

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

Catherine Zaborowski and	)	
Simone Jackson, individually and on	)	
behalf of a class,	)	
	)	
<i>Plaintiffs,</i>	)	No. 08 CV 6946
-vs-	)	
	)	
Sheriff of Cook County and Cook	)	<i>(Judge St. Eve)</i>
County, Illinois,	)	
	)	
<i>Defendants.</i>	)	

**PLAINTIFFS' REPLY IN SUPPORT OF
MOTION FOR CLASS CERTIFICATION**

Plaintiffs challenge the Sheriff's "shackling policy" which requires that pregnant women in his custody be shackled during labor and during recovery following childbirth. Plaintiffs contend that this "shackling policy" is unconstitutional. (Amended Complaint, ¶17.) Plaintiffs also contend, in a supplemental state law claim, that the Sheriff's policy violates Illinois law. (Amended Complaint, ¶18.)

Now before the Court is plaintiffs' motion for class certification. Defendants oppose class certification, raising a variety of meritless arguments. Plaintiffs respond to defendants' arguments below and demonstrate that this case should be allowed to proceed as a class action under Rule 23(b)(3) for

All women in the custody of defendant Sheriff on and after December 4, 2006 who have been or who will be shackled during labor, delivery, or recovery following delivery.

I. Shackling Pregnant Woman during Labor Causes Harm

Defendants claim that “none of the currently named plaintiffs suffered any physical or actual damages” as a result of the shackling policy. (Def.Mem. 11-12.) This is absurd: shackling a pregnant woman during labor causes harm.

The American College of Obstetricians and Gynecologists has concluded that “[t]he practice of shackling an incarcerated woman in labor may not only compromise her health care but is demeaning and unnecessary. . . . Women [who have been shackled during labor] describe the inability to move to allay the pains of labor, the bruising caused by chain belts across the abdomen, and the deeply felt loss of dignity.” (Exhibit 1, *infra*, Letter, Ralph Hale, MD to The Rebecca Project for Human Rights, June 12, 2007, available at <http://www.acog.org/departments/underserved/20070612SaarLTR.pdf>, visited September 14, 2009.)

Named plaintiff Simone Jackson could not walk to quicken her labor because defendants’ shackling policy required that she be shackled to her hospital bed. (Exhibit 2, *infra*, Jackson Dep. 42:17-21.) Defendants’ shackling policy thus lengthened the amount of time Jackson spent in labor and thereby increased the amount of her pain. This increase in the amount of pain caused “actual damages” because the unnecessary infliction of pain is actionable under the Due Process Clause of the Fourteenth Amendment

without proof of an “objective” injury. *Edwards v. Snyder*, 478 F.3d 827, 832 (7th Cir. 2007).

II. The Class Definition Is Not “Unworkable”

Defendants assert that the proposed class definition is “unworkable” because it includes woman “who will be shackled” during labor. (Def.Mem. 12.) Defendants do not contend that they have abandoned the Sheriff’s shackling policy. Nor do defendants deny that they intend to continue to require the shackling of every woman who is transported from the jail to a hospital for childbirth. Thus, the number of woman aggrieved by the shackling policy will continue to grow until the Sheriff abandons this policy. If, as plaintiffs request, the Court allows the case to proceed as a class action, every woman who has been subjected to the shackling policy should be bound by the final judgment.

Defendants are in error in asserting that plaintiffs could seek an injunction to prohibit future use of the shackling policy. (Def.Mem. 12.) The law in this Circuit does not permit plaintiffs to obtain injunctive relief. *Arreola v. Godinez*, 546 F.3d 788, 799 (7th Cir. 2008) and *Robinson v. City of Chicago*, 868 F.2d 959, 965-68 (7th Cir. 1989) foreclose any attempt by plaintiff to secure injunctive relief, either individually or for a Rule 23(b)(2) class.

Defendants are also mistaken in claiming that it is impossible to identify women aggrieved by the shackling policy. (Def.Mem. 12.) Defendants have to date been able to locate “documents which would reveal the names of

potential class members.” (Def.Mem. 13.) These documents – which do not fully satisfy plaintiffs’ outstanding discovery requests – identify 49 women (in addition to the five women who are parties to pending lawsuits) who gave birth while in the custody of the Sheriff. The first and last names of these women are set out in Exhibit 3. (The last names are redacted in the public filing of this memorandum.)

III. The Constitutionality of the Shackling Policy Should Be Decided on a Class Basis

Defendants seek to argue that the constitutionality of the shackling policy must be decided on a case by case basis. (Def.Mem. 5-6.) This argument is without merit because the Sheriff requires correctional officers to apply the shackling policy to all women giving birth who are in the custody of the Sheriff

Plaintiffs allege that defendant Sheriff requires that all pregnant women in his custody be shackled during labor and during recovery following labor. (Amended Complaint, ¶17.) Plaintiffs supported their motion for class certification with the Rule 30(b)(6) deposition of Superintendent Holmes showing that this policy was in effect through at least though August of 2008. (Motion for Class Certification at 2, 4.) Sheriff Dart stated that the policy was still being applied on June 25, 2009, when he publicly acknowledged and defended the policy, explaining that “[a]nytime a detainee is taken outside the jail for medical treatment, he or she becomes an immediate escape risk.” (Exhibit 4, *infra*.) Plaintiffs confirmed that defendants continue to apply the

shackling in the Rule 30(b)(6) deposition of deposition of Superintendent Hickerson (taken on July 9, 2009, after plaintiffs filed their class motion).

Superintendent Hickerson testified that the Sheriff has not made any changes in his shackling policy after August of 2008. (Exhibit 5, Hickerson Deposition 33:5-8.) The Sheriff's policy continues to be that when a pregnant woman comes to a hospital for childbirth, "we follow the procedures that we have a Department of Corrections inmate." (Exhibit 5, Hickerson Deposition 41:17-19). As Hickerson explained (Exhibit 5, Hickerson Deposition 43:11-45:7):

Q: The woman from Division 3 that is pregnant and was brought to the hospital for purposes of childbirth would be shackled in a room, correct?

Hickerson: Correct.

Q: And her leg – one leg would be shackled to the bed, correct?

A: Yes, sir.

Q: And a hand would be shackled to the bed?

A: Cuffed to the bed.

Q: Cuffed to the bed?

A: Yes, sir.

Q: The guard that's sitting in the room, [44] the armed guard that's sitting in the room under the practice and policy of the Sheriff would be required to shackle the female to her bed, correct?

A: Yes.

Q: The female who was pregnant and at the hospital from Division 3 for purposes of giving birth would remain shackled pursuant to the practice of the Sheriff up until the point there was a direction from a doctor, correct?

A. Yes.

Q: For a woman that's in Division 3 that's hospitalized, the guard upon notice or an order -- receiving an order from a doctor would have to contact his or her supervisor in regards to the doctor's order to remove the shackles, correct?

A: [45] Yes.

Q: Only after the guard received approval from his or her supervisor would the guard then remove the shackles from the woman in Division 3 that is hospitalized for purposes of delivering a child?

A: Unless it was an emergency.

Plaintiffs expect to prove that the Sheriff's shackling policy is contrary to *May v. Sheahan*, 226 F.3d 876 (7th Cir. 2000). There, the Seventh Circuit held that "the use of bodily restraints constitutes punishment in the constitutional sense if their use is not rationally related to a legitimate non-punitive government purpose or they appear excessive in relation to the purpose they allegedly serve." *Id.* at 884. Plaintiffs will support their case with evidence that the Sheriff's policy of shackling a woman while she is in labor, sometimes removing the restraints for the actual delivery and then replacing the shackles immediately after childbirth, is not rationally related to any legitimate non-punitive government purpose and is plainly excessive when an armed correctional officer is bedside during labor and delivery.¹

¹ Defendants are mistaken in stating that this case is about "the constitutionality of the application of a statute to a situation." (Def.Mem. 5.) Plaintiffs are not challenging "the constitutionality of the application of that Illinois statute [730 ILCS 125/17.5] to a particular set of events." (Def.Mem. 2.) Plaintiffs' challenge is to the Sheriff's shackling policy, and not to any statute.

The Rule 30(b)(6) deposition of Superintendent Holmes makes plain that the shackling policy is applied to all hospitalized detainees (Exhibit 2 to Class Motion at 51:3-7); whether a baby is born through a vaginal birth or through cesarean delivery (Def.Mem. 5), is irrelevant. Plaintiffs' challenge to the shackling policy does not turn on whether the birthing mother is shackled hand and foot throughout delivery, or "merely" handcuffed during delivery and then "shackled only before and after delivery." *Id.* Neither the "particulars of when and how each plaintiff was shackled or handcuffed nor the particulars of the whole labor experience" (Def.Mem. 6), has any bearing on plaintiffs' claim that, under *May v. Sheahan, supra*, defendants' policy that all women be shackled during labor and immediately after delivery is unconstitutional.

The Seventh Circuit rejected a defendant's similar attempt to change the focus of a class claim in *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948 (7th Cir. 2006), a consumer credit class action. There, the named plaintiff limited the class claim to statutory damages, declining "to make person-specific arguments" that would have supported compensatory damages. *Id.* at 953. Defendant argued that individual determinations were nonetheless required; the district court agreed and denied class certification. *Id.* at 956. The Court of Appeals reversed, concluding that the legality of defendant's conduct could be resolved from "the four corners of the offer." *Id.* In this case,

the legality of defendants' shackling policy can be resolved from the policy itself, without regard to any "woman-specific argument."

Murray was applied by the district court in *Jackson v. Sheriff*, No. 6 CV 493, a case challenging the Sheriff's now abandoned urethral swab policy. There, the Sheriff sought to argue that class certification was improper because the legality of the procedure turned on whether each prisoner had consented to the procedure. *Jackson, supra*, Mem.Op., December 14, 2006, at 8 (attached as Exhibit 6). The district court rejected this argument, accepting plaintiffs' framing of the issue: that "the totality of circumstances at the receiving unit makes it impossible for anyone to give a valid consent to the insertion of the urethral swab." (Exhibit 6 at 8.) The district judge in *Jackson* thus concluded that "[t]his framing of the issue effectively shifts the debate towards questions that are resolvable without delving into an individualized analysis of minor factual discrepancies." *Id.* Plaintiffs in this case have similarly framed the issue to focus on the legality of the policy, irrespective of "minor factual discrepancies."

Plaintiffs' challenge to the Sheriff's shackling policy in this case has nothing to do with whether a baby was born through a vaginal birth or through cesarean delivery. (Def.Mem. 5.) Nor does plaintiffs' challenge to the shackling policy turn on the type of restraints used. *Id.*

Plaintiffs do not bring this case to transform a ten-thousand dollar claim into a one hundred million dollar claim. (Def.Mem. 11.) Plaintiffs have

expressly requested, pursuant to Rule 23(C)(4) of the Federal Rules of Civil Procedure, that the case be maintained as a class action solely to adjudicate the legality of the Sheriff's shackling policy, and that all questions of damages for unnamed members of the class be reserved to individual damage actions. As the Seventh Circuit wrote in *Mejdrech v. Met-Coil Systems Corp.*, 319 F.3d 910 (7th Cir. 2003), "it makes good sense" to resolve the legality of the shackling policy in "one fell swoop while leaving the remaining, claimant-specific issues to individual follow-on proceedings." *Id.* at 911.

Plaintiffs' challenge to the Sheriff's shackling policy is quite different from the claim of excessive detention before the Seventh Circuit in *Harper v. Sheriff*, No. 08-3413 (September 8, 2009). There, the Court of Appeals disapproved a district court's order allowing a case to proceed as a class action because the Seventh Circuit concluded that whether a person had been subjected to an excessive length of detention could only be determined in an individual basis because what is excessive would "depend on how long each detainee was held after bond was posted and what justifications there might be for the delay on that particular day or for that particular detainee—the time of day, whether the jail was processing an unusually large number of detainees at that time, whether other events occurring at the jail legitimately slowed processing times, whether the detainee's lack of cooperation delayed processing, etc." *Harper*, slip op. 7. There are no individual factors in defen-

dants' shackling policy, which requires shackling of all women who are taken from the Jail to a hospital for childbirth.

Plaintiffs demonstrate below that the Court should overrule defendants' remaining objections to class certification.

IV. Numerosity

After plaintiffs filed their opening memorandum, defendants located "documents which would reveal the names of potential class members." (Def.Mem. 13.) Although defendants have yet to produce all of the documents requested by plaintiffs, the documents produced to date identify 49 women who have given birth while in the custody of the Sheriff. These women (with surnames redacted in the public filing), are identified in Exhibit 3, *infra*

Although plaintiffs expect the actual class size to be greater than the 49 persons identified to date, a class of 49 members satisfies the "rule of thumb" for numerosity which this Court endorsed in *Cotton v. Asset Acceptance, LLC*, No. 07-C-5005 (N.D.Ill. June 26, 2008, Exhibit 3 to Class Motion). The Court should reject defendants' challenge to numerosity.

V. Commonality

Defendants advance the remarkable claim that "plaintiffs have identified no factual or legal issues common to the class." (Def.Mem. 7.) This contention is without merit: plaintiffs identified the common questions in their motion for class certification (at 6-7):

The common question in this case is whether the use of bodily restraints on a pregnant woman during labor, delivery, or recov-

ery following delivery is “rationally related to a legitimate non-punitive government purpose,” as required by *May v. Sheahan*, 226 F.3d 876, 884 (7th Cir. 2000). This question is “common to all potential class members,” *Arreola v. Godinez*, 546 F.3d 788, 798 (7th Cir. 2008), and satisfies the commonality requirement of Rule 23(a).

This case presents an overriding common question about the constitutionality of the use of bodily restraints on a pregnant woman during labor, delivery and recovery following delivery.

VI. Typicality

Defendants argue that the claims of the two named plaintiffs are not typical of those of the class because “Plaintiffs claim to draw class members from two sources, those in the MOMs program and those originating from Division 3.” (Def.Mem. 8.) Defendants do not, however, present any evidence to support their claim that childbirth is different for a woman in the Sheriff’s custody who is in the “MOM’s program” than for a woman in the Sheriff’s custody who is housed in “Division 3.”

Defendants assert that the “MOM’s program” is a drug rehabilitation program, for which pregnant female detainees are “screened, approved and placed.” (Def.Mem. 8.) Defendants claim that those pregnant detainees who are not in the “MOM’s program” are held in “Division 3” because “they chose not to participate in MOM’s or were ineligible do[sic] to their criminal record.” *Id.* Defendants do not, however, contend that the Sheriff’s shackling policy is different for women in the “MOM’s” program than for women in

“Division 3.” Accordingly, the Court should reject defendants’ challenge to the typicality requirement.

VII. Adequacy

Defendants assert that there is a conflict between the named plaintiffs and the unnamed members of the putative class because “the interests of the remaining class members cannot be identified to any reasonable degree.” (Def.Mem. 9.) This is an unusual and meritless objection.

Persons who have been injured by application of an unlawful policy have the identical interest in obtaining a remedy for that injury. Defendants are unable to show any conflict between the named plaintiffs and the unnamed members of the putative class. Nor do defendants question the ability of plaintiffs’ attorneys to represent the proposed class. The Court should reject defendants’ objections to the adequacy of the class representations and their attorneys.

VIII. Rule 23(b)(3)

Defendants agree that “when a class challenges a uniform policy or practice, the validity of the policy or practice tends to be the predominant issue in the ensuing litigation.” (Def.Mem. 10.) Defendants assert in conclusory fashion that the constitutionality of the shackling policy involves “highly individualized factual analyses.” *Id.* Nowhere in their memorandum, however, do defendants seek to identify these “individualized factual analyses.” This silence is not surprising: there are no “individual facts” about

whether the shackling policy requires that pregnant woman in the custody of the Sheriff be shackled during labor and during recovery after childbirth.

Defendants fail to acknowledge the superiority of a class action to resolve the legality of the shackling policy in a single proceeding. Defendants point out that there are now four pending cases challenging the shackling policy.² (Def.Mem. 2, 5-6.) Absent class certification, a ruling on the merits of the policy in any of the four cases would not be binding on the other three. But when “a class is certified, its members (unless they opt out of the class), and not just the named plaintiff, are bound by the judgment. *Wiesmueller v. Kosobucki*, 513 F.3d 784, 786 (7th Cir. 2008).

² Plaintiff do not, and will not, “seek to join” the plaintiffs in those three individual cases as class members. On the contrary, plaintiffs oppose defendants’ pending motion for reassignment of the three other cases. (Record Item No. 37.)

IX. Conclusion

For the reasons above stated and those previously advanced, plaintiffs request that the Court order that this case be maintained as a class action for:

All women in the custody of defendant Sheriff on and after December 4, 2006 who have been or who will be shackled during labor, delivery, or recovery following delivery.

Respectfully submitted,

/s/ Kenneth N. Flaxman

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(773) 233-7900

Attorneys for Plaintiff

Exhibit 1



June 12, 2007

Malika Saada Saar
Executive Director
The Rebecca Project for Human Rights
2309 18th Street, NW, 2nd Floor
Washington, DC 20009

Dear Ms. Saada Saar:

The American College of Obstetricians and Gynecologists (ACOG) is writing this letter in support of federal legislation to prohibit the practice of shackling incarcerated pregnant women in labor. This practice has already been outlawed in Illinois and in California. ACOG's District IX testified in support of the legislation in California: "Physical restraints have interfered with the ability of physicians to safely practice medicine by reducing their ability to assess and evaluate the physical condition of the mother and the fetus, and have similarly made the labor and delivery process more difficult than it needs to be; thus, overall putting the health and lives of the women and unborn children at risk. Typically these inmates have armed guards on-site, which should be more than adequate to protect personnel helping a pregnant, laboring woman or to prevent her from fleeing."

The practice of shackling an incarcerated woman in labor may not only compromise her health care but is demeaning and unnecessary. Most women in correctional facilities are incarcerated for non-violent crimes and are accompanied by guards when they are cared for in medical facilities. Testimonials from incarcerated women who went through labor with shackles confirm the emotional distress and the physical pain caused by the restraints. Women describe the inability to move to allay the pains of labor, the bruising caused by chain belts across the abdomen, and the deeply felt loss of dignity.

The safety of hospital personnel is paramount and for this reason, adequate correctional staff must be available to monitor incarcerated women in labor, both during transport to and from the correctional facility and during the hospital stay. However, the safety of personnel has not been compromised in the years since laws preventing shackling have been instituted in California and Illinois. This safety track record demonstrates the feasibility of preserving the dignity and providing compassionate care of incarcerated laboring women.

ACOG is committed to high quality obstetric care for all women. Incarcerated women in labor constitute a particularly vulnerable population. Preventing the practice of shackling these women is an important step toward assuring humanitarian care and social justice. If you need further assistance as the specifics of this legislation are developed, please do not hesitate to contact staff in our Department of Government Relations. Specifically, you can contact either Lucia DiVenere by phone at 202-863-2510 or via email at ldivenere@acog.org or Tara Straw by phone at 202-863-2512 or via email at tstraw@acog.org.

