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

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#### Successful Bench Trials

# Boston v. Brown, 88-CV-1170 (N.D.N.Y. 1995) (McCurn, J.)

Incident:

December 31, 1987

Facility:

Clinton

Trial Date:

December 27, 1995

Decision:

December 28, 1995

Plaintiff(s):

Terrence Boston

Defendants: Sergeant Stephen Brown and Correction Officers John Gillen, Raney Rock

and Robert Ayotte.

Defendants Liable: All four defendants

Damages:

\$2,500 compensatory

\$4,500 punitives (\$1,500 against Brown and \$1,000 each against Gillen,

Rock and Ayotte)

Attorney's Fees:

\$14,552 upon motion

## Claim:

Plaintiff was in a fight with another inmate over the inmate having given him dirty sheets from the laundry. The fight only involved pushing and grabbing but no punching. While being restrained, he bit CO Rock. During escort to facility hospital, Sgt. Brown punched and struck him several times in the head. CO's Gillen and Ayotte then also kicked and hit him in the head, legs, and ribs, while the sergeant watched. CO Rock then arrived, saying "that fucking nigger bit me." Rock then punched and kicked him, and chopped him in the neck.

Injuries:

Boston suffered multiple contusions, abrasions, lacerations and scratches to his head, ears and face areas. He also had a small scratch/abrasion to one hand. Photographs taken by the facility showed bumps and blood on his forehead and mouth areas, as well as blood on both ears.

## Court's Findings:

In ruling from the bench, the court stated that under the circumstances "the Court was led to the inescapable conclusion that defendants gratuitously beat plaintiff not in a good faith effort to maintain or restore discipline but rather maliciously and sadistically to cause hm harm." The court also stated that "[t]he wholly gratuitous nature of the beating inflicted upon

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

ordered two sergeants (one of whom has been promoted to lieutenant since the incident) to pay punitive damages for their failure not only "to ensure that excessive force is not used against inmates," but because they themselves participated in such use of excessive force. The court also note that the punitive award against officer Parrotte was necessary because "not only did he kick Villanueva while he was handcuffed but then continued somewhat later by removing his shoes and striking him on the feet and legs while he was shackled."

Interestingly, Judge Smith indicated in his April 19 decision that punitive damages were being imposed "with the firm conviction gained from 13 years as a judicial officer handling litigation involving prisoners' claims of civil rights violations that the incidents occurred as described by plaintiffs and that such violations of prisoners' civil rights are not uncommon."

# Cay v. Burleigh, 89-CV-878 (N.D.N.Y. 1995) (Scanlon, M.J.)

Incident: July 28, 1988 Facility: Clinton

Trial Date: September 15, 1994

**Decision:** April 28, 1995 Compensatory Damages

October 16, 1997 Punitive Damages

Plaintiff: Nelson Cay

**Defendants:** Correction Officers Sherman Dubrey and Michael Burleigh

**Defendants Liable:** Both defendants.

**Damages:** \$14,000 Compensatory damages

\$ 42,000 Punitive damages (\$21,000 against each defendant)

Attorneys Fees: \$\(\) (to be litigated or settled, 10/97)

## Claim:

Plaintiff was on a work crew mowing lawn in the facility church area. When plaintiff finished, Burleigh asked him to help another inmate finish and plaintiff refused. Burleigh ordered him keeplocked and proceeded to escort him back to his housing area. On the way, he and Dubrey took plaintiff into the closed commissary area and brutally beat him. Another unknown CO stood guard by the door.

## Injuries:

Mr. Cay suffered serious and substantial physical injuries, which included large areas of multiple bruises and contusions to his back, chest, right and left flanks, left foot and calf, right

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.)

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 Tcdford 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 whn 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.

# <u>Hayden v. Maldonado</u>, 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).

Attornev's Fees: Settled for \$43,000

## Claim:

Plaintiff asked Maldonaldo 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 scizure.

**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

telling these is individuals is that he feared further retribution....Consequently, he would be reticent to tell any prison personnel that he was attacked, because workd might get back to the original assailants."

In its decision, the court expressed an intention to impose punitive damages against defendants. However, the parties settled for an additional \$12,300 prior to the hearing on punitive damages.

