

No. 10-945

---

---

IN THE  
**Supreme Court of the United States**

---

ALBERT W. FLORENCE,  
*Petitioner,*

v.

BOARD OF CHOSEN FREEHOLDERS  
OF THE COUNTY OF BURLINGTON, ET. AL,  
*Respondents.*

---

**On Writ of Certiorari to the  
United States Court of Appeals  
For the Third Circuit**

---

**BRIEF ON BEHALF OF *AMICI CURIAE*,  
POLICEMEN'S BENEVOLENT ASSOCIATION,  
LOCAL 249, POLICEMEN'S BENEVOLENT  
ASSOCIATION, LOCAL 199, POLICEMEN'S  
BENEVOLENT ASSOCIATION, LOCAL 177,  
POLICEMEN'S BENEVOLENT ASSOCIATION,  
LOCAL 109, AND POLICEMEN'S  
BENEVOLENT ASSOCIATION, LOCAL 167,  
IN SUPPORT OF RESPONDENTS**

---

JAMES M. METS  
*Counsel of Record*  
BRIAN J. MANETTA  
METS SCHIRO & MCGOVERN, LLP  
555 Highway 1 South, Suite 240  
Iselin, New Jersey 08830  
(732) 636-0040  
jmets@msmlaborlaw.com  
*Counsel for Amici Curiae*

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF THE <i>AMICI</i> .....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT.....	3
VISUAL INSPECTIONS OF INMATES ENTERING THE GENERAL POPULA- TION OF A PRISON OR JAIL ARE A CONSTITUTIONAL AND EFFECTIVE MEANS OF ENSURING THE SAFETY OF CORRECTIONS OFFICERS .....	3
CONCLUSION .....	24
APPENDIX .....	1a
APPENDIX A: Selected excerpts from the transcript of the June 8, 2010 interest arbitration hearing in <i>County of Bur- lington v. Policemen’s Benevolent Asso- ciation, Local #249 Corrections Officers,</i> Case. No. IA-2009-115. ....	1a
APPENDIX B: Selected excerpts from the transcript of the June 10, 2010 interest arbitration hearing in <i>County of Bur- lington v. Policemen’s Benevolent Asso- ciation, Local #249 Corrections Officers,</i> Case. No. IA-2009-115. ....	12a

## TABLE OF AUTHORITIES

CASES	Page
<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979).....	<i>passim</i>
<i>Block v. Rutherford</i> , 468 U.S. 576 (1984).....	9, 19, 20
<i>Bull v. City of San Francisco</i> , 595 F.3d 964 (9th Cir. 2010).....	9, 20, 21, 22
<i>Dodge v. County of Orange</i> , 282 F.Supp.2d 41 (S.D.N.Y. 2003) .....	9
<i>E.E.O.C. v. GEO Group, Inc.</i> , 616 F.3d 265 (3rd Cir. 2010).....	23
<i>Florence v. Bd. of Chosen Freeholders of the County of Burlington</i> , 621 F.3d 296 (3rd Cir. 2010), <i>cert. granted</i> , 79 U.S.L.W. 3442 (U.S. Apr. 4, 2011).....	<i>passim</i>
<i>Fraise v. Terhune</i> , 283 F.3d 506 (3rd Cir. 2002).....	16
<i>Hudson v. Palmer</i> , 468 U.S. 517 (1984).....	8-9, 19, 20
<i>Overton v. Bazzetta</i> , 539 U.S. 126 (2003).....	9
<i>Pell v. Procunier</i> , 417 U.S. 817 (1974).....	17
<i>Powell v. Barrett</i> , 541 F.3d 1298 (11th Cir. 2008).....	20, 21, 22
<i>Stanley v. Henson</i> , 337 F.3d 961 (7th Cir. 2003).....	20

## TABLE OF AUTHORITIES—Continued

STATUTES	Page
N.J. STAT. ANN. § 2C:33-29 (2011) .....	16
N.J. STAT. ANN. § 34:13A-16 (2011) .....	6
N.J. STAT. ANN. § 34:13A-17 (2011) .....	6
OTHER AUTHORITIES	
<i>The Findings and Recommendations of the Commission on Safety and Abuse in America's Prisons: Hearing Before the Subcomm. On Corrections and Rehabilitation of the S. Comm. on the Judiciary, 109th Cong. 608 (2006)</i> .....	4
Paul J. Bierman, <i>Improving Correctional Officer Safety: Reducing Inmate Weapons</i> (2007), <a href="https://www.ncjrs.gov/pdffiles1/nij/grants/220485.pdf">https://www.ncjrs.gov/pdffiles1/nij/grants/220485.pdf</a> .....	4
Brian Dawe, <i>Behind the Walls</i> , American Cop Magazine, March 2, 2006 .....	13
Federal Bureau of Prisons, <i>Management of MRSA</i> (2011), available at <a href="http://www.bop.gov/news/pdfs/MRSA.pdf">http://www.bop.gov/news/pdfs/MRSA.pdf</a> .....	13
New Jersey Department of Health and Senior Services, <i>MRSA Preventing Skin Infections</i> , available at <a href="http://www.state.nj.us/health/cd/mrsa/documents/prison_mrsa_newsletter.pdf">http://www.state.nj.us/health/cd/mrsa/documents/prison_mrsa_newsletter.pdf</a> . (last visited July 29, 2011) .....	12, 13

## TABLE OF AUTHORITIES—Continued

	Page
New Jersey State Commission of Investigation, <i>Gangland Behind Bars: How and Why Organized Criminal Street Gangs Thrive in New Jersey's Prisons . . . And What Can Be Done About It</i> (2009), available at <a href="http://www.state.nj.us/sci/pdf/Gangs%29sci%20Full.pdf">http://www.state.nj.us/sci/pdf/Gangs%29sci%20Full.pdf</a> . . . . .	15
PubMed Health, <i>Kaposi's Sarcoma</i> (2010), <a href="http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001682/">http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001682/</a> . . . . .	14
Elizabeth Scarborough, <i>HPD Inmate Hides Gun in Fat Layers</i> , <i>Click 2 Houston</i> , August 6, 2009, <a href="http://www.click2houston.com/news/20301265/detail.html">http://www.click2houston.com/news/20301265/detail.html</a> . . . . .	10, 11

## INTEREST OF THE *AMICI*<sup>1</sup>

*Amici curiae* are public sector labor unions affiliated with the New Jersey State Policemen's Benevolent Association that serve as the exclusive bargaining representatives for corrections officers in several counties throughout the State of New Jersey.<sup>2</sup> Each individual local union has a substantial interest in assuring that its members work in the safest possible environment. While no prison can be made completely safe for the men and women who work within its walls, certain precautions can enhance safety within the facility. Visual inspections of inmates prior to their placement in the general population is a simple and constitutional means of increasing the safety and wellbeing of corrections officers.

