20. Each defendant is identified by his official capacity at the time relevant hereto, and all defendants' actions described herein were done under color

FIRST CAUSE OF ACTION BY PLAINTIFF MICHELSON

21. Plaintiff Michelson was a member, organizer and officer of the Coalition, which planned and staged the anti-apartheid demonstration on September 22, 1981. The Coalition was affiliated with the National Stop the Apartheid Rugby Tour Coalition (herein after S.A.R.T.).

22. On information and belief, plaintiff's apartment at 400 Central Avenue, Albany, New York, had been under surveillance prior to September 22, 1981 by defendants and/or other members of their respective law enforcement agencies and/or other law enforcement agencies acting at the request of defendants.

23. Plaintiff's apartment had been used as a place for Coalition committee meetings.

24. On September 21, 1981, at the Hyatt House in Albany, New York, a meeting was held in the early evening between defendants Paul Daly, James Rose, Jon Reid, William Murray, and unknown other law enforcement officers, at which meeting alleged information from an alleged informant of the Federal Bureau of Investigation was discussed which allegedly related to plaintiff's apartment.

25. On September 21, 1981, at approximately 8:10 P.M., Mr. John Spearman was arrested by City of Albany Police officers.

Mr. Spearman was a member of S.A.R.T. and was in Albany to participate in the protest against the Springbok rugby game.

26. Subsequent to Mr. Spearman's arrest, the defendants decided and agreed to obtain a search warrant for plaintiff's Apartment at 400 Central Avenue.

27. Said search warrant was based on an application sworn to by defendant Detective John Tanchak of the Albany City police department. A copy of the application is attached as Exhibit A.

28. Said search warrant application was typed by defendant Albany County Assistant District Attorney Joseph Donnelly on September 21, 1981. Defendant Donnelly assisted in the preparation of said search warrant and application therefore, and while so doing was acting in an administrative and investigatory capacity.

29. On September 21, 1981, defendants Paul Daly, Agent in Charge, and/or James Rose, Special Agent of the Federal Bureau of Investigation, also assisted in the preparation of the application for said warrant by providing the aforesaid Donnelly and Tanchak with information allegedly from a confidential informant.

30. Upon information and belief, the alleged informant is a fabrication and does not exist.

31. On September 21, 1981, Deputy Chief Jon Reid and Lieutenant William Murray of the Albany City Police Department also assisted in the preparation of the warrant application.

32. Also present during the preparation of said warrant application were other unknown local, state, and federal law enforcement officers.

33. The Search Warrant application alleges that:

> "First: There is reasonable cause to believe that certain property, to-wit: smoke bombs, sticks, knives, rifles, shotguns, handguns and any other object which could be used as a weapon and any and all other contraband may be found in or upon . . . . ." (the apartment).

34. In fact, no weapons were found in the apartment.

35. The Warrant Application rests upon statements allegedly given to members of the Albany City Police Department and defendant Tanchak by a "confidential reliable informant."

36. The Warrant Application does not state the source or basis by which this alleged "informant" acquired the information attributed to him in the Application.

37. In fact, neither Detective Tanchak, nor any other Albany police official ever spoke to any alleged informant.

38. The Warrant Application fails to disclose that Detective Tanchak never had any direct communication with any informant.

39. In fact, none of the information in the Warrant Application was known to Tanchak from his own knowledge.

40. In addition, the Warrant Application is, on information and belief, deliberately false, misleading and perjurious.

41. The application falsely alleges that Mrs. Clara Satterfield sought police protection because she feared harm from members of the Coalition.

42. The Application falsely states that a second person "jumped from the car and escaped" at the time of Mr. Spearman's arrest.

43. The Application falsely identifies Mr. William Robinson as a travelling companion of Mr. Spearman, and falsely stated he was armed.

44. The defendants knew or should have known that said Search Warrant Application was fraudulent and not based on probable cause.

