

UNITED STATES DISTRICT COURT  
District of Maine

LAURIE TARDIFF, individually, and )  
on behalf of others similarly situated, )  
 )  
Plaintiffs, )  
 )  
v. ) Civil No. 02-251-P-C  
 )  
KNOX COUNTY, et al., )  
 )  
Defendants. )

**PLAINTIFF'S MOTION FOR APPROVAL OF NOTICE TO THE CLASS**

Plaintiffs move this Court to approve notice of class certification under Fed.R.Civ.P. 23(b)(3) as required by Rule 23(c)(2)(B). Plaintiffs propose that individual notice be mailed to identified potential class members, if and when, Plaintiffs are able to generate a list of potential class members for the time period from November 19, 1996 forward. Further, in order to increase the likelihood of reaching the maximum possible number of potential class members, and because development of a mailing list seems unlikely, Plaintiffs propose additional notice by publication in three (3) newspapers, by radio, by local cable and off-air television, by press release and publicity, and by notice posted at the booking desk of the Knox County Jail. As grounds for this motion, Plaintiffs state the following:

1. Plaintiffs obtained available computerized booking data from the Knox County Sheriff's Department for a portion of the time period of November, 1996 through June, 2004. See Affidavit of Robert J. Stolt at Paragraphs 2 and 8. Plaintiffs are working to construct this data into a Microsoft Access database. Id at Paragraph 4.

2. The raw data retrieved from the jail was produced to the Defendant. Id at Paragraph 3. This data is a complete copy of the data obtained at the Jail by Plaintiff's computer experts and the "Excel files" previously provided to Plaintiffs by Defendants.

3. Since obtaining the electronic data, my office, including Keith Varner, Esq., Spencer Tracy, other members of the firm's staff and me, in conjunction with our computer consultants, has worked diligently to organize, sort and transfer the data obtained into a Microsoft Access Database. In organizing and transferring the data all of the original data fields and data tables have been preserved.

4. My office staff has had great difficulty in sorting and organizing the data because many of the database fields were either not completed or completed inaccurately by jail data entry employees. The information we retrieved from the jail had been entered initially in an extremely incomplete and haphazard manner.

5. Staff members of my office are currently working to validate and verify the electronic records by cross-checking each record of arrest, booking, housing, release, intake and identity in the data sets. This includes comparing the Spillman data with data obtained earlier in discovery. This earlier discovery consists of Microsoft Excel apparently randomly saved by Corrections Sergeant Costigan. The databases we are working with contain more than 300,000 lines of data. Each line must be individually examined to be either attached to the appropriate detainee or removed from the data set.

6. The data and records maintained by the jail have several significant time period gaps. As an example, there are no paper or electronic records for March, June and July, 1997 or for August, September, October, November and December 1998. There are no electronic records for the periods May through November 2001 and May through August 2002. There are few records for the period August 2002 to March 2003. The gaps in the electronic records may be able to be filled by paper records, but search of the paper records is an arduous process.

7. The data screening and organizing process has been made more difficult because of the poor quality of the data. The initial databases created at the Knox County Jail are incomplete, inaccurate, inconsistent, incoherent and, in many cases, incomprehensible. My office staff members have spent many hours trying to match and validate entries. We have reached the limit of our ability to refine the data electronically. We are now manually "scrubbing" the data to produce a reasonable list of class members.

8. All of my office staff members, to some degree, have been engaged in this scrubbing process. I anticipate that the production of a partially complete, useable database of some class members with reasonably correct identifiers and reasonably accurate arrest, booking, housing and release data will take many weeks if it can be produced at all.

9. After the data has been scrubbed, Plaintiffs propose to send individual notice by mail to all identifiable potential class members at the addresses recorded in the booking data provided by the Jail. Plaintiff is uncertain that booking data provided by the Jail will result in a usable mailing list of potential class members. A copy of the proposed notice designed to be sent by mail to potential class members, if any, identified by the electronic booking data, is attached to this motion as Exhibit A. Class counsel drafted the Notice to include "plain English" answers to likely questions of class members as required by the 2003 amendment to Rule 23. The website address on the notice will be changed to provide the correct address once the domain name is secured by class counsel. See Exhibit A at Paragraph 16. Plaintiffs propose to make the deadline for potential class members to file notices of exclusion 90 days from the date the individual notices are mailed. See *id* at 12.

10. Additional notice is necessary to reach the maximum possible number of potential class members and because development of a mailing list seems unlikely.

