

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>JENNIFER REYNOLDS, ASHLEY</b>	<b>:</b>	<b>NO. 1:07-CV-01688-CCC</b>
<b>McCORMICK, HERBERT CARTER,</b>	<b>:</b>	
<b>and DEVON SHEPARD, both individually:</b>	<b>:</b>	<b>(Complaint filed 9/16/07)</b>
<b>and on behalf of a class of others similarly</b>	<b>:</b>	
<b>situated,</b>	<b>:</b>	
<b>Plaintiffs</b>	<b>:</b>	<b>Judge Christopher C. Conner</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	<b>CIVIL ACTION – LAW</b>
	<b>:</b>	
<b>THE COUNTY OF DAUPHIN,</b>	<b>:</b>	<b>JURY TRIAL DEMANDED</b>
<b>Defendant</b>	<b>:</b>	

**DEFENDANT COUNTY OF DAUPHIN’S MOTION TO DISMISS**

AND NOW, comes Defendant, the County of Dauphin, by and through its attorneys, Lavery, Faherty, Young & Patterson, P.C. and McNeese, Wallace & Nurick LLC, hereby files this Motion to Dismiss, and in support thereof avers as follows:

1. Plaintiffs, Jennifer Reynolds, Ashley McCormick, Herbert Carter, and Devon Sheppard, both individually and on behalf of a class of others similarly

situated, initiated this class action lawsuit with the filing of a civil complaint on September 18, 2007.

2. Plaintiffs served their complaint upon Defendant on September 21, 2007.

3. Plaintiffs' complaint alleges, *inter alia*, that Dauphin County Prison (hereinafter "Prison") has a written and/or *de facto* policy of strip-searching all individuals who enter the Prison regardless of the crime upon which they are charged and without the presence of reasonable suspicion to believe that the individuals are concealing a weapon or contraband. (Complaint, Doc. 1, ¶ 25).

4. The class that Plaintiffs seek to represent is the following:

All persons who have been or will be placed into the custody of the Dauphin County Prison after being charged with misdemeanors, summary offenses, violations of probation or parole, civil commitments, or minor crimes and were or will be strip searched upon their entry into the Dauphin County Prison pursuant to the policy, custom and practice of the County of Dauphin. The class period commences on September 16, 2005 and extends to the date on which Dauphin County is enjoined from, or otherwise ceases, enforcing their unconstitutional 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.

(Id. at ¶ 9).

5. Plaintiffs seek class certification pursuant to Rules (23)(b)(2) and 23(b)(3), Federal Rules of Civil Procedure. (Id. at ¶¶ 18, 19).

6. Named Plaintiffs allege that they each were arrested and subsequently strip searched at the Prison. (Id. at ¶¶ 34-37).

7. Plaintiffs allege in Count I of their complaint that the strip searches of named Plaintiffs and unnamed members of the purported class violated the Fourth Amendment of the United States Constitution. (Id. at ¶¶ 38-43).

8. Plaintiffs request in Count II of their complaint that this Honorable Court declare that the policy, custom, and practice of Defendant is unconstitutional in that the correctional officers of the Prison are directing/conducting strip searches of all individuals placed into the Prison without any particularized suspicion that the individuals have either contraband or weapons. (Id. at ¶¶ 44-46).

9. Plaintiffs also set forth a separate cause of action in Count III of their complaint seeking preliminary and permanent injunctive relief, enjoining Defendant from strip searching individuals placed into custody of the Prison absent any particularized suspicion that the individuals have either contraband or weapons. (Id. at ¶¶ 47-51).

10. As a result of the alleged constitutional violation, Plaintiffs seek an order certifying this action as a class action, a judgment against Defendant awarding compensatory damages to each named Plaintiff and each member of the purported

class, a declaratory judgment declaring that the Defendant's policy, practice and custom of strip searching all detainees is unconstitutional, a preliminary and permanent injunction seeking to enjoin Defendant from continuing to strip search individuals without reasonable suspicion that such individuals are concealing weapons and/or contraband, attorney's fees, and punitive damages. (Id. at ¶ 1, p. 14).

