

FETT & FIELDS, P.C.

ATTORNEYS AT LAW

805 E. Main St., Pinckney, MI 48169 • 734-954-0100 • FAX 734-954-0762 • E-MAIL
attys@fettlaw.com
www.fettlaw.com

James K. Fett, Esq.

Maureen K. Proffitt
Paralegal

Of Counsel:
Tishkoff, PLC
Lawrence A. Fields, Esq.

August 24, 2017

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

Re: Nowacki v MDOC
Case No. 11-852-CD

Dear Clerk:

Enclosed for filing with regard to the above captioned matter please find:

- Check No. 1328 for \$20.00 motion fee
- Plaintiff's Motion for Partial Summary Disposition Pursuant to MCR 2.116(C)(10)
(No Issue of Material Fact)
- Judge's copy

I have not included a praecipe or a notice of hearing per the court's August 7, 2017 Order that the motion will be decided without oral argument.

Thank you for your assistance.

Sincerely,

FETT & FIELDS, P.C.



Maureen K. Proffitt
Paralegal

Enclosure

cc: Jeanmarie Miller
Glen N. Lenhoff

FETT AND FIELDS PC 04/14
805 E. MAIN
PINCKNEY, MI 48169

8/24/2017

PAY TO THE ORDER OF Washtenaw County Circuit Court

\$ **20.00

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DOLLARS

Washtenaw County Circuit Court

MEMO

11-852-CD motion fee in Nowacki v MDOC

Lawrence Rafferty
AUTHORIZED SIGNATURE

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Washtenaw County Circuit Court 8/24/2017
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STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD
Hon. David S. Swartz

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100/734-954-0762-fax
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434/517-373-2454-fax
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502-1923
810-235-5660/810-235-5641-fax
Co-Counsel for Plaintiff

**Motion for Partial Summary Disposition Pursuant to MCR
2.116(C)(10) (No Issue of Material Fact)**

Plaintiff, through counsel, moves for partial summary disposition pursuant to
MCR 2.116(C)(10) as follows:

Overview

1. This Court should determine that Defendant's practice, begun in 2009, of requiring that only female employees fill the vast majority of *non-housing* corrections officer ("CO") positions at its female prison violates the Elliott-Larsen Civil Rights Act ("ELCRA") because admissions by Defendant's officials prove that Defendant had no

legally justified reason for the practice; rather, it decided to employ females exclusively at its new female prison, the Women's Huron Valley Facility ("WHV"), based on the 2008 *Neal v MDOC* class action verdicts for female inmates abused by male CO abuse between 1991 and 1999¹ (**Ex. 2**: Warren Dep. at 55-56; **Ex. 3**: Affidavits reciting admissions by MDOC officials). The officials made these decisions even though the undisputed evidence showed that measures developed in 2000, and approved by the Sixth Circuit in 2004, eliminated male CO abuse of female inmates in 2006 before WHV even opened in 2009 (**Ex. 4**: chart showing incidence of sexual misconduct and supporting MDOC 05-08-13 Interrogatory Answers).

2. The Equal Employment Opportunity Commission has determined that the practice also violates female COs' rights under Title VII because Defendant is using "too broad of an application of the BFOQ ... without a clear analysis and consideration of non-gender specific alternatives;" the Department of Justice has filed suit, *United States of American v State of Michigan and Michigan Department of Corrections*, Civil No. 2:16-cv-12146, to invalidate the BFOQs; The consequence for women of Defendant's overbroad use of BFOQs is that they are required to work dangerously high amounts of overtime and are precluded from transferring to other facilities.²

The Ruse

3. Defendant assigns females only to the vast majority of *non-housing* positions at the Women's Huron Valley Correctional Facility (the "WHV") because it claims that gender is a Bona Fide Occupational Qualification ("BFOQ") for such positions.

¹ **Ex. 1**: *Neal v MDOC*, 2009 WL 187813, *1 (Mich App)

² *USA v State of Michigan and MDOC*, p. 10, para. 34-35

4. This pretextual explanation for the BFOQs is based on the ruse of inserting “strip searches” or “pat downs” as duties into the job descriptions for the various *non-housing* position job descriptions; affiants from COs to Captains have testified that strip searches and pat downs are not bona fide requirements of the non-housing positions (**Ex. 5**: Strip search affidavits); nonetheless, Defendant justifies the vast majority of the BFOQs by reference to the strip search or pat down requirements (**Ex. 2**: Warren at 51-52; **Ex. 16**: Finch Affidavit).

History

5. In 2000 Defendant designated many *housing* unit positions at three other female prisons as “*BFOQ–female only*” (WHV was not yet in existence); this lawsuit is about *non-housing* positions at Defendant’s only remaining female prison, WHV, which opened in 2009; the housing/non-housing distinction is significant because female prisoners can be in a state of undress in the housing unit, whereas they are not in the cafeteria, classroom, gym or other *non-housing* units where privacy is not an issue.

6. The 2000 BFOQs are relevant only because Defendant attempts to justify its BFOQ designations for *non-housing* positions at a different facility (WHV), nine years later, based on a 2004 Sixth Circuit case that upheld the 2000 BFOQ designations for *housing* positions based largely on inmate sexual abuse during 1991-1999 at 3 *other* prisons; *Everson v MDOC*, 391 F3d 737, 751 (6th Cir 2004) (Defendant’s designation of these *housing* positions as “*BFOQ–female only*” upheld based on MDOC’s “**considered** decision that a BFOQ was necessary to address the grave problem of **sexual abuse of female inmates.**”) (emphasis added) (Federal cases attached in alphabetical order as **Appendix A**)

7. The *Everson* court concluded that MDOC met its burden of showing that its housing BFOQ designations were “a product of a **reasoned decision-making process based on available information and experience**” because it relied on (a) studies conducted pursuant to settlement agreements, (b) a report it commissioned (the Mahoney Report), (c) consultations with MDOC staff, (d) discussions with prison officials from other states; and (e) an array of materials, including expert reports from other lawsuits, a summary of disciplinary action taken against MDOC employees for sexual abuse, data on practices in female prisons in other states, job descriptions for positions in its housing units, applications for a BFOQ for officer positions at a women’s prison prepared by Wisconsin corrections officials, and an internal study known as the “GSAC study, *id.* at 751-752. Defendant has no such factual basis for the 2009 BFOQs, none whatsoever. *See Ambat v City and County of San Francisco*, 757 F3d 1017, 1026-1027 (9th Cir 2014).

8. The designation in 2000 of positions in Defendant’s *housing* units as “*BFOQ-female only*” had their desired effect – sexual abuse of female inmates drastically declined so that, as a practical matter, it is no longer an issue and Defendant, who has the burden of proof, has provided no evidence to the contrary. **Ex. 4:** chart showing incidence of sexual misconduct and supporting MDOC 05-08-13 Interrogatory Answers.

9. In fact, the evidence shows that to the extent abuse of prisoners occurs, it is perpetrated by the female COs. *Id.*

10. Plaintiff does **not** challenge the 2000 *housing* unit position designations.

***Everson* – The Red Herring**

11. Plaintiff does challenge April 2009 “*BFOQ-female only*” designations for *non-housing* positions at WHV because gender is **not** a BFOQ for those positions.

12. Nonetheless, Defendant continues to assert that the 2004 *Everson* case applicable to *housing* positions at different facilities than WHV and based on abuse occurring from 1991 to 1999 (and rectified by the 2000 measures) justifies its 2009 BFOQs for *non-housing* positions at WHV. *Everson, supra* at 761 (“Nor do we hold that gender constitutes a BFOQ for positions ... beyond the approximately 250 positions we have discussed.”)

Discriminatory Impetus for BFOQs

13. This lawsuit probably would never have been necessary if Defendant had not sustained the 2008 verdicts in the *Neal* class action; *Neal* was based on sexual abuse between 1991 and 1999 perpetrated by male officers at three separate women’s prisons that were closed in 2008-2009 when Defendant consolidated its female inmate population at the WHV; note: the abuse ended in 2006. **Ex. 4:** chart showing incidence of sexual misconduct and supporting MDOC 05-08-13 Interrogatory Answers.

14. It bears emphasizing that there has never been a problem of male officers sexually abusing female inmates at the WHV; in fact, more claims have been asserted against female officers (**Ex. 6:** Defendant’s Response to Plaintiff’s Request to Admit Dated April 9, 2013 and **Ex. 4:** chart showing incidence of sexual misconduct and supporting MDOC 05-08-13 Interrogatory Answers).

15. Warden Millicent Warren testified that former MDOC Director Patricia Caruso, in response to the *Neal* verdicts, directed that “to avoid future allegations of that nature, a comment was made all staff should be female working with female prisoners ... I was told [by Deputy Director Straub and Regional Prison Administrator Bruce Curtis] it was from Pat Caruso.” (**Ex. 2:** Warren at 55-56)

16. MDOC's stated intention to exclude male officers from positions in female prisons is confirmed by the following affidavits collectively attached as **Ex. 3**:

- a. Corrections Officer ("CO") Ralph Golidy states that (1) Warren stated that "we are going to do some things to motivate male corrections officers to leave" or words to that effect multiple times and (2) Deputy Warden Lucille Evans also stated that "we are doing some things to motivate the male corrections officers to leave" the facility; Golidy was the union president for the WHV MCO chapter and had regular interaction with Warren;
- b. CO Gomoluch, a former union steward, states that Warren stated in October 2010 that "when all these males leave [referring to WHV male COs] there will be no more males here;"
- c. CO Stennis George states that Deputy Director Straub stated at a labor/management meeting that the Department would not have any more males work at the women's prisons and the department intended to get rid of all males in the female prisons; and
- d. CO Shirley McClain states that Warden Warren told her academy class in 2012 that "It is our intention to make WHV an all-female corrections facility."

17. Defendant brazenly announced its intention to exclude all males from its female prisons in October 2008, shortly before WHV opened in May 2009 (**Ex. 7**: Michigan Citizen article in which MDOC Public Information Officer Russ Marlan cited "the termination of male guards in female prisons" as a response to the *Neal* litigation.)

Law and Application

18. "[T]he BFOQ defense is written narrowly, and is to be read narrowly" (citations omitted); the **burden is on an employer** to establish a BFOQ defense." (citations omitted) (emphasis added), *Everson* at 748.

19. Institutional embarrassment occasioned by "very high profile" media coverage does not justify BFOQ gender discrimination. *Breiner v Nevada Dep't of Corrections*, 610 F3d 1202, 1205, 1216 (9th Cir 2010)

No Basis in Fact

20. “It is impermissible ... to refuse to hire an individual woman or man on the basis of stereotyped characterization of the sexes,” *id.* and an employer must have a “**basis in fact**,” *id.* at 355, for its belief that gender discrimination is “reasonably necessary” --not merely convenient – to the normal operation of its business.” (citations omitted), *Everson* at 748 (emphasis added).

21. Deputy Director Gary Manns, who was formerly MDOC’s Personnel Director when the first wave of BFOQ applications were submitted and who signed the request for the 2009 application letter, testified that BFOQ designations were **not** justified for the following *non-housing* positions: food service officer, yard control officer, yard rover officer, health care officer, school officer, gate control officer, gym officer and industries officer (**Ex. 8**: Manns at 45, 49-51, 54-55); in other words, the deputy director conceded that there is no basis in fact for the request made in his March 27, 2009 letter which he cannot recall signing! *Id.* at 35-36. See also **Ex. 9**: Curtis at 31-32. Compare with “the basis in fact” cited in *Everson* (see para. 7, *supra*) and *Ambat, supra*, 757 F3d at 1026-1027 (Attached and highlighted as **Appendix A**).

22. Moreover, it is largely undisputed that males had performed the non-housing BFOQ position for years, including those positions predicated on the newly inserted strip search/pat down duties (**Ex. 5**: Strip search affidavits; **Ex. 29**: Plaintiff’s Affidavit; **Ex. 16**: Finch Affidavit). *White v Dep’t of Correctional Services*, 814 F Supp 2d 374, 385-386 (SD NY 2011) (Regular performance of BFOQ position by female COs in the past created issue of fact regarding basis in fact requirement) (**Appendix A**)

23. As detailed above, the April 2009 BFOQ decisions in this case do not meet this standard; moreover, embarrassing verdicts based on conduct that was addressed and rectified years prior is insufficient.

Not the Product of Reasoned Decision-Making

24. The “basis in fact” requirement also requires that “the employer must introduce sufficient evidence to prove that the administrator’s judgment – that a particular sex classification is reasonably necessary to the normal operation of the institution – is **the product of a reasoned decision-making process**, based on available information and experience.” *Henry v Milwaukee County*, 539 F3d 573, 580-581 (7th Cir 2008) (**Appendix A**) citing *Torres v Wis Dept of Health & Social Services*, 838 F2d 1523, 1532 (7th Cir 1988) (*en banc*) and *Ambat, supra* at 1026-1027 (**Appendix A**)

25. Partial summary disposition is also appropriate because it is undisputed that MDOC’s knee-jerk decision to make the *non-housing* unit positions “*BFOQ-female only*” in the wake of the embarrassing *Neal* verdicts was *not* “a product of a reasoned decision-making process based on available information and experience;” rather the proofs show no process whatsoever; consider:

- a. MDOC, in its response to interrogatories,³ justifies its 2009 BFOQs as follows:

* * * *

- a. All BFOQ’d positions at WHV were put into place because of necessity and to ensure that the privacy and individual rights of the female inmates were not violated, **pursuant to *Everson v MDOC*, 391F.3d737, 761-762 (6th**

³ **Ex. 10:** Defendant’s Response to Plaintiff’s Request for Admissions and Interrogatories Dated June 13, 2012, Response to No. 6

Cir.2004). The BFOQ's were put into place after examining each position in light of the settlement agreement reached in the Neal litigation;⁴

* * * *

Moreover, Warden Millicent Warren, who has been the WHV Warden since 2008, claims to know next to nothing about the process that led to the additional BFOQ designations in 2009 (**Ex. 2:** Warren at 207-209), Deputy Director Gary Manns cannot recall ever signing a letter seeking authorization on March 27, 2009 to create additional BFOQ positions (**Ex. 8:** Manns at 35-36), Deputy Warden Lucille Evans, identified by Warren as a person with knowledge of the process, knows painfully little (**Ex. 12:** Evans at 15-23; 62-63), Regional Prison Administrator Curtis, also identified by Warren as a person with knowledge of the process, had no recollection of the process (**Ex. 9:** Curtis at 20-21); and Deputy Director Straub, also identified by Warren as a person with knowledge of the process, knows little more than Curtis (**Ex. 13:** Straub at 10, 32).

No Consideration of Reasonable Alternatives to Sex Discrimination

26. MDOC's Personnel Director Tony Lopez admitted that MDOC did not consider alternatives to the BFOQs (**Ex. 14:** Lopez at 32), and therefore MDOC cannot meet "the burden of establishing that no reasonable alternatives exist to discrimination on the basis of sex. *Reed*, 184 F3d at 600." *Everson* at 749; moreover, MDOC implicitly admitted that there has always been a reasonable alternative to the BFOQs – security cameras – when it eliminated many (if not most) of the BFOQs on March 22, 2016,⁵

⁴ This is impossible since the BFOQs were developed before **September 2008** and the *Neal* Settlement was signed on **July 15, 2009**. (**Ex. 2:** Warren at 6, 207-208; **Ex. 11:** *Neal* Settlement Agreement Signature Page)

⁵ **Ex. 28:** Lopez 03-22-16 letter to Civil Service

supposedly because of security camera installation; security cameras have been considered a viable alternative to widespread use of BFOQs since at least 1999, *Westchester County Corrections, et al v County of Westchester*, 346 F Supp 2d 527 (SD NY 2004) (cameras in use in 1999); finally, the “team approach” to inmate supervision was successfully employed as an alternative to BFOQs; this entailed assigning only female employees to perform strip searches (**Ex. 5**: Strip search affidavits; **Ex. 29**: Plaintiff’s Affidavit); the team approach has been recognized as a viable alternative to BFOQs for years. *Gunther v Iowa State Men’s Reformatory*, 612 F2d 1079 (8th Cir 1980) (**Appendix A**), *White v Dep’t of Correctional Services, supra* at 385-386 (SD NY 2011) (**Appendix A**)

27. Plaintiff is entitled to partial summary disposition because MDOC administrators, prompted by the *Neal* verdicts, sought to eliminate male COs from WHV by manipulating the non-housing job descriptions (by including strip search and pat down duties) and then falsely designating them BFOQ-female only.

28. Neither the verdicts, nor the abuse giving rise to them, justify the instant BFOQs because (a) the abuse occurred during the period 1991-1999 at different facilities before MDOC in 2000 successfully implemented remedial measures in the housing unit, including designating housing positions as BFOQ-female only and (b) the *Everson* court and MDOC’s own expert limited the BFOQs to housing-type jobs (*Everson* at 752, 761 and **Ex. 19**: June 2000 Mahoney Report, p. 16).

29. The Court should also grant Plaintiff partial summary disposition of MDOC BFOQ affirmative defense since its officials’ MRE 801 (D)(2)(d) admissions establish that:

- a. There is no “basis in fact” for the belief that the *non-housing* BFOQs are reasonably necessary to the normal operation of the institution;


- b. The BFOQs were not the “product of a reasoned decision-making process;” and
- c. MDOC failed to consider “non-discriminatory alternatives” to the BFOQ designations.

30. Warren, Evans, Straub and Curtis admittedly know nothing about the process by which non-housing positions were designated BFOQ. Under long-standing precedent, their post hoc rationalizations for the BFOQs cannot justify classifications based on sex, or any other protected characteristic. *US v Virginia*, 518 US 515, 532-533 (1996) (“The State must show “at least that the [challenged] classification serves ‘important governmental objectives and that the discriminatory means employed’ are ‘substantially related to the achievement of those objectives.’ ” *Ibid.* (quoting *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 150, 100 S.Ct. 1540, 1545, 64 L.Ed.2d 107 (1980)). **The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation.**”) (emphasis added)

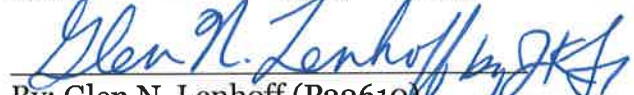
WHEREFORE, Plaintiff requests entry of partial summary disposition.

Respectfully submitted,

FETT & FIELDS, P.C.


By: James K. Fett (P39461)
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Co-Counsel for Plaintiff

LAW OFFICE OF GLEN N. LENHOFF


By: Glen N. Lenhoff (P32610)
328 S. Saginaw St. Fl. 8, North Bldg.
Flint, MI 18502-1923
810-235-5660
Co-Counsel for Plaintiff

Dated: August 24, 2017

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD
Hon. David S. Swartz

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100/734-954-0762-fax
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434/517-373-2454-fax
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502-1923
810-235-5660/810-235-5641-fax
Co-Counsel for Plaintiff

**BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY
DISPOSITION PURSUANT TO MCR 2.116(C)(10) (NO ISSUE
OF MATERIAL FACT)**

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I. INTRODUCTION

Defendant Michigan Department of Corrections (“MDOC”) requires that female Corrections Officers (“COs”) fill the vast majority of positions at its lone female prison, the Women’s Huron Valley (“WHV”) Facility, claiming that gender is a bona fide occupational qualification (“BFOQ”) for these *non-housing* positions.

Statements by MDOC administrators prove that the BFOQs were designed to drive all male COs from WHV. Warden Millicent Warren testified that it was Director Caruso’s desire that “**the gender of staff working with the women was to have all staff be female.**”¹ This was how positions such as “Food Service Officer” and “School Officer” came to be designated BFOQ-female only.

The impetus for this blatant gender discrimination was jury verdicts rendered in Washtenaw County Circuit Court in February and November 2008. The verdicts were for claims of sexual abuse arising between 1991 and 1999 at 3 other facilities now closed. Note: The female prison at issue in this case, the Women’s Huron Valley Correction Facility, was not even operational at the time of the verdicts.

MDOC’s knee jerk reaction to the verdicts was the significant expansion of “BFOQ-female only” positions to include *non-housing* unit positions never before envisioned as “BFOQ-female only.” It did this despite the fact that in late 2005 it had already successfully addressed the issue of sexual misconduct in a judicially sanctioned plan by which all males were removed from the *housing* units.²

¹ **Ex. 2:** Warren at 55-56. See also **Exhibit 3:** CO affidavits quoting Warren, Deputy Director Evans and Deputy Director Dennis Straub. To effectuate Director Caruso’s desire for all female COs, MDOC inserted “strip searches” and “pat downs” as essential functions in the non-housing unit positions to justify the designation BFOQ-female only.

² **Ex. 4:** chart showing incidence of sexual misconduct and supporting MDOC 05-08-13 Interrogatory Answers

Before an employer can designate a position “BFOQ-female only,” the law requires a “**basis in fact**” for the belief that a BFOQ is “reasonably necessary – not merely reasonable or convenient – to the normal operation of its business.” This means that “the employer must introduce sufficient evidence to prove that **the administrator’s judgment** – that a particular sex classification is reasonably necessary to the normal operation of the institution – **is the product of a reasoned decision-making process**, based on available information and experience.” (emphasis added) *Henry v Milwaukee County*, 539 F3d 573, 580-581 (7th Cir 2008). Defendant has the burden of proof as the BFOQ defense is an affirmative defense.

Despite direct inquiries, MDOC has failed to establish (1) a “basis in fact” for the belief that BFOQs are necessary or (2) that the “BFOQ-female only” designations were the “product of a reasoned decision-making process based on available information and experience and not embarrassing jury verdicts.” Partial summary disposition is therefore appropriate on any of these two independent issues.

Partial summary disposition is also appropriate because MDOC cannot demonstrate that it considered gender neutral alternatives to designating positions “BFOQ-female only.” HR Director Lopez explicitly acknowledged this.³ This admission alone requires partial summary disposition. As set forth below, there *were* gender neutral alternatives to BFOQ gender discrimination.

Not only did MDOC not consider gender neutral alternatives, it went out of its way to bar males from holding correction officer positions by falsely stating in job descriptions that strip searches and pat downs were essential functions of the position. The strip search

³ **Ex. 14**: Lopez at 31-33, 42

and pat down requirements automatically made the position “BFOQ-female only.”⁴ The evidence on this point is undisputed and includes testimony from a captain from WHV and many lower level command officers and corrections officers.⁵

II. FACTS

A. The Problem of Sexual Abuse of Female Inmates

Sexual abuse of female inmates was a grave problem in the 1990s at MDOC’s female prisons.⁶ This abuse spawned three prisoner lawsuits, *Neal v MDOC*, No. 96-6986-CZ (Washtenaw Co. Cir. Ct.) (the “*Neal*” suit), *Nunn v MDOC* and *USA v MDOC*. The plaintiffs in *Neal* and *Nunn* were represented by the same counsel.

B. The Remedies in 2000

To rectify the problems identified in the various lawsuits, MDOC established a Gender Specific Assignment Committee (“GSAC”). The committee studied the problems and issued a report (the “GSAC Study”).

The *USA v MDOC* suit was settled in May 1999, followed by the *Nunn* suit in July 2000. As a result of those settlements various measures were implemented to address the sexual abuse identified in the two lawsuits, including the prohibition of pat downs of female prisoners by male corrections officers, a knock and announce policy requiring male corrections officers to knock and announce their presence before entering certain areas, establishment of privacy areas, limitations on one-on-one and secluded area contact between male corrections officers and female prisoners, and commission of a study known as the Securicor Study.

⁴ **Ex. 2:** Warren at 102

⁵ **Ex. 5:** Strip search affidavits; **Ex. 16:** Finch Affidavit; **Ex. 15:** Eckerly Affidavit

⁶ The BFOQ history is drawn from the 6th Circuit’s Opinion in *Everson v MDOC*, 391 F3d 737 (6th Cir 2004). Federal cases attached as **Appendix A**

1. Housing Unit Positions Designated as “BFOQ-Females Only”

The director of MDOC in 2000, William Martin, desired further reforms. Initially Martin favored eliminating all male correction officers from the female prisons. However, he scaled back his plan after Michael J. Mahoney in June 2000 issued a report commissioned by MDOC which recommended limiting the BFOQs to *the housing-type positions*.⁷

2. Housing BFOQs the Product of Reasoned Decision-making Process Based on Available Information and Experience

On August 2, 2000 MDOC sought Michigan Civil Service Commission (“Civil Service”) approval to designate the housing unit positions in its three female prisons as “BFOQ-female only.”⁸ MDOC based its request to designate all the housing positions in the female prisons as “BFOQ-female only” on: “(a) studies conducted pursuant to settlement agreements, (b) a report it commissioned (the Mahoney Report), (c) consultations with MDOC staff, (d) discussions with prison officials from other states; and (e) an array of materials, including expert reports from other lawsuits, a summary of disciplinary action taken against MDOC employees for sexual abuse, data on practices in female prisons in other states, job descriptions for positions in its housing units, applications for a BFOQ for officer positions at a women’s prison prepared by Wisconsin corrections officials, and the “GSAC study,” *Everson* at 751-752.

Civil Service granted the request on April 14, 2000.

⁷ **Ex. 19:** June 2000 Mahoney Report, p. 16. *See Everson*, 391 F3d at 752, 761 (holding limited to housing-type positions)

⁸ **Ex. 20:** August 2, 2000 Gary Manns letter to Civil Service

C. 2002 Challenge to “BFOQ-Female Only” Designations and Injunction Against Implementation of BFOQs – *Everson v MDOC*

A group of male and female⁹ corrections officers challenged the exclusion of males from the housing units in *Everson v MDOC*. Judge Cohn issued a temporary restraining order against the housing unit BFOQ designations in September 2000. Judge Cohn held a 9 day bench trial from February 13, 2001 through March 7, 2001. He found no reasonable cause for the BFOQs on August 8, 2002. *Everson v MDOC*, 222 F Supp 2d 864 (ED Mich 2002). The MDOC appealed and the Sixth Circuit reversed in a 2 to 1 decision on September 3, 2004, *Everson v MDOC*, 391 F3d 737 (6th Cir 2004) (*rehearing denied* March 18, 2005).

D. Housing Unit “BFOQ-Female Only” Designations Finally Implemented in 2005

Following the Sixth Circuit’s reversal, MDOC in September 2005 removed all males from the *housing* units in its female prisons.¹⁰ If MDOC had stopped here with the BFOQ designations you would not be reading this.

E. Female Prisoner Plaintiffs Finally Get Their Day in Court

Meanwhile, the *Neal* female prisoner litigants were battling the defendant up and down the Michigan appellate system. The first group of plaintiffs went to trial in early 2008 resulting in a jury verdict of \$15,545,000.00. Judgment was later entered for \$30,351.00. The second trial was held in November 2008 resulting in a jury verdict of \$8.4 million¹¹. The MDOC was reeling.

⁹ Female COs filed EEOC charges against MDOC for the BFOQ designations at issue in this case. See **Ex. 17**. After the EEOC found cause, the DOJ filed a suit, captioned *USA v State of Michigan and MDOC*, Civil No. 2:16-cv-12146.

¹⁰ **Ex. 21**: Sept. 9, 2010 Letter from Eddie Cargor to EEOC

¹¹ **Ex. 22**: Report to the Legislature

F. Knee-Jerk Reaction to Jury Verdicts Far Cry From the 2000 Reasoned Decision to BFOQ the Housing Unit Positions

In contrast to the deliberate, reasoned decision-making process utilized in 2000, MDOC, in 2009, quickly decided, based on the highly publicized jury verdicts, that *non-housing* unit corrections officer positions at the new WHV, would be designated “BFOQ-female only.” See Manns March 27, 2009 letter to Civil Service.¹² This would mean that 85% of the positions would be “BFOQ-Female Only.”

Asked to justify its “BFOQ-female only” designations in response to affirmative defense interrogatories,¹³ Defendant stated:

* * *

- a. Any and all BFOQs implemented by Defendant were necessary and lawful. As to the reasons for said BFOQs see **documents numbered 136-152** in Defendant’s Responses to Plaintiff’s First Request for Production of Documents;¹⁴

It also identified Gary Manns and Tony Lopez as persons having knowledge regarding the BFOQs.¹⁵ Documents numbered 1362-152 are Manns’ 08-02-2000 and 03-27-2009 letters to Civil Service.

Given another opportunity to justify its BFOQs in response to requests to admit,¹⁶ Defendant was equally uninformative:

- a. All BFOQ’d positions at WHV were put into place because of necessity and to ensure that the privacy and individual rights of the female inmates were not violated, **pursuant to *Everson v MDOC*, 391 F3d 737, 761-762 (6th Cir 2004)**. **The BFOQ’s were put into place after**

¹² **Ex. 23:** 03-27-09 Manns’ letter to Civil Service

¹³ **Ex. 24:** Defendant’s Answers to Affirmative Defense Interrogatories

¹⁴ **Ex. 25:** Documents numbered 136-152 produced by Defendant are Manns’ **08-02-2000 and 03-27-2009 letters to Civil Service)**

¹⁵ **Ex. 26:** Answers to Interrogatories 1 and 4 of Plaintiff’s First Set of Interrogatories

¹⁶ **Ex. 10:** Defendant’s Response to Plaintiff’s Requests to Admit and Interrogatories Dated June 13, 2012

**examining each position in light of the settlement
agreement reached in the Neal litigation.¹⁷**

Defendant did, however, identify Warden Millicent Warren as having knowledge to support its denial that “most positions with the WHV facility are not legitimate, BFOQ women only positions, notwithstanding their designations as such.” Further, it stated that there were no documents to support its denial.¹⁸ The deposition testimony was similarly uninformative.

Warden Millicent Warren, “the person with knowledge of the facts upon which [the] denial ... is based,” has been at WHV since September 2008.¹⁹ WHV opened as a female prison in May 2009.²⁰ When she arrived at WHV staff functioned in work groups comprised of deputy wardens, Regional Prison Administrator (“RPA”) Bruce Curtis and the Deputy Director Dennis Straub.²¹ These work groups were already established and working when she arrived.²² The work groups developed “post order assignments” describing the duties.²³ The deputy wardens reviewed the post order assignments and if they contained a strip search requirement the position was designated “BFOQ-female only.”²⁴ The BFOQ designations were developed under the direction of Deputy Director Straub and RPA Bruce Curtis.²⁵ Note: Warren did not participate in the drafting of assignments or the decisions to include a strip search requirement.²⁶

¹⁷ This is impossible since the BFOQs were developed before September 2008 and the *Neal* settlement was signed on July 15, 2009. (Ex. 2: Warren at 6, 207-208; Ex. 11: *Neal* settlement agreement signature page). See Ex. 10: Defendant’s Response to Plaintiff’s Requests to Admit and Interrogatories Dated June 13, 2012.

¹⁸ *Id.*

¹⁹ Ex. 2: Warren at 6

²⁰ *Id.* at 23

²¹ *Id.* at 208

²² *Id.*

²³ *Id.* at 51-52

²⁴ *Id.*

²⁵ *Id.* at 208

²⁶ *Id.* at 207

Warden Warren identified Deputy Warden Lucille Evans as a participant in the work group.²⁷ Lucille Evans knows painfully little about the process.²⁸ RPA Bruce Curtis, identified by Warren as having participated in the BFOQ-designation decision also did his best rendition of Sergeant Schultz.²⁹ Deputy Director Straub knows little more than Curtis.³⁰

The fact of the matter is MDOC has no idea who drafted the job descriptions with the new strip search/pat down duties which triggered the BFOQ designations – “**Not knowing who participated in the creation of each job description** further information is not known at this time.”³¹

Deputy Director Gary Manns who signed the August 2, 2000 and March 27, 2009 letters to Civil Service requesting approval for the MDOC “BFOQ-female only” designations could not even remember signing the 2009 letter:³² “Quite honestly, I didn't even remember I wrote this letter, but it looks like to expand the BFOQs in areas that we felt needed to have female-only staff.”³³ Perhaps that is why he testified that there was no need to BFOQ the following positions identified in his 2009 letter: food service officer, yard rover officer, healthcare infirmary officer, school officer, gate control officer, gym officer.³⁴

To summarize, work groups or committees met prior to the Warren’s arrival at WHV in September 2008 and prior to the opening of WHV as a women’s prison in May 2009 to

²⁷ *Id.* at 210

²⁸ **Ex. 12:** Evans at 19-22

²⁹ **Ex. 9:** Curtis at 20-21

³⁰ **Ex. 13:** Straub at 21-22, 32

³¹ **Ex. 27:** MDOC Responses to 10-06-11 Interrogatories Nos. 4 and 6

³² **Ex. 23:** Manns’ 03-27-2009 letter to Civil Service

³³ **Ex. 8:** Manns at 34-35

³⁴ **Ex. 8:** Manns at 45, 49-51, 54-55; *see also Ex. 9:* Curtis at 31-32

develop job descriptions. Unknown deputy wardens drafted job descriptions. If the descriptions contained strip searches as an essential function or the job entailed seeing inmates while they were undressed, the position was designated BFOQ.

There is no documentation or witnesses regarding the information or experience considered in making the designations. It is undisputed that no alternatives to the BFOQs were considered.³⁵ This, the lack of documentation, as well as the statements by the WHV Warden (Warren), Deputy Warden (Evans) and HR Director Lopez, confirm that MDOC administrators were concerned about ridding WHV of male COs, *not* making reasoned decisions about BFOQs or considering gender neutral alternatives to “BFOQ-female only” designations.

G. MDOC Not the Least Bit Interested in Gender Neutral Alternatives to “BFOQ-Female Only” Designations Because it Wanted the Male COs Out of WHV

Not only did Defendant fail to employ a reasoned decision-making process based on available information and experience, it eschewed gender-neutral alternatives to gender discrimination because ultimately it wanted to exclude all male COs from female prisons. This is evident from (1) MDOC administrators’ statements to this effect and (2) the fact that MDOC went out of its way to bar males from the *non-housing* unit positions by inserting strip searches as an essential job duty in most of the job descriptions, thereby disqualifying male officers from performing such positions.

1. MDOC Administrators Stated Desire to Drive Male COs from WHV

Warden Warren testified on October 16, 2012 that Deputy Director Straub and RPA Curtis informed her of MDOC’s (Director Caruso’s) desire that “**the gender of staff**

³⁵ Ex. 14: Lopez at 31

working with the women was to have all staff be female.³⁶ Consistent with Warren’s testimony, the *Michigan Citizen* reported in October 2008 that Russ Marlan, Public Information Officer for MDOC, stated that one of changes that MDOC has been making to address sexual abuse of female prisoners is “the termination of male guards in female facilities.”³⁷

Although Marlan claims that he was misquoted, Warren’s testimony and statements that she and Deputy Lucille Evans made to groups of MDOC employees confirm that the *Michigan Citizen* was spot on. *See, e.g.*, CO Goliday’s Affidavit (“I have heard Warden Millicent Warren say (on more than one occasion) that **“we are going to do some things to allow male corrections officers to leave”** ... she told me that “we are going to do something to allow male corrections officers to leave” ... I also heard Deputy Warden Lucille Evans say, **“we are doing some things to motivate the male corrections officers to leave the facility,”** CO William Gomoluch’s Affidavit: (“In a hearing in October 2010, I heard Warden Millicent Warren state that **“when these males leave (referring to the current male corrections officers at the facility) there will be no more males here.”**”), CO Shirley McClain’s Affidavit (Warden Warren told her academy class in the spring of 2012 that: **“It is our intention to make WHV an all female corrections facility.”**) and CO Stennis George Affidavit (Deputy Director Straub told those at a Union/Management meeting that “(a) The Department would not hire any more male corrections officers for its female prisons and (b) **the**

³⁶ **Ex. 2:** Warren at 55-56

³⁷ **Ex. 7:** Michigan Citizen article

department intended to get rid of male corrections officers in female prisons.”³⁸

These MRE 801 (D)(2)(d) require admissions by MDOC officials require partial summary disposition because they confirm that they never were interested in gender neutral alternatives. They just wanted the male COs gone.

2. MDOC Falsely Stated in Job Descriptions That Strip Searches are an Essential Duty to Disqualify Males from Performing Those Jobs

Warden Warren explained when a position would be designated as “BFOQ-female only”: “My understanding is the provisions of the BFOQ apply when the essential function of your duty includes putting your hands on a member of the opposite sex.”³⁹ Warren also testified that a position could be a BFOQ if it involved seeing female prisoners in a state of undress.⁴⁰ Thus, according to Warren, the female-only BFOQ should be applied to corrections officer positions only when they required the searching of female prisoners, seeing them in a state of undress, or both. This is not the case with the *non-housing* unit “BFOQ-female only” designations at issue here.

a. Team Approach Obviates Need for Inclusion of BFOQ Triggering Strip Search Duties in Non-Housing Job Descriptions

When a male officer identifies the need to conduct a pat down (clothed body) search of a female prisoner, he simply follows Defendant’s “*team approach*” policy. For instance, male officers, “in conjunction with a female corrections officer, may search a prisoner’s coat/outerwear, while the female corrections officer performs the actual

³⁸ Ex. 3: Affidavits reciting admissions by MDOC officials

³⁹ Ex. 2: Warren 102

⁴⁰ Ex. 2: Warren 102

clothed body or pat down search.”⁴¹ Male and female corrections officers have worked in such teams successfully for years.⁴²

WHV has “shake down officers” that do the bulk of the searches, both pat down and strip searches. A female shake down officer “shakes down female prisoners when there is a male on assignment that can’t shake down the female prisoner and conducts, a strip search to ensure that a prisoner is not in possession of contraband.”⁴³

Strip searches are supposed to be conducted in certain areas and should be conducted by the “shakedown officer.”⁴⁴ While male officers cannot conduct strip searches, any female officer can be designated by a supervisor to conduct strip searches.⁴⁵ Male officers, as instructed, take female prisoners who require a strip search to the designated strip search room where a female officer conducts the search.⁴⁶ The procedure works well.⁴⁷

Further, Captain (ret.) Finch will testify that 99% of strip searches at WHV are conducted in visitation, segregation or the yard, “so it is easy to have the strip searches done by the same sex officer.”⁴⁸ Warren admits that the majority of strip searches are conducted in the visiting area after prisoner visitations.⁴⁹

⁴¹ *Id.* at 85-86; **Ex. 12**: Evans 53-54

⁴² **Ex. 5**: Strip search affidavits (McKinney, Kemner, Osborne); **Ex. 29**: Plaintiff’s Affidavit

⁴³ **Ex. 12**: Evans at 87

⁴⁴ **Ex. 2**: Warren 120-121, 124; **Ex. 12**: Evans 24, 87

⁴⁵ **Ex. 2**: Warren 74

⁴⁶ **Ex. 5**: Strip search affidavits (McKinney, Kemner, Spisak); **Ex. 29**: Plaintiff’s Affidavit

⁴⁷ **Ex. 5**: Strip search affidavits (Spisak)

⁴⁸ **Ex. 16**: Finch Affidavit

⁴⁹ **Ex. 2**: Warren 120

“BFOQ-female only” designations for *non-housing* positions are unnecessary since the *non-housing* unit positions ordinarily do not require strip searching or pat downs.⁵⁰ In the rare case that they do, the “team approach” works fine.⁵¹

The team approach has been a judicially recognized alternative to BFOQs for years. *See, e.g., Gunther v Iowa State Men’s Reformatory*, 612 F2d 1079 (8th Cir 1980) and *White v Dep’t of Correctional Services*, 814 F Supp 2d 374, 385-6 (SD NY 2011).

H. Positions at Issue

The following is a summary⁵² of the positions improperly designated as BFOQ – female only:

1. **Food Service Officer:** Strip searches may only be conducted in the food service area if approval is first obtained, and it is **not routine** for strip searches to be conducted there.⁵³ Prisoners are also not supposed to be in a state of undress in the food service area unless those who are preparing food change their clothes in the bathroom.⁵⁴
2. **Yard Control Officer:** Strip searches are not routinely conducted in the yard.⁵⁵ Further, it is contrary to prison regulations for a prisoner to be in a state of undress in the yard.⁵⁶
3. **Yard Rover Officer:** Yard Rover Officers also do not perform strip searches unless they conduct them out of assignment.⁵⁷ Further, it is contrary to prison regulations for a prisoner to be in a state of undress in the yard.⁵⁸
4. **Health Care Officer:** Health Care Officers do not perform strip searches.⁵⁹ Curtains and doors are present to protect prisoners’ privacy and Warren

⁵⁰ **Ex. 5:** Strip search affidavits; **Ex. 16:** Finch Affidavit; and **Ex. 29:** Plaintiff’s Affidavit

⁵¹ *Id.*

⁵² The summary is based on **Ex. 30:** Index of Improper BFOQ Positions, which includes more detailed information and a “Position Description” for each position.

⁵³ **Ex. 2:** Warren 76, 78

⁵⁴ **Ex. 12:** Evans 82-83

⁵⁵ **Ex. 2:** Warren 120

⁵⁶ **Ex. 2:** Warren 103-104; **Ex. 12:** Evans 82

⁵⁷ **Ex. 2:** Warren 182

⁵⁸ **Ex. 2:** Warren 103-104

⁵⁹ **Ex. 2:** Warren 153

admits a “knock-and-announce” policy would alleviate the possibility of seeing prisoners in a state of undress.⁶⁰

5. **Property Room Officer:** Warren admits that Property Room Officers do not conduct strip searches and should never see female prisoners in a state of undress.⁶¹
6. **School Officer:** Warren admits that strip searches are not performed in the school except in emergency situations and that there is no reason to see female prisoners in a state of undress in the school area.⁶²
7. **Off-Site Hospital Officer:** Two corrections officers are assigned to a prisoner for an off-site hospital visit, so only one female officer is required to conduct strip searches or observe a prisoner while she is in a state of undress.⁶³
8. **Gate Control Officer:** The only time a Gate Control Officer would conduct a strip search is if the “shakedown officer” was assigned to perform another duty and was not available.⁶⁴ Moreover, the Bubble, the Gate and the Information Desk, which work in conjunction with one another, only need to be staffed with one female officer among the three positions.⁶⁵
9. **Gym Officer:** Gym Officers do not conduct strip searches unless they are called away from their assignment at the gym to do a strip search in the designated strip search areas.⁶⁶ Prisoners are not supposed to be in a state of undress outside of the bathroom stalls of the gym bathroom. Further, Warren admitted that there is no reason the “knock-and-announce” policy could not be used if a male Gym Officer needed to access the bathroom in an emergency.⁶⁷
10. **Electronic Monitoring Officer:** There is no requirement that the Electronic Monitoring Officer conduct strip searches.⁶⁸ Cameras are only pointed into cells when prisoners are in observation cells for suicide or self-injurious behavior, and those cells do contain toilets.⁶⁹ However, two to three officers staff the control center where the cameras are monitored, including a Count Officer, and thus only one of those officers would need to be female due to the observation cell cameras.

⁶⁰ **Ex. 2:** Warren 157-158; **Ex. 29:** Plaintiff’s Affidavit

⁶¹ **Ex. 2:** Warren 183, 187

⁶² **Ex. 12:** Evans 123; **Ex. 2:** Warren 187-188

⁶³ **Ex. 12:** Evans 127

⁶⁴ **Ex. 2:** Warren 124

⁶⁵ **Ex. 2:** Warren 63-64, 122

⁶⁶ **Ex. 2:** Warren 132, 140

⁶⁷ **Ex. 2:** Warren 132, 134, 139, 140; **Ex. 12:** Evans 104

⁶⁸ **Ex. 2:** Warren 149-150

⁶⁹ **Ex. 12:** Evans 95-97; **Ex. 2:** Warren 146

11. **Industries Officer:** The Industries Officer no longer exists.⁷⁰ The assignment did not require the conducting of strip searches.⁷¹

I. MDOC Finally Comes Clean and Withdraws BFOQ Designations in 2016 with DOJ Breathing Down its Neck

In March 2016, with the Department of Justice breathing down its neck, MDOC implicitly admitted that there has always been a reasonable alternative to the BFOQs – security cameras – when it eliminated many (if not most) of the BFOQs on March 22, 2016,⁷² supposedly because of security camera installation.⁷³ Security cameras have been considered a viable alternative to widespread BFOQ designations since at least 1999. *Westchester County Corrections, et al v County of Westchester*, 346 F Supp 2d 527 (SD NY 2004) (cameras in use in 1999). In fact, Defendant has used them since 2009.⁷⁴ The real reason for elimination of the BFOQs in March 2016 is the fact that the Department of Justice was breathing down MDOC’s neck and in fact filed suit against it 2 months later. Nonetheless, this is potent evidence that there is no basis for the BFOQ designations.

III. ARGUMENT

A. No “Basis in Fact” for the Belief That BFOQ Designations Reasonably Necessary to Operation of WHV

“...[T]he BFOQ defense is written narrowly, and is to be read narrowly” (citations omitted); the burden is on an employer to establish a BFOQ defense.” (citations omitted), *Everson v MDOC*, 391 F3d 737, 748 (6th Cir 2004).

“It is impermissible ... to refuse to hire an individual woman or man on the basis of stereotyped characterization of the sexes,” *id.* and an employer must have a “basis in

⁷⁰ **Ex. 2:** Warren 162-164, 167

⁷¹ **Ex. 2:** Warren 162

⁷² **Ex. 28:** Lopez 03-22-16 letter to Civil Service

⁷³ ?? **Ex. 28:** Lopez 03-22-16 letter to Civil Service

⁷⁴ **Ex. 2:** Warren at 146-148; **Ex. 8:** Manns at 45, 49

fact,” *id.* at 355, for its belief that gender discrimination is “reasonably necessary” --not merely convenient – to the normal operation of its business.” (citations omitted), *id.* at 748.

Here, there is “no basis in fact” for the BFOQ designations.⁷⁵ There is no “**grave problem of sexual abuse of female inmates**” as there was in *Everson*. The BFOQs were implemented after the sexual abuse problem was rectified. There was no sexual abuse issue to justify the BFOQs.

Further, until the 2008 verdicts, male COs had performed the *non-housing* unit “BFOQ-female only” positions, indicating the BFOQ designations were unnecessary.⁷⁶ *See, e.g., White v Dep’t of Correctional Services*, 814 F Supp 2d 374, 385-6 (SD NY 2011). Finally, female COs perform all of the positions in male prisons which are designated “BFOQ-female only” at WHV.⁷⁷

MDOC’s justification for its BFOQs is insufficient to carry its burden of proof. Partial summary disposition should be granted on this basis alone.

B. No Reasoned Decision-Making Based on Available Knowledge and Experience

Everson recognizes the long-standing principle that the employer must demonstrate that its BFOQ decision was “the product of reasoned decision-making based on available information and experience”, 391 F3d at 751. The district court found that MDOC failed to make this showing. The Sixth Circuit reversed, finding that MDOC made a considered decision that a BFOQ was necessary to address “the grave problem of sexual abuse of female inmates” because it relied on (a) studies conducted pursuant to

⁷⁵ See **Ex. 8**: Manns at 45, 49-51, 54-55 and **Ex. 9**: Curtis at 31-32.

⁷⁶ **Ex. 16**: Finch Affidavit

⁷⁷ **Ex. 5**: Strip search affidavits

settlement agreements, (b) a report it commissioned (the Mahoney Report), (c) consultations with MDOC staff, (d) discussions with prison officials from other states; and (e) an array of materials, including expert reports from other lawsuits, a summary of disciplinary action taken against MDOC employees for sexual abuse, data on practices in female prisons in other states, job descriptions for positions in its housing units, applications for a BFOQ for officer positions at a women's prison prepared by Wisconsin corrections officials, and an internal study known as the "GSAC study" *id* at 751-752. Contrast this with what MDOC considered in this case: nothing. The decision-making process in this case is even more lacking than the deficient process which proved fatal to the defendant in *Ambat v City and County of San Francisco*, 757 F3d 1017, 1026-1027 (9th Cir 2014).

MDOC's knee-jerk decision to make the *non-housing* unit positions "*BFOQ-female only*" in the wake of the two embarrassing verdicts in the *Neal* litigation was *not* "a product of a reasoned decision-making process based on available information and experience." Rather, the decision was based on an ancient and irrelevant history of abuse, 10-18 years prior, at different facilities, which is fatal to MDOC's claimed reasoned decision-making process. *See Breiner v Nevada Dep't of Corrections*, 610 F3d 1202, 1214-1215 (9th Cir 2010) (No basis to presume sexual abuse would continue after state took over prison from private Corrections Corporation of America).

MDOC even submits a false account of its decision-making process. It claims that "the BFOQs were put into place after examining each position in light of the settlement agreement reached in the *Neal* litigation."⁷⁸ Impossible. The BFOQs were developed pre-

⁷⁸ **Ex. 10:** Defendant's Response to Plaintiff's Request for Admissions and Interrogatories Dated June 13, 2012.

September 2008⁷⁹ when there was no *Neal* agreement to examine (it was not signed until July 15, 2009,⁸⁰ after MDOC sustained the second huge verdict in *Neal*). Moreover, it relies on a case, *Everson*, which specifically limited its holding to the housing positions.

MDOC's mendacity and total lack of evidence requires partial summary disposition on this point as well.

C. MDOC Cannot Meet the Burden of Establishing That No Reasonable Alternatives Exist to Discrimination on the Basis of Sex

MDOC must prove that “no reasonable alternatives exist to discrimination on the basis of sex. *Reed*, 184 F3d at 600.” *Everson* at 749.

This it cannot do. First, MDOC decision-makers have no recollection or documents to prove that it considered alternatives. Defendant identified Mr. Lopez as an individual with knowledge of the BFOQ designation process in Defendant's Answers to Interrogatories to Defendant Dated October 6, 2011. Significantly, Mr. Lopez testified Defendant did **nothing** to determine if there were reasonable alternatives to gender discrimination (the BFOQs) **other than him “reviewing the [position descriptions] and the historical knowledge that I have.”**⁸¹ Mr. Lopez also explained Defendant's rationale for designating the *non-housing* positions as BFOQ-female only:

A. Well, my understanding was that there was subsequent issues of sexual misconduct and privacy issues. **We had just lost a major decision costing the State of Michigan millions of dollars.**

Q. No, I understand that.

A. And that's why. I mean, that's the discussions.⁸² (emphasis added)

⁷⁹ **Ex. 2:** Warren at 6, 207-208

⁸⁰ **Ex. 11:** *Neal* Settlement Agreement Signature Page

⁸¹ **Ex. 14:** Lopez at 31-33, 42

⁸² *Id.* at 42

Mr. Lopez’s “understanding ... that there was subsequent issues of sexual misconduct and privacy issues” is incorrect. Defendant’s Responses to Plaintiff’s Interrogatories Dated May 8, 2013 and attached spreadsheet demonstrates that after male officers were removed from housing units in September 2005 there were 0 sustained findings of sexual *misconduct* against male officers (same with female officers), 0 sustained findings of sex *harassment* against male officers (9 against females) and 6 sustained findings of *over familiarization* against male officers (13 against females).⁸³ Thus, the only factual basis for Defendant’s 2009 BFOQs were the embarrassing *Neal* verdicts. Mr. Lopez confirmed that Defendant failed to consider alternatives to the blatant gender discrimination represented by its BFOQ-female only designations.

Equally important, the “teamwork approach” and security cameras are reasonable alternatives that MDOC has always utilized at WHV and which obviate the need for the BFOQs. Thus, MDOC’s total failure of proof on its affirmative defense, as well as its disingenuous insertion of to strip search duties into the non-housing position job descriptions requires summary disposition.

D. Post Hoc Realization Legally Insufficient to Justify the BFOQs

Despite the opportunity, MDOC was unable in its discovery responses to provide any information about the actual basis for the BFOQs or the process by which they came to be. It is anticipated that MDOC will justify the BFOQs based on testimony of officials that did not actually participate in the designation decisions (e.g. Warren) or that cannot recall anything about the process. That testimony therefore lacks foundation and is

⁸³ **Ex. 4:** chart showing incidence of sexual misconduct and supporting MDOC 05-08-13 Interrogatory Answers

nothing more than post hoc rationalization which, under long-standing precedent, is insufficient to justify BFOQ discrimination. *US v Virginia*, 518 US 515, 532-533 (1996).

IV. CONCLUSION


The Court should also grant Plaintiff partial summary disposition of MDOC BFOQ affirmative defense since its official's MRE 801 (D)(2)(d) admissions establish that:

- a. There is no "basis in fact" for the belief that the *non-housing* BFOQs are reasonably necessary to the normal operation of the institution;
- b. The BFOQs were not the "product of a reasoned decision-making process;"
- c. MDOC failed to consider "non-discriminatory alternatives" to the BFOQ designations (no doubt because the non-discriminatory alternatives were already in place, rendering the BFOQs unnecessary; and
- d. Their post hoc rationalizations are legally insufficient to justify the BFOQs.

The Court should therefore grant Plaintiff partial summary disposition on liability.

Respectfully submitted,

FETT & FIELDS, P.C.


By: James K. Fett (P39461)
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Co-Counsel for Plaintiff
Dated: August 24, 2017

LAW OFFICE OF GLEN N. LENHOFF

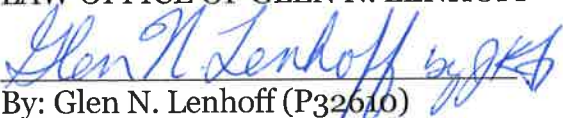

By: Glen N. Lenhoff (P32610)
328 S. Saginaw St. Fl. 8, North Bldg.
Flint, MI 18502-1923
810-235-5660
Co-Counsel for Plaintiff

Exhibit List

1. Unpublished *Neal* case
2. Warren Dep 6, 23, 51-52, 55-56, 59, 63-64, 74, 76-81, 85-86, 102-105, 120-122, 124, 132, 134, 139-140, 146, 149-150, 153, 157-158, 162-164, 167, 174, 182-183, 187-188, 207-210
3. Affidavits reciting admissions by MDOC officials. Golidy, Gomoluch, Stennis George, McClain
4. Chart showing incidence of sexual misconduct and supporting MDOC 05-08-13 Interrogatory Answers
5. Strip search affidavits
6. Defendant's Response to Plaintiff's Request to Admit Dated April 9, 2013
7. Michigan Citizen Article
8. Manns Dep. 34-36, 45, 49-51, 54-55
9. Curtis 20-21, 31-32
10. Defendant's Response to Plaintiff's Request for Admissions and Interrogatories Dated June 13, 2012, Response to No. 6
11. *Neal* Settlement Agreement Signature Page
12. Evans 15-24, 28, 32-35, 42-45, 53-54, 59, 62-63, 82-83, 87, 95-97, 104, 123, 127
13. Straub 10, 21-22, 32
14. Lopez Dep at 31-33, 42
15. Eckerly Affidavit
16. Finch Affidavit
17. EEOC letter to MDOC
18. Manns' 03-22-16 letter to Civil Service
19. Mahoney Report
20. 08-02-2000 Manns Letter
21. Cargor letter Sept. 9, 2010
22. Report to Legislature
23. 03-27-2009 Manns Letter to Civil Service
24. Def.'s Answers to Affirmative Defense Rogs
25. Docs numbered 136-152 produced by Defendant
26. Answers to Plaintiff's First Set of Rogs 1 and 4
27. Answers to Plaintiff's 10-06-11 Interrogatories
28. Lopez's 03-22-16 letter to Civil Service
29. Plaintiff Affidavit
30. Index of Improper BFOQ positions

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD
Hon. David S. Swartz

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100/734-954-0762-fax
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434/517-373-2454-fax
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502-1923
810-235-5660/810-235-5641-fax
Co-Counsel for Plaintiff

Proof of Service

Maureen K. Proffitt states that on the 24th day of August 2017, she served Plaintiff's Motion and Brief for Partial Summary Disposition Pursuant to MCR 2.116(C)(10) (No Issue of Material Fact) on counsel of record by enclosing the same in an envelope and placing the same in the United States mail, with the proper postage prepaid.



Maureen K. Proffitt

Not Reported in N.W.2d
 Not Reported in N.W.2d, 2009 WL 187813 (Mich.App.)
 (Cite as: 2009 WL 187813 (Mich.App.))

Page 1

HOnly the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT
 RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan.
 Tracy NEAL and All Others Similarly Situated,
 Plaintiffs-Appellees,

v.

DEPARTMENT OF CORRECTIONS, Kenneth
 McGinnis, Joan Yukins, Sally Langley, Carol Howes,
 Robert Salis, Cornell Howard, Martin Tate, Thomas
 Portman, William Ellison, Christopher Gallagher,
 Roderick Robey, William Overton, Director of De-
 partment of Corrections, Clarice Stovall, Nancy
 Zang, John Andrews, Jan Baldwin, Wes Bonney,
 David Crukshank, Joseph Durigon, David Habitz,
 Edward Hook, Jack Hutchins, Dennis Iford, Derle
 Jones, Art Lancaster, Erin Richardson, Anthony
 Simmons, Fred Welch, Lynn Williams, and Charles
 Williams, Defendants-Appellants.

Docket No. 285232.

Jan. 27, 2009.

West KeySummary

Civil Rights 78  **1750**

78 Civil Rights

78V State and Local Remedies

78k1747 Questions of Law or Fact

78k1750 k. Other Particular Cases and
 Contexts. Most Cited Cases

There was sufficient evidence for the jury to conclude that Department of Corrections (DOC), its director and the prison warden had adequate notice of the hostile environment to which female prisoners were subjected. Female prisoners won a class action suit arising out of allegations that the male corrections personnel systematically engaged in a pattern of harassment of female inmates. The level of sexual assault, abuse and harassment reflected in inmate interviews, employee depositions and DOC's own documents was far beyond the level that would be expected in a prison system that made a serious effort

to minimize these problems, and indicated that the defendants were deliberately indifferent to protecting inmates from sexual misconduct of all types. M.C.L.A. § 37.2101; MCR 3.501, 2.118(D).

