

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Filed  
6/21/99  
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)  
KATRINA MACK, on behalf of herself )  
and on behalf of others similarly situated, )  
Plaintiffs )  
)  
v. )  
)  
SUFFOLK COUNTY, RICHARD J. )  
ROUSE in his individual capacity, )  
JANE DOE, in her individual capacity, )  
and the CITY OF BOSTON, )  
Defendants )  
\_\_\_\_\_

Civil Action No. 98-12511-NG

SECOND AMENDED COMPLAINT

INTRODUCTION

1. This is a civil rights action for money damages against Suffolk County, Suffolk County Sheriff Richard Rouse, correctional officer Jane Doe, and the City of Boston, for injuries caused by the unconstitutional strip search of the plaintiffs.

2. The named plaintiff, Katrina Mack, seeks to represent a class of all women who were admitted to the Suffolk County Jail while waiting for bail to be set or for an initial court appearance, women who are arrested on default warrants, and women who are held in protective custody. Included in this class are women who have been taken into custody by the Boston Police Department, the MBTA Police Department, the

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Massachusetts State Police and the police departments of Chelsea, Revere and Winthrop. These women have all been unlawfully subjected to routine strip searches and routine visual body cavity searches due to a formal written policy implemented by the Suffolk County Sheriff's Department that states that "strip searches shall be conducted of all inmates committed to the custody of the Department...." The policy requires a strip search of the nude body of every person "at the time of each admission to the facility...." The policy also requires a visual body cavity inspection of a prisoner's anus and vagina. These searches are conducted routinely, without any reason to suspect a strip search or a visual body cavity search is necessary.

3. The City of Boston is sued for violating the constitutional rights of women because, under its policy, all women who are held in custody overnight are to be routinely subjected to a strip search and visual body cavity search while men who are held in custody overnight are not subject to such searches as a matter of routine.

4. Plaintiff seeks to have this Court declare that these routine searches are unconstitutional and to enjoin the defendants from conducting strip searches and visual body cavity searches of women who are held awaiting their first court appearance for the setting of bail, and women who are arrested on default warrants, and women who are held in protective custody on the grounds that it violates their constitutional right to be free from unreasonable searches under both the Massachusetts and United States Constitutions.

## JURISDICTION

5. This action is brought pursuant to 42 U.S.C. §§1983 and 1988 and the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343.

## PARTIES

6. The named plaintiff, Katrina Mack, was at all times relevant to this complaint a resident of the Commonwealth of Massachusetts.

7. The defendant Suffolk County is a duly designated county in the Commonwealth of Massachusetts, under the laws of the Commonwealth of Massachusetts.

8. The defendant Richard Rouse was at all times relevant to this complaint the Sheriff of Suffolk County. He is sued in his individual capacity. The actions of defendant Rouse alleged in this complaint were taken under color of law.

9. The defendant Jane Doe is a correctional officer employed by Suffolk County. She is sued in her individual capacity.

10. The actions of defendant Doe alleged in this complaint were taken under color of the laws of the Commonwealth of Massachusetts and the County of Suffolk.

11. The defendant City of Boston is a duly organized municipal corporation in the Commonwealth of Massachusetts.

**FACTS**

12. On March 5, 1998 at 1:30 a.m. plaintiff Katrina Mack was arrested by a Boston police officer in the Charlestown section of Boston for driving while under the influence of intoxicating liquor and leaving the scene after causing property damage.

13. Ms. Mack was taken to the Area A Boston police station on New Chardon Street in Boston.

14. Ms. Mack was booked, fingerprinted, frisked and placed in a cell with another female prisoner.

15. At approximately 3:00 a.m., the plaintiff was told that it was too late for her to be released on bail.

16. Plaintiff was then put in leg shackles, handcuffed and taken in a Boston Police wagon to the Suffolk County Jail on Nashua Street.

17. When plaintiff arrived at the Suffolk County Jail, defendant Doe brought plaintiff to a room and ordered her to take off all of her clothing.

18. Ms. Mack protested but defendant Doe replied, "You have to do this."

19. Ms. Mack began to cry. She complied with the order and took off all her clothing. Then defendant Doe searched plaintiff's clothing.

