that Michael was uncooperative show that the conversation lasted over *seven* minutes, not less than a minute as sworn to by Tramble. *Petitioner's Exh. 12, p. 71.* It is clear that, as early as May 23, 2001 – the date of Tramble's telephone call with Michael Greely - the State knew or should have known that Petitioner's jaw was not broken by another youth.[10]

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[9] Apparently, Project Zero Tolerance is a project established by Sec. Stalder in response to the DOJ's first emergency letters regarding the dangerous and life-threatening conditions in Louisiana's juvenile prisons. *See Appendix B at 1.* The DOJ's experts, in their 1996-98 reports, noted deep problems with the system. *See Williams v. McKeithen, No. 71-98-B (M.D. La. 1971) (Exhibits to United States' Objections and Responses to State Defendants' Interrogatories and Request for Production for Documents, Exh. N-Q) (filed Jan. 17, 1999).* Evidence adduced at the hearings shows that it remains a deeply troubled investigation system. Its most fatal flaw is the fact that all of the investigators are employees of the DPS&C, leaving the DPS&C to police itself. *V. II, p.147.*

[10] Michael further noted that it would have been impossible for him to fight with Petitioner while he was on detail because a guard *always* accompanies youth on detail. *V. II, p. 84.* This fact was confirmed by Warden Guyton. *Id. at 229.*

Blindness to the fact that the State's employees broke Petitioner's jaw afflicted the entire chain of command. Tallulah's Warden Hyam Guyton – the person ultimately responsible for Petitioner's safety and ferreting out abusive guards – found nothing "wrong with [Tallulah PZT investigator Jeff Wright's] the report," *V. II, p. 230,* even though federal investigators found serious flaws. *Petitioner's Exh. 12, p. 30-31.* DPS&C headquarters PZT investigator Bill Spencer, while acknowledging the seriousness of the injury and allegation, overlooked numerous inconsistencies in the stories supporting the theory that Michael broke Petitioner's jaw, *V. II, p. 155-156, 157-58, and 164-165,* and took great strides to disprove the most minute details of Petitioner's testimony. *See, e.g., V. II, p. 171-172.* Most dispiriting of all is the clear evidence that the State's abuse investigators begin their investigations with the assumption that the victim – in this case Petitioner – fabricates allegations. *V. II, p. 150.*

Lack of Treatment and Rehabilitation

Testimony at the hearing established that the State failed to provide Petitioner with mental health treatment. Dr. Guin's associates diagnosed Petitioner with depressive disorder, *id. at 3,* for which psychotropic medication was clearly indicated. *V. II, p. 193-194.* There is no evidence that Petitioner was receiving such medication while at Tallulah. In addition, the evidence established that Petitioner has extensive, specific mental health needs, and that none of those needs were being met at Tallulah. *See, e.g., Appendix D at 5 (Dr. Guin, after evaluating Petitioner and reviewing his DPS&C file, notes that "[v]irtually none of the research-based [mental health] interventions have been used" in Petitioner's case.").*

Rather than a rehabilitative, therapeutic environment, Tallulah is a "prison." *V. II, p. 211.* As a facility and a placement, Tallulah is clearly *inappropriate* for Petitioner, for it would not only fail to provide him with the treatment and rehabilitative services he needs, it would compound the trauma he has already suffered in his young life. *V. II, p. 211.* Evidence adduced at the hearings indicates that the failure to provide a therapeutic setting conducive to rehabilitating juvenile delinquents begins at the very top of the Tallulah hierarchy.

Warden Guyton's educational experience stopped at high school. *V. II, p. 226.* Of the 474.8 hours of training he has attended, only eight (8) hours were devoted to adolescent development. *See Appendix F (DPS&C printout of all training completed by Guyton in the past 10 years).* Tellingly, he could not recall any course in adolescent development or delinquency prevention he attended and could not note a single theory in either field that stood out as

memorable or promising. *V. II, p. 227-228.* Warden Guyton had more training hours in Use of Force on youth – 8.3 – than he did training hours in adolescent development.[11] *See Appendix E.* The lack of training and education permeates the staff at Tallulah. *See, e.g., V. II, p. 235-237 (Guyton testifies that none of the Tallulah guards have been trained in adolescent development, he is not aware how many have graduated college and that the DPS&C does not require that its guards be high school graduates).*

