

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE
ATTORNEY GENERAL

P.O. Box 30736
LANSING, MICHIGAN 48909-8236

September 21, 2017

Via United Parcel Service – overnight delivery

Clerk of the Court
Washtenaw County Circuit Court
101 E. Huron Street
PO Box 8645
Ann Arbor, MI 48107-8645

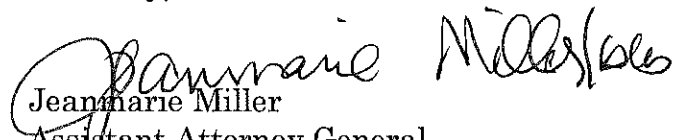
Re: *Tom Nowacki, et al v MDOC*
Washtenaw County Circuit Court No. 11-852-CD

Dear Clerk of the Court:

Enclosed for filing and a "judge's copy", please find Defendant's Response in Opposition to Plaintiffs' Motion for Summary Disposition and a Proof of Service in the above referenced matter.

Thank you for your assistance.

Sincerely,

Handwritten signature of Jeanmarie Miller in black ink.

Jeanmarie Miller
Assistant Attorney General
Civil Litigation, Employment &
Elections Division
517.373.6434

JM:blb

Enclosures

c: James K. Fett
Glen N. Lenhoff

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT
WASHTENAW COUNTY

TOM NOWACKI, et al,

Plaintiffs,

v

No. 11-852-CD

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

HON. DAVID S. SWARTZ

Defendant.

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PROOF OF SERVICE

The undersigned certifies that a copy of the following was served upon the attorneys of record in the above cause by U.S. mail to Glen N. Lenhoff and James K. Fett at the above addresses, respectively, with postage fully prepaid, on the 21st day of September, 2017:

1. Defendant's Response in Opposition to Plaintiffs' Motion for Summary Disposition; and
2. Proof of Service.


Legal Secretary

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 22ND JUDICIAL CIRCUIT
WASHTENAW COUNTY

TOM NOWACKI, et al,

Plaintiffs,

v

No. 11-852-CD

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

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**DEFENDANT'S RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION**

INTRODUCTION

In response to Plaintiffs' motion for summary disposition, Defendant initially refers this Court to Defendant's motion and brief in support of Defendant MDOC's motion for summary disposition filed on August 25, 2017. As stated in Defendant's motion for summary disposition, and as set forth below, summary disposition in

favor of the Michigan Department of Corrections is warranted in this matter. The undisputed evidence demonstrates that MDOC's 2009 limited expansion of the use of BFOQs in the Women's Huron Valley Correctional Facility did not violate the Elliott-Larsen Civil Rights Act.

ARGUMENT

A. The 2009 BFOQs were established based upon uncontroverted facts and upon the experience and reasoned judgment of longtime corrections staff.

Contrary to Plaintiffs' assertions and as held by Court of Claims Judge Mark T. Boonstra, MDOC did possess a basis in fact for the BFOQs established in 2009. It must first be pointed out that Plaintiffs have not challenged the housing unit BFOQs established in 2000 – BFOQs that were approved by the Sixth Circuit in *Everson, et al v Michigan Department of Corrections*, 391 F3d 737 (CA 6, 2004). Thus, Plaintiffs acknowledge that the housing unit BFOQs are legal and necessary. Three of the assignments challenged in this case – healthcare/infirmarium officer, off-site hospital officer and rover officer are all de facto housing unit assignments. As set forth in Defendant's Brief in Support of Defendant's Motion for Summary Disposition, the healthcare and off-site hospital assignments are housing assignments where prisoners sleep, shower and use the toilet. The rover assignment also worked regularly in the housing units covering for the assigned housing unit officers when they went to lunch and on break. (See Defendant's Brief in Support of Defendant's Motion for Summary Disposition at pages 8-9.) Thus, these three assignments are housing unit assignments and based upon *Everson* the BFOQs are necessary and reasonable.

With regard to the other assignments at issue – Food Service Officer, Yard Control Officer, Property Room Officer, School Officer, Gate Control Officer, Gym Officer, Electronic Monitor Officer and Industries Officer – the facts establish that the BFOQs were reasonable and necessary. These assignments are all one-on one secluded assignments, requiring the assigned officer to regularly pat-down female prisoners or see prisoners in a state of undress.

Prior to the consolidation of MDOC's female prisons into one facility – the Women's Huron Valley Facility – MDOC personnel conducted a complete review of the staffing requirements for the consolidated facility. As set forth in Defendant's Brief in Support of Motion for Summary Disposition, MDOC looked at the location and job requirements of each assignment, prior court decisions, including *Everson*, and settlement agreements reached in prior cases that limit the job duties that can be assigned to a male corrections' officer. While Plaintiffs state that the settlement agreement in *Neal, et al v Michigan Department of Corrections*, Washtenaw County Court Case Nos: 96-6986-CZ and 03-162-MZ could not have been the impetus for any of the 2009 expansions because it was not signed until July of 2009, Plaintiffs ignore the fact that the *Neal* litigation involving the sexual assault of female prisoners by male officers had been pending for a very long time. Thus, the *Neal* litigation was a driving force behind the 2009 BFOQs.

Furthermore, Plaintiffs completely fail to address the fact that, in 1996, a group of female prisoners filed a federal lawsuit alleging sexual misconduct, sexual harassment, violation of privacy rights, and other constitutional violations. *Nunn v*

Michigan Department of Corrections, ED Mich, No. 96-71416-DT. That case was settled in July of 2000. (See Defendant's Brief in Support of Defendant's Motion for Summary Disposition, Ex 4, Settlement Agreement in *Nunn*.) That settlement agreement specifically limited the job duties and assignments that could be filled by a male corrections' officer. The settlement agreement specifically stated in Section VIII that absent emergency circumstances "pat down searches of prisoners will only be conducted by female corrections officers during an evaluation period of at least twelve months. Should the MDOC decide to resume the routine search of inmates by male officers, it will give plaintiffs' counsel thirty days written notice." (See Defendant's Brief in Support of Defendant's Motion for Summary Disposition, Ex 4, Settlement Agreement in *Nunn*.) In Section VII of the agreement, MDOC was required to limit one-on-one situations between male officers and female prisoners:

MDOC will maintain a written procedure that restricts male staff from being alone in one-on-one situations with prisoners at facilities and centers in areas not clearly visible to prisoners or other staff, with the following exceptions: emergencies, medical care, counseling, questioning during investigations and reporting of confidential information. (See Defendant's Brief in Support of Defendant's Motion for Summary Disposition, Ex 4, Settlement Agreement in *Nunn*).

