(Sat)
9/19 - Solidarity Day Meeting -

12:00 Coalition meeting
flier at Harvest Festival at the Plaza with Aaron
flier and Roller Skating Block Party

2:26 :11 :19

9

9/20 Sunday demonstration at airport - Aaron went to Surya afternoon
Around 5:00 P.M

some meeting at my house Aaron still here

1:00 A.M. John S. + M.Y. arrive my house

9/21

9/21 Monday
Court day on cancellation of game

my house - T.V.
Afternoon ministers C.D.
6:30 Marshall meeting re + Aaron etc

7:30 P.M. Coalition meeting
8:20 P.M. J.S. arrested
11:00 P.M. - demon at Mumway House
[illegible]

8/14 - Bova Jordan - Library

8/17 - First Com Council meeting

8/26 1st Coalition Coalit + steering com meeting

8/29 Coalition meeting - Lopchick

9/4 - program com. meeting - I first saw Mike Young at Jon Campbells house
Then we went to Selfridge Press Conference?

~~9/5~~ -

9/5 - Coalition meeting [illegible] - Phil Harrington + Mike Y. there

~~9/~~

9/9 - Community meeting Central towers - Bill Robinson there and
Leo Wooten

9/10 Thurs common council meeting - Hecklers - "Mike" stayed at my
house [illegible]

~~9/11~~

9/11 - Party African [illegible] - Took Bill + Mike - Mike at my house (stayed)
dinner my house

9/12 - Coalition meet
10:00 CD + legal under coalit - 12:00 meet 1:30 Steve Biko
2:30? meeting? Mike saved this meeting -
Brought Bill + Mike to train stat.

9/15 - CD meeting - 8

9/16 Jonny Magaliano came - Aaron went to Marshall meeting
Mottas? meeting to priests not [illegible]

9/17 - CD St Rose 7:00

American Committee On Africa
198 Broadway, New York, N.Y. 10038 / (212) 962-1210 / Cable AMCOMMAF

SA-US – Sports Boycott
S-boks 1981 US Tour

August 27, 1981

Constitutional issue?

Dorothy J. Samuels
Executive Director
New York Civil Liberties Union
84 5th Avenue
New York, N.Y. 10011

Dear Ms. Samuels:

I am enclosing a statement we have issued in response to your letter to Mayor Koch concerning the proposed use of Downing Stadium by the South African national rugby team, the Springboks. We believe you have made a tragic mistake in this matter in creating a false "free speach" issue, when the real issue is the practice of racial discrimination. We believe there is no right for a team which has been organized strictly on the basis of race. excluding the vast majority of South Africans, to use a public stadium.

The Springbok team is chosen by race, not merit. It is hardly accidental that out of 30 players, 29 are white and 1 is "coloured." A former member of the Springboks, "Cheeky" Watson, left the team to protest its racist character.

At least 99% of all sporting events in South Africa are strickty segregated. Team members must all belong to the same racial group. Spactators must also be segregated. On August 2, while the Springboks were playing in New Zealand, a prominent "coloured" rugby player, Gavin Van Eyk, was arrested in Port Elizabeth for trying to attend a match in a "black" area. This is the reality of sports in South Africa, and this is the issue in the Springboks tour.

If the Mets or the Yankees practiced the same type of racial discrimination I doubt that the NYCLU would defend their "right" to lease a publicly owned stadium. I am sure that the NYCLU would not consider this a free speech issue.

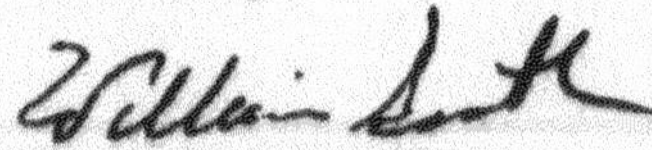
In your letter to Mayor Koch you call for the city "to follow neutral criteria in granting the use of City property, not to impose a political litmus test." We believe the consistent and long standing practice of racial discrimination is such a "neutral"

Executive Director: George M. Houser/Associate Director: Paul Irish/Research Director: Jennifer Davis Literature: Richard Knight

criteria. We do not urge the exclusion of the Springboks for their ideas, but for their deeds. If other countries can be shown to practice the same kind of discrimination, let us exclude these teams as well, regardless of their political ideology.

Over the years we have had great respect for the work of the NYCLU. We hope that in the light of this information you will reconsider your unfortunate stand on the Springbok tour. I would be happy to meet with you to discuss this further.

Sincerely,



William Booth,
president,
American Committee on Africa

WB/br

American Committee On Africa
198 Broadway • New York, N.Y. 10038 • Telephone: (212) 962-1210
NEWS

for further information
Contact: William Robinson (212)962-1210

FREEDOM OF SPEECH OR RACISM IN SPORT

New York, N.Y. August 27, 1981... William H. Booth, president of the American Committee on Africa (ACOA), today issued the following statement in response to a letter from the New York Civil Liberties Union (NYCLU) on the issue of the South African rugby team playing in New York.

