

RICHARD ALLAN POND
(DOB: March 25, 1952)

THE ALBERT LEWIN'S CIVIL RIGHTS CASE

**LETTER OF SUSPENSION
CIVIL COMPLAINT OF ALBERT LEWIN
BOSTON GLOBE ARTICLES
POND'S ANSWERS TO INTERROGATORIES
DEFENDANT OFFICER'S MOTION IN LIMINE
PLAINTIFF'S MOTION TO TAKE VIDEOTAPED DEPOSITION
AFSCME UNION LETTER
SPECIAL JURY VERDICT
AGREEMENT FOR JUDGMENT**

Records date from July 22, 1988 through October 10, 1995

Sources:

**Suffolk County Superior Court
Boston Public Library**

Total Pages: 35



Commonwealth of Massachusetts
Suffolk County Sheriff's Department



ROBERT C. RUFO
SHERIFF

July 22, 1988

JOHN M. BRASSIL
SPECIAL SHERIFF / SUPERINTENDENT

Officer Richard Pond
933 Metropolitan Avenue
Hyde Park, MA. 02136

"EXHIBIT E"

Dear Officer Pond:

This letter will serve to notify you that effective Monday, July 25, 1988 you are suspended from work for a period of fifteen working days as a result of your actions while in the employ of the Suffolk County Sheriff's Department. You are charged with failure to submit written reports in violation of Department policy. The circumstances surrounding this incident are as follows.

On Saturday, May 14, 1988 at approximately 3:00 P.M., you instructed an inmate to return contraband to his room. This inmate was uncooperative and refused to follow your instructions requiring that the inmate be returned to his room prior to the expiration of the inmate recreation period. Policy requires that written reports be submitted for infractions of jail rules prior to the completion of your shift. Failure by staff to submit written reports is a serious violation of this department's policies and procedures.

You are formally put on notice that in the event you continue to violate departmental policy, I will have no alternative but to recommend to the Sheriff that further disciplinary action be taken against you. A copy of this letter will be placed in your permanent personnel file and pursuant to the Union Contract you may file a counter statement to the contents of same.

Very truly yours, 1

John M. Brassil
Special Sheriff/Superintendent

JMB:rph

I, Officer Pond acknowledge that I have read the foregoing letter and further understand that a copy of same shall be placed in my permanent personnel file.

Officer Richard Pond

1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

91-3176

ALBERT LEWIN)
)
v.)
)
JOSEPH FITZPATRICK, RICHARD)
POND, RICHARD FLYNN, RUSSELL)
CHICKERING, AND VICTOR)
WELLINGTON)

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
1993

MAR 13 1991

MICHAEL JOSEPH
CLERK OF COURT

COMPLAINT

Introduction

1. This is an action for money damages brought by a pretrial detainee who was assaulted and beaten by guards while incarcerated at the Suffolk County Jail at Charles Street. The plaintiff seeks relief for violation of G.L. c.12, §11I, 42 U.S.C. §1983, and for the common law tort of assault and battery, and intentional infliction of emotional distress.

Parties

2. Plaintiff Albert Lewin is currently a resident of Kingston, Jamaica. At all times relevant to this complaint, the plaintiff was confined at the Suffolk County Jail on Charles Street ("Charles Street Jail") in the City of Boston, in the state of Massachusetts, was a resident of Massachusetts and was a citizen of the United States.

3. Defendants Joseph Fitzpatrick, Richard Pond, Russell Chickering and Victor Wellington were, at all times material to this Complaint, employed by Suffolk County as guards at the

Charles Street Jail. Defendants Fitzpatrick, Pond, Chickering and Wellington held the rank of officer.

4. Defendant Richard Flynn was, at all times material to this Complaint, employed by Suffolk County as a guard at the Charles Street Jail. Defendant Flynn held the rank of lieutenant.

5. The defendants acted under color of law, statutes, ordinances, regulations, customs and usages of the Commonwealth of Massachusetts.

Facts

6. On or about May 14, 1988, plaintiff was detained at the Charles Street Jail without bail pending his trial on an indictment charging him with the murder of a Boston City Police Officer, Sherman Griffiths. Plaintiff was later found not guilty of this charge.

7. Plaintiff's cell #39 was located on the second tier of the south side of the east wing of the jail. It was the eleventh cell from the guardroom floor.

8. On Saturday, May 14, 1988, plaintiff was on the "flats" during afternoon recreation. He was standing with a towel around his neck, as he had the habit of doing, holding his Bible, and conversing with a fellow inmate.

9. Defendant Flynn, the floor lieutenant at the mail jail, alerted defendant Pond that plaintiff was in contravention of a rule announced the previous morning that inmates were not allowed to have towels during afternoon recreation.

10. Defendant Flynn then ordered plaintiff to return his towel to his cell. Lewin agreed to go back to his cell voluntarily.

11. Defendant Flynn deviated from normal procedure by sending two officers, defendants Pond and Fitzpatrick, to accompany plaintiff to his cell. Defendant Chickering, who was the two tier officer at the time, would normally have been responsible for Lewin's return to his cell.

12. Defendants Pond and Fitzpatrick frustrated plaintiff's efforts to place his towel in the cell through the bars. Defendant Fitzpatrick grabbed plaintiff's arm and pushed him forcibly into the cell. Defendant Fitzpatrick then pushed plaintiff on the floor and tipped a steel bed, weighing about two hundred pounds, on top of him. The fall of the bed produced a loud noise and resulted in plaintiff being pinned to the ground.

