

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
Nicholas Zimmerman, Richard Liccione  
Terry Walley, Et.al.

Plaintiffs

V.

Superintendent Racette, Deputy Brown,  
Deputy Quinn, Deputy Gordon, Deputy  
Keysor, Deputy Walker, Sergeant Randall,  
Sergeant Orzech, Sergeant Delisle, Doctor  
Robert Adams, Food Service Administrator

Defendants  
-----x

JURY TRIAL DEMAND  
1983, 1985, and 1986 Complaint

THIS LAWSUIT IS DRAFTED AND  
LITIGATED BY NICHOLAS  
ZIMMERMAN AND THE F.O.C.I.S.  
PARALEGAL GROUP OF NEW YORK

Case#: \_\_\_\_\_

Judge: \_\_\_\_\_

File Date: \_\_\_\_\_

**INTRODUCTION**

The Plaintiffs in this case are all prisoners currently confined to the Special Housing Unit (a.k.a. "Unit 14") at Clinton Correctional Facility. This unit, which is under the Care, Custody and Control of the above named Defendants, is considered to be the modern day version of solitary confinement, where the Plaintiffs are confined to their cells 23 hours a day, 7 days a week, allowed three 10 minute showers per week, 1 visit per week, 1 hour of out of cell time; no phone calls, no personal property (clothing, food, television, etc....) no programming, educational classes or religious services. Notwithstanding the already well documented devastating effects of solitary confinement, the Defendants here have decided to increase the level of punishment legally allowed to solitary confinement prisoners by denying them the basic necessities of life, such as: cell cleaning supplies, hygiene products, adequate food, access to reading materials, etc.... The Executive Administrative Directors at Clinton C.F. has had years of prior knowledge of the violations of the Plaintiffs' Rights through grievances, complaints, lawsuits, letters and verbal conversations, yet they have done nothing to correct the misdeeds of their officers, and instead, they have kept these violations ongoing by rubber-stamping all correspondence that mention the blatant transgressions of their staff. Therefore, after trying to negotiate a reasonable settlement with the Defendants, the Plaintiffs have brought their claims to the "Court of Last Resort" to redress their grievances, be compensated and made whole again and to enjoin any further violations of their rights.

**JURISDICTION**

This is a Civil Rights action brought under 42 U.S.C. 1983, 1985 and 1986. This Court has jurisdiction under 28 U.S.C. 1331 and 1343. The Plaintiffs are entitled to declaratory relief pursuant to 28 U.S.C. 2201, Et. Seq. Plaintiffs also invoke the pendent jurisdiction of this Court.

**PARTIES**

Nicholas Zimmerman  
02-A-1663  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

09-A-5515  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Richard Liccione

Terry Walley  
14-A-2519  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Charles Scott  
10-R-2484  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

**DEFENDANT PARTIES**

Superintendent Steven Racette  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Deputy S. Brown  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Sergeant Randall  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Deputy Walker  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Sergeant Delisle  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Sergeant Orzech  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Food Service Administrator  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Doctor Robert Adams  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Deputy D. Quinn  
Clinton C.F.  
P.O. Box 2001  
Dannemora, N.Y. 12929

Deputy Debra Keysor

Sued in their individual capacities and in their official capacities as officials of the New York State Department of Corrections.

### **ADMINISTRATIVE REMEDIES**

I did present the facts relating to this complaint to the grievance program, Superintendent, Commissioner and all other relevant staff. All grievances and appeals were denied.

At this time, Plaintiff Zimmerman has one 1983 Complaint pending in the Western District.

### **STATEMENT OF FACTS**

#### **CELL CLEANING SUPPLIES**

From April 2014 till present, all of the Defendants have violated all of the Plaintiffs' 8<sup>th</sup> Amendment Rights by subjecting them to Cruel & Unusual Punishment in refusing to perform cell clean up duties three times a week in violation of Directive 4933(304.5)(E), refusing to issue soap, toothpaste, and toothbrushes "as needed" in violation of Directive 4933(302.2)(1)(3)(5), by refusing to issue washcloths in violation of Directive 4933(302.2)(b)(4) and combs (302.2)(c)(2) and by refusing to ensure that all cells are in good clean condition before an inmate moves in the cell in violation of Directive 4933(XII)(B) and by refusing to issue mini-brooms to each cell which is a standard S.H.U. practice. In refusing to follow these simple standard procedures, the Defendants have intentionally ensured that all cells in the S.H.U. will stay filthy and dirty and that germs from the last prisoner, will spread to the next, possibly causing an epidemic of in house diseases and sicknesses.

