

BRUTALITY CASE SUMMARIES
for the
PLATTSBURGH OFFICE
of
PRISONERS' LEGAL SERVICES OF NEW YORK

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Revised, October 1997

to the hospital, and so was Otero. Both were taken to isolated rooms near hospital and assaulted. Graham was assaulted at the hospital after he had been examined for injuries received in the corridor. Thus there were essentially three separate incidents in which plaintiffs were assaulted. The assaults consisted of being repeatedly punched, kicked and struck with batons, often while their hands were cuffed behind their backs.

Injuries:

Plaintiff Otero spent 10 weeks in the facility infirmary recovering from massive head and leg trauma, including a broken foot. Plaintiff Villanueva suffered multiple bruises, swelling and abrasions over his head and body, including a perforated eardrum. Plaintiff Graham received multiple body and head contusions and abrasions, and a deep laceration over his left eye from a baton strike. Good photographs of the injuries, including some we took four days later.

Court's Findings:

On October 24, 1994, the court awarded a total of \$18,000 in compensatory damages for the defendant officers' and sergeants' "*unauthorized, improper and unreasonable*" use of force. The Court held that to subject plaintiff's to this type of treatment, "*particularly when in restraints, was not only excessive but cowardly (particularly the assault on Graham by [Officer] Caron).*" The Court further noted that "*[d]efendants' argument that it was 'objectively reasonable' for them to act as they did was totally without support. No trained, or even civilized, correction officer could believe that such conduct does not violate clearly established statutory and constitutional rights of which a reasonable person would have known.*"

The court also found that racism played a role in these assaults, finding that Officers Bruno and Martin "*kicked, punched, and spit on [Mr. Villanueva] while using racial epithets.*" Likewise, the court found that Officers Devan and Dubrey were "*yelling racial epithets*" at Mr. Otero as they were "*kicking, stomping and striking him with batons.*" Finally, Mr. Graham was also "*showered with racial epithets*" along his escort from the incident to the prison hospital.

On April 19, 1995, the court ordered nine of the ten defendants who were found liable in October (7 officers and 2 sergeants) to pay a total of \$13,000 in punitive damages. As Judge Smith noted in his decision, while "*the duties of a corrections officer are difficult and not always pleasant . . . excessive force is inappropriate and can and will not be tolerated by society or the courts.*" With respect to the assault upon Mr. Graham, the court noted that Officer Caron's "*totally unprovoked attack on plaintiff Graham, punching him in the back a number of times, in the jaw at least twice and particularly by striking him near the eye with his baton causing a serious injury while Graham was handcuffed behind his back was inexcusable.*" Judge Smith held that "*as to the assault on plaintiff Otero, I find that defendants Jay Devan and Sherman Dubrey were equally culpable in that after punching Otero as he lay on the floor, they continued this assault, kicking, punching, striking with batons, all the while shouting racial slurs while Otero was handcuffed behind his back.*" In the incident involving Mr. Villanueva, the court

thigh, left wrist and arm, and right scapular area. Good photographs, including some we took eight days later.

Court's Findings:

The court stated that as a result of Mr. Cay's apparent refusal to assist another inmate mowing grass, "*defendant Burleigh and defendant Dubrey abrogated to themselves the role of adjudicators of the charges against plaintiff. They found him guilty. As punishment for plaintiff's defiance and flippant attitude they decided on summary corporal punishment.*" The court described such punishment as "*a quick, efficient and savage beating*" and that "*[d]efendants' lawless behavior which inflicted wanton injury [upon Mr. Cay] cannot be condoned.*"

The court also flatly rejected defendants' denial that they uttered racial epithets at Mr. Cay while beating him, and that they had never heard any staff at Clinton call any inmate "nigger" or "spic." The court further noted, "*[d]efendants' demeanor while testifying was in turn supercilious, condescending and evasive.*" Moreover, and contrary to their testimony under oath, the court found that "*defendants ignored the usual procedures designed to prevent escalation of officer/prisoner disputes in order to isolate Cay, to punish Cay and to cover up their acts.*"

The Court also stated in its punitive damages decision as follows: "*It has been the experience of the Court that the majority of correctional personnel acquit themselves dutifully in a profession often attendant with stressful and trying circumstances, but defendants' sadistic and deliberate actions clearly went beyond the pale of acceptable behavior. Officers Burleigh and Dubrey ambushed plaintiff. As they administered a savage beating upon him, they called him "Puerto Rican spic" and one threatened to kill him. That plaintiff was an inmate presents no excuse for their actions. Society expects more from individuals placed in positions of authority, and a token punitive damages award would be inappropriate in this instance.*"

Crespo v. Coughlin, 84-CV-718 (N.D.N.Y. 1994) (Smith, M.J.)

