

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

Michael Cantley, individually, and on behalf of
a Class of others similarly situated,

Plaintiff,

v.

The West Virginia Regional Jail and
Correctional Facility Authority;

and;

Terry L. Miller, both individually and in his
official capacity as Executive Director of the
West Virginia Regional Jail and Correctional
Facility Authority.

Defendants.

No. 3:09cv0758

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

This is a class action brought to redress the deprivation by Defendants of rights secured to the Plaintiff and proposed Class by the United States Constitution and the laws of the United States of America. For at least the past 11 years, the West Virginia Regional Jail and Correctional Facility Authority has had a policy of strip searching all individuals who enter any of the West Virginia Regional Jails and placing them in jail clothing, regardless of the crime with which they are charged. In addition, the West Virginia Regional Jail and Correctional Facility Authority also requires that all pre-trial detainees be deloused by having corrections officers use

plastic bottles to spray caustic delousing solution over the genitals of detainees. Upon information and belief, these policies are, in part, derived from the written procedures of the West Virginia Regional Jail and Correctional Facility Authority, and were promulgated by senior West Virginia Regional Jail and Correctional Facility Authority officials named herein.

It is well established in this judicial circuit that individuals charged with misdemeanors or other minor crimes cannot be strip-searched absent particularized suspicion that they possess weapons or contraband. Consequently, the policy of the West Virginia Regional Jail and Correctional Facility Authority to force those charged with minor crimes to undergo the indignities of a strip search upon entry into the any of the West Virginia Regional Jails is insensitive, unnecessary, and illegal.

Plaintiff Cantley brings this action on behalf of himself, and on behalf of a Class of thousands of others who were strip searched after being charged with petty crimes, to vindicate the clear and unnecessary violation of his civil rights and those of the Class Members he proposes to represent. Plaintiff was charged with a non-felony offense, and was subjected to a strip search, in violation of his right against unreasonable searches under the Fourth Amendment of the United States Constitution. Plaintiff seeks monetary damages from Defendant Terry L. Miller for himself and each member of the Proposed Class, a declaration that Defendant West Virginia Regional Jail and Correctional Facility Authority's policies are unconstitutional, and an injunction precluding Defendant West Virginia Regional Jail and Correctional Facility Authority and Defendant Terry L. Miller from continuing to violate the rights of those placed into the custody of the Regional Jails that they administer. With this as a background, Plaintiff Cantley complains as follows:

JURISDICTION

1. This Court has jurisdiction over this action under the provisions of 28 U.S.C. §§ 1331, 1341 & 1343 because it is filed to obtain compensatory damages and injunctive relief for the deprivation, under color of state law, of the rights of citizens of the United States secured by the Constitution and federal law pursuant to 42 U.S.C. § 1983. This Court also has jurisdiction over this action under the provisions of 28 U.S.C. § 2201, as it is filed to obtain declaratory relief relative to the constitutionality of the policies of a state government.

2. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's and Class claims occurred within this judicial district.

PARTIES

3. Plaintiff Cantley is an adult male residing in Cabell County, West Virginia. On or about September 28, 2008, he was arrested and placed in the Western Regional Jail on on non-felony charges of violating an order of protection at the home of his ex-wife.

4. Defendant West Virginia Regional Jail and Correctional Facility Authority ("WVRJA") is a state government agency organized and existing under the laws of the State of West Virginia. At all times relevant hereto, the WVRJA was responsible for the policies, practices, supervision, implementation and conduct of all matters pertaining to the West Virginia Regional Jail System and was responsible for the appointment, training, supervision and conduct of all Regional Jail personnel, including those working in the Central Regional Jail, Eastern Regional Jail, North Central Regional Jail, Northern Regional Jail, Potomac Highlands Regional Jail, South Central Regional Jail, Southern Regional Jail, Southwestern Regional Jail, Tygart

Valley Regional Jail, and the Western Regional Jail (collectively the “West Virginia Regional Jail System” or “WVRJS”). In addition, at all relevant times, the WVRJA was responsible for enforcing the rules of the West Virginia Regional Jail System, and for ensuring that personnel employed in West Virginia Regional Jail system obey the Constitution and laws of the United States and of the State of West Virginia.

5. Defendant Terry L. Miller (“Director Miller”) is the duly appointed Executive Director of the WVRJA, and, as such, is a policy maker with respect to the treatment of pre-trial and other detainees over which the WVRJA exercises custodial or other control. Director Miller’s principal place of business is the WVRJA’s Office, 1325 Virginia St. East, Charleston West Virginia, 25301. Director Miller is made a Defendant in this action in both his individual and official capacities.