20. Defendant Doe next ordered plaintiff to face her, lift her arms up, turn around, bend over and spread her cheeks while defendant Doe conducted a visual body cavity search.

21. Defendant Doe had no reason to suspect that plaintiff had any weapons or contraband hidden on her person.

22. After the search, plaintiff was placed into a cell alone.

23. Later in the morning, plaintiff was placed in a holding room with other women. She was taken to the Charlestown District Court for arraignment. The court ordered the plaintiff released on personal recognizance.

24. Plaintiff suffered extreme emotional distress as a result of the strip search and visual body cavity search conducted at the Suffolk County Jail. She was shocked by the incident. She felt humiliated, degraded and violated.

25. The search of plaintiff by defendant Doe conformed to the written policy of the defendant Suffolk County, specifically, Sheriff's Department Policy Number S507. This policy states that "strip searches shall be conducted of all inmates committed to the custody of the Department...." The policy requires a strip search of the nude body of every person "at the time of each admission to the facility...." The policy also requires that every female prisoner undergo a visual body cavity search of the prisoner's anus and vagina.

26. The policy of the Suffolk County Sheriff's Department requires this search as a matter of routine, without any reason to suspect a strip search and visual body cavity search is necessary.

27. The policy of the Suffolk County Sheriff's Department applies regardless of the length of time the person is to be held or of the charges lodged against the person.

28. The Suffolk County Sheriff's Department conducts a strip search and body cavity search of all women who are admitted to the jail including women who are waiting for an initial court appearance, women who are arrested on default warrants, and women who are held in protective custody.

29. Rule 318C of the Rules and Procedures of the Boston Police Department, requires that all female prisoners "be transported to the Suffolk County Jail for detainment." Female prisoners are not held overnight at Boston Police stations.

30. When female prisoners arrive at the Suffolk County Jail, they are subjected to a routine strip search and visual body cavity search as described above.

31. It is the policy of the Boston Police Department to hold male prisoners in cells at Boston Police stations until their first appearance in court.

32. Male prisoners who are held awaiting an initial court appearance, after arrest on a default warrant or who are held in protective custody in a Boston police station are not subjected to a routine strip search or body cavity search.

### **CLASS ACTION ALLEGATIONS**

33. This action is brought pursuant to Rule 23(a) and (b) (1), (2) and (3) of the Federal Rules of Civil Procedure by plaintiff as a class action on behalf of all women who were or will in the future be:

- a. taken into custody at the Suffolk County Jail before arraignment, or after an arrest on a default warrant or after being taken into protective custody; and

- b. subjected to a routine strip search and visual body cavity search at the Suffolk County Jail pursuant to the policy, practice or custom of conducting a strip search and visual body cavity search of every person who is admitted to the jail.

34. The named plaintiff, Katrina Mack, is a member of the class. The class represented by the plaintiff is so numerous that joinder of all such persons is impractical. On information and belief, the number of class members is more than three thousand women.

35. There are questions of law and fact which are common to the class of plaintiffs. Central to all the claims is the constitutionality of the policy or practice of the Suffolk County Sheriff to routinely conduct strip and visual body cavity searches.

36. Plaintiff's claims or defenses are typical of the claims or defenses of the class of plaintiffs.

37. Plaintiff will fairly and accurately represent and protect the interests of the members of the class. The attorney for plaintiff is experienced and capable in civil rights litigation and has successfully represented plaintiffs in other civil rights litigation including cases alleging unlawful strip searches. Counsel has the resources and expertise to prosecute this action.

38. This action is properly maintained as a class action because the prosecutions of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class, which would establish incompatible standards of conduct for the defendants.

39. This action is properly maintainable as a class action because the prosecutions of separate actions would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members who are not parties or substantially impair or impede their ability to protect their interests.

40. The defendants have acted on grounds generally applicable to the class thereby making appropriate final injunctive relief or declaratory relief with respect to the class as a whole.

41. As a direct result of policy class members have been subject to unlawful strip searches and visual body cavity searches which has caused each member of the class to endure pain and suffering and mental anguish.