The NYCLU in a letter from their executive director, Dorothy Samuels, August 11, opposed Mayor Edward Koch's decision to cancel the permit for the rugby team to play on a public facility, Downing stadium in New York City.

On August 21, Mayor Erasmus Corning of Albany issued a statement supporting his decision to allow the South African rugby team use of Bleeker Stadium in Albany, citing "constitutional guarantees... to espouse an unpopular cause."

The text of the statement follows:

"The NYCLU is unfortunately, dead wrong on the issue of the South African rugby team playing in New York.

The heart of the issue, quite simply, is racial discrimination. Racial discrimination is enshrined in South African law, and is official government policy in sport. The Springbok rugby team was not selected on merit, but on a blatantly racist basis. If such a team were selected on the same basis in the U.S., the NYCLU would be among the first to take the issue to court.

It is the practice of racial discrimination, not just the abhorrent policies of apartheid, that is being opposed.

The majority of athletes in South Africa, who seek to compete on a nonracial basis, are denied the right to do so. Those publicly supporting nonracial sport in South Africa have been harassed, banned and jailed. They have no legal recourse for ending discrimination such as the U.S. constitution.

It is because of South Africa's legalized racism in sport, and in support of the rights of South African athletes to compete without discrimination, that South Africa has been expelled from virtually all amateur competition by international sporting bodies.

Would the NYCLU have opposed anyone seeking to stop Hitler from hosting the 1936 Olympics because of blatant religious discrimination? I would certainly hope not.

Competiion free from racial discrimination is a cardinal principle of Olympic competition. And in the United States, it is the law.

The NYCLU supports legislation which bars government officials from awarding contracts to corporations which practice racial discrimination. How then can one argue that public officials have a constitutional obligation to provide facilities to a team formed on the basis of racial discrimination? Indeed, there can be no more commendable action by a public official than to refuse to host a team selected on a racist basis.

I hope the NYCLU will reconsider their position."

more...

William Booth, president of the ACOA since 1972, is justice of the New York State Supreme Court and former chairman of the New York City Human Rights Commission. He chairs the national Stop the Aparheied Rugby Tour (SART) coalition of over eighty groups opposed to the planned tour of the Springbok rugby team in Chicago, Albany, and New York City on September 19, 22, and 26, respectivley.

SART has issud in New York a joint publication with the South African Nonracial Olympic Committee which details the practice of discrimination in South African sport, which is enclosed.

--30--

T 1183—Notice of Claim against a Public Authority Pursuant to §50 General Municipal Law: Not for use in the Court of Claims: 3-77. JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS

In the Matter of the Claim of

CAPITOL DISTRICT COALITION AGAINST APARTHEID AND RACISM, AND ITS MEMBERS

TO:

COUNTY OF ALBANY

SIR(s): ***PLEASE TAKE NOTICE*** *that the claimant herein hereby make claim and demand against* COUNTY OF ALBANY *as follows:*

1. The name and post-office address of each claimant and of his attorney is:

Claimant: Capital District Coalition Against Apartheid and Racism and its members, Box 3002, Albany, New York 12203

Attorney: Walter & Thayer, 69 Columbia Street, Albany, New York 12207

2. The nature of the claim: Violation of First, Fourth and Fourteenth Amendments of United States Constitution, and of corresponding sections of New York State Constitution, and libel and slander.

3. The time when, the place where and the manner in which the claim arose: Claim arose on September 22, 1981 at or about 3:00 a.m. at 400 Central Avenue, Apt. 7K, and thereafter when documents, agendas, lists of members, including names and addressed, and other items confiscated by the Albany City Police and retained in the custody of the Police.

4. The items of damage or injuries claimed are: Mental and emotional distress and anxiety by members of Claimant coalition, fear of harassment and intimidation, economic repraisals, intimidation of members and potential members of Claimant coalition, chilling effect upon the exercise of Claimant's right to speak, assemble, protest, and associate together, and other actual and exemplary damages.

The undersigned therefore present this claim and demand $ for adjustment and payment, and notify you that unless the same is adjusted and paid within the time provided by law from the date of its presentation to you, it is the intention of the undersigned to commence an action thereon.