Washtenaw Circuit Court; LC No. 96-006986-CZ.

Before: CAVANAGH, P.J., and JANSEN and METER, JJ.

PER CURIAM.

*1 Defendants appeal by leave granted from an order that denied their motion for a judgment notwithstanding the verdict (JNOV) or new trial. We affirm.

This case was originally filed in 1996, and pertinent factual background is set forth in Neal v. Dep't of Corrections (On Rehearing), 232 Mich.App. 730, 732-733, 592 N.W.2d 370 (1998):

This is a class-action suit brought, in relevant part, under the Civil Rights Act [CRA], MCL 37.2101 et seq...., by female prisoners housed in facilities operated by the Michigan Department of Corrections (MDOC). Defendants are the department, its director, and several wardens, deputy wardens, and corrections officers employed by the MDOC....

The case arises out of allegations that male corrections personnel have systematically engaged in a pattern of sexual harassment of female inmates incarcerated by the MDOC. Specifically, plaintiffs' complaint alleged that the MDOC assigns male officers to the housing units at all women's facilities without providing any training related to cross-gender supervision; that women are forced to dress, undress, and perform basic hygiene and body functions in the open with male officers observing; that defendants allow male officers to observe during gynecological and other intimate medical care; that defendants require male officers to perform body searches of women prisoners that include pat-downs of their breasts and genital areas; that women prisoners are routinely subjected to offensive sex-based sexual harassment, offensive touching, and requests for sexual acts by male officers;

and that there is a pattern of male officers requesting sexual acts from women prisoners as a condition of retaining good-time credits, work details, and educational and rehabilitative program opportunities. The complaint also alleged that the inmates were subject to retaliation for reporting this gender-based misconduct. Plaintiffs claimed that these actions, and defendants' failure to protect female inmates from this misconduct through adequate training, supervision, investigation, or discipline of MDOC employees, constitute gender-based discriminatory conduct, sexual harassment, and retaliation in violation of the [CRA].

This action involves over five hundred plaintiffs and is to be tried in stages, with each stage involving a different "bundle" of plaintiffs.^{FN1} The instant appeal involves the first bundle of ten plaintiffs, who raised claims of sexual harassment occurring at the Scott Correctional Facility from 1991 through 1999. After a trial that took place in January 2008, the jury found in favor of the ten plaintiffs and against defendants MDOC, Joan Yukins (the Scott warden), and Kenneth McGinnis (the MDOC director).^{FN2} The jury reached separate verdicts for each plaintiff, with damages totaling \$15,545,000, and the trial court thereafter entered individual judgments.

FN1. The parties use the term "bundling" in their briefs, but we note that this case does not involve the Supreme Court's prohibition against bundled asbestos-related cases contained in Administrative Order No.2006-6.

FN2. In this first bundled trial, plaintiffs requested damages against only these three defendants.

At trial, testimony and exhibits were introduced detailing the sexually hostile environment at the Scott facility. In addition, the ten plaintiffs testified about groping, rapes, inappropriate pat-down searches, sexual comments, and other harassing behavior perpetrated by Scott guards.

*2 Defendants first argue that plaintiff failed to establish a violation of the CRA as a matter of law. We review de novo a trial court's decision with regard to a motion for a JNOV. Attard v. Citizens Ins. Co. of America, 237 Mich.App. 311, 321, 602 N.W.2d 633 (1999). "In reviewing a trial court's denial of a defen-

dant's motion for JNOV, this Court should examine the testimony and all legitimate inferences therefrom in the light most favorable to the plaintiff." *Id.* "A trial court should grant a motion for JNOV only when there was insufficient evidence presented to create an issue for the jury." *Id.*

A person may not be discriminated against on the basis of sex in the provision of public accommodations or public services. MCL 37.2102(1).^{FN3}

FN3. A prison environment is encompassed by this language for claims accruing before March 10, 2000. Neal v. Dep't of Corrections, unpublished opinion per curiam of the Court of Appeals, issued February 10, 2005 (Docket Nos. 253543 & 256506), slip op at 3, 10, remanded on other grounds 474 Mich. 970 (2005).

Discrimination because of sex includes sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:

* * *

(iii) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment. [MCL 37.2103(i).]

In Radtke v. Everett, 442 Mich. 368, 382-383, 501 N.W.2d 155 (1993), the Supreme Court indicated that the following elements must be established for a prima facie case of hostile-environment sexual harassment:

- (1) the [person] belonged to a protected group;
- (2) the [person] was subjected to communication or conduct on the basis of sex;
- (3) the [person] was subjected to unwelcome sexual conduct or communication;

(4) the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with the [person's] employment or created an intimidating, hostile, or offensive ... environment; and

(5) respondeat superior.

Respondeat superior liability exists when the defendant had sufficient notice of the harassment and failed to take adequate corrective action. Elezovic v. Ford Motor Co., 472 Mich. 408, 412, 697 N.W.2d 851 (2005).

In their appellate brief, defendants do not dispute that plaintiffs belonged to a protected group, that they were subject to unwelcome conduct or communication based on sex, or that the conduct or communication created an intimidating, hostile, or offensive environment. Instead, they focus on the alleged fact that there was no actual or constructive notice of the harassment.

Notice of a hostile environment may be actual or constructive. Sheridan v. Forest Hills Public Schools, 247 Mich.App. 611, 621, 637 N.W.2d 536 (2001). The pertinent inquiry is whether "the totality of the circumstances [was] such that a reasonable employer would have been aware of a substantial probability that sexual harassment was occurring." Chambers v. Tretco, Inc., 463 Mich. 297, 319, 614 N.W.2d 910 (2000). Here, there was sufficient evidence for the jury to conclude that defendants had adequate notice of the hostile environment.

*3 In 1997, Annabelle Romero was hired to investigate the problem of sexual harassment at Scott and another facility. In her extensive report, admitted as an exhibit at trial, she stated:

It is my opinion that the level of sexual assault, sexual abuse, sexual harassment, and invasions of privacy reflected in inmate interviews, employee depositions, and MDOC's own documents, and summarized in the sections above, is far beyond the level that would be expected in a prison system that has made a serious, concerted effort to minimize instances of staff-inmate relationships, sexual assault, sexual abuse, sexual

harassment, and invasions of privacy, and indicates that the [d]efendants are deliberately indifferent to protecting inmates from sexual misconduct of all types.

Another trial exhibit revealed that there were nearly two hundred sexual misconduct allegations at Scott from 1991 to 1999, out of a population of around eight hundred women. Another exhibit indicated that from 1994 to 1997, around thirty percent of the male staff at Scott were alleged to have taken part in sexual assaults.^{FN4} It was also revealed at trial that Human Rights Watch had issued a report indicating that, based on an investigation from 1994 through 1996, Michigan had failed to take adequate steps to protect against the potential for custodial sexual misconduct in prisons. The report stated, in part:

^{FN4}. While these numbers refer to allegations, they nonetheless have some bearing concerning whether defendants should have been aware of a hostile environment.

[t]hat officers often target like a radar women with histories of sexual or physical abuse or prisoners in emotional vulnerable positions such as those who lack support from family or friends, who are alienated or isolated by other prisoners or staff and younger women who are incarcerated for the first time.

In addition, many of the individual plaintiffs in this case testified that the sexually abusive behavior they endured was observed by or reported to supervisors. Yukins admitted at trial that, in her deposition, she stated that many women reported being assaulted by officer Lynn Williams before the assaults at issue in this case and that she should have fired Williams before he sexually assaulted any of the present plaintiffs.

This case is far different from the situation in Elezovic, supra at 427-428, 697 N.W.2d 851, where the plaintiff told "two [low-level] supervisors in confidence about one instance of ... improper conduct..." It also differs from Sheridan, supra at 629, 637 N.W.2d 536, in which the Court found that "the sexual harassment was not, as a matter of law, substantially pervasive enough to put defendant on notice of the sexual harassment." Instead, there was evidence of a pervasive, sexually harassing environment, and the jury was within its rights to conclude that defendants

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
CIVIL DIVISION

TOM NOWACKI, et al,

Plaintiffs,

Case No. 11-852-CD

-v-

HON. ARCHIE C. BROWN

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

The Deposition of MILLICENT D. WARREN, taken
before Timothy J. Boroski, RPR/CSR-2378 and Notary Public in
and for the County of Clinton, State of Michigan, at the
Women's Huron Valley Correctional Facility, 3201 Bemis Road,
Ypsilanti, Michigan, on Tuesday, October 16, 2012, commencing
at or about 8:40 a.m.

APPEARANCES:

Law Office of Glen N. Lenhoff
BY: ROBERT D. KENT-BRYANT, ESQ., (P40806)
328 South Saginaw Street
8th Floor, North Building
Flint, Michigan 48502
810.235.5660

Co-Counsel appearing on behalf of plaintiffs,

Page 6

1 A Yes.
 2 Q And as you probably know, it's also important that you
 3 give verbal out loud answers as opposed to nods or shakes
 4 of the head or utterances such as uh-huh or unh-unh.
 5 And, again, that's for the clarity of the record. The
 6 gestures and the utterances can tend to be ambiguous when
 7 we go back and read the record. Okay?
 8 A Yes.
 9 Q All right. What is your date of birth, ma'am?
 10 A April 30, 1954.
 11 Q And you mentioned you are currently employed as warden at
 12 the Huron Valley Women's Facility; true?
 13 A The name is Women's Huron Valley Correctional Facility.
 14 Q All right. And how long have you held that position?
 15 A At Women's Huron Valley Correctional Facility?
 16 Q Correct.
 17 A Since September of 2008.
 18 Q And before that, where were you?
 19 A At the Thumb Correctional Facility.
 20 Q And you were warden there?
 21 A Yes.
 22 Q And for what time period were you warden at the Thumb?
 23 A I believe it was 2001 forward to 2008.
 24 Q Any break in employment between the Thumb and here at
 25 Huron Valley?

Page 7

1 A None.
 2 Q And you were warden at Thumb Correctional Facility; true?
 3 A Correct.
 4 Q And that was a men's facility for that time?
 5 A Yes.
 6 Q For the entire time?
 7 A Yes.
 8 Q All right. And before you were at the Thumb as warden,
 9 what position did you hold and where?
 10 A Deputy warden at the Thumb Correctional Facility.
 11 Q For what time period?
 12 A I believe it was 2000 forward, the date I was
 13 appointed warden.
 14 Q All right. So you were deputy warden for a relatively
 15 short time at the Thumb it sounds like?
 16 A At that facility, yes.
 17 Q And before you were deputy warden at the Thumb, what
 18 position did you hold?
 19 A Deputy warden at Macomb Correctional Facility.
 20 Q And for what time period did you hold that position?
 21 A I believe it was 2000 -- I mean, sorry, 1996 sometime.
 22 Q Okay. Approximately?
 23 A Yeah.
 24 Q Okay. To June of 2000?
 25 A Correct.

Page 8

1 Q And what sort of a facility was Macomb during that period
 2 of time?
 3 A A male facility.
 4 Q And what position did you hold before your deputy warden
 5 position at Macomb?
 6 A Assistant deputy warden at Macomb Correctional Facility.
 7 Q For what time period?
 8 A 1993 forward to the time I was appointed deputy warden.
 9 Q And during that time period was it also a male facility?
 10 A Yes.
 11 Q And before that position, the ADW position at Macomb,
 12 what position did you hold?
 13 A I worked in field operations. It was called Bureau of
 14 Field Services at the time.
 15 Q And that's with the Michigan Department of Corrections?
 16 A Correct.
 17 Q And for what time period did you hold that position?
 18 A I began employment with the Department of Corrections
 19 field operations on May 1st of 1977.
 20 Q To 1993?
 21 A Yes.
 22 Q Did you hold various positions within the Bureau of Field
 23 Services?
 24 A Correct.
 25 Q Could you describe those for me?

Page 9

1 A I began working as -- they called it -- I can't remember
 2 the exact title. It was an employment specialist,
 3 perhaps, it was called working in community services.
 4 Q Is that a different position or part of employment
 5 specialist?
 6 A It was all in that umbrella. We worked with the male and
 7 female prisoners who were released from prison prior to
 8 parole.
 9 Q To prepare them for employment when they were released?
 10 A Correct.
 11 Q All right. For what time period did you hold that
 12 position?
 13 A I'm sorry, 1977 to maybe 1978. I'm guessing here. I'd
 14 have to go back.
 15 Q Approximately.
 16 A Yeah.
 17 Q All right. And then what was the next position you held?
 18 A I was a field agent. We called them -- the technical
 19 term was parole and probation agent.
 20 Q And during what time period, did you hold that point?
 21 A From that point forward until 1981.
 22 Q Okay. And did you service males, females or both while
 23 you held that position?
 24 A Both.
 25 Q All right. And what position did you hold after that?

(Pages 6 to 9)

Page 22

1 Q Do you know what percentage of the officers that were
 2 working in the women's facility before Huron Valley
 3 became all women, what percentage were males and what
 4 percentage were females?
 5 A No, I do not.
 6 Q Do you have even any approximation of that?
 7 A No.
 8 Q Okay. All right. Then -- I mean, and we have, I'm not
 9 going to ask you about them yet, but we have a number of
 10 position descriptions. For instance, my first one here
 11 is of food service officer. And we have others. We have
 12 yard control officer, et cetera. Do you know when these
 13 position descriptions were developed?
 14 A No, I do not.
 15 Q Okay. Now, there is position descriptions -- there is
 16 gym officer, there is electronic monitor officer. You
 17 know, and all of these are for the Huron Valley
 18 Correctional Complex. Rover officer, et cetera.
 19 Did you play a role, any role at any point in
 20 developing these position descriptions?
 21 A Not that I recall.
 22 Q Do you know who did develop -- or does it depend on the
 23 position? Because we'll later be going through them one
 24 by one.
 25 A Generally, a position description is developed by the

Page 23

1 director over that -- or manager over that assignment.
 2 For example, if it was in a housing units, the housing
 3 unit supervisor -- it may have been an assistant resident
 4 unit supervisor, a resident unit supervisor. At the
 5 time, there were assistant deputy wardens and there were
 6 deputy wardens. I was not warden at the women's facility
 7 when those were developed.
 8 Q All right. Well, was there, to your knowledge, a change
 9 in any of Huron Valley's position descriptions when it
 10 became an all female facility?
 11 A Could well have. Simply because, my understanding, I'm
 12 not an HR expert, but whenever you fill a position, you
 13 must have an updated position description. So those were
 14 routinely done by human resources in conjunction with the
 15 hiring manager.
 16 Q Okay. Because this is important and I want to go through
 17 this systematically, because I want to get as firm an
 18 idea as I can of who made these descriptions and who was
 19 involved in drafting these descriptions.
 20 So in May of 2009 -- I'm repeating myself, but
 21 I just want to get my footing here. In May of 2009,
 22 huron Valley becomes an all female facility; true?
 23 A Correct.
 24 Q At that time, you mentioned that whenever there is a
 25 change in a position, the position description is

Page 24

1 updated; true?
 2 A Yes.
 3 Q All right. And as of May 2009 when it was changed to an
 4 all female facility, was that considered to be a point at
 5 which all the positions were being changed and the
 6 position descriptions required updating?
 7 A I don't recall any direct involvement of that. I recall
 8 direct involvement only in the position descriptions for
 9 the deputy warden positions.
 10 Q Okay. But my question is, you mentioned earlier that
 11 when there is a position -- someone new is in a position,
 12 is that what you meant by a position change?
 13 A Creation of a new position.
 14 Q Okay. Well, when this became an all female facility,
 15 were all the positions considered to be new positions?
 16 A No.
 17 Q Okay. What positions were considered to be new positions
 18 when this became an all female facility?
 19 A The deputy wardens.
 20 Q Okay. Any others?
 21 A We expanded. For example, you know, if we had five
 22 housing units and now we have 15 housing units, we hired
 23 that many more, or we accepted that many more people into
 24 that position. But that position description is, I don't
 25 want to say statewide, because if it's BFOQ, obviously,

Page 25

1 there is not a BFOQ assignment in regard to every
 2 correctional facility.
 3 Q Right.
 4 A There are, but it's not -- it's not in the same context
 5 of gender. There are BFOQ assignments at every
 6 correctional facility that relate to specific skills for
 7 that assignment is my understanding.
 8 So, for example, if you are weapons trained,
 9 that is a bonafide requirement for that assignment is to
 10 be trained in the weapon, or you can't have that
 11 assignment.
 12 Q Well, there is information in this case that when this
 13 became an all female, Huron Valley became an all female
 14 facility, that a number of job descriptions had a strip
 15 search requirement added to them.
 16 Do you recall that?
 17 A No.
 18 Q Are you denying that is true?
 19 A I don't have knowledge of it.
 20 Q All right. You have never had anyone bring to your
 21 attention or complain to you or anything of this sort
 22 that strip search requirements have been added to job
 23 descriptions?
 24 A (No response).
 25 Q Let's say in the last three or four years I'm talking

(Pages 22 to 25)

1 A That is determined upon authoring and creating the post
 2 order assignment sheet. There is a post order for every
 3 custodial assignment.
 4 Q All right. And that's the book you're talking about,
 5 right?
 6 A It's part of the book.
 7 Q All right. But no where in the book, as far as you know,
 8 does the book say that a position, say explicitly, that a
 9 position is going to be BFOQ-female only; true?
 10 A True.
 11 Q All right. So that book goes to someone who looks at the
 12 book -- someone or someone's -- who looks at the book and
 13 determines that it's going to be BFOQ-female only; true?
 14 A I'm sorry, apparently, I'm not clear. When you develop
 15 it, if the job requirement says that you must do a search
 16 of a prisoner on that assignment, it must be BFOQ.
 17 Q Right. I understand that.
 18 A That's a given. I mean, that's not a -- it doesn't --
 19 it's -- so if that's in the assignment, then --
 20 Q Okay. Well, who specifically looks at the book and says,
 21 "Hey, this has a search requirement. Therefore, it's
 22 BFOQ-female only?"
 23 A It's done at the time of development.
 24 Q And who is that?
 25 A It's generally written by a deputy. And I don't know if

1 search requirement, or a -- or if the assignment will
 2 require seeing women in a state of undress, then it is
 3 declared BFOQ-female only at the facility?
 4 A Yes.
 5 Q All right. And you mentioned an involvement of Straub of
 6 Curtis. Where do they come in?
 7 A Going back initially, developing the whole custodial
 8 assignment sheet, has the title. And in order to
 9 determine appropriate staffing levels, those that are
 10 BFOQ only were identified for budget reasons to ensure
 11 that we hire the proper number of each gender for that
 12 assignment.
 13 If the assignment is non-BFOQ, it's whatever
 14 gender. There is no special qualifications for that
 15 assignment. If it's BFOQ identified, we can only hire a
 16 female for that assignment.
 17 Q Okay.
 18 A And so that whole sheet comes together, which is -- does
 19 a calculation of how many staff we go to the
 20 appropriations and ask for money to fund this facility,
 21 part of which have to be female only. And it's used for
 22 a lot of various reasons.
 23 Q You mentioned earlier that Straub and Curtis approve the
 24 BFOQ-female only designations. Did I recall that
 25 correctly?

1 I sign them any longer. We used to have to sign them
 2 annually as a warden.
 3 Q Okay. So that's done within the facility?
 4 A Yes.
 5 Q All right. And it sounds like the process is you, or one
 6 of the deputies, gets this book, or both. And if it has
 7 a search requirement, then it's BFOQ-female only; true?
 8 A I think there is more that goes into it. There also is
 9 if you would be in a position to view a female in a state
 10 of undress.
 11 Q Okay. Anything else?
 12 A Strip search. But that's part of the search process.
 13 Q Anything else?
 14 A I don't believe so.
 15 Q Okay. So, you know, and I apologize for continually
 16 abusing this dead horse, but I just want to make sure
 17 we're as specific as possible and that I'm understanding.
 18 So from these work groups, you get these books,
 19 which include post order assignments. Those are things
 20 you receive at the facility. And with regard to each
 21 post order assignment, you and/or the deputy wardens or
 22 supervisors review the books. One of the things you're
 23 reviewing the books for is to determine whether a
 24 specific position has to be BFOQ only.
 25 If, in looking at the assignment, there is a

1 A Yes.
 2 Q Is that the stage at which they approve it?
 3 A They approve the overall -- the overall staffing.
 4 Q All right.
 5 A Okay. So we would -- typically, before one was sent in
 6 for final approval, because the authority falls with the
 7 deputy director, you would sit down and -- how can I say
 8 this? I can't use an example here, because I have not
 9 had to be in that position here. When I was a warden in
 10 a men's facility, I would have to sit down and justify
 11 why I needed another officer in the back of food service,
 12 for example.
 13 Q Right.
 14 A So when it goes up there and he's making that decision on
 15 the big pot of money, he goes, "Well, I really have to
 16 approve that for Warden Warren at the Thumb, because it's
 17 a safety issue, they really need that assignment there."
 18 So you have a meeting with them to discuss your
 19 proposed staffing. And with the women, at the women's
 20 facility, the issue of BFOQ is on the table. So that the
 21 conversation says, "Is that assignment a BFOQ?"
 22 The question is answered.
 23 "Is there a requirement to do searches on that
 24 assignment?"
 25 "Yes."

(Pages 50 to 53)

1 I don't -- I honestly will tell you that these
 2 are men who have -- Straub has as much experience as I do
 3 in 35 years. They have worked custodial assignments and
 4 they know --
 5 Q You know, before you -- you don't have to defend it.
 6 A Okay.
 7 Q I'm really just trying to figure out the mechanism there.
 8 A So --
 9 Q So when you're defending these custodial assignments,
 10 you've preliminarily designated certain positions
 11 BFOQ-female only. And when you meet with them, that
 12 topic will come up is what you are saying; correct?
 13 A Yes.
 14 Q And when you talked about them approving the BFOQ-female
 15 only positions here at Huron Valley, is that what you
 16 were talking about, that process?
 17 A Yes.
 18 Q All right. And in the case of, let's say, food service
 19 officer, did -- well, strike that.
 20 You mentioned a little bit about the Thumb.
 21 Did you have these meetings also with regard to, since
 22 you have been warden, at Huron Valley?
 23 A Yes.
 24 Q All right. And did the issue of food service officer
 25 being a BFOQ-female only position come up?

1 litigation.
 2 Q When were you -- not this litigation? You're talking
 3 about the one involving --
 4 A The female offenders.
 5 Q -- the female offenders?
 6 A Yes. There were two specific lawsuits. And because of
 7 the indefensible position I believe the department found
 8 themselves in in some of the litigation, to avoid future
 9 allegations of that nature, a comment was made all staff
 10 should be female working with female prisoners.
 11 Q Who made that comment?
 12 A I was told it was from Pat Caruso.
 13 Q Who told you that?
 14 A Deputy Director Straub and RPA Curtis.
 15 Q All right. And what else was discussed in connection
 16 with that discussion?
 17 A I don't know if you could characterize it if they asked
 18 for my opinion. I did not believe that was possible, or
 19 necessarily advisable. From a fairness standpoint it
 20 would include many occupations who work at a correctional
 21 facility, some would -- some of which would be next to
 22 impossible to fill based on gender only.
 23 Q Okay. So that's what you said. Anything else you said
 24 with regard to Caruso's comment?
 25 A Yes. There were some assignments that, on the custodial

1 A Not specifically.
 2 Q Okay. All right. Did you, with regard to food service
 3 officer, did you discuss with Straub or Curtis why you
 4 had designated that position BFOQ only?
 5 A No.
 6 Q All right.
 7 A I -- I don't recall.
 8 Q All right. And then you said -- but you mentioned there
 9 were general discussions. Were they discussions that
 10 essentially that these either have a search requirement
 11 or a requirement -- or that women be seen in a state of
 12 undress; therefore, they are BFOQ-female only?
 13 A Yes.
 14 Q Was there any discussion beyond that with Straub and
 15 Curtis?
 16 A Yes.
 17 Q Okay. Tell me about that.
 18 A The decision made by the department on the gender of
 19 staff working with the women was to have all staff be
 20 female.
 21 Q The discussion between -- the discussion with Straub and
 22 Curtis that you had?
 23 A Yes.
 24 Q Okay. And tell me about that.
 25 A I was informed the director, Pat Caruso, had been in this

1 assignment sheet, were to be all BFOQ. And I discussed
 2 with the RPA and Deputy Director Straub if there could be
 3 some compromise on some of those assignments.
 4 Q Okay. What assignments were you referencing?
 5 A Specifically, yard assignments, for example.
 6 Q Okay.
 7 A My --
 8 Q Do the list of assignments first before you talk about
 9 why. So yard assignment. What other should there be, or
 10 did you discuss?
 11 A Construction assignments.
 12 Q Okay.
 13 A Transportation assignments.
 14 Q Okay.
 15 A Control center assignments.
 16 Q Okay. Any others?
 17 A In general, your gate, your information desks and your
 18 bubble.
 19 Q Any others? And if you have to use Exhibit 2 to refresh
 20 your memory or so forth, that's fine. I'm not really
 21 trying to hide the ball on you.
 22 A I understand.
 23 No.
 24 Q All right. And I want to back up a little bit. So
 25 Curtis and/or Straub related this comment of Caruso where

(Pages 54 to 57)

1 she advocated all the staff at Huron Valley being female
 2 only. And this would have been before the facility
 3 transferred over to female inmates only, true, this
 4 conversation?
 5 A I don't know when the conversation took place.
 6 Q Can you put it in a year, like 2009, 2010, '11?
 7 A Oh, certainly, it would have been in 2009 or prior.
 8 Q Okay. And did either Curtis or Straub give their
 9 reaction to Caruso's comment?
 10 A I believe they had the same, I don't want to say opinion,
 11 but they agreed.
 12 Q With Caruso?
 13 A No, with -- I'm characterizing. I don't want to
 14 characterize somebody. But with the more reasonable
 15 resolution.
 16 Q All right. And that would have been the -- this
 17 compromise with yard assignment, construction,
 18 transportation, control center, information desk, bubble,
 19 did they agree with that compromise?
 20 A Yes.
 21 Q Okay. So, again, just to make sure I understand the
 22 process, you would have received these books that you
 23 describe from the working groups, if they described a
 24 position where someone would be in a state of -- a female
 25 prisoner would be in a state of undress, or there would

1 You came in with a custodial assignment sheet.
 2 Was that modified in any way as a result of your meetings
 3 with Curtis and Straub?
 4 A Multiple times. It's a draft. It's a working draft.
 5 And it doesn't become legal or -- until it's signed by
 6 the deputy director and that becomes your document.
 7 Q Was it modified at all with regard to BFOQ positions?
 8 A The final approved draft?
 9 Q Yeah. Did the final approved draft differ at all from
 10 your initial submission as it pertains to BFOQ-female
 11 only positions at Huron Valley?
 12 A Yes.
 13 Q Okay. What were the differences?
 14 A For example, I'm going to -- please don't say I'm not
 15 telling the truth if I don't have the number right, but I
 16 believe there were six officers on the yard, as a yard
 17 assignment. Initially, they were identified as all BFOQ.
 18 Q Okay. So you had initially identified them as BFOQ?
 19 A They were identified because this -- not me.
 20 Q This facility?
 21 A Yes.
 22 Q All right.
 23 A Because the essential assignment required, if you're on
 24 the yard, if I saw you as a prisoner put something on
 25 your person or hide contraband, the officer would have to

1 be a search requirement, then you would have designated
 2 those positions BFOQ-female only.
 3 So you had a meeting with Straub and Curtis, or
 4 maybe more than one meeting, to discuss approval of this
 5 custodial assignment sheet that you developed. And at
 6 one these meetings, they mentioned Caruso's comments.
 7 And then you mentioned a compromise was reached
 8 that included assignments such as yard assignment,
 9 construction, transportation, control center, info desk
 10 and bubble, as non-BFOQ positions here at Huron Valley;
 11 correct?
 12 A That they could be --
 13 Q They could be?
 14 A -- BFOQ or non-BFOQ.
 15 Q They could be either one?
 16 A With the caveat that there was a -- the ability to have a
 17 custodial officer to provide the essential service of a
 18 shake if it was required.
 19 Q Okay. So do I interpret that correctly that there would
 20 have to be at least a female available to perform a
 21 shake? But if there were a female available, then the
 22 second officer could be male; is that what you're saying?
 23 A Yes.
 24 Q All right. Now, the -- this compromise, was that any --
 25 well, let me ask you this:

1 do a search.
 2 The compromise was, if we have six officers,
 3 and we use staff efficiently, three of which could be
 4 female and called upon to do a search if a search was
 5 called for. And would do so, so that there was not any
 6 allegation that a male fondled, grabbed, sexually
 7 assaulted, whatever, the female. And that is in -- just
 8 right out in the open you can't put your hands on them.
 9 The same thing on a transportation assignment.
 10 If there are two officers transporting --
 11 Q But make sure -- just for organizational purposes, the
 12 question I have on the table is what changes were made
 13 so that -- from your original submission of the custodial
 14 assignment tree assignments, the draft, to the final
 15 draft, what changed? And you mentioned yard. What --
 16 A So if it were six assignments, we did three BFOQ, three
 17 non-BFOQ.
 18 Q For the yard?
 19 A For the yard.
 20 Q Okay. What else?
 21 A Transportation, the same thing. Whatever the whole
 22 number was, we split it in half.
 23 Q Okay. What else?
 24 A The assignment I talked about with the bubble, gate --
 25 Q Okay.

(Pages 58 to 61)

1 A -- and information desk.
 2 Q Were changed from all BFOQ to half and half?
 3 A They were established as half and half.
 4 Q Okay. But just to be clear, in your initial draft you
 5 had them BFOQ-female only?
 6 A I can't say for sure.
 7 Q You're not sure?
 8 A (No audible response).
 9 Q That's fair.
 10 A It is not a document until it is done.
 11 Q I understand.
 12 A So, in the final, it was agreed that my gate officer who
 13 primarily shakes people down could be a man.
 14 Q Right. I really understand.
 15 A But if I have a female visitor come in, someone from the
 16 bubble who is a female could come out, relieve them, the
 17 male could go in the bubble and could perform that
 18 search.
 19 Q All right. I want to know, insofar as you recall, how it
 20 changed from your original proposal. I'm not saying it's
 21 unusual that these changed, but just how it changed from
 22 your original proposal to the final draft. Was yard
 23 initially all BFOQ-female only?
 24 A Yes.
 25 Q And then that changed to half and half; true?

1 A The bubble --
 2 Q Bubble, gate and information?
 3 A -- the gate and the information desk. It was a given
 4 that one of those three at all times must be a female.
 5 Q All right. Okay. Other than -- well, strike that.
 6 In your initial draft of the custodial
 7 assignment, were there any non-BFOQ positions?
 8 A Yes.
 9 Q Okay. What was non-BFOQ?
 10 A We called it a perimeter vehicle.
 11 Q Okay.
 12 A Actually, it was called perimeter security vehicle.
 13 Q Anything else?
 14 A The gun tower, the sally port.
 15 Q Okay.
 16 A Can I look at this?
 17 Q Sure. Do you mind if I sneak behind you and get a little
 18 refill?
 19 A (Examining document). The visiting room, information
 20 desk.
 21 Q Okay. Hold on.
 22 A Bubble, rover.
 23 Q Was non-BFOQ?
 24 A Was not distinguished as BFOQ only.
 25 Q All right.

1 A Yes.
 2 Q Was transportation originally all female --
 3 A Yes.
 4 Q -- or all BFOQ-female?
 5 A Yes.
 6 Q And then that changed to half and half?
 7 A Yes.
 8 Q Was the bubble originally all female BFOQ?
 9 A I think the gate was.
 10 Q Okay. Not sure about the bubble?
 11 A Yeah.
 12 Q Correct?
 13 A Yes. Correct.
 14 Q All right. And the gate was initially all BFOQ-female
 15 and then changed to half and half? Or at least someone
 16 being available?
 17 A Correct.
 18 Q All right. And then the information desk, was that
 19 originally BFOQ-female only?
 20 A Was not identified either way.
 21 Q All right. All right. And then it ended up being half
 22 and half?
 23 A It's a little bit of a mischaracterization. If I could,
 24 those three assignments work together.
 25 Q Which three?

1 A I believe that may be all.
 2 Q All right. And if something is not distinguished as BFOQ
 3 only, then the assumption is that it's not BFOQ; true?
 4 A Correct.
 5 Q All right. So here at Huron Valley the food service
 6 officer works where?
 7 A It's called the food service building.
 8 Q Right. And some of this may seem obvious, but what is
 9 done at the food service building?
 10 MS. MILLER: Can I just -- are you going to go
 11 into specific positions at this point?
 12 MR. KENT-BRYANT: You know, only this one.
 13 MS. MILLER: Okay. Can we take a quick break?
 14 (Off the record from 10:35 to 10:44).
 15 MR. KENT-BRYANT: Back on the record.
 16 Q (BY MR. KENT-BRYANT) What is done at the food service
 17 building?
 18 A The purpose of the building is to receive, store, prepare
 19 and serve food to prisoners and staff.
 20 Q All right. And food is served there how often; all three
 21 meals, or --
 22 A Three times a day.
 23 Q And I take it the, maybe I'm wrong, does the whole prison
 24 eat at the same time?
 25 A No.

(Pages 62 to 65)

1 pat-down is performed of one of the prisoners, but based
 2 on the observational skills of the correction officer,
 3 there is a need to perform a strip search.
 4 He calls in for authorization from a
 5 supervisor. The supervisor gives the authorization.
 6 Typically, that prisoner would be taken to one of the
 7 designated strip search areas; true?
 8 A Yes.
 9 Q All right.
 10 A Or segregation. You stopped me. That would be another
 11 area that a strip search is routinely done.
 12 Q All right. And then there is on duty, typically, an
 13 officer who performs the strip search; true? It's not
 14 usually the food service officer or somebody -- or just a
 15 typical corrections officer; true?
 16 A No.
 17 Q That's not true? Is there someone that usually performs
 18 the strip search at the facility?
 19 A Any officer, who is a female, could be designated by a
 20 supervisor to perform a strip search on a prisoner.
 21 Q Who usually performs, what position usually performs
 22 strip search as a matter of practice?
 23 A Any female corrections officer.
 24 Q So it's your contention that there aren't specific -- I'm
 25 not saying what's in their job description. I'm saying

1 They have been done in food service.
 2 They are dally done -- pat searches are daily
 3 done in food service. Where, again, it requires a female
 4 to touch the body, clothed body, of a prisoner before
 5 they leave the assignment. That must be done by a
 6 female.
 7 Q With regard to the -- but so I'm clear. If a strip
 8 search -- if it's determined by a food service officer
 9 that a strip search is required, the prisoner will
 10 usually be taken to a designated area; true?
 11 A Yes. Unless approval is given for it to be conducted on
 12 site.
 13 Q Now, since you have been warden -- first of all, have
 14 there been any strip searches that have emanated from
 15 food service? In other words, has anyone -- has any food
 16 service officer ever requested a strip search?
 17 A Yes.
 18 Q All right. How many times has that happened to you?
 19 A I don't know.
 20 Q Do you know whether there would be a record of that, and
 21 if so, where it would be?
 22 A There would be records. The reason we assign them --
 23 generally in a particular area, a room designated to do
 24 strip searches, is that you need a proper room --
 25 Q I understand that. But stay on this topic for a second,

1 who actually, on a day-to-day basis, usually does it?
 2 It's your contention that there is not any distinction
 3 between the different positions?
 4 A I'm trying to answer this very honestly for you.
 5 Q Um-hum.
 6 A If a need for a strip search is -- occurs --
 7 Q Right.
 8 A -- and you happen to be assigned in a housing unit, and
 9 you're coming back from lunch, the shift commander can
 10 say officer so and so, female, go and strip search this
 11 prisoner right now.
 12 So depending on the circumstance, yes. On a
 13 routine basis, if you work in segregation, every prisoner
 14 who comes into segregation is strip searched. So you may
 15 do some more often if your "normal" assignment is in
 16 segregation as a female officer.
 17 Q Right.
 18 A The same would hold true for a visit. If you are working
 19 in a visiting room, you could be a male or a female.
 20 However, the female officer that is designated to work in
 21 the visiting room that day is the one that performs the
 22 strip search after the visit.
 23 I don't want to mislead you that, you know, if
 24 you're a female and a need for a strip search is done and
 25 you're a corrections officer, you could be assigned that.

1 though. I have limited mental capacity. So if we have
 2 got two going on at the same time, I'm not -- I tend to
 3 lose my train of thought.
 4 So the records for whether a strip search
 5 emanated from food service, where would that be found?
 6 A It should be found in the strip search log that is
 7 maintained on the west side of the facility in the
 8 control center.
 9 Q Okay. Now, you're not sure how many strip searches since
 10 you've been here have emanated from food service; right?
 11 A No.
 12 Q Now, do you know whether those strip searches have been
 13 performed at the designated area versus right there in
 14 food service?
 15 A Yes, I know.
 16 Q Okay. And what is the answer?
 17 A Both.
 18 Q How many have been performed in food service?
 19 A I don't know.
 20 Q Do you know what the circumstances of that were -- or of
 21 those were?
 22 A I know of one particular incident.
 23 Q Okay. Tell me about it.
 24 A An officer, I don't recall if the supervisor was --
 25 authorized it, decided it was important to do a strip

(Pages 74 to 77)

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1 search because they believed the prisoner had contraband.
 2 Q Okay.
 3 A Much after the fact, I became aware that there were
 4 multiple prisoners who were strip searched in food
 5 service in what I determined was an inappropriate manner.
 6 An investigation ensued and those persons who were
 7 involved were subject to corrective action.
 8 The policy is clear, for a non-routine strip
 9 search, you must get authorization from the warden's
 10 office. That is why we have designated areas. Routine
 11 strip searches are done, as I indicated, in -- after
 12 visits and in segregation. It is not a routine to have
 13 one done in food service.
 14 Q All right.
 15 A Therefore, it would precipitate a request. And if time
 16 would allow, we would do it in the area designated for
 17 that.
 18 Q All right. And it would have to go -- non-routine strip
 19 searches would have to go through the warden's office?
 20 A Or a designee.
 21 Q Okay, so who? So that would be either you or who else?
 22 A A deputy. It can be a captain.
 23 Q Okay.
 24 A Generally --
 25 Q A senior officer at the facility?

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1 A Senior, um-hum.
 2 Q Is that a yes?
 3 A Yes.
 4 Q All right. And in this case that you're referencing,
 5 that was not done; true?
 6 A Correct.
 7 Q And when did this incident occur?
 8 A Maybe 2010.
 9 Q And this involved female officers?
 10 A Yes.
 11 Q No male officers were involved in this --
 12 A No.
 13 Q -- inappropriate strip search; true?
 14 A No.
 15 Q And what corrective actions were received?
 16 A I don't recall, specifically. I can't tell you the names
 17 of the persons.
 18 Q How many were involved in terms of officers?
 19 A I'm going to say several.
 20 Q Okay. How many were involved in terms of prisoners?
 21 A Well, it kind of morphed.
 22 Q Give me a range.
 23 A I was only told, initially, reported by a prisoner, of
 24 two to three.
 25 Q Okay.

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1 A By the time the whole investigation was completed, there
 2 probably were 20.
 3 Q Okay. Did you ever make a determination of how many
 4 actually were involved?
 5 A There was no way to make that determination.
 6 Q What was the alleged motivation for performing the strip
 7 searches?
 8 A Contraband.
 9 Q Do you know what kind of contraband?
 10 A Food.
 11 Q Did your knowledge of this emanate from a prisoner
 12 complaint or --
 13 A Yes.
 14 Q So not only was this not -- well, was this reported --
 15 strike that.
 16 Was authorization requested of anyone for the
 17 strip searches?
 18 A No.
 19 Q All right. So the officers just took it upon themselves?
 20 A Correct.
 21 Q All right. Was there an allegation of, by the prisoners,
 22 of sexual assault or sexual harassment arising out of
 23 this incident?
 24 A That's a broad term. Allegations were it was not done in
 25 a private area. And that allowed the prisoners to be

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1 seen or observed in a state of undress by other prisoners
 2 or multiple officers.
 3 Q Okay. Where was it done?
 4 A In the old food service building. I call it old because
 5 it was the only food service building up until earlier
 6 this year when the new one was opened. And it's located
 7 here on the west side of the facility.
 8 Q Where in that facility was it done? You said that it was
 9 not in a private area.
 10 A Right. It was in the back -- the back of food service
 11 where they prep and store and cook meals. It was not
 12 done in the dining area.
 13 Q All right. Were any of those officers discharged, do you
 14 know?
 15 A No.
 16 Q Any other examples of a strip search being done at the
 17 food service facility that you're aware of?
 18 A No.
 19 Q Okay. Now -- oh, maybe I'll try to get to one or two
 20 more exhibits before we have to break for the day.
 21 (Exhibit Number 3 marked for identification by
 22 the reporter).
 23 Q (BY MR. KENT-BRYANT) I have handed you what has been
 24 marked as Exhibit 3. Can you identify that document,
 25 please?

(Pages 78 to 81)

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1 **A** It is the operating procedure for the Women's Huron
 2 Valley Correctional Facility regarding the subject of
 3 search and arrest at the Women's Huron Valley
 4 Correctional Facility.
 5 **Q** Okay. That's -- it's a pretty big document. Included in
 6 that document, are there guidelines that pertain to Huron
 7 Valley for strip searches and patdowns?
 8 **A** Yes.
 9 **Q** All right. And I guess I sort of assumed it in the
 10 question. Let me ask it in a reverse way:
 11 Are the regulations that govern the Women's
 12 Huron Valley Correctional Facility concerning patdowns
 13 and strip searches found in Exhibit 3?
 14 **A** Yes.
 15 **Q** Okay. I want to turn your attention to that Page 3 of 20
 16 of this document.
 17 **MS. MILLER:** Did you say 3.
 18 **MR. KENT-BRYANT:** Of 20.
 19 **Q** (BY MR. KENT-BRYANT) All right. Now, on 3 of 20,
 20 towards the bottom of the page, there is search of
 21 prisoners, patdown, clothed body and cell search. I want
 22 to direct your attention to the second paragraph of that
 23 section. Do you see that?
 24 **A** Yes.
 25 **Q** All right. It begins by saying, "Each non-housing

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1 correction officer who has direct prisoner contact must
 2 conduct either a patdown or a clothed body search of a
 3 minimum of five randomly selected prisoners per shift."
 4 I just want to stop there for now. First of
 5 all, these procedures, do you know who authored them?
 6 Actually -- and I'm backing up away from that specific
 7 example just a second. Do you know, in general, who
 8 authored Exhibit 3?
 9 **A** According to Page 20 of that document, it was authored by
 10 Lucille Evans.
 11 **Q** Okay. Do you know who had input into it?
 12 **A** Should have been Inspector, captain, a uniformed
 13 supervisor.
 14 **Q** All right. And yourself?
 15 **A** Yes.
 16 **Q** I guess the initials make sense to me. It says,
 17 "Approved on November 3rd, 2010, by MW." That's probably
 18 you?
 19 **A** Yes.
 20 **Q** And then slash LE, which is Lucille Evans; right?
 21 **A** Correct.
 22 **Q** All right. Now, this specific sentence, is this
 23 something that was added to this document for this
 24 particular -- for this particular version of the
 25 operating procedure or was there a prior operating

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1 procedure where it was included?
 2 **A** Specific to operating procedure, I'm sure it was included
 3 in multiple operating procedure.
 4 **Q** How do you know that?
 5 **A** Because it's based on the policy directive.
 6 **Q** Okay. And there is a policy directive concerning five
 7 randomly selected prisoners per shift?
 8 **A** That's correct.
 9 **Q** And do you know when that policy directive was developed?
 10 **A** I don't have the date. The authority is identified on
 11 the front of your document.
 12 **Q** Okay.
 13 **A** As PD 04.04.100.
 14 **Q** Okay. From your experience, do you know how long that
 15 directive has been -- whether it would be found in PD
 16 04.04.100 or elsewhere, do you know how long that
 17 directive has pertained?
 18 **A** In the 35 years I worked for the Department of
 19 Corrections we have had a policy not numbered that way,
 20 because we used to have a different numbering system.
 21 But we had the subject of search and arrest at
 22 correctional facilities for my entire career.
 23 **Q** I'm specifically talking about, though, the requirement
 24 of searching five randomly selected prisoners. Do you
 25 know how long that requirement has existed?

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1 **A** No, I do not.
 2 **Q** Do you know when you first became aware of it?
 3 **A** No, I do not.
 4 **Q** It then says, skipping down, it says, "Such searches must
 5 be recorded on the daily prisoner shake down report and
 6 then recorded in the appropriate log book. WHV male
 7 corrections officers, in conjunction with a female
 8 corrections officer, may search a prisoner's coat,
 9 outerwear, while the female corrections officer performs
 10 the actual clothed body or patdown search."
 11 First of all, did I read that correctly?
 12 **A** Yes.
 13 **Q** And that's true, right? The patdowns can be performed as
 14 a team by a female and a male corrections officer; true?
 15 **A** As described in the paragraph.
 16 **Q** Right. So if there are more than one -- if one -- say,
 17 in some of the examples you provided earlier, I don't
 18 know if it was the gate and the bubble, if there is a
 19 male there and a female there, then this is how they
 20 would perform a patdown; right.
 21 The male would search the coat, the outerwear.
 22 I assume the female has to take it off. Or whoever is
 23 being searched has to take it off; right? True?
 24 **A** Wrong.
 25 **Q** Okay. So who takes it off? So if someone is wearing a

(Pages 82 to 85)

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1 coat --
 2 **A A prisoner is told to take their coat off.**
 3 **Q Okay. And then the coat can be handed to the male**
 4 **officer who can search the coat?**
 5 **A Yes.**
 6 **Q All right. And then the patdown on the prisoner is**
 7 **performed on the female -- or by the female; true?**
 8 **A Yes.**
 9 **Q All right. Now, by the way, when you worked at the Thumb**
 10 **Correctional Facility, was it against regulations for**
 11 **females to patdown male prisoners?**
 12 **A No.**
 13 **Q Do you know why not?**
 14 **A No.**
 15 **Q Was it against the rules for females to see males in a**
 16 **state of undress when you worked at the Thumb**
 17 **Correctional Facility?**
 18 **A No.**
 19 **Q And at the Thumb Correctional Facility, did women work in**
 20 **housing?**
 21 **A Yes.**
 22 **Q Did they work in intake?**
 23 **A Could have.**
 24 **Q Did they work in segregation?**
 25 **A Yes.**

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1 **Q Did they work in food service?**
 2 **A Yes.**
 3 **Q All right. In the food service, just in terms of**
 4 **performing patdowns in food service at Huron Valley**
 5 **Women's, would it be a reasonable alternative when it's**
 6 **staffed by two corrections officer, if one of them is**
 7 **male, for any patdown to be accomplished in the way that**
 8 **is described in Exhibit 3?**
 9 **It doesn't have to be, you know, your favorite.**
 10 **But would that be a reasonable alternative?**
 11 **A Not based on operational needs.**
 12 **Q And what do you mean by that?**
 13 **A As I testified earlier, food service is a very busy area.**
 14 **And it -- the schedule in food service typically runs**
 15 **your institutional daily activity.**
 16 **Searches need to be done efficiently,**
 17 **effectively, with staff that are available. We have**
 18 **prisoners who will be coming in -- relieving each other**
 19 **on shifts, for example. Might be in the middle of food**
 20 **lines.**
 21 **It's not necessarily a break in time when you**
 22 **can call for assistance to do a search for a prisoner.**
 23 **Therefore, for operational needs, having females perform**
 24 **that duty ensures the institutional schedule is not**
 25 **unduly delayed in feeding prisoners. Prisoners have to**

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1 **be fed within certain time frames for medication reasons**
 2 **and for standards that there can't be a lapse of time**
 3 **between one meal and the next.**
 4 **Q What did you do to determine -- I mean, what evidence did**
 5 **you use that having the patdowns achieved in the manner**
 6 **described -- that we just discussed in Exhibit 3, would**
 7 **delay the performance of -- or the provision of meals**
 8 **in any other way affect the institutional needs? I mean,**
 9 **what did you do to determine that those delays would**
 10 **actually happen?**
 11 **A If I have 30 prisoners arriving for a shift, that same 30**
 12 **generally will leave at the same time when they are**
 13 **relieved by an oncoming shift.**
 14 **Q If I may interrupt, I think I understand your logic. But**
 15 **I'm wondering what you did to determine whether that**
 16 **logic was actually true.**
 17 **So, for instance, when this was a mixed**
 18 **facility, male officers worked food service when women**
 19 **were present there; true?**
 20 **A Yes.**
 21 **Q Did you do anything to determine whether the patdowns as**
 22 **they were performed then in any way was detrimental to**
 23 **the efficiency of the food service operations?**
 24 **A It took a long time.**
 25 **Q Right. Well, first of all, when you say it took a long**

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1 **time, what is your evidence for that?**
 2 **A It required women to report for work at Women's Huron**
 3 **Valley. We identified. Put on a pass. Put in a**
 4 **vehicle. Transported out of Women's Huron Valley in a**
 5 **vehicle.**
 6 **Transported into Men's Huron Valley. Go into**
 7 **food service. Work the assignment. When the assignment**
 8 **was over, they had to be pat searched. They got in the**
 9 **vehicles. They went through the sallyport. They drove**
 10 **over to the women's facility. They went into the**
 11 **facility. They were strip searched and then they were**
 12 **allowed to go back to their assignment. It was very**
 13 **laborious.**
 14 **Q I guess I'm not following you. What does that have to do**
 15 **with -- I'm not saying it doesn't, but I'm not following.**
 16 **What does that have to do with a male working in food**
 17 **service?**
 18 **A The male can't perform that function.**
 19 **Q Right. But if there is -- it's staffed by two now;**
 20 **right?**
 21 **A At the time it was not. We had to bring in additional**
 22 **female staff to do the work.**
 23 **Q All right. But the suggestion isn't that there would be**
 24 **no females in food service. The suggestion is that there**
 25 **could be a male.**

(Pages 86 to 89)

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
CIVIL DIVISION

TOM NOWACKI, et al,

Plaintiffs,

Case No. 11-852-CD

-v-

HON. ARCHIE C. BROWN
VOL. 2

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

The Deposition of MILLICENT D. WARREN, taken
before Timothy J. Boroski, RPR/CSR-2378 and Notary Public in
and for the County of Clinton, State of Michigan, at the
Women's Huron Valley Correctional Facility, 3201 Bemis Road,
Ypsilanti, Michigan, on Tuesday, February 20, 2013, commencing
at or about 10:00 a.m.

APPEARANCES:

Law Office of Glen N. Lenhoff
BY: ROBERT D. KENT-BRYANT, ESQ., (P40806)
328 South Saginaw Street
8th Floor, North Building
Flint, Michigan 48502
810.235.5660

Co-Counsel appearing on behalf of plaintiffs,

1 A The shakedown room is not an assignment. It is an area
2 that is provided to conduct shakedowns in by staff
3 assigned to the visiting room, or to the shake -- you
4 know, to the shakedown officer assignment.

5 It can -- you know, it -- they can -- sometimes
6 you have a person who can't leave the visiting room and
7 another person conducts the shakedown. And so the room
8 itself is not an assignment. It's the duties associated
9 with whatever assignment the officer has for the day.

10 Q Now, are you -- you testified last time as to a shakedown
11 that occurred in the food service area. Do you recall
12 that testimony?

13 A Yes.

14 Q Other than that -- well, we're saying shakedown.
15 Actually, you testified concerning the strip search --

16 A Correct.

17 Q -- that occurred in the food service area. And then
18 other than that strip search and strip searches that may
19 occur in the housing unit, are you aware of any strip
20 searches that have been conducted anywhere else but in
21 the rooms that you identified earlier in the west
22 administrative building, and then in the east, what was
23 the --

24 A The same thing.

25 Q -- administration building? All right. Are you aware of

1 A Yes.

2 Q Okay. Anything else?

3 A I'm trying to think of every situation. I don't believe
4 so.

5 Q All right. Now, these are situations -- well, let's just
6 talk about custody. Sergeant, lieutenant and captain,
7 these are situations in which the custody supervisors
8 could see women in a state of undress; is that true?

9 MS. GROSS: I'm going to object. It calls for
10 speculation.

11 Q (BY MR. KENT-BRYANT) You can answer.

12 A We have a requirement by the department that any male
13 entering a unit must announce themselves. We call it the
14 knock and announce.

15 Q Okay.

16 A That there is a male in the area. They have a time frame
17 in which they are to wait. The purpose of that waiting
18 period is to allow a person who may be in the state of
19 undress to cover themselves up. And then they go into
20 the unit. Primarily, the purpose for a supervisor going
21 in is to -- not to manage the unit, but rather to provide
22 supervisory rounds.

23 Q And a supervisory round would consist of what?

24 A They would read the log book. They would talk to the
25 staff in the unit. Sometimes they will go into the day

1 any strip searches that have occurred anywhere else other
2 than the examples that I gave?

3 A Yes.

4 Q Where?

5 A In housing units.

6 Q Well, that's right. Right. Okay. So excluding strip
7 searches that occurred in the housing unit and then the
8 one that you talked about that occurred in the food
9 service areas, excluding those, are you aware of any
10 strip searches that have occurred since you have been
11 here anywhere but the strip search rooms that you talked
12 about in the east and west administrative buildings?

13 A No.

14 Q Now, supervisors are -- male supervisors are allowed in
15 the housing units; is that correct?

16 A Yes.

17 Q And what positions would those be?

18 A There are custody supervisors, which would be a sergeant,
19 lieutenant or captain.

20 Q Okay. Anything else?

21 A There are housing supervisors that would be -- they are
22 referred to as assistant unit resident supervisors, case
23 managers, resident unit managers, deputy wardens,
24 physical plant supervisors, health care supervisors.

25 Q Hold on just a second. Health care supervisors?

1 room. In practicality, most of it's talk to the officers
2 at the front desk, sign the book and move on.

3 Q All right. Have there been occasions where custody
4 supervisors have seen women in a state of undress?

5 MS. GROSS: Objection. Calls for speculation.

6 THE WITNESS: I can't say yes or no.

7 Q (BY MR. KENT-BRYANT) All right. Why are those custody
8 supervisor positions not BFOQ positions?

9 A My understanding is the provisions of the BFOQ apply when
10 the essential function of your duty includes putting your
11 hands on a member of the opposite sex. Here, male
12 officers putting their hands on a female prisons to
13 conduct the various types of searches that we are
14 required to do. Supervisors do not perform those kinds
15 duties.

16 Q Is it true also that positions are subject to BFOQ if
17 they involve seeing women in a state of undress?

18 A You know, that could be characterized that way. Unless
19 it's an emergency or -- in practicality, if a woman
20 chooses to not heed the knock and announce, there is a
21 man in the area and cover themselves up, you know, people
22 have been known to expose themselves both in and out of
23 prison. So those I'm sure do occur. They are less
24 likely to occur.

25 The risk for that occurring is by making the

(Pages 99 to 102)

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1 **pronouncement and ensuring that staff are there only for**
 2 **a very brief period of time. Not going into the areas**
 3 **where someone is taking their clothes off, where someone**
 4 **is showering, someone is using the bathroom.**

5 Q All right. So a position will not necessarily be subject
 6 to BFOQ merely because a female prisoner might have the
 7 ability to expose themselves?

8 A True.

9 Q All right. And very picayune for the record, by expose
 10 themselves, we're talking about revealing what people
 11 normally consider private parts; posterior, genitals or
 12 breasts, true?

13 A Yes.

14 Q All right. Now, with regard to housing supervisors, and
 15 you listed a number of them, are they in a position to
 16 see women in a state of undress?

17 MS. GROSSI: Calls for speculation.

18 Q (BY MR. KENT-BRYANT) You can answer.

19 A I believe any male person going into the unit could
 20 potentially see someone in a state of undress, or they
 21 could see them out in the yard in a state of undress. We
 22 have had prisoners strip clothes off and run in the yard
 23 outside.

24 Q All right. That's contrary to regulations, though, of
 25 course, right?

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1 And I thought your testimony was except in certain
 2 circumstances, no. So I'm wondering what certain
 3 circumstances you were referencing?

4 A Changing of their clothes. You know, if they need to
 5 change clothes. If they need to go to the bathroom.
 6 Those kinds of things. But there are rules that say you
 7 can't leave your room, even if you are in pajamas,
 8 without a robe on. You have to be covered leaving your
 9 housing cell, your cell, but -- they can't lay in bed
 10 naked. They have to cover up.

11 Q Now, are there any other areas in the entire facility
 12 where, other than what you have listed, where women are
 13 permitted to be in a state of undress?

14 A If I'm saying that they are in the state of undress in
 15 health care and in shakedown areas and in housing units,
 16 those would be areas that would be a reasonable
 17 expectation to find them in a state of undress.

18 Q Okay. So health care areas, restrooms and housing units,
 19 but I take it in the housing units, that's subject to the
 20 restrictions that you have already testified to, correct?
 21 You mentioned --

22 A Yes.

23 Q All right. Since the prison has opened as a female only
 24 facility, have male corrections officers received any
 25 overtime?

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1 A Of course.

2 Q But women are sometimes in a state of undress in the
 3 housing units, true?

4 A Yes.

5 MS. GROSSI: Same objection.

6 Q (BY MR. KENT-BRYANT) I'm sorry?

7 MS. GROSSI: I'm sorry to step on your answer.

8 That's my fault.

9 THE WITNESS: That's okay.

10 MS. GROSSI: You have to repeat your answer.

11 THE WITNESS: I'm sorry, say that again,

12 please.

13 Q (BY MR. KENT-BRYANT) Yes. But women are in certain
 14 circumstances allowed to be in a state of undress in the
 15 housing units, true?

