

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

KENNISON BATTLE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 99cv01788 (RCL)
	)	
DISTRICT OF COLUMBIA, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**MOTION BY PLAINTIFFS S. BATTLE, BROWN, SCOTT, SMITH, AND WILLIAMS  
FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY, AGAINST DEFENDANT  
DISTRICT OF COLUMBIA**

Based on (a) defendant District of Columbia's admission of facts establishing all of plaintiffs' claims (due to defendant's failure to respond to admission requests served July 29, 2004); (b) plaintiffs' sworn interrogatory answers verifying the allegations of their complaint; (c) the parties' stipulation of District of Columbia liability under 42 U.S.C. § 1983 for any deprivation of a constitutional right alleged in the complaint and found by the Court to have occurred, plaintiffs Shannon Battle, Bernard Brown, Eugene Scott, Vonsauli Smith, and Timothy Williams move the Court for partial summary judgment holding defendant District of Columbia liable to plaintiffs on each claim stated in plaintiffs' complaint.

In support of this motion, plaintiffs rely on the accompanying statement of material facts and memorandum.

Respectfully submitted,

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**PLAINTIFFS' STATEMENT OF MATERIAL FACTS**

The facts stated below are not subject to genuine dispute by defendant District of Columbia.

**Facts Admitted Under Rule 36, Fed. R. Civ. P.**

1. The following facts were admitted by defendant District of Columbia due to defendant's failure to respond to plaintiffs' admission requests served July 29, 2004, which requested admission of these facts:

1. Grace Lopes, a Special Officer appointed by United States District Judge William B. Bryant to check the District's compliance with orders entered in *Campbell v. McGruder*, C.A. No. 1462-71 (U.S. D. Ct. D.C.), inspected South One of the D.C. Detention Center (D.C. Jail) on March 6 and March 7, 1996. Her March 26, 1996 report to the Court, filed in *Campbell*, said:

The Special Officer and [her security expert] Mr. [James D.] Henderson visited South One on March 6 and March 7, 1996. We were able to walk along the tiers, visually inspect the interior of most of the cells, and interview the majority of the inmates housed in the unit. We also interviewed some of the correctional officers.

We received numerous brutality complaints and observed some inmates with visible physical injuries. These complaints included eyewitness accounts of . . . instances of alleged brutality. In addition, several inmate witnesses described being beaten or witnessing the beating of work-detail inmates who were allegedly forced, while handcuffed, to

clean up the tiers while being hit with batons and sticks by correctional officers. . . .

The conditions of confinement on South One on March 6 and 7, 1996 were deplorable. The Special Officer and Mr. Henderson observed a number of inmates housed in cells without sheets or blankets. Some inmates did not have mattresses and others slept on dirty, stained, torn and uncovered mattresses. In several instances only pieces of mattresses were on the bed frame.

The inmates in South One did not have eating utensils. They ate with their hands or with pieces of styrofoam that had been ripped from the top covers of their meal trays. Some inmates used filthy playing cards as eating utensils. However, there was no shortage of eating utensils at the Jail. On March 7, 1996, the Special Officer and Mr. Henderson counted over 100 boxes of plastic spoons and forks in a storage room in the Jail's culinary unit. The kitchen staff reported that utensils are only dispensed to housing units when requested by the correctional staff.

Many inmates told us they had been denied access to showers and a change of clothing for over 10 days. They wore heavily soiled clothing. Others wore dirty undershorts and tee shirts, claiming they had not been provided with any clothing except underwear for several days. One inmate did not have any clothing: he was cloaked in a soiled and damaged blanket. Another inmate wore socks and claimed he had not had any shoes for three days. Laundry detergent was unavailable. We were advised by staff that the Jail had an adequate supply of clothing.

Virtually all of the inmates were without personal property of any kind. Most did not have basic hygiene supplies such as toothpaste, toothbrushes, wash cloths, towels, soap, shampoo and deodorant. Jail staff assured us that hygiene kits, which contain many of these necessities, were in stock.

South One was extremely cold and due to the condition of the unit, as well as the lack of ventilation, it was filled with an overpowering stench. Correctional staff and inmates advised the Special Officer that there had not been any heat. A number of cells did not have water. Others had either hot or cold water but not both. Some cells did not have operable toilets and there were sinks and toilets that appeared to have been in disrepair for some time. The shower areas were filthy. Several showers were broken. Some cells did not have operable lighting.

South One was filthy. The unit was infested with roaches and flying insects. Inmates contended that despite repeated requests they had not been provided with cleaning supplies and equipment. Environmental

conditions in the unoccupied cells appeared to be no better than conditions in the occupied cells. We observed one unoccupied cell with a toilet full of feces and insects that apparently had not been flushed for many days notwithstanding the obvious health hazard. The toilet worked and flushed effectively when Mr. Henderson tested it.

Inmates on South One complained that they had been denied access to legal and non-legal telephone calls as well as writing paper, pens, pencils, and envelopes for legal mail. Inmates also claimed they had been denied access to social and legal visits. A review of log entries from February 23, 1996 through March 10, 1996 shows that there were only a handful of legal visits and no social visits.

Medical staff confirmed inmate complaints that prescription medication had been confiscated by the correctional staff and sick call was only conducted through the cell bars. Indeed, contrary to the express requirements of this Court's November 9, 1994 Order, the initial post orders for South One required sick call to be conducted at the cell bars. Several inmates alleged that officers refused to respond to medical emergencies, including at least one severe asthma attack. There were also several instances documented in the unit log in which nurses refused to dispense prescribed medications to inmates due to the disorder in the unit.

Contrary to this Court's October 13, 1972 Order, three juveniles were housed in cells throughout South One during the Special Officer's March 6 and 7, 1996 inspections. One of these juveniles, who wore filthy boxer shorts and a tee shirt, claimed that when he was housed in the cell over a week earlier, the cell walls and bars were covered with feces. He claimed that he was placed in the filthy cell for over one hour before officers finally gave him scouring powder and a piece of steel wool. After he cleaned the cell, he was not permitted to shower and was not given a change of clothing.

On one of the days we visited South One, it appeared that meal times had not been properly staggered. More than eight hours had elapsed between breakfast and lunch. Inmates reported that the staff was indifferent to their requests for cleaning supplies, medical care, food and other necessities. . . .

None of the inmates we interviewed appeared to have had any direct involvement in the February 23, 1996 incident. Some of the inmates had been transferred to the unit from North Two shortly after the incident and others had been transferred from other housing units in the Jail. We interviewed inmates who claimed that they had not received disciplinary reports and others who showed us disciplinary reports for what appeared to be fairly minor infractions.

In his draft report on our March 6 and 7, 1996 inspection of the Jail, Mr. Henderson found that South One has "the most deplorable, unjustifiably restrictive, dehumanizing, and inexcusably (although perhaps deliberately) mismanaged housing areas" he had ever seen. Based on all of these factors, the Special Officer and Mr. Henderson concluded that there was substantial evidence which suggested the unit was deliberately mismanaged and that this mismanagement created conditions of confinement that imperiled the health and safety of the staff and inmates assigned to South One. We also concluded that the evidence suggested the conditions of confinement in South One were imposed in retaliation for the officer stabbings on February 23, 1996.

\* \* \*

On March 14, 1996, [the Special Officer's former Special Assistant] Timothy Roche went to North Two and discovered two handmade knives concealed under the master control panel in the North Two control module. One of the knives was about eight inches long and one-and-one-half inches wide. The other was four to five inches long and about three-quarters of an inch wide. Both had been sharpened to a point.

After he found the knives, an officer assigned to North Two drew Mr. Roche's attention to a two and one-half foot wooden furniture leg which was also stored in the North Two control module. Inmates do not have access to the control modules in the Jail housing units.

\* \* \*

On March 21, 1996, the Special Officer returned to South One and interviewed inmates as well as correctional officers.

\* \* \*

[O]ne inmate whose DOC medical record documents two fractured ribs claims he received these injuries on March 14, 1996 as the result of an unprovoked assault by correctional staff. . . .

Contrary to the revised post orders provided by the defendants . . . March 20, 1996, . . . the officers claimed that the inmates housed in the unit were prohibited from using the telephone. They also maintained that all inmates housed on the unit, regardless of security status, were only permitted out of their cells for 15 minutes three times per week.

\* \* \*

The evidence collected establishes that South One was created in reaction to the assault on officers that occurred on February 23, 1996. Correctional officers have informed the special officer that when the unit was opened there were no post orders or operating procedures available.

The officers were not trained to work in the unit. They claimed the cells were stripped of everything but mattresses and the mattresses that were available had not even been sanitized.

