IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KIM YOUNG, RONALD JOHNSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	No: 06 C 552
v.	)	Judge Matthew F. Kennelly
	)	
COUNTY OF COOK, et al.,	)	
	)	
Defendants.	)	

DEFENDANT COUNTY OF COOK'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

NOW COMES Defendant COUNTY OF COOK by its attorney RICHARD A. DEVINE, State's Attorney of Cook County, through his assistant, Francis J. Catania, and moves this Honorable Court pursuant to Rule 56 of the Federal Rules of Civil Procedure to enter summary judgment in its favor and to dismiss Plaintiff's complaint. In support thereof, Defendant states as follows:

INTRODUCTION

Defendant County of Cook stands accused of having a policy of strip searching jail detainees in an abusive manner and also a policy of strip searching persons charged with minor crimes without reasonable suspicion that they may be carrying contraband[1] [EXHIBIT A, Third Amended Complaint]. The County of Cook is not liable because the County does not set operational policy for the Cook County Department of Corrections and under Section 1983 there is no *respondeat superior* liability. As a matter of well settled Seventh Circuit law, the County of Cook does not set policy for the Sheriff of Cook County and can have no direct liability for policies of the Sheriff because the County is unable to create or change such policies regarding the operation of the Cook County Department of Corrections. In addition, the strip search policy employed by the Office of the Sheriff of Cook County does not violate the constitution. The evidence in this record reveals only that the Sheriff is motivated to strip search detainees ONLY

[1] All other claims in this suit have been settled and only these claims remain.

because of the need to stop the introduction of weapons and contraband into the jail to preserve the safety and security of the jail, its employees and its detainees and prisoners.

STANDARD OF REVIEW

A motion for summary judgment should be granted when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue of material fact." Fed. R. Civ. P. 56(c). However, a "[p]laintiff may not rely only on the bare assertions of his pleadings." *Keri v. Bd. of Trs. of Purdue Univ.*, 458 F.3d 620, 651 (7th Cir. 2006) (citing Fed. R. Civ. P. 56(e)) (emphasis added). Local government units, such as the County of Cook, are not liable under § 1983 solely on a theory of respondeat superior. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 at 690-91, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). A section 1983 action may be brought against a local government when the local government is shown to be the "moving force" behind the constitutional violation. *Monell*, 436 U.S. at 690 n.55. In *Monell*, the Supreme Court created two means of establishing local governmental liability under section 1983: policy and custom. A government policy or custom can be established in two ways. Policy is made when a "decision maker possessing final authority to establish municipal policy with respect to the action" issues an official proclamation, policy or edict. A course of conduct is considered to be a "custom" when, though not authorized by law, such practices of state officials [are] so permanent and well settled" as to virtually constitute law. The [County] is not required to pay any damages where neither it nor its employee is liable. *Tibbs v. City of Chicago*, 2005 U.S. Dist. LEXIS 4510 (N.D. Ill. Feb. 8, 2005).

FACTS

Plaintiffs have pleaded that the County of Cook is directly liable for conducting strip searches in the Cook County Department of Corrections. The complaint describes this as a blanket policy of the County of Cook. [EXHIBIT A, Third Amended Complaint Paragraphs 6-8 "Complaint"]. The Complaint makes allegations at paragraphs 60(d), 66, 67, 75, 79, 84, 88, 93, and 98 that the County of Cook has such policies, yet plaintiff can point to no evidence to support that jail strip search policy is a policy of the County of Cook. Indeed, paragraphs 101

and 104 of the complaint allege County employees participated in causing the harms alleged by the strip search policy, yet no evidence in the factual record shows Cook County itself; any Cook County policy maker; or any Cook County employee with policy making authority made such policy or policy.

All witnesses in this case who discuss the strip search policy are employees of the Sheriff of Cook County: Deputy Marlon Jones, Deputy Alvin Montique, Sgt. Erica Queen, Deputy Bryon Hatton, Deputy Brian Doyle, Dan Brown, Scott Kurtovich, Salvador Godinez and former Sheriff Michael Sheahan are all employees of the Office of the Sheriff [SOF #1-5].