16 A Not without certain precaution, no.

17 Q Well, in their cells they are allowed to be in a state of
 18 undress, true?

19 A Yes. Changing clothes, for example. Changing out of
 20 clothing to get into a shower, for example.

21 Q Correct. So, when you were saying except in certain
 22 circumstances, what were you referencing?

23 A I'm not clear what you're asking.

24 Q Right. You said that -- I asked the question, are women
 25 allowed to be in a state of undress in the housing unit.

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1 A Yes.

2 Q In what capacity?

3 A All assignments for which they are qualified.

4 Q In other words, all of the assignments that are not BFOQ?

5 A Correct.

6 Q And they are not eligible for any overtime, obviously, in
 7 the assignments that are BFOQ, true?

8 A Yes.

9 Q And has it been true that, overall, female corrections
 10 officers, and I'll include in that resident unit officers
 11 and so forth, have received the majority of overtime that
 12 has been available overall?

13 A We have a much larger number of female staff who work at
 14 the facility versus men. So, normally, they will have
 15 more overtime because there is more of them to receive
 16 overtime. And it's -- it's administered according to the
 17 union contract, the collective bargaining agreement,
 18 based on seniority and qualifications for an assignment.

19 Q Have the women sometimes been, the female officers I'm
 20 talking about, required to clock mandatory overtime?

21 A Yes.

22 Q Have any of the male officers been required to clock
 23 mandatory overtime?

24 A I honestly can't testify to that.

25 Q Have you received, or become aware of, complaints on the

(Pages 103 to 106)

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1 percent of their time, very honestly. Depending on if
 2 they're -- what type of urine drop. For example, if it's
 3 an emergency, or like it's probable cause, it's generally
 4 done at control center.
 5 If it is a list we get for random drops, which
 6 is slim to none anymore these days, it could be assigned
 7 to anybody. But not necessarily yard staff unless it's
 8 convenient for them to be assigned to it. So I'm not so
 9 sure. I'm trying to be really accurate about the --
 10 Q That's what I'm --
 11 A -- the point there.
 12 Q Okay.
 13 A I don't believe under -- on Page 8, under Number 17, I
 14 don't believe any of our yard staff would be required to
 15 complete a security classification screen.
 16 Q Under what number was that?
 17 A Number 17 --
 18 Q Okay.
 19 A -- on Page 8.
 20 Q All right.
 21 A They do write misconducts. They may be in a position to
 22 order supplies. They may set up schedules. Although, it
 23 might not be a porter or laundry schedule. It might be
 24 an on-grounds maintenance. I don't believe they would
 25 have those kinds of assignments under them.

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1 Q All right.
 2 A And I believe the security classification, I don't
 3 believe I have ever seen them complete one of those. So
 4 I don't think that is accurate.
 5 Q All right. Are you aware of a strip search ever being
 6 generated out of the yard control officer position?
 7 A Routinely, no, I don't believe. I believe because those
 8 are supposed to be done in designated areas, they should
 9 be done by the officer assigned to the area, which would
 10 all be a BFOQ assignment.
 11 Q Right. And just to be clear, so there is an officer --

12 we went over this the last time, I believe. But there
 13 are officers assigned to visitors and so forth, or the
 14 visiting area, and they have to perform strip searches of
 15 the prisoners after a visitation, true?
 16 A Correct.
 17 Q And that's where the strip searches are usually
 18 performed, true?
 19 A The majority of them, yes.
 20 Q Right. And are you aware of any time that a yard control
 21 officer has ever had to perform a strip search?
 22 A No particular incident comes to mind. However, it is
 23 very -- it's possible that a yard officer be assigned --
 24 I'm going to give you a theoretical. It's the end of the
 25 day. It's -- 8:30 visits are done. And for the majority

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1 of the institution, they are in their housing units.
 2 A supervisor may pull a yard officer, yard
 3 control officer who is female and ask them to help with
 4 the strip search to get the rest of the prisoners back
 5 from their visits to their housing unit.
 6 So, potentially, yes. But we do have someone
 7 normally assigned to perform that function.
 8 Q All right. And you're not aware of a yard control
 9 officer ever having been called upon to do that?
 10 A I don't have personal knowledge.
 11 Q All right.
 12 (Exhibit Number 6 marked for identification by
 13 the reporter).
 14 Q (BY MR. KENT-BRYANT) I want to show you what has been
 15 marked as Exhibit 6 and first ask you to identify that.
 16 A It is the State of Michigan, Department of Civil Service,
 17 Position Description, specifically for the gate control
 18 officer.
 19 Q And, again, I'd like you to look through there to see if
 20 you're able to identify any inaccuracies?
 21 A (Examining document).
 22 MS. GROSSI: Was this Lucille Evans' dep Number
 23 5 exhibit?
 24 MR. KENT-BRYANT: That's probably where that
 25 other number is coming from.

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1 MS. GROSSI: I do have a copy in case you need
 2 extra.
 3 THE WITNESS: Do you want me to just look at
 4 hers?
 5 Q (BY MR. KENT-BRYANT) Why don't you begin by looking at
 6 the one that is actually marked. I'm pretty sure she's
 7 right. And then we can switch back and forth, or avoid
 8 switching back and forth.
 9 A (Examining document).
 10 Q You have had a chance to review Exhibit 6?
 11 A Yes.

12 Q Do you see anything inaccurate in there?
 13 A I'll make two clarifications as I did in the last one.
 14 Q Sure.
 15 A This is specific to a BFOQ position for that area.
 16 However, a male officer assigned to the bubble, or to the
 17 information desk, or another non-BFOQ assignment, would
 18 perform the same duties with regard to males.
 19 So when I say that, to clarify, I'm talking
 20 about male visitors, male staff. Because we have no male
 21 prisoners. This assignment specific to the female
 22 prisoners is done specifically by female staff.
 23 Q All right.
 24 A Also, female visitors and female staff -- females who are
 25 visitors or staff can waive and allow a male to do that.

(Pages 119 to 122)

1 But if they do not, short of that waiver, a male officer
 2 has to perform the search of a male visitor, a male staff
 3 member on the assignment.
 4 Q Okay.
 5 A So, you know --
 6 Q What you're talking about, though -- now, working --
 7 A These duties are performed by men when it relates to a
 8 male staff volunteer or prisoner.
 9 Q All right. The gate control officer position, however,
 10 is distinct from the bubble position and the information
 11 desk position; is that true?
 12 A Yes.
 13 Q All right. And a gate control officer is a BFOQ
 14 position, true?
 15 A Yes.
 16 Q Do you know who drafted that position description?
 17 A No.
 18 Q All right. Do you know when that position was declared
 19 BFOQ?
 20 A No.
 21 Q Do you know who was involved in the decision to make that
 22 a BFOQ position?
 23 A Honestly, no. I -- I believed it to be longstanding.
 24 Q Now, why is the gate control officer position a BFOQ
 25 position?

1 A That would probably be their primary duty.
 2 Q Are you aware of specific occasions when the gate
 3 officer, or the gate control officer, has performed a
 4 strip search?
 5 A I don't know particularly, no.
 6 Q Now, the gate control officer has that five pat-down
 7 requirement; is that true?
 8 A They have other requirements, because they do searching
 9 of staff. So there is additional requirements that they
 10 must do and --
 11 Q All right. Do they have the five pat-down requirement,
 12 the requirement to pat-down five female prisoners?
 13 A They would do that if there were five prisoners who would
 14 be traversing the gates. The gate is not an area where
 15 prisoners traverse without clear authorization.
 16 Q Okay.
 17 A So if I have two prisoners that are allowed to traverse
 18 the gate that day that are prisoners, then they could not
 19 possibly pat-down five.
 20 Q All right. So is that requirement in general waived for
 21 that position?
 22 A I don't think there is an official waiver, because
 23 normally there are that many prisoners. We have changed
 24 some of our practices. So, for example, we don't have
 25 visits seven days a week any longer. So there are two

1 A Well, in particular here because of the female prisoner
 2 issue and the prisoners -- it's a potential for having
 3 your hands put on a prisoner, a female prisoner, to
 4 perform various types of searches.
 5 Q What types of searches?
 6 A Strip searches, clothed body searches, pat-down.
 7 Q Is it typically the gate officer who performs the strip
 8 search of female prisoners who are receiving visitors?
 9 A That would vary based on the availability of other staff.
 10 Q So not always?
 11 A Correct.
 12 Q When would the gate officer be called upon to perform a
 13 strip search?
 14 A If there wasn't a staff member available.
 15 Q When is there not a staff member available?
 16 A There could be a variety of situations. The supervisor
 17 has determined that the "shakedown officer" would be
 18 assigned to perform some other duty, maybe they are
 19 taking urine samples that day, and we have a visitor we
 20 have to process for a particular reason, then they may
 21 have to do that. So it -- it would be based on
 22 individual daily circumstances.
 23 Q Okay. Typically, the shakedown officer is going to be
 24 the one that performs the strip search of the female
 25 prisoners after a visitation?

1 days of the week where it is not likely prisoners will be
 2 in the area to have that done.
 3 We do, however, have a number of what we call
 4 gate pass assigned prisoners who traverse the gates
 5 daily. Often it's more than two, up to five, it could be
 6 ten. So they do it based on the traffic in the gate that
 7 day. They don't have to go find somebody to do a search
 8 on to meet that criteria.
 9 Q And what would cause female prisoners to be traversing
 10 that area?
 11 A If they are being allowed out on a gate pass assignment,
 12 primarily.
 13 Q Okay. And is that one of the reasons, in your opinion,
 14 that a position is BFOQ female only?
 15 A I'm speaking from my experience. Every correctional
 16 facility in the state, if not the country, does their
 17 very best to assign a female to your gate and male in
 18 either the bubble or the information desk to perform a
 19 pat-down search of persons entering through their area of
 20 control who are the opposite sex.
 21 Q All right. Is that a yes, that it's -- that this is one
 22 of the reasons --
 23 A Yes.
 24 Q -- that the position is BFOQ only?
 25 A Yes.

(Pages 123 to 126)

1 A It was not identified as a BFOQ, but it is staffed. I
 2 recall it being staffed with a female on a regular basis.
 3 Q Female only?
 4 A Again, as I said, I don't believe there is a BFOQ
 5 anywhere else. I don't believe the assignment is
 6 identified as a BFOQ anywhere else.
 7 Q Right. Which means that it's formally designated female
 8 only. As a practical matter, if you know, when you were
 9 warden at Thumb Correctional Facility, was the gate
 10 control officer position staffed only by females?
 11 A I can't say exclusively, no.
 12 Q Okay. See if they are in the same order. This is going
 13 to be the gym control officer position.
 14 MS. GROSSI: I just have gym officer.
 15 MR. KENT-BRYANT: Right. Okay. You're right.
 16 I'm wrong.
 17 (Exhibit Number 7 marked for identification by
 18 the reporter).
 19 Q (BY MR. KENT-BRYANT) I want to show you -- and you may
 20 be spotting a pattern here -- I'm going to show you what
 21 has been marked as Exhibit 7. I'll ask you to identify
 22 that and whether there are any inaccuracies in that
 23 particular document.
 24 A This document is a State of Michigan, Department of Civil
 25 Service Position Description for the position of gym

1 officer. (Examining document). Okay.
 2 Q Are there any inaccuracies in the job description?
 3 A Yes.
 4 Q What would that be?
 5 A On Page 5, Number 15.
 6 Q Okay. You can -- she can look at that.
 7 A (Handing document).
 8 Q Thank you.
 9 A Duty 1, individual tasks related to the duty, conduct
 10 shakedowns and searches of female prisoners including
 11 strip searches. Strip searches would not be performed in
 12 that gym area. However, they would do shakedowns and
 13 searches of prisoners. They may be asked to do a strip
 14 search in the areas that strip search are performed, but
 15 not on that assignment.
 16 I'm not sure what it means by saying completes
 17 reclass reports for job lists. It seems like it's an
 18 incomplete sentence and I don't know what it refers to.
 19 On Page 6, under Duty 23, ensures prisoners
 20 shower and maintain appropriate appearance. Yes, to the
 21 point that if they look disheveled and smell, that would
 22 be an indication that they are not maintaining proper
 23 hygiene.
 24 However, there are no showers in the building
 25 to observe. And they don't -- I don't believe they

1 change clothes there at all. There are bathroom
 2 facilities there. They do have porters, so they do have
 3 to do all of that. But there was no showers that I know
 4 of that are in place in the gymnasium.
 5 On the same page, under Duty 4, assist in
 6 prisoners security screen reports. And assist obtaining
 7 information for PER reports. That seems a bit of a
 8 stretch that --
 9 Q What is a PER report?
 10 A A parole eligibility report.
 11 Q Okay.
 12 A It would be typically done in a housing unit. However,
 13 they could be called upon to -- by a housing supervisor
 14 to have input as to how they behave in the gymnasium.
 15 And, again, I think it's much of a stretch.
 16 On Page 7, under duty, Number 5, again, we find
 17 that assists in supervising urine drops. Urine drops are
 18 not taken in that building unless it's a mass number and
 19 that's designated as an area for some particular
 20 emergency reason they would be taken. But that would not
 21 be a duty unless that assignment was a closed and the
 22 supervisor had no one else to perform that duty.
 23 Yes, I believe everything else is fairly
 24 accurate.
 25 Q All right. With regard to Exhibit 7, do you know who

1 drafted this?
 2 A I thought we were on 6?
 3 MS. GROSSI: Don't mind this. This is Number
 4 7.
 5 Q (BY MR. KENT-BRYANT) I'm sorry. (Indicating).
 6 A Oh, yes, I'm sorry. No, I do not.
 7 Q Do you know when this position was BFOQ'd?
 8 A No.
 9 Q Do you know who was involved in the decision to BFOQ it?
 10 A Relating back to previous testimony, when it was
 11 determined that this would be the female facility, a
 12 staffing chart, which is the authorized assignments by
 13 the deputy director of correctional facilities
 14 administration makes that determination. At that time it
 15 was designated that. By whom, it would have been by
 16 the -- the authority in that would have been Dennis
 17 Straub.
 18 Q All right. And why is this position BFOQ?
 19 A Again, in that area prisoners are subject to searches of
 20 their persons and property. And the officer, custodial
 21 officer assigned would be called upon to do that. As
 22 well as potentially observing them in a state of undress
 23 while they are using the restroom.
 24 Q Okay. And when you're talking about the searches, you're
 25 talking about pat-down searches, true?

(Pages 131 to 134)

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1 stalls, are they protected in there from being able to be
 2 seen by others that are in that facility, the bathroom
 3 facility?
 4 **A** The bathroom in the gymnasium is in an area that has
 5 windows that open to the gymnasium. Very large windows.
 6 Ten -- from the ceiling down to waist area, perhaps, that
 7 look right into the area where you can visually see the
 8 sinks and a short partition in which somebody walks in.
 9 You see the head and you see the feet. If they are
 10 seated, you don't necessarily see the head.
 11 I do not know if they have doors that close on
 12 the front of there, but there is simply a very short
 13 partition.
 14 **Q** All right. But they are designed to -- I mean, you can't
 15 look from the gymnasium into the bathroom and see
 16 people -- see any of the people's private areas while
 17 they are using the restroom, true?
 18 **A** No.
 19 **Q** All right. ~~And is there any reason why, if a male~~
 20 ~~officer needed to access the bathroom in an emergency,~~
 21 ~~that the knock and announce policy couldn't be used?~~
 22 **A** No.
 23 **Q** Are you aware of male officers having been assigned to
 24 this gym facility or other gym facilities where the
 25 prisoners have been female at all at any point?

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1 **A** I don't know.
 2 **Q** Do you know if anyone spoke to any male officers who had
 3 the assignment of gym officers involving female prisoners
 4 before this position was BFOQ'd?
 5 **A** I do not know.
 6 **Q** So women who are in the gym, and really even outside of
 7 the stalls, are not supposed to be in a state of undress
 8 in the gym, true?
 9 **A** Correct.
 10 **Q** And, typically, if the need arose to perform a strip
 11 search arising out of the gym area, that would be
 12 performed in one of the designated rooms on any of the
 13 east or west administration buildings, true?
 14 **A** Right, correct.
 15 **Q** Now, in male facilities where you have been a warden,
 16 have there been similar gym facilities?
 17 **A** Yes.
 18 **Q** And have those gym officer positions been BFOQ male only?
 19 **A** No.
 20 **Q** Why not?
 21 **A** I don't know that any of the assignments in facilities
 22 where I was warden were specifically identified BFOQ or
 23 not.
 24 **Q** All right. And when you were at the Thumb, was there a
 25 gym?

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1 **A** Yes.
 2 **Q** And that was not a BFOQ only position -- women BFOQ
 3 female -- or male only position?
 4 **A** This is the first facility that I have worked at, that I
 5 know of, BFOQ in that definition exists.
 6 **Q** Okay. My question is, though, say, for instance, at the
 7 Thumb, I understand that it never was BFOQ, but why
 8 wasn't it BFOQ male only?
 9 **A** I don't know.
 10 **Q** All right.
 11 MR. KENT-BRYANT: All right. Let's mark this
 12 8.
 13 (Exhibit Number 8 marked for identification by
 14 the reporter).
 15 **Q** (BY MR. KENT-BRYANT) Just for safety's sake, I'm going
 16 to give you Exhibit 8 and ask you to look specifically at
 17 the version of it that is marked. And, again, ask you to
 18 identify what Exhibit 8 is and tell me if you find any
 19 inaccuracies. (Handing document).
 20 **A** (Examining document). The document is a State of
 21 Michigan, Department of Civil Service, position
 22 description for the specific assignment of electronic
 23 monitor officer.
 24 **Q** Okay.
 25 MR. KENT-BRYANT: Counsel, is that just a

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1 collection of the Lucille Evans' --
 2 MS. GROSSI: These are all the --
 3 MR. KENT-BRYANT: -- exhibits?
 4 MS. GROSSI: Yes, these are all the exhibits
 5 used at the Lucille Evans deposition.
 6 MR. KENT-BRYANT: Would you mind if I --
 7 MS. GROSSI: No.
 8 MR. KENT-BRYANT: -- I just went in the same
 9 order, if possible. See if we're -- while she's looking.
 10 **A** (Examining document).
 11 MR. KENT-BRYANT: Okay. I might make reference
 12 to them, because there is a couple of things I want to
 13 skip here.
 14 MS. GROSSI: Okay.
 15 **Q** (BY MR. KENT-BRYANT) Are there any inaccuracies in
 16 Exhibit 8?
 17 **A** The best way I can answer that is to say, understanding
 18 their task is to monitor electronic equipment, for
 19 example, on Page 5, under duty Number 2, it states,
 20 "Monitor prisoner porters to ensure they complete job
 21 duties."
 22 Prisoner porters do not work in control center.
 23 They are not allowed in there. However, technically, an
 24 officer could observe a prisoner doing that duty using a
 25 camera by observing them anyplace in the facility doing

(Pages 139 to 142)

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1 that job.

2 Q Okay.

3 A So it doesn't say that specifically, but I'm trying to be

4 as --

5 Q Okay.

6 A -- honest as I can be.

7 The rest of it is, again, based on what they

8 observe in the assignment, which is really inside a very

9 closed restricted area in which you don't have prisoner

10 contact in that assignment. So to write misconducts is

11 based on what you observe on the camera, for example, not

12 something you are -- directly have seen like we are

13 seeing one another. All of those duties would be based

14 on their ability to observe the activity on the area in

15 front of them.

16 Q So what are you referencing with regard to the job

17 description and inaccuracies?

18 A What I'm saying is it says a general duty doesn't

19 specifically say using the security monitoring equipment

20 available. It just says ensures prisoners compliance

21 with department policy, rules and regulations. And says

22 monitor prisoners activity and behavior.

23 Q All right.

24 A Most people would consider that being a direct

25 observation. There is no direct observation of the

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1 officer on that assignment.

2 Q Okay.

3 A Okay?

4 Q I understand that.

5 A Otherwise, I would say it is one of the more accurate

6 position descriptions you have shown me thus far.

7 Q All right. And in regard to Exhibit 8, do you know who

8 drafted that?

9 A No, I do not.

10 Q Do you know when this position was BFOQ'd?

11 A I know that it was on the staffing chart that I was

12 authorized to administer here.

13 Q Do you know if, prior to that time, if was a BFOQ female

14 only position?

15 A No, I do not.

16 Q All right. And this is BFOQ female only on all shifts,

17 true?

18 A Correct.

19 Q And, again, would it have been Straub and Curtis who

20 would have been involved in the BFOQ decision for this

21 position?

22 A Yes.

23 Q And why is this position BFOQ?

24 A This particular position has access to all facilities

25 cameras that report back to control center. So they have

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1 the potential of seeing a prisoner in a state of undress

2 on a regular basis.

3 Q Under what circumstances will the electronic monitor

4 officer see a prisoner in a state of undress?

5 MS. GROSSI: I'm going to object. Calls for

6 speculation.

7 Q (BY MR. KENT-BRYANT) You can answer.

8 A The positioning of the camera allows for viewing of

9 prisoners going into particular areas. A prisoner who

10 would remove their clothing going into a shower area.

11 Certainly, any emergency situation.

12 Q Okay. So any other examples of situations where the

13 electronic monitor officer would see a prisoner in a

14 state of undress?

15 MS. GROSSI: Same objection.

16 THE WITNESS: This is speculation. But,

17 potentially, if the prisoner willfully put themselves in

18 that position.

19 Q (BY MR. KENT-BRYAN) All right. I mean, that

20 particular -- yes, it was responsive to my question and I

21 appreciate that. That can occur on any position, true?

22 A Correct.

23 Q And the emergency situations that you're referencing,

24 what are you thinking of there?

25 A The same situation.

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1 Q Okay. Now, the cameras that the electronic monitor

2 officer would be viewing, they do not focus on the inside

3 of prisoner cells, true?

4 A There are some that do, yes.

5 Q In which situations?

6 A We have a number of cells that have cameras installed for

7 the purpose of direct observation.

8 Q What are those?

9 A They are specifically identified cells that would be what

10 we refer to as stripped of any items that could be used

11 to harm themselves. Primarily, it's just a bed and a

12 mattress without any other implements of self-harm

13 available to a prisoner. There are times when the

14 prisoner clearly is in a state of undress.

15 Q In these particular cells you're talking about?

16 A Yes. Yes.

17 Q It has not -- it's not uncommon for them even to be in

18 their own cell and be under direct observation to have

19 removed their clothing, taken off their suicide

20 protection gown. Checking their restraints, you know, is

21 very frequent.

22 And also observing them using the bathroom

23 where there is a toilet involved. In most of those cells

24 there is a toilet. And you do observe all of that on

25 those cameras.

(Pages 143 to 146)

1 Q And in the shower areas, the -- where are the cameras --
 2 you mentioned that the cameras see women undressing
 3 getting into the shower. Are they focused on the shower
 4 areas?
 5 A They are not -- they are --
 6 Q By focused, I mean pointed at. Not --
 7 A Right. They should be looking at the entrances to those
 8 areas. The way in which some of them are designed I
 9 guess is the best way to -- constructed.
 10 Q Which, the showers or the cameras?
 11 A The showers. The cameras I can point wherever. But you
 12 can pick up areas that -- you know, they can be in a
 13 state of undress. It's -- the showers, I mean, we use
 14 every space we can get. So the shower might be right up
 15 against the wall. And even though you're looking at who
 16 goes in there, you may be capturing part of that
 17 entranceway to the shower.
 18 Q Do you know, as you sit here today, whether it actually
 19 does?
 20 A I don't look at all the cameras. There is 1,400 cameras.
 21 I --
 22 Q But my question is, as you sit here today --
 23 A Not purposefully. The best way I can describe it, I have
 24 instructed the cameras to be placed so that we can
 25 determine who goes in a particular area and with whom,

1 but not necessarily what is going on in that area.
 2 Q All right.
 3 A So...
 4 Q I guess the question stands, though, as you sit here
 5 today, do you know whether the cameras in the -- or in or
 6 near the shower area, actually do capture prisoners in a
 7 state of undress?
 8 A I can't answer that.
 9 Q All right.
 10 A I'm sorry.
 11 Q Have any electronic monitor officers told you that the
 12 cameras in and around the shower area see women in a
 13 state of undress?
 14 A No.
 15 Q Now, are the shower areas and the restroom areas, are
 16 they the same areas or different areas?
 17 A It depends on the housing unit.
 18 Q All right. So is there any problems with the cameras
 19 seeing women in restroom areas in a state of undress?
 20 A (No audible response).
 21 Q And by restroom areas, I mean restroom areas as distinct
 22 from the shower areas. I assumed before when you were
 23 talking about shower areas, that if those included
 24 restroom facilities, they were included in your prior
 25 answers.

1 A For example, in those observation cells I mentioned,
 2 there are --
 3 Q Restroom facilities in there you mentioned.
 4 A Yeah. To help explain, there is wet cells. Wet cells
 5 have a toilet and and a sink in them.
 6 Q Right.
 7 A Okay. Otherwise, there is a general bathroom area where
 8 there is stalls.
 9 Q Right.
 10 A And then adjacent to that is generally a shower. So that
 11 they would be in the same proximity, but not necessarily
 12 next to each other. I'm thinking, because every -- there
 13 are so many buildings around here with different setups
 14 or configurations of their bathrooms.
 15 A Dickinson, I don't know if you can see into that area. I
 16 believe all the toilets are in stalls, except for in the
 17 housing unit.
 18 Q All right. All right. So I just want to make sure I
 19 understand. So in answer to the questions, do any of the
 20 cameras in and around the restroom areas show women in a
 21 state of undress? Is the answer yes, no, or I don't
 22 know?
 23 A I'm going to have to say no.
 24 Q Okay. Now, the electronic monitor position, that's not a
 25 position that has a strip search requirement, is it?

1 A No, not normally.
 2 Q Now, do you know if when this facility, before it became
 3 female only and there were men and women in different
 4 areas, do you know with regard to anywhere where females
 5 might reside whether male corrections officers ever were
 6 assigned to the electronic monitor officer position?
 7 A I do not know.
 8 Q Do you know if, before this position was designated BFOQ,
 9 whether any men or women were spoken to who had been
 10 electronic monitor officers in this facility?
 11 A I have no idea.
 12 Q Now, the electronic monitor position in male prisons,
 13 that's not a BFOQ male only position, true?
 14 A True.
 15 Q In the Thumb where you were warden, why wasn't that a
 16 BFOQ male only position?
 17 A I believe I have testified to this in the past. My
 18 experience with BFOQ assignments were specifically
 19 related to the female facilities.
 20 Q Okay.
 21 A When that became an acronym that was used in the
 22 department and it applied specifically to the female
 23 facilities, I don't recall any of my positions, whether
 24 they would normally or as a practice were staffed with
 25 females, were ever designated as BFOQ only. Maybe that

(Pages 147 to 150)

1 occurred unbeknownst to me, but...

2 Q Well, so, at the Thumb, though, could people in the

3 electronic monitor positions view the prisoners in a

4 state of undress?

5 A I recall I believe one set of cameras, I can't recall the

6 housing unit now in particular, and because it did, we

7 put -- it had to have been our close custody unit.

8 Because it had some security mesh over them and we put

9 some material to block it from view.

10 So if you were looking at the camera, the

11 camera was in the shower area. That you wouldn't be

12 standing there looking at a naked person showering. But

13 I -- it's been so long, I can't tell you what housing

14 unit it was. It seems like -- I mean, we didn't have --

15 Q So you're not sure?

16 A -- the number of cameras. Yeah, I can't tell you the

17 number of cameras, but...

18 Q So, and my question was, at the Thumb, could the

19 electronic monitor officer see prisoners in a state of

20 undress? It sounds like, as you sit here today, you

21 don't know?

22 A No, I don't.

23 Q All right.

24 A Potential, yes.

25 Q All right. With that potential existing, why was that

1 Q You were aware of the litigation that the department was

2 involved in concerning, you know, that was brought by

3 female prisoners, weren't you?

4 A Yes, very peripherally. It -- I don't know how to say

5 this, but the women's issues were very minor compared

6 to -- because of the size of the population, were very

7 minor overall to department. And so the majority of our

8 effort and energy has always gone to male facilities. So

9 while we would be on the periphery of what was going on,

10 it wasn't something we were directly affected by.

11 Q All right.

12 MR. KENT-BRYANT: Let's go ahead and mark that.

13 (Exhibit Number 9 marked for identification by

14 the reporter).

15 Q (BY MR. KENT-BRYANT) I want to show you what has been

16 marked as Exhibit 9. The same drill. I'll ask you to

17 identify it and then look through it and tell me whether

18 you see any inaccuracies.

19 A (Examining document). Yes, I'm ready.

20 Q All right. Do you see any inaccuracy in there?

21 A In general, yes. Again, on Page 5, under Duty 1, it

22 speaks of, "Conducts shakedowns and searches of female

23 prisoners, including strip searches." I don't believe a

24 strip search has ever been assigned in that area.

25 Q The health care infirmary officer?

1 not a BFOQ only position? I understand that -- well, let

2 me withdraw that question.

3 Did you, when you were at the Thumb

4 Correctional Facility, know that you could suggest that

5 positions be male only positions?

6 A I don't remember that ever being a topic of discussion.

7 Q Were you aware before you came to this facility that

8 positions -- well, let me ask you this. Strike that.

9 When did you first become aware that a position

10 within the Department of Corrections could be declared a

11 BFOQ position?

12 A The first recollection -- you know, I -- the first

13 recollection I have of BFOQ was having a discussion with

14 Sue Davis, who was a warden. I don't know where she was

15 a warden at the time. But when she started working for

16 the department, she always worked with women. She never

17 worked at a men's facility.

18 And my first introduction to BFOQ was her

19 discussion about the position of, I believe, the

20 department, to remove men from assignments within areas

21 where they can -- where their primary duties were to

22 conduct searches of prisoners, whether it be strip

23 searches or pat searches.

24 Q When was that? When did that --

25 A I can't say the year.

1 A Correct.

2 Q All right.

3 A Now, I'm on Page 6.

4 Q Okay.

5 A While under Number 3 there are those things that could

6 occur, they don't necessarily monitor -- they monitor the

7 prisoner going into an exam room. They are generally not

8 there when the prisoner changes clothes or is put in an

9 exam gown or anything like that. Potentially, yes.

10 Linens and clothing, potentially -- we don't

11 use any linens over there. It's pretty much all

12 disposable stuff so it's thrown out.

13 Job duties, yes. Dressing or undressing, that

14 would -- they would not be called upon to do it. Nursing

15 staff would be called upon to do that.

16 Assist in obtaining information from the parole

17 eligibility report. Only as it's assigned -- only as

18 they are assigned to the infirmary; not the health care

19 assignment. These are both combined.

20 And, again, on Page 7, under duty Number 5,

21 assist in room assignment, bed changes. That would only

22 apply to the infirmary, not to the health care

23 assignment. They don't have anything like that. That's

24 it.

25 Q All right. And this is a BFOQ only position -- or a BFOQ

(Pages 151 to 154)

1 female only position, true?
 2 **A Yes.**
 3 **Q** And what is the reason for that?
 4 **A Because the officer is interchanged with the infirmary**
 5 **officer, switched out with the infirmary officer. And**
 6 **the infirmary is considered like a housing unit.**
 7 **Probably even more so because the prisoners are confined**
 8 **to the bed.**
 9 **Q** Under what circumstances are they interchanged with the
 10 infirmary officer position?
 11 **A I understand they can be assigned to provide lunch**
 12 **reliefs where there may be additional movement in and**
 13 **out. Maybe they have to pack up a cell and they need to**
 14 **be in the unit while that duty is performed.**
 15 **Q** All right. And so they may be switched with the
 16 infirmary officer position you're saying?
 17 **A Correct.**
 18 **Q** And how often does that occur?
 19 **A I would only speculate. I don't know if they -- the**
 20 **clinic itself is very busy, except for during count**
 21 **times.**
 22 **Q** So the -- and if someone had to be switched with an
 23 infirmary officer, what is it that an infirmary officer
 24 does that would require a BFOQ?
 25 **A The infirmary is considered a housing unit.**

1 **A No.**
 2 **Q** If the health care officer did not have to interchange
 3 with the infirmary officer, would there be any reason for
 4 that position to be BFOQ?
 5 MS. GROSSI: I'm going to object. Calls for
 6 speculation.
 7 **THE WITNESS: I believe it could be safely**
 8 **managed with certain accommodations.**
 9 **Q (BY MR. KENT-BRYANT) By a male officer?**
 10 **A Yes.**
 11 **Q** All right. What sort of accommodations are you thinking
 12 of?
 13 **A It really applies, again, to the knock and announce.**
 14 **Q Okay.**
 15 **A For example, the officer podium for that station with the**
 16 **phone and everything else is right at the door. And so**
 17 **they process prisoners in. But they leave that**
 18 **assignment quite frequently.**
 19 **Q** Who does? Which --
 20 **A The officer.**
 21 **Q** The health care?
 22 **A The health care officer.**
 23 **Q** Okay.
 24 **A And the area is, I'm going to describe it as a U-shaped**
 25 **hallway where doorways are open -- I mean, every time I**

1 **Q** Okay.
 2 **A And so there are bedrooms, beds. They are confined to**
 3 **their bed for the most part.**
 4 **There are -- one shower in particular is really**
 5 **well opened up because of an infirm prisoner. If they**
 6 **have to do searches, you might see the prisoner in a**
 7 **state of undress on a regular basis.**
 8 **Q** Let me ask you this:
 9 **Has the health care officer position always**
 10 **been, since you have been here, interchanged with the**
 11 **infirmary officer position?**
 12 **A I believe so.**
 13 **Q** Well, if someone, I'm not saying who, testified that
 14 that's a relatively recent development, would you have
 15 any reason to dispute that?
 16 **A I'm -- I don't understand your question.**
 17 **Q** Well, I think there will be testimony in this case that
 18 the health care officer only recently interchanges with
 19 the infirmary officer. And before that that was not the
 20 case.
 21 **Would you have any reason to dispute that?**
 22 **A I don't have any knowledge of that.**
 23 **Q** All right. One way or the other?
 24 **A No.**
 25 **Q** You have to answer verbally.

1 **round over there they never close doors it seems. You**
 2 **know, they may pull a curtain if they have a curtain.**
 3 **But there are nurses in the offices, doctors going back**
 4 **and forth. They are doing blood draws. It's a typical**
 5 **clinic.**
 6 **And so they would have to be announcing that,**
 7 **you know, male in the area every time they came around.**
 8 **And often the women are -- they have to remove clothing**
 9 **in order for a medical procedure to occur.**
 10 **Q** That's in the infirmary area?
 11 **A No, that's also in the -- this is like a regular -- the**
 12 **health care officer the best way I can describe is like a**
 13 **regular doctor's office. For example, the male medical**
 14 **providers cannot be in one of those rooms without a**
 15 **female medical provider there. So, in other words, if**
 16 **there is a male doctor, he cannot perform an exam or be**
 17 **in that room without the female nurse being present.**
 18 **So the same concept would play out that --**
 19 **because the officer is right there in that area, there**
 20 **would have to be some way to let the prisoner know it's**
 21 **not the doctor coming around. It is a male officer**
 22 **coming around and making checks.**
 23 **Q** All right.
 24 **A That's the best way I can put you there.**
 25 **Q** And so the accommodation you made would be essentially

(Pages 155 to 158)

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1 the same as the doctor/nurse situation is what you're
 2 saying?
 3 **A Yes, I mean, continually announcing knock and announce --**
 4 **Q Okay.**
 5 **A -- male in the area. Because they should be rounding on**
 6 **an infrequent, at least every half hour basis, of the**
 7 **entire area.**
 8 **Q All right. And in this position there should not be a**
 9 **strip search requirement I think you already said, true?**
 10 **A That is correct.**
 11 **Q And you're unaware of any history of a health care**
 12 **officer having to perform a strip search, true?**
 13 **A That's correct.**
 14 **Q And maybe you just explained this. In terms of a**
 15 **pat-down requirement within health care, is that not**
 16 **applicable to that situation?**
 17 **A I'm not sure if you're paying attention to me. You're**
 18 **reading so --**
 19 **Q I'm listening. I'm multi-tasking. Just go ahead.**
 20 **A Okay. All right. I believe the question was the**
 21 **pat-search requirement?**
 22 **Q Right.**
 23 **A I believe they still have to perform the required number**
 24 **for that assignment. I believe, just with routine work**
 25 **there, they do more than five.**

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1 **Q All right.**
 2 **A I believe prisoners are routinely pat searched before**
 3 **they go into a medical procedure. And certainly**
 4 **afterwards it would be prudent to do so because they**
 5 **would be around medical equipment that could be used.**
 6 **Q And male officers would perform, if they were in the**
 7 **health care position, could perform that pat-down**
 8 **consistent with the procedure from the facility's**
 9 **procedure manual that we went over the last time, true?**
 10 **A No, a male could not be exempt in that assignment. There**
 11 **is many critical tools, to include syringes and those**
 12 **kinds of things that --**
 13 **Q Let me just interrupt you. The procedure I'm referring**
 14 **to, then we can get it out, but it's the one we looked at**
 15 **last time where males weren't exempt. It's a situation**
 16 **where males and females collaborate and the men can frisk**
 17 **the outer clothing that is removed and women would**
 18 **perform the actual pat-down. Do you recall that**
 19 **procedure?**
 20 **A Yes.**
 21 **Q All right. And that could be performed in the health**
 22 **care infirmary -- or health care officer position, true?**
 23 **A I would disagree.**
 24 **Q Why?**
 25 **A It would be very inefficient.**

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1 **Q Why?**
 2 **A The majority of prisoners who are seen in health care**
 3 **have -- should be pat searched upon leaving that --**
 4 **leaving that assignment.**
 5 **Q Can that be performed by the infirmary officer?**
 6 **A They are in two separate locations altogether.**
 7 **Q Which wasn't my question, though. Could it be performed**
 8 **by the infirmary officer?**
 9 **A There would have to be someone that relieves the**
 10 **infirmary officer, it has to be staffed with an officer**
 11 **all the time, before relieving them to come in and do a**
 12 **search of everyone coming out as they come in and out of**
 13 **the office.**
 14 **Q Is it true that, in the infirmary area, that the medical**
 15 **staff always closes the door during an exam of a**
 16 **prisoner?**
 17 **MS. GROSSI: I'm going to object. Calls for**
 18 **speculation.**
 19 **THE WITNESS: I can't testify --**
 20 **Q (BY MR. KENT-BRYANT) One way or the other?**
 21 **A -- one way or the other.**
 22 **Q All right. And, again, I understand the background**
 23 **information that you have given me, but when you were**
 24 **warden at the Thumb, the health care officer could be**
 25 **female, true?**

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1 **A Yes.**
 2 **Q All right. Do you know whether Exhibit 9 has been**
 3 **amended at any time since you have been warden?**
 4 **A No, I do not.**
 5 **Q All right.**
 6 **MR. KENT-BRYANT: What do you have as your next**
 7 **one?**
 8 **MS. GROSSI: I have industries officer.**
 9 **MR. KENT-BRYANT: Okay. Mark this as 10.**
 10 **(Exhibit Number 10 marked for identification by**
 11 **the reporter).**
 12 **Q (BY MR. KENT-BRYANT) All right. My question to you**
 13 **again is, first, can you identify what has been marked as**
 14 **Exhibit 10 and tell me any inaccuracies you see in it, if**
 15 **there are any?**
 16 **A This is the State of Michigan, Department of Civil**
 17 **Service, position description for the assignment of**
 18 **industries officer. (Examining document). Okay.**
 19 **Q What inaccuracies, if any, do you see in there?**
 20 **A Page 5, under 15, duty Number 1, conducts shakedown and**
 21 **searches of female prisoners; correct. Including strip**
 22 **searches; incorrect.**
 23 **Again, curious to me, is the "Complete reclass**
 24 **reports for job lists."**
 25 **Q Okay.**

(Pages 159 to 162)

1 A I'm not sure what that means.
 2 Q Not sure that's a complete sentence. All right.
 3 A Yeah, another cut and paste it looks like. Page 6, under
 4 duty Number 3, again, assists in prisoner security screen
 5 reports. I do not believe that is --
 6 Q Okay.
 7 A -- a responsibility.
 8 On Page 7, under Duty 6, I do not believe they
 9 would assist in the supervision of large group
 10 activities.
 11 Q Okay.
 12 A It seems to be totally out of place. Everything else
 13 appears to be accurate.
 14 Q All right. And I assume you don't know who specifically
 15 drafted Exhibit 10, true?
 16 A That is correct.
 17 Q However, the fact that it's designated as BFOQ female
 18 only, that would have been a decision that Curtis and
 19 Straub made?
 20 A At some point, yes.
 21 Q And why is industries officer a BFOQ female only
 22 position?
 23 A I believe the industries officer position was also in
 24 place at Scott Correctional Facility.
 25 Q Okay.

1 stations and I believe they have no more than 20
 2 prisoners who are working on dentures. And they do them
 3 for the entire State of Michigan.
 4 So there is lots of tools in there. There are
 5 molds. There are scrapers. There is -- I can't go into
 6 the whole process. It's unbelievable the number of
 7 tools.
 8 They work in an area separate from where they
 9 do the sewing. The sewing numbers never reached the
 10 potential they had told me. I think we may have 30 that
 11 are assigned in there at any given time. So between the
 12 two areas, 50 to 60 prisoners. The officer --
 13 Q Is that at once or is that --
 14 A Um-hum, yes.
 15 Q -- total?
 16 A Yes, at once.
 17 Q Okay.
 18 A In total between both of the factories.
 19 Q Right.
 20 A The officer is responsible for both operations, making
 21 rounds and, you know, completing the pat searches, the
 22 searches of prisoners. The bathroom are -- they are open
 23 in that they are a bathroom facility with what I call a
 24 cafe door. It's a half door so you can see a head and
 25 feet when you're standing. And you can only see the feet

1 A The industries brought here was really totally under
 2 development and never did result in what they told me it
 3 was going to be. It was supposed to be prisoners making
 4 uniforms for prisoner -- for prisoners, female prisoners.
 5 So an area was designed where they would change their
 6 clothing from what we considered to be blues, uniform
 7 prisoner uniform, into a jump suit.
 8 Q Okay.
 9 A And we even fashioned a change area for that purpose.
 10 They would be searched, in particular everyone leaving
 11 the assignment because the nature of the assignment,
 12 which it still does use sewing machines, which has
 13 needles and thread which are huge contraband items,
 14 dangerous contraband inside a facility, as well as a
 15 number of other kinds of tools that they need to maintain
 16 the machinery in there.
 17 Q How many people are in there at a time?
 18 A There are two functions. Let me finish.
 19 Q I'm sorry.
 20 A One is a sewing operations.
 21 Q Um-hum.
 22 A And the other one is an operation that makes dentures for
 23 all prisoners throughout the State of Michigan. So they
 24 have a finite number of prisoners that are assigned in
 25 there. In other words, they only have so many work

1 when you're seated on the commode. That's in the
 2 officer's area to monitor.
 3 I think I covered most of the essential
 4 assignments. All of the prisoners assigned in there are
 5 female, obviously. And the custodial responsibility is
 6 on the industries officer.
 7 Q Are the females, are all the females searched every day
 8 upon leaving?
 9 A I don't believe the requirement is to search every
 10 prisoners. I believe it's a random search. The reason I
 11 say that is it -- when we're random, we are less
 12 predictable. So, therefore, you don't know if you're
 13 going to be subject to search. So the risk becomes
 14 greater. I might be caught or I might not be caught in a
 15 search situation.
 16 Q Okay. So it's a random -- do you know how many searches
 17 are performed per day by the industry officer?
 18 A No, I do not.
 19 Q Are you aware if, whether yourself or anyone else, has
 20 have ever spoken to industry officers concerning how many
 21 searches are performed per day?
 22 A Not on that topic, no.
 23 Q All right. Are you aware of any strip searches being
 24 generated from the industries area?
 25 A No.

(Pages 163 to 166)

1 Q Now, the industry officer has the same five searches --
 2 pat-downs per day requirement?
 3 A I need to clarify. We need to be talking had the
 4 requirement, yes. We no longer have that assignment.
 5 Q The five pat-downs per day?
 6 A The industries officer assignment --
 7 Q Oh, no longer --
 8 A -- has been eliminated --
 9 Q Oh, okay.
 10 A -- from the department. So at the time, yes.
 11 Q Well, is the industries area still functioning?
 12 A Yes.
 13 Q And what is the name of the position of the person that
 14 supervises that area?
 15 A It is part of the duties of the yard staff.
 16 Q Okay. Why was that position eliminated?
 17 A It was eliminated by Deputy Director Treacher as an
 18 efficiency measure.
 19 Q So is there someone in the industries area at all times?
 20 A Yes.
 21 Q All right. By someone, I mean an officer, of course.
 22 A No.
 23 Q No, there is not? So at times the prisoners, there is no
 24 one inside the building supervising them?
 25 A There are no officers inside the building supervising

1 A Control center.
 2 Q And control center does what with that call for
 3 assistance?
 4 A Depending on the circumstance, the control center will
 5 dispatch someone. The yard sergeant could send the yard
 6 officer who -- the yard officer now has duties to make
 7 rounds, custodial rounds in the area. They also have to
 8 search prisoners leaving the area at the end of their
 9 shifts.
 10 Q Leaving the industries area?
 11 A Yeah.
 12 Q Okay. I'm sorry, I interrupted you.
 13 A The industries, if you can imagine, it's like a normal
 14 job. It's a factory job. So you start at a certain
 15 time. They eat on their assignment. They stay in the
 16 building the whole time. And then they leave at the end
 17 of the day.
 18 So we can -- we can put somebody there to
 19 supervise who comes in the building. And once they are
 20 in the building, they secure the building. And then they
 21 leave and go do their other assignment and come in and
 22 make rounds. And then at the end of the shift, when
 23 everyone is done working for the day, they search the
 24 prisoners before they leave the building and then go back
 25 to their other duties.

1 them.
 2 Q Who is supervising them?
 3 A In the one area, their technical position is called an
 4 industry supervisor.
 5 Q Okay.
 6 A It's a general term for a work supervisor depending on
 7 the factory they are running.
 8 Q Okay.
 9 A One happens to be Mr. Burris who is the supervisor of the
 10 dental lab operation. And the other one is Amy Sabo who
 11 is an industry supervisor for MSI. And she is --
 12 Q MSI?
 13 A Michigan State Industries.
 14 Q Okay.
 15 A They run the factories.
 16 Q All right. Are they Department of Corrections officers?
 17 A They are not officers.
 18 Q Okay. Are they Department of Corrections employees?
 19 A Yes.
 20 Q Do they perform searches?
 21 A No.
 22 Q So what happens if they detect someone secreting a tool
 23 or a needle or something of that sort?
 24 A They call for assistance.
 25 Q And to whom do they call for assistance?

1 Q All right. And randomly search the prisoners?
 2 A I believe it's random.
 3 Q All right. Has the -- have there been any problems
 4 involving prisoners secreting -- well, strike that.
 5 Strike that.
 6 So the procedure, if there is an issue with
 7 prisoners secreting items, is that Mr. Burris or Ms. Sabo
 8 is supposed to call the control center, true?
 9 A Yes.
 10 Q Has that happened?
 11 A I don't know. The change happened within the last six
 12 months perhaps. Seems like a shorter period of time. So
 13 I don't know.
 14 Q And there haven't been any problems reported to you
 15 concerning that procedure, true?
 16 A You would have to define problem.
 17 Q Well, I'll define it broadly and maybe I'll even say
 18 issue. Have there been any issues/problems reported to
 19 you concerning that procedure?
 20 A I have received staff complaints about the failure to
 21 have custody staff in the area.
 22 Q What have been the nature of those complaints?
 23 A It's a change from what we have always done. And they
 24 feel that they aren't officers.
 25 Q That Mr. Burris and Ms. Sabo aren't officers?

(Pages 167 to 170)

1 A Correct. In addition to others. They just happen to be
 2 the work supervisors I named for you.
 3 Q Have there been any safety problems reported?
 4 A No.
 5 Q And have there been any complaints from prisoners
 6 concerning Mr. Burris, given that he's male?
 7 A Yes, there have been complaints about Mr. Burris in the
 8 broad term.
 9 Q Have there been any complaints about him as a function of
 10 him being a man, in other words?
 11 A Yes.
 12 Q What have those been?
 13 A Typical complaints filed by a female prisoner for
 14 whatever reason. Allegations of over familiarization or
 15 he doesn't like me. I lost my job because he doesn't
 16 like me or I wouldn't do whatever for him. Those things
 17 are brought to our attention routinely. And we
 18 investigate the allegation to see if there is any
 19 allegation that can be substantiated.
 20 But to answer your question, honestly, yes, we
 21 get complaints about him.
 22 Q Any complaints about him seeing prisoners in a state of
 23 undress?
 24 A No.
 25 Q And he doesn't have pat-down responsibilities --

1 correct? It's part of the rounds?
 2 A Yes.
 3 Q And is it part of both the male and female yard control
 4 officer rounds?
 5 A They can't be assigned to do pat searches. So making
 6 "rounds", they can make rounds. If they are called upon
 7 to perform a search of -- on a female prisoner, they are
 8 not allowed to do so.
 9 Q Unless they follow the procedure we talked about?
 10 A If it's an emergency.
 11 Q Well, there is also the procedure where -- well, the yard
 12 control officers actually don't have to do --
 13 A Correct.
 14 Q -- the five pat-downs --
 15 A That's correct.
 16 Q -- true?
 17 Who else is exempt from the five pat-down
 18 requirement besides the yard control officers?
 19 A Oh, boy, I'm not going to name them all. I don't know
 20 for sure. But, for example, the perimeter security
 21 vehicle officer. An officer assigned to the information
 22 desk. The bubble officer. We don't have the arsenal
 23 officer anymore. I do not believe the sally port
 24 officer.
 25 Q Okay.

1 A No.
 2 Q -- true?
 3 Obviously, he doesn't have strip search
 4 responsibilities?
 5 A Correct.
 6 Q Now, is he new or has he always been there? I mean, in
 7 other words, they staff it now. But were they there when
 8 the industry officers were there? I mean, are they --
 9 A Yes.
 10 Q Okay. So the industries officers were in addition to
 11 Mr. Burris and Ms. Sabo?
 12 A Yes.
 13 Q All right. How long has Mr. Burris been there?
 14 A Since we opened the facility.
 15 Q Okay.
 16 A The operation was in place at the Scott Correctional
 17 Facility. He was the industry supervisor there. He
 18 moved the whole process here when Scott closed. And we
 19 temporarily put it in the programs building until the
 20 warehouse was built or redesigned to make a factory out
 21 of it. I can't tell you when we moved him in there.
 22 It's been a nightmare in the last several years.
 23 Q All right. So it seems that now the industries officer
 24 position is gone, and now the officer responsibilities
 25 are part of the yard control officer responsibilities,

1 A I know those off of the top of my head.
 2 Q Okay. Now, have you ever received any -- this question
 3 doesn't pertain particularly to the industries officer
 4 position.
 5 Have you ever received complaints from female
 6 officers about having to assist male officers with their
 7 pat-down requirements?
 8 A A specific one does not come to mind.
 9 Q All right.
 10 MR. KENT-BRYANT: Okay. Is rover officer the
 11 next one you have there?
 12 MS. GROSSI: Yes.
 13 MR. KENT-BRYANT: Do you want to take a quick
 14 break just to stretch your legs? I do.
 15 THE WITNESS: Would you like to take a quick
 16 break?
 17 MR. KENT-BRYANT: Let's take a quick break.
 18 (Off the record from 12:30 to 12:45, during
 19 which time Exhibit Number 11 was marked for
 20 identification by the reporter).
 21 Q (BY MR. KENT-BRYANT) All right. Let me show you what
 22 has been marked as Exhibit 11. Same drill. If you could
 23 identify that and then peruse it for any inaccuracies.
 24 A This is a State of Michigan, Department of Civil Service
 25 position description, specifically for the rover,

(Pages 171 to 174)

1 to be the rover --

2 **A** Correct.

3 **Q** -- for today, right?

4 Are any of those assignments given to males?

5 **A** Yes.

6 **Q** Even though the position is BFOQ?

7 **A** I can give you an example that recently happened.

8 **Q** Okay.

9 **A** Our programs building is normally closed. The programs

10 deputy was working and required to have the maintenance

11 of the floors to be an issue. Which she had to supervise

12 with a custodial officer that happened to be a male.

13 So although males don't normally work in the

14 programs building because they have to do pat searches,

15 she was there to perform that duty if it needed to be

16 done so he could perform custodial responsibilities.

17 So can it? Yes, I just gave you an example of

18 how it could be. Rovers could be assigned to relieve

19 your bubble officer and it doesn't require a woman or a

20 female to work in the bubble to relieve that officer.

21 **Q** Well, I'm asking the opposite, though. Maybe we're

22 confusing one another.

23 So when the assignment sheets are made up for a

24 week or so forth, are men ever assigned to rover, to be

25 the rover officer?

1 **A** I believe so.

2 **Q** All right. And, currently, as far as you know, there are

3 both yard control officers and rover officers?

4 **A** Yes. To understand the operation, we could have

5 activities on the yard. In other words, prisoners on any

6 given shift traversing the yard. So I need a yard

7 officer out there.

8 **Q** Right.

9 **A** Additionally, it may be Officer Dine. So the rover may

10 have to be assigned in the, you know, in the housing unit

11 to relieve the officer. So both could be performing

12 different but similar functions.

13 **Q** All right.

14 **A** Okay.

15 **MR. KENT-BRYANT:** What are we on, 13, now?

16 (Exhibit Number 13 marked for identification by

17 the reporter).

18 **Q** (BY MR. KENT-BRYANT) I want to show you what has been

19 marked as Exhibit 13. And if you could identify the

20 document and then, again, find any inaccuracies in the

21 job description if there are any.

22 **A** This is a State of Michigan, Department of Civil Service

23 position description. I don't know if we can save a

24 whole lot of time. But this was -- this is not a

25 position that works at this facility.

1 **A** I believe I just said yes.

2 **Q** Did you? All right. So in that particular circumstance,

3 it was determined that you wouldn't need a female to be

4 the rover for that particular circumstance; is that how

5 it worked?

6 **A** I believe it can be likened to the situation where we

7 identified half of the assignments for the yard to be

8 BFOQ and half of the assignment non-BFOQ. I believe the

9 same principal applies to rover.

10 **Q** All right. So, my understanding, and I guess I didn't

11 see it there in what we received, but my understanding is

12 there would be a yard control position description that

13 is not BFOQ in addition to one that is BFOQ; is that

14 correct?

15 **A** That's correct.

16 **Q** And that's the same for rover?

17 **A** I believe so.

18 **Q** If you know, is it half and half the way the yard control

19 officer position is?

20 **A** Honestly, I can't say. Sorry. The term rover and yard

21 control has been interchanged with each other over the

22 years for reasons beyond me. So I don't know what it

23 currently looks like.

24 **Q** Okay. Currently, is the rover position assigned

25 approximately 50/50 males and females?

1 **Q** Has it ever been?

2 **A** No.

3 **Q** Okay.

4 **A** This is a different classification altogether. We don't

5 staff any corrections medical aides at this facility.

6 I'm only aware of one facility in the state in which we

7 do that.

8 **Q** Okay. That probably does save some time.

9 Going back to the rover position real briefly,

10 that's not a position that requires that the officers

11 perform strip searches, true?

12 **A** Under normal circumstances, no. They could be called

13 upon to do it clearly, but not in the assignment. They

14 were relieving someone in the housing unit. We don't

15 perform strip searches in the housing unit.

16 **MR. KENT-BRYANT:** Mark this as 14.

17 (Exhibit Number 14 marked for identification by

18 the reporter).

19 **Q** (BY MR. KENT-BRYANT) I want to show you what has been

20 marked as Exhibit 14, if you could identify that and,

21 again, determine any inaccuracies that are in the

22 position description.

23 **A** This is a State of Michigan, Department of Civil Service,

24 position description for the assignment of property room

25 officer. (Examining document). All right. Ready?

1 Q Yes.

2 A Okay. On Page 5, under 15, under general summary of

3 duties, it speaks on the responsibility to conduct strip

4 searches of female prisoners. I don't believe that is a

5 function of that assignment.

6 "Completes reclass reports for job lists."

7 Again, I don't know what that means.

8 Q Right.

9 A Page 6, Duty 4, they may observe changing of clothes if

10 it's a size-related issue. Probably more so shoes than

11 items of clothing.

12 There is not a toilet in the facility -- in the

13 area. And that I believe is all of it.

14 Q All right. And, once again, with regard -- well, what

15 does a property room officer do?

16 A Their primary function is to ensure the safety of all

17 incoming property to prevent the introduction of escape

18 materials or contraband to the prisoners.

19 Q Okay.

20 A They are also involved fairly intimately in the ordering

21 process of items for prisoners. I don't believe they do

22 any measuring. However, with women's clothing in

23 particular, items come in sized. So there may be a need

24 to try on an item. A shirt is too small. It has to go

25 back. So rather than have it leave that area, the

1 officer then takes the product and returns it to the

2 manufacturer or the store or whatever the prisoner

3 purchased it from.

4 It's an isolated assignment. Prisoners come

5 over there on a pass or a call-out to pick up property.

6 They could be over there for a period of time by

7 themselves. So we call it an isolated assignment. They

8 shakedown prisoner property. This is essentially the

9 assignment.

10 They do clerical kinds of duties from the

11 standpoint of they maintain property cards so we have an

12 idea of what goes in and what comes out. Some property

13 in controlled by quantity. So if, for example, they say

14 Prisoner Warren already has two pairs of shoes. They are

15 only allowed two pairs of shoes. So you have to give me

16 the other pair of shoes in order for me to gave you that

17 pair of shoes.