# Lane v. Ball, 86-CV-406 (N.D.N.Y. 1988) (Smith, M.J.)

Incident: November 25, 1985 Facility: Clinton

Trial Date: August 17-18, 1988 Decision: November 14, 1988

**Plaintiff(s):** Darryl Lane

Defendants: Sergeant Robert Ball and Correction Officers Rick Covey, Edward

McGuire, Mark Reyell, Theodore Michael Rascoe, Robin Blaise and James

Dumont.

**Defendants Liable:** Only defendant Covey. (Prior to trial, parties stipulated to dismissal of

claims against Dumont and Ball)

**Damages:** \$14,000 (Court found liability; damages amount was settled)

Attorney's Fees: \$11,000 settlement

## Claim:

On the way to breakfast, plaintiff took a piece of cake from a tray with him. Covey ordered him to return to his cell. Plaintiff's request to speak with a sergeant was sharply denied, and upon his joining the company, Covey struck him and with the help of other officers wrestled him to the floor. After cuffed and subdued, Covey struck and kicked him with his booted foot. After being stood up and placed on the wall, Covey continued to punch him several times in the face, causing serious injuries

**Injuries:** Lane suffered serious injuries, including injury to the left eye where he was kicked

and punched by Covey.

## Court's Findings:

The court ruled that CO Covey "used unreasonable, gratutious and excessive force

maliciously and sadistically for the purpose of causing harm." The stated "[a]fter plaintiff was on the floor and subdued, he was struck and kicked in the face and elsewhere by Covey's booted foot, causing plaintiff serious injuries including an injury to plaintiff's left eye." The court found that "[p]laintiff was then brought to his feet and moved to a wall in handcuffs whereupon Covey again punched plaintiff several times including blows to the left side of his face in the area of his injured eye." The court found the other officers used reasonable force in subduing plaintiff. The court also found insufficient evidence to support the claim that the other officers did not avail themselves of a realistic opportunity to intercede to protect plaintiff from injury.

#### Successful Jury Trials II.

# Johnson v. Pecore, 93-CV-472 (N.D.N.Y. 1995) (DiBianco, M.J.)

Incident:

April 22, 1992

Facility:

Clinton

Trial Date: Decision:

August 21-25, 1995 August 25, 1996

Damages:

\$37,500 total damages

Jury awarded \$25,000 compensatory for beating and \$3,000 for inadequate

medical care.

Parties settled for \$9,500 in punitives.

Plaintiff(s):

Kenneth Johnson

Defendants: Sergeant George Wright, Correction Officers Kevin Pecore, Paul Mintzer,

George Shepler, and Larry Carter, and Nurse Douglas Johnson

Defendants Liable: Pecore, Shepler, Wright and Johnson

**Attorneys Fees:** 

Settled for \$24,000

## Claim:

Plaintiff got into an arguement with Pecore about using the toilet in the yard. He was assaulted by Pecore and other CO's there at the yard door. He claimed he was beaten again after he was taken to the facility hospital.

Injuries:

His injuries included a separated shoulder, bruised ribs and cuff marks. The case included a claim for inadequate medical care, since the separated shoulder was not discovered during his medical examination following the use of force incidents (it

was not discovered until the next day following a second examination).

# Murray v. Cross, 93-CV-1007 (N.D.N.Y. 1995) (Smith, M.J.)

Incident:

December 13, 1991

Facility:

Clinton

Trial Date:

January 18-24, 1995

Decision:

January 24, 1995

Defendants: Sergeant David Armitage and Correction Officers Eugene Cross, Richard

Rendle, Lyndon Johnson and Kenneth Waldron.

**Defendants Liable:** Jury verdict found only defendant Johnson Liable. New trial granted as to

all defendants, then case settled.

Damages:

\$2,500 compensatory damages. Before a second hearing on punitive damages was

held, the court ordered a new trial upon motion by the defendant held liable.

Prior to a second trial, the parties settled for \$1,500.

Attorneys Fees:

Settled for \$4,000.

