

1996 WL 685752

Only the Westlaw citation is currently available.  
United States District Court, W.D. New York.

Akil AL-JUNDI, a/k/a Herbert Scott Deane; Big Black, a/k/a Frank Smith; Elizabeth Durham, Mother and Legal Representative of Allen Durham, deceased; Litho Lundy, Mother and Legal Representative of Charles Lundy, deceased; Theresa Hicks, Widow and Legal Representative of Thomas Hicks, deceased; Alice McNeil, Mother and Legal Representative of Lorenzo McNeil, deceased; Maria Santos, Mother and Legal Representative of Santiago Santos, deceased; Laverne Barkley, Mother and Legal Representative of L.D. Barkley, deceased; Jomo Joka Omowale, a/k/a Eric Thompson; Vernon LaFranque; Alfred Plummer; Herbert X. Blyden; Joseph Little; Robin Palmer; George "Che" Nieves; James B. "Red" Murphy; Thomas Louk; Peter Butler; Charles "Flip" Crowley; William Maynard, Jr.; Calvin Hudson; Kimanthi Mpingo, a/k/a Edward Dingle; Kendu Haiku, a/k/a Willie Stokes; Ooji Kwesi Sekou, a/k/a Chris Reed; Phillip "Wald" Shields; Jerome Rosenberg; Alphonso Ross; Frank Lott; Gary Richard Haynes; Raymond Sumpter; Omar Sekou Toure a/k/a Otis McGaughey; Dacajeweah, a/k/a John Hill; and Johnnie Barnes, as the Administrator of the goods, chattels and credits which were of John Barnes, deceased, on behalf of themselves and all others similarly situated,  
Plaintiffs,

v.

Kurt G. OSWALD, as Administrator of the Estate of Russell G. Oswald; John S. Keller, as the Administrator of the Estate of John Monahan; Vincent Mancusi; and Karl Pfeil, Defendants.

No. 75-CV-0132E(M).

|  
Nov. 26, 1996.

#### Attorneys and Law Firms

Elizabeth M. Fink, Brooklyn, NY, Michael E. Deutsch, Chicago, IL, Joseph Heath, Jamesville, NY, Dennis Cunningham, San Francisco, CA, Daniel Meyers, New York City, for Plaintiffs.

John H. Stenger, Buffalo, NY, for Oswald.

Joshua J. Effron, Delmar, NY, for Keller.

Richard E. Moot, Buffalo, NY, for Mancusi.

Mitchell J. Banas, Buffalo, NY, for Pfeil.

#### MEMORANDUM AND ORDER

ELFVIN, District Judge.

\*1 The plaintiffs in this action allege violations of their constitutional rights in connection with events which took place following the September 9, 1971 inmate uprising at the Attica Correctional Facility. This Court presently considers the plaintiffs' motion filed March 14, 1996 asking that their proposed jury questionnaire be used as part of the *voir dire* of the venirepersons and that they be allowed eighteen additional peremptory challenges to be used during jury selection at the upcoming retrial of the "retaking" phase of the lawsuit<sup>1</sup> and that portion of their motion filed April 26, 1996 which seeks the admission into evidence for such trial of "the entire body" of photographic and documentary evidence generated by law enforcement officials related to the events at issue.<sup>2</sup> Such will be denied.

The questionnaire is said to bear upon the "substantial possibility of prejudice" created by the notoriety and historical importance of the riot, the subsequent retaking and related events and the extensive media coverage such has received.<sup>3</sup> The plaintiffs notably failed to cite any legal authority compelling a granting of their request. A trial court, in exercising its broad discretion over the substance of the *voir dire*, must reasonably endeavor to examine the prospective jurors so that the parties have adequate bases for challenges for cause and peremptory challenges. *Art Press v. Western Printing Machinery Co.*, 791 F.2d 616, 618 (7th Cir. 1986). Questions properly submitted by counsel to this Court and directed toward important aspects of the action to which the public could reasonably be expected to have strong reactions or prejudices may be suggested to the undersigned prior to the *voir dire*. *Pitasi v. Stratton Corp.*, 968 F.2d 1558,

1563 (2nd Cir. 1992). The plaintiffs conclusorily and whimsically assert the possible existence of inadequately particularized prejudice. This Court notes that the questions submitted by the plaintiffs inquire into prospective jurors' protected religious and political affiliations and activities which are not proper bases for challenges, that the balance of the pertinent questions are embodied in this Court's usual oral questioning of a panel of venirepersons and that a written questionnaire is not necessary. This Court will consider specific requests from counsel for additional inquiries to be put to one or more of the venirepersons to probe for improper bias or prejudice about material matters.

Additionally, the plaintiffs have not persuaded this Court to grant them eighteen or any other number of extra peremptory challenges in the upcoming retaking trial in addition to the three to which each party is entitled by law. 28 U.S.C. §1870; FRCvP<sup>4</sup> 47(b). (It may evolve that one or more additional challenges will be allowed,

depending on the total number of jurors to be seated.)

Finally, the plaintiffs' request for evidentiary rulings is premature.

\*2 Accordingly, it is hereby *ORDERED* that the plaintiffs' motion requesting that a written jury questionnaire be employed preparatory for the *voir dire* of the venirepersons and that the plaintiffs be allowed eighteen additional peremptory challenges is denied and that the plaintiffs' motion for the admission into evidence of unspecified photographic and documentary evidence is denied without prejudice.

#### All Citations

Not Reported in F.Supp., 1996 WL 685752

#### Footnotes

<sup>1</sup> The plaintiffs allege breaches of their constitutional rights in and during the planning for and executing the retaking of that portion of the prison held and occupied by the plaintiffs, in the failure to arrange for and provide proper medical attention to the plaintiffs following the retaking, in reprisals inflicted upon them after the retaking and prior to their having been returned to cells and in reprisals inflicted upon them after such recelling.

<sup>2</sup> Affirmation of Elizabeth M. Fink, Esq., dated April 22, 1996, ¶9. The plaintiffs also moved to amend the Complaint to conform such with the evidence presented at the earlier trial pursuant to Rule 15(b) of the Federal Rules of Civil Procedure and requested an award of interim attorney's fees; this Court addressed such in the Memoranda and Orders signed August 18 and November 6, 1996, respectively.

<sup>3</sup> Affirmation of Elizabeth M. Fink, Esq., dated March 5, 1996, ¶¶4-5.

<sup>4</sup> Federal Rules of Civil Procedure.

