

2008 WL 85092

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United States District Court,  
N.D. New York.

Phyllis A. MITCHELL, both individually and on  
behalf of a class of others similarly situated,  
Plaintiff,

v.

The COUNTY OF CLINTON; David Favro, both  
individually and in his official capacity as Sheriff  
of the County of Clinton; Jerry Maggy, both  
individually and as Undersheriff of the County of  
Clinton; Michael Smith, both individually and as  
Major in the Clinton County Sheriff's Department,  
Defendants.

No. 8:06-CV-00254. | Jan. 7, 2008.

#### Attorneys and Law Firms

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Quesnel, Esq., of counsel, Albany, NY, for Defendants.

#### Opinion

### MEMORANDUM-DECISION AND ORDER

Hon. NORMAN A. MORDUE, Chief Judge.

\*1 In this class action, plaintiff moves (Dkt. No. 64) to  
allow Paul Bachmann to intervene as a representative  
plaintiff pursuant to Fed.R.Civ.P. 23(d) and 24(b), and for  
leave to file an amended complaint accordingly. On July  
5, 2007, this Court issued a Memorandum-Decision and  
Order (Dkt. No. 58) certifying the following two  
subclasses of plaintiffs:

#### *Class A*

All persons who were placed into the custody of the

Clinton County Jail after being charged with  
misdemeanors, violations, violations of probation or  
parole, traffic infractions, civil commitments or other  
minor crimes and were strip searched upon their entry  
into the Clinton County Jail pursuant to the policy,  
custom and practice of the Clinton County Sheriff's  
Department and the County of Clinton, from February  
28, 2003 until October 24, 2003. Specifically excluded  
from the class are defendants and any and all of their  
respective affiliates, legal representatives, heirs,  
successors, employees or assignees.

#### *Class B*

All persons who were placed into the custody of the  
Clinton County Jail after being charged with  
misdemeanors, violations, violations of probation or  
parole, traffic infractions, civil commitments or other  
minor crimes and were strip searched upon their entry  
into the Clinton County Jail pursuant to the policy,  
custom and practice of the Clinton County Sheriff's  
Department and the County of Clinton, from October  
24, 2003 through the date on which the Clinton County  
Sheriff's Department and/or the County of Clinton  
cease or ceased, or are enjoined from, enforcing their  
unconstitutional policy, practice and custom of  
conducting strip searches absent reasonable suspicion.  
Specifically excluded from the class are defendants and  
any and all of their respective affiliates, legal  
representatives, heirs, successors, employees or  
assignees.

The Court appointed Phyllis A. Mitchell representative  
plaintiff for the entire class until a representative for Class  
B could be appointed, whereupon Ms. Mitchell would  
become the representative plaintiff for Class A. The Court  
further directed plaintiff to move for intervention by a  
proposed representative for Class B. This motion  
followed.

The proposed amended complaint claims that on or about  
November 9, 2003, Paul Bachmann was arrested and  
placed in the Clinton County Jail, and that he was  
strip-searched pursuant to defendants' unlawful policy.  
The Court finds that the motion to allow Bachmann to  
intervene is not untimely; that Bachmann's claim shares  
common questions of law and fact with the existing  
action; that intervention will not unduly delay or prejudice  
the adjudication of the parties' rights; and that Bachmann  
is an adequate representative of Class B. In the exercise of  
its discretion in conducting a class action under  
Fed.R.Civ.P. 23(d), the Court grants Bachmann's motion  
to intervene pursuant to Fed.R.Civ.P. 24(b).

The Court rejects defendants' contention that Bachmann  
cannot properly be permitted to intervene because the  
statute of limitations has run on his claim. The filing of a

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class action tolls the statute of limitations as to all asserted members of the class, *see generally American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553-54 (1974); thus, inasmuch as Bachmann's claim was viable when this action was commenced on February 28, 2006, it is not time-barred. The other objections raised by defendants lack merit.

\*2 It is therefore

ORDERED that plaintiff's motion (Dkt. No. 64) to allow Paul Bachmann to intervene as representative of Class B and for leave to serve an amended complaint is granted; and it is further

ORDERED that hereinafter the caption shall read:

**Phyllis A. Mitchell and Paul Bachmann, both individually and on behalf of a class of others similarly situated, Plaintiffs,**

-v-

**8:06-CV-254**

**The County of Clinton, David Favro, both individually and in his official capacity as Sheriff of the County of Clinton, Jerry Maggy, both individually and as Undersheriff of the County of Clinton, and Michael Smith, both individually and as Major in the Clinton County Sheriff's Department, Defendants.**

and the Clerk is directed to modify the docket report accordingly.

IT IS SO ORDERED.