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

KIM YOUNG, RONALD JOHNSON, and)
WILLIAM JONES, on behalf of themselves)
and a class of others similarly situated,	
)
Plaintiffs,)
)
v.) No. 06 C 0552
)
COUNTY OF COOK, MICHAEL SHEAHAN,) Judge Matthew Kennelly
individually and in his official capacity as Sheriff of	f)
Cook County, CALLIE BAIRD, individually and in	.)
her official capacity as former Director of the Cook)
County Department of Corrections,)
SCOTT KURTOVICH, individually in his official)
capacity as Director of the Cook County)
Department of Corrections,)
SALVADOR GODINEZ, individually and in his	
official capacity as Director of the Cook County	
Department of Corrections, et al,)
)
Defendants.) JURY TRIAL DEMANDED

PLAINTIFFS' LOCAL RULE 56.1(a)(1)(3) STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

Named Plaintiffs, KIM YOUNG, RONALD JOHNSON, and WILLIAM JONES, on behalf of themselves and class of others, through their attorneys, LOEVY & LOEVY, and pursuant to Local Rule 56.1(a)(1)(3), respectfully submit the following statement of facts in support of their motion for summary judgment.

I. Parties

Class I and the Class Representatives

- 1. Plaintiff Class I consists of all men who were subjected to a strip search and/or a visual body cavity search on intake to the Cook County Jail ("CCJ") on or after January 30, 2004. April 25, 2007 Order Certifying Class at 16, Dckt. No. 92. They challenge the manner used to strip search men on intake to the CCJ. <u>Id.</u> at 8. The representatives for Class I are William Jones and Ronald Johnson. Sheriff Defendants' Answer to the Third Amended Complaint ¶ 51 ("TAC Answer"), Exhibit 1 hereto.
- 2. William Jones is a 52-year-old resident of Palatine, Illinois who had an over 20-year career working for Motorola. William Jones Deposition at 5:2-4; 47:10-12, 65:22-24, Exhibit 2 hereto.
- 3. Mr. Jones was brought to CCJ after failing to comply with the condition of his bond for a misdemeanor traffic violation: driving with a suspended license. Exhibit 2 (Jones Dep.) at 7:18-9:17; 11; 16; Jones Court Documents at 1 (showing "BFW" warrant), 2 (showing "misdemeanor" and "minor traffic" violation checked), Group Exhibit 3 hereto. He had never been in a jail before. Exhibit 2 (Jones Dep.) at 67.
- 4. As part of intake, Mr. Jones was strip searched with a group of more than 50 other men in a cold hallway. Exhibit 2 (Jones Dep.) at 24; 28:10-21; 51:18-21; 70:5-9. The group was packed shoulder to shoulder, <u>id.</u>, and they all had to stay bent over with their buttocks spread while a guard walked up and down the line. <u>Id.</u> at 34. He made bond later that night and was released. <u>Id.</u> at 10-11, 16, 42-43.
- 5. Ronald Johnson is a 44-year-old resident of Illinois with an MBA degree from Tulane University. Ronald Johnson Deposition at 7, 11:2-11, Exhibit 4 hereto. After being falsely arrested, he was taken to CCJ, and discharged the following day on home monitoring. <u>Id.</u> at 37-38; 123:13-22; Ronald Johnson Deposition in 05-c-6545 at 85-86, 122-141, Exhibit 5 hereto.
- 6. During intake, Mr. Johnson was strip searched in a hallway with approximately 100 other men. Exhibit 4 (Johnson Dep. in 06-c-552) at 51. It was so crowded that the participants were touching while naked. <u>Id.</u> at 59. The group had to bend over, spread their buttocks, and cough continuously while a guard walked down the line. Id. at 62-64.

Class II and the Class Representatives

7. Plaintiff Class II consists of all people who were charged with only a misdemeanor or lesser offense not involving drugs or weapons who were subjected to a strip and/or a visual body cavity search on intake to the CCJ on or after January 30, 2004. April 25, 2007 Order Certifying Class at 16, Dckt. No. 92. The class challenges the reasonableness of strip

searching people with such charges absent individualized suspicion. <u>Id.</u> at 1. The representatives for Class I are William Jones and Kim Young. <u>Id.</u> at 11.

8. Kim Young is a 47-year-old grandmother who works as a certified nurse's assistant. Kim Young Deposition at 6, 16-17, Exhibit 6 hereto. She was brought to CCJ following her arrest on a warrant from a failure to appear on a traffic case: a misdemeanor driving on a suspended license. <u>Id.</u> at 29, 46-47. Her bond was \$200, but she did not have the money on her and had to wait for her sister to bring it to the jail. <u>Id.</u> at 34-35. Ms. Young went through an intake strip search before she bonded out. Id. at 143-144.

Defendants/Policymakers

- 9. The Defendants are Michael Sheahan in his official and individual capacities as Cook County Sheriff, Callie Baird in her official and individual capacities as Director of the Cook County Department of Corrections, Scott Kurtovich in his official and individual capacities as Director of the Cook County Department of Corrections, Salvador Godinez in his official and individual capacities as Director of the Cook County Department of Corrections (collectively the "Sheriff's Department Defendants") and Cook County. Answer of Sheahan, Baird, and Kurtovich to Plaintiffs' Second Amended Complaint ("SAC Answer") ¶¶ 16-17, 84, 88, Exhibit 7 hereto; Exhibit 1 (TAC Answer) ¶¶ 16-17.
- 10. Mr. Sheahan was the Sheriff of Cook County from December 3, 1990 to December 1, 2006. Michael Sheahan Deposition Vol. 1 at 4:18-21, Exhibit 8 hereto. By law, the Sheriff is the Custodian of the Cook County Jail ("CCJ"). 55 ILCS 5/3-6017. He is the policymaker for the jail. Exhibit 7 (SAC Answer) ¶ 17.
- 11. The Sheriff has delegated policymaking authority over the jail to the Director of the Cook County Department of Corrections ("CC DOC") including the policy for strip searching. See Exhibit 8 (Sheahan Dep. Vol. 1) at 13:19-24; 26:24-27:4, 49:22-50:9; 65:6-67:10.
- 12. Callie Baird was the Director from July of 2003 (before the beginning of the class period) until November of 2004. Deposition of Callie Baird Dep. at 12:15, Exhibit 9 hereto. Scott Kurtovich was the acting Director from November of 2004 to June of 2006, Deposition of Scott Kurtovich, Vol. I at 5:7-23, Exhibit 10 hereto. Salvador Godinez has been the Director since that time. Id.
- 13. Directors Baird, Godinez, and Kurtovich each had final policymaking authority over intake strip searches at the CCJ during their respective tenures. Exhibit 10 (Kurtovich Dep. Vol I.) at 7:18-24; 10:16-11:2; Kurtovich Deposition Vol II. at 42:16-44:5; 45:24-48:8; 49:16-51:1, Exhibit 11 hereto. Additionally, Scott Kurtovich possessed final policymaking authority

¹ Thomas Dart replaced Mr. Sheahan as Cook County Sheriff and he was automatically substituted in his official capacity for Michael Sheahan at that time. FRCP 25(d).

over the strip searches from January 1, 2004 to the present (*i.e.*, even before and after his tenure). Defendants' Joint Response to Plaintiffs' 5/14/07 Requests for Admission, No. 3, Exhibit 12 hereto.

