

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

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plaintiff by defendants at a time when he was handcuffed, and therefore, helpless to defend himself supports a finding that the imposition of punitive damages against defendants is required in order to punish them for their willful and malicious conduct and to deter others in their positions from similar behavior.” Finally, the court stressed that it understands the difficult job of prison officials and that as a general matter it “allows a great deal of deference to the behavior of correction officers.” “However,” the court stated, after listening to the testimony of plaintiff and defendants and in reviewing the exhibits presented at trial, the Court was convinced that the credibility battle was not a close one. Although plaintiff’s testimony was consistent with the documentary evidence of his injuries defendants’ testimony was wholly unsupported by the same.”

Otero v. Babbie, 92-CV-1064 (N.D.N.Y. 1994). (Smith, M.J.)

Incident: June 4, 1992 **Facility:** Clinton
Trial Date: September 20-26, 1994
Decision: October 24, 1994 Compensatory Damages
April 19, 1995 Punitive Damages

Plaintiff(s): Miguel Otero, Julio Villanueva and Renaldo Graham

Defendants: Correction Officers Leigh Martin, Kris Bruno, Kenneth Waldron, Todd Parrotte, Jay Devan, Sherman Dubrey, Daniel Caron, John Metcalfe, William Reif, Gary LaRoque and Theodore Rascoe, Sergeants Harold Boyle, Anthony Pavone and Philip Patnode, Deputy Superintendents Thomas Ricks and Wendall Babbie.

Defendants Liable: All, except Metcalfe, Reif, LaRoque, Rascoe, Ricks and Babbie.

Damages: \$18,000 compensatory (Otero \$9,000; Villanueva \$6,000; Graham \$3,000)
\$13,000 punitives (\$2,500 against Caron; \$2,000 against Boyle and Pavone; \$1,500 against Parrotte; and \$1,000 each against Martin, Bruno, Waldron, Devan and Dubrey. No punitive damages assessed against Patnode).

Attorneys Fees: \$68,000 settlement

Claim:

Thirty-five prisoners were lined-up in corridor for KL rec. A few at the end of the line, including Otero and Villanueva, were fooling over a piece of candy. CO’s thought it was a fight and overreacted. Villanueva was taken back into block and assaulted, resulting in a major confrontation between inmates and staff in the corridor. Villanueva was assaulted along the way

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, Geary 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 1/2 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*

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.

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

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.