Sincerely,

Ralph W. Hale MD

Ralph Hale, MD
Executive Vice President

cc: Janet Chapin, RN, MPH, Lucia DiVenere, Lisa Goldstein, MS, Tara Straw, Tara Linh Leaman, JD

Exhibit 2

1
2 **IN THE UNITED STATES DISTRICT COURT**
3 **NORTHERN DISTRICT OF ILLINOIS**
4 **EASTERN DIVISION**

5 **CATHERINE ZABOROWSKI and**)
6 **SIMONE JACKSON,**)
7 **Individually and on**)
8 **behalf of a Class,**)

9 **Plaintiffs,**)

10 **-vs-**)

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25 **SHERIFF OF COOK COUNTY**)
26 **and COOK COUNTY,**)
27 **ILLINOIS,**)

28 **Defendants.**)

29 **The deposition of SIMONE JACKSON**
30 **called by the Defendants for examination, taken**
31 **pursuant to the Federal Rules of Civil Procedure**
32 **of the United States District Courts pertaining**
33 **to the taking of depositions before MAUREEN A.**
34 **WOODMAN, a notary public within and for the**
35 **County of Cook and State of Illinois, at 500**
36 **Daley Center, Chicago, Illinois, on the 10th day**
37 **of March, 2009, at the hour of 9:30 o'clock a.m.**

PRESENT :

THOMAS G. MORRISSEY, LTD.

BY: MR. THOMAS G. MORRISSEY

10249 South Western Avenue

Chicago, Illinois 60643,

on behalf of the Plaintiffs;

ASSISTANT STATE'S ATTORNEY

BY: MR. PATRICK SMITH

500 Daley Center

Chicago, Illinois 60602,

on behalf of the Defendants.

ALSO PRESENT:

Ms. Lindsey Shapiro

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I N D E X

WITNESS	PAGE
SIMONE JACKSON	
Examination by Smith	4-76

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E X H I B I T S

DEPOSITION EXHIBIT	PAGE
1	4
2	71

1 MR. SMITH: Mark this as Exhibit No. 1.

2 (WHEREUPON, said document
3 was marked as Jackson
4 Exhibit No. 1 for
5 Identification.)

6 (Witness was duly sworn.)

7 SIMONE JACKSON,
8 called as a witness herein, after having been
9 first duly sworn, was examined and testified as
10 follows:

11 EXAMINATION

12 BY MR. SMITH:

13 Q. Let the record reflect this is the
14 deposition of Simone Jackson taken by agreement.

15 Please identify yourself, spell
16 your complete name for the benefit of the court
17 reporter.

18 A. My name is Simone Laverne Jackson.
19 S-I-M-O-N-E. L-A-V-E-R-N. J-A-C-K-S-O-N.

20 MR. SMITH: This deposition is taken in the
21 lawsuit that's been filed by Ms. Jackson and Ms.
22 Zaborowski versus Sheriff of Cook County under
23 case number 086946.

24 Mr. Morrissey, please identify yourself

1 for the record.

2 MR. MORISSEY: My name is Thomas Morrissey.
3 I represent the plaintiffs.

4 MR. SMITH: Thank you.

5 BY MR. SMITH:

6 Q. Ms. Jackson, do you go by any other
7 names?

8 A. I have. Sandra Greer.

9 Q. And any other names?

10 A. No, sir.

11 Q. What is your date of birth?

12 A. My date of birth is December the 1st,

13

14 Q. Have you ever used any other date of
15 births?

16 A. No.

17 Q. What about your Social Security number?

18 A. My Social Security number is

19 329-

20 Q. Have you used any other Social Security
21 numbers other than the one you have given the
22 court reporter?

23 A. No.

24 Q. Do you have a driver's license?

1 A. I don't drive.

2 Q. You don't drive?

3 A. No.

4 Q. Do you have an Illinois identification
5 card?

6 A. Yes, I do.

7 Q. May I see it, please.

8 (Tendering document.)

9 A. You need my Social Security card, too?

10 Q. No.

11 MR. SMITH: Let the record reflect I have
12 been tendered one Illinois state identification
13 number that reads that ID number 2 [REDACTED]

14 I'm going to make this as an
15 exhibit, and this exhibit will be identified as
16 Simone Jackson Exhibit 1. I'm going to leave it
17 right here so we'll make copies for you. Make
18 sure it's returned to you.

19 BY MR. SMITH:

20 Q. Where were you born?

21 A. I was born here in Chicago, Illinois.

22 Q. What hospital?

23 A. Michael Reese.

24 Q. And what is your level of education?

1 A. I received a GED. I have some college.

2 Q. Okay. What kind of college?

3 A. I went to vocational culinary arts
4 program. I had my sanitation license from the
5 State of Illinois.

6 Q. What is that?

7 A. Sanitation license?

8 Q. Yes. I don't know what that means.

9 A. Okay. Food sanitation license, that's
10 what I'm trying to say. Excuse me.

11 Q. Regarding food, sanitary food?

12 A. Yes.

13 Q. And when was that?

14 A. I received that in 2002. And I received
15 my GED in 1990.

16 Q. 1990?

17 A. Uh-huh.

18 Q. What neighborhood did you grow up in?

19 A. Bronzeville.

20 Q. Can you state your history of
21 employment, please, generally?

22 A. Generally it's food service, temporary
23 jobs.

24 Q. Let me cut you off to make it easier.

1 What was the first job you held?

2 A. The first job I held was through the
3 Mayor's Office Summer Program.

4 Q. And that was what year?

5 A. Like '82, '83.

6 Q. Okay. And after that where did you go?

7 A. I had worked at the Congress Hotel. I
8 have worked at just various places. I haven't
9 had a lot of employment through the years,
10 through my years.

11 Q. You have?

12 A. I haven't. I have not.

13 Q. How about this, how many different jobs
14 have you held from maybe age 18 until present?

15 A. Maybe six.

16 Q. And what was the longest job that you
17 held?

18 A. The longest job I held was at the Navy
19 base at Great Lakes.

20 Q. And how long was that for?

21 A. Six months.

22 Q. Six months?

23 A. Uh-huh.

24 Q. Why did you leave that job?

1 A. Mental reasons.

2 Q. Are you married?

3 A. No, I'm not.

4 Q. Do you have any children?

5 A. Yes, I have six.

6 Q. Six of them. Okay. Let's start off
7 with the oldest. What's the oldest child's name?

8 A. Sebon, S-E-B-O-N, Jackson. He is 26.

9 Q. Sorry. Who is his father?

10 A. His father is Larry Redmond. Allison
11 Porter, she is 21. Her father is Brian Porter.
12 Marvellis Rubin. His father is Marvellis Rubin.

13 Q. How old is he?

14 A. The father?

15 Q. The third child.

16 A. The third child is 19.

17 Q. Three more to go.

18 A. I know.

19 Q. Helping you out, that's all.

20 A. [REDACTED], she's 16, and her father's
21 Marveliss Rubin.

22 Q. Where does she reside at?

23 A. She resides at [REDACTED] East 73rd Street.

24 Q. With who?

10

1 A. With my mom and sister. Where am I at?
2 [REDACTED]. She is age nine. Her father is
3 John [REDACTED] And [REDACTED]. And she is
4 ten months. And she resides -- you want to know
5 where? She resides with me at [REDACTED] West Monroe.
6 Also Whisper resides at the same address [REDACTED]
7 West Monroe.

8 Q. And Whisper was the child that was born
9 in Stroger, correct?

10 A. No. Trinity.

11 Q. Okay. What was the date of her birth?

12 A. May the 3rd, [REDACTED]

13 Q. Where do you currently reside at again?

14 A. [REDACTED] West Monroe. Apartment B.
15 Chicago, Illinois.

16 Q. Okay. And who lives with you?

17 A. My mom, my sister.

18 Q. What's your mom's name?

19 A. Ruth Pines. P-I-N-E-S.

20 Q. And who else? Your two children?

21 A. Yes, Whisper and Trinity. And my sister
22 Memory Pines. P-I-N-E-S.

23 Q. Memory?

24 A. Yes. Her husband, Vernon. And her two

1 children, Brilliance and Siasabon Pines.

2 Q. Anybody else?

3 A. That's it.

4 Q. And Trinity, who's Trinity's father?

5 A. Trinity's father is Lusher White.

6 Q. Lusher with an L?

7 A. With an L.

8 Q. And where does he stay?

9 A. He stay in Evanston, 1810 Darrell.

10 Q. Does he pay child's support?

11 A. Yes.

12 Q. He does. And is there a pending child
13 support case?

14 A. Yes, there is.

15 Q. Do you have any information regarding
16 that?

17 A. No, not right now.

18 Q. If I ask for it, will you give it to
19 your attorney?

20 A. Yes, I will.

21 Q. How long have you resided at that Monroe
22 residence?

23 A. Last 18 months. Prior to me coming home
24 from the Dwight, since January the 27th.

1 Q. And prior to going into Cook County the
2 last time, where did you live at?

3 A. ██████ East 73rd Street.

4 Q. Regarding this complaint that you filed,
5 when did you -- what date did you enter the Cook
6 County jail?

7 A. November the 1st, 2007.

8 Q. And were you arrested by the CPD?

9 A. Yes, sir.

10 Q. And what was the charge?

11 A. Burglary.

12 Q. Burglary?

13 A. Yes, sir.

14 Q. What was your bond set at, do you
15 remember?

16 A. I think 20,000.

17 Q. After receiving a classification, where
18 were you assigned to, what division, three or
19 four?

20 A. Division three.

21 Q. Division three?

22 A. Uh-huh.

23 Q. And you were pregnant?

24 A. Yes, I was.

1 Q. Did you know how long you were pregnant,
2 how many months --

3 A. I was 12 weeks from the time --

4 Q. Let me finish the question.

5 A. Excuse me.

6 Q. How many months?

7 A. 12 weeks.

8 Q. 12 weeks?

9 A. Yes.

10 Q. And you were in division three, right?

11 A. Three.

12 Q. And you were then transferred, for lack
13 of a better word, to the MOMS program, correct?

14 A. Yes. I was offered that.

15 Q. How long did you stay in division three
16 before you went to the MOMS program?

17 A. About three weeks. I left on the 21st
18 of November.

19 Q. Let me ask you this, prior to giving
20 your deposition, did you have an opportunity to
21 review any material, any documents or anything?

22 A. Like what?

23 Q. Your complaint, did you read anything,
24 anything relating to this case?

1 A. No, not really, no. I already know the
2 case. I know my complaint.

3 Q. Okay. So you have a good command of the
4 facts?

5 A. So far, yeah.

6 Q. Okay.

7 A. To my knowledge.

8 Q. Have you -- are you on any medication
9 right now?

10 A. No, I'm not.

11 Q. And have you had anything to drink --
12 don't me to be offensive or anything.

13 A. None taken.

14 Q. Any alcoholic drink in the last 12
15 hours?

16 A. No, I'm not under the influence of any
17 type of alcohol.

18 Q. Nothing going to impair your ability to
19 testify?

20 A. Exactly.

21 Q. Okay. Now, tell us about the MOMS
22 program. Is there a form that you have to fill
23 out or do you have to qualify to get into the
24 MOMS program, other than being pregnant?

1 A. Yes.

2 Q. What is that? Tell us, please.

3 A. To qualify you cannot have any
4 significant bond forfeitures, you can't have any
5 escapes in your background, any violent crimes
6 like homicide or armed robberies, anything of
7 that nature. Also, of course, you have to be
8 pregnant.

9 Q. I said that.

10 A. I know you did. And your bond have to
11 be a certain amount. You have to have a bond for
12 one.

13 Q. It can't be no bond?

14 A. Right, and it has to be a certain amount
15 of bond. Can't exceed over like 250,000 or
16 something of that nature, so it's a cap to it.

17 Q. Okay. Anything else, any other terms or
18 any --

19 A. You have to have a -- acknowledge that
20 you have an addiction. Addiction of chemicals or
21 gambling.

22 Q. And did you have an addiction?

23 A. Yes, I did.

24 Q. What was your drug of choice?

1 A. My drug of choice was heroin.

2 Q. Heroin?

3 A. Yes.

4 Q. And how long had you been on heroin?

5 A. I have been a user of heroin on and off
6 for the past 20 years.

7 Q. 20 years?

8 A. Yeah.

9 Q. Anything else, any other addictions?

10 A. No.

11 Q. Did you -- was this a physical form that
12 you had to fill out?

13 I have not had the benefit prior to
14 your deposition of getting a copy of like the
15 application form. Is that what it's called? Can
16 you help me out.

17 A. Yeah. Well, the initial interview. I
18 was interviewed for it.

19 Q. Is it like a one-on-one?

20 A. A one-on-one.

21 Q. Do you know whom you interviewed with?

22 A. No, not personally. No, I couldn't say
23 the deputy's name, the sheriff's name.

24 Q. Was it a correctional officer or was it

1 a civilian?

2 A. It was a correctional officer and in
3 uniform. A Cook County Sheriff.

4 Q. Okay. Can I ask you, was it someone
5 that you knew in like division three?

6 A. No.

7 Q. But you don't know the person?

8 A. I don't know the person. Like I
9 never -- I wasn't constantly in contact with the
10 person that interview me.

11 Q. Okay. We already said that. Okay.

12 And after that interview, what's
13 the next step then?

14 A. The next step they called my references,
15 called the references that I gave. I had to give
16 three references of the people who could tell
17 about what -- you know, my addiction, would I
18 benefit from the program, so on and so forth.
19 And they did that.

20 I was told by my mom and my sister
21 and my children's grandmother that they did call
22 them and asked them some questions about me,
23 would I -- you know, would I run, would I benefit
24 from the program.

1 Q. Would I what?

2 A. Would I escape, run, escape from the
3 program. That's what I mean.

4 I also signed -- once I was
5 approved I signed an agreement like I was still
6 incarcerated. I signed an agreement that I was
7 released on sheriff furlough, a furlough, so it
8 was like a bond slip paper with copies, you know.
9 I had a copy and so forth.

10 Q. The documents that relate to the MOMS
11 program, those documents that you signed, did you
12 keep copies of those?

13 A. I haven't got them. I'm sure, yeah.
14 But I also know that they had copies.

15 Q. If you find something of that nature,
16 you will hand it over to your attorney?

17 A. Yes.

18 Q. Okay. And how long did the procedure
19 take, do you remember?

20 A. From the time I was approved and left,
21 the day I left?

22 Q. Yes.

23 A. Oh, I left about eight, I got into
24 Haymarket 3:00 o'clock that afternoon. At the

1 initial intake it took about maybe --

2 Q. So it happens all in one day?

3 A. It happens all in one day. It takes a
4 whole day.

5 Q. Okay. Were there any provisions
6 regarding restrains or shackling or handcuffing
7 in the application form that you may have signed?

8 A. Not -- no.

9 Q. You don't remember?

10 A. I'm pretty sure it wasn't.

11 Q. Now, how do you get from the compound to
12 the Haymarket?

13 A. Via a police car, a sheriff car.

14 Q. And were you shackled?

15 A. I was handcuffed.

16 Q. How were you handcuffed, front or back?

17 A. Front. Front.

18 Q. So for the record, it was just -- were
19 you standing there handcuffed on both your left
20 and your right wrists?

21 A. Yes, sir.

22 Q. Any other restraints?

23 A. I also received what they call a home
24 monitoring device that was placed on my ankle.

1 Q. And where was that placed on your ankle,
2 at the jail?

3 A. No, at the MOMS program.

4 Q. We're going to get to that. We're
5 almost there.

6 A. No problem.

7 Q. So then you have the handcuffs then.
8 Once you get to Haymarket what's the procedure?
9 What's the intake there? What do you do?

10 A. I go in and talk to the staff of
11 Haymarket and they ask me -- they place me in
12 their database and ask me what's my name, what's
13 my Cook County jail number and my emergency
14 contact. They also at the same time the sheriff
15 is placing me on the monitor and logging me in
16 the system so the bracelet can monitor my
17 whereabouts inside the facility of Haymarket.

18 Q. Okay. And the sheriff does that part of
19 it, the ankle bracelet?

20 A. Yes.

21 Q. And do you remember who you spoke with
22 at Haymarket during that initial interview?

23 A. Her name was Diedra.

24 Q. Diedra?

1 A. Welch.

2 Q. And how long does that procedure take?

3 A. About 30, 30 minutes.

4 Q. And are the ground rules discussed with
5 you?

6 A. Yeah, ground rules pertaining to
7 Haymarket facility. They're a unit it in itself,
8 no cussing. I signed the paper saying I agree to
9 their rules, Haymarket rules, and also the rules
10 of Cook County department.

11 Q. Okay. And just generally what were some
12 of the ground rules?

13 A. No profanity, take a shower daily, be
14 prepared for all meetings.

15 Q. Meetings?

16 A. Meetings. Also if I had any problems,
17 who my counselor was, if I needed any special
18 care like medications, psychiatric care they
19 would provide that, if it was an emergency as far
20 as my pregnancy they will provide medical care
21 immediately, things of that nature.

22 Q. Now, in division three you were housed
23 in a traditional type cell, correct?

24 A. Yes.

1 Q. At Haymarket how are you housed?

2 A. I'm housed in like a bedroom, you know.

3 Q. Never been there.

4 A. I'm trying to explain.

5 Q. Right.

6 A. Bedroom in your house. It's like a room
7 like.

8 Q. How many ladies in each room?

9 A. It was -- two to a room and sometimes
10 one to a room. The clients that have one to a
11 room, they were there were they children. They
12 either had their baby with them or just had they
13 children or child.

14 Q. I see. Okay. And were there any -- how
15 was security run at Haymarket MOMS?

16 A. 24-hour security.

17 Q. Do you understand my question?

18 A. Yes. 24-hour security. Upon entering
19 the building, there is a security guard, you have
20 to show ID. On the unit that I was in it was a
21 locked unit, so if -- I couldn't get off the
22 elevator -- I mean get on the elevator without a
23 key. And I couldn't leave out like the exit
24 doors without an alarm sounding very loud. So it

1 was a locked unit.

2 Q. But are you in any restraints while
3 you're in your room or in the -- is there like a
4 day room, something similar to a day room?

5 A. Yes, it is.

6 Q. And at any time are any handcuffs placed
7 on you or leg irons or anything?

8 A. No, sir.

9 Q. No?

10 A. No.

11 Q. And is the door to the room locked at
12 any time?

13 A. No locked doors other than the ones that
14 lead you to the street. Lead you out there.

15 Q. Okay.

16 A. Out of the facility.

17 Q. But your bedroom door, that's open?

18 A. Yeah, it's open. You can close it but
19 you can't lock it.

20 Q. And how long were you there at MOMS?

21 A. I was there from November 21 to
22 September the -- November the 21st, '07, to
23 September the 23rd, '08.

24 Q. November 21st of '07 to September of

1 '08?

2 A. Yes. 11 months.

3 Q. I see. You came back there?

4 A. No, I went from the jail to Haymarket.
5 I had my baby. I stayed there until September
6 the 23rd. Then I went to sheriff furlough from
7 September the 23rd to November --

8 Q. I meant after you had your baby?

9 A. I stayed there.

10 Q. You went back for the MOMS program?

11 A. Yeah.

12 Q. Okay.

13 A. I was just considering that I never
14 left. I just went to the hospital.

15 Q. Okay. When did you go in labor then?

16 You got there on November 21st and
17 when did you start going into labor?

18 A. May the 3rd.

19 Q. So you were there for quite awhile
20 before you even went into labor?

21 A. Exactly.

22 Q. Do you know how many -- how long people
23 would normally stay, inmates, just if you knew?

24 Do you know?

1 A. Well, I have one when I first entered
2 the facility a lady there with her child, she had
3 been there a year.

4 Q. Okay. All right. During that time in
5 the mother's program from November 21 until May
6 5th, did you have any problems with any of the
7 staff that you want to testify to?