There are two male class representatives in the case. Plaintiff/class representative Ronald Johnson was told to look at wall, not to look in any other direction except straight ahead [EXHIBIT B, Deposition of Ronald Johnson 55:1-6]. When ordered to put his clothes on, plaintiff/class representative Ronald Johnson could tell other detainees were dressing around him [Exhibit B, Johnson 67:21-24] but didn't care about them and wasn't observing them [Exhibit B, Johnson 68:1-3]. Plaintiff/class representative Kim Young testified about being taken to a gymnasium [SOF #9; EXHIBIT C, Young, 141:23-24 to 142:1-6] with 15-20 other females. A guard, ordered to disrobe and expose parts of her body to the guard, observed young. There was a divider separating her from other women. [SOF #9; Young, 142:12] This was different from when she was strip-searched in Waukesha County Jail in 2001. [SOF #10; Young, 143:3-8]. In 2001 she stood in line, and the women behind her could see her [SOF #10; Young, 143:12-15]. There are no witnesses and no evidence showing that the County of Cook directs policy-making by employees of the Sheriff regarding the operation of the Cook County Department of Corrections. For example, plaintiff deposed Marlon Jones [SOF #1; Jones, 4:9-12], Alvin Montique [SOF #2; Montique, 9:1-24], Erica Queen [SOF #3; Queen, 4:12-13], Bryan Hatton

[SOF #4; Hatton, 5:8-9], and Brian Doyle [SOF #5; Hatton, 5:1-11]. Each of these persons is a Sheriff's officer working at the jail and each was trained as an employee of the Office of the Sheriff. [SOF# 1, 2, 3, 4, 5]. Nearly all persons who are remanded to the jail actually enter the jail's general population the evening of processing [SOF#29, Kurtovich 111:24-112:2]. The purpose of strip-searching persons before they enter the general population is to assure contraband does not enter the jail facility [SOF#30, Brown 145:12-16]. Although scanning machines are used more and more, the technology is not sufficiently developed that strip-searching can be abandoned altogether [SOF#31, Martin 173:6-13]

ARGUMENT

On April 25, 2007, the Court certified two classes under Rule 23: (1) all males who were subjected to a strip search and/or a visual body cavity search as new detainees at the Cook County Jail on or after January 30, 2004; and (2) all persons charged only with misdemeanor or lesser offenses not involving drugs or weapons who were subjected to a strip search and/or a visual body cavity search as new detainees at the Cook County Jail on or after January 30, 2004. The Complaint asserts that the County of Cook is liable for these strip searches, but the law and factual record of this case show the County of Cook maintains no such policy and even if it did the policy of the Sheriff in this regard is not unconstitutional.

I. THE COUNTY IS NOT LIABLE FOR CREATING OR IMPLEMENTING JAIL INTAKE STRIP SEARCH POLICY

It is undisputed that all the events in this case took place at the Cook County Department of Corrections. Pursuant to Illinois law the Sheriff is statutory custodian of the jail. He or she shall have the custody and care of the courthouse and jail of his or her county, except as is otherwise provided. See 55 ILCS 5/3-6017.

Also as a matter of law, the Sheriff and his deputies are not County employees and, as a result, the County cannot be held liable for the alleged conduct of the Sheriff or his deputies. See *Moy v. County of Cook*, 159 Ill. 2d 519, 640 N.E.2d 926, 931 (1994) (holding that "the sheriff is a county officer and, as such, is not in an employment relationship with the County of Cook" and "therefore, the county may not be held vicariously liable for the sheriff's alleged negligent conduct.") accord *O'Connor v. County of Cook*, 787 N.E.2d 185, (1st Dist. March 10, 2003) (following *Moy* and holding that the County does not "bear any vicarious liability for the acts and omissions of the Sheriff and his staff.")