13. Defendant Pond then entered the cell and stood on the bed preventing plaintiff from moving while defendant Fitzpatrick punched and kicked plaintiff continuously in the head, face, and chest. As a result of this attack plaintiff was bleeding profusely from his nose and mouth. He lay prostrate on the ground, unable to move, for about two or three hours and did not leave his cell again until the following day.

14. Shortly after the incident, defendant Chickering entered plaintiff's cell, cleaned some of the blood off the floor, and left with the towel. A large blood stain of approximately one and one half square feet remained on the floor. Plaintiff was

lying on the floor of his cell, crying and moaning during the time defendant Chickering was inside the cell.

15. Around 6:00 that evening, defendants Chickering and Wellington entered plaintiff's cell and righted his bed. At the time, plaintiff was still lying on the floor. They asked plaintiff whether he "was talking." Plaintiff did not respond.

16. During the incident, defendant Flynn was standing on the guardroom floor in full view of plaintiff's cell. He did not act to curtail the violence.

17. Plaintiff sustained serious injuries as a result of the unprovoked attack. Plaintiff had two black eyes, one of which was swollen shut, an inflammation of the right head and lower back, pain in the chest and legs, difficulty breathing, and he was coughing up of blood.

18. Despite these serious injuries, defendants did not seek medical care for plaintiff.

19. The following morning, Sunday, May 15, 1988, plaintiff asked for grievance papers from the shift commander. He never received any response to his request. The shift commander did not refer plaintiff for medical care.

20. On Monday, May 16, 1988, plaintiff was able to get to a telephone to call his attorneys. Plaintiff did not receive any medical care until Monday, May 16, after his attorneys contacted the jail and reported the beating.

COUNT ONE (42 U.S.C. §1983 -- CIVIL RIGHTS VIOLATIONS)

21. The plaintiff repeats and realleges paragraphs 2 through 20 as if fully set forth herein.

22. By forcing plaintiff into a cell and physically beating and abusing him, the defendant deprived the plaintiff of the following clearly established and well-settled federal constitutional rights established pursuant to the 8th and 14th Amendments of the United States Constitution and actionable under Title 42 U.S.C. §1983:

- a. Freedom from intimidation and humiliation;
- b. Freedom from summary punishment and unauthorized punishment; and
- c. Freedom from cruel and unusual punishment.

23. By their failure to provide the plaintiff with immediate and adequate medical attention after the plaintiff was severely beaten and injured, the defendants exhibited deliberate indifference to the plaintiff's serious medical needs.

24. By their actions, the defendants subjected the plaintiff to these deprivations knowingly, intentionally, willfully, purposefully, maliciously and sadistically.

25. As a direct and proximate result of the acts and omissions of the defendants, the plaintiff was forced to endure great physical and mental pain and suffering and has sustained permanent physical and mental injury.

COUNT TWO G.L. c. 12, §11I -- CIVIL RIGHTS VIOLATIONS)

26. The plaintiff repeats and realleges paragraphs 2 through 20 as if fully set forth herein.

27. By forcing plaintiff into a cell and physically beating and abusing him, the defendants deprived the plaintiff of the following clearly established and well-settled rights under Articles 1, 10, 12 and 26 of the Massachusetts Declaration of Rights, all of which are actionable under G.L. c.12, §11H and I:

- a. Freedom from intimidation and humiliation;
- b. Freedom from summary punishment and unauthorized punishment; and
- c. Freedom from cruel or unusual punishment.

28. By their failure to provide the plaintiff with immediate and adequate medical attention after the plaintiff was severely beaten and injured, the defendants exhibited deliberate indifference to his serious medical needs.

29. By their actions, the defendants subjected the plaintiff to these deprivations knowingly, intentionally, willfully, purposefully, maliciously and sadistically.

30. As a direct and proximate result of the acts and omissions of the defendants, the plaintiff was forced to endure great physical and mental pain and suffering and has sustained permanent physical and mental injuries.

COUNT THREE (42 U.S.C. §1983 -- CONSPIRACY TO VIOLATE CIVIL RIGHTS)

31. The plaintiff repeats and realleges paragraphs 2 through 20 as if fully set forth herein.

32. Defendants Flynn, Pond, Fitzpatrick, Wellington and Chickering conspired to violate plaintiff's civil rights. Defendant Flynn, who sent two officers to accompany plaintiff to his cell when he was going there voluntarily, conspired with defendants Pond and Fitzpatrick to isolate plaintiff in his cell and physically abuse him. Defendants Chickering and Wellington participated in the plan to deprive plaintiff his civil rights in that they conspired to cover up the actions of their fellow officers by removing the blood from the cell floor, by uprighting the bed which was used to restrain plaintiff, by intimidating plaintiff to not speak to others about the incident and by failing to provide him with medical care.

33. By their conspiratorial actions defendants deprived plaintiff of the following clearly established and well-settled federal constitutional rights established pursuant to the 8th and 14th Amendments of the United States Constitution:

- a. Freedom from intimidation and humiliation;
- b. Freedom from summary punishment and unauthorized punishment; and
- c. Freedom from cruel and unusual punishment.

34. By their conspiratorial actions defendants deprived plaintiff immediate and adequate medical attention after the plaintiff was severely beaten and injured. The defendants exhibited deliberate indifference to the plaintiff's serious medical needs.

35. As a direct and proximate result of the conspiratorial actions of the defendants, plaintiff was forced to endure great physical and mental pain and suffering and has sustained permanent physical and mental injuries.

COUNT FOUR (ASSAULT AND BATTERY)

36. The plaintiff repeats and realleges paragraphs 2 through 20 as if fully set forth herein.

37. Defendants Fitzpatrick and Pond committed the common law tort of assault and battery against plaintiff.

38. As a result thereof, the plaintiff was seriously and permanently injured, and suffered great pain and anguish of mind and body.