CLASS ACTION ALLEGATIONS

6. Plaintiff brings this action pursuant to Rules 23(b)(1), 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of himself and a Class of similarly situated individuals who were charged with misdemeanors or minor crimes and were strip searched upon their entry into the West Virginia Regional Jail System, including the Central Regional Jail, Eastern Regional Jail, North Central Regional Jail, Northern Regional Jail, Potomac Highlands Regional Jail, South Central Regional Jail, Southern Regional Jail, Southwestern Regional Jail, Tygart Valley Regional Jail, and the Western Regional Jail.

7. The Class that Plaintiff seeks to represent is defined as follows:

All persons who have been or will be placed into the custody of the West Virginia Regional Jail System, after being charged with misdemeanors, summary violations, violations of probation, traffic infractions, civil

commitments or other minor crimes and were or will be strip searched upon their entry into the West Virginia Regional Jail System, pursuant to the policy, custom and practice of the West Virginia Regional Jail and Correctional Facility Authority. The class period commences on June 30, 2007 and extends to the date on which the West Virginia Regional Jail and Correctional Facility Authority is enjoined from, or otherwise ceases, enforcing its policy, practice and custom of conducting strip searches absent reasonable suspicion. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

8. This action has been brought and may properly be maintained as a Class action under Federal law and satisfies the numerosity, commonality, typicality and adequacy requirements for maintaining a class action under Fed. R. Civ. P. 23(a).

9. The members of the Class are so numerous as to render joinder impracticable. Upon information and belief, there are hundreds of people arrested for misdemeanors and violations who are placed into the custody of the West Virginia Regional Jail System every month -- all of whom are members of the Proposed Class. Upon information and belief, the size of the Proposed Class totals at least thousands of individuals, some of whom have had their civil rights violated on multiple occasions.

10. Upon information and belief, joinder of all of these individuals is impracticable because of the large number of Class Members and the fact that Class Members are likely dispersed over a large geographical area, with some members presently residing outside of West Virginia and this Judicial District. Furthermore, upon information and belief, many members of the Class are low-income persons, may not speak English, and likely would have great difficulty in pursuing their rights individually.

11. Common questions of law and fact exist as to all members of the Class, in that they all had their right to be free from unreasonable searches and delousing violated by Defendants' conducting strip searches absent particularized suspicion. All members of the Class were charged with misdemeanors or summary violations when placed into the custody of the West Virginia Regional Jail System, and all were illegally strip searched in violation of the established law in this judicial circuit.

12. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class sustained damages arising out of Defendants' course of conduct. The harms suffered by the Plaintiff are typical of the harms suffered by the Class Members.

13. The representative Plaintiff has the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the Class. Plaintiff has no interests that are adverse to the interests of the Members of the Class.

14. Plaintiff has retained counsel with substantial experience in the prosecution of Class action and civil rights litigation, including successful litigation of strip search cases. Plaintiff's counsel has the resources, expertise and experience to successfully prosecute this action against the WVRJA and Director Miller. Counsel for the Plaintiff knows of no conflicts among members of the Class or between counsel and members of the Class.

15. This action, in part, seeks declaratory and injunctive relief. As such, the Plaintiff seeks Class Certification under Fed. R. Civ. P. 23(b)(2), in that all Class Members were subject to the same policy requiring the illegal strip searches and delousing of individuals charged with misdemeanor or minor crimes and placed into the custody of the West Virginia Regional Jail

System. In short, the WVRJA, Director Miller, and the Regional Jail personnel acted on grounds generally applicable to all Class Members.

16. In addition to certification under Rule 23(b)(2), and in the alternative, Plaintiffs seek certification under Rule 23(b)(3).

17. Common questions of law and fact exist as to all members of the Class, and predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, without limitation, the common and predominate question of whether the Defendants' written and/or *de facto* policy of strip searching and delousing all individuals charged with misdemeanors or minor crimes and committed to the Jail is a violation of the Fourth and Fourteenth Amendments to the United States Constitution, and whether such a written and/or *de facto* policy existed during the Class Period.

18. A Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all of the individual members of the Class is impracticable given the large number of Class Members and the fact that they are dispersed over a large geographical area. Furthermore, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them. The cost to the federal court system of adjudicating thousands of individual cases would be enormous. Individualized litigation would also magnify the delay and expense to all parties and the court system. By contrast, the conduct of this action as a Class action in this District presents far fewer management difficulties, conserves the resources of the parties and the court system, and protects the rights of each member of the Class.