- 14. During their tenures, Baird, Godinez, and Kurtovich were responsible for ensuring that the CCJ's intake strip search procedures complied with state and federal requirements for the treatment of detainees. Exhibit 1 (TAC Answer) ¶ 17. This included the responsibility to reform intake search practices if they were not in compliance with the law. Exhibit 11 (Kurtovich Dep. Vol. II) at 38:23-39:2; 50:17-51:1.
- 15. Salvador Godinez admits that he implemented, enforced, and/or condoned the use of the procedures challenged in this case during his tenure as Director of the Cook County Department of Corrections ("CCDOC"). Exhibit 1 (TAC Answer) ¶ 17, FRCP 8(b)(3),(6).
- 16. It is also admitted that from January 1, 2004 to the present, Scott Kurtovich was aware of the procedures being used to conduct strip searches on new detainees at the CCJ. <u>Id</u>.; Exhibit 12 (Responses to 5/14/07 Requests for Admission), No. 4.

II. Background

The CCJ

- 17. During the class period, the CCJ has housed at a given time approximately 10,000 pretrial detainees in 10 residential divisions. Defendants' [Sheriff Sheahan's and Cook County's] August 16, 2004 Status Report in 74 C 2949 at 2, Exhibit 13 hereto. The women are housed in two divisions, the men are housed in nine divisions (there is one division with both male and female tiers). Michael Sheahan Deposition Vol. II at 146:19-24, Exhibit 23 hereto.
- 18. In Jail parlance, new detainees coming into the facility are referred to as "on the new." Daniel Brown Deposition Vol. I. at 163:17-19, Exhibit 14 hereto.
- 19. Detainees "on the new" enter the jail through the Receiving Classification and Diagnostic Center ("RCDC" or "Receiving"). Exhibit 14 (Brown Dep. Vol. I) at 20:1-9.
- 20. The RCDC is divided into a male side and a female side, which are physically separated. Exhibit 10 (Kurtovich Dep. Vol. I) at 74:2-20. Female officers can work on the male side of the RCDC, but men do not work on the female side. Exhibit 14 (Brown Dep. Vol. I) at 122:8-123:3.
- 21. Women on the new are not strip searched at the RCDC. Rather, they are only strip searched upon arrival to a housing division. Exhibit 14 (Brown Dep. Vol. I) at 21:2-20; 118:6-119:7; 133:3-134:9; 139:5-141:1; Exhibit 10 (Kurtovich Dep. Vol. I) at 58:8-12. Men on

the new are strip searched both at the RCDC and upon arrival to a housing division. Exhibit 10 (Kurtovich Dep. Vol. I) at 65:5-66:22; Exhibit 14 (Brown Dep. Vol. I) at 162:12-15.

The Class I Declarations

- 22. Group Exhibit 15 consists of declarations from 534 men who went through the RCDC hallway strip search during the class period. <u>See</u> Declarations, Group Exhibit 15 hereto; Declarations Summary ("Summary"), Exhibit 16 hereto.
- 23. The Class I declarations were obtained by attorneys who interviewed the declarants. Kanovitz Declaration ¶¶ 2-4, Exhibit 17 hereto. Each attorney was given a portion of the CIMIS database showing each person who was booked into the CCJ on a given day of the class period. Id. The attorneys were instructed to contact potential male interviewees at random from the list and to interview only the first person for that day that they could reach. Id. By the above process, Plaintiffs foreclosed any chance for selectivity based on the account of the interviewees gave. Id.
- 24. Thus, each of the 513 declarations in the summary covers a different day of the class period, <u>see</u> Exhibit 16 (Summary), "search date" column, and thus describes a distinct strip search occurrence during the class period. Id.
- 25. A handful of times, there was an error and Plaintiffs obtained more than one declaration for a given class period day. When that happened, Plaintiffs would produce both statements to Defendants' counsel and have included them in Group Exhibit 15. <u>Id.</u> ¶ 5.

III. The CCJ Intake Strip Search Policies

A. The Blanket Strip Search Procedure

- 26. All people entering CCJ "on the new" are strip searched under the CCJ's blanket strip search policy. Exhibit 14 (Brown Dep. Vol. I) at 150:4-151:7. The strip search is done regardless of the seriousness of the charges, regardless of whether the crime involved violence or drugs, regardless of the circumstances of the arrest, and regardless of the detainee's criminal history (or lack thereof). Exhibit 9 (Baird Dep.) at 32:9-22; Norman Carlson Deposition at 176:6-177:2, Exhibit 18 hereto.
- 27. Before adopting the blanket procedure of strip searching all detainees on the new, the Sheriff's Department never looked into how often those accused of committing misdemeanors brought contraband into the CCJ. Exhibit 10 (Kurtovich Dep. Vol. I) at 91:2-17.
- 28. Indeed, the Sheriff's Department's's FRCP 30(b)(6) witness was not aware of a strip or visual cavity search ever turning up drugs or weapons on a detainee who was accused of a non-drug, non-weapons offense misdemeanor. Exhibit 14 (Brown Dep. Vol. I) at 176-177.