18 So it has to be an exchange process in some of

19 that. So that's where it comes into some of the

20 changing of the clothing. Essentially, that's what they

21 do.

22 Q And it's designated as a BFOQ female only position, true?

23 A Yes.

24 Q Why?

25 A Well, I believe part of it is it's an isolated

1 assignment. And male officers are prohibited from being

2 in an area one-on-one with a female prisoner.

3 Q Prohibited by whom? '

4 A I understand that's part of the department's policy.

5 Q Do you know where I could find that policy?

6 A Female prisoners cannot be -- I mean, if they are

7 under -- if they are working with a male, there generally

8 has to be two prisoners. If we are transporting a female

9 prisoner, the transport officer has to be at least one

10 male and one female.

11 It's for privacy rights and to minimize the

12 risk of abuse.

13 Q My question, though, was it sounds like you're saying

14 there is a general policy somewhere that male corrections

15 officers cannot be isolated with the female prisoners.

16 I haven't seen that in my research, but that doesn't mean

17 it's not there. Can you point me in the direction?

18 A I can't tell you the document.

19 Q Okay.

20 A I know that --

21 Q Is there a document?

22 A I can't tell you that. I know in practice we do not put

23 a male staff member in that position routinely.

24 Q Okay. Any other reasons that it's a BFOQ position?

25 A Could be information that I'm not privy to.

1 Q All right. There is not a strip search requirement for

2 the position, true?

3 A True.

4 Q Is there a pat-down requirement for the position?

5 A They could be called upon to do a pat search.

6 Q Do they have that five pat-down per day requirement?

7 A I don't know.

8 Q Okay. Under what circumstances would they be required to

9 to do a pat-down?

10 A If there is any reason to believe the prisoner has

11 something they shouldn't have.

12 Q All right. Which is part of the pat-down policy

13 regardless of position, true?

14 A Yes.

15 Q So a yard control officer would have that same pat-down

16 responsibility, right?

17 A Yes.

18 Q Have you become aware of any situation in which the

19 property officer needed to do a pat-down that actually

20 occurred?

21 A One doesn't come to mind in particular.

22 Q All right. Do you know how common it is that the

23 property room officer has to perform a pat-down?

24 A No.

25 Q In terms of seeing women in a state of undress, the

(Pages 183 to 186)

1 property room officer shouldn't have to see women in a
2 state of undress, true?

3 A I don't think so.

4 Q All right. Did you have a -- you must have had a
5 property room at the Thumb?

6 A Yes.

7 Q And that was a position that could be staffed either by
8 males or females, true?

9 A Yes.

10 MR. KENT-BRYANT: Mark this as 15.

11 (Exhibit Number 15 marked for identification by
12 the reporter).

13 Q (BY MR. KENT-BRYANT) All right. I'm going to show you
14 what has been marked as Exhibit 15. Again, I would ask
15 you to identify it and then leaf through it to identify
16 any inaccuracies.

17 A Department of Corrections -- I'm sorry, State of
18 Michigan, Department of Civil Service, position
19 description for the assignment of school officer.
20 (Examining document). Okay.

21 Q Inaccuracies?

22 A Page 5, under Duty 15 -- or Item 15, duty Number 1,
23 speaks on performing strip searches. They are not
24 performed -- they do not perform strip searches in the
25 school building routinely; only in emergencies. And

1 And the other one works in the school building
2 proper where primarily classroom activity goes on. But
3 there is other kinds of things that occur in the
4 building; primarily, classroom.

5 Q All right. I think you already said there is not a strip
6 search requirement and, generally speaking, there is no
7 reason to be seeing the women in a state of undress in
8 this school officer position, true?

9 A True.

10 Q Now, the searches, are you aware that at times in the
11 past, even when the school was servicing females, that
12 male officers also were school officers before it got
13 BFOQ'd?

14 A Well, I don't know. I mean, it was always supposed to be
15 BFOQ from my knowledge. I understand there was a male
16 assigned there. And I pointed to the staffing chart that
17 required it to be a BFOQ. So when I was aware of it, you
18 know, I instructed staff to follow the staffing chart
19 that identified it as being a BFOQ assignment.

20 Q All right. Did you ever speak to any of the male or
21 female school officers concerning whether the search
22 requirement had ever caused any sort of problem?

23 A No, I have never had a conversation.

24 Q Do you have any evidence that there were any sorts of
25 problems concerning the search requirement when the

1 that's under a situational incident.

2 "Completes reclass reports for job lists." I'm
3 not clear on what that means.

4 Q Right.

5 A Page 6, Duty 4, speaks on observes female prisoners
6 changing clothes. The potential is there. Given the
7 vocational programing that goes on in the building, there
8 may be a need for them to change soiled clothes. But,
9 generally, it's not out in the open.

10 On duty Number 5, Page 7, speaks on the
11 assisting supervising urine drops; generally not.

12 Generally does not occur in that area. That would be it.

13 Q All right. And why is this position BFOQ?

14 A Again, there is a requirement to perform searches of
15 prisoners' persons, pat-down searches -- which men are
16 prohibited from doing by policy -- when they leave the
17 school building and leave the classrooms.

18 Q How many school officers are assigned at a time?

19 A I'm going to say two.

20 Q Is this another position where one can be male and one
21 can be female or do they both need to be female?

22 A They both are female. One works specifically in the
23 vocational education area. It contains the largest tool
24 crib, which contains the most critical, dangerous tools
25 that are stored inside the facility.

1 position was being staffed by males and females?

2 A None was brought to my attention.

3 Q So is the reason that you made sure that it was female
4 only strictly because it was designated BFOQ?

5 A Strictly because the assignment requires the custodial
6 officer to perform a search of the prisoner to ensure
7 there is no contraband leaving the area. Whether it be
8 school books, whether it be screws, wrenches, hammers,
9 drills; all those item.

10 And so the officer would have to put --
11 physically put his hands on the prisoner's body to do
12 that search. That is a requirement under the BFOQ for a
13 female to have that assignment.

14 Q Now, is that one that was done to every inmate using the
15 facility or is that a random search?

16 A It should be random coming out of the school building
17 proper. Out of the trades area, it should be all of
18 them.

19 Q And is that written down anywhere?

20 A It may be in their post order. I don't know.

21 Q Why from the trade area should it be all of them?

22 A To familiarize you with the operation, we run a buildings
23 trade, which means they run a wood shop. They have
24 glues. They have hammers. They have drills. They have
25 screw drivers. They have saws. They have a multiple

1 MS. GROSSI: Okay. Just a couple.
 2 EXAMINATION
 3 BY MS. GROSSI:
 4 Q Throughout the course of your deposition today,
 5 plaintiff's counsel has been asking you about various
 6 position descriptions to Huron Valley that are designated
 7 BFOQ, correct?
 8 A Correct.
 9 Q And those have been marked Exhibits 5 through 16,
 10 correct?
 11 A Correct.
 12 Q And I believe for each position he's asked as to the
 13 reason why that particular position was designated as
 14 BFOQ. You recall that, correct?
 15 A Yes.
 16 Q And you provided testimony in that regard?
 17 A Yes.
 18 Q Okay. I'm going to ask you just a few question about
 19 that. Were you the individual responsible for
 20 designating these positions that we discussed today as
 21 BFOQ?
 22 A No, I was not.
 23 Q Did you participate in any work group relating to
 24 designating these positions BFOQ?
 25 A No, I did not.

1 Q Do you know the individuals who made that determination?
 2 A I know that there was a committee of employees who worked
 3 at all the female correctional facilities at the time;
 4 Scott Correctional Facility, Women's, Huron Valley, as
 5 well as both camps. And those persons were put together
 6 under the direction of those wardens and the RPA, which
 7 is Bruce Curtis and Deputy Director Straub, Dennis
 8 Straub. That committee was put together and established
 9 in full swing prior to me being asked to come here.
 10 The minutes of those meetings, attending those
 11 meetings, I did not. I was not asked to be involved in
 12 that. That was work in progress. That's why many of
 13 these documents you have shown me I have never seen or
 14 was involved in writing them or can't explain some of the
 15 information on there. I'm left to assume that committee
 16 put that together. And it was condoned by my bosses.
 17 Q So the BFOQ designations were made before you arrived at
 18 the facility?
 19 A That's correct.
 20 Q Okay. And so when you're testifying as to the reasons
 21 that they were BFOQ, that's based on your own personal
 22 observations or how were you forming those opinions?
 23 A From the documents that -- such as this, and
 24 conversations I had, a variety of them, with the RPA and
 25 Deputy Director Straub; other staff that were associated

1 with that task.
 2 Q Is it possible that there are other reasons for the BFOQ
 3 designations that you are not aware of?
 4 A That's very possible.
 5 Q Okay. You testified about bathroom stalls in the
 6 facility?
 7 A Yes.
 8 Q When I hear stall, I think three walls and a door. Do
 9 your bathrooms here have doors?
 10 A Not all of them.
 11 Q Okay.
 12 A They almost all have three sides. But what you would
 13 consider the opening could be missing.
 14 MS. GROSSI: I don't have any other questions.
 15 EXAMINATION
 16 BY MR. KENT-BRYANT:
 17 Q As a matter of fact, it's not supposed to be missing,
 18 true?
 19 A That's not necessarily true.
 20 Q Okay. Explain how it's not.
 21 A It's not a requirement to have a door covering that area.
 22 Q Okay. Do you know anywhere on the facility where the
 23 doors aren't covering the area?
 24 A I can't recall each area. I would have to look at each
 25 stall.

1 Q Other than housing, do you know any areas where the
 2 stalls aren't covered?
 3 A I cannot be sure about the gymnasium or what we call the
 4 field house. It's kind of an open area. I don't know if
 5 they have a door covering that. I believe all the other
 6 areas do have a partition.
 7 Q And doors that enclose the stall?
 8 A Not floor to ceiling.
 9 Q No, I know. But there is a door?
 10 A A partition. Yeah, I wouldn't -- I wouldn't claim it as
 11 a door, but a partition.
 12 Q All right. So some sort of barrier on all four sides?
 13 A Yes.
 14 Q All right. I may have asked you this at the first
 15 session, but the committee you just referred to, do you
 16 know the names of any of the people on it?
 17 A I don't recall all of them, no.
 18 Q Do you recall any of them?
 19 A The deputies at the time, which would have been Lucille
 20 Evans.
 21 Q Okay.
 22 A I -- I think, but I can't say for sure, Carol Vallie.
 23 There were other ARUS's. I don't know who was on the
 24 committee.
 25 Q All right. And they were people that were staffed --

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD

Hon. Archie Brown

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

AFFIDAVIT OF STENNIS GEORGE

I, Stennis George, being first duly sworn, depose and state as follows:

1. My name is Stennis George. I was employed by the Michigan Department of Corrections and worked at the Scott Correctional facility ("Scott") for several years; I now work at the ~~Women's Huron Valley Correctional Facility.~~ *Detroit RE-ENTRY center* (56)

2. At a labor/management meeting I attended while employed at Scott, Dennis Straub (C.F.A. Director) made the statements that:

- a. The Department would not hire any more male corrections officers for its [REDACTED] female prisons; and [REDACTED]
- b. That the department intended to get rid of male corrections officers in [REDACTED] female prisons. [REDACTED]

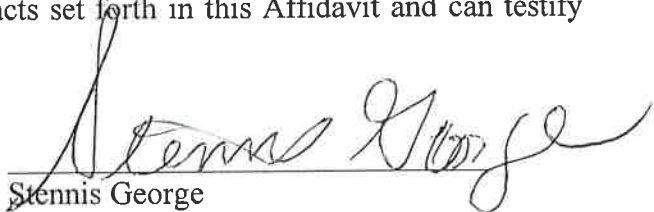
3. These statements were made during a discussion about males working the housing units.

4. After those statements were made, the Department did begin to hire mostly [REDACTED] females to the exclusion of male applicants. [REDACTED]


5. In attendance at this meeting was Warden Stovall, Dennis Straub, Deputy Warden Yvonne Thomas and myself.

6. I have personal knowledge of the facts set forth in this Affidavit and can testify competently thereto.

Dated: May 15 2013


Stennis George

Subscribed and sworn to before me this 15 day of May, 2013.


_____, Notary Public
Wayne County, Michigan
My commission expires: 4/12/2020
Acting in the County of: Oakland

**RYAN KUNKLE
NOTARY PUBLIC - MICHIGAN
WAYNE COUNTY
MY COMMISSION EXPIRES APRIL 2020
ACTING IN OAKLAND COUNTY**

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

TOM NOWACKI, et al.

Plaintiffs,

v

Case No. 11-852-CD

Hon. Timothy P. Connors

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Attorneys for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

AFFIDAVIT OF RALPH GOLIDY

Ralph Golidy, being first duly sworn, depose and state as follows:

1. My name is Ralph Golidy. I reside at 2881 Bynan Dr., Apt. 309, Ypsilanti, Michigan, 48197.
2. I am employed by the Michigan Department of Corrections and presently work at the WHV facility.
3. I am the former President of the W.H.V. Facility Chapter Union.
4. During my employment I have heard Warden Millicent Warren say (on more than one occasion) that "we are going to do some things to allow male corrections officers to leave". This was said at a meeting on January 27, 2011.

Exhibit 3

5. Once in a one-on-one meeting in January 2011, she told me that "we are going to do something to allow male corrections officers to leave".

6. I also heard Deputy Warden Lucille Evans say "we are doing some things to motivate the male corrections officers to leave" the facility. This was said on December 15, 2010.

7. Shortly thereafter males were removed from hospital assignments.

8. I have personal knowledge of the facts set out in this affidavit and can testify competently thereto.

Dated: March 12 2012

Ralph Golidy
Ralph Golidy

Subscribed and sworn to before me this 12 day of March, 2012.

Tammy L. Gask
, Notary Public
County, Michigan

My commission expires: Feb. 2014
Acting in the County of: Washtenaw

TAMMY L. GASK
NOTARY PUBLIC - MICHIGAN
WASHTENAW COUNTY
ACTING IN THE COUNTY OF WASHTENAW
MY COMMISSION EXPIRES FEB. 1, 2014

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD

Hon. Archie Brown

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

AFFIDAVIT OF WILLIAM GOMOLUCH

I, William Gomoluch, being first duly sworn, depose and state as follows:

1. My name is William Gomoluch. I reside at 515 East Keegan St., Deerfield, MI 49238.
2. I am a retired corrections officer with the Michigan Department of Corrections.
3. I worked at the Women's Huron Valley Facility ever since it was made into a women's facility.
4. During my tenure there I also served as a union steward.

Exhibit 3

5. In a hearing in October 2010, I heard Warden Millicent Warren state that "when these males leave (referring to the current male corrections officers at the facility) there will be no more males here."

6. I have personal knowledge of the facts set out above and can testify competently thereto.

Dated: JANUARY 3rd 2013

William Gomoluch
William Gomoluch

Sworn and Subscribed to before me on this 3rd day of Jan, A.D., ~~2012~~ 2013

Krystal R West
Notary Public

KRYSTAL R WEST
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF MONROE
My Commission Expires March 10, 2019
Acting in the County of _____

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD
Hon. Archie Brown

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

AFFIDAVIT OF SHIRLEY MCCLAIN

I, Shirley McClain, being first duly sworn, depose and state as follows:

1. My name is Shirley McClain. I reside at 11615 Tecumseh-Clinton Rd., Clinton, MI 49236.
2. I am currently employed by the Michigan Department of Corrections.
3. In May 2012, in Lansing, at the Academy a group of about thirty (30) females was addressed by Warden Warren. (Deputy Warden DeAngelo was present).

4. All of the women in this group were slated to go to WHV where Warren is the Warden.

5. WardenSM Warren made the statement:

"It is our intention to make WHV an all female corrections facility."

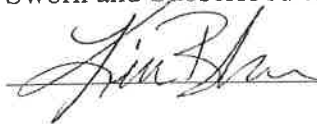
6. I have personal knowledge of the facts set out in this Affidavit and can testify competently thereto.

7. I am on probation until ^{April} ~~December~~ 9, ²⁰¹³ ~~2012~~ so I would not want this Affidavit shared with WHV until I complete my probation.

Dated: April 9 2013


Shirley McClain

Sworn and Subscribed to before me on this 9 day of April, A.D., 2013.


Notary Public

KIM BLASKA
Notary Public, Lenawee Co., MI
Acting In Lenawee Co., MI
My Comm. Expires Sept. 23, 2018

Hindsight reveals that Defendant’s expert opinion in *Everson* was sound. Since all men were removed from housing units in September 2005,¹ sexual misconduct by male guards has been a non-issue. Consider the years 2006-2008 taken from the spreadsheet attached to Defendant’s May 8, 2013 Interrogatory Answers (attached). These are the relevant years because they are after male officers were removed from housing and just before the 2009 BFOQ designations.

Finding	Staff/Pris	2006	2007	2008	TOTAL
SM	M/F				
Sustained		0	0	0	0
Not Sustained		0	1	1	2
Unfounded		1	5	4	10
SM	F/F				
Sustained		0	0	0	0
Not Sustained		0	0	0	0
Unfounded		0	0	1	1
SH	M/F				
Sustained		0	0	0	0
Not Sustained		8	2	4	14
Unfounded		2	3	1	6
SH	F/F				
Sustained		2	1	4	7
Not Sustained		9	11	11	31
Unfounded		9	7	8	24

In short, there were 4 *allegations* of sexual misconduct per year, none of which were sustained. Now compare these figures with the figures in *Teamsters* (46 sustained *findings* of sexual misconduct in 2.5 years), *Teamsters* at 983, and *Everson* (34.67 *allegations* of sexual misconduct per year, of which 9.67 per year were sustained), *Everson* at 741-742. The upshot: protection of female inmates from male officer sexual misconduct was *not* a *legitimate* basis for the 2009 BFOQs.

¹ Exhibit 21: Cargor 09-09-10 letter to EEOC stating male officers removed from housing units in September 2005.

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

TOM NOWACKI, et al,

Plaintiffs,

v

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

No. 11-852-CD

HON. ARCHIE C. BROWN

James K. Fett (P39461)
FETT & FIELDS, P.C
Attorneys for Plaintiff
805 E. Main Street
Pinckney, MI 48169
734-954-0100

Glen N. Lenhoff (P32610)
LAW OFFICE OF
GLEN N. LENHOFF
Co-Counsel for Plaintiffs
328 South Saginaw Street
8th Floor, North Building
Flint, MI 48502
(810) 235-5660

Jeanmarie Miller (P44446)
Attorney for Defendant
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517.373.6434

DEFENDANT'S RESPONSE TO PLAINTIFF'S
INTERROGATORIES DIRECTED TO DEFENDANT DATED MAY 8, 2013

INTERROGATORY QUESTIONS

1. For each year 2004 to the present, please state the total number of reports against male correction officers by female inmates for:
 - a. sexual misconduct
 - b. sexual harassment

- c. over-familiarization

RESPONSE: See attached spreadsheet, bates numbered 007271.

2. As to the complaints against male correction officers please state for each year 2004 to the present the number of reports of *sexual misconduct* that were:

- a. sustained
- b. not sustained
- c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

3. As to the complaints against male correction officers please state for each year 2004 to the present the number of reports of *sexual harassment* that were:

- a. sustained
- b. not sustained
- c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

4. As to the complaints against male correction officers please state for each year 2004 to the present the number of reports of *over-familiarization* that were:

- a. sustained
- b. not sustained

- c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

5. For each year 2004 to the present, please state the total number of reports against female correction officers by female inmates for:

- a. sexual misconduct
- b. sexual harassment
- c. over-familiarization

RESPONSE: See attached spreadsheet, bates numbered 007271.

6. As to the complaints against female correction officers please state for each year 2004 to the present the number of reports of *sexual misconduct* that were:

- a. sustained
- b. not sustained
- c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

7. As to the complaints against female correction officers please state for each year 2004 to the present the number of reports of *sexual harassment* that were:

- a. sustained
- b. not sustained
- c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

8. As to the complaints against female correction officers please state for each year 2004 to the present the number of reports of *over-familiarization* that were:

- a. sustained
- b. not sustained
- c. unfounded

RESPONSE: See attached spreadsheet, bates numbered 007271.

Please do not object as the district court in *Everson v MODC*, 222 F Supp 2d 864 (ED Mich 2002) stated that "The MDOC keeps detailed statistics which display individual incidents of improper conduct in each of the female prisons year by year, ...," *id* at 887.

Dated: 6/19/13

Pam R. Nelson
Pam R. Nelson
Litigation Specialist
MDOC

Subscribed and sworn to before me this
19 day of June, 2013.

Robert W. Farr
Notary Public
Eaton County, Michigan
My Commission expires: 1-29-2015
acting in Ingham County

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

Exhibit 5

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD

Hon. Archie Brown

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

AFFIDAVIT OF SCOTT KEMNER

Scott Kemner, being first duly sworn, depose and state as follows:

1. My name is Scott Kemner. I have been employed by the Michigan Department of Corrections since 1995.
2. I have been assigned to the Women's Huron Valley (WHV) since ^{2004. SAK} ~~2003~~.
3. I currently work as a yard control officer. I have been in that position since approximately 2005.
4. There are usually two (2) females and eight (8) males assigned to yard control so if a strip search is required we take the inmate to a designated strip search room where the strip

search is conducted by female officers; this has always been the procedure since I have worked **Exhibit 5** there.

5. With regard to shakedowns, the male officers call a female officer to conduct the pat down of the female prisoner. The male officers and female officers work together and there have been no problems to my knowledge with this procedure.

6. Since the Warden has added strip searches as a duty for most job descriptions, I have lost out on a significant amount of overtime as the female officers were ordered to work overtime on the designated B.F.O.Q. positions that males were prohibited from working.

7. Most of the new hires to the WHV facility have been female.

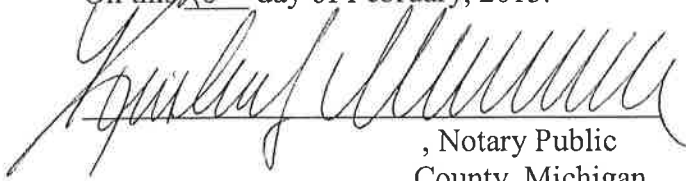
8. I have personal knowledge of the facts set out above and can testify competently thereto.

Dated: February 28th, 2013



Scott Kemner

Subscribed and sworn to before me
On this 28th day of February, 2013.



, Notary Public
County, Michigan



KIMBERLY GRUHLKE
Notary Public, State of Ohio
My Commission Expires
August 24, 2016

My Commission expires:
Acting in the County of

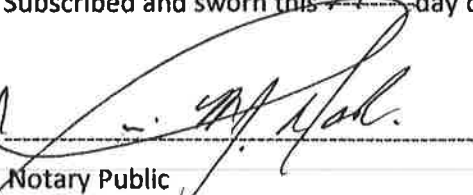
AFFIDAVIT OF JAMES BROWN

1. My name is James Brown, I reside at 49244 Togowtee Pass, Belleville Michigan 48111.
2. I am a retired Sergeant with the Michigan Department of Corrections, I retired in January of 2011.
3. I have worked for the Department of Corrections for over 33 years.
4. I have worked in male and female prisons alike.
5. In the male prisons most positions are available to either male or female Officers, however, those same positions in Women's Huron Valley Facility ("WHV") are classified as BFOQ positions reserved for females to exclusion of male officers.
6. Likewise most new hires at WHV are females.
7. Males are, by virtue of the BFOQ classifications are denied overtime while female officers are assigned mandatory overtime.
8. I have personal knowledge of the facts set forth in this affidavit and can testify competently there to.



James Brown

Subscribed and sworn this 17th day of March, 2011


Notary Public

IRIS M J NASH
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF WAYNE
My Commission Expires: Nov. 13, 2016
Acting in the County of Washtenaw

AFFIDAVIT OF LAURALIE CORRIN

1. My name is Lauralie Corrin, I reside at 387 Dowell Road, Deerfield, Michigan 49238.

2. I am a female corrections officer and I have been employed by the Michigan Department of Corrections for over 10 ½ years.

3. My first assignment was to Mid Michigan Facility for Men in St. Louis; it is now called Central Michigan Correctional Facility for Men.

4. In December 2010 I transferred from Central Michigan Correctional Facility for Men to Women's Huron Valley Correctional Facility ("WHV").

5. When I was at the St. Louis facility I worked the following positions and/or saw both female and male officers working those positions:

- a. Rover 3rd shift;
 - b. School Officer;
 - c. Healthcare/Infirmary
 - d. Monitor (although we had far fewer cameras at St. Louis ... WHV has 1,457 cameras in the facility);
 - e. Gym;
 - f. Gate control;
 - g. Property room;
 - h. Offsite Hospital; and
 - i. Food service.
- ~~3. School officer~~

6. However, at the WHV these positions (a through i) are designated BFOQ positions reserved for female officers; most of the above positions are three shift positions.

7. When a strip search was required (at the St. Louis facility) we simply called a male officer to do it.

8. However, at the WHV job descriptions for those positions include the duty to strip search and on that basis men are excluded from working those positions because they cannot strip search a female prisoner.

9. The effect of these BFOQ designations at the WHV Facility is that:

Exhibit 5

- a. Male officers are prohibited from assignment to those jobs (unless no female is available or it creates overtime);
- b. Females are forced into mandatory overtime which many do not want;
- c. When dealing with large, strong or aggressive prisoners having a male officers can prevent injuries and avoid dangerous conflict with the prisoner (However, there have been instances when male officers have been called to subdue large violent females); and
- d. Male officers cannot bid on those jobs designated as BFOQ at WHV Facility despite those positions being available to both genders at the Central Michigan Facility for Men.

10. I have personal knowledge of the facts set forth in this affidavit and can testify competently thereto.

Lauralie Corrin
Lauralie Corrin

Subscribed and sworn this 16 day of March, 2011.

Heather Cross
Notary Public

HEATHER CROSS
NOTARY PUBLIC, STATE OF MI
COUNTY OF SAGINAW
MY COMMISSION EXPIRES Sep 16, 2011
ACTING SECRETARY OF

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

Exhibit 5

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD

Hon. Archie Brown

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

AFFIDAVIT OF STEVE McKINNEY

Steve McKinney, being first duly sworn, depose and state as follows:

1. My name is Steve McKinney. I have been employed by the Michigan Department of Corrections for nineteen and one-half years.
2. My current position is that of Corrections Officer. My assignment is mainly yard control but I also work the "bubble" and visiting room.
3. I have been assigned to the Huron Valley Women's facility since September 2009.
4. In those positions I am never required to view female prisoners in any state of undress nor are prisoners permitted to be undressed while in those assignment areas.

5. If strip searches are necessary we were instructed to take the female inmate to the ~~designated strip search room where a female officer would conduct the strip search. Males are not permitted to strip search or pat down female inmates.~~ **Exhibit 5**

6. Similarly, shakedowns are done by females in collaboration with the male officers. I cannot recall this being a problem as the male and female officers know and followed the procedure.

7. Since the inclusion of the strip search requirements in most position/job descriptions and the declaration of such jobs as females only/BFOQ, I have lost significant overtime.


8. Likewise, female officers have complained to me about the large amount of "forced overtime" they had to work due to the BFOQ.

9. I have personal knowledge to the facts set out in this Affidavit and can testify competently thereto.

Dated: ~~February~~ ^{4th}, 2013
~~March~~

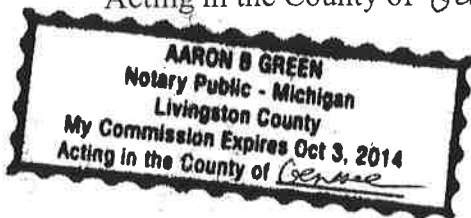

Steve McKinney

Subscribed and sworn to before me
On this ^{4th} day of ~~February~~, 2013.
~~March~~



_____, Notary Public
Genesee County, Michigan

My Commission expires: ~~10-3-2014~~
Acting in the County of ~~Genesee~~



STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

Exhibit 5

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD

Hon. Archie Brown

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

AFFIDAVIT OF ANNETTE OSBORNE

Annette Osborne, being first duly sworn, depose and state as follows:

1. My name is Annette Osborne. I have been employed with the Michigan Department of Corrections for nearly 10 years.
2. I work in the food service area at Women's Huron Valley Corrections Center ("WHV") and I have worked with Tom Nowacki for over a year in the food service area.
3. Part of my job description is to search female prisoners when necessary.
4. I cannot recall any incident where female corrections officers were called to food service (from their other assignment) to conduct a strip ^{AD} search of a female inmate.
5. I do pat down searches if needed and I randomly do pat down searches.

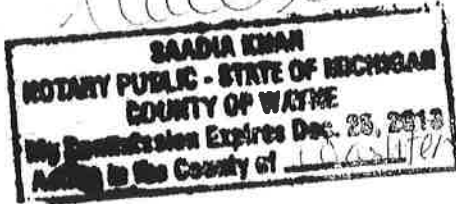
Female officers were called off to searches but NOT to strip search any prisoners.

6. I have personal knowledge of the facts set forth in this affidavit and can testify competently thereto. Exhibit 5

Annette Osborne

Annette Osborne

Subscribed and sworn this 1st day of March, 2013.



STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

Exhibit 5

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD

Hon. Archie Brown

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

AFFIDAVIT OF MARK SPISAK

Mark Spisak, being first duly sworn, depose and state as follows:

1. My name is Mark Spisak. I have been employed with the Michigan Department of Corrections for nineteen years.
 2. My current assignment is in "yard" at the Huron Valley Women's facility.
 3. I have been assigned to Women's Huron Valley (WHV) since 2009.
 4. My former position was food service officer.
 5. In the position of food service officer I was never in a position to see female inmates in state of undress; nor were they permitted to be undressed in the food service area.
-

6. As a food service officer, I had no strip search duties, if a strip search was needed, Exhibit 5 the inmate was taken to the strip search room and searched by a female officer.

7. This procedure worked very well and I collaborated often with the female officers when strip searches were needed.

8. When the facility added strip search requirements to the job description, I lost my food service position.

I have personal knowledge of the facts set out above and can testify competently thereto.

Dated: February 27, 2013



Mark Spisak

Subscribed and sworn to before me
On this 27th day of February, 2013.

ANN GRAY
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Mar 4, 2018
ACTING IN COUNTY OF Wayne



, Notary Public
County, Michigan

My Commission expires:
Acting in the County of

MAY 04 2013

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

BY: ✓

copy to Tom

TOM NOWACKI, et al,

Plaintiffs,

v

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

No. 11-852-CD

HON. ARCHIE C. BROWN

James K. Fett
FETT & FIELDS, P.C
Attorneys for Plaintiff
805 E. Main Street
Pinckney, MI 48169
734-954-0100

Glen N. Lenhoff
LAW OFFICE OF
GLEN N. LENHOFF
Co-Counsel for Plaintiffs
328 South Saginaw Street
8th Floor, North Building
Flint, MI 48502
810-235-5660

Jeanmarie Miller (P44446)
Attorney for Defendant
Assistant Attorney General
P.O. Box 30736
Lansing, MI 48909
517-373-6434

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
REQUEST FOR ADMISSIONS AND
INTERROGATORIES DATED APRIL 9, 2013**

REQUEST FOR ADMISSION NO. 1:

1. Please admit that each year during the period January 1, 2009 to the present most complaints of sexual misconduct by guards at WHV were lodged against the female guards not against male guards.

RESPONSE: Denied.

INTERROGATORY AND DOCUMENT REQUEST NO.1:

If the response to the foregoing Request is other than an unqualified admission.

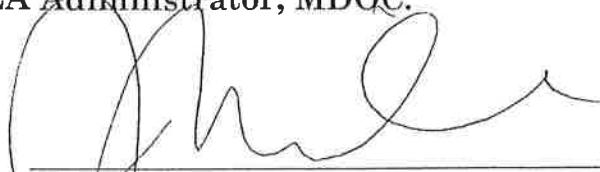
- a. State all facts upon which you base your claim of lack of information or knowledge, if your refusal to admit the truth of the matter is based upon a claimed lack of information or knowledge.
- b. State all facts upon which you base any denial, partial denial or qualified admission.
- c. Identify and produce all documents supporting or tending to support any denial, partial denial or qualified admission.
- d. Identify all persons with knowledge of the facts upon which any denial, partial denial or qualified admission is based.

The purpose of this interrogatory is to have you reveal anything presently known by you which bears on your refusal to respond to the Request with an unqualified admission, Plaintiff will, at the time of trial, move the Court for an order excluding from evidence all tangible or intangible things known to you at the time of your responses to these Requests and Interrogatories and not disclosed in your responses

RESPONSE:

- a. As the word “most” in the request for admissions is not defined it is not clear what is meant by that term. However, from January 1, 2009 through April 16, 2013 only 10 sexual misconduct complaints were lodged by inmates against guards at WHV. Six were lodged against the female officers and four against male officers. MDOC does not consider this difference in the number of charges filed against female v. male officers as constituting “most” but rather that the complaints are fairly evenly split.
- b. See answer to subpart a above.

- c. The only documents would be the actual complaints themselves which Defendants object to producing as the complaints contain private information regarding the complaining inmates.
- d. Jennifer Polhemus, PREA Administrator, MDOC.



Jeanmarie Miller (P44446)
Assistant Attorney General
Attorney for Defendant
P.O. Box 30736
Lansing, MI 48909
517.373.6434

Dated: May 2, 2013

Exhibit 7

See P2



**America's Most Progressive
Community Newspaper**

The Michigan Citizen, 1055 Trumbull, Detroit, MI 48216 (313) 963-8282

Mon, 19 Mar, 2012

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GUEST BOOK

Guest Book

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Women prisoners' lawsuit addresses MDOC abuse

By Eric T. Campbell
The Michigan Citizen

DETROIT — The National Lawyer's Guild, the nation's foremost progressive legal organization, held their annual convention at the Detroit Renaissance Center Marriott Hotel this past weekend.

Honorees included Richard Soble, one of ten Michigan attorneys who, in 1996, helped initiate a class action lawsuit by female prisoners incarcerated at three Michigan women's prisons. The plaintiffs numbered almost 500 and the charges included a wide range of systematic sexual assault and abuse over a period of five years.

Neal vs. the Michigan Department of Corrections (MDOC) was directed against the MDOC, its director McGinnis and the wardens of Scott, Western Wayne and Florence Crane Correctional Facilities.

This past February, after 12 years of litigation, a jury unanimously awarded the female prisoners damages of over \$15 million.

At the end of the trial, the jury offered a statement to the plaintiffs apologizing for the physical and mental manipulation they were forced to endure.

In a gesture considered extremely rare, according to attorneys litigating the 'Neal' case, the jurors stated: "We, the members of the jury, as representatives of the citizens of Michigan, would like to express our extreme regret and apologies for what you have been through."

Soble told the Michigan Citizen during an interview that, after a long history of harassment by male prison guards and complaints to corrections officials, the more active, outspoken victims were finally driven to file a class-action lawsuit. Additional inmates and former inmates joined the suit voluntarily. It resulted in the largest group of women to ever to sue the state.

"We had relatively little trouble talking to prisoners," Soble says, "but very little cooperation from the MDOC."

In fact, 18 appeals were initiated by the defense before the case went to trial. In addition, state legislation was proposed altering Michigan law in order to eliminate protections for the prison population.

Next Page

MICHIGAN FORWARD

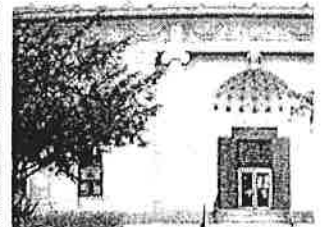
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Subsequently, 'Neal' became the first case to hold that the Michigan Civil Rights Act applies to prisoners. An equally lengthy discovery period revealed a culture of prison abuse that was executed by subordinates and tolerated by administrators.

The suit is subdivided into groups with seven to ten inmates being represented in each case. The first trial, held at Wayne County Circuit Court in front of Judge Timothy Conners, focused primarily on the experiences of ten prisoners held at Scott Prison during the years 1993 to 1999.

"Our view was that directors and wardens did absolutely nothing to stop these actions during this time period," Soble says.

Charges levied by inmates against prison guards included rape, sodomy, oral sex, cross gender pat downs and unwarranted observation during showering and dressing. As many as fifty guards were implicated directly during the proceedings and more were left unnamed, according to Soble. Observers of the case have described the behavior in very stark terms.

"Unfortunately the sexual abuse of women in Michigan state prisons is not at all new," said David Fahti, Director of the U.S. program for Human rights Watch, which produced a study documenting abuses in Michigan prisons. The results of that study, based on interviews with current and former inmates, prisoner rights advocates and the MDOC, revealed a pattern of sexual misconduct, "tolerated over the years at both the institutional and departmental levels."

"Certainly prison authorities should have known about and taken corrective action long before now," Fahti asserts.

Fahti says that sexual abuse could also qualify as torture under international treaties ratified by the United States, depending on the circumstances. The abuses seen in Michigan prisons are not limited to this particular corrections department, but are happening nationwide.

"This is a problem that arises whenever you have the power imbalance and culture of impunity that you see in prisons," Fahti told the Michigan Citizen.

Currently, the second phase of the lawsuit is being argued in front of Judge Conners. It involves seven women from the now closed Florence Craine prison. There are 49 more cases remaining to be tried, potentially costing the state of Michigan an exorbitant amount of money.

The landmark decision is expected to encourage more actions against corrections departments nationwide. Thus far, judgments for women prisoners in this country have been few and far between.

Russ Marlan, Public Information Officer for the MDOC, told the Michigan Citizen that changes in the prison system have been made over the last fifteen years with the intent of addressing issues related to prisoner abuse. He cited new training procedures for guards; physical plant changes designed to prevent privacy issues; and the termination of male guards in female facilities.



Exhibit 7

Marlan says the case has thus far involved testimony by inmates difficult to counter after a decade and that many of the cases would have been dealt with at the time if reported.

“We always investigate allegations of abuse thoroughly and if they’re proven true than the guard is gone,” Marlan says.

The MDOC awaiting a decision by the Michigan Court of Appeals on the first ‘Neal’ decision — Marlan says attorneys working out of the Attorney General’s office are confident it will be reversed.

Marlan also says that reports and allegations of abuse have decreased significantly since changes were enacted.

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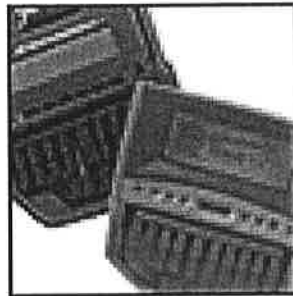
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Nowacki v. State of Michigan Department of Corrections

Deponent: **Gary Manns**

Taken: **4/4/2013**



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1 Q. Okay. Is Russ Marlin the public information director
2 at the present time?
3 A. Yes.
4 Q. Okay. And how long has he been the public information
5 director?
6 A. I'm taking a guess. Seven years.
7 Q. Okay.
8 A. Give or take.
9 Q. And is James Long still the attorney for Corrections?
10 A. He's still an attorney with the AG.
11 Q. Okay. But he's assigned to you guys?
12 A. I don't know if that to be the fact right now.
13 Q. Okay.
14 A. I'm out of touch with that in my current position.
15 When I was deputy director, him and Denise Barton were
16 the two people I dealt with every day.
17 Q. Well, if you see him, tell him I said hello. He's a
18 fine gentleman.
19 A. Yes, he's a very good guy.
20 Q. How many times have you requested of the Department of
21 Civil Service that certain positions be designated for
22 female only?
23 A. This is the only time that I recall. This was a major
24 issue unless something else came along that I just
25 don't recall. But this was, this was it. This was

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1 the start of it.
2 Q. And when you're saying this, you're pointing to
3 Exhibit 1?
4 A. I'm sorry. Exhibit 1, yes.
5 Q. All right. And it wasn't apparent to me from the
6 correspondence, but did they approve all of your
7 request?
8 A. I believe they did. I don't see any letters in here
9 from Civil Service, but there would have to be, excuse
10 me, a letter authorizing us to move forward from Civil
11 Service. I just, I don't see it.
12 Q. I have it. I was just trying to save paper.
13 All right. In 2009 you also communicated
14 with Civil Service in your capacity as operations
15 support administrator, is that right?
16 A. Yes, deputy director.
17 Q. Okay.
18 (Deposition Exhibit No. 2 marked and
19 attached.)
20 MR. FETT: I'll give you that, Jane.
21 MS. MILLER: Thank you.
22 BY MR. FETT:
23 Q. Go ahead and review that and let me know when you're
24 done.
25 A. Okay.

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1 Q. You wrote the letter dated March 27, 2009 to
2 Mr. Stevens, is that right?
3 A. Yeah, Gary Stevens was the state personnel director at
4 that time.
5 Q. Okay. And what was the impetus for you to write this
6 letter?
7 A. Quite honestly, I didn't even remember I wrote this
8 letter, but it looks like to expand the BFOQs in areas
9 that we felt needed to have female-only staff.
10 Q. Okay. And did you -- do you recall any conversations
11 with Miss Caruso regarding expanding positions that
12 were BFOQ female?
13 A. I really don't.
14 Q. Okay.
15 A. I don't even remember this letter, so --
16 Q. Okay. Well, there's an attachment to this I did not
17 include which I will have to get.
18 A. I'm sorry.
19 Q. Go ahead.
20 A. Can I take this for a minute?
21 Q. Sure, sure.
22 (Off the record at 10:48 a.m.)
23 (Back on the record at 10:50 a.m.)
24 BY MR. FETT:
25 Q. Do you recall whether or not there was an effort to

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1 designate additional positions as BFOQ when the
2 prisons were consolidated at Huron Valley?
3 A. I don't recall that specifically. But looking at this
4 letter, it looks like obviously I was trying to expand
5 something with BFOQ, but I don't know the specifics.
6 Q. Okay. All right. Can you tell me, is there any BFOQ
7 designations in the male prisons where it would be say
8 male only?
9 A. No, not that I'm aware of.
10 Q. Any designations in the male prisons where there's
11 female only?
12 A. Not that I'm aware of.
13 Q. Okay. And I guess that could occur if there was
14 someone needed to pat down female visitors, that might
15 be a position where you'd want to have female only if
16 you were going to do that?
17 A. I don't recall any specific, but I would imagine, and,
18 again, I haven't been in the facility in a while, but
19 I'm assuming we would have a female officer pat down a
20 female visitor.
21 Q. Okay. But you wouldn't have to designate that
22 position as BFOQ female only because you could just
23 have male and females work that position, true?
24 A. They do. I believe they do historically.
25 Q. Has there ever been any consideration to designating

See Ex 0 to this brief

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1 I understand this correctly. When you were looking at
2 whether or not to have positions designated as female
3 only, you were looking at the problem areas?
4 A. I don't know if I'd say problem areas because at any
5 time in a facility, something can be a problem area.
6 I think at that time it was where are complaints
7 coming from.
8 Q. Not geographically but position-wise are you saying?
9 A. I wouldn't even know. I wouldn't say position-wise
10 but location and facility. For instance, again, I'm
11 going from memory --
12 Q. All right.
13 A. -- because I can't remember how it is, so I don't want
14 to be leading us in an area that isn't accurate.
15 But if there were a number of complaints
16 coming out of say intake where the prisoners come into
17 the facility, they're getting processed, prepped to go
18 into the facility, you know, if you have females
19 coming in, that could be an issue depending on who the
20 officer or officers are there.
21 Housing units, the same way. You have
22 prisoners that that's their living quarters.
23 Obviously there could be states of undress and
24 whoever's there. It's those sorts of things that
25 generated the interest or the discussion of what do we

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1 need to do to minimize complaints of this nature.
2 Q. How about positions relating to medical care or
3 hospital care; do you recall those as generating a lot
4 of grievances by the prisoners?
5 A. I don't know if it generated a lot of grievances, but
6 historically over time, there's always issues that had
7 popped up. I remember roughly the parameters that,
8 yes, there were some complaints coming out of the
9 clinic hospital area in the facility.
10 Q. Okay. And do you recall that being an impetus for
11 listing some of those positions in Exhibit 1?
12 A. I don't know which position. I know we have housing
13 intake and RUO positions. It's possible.
14 Q. Okay.
15 A. I can't answer. I don't want to say that for certain
16 because, again, I don't want to go back on
17 thirteen-year-old memory, being separated from this.
18 Q. Okay. You're familiar with the hundred million dollar
19 settlement that the DOC entered into with the
20 plaintiffs in the prison lawsuit, aren't you?
21 A. Yes.
22 Q. Everybody's heard of that one.
23 A. I was ready. I was trying to hear what you were going
24 to say the name because I can't remember the name.
25 Q. The Neil, Neil case.

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1 A. Yeah, I was going to say that, but I didn't know that
2 to be the fact.
3 Q. Okay.
4 A. I believe it is the Neil, but, again, I don't know for
5 sure.
6 Q. Do you know if that event, that is the settlement of
7 that case for a hundred million, prompted the
8 department to do anything with regard to its BFOQ
9 designations?
10 A. I don't recall that occurring.
11 Q. Okay.
12 A. But, then again, I can't remember when I was leaving
13 that type of duty to go on to something else.
14 Q. If the settlement occurred say 2008 and you were a
15 deputy director --
16 A. I was, yeah.
17 Q. Would you have known whether or not that event, the
18 settlement, prompted any further BFOQ designation
19 requests?
20 A. I don't recall it, but that does not mean it did not
21 occur.
22 Q. Okay.
23 A. You know, when that lawsuit was going on, our
24 litigation area probably stepped up and looked at
25 that.

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1 Q. Okay. Did you refine a list over time that eventually
2 became the list in Exhibit 1? -
3 A. You mean prior to this letter?
4 Q. Yeah.
5 A. I really don't recall. I know we had a number of
6 discussions on what areas should we even be looking at
7 if we're going to look at something like this, but I
8 don't know. I can't recall the steps that led us up
9 to putting these positions down because that would
10 have been in '99.
11 Q. Sure. But all I'm trying to establish is if there was
12 additions and deletions to your list before you filed
13 it off.
14 A. I couldn't even take a guess. I imagine there had to
15 be some discussion before the final list was done. I
16 don't remember.
17 Q. Okay.
18 A. I've got a good memory, but I can't remember way back
19 then in that time.
20 Q. All right. That's fair enough.
21 Do you know whether there was sentiment
22 within the administration of Corrections to make all
23 the positions in the women's facility, all the
24 corrections officer positions female?
25 A. No, I don't believe that to be the case.

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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

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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

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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.

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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 darn 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 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.**

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1 **Okay. Do you know what a health care**
2 **infirmiry officer is?**

3 A. That would be the person that is in the infirmiry when
4 prisoners go make their appointments. That person
5 would usually be sitting in the lobby of the infirmiry
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 sitting, 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.

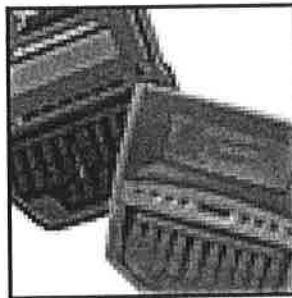
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1 And that's where it got fuzzy with a lot of
2 people and they were down on it because people thought
3 that that meant that you had to give them the job.
4 Anybody who was in that class, it was to participate
5 in an interview, and then based on 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

Nowacki v. State of Michigan Department of Corrections

Deponent: **Bruce Curtis**

Taken: **4/4/2013**



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Phone: (734) 761-5328 Fax: (734) 761-7054

mail@huron4deps.com www.huron4deps.com

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Page 17

1 A. And those, the department decided to close both of those
2 facilities.
3 When they closed both of those, there were
4 several reasons. There was budgetary issues, it was
5 very expensive to operate, so they decided to close both
6 of those facilities. The JMF facility closed first, and
7 then the Southern Michigan Facility closed later which
8 was receiving and guidance.
9 **Q. Okay.**
10 A. But there was a lot going on as there is now. I mean,
11 we're continually evolving.
12 **Q. All right. Well, was there ever a point that you recall**
13 **discussing using the BFOQ designation with any director,**
14 **not just with Bill Martin, in the prison setting? I**
15 **don't want to talk about the boot camp thing.**
16 A. No, not really, not where I directly talked about BFOQ.
17 I was aware of BFOQ, knew what BFOQ meant, because we
18 had it for other things other than gender issues. So,
19 you know, but I never had a direct conversation that I
20 can remember --
21 **Q. Okay.**
22 A. -- myself to the director.
23 **Q. Okay. Did you ever have meetings with the director?**
24 A. There's meetings. There was certainly meetings when --
25 staffing meetings when we closed the male -- the women's

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1 facility that now that we now have was actually two
2 facilities. There was women on the east side and males
3 on the west side.
4 **Q. Right.**
5 A. And part of the males on the west side was the mental
6 health facility which when I took over, I'm the one that
7 closed it because when I went over there and looked at
8 it, I wasn't happy with what I saw. I started looking
9 for an area and found Maxey Boys Facility which was
10 underpopulated with the Department of Human Services.
11 And the department, then I appealed to the
12 director at that time who was Beth Caruso and I said
13 this would be a much better place for us to put this
14 mental health population and we can manage them more
15 like a mental health hospital than what's going on now.
16 They agreed with that and they made a deal with the
17 Department of Human Services, and I got what I wanted.
18 **Q. So you put them all out in my neighborhood.**
19 A. I got my mental health facility.
20 But that being said, when that happened,
21 there was some kind of decisions that I really didn't
22 have much to do with to close the Scott Women's Facility
23 and put the women where the males had once been in that
24 other part.
25 **Q. Right.**

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1 A. And, now, when they staffed that then, you know, all the
2 staffing sheets come through my office. So I had to
3 review those. I did not do the staffing sheets. I
4 reviewed them, however.
5 **Q. Okay.**
6 A. They were satisfactory.
7 **Q. All right. All right. In the time that you've known**
8 **Warden Warren, have you always found her to be truthful?**
9 A. Yes, I have.
10 **Q. Are you aware that she testified that you and Dennis**
11 **Straub told her that Director Caruso wanted all female**
12 **staff at the women's prisons?**
13 A. No.
14 **Q. Is that true?**
15 A. No, not to my knowledge. I never had that conversation.
16 **Q. Did you ever hear about it from anybody else?**
17 A. No.
18 **Q. Do you know whether Director Caruso at one time wanted**
19 **all female corrections officers at the female prisons?**
20 A. No, I don't.
21 **Q. Okay. When you say you don't, you don't know whether it**
22 **was said or not?**
23 A. Yeah. That's exactly what I'm saying --
24 **Q. Okay.**
25 A. -- because there's a lot of, there's a lot of talking

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1 that goes on, and so what matters to me in the
2 Department of Corrections especially, if I go say
3 something tomorrow --
4 **Q. Right.**
5 A. It will be all over the department or all over my
6 region, and it may or may not have been what I said. I
7 mean, that's just the nature of Corrections. I mean,
8 it's just everybody says, well, Bruce or the RPA said
9 this.
10 Well, and it will come back and I'll have to
11 laugh because maybe part of it it was said or something
12 about it was said, but it won't be, by the time it gets
13 back to me, it probably won't be what was said. It's
14 just part of the nature of it.
15 **Q. Kind of like E. F. Hutton?**
16 A. Pardon me? What?
17 **Q. You're like E. F. Hutton used to be; when E. F. Hutton**
18 **speaks, people listen. They may not always get it**
19 **right.**
20 A. I wish it were like that, I wish people did listen when
21 I spoke more, you know.
22 **Q. Well, they listen. They just misconstrue what you say**
23 **probably.**
24 A. Well, make it what, make it what someone wants it to be.
25 **Q. Okay. What I understand is the evolution of the BFOQ**

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1 designations at the Huron Valley facility is that at one
2 time Miss Caruso wanted all the corrections officers to
3 be female, but there was a little push back by
4 Ms. Warren or Warden Warren, and as a result of that,
5 there was a compromise so that not all the positions
6 were designated as female BFOQ.
7 Do you have any knowledge?
8 A. I don't remember that, no. No. I'm sorry, but I don't
9 remember that.
10 Q. Okay. Did you have a role in selecting which positions
11 at the Women Huron Valley Prison when it was all women
12 were to be designated BFOQs?
13 A. I did not.
14 Q. Do you know who did?
15 A. I'm going to say probably whoever was the deputies at
16 that time, and I think there were a couple of deputies
17 when it first came about.
18 Q. When you say deputy, are you talking about deputy --
19 A. Deputy wardens that work for the warden. Usually the
20 deputy does the staffing sheets.
21 Q. Okay.
22 A. And they might discuss with the warden what kind of
23 position they want.
24 And my understanding on a BFOQ position that
25 what determines if it's going to be a BFOQ position is

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1 if the male officer is left alone with female prisoners,
2 that was the goal, and as far as, as long as, it was the
3 same way in boot camp with me, as long as a male officer
4 is not alone with a female prisoner, it's not an issue,
5 not a problem.
6 But, like I said before, I was practicing
7 that before the BFOQ ever came into existence.
8 Q. Got it. Okay.
9 A. So, you know, I don't know what, I mean, I know that's
10 how they determined that. When I reviewed the sheets, I
11 looked for the appropriate staffing for security
12 reasons, and when I see the sheets, it doesn't say the
13 person that's going to be in there.
14 Now, it may, it would over there mention if
15 it's a BFOQ, but I know all the BFOQ positions, so they
16 wouldn't need to designate that. It would be a housing
17 position, it would be any other position where a male
18 officer might be left alone with a female prisoner.
19 Q. Okay.
20 A. That's the secret of the whole thing and whether that
21 would be transportation or not.
22 Q. Okay.
23 A. And it wouldn't be wise either way to have a male
24 officer in a vehicle transporting a female prison
25 without a female officer being there. To me, that would

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1 be inappropriate.
2 Q. Okay.
3 A. And, like I said, that has nothing to do with BFOQ to
4 me.
5 Q. Okay.
6 A. It's just something that you probably wouldn't be wise
7 to do.
8 Q. Okay.
9 A. Same thing on the other side, you know, I mean.
10 Q. When you're talking about the male prisoners --
11 A. The same thing. It wouldn't be wise to be totally left
12 alone. That's just to me common sense.
13 Q. Okay. And I understand you're talking common sense.
14 Let's talk about just designating something as a BFOQ.
15 A. It would be, it would be based on the potential for the
16 male to be left alone with the female employee.
17 Q. Okay.
18 A. The position would.
19 Q. Okay. How about any other factors besides that?
20 A. Not to me. I don't think there are any other factors
21 that are included in that.
22 Q. All right. Did you ever work with -- well, you know
23 Gary Manns, right?
24 A. I do know Gary.
25 Q. Did you see him go out the door?

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1 A. Yeah.
2 Q. Okay. You notice he was happy when he left?
3 A. Gary's always happy. I've known him for years. I've
4 never seen him not smiling really.
5 MS. MILLER: It's true.
6 BY MR. FETT:
7 Q. Okay. Anyway, did you do any work with him in terms of
8 researching whether other state systems, prison systems,
9 what they do with the BFOQ designations?
10 A. I did not.
11 Q. Okay. Are you aware, are you aware of what that
12 research showed?
13 A. I could have read it but I don't remember it. I don't
14 remember reading any specific, any documentation that
15 showed what the research said.
16 Q. Okay. Okay.
17 A. I certainly wasn't on any committee to study it.
18 Q. Got it. All right. Who do you report to?
19 A. I report to Deputy Director Tom Finco.
20 Q. Is he a state police lieutenant?
21 A. Yeah. He's the deputy director of the correctional
22 facilities. Now we have a chief deputy director and we
23 have three regular deputy directors.
24 Q. This is the same guy who was a state police lieutenant
25 at Jackson?

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1 A. In Lansing.
2 Q. Okay.
3 A. Grandview Plaza.
4 Q. Do you recall meeting with Mr. Straub regarding any
5 issues relating to that consolidation?
6 A. Only there were quite a few meetings that had to do with
7 consolidating. Most of it where I was concerned is the
8 actual moving of the women, closing Scott which was a
9 big deal over in Plymouth and moving and transporting
10 those women over to the Huron Valley facility.
11 And most of mine was getting that facility
12 ready for the women to occupy that because there were a
13 lot of structural things that had to be done, and having
14 the boot camp or the Special Alternative Incarceration
15 under me, they had those male crews come in there to do
16 that.
17 Boot camp puts out a lot of crews, work
18 crews, and then my regional maintenance people had to
19 work with the Huron Valley maintenance people, and the
20 Huron Valley didn't have enough to do it. So my
21 regional maintenance people did the work, the structural
22 work to take care of that.
23 And I would go mostly confer with him on, you
24 know, money and what we needed here and what we needed
25 there, what we have to have for those women as compared

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1 to the men. Most of mine had to do with, my meetings
2 with Denny had to do with that.
3 Q. Okay. Did you ever meet with say Denny and Warden
4 Warren regarding issues relating to the consolidation of
5 prisoners?
6 A. Mostly construction issues, things like that. Not so
7 much staffing issues because staffing issues were pretty
8 simple to me. As I said earlier, my concern is that we
9 have appropriate staffing to cover yard areas, to cover
10 gymnasium areas, to cover feeding, to cover the housing
11 units, those kind of things, and that's pretty simple.
12 There is an executive, operations executive
13 position, at that time it was operations administrator,
14 who handled staffing for the department.
15 Q. Who filled that position?
16 A. Ed Mize, a guy by the name of Ed Mize.
17 Q. M-I-E-S?
18 A. M-I-Z-E.
19 But most of the staffing that would come
20 through that, I don't know how much the deputies, the
21 deputy wardens at WHB conferred with Ed at that time,
22 and they didn't confer with me except Warden Warren
23 might ask me if we can do this and this in terms of the
24 amount of staffing they could have because the regional
25 business manager works directly for me, and they would,

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1 they would do the study of what this thing is going to
2 cost. That's mostly where I came into play.
3 Q. Okay. So I think I know the answer to this but I've got
4 to ask anyway. So did you have anything to do with
5 whether positions at Huron Valley would be designated
6 BFOQ females only?
7 A. I did not.
8 Q. Okay. Would you expect that yard officer positions
9 would have to be BFOQ female only?
10 A. No.
11 Q. How about industries officer?
12 A. Well, unless it was a position where the position was
13 isolated, as I stated before, I would be concerned about
14 that, and it depends on what staff are there continually
15 with that officer.
16 Q. All right. But with those caveats?
17 A. Yeah, those were the -- that's pretty much the
18 decision-making of in my mind of where BFOQ should be.
19 Q. Got it. How about food service officer?
20 A. That's the same thing. It would be the same thing.
21 Q. And I know what you mean but just for the record, it
22 would be the same thing provided that there's no
23 isolation?
24 A. That's correct.
25 Q. So if there's no isolation, it doesn't have to be

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1 designated BFOQ?
2 A. If they -- it depends on where in the food service
3 operation that happens, and it also would depend on what
4 staffing were there. If a food service officer was a
5 dining room officer and it's an open, obvious position
6 with females going and coming but similar to the yard, I
7 mean, it's a public area, it wouldn't be a problem.
8 Q. Okay.
9 A. If that officer was something like that we had in
10 central, I can't remember Huron Valley. I've got a lot
11 of prisons, so I can't remember what their staffing is
12 back there. Let's say it was a back dock position and
13 it is alone back there with those women workers. I'd
14 say that had to be a BFOQ position.
15 Q. Okay. Okay. Would the same notion apply to say the gym
16 officer?
17 A. It would be the same.
18 Q. Okay. Same thing with gate officer?
19 A. Well, it depends on if they had to -- sometimes the
20 duties of the gate officer, for example, and there's a
21 lot of different gates in prisons, is to shake down the
22 prisoners coming through. That couldn't be a male
23 officer.
24 Q. Okay. But could a male officer do that if they were
25 working with a female officer?.