19. Upon information and belief, there are no other actions pending to address the Defendants' flagrant violation of the civil rights of thousands of individuals, even though the Defendants have maintained their illegal strip search and delousing regimen for at least the past [three] years.

20. In the alternative to certification under Fed. R. Civ. P. 23(b)(3), Plaintiff also seeks partial certification under Fed. R. Civ. P. 23(c)(4).

FACTS

Facts Applicable to the Class Generally

21. The Fourth Amendment of the United States Constitution prohibits state officials, such as Director Miller in this action and the Corrections Officers he supervises, from performing strip searches of arrestees who have been charged with misdemeanors or other minor crimes unless the officer has reasonable suspicion to believe that the arrestee is concealing a weapon or contraband.

22. Upon information and belief, the WVRJA and Director Miller have instituted a written and/or *de facto* policy, custom or practice of strip searching and delousing all individuals who enter the custody of the West Virginia Regional Jail System, regardless of the nature of their charged crime and without the presence of reasonable suspicion to believe that the individual was concealing a weapon or contraband.

23. Upon information and belief, the WVRJA and Director Miller have instituted a written and/or *de facto* policy, custom or practice of conducting visual body cavity searches (visual inspection of the vaginal and rectal cavities) on all individuals who enter the custody of the West Virginia Regional Jail System, regardless of the individual characteristics or the nature

of their charged crime. For purposes of this Complaint, strip and visual cavity searches are collectively referred to as “strip searches”.

24. Upon information and belief, some members of the Proposed Class (not including the Plaintiff) are also required to undergo physical cavity searches upon entry to the custody of the WVRJA, where a Corrections Officer inserts a gloved finger into the rectum of a detainee to search for contraband.

25. Upon information and belief, the WVRJA and Director Miller have instituted a written and/or *de facto* policy, custom or practice of delousing all individuals who enter the custody of the West Virginia Regional Jail System, regardless of the individual characteristics or the nature of their charged crime. The delousing procedure first entails a detainee completely disrobing in front of a correction officer. The correction officer then sprays delousing solution upon a detainee’s naked body. Finally, the detainee is ordered to shower within full view of the corrections officer. The delousing procedure is conducted upon all detainees without inquiry into or establishment of reasonable suspicion, or inquiry or establishment into whether the detainee actually harbors lice.

26. The WVRJA and Director Miller know that they may not institute, enforce or permit enforcement of a policy or practice of conducting strip searches and delousing without particularized, reasonable suspicion.

27. The Defendants’ written and/or *de facto* policy, practice and custom mandating wholesale strip searches and delousing of all misdemeanor and violation arrestees has been promulgated, effectuated and/or enforced in bad faith and contrary to clearly established law.

28. Reasonable suspicion to conduct a strip search may only emanate from the particular circumstances antecedent to the search, such as the nature of the crime charged, the particular characteristics of the arrestees, and/or the circumstances of the arrest.

29. Upon information and belief, the WVRJA and Director Miller have promulgated, implemented, enforced, and/or failed to rectify a written and/or *de facto* policy, practice or custom of strip searching and delousing all individuals placed into the custody of the West Virginia Regional Jail System without any requirement of reasonable suspicion, or indeed suspicion of any sort. This written and/or *de facto* policy made the strip searching of pre-trial detainees routine; neither the nature of the offense charged, the characteristics of the arrestee, nor the circumstances of a particular arrest were relevant to the enforcement of the policy, practice and custom of routine strip searches.

30. Pursuant to this written and/or *de facto* policy, each member of the Class, including the named Plaintiff, was the victim of a routine strip search upon their entry into the West Virginia Regional Jail System. These searches and delousing were conducted without inquiry into or establishment of reasonable suspicion, and in fact were not supported by reasonable suspicion. Strip searches are conducted for individuals arrested for, among other innocuous offenses, Driving While Intoxicated, Harassment and Trespassing.

31. As a direct and proximate result of the unlawful strip search conducted pursuant to this written and/or *de facto* policy, the victims of the unlawful strip searches and delousing -- each member of the class, including the named Plaintiff -- has suffered or will suffer psychological pain, humiliation, suffering and mental anguish.

Facts Applicable to the Named Plaintiff

32. Plaintiff Cantley is an adult male residing in Cabell County, West Virginia. On or about September 28, 2008 he was arrested on non-felony charges of violating an order of protection at the home of his ex-wife. Specifically, Mr. Cantley was required to stay away from his former wife's home, and failed to do so on the date in question. The allegations against Mr. Cantley did not involve a claim that he had harmed his wife, or anyone else, but rather that he was present in a location at which he was forbidden to be present.