B. The Procedure for Women

- 29. Instead of strip searching women at the RCDC, the CCJ uses a bodyscan machine. Erica Queen Deposition at 34:1-3, 63:5-22, Exhibit 19 hereto; Exhibit 14 (Brown Dep. Vol. I) at 120:4-121:12; Exhibit 10 (Kurtovich Dep. Vol. I) at 59:16-8.
- 30. The CCJ prohibited strip searching women at the RCDC in approximately 2000. Exhibit 19 (Queen Dep.) at 18:12-24; Exhibit 14 (Brown Dep. Vol. I) at 118:6-119:7; 120:4-11.
- 31. The change for women was made as the result of a lawsuit or lawsuits concerning the strip searching of women at the CCJ. Exhibit 10 (Kurtovich Dep. Vol. I) at 49:2-22; 58:18-59:6; 140:23-141:1; 145:15-23;165:7-15; Exhibit 8 (Sheahan Dep. Vol. I) at 54:24-56:2, 73:19-74:4.
- 32. The body scan machine was installed several years after the prohibition on RCDC strip searches for women went into effect. Exhibit 19 (Queen Dep.) at 41:3-7.
- 33. Under the current procedure, each woman steps, one at a time, onto a platform, spreads her arms and legs, and then the operator hits a button to start the scan. <u>Id.</u> at 34:10-16; 63:20-64:8. The scan takes about two minutes. Id.
- 34. The women remain clothed during the scan. <u>Id.</u> at 64:2-66:6. Even though the women are clothed, the jail maintains a partition between the group and the machine so that when one woman is undergoing the scan the others in the group cannot see her. <u>Id.</u> at 63:20-64:1.
- 35. After completing the body scan, the women are picked up by officers from their housing divisions. <u>Id.</u> at 60:19-23. Each woman is handcuffed and then they are escorted as a group through a tunnel beneath the jail complex to the housing division. Damita Delitz Deposition at 14:22-16:4, Exhibit 20 hereto.
- 36. Once at the division, the women are strip searched. Exhibit 14 (Brown Dep. Vol. I) at 92.
- 37. Each woman is directed into an open-faced cubicle which is approximately five feet by five feet. Exhibit 20 (Delitz Dep.) at 30:14-31:11; Exhibit 10 (Kurtovich Dep. Vol. I) at 47:9-48:12. The cubicle is like a privacy screen in a doctor's office such that no woman standing in her cubicle can be seen by any of the other women in their cubicles. <u>Id.</u> Each cubicle has a chair for the woman's clothes. <u>Id.</u>
- 38. The guards provide each woman a fresh sheet of paper to stand on so that they are not standing on the bare floor. Id.

- 39. There are two women's housing divisions. One has 13 cubicles, the other has only three, and no more than that number of women participate in the strip search at one time. Exhibit 20 (Delitz Dep.) at 28:15-29:16.
- 40. The women are first ordered to disrobe, then they are instructed to rub their fingers behind their ears, run their fingers through their hair, stretch their arms and feet apart, lift their breasts, and squat down and cough (although not necessarily in that order). <u>Id.</u> at 31:4-32:17. The women then put their clothes back on, one article at a time, after shaking each to show there is nothing inside. <u>Id.</u> at 35:1-13.
- 41. During this entire process, the women are disrobed for a total of no more than approximately four minutes. <u>Id.</u> at 59:13-16. It is a quick process. <u>Id.</u>
- 42. The process is the same for all women on the new. Exhibit 10 (Kurtovich Dep. Vol. I) at 92:14-18.

C. Additional Information About Prior Strip Search Lawsuits/Lack of Changes for the Men

- 43. On April 8, 2001, the <u>Chicago Tribune</u> published an editorial about strip searches of women at the CCJ. <u>See</u> Editorial, Exhibit 21 hereto; Exhibit 8 (Sheahan Dep. Vol. I) at 74:8-75:23; Exhibit 23 (Sheahan Dep. Vol. II) at 117:8-118:16.
- 44. Sheriff Sheahan and members of his staff read the editorial. Exhibit 23 (Sheahan Dep. Vol. II) at 118:12-120:20.
- 45. The editorial discussed a lawsuit filed by Tonya Townsend. Exhibit 21 (Editorial) at 1. Ms. Townsend's lawsuit was styled Wilkes et al. v. Sheahan, et al. See Wilkes Amended Complaint, Exhibit 22 hereto. It challenged, *inter alia*, the female group intake strip searches at the CCJ. <u>Id.</u>, passim.
- 46. Although he is not a lawyer, Sheriff Sheahan understood from the editorial that the lawsuit challenged "the demeaning way" in which strip searches were being performed at the CCJ. Exhibit 23 (Sheahan Dep. Vol II) at 122:23-124:3.
- 47. The editorial stated that women were being strip searched in groups of 15 to 40. Exhibit 21 (Editorial) at 1.
- 48. It stated that the women were being required to perform the squat and cough repeatedly during the search. <u>Id.</u> at 1.
- 49. The editorial stated that the guards would insult the women, calling them "bitches" and "whores." <u>Id.</u> at 1.

- 50. The editorial stated that women would cry, collapse, and even vomit during the search if they were "drug sick." <u>Id.</u> at 1.
- 51. The editorial stated that unleashed dogs were sometimes used during the search. Id. at 2.
- 52. The editorial stated that even the guards performing the searches had testified that the floors were sometimes so fouled with urine, excrement and blood that they too felt like vomiting. Id. at 2.
- 53. The editorial stated that New York City strip searches its detainees individually, even though it has more detainees than Cook County. <u>Id.</u> at 2.
- 54. The editorial stated that in Cook County, instead of performing the searches individually throughout the day, the jail waits until the bullpen fills up with a "critical mass" of detainees, sometimes for hours on end. <u>Id.</u> at 2-3.
- 55. In January of 1995, Sheriff Sheahan was sued by a male inmate, *inter alia*, for the manner of the group strip search, stating:

Upon my arrival at [the Jail] I was taken to receiving.... Afterward ... we were strip searched. We were made to stand naked and barefoot. The tunnel was extremely cold and the floor was damp and soiled. After our clothes were searched we were directed to turn around and face the wall. Then they searched our shoes and personal papers. I made the mistake of looking at the officer behind me. He bashed my head into the wall....

Pryor v. Sheahan, 1996 WL 221198, *1 (N.D. III. 1996).

- 56. Judge Manning refused Defendant Sheahan's motion to dismiss these allegations, citing <u>Bell</u>. Thereafter, the claims were settled. <u>See</u> Report of Committee on Finance for April 15, 1997, available at http://legacy.cookcountygov.com/secretary/CommitteePages/ Meeting%20Reports/ Finance%20Committee/1997/04-15-97.htm.
- 57. On or about July 16, 2003 (before the class period commenced), detainee George Jenkins filed a grievance regarding his intake strip search at the RCDC. Jenkins Declaration ¶¶ 3-5; Jenkins Grievance, Group Exhibit 24, hereto.

58. It states, *inter alia*:

This is a second grievance. I am writing this grievance due to the improper and unconstitutional strip-body cavity search 3 times, or 2 more than was necessary.