45. Honorable Thomas Keegan, City of Albany Police Court, issued the Search Warrant based upon the Application of defendant Tanchak.

46. At approximately 3:00 a.m., on September 22, 1981, a posse of local, state, federal and unknown law enforcement officers broke into plaintiff's apartment door, did not identify themselves as law enforcement officers, terrorized plaintiff and her guests, searched and scavenged the apartment and broke and destroyed certain items found therein including, but not limited to, plaintiff's toilet and her answering machine.

47. The aforementioned officers included James J. Rose, Special Agent, Albany office, Federal Bureau of Investigation, John Reid, Assistant Chief of the Albany City Police Department, Lieutenant William Murray of the Albany City Police Department, Detective John Tanchak of the Albany City Police Department, other unknown officers of the Albany City Police Department, unknown officers of the New York State Police, and other unknown law enforcement agents.

48. At the time of this intrusion, plaintiff and her two (2) houseguests were sleeping peacefully. No crime or offense had been committed or was subsequently committed within the apartment in the presence of the officers.

49. Plaintiff and her houseguests were arrested and removed in handcuffs from the apartment.

50. The aforementioned defendants, ie, Daly, Rose, Donnelly, Murray, Tanchak and other unknown law enforcement officers at Albany City Police Department Headquarters, did agree to prepare an invalid search warrant for plaintiff's apartment, and did agree and conspire to gain illegal entry to said apartment under color of State law, and all agreed and conspired to search and seize the inhabitants of said apartment so that plaintiff and her guests would be detained and thereby prevented from peacefully protesting the Springbok rugby game.

51. The conduct of the defendants, acting individually, and together, and in conspiracy with each other deprived plaintiff of the right to be secure in her person and effects against unreasonable searches and seizures under the Fourth and Fourteenth Amendments to the United States Constitution, and deprived her of liberty without due process of law under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution and further deprived plaintiff of equal protection of the law under the Fourteenth Amendment of the United States Constitution.

SECOND CAUSE OF ACTION
OF PLAINTIFF MICHELSON

52. Paragraphs 1 to 51 are hereby incorporated into this Second Cause of Action, as if fully set forth herein.

53. Various items of personal property were seized in Plaintiff's apartment.

54. The mandatory search inventory prepared and signed by Defendant Tanchak states:

> "I swear that the following is a true and detailed inventory of all property taken by me on the Search Warrant filed herewith:
>
> - Eight firecrackers
> - Five plastic containers, each containing a quantity of marijuana
> - One box of Remington 38 Special containing 35 live rounds of 38 special ammo
> - One speed leader containing five live 38 Special +P hollow points
> - One leather purse with shotgun shell holders attached.

55. None of the "smoke bombs, sticks, knives, rifles, shotguns, handguns" and other "weapons" allegedly in Plaintiff's apartment were found there.

56. In addition to the items listed above as having allegedly been found in the apartment, defendants confiscated and illegally seized the items listed on Schedule 1 attached hereto as Exhibit B, which includes Plaintiff's personal papers, other property, and papers and documents belonging to the Coalition. None of these items were mentioned in the search warrant and none are criminal contraband.

57. All of the items in Schedule 1, except keys to Plaintiff's apartment, telephone bills, personal telephone books and news-clippings,were returned to Plaintiff on October 1, 1981.

58. The balance of the items have been demanded, but have not been returned.

59. The confiscation and scrutiny of Plaintiff's personal papers and the permanent deprivation of some of her personal property violate her right of privacy and association, and her right to be free from unreasonable searches and seizures in violation of the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

THIRD CAUSE OF ACTION
OF PLAINTIFF MICHELSON

60. Paragraphs 1 to 59 are hereby incorporated into this Third Cause of Action as if fully set forth herein.

61. Pursuant to the unlawful search of Plaintiff's apartment, she was arrested by Defendants and charged with two (2) criminal violation charges, i.e., possession of marijuana and possession of firecrackers.