Incident: May 22, 1983

Facility: Clinton

Trial Date: March 16-18, 1994

Decision: April 14, 1994

Plaintiff(s): Richard Crespo

Defendants: Sergeant Thomas Roberts and Correction Officers Stephen Brown, Daniel Canning, Gearsy LaRoque, Superintendent Eugene LeFevre, Commissioner Thomas A. Coughlin, III, Acting Deputy Superintendent of Security John Curran and Deputy Superintendent of Security James Sullivan

Defendants Liable: Roberts, Brown and Canning

Damages: \$30,000 Compensatory (no punitives awarded)

Attorneys Fees: Settled for \$40,415 (includes \$250 interest)

Claim:

There was a large demonstration/takeover in the prison yard in response to officers' assault of an inmate named Raphael Quiles. Plaintiff was in the yard at the time of the takeover, but denied any involvement in the demonstration. He said the defendants believed he was involved simply because he was hispanic, and as a result, beat him in retaliation once control over the yard was restored and prisoners were being processed back into the facility. Plaintiff testified that the sergeant told the officers to beat him, stating "party on that."

Injuries: Plaintiff suffered serious wounds to his head and legs which required stitches, as well as bruises and abrasions to his head and body. Plaintiff testified to continuing emotional injury, sleeplessness, nightmares and migraine headaches, but the court did not find such claims substantiated.

Court's Findings:

The court found that plaintiff had been viciously assaulted by a sergeant and two correction officers. (Officer Brown had been promoted to sergeant at the time of the trial. He was also a defendant in Boston). The court found that as a result of defendants' beating, "*plaintiff suffered serious wounds to his head and legs which required stitches as well as bruises and abrasions to his head and body.*" The court further noted that "*plaintiff did nothing to justify the use of any force, much less the amount of force which I find was used by defendants Roberts, Brown and Canning...There was simply no need for the application of any force and it cannot be seriously argued that force was applied in a good faith effort to maintain or restore discipline. Indeed, it is clear that it was applied maliciously for the sole purpose of causing harm.*"

Plaintiff had claimed that CO LaRoque threatened him the day after the incident should he speak with the Inspector General investigators. The court "*accepted as true*" such claims, finding LaRoque's testimony "*unworthy of belief.*" However, the court held that this did not rise to the level of an 8th Amendment claim, stating "[s]uch conduct by LaRoque is reprehensible but not, in these circumstances, actionable."

Scott v. Dubray, 87-CV-1340 (N.D.N.Y. 1992) (Hurd, M.J.)

Incident: August 9, 1987

Facility: Clinton

Trial Date: February 3, 4 and 5, 1992

Decision: April 22, 1992

Plaintiff(s): Kenneth Scott

Defendants: Captain Roger Dubray, Lieutenant Samuel Tedford, Sergeants Robert Sweeney and Darwin LaClair, and Correction Officers Mark Liberty, Pat Conley and Steven Parker.

Defendants Liable: Tedford, Sweeney and Liberty (action against LaClair was dropped).

Damages: \$1,250 Compensatory damages
\$500 Punitive damages (\$100 against Tedford and \$200 each against Liberty and Sweeney)

Attorney's Fees: Settled for \$15,000.

Claim:

There was a disturbance in the SHU which involved throwing food, feces, etc. onto the gallery. As CO's Conley and Liberty were putting a cell shield on plaintiff's cell, he squirted them with urine. As a result, and with the assistance and planning of a lieutenant and sergeant, the CO's retaliated. The retaliation was to squirt plaintiff with urine and beat him.

Injuries: Severe contusion, swelling and laceration to left eye. Eye was swollen for about two weeks and he suffered headaches for 4-5 months. A complete recovery was made, with no visual impairment.

