

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2002 JAN 14 PM 4:53

LORETTA G. WHYTE
CLERK



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**GRETA CAZENAIVE,
et al**

* **CIVIL ACTION**

* **NUMBER: 00-1246**

VERSUS

* **SECTION: G**

**SHERIFF CHARLES C. FOTI, Jr.,
et al**

* **MAGISTRATE SECTION: 5**

* **JUDGE MOREY L. SEAR**

* **MAGISTRATE ALMA L. CHASEZ**

**CONSENT DECREE
FOR INJUNCTIVE AND DECLARATORY RELIEF ONLY**

IT IS HEREBY STIPULATED by and between the undersigned counsel for plaintiffs and defendants, as follows:

1. On April 25, 2000, Plaintiffs filed a Class Action Complaint in the above-captioned matter seeking declaratory and injunctive relief, attorneys fees, and costs against Sheriff Charles C. Foti, Jr., in his personal and official capacities as Criminal

DATE OF ENTRY
JAN 15 2002

Fee _____
Process _____
X Dktd _____
CtRmDep _____
Doc.No. _____

Sheriff for the Parish of Orleans.¹ Said Complaint also named as defendants various Orleans Parish Criminal Sheriff's Office (OPCSO) wardens and deputies and alleged an unlawful policy, practice and custom of routinely authorizing and performing strip and visual body cavity searches on persons arrested only for minor offenses and detained pending the posting of bond, without reasonable suspicion that the person is carrying weapons or contraband.

2. The plaintiffs' lawsuit makes claims on behalf of three named plaintiffs and a class of persons similarly situated for violation of his or her civil rights to be free from unreasonable searches and seizures under the Fourth and Fourteenth Amendments and right to privacy under the Fourth, Ninth, and Fourteenth Amendments to the Constitution of the United States, all in violation of 42 U.S.C. § 1983. The plaintiffs challenge the constitutionality of the OPCSO policy on its face and as applied.

3. The parties do not dispute the certification of the injunctive class pursuant to F.R.C.P. 23(b)(2). Accordingly, plaintiff's class for declaratory and injunctive relief is hereby deemed certified under F.R.C.P. 23(b)(2) only.

4. Discovery has been conducted by both parties. In order to put an end to this phase of the litigation and to avoid unnecessary expense and the uncertainties of future litigation regarding the injunctive phase, the Sheriff, his agents, assigns, employees, deputies and successors are hereby ordered to adopt and enforce the

¹In their complaint, plaintiffs also seek compensatory and punitive damages for the named plaintiffs and the class they seek to represent. The issue regarding the appropriateness of certification of the damage class pursuant to F.R.C.P. 23(b)(3) is contested and has been submitted to the Court for decision. This consent decree regarding injunctive and declaratory relief is entirely separate from the damage claim and is solely concerned with the injunctive class pursuant to F.R.C.P. 23(b)(2).

policy and form attached hereto as Attachment A and B and incorporated herein, to submit to the jurisdiction of the Court regarding the implementation and enforcement of Attachments A and B and to designate plaintiffs' counsel as prevailing parties on this issue only (for purposes of attorneys fees and costs), all as more fully set forth hereinbelow.

5. The parties, with the oversight and assistance of the U.S. Magistrate Judge, have agreed to the adoption and implementation of a new written policy regarding these searches which passes constitutional muster.

6. It is agreed that defendant Charles C. Foti, the Criminal Sheriff of Orleans Parish, will establish, implement and enforce the policy, practices and procedures as set forth in Attachments A and B, incorporated herein, as to all arrestees charged only with minor offenses who are awaiting his or her initial court appearance. Said Sheriff, his agents, assigns, employees, deputies and successors are hereby permanently enjoined from enforcing any policies, practices or procedures as to said arrestees which are in contravention to those set forth in Attachments A and B.

7. It is further agreed that within 30 days of the date of entry of this decree, the provisions of this decree will be disseminated to all employees of the Orleans Parish Criminal Sheriff's Office, will be fully implemented by that time and defendants will furnish this Court and plaintiffs' counsel written confirmation of same.

8. Implementation of this Decree shall be monitored for one year following the entry date herein. On the first day of every month (or the next business day, if the first falls on a holiday or weekend) defendants shall provide plaintiffs counsel with the booking information on twenty (20) individuals (15 men and 5 women), picked at

random, who were arrested the preceding month for minor offenses only as defined in Attachment A and were placed in custody of the OPCSO. Defendants will also furnish to plaintiffs' counsel copies of the booking records and strip search records related to any strip and/or visual body cavity search conducted on an arrestee charged with only minor offenses, within 7 days of the search. The monitoring period may be extended by the parties mutual agreement, in writing, or by Order of the Court, upon good cause shown.