8 A. Well, yes. I have disagreements. I had
9 attitude problems.

10 Q. You did?

11 A. Me, me, myself. I had an attitude
12 problem.

13 Q. Were you written up for any type of
14 disciplinary problems where it was written up?

15 A. Yes.

16 Q. You did?

17 A. Yes, yes.

18 Q. And how many times?

19 A. About twice.

20 Q. Twice?

21 A. Yes, sir.

22 Q. And as a result of being written up for
23 disciplinary problems, what came of that? Is
24 there a penalty or punishment?

1 A. Yes, I will receive -- I had to write an
2 essay. I would have to lose my privilege of
3 ordering food out.

4 Q. Carry-outs?

5 A. Carry-outs for a privilege. I have lost
6 that before. Things like that.

7 Q. And did you keep any of these reports or
8 disciplinary tickets I think they're called, do
9 you have any of those with you?

10 A. No. But all my reports and things that
11 as far as my treatment in Haymarket file, as far
12 as that, my treatment.

13 Q. Did you keep any reports or anything
14 from your stay at Cook County Jail or Haymarket,
15 were they all kept at the facility?

16 A. Yeah, I have kept like group things
17 like -- like if you gave a seminar or something,
18 I would keep that, books they would give us.
19 Things pertaining to my getting better.

20 Q. Nothing really relevant to the lawsuit?

21 A. No, nothing relevant to the lawsuit.

22 Q. Now, on May 5th, let me ask this, when
23 is it determined that you're going into labor I
24 guess? I mean when is it decided?

1 A. That I'm actually in labor?

2 Q. Yes.

3 A. The doctor said when I go to the
4 hospital, when the doctor checked me or the
5 nurse, they say that I'm in labor.

6 Q. So there's somebody at the MOMS program?

7 A. Uh-uh. I have to be transferred to the
8 hospital to truly determine that I am in labor.

9 Q. I guess -- this may sound silly. What
10 prompts that? How do you notify the MOMS people
11 to take you? What is required? I mean do they
12 do a check on you, a medical check on you in MOMS
13 to say, well, we better go over this -- you
14 better go over to Stroger? Or is this by your
15 word only?

16 A. Basically, yes, it's by my word of -- I
17 don't want to say maybe. It's by my word and the
18 symptoms that I described to them to say that,
19 okay, we'll make a phone call and call the
20 ambulance.

21 Q. Symptoms that would be commonplace?

22 A. With labor, yes.

23 Q. Okay. And that's what happened in your
24 case?

1 A. Yes.

2 Q. Okay. So then you're taken then to
3 Stroger, correct?

4 A. Well, not just taken to Stroger.
5 They'll call an ambulance. The ambulance, they
6 make the decision on what hospital I go to. It
7 was usually Mount Sinai or Stroger. I just
8 happened to get Stroger.

9 Q. Okay. Tell us then, why don't you tell
10 us in your case back on May 5th what happened
11 that day?

12 A. May 5th?

13 Q. Yes, that's the day --

14 MR. MORISSEY: No, no. She didn't say that.
15 She said May 3rd.

16 MR. SMITH: I'm sorry. I didn't mean to
17 trick you up. I thought you said May 5th.

18 BY MR. SMITH:

19 Q. May 3rd. Okay.

20 A. Yes.

21 Q. On May 3rd, tell me about that date.

22 A. When I went in labor?

23 Q. Yes.

24 A. May the 3rd, the day I went in labor, I

1 had woke up maybe like 3:00 o'clock in the
2 morning, that early morning part, wasn't feeling
3 good, my back was hurting. I went to the staff
4 office, told them I was hurting, that I thought I
5 was in labor.

6 Q. Slow down.

7 A. Okay. I went to the office, told them
8 that my back was hurting very bad and I believe I
9 was in labor. This was my sixth child, so I'm
10 pretty aware about labor. They told me
11 that -- they had to call the sheriff department
12 and call the director, you know, the things and
13 can I hold on. So I let them do that. Took a
14 shower. Got my bag ready.

15 Q. Okay.

16 A. And waited for the ambulance. The
17 ambulance came.

18 Q. What time?

19 A. I'm not sure.

20 Q. Approximately?

21 A. Let's say maybe an hour, 30 minutes at
22 the most.

23 Q. So about 3:30, 4:00?

24 A. Yes. The ambulance came. They asked me

1 some questions about me.

2 Q. Now, were these paramedics?

3 A. Paramedics, EMTs.

4 Q. Were they from County or Chicago?

5 A. I think they private. I'm not sure. I
6 guess they from 911 call.

7 Q. Okay. So you don't know --

8 A. I don't know. I don't know. So they
9 came. I went to Cook County. They let staff
10 know that they were taking me to Cook County.

11 Q. Tell me about the circumstances of the
12 transportation. How was it -- how were you
13 transported in the ambulance?

14 A. On a gurney.

15 Q. Did they have the gurney in the building
16 in MOMS? How did they get you from your bedroom,
17 I guess, to the ambulance?

18 A. They brought the -- they brought they
19 equipment to transport me theirsself (sic).

20 Q. What was that? What type of device was
21 that? What kind of equipment?

22 A. Like a chair. A chair.

23 Q. Wheelchair?

24 A. No, it wasn't a wheelchair. It was a --

1 it was made like a chair. So I wouldn't say a
2 wheelchair, because it can break down to a bed.
3 It was they device, so whatever they standard
4 device they use.

5 Q. They put you in that device?

6 A. They put me in that device. Strapped me
7 around so I wouldn't fall. And they got me on
8 the elevator with the Haymarket staff. Her name
9 was Michelle. And we proceeded.

10 Q. Her name was Michelle?

11 A. Her name was Michelle. And we proceeded
12 to the ambulance and then to Stroger Hospital.

13 Q. Other than the straps so you don't fall
14 out, were you put in any type of leg irons or
15 handcuffs or any restraints at all?

16 A. No.

17 Q. No?

18 A. No.

19 Q. So it was just the restraint that was
20 used by the paramedics, right?

21 A. Yes.

22 Q. So then they put you in the back of the
23 ambulance?

24 A. Yes.

1 Q. Who's back in there with you?

2 A. The Haymarket staff Michelle.

3 Q. Is there anyone from the sheriff's
4 office there?

5 A. No.

6 Q. Was there anyone from the sheriff's
7 office involved at all in the transportation from
8 your bedroom to the Stroger Hospital?

9 A. No.

10 Q. Now, you get to Stroger?

11 A. I get to Stroger. I go into the
12 emergency room. And the staff talks to the lady,
13 tell them I'm in labor.

14 Q. Michelle?

15 A. She talks to the lady at the emergency
16 room and tells them I am in labor. The lady
17 approaches me, asks me how many weeks I am, how
18 do I feel. Took me in the back because I had to
19 be checked to see if I was dilated or whatever.
20 To see if they'll keep me.

21 So I was proceeded to the back and
22 they checked me. And they okayed that I was in
23 labor. Proceeded to take me in the labor and
24 delivery floor. I was admitted to the labor and

1 delivery floor. Michelle followed me up.

2 Q. What's Michelle's last name?

3 A. I'm not sure.

4 Q. Can you describe her for me?

5 A. She's an African American female. She's
6 about 240 pounds. She worked nights only. Short
7 hair, very short hair. That's about it.

8 Q. Continue then.

9 A. Okay. At the time I was admitted to
10 labor and delivery, taken to labor and delivery,
11 and Michelle came with me and she stayed there
12 until the sheriff came. She said she couldn't
13 leave or go anywhere like get a pop or anything
14 until the sheriff came.

15 Q. So describe the room that you're put in?

16 A. The room it's a big size room. It has a
17 TV. It has all the monitors and baby stuff, so
18 when you deliver, so it's a really big room.

19 Q. Was there other -- is there a single
20 room?

21 A. Yeah, it's a private room. It's a
22 private room. Has its own bathroom and stuff.

23 Like I said, it got all the baby's
24 stuff, monitors, lights and things like that.

1 Q. Okay. And were you put in any
2 restraints at all, cuffs or --

3 A. Not by Michelle.

4 Q. By Michelle?

5 A. No, not by Michelle.

6 Q. How long -- I'm sorry, were you going to
7 say something?

8 MR. MORISSEY: There is no question pending.
9 And I prefer you ask questions and she will
10 answer.

11 MR. SMITH: That's what I'm doing. I didn't
12 want to cut her off. All right?

13 MR. MORISSEY: There's no question pending.

14 BY MR. SMITH:

15 Q. Let's start over.

16 How long did Michelle stay before
17 the sheriff got there?

18 A. I'd say about maybe three hours, maybe.

19 Q. Three hours?

20 A. Maybe three hours before the sheriff
21 came.

22 Q. Now, was medical personnel coming in and
23 out?

24 A. Yes, yes. And she introduced herself as

1 Santa Maria, my nurse, she introduced, because
2 she was there all through the delivery until she
3 was relieved you know, but I delivered before
4 she -- her shift was over.

5 Q. What was her name?

6 A. Santa Maria.

7 Q. That was her first name?

8 A. That's what she said her name was. And
9 that's what I called her.

10 Q. Was she Hispanic?

11 A. I think she was Filipin, I think. I'm
12 not sure what her -- really what her ethnic
13 were -- was.

14 Q. Who was the correctional officer that
15 came and relieved Michelle?

16 A. Officer Jackson.

17 Q. Is that a male or female?

18 A. Female.

19 Q. Were they all female?

20 A. Yes, all of them was female.

21 Q. And did you know Officer Jackson at all
22 prior to her coming in the room that day?

23 A. No.

24 Q. And what happened when she came in?

1 A. She came in with two, I guess her
2 superiors, they had white shirts. They had the
3 shackles with them in they hands. And they gave
4 them to her. And she -- they left. They talked
5 a minute.

6 Q. The white shirts left?

7 A. Right, the white shirts left. She
8 talked to me, asked me, you know, what I was
9 there for, just general questions, how old was I,
10 was it my first be baby, things like that.

11 Q. Small talk?

12 A. Small talk basically. I'd say about
13 maybe 40 minutes, another officer came, Officer
14 Flemmings.

15 Q. Did Officer Jackson put any restraints
16 on you?

17 A. No.

18 Q. And you said then Officer Flemmings?

19 A. Flemmings.

20 Q. And what happened when Officer Flemmings
21 came?

22 A. Officer Flemmings came to see that I had
23 to be shackled.

24 Q. She said that?

1 A. She said that.

2 Q. She told that to Jackson?

3 A. She told that to Jackson. Jackson said
4 that she had been working with this unit for some
5 time and at one point they didn't shackle the
6 MOMS program.

7 Q. Do you know what she meant when she said
8 this unit?

9 A. What did she meant? That she had been
10 the person that relieved the -- stand on the
11 ladies that had babies from MOMS.

12 Q. So were you then shackled?

13 A. I was then shackled and handcuffed.
14 Shackled at one leg and handcuffed at the other,
15 other arm.

16 Q. So it's a handcuff on your left arm
17 or -- I mean I'm just saying the opposite?

18 A. Yeah, yeah, opposite.

19 Q. Opposite wrist and ankle, right?

20 A. Correct.

21 Q. Would you ever be shackled to the same
22 ankle with the -- did you still have the leg
23 bracelet on?

24 A. Well, she's putting it on. Flemmings

1 putting it on.

2 Q. Your ankle bracelet?

3 A. You are talking about the home
4 monitoring thing?

5 Q. Yes.

6 A. That never came off. It never came off.

7 Q. I mean would they ever have the leg
8 bracelet with the home monitor on it on the same
9 leg?

10 A. Yeah.

11 Q. They would?

12 A. Uh-huh.

13 Q. And how did that feel after you had the
14 handcuffs on, the shackles on, on the arm and
15 leg?

16 A. How did it feel?

17 Q. Yes. Did you have any complaints or --

18 A. Yeah, because I'm in labor. I want to
19 move. I want to -- yeah.

20 Q. That's why you're here. I want to find
21 out about that.

22 A. No problem. I have no problem telling
23 you.

24 Q. Were they too tight?

1 A. No, but I'm in pain so I want to move.
2 I want to caress myself, so it's like I can't do
3 but so much in the bed. So it felt like being
4 tied down. Okay. And then I know I'm in pain
5 and it's very uncomfortable.

6 Q. Okay. And was your feeling of
7 uncomfortable, was it right away or did it -- I
8 mean did it happen as soon as they put on the
9 cuffs were you uncomfortable?

10 A. Yeah, it was uncomfortable because I'm
11 constantly having to use the bathroom. I have
12 to --

13 Q. Let's stop there.

14 A. Okay.

15 Q. How would you use the bathroom?

16 A. They had to bring a bedpan. And if they
17 don't get there fast enough, I'd use it on
18 myself.

19 Q. Okay. Was a catheter at all put in?

20 A. Eventually.

21 Q. How long were you there before a
22 catheter was put in?

23 A. I'm going to say about maybe three
24 hours. Now, that -- with the catheter, I had to

1 get one of the restraints taken off my leg,
2 because I had to sit my legs a certain way for
3 the catheter to come in. But once they put it in
4 they had put it back on. Because I had to put my
5 feet together like this. To get the catheter.

6 Q. Okay. And did you communicate that to
7 Officer Flemmings that you were uncomfortable
8 with the handcuffs?

9 A. Yes, and Officer Jackson.

10 Q. And what would you say to them?

11 A. That this -- that I wasn't going
12 nowhere. I didn't see why I had to be
13 restrained. I'm in labor. I have to ask for a
14 bedpan. They didn't feel like -- the officers
15 felt like it was the nurse's duty to get me a
16 bedpan. The nurses felt like they didn't have to
17 give me a bedpan because I didn't supposed to be
18 restrained. That's how they communicating with
19 each other.

20 Q. Let's talk about that for a while. Did
21 the nurse that you described --

22 A. Santa Maria.

23 Q. Did she say anything to the correctional
24 officers regarding your restraints?

1 A. Yes.

2 Q. And what did she say?

3 A. She said that that wasn't supposed to
4 happen. That never happened. She never seen
5 that to happen, that the ladies that was
6 incarcerated be restrained.

7 She also made a call to the
8 captain, the captain on duty or whoever the
9 superior was.

10 Q. Santa Maria did?

11 A. Right, for me to get the restraints off.
12 She said she couldn't keep coming back for me to
13 go to the bathroom. She just couldn't.

14 Q. And do you know what captain she called?

15 A. No.

16 Q. Was the call made from your room?

17 A. No.

18 Q. How do you know she called the captain?

19 A. Because Flemmings and her went out and
20 she said that she had a problem -- Flemmings said
21 she was following orders and if she had a problem
22 call her captain and she will go with her. So
23 the verbal part was --

24 Q. Was told to you?

1 A. Was in front of me. Was spoken in front
2 of me. But the results was just told at
3 the -- they came back and she said she couldn't
4 take them off.

5 Q. The captain?

6 A. No, Santa Maria came back and said they
7 wouldn't take them off.

8 Q. The captain said no?

9 A. Right.

10 Q. Right?

11 A. Yes, yes.

12 Q. You made it sound like I was putting
13 words in your mouth.

14 A. No.

15 Q. How about doctors, were any doctors in
16 the room?

17 A. No. But Santa Maria said that she was
18 calling the attending physician about it, the
19 restraints. They wanted me to walk to speed up
20 the labor process. And I couldn't walk because I
21 was restrained.

22 Q. Okay. Any doctors come in?

23 A. They didn't come in to talk to me, no.

24 Q. And how long were you there then before

1 you started having -- the delivery process began?

2 A. The delivery process, I think I had my
3 baby about 9:00 o'clock on the 3rd.

4 Q. So you got there about --

5 A. P.m. But I came early morning on the
6 third, a.m.

7 Q. Let me ask you this. Do you know
8 approximately what time the cuffs were put on
9 you?

10 A. All I know it was during the 11:00 to
11 7:00 shift.

12 MR. MORISSEY: The night shift, right?

13 THE WITNESS: Right, 11:00 p.m. to 7:00 a.m.
14 shift.

15 BY MR. SMITH:

16 Q. Okay.

17 A. I left like 3:00 o'clock that morning,
18 something like that.

19 Q. So sometime before 7:00 a.m.?

20 A. Exactly.

21 Q. That's when Flemmings came in?

22 A. Right.

23 Q. Was Flemmings actually 7:00 to 3:00?

24 A. I'm not sure. She could have been.

1 Q. And then, I'm sorry, I didn't hear the
2 time again when you had your baby?

3 A. About 9:00.

4 Q. A.m.?

5 A. P.m. 9:00 p.m.

6 Q. And what time did your doctor come in,
7 the doctor that delivered the baby?

8 A. They prepped me -- I'm not sure.
9 Because I'm in labor.

10 Q. That's what I'm trying to be very
11 general with it.

12 A. I know I was prepped. I'm not sure of
13 the time. I'm not sure when they actually came
14 in and delivered the baby. I know they did it,
15 so...

16 Q. When did they take the shackles off?

17 A. They didn't.

18 Q. They didn't?

19 A. No.

20 Q. So when you were having the baby, the
21 shackles were still on?

22 A. Yes. I know -- that's my testimony. I
23 know my arm was still shackled for sure, because
24 I'm numb down at the waist. I'm numb from my

1 waist down.

2 Q. Did you have a --

3 A. Depidural (sic).

4 Q. Epidural?

5 A. Thank you.

6 Q. When did you get the epidural shot?

7 MR. MORISSEY: Objection. She said that she
8 was in labor. She wasn't conscious of the time
9 actual. She can answer. If you know.

10 THE WITNESS: Well, I don't know the exact
11 time, I don't. I don't know the exact time of
12 the actual depidural.

13 BY MR. SMITH:

14 Q. Epidural?

15 A. Epidural. And I know I had it. I know
16 I was prepped. I know I was put on the thing,
17 but I also am aware that my arm was still
18 shackled, you know, my arm was still cuffed.

19 Q. Did the doctor ever say something like
20 take the handcuffs off or did you hear him say
21 anything relating to you being shackled?

22 A. Yeah.

23 Q. What did you hear the doctor say?

24 A. I heard them say that -- I know when

1 they came to put the epidural that was one part.
2 They asked me do I want the epidural, how I would
3 get it, and they talked about the shackles then,
4 because I have to sit a certain way. And they
5 said if I sat in this position -- because they
6 talking amongst the sheriff, if they can
7 unshackle me. If I laid in this position, would
8 I be -- can I still be shackled. If I laid, took
9 it another position, I would have to be
10 unshackled. So they made the decision to keep me
11 shackled while I got the epidural.

12 Q. Did you have to sit up for the epidural?

13 A. Yeah, I sat up for the epidural.

14 Q. So you were still restrained both by
15 ankle and wrist?

16 A. Uh-huh. And leg.

17 Q. Now, did you ever hear -- who was the
18 doctor that delivered the baby?

19 A. I'm not sure.

20 Q. Can you describe him for me, please?

21 A. It was all ladies.

22 Q. Female doctor, too?

23 A. Yes, female doctor, too. And there was
24 three of them, three ladies there.

1 Q. Three doctors?

2 A. I don't know if they was doctors.

3 Q. Three personnel?

4 A. Three.

5 Q. Okay. All right.

6 And describe the doctor, was she
7 black, white, Hispanic?

8 A. No, it was like Indians.

9 Q. The nurses, too?

10 A. The three ladies that delivered the
11 baby, helped her deliver my baby was like
12 Indians.

13 Q. Okay. Do you remember any of their
14 names at all?

15 A. Not in -- just in that -- no. I don't
16 even know the doctor's name that delivered my
17 baby.

18 Q. Did you hear -- listen to my question
19 carefully. Did you hear any of the Indian
20 medical personnel tell the correctional officers
21 to take the restraints off?

22 A. No.

23 Q. Were there any complications? I trust
24 everything went well for your baby. It was

1 delivered without incident?