## Claim:

Plaintiff alleged he was beaten in Clinton's PC unit. He claimed he was punched in the head and hit and kicked and struck with batons about his head and body. He also claimed his shoes were removed by Johnson during the beating and that Waldron struck him on bottoms of his feet with his baton. He alleged the beating was in retaliation for a sexual relationship with a nurse at Clinton.

Injuries:

Multiple contusions with abrasions, deep laceration on left forearm and hand, linear bruises on back, abrasion left ankle and toe, with tenderness and weight bearing pain. Moderately severe strain of left lower leg and foot, back strain in thoraxic area. Contusions with abrasions to chest.

#### Settlements III.

Slater v. Menard, 95-CV-897 (N.D.N.Y. 1996)

Incident:

October 4, 1994

Facility:

Clinton

Settlement Date:

August 1997

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.

Injuries: Bruises and contusions about the body, contusion and swelling to right eye, deep

ligature-type marks and lacerations on neck.

# Allaway v. Martin, 93-CV-1263 (N.D.N.Y. 1996)

Incident: December 3, 1990 Facility: Clinton

Settlement Date: April, 1996

Plaintiff: Charles Allaway

**Defendants:** Correction Officers Stephen Martin, Howard Pickman, Scott Darrah, Jay

Siskavich, Ronald Boyse, and Dale Dubrey, Sergeants Harold Boyle and Timothy Murtha, and Lieutenant Bruce McCormick. On failure to discipline supervisory liability grounds, Commissioner Thomas A.

Coughlin, III, Assistant Commissioner Kevin Breen, his Special Assistant

Thomas Testo, and Deputy Director Lorraine Macey.

**Damages:** \$40,000

Attorney's Fees: \$20,000

Claim:

Plaintiff claimed he was assaulted by Boyse, Darrah and Siskavitch outside his cell. He then claimed Martin and Pickman threw him down a flight of stairs on escort to hospital, and that he was further beat in the hospital. The claim also alleged false reports to cover up the beating. Supervisory liability claim against DOCS Labor Relations for repeated failure to discipline Martin and Pickman and others for excessive force.

It's notable that plaintiff had pled guilty to numerous criminal charges of assault in the underlying incident.

Injuries: Multiple contusions, abrasions and other injuries, including a 2½ inch deep

laceration to his head requiring stitching.

# Guadelupe v. Brushnefski, 93-CV-81 (N.D.N.Y. 1995)

Incident: July 17, 1992 Facility: Clinton

Settlement Date: September 1995

Plaintiff: Orlando Guadelupe

**Defendants:** Correction Officers Gary Brushnefski, Paul Ufiva, William Allen, David

Allen, Lyndon Johnson, Orris Mayo, Foster Beede, Charles Grimshaw and

David Beane, Sergeants Philip Patnode and T. Lobdell

**Damages:** \$7,000

Attorney's Fees: \$7,000

Claim:

Plaintiff claimed he was assaulted by officers while handcuffed on July 17, 1992.

**Injuries:** Medical records indicated that he suffered multiple abrasions and lacerations to

his face and mouth and upper body.

## Ramirez v. Allen, 94-CV-590 (N.D.N.Y. 1995) (Smith, M.J.)

Incident: July 17, 1992 Facility: Clinton

**Settlement Date:** September 1995 ("misplaced" and re-signed stip in March 1996)

Plaintiff: Raphael Ramirez

**Defendants:** Correction Officers Gary Brushnefski, Paul Uliva, William Allen, David

Allen, Lyndon Johnson, Orris Mayo, Foster Beede, Charles Grimshaw and

David Beane, Sergeants Philip Patnode and T. Lobdell

[Final Stipulation dismissed from the case.]

**Damages:** \$4,500

Attorney's Fees: \$5,500

Claim:

This is a companion case to *Guadelupe*. He claimed that he was taken out of his cell and struck in the head by an officer, handcuffed and then further struck about the body as he was taken to the facility hospital.

Injuries: Medical records indicated that he suffered from contusions and abrasions about

his head, neck, face, lip, right rib cage and right upper shoulder.