Additionally, the agreement prohibited male officers from being in any position to view locations "...where prisoners may dress, shower and use the toilet..." (See Defendant's Brief in Support of Defendant's Motion for Summary Disposition, Ex 4, Settlement Agreement in *Nunn*.)

The *Nunn* agreement was not the only settlement agreement entered into prior to 2009 that limited where male corrections officers could be assigned. In 1999, a settlement agreement was reached with the United States Department of

Justice that also required MDOC to limit assignments where male officers were in one on one situations or in secluded areas with female prisoners. (See Defendant's Brief in Support of Defendant's Motion for Summary Disposition, Ex 2, Settlement Agreement in *United States v Michigan*).¹

Plaintiffs have not, and cannot, rebut or contradict the testimony of virtually every single MDOC employee who has stated that the impetus for the 2009 BFOQs was the fact that despite establishment of BFOQs in the housing units – BFOQs approved by the court in *Everson* – sexual misconduct between male staff and female prisoners continued to be a problem. In fact, it was these continued problems that led to the 2003 *Neal* litigation. In the 5 years between 2004 and the implementation of the 2009 BFOQs, there were 84 complaints of sexual misconduct made by female prisoners against male officers. These numbers make it clear that the steps taken in *Everson* were not sufficient to fix the problem. After the 2009 expansion, the number of these complaints dropped to only 19 for the 4 year period of 2009-2013, a decrease of average complaints per year of nearly 72%-. (See Defendant's Brief in Support of Defendant's Motion for Summary Disposition, Ex 17, Defendant's Response to Plaintiffs' Interrogatories).

Every MDOC staff member involved in creating the staffing plan for Women's Huron Valley and in establishing the 2009 BFOQs has testified that the sexual misconduct problem, the resulting litigation, and the settlement agreements

¹ While the USA settlement agreement referenced the Crane and Scott facilities, those facilities were closed and consolidated into the Women's Huron Valley facility.

reached led to the establishment of the 2009 BFOQs. Plaintiffs have offered absolutely nothing to rebut this testimony or the very well documented problem of sexual misconduct at the Women's Huron Valley facility. Plaintiffs have not presented the testimony of any corrections official who has examined the history of MDOC's female correctional facilities, the physical layout of the facility, and the job duties of each correctional assignment who has contradicted the reasons for the implementation of the 2009 BFOQ positions. At most, Plaintiffs have pointed to the testimony of former HR Director Gary Manns who testified he did not know why many of the BFOQs were established and that he did not see a reason for them. What Plaintiffs have failed to tell the Court, however, is that Manns candidly admitted that he had no personal knowledge about how each of the assignments operated. In fact, when Manns' testimony is examined in total, he makes it very clear that he had no idea whether a BFOQ would be necessary in any of the positions at issue. His testimony involved him "guessing" and stating that the corrections staff would be better equipped to make those decisions. (Ex 6, Manns Deposition at pgs 48-55).

In asserting that MDOC did not make a reasoned decision in the implementation of the 2009 BFOQs, Plaintiffs cite the Ninth Circuit decision in *Ambat v City & Co of San Francisco*, 757 F3d 1017 (CA 9, 2015). *Ambat*, however, did not involve facts comparable to the present case. In *Ambat*, no studies were conducted, the staff did not have any meetings or discussions about the establishment of BFOQs, and no outside sources were consulted. In the present

case, the 2009 BFOQs arose out of a lengthy and storied history of sexual misconduct at MDOC's female prisons. Studies were conducted, and after reviewing the results of these studies, MDOC decided that it was necessary to consolidate of all female prisoners into one facility. The Warden and Deputy Warden of the consolidated facility met to discuss the staffing plan. The plan was based upon the history of MDOC's female prisons, prior court decisions, and settlement agreements. Thus, MDOC's entire process was nothing like the non-existent and arbitrary review process in *Ambat*.

B. MDOC has established that in 2009 there were no reasonable alternatives to the establishment of the BFOQs at issue in this case.

Contrary to Plaintiffs' assertions, MDOC has demonstrated that, in 2009, there were no reasonable alternatives to the establishment of the BFOQs at issue in this case.

The decision in *Everson*, as well as the settlement agreements in *Nunn, USA*, and ultimately *Neal*, show that there were no reasonable alternative to establishing BFOQs for the healthcare/infirmiry, off-site hospital, and rover assignments. These positions are all housing unit positions where the assigned officers are in a position to see female prisoners in a state of undress, showering, and using the toilet. (See Defendant's Brief in Support of Defendant's Motion for Summary Disposition at pages 8-9.) As *Everson* demonstrated, it is rationale and necessary to have only female officers fill these assignments in order to protect the rights of MDOC's female prisoner population. The same is true of the Electronic Monitor Officer assignment where the corrections officer must be able view every single

camera feed, including those that can show female prisoners in a state of undress or using the toilet. (See Defendant's Brief in Support of Defendant's Motion for Summary Disposition at pgs 8-9.)

With regard to the remainder of the positions at issue in this case, the testimony demonstrates that the BFOQs were intended to be a temporary fix until such time as MDOC could install sufficient audio and video recording equipment to monitor the staff's interaction with the female population at Women's Huron Valley. Although Plaintiffs did not ask any MDOC official about this subject, in another lawsuit over the BFOQs, various individuals have testified that the intention was to reconsider the BFOQs after all of the technological upgrades were made to the Women's Huron Valley facility and a trial period passed to ensure that the increased audio and video surveillance provided the necessary deterrence and security necessary. Former Women's Huron Valley Warden Millicent Warren testified that the BFOQs were put in place until the recording systems could be installed, vetted, and shown to be reliable. (Ex 1, Warren Deposition at pgs 131-133)(Ex 2, DeAngelo-Kipp Deposition at pgs 38-42)(Ex 3 Straub Deposition at pgs 69-70). The installation of the audio and video surveillance was a lengthy process. It was a 1.4 million dollar project that began in 2009, and required additional allocations in 2011 and 2013. (Ex 4, Vallad Deposition at pgs 20-22). It involved re-wiring the entire facility and even moving prisoners to alternate housing units during certain phases of the project. When WHV opened there were less than 100 cameras and none had audio recording capability. As late as 2014, additional

installations were occurring. (Ex 2 at pgs 38-42). By the time Warren retired in 2015, over 1400 cameras had been installed and most of them have audio capability. (Ex 1 at p 145). In fact, even before she retired in 2015, discussions had begun about whether or not it was feasible to remove the BFOQs. (Ex 1 at p 140-142). In February of 2015, when Warden Anthony Stewart came in, he again reviewed the staffing plan as well as all of the technological upgrades made to the facility. After determining that the system proved reliable and that there were no blind spots or issues with equipment reliability, Warden Stewart recommended the removal of many of the BFOQs. (Ex 5, Stewart Deposition at pgs 150-152)(Ex 7, Lopez Deposition at pgs 164-169). This was a crucial assessment because there had been problems with the system crashing and it was essential that all the bugs be worked out before removing any BFOQ. (Ex 7 at pgs 164-169).²

Accordingly, not only did MDOC consider alternatives – it took steps at the time the BFOQs were established to make expensive and significant technological upgrades that would ultimately lead to the removal of the BFOQs.