COUNT FIVE Intentional Infliction of Emotional Distress

39. The plaintiff repeats and realleges paragraphs 2 through 20 as if fully set forth herein.

40. Defendants committed the common law tort of intentional infliction of emotional distress by conspiring to assault and batter plaintiff, by severely beating the plaintiff, and by conspiring to deprive, and by depriving plaintiff medical care.

41. Said defendants actions were intentional, extreme, outrageous and beyond all bounds of decency that should be tolerated in a civilized community.

42. As a result thereof, the plaintiff suffered great emotional pain and anguish.

WHEREFORE, plaintiff respectfully prays that this Court:

1. Allow compensatory damages.

2. Allow punitive damages.
3. Allow attorney fees, costs and interest.
4. Grant such other relief as is necessary, appropriate, equitable or just.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.

Albert Lewin

By his attorneys,

Patricia Garin

Patricia Garin

BBO# 544770

Max D. Stern

BBO# 479560

Stern, Shapiro, Rosenfeld
& Weissberg

80 Boylston Street

Suite 910

Boston, MA 02116

(617) 542-0663

Dated: ~~April~~ ^{May} 13, 1991

Databases selected: Boston Globe

Suit accuses five jail guards of beating Lewin

Doris Sue Wong, GLOBE STAFF. Boston Globe (pre-1997 Fulltext). Boston, Mass.: May 14, 1991.

Abstract (Summary)

The lawyers said that [Richard Pond] stood on the bed while [Joseph Fitzpatrick] punched and kicked [Albert Lewin] repeatedly in the head, face and chest. [Richard Flynn] allegedly watched and did nothing to stop the attack, which the lawyers said left Lewin unable to move for hours, coughing up blood. Shortly after the beating, while Lewin was on the floor moaning, [Russell Chickering] allegedly entered the cell, cleaned some of the blood off the floor and left with the towel.

Full Text (356 words)

Copyright Boston Globe Newspaper May 14, 1991

A civil rights suit was filed yesterday against five Suffolk County Jail guards, alleging that they took part in or helped to cover up an unprovoked attack on Albert Lewin three years ago, when he was awaiting trial in the fatal shooting of a Boston police detective.

Filed in Suffolk Superior Court, the suit names Richard Flynn, a lieutenant at the Suffolk County Jail, and jail officers Joseph Fitzpatrick, Richard Pond, Russell Chickering and Victor Wellington as defendants.

Last fall, a jury in Greenfield acquitted Lewin of all charges, including murder, stemming from the Feb. 17, 1988, shooting of Detective Sherman Griffiths during a drug raid. Lewin has since been deported to Jamaica.

Lewin's suit alleges he was attacked in his cell in the old jail at Charles Street on May 14, 1988, the day that a memorial was being dedicated in Griffiths' honor.

Lewin's lawyers, Patricia Garin and Max Stern, state in the suit that on that day Flynn allegedly told Pond that Lewin was violating a rule -- adopted the previous morning -- prohibiting inmates from carrying towels during recreation period, and ordered Lewin to return his towel to his cell.

The lawyers alleged that Pond and Fitzpatrick, who accompanied Lewin to his cell, thwarted his attempts to place the towel into the cell through the bars. Fitzpatrick then allegedly grabbed Lewin's arm, pushed him inside, shoved him to the floor and then tipped the 200-pound steel bed on top of him.

The lawyers said that Pond stood on the bed while Fitzpatrick punched and kicked Lewin repeatedly in the head, face and chest. Flynn allegedly watched and did nothing to stop the attack, which the lawyers said left Lewin unable to move for hours, coughing up blood. Shortly after the beating, while Lewin was on the floor moaning, Chickering allegedly entered the cell, cleaned some of the blood off the floor and left with the towel.

The suit also charges that Lewin was denied medical care for two days after the beating.

Sheriff Robert Rufo suspended four guards for two months following the beating, but the sheriff's office has declined to identify the officers.

Indexing (document details)

Author(s): Doris Sue Wong, GLOBE STAFF
 Publication title: Boston Globe (pre-1997 Fulltext). Boston, Mass.: May 14, 1991.
 Source type: Newspaper
 ISSN: 07431791
 ProQuest document ID: 59198269
 Text Word Count: 356
 Document URL: <http://proquest.umi.com.ezproxy.bpl.org/pqdweb?did=59198269&sid=1&Fmt=3&clientId=140794&RQT=309&VName=PQD>

INTERROGATORIES

1. State your name, home address and telephone number, business addresses and telephone numbers, date of birth, social security number and badge or identification number.

1. Richard A. Pond, 24 Beers Avenue, Norwell, Massachusetts, 02061; 659-2417; 200 Nashua Street, Boston, Massachusetts, 02114; 725-4009, ext. 295; March 25, 1952; 017-42-7369; Badge # 102.

2. With regard to your employment at the Suffolk County Jail, state your monthly gross pay.

2. Approximately \$ 3,010. gross monthly.

3. Other than Suffolk County Jail, are you self-employed or employed by any other person, business or institution? If so, state the following for each: name of employer; address and telephone; your monthly gross pay.

3. No.

4. Do you own your own home? If so, state the following for that property: address; date the title was filed; type of title (e.g., joint tenancy, tenancy in common, tenancy by the entirety); any other name(s) on the title.

4. Yes, with my wife; Richard A. and Leslie M. Pond (tenancy by the entirety); March, 1988, at Plymouth County Registry of Deeds.