Several correctional officers have told the Special Officer that the inmates in South One were essentially deprived of virtually all basic necessities including clothing and heat as well as social and legal telephone calls, writing material, cleaning supplies, recreation and showers until after Margaret Moore toured the unit [on March 8, 1996]. They were denied access to prescribed medication as well as confidential medical encounters. The evidence suggests that the level of depravity was deliberate and intended to punish the inmates in retaliation for the February 23, 1996 assaults.

There is also evidence which establishes that some of the inmates reacted forcefully to this punishment by creating a series of disturbances. They threw food and excrement on the tiers and flooded the cellblock with water. This exacerbated the tension between officers and inmates and appears to have led to unnecessary violence. The two-and-one half foot wooden furniture leg and knives that Mr. Roche found in the North Two control module bear testament to the lawlessness that has prevailed at the Jail. [Footnotes omitted.]

2. The findings of fact in the Special Officer's Report to the Court, stated in Request 1 above, are true.

3. The findings of fact in the Special Officer's Report to the Court, stated in Request 1 above, are "factual findings resulting from an investigation made pursuant to authority granted by law," within the meaning of Rule 803(8)(C), Fed. R. Evid.

4. Neither "the sources of information" nor "other circumstances indicate lack of trustworthiness," within the meaning of Rule 803(8)(C), Fed. R. Evid., of the findings of fact in the Special Officer's Report to the Court, stated in Request 1 above.

5. On February 23, 1996, plaintiff Shannon Battle, DCDC #263-505, was in the NE-1 unit of the Jail. At approximately 2:00-4:00 p.m., District of Columbia correctional officers, including officers Jackson, Brown, and other officers including approximately two lieutenants and eight corporals came to NE-1 and took several prisoners, including Mr. Battle, to South One. The officers did not permit the prisoners to bring any of their personal property with them.

6. Officers placed Mr. Battle in Cell #39 on the lower left tier in South One. He remained there from his arrival on February 23, 1996 until on or about March 3, 1996. During this time, he asked a commanding officer each day for permission to call his parents and/or his lawyer. The first time he made this request, February 23, 1996, a District of Columbia correctional officer, Lt. Clark, sprayed him with chemical agent. The spray caused intense irritation, itching and burning on Mr. Battle's face and in his eyes, as well as mental and emotional distress. The intense irritation, itching, and burning lasted for approximately fifteen to thirty minutes, during which Mr. Battle was unable to open his eyes. The irritation, itching, and burning gradually subsided over a period of approximately three hours. Mr. Battle received no medical treatment or shower following the spraying. District of Columbia correctional officers denied Mr. Battle's requests to call his parents or his lawyer on every other occasion when he made such requests. Mr. Battle received no recreation or shower when in South One. The water in Mr. Battle's cell did not run the entire time that he was in South One. The cell was filthy. The air smelled very bad. There were flies and roaches. Women's sanitary napkins had been glued to the seat of the toilet. They were so dirty that Mr. Battle did not want to sit on them. For the first two days, although the temperature was extremely cold, Mr. Battle had no sheets, towels, or blankets. He had only a jumpsuit and tennis shoes (without socks). To try to stay warm, Mr. Battle walked constantly in his cell when awake. The effort was not successful. Mr. Battle was cold constantly. He shivered from the cold. His feet were numb from the cold. At night, Mr. Battle lay down, shivering from the cold, until he passed out. He slept a short while, then awoke and shivered until he passed out again. This happened repeatedly, all night. An officer gave Mr. Battle a blanket on or about February 26, 1996. Mr. Battle wrapped himself in the blanket, but he still shivered from the cold. The periods during which he slept were longer than before he had the blanket, but he still woke up several times, shivering from the cold. Mr. Battle did not receive his personal property while he was in South One. Every day, officers

entered the units wearing shields and carrying sticks. On or about March 1, 1996, officers removed Mr. Battle from his cell to appear before a Housing Board. The Board told Mr. Battle they would recommend his transfer to general population. Two days later, on or about March 3, 1996, Mr. Battle was removed from South One.

7. For several weeks beginning approximately March 23, 1996, plaintiff Bernard Brown, DCDC #245-479, was confined in Cell #77 in the lower right tier of South One. One day in March, between fifteen and twenty District of Columbia correctional officers entered the lower right tier of South One and shouted "Ya'll motherfuckers got a ass whippin comin." The officers included District of Columbia correctional officers Lt. Cobb, Lt. Givan, Maj. Corbett, Cpl. Simmons, and Sgt. Wellington, among others. The officers shouted to the inmates to place their hands outside of their cells so that the officers could place handcuffs on them behind their backs. Mr. Brown complied and was handcuffed from behind. Mr. Brown's cell door opened. An officer grabbed Mr. Brown and slammed him face down to the floor of his cell. An officer pressed his foot onto Mr. Brown's head. Another officer pressed his foot onto Mr. Brown's back. Other officers searched Mr. Brown's cell. An officer asked, "Bernard, where's the fuckin matches at." Mr. Brown replied, "I don't know what you're talking about, and my head plus back hurt. Can you please get off of me." One of the officers kicked Mr. Brown in the ribs. Officers pulled Mr. Brown up off of the floor and one of them slapped him in the head. Officers dragged Mr. Brown to the dining area on the upper tier. In the dining room Mr. Brown saw other inmates from the lower right tier with their hands handcuffed behind their backs. Some were coughing, others were naked, and some had swollen eyes. When Mr. Brown was returned to his cell he noticed that his toothpaste, soap, deodorant, hairbrush, lotion, baby power, baby oil, underwear, t-shirts, socks, tennis shoes and over 60 family photographs, including pictures of his deceased mother, were missing. None of these items was returned to Mr. Brown. As a result of the officers' slamming Mr. Brown to the floor, stepping on his head and back, kicking his ribs, and slapping his head, Mr.

Brown suffered immediate pain at the sites of the blows, continuing pain and discomfort which gradually diminished and ended after about a week, and mental and emotional distress.

8. On a subsequent day, another incident took place on the lower right tier of South One while Mr. Brown was confined in cell #77. Around 6:00 or 6:30 p.m. District of Columbia correctional officers including officers Cpl. T. Davis, Cpl. Jenkins, Lt. Irvin, Lt. Stroble, and Lt. Washington entered the tier. They approached Mr. Brown's and Joseph Calloway's cell. Mr. Calloway was in cell #76. An officer, Lt. Irvin, sprayed Mr. Calloway with mace and officers dragged Mr. Calloway off the tier. An officer, Cpl. T. Davis, said to Mr. Brown, "Bernard are you buckin too? Because you need to know that you'll be treated the same and guess what else I have. My knife. Yes, in case you get silly." Mr. Brown's cell was opened and the officer, Cpl. T. Davis, punched Mr. Brown in the head several times. Mr. Brown fell to the floor and acted as if he were unconscious, although he wasn't. The officer, Cpl. Davis, stated, "I've got something for that." He, Cpl. Davis, left and returned moments later with a fire extinguisher and sprayed the yellow spray from the fire extinguisher on Mr. Brown. Mr. Brown arose and moved around his cell, avoiding some of the continued spraying. Mr. Brown and parts of his cell remained covered with the extinguisher spray for approximately six hours, until officers on the midnight shift allowed him to take a shower and to clean his cell. As a result of the officer's repeated punching of Mr. Brown, Mr. Brown suffered immediate pain at the sites of the blows, continuing pain and discomfort which gradually diminished and ended after about a week, and mental and emotional distress. As a result of the officer's spraying of Mr. Brown with the fire extinguisher, Mr. Brown suffered the discomfort and distress of being covered for several hours with the extinguisher spray.

9. On a subsequent day, District of Columbia correctional officials Warden Plaut and Director Margaret Moore, and District of Columbia correctional officers, including Maj. Corbett, M.L. Brown, Lt. Givan, Lt. Cobb, Cpl. Summers, Sgt. Wellington, Cpl.

Simmons and several other officers, were touring the South One unit. While the officers and the Warden and Director were on the top right tier Mr. Brown banged on his cell bars and the officials all looked towards his cell. Mr. Brown yelled, "I need to see someone please." An officer, Cpl. Summers, walked down to the lower right tier and approached Mr. Brown's cell. He, Cpl. Summers, told Mr. Brown, "You'll get a legal call. Just shut-up!" Mr. Brown told him that he didn't care about getting a legal call; he was interested in finding out what happened to his property. The officer, Ofc. Summers, and the others left South One. Approximately an hour and a half later defendant an officer, Lt. Cobb, approached Mr. Brown's cell and said, "Mr. Brown you still haven't learned your lesson. Pop 77 Wellington!" The officer, Lt. Cobb, swung at Mr. Brown. Mr. Brown ducked. The officer, Lt. Cobb, punched Mr. Brown in the chest. As a result of the officer's punching of Mr. Brown, Mr. Brown suffered immediate chest, continuing pain and discomfort which gradually diminished and ended after a few days, and mental and emotional distress.