---

<sup>1</sup> Pursuant to Supreme Court Rule 37.6, counsel for *Amici* states that no counsel for a party authored this brief in whole or in part, and that no person other than *Amici*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Blanket letters of consent for the filing of *amicus curiae* briefs have been filed with the Clerk of the Court pursuant to Rule 37.3.

<sup>2</sup> Policemen's Benevolent Association (hereinafter, "PBA") Local 249 is the exclusive representative of rank-and-file corrections officers employed by Burlington County. PBA Local 199 is the exclusive bargaining agent for rank-and-file corrections officers employed by Union County. PBA Local 177 is the exclusive bargaining agent for all corrections officers employed by Somerset County. PBA Local 109 is the exclusive bargaining agent for rank-and-file corrections officers employed by Hudson County. PBA Local 167 is the exclusive bargaining agent for rank-and-file corrections officers employed by Mercer County. Each individual local is affiliated with the New Jersey State Policemen's Benevolent Association.

*Amici* seek to provide this Court with the unique perspective of the men and women who benefit most from visual inspections – corrections officers. The United States Court of Appeals for the Third Circuit carefully balanced the rights of prisoners with the need to maintain a secure prison environment and found that the visual inspections were necessary to maintain institutional security at the Burlington and Essex County jails. *Florence v. Bd. of Chosen Freeholders of the County of Burlington*, 621 F.3d 296, 308 (3rd Cir. 2010), *cert. granted*, 79 U.S.L.W. 3442 (U.S. Apr. 4, 2011). As these visual inspections protect corrections officers, *Amici* file this brief in support of the Respondents in this matter.

### **SUMMARY OF THE ARGUMENT**

As this Court has recognized, “[a] detention facility is a unique place fraught with serious security dangers.” *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). Each day, corrections officers leave their homes and go to work without any guarantee that they will return safely. The unions that represent corrections officers are duty bound to ensure that employment within a correctional facility is as safe as possible under the circumstances.

Visual inspections of individuals entering the general inmate population is the first line of defense for corrections officers. This simple precaution advances officer safety and prevents an already dangerous environment from becoming deadly. A visual inspection can uncover secreted contraband, identify certain contagious illnesses and uncover gang affiliations. The information obtained through these inspections increases the security of the prison, and thus the safety of corrections officers and civilian employees.

This Court has held that in the context of strip searches, inmate privacy interests must give way to the safety and security of the prison environment. *Bell*, 441 U.S. at 559. Corrections officers rely on visual inspections to keep them safe. Accordingly, this Court must affirm the Third Circuit's decision in this matter.

### ARGUMENT

#### **VISUAL INSPECTIONS OF INMATES ENTERING THE GENERAL POPULATION OF A PRISON OR JAIL ARE A CONSTITUTIONAL AND EFFECTIVE MEANS OF ENSURING THE SAFETY OF CORRECTIONS OFFICERS.**

Visual inspections of inmates entering the general population of a correctional facility are essential for the safety and well being of corrections officers. Simply observing an inmate's body prior to his or her incarceration in the general population of a county jail can provide corrections officers and jail administrators invaluable information concerning the prisoner. A visual inspection can reveal contraband such as weapons and drugs. A trained corrections officer can also identify certain contagious diseases as well as possible gang affiliation during a visual observation. Disallowing visual inspections will place corrections officers at a stark disadvantage in the constant struggle to maintain control of the prison population.

The safety of corrections officers is of paramount importance to the *Amici*. In 2005, the New Jersey Department of Corrections released a report from the Commission on Safety and Abuse in America's



Prisons.<sup>3</sup> The statistics contained in this report are shocking. Nationally, on average, there were 88 inmate assaults on officers per day in 2001. *Id.* There were 39 deaths in the line of duty between 2000 and 2003. *Id.*

A 2007 study, entitled *Improving Correction Officer Safety: Reducing Inmate Weapons*, recognized that while the Federal Bureau of Investigation (“FBI”) keeps detailed records of police officers killed in the line of duty, there are no comparable statistics with regard to corrections officers.<sup>4</sup> This study found that in 1990, there were 10,731 reported assaults by inmates on federal corrections facility staff. *Id.* at 2-3. By 1995, the number of assaults rose to 14,165. *Id.* at 3. The nearly one-third increase in the number of assaults was accompanied by an increase in violence. While no officers were killed as a result of the assaults reported in 1990, fourteen (14) corrections officers and staff members were killed in 1995. *Id.* at 3.

Inmate on inmate assaults are twice as common as assaults on corrections officers. *Id.* “Approximately 3% of prisoners are assaulted and injured by other prisoners each year in federal prisons. The probability of similar assaults is almost four times higher in state prisons.” *Id.* These assaults place corrections

---

<sup>3</sup> *The Findings and Recommendations of the Commission on Safety and Abuse in America’s Prisons: Hearing Before the Subcomm. On Corrections and Rehabilitation of the S. Comm. on the Judiciary*, 109th Cong. 608 (2006) (statement of William Hepner, Program Development Specialist, New Jersey Department of Corrections).

<sup>4</sup> Paul J. Bierman, *Improving Correctional Officer Safety: Reducing Inmate Weapons* (2007), <https://www.ncjrs.gov/pdffiles1/nij/grants/220485.pdf>.

officers in grave danger, as they must enter the fray between two or more violent inmates to quell the altercation. In light of these grim statistics, the precautionary policy of visual inspections as a means of protecting corrections officers must be allowed to continue.

The visual inspection at issue in this appeal was performed on an individual who was about to enter the general population of the Burlington County Jail. *Florence*, 621 F.3d at 299. Incarceration in the general population exposes inmates to corrections staff as well as other inmates. A visual inspection of each inmate entering the general population, regardless of the crime for which they are accused or convicted, is a simple and egalitarian means of ensuring the safety of the corrections staff as well as the inmates.<sup>5</sup>

At the Burlington County Jail specifically, safety is at a premium. This particular jail employs an open configuration where most prisoners are not confined to cells, but coningle in common areas. Corrections officers are deployed throughout the inmate population. These officers do not keep watch over their charges from a protected tower or booth, but are instead stationed amongst the prisoners themselves. As the inmates move throughout the jail facility, corrections officers in Burlington County are commonly alone with large numbers of inmates. For example, as inmates move to and from their

---

<sup>5</sup> This Court has declined to draw a distinction between pretrial detainees and convicted inmates and should not do so here. “There is no basis for concluding that pretrial detainees pose any lesser security risk than convicted inmates. Indeed, it may be that in certain circumstances they present a greater risk to jail security and order.” *Bell v. Wolfish*, 441 U.S. 520, 546 n.28 (1979).

recreation period, two officers are locked in a sally port with upwards of sixty inmates. *See App. A, pp. 5a-7a.* For protection, these officers are provided with a radio and a whistle. *See App. A, p. 7a.*

The ratio of officers to inmates in the dining hall is even more disproportionate. Burlington County policy requires five corrections officers to supervise eighty inmates in the dining hall. *See App. A, pp. 7a-8a.* However, there are instances when fewer officers are present in the dining hall when the prisoners dine. *See App. A, p. 7a.* Inmates will always outnumber corrections officers in a prison facility. Therefore, it is imperative that every precaution must be taken to ensure that corrections officers are as safe as possible.