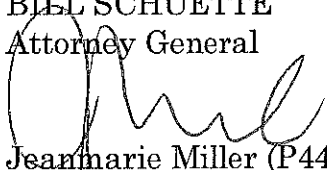
² Plaintiffs asserts that the removal was as a result of a lawsuit filed by the Department of Justice. This, however, is not the case. Stewart testified he started look into removing the BFOQs shortly after he arrived at Women's Huron Valley in February of 2015, and the BFOQs were removed in May of 2016. The DOJ did not file suit until October of 2016.

CONCLUSION

A finding that the BFOQs were not, or are not, supported by the facts would be improper. As stated above and in Defendant's Brief in Support of Defendant's Motion for Summary Disposition, the BFOQ assignments at issue here are proper and should be upheld.

Respectfully submitted,

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Dated: September 21, 2017



Millicent Warren
8/8/2017

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Paul D. Borman

Mag. Judge Mona K. Majzoub

vs

CIVIL NO. 2:16-cv-12146

STATE OF MICHIGAN and
MICHIGAN DEPARTMENT
OF CORRECTIONS,

Defendants.

/

Deposition of MILLICENT WARREN, taken in
the above-entitled matter before Notary Public, Patricia
A. Lutza, CSR, CRR, at 315 West Allegan, Lansing,
Michigan, on Tuesday, August 8, 2017, commencing at about
9:30 a.m.

1 could happen.

2 Q. Are there any other situations where a male
3 Corrections officer could work in a non-housing unit
4 position that's been designated as female only?

5 A. No.

6 Q. Do you know if the working group that was
7 considering the non-housing unit BFOQs we have been
8 discussing, did they consider any alternatives to
9 female only assignments?

10 A. Not the working group, that I am aware of.

11 Q. Did someone else at the facility or within MDOC
12 consider any alternatives?

13 A. Yes.

14 Q. Who?

15 A. Myself.

16 Q. What alternatives did you consider?

17 A. As I testified this morning, there was a campaign
18 underway to add a significant number of cameras to
19 the facility that had both visual and audio
20 capability. As a result of that, I had had
21 discussion that when they were all in place and we
22 had reliability on them all, which meant you go
23 around, you test them, you knew this was happening
24 or that was happening, that we could revisit the
25 number of assignments that were BFOQ only to

1 determine whether or not reducing the staff in that
2 area -- or removing the BFOQ requirement could be
3 safely done, still providing for the safety and
4 security of the prisoners and staff in the area, by
5 use of camera. It would never be preventative but
6 it would be something we could prove or disprove an
7 allegation after the fact, and that had been one of
8 the problems the Department experienced. So our
9 goal in putting these in were to put them in areas
10 so that we could use them to reduce the expansion of
11 the BFOQ and be able to prove or disprove any
12 allegations made by staff or prisoner or volunteer,
13 anybody, of wrong doing in those areas.

14 Q. Did you have any other ideas for alternatives aside
15 from the cameras?

16 A. To reduce the number of BFOQ assignments?

17 Q. Yes.

18 A. There really had not been. The isolated assignment
19 is one that would be hard looked at because there
20 was a history of a staff death at the facility on an
21 isolated assignment.

22 Q. When you say "the facility," do you mean Women's
23 Huron Valley or the predecessor?

24 A. The predecessor. So there already was a sense that
25 single officer assignments were and are to remain to

1 this day very dangerous for both staff and
2 prisoners. So especially with something happening
3 in a facility, it was very difficult to get mind-set
4 past that, so you wouldn't even get buy-in from
5 staff on something like that.

6 There is always going to be a pat-down
7 search that's going to happen all the time. Can you
8 change and look at your electronic monitor, where
9 perhaps somebody can step in if they are going to be
10 looking at a camera in a state of undress.
11 Potentially, for a long period of time, I don't
12 know. Potentially, you know, they should be doing
13 camera rounds systematically, so if we are not going
14 to be doing them in a housing unit at this
15 particular time or somewhere like that, where you
16 need a BFOQ, could you have an officer come in and
17 do something like that, potentially. But, again, it
18 depends on the reliability of that camera system you
19 placed in and being vetted out.

20 Q. You had mentioned having someone step in, for
21 example, for the electronic monitor position in the
22 circumstances you have just described. Did you
23 consider having the other female staff step in to do
24 pat-down searches say?

25 A. We did.

1 of that and some of the management above me about
2 doing --

3 Q. When you say "counsel," you are referring to
4 attorneys?

5 A. Attorneys that --

6 Q. As I mentioned earlier, I said, unless you know the
7 information independently of your attorneys, don't
8 share the contents of that conversation.

9 A. Right.

10 Q. Go on.

11 A. So there were conversations about now that we have
12 cameras in, can we proceed to pull back on some of
13 the BFOQs.

14 Q. When did these conversations occur?

15 A. I would say beginning in maybe late '13, maybe '14.
16 And, quite honestly, there were two pieces of
17 litigation that were introduced that I was aware of
18 that hadn't been resolved, and I was quite involved
19 with the Department of Justice at the time on
20 another piece of litigation, and then the PREA came
21 in to be enforced. So there were a lot of competing
22 entities all discussing the same topic, so it's hard
23 to resolve something when you are litigating the
24 issue. So I believe they have now been able to move
25 forward. I am not sure exactly how, maybe they

1 found the cameras to be such that they feel very
2 comfortable in doing that. I don't know how many
3 assignments or what assignments that they have moved
4 forward on, but we were moving in that -- that's
5 what we wanted to do. I mean, it was going to be a
6 way to solve a lot of other problems.

7 Q. So let me make sure I understand you correctly. So
8 there were discussions in late 2013 into 2014 about
9 potentially lifting some of the BFOQ designations.
10 However, if I understand you correctly, it didn't
11 occur at that time, though, because there was some
12 ongoing, active litigation concerning the same
13 issues. Are we talking about allegations of sexual
14 misconduct, again, staffed by inmates' issues or
15 other issues?

16 A. There were BFOQ issues, as well as staff privacy.

17 Q. So litigation about BFOQ designations and you said
18 staff -- what do you mean by staff privacy?

19 A. I'm sorry. Prison privacy. We did have staff
20 privacy issues.

21 Q. So inmate privacy issues.

22 A. Yes.

23 Q. So there was active, live litigation --

24 A. Right.

25 Q. So your impression was it was not the right time to

1 historically.