33. Plaintiff Cantley's arrest was void of any reasonable suspicion that he harbored any weapons or contraband.

34. Mr. Cantley was first taken in custody by the West Virginia State Police, and later that evening taken to the Western Regional Jail. The Plaintiff was initially housed in a holding cell.

35. After being housed in a holding cell for several hours, the Plaintiff was required to undergo a strip search.

36. Plaintiff was brought into a shower room and advised by a correctional officer that he would be strip searched. In connection with the strip search, Plaintiff was required to completely disrobe, lift his arms and legs, spread his butt cheeks, lift up his testicles and bend over, so that he could be inspected by a correctional officer. Plaintiff was then sprayed with de-lousing solution and ordered to shower while the corrections officer had a complete view of Plaintiff showering. He was then issued prison clothing.

37. Plaintiff was released from the Western Regional Jail on or about November 6, 2008, and all charges were dismissed.

38. As a direct and proximate result of the unlawful strip search, Plaintiff has suffered and continues to suffer psychological pain, humiliation, suffering and mental anguish.

CAUSES OF ACTION

**FIRST CAUSE OF ACTION AGAINST DIRECTOR MILLER IN
HIS INDIVIDUAL CAPACITY**

**-- Violation of Constitutional Rights Under Color of State Law --
-- Illegal Strip and Visual Cavity Searches --**

39. Plaintiff incorporates by reference and realleges each and every allegation stated in the foregoing paragraphs.

40. The Fourth Amendment of the United States Constitution protects citizens from unreasonable searches by law enforcement officers, and prohibits officers from conducting strip searches and delousing of individuals arrested for misdemeanors or violations absent some particularized suspicion that the individual in question has either contraband or weapons.

41. The actions of Director Miller detailed above violated Plaintiff's rights under the United States Constitution. It was not objectively reasonable for West Virginia Regional Jail personnel to strip search and delouse the Plaintiff and Class Members based on their arrests for misdemeanor/ summary violation charges. It was also not objectively reasonable for Director Miller to order/direct West Virginia Regional Jail System personnel to conduct such searches.

42. These strip searches and delouses were conducted pursuant to the policy, custom or practice of Director Miller. As such, Director Miller is directly liable for the damages of Plaintiff and members of the Class.

43. Upon information and belief, Director Miller is responsible for establishing the policies and procedures to be utilized in the operation of the Western Regional Jail system, and is responsible for the implementation of the strip search and delousing policies questioned in this lawsuit. As such, Director Miller is individually responsible for the damages of the Plaintiff and Members of the Class.

44. The Policy Making Defendants knew that the Jail's strip search and delousing policies were illegal, and acted willfully, knowingly, and with specific intent to deprive Plaintiff and Members of the Class of their Constitutional rights.

45. This conduct on the part of all Defendants represents a violation of 42 U.S.C. § 1983, given that their actions were taken under color of state law.

46. As a direct and proximate result of the unconstitutional acts described above, Plaintiff and the Members of the Class have been irreparably injured.

**SECOND CAUSE OF ACTION AGAINST DIRECTOR MILLER IN
HIS INDIVIDUAL CAPACITY**

**-- Violation of Constitutional Rights Under Color of State Law --
-- The Right to Privacy --**

47. Plaintiff incorporates by reference and realleges each and every allegation stated in the foregoing paragraphs.

48. The right to privacy is protected by the Fourth Amendment and is also an independent right with other constitutional underpinnings.

49. The right to privacy prohibits officers from conducting delousing of individuals arrested for misdemeanors or violations absent some particularized suspicion that the individual in question has lice.

50. The actions of Director Miller detailed above violated and improperly invaded Plaintiff's right to privacy. It was not objectively reasonable for West Virginia Regional Jail personnel to delouse the Plaintiff and Class Members based on their arrests for misdemeanor/summary violation charges. It was also not objectively reasonable for Director Miller to order/direct West Virginia Regional Jail System personnel to conduct such a procedure.

51. This delousing was conducted pursuant to the policy, custom or practice of Director Miller. As such, Director Miller is directly liable for the damages of Plaintiff and members of the Class.

52. Upon information and belief, Director Miller is responsible for establishing the policies and procedures to be utilized in the operation of the Western Regional Jail, and is responsible for the implementation of the delousing policies questioned in this lawsuit. As such, Director Miller is individually responsible for the damages of the Plaintiff and Members of the Class.