At a recent Interest Arbitration hearing, PBA Local 249 President Robert Swenson had the opportunity to testify concerning the conditions within Burlington County's two jails.<sup>6</sup> Officer Swenson serves as a corrections officer as well as the Union president. He reported that the inmates housed within the County's jails are younger than in the past, and have become more violent and aggressive. *See App. A, p. 2a.* The level of respect for corrections officers has similarly decreased in the ten years since Officer Swenson began working in Burlington County. *See App. A, p. 2a.*

---

<sup>6</sup> In New Jersey, police officers and firefighters may invoke Interest Arbitration pursuant to N.J. STAT. ANN. §34:13A-16, *et. seq.*, to determine any unresolved issues concerning terms and conditions of employment following collective negotiations. Pursuant to N.J. STAT. ANN. §34:13A-17 (2011), the presiding arbitrator may administer oaths. Officer Swenson testified under oath. The relevant portions of the sworn testimony of Officer Swenson, as cited herein, is included in the attached appendix.

Altercations with inmates are a common experience throughout New Jersey's County Jails. In Burlington County, six corrections officers have recently been forced to retire as a result of injuries suffered at the hands of inmates.<sup>7</sup> In June 2011, a corrections officer was injured in a small-scale riot at the Somerset County Jail. Officers in Union, Mercer and Hudson Counties have also been injured in altercations with inmates.

For corrections officers, danger lurks around every corner of the jail. At any time, inmates can become violently aggressive towards corrections officers or each other. Reducing the opportunity and intensity of these altercations is vital to maintaining a safe prison environment. Visual inspections are the first line of defense for corrections officers. Such inspections help reduce the amount of contraband passing through to the general population, which reduces the opportunity for inmates to smuggle weapons and drugs into the jail. These inspections are also effective in identifying an inmate's gang affiliation. This

---

<sup>7</sup> Corrections Officer Ernestine Scott was involved in an altercation with an inmate in the clinic area, leaving her with permanent neck and shoulder injuries. *See* App. A, p. 9a. She was eventually forced to retire as a result of these injuries. *Id.* Corrections Officer Kelvin Mack was struck twice in the back of the head by a mentally ill inmate. *Id.* He was forced to retire as a result of his injuries. *Id.* Corrections Officer Cyphers tried to break up a fight in the dining hall between two inmates assigned to work in the kitchen. *See* App. A, p. 10a. She injured her neck in this altercation and was forced to retire. *Id.* Sergeant Ortiz sustained a back injury when assaulted by an inmate and was forced to retire early. *Id.* Corrections Officer Frazer has been out of work for a year and a half and is currently seeking retirement after he was violently struck several times by an inmate who is a high ranking member of the Bloods street gang. *Id.*

prevents rival gang members from sharing a cell and allows officers to segregate gang members from each other. In addition, a visual inspection can identify a prisoner with an infectious disease and prevent its transmission to corrections officers and other inmates.

1. The introduction of contraband into the general population of a prison can be deadly for corrections officers. During the PBA Local 249 Interest Arbitration hearing, Officer Swenson testified concerning the changes to the visual inspection policy at the Burlington County jail following the District Court's decision in this matter.<sup>8</sup> He testified, "[w]e can't really determine as to whether or not an individual that's being introduced into the facility has any type of concealed contraband, weapons or anything like that that can make it inside the secured perimeter of the jail." See App. A, p. 3. The danger posed to corrections officers by the introduction of a weapon into the general population is obvious. Fortunately, the Third Circuit recognized that visual inspections are critical to officer safety and overturned the District Court's decision. A return to the District Court's decision will place corrections officers at the Burlington County Jail and elsewhere in grave peril, as they will have lost their first line of defense against the introduction of contraband into the general prison population.

This Court has acknowledged that the smuggling of contraband into our nation's correctional institutions is a real and serious concern. *Hudson v. Palmer*, 468

---

<sup>8</sup> The Interest Arbitration proceedings occurred after the District Court's decision in this matter, but before the Third Circuit's reversal.

U.S. 517, 527 (1984) (“[A]ttempts to introduce drugs and other contraband into [prison] premises is one of the most perplexing problems of prisons.”); *Overton v. Bazzetta*, 539 U.S. 126, 134 (2003) (“drug smuggling and drug use in prisons and drug use in prisons are intractable problems”); *Block v. Rutherford*, 468 U.S. 576, 588-89 (1984) (“We can take judicial notice that the unauthorized use of narcotics is a problem that plagues virtually every penal detention center in the country.”).

In *Dodge v. County of Orange*, 282 F.Supp.2d 41 (S.D.N.Y. 2003), the Southern District of New York noted that any contraband introduced into the prison environment is dangerous. *Id.* at 46-7. “The dangers posed by weapons, ammunition or drugs are obvious. Less apparent is the danger presented by money, cigarettes or even excess prison issue items.” *Id.* at 47. These items are dangerous because they create barter economies, which foster competition among inmates. *Id.* These economies also create a class system among inmates, which can lead to violence against the “haves” and “have nots.” *Id.*

One of the more obvious points of entry for contraband into the prison facility is at intake. See *Bull v. City of San Francisco*, 595 F.3d 964, 967 (2010) (recognizing that jail administrators at San Francisco Jail No. 9 believed that “the greatest opportunity for the introduction of drugs and weapons into the jail occurs at the point when an arrestee is received into the jail for booking and, thereafter, housing.”). Thus, the most obvious place to take precautionary measures to deter smuggling is at intake, where inmates are taken from the outside and placed into the prison system.

Smuggling weapons and drugs into prisons is a very real problem. In August 2009, an overweight individual was actually in jail for fourteen hours before he admitted that he had hidden a gun and two clips between layers of his fat.<sup>9</sup> A visual inspection of this inmate would have revealed the weapon.