Finally, Petitioner was often denied the rudimentary rehabilitative treatment offered at Tallulah. The unrebutted testimony proves that he spent up to two months in isolation. When there, guards routinely refused to allow him to go to school. *V. I, p. 8-9.*

LEGAL ARGUMENT

THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, ARTICLE I, § 2 OF THE LOUISIANA CONSTITUTION, ARTICLE V, § 19 OF THE LOUISIANA CONSTITUTION AND OUR CHILDREN'S CODE ARE VIOLATED WHEN A CHILD IN THE CUSTODY OF THE STATE IS SUBJECTED TO EXCESSIVE USE OF FORCE, INADEQUATE ABUSE INVESTIGATIONS, INADEQUATE MENTAL HEALTH TREATMENT, AND DEPRIVED OF REHABILITATIVE TREATMENT AND EDUCATION.

Federal Due Process

At the very least, the Due Process Clause of the Fourteenth Amendment to the United States Constitution "requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." Jackson v. Indiana, 406 U.S. 715, 738, 92 S.Ct. 1845, 1858, 32 L.Ed.2d 435 (1972). With respect to juveniles adjudicated delinquent under state laws, federal courts have repeatedly held that where "the purpose of incarcerating juveniles in a state training school is treatment and rehabilitation, due process requires that the conditions and programs at the school must be reasonably related to that purpose." Morgan v. Sproat, 432 F. Supp. 1130, 1135 (S.D. Miss. 1977). See also, Alexander S. v. Boyd, 876 F. Supp. 773, 796 (D.S.C. 1995) (holding the same) (citing Martarella v. Kelley, 349 F. Supp. 575, 585 (S.D.N.Y. 1972); Pena v. New York State Division for Youth, 419 F.

[11] The failure to acknowledge the importance of sound leadership plagues the DPS&C. Tallulah Warden for Security Billy Varner was recently convicted of driving drunk in a State vehicle. *See State v. Billy Varner, No. 00M1621 (4th JDC) (Jan. 12, 2001 judgment for "DWI 1st").* The incident occurred on July 6, 2000 and was widely discussed by the youth at Tallulah as an example of how the adults charged with "rehabilitating" them are in need of treatment themselves.

Supp. 203, 206-07 (S.D.N.Y. 1976)).[12] Juvenile institutions have a constitutional duty to protect the children they detain from harm. D.B. v. Tewksbury, 545 F.Supp. 896 (D. Or. 1982).

Clearly, outright abuse of a child in a juvenile correctional facility violates that child's due process rights under the Fourteenth Amendment to the United States Constitution. The use of force or corporal punishment against children in correctional facilities is consistently condemned by courts. Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind. 1972) (beatings with a paddle), aff'd, 491 F.2d 352 (7th Cir. 1974), cert den., 417 U.S. 976 (1974); Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (physical beatings and use of tear gas), rev'd on other grounds, 562 F.2d 993 (5th Cir. 1977); Santana v. Collazo, 553 F. Supp. 966 (D.P.R. 1982) (beatings of children who escaped from institution and were recaptured), aff'd in part and vacated and remanded in part, 714 F.2d 1172 (1st Cir. 1983), cert. denied, 466 U.S. 974 (1984); Milonas v. Williams, 691 F.2d 931 (10th Cir. 1982) (grabbing children by the hair, pulling them backwards, and flinging them against walls), cert. denied, 460 U.S. 1069 (1983). Any use of force at a juvenile institution must be reasonably related to its purpose of treatment and rehabilitation.

In order to comport with federal due process standards, states must maintain a minimally adequate mental health treatment system in a juvenile correctional facilities. See e.g., Youngberg v. Romeo, 457 U.S. 307, 322, 102 S. Ct. 2452, 2461, 73 L. Ed. 2d 28 (1982) (substantive due process includes right to minimally adequate training for involuntarily committed mentally retarded persons). Minimally adequate mental health treatment should include trained staff providing services that may include the following: emergency mental health services, a professional evaluation and development of a treatment plan, periodic follow-up evaluations, and regular mental health services, including counseling. Gary W. v. Louisiana, 437 F. Supp. 1209, 1219 (E.D. La. 1976) (requiring individualized assessments and treatment programs for mentally retarded, physically handicapped, and delinquent children in custody of state).

Finally, juveniles in correctional facilities have a constitutional right to an adequate educational program.[13] Donnell C. v. Illinois State Bd. of Education, 829 F. Supp. 1016 (N.D.