53. The Policy Making Defendant knew that the Jail's delousing policies were illegal, and acted willfully, knowingly, and with specific intent to deprive Plaintiff and Members of the Class of their Constitutional rights.

54. This conduct on the part of all Defendants represents a violation of 42 U.S.C. § 1983, given that their actions were taken under color of state law.

55. As a direct and proximate result of the unconstitutional acts described above, Plaintiff and the members of the Class have been irreparably injured.

THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

-- Demand for Declaratory Judgment --

56. Plaintiff incorporates by reference and realleges each and every allegation stated in the foregoing paragraphs.

57. The policy, custom and practice of the WVRJA and Director Miller is clearly unconstitutional and violates the right to privacy, in that these entities and individuals are directing/conducting the strip searches and delousing of all individuals placed into the West Virginia Regional Jail System without any particularized suspicion that the individuals in question have either contraband or weapons.

58. Plaintiff and Members of the Class request that this Court issue a declaratory judgment, and that it declare the strip search and delousing policies of the WVRJA and Director Miller to be unconstitutional and violative of the right to privacy.

FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

-- Demand for Preliminary and Permanent Injunction --

59. Plaintiff incorporates by reference and realleges each and every allegation stated in the foregoing paragraphs.

60. The policy, custom and practice of the WVRJA and Director Miller is clearly unconstitutional and violative of the right to privacy, in that these entities and individuals are directing/conducting the strip searches and delousing of all individuals placed into the West

Virginia Regional Jail system without any particularized suspicion that the individuals in question have either contraband, weapons, or lice.

61. Upon information and belief, this policy is currently in place in the West Virginia Regional Jail System, with new and/or prospective Members of the Class being subjected to the harms that have already been inflicted upon the Plaintiff.

62. The continuing pattern of strip searching and delousing individuals charged with minor crimes will cause irreparable harm to the new and/or prospective Members of the Class, an adequate remedy for which does not exist at law.

63. Plaintiff demands that the WVRJA, Director Miller, and the West Virginia Regional Jail System personnel immediately desist from strip searching and delousing individuals placed into the custody of the West Virginia Regional Jail System absent any particularized suspicion that the individuals in question have either contraband, weapons, or lice, and seeks both a preliminary and permanent injunction from this Court ordering as much.

DEMAND FOR TRIAL BY JURY

64. The Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cantley, on behalf of himself and on behalf of a Class of others similarly situated, requests that this Honorable Court grant them the following relief:

1. An order certifying this action as a Class Action pursuant to Fed. R. Civ. P. 23.

2. A judgment against Director Miller in his individual capacity, on Plaintiff's First and Second Causes of Action detailed herein, awarding compensatory damages to Plaintiff and each Member of the Proposed Class in an amount to be determined by a jury and/or the Court on both an individual and a Class-wide basis.

3. A declaratory judgment against all Defendants declaring the WVRJA and Director Miller's policy, practice and custom of strip and visual cavity searching, and delousing, of all detainees entering the West Virginia Regional Jail System, regardless of the crime charged or suspicion of contraband or lice, to be unconstitutional, violative of the right to privacy and otherwise improper.

4. A preliminary and permanent injunction enjoining all Defendants from continuing to strip and visual cavity search, and delouse, individuals charged with misdemeanors or minor crimes absent particularized, reasonable suspicion that the arrestee subjected to the search is concealing weapons or other contraband or lice.

5. A monetary award for attorneys' fees and the costs of this action, pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 23.

Respectfully submitted by:

Dated: June 30, 2009

/s/ D. Aaron Rihn, Esquire
D. Aaron Rihn, Esquire
ROBERT PEIRCE & ASSOCIATES, P.C.
2500 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1918
412.281.7229
W.V. I.D. 8736

Elmer Robert Keach, III, Esquire
LAW OFFICES OF ELMER ROBERT
KEACH, III, P.C.
1040 Riverfront Center
Post Office Box 70
Amsterdam, NY 12010
518.434.1718

Gary E. Mason, Esquire
Donna F. Solen, Esquire
Nicholas A. Migliaccio, Esquire
THE MASON LAW FIRM, LLP
1225 19th Street, NW
Suite 500
Washington, DC 20036
202.429.2290

Daniel R. Karon, Esquire
GOLDMAN SCARLATO & KARON, P.C.
55 Public Square
Suite 1500
Cleveland, OH 44113
216.622.1851

**ATTORNEYS FOR PLAINTIFF AND
PROPOSED CLASS**