# Blake v. Osborn, 94-CV-527 (N.D.N.Y. 1995)

Incident: June 14, 1992 Facility: Clinton

Settlement Date: March 1995

Plaintiff: Anthony Blake

**Defendants:** Correction Officers Kevin Osborne, Michael Mussen, Christopher Otranto,

Jeff Baker, and Norm Gero and Sergeant Donald Yando

Damages: \$12,000

Attorney's Fees: \$2,000

Claim:

Plaintiff alleged that he was assaulted by six officers. He claimed that one officer punched him in the face, knocking him down a flight of stairs, after which other officers proceeded to punch, kick and strike him in the face and body as he lay on the floor. He also claimed that on the way to the facility hospital, he was forced to "kiss" each step on the stairs leading to the hospital.

**Injuries:** He suffered multiple abrasions to his face, bruising to his forehead, swelling about

the eyes, a bloody nose, abrasions and bruises on his back and left shoulder and

scrapes and abrasions on his elbow, as well as pain to his ribs and ankle.

# Moon v. Bousquet, 92-CV-789 (N.D.N.Y. 1993)

Incident: September 19, 1989 Facility: Clinton

Settlement Date: January 14, 1993

Plaintiff(s): Michael Moon

**Defendants:** Sergeants Edgar J. Bousquet, Thomas Roberts, Thomas R. Whitman.

Correction Officers Henry A. Cormier, Lawrence J. Cormier, Craig S.

Stoughton, Theordore Michael Rascoe, and Carl Walker, and

Superintendent Senkowski

**Damages:** \$12,000

Attorney's Fees: \$5,000

## Claim:

Plaintiff claimed he was assaulted by four officers in the presence of two sergeants who failed to intervene. This incident occurred in the Mental Health Satellite Unit at Clinton. He claimed he was punched, kicked, struck with batons and that Rascoe jumped on his back with his boots while he was being held down on his bed. In X-ray room, technician heard CO's wonder how they could explain his injuries, one of them suggesting they say he fell off the table.

Injuries: Plaintiff alleged and his medical records showed that he suffered facial

lacerations, multiple bruises, swelling, ecchymosis to eyes and and other injuries to his

head and body.

# Rosado v. Crowley, 87-CV-791 (N.D.N.Y. 1993)

Incident: July 8, 1986 Facility: Clinton

Settlement Date: May, 1993

Plaintiff: Victor Rosado

**Defendants:** Lieutenant Joseph Wood and Correction Officers Michael Crowley.

Robert Waldron and John Does (on March 23, 1993, court denied motion

to amend complaint and add CO Richard Reynolds)

**Damages:** \$14,500

Attorney's Fees: \$2,000

## Claim:

This case was filed following a mass demonstration in the north yard at Clinton. Plaintiff claimed that when he was removed from the yard (dragged) by CO's and beaten by three officers with fists, sticks and their heavy shoes.

**Injuries:** Multiple injuries, including broken nose (comminuted fracture of nasal bone) leading to permanent disfigurement. Multiple lacerations and contusions to face and eye areas, with extreme swelling and eccymosis. Contusions and abrasions to legs.

# Maves v. Ashline, 90-CV-275 (N.D.N.Y. 1993)

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: S14,000

Aftorney'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.)

Incident: March 7, 1987 Facility: Auburn

**Trial Date:** August 13-16, 1991

Settlement Date: August 1991 (following a hung jury)

Plaintiff: Julio Rodriquez (filed *pro se*; Federal TAP Case)

**Defendants:** Sergeant Charles Murphy, Correction Officers J. Millen and J.K. Trutschel

and Superintendent Robert J. Henderson

**Damages:** \$7,100

Attorney's Fees: \$1,400

Claim:

Sergeant approached plaintiff in messhall after plaintiff gave water to another inmate at another table. Plaintiff put finger in sergeant's face, sergeant slapped it, then plaintiff hit sergeant in the face. Use of force followed, cuffed and taken to SHU. On the way in elevator, sergeant told CO's to "fuck him up." Punched and struck numerous times in head and body.

Injuries: Several facial lacerations and abrasions to chest, shoulder and back. Also claimed

he was knocked unconscious during beating.

# Gailhart v. Landry, 88-CV-567 (N.D.N.Y. 1991)

Incident: June 4, 1987 Facility: Clinton

Settlement Date: September 1991

Plaintiff: Guy Gailhart

**Defendants:** Correction Officer John Landry and Kevin Breen, Lorraine Macey and

John Seiler of DOCS Labor Relations. There were a number of medical defendants (Kang Lee, Tim Foley, Philip Erickson and Donald Sheridan,

but they were dropped during litigation).