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1 A. Well, you'd have the female officer do it. The male
2 ~~officer would be observing.~~
3 **Q. Okay.**
4 A. You know, if it was a -- again, it depends on the
5 situation and where it is.
6 **Q. Okay.**
7 A. It depends on the equipment being used, whether they're
8 going through a pass-through metal detector, whether
9 they're using a wand to look for metal objects.
10 **Q. Okay. Let me switch directions here for just a moment.**
11 **Do you know at the prison level, specifically like the**
12 **Huron Valley Women's Prison, whether there is the**
13 **ability to track overtime usage?**
14 A. Sure, there is.
15 **Q. Okay. And that's something that the agency is concerned**
16 **about because you want to minimize overtime --**
17 A. Yes.
18 **Q. -- In an economy like this.**
19 **Can -- do you have the capability with your**
20 **accounting system to figure out what a particular**
21 **individual worked for overtime in a particular period?**
22 A. You should have an Overtime Equalization List. The
23 shift commander in that particular facility should be
24 monitoring the overtime equalization.
25 **Q. And just explain briefly what an Overtime Equalization**

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1 List is.
2 A. You start with your most senior officer, offering them
3 overtime, and you may have an A list or B list or C list
4 or however that's set up. And you go down the list, and
5 when you exhaust that list, then you start over again.
6 **Q. Okay.**
7 A. And so that overtime, you equalize overtime between the
8 staff who are -- who sign up or want the overtime.
9 **Q. So that the overtime that's reflected on that list, is**
10 **that for just for a particular year or is it a**
11 **continuing list that is -- that there's no specific**
12 **period?**
13 A. Well, it goes on. You know, you look at what your
14 yearly statistics are and try to figure out where your
15 problems are, if you're running overtime in certain
16 areas.
17 **Q. Okay.**
18 A. But it would go on. It would be a continual list. I
19 mean, because the year ended, that doesn't mean that
20 Officer A, if he, he or she has less overtime than
21 Officer B, you would try to equalize that as best you
22 can.
23 **Q. So that --**
24 A. And it would continue on, yes.
25 **Q. All right. So that just because a new year starts**

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1 doesn't mean that everybody starts with zero overtime
2 for figuring out who gets the overtime?
3 A. That's right.
4 **Q. Okay. I mean, they would call that like a rolling,**
5 **rolling amount?**
6 A. Revolving.
7 **Q. Okay.**
8 A. However you -- it's been so long since I was shift
9 commander or deputy warden.
10 **Q. Okay. Going back again to the BFOQ, are you familiar**
11 **with what an electronic monitor officer is?**
12 A. Yes.
13 **Q. Just briefly give me the Readers Digest version of what**
14 **they do.**
15 A. Well, they, they monitor the screenings, the camera
16 system that we have, whether they're in units or whether
17 they're in possibly segregation cells or things like
18 that.
19 **Q. Okay.**
20 A. It's the monitoring system, and they monitor cameras,
21 you know, all over the, all over the facility.
22 **Q. So they just have to sit there and watch screens?**
23 A. And Huron Valley has many because it's a hundred and
24 eighty acres, and, yeah, you have banks of cameras that
25 you monitor.

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1 **Q. Is there caffeine readily available?**
2 A. Oh, yes. You try to relieve them --
3 **Q. I would hope.**
4 A. -- a decent period of time.
5 **Q. Is that -- should that be a BFOQ position?**
6 A. Yes.
7 **Q. Okay. And why is that?**
8 A. Because of the different, the way the cameras face in
9 terms of showers and the possibility of different stages
10 of dress and undress.
11 **Q. Okay. Is there any -- is that a BFOQ position in the**
12 **male prisons?**
13 A. I don't know. No, we don't have them in male. We don't
14 have BFOQ in males. It would be an SAI.
15 **Q. What's that mean?**
16 A. It would be that if we had a camera in a women's housing
17 unit, a male wouldn't be monitoring the camera. Special
18 Alternative Incarceration, the boot camp I was telling
19 you with the other.
20 In a male prison, you don't have BFOQ
21 positions.
22 **Q. Okay. Do you know what a health care infirmary officer**
23 **is?**
24 A. Yes.
25 **Q. Give me the Readers Digest version of that.**

RECEIVED
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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. TIMOTHY P. CONNORS

Defendant.

James K. Fett
FETT & FIELDS, P.C
Attorneys for Plaintiff
805 E. Main Street
Pinckney, MI 48169
734-954-0100

Glen N. Lenhoff
LAW OFFICE OF
GLEN N. LENHOFF
Co-Counsel for Plaintiffs
328 South Saginaw Street
8th Floor, North Building
Flint, MI 48502
(810) 235-5660

Jeanmarie Miller (P44446)
Attorney for Defendant
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517.373.6434

**DEFENDANT'S RESPONSE TO PLAINTIFF'S
REQUEST FOR ADMISSIONS AND
INTERROGATORIES DATED JUNE 13, 2012**

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Please admit that it is the policy of the Defendant to conduct strip searches in designated "search areas".

RESPONSE: Denied.

Next Page

REQUEST FOR ADMISSION NO. 6:

Please admit that most positions with the WHV facility are not legitimate, B.F.O.Q. women only positions, notwithstanding their designations as such.



RESPONSE: Denied.

INTERROGATORY AND DOCUMENT REQUEST NO. 6:

If the response to the foregoing Request is other than an unqualified admission:

- a. State all facts upon which you base your claim of lack of information or knowledge, if your refusal to admit the truth of the matter is based upon a claimed lack of information or knowledge.
- b. State all facts upon which you base any denial, partial denial or qualified admission.
- c. Identify and produce all documents supporting or tending to support any denial, partial denial or qualified admission.
- d. Identify all persons with knowledge of the facts upon which any denial, partial denial or qualified admission is based.

The purpose of this interrogatory is to have you reveal anything presently known by you which bears on your refusal to respond to the Request with an unqualified admission. Plaintiff will, at the time of trial, move the Court for an order excluding from evidence all tangible or intangible things known to you at the time of your responses to these Requests and Interrogatories and not disclosed in your responses.

RESPONSE:

- a. All BFOQ'd positions at WHV were put into place because of necessity and to ensure that the privacy and individual rights of the female inmates were not violated, pursuant to Everson v MDOC, 391F.3d737,



761-762 (6th Cir.2004). The BFOQ's were put into place after
examining each position in light of the settlement agreement reached
in the Neal litigation.

- b. See answer to subpart a above.
- c. Not applicable.
- d. Millicent Warren.

Dated: 7/11/12

Pamela Nelson
Pamela Nelson, Litigation Specialist
Michigan Department of Corrections

Subscribed and sworn to before me this
11 day of July, 2012.

Robert W. Farr
Notary Public
acting in Ingham County, Michigan
My Commission expires: 1-29-2014

ROBERT W. FARR
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF EATON
My Commission Expires Jan. 29, 2014
Acting in the County of Ingham

As to any objections.

Jeanmarie Miller
Jeanmarie Miller (P44446)
Assistant Attorney General
Public Employment Elections & Tort
P.O. Box 30736
Lansing, Michigan 48909
517.373.6434

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

TRACY NEAL, et al.,

Plaintiffs,

v

Case No. 96-6986-CZ
Hon. Timothy P. Connors

MICHIGAN DEPARTMENT OF CORRECTIONS,
et al.,

Defendants.

NICOLE ANDERSON, et al,

Plaintiffs,

v

Court of Claims
Case No. 03-162-MZ

MICHIGAN DEPARTMENT OF CORRECTIONS,
et al.,

Defendants.

RICHARD A. SOBLE (P20766)
Counsel for Plaintiffs
221 N. Main St., Ste. 200
Ann Arbor, MI 48104
734.996.5600

PATRICIA STREETER (30022)
Counsel for Plaintiffs
221 N. Main St., Ste. 300
Ann Arbor, MI 48104
734.222.0088

J. RICHARD COLBECK
(12036)
Attorney for Defendant
Tate
53 E. Chicago Street
Coldwater, MI 49036
517.279.8021

DEBORAH LaBELLE (P31595)
Counsel for Plaintiffs
221 N. Main St., Ste. 300
Ann Arbor, MI 48104
734.996.5620

JOHN L. THURBER (P44989)
Assistant Attorney General
Counsel for Defendants
P.O. Box 30217
Lansing, MI 48909
517.335.7021

RALPH J. SIRLIN
(P24635)
RONALD J. REOSTI
(P19368)
Counsel for Plaintiffs
23880 Woodward Ave.
Pleasant Ridge, MI 48069
248.691.4200

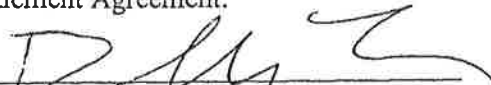
MOLLY RENO (P28997)
Counsel for Plaintiffs
P.O. Box 225
Whitmore Lake, MI 48189
734.449.9883

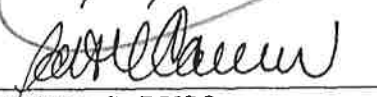
MICHAEL L. PITT (P24429)
PEGGY GOLDBERG PITT (P41407)
CARY S. McGEHEE (P42318)
Counsel for Plaintiffs
117 W. Fourth St., Ste. 200
Royal Oak, MI 48067-3804
248.398.9800

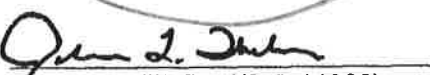
CLASS SETTLEMENT AGREEMENT

issue any orders of compliance, costs, or fees, related to the enforcement of the provisions of the


Settlement Agreement.

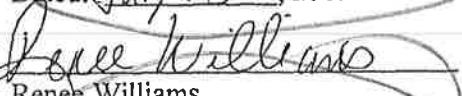

DEBORAH A. LaBELLE (P31595)
Co-Counsel for Plaintiffs
Dated: 7/15/09, 2009


PATRICIA CARUSO
IN HER OFFICIAL CAPACITY AS
DIRECTOR OF THE MICHIGAN
DEPARTMENT OF CORRECTIONS.
Dated: July 15, 2009


JOHN L. THURBER (P44989)
Assistant Attorney General
Counsel for Defendants
Dated: July 15, 2009

CLASS REPRESENTATIVES:


Toni Bunton
Dated: July 15, 2009


Renee Williams
Dated: July 15, 2009

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
CIVIL DIVISION

TOM NOWACKI, et al.,

Plaintiffs, NO: 11-852-CD

vs. JUDGE BROWN

STATE OF MICHIGAN DEPARTMENT
OF CORRECTIONS,

Defendant.

The Deposition of LUCILLE EVANS, taken
before me, Daniel E. Ripka, CSR-2367, Notary Public, on
Wednesday, October 17, 2012, at the Woodland Correctional
Center, 91036 East M-36, Whitmore Lake, Michigan, commencing at
or about 9:30 A.M.

APPEARANCES:

LAW OFFICE OF GLEN N. LENHOFF
BY: ROBERT D. KENT-BRYANT, ESQ. (P40806)
328 South Saginaw Street
8th Floor, North Building
Flint, Michigan 48502
(810) 235-5660

Appearing on Behalf of Plaintiffs.

JEANMARIE MILLER, ESQ. (P44446)
525 West Ottawa Street, Floor 5
Lansing, Michigan 48909
(517) 373-6434

Appearing on Behalf of Defendant.

ALSO PRESENT: TOM NOWACKI

1 Q. All right. Anything else that you recall at that time
 2 back in 2005?
 3 A. Oh, my. That's almost 15 years ago, isn't it?
 4 Q. No, it's about seven years.
 5 MS. MILLER: Seven. 2005. Seven years ago.
 6 Q. (BY MR. KENT-BRYANT): 2005, yeah.
 7 A. Seven years ago. Oh, boy.
 8 Q. Just the best as you can.
 9 A. I'm positive it was pretty much housing units. The
 10 infirmary could be considered as a housing unit, because
 11 women are in a state of undress in a housing unit. It's
 12 where they lived. It's almost like a hospital.
 13 Q. So the infirmary?
 14 A. Uh-huh (Yes).
 15 Q. All right.
 16 Anything else you remember?
 17 A. Not that I remember. I can't... I just can't recall.
 18 Q. All right. That's fair enough. And that's always a fair
 19 answer. That's always a fair answer.
 20 And at that time you were resident unit manager?
 21 A. No.
 22 MS. MILLER: Assistant deputy warden.
 23 Q. (BY MR. KENT-BRYANT): No, you were assistant deputy
 24 warden at that time. Okay.
 25 Now, is it true that in May 2009 that Huron

1 A. I don't recall.
 2 Q. Okay.
 3 During that time period -- Well, maybe it was
 4 even before that time period. When did you learn that the
 5 facility was going to become female only in terms of
 6 inmates?
 7 A. Are you asking me the specific date that it was decided?
 8 Q. Approximate, I'm sure. I'm sure you don't have it as, you
 9 know, January 3rd at 2:45 P.M., but when approximately did
 10 you learn that this was going to become an all women's
 11 facility?
 12 A. I don't recall.
 13 Q. Do you know, I mean, was it a matter of weeks, months,
 14 years?
 15 A. This is just an estimation. It is in my estimation that
 16 that women's facility -- that I was there for
 17 approximately a year when the conversion process, or so,
 18 began --
 19 Q. Okay.
 20 A. -- to eventually make it all become one women's facility.
 21 See, I can't answer your question exactly,
 22 because there was a conversion process.
 23 Q. All right. And that's interesting. When you talk about a
 24 conversion process, and that makes sense that it just
 25 wouldn't happen overnight, what do you recall being the

1 Valley converted to an all women's facility?
 2 A. I do not remember the exact date and the exact month, but,
 3 yes, eventually women's and men's facility did become one
 4 women's facility.
 5 Q. All right. Now, my question to you is between the time
 6 January 2005 when you became assistant deputy warden at
 7 Huron Valley Women's and whenever it became an all women's
 8 facility, during that time period do you recall any other
 9 positions other than what you've named so far that were
 10 BFOQed?
 11 A. What's your question again?
 12 Q. All right. Between the time that you arrived as assistant
 13 deputy warden and the time that Huron Valley became an all
 14 women's facility, okay, for that time period do you recall
 15 any other positions that were BFOQed women only other than
 16 what you've named so far?
 17 A. Let me be clear. Your question is once the facility
 18 expanded and became one massive --
 19 Q. No, no, no. In between the time --
 20 A. That --
 21 Q. Hold on. In between the time that you first came back in
 22 January 2005 as ADW to the time that it expanded, so from
 23 when you first arrived to just before it expanded, do you
 24 recall any other positions being BFOQed? And we'll
 25 obviously get to the next time period.

1 different elements of or stages of the conversion process?
 2 A. There had to be beds located for the male prisoners that
 3 were still housed on the west entrance of the facility.
 4 Q. Right.
 5 A. Those prisoners had to be transferred out.
 6 Q. When did the last male leave?
 7 A. Sir, I have no idea. I'm not even going to begin to try
 8 to answer that.
 9 Q. Okay. Okay. That's fine.
 10 Go ahead. You were saying about the conversion
 11 process.
 12 A. Basically arrangements had to be made for all of the
 13 prisoners to be placed from the men's facility and placed
 14 in beds throughout other locations in the state.
 15 There had to be established the housing units.
 16 There are certain knock and announce features, and other
 17 things, that are considered with female prisoners.
 18 Once all of the males were transferred out the
 19 males from the infirmary then had to be transferred, and
 20 that was a little bit longer process.
 21 There was a process where the men's facility had
 22 -- There was some cleaning that needed to be done. So
 23 that is what I mean when I say the conversion process.
 24 Q. Right, right, right.
 25 Now, if we took -- And I only ask these

(Pages 14 to 17)

1 questions, and if you don't know that's a fine answer. I
2 don't know the answer to these questions. That's why I'm
3 asking you.

4 If we -- Instead of saying what the date was for
5 when the last male inmate left, if we went back from like
6 how long before it opened as an all women's facility would
7 you have any idea when the last male left?

8 A. No.

9 Q. All right.

10 A. I'm sorry. I just -- I don't remember when.

11 Q. Right. No. That's fine. That's a perfectly fine answer.

12 You don't have to feel like that's an indictment in any
13 sense. You can only answer the questions where you know
14 the answers, and I don't expect you to guess.

15 A. I'm sorry. I don't feel as if it's an indictment, I feel
16 as if it's not really a fair question to be able to gauge
17 from one job to another when a female prisoner arrived as
18 opposed to when a male prisoner left, as opposed to when,
19 you know, the entire process was completed on an exact
20 date. It's just not something that I guess a person would
21 keep track of.

22 Q. Right. No. That's fine. It's a fair question because I
23 don't know these answers and I don't know if I have to get
24 them from someone else until I ask you.

25 A. Okay.

1 Q. But if you don't know, that is a perfectly fine answer.

2 A. Okay.

3 Q. I don't know you don't know until I ask you and you say
4 "That's not something I know."

5 A. Okay.

6 Q. Now, during the process, the conversion process did you
7 play any role in determining what positions would be
8 considered BFOQ female only when the facility became all
9 female?

10 A. I did not.

11 Q. Did you consult with Warden Warren about what positions
12 would be considered BFOQ female only?

13 A. I did not.

14 Your question is not stated properly. The
15 question is did administrative staff as a whole have
16 meetings or have a meeting to discuss what possible BFOQ
17 positions --

18 Q. Okay.

19 A. -- would be assigned to that facility. That is really the
20 correct answer.

21 Q. Well, and the answer to that question is what?

22 A. The answer is yes.

23 Q. All right.

24 A. Administrative staff did meet and discuss what positions
25 would be BFOQ.

1 It's really important that you get this written
2 down. The decision --

3 Q. Ma'am --

4 A. -- was not made --

5 Q. Ma'am. Just answer the questions. All right?

6 MS. MILLER: Just let him ask the questions.

7 THE WITNESS: Okay.

8 Q. (BY MR. KENT-BRYANT): You don't have to give a lecture
9 with every answer.

10 A. Okay. I'm not trying to give you a lecture.

11 Q. The reason I reacted like that is that Warden Warren said
12 you did play a role. All right?

13 A. I just confirmed that we did.

14 Q. Very good.

15 Now, the meetings that the administrative staff
16 had, those included whom?

17 A. I don't recall. The warden for sure.

18 Q. Do you recall anyone else?

19 A. Other deputy wardens that was assigned to the facility.
20 We changed deputy wardens several times, so I don't
21 remember exactly who was on the team at that time.

22 Q. Okay. One of them was you?

23 A. Yes.

24 Q. All right. And you don't remember anybody else that was
25 involved?

1 A. Not really.

2 Q. How many meetings were there?

3 A. I don't recall.

4 Q. More than one?

5 A. It's safe to say yes.

6 Q. Were there -- Well, let me ask you this. More than five?

7 A. I don't... I don't recall.

8 Q. All right. Now, the meetings that occurred, do you know
9 whether there were minutes kept of those meetings?

10 A. I do not.

11 Q. Okay. Did the meetings pertain -- I mean, were these
12 ordinary meetings that administrative staff was having
13 where the issue of BFOQ female only came up, or were these
14 specifically for the singular purpose of determining what
15 positions were BFOQ female only?

16 A. I do not recall whether there was a special meeting or if
17 it was just part of our general administrative staff
18 meeting.

19 Q. All right. And it sounds like there was -- At least you
20 can say there was more than one meeting; is that true?

21 A. I don't recall how many meetings we had.

22 Q. All right.

23 A. I can say that, yes, there was one but I don't recall how
24 many.

25 Q. Do you know the time period over which the meeting or

1 meetings took place? I mean, do you know approximately
 2 what year?
 3 **A. I don't recall.**
 4 **Q. To you does May 2009 seem like it makes sense for when the**
 5 **facility opened as an all women's facility?**
 6 **A. That... that sounds like the correct date --**
 7 **Q. Okay.**
 8 **A. -- that Scott prisoners transferred there and we became**
 9 **one women's facility.**
 10 **Q. All right. Do you remember...**
 11 **Well, doing the math you would have been there**
 12 **for about 18 months or so while it was an all women's**
 13 **facility before you transferred over here; is that true?**
 14 **A. Before I transferred to this particular facility?**
 15 **Q. Correct. Correct.**
 16 **A. No. I was there from December -- I'm sorry, from January**
 17 **of 2005 until I transferred to this facility.**
 18 **Q. Right. But the marker I'm using is from when it became an**
 19 **all women's facility. You were there about 18 months when**
 20 **it was an all women's facility?**
 21 **A. Approximately, yes. I don't recall exactly, but**
 22 **approximately, yes, 18 months or so.**
 23 **Q. I'm going to show you... I'm going to show you what was**
 24 **marked as Exhibit 2. And for the time that you were there**
 25 **does this look like an accurate list of the positions that**

1 **Q. Okay.**
 2 **A. We discussed I'm pretty sure medical emergency**
 3 **transportation.**
 4 **Q. Okay.**
 5 **A. That's what I can recall off of the top of my head.**
 6 **Q. Now, we'll go through the different positions in more**
 7 **detail in a moment.**
 8 **When you talk about the shakedown position,**
 9 **what's that position?**
 10 **A. When prisoners go for visits they have to be shaken down**
 11 **prior to the visit and after the visit.**
 12 **Q. Was there a position for performing strip searches?**
 13 **A. Yes.**
 14 **Q. That's different than the shakedown position?**
 15 **A. The person that -- We never had a position titled a strip**
 16 **search position, it was titled a shakedown position and it**
 17 **included strip searches.**
 18 **Q. So the shakedown person was generally the person in**
 19 **addition to other things that was responsible for strip**
 20 **searches that needed to be performed at the facility?**
 21 **A. Pretty much. But that was only in the location at the**
 22 **visiting room near the control center area.**
 23 **So there was more than one position where staff**
 24 **was required to multitask and do shakedowns.**
 25 **Q. I haven't gotten a full tour of the facility. There's a**

1 were BFOQ and non BFOQ?
 2 And you can take your time.
 3 **A. This appears accurate.**
 4 **Q. Okay. And what you see in Exhibit 2, was it at this**
 5 **meeting or these meetings among administrative staff where**
 6 **it was determined which positions as are reflected in**
 7 **Exhibit 2 would become BFOQ female only and which would**
 8 **not?**
 9 **A. There's a lot of positions listed here so I don't recall**
 10 **if this is accurate to reflect our discussion at a**
 11 **meeting.**
 12 **Q. All right. Do you recall at the meeting or meetings you**
 13 **referenced earlier what positions were discussed in terms**
 14 **of becoming BFOQ female only?**
 15 **A. I vaguely recall.**
 16 **Q. Okay. What do you recall?**
 17 **A. Housing units; the infirmary, as I've said earlier; yard**
 18 **positions, some of the yard positions; hospital positions,**
 19 **hospital coverage; MSI Industries.**
 20 **Q. Go ahead. Any others?**
 21 **A. Food service, the shakedown position, half of the control**
 22 **center assignments, the recreations officer position, the**
 23 **reception and guidance center positions.**
 24 **Q. What was that again? I'm sorry.**
 25 **A. Reception and guidance center. It's RGC.**

1 room designated for strip searches that need to be
 2 performed near the visiting area; is that true?
 3 **A. Yes, that's correct.**
 4 **Q. All right. And is that where strip searches were**
 5 **performed if they needed to be performed from anywhere in**
 6 **the facility?**
 7 **A. No. The facility has an east entrance and a west**
 8 **entrance. Prisoners were allowed to visit on the east**
 9 **entrance and the west entrance.**
 10 **Q. Okay.**
 11 **A. So you would have to have that assignment covered on both**
 12 **sides of the facility.**
 13 **Q. Is there a room designated for strip searches near both**
 14 **the east --**
 15 **A. Yes.**
 16 **Q. -- and the west entrance?**
 17 **A. Yes.**
 18 **Q. Okay. So if a strip search were required anywhere, you**
 19 **know, if a situation arose anywhere in the facility where**
 20 **a strip search is required it would have to be performed**
 21 **in one of those two rooms?**
 22 **A. No.**
 23 **Q. Okay. Tell me why.**
 24 **A. If there is a situation in segregation where a prisoner is**
 25 **threatening harm or have injured themselves, to be sure**

(Pages 22 to 25)

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1 that the prisoner doesn't still have something that she
 2 could hurt herself with a strip search could be done in
 3 segregation.
 4 Q. Segregation. Okay.
 5 A. Uh-huh (Yes).
 6 Q. Okay. With the exception of what you just said if a strip
 7 search were required anywhere in the facility, with the
 8 exception of what you've already said, would it typically
 9 be done at one of the strip search rooms in the east or
 10 the west side?
 11 A. Not necessarily.
 12 Q. Okay. Explain.
 13 A. A strip search could be done in a housing unit, a strip
 14 search could be done in the food service area.
 15 Q. Was it preferred, however, by administration that it be
 16 performed in one of these two rooms near the east and west
 17 entrance?
 18 A. I can't say yes. I cannot say yes.
 19 Q. Why not?
 20 A. Because if a prisoner is in segregation and the prisoner
 21 has been taken to segregation for an assault on the yard
 22 with a weapon and you took that person into segregation
 23 that would be the preferred location for the strip search,
 24 not to take them from --
 25 Q. Segregation.

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1 A. -- that location to another location with a possible
 2 weapon for a strip search.
 3 Q. Right. And you mentioned that earlier. So let me
 4 rephrase the question.
 5 With the exception of the issue you just spoke
 6 of concerning segregation, if a strip search is required
 7 on the facility, Huron Valley Women's, is it preferred by
 8 administrative staff that it occur in either one of the
 9 strip search areas near the west or east entrance?
 10 A. I'm sort of having a difficult time answering your
 11 question when you say is it preferred by administrative
 12 staff.
 13 Q. Right.
 14 A. It's situational.
 15 When it is referenced for visiting and
 16 transportation it is preferred that it be done in those
 17 two areas.
 18 There are many issues that could arise that
 19 administration or as an administrator I would prefer the
 20 strip search to be done in the area that is closest to
 21 where the incident occurred.
 22 Q. Okay. So my understanding of the procedure is if an
 23 officer wants to or feels that it's necessary to perform a
 24 strip search typically the officer needs to get permission
 25 from administration, right?

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1 A. Yes. Their supervisor, a sergeant, a lieutenant. It's
 2 normally a shift commander.
 3 Q. All right. And if there aren't any extenuating reasons
 4 for the strip search to occur in, you know, wherever the
 5 location is, let's say it's food service, is it typically
 6 the case that the officer will then be ordered to take the
 7 prisoner to one of these strip search rooms in the east or
 8 west with the exception of the segregation issue that you
 9 mentioned?
 10 A. That's a fair assessment.
 11 Q. Okay. When you first arrived at Huron Valley Women's in
 12 January 2005 in the women's facility do you have a sense
 13 of what percentage of the employees were male versus the
 14 percentage that were female?
 15 A. When I arrived in 2004?
 16 Q. Or '4 or '5, when you first arrived --
 17 A. I'm sorry. 2005. I'm sorry.
 18 Q. That's okay -- as assistant deputy warden.
 19 A. The majority were females. I can't speculate on the
 20 percentage.
 21 Q. When the facility reopened as an all -- I don't want to
 22 say reopened, but when it was fully converted to a women's
 23 facility, an all women's facility, do you have an estimate
 24 as to what percentage of the employees were male versus
 25 what percentage were female?

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1 A. I would say -- I'll just give as an estimate that 75, 80
 2 percent of the staff were females.
 3 Q. You mentioned the majority were females in January 2005
 4 from your estimate. Was there a higher percentage of
 5 female employees after the facility became all female or
 6 before?
 7 A. Your question again is...?
 8 Q. Yeah, it wasn't a great question.
 9 In January 2005 when you arrived as assistant
 10 deputy warden there was a certain percentage of women who
 11 were employed at the portion of the facility that was
 12 women's, and then there was a certain portion that were
 13 employed at the facility when it became all women's. I'm
 14 just wondering which was higher. Were there more, a
 15 higher percentage of women in January 2005 working at the
 16 women's facility or after it became an all women's
 17 facility?
 18 A. There was a higher percentage after it became an all
 19 women's facility because there were more staff there.
 20 Q. All right.
 21 Okay. Going back to the meetings you spoke
 22 about earlier where the issue of BFOQing positions was
 23 discussed, do you recall what the criteria the group used
 24 to decide whether a position should be BFOQ female only?
 25 A. I do not recall the verbiage or the exact wording that was

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1 used. The basic method used to assist in gauging whether
 2 it should be a BFOQ position was those positions where a
 3 prisoner would be required to be shaken down and those
 4 positions where a female prisoner would be in a state of
 5 undress.
 6 Q. Anything else, or were those the two basic criteria?
 7 A. To my knowledge, to my recall those were basically the
 8 criteria.
 9 Q. All right. And lots of times, I'll just give you a
 10 guidance for how I work, after some question where I've
 11 asked you for a list I usually say at the end of it, you
 12 know, "Anything else?" I'm not suggesting that there has
 13 to be anything else, nor am I attempting to badger you,
 14 I'm just making sure that we've gotten the full list of
 15 your reasons, you know, and that you haven't been
 16 interrupted, or anything like that.
 17 All right. So -
 18 A. You'll take into consideration recall that I may not
 19 recall and I may -
 20 Q. All you can do is your best.
 21 A. Okay.
 22 Q. That's all you can do.
 23 And when you talk about one of the criteria
 24 having to do with the issue of a shakedown, how did that
 25 work? Was it if a shakedown was ever required as part of

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1 whatever the job description was then that would be BFOQ
 2 female, or was there some other way of approaching that?
 3 How did you do that?
 4 A. I'm not quite understanding your question.
 5 Q. Okay. So one of the criteria for determining whether a
 6 position in general was going to be BFOQ female only, and
 7 I'm going back to when this group was meeting, had to do
 8 with the issue of shakedown. And I'm trying to sort of
 9 focus in on that.
 10 Was it the consensus of the group that if a
 11 shakedown of a prisoner was ever required within that
 12 position that it would then be a BFOQ female-only
 13 position, or was there a more nuanced approach to it?
 14 A. The criteria basically was if it was a routine requirement
 15 that a prisoner be shaken down.
 16 Q. Now, in a lot of these positions prior -- Well, I'll ask
 17 you this. In some of the positions that were declared
 18 BFOQ female only when the facility became all female were
 19 some of those positions not BFOQ female only prior to the
 20 facility becoming all female? So like food service?
 21 A. State your question again.
 22 Q. Sure. In these meetings there was discussion about what
 23 positions would be BFOQ female only. And there was, at
 24 least out of these group meetings I'm getting from your
 25 testimony, a decision concerning which positions going

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1 forward would be BFOQ female only. Were some of the
 2 positions that were determined should be BFOQ female, only
 3 formerly not BFOQ female only?
 4 A. I do not recall, with the exception of what I've already
 5 named for you those housing units -
 6 Q. Right.
 7 A. -- infirmaries, and so on and so forth, obviously I don't
 8 recall all of the exact positions or I would have named
 9 them. So I can't... To answer your question I can't
 10 distinguish, I can't recall to be able to distinguish
 11 which specifically were BFOQ -
 12 Q. Already?
 13 A. -- and which were expanded to be BFOQ.
 14 Q. Okay. Well, we'll go through them. Maybe that's harder
 15 to do as a group. Maybe if we go through them one by one,
 16 which we'll do later, that will be helpful.
 17 Now, you mentioned the issue of women in a state
 18 of undress. Were there rules that the women had
 19 concerning when they could be in a state of undress?
 20 A. Yes.
 21 Q. Okay. Do you recall what those rules were?
 22 A. Prisoners could only be in a state of undress in their
 23 cell, in the shower, during the strip search process, in
 24 the infirmary, which was like a hospital environment.
 25 Q. Anywhere else?

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1 A. I cannot recall.
 2 Medical exams. That would be in the medical
 3 building or the medical area.
 4 That is what I can recall.
 5 Q. Were there different, during different shifts or different
 6 times were there different rules about when the women
 7 could be in a state of undress?
 8 A. I'm not really understanding your question.
 9 Q. So particularly third shift. I don't know. See, these
 10 are things I don't know the answers to.
 11 Particularly third shift when people are going
 12 to bed, sleeping, were there any different standards for
 13 where they could be in a state of undress, or was it the
 14 same as the other two shifts?
 15 A. It was pretty much the same as the other two shifts. I
 16 don't want to expand on your answer -- on your question,
 17 but I think in all fairness it deserves a bit of
 18 explanation, if I may.
 19 Q. Uh-huh (Yes).
 20 A. Female prisoners have assignments at any prison, prisoners
 21 have work assignments. If a prisoner has a work
 22 assignment, regardless of what time of day that prisoner
 23 gets off of the assignment, there may be 50 women working
 24 in food service that work a specific shift. When they get
 25 off work and they leave that shift and they go to their

(Pages 30 to 33)

1 housing unit they're entitled to take off their clothes in
2 their cell, change clothes, go to the shower.

3 We have not very many midnight porters, but we
4 do have some midnight porters. We have some food service
5 details that are -- that may go until 5 o'clock or start
6 at 5 o'clock in the morning. They're entitled to go and
7 take a shower or be in a state of undress to prepare for
8 their assignment or to clean up after an assignment. And
9 that's why I can't give a specific time to say only
10 between the hours of this is a female allowed to take her
11 clothes off and change clothing.

12 Q. So it sounds like, if I'm summarizing correctly, from your
13 understanding the rules about where women could and could
14 not be in a state of undress was pretty much the same
15 regardless of shift. Does that seem accurate?

16 A. The locations in which they could be in a state of undress
17 unless they're being strip searched is typically in the
18 shower or in their cell.

19 Q. Right. I'm understanding. And that's regardless of
20 shift?

21 A. Right.

22 Q. Okay. Are these rules for when women could be in a state
23 of undress, are they published anywhere, is there any sort
24 of manual or any posting on walls, or anything of that
25 sort?

1 Q. Well, let me tell you, the... Although I usually tell
2 people not to worry about where I'm going with the
3 question, but I'm going to tell you where I'm going with
4 the question.

5 I would like to find these rules, and what I do
6 is I write a request to Ms. Miller and say "Will you
7 please provide such and such rules?" And I'm trying to
8 figure out whether those rules are something that would be
9 at Huron Valley, something that was generated by Huron
10 Valley, or whether they would be something that, you know,
11 was generated in Lansing.

12 And, again, this is another place where if
13 you're not sure, that's fine, but if you know that, "Hey,
14 those were rules that we developed at Huron Valley" then
15 that would be fine; or if your answer was "No, those came
16 from Lansing" that would be fine; or if your answer was
17 "We got a basic template for them from Lansing but we
18 modified them" that would be fine, too. I'm just
19 wondering.

20 A. Each facility has housing unit rules.

21 Q. Okay.

22 A. The rules may be based on the physical layout or the
23 physical location of the facility or the layout of the
24 housing unit or the facility.

25 Q. All right.

1 A. The prisoners have housing unit rules.

2 Q. Okay.

3 Do you know whether the housing unit rules
4 pertaining to prisoners being, female prisoners being in a
5 state of undress, do you know whether those rules are the
6 same departmentwide, or are they something that's
7 developed for each facility?

8 A. I cannot answer departmentwide because I've not worked at
9 like absolutely every facility to... I mean, the rules for
10 when a prisoner can be in a state of undress basically
11 statewide is when you are taking a shower or when you are
12 in your cell.

13 Q. Okay. So at Huron Valley when you were assistant deputy
14 warden was it your understanding that the rules concerning
15 when women could be in a state of undress was something
16 that was developed or at least modified within the
17 facility, or was it your understanding that this was
18 something that came as policy of the Department of
19 Corrections?

20 A. Overall it's policy for the Department of Corrections, but
21 there are some exclusive rules that apply to female
22 prisoners regarding how many buttons they, you know, may
23 be able to have unbuttoned, and so on and so forth.

24 I'm maybe not quite understanding what your
25 question is.

1 Now, at Huron Valley Women's Facility when it
2 became an all female facility you were unable to tell me
3 who specifically would have been at any given meeting
4 because there was, it sounded like there was some
5 variation concerning who was transferred -- or not who was
6 transferred, who was assigned there. But in terms of
7 administrative staff who do you remember from, you know,
8 say May of 2009 till the time you left, who do you
9 remember in terms of who the, at any time were the
10 assistant deputy wardens?

11 Yourself.

12 A. I want to say Olivia Bruce.

13 Q. Olivia Bruce. Okay.

14 A. Carol Valley.

15 No, I'm sorry. Olivia Bruce was retired in
16 2009. She was retired.

17 Carol Valley was there. Myself. Of course
18 Warden Warren.

19 Q. Right.

20 A. We had a deputy warden, Mary Jo Pass.

21 Q. Pass?

22 A. P-A-S-S.

23 Q. Okay.

24 A. And you're talking from 2009 until...?

25 Q. Until you left.

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1 Q. All right. During the meetings that you've discussed
 2 earlier was there any consideration given to BFOQing any
 3 of the supervisor positions?
 4 A. I do not recall.
 5 Q. Now, you've done quite a bit of work at male prisons as
 6 well. In male prisons are female corrections officers
 7 barred from working in housing units?
 8 A. They are not.
 9 Q. Are they barred from working in segregation?
 10 A. They are not.
 11 Q. Are they barred from working in Intake?
 12 A. I've not worked at a male facility that has intake so I
 13 can't answer that.
 14 Q. Okay. Have you ever worked at a male facility where any
 15 position was BFOQ male only?
 16 A. We don't send females to strip search male prisoners.
 17 Q. Okay. Do you know -- Well, let's talk about that. So if
 18 a female here at Woodland, for instance, determines that a
 19 strip search is necessary what procedure would that female
 20 corrections officer use?
 21 A. That's totally circumstantial.
 22 Q. All right. But they wouldn't perform the strip search,
 23 right, the female wouldn't?
 24 A. No.
 25 Q. All right. So would they have to contact someone else to

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1 perform the strip search?
 2 A. We don't have what you really call single assignments
 3 here, so they would have a male accessible. The majority
 4 of the staff here are male.
 5 Q. Right.
 6 A. And so they would follow the procedure. Unless it was,
 7 you know, an absolute emergency they would always call for
 8 a supervisor.
 9 Q. All right. And you said they'd follow the procedure. The
 10 first part of the procedure would be calling a supervisor?
 11 A. Absolutely.
 12 Q. And you would be an example of one of the supervisors,
 13 true?
 14 A. No.
 15 Q. You're not a supervisor at Woodland?
 16 A. I'm an administrator at Woodland.
 17 Q. Okay.
 18 A. Traditionally the hierarchy is the officer contacts the
 19 control center, there is a sergeant on duty, we have a
 20 lieutenant on duty, we have a captain on duty, and that is
 21 the chain of command.
 22 Q. All right. So the procedure would be for, if it's a CO,
 23 let's say, would be to call control center?
 24 A. Yes.
 25 Q. And then what would control center do?

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1 A. That's a circumstantial question.
 2 Q. Can we say that in most circumstances the control center
 3 would try and make a male available to perform the strip
 4 search?
 5 A. In most circumstances the supervisor would -- the control
 6 center would send a supervisor and make the determination
 7 at that point and it would be a male that would conduct
 8 the strip search.
 9 Q. All right. Now, with regard to strip searches at Huron
 10 Valley Women's Facility when you were there it was also
 11 the policy there that if a strip search were required,
 12 other than in the visiting areas at the east and west
 13 gate, that the officer would have to call a supervisor or
 14 administrator before going any further with regard to the
 15 strip search; is that true?
 16 A. That is correct.
 17 Q. Am I saying that just the right way? I was a little
 18 insecure as I was saying it. Was that accurate?
 19 A. Can you say it again?
 20 Q. When a CO at Huron Valley when you were there determined
 21 that a strip search is necessary the CO was required to
 22 call their supervisor before going any further; is that
 23 true?
 24 A. That's not a hundred percent true.
 25 Q. Correct me so that I'm a hundred percent accurate, because

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1 I want to go forward from this.
 2 A. In a housing unit environment, which is separate from the
 3 shakedown area, the housing units have supervisors
 4 assigned to them, that would be assistant resident unit
 5 supervisor, resident unit manager, that would contact
 6 control center and the strip search could be conducted by
 7 a female.
 8 Q. All right. So there they would also contact control
 9 center and typically a female would -- Well, it would be a
 10 female who would do the strip search?
 11 A. Correct.
 12 Q. All right. So that's really, you know, the mirror image
 13 of what the procedure is here at the male facility,
 14 correct?
 15 A. Correct.
 16 Q. All right.
 17 I'm going to ask you some questions about the
 18 operating procedure.
 19 Let me ask you this. When you were at Huron
 20 Valley before it became... Well, I'm going to go back
 21 even a step further.
 22 When the Huron Valley became an all female
 23 facility food service was one of the positions that was
 24 newly BFOQed; is that true?
 25 A. I don't recall. I want to say... I don't recall.

(Pages 42 to 45)

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1 A. That's correct, yes.
 2 Q. All right. Did you author Exhibit 3?
 3 A. Yes.
 4 Q. Did you have any people that contributed to authoring
 5 Exhibit 3, or was that your own work product?
 6 A. There were many reviewers of the operating procedure prior
 7 to final approval.
 8 Q. Do you know who those were?
 9 A. I'm sure it was the Deputy Warden Osterhout, it was Deputy
 10 Warden Pass, it was the warden.
 11 Q. Right.
 12 A. I cannot be a hundred percent sure. I want to say that
 13 the inspectors were asked to review the document and make
 14 comments.
 15 Q. So did this go through several steps where you drafted the
 16 procedure, submitted it to others for comment, maybe
 17 incorporate their suggestions and then submit it again for
 18 review?
 19 A. That basically was the process.
 20 Q. Do you know over or how long the period of time was that
 21 you were drafting this?
 22 A. I don't know how long, no.
 23 Q. Okay. The effective date for this was November 3rd, 2010,
 24 true?
 25 A. According to the document, yes.

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1 Q. Were you still there at that time, or is that just about
 2 when you left?
 3 A. I was there. I left in I want to say June of 2011.
 4 Q. Okay. All right.
 5 Now, was there a previous operating procedure
 6 for search and arrest at Women's Huron Valley Correctional
 7 Facility that you used as a template, or did you draft
 8 this all new?
 9 A. I do not recall if I utilized the template that was there
 10 previously. I do not recall if there was an operating
 11 procedure prior to this.
 12 Q. So what procedure did you go through -- You talked about
 13 the review procedure. What else did you do to prepare
 14 Exhibit 3?
 15 A. I reviewed and utilized the Department of Corrections
 16 policy directives. We have policy directives. We have
 17 ACA standards and the --
 18 Q. What's ACA? I'm sorry.
 19 A. It's basically accreditation standards, the standard that
 20 the department likes to meet.
 21 Q. All right.
 22 A. Culmination of policy directives was utilized to write the
 23 operating procedure.
 24 Q. Anything else you used besides what you've named?
 25 A. Documents that you see listed on the operating procedure.

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1 Q. Did you interview any or talk to any of the officers at
 2 Huron Valley as part of developing Exhibit 3?
 3 A. Formally?
 4 Q. Formally or informally.
 5 A. Informally.
 6 Q. Do you know who you spoke to?
 7 A. I do not.
 8 Q. Is there any record of who you would have spoken to?
 9 A. No.
 10 Q. Did you have any notes or other like computer files or
 11 anything that you used in preparation for drafting
 12 Exhibit 3?
 13 A. Pencil and paper.
 14 Q. Okay. And so you'd maybe the way I am writing notes as
 15 you're thinking of things or to help you remember things,
 16 and so forth?
 17 A. Yes, pretty much.
 18 Q. Do you know whether those notes still exist?
 19 A. I doubt it. I had no reason to keep them.
 20 Q. Okay. There wasn't a particular file where you kept
 21 things that you were using or that you produced in
 22 association with drafting Exhibit 3?
 23 A. No.
 24 Q. All right.
 25 A. It's not... it's not typical practice.

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1 Q. You don't have to defend it, actually. If there are
 2 they'd be something I'd be interested in.
 3 Would you turn to page 3, or 3 of 20.
 4 Okay. So if you'd look at the second paragraph
 5 beginning "Each non-housing corrections officer."
 6 A. I see it.
 7 Q. All right. Go ahead and review that just real quickly and
 8 I'll ask you a couple questions about it.
 9 A. Your question?
 10 Q. Yeah. The requirement that a corrections officer must
 11 perform five randomly selected prisoners -- searches of
 12 five randomly selected prisoners per shift, from where did
 13 you develop or find that standard?
 14 A. That is standard requirement in most officer position
 15 descriptions statewide.
 16 Q. So did you get it from position descriptions or did you
 17 get it from policy directives?
 18 A. I can't -- I don't recall exactly where it came from.
 19 Q. Now, it -- Go ahead. You want to say something?
 20 A. I was going to say, but the information contained within,
 21 as I said before, basically are from the policy
 22 directives.
 23 Q. All right.
 24 Then it says, "WHV male corrections officers in
 25 conjunction with female correction officers may search a

(Pages 50 to 53)

1 prisoners coat/outerwear while the female corrections
2 officer performs the actual clothed body or patdown
3 search."

4 Was that the procedure used by which the male
5 corrections officers could perform their five randomly
6 selected prisoners for search?

7 A. No.

8 Q. What was that procedure?

9 A. There is no procedure that allows for a male to shake down
10 a female prisoner. A male may shake down their coat --

11 Q. Coat, right.

12 A. -- or their outer garment, but not the physical body
13 shakedown.

14 Q. So in food service, for instance, when a male needed to
15 perform -- Let's say before the position was BFOQed there
16 was already a requirement that females be -- Strike that
17 whole question.

18 Before the food service position was BFOQed
19 there was already a requirement that all officers,
20 including male officers, shake down five randomly selected
21 prisoners a day, true?

22 A. Would you repeat the question?

23 Q. Yes. There was already a requirement before the food
24 service position was BFOQed that officers perform five
25 randomly selected shakedowns per day?

1 Q. All right. And so that applies to the females, too,
2 correct?

3 A. Yes.

4 Q. And so when they have to perform the shakedowns here at
5 the male facility what do they do?

6 A. They shake the prisoner down.

7 Q. All right. And they don't have to call for male
8 assistance to do it?

9 A. No.

10 Q. All right. Did you receive -- prior to May 2009 did you
11 have any reports from anyone that males who... Strike
12 that.

13 The male requirement that they also do five
14 shakedowns but that they have to get female assistance to
15 do it, did that result in any problems that you became
16 aware of from January 2005 to May of 2009?

17 A. Restate your question.

18 Q. Were you aware, did you have any problems reported to you
19 caused by men having to have female assistance to perform
20 shakedowns?

21 A. Yes, the women complained all the time.

22 Q. Which women? Employees?

23 A. The female, the female employees complained all the time.

24 Q. Who complained?

25 A. I don't recall names.

1 A. That is the standard.

2 Q. And prior to the food service position becoming BFOQed the
3 procedure that males used to perform the shakedowns or to
4 have the shakedowns performed is they would find a female
5 corrections officer to assist, and the female correction
6 officer would actually do the shakedown that involved
7 actual body contact, true?

8 A. True. Yes.

9 Q. By the way, here at Woodland do female corrections
10 officers perform shakedowns of male prisoners?

11 A. They do not. I mean, they may, but we don't have -- We've
12 got probably maybe four females on day shift, and I think
13 I've got only three on afternoons, so not to discredit
14 anything at all, but there's really no comparison with the
15 staffing.

16 The staffing here is so very, very few females
17 we have to sometimes take the one female that we have on
18 duty and have that person work in the gate area to process
19 visits.

20 So it's very difficult for you to compare what
21 we do at Woodland with what happens at Women's.

22 Q. But here at Woodland are corrections officers required to
23 perform five randomly selected prisoner shakedowns per
24 shift?

25 A. Yes. That's state -- That's basically statewide.

1 Q. Do you recall any names?

2 A. No. But that was one of the major complaints amongst the
3 female staff.

4 Q. Were any of those complaints in writing?

5 A. There may have been. I don't recall.

6 Q. But in terms of -- Well, strike that.

7 All right. If you would turn to page 4 of 20.

8 And, again, I'm going to the section that is headed
9 "Search of prisoners - Strip Search."

10 The second paragraph says, "A strip search of a
11 prisoner at WHV," which is Women's Huron Valley, true?

12 A. Uh-huh (Yes).

13 Q. Okay. Yes?

14 A. Yes.

15 Q. "Must be conducted by and only in the presence of female
16 employees." That's true, correct?

17 A. Yes.

18 Q. And it says, "Each strip search of a prisoner must be
19 conducted in a place which prevents the search from being
20 observed by those not assisting in the search," true?

21 A. Correct.

22 Q. "Unless an emergency requires it to be conducted
23 immediately and there is no opportunity to move to a
24 sheltered area," true?

25 A. Correct.

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1 Q. Now, that second clause, did that ever happen while you
 2 were at Huron Valley as an assistant deputy warden?
 3 A. Yes. That actually was the discussion that we had earlier
 4 when you asked about strip searches in a preferred
 5 location as opposed to other locations, and then the
 6 preferred locations you referenced were the strip search
 7 rooms.
 8 Q. Right.
 9 A. And I indicated that dependent on the circumstances in an
 10 emergency situation that a strip search could occur
 11 elsewhere.
 12 This is really what this references here when it
 13 says, "Each strip search of a prisoner must be conducted
 14 in a place which prevents the search from being observed
 15 by those not assisting in the search --" That's an always,
 16 regardless to whether it's an emergency -- unless there
 17 is an emergency -- unless an emergency requires it to be
 18 conducted immediately and there is no opportunity to move
 19 to a sheltered area." That would reference a situation
 20 where we suspected a prisoner could have a knife on them
 21 or could have drugs on them and they would be in the food
 22 service building.
 23 Q. All right. I guess my question is did that ever happen?
 24 A. I'm positive that there has been emergency situations
 25 where a prisoner had to be strip searched for probable

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1 cause.
 2 Q. All right. Do you recall any specific instance when that
 3 happened at Huron Valley?
 4 A. There was a specific instance at Huron Valley where there
 5 was strip searches that occurred, and it was a secluded
 6 area that was shielded, and it was because of an incident
 7 that had occurred with the prisoners that work in food
 8 service and the prisoners were strip searched there.
 9 Q. I wonder if that's the same incident that Warden Warren
 10 talked about yesterday. That involved female officers,
 11 true?
 12 A. Correct.
 13 Q. And my understanding was, but you can correct me if I'm
 14 wrong, is that those female officers were actually
 15 reprimanded for --
 16 A. They were.
 17 Q. Let me just finish the question. They were reprimanded
 18 for performing the search in the food service area rather
 19 than taking the prisoners to one of the strip search areas
 20 or rooms on the east or west gate?
 21 A. Correct.
 22 Q. Okay.
 23 A. It was not that level of emergency that it should have
 24 occurred there in the food service.
 25 Q. Any other instances that you recall at Huron Valley where

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1 there was an emergency that necessitated a strip search
 2 not -- either not in segregation, which you mentioned
 3 earlier, but also not at one of the strip search rooms at
 4 either the east or west gate other than what you've
 5 already testified to?
 6 A. I don't recall. I don't recall.
 7 Q. All right.
 8 Are there specific -- Is there specific training
 9 that officers receive concerning the conduction of strip
 10 searches?
 11 A. Yes.
 12 Q. Could you describe what that is, what sort of training
 13 they receive, where they receive it?
 14 A. The Department of Corrections offers annual training, and
 15 that training is a part of the training that's offered
 16 annually.
 17 Q. Is that something the officers are required to attend
 18 annually, or is there some certain amount of time they can
 19 go and then have to -- How does that work?
 20 A. For annual training it's annual.
 21 Q. Okay. So everybody goes annually?
 22 A. Uh-huh (Yes).
 23 Q. Yes?
 24 A. Yes.
 25 Q. Okay. And where is that conducted?

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1 A. At the facility.
 2 Q. Okay.
 3 A. I want to add, if I may, I do not recall whether strip
 4 search training is exclusive for the annual training, but
 5 officers do have annual training that may cover the strip
 6 search procedure.
 7 Q. When you were at Huron Valley Women's Facility who was
 8 responsible for conducting the annual training?
 9 A. We had Mr. Bosley was one of our trainers or HRD.
 10 Mr. Klamerus was one of our trainers, an HRD.
 11 Q. What's HRD?
 12 A. Human resources developer.
 13 Q. Okay.
 14 A. And there was a third person. I can't recall his name.
 15 Q. Okay. Did they or anyone else prepare any like materials,
 16 any sort of booklet that went along with the training?
 17 A. I specifically recall a time when the female prisoners
 18 were given strip search training to ensure that a strip
 19 search was consistent, and they were trained, and I'm
 20 positively sure that the video of how a strip search is
 21 conducted was one of the training tools.
 22 Q. Any written materials?
 23 A. I don't know.
 24 Q. Okay.
 25 A. The department again provides training on strip search

(Pages 58 to 61)

1 procedures.
 2 Q. The video, does the video contain live strip searches of
 3 actual people?
 4 A. The video contained a live strip search.
 5 Q. Okay. So not using some mannequin, or something like
 6 that, an actual person?
 7 A. Correct.
 8 Q. All right.
 9 Do you know who Ralph Goidy or Goliday is?
 10 A. At the time I was at the facility he was the union – he
 11 was a union steward. He is a corrections officer.
 12 Q. Okay. Do you recall telling him that, and this is what he
 13 said that you told him, quote, "We are doing some things
 14 to motivate the male correction officers to leave the
 15 facility?"
 16 A. I do not recall making that statement.
 17 Q. Do you deny that you made that statement?
 18 A. I deny making that statement. That is not of my
 19 professional character.
 20 Q. Warden Warren testified that after you all had the
 21 meetings to determine, among other things, what positions
 22 would be BFOQ female only she would develop I think it was
 23 called a custodial assignment sheet and she would review
 24 the custodial assignment sheet with Curtis and Straub and
 25 from that would be generated a final custodial assignment

1 Q. Okay.
 2 MR. KENT-BRYANT: I'm going to go over position
 3 descriptions. Do you want to take break?
 4 MS. MILLER: This would be a good place to take
 5 a break, yup.
 6 MR. KENT-BRYANT: Okay.
 7 (Discussion off the record. Recess taken
 8 at 11:19 A.M. Deposition resumed at or
 9 about 11:34 A.M.)
 10 Q. (BY MR. KENT-BRYANT): All right. I want to show you what
 11 I think was actually marked Exhibit 1, and can you
 12 identify that document, please?
 13 A. It's a position description.
 14 Q. For which position?
 15 A. According to the document it's for corrections officer.
 16 Q. And for what working title?
 17 A. It says food service.
 18 Q. And that's at Huron Valley?
 19 A. The division does indicate Huron Valley Correctional
 20 Complex. That's what it says here.
 21 Q. And the general summary of function/purpose of the
 22 position indicates that there was a gender based BFOQ for
 23 this particular position; is that true?
 24 A. The document reads that, yes.
 25 Q. And was that true while you were there?

1 sheet. Her meeting with Curtis and Straub, are you
 2 familiar with that fact or that process?
 3 A. I do not have firsthand knowledge or information of when
 4 Warden Warren met with her boss or the deputy director.
 5 Q. Right.
 6 A. I would like to add the meeting, meetings that we held as
 7 an administrative staff at the facility, our information
 8 and our requests were mere recommendations that the warden
 9 then would present to the deputy director and the RPA.
 10 Q. Okay. That's what she said, too.
 11 And she said that at one of the meetings with
 12 Curtis and Straub that they told her that Caruso said that
 13 the department wanted all employees at Huron Valley to be
 14 female.
 15 Did Warden Warren tell you that?
 16 A. Warden Warren has never told me "I would like to see every
 17 staff person at this institution be female."
 18 Q. No. Maybe I said that a little bit wrong. Did she tell
 19 you that she was told that Caruso said that?
 20 A. I don't recall. She and I – I worked for her for a very
 21 long time, we had many conversations. I don't recall that
 22 conversation, her stating that.
 23 Q. All right.
 24 A. I'm not saying that she did or didn't, but we had many,
 25 many conversations.

