UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIC JONES, et al. Plaintiffs v. **SUSAN MURPHY,** et al. Defendants	Civil Action No. **CCB 05 CV 1287**

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
(With Request for Hearing)

Plaintiffs, by and through undersigned counsel, respectfully move this Honorable Court pursuant to Federal R. of Civ. P. 23(a) and 23(b) to enter an order certifying the classes defined in this motion, approving the named class representatives, appointing Sean Day, William Claiborne, and Barrett Litt as class counsel, and granting other relief requested herein. Plaintiffs request a hearing on this motion.

Defendants do not consent to the relief sought in this motion. LCvR 7.

A memorandum in support hereof accompanies this motion.

Plaintiffs seek certification under 23(b)(3) (Damages Class) on the issues of liability and damages, or for a "Hybrid" Rule 23(b)(2) and (b)(3) Injunctive Relief and Damages Class. The Named Plaintiffs and Class Definitions are set forth below.

OVERDETENTION CLASS

Class Representatives

Kevin Adams, Tonia Bowie, David Colyns, Anthony Haig, Gary Saunders, and Michael Washington.

Class Definition

Each person who, since May 12, 2002 continuing to the termination of this case, was or is arrested in the City of Baltimore and then detained at the Baltimore Central Booking and Intake Center for more than 48 hours after arrest without release or presentment before a court commissioner or other judicial officer.[1]

SUSPICIONLESS STRIP SEARCH CLASS

Class Representatives

Anthony Haig, Eric Jones, Gary Saunders, Michael Washington, and Dana West.

Class Definition

Each person who, since May 12, 2002 continuing to the termination of this case, was or will be taken to Baltimore Central Booking and Intake Center (a) on charges or in cases not involving weapons, drugs, or felony violence, and (b) strip searched[2] (c) prior to or without presentment before a court commissioner or other judicial officer.

---

[1] The Plaintiffs reserve on the issue of whether, for persons presented and ordered released, any delays between the release order and actual release should be accrued toward the 48 hour determination. In some instances the delay was as much as 8 hours.

[2] A "strip search" is being defined herein as the removal, pulling down, or rearrangement of clothing for the visual inspection of a person's genital and/or anal areas, which may also include requiring the person to squat and cough, in the presence of one or more guards.

NON-PRIVATE STRIP SEARCH CLASS

Class Representatives

Anthony Haig, Eric Jones, Gary Saunders, Michael Washington, and Dana West.

Class Definition

Each person who, since May 12, 2002 continuing to the termination of this case, was or will be taken to Baltimore Central Booking and Intake Center and strip searched in the presence of other arrestees or staff not involved in the search, prior to or without presentment before a court commissioner or other judicial officer.

EQUAL PROTECTION STRIP SEARCH CLASS[3]

Class Representatives

Anthony Haig, Eric Jones, Gary Saunders, Michael Washington, and Dana West.

Class Definition

Each male who, since May 12, 2002 continuing to the termination of this case, is or will be taken to Central Booking and strip searched prior to or without presentment before a court commissioner or other judicial officer.

---

[3] As set forth in the Memorandum, both the Equal Protection Strip Search Class and the Underwear Search Class are submitted as Alternative Classes. Based on the written post orders and contention of Defendants, which is that male but not female arrestees were automatically stripped to their underwear, each male who is not proved to be a member of a bare skin strip search class would fall into the Underwear Search Class by way of the Defendants' version of facts.

Likewise, while female search officers have testified that they strip searched female intakes, if more consistently with the post orders men but not women are proven to be searched to their bare skin, those men would be members of the Equal Protection Strip Search Class.

UNDERWEAR SEARCH CLASS

Class Representatives

Kevin Adams, Gary Saunders, and Aaron Ross.

Class Definition

Each male who, since May 12, 2002 continuing to the termination of this case, is taken to Baltimore Central Booking and Intake Center and searched to his underwear prior to or without presentment before a court commissioner or other judicial officer

INJUNCTIVE RELIEF CLASS

Plaintiffs Gary Saunders, Anthony Haig, and Aaron Ross seek to be class representatives against Warden Franks in his official capacity for the purposes of injunctive relief. Each has standing for injunctive relief for the reasons set forth in the Memorandum.

WHEREFORE, the Named Plaintiffs request that the above-defined classes be certified under Rule 23, that they be appointed as class representatives for the classes set forth above, that undersigned counsel be appointed class counsel, and such other and further relief as this cause requires.

Respectfully submitted, ___/s/Sean R. Day/s/_____ Sean R. Day (Bar No. 12831) 8505 Baltimore Avenue • Suite B College Park, Maryland 20740 301.220.2270 (Phone) 301.220.2441 (Fax) *sean@dayincourt.net*	Respectfully submitted, __/s/William Claiborne/s/_____ William Claiborne (pro hac vice) 717 D Street, NW Suite 210 Washington, DC 20004 202-824-0700 (Phone) 202-824-0745 (Fax) *claibornelaw@gmail.com*
Respectfully submitted, __/s/Barrett S. Litt/s/_____ Barrett S. Litt (pro hac vice) Litt, Estuar et al. 1055 Wilshire Boulevard, Suite 1880 Los Angeles, CA 90010 213.386-3114 x 217 (Phone) 213.380-4585 (Fax) *blitt@littlaw.com*	

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIC JONES, et al. Plaintiffs v. **SUSAN MURPHY,** et al. Defendants	Civil Action No. **CCB 05 CV 1287**

MEMORANDUM IN SUPPORT OF
MOTION FOR CLASS CERTIFICATION

Table of Contents

SUMMARY 1

STATEMENT OF FACTS CENTRAL TO CLASS CERTIFICATION 6

ARGUMENT 10

I. CLAIMS, PROPOSED CLASSES, NAMED PLAINTIFFS 10

A. Plaintiffs' Claims 10
(Chart of Claims) 10

B. Plaintiffs' Proposed Class Definitions 11
1. Overdetention Class 11
2. Suspicionless Strip Search Class 12
3. Non-Private Strip Search Class 14
4. Equal Protection Strip Search Class 15
5. Underwear Strip Search Class 16

C. Individual Class Representatives 18
(Chart of Classes, Named Plaintiffs, and Defendants) 18

1. Gary Saunders 19
2. David Colyns 19
3. Eric Jones 20
4. Dana West 20
5. Tonia Bowie 20
6. Anthony Haig 21
7. Michael Washington 21
8. Kevin Adams 22
9. Aaron Ross 22

II. PLAINTIFFS' CLAIMS SHOULD RECEIVE CLASS ACTION TREATMENT BECAUSE EACH CLAIM INDEPENDENTLY SATISFIES THE RULE 23 REQUIREMENTS, AND JUSTICE COMPELS CLASS ACTION TREATMENT 22

A. The Class Prerequisites Under Rule 23(a) Have Been Met for Each Claim 24

1. Numerosity 24
a) Overdetention Class 25
b) Suspicionless Strip Search Class 25
c) Non-Private Strip Search Class 26
d) Equal Protection Strip Search Class 26
e) The Underwear Strip Search Class 26

2. Commonality 26
a) Overdetention Class 27
b) Suspicionless Strip Search Class 28
c) Non-Private Strip Search Class 29
d) Equal Protection Strip Search Class 29
e) Underwear Strip Search Class 30

3. Typicality 31

4. Adequacy 32

B. The Class Prerequisites Under Rule 23(b) Have Been Met for Each Claim 34

1. Rule 23(b)(2) Injunctive Relief Class 34

2. Rule 23(B)(3) Damages Class 35
a) Common issues of law and fact predominate over individual issues of liability 35
i) Overdetention Class 40
ii) Suspicionless Strip Search Class 41
iii) Non-Private Strip Search Class 42
iv) Equal Protection Strip Search Class 42
v) Underwear Strip Search Class 42

b) Class Action Treatment Is Superior and the Case is Manageable as a Class Action 43

3. Rule 23 (B)(2)/ (B)(3) "Hybrid" Class 45

III. TRYING DAMAGES ON A CLASS WIDE BASIS USING STATISTICAL SAMPLING 46

CONCLUSION 49

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIC JONES, et al. Plaintiffs v. **SUSAN MURPHY,** et al. Defendants	Civil Action No. **CCB 05 CV 1287**

MEMORANDUM IN SUPPORT OF
MOTION FOR CLASS CERTIFICATION

Eric Jones *et al.*, the Named Plaintiffs in this case, by and through undersigned counsel, file this memorandum in support of their Motion for Class Certification under Fed. R. Civ. P. 23.

SUMMARY

The Fourth Circuit follows a liberal policy of granting class action treatment in cases such as this one, recognizing that certification of a class action serves important public purposes, including promoting judicial economy and efficiency, and affording injured persons a remedy. Gunnells v. Healthplan Servs., 348 F.3d 417, 424 (4th Cir. 2003).

Courts routinely certify strip search class actions similar to this one, including at least 9 in federal courts since 2007. *See, e.g.* (in reverse chronological order):

In re Nassau County Strip Search Cases, 2008 U.S. Dist LEXIS 29083 (E.D.N.Y. March 27, 2008) (after remand by Augustin v. Jablonsky (In re Nassau County Strip Search Cases), 2006 U.S. App. LEXIS 21602 (2nd Cir. 2006)

Johnson v. District of Columbia, 2008 U.S. Dist. LEXIS 9069 (D.D.C. Feb. 8, 2008) (challenging alleged practice of pre-presentment strip searches of arrestees) (Claiborne, Litt, and Day, counsel of record)

Moyle v. County of Contra Costa, 2007 U.S. Dist. LEXIS 89509 (N.D. Cal. Dec. 5, 2007)

Engeseth v. County of Isanti, 2007 U.S. Dist. LEXIS 78694 (D. Minn. Oct. 23, 2007)

Smith v. Dearborn County, 244 F.R.D. 512 (S.D. Ind. Aug. 28, 2007)

Mitchell v. County of Clinton, 2007 U.S. Dist. LEXIS 48589 (N.D.N.Y. Jul. 5, 2007)

Young v. County of Cook, 2007 U.S. Dist. LEXIS 31086 (N.D. Ill. Apr. 25, 2007)

Barnes v. District of Columbia, 242 F.R.D. 113 (D.D.C. Mar. 26, 2007) (Claiborne, counsel of record)

Sutton v. Hopkins County, 2007 U.S. Dist. LEXIS 3143 (W.D. Ky. Jan. 11, 2007) (denying motion to decertify)

Dodge v. County of Orange, 226 F.R.D. 177, 183 (D.N.Y. 2005)

Tardiff v. Knox County, 365 F.3d 1, 7 (1st Cir. 2004)

Bullock v. Sheahan, 225 F.R.D. 227 (N.D. Ill. 2004)

Bynum v. District of Columbia, 217 F.R.D. 43 (D.D.C. 2003) (Bynum II) (Claiborne and Litt, counsel of record)

Blihovde v. St. Croix County, 219 F.R.D. 607, 622-23 (W.D.Wis. 2003)

Maneely v. City of Newburgh, 208 F.R.D. 69, 78-79 (S.D.N.Y. 2002)

Mack v. Suffolk County, 191 F.R.D. 16, 24 (D.Mass. 2000)

Gary v. Sheahan, 1998 U.S. Dist. LEXIS 13378 (N.D.Ill. 1998), *motion to decertify denied* 188 F.3d 891 (7th Cir. 1999)

Smith v. Montgomery County, 573 F. Supp. 604, 613 (D. Md. 1983) (Smith II)

Courts have also certified arrestee and inmate overdetention classes. County of Riverside v. McLaughlin, 500 U.S. 44 (1991) (detention for 48 hours without probable cause determination presumed unreasonable); Dellums v. Powell, 566 F.2d 167, 174, 189 (D.C. Cir. 1977) (certifying class on several claims of falsely arrested protesters against multiple individual defendants and approving use of damages matrix approved by jury for damages); Bynum v. District of Columbia, 214 F.R.D. 27 (D.D.C. 2003) ("Bynum I"); Jones v. Cochran, 1994 U.S. Dist. Lexis 20625 (S.D. Fla. 1994) (reference to (b)(3) certification order made in previous decision).

Liability determinations for each claim in this case will depend on an analysis of a common nucleus of facts that will not vary in the individual cases. In re A.H. Robins Co., 880 F.2d 709, 741, 747 (4th Cir. 1989) (Court of Appeals affirmed certification of class under Rule 23(b)(1) that district court might have certified under 23(b)(3), noting that claim satisfied both prongs of Rule 23(b)(3)). This case presents exactly the kind of claims the Gunnells Court certified because **(1)** defendants' liability on each claim can be determined in one lawsuit on the basis of common evidence; Gunnells, 348 F.3d at 427 n. 4, 438-39; Augustin v. Jablonsky (In re Nassau County Strip Search Cases), 2006 U.S. App. LEXIS 21602 (2nd Cir. 2006) (Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation); Smith v. Montgomery County, 573 F. Supp. 604, 613 (D. Md. 1983) (Smith II) (certifying Rule 23(b)(3) class of female "temporary detainees" challenging indiscriminately applied strip search policy at county jail); and **(2)** the claims of the putative class members are so small that they will have no remedy unless they can get a class remedy. Gunnells, 348 F.3d at 426.

Additionally, common issues predominate over individualized questions even on damages because damages can be tried on a class-wide basis using statistical sampling, Hilao v. Estate of Marcos, 103 F.3d 767, 782 (9th Cir. 1996), or a damages matrix, Dellums v. Powell, 566 F.2d 167, 174, 189 (D.C. Cir. 1977).

Each class claim in this case presents one or two basic, overriding common questions of law or fact, the answers to which will establish, or defeat, liability for every single class member, and which is susceptible to generalized, class-wide proof. See Augustin, 2006 U.S. App. LEXIS 21602 at *22 (an issue is common to the class when it is susceptible to generalized, class-wide

proof). That is, for each claim, did the conduct (strip searches or overdetentions) occur as the result of a uniform policy or practice and, if so, were the practices constitutional? Smith II, 573 F. Supp. 604, 613 (D. Md. 1983); Tardiff v. Knox County, 365 F.3d 1, 7 (1st Cir. 2004); Augustin, 2006 U.S. App. LEXIS 21602 at *22; Dodge v. County of Orange, 226 F.R.D. 177, 183 (D.N.Y. 2005) (where a single issue, such as the existence of a uniform policy, is guaranteed to come up time and time again, issues of judicial economy strongly militate in favor of resolving that issue via a technique that will bind as many persons as possible).

The proof needed to resolve the common fact issues will primarily be, in the case of overdetentions, the electronic data on arrests, presentments, and releases from the Baltimore Central Booking and Intake Center's ("CBIC" or "Central Booking") computerized arrest booking system -- the "Automated Booking System" ("ABS"). In the case of strip searches, the proof needed for common fact issues will come from electronic data in Central Booking's ABS, testimony and affidavits by persons subject to the procedures, and depositions of defendants and staff at Central Booking.

The identity of persons who have been subjected to underwear searches or strip searches cannot be ascertained solely from the data in the ABS because the system does not have a field indicating that someone has been strip searched. But, the members of the various strip search classes can be identified using the ABS in combination with other information. For example, the underwear strip search class is defined as all males arrestees who were processed at Central Booking during a definite period. The identities of all males processed through Central Booking during anyone period can be identified by running a query in the ABS because the system has

fields showing name, sex, and date of processing in Central Booking. **Exhibit 124 ¶** 13.[1] Meanwhile, if bare skin strip searches occurred during a certain period of time, those class members can be identified through a date-specific query. For the Suspicionless Strip Search, because the ABS contains charge information, persons with arrest charges that would not support a strip search can be identified. Id. Bryan Miller's affidavit explains how the number of strip search class members can be established using statistical and other techniques if the search pattern was applied to most or many but not all arrestees. **Exhibit 97**. Furthermore, if an officer is proved to have not followed the general practice of strip searching, arrestees searched by such officer may be identified through the ABS. **Exhibit 124 ¶** 13.[2]

Realistically, individual damages in these cases will be inadequate to attract sufficient counsel to represent individuals on a case-by-case basis. Class action treatment is the superior form of adjudication where the class members could not afford to bring individual lawsuits because their claims are too small. See Carnegie v. Household Int'l Finance, Inc., 376 F.3d 656, 661 (7th Cir. 2004) ("the *realistic* alternative to [this] class action is not 17 million individual suits, but zero individual suits"); Tardiff v. Knox County, 365 F.3d 1, 7 (1st Cir. 2004) (fact that vast majority of booking strip search claims would never be brought unless aggregated in a class action because provable actual damages are too small weighs in favor of certification). In fact, absent class certification and its attendant class-wide notice procedures, most potential class members -- who number in the tens of thousands -- will probably never even know that

[1] Previously-filed exhibits are not being re-filed electronically, but will be reproduced in the paper copy.

[2] Gary v. Sheahan, 1998 U.S. Dist. LEXIS 13378 (N.D. Ill. Aug. 19, 1998) (that two individual officers deviated from practice not sufficient to create a material issue of fact regarding existence of strip search practice for women).

defendants violated their clearly established constitutional rights, and thus will never will be able to vindicate those rights. Augustin, 2006 U.S. App. LEXIS 21602 at *27.

The alternative to certification, in the worst case, is no remedy for injured plaintiffs, or, in the best case, thousands of individual suits and motions for offensive collateral estoppel following a single favorable verdict. Id. In fact, class certification of the claims in this case "provides a single proceeding in which to determine the merits of the plaintiffs' claims, and therefore protects the defendant from inconsistent adjudications." Gunnells, 348 F.3d at 427.

Class action treatment of all claims in this case would provide the same benefits in the litigation identified by the Gunnells Court: (1) class certification will provide access to the courts for those with claims that would be uneconomical if brought in an individual action, 348 F.3d at 426; (2) class certification in this case seems likely to reduce litigation costs and preserve scarce judicial resources through the "consolidation of recurring common issues," Id; and (3) class certification "provides a single proceeding in which to determine the merits of the plaintiffs' claims, and therefore protects *the defendant[s]* from inconsistent adjudications." Id. at 427 (emphasis in original).

STATEMENT OF FACTS CENTRAL TO CLASS CERTIFICATION

The Baltimore Central Booking and Central Intake Center (CBIC or "Central Booking") opened in 1995 as the central location for booking and processing arrestees in Baltimore City. Central Booking is an agency of the Division of Pretrial Detention and Services, which in turn is a division of the Maryland Department of Public Safety and Correctional Services. Central Booking processes approximately 100,000 arrestees each year (according to the State statistics, 95,463 in 2006). **Exhibit 129.**

Central Booking has a "booking floor" for persons awaiting presentment, which also has a few rooms dedicated for persons who have been presented, were ordered to be held, and are awaiting placement on another floor. However, the only detainees on the "booking floor," where arrestees are processed and held pending presentment, are arrestees. At no time are arrestees intermingled with other types of detainees, including arrestees who have been ordered held at presentment. Arrestees are processed in the following steps (although males and females are held and processed separately in different parts of Central Booking, the process for both is basically the same): (1) arrestees admitted to Central Booking at the Sallyport and patted-down; (2) arrestees screened for medical issues (this step was not implemented in the early part of the class period); (3) arrestees taken into the "search room" for strip searches or other type of searches; (4) arrestees taken to booking area for fingerprinting, identification, and criminal history review; (5) arrestees held in holding cells pending presentment before a commissioner or release; (6) (for persons being charged) arrestees taken before commissioner for presentment.; (7) arrestees either released, or held with or without bond.

The deposition testimony of searching officers at Central Booking shows that during the class period, from May 12, 2002, until some time after July 5, 2005, all arrestees[3] were subjected to blanket strip searches to their bare skin regardless of charge. The bare skin strip searches

[3] For their Equal protection strip search claim, the Plaintiffs have pled in their complaint that Central Booking staff subjected virtually all males but virtually no females to blanket strip searches. However, the Suspicionless Strip Search Claim includes all "persons," not just "males," strip searched without a reasonable, individualized suspicion. *See, e.g.*, Fourth Amended Complaint ¶¶ 9, 193-204, and 253-265 (Document 142, filed 10/12/07). The deposition testimony of line officers indicates that during the tenures of Defendant Wardens William Jednorski and Susan Murphy, and at the start of Defendant Warden Mitchell Franks's tenure, the general practice of searching officers was to subject all arrestees (male and females) to strip searches.

occurred throughout the tenures of Defendants Jednorski and Murphy, and stopped sometime during Warden Franks' tenure. As to males: **Exhibit 111** (excerpt), deposition testimony of Estep at 48-51, 54-55 (sometime after Franks came in as warden). As to females: **Exhibit 114** (excerpt), deposition testimony of Stevenson at 22-25, 30 (end of 2005); **Exhibit 115** (excerpt) deposition testimony of Banks at 23-25, 46-47, 50, 70-72 (into 2006); **Exhibit 117** (excerpt), deposition testimony of Jones at 16-18, 20-27, 42-49 (active practice as of deposition date 11/5/07).[4] Men were searched two at a time with no partition between them. **Exhibit 110** (excerpt), deposition testimony of Diggs at 56-57; **Exhibit 108** (excerpt), deposition testimony of Irvine at 77.

The Defendant Wardens have denied that strip searches took place during their tenures. Defendant Warden Murphy and Benjamin Brown, Assistant Commissioner for the Division of Pretrial Detention and Services, submitted Affidavits contending that the policy was to subject males (but not females) to "underwear searches," that is, males were made to take off their clothes down to the last layer of clothes, but not down to their bare skin. Murphy Affidavit filed as Document 25, 10/7/05, appended to paper Exhibits filed herewith; Brown Affidavit at **Exhibit 116**. As set forth in the post orders prior to January 1, 2006, which includes all or part of all

[4] The line staff officers deposed to date have generally testified that there was a policy or practice of subjecting all male and female arrestees processed at Central Booking to blanket strip searches during different parts of the class period; their testimony differs as to when the strip search practice ended. This discrepancy does not affect class certification, because the existence of a policy or practice of subjecting all male and female arrestees to blanket strip searches is not in dispute; the only dispute is when the practice stopped. When the practice stopped is a fact issue that can be resolved and applied across-the-board to all class members. The mere fact that some officers did not follow the practice of subjecting all arrestees to strip searches upon intake would not destroy the existence of a general practice of subjecting all arrestees to strip searches upon intake. Gary v. Sheahan, 1998 U.S. Dist. LEXIS 13378 (N.D. Ill. Aug. 19, 1998) (that two

Defendants' tenures, males were searched to their underwear, while women were not stripped at all. Plaintiffs have pled this fact pattern in the alternative and base the underwear strip search on this contention. Under Fed. R. Civ. P. 23 the Court may certify a claim that is pled in the alternative per Fed. R. Civ. P. 8(e)(2). Weyrich v. New Republic, Inc., 235 F.3d 617, 628 (D.C. Cir. 2001) (holding that plaintiffs may plead similar but mutually exclusive torts in the alternative); Bame v. Clark, 466 F. Supp. 2d 105, 110 (D.D.C. 2006); Smith v. District of Columbia, 295 F. Supp. 2d 53, 55 (D.D.C. 2003) (recognizing party's right to proceed on alternate claims granted by Fed. R. Civ. P. (8)(e)(2)); Guerrero v. Brickman Group, LLC, 2007 U.S. Dist. LEXIS 21126 (D. Mich. 2007) (although denying FLSA certification Court grants certification under Fed. R. Civ. P. 23(b)(3) on state law claims even though one of the state law claims – unjust enrichment – is inconsistent, and pled in the alternative to, the FLSA claim); In re GMC, 385 F. Supp. 2d 1176, 1180 (D. Okla. 2005) (noting in a class action complaint context that plaintiffs may plead alternate, inconsistent claims and go to the jury on both).

Regarding the overdetention claim, during the class period at least 1,836 arrestees were held without presentment or release for more than 48 hours, 1,749 of which were during Warden Murphy's tenure, 26 during Warden Jednorski's tenure, and 61 during Warden Franks's tenure. **Exhibit 124** (Table 2).[5]

---

individual officers deviated from practice not sufficient to create a material issue of fact regarding existence of strip search practice for women).

[5] As set forth in Exhibit 124, there are some booking entries in the ABS for which additional discovery will be needed to classify the bookings and calculate detention times.

ARGUMENT

I. CLAIMS, PROPOSED CLASSES, NAMED PLAINTIFFS

A. Plaintiffs' Claims

Plaintiffs have five claims, described separately below, for which they seek class action treatment, as shown in the following chart. Each class claim[6] separately meets the requirements of Rule 23(a). Each claim also separately meets both the requirements of Rule 23(b)(2) and Rule 23(b)(3), Smith v. Montgomery County, 573 F. Supp. 604, 613 (D. Md. 1983), and the requirements for a "hybrid" class under Fed. R. Civ. P. 23(b)(2)/ (b)(3). Miller v. Balt. Gas & Elec. Co., 202 F.R.D. 195, 198, 199 (D. Md. 2001), citing Eubanks v. Billington, 110 F.3d 87, 96 (D.C. Cir. 1997) (court may adopt a "hybrid" approach, certifying a (b)(2) class as to the claims for declaratory or injunctive relief, and a (b)(3) class as to the claims for monetary relief, effectively granting (b)(3) protections including the right to opt out to class members at the monetary relief stage). Each claim could also be certified under Rule 23(c)(4)(A).

Claim	**Count/ ¶ ¶**	**Gender of class members**	**Constitutional provision**
Suspicionless Strip Search	1/ 253-265	Males and Females	4th Amendment
Non-Private Strip Search	2/ 266-278	Males	4th Amendment
Equal Protection Strip Search	3/ 279-292	Males only	14th Amendment
Underwear Strip Search (Equal Protection only)	11/ 372-385	Males only	14th Amendment
Overdetention Claim	4/ 293-305	Males and Females	4th Amendment

[6] The Fourth Circuit has expressly recognized that "if [an] action includes multiple claims, one or more of which might qualify as a certifiable class claim, the court may separate such claims from other claims in the action and certify them under the provisions of subsection (c)(4)," provided that "each subclass must independently meet all the requirements of (a) and at least one of the categories specified in (b)." Gunnells, 348 F.3d at 441, citing In re A.H. Robins Co., 880 F.2d 709, 740 (4th Cir. 1989).

Some courts treat the existence of a class as a separate implicit element of Rule 23(a). Hammond v. Powell, 462 F.2d 1053, 1055 (4th Cir. 1972) (prerequisite of an ascertainable and definable class stems from the concern that at the time of judgment the individual members of the class will be readily identifiable). The definitions of the proposed classes set forth in Plaintiffs' Fourth Amended Complaint easily satisfy this requirement because Plaintiffs' proposed class definitions set forth general parameters that limit the scope of the classes to such a degree that it is administratively feasible for the Court to determine whether a particular individual is a member of one of the classes, and Plaintiffs can show membership in a class from a ministerial inspection of data in the "Automated Booking System," Central Booking's computerized booking system. Bynum I, 214 F.R.D. at 31-32.

B. Plaintiffs' Proposed Class Definitions

Certain plaintiffs move to certify one class for each of the claims as defined below.

1. Overdetention Class (Fourth Amended Complaint[7] Count 4)

Plaintiffs Kevin Adams, Tonia Bowie, David Colyns, Anthony Haig, Gary Saunders, and Michael Washington seek to represent a class ("Overdetention Class") of males and females held at Central Booking more than 48 hours after arrest before presentment or release, defined as a class consisting of:

> each person who, since May 12, 2002 continuing to the termination of this case, was or is arrested in the City of Baltimore and then detained at the Baltimore Central Booking

[7] The Fourth Amended Complaint, Document 142, filed 10/12/07, is miscaptioned as the "Third Amended Complaint."

and Intake Center for more than 48 hours after arrest without release or presentment before a court commissioner or other judicial officer.[8]

Plaintiffs have sufficiently outlined the boundaries of the overdetention class because "by looking at the class definition, counsel and putative class members can easily ascertain whether they are members of the class." Pigford, 182 F.R.D. at 346. Anyone who has been held in Central Booking beyond 48 hours after arrest during the class period can easily determine, simply by reading the definition, whether he or she was a member of the proposed class. See Bynum I, 214 F.R.D. at 32. There are no terms in the definition that require further clarification, and nothing in the definition would require the Court to hold individualized hearings to decide whether a particular individual fell within the scope of the definition. Id. In fact, plaintiffs can show membership in the class from a ministerial inspection of defendants' computer records (taking time of (a) arrest and (b) time of presentment or release, as shown in the Arrest Booking System, and extracting information for persons detained for more than 48 hours without presentment). **Exhibit 124**.

2. Suspicionless Strip Search Class (Fourth Amended Complaint Count 1)

Anthony Haig, Eric Jones, Gary Saunders, Michael Washington, and Dana West seek to represent a class ("Suspicionless Strip Search Class") of persons arrested on minor charges subjected to across the board strip searches pursuant to booking at Central Booking, defined as a class consisting of:

[8] The Plaintiffs reserve on the issue of whether, for persons presented and ordered released, any delays between the release order and actual release should be accrued toward the 48 hour determination. In some instances the delay was as much as 8 hours.

> each person who, since May 12, 2002 continuing to the termination of this case, was or will be taken to Baltimore Central Booking and Intake Center (a) on charges or in cases not involving weapons, drugs, or felony violence, and (b) strip searched (c) prior to or without presentment before a court commissioner or other judicial officer. . ..

The Fourth Amended Complaint defines a strip search at ¶ 8:

> the removal, pulling down, or rearrangement of clothing for the visual inspection of an arrested person's genital and/or anal areas, which may also include requiring the person to squat and cough, in the presence of one or more guards.

The Suspicionless Strip Search Class presents no individual questions on the issue of liability, or membership in the class, because the class definition includes every person strip searched pursuant to the booking process, excluding those persons whose arrest charge supplies reasonable suspicion to search. Tardiff, 365 F.3d at 5 (class definitions excluded those arrested for drugs, weapons or violent felonies); Augustin, 2006 U.S. App. LEXIS 21602, at *21-*28; Smith, 643 F. Supp. at 437.

Once the blanket strip search practice is established (including any time boundaries), the Plaintiffs can show membership in the class from a ministerial inspection of the computer data in the Automated Booking System to identify persons arrested on charges not involving weapons, drugs, or felony violence because the Automated Booking System captures arrest charge data for each arrestee and the date of arrest, which has been produced by the Defendants.

Moreover, Defendants do not keep records establishing reasonable suspicion for any arrestee. Therefore, once the Suspicionless Strip Search Class Plaintiffs establish the existence of a policy or practice of strip searches, the burden will fall upon Defendants to demonstrate, as an affirmative defense, that particular searches were reasonable, which, absent records, they cannot do. See Smith IV, 643 F. Supp. at 443; (burden on defendant to exclude); Mack v. Suffolk County, 191 F.R.D. 16, 24 (D. Mass. 2000); Blihovde v. St. Croix County, 219 F.R.D.

607, 621 (W.D. Wis. 2003); Anderson v. Cornejo, 199 F.R.D. 228, 240-41 (N.D. Ill. 2000) (assuming that pattern and practice method of proof applies to class actions involving strip search policies); see also Int'l Bhd. of Teamsters v. United States, 431 U.S. 324, 360 (1977)(Title VII). If the Defendants can show proof regarding certain individuals, which is doubtful, those person can be excluded from the class. Smith, 643 F. Supp. at 443. Moreover, Plaintiffs' proposed class definition excludes arrestees charged with crimes such as possession of drugs or weapons, or crimes of violence, where the nature of the charge itself would supply the reasonable suspicion needed to justify a strip search. Thus, Plaintiffs can show membership in the class from a ministerial inspection of Defendants' computer records, which show the date of arrest and charge(s).

3. Non-Private Strip Search Class (Fourth Amended Complaint Counts 2)

Anthony Haig, Eric Jones, Gary Saunders, Michael Washington, and Dana West seek to represent a class ("Non-Private Strip Search Class") defined as a class consisting of:

> each person who, since May 12, 2002 continuing to the termination of this case, was or will be taken to Baltimore Central Booking and Intake Center and strip searched in the presence of other arrestees or staff not involved in the search, prior to or without presentment before a court commissioner or other judicial officer.[9]

The Non-Private Strip Search Class presents no individual questions on the issue of liability, or membership in the class, because the class definition is limited to every arrestee who was strip searched non-privately (males) prior to presentment. The phrase "in the presence of other arrestees or staff not involved in the search" is an element of the offense and plaintiffs have

[9] While the Non-Private Strip Search Class, like the Suspicionless Strip Search Class, was pled as gender-neutral, the line staff testimony to date indicates only that males were strip searched in a non-private setting.

alleged and will establish by proof applicable to the entire class of a practice of strip searching arrestees in groups of two and sometimes more, and establishing this practice does not present individualized inquiries. Therefore, as with the Suspicionless Strip Search Class, once a practice of strip searching arrestees in groups is established, Plaintiffs can show membership in the class from a ministerial inspection of Defendants' computer records (*i.e.*, all males processed at Central Booking, without regard to the charge).

4. Equal Protection Strip Search Class (Fourth Amended Complaint Count 3)

Plaintiffs Anthony Haig, Eric Jones, Gary Saunders, Michael Washington, and Dana West seek to represent an alternate class ("Equal Protection Strip Search Class") of males (but not females) regardless of charge subjected to across the board strip searches at Central Booking, defined as a class consisting of:

> each male who, since May 12, 2002 continuing to the termination of this case, is or will be taken to Central Booking and strip searched prior to or without presentment before a court commissioner or other judicial officer.

The Equal Protection Strip Search Class presents no individual questions on the issue of liability, or membership in the class, because the class definition is limited to every male arrestee who was strip searched prior to presentment. Once the practice is established, Plaintiffs can show membership in the class from a ministerial inspection of Defendants' computer records. This claim is now conceived in the alternative because the deposition testimony seems to indicate that the Central Booking line staff subjected all male **and female** arrestees to bare skin strip searches.

5. Underwear Strip Search Class (Fourth Amended Complaint Count 11)

Plaintiffs Kevin Adams, Gary Saunders, and Aaron Ross seek to represent a class (the "Underwear Strip Search") of males who were strip searched to their underwear, defined as a class consisting of:

> each male who, since May 12, 2002 continuing to the termination of this case, is taken to Baltimore Central Booking and Intake Center and searched to his underwear prior to or without presentment before a court commissioner or other judicial officer.

The Underwear Strip Search presents no individual questions on the issue of liability, or membership in the class, because the class definition is limited to every male arrestee who was strip searched to his underwear prior to presentment. The phrase "strip searched to his underwear" is an element of the offense and plaintiffs have alleged and offered proof applicable to the entire class (and Defendant Wardens have conceded) that every male arrestee is strip searched to his underwear so the phrase does not present individualized inquiries. Therefore, as with the other classes, Plaintiffs can show membership in the class from a ministerial inspection of defendants' computer records.

Conceivably, every male strip searched to his skin (*e.g.*, Haig, Jones, Saunders pre-2006, Washington, and West) is also a member of the underwear strip search class, because either (1) they are considered two separate searches, *i.e.*, the male arrestee was stripped to his underwear, then subjected to a full skin strip search (this is how the searches are conceived in the Post Orders filed by Defendants); (2) if there is but one search, the male arrestee is stripped to his underwear momentarily before pulling down his underwear; or (3) an underwear search might be deemed a lesser included act within a bare skin strip search.

Plaintiffs conceive the underwear strip search class as a "residual" class. That is, if a person is stripped to his underwear, then stripped to bare skin, he would recover under a bare skin search class only. Meanwhile, the Defendants assert that every male arrestee prior to January 1, 2006 was automatically stripped to his underwear; to the extent that a male arrestee is excluded from all of the skin strip search classes, he would automatically fall into the underwear strip search class by admission of the Defendants regarding their search policies and practices.[10]

This Court may also certify the Claim which is pled in the alternative. Weyrich v. New Republic, Inc., 344 U.S. App. D.C. 245, 235 F.3d 617, 628 (D.C. Cir. 2001) (holding that plaintiffs may plead similar but mutually exclusive torts in the alternative); Bame v. Clark, 466 F. Supp. 2d 105, 110 (D.D.C. 2006); Smith v. District of Columbia, 295 F. Supp. 2d 53, 55 (D.D.C. 2003) (recognizing party's right to proceed on alternate claims granted by Fed. R. Civ. P. (8)(e)(2)); Guerrero v. Brickman Group, LLC, 2007 U.S. Dist. LEXIS 21126 (D. Mich. 2007) (although denying FLSA certification Court grants certification under Fed. R. Civ. P. 23(b)(3) on state law claims even though one of the state law claims – unjust enrichment – is inconsistent, and pled in the alternative to, the FLSA claim); In re GMC, 385 F. Supp. 2d 1176, 1180 (D. Okla. 2005)(noting in a class action complaint context that plaintiffs may plead alternate, inconsistent claims and go to the jury on both).

[10] On this theory, Plaintiff Gary Saunders, who alleges he was stripped to his bare skin during the tenures of Wardens Jednorski and Murphy and to his underwear during the tenure of Warden Franks, seeks to represent the underwear strip search class as to Warden Jednorski (in addition to Warden Franks), even though his claim is that he was stripped to his bare skin during Warden Jednorski's tenure. If the factfinder believes Mr. Saunders was only stripped to his underwear during Warden Jednorski's tenure, then Mr. Saunders, like any other member of the bare skin strip search class, may recover as a member of the underwear strip search class.

C. Individual Class Representatives

The Chart below shows the various class representatives, the classes they seek to represent, and during which Warden's tenure their claims fall. The chart further sets apart Plaintiffs Saunders, Haig, and Ross as Named Plaintiffs with standing for a Rule 23(b)(2) injunctive relief class.

	DEFENDANTS			
CLASSES	**William Jednorski, Warden (5/12/02 – 3/8/04)**	**Susan Murphy, Assistant Warden (5/12/02 – 3/8/04) and Warden (3/9/04 – 6/22/05)**	**Mitchell Franks, Warden (7/6/05 – Present)**	**State (Mitchell Franks, Official Capacity)**
Overdetention		Adams Bowie Colyns Haig Saunders Washington		Haig Ross Saunders
Suspicionless Strip Search	Saunders	Haig Jones Saunders Washington West		Haig Ross Saunders
Non-Private Strip Search	Saunders	Haig Jones Saunders Washington West		Haig Ross Saunders
Equal Protection Strip Search	Saunders	Haig Jones Saunders Washington West		Haig Ross Saunders
Underwear Strip Search	Saunders	Adams	Ross Saunders	Haig Ross Saunders

1. Gary Saunders

Gary Saunders has been arrested numerous times in the City of Baltimore during the class period: (1) on August 8, 2002, by an officer of the BPD on a charge of misdemeanor theft; (2) on November 18, 2002 on warrants for Open Alcohol Container charges; (3) on September 14, 2004 on trespassing and disorderly conduct charges; (4) on February 19, 2005 by an officer of the BPD on a trespassing charge; (5) on June 30, 2006 on a disorderly conduct charge; and (6) numerous open alcohol container and/or other minor arrests for which he was not charged. FOURTH AMENDED COMPL. ¶ 51; **Exhibit 1**; **Exhibit 26** (June 30, 2006 Arrest).

On each occasion, Mr. Saunders was taken to Central Booking and strip searched pursuant to his booking. FOURTH AMENDED COMPL. ¶ 52-53; **Exhibits 1 and 20**. The strip searches were not based on reasonable suspicion, and were conducted in the presence of other arrestees. Id. 54, 57. After the June 30, 2006 arrest, unlike his other arrests, he was stripped only to his underwear. **Exhibit 26**.

After the September 14, 2004 arrest for failing to leave a public bus stop, Mr. Saunders was detained without presentment for 59 hours, 57 minutes. FOURTH AMENDED COMPL. ¶ 58; **Exhibits 42, 54, 55**.

2. David Colyns

David Colyns was arrested by an officer of the BPD on November 30, 2004, on charges of possessing paraphernalia and a pocket knife. FOURTH AMENDED COMPL. ¶ 46. The BPD then placed Mr. Colyns into the custody of Central Booking. Id. 47. Mr. Colyns was detained without presentment for 65 hours, 16 minutes. Id. 48; **Exhibits 40, 74-75**.

3. Eric Jones

Eric Jones was arrested by an officer of the BPD on January 9, 2005, on charges of misdemeanor assault and false imprisonment. FOURTH AMENDED COMPL. ¶ 33.

The BPD placed Mr. Jones into the custody of Central Booking. FOURTH AMENDED COMPL.¶ 34. At Central Booking, Mr. Jones was strip searched pursuant to his booking. Id. 35; **Exhibit 10**. The strip search was not based on reasonable suspicion, and was conducted in the presence of other arrestees. Id. 37, 39.

Mr. Jones was detained without presentment for more than 36 hours. FOURTH AMENDED COMPL. ¶ 40.

4. Dana West

Dana West was arrested by an officer of the BPD on January 13, 2005, on a charge of leaving the scene of an accident. FOURTH AMENDED COMPL. ¶ 25.

The BPD placed Mr. West into the custody of Central Booking. FOURTH AMENDED COMPL. ¶ 26. Mr. West was strip searched pursuant to his booking. Id. 27; **Exhibits 2, 23**. The strip search was not based on reasonable suspicion, and was conducted in the presence of other arrestees. Id. 29, 31.

