**Memorandum on Florence v. Board of Chosen Freeholders of the County of Burlington,**

**et. al, No. 10-945 (Granted Certiorari) by United States Supreme Court**

**on Institutional Blanket Strip Searches**

NSA’s Legal Affairs Committee (“Committee”) h unanimously recommended to NSA’s Management Subcommittee on behalf of NSA’s Board of Directors, NSA’s active involvement in the legal issue(s) of blanket strip searches in our nation’s jails. A Writ of Certiorari was previously granted in this case by the U.S. Supreme Court; and oral Argument will be heard by the U.S. Supreme Court on October 12, 2011.

 As is NSA practice, NSA  requested individual State Sheriff Associations to join the NSA Brief to demonstrate to the U.S. Supreme Court the gravity of the legal issues in the ongoing administration and operation of our nation’s jails.Over Thirty-Eight[38] State Sheriffs' Associations joined in with NSA lending support to NSA's argument that blanket strip-searches are permissible under the 4th Amendment to the U.S. Constitution.

**Legal Issues:**

Issue:  Whether the Fourth Amendment permits a jail to conduct a suspicionless strip search whenever an individual is arrested, including for minor offenses.  In plain English:  Does the United States Constitution permit the government to strip search every person admitted to a jail, even if there is no reasonable basis to suspect that the person has hidden weapons or contraband?

Facts:  The issue is whether or not a visual strip search for an arrestee before being placed with the general jail population (regardless of pretrial, conviction, major or minor offense) is constitutional under the Fourth Amendment.

In 1979, the Supreme Court decided in Bell v. Wolfish, 441 US 520, to uphold a jail policy requiring a visual strip search of every inmate (convicted and pretrial) after every contact visit from a person outside the institution.  Since Bell, a number of circuit courts have concluded that strip searches of arrestees charged with minor offenses may not be strip searched unless there is reasonable suspicion that the arrestee is concealing a weapon or other contraband.  From 2008 – 2011, three circuits have ruled differently (11th, 9th, and the lower court decision in this 3rd circuit case), ruling that a jail’s blanket policy of strip searching all arrestees upon entering a jail facility is reasonable, even in the absence of individualized suspicion.

The plaintiff in this case was arrested based on an outstanding bench warrant for some non-indictable civil contempt.  He was strip searched by one jail and after six days was transferred to another jail, where he was strip searched and subjected to a visual body cavity search. The searches at both jails were done per each institution’s policy (meaning one jail required visual body cavity and one didn’t). The 3rd Circuit found both of these searches to be constitutional, saying the searches were reasonable due to the jails’ interest in:  (1) the detection and deterrence of smuggling weapons, drugs or other contraband into the facility; (2) the identification of gang members by observing their tattoos; and (3) the prevention of disease, specifically Methicillin-resistant Staphylococcus aureus (MRSA).  The court also mentioned that a blanket policy helped the jails avoid an equal protection issue as it removed an officer’s discretion in deciding who to search.

There is no doubt that this issue is very important to all Offices of Sheriff, cities and counties across the United States because most, if not all, must contend with the dangers created by the smuggling of drugs, weapons and other contraband into their jails.

However, the dissent follows along the lines: “The majority sweeps away twenty-five years of jurisprudence, giving jailors the unfettered right to conduct mandatory, routine, suspicion-less body cavity searches on any citizen who may be arrested for minor offenses, such as violating a leash law or a traffic code, and who pose no credible risk for smuggling contraband into the jail.”

**Reasons for National Sheriffs’ Association to Submit a Merits Brief to the United States Supreme Court:**

In Bull v. City and County of San Francisco, 595 F.3d 964 (9th Cir. 2010) (en banc), the Ninth Circuit recently upheld the constitutionality of visually strip searching all arrestees before they enter the general jail population.  The record reveals that: (1) the city's jails, like other urban jails, face a severe and pervasive smuggling problem that threatens the safety of jail personnel, visitors, and inmates; (2) arrestees routinely attempt to smuggle contraband in their bodily orifices -- which can only be discovered through a visual strip search; and (3) drugs and weapons have been regularly discovered in the bodily orifices of persons arrested for minor offenses that do not involve drugs, weapons or violence. Thus, to ensure the safety of their personnel, visitors, and inmates, local jail officials need to be able to visually strip search all arrestees before they enter the general jail population.  The constitutionality of doing so is therefore of critical importance to most, if not all, cities and counties in the United States.

For further information/clarification on NSA’s Amicus Brief, please contact:

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