#### **COLD ALTERNATIVE DIET**

From April 2014 till present, all of the Defendants have violated Plaintiffs' Zimmerman, Lopez, Vega, etc....8<sup>th</sup> Amendment Rights by failing to ensure that the Cold Alternative Diets (or "Jewish Trays") be stocked with fresh fruit, meats, bread, salads, etc.... For years, the Jewish Trays being distributed to SHU prisoners have contained rotten meat, hard stale bread with molded edges, old brown colored lettuce and tomatoes, food with outdated labels, etc.... In addition, in violation of well established correctional regulations and Jewish faith principals, Correctional Officers in the SHU unwrap the sealed food, before it is distributed to the prisoners, outside of their presence. The Defendants are also liable for violating Zimmerman's, Vega's, Lopez's First Amendment Rights because the rotten food is intentionally being distributed in a attempt to stop Plaintiffs from exercising their religious beliefs and to disown the Cold Alternative Diet.

#### **UNSANITARY LIVING CONDITIONS**

From April 2014 till present, all of the Defendants have violated all of the Plaintiffs' 8<sup>th</sup> Amendment Rights by ensuring that the living conditions in the SHU remain as unsanitary as possible. The correctional staff in the SHU simply refuse to sweep, mop and dust three times a week and has denied requests by even low security prisoners to perform such tasks. Dust, garbage, spilled food, etc... litter the gallery's for months. Staff also refuses to clean the shower area after prisoners take showers. Soap scum, blobs of hair balls, half used bars of soap, dirty underwear, washcloths, etc... litter the shower area for months and it only gets cleaned when staff is notified that outside visitors will be touring the jail. In addition, huge puddles of water center the foyer area of the shower, in which prisoners are forced to step in it to get to the shower, thus risking a foot fungus or a slip and fall. Lastly, all of the shower heads are old, broken and rusty which makes the water shoot out at a wide range and prevents prisoners from taking an adequate shower. These violations, coupled with the rusting ceiling that makes dirty water drip on prisoners head and face while they shower, are intentional and malicious.

### **WINDOW SCREENS**

From April 2014 till present, all of the Defendants have violated all of the Plaintiffs' 8<sup>th</sup> Amendment Rights by failing to install window screens on the SHU windows. On hot summer days, Plaintiffs are forced to decide between opening their windows to get air or being bitten, stung and constantly harassed by the large variety of insects, birds, etc... that live in the upstate Clinton area. All of this can be avoided by simply installing window screens to ensure prisoner/staff safety.

### **INADEQUATE RADIO PROGRAMMING**

From April 2014 till present, all of the Defendants have violated all of the Plaintiffs' 1<sup>st</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendments Rights by issuing an arbitrary and capricious decision to deny the Plaintiffs' request to replace the current radio and television schedule. Currently, Clinton only has two wall jacks (outlets) where prisoners can listen to news and music. Clinton does not have a third jack for a sports channel, which every other SHU has. Therefore, all sports events are played on the television station, which prevents Plaintiffs from listening to important news broadcasts, such as 60 Minutes. In addition, Clinton staff insists on playing the music that **they** want to hear (country, pop, rock, classical) six days a week and only change to a "semi-Hip Hop" station on Sundays. It is well documented that "DOCCS data reveals that black individuals are more likely to receive SHU sentences, and to receive longer SHU sentences, as compared to individuals of other racial and ethnic groups. In 2011, black individuals accounted for approximately 62% of the individuals held at Upstate and Southport Correctional Facilities, where individuals with the longest SHU sentences are generally incarcerated. In contrast, approximately 49% of the general prison population is black" (See Peoples v. Fischer 11-Civ-2694, page 10, paragraph 33 of the 1983 civil rights compliant.). It is also well documented that Hip-Hop is one of the most popular forms of music (See Matt Benz "*Rock Still the Top Selling Genre*", Billboard, March 31<sup>st</sup>, 2001, 6, 86 – explaining that Hip-Hop overtook country music as the second most popular genre of music – See Todd Martens "*Rock Tops RIAA Poll*", Billboard, May 31<sup>st</sup>, 2003, 74 – Reporting that the market share of Rap/Hip-Hop grew from 11.4% to 13.8 percent, second only to Rock –

See Gail Mitchell “*Black-Music’s Historic Week: Hot 100 Testifies to Mainstreaming of R&B/Hip-Hop*”, Billboard, October 18<sup>th</sup>, 2003, 20.). Therefore, with the majority of SHU prisoners being black, and Hip-Hop/R&B being the preferred music among black people, (as well as Latinos and white people that grew up in urban America) it is obvious that Clinton staff is forcing a genre of music on SHU prisoners that they do not relate to or understand.