Dated: December 17, 1981

Anita Thayer

The name signed must be printed beneath

ANITA THAYER, ATTORNEY

The name signed must be printed beneath

Anita Thayer

Attorney(s) for Claimant(s)
Office and Post Office Address, Telephone Number

WALTER & THAYER
69 Columbia Street
Albany, New York 12207
(518) 462-6753

INDIVIDUAL VERIFICATION

State of New York, County of Albany *ss.:*

ANITA THAYER

being duly sworn, deposes and says that deponent is attorney for ~~the~~ *claimant in the within action; that* she *has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.*

Anita Thayer

Sworn to before me, this 17th
day of December, 1981

Fanny Earl Walter

FANNY EARL WALTER
Notary Public in the State of New York
Qualified in Albany County
Commission Expires March 30, 1983
Notary Reg. No. 4147313

CORPORATE VERIFICATION

State of New York, County of Albany *ss.:*

Anita Thayer

being duly sworn, deposes and says that deponent is the Attorney *of* Capital Dist. Coal. Ag. Apartheid

corporate claimant named in the within action; that deponent has read the foregoing Notice of Claim and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because said claimant is a an associate *and deponent an officer thereof, to wit its* attorney

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Anita Thayer

Sworn to before me, this 17th
day of December, 1981

Fanny Earl Walter

FANNY EARL WALTER
Notary Public in the State of New York
Qualified in Albany County
Commission Expires March 30, 1983
Notary Reg. No. 4147313

In the Matter of the Claim of

CAPITOL DISTRICT COALITION AGAINST APARTHEID AND RACISM, AND ITS MEMBERS

Notice of Claim Against the
COUNTY OF ALBANY

WALTER & THAYER
Attorney(s) for Claimant(s)
Office and Post Office Address
69 Columbia Street
Albany, New York 12207
(518) 462-6753

T 273 Writ of Habeas Corpus. Blank Court.

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SUPREME COURT
COUNTY OF ALBANY

Index No.

Bail Application

THE PEOPLE OF THE STATE OF NEW YORK
EX REL. VERA MICHELSON,

Petitioner

against

GEORGE INFANTE, Sheriff of Albany County

Respondent

WRIT OF HABEAS CORPUS

Class B misde.

The People of the State of New York

upon the relation of VERA MICHELSON

TO GEORGE INFANTE, Sheriff of Albany County, State of New York *Greeting:*

WE COMMAND YOU, That you have and produce the body of VERA MICHELSON *by you imprisoned and detained, as it is said, together with your full return to this writ and the time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged before Hon.* JOSEPH HARRIS *one of the* Judges *of the* County *Court of* the State of New York *county of* Albany *at* Special Term Part I *in the courthouse thereof on the* 24th *day of* September 24 *19*81 *at* 9;30A *M. to do and receive what shall then and there be considered concerning the said person and have you then and there this writ.*

WITNESS, Hon. EDWARD S. CONWAY *one of the* Justices *of our said Court the* 24th *day of* September 22 *19* 81.

Clerk

ANITA THAYER
Attorney(s) for Petitioner

Walter and Thayer
Office and Post Office Address
196 Mount Hope Drive
Albany, New York 12202

The within writ is hereby allowed this 24th *day of* September *19* 81.

s/ Edward S. Conway
J. S. C.

T 272—Petition for Writ of Habeas Corpus.

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SUPREME COURT
COUNTY OF ALBANY

Index No.

THE PEOPLE OF THE STATE OF NEW YORK
EX REL. VERA MICHELSON,

Petitioner

against

GEORGE INFANTE, Sheriff of Albany County,

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

To: Honorable Edward S. Conway, Justice of the Supreme Court

The petition of VERA MICHELSON, by her attorney, ANITA THAYER *shows that:*

1. *This petition is made on behalf of* VERA MICHELSON
   who is detained by Albany County Sheriff George Infante
   at Albany County Jail

2. *The cause or pretense of the detention, according to the best knowledge and belief of the petitioner is,*
   A mandate from Albany County Jail attached hereto as "Exhibit A" and "B".

3. *That a court or judge of the United States does not have exclusive jurisdiction to order the release of said person.*

4. *This writ is sought because of an illegal detention, the nature of the illegality being*
   See attached.

5. *An appeal has* not *been taken from the order by virtue of which said person is detained. The result of said appeal is*

No previous application has been made for this relief

Wherefore your petitioner prays that a writ of habeas corpus issue, directed to the respondent, requiring the respondent to produce the said petitioner, VERA MICHELSON *before a justice of* ~~*this*~~ County *court at* Special *Term, Part* I *thereof on* September 24, 1981 at 9:30 a.m.

Dated: September 22, 1981

Anita Thayer

Petitioner—print name beneath signature
VERA MICHELSON

ANITA THAYER
Attorney(s) for Petitioner
Office and Post Office Address
WALTER AND THAYER
196 Mt. Hope Drive
Albany, New York 12202

STATE OF NEW YORK
COUNTY OF ALBANY } **ss.:**

attorney for ANITA THAYER, *being duly sworn, deposes and says that she is the petitioner in the within proceeding; that she has read the foregoing petition and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.*

Sworn to before me, this 24th
day of September 19 81

Martha Mann

MARTHA MANN
Notary Public in the State of New York
Qualified in Albany County
4638081
My Commission Expires Mrach 30, 19 82

Anita Thayer
Petitioner

Index No.

