

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

---

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

INTERVENORS' COMPLAINT

INTRODUCTION

1. This complaint is brought on behalf of members of the class alleged in the complaint in Mack v. Suffolk County et. al. The intervenors seek to intervene as plaintiffs and class representatives in this case. This intervenors complaint presents the same legal theories as the complaint brought by the named plaintiff.

JURISDICTION

2. 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.

53

**PARTIES**

3. Joanne Maniscalco is a resident of the City of Boston. She was arrested without a warrant on the evening of December 5, 1996 in Boston for violation of a Boston ordinance against peddling without a license.

4. Christine Daley is a resident of the City of Boston. She was arrested without a warrant in Boston on September 22, 1997 and charged with assault and battery.

5. Denise Gasparini is a resident of Boston. She was arrested by a Boston police officer on Dec. 7, 1998 on a default warrant from the Somerville district court charging her with larceny under \$250.00. This charge was the result of her children's failure to return a rented Sega video game.

6. Alice Buckley was arrested without a warrant on the evening of June 16, 1998 and charged with assault and battery.

7. The defendant Suffolk County is a county in the Commonwealth of Massachusetts, duly organized 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. Jane Doe 2-5 is the term used to describe the female correctional officers employed by Suffolk County who actually conducted the strip searches of the plaintiff-intervenors. They are sued in their individual capacities.

10. The actions of defendants Doe 2-5 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

#### Joanne Maniscalco

12. On December 5, 1996 Joanne Maniscalco was arrested outside the Fleet Center in Boston for violation of a Boston ordinance against peddling without a license. She had been selling sausages from a cart. She was taken to the Area A police station in Government Center. She was booked at the police station. After she was held at the police station for two to three hours Ms. Maniscalco was transported to the Suffolk County Jail on Nashua Street.

13. When Ms. Maniscalco was told she was to be searched she explained that she was only arrested for selling sausages. The correctional officer referred to here as Jane Doe 2 told the plaintiff that they search everyone. Jane Doe 2 ordered Ms. Maniscalco to take off all of her clothing. She did so. The officer visually searched her body. Next Jane Doe 2 stood behind Ms. Maniscalco and ordered her to bend over and spread her cheeks. Ms. Maniscalco did what she was required to do.

14. After the search Ms. Maniscalco was placed in a cell type room near the booking area until she was released from custody. The plaintiff felt that this search was humiliating and degrading. As a direct and proximate result of the unlawful strip

search, Ms. Maniscalco suffered and continues to suffer pain, suffering and mental anguish.

Christine Daley

15. On September 22, 1997 plaintiff Christine Daley was arrested in Boston and charged with assault and battery. She had been in an argument with a roommate. Her roommate was arrested and charged with two counts of assault and battery with a dangerous weapon on Ms. Daley.

16. Ms. Daley was taken to the D-4 police station. She was booked at the police station. After being held at the police station for about an hour she was taken to the Suffolk County Jail on Nashua Street. At the jail Jane Doe 3 ordered Ms. Daley to take off all of her clothing. She complied. Jane Doe 3 visually searched plaintiff's body. Then Jane Doe 3 stood behind Ms. Daley and ordered plaintiff to bend over and spread her cheeks. She did as she was told.

17. Ms. Daley felt the strip search was humiliating and degrading. As a result of the search she was upset and scared. As a direct and proximate result of the unlawful strip search, Ms. Daley suffered and continues to suffer pain, suffering and mental anguish.

18. Ms. Daley was placed in a cell type room near the booking area. She remained in this cell until she was released from the jail. The charges against Ms. Daley were ultimately dismissed.

Denise Gasparini

19. Denise Gasparini was arrested by a Boston police officer on Dec. 7, 1998 on a default warrant from the Somerville district court. She was charged with larceny under \$250.00 based on the failure to return a rented video game.

20. Ms. Gasparini was taken to the East Boston police station where she was booked. She was held at the police station for a couple of hours. Then she was taken to the Suffolk County Jail on Nashua Street.

21. Jane Doe 4 brought Ms. Gasparini into a room with a younger female prisoner. Jane Doe 4 ordered the other prisoner to take off all of her clothing. First the correctional officer conducted a strip and visual body cavity search of the other prisoner. Then Jane Doe 4 ordered Ms. Gasparini to remove her clothing. The officer searched plaintiff's body. Next the officer ordered plaintiff to bend over and spread her cheeks while Jane Doe 4 stood behind her.

