The doctrine of collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue decided against that party in a prior adjudication. This doctrine protects parties from multiple lawsuits, conserves the resources of the court and the litigants, and “fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.” The party seeking to invoke collateral estoppel has the burden of showing the identity and decisiveness of issues, while the party against whom preclusion is sought bears the burden of showing that he did not have a full and fair opportunity to litigate the issues.

It is an affirmative defense that can be waived if it is not pled in a timely manner. However, a district court may consider this defense, even if it was raised for the first time during summary judgment proceedings, provided that the plaintiff was given notice of the defense and had an opportunity to respond to it. A district court may also sua sponte consider the issue of collateral estoppel because it furthers the strong public policy of economizing the use of judicial resources by avoiding relitigation.

Because the doctrine of collateral estoppel places termination of litigation ahead of the correct result, its application “has been narrowly tailored to ensure that it applies only where the circumstances indicate the issue estopped from further consideration was thoroughly explored in the prior proceeding, and that the resulting judgment thus has some indicia of correctness.”

It has been applied in circumstances where the issue was litigated and decided by an administrative agency; however, when the doctrine is applied to the determination of an administrative agency, New York courts additionally require the agency’s determination to have been “quasi-judicial” in character rather than legislative. Parole revocation hearings satisfy this requirement because they “have safeguards comparable to those found in judicial trials.”

Parole revocation hearings are administrative in nature but they have many of the indicia of judicial proceedings. Minimum due process requirements such as written notice of claimed violations; disclosure to the parolee of evidence against him; an opportunity to confront and cross examine adverse witnesses; a neutral and detached hearing officer; and a written statement by fact finders of evidence relied upon and reasons for revoking parole, serve as a buffer against constitutional infringements.

Additionally, in a parole revocation hearing, the parole authorities have the burden of proving a parole violation by a preponderance of the evidence, which is the same burden of proof in a 42 U.S.C. § 1983 cause of action. Thus, a determination made by an administrative law judge in a parole revocation hearing may preclude a parolee from relitigating an issue in a civil rights lawsuit brought pursuant to § 1983.

In Banks v. Person, the doctrine of collateral estoppel was successfully invoked in a civil rights lawsuit where the plaintiff alleged excessive force. In Banks, upon arriving at his parole officer’s office, Banks was immediately handcuffed and told he was wanted for questioning in connection with attempted murder. The parole officers claimed that Banks became agitated and began kicking and jumping, and as a result of his actions, it took many officers to subdue him. Banks did not admit to any conduct that provoked the exercise of force by the parole officers.

The district court, in determining whether collateral estoppel applied, examined whether there was an identity of issue between the parole revocation hearing and the § 1983 claim. At the parole revocation hearing, the issue decided was whether Banks had violated the terms of his parole by allegedly resisting arrest, failing to follow instructions, and posing a danger to himself and other individuals. The administrative
law judge sustained the parole violation, finding that Banks acted violently to the attempt to detain him for questioning. The district court found that there was an identity of issue because the issue litigated at the parole revocation hearing—Banks’ conduct in his parole officer’s office—was the same issue the defendants sought to bar Banks from relitigating in the civil rights case.

Next, the court examined whether the factual findings concerning Banks’ conduct in his parole officer’s office were necessary to the judgment sustaining Banks’ parole revocation. The court found that “[g]iven the nature of the charge, a finding that Banks had acted dangerously [in his parole officer’s office] was clearly necessary to the ultimate determination that Banks violated a term of his parole.”

The court also considered whether Banks had a full and fair opportunity at the parole revocation hearing to litigate the issue of his conduct. At the hearing, Banks was represented by competent counsel, who had the opportunity to call, cross-examine, and subpoena witnesses. Further, “Banks’ incentive to vigorously litigate the propriety of his parole revocation was high. If the violation was sustained, Banks’ liberty was at stake.” These factors demonstrated to the court that Banks had a full and fair opportunity at the parole revocation hearing to litigate the issue of his conduct in his parole officer’s office.

Since the issue in question was actually and necessarily decided at the parole revocation hearing, and since Banks had a full and fair opportunity to litigate the issue, the district court found that collateral estoppel was applicable. Therefore, Banks could not relitigate the issue of his conduct in his parole officer’s office in the § 1983 action.

Collateral estoppel was raised as a defense, unsuccessfully, in Curry v. City of Syracuse, where a parolee sued the city and one of its police officers, both individually and as a police officer. In Curry, Officer Lynch responded to a call of shots fired in a high crime area and saw a man coming out of a yard in the area where the shots had been fired. Lynch chased after the man, later identified as Curry, while continually ordering him to stop. Lynch eventually tackled Curry and attempted to handcuff him while the two were struggling. During the struggle, Curry hit Lynch in the head and also reached for and pulled an object out of his sock, which he then threw away. Lynch hit Curry with his police radio numerous times and called for help. Another officer responded to Lynch’s call for help, and the two officers handcuffed Curry. Curry told the officers he ran from them because he was on parole and was out past his curfew.

