

DEC 29 2003

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

 ORIGINAL

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MICHAEL SPINNER, FRANCIS BECHT, PAUL BRUMAIRE, FRANK CANTERINO, a minor by his mother LINDA CANTERINO, KEWAL CHATTWAL, MOHAMMED HABROUT, YVONNE JAMES, ALEKSANDRA JARGILO, MARK KENNISH, TODD KNOPKE, WILLIAM MAURO, ANGIE MELICIO, ANTHONY MICCIULLI, BARBARA PHILIPS ADAMS, CORNEILIUS PHILIPS, CARMEN PHILIZAIRE, MARCEL SARFATI, TROY STEPHEN, ERIC THOMPSON, GUYTHO VERNET, individually and on behalf of a class of all others similarly situated, FEDERICO TENORIO, ALEXANDER TIMOFEEV, individually,

CONSOLIDATED  
COMPLAINT

CV 01 2715

CV 01 8264

CV 02 2899

CV 02 1039

Plaintiffs,

(CPS) (CLP)

-against-

THE CITY OF NEW YORK, BERNARD B. KERIK, HOWARD SAFIR, RUDOLPH GIULIANI, GARY KATZ, THOMAS RUSSO, JOHN O'CONNELL, BARBARA PRATO, JAMES MCLOONE, DETECTIVE PAUL DENVER, POLICE OFFICER EDWIN CABAN, POLICE OFFICERS JOHN & JANE DOES 1-500 (a fictitious name for numerous unidentified police officers employed in Brooklyn Central Booking),

Defendants.

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Jury Trial Demanded

Defendants.

----- X

**PRELIMINARY STATEMENT**

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments to the United States Constitution, and state law, in which the named plaintiffs, on behalf of themselves and a class of similarly situated individuals, seek relief for violations of their rights which occurred while the plaintiffs were in the custody of the New York City Police Department ("NYPD") at Brooklyn Central Booking located at 120 Schermerhorn Street in Brooklyn, New York.

Two aspects of the plaintiffs' confinement are challenged: (1) improper strip searches that occurred and are still occurring at Brooklyn Central Booking; and (2) exposure to unsanitary and inhumane conditions in Brooklyn Central Booking.

The class, as defined in the Memorandum and Order of October 6, 2003, is defined as all persons who since 1998 (1) have been charged with misdemeanors or noncriminal offenses in Kings County; (2) were as a result detained at Brooklyn Central Booking; and (3) were, during their detention, strip searched at Brooklyn Central Booking without regard for the existence of probable cause or reasonable suspicion.

Plaintiffs also seek certification on the conditions of Brooklyn Central Booking as well as on defendants' policy, practice, and/or custom of strip searching detainees in the presence of onlookers and/or members of the opposite sex.

Plaintiffs, on behalf of themselves and the class they represent, seek compensatory and punitive damages, declaratory and injunctive relief, an award of costs and attorneys' fees, and such other and further relief as the court deems just and proper.

Two of the plaintiffs -- Becht and Corneilius Philips -- also assert claims of false arrest and malicious prosecution, but these are ancillary issues, simple in nature, which will not overshadow the primary claims in this litigation. Also, plaintiff Mohammed Habrout asserts a claim under the Thirteenth Amendment.

#### **JURISDICTION & VENUE**

2. This action is brought pursuant to 42 U.S.C. § 1983, the Fourth, Thirteenth, and Fourteenth Amendments to the United States Constitution, and Fed. R. Civ. P. 23. Jurisdiction is conferred upon this Court by the aforesaid statutes and 28 U.S.C. §§ 1331 and 1343.

3. Plaintiffs invoke the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide claims arising under state law.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial portion of the facts alleged occurred in Kings County.

#### NOTICES OF CLAIM

5. For the majority of the plaintiffs, notices of claim were filed upon the City of New York within ninety days of the incidents at issue, more than thirty days have elapsed since such filings, and the City has refused to settle plaintiffs' claims.

#### PARTIES

6. The named plaintiffs are residents of the State of New York, County of Kings.

7. The City of New York is a municipal corporation organized under the laws of the State of New York.

8. Howard Safir, sued herein in his official and individual capacities, was the Commissioner of the NYPD from April 15, 1996 to August 20, 2000.

9. Bernard Kerik, sued herein in his official and individual capacities, was the Commissioner of the NYPD from August 20, 2000 to January 2002.

10. Gary Katz, Thomas Russo, John O'Connell, Barbara Prato, and James McLoone, sued herein in their official and individual capacities, are present and former commanders of Brooklyn Central Booking.

11. Rudolph Giuliani, sued herein in his official and individual capacities, is the former Mayor of the City of New York.

12. The individual defendants were either directly involved in the unconstitutional actions alleged herein, or are liable as supervisors.

13. Detective Paul Denver is the officer who arrested plaintiff Francis Becht. He is sued in his individual and official capacities.

14. Police Officer Edwin Caban is the officer who arrested plaintiff Corneilius Philips. He is sued in his individual and official capacities.