5. Tonia Bowie

Tonia Bowie was arrested in the City of Baltimore on April 11, 2005, on a charge of driving on a suspended license. FOURTH AMENDED COMPL. ¶ 42. She was placed into the custody of Central Booking, and was detained without presentment for 57 hours, 9 minutes. Id. 43-44; **Exhibits 39, 76-77**.

6. Anthony Haig

Anthony Haig was arrested by an officer of the BPD on April 17, 2005 on a charge of reselling Orioles baseball tickets. FOURTH AMENDED COMPL. ¶ 60.

The BPD placed Mr. Haig into the custody of Central Booking. FOURTH AMENDED COMPL.¶ 61. Mr. Haig was strip searched pursuant to his booking. Id. 62; **Exhibit 25**. The strip search was not based on reasonable suspicion, and was conducted in the presence of other arrestees. Id. 63, 66.

Mr. Haig was detained without presentment for more than 48 hours. FOURTH AMENDED COMPL. ¶ 67; **Exhibits 44, 56, and 57**.

As of the date of the filing of the THIRD and FOURTH AMENDED COMPLAINTS, Mr. Haig had an outstanding warrant for his arrest that would subject him to arrest and being placed into the custody of Central Booking for booking. FOURTH AMENDED COMPL.¶ 69.

7. Michael Washington

Michael Washington was arrested by an officer of the BPD in April 2005 on a charge of urinating in public. FOURTH AMENDED COMPL. ¶ 70.

The BPD placed Mr. Washington into the custody of Central Booking. FOURTH AMENDED COMPL. ¶ 71. At Central Booking, Mr. Washington was strip searched pursuant to his booking. Id. 72; **Exhibits 24, 99**. The strip search was not based on reasonable suspicion, and was conducted in the presence of other arrestees. Id. 73, 76.

Mr. Washington was detained without presentment for more than 48 hours. FOURTH AMENDED COMPL. ¶ 77. He was released without charge. Id. 78.

8. Kevin Adams

Kevin Adams was arrested by an officer of the BPD in April 2005 on a charge of having an open container of alcohol. FOURTH AMENDED COMPL. ¶ 79. The BPD placed Mr. Adams into the custody of Central Booking. FOURTH AMENDED COMPL. ¶ 80. At Central Booking, Mr. Adams was strip searched to his underwear pursuant to his booking. Id. 81.

Mr. Adams was detained without presentment for more than 48 hours. FOURTH AMENDED COMPL. ¶ 84; **Exhibit 45**. He was released without charge. Id. 85.

9. Aaron Ross

Aaron Ross was arrested by an officer of the BPD on October 12, 2007, on a charge of loitering for peacefully protesting in front of a restaurant. FOURTH AMENDED COMPL. ¶ 86. The Fourth Amended Complaint was filed after Mr. Ross's arrest while he was in transit to Central Booking. Mr. Ross attempted to file a written administrative grievance but was advised there was no procedure for doing so prior to being searched. **Exhibit 28**. Mr. Ross was stripped to his underwear pursuant to his booking. FOURTH AMENDED COMPL. ¶ 88. He was arrested along with two women on the same charge for the same activities; neither woman was stripped to her underwear. **Exhibit 29**.

II. PLAINTIFFS' CLAIMS SHOULD RECEIVE CLASS ACTION TREATMENT BECAUSE EACH CLAIM INDEPENDENTLY SATISFIES THE RULE 23 REQUIREMENTS, AND JUSTICE COMPELS CLASS ACTION TREATMENT

All of the requirements of Rule 23(a) are met for all claims. Additionally, the claims are appropriate for certification as 23(b)(2) classes for purposes of injunctive relief because Rule 23(b)(2) and the Committee Notes specifically provide for declarative and injunctive relief as independent remedies. The claims are also appropriate for certification as 23(b)(3) classes for

purposes of monetary relief because the class issues – whether the strip searches and overdetentions occurred pursuant to established custom or policy – predominate over individual issues and class action treatment is the superior form of resolving the claims. Smith, 573 F. Supp. at 613.

The claims are also appropriate for certification as "hybrid" classes under (b)(2) for liability and (b)(3) for damages. Miller v. Balt. Gas & Elec. Co., 202 F.R.D. 195, 198, 199 (D. Md. 2001), citing Eubanks v. Billington, 110 F.3d 87, 92 (D.C. Cir. 1997) (permitting "hybrid" class to be certified under (b)(2) for liability and (b)(3) for damages). Finally, the specific issues of liability on each claim (including the effectiveness of Defendants' proffered justification of the male-only underwear strip searches) is independently appropriate for certification under Rule 23(c)(4)(A). Gunnells, 348 F.3d at 441; Augustin, 2006 U.S. App. LEXIS 21602, at *18; Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996).

The United States District Court for the District of Columbia earlier this year certified a strip search class action similar to this one (in which counsel for Plaintiffs in this case are also counsel of record). Johnson v. District of Columbia, 2008 U.S. Dist., LEXIS 9069 (D.D.C. 2008). In Johnson, the Plaintiffs allege that the Unites States Marshal Service for the Superior Court of D.C. subjected women, but not men, to pre-presentment strip searches. The court certified the case as a class action. While the court in Johnson denied certification for injunctive relief due to lack of standing, this case does not present similar standing difficulties.[11]

[11] The court in Johnson also declined to certify, without prejudice, an alternative Fourth Amendment class on the alternative theory that both men and women were subjected to strip searches, as there was no evidence that men were strip searched as well. In this case, however, there is evidence both ways: the line staff depositions suggest that both men and women were

In this case, each of the classes satisfy the requirements of (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation under FRCP Rule 23(a) and Rule 23(g). Moreover, each of the classes satisfies the requirements of Rule 23(b)(2) and (b)(3) and Rule 23(c)(4)(A).

A. The Class Prerequisites Under Rule 23(a) Have Been Met for Each Claim

1. Numerosity

Plaintiffs satisfy the numerosity requirement because they can show the "impracticability of joinder," including some evidence or reasonable estimate of the number of class members. Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n, 375 F.2d 648 (4th Cir. 1967) (class of eighteen individuals found sufficiently numerous). As the district court in Frank v. Eastman Kodak Co., 228 F.R.D. 174, 181 (D.N.Y. 2005) noted in certifying a class of 28 claimants, 28 is a small number of persons for a class, but it is better than 28 separate lawsuits. The determination of numerosity is a discretionary matter. Holsey v. Armour & Co., 743 F.2d 199, 217 (4th Cir. 1984). The relevant class period under Maryland law is three years back from the date of filing, leading to the conclusion that the class numbers in the thousands.

---

subjected to strip searches (though the female searches may have ended later), while the post orders and affidavits from Warden Murphy and Assistant Commissioner Brown suggest that men were discriminately searched.

However, the Plaintiffs' alternative "Underwear Search" class is distinguishable from Johnson in that the written policy of the Defendants was to subject men, but not women, to underwear searches, and they contend that the policy was followed. To support their alternate claim, the Plaintiffs have (1) the written policies, (2) the Affidavit of former Warden Murphy, and (3) the deposition testimony of Deputy Commissioner Brown, the State's 30(b)(6) designee.

a) Overdetention Class

There is numerosity for the Overdetention Class. During the class period, according to the Automated Booking System data obtained from the State, at least 1,836 arrestees were detained for more than 48 hours without presentment or release. **Exhibit 124 (Table 2)**.

b) Suspicionless Arrestee Strip Search Class

The strip search class members also number in the thousands. Every year, about 100,000 people, including 80,000 men, pass through Central Booking. If the practice stopped after Warden Franks became warden in July 2005, then the class may consist of up to roughly 400,000 arrestees.[12]

Using just the arrestee strip search affidavits, those affidavits evidence more than 20 men subjected to the illegal strip searches on minor charges. **Exhibits 1-28**. As the men undergo strip searches in groups of 2 or more at a time, the affidavits account for more strip searches and class members than their number. Moreover, a few of the affiants submitted affidavits in reference to numerous arrests (in the case of Gary Saunders, as many as 100 times during the class period), further increasing the number of claims represented by the affidavits. **Exhibits 1, 8, 18**.

These figures show that the proposed classes contain a large number of members and claims that would render joinder in one suit impracticable. Reid, 205 F.R.D. at 666.

[12] This would be reduced by the number of arrestees whose charges would support a strip search; however, approximately 20% were arrested for "nuisance" violations and not even charged, Exhibit 129, so without any detailed analysis, the 400,000 would include at least 80,000 arrestees for whom the charge would not support a strip search. Precise numbers are not required, just a reasonable basis to believe that there is numerosity. Bynum I, 214 F.R.D. at 32.

c) Non-Private Strip Search Class

The minimum class size for the Non-Private Strip Search Class can also be determined from the Arrest Booking System. The Non-Private Strip Search Class includes all males who were searched, regardless of charge. Of the approximately 500,000 arrestees during the class period, 80%, or 400,000, were men.

d) Equal Protection Strip Search Class

On the alternative theory that men but not women were strip searched, the minimum class size for the Equal Protection Strip Search Class can be determined from the same evidence as the Non-Private Strip Search Class, as it includes men arrested on charges that would have supported a *non-discriminatory* strip search.

e) Underwear Strip Search Class

The Defendants have submitted affidavits and exhibits asserting that all men, but not women, are automatically subjected to searches to their underwear. This class, therefore, has hundreds of thousands of men in it (*i.e.*, all men processed at Central Booking during the class period until January 1, 2006).

2. Commonality: Questions of Law and Fact Demonstrate a Well-Defined Community of Interest

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." In Smith II, 573 F. Supp. at 612, this Court held that for a class of temporary detainees strip searched without probable cause to believe that they possessed either weapons or contraband, the legal question of whether defendant's indiscriminate strip search policy was unconstitutional

raised a common question of law as to defendant's liability, satisfying the commonality requirement. As set out in detail for each claim in the following section, Plaintiffs establish commonality for each claim[13] because for each claim Plaintiffs assert a pattern or policy of illegal conduct that affects each member of the class. As the leading treatise on class action litigation states, "when the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected." Alba Conte & Herbert Newberg, Newberg on Class Actions, § 3.10 (4th ed. 2002).

Plaintiffs satisfy this requirement because for each class, the existence of the practice is a common question of fact, and the constitutionality of the practice is a common question of law.

a) Overdetention Class

Common issues of fact and law in the Overdetention Class are set forth in ¶ 246 of the FOURTH AMENDED COMPLAINT and include: (1) whether Central Booking has had a practice that has caused arrestees to be held more than 48 hours before presentment or release; and (2) whether the practice violates the Fourth Amendment. Smith, 573 F. Supp. at 612 (constitutionality of the search policy is a common question of law). The class definition includes only persons held more than 48 hours. Under Supreme Court precedent, at 48 hours the burden shifts to the detaining authority having the arrestees in custody to justify the continued detention. County of Riverside v. McLaughlin, 500 U.S. 44 (1991).

[13] The First Circuit identified four basic common issues of law and fact in a strip search class action: "… what rule, policy or custom as to strip searches was in force in each county during the periods in question; was it lawful as applied to groups or individual class members; if unlawful as to some categories of arrestees, were there still facts as to particular arrestees that justified a

b) Suspicionless Arrestee Strip Search Class

Common issues of fact and law in the Suspicionless Strip Search Class are set forth in ¶ 198 of the FOURTH AMENDED COMPLAINT and include: (1) whether the Defendant Wardens and Central Booking have a custom and/or practice of subjecting intakes at Central Booking arrested on non-drug, non-weapon, non-violent charges to across the board (blanket) booking strip searches; and (2) whether such custom and/or practice, if proved, violates the Fourth Amendment. Smith, 573 F. Supp. at 612. Plaintiffs submitted in support of their Rule 56(f) motion affidavits of more than 20 former intakes covering more than 100 arrests, and other affidavits, establishing that Central Booking has a practice and custom of subjecting male arrestees to suspicionless strip searches, and doing so in view of other arrested persons. The strip search allegations of the named plaintiffs are supported by affidavits at **Plaintiffs' Exhibits 1, 2, 10, 20, 23-26, 28, and 99**, as well as the testimony of Central Booking officers. The Wardens, according to Warden Murphy's Affidavit, deny such a practice. The mere fact that the existence of the practice is a disputed issue does not preclude certification. Tardiff, 365 F.3d at 5; Augustin, 2006 U.S. App. LEXIS 21602, at *21-*28. The "issue [of whether the practice exists] is like any other common predicate to liability for multiple parallel claims -- say whether the train engineer was negligent (or acting within the scope of his employment) when the train went off the rails." Tardiff, 365 F.3d at 5.

As stated above, the class definition excludes all arrestees for whom the nature of the arrest charge would supply reasonable suspicion to search (drugs, weapons, and violent felonies) and thus excludes those persons who could be strip searched as a matter of course

---

strip search; and if liability exists, what are the damages to each person injured?" Tardiff, 365

regardless of the custom or policy of across the board strip searches. Tardiff, 365 F.3d at 5; Augustin, 2006 U.S. App. LEXIS 21602, at *21-*28; Smith, 643 F. Supp. at 437. Drawing draw bright lines according to the offenses that class members were arrested for avoids individual evidentiary disputes and thus preserves commonality. Smith, 643 F. Supp. at 437.

c) Non-Private Strip Search Class

Common issues of fact and law in the Non-Private Strip Search Class are set forth in ¶ 210 of the FOURTH AMENDED COMPLAINT and include: (1) whether the Defendant Wardens and Central Booking have a custom and/or practice of subjecting (male) intakes at Central Booking to non private strip searches; and (2) whether such policies, customs, and practices, if found to exist, violate the Fourth Amendment. Smith, 573 F. Supp. at 612. Whether there has been a practice of strip searching arrestees in front of other persons not necessary for the search is a common question of fact applicable to the class. This claim does not depend on violation of the reasonable suspicion standard, so the definition of the class includes all arrestees subjected to the strip searches regardless of arrest charge.

d) Equal Protection Strip Search Class

Common issues of fact and law in the Equal Protection Strip Search Class are set forth in ¶ 222 of the FOURTH AMENDED COMPLAINT and include: (1) whether the Defendant Wardens and Central Booking have and have had policies, customs, and/or practices of subjecting male arrestees being booked at Central Booking to strip searches under circumstances where similarly-situated female arrestees are not strip searched; and (2) whether such policies, customs, and practices, if found to exist, violate the Fourteenth Amendment. Smith, 573 F. Supp. at 612.

F.3d at 4.

Plaintiffs submitted in support of their Rule 56(f) motion affidavits of more than 20 former intakes covering more than 100 arrests, and other affidavits, establishing that Central Booking does have a custom of subjecting male arrestees to suspicionless strip searches. Defendant Wardens have denied strip searching women. Furthermore, the Wardens' "Post Orders," **Exhibits 102 and 103**, exhibit facially disparate treatment of men and women, whereby women are patted down, but men are patted down, stripped to their underwear, then strip searched for any reason and in any manner based upon the desire of the search officer.

The mere fact that the existence of the practice is a disputed issue does not preclude certification. Tardiff, 365 F.3d at 5; Augustin, 2006 U.S. App. LEXIS 21602, at *21-*28.

This claim does not depend on violation of the reasonable suspicion standard so the definition includes all male arrestees subjected to the strip searches regardless of arrest charge.

e) Underwear Strip Search Class

Common issues of fact and law in the Underwear Strip Search Class are set forth in ¶ 234 of the FOURTH AMENDED COMPLAINT and include: (1) whether the Defendant Wardens and Central Booking have and have had a practice of subjecting male arrestees being booked at Central Booking to underwear strip searches under circumstances where similarly-situated female arrestees are not strip searched to their underwear; (2) whether such practice, if found to exist, violates the Fourteenth Amendment. According to the Wardens and their post orders, their underwear strip search policy prior to January 1, 2006 was applied to men but not women.

The Plaintiffs have sought partial summary judgment regarding this policy (Document 162, filed 2/20/08). This does not preclude certification, it simply presents a common issues of

fact and law in support of class certification. Smith II, 573 F. Supp. at 612.

This claim does not depend on violation of the reasonable suspicion standard so the definition includes all male arrestees subjected to the underwear strip searches regardless of arrest charge.

3. Typicality: Class Representatives Have Claims and Damages Typical of the Class

The typicality requirement of Rule 23 addresses whether the representatives' claims and interests are in fact consistent and harmonious with the rest of the class. The purpose of the typicality requirement is to ensure that the claims of the representative and absent class members are sufficiently similar so that the representatives' acts are also acts on behalf of, and safeguard the interests of, the class. The requirement of typicality is satisfied if the movant's claim arises from the same course of events as those of the other potential class members and relies on similar legal theories to prove the defendants' liability. In re Royal Ahold N.V. Sec. & ERISA Litig., 219 F.R.D. 343, 350 (D. Md. 2003). Here, for each claim common issues of law and fact predominate and, accordingly, there is a well-defined community of interest between the named plaintiffs and the proposed class members.

Likewise, in this case, for each claim the named plaintiffs' legal theories are the same as every other class member's, and all class members were injured by the same course of conduct, *i.e.*, either the unconstitutional strip search practice, or the practice of overdetentions.

For the Overdetention Class, each named Plaintiffs' claims (Kevin Adams, Tonia Bowie, David Colyns, Anthony Haig, Gary Saunders, and Michael Washington) are typical in that each was detained for more than 48 hours without presentment or release.

The claims of the Named Plaintiffs for the three full strip search classes are also typical of all claims of their nature, as each named Plaintiff, just like every member of each class, was subjected to a strip search that was not private, was a blanket strip search, and, for the alternate Equal Protection Claim, was a search applied to men.

Lastly, the claims of Named Plaintiffs Kevin Adams, Gary Saunders, and Aaron Ross are typical of an underwear strip search claim, as each was subjected, like all members of that class, to an automatic search to his underwear due to the practice, policy, and custom of subjecting all men, but not women, to such a search.

4. Adequacy of Representation: Class Representatives Adequately Represent the Class; Class Counsel Adequately Represent the Class

Rule 23(a)(4) demands that named plaintiffs adequately represent the class. In this case, no conflicts of interest exist between the representative plaintiffs and the proposed class. Gunnells, 348 F.3d at 425. However, for a conflict of interest to prevent plaintiffs from meeting the requirement of Rule 23(a), that conflict must be a fundamental one that goes to the heart of the litigation. Id. at 430-431. The issues presented by the named representatives mirror those faced by the putative class, which stands only to gain by this action. The Named Plaintiffs have signed declarations expressing their commitment to represent each class of which they are a representative member. **Exhibits 130-137**.

Rule 23(g)(1)(C)(i) requires the Court to appoint adequate counsel to represent the class. Rule 23(g) requires that the court must consider the following in appointing class counsel: "[(1)] the work counsel has done in identifying or investigating potential claims in the action, [(2)] counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action, [(3)] counsel's knowledge of the applicable law, and [(4)] the resources

counsel will commit to representing the class." In re Royal Ahold N.V. Sec., 2006 U.S. Dist. LEXIS 48928, *14-15 (D. Md. 2006); Noble v. 93 Univ. Place Corp., 224 F.R.D. 330, 346 (D.N.Y. 2004). The court may consider any "other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Id.

Plaintiffs' counsel have done extensive research and discovery in this case, including the hiring of a team of computer experts to handle and process data in the Automated Booking System. Plaintiffs' counsel have taken a 30(b)(6) deposition and 20 depositions of line officers and supervisors, and have efficiently pursued a course of discovery in this case.

Plaintiffs' counsel have litigated or served as amicus in several class action cases in the areas of strip searches and overdetentions. Johnson v. District of Columbia, 2008 U.S. Dist. LEXIS 9069 (D.D.C. 2008) (William Claiborne, Barrett Litt, and Sean Day, counsel); Bynum v. District of Columbia (Bynum I), 214 F.R.D. 27 (D.D.C. 2003) and Bynum v. District of Columbia (Bynum II), 217 F.R.D. 43 (D.D.C. 2003) (William Claiborne and Barrett Litt, counsel); Powell v. Barrett (I), 2005 U.S. Dist. LEXIS 685 (D. Ga. 2005) and Powell v. Barrett (II), 376 F.Supp.2d 1340 (D. Ga. 2005) (William Claiborne and Barrett Litt, counsel); Tardiff v. Knox County, 365 F.3d 1 (1st Cir. 2004) (William Claiborne, amicus counsel).

As described in their declarations, Plaintiffs counsel are experienced attorneys in civil rights and class action cases with sufficient staff and financial resources to prosecute the case. Counsels' affidavits are attached as **Plaintiffs' Exhibits 121-123**.

Plaintiffs' legal team is led by Barrett Litt of Litt & Associates, a boutique civil rights and public interest law firm. Mr. Litt and his firm have successfully litigated many other class

actions and multi-party public interest cases, which are detailed in his declaration. (See Declaration of Barrett S. Litt, **Exhibit 121**). Mr. Litt and his firms have been recognized on several occasions for their excellent civil rights work. *Id*. William Claiborne, also an experienced class action lawyer with experience in class action strip search and overdetention litigation, is lead managing counsel.

B. The Class Prerequisites Under Rule 23(b) Have Been Met for Each Claim

"In order to be maintained as a class action, a representative suit must comply with the requirements of each of the four subsections of Rule 23(a), (numerosity, commonality, typicality, and adequacy of representation) and must satisfy the additional requirements of at least one of the three subdivisions of Rule 23(b)." 2 Newberg on Class Actions § 4:1, pg. 3. Here, class certification is proper under both Rule 23(b)(2), 23(b)(3), and as a hybrid (b)(2)/(b)(3) action.

1. Rule 23(b)(2) Injunctive Relief Class

The current lawsuit is, in part, a paradigm of a Rule 23(b)(2) action. "Rule 23(b)(2) was drafted specifically to facilitate relief in civil rights suits." 8 Newberg on Class Actions, §25:20. Rule 23(b)(2) is typically used in cases seeking injunctive or declaratory relief. *Id*. Rule 23(b)(2) is appropriate if the "party opposing the class has acted or refused to act on grounds generally applicable to the class." *See* Rule 23(b)(2). The class representatives allege that Defendants' practice and custom of overdetaining arrestees, subjecting arrestees to blanket, non-private, and discriminatory (gender) strip searches violates the United States Constitution, with these unconstitutional practices and customs affecting persons on a class-wide basis. Plaintiffs seek injunctive and declaratory remedies to ensure that Defendants do not resume these unlawful practices. The relief sought necessarily applies to the whole class. Hurley v. Ward, U.S. Dist.

LEXIS 8630 (S.D.N.Y. 1979) (constitutionality of strip and body cavity searches of [visitors] properly certified under Rule 23(b)(2)). Thus, class certification is appropriate under Rule 23(b)(2).

As of the date of the filing of the FOURTH AMENDED COMPLAINT, Plaintiff **Anthony Haig** has standing to seek injunctive relief because he had an outstanding warrant for his arrest that would subject him to arrest and being placed into the custody of Central Booking for booking. FOURTH AMENDED COMPL.¶ 69. **Gary Saunders** has standing to seek injunctive relief because he is a "recidivist" (he is frequently arrested, regardless of whether he has committed a crime), and has been arrested numerous times in the City of Baltimore during the class period. He is thus likely to be re-arrested and subjected to the overdetentions and strip searches. In fact, during the pendency of the litigation, on June 30, 2006, he was arrested and processed at Central Booking, and subjected to a discriminatory search to his underwear. **Exhibit 26**. Lastly, in addition to the "recidivist" and a person with an outstanding warrant, counsel for Plaintiffs met the seemingly impossible task (for the facts of this case) of obtaining more ordinary standing for injunctive relief by filing the FOURTH AMENDED COMPLAINT on October 12, 2007 during the small window between the time Plaintiff **Aaron Ross** was arrested and his arrival at Central Booking. His affidavit, along with co-arrestee Jeannie Deibel, suggests that despite the new post orders, men but not women were being searched to their underwear. **Exhibits 28 and 29**.

2. Rule 23 (b)(3) Damages Class: Each Claim Satisfies the Predominance and Superiority Requirements Of Rule 23 (b)(3)

a) Rule 23(b)(3): Common issues of law and fact predominate over individual issues of liability.

The Fourth Circuit test for predominance is whether a claim is sufficiently cohesive to warrant adjudication by representation. This test is met where class action treatment of a claim

presents the most efficient method of resolving the claim through the "consolidation of recurring common issues." Gunnells, 348 F.3d at 443; Smith II, 573 F. Supp. at 613. See also Tardiff, 365 F.3d at7; Augustin v. Jablonsky (In re Nassau County Strip Search Cases), 2006 U.S. App. LEXIS 21602 (2nd Cir. 2006). The predominance analysis should be applied on a per claim basis, and not on a per lawsuit basis. Gunnells, 348 F.3d at 443. The fundamental question to decide under Rule 23(b)(3) is whether the group aspiring to class status is seeking to remedy a common legal grievance. Augustin, 2006 U.S. App. LEXIS 21602 (Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation); Smith II, 573 F. Supp. at 613. As the district court said in Smith in certifying a (b)(3) booking strip search class:

> As previously stated, this case presents a common question of law which is predominant over any additional individual claims. Moreover, resolution of the liability and damages issues within the context of a class action is far more efficient than individual prosecution of damages actions. A class action is also the fairest means to settle this controversy since it is unlikely that most class members would pursue these claims on their own. Thus, because all the requirements of Rule 23 have been satisfied, the Court finds the certification of a class for the purpose of both damages and liability entirely appropriate.

Smith, 573 F. Supp. at 613.

Recurring common issues make up the heart of Plaintiffs' case against defendants on each claim. This case presents claims similar to the claim certified in Gunnells. In Gunnells, the Fourth Circuit certified a single claim against a health insurance plan manager alleging that mismanagement of the plan resulting in its ultimate collapse similarly affected a large group of people in a single state. 348 F.3d at 427. Here, the overdetention Plaintiffs allege that Defendants were deliberately indifferent to the overdetentions at Central Booking because they

maintained or acquiesced in the implementation of a release system "that simply delays all releases until the system, in its sweet time, and with the resources it chooses . . . is ready to make releases," Berry v. Baca, 379 F.3d 764, 768 (9th Cir. 2004), and that system similarly affected a large group of people in a single city. The strip search Plaintiffs allege that Defendants' strip search practices similarly affected a large group of people in a single city.

The common questions of law and fact "predominate over any questions affecting only individual members" in this case because the allegations of an unconstitutional custom and practice of overdetentions and strip searches relate to the defendants' conduct, involve at least one common question of fact (existence of the policy or practice) and one common question of law (constitutionality of the policy or practice), and the questions are susceptible of class-wide proof. Bynum I, 214 F.R.D. at 39.

The proof needed to resolve the common fact issues will primarily be, in the case of overdetentions, electronic data on arrests, presentments and releases from Central Booking's computerized "Automated Booking System." In the case of strip searches, the proof needed will come from electronic data from Central Booking's Automated Booking System, testimony and affidavits by persons subjected to the procedures, and the testimony of staff at Central Booking. The case will involve generalized evidence which will prove or disprove liability on a class-wide basis, and resolution of that question will dispose of the issue of defendant's liability to plaintiffs in this action. Bynum I, 214 F.R.D. at 39.

The predominance determination is related to the commonality requirement of Rule 23(a), in that "the common issues identified as sufficient under Rule 23(a) must be shown by the plaintiffs to predominate over the non-common issues [but] the common issues do not have to be

shown to be dispositive." Bynum I, 214 F.R.D. at 39. Similarly, the leading commentators on the federal courts have explained that "when one or more of the central issues in the action are common to the class and can be said to predominate, the action will be considered proper under Rule 23(b)(3) even though important matters will have to be tried separately." 7A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1778 (2d ed. 1986); Gunnells

In Bynum I, an overdetention class action case, the Court stated:

> The Court has already determined the existence of at least one common question of fact (whether defendant has detained the class members later than their scheduled release date) and at least one common question of law (whether these alleged overdetentions violate the Fourth, Fifth, and Eighth Amendments). A resolution of these two questions, which are common to all of the class members' claims, would dispose of the issue of whether defendant is liable to plaintiffs in this action.

Bynum I, 214 F.R.D. at 39.

The only potential significant individual issue in certifying these claims is damages. This Circuit has long held that the mere existence of individual damages issues in a (b)(3) class does not cause individual issues to predominate over common issues on liability or causation so as to justify denying certification of the class, when the liability issue is susceptible of class proof. Central Wesleyan College v. W.R. Grace & Co., 6 F.3d 177 (4th Cir. 1993); Gunnells, 348 F.3d at 426. Other courts recently certifying strip search classes have held the same. Tardiff, 365 F.3d at 6; Augustin, 2006 U.S. App. LEXIS 21602; Johnson, 2008 U.S. Dist. LEXIS 9069 (D.D.C. 2008), *25 *et seq*.; and Nassau, 2008 U.S. Dist. LEXIS 29083 (E.D.N.Y. 2008).

The First, Second and Seventh Circuits have recently gone further and recognized that since most class actions settle, manageability (including predominance issues) issues – which

generally do not arise until the damages phase – will in fact never arise at all. As the Seventh Circuit stated in Carnegie:

> Often, and possibly in this case as well, there is a big difference from the standpoint of manageability between the liability and remedy phases of a class action. The number of class members need have no bearing on the burdensomeness of litigating [RICO liability]. Whether particular members of the class were defrauded and if so what their damages were are another matter, and it may be that if and when the defendants are determined to have violated the law separate proceedings of some character will be required to determine the entitlements of the individual class members to relief. That prospect need not defeat class treatment of the question whether the defendants violated RICO. Once that question is answered, if it is answered in favor of the class, a global settlement along the lines originally negotiated (though presumably with different dollar figures) will be a natural and appropriate sequel. And if there is no settlement, that won't be the end of the world. Rule 23 allows district courts to devise imaginative solutions to problems created by the presence in a class action litigation of individual damages issues. Those solutions include "(1) bifurcating liability and damage trials with the same or different juries; (2) appointing a magistrate judge or special master to preside over individual damages proceedings; (3) decertifying the class after the liability trial and providing notice to class members concerning how they may proceed to prove damages; (4) creating subclasses; or (5) altering or amending the class. (internal citations omitted)

Carnegie v. Household Int'l Finance, Inc., 376 F.3d 656, 661 (7th Cir. 2004) (Posner, J.). Certification "as a pretrial joinder device to facilitate group settlements [was] both proper and desirable." In re A.H. Robins Co., 880 F.2d 709, 738 (4th Cir. 1989); In re Honda Am. Motor Co. Dealership Rels. Litig., 979 F. Supp. 365, 369 n.6 (D. Md. 1997).

Moreover, in this case, individual damage issues are obviated by Plaintiffs' proposed sampling procedure, described in their Trial Plan. Alternatively, for each claim, damages could be handled by a damages matrix like the one used in Dellums, 566 F.2d at n.6 and 189. The Dellums Court held that common issues predominated on the determination of class damages where the jury awarded damages on a class wide basis (either for the class as a whole or by

subclass) by setting a fixed amount of damages for each class member for each claim according to a matrix or schedule. Id. at 189. The jury set a matrix of damages for each class member on the detention claims by fixing a set amount for specific periods of detention based on length of detention, and setting a lump sum for each class member on the false arrest and First Amendment claims. Id. at n.6.

Each class is specifically addressed below.

i. Overdetention Class

The Overdetention Class has at least one common question of fact (whether Defendants held the Overdetention Class members more than 48 hours without presentment or release) and at least one common question of law (whether these alleged overdetentions violate the Fourth and Fourteenth Amendments). A resolution of these two questions would dispose of the issue of whether Defendants are liable to plaintiffs on this claim. Plaintiffs can prove the existence of a pattern of overdetentions using Central Booking's own computer data in the Automated Booking System (arrest booking system), which will show every person held more than 48 hours.

Moreover, the proposed Overdetention Class definition sets a liability floor of 48 hours, which under Riverside triggers the presumed unreasonability of the detention, and obviates the need for individualized inquiries into the cause of overdetentions in individual cases. The "floor" of the class definition is fixed on a definite, objective criteria – date and time of presentment or release – that is easily ascertainable from Central Booking's computers.

Although individual damages questions may arise, such individual damages determinations by themselves do not defeat predominance on the issue of liability on the overdetention claim. Moreover, damages could be handled by a simple damages matrix like the

one used in Dellums, 566 F.2d at n.6 and 189, where damages are set according to the length of overdetention.

ii. Suspicionless Strip Search Class

The Suspicionless Strip Search Class has at least one common question of fact (whether Defendants subjected persons arrested on minor charges to across the board strip searches), and at least one common question of law (whether these alleged strip searches violate the Fourth and Fourteenth Amendments). A resolution of these two questions would dispose of the issue of whether Defendants are liable to Plaintiffs on this claim. Plaintiffs can prove the existence of a pattern of subjecting persons arrested on minor charges to across the board strip searches on a class wide basis. Once that is accomplished, Plaintiffs can use the computer data in the Automated Booking System to identify arrestees arrested on charges not involving weapons, drugs, or felony violence during the period in which arrestees were subjected to blanket strip searches.

Although individual damages questions may arise, such individual damages determinations by themselves do not defeat predominance on the issue of liability on the Suspicionless Arrestee Strip Search claim. Johnson at *29. Moreover, Plaintiffs' proposed method of using sampling to try damages on a class-wide basis would obviate the need for individualized damages determinations, or, alternatively, for each claim, damages could be handled by a damages matrix like the one used in Dellums, 566 F.2d at 174 n.6 and 189. On the latter, for instance, damages could be determined on the basis of the arrest charge, and could factor in whether the person was later released without charge.

iii. Non-Private Strip Search Class

The Non-Private Strip Search Class also has at least one common question of fact (whether Defendants subjected men booked into Central Booking to non-private strip searches), and at least one common question of law (whether these alleged strip searches violate the Fourth and Fourteenth Amendments), the resolution of which would dispose of the issue of whether defendants are liable to plaintiffs on this claim. As above, damages could be ascertained in separate hearings, or on a class wide basis using sampling or a Dellums style matrix.

iv. Equal Protection Strip Search Class

The Equal Protection Strip Search Class also has at least one common question of fact (whether Defendants subjected men but not women to blanket strip searches at Central Booking), and at least one common question of law (whether these alleged strip searches violate the equal protection clause of the Fourteenth Amendments), the resolution of which would dispose of the issue of whether Defendants are liable to Plaintiffs on this claim. Damages could be ascertained in separate hearings, or on a class wide basis using sampling or a Dellums style matrix.

v. Underwear Strip Search Class

The Underwear Strip Search Class also has at least one common question of fact (whether Defendants subjected men but not women booked into Central Booking to searches down to their underwear), and at least one common question of law (whether these underwear strip searches violate the equal protection clause of the Fourteenth Amendments), the resolution of which would dispose of the issue of whether defendants are liable to plaintiffs on this claim.

Damages could be ascertained in separate hearings, or on a class wide basis using sampling or a Dellums style matrix.

This class is proposed as an alternate class, in the event that the factfinder accepts the Defendants' version of facts.

b) Class Action Treatment Is Superior and the Case is Manageable as a Class Action

Rule 23(b)(3) also requires a class action to be the most "fair and efficient" method of resolving a claim. See Rule 23(b)(3). In analyzing that question, courts must consider four nonexclusive factors: (1) the interest of the class members in maintaining separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. See Rule 23(b)(3); Tardiff, 365 F.3d at7; Augustin, 2006 U.S. App. LEXIS 21602, 30-31. All of these factors favor class certification for each claim in this case.

In Smith II this Court held that class action treatment of a booking claim similar to Plaintiffs' strip search claims was "far more efficient than individual prosecution of damages actions" under Rule 23(b)(3). 573 F. Supp. at 613. Plaintiffs proposed trial plan sets forth the most efficient method – in fact for most class members the only method -- of resolving the class claims. Johnson also involves pre-presentment strip searches of arrestees.

Plaintiffs propose bifurcating the liability trial from damages determination on each claim, and trying liability for all claims in one proceeding. See In re Honda Am. Motor Co.

Dealership Rels. Litig., 979 F. Supp. at 366. There will be little difficulty in managing a class action on the issue of liability, especially since any individualized inquiries will be inconsequential at the liability stage. At that point, if there is a favorable judgment for Plaintiffs on at least one claim, the parties can attempt to negotiate a settlement or to negotiate a means of resolving damages. If the parties cannot resolve the damages, damages can be tried on a class wide basis for each claim in one proceeding using a damages matrix or sampling.

Additionally, the class members have little interest in maintaining separate actions since, without class notification, most putative class members will not even know that they suffered a violation of their constitutional rights. See, Augustin, 2006 U.S. App. LEXIS 21602, *31-32; Blihovde v. St. Croix County, 219 F.R.D. 607, 622 (W.D.Wis. 2003) (many class members may not even be aware that they have a claim absent certification).

Even if the parties fail to address damages issues, the Court can still at that point enter a class-wide judgment of liability on the claims, leaving class members to pursue damage claims in separate law suits. Tardiff, 365 F.3d at 7.

However, determination of damages would be manageable as a class action because damages can be determined by using one of the methods specified by the Carnegie Court, such as bifurcating liability and damage trials with the same or different juries, appointing a special master, or by establishing class-wide damages on an aggregate basis in a single trial using statistical sampling or using a Dellums type damages matrix.

The primary consideration in determining whether a class action is “superior” is the availability of other possible ways of handing the case. Realistically, individual damages in these

cases will be inadequate to attract sufficient counsel to represent individuals on a case-by-case basis. Carnegie v. Household Int'l Finance, Inc., 376 F.3d 656, 661 (7th Cir. 2004) ("the *realistic* alternative to [this] class action is not 17 million individual suits, but zero individual suits"). Class members and their addresses and other identifying information, including when they were searched and overdetained, are easily identifiable from Central Booking's Automated Booking System and other computerized records, including those of jails, courts, and motor vehicle departments. See Smith IV. Plaintiffs have obtained Automated Booking System data through discovery, which contains the last known addresses of all class members.

Possible manageability problems will rarely, if ever, by themselves be sufficient to prevent certification of a class. Klay v. Humana, Inc., 382 F.3d 1241, 1272 (11th Cir. 2004). And in this case, the liability issues will not prevent any manageability difficulties, while damages can be resolved using Plaintiffs' proposed sampling methods or a Dellums style matrix.

3. Rule 23 (B)(2)/ (B)(3) "Hybrid" Class: Each Claim is Appropriate for Certification as a "Hybrid" Class

Since there are claims for both injunctive relief and damages, and the requirements for certification are satisfied as to each, the Court may certify Rule 23(b)(2) and (b)(3) "hybrid" classes. See, e.g., Miller v. Balt. Gas & Elec. Co., 202 F.R.D. 195, 198, 199 (D. Md. 2001), citing Eubanks v. Billington, 110 F.3d 87, 92 (D.C. Cir. 1997) (permitting a "hybrid" class under (b)(2) for liability and (b)(3) for damages); Bratcher v. Nat'l Standard Life Ins. Co. (In re Monumental Life Ins. Co.), 365 F.3d 408, 416n. 16 (5th Cir. 2004). Judge Royce Lamberth of the District of Columbia district court recently certified, in two separate orders, two "hybrid" classes addressing virtually the same issues plaintiffs address here. These classes consisted of (1) persons held in the D.C. Jail after the release dates, and (2) defendants subjected to blanket

strip searches after being ordered released and returned to the D.C. Jail for release processing. Bynum v. District of Columbia (Bynum I), 214 F.R.D. 27 (D.D.C. 2003) ("hybrid" overdetention class certified); Bynum v. District of Columbia (Bynum II), 217 F.R.D. 43 (D.D.C. 2003) ("hybrid" strip search class certified).

III. TRYING DAMAGES ON A CLASS WIDE BASIS USING STATISTICAL SAMPLING[14]

Plaintiffs submit herewith a trial plan (**Exhibit 126**) supported by expert statistical and medical testimony for trying damages for all claims in on trial on the basis of a statistically valid sample. Damages awarded the sample can then be extrapolated to the class, and distributed on the basis of a matrix or formula approved by the jury. See Affidavits of Professor Richard Berk, Bryan Miller, Dr. Susan Fiester, and Kevin Nichols in support of Plaintiffs' proposed sampling procedure, **Exhibits 96, 97, 124, and 125**. The Honorable Royce Lamberth of the District of Columbia District Court recently approved a similar plan in Bynum v. District of Columbia, 02-956 (RCL) (Bynum plaintiffs' proposed trial plan, docket # 98, 9/8/03 attached hereto as **Exhibits 127**).[15] Many states, including Maryland and the District of Columbia, have statutes

---

[14] While this issue is being briefed, the Court may certify a class action in full while deferring on the method of determining damages, as has been done in other recent strip search class actions. *See, e.g.*, In re Nassau County Strip Search Cases, 2008 U.S. Dist LEXIS 29083 at *20 (E.D.N.Y. 2008) (certifying both liability and damages but adding that "the Court has neither selected nor foreclosed any particular damages model"); Johnson v. District of Columbia, 2008 U.S. Dist. LEXIS 9069 at *29 (D.D.C. 2008) ("the Court reserves ruling on such [damages] methodology issues for another day but is satisfied that Plaintiffs have satisfied the predominance requirement for the purposes of class certification"); Mitchell v. County of Clinton, 2007 U.S. Dist. LEXIS 48589 (N.D.N.Y. Jul. 5, 2007) ("the Court has the flexibility to deal with management issues as they arise. At this point, denial of certification regarding damages or other issues is not warranted. The case in its entirety is certified as a class action").