Keeping contraband out of prisons can be the difference between life and death for a corrections officer. Weapons brought in from the outside can turn a run of the mill fistfight between inmates into a murder. Corrections officers attacked by inmates with smuggled weapons have no means to defend themselves. While a shank-proof vest may protect against primitive “jailhouse weapons,” it cannot protect against all of the “outside” weapons an inmate can smuggle into the prison.

Plaintiffs in this case have repeatedly argued that a less intrusive means to prevent smuggling can be employed to reduce the introduction of contraband into the prison environment. Specifically, Plaintiff alleged below that the Body Orifice Scanning System (“BOSS Chair”) is a non-intrusive means to reduce smuggling. The BOSS Chair, however, is designed to detect metal objects concealed in various body cavities. *Florence*, 621 F.3d at 310. The effectiveness of the BOSS Chair for this limited purpose is questionable. For example, in the Somerset County Jail, corrections officer and PBA Local 177 President Ruben Crespo reported that the facility’s BOSS Chair regularly picks up metal rebar in the flooring and is of limited utility in preventing smuggling.

---

<sup>9</sup> Elizabeth Scarborough, *HPD Inmate Hides Gun in Fat Layers*, Click 2 Houston, August 6, 2009, <http://www.click2houston.com/news/20301265/detail.html>.

Moreover, inmates who know that the BOSS Chair will be used can easily circumvent its detection capabilities by smuggling non-metallic weapons into the prison. In addition, the BOSS Chair is not capable of detecting drugs secreted on an inmate and destined for the general prison population. *Id.*

Drug smuggling also decreases the safety of the jail environment. When a small number of inmates control the supply of drugs to the prison population, fights between inmates can erupt. These fights are a serious threat to the safety of corrections officers. Smuggling drugs can also create barter economies, which skew the general order of the prison facility. Moreover, illegal drug use may embolden inmates to be more aggressive towards officers because they are not in control of their faculties.

Visual inspections are a simple and constitutional means to prevent the introduction of drugs and weapons into the general prison population. Reducing drugs and weapons will create a safer prison environment. Corrections officers and inmates both benefit from a safer environment. If these visual inspections are outlawed, corrections officers will be the most impacted. Inmates have nothing but time on their hands to plot and scheme. They will find ways to introduce weapons into the general population, especially once it becomes known that certain individuals will be permitted to enter the general population without undergoing a visual inspection. The Third Circuit's decision gives officers a constitutionally firm preventative measure of protection against the plotters and therefore must be affirmed.

2. Visual inspections also play a vital role in the identification of certain contagious illnesses prevalent in correctional facilities. A visual inspec-



tion of detainees before they enter the prison's general population can detect highly contagious diseases like methicillin-resistant staphylococcus aureus ("MRSA"), HIV or AIDS. Detecting inmates with these diseases before they enter the general population is essential for the safety of corrections officers as well as other inmates. Contagious diseases can spread through the confines of a correctional facility very quickly. The officers and prisoners are in close proximity, in conditions that are oftentimes less than sanitary.

Identification and treatment of certain illnesses at intake is essential for the safety of the corrections staff. Christopher Briggs is a corrections officer employed at the Burlington County Jail as a transportation officer. *See* App. B, pp. 12a-14a. His duties include driving inmates to the hospital and sitting with them while they are examined. *Id.* Throughout his twenty-year tenure as a corrections officer, he has come across inmates suffering from staph infections, hepatitis, AIDS and sexually transmitted diseases. *See* App. B, pp. 15a.

MRSA is so prevalent in prisons that the New Jersey Department of Health and Senior Services has authored an informative brochure apprising inmates of the risks and how to avoid them.<sup>10</sup> MRSA is a superbug that is commonly found in high numbers in correctional facilities. *Id.* If left untreated, MRSA can cause serious health problems and lead to death. *Id.* MRSA is often detected by the presence of

---

<sup>10</sup> New Jersey Department of Health and Senior Services, *MRSA Preventing Skin Infections*, available at [http://www.state.nj.us/health/cd/mrsa/documents/prison\\_mrsa\\_newsletter.pdf](http://www.state.nj.us/health/cd/mrsa/documents/prison_mrsa_newsletter.pdf) (last visited July 29, 2011).

abscesses, cellulitis, boils, carbuncles and impetigo.<sup>11</sup> The infection kills between four and ten percent of those who contract it. *Id.*

Visual inspections at intake can identify inmates with MRSA and ensure that an infected inmate is medically segregated and receives the medical care he or she needs. This reduces the likelihood that corrections officers and inmates will become infected. Such visual inspections also reduce the likelihood that a corrections officer will carry infections from the prison to their homes and spread disease amongst their families.

While MRSA is spread through direct contact, other diseases may be spread through bodily fluids. Officer Swenson testified that Burlington County Corrections Officers have reported having feces balls and urine thrown at them. *See* App. A, p. 10a. In addition, “gassing” is common in many jails. “In prison parlance, being ‘gassed’ is when an inmate combines urine, feces, semen, vomit, mucus, blood and whatever other bodily fluid they can collect and throws it in [a corrections officer’s] face.”<sup>12</sup> Certain infectious diseases, such as HIV and AIDS can be spread through contact with bodily fluids. Moreover, certain infections that accompany HIV and AIDS,

---

<sup>11</sup> Federal Bureau of Prisons, *Management of MRSA* (2011), available at <http://www.bop.gov/news/pdfs/MRSA.pdf>.

<sup>12</sup> Brian Dawe, *Behind the Walls*, American Cop Magazine, March 2, 2006.

such as Kaposi's Sarcoma, can be identified through a visual inspection.<sup>13</sup>

Visual inspections are vital to prevent inmates with contagious diseases from entering the general prison population. While many inmates refuse to disclose whether they are stricken with a particular illness, some illnesses can be detected by simply observing the inmates' body. MRSA is one such highly contagious disease. Visual inspections are necessary to decrease the likelihood that corrections officers will contract an infectious disease.

3. There is no doubt that gangs are becoming increasingly prevalent in correctional facilities throughout the Country. Officer Swenson recently testified that, at the Burlington County Jail, the gang problem has increased considerably. *See* App. A, pp. 2a-3a. The Burlington County Jail houses Bloods, Crips, Latin Kings and other gangs. *See* App. A, p. 2a. The Bloods represent the highest percentage. *Id.* In Burlington County, the gangs are mixed in with the general population. *Id.*

Prior to the District Court's decision in this matter, corrections officers at intake would utilize visual inspections to identify an inmate's gang affiliation by the presence of gang tattoos. *See* App. A pp. 3a-4a. However, following that decision, that task became more difficult. Officer Swenson testified that after visual inspections stopped: "[t]he actual individuals themselves that are being incarcerated are getting smarter. So they're not tattooing themselves in obvious places that we can check anymore as

---

<sup>13</sup> PubMed Health, *Kaposi's Sarcoma* (2010), <http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001682/>.

much.” See App. A, p. 3a. With regard to gangs, corrections officers rely on visual inspections to identify gang members and keep them away from inmates aligned with rival gangs. Disallowing such visual inspections puts both inmates and corrections officers at risk.