2 A. Yes.

3 Q. Tell me then what happened next. What
4 happened after the baby was delivered?

5 A. After I delivered the baby, I was --

6 Q. Are you just shackled at that point
7 still just with your ankle?

8 A. I'm with my ankle. And like I said, I'm
9 there but I'm aware, I believe I'm aware. So I'm
10 still shackled. I'm shackled, because they
11 taken -- they got to transfer me to another bed.
12 And that's how I know I'm shackled.

13 Q. Why did they do that?

14 A. I'm not in an actual delivery room when
15 you stay in. Some rooms are where you can
16 deliver and stay in the same room. I'm not in
17 that type of room. So I have to be transported
18 to another room.

19 Q. Okay.

20 A. So by that time --

21 Q. Post delivery?

22 A. Exactly, post delivery.

23 So they take the handcuffs off, the
24 shackles off and they transfer me to the bed and

1 I am wheeled to the next room.

2 Q. I just want to go back. And do you
3 remember when they took the leg shackle off you?

4 A. Yeah. When they transferred me to the
5 next bed.

6 Q. I mean before you had the baby, before
7 you delivered the baby.

8 MR. MORISSEY: Objection. She didn't say
9 that they took the shackle off.

10 THE WITNESS: Right, I just said I couldn't
11 feel it no more because I got the epidural.

12 BY MR. SMITH:

13 Q. I thought you said when they put you in
14 that device, you know --

15 A. I'm not sure, because I can't feel it.
16 I'm dead.

17 Q. You don't know if --

18 A. Right, because I can't feel it now. And
19 then my focus is mainly on pushing and --

20 Q. I know. I know. All right.

21 A. Well, like I said --

22 Q. So how long then do you stay in your
23 room after the baby was delivered?

24 A. After they cleaned me up, let's say

1 another hour. Another hour. About an hour.

2 Q. Okay. And then when they moved you, do
3 you have both shackles on?

4 A. Yes.

5 Q. Okay. And in the other room they put
6 you in, describe that room?

7 A. It's a smaller room, with just a TV,
8 phone, bed and a bathroom. It's a private room.
9 It has a desk, couple of chairs in case I get
10 visitors or whoever sits in that room.

11 Q. And --

12 A. And I think it's on the same floor. I
13 don't remember going on the elevator or anything.

14 Q. Okay. And what officer was there? Was
15 it the same two officers or another officer?

16 A. It was Flemmings that took me to the
17 room. I went to sleep. When I woke up it was
18 another officer, Officer Martinez.

19 Q. Martinez?

20 A. Yes.

21 Q. And then you were shackled?

22 A. Yeah, I'm shackled. I'm shackled. I
23 stay shackled. I don't get unshackled until -- I
24 stayed from the 3rd to the 5th.

1 Q. I don't know that. That's why I ask the
2 question.

3 A. No problem. I stayed from the 3rd to
4 the 5th. I stay shackled in handcuffs. I also
5 take care of my baby with the handcuffs and the
6 blue box. The blue box is a device that going
7 between the chain of the handcuffs. And that's
8 put on me, too. So I'm lifting my baby out the
9 crib with my hands, like a puppy. I'm also being
10 checked by somebody else, like the police
11 is -- the sheriff is put on me and then somebody
12 else in black uniform that come up and check,
13 make sure they locked. Like a special unit I
14 think you would call them.

15 Q. Okay. What were they for?

16 A. I guess to check the police.

17 Q. Check the police?

18 A. Make sure they doing they job.

19 Q. Okay.

20 MR. MORISSEY: By police you mean the
21 sheriffs?

22 THE WITNESS: Yes, yes, that's who I mean.
23 The sheriffs. Sheriff is doing they jobs.

24 BY MR. SMITH:

1 Q. All right. And the shackles were just
2 on you the whole time?

3 A. The whole time. I also --

4 Q. It was always opposite, right?

5 A. Yes.

6 Q. Leg --

7 A. No, no.

8 Q. Wrist and ankle?

9 A. Wrist and then ankle. When I had the
10 baby they put the handcuffs on me with the blue
11 box. So it's heavy.

12 Q. All right. So the blue box, that
13 replaced the what?

14 A. No, it didn't replace anything. It made
15 it more -- what I'm trying to say I'm handcuffed.
16 Standard handcuff. The blue box what I'm saying
17 in between that. So it makes it even heavier.

18 MS. SHAPIRO: So you can't move your
19 hands --

20 MR. MORISSEY: Objection, only one person.

21 MS. SHAPIRO: Sorry.

22 THE WITNESS: I don't know it's there
23 really, because --

24 BY MR. SMITH:

1 Q. Let's just say you don't know why?

2 A. Right. It's blue. And I guess so you
3 won't -- it's heavy. So it can be heavy.

4 Q. How heavy is it?

5 A. Oh, maybe four or five pounds.

6 Q. Four or five pounds?

7 A. With the whole thing, you know, with the
8 whole thing.

9 Q. How heavy is that blue box?

10 A. It's heavy. Because it's in the middle
11 of my wrist, so I have to lift it up.

12 Q. How much to your best guess, how
13 much --

14 A. Standard. It's a standard -- it goes to
15 the width of the handcuff.

16 Q. Okay. And what about your ankles, other
17 than the electronic monitoring bracelet, were
18 there any shackles on your ankles?

19 A. Yes.

20 Q. How was that? How did that work?

21 A. It was one shackle, one cuff with a
22 chain to go around inside the bed railing of the
23 bed and locked to me.

24 Q. 24 hours a day?

1 A. 24 hours a day.

2 Q. So it's your testimony that you were
3 never able to use the bathroom that was in the
4 room?

5 A. Right. I never used it.

6 Q. Never used it?

7 A. Uh-uh.

8 Q. What about did you shower?

9 A. I didn't shower. I didn't shower. They
10 would --

11 Q. Did they give you a sponge bath?

12 A. Yeah, I would take a sponge. They
13 wouldn't give it to me. When I had to use the
14 bathroom, I would have to call the nurse. And
15 the nurses said that I was -- they wasn't really
16 aware I was shackled. They thought I was being
17 lazy.

18 Q. Do you know why they thought that, they
19 would think that?

20 A. I don't think they was aware that
21 why -- why I think that, because I felt --

22 Q. If you know.

23 MR. MORISSEY: Objection. You don't know
24 what the nurses thought.

1 THE WITNESS: Right. Okay.

2 BY MR. SMITH:

3 Q. I asked her if she knew.

4 A. No, I didn't know.

5 Q. After your attorney told you. That's
6 okay. That's fine.

7 Any family visit you?

8 A. No visitors.

9 Q. Not allowed?

10 A. They wasn't allowed. My baby daddy
11 tried -- my father of the baby tried to visit me
12 but he was stopped. Wasn't no phone calls
13 allowed.

14 Q. And the baby's in the room with you?

15 A. Yeah.

16 Q. And you stayed there until --

17 A. The 5th. I did also have a surgery
18 while I was there. I received a tubal ligation
19 too.

20 Q. What's that?

21 A. That's where the tubes are closed up so
22 you wouldn't have no more babies. And I was
23 shackled during that procedure, too. And I was
24 also --

1 Q. Let's stop there. I wasn't aware of
2 that.

3 You were then taken to the OR then
4 for that procedure?

5 A. Yeah. I was taken to OR.

6 Q. When was that done?

7 A. Like the 4th.

8 Q. And tell me about that. How did that --
9 how was that arranged for you?

10 A. I was taken off the shackles and put on
11 the bed and then shackled again and rolled to ER.
12 OR.

13 Q. They take you from your bed where you're
14 shackled?

15 A. Uh-huh.

16 Q. When I say you're shackled, I think we
17 can agree that it's always in either the
18 left -- the one wrist or the right wrist or
19 you're in the blue box, right?

20 A. Either or. Either or. Yes, I agree
21 with that.

22 Q. Don't want to keep on having to ask you
23 every minute of the day the position of the
24 shackle.

1 So you are then taken on the
2 gurney?

3 A. Yes.

4 Q. And shackled again?

5 A. And I'm shackled again. And I go to the
6 ER.

7 Q. Who took you from your room, hospital
8 room, to the operating room?

9 A. The sheriff and a nurse.

10 Q. A nurse?

11 A. Yes.

12 Q. What sheriff was that?

13 A. I'm not sure of her name but it's like
14 Patterson or Peterson. Officer Patterson or
15 Peterson. She is accompanied by another officer,
16 Officer Moday. Monee. I'm wheeled there and
17 I'm --

18 Q. What time of day is that?

19 A. Afternoon. I'm not sure of the time.
20 But it's afternoon.

21 Q. Let's go back, because this took me by
22 surprise.

23 Did you make that decision -- was
24 that already arranged for you to have the surgery

1 done?

2 A. Yes, that was arranged.

3 Q. This was something you worked out in the
4 MOMS program that after you deliver --

5 A. I worked it out with the -- my ob-gyne
6 to -- when I had the baby that I have my tubes
7 tied. So it's a procedure that has to be
8 approved like maybe 30 days before I had a baby.
9 So like my eighth month, seventh month.

10 Q. Okay. That's good enough. Okay.

11 Now, so then tell me what you
12 remember about the operating room, the OR.

13 A. Okay. Prior to going to that, the
14 anesthesiologist came out and said that I
15 couldn't come into the operating room with the
16 shackles on because of the magnetic force in the
17 light. And that he also stated to the officers
18 that he didn't want the shackles on because I
19 would be under anesthesia and I wouldn't be able
20 to move anywhere and there's no purpose for that.

21 So she said she was following
22 orders. And he said, well, he didn't want them
23 on because it was a risk. So they called
24 captains and they came up with a soft shackle.

1 Q. What is that, a soft shackle?

2 A. It's made of cloth.

3 Q. Okay. I know what you mean.

4 A. So I stayed in the hallway about four
5 hours until they found what they needed to find.
6 Okay. So I end up going in surgery -- finally
7 going surgery with soft shackles. I come out to
8 the recovery. When I wake up I'm in the recovery
9 room and I'm shackled. Now I got on the regular
10 shackles.

11 Q. By the time you woke up you had the
12 regular metal shackles?

13 A. Right.

14 Q. And how were you shackled, to the --

15 A. I was shackled to the bed railing.

16 Q. Bed railing?

17 A. Yes, to the bed railing.

18 Q. Was it one leg and one arm or did you
19 have both arms?

20 A. Yeah.

21 Q. Which one?

22 A. It was one leg and one arm.

23 Q. Okay. And how long were you in recovery
24 room for?

1 A. I don't know. I just woke up in there.

2 Q. Okay. And then when did you return to
3 your regular room, was it that day or the next
4 day?

5 A. That day.

6 Q. That day.

7 A. Uh-huh.

8 Q. Do you know what time of day it was?

9 A. Uh-uh.

10 Q. Was it nighttime?

11 A. Could have been. Could have been.

12 Q. Could have been?

13 A. Could have been. Like I said, it was a
14 long day in the hallway and --

15 Q. I agree.

16 And when you got back to your room,
17 you were shackled again?

18 A. Yes, returned to the bed, shackled.

19 Q. Who was the correctional officer?

20 A. I'm not sure.

21 Q. Following morning, how long did you
22 stay?

23 A. Following morning I'd say about 8:00 the
24 next day.

1 Q. On the 5th?

2 A. Yeah, on the 5th, I stayed until maybe
3 about 3:00'ish.

4 Q. Were you shackled the whole time?

5 A. Yeah. Haymarket staff came and then I
6 was released.

7 Q. Well, let's talk about that with the
8 Haymarket then.

9 Was it the same lady? Was it
10 Michelle?

11 A. No, no, it was a lady named Delores that
12 came and got me.

13 Q. And she comes up to your room; is that
14 true?

15 A. Yeah, she came up to my room and said
16 that she was here to get me and she said that she
17 was making sure everything was prepared for me to
18 be released with a doctor, the baby was being
19 released. And I guess the officer got the okay
20 to release me and she unshackled me.

21 Q. Discharge summary instructions?

22 A. Yeah, instructions. Typical discharge
23 papers. And the officer left and I prepared
24 myself to go with my baby. And I went back to

1 the MOMS program.

2 Q. How did you get -- what transportation
3 did you go --

4 A. I left in the Haymarket staff van.

5 Q. A van?

6 A. Yes.

7 Q. Who was with you in the van?

8 A. Me.

9 Q. You were driving the van?

10 A. And Ms. Delores. Delores was driving
11 the van.

12 Q. And the baby?

13 A. And the baby.

14 MR. SMITH: Do you want to take a break for
15 a couple of seconds?

16 MR. MORISSEY: Sure.

17 (Recess.)

18 BY MR. SMITH:

19 Q. Back on the record.

20 We left off at I believe you were
21 going -- you were transported and back at MOMS.
22 Okay.

23 A. Yes.

24 Q. And then you said you stayed there until

1 approximately September?

2 A. The 23rd.

3 Q. The 23rd. Okay. And where did you go
4 after that?

5 A. Oh, I was given the opportunity --

6 Q. Let me back up.

7 Did you have any more -- any
8 problems during the period when you returned to
9 MOMS to when you left MOMS? So it would be from
10 May 5th until September.

11 A. What you mean by problems, that I had to
12 go back to the hospital or --

13 Q. No, like disciplinary problems or
14 anything, were you written up, or any problems
15 with the staff, those general type of problems,
16 fighting or anything.

17 A. No, just depression, postpartum
18 depression, standard stuff.

19 I talked about the situation with
20 my therapist and stuff like that.

21 Q. What situation?

22 A. That I -- what I had just experienced.

23 Q. Did you have to go back -- did you seek
24 any type of medical treatment for the shackling

1 that happened to you?

2 A. No, I didn't seek no medical treatment,
3 like -- I would like to ask you like did I think
4 I needed some help from that?

5 Q. No. Let me ask you this. We'll get to
6 that.

7 As far as being shackled, which you
8 testified to during that period of time, did you
9 receive any type of physical injury as a result
10 of it?

11 A. No, no cuts or bruises or nothing like
12 that, no.

13 Q. Never saw anybody that had to go back to
14 Cermak or anything?

15 A. No.

16 Q. Now, you testified that you had
17 depression, correct?

18 A. Yeah.

19 Q. And did you have depression before this?

20 A. Yes, I did.

21 Q. Did you take medication for your
22 depression?

23 A. Yes, I did.

24 Q. What did you take?

1 A. Zoloft.

2 Q. Zoloft?

3 A. Yes.

4 Q. And you indicated that when you got back
5 to MOMS, that you talked to a therapist?

6 A. My regular therapist, regular meeting,
7 yeah.

8 Q. Who was your therapist?

9 A. At Haymarket her name is Patty Fazio.

10 Q. Is that the only therapist that you had?

11 A. Yes. Pertaining to my mental, you know.

12 Q. Patty Fazio?

13 A. Fazio. F-A-Z-I-O.

14 Q. And did you see her prior to going to
15 Stroger Hospital?

16 A. Oh, yes. On a weekly basis.

17 Q. Did you get to see her more often after
18 you returned from Stroger?

19 A. No. It wasn't in her schedule to see me
20 more often.

21 Q. Okay. How long have you been on Zoloft?

22 A. I was on Zoloft -- I've been diagnosed
23 with depression like maybe since 2000.

24 Q. You've been on it for like nine years?

1 A. No, I haven't been on it. I wouldn't
2 take the medication at first.

3 Q. You would go off and on?

4 A. Right, yeah.

5 Q. Running out?

6 A. No, I haven't had it.

7 Q. Is there a reason why not?

8 A. I'm being prescribed -- what I'm trying
9 to say, I'm being assessed for a diagnosis for my
10 Zoloft. I'm just getting out, so I'm into a Mile
11 Square, Mount Sinai Mental Health program, so I'm
12 assessed as we speak. And my therapist there is
13 Mr. Kelly.

14 Q. Did you go back to the county
15 jail -- did you go back to the compound division
16 three or division four or did you get shipped
17 right from MOMS to Dwight?

18 A. No, I went to division -- I mean I left
19 MOMS program to another program called Sheriff
20 Furlough.

21 Q. Where is that at?

22 A. That's -- the program itself is in Cook
23 County Jail but you can go home. So I went home.
24 I went home and then I would go to Sheriff

1 Furlough program every day from 8:00 to 3:00.

2 Q. With your baby?

3 A. No, not with my baby, just with me. I
4 just had to show up. No kids was allowed in
5 County Jail.

6 Q. All right. You'd show up back at --

7 A. County.

8 Q. Where?

9 A. I think it's five, division five. You
10 go to division five.

11 Q. Did you stay in that County Sheriff
12 Furlough program until you were shipped to the
13 IDOC?

14 A. Until the disposition of my case.

15 Q. What was the -- what happened to your
16 case?

17 A. I was --

18 Q. Did you plead guilty?

19 A. I pled guilty to a theft.

20 Q. Okay.

21 A. Three years. Three years.

22 Q. So then did you continue to see any
23 mental health professionals when you went to the
24 IDOC?

1 A. Yeah, when I went to Dwight, yes. I
2 ended up seeing him like a week before I got out.
3 I let him know through my intake that I was on
4 medication coming into the Department of
5 Corrections. Illinois Department of Corrections.

6 Q. Did you -- where is the intake for the
7 females? Did you go right to Dwight?

8 A. Yes.

9 Q. Dwight -- go right from the County to
10 Dwight?

11 A. Yes, sir.

12 Q. Did you tell the intake personnel at
13 Dwight about the shackling experience you had?

14 A. No.

15 Q. No?

16 A. No.

17 Q. Did you speak to anybody in Dwight, any
18 medical personnel about the shackling experience?

19 A. No, sir.

20 Q. When you got out -- when did you get out
21 from Dwight?

22 A. January 27, '09.

23 Q. Have you since spoken to anybody, any
24 medical professional about your shackling

1 experience?

2 A. Yes, I talked to the therapist that I'm
3 trying -- where I'm at now, Mile Square.

4 Q. Where are you at?

5 A. Mile Square, the place that I go for my
6 therapist now.

7 Q. What is that? Who runs that? The
8 state?

9 A. I suppose so.

10 Q. Mile Square?

11 A. Mile Square. It's a subsidy of Mount
12 Sinai Hospital, so...

13 MR. SMITH: Do you know anything about this,
14 the program, Tom?

15 MR. MORISSEY: I'm not being deposed.

16 MR. SMITH: Off the record.

17 (Discussion off the
18 record.)

19 THE WITNESS: So I just start seeing him
20 last week. Because I need my medication and I
21 haven't had it since I've been released from
22 Dwight. They didn't send it with me or anything.

23 BY MR. SMITH:

24 Q. Well, as we sit here today, how do you

1 feel about the shackling experience?

2 A. I feel outraged.

3 Q. Why is that?

4 A. Because I felt like I had my baby in
5 captivity.

6 Q. In captivity?

7 A. Uh-huh. And I'm mad at myself, you
8 know.

9 Q. You're what?

10 A. I'm upset with myself about it.

11 Q. Why are you upset at yourself?

12 A. Because I felt like it's something that
13 she didn't have to go through. It could have
14 been avoided, if I made the right decision and
15 not getting arrested, you know, not committing a
16 crime.

17 Q. Okay. All right.

18 Was this the first time you had a
19 one of your babies in while being incarcerated?

20 A. No. The first child I ever had
21 incarcerated was Marvellis, my 19-year old.

22 Q. Where was that at?

23 A. Dwight Correctional Center.

24 Q. How many times -- let me show you this.

1 I'm not doing this to embarrass you. I want you
2 to look at this Illinois Department of
3 Corrections. It doesn't have all your arrests.
4 Some of the smaller misdemeanors and stuff we're
5 not concerned about, they're not on here. But
6 looking at it with your lawyer, is there anything
7 you disagree with?

