**Gratuitous force violates Section 1983**

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This *pro se* plaintiff alleged that state troopers subjected him to excessive force. The district court threw out the case. The Court of Appeals reinstates the case, holding that it does not take a vicious beating to make out an excessive force claim.

The case is [**Phelan v. Sullivan**](http://www.sallyrobertslegal.com/Pdf%20files/Phelan%20v.%20Sullivan%2012-3604_so.pdf), a summary order issued on September 17. The district court said that plaintiff's injuries were minimal and he therefore did not have enough evidence for a jury trial. As the trial court saw it, "Phelan did not allege any specific injury or allege that he sought medical treatment, and that the force used was reasonable to effectuate his arrest. The district court also stated that, at most, Phelan alleged that '[Defendants-Appellees] broke down the door to [Phelan’s] apartment without warning, tackled him to the ground, placed their feet and knees on his back, twisted his arms behind his back, and handcuffed him.'”

Sounds like a weak case. Except that it's not, at least on paper. There was more evidence than that. The Second Circuit (Calabresi, Livingston and Chin) noted that "Phelan alleged that several of the Defendants-Appellees punched, kicked, and beat him while effecting his arrest, and that Defendants-Appellees’ actions nearly broke his arm."

The Second Circuit held in 2004 that excessive force claims exist when the police use gratuitous force against an arrestee. And the Court said in *Robison v. Via*, 821 F.2d 913 (2d Cir. 1987), that the plaintiff (who did not seek medical treatment for her injuries) had a case "where the plaintiff alleged that a defendant 'pushed' her against a car door, 'yanked' her out, 'threw [her] up against the fender,' and 'twisted [her] arm behind [her] back,' and that she had suffered bruises lasting several weeks." This case is like *Robison*, and it goes to trial.