11. The standard to be applied in consideration of a motion to dismiss pursuant to Rule 12(b)(6) is well established in our jurisprudence. The court is to accept as true all factual allegations in the complaint and draw all reasonable inferences in the light most favorable to the Plaintiff. Board of Trustees of Bricklayers and Allied Craftsmen Local 6 of New Jersey v. Wettlin Assoc. Inc., 237 F.3d 270, 272 (3d Cir. 2001).

12. The question before the court on a motion to dismiss is whether the Plaintiff can prove any set of facts in support of his claim that entitles the Plaintiff to relief. Hartford Fire Insurance Company v. California, 113 S. Ct. 2811, 2817 (1993), Ramadan v. Chase Manhattan Corp., 229 F.3d 194-195-96 (3d Cir. 2000).

13. If it is clear from the pleading that a defendant cannot be held liable, then dismissal of all claims against that defendant is appropriate. Labov v. Lalley, 809 F.2d 270 (3d Cir. 1987).

14. In adjudicating a Rule 12(b)(6) Motion, the district court is not limited to evaluating the Complaint, rather it can also consider documents attached to the complaint, matters of public record, and undisputedly authentic documents. Pension Benefit Guar. Corp. v. White Consol. Industries, 998 F.2d 1192, 1196 (3d Cir. 1993).

15. On its face and as a matter of law, Plaintiffs' Complaint fails to set forth a claim upon which relief can be granted because the proposed class is overbroad and includes purported members who cannot recover based upon the claims as alleged, i.e. individuals for whom there existed a reasonable suspicion that he/she possessed weapons, possessed drugs, and/or had a criminal history at the time he/she was strip searched.

16. Named Plaintiffs and purported class members lack standing to seek declaratory and injunctive relief because they have not alleged that there is a likelihood that they will be subjected to the complained of conduct in the future.

17. The third purported cause of action set forth in Plaintiffs' Complaint, which requests an injunction, must be dismissed because such cause of action seeks only a form of relief and it cannot be maintained as an independent cause of action as a matter of law.

18. Plaintiffs cannot recover punitive damages from Defendant as a matter of law based upon the allegations contained in the complaint.

19. Plaintiffs cannot recover on their allegations that Defendant has a blanket strip search policy when, in fact, Defendant has a written policy which sets forth distinct factors for each correctional officer to consider in his/her determination as to whether reasonable suspicion exists prior to any strip search being performed. Plaintiffs' claims in this regard should be limited to the allegations of a de facto, unconstitutional policy or custom. A true and correct copy of the Prison's strip search policy with original Affidavit attesting to its authenticity is attached hereto and marked as Exhibit "A".

WHEREFORE, for the reasons set forth hereinabove, Defendant, County of Dauphin, hereby requests that this Honorable grant its Motion to Dismiss and enter the accompanying order.

Respectfully submitted,

Lavery, Faherty, Young & Patterson, P.C.

Date: October 11, 2007

By: /s/ Frank J. Lavery, Jr.

Frank J. Lavery, Jr., Esquire

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Date: October 11, 2007

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Date: October 11, 2007

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Co-counsel for Defendant

McNEES, WALLACE & NURRICK LLC

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Date: October 11, 2007

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Date: October 11, 2007

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Co-counsel for Defendant



**CERTIFICATE OF CONCURRENCE/NON-CONCURRENCE**

I, Frank J. Lavery, Jr., Esquire, hereby certify that I am counsel for the Defendant and that I contacted Robert Keach, III, Esquire, lead counsel for Plaintiffs, to seek Plaintiffs' concurrence with the foregoing Motion to Dismiss. Mr. Keach advised that Plaintiffs do not concur in the foregoing motion, with the exception that Mr. Keach indicated a willingness to withdraw the claims for punitive damages against Dauphin County in an amended complaint.

Respectfully submitted,

Lavery, Faherty, Young & Patterson, P.C.

By: s/ Frank J. Lavery, Jr.