10. On or about March 1, 1996, plaintiff Eugene Scott, #235-753, was in the SE-2 open population unit of the Jail. He was found guilty of a prison discipline offense, lack of cooperation, and District of Columbia correctional officers took him to Cell #63 in the lower right tier of South One. South One was cold. Officers took away all of Mr. Scott's property. They did not return it until he left South One on March 20. Mr. Scott had only a prison jumpsuit to wear. He had no sheet or blanket. Due to the cold, he shivered and could not sleep. The cell had no hot water. The toilet did not work. Mr. Scott had no soap, toothbrush, toothpaste, or towel.

11. On March 3, 1996, Mr. Scott faked a suicide attempt to get out of the block. District of Columbia correctional officers took him to the psychiatric unit. On or about March 8, 1996 officers took him to Cell #22 in the lower left tier of South One, where he remained until about March 20, 1998. The toilet in Cell #22 was inoperable. It also leaked, covering the floor with dirty, foul-smelling toilet water. Mr. Scott used a milk

carton as a toilet. When officers came with a trash bag to collect empty food trays, Mr. Scott emptied the milk carton containing his body wastes into the trash bag. Mr. Scott had only one pair of boxer shorts, one pair of socks, and one jumpsuit to wear. He had no personal hygiene items. There was no hot water in his cell. Mr. Scott had no eating utensils. He used a piece of a styrofoam food tray as an eating utensil. South One was cold. Mr. Scott had no blanket. He shivered. Mr. Scott tore the cover of his mattress so he could get inside it to try to stay warm. It was uncomfortable inside the mattress. Due to the cold and discomfort, Mr. Scott was unable to sleep for more than a few minutes at a time. At no time was Mr. Scott allowed out of Cell 22 for recreation or a shower.

12. On or about March 18, 1996, a District of Columbia correctional officer, Maj. Corbett, came to Mr. Scott's cell and said, "Nigger, I'll be back." At the beginning of the next shift, at approximately 5:00 p.m., the officer, Maj. Corbett, returned to Mr. Scott's cell with a large number of officers. He, Maj. Corbett, sprayed chemical agent at Mr. Scott. Mr. Scott moved from the back of his cell toward the bars, extending his hand through the bars to be handcuffed. Officers handcuffed him. The officer, Maj. Corbett, kept spraying the chemical at Mr. Scott causing him to gag, and suffer an asthma attack, as well as mental and emotional distress. Mr. Scott wheezed and gasped for breath. The officer, Maj. Corbett, said to the other officers, "Kick his motherfucking ass." District of Columbia correctional officers including Ofcs. Eze, Smallwood, Williams, and Favis entered Mr. Scott's cell, beat him in his cell, and continued to beat him as they dragged him into the laundry room next door to his cell. The officers hit Mr. Scott in the head, body, and groin. They beat him with slapjacks. They stomped on his hand, fracturing his finger. They dragged him to the infirmary, continuing to beat him. In the infirmary, Mr. Scott received eye drops but no other medical treatment. Officers took him back to his cell. Later that day he received medical treatment during which medical personnel discovered Mr. Scott's fractured finger. In addition to immediate pain caused by the

officers' blows, Mr. Scott, due to the beating, suffered mental and emotional distress and was stiff and sore for approximately three days.

13. On or about February 24, 1996, plaintiff Vonsauli Smith, DCDC #261-468, received a Disciplinary Report (DR) for being "out of place" during a count when he had been unable to enter his cell in SE-2 at the D.C. Jail because the cell was locked. Five days later, on or about February 29, 1996, Mr. Smith appeared at an adjustment hearing. He was found guilty, received a 14-day sentence, and was immediately taken to Cell #11 in the upper left tier of South One. Mr. Smith was not allowed to bring any of his property with him. He did not receive his property until three days later. For the first three days Mr. Smith had no personal hygiene items. When Mr. Smith received his property, he still had no toothpaste, toothbrush, or soap. A few days later he borrowed soap from another prisoner. South One was infested with roaches and other insects. South One was cold. Mr. Smith had two sheets, but did not receive a blanket until the fourth day he was in Cell #11. During his first four days in South One Mr. Smith stayed awake and moved as much as possible in his cell to stay warm. When he fell asleep he was soon awakened by numbness in various parts of his body, due to being cold. After he received a blanket, Mr. Smith wrapped himself in the blanket at nearly all times, but was still cold. Mr. Smith had no warm water in his cell. He had no eating utensils. He used a piece of styrofoam as an eating utensil.

14. On March 14, 1996, at approximately 4:00 p.m. during shift change, a District of Columbia correctional officer, a Shift #2 lieutenant, entered the upper left tier of South One, looked around, and left. The tier had been flooded and flooding continued for approximately 45 minutes. A District of Columbia correctional officer, Maj. Corbett, and approximately six or seven officers including District of Columbia correctional officers Lt. Broadnax, Cpl. T. Johnson, and Cpl. Favis then entered the tier. An officer, Maj. Corbett, came to Mr. Smith's cell, which had water in it from the flooding, and asked if Mr. Smith had flooded the tier. Mr. Smith said no, and noted that all of the cells

had water in them. The officer, Maj. Corbett, displayed a canister of chemical agent and Mr. Smith stepped to the back of the cell to avoid being sprayed. The officer, Maj. Corbett, said that Mr. Smith was "not being orderly" and that he was going to "mace" Mr. Smith. He, Maj. Corbett, stated, "If you don't come to the bars, we're going to give you an old-fashioned ass whupping." He called to officers in the bubble to "pop" Mr. Smith's cell and the cell door opened. He told officers to "go in and whup him." Approximately six or seven District of Columbia correctional officers, including defendants Cpl. T. Johnson and Cpl. Favis entered Mr. Smith's cell. Mr. Smith retreated to his bed and curled up to protect himself. Officers including defendants Johnson and Favis hit him with their fists on his head, ribs, hand, back, shoulder, arms, and legs. An officer used a long black wooden stick like a battering ram to hit Mr. Smith repeatedly in his right rib cage. The blows fractured Mr. Smith's 9th and 10th posterior ribs and displaced his 10th lateral right rib. After one of the blows from the stick, Mr. Smith suddenly lost his wind and had difficulty breathing. A District of Columbia correctional officer, Lt. Broadnax, appeared to notice that Mr. Smith was in severe pain and told the officers to "mop his ass up the tier." Mr. Smith uncurled from the fetal position, experiencing sharp pain in his right rib area. Officers grabbed him by the collar, lifted him up, and an officer punched him in the right side of his face. Smith lay on his back on his bed. Officers grabbed his legs and pulled him off the bed, causing his head and back to hit the floor. He was unable to move his arms to break his fall because of the pain in his ribs. The officers dragged Mr. Smith by his feet out of his cell onto the tier. Officers grabbed Mr. Smith and thrust him down the tier, causing him to slide, spinning on his back and onto his side, approximately 10 feet. Mr. Smith landed at the feet of other officers face down. These officers picked him up, turned him onto his back, and slid him in the same manner back down the tier, again approximately 10 feet. Mr. Smith tried to tell the officers that something was wrong with his ribs, but he could barely breathe.

15. After first suggesting that Mr. Smith should mop up the tier, District of Columbia correctional officers placed handcuffs on Mr. Smith's wrists behind his back, over his protests that this position caused severe pain. In response to Mr. Smith's protests, an officer grabbed his handcuffed wrists and pushed them up higher against Mr. Smith's back. In this position, officers pushed Mr. Smith along corridors, first to R&D to change his jumpsuit, then to the infirmary.

16. In the infirmary, Mr. Smith told medical staff what had happened and asked them to check his ribs for damage. A doctor listened with a stethoscope to Mr. Smith's breathing and then officers returned Mr. Smith to his cell in South One. There, Mr. Smith began throwing up blood. Another prisoner told an officer, Maj. Corbett, that Mr. Smith needed medical attention. Officers came to Mr. Smith's cell and again took him to the infirmary. The same doctor who had listened to Mr. Smith's breathing with a stethoscope took an X-ray of Mr. Smith's chest (but not of his ribs) and said, "there's nothing wrong with you." Another doctor looked at the X-rays, felt Mr. Smith's right rib cage, performed a rib X-ray, determined that Mr. Smith needed immediate hospital treatment and ordered that Mr. Smith be taken to D.C. General Hospital. At the hospital, Mr. Smith received treatment including pain killers and ointment. Early the following morning, Mr. Smith returned to the same cell in South One, where water remained on the floor.