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[12] Some federal courts have premised a juvenile's constitutional right to treatment and rehabilitation on an alternate theory, the quid pro quo theory. "[T]he quid pro quo theory provides that because juvenile delinquency proceedings generally do not involve the full range of procedural due process protections of a criminal trial, the state must provide rehabilitation to incarcerated juveniles to make up for the difference." Alexander S., 876 F. Supp. at 796 (discrediting the theory on the basis of O'Connor v. Donaldson, 422 U.S. 563, 45 L. Ed. 2d 396, 95 S. Ct. 2486 (1975) (Burger, C.J., concurring)). In In re C.B., 97-2783 (La. 3/11/98); 708 So.2d 391, 397, the Louisiana Supreme Court adopted the quid pro quo theory of rehabilitative treatment for juveniles as a guiding principle in determining that "the applicable due process standard in juvenile proceedings is fundamental fairness." Ibid.

Ill. 1993) (finding a lack of instruction gave rise to claim under substantive due process); Robin A. v. McCoy, Civ. No. 90-1151 (D. Or. April 23, 1992 (consent decree provided for educational services in classroom setting for each child on school days). Incarcerated juveniles should be given appropriate educational testing upon admission. Morgan v. Sproat, 432 F. Supp. 1130 (S.D. Miss. 1977); Inmates of Boys Training School v. Affleck, Civ. No. 4529 (D.R.I. January 15, 1979) (previous opinion 346 F. Supp. 1354 (D.R.I. 1972)). Institutional staff should develop individualized educational plans appropriate to each child. Gary W. v. Louisiana, 437 F. Supp. 1209 (E.D. La. 1976); Morgan v. Sproat, supra; Inmates of Boys Training School v. Affleck, supra. Institutions must provide sufficient resources to implement such plans. Doe v. Holladay, No. CV-77-74-BLG (D. Mont. April 1, 1982); Inmates of Boys Training School v. Affleck, supra.

The evidence presented at the hearings demonstrated constitutional violations of gross proportions in the areas of excessive use of force, protection from harm, and mental health and rehabilitative treatment. Although it is apparent that guards broke Petitioner's jaw by punching him in the face, it is irrelevant for purposes of Petitioner's motion whether his jaw was broken by a guard or another youth. Petitioner was placed in the State's custody for rehabilitation and treatment. The Court and society assumed that the State would provide – at a minimum – a safe environment and protect him. Who assaulted Petitioner and broke his jaw is not the point; that it happened while in the State's custody violates his constitutional rights, for his injury bears no relation to the purposes of his detention. In addition, it is clear that the State, through its agents the DPS&C and Tallulah, failed to provide constitutionally adequate mental health, rehabilitative and educational treatment. This Court must find that the State violated Petitioner's constitutional rights.

State Constitutional and Statutory Protections

Article I, § 2 and Article V, § 19 of the Louisiana Constitution of 1974 govern the constitutional rights of juveniles in Louisiana.[14] Due process rights guaranteed by Article I, § 2

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[13] The law cited applies to general education. In addition, if a school district has determined that a child is in need of special education, it may be required by state law to provide special education services to a child even though the child is in the custody of the state by court order.

[14] La. Const. Art. I, § 2 provides: "No person shall be deprived of life, liberty, or property except by due process of law." La. Const. Art. V, § 19 provides in pertinent part: "The determination of guilt or innocence, the detention, and the custody of a person who is alleged to have committed a crime prior to his seventeenth birthday shall be pursuant to special juvenile procedures that shall be established by law."

of the Louisiana Constitution exceed those guaranteed by the Fourteenth Amendment to the United States Constitution:

> [T]he individual rights guaranteed by our state constitution's declaration of individual rights (Article I) represent more specific protections of the individual against governmental power than those found in the federal constitution's bill of rights, and they may represent broader protection of the individual.

Guidry v. Roberts, 335 So.2d 438, 448 (La. 1976). In addition to the enhanced protection of individual rights afforded juveniles through Louisiana's due process clause, juveniles adjudicated delinquent of crimes have the constitutional right to "special juvenile procedures which shall be provided by law." La. Const. Art. V, § 19. The Louisiana Supreme Court has read the provisions of Article V, § 19 to dictate "a general rule of 'non-criminal' treatment of juveniles." In re C.B., 97-2783 (La. 3/11/98); 708 So.2d 391, 396.