5. If you own any other residential real estate, other than that listed in #4 above, state the following for each: the address

of the property; the date the current title was filed; type of title (e.g., joint tenancy, tenancy by the entirety or tenancy in common); any other name(s) on the title.

5. None.

6. State the following for any piece of commercial real estate for which your name is on the title: the address of the property; the date the current title was filed; any other name(s) on the title.

6. None.

7. Do you own a motor vehicle, boat, or any other type of recreational motor vehicle? If so, state the following for each motor vehicle, boat, or other recreational vehicle: vehicle manufacturer and model; year of manufacture; vehicle registration number; vehicle identification number.

7. Yes; 1987 Oldsmobile Delta 88;
V.I.N.-1-G3HN5439HH320114

8. State the following for each bank account in your name, including but not limited to savings, checking, money market, certificate of deposit accounts: name of bank or savings institution; type of account; account number; any other name(s) on the account; amount in account.

8. South Boston Savings Bank, Account #345 643

9. If you have ever been complained against in your capacity as a prison guard at Suffolk County Jail, or have ever been subject to any civilian, internal or other charge, investigation or disciplinary action in that capacity, describe in detail each such complaint, charge, investigation or disciplinary action, including but not limited to: the nature and substance of the allegations raised and the circumstances giving rise to allegations; the names and addresses of all persons who brought such charges and complaints; the date any violations or misconduct is alleged to have taken place; the names and addresses of any person(s) or entity who ordered and administered any investigation of alleged violations; the dates any investigation began and ended and the findings of any investigation; a description of any disciplinary action taken or training or instruction recommended or received as a result of any charges, complaint or investigation and whether you completed such discipline, training or instruction.

9. Only this Albert Lewin matter.

(He is the only complainant; as to investigations, I have been asked questions which I assume were part of investigations, typically, was I on duty at (date, shift, area) and what did I see or do. At no time did these investigations lead to charges against me. I recall no further details.)

10. If you have ever been the named defendant in any civil suit, describe in detail each such complaint including but not limited to: the nature and substance of the allegations raised

[Handwritten: 91-3176]

and the circumstances giving rise to such allegation; the names and addresses of any and all persons who brought such complaints; the date any such incident is alleged to have taken place; the current status or outcome of each civil suit; the name of the plaintiff's attorneys; the court in which the case was brought and the docket number.

10. I was divorced; the case was originally filed at Suffolk County Probate Court but, after my wife moved, was decided by the Norfolk County Probate Court, and child support proceedings in about 1976.

11. If you have ever been arrested in connection with any criminal charges describe in detail each such arrest and charge including but not limited to: what criminal charges were brought against you; the date of each arrest; the court in which the charges were brought; the docket number of the case; the disposition of each case.

11. In about 1983 in Coconut Creek, Broward County, Florida, I was arrested but several charges, e.g., operating without license, assault and battery on police officer, etc., were all dismissed before trial.

In about 1985 in Norwood, Massachusetts, I was arrested and tried in Dedham District Court, where I pled guilty to perating under the influence, fined and participated in a program.

The above is true and accurate to the best of my knowledge, recollection and belief, in witness whereof, I hereby sign my name under the pains and penalties of perjury.

DATE: November 4, 1991

[Handwritten Signature]
Richard Pond

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
C.A. No. 91-3176-E.

ALBERT LEWIN,)
 Plaintiff)
 v.)
 JOSEPH FITZPATRICK, ET AL.,)
 Defendants and)
 Third-Party)
 Plaintiffs)
 v.)
 MAYOR RAYMOND FLYNN, ET AL.,)
 Third-Party)
 Defendants)

DEFENDANT OFFICERS' MOTION IN LIMINE - III

Now come the Defendant Officers and move that the Trial Judge exclude as inadmissible (and prohibit reference to or questions concerning) either:

- 1) Officer Richard Pond's status as former police officer, having been a police officer;
- 2) Officer Richard Flynn's BROTHER'S status as both a) a Boston police officer, b) at one time assigned to the narcotics squad on which also Sherman Griffiths served, among many other officers

for the reason that neither fact is relevant.

Respectfully submitted,

Wayne Soini

Wayne Soini
8 Beacon Street
Boston, MA 02108
Tel.: 367-6024

DA: SEPTEMBER 30, 1994

*7/20/95: After hearing, allowed as to #1 and denied as to #2.
J. M. Lamer, JSC*

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 91-3176-E

ALBERT LEWIN,
Plaintiff

v.

JOSEPH FITZPATRICK, RICHARD POND,
RICHARD FLYNN, RUSSELL CHICKERING
AND VICTOR WELLINGTON,
Defendants and Third
Party Plaintiffs

v.

MAYOR RAYMOND FLYNN,
and BRUCE BOLLING, JAMES BYRNE,
MARIA HENNIGAN-CASEY,
CHRISTOPHER IANNELLA, JAMES
KELLEY, MICHAEL MCCORMICK, BRIAN
McLAUGHLIN, THOMAS MENINO, ALBERT
O'NEIL, DAVID SCONDRAS, ROSARIA
SALERNO, ROBERT TRAVAGLINI,
CHARLES YANCEY, as they together
constitute the City Council of
Boston acting in the capacity of
County Commissioners of Suffolk
County,
Third-Party Defendants

iii/15/94

*After review and hearing
motion to allow v. deposed Dep. is
allowed. Third party
of the Council, etc.*

Defendants to be included.