8 A. Pertaining to this?

9 Q. Pertaining to those charges and
10 sentences and dates.

11 A. No, sir.

12 Q. Do you agree with everything?

13 A. Basically, yeah.

14 MR. SMITH: I'm going to strike the Ms.
15 Jackson Exhibit No. 1, which was the
16 identification card. I'm not going to be using
17 it as an exhibit. And I will mark this Exhibit
18 No. 2.

19 (WHEREUPON, said document
20 was marked as Jackson
21 Exhibit No. 2 for
22 Identification.)

23 BY MR. SMITH:

24 Q. I'm going to show you what has been

1 previously marked as Jackson Exhibit No. 1 and
2 carefully read over this complaint and when
3 you're finished with it I'll ask you some
4 questions.

5 MR. MORISSEY: Off the record.

6 (Discussion off the
7 record.)

8 BY MR. SMITH:

9 Q. Back on the record.

10 You've read this document?

11 A. Yes.

12 Q. Is everything true and accurate to the
13 best of your belief?

14 A. To the best of my belief.

15 MR. MORISSEY: Objection. She doesn't have
16 personal knowledge of certain, about the other
17 one --

18 MR. SMITH: That's why I said to the best of
19 her ability.

20 BY MR. SMITH:

21 Q. If you had an opportunity to change
22 anything in the complaint, would you do it?

23 A. Would I do it? No. I wouldn't change
24 it.

1 Q. If there is anything to add to the
2 complaint, would you do it?

3 A. The --

4 MR. MORISSEY: I'm going to object. You're
5 asking a non-lawyer whether or not she would add
6 any additional thing to a complaint, and she's
7 not equipped to draft the complaint. That's why
8 she has counsel to do it. But you can answer the
9 questions to the best of your ability.

10 THE WITNESS: When I talked about the
11 surgery part of it, the surgery.

12 BY MR. SMITH:

13 Q. Okay.

14 A. That's about it. But other than that,
15 no.

16 Q. Do you know Catherine Zaborowski?

17 A. I've seen her. I mean we was there
18 together for a period of time.

19 Q. Have you --

20 A. I was gone by the time she delivered.

21 Q. Okay. Have you and Catherine Zaborowski
22 ever talked about this case?

23 A. No, we didn't talk about the case. We
24 just talked about...

1 Q. The shackling?

2 A. The shackling experience. The
3 experience.

4 Q. The experience?

5 A. Yeah, the experience.

6 Q. She told you about her being shackled?

7 A. Yes.

8 Q. And you told her about you being
9 shackled?

10 A. Yes.

11 Q. Is there anybody else that you told, any
12 other inmates that you told, any other people
13 that you told that you were shackled?

14 A. I didn't have to tell nobody. It was a
15 procedure that was being done, but -- at Stroger.
16 Let me say this. My prenatal care was at Mount
17 Sinai and my delivery was at Stroger. And
18 earlier part of the question, we was given a --
19 we didn't have a choice which hospital, we only
20 had two hospitals we would go to, Stroger and
21 Mount Sinai. But if it's called by ambulance, it
22 was up to the ambulance which one.

23 Q. I know. But my question was, did you
24 physically talk to any other inmates about your

1 shackling experience other than Catherine
2 Zaborowski?

3 A. Yeah, I talked in groups.

4 Q. How many people would you say you talked
5 to?

6 A. I expressed my feelings in group to the
7 16 women that was housed there.

8 Q. You told everybody at MOMS?

9 A. My experience, what I went through,
10 yeah.

11 Q. How did you come in contact with
12 Mr. Morrissey?

13 A. I called him.

14 Q. You called him?

15 A. Uh-huh. I called him on the phone. And
16 I --

17 Q. Were you referred to him by somebody?

18 A. No. I had kind of knew of him -- things
19 on I seen on the jailhouse -- it was a lawsuit he
20 had and it was posted all over the jailhouse
21 about being strip searched. So I got his name
22 off --

23 Q. No sheriff officer told you?

24 A. No, no staff member, no. I just called

1 **411.**

2 **MR. SMITH: Thank you.**

3 **MR. MORISSEY: You're done. No further**
4 **questions.**

5 **MR. SMITH: Waive?**

6 **MR. MORISSEY: She waives signature.**

7 **AND FURTHER DEPONENT SAYETH NAUGHT**

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1 STATE OF ILLINOIS)
2 COUNTY OF C O O K) SS:

3 I, MAUREEN A. WOODMAN, Certified Shorthand
4 Reporter and Notary Public in and for the County
5 of Cook and State of Illinois, do hereby certify
6 that SIMONE JACKSON was first duly sworn to
7 testify the whole truth and that the above
8 deposition was recorded stenographically by me,
9 and was reduced to typewriting under my personal
10 direction.

11 I further certify that the said deposition
12 was taken at the time and place specified.

13 I further certify that I am not a relative
14 nor employee or attorney nor counsel of any of
15 the parties, nor a relative or employee of such
16 attorney nor counsel nor financially interested
17 directly nor indirectly in this action.

18 In witness whereof, I have hereunto set my
19 hand and affixed my seal of office at Chicago,
20 Illinois, this day of
21 A.D., 2009.

22
23 MAUREEN A. WOODMAN, C.S.R.
24 License No. 084-002740

Exhibit 3

Members of the Putative Class Identified as of 9/14/0

1	██████████	Melissa	43	██████████	Kawana
2	██████████	Sharonda	44	██████████	Elaine
3	██████████	Jamille	45	██████████	Charone
4	██████████	Kiedra	46	██████████	Joy
5	██████████	Tomeika	47	██████████	Latiana A.
6	██████████	Wendy	48	██████████	Jassica
7	██████████	Lucretia	49	██████████	Christine
8	██████████	Charlene			
9	██████████	Verna			
10	██████████	Mariane			
11	██████████	Victoria			
12	██████████	Jamie			
13	██████████	Jennifer			
14	██████████	Candice			
15	██████████	Jennifer			
16	██████████	Cora			
17	██████████	Nicole			
18	██████████	Jasmine			
19	██████████	Latrice			
20	██████████	Ida			
21	██████████	Denae			
22	██████████	Shareka			
23	██████████	Lawanda			
24	██████████	Eric			
25	██████████	Deborah			
26	██████████	Veronica			
27	██████████	Tammy			
28	██████████	Felicia U			
29	██████████	Kimberly			
30	██████████	Brittany			
31	██████████	Laura A.			
32	██████████	Ashley			
33	██████████	Londie			
34	██████████	Towana			
35	██████████	Stephanie			
36	██████████	Angela			
37	██████████	Anastasia			
38	██████████	Denise			
39	██████████	Teresa			
40	██████████	Sheena J.			
41	██████████	Martha			
42	██████████	Anna			

Exhibit 4



Archives Opinion

[Return to your last page](#)

Archive for Thursday, June 25, 2009

Handcuffing pregnant inmates

June 25, 2009

Handcuffing pregnant inmates

This is in response to "Suit: Inmate shackled in labor; Woman was incarcerated days before hospital delivery" (News, June 12).

Attorneys Thomas Morrissey and Kenneth Flaxman allege that the jail's policy for handcuffing pregnant inmates while they are treated at outside hospitals violates state law.

Nothing could be further from the truth.

In fact, the jail's written policy specifically cites the statute in question and orders correctional officers to not handcuff pregnant inmates while they are being transported to the hospital and while they are delivering their babies.

Anytime a detainee is taken outside the jail for medical treatment, he or she becomes an immediate escape risk.

That is why we are permitted by law to cuff pregnant inmates to their hospital beds if they are not in labor and after child birth.

Many female inmates have successfully escaped custody while receiving medical treatment (including child birth) at hospitals outside of Cook County Jail.

The policy is in place to protect both the hospital staff and the female inmates.

In fact, not long ago, a female inmate who was hospitalized for surgery died while jumping from a hospital window at the in an escape attempt while she was recovering from the operation.

Further, it should be mentioned that the sheriff's office has operated a program called MOM's that has allowed hundreds of pregnant inmates who are charged with non-violent crimes to receive therapeutic pre- and post-natal care while in custody.

The program includes substance abuse counseling and mental-health treatment for pregnant inmates, and it allows them to remain with their babies after birth in a secure setting outside the jail walls.

– *Thomas J. Dart, sheriff of Cook County, Chicago*

Related articles

Exhibit 5

1

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

2

3

4

CATHERINE ZABOROWSKI and)
SIMONE JACKSON,)
individually and on behalf)
of a class,)

6

Plaintiffs,)

7

vs.)

No. 08 C 6946

8

SHERIFF OF COOK COUNTY and)
COOK COUNTY, ILLINOIS,)

9

10

Defendants.)

11

12

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14

The deposition of GARY HICKERSON,

15

called for examination, taken pursuant to

16

notice and pursuant to the Federal Rules of

17

Civil Procedure for the United States District

18

Courts pertaining to the taking of depositions,

19

taken before Kathleen P. Lipinski, Certified

20

Shorthand Reporter and Notary Public, at 500

21

Daley Center Chicago, Illinois, commencing at

22

10:15 o'clock a.m. on the 9th day of July,

23

A.D., 2009.

24

TOOMEY REPORTING (312) 853-0648

1 **APPEARANCES:**

2 **Mr. Thomas G. Morrissey**
3 **(Thomas Morrissey, Ltd.)**
4 **10249 South Western Avenue**
5 **Chicago, Illinois 60643**
6 **Phone: (773) 233-7900**

7 **On behalf of the Plaintiffs;**

8 **Mr. Ronald Weidhuner**
9 **(State's Attorney of Cook County, Illinois**
10 **Civil Actions Bureau)**
11 **500 Daley Center**
12 **69 West Washington**
13 **Chicago, Illinois 60602**
14 **Phone: (312) 603-5527**

15 **On behalf of the Defendant.**

16

17

18

19 **ALSO PRESENT: Lindsey Scarpino,**
20 **Lindsey Shapiro, John Braves.**

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TOOMEY REPORTING (312) 853-0648

1 I N D E X

2 WITNESS PAGE

3 GARY HICKERSON

4 Direct Examination by Mr. Morrissey 04

5 Cross-Examination by Mr. Weidhuner 53

6 Redirect Examination by Mr. Morrissey 56

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10

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12

13 E X H I B I T S

14 HICKERSON DEPOSITION EXHIBIT PAGE

15 No. 1 10

16 No. 2 10

17 No. 3 16

18 No. 4 29

19

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TOOMEY REPORTING (312) 853-0648

1 (WHEREUPON, documents marked
2 Hickerson Deposition Exhibit
3 Nos. 1-5, for identification.)
4 (WHEREUPON, the witness was
5 duly sworn.)

6 MR. MORRISSEY: This is a discovery
7 deposition pursuant to Rule 30(b)(6) in regards
8 to the practices and procedures of the Sheriff
9 of Cook County in regards to restraining and/or
10 shackling women that are pregnant and are
11 brought to a hospital.

12 The preliminary question is, Ron, are
13 you producing Superintendent Hickerson pursuant
14 to the Rule 30(b)(6) --

15 MR. WEIDHUNER: Yes.

16 WHEREUPON:

17 GARY HICKERSON,
18 called as a witness herein, having been first
19 duly sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. MORRISSEY:

23 Q. Superintendent, you've been deposed
24 before in other matters, I'm sure, correct?

TOOMEY REPORTING (312) 853-0648

1 A. Yes, sir.

2 Q. Will you please state your full name
3 for the record?

4 A. Gary Hickerson.

5 Q. You're currently superintendent of
6 what division?

7 A. Administration.

8 Q. Your direct supervisor is who?

9 A. Director Brown, Director Danny Brown.

10 Q. For what period of time have you been
11 the Superintendent of Administration?

12 A. Mid May of 2009 until present.

13 Q. You were recently deposed in a case
14 called Streeter vs. Sheriff of Cook County,
15 correct?

16 A. Yes, sir.

17 Q. Have you had an opportunity to review
18 your answers in that deposition?

19 A. No, sir.

20 Q. Would your answers be the same today
21 as they were then in regards to your various
22 titles and positions with the Cook County
23 Sheriff?

24 A. Yes, sir.

TOOMEY REPORTING (312) 853-0648

1 Q. Briefly since January of 2006 until
2 the present, can you tell me the various
3 positions you've held with the Sheriff of Cook
4 County?

5 A. January of 2006, I was superintendent
6 in Division 5. In 2007, I was superintendent
7 of Division 4 and that was until mid August
8 of -- I'm sorry, 2006 of 5, 2007 of 4. I know
9 I moved to External Ops in August of 2008.

10 Q. Prior to being Superintendent of
11 External Operations in August of 2008 -- And I
12 have to keep my voice up because we have this
13 horrible HV -- heating and ventilation system
14 in this room.

15 Prior to August of 2008, what was your
16 previous position with the Sheriff?

17 A. Prior to August?

18 Q. Prior to August of 2008.

19 A. Prior to August of 2008, I was a
20 superintendent in Division 4.

21 Q. Prior to August of 2008, had you ever
22 worked in External Operations as an employee of
23 the Sheriff?

24 A. Yes. It was referred to as

TOOMEY REPORTING (312) 853-0648

1 External -- It was referred to as Chief
2 Security at that time.

3 Q. When did you work in Chief Security?

4 A. As an officer in 1983 to 1986, as a
5 sergeant from 1987 until 1991, and a short
6 period for a few months after that as a
7 lieutenant in 1991.

8 Q. Would it be correct, then, to say that
9 since 1991 up until August of 2008, you had not
10 had any either supervisory responsibilities or
11 officers that were assigned to hospital units
12 or you didn't work in hospital units?

13 A. That's correct.

14 Q. For how long were you the
15 Superintendent of External Operations?

16 A. Nine months.

17 Q. When did you leave External
18 Operations?

19 A. Mid May of 2009.

20 Q. What is External Operations?

21 A. It's the area that -- It's the
22 division that handles all the perimeter
23 security of the Cook County Jail as well as all
24 the outlying hospital security for inmates that

TOOMEY REPORTING (312) 853-0648

1 are hospitalized, I should say.

2 Q. Does External Operations also have
3 officers that are assigned to transport inmates
4 from the jail complex to outlying hospitals?

5 A. Yes.

6 Q. During the time you were the
7 superintendent, how many officers were assigned
8 the duty of transportation of inmates from the
9 jail to outlying hospitals?

10 A. We assign four officers per shift to
11 handle that detail and occasionally more
12 depending on how many inmates would actually
13 get ill at the jail at that time.

14 Q. Are there any vehicles under the
15 control of External Operations that are used to
16 transport detainees from the jail to hospital
17 complexes?

18 A. Yes.

19 Q. What types of vehicles are used?

20 A. Depending on the medical needs, we do
21 have handicapped vehicles. If the doctor
22 allows, we use the squad cars.

23 Q. What types of handicap vehicles are
24 under the jurisdiction of External Operations?

TOOMEY REPORTING (312) 853-0648

1 A. There are two that I know of that are
2 assigned that we use when an inmate is in a
3 wheelchair that we have to use for handicap.

4 Q. Are those ambulances or vans?

5 A. The ambulances are not driven by us.
6 They are in the control of Cermak. We put an
7 officer in there before transporting, but we do
8 not drive that vehicle. It's Cermak's
9 vehicles.

10 Q. The other vehicles that are used to
11 transport inmates, what are they?

12 A. Squad cars.

13 Q. You said squad cars and you also have
14 two handicap vans?

15 A. Yes, sir, two handicap vans.

16 Q. And there are ambulances that Cermak
17 has, correct?

18 A. Correct.

19 Q. Are there any general orders or
20 divisional procedures that are given to
21 officers that transport inmates from the jail
22 to hospital facilities?

23 A. Yes.

24 Q. What are those written orders?

TOOMEY REPORTING (312) 853-0648

1 A. There is a hospital and policy
2 procedure. I'm not sure of the number, but we
3 have hospital policy and procedures in our SOPs
4 that all officers are given.

5 Q. Showing you what has been marked as
6 Exhibit 1, it's a document that's dated
7 effective date July 25, 2006, and it's a
8 nine-page document. I'd ask you to take a look
9 at that document for a moment.

10 (WHEREUPON, witness viewing
11 document.)

12 BY THE WITNESS:

13 A. Okay.

14 BY MR. MORRISSEY:

15 Q. Is this the document you're referring
16 to?

17 A. Yes, sir.

18 Q. Are there any other documents that
19 you're aware of?

20 A. No, sir. This was changed when I was
21 a superintendent.

22 Q. I'm showing you what has been marked
23 as Plaintiff's Exhibit Number 2 with an
24 effective date of 2008. It's an eight-page

TOOMEY REPORTING (312) 853-0648

1 document. It says it's related to General
2 Order 9.44. I'd ask you to take a look at
3 that.

4 Is that the document you're referring
5 to as updating the Exhibit 1 document?

6 A. Yes, sir.

7 Q. In regards to correctional officers
8 and supervisors that are responsible for
9 guarding inmates that are hospitalized, are
10 there any other written general orders or
11 divisional procedures that you're aware of that
12 were applicable during the period of time from
13 December of 2006 to the present?

14 A. No, sir.

15 Q. When you came in to External
16 Operations in August of 2008, who was the
17 superintendent that immediately preceded you?

18 A. Superintendent Michael Holmes.

19 Q. In August of 2008, was there a
20 procedure -- a practice and a written procedure
21 in regards to shackling all detainees that were
22 housed outside the Cook County Department of
23 Corrections complex?

24 A. Yes, sir.

TOOMEY REPORTING (312) 853-0648

1 Q. What was the written policy and
2 practice in regards to -- Strike that.

3 In August of 2008, were all detainees
4 that were housed outside of the Cook County
5 Department complex classified as high-risk
6 inmates?

7 A. Yes, sir.

8 Q. As a superintendent of the External
9 Operations, what is a high-risk inmate?

10 A. The definition that we're using is any
11 inmate outside of the compound is considered a
12 high-risk inmate.

13 Q. Would an elderly inmate that is over
14 70 years old be considered a high-risk inmate
15 if they were hospitalized?

16 A. According to this definition, yes,
17 sir.

18 Q. As far as the practice when you were
19 Superintendent of External Operations, would a
20 70-year-old inmate be considered a high-risk
21 inmate?

22 A. Yes, sir.

23 Q. If a person was in a -- was a
24 paraplegic and was hospitalized and a detainee

TOOMEY REPORTING (312) 853-0648

1 at the Cook County Department of Corrections,
2 would that detainee who was a paraplegic who
3 was housed at Stroger be considered a high-risk
4 inmate?

5 A. Yes, sir.

6 Q. If a person had open heart surgery and
7 was a detainee of the Sheriff, if that person
8 was hospitalized at Stroger Hospital, would
9 that person be considered a high-risk inmate?

10 A. Yes, sir.

11 Q. Now, if a person had open heart
12 surgery and was a detainee of the Sheriff and
13 was hospitalized at Cook County -- at Stroger
14 Hospital, would that person be shackled?

15 MR. WEIDHUNER: I'm going to object
16 because time frame is too general. Are we
17 talking during the operation, postop, or
18 exactly when in regards to this? Three months
19 ago, or what?

20 BY MR. MORRISSEY:

21 Q. Assuming that a person was a detainee
22 of the Sheriff and within 48 hours after the
23 surgery was placed in the hospital room, would
24 that person be considered a high-risk inmate?