22. Ms. Gasparini was shocked and scared as a result of the search. She felt humiliated and degraded. The search was emotionally traumatic. As a direct and proximate result of the unlawful strip search, Ms. Gasparini suffered and continues to suffer pain, suffering and mental anguish.

Alice Buckley

23. Alice Buckley was arrested without a warrant on the evening of June 16, 1998 and charged with assault and battery. She was held in a cell at the Area A police station for five to six hours. Finally she was taken to the Suffolk County Jail on Nashua Street. Jane Doe 5, a female correctional officer, took her into a room and ordered

plaintiff to take off her clothing. Plaintiff removed her clothing. Jane Doe 5 required Ms. Buckley to lift her breasts, bend over and spread her cheeks and lift her feet. Ms. Buckley was scared during the search. She had no idea what she might be ordered to do next. Ms. Buckley felt humiliated and violated. As a direct and proximate result of the unlawful strip search, Ms. Buckley suffered and continues to suffer pain, suffering and mental anguish.

24. The charges against Ms. Buckley were ultimately dismissed.

#### Facts Applicable to All Intervenors

25. There was no reason to suspect that any of the intervening plaintiffs had a weapon or contraband hidden on her person.

26. Jane Does 2-5 did not have a reasonable suspicion that any of the intervening plaintiffs had a weapon or contraband hidden on her person.

27. The searches of each plaintiff by defendants Jane Doe 2-5 took place because of 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.

28. 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.

29. 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.

30. At the time of the incidents alleged in this complaint the Suffolk County Sheriff's Department conducted a strip search and body cavity search of all women who were admitted to the jail including women who were waiting for an initial court appearance and women who were arrested on default warrants.

31. Each of the intervening plaintiffs was searched in the manner described above because of the policy of the Suffolk County Sheriff's Department.

32. 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.

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

34. 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.

35. Male prisoners who are held awaiting an initial court appearance or after arrest on a default warrant in a Boston police station are not subjected to a routine strip search or body cavity search. Male prisoners arrested in Boston are only strip searched if there is a reason to suspect the male prisoner has a weapon or contraband hidden on his person.

36. If the intervening plaintiffs has been male, they would have remained in custody in a Boston police station and they would not have been required to submit a routine strip and visual body cavity search.

### CLASS ACTION ALLEGATIONS

37. 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, from December 10, 1995 forward, were or who will in the future be:

- a. taken into custody by the Boston Police Department and transferred to the Suffolk County Jail pursuant to Boston Police Department rules regarding the custody of female prisoners to be held pending a first court appearance, or after an arrest on a default warrant; 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 the Suffolk County Sheriff.

38. The intervening plaintiffs are members 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.

39. 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 and the policy of the City of Boston of conducting routine strip and visual body cavity searches of woman but not of men who are otherwise in a similar position.



40. Plaintiff-intervenors' claims or defenses are typical of the claims or defenses of the class of plaintiffs.

41. Plaintiff-intervenors will fairly and accurately represent and protect the interests of the members of the class. The attorney for the plaintiffs 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.

42. 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.

43. 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.

44. 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.

45. 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**

46. The above paragraphs are incorporated herein.

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

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

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

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

50. The above paragraphs are incorporated herein.

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

52. 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.

53. 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 or pursuant to a default warrant.

54. 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.

55. As a result of defendant Rouse's conduct, plaintiff-intervenors were subjected to the search described above.

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

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

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

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

59. The above paragraphs are incorporated herein.

60. 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.

61. 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.

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

**FOURTH COUNT: 42 U.S.C. §1983: DEFENDANTS DOE 2-5**

63. The above paragraphs are incorporated by reference.

64. At all times relevant to this complaint, defendants Doe 2-5 were acting under color of the laws of the Commonwealth of Massachusetts and the County of Suffolk.

65. By the actions described in the preceding paragraphs, the correction officers referred to as Jane Doe 2-5 deprived the plaintiff-intervenors 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.

66. As a direct and proximate result of the acts of the defendants, the plaintiff-intervenors suffered the injuries described above.

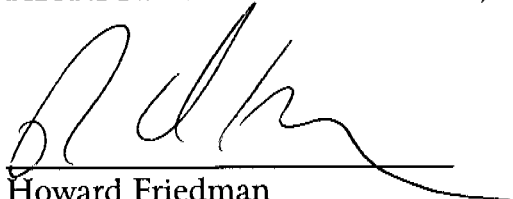
WHEREFORE the plaintiff-intervenors requests that this Court:

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 plaintiffs 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,



Howard Friedman  
BBO #180080  
Law Offices of Howard Friedman  
90 Canal Street  
Boston, MA 02114-2022  
(617) 742-4100