17. While Mr. Smith was out of his cell on March 14 at the infirmary, members of Special Officer Grace Lopes's staff came to the unit. Other prisoners told them what had happened to Mr. Smith. On March 15, Ms. Lopes visited Mr. Smith and he showed her a disciplinary report he had received following the incident. She promised to return. The following day, however, District of Columbia correctional officers moved Mr. Smith to Cell #59, in the upper right tier of South One. Ms. Lopes planned to return on March 23. On March 23, officers removed Mr. Smith from South One and sent him to the Occoquan Facility in Lorton, Virginia. Special Officer Lopes obtained Mr. Smith's

medical records showing his fractured ribs. She submitted them to the Court, with Mr. Smith's name blacked out, during the April 9, 1996 *Campbell v. Magruder* hearing. As a result of the chemical spraying and beating, Mr. Smith suffered pain, discomfort, mental and emotional distress, fractured and displaced ribs, and inability to move his upper body normally for several weeks.

18. Mr. Smith received no mail when he was in South One. After Mr. Smith arrived at Occoquan he received mail that had been addressed to him at the Jail and was postmarked the previous month.

19. On February 23, 1996 District of Columbia correctional officers took plaintiff Timothy Williams, DCDC #206-776, to South One and placed him in Cell #19 on the upper left tier. Mr. Williams was one of the first prisoners placed in South One on February 23, 1996. The officers did not permit Mr. Williams to bring to South One any of his personal property, including personal hygiene items and legal papers. At the entrance to South One, District of Columbia correctional officers took away Mr. Williams's Nike athletic shoes. Mr. Williams entered Cell #19 wearing only a jumpsuit, t-shirt, underwear, and socks. For approximately three weeks, Mr. Williams received no shower and wore the same jumpsuit, t-shirt, underwear, and socks, which he washed out in cold water in the sink in his cell. Mr. Williams had no hot water in his cell. He received no other clothes until he had been in South One for at least three weeks, when he received a couple of pairs of socks, a t-shirt, and underpants. Later, he received his athletic shoes. While he was housed in Cell #19, Mr. Williams had no blanket or sheet. South One was cold. Mr. Williams shivered from the cold. He gathered small scraps of cloth and foam and tried to wrap himself up to stay warm. On his bed, he lay underneath his mattress, with his back against the steel frame. He moved around inside his cell, spoke with other prisoners while standing at the bars of his cell, and did exercises in his cell to try to stay warm. Mr. Williams was too cold to sleep normally. After long periods of no sleep, he would fall asleep for short periods of time, physically exhausted from

shivering and the lack of sleep. After approximately three weeks in South One, he received a shower approximately two times per week, and was given lye soap to wash himself, which caused his skin to break out. While he was housed in Cell #19, Mr. Williams served occasionally as a detail member. Because the water in the upper tier shower was very cold, Mr. Williams sometimes took a shower on the lower tier while he was out of his cell on detail; however, the water in the lower tier shower was so hot that it was painful to stand under the water. On food distribution detail, Mr. Williams was allowed out of his cell for approximately 5-10 minutes at a time, to pick up food trays from cells on both the upper right and left tiers. On cleaning detail, he was allowed out of his cell for up to 30 minutes at a time, and he sometimes collected scraps of cloth and bits of soap from empty cells. He used these scraps and soap to try to clean his own cell #19, which was filthy, and gave them to other prisoners to use in their own cells. Mr. Williams asked officers to provide cleaning agents and supplies so that the prisoners could clean their cells, but the officers refused. The toilet in his cell #19 was backed-up. When another toilet in the unit was flushed, filthy water and debris would come up in Mr. Williams's toilet. A strong smell of feces and urine was always present. The food Mr. Williams received was inadequate in both quantity and sanitation. It often contained ashes or smelled of urine. Mr. Williams complained to officers, including Ofc. Davis, about the condition of the food. The officer, Davis, whom Mr. Williams suspected of tampering with his food, laughed at Mr. Williams and said, "Aren't you gonna eat?" Mr. Williams often did not eat all or any of the food he received and he felt hungry all of the time. Mr. Williams had no eating utensils. He ate using his unclean hands, playing cards which he used and re-used, and pieces of Styrofoam trays.

20. After approximately one month, following a flooding incident which occurred on the upper left tier, District of Columbia correctional officers removed Mr. Williams from Cell #19 and placed him in Cell #54 on the upper right tier of South One. Officers told Mr. Williams that he was moved to Cell #54 because he had instigated the

flooding; however, Mr. Williams had been out of the unit on a legal visit during the incident. In Cell #54, Mr. Williams was placed in total separation and on special handling status. At a subsequent Adjustment Board hearing, Mr. Williams was taken off of restrictive status and resumed some detail duties. After he complained to the court monitor, Ms. Lopes, about conditions in the unit, however, Mr. Williams was removed from detail assignments. In Cell #54, Mr. Williams received, for the first time since he had been housed in South One, personal hygiene items, including one bar of soap (without lye), toothpaste, and a very small toothbrush. He also received one blanket and one sheet, the first he had received since he had been housed in South One. When he arrived in Cell #54, he had no hot water in his cell. Mr. Williams remained in Cell #54 until he was moved out of the South One unit at the end of May 1996. While he was housed in Cell #54, an incident occurred during which District of Columbia correctional officer Davis jerked Mr. Williams's handcuffed wrists up behind Mr. Williams's back, straining his shoulder. Mr. Williams returned to South One from a legal visit and submitted to a strip search in the sallyport. When the strip search officer told Mr. Williams to use his hand to lift his testicles, and then use the same hand to hold open his lips and lift his tongue, Mr. Williams complained. An officer, Ofc. Davis, came out of the bubble area toward Mr. Williams. The other officer placed handcuffs on Mr. Williams's wrists behind his back and shackles on his ankles. The officer, Davis, told the other officer, "I've got him from here." As the officer, Davis, and Mr. Williams walked toward Cell #54, the officer said, "You're a bad ass; you're hard-headed." The officer, Davis, grabbed the handcuffs on Mr. Williams's wrists and jerked his arms upward behind Mr. Williams's back. Mr. Williams told the officer, Davis, that he thought he needed to see a doctor. The officer, Davis, said, "You ain't seeing no doctor here." As a result of the jerking by the officer, Davis, Mr. Williams suffered pain in his shoulder and mental and emotional distress. In the South One unit, Mr. Williams received no medical treatment in response to repeated requests. He has since received treatment for this injury

including steroid shots, physical therapy, and pain medication. On another occasion, while Mr. Williams was housed in Cell #54, a District of Columbia correctional officer, officer Britt, punched him. Mr. Williams was at the top of the tier, wearing handcuffs. The officer, Britt, approached Mr. Williams and, facing Mr. Williams, punched him in the stomach and right side of his face. As a result of this punching, Mr. Williams suffered pain at the sites of the officer's blows and mental and emotional distress. On another occasion, while Mr. Williams was housed in Cell #54, a District of Columbia correctional officer came to Cell #54 and sprayed chemical agent directly at Mr. Williams. Mr. Williams received no shower or medical treatment following the spraying of chemical agent. Mr. Williams suffered burning of his eyes and skin and asthma symptoms of difficult breathing as a result of the officer's use of chemical agent.

21. While Mr. Williams was in South One, Mr. Williams received only a few items of legal mail. He filed a grievance and complained about the disruption of mail service to Director Moore in an interview. Director Moore told Mr. Williams to give his mail to Warden Britton-Jackson for delivery; however, Mr. Williams later found items of his mail in the trash while he was serving on cleaning detail. While Mr. Williams was in South One, several persons came to the Jail but were denied visits with him. His mother, Wilhelmina Williams, came two or three times to the Jail, but each time staff refused to let her visit him. His brother, Derrick Johnson, also came to the Jail, but staff refused to let him visit Mr. Williams. Mr. Johnson spoke to a supervisor about the denial of visitation; the supervisor told Mr. Johnson that Mr. Williams's visit had been "taken." Mr. Williams's lawyer, John Shorter, also came to visit Mr. Williams. During at least one legal visit with Mr. Shorter, Mr. Williams wore only socks, because he had no shoes. At least twice, Mr. Shorter came to the Jail to conduct a legal visit with Mr. Williams, but staff refused to let him visit Mr. Williams. During the entire time that Mr. Williams was housed in South One, he never received his legal papers. During the entire time that Mr. Williams was housed in South One, officers repeatedly sprayed chemical agent

throughout the tier where he was housed, causing irritation of Mr. Williams's eyes and skin, and triggering asthma symptoms of difficult breathing. Mr. Williams also suffered asthma symptoms and irritation of his eyes and skin when the housing unit filled with smoke during fires. Mr. Williams repeatedly requested, but did not receive, any medical treatment for these complaints.