9. The parties to this Consent Decree may modify any of its terms upon mutual agreement, in writing, and with approval of the Court. Either party may also apply to the Court for modification of this Consent Decree, upon legal cause shown.

10. The parties to this Consent Decree agree that the provisions herein fully and fairly accommodate the interests of the parties hereto regarding the issue of injunctive and declaratory relief in this matter, that this Court should adopt and approve this Consent Decree and that this Consent Decree is a full and final judgment between the parties with regard to permanent injunctive and declaratory relief only.

11. The parties agree that plaintiffs have substantially prevailed on the merits with respect to their claims for declaratory and injunctive relief. All remaining claims are reserved by plaintiffs and denied by defendants. Plaintiffs will submit an itemization of reasonable attorneys fees and costs to defendants counsel no later than 15 days after the Court's entry of this order. Defendants shall provide a response to plaintiffs' submission within 15 days. If the parties are unable to agree on attorneys fees and costs within 10 days of plaintiffs' counsel's receipt of defendants' response, the matter shall be submitted to the Magistrate Judge for decision. Fees and costs related to

monitoring shall be submitted to defendants' counsel no later than 30 days following the expiration of the monitoring period. If agreement cannot be reached, the matter shall be submitted to the Magistrate Judge for decision.

12. This Court retains jurisdiction of this action in order to enforce the terms of the Decree, to determine reasonable attorneys fees and costs, to resolve any dispute regarding this Decree and all other issues of this lawsuit not explicitly covered by this Decree.

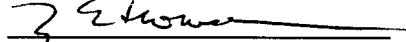
13. Upon approval of the Court, as provided below, the Clerk is requested to enter this Consent Decree in the official docket.

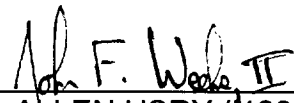
WHEREFORE, having fully read and considered the provisions set forth in the above Consent Decree, plaintiffs and defendants having stipulated and agreed to the above terms, and the Court having approved the entry of this decree, IT IS SO ORDERED.

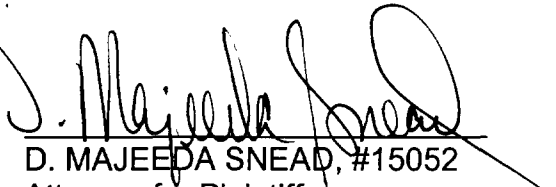
NEW ORLEANS, LOUISIANA, this 17th day of January, 2002.


MAGISTRATE JUDGE ALMA CHASEZ
U.S. DISTRICT COURT

AGREED TO BY:

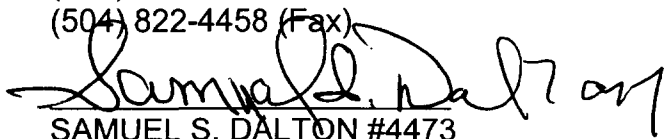

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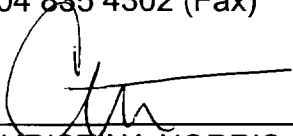
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GretaCaze: ConDecree.Final3

OPCSO Policy

Subject: Strip Search of Arrestees Charged Only with Minor Offenses

1. PURPOSE AND APPLICABILITY

The purpose of this policy is to provide deputies with guidelines for determining if and under what conditions the use of strip searches of new arrestees charged only with minor offenses, is legally permissible and to establish guidelines for the appropriate conduct of such searches. It applies to all arrestees charged only with minor offenses, until after their first court appearance, if they are not ordered to be released or post bond.

2. POLICY

The Orleans Parish Criminal Sheriff's Office (OPCSO) recognizes that the use of strip searches may, under certain conditions, be necessary to protect the safety of deputies, civilians and other prisoners; to detect and secure evidence of criminal activity; and to safeguard the security, safety and related interests of OPCSO's prisoner detention and holding facilities. It is the policy of the OPCSO that such searches shall be conducted only with proper authority and justification and in accordance with the procedural guidelines for conducting such searches as set forth in this policy.

3. DEFINITIONS

Strip Search: Any search of an individual requiring the removal or rearrangement of some or all of the individual's clothing which permits the visual inspection of his or her genital areas, anus, breasts and/or buttocks.