### STATEMENT OF FACTS

#### **A. Strip Searches**

15. The Fourth Amendment to the United States Constitution prohibits government officials from performing strip searches of arrestees charged with misdemeanors or other lesser offenses unless the officer has a reasonable suspicion that the arrestee is concealing a weapon or other contraband based on the crime charged, the particular characteristics of the arrestee, or the circumstances of the arrest.

16. Even where the requisite suspicion exists, the Constitution mandates that strip searches be conducted in a reasonable manner. A strip search is unreasonable if it is carried out by, or in the presence of, officers of a different sex as the arrested person, or in the presence of onlookers or other arrestees.

17. Defendants created and maintain a policy, practice and custom in Brooklyn Central Booking of carrying out baseless and unlawful strip searches.

18. These strip searches are performed on every individual who is processed through Brooklyn Central Booking. Under defendants' policy, it is immaterial that the arrestee is charged with a misdemeanor and that there is an absence of reason to believe that the arrestee is concealing contraband. Moreover, the strip searches are conducted in the most humiliating

manner possible, in full view of numerous officers and arrestees, and often times in front of members of the opposite sex.

19. Defendants and officials at the highest-levels of municipal government are aware that unlawful strip searches are being conducted in Brooklyn Central Booking on a widespread and persistent basis. This knowledge is derived from defendants' direct participation in the practice, their own observations, conversations with their colleagues, reports from subordinates, and from the numerous lawsuits, claims and complaints filed on the practice. Defendants and other officials, however, have been deliberately indifferent to the problem, have been grossly negligent, and/or have failed to take appropriate remedial action.

20. The named plaintiffs, after being arrested for misdemeanors, were subjected to the above-described unlawful strip search practice:

- a. MICHAEL SPINNER on or about January 4, 2001.
- b. FRANCIS BECHT on or about October 4, 2000.
- c. PAUL BRUMAIRE on or about March 19, 2002.
- d. FRANK CANTERINO on or about June 2, 2001.
- e. KEWAL CHATTWAL on or about November 3, 2001.
- f. MOHAMMED HABROUT on or about December 17, 1999.
- g. YVONNE JAMES on or about May 2, 2001.
- h. ALEKSANDRA JARGILO on or about March 5, 2001.
- i. MARK KENNISH on or about July 5, 2001.
- j. TODD KNOPKE on or about May 20, 2001.
- k. WILLIAM MAURO on or about September 13, 1999.
- l. ANGIE MELICIO on or about March 30, 2001.

- m. ANTHONY MICCIULLI on or about April 10, 2001.
- n. BARBARA PHILIPS (ADAMS) on or about July 8, 2001.
- o. CORNEILIUS PHILIPS on or about March 28, 2001.
- p. CARMEN PHILIZAIRE on or about February 25, 2001.
- q. MARCEL SARFATI on or about April 29, 2001.
- r. TROY STEPHEN on or about January 31, 2001.
- s. FEDERICO TENORIO on or about November 24, 2000.
- t. ERIC THOMPSON on or about February 14, 2001.
- u. ALEXANDER TIMOFEEV on or about April 1, 2001.
- v. GUYTHO VERNET on or about February 15, 2001.

**B. Unconstitutional Conditions of Brooklyn Central Booking**

21. Jail conditions are unconstitutional where they result in serious deprivations of basic human needs and are imposed with deliberate indifference.

22. Each of the named plaintiffs was processed at Brooklyn Central Booking. While incarcerated at Brooklyn Central Booking, plaintiffs and numerous other arrestees were held in filthy, disease-ridden, overcrowded jail cells. These jail cells have been infested with rodents and roaches for years. Moreover, there is often human feces and excrement on the floor and on the single toilet that the numerous arrestees in a cell are forced to share without privacy. The toilet is clogged and overflows onto the floor. Toilet paper and bedding are nonexistent. There is no access to clean drinking water. Temperatures are in the extremes. Milk is stored in a refrigerator that is labeled as containing "biohazards." There are health officials present in the facility advising the arrestees to be tested for tuberculosis once they are released. Violent criminals roam without supervision. The guards assigned to Central Booking look the other way



at these dangerous conditions, and either ignore or utter profanities to arrestees who seek their assistance. The guards sometimes subject arrestees to forced labor. Mohammed Habrout was ordered to transport a heavy crate of milk. The typical arrestee spends 24 harrowing hours in Central Booking.

23. Defendants and officials at the highest-levels of municipal government are aware of the unconstitutional conditions of Brooklyn Central Booking and know that such conditions exist on a widespread and persistent basis. This knowledge is derived from defendants' direct participation in the operation of the facility, the officials' own observations, conversations with colleagues, reports from subordinates, and from the numerous lawsuits, claims and complaints filed by arrestees and municipal employees. Defendants and other officials, however, have been deliberately indifferent to the problem, have been grossly negligent, and/or have failed to take appropriate remedial action. Accordingly, defendants have created and maintain a policy, practice and custom in Brooklyn Central Booking of confining detainees in Brooklyn Central Booking in an unconstitutional manner.