A Violation of Release Report charged Curry with threatening the safety and well-being of a police officer by resisting arrest, possessing a controlled substance, violating his curfew, and threatening the safety and well-being of a police officer by striking Lynch. The administrative law judge presiding over the parole revocation hearing found that Curry violated his parole by being out past his curfew and by threatening his safety and that of the officers.

Curry brought claims of excessive force and false arrest against the city and Lynch pursuant to 42 U.S.C. § 1983. In determining the collateral estoppel effect of the parole revocation hearing to the civil rights action, the Second Circuit considered four factors.

The first factor considered was whether there was an issue of identity. Curry’s actions in threatening and striking Lynch were the primary subject of testimony at the parole revocation hearing, and his actions were an issue in the federal court action. Thus, the Second Circuit found “the issue being raised in the present case is identical to an issue that has already been decided in a previous adjudication.”

The second factor examined was whether Curry was represented by competent and experienced counsel at the parole revocation hearing. Curry’s attorney in the § 1983 action did not dispute the city’s contention that Curry’s attorney at the parole revocation hearing was experienced and competent. Instead, he argued that he would have taken a different defense tactic at the hearing. The Second Circuit found that:

Curry was represented by competent counsel at the parole revocation hearing. He had a strong “incentive and initiative to litigate” this issue at the parole revocation hearing, because he knew that a finding by the ALJ that he had struck Lynch would almost certainly result in his incarceration. Curry had the opportunity to call witnesses, to testify himself, to present evidence, and to cross-examine Lynch and Officer Yarema; the fact that he chose not to testify, and that his counsel conducted only a limited cross-examination [of the officers], is beside the point. The opportunity was clearly there. Accordingly, we find that Curry had a full and fair opportunity to litigate this issue before the ALJ.
The third factor considered by the Second Circuit was whether new evidence was available. Curry claimed that he did not have a full and fair opportunity to litigate the issue of whether he struck Lynch because there was new evidence that was not available at the parole revocation hearing. The new evidence was the officers’ deposition testimony, which Curry contended, contradicted the testimony given by the officers at the parole revocation hearing. However, the Second Circuit found that this new evidence related to the issue of the force used by Lynch, not to the issue of Curry striking Lynch. Therefore, the new evidence did “not prevent application of collateral estoppel on the question of whether Curry struck Lynch.”

The last factor examined was whether the issue that was decided at the parole revocation hearing was decisive of the § 1983 action. The Second Circuit was unable to find any New York precedent construing the term “decisive” in this context; however, it defined it as “an issue is ‘decisive in the present action’ if it would prove or disprove, without more, an essential element of any of the claims set forth in the complaint.” Applying this definition, the Second Circuit found that the issue of whether Curry struck Lynch was not decisive of whether Lynch used excessive force because “[e]ven if Curry struck Lynch, it is possible for Curry to prevail on his excessive force claim if he is able to show that Lynch used more force than was necessary to subdue him.”

Although Curry was represented by competent and experienced counsel, and had the incentive and initiative to litigate the propriety of his parole revocation, and there was no relevant new evidence, the issue of whether Curry struck Lynch was not decisive to Curry’s claim of excessive force. Therefore, collateral estoppel could not be applied in the § 1983 action.

The defense of collateral estoppel was also rejected in Hernandez v. Wells. In Hernandez, the plaintiff, a parolee, went to a correctional facility to leave a package of clothing for a friend. An altercation ensued when Wells, a corrections officer, refused to allow him inside the facility. When Hernandez demanded to speak to a captain, Wells responded by handcuffing Hernandez and advising him that he was under arrest. Wells claimed he handcuffed Hernandez because Hernandez punched him in the face, a claim that Hernandez denied. Hernandez was charged with assault, obstructing governmental administration, and harassment.

A few weeks later, the New York State Division of Parole issued a violation of parole warrant on Hernandez, charging him with eight violations of his conditions of release, six of which were connected to the events at the correctional facility. At the final parole revocation hearing before an administrative law judge, both Hernandez and Wells testified at the proceeding. Notably, the administrative law judge found Wells’ testimony credible, but not Hernandez’s testimony. The administrative law judge found that Hernandez punched Wells and concluded that the charges of physically assaulting an officer and causing injury and assaulting a peace officer and preventing that officer from performing his duties had been proven by a preponderance of the evidence.

Hernandez filed an action pursuant to 42 U.S.C. § 1983, alleging deprivation of federal rights, malicious prosecution, and malicious abuse of process, and naming the city of New York, the city’s Department of Corrections, and a number of corrections officers, including Wells, as defendants. During discovery, the defendants, for the first time, provided Hernandez with portions of Wells’ disciplinary history. The disciplinary history revealed that Wells had filed a Use of Force Report in which he stated that, when an inmate attacked him and other corrections officers first, they had to use force in self-defense. The report was false—a video tape from a monitor revealed that the officers, not the inmate, were the aggressors. In addition to filing a false report, Wells also provided false information about the incident at a hearing. He was disciplined as a result of his actions. The closing memorandum for the assault case stated, “[s]hould Officer Wells violate any of the Department’s Rules or Regulations at any time in the future, his expeditious termination is virtually assured.”

