

City Ruled Liable for Automatic Strip Search of Misdemeanants

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A federal judge has found New York City liable for automatically strip-searching inmates at Rikers Island and other city jails who have been arrested for misdemeanor drug and weapons charges.

In [*McBean v. City of New York*](#), 02 Civ. 5426, Southern District Judge Gerard Lynch yesterday granted summary judgment to a class of jailed defendants. They claim the city violated the U.S. Constitution by conducting the searches without reasonable suspicion that the arrested, but not convicted, individuals were concealing contraband as they entered the jails.

"[I]t was undisputed that at the time those searches were performed, they were undertaken without the searching officers' knowing any facts other than the person's status as a misdemeanor-detainee, and therefore indiscriminately and without reference to 'the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest,'" Judge Lynch wrote, quoting the Second Circuit cavity search case of *Weber v. Dell*, 804 F.2d 796 (1986). "On these facts, the searches cannot have been supported by reasonable suspicion."

He found the city liable for strip-searching between July 15, 1999, and Oct. 4, 2007, those arrested for misdemeanor narcotics and weapons offenses without reasonable suspicion. He certified the class and appointed Richard Emery of Emery, Celli, Brinckerhoff & Abady as class counsel.

In a memorandum, New York City had argued that Judge Lynch should dismiss the claims because "like felony detainees, [these misdemeanants] could never legitimately claim that they had a 'right' not to be strip-searched."

But Judge Lynch said this position "gravely misconstrues" controlling precedent.

"It is bedrock law that whatever the relevant misdemeanor charge—whether it relates to narcotics or weapons—all misdemeanants have a right not be to strip-searched at intake absent reasonable suspicion," Judge Lynch said. "To the extent that defendants suggest that strip searches of narcotics and weapons misdemeanants do not implicate the Fourth Amendment, this argument is contrary to precedent and wholly without basis."

That "bedrock law" is *Weber v. Dell*, Judge Lynch said.

He said he was unable to reach the "novel" issue of "whether a certain type of misdemeanor can be plucked from the purview" of *Weber* because the officers here were "wholly unaware whether a particular detainee had been arraigned on narcotics-weapons-related charges."

Even so, the judge made it clear how he would decide that issue if he had to, saying, "There appears to be no support in this circuit's precedent for the proposition that a bare misdemeanor charge is sufficient to establish reasonable suspicion that a detainee is secreting contraband."

Mr. Emery explained that the putative class he proposed in this litigation had to intervene in 2004 because the terms of a proposed settlement in *McBean* had been narrowed to exclude narcotics and weapons misdemeanants. The original *McBean* plaintiffs and the city ultimately reached a settlement approved by Judge Lynch in 2006.

During extended discovery for his putative class, Mr. Emery said, the court learned that the city, despite representing it had changed its policy in 2002, continued to strip-search post-arraignment detainees.

Mr. Emery said yesterday the decision affects "a massive number of people."

"Rikers Island is one of the largest, most troubled facilities in the country," he said. "The judge is respecting the constitutional rights of people who are presumed innocent."

Judge Lynch went on to dismiss, without prejudice, claims challenging strip searches conducted by the Department of Corrections that are not part of the intake process.

He said introduction of these claims was "problematic," because "they arise under different factual circumstances and do not raise common questions of law with the claims raised by the original plaintiffs."

Assistant Corporation Counsels Genevieve Nelson, Karl J. Ashanti, Baree Fett and Gabriel Harvis represented the city. A spokeswoman for the Law Department said the city is reviewing the decision and weighing its legal options.

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