

## LESLIE KELMACHTER

HER BATTLE TO HELP A MAN  
PUSHED OFF A ROOF BY POLICE

## EXCEPTIONAL CASE

**Y**ou have to really love your job to get up at 4:00 am every day to start work. But that is exactly what trial attorney Leslie Kelmachter does. A partner at The Jacob D. Fuchsberg Law Firm, Kelmachter has tried too many cases to count over the course of her career. "I prepare about 15 cases a year for trial, but the vast majority settle," she says, often right before they go to the jury.

Kelmachter finds representing the plaintiff in a personal injury or medical malpractice case particularly "compelling" because you are "doing it for someone." She says, "I'm moved by my clients."

A recent federal case Kelmachter tried is a perfect example. In March, she won a \$4.6 million verdict for Shawn Lewis, who fell from a Brooklyn rooftop after being chased by the police. As a result of his injuries, the young man is now a paraplegic and confined to a wheelchair.

According to court papers, it is undisputed that, on the day of the accident, Lewis went to his ex-girlfriend's apartment in violation of an order of protection that she had against him. The ex-girlfriend called the police and, when they arrived, Lewis fled from the officers, ending up on the roof of a four-story building.

But at that point, the stories diverge. "The only people who know what happened are the four people who were on the roof," says Kelmachter. At trial, Lewis testified that one officer pushed him so hard in the chest that he stumbled backwards and over the edge of the roof, landing in an alley. Kelmachter argued that the officer's conduct constituted battery or the excessive use of force. In contrast, the officers denied that Lewis was pushed, contending that he simply fell.

Kelmachter got the case only a month before trial from an attorney at another law firm for whom she tries cases. Other attorneys might have panicked at the thought of preparing such a complex trial on that short of notice, but not Kelmachter. She thrives on the challenge. It is a "different process than when you have the case from the beginning," she explains, but she "likes it very much."

Winning Lewis' case was going to be an uphill battle. "The facts weighed against us," says Kelmachter. Lewis was an immigrant "working without the benefit of working papers or legal status," she explains. So humanizing him for the jury was important.

The biggest hurdle Kelmachter faced, however, was the fact that Lewis had given different versions of what happened on the roof before

trial. Lewis initially said that he had been pushed off of the roof by an officer. He later recanted that story, telling officers who interviewed him in the hospital that he fell trying to go down the fire escape.

The officers' argued that Lewis' recantation was not coerced. But Kelmachter notes that when Lewis recanted, he was under arrest, handcuffed to a hospital bed and intimidated. In fact, Lewis testified that an officer told him that if he said he had fallen trying to go down the fire escape, he would no longer be guarded by police or handcuffed. Although Lewis knew this story was not the truth, he agreed to go along with it because he was alone in the country and scared.

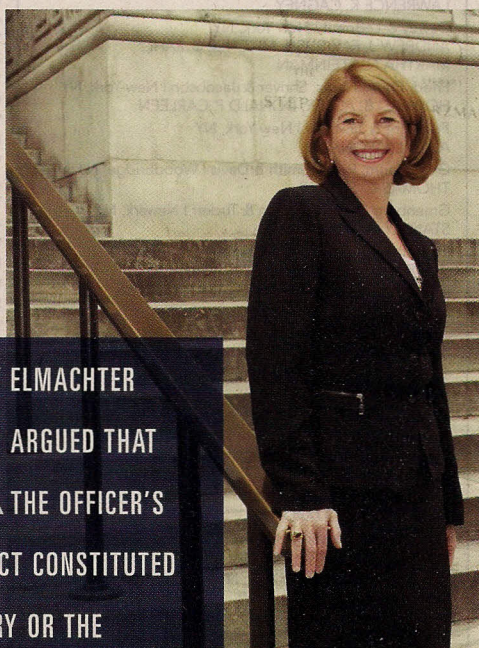
At trial, defense counsel argued that Lewis' prior inconsistent statements should weigh against his credibility. However, the officers had given different versions of the events, too.

Kelmachter's challenge was to explain Lewis' lies to the jury and convince them that his testimony at trial was more compelling than the officers' testimony. "The police officers on the roof lied because they could, in the belief that whatever they said would be accepted; Mr. Lewis lied in the belief that if he told the truth, it would be rejected," says Kelmachter.

The jury deliberated for three days before arriving at a verdict but ultimately sided with Lewis.

Meanwhile, "his life is difficult," says Kelmachter. He is married now, supported by his wife while helping raise her young daughter. Although Lewis could really use the money from the verdict, he will not see it for awhile. The case is in the post-trial motion stage. If the defendant loses these motions, which Kelmachter believes it will, it has indicated that it will appeal. If there is an appeal, she believes that it will be between 18 months and two years before the case is ultimately resolved.

—Robin L. Barton



**K**ELMACHTER  
ARGUED THAT  
THE OFFICER'S  
CONDUCT CONSTITUTED  
BATTERY OR THE  
EXCESSIVE USE OF FORCE.