TOOMEY REPORTING (312) 853-0648

1 A. Yes, sir.

2 Q. And would that person necessarily be
3 shackled?

4 A. That would depend on the doctor's
5 orders, sir.

6 Q. Assuming that there were no specific
7 doctor's orders, under the practice of the
8 Sheriff, would that person who had received
9 open heart surgery 48 hours before be
10 considered a high-risk inmate and be shackled?

11 A. Yes, sir.

12 Q. When a person under the practice of
13 the Sheriff was shackled in a hospital room,
14 describe what the shackling included.

15 A. The shackling included the shackles
16 were attached to the bedframe and attached to
17 the leg, if we did it on the left side, then
18 the cuff would be cuffed on the right side of
19 their hand.

20 Q. If a detainee was housed -- Strike
21 that.

22 If a detainee of the Sheriff was
23 paralyzed and was hospitalized at Stroger
24 Hospital, would that -- and assuming that there

TOOMEY REPORTING (312) 853-0648

1 was no specific doctor's order, would that
2 person be shackled pursuant to the Sheriff's
3 practice and policy?

4 A. Yes, sir.

5 Q. When you came in to the External
6 Operations in August of 2008, did you review
7 the divisional procedure?

8 A. Yes, sir.

9 Q. After you reviewed the divisional
10 procedure which is in front of you as
11 Exhibit 1, did you find it was necessary to
12 make any changes to that divisional --

13 A. Yes, sir.

14 Q. After reviewing it, what concerns did
15 you have about the divisional procedure which
16 is marked Exhibit 1?

17 A. The -- Some of the wording. We
18 decided to change some of the wording to spell
19 out exactly what we were doing. It wasn't the
20 actual policy itself, just some of the wording
21 in the policy itself of how we were handling
22 it.

23 Q. In regards to the written policy which
24 was in effect in August of 2008, did you make

TOOMEY REPORTING (312) 853-0648

1 any changes in regards to women that were
2 detainees of the Sheriff that were brought to
3 the hospital when they were pregnant?

4 A. We did change some of the verbiage.

5 Q. Specifically what changes were made in
6 regards to women that were brought to the -- to
7 a hospital while pregnant?

8 A. I might stand corrected. It doesn't
9 look like we changed anything in the verbiage.

10 Q. So the written policy in regards to
11 women that leave the Cook County Jail complex
12 and go to a hospital while pregnant was not
13 changed by you after you became Executive
14 Director -- I'm sorry, after you became
15 Superintendent of External Operations?

16 A. That's correct.

17 Q. Were there any other written
18 directives or general orders that were changed
19 by you after becoming External Operations
20 superintendent in regards to pregnant women
21 that are hospitalized?

22 A. No, sir.

23 Q. Turning to Exhibit 3, if you will, for
24 a moment, it's an External Operations daily

TOOMEY REPORTING (312) 853-0648

1 detainee hospitalization checklist for a woman
2 by the name of Simone Jackson dated 5/2/08. Do
3 you have that document in front of you?

4 A. No, I do not.

5 (WHEREUPON, document
6 tendered.)

7 BY MR. MORRISSEY:

8 Q. Take a moment to look at that
9 document. It's actually a two-page document.
10 (WHEREUPON, witness viewing
11 document.)

12 BY THE WITNESS:

13 A. Okay.

14 BY MR. MORRISSEY:

15 Q. In regards to Exhibit 3, Exhibit 3, is
16 that a form used by your correctional officers
17 that are assigned to External Operations?

18 A. Yes, sir.

19 Q. Was this form in existence at the time
20 that you were superintendent?

21 A. Yes, sir.

22 Q. And was this form -- Strike that.
23 What is the purpose of a form which is
24 titled "External Operations Daily Detainee

TOOMEY REPORTING (312) 853-0648

1 Hospitalization Checklist"? What is the
2 purpose of it?

3 A. It is an informational sheet for the
4 supervisors to check to see if there's any
5 pertinent information day to day as to what
6 happened with the patient, or the inmate I
7 should say.

8 Q. What information is contained on the
9 form?

10 A. The officer that's assigned there
11 signs the sheet. The sergeant that is making
12 rounds signs the sheet. Any lunch relief
13 officers would sign the sheet. Any notations
14 for doctors' orders or requests would have
15 that, as well.

16 Q. Does the form also indicate whether or
17 not the prisoner was shackled during the course
18 of the day?

19 A. Yes.

20 Q. Why does this form indicate when a
21 prisoner/detainee is handcuffed or the
22 handcuffs are removed?

23 A. Why?

24 Q. Yes.

TOOMEY REPORTING (312) 853-0648

1 A. That's part of our protocol. If
2 you're going to remove restraints, we need to
3 document it and notify your supervisor.

4 Q. It would be correct, then, to say that
5 the protocol or practice of the Sheriff was for
6 the guards to have the hospitalized inmate
7 shackled?

8 A. Correct.

9 Q. At all times, correct?

10 A. Correct.

11 Q. And by shackling, what do you mean?

12 A. Shackling the leg to the bedframe and
13 the hand to the other part of the bedframe.

14 Q. So for purposes of this deposition,
15 when I state "shackling," you understand what I
16 mean as far as a hospitalized detainee,
17 correct?

18 A. Yes, sir.

19 Q. And is it correct that this standard
20 form is used to note when, if at all, the
21 shackles are removed by the guards during the
22 course of a day, correct?

23 A. Yes, sir.

24 Q. And it's the obligation of the guard

TOOMEY REPORTING (312) 853-0648

1 under the protocol or practice to make a record
2 if the shackles are removed from a hospitalized
3 detainee, correct?

4 A. Yes, sir.

5 Q. And if there is no notation on the
6 form, the assumption would be that the detainee
7 was shackled during that period of time,
8 correct?

9 A. Yes.

10 Q. During what parts -- Strike that.

11 Under what circumstances would a guard
12 that was assigned to monitor or watch a
13 hospitalized detainee remove the shackles
14 during the course of a day?

15 A. If they were allowed to go to the
16 bathroom, they would remove the shackles from
17 the bedframe and then re-shackle both legs and
18 allow them to go to the bathroom; if they were
19 being moved for a test; if a doctor requested
20 it.

21 But before any of this happens, they
22 must notify the supervisor on duty unless it's
23 an emergency situation. And they would then
24 notify them via radio that they had an

TOOMEY REPORTING (312) 853-0648

1 emergency.

2 Q. Would it be correct to state that the
3 practice of the Sheriff was before any shackle
4 was removed from a hospitalized detainee that
5 the guard that was watching the detainee would
6 have to seek the approval of a supervisor?

7 A. Other than life-threatening.

8 Q. By "life-threatening," what do you
9 mean?

10 A. A doctor said the cuffs or shackles
11 have to come off or this person is going to
12 die. That would be life-threatening.

13 Q. What was and is the practice in
14 regards to assigning a correctional officer to
15 guard a hospitalized detainee?

16 A. I don't understand the question.

17 Q. The question is: If a detainee was in
18 a hospital room, was there a practice and prior
19 to August of 2008, of having a guard assigned
20 to the room with the hospitalized detainee?

21 A. Yes.

22 Q. Would that correctional officer have a
23 gun?

24 A. Yes, sir.

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1 Q. In addition, would the hospitalized
2 detainee under all circumstances be shackled?

3 A. Yes, sir.

4 Q. Now, you mentioned that in addition to
5 the correctional officer assigned to the room,
6 that there would be supervisors that also would
7 be responsible for monitoring hospitalized
8 detainees, correct?

9 A. Yes, sir.

10 Q. And the supervisor would also sign the
11 External Operations daily reports, correct?

12 A. Yes, sir.

13 Q. During the course of each shift, would
14 a supervisor have to come into the hospital
15 room where a detainee is housed to ensure that
16 the guard was performing his duty?

17 A. Yes, sir.

18 Q. And would that supervisor make a
19 notation or sign the External Operations log
20 which is indicated by Exhibit 3?

21 A. Yes, sir.

22 Q. Now, in addition to the form, is it
23 the practice of correctional officers to make
24 notes during those shifts?

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1 A. Yes, sir.

2 Q. And are those notes kept in the
3 regular course of business by the Sheriff's
4 Office?

5 A. Yes, sir.

6 Q. Turning to page 2 of Exhibit 3, are
7 those notes made by the correctional officer
8 assigned to Simone Jackson on May 2nd, 2008?

9 A. Yes, sir.

10 Q. Do you know a Sergeant Roldan?

11 A. Roldan, yes, sir.

12 Q. Was Sergeant Roldan part of External
13 Operations?

14 A. Yes, sir.

15 Q. Is there a note on May 2nd, 2008, by
16 the correctional officer that he had contacted
17 Sergeant Roldan at 7:00 a.m. in the morning?

18 A. Yes, sir.

19 Q. And does it reflect that Ms. Jackson
20 was shackled and handcuffed?

21 A. Yes, it does.

22 Q. And was that pursuant to the practice
23 of the Sheriff?

24 A. Yes, sir.

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1 Q. And does it indicate that Ms. Jackson
2 is part of the MOMs program?

3 A. Yes, it does.

4 Q. And what is the Moms Program?

5 A. The Moms Program, to the best of my
6 knowledge, is a program that allows the inmates
7 from Division 3 to go to the Haymarket and seek
8 counseling and skills while they're there.

9 Q. Does the note also indicate that --
10 Strike that.

11 It's your understanding that people
12 that are assigned to the MOMs program from
13 Division 3 are either pregnant or have
14 delivered a child, correct?

15 A. Yes.

16 Q. Does this note at 7:00 a.m. in the
17 morning on May 2nd, 2008, indicate that the
18 patient, Ms. Jackson's water bag had broken --
19 water had broken?

20 A. Yes, it does.

21 Q. Now, as a Superintendent of External
22 Operations, looking at this note, would it
23 occur to you that Ms. Jackson was hospitalized
24 for the purpose of delivering a child?

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1 A. Yes.

2 Q. Now, there is a notation at 5:00 p.m.
3 in the afternoon on May 2nd, 2008, correct?

4 A. I'm sorry?

5 Q. There is a notation on Exhibit 3 at
6 5:00 p.m. on May 2nd, 2008, correct?

7 A. Yes.

8 Q. Now, would that notation have been
9 made by the correctional officer that was
10 assigned to guard Ms. Simone Jackson?

11 A. Yes.

12 Q. And at that time that would have been
13 Officer Fleming?

14 A. Yes.

15 Q. So Officer Fleming would have made
16 that note in the normal course of business of
17 the Sheriff, correct?

18 A. Yes, sir.

19 Q. Do you know a Sergeant Johnson?

20 A. Yes.

21 Q. And does it reflect that
22 Sergeant Johnson would have been Officer
23 Pemberton's supervisor, correct -- I'm sorry,
24 Officer Fleming's supervisor?

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1 A. That is correct.

2 Q. And again it reflects that Ms. Jackson
3 is in the MOMs program, correct?

4 A. Correct.

5 Q. And Sergeant Jackson is giving an
6 order that Ms. Jackson should be shackled and
7 handcuffed, correct?

8 A. At 5:00 o'clock, yes, sir.

9 Q. And that order by Sergeant Jackson --
10 Sergeant Johnson was following the practice and
11 procedure of the Sheriff's Office in regards to
12 shackling and handcuffing prisoners that were
13 hospitalized, correct?

14 A. That is correct.

15 Q. Now, there is another notation at 2014
16 which would be 8:14 in the evening, correct?

17 A. Yes, sir.

18 Q. And that notation is: Patient is in
19 active labor. Doctor issued for for shackles
20 to be removed. Notified Sergeant Johnson.

21 That notation would have been made by
22 Officer Fleming, correct?

23 A. Correct.

24 Q. And that would be pursuant to the

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1 standard practice and procedures of the Sheriff
2 again, correct?

3 A. Correct.

4 Q. Looking at the front side of
5 Exhibit 3, the form, there's no notation on
6 that form that the shackles, in fact, were
7 removed at 8:14, correct?

8 A. Correct.

9 Q. And there's no notation at 8:14 by
10 Officer Fleming that the shackles, in fact,
11 were removed at 8:14, correct?

12 A. That is correct.

13 Q. Is it the practice and procedure for a
14 correctional officer to notify his or her
15 supervisor that a doctor is asking for the
16 shackles to be removed?

17 A. Correct.

18 Q. Now, there is a notation at 12:30 a.m.
19 in the morning that the shackles were removed,
20 correct?

21 A. It says "Cuffs were removed."

22 Q. "Patient is in labor," correct?

23 A. Correct.

24 Q. At 11:00 p.m. there is a notation by

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1 the officer on duty that "Patient is in labor.

2 Per the doctor no shackle order is present in

3 envelope." What does "in envelope" mean?

4 A. For each patient or each inmate there,

5 we keep an envelope that keeps this type of

6 paperwork and any other pertinent paperwork in

7 that envelope that is eventually going to go

8 back to External Operations to be filed, so

9 that order would have been in that envelope.

10 Q. Let me clarify. So for each

11 hospitalized patient, there is an envelope

12 maintained by the Sheriff's Office?

13 A. An 8-by-11 manila envelope, yes.

14 Q. Looking at this record, would it

15 appear to you that the shackle -- the handcuffs

16 were removed for the first time at 12:30 a.m.

17 on May 3rd, 2008?

18 A. They were removed at that time. Were

19 they removed earlier? I couldn't say. It's

20 not documented.

21 Q. And there is a notation at the time

22 the baby was delivered at 12:40 a.m. on

23 May 3rd, 2008?

24 A. That is correct.

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1 Q. In May of 2008, for women that came to
2 the jail -- came to the hospital from the jail
3 who were pregnant, the standard practice of the
4 Sheriff's Office was to shackle the woman once
5 she reached the hospital room, correct?

6 A. Yes, sir.

7 Q. For a woman that was pregnant and was
8 brought to a hospital for purposes of
9 delivering a baby, the practice of the Sheriff
10 in May of 2008 was to keep the shackles on the
11 woman until the point that a medical doctor
12 ordered a correctional officer to remove the
13 shackles; is that correct?

14 A. That's correct.

15 Q. Looking at Exhibit 4 which is a
16 document for Simone Jackson, the External
17 Operations daily detainee hospitalization
18 checklist dated May 3, '08, is that again a
19 record that's kept in the normal course of
20 business?

21 A. Yes, sir.

22 Q. And it's a two-page document, isn't
23 it, Superintendent?

24 A. Yes, sir.

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1 Q. And there's a notation made on the top
2 of the second page of 5/3/08, "Per Sergeant
3 Roldan, inmate is to remained cuffed and
4 shackled while handling her baby"; is that
5 correct?

6 A. Yes, sir.

7 Q. In May of 2008, for a woman that had
8 delivered a child at a hospital who was in
9 custody, was it the practice and the policy of
10 the Sheriff to handcuff and shackle the woman
11 while she was handling her baby?

12 A. Yes, sir.

13 Q. In May of 2008, was it the practice
14 and policy of the Sheriff of Cook County to
15 shackle a woman while she was breast-feeding
16 her newly-born child?

17 A. Yes, sir.

18 Q. There is a notation at 11:25 a.m. that
19 Officer McLean and Officer Pemberton are
20 transporting inmate to the fourth floor OR for
21 a medical procedure; is that correct?

22 A. That is correct.

23 Q. While a patient is being transported
24 to the operating room for a surgery in May of

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1 2008, was it the practice and policy to have
2 that inmate shackled?

3 A. Yes.

4 Q. At 11:34 a.m. there is a notation on
5 Exhibit 4, "Per Sergeant Roldan, restraints
6 cannot be removed during surgery because inmate
7 will not be completely sedated"; is that
8 correct? Do you see that notation?

9 A. Yes, sir.

10 Q. Was it the practice and policy of the
11 Sheriff of Cook County to maintain restraints
12 on a woman or inmate during the course of
13 surgery if there was no order by a doctor?

14 A. If an inmate is going to be completely
15 sedated, the shackles and the restraints would
16 come off completely.

17 If you're having a minor surgery
18 procedure which still means you're not
19 completely sedated, yes, we would leave the
20 shackles and cuffs on you unless the doctor
21 gives us an order.

22 Q. In August of 2008 when you became
23 Superintendent of External Operations, did you
24 review the procedures involving shackling

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1 pregnant women who are hospitalized while an
2 inmate of the Sheriff?

3 A. Yes.

4 Q. At whose direction did you review the
5 procedures in regards to shackling pregnant
6 women in August of 2008?

7 A. My immediate director at the time was
8 Director Romero.

9 Q. Did you have a conversation with
10 Director Romero when you took command of
11 External Operations?

12 A. Yes.

13 Q. Who was present during the
14 conversation?

15 A. Just myself and him.

16 Q. Do you recall what date that
17 conversation --

18 A. No, sir, I don't.

19 Q. Do you recall it was in the month of
20 August of 2008?

21 A. It might have been September. I went
22 on vacation as soon as I got there, so I didn't
23 really --

24 Q. Are there any records in regards to

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1 when you were on vacation in 2008?

2 A. Yes.

3 Q. But, to the best of your recollection,
4 you were on vacation in August?

5 A. Yes, for just a week.

6 Q. Within four to five weeks of becoming
7 the commander -- or the Superintendent of
8 External Operations, you recall having a
9 conversation with Romero in regards to
10 shackling of pregnant women?

11 A. All the policies. We sat down with
12 all the policies.

13 Q. And Director Romero is one of the
14 assistant directors to the executive directors?

15 A. Yes, sir.

16 Q. And specifically in regard -- What
17 policies of External Operations did you discuss
18 with Director Romero?

19 A. All of them. The policy is to review
20 these once per year.

21 Q. As a result of your conversations with
22 Director Romero, did you cause any of the
23 policies for External Operations to change?

24 A. Minor changes in different policies.

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1 I can't remember exactly which ones. We
2 actually wrote some policies pertaining to
3 something other than the hospital with some of
4 the newer equipment we were using.

5 Q. Were there any written changes in
6 regards to women that were pregnant and
7 hospitalized?

8 A. Not by us.

9 Q. Were there any written changes by
10 anybody within the Sheriff's Office after you
11 assumed command of External Operations?

12 A. The Women's Justice Program.

13 Q. Is the Women's Justice Program part of
14 the Sheriff's Office?

15 A. Yes, sir.

16 Q. Is there a woman by the name of
17 Ms. McDermott that is in charge of the Women's
18 Justice Department?

19 A. Yes, sir.

20 Q. After you became head of External
21 Operations, did you have any conversations with
22 Ms. McDermott in regards to pregnant women who
23 are hospitalized?

24 A. No, I did not.

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1 Q. Did Ms. McDermott make any changes
2 while you were head of External Operations in
3 regards to pregnant women that are
4 hospitalized?

5 A. I'm not sure if she did. I -- One of
6 her assistants might have.

7 Q. What changes were made by either
8 Ms. McDermott or one of her subordinates in
9 regards to hospitalized pregnant women?

10 A. They no longer had us sitting on the
11 females from the MOMs program.

12 Q. Now, when you say "sitting," what do
13 you mean?

14 A. We were no longer part of being
15 security for them. "Us" being External
16 Operations.

17 Q. Was that a decision made by -- Strike
18 that.

19 As the Superintendent of External
20 Operations, you have specific command and
21 responsibility for all inmates that are housed
22 outside of the jail compound, correct?

23 A. Yes.

24 Q. And the Women's Justice Department

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1 does not have responsibility in regards to
2 providing security and custody of detainees
3 that are housed off of the Cook County Jail
4 compound, correct?