SUPREME **COURT**
COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. VERA MICHELSON,

Petitioner

against

GEORGE INFANTE, Sheriff of Albany County,

Respondent

Petition
FOR WRIT OF HABEAS CORPUS

ANITA THAYER
Attorney(s) for Petitioner

WALTER AND THAYER
Office, Post Office Address and Telephone No.
196 Mt. Hope Drive
Albany, New York 12202
(518) 462-2542

Attachment for Petition for Writ of Habeas Corpus

MICHELSON V. INFANTE

4. a. On the morning of 9/22/81 petitioner was arrested in her home and subesquently charged with violating the following laws: (1) Penal Law § 221.05, a violation [Possession of a quantity of marijuana]; (2) Penal Law § 270.00, a Class B misdemeanor [Possession of fire works].

b. On or about 9:30 a.m. on the 22nd day of September 1981 petitioner was arraigned before the Honorable Thomas W. Keegan in Albany Police Court on the charges described above.

c. Bail was not set and petitioner was remanded to the Albany County Jail.

d. § 530.20 of the New York State Criminal Procedure Law requires that "when the defendant is charged, by information, prosecutor's information, or misdemeanor complaint, with an offense or offenses less than felony grade only, the court must order recognizance or bail." (emphasis added)

e. Petitioner's incarceration is unlawful because she was not accorded recognizance or bail as was her statutory right.

f. Furthermore, the court's discretion should require petitioner to be released on her own recognizance as the charges against her are very minor, there is no previous arrest record, she is gainfully employed, and has been a resident of the Capital District area for 15 years.

POLICE COURT
CITY OF ALBANY

Complaint, Information for Misdemeanor or Violation

Officer Dt. John Tanchak is a police officer

Deponent

Street in the City of Albany

People of the State of New York against Michael R. YOUNG, Vera MICHELSON, Aaron ESTIS

at the City of Albany in the County aforesaid on the 22nd day of September 19 81, did knowingly violate subdivision of section 221.05 of the penal law of the State of New York, in that they did knowingly and unlawfully possess marijuana. TO WIT: On 9/22/81 at about 3:25AM at 400 Central Avenue in apartment 7K while the officers were executing a search warrant the defendants were found to have in their possession and under their control five plastic containers each containing a quantity of marijuana.

THE SOURCES OF DEPONENT'S INFORMATION AND THE GROUNDS FOR HIS BELIEF ARE ORAL STATEMENTS MADE TO DEPONENT BY THE DEFENDANT THAT HE COMMITTED THE FOREGOING ACTS AT THE TIME, PLACE AND IN THE MANNER ABOVE SET FORTH; AND/OR FROM INFORMATION OBTAINED FROM WITNESSES WHOSE DEPOSITIONS ARE ATTACHED HERETO AND MADE A PART HEREOF.

Sworn to before me this 22nd

day of September 19 81

Clerk of the Police Court

FALSE STATEMENTS CONTAINED HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW OF THE STATE OF NEW YORK.

Dt. John Tanchak
Deponent

Form 3-2
5M 7/80

POLICE COURT
CITY OF ALBANY

210 16

People of the State of New York against
Aaron ESTIS
3 Lee St., Sommerville Mass.
Michael YOUNG
611 Ocean Ave., Brooklyn, New York
Vera MICHELSON
400 Central Ave 7K, Albany New York
Address

violate subdivision , of section 221.05 P.L.

Class

Complaint, Information for ~~Misdemeanor~~ or Violation

Defendant Arraigned 9/22/81

Warrant Issued

Warrant Returned

The defendant, immediately on being brought before the Court, was informed of the charge against him and his right to the aid of counsel in every stage of the proceedings, and before any further proceedings were had, plead

NOT GUILTY.

Bail fixed in the sum of ______, or in the sum of $ ______ cash deposit.

In default of Bail defendant committed.

Esq., Atty.

Justice of the Police Court, Albany, N.Y.

BAIL $

FINE $

RETURN BAIL $

POICE COURT
CITY OF ALBANY

Complaint, Information for Misdemeanor or Violation

Officer [illegible]. John Tanchak is a police officer

Deponent

Street in the City of Albany

People of the State of New York against Michael [illegible], Aaron [illegible], Vera [illegible]

at the City of Albany in the County aforesaid on the 22nd day of September 1981, did knowingly violate subdivision 2(b)(i) of section 270.00 of the penal law of the State of New York, in that She did possess, use, explode or cause to explode any fireworks. TO WIT: on [illegible] at about [illegible] while at [illegible] Central Avenue in apartment 7[illegible], Albany, New York while the officers were executing a search warrant it was found that the defendants were in possession of eight [illegible] and red firecrackers.