The second and third strip-body cavity searched was ordered as punishment for a detainee in the strip-body cavity search line not understanding English . . . On the 3rd strip-body cavity search c/o Broadway ordered us to stay bent over (Naked), holding our buttocks open (coughing), until he finished searching our shoes and property, which took about 5 minutes!

Id. (grievance).

59. In July of 2004, George Jenkins sued Defendant Sheahan and others over the intake strip search. Jenkins Amended Complaint, passim, Exhibit 25 hereto. The complaint alleged, *inter alia*, that plaintiff was subjected to misconduct:

while at the Cook County Department of Corrections, on July 7, 2003, Div. 5, at about 8:30 pm of the basement hallway or tunnel, during 3 consecutive strip body cavity searches that were performed in a highly abusive fashion and manner. . . . Defendant Sheahan has failed to establish policies designed to safe-guard the plaintiff from being subjected to a strip-body cavity search 3 times in an abusive fashion in violation of Bell v. Wolfish. . . . Defendant Velasco has a policy and practice of having plaintiff, and other pretrial detainees to be strip-body cavity searched in an open hallway-tunnel. . . [and that there are alleged] illegal acts that are contained in Exhibits #1 and #2.

Complaint at 6-7B. The first exhibit to Jenkins' complaint was the grievance dated July 16, 2003. <u>Id.</u>

- 60. The second exhibit was a letter Jenkins sent to Sheriff Sheahan dated July 22, 2003, recounting the same events. <u>Id.</u> at Exh. 2. That letter was received by Mr. Sheahan's office and Mr. Jenkins was told it was being investigated. <u>Id.</u> at Exh. 2, p. 4.
- 61. Sheriff Sheahan read the letters that his office received from inmates and did not have his staff intercept them. Exhibit 23 (Sheahan Dep. Vol. II) at 186:5-189:3.

D. The Group Strip Search Procedure for Men when this case was filed

1. The first strip search, at the RCDC

Size of the Group/Proximity of the Searchees/Lack of Dividers

62. Unlike with the women on the new, the men are strip searched at the RCDC before going to their housing divisions. Exhibit 10 (Kurtovich Dep. Vol. I) at 65:5-66:22.

- 63. The RCDC staff do not start the strip search until the bullpen fills up. Exhibit 14 (Brown Dep.) at 98:12-22; 257. Then they take the men into a hallway to be strip searched as a group. <u>Id.</u> at 98:12-22; Exhibit 10 (Kurtovich Dep. Vol. I) at 75:13-23, 77:1-10. All men are strip searched in the same fashion. Exhibit 10 (Kurtovich Dep. Vol. I) at 92:19-22.
- 64. The hallway is approximately 150 feet long. <u>Id.</u> at 75:13-23. Sometimes the detainee line runs along the entire wall. Exhibit 14 (Brown Dep. Vol I) at 109:19-110:12. Declarants have reported massive strip searches with detainees lined up on both walls. <u>See e.g.</u> Declaration of Darrell Flenard 1-11-07 (Inmates were lined up on both sides of the hallway and both sides were completely full.") (bates nos. 1016-1017), Group Exhibit 15.
- 65. Jail Guard Montique testified that the guards usually take groups of 75 men at a time from the bull pen and that the last group of the night is usually fewer. Alvin Montique Deposition at 34:16-37:7; 48:20-49:5, Exhibit 26 hereto.
- 66. Montique testified that the men have six inches or less between them. <u>Id.</u> at 35:3-11.
- Of the 513 strip search events covered by the Summary, 453 (or almost 90%) involved searches where the detainees were packed so close that the declarant made physical contact with the body of at least one other detainee while he was being strip searched. Exhibit 16 (Summary) at Column 7 ("contact"). See e.g. Declarations of: Derrick Peterson 4-1-04 ("Given the number of men in the hallway, I had no personal space during the search. . . . I made contact with other searchees a number of times.") (bates nos. 96-97); Roy Cobbs 2-22-05 ("We were instructed to be so close to the people next to us that we were touching.") (bates nos. 296-297); John Schuricht 6-4-05 ("You could not move without touching the naked men on each side of you.") (bates nos. 440-441); Joshua Yang 8-25-05 ("I was approximately 6 inches or less from the inmates next to me. Occasionally during the strip search I bumped up against the inmates next to me. There were no dividers.") (bates nos. 549-550); Torrence Williams 3-8-06 (We were ordered to strip naked as a group. . . . I had no personal space during the search. As we stood in the hallway, I was actually touching the shoulders of the inmate to my right and to my left.") (bates nos. 795-796); and Effrin Hobbs 1/1/07 ("The inmates were literally forced to stand shoulder to shoulder. As we stood in the hallway, I was actually touching the inmates to my right and to my left for the entire search period.") (bates nos. 990-991), Group Exhibit 15.
- 68. Additionally, all 513 declarants reported that they could see the naked bodies of the other searchees and that it appeared that the other detainees could see them. Exhibit 16 (Summary) at Column 8 ("visible").
- 69. The population coming into the jail includes homeless people, Exhibit 18 (Carlson Dep.) at 127:12-19, and some of the detainees going through the strip search are dirty. Exhibit 26 (Montique Dep.) at 64:8-16.

- 70. Many declarants reported an overwhelming stench from the mass strip search. See e.g. Declarations of: Dewayne Stewart 8-14-05 ("The hallway smelled horrible, like urine and a dead animal") (bates nos. 526-527); Daniel Galven 8-11-05 ("The hallway smelled like bad body odor, and there was no ventilation.") (bates nos. 520-521); and Bennet Sanders 1-1-06 ("There was garbage on the floor. The hallway smelled like feces.") (bates nos. 711-712), Group Exhibit 15.
- 71. Even the jail guards have directed complaints to supervisors and each other about the stench. Exhibit 26 (Montique Dep.) at 55:20-56:7; Bryan Hatton Deposition. at 78:4-14; 58, Exhibit 27 hereto: Marlon Jones Dep.58-59:1, Exhibit 28 hereto.
- 72. No effort is made to determine the last time a person has bathed before they go through the group strip search. Exhibit 26 (Montique Dep.) at 64:17-21.
- 73. Some declarants estimated that over 100 men were forced to go through the search at one time. See e.g. Declarations of: Leroy McKeller 10-22-05 (bates nos. 632-633); Timothy P. Gaffigan 2-12-07 (bates nos. 1036-1037); and Brandon Gaiter 3-17-06 (bates nos. 805-806). Group Exhibit 15.
- 74. The Sheriff Department's FRCP 30(b)(6) witness was unable to give an estimate of the average number of participants in each search. Exhibit 10 (Kurtovich Dep. Vol. I) at 77:1-16. Another 30(b)(6) witness, Daniel Brown, has seen 80 at a time, Exhibit 14 (Brown Dep. Vol. I) at 188:3-4, and he could not rule out that strip searches may be done with greater than 80 men at a time. <u>Id.</u> at 99:4-13.
- 75. For the period of time before Plaintiffs filed their motion for class certification, there were no privacy screens in the hallway for the men as there were for the women. Exhibit 10 (Kurtovich Dep. Vol. I) at 77:24-78:10.
- 76. Defendants' expert, Norman Carlson, is not aware of any jails that have done group strip searches without affording privacy dividers in the last 20 years. Exhibit 18 (Carlson Dep.) at 158:4-9.
- 77. Mr. Carlson was the main defendant in <u>Bell v. Wolfish</u> along with Griffin Bell. Exhibit 18 (Carlson Dep.) at 46:1-11. By the time of <u>Bell</u>, the United States Bureau Of Prisons' Metropolitan Correction Center at issue in that case was using privacy dividers for its strip searches such that each participant had privacy from the others. <u>Id.</u> at 50:8-51:9.
- 78. When asked in November 2006 why the CCJ had not installed privacy dividers for the group strip search in the RCDC hallway, the Department's FRCP 30(b)(6) witness stated that he was the most knowledgeable person and that to the best of his knowledge the Department had never looked into it. Exhibit 10 (Kurtovich Dep. Vol. I) at 86:19-87:11; 89:9-19.

