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## REPORT OF STUART GRASSIAN, 2009 Misc. Filings LEXIS 8675

United States District Court for the Eastern District of New York

99-CV-2844, (DRH) 99-CV-3126, (DRH) 99-CV-4238 (DRH)

August 2, 2009

### Reporter

2009 Misc. Filings LEXIS 8675 \*

In Re: Nassau County Strip Search Cases

Expert Name: Dr. STUART EDWIN GRASSIAN, M.D.

### Text

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U.S Dist Ct, Eastern Dist NY.

Expert Report Regarding General Damages

My name is Stuart Grassian M.D, I am a Board-certified psychiatrist, licensed to practice medicine in the Commonwealth of Massachusetts. In addition to my clinical practice, I have substantial experience in interviewing and evaluating individuals who have been subjected to strip-search procedures, including in both class-action and individual lawsuits suits brought in federal courts in the states of New York, Massachusetts, and Texas. My c.v. Is attached hereto, as is a list of cases in which. I offered testimony over the last five years.

In the present circumstance, I was retained by the law firm of Giskan, Solotaroff, Anderson & Stewart LLP and asked to provide my opinion regarding the issue of general damages resulting from strip-search procedures, and to review and comment upon the expert opinions of Paolo Carozzo and Adam Schulman, offered by the defendants in this case. For this purpose, I reviewed a number of documents, a list of which is attached hereto. My professional fee for this work is \$ 360/hour.

Opinion 1. General and [\*2] Special Damages.

During the course of my professional work in this area, I have evaluated a number of individuals who experienced particular, severe psychiatric sequelae after being strip-searched, <sup>1</sup> Such individuals often have a history predisposing them to such particularized harm - for example, a past history of sexual abuse or rape, or a strong cultural aversion to exposure of the body, and so on. Yet from the many evaluations that I have conducted, it has been evident that even those individuals who manage the indignity and stress of strip search without becoming overtly psychiatrically symptomatic invariably experience the procedure as degrading, offensive, and inherently humiliating This reality comes as no surprise. When we speak of "human dignity" in this context, we should think of that term's opposites - indignity, indignation. Both my clinical and my forensic experience have taught that all people have a need to be treated with respect, with dignity - not to be disempowered and humiliated by another who is more powerful than they. The need for such dignity is especially strong when one individual does have power over another, or when one individual is expected to [\*3] expose himself (emotionally or physically) in front of another.

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<sup>1</sup> For example, see

Blackburn v. Snow, 771 F.2d 556;

1985, and

Adedeji v. U.S., 782 F.Supp. 688.,

1992.

It is interesting that in his report, Dr. Schulman casually dismisses the intrusion on the patient's sense of dignity inherent in a doctor's physical exam: "Removing your clothes in the presence of a doctor for a physical exam may be embarrassing, but it does no injury to your human dignity." His comment reveals his naivete regarding the issue. In fact, medical students are taught not to be present while the patient is disrobing. Leaving the room helps preserve the patient's dignity; being present would be little more than becoming a voyeur, humiliating the patient. And, they are taught a technique in the complete physical examinations that allows the patient to be entirely covered except, sequentially, for the area now being examined.<sup>2</sup> Consider some of the maneuvers demanded during a police strip search - for example, opening the mouth wide and moving the tongue from side to side. Would a physician ever insist the patient perform this slightly grotesque maneuver while naked? Clearly [\*4] not. Medical students are also taught the importance of a sense of formality while examining a new patient - for example, that being properly dressed and addressing the patient by her surname will help create a sense of propriety and dignity. Similar considerations apply in mental health treatment, when it is a person's private thoughts and feelings, rather than his body that is exposed. There is a formality required, a delicacy in probing into potentially uncomfortable areas, empathy and respect when the individual is too uncomfortable to expose certain feelings or thoughts or parts of his history.

The subjective experience of personal dignity, of having self-respect and of being treated with respect, is a major force in everyday life. And assaults on self-esteem and dignity are unfortunately not uncommon. This is especially true in situations where there is an [\*5] inequality of power between the parties. In my clinical work, I have seen a great variety of such assaults which are far less onerous and intimidating than a police strip search, yet can still cause great harm. An employer ridicules out loud an employee for his foreign accent; a landlord screams insults and racial epithets at a tenant who is behind in his rent; an attractive young woman scornfully and publicly rejects an inept would-be suitor's request for a date. In one way or another, all of these involve inequalities of power. And each of them will cause harm to the individual's sense of dignity and self-respect. There is something intrinsically shameful in that feeling of disempowerment, of being in some way less than the person exerting power. Indeed, as we have witnessed from time to time in gruesome, headline-making news stories, any of them can result in an explosion of rage and shame, even murder. Yet in fact clearly none of them involves the degree of power inequality experienced by the plaintiffs herein. Affronts to dignity are not uncommon in life, and they can be so injurious as to result in mayhem or even death.

And, none of them involves the forced exposure of [\*6] one's naked body. There is something especially distressing about violations of bodily integrity - the forced exposure of the body, or of bodily functions -- even in situations where there is no inequality of power, no feeling of disempowerment. Passing gas in a public setting, inadvertently exposing a private part of the body - any of these can result in derision and humiliation. But when these two forces are both present -- both the feeling of powerlessness and also the humiliation of forced public exposure - the effect of each will be multiplied by the other.

There is, in short, a powerful and visceral reaction when one individual exerts power and control over another and treats that individual in a manner that is intrinsically debasing and humiliating. An arbitrary and unconstitutional strip search is an indignity; it will inevitably result in indignation and humiliation. It is not difficult for anyone to imagine the outrage and humiliation of an individual just deprived of his freedom who is then subjected to a strip search by his captors.