Indeed, the Sheriff of Cook County is an independently elected constitutional officer who answers only to the electorate, not to the County government. *Thompson v. Duke*, 882 F.2d 1180, 1187 (7th Cir. 1989), cert. denied, 495 U.S. 929 (1990). Similarly, *Ryan v. County of DuPage*, 45 F.3d 1090, 1092 (7th Cir. 1995) affirmed dismissal the plaintiff's Section 1983 claims against DuPage County based upon the alleged conduct of the DuPage County Sheriff and stated that "it is plain that the county was properly dismissed; Illinois sheriffs are independently elected officials not subject to the control of the county." By statute, Cook County Deputy Sheriffs and employees of the Department of Corrections are appointed by the Sheriff and perform all of their duties in the name of the Sheriff. See 745 ILCS 5/3-6008 and 5/3-6015. The County lacks the authority to establish any policies concerning training or the performance of duties by employees of the Sheriff's office. *Thompson*, 882 F.2d at 1187.

In order to establish liability against the County, Plaintiff must identify the illegal conduct properly attributable to the County and show that the County was the "moving force" behind the alleged injury. This means that the Plaintiff must show that the action was taken with the requisite degree of culpability and demonstrate a direct causal link between the County action

and the deprivation of federal rights. See *Bd. of the County Comm'rs of Bryan County v. Brown*, 520 U.S. 397, 404, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997). Plaintiffs fail to show that any illegal conduct was attributable to the County; much less show County was a moving force behind the injury. Therefore the County is not liable as alleged in the Complaint.

Because the Sheriff and his employees have no employment relationship with the County, the County cannot be held liable for the alleged misconduct of the individual defendants in this matter. See *Moy*, 640 N.E.2d at 931. Moreover, even if the deputies were County employees, under § 1983, there is no *respondeat superior* liability. *Perkins v. Lawson*, 312 F.3d. 872, 875 (7th Cir. 2002). Count VII paragraph 100 of the complaint alleges County of Cook is liable on a *respondeat superior* basis. There is no County employee remaining in the case. Scott, Martin, Rothstein, Winship, Bersky and Fagus have all been dismissed [SOF #15]. Under the doctrine of *respondeat superior*, an employer can be held vicariously liable for the tortious acts of its **employees**. *Pyne v. Witmer*, 129 Ill. 2d 351, 359, 135 Ill. Dec. 557, 543 N.E.2d 1304 (1989) and *Alms v. Baum*, 343 Ill. App. 3d 67, 71 (Ill. App. Ct. 1st Dist. 2003). The remaining defendants are employees of the Office of the Sheriff, who has sole authority to direct their actions. For purposes of *respondeat superior* liability, a servant is one whose physical conduct in performing the services is subject to the master's control or right to control *Morgan v. Veterans of Foreign Wars of the United States*, 206 Ill. App. 3d 569, 575, 151 Ill. Dec. 802, 565 N.E.2d 73 (1990). The County of Cook exerts no control over the named defendants or any other employee of the Sheriff.

In prior pleadings, Plaintiffs have suggested they adequately alleged customs, policies, and practices of the County of Cook violated federal rights of class members. No evidence exists in the factual record of this case to support such allegations. Plaintiffs allege that their injuries