THE SOURCES OF DEPONENT'S INFORMATION AND THE GROUNDS FOR HIS BELIEF ARE ORAL STATEMENTS MADE TO DEPONENT BY THE DEFENDANT THAT HE COMMITTED THE FOREGOING ACTS AT THE TIME, PLACE AND IN THE MANNER ABOVE SET FORTH; AND/OR FROM INFORMATION OBTAINED FROM WITNESSES WHOSE DEPOSITIONS ARE ATTACHED HERETO AND MADE A PART HEREOF.

Sworn to before me this 22nd

day of September 1981

Clerk of the Police Court

FALSE STATEMENTS CONTAINED HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW OF THE STATE OF NEW YORK.

Det. John Tanchak

Deponent

Form 3-[illegible]
5M 7/80

POLICE COURT 17
310
CITY OF ALBANY

People of the State of New York against
Vera [illegible]
400 Central Avenue 7K Albany NY
Aaron [illegible]TIS
3 Lee St., Sommerville Mass.
Michael [illegible]
611 [illegible] Avenue Brooklyn New York

Address

violate subdivision 2(b)(i)

, of section 270.00 P.L.

Class

Complaint, Information for Misdemeanor or Violation

Defendant Arraigned 9/22/81

Warrant Issued

Warrant Returned

The defendant, immediately on being brought before the Court, was informed of the charge against him and his right to the aid of counsel in every stage of the proceedings, and before any further proceedings were had, plead

NOT GUILTY.

Bail fixed in the sum of ____________, or in the sum of $ ____________ cash deposit.

In default of Bail defendant committed.

Esq., Atty.

Justice of the Police Court, Albany, N.Y.

BAIL $

FINE $

RETURN BAIL $

STATE OF NEW YORK
SUPREME COURT

APPELLATE DIVISION
THIRD DEPARTMENT

VERA MICHELSON and AARON ESTIS,

Petitioners,

- against -

REPLY AFFIRMATION

HON. JOHN CLYNE, HON. THOMAS W. KEEGAN, and HON. SOL GREENBERG,

Respondents.

MICHAEL KATZER, a duly licensed and practicing attorney of the State of New York, affirms as follows under penalty of perjury:

1. That he is an Assistant District Attorney of Albany County, New York, and that in such capacity, your affiant is fully familiar with the facts and circumstances of this action.

2. That he submits this Reply Affirmation to the Verified Petition in Support of a Writ of Prohibition of Lewis B. Oliver, Esq., and Anita Thayer, Esq., dated November 19, 1981.

3. That this Affirmation is made upon information and belief, the source of your affiant's information and the basis for his belief are an examination of the files maintained by the District Attorney's Office.

FACTUAL STATEMENT

4. Petitioners Vera Michaelson and Aaron Estis, along with one Michael Young are charged in Albany Police Court with the offenses of Possession of a Quantity of Marijuana and Possession of Fireworks. Additionally, Michael Young and one John Spearman stand indicted in Albany County Court for the crime of Criminal Possession of a Weapon in the Third Degree.

5. Evidence that the People intend to offer at the trial of petitioners Michaelson and Estis, and Young, on the one hand, in Police Court, and at the trial of Young and Spearman, on the other hand, in County Court, was seized by the Albany Police Department while conducting a search of Michaelson's apartment on September 22, 1981 pursuant to a search warrant issued earlier that day by the Hon. Thomas Keegan, Albany Police Court Judge.

6. All of the above named defendants have moved to suppress the evidence so seized. Rather than have two separate suppression hearings, one in Police Court with respect to Michaelson, Estis and Young, and one in County Court with respect to Young and Spearman, -- both of which will involve the same issues and will call for the presentation of the same witnesses--the People have proposed, in the interest of justice, judicial efficiency and without prejudice to any of the defendants, that a single, joint suppression hearing be held. In such joint hearing, the Hon. John Clyne, Albany County Court Judge, will act in such capacity with respect to Young and Spearman, and will act as a "superior court

judge sitting as a local criminal court" with respect to the petitioners herein. It is this procedure which the petitioners oppose and seek to prohibit.

STATEMENT OF THE ISSUE

7. Criminal Procedure Law §10.10(3)(g) authorizes a county court judge to sit as a local criminal court. When a county court judge does sit as a local criminal court he can exercise "preliminary jurisdiction" only with respect to an offense, not "trial jurisdiction", C.P.L. §10.30(3).

8. "Preliminary jurisdiction" is defined as follows in C.P.L. §1.20(25):

> 25. "Preliminary jurisdiction." A criminal court has "preliminary jurisdiction" of an offense when, regardless of whether it has trial jurisdiction thereof, a criminal action for such offense may be commenced therein, and when such court may conduct proceedings with respect thereto which lead or may lead to prosecution and final disposition of the action in a court having trial jurisdiction thereof.