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flavery@laverylaw.com  
Attys for Defendant

DATE: October 11, 2007

## CERTIFICATE OF SERVICE

I, Megan L. Renno, an employee with the law firm of Lavery, Faherty, Young & Patterson, P.C., do hereby certify that on this 11<sup>th</sup> day of October, 2007, I served a true and correct copy of the foregoing **Motion to Dismiss** via U.S. Middle District Court's Electronic Case Filing System, addressed as follows:

Alan M. Ross, Esquire  
Email: amresquire@aol.com

James P. DeAngelo, Esquire  
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/s/ Megan L. Renno

Megan L. Renno, Legal Secretary to  
Frank J. Lavery, Jr., Esquire,  
Robert G. Hanna, Jr., Esquire, and  
Devon M. Jacob, Esquire

This document has also been electronically filed and is available for viewing and downloading from the ECF system.

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<b>and on behalf of a class of others similarly</b>	:	
<b>situated,</b>	:	
<b>Plaintiffs</b>	:	<b>Judge Christopher C. Conner</b>
	:	
<b>v.</b>	:	<b>CIVIL ACTION – LAW</b>
	:	
<b>THE COUNTY OF DAUPHIN,</b>	:	<b>JURY TRIAL DEMANDED</b>
<b>Defendant</b>	:	

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, upon consideration of Defendant’s Motion to Dismiss, and Plaintiffs’ response thereto, said Motion is hereby GRANTED and:

1. Plaintiffs’ action is dismissed as a class action;
2. Counts II and III of Plaintiffs’ Complaint are dismissed;

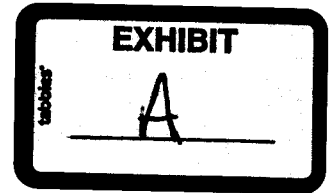
3. Plaintiffs' claim for punitive damages as described in paragraph 1 of the Complaint is hereby dismissed; and
4. Any and all allegations and/or forms of recovery based upon the theory that Defendant has a formal blanket strip search policy are stricken.

BY THE COURT:

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J.

# EXHIBIT "A"



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JENNIFER REYNOLDS, ASHLEY	:	NO. 1:07-CV-01688-CCC
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and DEVON SHEPARD, both individually:	:	(Complaint filed 9/16/07)
and on behalf of a class of others similarly :	:	
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Plaintiffs	:	Judge Christopher C. Conner
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v.	:	CIVIL ACTION – LAW
	:	
THE COUNTY OF DAUPHIN,	:	JURY TRIAL DEMANDED
Defendant	:	

AFFIDAVIT OF DOMINICK DeROSE

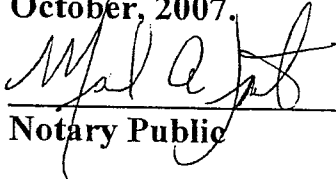
1. I am presently the Dauphin County Prison Warden.
2. The document attached hereto is a true and correct copy of the Dauphin County Prison strip search policy.
3. The foregoing is based upon my personal knowledge and I am competent to testify to the foregoing matters and would so testify if called as a witness at the trial of this matter.



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Dauphin County Prison Warden

Sworn to and Subscribed to  
Before the 10<sup>th</sup> day of  
October, 2007.



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Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Mark A. Templeton, Notary Public  
Swatara Twp., Dauphin County  
My Commission Expires Apr. 28, 2008  
Member, Pennsylvania Association Of Notaries

TITLE:	Searches of Newly Committed Inmates
POLICY:	9.20 page 1 of 4
CHAPTER:	Security and Control
REFERENCE:	PA TITLE 37 sec 95.241
ACA:	
PURDONS STATUTE 61:	

POLICY:

The introduction and presence of unauthorized weapons and other contraband present serious threats to the security and proper management of a correctional facility. Therefore, all persons and property coming into Dauphin County Prison are subject to search at any time. Searches will be conducted in a reasonable manner so as to avoid embarrassment to the person and to protect the property searched. Searches will not be conducted for the purposes of harassment or punishment.