- 79. He also was not aware of any reason why dividers could not be used in the RCDC hallway for the men, and he could not foresee any serious problem with installing them. <u>Id.</u> at 88:14-89:19.
- 80. Sheriff Sheahan made the decision to install the dividers for the women, Exhibit 8 (Sheahan Dep. Vol. I) at 46:23-48:4; 56:6-10; 67:13-24, and to change the area where the strip searches of the women were performed from the RCDC to the division. Exhibit 23 (Sheahan Dep. Vol. II) at 127:12-128:7.
- 81. He did not require the use of dividers for the men at that time. Exhibit 8 (Sheahan Dep. Vol. I) at 75:24-77:18.
- 82. Regardless, after approving the dividers for women, he did not have any objection to installing them for the men. Exhibit 8 (Sheahan Dep. Vol I) at 83:18-84:6.

The steps in the strip and visual anal cavity search

- 83. Once in the hallway, the men are instructed to line up, single file, behind a yellow line that runs along the floor and to place their backs against the wall. Exhibit 14 (Brown Dep. Vol. I) at 106:8-108:5. The guards then order the men to step forward, remove all of their clothing and shoes, put the articles on the line, and then place their backs against the wall. <u>Id.</u> at 184:12-85:21.
- 84. The group is then instructed through the following steps: raise their arms above their heads; wiggle their fingers; open their mouths and stick out their tongues; run their fingers through their hair; turn around and place their hands high up on the wall; and then lift the left foot then the right. <u>Id.</u> at 184:12-85:21.
- 85. Additionally, the men are instructed to take a step back, bend over at the waist, "grab their cheeks," pull them apart, and cough. <u>Id.</u> at 112:12-22; 199:7-200:21. The guards then examined the exterior of each man's anus. <u>Id.</u> at 170:3-9; 237:12-15.
- 86. For each step, the officers performing the search must observe each searchee in the group satisfactorily perform each step <u>Id.</u> at 185:17-188:15.
- 87. According to Daniel Brown, an FRCP 30(b)(6) witness for the Department, the Jail ceased performing this part of the search in or about March of 2006 (several months after this case was filed) and now uses the squat and cough alternative that it had been affording to the women. <u>Id.</u> at 112.
- 88. Brown was not aware of any justification for using the bend and spread on the men rather than squat and cough. Id. at 145:2-22.

- 89. The CCJ has not encountered any problems substituting the squat and cough procedure on the men. <u>Id.</u> at 117-18. It appears to be just as effective as the visual bend and spread search. <u>Id.</u> at 176-177.
- 90. Despite the successful substitution, numerous declarants describing intake strip searches occurring after March of 2006 report that the bend and spread is still used and that they had to do both the bend and spread and the squat and cough procedures. See e.g. Declarations of: Stuart Fernandez 5-27-06 (bates nos. 884-885); Leodis Mitchell 5-30-06 (bates nos. 889-890); Darrell Flenard 1-11-07 (bates nos. 1016-1017); and Michael Scott 2-15-07 (bates nos. 1040-1041). Group Exhibit 15.
- 91. According to the FRCP 30(B)(6) witness Brown, the change from the bend and spread to the squat and cough procedure was never put in writing. Exhibit 14 (Brown Dep. Vol. I) at 112:9-116:11.

Hygiene/bodily fluids problems stemming from the dense search and lack of dividers

92. Bodily fluids were often present during the male group search. Exhibit 16 (Summary) at Column 10 ("bod. flds"). During 245 of the searches, the declarant or another detainee in the search released diarrhea, vomited, and/or bled. Id. See e.g. Declarations of: Vince King 4-22-04 ("During the search, any of the inmates were violently sick. The inmates were made to clean up their own vomit even though this made them get sick again.") (bates nos. 98-99); Bennet Sanders 1-1-06 ("Then when that inmate threw up, the guards made that inmate clean the vomit up off the floor with his own shirt.") (bates nos. 711-712); Nick Brocato 2-6-05 ("I witnessed a number of men who were physically ill during this search. There were a number of men who were vomiting and had diarrhea. There was also one individual who had blood coming out of his anus. None of these men were taken out of line.") (bates nos. 280-281); Philip Jones 2-24-05 ("One older gentleman urinated on himself. There were also a couple individuals who were vomiting. These individuals were forced to clean up their own vomit.") (bates nos. 298-299); John Schuricht 6-4-05 ("When we were told to bend over, one inmate about five people down from me complained that he could not bend over or he would throw up. The guards shoved him into the wall. I could hear the guards beating him. . . . When we left the hallway we had to walk through his vomit and feces.") (bates nos. 440-441); Damon Sanders 8-22-05 (" I observed at least 2 people vomit onto the floor. I also observed an inmate with open sores on their arm and back.") (bates nos. 543-544); Jeremiah Brewer 5-26-06 ("I did observe other inmates get ill and vomit during the search. When this would happen the guards would scream at the sick men and make them clean up the floor.") (bates nos. 882-883); Kirk Flemming 10-27-06 ("I noticed that a few searchees were throwing up, and I saw one man pass out. The guards called for help, but it took over 30 minutes for help to arrive.") (bates nos. 986-987); Effrin Hobbs 1-1-07 ("Because of the smells in the hallway, it was hard to breath. I ended up vomiting and at least two other inmates began vomiting as well.") (bates nos. 990-991); and Anthony Williams 2-10-07 ("During the search a couple of inmates began to get sick. These inmates vomited on the floor and the walls of the hallway. The vomit splattered and hit other inmates

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and got on other inmates clothes that they had to put back on after the search. At no point during the strip search was any of this vomit cleaned up.") (bates nos. 1032-1033). Group Exhibit 15.

