

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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PAUL MARRIOT, ET AL,

Civil Action No. 03-CV-0531

Plaintiffs,

- against -

**STATEMENT OF
MATERIAL FACTS**

THE COUNTY OF MONTGOMERY, ET AL,

DNH/DEP

Defendants.
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Defendants, through their attorneys, WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, as and for a Statement of Material Facts Pursuant to Local Rule 7.1(b) state as follows:

1. Plaintiff commenced this action against the County of Montgomery, the Montgomery County Sheriff's Department and the individually named defendants, by filing and serving a class action complaint dated April 29, 2003 (see Exhibit N of Hyland Affidavit).
2. Plaintiff's complaint alleges that the Montgomery County Correctional Facility has an unconstitutional strip/cavity search policy whereby all individuals charged with misdemeanors, violations or other minor crimes are strip/cavity searched upon admission (see Exhibit N of Hyland Affidavit).
3. The MCCF does not have a policy or practice of performing strip/cavity searches on all misdemeanor arrestees.
4. Reasonable suspicion that the individual has contraband is required in order for a strip/cavity search to be performed.

5. Individuals admitted into the MCCF go through a Change Out procedure, whereby the individual disrobes and showers in the presence of an officer, of the same sex, before changing into a jail uniform (pg. 17-18 Exhibit C to Hyland Affidavit; see pg. 39-40 Exhibit M to Rozger Affidavit).
6. No search targeting the breasts, genitals and anus occurs during the Change Out.

Dated: August 5, 2004
Albany, New York

Respectfully submitted by:

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

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