**PLAINTIFF'S MOTION FOR LEAVE TO TAKE PLAINTIFF'S
VIDEOTAPED DEPOSITION IN JAMAICA FOR USE AT TRIAL
AND
APPLICATION FOR FUNDS, PURSUANT TO M.G.L. c.261, §27A,
TO TRAVEL TO JAMAICA TO TAKE THE DEPOSITION**

Plaintiff hereby moves this Court, pursuant to Rule
30A(k)(1) of the Massachusetts Rules of Civil Procedure, for
leave to take an audiovisual deposition of plaintiff Albert Lewin
for use at trial.

Plaintiff further moves this Court, pursuant to G.L. c.261,

§27A, to authorize plaintiff's counsel to incur expenses in an amount not to exceed \$2,200.00 to cover the costs incurred when counsel travel to Jamaica to take plaintiff's deposition for use at trial. The requested authorization will cover the cost of round trip airfare, two nights' lodging and meals, and taxi service for plaintiff's counsel (Max D. Stern) and defense counsel (Wayne Soini).

In support of this motion, plaintiff states:

1. This action arises out of the beating of Albert Lewin by jail guards when he was incarcerated at the Suffolk County Jail at Charles Street ("Charles Street Jail") awaiting trial. On February 17, 1988, plaintiff was arrested and charged with the murder of Boston Police Officer Sherman Griffiths. He was placed at the Charles Street Jail to await trial. On May 14, 1988, defendants Fitzpatrick and Pond, two prison guards, entered plaintiff's cell. Defendant Fitzpatrick pushed Lewin onto the floor and tipped a heavy steel bed, weighing approximately two hundred pounds, on top of him. The fall of the bed resulted in plaintiff being pinned to the floor. While defendant Pond stood on top of the bed preventing plaintiff from moving, defendant Fitzpatrick punched and kicked plaintiff continuously in the head, face and chest. Defendants Flynn, Chickering and Wellington conspired to set up the beating and then to cover up the beating. The sheriff's department conducted their own investigation into the beating and concluded that Fitzpatrick did, in fact, beat plaintiff and that Pond did, in fact, observe

the beating from inside the cell. The sheriff suspended Fitzpatrick, Pond, Flynn and Chickering for five to fifteen days for their actions.

2. Plaintiff remained in the custody of the sheriff until October 25, 1990 when, after a four week long jury trial, he was found not guilty. Thereafter, plaintiff was deported from the United States to Jamaica since, at the time of his arrest on February 17, 1988, he was undocumented.

3. On May 13, 1991, plaintiff filed this action. The plaintiff seeks relief for violations of G.L. c.12, §11I and 42 U.S.C. §1983, and for the common law torts of assault and battery and intentional infliction of emotional distress. The action was originally brought against the five guards alleged to be involved in the beating. On June 25, 1991, defendants impleaded their public employer, the third party defendants, under G.L. c.258, §9, the Massachusetts Torts Claim Act. The third-party defendants' Motion to Dismiss the claim was denied by Judge Donovan on September 18, 1991. However, the third-party defendants Motion to Bifurcate was granted by Judge Flannery on October 6, 1994.

4. Because plaintiff was deported by the Immigration and Naturalization Service (INS) in October, 1990, he is not entitled to re-enter the United States until October, 1995 unless he obtains some form of waiver of these rules.

5. For the last ten months, plaintiff's counsel and immigration attorney Nancy Kelly have been working with the INS

and the Justice Department to obtain a non-immigrant visa from the Department of State or parole from the INS. To date, Mr. Lewin's application for a non-immigrant visa has been denied and his application for parole has been denied. Neither the Justice Department nor the State Department have provided any basis for their decisions.

6. The testimony of Albert Lewin is essential for a fair determination of the case. However, it appears that there remains no way to bring Albert Lewin into the United States for his trial short of suing the INS in Federal Court for arbitrarily denying Mr. Lewin access to the courts.

7. Plaintiff Lewin currently resides in Kingston, Jamaica. He is unemployed. He has two children. He is in the process of sending an Affidavit of Indigency to his counsel. Counsel will file the affidavit with the Court upon receipt.

8. G.L. c.261, §27C provides that "if the court makes a finding of indigency . . . it shall not deny any request with respect to extra fees and costs if it finds the document, service or object is reasonably necessary to assure the applicant as effective a . . . prosecution . . . as he would have if he were financially able to pay." The reasonableness standard "looks to whether a [litigant] who is able to pay and was paying the expenses [himself], would consider the 'document, service or object' sufficiently important that he would choose to obtain it in preparation for trial." Perez v. Bay State Ambulance & Hospital Rental Svc., Inc., 413 Mass. 670, 677 (1992), citing

Commonwealth v. Lockley, 381 Mass. 156, 160 (1980).

9. Plaintiff Albert Lewin is indigent, as defined by G.L. c. 261, §27A(b) and (c). His income after taxes is well below "one hundred twenty-five per cent or less of the current poverty threshold annually established by the Community Services Administration." He "is unable to pay the fees and costs of the proceeding in which he is involved, or is unable to do so without depriving himself . . . of the necessities of life, including food, shelter and clothing."

9. In light of these facts, plaintiff is requesting authorization to incur expenses in the amount of \$2,200.00 for counsel to travel from Boston to Jamaica to take Mr. Lewin's videotaped deposition for use at trial.

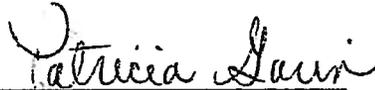
10. Airfare from Boston, Massachusetts, to Kingston, Jamaica for counsel for Albert Lewin, (Max D. Stern) and counsel for the guards (Wayne Soini) is \$554.00 each or \$1,108.00. This price is subject to change depending on the dates of travel.