5 A. I'm not sure what their policies are
6 now. I don't know their policies, to be honest
7 with you.

8 And I need to strike the last
9 statement because actually DCSI, I do believe,
10 sits on their own inmates at the hospital, as
11 well.

12 Q. What is DCSI?

13 A. Department of Community Supervision
14 and Intervention is the pre-release program,
15 the day reporting program, and the home
16 monitoring program; so I would not sit on their
17 inmates either.

18 Q. But those are -- But you received an
19 order sometime after August of 2008 from the
20 Women's Justice Department that women that were
21 assigned to the MOMs program were not to be --
22 that External Operations was not to provide
23 security?

24 A. That is correct.

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1 Q. Now, that was just specifically to
2 women that were part of the MOMs program,
3 correct?

4 A. Correct.

5 Q. So that you continued to have
6 responsibility over women that came from
7 Division 3 in the course of their pregnancy and
8 were hospitalized, correct?

9 A. That is correct.

10 Q. In regards to after August of 2008,
11 you stated that External Operations would no
12 longer provide security for women that were in
13 the MOMs program that were hospitalized for
14 purposes of delivering a child, correct?

15 A. Correct.

16 Q. Was there any other branch of the
17 Sheriff's Office that provided security for
18 women that were hospitalized after August of
19 2008 for the purposes of delivering a child?

20 A. For the Women's Justice Program?

21 Q. Do you understand my question?

22 A. No.

23 Q. In August of -- Sometime after August
24 of 2008, you're not sure specifically, correct?

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1 A. Correct.

2 Q. You don't have an exact date. It
3 could have been September or October of 2008
4 that External Operations no longer provided
5 security for women that were hospitalized from
6 the MOMs program?

7 A. It was in October of '08.

8 Q. So you're sure it was in October of
9 '08?

10 A. Yes, sir.

11 Q. After October of 2008, to your
12 knowledge, was any other division within the
13 Sheriff's Office responsible for providing
14 security for women from the MOMs program that
15 were hospitalized for the purposes of
16 delivering a child?

17 A. I don't know.

18 Q. Did you raise any concerns as the
19 External Operations superintendent in regards
20 to the security risk of not having a
21 correctional officer sitting at the bed of a
22 hospitalized female after 2008, that she may be
23 a flight risk?

24 A. No, sir.

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1 Q. Was it your responsibility, to your
2 knowledge, as the External Operations chief, to
3 provide security for all detainees that are
4 housed outside of the Cook County Department
5 of Corrections?

6 A. No, sir.

7 Q. Did you raise any concerns after
8 October of 2008 that your unit, External
9 Operations, was not providing security for
10 these women from the MOMs program that were
11 hospitalized for the purposes of delivering a
12 child?

13 A. No, sir.

14 Q. Did you personally have any concerns
15 that women from the MOMs program that were
16 hospitalized for the purpose of delivering a
17 child were a flight risk?

18 A. No, sir.

19 Q. Did you personally believe that there
20 was a penological reason after October of 2008
21 to have these women shackled that were in the
22 MOMs program and were hospitalized for the
23 purpose of delivering a child?

24 MR. WEIDHUNER: I'm going to object to

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1 that question. It calls for his particular,
2 what would you say, opinion. And this 30(b)(6)
3 is not for his opinion but for the policies,
4 practices, and customs of the Sheriff.

5 MR. MORRISSEY: Okay.

6 BY THE WITNESS:

7 A. I didn't care.

8 BY MR. MORRISSEY:

9 Q. In August of 2008 when you were --
10 Strike that.

11 After October of 2008 for women that
12 were assigned to the MOMs program and
13 hospitalized for the purposes of delivering a
14 child, was it your understanding that not only
15 a correctional officer is not assigned to the
16 room but also that the women were not shackled?

17 A. After?

18 Q. After October of 2008.

19 MR. WEIDHUNER: You're talking about
20 the MOMs now?

21 MR. MORRISSEY: Yes. Let me shorten
22 the question.

23 MR. WEIDHUNER: Okay.

24

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1 BY MR. MORRISSEY:

2 Q. After October of 2008 for women that
3 were assigned to the MOMs program that were
4 hospitalized for purposes of childbirth, were
5 they shackled?

6 A. I don't know.

7 Q. In August of 2008, what reason were
8 women that were assigned to the MOMs program,
9 what reason did you assign a guard to watch
10 women that were assigned to the MOMs program
11 that were hospitalized for the purpose of
12 delivering a child?

13 A. They were -- We were instructed by the
14 receiving and/or records department that this
15 was our inmate. "Ours" being the Department of
16 Corrections. And when it's a Department of
17 Corrections inmate, we follow the procedures
18 that we have for a Department of Corrections
19 inmate.

20 Q. Who instructed you from the RCDC that
21 a woman that was in the MOMs program in August
22 of 2008 who was hospitalized for the purpose of
23 delivering a child needed to be shackled?

24 A. Whoever took that information. We

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1 have hospital takeovers all the time. It
2 happens every day and we always get information
3 from a different records officer that this is
4 now our prisoner. We are to send an officer on
5 that prisoner.

6 Q. What type of log do you maintain in
7 regards to -- log from the -- concerning
8 information from the records office or the RCDC
9 that External Operations is to take over the
10 information for a hospitalized detainee?

11 A. That information should be in the
12 External Operations shift commander's office in
13 a logbook.

14 Q. Would it be correct to state that
15 after October of -- strike that -- that from
16 the time you became External Operations chief
17 in August of 2008 to the time you left, that
18 the procedures and practices in regards to
19 women that came from Division 3 to the hospital
20 who were brought to the hospital for purposes
21 of delivering a child remained the same?

22 A. Correct.

23 Q. During the time you were External
24 Operations superintendent from August of 2008

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1 up to you said May of 2009?

2 A. Yes, sir.

3 Q. If a woman from Division 3 was brought
4 to a hospital for the purpose of childbirth, a
5 correctional officer would be assigned to her
6 room, correct?

7 A. Correct.

8 Q. And the correctional officer would
9 have a gun, correct?

10 A. Yes.

11 Q. The woman from Division 3 that is
12 pregnant and was brought to the hospital for
13 purposes of childbirth would be shackled in a
14 room, correct?

15 A. Correct.

16 Q. And her leg -- one leg would be
17 shackled to the bed, correct?

18 A. Yes, sir.

19 Q. And a hand would be shackled to the
20 bed?

21 A. Cuffed to the bed.

22 Q. Cuffed to the bed?

23 A. Yes, sir.

24 Q. The guard that's sitting in the room,

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1 the armed guard that's sitting in the room,
2 under the practice and policy of the Sheriff
3 would be required to shackle the female to her
4 bed, correct?

5 A. Yes.

6 Q. The female who was pregnant and at the
7 hospital from Division 3 for purposes of giving
8 birth would remain shackled pursuant to the
9 practice of the Sheriff up until the point
10 there was a direction from a doctor, correct?

11 A. Yes.

12 Q. If and when a medical doctor
13 instructed the guard assigned to the hospital
14 room to remove the shackles, there would be a
15 practice of -- Strike that. Let me shorten it.

16 MR. WEIDHUNER: Why don't you, because
17 this has all been asked and answered, Tom.

18 BY MR. MORRISSEY:

19 Q. For a woman that's in Division 3
20 that's hospitalized, the guard upon notice or
21 an order -- receiving an order from a doctor
22 would have to contact his or her supervisor in
23 regards to the doctor's order to remove the
24 shackles, correct?

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1 A. Yes.

2 Q. Only after the guard received approval
3 from his or her supervisor would the guard then
4 remove the shackles from the woman in
5 Division 3 that is hospitalized for purposes of
6 delivering a child?

7 A. Unless it was an emergency.

8 Q. As the Rule 30(b)(6) designated
9 deponent, you're here to -- As the
10 Rule 30(b)(6) deponent, do you know whether or
11 not the procedures have changed at all since
12 you left External Operations in May of 2009
13 concerning the shackling of pregnant women from
14 Division 3 at the hospital?

15 A. I don't know.

16 Q. Currently who is the Superintendent of
17 External Operations?

18 A. Thomas Snooks.

19 Q. How do you spell his name?

20 A. S-n-o-o-k-s.

21 Q. Do you personally know how many women
22 from Division 3 gave birth to children during
23 the period from August of 2008 up to May of
24 2009?

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1 A. No, I do not.

2 Q. Now, in regards to Division 3, when a
3 woman from Division 3 was transported to the
4 hospital to give birth to a child, officers
5 from External Operations would accompany the
6 woman, correct?

7 A. Yes.

8 Q. To your knowledge, normally would the
9 woman be transported in an ambulance, if she
10 was being transported from Division 3 to a
11 hospital for the purpose of giving birth to a
12 child?

13 A. Yes.

14 Q. How many correctional officers from
15 Division -- How many correctional officers from
16 External Operations would be assigned to
17 transport a woman from Division 3 when she was
18 being transported to the hospital to give birth
19 to a child?

20 A. One officer in the ambulance,
21 two officers in a squad car following.

22 Q. The practice and policy of the Sheriff
23 from August 2008 to the present in regards to
24 women from Division 3 that are transported to

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1 the hospital for purposes of giving birth to a
2 child is to shackle the woman while she's being
3 transported?

4 A. Yes.

5 Q. In regards to women that are in
6 Division 3 that are transported to a hospital
7 for purposes of giving birth to a child, how
8 were they shackled in the ambulance?

9 A. To the bed that they're usually put on
10 and brought in. They would be shackled to part
11 of the metal bed as well as cuffed, and that
12 was depending on the type of condition she was
13 in. It would be up to the medical staff to
14 tell us what we can and can't do.

15 Q. In the absence of any direction from
16 the medical staff, the practice of shackling of
17 a woman from Division 3 to the hospital was
18 what? How was --

19 A. They were shackled to the bed,
20 bedframe. They were cuffed to the bedframe.

21 Q. When a woman from Division 3 is
22 transported to the hospital for purposes of
23 giving birth to a child, what type of
24 restraints are used once the female in

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1 childbirth arrives to the hospital?

2 A. The same.

3 Q. Can you tell me specifically?

4 A. Shackles and cuffs.

5 Q. In the emergency room?

6 A. Yes, sir.

7 Q. If the woman who was being trans- --
8 who was transported from Division 3 for the
9 purposes of giving birth to a child, to a
10 hospital, enters the emergency room, she is
11 shackled, correct?

12 A. Yes, sir.

13 Q. If that same woman is removed from the
14 emergency room and transferred to a labor and
15 delivery room, is it the practice of the
16 Sheriff to shackle the woman while she is
17 transported from the emergency room to the
18 labor and delivery room?

19 A. If the doctor said she's in labor,
20 they're removed. If the doctor does not tell
21 us that she's in labor, they remain on.

22 Q. Just to clarify. So unless the
23 medical doctor gives an order to the
24 correctional officers that the woman is in

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1 labor, the normal practice and procedure for
2 the Sheriff is to maintain the shackles on a
3 woman when she's moved from the emergency room
4 to the labor and delivery room?

5 A. Yes, sir.

6 Q. Is it also the practice and policy
7 once the woman from Division 3 is placed in the
8 labor and delivery room to secure the woman to
9 the hospital bed with shackles?

10 A. Yes.

11 Q. And for a woman in Division 3 after
12 she is placed in the labor and delivery room,
13 the shackles remain on that woman up to the
14 point in which a doctor issues a written order
15 or oral order that the shackles should be
16 removed?

17 A. Yes.

18 Q. Once a doctor issues an order to
19 remove the shackles, the shackles remain on the
20 woman until the guard's supervisor authorizes
21 the removal of the shackles, correct?

22 A. Yes.

23 Q. And it's the practice and procedure of
24 the Sheriff that once a child is delivered,

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1 that the shackles are re-placed on the woman?

2 A. If we're able to, if there's no
3 medical reasons, yes.

4 Q. And after the birth of a child, either
5 for a woman that was in the MOMs program or --
6 Well, strike that.

7 After the birth of a child for a woman
8 that was previously housed in Division 3, it is
9 the practice and the policy to have the woman
10 shackled during all times when she was
11 hospitalized?

12 A. Yes, sir.

13 Q. And for a woman in Division 3
14 during -- after she delivers a child, the
15 shackles remain on the woman while she is
16 breast-feeding the child?

17 A. Yes, sir.

18 MR. MORRISSEY: May I have a moment.

19 (Brief pause.)

20 BY MR. MORRISSEY:

21 Q. During that time you were the External
22 Operations supervisor -- superintendent, did
23 you receive any notice of any woman that was
24 hospitalized for purposes of delivering a child

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1 attempting to escape?

2 A. No, sir.

3 Q. During the time you were the External
4 Operations superintendent, did you receive any
5 notice or report that a woman that was assigned
6 to the MOMs program attempted to escape?

7 A. No, sir.

8 Q. Where are the External Operations
9 daily detainee hospitalization checklists kept?
10 Where are the records kept?

11 A. They're in a supply room in the South
12 Campus of the Sheriff's Department.

13 Q. Are those records kept under the
14 custody and control of the External Operations
15 Division?

16 A. Yes, sir.

17 Q. And that would be at 26th and
18 California?

19 A. It's actually at about 31st and
20 California.

21 Q. For what period of time, to your
22 knowledge, are those External Operations
23 checklist records maintained?

24 A. I'm not sure how many years they go

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1 back. I really don't know.

2 Q. When you were superintendent, did you
3 have access to those records?

4 A. Yes.

5 Q. And could you access the records for
6 the previous six months within a matter of a
7 day?

8 A. It would take a couple officers a few
9 days to go through it. They're boxed up in a
10 room down in the basement.

11 Q. Are they boxed up on a daily basis?
12 Are they run consecutively for --

13 A. Monthly basis.

14 Q. So if I asked you to pull the -- or
15 have somebody from your department pull the
16 External Operations checklist for a specific
17 individual that was hospitalized in the year
18 2008, that record could be obtained in a matter
19 of days?

20 MR. WEIDHUNER: I'm going to object at
21 this point. This has nothing to do with what
22 we are here for. Don't answer. And if you
23 keep it up, we're going to terminate the dep.

24 MR. MORRISSEY: I have nothing

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1 further.

2 CROSS-EXAMINATION

3 BY MR. WEIDHUNER:

4 Q. I'm going to ask you as to Exhibit
5 Number 2 which was the general order that was
6 effective October '08, page 3 of 8, D, "Labor
7 and Delivery Room." Sentence Number 1: In
8 accordance with Illinois Statute 730 ILCS
9 125/17.5 (Pregnant Female Prisoners) No
10 handcuffs, leg irons, or waist chains shall be
11 used on a female inmate (detainee) who is in
12 labor, this includes while being been
13 transported to the medical facility, what does
14 all that mean to you?

15 A. That means to me that if a doctor told
16 me that the inmate was in labor, we would not
17 use any restraints whatsoever.

18 Q. Now, we were talking a lot of times of
19 taking an inmate, a pregnant female from
20 Division 3, to the hospital to deliver this
21 baby. Do you know, would External Ops go to
22 Division 3 to pick them up or Cermak to pick
23 them up?

24 A. Cermak.

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1 Q. Do you recall of any instance where
2 you had to actually go to Division 3 and pick
3 up an inmate from there?

4 A. No, sir.

5 Q. In regards to Exhibits 3 and 4, in
6 regards to the officer's notes, are these just
7 a summary of what happens or is this supposed
8 to be word for word what an officer did on his
9 shift?

10 A. It is a summary of what happened.

11 Q. So when a doctor says take off the
12 cuffs and your officer calls his supervisor but
13 yet it doesn't say the cuffs were removed, can
14 we assume that the cuffs were removed or the
15 shackles were removed?

16 MR. MORRISSEY: I'm going to object.
17 I don't know if he has any personal knowledge.
18 BY MR. WEIDHUNER:

19 Q. If you know from your own personal
20 knowledge?

21 A. That, I wouldn't know.

22 Q. There was a note on Exhibit 4 of
23 5/3/08 of Simone Jackson at 11:34: Per
24 Sergeant Roldan restraints cannot not be

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1 removed during surgery because inmate will not
2 be completely sedated.

3 Do you remember saying yes to the --

4 A. Yes.

5 Q. At 11:40 hours, per sergeant Roldan
6 after receiving an okay, soft restraints can be
7 used. Metal restraints can be taken off after
8 soft restraints are in place. Arms and legs,
9 initials R.M.

10 A. Yes, sir.

11 Q. Who is R.M.?

12 A. I don't know. It could have been the
13 officer that was actually on duty. I'm
14 assuming it was R. McLean.

15 Q. Do you know how to spell McLean's
16 name?

17 A. It might be McLean or McClendon. I'm
18 looking -- It's a very poor -- I do believe it
19 is Officer McClendon.

20 Q. And that's looking at the 11:25 hours
21 entry?

22 A. Yes. It's a poor signature, but it is
23 McClendon. We do have a McClendon in that
24 office.

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1 Q. So in a nutshell, I think we can sum
2 up the policy as keep them shackled and cuffed
3 unless told by a doctor to remove them?

4 A. Yes, sir.

5 MR. WEIDHUNER: Nothing else.

6 MR. MORRISSEY: I have just a few
7 brief follow-ups.

8 REDIRECT EXAMINATION

9 BY MR. MORRISSEY:

10 Q. Now, women that are assigned to
11 Division 3, to your knowledge, have some type
12 of medical need, correct?

13 A. No.

14 Q. If you know?

15 A. No, they do not.

16 Q. Cermak is part of Division 8, correct?

17 A. Yes, sir.

18 Q. And Division 8 includes Division 3,
19 correct?

20 A. No. They are close but they're not
21 the same buildings.

22 Q. No, I'm not saying physically, but the
23 same superintendent from the Sheriff's Office
24 that's is in charge of Division 8 is also in

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1 charge of Division 3?

2 A. That is correct.

3 Q. And when I asked you those series of
4 questions about women that go to the hospital
5 from Division 3, you understood that I meant
6 that they either went physically from
7 Division 3 or from Cermak Hospital to a
8 hospital facility delivering a child, correct?

9 A. All females would leave from Cermak,
10 yes.

11 Q. So all women that were pregnant
12 generally would leave from Cermak when they
13 were going to the hospital for purposes of
14 delivering a child, correct?

15 A. Yes, sir.

16 Q. So my question just briefly is: When
17 a woman was taken from Cermak and formally
18 assigned to Division 3 and transported by
19 External Operations, she would have been
20 shackled during transport by officers from
21 External Operations, correct?

22 A. Yes, sir.

23 Q. And the same would be true that once
24 she got to the hospital, Stroger or Mount

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1 Sinai, that women that came from Cermak; i.e.,
2 Division 3, were shackled in the emergency
3 room, correct?

4 A. Yes.

5 Q. And the same would be true that if a
6 woman was assigned in Division 3 that came from
7 Cermak to the hospital and later was
8 transported to the labor and delivery room, she
9 would have remained shackled, correct?

10 A. Yes.

11 Q. And that a woman from Division 3 who
12 left the jail from Cermak would remain shackled
13 while she was hospitalized until the Sheriff's
14 Office received an order from a medical doctor
15 that the shackles should be removed?

16 A. Correct.

17 MR. MORRISSEY: I have nothing
18 further.

19 MR. WEIDHUNER: Nothing else.

20 MR. MORRISSEY: Thanks a lot.

21 THE COURT REPORTER: Signature?

22 MR. MORRISSEY: Don, signature?

23 MR. WEIDHUNER: Do you want to waive
24 your signature? The only thing we can change

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1 is waive spellings and typos.