In 2009, the New Jersey State Commission of Investigation (“SCI”) authored a study entitled *Gangland Behind Bars*.<sup>14</sup> The investigation revealed that nearly 150,000 documented members of criminal street gangs are currently incarcerated in federal, state and local correctional facilities around the nation. *Id.* at 11. Among the current inmate population of State prison facilities in New Jersey, which consists of over 22,000 inmates, 4,600 have been officially identified by the New Jersey Department of Corrections (“DOC”) as gang members. *Id.* This number, which many experts find conservative, does not include inmates considered “non-member associates.” *Id.* As of 2009, the DOC has reported that 75 to 80 new gang-member inmates were entering the state prison system each month. *Id.*

The SCI’s investigation recognized that county jails are a major conduit into the state prisons. *Id.* Thus, as the number of gang-affiliated inmates rises at the

---

<sup>14</sup> New Jersey State Commission of Investigation, *Gangland Behind Bars: How and Why Organized Criminal Street Gangs Thrive in New Jersey’s Prisons . . . And What Can Be Done About It* (2009), available at <http://www.state.nj.us/sci/pdf/Gangs%29sci%20Full.pdf>.

state level, the number of gang members at the county level necessarily rises at a greater rate.<sup>15</sup>

Gang assaults in prison have become such a problem that the New Jersey Department of Corrections created a policy designed to isolate and rehabilitate gang members. See *Fraise v. Terhune*, 283 F.3d 506, 509 (3rd Cir. 2002). Under this policy, prison officials were permitted to transfer “core” members of certain gangs and transfer them to the Security Threat Group Management Unit (“STGMU”). *Id.* This policy was specifically designed to reduce assaults on staff and inmates. *Id.* One of the means employed by the DOC to identify gang members for transfer to the STGMU was by the presence of gang tattoos. *Id.* at 510. Justice Alito, then serving on the Third Circuit Court of Appeals, authored *Fraise* and upheld New Jersey’s STGMU policy in part because it would reduce the danger to corrections officers. *Id.*

The New Jersey Legislature includes the presence of gang tattoos as one of the seven criteria indicating the existence of individuals associated in a criminal street gang. See N.J. STAT. ANN. §2C:33-29 (2011). Many gangs have tattoos easily identifiable to a trained corrections officer. Visual inspections are necessary to identify the tattoo and appropriately identify the gang affiliation.

Very few, if any, gang members are willing to simply tell a corrections officer that they are members of a particular gang. Indeed, many gang members find it advantageous to downplay their respec-

---

<sup>15</sup> The percentage of gang-affiliated inmates at the county level may be higher than that of gang members in the state prison system as not all prisoners incarcerated at the county level graduate to prisons under the purview of the DOC.

tive affiliations. A visual inspection at intake is a simple means to determine whether an individual is a gang member. This, in turn, will allow corrections officers to properly separate rival gang members. Without this line of defense, corrections officials are unable to properly place prisoners within the general population.

Improper placement of an inmate can have deadly consequences. Many gangs are constantly at war. Fights amongst rival gangs are common. Even a small fight within the confines of a prison can become a large-scale conflagration in a matter of seconds. Corrections officers must break up these fights and in so doing, place themselves in harm's way.

A simple visual inspection at intake can identify gang members and allow corrections officers to properly place them in the appropriate area of the correctional facility. Keeping rival gang members separated from each other can decrease the likelihood of prison violence. The less violent a prison is, the safer the corrections officers who work within its walls will be.

4. This Court has consistently considered prison security concerns when determining cases brought under the Fourth Amendment. "Central to all other corrections goals is the institutional consideration of internal security within the corrections facilities themselves." *Bell*, 441 U.S. at 546-47, (citing *Pell v. Procunier*, 417 U.S. 817, 823 (1974)). This central tenant of institutional security has helped shape the Court's jurisprudence with regard to the rights retained by inmates within the prison walls. *See Bell*, 441 U.S. at 546. While a prisoner does not lose his constitutional rights when confined within a

prison facility, those rights must necessarily be limited in order to maintain a safe prison environment.

In the seminal case of *Bell v. Wolfish*, this Court approved the Federal Bureau of Prisons' policy that required inmates at the Metropolitan Correctional Center to expose their body cavities for visual inspection as part of a strip search conducted after contact visits with persons from outside the institution. *Id.* These visual cavity searches provided an opportunity to discover and deter the smuggling of weapons, drugs and other contraband into the facility. *Id.* These strip searches were conducted after contact visits with persons from outside the institution. *Id.* Corrections officials testified that visual cavity searches provided an opportunity to discover and deter the smuggling of weapons, drugs and other contraband into the facility. *Id.*

The inherent dangers of the prison environment played a large part in this Court's determination. "A detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence." *Id.* This Court noted numerous inmate attempts to smuggle contraband into the prison by concealing it in a body cavity. *Id.* While mindful that the searches are intrusive, and that the occasional corrections officer might conduct an abusive search, the safety concerns outweigh the invasion of privacy. *Id.* This Court found that prison authorities must be given broad discretion to take the steps necessary to ensure the safety of inmates and corrections personnel and to prevent escape and unauthorized entry. *Id.* at 547.

Similarly, in *Hudson v. Palmer*, 468 U.S. 517 (1984), this Court found that an inmate has no reasonable expectation of privacy within his or her cell. Once again, security concerns weighed heavily in the decision. “Within [the] volatile [prison] ‘community,’ prison administrators are to take all necessary steps to ensure the safety of not only the prison staffs and administrative personnel, but also visitors. They are under an obligation to take necessary steps to guarantee the safety of the inmates themselves.” *Id.* at 526.