[15] The case settled before trial. Bynum v. District of Columbia, 412 F. Supp. 2d 73 (D.D.C. 2006) (final approval order).

that specifically authorize and endorse the use of statistical evidence or proof of amount of damages sustained by the members of the class on a class-wide basis, without requiring proof of such matters by each individual member of the class. Md. Code Ann., Health-Gen. I §15-120(e)(2) and (3); D.C. Code § 28-4508 (District of Columbia direct purchaser antitrust) (amount of damages sustained by the members of the class may be proven on a class-wide basis, without requiring proof of such matters by each individual member of the class).

Of these methods, establishing class-wide aggregate damages in a single damages trial using a matrix or statistical sampling is the best approach because it achieves economy for all parties and the Court without unfairness to any party or absent class member. In re Chevron U.S.A., 109 F.3d 1016, (5th Cir. 1997) (approving the methodology of statistical sampling but invalidating its use on an aggregate basis in that case because the sample was not chosen by reliable statistical method); Manual for Complex Litigation §21.493, at 101 (3d ed. 1995); Michael J. Saks and Peter David Blanck, Justice Improved: The Unrecognized Benefits Of Aggregation And Sampling In The Trial Of Mass Tort, 44 Stanford Law Review 815 (1992); Laurens Walker and John Mohanan, Sampling Damages, 83 Iowa Law Review 545 (1998); Laurens Walker, A Model Plan to Resolve Federal Class Action Cases by Jury Trial, 88 Virginia Law Review 805 (2000).

Aggregate trials of non-economic damages in civil rights cases have a long history in federal courts. 3 Newberg 10.5 at 483-487. See, Dellums v Powell, supra (compensatory damages and distribution matrix established by jury based on special verdict upheld for class of people subjected to unlawful arrests and illegal detentions; jury was able to award damages along

a sliding scale which took into account, in a rough way, the different experiences of class members without losing administrative feasibility); Hilao v. Estate of Marcos, 103 F.3d 767, 782 (9th Cir. 1996) (trial of class of 10,000 tried with sample of 137 people, the preparation for which was done under the supervision of a court appointed special master and aided by a statistical expert); In re Chevron U.S.A., 109 F.3d at 1020, citing to Hilao, 103 F.3d at 782-84, 786.

There is a growing trend in favor of using aggregate damage trials in federal courts and state courts in cases of all kinds. 3 Newberg 10.5 at 483-487 (4th ed. 2002); Newberg at 25:21 p.561; Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris, Inc., 133 F. Supp. 2d 162, 169 (E.D.N.Y. 2001); In re Simon II Litigation, 211 F.R.D.86, 192-93 (E.D.N.Y. 2002); Bell v. Farmers Insurance Exchange, 115 Cal.App.4th 715, 9 Cal.Rptr.3d 544 (2004) (wage case). See A Model Plan To Resolve Federal Class Action Cases By Jury Trial, 88 Va. L. Rev. 405 (2002). Here plaintiffs propose first a liability trial, second a trial of the sample's damages, and third a trial of the whole class' damages based on testimony about how to extrapolate the sample determination to the class as a whole (using the same jury).

Since damages using sampling are determined on a class-wide basis that can be reliably applied to the class as a whole, the defendants pay no more to the class than they would in the aggregate to individuals if the cases of all class members were tried separately. See Allapattah Servcs. v. Exxonn Corp., 333 F.3d 1248, 1258 (11th Cir. 2003), Exxon Mobil Corp. v. Allapattah Servs., 125 S. Ct. 2611 (U.S. 2005). Defendants are protected because the aggregate amount could reflect the fact that some class members may have suffered no damages, if that in fact were the case. No un-injured class member, if any, would recover from any fund of

aggregate damages without submission of proof of damage because recovery from the fund is conditioned on submission of a claim form executed under penalty of perjury. Here, through the submission of sworn claim forms, equal in dignity to sworn testimony, unaided by expert testimony, plaintiffs satisfy the standards for recovery of compensatory damages applicable to a single plaintiff civil rights case. Bogle v. McClure, 332 F.3d 1347, 1358-1359 (11th Cir. 2003) (damages of $1,000,000 per plaintiff in civil rights case based on plaintiffs' testimony affirmed).

CONCLUSION

For these reasons and others that may be argued at a hearing, the Court should certify the case as a class action, as is routinely done on cases similar to this one.

Respectfully submitted,

_/s/Sean R. Day/s/_____
Sean R. Day (Bar No. 12831)
8505 Baltimore Avenue • Suite B
College Park, Maryland 20740
301.220.2270 phone
301.220.2441 fax

__/s/ William Claiborne/s/_____
William Claiborne (*pro hac vice*)
717 D. Street, NW • Suite 210
Washington, D.C. 20004
202-824-0700 (Phone)
202-824-0745 (Fax)
claibornelaw@gmail.com

_/s/Barrett S. Litt/s/_____
Barrett S. Litt (*pro hac vice*)
LITT, ESTUAR, HARRISON, MILLER & KITSON, LLP
1055 Wilshire Blvd. • Suite 1880
Los Angeles, CA 90017
213.386-3114 x 217 (Phone)
213.380-4585 (Fax)
blitt@littlaw.com
Attorneys for Plaintiffs and Proposed Class

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIC JONES, et al. Plaintiffs v. **SUSAN MURPHY,** et al. Defendants	Civil Action No. **CCB 05 CV 1287**

ORDER FOR CLASS CERTIFICATION

Upon consideration of the Plaintiffs' Motion for Class Certification, the Defendants' response thereto, and the Plaintiffs' reply, it is thereupon this _____ day of _____ 2008,

ORDERED, that the motion be and is hereby GRANTED; and it is further,

ORDERED that an **"Overdetention Class"** class be and is hereby certified and defined as follows:

> Each person who, since May 12, 2002 continuing to the termination of this case, was or is arrested in the City of Baltimore and then detained at the Baltimore Central Booking and Intake Center for more than 48 hours after arrest without release or presentment before a court commissioner or other judicial officer.

And it is further,

ORDERED, that Kevin Adams, Tonia Bowie, David Colyns, Anthony Haig, Gary Saunders, and Michael Washington be and are hereby approved as class representatives of the Overdetention Class; and it is further,

ORDERED, that a **"Suspicionless Strip Search Class"** class be and is hereby certified and defined as follows:

> Each person who, since May 12, 2002 continuing to the termination of this case, was or will be taken to Baltimore Central Booking and Intake Center (a) on charges or in cases not involving weapons, drugs, or felony violence, and (b) strip searched[1] (c) prior to or without presentment before a court commissioner or other judicial officer.

And it is further,

ORDERED, that Anthony Haig, Eric Jones, Gary Saunders, Michael Washington, and Dana West be and are hereby approved as class representatives of the Suspicionless Strip Search Class; and it is further,

ORDERED, that a **"Non-Private Strip Search Class"** class be and is hereby certified and defined as follows:

> Each person who, since May 12, 2002 continuing to the termination of this case, was or will be taken to Baltimore Central Booking and Intake Center and strip searched in the presence of other arrestees or staff not involved in the search, prior to or without presentment before a court commissioner or other judicial officer.

And it is further,

ORDERED, that Anthony Haig, Eric Jones, Gary Saunders, Michael Washington, and Dana West be and are hereby approved as class representatives of the Non-Private Strip Search Class; and it is further,

---

[1] As used herein, "strip search" shall mean the removal, pulling down, or rearrangement of clothing for the visual inspection of a person's genital and/or anal areas, which may also include requiring the person to squat and cough, in the presence of one or more guard.

ORDERED, that an **"Equal Protection Strip Search Class"** class be and is hereby certified and defined as follows:

> Each male who, since May 12, 2002 continuing to the termination of this case, is or will be taken to Central Booking and strip searched prior to or without presentment before a court commissioner or other judicial officer.

And it is further,

ORDERED, that Anthony Haig, Eric Jones, Gary Saunders, Michael Washington, and Dana West be and are hereby approved as class representatives of the Equal Protection Strip Search Class; and it is further,

ORDERED, that an **"Underwear Search Class"** class be and is hereby certified and defined as follows:

> Each male who, since May 12, 2002 continuing to the termination of this case, is taken to Baltimore Central Booking and Intake Center and searched to his underwear prior to or without presentment before a court commissioner or other judicial officer.

And it is further,

ORDERED, that Anthony Haig, Gary Saunders, and Aaron Ross be and are hereby approved as class representatives of the Underwear Search Class; and it is further,

ORDERED, that Anthony Haig, Gary Saunders, and Aaron Ross be and are hereby approved as class representatives for declaratory and injunctive relief; and it is further,

ORDERED that the classes defined above be maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure as to the claims of the class members for declaratory or injunctive relief against Defendant Franks in his official capacity, and that the class be maintained as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure on issues of both liability and damages as to the claims of the class members for monetary relief as to all Defendants in their individual capacities; and it is further,

ORDERED, that Sean R. Day, William Claiborne, and Barrett S. Litt shall serve as class counsel in this action.

_____

CATHERINE C. BLAKE
United States District Court Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIC JONES, et al. Plaintiffs v. **SUSAN MURPHY,** et al. Defendants	Civil Action No. **CCB 05 CV 1287**

MEMORANDUM IN SUPPORT OF
MOTION FOR CLASS CERTIFICATION

Index of Exhibits

No.	Description	E-Filed
1	Strip Search Affidavit (expanded) of Gary Saunders	11/30/05, Doc. 35-4
2	Strip Search Affidavit (expanded) of Dana West	11/30/05, Doc. 35-5
3	Strip Search Affidavit of Ronald Armstrong	11/30/05, Doc. 35-6
4	Strip Search Affidavit of Kenneth Bailey-El	11/30/05, Doc. 35-7
5	Strip Search Affidavit of Bryant K. Battle	11/30/05, Doc. 35-8
6	Strip Search Affidavit of Heath Demmer	11/30/05, Doc. 35-9
7	Strip Search Affidavit of Kevin Gary	11/30/05, Doc. 35-10
8	Strip Search Affidavit # 2 of Kevin Gary	11/30/05, Doc. 35-11
9	Strip Search Affidavit of Maurice James	11/30/05, Doc. 35-12
10	Strip Search Affidavit of Eric Jones	11/30/05, Doc. 35-13
11	Strip Search Affidavit of Richard Jones	11/30/05, Doc. 35-14
12	Strip Search Affidavit of Raymous Little	11/30/05, Doc. 35-15
13	Strip Search Affidavit of Charles Martin	11/30/05, Doc. 35-16
14	Strip Search Affidavit of Richard McNeal	11/30/05, Doc. 35-17
15	Strip Search Affidavit of Antwan Moore	11/30/05, Doc. 35-18
16	Strip Search Affidavit # 2 of Antwan Moore	11/30/05, Doc. 35-19

17	Strip Search Affidavit of Vincent Perry	11/30/05, Doc. 35-20
18	Strip Search Affidavit # 2 of Vincent Perry	11/30/05, Doc. 35-21
19	Strip Search Affidavit of Therman Phillips	11/30/05, Doc. 35-22
20	Strip Search Affidavit of Gary Saunders	11/30/05, Doc. 35-23
21	Strip Search Affidavit of John Teague	11/30/05, Doc. 35-24
22	Strip Search Affidavit of Robert Maith	11/30/05, Doc. 35-25
23	Strip Search Affidavit of Dana West	11/30/05, Doc. 35-26
24	Strip Search Affidavit of Michael Washington	7/3/06, Doc. 67
25	Strip Search Affidavit of Anthony Haig	7/3/06, Doc. 67
26	Strip Search Affidavit of Gary Saunders (6/30/06 arrest)	With this Motion
27	Strip Search Affidavit of Jon Swindall	With this Motion
28	Strip Search Affidavit of Aaron Ross	With this Motion
29	Search Affidavit of Jeannie Deibel	With this Motion
39	Overdetention Affidavit of Tonia Bowie	11/30/05, Doc. 35-27
40	Overdetention Affidavit of David Colyns	11/30/05, Doc. 35-28
42	Overdetention Affidavit of Gary Saunders ("Walk Through")	11/30/05, Doc. 35-30
44	Overdetention Affidavit of Anthony Haig	With this Motion
45	Overdetention Affidavit of Kevin Adams	With this Motion
54-55	Overdetention Court Documents for Gary Saunders	11/30/05 Doc. 35 - 31 & 32
74-75	Overdetention Court Documents for David Colyns	11/30/05 Doc. 35 - 33 & 34
76-77	Overdetention Court Documents for Tonia Bowie	11/30/05 Doc. 35 - 35 & 36

95	Central Booking and Intake Facility Plan for Efficient and Timely Processing of the Booking Floor	11/30/05, Doc. 35-42
96	Declaration of Richard A. Berk	11/30/05, Doc. 35-43
97	Declaration of Bryan Miller	11/30/05, Doc. 35-44
99	Strip Search Affidavit (expanded) of Michael Washington	7/3/06, Doc. 67
102	Post Order, Female Search Officer, Eff. 11/16/98, Rev. 8/20/04	2/20/08, Doc. 162-3
103	Post Order, Men's Search Officer, Eff. 11/16/98, Rev. 8/20/04	2/20/08, Doc. 162-4
108	Deposition of Vernon Irvine (exerpt), 9/7/07	Excerpt of cited pages filed with this Motion
110	Deposition of Maurice Diggs (excerpt), 10/11/07	Excerpt of cited pages filed with this Motion
111	Deposition of Kevin Estep Jr. (excerpt), 10/11/07	Excerpt of cited pages filed with this Motion
114	Deposition of Beverly Stevenson (excerpt), 10/31/07	Excerpt of cited pages filed with this Motion
115	Deposition of Denise Banks (excerpt), 11/5/04	Excerpt of cited pages filed with this Motion
116	Affidavit of Benjamin Brown, 5/26/06	2/20/08, Doc. 162-17
117	Deposition of Lola Jones (excerpt), 11/5/07	Excerpt of cited pages filed with this Motion
121	Declaration of Barrett Litt	With this Motion

122	Declaration of William Claiborne	With this Motion
123	Declaration of Sean Day	With this Motion
124	Declaration of Kevin Nichols	With this Motion
125	Declaration of Susan Fiester	With this Motion
126	Trial Plan, Jones v. Murphy	With this Motion
127	Trial Plan, Bynum v. D.C.	With this Motion
129	Population Report for Central Booking	With this Motion
130	Class Representative Declaration by Tonia Bowie	With this Motion
131	Class Representative Declaration by David Colyns	With this Motion
132	Class Representative Declaration by Gary Saunders	With this Motion
133	Class Representative Declaration by Dana West	With this Motion
134	Class Representative Declaration by Michael Washington	With this Motion
135	Class Representative Declaration by Kevin Adams	With this Motion
136	Class Representative Declaration by Anthony Haig	With this Motion
137	Class Representative Declaration by Aaron Ross	With this Motion
App.	Affidavit of Susan Murphy, filed by State	10/7/05, Doc. 25

AFFIDAVIT REGARDING STRIP SEARCH
AT BALTIMORE CENTRAL BOOKING AND INTAKE CENTER

1. Name: Gary Saunders
DOB: 2-4-49 Race: Black Sex: Male

2. I was arrested by an officer of the MTA (for example, BPD) on 6-30-06 (Date) at approximately 10:15 p.m. (Time).

3. I was arrested on the following charge(s):
Disorderly Conduct

4. ***Before I saw a commissioner***, I was "strip searched" by an officer at the Baltimore Central Booking and Intake Center ("Central Booking"), as follows:

a. Did a Central Booking officer make you remove or pull down your pants? Yes

b. Were you wearing underwear? Yes. If YES, did a Central Booking officer make you pull down or remove your underwear? No

c. Did a Central Booking officer make you show your bare genitals? No

d. Did a Central Booking officer make you turn around to show your bare buttocks? No

e. Did a Central Booking officer make you squat? Yes

f. Were any other arrested people in the same room as you when this search was done? Yes

5. _____

Pursuant to 28 U.S.C. § 1746, I certify as true under penalty of perjury under the laws of the United States of America that the statements in this Affidavit are true and correct.

Signed in Baltimore, Maryland.

Gary Saunders 7/24/06
Signature Date

Return to:
Sean R. Day
Attorney at Law
8505 Baltimore Ave.
College Park, MD 20740

AFFIDAVIT REGARDING STRIP SEARCH
AT BALTIMORE CENTRAL BOOKING AND INTAKE CENTER

1. Name: JON E. SINDALL

DOB: 12-26-58 Race: White Sex: M

2. I was arrested by an officer of the ~~TRESPASSING~~ B.C.P.D (for example, BPD) on _____ (Date) at approximately _____ ___.m. (Time).

3. I was arrested on the following charge(s):

TRESPASSING

_____

_____

4. ***Before I saw a commissioner***, I was "strip searched" by an officer at the Baltimore Central Booking and Intake Center ("Central Booking"), as follows:

a. Did a Central Booking officer make you remove or pull down your pants? YES

b. Were you wearing underwear? YES. If YES, did a Central Booking officer make you pull down or remove your underwear? YES

c. Did a Central Booking officer make you show your bare genitals? YES

d. Did a Central Booking officer make you turn around to show your bare buttocks? YES

e. Did a Central Booking officer make you squat? YES

f. Were any other arrested people in the same room as you when this search was done? YES

5. _____

_____.

Pursuant to 28 U.S.C. § 1746, I certify as true under penalty of perjury under the laws of the United States of America that the statements in this Affidavit are true and correct.

Signed in Baltimore, Maryland.

Jon E. Sindall
Signature

9-13-06
Date

Return to:
Sean R. Day
Attorney at Law
8505 Baltimore Ave.
College Park, MD 20740

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIC JONES, et al. Plaintiffs v. **SUSAN MURPHY**, et al. Defendants	Civil Action No. **CCB 05 CV 1287**

AFFIDAVIT OF AARON ROSS REGARDING SEARCH AT BALTIMORE CENTRAL BOOKING AND INTAKE CENTER

1. My name is Aaron Ross. I am a male.

2. I am making this affidavit based on my personal knowledge.

3. On October 12, 2007, I was (falsely) arrested at a foie gras demonstration in the City of Baltimore. I was arrested along with Erin Marcus and Jeannie Deibel (both females).

4. After my arrest, I was taken to the Baltimore Central Booking and Intake Center.

5. At Central Booking, I was taken to a search room and subjected to a search. This search occurred after a Sallyport patdown.

6. I attempted to file a written administrative grievance relating to the search to my underwear. The Sallyport officer told me I needed to wait until I was released to file it. I later handed the written grievance to Officer Osuala in the search room. Officer Osuala folded the form back up and stuck it in my

pocket.

7. Officer Osuala then ordered me to take off all my clothes except my socks and underwear. I complied by removing my shoes, pants, and shirt.

8. The curtain to the search room was about halfway open. While I was in the search room I could see into the hallway and booking area. I saw people walk by and look at me while I was standing in my underwear.

Pursuant to 28 U.S.C. § 1746, I certify as true under penalty of perjury under the laws of the United States of America that the statements in this Affidavit are true and correct. Executed on 10/12/2007 in Baltimore, Maryland.

Aaron Ross

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIC JONES, et al. Plaintiffs v. **SUSAN MURPHY**, et al. Defendants	Civil Action No. **CCB 05 CV 1287**

AFFIDAVIT OF JEANNIE DIEBEL REGARDING SEARCH AT BALTIMORE CENTRAL BOOKING AND INTAKE CENTER

1. My name is Jeannie Deibel. I am a female.

2. I am making this affidavit based on my personal knowledge.

3. On October 12, 2007, I was (falsely) arrested at a foie gras demonstration in the City of Baltimore. I was arrested along with Erin Marcus (a female) and Aaron Ross (a male).

4. After my arrest, I was taken to the Baltimore Central Booking and Intake Center.

5. At Central Booking, I was taken to a search room along with Erin Marcus and subjected to a search. This search occurred after a Sallyport patdown.

6. There was a metal divider between me and Ms. Marcus, but I could observe and hear that Ms. Marcus was subjected to the same search as I was.

7. In the search room, I was told to jiggle my clothes and pull out my bra (underneath my shirt), which I did.

8. I was not asked to remove any clothing.

9. I was not asked to rearrange any clothing to expose any skin.

10. Later, after I saw the Commissioner, I was placed in a cell with 5 other women.

11. Three of the 5 other women in the cell were snorting heroin. I was offered heroin and declined.

Pursuant to 28 U.S.C. § 1746, I certify as true under penalty of perjury under the laws of the United States of America that the statements in this Affidavit are true and correct. Executed on April 18th in 2008, Maryland.

Jeannie Deibel

AFFIDAVIT REGARDING DETENTION AT BALTIMORE CENTRAL BOOKING AND INTAKE CENTER

1. Name: ANTHONY P. HAIG Sex: M DOB: 2/16/65

2. Date of this arrest: 4/17/05 Approx. time of this arrest: 12:30 pm

3. I was arrested on the following charge(s):

SCALPING TICKETS AT A BALTIMORE ORIOLES / YANKEES BASEBALL GAME.

4. Which police department arrested you? BALTIMORE.

5. Approximately when did you arrive at the Baltimore Central Booking and Intake Center ("Booking Center")? Date: 4/17/05 Time: 2:00 pm

6. Approximately when did you get to see a commissioner?

Date: 4/19/05 Time: 10:00 pm

7. Were you released on personal recognizance? YES AH. If YES, how long after you were ordered released did it take to get released from the Booking Center? 2 to 3 HOURS.

8. Were you released on bond? NO. If YES, how long after your bond was posted did it take to get released from the Booking Center? N/A.

Pursuant to 28 U.S.C. § 1746, I certify as true under penalty of perjury under the laws of the United States of America that the statements in this Affidavit are true and correct.

Signed in Baltimore, Maryland.

Anthony P. Haig
Signature

3/20/06
Date

1408-501064

THIS PAGE IS ATTORNEY-WORK PRODUCT
PRIVILEGED INFORMATION

You are NOT agreeing to participate in any litigation, and the attorney is NOT agreeing to represent you in any litigation. The following information, however, will be helpful in determining what, if any, litigation is suitable, and allow the attorney to further screen cases. The Attorney is not and will not conduct any in-person solicitation of business.

Name Anthony P. Hayes

Address 2202 E 17th St

Oakland CA.

Phone 1 (510) 772-0632

Phone 2 _____ (if applicable)

Email _____ (if applicable)

1. Please feel free to provide any additional details about your experience at the Booking Center that you believe was unfair:

The conditions in the holding cells are not even suitable for wild animals. The employees are ignorant and "GHETTO". These employees are not qualified or suitable for this type of work. We were crammed in these dirty cells with no regard. Someone could have "Died" in this place and they would not have known. Terrible, Terrible conditions.

Anthony P. Hayes
3/26/06
(510) 772-0632

AFFIDAVIT REGARDING DETENTION AT BALTIMORE CENTRAL BOOKING AND INTAKE CENTER (WALK-THROUGH)

1. Name: Kevin Adams Sex: Male DOB: 11-13-61

2. Date of this arrest: April 2005 Approx. time of this arrest: 8:00pm

3. I was arrested on the following charge(s):

Open Container

4. Which police department arrested you? Eastern District.

5. Approximately when did you arrive at the Baltimore Central Booking and Intake Center ("Central Booking")? Date: April 15 Time: 9:00 Am

6. I did not see a commissioner.

7. I was released from Central Booking without being charged with a crime.

8. Approximately when were you released from Central Booking?

Date: April 18 Time: 5.00 Am

Pursuant to 28 U.S.C. § 1746, I certify as true under penalty of perjury under the laws of the United States of America that the statements in this Affidavit are true and correct.

Signed in Baltimore, Maryland.

Kevin Adams
Signature

3-8-2006
Date

1408-501066

DISTRICT COURT OF MARYLAND FOR BALTIMORE CITY

LOCATED AT (COURT ADDRESS): 1400 E. NORTH AVE., BALTO, MD 21213

DISTRICT COURT CASE NUMBER:

TIME: 11:28

RELATED CASE(S):

COMPLAINANT

NAME (LAST,FIRST,M.I): VIGUE, GEORGE C

TITLE: OFFR

AGENCY: AD

SUB-AGENCY: 5937

I.D.NO.(POLICE): F814

WORK TELEPHONE: (410)3962626

HOME TELEPHONE: (000)0000000

ADDRESS: ORGANIZED CRIME DIVISION

APT.NO.: 601 E. FAYETTE STREET

CITY: BALTIMORE

STATE: MD

ZIP CODE: 21202

DEFENDANT

NAME (LAST, FIRST, M.I): HAIG, ANTHONY

TITLE:

MAFIS NAME (LAST, FIRST, M.I): HAIG,ANTHONY

TITLE:

I.D.NO.	RACE	SEX	HT.	WT.	D.O.B.(MM/DD/YY)
2764139	B	M	5/10	180	2/16/65

HAIR	EYES	OTHER DESCRIPTION
BRO	BRO	

WORK TELEPHONE: ( )

HOME TELEPHONE: (510)7103370

ADDRESS: 2262 E 17TH ST

APT.NO.:

CITY: OAKLAND

STATE: CA

ZIP CODE: 94606

☐DOMESTIC VIOLENCE ☐HATE CRIME

STATEMENT OF PROBABLE CAUSE

ARREST ON TRAFFIC/NATURAL RESOURCES CITATIONS/CRIMINAL CHARGES/MUNICIPAL ORDINANCES/PUBLIC LOCAL LAWS

THE DEFENDANT HAS BEEN ARRESTED UPON THE FOLLOWING INFORMATION OR OBSERVATION: (MAKE A PLAIN, CONCISE AND DEFINITIVE STATEMENT OF ESSENTIAL FACTS CONSTITUTING THE OFFENSE CHARGED)

ON 17 APRIL 05, DET VIGUE WAS WORKING A PLAINCLOTHES SCALPER'S DETAIL IN THE 200 BLK S HANOVER ST (WITHIN 1 MILE OF CAMDEN YARDS). AT THIS TIME, DET VIGUE OBSERVED THE DEF SELLING TICKETS TO THE ORIOLES GAME IN THE BLOCK. THE DEF WAS ARRESTED, AND RECOVERED FROM HIS PERSON WERE (7) ORIOLES BASEBALL TICKETS. SAME SUBMITTED TO ECU. DEF CHARGED AT CBIF.

CONTINUED ON ATTACHED SHEET (FORM DC/CR 4A)

COURT COPY

PROBABLE CAUSE CHARGES #

LACK OF PROBABLE CAUSE CHARGES # _____

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE MATTERS AND FACTS SET FORTH IN THE FOREGOING DOCUMENT ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

DATE	ARRESTING OFFICER
4/19/2005	

AGENCY	SUB-AGENCY	I.D. NO.
)	5937	F814

I HAVE REVIEWED THE STATEMENT OF CHARGES AND HAVE DETERMINED THAT

☐THERE IS PROBABLE CAUSE TO DETAIN THE DEFENDANT

☐THERE IS NOT PROBABLE CAUSE TO DETAIN THE DEFENDANT AND I HAVE ACCORDINGLY RELEASED HIM ON HIS OWN RECOGNIZANCE.

DATE	JUDICIAL OFFICER	COMMISSIONER I.D. NO.
4-19-05		1268

D560041135 13

CBF2051131 10

TRACKING NO. _____ CBF NO. _____

FORM DC/CR 4 (Rev. 7/94)

1408-501067

PLAINTIFF 0056- 001

Local Incident #: 051D09870

DISTRICT COURT OF MARYLAND FOR BALTIMORE CITY

DATE: 04/19/2005
TIME: 12:12
RELATED CASE(S):

LOCATED AT (COURT ADDRESS)
1400 E. NORTH AVE., BALTO, MD 21213

DC Case No: 0B01682639

ER COURT

DEFENDANT'S NAME (LAST,FIRST,M.I)
HAIG, ANTHONY

COURT COPY

COMPLAINANT			DEFENDANT					
NAME (LAST,FIRST,M.I)		TITLE	NAME (LAST, FIRST, M.I)					TITLE
VIGUE, GEORGE C		OFFR	HAIG, ANTHONY					
AGENCY	SUB-AGENCY	I.D.NO.(POLICE)	MAFIS NAME (LAST, FIRST, M.I)					TITLE
AD	5937	F814	HAIG,ANTHONY					
			I.D.NO.	RACE	SEX	HT.	WT.	D.O.B.(MM/DD/YY)
			2764139	B	M	5/10	180	2/16/65
WORK TELEPHONE	HOME TELEPHONE		HAIR	EYES	OTHER DESCRIPTION			
(410)3962626	(000)0000000		BRO	BRO				
ADDRESS		APT.NO.	WORK TELEPHONE		HOME TELEPHONE			
ORGANIZED CRIME DIVISION	601 E. FAYETTE STREET		( )		(510)7103370			
			ADDRESS					APT.NO.
			2262 E 17TH ST					
CITY	STATE	ZIP CODE	CITY		STATE		ZIP CODE	
BALTIMORE	MD	21202	OAKLAND		CA		94606	

☐DOMESTIC VIOLENCE ☐HATE CRIME

Page 1 of 1

STATEMENT OF CHARGES

IT IS FORMALLY CHARGED THAT THE DEFENDANT

	CJIS CODE	AR	ON OR ABOUT (DATE)	AT (PLACE)
1		05030626	04-17-05	200 S EUTAW ST BALTIMORE CITY, STATE OF MARYLAND

DID UNLAWFULLY OFFER FOR RESALE, TICKET(S) TO A PROFESSIONAL SPORTING EVENT THAT TAKES PLACE IN CAMDEN YARDS WITHIN 1 MILE OF ORIOLE PARK AT CAMDEN YARDS, IN BALTIMORE CITY, MARYLAND...

IN VIOLATION OF:
☐MD. ANN. CODE ART. SEC. ☐COMMON LAW OF MD. ☑PUB. LOCAL LAW ART. 19 SEC. 198 A
PROBABLE CAUSE ✓ Y ____ N
☐COMAR / AGENCY CODE NO. ☐ORDINANCE NO. AGAINST THE PEACE, GOVERNMENT AND DIGNITY OF THE STATE
COMMISSIONER INITIALS: BW ID NO. 1260

	CJIS CODE	AR	ON OR ABOUT (DATE)	AT (PLACE)
2				

IN VIOLATION OF:
☐MD. ANN. CODE ART. SEC. ☐COMMON LAW OF MD. ☐PUB. LOCAL LAW ART. SEC.
PROBABLE CAUSE ____ Y ____ N
☐COMAR / AGENCY CODE NO. ☐ORDINANCE NO. AGAINST THE PEACE, GOVERNMENT AND DIGNITY OF THE STATE
COMMISSIONER INITIALS: ____ ID NO. ____

☐CONTINUED ON ATTACHED SHEET (FORM DC/CR 2A)

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE MATTERS AND FACTS SET FORTH IN THE FOREGOING DOCUMENT ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

DATE 04/19/2005 PEACE OFFICER Vigue

AGENCY AD SUB-AGENCY 5937 I.D. NO. F814

RG 5579

TRACKING NO. 0560041135113

CBF NO. CBF2005113110

FORM DC/CR 2 (Rev 7/94)

1408-501068

DISTRICT COURT OF MARYLAND FOR Baltimore City

Located at 1400 E. North Avenue, Baltimore, MD 21213 **Case No.:000B01682639**

STATE OF MARYLAND **VS** **HAIG, ANTHONY**

COMPLAINANT:
VIGUE, GEORGE C OFFR
Agency/Subagency: AD 5937
ID: F814

2262 E 17TH ST
OAKLAND, CA 94606
CC#: 051D09870 SID: 2764139
Local ID:8002764139 DL#: DL State:
Race: 1 Sex: M Height:5'10" Weight: 180 Hair: BRN Eyes: BRN
DOB:02/16/1965 Phone(H): (510) 710-3370 Phone(W):

CHARGE SUMMARY

UPON THE FACTS CONTAINED IN THE APPLICATION OF VIGUE, GEORGE C OFFR IT IS FORMALLY CHARGED THAT HAIG, ANTHONY at the dates, times and locations stated in the Charging document:

CHG/CIT	STATUTE	PENALTY	DESCRIPTION OF THE CHARGE
	19 198 A	$50.00	RESALEING ORIOLE TICKEST

TRUE COPY, TEST

LONNIE P. [illegible], Administrative Clerk
DISTRICT COURT OF MARYLAND, DIST. [illegible]

Date:04/19/2005 **Time:08:20 PM** **Judicial Officer:** _____ **1260**

Tracking No. 056004113513

1408-501069

DISTRICT COURT OF MARYLAND FOR Baltimore City

Located at 1400 E. North Avenue, Baltimore, MD 21213 **Case No.: 000B01682639**

STATE OF MARYLAND **VS** **HAIG, ANTHONY**
2262 E 17TH ST
OAKLAND, CA 94606-0000
SID: 0002764139 Local ID: 8002764139

INITIAL APPEARANCE REPORT (Rule 4-213)

I hereby certify that when the above named Defendant was brought before me for initial appearance, I:
INFORMED Defendant of each offense charged and of the allowable penalties, including mandatory penalties, if any.
ADVISED Defendant that a copy of the Charging Document is not available, but will be provided as soon as possible and gave Defendant a copy of the Notice of Advice of Right to Counsel.
READ to Defendant, the Notice of Advice of Right to Counsel.
ADVISED Defendant that an appearance for trial without a lawyer may result in the Court determining that counsel was waived and the Defendant may have to proceed without a lawyer.

Pretrial Release Determination (Rule 4-216)

On the basis of information available to and developed by me I HAVE DETERMINED:
That Defendant may be released on personal recognizance because the charge is not an offense for which the maximum penalty is death or life imprisonment.
That Defendant may be released on personal recognizance because it will reasonably assure the Defendant's appearance.

Notice

I INFORMED THE DEFENDANT:

1. that a condition of ANY release is that Defendant appear for hearing and/or trial as directed by the Court.
2. that a warrant will be issued for the Defendant's arrest for any violation of condition(s) of release; that if the recognizance or bail bond is forfeited and the Defendant fails to surrender within 30 days following the forfeiture, on a felony charge the penalty imposed may be up to 5 years in jail and/or a fine up to $5,000, or on a misdemeanor charge the penalty imposed may be up to 1 year in jail and/or a fine up to $1,000; that the Defendant may be charged with contempt of Court.
3. to notify the Court in writing of any change of address or telephone number.

Date: 04/19/2005 Time: 08:26 PM Commissioner: _____ ID: 1260

Receipt

I have ☐ read ☐ had read to me the offense(s) for which I am charged, the conditions of release, the penalty for violation of the conditions of release, the Notice of Advice of Right to Counsel. I acknowledge receipt of a copy of this form.
I have been informed that the Arraignment date is 05/10/2005 at 8:30 AM in Room 7, at 1400 E. North Avenue, Baltimore, MD 21213.
I agree to any conditions of release and agree to appear as directed.

Date _____ Signature of Custodian _____ Signature of Defendant _____

Tracking No. 056004113513

1408-501070

PLAINTIFF 0057- 001

PLAINTIFF'S EXHIBIT 108

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

----------x

ERIC JONES, et al. :

Plaintiffs :

v. : 05-1287 CCB

SUSAN MURPHY, et al. :

Defendants :

----------x

Deposition of VERNON IRVINE
Baltimore, Maryland
Friday, September 7, 2007
10:06 a.m.

Job No.: 5-111118
Pages: 1-165
Reported by: Linda M. Bahur, RPR

Deposition of VERNON IRVINE, held at:
L.A.D. Reporting Company
10 N. Calvert Street
Suite 141
Baltimore, Maryland 21202

Pursuant to agreement, before Linda M. Bahur, Registered Professional Reporter and Notary Public of the State of Maryland.

A P P E A R A N C E S

ON BEHALF OF THE JONES PLAINTIFFS:

SEAN R. DAY, ESQUIRE
LAW OFFICE OF SEAN R. DAY
8505 Baltimore Avenue, Suite B
College Park, Maryland 20740
(301) 220-2270

ON BEHALF OF THE NAACP PLAINTIFFS:

DARCY TROUTMAN, ESQUIRE
DAVID WHARWOOD, ESQUIRE
GIBSON, DUNN & CRUTCHER
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 887-3539

ON BEHALF OF THE DEFENDANTS:

KARL A. POTHIER, ESQUIRE
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
6776 Reisterstown Road
Suite 313
Baltimore, Maryland 21215
(410) 585-3071

C O N T E N T S

EXAMINATION OF VERNON IRVINE PAGE

by Mr. Day 5
by Ms. Troutman 149
by Mr. Wharwood 157
by Mr. Day 159

E X H I B I T S

(Attached to the transcript; originals retained by Mr. Day)

EXHIBIT PAGE

1 Post order for men's search room, dated 11/16/04, revised 8/20/04 82
2 Post order for the men's sallyport, dated 12/1/1997, revised 8/20/2004 111
3 Post order for men's search room, dated 1/1/06 113

77

Q And said there were two officers in the search room?
A Normally, yes.
Q And how many arrestees are searched at a time?
A Two.
Q And so, you'll have one officer searching one arrestee and then the other searching the other arrestee; is that correct?
A Yes.
Q Is there any partition of any sort between the two arrestees?
A No, there's not. At one time there was but not anymore. No.
Q When was that removed?
A 2001.
Q Do you know why?
A Well, the search room that we're using right now was an old working man closet they call it because I've been there ten years. So the search area changed maybe back in 1999 maybe. There was a partition there. Sometime it was knocked down or hinges fall

78

out.
Q And who is supervising, well, who supervises the arrestees while they're on the bench waiting for the search officer?
A Any officer passing by. You know? Could be the sallyport officer can visually look. The point officer is available. Anyone at booking station can look over there and observe the arrestees on the bench, but normally the point officer and a medical officer that's escorting during triage, there's two there. So usually there's around four to five officers in that general area.
Q How many arrestees do those benches accommodate?
A Five to six.
Q Are there occasions when you have more than five to six arrestees waiting for the search room officer? No?
A All depending upon how fast triages are. If the bench is full for some unknown reason, it happens. so once they see triage, they can sit back in the sallyport and wait to be searched. This happens

79

occasionally also. Some officers search slower and other ones, some are faster.
Q What types of items have you found doing this search in the search room?
A I found knives, needles, drugs. At sallyport entry, I found weapon, 9 millimeter.
Q Let's talk about the search.
A Okay. Search, okay. I found knives. Ink pens can be used as weapons.
Q How many ink pens have you found?
A I just have one. It was a regular ink pen but you take a top off of it, it was a knife.
Q So that's one ink pen you found --
A A regular ink pen --
Q -- since '97?
MR. POTHIER: Objection. Objection to form. Go ahead.
A It wasn't an ink pen; it was a knife. It was shaped like a -- ink pen you have, you pull the top part off, it was all knife. I only found one. It wasn't an ink pen.
Q I want to make sure we're talking about the

80

same period. One of those knives/ink pens --
A Yes.
Q -- or perhaps a knife disguised as an ink pen?
A Yes, only one I found.
Q Since 1997?
A Yes.
Q And on how many occasions have you found knives?
A Depending upon who is at the door, if the officer is not strong, do a thorough search, I found over 60 or 70 knives.
Q Do you recall, at what stage of the search have you found these knives?
MR. POTHIER: Objection. Asked and answered.
A Can you repeat the question again?
Q Yes. What stage of the search have you found the knives that you're referring to?
A Well, I ask them to take everything out of your pockets and several times after, going through the pockets myself and I'll pull a knife out and I'll say, what is this? Oh, I forgot about that. Once I

PLAINTIFF'S EXHIBIT 110

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

----------X
ERIC JONES, et al., *
Plaintiffs *
vs. * CASE NUMBER:
SUSAN MURPHY, et al., * 05-1287 CCB
Defendants *
----------X

Deposition of MAURICE DIGGS
Baltimore, Maryland
Thursday, October 11, 2007
10:12 a.m.

Job Number: 1-113748
Pages: 1 - 223
Reported by: Emily Rose Hoffman, Notary Public

2

Deposition of MAURICE DIGGS held at the offices of:

L.A.D. Reporting Company
10 North Calvert Street
Suite 141
Baltimore, Maryland 21202

Pursuant to Notice, before Emily Rose Hoffman, Notary Public of the State of Maryland.

3

A P P E A R A N C E S

On behalf of the Plaintiffs:
WILLIAM C.C. CLAIBORNE, III, ESQUIRE
Claiborne Law
717 D Street N.W., Suite 210
Washington, D.C. 20004-2813
(202) 824-0700

On behalf of the Plaintiffs:
SEAN R. DAY, ESQUIRE
Law Office of Sean R. Day
8505 Baltimore Avenue, Suite B
College Park, Maryland 20740
(301) 220-2270

4

A P P E A R A N C E S, continued:

On behalf of the Plaintiff NAACP:
HILLARY A. GOULD, ESQUIRE
DARCY TROUTMAN, ESQUIRE
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 887-3612

On behalf of the Defendants:
KARL A. POTHIER, ESQUIRE
Assistant Attorney General
Maryland Department of Public Safety and Correctional Services
6776 Reisterstown Road - Suite 313
Baltimore, Maryland 21215
(410) 585-3071

53

A It's pretty good.
Q Would it get the aluminum foil?
A Probably would.
We don't allow people to come through like with gum and stuff like that because we walk through ourselves, so --
Q The scanners?
A (Witness nods head.)
Q Well, let's suppose a prisoner comes through with gum, is that something you would find with -- the sallyport officer would find during his initial pat-down?
A Yeah, that'd be like before. Like a lot of times when we first walk through, if we know he's going to set it off really bad, we'll just start taking some of the stuff out of his pockets for him, because he's still cuffed up. He can't take it, take it out.
Q How would you know somebody is going to set it off pretty bad?
A We can look and tell it's going to be a lot of metal.