- 93. Sheriff Sheahan knew that detainees vomit all the time because some may be coming down off of drugs and get sick during the strip search. Exhibit 23 (Sheahan Dep. Vol. II) at 166:2-24.
- 94. Defendants' expert, Norman Carlson, testified that given the type of population that is coming into the jail, he would also expect that people would at times vomit or have diarrhea during the strip search. Exhibit 18 (Carlson Dep.) at 128:1-22.
- 95. Men vomit "all the time" during the strip searches. Exhibit 26 (Montique Dep.) at 59:22-60:1.

Insults and slurs/use of threats and violence

- 96. 431 of the 513 declarants reported insults being used by the guards during the group strip searches. Exhibit 16 (Summary) at Column 11 ("insults").
- 97. The guards used insults about matters like body order, their anatomy, sexual orientation and race. See e.g. Declarations of: Joseph Sanchez 3-21-04 ("The guards called me a 'faggot.' They called other inmates 'bitches.'") (bates nos. 81-82); Vince King 4-22-04 ("The guards regularly made comments regarding inmates' anatomy, especially their genitals.") (bates nos. 98-99); Ronald Robinson 7-11-05 ("The guards made fun of inmates' appearances, including commenting about an inmate's genitalia, and animal noises to comment on the size of an inmate. One inmate who had bandages on and appeared to be bleeding was told, 'it's a shame they did not finish you off because you're an ugly motherfucker."") (bates nos. 472-473); Dameon Sanders 8-22-05 ("I observed a guard insult one inmate who did not speak English very well. The guard asked about his green card and said 'what are you doing here in America.' The guard also called him gay because of the look of his underwear.") (bates nos. 544-545); Bennet Sanders 1-1-06 ("They called us 'nigger,' 'motherfucker,' 'boy,' and 'punk.' The guards called one inmate that was gay 'faggot.' The guards taunted him saying 'With your homosexual ass."") (bates nos. 711-712); Brandon Gaiter 3-17-06 ("The guards called us 'bitches,' 'hoes,' 'gays,' and 'ladies.'") (bates nos. 805-806); Derrick Taylor 6-30-06 ("One of the searchee on the line told the guards that his mother had just passed on. The guards then made rude and derogatory comments about the searchee's mother. When the searchee got upset he was called a 'dope fiend' and was threatened with being taken to another room and being beaten if he said another word.") (bates nos. 927-928); and Kirk Fleming 10-27-06 ("They called us names like 'bitches' and 'hoes.' They used racial slurs and threatened physical violence.") (bates nos. 986-987). Group Exhibit 15.

- 98. Guards also frequently used violence during searches. Of the 513 declarants in the Summary, 397 of them either witnessed or was a victim of violence by the guards during the strip search. Exhibit 16 (Summary) at column 12 ("violence"). See e.g. Declarations of: Jesus Urichima 2-7-04 ("If someone does not understand English, they will get beat up by the guards for not understanding.") (bates nos. 14-15); Jose Santoyo 1-1-05 ("When these individuals did not follow the guards' instructions immediately, due to their lack of understanding, the guards would smash their heads into the wall or hit them in the face.") (bates nos. 234-235); Kenneth Collier 8-30-05 ("Approximately 5 inmates were individually assaulted by the guards. For these inmates the guard approached the inmate and punched the inmate a few times in the face and stomach.") (bates nos. 559-560); Mario Hogans 10-18-05 ("They treated the sickest inmates the worst. For example, when an inmate was too sick to stand, one of the guards went to him and told him to stand or he would 'smack' him. When the inmate failed to comply exactly, the guard smacked his head into the wall. Simply put, we were not treated like human beings.") (bates nos. 630-631); Kevin Gage 1-26-06 ("While I was bent over during the strip search I was kicked in the back by one of the guards. I could not say anything in fear of brutal retaliation from the guards. I observed 3 other inmates get hit by the guards.") (bates nos. 729-730); Alphonso Gaines 3-3-06 ("The sick inmate was hit by the guards because he threw up.") (bates nos. 785-786); Brandon Gaiter 3-17-06 ("I was hit in the back of the head with my own Timberland boot.") (bates nos. 805-806); Waldon Brown 4-25-06 ("My head was slammed back against the wall when I briefly moved it. I also observed the guards slapping and pushing other men for not following the instructions fast enough.") (bates nos. 848-849); Patrick Foster 6-17-06 ("I saw the guards slap one man and hit another with his own boot because they turned around while the guards were inspecting their own clothes") (bates nos. 917-918); Patrick Sanders 10-15-06 ("One guard slapped a man in the face because he picked up his shoes when he was not supposed to. Upon getting hit, the man started to bleed from his nose.") (bates nos. 976-977); and Michael Scott 2-15-07 ("The guards also threw shoes at some inmates and kicked some inmates from behind.") (bates nos. 1040-4041). Group Exhibit 15.
- 99. Also, dogs were sometimes used during the strip searches, 25 of the 513 (or approximately 5%) strip search events in the Summary included the use of dogs. Exhibit 16 (Summary) at column 13.
- 100. Declarants reported that the dogs were used to threaten and frighten detainees during the strip search. See e.g. Declarations of: Nathaniel Butts 5-04 ("Perhaps the scariest aspect of the entire process was the use of the dogs. The guards allowed the dogs to search us without muzzles or leashes. The guards told us that if we moved the dogs would bite of (*sic*) our genitals.")(bates nos. 100-101); Nick Brocato 2-6-05 ("There were three dogs used during this search. These dogs were unmuzzled and came right up to us to sniff our bodies.")(bates nos. 280-281); Alvin Stanton 7-8-05 ("The dog sniffed the inmates belongings and the inmates themselves, while the inmates had no clothing on. The dog was not muzzled.")(bates nos. 467-468); Darryl Burrows 7-1-06 ("The dogs stood by the guards and barked at the searchees whenever a guard raised his voice.")(bates nos. 930-931); and Derris Miles 7-3-06 ("At least

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three dogs were present during the search, one without a muzzle, and the guards made threats of physical violence if any searchee were to look at the dogs.")(935-936). Group Exhibit 15.