11. The costs of food, lodging, transportation to and from the airport, and to and from the attorney's office in Kingston, for two days for Mr. Stern and Mr. Soini will be approximately \$800.00 to \$1,000.00. This figure is based on an estimate of \$150.00 per night for a hotel room (for a total of \$600.00 for two nights each for two attorneys) and \$200.00 to \$400.00 for meals, taxis and any other miscellaneous expenses for two days.

WHEREFORE, plaintiff requests that this Court, in the interests of justice, grant plaintiff leave to take his

audiovisual deposition in Jamaica and authorize plaintiff's counsel to incur up to \$2,200.00 in costs for air fare and two days' food and lodging for plaintiff's and defendants' attorneys in order that they may take plaintiff's videotaped deposition in Jamaica.

Respectfully submitted,



Max D. Stern
BBO #479560
Patricia Garin
BBO #544770
STERN, SHAPIRO, WEISSBERG
& GARIN
80 Boylston Street
Suite 910
Boston, MA 02116
(617) 542-0663

Dated: November 15, 1994

G:\LEWIN\FEES.APP



AFSCME Council 93

American Federation of State, County and Municipal Employees
8 Beacon Street, Boston, MA 02108 367-6000

April 10, 1995

Hon. Peter Lauriat
Associate Justice
Superior Court
Suffolk County
Boston, MA

Joseph Bonavita
Executive Director

Herbert Ollivierre
President

Joseph Lydon
Executive
Vice President

Natalie Baker
Recording
Secretary

James Donovan
Treasurer

John Gordon
Sgt. at Arms

RE: Lewin v. Fitzpatrick, et al. v. Mayor Flynn, et al.,
C.A. No. 91-03176

Dear Judge Lauriat:

I am in Fall River today and Tuesday, but I will have this hand-delivered and faxed to Attorneys Stern and Sallant simultaneously.

It does not appear to me that next week will be appropriate for trial of the above-noted case.

I still have no written transcript of Mr. Lewin's deposition and, correspondingly, a basis for seeking Your Honor's consideration of objections.

Further, as indicated in the supplemental motion I have drafted now having seen and heard the videotape, I find the cross-examination portion difficult to hear and, in spots, inaudible. The direct-examination was better. Apparently, the placement of the microphone caused this; perhaps it was another factor or factors. I do not accuse Attorney Stern of intentionally reducing my voice, or amplifying his. It is only that the result of this home-made process by his agent is this.

Counsel have not met since Jamaica, although I offered three dates this past week. One thing we have to do relates to making legible medical records or notes presently not legible or which are unintelligible abbreviations.

The Court has, I believe, motions in limine pending and not acted on including expert or opinion testimony areas, which are significant in at least my own view of fair trial.

Of my five clients, I have heard from three; one is out of state but may be able to return to Boston next week, if there is a trial. Of the other two, each has chronic physical problems and, I understand, they may be out on sick- or injury-leave. I am seeking they get back to me, but I have yet to hear.

Delivered 4.10.95
at 12 noon.
AM

Thank Your Honor for his attention to this unusual situation.

Very truly yours,

Wayne Soini

Wayne Soini

8 Beacon Street

Boston, MA 02108

cc: Augustus J. Camelio, General Counsel
Max Stern, Esquire
Kim Saillant, Esquire

ORIGINAL

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 91-3176-E

ALBERT LEWIN

vs.

JOSEPH FITZPATRICK, RICHARD POND
and RICHARD FLYNN

SPECIAL JURY VERDICT

I. Assault and Battery

1. Did defendant Joseph Fitzpatrick or defendant Richard Pond, acting alone or in concert with the other, commit an assault and battery upon on plaintiff Albert Lewin on May 14, 1988?

Joseph Fitzpatrick	<u> ✓ </u>	YES	<u> </u>	NO
Richard Pond	<u> ✓ </u>	YES	<u> </u>	NO

II. Violation of Constitutional Rights

Joseph Fitzpatrick

2. Did defendant Joseph Fitzpatrick deprive plaintiff Albert Lewin of a right guaranteed by the State or Federal Constitutions by subjecting him to summary punishment or to excessive force, either by actively taking part in the unconstitutional activity or by lending aid or encouragement to the wrongdoer?

 ✓ YES NO

Richard Pond

3. Did defendant Richard Pond deprive plaintiff Albert Lewin of a right guaranteed by the State or Federal Constitutions by subjecting him to summary punishment or to excessive force, either by actively taking part in the unconstitutional activity or by lending aid or encouragement to the wrongdoer?

YES NO

If your answer to Question 3 is "YES," please answer Question 5. If your answer to Question 3 is "NO" but your answer to Question 2 is "YES", please answer question 4.

4. Did defendant Richard Pond deprive plaintiff Albert Lewin of a right guaranteed by the State or Federal Constitutions by subjecting him to summary punishment or to excessive force, by being present at the scene of the constitutional violation and failing to take reasonable steps to protect Albert Lewin from another jail officer's infliction of summary punishment or use of excessive force upon Albert Lewin?

YES NO

Richard Flynn

5. Did defendant Richard Flynn deprive plaintiff Albert Lewin of a right guaranteed by the State or Federal Constitutions by subjecting him to summary punishment or to excessive force, either by actively taking part in the unconstitutional activity or by lending aid or encouragement to the wrongdoer?

YES NO

If your answer to Question 5 is "YES," please answer Question 8. If your answer to Question 5 is "NO" but your answer to Question 2 and/or Question 3 is "YES", please answer question 6.