62. Plaintiff was removed from her apartment in handcuffs, she was booked, photographed, fingerprinted, given gun powder tests, handcuifed to a table, and interrogated about her political activities and the plans for the demonstration. Plaintiff was not read her Miranda rights.

63. Plaintiff was held in custody at the Albany City Police Division II lock-up, denied access to an attorney, not permitted to make a phone call, and arraigned the next morning before

Judge Thomas W. Keegan in Albany Police Court.

64. Upon the morning of plaintiff's arraignment at Albany City Police Court, on information and belief, a discussion was had between Judge Keegan, and certain of the defendants out of the presence of plaintiff or her counsel, at which time it was agreed not to fix bail for plaintiff.

65. Plaintiff was arraigned before Judge Keegan on September 22, 1981 on charges of possession of fireworks in violation of New York State Penal Law 270.00(2)(b)(i) and possession of marijuana in violation of New York State Penal Law 221.05, both charges being classified as violations under the laws of New York State.

66. At the arraignment, defendant Albany County Assistant District Attorney John Dorfman requested that bail not be set for seventy two (72) hours and such request was granted by Judge Keegan. Under New York State Criminal Procedure Law 170.10(7) and 530.20(1), plaintiff was entitled to immediate bail as a matter of right.

67. Judge Keegan remanded plaintiff to the Albany County Jail where she was confined in a cell continually for approximately the first thirty-six (36) hours of her imprisonment.

68. Plaintiff was held at the jail until September 24, 1982, when she was released on her own recognizance pursuant to a writ of habeas corpus despite the recommendation of defendant Assistant District Attorney Joseph Donnelly that a high bail be set for these petty offenses.

69. On December 8, 1981, the charges were dismissed.

70. The arrest and confinement of Plaintiff prevented her from continuing to organize the September 22nd demonstration and prevented her from participating in and leading the September 22 march and demonstration as well as preventing plaintiff from planning another Springbok protest scheduled for September 26, 1981.

71. The defendants individually, together, and in conspiracy with each other and Judge Keegan deprived plaintiff of her right to counsel in violation of the Sixth and Fourteenth Amendments of the United States Constitution, her right to reasonable bail as guaranteed by the Eighth Amendment to said Constitution, her right not to be deprived of her liberty without due process of law guaranteed by the Fifth and Fourteenth Amendments of said Constitution, her right to freedom of speech and association protected under the First and Fourteenth Amendments to said Constitution, and her right to equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution.

FOURTH CAUSE OF ACTION
OF PLAINTIFF MICHELSON

72. Paragraphs 1 to 71 are hereby incorporated into this Fourth Cause of Action as if fully set forth herein.

73. The participation in the aforementioned conspiracy and illegal activity by high ranking Albany City officials, such as Deputy Chief Jon Reid, Police Chief Thomas Burke, Lieutenant

William Murray, and Judge Thomas W. Keegan, and unknown others demonstrates the existence of a policy of the City of Albany during September 1981 that certain political activists were to be removed from the streets at all costs prior to the Springbok game and plaintiff was either considered such a political activist, or fell victim to such a policy.

74. The participation in the aforementioned conspiracy and illegal activity by high ranking Albany County officials such as District Attorney Sol Greenberg, Assistant District Attorney Joseph Donnelly, Assistant District Attorney John Dorfman, and unknown others demonstrates the existence of a policy of the County of Albany during September 1981 that certain political activists were to be removed from the streets of Albany at all costs prior to the Springbok game and plaintiff was either considered such a political activist, or fell victim to such a policy.

75. The City of Albany and the County of Albany shared in the policy to remove certain political activists from the Albany streets prior to the Springbok game and conspired to enforce said policy, and New York State law enforcement officers participated in carrying out said policy and by so doing joined in the conspiracy and each and every defendant is liable for the acts and ommissions of each and every other defendant.

76. Defendants Rose and Daly also participated in carrying out said policy and by so doing joined in the conspiracy and each

and every defendant is liable for the acts and omissions of each and every other defendant.