11. Plaintiffs propose posting a notice at the booking desk of the Knox County Jail. The proposed notice is attached as Exhibit B. Plaintiffs will provide the Defendants with an 11 x 14 version of this notice to be posted in a location that is visible to detainees during the booking process. Plaintiffs will also provide 500 copies on standard 8 ½ x 11 paper, which can be given out on request. Plaintiffs will replenish this supply on request. The 11 x 14 notice should remain posted for at least six months unless the Court orders a different time period.

12. Plaintiffs propose publishing a notice in three local newspapers. The proposed notice by publication is attached as Exhibit C. Plaintiffs propose that this notice be published three times each in the Times Record; The Courier Gazette; and The Camden Herald.

13. Plaintiffs further propose publishing a notice by advertising, press releases and publicity over local radio and television via local cable and off-air broadcast.

14. This case has received some publicity in local newspaper articles and on local radio and television broadcasts. These media publicity reports have generated some direct contact between some potential class members and class counsel. The individual notice will be mailed to those people and to any others who contact class counsel in the future, if they appear to meet the class definition.

15. This notice is filed in conjunction with Plaintiffs' motion, contemporaneously filed, for an "order in aid of identification of class members". Here, Plaintiffs ask the court to approve the concept of Plaintiffs proposal for class notification subject to identification of class members pursuant to Plaintiffs proposed order on its motion for "order in aid of identification of class members".

WHEREFORE, Plaintiffs move this Court to approve the notice plan and the attached notices of the Court's class certification decision pursuant to Fed.R.Civ.P. 23(c)(2)(B).

Dated: September 15, 2004

RESPECTFULLY SUBMITTED,  
the Plaintiffs, individually and on  
behalf of all others similarly situated,  
By their attorneys,

*/S/ Robert J. Stolt, Esq.*

Sumner H. Lipman, Esq.  
Robert J. Stolt, Esq.  
LIPMAN, KATZ & McKEE, P.A.  
227 Water Street, P.O. Box 1051  
Augusta, ME 04332-1051  
(207) 622-3711  
E-Mail: [slipman@lipmankatzmckee.com](mailto:slipman@lipmankatzmckee.com)  
[rstolt@lipmankatzmckee.com](mailto:rstolt@lipmankatzmckee.com)

Dale F. Thistle, Esq.  
LAW OFFICE OF DALE F. THISTLE  
103 Main Street, P.O. Box 160  
Newport, ME 04953-0160  
(207) 368-7755  
E-Mail: [dthistle@midmaine.com](mailto:dthistle@midmaine.com)

David M. Hoffman, Esq.  
15A New England Avenue, PO Box 554  
Summit, NJ 07901  
(908) 608-0333  
E-Mail: [dhoffman@david-hoffman-esq.com](mailto:dhoffman@david-hoffman-esq.com)

Frank Diprima, Esq.  
41 Constitution Way  
Morristown, NJ 07960  
(973) 656-0251  
E-Mail: [Diprimalaw@aol.com](mailto:Diprimalaw@aol.com)

UNITED STATES DISTRICT COURT  
District of Maine

LAURIE TARDIFF, individually, and )  
on behalf of others similarly situated, )  
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Plaintiffs, )  
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v. ) **Civil No. 02-251-P-C**  
 )  
KNOX COUNTY, et al., )  
 )  
Defendants. )

**AFFIDAVIT OF ROBERT J. STOLT**

I, Robert J. Stolt, first being duly sworn, do hereby depose and say as follows:

1. I am an attorney in good standing in the State of Maine and in the Commonwealth of Massachusetts and a principal in the law firm of Lipman, Katz and McKee, P.A., 227 Water Street, Augusta, Maine 04330. I am one of the attorneys for the Plaintiff above named and I am duly authorized to execute this Affidavit.

2. On July 8, 9 and 14, 2004, computer consultants retained by my firm, accompanied by Keith R. Varner, Esq. and Spencer Tracy, Legal Assistant, of my firm, obtained arrest, booking, housing, release and other data for all detainees booked into the Knox County Jail from November 19, 1996 through June, 2004 from computerized records maintained by the Knox County Sheriff's Department. Included in the electronic records obtained were databases used by the Knox County Jail and Knox County Sheriff in conjunction with proprietary law enforcement software manufactured by Spillman Technologies, Inc. (hereinafter "Spillman"). Also obtained were Microsoft Excel records and numerous other computer files and records.

3. A complete copy of all records obtained has been provided by my office to Defendants' attorney, Peter T. Marchesi.

4. Since obtaining the electronic data, my office, including Keith Varner, Esq., Spencer Tracy, other members of the firm's staff and me, in conjunction with our computer consultants, has worked diligently to organize, sort and transfer the data obtained into a Microsoft Access Database. In organizing and transferring the data all of the original data fields and data tables have been preserved.