- 101. Director Baird gave orders to have dogs present at the RCDC in connection with inmates entering the CC DOC. Exhibit 9 (Baird Dep.) at 41:23-44:14; 3/8/06 External Operations Memorandum, Exhibit 29 hereto.
- 102. She gave the order after Director Kurtovich requested it. <u>Id.</u> She claims that her purpose for having dogs present at the RCDC was to "provide a sense of calm" and a "deterrent effect." Id.
- 103. Director Baird believes that there could be a "myriad of different situations" where it would be appropriate to use dogs during the RCDC strip search. <u>Id.</u> at 39:5-40:6.
- 104. The K9 officers were expressly ordered to have their dogs in the hallway during the male strip search. Declaration of Jeffrey Aleman \P 3, Exhibit 30 hereto. It was not uncommon for the inmates to be fearful of the dogs. <u>Id.</u> \P 4.
- 105. Director Baird claims she did not know that dogs were actually being used during the strip searches. Exhibit 9 (Baird Dep.) at 38:24-39:4.
- 106. On April 22, 2005 (after Kurtovich had succeeded Baird as Director), Kurtovich himself ordered that the dogs be present at the RCDC in connection with detainees on the new. 5/3/05 External Operations Memorandum, Exhibit 31 hereto; Exhibit 29 (3/8/06 Memorandum).
- 107. On April 23, 2005, CCJ K9 specialist Aleman wrote an incident report criticizing the use of dogs in the RCDC. 4/23/05 Report, Exhibit 32 hereto. He wrote a second such report on April 27, 2005. 4/27/05 Report, Exhibit 33 hereto.
- 108. On April 29, 2005, Mr. Aleman wrote a third such report, this time noting that the K-9 assignment came from Acting Director Kurtovich. 4/29/05 Report, Exhibit 34 hereto; Exhibit 30 (Aleman Declaration) \P 6. Shortly thereafter, he was removed from the K9 team and placed into a less desireable and lower paying position. <u>Id.</u> Director Kurtovich refused to give Mr. Aleman an explanation for the demotion. <u>Id.</u>

Repetitious searches and other demeaning procedures

109. Additionally, guards required that the groups repeat the strip search or portions thereof. This would often occur when one member of the group would make a mistake or take longer than the rest of the group, and the guards would require the entire group to repeat the procedure as a punishment; sometimes there was no provocation at all. See e.g. Declarations of: Roy Cobbs 2-22-05 ("I was order (*sic*) to bend and spread my cheeks as well as to squat and cough. Both of these procedures took approximately one minute. However, if anyone did not

follow instructions we were forced to begin this process all over again. The (*sic*) occurred a couple of times.")(bates nos. 296-297); Daniel Galvan 8-11-05 ("I was required to bend over, spread my butt cheeks, and cough. This process took approximately 10 minutes because the guards made all inmates repeat the process until the guards were satisfied that all inmates coughed in unison.")(bates nos. 520-521); Robert Severson 10-17-05 ("Because some of the inmates did not cough loudly enough and because some did not cough all in unison, the guards forced us repeat this humiliating procedure. We had to go through the process of squatting and coughing about four or five times.")(bates nos. 628-629); and Lonnie Holder 1-6-07 ("We were forced to do this twice during the search because one of the inmates did it wrong. We were bent over with our cheeks spread for about five minutes each time.")(bates nos. 1006-1007); Group Exhibit 15.

- 110. Of the 513 declarants in the Summary, at least 395 reported the use of a bend and spread procedure either alone or with a squat and cough during the strip search.² Exhibit 16 (Summary) at column 9.
- 111. The average length of time that these declarants had to remain in the bend and spread and/or squat and cough position was 6 minutes. <u>Id.</u>
- 112. The duration of the entire strip search reported by the declarants was as follows: approximately 46% lasted between fifteen and thirty minutes; approximately 20% lasted between thirty and forty-five minutes; while approximately 24% took longer than forty-five minutes. Approximately 6% lasted between ten and fifteen minutes, while the remainder took ten minutes or less. Exhibit 16 (Summary) at columns 1-5 ("overall length of searches").
- 113. Temperature often was also an issue during the group searches: 273 of the 513 reported that the hallway was cold during the search. Exhibit 16 (Summary) at column 6 ("temp."). See e.g. Declarations of: James Thigpen 2-6-04 ("It was cold to the point where it made you shiver.")(bates nos. 11-12); Joseph Davison 6-1-06 ("The hallway where the strip search took place was extremely cold and uncomfortable.")(bates nos. 893-894); and Kevin Henry 1-8-07 ("The hallway was freezing cold and very uncomfortable.")(bates nos. 1010-1011). Group Exhibit 15.
- 114. It is common for the detainees to complain about the temperature. Exhibit 26 (Montique Dep.) at 55:12-15.

² More declarants than 395 reported the use of a bend and spread procedure. The number reported in the Summary (395) constitutes only those men who described a specific amount of time for that procedure. See Group Exhibit 15, *passim*.

2. The second strip search at the mens' housing divisions

- 115. Once they have put their clothes back on, the men then wait in bull pens to be transported to the housing divisions. Exhibit 14 (Brown Dep. Vol. I) at 200:10-201:16.
- 116. When the men arrive at their respective divisions they undergo a second strip search. <u>Id.</u> at 162:12-163:24. The process is the same as at the RCDC. <u>Id.</u>; Exhibit 27 (Hatton Dep.) at 93:25-94:20.
- 117. The female body scan is used at the RCDC because the Department prohibits strip searching the women there like they do the men. Exhibit 10 (Kurtovich Dep. Vol. I) at 66:3-67:15. The purpose for the male RCDC search it to screen for contraband before the detainee is transported from receiving into the jail. <u>Id.</u>
- 118. The reason for strip searching men at the RCDC hallway, rather than only upon arrival to the housing division as with the women, is because the CCJ has a body scan machine for the women but not for the men. Exhibit 14 (Brown Dep. Vol. I) at 159:8-160:4.
- 119. The Department's 30(b)(6) witness had no knowledge why the Sheriff does not provide a bodyscan machine for the men at the RCDC, or if the Department had ever looked into obtaining one. <u>Id.</u> at160:5-161:7.
- 120. Following this Court's decision to certify the case as a class action, the CCJ did install a body scan machine for the men at the RCDC. Exhibit 11 (Kurtovich Dep. Vol II) at 19:19-19:4.
 - 121. It takes only seconds to complete the scan. Id. at 58:3-10.
- 122. The machine costs approximately \$150,000. <u>Id.</u> at 19:19-20:4. The CCJ also obtained an x-ray machine for the men's shoes, which adds to the expense. Id. at 20:14-21:4
- 123. The machine is not 100% effective at finding contraband. <u>Id.</u> at 32:18-33:2. Nevertheless, it is Mr. Kurtovich's recommendation that the scanning machines should replace the blanket strip search. <u>Id.</u> at 33:21-35:8; 68:3-13. Intake strip searches based on individual suspicion would still remain an option. Id.
- 124. As of Mr. Kurtovich's deposition in December of 2007, the CCJ was still using the blanket strip search at the RCDC. <u>Id.</u> at 64:9-15.