Hernandez argued that collateral estoppel was inappropriate in the civil rights lawsuit because he did not know at or before the parole revocation hearing that Wells had been disciplined for falsely claiming that an inmate assaulted him. The district court found Hernandez’s argument “powerful,” for “[i]f significant new evidence has been uncovered since the parole revocation hearing, [the court] cannot find that Hernandez had a full and fair opportunity to present his case at the hearing without that evidence.”

The defendants argued that Wells’ disciplinary history was available during the parole revocation hearing because Hernandez’s attorney could have discovered it by cross-examining Wells. The district court rejected this argument, finding that Hernandez’s attorney had no “good-faith basis” for asking Wells about his disciplinary history at the parole revocation hearing.
The defendants also argued that Wells’ disciplinary history was not significant evidence that could have helped Hernandez’s case and changed the decision rendered by the administrative law judge. The district court disagreed, stating:

The ALJ did not learn that Wells had made a false claim in the past about being assaulted on the job, and it is at least likely that such evidence would have affected her evaluation of Wells’ credibility. Furthermore, Wells’ disciplinary history suggests a motive for him to lie about the [incident with Hernandez], as Wells was told in 1998, after he had filed a false report of an assault and then lied about it, that he would almost certainly be fired if he transgressed again. Because Wells’ credibility was central to the ALJ’s determination that an assault had occurred, Wells’ disciplinary history amounts to significant evidence that certainly could have altered the ALJ’s factual findings.29

The district court thus found that Hernandez did not have a full and fair opportunity to litigate the assault at the parole revocation hearing because he presented his case to the administrative law judge without the benefit of this important new information. Accordingly, collateral estoppel was inappropriate, and Hernandez could relitigate the administrative law judge’s finding that Hernandez assaulted Wells.30

As case law demonstrates, in deciding whether to raise the affirmative defense of collateral estoppel in an action brought pursuant to 42 U.S.C. § 1983, a municipal attorney should evaluate the following:

(1) Whether there was an identity of issue between the parole revocation hearing and the civil rights lawsuit. The issue litigated at the parole revocation hearing must be the same issue the defendant seeks to bar the plaintiff from relitigating in the civil rights case.

(2) Whether the parolee was represented by competent and experienced counsel at the parole revocation hearing. Inexperience with parole revocation hearings may not weigh heavily against invoking collateral estoppel if the attorney has other trial experience. To deny collateral estoppel on this issue, the attorney’s incompetence and inexperience must have had an identifiable effect on the outcome of the parole revocation hearing and denied the parolee a full and fair opportunity to litigate.

(3) Whether the parolee had an incentive to vigorously litigate his position at the hearing. Generally, this factor is present because failure to do so would likely result in the parolee’s incarceration.

(4) Whether new evidence is available. A parolee’s claim of new evidence is only successful if the new evidence is relevant to the issue at question, not merely because it is evidence that wasn’t available at the parole revocation hearing. It must be shown that, without the new evidence, the parolee was denied a full and fair opportunity to present his case at the parole revocation hearing.

(5) Whether the issue would prove or disprove, without more, an essential element of any of the claims set forth in the complaint. This is clearly the most difficult factor to overcome in persuading a court that collateral estoppel is appropriate in the § 1983 action.

Collateral estoppel is a defense that is all too often overlooked in § 1983 actions, but if successfully raised, it serves to protect the resources of municipal defendants by avoiding relitigation of issues decided at a parole revocation hearing.

Endnotes
2. Id. (quotation omitted).
3. Id.
4. Curry v. City of Syracuse, 316 F.3d 324, 330–331 (2d Cir. 2003), appeal after remand, Curry v. Lynch, 323 F. App’x 63 (2d Cir. 2009).
5. Curry, 316 F.3d at 331.
8. Doe, 148 F.3d at 79 (citation omitted).
10. Id. (citations omitted).
11. Banks 49 F.Supp.2d at 128-129 (citation omitted).
12. Id. at 129.
13. Id. at 128-29.
14. Id. at 127.
15. Id. at 128.
16. Id. at 129.
17. 316 F.3d 324 (2d Cir. 2003).
that he was not very familiar with parole, but he also stated that he had been a trial attorney for twelve years.

The court stated that: "Although Hernandez suggested that his attorney’s alleged inexperience deprived him of a full and fair opportunity to litigate, he does not identify any deficiencies in [his lawyer’s] performance. Because Hernandez does not allege that his attorney’s inexperience had any identifiable effect on the outcome of the parole revocation hearing, he does not demonstrate that [his lawyer’s] supposed failings denied him a full and fair opportunity to litigate." Id.

Ms. Richards argued the doctrine of collateral estoppel before the district court and the Second Circuit in *Curry v. City of Syracuse*. She received her Juris Doctor, *magna cum laude*, from Syracuse University College of Law in 1995. She is an Associate Counsel, Office of University Counsel, the State University of New York. The views expressed are her own and do not necessarily represent the views of the State University of New York or any other institution with which she is or has been affiliated.

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