77. Pursuant to said policy of the City and County of Albany the aforementioned constitutional rights of plaintiff were violated.

FIFTH CAUSE OF ACTION
OF PLAINTIFF MICHELSON

78. Paragraphs 1 to 77 are hereby incorporated into this Fifth Cause of Action as if fully set forth herein.

79. The defendants, City of Albany, County of Albany, Sol Greenberg, Thomas Burke, Paul Daly, and James J. Rose were in official positions to prevent the acts and things complained of herein and by reasonable diligence could have prevented said acts and things, and they were grossly negligent in failing to prevent said acts and things.

80. The City of Albany, County of Albany, Sol Greenberg, Paul Daly and Thomas Burke were each grossly negligent in not providing more adequate supervision for its employees, agents and officers during September 1981 when the Springbok team was to play in Albany and more adequate supervision could have prevented the acts and things complained of herein.

81. By failing to exercise reasonable diligence, and by being grossly negligent in not properly supervising their subordinates said defendants are responsible for the violation of the aforementioned constitutional rights of plaintiff.

SIXTH CAUSE OF ACTION
OF PLAINTIFF MICHELSON

82. Paragraphs 1 to 81 are hereby incorporated into this Sixth Cause of Action as if fully set forth herein.

83. The number and quality of illegal acts and ommissions heretofore complained of constitutes illegality so egregious as to demonstrate malice, or deliberate disregard of, and gross indifference to the constitutional rights of the plaintiff as referred to herein on the part of each and every defendant and each and every defendant knew or should have known that the acts hereinabove complained of were carried out with malice or reckless disregard of plaintiff's rights.

SEVENTH CAUSE OF ACTION
BY PLAINTIFF MICHELSON

84. Paragraphs 1 to 83 are hereby incorporated into this Seventh Cause of Action as if fully set forth herein.

85. On December 8, 1981, the violation charges against Plaintiff were dismissed.

86. Plaintiff's arrest, detention and criminal prosecution were done in malice and without probable cause in order to prevent her from participating in the demonstration, and were done without cause to believe the prosecution would succeed.

87. Defendants individually and in concert with each other committed the tort of malicious prosecution under the common law of the State of New York.

EIGHTH CAUSE OF ACTION
OF PLAINTIFF MICHELSON

88. Paragraphs 1 to 87 are hereby incorporated into this Eighth Cause of Action, as if fully set forth herein.

89. By confiscating Plaintiff's personal papers and documents relating to the Coalition and planned demonstration pursuant to the search warrant issued by Judge Keegan without cause to believe they were related to any criminal enterprise, defendants, individually and in concert with each other, committed the common law tort of abuse of process.

NINTH CAUSE OF ACTION
OF PLAINTIFF MICHELSON

90. Paragraphs 1 to 89 are hereby incorporated into this Ninth Cause of Action as if fully set forth herein.

91. Plaintiff was unlawfully arrested and detained against her will by Defendants.

92. Defendants, individually and in concert with each other, thereby committed the common law tort of false arrest and false imprisonment.

FIRST CAUSE OF ACTION
OF PLAINTIFF COALITION

93. Paragraphs 1 to 92 are hereby incorporated into this First Cause of Action of Plaintiff Coalition as if fully set forth herein.

94. The Coalition was first organized in July of 1981 for the specific purpose of opposing by lawful means the South Africa Springbok's planned exhibition game in Albany and by organizing a broad and diverse lawful protest of the September 22, 1981

rugby game to be played in Albany's municipal stadium.

95. The Coalition's purposes and actions are and were grounded in political and moral abhorence for the institution of apartheid and were in accordance with the United Nations approved international boycott of South African sporting and other events.

96. At the time of the planned demonstration, the Coalition had affiliated with it, approximately forty (40) civil rights, civic, student, labor, community and neighborhood organizations.