4. PROCEDURES

- A. Individuals arrested only for a minor offense, including a misdemeanor not involving weapons or controlled dangerous substances, or a traffic offense, petty offense or violation of a city or parish ordinance, shall not be subject to strip searches unless the deputy has articulable, reasonable suspicion to believe that the individual is concealing contraband or weapons. Factors to consider in establishing individualized, reasonable suspicion may include but are not limited to the following:
 - 1. The nature of the offense charged.
 - 2. The arrestee's appearance and demeanor.
 - 3. The circumstances surrounding the arrest.

4. The arrestee's criminal record, particularly past crimes of violence and narcotics offenses.
 5. The discovery of evidence of a major offense in plain view or in the course of a search incident to the arrest.
 6. The detection of suspicious objects beneath the suspect's clothing during a field search incident to arrest.
 7. Reliable information received
 8. Positive response from a metal or drug detector device that is properly calibrated, properly operated and that uses scientifically accepted and reliable methodology. In order to reduce the possibility of false or misleading reports, if there is a positive response from a walk-through metal detector, the deputy shall use a hand-held metal detector for verification purposes before considering the propriety of a strip search. If there is a positive response from a drug detection device, the deputy shall perform a second test for verification purposes before considering the propriety of a strip search.
- B. Where articulable, reasonable suspicion exists to conduct a strip search, the deputy shall make a written request, including the date and time of the request, to the supervisor of the detention facility or other designated authority that clearly defines the basis for suspicion. The supervisor or other designated authority will either approve or disapprove the request, in writing, stating the date and time of his or her response.
- C. When authorized by the supervisor or other designated authority, strip searches may be conducted only as follows:
1. By specifically trained personnel.
 2. By the fewest number of personnel necessary and only by those of the same sex.
 3. Under conditions that provide privacy from all but those authorized to conduct the search.
- D. Following a strip search, the deputy performing the search shall submit a written report to the supervisor or other designated authority that details, at a minimum, the following:
1. Date, time and place of the search.
 2. Name and rank of the deputy(s) conducting the search.

3. Name, date of birth and folder number of the arrestee searched.
 4. Name and rank of supervisor who approved search
 5. Name and position of all those present during the search.
 6. A detailed description of the nature and extent of the search.
 7. Any weapons, evidence or contraband found during the search.
 8. If weapons, evidence or contraband is found as a result of the search, date and time of notification to supervisor and medical department and identities of those notified
- E. If during a strip search the deputy visually observes an object inside a body cavity that the deputy reasonably believes is a weapon or contraband, the deputy shall monitor the prisoner and alert the supervisor or designated authority who authorized the search and the OPCSO medical department.
- F. The Sheriff shall maintain a central registry containing a copy of every report regarding a strip search prepared pursuant to this policy. In addition, the original of each report shall be placed in the individual arrestee's folder. OPCSO shall preserve and safeguard these reports for a minimum of three years.

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ORLEANS PARISH CRIMINAL SHERIFF'S OFFICE
ARRESTEE STRIP LOG

NUMBER: _____

MUST BE FILLED OUT PRIOR TO PERFORMING A STRIP SEARCH OF AN ARRESTEE
CHARGED ONLY WITH MINOR OFFENSES:

DATE: _____ TIME: _____ FOLDER # _____
ARRESTEE NAME: _____ DOB: _____
CHARGES: _____

ARRESTING OFFICER/AGENCY: _____

REASON FOR SEARCH: (Check one or more as applicable)

Drug Charges	<input type="checkbox"/>	Suspicious Actions	<input type="checkbox"/>
Past Criminal History	<input type="checkbox"/>	Arresting Officer Suspicions	<input type="checkbox"/>
Violent Actions	<input type="checkbox"/>	Other	<input type="checkbox"/>

EXPLAIN: _____

Submitted by: _____ Date: _____ Time: _____

Deputy Signature

Deputy Print Name

Approved: Disapproved:

Supervisor Signature

Supervisor Print Name and Rank

Date: _____ Time: _____

SUPERVISOR COMMENTS: _____

IF ARRESTEE WAS STRIP SEARCHED, PLEASE PROVIDE THE FOLLOWING INFORMATION:

Date: _____ Time: _____ Location: _____

Name of Deputy Who Conducted Search (Print): _____

Name and Position of Every Person Present During Search: (Print): _____

DESCRIBE THE SEARCH _____

AS A RESULT OF THE SEARCH DID YOU FIND ANYTHING?

YES NO

IF SO, WHAT? _____

ACTION TAKEN: _____

SIGNATURE OF SEARCH DEPUTY: _____ DATE: _____ TIME: _____

NOTICE: The original of this report must be kept with the booking packet at all times.
A copy of this report is to be furnished to the Warden of each facility at the end
of the shift when the search takes place.

Cazenave: StripForm2