This Court further relied on security concerns to affirm a policy denying contact visits to pretrial detainees. *Block v. Rutherford*, 468 U.S. 576 (1984). The contact visits at issue exposed potentially violent detainees to family, friends and prison staff. *Id.* at 586. This Court’s analysis focused on the risk, no matter how remote, that innocent people could be taken hostage or used as pawns in an escape attempt. *Id.* The mere risk that the safety of innocent individuals would be jeopardized was sufficient for this Court to deny such visits. *Id.*

Moreover, this Court has recognized the danger of classifying inmates based on perceived security levels. *Hudson*, 468 U.S. at 529; *Block*, 468 U.S. at 587. In *Block*, the Court acknowledged the danger in distinguishing pretrial detainees from convicted criminals with regard to security procedures on the basis of perceived security risks. *Block*, 468 U.S. at 587. “It is not unreasonable to assume, for instance, that low security risk detainees would be enlisted to help obtain contraband or weapons by their fellow inmates who are denied contact visits.” *Id.* Moreover, the possibility of confusing inmates with a low propensity for violence with those who regularly



engage in violence, drug smuggling or escape is exceedingly high. *Id.*

The *Hudson* Court also recognized the danger of establishing a plan for supposedly random searches. “It is simply naïve to believe that prisoners would not eventually decipher any plan officials might devise for ‘planned random searches,’ and thus be able to routinely anticipate searches.” *Hudson*, 468 U.S. at 529. The random search of a prisoner’s cell and locker was deemed valid and necessary to “ensure the security of the institution and the safety of inmates and all others within its boundaries.” *Id.*

More recently, the Third, Seventh, Ninth and Eleventh Circuits have determined that blanket visual inspections or strip search policies were permissible under the Fourth Amendment, based largely on this Court’s concern for institutional security. See *Florence*, 621 F.3d at 299, *Bull*, 595 F.3d at 977, *Powell v. Barrett*, 541 F.3d 1298 (11th Cir. 2008).

The Seventh Circuit, in *Stanley v. Henson*, 337 F.3d 961 (7th Cir. 2003), found that forcing an arrestee to remove her clothing and don prison attire while in view of prison personnel did not violate the Fourth Amendment. *Id.* at 967-68. Relying on *Bell v. Wolfish*, the Seventh Circuit gave deference to prison official’s justification for the search, which was to locate and control contraband, which in turn increases safety for corrections officers, staff and inmates. *Id.* at 966. The Eleventh Circuit, in *Powell v. Barrett*, similarly relied upon institutional security and safety to justify strip-searching pretrial detainees. The *Powell* Court relied on the expert opinions

of jail administrators, who had determined that anyone to be detained in the general population of a detention facility should be strip-searched in an effort to reduce smuggling. *Powell*, 541 F.3d at 1311.

The Eleventh Circuit's decision also analyzed the security threat an unsearched prisoner can cause to prison personnel. "The [prison] officials usually have no way of knowing whether someone coming into the detention facility after an arrest on a misdemeanor or other minor offense is only a minor offender or is also a gang member who got himself arrested so that he could serve as a mule smuggling contraband in to other members." *Id.* at 1311. The need for the strip searches was obvious:

The need for strip searches at all detention facilities, including county jails, is not exaggerated. Employees, visitors, and (not least of all) the detained inmates themselves face a real threat of violence, and administrators must be concerned on a daily basis with the smuggling of contraband by inmates accused of misdemeanors as well as those accused of felonies.

*Id.* at 1310.

The Ninth Circuit's *en banc* decision in *Bull v. City of San Francisco* similarly focused on security concerns to validate the City of San Francisco's blanket strip search policy. The *Bull* Court found that searches performed on pretrial detainees before they were transferred into the general jail population was reasonably related to prevent the introduction of drugs, weapons and other contraband into the jails. *Bull*, 595 F.3d at 976. Preventing the smuggling of contraband through these searches served to protect the prison staff as well as the inmates. *Id.* The *Bull*

Court also recognized that due to the “ongoing, dangerous and perplexing contraband-smuggling problem,” there were no obvious, easy alternatives to prevent smuggled items from entering the prison. *Id.* at 977.

The Ninth Circuit shared the Eleventh Circuit’s concern that all arrestees have the potential to smuggle contraband. *Id.* at 979-80; *see also, Powell*, 541 F.3d at 1313. The fact that not everyone is arrested on a moment’s notice and may have the opportunity to conceal drugs or weapons on their person is a very real danger, especially in light of the proliferation of gangs in America’s prisons.

The Third Circuit below was mindful that the visual inspections at issue were significant intrusions on an individual’s privacy. *Florence*, 621 F.3d at 307. However, significant security concerns caused the *Florence* Court to decide this matter similarly to *Bull* and *Powell*. The prevention and detection of contraband prior to its introduction into the general population outweighed the privacy interests of the inmates and thus the Third Circuit overturned the District Court’s grant of summary judgment to the Plaintiffs in this matter. *Id.* at 311.

In its decision, the Third Circuit was mindful of the inherent danger of distinguishing between inmates based on the degree of the crime accused. The Court found that: “[i]t is plausible that incarcerated persons will induce or recruit others to subject themselves to arrests on non-indictable offenses to smuggle weapons or other contraband into the facility.” *Id.* at 308. A blanket visual inspection policy is a clear deterrent for potential smugglers. A well-established, particularized policy, however, does not. “If non-indictable offenders were not subject to automatic

search it would create a security gap which offenders could exploit with relative ease.” *Id.* The Third Circuit further recognized that “[a] detention facility need not suffer a pattern of security breaches before it takes steps to prevent them where those steps are neither ‘irrational [n]or unreasonable.’” *Id.* at 310.

As this Court instructed in *Bell*, jailers and corrections officials “should be accorded wide ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and maintain institutional security.” *Bell*, 441 U.S. at 547. The visual inspection policy at issue in this matter is vital to the security needs of a prison.

In *E.E.O.C. v. GEO Group, Inc.*, 616 F.3d 265 (3rd Cir. 2010), the Third Circuit acknowledged that “[a] prison is not a summer camp and prison officials have the unenviable task of preserving order in difficult circumstances.” *Id.* at 275. Visual inspection of inmates is one such difficult and unenviable task. The inspections are necessary, however, to protect all of the individuals spending time within a prison’s walls. This includes the inmates as well as the brave men and women who show up each day to work within the confines of a correctional facility.

This Court has determined that visual inspections are justifiable from both penalogical and constitutional perspectives. *See Bell*, 441 U.S. at 557. As a practical matter, a visual inspection protects corrections officers by preventing the introduction of contraband into the prison environment and fosters the identification of gang membership and communicable diseases. Accordingly, this Court must affirm the Third Circuit’s decision in this matter.

**CONCLUSION**

For the foregoing reasons, this Honorable Court must affirm the Third Circuit's decision in this matter.

Respectfully submitted,

JAMES M. METS

*Counsel of Record*

BRIAN J. MANETTA

METS SCHIRO & MCGOVERN, LLP

555 Highway 1 South, Suite 240

Iselin, New Jersey 08830

(732) 636-0040

[jmets@msmlaborlaw.com](mailto:jmets@msmlaborlaw.com)

*Counsel for Amici Curiae*

## **APPENDIX**

1a

**APPENDIX A**

ARBITRATION HEARING  
CASE NO. IA-2009-115

---

COUNTY OF BURLINGTON

vs.