97. The Coalition was one of nearly two hundred (200) organizations that were members of the national Stop Apartheid Rugby Team (S.A.R.T.) coalition.

98. The Coalition arranged for the proper permission of City, and State authorities for the September 22, 1981 demonstration.

99. On the days immediately preceding the demonstration, Coalition leaders met with and fully cooperated with defendant city, county and state law enforcement officers and other local officers.

100. Prior to September 22nd, the Coalition was in the process of organizing a massive demonstration which had attracted national attention, since Albany was slated to be the only American municipality that was permitting the South African team to use a public facility, or play a public game.

101. Concerned by the size of the planned demonstration and the unprecedented political clout of the Coalition, defendants

devised a strategy to discourage participators in the anti-apartheid rally. This strategy succeeded in reducing the size and effectiveness of the protest rally.

102. Defendants deliberately and with gross disregard for the truth, fabricated and/or distributed to public officials, the press, the Coalition, and the public at large, untrue information that the demonstration planned by the Coalition would be violent and against the law.

103. On information and belief, defendants Daly, Rose, Burke, Reid, and Murray and others disseminated information that there would be a confrontation between the Communist Worker Party and the Connecticut Klu Klux Klan.

104. Such plans were denied by both the Klu Klux Klan and the Communist Workers Party and no such clash took place.

105. Defendants, or other unknown members of their respective police agencies, advised owners of commercial establishments in the vicinity of the planned demonstration that violence was expected and they should close on September 22, 1981.

106. On information and belief, defendants Daly and Rose and other unknown defendants and others provided information to State Superintendent of Police John Connellie and New York State Governor Hugh Cary, which caused them to conclude that there was a danger of imminent riot.

107. As discussed supra, defendants also acted to discourage participation in the demonstration by arresting and keeping in jail, plaintiff Michelson, and her houseguests, so as to give

the impression that the rally organizers were criminals and proponents of violence.

108. In addition, on information and belief, the Coalition and its members were harassed, followed, subject to surveillance, and records and files made of their lawful first amendment activities by the defendants or other unknown members of defendants' police agencies.

109. The defendants acted individually, together and in conspiracy with each other in the above activities.

110. By these acts, defendants intimidated people, interferred with the demonstration planned by the Coalition, and damaged the reputation of the Coalition and its members as peaceful, law-abiding citizens, thus depriving the Coalition and its members of equal protection of the law, equal priviledges, and immunities under the law and the right to freedom of speech and freedom of association under the First and Fourteenth Amendments to the United States Constitution.

SECOND CAUSE OF ACTION
OF PLAINTIFF COALITION

111. Paragraphs 1 to 110 are hereby incorporated into this Second Cause of Action as if fully set forth herein.

112. The unlawful seizure of Coalition documents and the scrutiny thereof by the defendants of a Coalition telephone list and other documents on September 22, 1981 from the apartment of plaintiff Michelson further interferred with the lawful exercise

of First Amendment Rights by the Coalition and its member and invaded the privacy of Coalition members.

113. This activity of the defendants has deprived the Coalition and its members of their rights to freedom of association, and privacy under the First, Fourth and Fourteenth Amendment to the United States Constitution.

DAMAGES

114. As a result of the violation of Plaintiff Michelson's constitutional and common law rights, she was incarcerated in jail and deprived of liberty for three (3) days, deprived of personal papers and effects, suffered mental and emotional distress, anxiety, stigmatization, damage to reputation as a peaceable person, invasion of privacy, interference with right to speak, assemble and associate freely, fright, embarrassment, legal expenses, and other actual and exemplary damages.

115. As a result of the violation of Plaintiff Coalition's constitutional rights, the Coalition and its members suffered interference with their right to speak, assemble, and associate freely, damage to reputation, invasion of privacy, seizure of Coalition documents, legal expenses, and other actual and exemplary damages.