1 A. Yes.
 2 Q. Now, to be clear, because I didn't mean to be tricky, at
 3 the time the facility turned to female only it was a BFOQ
 4 female-only position, true?
 5 A. I didn't –
 6 Q. I think I was too general in my previous question.
 7 A. I didn't get your question.
 8 Q. Yes. This became a gender based BFOQ position after the
 9 facility became female only, true?
 10 A. I cannot be positive.
 11 Q. Okay. You do recall, I think you testified you do recall
 12 men working this position on occasion --
 13 A. Yes, I do.
 14 Q. All right. And to let me finish the question so I don't
 15 want you to have something on the record that you're not
 16 happy with. That was only before the facility became
 17 female only, true?
 18 Maybe not. I guess that's what I understood.
 19 A. I need to be sure of your question.
 20 Q. Right. And that's consistent with my initial instruction
 21 to you, so that's completely appropriate.
 22 The only time you remember men working food
 23 service was before the facility became all female; is that
 24 true?
 25 A. That's not exactly true.

Caruso

1 A. We can assign women to yard to answer your question.
 2 Q. Okay.
 3 A. And they can shake down male prisoners. That is really
 4 your question. And so yes and yes.
 5 Q. All right. And in the yard women are not supposed to be
 6 in a state of undress, true?
 7 A. We're talking -- Oh, we're back to female.
 8 Q. I switched back, as I do.
 9 A. Okay.
 10 MS. MILLER: She was hoping you weren't talking
 11 about the COs.
 12 THE WITNESS: Yes. That's true. Correct.
 13 MR. KENT-BRYANT: I wasn't. I wasn't.
 14 Q. (BY MR. KENT-BRYANT): At Huron Valley women were not
 15 supposed to be in a state of undress?
 16 A. Correct. Yes, sir. Correct.
 17 Q. In the yard area?
 18 A. That is correct.
 19 Q. The same for food service, true?
 20 A. Correct.
 21 Let's restate your question about food service.
 22 Q. Women were not supposed to be in a state of undress in the
 23 food service area, right?
 24 A. Traditionally and typically that is correct.
 25 Food service is an assignment where women have

1 Q. For what position?
 2 A. The working title is the gate control officer.
 3 Q. And this was a BFOQ female-only position at Huron Valley
 4 Women's; is that true?
 5 A. The document reads "This is a gender based BFOQ position."
 6 Q. All right. Now, is this a position that was discussed at
 7 the group meeting among administrators that you spoke of
 8 earlier?
 9 A. I don't recall. I'm sorry, I do not recall.
 10 Q. All right. Do you have any knowledge as to why that
 11 position was considered BFOQ female only?
 12 A. The women's... The Huron Valley Women's Facility has many
 13 gate pass prisoners.
 14 For corrections terminology a gate pass prisoner
 15 is a prisoner that works outside of the gates and
 16 therefore pass through the gated area to and from an
 17 assignment.
 18 Q. Okay. And why did that necessitate that this be a BFOQ
 19 female-only position?
 20 A. I can only speculate.
 21 Q. You don't know as you sit here today?
 22 A. No, no, no. You asked me why is it.
 23 Q. Right.
 24 A. And I'm just going to give you my speculation of why it
 25 is. That female prisoners traverse the gates and they -

1 soiled their clothing or their garment and would need to
 2 change. Food service is an assignment that is longer than
 3 15 minutes or an hour, and by it being a -- just the mere
 4 species of a female you would find that -- Or you wouldn't
 5 find. That's certainly not appropriate English. Please
 6 strike that.
 7 Q. No, go ahead. I understand what you're saying.
 8 A. It could not -- it would not be unnormal or unnatural for
 9 women to on a long-term assignment that would be four
 10 hours, five, six hours to maybe not have -- they would
 11 need to maybe change occasionally or more often than you
 12 would find in a men's facility for purposes that are
 13 just --
 14 Q. Of personal hygiene?
 15 A. That is correct.
 16 Q. All right. And that would be performed in the restroom
 17 area?
 18 A. Correct.
 19 Q. All right.
 20 (Deposition Exhibit Number 5 was marked for
 21 identification by the reporter.)
 22 Q. (BY MR. KENT-BRYANT): Okay. Handing you what's been
 23 marked as Exhibit 5. Can you identify this document,
 24 please?
 25 A. It is a position description.

1 must be shaken down and strip searched as well.
 2 Q. Always have to be strip searched?
 3 A. Coming in from an outside detail where you have access to
 4 the public and contraband, that's correct.
 5 Q. How many officers were assigned at any given time to the
 6 gate?
 7 A. One. At shift change there was a second officer added, or
 8 if there was heavy traffic or during unusual events I
 9 should say with high volumes of traffic there would be
 10 two.
 11 MS. MILLER: Can I just ask you to clarify?
 12 Because the way you answered that. You said one, and then
 13 you said at shift change. Do you mean there was typically
 14 one, and then at shift change they would add another?
 15 THE WITNESS: That is correct.
 16 MS. MILLER: Okay.
 17 MR. KENT-BRYANT: Right. That's what I
 18 understood.
 19 THE WITNESS: Thank you for clarifying.
 20 MS. MILLER: That's okay.
 21 Q. (BY MR. KENT-BRYANT): So during before the facility
 22 became all female do you recall any men being assigned to
 23 gate control officer?
 24 A. Yes, I do.
 25 Q. And did those men shake down or search females?

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1 A. No.
 2 Q. All right. What was done instead?
 3 A. Several things.
 4 Q. Okay. Tell me.
 5 A. We would attempt to pull a female from another assignment.
 6 It's really -- And when I say several things I
 7 should have said several assignments or locations, we
 8 would pull a female from that assignment or that location.
 9 Q. All right. Was there a place where typically the female
 10 was drawn from?
 11 A. Not typically.
 12 Q. All right.
 13 A. Every attempt would be made to use the strip search
 14 officer, because the strip search officer was closer to
 15 the gate area.
 16 Q. Okay.
 17 Now, there's not -- I didn't see a specific
 18 position description for a strip search officer. Was
 19 there... was there such a position description, or is it
 20 part of another position?
 21 A. There's no position description for a shakedown officer,
 22 is there not? Did you have that?
 23 Q. I have not seen it. But that doesn't mean it doesn't
 24 exist. I mean, this is why we do discovery to see what we
 25 do and do not have.

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1 But it could have been somebody that had a
 2 different name, I don't know. Do you?
 3 A. No. We multi -- The gate officer is basically relieved by
 4 the person that does the strip searches.
 5 Q. All right.
 6 A. The strip search officer could be the control center
 7 officer.
 8 Q. All right.
 9 What does a strip search officer do? I mean,
 10 sometimes I have to ask these questions that maybe seem
 11 obvious, but tell me what the strip search officer does?
 12 A. Shakes down female prisoners when there is a male on
 13 assignment that can't shake down the female prisoner and
 14 conducts a strip search to ensure that a prisoner is not
 15 in possession of contraband.
 16 Q. Okay. Does the strip search officer typically perform the
 17 strip searches of prisoners even if the request for the
 18 strip search doesn't emanate from the gate area?
 19 A. Yes.
 20 Q. Okay. Now, and I really have no idea, so how many, in any
 21 given shift, let's say, and maybe the shifts are
 22 different, how many women go through the gate area per
 23 shift that need to be shaken down?
 24 A. I can't answer that. I don't have the answer to that.
 25 Q. I mean, do you have any -- I mean, is there any range? I

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1 mean, are we talking a couple? Are we talking a couple
 2 dozen?
 3 A. It depends on how many gate pass assignments we may have
 4 as to how many prisoners may go through the gate to be
 5 strip searched.
 6 Q. And the strip search officer, how far is, I mean in space,
 7 is the strip search officer typically from the gate
 8 officer?
 9 A. Maybe 30 feet. You're back at Women's Facility now,
 10 aren't you?
 11 Q. Correct. Correct.
 12 A. Space and mileage and measurements is not my expertise. I
 13 really need that on the record. It's not.
 14 Q. Okay.
 15 A. I would say maybe 30 to 60 feet.
 16 Q. Okay. Within voice distance?
 17 A. No. There are gates that separate the individuals.
 18 Q. Okay. So do they radio when they need assistance at the
 19 gate?
 20 A. They could, yes.
 21 Q. Is that typically what is done?
 22 A. They could radio or they could pick the phone up.
 23 Q. Okay. All right.
 24 The strip search officer when not conducting a
 25 strip search or not performing a shakedown at the gate

Page 89

1 area, what is that individual doing?
 2 A. You may not find a position description because that
 3 assignment is traditionally in addition to other duties.
 4 Q. Okay.
 5 A. So that could be the control center officer that functions
 6 as control center officer and strip search officer and
 7 shakedown officer and gate relief, if you follow me.
 8 Q. Right. Right.
 9 A. It could be a person that is -- You won't probably find a
 10 description.
 11 If you've looked at our staffing sheets -- their
 12 staffing sheets you may not see that listed as a staffing
 13 position. The function is a mandatory requirement;
 14 however, we don't get staffing for...
 15 Q. Strip search officer.
 16 A. Correct.
 17 Q. Right.
 18 All right. But it sounds like typically there's
 19 a person on duty who is going to be primarily charged with
 20 performing the strip searches during any given shift; is
 21 that true? And it might be the control center officer?
 22 A. That is pretty much true.
 23 Q. Okay.
 24 A. I do want to add, and if I may.
 25 Q. Sure.

(Pages 86 to 89)

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1 A. No, sir.
 2 Q. All right.
 3 Now, did you ever receive directly any
 4 complaints from any female corrections officers having to
 5 assist male correction officers in the gym area to perform
 6 shakedowns?
 7 A. I don't recall that.
 8 Q. In - Oh, go ahead.
 9 A. I don't recall that a female complained to me about
 10 anything related to the gym.
 11 Q. Okay. And do you ever recall a strip search emanating
 12 from the gym area; in other words, an officer called in
 13 for permission to have a strip search performed from the
 14 gym area?
 15 A. I don't recall if it occurred. I don't remember.
 16 Q. And I think I asked you this. Getting maybe a little bit
 17 tired. You don't recall one way or the other whether any
 18 men ever worked as a gym officer, true?
 19 A. No, I don't recall, I really don't.
 20 (Deposition Exhibit Number 7 was marked for
 21 identification by the reporter.)
 22 Q. (BY MR. KENT-BRYANT): All right. Can you identify
 23 Exhibit 7?
 24 A. A position description.
 25 Q. For what position?

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1 A. Electronic monitor officer.
 2 Q. And is this a position that you recall the group
 3 discussing in terms of it being a BFOQ female-only
 4 position?
 5 A. I don't recall whether the group discussed this one.
 6 Q. And what does the electronic monitor officer do?
 7 A. Electronic monitor monitors cameras throughout the
 8 facility.
 9 Q. Are there any cameras that are actually pointed at any
 10 area where women are allowed to be in a state of undress?
 11 A. Their cell. If you have a prisoner that is on observation
 12 status, in addition to there being a physical person
 13 observing, the camera.
 14 Q. Do you ever recall a time while you were there where
 15 cameras were pointed into cell areas?
 16 A. If you have an observation, prisoner on observation, the
 17 camera would be in addition to the individual that would
 18 provide observation for the prisoner. So, yes.
 19 Q. But my question was, and maybe you answered it, my
 20 question was do you recall that happening?
 21 A. Yes.
 22 Q. How often did that happen?
 23 A. When a prisoner was on observation status.
 24 Q. I mean, and how often did that happen?
 25 A. A prisoner could be on observation status at any time. I

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1 don't have an exact number or date, or I can't say how
 2 many instances per day.
 3 Q. Is there a record of that somewhere, do you know?
 4 A. I can't be positive.
 5 Q. And for what reasons would a prisoner be put on
 6 observation status?
 7 A. Suicide precaution.
 8 Q. Any other reason?
 9 A. Self-injurious behavior.
 10 Q. Anything else?
 11 A. Those are documented items and that's normally determined
 12 by CMHP, so it would be a qualified mental health person
 13 that makes a determination of these two scenarios where it
 14 would be suicide precaution or a self-injurious behavior
 15 issue.
 16 Q. Other than when someone's on observation status cameras
 17 are not pointed inside the cells, true?
 18 A. That's correct.
 19 Q. The electronics officers, they're located in the control
 20 center?
 21 A. Correct.
 22 Q. All right. How many officers are typically in the control
 23 center?
 24 A. I pause because I'm thinking.
 25 Q. Uh-huh (Yes).

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1 A. Between two and three.
 2 Q. All right.
 3 And do the officers in the control center have
 4 different responsibilities if there's more than one?
 5 A. Yes.
 6 Q. And would one of them be the electronic monitor officer?
 7 A. Yes.
 8 Q. And what are the others?
 9 A. My memory doesn't serve me as well, I'll repeat that.
 10 Q. Okay.
 11 A. The other officer could be the officer that is the count
 12 officer. That person is the individual that is the master
 13 of... to handle all the - is the individual that handles
 14 the master count boards and the movement in and out of the
 15 facility, in addition to many other duties.
 16 Q. And people in the control - officers in the control
 17 center, do they have any shakedown responsibilities?
 18 A. Yes. We discussed that earlier that that person is
 19 traditionally the one that does the shakedowns, the strip
 20 searches.
 21 Q. All right. Okay. I understand what you're saying now.
 22 So the person that's the electronic monitor
 23 officer, does that person have -
 24 A. It may be the electronic monitor who goes to do the strip
 25 search, it may be the control center - the count officer

(Pages 94 to 97)

1 it was not specified, specifically to answer your
 2 question, the general conversation that I heard that it
 3 was the healthcare issue or a necessarily infirmary
 4 officer issue but just an issue in general.
 5 Q. All right. Do you recall at any time you were there men
 6 working in that position?
 7 A. I don't recall men working in that position.
 8 MR. KENT-BRYANT: Let's take a little break
 9 here.
 10 MS. MILLER: Okay.
 11 (Discussion off the record. Recess taken
 12 at 12:42 P.M. Deposition resumed at or
 13 about 12:53 P.M.)
 14 (Deposition Exhibit Number 9 was marked for
 15 identification by the reporter.)
 16 Q. (BY MR. KENT-BRYANT): Just a couple of questions about
 17 things we discussed previously.
 18 With the healthcare infirmary areas you
 19 mentioned that women might be seen in a state of undress
 20 when the prisoners are examined.
 21 Are the -- Now, I've never been there. Are the
 22 beds separated from one another by barriers or curtains?
 23 A. To my memory it is just your typical pull curtain like you
 24 would...
 25 Q. Okay. So when physicians perform or healthcare

1 changing clothes, true?
 2 A. Never said that.
 3 Q. All right. Well, I'm just making it clear.
 4 A. I didn't say that. I said that they had a locker facility
 5 there.
 6 Q. All right. And there was -- Women would be in a state of
 7 undress actually only within the stall area, right?
 8 A. Yes.
 9 Q. And there was a sign outside of the bathroom locker
 10 facility about males having to knock and announce before
 11 entering, true?
 12 A. I don't recall. I can't sit here and honestly say that I
 13 recall a specific sign in a specific location.
 14 Q. All right. And do you know one way or the other whether
 15 in fact male corrections officers did utilize the knock
 16 and announce procedure before going into a female bathroom
 17 area in the gym area?
 18 A. I cannot sit here exclusively and say an affirmative yes
 19 or no to that because I cannot in all honesty say that I
 20 was there in each instance where an individual male went
 21 into that area.
 22 I can say this, throughout the entire facility
 23 there are knock and announce postings. And the proximity
 24 it is to the restroom that you've asked me about I can't
 25 answer that, but I will assure you that there are knock

1 professionals perform any sort of examination they do pull
 2 the curtain so that other, not only officers, but other
 3 prisoners can't see the examination, true?
 4 A. I can't answer that concretely. I wasn't -- I'm not
 5 there. But I could assume that they would.
 6 Q. All right.
 7 A. I mean, as a professional... I mean, it's an ethical,
 8 professional, ethical requirement, I would think.
 9 Q. Right.
 10 Now, in the gym you mentioned that there were
 11 bathrooms that women could use while they were in the gym
 12 area, right?
 13 A. Yes.
 14 Q. Now, are you sure that there were locker facilities there
 15 for them?
 16 A. There is lockers in -- There were lockers in that facility
 17 when we expanded and the conversion was completed and we
 18 were -- when we had become one women's facility.
 19 On the frequency in which the women used them, I
 20 cannot answer that.
 21 Q. When women would... when women would change clothes after
 22 using the gym isn't it true that they had to go to their
 23 cell to change clothes?
 24 A. Yes.
 25 Q. All right. So the locker facility wasn't used for women

1 ~~and announce signs throughout the facility in the area of~~
 2 ~~the restroom.~~
 3 And from a professional standpoint I would
 4 really hope that a male would not go into the restroom
 5 area even in a knock and announce state, that if there was
 6 a need for someone to go into the rest room area that a
 7 female officer would be contacted and notified and go into
 8 that area.
 9 Q. Well, outside of the stall areas were women supposed to --
 10 in the restroom area were women supposed to be in a state
 11 of undress?
 12 A. No.
 13 Q. Did you ever receive any complaints concerning the gym
 14 area that men had ever seen any women in a state of
 15 undress?
 16 A. I haven't received any specific complaints on that.
 17 Q. Any nonspecific -- Any complaints of any kind?
 18 A. No, sir.
 19 Q. All right.
 20 Okay. We've had marked as Exhibit 8 a document.
 21 Can you identify that document for me, please?
 22 A. Exhibit 8?
 23 Q. Yes.
 24 A. It says position description, healthcare slash infirmary
 25 officer.

(Pages 102 to 105)

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1 A. Correct.

2 Q. The --

3 A. I'll say this, though, if I may add -- And I apologize if

4 I cut you off. I'll say this, if I may add. The school,

5 the industries, the recreational building, those are in

6 pretty far proximity from your traditional housing units

7 based on the physical layout of the facility.

8 And the point that I'm making is this. In this

9 very casual conversation that we just call a female

10 officer to come and assist in a shakedown is just really

11 not as casual as that, because it's a good distance from

12 one location to another. And if there is kind of an

13 emergent situation that a male calls for a female to

14 assist in a shakedown, well, control center would actually

15 authorize that person to be released from their

16 assignment, and depending on the urgency of the nature

17 it's a bit of a distance.

18 Q. Do you have an estimate of what the distance is?

19 A. No, I don't.

20 Q. You also mentioned the privacy concerns because the cement

21 walls aren't very high in the bathroom?

22 A. It's the physical design of...

23 Q. Of the bathroom.

24 There are also stalls in there, correct?

25 A. I don't remember. I'm trying to recall how it's made.

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1 I know that there is a cement barrier and an

2 entrance on like the right and the left side of the

3 restroom.

4 I don't recall.

5 Q. All right.

6 A. There's absolutely some type of dividers, but I don't

7 recall whether it's a stall, or a stall door. I just...

8 Q. All right. And women are not allowed to be in a state of

9 undress in the school area, true?

10 A. Correct.

11 Q. And you can't see them in a state of undress in the

12 bathroom area from the school area, true?

13 A. True.

14 (Deposition Exhibit Number 14 was marked

15 for identification by the reporter.)

16 Q. (BY MR. KENT-BRYANT): Can you please identify Exhibit 14?

17 A. It's a position description.

18 Q. For what position?

19 A. It's for working title of off-site hospital officer.

20 Q. And this is a BFOQ female-only position?

21 A. As defined by the document, "This is a gender based BFOQ

22 position designated for female officers."

23 Q. And is this one of the positions that you recall your

24 group discussing prior to the conversion of the facility

25 to female only?

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1 A. This is one of the positions that I recall us discussing.

2 Q. And do you recall why this position was BFOQed female

3 only?

4 A. Women in an off-site hospital, as in anyone in an off-site

5 hospital are in the state of undress. We're not normally

6 in a hospital bed clothed.

7 And when the doctor or nurse comes in to conduct

8 the physical exam of the prisoner that usually requires

9 they take off.

10 Q. But is it your understanding that that examination would

11 not be screened from the officer?

12 A. The officer has to -- It's the officer's job to provide

13 coverage for the prisoner. They can't... If the doctor

14 comes in the officer can't -- they just can't leave.

15 Q. No, I know. But typically in a hospital when the physical

16 exam is performed -- Hold on -- the area, the bed area is

17 screened from people walking in and other patients, and so

18 forth. Is that not the situation with the off-site

19 hospital officer?

20 A. I can't say that's a hundred percent true any or all of

21 the time.

22 Q. Are you saying it's not true, or do you just not know?

23 A. It's safe to say I don't know.

24 Q. All right. All right.

25 Do you recall there being any complaints or

Page 125

1 comments about off-site hospital officers seeing women in

2 a state of undress?

3 A. Excuse me. I'd like to go back to your original question

4 about... Would you just repeat your last question,

5 please?

6 Q. Right. Do you recall receiving any complaints or comments

7 concerning off-site hospital officers seeing women in a

8 state of undress?

9 A. I'd like to go to the question before that.

10 Q. Oh, I have no idea what the question before that was.

11 A. The question before that you asked is the officer

12 basically present when the prisoner is in the state of

13 undress, is the officer present and at the

14 officer's (sic.) bedside, and I said -- my response was I

15 can't say that that's true a hundred percent of the time

16 or all of the time. And you indicated, well, then is it

17 safe for me say that I'm not sure, and I indicated that

18 that was a fair answer.

19 I'd like to retract my saying that it is not

20 true.

21 Q. Just go ahead.

22 A. It is true that an officer is required to keep basic

23 visual contact of a prisoner when the prisoner is on --

24 when the prisoner is in an outside hospital.

25 Visual contact may... It could mean different

(Pages 122 to 125)

1 things. But the point is this, an officer that's on duty
 2 with a prisoner that is in a hospital has a requirement to
 3 be present with that prisoner.
 4 Q. Do you recall while you were at Huron Valley any males
 5 working as an off-site hospital officer?
 6 A. Males have worked on off-site hospital, yes.
 7 Q. All right. And do you recall there being any complaints
 8 or comments concerning males viewing female prisoners
 9 under those circumstances in a state of undress?
 10 A. There has been several prisoner grievances that were filed
 11 regarding issues that occurred on off-site hospital.
 12 Q. We talked about a number of positions. Again, and I want
 13 to return a little bit to your current position here at
 14 Woodland. Do you have a gym facility here?
 15 A. I do.
 16 Q. Are women allowed to work at the gym facility as a gym
 17 officer?
 18 A. They are allowed.
 19 Q. All right. I mean, here at Woodland are there any BFOQ
 20 male-only positions?
 21 A. I think BFOQ is specific gender base for female
 22 assignments. To ask if I have those positions at a men's
 23 facility I would say no.
 24 Q. No, that's not what I'm saying.
 25 A. Okay. I'm sorry.

1 classification level, what his level of restraint in
 2 transport will be. All of those things are not determined
 3 at a facility level, they're determined based on the
 4 threat of the prisoner, his history, what his security
 5 classification is.
 6 Q. So if there were two officers and one of them were female,
 7 in the period of time where a woman might be in a state of
 8 undress the female officer could maintain visual contact
 9 with the prisoner, correct?
 10 A. I assume that would be correct.
 11 Q. Now, here at Woodland you mentioned two officers that are
 12 assigned. Can both of them -- Is it allowable for both of
 13 them to be female?
 14 A. It is allowable. Not that I have enough female staff to
 15 do that.
 16 Q. When you were at Huron Valley did you receive any
 17 complaints or overhear any conversations involving
 18 complaints from women corrections officers about
 19 difficulty transferring from Huron Valley?
 20 A. Not particularly, no.
 21 Q. Do you recall that being an issue at Huron Valley whether
 22 it was through the union or through some other means that
 23 the women's corrections officer had a harder time having a
 24 request for transfer granted because women corrections
 25 officers were so in demand at Huron Valley?

1 Q. The BFOQ could be either male or female, and my question
 2 is here at a male facility do you have any BFOQ male-only
 3 positions that only men can work?
 4 A. No.
 5 Q. Do you have a school facility here?
 6 A. No.
 7 Q. All right. An industries facility?
 8 A. No.
 9 Q. And in terms of off-site hospital officer, do you have an
 10 off-site hospital officer?
 11 A. We don't have a specific assignment on our staffing
 12 schedule that gives us an off-site hospital position.
 13 Q. But sometimes people would have to go to the hospital?
 14 A. Absolutely. Yes.
 15 Q. And if someone has to go to the hospital, if one of the
 16 inmates has to go to the hospital can it be a female that
 17 accompanies the male inmate?
 18 A. We send two officers.
 19 Q. Okay. And for the off-site hospital officer at Huron
 20 Valley weren't usually two officers assigned to that?
 21 A. Usually I -- Usually.
 22 Q. And when they would arrive at the -- Well, let me ask you
 23 this. Why would there be two officers usually assigned?
 24 A. It's based on the Department of Corrections' policy.
 25 Policy requires based on a prisoner's security, custody

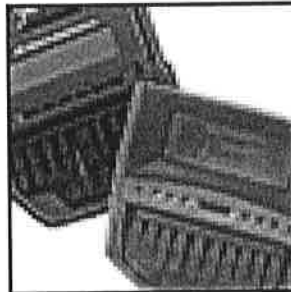
1 A. You want to know if I've heard?
 2 Q. Yeah. Was it an issue that you recall?
 3 A. Yes, it was a bit of an issue.
 4 Q. And did you ever hear complaints from women corrections
 5 officers about mandatory overtime?
 6 A. Of course. Yes.
 7 Q. And was that -- Was the mandatory overtime in part caused
 8 by the fact that much of the overtime couldn't be staffed
 9 by men because the positions were BFOQ female only?
 10 A. I can't answer what the exact reason was. It varied why
 11 overtime was overtime.
 12 Q. Okay. That could have been one of the reasons, wouldn't
 13 you agree?
 14 A. Could.
 15 Q. And same thing with the transfers, wasn't one of the
 16 reasons that it was difficult for women to successfully
 17 request transfers was because they were so needed at Huron
 18 Valley because so many positions were BFOQ female only?
 19 A. That would be speculation.
 20 it would be logical that because you have many
 21 BFOQ positions you would need many females. But I don't
 22 have any type of concrete information to support that to
 23 be true or not true as to why women transferred or didn't
 24 transfer. That would be speculation on my part.
 25 Q. While you were at Huron Valley were there complaints of --

(Pages 126 to 129)

Nowacki v. State of Michigan Department of Corrections

Deponent: **Dennis Straub**

Taken: **4/5/2013**



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Page 9

1 A. He works for Civil Service. He did when I left. I need to
2 qualify that.

3 Q. All right. I think we heard, I could be wrong, I thought Gary
4 Manns said he was a DOC employee but worked at Civil Service.

5 A. He worked at -- go ahead.

6 MS. MILLER: If I can clarify this. The personnel
7 directors at all of the state departments, each state
8 department has a personnel director but that personnel
9 director is technically a Civil Service employee, works for
10 the Department of Civil Service. They're just assigned to
11 each of the state departments.

12 MR. FETT: So Gary Manns was a Civil Service?

13 MS. MILLER: Back then, no, but it changed in
14 probably like the last year-and-half, two years ago. Civil
15 Service took all the personnel directors but they're still at
16 MDOC and it's not like he works for any other state
17 department, but he's technically an employee of Civil Service.

18 MR. FETT: Thank you for the clarification.

19 BY MR. FETT:

20 Q. All right. Well, you understand, of course, that Huron Valley
21 has some BFOQ positions; correct?

22 A. Yes, sir.

23 Q. Were there BFOQ positions at the other female prisons before
24 the female population was consolidated at Huron Valley?

25 A. Not that I recall, but you're going back a long time now and

Page 10

1 I've been retired for almost two years, so I'm gonna tell you
2 not that I remember.

3 Q. What are you doing now?

4 A. Nothing.

5 Q. Oh. Do you like it?

6 A. Yes.

7 Q. Do you fish?

8 A. I do exactly what I want every day or what my wife tells me to
9 do, I should say. I need to qualify that one too.

10 Q. We're going to send this transcript to her.

11 All right. And you understand that before the
12 female prison population was consolidated at Huron Valley,
13 that there was a Huron Valley facility that had both male and
14 female prisoners?

15 A. Yes, sir.

16 Q. I'm going to direct your attention to the period before the
17 consolidation; okay?

18 A. Okay.

19 Q. And specifically to the female part of that Huron Valley
20 population.

21 A. Yes, sir.

22 Q. Do you know if there were any BFOQ positions for the positions
23 at the female portion of Huron Valley pre-consolidation?

24 A. I don't remember.

25 Q. Have you reviewed any documents in preparation for your

Page 11

1 deposition today?

2 A. No, sir.

3 Q. Have you talked with anybody to assist you in preparing for
4 the deposition today?

5 A. No, sir.

6 Q. Okay. Do you know the reason for developing the BFOQ's for
7 the female prison at Huron Valley after the consolidation?

8 A. I can only tell you what I remember. What I remember was
9 there was a lot of accusations being made against the male
10 employees by the female prisoners that, more often than not,
11 were not true. And as a result of that, it left a very
12 spotted history for that employee that we couldn't erase.

13 As a result of that, we had meetings with the
14 Assistant Attorney General as well as Director Caruso and
15 discussed that issue.

16 Q. And be careful not to tell us anything that would have been
17 said when the Attorney General attorney was present because
18 you don't want to reveal stuff that's subject to the
19 attorney/client privilege; okay? She'll stop you.

20 A. I don't know what I can say because --

21 Q. She'll tell you.

22 A. Okay.

23 MS. MILLER: Let me just say, Mr. Straub, if he asks
24 you questions about meetings and discussions, if you know
25 someone from the Attorney General's office was there, tell us

Page 12

1 that. If you have no way of distinguishing meetings where
2 someone may have been there from the AG's office and someone
3 wasn't, tell us that. Just make sure. When he asks a
4 question and he's asking about conversations at meetings, try
5 to begin your answer with if you know who was there.

6 THE WITNESS: Okay.

7 MS. MILLER: That way we know. Because obviously we
8 can't read your mind and you're the one that was at the
9 meetings. So just let us know who was attending the meetings,
10 if you can.

11 THE WITNESS: Will do.

12 BY MR. FETT:

13 Q. Back to the impetus for these BFOQ positions at Huron Valley.
14 Do you recall the Neal case being one of the
15 reasons that the Department was interested in doing BFOQ
16 positions?

17 A. We were looking at BFOQ's prior to that, but the Neal lawsuit
18 just sped that thought process and action up. I will say
19 that.

20 Q. All right. And do you recall when the Department was looking
21 at BFOQ positions under Director Martin?

22 A. I knew he was doing it but I wasn't a part of that. I wasn't
23 the deputy director, I think I was the warden at the Cotton
24 facility at the time, so I wouldn't have been a part of that.

25 Q. And it was like 1999/2000?

Page 21

1 partner and not by herself because there better be something
2 going on to warn her presence.
3 **Q. A knock and announce; right?**
4 A. Yeah. Well, we didn't do the knock and announce for the males
5 with females.
6 **Q. I'm sorry. You did?**
7 A. We did not do knock and announce with female officers in male
8 institutions.
9 **Q. Why is that?**
10 A. We weren't ordered to do that, for one thing. I believe the
11 court ordered us to do that with the females.
12 **Q. And when you say "the court", are you referring to the Everson**
13 **case?**
14 A. I don't remember which case, counselor. I'm sorry.
15 **Q. Tell me about what role, if any, you had in implementing**
16 **BFOQ's for the Washtenaw or the Huron Valley facility when it**
17 **became an all-womens' prison.**
18 A. I would have been part of that decision-making process.
19 **Q. And tell me how.**
20 A. There would have been meetings with the director and I and I'm
21 gonna say on most all other occasions where the Attorney
22 General was present because we needed his input and advice on
23 what we could and couldn't do, as well as Mr. Lopez with Civil
24 Service.
25 **Q. Okay. Well, that makes the deposition shorter.**

Page 22

1 Did you ever have meetings with Mr. Curtis and
2 Millicent Warren?
3 A. I don't remember any. That's why I'm puzzled by this
4 deposition of hers. I don't remember having a meeting with
5 her and RPA Curtis on this issue. I'm not saying I didn't.
6 I'm saying I don't recall none.
7 **Q. Okay.**
8 A. That typically would have been something that I would have had
9 RPA Curtis do with the wardens. I didn't get involved with
10 the wardens that much with my level. I didn't have time. And
11 that's what the RPA's jobs were.
12 **Q. Have you talked to RPA Curtis recently?**
13 A. I seen him -- oh, good Lord. Let me think. I seen him a few
14 weeks ago. It was in passing and it was not work related.
15 **Q. Got it.**
16 A. I asked him how he was doing with his hip surgery. End of
17 story. That was it. Nothing, nothing to do with work.
18 And I've seen Bruce one time, like I said, a couple
19 weeks ago, maybe a couple weeks ago, and that's the only time
20 I've seen Bruce.
21 **Q. In your time working with Ms. Warren, have you known her to be**
22 **truthful?**
23 A. I've always known Millie to tell the truth as she sees it or
24 as she believes it, yes. I'm not gonna call her a liar in
25 this deposition, but I'm just saying that's not something that

Page 23

1 I remember nor would I have said that to begin with because I
2 didn't believe it, like I've said.
3 **Q. Well, people can remember things differently without lying;**
4 **right?**
5 A. That's what I'm trying to say. She may have heard something
6 and just assumed out of the conversation that that was the
7 intent, but I'm here to tell you it was never the director nor
8 my intent to do that.
9 **Q. Did you ever observe any deficits with regard to Warden**
10 **Warren's memory?**
11 A. I've known Millie to think one thing and it not be what it
12 really is. I mean a lot of conversations take place, there's
13 a lot of meetings that take place, and people walk out of
14 there thinking one thing when in reality that wasn't what was
15 said nor was that the intent. I think that's just human
16 nature of anybody, not just Millicent Warrant -- Warren.
17 Excuse me.
18 **MR. FETT:** I know it's hard, "Warden Warren".
19 **MS. MILLER:** "Warden Warren" is very difficult.
20 **THE WITNESS:** I was trying to stay away from the
21 "Warden Warren" and stay "Millicent Warren".
22 **MS. MILLER:** It's horribly difficult. I go with
23 "Millie" because it's easier.
24 **BY MR. FETT:**
25 **Q. Other than what you would expect in the normal course with any**

Page 24

1 person, did you notice anything that was remarkable in terms
2 of Millie's memory?
3 A. I can tell you that Millie Warren was a person that was very,
4 very overworked, under an extreme amount of pressure and was
5 having a difficult time coping with it all. And my hat went
6 off to her for being able to deal with it all at the same
7 time. And as a result of that, I think things like this may
8 have happened with her memory (pointing).
9 **Q. Okay.**
10 A. This wasn't the only thing she had to deal with.
11 **Q. Would you say that her memory was not any worse or not any**
12 **better than the other wardens you had to deal with?**
13 A. I don't think it was any worse, no. I just think she was
14 under a whole lot more pressure with a hell of a lot more
15 issues to deal with than the normal warden did, absolutely.
16 It was unbelievable the amount of things she had going on with
17 the consolidation of a prison, let alone lawsuits that was
18 going on, let alone the staff that was fighting her, let alone
19 the prisoners that were making accusations left and right.
20 **Q. Those lawsuits were a big deal; weren't they?**
21 A. Pardon?
22 **Q. The lawsuits, that was a big deal; wasn't it?**
23 A. I don't like the fact you and I are still paying for it, to
24 answer your question.
25 **Q. Yes, we are. But that was a big deal; wasn't it?**

Page 29

1 A. Well, I can think of one as an example that would have been
2 the Visiting Room officer. I think it was the Visiting Room
3 because they had to search the female visitors and strip
4 search them. So that's one that comes to my mind.
5 Oh, God, I'm trying to think of what else. I can't
6 sit here and say with any accuracy. I can give you what I
7 think but I don't know it to be true.
8 Q. And we'll take it with that reservation and that
9 qualification, sir.
10 A. I would say Food Service would have probably been one where
11 they had to strip search them; any isolated position where it
12 was one on one.
13 Q. Can you give me an example of what those might be, what types
14 of positions might be a isolated, one-on-one type of position?
15 A. Food Service. The Information Desk -- or not the Information
16 Desk -- the Visiting Room. I'm sorry, counselor, I just, I
17 don't remember anymore.
18 Q. You don't have to be sorry. That's fine.
19 A. Well, I feel bad not being able to answer your question, but
20 after two years, I've tried to forget almost everything about
21 Corrections because I don't care anymore.
22 Q. With regard to the BFOQ positions, do you remember whether
23 some of the positions were made half BFOQ and half non-BFOQ?
24 A. You mean in total?
25 Q. Yes.

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1 A. No. I don't remember being half/half, no. A matter of fact,
2 if I look at just the housing units alone, that's probably
3 more than half.
4 Q. No. I mean like take the position of the yard officers, the
5 testimony has been that half of the yard officers on each
6 shift would be female only and the other half could be male?
7 A. That may be the truth. I don't remember.
8 Q. Okay.
9 A. That would make sense if that is the truth.
10 Q. Do you know if there is any reports generated regarding the
11 BFOQ positions after the consolidation?
12 A. A report?
13 Q. Yes. Did you get a memo, a report, any type of document that
14 related to thinking --
15 A. Not that I remember. That would've been through probably Gary
16 Manns and Tony Lopez, who would've kept the records. I don't
17 remember getting any list or report that I got, no.
18 Q. Do you know what a staffing chart is?
19 A. Yes.
20 Q. Tell me what a staffing chart is.
21 A. It tells you where the assignments are at the facility and
22 whether or not, in this case, there would be BFOQ positions
23 and the numbers on those assignments.
24 Q. When you say "the numbers", you mean --
25 A. Like in the housing units, like it'd have 2, 4, 6 or 8

Page 31

1 officers. It would identify how many officers in the yard,
2 how many officers in Food Service and on and on and on.
3 That's what a manning chart is in my mind, layman terms'
4 understanding.
5 Q. And it would also indicate which of the positions had to be
6 BFOQ?
7 A. It should, yes.
8 Q. And are those staffing charts the same? I mean does the chart
9 remain the same for significant periods of time or is it
10 changing every day? How do we look at that?
11 A. There's revisions made as needed across the state. I mean
12 like let's give an example of when we were going through the
13 budget reductions, wardens were asked to review their staffing
14 patterns, their staffing sheets, and see what positions we
15 could eliminate and reduce to save money, so yeah.
16 And each revision would have a number associated
17 with it, Revision Number 1, 2, 3, 4 or whatever number it was,
18 101, you know. It goes back over the years.
19 Q. Okay.
20 A. But that was a routine occurrence, especially during the
21 budget crunch era that I lived through up there. We were
22 always asked to do more with less and I think they still are
23 today.
24 Q. Was the document called Staffing Chart or did it have some --
25 A. Custodial Staffing and Assignment Sheets or something like

Page 32

1 that. Custodial, I think it was Custodial Staffing Assignment
2 Sheets. It wasn't just Staffing.
3 Q. Would it be a document that was, you know, multiple sheets or
4 was it a big chart?
5 A. No. It was multiple sheets. It depended on how many
6 assignments there was at that facility, how many pages.
7 Q. Did you ever talk to Gary Manns about BFOQ's?
8 A. I'm sure I did.
9 Q. Do you recall any of your conversations with him?
10 A. No, sir. No, sir.
11 Q. Do you recall any conversations with RPA Curtis about BFOQ's?
12 A. I'm sure if there were any discussions, Gary and Bruce both
13 would have been involved in them, more often than not.
14 Q. What I'm asking is do you recall any specific conversations?
15 A. No, sir, I don't. I'm sorry.
16 Q. Have you talked to Director Caruso lately?
17 A. No. I haven't spoke to her in probably a year, close to a
18 year, and that was just a phone call when she was on her way
19 back from someplace she had been speaking at, just to see how
20 I was doing. I was at my son's house in Chicago, to be
21 truthful, or Joliet.
22 Q. So this was when she was retired from the director position?
23 A. Oh, yes. Oh, yes. We both were retired. That's why I say it
24 was like a year ago.
25 Q. Do you stay in touch with any of the other directors?

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
CIVIL DIVISION

TOM NOWACKI, et al,
Plaintiffs,

Case No. 11-852-CD

-v-

HON. ARCHIE C. BROWN

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

The Deposition of TONY LOPEZ, taken before Timothy J. Boroski, RPR/CSR-2378 and Notary Public in and for the County of Clinton, State of Michigan, 206 East Michigan, Lansing, Michigan, on Friday, June 7, 2013, commencing at or about 1:35 p.m.

APPEARANCES:

Fett & Fields, PC
BY: JAMES K. FETT, ESQ., (P39462)
805 East Main Street
Pinckney, Michigan 48169
734.954.0100

Attorney of-record on behalf of Plaintiffs,

1 everything they wanted.

2 MR. KENT-BRYANT: I'm not suggesting -- I'm not
3 suggesting that we have it. But I am suggesting that, to
4 my knowledge, none of them had the type of grievance that
5 you have been describing.

6 Q (BY MR. KENT-BRYANT) Now, it's your understanding, isn't
7 it, that a position can be BFOQ'd only if there is no
8 reasonable alternative to BFOQ'ing the position, true?

9 A Again, the process is, if we believe that there is a
10 legitimate reason for it to be BFOQ'd, we can make the
11 request.

12 Q Do you perform any sort of analysis to determine if there
13 is a reasonable alternative to BFOQ'ing the position?

14 A Other than reviewing the PDs and the historical knowledge
15 that I have, no.

16 Q Well, that might be something. Okay. To determine
17 whether there is a reasonable alternative to BFOQ'ing a
18 certain position, you reviewed the position descriptions;
19 that's one thing, right?

20 A Um-hum.

21 Q Yes?

22 A Yes.

23 Q And then when you were talking about historical
24 knowledge, what do you mean by that?

25 A That goes back to the --

1 Q Court cases and so forth?

2 A -- the Department of Justice, the court cases and
3 discussions we have had since probably the mid '90s.

4 Q All right. So with regard -- let's just do the yard
5 control officer -- with regard to the yard control
6 officer position, what if any analysis are you aware of
7 that was done to determine that there was no reasonable
8 alternative to BFOQ'ing the position?

9 A I'm not aware of any.

10 Q Is that true of all of the positions that are included in
11 Exhibit 1?

12 A Yes. I would say yes. I was flipping through these and
13 as -- I would say yes.

14 Q All right. So -- and I just want to make this clear for
15 the record. So I think the positions are the industries
16 officer, health care infirmary officer, electronic
17 monitor officer, yard control officer, gym officer, which
18 we'll get to next, food service officer, gate control
19 officer, inpatient/RTP medical aide, inpatient/RTP
20 medical unit officer, school officer, rover officer,
21 property room officer, off sight hospital officer and
22 intake officer, you're not aware of an analysis being
23 done to determine whether there was a reasonable
24 alternative to BFOQ'ing those positions, true?

25 A I'm not familiar with any specific study. I would say

1 yes to that.

2 Q You would say true to that, actually?

3 A To my statement.

4 Q Right. Well, I asked you whether that was true or not.

5 As far as you know, there was no analysis done to
6 determine whether there was a reasonable alternative to
7 BFOQ'ing the positions I just listed, true?

8 A Yeah, I'm not familiar with any analysis.

9 Q Okay. And I'll try to make this as efficient as I can.

10 After the yard control officer position on 6893
11 is the food service officer position. I take it that the
12 reason that this position was BFOQ female only is that it
13 was communicated to you that there existed concerns about
14 pat-downs, searches and concerns about seeing women in a
15 state of undress, true?

16 A I'm sorry, you said the 6893? .

17 Q Yes.

18 A Yes, the food service officer. I'm just getting back
19 into --

20 Q Right. Right. And turning to 6901, gate control officer
21 position, the reason that this position was BFOQ female
22 only, is that, again, it was communicated to you that
23 there were concerns about pat-downs, searches and male
24 officers seeing female inmates in a state of undress; is
25 that true?

1 were involved in the BFOQ decision?

2 A No.

3 Q Do you know whether the -- I know I asked you whether you
4 made any recommendations concerning the position
5 descriptions, but do you know whether there were any
6 additions made to the position descriptions so that the
7 positions could be BFOQ'd?

8 A I don't believe so. I think that my recollection is in
9 the general statement, you know, we included a general
10 statement similar to the other BFOQ position, you know,
11 dealing with privacy, dealing with the -- you know, for
12 the female prisoners. And, again, given the historic
13 nature of this issue, we believe that's sufficient.

14 Q Now, these -- obviously, these positions that were
15 requested to be BFOQ in 2009 were not requested to be
16 BFOQ'd in the previous round in the last 19 -- the mid to
17 late 1990s and so forth. Do you know why?

18 A Well, my understanding was that there was subsequent
19 issues of sexual misconduct and privacy issues. We had
20 just lost a major decision costing the State of Michigan
21 millions of dollars.

22 Q No, I understand that.

23 A And that's why. I mean, that's the discussions.

24 Q Okay. And do you know if a -- do you know any specific
25 problems that arose out of the particular positions that

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CERTIFICATE OF NOTARY PUBLIC

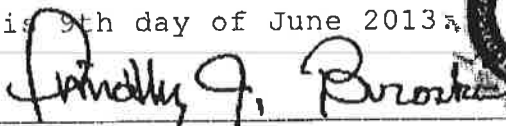
DEPONENT: TONY LOPEZ (STATE OF MICHIGAN)
RECORDED: June 7, 2013 (SS)
LOCATION: Lansing, Michigan (COUNTY OF CLINTON)

Being a Notary Public duly commissioned and qualified in and for the State of Michigan at Large, I do hereby certify that pursuant to notice there came before me the deponent herein, who was by me first duly sworn to testify to the truth and nothing but the truth touching and concerning the matters in controversy in this cause.

Being thereupon carefully examined under oath, said examination was recorded stenographically and was later reduced to transcription under my supervision; said transcription being a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition was taken; and further, I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto subscribed my signature this 9th day of June 2013.


Timothy J. Boroski, RPR/CSR-2378



MY COMMISSION EXPIRES:
October 30, 2018

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD
Hon. Archie C. Brown

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

AFFIDAVIT OF DEBORAH ECKERLY

I, Deborah Eckerly, being first duly sworn, depose and state as follows:

1. My name is Deborah Eckerly. I reside at 4800 S.E. Central Hwy., #33, Stewart, FL 34997.

2. I was employed by the Michigan Department of Corrections for 18 years and am currently retired.

3. I worked at the Women's Huron Valley facility for my last (2) years and immediately prior to that I worked at the Mound Road Men's Correctional facility.

4. While at the Mound Road Men's facility, women were allowed to work most positions and if a strip search was required, a male officer was used to do the search.

5. When I went to the Women's Huron Valley facility (as a lieutenant) I found that men were excluded from most positions because the facility had inserted strip search requirements in most job descriptions and used that requirement (alleged as B.F.O.Q.) to preclude assignment of male officers.

6. Policy was set at the (WHV) by the facility administration, i.e., warden and deputy wardens. *Per prisoner law suits and a court order.*

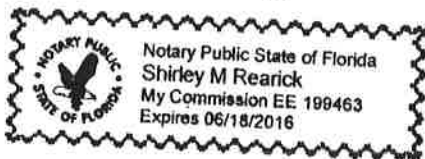
7. I have personal knowledge of the facts set forth in this affidavit and can testify competently thereto.

Dated: 5-21 2013

Debra Eckerly
DE ~~Deborah~~ Eckerly
Debra Eckerly

Sworn and Subscribed to before me on this 21st day of May, A.D., 2013.

Shirley M Rearick
Notary Public



STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD

Hon. Timothy P. Connors

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

AFFIDAVIT OF ROBERT FINCH

Robert Finch, being first duly sworn, depose and state as follows:

1. My name is Robert Finch. I reside at 8514 Honeytree Blvd., Canton, Michigan, 48187.
 2. I am retired from the Michigan Department of Corrections after thirty-three and one-half (33½) years of service, twenty four (24) years as a Captain.
 3. I have worked at the Jackson Prison, the Phoenix Center, Huron Valley Men's Facility, Western Wayne and most recently the Huron Valley Women's Facility.
-

4. Based on my experience in men's prisons, females were allowed to work any job and if a strip search was necessary they were conducted by male officers in a shake down room.

5. Ninety nine (99%) percent of strip searches are done in (a) visitation, (b) segregation or the yard so it is easy to have the strip searches done by the same sex officers.

6. At Huron Valley Women's Facility men used to work most positions, however, the administration steadily removed males from assignments by adding strip searches to job descriptions as B.F.O.Q.'s.

7. The adding of B.F.O.Q. (strip searches) severely limited the available male assignments in the facility (WHV).


8. Local (facility) policies are approved by the facility wardens at each prison.

9. I have personal knowledge of the facts set forth in this affidavit and can testify competently thereto.

Dated: 8-16-2012 2012


Robert Finch

Subscribed and sworn to before
me this 16th day of August, 2012.



, Notary Public
County, Michigan

My commission expires:
Acting in the County of:

CHARLENA E. SMITH
Notary Public, Washtenaw County, Michigan
Acting in Washtenaw County, Michigan
My Commission Expires June 19, 2013



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Detroit Field Office

9-2-11
Exhibit 17

477 Michigan Avenue, Room 865
Detroit, MI 48226
(866) 408-8075
(313) 226-7638
TTY (313) 226-7599
FAX (313) 226-2778

RECEIVED

Michael Hosey
EEO/Civil Rights Coordinator
Michigan Department of Corrections
Greenview Plaza Bldg., P. O Box 30003
Lansing, MI 48909

OCT 12 2011

MDOC LABOR RELATIONS

Re: Margaret Sharpe et. al v. Michigan Department of Corrections
Charge No. ~~471-2010-00100~~

Also for Charge No(s): 471-2010-03331; 471-2011-01129; 01130; 01133; 01134;
01219; 01311; 01312; 01317; 01321; 01322; 01328; 01364; 01365; 01366; 01367;
01379; 01380; 01382; 01785; 01787; 01790; 01832; 01839; 01840; 02084; 02089 &
02093

Dear Mr. Hosey:

As you are aware, the above referenced charges were assigned to the EEOC for review. The investigation has been completed and the Commission is ready to make a determination of the merits of the above referenced charges. The determinations will be based on the information and documentation supplied by both Respondent and the Charging Parties. A summary of the information is indicated below. I also left you a detailed voice mail message regarding this matter on September 29, 2011. This letter serves as final notice of Pre-Determination of the above cited charges.

The evidence shows that there is not reasonable cause to believe that the females were denied equal pay, denied promotion, subjected to sex based and sexually based harassment or denied specific BFOQ approved positions due to their gender, female. There is, however, reasonable cause to believe that the Respondent's broad application of the BFOQ has a negative impact on female officers' ability to transfer to other correctional facilities. In other words, there is sufficient evidence to establish a violation of Title VII with respect to the denial of transfer due to sex and the expansion and overly broad application of the BFOQ without a clear cut policy and the documented consideration of less discriminatory alternatives.

The evidence gathered during the investigation revealed the following:

Issue #1: Wage Issue – No Violation – No Cause Finding

The evidence shows that male and female officers are paid the same wage rates for performing the same duties. However, following the implementation of the BFOQ, there were a small number of male guards frozen, or "red circled," in their higher wage rate.

This is a very small number and it diminishes each year. No new males are eligible for this higher "red circle" rate. This is an allowable exception under the Equal Pay Act and it provides the rationale for the male RUO E10 officers who are paid at a higher wage rate.

Issue #2: Sex, Sexual Harassment - No Violation – No Cause Finding

There is no evidence to establish that female guards have made the Respondent aware of specific sex based and sexually based comments, remarks and actions. Without clear cut specific instances of who was subjected to this alleged treatment, when it happened, who did it, who it was reported to and what action was or was not taken, the EEOC is unable to investigate this issue further. The Respondent has a harassment policy in place which affords an employee with the opportunity to utilize the internal process to allege a sex based or sexually hostile work environment. There is no record of any complaints having been made. Further, despite our efforts to get specific and direct answers regarding this, all of the allegations remain generalized and non-specific. There is no evidence to support the allegations of sexual harassment based on the laws enforced by the EEOC.

Issue #3: Overly Expansive Application of the BFOQ Process – Cause Finding

According to the applicable legal standards and the decision of the 6th Circuit Court of Appeals, it is clear that the Respondent has met their legal burden to use the BFOQ defense in the assignment of female Correctional Officers. However, *Everson v. MDOC* states that female facilities need not employ only female officers. Only those positions that require females i.e., housing units, strip searches, and hospital visits (where appropriate) need to be female staffed. In the meantime, the Respondent should provide for equal employment opportunities for female correction officers, while balancing those opportunities against a moderate concern for inmate privacy and concern for institutional security. Preferential treatment should not be granted based on the existing number of female and male guards or the percentage of the imbalance.

It appears as if the Respondent is using too broad of an application of the BFOQ which has a negative impact on female Officers ability to transfer out of the correctional facility. Meaning, female officers should be allowed the same rights the male officers are given when it comes to being transferred to other Correctional Facilities. It appears as if the transition into the BFOQ has had a fundamentally negative, adverse impact on Female Officers assigned to the MDOC Female Facility. As currently implemented, the gender based policy disqualifies females from positions without a clear analysis and consideration of non-gender specific alternatives. The Respondent needs to develop a clear-cut policy to demonstrate that such alternatives have been considered and an explanation as to why this alternative can not be effectuated.

Issue #4: Denied the opportunity for transfer – Cause Finding

In September 2005, the MDOC removed all male correction officers from working inside

the housing units of female prisons based on a BFOQ. The female correctional facilities became grossly under staffed because of the removal of male officers from the housing units. This event, coupled with the MDOC's hiring freeze resulted in the inability of the Respondent to provide adequate services to the female prison population due to the staffing change. Instead of considering other alternatives, the Respondent denied transfers to high seniority female Officers because they are female. This gender based decision has resulted in some female staff being denied a transfer outside the Women's Correctional Facility, because of their sex. Further, testimony revealed that the female guards are told directly by management and the Warden that they cannot transfer because they are female. No effort is made to explain the BFOQ staffing and no consideration is being made for other, less discriminatory alternatives.

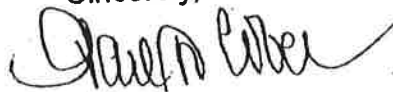
Issue #5: Denied the opportunity for promotion/reassignment – No Cause Finding

According to the applicable legal standards and the decision of the 6th Circuit Court of Appeals, it is clear that MDOC has met their legal burden to use the BFOQ defense in the assignment of female correctional officers. It is also clear from the evidence provided that MDOC has promoted females correctional officers. The investigation revealed that some female officers working at the Women's Huron Valley Correctional Facility were promoted outside of the facility. For example, the evidence shows three female Correction Officers were promoted from February 2010 to August 2010. (Dates of Promotion: 1/10/10, Resident Unit Officer E10; 5/2/10, Resident Unit Officer E10; 5/2/10, Resident Unit Officer E10).

This evidence, when consider as whole presents a mixed finding. The Charging Parties will receive Dismissal Notices that will allow them to pursue the no cause/no violation portion of their charges in federal court. Letters of Determination finding reasonable cause to believe that the Respondent has violated Title VII with respect to the overly broad expansion of the BFOQ and the denial of transfer to female guards will be issued.

Once the Commission's determinations have been issued, both sides will be invited to join in a collective effort toward a just resolution of this matter. Conciliation Agreements containing the types of relief necessary to remedy the violation of the statute will be forwarded at that time. If you have any questions, I can be reached at (313) 226-3347.

Sincerely,



Gail D. Cober
Field Director

Date mailed: _____

9/29/11

Remailed after
"Return to Sender"
10/11/11



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Detroit Field Office

477 Michigan Avenue, Room 865
 Detroit, MI 48226-9704
 (313) 226-4600
 TTY (313) 226-7599
 FAX (313) 226-2778

Charge No: 471-2010-03165

Margaret Sharp
 10843 Patton, Apt. #1
 Dearborn, MI 48216

Charging Party

Michigan Department of Corrections
 3201 Bemis Road
 Ypsilanti, MI 48198

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended and the Equal Pay Act of 1963, as amended.

All requirements for coverage have been met. The charging party alleges that she was discriminated against on the basis of her sex in that she was denied reassignment, promotion, equal wages and subjected to a hostile work environment. A Dismissal and Notice of Rights has been issued to the Charging Party to further address her allegations.

However, the evidence supports a violation of the statutes enforced by the Equal Employment Opportunity Commission. Specifically, the investigation revealed the Respondent is using too broad of an application of the BFOQ which has a negative impact on female officers ability to transfer to other correctional facilities.

EEOC regulations and guidelines require that if the Commission determines that there is reason to believe that violations have occurred, it shall endeavor to eliminate the alleged unlawful employment practices by informal methods of conference, conciliation, and persuasion. Having determined that there is reason to believe that violations have occurred, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. A representative of this office will be in contact with each party in the near future to begin the conciliation process. Disclosure of information obtained by the Commission during the conciliation process will be made in accordance

with the Commission's Procedural Regulations. When the respondent declines to enter into settlement discussions, or when the Commission's representative for any other reason, is unable to secure a settlement acceptable to the office Director, the Director shall so inform the parties in writing and advise them of the court enforcement alternative available to aggrieved persons, and the Commission.