22. The persons responsible for and the persons who implemented plaintiffs' conditions of confinement at the D.C. jail were District of Columbia employees who in carrying out their responsibility for or implementing plaintiffs' conditions of confinement acted under color of District of Columbia law, within the meaning of 42 U.S.C. § 1983.

#### **Facts Established by Plaintiffs' Interrogatory Answers**

2. Plaintiffs' interrogatory answers establish the following facts alleged in the complaint:

4. At all relevant times, each plaintiff was confined in the Jail as a sentenced prisoner or a detainee.

\* \* \*

#### **Facts--Inhumane, Unconstitutional Conditions in South One**

12. Beginning February 23, 1996 and lasting for several weeks, defendants knowingly and intentionally subjected inmates confined in South One, including plaintiffs, to inhumane, unconstitutional conditions of confinement. These conditions included total lack or inadequacy of (1) sanitation (inoperable, backed-up, and unclean toilets or sinks; feces, urine, saliva, and other dirt and filth on floors, walls, bars, and other surfaces; mice; insects including roaches, gnats, water bugs, centipedes, and fruit flies; lack of cleaning agents and cleaning tools); (2) personal cleanliness (cut-off water supply; inadequate supply of hot and/or cold water; dirty water; inoperable sinks; denial of access to showers; lack of personal hygiene items such as soap, toothbrushes, and toothpaste; lack of clean clothing, sheets and towels and no means to clean them); (3) eating utensils (requiring prisoners to use and re-use playing cards, scraps of Styrofoam, and their unwashed hands to eat); (4) heat (low temperature; insufficient clothing

necessary for warmth; lack of blankets); (5) air (odors and contamination from chemical agents, smoke, feces, and urine); and (6) medical treatment (including denial of prescribed medications, denial of access to the infirmary for medical examination and treatment, denial of medical treatment following the use of force by officers, and denial of showers following chemical sprayings by officers). Plaintiffs suffered these unconstitutional conditions, and consequent physical discomfort and mental and emotional distress, to varying degrees, for varying periods of time. The conditions endured by each individual plaintiff are pleaded below.

**Facts--Other Unusual Restrictions, Manifesting Punitive Intent**

13. Beginning February 23, 1996 and lasting for several weeks, defendants knowingly and intentionally subjected inmates confined in South One, including plaintiffs, to other unusual restrictions. Plaintiffs do not claim that these other restrictions were violations of law that caused them cognizable injury. These other restrictions, however, manifest defendants' punitive intent in imposing all of the conditions of confinement to which they subjected South One inmates--including the inhumane, unconstitutional conditions alleged in paragraph 12. The other unusual restrictions to which defendants subjected South One inmates included total or partial denial of (1) visitors (including legal visits and Classification and Parole (C&P) officer visits), (2) incoming and outgoing mail (including legal mail), (3) recreation, (4) phone calls, (5) personal property (including religious materials and legal papers), (6) access to the law library, (7) canteen privileges, (8) religious services, and (9) Institutional Grievance Procedure (IGP) forms.

**Facts--Unconstitutional Conditions of Confinement, Beatings, Chemical Sprayings, and Restrictions Suffered by Plaintiffs**

\* \* \*

**Shannon Battle**

17. On February 23, 1996, plaintiff Shannon Battle, DCDC #263-505, was in the NE-1 unit of the Jail. At approximately 2:00-4:00 p.m., defendants Jackson, Brown, and officers including approximately two lieutenants and eight corporals came to NE-1 and took several prisoners, including Mr. Battle, to South One. The officers did not permit the prisoners to bring any of their personal property with them.

18. Officers placed Mr. Battle in Cell #39 on the lower left tier in South One. He remained there from his arrival on February 23, 1996 until on or about March 3, 1996. During this time, he asked a commanding officer each day for permission to call his parents and/or his lawyer. The first time he made this request, February 23, 1996, Lt. Clark sprayed him with chemical agent. The spray caused intense irritation, itching and burning on Mr. Battle's face and in his eyes, as well as mental and emotional distress. The intense irritation, itching, and burning lasted for approximately fifteen to thirty minutes, during which Mr. Battle was unable to open his eyes. The irritation, itching, and burning gradually subsided over a period of approximately three hours. Mr. Battle received no medical treatment or shower following the spraying. Commanding officers denied Mr. Battle's requests to call his parents or his lawyer on every other occasion when he made such requests. Mr. Battle received no recreation or shower when in South One. The water in Mr. Battle's cell did not run the entire time that he was in South One. The cell was filthy. The air smelled very bad. There were flies and roaches. Women's sanitary napkins had been glued to the seat of the toilet. They were so dirty that Mr. Battle did not want to sit on them. For the first two days, although the temperature was extremely cold, Mr. Battle had no sheets, towels, or blankets. He had only a jumpsuit and tennis shoes (without socks). To try to stay warm, Mr. Battle walked constantly in his cell when awake. The effort was not successful. Mr. Battle was cold constantly. He shivered from the cold. His feet were numb from the cold. At night, Mr. Battle lay down, shivering from the cold, until he passed out. He slept a short while, then awoke and shivered until he passed out again. This happened repeatedly, all night. An officer

gave Mr. Battle a blanket on or about February 26, 1996. Mr. Battle wrapped himself in the blanket, but he still shivered from the cold. The periods during which he slept were longer than before he had the blanket, but he still woke up several times, shivering from the cold. Mr. Battle did not receive his personal property while he was in South One. Every day, officers entered the units wearing shields and carrying sticks. On or about March 1, 1996, officers removed Mr. Battle from his cell to appear before a Housing Board. The Board told Mr. Battle they would recommend his transfer to general population. Two days later, on or about March 3, 1996, Mr. Battle was removed from South One.

### **Bernard Brown**

19. For several weeks beginning approximately March 23, 1996, plaintiff Bernard Brown, DCDC #245-479, was confined in Cell #77 in the lower right tier of South One. One day in March, between fifteen and twenty officers entered the lower right tier of South One and shouted "Ya'll motherfuckers got a ass whippin comin." The officers included defendants Lt. Cobb, Lt. Givan, Maj. Corbett, Cpl. Simmons, and Sgt. Wellington, among others. The officers shouted to the inmates to place their hands outside of their cells so that the officers could place handcuffs on them behind their backs. Mr. Brown complied and was handcuffed from behind. Mr. Brown's cell door opened. An officer grabbed Mr. Brown and slammed him face down to the floor of his cell. An officer pressed his foot onto Mr. Brown's head. Another officer pressed his foot onto Mr. Brown's back. Other officers searched Mr. Brown's cell. An officer asked, "Bernard, where's the fuckin matches at." Mr. Brown replied, "I don't know what you're talking about, and my head plus back hurt. Can you please get off of me." One of the officers kicked Mr. Brown in the ribs. Officers pulled Mr. Brown up off of the floor and one of them slapped him in the head. Officers dragged Mr. Brown to the dining area on the upper tier. In the dining room Mr. Brown saw other inmates from the lower right tier with their hands handcuffed behind their backs. Some were coughing, others were naked,

and some had swollen eyes. When Mr. Brown was returned to his cell he noticed that his toothpaste, soap, deodorant, hairbrush, lotion, baby powder, baby oil, underwear, t-shirts, socks, tennis shoes and over 60 family photographs, including pictures of his deceased mother, were missing. None of these items was returned to Mr. Brown. As a result of the officers' slamming Mr. Brown to the floor, stepping on his head and back, kicking his ribs, and slapping his head, Mr. Brown suffered immediate pain at the sites of the blows, continuing pain and discomfort which gradually diminished and ended after about a week, and mental and emotional distress.