2 Q. Maybe I should ask the question differently. When
3 you arrived at Women's Huron Valley, were there
4 cameras there?

5 A. Yes.

6 Q. When you first started at Women's Huron Valley,
7 about how many cameras were there?

8 A. A hundred or less.

9 Q. Did any of those cameras have audio at the time you
10 started?

11 A. No.

12 Q. When you left Women's Huron Valley -- remind me of
13 the date -- sometime in 2015?

14 A. Yes. It was February 1st.

15 Q. On February 1, 2015, when you left Women's Huron
16 Valley, about how many cameras were there?

17 A. 1400.

18 Q. Of those 1400 cameras, about how many had audio
19 capability?

20 A. I would say a couple hundred maybe, 2 to 300, tops.

21 Q. Moving on to one of the topics you have been
22 designated for as a 30(b)(6) witness, the decision
23 to use cameras. You stated earlier that when you
24 started at Women's Huron Valley, there were
25 approximately a hundred or less cameras and then at

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Jodi DeAngelo
5/15/2017

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Paul D. Borman

Mag. Judge Mona K. Majzoub

vs

CIVIL NO. 2:16-cv-12146

STATE OF MICHIGAN AND
MICHIGAN DEPARTMENT
OF CORRECTIONS,

Defendants.

/

Deposition of JODI DeANGELO-KIPP, taken in
the above-entitled matter before Notary Public, Patricia
A. Lutza, CSR, CRR, at the Women's Huron Valley
Correctional Facility, 3201 Bemis Road, Ypsilanti,
Michigan, on Monday, May 15, 2017, commencing at about
time 9:30 a.m.

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1 any discussions about considering alternatives to
2 these female only assignments that we just went
3 over?

4 A. We discussed the camera system being installed, but
5 when I left that project was not done yet. There
6 were discussions about the capabilities of our audio
7 and video system.

8 Q. Can you elaborate on how the discussions with the
9 cameras related to the female only assignments?

10 A. I do not recall how they came up but it was some
11 type of operational discussion about the facility.
12 We did have discussions about when the camera
13 project was done, what the capabilities would be,
14 but that was preliminary conversations very early on
15 and the project was still ongoing.

16 Q. At the time you were here at Women's Huron Valley,
17 were there cameras in the facility?

18 A. Yes.

19 Q. And you said the project was ongoing. Can you
20 describe for me what project you are referring to?

21 A. The installation of the camera system here, it's a
22 massive system in comparison to other facilities.
23 So the project, the scope was very large and it was
24 a very detailed project. So we would have
25 occasional conversations about when the project was

1 over, especially what some of our coverage, in terms
2 of BFOQ down the road. But I wasn't here when the
3 project was over -- I don't even know if it's over
4 now -- so when I left it was not.

5 Q. How far along was this project at the time you left
6 in 2014?

7 A. Well, I don't know what the end result is, so I
8 wouldn't be able to tell you how far along it was.

9 Q. Were there cameras being installed while you were
10 here?

11 A. Yes, the entire time I was here cameras were being
12 installed.

13 Q. And you mentioned there were discussions about this
14 camera project between 2011 and 2014, who was
15 involved in these discussions?

16 A. The warden, Millicent Warren, and I.

17 Q. Any other staff, deputy wardens?

18 A. I wouldn't be able to testify if anyone else was in
19 the room or who that would have been.

20 Q. Do you know if there are any notes kept of these
21 meetings?

22 A. No.

23 Q. So you have mentioned during these discussions about
24 how -- would it be fair to say that the cameras were
25 installed with the purpose to alleviate any further

Jodi DeAngelo
5/15/2017

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1 BFOQs or -- I am trying to figure out how the
2 cameras relate to the female only staffing
3 requirements at Women's Huron Valley.

4 A. The purpose of the cameras are safety and security.

5 Q. Okay. And how did that relate to the female only
6 requirements? My original question was were there
7 any alternatives considered when you raised the
8 cameras. So I am trying to figure out how -- the
9 relationship between the cameras as an alternative
10 to having female only staff for certain positions?

11 A. Well, we discussed, again, the cameras, this
12 project, in most areas as I recall here, are heavily
13 covered or at least we were headed in that
14 direction.

15 Q. When you say heavily covered, what do you mean?

16 A. With video coverage.

17 Q. Not literally covered?

18 A. Ultimately not every inch of the place is covered,
19 that has to be taken into consideration too. But
20 due to the size of the project, we did have a couple
21 conversations, as I recall, in assessing or
22 reassessing down the road possibly the need or if
23 the need still existed for as many BFOQ assignments.
24 But we weren't in any position at all to make that
25 determination because the project wasn't over.

1 Q. Would it be fair to say that one of the purposes
2 served by the project would be to reduce the number
3 of BFOQ assignments at the facility?

4 A. No. It was always the safety and security.

5 Q. So would it be fair to say that one of the, I guess,
6 positive side effects -- or one of the side
7 effects -- I won't say positive or negative -- one
8 of the side effects of the camera project would be
9 to possibly alleviate the use of BFOQs at the
10 facility?

11 A. We discussed it as a possible residual effect, it
12 could possibly be. But, again, these are very early
13 on conversations; the project wasn't over. There
14 were many times we had problems with the camera
15 system, where it would fail on us, or we would have
16 connection issues, or where we had to reposition
17 cameras that we thought would be in a good position
18 for monitoring only to find out we still had blind
19 spots, but we were in the testing phase very much of
20 this project. So it was too early on to see if the
21 coverage and the reliability of the system would
22 prove to be one that we could experience that type
23 of an effect from it, but there were just very early
24 conversations of possibly could it type of
25 conversation.

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1 Q. You use the phrase "testing phase." Was the camera
2 project in the testing phase the entire time you
3 were here?

4 A. Well, with any security system, you have your
5 installation, and then you have your warranty
6 period. And in that period you are in a phase of
7 testing it. Very rarely are you going to install
8 something and it's 100 percent that very minute,
9 there is always tweaks, you give yourself some room
10 for growing pains if you went into it thinking --
11 using cameras, just for an example again -- the
12 coverage with audio or video coverage or visual
13 coverage, there were spots that, again, there would
14 still be blind spots that you maybe weren't
15 anticipating. We had many situations that I recall,
16 not this exact reason, but we had many reasons where
17 I had to bring the company in that installed it for
18 troubleshooting, we had failures in some areas.
19 Again, it was working out the growing pains, working
20 out the system, tweaking it, testing it, once you
21 install it, there's that period. It's ongoing,
22 nothing is perfect forever, so you are always at
23 some interval bringing people in for tweaking or
24 upgrading. We had system upgrades that we have to
25 push to the camera system and sometimes it didn't

3

Dennis Straub
7/26/2017

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Paul D. Borman

Mag. Judge Mona K. Majzoub

vs

CIVIL NO. 2:16-cv-12146

STATE OF MICHIGAN and
MICHIGAN DEPARTMENT
OF CORRECTIONS,

Defendants.