came about because the County followed a policy of strip-searching detainees in a harassing manner. However, even if true, this would not render the County liable. While a sheriff is viewed as a county officer, "count[ies] [are] given no authority to control the office of the sheriff," *Moy v. County of Cook*, 640 N.E. 2d 926, 929 (Ill.1994). The Seventh Circuit has explicitly ruled that Illinois counties are not liable for their sheriffs' actions under *Monell*, stating that "Illinois sheriffs are independently elected officials not subject to the control of the county." *Ryan v. County of DuPage*, 45 F.3d 1090, 1092 (7th Cir. 1995). Thus, County states that any policies promulgated by the Sheriff of Cook County or Michael F. Sheahan cannot be attributed to Cook County, and Cook County cannot be held liable under a respondeat superior theory. See *Carver v. Sheriff of LaSalle County*, 203 Ill. 2d 497, 787 N.E.2d 127, 136-37, 272 Ill. Dec. 312 (2003) ("… [S]heriffs answer to the electorate of the county from which they are elected, and not to the county board.") Finally, in *Ryan v. County of DuPage*, 45 F.3d 1090, 1092 (7th Cir. 1995), the Seventh Circuit considered a § 1983 suit against the sheriff of DuPage County that attempted to impose municipal liability on the County of DuPage, for actions undertaken by the sheriff, the purported policymaker for the county. In *Ryan*, they affirmed the dismissal of the county as a defendant, holding that the sheriff is a policymaker for the county sheriff's office, not for the county itself. *Ryan*, 45 F.3d at 1092 and described Illinois sheriffs as "independently elected officials not subject to the control of the county" *Franklin v. Zaruba*, 150 F.3d 682, 685 (7th Cir. Ill. 1998).

The Seventh Circuit has recognized that in Section 1983 claims against Illinois sheriffs, Illinois counties have a duty to indemnify judgments or settlements entered against sheriffs or their deputies, and are accordingly necessary and indispensable parties for purposes of indemnification. See *Carver v. Sheriff of LaSalle Co.*, 324 F.3d 947 (7th Cir. 2003). However,

Plaintiffs, have not asserted a *Carver* indemnification claim, but rather, have asserted only direct and vicarious liability claims against the County of Cook. Such direct or vicarious liability claims are not viable under *Thompson*, *Ryan*, and *Moy*. If the Sheriff remains a party to this litigation in his official capacity, Plaintiff should be required to amend his Complaint to state a proper Carver indemnification claim for declaration against the County of Cook.

II. THE SHERIFF AND HIS EMPLOYEES DO NOT VIOLATE THE RIGHTS OF DETAINEES UNDER THE 4TH AND 14TH AMENDMENTS

Assuming Plaintiffs are allowed to amend their complaint to allege a proper Carver indemnification claim against the County of Cook, there still is no constitutional violation to indemnify. There is no constitutional violation where the strip search is no more intrusive than the one the Supreme Court upheld in *Bell v. Wolfish*, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979). First, and most fundamentally, the Court in *Bell* addressed a strip search policy, not any individual searches conducted under it. The Court spoke categorically about the policy, not specifically about a particular search or an individual inmate. See *Bell*, 441 U.S. at 560, 99 S. Ct. at 1885. *Hudson v. Palmer*, 468 U.S. 517, 538, 104 S. Ct. 3194, 3206, 82 L. Ed. 2d 393 (1984) cited Bell for the proposition that "[i]n some contexts, . . . the Court has rejected the case-by-case approach to the "reasonableness" inquiry in favor of an approach that determines the reasonableness of contested practices in a categorical fashion."

The threshold determination here is whether a policy of strip search of a male detainee in the presence of other male detainees and male officers constitutes a constitutional violation. In the Complaint Plaintiffs allege that many men were ordered into a corridor where they were required to disrobe where they could observe each other in large groups. Plaintiffs' claim of a constitutional violation based on the presence of officers and detainees during their strip search

apparently satisfied the first inquiry for a municipal liability claim at the motion to dismiss stage. Now things are different.