20. On a subsequent day, another incident took place on the lower right tier of South One while Mr. Brown was confined in cell #77. Around 6:00 or 6:30 p .m. officers including defendants Cpl. T. Davis, Cpl. Jenkins, Lt. Irvin, Lt. Stroble, and Lt. Washington entered the tier. They approached Mr. Brown's and plaintiff Joseph Calloway's cell. Mr. Calloway was in cell #76. Lt. Irvin sprayed Mr. Calloway with mace and officers dragged Mr. Calloway off the tier. Cpl. T. Davis said to Mr. Brown, "Bernard are you buckin too? Because you need to know that you'll be treated the same and guess what else I have. My knife. Yes, in case you get silly." Mr. Brown's cell was opened and Cpl. T. Davis punched Mr. Brown in the head several times. Mr. Brown fell to the floor and acted as if he were unconscious, although he wasn't. Cpl. Davis stated, "I've got something for that." Cpl. Davis left and returned moments later with a fire extinguisher and sprayed the yellow spray from the fire extinguisher on Mr. Brown. Mr. Brown arose and moved around his cell, avoiding some of Cpl. Davis's continued spraying. Mr. Brown and parts of his cell remained covered with the extinguisher spray for approximately six hours, until officers on the midnight shift allowed him to take a shower and to clean his cell. As a result of Cpl. Davis's repeated punching of Mr. Brown, Mr. Brown suffered immediate pain at the sites of the blows, continuing pain and discomfort which gradually diminished and ended after about a week, and mental and emotional distress. As a result of Cpl. Davis's spraying of Mr. Brown with the fire

extinguisher, Mr. Brown suffered the discomfort and distress of being covered for several hours with the extinguisher spray.

21. On a subsequent day, Mr. Brown saw that Warden Plaut, Margaret Moore, Maj. Corbett, M.L. Brown, Lt. Givan, Lt. Cobb, Cpl. Summers, Sgt. Wellington, Cpl. Simmons and several other officers were touring the South One unit. While the officers and the Warden and Director were on the top right tier Mr. Brown banged on his cell bars and the officials all looked towards his cell. Mr. Brown yelled, "I need to see someone please." Cpl. Summers walked down to the lower right tier and approached Mr. Brown's cell. Cpl. Summers told Mr. Brown, "You'll get a legal call. Just shut-up!" Mr. Brown told him that he didn't care about getting a legal call; he was interested in finding out what happened to his property. Ofc. Summers and the others left South One. Approximately an hour and a half later defendant Lt. Cobb approached Mr. Brown's cell and said, "Mr. Brown you still haven't learned your lesson. Pop 77 Wellington!" Lt. Cobb swung at Mr. Brown. Mr. Brown ducked. Lt. Cobb punched Mr. Brown in the chest. As a result of Lt. Cobb's punching of Mr. Brown, Mr. Brown suffered immediate chest, continuing pain and discomfort which gradually diminished and ended after a few days, and mental and emotional distress.

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### **Eugene Scott**

43. On or about March 1, 1996, plaintiff Eugene Scott, #235-753, was in the SE-2 open population unit of the Jail. He was found guilty of a prison discipline offense, lack of cooperation, and officers took him to Cell #63 in the lower right tier of South One. South One was cold. Officers took away all of Mr. Scott's property. They did not return it until he left South One on March 20. Mr. Scott had only a prison jumpsuit to wear. He had no sheet or blanket. Due to the cold, he shivered and could not sleep. The cell had no hot water. The toilet did not work. Mr. Scott had no soap, toothbrush, toothpaste, or towel.

44. On March 3, 1996, Mr. Scott faked a suicide attempt to get out of the block. Officers took him to the psychiatric unit. On or about March 8, 1996 Officers took him to Cell #22 in the lower left tier of South One, where he remained until about March 20, 1998. The toilet in Cell #22 was inoperable. It also leaked, covering the floor with dirty, foul-smelling toilet water. Mr. Scott used a milk carton as a toilet. When officers came with a trash bag to collect empty food trays, Mr. Scott emptied the milk carton containing his body wastes into the trash bag. Mr. Scott had only one pair of boxer shorts, one pair of socks, and one jumpsuit to wear. He had no personal hygiene items. There was no hot water in his cell. Mr. Scott had no eating utensils. He used a piece of a styrofoam food tray as an eating utensil. South One was cold. Mr. Scott had no blanket. He shivered. Mr. Scott tore the cover of his mattress so he could get inside it to try to stay warm. It was uncomfortable inside the mattress. Due to the cold and discomfort, Mr. Scott was unable to sleep for more than a few minutes at a time. At no time was Mr. Scott allowed out of Cell 22 for recreation or a shower.

45. On or about March 18, 1996, defendant Maj. Corbett came to Mr. Scott's cell and said, "Nigger, I'll be back." At the beginning of the next shift, at approximately 5:00 p.m., Maj. Corbett returned to Mr. Scott's cell with a large number of officers. Maj. Corbett sprayed chemical agent at Mr. Scott. Mr. Scott moved from the back of his cell toward the bars, extending his hand through the bars to be handcuffed. Officer handcuffed him. Maj. Corbett kept spraying the chemical at Mr. Scott causing him to gag, and suffer an asthma attack, as well as mental and emotional distress. Mr. Scott wheezed and gasped for breath. Maj. Corbett said to the other officers, "Kick his motherfucking ass." Officers including Ofcs. Eze, Smallwood, Williams, and Favis entered Mr. Scott's cell, beat him in his cell, and continued to beat him as they dragged him into the laundry room next door to his cell. The officers hit Mr. Scott in the head, body, and groin. They beat him with slapjacks. They stomped on his hand, fracturing his finger. They dragged him to the infirmary, continuing to beat him. Plaintiffs Billy

Richardson and Levy Rouse saw all or part of this beating. In the infirmary, Mr. Scott received eye drops but no other medical treatment. Officers took him back to his cell. Later that day he received medical treatment during which medical personnel discovered Mr. Scott's fractured finger. In addition to immediate pain caused by the officers' blows, Mr. Scott, due to the beating, suffered mental and emotional distress and was stiff and sore for approximately three days.

### **Vonsauli Smith**

46. On or about February 24, 1996, plaintiff Vonsauli Smith, DCDC #261-468, received a Disciplinary Report (DR) for being "out of place" during a count when he had been unable to enter his cell in SE-2 at the D.C. Jail because the cell was locked. Five days later, on or about February 29, 1996, Mr. Smith appeared at an adjustment hearing. He was found guilty, received a 14-day sentence, and was immediately taken to Cell #11 in the upper left tier of South One. Mr. Smith was not allowed to bring any of his property with him. He did not receive his property until three days later. For the first three days Mr. Smith had no personal hygiene items. When Mr. Smith received his property, he still had no toothpaste, toothbrush, or soap. A few days later he borrowed soap from another prisoner. South One was infested with roaches and other insects. South One was cold. Mr. Smith had two sheets, but did not receive a blanket until the fourth day he was in Cell #11. During his first four days in South One Mr. Smith stayed awake and moved as much as possible in his cell to stay warm. When he fell asleep he was soon awakened by numbness in various parts of his body, due to being cold. After he received a blanket, Mr. Smith wrapped himself in the blanket at nearly all times, but was still cold. Mr. Smith had no warm water in his cell. He had no eating utensils. He used a piece of styrofoam as an eating utensil.

47. On March 14, 1996, at approximately 4:00 p.m. during shift change, a Shift #2 lieutenant entered the unit, looked around, and left. The tier had been flooded and flooding continued for approximately 45 minutes. Defendant Maj. Corbett and

approximately six or seven officers including defendants Lt. Broadnax, Cpl. T. Johnson, and Cpl. Favis then entered the tier. Maj. Corbett came to Mr. Smith's cell, which had water in it from the flooding, and asked if Mr. Smith had flooded the tier. Mr. Smith said no, and noted that all of the cells had water in them. Maj. Corbett displayed a canister of chemical agent and Mr. Smith stepped to the back of the cell to avoid being sprayed. Maj. Corbett said that Mr. Smith was "not being orderly" and that he was going to "mace" Mr. Smith. Maj. Corbett stated, "If you don't come to the bars, we're going to give you an old-fashioned ass whupping." Maj. Corbett called to officers in the bubble to "pop" Mr. Smith's cell and the cell door opened. Maj. Corbett told officers to "go in and whup him." Approximately six or seven officers, including defendants Cpl. T. Johnson and Cpl. Favis entered Mr. Smith's cell. Mr. Smith retreated to his bed and curled up to protect himself. Officers including defendants Johnson and Favis hit him with their fists on his head, ribs, hand, back, shoulder, arms, and legs. An officer used a long black wooden stick like a battering ram to hit Mr. Smith repeatedly in his right rib cage. The blows fractured Mr. Smith's 9th and 10th posterior ribs and displaced his 10th lateral right rib. After one of the blows from the stick, Mr. Smith suddenly lost his wind and had difficulty breathing. Lt. Broadnax appeared to notice that Mr. Smith was in severe pain and told the officers to "mop his ass up the tier." Mr. Smith uncurled from the fetal position, experiencing sharp pain in his right rib area. Officers grabbed him by the collar, lifted him up, and an officer punched him in the right side of his face. Smith lay on his back on his bed. Officers grabbed his legs and pulled him off the bed, causing his head and back to hit the floor. He was unable to move his arms to break his fall because of the pain in his ribs. The officers dragged Mr. Smith by his feet out of his cell onto the tier. Officers grabbed Mr. Smith and thrust him down the tier, causing him to slide, spinning on his back and onto his side, approximately 10 feet. Mr. Smith landed at the feet of other officers face down. These officers picked him up, turned him onto his back, and slid him in the same manner back down the tier, again approximately 10 feet. Mr. Smith

tried to tell the officers that something was wrong with his ribs, but he could barely breathe. Prisoners Timothy Williams, DCDC #207-776, Ned McAllister, DCDC #254-452, Carlos Smith, DCDC #265-438, Joseph Calloway, DCDC #267-711, and Charles Card, DCDC #258-799, saw and heard all or part of the March 14, 1996 beating of Mr. Smith.