/

Deposition of DENNIS STRAUB, taken in the
above-entitled matter before Notary Public, Patricia A.
Lutza, CSR, CRR, at 315 West Allegan, Lansing, Michigan,
on Wednesday, July 26, 2017, commencing at about 9:00 a.m.

Page 2

1 APPEARANCES:

2

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4 LISA EDWARDS, ESQ.

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16

17 Appearing on Behalf of the Plaintiff.

18

19

20

21

22

23

24

25

1 Snyder's letterhead still be used in January of
2 2011? Oh. He was there in 2011. Okay. Ignore me.

3 Q. The letter then says, "Based on this information and
4 the continued evolution of the facility's BFOQ
5 requirements, the custodial staffing assignment
6 summary was developed."

7 Is the custodial staffing assignment
8 summary that's referenced in this letter the type of
9 document that's in Exhibit 9?

10 A. Yes, ma'am.

11 MS. SAID: Let's take a short break.

12 (A short recess was taken.)

13 MS. SAID: We are back on the record.

14 BY MS. SAID:

15 Q. Were any alternatives to the female only assignments
16 at WHV considered?

17 A. I don't understand what you are asking. I'm sorry.

18 Q. Do you recall if there was any discussion of
19 alternatives to the female only assignments at WHV?

20 A. No, I don't.

21 Q. Do you know under what circumstances an MDOC
22 facility would lift a female only assignment?

23 A. I am only going to assume you would do that if you
24 had cameras in place that would lessen the need for
25 that female officer. I know that that was always my

Page 70

1 intent.

2 Q. What do you mean when you say "my intent"
3 specifically?

4 A. Like I said, if I could have had my way, I would
5 have cameras in every nook and corner of an
6 institution. There would be no spot you could not
7 see something. But that takes money and the State
8 doesn't have that kind of money.

9 Q. Does WHV have cameras at its --

10 A. I would say WHV has more cameras than the average
11 institution, yes.

12 Q. Do you know when WHV first started installing
13 cameras at its facility?

14 A. They were installing them when I left. They had
15 cameras and was installing more when I retired.

16 Q. Do you know approximately how many cameras they had
17 at the time you left?

18 A. No, ma'am, I do not.

19 Q. Even a ballpark figure?

20 A. No.

21 Q. So if I recall correctly, you left in 2011. So at
22 that time they had cameras installed and they were
23 installing more?

24 A. Yes.

25 Q. Do you know whose idea it was to install cameras at

4

Edward Vallad
4/24/2017

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Paul D. Borman

Mag. Judge Mona K. Majzoub

vs

CIVIL NO. 2:16-cv-12146

STATE OF MICHIGAN AND
MICHIGAN DEPARTMENT
OF CORRECTIONS,

Defendants.

Deposition of EDWARD VALLAD, taken in the
above-entitled matter before Notary Public, Patricia A.
Lutza, CSR, CRR, at 315 West Allegan, Lansing, Michigan,
on Monday, April 24, 2017, commencing at about 9:00 a.m.

1 operating procedure written which puts the funding
2 into place, but I did not have any record of the
3 chain of events prior to that. I only have in front
4 of me the funding source and dates and bills and
5 things like that.

6 Q. You mentioned that it was facility funding. So does
7 that mean that the cost of the cameras came out of
8 WHV's budget?

9 A. That's what I recall when I looked at the
10 spreadsheet Friday, that it was facility funding.

11 Q. And approximately how much does it cost for WHV to
12 install the cameras?

13 A. 1.4 million. From what I have memorized right now,
14 it's right around 1.4.

15 Q. And is 1.4 million the total cost of the cameras?

16 A. I believe so. Again, without that in front of me,
17 it's hard.

18 Q. Is there a particular document that would help you
19 provide a more precise figure or --

20 A. Actually I think -- I don't know if that was
21 provided or not. I can't recall if I had printed
22 out the spreadsheets. They may be there. I don't
23 know.

24 Q. Can you describe that document for me?

25 A. It's an MOP lump sum spreadsheet project, physical

1 plant project spreadsheet, and it goes by fiscal
2 year.

3 Q. And who maintains that document?

4 A. I do.

5 Q. And what did the 1.4 million cover?

6 A. Materials, some professional services, and some
7 support labor by an outside vendor.

8 Q. And what do you mean by "materials"?

9 A. All the materials related to the camera's conduit
10 pipe; cameras, computers, servers, hard drives.

11 Q. And what do you mean by "professional services"?

12 A. Design professionals had assisted and designed,
13 architect engineers, that's the term that we use for
14 that group.

15 Q. And what do you mean by "support labor"?

16 A. Midstate Security was hired later on -- the project
17 began with a facility install and then regional
18 maintenance install -- or labor was involved, and
19 then Midstate Security was hired toward the end for
20 support, training and help on the initial project.

21 Q. Do you know what type of cameras were purchased?

22 A. No, I don't.

23 Q. Was the total \$1.4 million approved in a third and
24 fiscal year?

25 A. 2009/2010 was the bulk of it. And there was some

1 additional funding, if I recall, in 2011.

2 Q. So was there a separate request for additional money
3 in 2011?

4 A. Yes.

5 Q. And would a request for funding for something like
6 cameras be put in writing?

7 A. Yes.

8 Q. And what would be the name of the document that
9 reflected the request?

10 A. It's MOP, maintenance operating procedure -- I am
11 not sure about the P, it does not sound right -- but
12 it's called an MOP.

13 Q. And in that request for funding, does the
14 correctional facility have to state a justification
15 for the request?

16 A. In this case if it came from leadership, I don't
17 know what form that would have been in. Sometimes
18 there is internal memos and emails to support that
19 MOP. And again I haven't seen any of that
20 documentation.

21 Q. When you say "in this case," are you referring to
22 the cameras at WHV?

23 A. Any of the projects at WHV up to my term as the
24 administrator.

25 Q. And so did the cameras at WHV come from leadership?

5

Anthony Stewart, Warden
4/26/2017

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Paul D. Borman

Mag. Judge Mona K. Majzoub

vs

CIVIL NO. 2:16-cv-12146

STATE OF MICHIGAN AND
MICHIGAN DEPARTMENT
OF CORRECTIONS,

Defendants.