### **MAGIC SHAVE SHAVING CREME**

From April 2014 till present, Defendants Randall, Adams, Racette and Brown violated all of the Plaintiffs’ 8<sup>th</sup> Amendment Rights by refusing to add Magic Shave Shaving Creme to the SHU commissary sheet, such that Plaintiffs can purchase a container of the creme every 30 days. Currently, all plaintiffs are forced to shave with a razor, which leads to the painful medical condition known as Pseudofolliculitis barbae (a.k.a. “Razor Bumps”). This specially made creme, which is available in every SHU in the State, allows Plaintiffs a clean shave without having to use a razor. All other cremes that are made for Caucasian men are readily available on the commissary sheet, but not this creme, which is designed specifically for African-American men. Therefore, the Defendants have also violated the Plaintiffs’ rights against racial discrimination.

### **INADEQUATE PLUMBING SYSTEM**

From April 2014 till present, Defendants Randall, Racette and Keysor violated all of the Plaintiffs’ 8<sup>th</sup> Amendment Rights by refusing to ensure that Clinton’s SHU unit has an adequate and workable plumbing system. For as long as 8 years, the plumbing system has been inadequate in so far as the sinks and toilets constantly stay clogged and Plaintiffs are forced to live in cells like this for weeks until the plumber decides to show up. Plaintiffs’ request for a plunger will most often be ignored by SHU staff for hours, sometimes days. Even when the sinks and toilets are finally unclogged they will undoubtedly be clogged again in the next few weeks as Clinton’s plumbing system is completely inadequate.

### **IMPROPER HANDLING OF MEDICATION**

From April 2014 till present, Defendants Keysor, Racette and Quinn violated all of the Plaintiffs’ 8<sup>th</sup> Amendment Rights by allowing Correctional Officers, not medical staff, to dispense and distribute medication to prisoners in the SHU in clear violation of DOCCS policy.

### **INADEQUATE PRISON CLOTHING**

From April 2014 till present, Defendants Keysor, Racette and Quinn violated all of the Plaintiffs’ 8<sup>th</sup> Amendment Rights by forcing Plaintiffs to wear dirty, used and sometimes blood-stained clothing from the prison State-Shop. Whenever a prisoner leaves the SHU, his State-issued green uniform is taken from him, sent to the laundry (*allegedly*), and then given to the next prisoner. Since the State-Shop never issues new

State uniforms (although the law directs them to do so) it is quite possible that one pair of State pants might be worn by 5,000 different prisoners, causing the potential of an in-house epidemic of diseases and sicknesses.

### **LEGAL CLAIMS**

#### **(1<sup>st</sup> CLAIM)**

All of the Defendants have violated all of the Plaintiffs' 8<sup>th</sup> Amendment Rights by denying them cleaning supplies, hygiene supplies, washcloths, adequate Cold Alternative Diet Trays, sanitary living area, window screens, adequate radio programming, adequate/clean shower area.

#### **(2<sup>nd</sup> CLAIM)**

Defendants Randall, Racette, Adams and Brown have violated all of the Plaintiffs' 8<sup>th</sup> Amendment Rights by denying them Magic Shave Creme.

#### **(3<sup>rd</sup> CLAIM)**

Defendants Keysor, Racette and Randall violated all of the Plaintiffs' 8<sup>th</sup> Amendment Rights by refusing to ensure that Clinton's SHU have a workable plumbing system.

#### **(4<sup>th</sup> CLAIM)**

Defendants Keysor, Racette and Quinn violated all of the Plaintiffs' 8<sup>th</sup> Amendment Rights by allowing officers to distribute medication and issuing dirty clothing to Plaintiffs.

### **RELIEF REQUESTED**

Wherefore, Plaintiffs request the following relief be granted by the Court:

- A.** Declare that the Defendants' acts, practices and policies detailed above violate, and continue to violate, Plaintiffs' rights secured by the United States and New York State Constitution and the laws of New York State.
- B.** Render a preliminary and permanent injunction ordering the Defendants to: **(1)** allow Plaintiffs to purchase Magic Shave Shaving Creme, **(2)** issue cell cleaning supplies three times a week, **(3)** issue hygiene supplies as needed, **(4)** provide sanitary living quarters, **(5)** provide window screens, **(6)** provide a clean shower area, clean prison clothing and a workable plumbing system, **(7)** provide adequate Cold Alternative Diet Trays, **(8)** provide adequate radio programming, **(9)** stop allowing officers to distribute medication.
- C.** Appoint a Court Monitor for two years (24 months) to oversee and ensure that Defendants comply with all court orders and decisions in this case.
- D.** Award each Plaintiff \$10,000 per day, per violation, in compensatory damages for every day that Plaintiff's were subject to these conditions.

- E.** Award each Plaintiff \$10,000 per day, per violation, in punitive damages for every day that Plaintiffs were subject to these conditions, from each defendant jointly and severally.
- F.** Award Plaintiffs costs and reasonable attorney fees and all other relief this court deems just and proper.

Cc: Attorney General

x \_\_\_\_\_  
Nicholas Zimmerman (Lead Plaintiff)  
02-A-1663  
Clinton C.F.  
P.O. Box 2001  
Dannemora N.Y. 12929