48. After first suggesting that Mr. Smith should mop up the tier, officers placed handcuffs on Mr. Smith's wrists behind his back, over his protests that this position caused severe pain. In response to Mr. Smith's protests, an officer grabbed his handcuffed wrists and pushed them up higher against Mr. Smith's back. In this position, officers pushed Mr. Smith along corridors, first to R&D to change his jumpsuit, then to the infirmary.

49. In the infirmary, Mr. Smith told medical staff what had happened and asked them to check his ribs for damage. A doctor listened with a stethoscope to Mr. Smith's breathing and then officers returned Mr. Smith to his cell in South One. There, Mr. Smith began throwing up blood. Another prisoner told Maj. Corbett that Mr. Smith needed medical attention. Officers came to Mr. Smith's cell and again took him to the infirmary. The same doctor who had listened to Mr. Smith's breathing with a stethoscope took an X-ray of Mr. Smith's chest (but not of his ribs) and said, "there's nothing wrong with you." Another doctor looked at the X-rays, felt Mr. Smith's right rib cage, performed a rib X-ray, determined that Mr. Smith needed immediate hospital treatment and ordered that Mr. Smith be taken to D.C. General Hospital. At the hospital, Mr. Smith received treatment including pain killers and ointment. Early the following morning, Mr. Smith returned to the same cell in South One, where water remained on the floor.

50. While Mr. Smith was out of his cell on March 14 at the infirmary, members of Special Officer Grace Lopes's staff came to the unit. Other prisoners told them what had happened to Mr. Smith. On March 15, Ms. Lopes visited Mr. Smith and he showed her a disciplinary report he had received following the incident. She promised to return.

The following day, however, officers moved Mr. Smith to Cell #59, in the upper right tier of South One. Ms. Lopes planned to return on March 23. On March 23, officers removed Mr. Smith from South One and sent him to the Occoquan Facility in Lorton, Virginia. Special Officer Lopes obtained Mr. Smith's medical records showing his fractured ribs. She submitted them to the Court, with Mr. Smith's name blacked out, during the April 9, 1996 *Campbell v. Magruder* hearing. As a result of the chemical spraying and beating, Mr. Smith suffered pain, discomfort, mental and emotional distress, fractured and displaced ribs, and inability to move his upper body normally for several weeks.

51. Mr. Smith received no mail when he was in South One. After Mr. Smith arrived at Occoquan he received mail that had been addressed to him at the Jail and was postmarked the previous month.

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### **Timothy Williams**

54. On February 23, 1996 officers took plaintiff Timothy Williams, DCDC #206-776, to South One and placed him in Cell #19 on the upper left tier. Mr. Williams was one of the first prisoners placed in South One on February 23, 1996. The officers did not permit Mr. Williams to bring to South One any of his personal property, including personal hygiene items and legal papers. At the entrance to South One, officers took away Mr. Williams's Nike athletic shoes. Mr. Williams entered Cell #19 wearing only a jumpsuit, t-shirt, underwear, and socks. For approximately three weeks, Mr. Williams received no shower and wore the same jumpsuit, t-shirt, underwear, and socks, which he washed out in cold water in the sink in his cell. Mr. Williams had no hot water in his cell. He received no other clothes until he had been in South One for at least three weeks, when he received a couple of pairs of socks, a t-shirt, and underpants. Later, he received his athletic shoes. While he was housed in Cell #19, Mr. Williams had no blanket or sheet. South One was cold. Mr. Williams shivered from the cold. He gathered small

scraps of cloth and foam and tried to wrap himself up to stay warm. On his bed, he lay underneath his mattress, with his back against the steel frame. He moved around inside his cell, spoke with other prisoners while standing at the bars of his cell, and did exercises in his cell to try to stay warm. Mr. Williams was too cold to sleep normally. After long periods of no sleep, he would fall asleep for short periods of time, physically exhausted from shivering and the lack of sleep. After approximately three weeks in South One, he received a shower approximately two times per week, and was given lye soap to wash himself, which caused his skin to break out. While he was housed in Cell #19, Mr. Williams served occasionally as a detail member. Because the water in the upper tier shower was very cold, Mr. Williams sometimes took a shower on the lower tier while he was out of his cell on detail; however, the water in the lower tier shower was so hot that it was painful to stand under the water. On food distribution detail, Mr. Williams was allowed out of his cell for approximately 5-10 minutes at a time, to pick up food trays from cells on both the upper right and left tiers. On cleaning detail, he was allowed out of his cell for up to 30 minutes at a time, and he sometimes collected scraps of cloth and bits of soap from empty cells. He used these scraps and soap to try to clean his own cell #19, which was filthy, and gave them to other prisoners to use in their own cells. Mr. Williams asked officers to provide cleaning agents and supplies so that the prisoners could clean their cells, but the officers refused. The toilet in his cell #19 was backed-up. When another toilet in the unit was flushed, filthy water and debris would come up in Mr. Williams's toilet. A strong smell of feces and urine was always present. The food Mr. Williams received was inadequate in both quantity and sanitation. It often contained ashes or smelled of urine. Mr. Williams complained to officers, including Ofc. Davis, about the condition of the food. Ofc. Davis, whom Mr. Williams suspected of tampering with his food, laughed at Mr. Williams and said, "Aren't you gonna eat?" Mr. Williams often did not eat all or any of the food he received and he felt hungry all of the time. Mr.

Williams had no eating utensils. He ate using his unclean hands, playing cards which he used and re-used, and pieces of Styrofoam trays.

55. After approximately one month, following a flooding incident which occurred on the upper left tier, officers removed Mr. Williams from Cell #19 and placed him in Cell #54 on the upper right tier of South One. Officers told Mr. Williams that he was moved to Cell #54 because he had instigated the flooding; however, Mr. Williams had been out of the unit on a legal visit during the incident. In Cell #54, Mr. Williams was placed in total separation and on special handling status. At a subsequent Adjustment Board hearing, Mr. Williams was taken off of restrictive status and resumed some detail duties. After he complained to the court monitor, Ms. Lopes, about conditions in the unit, however, Mr. Williams was removed from detail assignments. In Cell #54, Mr. Williams received, for the first time since he had been housed in South One, personal hygiene items, including one bar of soap (without lye), toothpaste, and a very small toothbrush. He also received one blanket and one sheet, the first he had received since he had been housed in South One. When he arrived in Cell #54, he had no hot water in his cell. Mr. Williams remained in Cell #54 until he was moved out of the South One unit at the end of May 1996. While he was housed in Cell #54, an incident occurred during which Ofc. Davis jerked Mr. Williams's handcuffed wrists up behind Mr. Williams's back, straining his shoulder. Mr. Williams returned to South One from a legal visit and submitted to a strip search in the sallyport. When the strip search officer told Mr. Williams to use his hand to lift his testicles, and then use the same hand to hold open his lips and lift his tongue, Mr. Williams complained. Ofc. Davis came out of the bubble area toward Mr. Williams. The other officer placed handcuffs on Mr. Williams's wrists

behind his back and shackles on his ankles. Ofc. Davis told the other officer, "I've got him from here." As Ofc. Davis and Mr. Williams walked toward Cell #54, Ofc. Davis said, "You're a bad ass; you're hard-headed." Ofc. Davis grabbed the handcuffs on Mr. Williams's wrists and jerked his arms upward behind Mr. Williams's back. Mr. Williams told Ofc. Davis that he thought he needed to see a doctor. Ofc. Davis said, "You ain't seeing no doctor here." As a result of the jerking by Ofc. Davis, Mr. Williams suffered pain in his shoulder and mental and emotional distress. In the South One unit, Mr. Williams received no medical treatment in response to repeated requests. He has since received treatment for this injury including steroid shots, physical therapy, and pain medication. On another occasion, while Mr. Williams was housed in Cell #54, Ofc. Britt punched him. Mr. Williams was at the top of the tier, wearing handcuffs. Ofc. Britt approached Mr. Williams and, facing Mr. Williams, punched him in the stomach and right side of his face. As a result of the punching by Ofc. Britt, Mr. Williams suffered pain at the sites of the officer's blows and mental and emotional distress. On another occasion, while Mr. Williams was housed in Cell #54, an officer came to Cell #54 and sprayed chemical agent directly at Mr. Williams. Mr. Williams received no shower or medical treatment following the spraying of chemical agent. Mr. Williams suffered burning of his eyes and skin and asthma symptoms of difficult breathing as a result of the officer's use of chemical agent.