PROCEDURE:

A. DEFINITIONS

1. Pretrial Detainee - An individual, subject to incarceration or detention, who is charged but not convicted of a criminal offense.
2. Convicted prisoner - An individual that has been adjudged GUILTY of his/her criminal charge. This individual does not need to be sentenced to be considered convicted. All Probation and Parole violators shall be considered as a convicted individual.
3. Strip Search - A search during which a detainee is required to remove all of his/her clothing for the purpose of discovering the existence of any weapons, evidence of a crime, controlled substances or other contraband. Such a search includes the visual inspection of the detainee's body cavities.



TITLE:	Searches of Newly Committed Inmates
POLICY:	9.20 page 2 of 4
CHAPTER:	Security and Control

B. REQUIRED FINDINGS AND AUTHORIZATIONS

1. Strip searches shall be conducted on pretrial detainees only under the following circumstances:
  - a. If the intake Correctional Officer determines the existence of specific factors, which establish a reasonable suspicion that the detainee possesses a weapon, evidence of a specific crime, controlled substances, or other contraband,  
  
AND
  - b. If the strip and visual body cavity search is authorized in writing by the signature of the Shift Commander present at the facility on form PD-1.
2. The factors which may be taken into consideration to determine the "reasonable suspicion" required in No.1 above are as follows:
  - a. The appearance and demeanor of the detainee;
  - b. The nature of the charges pending against the detainee;
  - c. The detainee's prior arrest record (if known);
  - d. Discoveries from prior arrests and/or prior searches of the detainee (if known);
  - e. Detainee's conduct during the period of confinement;
  - f. Detainee's known relationship with another inmate and/or detainee;
  - g. Detainee's known history of suicide attempts or threats;

TITLE:	Searches of Newly Committed Inmates
POLICY:	9.20 page 3 of 4
CHAPTER:	Security and Control

- h. Any other reasonable suspicion based upon specific circumstances that leads the Correctional Officer to suspect that the detainee is concealing weapons, evidence of a specific crime, controlled substances or other contraband.
  - 3. In the absence of unusual circumstances clearly demonstrating one or more of the above factors, strip searches will not be permitted for pretrial detainees.
- C. Prior to the commencement of a strip search on a pretrial detainee, the intake Correctional Officer must fill out form PD-1 and secure the authorization of the Shift Commander. Upon completion of form PD-1, the strip search shall be conducted in accordance with standard procedure, by a Correctional Officer of the same sex as the person to be searched, in a private, dignified and professional manner.
- D. The completed form shall be forwarded to the Administration for review and placement in the inmate's treatment file.
- E. All individuals committed to Dauphin County Prison that have been convicted of the criminal charge/s filed against them will be stripped searched during the intake process.

APPROVED Anthony Petrucci 9-24-99  
Anthony Petrucci - Prison Board Chairman Date

APPROVED Dominick L. DeRose 9/24/99  
Dominick L. DeRose - Warden Date

PRETRIAL DETAINEE STRIP-SEARCH FORM NO. 1 (PD-1)

DCP #: \_\_\_\_\_  
Name of Pretrial Detainee [printed] \_\_\_\_\_

DATE \_\_\_\_\_  
Name of Corrections Officer [printed] \_\_\_\_\_

Identify specific factors, which establish reasonable suspicion that the Pretrial Detainee may possess a weapon, evidence of a crime, controlled substances, or other contraband. Check all that apply:

\_\_\_\_\_ The appearance and demeanor of the detainee;

\_\_\_\_\_ The nature of the criminal charges pending against the detainee;

\_\_\_\_\_ The detainee's prior arrest record (if known);

\_\_\_\_\_ Discoveries from prior arrests and/or prior searches of the detainee (if known);

\_\_\_\_\_ Detainee's conduct during the period of confinement;

\_\_\_\_\_ Detainee's known relationship with another inmate and/or detainee;

\_\_\_\_\_ Detainee's known history of suicide attempts or threats;

\_\_\_\_\_ Any other reasonable suspicion based upon specific circumstances that leads the corrections officer to suspect that the detainee is concealing weapons, evidence of the specific crime, controlled substances or other contraband.

Please Describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
CORRECTIONS OFFICER SIGNATURE

REVIEWED BY:

APPROVED BY:

\_\_\_\_\_  
Shift Commander

\_\_\_\_\_  
Deputy Warden