54

Q Like how?
A Keys. Guys got --
Q Oh, you see the things?
A Visually.
Q I see. Okay.
Now, how about if somebody comes in, does the charge affect how thorough the initial search in the sallyport is?
A Like I said, the charge doesn't really affect that. Sometimes it's to your discretion, whereas that -- you know, how well you do your job. If you don't do this, it's going to do that.
Q But it sounds like at least you, when you're working in the sallyport, you did a pretty thorough pat-down of the -- or pretty thorough search of the prisoners as they came into the sallyport?
A Yes.
Q How about your colleagues, were you ever in there when colleagues were in there, in the sallyport working?
A Yes.

55

Q Did you believe they were doing the thorough searches of the prisoners?
A If I felt -- if they didn't, I would tell them to check again. I'm an FTO officer, so I train a lot of the officers in the building.
Q What's a FTO officer?
A Field training officer. I train the new ones that come in.
Q I see. Are you like a manager or supervisor? Can you tell me --
A No. I went through certified training, instructor, training them through the proper procedures, the way of doing it.
Q When did you go through that training?
A Last year.
Q How about before that period of time, were you an FTO before that time?
A No, I just try to do the best I can.
Q I appreciate that.
Well, how about -- like since you've been there a long time, the other guys, you sometimes tell them, you need to do this better,

56

you need to do that better?
A They look up to me and call me the old man.
Q We won't call you that here.
All right. Well, is there anything about this sallyport that we haven't covered just now that you think is important to the sallyport job?
MR. POTHIER: Objection. Vague.
A No.
Q Is there anything that we haven't covered here that officers in the sallyport do to try to find any kind of contraband, guns, weapons, anything like that on a prisoner as he's brought into the sallyport?
A I think basically we covered everything to me.
Q All right. So we started to do this before. Let's flip.
Now you're in the search room. How many people are in the search room at any one time?

57

A It's one on one. If I have a person to search, I have that one person, and the other officer have another person to search.
Q So there is usually two?
A Just two of us.
Q Okay. But there is always two?
A Mm-hmm, yes.
Q How can you have two officers in the search room but only one in the sallyport?
MR. POTHIER: Objection. Staffing.
MR. CLAIBORNE: He may know.
Q Do you know?
A I guess they see that's not a reason to have two people there.
MR. CLAIBORNE: Doesn't rise to the level of objection, but let the record show --
MR. POTHIER: Well, I mean, I think he's already testified that the sallyport is a much more controlled environment, to the extent they're still cuffed, you know, it's -- search room is a little different. They're being -- the cuffs are being removed.

58

BY MR. CLAIBORNE:
Q Is that right, I mean, because the cuffs are coming off, that's why you need two guys in the searching room?
A Yes.
Q Okay. Is there any other reason like that you can tell me why you need two guys in the searching room?
A Safety.
Q Okay. Safety.
And that's because the fact that the cuffs are off, or is there some other reason?
A I guess for --
MR. POTHIER: If you know.
A -- safety.
Q Sure.
Let's -- when prisoners are brought in to the sallyport, are they wearing leg irons or handcuffs on the ankles, anything like that?
A It depends.
Q Sometimes they do?
A (Witness nods head.)

59

Q Do you know on what occasions they'd have the leg irons on?
A They're runners --
Q I see.
A They're fighters, combative.
Q Right.
When the sallyport officer is through processing the prisoner, he puts him in the chair for pick up by the search officer, does that prisoner still have his handcuffs on?
A Yes.
Q Okay. So it's the searching officer that takes the cuffs off?
A Yes.
Q Okay. So when the search officers are in the search room, is there anything separating one search officer's processing his prisoner and the other search officer is working with his prisoner, anything that separates the two?
A We have the dividing partitions in between. And that way, he have his side of privacy, and the other person can have his side of

60

privacy.
Q And from 1996 up through the present, have those dividers always been installed in the search room?
A Yeah, until they got knocked down, I guess.
Q When did they get knocked down?
A I can't recall the year, but they got knocked down.
Q But a long time ago?
A It's been a couple years.
Q Did they get put back up?
A No. They haven't. No.
Q So there's no divider right now; is that right?
A Right.
Q Okay. So let's say you're in the search room. When you're through searching a prisoner, what would you do with him?
A He'll be escorted out to the booking room -- booking area.
Q Who would escort him out?

PLAINTIFF'S EXHIBIT 111

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

----------X
ERIC JONES, et al., *
Plaintiffs *
vs. * CASE NUMBER:
SUSAN MURPHY, et al., * 05-1287 CCB
Defendants *
----------X

Deposition of KEVIN ESTEP, JR.
Baltimore, Maryland
Thursday, October 11, 2007
2:01 p.m.

Job Number: 1-113748
Pages: 1 - 113
Reported by: Emily Rose Hoffman, Notary Public

Deposition of KEVIN ESTEP, JR., held at the offices of:

L.A.D. Reporting Company
10 North Calvert Street
Suite 141
Baltimore, Maryland 21202

Pursuant to Notice, before Emily Rose Hoffman, Notary Public of the State of Maryland.

A P P E A R A N C E S

On behalf of the Plaintiffs:
WILLIAM C.C. CLAIBORNE, III, ESQUIRE
Claiborne Law
717 D Street N.W., Suite 210
Washington, D.C. 20004-2813
(202) 824-0700

On behalf of the Plaintiffs:
SEAN R. DAY, ESQUIRE
Law Office of Sean R. Day
8505 Baltimore Avenue, Suite B
College Park, Maryland 20740
(301) 220-2270

A P P E A R A N C E S, continued:

On behalf of the Plaintiff NAACP:
HILLARY A. GOULD, ESQUIRE
DARCY TROUTMAN, ESQUIRE
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 887-3612

On behalf of the Defendants:
KARL A. POTHIER, ESQUIRE
Assistant Attorney General
Maryland Department of Public Safety and Correctional Services
6776 Reisterstown Road - Suite 313
Baltimore, Maryland 21215
(410) 585-3071

45

A A shower curtain.
Q And how is it attached?
A With the little hooks on the pole.
Q And what type of material is the shower curtain?
A Plastic.
Q And is it something that if you're standing outside the search room, you can see silhouettes of people who are inside the search room?
A Not that I know of. Never looked at it like that.
Q How far from the floor is the bottom of the curtain?
A I have no clue.
Q About ankle high, knee high?
A About ankle high.
Q Okay. And when -- is there a gap between the curtain and the wall?
A Yeah, about maybe an inch.
Q And where do people stand when they're being searched within the search room?

46

A You have two mats in there. There's a mat here (indicating), and then maybe a mat right here (indicating) where that third chair is.
Q And where are those in relation to the entryway?
A Maybe a couple of steps.
Q If you took down the curtain, would you be able to see the areas where the men are searched?
A If you walk past?
Q Yes.
A Yes.
Q So you might also be able the see that if somebody is opening the curtain to go inside?
A Mm-hmm.
Q Or to come outside?
A Mm-hmm.
Q Is that "yes"?
A Yes.
THE WITNESS: I'm sorry.
Q Are there occasions when two arrestees are being searched at the same time?

47

A Many times, most of the time.
Q Is there any sort of partition in between them?
A Now?
Q Yes.
A No. But it was at one time.
Q Okay. And then it got knocked down?
A Yes. Taken down, knocked down, whatever.
Q That's what we're hearing.
When did that happen?
A Man, them things been down for a while. I can't even recall.
Q Matter of --
A Years.
Q Years?
A Years.
Q Do you know why it hasn't been replaced?
A No.
Q Why don't you tell me currently what's involved in a search in the search room.

48

A Well, they take off their shoes, socks, pants.
Q How about the shirt?
A Me particularly, I don't take their shirts off.
Q Why not?
A Because I checks, I make them lift it up.
Q Is there a time since you've been at Central Booking that a more thorough search was done in the search room?
A Yes.
Q What was involved in the more thorough search?
A Naked.
Q And do you know when you changed over from the naked to doing the underwear and the shirts?
A I'm thinking maybe about two years.
Q About two years ago?
A About two years.
Q Do you know the warden who was there

49

when that changed?
A Mitchell Franks.
Q So as far as you believe, he was the one who implemented the change in the policy?
A I guess.
Q What do you mean you guess?
A I mean, he has a boss, so -- I don't know where it came from.
Q But you believe that he was the one who was the warden when this --
A When the policy changed, yeah.
Q And before that, every male arrestee would go in the search room and you would strip -- have them strip naked?
A Yeah.
Q And would you have them squat?
A Yeah.
Q Have them cough?
A Yes.
Q How were you notified that there was a change where now, instead of stripping them naked, you would just have them go down to their

50

underwear?
A How was I notified?
Q Yes.
A I think through post orders and through word of them coming around and letting everybody know that was going to be the new policy. I'm really not sure as to how.
Q Do you recall being told?
A Yeah. I recall being told, but I don't know when or who it came from. I don't know.
Q Do you recall reading a changed post order?
A Yeah.
Q When do you recall reading that?
A Maybe about two years ago.
Q And how long after Warden Franks took over did this change occur?
A I have no idea.
Q But you're fairly certain that it was sometime after Mitchell Franks took over?
A Yeah.

51

Q And throughout the time that Warden Murphy -- Susan Murphy was the warden, you were doing the full strip searches?
A I do believe so, yes.
Q And during the whole time that Warden Jednorski was there, you were doing the full strips of the men?
A (Witness nods head.)
Q Is that "yes"?
A Yes, I'm sorry.
Q And you work with other officers in the same search room?
A Yes.
Q And they were doing the same type of searches you were doing?
A Yes.
Q So as far as you know, there wasn't a time that you were doing the full strips and the guy next to you was doing just the underwear?
A No.
Q I think you said you don't recall who specifically told you about the change?

52

A No, I don't recall.
Q Did you have any discussions with other officers about the change?
A Probably so.
Q What did you think about the change?
A Don't really agree with it.
Q Why not?
A Due to my years in correction, I've seen people hide stuff in their rectum, under they -- you know, scrotum sac, under they arms, in they feet, taped to they feet, in they toes, so.
Q Now, during this period of time that you said the policy was to do a full strip down to the naked body --
A Mm-hmm.
Q -- were there occasions where an arrestee would come in and you would not do the full strip search?
A No.
Q You treated everybody the same?
A Yes.
Q As far as you know, all the other

53

search officers were doing the same as you were doing?
A Yes.
Q Let me ask about the period that you were doing what I'm going to call the full strip search.
What -- how often would you find contraband as a result of the strip searches?
A A day or?
Q Sure. A day.
A Maybe at least two to three times a day. Or more.
Q Did you pay any attention to, when you found something, what the person had been charged with?
A Not really.
Q And --
A I mean, after I find it, you might look at and see what they charged with, because you have to do -- turn stuff into the police liaison, so.
Q Is it your recollection that the

54

switch from Warden Murphy to Warden Franks was in the summer of 2005?
A I don't even recall.
Q How long has Mitchell Franks been the warden?
A Maybe a year or two, I don't know.
Q Do you recall anything else in your life that was going on around the time that there was this switch?
A No.
Q Was there media attention, extra media attention?
A About the searching?
Q About Central Booking and over detentions and all that stuff?
A I don't know.
Q You don't remember?
A No.
Q Okay. Well, regardless of who was warden, you believe it was approximately two years ago that there was a change in the searches?
A Yeah.

55

THE WITNESS: Did I say yes?
THE COURT REPORTER: You did. No, you didn't. You said "yeah."
BY MR. DAY:
Q I take a "yeah" as a "yes." Especially when combined with an up and down nod.
Now, when you were doing the full strips and finding contraband, where did you find that the contraband was normally hidden?
A In the rectum. And under their scrotum sac.
Q Now, when you say in the rectum, do you mean between the cheeks or actually --
A Sometimes in between the cheeks and sometimes actually stuck up there. I mean, you just see like something hanging out that's unusual.
Q What types of contraband would you find hidden under the -- you said the sac and the rectum area?
A Drugs, cigarettes.
Q Anything else?

56

A Money.
Q Anything else?
A Cell phones. Matches, lighters.
Q Now, when arrestees make their way into the cells, are there flammable items in the cells?
A Toilet paper.
Q Anything else?
A That's all I know of, is toilet paper.
Q Are you aware of any occasions when an arrestee has lit fire to toilet paper?
A Yes.
Q How many times?
A Hundreds of times.
Q And what happens when they light fire to toilet paper?
A You just smell it. You smell it burn, we have to re-search the cell.
Q And then what?
A Say that again.
Q And then what?
A They're taken to an area where they

PLAINTIFF'S EXHIBIT 114

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

****

ERIC JONES, et al.

Plaintiffs

v. Case No.: 05-1287 CCB

SUSAN MURPHY, et al.

Defendants.

****

DEPOSITION OF OFFICER BEVERLY STEVENSON
Baltimore, Maryland
Wednesday, October 31, 2007
1:15 p.m.

Job No.: 3-113371
Pages 1 - 80
Reported by: Sheri D. Hayhurst, RPR

2

Deposition of OFFICER BEVERLY STEVENSON, held at the offices of:

L.A.D. REPORTING COMPANY
10 North Calvert Street
Suite 141
Baltimore, Maryland 21202

Pursuant to agreement, before Sheri D. Hayhurst, Registered Professional Reporter of the state of Maryland.

3

APPEARANCES: On behalf of the Plaintiffs:

WILLIAM "CHAZ" CLAIBORNE, ESQUIRE
CLAIBORNE LAW
717 D Street Northwest
Suite 210
Washington, D.C. 20004-2813
(202) 824-0700

SEAN R. DAY, ESQUIRE
LAW OFFICE OF SEAN R. DAY
8505 Baltimore Avenue
Suite B
College Park, Maryland 20740
(301) 220-2270

On behalf of Plaintiff, NAACP:

HILARY A. GOULD, ESQUIRE
DAVID WHARWOOD, ESQUIRE
GIBSON, DUNN & CRUTCHER, LLP
1050 Connecticut Avenue, Northwest
Washington, D.C. 20036-5306
(202) 887-3612

On behalf of Defendants:

KARL A. POTHIER, ESQUIRE
ASSISTANT ATTORNEY GENERAL
MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
6776 Reisterstown Road
Suite 313
Baltimore, Maryland 21215
(410) 585-3071

4

C O N T E N T S

EXAMINATION OF OFFICER BEVERLY STEVENSON: PAGE

By Mr. Claiborne 5
By Mr. Day 70
By Mr. Claiborne 71
By Ms. Gould 72
By Mr. Wharwood 76

EXHIBITS:

(None offered)

21

her charge.

Q What about whether or not you found anything on her during the pat-down at the sallyport door? Did that affect whether or not she got strip searched?

A Everybody got strip searched.

Q I know you're answering my question. So, what you're saying is during that period of time, every single woman that came through -- every single arrestee got strip searched regardless of charge?

A Yes.

Q Okay. I understand. Now, is that the practice you followed at the time you went to work in the court commissioner's office?

A Yes.

Q So, it never changed?

A Huh-uh.

Q So, let me pin down the day you went to the court commissioners. Basically, three years ago; is that right?

A Yeah. You could say about three years ago.

22

Q Well, I mean, I don't want to -- that's an important question. So, I don't want to put words in your mouth.

A No. I mean, I was on and off. See, I post various, but I wasn't working in the female sallyport after a certain period of time.

Q So, but how long ago do you think you stopped working in the female sallyport?

A Oh, it's been since 05. I can tell you that. It's been 05.

Q Why do you remember 05?

A 05, because I was at the court commissioner, and then I went to traffic.

Q I see. So, until 05, the practice on the female side was just strip search every single female arrestee when she came in?

A Yes.

Q All right. Now, do you have any idea what the other female corrections officers were doing?

A Well, one of them could be given phone calls. One could have been passing out lunch. One could have been booking. It all depends on how many officers we had back there that day.

23

Q And what I mean is say like you had three female correctional officers working on a shift. Do you believe that the other two officers would have been strip searching the women, too? Was this just something you did or was it something everybody did?

A Well, we would pitch in.

Q What do you mean by that?

A Like if I'm searching --

Q Yeah.

A -- the other officer might say, "I'll take her in the strip search room."

Q I see.

A We would help out.

Q So, you're probably saying this -- I just want to make sure I understand it.

A Right.

Q The other officers also strip searched every single woman that came through? It wasn't just your own personal practice?

A Right. Every officer that worked back there would strip search the female that comes in there.

24

Q How did you know that's what you were supposed to do as part of the job?

A That was part of the post orders, and when I got at Central Booking, that's how I was trained.

Q Okay. Did a field training officer train you?

A No. This was just an officer that was there longer than me when I got in and taught me this is what I'm supposed to do.

Q Do you remember that officer's name?

A Oh, no. The lady up there, she's gone. She's gone.

Q Do you remember when Susan Murphy actually became the warden?

A I can't remember what year she came, but I was there when she was there.

Q Okay. When she came, she was like an assistant warden, right?

A Yes.

Q But then at some point, she actually

25

became the warden. Jednowski left, and Susan Murphy became the acting warden and then the actual warden?

A Yes.

Q Even if you don't remember the time, you remember that at some point that happened, right?

A Yes.

Q Now, after Susan Murphy became the warden, were you still working sometimes in the female side search room?

A Every now and then.

Q So, even after Susan Murphy came on, was it still the practice to strip search every single female arrestee that came in?

A Yes.

Q Let's see kind of going up the chain of command, your floor supervisors, sergeants, so on and so forth -- at any time when you were working in the female search room, did anyone of them ever say anything to you about the strip searches?

A No.

Q Did they ever come around and say, "Officer Stevenson, you're doing searches, aren't

26

you?" Anything like that to make sure you're following the practice?

A No.

Q Who was your floor supervisor during that period of time?

A It all depends, because we had different supervisors.

Q Do you remember who was your sergeant or was that more than one person also?

A West. She passed.

Q I'm sorry.

A She passed.

Q Do you remember what her name was?

A Sergeant West.

Q West?

A Uh-huh.

Q All right. Did she ever come back to the search room area when you were or somebody else were conducting the strip searches?

A No.

Q Did any of your superiors ever come back to the search room area when you or somebody else

27

was conducting the strip searches?

A No.

Q Do you believe they knew about the strip searches?

A Yes.

Q Why do you say that?

A Because it was in the post orders, and that is one of the things that they taught us, too.

Q I see. You mean your superiors taught you to do this?

A Right.

Q I see. Did you ever see Susan Murphy on the booking floor at any time?

A Yes.

Q When would you see her on the booking floor?

A She would come through in the mornings.

Q Would she come into the sallyport?

A No. She comes through the other entrance.

Q What other entrance would that be?

A It's another door that she comes through from her office down the hallway.

28

Q I see. If she came from her office on to the booking floor -- well, on to the area where you all were booking, would she come in on the male side or the female side?

A The male.

Q And how would she typically come on to the female side?

A She would have to walk through the male to get to the females.

Q So, she walks down the corridor?

A Yes.

Q Is that what you were talking about earlier?

A Yes.

Q Where does that corridor let out?

A You got two different entrances. You have one entrance towards the female. You've got one entrance towards the male. The corridor is a long hall, probably as long as this Calvert Street that ends to the other side. Either way, you could cut through the male or the female side through the corridor.

29

Q So, if you came through one of these corridors, would you pass the search room?
A No. Now, if you come down A-Line Corridor, you're not passing the search room. If you come down the B-Line corridor -- if you're coming Medical Way, you're passing the search room.
Q Okay. Did you ever see her come out of B-Line Corridor, go past the search room while you were working in that area?
A She has stood up in that area. I've seen her standing up in that area.
Q To just kind of watch what's going on?
A Uh-huh.
Q Did she see the female officers take the female arrestees into the search room?
A No. I can't say that.
Q But she was present when that was happening?
A Right.
Q I see. To your knowledge, did she ever say anything to any of the officers about strip searches?

30

A No.
Q All right. Let's flip over to the male side. One final question.
To your knowledge, is it still the practice at Central Booking that every single female arrestee that comes through gets strip searched?
A No.
Q Why do you say it's not the practice?
A Because they stopped it.
Q And when did they stop it?
A It was end of 05, they stopped the strip search.
Q Why do you say end of 05?
A Because it was like only two and a half years ago when Franks said, "We would no longer be strip searching."
Q Can you describe the strip search to me so we'll make sure that we're both talking about the same thing when we say "strip search?"
A Okay. When you take a lady in there, you're asking her to take off her garment down to her bra. She is to take her bra and shake it, and then she is to take her underwear off, and she is to squat and cough.

31

Q So, she's naked down to the skin?
A Now, you're talking before or after we stopped the strip search?
Q Well, at some point -- yeah. Does she ever have to take her -- well, you said she takes her underwear off, right?
A Yes.
Q So, then at that point, she's naked down to the skin, right?
A Yes.
Q I see. And then while she's naked down to the skin, she has to squat?
A And cough.
Q I see. Why does she have to squat and cough?
A To make sure she has nothing up in her vagina area.
Q What does one have to do with the other? Does that dislodge items that are secreted in the vagina?

32

A Yes.
Q I see. Let me just -- my colleague is pointing something out to me.
When you were talking about a woman has to lift up her bra, is that right, during the search process?
A Well, that's why I asked you which one were you talking about. Are we talking down naked? Or are you or talking about the one that where we stopped actually strip searching, and this is how we had to search them?
Q Well, I'm not sure what you mean.
A Okay. The first when we use to strip search, they would be naked, okay. Then when they stopped us from strip searching, they would have to take off their clothes, and they would have their panties and the bra on. So, when we was back in 06, they would have to lift up their bra and shake it and then pull their panties down to their knees and cough.
Q So, when you say, "They lift up their bra," and you kind of made this motion where it's

PLAINTIFF'S EXHIBIT 115

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
----------X
ERIC JONES, et al. :
Plaintiffs :
v. : 05-1287 CCB
SUSAN MURPHY, et al. :
Defendants :
----------X
Deposition of DENISE BANKS
Baltimore, Maryland
Monday, November 5, 2007
10:04 a.m.

Job No.: 5-114052
Pages 1 - 96
Reported by: Beatriz D. Fefel, RPR

2

Deposition of DENISE BANKS held at the offices of:

L.A.D. REPORTING COMPANY
10 North Calvert Street
The Equitable Building, Suite 141
Baltimore, Maryland 21202
(410) 539-3664

Pursuant to agreement, before Beatriz D. Fefel, Registered Professional Reporter and Notary Public of the State of Maryland.

3

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF JONES:
SEAN R. DAY, ESQUIRE
LAW OFFICE OF SEAN R. DAY
8505 Baltimore Avenue
Suite B
College Park, Maryland 20740
(301) 220-2270
AND
WILLIAM "CHAZ" CLAIBORNE, ESQUIRE
CLAIBORNE LAW
717 D Street, Northwest
Suite 210
Washington, D.C. 20004-2813
(202) 824-0700

4

A P P E A R A N C E S (C O N T I N U E D)

ON BEHALF OF THE PLAINTIFF NAACP:
HILLARY A. GOULD, ESQUIRE
GIBSON, DUNN & CRUTCHER, L.L.P.
1050 Connecticut Avenue, Northwest
Washington, D.C. 20036-5306
(202) 955-8500

ON BEHALF OF THE DEFENDANTS:
KARL A. POTHIER, ESQUIRE
ASSISTANT ATTORNEY GENERAL
MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
Suite 313
6776 Reisterstown Road
Baltimore, Maryland 21215
(410) 585-3071

21

A Right. Everybody comes -- all right. Just stop. Everyone comes in with an orange band --
Q Okay.
A -- everyone. So once you see a nurse, the orange band comes off. Pink band goes on for health and medical, mental, like, you know, any -- have medication or something like that, the pink band goes on then.
Q Okay. I got you now.
Okay. So let me ask you this question. Let's suppose that -- this orange band, does that go on before, or after they see the commissioner?
A Before.
Q All right. And you were giving me these posts that you go through, that the arrestees go through. Was that for males only, or was that also for female arrestees?
A Male and female.
Q All right. So apart from doing -- let's see. You were the WIP officer and then you did medical, took people in for their medical clearances. What other jobs have you held?

22

A Female search, heat strat.
Q Who?
A Heat strat.
Q What's that?
A Heat stratification. That's getting ladies cleared to go across the street to WDC, medically cleared for WDC.
Q How come you call it heat strat?
A Heat stratification. That means that same thing that goes on with the males goes on with the females, but they going into WDC for their medical clearance. They going -- they have been committed by the commissioner and they do a health assessment for the facility over there.
Q So this heat strat is only for female arrestees --
A That's --
Q -- who been ordered held?
A Who has been committed, yes.
Q Okay. Now, when you worked female search --
A Yes.
Q -- what periods of time did you do that?

23

A When I first started I was always in females.
Q Okay. Then how long did you work -- have you always worked in females searches, or is that something you only did for a period of time and then stopped?
A Right. It's only like for a period of time, and then you stop, you go to another post.
Q So how long were you in the female search room?
A I could have been in there, in and out, different -- I -- for work -- I'm going to say work week.
Q Umh-humh.
A I can be there for that whole week.
Q Okay.
A And then when I come back the following week I could have a different post.
Q Got you. Are you still occasionally assigned to the search room?
A I haven't been in that in a while.
Q When was the last time you were in the

24

search room?
A It could have been months. It could have been -- maybe like -- it's been like a year, I think.
Q Okay. So from the time you started up until a year ago, were you occasionally --
A In females.
Q -- posted to the female search room?
A Yes.
Q Okay. So it would -- this is 2007. So are you saying sometime in 2006 is when you -- is the last time you worked in the female search room?
A I think, but I'm not sure. But I think so.
Q Okay. Even if you can't remember the date --
A Umh-humh.
Q -- can you remember who was warden when you stopped working in the female search room?
A Oh. I couldn't tell you that.
Q Okay. How about assistant warden?
A I think Murphy was assistant warden.
Q Okay. Do you remember who was security chief?

25

A Fernandez. I think Fernandez was.
Q So basically the last time you worked in the female search room Fernandez was the security chief?
A Yes.
Q Okay. That just kind of helps us place it in time.
A Okay.
Q So from the time you first started and you were assigned to this female search room up until the last time you worked in the female search room, about how often would you be assigned to the female search room?
A It could be every day.
Q And then how long -- just kind of generally speaking.
A As far as what?
Q Were you working in the search room? I mean, I know you didn't work there every day because you said --
A Right.
Q -- sometimes you worked a week --
A See, when I say -- my workweek means we

26

seven days on and four days off. So for that week that I'm at work, I could be in the search room for that whole week.
Q I understand.
A Okay.
Q But like on average how often would you be in the search room during any given month?
A I guess two or three weeks, two weeks.
Q Okay. And when was the last time you actually worked in Central Booking?
A When the last time I actually worked in Central Booking?
Q (Nodding.)
A Yesterday.
Q Okay. Because some folks come in and they don't work in the Central Booking floor anymore or they don't --
A Oh. Yesterday.
Q Okay. Got you.
And what shift are you working now
A Seven to three; seven a.m. to three p.m.
Q Have you always worked that shift?

27

A No.
Q What shift were you working when you first started?
A Seven p.m. to three a.m.
Q And then how long did that last?
A Probably a month.
Q Okay. Didn't like that, hunh?
A No.
Q And then after that, what shift did you go to?
A Three p.m. to eleven p.m.
Q How long did you stay there?
A Two years. Two years.
Q And then what's --
MR. DAY: Which years?
Q Yeah. Okay. So let's see. If you started in 2001 --
A Umh-humh.
Q -- can you remember what years you worked the three to eleven?
A From 2001 'til -- 2001 to 2003. Either 2003 or 2004 is when I stopped.

28

Q Who was the security chief when you stopped?
A When I stopped working nights and come to seven to three?
Q No. When you stopped doing your three to eleven.
A When I stopped doing my three to eleven, Merritt was the chief.
Q Okay. And then after you -- and who was the assistant warden? Do you remember that?
A I think Murphy was. I'm not sure. I think Murphy was.
Q Okay. And then after you stopped doing the three to eleven, what shift did you go to?
A Seven to three.
Q That's seven a.m. to three p.m.?
A Yes.
Q And that's the one you're doing now, right?
A Yes.
Q So from the time you started the seven a.m. to three p.m., that was it, that's the only shift you've worked?
A No. I worked like two -- I might have made

45

A No.
Q When was the first time you did any searches of females?
A When I went to the eight -- three to eleven and eleven A to seven P.
Q Okay. How about on the three p.m. to eleven p.m.?
A Yes.
Q So during that period of time did you ever work in the female Sallyport?
A Yes.
Q And during that period of time did you ever work on the male Sallyport?
A Yes.
Q All right. So when you worked on the female Sallyport, you were also in the search room, female search room; is that right?
A Yes.
Q All right. So when you first started working in the Sallyport in the female search room, who taught you how to do the job?
A Who taught me how to do my job?

46

Q Right. Showed you what to do.
A I'm trying to remember who was the officer at that time that showed me. I think it was Officer Blackmon.
Q Is that B-L-A-C-K-M-O-N?
A Yes.
Q She's still working there now, right?
A Yes.
Q Do you remember her first name?
A I don't know Officer Blackmon's first name.
Q All right. What did she tell you about how to -- what to do in the search room?
A When -- when the females come in, they get a brief pat-down. Before they -- when they take their belongings off, they have a regular, valuable, and U. S. currency, which is their money. After we take all of their properties out of their pockets and on them they will go into a search room. Take them in the search room and they would get stripped naked down, so they're bare, you know, bare bodies, and they have to squat and cough. And then I check all of their clothing and give it back, making sure that they don't have any contrabands or weapons on them. And then I give it back, give their clothes back.

47

Q So during that period of time the women got stripped down to the skin; is that right?
A Yes.
Q That was just every female arrestee that came through got stripped down to the skin?
A That I did, yes.
Q So it didn't matter what the charge was, right?
A Right.
Q And it didn't matter whether anything had been found on her in the Sallyport, right?
A Right.
Q All right. Now, is this what Blackmon told you to do, to strip every woman down to her skin?
A Right, to make sure they didn't have anything on them.
Q But, I mean, that's how Blackmon taught you to do it, right?
A Right.
Q Okay. You know, just like when you're socializing with anybody, or even at work, did this topic of the strip searches in the search room ever come up? Did you all ever talk about, hey, I found this, or I don't like this part of the job, or we need this for our safety? Did anything like that ever come up?
A Something like off work or --
Q Yeah, at any time.
A Any --
Q What I'm wondering is this, really. What I'm leading up to is did you believe that during this period of time your co-workers who were working in the search room would also take the women into the search room and give them a strip search?
A Do I think they did their job?
Q Okay. Well, let's put it that way. I'm just -- what I'm kind of -- let me explain it this way. I'm just trying to find out if this is just something you did or if this is what everybody did with the female arrestees.
A Right. See, that's the thing, I can only say what I did.

48

49

Q Okay.
A So I can't justify, like when they go behind closed doors, what they did.
Q Right.
A I'm doing it to safeguard it for me --
Q I understand.
A -- to make sure nobody -- because people do hide things in provocative places.
Q Okay. Is there any -- you said were they doing their job. Is there any reason to believe that when you saw your co-workers take a woman into the search room, is there any reason to believe they were doing something else besides strip searching them in there?
A It could be because at a later date, you know, at a later date throughout the day you can -- a person would have contraband on them.
Q So you take them in and do a strip search, right?
A You search them again.
Q Strip search. So it seems to me that's the only reason anybody went to the search room during

50

this period of time at least, was to get a strip search?
A Right.
Q This practice of making, making all of the female arrestees go into the search room, take their clothes off and do the squat and cough, how long did that practice continue? Or is it still going on today?
A I think it's still going on today. I'm not sure.
Q Well, let's kind of go this way.
A Excuse me.
Q I'm sorry. That's okay. That's me.
The last time you worked in the search room was about a year ago, right?
A Yes.
Q So the last time you worked in the search room, were you still giving the strip searches to all the females?
A I did, yes.
Q And so at that time you were on the seven a.m. to three p.m.?

51

A Yes.
Q To your knowledge, you know, when you were working the seven a.m. to three p.m., were the other female correction officers giving strip searches to the female arrestees?
A To my knowledge, I think they were, yes.
Q Now, at any given time when you were working in the female search room, how many other of your colleagues would be assigned to work in the search room?
A That's -- that's a one-man post. So it only be like one person.
Q Okay.
A Only, only -- I only get assistance if I get an overflow of females coming in at one time.
Q Okay.
A Then I will say I need somebody to help me, you know, search.
Q I see.
A That person would stay out front with them, they be watch -- they take all their belongings or whatever, and give me the bag and them, and we go in

52

the search room and I'll strip search them down, take their clothes, check their clothes to make sure, you know, nothing was in it or on them, and give it back to them, tell them to come get dressed and step back outside.
Q All right. What would you do if at any time during the process, you know, when a female arrestee came in at the Sallyport until she got to the booking window, what would you do if you found illegal drugs on that woman?
A We have to notify the police liaison to call the officer back to say these drugs was found on this person, and you do a copy on our little copy machine and send it to them.
Q A copy of what?
A Of the drugs on a piece of paper, and send them the drugs and a copy of the paper to them down to the liaisons.
Q A copy of what paper?
A All right. Like say this was drugs, illegal drugs.
Q Right.

69

Q Okay. Now, how about when you switched over from seven a.m. to three p.m., did you see the same thing?

A Yes.

Q So then based on your knowledge, as far as you know, from the time you started your three p.m. to eleven p.m. shift and then up through your working your seven a.m. to three p.m. shift, you believe that the male officers were strip searching all of the male arrestees?

MR. POTHIER: Objection to form.

A Yes.

Q Did you ever go to the lineup or the roll call when you were working over in Central Booking?

A Yes.

Q Did any warden ever come in there and say, look, from now on we're going to change the way we do our strip searches?

A Not my knowledge, no.

Q How about -- do you know what a post order is?

A Yes.

70

Q Did any post orders ever come out and change any of the strip search practices?

A Not that I know of.

Q Did you ever hear anybody saying, okay, now we're going to strip search the males just down to their last layer of clothing, instead of strip searching them all the way down to their skin?

A I might have heard that, but I just can't like recall exactly when.

Q Okay. When was the last time you were actually in the female search room doing a search on a female?

A It's been a minute. This could have been -- what -- I couldn't possibly -- it could have been last year. I'm not sure.

Q Okay. How many times last year did you work in the female search room?

A I used to work it all the time.

Q Okay. And can you just give me a brief description of the search process that you used, you know, this last time when you worked in -- the last times when you worked in the female search room?

71

A I searched -- I stripped down bare.

Q Okay. So you take the woman into --

A Went into the search room.

Q And then you take all her clothes off?

A And I take all her clothes off and I searched all her belongings.

Q All right. So you search her naked, down to the skin?

A Yes.

Q And do you -- do the -- do you then tell the female arrestees to squat and cough or anything like that?

A Yes.

Q Why do you tell them to squat and cough?

A Because they could have -- that's what I meant by provocative places.

Q Okay.

A They could have anything stored up in their anal area or their vagina. So if they cough, it could come out.

Q I see. Have you seen that happen before, somebody coughs and something comes out of a

72

provocative area?

A Yes. But it wouldn't be no contraband.

Q What would it be?

A Toilet tissue from them - excuse my language - being on their menstrual cycle.

Q What do you all do with the -- when you find something like that? Do you dispose of it, or --

A What?

Q Like a sanitary napkin or something like that.

A Yes, it's disposed of, and give them a fresh one, or give them a tampon.

Q Apart from that, if you find -- you know, when the female does her squat and cough, have you ever found drugs as a result of that squat and cough search?

A No, I haven't.

Q How about weapons?

A No.

Q And why do you all make them do the squat and cough part?

A For me that's just a precaution that I take.

PLAINTIFF'S EXHIBIT 117

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
----------X
ERIC JONES, et al. :
Plaintiffs :
v. : 05-1287 CCB
SUSAN MURPHY, et al. :
Defendants :
----------X
Deposition of LOLA NOEL JONES
Baltimore, Maryland
Monday, November 5, 2007
11:38 a.m.

Job No.: 5-114052
Pages 1 - 100
Reported by: Beatriz D. Fefel, RPR

2

Deposition of LOLA NOEL JONES, held at the offices of:

L.A.D. REPORTING COMPANY
10 North Calvert Street
The Equitable Building, Suite 141
Baltimore, Maryland 21202
(410) 539-3664

Pursuant to agreement, before Beatriz D. Fefel, Registered Professional Reporter and Notary Public of the State of Maryland.

3

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF JONES:
SEAN R. DAY, ESQUIRE
LAW OFFICE OF SEAN R. DAY
8505 Baltimore Avenue
Suite B
College Park, Maryland 20740
(301) 220-2270
AND
WILLIAM "CHAZ" CLAIBORNE, ESQUIRE
CLAIBORNE LAW
717 D Street, Northwest
Suite 210
Washington, D.C. 20004-2813
(202) 824-0700

4

A P P E A R A N C E S (C O N T I N U E D)

ON BEHALF OF THE PLAINTIFF NAACP:
HILLARY A. GOULD, ESQUIRE
GIBSON, DUNN & CRUTCHER, L.L.P.
1050 Connecticut Avenue, Northwest
Washington, D.C. 20036-5306
(202) 955-8500

ON BEHALF OF THE DEFENDANTS:
KARL A. POTHIER, ESQUIRE
ASSISTANT ATTORNEY GENERAL
MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES
Suite 313
6776 Reisterstown Road
Baltimore, Maryland 21215
(410) 585-3071

13

A Yes.
Q Okay. So when you've been booking -- working the booking process area, did you ever work the Sallyport search room post?
A Are you talking about the male Sallyport, or the female? You got to be talking about the female side.
Q Yeah. But --
A Yes, I have.
Q So, now, the same person does both of those positions, right? The female officer meets the female arrestee at the Sallyport door --
A Yeah.
Q -- and then ultimately brings her into the search room?
A Not exactly in that order, but yeah.
Q Can you tell me how it works, then?
A Well, I was trained one way in the beginning, when I initially came over there, then later on I was trained another way to do things, you know.
Q Well, let's talk about the first time you

14

got trained. What did they train you?
A The first time I was trained -- I mean, I was trained under a sergeant, Sergeant Sabrina West. She no longer works there, though. I was trained for you to pat the arrestee down at the door, before you even let them in.
Q That's at the Sallyport door?
A Right. When a police officer is presenting his arrestee to you, you have to pat him down, or her, because I have worked the male and I have worked the female door. Once you pat the person down, they come into the institution, and you have a desk that sits up against the wall where you have your plastic bags, like a garbage bag, you have small ones, you have large ones, you have a blue property bag that secures their valuables that you can't see, like if they have cash, watches, jewelry, it goes into this blue bag. You going to pat -- after you pat -- frisk the person down at the door, you bring them to your table. They still probably gonna have handcuffs on. Well, he -- yeah. Well, that's, that's what we do. That's what I used to do when I first got there.

15

Q Umh-humh.
A Now that -- let me just finish the process before I move on to something else. I don't want to confuse myself.
Q Yeah.
A So we have these supplies on our desk, on the table, and you gonna -- the officer that dropped them off -- usually -- well, now they have these flex PlastiCuffs, I don't think they had those in the beginning, when I started. They have those plasticuffs that you -- we have a cutter that -- a wire cutter --
Q Umh-humh.
A -- or a plastic piece that cuts plastic, we cut those plastic off. If they have metal handcuffs, the officers usually takes them off the individual.
And we inventory their property. Like if they have watches, they take their jewelry off and we secure it in a property bag. If they have a coat, a winter coat, the winter coat goes -- we search the pockets, pat the pockets down, or whatever they have, pat the pockets down on their coat, if nothing's in

16

it, then it curled up in a trash bag. And practically everything they have is checked before you put it in a bag, before you bag it up for the officer that's going to be doing the booking. Because booking is like -- the booking process is like typing in the office, but you gonna --
Q Does the same officer do the --
A No, it's a different officer.
Q Who does the typing?
A It's a different officer that does the inventory of the property. I mean, that types it in.
Q Right.
A Anyway, once you've done that, you're going to take the individual into the search room. There's a search room where you were trained to take the arrestee in there. This is in the beginning when I first started working in the booking area. You're told to tell the individual to strip down to nothing basically. Well, I -- in my process, I was trained one way, but I would do it a different way because I didn't feel comfortable that -- you know, to tell people to do that. So, you know, this is -- when I

17

had to do it, I would have the person go in there, in the search room and unbutton their shirt, or if they have a pullover shirt, just to lift their shirt up, and then loosen their bra and flip their bra up, lift their breasts up so that I could see that you don't have -- you're not hiding a weapon.