POLICEMEN'S BENEVOLENT ASSOCIATION  
LOCAL #249 CORRECTIONS OFFICERS

---

Arbitrator: Timothy A. Hundley

Computer-aided transcript taken stenographically in the above-entitled matter before DONNA ROSNER a Certified Court Reporter, License No. XI001976, and Notary Public of the State of New Jersey, at the offices of Capehart and Scratchard, Laurel Corporate Center, Suite 300S, 8000 Midlantic Drive, Mount Laurel, New Jersey, on Tuesday, June 8, 2010, commencing at 11:22 a.m.

\* \* \*

[13] Q. And as far as the security level, what is BCDC?

A. BCDC houses all the male inmates that are max. We do have medium, and some medium/minimum classified inmates. So for the most part, it's as the max facility.

Q. And it houses anywhere between medium/minimum up through maximum security inmates?

A. Yes.

Q. And do you know how many inmates are housed at the maximum security facility?

A. The count fluctuates daily. I mean, right now I believe it's probably around 380 to 390, somewhere around in there.

Q. And in your ten years of experience, have you noticed any change in the characteristics of the types of inmates that are being housed in the facility?

A. Yes. The inmates have definitely been getting younger, more violent, more aggressive, you know, as opposed to ten years ago.

Q. Have you noticed any change in the level of respect for the correctional officers [14] from the inmates?

A. Yes, definitely.

Q. How so?

A. It's deteriorated totally. It's horrible, horrible.

Q. Are there any gangs in the maximum correctional facility?

A. Yes, we have gangs.

Q. Which gangs are represented?

A. We have—I think the most amount are the Bloods with the different sex, and we also have some Crips, Latin Kings, and other ones that have been identified, you know, by our gang unit.

Q. The Bloods represent the highest percentage?

A. Yes.

Q. And does the county correctional—Department of Corrections segregate the gang population from the general population?

A. No. They're mixed in with general population.



Q. In your ten years, have you noticed whether or not the gang population has increased, decreased, remained the same?

[15] A. I think its increased considerably.

Q. Are the gang members of particular—of a particular gang, are they segregated from one another or are they allowed to congregate?

A. What they try to do is segregate Bloods from Bloods, and Crips from Crips, and stuff like that, but they're integrated amongst different gang members on different tiers.

Q. Are you familiar with the recent court ruling that prohibited strip searches of inmates?

A. I'm familiar with it.

Q. And has that had any effect on the way that you as a corrections officer have approached your job?

A. Well, it's definitely a setback.

Q. How so?

A. We can't really determine as to whether or not the individual that's being introduced into the facility has any type of concealed contraband, weapons, or anything like that that can make it inside the secured perimeter of the jail.

Q. What about, did it have any impact on the ability to identify gang markings?

[16] A. Yes. The actual individuals themselves that are being incarcerated are definitely getting smarter. So they're not tattooing themselves in obvious places that we can check anymore as much.

Q. You talked about the maximum security facility. What is CWRC? What types of inmates does that facility house?

A. We have medium—the highest classification is medium/minimum for the males out there, and it goes all the way down to minimum. And they basically go out there. There's different details that the inmates leave for: Landfills, cemetery. Buttonwood Hospital, they participate in detail out there. And other inmates are basically housed in which are like the D wings, the medium/minimums that aren't classified to go outside. And there's the female side which houses all the way from minimum all the way to max.

Q. Can you describe—let's go back to the BCDC. Can you describe the physical characteristics or how the jail is setup?

A. Do you mean like—

Q. As far as the different—the

\* \* \*

[22] Q. What's that mean, jumper and ID card?

A. Their jail-issued jumper, and their jail-issued identification card with their name and their inmate information on it.

And you would move them—if they're going inside to rec, you would move them to the top level. They'd line up. If they're going outside, they move to the bottom level, because the rec yard is actually on the third floor going out.

Q. Are the inmates broken up into groups for rec or do all of them go out at the same time?

A. All of them go at the same time.

Q. You said there were two rec officers. How many officers would supervise the movement of the inmates into rec?

A. It would be the tier officer himself would participate in the supervision, and you would also have the booth officer, and just the two rec officers. So it would be four.

Q. Once they're lined—say today they're going outside for rec and they're lined up on the lower level, where do they move from [23] the lower tier to the next spot?

A. They would move into what we call a sally port. Basically it's a small hallway, a small space before they're moved out. And then the tier door would close, the main door, and then they would pop the sally port door leading out to the rec yard, and then the inmates would follow into the rec yard that way.

Q. So the sally port has two locked doors on each end?

A. Yes. You would have the tier door and then the outside rec door.

Q. And the inmates are led into the sally port —

A. Yes.

Q. —through the tier door?

A. Through the tier door.

Q. Is that door then locked before the other door is open?

A. Yes. That's policy.

Q. And where are the rec officers at this time?

6a

A. They are—usually you have one stationed at the tier door taking count, checking the ID cards as they're coming out, and the other [24] one would be in the sally port.

Q. With the inmates?

A. With the inmates.

Q. So at some point in time, are the rec officers locked in the sally port with the inmates?

A. Yes.

Q. Has there ever been any altercations in the sally port that you're aware of?

A. There has been over the years.

Q. How do the officers get to the officers in the sally port to assist them?

A. Well, if there's any type of disturbance a code would be called. It would go through center control, which is basically the nervous system, so to say, of the jail. And they would, you know, put an all page out that there's a Code 2.

Q. What's a Code 2?

A. Minor disturbance or fight, inmates refusing to work, anything which you would require backup for assistance. And officers would respond from wherever areas that they're at to the area that the disturbance is in.

Q. If you have two rec officers in the [25] sally port, how many prisoners would fit in the sally port when they go out to rec?

A. How many is going to rec? Usually E wing, for example, the maximum wing, is only 30 inmates. You can fit all 30 with no problem. It's tight. But some of

the bigger wings—F wing you might have 50, 60 guys going to rec. It's quite confusing.

Q. I'm going to move away from this area for just a second. What type of equipment do you carry when you're a tier officer?

A. A jail-issued radio, a whistle, that's really about it.

MR. METS: That's it.

Excuse me one second.

(Whereupon, discussion held off the record.)

BY MR. METS:

Q. Now, you described two types of movement where half the wing would be out at one time, and then rec where the entire wing would be out. Are there any other types of movements where all the inmates would be released at one time?

A. I mean in the rare occasion where [26] everybody wanted to go to church. All the inmates top and bottom would be open for them to go out.