5. My office staff has had great difficulty in sorting and organizing the data because many of the database fields were either not completed or completed inaccurately by jail data entry employees. The information we retrieved from the jail had been entered in an extremely incomplete and haphazard manner.

6. Staff members of my office are currently working to validate and verify the electronic records by cross-checking each record of arrest, booking, housing, release, intake and identity in the data sets. This includes comparing the Spillman data with data obtained earlier in discovery. This earlier discovery consists of Microsoft Excel apparently randomly saved by Corrections Sergeant Costigan. The databases we are working with contain more than 300,000 lines of data. Each line must be individually examined to be either attached to the appropriate detainee or removed from the data set.

7. To date we have incurred expenses in excess of \$63,000 in our effort to organize the data into a coherent and useable form. This amount does not include attorney and staff time.

8. The data and records maintained by the jail have several significant time period gaps. As an example, there are no paper or electronic records for March, June and July, 1997 or for August, September, October, November and December 1998. There are no electronic records for the periods May through November 2001 and May through August 2002. There are few records for the period of August 2002 to March 2003. The gaps in the electronic records may be able to be filled by paper records, but search of the paper records is an arduous process.

9. The data screening and organizing process has been made more difficult because of the poor quality of the data. The initial databases created at the Knox County Jail are incomplete,

inaccurate, inconsistent, incoherent and, in many cases, incomprehensible. My office staff members have spent many hours trying to match and validate entries. We have reached the limit of our ability to refine the data electronically. We are now manually "scrubbing" the data to produce a reasonable list of class members.

Dated: September 15, 2004

*/S/ Robert J. Stolt*  
Robert J. Stolt, Esq.

State of Maine  
Kennebec, ss.

Dated: September 15, 2004

Personally appeared before me the above-named Robert J. Stolt and swore to the truth of the foregoing statements.

Dated: September 15, 2004

*/S/ Kris A. Barron*  
Notary Public  
My Commission Expires:12/17/2008

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>DO NOTHING UNTIL FURTHER NOTICE</b>	<b>Stay in this lawsuit. Await the outcome. Give up certain rights.</b> By doing nothing, you keep the possibility of getting money or benefits from a trial or a settlement of this case. But, you give up any right to sue Knox County separately about the legal claims in this case. If this case settled, you will need to submit a timely claim form. You must keep class counsel informed if you change your mailing address.
<b>ASK TO BE EXCLUDED</b>	<b>Get out of this lawsuit. Get no benefits from it. Keep rights.</b> If you ask to be excluded and money or benefits are later awarded, you won't share in those. But, you keep your rights to sue Knox County separately about the same legal claims in this lawsuit. To be excluded, your Notice of Exclusion must be received by the Claims Administrator by _____, 20__.

**BASIC INFORMATION**

**1. Why did I get this notice?**

After you were arrested, you gave your name and address during booking at the jail. As part of the lawsuit, the County gave this booking information to the lawyers for the plaintiffs. From this information, it appears that you **may** be a class member. This is not an assurance that you are a class member.

**2. What is this case about?**

The plaintiffs claim that the Knox County Jail's strip search process is an illegal strip-search of people in the class. A strip-search is a visual inspection or focused look at a person's naked body. Plaintiffs say that during the strip search, people being admitted to the Jail are routinely strip searched by officers during the intake process. The officers require people to expose their body cavities and to squat and cough to expel items hidden in the body. Plaintiffs are seeking money damages for every person who was strip searched and a new policy providing people with privacy while they change into a jail uniform.

**3. What is Knox County's defense?**

Knox County defends the suit by denying any liability, and asserting that all searches that are the subject of the suit were constitutionally conducted, and that no persons searched were damaged by any such search.

**4. What is a class action?**

In a class action, one or more people, called "class representatives", sue on behalf of other people who have similar claims. All of the people with claims are called plaintiffs. Knox County, which is being sued, is the Defendant. The court will resolve the common issues for everyone in the class. The lawyers representing the class are called "class counsel."

**5. What are the requirements to be in the class?**

The Court has allowed the lawsuit to be on behalf of all those people who, between November 19, 1996 and December 31, 2004, were strip-searched at the Knox County Jail while waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon or drugs or a violent felony.

**6. What is a "violent felony"?**

The term "violent felony" is a Class A or B crime involving the use, attempted use, or threatened use of force, or a substantial risk that use of force may be used, to cause injury to another person or property. Examples of violent felonies include murder, manslaughter, rape, sexual assault, aggravated assault, kidnapping, burglary, robbery and arson.

