

Ex-Attica Inmate Wins \$4 Million in Suit Over Reprisals After 1971 Uprising

By ROBERT D. McFADDEN

Twenty-six years after he was beaten and tortured in an orgy of reprisals by guards who had crushed the deadliest prison uprising in the country's history, a former Attica inmate was awarded \$4 million in damages yesterday by a Federal court jury in Buffalo.

The plaintiff, Frank Smith, was forced to walk over broken glass, beaten with batons, locked in his cell for four days, burned with cigarettes, made to lie on a picnic table for hours with a football under his chin and threatened with castration and death. He was the first of 1,281 inmates to win damages in the long-running case. They filed a \$2.8 billion civil liability suit in 1974.

"This is a feeling I will never be able to express," an exuberant Mr. Smith, 64, a Queens resident employed as a paralegal, said in a telephone interview from Buffalo after the verdict. "We finally got justice. The jury has sent a message that people everywhere need to be treated like humans, not animals."

Elizabeth Fink, the principal lawyer for Mr. Smith and the other plaintiffs, has spent her entire career on the case. She called the award a vindication of 23 years of court bat-

tlies on behalf of the inmates, many now dead, who were brutalized after state troopers and guards stormed Attica Correctional Facility, 30 miles east of Buffalo, and quelled the uprising on Sept. 13, 1971. The bloodshed left 43 dead and more than 90 injured.

Ms. Fink noted that yesterday's verdict, by a seven-member jury in the court of Judge John T. Elfvig, was in the monetary award phase of a trial whose facts were determined in a trial before the same judge in 1992. A jury then concluded that Attica's former deputy warden, Karl Pfeil, was liable for having overseen brutal reprisals against inmates, who suffered "cruel and unusual punishment."

Although Mr. Pfeil was held personally responsible, and other prison officials and correction officials were not, lawyers for both sides agreed that New York State would wind up paying any monetary damages, because state officials are indemnified for the performance of their duties.

Ms. Fink said that Mr. Smith's \$4 million award could become a yardstick for damages to the remaining former inmates. But she said the plaintiffs' goal was still an overall monetary settlement with the state.

The first of 1,281 plaintiffs wins damages.

The two sides have tried to reach settlements in the case in recent years.

Mitchell Banas, Mr. Pfeil's lawyer, said the award would be appealed. He acknowledged during the one-week trial that Mr. Smith had been hurt in the Attica violence, but he said the severity of the injuries had been exaggerated.

"It was plainly excessive," Mr. Banas told The Associated Press, referring to the award. "We had a runaway jury here. They obviously based their decision not on evidence, but on emotion or sympathy or punishment."

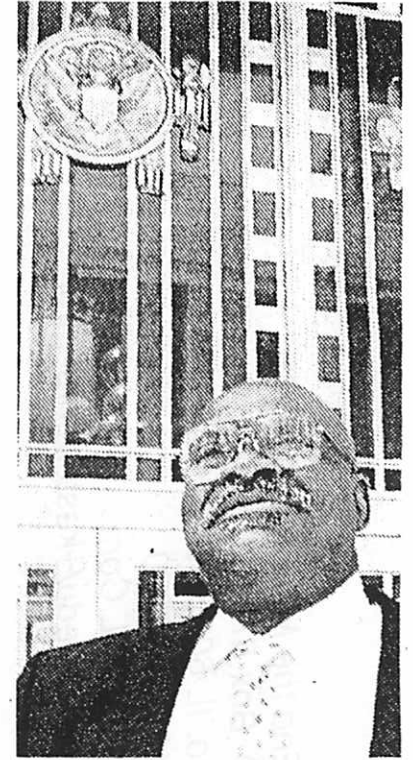
But Mr. Smith and his lawyer said the damages were justified by what had happened at the prison in the days following Gov. Nelson A. Rockefeller's decision to suppress the inmate uprising, which began on Sept. 9, 1971, and was put down four days later with tear gas and gunfire.

Many survivors of the violence, including inmates and prison employees, recalled at the 1992 trial how state troopers and guards had violently retaken the prison. After control had been re-established, they said, naked inmates were made to run over broken glass past a gantlet of correction officers swinging nightsticks, an action that officers defended as needed for control.

Mr. Smith testified that he was forced to lie naked on a table for three to five hours holding a football with his chin. If he allowed the ball to roll away, he said he was told, he would be killed or castrated. As he lay on the table, he said, guards struck his testicles with batons and dropped lighted cigarettes and shell casings on his body.

Later, he said, he was beaten until both his wrists were broken and prison officers played one-man Russian roulette with him. Mr. Smith, who had been imprisoned for armed robbery and emerged as a leader during the uprising, said the authorities had sought him out for reprisals.

Released from prison in 1973, he has worked for more than 20 years as a paralegal investigator for Ms. Fink, his lawyer. He is married and has three children and several grandchildren.



Associated Press

Frank Smith, a former inmate, was awarded \$4 million in damages after guards tortured him.

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Dear Friends,

Enclosed is a leaflet for an upcoming program we are sponsoring to commemorate the great Attica rebellion of September 9 - 13, 1971. On the other side of this page is an article from the *New York Times* that describes recent events in the case. We do hope that you will be able to attend the program and support the Attica Brothers. The Brothers' defense committee is in desperate need of funds, so if you can't attend perhaps you will be able to make a contribution to the Attica Brothers' Defense Committee. Please do this by making a check out in this name and mailing it to CEML at our usual address. As a source of encouragement, we will provide free of charge a beautiful new three-color poster, 11 x 17, to anyone who contributes at least \$10.

While planning this event we were greatly saddened to learn that Akil Al-Jundi, one of the Attica Brothers and a leading member of its Defense Committee, died after a long bout with diabetes. Akil had come to Chicago several times to work with CEML and other groups in the area and every one who met him recognized immediately that Akil, who was wounded several times when the state retook Attica, was an extraordinary human being -- caring, self-sacrificing, and revolutionary to the core. All of us who were touched by Akil are better human beings because of that. New York State has taken so long (over 23 years now) to deal with the law suit at least in part provoked by the hopes that some of the Attica Brothers would die and thus not be eligible for a settlement. Unfortunately, in Akil's case they calculated correctly. Let's join together to make certain that they don't win any more such victories.

ATTICA MEANS FIGHT BACK!

Please clip and mail to CEML at the address above

Enclosed is a contribution of \$_____.

Please send me ___ copies of the new poster.

Name _____

Address _____

City _____ State _____ Zip _____

H phone _____ W phone _____