Court's Findings:

Court found Sweeney and Tedford set up plaintiff to have urine thrown on him by CO. Liberty who also punched plaintiff in the head. Injuries were a ½ inch laceration to upper left eyelid, contusion to left eye, and swelling to lower eyelid. The court found "*this was not a spontaneous attack [but] a planned retaliation, and when it went too far, there was a concerted effort to cover it up.*" The court also stated, "*the officers got right down and dirty with the plaintiff. 'If you squirt us with urine, we are going to throw cups of urine on you and add a couple of punches.'* Such an attitude, while understandable and perhaps expected on a children's playground, cannot be tolerated within a prison system by a civilized society."

Diaz v. Richardson, 90-CV-448 (N.D.N.Y. 1992) (Hurd, M.J.)

Incident: June 28, 1989

Facility: Clinton

Trial Date: February 25-26, 1992
Decision: October 5, 1996 Compensatory Damages
November 13, 1992 Punitive Damages

Plaintiff(s): Eligio Diaz

Defendants: Sergeant Earl Parks and Correction Officers Roderick Richardson, Stephen Martin and Randy Vann

Defendants Liable: All defendants.

Damages: Initially \$22,500 total (\$8,500 compensatory and \$14,000 punitive) awarded by the court. (\$5,000 punitives against Richardson, \$4,000 against Parks and \$2,500 each against Martin and Vann).

[Defendants appealed the punitive damages award, which led to a settlement of \$21,500 in compensatory damages. Thus although we have two court decisions, the case was settled with no punitive damages.]

Attorneys Fees: Settled for \$15,000

Claim:

Plaintiff requested that Richardson give him his personal property. Richardson ordered him to return to his cell, plaintiff refused and demanded to speak with a sergeant. Richardson then assaulted plaintiff, pushing, punching and kicking him. Plaintiff got up and tried to get away, running to some of the upper galleries. Defendants took chase, caught him and viciously beat him.

Injuries: Plaintiff suffered a fracture of the right zygomatic bone, fracture of the right maxillary bone, and lacerations, abrasions, ecchymosis and hemorrhage of and around the eye, as well as abrasions and scratches about his body.

Court's Findings:

The court found that officer Richardson initiated the incident by pushing Mr. Diaz “*very hard with both hands*” and “*then proceeded to strike and kick [him] while he was on the floor.*” Officers Martin and Vann then arrived and “*proceeded to administer a further beating.*” The court thus stated that it could “*only conclude that the defendants Richardson, Vann, and Martin used unnecessary and wanton infliction of force upon the plaintiff in violation of his constitutional rights...[and that] Parks failed to intervene, and thus condoned the use of physical force....*” The court went on to state that “[i]n fact, [Parks] did more than just fail to intervene, he entered into a conspiracy by delaying a call for help until sufficient time elapsed to enable

defendants, particularly Richardson, to administer their vengeful beating on the upper floors of Upper F Block.” The court also “totally rejected” the defendants’ version of what happened, having claimed plaintiff’s injuries resulted from a fall against a feed-up cart. On November 13, 1992, the court went on to award \$14,000 in punitive damages against the defendants to punish them for their “vicious beating” of Mr. Diaz. Again, however, defendants appealed the punitive award which led to the above-mentioned settlement.

Hayden v. Maldonado, 82-CV-1166 (N.D.N.Y. 1989) (Munson, J.)

Incident: May 22, 1981

Facility: Clinton

Trial Date: August 11-14, 1986

Decision: May 24, 1989

Plaintiff(s): John Hayden

Defendants: Correction Officers Aristides Maldonado and Larry Brooks

Defendants Liable: Both defendants.

Damages: \$24,600 total (\$12,300 compensatory decision by the court, then a settlement of another \$12,300 instead of court deciding punitives).

Attorney’s Fees: Settled for \$43,000

Claim:

Plaintiff asked Maldonado to allow a fellow inmate to attend the afternoon’s movie. He rejected the requests and ordered plaintiff to lock in his cell, which he did. Plaintiff testified shortly after his cell was cracked and told a sergeant wanted to speak with him. The two defendants and a third unknown officer then assaulted him. Defendants claimed plaintiff received his injuries as a result of an epileptic seizure.

Injuries: Hayden suffered bruised ribs, a black eye, and other bruises and abrasions about his head and body. He spent two weeks in the facility hospital as a result of the beating.