Q. What about chow?

A. On the bigger wings, no. It's divided top and bottom for security purposes.

Q. Can you describe the physical structure of the dining hall?

A. Actually it's a huge dining hall with tables with four seats, four little stools. It can hold up to 80 inmates in there at a time. And then there's a chow line with two windows that they receive trays, and an entry door from each side of the jail, like what we call pod 2 or A/B side. There is a main entry door. There's also another main entry door on the E/F side.

And then there's the officers' dining room that sits right behind it with a secured door on that as well.

Q. Are officers in the dining hall with the inmates when they're eating?

A. Yes.

Q. And how many officers would be assigned to the dining hall?

A. Well, the policy calls for five as [27] well as one supervisor.

Q. Well, is the policy followed?

A. Sometimes. I mean, sometimes we're short.

Q. How many officers—how many corrections officers work for Burlington County Corrections?

A. I think our number is at 230—around 230 right now.

Q. Approximately 230?

A. 230.

Q. That includes supervisors or just CO's?

A. Just CO's.

Q. How many supervisors are there; do you know?

A. It's 34 or 33.

Q. Can you describe the different assignments that are unique to the BCDC?

A. Like jobs?

Q. Jobs, posts.

A. Well, a lot of the assignments basically coincide with BCDC and CWRC, the same jobs, but you can be a tier officer at the main jail.

[43] A. In the final offer, I believe they eliminated it completely.

Q. So without the bidding system, who would assign the posts?

A. Either it would be your shift supervisors or administration. You would walk in and somebody would just tell you where you're working.

Q. Do you have any knowledge of any officers who have been injured in the line of duty?

A. There's been several in the past ten years that I've been there.

Q. Any that you're aware of that have been seriously injured before compelled retirement?

A. Actually a few in the past. I think it's been three or four years. It's been more so than the past.

Q. Are you familiar with a situation involving Officer Jensen?

A. That's not Jensen. That's supposed to be Ernestine Scott. She was involved with an inmate in an altercation in the clinic area, leaving her with permanent neck and shoulder [44] injuries, causing her to retire.

Q. What about Officer Mack?

A. Officer Kelvin Mack was involved with one of the mental patients, so to say, mentally ill. He got struck in the back of the head twice with a cane which led to his early retirement.

Q. And Officer Cyphers?

A. She was involved in breaking up a fight in the chow hall area between two kitchen workers when she was assigned as a kitchen officer, injured her neck and forced to retire early.

Q. What about Sargent Ortiz?

A. Sargent Ortiz, to my recollection, believe she got hurt by an inmate in the detention area, sustained a back injury and had to retire early.

Q. Are you familiar with the situation involving Officer Frazer?

A. Yes.

Q. And what happened with Officer Frazer?

A. Officer Frazer was struck by an inmate several times, a high-ranking Blood member

\* \* \*

[46] early 30's, early to mid 30's.

Q. Have you ever experienced inmates attempting to expose you to bodily fluids?

A. Some inmates do.

Q. What do they do?

A. Some of them will roll—you know, take feces balls and try to roll them under the door, or there's been officers at times that suspected they had urine thrown on them. It's kind of hard to confirm. That definitely happens, not as often, but it does.

Q. Are you familiar with the sick time policy that the administration has implemented regarding sick time verification?

A. Yes.



11a

Q. And could you explain what your knowledge of that policy is regarding the verification part?

A. The verification part?

Q. Yes.

A. If you call out sick, it was always part of the policy that you were subject to attendance verification where they called your house to make sure that you're in your residence while you were sick. It was recently

\* \* \*

12a

**APPENDIX B**

ARBITRATION HEARING  
CASE NO. IA-2009-115

---

COUNTY OF BURLINGTON

vs.

POLICEMEN'S BENEVOLENT ASSOCIATION  
LOCAL #249 CORRECTIONS OFFICERS

---

Arbitrator: Timothy A. Hundley

Computer-aided transcript taken stenographically in the above-entitled matter before DONNA ROSNER, a Certified Court Reporter, License No. XI001976, and Notary Public of the State of New Jersey, at the offices of Capehart and Scatchard, Laurel Corporate Center, Suite 300S, 8000 Midlantic Drive, Mount Laurel, New Jersey, on Thursday, June 10, 2010, commencing at 10:45 a.m.

\* \* \*

[11] A. Yes.

Q. With the same weapon?

A. No, sir.

Q. What weapon do you carry off duty?

A. I have a Smith Wesson 4906, 9 millimeter.

Q. You're qualified with that weapon also?

A. Yes.

Q. As a transportation officer, do you at times have to take ill or injured inmates to the medical facilities?

A. Yes, to the emergency room. Sometimes they're admitted. We have to do hospital duty.

Q. What does "hospital duty" consist of?

A. When you're assigned hospital duty, you sit in the room with them while they're in the hospital.

Q. Are these inmates secured while they're in the hospital?

A. Yes. Yes, they are.

Q. How so?

A. They're handcuffed and shackled to [12] the beds.

Q. So feet and wrists?

A. Just feet.

Q. Just feet?

A. Yeah.

Q. Their arms are free?

A. Yes.

Q. And how many officers will sit with an inmate in the hospital?

A. Two.

Q. Is there a minimum number of officers who are engaged in transport?

A. Two.

Q. And what type of vehicle do you use to transport the prisoners?

A. The jail van.

Q. Does that have a secure area?

A. Yeah, a caged area.

Q. At times do you take more than one inmate?

A. Yes.

Q. When you have to transport an inmate for a medical, are you made aware if that inmate is infectious or carrying bloodborne pathogens?

A. Oh, no.

[13] Q. Are you given any protective gear?

A. No.

Q. In your 20 years—what facility are you assigned to?

A. The Mount Holly, the maximum facility, the main jail.

Q. Main jail?

A. Right.

Q. Is that what we've been calling BCDC?

A. BCDC, yes.

Q. In your—have you always been assigned to BCDC?

A. The majority of the time, yes.

Q. Sometimes you were at the minimum security facility?

A. Yes.

Q. How long were you at minimum?

A. Maybe a month, here or there.

Q. So 19-plus years at the maximum security facility?

A. Yes.

Q. Are you aware if there's—in your experience have you come across inmates who have had infectious diseases?

[14] A. Yes.

Q. What type of diseases?

A. Staph, hepatitis, AIDS, venereal diseases.

Q. Have you ever worked classification?

A. Yes.

Q. Do you currently work classification?

A. When there's no transportation, I do assist.

Q. Are you familiar with the process of the system that's in place for processing an inmate from the time he comes into the facility up through classification?

A. Yes.

Q. When an inmate is brought into the facility, what's the first thing that they are required to do?

A. Be searched, quelled, and changed over into a uniform.

Q. What is "quelled"?

A. It's a liquid they put on for lice. I believe it's lice.

Q. So it's a delousing formula?

A. Yes, sir.