/

Deposition of ANTHONY STEWART, taken in
the above-entitled matter before Notary Public, Patricia
A. Lutza, CSR, CRR, at 211 West Fort Street, Detroit,
Michigan, on Wednesday, April 26, 2017, commencing at
about 9:00 a.m.

- 1 A. Yes.
- 2 Q. So since you have been at Women's Huron Valley, for
3 the assignments that were designated as female BFOQ,
4 did male Corrections officers ever work in those
5 BFOQ positions?
- 6 A. Prior to the designation being removed, no.
- 7 Q. So there were no circumstances under which --
- 8 A. No.
- 9 Q. -- under which a male Corrections officer would work
10 a BFOQ position prior to the removal?
- 11 A. Correct.
- 12 Q. We previously discussed that in Exhibit 59 that
13 several of the BFOQ designations have been removed.
14 Can you tell me about the decision-making process
15 for removing those designations?
- 16 A. Yes.
- 17 Q. Okay.
- 18 A. When I was asked to come to Women's Huron Valley as
19 warden, I asked for several documents to help
20 prepare, one of which was a staffing sheet. I asked
21 for the budget. I asked for a lot of different
22 items that would help me prepare prior to coming.
23 When I looked at the staffing sheet and noticed that
24 there were a lot of BFOQ positions in custody,
25 traditional custody assignments, and with my limited

1 knowledge of BFOQs, because I had BFOQ positions in
2 Detroit where I was a warden, I knew that the
3 primary piece of the BFOQs, you don't want to see a
4 female offender in a state of undress, and I didn't
5 understand how they wouldn't be undressed in these
6 particular situations, so that sparked my interest.

7 Then when I got to the facility and I met
8 with some staff and discussed it and then met with
9 my department tech and saw the sophisticated
10 surveillance system that we had, I felt that based
11 on the fact that we had this enhanced surveillance
12 and the fact that traditionally female offenders
13 should not be in states of undress, that's when I
14 started pursuing having the positions -- the BFOQ
15 designation removed. There are a lot of officers
16 that were -- female officers that would be getting
17 mandated a lot. And I know that it worked in
18 Detroit, I reduced BFOQs there as well which was
19 relaxed, the mandate situation. I looked at this as
20 an opportunity to do it as well, given the fact that
21 we had such a sophisticated surveillance system.

22 Q. I am going to back up a little bit and get a little
23 more detail about some of the information you gave
24 me. You said when you got to Women's Huron, you
25 discussed lifting the BFOQs with your staff.

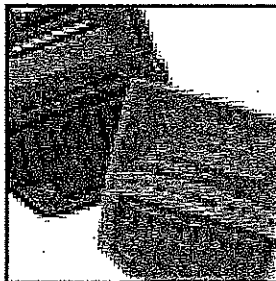
- 1 A. Yes.
- 2 Q. Do you remember who you talked to?
- 3 A. I talked to the MCO president.
- 4 Q. Who was that?
- 5 A. That's Latese Walls. I talked with my deputy warden
6 of custody, David Johnson, and those are the two
7 that pop out, but I talked to several employees to
8 get their thoughts on it. Obviously coming in you
9 don't want to change something right away but when
10 something -- this certainly stood out as something I
11 felt we should at least discuss, given the increased
12 mandates and the fact that when these were put in
13 place, I don't believe they had the sophisticated
14 system that we have now, but I thought it was a good
15 opportunity to have this dialogue to start the
16 conversation.
- 17 Q. During these discussions, what were folks's opinions
18 about lifting the BFOQ designations?
- 19 A. They thought it was a great idea. They just didn't
20 think I wasn't going to be able to get it done.
- 21 Q. Why didn't they think you were going to be able to
22 get it done?
- 23 A. They just thought it was done for a reason and they
24 just didn't think that I would have success getting
25 it done.

6

Nowacki v. State of Michigan Department of Corrections

Deponent: Gary Manns

Taken: 4/4/2013



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1 Q. Why don't you believe that to be the case?
 2 A. Because you had officers that were out in the yard,
 3 and out in the yard you have cameras. There's nothing
 4 sensitive out in the yard.
 5 Q. Okay.
 6 A. And so it doesn't seem like that would have an impact
 7 whether it was male or female.
 8 Q. Okay. Are there other positions besides a yard
 9 position that it really wouldn't make any difference?
 10 A. Back at that time we still had rover, ARV vehicles,
 11 towers, yard crews, and depending on where the yard
 12 crews are, I guess there always could be something
 13 occurring possibly. But the type of positions like
 14 that, I mean, you didn't have the allegations that
 15 were that frequent.
 16 Q. Okay. Do you know, when you were looking at this for
 17 Bill Martin, you and your staff looking at this, did
 18 you explore any alternatives to designating things as
 19 female only? And I'll give you some examples if you
 20 need.
 21 A. Yeah. I'm not -- alternatives to --
 22 Q. To designating something as female only. And --
 23 A. You mean other positions or --
 24 Q. Or things like just making sure you had both females
 25 and male officers available in a particular area if

1 say a strip search had to be done.
 2 A. I would like to think we did that, but I can't recall
 3 the specific --
 4 Q. Okay.
 5 A. -- because that's a facility -- the best person would
 6 be the CFA --
 7 Q. Okay. That's fair.
 8 A. -- people.
 9 Q. You earlier referenced the knock and announce. And
 10 I'm thinking of police officers going to a house and
 11 knock and announce.
 12 But that was implemented at some point in
 13 Corrections as a way to kind of guard against invasion
 14 of female privacy, right?
 15 A. Correct.
 16 Q. Okay. Do you recall when that happened?
 17 A. It had to be in the nineties.
 18 Q. Okay.
 19 A. But I don't recall. That was probably the precursor
 20 to everything.
 21 Q. Okay.
 22 A. Again, that would be your CFA people coming on board
 23 later.
 24 Q. Got it. Okay. Earlier you had testified that you did
 25 some research and you only found one position in the

1 United States which was in Wisconsin which was I think
 2 you said a part-time afternoon?
 3 A. Second shift.
 4 Q. Okay. As we sit here today, do you know if other
 5 states' prison systems employ these BFOQ designations?
 6 A. I have no idea because it's no longer a task, I
 7 wouldn't look into it, and I surely wouldn't do it on
 8 my own time.
 9 Q. All right.
 10 A. Yeah.
 11 Q. Not just for recreation?
 12 A. Not for giggles, no.
 13 Q. Do you know how you went about finding that out back
 14 in '99 or 2000, whenever you did it?
 15 A. I think, and, again, I don't know the specifics, but I
 16 think we had contacted other state corrections
 17 departments around the nation.
 18 Q. Okay. Is there any type of journal or treatise that
 19 you would look to in this day and age to find out
 20 whether or not other systems are using BFOQ
 21 designations?
 22 A. Right now?
 23 Q. Yeah.
 24 A. I imagine anybody can go on the internet, go BFOQ
 25 prison system, and it would pop up.