The evidence in this case comes from the testimony of the named class representatives. Kim Young, Ronald Johnson, and William Jones, on behalf of themselves and a class of others similarly situated, all testified as to certain procedures in regards to strip searching at the Cook County Department of Corrections. Johnson and Jones spoke of group strip searches but each described how guards told them to look straight ahead or at a line on the floor [SOF #6 & 7; Jones, 31:15-22] [SOF #8; Johnson, 55:1-4] and not to look around. To contrast this group strip search, Kim Young testified that following her arrest and bond hearing in January 2005, she was group strip searched in a gymnasium, but there was a divider which shielded her from the view of others except of course the guard. [SOF #9 & 10; Young, 141:23-24 to 142:1-6, 12]. This was only slightly different from her previous experience just 4 years prior in Wisconsin when she was strip searched individually but in a place where others in line could see her. [SOF #10; Young, 143:3-15]. The Wisconsin search was also a group strip search. None of the class representatives say much beyond the simple fact that strip searches were done in groups of persons who were involved in the process as new detainees. It is telling that Plaintiff Jones did not even discuss the search with other detainees because the strip search seemed to be a normal procedure so no one talked about it after it was done. [SOF#20, EXHIBIT D, Jones, 48:22-23]. If Plaintiffs/Class Representatives understand the need for strip searches in jails lawyers and judges can surely understand why the Supreme Court has recognized that security needs in the *Bell* situation found to justify strip searching an inmate re-entering the jail population after a contact visit are no greater or less than those that justify searching an arrestee when he is being booked into the general population for the first time. At least one Federal Circuit, the 11th Circuit in

And the searches conducted in the *Bell* case were more intrusive, and thereby impinged more on privacy interests, than those conducted in this case (see below, note 39 cited in *Bell v. Wolfish*, 441 U.S. 520, 558 (U.S. 1979).

The judicial orders issued at the motion to dismiss stage and the motion for class certification stage assumed that group strip searches violated the 4th Amendment. A survey of cases addressing this issue directly has NOT found any saying group searches are unconstitutional. In *San Bernardino*, the Court's order on the motion to dismiss considered the fact that strip searches occurred in groups as a factor weighing against their constitutionality but did not decide whether group strip searches independently violated the Fourth Amendment. See *Craft v. County of San Bernardino*, 468 F.Supp.2d 1172 (C.D.Cal. 2006). *Craft v. County of San Bernardino*, 2008 U.S. Dist. LEXIS 27526 (D. Cal. 2008). In *Adams*, when denying Plaintiff's motion for summary judgment, the Court ruled plaintiff failed to provide evidence that his constitutional rights were violated. Rather, plaintiff relies solely on the broad theory that all group strip searches are unlawful. The complaint was ruled to not state a claim. Additionally, in that case, plaintiff provided no evidence that County policy was behind the searches of plaintiff. *Adams v. County of Sacramento*, 2007 U.S. Dist. LEXIS 15666, 8-9 (D. Cal. 2007). In *Boissiere v. Foti*, 1988 U.S. Dist. LEXIS 11266 (D. La. 1988) the court was asked among other things to determine if group strip searches violated the right to privacy. Again the answer was no.

Recently, the 11th Circuit had a chance to look at, among others, the very issue raised here about group searches. The court's *Powell v. Barrett en banc* concern was in strip searches conducted on five detainees who were members of the arrestee group where neither the charge itself nor any other circumstance supplied reasonable suspicion that the detainee might be concealing contraband. The court upheld the policy of strip searches, at least where the strip

search was no more intrusive than the one the U.S. Supreme Court upheld in *Bell v. Wolfish*. To the extent that the court's decision in *Wilson v. Jones*, 251 F. 3d 1340 (11th Cir. 2001), finding a constitutional violation, was inconsistent with the court's present reasoning, the court overruled it. At least one district judge in this Circuit relied in part on the reasoning of the now overruled *Wilson* case: Judge Gettleman citing with favor the Wilson court conclusion regarding persons charged with misdemeanors a strip search policy that did not require reasonable suspicion violated Fourth Amendment *Calvin v. Sheriff of Will County*, 405 F. Supp. 2d 933, 940 (N.D. Ill. 2005) [citing *Wilson v. Jones*, 251 F.3d 1340, 1342 (11th Cir. 2001)]. In *Calvin*, the Court found a county detention facility's blanket strip search policy violated the Fourth Amendment as applied to arrestees detained on a failure-to-appear warrant in a misdemeanor or traffic case and misdemeanor or traffic detainees who were being processed for release following a court appearance. In evaluating the *Bell* decision, the Eleventh Circuit correctly notes that "the Supreme Court instructed us that jail officials should be accorded wide-ranging deference in the adoption and execution of policies and practices to preserve internal order and discipline and to maintain jail security. Assuming that the detainees being booked into the jail retained some Fourth Amendment rights, those rights were not violated by a policy or practice of strip searching each one of them, including full body visual searches, as part of the booking processes. The [Bell] court rejected a reasonable suspicion requirement for such policy or practice." *Powell v. Barrett*, 2008 U.S. App. LEXIS 18907 (11th Cir. Ga. Sept. 4, 2008).