WHEREFORE, Plaintiff Michelson requests compensatory damages against defendants individually and jointly in the sum of One Million ($1,000,000.00) Dollars, and exemplary punitive damages

in the sum of Two Million ($2,000,000.00) Dollars, together with reasonable costs and expenses and attorney fees; and

Plaintiff Coalition requests compensatory damages against defendants individually and jointly in the sum of One Million ($1,000,000.00) Dollars and exemplary punitive damages against the defendants individually and jointly in the sum of Two Million ($2,000,000.00) Dollars together with reasonable costs and expenses and attorney fees, and

Plaintiff Coalition requests a permanent injunction enjoining the defendants their agents, officers and employees to cease and desist from unlawful surveillance of the first amendment activities of the Coalition and its members.

Plaintiff Coalition seeks a permanent injunction enjoining defendants, their agents, officers and employees from engaging in any activity, conspiracy or plan which interferes with the lawful activities of the Coalition, or discourages or prevents any member of the Coalition from participating in any lawful activity of the Coalition; and

Plaintiffs ask for such other and further relief as the Court deems just and proper.

DATED: December 14, 1982
Albany, New York

Anita Thayer
ANITA THAYER

ANITA THAYER
LANNY E. WALTER
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69 Columbia Street
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

VERA MICHELSON, and CAPITAL DISTRICT COALITION AGAINST APARTHEID AND RACISM, by its Chairman MICHAEL DOLLARD,

Plaintiffs,

CIVIL NO.
82-CV-1413

-against-

(Hon. Roger J. Miner)

PAUL DALY, AGENT IN CHARGE, FEDERAL BUREAU OF INVESTIGATION; JAMES J. ROSE, SPECIAL AGENT, FEDERAL BUREAU OF INVESTIGATION; and UNKNOWN OTHER AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION; UNKNOWN NEW YORK STATE POLICE OFFICERS; ALBANY COUNTY DISTRICT ATTORNEY SOL GREENBERG; ALBANY COUNTY ASSISTANT DISTRICT ATTORNEY JOSEPH DONNELLY; ALBANY COUNTY ASSISTANT DISTRICT ATTORNEY JOHN DORFMAN; UNKNOWN OTHER ALBANY COUNTY DISTRICT ATTORNEYS; THE COUNTY OF ALBANY; THE CITY OF ALBANY POLICE CHIEF THOMAS BURKE; CITY OF ALBANY ASSISTANT POLICE CHIEF JON REID; CITY OF ALBANY POLICE LIEUTENANT WILLIAM MURRAY; CITY OF ALBANY DETECTIVE JOHN TANCHAK, UNKNOWN OTHER CITY OF ALBANY POLICE OFFICERS, and THE CITY OF ALBANY,

Defendants.

MEMORANDUM ON BEHALF OF PLAINTIFFS IN OPPOSITION TO MOTION TO DISMISS PURSUANT TO FRCP 12(b)

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BACKGROUND

Plaintiff Vera Michelson is a resident of the City of Albany who actively participated in the organization of a demonstration on September 22, 1981 in order to peacefully protest the policy of apartheid as respesented by the South African Rugby team. On the evening of September 21 she was asleep in her apartment at 400 Central Avenue, Apartment 7K when it was invaded by certain defendants and other unknown law enforcement agents. Instead of attending the protest, plaintiff was arrested by this raiding party, and taken to the police station. Her apartment was ransacked, and numerous personal papers, and Coalition documents were confiscated. Plaintiff was charged with a petty offense and incarcerated in the Albany County Jail for three (3) days without bail in violation of New York law. The petty offenses charged against plaintiff were subsequently dismissed.

The Capital District Coalition Against Apartheid and Racism is an unincorporated association that was the local initiator and organizer of a protest rally against a rugby game scheduled between the South African Springbok team and a local rugby team. The size and effectiveness of this associational activity was severly diminished and impinged by the conduct of defendants, to wit: spreading false rumors of violence, disseminating unfounded threats to would be participants and supporters,

placing the Coalition and its leaders and/or members under surveillance, maintaining records and files of activities protected by the First Amendment, arresting plaintiff Michelson and other coalition members on the eve of the rally, and confiscating coalition documents.