1 Q. Okay.
 2 A. Back then and the phones, we didn't have the good
 3 texts or anything back then, so that was all a manual
 4 call. So today's technology versus then, I mean, you
 5 probably can find out damn near anything you want.
 6 Q. Okay. Okay. I'm going to ask you about some
 7 positions, and I understand that you may not remember
 8 this because it's been a while, but you're here, so I
 9 might as well ask you.
 10 You earlier talked about yard officers. Is
 11 that referred to as a yard control officer?
 12 A. Yeah, I would imagine.
 13 Q. Okay. Do you know what a gate control officer is?
 14 A. Gate control officer could be the person coming out of
 15 the control center that lets prisoners and staff get
 16 through certain areas in the facility.
 17 Q. And would that be something that you think you would
 18 need a BFOQ female-only designation?
 19 A. I would have no idea. There would be better people to
 20 answer that question. Your CFA people would know that
 21 because that deals with the security of the facility.
 22 Q. Okay. But as you sit here today, you don't know
 23 whether you included a gate control officer in your
 24 list of positions?
 25 A. I don't believe I would have because that wouldn't

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1 have been any particular assignment that is going to
 2 put in the mind thought back then a female prisoner in
 3 a situation where it would be -- they would be
 4 vulnerable. You have cameras around, you have
 5 officers out there, you've got the tower people at
 6 that time. You have administration going everywhere.
 7 You have maintenance people, grounds people,
 8 contractors might be in there. So --
 9 Q. Got it. Do you think you would need to do a BFOQ
 10 designation for a gym control officer?
 11 A. I have no idea. That would be the call of the warden
 12 or the people that you're -- I guess we only have
 13 deputy wardens now, so we've lost a lot of
 14 classifications during all this period of time.
 15 Q. Okay. But do you know what a gym control officer
 16 does?
 17 A. If it's what I think, your gym officer is the person
 18 that opens up the gym, gets the basketballs and
 19 different items out for the prisoners, monitors the
 20 behavior in that location. And so --
 21 Q. Okay. If that is, in fact, the duties --
 22 A. Right.
 23 Q. If those are the duties, would you need a BFOQ
 24 female-only designation for that position?
 25 MS. MILLER: Well, I'm just going to place

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1 an objection. He's already said he has no idea and
 2 he's not sure exactly what the position does.
 3 But you can answer if you can.
 4 THE WITNESS: Well, again, I don't know if
 5 I'm the person to say that. It would really be the
 6 CFA people who deal with that every single day, and
 7 I'd only be guessing. I wouldn't do any people any
 8 good guessing.
 9 BY MR. FETT:
 10 Q. I understand that there's people better able based on
 11 their present knowledge. But based on what you were
 12 doing for the department in '99, 2000, and what you
 13 know of the gym officer --
 14 A. Gym officer.
 15 Q. You wouldn't think you need a BFOQ designation for
 16 that job, do you?
 17 A. I don't believe you would. I was a correction officer
 18 and I worked in the gym myself way, way, way back when
 19 I was a youngster. Again, that was back then in my
 20 perspective. It could be totally different now.
 21 Q. Got it. Have you ever heard of an electronic monitor
 22 officer?
 23 A. No.
 24 Q. Okay. Let me see if I'm saying it right. Yeah, I'm
 25 saying it right.

Page 51

1 Okay. Do you know what a health care
 2 infirmary officer is?
 3 A. That would be the person that is in the infirmary when
 4 prisoners go make their appointments. That person
 5 would usually be sitting in the lobby of the infirmary
 6 when the person comes in.
 7 Q. Okay. What do they do?
 8 A. Monitor their area.
 9 Q. Okay.
 10 A. Make sure, check the pass, make sure the appropriate
 11 person is over there, look at the call-out sheet if
 12 they still have the call-out sheet, this person, this
 13 prisoner should be here at this time for a medical
 14 appointment, let me look at your ID, you're the right
 15 person, sit here, whoever is going to be looking at
 16 you will come out.
 17 Q. Okay. And is that a duty that would require a BFOQ
 18 female-only designation?
 19 A. I'd only be guessing.
 20 Q. All right. Based on what you were doing.
 21 A. When I had that position from time to time when I was
 22 an officer going all over, of course, I only worked in
 23 a male facility, so I wouldn't see a need. But I'm
 24 not the expert in it by any means.
 25 Q. We earlier talked about the industries officer, and I

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1 don't think I asked you what they do.
 2 A. The industry officer, again, like many of these
 3 officers, when prisoner workers come or other
 4 prisoners deliver things there, that person probably
 5 lets them in, checks their IDs. Industry officer when
 6 prisoners are coming and going from their assignments
 7 check and make sure that nothing is leaving with them.
 8 I mean, industry is a great place to craft some
 9 weapons, depending on where you're at. That one,
 10 that's what they do.
 11 Q. Okay.
 12 A. Yeah.
 13 Q. Do you know that position's been eliminated?
 14 A. It does not surprise me.
 15 Q. You've had to eliminate some positions?
 16 A. A lot of positions were eliminated.
 17 Q. Before that was eliminated, do you think that was the
 18 kind of position that would require a BFOQ designation
 19 female-only designation?
 20 A. You're talking about in the women's facility?
 21 Q. Yeah.
 22 A. It potentially could, and the reason I say that is as
 23 the prisoners are coming out, they may have to change
 24 their clothes when they're going on to their
 25 assignment, and when they come out, they put their

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1 civilian clothes on. So potentially, yes.
 2 Am I an expert in that, no, because, again,
 3 you want to make sure that when prisoners, male or
 4 female, are leaving their assignments, they go with
 5 what they came with.
 6 Q. Would that be something that could be addressed as the
 7 need to check them out when they're taking off, could
 8 that be addressed by using a team approach, having
 9 both a male and a female there?
 10 A. I would be answering for -- your best experts are CFA
 11 people. I mean, you could, but, again, a team
 12 approach might add extra staff that you don't have the
 13 comfort of having.
 14 Q. Okay. Do you know how many industries officers you
 15 would have at the, say at the women's facility?
 16 A. I have no idea.
 17 Q. All right. Are there corrections officers that deal
 18 with, that work in an academic setting, they have
 19 classes at the women's prison?
 20 A. They used to have classes at the women's facility.
 21 I'm assuming they still do now for equality because
 22 the males have it I believe. It's been a while since
 23 I've been to the facilities, and they had officers,
 24 school officers. I don't know if they have those
 25 anymore.