Okay. You still have your pants on, you still have your shirt on, you just lifted it up. When you get finished the top body search, they still have their shirt on, I ask them to take their pants down to their knees, take their underwear down to their knees, and they have to bend over and cough.

Q I understand.

A And that's the search in the search room.

Q Now, when you're talking about the top body search at this time --

A Umh-humh.

Q -- would you actually view, look at the women's naked breasts?

A Would I actually view, look at them?

Q Right. When they flipped up the bra, could you see --

18

A You have to look underneath. When women have -- well, when you're well-endowed, and once you've taken your shirt off and flipped the bra up, sometime women store stuff underneath of here. So you do have to ask them to lift it, and once they lift it, they put it back down and fix their clothes.

Q I see. I see you making a motion. That's not going to -- the court reporter can't get the motions, so that's why I'm asking the question.

A Okay. Yeah.

Q When you do those flipping motions, that means you were able to see with your eyes the women's breasts?

A Basically, yeah.

Q Okay. That's just all I wanted to cover.

And you'd ask the lady if she was well-endowed to lift up her breasts to see if there was anything under there?

A Yeah. Because a lot of times you dealing with -- you have to do this because you dealing with people that try to be -- try to outslick you, or try to bring drugs, try to have drugs there while they --

19

while they there in the holding cell. Like we deal with a lot of -- you do have prostitutes that come through the jail, and they -- I'm going to say -- I don't -- maybe -- hold it. Sorry. Okay. You have --

Q What? No. What were you going to say?

MR. DAY: You can be honest.

Q I mean, we've all been doing this.

A Okay. You have --

Q You're not --

A -- a prostitute --

Q -- the first person --

A -- that comes --

Q -- in here.

A -- in through the jail, right, and basically I already know that you are one --

Q Right.

A -- because of the way you're dressed. The odor of your body is -- the odor's not good. Sometime I may have to get a face mask because the odor's not -- is -- the odor is -- the odor is so bad, you don't -- I don't want to be in that one room with you. So I'm going to -- sometimes I have to get a mask from

20

the nurse.

So those women, they put different types of articles in their body cavities, and we have searched women and they have come out with cigarette lighters, needles, all of that stuff, in the beginning. That was in the beginning when I first started working the booking area. We used to find stuff like that.

Q So when you first started, that was when Giles was the chief and Jednorski was the warden?

A I believe so, yeah.

Q Now, back during that period when you were doing here's-how-they-trained-you-to-do-it-first, did you -- this search process as you've described it, did every single female arrestee have to undergo it?

A Yes, they wanted every single female to undergo it. And, you know, I went to a supervisor because I had a problem with that, I really did. But it was like nobody gets discriminated, everybody, everybody has to get done. I -- and I was like, you know, to my supervisor, well, why is it that somebody that just come in here on a traffic, like somebody didn't know they had a suspended license but you

21

locking them up for their suspended license, you know, they may have moved from one address to another and didn't know that their -- or they missed the court date or something, you know. I mean, just sometimes regular everyday people that you -- say it could be me that, that -- you know, and I was -- you know, I would have a problem with why do you have to house the murderers with the people that just come to -- that just had a traffic ticket or DUI. Everybody is not a career criminal like everybody else, you know. I had a problem, I still do have a problem. I'm trying to find a new job. I still have a problem with why do you house these people that's just here for a traffic offense, why do you have to house them with the rapists and the murderers. I still have a problem with that. I don't like that, I really don't. And I, I -- sometimes there are certain things to -- I mean, you all recording me, I can't say. But anyway.

Q That's okay. I mean, what you said here is, it's recorded, but here's your -- well, what's on your mind? Just get it off your mind.

MR. POTHIER: Well, just answer the

22

questions.

A I'm going to answer your questions.

Q Sure.

A But like I said, I'm waiting for the next answer -- next question.

Q Okay. Who was the supervisor that you talked to about this?

A Several of us spoke to the sergeant that I trained under, Sergeant Sabrina West. She said, Jones, that's just the way it is, you know; you know, we don't have the higher-up command of chain stuff. So she just used to tell me that's just the way it is.

Q Did she tell you that's the way the warden wants it so that's the way we have to do it?

MR. POTHIER: Objection.

A Kind of. Sort of, yeah. And then she will say how -- that's how it is in the post orders, she would say that, too.

Q How often did you talk to Sergeant West about this? Was this a running thing where you were --

A It was a regular thing, because I trained

23

underneath of her.

Q How about any of the others? You mentioned several supervisors. Who were the other part of the several?

A Well, there's not too many supervisors that I talked to, because I'm not the supervisor's pet. So there's not too many supervisors I could talk to.

Q Do you remember their names?

A Did I talk to other supervisors about that problem? Probably, but, you know, it just went overtop of their head, you know, and they never came back with any feedback. So it really don't make sense to just even bring their name up.

Q Yeah. I mean, we would like to know their names. How about Childs? Did you go complain about this to Childs?

A Yeah, I probably did. I probably said something to Jednorski, too.

Q What would you tell --

A They didn't care. They didn't care. They was the big head honchos.

Q Right.

24

A They really didn't care. Because I'm the low man down on the totem pole, I'm the one that had to do these things. This was in my post orders for me to do, and this is what I did.

Q I understand. I understand completely.

So what was Jednorski's reaction when you told him about these strip searches?

A Well, if the strip searches aren't done, then weapons and stuff come into the jail, you know. And, you know, since, since the strip searches have, you know, ceased, the complete clothes off like they supposed to be done, you know, stuff come in the jail. Some women -- some lady came in there and tried to commit suicide. Where she had the razor blades or how she got them in the jail -- she was still on the first floor in the booking process, in between the area we put females and where you see the commissioner in the pretrial area, she tried to kill herself with a razor blade. I don't know if she had them in her mouth or she had them in a body cavity.

Well, usually we ask to look in the -- I ask to look in a person's mouth, too, as part of my

25

search, lift your tongue up, look in the mouth. Even I ask the in -- I ask the arrestee to take their own fingers and go through their own hair. Sometimes I -- sometimes if it looks like they have too much hair, I'll put gloves on -- well, I'll usually have gloves, but sometimes I'll take them off once my hand's wet. I'll put my hand through an individual's hair sometimes, but usually I try to get them to do it first, before I do it. That's the people with long hair that you can hide stuff in.

Q Right. Now, when you talked to Jednorski, do you remember when that was? Was that when you first got there, or was that also like a running thing, whenever you saw him you'd complain about it?

A Sometimes they would walk the floor, you know, and let you talk to them freely, openly, if you -- if you -- if where we worked is -- you're not busy at that particular time when they come through.

Q Who is "they"? You mean the wardens?

A Yeah --

Q How about --

A -- the warden.

26

Q -- Murphy? She was assistant warden back then, right?

A Yeah.

Q Was she already the assistant warden when you went over to the booking process part of Central Booking?

A No.

Q So --

A She came later.

Q I mean, that's like -- I'm not talking about when she became warden. How about when she came to the facility? She came to the facility after you started working in the search room part of the booking area --

A Right.

Q -- right?

A Right.

Q Do you remember how long you were working in the search -- you know, the booking process area before Murphy came to Central Booking?

A Probably for several years, probably.

Q Did you ever talk to Murphy about this when she was the assistant warden?

A Probably.

Q What was her kind of reaction?

A The same thing that you hear from -- the same thing that was said, it's part of the process, you still have to do it.

Q Right. Did her attitude change after she became the warden?

A I don't think so.

Q Did you talk to her about this after she became the warden?

A No.

Q How about your -- I'm sorry.

A This is one thing.

Q Yeah.

A All right? Since I've been working there. You can't go to them for certain things because it gets pushed under the rug. So you just learn how to just -- once you said something one time and time has passed, you learn not to go back, especially to that same person you said it to.

Q Right.

27

28

A Because -- ask your next question.

Q Okay. How about your colleagues, did you ever tell your colleagues that you didn't feel comfortable?

A Sure.

Q What did they say?

A It's job security, we got to do it.

Q Who did you talk to?

A We all talk among each other.

Q The -- you mean --

A My co-workers.

Q -- the correctional officers?

A I'm not going to name names. My co-workers, everybody that I work around. I don't want to name names.

Q Well --

A Too many of them to name. And then I really don't want to name them because -- I want to get off the topic or get off the subject. I don't want to.

Q Well --

A If you -- if -- you need me to name some names?

41

She's no longer here now, she passed away a few months, a month or so. She passed away not that long ago.

Q Okay.

A I'm trying to think.

Q Did she work there until she passed?

A Basically.

Q Okay. But we know it was after Jednorski left, right, that the new training came in?

A I'm not -- I can't be sure. I can't be sure about that. I can't say yes and I can't say no on that because -- memory doesn't really serve me correct on the correct times and dates, but I can tell you that it happened, but I really can't explain exactly what year. Because you not going to ask me to recall something five years ago, I'm going to say I have no knowledge, because I don't. I know what happened, but I can't give you no specifics on the date.

Q Well, let's think about it. You complained to Murphy about it, right?

A Probably.

Q All right. Now, so do they announce the

42

change in the strip search practice at the roll call?

A If they didn't do that at roll call, they did it once you was in that particular area that you was working that day, like the females.

Q Okay. So who -- what did they tell you when you got told?

A Basically that the females wouldn't be taking all their clothes off at once.

Q So what was --

A Just -- just the way I was telling you that I liked -- that I preferred to do it. Maybe I was told that way, I'm not sure, because I didn't really like the taking-all-the-clothes-off approach.

Q So you talked about two training periods. The first way you got trained was the females had to take off every article of clothing down to the naked skin?

A Basically, yeah.

Q Squat and cough?

A Yeah.

Q Okay. Now, the new training was that the females had to take their pants and their underwear

43

down to their knees; is that right?

MR. POTHIER: Objection. She hasn't testified to that.

MR. CLAIBORNE: I don't know.

BY MR. CLAIBORNE:

Q That's what I thought you were saying, because that's the way you said you did it.

A Now, ask the question again.

Q Yeah. In the new training, what do they tell you to do with respect to searching the females?

A With respect to the search is never at any time would the female have all of their clothes off, basically, that's what I was trained the second time around.

Q Okay.

A And as I stated before, when women go into the search area to be searched, you could ask the woman to even take off their T-shirt or blouse, whatever they may have on, and they still have their underwear on, they still have their pants on, they still have their shoes and socks on, and then you can have them -- they don't even have to loosen their bra

44

if they don't want to. Flip their bra up so that you can see that they are not storing weapons.

Q When you say flip the bra, do you mean so that your eyes can look at their breasts?

A Not that I really wanted to.

Q I know. But I'm just talking about --

A Please.

Q I'm not saying that. I'm just talking about for the searches, you'd have to do a visual examination of the breasts?

A Basically, yeah. Not that I really wanted to.

Q Okay. Did you have to tell the women to move their breasts in any way, lift them up or anything?

A Only for those women that were well endowed, where their breasts -- and I'm not going to say sag. Where they came down to where it was like a pocket underneath of here (indicating), and you have to lift it to see if something is stored there. Those, yeah, just them. But if somebody just -- I mean -- well, I don't want to use myself. But some women, they may

45

not have to do that, lift that thing -- lift your -- lift them up a little, some women don't have to do that at all.

Q Okay. Did you ever find anything as a result of --

A Of searching that area?

Q Yeah.

A Cigarette lighters and needles, yes.

Q Okay. So after you examined the women's breasts, then the women put their top clothes back on?

A I never touched them. Please.

Q No. I said examined. Visually examined is what I mean.

A Yeah. After they done that, they can put their bra back on.

Q Okay. Then they put their shirt back on?

A Usually I don't tell them to take their shirt off.

Q Just lift their shirt up?

A Basically, yes.

Q Now, that's your top search. So when you're done with your top search, you start on your bottom

46

body search, right?

A Yeah.

Q Bottom body search. Okay. With the new training, what did they tell you to do with your new training?

A Like I said before, they're not taking their clothes completely off. They're dropping their pants to their knees -- or, really, they only have to drop -- or you have to take your pants down at least to your knees, and your underwear, and then you have to bend over, squat and cough.

Q Do you know what I mean when I say visual examination, where you look at somebody? I'm not talking about touching them. I'm just talking about when you -- like here's a visual examination of this pen, I'm looking at it.

A Umh-humh.

Q That's really what I mean, look at it. Did you have to look at the women's vaginas after they took their pants and underwear down?

A Yeah.

Q Okay. So that's what your superiors

47

instructed you to do?

A Yeah, I guess so. It wasn't comfortable. I didn't want to do it, but it was job security.

Q Okay. Now, this is kind of a colloquial term, but did the females have to spread their butt cheeks as part of the search?

A Some officers told them to do that, but I didn't.

Q Okay. How do you know some told them to do that?

A Because if I'm, like I just told you, in the area where you do the searches, you may be standing beside one officer -- sometime we have like five females come in the door at one time, so you may have two officers searching sometimes. Well, a long time ago you would used to do that. And you may hear the officer say spread your cheeks.

Q Got you. Okay.

Now, when was the last time you worked in a search room?

A Within the last thirty days I have.

Q And so are you still conducting this same

48

type of search?

A Yup.

Q So you make every woman take down her -- well, pull her -- she's got to pull her shirt up and then pull her bra up, you do a visual examination --

A Yes.

Q -- of her breasts?

A Yes.

Q And then after she puts her shirt back together, you make them take down their pants and take down their panties?

A Yeah.

Q And then you do the visual examination?

A Yeah.

Q Okay. Front and back?

A No, not front and back. Because she is turned -- yeah, I guess you could say. Because when she goes to -- she have to turn around -- she's already turned around looking at me. So when I instruct her what to do, she turns around. So, yeah, I guess you could say front and back.

Q Based on what you hear people say seeing

49

other people, are the other female officers doing these same types of searches?

A Yeah. I have some officers that tell them -- well, yeah. They may not do it the way -- some of them are still telling them to take all their clothes off, yes, some officers are still doing it that way. Yes, they are. I can't -- only name one in particular that I know that really does that, and that was the officer that just left, and I can't tell you nobody else. But I know that she said -- she told -- she said that's the way she still does it.

Q What's her name?

A Officer Banks.

Q When did she tell you that's the way she still does it?

A When we met with him on that last occasion, last Thursday or Friday, I went for my job. When I heard her make the statement in front of him and the other officer, too, Officer Sharpe, that's when she said it. I may not have actually been in the room with her when she done it, but she said it, that's what she do.

50

Q Who is Officer Sharpe?

A Officer Sharpe is the next officer that's coming to meet with you at two o'clock.

Q When did you talk to Sharpe?

A I didn't talk to her. You mean when did I -- we all know that we suppose to meet with you, but we don't know what each other is talking about or what each other said.

Q Right.

A What I talk to you about is none of her business. What she talk to you about is none of my business. If she choose to tell me, that's fine. But I'm not the type of officer that gonna share what I've sat here and said to you with her. She may find out in court or something, but I'm not -- I don't -- they are not my friends, put it like that. They are not my -- I don't see those people when I leave my job. I don't hang with them uptown. I don't go to movies with them. Our kids don't hang out or nothing. We're just co-workers, at work.

Q Who else was present when you and Sharpe and Banks were there?

51

A This gentleman right here (indicating).

Q Mr. Pothier?

A He got a funny name. That's why I said "this gentleman."

Q Pothier?

MR. POTHIER: Something like that.

MR. CLAIBORNE: It's French or something like that. It's pretty common where I'm from.

BY MR. CLAIBORNE:

Q All right. Who else have you seen, you know, who -- other corrections officers have you seen down there talking about this?

A What, our thing today?

Q Yes. Just the strip search practice. I mean, like jurors always talk about the lawyers, they say that lawyer asked me this question, that lawyer asked me that question.

A We talked about this, you know, just -- don't nobody like to do it. Who want to look at another person body part? I know I don't. But I'm the single head of my household and that's the only way my bills get paid, if I have a job. So if you

52

want to call it job security, or whatever you want to call it, I just try to do my job when I'm at work. I try to do my job to the best of my ability.

Q Do you know what grouse means, when people grouse? It's kind of like complaining.

A Yeah, I guess.

Q All right. Well, so sometimes -- it sounds like sometimes the other corrections officers will complain about having to do these searches.

A Griping about it, yeah.

Q Gripe, that's a good word. So the other officers gripe because they have to strip search the female arrestees?

A Yeah, I guess so. Nobody wants to do that. That's a job that nobody don't want to do. Some people don't mind to do it, doing it, but -- some officers don't mind. It's like they get a kick out of it or something. But I don't, I don't like to do it.

Q But as far as you know, everybody's still doing it to up to the present, all the female officers are still strip searching all the female arrestees?

A To my knowledge.

PLAINTIFF'S EXHIBIT 121

DECLARATION OF BARRETT S. LITT

I**, BARRETT S. LITT**, declare:

1. I am a partner in the law firm of Litt, Estuar, Harrison & Kitson, LLP. For the seven years before the formation of my current firm, I was the principal in the law firm of Litt & Associates, Inc., in which the partners in my current firm were trained. From September 1, 1991 to May 1, 1997, when my then partner left the law firm to become Deputy General Counsel for Civil Rights at HUD, I was a partner at the firm of Litt & Marquez. For the seven years prior to that, I was a partner in the firm of Litt & Stormer, Inc. The facts set forth herein are within my personal knowledge or knowledge gained from review of the pertinent documents. If called upon, I could and would testify to those facts in a court of law.

2. This declaration is submitted in support of Plaintiffs' Motion for Class Certification.

3. I am an attorney duly licensed to practice in the State of California and in the Central District of California. I graduated from the University of California at Berkeley in 1966, and from UCLA Law School in 1969. For the first approximately ten or more years of my practice, I focused primarily in the area of criminal defense at the trial and appellate levels, mostly in the federal courts. In that capacity, I handled hundreds of matters, tried many cases ranging from immigration offenses to murders, and handled numerous appeals. For the past approximately 25 years, I, as well as the firms in which I have been a principal, have focused primarily on complex civil litigation in the areas of constitutional law, civil rights law, class action litigation, and complex multi-party litigation.

4. My current and former firms listed in ¶1 all operated for the specific purpose of developing and maintaining a civil rights and public

interest law practice which operates in the private sector on the basis of self-generated fee awards and other recoveries. Nearly all of the work of my past and present firms falls into this category. Litt & Stormer received the Pro Bono Firm of the Year Award from Public Counsel in 1987 in recognition of its public interest and civil rights work. Litt & Marquez received an award from the NAACP Legal Defense Fund in July, 1992, as civil rights firm of the year in recognition of its civil rights work, primarily for litigation I headed regarding the LAPD's canine unit. I received an award from UCLA School of Law as its public interest alumnus of the year in 1995. I have both spoken and written on the subject of civil rights training. I recently published an article entitled "Class Certification in Police/ Law Enforcement Cases" in *Civil Rights Litigation and Attorney's Fee Annual Handbook*, Vol. 18, Ch. 3 (West Publishing 2002) and an article in the *Los Angeles Lawyer* regarding the use of minimum statutory damages under the Unruh Act, particularly actions brought under Civil Code §52.1, to enhance the prospects for certifying class actions. See *Rights for Wrongs*, Los Angeles Lawyer December 2005.

5. Civil rights class actions in which I am, or have been, the, or one of the, lead counsel, include:

- *Craft v. County of San Bernardino*, 468 F.Supp.2d 1172 (C.D.Cal. 2006) (certified class action against the Sheriff of San Bernardino County for blanket strip searches of detainees, arrestees, and persons ordered released from custody; partial summary judgment decided for plaintiffs; $25.5 Million settlement approved and order signed on April 1, 2008);

- *Gail Marie Harrington-Wisely, et al. v. State of California, et al.*, Superior Court Case No. BC 226373 (a case involving searches of visitors to California prisons utilizing backscatter x-ray methods without reasonable suspicion; stipulated injunction entered);

- *Lopez v. Youngblood*, No. CV07-00474 LJO (DLBx) (E.D. Calif.) (pending class action against Kern County, California, for unlawful pre-arraignment and post-release strip searches and strip searches not conducted in private);

- *Williams v. Block*, Case No. CV-97-03826-CW (Central District of California) and related cases (a series of cases county jail overdetention and strip search cases, settled for $27 Million and a complete revamp of jail procedures);

- *Bynum v. District of Columbia*, Case No. 02-956 (RCL) (D.D.C.) (class action against the District of Columbia for overdetentions and blanket strip searches of persons ordered released from custody; final approval of $12,000,000 settlement occurred January 2006);

- *Barnes v. District of Columbia*, Civil Action No: 06-315 (RCL) (D.D.C.) (pending class action against District of Columbia for continuing to both over-detain and strip search post-release inmates despite settlement in *Bynum*, *supra*);

- *Johnson v. District of Columbia*, Case No. 02-2364 (RMC) (D.D.C.) (pending class action against the District of Columbia and United States Marshals for blanket strip searches of arrestees without reasonable suspicion and not involved in drug or violent activity);

- *Powell v. Barrett*, Civil Case No. 1:04-cv-1100 (N.D. Ga.)(RWS)(pending class action against the Sheriff of Fulton County for overdetentions and blanket strip searches of arrestees and persons ordered released from custody; interlocutory appeal resulted in no qualified immunity determination for the strip search practices at issue; matter currently pending in the Eleventh Circuit after rehearing en banc granted);

- *Davis v. County of Los Angeles*, No. CV 04-8251 AHM (MANx) (C.D. Calif.) (pending class action for failure to adequately address spread of MRSA in the Los Angeles County jail);

- *Solis v. County of Los Angeles*, No. CV06-1135 SVW (CTx) (C.D. Calif.) (pending class action for strip searches of persons arrested on

warrant without individualized suspicion and strip searches in groups);

- *Ofoma v. Biggers*, Case No.: 715400 (Complex Litigation Panel) (Orange County Superior Court)(family discrimination class action settled in 1996 for damages for the individual plaintiffs and the class of residents, a consent decree and an award of attorney's fees);

- *People of the State of California v. Highland Federal Savings and Loan*, Case No.: CA 718 828 (Los Angeles Superior Court)(class action filed on behalf of the People of the State of California and a class of tenants residing in several slum buildings located in Los Angeles for financing practices encouraging and perpetuating slum conditions, settled for $3.165 million after decision in *People v. Highland*, 14 Cal.App.4th 1692, 19 Cal. Rptr. 555 (1993) established potential liability for lenders);

- *Hernandez v. Lee*, No. BC 084 011 (Los Angeles Superior Court)(a class action on behalf of tenants of numerous buildings for slum conditions settled in 1998 for $1,090,000);

- *Mould v. Investments Concept, Inc*., Case No.: CA 001 201 (Los Angeles Superior Court)(race discrimination class action on behalf of a class of applicants and potential housing applicants, settled in 1992 for a total of $850,000 for the class and a comprehensive consent decree regarding the defendants' discriminatory policies and practices);

- *California Federation of Daycare Association v. Mission Insurance Co.*, Case No.: CA 000 945 (Los Angeles Superior Court)(class action on behalf of several thousand family daycare providers whose daycare insurance policies were canceled mid-term or were not renewed by Mission Insurance Company, settled in 1980's for reinstatement of policies and attorney's fees; brought at request of Public Counsel).

6. Individual or multi-plaintiff civil rights cases in which I am or have been the, or one of the, lead counsel, going back to the late 1980's, include:

- *McClure v. City of Los Angeles*, No. CV-92-2776-E (C.D. Cal.)(fair housing and equal protection case against City of Long Beach and its agents for preventing six group homes for Alzheimer's victims from opening; jury verdict of $22.5 Million (reduced on remittitur to $13,826,832) plus approximately $10,000,000 in attorney's fees and costs; settled on appeal for $20 Million);

- *U.S. v. Hovsepian*, 359 F.3d 1144, 1147 (9th Cir. 2004)(en banc) (successful action to naturalize individuals previously convicted of conspiracy to bomb Turkish consulate in Philadelphia), aff'd after remand, 422 F.3d 883 (9/6/05);

- *Walker v. City of Lakewood***,** 263 F.3d 1005 (9th Cir. 2001) (reversing district court decision dismissing fair housing organization's claim against city for retaliation for supporting tenants suing landlord; case subsequently settled for structural relief, damages and attorney's fees);

- *Hospital and Service Employees Union, SEIU Local 399, AFL-CIO v. City of Los Angeles* (Los Angeles Superior Court) (a settlement in 1993 of $2.35 million against the Los Angeles Police Department for injuries to 148 demonstrators at Century City organized by the Justice for Janitors campaign of SEIU);

- *Rainey v. County of Ventura*, Case No.: 96 4492 LGB (C.D. Calif.)(action against County of Ventura for race discrimination on behalf of 12 police officers, settled for damages, structural relief and attorney's fees);

- *Lawson v. City of Los Angeles*, Case No.: BC 031 232 (Los Angeles Superior Court)(lawsuit filed in 1991 on behalf of individuals who had been subjected to what plaintiffs alleged were unlawful use of force practices by the Los Angeles Police Department's Canine Unit, settled in 1995 for $3.6 million and comprehensive structural relief);

- *Tipton-Whittingham v. City of Los Angeles*, Case No.: CV-94-3240 (TH)(C.D. Cal.)(sex discrimination and harassment suit against the Los Angeles Police Department, involving over 25 individual officers, as a result of which the Department has already completely

revamped its anti-discrimination policies and procedures; damages claims settled for $4.85 Million in 2004 in addition to separate fee award of nearly $2 Million in 2000 for injunctive relief, resulting in decision in *Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, in which the California Supreme Court upheld catalyst fees under California law);

- *Tavelman v. City of Huntington Park* (individual employment discrimination case against the City on behalf of a Jewish police officer who had been subjected to a campaign of religious harassment which was settled in mi-'90's for $350,000);

- *Hampton v. NRG* (racial harassment in employment claim; jury verdict of $1,000,000 for two former employees, plus award of attorney's fees and costs; settled in mid-'90's while on appeal);

- *Ware v. Brotman Medical Center* (Los Angeles Superior Court) (1993 $2.5 million jury verdict against hospital for removal of hospital privileges of black doctor; settled for $1.75 million);

- *Mathis v. PG&E* (1991 $2 million verdict against PG&E for barring contract employee from Diablo Canyon Nuclear Power Plant; reversed by the Ninth Circuit);

- *Zuniga v. Los Angeles Housing Authority*, 41 Cal.App.4th 2 (1995) (holding that the Housing Authority could be held responsible for injuries to tenants after the Housing Authority was put on notice that tenants were being victimized on the premises and took no reasonable measures to prevent the injury; case settled for $1,040,000);

- *Macias v. State of California* (Los Angeles Superior Court) (action against the State of California and others for blinding of young man as a result of exposure to malathion spray, a portion of which was decided in *Macias v. State of California*, 10 Cal.4th 844 (1994));

- *PIN v. HACLA*, Case No: CV-96-2810 RAP (RNBx)(action against the Housing Authority of the City of Los Angeles on behalf of several hundred present or former tenants for discrimination by failing to provide adequate security for isolated minorities in

housing developments, settled in 1998 for $1.3 Million plus a comprehensive structural relief settlement agreement);

- *Melgar v. Klee* (Los Angeles Superior Court) (1988) ($1.5 million jury verdict against Los Angeles Police Department for police shooting; settled for $1.45 million);

- *Heidy v. United States Customs Serv.*, 681 F.Supp. 1445 (C.D.Cal. 1988) (injunction against U.S. Customs Service for policies and practices of seizing materials from persons traveling from Nicaragua in violation of the First Amendment);

- *Hernandez v. Avol* (action on behalf of approximately 350 slum housing residents, settled in 1988 for a comprehensive injunction and $2.5 Million damages, plus a separate award of attorney's fees).

7. Civil rights cases in which I have been the, or one of the, lead counsel in reported decisions, i.e., decisions published in official state or federal reports (limited to 1995 forward) include: *Powell v. Barrett*, 496 F.3d 1288 (11th Cir. 2007) (rehearing en banc granted on issue of whether there was qualified immunity for practice of strip searching pre-trial detainees headed for the general population without reasonable suspicion); *Powell v. Barrett*, 376 F.Supp.2d 1340 (N.D.Ga. 2005); *Craft v. County of San Bernardino*, 468 F.Supp.2d 1172 (C.D.Cal. 2006) (holding that San Bernardino's (1) policy of strip searching in group setting arrestees returning from court who were entitled to release, and (2) policy of strip searching pre-arraignment arrestees charged with crimes not involving drugs or violence who were transferred from short-term to long-term jails violated the Fourth Amendment); *Bynum v. District of Columbia*, 412 F.Supp.2d 73 (D.D.C. 2006) (denying motion to dismiss claims of Fourth Amendment violations for strip searches of court returns entitled to release and over-detentions of such inmates); *Bynum v. Government of Dist. of Columbia*, 384 F.Supp.2d 342 (D.D.C. 2005) (approving final strip search settlement);

Tipton-Whittingham v. City of Los Angeles, 34 Cal.4th 604 (Cal. S. Ct. 2004) (civil rights catalyst attorneys' fees available under California law even though not under federal law); *Tipton-Whittingham v. City of Los Angeles*, 316 F.3d 1058 (9th Cir. 2003); *U.S. v. Hovsepian*, 422 F.3d 883 (9th Cir. 2005) (en banc); *U.S. v. Hovsepian*, 359 F.3d 1144 (9th Cir. 2004) (en banc); *Walker v. City of Lakewood*, 272 F.3d 1114 (9th Cir. 2001); *Streit v. County of Los Angeles*, 236 F.3d 552 (9th Cir. 2001); *Biggs v. Best, Best & Krieger*, 189 F.3d 989 (9th Cir. 1999); *Mathis v. Pacific Gas and Elec. Co.*, 75 F.3d 498 (9th Cir. 1996); *Haynie v. Superior Court*, 26 Cal.4th 1061 (Cal. S. Ct. 2001); *Silva v. Block*, 49 Cal.App.4th 345 (1996); *Zuniga v. Housing Authority*, 41 Cal.App.4th 82 (1995); and *Macias v. State of California*, 10 Cal.4th 844 (Cal. S. Ct. 1995).

8. I am rated "av" by Martindale-Hubbell and am listed as a Southern California "SuperLawyer" in the field of civil rights.

9. As my case list demonstrates, I have been involved with, and successful in, a wide range of complex civil rights cases, including class actions such as this, and have the requisite skills and experience to act as class counsel in this case.

10. I have been particularly involved in strip search class action litigation, as my case list makes clear. In the *Craft v. County of San Bernardino* case cited above, United States District Judge Stephen Larson made the following comments about me in awarding class fund attorney's fees:

- "Class counsel are highly experienced and highly regarded civil rights lawyers, with extensive class action experience. Mr. Litt is a well known and highly regarded civil rights lawyer specializing in civil rights class actions, especially law enforcement class actions. He has been lead counsel in two other eight figure strip search

> settlements aside from this one, and is lead counsel in several other pending strip search class actions in California, Washington D .C., Maryland and Georgia. He has several seven figure, and one eight figure, civil rights trial verdicts. With this case, he will have been lead counsel in three of the four largest strip search cases, measured in terms of monetary recovery, in the United States." *Craft v. County of San Bernardino*, 2008 WL 916965, 6 (C.D.Cal. 2008)

11. As these comments reflect, I am one of the leading plaintiffs' counsel in the country in the field at issue in this case – jail strip search cases.

12. In the course of my work on law enforcement class actions, I have gained considerable experience in organizing cases and making them manageable. From my experience, most law enforcement agencies have computerized records. Discovery has shown that this is true of the San Bernardino Sheriff's Department. These records usually contain a variety of information including name, address, a unique identifier, personal identifying information (such as Social Security number and driver's license number), arrest information, case number, charges, holds, release information (sometimes direct, sometimes requiring extraction), and other data from which an analysis of a variety of issues is possible. While the particular data and how it is presented varies from one jurisdiction to another, the common factor is databased prisoner and/or arrestee files from which it has always been possible to make determinations of targeted questions. As it pertains to this case, it has been possible to determine from the jail computer records whether someone was strip searched or, in jurisdictions that utilized random strip searches, whether they were among the population subjected to random strip searches. To accomplish this, I have

regularly worked with professors and graduate students at UCLA's Department of Statistics who have analyzed the data, put the relevant information that may come from different databases into a single database, and written programs specific to that database for the purposes of generating the required information. In this case, plaintiffs have submitted the declaration of Richard Berk, formerly a professor of statistics at UCLA now at the University of Pennsylvania, whom plaintiffs have retained to perform such an analysis. Professor Berk initially acted as plaintiffs' expert in the *Williams* case against the Los Angeles County Jail and, in conjunction with the settlement, performed such services for all the parties; i.e., plaintiffs' counsel, defense counsel, and the Class Administrator. Although Professor Berk is now at the University of Pennsylvania, I continue to use his services as he has extensive experience in this area, and has acted in this capacity in cases throughout the country. Although plaintiffs have not yet had the opportunity to review the computerized data, it is clear that plaintiffs will be able to proceed in this case as in the others, and determine class members from the defendants' computer records.

13. Once a class list is generated – ideally with the involvement of all parties and the court – the class can be notified. Generally, plaintiffs propose that class notice occur after a bifurcated liability trial, or after both the liability and damages phases of the trial, depending on the court's and parties' views. Plaintiffs suggest first a liability trial so that the substantial expense associated with class notice occur only if there is a favorable liability determination. In the event plaintiffs are successful on the liability issues, either in conjunction with a settlement or not, or before or after the damages phases of the trial, class notice would then be given. The class notice would explain the process adopted by the court, and provide an opportunity to opt out. An advantage of this approach is that it saves costs

and expenses for the parties and the court. If liability is not found, that is the end of the process. If liability is found, that is another opportunity to determine if the case can settle. If it does not, then the class receives notice. The claims procedure can be combined with the notice, even though there may be no amount involved yet. People filing claims would indicate that they qualify as a class member by making sworn representations under penalty of perjury, thereby adding protection that only appropriate class members are compensated. In this case, I believe that many of the key liability issues may be resolved through summary judgment, which plaintiffs will file prior to the hearing on the motion for class certification.

14. Once the class list is generated, a random sample of an appropriate size, probably around 250-300, would be generated for a damages trial. This is an estimate based on my personal experience. As Professor Berk indicates, it is too early to choose a proper random sample size. It would be difficult, to say the least, to try individual damage determinations for all class members. Instead, plaintiffs propose that the second phase of the trial would be to determine damages for the random sample. Plaintiffs would retain an integrated team of mental health professionals to provide opinions on the random sample's damages through a combination of surveys, psychological testing and individual interviews. The jury would determine the damages for each member of the random sample.

15. The third phase of the trial would be to extrapolate the random sample's damages to the class as a whole. From the random sample award, a statistical analysis will be utilized to determine the mean award, and what the range of awards from the mean would be at difference confidence levels. For example, if the mean award were $5,000 (an arbitrary figure), it can be determined under standard statistical procedures what the range on each side

of the mean would be for a 95%, 99% or even 99.99% confidence level. This determination would depend in part on the sample size, in part on the size of the total population at issue, and in part on the distribution of the random sample's awards. (See Professor Berk's Declaration.) Hypothetically, the range might be plus or minus $500 for a 95% confidence level, plus or minus $650 for a 99% confidence level, and plus or minus $1000 for a 99.99% confidence level. The confidence level means that, if another random sample were chosen, there is a certain likelihood that the mean from that determination would be within the plus or minus range of the mean in the initial random sample. A confidence level of 95% means that 19 out of 20 determinations drawn from a random sample would fall within that range; a confidence level of 99% means that 99 out of 100 determinations drawn from a random sample would fall within that range; and a confidence level of 99% means that 9,999 out of 10,000 determinations drawn from a random sample would fall within that range. The jury would hear testimony on how to extrapolate damages to the class as a whole and determine the confidence level to use, or the court would so determine and instruct the jury.

16. In any event, at whatever confidence level is adopted, the jury can determine the class damages to be awarded. This procedure provides a much higher level of reliability than individual damage trials since it is well known that re-trials of individual cases can result in substantially different verdicts than the first trial. In fact, in cases where the defense has retained a statistics expert, my experience has been that there is no dispute in principle with the approach or methodology which appear to be universally accepted among statisticians, but rather with how to apply it to the particulars of a case. I have not discussed this analysis with Professor Berk, and it is strictly my presentation based on my independent experience addressing statistics for litigation purposes.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 17, 2008, at Los Angeles, California.

Barrett S. Litt

UNITED STATES DISTRICT COURT
FOR MARYLAND

ERIC JONES, et al. Plaintiffs v. **SUSAN MURPHY** et al. Defendants	Civil Action No. **CCB 05 CV 1287**

AFFIDAVIT OF WILLIAM CLAIBORNE IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

1. My name is William Claiborne. I represent I am lead managing counsel for the named plaintiffs and the putative class in this case, Jones v. Murphy, CCB 05 CV 1287.

2. This affidavit is in support of plaintiffs' motion for class certification.

Training and Experience

3. I am an attorney licensed to practice in the State of Georgia (admitted to bar in 1988) and the District of Columbia (admitted to bar in 1995). I am admitted pro hac vice in this Court. I am a sole practitioner and maintain offices at 717 D Street, NW, Suite 210, Washington, DC 20004-2813, phone 202/824-0700, fax 202/824-0745. My practice focuses on plaintiffs' class actions.

4. In 1984 I received a B.A. in Greek and Latin from St. Louis University, St. Louis, Missouri (Phi Beta Kappa). I graduated magna cum laude from the University of Georgia Law School in 1987.

5. I clerked for Justice George T. Smith of the Supreme Court of Georgia after my first year of Law School, and I clerked for Justice Albert Rendlen of the Missouri Supreme Court after Law School (1987-1988).

6. From 1988 to 1990 I was an associate in corporate and international banking at Shaw, Pittman in Washington, D.C. From 1994 I practiced in Taipei, Taiwan in the offices of Ding Mao Song. The majority of the practice involved representing

Taiwan governmental entities such as Taiwan Power (the island's only utility) and DORTS (an agency responsible for constructing and operating a mass transit light rail system) in contract disputes with U.S. and European vendors. The practice was directly relevant to litigation because it involved evaluating claims and preparing them for arbitration subject to New York law.

7. In 1994/1995 I was an associate at Skadden, Arps in the New York/ Beijing offices representing lenders in project finance transactions and representing independent power producers in establishing plants in Mainland China. The practice involved drafting and negotiating documents for the financing of power plants. The practice was directly relevant to complex federal litigation because a typical financing document involved 20-30 parties and 150-160 exhibits.

8. I was on the CJA panel for the Superior Court of the District of Columbia from 1995 to 2005 where I tried numerous jury trials and I handled numerous criminal cases. In 1998 I attended a two week trial college at the National Criminal Defense College through Mercer Law School in Macon Georgia. I have tried over 35 bench and jury trials over the past 15 years. In year 2005-2006, the CLE classes I have attended include: (1) 41st Annual Deborah T. Creek Criminal Practice Institute (CPI) conference District of Columbia Public Defender Service all day seminar of criminal defense law, (2) Advanced E-Discovery Institute: Practical Concerns, Pragmatic Advice, Emerging Trends 2005, offered by Georgetown Univ. Law Center, (3) Annual Litigation Under § 42 U.S.C. 1983 Skills Seminar on December 9, 2005 in Atlanta, Georgia sponsored by the Institute of Continuing Legal Education in Georgia (speaker also), (4) District of Columbia NACDL Rites of Spring, (5) Georgetown University Law Center's 24th Annual Section 1983: Civil Rights Litigation on April 20-21, 2006. I attended the National Association of Criminal Defense Lawyers Seminar in October, 2007. I also recently attended the Georgetown University Law Center's 26th Annual Section 1983: Civil Rights Litigation on April 17-18, 2008.

9. Since 1995 I have been in private practice in the District of Columbia representing plaintiffs in civil rights and personal injury cases and defendants in criminal cases. My practice over the last 6-7 years is devoted mainly to complex federal civil rights litigation.

Academic

10. I delivered two sections (overdetentions and strip searches) at the Annual Litigation Under § 42 U.S.C. 1983 Skills Seminar on December 9, 2005 in Atlanta, Georgia sponsored by the Institute of Continuing Legal Education in Georgia. Participants who attend the whole seminar received CLE credits and I received CLE credits for the written materials I presented.