Plaintiff Michelson brought suit in the Federal District Court for the Northern District of New York alleging the violation of various constitutional rights and invoking the Court's pendent jurisdiction with regard to various state tort claims.

Plaintiff Coalition has alleged a violation of its and its members right to associate and to hold a public rally, and an invasion of their right of associational privacy through the confiscation of names, addresses and other coalition documents.

Defendants Albany County District Attorney Sol Greenberg and Albany County Assistant District Attorneys Joseph Donnelly and John Dorfman, move to dismiss the complaint pursuant to FRCP 12(b) on grounds of absolute immunity, and to dismiss the claim for punitive damages. They also move to dismiss the claim of the Coalition for lack of standing.

ARGUMENT

POINT I. WITH REFERENCE TO PLAINTIFFS' CONSTITUTIONAL CLAIMS, THE DEFENDANTS COUNTY OF ALBANY, ALBANY COUNTY DISTRICT ATTORNEY SOL GREENBERG, AND ASSISTANT DISTRICT ATTORNEYS JOSEPH DONNELLY AND JOHN DORFMAN DO NOT UNDER APPLICABLE FEDERAL LAW HAVE ABSOLUTE IMMUNITY FOR THE SEARCH AND SEIZURE AND OTHER INVESTIGATIVE AND NON-JUDICIAL ACTS AGAINST PLAINTIFFS. ALTHOUGH THE COUNTY OF ALBANY IS NOT LIABLE FOR PUNITIVE DAMAGES, THE INDIVIDUAL DEFENDANTS DONNELLY, GREENBERG AND DORFMAN ARE LIABLE UNDER FEDERAL LAW FOR PUNITIVE DAMAGES ALLEGED IN THE CLAIMS BASED UPON VIOLATION OF FEDERAL CONSTITUTIONAL RIGHTS.

The first six (6) claims of plaintiff Michelson and the claims of the Coalition allege that defendants County of Albany, Albany County District Attorney Sol Greenberg, and Albany County Assistant District Attorneys Joseph Donnelly and John Dorfman, and unknown other Albany County Assistant District Attorneys, in concert with each other and with others while acting under color of state law, violated numerous constitutional rights of the plaintiff guaranteed by the First Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the Constitution. The constitutional claims are made in Federal Court pursuant to 42 U.S.C. 1983, 1985, 1986, 1988, and Bivens. The named individuals Donnelly, Greenberg, and Dorfman, are each sued individually and in his official capacity (par. 18).[1] (Footnotes on next page).

A. Immunity

The defense of immunity by municipalities or individuals in an action raises a question of federal substantive law.[2]

Martinez v. California, 444 U.S. 227, 284 (1980); Mancini v. Lester, 630 F. 2d 990, 994-995 (3rd Cir. 1980);[3] Hampton v. Chicago, 484 F. 2d 602, 607 (7th Cir. 1973), cert. denied 415 U.S. 917;[4] Kletschka v. Driver, 411 F. 2d 436, 448 (2nd Cir. 1969); Nelson v. Knox, 256 F. 2d 312, 314 (6th Cir. 1958); Wade v. Bethseda Hospital, 356 F. Supp. 380, 385 (S.D., Ohio 1973).

With respect to the County of Albany, the Supreme Court has held that a municipality has no immunity from liability under 1983 flowing from its constitutional violations and may not assert the good faith of its officers as a

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[1]References to paragraph numbers "par." denote the designated paragraph in the complaint herein.

[2]The only immunity case cited by movants is a state court decision [Schanbarger v. Kellogg, 35 A.D. 2d 402 (3rd Dept. 1970), mot. for lv. ap. den. 36 N.Y. 2d 485, cert. denied 405 U.S. 919] which is not relevant to a 1983 claim.