2 THE WITNESS: I'll waive it.

3 MR. MORRISSEY: Show signature waived.

4 (WHEREUPON, at 11:50 a.m. the
5 deposition was completed and
6 the witness was excused.)

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[illegible]

3 I, KATHLEEN P. LIPINSKI, a Notary
4 Public within and for the County of Cook, State
5 of Illinois, and a Certified Shorthand Reporter
6 of said state do hereby certify:

7 That previous to the commencement of
8 the examination of the witness, the witness was
9 duly sworn to testify the whole truth
10 concerning the matters herein;

11 That the foregoing deposition
12 transcript was reported stenographically by me,
13 was thereafter reduced to typewriting under my
14 personal direction, and constitutes a true
15 record of the testimony given and the
16 proceedings had;

17 That the said deposition was taken
18 before me at the time and place specified;

19 That the said deposition was adjourned
20 as stated herein;

21 That I am not a relative or employee
22 or attorney or counsel, nor a relative or
23 employee of such attorney or counsel for any of
24 the parties hereto, nor interested directly or

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1 indirectly in the outcome of this action.

2 IN WITNESS WHEREOF, I do hereunto set
3 my hand and affix my seal of office at Chicago,
4 Illinois, this 10th day of July, 2009.

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KATHLEEN P. LIPINSKI, CSR

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18 CSR 084-003808

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Exhibit 6

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

ROBERT JACKSON, JOSEPH McGRATH, and DERRELL SMITH	)	
	)	
	)	
Plaintiffs,	)	
	)	No. 06 C 0493
v.	)	
	)	HONORABLE DAVID H. COAR
SHERIFF OF COOK COUNTY, COOK COUNTY, ILLINOIS and DIRECTOR, CERMAK HEALTH SERVICES,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Now before this court is the Motion to Certify Plaintiff Class filed by plaintiffs Robert Jackson (“Jackson”), Joseph McGrath (“McGrath”), and Derrell Smith (“Smith”) (collectively “Plaintiffs”) against Defendants Sheriff of Cook County (“Sheriff”), Cook County of Illinois (“Cook County”), and Director of Cermak Health Services (“Cermak”) (collectively “Defendants”). For the reasons set forth below, Plaintiffs’ motion for class certification is GRANTED.

BACKGROUND¹

The instant Plaintiffs were admitted to the Cook County Jail as pre-trial detainees at varying dates,² where they were allegedly forced to undergo a screening test for sexually

¹For the purposes of this motion, Plaintiff’s well-pleaded allegations are taken as true. See *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 179 (1974).

²Jackson was admitted on February 4, 2004, McGrath on December 27, 2005, and Smith on July 20, 2004.

transmitted disease (“STD screening”). Though some details of their accounts vary, the general process was the same in all cases. Upon arriving at the jail, Plaintiffs signed medical release forms and questionnaires as part of the admission procedure. One of these forms contained a “Consent for Treatment” decree, apparently signed by all three putative representatives, that read as follows:

I consent to a medical and mental health history and physical including screening for tuberculosis and sexually transmitted diseases as part of the intake process of the Cook County Jail....[signed by prisoner].

See Resp. to Cert. Mot. Ex. A at 18, Ex. B at 16, Ex. C at 17. All admitted prisoners were lined up to enter an examination room within the medical intake area. Once inside, a medical technician from Cermak Health Services asked the prisoners to lower their pants. The technician would then insert a cotton swab into the tip of each prisoner’s penis, apparently in order to collect a tissue sample for testing.³ At all times, jail deputies were nearby, though it is not entirely clear where they were usually stationed with respect to the examination area.⁴

On January 27, 2006, Plaintiff Jackson filed a complaint alleging violation of his constitutional rights under the Fourth and Fourteenth Amendments pursuant to 28 U.S.C. § 1983. The Complaint was amended on January 31, 2006 to include additional Plaintiffs McGrath and Smith, and corrected on February 1, 2006. Plaintiffs in this case have now filed a motion for class certification. The putative plaintiff class consists of “[a]ll male prisoners at the Cook County Jail who, on and after January 27, 2004, was [sic] subjected to the non-consensual

³The particulars of this particular point in the process vary, as some accounts claim that: the swabbing was done over a garbage can; the technician failed to change his glove before administering the test to subsequent prisoners; and that either the prisoner held his own penis during the procedure or his penis was held by the technician.

⁴See, e.g., Smith Dep. at 51 (placing the guard in the doorway of the room).

insertion of a swab into this penis as part of his admission to the jail.” Cert. Mot. at 1. In support of their motion to certify the class, Plaintiffs have submitted fourteen (14) “Sworn Declarations” from men who had been admitted into the Cook County Jail.⁵ See Cert. Mot., Ex. 1. These declarations rely upon roughly identical text to state their support of the class and the declarant’s potential membership in it:⁶

The undersigned, under penalties of perjury, certifies that the following statement are [sic] true:

- 1-2. [summary of individual’s biographical information, including name, date of admission, CIMIS number, and age at the time]
3. On admission to the Cook County Jail, I was subjected to a procedure which I understand to be known as the insertion of a urethral swab into my penis.
4. I did not consent to this procedure [and tried to refuse].
5. I would not have agreed to undergo this procedure if I had been given a choice.
6. The procedure was painful and an embarrassing intrusion into a private part of my body.
7. I was in pain for [____] day(s) after the procedure.
8. The person who performed the procedure held my penis with his hand while inserting the swab.

Id.

⁵These declarations were made by: Kamal J. Davis, Troy O. Hampton, Lawrence A. Howard, Crasseros Jackson, Jerome Johnson, Thomas Kelly, Sylvester Kimbrew, Larry E. Lawson, Kevin McDuffie, Calvin K. Odisho, Vincent D. Papaccio, Leonard Pitman, Michael Rodriguez, and John O. Williams.

⁶Bracketed language indicates wording that varied from one declaration to another, or which was absent from one or more of the declations.

LEGAL BACKGROUND

The federal Rules of Civil Procedure provide the federal district courts with broad discretion to determine whether certification of a class-action lawsuit is appropriate. *Keele v. Wexler*, 149 F.3d 589 (7th Cir. 1998). When evaluating a motion for class certification, the court accepts as true all well-pleaded allegations made in support of certification. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 179 (1974); *Hardin v. Harshberger*, 814 F.Supp. 703, 706 (N.D.Ill. 1993). The party seeking class certification bears the burden of showing that the requirements for the class certification have been met. *Carlisle*, 417 U.S. at 179; *see also Patterson v. Gen. Motors Corp.*, 631 F.2d 476, 480 (7th Cir.1980), cert. denied, 451 U.S. 914 (1981). Failure to establish any one of the requirements precludes class certification. *Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584 (7th Cir. 1993).

Rule 23 of the Federal Rules of Civil Procedure governs the requirements of class certification. Under that rule, deciding a motion for certification requires a two-step analysis. First, the named plaintiff must satisfy the four threshold pre-requisites of Rule 23(a): (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. Second, the action must qualify under one of the three subsections of Rule 23(b); in this instance, the Plaintiffs seek to qualify under 23(b)(3), meaning they must establish that questions common to all members of the class predominate and that a class action would be the most effective approach to resolving the matter. In order to determine whether or not these criteria have been met, it is not appropriate to examine the substantive merits of the case itself. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974) (finding that the court deciding certification has no “authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether

it may be maintained as a class action”). Nonetheless, it is necessary to “make a ‘preliminary inquiry...that has as its focus not the substantive strength or weakness of the plaintiffs’ claims but rather the merits of those allegations that bear on the suitability of a case for class treatment under Rule 23(a) and (b).’” *Rahim v. Sheahan*, 2001 WL 1263493 at *10 (N.D.Ill. Oct. 19, 2001) (quoting *Szabo v. Bridgeport Machs., Inc.*, 249 F.3d 672, 676 (7th Cir. 2001)).

ANALYSIS

Because the Plaintiff have met all of the prerequisites of 23(a), as well as the criteria of 23(b)(3), their motion for class certification is GRANTED.

Numerosity

Rule 23(a)(1) is satisfied if “the class is so numerous that joinder of all members is impracticable.” This places a positive burden on the party seeking to certify the class to show that there are enough class members that it would not make sense to bring them all into court. Plaintiffs are not required to specify the exact number of class members. *Vergara v. Hampton*, 581 F.2d 1281, 1284 (7th Cir. 1978). An approximation of the proposed class size can be based on common-sense assumptions and estimates. *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 56 (D. Ill. 1996). However, failure to provide an estimate, or means for making such an estimate, can prove fatal to a certification motion. *Marcial v. Coronet Ins. Co.*, 880 F.2d 954, 957 (7th Cir. 1989) (holding that plaintiffs “cannot rely on conclusory allegations that joinder is impractical or on speculation as to the size of the class in order to prove numerosity”) (citing *Valentino v. Howlett*, 528 F.2d 975, 978 (7th Cir. 1976)). While there is no set minimum number of plaintiffs required for class certification, Courts have generally recognized that joinder is impracticable where a class contains more than 40 members. *Johnson v. Rohr-Ville Motors, Inc.*, 189 F.R.D.

363, 368 (D. Ill. 1999) (citing *Swanson v. Am. Consumer Indus., Inc.*, 415 F.2d 1326, 1333 (7th Cir. 1969)).

Defendants are correct that Plaintiffs have not given this Court a definite idea of how many members its putative class will contain. At present, it is only clear from the record that seventeen current or former prisoners have a potential claim against Defendants; the three named Plaintiffs and the additional fourteen declarants.⁷ While the definiteness of the total number of class members is a factor to consider in weighing considerations for or against certification, in this instance it is nonetheless clear that the putative class will be sufficiently large. As Plaintiffs previously stated, the alleged “invasive procedure has been applied to more than one thousand persons from January 27, 2004 to the present.” Cert. Mot. at 1. The class will likely expand to include nearly all prisoners admitted into the Cook County Jail within the Plaintiffs’ proposed temporal range. Though somewhat variable due to prisoners who opt out, or unusual cases in which the roughly standardized procedures were not applied, it is clear that this putative class is sufficiently numerous for determining that certification would be more efficient than resolution through joinder or multiple legal actions.⁸

⁷Defendants maintain that because the supporting declarations use boilerplate language their veracity as personalized accounts is suspect and they should not be given significant weight. However, repeated language does not prove that the experience was not common to all of these declarants, and there was in fact some effort to individualize the declarations, e.g., the medical technician's approach, or the number of days of pain following the procedure, differed from one account to another.

⁸ Plaintiffs’ fourteen declarations were collected by contacting only three days’ worth of prisoners admitted into the Cook County Jail. Cert. Mot. at 2-4; Resp. to Cert. Mot. at 5. Even if class membership were limited to prisoners who sign such a declaration, Plaintiffs have thus far gained an average of $4\frac{2}{3}$ additional members for every considered day of admission into the jail. The proposed definition of the class, which would cover all prisoners admitted since January 27, 2004, would cover hundreds of days, and would therefore provide the requisite

Defendant maintains that a mailing was sent to all prisoners currently held in the Cook County Jail system. Plaintiffs admit that this is true. Reply in Supp. of Cert. Mot. at 4 . Defendant also argues that Plaintiffs have had adequate time to seek out declarants regarding the typicality of the allegations and have only had limited success in their efforts. Resp. to Cert. Mot. at 5. However, Plaintiffs failure to more definitely determine the ultimate size of the class, despite their time and effort, is not terminal. As stated above, this class action will likely include a large majority of prisoners who have had the screening process applied to them, and a sufficiently high number of class members to warrant the greater efficiency of the class action process. Because enough information has been provided to make this determination, Plaintiffs have relied on more than mere "conclusory allegations that joinder is impractical or on speculation as to the size of the class in order to prove numerosity." *See Marcial*, 880 F.2d at 957. Rather, they have provided adequate information from which a large, if indefinite, number of class members can be discerned.

Commonality/Typicality⁹

Rule 23(a)(2) calls for the "existence of at least one issue of fact or law common to all class members." *Meiresonne v. Marriott Corp.*, 124 F.R.D. 619, 622 (D. Ill. 1989). "A common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2)," *id.*, and under the rule the existence of some factual variation among class members will not defeat a class action, *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992).

numerosity.

⁹These two criteria are often analyzed together, *see Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992), as this Court now does.

Plaintiffs assert that there are several common questions of fact or law, namely:

Is the procedure undertaken without consent? And, if so, is consent required by the Fourth and/or Fourteenth Amendments?

Does the Procedure violate rights secured by the Fourth and/or Fourteenth Amendments?

Is the manner in which the procedure is performed reasonably calculated to spread disease and, if so, is this a violation of rights secured by the Fourth and/or Fourteenth Amendments?

Pl.'s Cert. Mot. at 4-5. While there are some factual discrepancies among members of the putative plaintiff class, there are nonetheless common issues of fact and law to justify class certification.

Defendants rely too much on select factual determinations that might bary on a case-by-case basis, and which in some way might affect the screening process for individual putative class members. Rather than seeking to establish that the prisoner consent was valid in some instances and invalid in others, Plaintiffs maintain that, *as a rule*, the manner in which the screening process is conducted precludes valid consent: "Plaintiffs intend to show in their impending motion for summary judgment that the totality of circumstances at the receiving unit makes it impossible for anyone to give a valid consent to the insertion of the urethral swab."

Pl.'s Reply in Supp. of Class Cert. at 11. This framing of the issue effectively shifts the debate toward questions that are resolvable without delving into an individualized analysis of minor factual discrepancies. *See, e.g., Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 955 (7th Cir. 2006) (upholding class certification despite member differences because the answers to the distinguishing question – the presence or absence of a firm offer – were not dispositive of the ultimate legal determinations).

Similarly, the class definition satisfies the demands of Rule 23(a)(3), which requires that the claims of the class representatives be typical of those of other class members. A typical claim arises “from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory.” *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983). Further, “similarity of legal theory may control even in the face of different facts.” *Id.* Here, the underlying factual basis was the same for all prisoners admitted to the Cook County jail; they were all admitted and screened, and a variety of different factors may or may not have combined to invalidate the boilerplate consent that they gave. The legal argument that comes out of this is that the prisoners’ constitutional rights under the Fourth and/or Fourteenth Amendments were violated. Despite minor difference in how the underlying process was executed, this indeed suffices to establish that all prisoners that underwent this screening share a common nucleus of facts, and that the Plaintiffs’ legal theory would carry over to any of them.

Representativeness

Rule 23(a)(4) requires that the named plaintiff “fairly and adequately protect the interests of the class.” This inquiry is generally broken into two component parts: (1) whether Plaintiff’s counsel possesses the sufficient qualifications and experience to litigate a class action lawsuit in federal court; and (2) whether Plaintiff has interests that are antagonistic to or in conflict with those of other class members.

Defendant has not challenged the general adequacy of counsel in this case, and this Court sees no reason to doubt that it is adequate. Defendant does raise a question about the techniques used by Plaintiffs’ counsel in finding their clients in this instance. Resp. to Cert. Mot. at 4.

However, this is unavailing – whether or not Plaintiffs were fully aware of their constitutional protections before they were approached by Mr. Flaxman and Mr. Morrissey has little to do with counsel’s ability to zealously advocate for the entire class from this point forward.

In addition, there is nothing to indicate that the Plaintiffs’ interests will be “antagonistic to those of the rest of the class.” While Defendants make a great deal out of the Second Circuit’s choice to consider Plaintiffs’ credibility of individuals, Resp. to Cert. Mot. at 8-9, they have not advanced evidence of dishonesty that would make this Court question their ability to stand as class representatives. Defendants’ suggestion that McGrath’s status as an “admitted heroin addict” should make his credibility “highly suspect” is not convincing, *see* Resp. to Cert. Mot. at 9, particularly where class membership is made up entirely of prisoners, many of whom have a history of criminality and/or drug abuse.

Predominance of Common Questions

Rule 23(b)(3), which provides the grounds for Plaintiffs’ motion, requires that “questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” *Amchem Prods. v. Windsor*, 521 U.S. 591, 615 (1997). “The matters pertinent to the finding [under Rule 23(b)(3)] include: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (d) the difficulties likely to be encountered in the management of a class action.” Fed. R. Civ. P. 23(b)(3). In considering these

requirements, “the court must review the substantive elements of plaintiffs’ cause of action, the proof necessary for the various elements and the manageability of the trial on these issues.”

Rodriguez v. Ford Motor Credit Co., 2002 WL 655679 at *4 (N.D. Ill. Apr. 18, 2002) (citing *Simer*, 661 F.2d at 672)). “Where liability determinations are both individual and fact-intensive, class certification under Rule 23(b)(3) is improper.” *Oshawa*, 225 F.R.D. at 584 (citing *Rodriguez*, 2002 WL 655679 at *4)).

The “predominant” question is whether or not Defendants unconstitutionally performed the screening process without achieving valid consent from the prisoners. Largely because of the manner in which Plaintiff has framed this question – as a categorical determination that applies to all individuals subjected to that process – there is no reason to think that minor factual discrepancies will counterbalance the importance of this overarching issue. The most difficult and all-encompassing question of consent, and Defendants’ alleged nefarious intent, can be decided and applied to all potential members. These questions will predominate, addressing far weightier factual and legal issues than minor individual deviations from the standard jail practices in question.

The second part of 23(b)(1)(3) requires “that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” It is true that individualized factfinding with respect to each putative class member can undermine the potential benefits of class action status. See *Fisher v. Britol-Myers Squibb Co.*, 181 F.R.D. 365, 373 (N.D. Ill. 1998) (finding that there is little efficiency when court would need to engage in “extensive individualized proceedings regardless of whether we certify a class”); *Crato v. Estate of Kassel*, 63 F.R.D. 18 (S.D.N.Y. 1974) (finding certification of plaintiff class, or subgroups of a plaintiff

class, inappropriate in case of fraud because each member would be required to testify on the representations that were made to them). However, in this instance the factual determination required in every given instance would be a relatively straightforward one; if the Plaintiffs successfully establish that the screening process was necessarily non-consensual, determining membership would be a simple matter of deciding who went through that process. Any additional factual analysis of individual circumstances would be limited, as stated above.

Even if it were necessary to conduct a mini-hearing to establish that each of the individual putative class members was indeed subject to the practices outlined in Plaintiffs' allegations, which should not be the case, this would still be more efficiently done if this court is first able to categorically address the alleged unconstitutional process itself. To rehear this same question for each prisoner defies logic, and the case therefore demands the efficiency of scale that Rule 23 provides. As the matter is framed by Plaintiffs, membership in the class will be determined by whether or not a given prisoner underwent the STD screening. This is well within the realm of reasonable membership determinations that courts of this circuit have found appropriate in the past.

This outcome is supported by the application of another, implicit requirement that this circuit has read into the explicit criteria of Rule 23; that the definition of the proposed class be "adequately defined and clearly ascertainable." *Simer v. Rios*, 661 F.2d 655, 669 (7th Cir. 1981). If Plaintiffs were in fact arguing that *some* of the prisoners admitted into the Cook County Jail had consented, the margins of that class would be subjective and difficult to determine without a thorough factual analysis of each prisoner's experience. If that were the case, Plaintiffs would fail to meet the implicit criterion adopted by the Seventh Circuit. *Id.* However where, as here,

the Plaintiffs maintain that the process itself is constitutionally suspect, they have presented an issue that can and should be addressed categorically with respect to all similarly-situated prisoners.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for class certification is GRANTED.

Enter:

/s/ David H. Coar
David H. Coar
United States District Judge

Dated: **December 14, 2006**

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Patrick S. Smith, ASA, 500 Daley Center, Chicago, IL 60602, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: none.

/s/ Kenneth N. Flaxman

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