Court’s Findings:

The court stated that it did not credit the defendants’ testimony, rejecting their claim that they did not assault him and that his injuries resulted from an epileptic seizure. The court also noted that the reason plaintiff had not complained to certain prison personnel that he had been beaten after the assault was fear of further harm. The court noted that “[t]he motive for not

Plaintiff: Michael Slater
Defendants: Correction Officers Darryl Menard and Aristides Maldonado
Damages: \$18,000
Attorney's Fees: \$7,000

Claim:

Plaintiff claimed that he was assaulted by the two officers in the prison Industrial Building. He claimed Officer Menard first assaulted him, then handcuffed him behind his back, after which he was further assaulted by both officers. He claimed the assaults consisted of blows about the head and body by Officer Menard with his fists and by Officer Maldonado with his baton. He also claimed that the two officers filed false reports in order to cover up the alleged beating, including false misbehavior reports which resulted in a lengthy period of solitary confinement.

Injuries: Multiple contusions, abrasions, and other injuries to his face, back, legs and hands.

Alamo v. Rushford, 92-CV-922 (N.D.N.Y. 1996)

Incident: April 17, 1992 **Facility:** Clinton
Settlement Date: September 27, 1996

Plaintiff: Luis Alamo

Defendants: Correction Officers John Rushford, Howard Pickman, Bruce St. Pierre, and Terry Brunet

Damages: \$23,000

Attorney's Fees: \$16,000

Claim:

Plaintiff claimed that he was assaulted by the four officers following plaintiff's fight with another inmate in Lower F Block. Plaintiff alleged he was cuffed, taken to an isolated sergeant's office and brutally beaten. He alleged he was punched and kicked about head and body, struck with a baton across back and held down on a desk while officer Rushford wrapped an electrical cord around his neck and severely choked him.

Incident: April 19, 1989 **Facility:** Franklin
Settlement Date: October 1993
Plaintiff: Kevin Mayes
Defendants: Sergeant Lawrence Ashline and Correction Officers David Smart, William Durnin, Kenneth Schwenke and Justice DeCosse
Damages: \$14,000
Attorney's Fees: \$3,000

Claim:

Plaintiff claimed that he was assaulted by four officers at Franklin following a verbal argument with an officer. Following the assault, plaintiff alleged that an officer pushed his head through a window causing it to shatter.

Injuries: Plaintiff received 34 stitches to his face. Plaintiff died of unrelated medical problems while litigation was proceeding and his mother settled the claims.

Joshua v. Provost, 88-CV-345 (N.D.N.Y. 1991)

Incident: January 20, 1988 **Facility:** Clinton
Settlement Date: March 1991
Plaintiff: Franklin Joshua
Defendants: Correction Officers Joseph Provost and Donald Uhler
Damages: \$2,000
Attorney's Fees: None

Claim:

Injuries:

Rodriguez v. Henderson, 87-CV-657 (N.D.N.Y. 1991) (McAvoy, J.)

Larry Cormier, William Currier, Sherwood Dubrey, Paul Gilmore, Wilbur LaMountain, Aristides Maldonado, Scott Rabideau and Larry T. Velie

Damages: Colon \$10,000; Hickman \$10,000; Hinton \$9,000; Montes \$2,500; Gregg \$5,000; Williams \$10,000

Attorney's Fees: None

Claim:

The six prisoner plaintiffs claimed they were assaulted by officers at Clinton on April 5, 1985. They alleged that nine officers, under the supervision of a sergeant, clubbed, punched, and kicked them as they lay on beds and the floor of their dormitory rooms in the facility hospital area. They were being temporarily housed there due to lack of space in the general prison population.

Injuries: Injuries were alleged to include two inmates knocked unconscious, one broken shoulder, and many lumps, bruises, cuts and abrasions.

McKenzie v. Pecore, (N.D.N.Y. 1988)

Incident: January 16, 1986 **Facility:** Clinton
Settlement Date: April 15, 1988)

Plaintiff: Michael McKenzie

Defendants: Correction Officers Joseph Pecore and Rick Covey

Damages: \$500

Attorney's Fees: None

Claim: Plaintiff claimed that he was beaten by CO's, following an argument over his not receiving certain food items .