9. "Trial Jurisdiction" is defined as follows in C.P.L. §1.20(24):

> 24. "Trial jurisdiction." A criminal court has "trial jurisdiction" of an offense when an indictment or an information charging such offense may properly be filed with such court, and when such court has authority to accept a plea to, try or otherwise finally dispose of such accusatory instrument.

10. The issue in this matter is whether the conduct of a suppression hearing and determination of a suppression motion is within the realm of preliminary jurisdiction or trial jurisdiction. If it is a matter of preliminary jurisdiction, then Judge Clyne, sitting as a local criminal court is authorized to determine the suppression motion brought by the petitioners. The People assert that a suppression issue is clearly a matter of "preliminary jurisdiction".

A SUPPRESSION HEARING IS A MATTER OF "PRELIMINARY JURISDICTION", AS DEFINED BY THE STATUTE.

11. The very definitions of "preliminary jurisdiction" and "trial jurisdiction" make it plain that a suppression hearing is a matter of preliminary jurisdiction, see C.P.L. §1.20(24), (25), set out above.

12. The essence of the concept of "preliminary jurisdiction" is the conduct of proceedings which lead or may lead to prosecution and final disposition in a court having trial jurisdiction.

13. The essence of the concept of trial jurisdiction is the ultimate or final disposition of a criminal case.

14. A suppression hearing does not, of course, result in the final disposition of a criminal action. Instead, it is a proceeding which "leads or may lead to...final disposition". As such, a suppression hearing is within "preliminary jurisdiction", not "trial jurisdiction".

IT HAS BEEN JUDICIALLY DETERMINED THAT A SUPPRESSION HEARING IS NOT PART OF A TRIAL, AND IS THUS NOT A MATTER OF "TRIAL JURISDICTION".

15. In addition to reliance on the definitions contained in the statute, the People gain support for their position from judicial declarations that a suppression hearing is not part of a trial.

16. In Gannett v. DePasquale, 43 N.Y. 2d 370 (1970), the Court of Appeals directly stated that "...a suppression hearing... of course, is 'not within the specific meaning of "trial"'", at 378.

17. This ruling was affirmed by the United States Supreme Court, see 443. U.S. 368 (1979), in an opinion which emphasized the distinction between pretrial proceedings, such as a suppression hearing, and the "actual trial".

18. Again, this leads to the conclusion, on the basis of the highest court in our judiciary, that a suppression hearing is not part of a trial or within a court's"trial jurisdiction" but is, instead, a matter of "preliminary jurisdiction".

A TRIAL CAN ONLY BE CONDUCTED BY ONE JUDGE.

19. Another approach towards resolution of the issue before this court is reliance on the established rule of law that only one judge can preside over a trial. See e.g. N.Y. Judiciary Law §21.

20. It is common, accepted and lawful practice for one judge to conduct a suppression hearing and determine a motion to suppress, while a different judge presides over the trial in the same case.

21. If a suppression hearing was part of a trial or within "trial jurisdiction" then such practice would be unlawful. Obviously, it is not unlawful, thereby reinforcing the conclusion that a suppression hearing is a preliminary matter, not within "trial jurisdiction".

A JOINT SUPPRESSION HEARING PROMOTES JUDICIAL ECONOMY AND EFFICIENCY.

22. There is a line of cases which hold that it is proper for a lower court judge to review a search warrant issued by a judge of a higher court. People v. Fusco, 75 Misc. 2d 981 (Nassau Co. Ct. 1973), People v. Sossa, 77 Misc. 2d 98 (NYC Crim. Ct., 1974), People v. Kissinger, 40 Misc. 2d 273 (Dist. Ct., Nassau Co., 1963).

23. The rationale supporting these decisions is that permitting a lower court judge to review a warrant issued by a higher court would avoid a multiplicity of motions in different courts at different times and would promote the efficient administration of justice. See e.g. People v. Sossa, People v. Kissinger, supra.

24. Such a goal, as espoused by the above courts, is the same goal that the People seek to achieve by the conduct of a joint suppression hearing: the avoidance of a multiplicity of

motions in different courts at different times, and the promotion of the efficient administration of justice.

PETITIONERS ARE NOT PREJUDICED
BY HOLDING A JOINT SUPPRESSION HEARING

25. The benefits that redound to the administration of justice by conducting a joint suppression hearing will be achieved without any prejudice to the petitioners.

26. Petitioners' claim that they will be harmed by association with persons charged with more serious offenses ignores the fact that both the suppression hearing and their potential trial will be conducted by a court alone, sitting without a jury. Certainly both the suppression court and the trial court will be capable of overlooking any claimed prejudice caused by the joint procedure. In point of fact, no prejudice or irreparable harm will result to the petitioners as a result of the proposed joint hearing, while the efficient administration of justice will be greatly advanced.