Specifically, the Powell *en banc* court was met with the following factual scenario drawn from the District Court record:

> [H]aving the arrested person go into a large room with a group of up to thirty to forty other inmates, remove all of his clothing, and place the clothing in boxes. (Id. P 181.) The entire group of arrestees then takes a shower in a single large

> room. (Id. PP182, 238.) After the group shower each arrestee "either singly, or standing in a line with others, is visually inspected front and back by deputies." (Id. P183.) "Then each man [takes] his clothes to a counter and exchange[s] his own clothes for a jail jumpsuit." (Id. P 239.) Identifying an illustrative case, the complaint alleges that one of these five plaintiffs "along with every other inmate in the process, had to stand before a guard front and center, and show his front and back sides while naked." (Id. P240.) There is no allegation that any members of the opposite sex either conducted the visual searches or were present while they were being conducted. Nor is there any allegation that the searches were conducted in an abusive manner. *Powell v. Barrett*, 541 F.3d 1298 at (11th Cir. Ga. Sept. 4, 2008). Emphasis supplied.

This group strip search practice is little different in terms of numbers and duration as that employed by the Sheriff. Aside from there being a group searched at one time, none of the plaintiff/class representatives testifies about specific conduct that might indicate the search was conducted as a matter of policy, with the intent to abuse. All agree that the place where the male strip search is conducted is a narrow hallway. No evidence exists that shows members of the opposite sex were present during the search. There are really no allegations of verbal abuse by guards directed toward the plaintiff/class representatives. There is no proof showing these plaintiff/class representatives were physically hurt by deputies. Even if we are to believe someone present during the strip search was threatened or that a deputy used racially derogatory language in the present of the plaintiff/class representative, allegations such as these simply do not implicate protected constitutional rights. See *DeWalt v. Carter*, 224 F.3d 607, 612 (7th Cir. 2000) (even "racially derogatory language, while unprofessional and deplorable, does not violate the Constitution"). There is no claim that the strip search was performed any differently than those already approved in *Bell*, which were conducted as a matter of policy on all person detained. In fact, the *Bell* court described the precise nature of the strip searches done at the MCC: "If the inmate is a male, he must lift his genitals and bend over to spread his buttocks for visual inspection. The vaginal and anal cavities of female inmates also are visually inspected.

The inmate is not touched by security personnel at any time during the visual search procedure. 573 F.2d, at 131; Brief for Petitioners 70, 74 n. 56. *Bell v. Wolfish*, 441 U.S. 520, 558 (U.S. 1979). And again, the *Bell* Court upheld this method of strip searching detainees.

III. EQUAL PROTECTION GROUND FAILS SINCE THE EVIDENCE SHOWS NO SIGNIFICANT DISPARITY OF TREATMENT IS BASED ON GENDER

The Complaint alleges that these strip searches are a violation of both the 4th Amendment and the 14th Amendment. According to the plaintiffs' theory, since women have dividers and men do not, men have an equal protection claim. There remains no evidence or law supporting a position that dividers are a constitutionally required minimum. Plaintiffs suggest that the only difference between the searches conducted on men and women is based on gender. The evidence however highlights several reasons men and women are not similarly situated. In addition to gender, 1) women are searched in a gymnasium giving rise to the need for dividers to afford more protection from prying eyes not associated with the process while men are searched in a tunnel where access is easily controlled; 2) women have monthly bodily processes that might cause additional concern for privacy due to additional embarrassment which men clearly do not have to deal with; and 3) the numbers of women entering the jail far less than men, which by itself makes treating males different. There is no essential difference between the use of a privacy screen and the use of an order not to look at the persons next to you.