Professional Society Memberships

12. I belong to NPAP (National Police Accountability Project) and NACA (National Association of Consumer Advocates).

Experience litigating complex federal cases including civil rights cases

PENDING AND SETTLED CLASS ACTION CASES IN WHICH I AM LEAD/MANAGING COUNSEL

Bynum v. District of Columbia, 02-956 (RCL) (D.D.C.) (plaintiffs challenge DC Jail's practice of overdetaining inmates past their release dates and DC Jail's practice of returning court returns entitled to release by virtue of their court appearances to DC Jail solely for out-processing and subjecting them to blanket strip and visual body cavity searches before releasing them)(both classes certified, settled and approved) Bynum v. District of Columbia, 412 F. Supp. 2d 73 (D.D.C. 2006)

Elliott v. Smart Professional Photocopy Corp., 02ca3321 (Judge Rankin, District of Columbia Superior Court) (consumer rights) (settled and approved)

Ford v. ChartONE, Inc., 02ca1331, 04-CV-1193 (consumer rights) Julian Ford v. ChartOne, Inc., 2006 D.C. App. LEXIS 533 (January 2007) (final class settlement)

Petersan v. ChartONE, Inc., 03ca8328 (Judge Terrell, District of Columbia Superior Court) (consumer rights) (representative action, DC version of California's 17200) (January 2007) (final class settlement as part of Ford v. ChartONE settlement)

Johnson v. District of Columbia, 02-2364 (RMC) (D.D.C.) (plaintiffs challenge District of Columbia's and Marshals' practice of strip searching all women arrestees taken to Superior Court for presentment)(defendants stopped practice and motions to dismiss pending)(classes certified)

Powell v. Barrett, 04-1100(N.D. Ga.), 05-16734(11th Cir.) (plaintiffs challenge Fulton County Jail's practice of overdetaining inmates past their release dates and Fulton County Jail's practice of subjecting arrestees and court returns and other releasees to blanket strip and visual body cavity searches)(appeal argued 10/6/06; presiding judge announced panel would defer assigning opinion for 30 days to give

defendants opportunity to settle case before issuing opinion))(currently briefing for en banc review)

Barnes v. District of Columbia, 06-315 (RCL)(D.D.C) (challenges DC Jail's release and strip search policies/practices)(motion for class action treatment pending).(classes certified)

SOME SETTLED AND PENDING CIVIL RIGHTS CASES AND COMPLEX FEDERAL CASES

McDowell v. District of Columbia, 02-1119(RWR/JMF)(D.D.C.)(plaintiff challenges in-the-field intimate body search) McDowell v. Gov't of the Dist. of Columbia, 233 F.R.D. 192 (D.D.C. 2006)

Carter v. District of Columbia, 01-cv-1050(GK/JMF) (false arrest, first amendment retaliation, § 1983)

Horn v. District of Columbia, 2001cv225(GK)(DAR) (false arrest, illegal search, § 1983)(challenges District of Columbia MPD's practice of conducting field intimate body strip searches of suspects and arrestees where officers touch genitalia and anus with hands)

Doe v. District of Columbia, 02-342, (school principal and teachers took schoolchildren to DC Jail and instructed guards to subject children to strip and visual body cavity searches)

Walker v. Metiver and District of Columbia, 99ca6954 (police shooting)

Taylor v. AMTRAK, 99ca9067 (police shooting)

Robinson v. AMTRAK, 01cv705(CKK) (false arrest, excessive force)

Elliott v. Barham, et al., 00cv2047A (E.D. Va) (medical malpractice, dismissed pursuant to confidential agreement)

Smith v. Perry and District of Columbia, 2000cv199(GK) (false arrest, excessive force, settled for $195,000)

Newby v. District of Columbia, 98cv429 (SS, CKK), (civil rights, plaintiff forced to perform strip shows while inmate at DC Jail)Judge Sporkin granted directed

verdict for plaintiff at close of all evidence on all claims including § 1983 municipal liability claim) Newby v. District of Columbia, 59 F. Supp. 2d 35 (D.D.C. 1999)

Pryor v. District of Columbia, 98cv419 (SS,GK) (settled) (civil rights, plaintiff beaten for protesting guards forcing inmates to perform strip shows while at DC Jail)

Williams v. District of Columbia, 98cv829 (CKK) (settled) (civil rights, plaintiff forced to perform strip shows while inmate at DC Jail)

Whitmore v. Virginia, E. D. Va. C.A. 96-980-A, (§ 1983/religious discrimination case, unwanted proselytizing by co-workers, treatment by co-workers rendered plaintiff's previously a-symptomatic schizophrenia symptomatic)

Doe v. The MEGA Life and Health Insurance Co., 96 CV 02236 (TPJ)(bad faith insurance claim for denial of claim of plaintiff for hospital and medical expenses incurred as a result of suicide attempt where District of Columbia statute prohibits such denials)

OTHER COMPLEX CASES

Young v. FST Enterprises (McDonald's), (D.C. Superior Court). Lead counsel, premises liability. Plaintiff was young woman who witnessed execution style murder of 3 co-workers in robbery at fast food restaurant that caused her severe emotional damages and post traumatic stress syndrome. Case dismissed pursuant to confidential agreement.

United States v. Evans, involuntary intoxication defense to domestic violence charges based on reactions of a bi-polar police woman to steroid based asthma medication.

I, William Claiborne, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 23, 2008.

___/sig wcc/_____
WILLIAM CLAIBORNE
D.C. Bar # 446579
717 D Street, NW
Suite 210
Washington, DC 20004
Phone 202/824-0700
Fax 202/824-0745

UNITED STATES DISTRICT COURT
FOR MARYLAND

ERIC JONES, et al. Plaintiffs v. **SUSAN MURPHY** et al. Defendants	Civil Action No. **CCB 05 CV 1287**

AFFIDAVIT OF SEAN R. DAY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

1. My name is Sean R. Day. I am the lead local counsel for the Named Plaintiffs and Putative Class in this case.

2. This affidavit is in support of Plaintiffs' motion for class certification.

3. I am an attorney licensed to practice in state and federal courts in Maryland (admitted 1995) and the District of Columbia (admitted 1996). I maintain offices at 8505 Baltimore Avenue, Suite B, College Park, Maryland 20740.

4. In 1990 I received a B.S. in Commerce (Finance Concentration) with Distinction (Top 10%) from the University of Virginia. In 1995 I received a J.D. *cum laude* from the School of Law at the State University of New York at Buffalo.

5. During 1996 I worked for a small private practice with a focus on personal injury litigation. Since January 1997 I have been a sole practitioner.

6. I have handled numerous civil rights lawsuits against government entities, including the State of Maryland, Montgomery County, Prince George's County, City of Greenbelt, District of Columbia, and the United States, including: Helton v. United States, 191 F.Supp.2d 179 (D.D.C. 2002) (arrestee strip search case under Federal Tort Claims Act) (settled); White v. Maryland Transportation Authority, 151 F.Supp.2d 651 (D.Md. 2001) (false arrest and excessive force) (settled); and Bibum v. Prince George's County, 85 F.Supp.2d 557 (D.Md. 2000) (false arrest and excessive force) (settled).

7. I have also been counsel of record in three class action lawsuits: Johnson v. District of Columbia, 02-2364 (RMC) (D.D.C.) (arrestee strip searches of women but not men) (pending, certified as class action); Ford v. ChartOne, Superior Court of the District of Columbia, Docket No. 02-7111 (consumer class action) (settled) (groundbreaking appellate decision in the area of D.C. consumer rights published at 908 A.2d 72 (D.C. 2006)); and Elliott v. Smart, Superior Court of the District of Columbia, Docket No. 02-CA-3321 (consumer class action) (settled).

8. I have handled as sole counsel at least 10 jury trials and 50 bench trials in civil (usually plaintiff) and criminal cases in state and federal courts, and have handled appeals in the Fourth Circuit, the Court of Special Appeals of Maryland, and the D.C. Court of Appeals (2 in each court).

9. I have been particularly interested in litigation involving social and political injustices, including civil rights cases and cases involving animals and animal rights activists.

10. Through interviews with persons released from the Baltimore Central Booking and Intake Center, an officer employed at CBIC, and other CBIC insiders, I learned of the facts that led to the filing of this lawsuit.

11. In my *pro bono* representation of 11 animal rights activists who were arrested and charged in the District of Columbia, in interviewing those 6 male and 5 female activists I uncovered the U.S. Marshal Service for the Superior Court's policy and practice of strip searching female, but not male, arrestees, leading to Helton and Johnson and the end of the discriminatory policy and practice.

I, Sean R. Day, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 25, 2008.

/s/Sean R. Day/s/
SEAN R. DAY
8505 Baltimore Avenue
Suite B
College Park, MD 20740
301.220.2270

DECLARATION OF KEVIN NICHOLS

I, KEVIN NICHOLS, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration, except where specified otherwise. If called to testify to these facts as a witness in this action, I would so testify.

2. I have been retained by Plaintiffs' counsel to provide results of data that I have analyzed in this case initially, but not exclusively, for the purpose of class certification. I have been retained to provide my opinion on the following two subjects in the action *Eric Jones et al. v. Susan Murphy et al.*, Case Number 05-1287 CCB, United States District Court for the District of Maryland involving persons brought to Baltimore's Central Booking and Intake Facility for presentment to a court commissioner. First, the ability of the data to identify arrestees whom have been either over detained or strip searched for current and future data. Second, to evaluate a methodology to determine damages for the named plaintiffs and class members. I have been informed that there are three defendants in the case: Susan Murphy, William Jednorski and Mitchell Franks, in his individual and official capacity.

Qualifications

3. I am a third year Ph.D. student at the University of California, Los Angeles and have earned my Master's degree in Statistics. I am trained at the graduate level in data management and data analysis. My doctoral research entails computational simulation for both social and financial sciences. I am currently working on this case with Dr. Richard Berk, Professor of Criminology and Statistics at the University of Pennsylvania and fellow of both the American Association for the Advancement of Science & the American Statistical Association, and with Dr. Brian Kriegler, Ph.D. in Statistics from the University of California, Los Angeles. Attached hereto is a true and correct copy of my curriculum vitae, marked **Exhibit A.**

4. I have worked extensively on numerous class action lawsuits that have required the use of statistical computational programming, numerical analysis, and sampling. While protective orders prohibit me from going into details about these cases, I will describe aspects of some of the cases on which I have worked that resemble this case.

a. In *Craft v. San Bernardino County Sheriff's Department* (Case No. 05-359 SGL (OP)(D. Cal. 2006)), my task (along with Dr. Kriegler) was to analyze and process data maintained by the San Bernardino County Sheriff's Department (hereafter "SBSD") necessary to

identify individuals who were subjected to full body cavity searches prior to their arraignment hearing and/or after being ordered released by the San Bernardino County Superior Court and/or in the presence of other inmates. To accomplish this task, SBSD turned over all data and documentation that Dr. Kriegler and I concluded were necessary to address the issues for which we were retained. This was then agreed to by the parties with participation of the court. It was subject to an agreement that the data be maintained in strict confidence and not be used for any purpose other than the class claims administration in *Craft.* In all, *Craft* involved analysis of approximately 380,000 bookings, of which over 265,000 bookings qualified approximately 155,000 unique individuals for membership in the class. My understanding is that the settlement of this case is currently being finalized.

b. *Fairfield v. Advantage Rent-a-Car* (Case No. BC342461) was a "wage and hour" case in which my tasks were threefold. First, I recommended a procedure by which hourly employee data should be sampled so that conclusions about the population of hourly employees could be drawn within a reasonably small margin of error. Second, upon receiving the data from Advantage Rent-a-Car, I imported and wrote computational code so that the data were in a format that could be analyzed. Third, I analyzed this sample of data for the purposes of computing both missed meal breaks and uncompensated overtime hours of work, then I made projections to the population of class members. All of this work was subject to an agreement that the data be maintained in strict confidence and not be used for any purpose other than the class claims administration in *Fairfield*. I analyzed clock in/out (i.e., time card) data for approximately 150 employees and 3,500 employee workdays. My understanding is that the settlement of this case is currently being finalized.

c. *Barnes v. District of Columbia* (Case no. 06-315 RCL) is a class action law suit against the District of Columbia for detaining individuals past their expected date of release and/or subjecting them to full body cavity searches after being ordered to be released by a Superior Court judge. Just as in *Craft*, the DC Department of Corrections turned over all data and documentation that I concluded were necessary to address the issues for which I was retained. Their database consisted of approximately 43,000 bookings during the class period. Roughly 12,000 bookings have been identified as individuals for possible membership in the class. To help determine the class size and individual class membership, I have designed a sampling procedure for examining a subset of possible class

members' hard copy documents based on the results of individuals' data (e.g., booking data, charges data, location history, etc.) located on the DC jail's computer database system. I am still actively working on this case.

d. *Gamino v. County of Ventura*(Case no. CV-02-9785 CBM (Ex)) is a class action against Ventura County for subjecting individuals to full body cavity searches after being arrested on a charge of driving under the influence. The Sheriff's Department turned over data and documentation that I concluded were necessary to address the issues for which I was retained. The data consisted of 41,000 bookings during the class period. Of those 41,000 bookings, approximately 3,500 individuals have been identified for the class. I am still actively working on this case. This case is in mediation and is expected to settle.

5. For each of these cases, I have had (or am still having) discussions with each respective opposing counsel's technical experts to ensure that there was (is) minimal burden placed on those responsible for producing the data.

6. For all of these cases I have used the highly reputable statistical software program SAS for all analysis. I am also trained to use Microsoft Office tools. I have taken graduate courses in data management and SAS programming.

Knowledge in this Case

7. I have read the document "BC Treatment Plan," as provided by the Plaintiffs Counsel. This plan details the protocol for an arrest made in Baltimore County and the timetable for a booking cycle. A true and correct copy of the "BC Treatment Plan," was filed as Plaintiffs' **Exhibit 95.**

8. I have read the declarations of Richard A. Berk(**Exhibit 96)** and Susan J. Fiester(**Exhibit 125)** in support of the Plaintiffs' counsel to provide an opinion on a methodology to determine damages for named plaintiffs and class members on a class-wide basis in this action.

9. Plaintiffs' counsel has also instructed me to consider the gender of the arrestee, and the warden in tenure, at the time of arrest. Plaintiffs' counsel has informed me to assume that these are the dates that the wardens were in tenure:

a. William Jednorski (May 12th, 2002 – March 8th, 2004

b. Susan Murphy (March 9th, 2004 – June 22nd, 2005)

c. Howard Ray (June 23rd, 2005 – July 5th, 2005)

d. Mitchell Franks (July 6th, 2005 – End of class period)

10. I have worked intensively with numerous electronic files provided to us by the City of Baltimore. Plaintiffs' counsel has informed me that at the outset, there is one database of critical importance to this case. That database comes from the Central Booking and Intake Center's Automated Booking System (henceforth referred to as the "ABS data"). After several conversations with opposing counsel's technical experts on the best way to format and transport the data, we received CD-ROMs with the ABS data from the county of Baltimore. The data consists of bookings with arrest dates during the period of May 2002 through August 2007. After discussions with Plaintiffs' counsel and with Defendants' counsel and their technical experts, I was provided with ABS data in the form of six electronic data files ("queries").

11. Each query is part of a relational database by Central Booking Facility number (henceforth known as "CBF number"). That is, the CBF number is found in all six queries and can be used to link information from one query to information on the same booking found in another query. Thus far for analysis only information from Queries 1, 2 and 6 have been necessary to identifying possible over-detentions. Some key pieces of information found in each query are as follows: Query 1 contains biographical information, arrest information, transport information, booking information, offense information, court commissioner hearing information and release information. Specific fields from Query 1 provide the following pieces of information that I have used for analysis: the recorded arrest date and time, the recorded release date and time, whether or not that individual was a police release and the recorded date and time in which an inmate was heard by a court commissioner. Query 2 contains primarily charge information. Charge information will be used to determine charge severity. Query 6 contains location history information. Query 6 is used to determine the first time that an inmate is scanned into the system, the last time an inmate moves during the booking cycle and whether or not that inmate was ever in room for a court commissioner hearing. Queries 3, 4 and 5 have not been used in the over-detention analysis of the data. Query 3 contains a description of the incident for each booking cycle. Query 4 contains information on the arresting officer as well as other affiliates to the arrestee for the booking cycle. Query 5 contains a list of personal possessions found on the arrestee.

12. Plaintiffs' counsel has instructed me to identify three classes of people:

a. All individuals who were booked and presented to a court commissioner more than 48 hours after the time of arrest. From henceforth these people will be known as "presentments."

b. All individuals who were booked and released by the Police more than 48 hours after the time of arrest without charges. From henceforth these people will be known as "Released without charge" or "RWOCs" for short.

c. All individuals who were neither released nor presented to a court commissioner. Plaintiffs' counsel has undergone further investigation and informed me that it appears these people were already in jail and were brought to ABS to be processed on a different warrant or for an offense allegedly committed while in jail. From henceforth these will be known as "jail detainees."

13. While there are no fields that directly indicates a strip search, if provided parameters I can develop logical queries to identify class members based on the date/time of booking, gender, arrest charges, search officer, and other parameters.

Examination of Data & Assumptions for Analysis

14. For all analyses, Plaintiffs' counsel has asked me to assume that each booking cycle begins with the arrest date and time. Should the arrest date/time information be unavailable for a given booking, then the first documented movement while in custody shall be considered the beginning of detainment for that individual.

15. I computed presentment detention as the difference between the court commissioner hearing (henceforth "CC hearing") and the date/time of arrest. For all bookings found in both the booking informational query (Query 1) and the location history query (Query 6) there is 100% correlation between the CC hearing field found in Query 1 and the first time that an arrestee visits one of the following court commissioner rooms in Query 6: 2N10, 2N14, 2N15, 2N16, 2N17, 2N18,2N25. This means that the first time an arrestee is scanned in at one of the court commissioner rooms is the same exact time that is found for their CC hearing field in the booking query. Thus, calculating detention for a "presentment" by subtracting the date/time of arrest from the CC hearing is congruent to calculating the difference between a person's time of arrest and the first time that person enters one of the above listed court commissioner rooms. From henceforth this will be known as method 1 for calculating "presentment" detention length.

16. Plaintiffs' counsel has asked me to search for instances in which a "presentment," visits a court commissioner room multiple times during a booking cycle. Of the 236,401 "presentments" 13,377

of them have multiple trips to a court commissioner room. Plaintiffs' counsel has asked me to calculate the length of detention in an alternate way for these people. Instead of calculating detention as the first time a person enters a court commissioner room minus time of arrest, detention will instead be calculated as the last time a person enters a court commissioner room minus the time of arrest. Except for in the case of "presentments" who have visited room 2N25. I have been informed that room 2N25 is also used for pre-trial so "presentments" with multiple trips to 2N25 may have reasons for additional visits other than a court commissioner hearing. The first visit to room 2N25 will be considered the end of the term of detainment. Again, using this alternative method for calculating detainment will not make a difference for most "presentments" as they only enter a court commissioner room once, but nonetheless the resulting number of over-detentions for the class is still affected significantly using this alternative method of detention calculation. From henceforth this will be known as method 2 for calculating "presentment" detention length.

17. There were some instances (3,098) in the ABS data in which a booking number existed in the location history query (Query 6) but did not exist in the booking informational query (Query 1) and the location history indicated that the arrestee had visited a court commissioner hearing room. Without booking or arrest information we had to use an alternative method to calculate the length of detainment for these individuals. The length of detainment is again calculated in one of following two ways:

a. Parallel to method 1 for calculating presentment length, these 3,098 bookings will have the end of their detention length considered to be the first time they enter one of the court commissioner rooms. Without an arrest date, the beginning of their detainment will simply be the date/time of the first movement while in custody found in the location history query (Query 6). Detainment for these 3,098 bookings calculated this way will be included with the method 1 version of the results.

b. Congruent with method 2 for calculating presentment length, these 3,098 will have their last date/time they enter a court commissioner room (unless its room 2N25, in which case the date/time of the first visit is still used) used as the end of their detainment. The beginning of their detainment will again be the first date/time of movement under custody found in Query 6. Detainment for these 3,098 bookings calculated this way will be included with the method 2 version of the results.

18. If a booking did not have a CC hearing or any electronic evidence of ever visiting a court commissioner room, I considered this booking not to be a presentment. If according to the data, an individual was released with out having been presented to a court commissioner but s/he was a "police release," then this booking was classified as a "RWOC." If the release time is recorded then detention is computed as the difference between the release date/time and the arrest date/time. If the release date/time is not available in the ABS data, then detention is computed as the difference between the last known date/time of movement while in custody minus the date/time of arrest.

19. I considered individuals who, according to the electronic data, did not visit a court commissioner after their arrest and were not indicated as being released without charge. There are 145,407 such bookings. 89,314 of these bookings had a booking type that was not "Warrant." 19,334 of them visited a pre-commissioner hearing waiting room (2N01, 2N04, 2N06). Plaintiffs counsel has informed me that further discovery is required before these bookings can be accurately classified and a methodology for calculating detention can be developed. These bookings for now have been classified as "other."

Results

20. Table 1 shows all bookings for the class period(up to the point that we have data) dissected in the following way:

a. Bookings were first classified as "presentments", "RWOCs" or "other"
b. Bookings were then further classified by warden in tenure based on their arrest date.
c. "Presentments" and "RWOCs" had their detainment length calculated as was specified in paragraphs 15, 17 and 18. Method 1 for calculating presentment detention was used.
d. All bookings were then further classified by the length of their detainment. Inmates with more than 48 hours of detainment were flagged as over-detained.
e. "Presentments" and "RWOCs" were classified by gender.

21. Table 2 shows all bookings for the class period(up to the point that we have data) dissected in the following way:

a. Bookings were first classified as “presentments”, “RWOCs” or “other”

b. Bookings were then further classified by warden in tenure based on their arrest date.

c. “Presentments” and “RWOCs” had their detainment length calculated as was specified in paragraphs 16, 17 and 18. Method 2 for calculating presentment detention was used.

d. All bookings were then further classified by the length of their detainment. Inmates with more than 48 hours of detainment were flagged as over-detained.

e. “Presentments” and “RWOCs” were classified by gender.

Implementing a coded version of the logic found in paragraphs 15, 16, 17 and 18 with SAS I was able to generate the following results.

Table 1: Analysis of Bookings from ABS Data (CC Hearing Field Used for End of Detainment)					
	JEDNORSKI	MURPHY	RAY	FRANKS	**TOTAL**
TOTAL BOOKINGS	**82,373**	**211,519**	**3,151**	**178,710**	**475,753**
Presentments	54,904	86,760	1,195	93,542	**236,401**
RWOCs	15,926	44,862	821	32,336	**93,945**
Other	11,543	79,897	1,135	52,832	**145,407**
PRESENTMENTS NOT PRESENTED WITHIN 48 HOURS	**6**	**528**	**0**	**0**	**534**
48-60 Hours	3	371	0	0	**374**
60-72 Hours	1	119	0	0	**120**
72+ Hours	2	38	0	0	**40**
*24-48 Hours	4,158	24,119	267	6,612	**35,156**
*Within 24 Hours	50,740	62,113	928	86,930	**200,711**
RWOCS NOT PRESENTED WITHIN 48 HOURS	**4**	**1,095**	**0**	**1**	**1,100**
48-60 Hours	3	654	0	0	**657**
60-72 Hours	1	295	0	0	**296**
72+ Hours	0	146	0	1	**147**
*24-48 Hours	188	11,551	175	2,140	**14,054**
*Within 24 Hours	15,734	32,216	646	30,195	**78,791**
PRESENTMENTS + RWOCS	**70,830**	**131,622**	**2,016**	**125,878**	**330,346**
PRESENTMENTS + RWOCS, Detainment is greater than 48 Hours	**10**	**1,623**	**0**	**1**	**1,634**
PRESENTMENTS + RWOCS, gender is male	**56,067**	**106,238**	**1,702**	**102,246**	**266,253**

Table 2: Analysis of Bookings from ABS Data (Last Movement to a CC Room Used for End of Detainment)					
	JEDNORSKI	MURPHY	RAY	FRANKS	**TOTAL**
TOTAL BOOKINGS	**82,373**	**211,519**	**3,151**	**178,710**	**475,753**
Presentments	54,904	86,760	1,195	93,542	**236,401**
RWOCs	15,926	44,862	821	32,336	**93,945**
Other	11,543	79,897	1,135	52,832	**145,407**
PRESENTMENTS NOT PRESENTED WITHIN 48 HOURS	**22**	**654**	**0**	**60**	**736**
48-60 Hours	14	455	0	3	**472**
60-72 Hours	5	139	0	0	**144**
72+ Hours	3	60	0	57	**120**
*24-48 Hours	4,806	25,164	299	7,204	**37,473**
*Within 24 Hours	50,076	60,942	896	86,278	**198,192**
RWOCS NOT PRESENTED WITHIN 48 HOURS	**4**	**1,095**	**0**	**1**	**1,100**
48-60 Hours	3	654	0	0	**657**
60-72 Hours	1	295	0	0	**296**
72+ Hours	0	146	0	1	**147**
*24-48 Hours	188	11,551	175	2,140	**14,054**
*Within 24 Hours	15,734	32,216	646	30,195	**78,791**
PRESENTMENTS + RWOCS	**70,830**	**131,622**	**2,016**	**125,878**	**330,346**
PRESENTMENTS + RWOCS, Detainment is greater than 48 Hours	**26**	**1,749**	**0**	**61**	**1,836**
PRESENTMENTS + RWOCS, gender is male	**56,067**	**106,238**	**1,702**	**102,246**	**266,253**

Sampling Individuals in Computerized Databases

22. In **Exhibit 96**, Dr. Berk recognizes random probability sampling as a scientifically valid way of using a sample to learn about a population. Given a random probability sample it is possible to extrapolate the results of that sample to the population with some margin of statistically random error.

23. In **Exhibit 125**, Dr. Fiester declares that for this class, the results of a psychological analysis on a random probability sample of the entire class can be extrapolated to the entire class.

24. Given the resulting data from a psychological analysis for a random probability sample of this class I am capable of statistically projecting class wide results with some margin of statistically random error as a means for assessing damages on a class wide basis.

Conclusions

25. With the availability of ABS data it is both feasible and efficient to determine a list of potential class members using logic outlined in paragraphs 15, 16 and 17. Furthermore, should a random probability sample be taken of the entire class and then subjected to a psychological analysis, it is also a relatively simple and efficient process to extrapolate the results of this analysis to the entire class.

I declare the foregoing to be true under penalty of perjury of the laws of the United States. Executed this 25th day of April, 2008, at Los Angeles, California.

/s/ Kevin Nichols /s/

Kevin Nichols

Kevin Nichols

3632 Greenfield Av. #4
Los Angeles, CA 90034
Nichols@stat.ucla.edu

Education

Spring 2008 *M.S.., Statistics,* ***University of California, Los Angeles***

Spring 2005 *B.A. Applied Mathematics,* ***University of California, Berkeley***

Positions

September 2005-Present *Graduate Teaching Assistant,* ***University of California, Los Angeles Department of Statistics***
I currently teach mainly upper division graduate courses in statistics, applied statistics and social statistics.

July 2006-Present *Litigation Consultant,* ***Self-Employed***
Fairfield v. Advantage Rent-a-Car: Estimated number of hourly employees and number of hours for which individuals were not compensated properly for overtime and missed meal breaks. Provided deposition testimony and wrote four declarations. Employed graduate students to assist in sampling, data entry, analysis, and critiquing of Advantage's expert witness testimony. Performed analyses in SAS, R, and Excel. $2.5 million settlement.
Craft et al. v. San Bernardino County: Identified individuals who had been subjected to a body cavity search prior to their arraignment hearing, after being ordered released, or in the presence of other inmates. Collaborated with County's database system administrators to agree on criteria for determining class members. Employed graduate students to assist in analysis of jail database system using SAS and Access. $25.5 million settlement.

June 2008 *Technical Teaching Assistant Coordinator,* ***University of California, Los Angeles Department of Statistics***
Starting at the end of the current school quarter I will be the liaison for teaching assistants and first-year graduate students in the Statistics Department. I will lead orientation for first-year students and teach weekly graduate student seminars on how to utilize technology in class.

Teaching

September 2007-June 2008 *Teaching Fellow,* ***UCLA Department of Statistics***

Fall 2007:	Statistics 10, *Introduction to Statistical Reasoning*
Winter 2008:	Statistics 112, *Statistical Reasoning for the Social Sciences*
Spring 2008:	Statistics 112, *Statistical Reasoning for the Social Sciences*

September 2006-August 2007 - *Teaching Associate,* ***UCLA Department of Statistics***

Fall 2006:	Statistics 10, *Introduction to Statistical Reasoning*
Winter 2007:	Statistics 10, *Introduction to Statistical Reasoning*
Spring 2007:	Statistics 10, *Introduction to Statistical Reasoning*
Summer 2007:	Statistics 10, *Introduction to Statistical Reasoning*

December 2005-August 2006 *Teaching Assistant,* ***UCLA Department of Statistics***

Winter 2006:	Statistics 13, *Statistical Reasoning for the Life Sciences*
Summer 2006:	Statistics 10, *Introduction to Statistical Reasoning*

May 2005-August 2005 *Kaplan GRE Instructor,*
I was employed as a tutor for potential graduate students preparing to take the GRE

Papers

September 2007 Nichols, K., McCardle, K. and Bikhchandani, S. *A Simulated Approach to Repeated Selling with History Dependent Prices.* Forthcoming.

Awards

June 2007 *Teaching Assistant of the Year,* ***UCLA Department of Statistics***

November 1996 *John Bright Memorial Winner*

Computer Skills

Windows XP, OS X, MS Office (Word, Excel, PowerPoint, Access), R, SAS, Stata, LaTeX

Memberships

American Statistical Association, Citizen of the United States of America

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIC JONES, *et al.* Plaintiffs v. **MITCHELL FRANKS**, *et al.* Defendants	Civil Action No. **CCB 05 CV 1287**

DECLARATION OF SUSAN J. FIESTER

I, Susan J. Fiester, hereby declare:

1. I have personal knowledge of the information set forth herein and, if called upon to testify, I could and would do so as follows:

2. This declaration is prepared in support of plaintiffs' motion for class certification regarding strip searches and/or over-detention.

3. I graduated from Smith College with a bachelor's degree cum laude in psychology in 1971. I graduated from Yale University School of Medicine in 1977. I completed a four-year residency program in psychiatry at Yale University School of Medicine in 1981. I completed a two-year post doctoral fellowship, the Robert Wood Johnson Clinical Scholar Program, also at Yale University School of Medicine. This program involved the advanced study of epidemiology and research methodology.

4. I have been retained as an expert in class action cases involving the evaluation of inmates residing in correctional institutions in the District of Columbia, Arizona and Georgia. I have also been retained in a class action case

involving the manufacturing sector. I have evaluated plaintiffs and assessed psychological damages in the plaintiffs in these cases.

5. My curriculum vitae is attached as Exhibit "A". A list of cases in which I have testified at deposition or at trial since 1999 is attached as Exhibit "B."

6. I have been retained by plaintiffs' counsel to provide my opinion on a methodology to determine emotional distress damages for the named plaintiffs and class members in the action of Eric Jones, et al. v. Susan Murphy et al., Civil Case No. CCB 05-cv-1287 (D. Md) involving persons arrested and held for presentment at the Baltimore Central Booking and Intake Center ("Central Booking"). This declaration is prepared in support of plaintiffs' motion for class certification regarding three basic categories of persons: (1) strip searches of all arrestees booked into Central Booking on charges that do not involves drugs, weapons or violence; (2) strip searches of male arrestees booked into Central Booking, regardless of charge; and (3) persons arrested and held at Central Booking more than 48 hours before seeing a commissioners and who receive a release or dismissal order.

7. In reaching my opinions in the matter I have not reviewed documents at this stage, as discovery has not commenced. I do, however, draw on my previous experience with evaluation of inmates in cases related to violations of inmates' civil rights. It is my understanding that this case involves over-detentions and/or strip searches, which means that plaintiffs' claimed damages are for either being

detained when they should have been free or for being improperly subjected to highly intrusive searches. Adverse psychological responses can occur in individuals subjected to these actions (over-detention and strip search.).

8. Psychological responses to an experience can be classified based on the nature of and intensity of response. For example, psychological literature on the effects of trauma has shown that when exposed to the same trauma, some individuals develop significant symptomatology that is persistent and detrimentally effects their functioning (e.g. PTSD), while others experience only mild and transient symptoms which do not reach the level of a psychiatric disorder. In addition, the DSM-IV allows for the classification of the severity of the disorder for many of the major mental disorders. Based on this concept, I propose that the psychological reactions of the plaintiffs to overdetentions and strip searches be classified according to a dimension of severity. Rating the level of severity of individuals' response to such events could be accomplished by the evaluation of a random sample of affected individuals through survey questionnaire, psychological testing, in-depth clinical evaluation and the subsequent categorization and rating of the individuals' reactions and degree of distress.

9. As applied to the class as whole. the following methodology is proposed:

   a. A random sample of the whole class, (the class of over-detainees and/or the class of those strip searched), will be culled by a statistician. I will refer to this group as Random Sample "A".

10. Random Sample A will be surveyed and subjected to computerized psychological testing.

11. The survey design will minimally include identification of the psychological responses to the over-detention and/or strip search. I have not tried at this stage to identify all the components of the survey, as I believe that should be determined by consultation with an expert in the field of surveys.

12. In order to ensure that the reactions reported by the individuals in response to the over-detention and/or searches are valid, psychological tests will be performed to rule out malingering or exaggeration. In addition, in-depth clinical evaluation will determine the individual's baseline mental state and level of functioning prior to the over-detention and/or strip searches. The baseline mental stability and level of functioning can then be compared to the individual's mental state and level of functioning subsequent to the detention and/or strip search.

13. Efforts would be made to obtain the best possible response rate.

14. Based on the data from the psychological testing and the responses to the instruments, Random Sample A will be divided into a number of groupings. These categories can be determined only after the data has been collected and analyzed. As an example, over-detaining might be divided into groups based on the length of over-detained or by the degree of severity of their reactions. Persons being subjected to strip searches might be divided into groups based on the severity of their reactions to being strip-searched and severe reaction to being strip-searched. Individuals could also be categorized according to the nature of charges, prior arrests or other factors. These groupings are not meant to be exclusive but rather to exemplify to the Court the range of classifications that may be appropriate in assessing the consequences of the alleged unlawful conduct.

15. From Random Sample A, a smaller random sample would then be selected, with individuals representing the various classifications in proportion to their representation in the larger sample groups. I will refer to this as Random Sample "B".

16. In-depth clinical interviews and additional psychological testing would then be conducted to further evaluate the individuals in Random Sample B.

17. Based on all the foregoing, opinions could be given regarding the severity of the emotional impact of the over-detention and/or strip searches for the random sample, and ultimately extrapolated to the class as a whole.

18. The purpose of the process outlined above is to collect extensive data which will provide the basis for an informed and valid expert opinion in this matter.

I declare the foregoing to be true under penalty of perjury of the laws of the United States. Dated this day 12th day of October, 2005.

SUSAN J. FIESTER

ELICIA TIMBERLAKE WRIGHT
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires December 18, 2006

Subscribed and sworn to before me, in my presence, this 30th day of November, 2005 a Notary Public in and for the County of Montgomery

Elicia Timberlake Wright
Notary Public

My commission expires December 18, 2006

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ERIC JONES, et al. Plaintiffs v. **SUSAN MURPHY,** et al. Defendants	Civil Action No. **CCB 05 CV 1287**

PLAINTIFFS' PROPOSED TRIAL PLAN

The Plaintiffs, by and through undersigned counsel, submit this Trial Plan in support of their motion for class certification.

I. INTRODUCTION

This is a §1983 class action case alleging the overdetention of arrestees in Baltimore Central Booking and Intake Center ("Overdetention Claim"), blanket strip searching of arrestees pursuant to their booking to Central Booking ("Strip Search Claims"), strip searching of men but not women ("Equal Protection Claim"), strip searching of men in non-private seetings ("Non-Private Strip Search Claim"), and searching men, but not women, to their underwear ("Underwear Search Claim"). The Overdetention Claim covers cases where an arrestee was overdetained without presentment (and released) as well as cases where the arrestee was overdetained and presented.

II. PURPOSE OF PROPOSED TRIAL PLAN

Plaintiffs hereby present this proposed trial plan, which explains Plaintiffs' planned approach to discovery, class notice, and trial. This Proposed Trial Plan is

meant to aid the Court in determining effective discovery management, the development of notice procedures, and management of the trial of the case. The Proposed Trial Plan is not necessarily meant to be final in the matters of witnesses or exhibits; expert reports; proposing jury instructions and special verdict forms, or even adopting a particular methodology of determining damages for class members. Moreover, the determination of a trial plan will depend on the Court's decisions regarding the most efficient and reasonable method for proceeding to trial. On this basis, Plaintiffs reserve the right to present a revised and more detailed trial plan once discovery is complete and the trial date nears.

III. BIFURCATION OF LIABILITY AND DAMAGES PHASES

Plaintiffs propose that the trial, and initially discovery, be bifurcated into (1) a liability phase (including determination of injunctive relief) and (2) a damages phase. Rule 42(b). The parties have thus far been proceeding on an informal, cooperative discovery process on liability and class action issues.

Bifurcation of civil rights class actions into a liability phase and a damages phase is widely recognized and accepted. *See, e.g.*, Gunnells v. Healthplan Servs., 348 F.3d 417, 425 (4th Cir. 2003); Shetterly v. Raymark Indus., 117 F.3d 776, 782 (4th Cir. 1997) (district court has discretion to bifurcate the trial to ensure case is tried in an orderly fashion); Miller v. Balt. Gas & Elec. Co., 202 F.R.D. 195, 199 (D. Md. 2001); Neal v. Director of Department of Corrections, 1995 U.S. Dist. LEXIS 11543 (D.D.C. 1995) (Memorandum Opinion IV) (Procedures for Absent Class Members) rev'd on other grounds sub nominee, Bonds v. District of Columbia, 93 F. 3d 801 (D.C. Cir. 1996). Rule 42(b) permits

trial of individual, discrete issues. As long as separate juries do not re-examine previously resolved fact determinations, bifurcation does not violate the Seventh Amendment. Robinson v. Metro-North Commuter R.R., 267 F.3d 147, 170 (2d Cir. 2001); Olden v. Lafarge Corp., 383 f.3d 495, 509 (6th cir. 2004) (affirming Rule 23(b)(3)/23(c)(4)(a) certification of liability issues in a toxic pollutants exposure case noting that if done properly, bifurcation will not raise any seventh amendment "re-examination" issues).

The central issues to be determined in the liability phase are, on the overdetention claim: (1) whether Central Booking has a pattern and practice that led to arrestees being detained for more than 48 hours before release or presentment; (2) whether the practice violates the constitutional rights of arrestees; (3) whether defendant Wardens are liable directly (by having constructive notice of each and every overdetention, and failing to act), on the basis of supervisory liability or acquiescence, or some other theory.

On the strip search claims, the issues to be determined at the liability stage are: (1) whether Central Booking has a practice/policy of subjecting arrestees to blanket booking strip searches (a) without individualized suspicion, (b) in non-private setting, or (c) on the basis of gender; (2) whether the practice/policy violates the constitutional rights of arrestees; whether subjecting males but not females to underwear searches violates the Equal Protection Class; and (4) whether defendant Wardens are liable on the basis of supervisory liability or acquiescence.

The Plaintiffs are currently endeavoring to obtain some clarity on one issue in particular, that is, whether the facts alleged by the Defendants, *i.e.*, that prior to January 1, 2006, the Defendants employed a practice of searching men, but not women, to their underwear. Some additional liability issues may be appropriate for summary judgment as the discovery process unfolds. This far, the focus of discovery has been on line staff and lower-level supervisors. Another issue that may need a motion for summary judgment to be clarified is, in the case of persons who are presented to a commissioner, is whether the period of overdetention should be measured from the time of presentment to the commissioner, or the time at which theperson is actually released from Central Booking. At some times during the class period post presentment release often took up to 8 hours.

At the trial stage, liability and damages can be bifurcated as well, as discussed below.

IV. NOTICE PROCEDURES

Notice to class members is not required at Phase I for any class because the issue of liability falls under Rule 23(b)(2). Class actions seeking declaratory or injunctive relief under Rule 23(b)(2) are not subject to the individual notice requirements of Rule 23(c)(2). Stolz v. United Broth. of Carpenters and Joiners of America, 620 F. Supp. 396 (D. Nev. 1985). Moreover, under Fed. R. Civ. P. 23 class notice can be deferred umtil after a resolution of all liability issues.

Notice is required for Phase II because damages are integral to a Rule 23(b)(3) class. Moreover, notice in the case addresses any due process objections

class members might have to a class-wide determination of damages. Objecting class members would be allowed to opt out of the class in favor of an individual jury trial on damages. The Court can determine the content of the notice after it rules on the methodology of proving damages.

Plaintiffs will submit their proposal for notification procedures if the Court certifies any of the claims or issues. However, at this point the Plaintiffs note that the Defendants have provided the Plaintiffs with data from the Automated Booking System that the Defendants represent contains information as to each person arrested and taken to Central Booking during the class period, including their address at the time of their arrest. Furthermore, issues involving Central Booking have in the past generated widespread media interest.

V. PHASE I – TRIAL OF LIABILITY

Determination of liability. Determination of liability can be made either by trial or by motion for summary judgment. The issue of the constitutionality of the Defendants' written policy of subjecting every male booked into Central Booking during the class period to an underwear strip search based on gender is at the writing pending before the Court.

Whether Central Booking had a practice or written policy of subjecting persons booked into Central Booking during the class period to bare skin[1] strip searches (a) without individualized, reasonable suspicion, (b) of men not in private, and/or (c) on the basis of gender, might also be established through a

[1] That is, where the underwear are removed or pulled down to expose the genital and/or anal area(s).

motion for summary judgment depending on the results of discovery. The existence of such policies and practices, however, could be determined at trial if not by summary judgment. Discovery results thus far suggest that the existence of a practice of bare skin strip searches for males and females, will not be in dispute; the only issue will be, when did they stop?