WHEREFORE, the Respondent Hon. Sol Greenberg, respectfully requests this court not grant the extraordinary relief of a writ of prohibition, preventing the Hon. John J. Clyne from sitting as a local criminal court with respect to the suppression motion brought by the petitioners.

Michael Katzer

Michael Katzer
Assistant District Attorney

DATED: Albany, New York
November 23, 1981.

STATE OF NEW YORK)
) ss.: **AFFIDAVIT**
COUNTY OF ALBANY)

FRANK T. FITZGERALD, being duly sworn deposes and says:

1. THAT he is a professor of the College of St. Rose, a resident of the City of Albany, and member of the Albany Coalition Against Apartheid since its formation in August of 1981.

2. THAT on the afternoon of September 24, 1981 deponent spent 2 to 3 hours with defendant Michelson at her apartment.

3. On information and belief, defendant had been released from the Albany County Jail for an amount of hours and was just beginning to survey the incredible mess that had been created in her apartment by the circumstances of September 22, 1981.

4. During the course of his stay in defendant's apartment, defendant told him of certain items missing from her apartment that she believed had been confiscated by the Albany Police Department.

5. THAT the items which defendant reported to him as missing on the 24th day of September 1981 were:

a. two personal telephone books

b. several sets of keys including two sets of defendant's keys

c. a clipboard containing Coalition Against Apartheid documents, names of Coalition members, and other mailing lists.

approximately 7 p.m. at the request of defendant, dep-
accompanied defendant and Dr. Barry Sample, a SUNY Albany
professor to Division II to seek the above items and others
now known to the defendant to be missing.

7. At Division II the group spoke to Lt.
Wolfgang who advised them that the property room was closed;
he further stated in answer to questions that he was familiar
with some of the items requested by defendant and he did know
that there were no keys.

8. THAT Lt. Wolfgang further told the group
including deponent that he had seen a plastic bag with some
clipboards in it.

9. THAT the group was advised to come back
tomorrow and talk to Lt. Murray; he then said, "There shouldn't
be any problem.

10. THAT the group was further advised that
defendant could call and designate a representative if she
could not come back during business hours.

11. THAT subsequently defendant designated
deponent to return and provided him with a list of items to
request from the police.

12. To the best of his recollection the
list provided by defendant to deponent was as follows:

a) keys
b) Coalition list and committees
c) a large 5 to 6 page mailing list
d) personal telephone books FTP

e) Items belonging to Aaron (not specified).
f) telephone bill.
g) Newspaper clippings on the KKK FVF

13. On mid-morning I returned to Division II. Upon asking to see "Lt." Murray, I learned he was a detective.

14. I was directed upstairs to an office occupied by Lt. Murray. Soon thereafter Lt. Murray provided deponent with a clear plastic bag containing items for defendant Michelson and her co-defendant Aaron Ester.

15. Deponent inventoried the contents of the bag; he then discussed in detail the items on the list from defendant Michelson but not apparently in the bag with Detective Murray. Of the items specifically requested, deponent received everything but the keys, telephone books, telephone bill, + newsclippings. FVF

16. The extensive discussion which ensured between Detective Murray and deponent will not be set forth in this affidavit.

17. THAT subsequently deponent gave the trash bag to defendant and the defendant Michelson in the presence of deponent carefully inventoried the bag.

18. THAT the items returned to defendant are listed on the attached list and incorporated herein by reference.

19. THAT none of the items so taken and then returned are listed on the Albany Police Department Receipt and Inventory as sworn to on the 22nd day of September, 1981 by Detective Tanchak.

LIST OF ITEMS RETURNED TO FRANK T. FITZGERALD
FOR VERA MICHELSON ON OCTOBER 1, 1981

1. Clipboard with the following on it:

   a. Agenda of September 5, 1981 Coalition meeting with note

   b. List of names with times next to names

   c. List of petition carriers for unnamed petition

   d. List of Coalition Schedule of Events

   e. Flyer announcing meeting of Central Towers Committee

   f. Against Apartheid Program at Swinburne Park (plans for 9/22/81)

   g. Program at Capital (plans for 9/22/81)

   h. List of names of people who will leaflet

   i. List of names of Coalition members, lists of committee assignments

   j. Demonstration charts and parade route (xerox)

   k. Demonstration flyer

   l. Additional list of telephone numbers

2. CSEA folder with the following enclosed

   a. Knickerbocker News article

   b. Alderman Brace's resolution

   c. Coalition Agenda (10/3/81)

   d. SART letter of appeal

   e. Additional news clipping

   f. Fact sheet re: Apartheid rugby

3. Two reel-to-reel tapes of dialogues of 4 retarded people talking about their institutional experiences.

4. Other personal items belonging to co-defendant Estes were also returned.

STATE OF NEW YORK
ALBANY POLICE COURT COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

VERA MICHELSON, AARON ESTIS AND MICHAEL YOUNG,

Defendants.