**7. Are all strip-searches in jail illegal?**

There are times when correctional officers can legally strip-search a prisoner. This case does not claim that all strip-searches at the jail were illegal. Plaintiffs claim that the intake searches of people who were held before a first court appearance were illegal. This case does not concern strip-searches for cause or on return from work release. This case does not challenge any strip-searches of convicted prisoners.

**8. Is there any money available now?**

No. This case has not settled. The Court has not decided whether the County did anything wrong.

**9. How many people are there in this class action?**

Lawyers for the plaintiffs estimate that there are several thousand persons eligible for class membership.

**10. Do I have a lawyer in this case?**

## Exh A to Mot4App

The Court has decided that attorneys **Sumner Lipman and Robert Stolt** of Lipman, Katz & McKee, P.A., Post Office Box 1051, 227 Water Street, 2<sup>nd</sup> Floor, Augusta, Maine 04330, and **Dale Thistle** of The Law Offices of Dale F. Thistle, 103 Main Street, Post Office Box 160, Newport, Maine 04953-0160, may represent all of the class members. They are referred to as "class counsel". They are experienced in handling civil rights cases.

For more information on these lawyers, you can view their firm web site at: [www.lipmankatzmckee.com](http://www.lipmankatzmckee.com).

### **11. Should I get my own lawyer?**

You do not need to hire your own lawyer because class counsel is working on your behalf. If you want your own lawyer, you can hire one. If you want to bring your own case, you must ask to be excluded from the class action and file your own case. To file a case, you should hire your own lawyer.

### **12. Why would I ask to be excluded?**

If you want to bring your own case, you must ask to be excluded, also called "opting out" of the class action. Then you will not receive any money or other benefits from this case. However, you will not be legally bound by any judgment in this case. If you plan to file your own lawsuit for the illegal strip-search, you should exclude yourself. You will then need to retain a lawyer or enter a pro se appearance if you wish to assert your rights. You should consult a lawyer soon because once you are excluded, the statute of limitations will start to run. Your Notice of Exclusion should be sent to the Claims Administrator at Knox County Class Action, \_\_\_\_\_ . **It must be received by \_\_\_\_\_, 200\_\_\_\_\_.**

### **13. How will the lawyers be paid?**

If Class Counsel wins money or benefits for the class, they will ask the Court to approve payment of attorney's fees and expenses. If the Court grants this request, the fees and expenses will either be deducted from the settlement fund or paid separately by Knox County.

### **14. What happens next?**

The plaintiffs will seek information from the County and the County will seek information about the plaintiffs. There could be a trial. It is not known how long this will take. Counsel will need to contact you if there is a settlement or a trial. It is important that you send a written notice of any change of address to Knox County Class Action,

**Exh A to Mot4App**

\_\_\_\_\_. Please do not write to the Court directly. You should also inform the Post Office of your forwarding address.

**15. What do I need to do in order to be part of this case?**

To participate in this lawsuit, you do not have to do anything at this point except regularly receive and read your mail. If this case settles or a judgment is returned against the County, class counsel will need to contact you and you will have to return a form within a set time period.

In order to ensure that you are able to participate in any settlement or judgment, you must make sure that class counsel can reach you when it becomes necessary. If your address or telephone number changes, you must let the Class Administrator know this by sending written notice to: Knox County Class Action, \_\_\_\_\_. Please do not write to the Court directly.

**16. How can I get more information?**

Visit the website at \_\_\_\_\_.

## NOTICE OF CLASS ACTION

*A court authorized this notice. This is not a solicitation from a lawyer.*

- You **may** be a member of a class action against Knox County. The fact that you received this notice is not a guarantee that you are a member of the class. This notice is to inform you of the case and your legal rights.
- To be a class member you must meet all of the following requirements:
- **Time:** You were arrested between November 19, 1996 and December 31, 2004.
- **Type of custody:** You were held at the Knox County Jail after an arrest but before a bail hearing or first court appearance. This includes arrests on default and other warrants.
- **Offense:** The underlying offense for which you were arrested did not involve a weapon or drugs, and was not a violent felony.
- **Search:** You were required to go through a strip search process which took place before you were placed into a housing area or into a holding cell. A strip search process is one in which you were required to remove your clothes and either squat, cough, open your mouth and expose your body cavity while a corrections officer inspected and viewed your naked body.
- **Without cause:** If you were strip searched for cause, you are not in the class. An example of a strip-search for cause is a strip-search after a corrections officer finds drugs or a weapon in a person's clothing or has a reason to expect to find hidden contraband.
- Plaintiffs claim that the strip search process at the Knox County Jail is an unconstitutional strip-search. Plaintiffs claim that corrections officers routinely viewed and inspected people's naked bodies without having a valid reason to do so. A strip search process is one in which you were required to remove your clothes, and either squat, cough, open your mouth and expose your body cavity while a corrections officer inspected and viewed your naked body.
- Plaintiffs seek money damages from Defendant Knox County for the harm the strip searches caused to class members and a change in the practice.
- Knox County defends this suit by denying any liability, and asserting that all searches that are the subject of the suit were constitutionally conducted, and that no persons searched were damaged by any such search.
- The Court has not yet decided whether Knox County did anything wrong.