6. Did defendant Richard Flynn deprive plaintiff Albert Lewin of a right guaranteed by the State or Federal Constitutions by subjecting him to summary punishment or to excessive force, by being present at the scene of the constitutional violation and failing to take reasonable steps to protect Albert Lewin from another jail officer's infliction of summary punishment or use of excessive force upon Albert Lewin?

_____ YES _____ NO

If your answer to Question 6 is "YES," please answer Question 8. If your answer to Question 6 is "NO" but your answer to Question 2 and/or Question 3 is "YES", please answer Question 7.

7. Did defendant Richard Flynn, in his role as supervisor of defendants Fitzpatrick and Pond, deprive plaintiff Albert Lewin of a right guaranteed by the State or Federal Constitutions by subjecting Albert Lewin to summary punishment or to excessive force, by being recklessly or callously indifferent to the constitutional rights of Albert Lewin?

_____ YES _____ NO

III. Intentional Infliction of Emotional Distress

8. Did any defendant, acting alone or in concert with one or both of the other defendants, intentionally cause the plaintiff Albert Lewin to suffer emotional distress?

Joseph Fitzpatrick	<u> ✓ </u>	YES	<u> </u>	NO
Richard Pond	<u> ✓ </u>	YES	<u> </u>	NO
Richard Flynn	<u> ✓ </u>	YES	<u> </u>	NO

If your answer to either part of Question 1 is "YES", and/or if your answer to Question 2 and/or Question 3 is "YES", and/or your answer to Questions 4, 5, 6, or 7 is "YES", and/or if your answer to any part of Question 8 is "YES", please answer Question 9. Otherwise, stop here, sign the Special Jury Verdict slip, and return to the courtroom.

IV. DAMAGES

Compensatory Damages

9. Please state, in words and numbers, the amount of money that you find will fairly and reasonably compensate the plaintiff Albert Lewin for the injuries he suffered on account of defendant(s)' conduct.

One hundred fifty thousand Dollars
Amount in Words

\$ 150,000.00
Amount in Numbers

If you answer to Question 2 and/or Question 3 is "YES", and/or your answer to Questions 4, 5, 6, or 7 is "YES", please answer Question 10. Otherwise, stop here, sign the Special Jury Verdict slip, and return to the courtroom.

Punitive Damages

10. Do you award punitive damages against the defendants:

Joseph Fitzpatrick ✓ YES NO
[Only if your answer to Question 2 was "YES"]

Richard Pond ✓ YES NO
[Only if your answer to Question 3 or Question 4 was "YES"]

Richard Flynn ✓ YES NO
[Only if your answer to Question 5, Question 6 or Question 7 was "YES"]

If your answer to any part of Question 10 is "YES", please answer Question 11. If your answer to all parts of Question 10 is "NO", stop here, sign the Special Jury Verdict slip, and return to the courtroom.

11. Please state, in words and numbers, the amount of punitive damages that you award against each of the defendants as to whom you answer to Question 10 was "YES".

Joseph Fitzpatrick

Twenty five thousand dollars
Amount in Words

\$ 25,000
Amount in Numbers

Richard Pond

Twenty five thousand dollars
Amount in Words

\$ 25,000
Amount in Numbers

Richard Flynn

Twenty five thousand dollars
Amount in Words

\$ 25,000
Amount in Numbers

I CERTIFY THAT EACH OF THE QUESTIONS ANSWERED ABOVE WAS ANSWERED BY AT LEAST 11 OF THE JURORS.

Date: 4/27/95

Andrea Brizuela
Foreperson

Databases selected: Boston Globe

Man cleared of killing officer wins suit Lewin, beaten in jail, is awarded \$225,000; [City Edition]

John Ellement, Globe Staff. Boston Globe (pre-1997 Fulltext). Boston, Mass.: Apr 28, 1995. pg. 21

Abstract (Summary)

Albert Lewin, acquitted of murdering Boston Police Detective Sherman Griffiths amid evidence of police misconduct in the case, was awarded \$225,000 yesterday after a Suffolk Superior Court jury found that three guards at the Charles Street Jail beat him while he was awaiting trial in 1988.

A jury in 1990 found Lewin not guilty of murdering Griffiths after two Boston police officers were charged with perjury in the case and key evidence was suppressed because it was obtained illegally.

Lewin charged in a civil lawsuit that he was beaten by three Suffolk County sheriff's guards at the jail on May 14, 1988, the same day a memorial was being erected in Griffiths' honor.

Full Text (724 words)

Copyright Boston Globe Newspaper Apr 28, 1995

Albert Lewin, acquitted of murdering Boston Police Detective Sherman Griffiths amid evidence of police misconduct in the case, was awarded \$225,000 yesterday after a Suffolk Superior Court jury found that three guards at the Charles Street Jail beat him while he was awaiting trial in 1988.

A jury in 1990 found Lewin not guilty of murdering Griffiths after two Boston police officers were charged with perjury in the case and key evidence was suppressed because it was obtained illegally.

Lewin charged in a civil lawsuit that he was beaten by three Suffolk County sheriff's guards at the jail on May 14, 1988, the same day a memorial was being erected in Griffiths' honor.

The still-raw emotions surrounding the Griffiths case were evident yesterday when officers learned of the jury's award.

"This is extreme when I say this, but this clearly sends a message to policemen that if you kill a cop you can get a quarter of a million dollars for it," said Tommy Montgomery, president of the Boston Police Detectives Benevolent Society. "That might sound extreme, but that's the reality of what cops might think. It's the reality of what a lot of families whose spouses are cops might think."

Patricia Garin, one of Lewin's attorneys during the murder trial and in the civil lawsuit, responded with equal fire.