Injuries: Contusions and abrasions on the face and body

Dare v. Ball, 85-CV-134 (N.D.N.Y. 1987)

Incident: August 29, 1984 **Facility:** Clinton

Settlement Date: August 14, 1987

Plaintiff: Leonard Dare

Defendants: Sergeants Robert Ball and Joseph Kilkeary, Correction Officers Mark Drown, Randy Vann, Howard Pickman and David Shambo, Lieutenant Stephen Drown, Superintendent Eugene LeFevre and Deputy Superintendent John Curran

Damages: \$12,500

Attorney's Fees: None

Claim:

Plaintiff alleged that he was assaulted by four officers and two sergeants. He claimed that he was first beaten in a housing unit, which beating consisted of being punched in the face and repeatedly punched and kicked in the head, chest, ribs, back, stomach, kidney, legs and other parts of his body. He claimed that he was then handcuffed and taken to an isolated room in the facility hospital where he was further clubbed, kicked and beaten. He alleged that this second beating included twice having a baton rammed into his buttocks near his rectal area, with statements by the officers inferring they were going to penetrate him. He also alleged that officers tightly wrapped a piece of cloth around his neck, causing him to pass out.

Injuries: As a result of all this, plaintiff alleged he suffered at least four broken ribs, along with numerous cuts, bruises and contusions, and bloody urine. Plaintiff spent 13 days in the facility hospital.

III. Unsuccessful Bench Trials

Rodriguez v. Wallace, 94-CV-528 (N.D.N.Y. 1996) (Scullin, J.)

Incident: January 4, 1993 **Facility:** Clinton

Trial Date: February 5, 1996

Decision: February 5, 1996

Plaintiff: Francisco Rodriguez

Defendants: Correction Officer Robert Wallace

Claim:

Inmates of Unit 14 v. LeFevre, 77-CV-147 (N.D.N.Y. 1988) (Foley, J.)

Incident: Various, between October 1976 and March 1977
Clinton

Facility:

Trial Date: April 1988

Decision: April 12, 1988, jury verdict dismissing claims against defendants Rebideau, Conley, Connley, Huckeba, Kleinschmidt, Zelinski, and Dobbs. Stipulations of dismissal against defendants Fuller, Ryan and LeFevre in February 1988. Plaintiff Moore's and Smith's claims dismissed by stipulation in April 1987, and Bayron's claims dismissed by stipulation in March 1988.

Plaintiffs: Victor Bayron, George Cardwell, Gregorio Cruz, Fred Curl and Martin Lacher

Defendants: [From 1st Amended Complaint] Correction Officers Sherman Rebideau, Donald Barber, Patrick Conley, Gregory Connley, Brian Huckeba, Ludwig Kleinschmidt, James O'Brian, Wayne Wilkins and Robert Zelinsky, Sergeants Sherry Dobbs and Charles Ryan, Lieutenant Ronald Foster, Jr., and Superintendent Eugene LeFevre.

Claim:

Allegations of a pervasive pattern and practice of defendants' assaulting plaintiffs in Unit 14, the Special Housing Unit at Clinton. General allegations included slamming inmates' heads into metal walls in the Unit elevator and beating them repeatedly, smashing their faces into the table in the Unit frisk area, kicking and choking inmates, inflicting beatings with batons, the use of threats and obscene and abusive racial and religious epithets, the filing of false misbehavior reports, and the destruction of personal property. Complaint also amended alleging inadequacies with the camera surveillance system which was installed in the Unit in 1978.

Injuries: Numerous lacerations, contusions, and abrasions about their bodies. Also the intentional infliction of anxiety, humiliation and mental and emotional harm.

IV. Unsuccessful Jury Trials

Mendez v. Liberty, 88-CV-1029 (N.D.N.Y. 1990) (Smith, M.J.)

Incident: July 24, 1988

Facility: Clinton

Trial Date: June 25-26, 1990

Plaintiff: David Mendez

Defendants: Sergeants Steven Liberty and Richard Sheasby and Correction Officers Michelle Caserto, Norman Collins, John Helmer, Edwin Hewitt, Orris Mayo, Leo Miller and Michael Venne.

Claim:

Plaintiff claimed he was slapped, punched and kicked by Liberty, Collins, Miller and Venne in Clinton's APPU. After treatment at the facility hospital, he claimed Mayo, Helmer, Hewitt, Sheasby and Caserto beat him a second time.

Injuries: After first incident, plaintiff alleged skin injuries and general soreness about his body, including arms, shoulders, ribs and head. As a result of the second incident, he claimed additional aches, pains and a burning sensation over his body.