**Any questions? Read on for more information.**

**KNOX COUNTY JAIL STRIP-SEARCH LAWSUIT**

Laurie Tardiff v. Knox County, et al. Civil Action No. 02-251-P-C

**You may be a class member** in a class action lawsuit which was certified by the Federal District Court of Maine on behalf of current and former detainees at the Knox County Jail who:

- (1) After November 19, 1996;
- (2) Were held in custody at the Knox County Jail before a bail hearing or a first court appearance; and
- (3) Were not arrested for crimes involving drugs or weapons, or a violent felony; and
- (4) Were strip searched, without an evaluation to determine if there was a reason to suspect possession of hidden contraband.

You must meet **ALL** of the above conditions to be a class member. You are **not** a class member if you were a convicted prisoner serving a sentence, or if you were strip-searched for cause, for example after an officer discovered drugs or contraband in your possession.

The plaintiffs say that the jail's strips search procedure is an illegal strip-search because jail officers did not have a valid reason for the search. The case seeks money damages for the plaintiffs and new policies to protect a detainee's privacy during intake.

Knox County denies the allegations. Knox County says that its officers did strip search detainees as a routine matter. The County says its officers were searching detainees' bodies for contraband. The County claims the officer had cause to do so.

The Court certified this case as a class action but the Court has not yet decided whether Knox County did anything wrong.

**If you believe you are a class member**, write to: Sumner H. Lipman, Lipman, Katz & McKee, P.A., P.O. Box 1051, 227 Water Street, 2<sup>nd</sup> Floor, Augusta, Maine 04332-1051. Explain why you believe you are a class member. Include your full name, an address and telephone number where you can be reached when you are released from the jail, and, if possible, the date you expect to be released. You will receive the full notice of the lawsuit.

To keep counsel informed of your address, write to: Knox County Class Action, \_\_\_\_\_ . Please include your name, date of birth, and social security number. Be sure to include an address where you can be reached when you are released from the jail.

**ASK FOR A COPY OF THIS NOTICE – You are entitled to one!**

**KNOX COUNTY JAIL STRIP-SEARCH LAWSUIT**

Laurie Tardiff v. Knox County, et al. Civil Action No. 02-251-P-C

**You may be a class member** in a class action lawsuit which was certified by the Federal District Court of Maine on behalf of current and former detainees at the Knox County Jail if you meet ALL of the following conditions:

- (1) You were held at the Knox County Jail between November 19, 1996 and December 31, 2004; and
- (2) You were held in custody at the jail **before** a bail hearing or a first court appearance;
- (3) You were **not** arrested for crimes involving drugs or weapons, or a violent felony; and
- (4) You were strip-searched without an evaluation to determine if there was a reason to suspect possession of hidden contraband.

A strip search process is one in which you were required to remove all of your clothes, and either squat, cough, open your mouth and expose your body cavity while a corrections officer inspected and viewed your naked body.

*You are **not** a class member if you were a convicted prisoner serving a sentence, **or** if you were strip-searched for cause, for example after an officer discovered drugs or contraband in your possession.*

**If you believe you are a class member, write to:**

Explain why you believe you are a class member. Include your full name, current address

**Knox County Jail Strip-Search Lawsuit**  
Laurie Tardiff v. Knox County, et al. Civil Action No. 02-251-P-C

You may be a member of this class action lawsuit if you meet **ALL** of the following conditions:

- (1) You were held at the Knox County Jail after October 14, 1996;
- (2) You were held in custody at the jail before a bail hearing or a first court appearance;
- (3) You were not arrested for crimes involving drugs or weapons, or a violent felony; and
- (4) You were strip-searched without an evaluation to determine if there was a reason to suspect possession of hidden contraband.

*You are **not** a class member if you were a convicted prisoner serving a sentence, or if you were strip-searched for cause, for example after an officer discovered drugs or contraband in your possession.*

**If you believe you are a class member, write to:**

Explain why you believe you are a class member. Include your full name, current address