56. While Mr. Williams was in South One, Mr. Williams received only a few items of legal mail. He filed a grievance and complained about the disruption of mail service to Director Moore in an interview. Director Moore told Mr. Williams to give his mail to Warden Britton-Jackson for delivery; however, Mr. Williams later found items of

his mail in the trash while he was serving on cleaning detail. While Mr. Williams was in South One, several persons came to the Jail but were denied visits with him. His mother, Wilhelmina Williams, came two or three times to the Jail, but each time staff refused to let her visit him. His brother, Derrick Johnson, also came to the Jail, but staff refused to let him visit Mr. Williams. Mr. Johnson spoke to a supervisor about the denial of visitation; the supervisor told Mr. Johnson that Mr. Williams's visit had been "taken." Mr. Williams's lawyer, John Shorter, also came to visit Mr. Williams. During at least one legal visit with Mr. Shorter, Mr. Williams wore only socks, because he had no shoes. At least twice, Mr. Shorter came to the Jail to conduct a legal visit with Mr. Williams, but staff refused to let him visit Mr. Williams. During the entire time that Mr. Williams was housed in South One, he never received his legal papers. During the entire time that Mr. Williams was housed in South One, officers repeatedly sprayed chemical agent throughout the tier where he was housed, causing irritation of Mr. Williams's eyes and skin, and triggering asthma symptoms of difficult breathing. Mr. Williams also suffered asthma symptoms and irritation of his eyes and skin when the housing unit filled with smoke during fires. Mr. Williams repeatedly requested, but did not receive, any medical treatment for these complaints.

### **Facts Established by the Parties' Stipulation**

3. Under the Stipulation filed with the Court, the parties have stipulated as follows:

If the Court or jury finds that an employee of the District of Columbia (whether a defendant or not) caused or subjected a plaintiff to deprivation of a constitutional right, the District of Columbia will be liable to the plaintiff under

42 U.S.C. § 1983 for compensatory damages for injury proximately caused by the deprivation. (Plaintiff need not present evidence that a District of Columbia custom, policy, or practice, or personal action by a District of Columbia policymaker, caused or subjected plaintiff to the deprivation.)

Respectfully submitted,

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Counsel for Plaintiffs

### **Verification of Service of Admission Requests**

My name is Daniel M. Schember. I am one of the attorneys for plaintiffs in this case. On July 29, 2004, I mailed to Robert A. DeBerardinis, Assistant Attorney General for DC, 441 Fourth Street, N.W., 6th Fl. South, Washington, D.C. 20001 by first class mail a copy of the twenty-two admission requests stated in paragraph 1 above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 27, 2004.

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Daniel M. Schember

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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KENNISON BATTLE, *et al.*, )  
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 Plaintiffs, )  
 )  
 v. ) Civil Action No. 99cv01788 (RCL)  
 )  
 DISTRICT OF COLUMBIA, *et al.*, )  
 )  
 Defendants. )

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**MEMORANDUM IN SUPPORT OF MOTION BY PLAINTIFFS S. BATTLE, BROWN,  
SCOTT, SMITH, AND WILLIAMS FOR PARTIAL SUMMARY JUDGMENT ON  
LIABILITY, AGAINST DEFENDANT DISTRICT OF COLUMBIA**

Under the facts admitted by defendant under Rule 36, the facts stated in the complaint and incorporated plaintiffs' interrogatory answers, and the Stipulation filed with the Court--all of which are set forth in plaintiffs' statement of material facts--defendant District of Columbia is liable to plaintiffs for compensatory damages on each of the plaintiffs' claims.

**Plaintiffs' Interrogatory Answers**

Each plaintiff has executed sworn interrogatory answers verifying the allegations in the complaint. Defendant District of Columbia asked each plaintiff the same interrogatories. The interrogatory answers by plaintiff Shannon Battle verifying the allegations of the complaint are as follows; each plaintiff similarly has answered these same interrogatories by verifying the allegations of the complaint:

13. If you assert that you were assaulted by a correctional officer while housed in South One, describe in detail the circumstances of said assault, identify the correctional officer who assaulted you, and describe any injuries you claim as a result of the assault.

**Answer:** The information responsive to this interrogatory that I can remember at this time is stated in the complaint.

18. If you claim that you were denied medical treatment, eating utensils, phone privileges, clothing and/or bedding or any other right, privilege or entitlement of confinement identify specifically the right, privilege or entitlement that you were denied and state the date, time and circumstances of such denial.

**Answer:** The information responsive to this interrogatory that I can remember at this time is stated in the complaint . . . .<sup>1</sup>

20. Do you contend that you were subjected to cruel and unusual punishment while incarcerated at DC Jail? If the response is yes please identify the period of time you were subjected to cruel and unusual punishment and state what facts you will use to support such a contention.

**Answer:** Yes. To the extent I recall at this time, the answers to this interrogatory are stated in the complaint, the complaints in the consolidated cases, and the documents plaintiffs have produced in response to defendants' discovery requests.

The plaintiffs' sworn interrogatory answers support the portions of plaintiffs' Statement of Material Facts that set forth the complaint allegations within their personal knowledge.

**Defendant's Liability Based on Plaintiffs' Statement of Material Facts**

**Assault and battery.**--Plaintiffs' Statement of Material Facts establishes that each plaintiff was assaulted and battered by one or more District of Columbia correctional officers acting within the scope of their employment. *See Holder v. District of Columbia*, 700 A. 2d 738 (D.C. 1997). The District of Columbia is liable for these torts under the doctrine of *respondeat superior*. *Id.*

**Unconstitutional excessive force.**--Plaintiffs' Statement of Material Facts establishes that each plaintiff was subjected to excessive, unconstitutional force by one or more District of Columbia correctional officers acting under color of law. *Hudson v. McMillian*, 593 U.S. 1 (1992); *Whitley v. Albers*, 475 U.S. 312 (1986); *Norris v. District of Columbia*, 737 F.2d 1148, 1151 (D.C. Cir. 1984). The parties' Stipulation establishes the District of Columbia's liability for the officers' unconstitutional force.

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<sup>1</sup> In addition to verifying the allegations in the complaint, plaintiff Battle incorporated by reference his answers to interrogatories 5, 6, and 22. These answers said he had received no medical treatment for his injuries.

**Unconstitutional conditions of confinement.**--Plaintiffs' Statement of Material Facts establishes that each plaintiff was subjected to unconstitutional conditions of confinement by District of Columbia correctional officers acting under color of law. *Wilson v. Seiter*, 501 U.S. 294 (1991) (extreme temperature, improper ventilation, unsanitary bathroom and eating facilities); *Gaston v. Coughlin*, 249 F.3d 156 (2d Cir. 2001) (extreme temperature, vermin, sewage); *Maynor v. Morgan County, Alabama*, 147 F. Supp. 2d 1185 (N.D. Ala. 2001) (filth, denial of sheets); *Isby v. Clark*, 100 F.3d 502 (7th Cir. 1996) (cold, filthy cell); *Antonelli v. Sheahan*, 81 F.3d 1422 (7th Cir. 1996) (cold, pest infestation) *Mitchell v. Maynard*, 80 F.3d 1433 (10th Cir. 1996) (placement in cold cell without blanket); *Whitnack v. Douglas*, 16 F.3d 954 (8th Cir. 1994) (filthy cell); *Howard v. Adkison*, 887 F. 2d 134 (8th Cir. 1989) (filthy cell); *Kimbrough v. O'Neil*, 523 F.2d 1057 (7th Cir. 1975) (cold, no personal hygiene items).

Again, the parties' Stipulation establishes the District of Columbia's liability for the unconstitutional conditions.

Plaintiffs' motion should be granted.

Respectfully submitted,

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