"No one, no one, guilty or innocent, should have to be in fear of being beaten by guards while they are in jail awaiting trial and are presumptively innocent," she said. "Guards cannot take the law into their own hands and punish people. Al Lewin was innocent, but that's not what was before this jury."

The verdict raises a political question for Mayor Menino, who must decide whether to step in and have the city pay the \$150,000 in compensatory damages awarded by the jury. With interest the award jumps to \$222,000.

The guards would still each have to pay \$25,000 in punitive damages awarded by the jury, since state law prohibits the city from paying punitive damages. With interest, the individual punitive damage awards increase to \$37,000.

The three guards are Lt. Richard Flynn, Lt. Richard Pond and Jail Officer Joseph Fitzpatrick. Pond and Flynn declined comment yesterday after the verdict. Wayne Soini, the attorney for the three men, said a decision on whether to appeal will depend on what the Menino administration does.

The jury concluded that Fitzpatrick and Pond followed Lewin back to his cell and beat him while Flynn stood by. They also found the three had violated Lewin's civil rights by using "excessive force" and inflicted "summary punishment" on Lewin before trial, in violation of his civil rights.

Lewin did not testify in person but did appear via videotaped testimony. Lewin said he had a bed pushed on top of him while being punched and kicked in the face. He said he tried to protect himself by shielding his eyes with a Bible. Lewin suffered bruises to his face and body, but no broken bones.

Suffolk County Sheriff Robert C. Rufo conducted an internal investigation and the findings were forwarded to the attorney general's office, which found there was insufficient evidence to file criminal charges. Rufo suspended the three for periods ranging from 15 to 30 days for failing to write a report that Lewin, as they claimed, was an uncooperative prisoner that day.

The city may be liable because in Boston, city and county government are one and the same. Albert Wallis, chief corporation counsel for the city, said the verdict will be reviewed before any decision is made.

Gerard Lydon, spokesman for Rufo, said the sheriff would not comment on what the city should do. "They do work for us, but it is a matter of litigation between the union and the city and we're not going to comment on it," Lydon said.

Montgomery said the city should pay. "First of all, I don't think the officers should have been found liable for any allegations Al Lewin made," Montgomery said. "But if a jury made this decision, then I do think that the city should indemnify the officers."

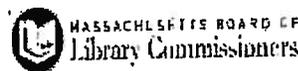
Garin said the city kept the men on the payroll after the beating and should stand by its employees now and pay the damages.

Lewin was deported to Jamaica following his acquittal because he was in the country illegally.

Indexing (document details)

Author(s): John Ellement, Globe Staff
 Section: METRO/REGION
 Publication title: Boston Globe (pre-1997 Fulltext). Boston, Mass.: Apr 28, 1995. pg. 21
 Source type: Newspaper
 ISSN: 07431791
 ProQuest document ID: 21584516
 Text Word Count 724
 Document URL: <http://proquest.umi.com.ezproxy.bpl.org/pqdweb?did=21584516&sid=2&Fmt=3&clientId=140794&RQT=309&VName=PQD>

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 91-3176-E

1-10-95
Deliberated & Approved
[Signature]

ALBERT LEWIN,
Plaintiff

v.

JOSEPH FITZPATRICK, RICHARD POND,
and RICHARD FLYNN,

Defendants and Third
Party Plaintiffs

v.

MAYOR RAYMOND FLYNN,
and BRUCE BOLLING, JAMES BYRNE,
MARIA HENNIGAN-CASEY,
CHRISTOPHER IANNELLA, JAMES
KELLEY, MICHAEL McCORMICK, BRIAN
McLAUGHLIN, THOMAS MENINO, ALBERT
O'NEIL, DAVID SCONDRAS, ROSARIA
SALERNO, ROBERT TRAVAGLINI,
CHARLES YANCEY, as they together
constitute the City Council of
Boston acting in the capacity of
County Commissioners of Suffolk
County,
Third-Party Defendants

AGREEMENT FOR JUDGMENT

File sent
3/30/95
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IDS
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U.W.
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IG.

The plaintiff, Albert Lewin, and the defendants, Joseph Fitzpatrick, Richard Pond, and Richard Flynn, hereby represent and agree as follows:

1. This case was tried in April, 1995, resulting in a verdict for plaintiff against the defendants for compensatory damages in the amount of \$150,000 and punitive damages in the amount of \$25,000 against each defendant.

JUDGMENT ENTERED ON DOCKET Oct. 20, 1995

PURSUANT TO THE PROVISIONS OF MASS.R.CIV.P. 68B AS AMENDED AND NOTICE SENT TO PARTIES PURSUANT TO THE PROVISIONS OF MASS.R.CIV.P. 77(d) AS FOLLOWS:

2. Thereafter, the defendants filed a timely Motion to Set Aside the Verdict and For a New Trial, challenging the verdict as to both liability and damages.

3. Both the plaintiff and the defendants now desire to settle and compromise this dispute and thereby terminate the litigation as between them and have, accordingly, agreed upon entry of judgment, as set forth below. In agreeing to the entry of judgment, the defendants do not admit their culpability, but they do waive their motion for new trial and all rights of appeal.

4. Judgment may be entered as follows:

Judgment for plaintiff against defendants Fitzpatrick, Pond and Flynn for the application of excessive force, on Counts One, Two and Four in the amount of One Hundred Fifty Thousand Dollars (\$150,000), with statutory interest and attorney fees to be determined by the Court, and dismissing all other claims with prejudice.

For the Plaintiff,

For the Defendants,

Max D. Stern

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Dated: Oct. ~~11~~ 10, 1995.

K:\LEWIN\AGREEJUD