**FIRST COUNT: 42 U.S.C. § 1983: DEFENDANT SUFFOLK COUNTY**

42. The above paragraphs are incorporated herein.

43. The policy of the Suffolk County Sheriff's Department regarding strip searches directs County employees to conduct searches that violate the United States Constitution.

44. By the actions described above, the defendant deprived the plaintiff and members of the plaintiff class of their clearly established right guaranteed by the Constitution of the United States to be free from an unreasonable search and seizure.

45. As a direct and proximate result of this conduct, plaintiff suffered the injuries described above.



**SECOND COUNT: 42 U.S.C. § 1983: DEFENDANT RICHARD ROUSE**

46. The above paragraphs are incorporated herein.

47. Defendant Richard Rouse is the Sheriff and is the policymaker for the Suffolk County Jail.

48. Defendant Rouse implemented and maintained a policy of conducting strip searches and visual body cavity searches of all persons who are admitted to the Suffolk County Jail, regardless of the nature of charges or the circumstances of the individual.

49. Defendant Rouse knew or should have known that the strip search policy at the Suffolk County Jail would result in correctional officers conducting unconstitutional searches of women who were being held for arraignment, in protective custody or pursuant to a default warrant.

50. Defendant Rouse established and enforced the policy of conducting routine strip searches without any reason to believe the woman has anything concealed on her person by implementing and maintaining the strip search policy.

51. As a result of defendant Rouse's conduct, plaintiff was subjected to the search described above.

52. Even after defendant Rouse had actual knowledge that the policy of strip searching women who were held for arraignment, in protective custody, or pursuant to a default warrant was unconstitutional, he continued to enforce the policy.

53. Defendant Rouse acted with reckless indifference to the constitutional rights of women who are detained at the Suffolk County Jail as described above.

54. As a direct and proximate result of this conduct, plaintiff suffered the injuries described above.

**THIRD COUNT: 42 U.S.C. § 1983: DEFENDANT CITY OF BOSTON**

55. The above paragraphs are incorporated herein.

56. By requiring female prisoners awaiting an initial court appearance to be held at the Suffolk County Jail, it is the policy or custom of the Boston Police Department to require women who are arrested and held in custody before their first court appearance to undergo a strip search and visual body cavity search while men in the same circumstances are not required to undergo similar searches.

57. The strip search and visual body cavity search of all females awaiting an initial court appearance is an affirmative policy of the Boston Police Department which violates the right of women to the equal protection of law and violates the right of women under the Fourth Amendment to be free from unreasonable searches and seizures.

58. As a direct and proximate result of the policies or customs of the City of Boston, the plaintiff suffered the injuries described above.

**FOURTH COUNT: 42 U.S.C. §1983: DEFENDANT DOE**

59. The above paragraphs are incorporated by reference.

60. At all times relevant to this complaint, defendant Doe was acting under color of the laws of the Commonwealth of Massachusetts and the County of Suffolk.

61. Defendant Doe had no legal justification for conducting a strip search or a visual body cavity search of the plaintiff's person.

62. By the actions described in the preceding paragraphs, the defendant deprived the plaintiff of clearly established rights guaranteed by the Constitution of the United States and by the Massachusetts Declaration of Rights including freedom from an unreasonable search and seizure and the right to be treated equally under the law.

63. As a direct and proximate result of the acts of the defendant, the plaintiff suffered the injuries described above.

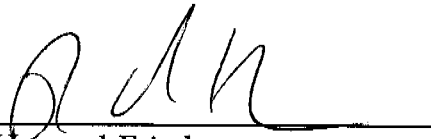
**WHEREFORE** the plaintiff requests that this Court:

1. declare that the policy or practice of conducting routine strip searches and routine visual body cavity searches of women is illegal and unconstitutional and enjoin enforcement of the policy;
2. award compensatory damages to the individual plaintiff and to members of the plaintiff class;
3. award punitive damages against the defendant Rouse;
4. award the plaintiffs the costs of this action including reasonable attorney's fees; and
5. award whatever additional relief this Court deems necessary and appropriate.

JURY DEMAND

A jury trial is hereby demanded.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script, appearing to read 'H. Friedman', is written over a horizontal line.

Howard Friedman

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