The Louisiana Supreme Court has proclaimed that:

> [T]he unique nature of the juvenile system is manifested in its noncriminal, or civil, nature, *its focus on rehabilitation and individual treatment* rather than retribution, and the state's role as parens patriae in managing the welfare of the juvenile in state custody.

In re C.B., 708 So.2d at 396-97 (emphasis supplied). Indeed, the provisions of the Louisiana Children's Code not only highlight the juvenile justice system's focus on rehabilitation and individual treatment, but specifically point to the state's duty to act as a parent with respect to children in custody. La. Ch.C. art. 102 (West 2000) provides:

> The provisions of this Code shall be liberally construed to the end that each child and parent coming within the jurisdiction of the court shall be accorded due process and that each child shall receive, preferably in his own home, the care, guidance, and control that will be conducive to his welfare. In those instances when he is removed from the control of his parents, *the court shall secure for him care as nearly as possible equivalent to that which his parents should have given him*.

Id. (emphasis supplied); see also La. Ch.C. art. 801 (West 2000) (specifically governing delinquency proceedings, echoing same language).

The Louisiana Children's Code is instructive in determining what constitutes "care as nearly as possible equivalent" to that which a child's parent owes him. In Child in Need of Care proceedings, the state may take a child out of his parent's custody and into state custody if there are reasonable grounds to believe a child is a) "the victim of abuse perpetrated, aided, or tolerated by the parent or caretaker, and his welfare is seriously endangered if he is left within the custody or control of that parent or caretaker"; or b) "a victim of neglect." La. Ch.C. arts. 606, 619, 626 (West 2000). "Abuse" is defined in part as "[t]he infliction, attempted infliction,

or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by the parent or any other person." La. Ch.C. art. 603(1)(a) (West 2000). "Neglect" is defined as "the refusal of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child, as a result of which the child's physical, mental, or emotional health is substantially threatened or impaired." La. Ch.C. art. 603(14) (West 2000). If the state later demonstrates by a preponderance of the evidence that a child is in need of care, the child remains in state custody. La. Ch.C. art. 665 (West 2000). Thus, in order for the juvenile court to protect a juvenile's constitutional rights in delinquency proceedings, it must ensure that a child receives care that as nearly as possible does not constitute abuse or neglect.

In addition, under our state's Children's Code, the State has a clear obligation to adequately investigate allegations of child abuse. *See, e.g.* La. Ch.C. art. 610, 612 (reports of child abuse *shall* be reported and investigated promptly). Incomplete investigations by state officials may give rise to a cause of action for damages. Todd v. State Dept. of Social Services, 699 So.2d 35 (La. 1977). One commentator has stated that the state's duty to a child increases when the child is in the state's custody. McGough & Triche, La. Ch.C. Handbook, at p. 106 (West 1999).

Without question Petitioner suffered both abuse and neglect in the custody of the State. Petitioner was repeatedly injured, physically and mentally, by guards and other youth at Tallulah. In addition, the State, through its agents the DPS&C and Tallulah, failed to adequately investigate the cause of Petitioner's broken jaw. Finally, it is clear the State failed to provide the treatment and rehabilitative services to which Petitioner was entitled. This Court must find that Petitioner's state constitutional and statutory rights were violated.

CONCLUSION

Petitioner, who is entitled to "care as nearly as possible equivalent to that which the parents should have given him" in secure custody, La. Ch.C. art. 801 (West 2000), has received "care" at Tallulah which would likely result in his removal from his parent's custody if he were in their custody. A guard broke his jaw and he and his colleagues conspired to cover the abuse up by attributing the assault to another youth. The facility and DPS&C headquarters compounded the abuse by failing to meaningfully investigate the matter. Petitioner was subjected to constant verbal abuse and was threatened with physical assault from both guards and

other youth. The State failed to provide adequate mental health, rehabilitative and educational treatment. This Court must act to prevent such manifestly unconstitutional treatment at the hands of the State by declaring that Petitioner's state and federal constitutional rights, as well as his state statutory rights, were violated and prohibit the DPS&C from placing Petitioner back at Tallulah.

Date: November 27, 2001.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel hereby affirms that he has served the following parties with this Brief in Support of Motion to Modify Disposition by hand delivery or placing same in first class mail:

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