There are many insults to human dignity which are common enough to be readily appreciated by a jury, and the degradation, the indignity, [\*7] of strip searches - the forced nakedness and the degrading maneuvers demanded of the individual subjected to the search - are especially palpable injuries.

Opinion 2, Statements of Professor Carozzo and Dr. Schulman.

## 2.1. Psychological Nature of the Harm.

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<sup>2</sup>The technique involves using two sheets, one covering the upper body, the other the lower. Only the space between the sheets is exposed as the examination moves from upper torso downward - thus, for example, only the abdomen, or one breast, can be exposed at a time, while the rest of the body is covered.

Both of the defendant's experts opine that psychological terms - such as embarrassment, humiliation, distress, and so forth - cannot be employed in describing the presumed and general damages resulting from the intrinsic harm to dignity inherent in being subject to a strip search. I would respectfully but firmly disagree. These damages are not physical, nor economic; they are psychological in nature -- the harm inherent in the assault against the individual's dignity, his self-respect and sense of personal integrity,

Assaults to self-esteem and dignity by people in power are, indeed, not at all uncommon, and cause an inevitable, intrinsic, psychological harm. Of course, there are individuals who will be especially vulnerable, who will experience a special degree of harm. But anyone exposed to such indignities will be harmed. I have been asked whether there are subgroups of people who would not be so affected -- for [\*8] example, antisocial personalities. or individuals who so dissociate during the strip search as to become numb and feel nothing.

The answer in each case is no. Indeed, individuals with antisocial personalities depend even more than healthier people on continual reinforcements of their sense of power and control and thus, if anything, are likely to have more severe reactions to the experience of loss of control and dignity. And as for dissociation, this phenomenon is a defense mechanism against severe stress. Individuals who dissociate during a very stressful situation eventually will express the emotion they have been bottling up.<sup>3</sup>

It is precisely this inherent, general, inevitable harm, which is the "general harm" at issue in this matter. Yet clearly, by their own admission., neither Professor Carozza nor Dr. Schulman have any professional experience in speaking with individuals who have experienced [\*9] such harm, in order to understand their experience of it.

## 2.2 Comparable Situations.

The defendant's experts compare the harm to human dignity inherent in a strip search procedure with that inherent in genocide, slavery, torture, and so forth. They conclude that snip search is a far less severe assault in comparison with these atrocities.

Clearly, this is not a difficult conclusion to reach. Indeed, it seems quite obvious. Yet at the same time, it is a rather odd argument. The victim of genocide, or slavery, or torture, has obviously lost a great deal beyond the loss of his human dignity. Such atrocities result in physical agony, in the loss of freedom, even in death - with such atrocities, dignity inevitably takes a distant place in the mind of the victim. Indeed, many victims of such atrocities lose all concern with their own dignity; in their desperation, they become utterly debased.

Why, then, do these experts use such atrocities as a point of comparison? It is not because the harm to the personal dignity of the victims of such atrocities is really what they have studied. It is, instead, the dignity of the entire global community, which is debased by such atrocities. [\*10] The defendants' experts have apparently spent much of then-professional life contemplating issues of biomedical ethics: For example, if an individual with a terminal illness wishes to end his life rather than enduring pain and the gradual decline of his quality of life, does he have a right to do so, or rather is the human dignity of the global community so offended by this contemplated euthanasia that he does not have the legal right to make such a decision? Similarly, if technology would allow the cloning of a human being, would an individual's attempt to create his own clone violate the human dignity?

In short, the defendants' experts have studied situations in which the individual or the governmental entity's right of self-determination must be weighed against the dignity of the global community. For example, the Holocaust is unacceptable because the right of a State to determine its population future cannot outweigh the debasement of human dignity in its decision to destroy part of its own population,

While the defendants' experts certainly struggle with important issues in their professional lives, their arguments really have no relevance in this case. Indeed, the [\*11] defendants' expert reports miss the central point here: The

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<sup>3</sup>This is why, for example, we see people fall apart emotionally after they have successfully coped with a stress. The emotions bottled up by those who dissociate may be released immediately after the stress ends, or at may fester for years, causing an erosive damage over time.

issue in the present case is not one involving the global community. It is, instead, about a much simpler issue - the assault to the human dignity of the actual victims of an unconstitutional act, and the task of the jury to fix an amount in general damages to approximate that harm.

### Opinion 3. Conclusions.

There is an inherent harm to the personal dignity of the plaintiffs in the present case, one that; can readily be appreciated. By their very nature, the illegal police strip search procedures at issue here have an overwhelming tendency to cause injury to those subjected to it. While some plaintiffs may indeed have been especially vulnerable, and especially injured, by being strip-searched, there is a common, a universal harm - a humiliation and degradation which is inherent in the procedure itself. This harm is certainly not a trivial one.

If allowed to provide expert testimony in this matter, I would act attempt to define the amount of general damages caused, a task that would seem ultimately to be reserved for the jury. I would, however, attempt to clarify and expand upon the ideas presented herein -- for [\*12] example, the role of power imbalance in creating violations of dignity; the relationship between exposure, bodily integrity, vulnerability, and shame; the additional burden created when the individual experiences the. exertion of power as arbitrary and capricious and so forth. That is, I believe my testimony could be helpful to the jury's understanding of why certain actions might seem to them to be particularly offensive and harmful, and why other actions might not.

Signed under pains and penalties of perjury, this 2nd day of August. 2009.

/s/ **Stuart Grassian**, M.D.

**Stuart Grassian**, M.D.

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