**Damages:** \$10,000

Attorney's Fees: \$2,250

Claim:

Plaintiff was in the North Yard when ordered to leave. He and the escort CO (Landry) had "words," then Landry punched him in the face, breaking his nose. Initially a claim for deliberate indifference to serious medical needs, but the claim was dropped. Later, complaint amended to add supervisory liability claim against DOCS Labor Relations for past failure to discipline Landry.

**Injuries:** Fractured nasal bone and cartilage, scratches and massive swelling and

discoloration of nasal and eye areas.

# Young v. Napper, 86-CV-453 (N.D.N.Y. 1990)

Incident: July 8, 1985 Facility: Clinton

Settlement date: May 8, 1990

Plaintiff: Cedric Young

**Defendants:** Correction Officers Randall Napper, Beaman Labare, David Dresser,

Stephen Martin and Robert P. Sweeney, Sr.

**Damages:** \$12,000

Attorney's Fees: \$2,250

Claim:

Plaintiff claimed he was assaulted by several officers in a hallway at Clinton. He also alleged that he was then taken to the facility hospital and beaten there again.

**Injuries:** Superficial scratches and discoloration on right arm, ribs, chest and thigh areas.

# Colon v. Kilkeary, 85-CV-978 (N.D.N.Y. 1988)

Incident: April 5, 1985 Facility: Clinton

**Settlement Date:** Two plaintiffs settled in 1987 and four in June 1988

Plaintiff(s): Michael Colon, Tracy Hickman, Leonard Hinton, Ismail Montes, Alan Gregg and

Gregory Williams

**Defendants:** Sergeant Joseph Kilkeary and Correction Officers Gary Barton, Gary Brushnefski,

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

Attornev's Fees: None

Claim: Plaintiff claimed that he was beaten by CO's, following an argument over his not

receiving certainl food items.

**Injuries:** Contusions and abrasions on the face and body

<u>Dare v. Ball</u>, 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, LieutenantStephen 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:

Plaintiff and Wallace got in an arguement over his clothing at dinner. Plaintiff claimed Wallace came to his cell later, cut down extra clothes he had in his cell and punched plaintiff in the eye.

**Injuries:** A black eye.

# Addison v. State of New York, (Court of Claims, 1993) (Bell, J.)

Incident: March 6, 1990 Facility: Bare Hill

Trial Date: September 7, 1993 Decision: October 12, 1993

Plaintiff: Charles Addison

**Defendant:** State of New York

## Claim:

Claimant said he was escorted to facility hospital some time after he helped break-up a fight among other inmates. He claimed that while cuffed and facing wall in infirmary, either Correction Officer Robert Pellerin or Timothy Marlow slammed his head/face into the wall several times.

**Injuries:** Swollen and cut lip and a broken bridge plate.

# Barnes v. Johnson, 85-CV-1178 (N.D.N.Y. 1990) (DiBianco, M.J.)

Incident: August 31, 1984 Facility: Clinton

Trial Date: October 2-5, 1989 Decision: March 30, 1990

Plaintiff: Larry Barnes

**Defendants:** Correction Officers Lyndon Johnson, John P. Kelley, Allen Fessette and

Peter Hartmann

## Claim:

Plaintiff claimed he was punched, kicked and beat by officers on way to disciplinary hearing. Officers claimed he struck officer and reasonable force used to subdue him.

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

Facility: Incident: Various, between October 1976 and March 1977

Clinton

April 1988 Trial Date:

April 12, 1988, jury verdict dismissing claims against defendants Rebideau, Decision:

> 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.

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

**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 Zelinsksy, Sergeants Sherry Dobbs Charles Ryan, Lieutenant Ronald Foster, Jr., and Superintendent Eugene LeFevre.

and

## 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.

Numerous lacerations, contusions, and abrasions about their bodies. Also the Injuries:

intentional infliction of anxiety, humiation and mental and emotional harm.

#### **Unsuccessful Jury Trials** IV.

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 stapped, 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.