On Behalf of the Commission:

9/30/11
Date

Webster Smith
for Webster Smith
District Director

Enclosure: Information Sheet on Filing Suit in Federal Court



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

RICK SNYDER
GOVERNOR

HEIDI E. WASHINGTON
DIRECTOR

March 22, 2016

Michigan Civil Service Commission
Janine M. Winters, State Personnel Director
400 S. Pine Street
Lansing, MI 48909

Dear Ms. Winters:

This is to advise that the department will be discontinuing the use of gender based Bona Fide Occupational Qualification (BFOQ) for some Corrections Officer positions located at the Women's Huron Valley Correctional Facility. The BFOQs were previously approved to assist the department in ensuring the privacy and security of female prisoners. The department's request for expanded BFOQs was submitted to former State Personnel Director, Jeremy S. Stephens on March 27, 2009 and approved April 17, 2009. However, with the continuing technological advances that have been made at the facility since the original approval for the BFOQs was granted, primarily the placement of over 1,300 cameras throughout the facility, monitoring of cameras and high capacity storage recorders, the department does not believe that some of the previously approved BFOQs remain necessary.

The following are the specific positions/assignments that no longer require BFOQ designation:

- Food Service -- Day and Afternoon assignments
- Gym -- Day and Afternoon assignments
- Infirmary Dental -- Day and Afternoon assignments
- Property Room -- Day assignment
- School -- Day and Afternoon assignments
- Yard Control -- Day, Afternoon and Night assignments
- School Vocational -- Day Activity assignment
- School Academic -- Day Activity assignment.

Please contact me if additional information is required.

Sincerely,

Tony Lopez

Tony Lopez
Human Resources Director

MICHIGAN DEPARTMENT OF CORRECTIONS

"Expecting Excellence Every Day"

MEMORANDUM

DATE: June 23, 2000

TO: Gary Manns
Personnel Director

FROM: Bill Martin, Director 

SUBJECT: Expert Witness Report

Please see the attached memo from Jeff Baumann and the report from Michael J. Mahoney. Mr. Mahoney concludes that the Department should only have female staff in positions of 1) Housing Unit RUO or CO, 2) Segregation Unit RuO and CO and 3) Intake RuO and CO at our female facilities.

Please take the steps necessary to implement the experts conclusions.

attachment

MICHIGAN DEPARTMENT OF CORRECTIONS

CONSULTANT/EXPERT WITNESS REPORT

MICHAEL J. MAHONEY

JUNE, 2000

I. INTRODUCTION

I have been hired by the Michigan Department of Corrections (MDOC) as a consultant to determine whether certain custody positions at MDOC women's facilities should be filled only by female custody staff or if there is a less intrusive means to ensure the safety and reasonable privacy needs of female inmates.

II. METHODOLOGY

I am quite familiar with the operations of the MDOC, having served as an expert witness for the Department in five cases since 1991. Two of those cases, United States v. Michigan, USDC Case No. 97 CV-71514-DT, and Nunn et al. v. Michigan Department of Corrections et al., Case No. USDC-ES-#95CV-71416-DT, are particularly relevant to the issue presented in this report because they dealt with allegations that the Department was not properly addressing sexual misconduct, sexual harassment and privacy violations by male staff against female prisoners. However, in neither case was I asked to give an opinion on limiting officer assignments in housing units to females only.

The following documents have been reviewed for this assignment:

- o Title VII of the U.S. Civil Rights Act of 1964., B. Elliot Larson Civil Rights Act, MCL 37.2101
- o MDOC Mission Statement
- o USA v. State of Michigan 97 CV-71514-DT Settlement Agreement

MDOC

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- o National Institute of Corrections Survey on Cross Sex Rat Searches of Females
- o MDOC Gender Specific Assignments Committee Report of 12/11/98
- o Michigan Department of Civil Service Position Descriptions
 - Correctional Officer (CO) 8, E9
 - Resident Unit Officer (RUCO) E10
 - Assistant Resident Unit Supervisor (ARUM) 11
 - Resident Unit Manager (RUM) 13
 - Corrections Shift Supervisor 11, 12, 13
- o Post Orders and Staffing Charts for Female Facilities
- o Director's Office Memorandums 2000-33, 2000-33A (Previously '99-40, '99-40A)
- o Addendum to the Employee Handbook effective 9/17/99
- o Trainer Manuals for MDOC staff at women's facilities:
 - Personal Searches, October 1999
 - Knock and Announce, November 1999
- o Instruction guide for prisoner education entitled, "Appropriate and Inappropriate Staff and Prisoners Interactions", November 1999
- o Brochure entitled, "Appropriate and Inappropriate Staff and Prisoners Interactions", A Guide to Correctional Sexual Misconduct and Intervention, November 1999
- o U.S.A. v. State of Michigan Final Report of the Joint Expert
2/25/00

MDOC

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- o United States Memorandum in support of stipulation to dismiss the lawsuit U.S.A. v. Michigan
- o Review of refinements to curriculum for training of staff who work in female facilities .
- o *Solon Magazine*, September 1, 1998. "Locked up in America - Slaves to the Prison System."
- o "Sexual Misconduct in Prisons: Law, Agency Response and Prevention." *Special Issues in Corrections*, November 1996. United States Department of Justice, National Institute of Corrections.
- o "Current Issues in the Operation of Women's Prisons." *Special Issues in Corrections*, September 1998. United States Department of Justice, National Institute of Corrections.
- o *Security Unit Agreement Between Michigan Corrections Organization, SEIU Local 526M, AFL-CIO and State of Michigan*, May 20, 1999 through December 31, 2001.
- o Article, "The Essence of Her Womanhood: Defining the Privacy Rights of Women Prisoners and the Employment Rights of Women Guards." Rebecca Jurado. Copyrighted 1999. American University. *Journal of Gender, Social Policy and the Law*.
- o Policy Article, "Rape and Sexual Misconduct in the Prison System: Analyzing America's Most 'Open' Secret." Cheryl Bell, Martha Coven, et al. Copyright 1999. *Yale Law and Policy Review*.

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- o U.S.A. v. Michigan, *Expert Witness Reports* of Experts Romero, Newkirk, Sullivan and Monaco.
- o "All Too Familiar: Sexual Abuse of Women in U.S. Prisons." *Human Rights Watch Report*. December 1996.
- o "Not Part of My Sentence." *Violations of Human Rights of Women in Custody*. Innis International 1998.
- o "Women in Prison: Sexual Misconduct by Correctional Staff." *Report to the Honorable Eleanor Holmes Norton, House of Representatives*. United States General Accounting Office. June 1999.

In addition, tours were conducted at the Scott, Crane and Branch facilities, which included interviews of staff and prisoners.

III. ISSUE

Should certain custody positions of the Michigan Department of Corrections be filled only by female custody staff or is there a less intrusive means to ensure the privacy and safety of female inmates?

IV. ANALYSIS

The mission of the Michigan Department of Corrections as stated in Policy Directive PD 01-01-100 is as follows:

"The Department enhances public safety by recommending sanctions to the Court and as directed by the Courts,

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carrying out the sentences given to convicted adult felons in a humane, cost-efficient manner which is consistent with sound correctional principles and constitutional standards."

It is the policy of the Michigan Department of Corrections to follow all federal and state laws regarding employment practices and the Department is an equal opportunity employer. It makes every effort, and its goal is, to not engage in employment discrimination in any aspect of employment relations including but not limited to hiring, promotion, assignment or discharge.

The Michigan Department of Corrections, as most correctional agencies do, attempts to provide a safe, secure environment, respecting the privacy of prisoners, specifically females, while at the same time enforcing the appropriate federal and state laws on equal opportunity employment. The essence of the function of the Michigan Department of Corrections requires that it appropriately balance these two sometimes competing responsibilities.

Privacy issues regarding prisoners have been litigated in a variety of cases across the country and in the State of Michigan. Developing case law and current evolving policy and practice in the corrections field requires a greater sensitivity to the issue

MDOC

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of female prisoners' privacy.

In general, females have a higher expectation of privacy when they are being viewed or touched by members of the opposite sex. Concerns about female privacy issues in correctional facilities have been highlighted by such groups as the Human Rights Watch in its report entitled, "All Too Familiar, Sexual Abuse of Women in U.S. State Prisons". See for example, Gunther v. Iowa State Men's Reformatory, 462 F.Supp. (N.D. Iowa 1979), affirmed (Eighth Circuit 1980) and Jordan v. Gardner, 986 F. 2nd, 1521, 1526 (Ninth Circuit, 1993).

The Michigan Department of Corrections has been involved in litigation relevant to sexual misconduct between male staff and female prisoners and their privacy rights. (United States v. State of Michigan E.D. Mich, No. 97-CV-71514-DT; Nunn v. MDOC, E.D. Mich, No. 96-CV-7146-DT; Neal v. MDOC, Washtenaw County Circuit Court, Michigan, No. 96-006986-CZ.) This litigation and allegations by prisoners of such behaviors have increased the need for further scrutiny of female privacy issues and the supervision of female prisoners by male staff.

The morale and culture, and indeed the safety of correctional facilities is determined to a great degree by the interaction between staff and prisoners. Conflicts in this interaction,

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including negative incidents or perceptions, disrupt normal operation of the correctional facility and hinder the ability of the MDOC to conduct the essence of its business. Society's expectations of privacy in correctional facilities is heightened when it specifically involves female prisoners and male supervisory staff. See article entitled, "The Essence of Her Womanhood: Defining the Privacy Rights of Women Prisoners and the Employment Rights of Women Guards".

While courts have been reluctant to recognize specific privacy rights for male prisoners supervised by female staff, they have been more sensitive to the issue of female prisoners with privacy issues when supervised by male staff.

When allegations of inappropriate sexual behaviors are made against staff, the staff person identified is generally removed from their assignment and placed into a non-inmate contact assignment. In fact, in many of the cases, these individuals are moved to specific assignments (e.g. - the bubble or the control center) and negatively labeled. Similarly, prisoners who make such allegations claim fear of retaliation by corrections staff when making such an allegation. Prisoners can suffer the consequences of disciplinary charges for allegations that are unfounded.

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V. MDOC ACTIVITIES AND ALTERNATIVES CONSIDERED AND IMPLEMENTED

The MDOC has responded in the following manner to issues of allegations of inappropriate behavior and complaints regarding privacy of female prisoners.

A. Physical Plant Modifications

The former gang or group showers consisting of a rectangle room with multiple showerheads have been replaced at the Crane Correctional Facility. The new showers are pie-shaped with individual shower curtains in each shower cubicle. This has substantially enhanced privacy while still maintaining the supervision of female prisoners during the showering process.

Dressing areas have been specifically developed in all housing units at the Crane Correctional Facility. New dressing areas have been identified for use in dressing and changing of clothes.

The MDOC has made a number of physical plant changes at both the Scott and Crane facilities to limit access to some spaces and has limited access and increased observability in others. There are new keys and locks which are only controlled by the shift commander or warden for secluded areas. Many areas, including classrooms, are sealed each night with specially numbered taped seals which would report any entry in the area. Some offices and

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classrooms are lit continuously and other areas have been retrofitted with convex mirrors so the security officer conducting rounds can see into blind corners. Many doors have been replaced with screens, half doors or had windows cut into them.

Cell doors at Scott are equipped with curtains on the windows which can be raised for privacy during toilet use or dressing.

B. Policy and Practice

Director's Office Memorandums 1999-40 and 40-A, now numbered 2000-33 and 2000-33-A, were issued to outline policy and procedure changes at the women's facilities pursuant to the settlement of USA v. Michigan 97-CV-71514-DT, which alleged the inmates in Michigan's women's prisons were subject to sexual misconduct and invasion of privacy by staff.

This MDOC policy outlines a broad range of changes made in a variety of issues regarding reporting of allegations, investigations, employee discipline, tracking of misconduct incidents, operational issues, and training and quality assurance.

Some specific issues related to privacy and inappropriate sexual misconduct include the following:

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1. Through policy initiatives and physical plant renovations, each facility now has a plan which incorporates a number of activities to minimize access to and monitoring of secluded areas to minimize one-on-one situations of staff and prisoners.

2. A knock and announce policy is now in effect at women's institutions stating that absent compelling circumstances or reasonable suspicion of unauthorized activity/rule violations, male staff assigned to a female facility shall verbally announce their presence prior to entering an area where prisoners could be in a state of undress.

3. Pat-down and clothed body searches at the women's institutions have been changed by Policy Variance #2239 effective July 14, 1999, which states that absent exigent circumstances or a reasonable suspicion that a prisoner is in possession of a contraband, pat-down and clothed body searches of female prisoners shall be conducted only by female staff.

4. The employee handbook has been modified to include the new definitions and issues related to employment and employee discipline. Work rule definitions have been articulated to specifically identify whether an employee has engaged in such prohibited contact with prisoners including:

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- o Sexual misconduct
- o Sexual harassment
- o Over-familiarity

5. Pre-employment screening for staff at the women's institutions has been broadened and made more thorough as to background checks. Background checks for any new criminal history and outstanding warrants and checks to determine if any personal protection orders have been filed are conducted on staff at women's institutions regularly.

C. Staff Training

The MDOC Training Schedule for FY '99 - 2000 includes the following specialized program for staff who work in women's facilities:

- o The 40-hour seminar entitled, "Critical Issues in Managing Women Prisoners." All new staff or staff who transfer to a women's facility are mandated to attend this course.
- o A 6-hour seminar entitled, Female Offender Supervision - 2000 Update.
- o An 8-hour seminar entitled, Advanced Techniques for Investigating Grievances of Women Prisoners.
- o Updated curriculum including a video tape on the proper way for staff to conduct pat-down and clothed body searches of women prisoners.

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D. Prisoner Education

A curriculum was developed and implemented which provided instruction for prisoners in appropriate and inappropriate staff and prisoner interactions. Additionally, each prisoner is provided with a brochure entitled, "Appropriate and Inappropriate Staff and Prisoner Interactions - A Guide to Sexual Misconduct Prevention and Intervention".

All prisoners in custody as of November 1999 were required to attend this class. Additionally, prisoners entering the system now attend this class as a requirement of the reception process.

Copies of the settlement agreement in USA v. Michigan have been placed in the prison law libraries. High visibility reminders via posters have been developed and placed throughout the facilities.

E. Staffing

Additional rovers have been assigned with particular emphasis on making rounds in housing units and isolated areas at the female facilities.

MDOC commissioned and reviewed the Securicor study and has decided due to union contracts and other issues to not pursue those recommendations.

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It is clear that the Michigan Department of Corrections has identified, considered and implemented a variety of strategies designed to focus on issues of inmate privacy and sexual misconduct between staff and prisoners.

VI. RECOMMENDATIONS

There are legitimate penological reasons for having only women staff supervise female prisoners in limited situations. These include the following:

- o Same sex supervision would reduce the likelihood of sexual misconduct. In most correctional facilities, the majority of sexual misconduct activities and allegations involved male staff and female prisoners. Utilization of female supervision of female prisoners in limited but specific areas of vulnerability will reduce the likelihood of such incidents.

- o The reduction of the potential or fear of sexual misconduct will enhance the MDOC's ability to achieve the mission and essence of the Michigan Department of Corrections.

- o Observation is the key to supervising prisoners. Male staff, in supervising housing units where women change clothes, shower and use the toilet facilities, are

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sometimes reluctant to discharge these responsibilities because of their natural aversion to observing such activities. If they act on this natural reluctance, it provides for less security. If they actively pursue these visual activities, then it creates the potential for problems.

- o Housing units are where the most long-term and isolated continuing contacts between staff and prisoners occur. Correctional Officers working in housing units tend to be assigned there for longer periods of time and tend to be isolated during the evening and night work hours. These situations can provide opportunities for relationships between staff and prisoners which can lead to over-familiarity and sexual misconduct. Female only staff in female housing units would reduce the likelihood of such occurrences.

The recommendation for female staff supervision of female prisoners in limited situations also meets legitimate employee concerns as identified by courts in some cases, see for example Rider v. Commonwealth of Pennsylvania, 850 F.2d 982 (1988).

Additional employee concerns relevant to this issue include the reduction of the fear of male staff from retaliation by

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the filing of false complaints by female prisoners against them for pat-down searches, visual observations and other activities. The removal of male staff from these limited assignments reduces the probability of false claims by prisoners of sexual misconduct and the reassignment of staff pending the outcome of the investigation.

MDOC policy states that because of the nature of urine collection including privacy issues, chain of custody required for evidentiary purposes, it is essential that this activity be conducted by female staff. In addition, current policy mandates that strip searches be conducted by members of the same sex. Current policy pursuant to policy variance issued by the Director requires that only female staff members shall pat-down search female prisoners at the female facilities. More female staff available in the female facilities will result in more pat-down searches and better security.

Problems have been identified since the new policy on the moratorium of male pat-down searches of female prisoners have occurred. Instances of increased levels of contraband, decrease in staff morale, and perceptions of a lessening of security have occurred.

Assuming the continuation of this pat-down policy, there should

MDOC

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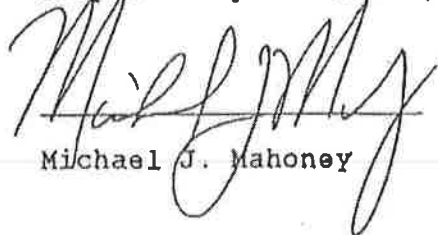
be an increase in female staff available to conduct them in a professional manner.

VII. CONCLUSION

In spite of the comprehensive nature of the above identified activities, it is the conclusion of this Consultant/Expert Witness that female prisoner supervision by the Michigan Department of Corrections for the following limited duties and assignments should be accomplished by female staff only in order to provide the necessary safe and humane conditions of confinement and the professional operations of the MDOC female correctional facilities:

- o All Housing Unit RUO and CO assignments
- o Segregation Unit RUO and CO assignments
- o Intake RUO and CO assignments

Respectfully submitted,



Michael J. Mahoney

Exhibit 20

State of Michigan

John Engler, *Governor***Department of Corrections**Grandview Plaza Building, P.O. Box 30003
Lansing, Michigan 48909
Bill Martin, *Director*

August 2, 2000

Jeffrey Simbob
Bureau of Human Resource Services
Michigan Department of Civil Service
Capitol Commons Building
Lansing, MI 48909

Dear Mr. Simbob:

This is a request for selective certification to allow only female staff in Corrections Officer and Resident Unit Officer positions with regular work assignments in housing units, segregation units, or the intake unit at the Scott Correctional Facility, which houses only female inmates. Their custody and security duties include those that affect the privacy of female prisoners such as observing showers, observing inmates dressing and undressing, observing inmates using toilet facilities, and conducting multiple daily searches (including strip searches).

As indicated in the attached report, a mission of the Michigan Department of Corrections is to provide a safe, secure environment, respecting the privacy of prisoners, specifically females, while providing staffing consistent with the appropriate federal and state laws regarding equal employment opportunity. The MDOC has been involved with litigation relevant to sexual misconduct between male staff and female prisoners and their privacy rights. In addition, the Department recently entered into a settlement agreement of the USA v. Michigan 97-CV-71514-DT, which alleged that inmates in Michigan women's prisons were subject to sexual misconduct, sexual harassment, over-familiarity and invasion of privacy by staff.

The Department has made a number of changes responding to allegations of inappropriate behavior and complaints regarding privacy of female prisoners. These include physical plant modifications, policy, procedure, and employee handbook changes, improvements in staff training, staffing level increases, and improving prisoner education. However, it is felt that these changes will not eliminate inappropriate behavior or sexual misconduct.

Accordingly, we are requesting that the indicated positions be selectively certified for female staff only to occupy the positions. The following reasons are cited for this request; same sex supervision would enhance the privacy of female prisoners, reduce the likelihood of sexual misconduct, the reduction of fear of sexual misconduct will enhance the ability of the Department to achieve its mission, security capabilities would be improved due to much less reluctance by

Exhibit 20

Jeffrey Simbob
Page 2

female staff to perform observation duties, and female staff only in housing units would reduce the likelihood of instances where individual male staff and individual female prisoners would be involved in long isolated contacts. The request is being made for the following position numbers:

Corrections Officer Positions - Housing

47-04-21-02-04-04-001	47-04-21-02-04-04-006	47-04-21-02-04-04-011
47-04-21-02-04-04-002	47-04-21-02-04-04-007	47-04-21-02-04-04-012
47-04-21-02-04-04-003	47-04-21-02-04-04-008	47-04-21-02-04-04-013
47-04-21-02-04-04-004	47-04-21-02-04-04-009	47-04-21-02-04-04-014
47-04-21-02-04-04-005	47-04-21-02-04-04-010	

Corrections Officer Positions - Intake

47-04-21-02-04-04-015	47-04-21-02-04-04-016
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Resident Unit Officer Positions

47-04-21-02-03-01-090	47-04-21-02-03-01-120	47-04-21-02-03-01-150
47-04-21-02-03-01-091	47-04-21-02-03-01-121	47-04-21-02-03-01-151
47-04-21-02-03-01-092	47-04-21-02-03-01-122	47-04-21-02-03-01-152
47-04-21-02-03-01-093	47-04-21-02-03-01-123	47-04-21-02-03-01-153
47-04-21-02-03-01-094	47-04-21-02-03-01-124	47-04-21-02-03-01-154
47-04-21-02-03-01-095	47-04-21-02-03-01-125	47-04-21-02-03-01-155
47-04-21-02-03-01-096	47-04-21-02-03-01-126	47-04-21-02-03-01-156
47-04-21-02-03-01-097	47-04-21-02-03-01-127	47-04-21-02-03-01-157
47-04-21-02-03-01-098	47-04-21-02-03-01-128	47-04-21-02-03-01-158
47-04-21-02-03-01-099	47-04-21-02-03-01-129	47-04-21-02-03-01-159
47-04-21-02-03-01-100	47-04-21-02-03-01-130	47-04-21-02-03-01-160
47-04-21-02-03-01-101	47-04-21-02-03-01-131	47-04-21-02-03-01-161
47-04-21-02-03-01-102	47-04-21-02-03-01-132	47-04-21-02-03-01-162
47-04-21-02-03-01-103	47-04-21-02-03-01-133	47-04-21-02-03-01-163
47-04-21-02-03-01-104	47-04-21-02-03-01-134	47-04-21-02-03-01-164
47-04-21-02-03-01-105	47-04-21-02-03-01-135	47-04-21-02-03-01-165
47-04-21-02-03-01-106	47-04-21-02-03-01-136	47-04-21-02-03-01-166
47-04-21-02-03-01-107	47-04-21-02-03-01-137	47-04-21-02-03-01-167
47-04-21-02-03-01-108	47-04-21-02-03-01-138	47-04-21-02-03-01-168
47-04-21-02-03-01-109	47-04-21-02-03-01-139	47-04-21-02-03-01-169
47-04-21-02-03-01-110	47-04-21-02-03-01-140	47-04-21-02-03-01-170
47-04-21-02-03-01-111	47-04-21-02-03-01-141	47-04-21-02-03-01-171
47-04-21-02-03-01-112	47-04-21-02-03-01-142	47-04-21-02-03-01-172
47-04-21-02-03-01-113	47-04-21-02-03-01-143	47-04-21-02-03-01-173
47-04-21-02-03-01-114	47-04-21-02-03-01-144	47-04-21-02-03-01-174
47-04-21-02-03-01-115	47-04-21-02-03-01-145	47-04-21-02-03-01-175
47-04-21-02-03-01-116	47-04-21-02-03-01-146	47-04-21-02-03-01-176
47-04-21-02-03-01-117	47-04-21-02-03-01-147	47-04-21-02-03-01-177
47-04-21-02-03-01-118	47-04-21-02-03-01-148	47-04-21-02-03-01-178
47-04-21-02-03-01-119	47-04-21-02-03-01-149	

Exhibit 20

Jeffrey Simbob
Page 3

Included for your review are documents utilized by the Department in making its determination for the request of the selective certifications.

Thank you for your consideration of this request and please contact me if you need any further information regarding this matter.

Sincerely,



Gary Manns, Personnel Director
Michigan Department of Corrections

attachments



Cargor
Exhibit 21

JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

PATRICIAL CARUSO
DIRECTOR

September 9, 2010

*Reviewed
Told Eddie to send
on 9-9-10*

Attn: Linda K. Sankovich, Enforcement Manager
U.S. Equal Employment Opportunity Commission
Detroit Field Office
477 Michigan Avenue, Room 865
Detroit, MI 48226

Dear Ms. Sankovich,

The following is a statement of our position regarding the Margaret Sharpe vs. Michigan Department of Corrections EEOC #471-2010-03165

Allegation #1

The Claimant contends since at least 2006 and continuing through 2010 and to the present, the Michigan Department of Corrections (MDOC) has repeatedly denied her and other female corrections officers the opportunity for transfer, promotion, and/or reassignment due to their sex, female. The claimant also asserts MDOC designated 85% of the correctional staff positions at the Huron Valley Facility as BFOQ female only. The Claimant further contends MDOC is using the BFOQ rationale to deny transfer, reassignment, and /or promotion beyond the scope of the BFOQ privacy concern.

Response to Allegation #1

An investigation into the above allegation revealed in September 2005, the Michigan Department of Corrections (MDOC) removed all male corrections officers from working inside the housing units of female prisons based on a Bona Fide Occupational Qualification (BFOQ), Attachment #1 (Court Order). The female correctional facilities became grossly under staffed because of the removal of male officers from the housing units and went immediately under a hiring freeze to continue to provide adequate services to the female prison population due to the staffing change. The hiring freeze has resulted in some female staff being denied a transfer outside the Women's Correctional Facility.

The investigation to the above allegation has also revealed that some female officers working at the Women's Huron Valley Correctional Facility, including the Claimant were promoted outside of the facility. According to the Claimant's work history, effective November 15, 2009, she was promoted to a Corrections Transportation Officer (CTO) position with Field Operations Administration. See **Attachment #2 (Employee History).**

Allegation #2

Exhibit 21

The Claimant also contends since at least 2006 and continuing through 2010 and to the present, female corrections officers E9s (CO E9s), including her, are required to perform the duties of the Resident Unit Officer E 10 assignments in response to the BFOQ are assigned CO E9 work, but are allowed to retain their RUO E 10 wages. The Claimant asserts also the female corrections officers have also had their retention premium wages withdrawn resulting in female corrections officers being paid less wages than male officers who are performing equal work while similarly situated.

Response to Allegation #2

An investigation to the above allegation reveals that female corrections officers are afforded opportunities to promote to the RUO position at WHV after meeting the experience requirements. From January 2010 to August 2010 three female corrections officers were promoted to the RUO E 10 position Attachment #3 A, B, C (History of promoted female corrections officers in 2010). Male RUOs working at WHV positions were frozen, however they were allowed to retain their RUO E 10 pay.

Allegation #3

The Claimant contends she and other female corrections have been subjected to ongoing and repeated egregious sexual harassment by inmates, allegations of sexual harassment from inmates, and unsafe working conditions resulting in a hostile and offensive work environment. The Claimant also asserts that MDOC is aware of the harassment and refuses to take any action to remedy the matter.

Response to Allegation #3

All prisoner complaints must be investigated by MDOC based on current policy. See Attachment #4A&B

Allegation #4

The Claimant believes that she, and her fellow corrections officers have been denied transfer, reassignment, promotion, equal wages, and subjected to a hostile work environment due to their gender, female in violation of Title VII of the Civil Rights Act of 1964, as amended. Further, the Claimant believes that she, and her fellow female corrections officers have been denied equal wages in violation of the Equal Pay Act of 1963, as amended.

Response to Allegation #3

Response to allegation #4 is covered above under #1, 2, and 3.

If you need further information please feel free to contact me at (734) 572-8797

Sincerely,

Eddie R. Cargor,

HR Manager
Women's Huron Valley Correctional Facility

**REPORT TO THE LEGISLATURE
Public Act 245 of 2008
Section 224
Litigation Report**

Section 224: By April 1, 2009, the department shall provide a litigation report to the senate and house appropriations subcommittees on corrections, the senate and house fiscal agencies, and the state budget director. The report shall identify all lawsuits adjudicated through the trial court phase in which the department or an employee acting on behalf of the department was a defendant and in which trial court proceedings resulted in a decision of \$1,000,000.00 or more against the department.

February 1, 2008: Neal, et al v MDOC, et al, Washtenaw CC 96-6986-CZ (Trial #1)
Jury verdict in the amount of \$15,545,000.00 Pre-judgment interest and costs resulted in a final judgment order of \$30,351,000.00.

November 12, 2008: Neal, et al v MDOC, et al, Washtenaw CC 96-6986 (Trial #2)
Jury verdict in the amount of \$8.4 million.

Appeals are pending.



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

PATRICIA L. CARUSO
DIRECTOR

March 27, 2009

Jeremy S. Stephens, State Personnel Director
Michigan Civil Service Commission
400 South Pine Street, P.O. Box 30002
Lansing, MI 48909

Dear Mr. Stephens:

In accordance with Civil Service Rule 1-8.4 Bona Fide Occupational Qualification (BFOQ), the Michigan Department of Corrections (MDOC) is requesting to expand the establishment of BFOQ positions. If approved, this will result in the utilization of only female staff in positions with regular work assignments that affects the privacy and security of female prisoners. Custody and security duties include those that affect the privacy of female prisoners such as observance of showers, dressing and undressing, use of toilet facilities, and conducting multiple daily searches, including clothed body and unclothed strip searches.

The mission of the MDOC is to provide a safe and secure environment, while respecting the privacy of prisoners, and to provide staffing which is consistent with the appropriate federal and state laws regarding equal employment opportunity. The MDOC has been involved with litigation involving alleged sexual misconduct between male staff and female prisoners and their privacy rights. This litigation, along with the MDOC's desire to maximize the safety and security of its staff and prisoners, has demonstrated the critical need to expand a limited number of BFOQ positions. Each of the identified positions is either an isolated position, involves potential privacy concerns on the part of the prisoners, or requires an officer to conduct pat-down searches on the female prisoners. Thus, each position touches on the MDOC's legitimate concerns of safety, security, and privacy.

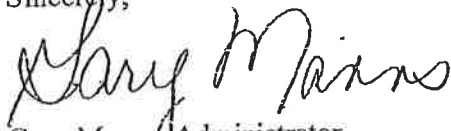
The Department has made a number of changes responding to allegations of inappropriate behavior and complaints regarding privacy of female prisoners. These include physical plant modification, policy, procedure, and employee handbook changes, improvements in staff training, staffing level increases, and improved prisoner education. Notwithstanding these changes, however, the Department has determined that additional steps would further increase the safety and security of its staff and prisoners. The MDOC has reasonably concluded that the BFOQ positions would accomplish the issues at hand – the security of the prison, the safety of prisoners, and the protection of the privacy rights of prisoners.

Accordingly, the MDOC is requesting that the attached positions be approved to be filled by female staff. Same sex supervision will maximize the female inmate's right to privacy and

reduce the likelihood of sexual misconduct. This will enhance the ability of the Department to achieve its mission of providing safety and security for female prisoners.

Thank you for your consideration of this request and please contact me if you need any further information regarding this matter.

Sincerely,

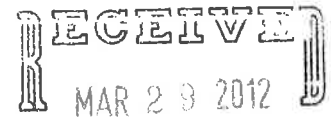


Gary Manns, Administrator
Operations Support Administration

C: Director Patricia Caruso, MDOC
James Long, Attorney General's Office
Pete Govorchin, Attorney General's Office / w/o Attachments

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

Exhibit 24



TOM NOWACKI, et al.

BY:.....

Plaintiffs,
v

Case No. 11-852-CD
Hon. Timothy P. Connors

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Attorneys for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

**DEFENDANT'S ANSWERS TO PLAINTIFF'S AFFIRMATIVE
DEFENSE INTERROGATORIES TO DEFENDANT**

1. Defendant's first Affirmative Defense reads as follows:

Plaintiff has failed to state a claim upon which relief may be granted.

As to this affirmative defense:

- a. Please identify the factual basis for this affirmative defense;
- b. Please identify each person who has knowledge concerning this affirmative defense;
- c. Please identify each document which relates to, refers to or which might be construed to support or negate this affirmative defense; and
- d. Identify each oral communication which relates to, refers to or which might be construed to support or negate this affirmative defense.

RESPONSE:

- a. Any and all BFOQs implemented by Defendant were necessary and lawful. As to the reasons for said BFOQs see documents numbered 136-152 in Defendant's Responses to Plaintiff's First Request for Production of Documents;
- b. See answer to Interrogatory 1 and 4 in Defendant's Answers to Plaintiff's First Set of Interrogatories;
- c. See documents numbered 136-152 in Defendant's Responses to Plaintiff's First Request for Production of Documents;
- d. See answer to Interrogatory 1 and 4 in Defendant's Answers to Plaintiff's First Set of Interrogatories.

2. Defendant's **second** Affirmative Defense reads as follows:

Plaintiff's claims may be barred by the statutes of limitations.

As to this affirmative defense:

- a. Please identify the factual basis for this affirmative defense;
- b. Please identify each person who has knowledge concerning this affirmative defense;
- c. Please identify each document which relates to, refers to or which might be construed to support or negate this affirmative defense; and
- d. Identify each oral communication which relates to, refers to or which might be construed to support or negate this affirmative defense.

RESPONSE:

Defendant is unable to answer this interrogatory at this time as discovery is still ongoing and it is unclear as to whether this matter will be a class action lawsuit and who the class members and/or plaintiffs will be. It is possible that a particular challenged employment action (including but not limited to opportunity to bid on work, work overtime or denial of career opportunity) may be outside the applicable 3 year statute of limitations. Until the make-up of the Plaintiff class is determined and the

Until the make-up of the Plaintiff class is determined and the alleged lost opportunities of each individual are identified, Defendant is unable to provide more specific information. Defendant will supplement as further information is known.

6. Defendant's sixth Affirmative Defense reads as follows:

Plaintiff's claims are barred as Defendant has a legitimate BFOQ for positions at its Women's Huron Valley Correctional Facility.

As to this affirmative defense:

- a. Please identify the factual basis for this affirmative defense;
- b. Please identify each person who has knowledge concerning this affirmative defense;
- c. Please identify each document which relates to, refers to or which might be construed to support or negate this affirmative defense; and
- d. Identify each oral communication which relates to, refers to or which might be construed to support or negate this affirmative defense.

RESPONSE:

See answer to interrogatory 1.

7. Defendant's seventh Affirmative Defense reads as follows:

Plaintiff's claims may be barred on the grounds of res judicata and/or collateral estoppel.

As to this affirmative defense:

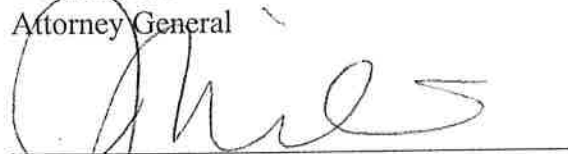
- a. Please identify the factual basis for this affirmative defense;
- b. Please identify each person who has knowledge concerning this affirmative defense;
- c. Please identify each document which relates to, refers to or which might be construed to support or negate this affirmative defense; and

RESPONSE:

Withdrawn.

Respectfully submitted,

Bill Schuette
Attorney General



Jeanmarie Miller (P44446)
Assistant Attorney General
Attorneys for Defendant
P.O. Box 30736
Lansing, Michigan 48909
(517) 373-6434

Dated: March 27, 2012

PROOF OF SERVICE

The undersigned certifies that on the 27th day of March, 2012, she served a copy of the above document in this matter on all counsel of record and parties *in pro per* at their last known addresses via facsimile and first class mail by depositing same in a United States Post Office depository in Lansing, Michigan with first class postage fully paid.



Brenda Barton

Exhibit 25

State of Michigan

John Engler, *Governor***Department of Corrections**Grandview Plaza Building, P.O. Box 30003
Lansing, Michigan 48909
Bill Martin, *Director*

August 2, 2000

Jeffrey Simbob
Bureau of Human Resource Services
Michigan Department of Civil Service
Capitol Commons Building
Lansing, MI 48909

Dear Mr. Simbob:

This is a request for selective certification to allow only female staff in Corrections Officer and Resident Unit Officer positions with regular work assignments in housing units, segregation units, or the intake unit at the Scott Correctional Facility, which houses only female inmates. Their custody and security duties include those that affect the privacy of female prisoners such as observing showers, observing inmates dressing and undressing, observing inmates using toilet facilities, and conducting multiple daily searches (including strip searches).

As indicated in the attached report, a mission of the Michigan Department of Corrections is to provide a safe, secure environment, respecting the privacy of prisoners, specifically females, while providing staffing consistent with the appropriate federal and state laws regarding equal employment opportunity. The MDOC has been involved with litigation relevant to sexual misconduct between male staff and female prisoners and their privacy rights. In addition, the Department recently entered into a settlement agreement of the USA v. Michigan 97-CV-71514-DT, which alleged that inmates in Michigan women's prisons were subject to sexual misconduct, sexual harassment, over-familiarity and invasion of privacy by staff.

The Department has made a number of changes responding to allegations of inappropriate behavior and complaints regarding privacy of female prisoners. These include physical plant modifications, policy, procedure, and employee handbook changes, improvements in staff training, staffing level increases, and improving prisoner education. However, it is felt that these changes will not eliminate inappropriate behavior or sexual misconduct.

Accordingly, we are requesting that the indicated positions be selectively certified for female staff only to occupy the positions. The following reasons are cited for this request; same sex supervision would enhance the privacy of female prisoners, reduce the likelihood of sexual misconduct, the reduction of fear of sexual misconduct will enhance the ability of the Department to achieve its mission, security capabilities would be improved due to much less reluctance by

Exhibit 25

Jeffrey Simbob
Page 2

female staff to perform observation duties, and female staff only in housing units would reduce the likelihood of instances where individual male staff and individual female prisoners would be involved in long isolated contacts. The request is being made for the following position numbers:

Corrections Officer Positions - Housing

47-04-21-02-04-04-001	47-04-21-02-04-04-006	47-04-21-02-04-04-011
47-04-21-02-04-04-002	47-04-21-02-04-04-007	47-04-21-02-04-04-012
47-04-21-02-04-04-003	47-04-21-02-04-04-008	47-04-21-02-04-04-013
47-04-21-02-04-04-004	47-04-21-02-04-04-009	47-04-21-02-04-04-014
47-04-21-02-04-04-005	47-04-21-02-04-04-010	

Corrections Officer Positions - Intake

47-04-21-02-04-04-015	47-04-21-02-04-04-016
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Resident Unit Officer Positions

47-04-21-02-03-01-090	47-04-21-02-03-01-120	47-04-21-02-03-01-150
47-04-21-02-03-01-091	47-04-21-02-03-01-121	47-04-21-02-03-01-151
47-04-21-02-03-01-092	47-04-21-02-03-01-122	47-04-21-02-03-01-152
47-04-21-02-03-01-093	47-04-21-02-03-01-123	47-04-21-02-03-01-153
47-04-21-02-03-01-094	47-04-21-02-03-01-124	47-04-21-02-03-01-154
47-04-21-02-03-01-095	47-04-21-02-03-01-125	47-04-21-02-03-01-155
47-04-21-02-03-01-096	47-04-21-02-03-01-126	47-04-21-02-03-01-156
47-04-21-02-03-01-097	47-04-21-02-03-01-127	47-04-21-02-03-01-157
47-04-21-02-03-01-098	47-04-21-02-03-01-128	47-04-21-02-03-01-158
47-04-21-02-03-01-099	47-04-21-02-03-01-129	47-04-21-02-03-01-159
47-04-21-02-03-01-100	47-04-21-02-03-01-130	47-04-21-02-03-01-160
47-04-21-02-03-01-101	47-04-21-02-03-01-131	47-04-21-02-03-01-161
47-04-21-02-03-01-102	47-04-21-02-03-01-132	47-04-21-02-03-01-162
47-04-21-02-03-01-103	47-04-21-02-03-01-133	47-04-21-02-03-01-163
47-04-21-02-03-01-104	47-04-21-02-03-01-134	47-04-21-02-03-01-164
47-04-21-02-03-01-105	47-04-21-02-03-01-135	47-04-21-02-03-01-165
47-04-21-02-03-01-106	47-04-21-02-03-01-136	47-04-21-02-03-01-166
47-04-21-02-03-01-107	47-04-21-02-03-01-137	47-04-21-02-03-01-167
47-04-21-02-03-01-108	47-04-21-02-03-01-138	47-04-21-02-03-01-168
47-04-21-02-03-01-109	47-04-21-02-03-01-139	47-04-21-02-03-01-169
47-04-21-02-03-01-110	47-04-21-02-03-01-140	47-04-21-02-03-01-170
47-04-21-02-03-01-111	47-04-21-02-03-01-141	47-04-21-02-03-01-171
47-04-21-02-03-01-112	47-04-21-02-03-01-142	47-04-21-02-03-01-172
47-04-21-02-03-01-113	47-04-21-02-03-01-143	47-04-21-02-03-01-173
47-04-21-02-03-01-114	47-04-21-02-03-01-144	47-04-21-02-03-01-174
47-04-21-02-03-01-115	47-04-21-02-03-01-145	47-04-21-02-03-01-175
47-04-21-02-03-01-116	47-04-21-02-03-01-146	47-04-21-02-03-01-176
47-04-21-02-03-01-117	47-04-21-02-03-01-147	47-04-21-02-03-01-177
47-04-21-02-03-01-118	47-04-21-02-03-01-148	47-04-21-02-03-01-178
47-04-21-02-03-01-119	47-04-21-02-03-01-149	

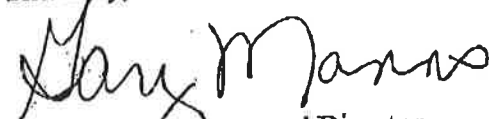
Exhibit 25

Jeffrey Simbob
Page 3

Included for your review are documents utilized by the Department in making its determination for the request of the selective certifications.

Thank you for your consideration of this request and please contact me if you need any further information regarding this matter.

Sincerely,



Gary Manns, Personnel Director
Michigan Department of Corrections

attachments

STATE OF MICHIGAN

CIVIL SERVICE COMMISSION

SUSAN GRIMES MUNSELL, CHAIRPERSON
RAE LEE CHABOT
ROBERT P. HUNTER
JAMES P. PITZ



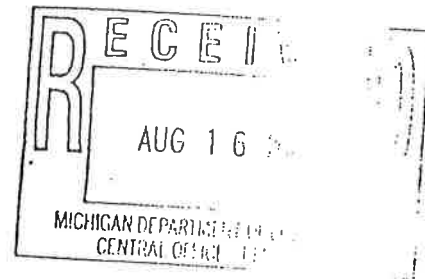
JOHN ENGLER, Governor

DEPARTMENT OF CIVIL SERVICE

CAPITOL COMMONS CENTER
400 SOUTH PINE STREET, P.O. BOX 30002
LANSING, MICHIGAN 48909
www.state.mi.us/mdcs

JOHN F. LOPEZ, State Personnel Director

August 14, 2000



Mr. Mark T. Symons
Department of Corrections
Western Wayne Correctional Facility
48401 Five Mile Road
Plymouth, MI 48170

Dear Mr. Symons:

This is in response to a memo from Gary Manns dated August 2, 2000 requesting selective certification approval for the following positions at the Western Wayne Correctional Facility, Bureau of Correctional Facilities Administration.

Position Number
See attached

Classification Title
Corrections Officer 8-E9
Resident Unit Officer E10

Based on the Position Description (CS-214) and the information provided in your letter, the selective certification criterion approved for this position is as follows:

Allow only female staff at Western Wayne Correctional Facility in Corrections Officer and Resident Unit Officer positions with regular work assignments in housing units, which include segregation units. Their custody and security duties include those that affect the privacy of female prisoners such as observing showers, observing inmates dressing and undressing, observing inmates using toilet facilities, and conducting multiple daily searches (including strip searches).

All of the applicants considered for this position must possess the minimum requirements for the classification. The screening of applicants to identify those who possess the selective certification criterion will be the responsibility of your agency.

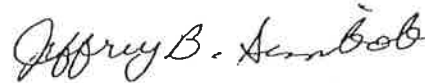
Mr. Mark T. Symons
Page 2
August 14, 2000

This approval will remain in effect for the duration of the position unless there is a substantial change in the position's duties and responsibilities or the position is abolished.

The standards of Civil Service Regulation 3.05, on "Selective Certification for Position-Specific Qualifications" and Civil Service Regulation 2.01, on "Implementing a Reduction in Force for Nonexclusively Represented Employees," must be applied.

If you have any questions, please contact Gloria Hastings, Personnel Management Analyst, at (517) 373-1824.

Sincerely,



Jeffrey Simbob
Human Resource Manager
Bureau of Human Resource Services

cc: Gary Manns
Position File

Attachment

Attachment
Positions to be Filled by Females Only
Western Wayne Correctional Facility
August 11, 2000

Corrections Officer Positions

47-04-17-07-05-00-357	47-04-17-07-05-00-367	47-04-17-07-05-00-376
47-04-17-07-05-00-358	47-04-17-07-05-00-368	47-04-17-07-05-00-377
47-04-17-07-05-00-359	47-04-17-07-05-00-369	47-04-17-07-05-00-378
47-04-17-07-05-00-360	47-04-17-07-05-00-370	47-04-17-07-05-00-379
47-04-17-07-05-00-361	47-04-17-07-05-00-371	47-04-17-07-05-00-380
47-04-17-07-05-00-362	47-04-17-07-05-00-372	47-04-17-07-05-00-381
47-04-17-07-05-00-363	47-04-17-07-05-00-373	47-04-17-07-05-00-382
47-04-17-07-05-00-364	47-04-17-07-05-00-374	47-04-17-07-05-00-383
47-04-17-07-05-00-365	47-04-17-07-05-00-375	47-04-17-07-05-00-384
47-04-17-07-05-00-366		

Resident Unit Officer Positions

47-04-17-07-05-00-385	47-04-17-07-05-00-407	47-04-17-07-05-00-428
47-04-17-07-05-00-386	47-04-17-07-05-00-408	47-04-17-07-05-00-429
47-04-17-07-05-00-387	47-04-17-07-05-00-409	47-04-17-07-05-00-430
47-04-17-07-05-00-388	47-04-17-07-05-00-410	47-04-17-07-05-00-431
47-04-17-07-05-00-389	47-04-17-07-05-00-411	47-04-17-07-05-00-432
47-04-17-07-05-00-390	47-04-17-07-05-00-412	47-04-17-07-05-00-433
47-04-17-07-05-00-391	47-04-17-07-05-00-413	47-04-17-07-05-00-434
47-04-17-07-05-00-392	47-04-17-07-05-00-414	47-04-17-07-05-00-435
47-04-17-07-05-00-393	47-04-17-07-05-00-415	47-04-17-07-05-00-436
47-04-17-07-05-00-394	47-04-17-07-05-00-416	47-04-17-07-05-00-437
47-04-17-07-05-00-395	47-04-17-07-05-00-417	47-04-17-07-05-00-438
47-04-17-07-05-00-396	47-04-17-07-05-00-418	47-04-17-07-05-00-439
47-04-17-07-05-00-397	47-04-17-07-05-00-419	47-04-17-07-05-00-440
47-04-17-07-05-00-398	47-04-17-07-05-00-420	47-04-17-07-05-00-441
47-04-17-07-05-00-399	47-04-17-07-05-00-421	47-04-17-07-05-00-442
47-04-17-07-05-00-400	47-04-17-07-05-00-422	47-04-17-07-05-00-443
47-04-17-07-05-00-401	47-04-17-07-05-00-423	47-04-17-07-05-00-444
47-04-17-07-05-00-402	47-04-17-07-05-00-424	47-04-17-07-05-00-445
47-04-17-07-05-00-403	47-04-17-07-05-00-425	47-04-17-07-05-00-446
47-04-17-07-05-00-404	47-04-17-07-05-00-426	47-04-17-07-05-00-447
47-04-17-07-05-00-405	47-04-17-07-05-00-427	47-04-17-07-05-00-448
47-04-17-07-05-00-406		

STATE OF MICHIGAN

CIVIL SERVICE COMMISSION

SUSAN GRIMES MUNSELL, CHAIRPERSON
RAE LEE CHABOT
ROBERT P. HUNTER
JAMES P. PITZ



JOHN ENGLER, Governor

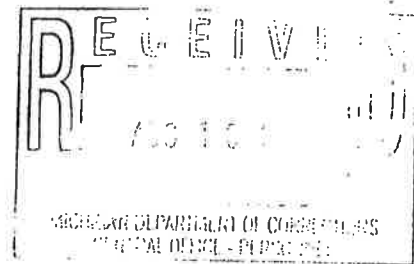
DEPARTMENT OF CIVIL SERVICE

CAPITOL COMMONS CENTER
400 SOUTH PINE STREET, P.O. BOX 30002
LANSING, MICHIGAN 48909
www.state.mi.us/ndcs

JOHN F. LOPEZ, State Personnel Director

August 14, 2000

Ms. Carol Zachery
Department of Corrections
Scott Correctional Facility
47500 Five Mile Road
Plymouth, MI 48170



Dear Ms. Zachery:

This is in response to a memo from Gary Manns dated August 2, 2000 requesting selective certification approval for the following positions at the Scott Correctional Facility, Bureau of Correctional Facilities Administration.

Position Number
See attachment

Classification Title
Corrections Officer 8-E9
Resident Unit Officer E10

Based on the Position Description (CS-214) and the information provided in your letter, the selective certification criterion approved for this position is as follows:

Allow only female staff in Corrections Officer and Resident Unit Officer positions with regular work assignments in housing units, segregation units, or the intake unit at the Scott Correctional Facility, which houses only female inmates. Their custody and security duties include those that affect the privacy of female prisoners such as observing showers, observing inmates dressing and undressing, observing inmates using toilet facilities, and conducting multiple daily searches (including strip searches).

All of the applicants considered for this position must possess the minimum requirements for the classification. The screening of applicants to identify those who possess the selective certification criterion will be the responsibility of your agency.

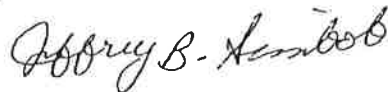
Ms. Carol Zachery
Page 2
August 14, 2000

This approval will remain in effect for the duration of the position unless there is a substantial change in the position's duties and responsibilities or the position is abolished.

The standards of Civil Service Regulation 3.05, on "Selective Certification for Position-Specific Qualifications" and Civil Service Regulation 2.01, on "Implementing a Reduction in Force for Nonexclusively Represented Employees," must be applied.

If you have any questions, please contact Gloria Hastings, Personnel Management Analyst, at (517) 373-1824.

Sincerely,



Jeffrey Simbob
Human Resource Manager
Bureau of Human Resource Services

cc: Gary Manns
Position File
Attachment

Attachment
Positions to be Filled by Females Only
Scott Correctional Facility
August 11, 2000

Corrections Officer Positions - Housing

47-04-21-02-04-04-001	47-04-21-02-04-04-006	47-04-21-02-04-04-011
47-04-21-02-04-04-002	47-04-21-02-04-04-007	47-04-21-02-04-04-012
47-04-21-02-04-04-003	47-04-21-02-04-04-008	47-04-21-02-04-04-013
47-04-21-02-04-04-004	47-04-21-02-04-04-009	47-04-21-02-04-04-014
47-04-21-02-04-04-005	47-04-21-02-04-04-010	

Corrections Officer Positions - Intake

47-04-21-02-04-04-015	47-04-21-02-04-04-016
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Resident Unit Officer Positions

47-04-21-02-03-01-090	47-04-21-02-03-01-120	47-04-21-02-03-01-150
47-04-21-02-03-01-091	47-04-21-02-03-01-121	47-04-21-02-03-01-151
47-04-21-02-03-01-092	47-04-21-02-03-01-122	47-04-21-02-03-01-152
47-04-21-02-03-01-093	47-04-21-02-03-01-123	47-04-21-02-03-01-153
47-04-21-02-03-01-094	47-04-21-02-03-01-124	47-04-21-02-03-01-154
47-04-21-02-03-01-095	47-04-21-02-03-01-125	47-04-21-02-03-01-155
47-04-21-02-03-01-096	47-04-21-02-03-01-126	47-04-21-02-03-01-156
47-04-21-02-03-01-097	47-04-21-02-03-01-127	47-04-21-02-03-01-157
47-04-21-02-03-01-098	47-04-21-02-03-01-128	47-04-21-02-03-01-158
47-04-21-02-03-01-099	47-04-21-02-03-01-129	47-04-21-02-03-01-159
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47-04-21-02-03-01-101	47-04-21-02-03-01-131	47-04-21-02-03-01-161
47-04-21-02-03-01-102	47-04-21-02-03-01-132	47-04-21-02-03-01-162
47-04-21-02-03-01-103	47-04-21-02-03-01-133	47-04-21-02-03-01-163
47-04-21-02-03-01-104	47-04-21-02-03-01-134	47-04-21-02-03-01-164
47-04-21-02-03-01-105	47-04-21-02-03-01-135	47-04-21-02-03-01-165
47-04-21-02-03-01-106	47-04-21-02-03-01-136	47-04-21-02-03-01-166
47-04-21-02-03-01-107	47-04-21-02-03-01-137	47-04-21-02-03-01-167
47-04-21-02-03-01-108	47-04-21-02-03-01-138	47-04-21-02-03-01-168
47-04-21-02-03-01-109	47-04-21-02-03-01-139	47-04-21-02-03-01-169
47-04-21-02-03-01-110	47-04-21-02-03-01-140	47-04-21-02-03-01-170
47-04-21-02-03-01-111	47-04-21-02-03-01-141	47-04-21-02-03-01-171
47-04-21-02-03-01-112	47-04-21-02-03-01-142	47-04-21-02-03-01-172
47-04-21-02-03-01-113	47-04-21-02-03-01-143	47-04-21-02-03-01-173
47-04-21-02-03-01-114	47-04-21-02-03-01-144	47-04-21-02-03-01-174
47-04-21-02-03-01-115	47-04-21-02-03-01-145	47-04-21-02-03-01-175
47-04-21-02-03-01-116	47-04-21-02-03-01-146	47-04-21-02-03-01-176
47-04-21-02-03-01-117	47-04-21-02-03-01-147	47-04-21-02-03-01-177
47-04-21-02-03-01-118	47-04-21-02-03-01-148	47-04-21-02-03-01-178
47-04-21-02-03-01-119	47-04-21-02-03-01-149	

STATE OF MICHIGAN

CIVIL SERVICE COMMISSION

SUSAN GRIMES MUNSELL, CHAIRPERSON
RAE LEE CHABOT
ROBERT P. HUNTER
JAMES P. FITZ



JOHN ENGLER, Governor

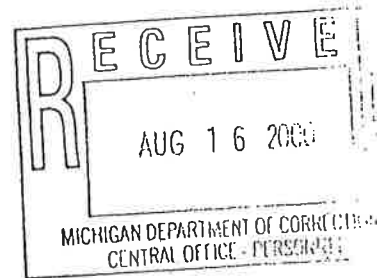
DEPARTMENT OF CIVIL SERVICE

CAPITOL COMMONS CENTER
400 SOUTH PINE STREET, P.O. BOX 30002
LANSING, MICHIGAN 48909
www.state.mi.us/mdcs

JOHN F. LOPEZ, State Personnel Director

August 14, 2000

Mr. Dennis Hopkins
Department of Corrections
Florence Crane Correctional Facility
38 Fourth Street
Coldwater, MI 49036



Dear Mr. Hopkins:

This is in response to Gary Manns' August 2, 2000 letter requesting selective certification approval for the positions at Camp Branch in the Bureau of Correctional Facilities Administration.

Position Number

See attached listing

Classification Title

Corrections Officer 8-E9
Resident Unit Officer E10

Based on the Position Description (CS-214) and the information provided in Mr. Manns' letter, the selective certification criterion approved for the positions is as follows:

Allow only female staff at Camp Branch, which houses only female inmates, in Corrections Officer and Resident Unit Officer positions with regular work assignments in housing units, which include segregation units. Their custody and security duties include those that affect the privacy of female prisoners such as observing showers, observing inmates dressing and undressing, observing inmates using toilet facilities, and conducting multiple daily searches (including strip searches).

All of the applicants considered for this position must possess the minimum requirements for the classification. The screening of applicants to identify those who possess the selective certification criterion will be the responsibility of your agency.

ATTACHMENT
Positions to be Filled by Females Only
Camp Branch
August 14, 2000

Corrections Officer Positions - Housing

47-04-16-81-03-37-083	47-04-16-81-03-37-090	47-04-16-81-03-37-097
47-04-16-81-03-37-084	47-04-16-81-03-37-091	47-04-16-81-03-37-098
47-04-16-81-03-37-085	47-04-16-81-03-37-092	47-04-16-81-03-37-099
47-04-16-81-03-37-086	47-04-16-81-03-37-093	47-04-16-81-03-37-100
47-04-16-81-03-37-087	47-04-16-81-03-37-094	47-04-16-81-03-37-101
47-04-16-81-03-37-088	47-04-16-81-03-37-095	
47-04-16-81-03-37-089	47-04-16-81-03-37-096	

Resident Unit Officer Positions

47-04-16-81-02-37-22	47-04-16-81-02-37-33	47-04-16-81-02-37-44
47-04-16-81-02-37-23	47-04-16-81-02-37-34	47-04-16-81-02-37-45
47-04-16-81-02-37-24	47-04-16-81-02-37-35	47-04-16-81-02-37-46
47-04-16-81-02-37-25	47-04-16-81-02-37-36	47-04-16-81-02-37-47
47-04-16-81-02-37-26	47-04-16-81-02-37-37	47-04-16-81-02-37-48
47-04-16-81-02-37-27	47-04-16-81-02-37-38	47-04-16-81-02-37-49
47-04-16-81-02-37-28	47-04-16-81-02-37-39	47-04-16-81-02-37-50
47-04-16-81-02-37-29	47-04-16-81-02-37-40	47-04-16-81-02-37-51
47-04-16-81-02-37-30	47-04-16-81-02-37-41	47-04-16-81-02-37-52
47-04-16-81-02-37-31	47-04-16-81-02-37-42	47-04-16-81-02-37-53
47-04-16-81-02-37-32	47-04-16-81-02-37-43	



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

PATRICIA L. CARUSO
DIRECTOR

March 27, 2009

Jeremy S. Stephens, State Personnel Director
Michigan Civil Service Commission
400 South Pine Street, P.O. Box 30002
Lansing, MI 48909

Dear Mr. Stephens:

In accordance with Civil Service Rule 1-8.4 Bona Fide Occupational Qualification (BFOQ), the Michigan Department of Corrections (MDOC) is requesting to expand the establishment of BFOQ positions. If approved, this will result in the utilization of only female staff in positions with regular work assignments that affects the privacy and security of female prisoners. Custody and security duties include those that affect the privacy of female prisoners such as observance of showers, dressing and undressing, use of toilet facilities, and conducting multiple daily searches, including clothed body and unclothed strip searches.