For overdetentions, Plaintiffs expect to be able to use the Defendants' computer databases and admissions related to those databases to determine who was overdetained and for how long, as explained in Kevin Nichols' affidavit Plaintiffs' Exhibit # 124.

Methods of proof. Plaintiffs will prove Central Booking's liability (i.e., the existence of policies and practices) with evidence based upon declarations of arrestees, statistical sampling, analysis of Central Booking's own computer records, deposition testimony of Central Booking employees, and witness testimony (including arrestees taken to Central Booking during various periods of time).

The use of statistical evidence to prove liability in civil rights cases is well established. Berger v. Iron Workers Reinforced Rodmen Local 201, 843 F.2d 1395, 1413 (D.C. 1998); Davis v. Califano, 613 F.2d 957 (D.C. Cir. 1979) ("statistical proof may alone be used, without presentation of specific instances of discrimination, to establish a prima facie case of employment discrimination"); Mitchell v. Diamond Cab Company of District of Columbia, 2003 U.S. Dist. LEXIS 12492, *25 (D.D.C. 2003) (motion for summary judgment) (collecting cases).

Scholars, courts and even legislatures have recognized that, in many cases, statistical methods actually provide a more accurate form of evidence than individual testimony.

Many categories of federal cases routinely use statistical methods to determine liability and damages. *See, e.g.,* Castaneda v. Partida, 430 U.S. 482, 97 S. Ct. 1272, 51 L. Ed. 2d 498 (1977) (statistical data to prove discrimination in jury selection); Menard-Sanford v. Mabey (In re A.H. Robins Co.), 880 F.2d 694 (4th Cir. 1989) (Dalkon Shield litigation); Berger (employment discrimination); Zippo Manufacturing Co. v. Rogers Imports, Inc., 216 F. Supp. 670 (S.D.N.Y. 1963) (Feinberg, J.) (survey data in trademark infringement case); Cimino v. Raymark Indus., 751 F. Supp. 649, 659 (E.D. Tex. 1990) (discussing statistics and its applications in federal cases) rev'd, Cimino v. Raymark Indus., Inc., 151 F.3d 297 (5th Cir. 1998). Courts frequently permit evidence of life-expectancy or mortality tables when determining damages. *See* Ageloff v. Delta Airlines, Inc., 860 F.2d 379 (11th Cir. 1988); Asana v. United States, 616 F.2d 41 (2nd Cir. 1980); Larsen v. International Business Machines Corp., 87 F.R.D. 602 (E.D.Pa. 1980) (use of work-life tables); *see also* Bell v. Farmers Insurance Exchange, 115 Cal.App.4th 715, 9 Cal.Rptr.3d 544 (2004) (relying heavily on federal law in upholding the use of statistics to formulate damages and provides a thorough and detailed discussion of the use of statistics to determine damages in the wage and hour context).

Discovery. Database discovery of Central Booking and Baltimore City Police Department computers has been provided and will need to be updated.

The parties have thus far engaged in informal, targeted, cooperative discovery focusing on the search practices, policies, and justifications. Plaintiffs have deposed numerous line officers and have started on supervisor depositions from the bottom up. That will need to continue on up to the Wardens.

At this point, Defendants have no need to depose absent class members for the liability phase of the trial beyond those who will be on Plaintiffs' witness list. Dellums v Powell, 566 F.2d 167, 187 (D.C. Cir. 1977) (defendant has no absolute right to take discovery from absent class members). Nor would Defendants need to take damages discovery from any plaintiffs at this point.

Costs and Attorneys' Fees**.** Plaintiffs will be entitled to an award of costs and reasonable attorneys' fees for work expended to this date in this litigation should plaintiffs' prevail at this Phase. Neal v. Director of Department of Corrections, 1995 U.S. Dist. LEXIS 11543 at *14.

VI. IMPLEMENTATION OF INJUNCTIVE RELIEF

Plaintiffs believe that the claims for injunctive relief can be settled by agreement between the parties without the need for a court order or on-going court supervision. However, should the parties be unable to resolve this claim, Plaintiffs will request an injunction ordering that:

- The State Defendants must maintain a written log of all strip searches of arrestees, showing the name of the arrestee, the charge, the date and time of search, the person conducting the strip search, the reason(s) therefore, the person's gender, and other persons present during the search.

- Requiring that all strip searches to be approved by a supervisory officer.
- Thorough strip search training of all officers.
- Each month, the State Defendants file with the Court , and provide to plaintiffs' counsel a copy of the log;
- Attorney's fees and costs for the injunctive phase be awarded, as well as monitoring fees for the foregoing.

VII. PHASE II – DETERMINING COMPENSATORY DAMAGES

If plaintiffs prevail on liability, the issue of damages may well settle. The Court may even order "bellwether" damages trials of a representative sample, which the parties can then use to assess the values of all claims and possibly settle the case. In re Chevron U.S.A, 109 F.3d 1016, 1019 (5th Cir. 1997) ("The notion that the trial of some members of a large group of claimants may provide a basis for enhancing prospects of settlement or for resolving common issues or claims is a sound one that has achieved general acceptance by both bench and bar").

If the case does not settle, Phase II of the trial would address classwide damages. The D.C. Circuit Court of Appeals approved the use of a "damages matrix" specifically stated in a mass arrest/ overdetention class action that assigned set amounts of damages to class members by allocating damages according to categories of overdetention times, e.g., x dollars for all persons overdetained between 12-24 hours, y dollars to all persons overdetained between 24-36 hours, etc. Dellums v Powell, 566 F.2d at 189 ("Nor do we think that

determination of damages in this case requires individualization."). Therefore, along with other methods of determining damages, plaintiffs propose two methods of determining damages on a class-wide basis.

A. Methodologies of Determining Compensatory Damages

There are five basic methodologies of determining damages in class actions such as this: (1) by asking the jury to establish a matrix for damages based on such factors as length of detention, type of strip search, and/or arrest charge without statistical sampling; (2) in a single, class-wide damages trial using "sampling;" (3) by mini-trials tried to judges (or, if Defendants agree, magistrate judges, or even special masters) on the issue of damages; (4) using "bell whether" trials of a sample of plaintiffs; or (5) by a claims procedure agreed upon by the parties.

Plaintiffs propose determining damages (1) by asking the jury to establish a matrix for damages for the entire class using the method approved by the Court of Appeals in Dellums; or, alternatively, (2) in a single, class-wide damages trial using "sampling;" (3) by mini-trials tried to judges (or magistrates if defendants agree) on the issue of damages; or, alternatively, (4) by a claims procedure agreed upon by the parties.

The plaintiffs in Dellums v. Powell, whose claims included a claim for damages arising from mass arrest and overdetention, submitted a damages question to the jury that allowed the jury to assign a schedule of damages based on length of detention that was then to be applied to the plaintiffs on a ministerial

basis. 566 F.2d at 208. Working with the Form of Verdict designed by the district court, the jury was able to award damages along a sliding scale which took into account, in a rough way, the different experiences of different members of the class, without losing administrative feasibility. Id. This is the simplest method of determining damages on a class-wide basis.

Alternatively, Plaintiffs propose using the second method, a single trial using "sampling" to try class-wide damages on an aggregate basis to a jury, as the best approach. The use of acceptable sampling techniques, in lieu of discovery and the presentation of voluminous data from the entire class, will produce substantial savings in time and expense. **For many class members, sampling (or damages matrix methods) techniques may provide the only practicable means to obtain recov**ery. *See* Manual for Complex Litigation §21.493, at 101 (3d ed. 1995). The Fourth Circuit used sampling techniques extensively in the Dalkon Shield Litigation. *See, e.g.*, Menard-Sanford v. Mabey (In re A.H. Robins Co.), 880 F.2d 694 (4th Cir. 1989). For a discussion of the Fourth Circuit's extensive use of sampling in the Dalkon Shield Litigation, see Laurens Walker, Essay: A Model Plan To Resolve Federal Class Action Cases By Jury Trial, 88 Va. L. Rev. 405, 419 (2002).).[2] Many states, including Maryland and the District of Columbia, have statutes that specifically authorize and endorse the use of statistical evidence or proof of amount of damages sustained by the members of the class on a class-wide

[2] The case settled before trial. Bynum v. District of Columbia, 412 F. Supp. 2d 73 (D.D.C. 2006) (final approval order).

basis, without requiring proof of such matters by each individual member of the class. Md. Code Ann., Health-Gen. I §15-120(e)(2) and (3); D.C. Code § 28-4508 (District of Columbia direct purchaser antitrust) (amount of damages sustained by the members of the class may be proven on a class-wide basis, without requiring proof of such matters by each individual member of the class).

B. Trial Of Class-Wide Damages Using "Sampling"

1. Aggregate trial

Aggregate trials of non-economic damages in civil rights cases are well established. Dellums v Powell, 566 F.2d 176, 189 (D.C. Cir. 1977). In Dellums, the Court of Appeals upheld a jury's award of a lump sum of compensatory damages, and a distribution matrix of damages for unlawful arrests and illegal detentions based on the arrests. Id. The jury in Dellums decided on a lump sum for a class of protestors arrested without probable cause and illegally detained for varying periods. It then set a schedule according to which damages were assigned to subclasses based upon length of illegal incarceration. The court then assigned class members to a subclass based upon the detention records of the government. Id. The Dellums Court specifically stated, "Nor do we think that determination of damages in this case requires individualization." Id.

There is a growing trend in favor of using aggregate damage trials. 3 Newberg on Class Actions §10.5 at 483-487 (4th ed. 2002); Long v. Trans World Airlines, Inc., 761 F. Supp. 1320, 1326 (N.D. Ill. 1991) (court limits discovery to

members of a sample of the class and rules plaintiffs can try a class-wide amount for damages including intangible injuries such as pain and suffering to a jury using sampling); Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris, Inc., 133 F. Supp. 2d 162, 169 (E.D.N.Y. 2001); In re Simon II Litig., 211 F.R.D. 86, 147 (E.D.N.Y. 2002), *vacated and remanded on other grounds*, 407 F.3d 125 (2d Cir. 2005); Christopher J. Roche, Note: A Litigation Association Model To Aggregate Mass Tort Claims For Adjudication, 91 Va. L. Rev. 1463 (2005) (discussion of sampling begins at page 1502); Laurens Walker, Essay: A Model Plan To Resolve Federal Class Action Cases By Jury Trial, 88 Va. L. Rev. 405; .Ann. Code of Md., Health-Gen. §15-120(e)(2) (authorizing use of statistical sampling for tobacco litigation).

2. Sampling In General

Sampling involves randomly selecting a fraction of class members, trying the damages of each plaintiff in the sample to a jury, extrapolating from the damages of the class to a lump sum for the class, and then distributing the damages among class members according to a formula, or matrix, or point system determined by the jury, or by the Court. Michael J. Saks & Peter David Blanck, Justice Improved: The Unrecognized Benefits of Aggregation and Sampling in the Trial of Mass Torts, 44 Stan. L. Rev. 815 (1992); 3 Newberg on Class Actions § 10.5 at 483-487. Courts have employed various distribution procedures to allocate class awards to class members, some of which are discussed below.

The most influential case in which tort damages were determined in a lump sum for the entire class in a rule 23(b)(3) class action is Hilao v. Estate of Marcos, 103 F.3d 767, 782 (9th Cir. 1996). In Hilao, working under the supervision of a court appointed special master and aided by a statistics expert, plaintiffs tried the liability and damages claims of approximately 10,000 class members on the basis of a sample of 137 class members chosen by statistical methods. The district court then distributed aggregate damages among the three subclasses based on an average of the representative awards for each subclass. One panel of the Fifth Circuit indicated approval of sampling techniques to determine class-wide tort damages, and even cited to Hilao with approval in In re Chevron U.S.A., 109 F.3d 1016, 1020 (5th Cir. 1997) (inferences about a group may be drawn from a sample if the sample is scientifically chosen; the reliability of the statistical method protects the due process right of the defendant from having to pay a larger award than it owes), citing to Hilao, 103 F.3d at 782-84, 786. Aggregate damage trials using sampling are common in other types of federal cases. Segar v. Smith, 738 F.2d 1249, 1264 (D.C. Cir. 1984) (calculating back pay and front pay in Title VII case on a class-wide basis using statistical methods); Long v. Trans World Airlines, 761 F. Supp. 1320, 1326 (N.D. Ill. 1991) (limiting discovery to members of a sample of the class and ruling that plaintiffs can try a class wide amount for damages including intangible injuries such as pain and suffering to a jury using sampling); In re Sugar Industrial Antitrust Litigation, 73 FRD 322, 353 (E.D. Pa. 1976) (proposing statistical method of determining damages); Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris, Inc., 133 F. Supp. 2d 162, 169

(E.D.N.Y. 2001); In re Simon II Litig., 211 F.R.D. 86, 147 (E.D.N.Y. 2002), *vacated and remanded on other grounds*, 407 F.3d 125 (2d Cir. 2005)..

"There is no constitutional, statutory, procedural, or theoretical bar to aggregate recovery for the class." 3 Newberg on Class Actions §10.5 at 483-487 (4th ed. 2002). Sampling passes muster under both the Due Process Clause and the Seventh Amendment.

a. Sampling Does Not Violate the Seventh Amendment

The use of aggregated proof, based upon sampling in plaintiffs' damages claim, does not violate a Defendant's right to a jury trial. *See, e.g.*, Long, 761 F. Supp. at 1326; In re Simon II Litig., 211 F.R.D. 86, 154 (E.D.N.Y. 2002), vacated and remanded on other grounds, 407 F.3d 125 (2d Cir. 2005). The most commonly raised objection to aggregate damage trials is that the procedure violates the defendant's Seventh Amendment jury trial right by denying the defendant a right to confront each plaintiff about his individual damages. Cimino v. Raymark Indus., Inc., 151 F.3d 297, 321 (5th Cir. 1998); In re Fibreboard Corp., 893 F.2d 706, 709 (5th Cir. 1990). Defendants often contend that individualized discovery and jury trial are necessary because each class member may be differently situated with respect to damages.

However, nothing in the Seventh Amendment gives a defendant an individual right of confrontation. Sampling is appropriate even if the Court were to find that defendant does have a right to try damages individually. As the Long court put it, "the very purpose of a statistical model is to account for individual

issues." Long, 761 F. Supp. at 1326. Accordingly, the presence of individual issues does not, in itself, render the use of a statistical model inappropriate under the Seventh Amendment.

b. Sampling Does Not Deprive Defendant of Due Process

Aggregate damages in no way infringe on a defendant's due process rights. Dellums, 566 F.2d at 189;. The Dellums Court specifically stated, "Nor do we think that determination of damages in this case requires individualization." Id. The Hilao Court rejected the defendant's due process challenge, relying on the analysis established in Mathews v. Eldridge, 424 U.S. 319 (1976) for determining whether a procedure by which a private party invokes state power to deprive another person of property satisfies due process.[3] Aggregate damages trials using sampling also pass muster under this test. Justice Improved: The Unrecognized Benefits of Aggregation and Sampling in the Trial of Mass Torts, 44 Stan. L. Rev. at 828.

Once aggregate damages are established against the defendants, the problem of allocations among classes and distribution within each class largely becomes a plaintiffs' problem. In re Simon II Litig., 211 F.R.D. 86, 103 (E.D.N.Y. 2002), *vacated and remanded on other grounds*, 407 F.3d 125 (2d Cir. 2005). The defendant has no interest in the division of class damages among the class members providing the amount of class-wide damages is accurate. Id. Plaintiffs

[3] In Connecticut v. Doehr, 501 U.S. 1 (1991), the Supreme Court refined the third prong of the Mathews test for disputes involving only private parties.

vote on whether to accept distribution of class damages by exercising (or not exercising) their opt-out rights.

Aggregate proof of a defendant's monetary liability is just as accurate as class treatment of other elements of liability. Long, 761 F. Supp. at 1330. It is not unusual, and probably more common than otherwise in many types of cases, that aggregate evidence of the defendant's liability is more accurate and precise than would be so with individual proofs of loss." Id., citing to Newberg at 349. As the Bell Court observed, "statistical sampling does not dispense with proof of damages but rather offers a different method of proof." *Id.,* 9 Cal. Rptr. 3d at 574.

The use of sampled data is neither pro-plaintiff nor pro-defendant but favors adjudication on the merits of a legal dispute rather than disposition according to information costs. The use of statistical sampling for both damages and liability is especially effective given the disparity in power between the pre-trial detainees, Central Booking and its prison system. Given the number of pre-trial detainees, scientifically valid random sampling and statistical analysis are an effective means to bolster representative testimony.

3. Procedures followed in trying class-wide damages to a jury using sampling in Hilao

The seminal case for statistical sampling in cases involving non-economic damages is Hilao, 103 F.3d at 774. In Hilao, the Ninth Circuit upheld certification of a damages class of approximately 10,000 Philippine nationals or their estates who sought damages as a result of acts of torture, "disappearance", or summary execution that occurred over a 14 year period under the regime of

Ferdinand E. Marcos. The Ninth Circuit approved the court's use of a statistical sample of the class claims in order to compute and award compensatory damages to the class members. The trial was trifurcated into (1) liability (2) punitive damages and (3) compensatory damage phases.

Liability was determined by a jury trial of 22 plaintiffs. In the third phase of the trial (the compensatory damage phase) the Court allowed the jury to consider damages to a random sample of plaintiffs as representative of the injuries suffered by the subclasses. To address plaintiffs' due process concerns, the individual plaintiffs were given the choice of opting out of the certified class action and proceeding with individual trials.

The district court made the following initial findings: of 10,059 claims, the court ruled that 518 were invalid leaving 9,541 claims. Sampling methodology was then applied to these valid claims. Of these, 137 were randomly selected by computer. An inferential statistician testified that the examination of 137 sample claims would achieve a "95 percent statistical probability that same percentage determined to be valid among the examined claims would be applicable to the totality of the claims filed." Hilao, at p.782.

A special master was appointed to oversee the depositions of the sample 137 depending on the definition or category in which the claimant fell. The special master then determined the category for that plaintiff based upon definitions established in the liability phase of the trial, for example torture, summary execution, or disappearance. The jury was free to accept, modify, or

reject the award. Id. The Ninth Circuit held that, given the similarity in damages of the subclasses, the benefit of the statistical sampling method was "enormous" given the prospect of trying 10,000 individual cases. Id. at p.786.

The special master then recommended the amount of damages to be awarded to each claimant, Id. at p.783, by further breaking down the three classes in the liability phase into damage classes. For example, for the torture victims he considered duration of time, length of detention, methods of torture used, and the age of the victim. For those persons who summarily disappeared, the special master considered whether they were first tortured, whether there was actual murder, the family's anguish, and lost earnings. Id.

Thereafter the statistician in Hilao testified to his methodology and his recommendations of damage awards. Id. at 783. On appeal before the Ninth Circuit, the Estate of Marcos unsuccessfully challenged the statistical methodology employed to determine the class claims.

4. Procedures to be followed in trying class-wide damages to a jury using sampling in this case

The following is a summary of Plaintiffs' proposed procedure for trying damages on an aggregate basis. Plaintiffs can elaborate on the procedure as discovery becomes available and as the Court directs.

- Generate a class list for Overdetention Class (including length of overdetention of each class member) and class list of each of the Strip Search Classes using database discovery from Central Booking's Automated Booking System and other discovery. Bryan Miller's affidavit

explains how the number of strip search class members can be established using statistical and other techniques if the search pattern was applied to most or many but not all arrestees. (Declaration at Plaintiffs' Exhibit # 97, submitted with Document 35 on November 30, 2005; it is not re-filed again here, but is included as an exhibit with the chambers copy)

- Statistics expert Richard Berk, Ph. D. (Declaration at Plaintiffs' Exhibit # 96, submitted with Document 35 on November 30, 2005; it is not re-filed again here, but is included as an exhibit with the chambers copy) selects samples for each class using reliable statistical methods.

- Parties conduct discovery of sample plaintiffs under the supervision of a special master.

- Medical and psychiatric expert Dr. Susan Fiester (Plaintiffs' Exhibit # 125, submitted herewith) examines members and samples and makes diagnoses with explanation of factors on which diagnoses based.

- Special master makes recommendation on the amount of damages to be awarded each sample plaintiff on the basis of depositions and submissions of the parties.

- Jury trial at which plaintiffs' statistics expert can testify (where evidence supports testimony) that the selection of the random sample met the standards of inferential statistics, that efforts to locate and obtain testimony from the claimants in the random sample "were of the highest standards," that the procedures followed conformed to the standards of

inferential statistics, and that the injuries of the random-sample claimants were representative of the class as a whole.

- Jury trial at which plaintiffs' medical psychiatric expert can testify regarding diagnoses and bases of diagnoses.

- Jury trial at which testimony of sample plaintiffs and their witnesses is presented.

- Jury trial at which special master testifies about his recommendations and report given to jury.

- Jury or the Court determines formula or point system for distributing the class damages among class members. Distribution methods are discussed below.

Discovery. Plaintiffs suggest that a statistical model, based on discovery from a random sample, can adequately address the various damages issues. Plaintiffs propose limiting discovery to members of the sample using depositions. In Hilao the discovery from the sample was limited to depositions supervised by the special master. Hilao, at 782.

Class members. All class members for the overdetention class can be readily determined from defendant's records. Additional discovery is expected to flesh out whether any of the Central Booking search room officers did not follow the practice and procedure of conducting blanket strip searches of arrestees; as for underwear searches, discovery has revealed that recently, at a minimum,

every male was automatically strip-searched to his underwear, so any male who might be excluded from the full strip search classes will fall into the underwear strip search class.

Distribution of lump sum award. Any award can be allocated among class members based on a per day or per hour amount for Overdetention Class members (including, perhaps, a flat amount for each overdetained person, plus an amount for each additional hour) or a per incident amount for Strip Search Class members. Alternative methods include allowing the jury to set a distribution matrix utilizing a formula or a point system or allowing the court to set the distribution method. In Dellums the jury awarded damages along a sliding scale which took into account the different experiences of different members of the class, without losing administrative feasibility. 566 F.2d at n.6 and at 189. Judge Weinstein in Simon II describes how damage awards in the Agent Orange, Dalkon Shield, and Holocaust litigations, for example, have been appropriately distributed through court fixed and administered schemes. In re Simon II Litig., 211 F.R.D. 86, 103, 110, 147 (E.D.N.Y. 2002), *vacated and remanded on other grounds*, 407 F.3d 125 (2d Cir. 2005).

Cy pres. Plaintiffs expect to be able to identify and locate most class members using data in defendants' databases, and through publication and publicity. See J. Douglas Richards, American Antitrust Institute Symposium: Thinking Creatively About Remedies: What Makes an Antitrust Class Action Remedy Successful?: A Tale of Two Settlements, 80 Tul. L. Rev. 621 (December, 2005) (discussing methods of identifying class members using electronic data and

available remedies). But, Plaintiffs propose that any residue (*e.g.*, funds allocated to class members who cannot be located or de minimis amounts) be paid to a cy pres fund where the unclaimed funds may be distributed for the indirect prospective benefit of the class. *See* Democratic Cent. Comm. v. Washington Metro. Area Transit Commission, 84 F.3d 451 (D.C. Cir. 1996); In re Airline Ticket Com'n Antitrust Litigation, 268 F.3d 619, 625 (8th Cir. 2001).

VIII. CONCLUSION

Plaintiffs' proposed trial plan demonstrates that this case can follow a discovery plan and be tried in two phases through the use of focused discovery, testimony, surveys, and aggregate damage awards.

Respectfully submitted, _____/s/_____ Sean R. Day (Md Bar No. 12831) 8505 Baltimore Avenue • Suite B College Park, Maryland 20740 Phone: 301.220.2270	Respectfully submitted, _____/s/_____ WILLIAM CLAIBORNE pro hac vice 717 D Street, NW , Suite 210 Washington, DC 20004 Phone 202.824.0700 Fax 202.824.0745
Respectfully submitted _____/s/_____ Barrett S. Litt pro hac vice Litt, Estuar, Harrison & Kitson LLP 1055 Wilshire Blvd. Suite 1880 Los Angeles, CA 90017 Tel: 213.386.3114 Fax: 213.380.4585	Counsel for the Named Plaintiffs and the Proposed Classes

PLAINTIFF'S EXHIBIT 127

UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

MARCUS BYNUM, et al. Plaintiffs v. GOVERNMENT OF THE DISTRICT OF COLUMBIA, Defendant	Civil Action No: **02-956 (RCL)** Next Event: None scheduled

PLAINTIFFS' PROPOSED TRIAL PLAN

I. INTRODUCTION

This is a §1983 class action case alleging the overdetention of inmates in the DC Jail past their court ordered release dates ("Overdetention Claim"), and blanket strip searches of inmates returning from court to the DC Jail after a judge has already ordered their release ("Strip Search Claim"). This Court certified an Overdetention Class on March 31, 2003 (docket # 69) and a Strip Search Class on August 11, 2003 (docket # 93).

The Court certified the Overdetention Class as a Rule 23(b)(2) as to the claims of the class members for declaratory or injunctive relief. The Court also certified the damages class under Rule 23(b)(3), and defined the Overdetention Class using the following two-part class definition:

> "(a) Each person who has been, is, or will be incarcerated in any District of Columbia Department of Corrections facility in the three years preceding the filing of this action up to and until the date this case is terminated; and (b) who was not released, or, in the future, will not be released by midnight on the date on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired."

The Court certified the Strip Search Class under Rule 23(b)(2) as to the claims of the class members for declaratory or injunctive relief, and as a Rule 23(b)(3) class for monetary relief. The Strip Search Class was defined using the following two-part class definition:

> "Each person who, in the three years preceding the filing of this action, up until the date this case is terminated, has been, is or will be: (i) in the custody of the Department of Corrections; (ii) taken to court form a Department of Corrections facility; (iii) ordered released by the court or otherwise became entitled to release by virtue of the court appearance because the charge on which he had been held was no longer pending or was dismissed at the hearing, was ordered released on his own recognizance, or had posted bail, was sentenced to time served, was acquitted or was otherwise entitled to release; (iv) was not the subject of any other pending case or cases which imposed any condition of release other than personal recognizance; (v) was not the subject of any detainer or warrant; (vi) was returned to the DC Jail or CTF from court, to be processed out of Department of Corrections custody; and (vii) was subjected to a strip search and/or visual body cavity search without any individualized finding of reasonable suspicion or probable cause that he was concealing contraband or weapons; before being released, regardless of whether he was overdetained."

In the Order certifying the Overdetention Class, the Court also ordered the parties to jointly submit an agreed-upon proposed order regarding class notification procedures. If no agreement could be reached on the terms of the proposed order, separate proposed orders were to be submitted within 30 days. All parties moved the Court to extend the time for submitting proposed notice procedures for the Overdetention Class until after the Court ruled on plaintiffs' second motion to certify the Strip Search Class, and until after plaintiffs submitted a proposed trial plan setting forth their proposal to try damages using sampling and other statistical methods (docket # 78). The Court granted the motions (docket # 81).

II. CONSENT SOUGHT BUT NOT OBTAINED

Plaintiffs have tried to discuss the issues set forth in the proposed trial plan with Defendant District of Columbia through opposing counsel Maria Amato and her supervisor Robert Utiger, Esq., but have been unable to do so.

III. PROPOSED TRIAL PLAN

Plaintiffs hereby present this proposed trial plan ("Proposed Trial Plan"), which explains Plaintiffs' planned approach to discovery, class notice, and trial. This Proposed Trial Plan is meant to aid the Court in determining effective discovery management, the development of notice procedures, and management of the trial of the case. The Proposed Trial Plan is not necessarily meant to be final in the matters of witnesses or exhibits; expert reports; proposing jury instructions and special verdict forms, or even adopting a particular methodology of determining damages for class members. Moreover, the determination of a trial plan will depend on the Court's decisions regarding the most efficient and reasonable method for proceeding to trial on a number of discovery matters presently pending. On this basis, Plaintiffs reserve the right to present a revised and more detailed trial plan once discovery is complete and the trial date nears.

IV. BIFURCATION OF LIABILITY AND DAMAGES PHASES

Plaintiffs propose that the trial be bifurcated into (1) a liability phase (including determination of injunctive relief) and (2) a damages phase. Rule 42(b). Bifurcation of civil rights class actions into a liability phase and a damages phase is widely recognized and accepted. See, e.g., Berger v. Iron Workers Reinforced Rodmen, Local 201, 170 F.3d 1111 (D.C. Cir. 1999); Neal v. Director of Department of Corrections, 1995 U.S. Dist. LEXIS 11543 (D.D.C. 1995) (Memorandum Opinion IV) (Procedures for Absent Class Members) rev'd on other grounds sub nominee, Bonds v. District of Columbia, 93 F. 3d 801 (D.C. Cir. 1996). Rule 42(b) permits trial of individual, discrete issues. As long as separate juries do not re-examine previously resolved fact determinations, bifurcation does not violate the Seventh Amendment. Robinson v. Metro-North Commuter R.R., 267 F.3d 147, 170 (2d Cir. 2001). This proposal tracks the Court's orders

certifying each of the classes as a Eubanks hybrid class. Eubanks v. Billington, 110 F.3d 87, 96 (D.C.Cir.1997).

The central issues to be determined in the liability phase are: (1) whether the District has a pattern and practice of over detaining inmates past their release dates; (2) whether the District violates the constitutional rights of inmates by overdetaining inmates past their release dates; (3) what length of overdetention constitutes an unconstitutional overdetention; (4) whether the Department of Corrections has a practice/policy of subjecting inmates to blanket strip searches after a judge has ordered their release; and (5) whether the Department of Corrections violates the constitutional rights of inmates by subjecting them to blanket strip searches after a judge has ordered their release. These issues can probably be determined on a motion for summary judgment on the applicable legal standard.

Phase II of the trial will address damages. Plaintiffs propose determining damages (1) in a single, class-wide damages trial using "sampling," or, alternatively, (2) by mini-trials tried to judges (and magistrates if defendant agrees), or, alternatively, (3) by a claims procedure agreed upon by the parties.

"Sampling," discussed below, is the process of collecting information from fewer than all potential sources. Laurens Walker, Essay: A Model Plan To Resolve Federal Class Action Cases By Jury Trial, 88 Va. L. Rev. 405 (2002). In this context, sampling involves randomly selecting a fraction of the plaintiffs in the class, trying the damages of each plaintiff in the sample to a jury, extrapolating the sampled damage award to determine damages for the class as a whole, and then distributing the class damages among class members according to a formula or point system determined by the jury or the Court.

Plaintiffs believe that the damages due the class can be determined in a single jury proceeding. In preparation for the trial, an expert working under the supervision of a special master will generate a random sampling of the class. Through reasonable discovery, defendant can obtain facts relevant to the sample members' experiences during the class period. Using this data, the parties' experts can then extrapolate damages for the entire class.

V. NOTICE PROCEDURES

Notice to class members is not required at Phase I for either class because the issue of liability falls under Rule 23(b)(2). Class actions seeking declaratory or injunctive relief under Rule 23(b)(2) are not subject to the individual notice requirements of Rule 23(c)(2). Stolz v. United Broth. of Carpenters and Joiners of America, 620 F. Supp. 396 (D. Nev. 1985).

Notice is required for Phase II because damages are integral to a Rule 23(b)(3) class. Moreover, notice in the case addresses any due process objections class members might have to a class-wide determination of damages. Objecting class members would be allowed to opt out of the class in favor of an individual jury trial on damages. The Court can determine the content of the notice after it rules on the methodology of proving damages.

Plaintiffs submit under separate cover their proposals for notification procedures.

VI. PHASE I – TRIAL OF LIABILITY

Determination of liability. Determination of liability can be made either by trial or by motion for summary judgment. The fact that the Department of Corrections had a practice (and then a written policy) of subjecting every single person booked into the DC Jail during the class period to a strip search and visual body cavity search without an individualized finding of reasonable suspicion can be established through a motion for summary judgment based upon concessions by the District made in discovery. Any issues of whether any of those searches could be

validated on other grounds (which plaintiffs contend they could not but defendants presumably contend otherwise) would also be resolved. The result would be that the liability phase would determine who was unlawfully strip searched.

For overdetentions, the procedure would be to determine certain issues under special interrogatories from which a determination of the class members who have been overdetained could be made.

Methods of proof. Plaintiffs will prove the District's liability with evidence based upon declarations of pre-trial detainees, statistical sampling, analysis of the District's own computer records, deposition testimony and witness testimony.

The use of statistical evidence to prove liability in civil rights cases is well established. Berger v. Iron Workers Reinforced Rodmen Local 201, 843 F.2d 1395, 1413 (D.C. 1998); Davis v. Califano, 613 F.2d 957 (D.C. Cir. 1979) ("statistical proof may alone be used, without presentation of specific instances of discrimination, to establish a prima facie case of employment discrimination"); Mitchell v. Diamond Cab Company of District of Columbia, 2003 U.S. Dist. LEXIS 12492, *25 (D.D.C. 2003) (motion for summary judgment) (collecting cases); Simon II, 2002 U.S. Dist. LEXIS 25632, *156 (E.D.N.Y. Oct. 22, 2002) (citing to extensive body of law review article discussing sampling to prove liability and making point that requiring individual trials on damages allows wrongdoer to avoid responsibility for conduct). Both scholars and courts have recognized that, in many cases, statistical methods actually provide a more accurate form of evidence than individual testimony. Simon II, 2002 U.S. Dist. LEXIS 25632, at *161.

Many categories of federal cases routinely use statistical methods to determine liability and damages. See, e.g., Castaneda v. Partida, 430 U.S. 482, 97 S. Ct. 1272, 51 L. Ed. 2d 498 (1977) (statistical data to prove discrimination in jury selection); Burger (employment discrimination);

Zippo Manufacturing Co. v. Rogers Imports, Inc., 216 F. Supp. 670 (S.D.N.Y. 1963) (Feinberg, J.) (survey data in trademark infringement case); Cimino v. Raymark Indus., 751 F. Supp. 649, 659 (E.D. Tex. 1990) (discussing statistics and its applications in federal cases) rev'd, Cimino v. Raymark Indus., Inc., 151 F.3d 297 (5th Cir. 1998). Courts frequently permit evidence of life-expectancy or mortality tables when determining damages. See, Ageloff v. Delta Airlines, Inc., 860 F.2d 379 (11th Cir. 1988); Asana v. United States, 616 F.2d 41 (2nd Cir. 1980); Larsen v. International Business Machines Corp., 87 F.R.D. 602 (E.D.Pa. 1980) (use of work-life tables).

Discovery. The databases described in plaintiffs' motion to compel, other items needed to prove liability such as defendant's witnesses, and limited discovery on liability of absent class members only, as listed on plaintiffs' witness list to testify as fact witnesses, would complete the discovery necessary for Phase I. At this point, Defendant has no need to depose absent class members for the liability phase of the trial beyond those on plaintiffs' witness list. Dellums v Powell, 566 F.2d 167, 187 (D.C. Cir. 1977) (defendant has no absolute right to take discovery from absent class members).

Costs and Attorneys' Fees**.** Plaintiffs will be entitled to an award of costs and reasonable attorneys' fees for work expended to this date in this litigation should plaintiffs' prevail at this Phase. Neal v. Director of Department of Corrections, 1995 U.S. Dist. LEXIS 11543 at *14.

VII. IMPLEMENTATION OF INJUNCTIVE RELIEF.

Plaintiffs will request an injunction ordering that:

- The Department of Corrections release every sentenced prisoner before midnight on the date his or her sentence expires, and release every pre-trial detainee before midnight on the date when the last outstanding basis for detention expires for him or her;

- Each month, Defendant file with the Court, and provide to plaintiffs' counsel, a list of inmates indicating the proposed Release Dates[1] for each inmate, a list of inmates released in the previous month, and the Exit Date and Exit Time for each inmate released in the previous month;

- The Court order certain prescribed changes to the Jail and Records Office's release procedures (such as staffing, functioning computerization, and staff training). To the extent the Court orders such changes, each month, Defendant shall file with the Court, and provide to plaintiffs' counsel, a monthly report on the Jail and Records Office compliance with the order.

- Each month, Defendant file with the Court, and provide to plaintiffs' counsel, a report showing which prisoners and pre-trial detainees were strip searched, when, and at what point during the prisoner/detainee's release process;

- Defendant not enforce any District of Columbia statute prohibiting releases of inmates, otherwise entitled to release, for example, between midnight and 8:00 a.m.;

- DC Jail refrain from subjecting Strip Search Class members to blanket strip searches after a judge has ordered their release. Gary v. Sheahan, 1998 U.S. Dist. LEXIS 7179 (show cause discussing PI enjoining strip searches of court returns);

- Attorney's fees and costs for the injunctive phase be awarded, as well as monitoring fees for the foregoing.

---

[1] Unless defined herein, capitalized terms in this motion have the same meaning as in the Third Amended Complaint. "Department of Corrections" means District of Columbia Department of Corrections. "Overdetain" means holding a detainee or prisoner in Department of Corrections' custody past the person's release date. "Release Date" for each detainee or inmate is the day on which the person is entitled to be released by court order or the date on which the basis for his or her detention has otherwise expired. "Exit Date" for each detainee or inmate means the date on which he or she was actually released from the custody of the Department of Corrections. "Exit Time" for each detainee or inmate

.Discovery. Plaintiffs may need additional discovery on the issue of injunctive relief. The scope of that discovery can be determined after plaintiffs receive responses to outstanding discovery requests.

VIII. PHASE II –DETERMINING COMPENSATORY DAMAGES

A. METHODOLOGY OF DETERMINING COMPENSATORY DAMAGES

Phase II of the trial will focus on class damages. There are three basic methodologies of determining damages in class actions such as this: (1) in a single class-wide damages trial using "sampling," or, alternatively, (2) by mini-trials tried to judges (and magistrates if defendant agrees), or, alternatively, (3) by a claims procedure agreed upon by the parties. Each of these methods is discussed below. See e.g. Simon II, 2002 U.S. Dist. LEXIS 25632, * 30 (discussing methods used to allocate aggregate damages among claimants).

Plaintiffs propose using the first method, a single trial using "sampling" to try class-wide damages on an aggregate basis to a jury, as the better approach. The use of acceptable sampling techniques, in lieu of discovery and the presentation of voluminous data from the entire class, will produce substantial savings in time and expense. For many class members, sampling techniques may provide the only practicable means to obtain recovery. See Manual for Complex Litigation §21.493, at 101 (3d ed. 1995).

B. TRIAL OF CLASS-WIDE DAMAGES USING "SAMPLING"

1. Aggregate trial

Aggregate trials of non-economic damages in civil rights cases are well established in this

---

means the time of day on the date on which he or she was actually released from the custody of the Department of Corrections.

Circuit. Dellums v Powell, 566 F.2d at 189. In Dellums, the Court of Appeals upheld a jury's award of a lump sum of compensatory damages, and a distribution matrix of damages for unlawful arrests and illegal detentions based on the arrests. Id. The jury in Dellums decided on a lump sum for a class of protestors arrested without probable cause and illegally detained for varying periods. It then set a schedule according to which damages were assigned to subclasses based upon length of illegal incarceration. The district court then assigned class members to a subclass based upon the detention records of the government. Id. The Dellums Court specifically stated, "Nor do we think that determination of damages in this case requires individualization." Id.

There is a growing trend in favor of using aggregate damage trials. 3 Newberg on Class Actions §10.5 at 483-487 (4th ed. 2002); Long v. Trans World Airlines, Inc., 761 F. Supp. 1320, 1326 (N.D. Ill. 1991) (court limits discovery to members of a sample of the class and rules plaintiffs can try a class-wide amount for damages including intangible injuries such as pain and suffering to a jury using sampling); Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris, Inc., 133 F. Supp. 2d 162, 169 (E.D.N.Y. 2001); Simon II, 2002 U.S. Dist. LEXIS 25632. See Essay: A Model Plan To Resolve Federal Class Action Cases By Jury Trial, 88 Va. L. Rev. 405.

2. Sampling In General

Sampling involves randomly selecting a fraction of class members, trying the damages of each plaintiff in the sample to a jury, extrapolating from the damages of the class to a lump sum for the class, and then distributing the damages among class members according to a formula, or matrix, or point system determined by the jury, or by the Court. Michael J. Saks & Peter David Blanck, Justice Improved: The Unrecognized Benefits of Aggregation and Sampling in the Trial of Mass Torts, 44 Stan. L. Rev. 815 (1992); 3 Newberg on Class Actions § 10.5 at 483-487. Courts

have employed various distribution procedures to allocate class awards to class members, some of which are discussed below.