It is important to note that women are not strip searched in the same area as men. Women are strip searched in the division to which they have been assigned and there is no evidence that male correctional officers are ever involved in that process. Women are searched in a gymnasium [SOF#9], while men are searched in a hallway [SOF#16]. This difference alone can reasonably support the use of dividers in a gymnasium where the physical structure makes the

place of the search less conducive to affording privacy and increases the likelihood that someone not involved in the process would be able to observe. Each male plaintiff/class representative described how he was ordered to face the wall and/or look at a line on the floor, thereby being ordered not to look around. This direction to avoid looking at others serves the same "privacy" concern as the dividers in a gymnasium. A policy is subject to scrutiny under the equal protection clause of the fourteenth amendment, which requires that the party seeking to uphold a policy that expressly discriminates on the basis of gender must carry the burden of showing an "exceedingly persuasive justification" for the differing treatment. *Mississippi University for Women v. Hogan*, 458 U.S. 718, 102 S. Ct. 3331, 3336, 73 L. Ed. 2d 1090 (1982). If the evidence showed that women were not strip searched and men were, this might raise an equal protection issue. However, the factual record shows that both men and women are subjected to a strip search prior to admission into general population. Plaintiffs can point to no policy, which expressly discriminates; they can only point to one policy of strip searching detainees at intake, where an order to males not to look at each other is the functional equivalent of a privacy screen.

CONCLUSION

At this juncture, the Plaintiffs case shows that no policy of the County has caused a violation. It shows that the Sheriff has conducted strip searches in accordance with those already approved by the Supreme Court in *Bell*. That the Class representatives themselves can point to nothing beyond group strip searches, applicable to all including women, and that those persons are by and large charged with felonies and that some offices might use rude and offensive language in the presence of detainees being searched – though it seems to be comments about smell.

Despite *Bell v. Wolfish*, Courts still have difficulty evaluating a jail strip search policy. The Sixth Circuit identified one such problem. A district judge had allowed emotional response to be his guide. The 6th Circuit wrote: "[i]t is troubling to consider how much of our visceral

reactions to strip searches, pro and con, may rest upon perceptions of class and sex." See *Dufrin v. Spreen*, 712 F.2d 1084, 1088 (6th Cir. 1983): "In directing a verdict for Dufrin, the trial judge observed that he did not like the idea of police routing 'middle-class housewives' out of their beds 'at 11:30 at night' and forcing those housewives to submit to strip-searches . . . . We cannot believe from these comments that the trial court was implying that a different rule ought to exist for a female who was not middle-class, or who was not a housewife, or who was not from the suburbs. Any suggestion [otherwise] is in our view neither legally nor morally supportable" *Dufrin v. Spreen*, 712 F.2d 1084, 1088 (6th Cir. Mich. 1983). This court should not let visceral reactions to strip searches be the guide.

WHEREFORE, Defendant County of Cook respectfully requests that the Court grant Summary Judgment in favor of the County of Cook, dismiss plaintiffs' liability claims against the County as set forth in the complaint, in their entirety. In addition, the Defendant County of Cook asks this court to rule that Plaintiffs have not pleaded a claim for indemnification and dismiss the County entirely. In the alternative, Defendant County of Cook asks this court to maintain the County of Cook as a party defendant solely for the purposes delineated in *Carver v. Sheriff of LaSalle Co.* and order plaintiff to re-plead. Defendant County of Cook also requests the Court order further relief as the Court may deem necessary and appropriate.

Respectfully Submitted,
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