The mission of the MDOC is to provide a safe and secure environment, while respecting the privacy of prisoners, and to provide staffing which is consistent with the appropriate federal and state laws regarding equal employment opportunity. The MDOC has been involved with litigation involving alleged sexual misconduct between male staff and female prisoners and their privacy rights. This litigation, along with the MDOC's desire to maximize the safety and security of its staff and prisoners, has demonstrated the critical need to expand a limited number of BFOQ positions. Each of the identified positions is either an isolated position, involves potential privacy concerns on the part of the prisoners, or requires an officer to conduct pat-down searches on the female prisoners. Thus, each position touches on the MDOC's legitimate concerns of safety, security, and privacy.

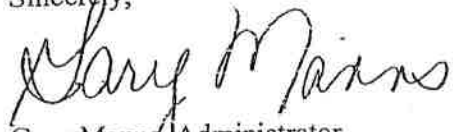
The Department has made a number of changes responding to allegations of inappropriate behavior and complaints regarding privacy of female prisoners. These include physical plant modification, policy, procedure, and employee handbook changes, improvements in staff training, staffing level increases, and improved prisoner education. Notwithstanding these changes, however, the Department has determined that additional steps would further increase the safety and security of its staff and prisoners. The MDOC has reasonably concluded that the BFOQ positions would accomplish the issues at hand – the security of the prison, the safety of prisoners, and the protection of the privacy rights of prisoners.

Accordingly, the MDOC is requesting that the attached positions be approved to be filled by female staff. Same sex supervision will maximize the female inmate's right to privacy and

reduce the likelihood of sexual misconduct. This will enhance the ability of the Department to achieve its mission of providing safety and security for female prisoners.

Thank you for your consideration of this request and please contact me if you need any further information regarding this matter.

Sincerely,


Gary Mann, Administrator
Operations Support Administration

C: Director Patricia Caruso, MDOC
James Long, Attorney General's Office
Pete Govorchin, Attorney General's Office / w/o Attachments

JENNIFER M. GRANHOLM
GOVERNOR



STATE OF MICHIGAN
CIVIL SERVICE COMMISSION

JEREMY S. STEPHENS
STATE PERSONNEL DIRECTOR

COMMISSIONERS

SHERRY L. McMILLAN, CHAIR
ANDREW P. ABOOD
KELLY G. KEENAN
THOMAS M. WARDROP

April 17, 2009

Mr. Gary Manns
Department of Corrections
Grandview Plaza Bldg
Lansing, MI 48933

Dear Mr. Manns:

This letter is in response to your letter of March 27, 2009, requesting approval of an expansion of the bona fide occupational qualification (BFOQ) based on sex for a number of additional positions in the Department of Corrections.

Civil Service staff has reviewed your request and the position descriptions attached to your request, and determined that it is appropriate that only female employees be assigned to regular work assignments in these positions that affect the privacy and security of female prisoners, including, but not limited to, observing showers, dressing, undressing, and use of toilet facilities, and conducting clothed body and unclothed strip searches.

Therefore, as provided in Civil Service Rule 1-8.4, I approve the BFOQ based on sex for the positions requested.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy S. Stephens".

Jeremy S. Stephens
State Personnel Director

Cc: Patricia Caruso, Director, MDOC
James Long, Attorney General
Pete Govorchin, Attorney General
Matt Fedorchuk, CSC

State of Michigan



John Engler, *Governor*

Department of Corrections

Grandview Plaza Building, P.O. Box 30003

Lansing, Michigan 48909

Bill Martin, *Director*

August 29, 2000

Fred Parks, Executive Director
Michigan Corrections Organization
421 W. Kalamazoo Street
Lansing, MI 48933

Dear Mr. Parks:

Attached for your information are the Department of Civil Service approvals for selective certification of positions referenced in my August 2, 2000 correspondences.

If you have any questions or would like to discuss this issue, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Gary Manns".

Gary Manns, Personnel Director
Michigan Department of Corrections

attachments

Vehicle Sally port
Construction Security Escort

Construction Security Escort
Construction Security Escort

Construction Security Escort

AFTERNOON SHIFT BFOQ

Calhoun – RTP/Acute
Calhoun – RTP/Acute
Dickinson-Level II
Dickinson-Level II
Emmet-Level I
Fillmore-Level I
Gladwin-Level I
Harrison-Level I
Unit #1-SEG/Level IV
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #3-Level II
Unit #4-Level II
Unit #5-Level II
Unit #9-RGC/Level II
Food Service
Gate
Infirmary Health Care (E)
Infirmary Mental Health
Outside Hospital
Rover
School
Electronic Monitor

Calhoun – RTP/Acute
Dickinson-Level II
Dickinson-Level II
Emmet-Level I
Fillmore-Level I
Gladwin-Level I
Harrison-Level I
Kent-Infirmary
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #3-Level II
Unit #4-Level II
Unit #5-Level II
Unit #6-Level I
Unit #9-RGC/Level II
Food Service
Gate
Infirmary Health Care (W)
Outside Hospital
Rover
Rover
Yard Control

Calhoun – RTP/Acute
Dickinson-Level II
Dickinson-Level II
Emmet-Level I
Fillmore-Level I
Gladwin-Level I
Harrison-Level I
Unit #1-SEG/Level IV
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #3-Level II
Unit #4-Level II
Unit #5-Level II
Unit #6-Level I
Unit #9-RGC/Level II
Food Service
Gym
Infirmary Dental
Outside Hospital
Rover
School
Electronic Monitor

AFTERNOON SHIFT NON-BFOQ

Alert Response
Control Center
Outside Hospital
Rover
Rover
Yard Control

Bubble
Information Desk
Outside Hospital
Rover
Visiting Room

Bubble
Information Desk
Outside Hospital
Rover
Visiting Room

MIDNIGHT SHIFT BFOQ

Calhoun-RTP/Acute
Calhoun-RTP/Acute
Dickinson-Level II

Calhoun-RTP/Acute
Dickinson-Level II
Dickinson-Level II

Calhoun-RTP/Acute
Dickinson-Level II
Dickinson-Level II

Emmet-Level I
Fillmore-Level I
Harrison-Level I
Kent-Infirmary
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #3-Level II
Unit #5-Level II
Unit #6-Level I
Food Service
Outside Hospital
Yard Control

Emmet-Level I
Gladwin-Level I
Harrison-Level I
Kent-Infirmary
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #4-Level II
Unit #5-Level II
Unit #9-RGC/Level II
Outside Hospital
Rover
Electronic Monitor

Fillmore-Level I
Gladwin-Level I
Kent-Infirmary
Unit #1-SEG/Level IV
Unit #2-Level II
Unit #3-Level II
Unit #4-Level II
Unit #6-Level I
Unit #9-RGC/Level II
Outside Hospital
Rover
Electronic Monitor

MIDNIGHT SHIFT NON-BFOQ

Bubble
Outside Hospital
Rover

Bubble
Outside Hospital
Yard Control

Control Center
Outside Hospital

C: File

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

RECEIVED
JAN 31 2012
BY: ✓

TOM NOWACKI, et al,

Plaintiffs,

v

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

No. 11-852-CD

HON. TIMOTHY P. CONNORS

James K. Fett
FETT & FIELDS, P.C
Attorneys for Plaintiff
805 E. Main Street
Pinckney, MI 48169
734-954-0100

Glen N. Lenhof
LAW OFFICE OF GLEN N.
LENHOFF
Co-Counsel for Plaintiffs
328 South Saginaw Street
8th Floor, North Building
Flint, MI 48502
(810) 235-5660

Jeanmarie Miller (P44446)
Attorney for Defendant
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517.373.6434

**DEFENDANT'S ANSWERS TO PLAINTIFF'S
INTERROGATORIES TO DEFENDANT DATED OCTOBER 6, 2011**

1. Identify the name, job title, and address of each current and former employee who was involved in requesting permission from the Michigan Civil Service Commission to designate positions gender based BFOQ positions.

RESPONSE:

In 2000 – Gary Manns, Manager of Personnel Division, MDOC

In 2007 – Tony Lopez, Manager, Human Resource Director

2. Identify each type of compensation, fringe benefit, or other perquisite (sic), including but not limited to, disability insurance, stock options, retirement or pension benefits, profit sharing, vacation, holiday pay, life and health insurance, to which Plaintiff's entitled.

RESPONSE:

See documents attached to Defendant's Response to First Request for Production of Documents, documents numbered 570-667.

3. With respect to each benefit identified above, what is the annual cost of each item.

RESPONSE:

See documents attached to Defendant's Response to First Request for Production of Documents, documents numbered 570-667.

4. Please identify all employees that participated in the decisions to include strip searches in job descriptions issued after 2007 at the Women's Huron Valley Correctional Facility ("WHV").

RESPONSE:

Position descriptions for Corrections Officers are created at a statewide level. No records indicate who was involved in drafting any

particular job description but it is believed that Nancy Zang, former
Manager of the Female Offender Programs for MDOC, Clarice Stovall,
former warden at Scott Correctional Facility, Susan Davis, former warden
at Huron Valley Women's and Pete Govorchin may have been involved in
that process.

5. What are the names, telephone numbers and addresses of all persons known to Defendant who have personal knowledge with respect to Defendant's purported reasons for including strip searches in job descriptions after 2007 at WHV?

RESPONSE:

See answer to Interrogatory 4. The individuals may be contacted through counsel for Defendant.

6. Please state the knowledge or information regarding the instant case possessed by each person identified in the preceding interrogatory.

RESPONSE:

Each individual listed would have information regarding the reason a position was BFOQ'd or that the need to conduct strip searches was added to a particular position. Not knowing who participated in the creation of each job description further information is not known at this time.

7. Identify the person or persons responsible for preparing the answers to these Interrogatories, and if more than one person, who was responsible for which Interrogatories.

RESPONSE:

**Pam Nelson, Department Specialist, Litigation Support Division,
Michigan Department of Corrections;**

**Paul J. Slagter, Administrative Assistant, Women's Huron Valley
Correctional Facility.**

8. Please state the amount of Plaintiff's total compensation for each year of this employment with Defendant.

RESPONSE:

**See documents attached to Defendant's Response to First Request
for Production of Documents, documents numbered 570-667.**

Dated:


Pam Nelson

Subscribed and sworn before me, a Notary
Public,
this _____ day of _____, _____.

Notary Public

_____ County, Michigan
Acting in _____ County, Michigan
My Commission Expires: _____

As to objections only:



Jeanmarie Miller (P44446)
Attorney for Defendant
Michigan Department of Attorney General
Public Employment, Elections &
Tort Division
P.O. Box 30736
Lansing, MI 48909
(517) 373-643

Copy to
TS

Exhibit 27

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

RECEIVED
JAN 31 2012
BY: ✓

TOM NOWACKI, et al,

Plaintiffs,

v

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

No. 11-852-CD

HON. TIMOTHY P. CONNORS

James K. Fett
FETT & FIELDS, P.C
Attorneys for Plaintiff
805 E. Main Street
Pinckney, MI 48169
734-954-0100

Glen N. Lenhof
LAW OFFICE OF GLEN N.
LENHOFF
Co-Counsel for Plaintiffs
328 South Saginaw Street
8th Floor, North Building
Flint, MI 48502
(810) 235-5660

Jeanmarie Miller (P44446)
Attorney for Defendant
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517.373.6434

**DEFENDANT'S ANSWERS TO PLAINTIFF'S
INTERROGATORIES TO DEFENDANT DATED OCTOBER 6, 2011**

1. Identify the name, job title, and address of each current and former employee who was involved in requesting permission from the Michigan Civil Service Commission to designate positions gender based BFOQ positions.

RESPONSE:

In 2000 – Gary Manns, Manager of Personnel Division, MDOC

In 2007 – Tony Lopez, Manager, Human Resource Director

2. Identify each type of compensation, fringe benefit, or other perquisite (sic), including but not limited to, disability insurance, stock options, retirement or pension benefits, profit sharing, vacation, holiday pay, life and health insurance, to which Plaintiff's entitled.

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RESPONSE:

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particular job description but it is believed that Nancy Zang, former Manager of the Female Offender Programs for MDOC, Clarice Stovall, former warden at Scott Correctional Facility, Susan Davis, former warden at Huron Valley Women's and Pete Govorchin may have been involved in that process.

5. What are the names, telephone numbers and addresses of all persons known to Defendant who have personal knowledge with respect to Defendant's purported reasons for including strip searches in job descriptions after 2007 at WHV?

RESPONSE:

See answer to Interrogatory 4. The individuals may be contacted through counsel for Defendant.

6. Please state the knowledge or information regarding the instant case possessed by each person identified in the preceding interrogatory.

RESPONSE:

Each individual listed would have information regarding the reason a position was BFOQ'd or that the need to conduct strip searches was added to a particular position. Not knowing who participated in the creation of each job description further information is not known at this time.



STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

RICK SNYDER
GOVERNOR

HEIDI E. WASHINGTON
DIRECTOR

March 22, 2016

Michigan Civil Service Commission
Janine M. Winters, State Personnel Director
400 S. Pine Street
Lansing, MI 48909

Dear Ms. Winters:

This is to advise that the department will be discontinuing the use of gender based Bona Fide Occupational Qualification (BFOQ) for some Corrections Officer positions located at the Women's Huron Valley Correctional Facility. The BFOQs were previously approved to assist the department in ensuring the privacy and security of female prisoners. The department's request for expanded BFOQs was submitted to former State Personnel Director, Jeremy S. Stephens on March 27, 2009 and approved April 17, 2009. However, with the continuing technological advances that have been made at the facility since the original approval for the BFOQs was granted, primarily the placement of over 1,300 cameras throughout the facility, monitoring of cameras and high capacity storage recorders, the department does not believe that some of the previously approved BFOQs remain necessary.

The following are the specific positions/assignments that no longer require BFOQ designation:

- Food Service – Day and Afternoon assignments
- Gym – Day and Afternoon assignments
- Infirmary Dental – Day and Afternoon assignments
- Property Room – Day assignment
- School – Day and Afternoon assignments
- Yard Control – Day, Afternoon and Night assignments
- School Vocational – Day Activity assignment
- School Academic – Day Activity assignment.

Please contact me if additional information is required.

Sincerely,

Tony Lopez

Tony Lopez
Human Resources Director

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

Exhibit 29

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD

Hon. Archie Brown

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

AFFIDAVIT OF THOMAS NOWACKI

Thomas Nowacki, being first duly sworn, depose and state as follows:

1. My name is Thomas Nowacki. I have been employed with the Michigan Department of Corrections for approximately thirteen (13) years.
2. My current position with the MDOC is corrections officer.
3. I currently work at the Huron Valley Women's Facility ("WHV").
4. I have been assigned to WHV since 2009.
5. During my assignment to WHV I have worked as:
 - a. Food service officer;
 - b. School officer;

- c. Yard rover;
- d. Health care; and
- e. Visiting room.

6. In those positions, I was never required to see women in a state of undress. In fact, women were prohibited from being in a state of undress in those work areas/assignments.

7. In the health care assignment female inmates were always in a private room when examined by a health care professional.

8. During my assignments to the aforementioned positions I was never required to perform a strip search of any female inmate. If a strip search was required, we were instructed to have the strip search performed by the strip search officer in the designated strip search room.

9. In each of these positions, I ~~frequently~~ collaborated with female officers in shaking down prisoners.

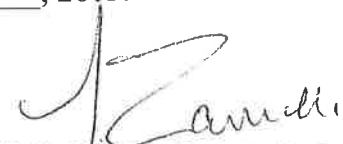
10. The procedure we used was that the male officer would shakedown the prisoners' outer clothing, such as a coat or hat, after it was removed by the prisoner, while the female officer performed the shakedown/pat down of the female inmate.

11. This procedure worked very well and I do not recall it ever causing a problem. Male and female officers often collaborated and requested assistance from one another. This shakedown procedure was not out of the ordinary.

12. I have personal knowledge of the facts set out in this affidavit and can testify competently thereto.


Thomas Nowacki

Subscribed and sworn this 27th day of February, 2013.


JOUHAINA ZAYIDI
Notary Public - Michigan
Wayne County
My Commission Expires Jan. 16, 2019
Acting in the County of Wayne

STATE OF MICHIGAN
WASHTENAW COUNTY CIRCUIT COURT

TOM NOWACKI,

Plaintiff,

v

Case No. 11-852-CD
Hon. Archie Brown

STATE OF MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

James K. Fett (P39461)
FETT & FIELDS, P.C.
805 E. Main St.
Pinckney, MI 48169
734-954-0100
Counsel for Plaintiff

Jeanmarie Miller (P44446)
Assistant Attorney General
P.O. Box 30736
Lansing, Michigan 48909
517-373-6434
Attorney for Defendant

Glen N. Lenhoff (P32610)
Law Office of Glen N. Lenhoff
328 S. Saginaw St., Fl. 8, North Bldg.
Flint, MI 48502
810-235-5660
Co-Counsel for Plaintiff

INDEX OF IMPROPER BFOQ POSITIONS

1. Food Service Officer
2. Yard Control Officer
3. Yard Rover Officer
4. Health Care Officer
5. Property Room Officer
6. School Officer
7. Off-Site Hospital Officer

8. Gate Control Officer
9. Gym Officer
10. Electronic Monitoring Officer
11. Industries Officer

1. Food Service Officer

All food service positions, where corrections officers provide custodial supervision of prisoners eating or working in the food service areas, are gender BFOQ positions.¹ During the conversion of WHV to a strictly women's prison, Warren was instructed to assign more female officers to the food service building because female prisoners were preparing meals.² However, male officers were not prohibited from food service and did work in the building.

Warren subsequently created the original custodial assignment sheet designating the Food Service Officer position as a gender BFOQ position.³ Warren testified that strip searches and pat-downs are required to be conducted by Food Service Officers and that was the only reason for the gender BFOQ.⁴

Warren further testified that strip searches originating from the food service area are conducted in the food service areas or in the segregation area.⁵ However, strip searches may only be conducted in the food service area if approval is first obtained, and it is **not routine** for strip searches to be conducted there.⁶ While Warren claimed that the male/female team pat-down approach would interrupt the feeding of prisoners, she conducted no research in coming to that conclusion.⁷

Moreover, at least two officers are assigned to food service.⁸ Yard officers occasionally make a round or check of the building, and additional officers are sent to the building while the "chow lines" are in progress.⁹ A Housing Unit Rover Officer, who must be female because the

¹ Warren 69; Evans 70-72. All referenced exhibits correspond to the exhibits in Plaintiff's Brief in Support.

² Warren 29, 35

³ Warren 37, 43

⁴ Warren 48, 70; Evans 67-68

⁵ Warren 73-74, 76

⁶ Warren 76, 78

⁷ Warren 87-90

⁸ Evans 70-73

⁹ Evans 70

Officer works in a housing unit, escorts the prisoners to the food service building.¹⁰ Thus, there are ample female officers present to conduct searches of any kind.

Prisoners are also not supposed to be in a state of undress in the food service area unless those who are preparing food change their clothes in the bathroom.¹¹ Though the officers may also need to go into the bathrooms to supervise prisoners, female officers may be present to do so without barring males from food service.¹²

¹⁰ Warren 69

¹¹ Evans 82-83

¹² Warren 70; Evans 68

1. Position Code COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Food Service Officer	11. Section Food Service
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security in Food Service, primarily on the day and afternoon shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based ~~BPO~~ position designated for Female Officers working on the am, pm, and mn shifts.

<i>M. Warren</i>
EXHIBIT NO. <u>1</u>
T.J.B. <u>10-16-12</u>

For Civil Service Use Only

Duty 3

General Summary of Duty 3

% of Time 10

Participates as a member of a treatment team of counselors and work supervisors for the purposes of classification, reclassification, parole eligibility counseling and minor disciplinary procedures. Assists as necessary with other assigned duties. Assists in committees as assigned, i.e., CAC, Fire Safety, etc.

Individual tasks related to the duty.

- Assists in prisoner security screen reports
- Assist in obtaining information for PER reports
- Completes work as assigned
- Participates in committees as assigned

Duty 4

General Summary of Duty 4

% of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Randomly conducts strip searches to prevent theft and the introduction of contraband.
- Communicates with Food Service staff.
- Conducts clothed body searches for contraband.

Duty 5

General Summary of Duty 5 % of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner activities including the changing of clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Makes frequent rounds in the prisoner bathroom.
- Monitors cleanliness in rooms/areas of control.

Duty 6

General Summary of Duty 6 % of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc., as approved by the Deputy.
- Participates in required training, mobilizations, emergency control activities
- Monitors large groups of prisoners
- Ensures sanitary standards are adhered to
- Other duties as assigned.

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns and strip searches
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports. Must be physically fit and able to respond to emergencies as needed.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

<u>NAME</u>	<u>CLASS TITLE</u>	<u>NAME</u>	<u>CLASS TITLE</u>

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient Food Service area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security in Food Service as well as some treatment responsibilities, primarily on the day and afternoon shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

- High School graduate or completed GED
- 15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

- 8 level - None
- 9 level - One year experience at the 8 level.

KNOWLEDGE, SKILLS, AND ABILITIES:

- Satisfactory completion of the Department of Corrections Officer Academy
- Must be able to qualify in all required emergency control programs
- Successful completion of the Department's PA415 training
- Required female offender training
- Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

2. Yard Control Officer

There are two sets of Yard Control Officers, one of which is designated a BFOQ position and one which is designated a non-BFOQ position.¹³ Evans testified the position was a BFOQ position because of the need for shakedowns.¹⁴ The “team search” policy clearly obviates the need for more than one female Yard Control Officer.

Further, it is contrary to prison regulations for a prisoner to be in a state of undress in the yard.¹⁵ As such, there is no need for a Yard Control Officer to see a prisoner in a state of undress unless they are called upon to relieve another officer in a housing unit.¹⁶ However, Yard officers are not assigned to housing units except in emergency (i.e. non-routine) situations.¹⁷

Finally, strip searches are not routinely conducted in the yard and Warren is not aware of any such instances where a strip search was conducted there during her tenure.¹⁸

¹³ Warren 112-113-116

¹⁴ Evans 78

¹⁵ Warren 103-104; Evans 82

¹⁶ Warren 115-116

¹⁷ Warren 109-110

¹⁸ Warren 120

(4)

I. Position Code **Exhibit 30**
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Yard Control Officer	11. Section Yard
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security on the yard as well as treatment responsibilities, primarily on the day and afternoon shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am, pm, and mn shifts.

M. Warren
EXHIBIT NO. 5
T.J.B. 2-20-13

Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and **Exhibit 30** Explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 45

Responsible for the custody of female prisoners on the yard. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners while active in the yard.

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine rules and policies
- Conducts shakedowns and searches of female prisoners including strip searches
- Gives direction to prisoners regarding daily activities
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance w/with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Assists in minor disciplinary procedures
- Disseminates information, current rule changes, memos etc., to prisoners
- Maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Conducts searches for contraband

Duty 4

General Summary of Duty 4

% of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner activities including the changing of clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control

Duty 5

General Summary of Duty 5

% of Time 10

Miscellaneous other duties

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc.
- Participates in required training, mobilizations, emergency control activities
- Assist in supervising urine drops.
Assists in committees as assigned, i.e., CAC, Fire Safety, etc.
- Other duties as assigned.

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

<u>NAME</u>	<u>CLASS TITLE</u>	<u>NAME</u>	<u>CLASS TITLE</u>

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient yard area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security on the yard as well as some treatment responsibilities, primarily on the day and afternoon shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

3. Yard Rover Officer

Half of the Yard Rover Officer positions are gender BFOQ positions because of the need for shakedowns and the possibility that they could relieve Housing Unit Officers.¹⁹ The “team search” policy clearly obviates the need for more than one female Yard Rover Officer to conduct shakedowns. Yard Rover Officers also do not perform strip searches unless they conduct them out of assignment.²⁰ Further, it is contrary to prison regulations for a prisoner to be in a state of undress in the yard.²¹ Warren testified that Yard Rover Officers may need to relieve Housing Unit Officers as a reason for the gender BFOQ designation,²² but neither Warrens nor Evans cited it as a reason the gender BFOQ was established in the custodial assignment sheet process.

¹⁹ Evans 110

²⁰ Warren 182

²¹ Warren 103-104, Evans

²² Warren 176-181

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

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2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Rover Officer	11. Section Housing Units
6. Name and Classification of Direct Supervisor Correction Shift Supervisor-1 (Sgt)	12. Unit Third Shift
7. Name and Classification of Next Higher Level Supervisor Correction Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, MI 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security in a female housing unit, as well as treatment responsibilities, on the mn shift. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the mn shift.

For Civil Service Use Only

M. Warren
EXHIBIT NO. 11
T.J.B. 2-20-13

15. Please describe your assigned duties, percent of time spent performing each duty, and **Exhibit 30** explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 40

Responsible for the custody of female prisoners in a housing unit. Has direct contact with and knowledge of individual prisoners. Monitors behavior, wellness and overall condition of female prisoners in a housing unit

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine housing rules and policies
- Conducts shakedowns and searches of female prisoners including strip searches
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3 % of Time 15

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner shower activities including the changing of clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control
- Maintains laundry issue, state materials, MSI laundry procedure and prisoner room guidebooks to ensure proper procedures are followed.

Duty 4

General Summary of Duty 4 % of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Assists in room changes/bed changes to facilitate room management
- Conducts cell searches for contraband

Duty 5

Exhibit 30

General Summary of Duty 5

% of Time 10

Miscellaneous other duties

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc.
- Participates in required training, mobilizations, emergency control activities
- Assists in the supervision and collection of urine drops.
- Other duties as assigned.

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

TO BE COMPLETED BY DIRECT SUPERVISOR

Exhibit 30

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient living area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security of a housing unit as well as has some treatment responsibilities on all shifts.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

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2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Resident Unit Officer E10	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Rover Officer	11. Section Housing Units
6. Name and Classification of Direct Supervisor Assistant Resident Unit Supervisor-1	12. Unit First And Second Shifts
7. Name and Classification of Next Higher Level Supervisor Resident Unit Manager-2	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security in a female housing unit, as well as treatment responsibilities, primarily on the day and afternoon shift. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am and pm shifts.

M. Werners
EXHIBIT NO. 12
T.J.B. 2-20-13

For Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1

% of Time 40

Responsible for the custody of female prisoners in a housing unit. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners in a housing unit

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine housing rules and policies
- Conducts shakedowns and searches of female prisoners including strip searches
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2

% of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 10

Participates as a member of a treatment team of counselors and work supervisors for the purposes of classification, reclassification, parole eligibility counseling and minor disciplinary procedures. Assists as necessary with other assigned duties. Assists in committees as assigned, i.e. CAC, Fire Safety, etc.

Individual tasks related to the duty.

- Assists in prisoner security screen reports
- Assist in obtaining information for PER reports
- Completes reports as assigned
- Participates in committees as assigned

Duty 4

General Summary of Duty 4

% of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Assists in room changes/bed changes to facilitate room management
- Conducts cell searches for contraband

Duty 5

General Summary of Duty 5 % of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner shower activities including the changing of clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control
- Maintains laundry issue, state materials, MSI laundry procedure and prisoner room guidebooks to ensure proper procedures are followed.

Duty 6

General Summary of Duty 6 % of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc., as approved by the Deputy.
- Participates in required training, mobilizations, emergency control activities
- Assists in the supervision and collection of urine drops.
- Other duties as assigned.

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

<u>NAME</u>	<u>CLASS TITLE</u>	<u>NAME</u>	<u>CLASS TITLE</u>

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient living area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security of a housing unit as well as has some treatment responsibilities on all shifts.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

One year experience as a Corrections Officer 9, Corrections Medical Aide 9, or Special Alternative Incarceration Officer 9.

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

4. Health Care Officer

Health Care Officers monitor prisoners in the clinic area and provide security for medical staff.²³ Health Care Officers do not perform strip searches and Warren is not aware of any strip search being assigned in that area.²⁴

The Health Care Officers' area is a clinic, and there may be prisoners in a state of undress as they are treated.²⁵ However, curtains and doors are present to protect prisoners' privacy and Warren admits a "knock-and-announce" policy would alleviate the possibility of seeing prisoners in a state of undress.²⁶ Further, Evans testified that using curtains to shield prisoners is "an ethical, professional, ethical requirement."²⁷ Plaintiff worked as a Health Care Officer, and, during those times, female prisoners were always examined by a health care professional in a private room.²⁸

Warren testified that the Health Care Officer position is a gender BFOQ position because it interchanges with the Infirmary Officer position, because the infirmary is considered a housing unit.²⁹ However, she had no idea how often that occurs and Plaintiff, when he worked as a Health Care Officer, was not "interchanged" into the infirmary.³⁰

Warren indicated that patdown searches are required because of the presence of dangerous medical equipment in the clinic.³¹ She stated that calling a female officer to conduct them would be "very inefficient" because:

²³ Evans 99-100

²⁴ Warren 153

²⁵ Warren 157-158; Evans 100

²⁶ Warren 157-158; Plaintiff's Affidavits

²⁷ Evans 103

²⁸ Plaintiff's Affidavits

²⁹ Warren 154-155

³⁰ Plaintiff's Affidavits

³¹ Warren 159-161

a. The majority of prisoners leaving the clinic need to be pat-searched upon leaving the area; and

b. The infirmary must be staffed at all times and another officer would have to relieve the Infirmary Officer.

However, those claims are belied by the successful and longstanding practice of “team searches” using a male and female officer and the possibility of calling a female officer other than the Infirmary Officer.

1. Position Cod **Exhibit 30**
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Health Care/Infirmary Officer	11. Section Health Care/Infirmary
6. Name and Classification of Direct Supervisor Correction Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Correction Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security in a female infirmary as well as treatment responsibilities on all shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on all shifts.

M. Warner
EXHIBIT NO. 9
T.J.B. 2.20.13

For Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and **Exhibit 30** explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 40

Responsible for the custody of female prisoners in the infirmary. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners in the Infirmary

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine rules and policies
- Conducts shakedown and searches of female prisoners including strip searches
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists.
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior, conducting rounds in areas where prisoners are in various stages of undress.
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3 % of Time 10

Ensures that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner activities including the changing of clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Monitor prisoners who need assistance dressing and undressing as needed
- Monitors cleanliness in rooms/areas of control.

Duty 4

General Summary of Duty 4 % of Time 10

Participates as a member of a treatment team of counselors and work supervisors for the purposes of classification, reclassification, parole eligibility counseling and minor disciplinary procedures. Assists as necessary with other assigned duties. Assists in committees as assigned, i.e. CAC, Fire Safety, etc.

Individual tasks related to the duty.

- Assists in prisoner security screen reports
- Assists in obtaining information for PER reports
- Completes work as assigned
- Participates in committees as assigned

Duty 5

General Summary of Duty 5 % of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Assists in room changes/bed changes to facilitate room management.
- Conducts cell searches for contraband.

Duty 6

General Summary of Duty 6 % of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc., as approved by the Deputy.
- Participates in required training, mobilizations, emergency control activities
- Assists in medical emergencies and notifies Health Care staff.
- Other duties as assigned.

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns and strip searches
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports. Must be physically fit and able to respond to emergencies as needed.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

<u>NAME</u>	<u>CLASS TITLE</u>	<u>NAME</u>	<u>CLASS TITLE</u>

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

SignatureDate

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security in the Infirmary as well as some treatment responsibilities, primarily on the day and afternoon shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

5. Property Room Officer

Property Room Officers are custodians of prisoner property, process orders for prisoner clothing and monitor the property room.³² Warren admits that Property Room Officers do not conduct strip searches and should never see female prisoners in a state of undress.³³

Warren and Evans testified that the position is a gender BFOQ position because it could place male officers in a one-on-one situation with female prisoners and because of the need for shakedowns.³⁴ Property room officers are usually assisted by a prisoner worker who must be shaken down at the end of their assignment.³⁵ However, the “team search” policy allows for shakedowns of female prisoners when there is a male Property Room Officer. Moreover, the “one-on-one situation” is a litigation-driven excuse as demonstrated by:

- Neither Warrens nor Evans cited it as a reason the gender BFOQ was established in the custodial assignment sheet process and Warren could not identify a written policy stating that male officers were prohibited from being in one-on-one situations with a female prisoner.
- WHV routinely leaves the male industry supervisor alone with female prisoners all day in the sewing and dental factories.
- There are cameras that record all occurrences in the Property Room area and it can be observed by the Electronic Monitoring Officer in real time.³⁶

³² Evans 114-115, 116

³³ Warren 183, 187

³⁴ Warren 184-186; Evans 114-115

³⁵ Evans 116-117, 118-119

³⁶ Warren 196-199

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Handwritten signature/initials

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Property Room Officer	11. Section Property Room
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit Day Activity Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security in the property room as well as treatment responsibilities, on the day activity shift. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the day activity shift.

M. Warren
EXHIBIT NO. 14
T.J.B. 2-20-17

For Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and **Exhibit 30** explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 45

Responsible for the custody of female prisoners in the property room. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners in the property room.

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine rules and policies
- Conducts shakedown and searches of female prisoners including strip searches
- Gives direction to prisoners regarding daily activities
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Conducts thorough shakedowns of incoming property and distributes allowable items
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 30

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Conducts searches for contraband

Duty 4

General Summary of Duty 4

% of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner activities including the changing of clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cards, laundry issue, and state materials to ensure proper procedure is followed.
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control

Duty 5

Exhibit 30

General Summary of Duty 5

% of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Participates in required training, mobilizations, emergency control activities
- Other duties as assigned

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by these decisions. Use additional sheets, if necessary. **Exhibit 30**

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient living area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security as well as some treatment responsibilities on the day activity shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position. **Exhibit 30**

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. I certify that the entries on these pages are accurate and complete.

Appointing Authority's Signature

Date

6. School Officer

School Officers are responsible for prisoners in the vocational education and school areas.³⁷ Warren testified the School Officer position is a gender BFOQ position because of the need for shakedowns and the “open” bathroom area obscured only by a low cement wall.³⁸ She also testified that the need to call a female officer for patdowns would disrupt the WHV schedule.³⁹ However, at one point in time during Warren’s tenure, the position was staffed with a male and a female officer and there were never any problems regarding patdowns.⁴⁰

Further, the bathroom wall still prevents a corrections officer from seeing prisoners in a state of undress in the bathroom and Warren admits there is no reason to see female prisoners in a state of undress in the school area.⁴¹ Finally, Warren admits that strip searches are not performed in the school except in emergency situations.⁴²

³⁷ Warren 188-189

³⁸ Evans 120; Warren 188

³⁹ Warren 192

⁴⁰ Warren 189-190, 193

⁴¹ Evans 123; Warren 188

⁴² Warren 187-188

I. Position Cod **Exhibit 30**
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

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2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) School Officer	11. Section School
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First And Second Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, MI 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security in a female educational setting as well as treatment responsibilities on the day and afternoon shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am and pm shifts.

M. Warren
EXHIBIT NO. 15
T.J.B. 2-20-13

For Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 45

Responsible for the custody of female prisoners in the school. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners during educational activities in the school.

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine rules and policies
- Conducts shakedowns and searches of female prisoners including strip searches
- Gives direction to prisoners regarding daily activities
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Assists with counseling and minor disciplinary procedures
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintain required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3 % of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Conducts searches for contraband

Duty 4

General Summary of Duty 4 % of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners maintain appropriate appearance
- Observes female prisoners changing clothes
- Monitors and observes toilet activities
- Ensures prisoners keep linens and clothing clean through routine laundry procedures
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control

Duty 5

General Summary of Duty 5

% of Time 10

Miscellaneous other duties

Individual tasks related to the duty.

- Participates in required training, mobilizations, and emergency control activities
- Account for all critical and dangerous tools.
- Assist in supervising urine drops.
- Other duties as assigned.

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security in the school as well as some treatment responsibilities, on the day and afternoon shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position. **Exhibit 30**

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. I certify that the entries on these pages are accurate and complete.

Appointing Authority's Signature

Date

7. Off-Site Hospital Officers

Offsite hospital officers provide custodial supervision for prisoners receiving medical treatment at local hospitals.⁴³ It is a gender BFOQ position because prisoners can be in a state of undress during medical procedures, while using the rest room or being bathed in bed.⁴⁴ The Off-Site Hospital Officers must observe the prisoner at all times, keeping “basic visual contact.”⁴⁵ However, two corrections officers are assigned to a prisoner for an off-site hospital visit.⁴⁶ Evans assumes that if there is a male officer and a female officer assigned, the female officer can maintain visual contact while the female is in a state of undress.⁴⁷

⁴³ Warren 203

⁴⁴ Warren 203-204

⁴⁵ Evans 125-126

⁴⁶ Evans 127

⁴⁷ Evans 128

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

M. Warren
EXHIBIT NO. 16
T.J.B. 2-2013

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer- E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Offsite Hospital Officer	11. Section Various Local Hospitals In The Area.
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security of female prisoners under guard at local outside hospitals on all shifts. The goal is to provide a safe, clean, secure, environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am, pm, and mn shifts.

Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 40

Responsible for the custody of female prisoners in a hospital environment. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness, and overall condition of female prisoners while under guard in a hospital setting.

Individual tasks related to the duty.

- Monitor prisoner behavior
- Enforces host hospital rules
- Conducts shakedowns and searches of female prisoners including strip searches
- Gives direction to prisoners
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists

Duty 2

General Summary of Duty 2 % of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitor activities and behavior of female prisoners who may be in various stages of undress
- Disseminate information, current rule changes, memos etc., to prisoners
- Take formal and informal prisoner counts, maintain required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3 % of Time 10

Work cooperatively with host hospital security staff and medical personnel to ensure safety, security, and compliance with local rules and regulations.

Individual tasks related to the duty.

- Maintain constant visual observation of assigned female prisoners who may be in various states of undress based upon their medical condition.
- Ensure all security measures are followed during all physical examinations and medical testing.
- Maintain a constant visual of female prisoners during surgical procedures including childbirth, and procedures done on private areas of the body and/or various states of undress
- Maintain open communications with hospital security staff and institutional supervisor..

Duty 4

General Summary of Duty 4 % of Time 10

Prevent prisoners from injuring other patients, employees, visitors and/or themselves and from damaging property.

Individual tasks related to the duty.

- Monitor prisoner behavior
- Write prisoner misconduct tickets
- Assist in room/bed changes and any other movement required
- Conducts searches for contraband

Duty 5

General Summary of Duty 5 % of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners maintain appropriate appearance
- Observes female prisoners changing clothes
- Monitors and observes toilet activities
- Ensure prisoners keep linens and clothing clean
- Monitors cleanliness in rooms/areas of control

Duty 6

General Summary of Duty 6 % of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Participate in required training, mobilizations, and emergency control activities
- Communicate with Shift Supervisor regarding status of prisoner
- Other duties as assigned.

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforce rules
- Write passes to activities
- Monitor cleanliness/caustic reports
- Conduct prisoner shakedowns
- Fill out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient treatment area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security of female prisoners under guard at offsite medical facilities as well as some treatment responsibilities, on the day, afternoon, and midnight shifts.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

8. Gate Control Officer

Gate Control Officers monitor the front gate, and Evans testified the position was designated as a BFOQ position because of the need for shakedowns of prisoners and visitors.⁴⁸ Yet the only time a Gate Control Officer would conduct a strip search is if the “shakedown officer” was assigned to perform another duty and was not available.⁴⁹ Again, the “team search” policy obviates the need for a female Gate Control Officer, especially given that a second officer is assigned to the Gate during shift change or high traffic times.⁵⁰

Moreover, Warren and Straub originally agreed that the Gate Control Officer could be male.⁵¹ The Bubble, the Gate and the Information Desk, which work in conjunction with one another, only need to be staffed with one female officer among the three positions.⁵²

⁴⁸ Warren 122-123; Evans 84-85

⁴⁹ Warren 124

⁵⁰ Evans 84-85

⁵¹ Warren 62

⁵² Warren 63-64, 122

I. Position Code

COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

M. Warren
EXHIBIT NO. 6
T.J.B. 2-20-13

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Gate Control Officer	11. Section Gate
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, MI 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security at the gate as well as treatment responsibilities, on all shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am, pm, and mn shifts.

I Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 45

Responsible for the custody and security in the gate area.. Has direct contact with and knowledge of individual prisoners. Monitors all gate traffic, incoming staff, volunteers, and female prisoners moving through the security gate.

Individual tasks related to the duty.

- Enforces compliance of the allowable items list that are permitted entry through the gate
- Gives direction to staff traversing the gate and monitors the flow of traffic.
- Conducts shakedowns and searches of female prisoners including strip searches.
- Completes work reports/block reports for prisoners working in area.

Duty 2

General Summary of Duty 2 % of Time 25

Ensures only authorized staff, volunteers, and female prisoners are allowed to traverse through the gate.

Individual tasks related to the duty.

- Ensures contraband does not enter through the gate area.
- Maintains log of prisoner pass activities
- Disseminates information to the Bubble Officer
- Maintains required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 25

Prevents prisoners escaping and ensuring all security measures are in compliance with institutional and department rules, regulations, policies, and procedures.

Individual tasks related to the duty.

- Monitors the flow of gate traffic
- Checks all identification of individuals entering and exiting the gate area.
- Ensures only authorized staff, volunteers, and prisoners traverse the front gate.
- Ensures gate traffic clear the metal detector
- Ensures an accurate log of all visitors and volunteers is maintained.
- Ensures visitors are issued proper temporary I.D. tags and that their hands are marked accordingly
- Ensures all pedestrians are shaken down randomly and clothed body searches are recorded in the log.

Duty 4

General Summary of Duty 4

% of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Participates in required training, mobilizations and emergency control activities
- Respond to emergencies as needed.
- Other duties as assigned.

Duty 5

General Summary of Duty 5

% of Time _____

Individual tasks related to the duty.

-

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift; answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

<u>NAME</u>	<u>CLASS TITLE</u>	<u>NAME</u>	<u>CLASS TITLE</u>

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe and secure environment while enforcing rules and regulations. This person is responsible for the custody and security of the gate area on all shifts.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 9 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Successful completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable.

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. *I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.*

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. *I certify that the entries on these pages are accurate and complete.*

Appointing Authority's Signature

Date

9. Gym Officer

The Gym Officer supervises prisoners during their leisure time activity in the gym area.⁵³ It was designated a gender BFOQ position because of the need for shakedowns and because of the need for female prisoners to use the bathroom.⁵⁴

However, Gym Officers do not conduct strip searches unless they are called away from their assignment at the gym to do a strip search in the designated strip search areas.⁵⁵ They would do shakedowns of prisoners,⁵⁶ but, again, the “team search” policy applies to the position.

Further, prisoners are not supposed to be in a state of undress outside of the bathroom stalls of the gym bathroom.⁵⁷ Warren admitted that there is no reason the “knock-and-announce” policy could not be used if a male Gym Officer needed to access the bathroom in an emergency.⁵⁸ Finally, there are no showers in the gym area and the prisoners do not change clothes there.⁵⁹

⁵³ Evans 91

⁵⁴ Evans 93

⁵⁵ Warren 132, 140

⁵⁶ Warren 132, 134-135

⁵⁷ Warren 134; Evans 104

⁵⁸ Warren 139

⁵⁹ Warren 132-133; Evans 103-104

1. Position Code
COMPOSIT

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

M. Warren
EXHIBIT NO. 7
T.J.B. 2-20-13

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Gym Officer	11. Section Gym
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First And Second Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, MI 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security of female prisoners in the Gym area as well as treatment responsibilities on the day and afternoon shifts. The goal is to provide a safe, clean, secure, efficient working environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the day and afternoon shifts.

Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 40

Responsible for the custody of female prisoners in the Gym. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners in a physical fitness environment.

Individual tasks related to the duty.

- Enforces routine rules and policies
- Gives direction to prisoners regarding daily activities
- Conduct shakedowns and searches of female prisoners including strip searches
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2 % of Time 20

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintain required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3 % of Time 20

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Ensures prisoners shower and maintain appropriate appearance
- Observes prisoner shower activities including the changing of clothes
- Monitors and observes toilet activities
- Monitors prisoner porters to ensure they complete their job duties
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control

Duty 4

General Summary of Duty 4 % of Time 15

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Conducts searches for contraband
- Assists in prisoner security screen reports
- Assist in obtaining information for PER reports
- Completes reports as assigned
- Participates in committees as assigned

Duty 5

General Summary of Duty 5

% of Time 5

Miscellaneous other duties.

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc., as approved by the Deputy
- Participates in required training , mobilizations, and emergency control activities
- Assists in supervising urine drops
- Other duties as assigned

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

NAME

CLASS TITLE

NAME

CLASS TITLE

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient physical fitness area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security in the Gym as well as some treatment responsibilities, primarily on the day and afternoon shifts.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Successful completion of Department of Corrections Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. I certify that the entries on these pages are accurate and complete.

Appointing Authority's Signature

Date

10. Electronic Monitoring Officer

Electronic Monitoring Officers monitor cameras placed throughout the facility.⁶⁰ This assignment takes place in “a very closed restricted area in which you don’t have prisoner contact.”⁶¹ There is no requirement that the Electronic Monitoring Officer conduct strip searches.⁶²

Cameras do not provide views of restrooms or the showers.⁶³ According to Evans, cameras are only pointed into cells when prisoners are in observation cells for suicide or self-injurious behavior, and Warren testified that those cells do contain toilets.⁶⁴ However, two to three officers staff the control center where the cameras are monitored, including a Count Officer, and thus only one of those officers would need to be female due to the observation cell cameras.

⁶⁰ Evans 95

⁶¹ Warren 143

⁶² Warren 149-150

⁶³ Warren 147-149. Warren testified the shower entranceways are visible.

⁶⁴ Evans 95-97; Warren 146

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

M. Warren
EXHIBIT NO. 8
T.J.B. 2-20-13

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Electronic Monitor Officer	11. Section Control Center
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit First, Second, And Third Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security responsibilities on all shifts. The goal is to provide a safe, clean, secure, efficient living environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the am, pm, and mn shifts.

Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1 % of Time 55

Responsible for the custody and security of the entire facility.

Individual tasks related to the duty.

- Enforces routine housing rules and policies by monitoring cameras located throughout the facility from the control center.
- Gives warnings/summaries/misconducts to modify behavior of violators by monitoring cameras to observe prisoner behavior.
- Electronically monitor observations of seclusion rooms containing female prisoners who can be in various stages of undress.
- Electronically monitor activities of female housing units, sallyport, and security fences throughout the facility.
- Conducts shakedowns and searches of female prisoners including strip searches.
- Ensures only authorized staff, volunteers, and female prisoners are allowed to traverse through the gate.

Duty 2

General Summary of Duty 2 % of Time 20

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitor prisoner activity and behavior.
- Maintains regular pass log of prisoner pass activities.
- Disseminates information, current rule changes, memos, etc., to prisoners
- Take formal and informal prisoner counts, maintain required logs, aids in preventing escapes, investigates for contraband articles and materials.
- Monitor prisoner porters to ensure they complete job duties
- Maintain cleanliness reports
- Monitor cleanliness in rooms/areas of control

Duty 3

General Summary of Duty 3 % of Time 10

Assists as necessary with other assigned duties and committees as assigned, i.e., CAC, Fire Safety, etc.

Individual tasks related to the duty.

- Completes reports as assigned.
- Participates in committees as assigned.
- Operates and monitors cameras from control center to ensure security and compliance of policies and rules throughout the facility.
- Assist Control Center Officer in security related tasks including zone checks, OMNI and CMIS moves, and lock changes.

Duty 4

General Summary of Duty 4 % of Time 10

Prevent prisoners from injuring other prisoners, employees, and themselves and from damaging property

Individual tasks related to the duty.

- Monitors prisoner behavior
- Write prisoner misconduct tickets.
- Assist in room/bed changes to facilitate room management
- Conduct searches for contraband.

Duty 5

General Summary of Duty 5

% of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Participate in required training, mobilizations, and emergency control activities.
- Accurately record pertinent information in the Control Center log.
- Communicate with shift supervisors, keeping them informed of pertinent information.
- Assist in supervising prisoner urine drops.
- Other duties as assigned.

Duty 6

General Summary of Duty 6

% of Time _____

Individual tasks related to the duty.

-

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

<u>NAME</u>	<u>CLASS TITLE</u>	<u>NAME</u>	<u>CLASS TITLE</u>

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

NOTE: Make a copy of this form for your records.

TO BE COMPLETED BY DIRECT SUPERVISOR

22. Do you agree with the responses from the employee for Items 1 through 20? If not, which items do you disagree with and why?

23. What are the essential duties of this position?

This is a gender based BFOQ position designated for female officers, enforcing rules and regulations while ensuring and respecting the privacy of female prisoners.

24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean and secure environment from the control center while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for custody and security as well as some treatment responsibilities on all shifts.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

27. I certify that the information presented in this position description provides a complete and accurate depiction of the duties and responsibilities assigned to this position.

Supervisor's Signature

Date

TO BE FILLED OUT BY APPOINTING AUTHORITY

28. Indicate any exceptions or additions to the statements of the employee(s) or supervisor.

29. I certify that the entries on these pages are accurate and complete.

Appointing Authority's Signature

Date

State of Michigan
Department of Civil Service
Capitol Commons Center, P.O. Box 30002
Lansing, MI 48909

Federal privacy laws and/or state confidentiality requirements protect a portion of this information.

POSITION DESCRIPTION

This form is to be completed by the person that occupies the position being described and reviewed by the supervisor and appointing authority to ensure its accuracy. It is important that each of the parties sign and date the form. If the position is vacant, the supervisor and appointing authority should complete the form.

This form will serve as the official classification document of record for this position. Please take the time to complete this form as accurately as you can since the information in this form is used to determine the proper classification of the position. **THE SUPERVISOR AND/OR APPOINTING AUTHORITY SHOULD COMPLETE THIS PAGE.**

2. Employee's Name (Last, First, M.I.)	8. Department/Agency Corrections 47-15
3. Employee Identification Number	9. Bureau (Institution, Board, or Commission) Correctional Facilities Administration
4. Civil Service Classification of Position Corrections Officer-E	10. Division Huron Valley Correctional Complex
5. Working Title of Position (What the agency titles the position) Industries Officer	11. Section Industries Building
6. Name and Classification of Direct Supervisor Corrections Shift Supervisor-1 (Sgt)	12. Unit Day Activity Shift
7. Name and Classification of Next Higher Level Supervisor Corrections Shift Supervisor-2 (Lt)	13. Work Location (City and Address)/Hours of Work 3511 Bemis Road, Ypsilanti, Mi 48197

14. General Summary of Function/Purpose of Position

Responsible for custody and security in the industries area as well as treatment responsibilities on the day activity shift. The goal is to provide a safe, clean, secure, efficient working environment while respecting the privacy of female prisoners and enforcing rules and regulations. This is a gender based BFOQ position designated for Female Officers working on the Day Activity Shift.

M. Warren
EXHIBIT NO. 10
T.J.B. 2-20-13

For Civil Service Use Only

15. Please describe your assigned duties, percent of time spent performing each duty, and explain what is done to complete each duty.

List your duties in the order of importance, from most important to least important. The total percentage of all duties performed must equal 100 percent.

Duty 1

General Summary of Duty 1

% of Time 40

Responsible for the custody of female prisoners in the Industries Building. Has direct contact with and knowledge of individual prisoners. Attempts to modify prisoner attitudes and behavior through interaction, on a one-on-one or a group basis. Monitors behavior, wellness and overall condition of female prisoners in a work environment.

Individual tasks related to the duty.

- Makes rounds to monitor prisoner behavior
- Enforces routine rules and policies
- Conducts shakedowns and searches of female prisoners including strip searches
- Gives direction to prisoners regarding daily activities
- Gives warnings/summaries/misconducts to modify behavior
- Completes reclass reports for job lists
- Completes work reports/block reports for prisoners

Duty 2

General Summary of Duty 2

% of Time 25

Ensures prisoner compliance with institutional and Department rules and regulations, policies and procedures.

Individual tasks related to the duty.

- Monitors prisoner activities and behavior
- Writes passes authorizing prisoners to attend activities
- Maintains regular pass log of prisoner pass activities
- Disseminates information, current rule changes, memos etc., to prisoners
- Takes formal and informal prisoner counts, maintain required logs, aids in preventing escapes, investigates for contraband articles and materials.

Duty 3

General Summary of Duty 3

% of Time 10

Participates as a member of a treatment team of counselors and work supervisors for the purposes of classification, reclassification, parole eligibility counseling and minor disciplinary procedures. Assists as necessary with other assigned duties. Assists in committees as assigned, i.e. CAC, Fire Safety, etc.

Individual tasks related to the duty.

- Assists in prisoner security screen reports
- Assist in obtaining information for PER reports
- Completes reports as assigned
- Participates in committees as assigned

Duty 4

General Summary of Duty 4

% of Time 10

Prevent prisoners from injuring other prisoners, employees and themselves and from damaging property.

Individual tasks related to the duty.

- Monitors prisoner behavior
- Writes prisoner misconduct tickets
- Maintains accountability of critical and dangerous tools.
- Conducts searches for contraband

11. Industries Officer

The Industries Officer, which no longer exists, supervised prisoners who worked in the sewing or dental factories.⁶⁵ The position was designated as a gender BFOQ position because of the need for shakedowns of female prisoners, particularly because of the possibility of a prisoner stealing dangerous tools.⁶⁶ This assignment did not require the conducting of strip searches, and Warren is unaware of any strip searches being generated from the area.⁶⁷

⁶⁵ Warren 163-164, 167

⁶⁶ Evans 106-107, Warren 162

⁶⁷ Warren 162

Duty 5

General Summary of Duty 5 % of Time 10

Ensure that proper standards of care and hygiene are maintained.

Individual tasks related to the duty.

- Monitors and observes toilet activities
- Monitors prisoner porters to ensure they complete job duties
- Maintains cleanliness reports
- Monitors cleanliness in rooms/areas of control

Duty 6

General Summary of Duty 6 % of Time 5

Miscellaneous other duties

Individual tasks related to the duty.

- Assists in supervision of large group activities outside the housing unit such as meals, movies, special entertainment, etc., as approved by the Deputy.
- Participates in required training, mobilizations, and emergency control activities
- Other duties as assigned.

16. Describe the types of decisions you make independently in your position and tell who and/or what is affected by those decisions. Use additional sheets, if necessary.

- Enforcing rules
- Writing passes to activities
- Monitoring cleanliness/caustic reports
- Conducting prisoner shakedowns
- Filling out log book

17. Describe the types of decisions that require your supervisor's review.

- Writing misconducts - minor and major
- Completing security classification screens
- Ordering supplies - janitorial and office
- Setting up porter schedules/laundry schedules

18. What kind of physical effort do you use in your position? What environmental conditions are you physically exposed to in your position? Indicate the amount of time and intensity of each activity and condition. Refer to instructions on page 2.

Must handle weapons and be able to pass necessary skill tests. Must be able to see, hear, smell for danger. Must be able to run, climb, lift, answer telephone, write reports and read reports.

19. List the names and classification titles of classified employees whom you immediately supervise or oversee on a full-time, on-going basis. (If more than 10, list only classification titles and the number of employees in each classification.)

<u>NAME</u>	<u>CLASS TITLE</u>	<u>NAME</u>	<u>CLASS TITLE</u>

20. My responsibility for the above-listed employees includes the following (check as many as apply):

- | | |
|---|--|
| <input type="checkbox"/> Complete and sign service ratings. | <input type="checkbox"/> Assign work. |
| <input type="checkbox"/> Provide formal written counseling. | <input type="checkbox"/> Approve work. |
| <input type="checkbox"/> Approve leave requests. | <input type="checkbox"/> Review work. |
| <input type="checkbox"/> Approve time and attendance. | <input type="checkbox"/> Provide guidance on work methods. |
| <input type="checkbox"/> Orally reprimand. | <input type="checkbox"/> Train employees in the work. |

21. I certify that the above answers are my own and are accurate and complete.

Signature

Date

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24. Indicate specifically how the position's duties and responsibilities have changed since the position was last reviewed.

25. What is the function of the work area and how does this position fit into that function?

To provide a safe, clean, secure, efficient work area for female prisoners while respecting the privacy of female prisoners and enforcing rules and regulations. This person is responsible for the custody and security in the Industries building as well as some treatment responsibilities on the Day Activity shift.

26. In your opinion, what are the minimum education and experience qualifications needed to perform the essential functions of this position.

EDUCATION:

High School graduate or completed GED
15 Semester or 23 term college credits in Human Services areas

EXPERIENCE:

8 level - None
9 level - One year experience at the 8 level

KNOWLEDGE, SKILLS, AND ABILITIES:

Satisfactory completion of the Department of Corrections Officer Academy
Must be able to qualify in all required emergency control programs
Successful completion of the Department's PA415 training
Required female offender training
Must complete special training for Residential Treatment Programs provided by the Department of Community Health, if applicable

CERTIFICATES, LICENSES, REGISTRATIONS:

NOTE: Civil Service approval of this position does not constitute agreement with or acceptance of the desirable qualifications for this position.

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Supervisor's Signature

Date

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Date