The most influential case in which tort damages were determined in a lump sum for the entire class in a rule 23(b)(3) class action is Hilao v. Estate of Marcos, 103 F.3d 767, 782 (9th Cir. 1996). In Hilao, working under the supervision of a court appointed special master and aided by a statistics expert, plaintiffs tried the liability and damages claims of approximately 10,000 class members on the basis of a sample of 137 class members chosen by statistical methods. The district court then distributed aggregate damages among the three subclasses based on an average of the representative awards for each subclass. One panel of the Fifth Circuit indicated approval of sampling techniques to determine class-wide tort damages, and even cited to Hilao with approval in In re Chevron U.S.A., 109 F.3d 1016, 1020 (inferences about a group may be drawn from a sample only if the sample is scientifically chosen, because it is the reliability of the statistical method that protects the due process right of the defendant from having to pay a larger award than it owes), citing to Hilao, 103 F.3d at 782-84, 786. Aggregate damage trials using sampling are common in other types of federal cases. Segar v. Smith, 738 F.2d 1249, 1264 (D.C. Cir. 1984) (court calculated back pay and front pay in Title VII case on a class-wide basis using statistical methods); Long, 761 F. Supp. at 1326 (court limits discovery to members of a sample of the class and rules plaintiffs can try a class wide amount for damages including intangible injuries such as pain and suffering to a jury using sampling); In re Sugar Industrial Antitrust Litigation, 73 FRD 322, 353 (E.D. Pa. 1976) (court proposes determining dames in an aggregate class-wide approach using statistical methods); Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris, Inc., 133 F. Supp. 2d 162, 169 (E.D.N.Y. 2001); Simon II, 2002 U.S. Dist. LEXIS 25632, at *187.

"There is no constitutional, statutory, procedural, or theoretical bar to aggregate recovery for the class." 3 Newberg on Class Actions §10.5 at 483-487 (4th ed. 2002). Sampling passes muster under both the Due Process Clause and the Seventh Amendment.

a. Sampling Does Not Violate the Seventh Amendment

The use of aggregated proof, based upon sampling in plaintiffs' damages claim, does not violate the Seventh Amendment. Long, 761 F. Supp. at 1326; Simon II, 2002 U.S. Dist. LEXIS 25632, at *187. The most commonly raised objection to aggregate damage trials is that the procedure violates the defendant's Seventh Amendment jury trial right by denying the defendant a right to confront each plaintiff about his individual damages. Cimino v. Raymark Indus., Inc., 151 F.3d 297, 321 (5th Cir. 1998); In re Fibreboard Corp., 893 F.2d 706, 709 (5th Cir. 1990). Defendants often contend that individualized discovery and jury trial are necessary because each class member may be differently situated with respect to damages.

However, nothing in the Seventh Amendment gives a defendant an individual right of confrontation. Sampling is appropriate even if the Court were to find that defendant does have a right to try damages individually. As the Long court put it, "the very purpose of a statistical model is to account for individual issues." Long, 761 F. Supp. at 1326. Accordingly, the presence of individual issues does not, in itself, render the use of a statistical model inappropriate under the Seventh Amendment.

Moreover, Fifth Circuit cases invalidating the use of statistics to extrapolate findings of liability from a group of representative plaintiffs to all plaintiffs (in place of individual jury verdicts as to each plaintiff) are based on a peculiar feature of Texas law requiring that causation issues be decided on an individual basis. Cimino v. Raymark Indus., Inc., 151 F.3d 297, 321 (5th Cir. 1998); In re Fibreboard Corp., 893 F.2d 706, 709 (5th Cir. 1990). Any language in Cimino

stating that the Seventh Amendment requires one-on-one damages trials with individual jury verdicts as to each plaintiff is dicta because the holding in Cimino on exposure to asbestos and causation was specifically based on Texas state law. This Circuit follows a different rule, and allows damages to be determined on a class-wide basis, Dellums v. Powell, 566 F.2d at n.6 and at 189 (jury awarded damages along a sliding scale which took into account the different experiences of different members of the class, without losing administrative feasibility); Segar v. Smith, 738 F.2d 1249, 1264 (D.C. Cir. 1984) (court calculated back pay and front pay in Title VII case on a class wide basis using statistical methods). Moreover, the difficult causation issue in Cimino and Fibreboard – whether a plaintiff was exposed to asbestos and whether the asbestos or some other agent caused the medical condition – is not present here. In this case, causation is simple and direct. For any person overdetained past midnight on the day of his release, or whatever time is set by the court or the jury as the constitutional threshold, the custom and practice of operating the Department of Corrections without a workable inmate management system caused the overdetention. For any person strip searched, the custom or policy of the Department of Corrections of subjecting inmates to blanket strip searches, after a judge has ordered their release, caused the strip search.

In this Circuit, the fact finder may properly infer emotional distress from factual circumstances and award damages to compensate for that injury. Berger v. Iron Workers Reinforced Rodmen, Local 201, 170 F.3d 1111, 1138 (D.C. Cir. 1999), citing Memphis Community Sch. Dist. v. Stachura, 477 U.S. 299, 311 (1986); Daskalea v. District of Columbia, 227 F.3d 433, 444 (D.C. Cir. 2000) (plaintiff's mental and emotional distress suffered while in the DC Jail are compensable under §1983, even in the absence of physical injury or corroborating expert testimony to establish the causal link between her treatment in prison and her injuries).

b. Sampling Does Not Deprive Defendant of Due Process

Aggregate damages in no way infringe on a defendant's due process rights. Dellums, 566 F.2d at 189. The Dellums Court specifically stated, "Nor do we think that determination of damages in this case requires individualization." Id. The Hilao Court rejected defendant's due process challenge relying on the analysis established in Mathews v. Eldridge, 424 U.S. 319 (1976) for determining whether a procedure by which a private party invokes state power to deprive another person of property satisfies due process. Recently, in Connecticut v. Doehr, the Supreme Court has refined the third prong of the Mathews test for disputes involving only private parties. Aggregate damages trials using sampling also pass muster under this test. Justice Improved: The Unrecognized Benefits of Aggregation and Sampling in the Trial of Mass Torts, 44 Stan. L. Rev. at 828.

Once aggregate damages are established against the defendants, the problem of allocations among classes and distribution within each class largely becomes a plaintiff's problem. Simon II, at *10. The defendant has no interest in the division of class damages among the class members providing the amount of class-wide damages is accurate. Id. Plaintiffs vote on whether to accept distribution of class damages by exercising (or not exercising) their opt-out rights.

Aggregate proof of a defendant's monetary liability is just as accurate as class treatment of other elements of liability. Long, 761 F. Supp. at 1330. It is not unusual, and probably more common than otherwise in many types of cases, that aggregate evidence of the defendant's liability is more accurate and precise than would be so with individual proofs of loss." Id., citing to Newberg at 349.

The use of sampled data is neither pro-plaintiff nor pro-defendant but favors adjudication on the merits of a legal dispute rather than disposition according to information costs. The use of

statistical sampling for both damages and liability is especially effective given the disparity in power between the pre-trial detainees, the District and its prison system. Given the number of pre-trial detainees, scientifically valid random sampling and statistical analysis are an effective means to bolster representative testimony.

3. Procedures followed in trying class-wide damages to a jury using sampling in Hilao

The seminal case for statistical sampling in cases involving non-economic damages is Hilao, 103 F.3d at 774. In Hilao, the Ninth Circuit upheld certification of a damages class of approximately 10,000 Philippine nationals or their estates who sought damages as a result of acts of torture, "disappearance", or summary execution that occurred over a 14 year period under the regime of Ferdinand E. Marcos. The Ninth Circuit approved the district court's use of a statistical sample of the class claims in order to compute and award compensatory damages to the class members. The trial was trifurcated into (1) liability (2) exemplary damages[2] and (3) compensatory damage phases.

Liability was determined by a jury trial of 22 plaintiffs. In the third phase of the trial (the compensatory damage phase) the Court allowed the jury to consider damages to a random sample of plaintiffs as representative of the injuries suffered by the subclasses. To address plaintiffs' due process concerns, the individual plaintiffs were given the choice of opting out of the certified class action and proceeding with individual trials.

The district court made the following initial findings: of 10,059 claims, the court ruled that 518 were invalid leaving 9,541 claims. Sampling methodology was then applied to these valid

[2] Plaintiffs are not seeking punitive damages in this case because punitive damages do not lie against a municipality.

claims. Of these, 137 were randomly selected by computer. An inferential statistician testified that the examination of 137 sample claims would achieve a "95 percent statistical probability that same percentage determined to be valid among the examined claims would be applicable to the totality of the claims filed." Hilao, at p.782.

A special master was appointed to oversee the depositions of the sample 137 depending on the definition or category in which the claimant fell. The special master then determined the category for that plaintiff based upon definitions established in the liability phase of the trial, for example torture, summary execution, or disappearance. The jury was free to accept, modify, or reject the award. Id. The Ninth Circuit held that, given the similarity in damages of the subclasses, the statistical sampling method was "enormous" given the prospect of trying 10,000 individual cases. Id. at p.786.

The special master then recommended the amount of damages to be awarded to each claimant, Id. at p.783, by further breaking down the three classes in the liability phase into damage classes. For example, for the torture victims he considered duration of time, length of detention, methods of torture used, and the age of the victim. For the those persons who summarily disappeared, the special master considered whether they were first tortured, whether there was actual murder, the family's anguish, and lost earnings. Ibid.

Thereafter the statistician in Hilao testified to his methodology and his recommendations of damage awards. at p.783. On appeal before the Ninth Circuit, the Estate of Marcos challenged the statistical methodology employed to determine the class claims.

4. **Procedures to be followed in trying class-wide damages to a jury using sampling in this case**

The following is a summary of Plaintiffs' proposed procedure for trying damages on an aggregate basis. Plaintiffs can elaborate on the procedure as discovery becomes available and as the Court directs.

- Obtain class list for Overdetention Class (including length of overdetention of each class member) and class list of the Strip Search Class using the database discovery detailed in plaintiffs motion to compel (docket # 97);

- Statistics expert Richard Berk, Ph. D.[3] selects sample for each class using reliable statistical methods;

- Parties conduct discovery of sample plaintiffs under the supervision of a special master;

- Special master makes recommendation on the amount of damages to be awarded each sample plaintiff on the basis of depositions and submissions of the parties

- Jury trial at which plaintiffs' expert can testify (where evidence supports testimony) that the selection of the random sample met the standards of inferential statistics, that efforts to locate and obtain testimony from the claimants in the random sample "were of the highest standards", that the procedures followed conformed to the standards of inferential statistics, and that the injuries of the random-sample claimants were representative of the class as a whole

- Jury trial at which testimony of sample plaintiffs and their witnesses is presented;

- Jury trial at which special master testifies about his recommendations and report given to jury;

- Jury or the Court determines formula or point system for distributing the class damages among class members. Distribution methods are discussed below.

Discovery. Plaintiffs suggest that a statistical model, based on discovery from a random sample, can adequately address the various damages issues. Plaintiffs proposing limit discovery to members of the sample, and to method (such as depositions). In Hilao the discovery from the sample was limited to depositions supervised by the special master. Hilao, at 782.

Class members. All class members for both classes can be determined from defendant's records. This is not a jury issue.

Distribution of lump sum award. Any award can be allocated among class members based on a per diem amount for Overdetention Class members or a per incident amount for Strip Search Class members. Alternative methods include allowing the jury to set a distribution matrix utilizing a formula or a point system or allowing the court to set the distribution method. In Dellums the jury awarded damages along a sliding scale which took into account the different experiences of different members of the class, without losing administrative feasibility. 566 F.2d at n.6 and at 189. Judge Weinstein in Simon II describes how damage awards in the Agent Orange, Dalkon Shield and Holocaust litigations, for example, have been appropriately distributed through court fixed and administered schemes. 2002 U.S. Dist. LEXIS 25632, at *30.

Cy pres. Plaintiffs propose that any residue (e.g. class shares of class members who cannot be located) be paid to a cy pres fund where the unclaimed funds may be distributed for the indirect

---

[3] See Plaintiffs' Exhibit 31 to Consent Motion Of All Parties To Defer Filing Proposed Order Regarding Class

prospective benefit of the class. See Democratic Cent. Comm. v. Washington Metro. Area Transit Commission, 84 F.3d 451 (D.C. Cir. 1996); In re Airline Ticket Com'n Antitrust Litigation, 268 F.3d 619, 625 (8th Cir. 2001).

IX. CONCLUSION

Plaintiffs' proposed trial plan demonstrates that this case can be manageably tried in two phases through the use of testimony, surveys, and aggregate damage awards.

WHEREFORE, Plaintiffs respectfully moves this Court to grant their motion.

Respectfully submitted, _____ WILLIAM CLAIBORNE D.C. Bar # 446579 Counsel for the Named Plaintiffs and the Classes 717 D Street, NW , Suite 210 Washington, DC 20004 Phone 202/824-0700 Fax 202/824-0745	Respectfully submitted, _____ LYNN CUNNINGHAM D.C. Bar # 221598 Counsel for Plaintiffs and the Classes Professor of Clinical Law The George Washington University Law School 2000 G Street, N.W. Washington, D.C. 20052 Phone: (202)994-7659 Fax: (202)994-4693
Respectfully submitted _____ Barrett S. Litt, Esq. pro haec vice 3435 Wilshire Boulevard, Suite 1100 Los Angeles, CA 90010 Phone (213)-386-3114 Fax (213)-380-4585	Respectfully submitted, _____ Paul J. Estuar, Esq. pro haec vice 3435 Wilshire Boulevard, Suite 1100. Los Angeles, CA 90010 Phone (213)-386-3114 Fax (213)-380-4585

Notification Procedures To Overdetention Class Members (docket # 78), Affidavit of Richard Berk, discussing sampling and application to this case.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was mailed by first class mail on September 8, 2003 to:

Robert Utiger, Esq. Senior Litigation Counsel Equity Division 441 4th Street, N.W. Washington, D.C. 20001 (202)724-6642 Counsel for District of Columbia	Maria Amato, Esq. Senior Litigation Counsel Equity Division 441 4th Street, N.W. Washington, D.C. 20001 (202)724-6642 Counsel for District of Columbia

_____
WILLIAM CLAIBORNE
D.C. Bar # 446579

Processing Totals for Central Booking & Intake Center Division of Pretrial Detention and Services			
	FY 2004	FY 2005	FY 2006
Bookings	100,848	94,656	95,463
RWOCs	21,990 (21.8%)	20,548 (21.7%)	19,714 (20.7%)
Commits	48,825 (48.4%)	44,857 (47.4%)	45,215 (47.4%)
RORs	29,491 (29.2%)	28,831 (30.5%)	29,179 (30.6%)

CLASS REPRESENTATIVE DECLARATION

I, Tonia R. Bowie, declare and state as follows:

1. I am a plaintiff in the court action against the State of Maryland, the City of Baltimore, and other named entities or individual(s) regarding my treatment at the Baltimore Central Booking and Intake Center.

2. I am currently a resident of (County/City, State) Baltimore Md.

3. I am a representative of the following class(es):

(Initial all that apply):

a. _____ I was strip-searched at Central Booking after my arrest but prior to seeing a district court commissioner, and:

(1) _____ I was strip searched as part of a blanket strip search conducted without regard suspicion that I was concealing drugs, weapons, or other contraband; and/or

(2) _____ I am male; and/or

(3) _____ I was strip-searched in view of other arrested persons.

d. T.B. I was detained for more than 48 hours after my arrest before I saw a district court commissioner.

4. I understand that I have a continuing duty to represent the interests of the class as a whole at all times.

5. I understand that it is my duty and responsibility to inform class members of this case and of their right to be included as a class member.

6. As a class representative, I understand my duty to the class to follow through with this case to the end through my lawyers.

7. So far as I know, I have no antagonistic or conflicting interests with any of the other class members.

8. I will not make any settlement, compromise, or dismissal of this case which will sacrifice the interests of the class as a whole in order to maximize my personal recovery from this lawsuit.

I, pursuant to 28 U.S.C. § 1746, certify as true under penalty of perjury under the laws of the United States of America that the following is true and correct, executed on (date) 11/12/05

at (City/County and State) Baltimore. Md.

Omar Bennett

Duties of Class Representatives

1. A class representative volunteers to represent many other people with similar claims and damages. The class representative believes that it is important that all benefit from the lawsuit equally, because a class lawsuit will save time, money, and effort. Thus, a class action will benefit all parties, and the court. Such an action is an important tool to assure compliance with the law, and to ensure just compensation to all those similarly situated.

2. A class representative represents the interests of all litigation class members in a lawsuit filed to recover money damages for the class.

3. A class representative has claims which are typical of the members of the class. This is known as common issues of law or of fact. For example, as a class representative, your claims against the defendants are typical of the claims of the members of the class against them because each class member incurred damages or injuries as a result of a common event. In this case, the "common event" was being strip-searched, and/or being held for more than 24 hours after your arrest before seeing a district court commissioner, and/or continuing to be detained for an unreasonable length of time after being released on personal recognizance and/or posting a bond.

4. A class representative always considers the interests of the class as a whole just as his or her own personal interests would be considered.

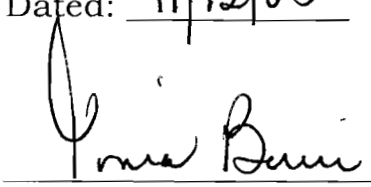
5. A class representative participates actively in the lawsuit by such things as testifying at deposition and trial, answering written interrogatories, providing information to Attorneys that is necessary for the case, and by keeping Attorneys advised of their **current whereabouts** at all times. It is very important that Attorneys know how to contact a class representative when neccassary.

6. A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be in the best interests of the class as a whole.

7. A class representative is not required to know as much about lawsuit as a lawyer. However, the class representative should be interested, on a continuous basis, in the progress of the lawsuit, and must make every effort to tell class counsel what he/she knows about the case.

8. I have reviewed this document or had it read to me and I acknowledge my duties as a class representative in the lawsuit against the State of Maryland and all defendants named in this lawsuit.

Dated: 11/12/05



Signature

CLASS REPRESENTATIVE DECLARATION

I, David Colyers, declare and state as follows:

1. I am a plaintiff in the court action against the State of Maryland, the City of Baltimore, and other named entities or individual(s) regarding my treatment at the Baltimore Central Booking and Intake Center.

2. I am currently a resident of (County/City, State) Baltimore, MD.

3. I am a representative of the following class(es):

(Initial all that apply):

a. _____ I was strip-searched at Central Booking after my arrest but prior to seeing a district court commissioner, and:

(1) _____ I was strip searched as part of a blanket strip search conducted without regard suspicion that I was concealing drugs, weapons, or other contraband; and/or

(2) _____ I am male; and/or

(3) _____ I was strip-searched in view of other arrested persons.

d. ✓ I was detained for more than 48 hours after my arrest before I saw a district court commissioner.

4. I understand that I have a continuing duty to represent the interests of the class as a whole at all times.

5. I understand that it is my duty and responsibility to inform class members of this case and of their right to be included as a class member.

6. As a class representative, I understand my duty to the class to follow through with this case to the end through my lawyers.

7. So far as I know, I have no antagonistic or conflicting interests with any of the other class members.

8. I will not make any settlement, compromise, or dismissal of this case which will sacrifice the interests of the class as a whole in order to maximize my personal recovery from this lawsuit.

I, pursuant to 28 U.S.C. § 1746, certify as true under penalty of perjury under the laws of the United States of America that the following is true and correct, executed on (date) 11/12/05

at (City/County and State) Baltimore, MD

X David Colyns

*David Colyns

Duties of Class Representatives

1. A class representative volunteers to represent many other people with similar claims and damages. The class representative believes that it is important that all benefit from the lawsuit equally, because a class lawsuit will save time, money, and effort. Thus, a class action will benefit all parties, and the court. Such an action is an important tool to assure compliance with the law, and to ensure just compensation to all those similarly situated.

2. A class representative represents the interests of all litigation class members in a lawsuit filed to recover money damages for the class.

3. A class representative has claims which are typical of the members of the class. This is known as common issues of law or of fact. For example, as a class representative, your claims against the defendants are typical of the claims of the members of the class against them because each class member incurred damages or injuries as a result of a common event. In this case, the "common event" was being strip-searched, and/or being held for more than 24 hours after your arrest before seeing a district court commissioner, and/or continuing to be detained for an unreasonable length of time after being released on personal recognizance and/or posting a bond.

4. A class representative always considers the interests of the class as a whole just as his or her own personal interests would be considered.

5. A class representative participates actively in the lawsuit by such things as testifying at deposition and trial, answering written interrogatories, providing information to Attorneys that is necessary for the case, and by keeping Attorneys advised of their **current whereabouts** at all times. It is very important that Attorneys know how to contact a class representative when neccassary.

6. A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be in the best interests of the class as a whole.

7. A class representative is not required to know as much about lawsuit as a lawyer. However, the class representative should be interested, on a continuous basis, in the progress of the lawsuit, and must make every effort to tell class counsel what he/she knows about the case.

8. I have reviewed this document or had it read to me and I acknowledge my duties as a class representative in the lawsuit against the State of Maryland and all defendants named in this lawsuit.

Dated: 11/12/05

X David Colvin

CLASS REPRESENTATIVE DECLARATION

I, Gary Saunders, declare and state as follows:

1. I am a plaintiff in the court action against the State of Maryland, the City of Baltimore, and other named entities or individual(s) regarding my treatment at the Baltimore Central Booking and Intake Center.

2. I am currently a resident of (County/City, State) Baltimore, Maryland.

3. I am a representative of the following class(es):

(Initial all that apply):

a. ✓ I was strip-searched at Central Booking after my arrest but prior to seeing a district court commissioner, and:

(1) ✓ I was strip searched as part of a blanket strip search conducted without regard suspicion that I was concealing drugs, weapons, or other contraband; and/or

(2) ✓ I am male; and/or

(3) ✓ I was strip-searched in view of other arrested persons.

d. ✓ I was detained for more than 48 hours after my arrest before I saw a district court commissioner.

4. I understand that I have a continuing duty to represent the interests of the class as a whole at all times.

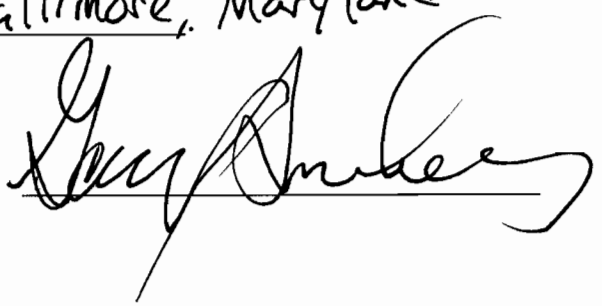
5. I understand that it is my duty and responsibility to inform class members of this case and of their right to be included as a class member.

6. As a class representative, I understand my duty to the class to follow through with this case to the end through my lawyers.

7. So far as I know, I have no antagonistic or conflicting interests with any of the other class members.

8. I will not make any settlement, compromise, or dismissal of this case which will sacrifice the interests of the class as a whole in order to maximize my personal recovery from this lawsuit.

I, pursuant to 28 U.S.C. § 1746, certify as true under penalty of perjury under the laws of the United States of America that the following is true and correct, executed on (date) 11-28-05 at (City/County and State) Baltimore, Maryland



Duties of Class Representatives

1. A class representative volunteers to represent many other people with similar claims and damages. The class representative believes that it is important that all benefit from the lawsuit equally, because a class lawsuit will save time, money, and effort. Thus, a class action will benefit all parties, and the court. Such an action is an important tool to assure compliance with the law, and to ensure just compensation to all those similarly situated.

2. A class representative represents the interests of all litigation class members in a lawsuit filed to recover money damages for the class.

3. A class representative has claims which are typical of the members of the class. This is known as common issues of law or of fact. For example, as a class representative, your claims against the defendants are typical of the claims of the members of the class against them because each class member incurred damages or injuries as a result of a common event. In this case, the "common event" was being strip-searched, and/or being held for more than 24 hours after your arrest before seeing a district court commissioner, and/or continuing to be detained for an unreasonable length of time after being released on personal recognizance and/or posting a bond.

4. A class representative always considers the interests of the class as a whole just as his or her own personal interests would be considered.

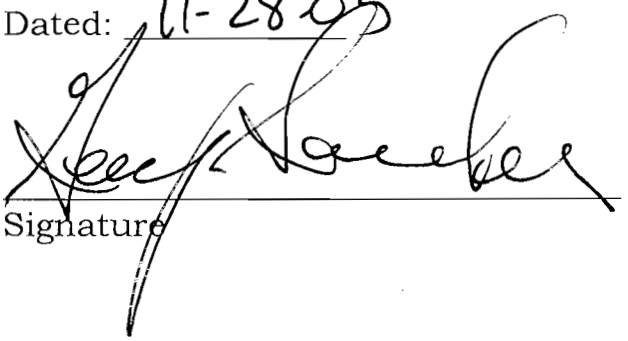
5. A class representative participates actively in the lawsuit by such things as testifying at deposition and trial, answering written interrogatories, providing information to Attorneys that is necessary for the case, and by keeping Attorneys advised of their **current whereabouts** at all times. It is very important that Attorneys know how to contact a class representative when neccassary.

6. A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be in the best interests of the class as a whole.

7. A class representative is not required to know as much about lawsuit as a lawyer. However, the class representative should be interested, on a continuous basis, in the progress of the lawsuit, and must make every effort to tell class counsel what he/she knows about the case.

8. I have reviewed this document or had it read to me and I acknowledge my duties as a class representative in the lawsuit against the State of Maryland and all defendants named in this lawsuit.

Dated: 11-28-05



Signature

CLASS REPRESENTATIVE DECLARATION

I, DANA T. WEST, declare and state as follows:

1. I am a plaintiff in the court action against the State of Maryland, the City of Baltimore, and any other named entities or individual(s) regarding my treatment at the Baltimore Central Booking and Intake Center.

2. I am currently a resident of (County/City, State) Baltimore County.

3. I am a representative of the following class(es):

(Initial all that apply):

a. DV I was strip-searched after my arrest but prior to seeing a district court commissioner.

b. _____ I was detained for more than 24 hours after my arrest before I saw a district court commissioner.

c. DV After I was released on personal recognizance or posted a bond, I continued to be detained for an unreasonable length of time.

4. I understand that I have a continuing duty to represent the interests of the class as a whole at all times.

5. I understand that it is my duty and responsibility to inform class members of this case and of their right to be included as a class member.

6. As a class representative, I understand my duty to the class to follow through with this case to the end through my lawyers.

7. So far as I know, I have no antagonistic or conflicting interests with any of the other class members.

8. I will not make any settlement, compromise, or dismissal of this case which will sacrifice the interests of the class as a whole in order to maximize my personal recovery from this lawsuit.

I, pursuant to 28 U.S.C. § 1746, certify as true under penalty of perjury under the laws of the United States of America that the following is true and correct, executed on (date) 3 MAY 05 at (City/County and State) Bibb County.

Duties of Class Representatives

1. A class representative volunteers to represent many other people with similar claims and damages. The class representative believes that it is important that all benefit from the lawsuit equally, because a class lawsuit will save time, money, and effort. Thus, a class action will benefit all parties, and the court. Such an action is an important tool to assure compliance with the law, and to ensure just compensation to all those similarly situated.

2. A class representative represents the interests of all litigation class members in a lawsuit filed to recover money damages for the class.

3. A class representative has claims which are typical of the members of the class. This is known as common issues of law or of fact. For example, as a class representative, your claims against the defendants are typical of the claims of the members of the class against them because each class member incurred damages or injuries as a result of a common event. In this case, the "common event" was being strip-searched, and/or being held for more than 24 hours after your arrest before seeing a district court commissioner, and/or continuing to be detained for an unreasonable length of time after being released on personal recognizance and/or posting a bond.

4. A class representative always considers the interests of the class as a whole just as his or her own personal interests would be considered.

5. A class representative participates actively in the lawsuit by such things as testifying at deposition and trial, answering written interrogatories, providing information to Attorneys that is necessary for the case, and by keeping Attorneys advised of their **current whereabouts** at all times. It is very important that Attorneys know how to contact a class representative when neccassary.

6. A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be in the best interests of the class as a whole.

7. A class representative is not required to know as much about lawsuit as a lawyer. However, the class representative should be interested, on a continuous basis, in the progress of the lawsuit, and must make every effort to tell class counsel what he/she knows about the case.

8. I have reviewed this document or had it read to me and I acknowledge my duties as a class representative in the lawsuit against the State of Maryland and all defendants named in this lawsuit.

Dated: 28 NOV 05

Signature

CLASS REPRESENTATIVE DECLARATION

I, Michael Washington, declare and state as follows:

1. I am a plaintiff in the court action against the State of Maryland, the City of Baltimore, and other named entities or individual(s) regarding my treatment at the Baltimore Central Booking and Intake Center.

2. I am currently a resident of (County/City, State) Anne Arundel County, Glen Burnie, Maryland

3. I am a representative of the following class(es):

(Initial all that apply):

a. ✓ I was strip-searched at Central Booking after my arrest but prior to seeing a district court commissioner, and: I never saw a commissioner

(1) ✓ I was strip searched as part of a blanket strip search conducted without regard suspicion that I was concealing drugs, weapons, or other contraband; and/or

(2) ✓ I am male; and/or

(3) ✓ I was strip-searched in view of other arrested persons.

d. ✓ I was detained for more than 48 hours after my arrest ~~before I saw a district court commissioner.~~ I never saw a district court commissioner

4. I understand that I have a continuing duty to represent the interests of the class as a whole at all times.

5. I understand that it is my duty and responsibility to inform class members of this case and of their right to be included as a class member.

6. As a class representative, I understand my duty to the class to follow through with this case to the end through my lawyers.

7. So far as I know, I have no antagonistic or conflicting interests with any of the other class members.

8. I will not make any settlement, compromise, or dismissal of this case which will sacrifice the interests of the class as a whole in order to maximize my personal recovery from this lawsuit.

I, pursuant to 28 U.S.C. § 1746, certify as true under penalty of perjury under the laws of the United States of America that the following is true and correct, executed on (date) ~~Dec~~ Jan. 6, 2006

at (City/County and State) Glen Burnie, Anne Arundel County, Maryland

Michael J Washington
1/12/06

Duties of Class Representatives

1. A class representative volunteers to represent many other people with similar claims and damages. The class representative believes that it is important that all benefit from the lawsuit equally, because a class lawsuit will save time, money, and effort. Thus, a class action will benefit all parties, and the court. Such an action is an important tool to assure compliance with the law, and to ensure just compensation to all those similarly situated.

2. A class representative represents the interests of all litigation class members in a lawsuit filed to recover money damages for the class.

3. A class representative has claims which are typical of the members of the class. This is known as common issues of law or of fact. For example, as a class representative, your claims against the defendants are typical of the claims of the members of the class against them because each class member incurred damages or injuries as a result of a common event. In this case, the "common event" was being strip-searched, and/or being held for more than 24 hours after your arrest before seeing a district court commissioner, and/or continuing to be detained for an unreasonable length of time after being released on personal recognizance and/or posting a bond.

4. A class representative always considers the interests of the class as a whole just as his or her own personal interests would be considered.

5. A class representative participates actively in the lawsuit by such things as testifying at deposition and trial, answering written interrogatories, providing information to Attorneys that is necessary for the case, and by keeping Attorneys advised of their **current whereabouts** at all times. It is very important that Attorneys know how to contact a class representative when neccassary.

6. A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be in the best interests of the class as a whole.

7. A class representative is not required to know as much about lawsuit as a lawyer. However, the class representative should be interested, on a continuous basis, in the progress of the lawsuit, and must make every effort to tell class counsel what he/she knows about the case.

8. I have reviewed this document or had it read to me and I acknowledge my duties as a class representative in the lawsuit against the State of Maryland and all defendants named in this lawsuit.

Dated: Friday January 6, 2006

Michael Washington
Signature

CLASS REPRESENTATIVE DECLARATION

I, Kevin Adams, declare and state as follows:

1. I am a plaintiff in the court action against the State of Maryland, the City of Baltimore, and other named entities or individual(s) regarding my treatment at the Baltimore Central Booking and Intake Center.

2. I am currently a resident of (County/City, State) Baltimore, Maryland.

3. I am a representative of the following class(es):

(Initial all that apply):

a. Yes I was strip-searched to my underwear at Central Booking after my arrest but prior to seeing a district court commissioner, and:

(1) Yes I was strip searched to my underwear as part of a blanket strip search conducted without regard suspicion that I was concealing drugs, weapons, or other contraband; and/or

(2) Yes I am male; and/or

(3) Yes I was strip-searched to my underwear in view of other arrested persons.

d. Yes I was detained for more than 48 hours after my arrest before I saw a district court commissioner.

4. I understand that I have a continuing duty to represent the interests of the class as a whole at all times.

5. I understand that it is my duty and responsibility to inform class members of this case and of their right to be included as a class member.

6. As a class representative, I understand my duty to the class to follow through with this case to the end through my lawyers.

7. So far as I know, I have no antagonistic or conflicting interests with any of the other class members.

8. I will not make any settlement, compromise, or dismissal of this case which will sacrifice the interests of the class as a whole in order to maximize my personal recovery from this lawsuit.

I, pursuant to 28 U.S.C. § 1746, certify as true under penalty of perjury under the laws of the United States of America that the following is true and correct, executed on (date) April 15 on or About at (City/County and State) Maryland.

Kevin Adams
Signature

Duties of Class Representatives

1. A class representative volunteers to represent many other people with similar claims and damages. The class representative believes that it is important that all benefit from the lawsuit equally, because a class lawsuit will save time, money, and effort. Thus, a class action will benefit all parties, and the court. Such an action is an important tool to assure compliance with the law, and to ensure just compensation to all those similarly situated.

2. A class representative represents the interests of all litigation class members in a lawsuit filed to recover money damages for the class.

3. A class representative has claims which are typical of the members of the class. This is known as common issues of law or of fact. For example, as a class representative, your claims against the defendants are typical of the claims of the members of the class against them because each class member incurred damages or injuries as a result of a common event. In this case, the "common event" was being strip-searched, and/or being held for more than 24 hours after your arrest before seeing a district court commissioner, and/or continuing to be detained for an unreasonable length of time after being released on personal recognizance and/or posting a bond.

4. A class representative always considers the interests of the class as a whole just as his or her own personal interests would be considered.

5. A class representative participates actively in the lawsuit by such things as testifying at deposition and trial, answering written interrogatories, providing information to Attorneys that is necessary for the case, and by keeping Attorneys advised of their **current whereabouts** at all times. It is very important that Attorneys know how to contact a class representative when neccassary.

6. A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be in the best interests of the class as a whole.

7. A class representative is not required to know as much about lawsuit as a lawyer. However, the class representative should be interested, on a continuous basis, in the progress of the lawsuit, and must make every effort to tell class counsel what he/she knows about the case.

8. I have reviewed this document or had it read to me and I acknowledge my duties as a class representative in the lawsuit against the State of Maryland and all defendants named in this lawsuit.

Dated: 3-8-2006

Kevin Tatum

Signature

CLASS REPRESENTATIVE DECLARATION

I, ANTHONY P. HAIG, declare and state as follows:

1. I am a plaintiff in the court action against the State of Maryland, the City of Baltimore, and other named entities or individual(s) regarding my treatment at the Baltimore Central Booking and Intake Center.

2. I am currently a resident of (County/City, State) OAKLAND CALIFORNIA.

3. I am a representative of the following class(es):

(Initial all that apply):

a. ___ I was strip-searched at Central Booking after my arrest but prior to seeing a district court commissioner, and:

(1) ___ I was strip searched as part of a blanket strip search conducted without regard suspicion that I was concealing drugs, weapons, or other contraband; and/or

(2) ___ I am male; and/or

(3) ___ I was strip-searched in view of other arrested persons.

d. ___ I was detained for more than 48 hours after my arrest before I saw a district court commissioner.

4. I understand that I have a continuing duty to represent the interests of the class as a whole at all times.

5. I understand that it is my duty and responsibility to inform class members of this case and of their right to be included as a class member.

6. As a class representative, I understand my duty to the class to follow through with this case to the end through my lawyers.

7. So far as I know, I have no antagonistic or conflicting interests with any of the other class members.

8. I will not make any settlement, compromise, or dismissal of this case which will sacrifice the interests of the class as a whole in order to maximize my personal recovery from this lawsuit.

I, pursuant to 28 U.S.C. § 1746, certify as true under penalty of perjury under the laws of the United States of America that the following is true and correct, executed on (date) 3/26/09 at (City/County and State) Oakland Ca.

Courtney P. Hong

Duties of Class Representatives

1. A class representative volunteers to represent many other people with similar claims and damages. The class representative believes that it is important that all benefit from the lawsuit equally, because a class lawsuit will save time, money, and effort. Thus, a class action will benefit all parties, and the court. Such an action is an important tool to assure compliance with the law, and to ensure just compensation to all those similarly situated.

2. A class representative represents the interests of all litigation class members in a lawsuit filed to recover money damages for the class.

3. A class representative has claims which are typical of the members of the class. This is known as common issues of law or of fact. For example, as a class representative, your claims against the defendants are typical of the claims of the members of the class against them because each class member incurred damages or injuries as a result of a common event. In this case, the "common event" was being strip-searched, and/or being held for more than 24 hours after your arrest before seeing a district court commissioner, and/or continuing to be detained for an unreasonable length of time after being released on personal recognizance and/or posting a bond.

4. A class representative always considers the interests of the class as a whole just as his or her own personal interests would be considered.

5. A class representative participates actively in the lawsuit by such things as testifying at deposition and trial, answering written interrogatories, providing information to Attorneys that is necessary for the case, and by keeping Attorneys advised of their **current whereabouts** at all times. It is very important that Attorneys know how to contact a class representative when neccassary.

6. A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be in the best interests of the class as a whole.

7. A class representative is not required to know as much about lawsuit as a lawyer. However, the class representative should be interested, on a continuous basis, in the progress of the lawsuit, and must make every effort to tell class counsel what he/she knows about the case.

8. I have reviewed this document or had it read to me and I acknowledge my duties as a class representative in the lawsuit against the State of Maryland and all defendants named in this lawsuit.

Dated: 3/26/06

Anthony P. Haig
Signature

CLASS REPRESENTATIVE DECLARATION

I, Aaron Ross, declare and state as follows:

1. I am a plaintiff in the court action against the State of Maryland, the City of Baltimore, and other named entities or individual(s) regarding my treatment at the Baltimore Central Booking and Intake Center.

2. I am currently a resident of (County/City, State) Baltimore, Maryland _____.

3. I am a representative of the following class(es):

(Initial all that apply):

a. AR I was strip-searched to my underwear at Central Booking after my arrest but prior to seeing a district court commissioner, and:

(1) AR I was strip searched to my underwear as part of a blanket strip search conducted without regard suspicion that I was concealing drugs, weapons, or other contraband; and/or

(2) AR I am male; and/or

(3) AR I was strip-searched to my underwear in view of other arrested persons.

b. _____ I was detained for more than 48 hours after my arrest before I saw a district court commissioner.

4. I understand that I have a continuing duty to represent the interests of the class as a whole at all times.

5. I understand that it is my duty and responsibility to inform class members of this case and of their right to be included as a class member.

6. As a class representative, I understand my duty to the class to follow through with this case to the end through my lawyers.

7. So far as I know, I have no antagonistic or conflicting interests with any of the other class members.

8. I will not make any settlement, compromise, or dismissal of this case which will sacrifice the interests of the class as a whole in order to maximize my personal recovery from this lawsuit.

I, pursuant to 28 U.S.C. § 1746, certify as true under penalty of perjury under the laws of the United States of America that the following is true and correct, executed on (date) October 12, 2007 at (City/County and State) Baltimore, Maryland

Aaron Ross

Duties of Class Representatives

1. A class representative volunteers to represent many other people with similar claims and damages. The class representative believes that it is important that all benefit from the lawsuit equally, because a class lawsuit will save time, money, and effort. Thus, a class action will benefit all parties, and the court. Such an action is an important tool to assure compliance with the law, and to ensure just compensation to all those similarly situated.

2. A class representative represents the interests of all litigation class members in a lawsuit filed to recover money damages for the class.

3. A class representative has claims which are typical of the members of the class. This is known as common issues of law or of fact. For example, as a class representative, your claims against the defendants are typical of the claims of the members of the class against them because each class member incurred damages or injuries as a result of a common event. In this case, the "common event" was being strip-searched, and/or being held for more than 24 hours after your arrest before seeing a district court commissioner, and/or continuing to be detained for an unreasonable length of time after being released on personal recognizance and/or posting a bond.

4. A class representative always considers the interests of the class as a whole just as his or her own personal interests would be considered.

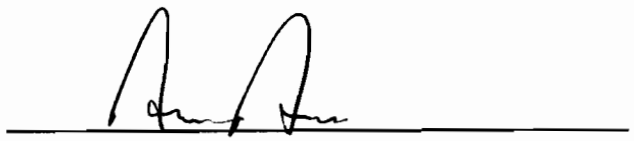
5. A class representative participates actively in the lawsuit by such things as testifying at deposition and trial, answering written interrogatories, providing information to Attorneys that is necessary for the case, and by keeping Attorneys advised of their **current whereabouts** at all times. It is very important that Attorneys know how to contact a class representative when neccassary.

6. A class representative recognizes and accepts that any resolution of the lawsuit, such as by settlement or dismissal, is subject to court approval and must be in the best interests of the class as a whole.

7. A class representative is not required to know as much about lawsuit as a lawyer. However, the class representative should be interested, on a continuous basis, in the progress of the lawsuit, and must make every effort to tell class counsel what he/she knows about the case.

8. I have reviewed this document or had it read to me and I acknowledge my duties as a class representative in the lawsuit against the State of Maryland and all defendants named in this lawsuit.

Dated: 04/19/08



Signature