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1 Q. Okay. But they did when --
 2 A. When I was familiar with what was going on in the
 3 facilities.
 4 Q. Did you designate any of those to be female only when
 5 you were doing that project for Bill Martin?
 6 A. I don't recall. I just don't recall which specific
 7 assignments.
 8 Q. Okay. As you sit here today, do you think that would
 9 be an assignment that you would designate as BFOQ
 10 female only?
 11 A. Would I?
 12 Q. Yeah.
 13 A. Based on my old historical perspective, that person
 14 usually sits out in the hallway, it might be in the
 15 classroom, and they're just making sure that the
 16 activities in the classroom are functioning
 17 appropriately and everybody that's in there is
 18 supposed to be in there.
 19 So, again, I would be speculating, but I
 20 don't know if that would be a need for that position.
 21 Of course, that all could have changed, and somebody
 22 current and brighter than I might see it differently.
 23 Q. Okay. Taking you back again to the old days when you
 24 were doing that project for Bill Martin, do you know
 25 whether you had any food service positions designated

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1 as BFOQ female only?
 2 A. I don't recall having that back then.
 3 Q. Okay. That wouldn't require BFOQ female only, would
 4 it?
 5 A. Not from my memory, but a lot of things have changed
 6 in the facilities since then.
 7 Q. Sure, sure. This has nothing to do with this case,
 8 but I'm looking at an article. So my question is does
 9 the Department of Corrections have an affirmative
 10 action plan?
 11 A. I don't think that's required by the governor's office
 12 anymore. I think that went out in like 1999 that the
 13 department had to an EEO plan and the affirmative
 14 action plan. So, no.
 15 Affirmative action basically is the, from
 16 my historical perspective the results and actions that
 17 an employer takes to address the past effects of
 18 exclusionary practices, and, when appropriate, you
 19 correct that practice.
 20 And affirmative action was a lot of times
 21 implemented through the Civil Service system in which
 22 you were able to go down into when we had the band
 23 system, first band, second band, third band, bring
 24 people up into the first band, to give people the
 25 opportunity to participate in an interview.

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1 And that's where it got fuzzy with a lot of
 2 people and they were down on it because people thought
 3 that that meant that you had to give them the job.
 4 Anybody who was in that class, it was to participate
 5 in an interview, and then based on your interview, you
 6 select the best candidate.
 7 Q. Okay.
 8 A. So, no, there is no affirmative action anymore. That
 9 went out years ago.
 10 Q. Okay.
 11 A. And then EEO which is the cousin to that is the legal
 12 obligation system by which nobody is discriminated
 13 against by any illegal criteria such as age, race,
 14 marital status, handicapper status, political
 15 affiliation, genetics. That's wiping off some old
 16 stuff, but that's been a while.
 17 Q. And do you know whether or not these factors that you
 18 can't discriminate based on, age, race, height,
 19 weight, disability, blah, blah, does that apply to
 20 prisoners, does that protect prisoners in your system?
 21 A. That I don't recall.
 22 Q. Okay. We've been talking about protections afforded
 23 the female prisoners and what you've done to ensure
 24 their privacy and eliminate misconduct.
 25 And correct me if I'm wrong, but those same

7

Tony Lopez
7/25/2017

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Paul D. Borman

Mag. Judge Mona K. Majzoub

vs

CIVIL NO. 2:16-cv-12146

STATE OF MICHIGAN and
MICHIGAN DEPARTMENT
OF CORRECTIONS,

Defendants.

/

Deposition of TONY LOPEZ, taken in the
above-entitled matter before Notary Public, Patricia A.
Lutza, CSR, CRR, at 315 West Allegan, Lansing, Michigan,
on Tuesday, July 25, 2017, commencing at about 9:00 a.m.

1 was there, he felt comfortable making the request to
2 do away with some of these BFOQs because of all the
3 cameras -- and they wanted an opportunity to observe
4 the cameras, to monitor the cameras, where they felt
5 comfortable that the cameras were doing -- and there
6 was some issues with them breaking down. That's one
7 thing, we don't want them all of a sudden -- we lift
8 the BFOQs and cameras start crashing. We actually
9 met with some technical staff that was doing the
10 placement of the cameras and they explained and
11 there was some -- like anything, there was some bugs
12 to work out. At the point in time he made the
13 request, he felt comfortable that the system would
14 be able to monitor appropriately.

15 Q. Did you know in advance what the threshold number of
16 cameras they would need in order to feel comfortable
17 enough to lift the BFOQs?

18 A. No.

19 Q. Well, who determined what the threshold number would
20 be?

21 A. I don't know if there is a threshold number. I
22 mean, they -- I think they are still putting in
23 cameras. But they felt comfortable with the number
24 of cameras that they installed in the system, that
25 was the big thing. I believe the system crashed a

1 A. The cameras. Basically it was based with the new
2 technology, with the cameras, the monitoring, the
3 24/7 monitoring, the Correctional Facilities
4 Administration felt that the BFOQs could be
5 discontinued for these positions.

6 Q. So does it alleviate concerns of privacy, the
7 cameras, are you saying?

8 A. I don't -- it may. It could be isolated, the
9 privacy. I am not a hundred percent sure that
10 was -- the rationale came from CFA. We just
11 facilitated the notification to the state personnel
12 director.

13 Q. Did CFA draft this document for you to sign then?

14 A. No. Actually I worked on this. I mean, they gave
15 me the positions and I pretty much drafted the
16 language. I think CFA had a little input.

17 Q. Do you know who wrote "effective April 10th" on
18 here?

19 A. No.

20 Q. Or do you know who wrote at the bottom "field
21 house"?

22 A. No.

23 Q. Or who wrote "programs" next to "school"?

24 A. No.

25 Q. For positions that were not lifted, electronic

1 all in a written format?

2 A. I don't recall. We had the meetings and other than
3 the staffing sheet, every facility has a staffing
4 sheet, and going through the staffing sheet, Warden
5 Stewart is, Well, the reason we don't need here --
6 like, for example, at the gym, we have installed 60
7 plus cameras in the gym. We believe that all of the
8 little blind spots are all taken care of, so it's
9 not necessary to have a -- there could be a lot of
10 isolated areas within that large of a venue.

11 Q. Did you take notes at this meeting or any of the
12 other meetings that we have discussed?

13 A. If I did, they would be in the BFOQ information. I
14 didn't retain anything myself.

15 Q. So was there a place in your old office where you
16 kept notes from meetings that you have attended
17 relating to the BFOQs?

18 A. Whatever information I had in regards to BFOQs I
19 left with Jonathan Patterson, the new HR director.

20 Q. Including your personal notes?

21 A. Anything that I've kept, if I kept it -- I may have
22 taken notes and I may have -- anything that I had it
23 would be there. I didn't retain anything for
24 myself, my personals or anything like that, if I
25 took a note.