PROCEEDINGS in above-entitled matter were held before City of Albany Police Court Judge Thomas W. Keegan, Albany City Police Court, Morton Avenue, Albany, New York, on November 17, 1981.

APPEARANCES:

SOL GREENBERG, ESQ., Albany County District Attorney, Albany County Court House, Albany, New York, on behalf of the People by (JOHN DORFMAN, ESQ., Assistant District Attorney.)

LEWIS OLIVER, JR., ESQ., 31 Barclay Street, Albany, New York, on behalf of Defendant Aaron Estis.

ANITA THAYER, ESQ., 196 Mount Hope Drive, Albany, New York, on behalf of Defendant Vera Michelson.

THE COURT: This is the matter of the People of the State of New York against Vera Michelson, Aaron Estis, and Michael Young, charging on the 22nd day of September, 1981, a violation of Section 270 of the Penal Law, possession of fireworks, and Section 221.05 of the Penal Law, possession of marijuana.

The people are represented by John Dorfman, Assistant District Attorney.

Defendant Michelson is represented by Albany Attorney Anita Thayer.

Defendant Aaron Estis is represented by Albany Attorney Lewis Oliver.

Defendant Michael Young is represented by Bernard Bryan; neither Mr. Bryan nor Mr. Young are present in court, they were not required to be here.

Mr. Dorfman?

MR. DORFMAN: May it please the court, Your Honor, as the court is aware, there are pending cases with relation to Mr. Young and the charges that are in Police Court currently are now under indictment and pending in County Court. Defendant Young is charged with possession of a weapon in County Court, a Class D felony. Another indictment involving a James Furman, which is not

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on all fours as it relates to the present motion, which is before the court for suppression of a search warrant, however, the indictment involving Mr. Young and the factual allegation contained therein, together with Item C, pursuant to the search warrant, and which is the subject of this motion, are also pending in County Court.

There is a motion to suppress the evidence seized, which was seized by way of an identical search warrant, and accordingly, the people would be required to do an identical suppression hearing in County Court and using the identical witnesses and the people that were mentioned in the search warrant. It would be identical, the suppression hearing, to the search warrant which is under attack.

The people have talked to Judge Clyne and have requested of Judge Clyne that he sit as the County Court Judge relating to the search warrant, as it relates to Mr. Young, in County Court, pursuant to his indictment, and also to sit as an acting Albany Police Court Justice pertaining to the motion which is present before this court at this time. Judge Clyne has consented to sit in such capacity and has scheduled a hearing to commence on November 24, 1981, at 2 p.m. with relation to

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Mr. Furman, Mr. Young, Mr. Estis, and Miss Michelson, and for that reason, the people respectfully request an adjournment until that time so the matter can be heard before Judge Clyne.

I would like to point out there has been subpoenas issued and individuals have come to court on this date and the people have been advised they are going to be continued under the subpoena power of the court; they are to be at Albany County Court on November 24 at 2 p.m., a Tuesday.

MR. COURT: Mr. Oliver?

MR. OLIVER: Your Honor, first of all, we would like to indicate we were notified to be ready for a hearing on motions to suppress and we are prepared to proceed at this time and object to any adjournment. I had an opportunity to speak with Mr. Dorfman before the case was called and we would respectfully submit to Your Honor that Your Honor should not give up jurisdiction in this suppression hearing and that Judge Clyne is without jurisdiction to handle the hearing.

Section 10.30 of the Criminal Procedure Law, Subdivision 3, covers the situation where a superior court judge sits as a local criminal court judge states:

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Notwithstanding the provisions of Subdivision 1, a superior court judge sitting as a local criminal court does not have trial jurisdiction of any offense, but has preliminary jurisdiction only, as provided in Subdivision 2.

Subdivision 2 provides that: Local criminal courts have preliminary jurisdiction of all offenses subject to divestiture thereof in any particular case by the superior courts and their grand juries.

Subdivision 1 of Section 10.30 provides: Local criminal courts have trial jurisdiction of all petty offenses. What we have here, Your Honor, is two petty offenses as defined in Section 1.20 (39). Violations or traffic infractions; these offenses are of such a minor nature that the statute provides conclusively that a superior court judge who is sitting as a local court judge does not have trial jurisdiction over these offenses, and then the question becomes whether or not a motion to suppress is part of a trial court jurisdiction or part of a court's preliminary jurisdiction as defined in Section 120, Subdivisions 24 and 25.

We submit the statute is clear that trial jurisdiction is when an indictment or an informa-