By contrast, the women have been transported to their housing division without any RCDC strip search or body scan

- 125. For at least seven years before Erica Queen's November 2006 deposition, strip searching had been banned for women at the RCDC. Exhibit 19 (Queen Dep.) at 18:12-24.
- 126. About three years before her deposition, the CCJ had installed a bodyscan machine for the women in the RCDC. <u>Id.</u> at 41:3-7.
- 127. In the interim, new female detainees were simply transferred from the RCDC through the tunnel to the housing divisions without a strip search or a body scan for weapons or contraband. Id. at 41:11-21.
- 128. Since the CCJ installed the body scan machine on the women's side of the RCDC, the women are now body scanned for weapons and contraband before going to their housing divisions. Id. at 60:19-23.
- 129. Nevertheless, when the machine breaks down, the women are sent directly to the divisions with no strip search to substitute. <u>Id.</u> at 40-41.

3. The addition of the dividers for the men's strip searches

- 130. In February of 2007, after Plaintiffs filed their motion for class certification, the CCJ installed privacy dividers in the RCDC hallway for the male intake strip searches. 3/8/2007 Brown Affidavit ¶¶ 10-11, Exhibit 35 hereto.
- 131. The dividers are privacy screens, consisting, essentially, of cloth hung on a metal rod. Brown Dep. Vol. II at 14:21-15:1, Exhibit 36 hereto.
- 132. The screens were set up in the hallway, approximately every four feet. <u>Id.</u> at 20:14-21:9. The hallway is large enough to accommodate 37 strip stalls. <u>Id.</u>
- 133. The CCJ then limited the number of men who could go through the group intake strip search at one time to the number of stalls. <u>Id.</u> at 32:9-33:18.
- 134. The Department's FRCP 30(b)(6) deponent testified that the change makes the search better and that the guards are probably more thorough with 37 people than with the greater numbers. <u>Id.</u> at 32:21-33:18; 36:1-38:2.
- 135. Also, the change has not affected the CCJ's ability to timely process all of the detainees on the new. <u>Id.</u> at 80:12-81:12.

- 136. Defendants' expert, Norman Carlson, admits that the CCJ has not experienced any major problems from the addition of dividers (beyond the wear and tear on the dividers themselves). Exhibit 18 (Carlson Dep.) at 54:20-55:9.
- 137. Following installation of the partitions in the RCDC hallway, partitions were added for the strip searches at the divisions in approximately June of 2007. Exhibit 11 (Kurtovich Dep. Vol. II) at 9:21-10:7.
- 138. The change to the RCDC strip search procedure regarding the use of dividers was communicated orally to the guards; there is nothing in writing about the requirement. Exhibit 36 (Brown Dep. Vol. II) at 20:17-24.
- 139. Sometimes the guards fail to follow the verbal procedure. <u>See e.g.</u> Declaration of Nicholas Perez 5-4-07 ("As we stood in the hallway there were 2 to 3 inches of space between myself, and the inmate to my right and to my left. There were dividers, but the guards did not use them.").

IV. The Admittedly Reasonable BOP Strip Search Procedures Compared

- 140. Defendants admit that the BOP procedures regarding intake strip searches of detainees are relevant to this case. Exhibit 12 (Defendants' Responses to 5/14/07 Requests for Admission), No. 16.
- 141. Defendants also admit that the BOP procedures regarding intake strip searches of detainees are reasonable for the circumstances in the BOP. Exhibit 12 (Defendants' Supplemental Joint Response to Plaintiffs' 5/14/07 Requests for Admission), No. 8.
- 142. Defendants also assert that the circumstances for the BOP strip searches are similar to those for the CCJ in that: (1) both BOP and the CCJ receive pretrial detainees charged with nonviolent offenses, violent offenses, and drug offenses, and also those who are repeat felons; and (2) the BOP has a large intake volume of detainees sufficient to justify using a group strip search procedure. Defendants' Joint Answers to Plaintiffs' Amended 9/28/07 Interrogatories, No. 1, Exhibit 37 hereto.

BOP Privacy Requirements For Intake Strip Search

- 143. The BOP permits strip searching more than one detainee at a time. Program Statement 5800.12 Chapter 1 at 9-10, Exhibit 38 hereto.
- 144. Nevertheless, the policy requires privacy amongst the searchees by limiting the number of participants to the number of available strip stalls (which are, essentially, privacy dividers). Id.;

Exhibit 18 (Carlson Dep.) at 191:17-192:4.

145. The policy is dated 12/31/97. <u>Id.</u> By the time Mr. Carlson retired from the BOP in 1987 all of the facilities had privacy screens such that each person going through the strip search had privacy from the others. Exhibit 18 (Carlson Dep.) at 50:3-51:5.

BOP Prohibition on Blanket Strip Searches of Persons Charged with Misdemeanors

- 146. The BOP policies prohibit intake strip searches of detainee charged with misdemeanors or contempt unless the detainee consents or unless there is reasonable suspicion that the particular detainee is in possession of contraband or weapons. See Program Statement 7331.03 at 6, Exhibit 39 hereto.
- 147. Rather, persons charged with misdemeanors or contempt are given the option to avoid the strip search by remaining out of general population. <u>Id.</u>; Exhibit 18 (Carlson Dep.) at 169:15-20.
- 148. This prohibition has been in place since at least 2002. Exhibit 18 (Carlson Dep.) at 90:2-13.
- 149. Defendants' expert, Norman Carlson, is not aware of any jurisdictions, other than Cook County, that are doing blanket strip searches of persons charged with misdemeanors without giving them the same option the BOP gives. Exhibit 18 (Carlson Dep.) at 169:15-20.

RESPECTFULLY SUBMITTED,

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

I, Samantha Liskow, an attorney, certify that on November 10, 2008, I filed the attachment Statement of Facts and served this document by ECF electronic filing as to counsel for all parties.

/s/ Samantha Liskow