24. In a January 31, 1999 article appearing in the New York Times, Sunday Edition, a journalist reported on her experience in Brooklyn Central Booking after being arrested on a minor offense:

Our dubious sorority was locked in a grimy, littered cell, which we shared with free-range mice and cockroaches. There was one open, seatless toilet. The food consisted of desiccated bread sandwiching slabs of something pink and slimy. (I ended up eating mustard and mayonnaise sandwiches). The milk was warm, and one of the guards told us the water was contaminated with lead. Another guard decided I was his type, and made sure I knew where to find him in case my marriage fell apart.



About 10 P.M., after six hours in lockup, my lawyer stopped by for the last time that day to tell me that it takes 24 to 30 hours for the paperwork to go through Albany. I wouldn't see a judge until that happened.

I resigned myself to spending the night. I lay down on the cold, dirty, linoleum floor with the 'girls,' my sneakers for a pillow. I wrapped myself in a reeking jacket that one of the women lent me. I worried about lice, and told myself that the congested coughing I heard was probably not a sign of tuberculosis. The guard woke us several times to move us en masse from one cell to another. Without explanation, breakfast arrived at 3 A.M. (Warm milk, boxes of dry cereal, no utensils.)

### C. Class Allegations

25. As the Court has already found, the requirements of a class action are met in this case.

26. First, the class is so numerous that joinder of all members is impracticable. Most of the named plaintiffs in this case observed numerous individuals other than themselves being strip searched without regard to individualized suspicion. Indeed, the officers employed in Central Booking plainly lacked knowledge of what plaintiffs and the other arrestees were charged with, and conducted strip searches in an assembly-line manner. The named plaintiffs also observed numerous of their fellow arrestees being subjected to the same deprived conditions of confinement. The named plaintiffs and the numerous individuals who were confined with them provide just a small sample of the thousands of individuals processed in Brooklyn Central Booking each year.

27. Second, there are questions of law and fact common to the class, and the claims of the class representatives are typical of those of the class. Indeed, commonality and

typicality exist because the injuries complained of by the named plaintiffs resulted from the same unconstitutional practice, custom and pattern that injured and will injure the class members.

28. Third, the named plaintiffs will fairly and adequately protect the interests of the class. The named plaintiffs are stable residents of Brooklyn, they have no arrest history, and they possess a genuine interest in remedying the harm that was inflicted upon them and others.

29. Fourth, the undersigned attorneys are highly-experienced in federal civil rights litigation and are able and qualified to conduct the class wide litigation.

**D. Claims of False Arrest and Malicious Prosecution by Plaintiffs Francis Becht and Cornelius Philips**

30. Francis Becht: On October 4, 2000, Mr. Becht was arrested for misdemeanor criminal mischief (vandalism) by Detective Paul Denver of the 62<sup>nd</sup> Police Precinct. The misdemeanor charge against Becht was dismissed on March 15, 2001. Becht was arrested and prosecuted without probable cause because Detective Denver knew that Becht's neighbor, who had accused Becht of damaging her automobile, was emotionally disturbed and that her complaint was objectively implausible. Moreover, although Becht had paperwork in his possession that objectively and unequivocally established that he was at work and not anywhere near his neighbor's property when the alleged vandalism occurred, Detective Denver refused to consider the paperwork or alert prosecutors of its existence.

31. Cornelius Philips: On March 28, 2001, Philips was arrested by Police Officer Edwin Caban and others of Transit District 33, and falsely charged with Obstructing Governmental Administration, a misdemeanor. Philips never obstructed the administration of the government. Philips merely attempted to explain to Officer Caban that he was not truant from school, but on his way to a nearby doctor's office for an examination. During this

f. Involuntary servitude (Mohammed Habrout).

35. The aforesaid conduct by defendants violated plaintiffs' rights under state law. Specifically, defendants' conduct constituted:

- a. Assault and battery;
- b. Negligence;
- c. Negligent discharge of duties;
- d. Negligent hiring;
- e. Negligent retention and monitoring of incompetent employees;
- f. Negligent supervision and training of municipal employees;
- g. An invasion of privacy;
- h. Intentional infliction of emotional distress.

**WHEREFORE**, plaintiffs demand a jury trial and request the following relief:

- a. Certification of the class described herein;
- b. Compensatory damages in an amount to be determined by a jury;
- c. Punitive damages in an amount to be determined by a jury;
- d. Costs, interest and attorneys' fees;
- e. An injunction ceasing all improper strip searches at Brooklyn Central Booking;
- f. Such other and further relief as this court may deem just and proper.

DATED: December 22, 2003  
Brooklyn, New York

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By:



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RICHARD J. CARDINALE (RC-8507)

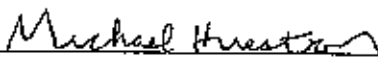
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**DECLARATION OF SERVICE**

I, Michael Hueston, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury that on 12/22/03, I caused to be served the annexed on the following counsel of record by hand delivering a copy of same to the address set forth below, being the address designated by said attorney for service:

Heidi Grossman  
New York City Law Department  
100 Church Street  
New York, NY 10007

Dated: Brooklyn, New York  
12/22/03

  
\_\_\_\_\_  
MICHAEL HUESTON