[3]The Third Circuit explicitly held that a New Jersey statute excusing municipalities and their officials from liability for certain torts could not provide immunity against a 1983 action. Mancini v. Lester, supra, 630 F. 2d at 994-995.

[4]The Seventh Circuit also rejected an immunity defense based on an Illinois tort immunity act. Hampton v. Chicago, supra, 484 F. 2d at 607.

defense to liability under 1983. Owen v. City of Independence, 445 U.S. 622, 650-656 (1980). Thus, even if the individually named defendants possessed a good faith defense, the County of Albany would nevertheless be liable for any damages caused to plaintiff. Owen v. City of Independence, supra, 445 U.S. at 650-656.

With respect to Donnelly, Greenberg, and Dorfman, the jurisprudence of 1983 is settled that the District Attorney possesses absolute immunity only for those acts which are quasi-judicial and related to the judicial process. The District Attorney possesses only qualified good faith immunity comparable to the policeman's for those aspects of the prosecutor's role as an administrator or investigative officer. Guerro v. Mulhearn, 498 F. 2d 1249, 1255-1256 (1st Cir. 1974); Hampton v. City of Chicago, 484 F. 2d 602, 608-609 (7th Cir. 1973); Robichaud v. Ronan, 351 F. 2d 533, 537 (9th Cir. 1965); see Imbler v. Pachtman, 424 U.S. 409, 430-431 (1976).

The conduct of the Albany County defendants, Donnelly, Greenberg and Dorfman which violated the plaintiffs' constitutional rights was within the investigative function of the District Attorney's office. At the time Donnelly agreed with other law enforcement officials present to author the search warrant application, the purpose was to gain entry and investigate the occupants of 400 Central Avenue, Apartment 7K.

Donnelly agreed with Daly, Rose, Reid, Murray, Tanchak and other unknown law enforcement officials to prepare a perjurious search warrant for Apartment 7K, and later that night and into the early morning Donnelly and the police agreed and conspired to gain illegal entry into Apartment 7K and search and seize the inhabitants (including plaintiff) in order to prevent them from attending the protest against the Springboks rugby game on September 22 (par. 22-44). Donnelly personally typed the search warrant application in the police station (par. 28). The search warrant application, attached to the complaint as Exhibit A, contains facts which were deliberately false, misleading, and perjurious (par. 30-43). A perusal of the search warrant application makes it incandescently clear that the target of the search was the people inside Apartment 7K which, in the words of the application, "was being used as a base to plan their [Communist Workers Party] activities in the Albany area relating to the Rugby game" (see Exhibit A).

The federal courts have classified conduct similar to that of Donnelly, Greenberg, and Dorfman here on many occasions, and in each case the preparation of a search warrant and the resulting search and seizure have unanimously been determined

to be within the investigative aspect of the prosecutor's function. As part of the investigative aspect, the courts have unanimously held that the District Attorney possesses only a qualified immunity.

The Second Circuit has explicitly held that planning a raid on an apartment is part of the investigative function of a district attorney for which only qualified immunity is available:

> Where the alleged harm is inflicted independently of the prosecution, however, absolute immunity will not attach. See Hampton v. Hanrahan, supra. If, for example, a prosecutor violates the Fourth Amendment by conducting an illegal search, the victim is harmed by the invasion of his zone of privacy, whether or not the evidence unlawfully obtained is introduced at trial. Redress for this harm is not barred by Imbler. See J.D. Pflaumer, Inc. v. United States Department of Justice, 450 F. Supp. 1125 (E.D. Pa. 1978).
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> Lee v. Williams, 617 F. 2d 320, 322 (2nd Cir. 1980)

Similarly, the Fifth Circuit has held that a prosecutor who assists, directs, or otherwise participates with police in obtaining evidence by search and seizure prior to indictment is functioning in an investigative capacity. Marrerro v. City of Hialeah, 625 F. 2d 499, 505, 506-511 (5th Cir. 1980).

Numerous other cases have followed the rule that prosecuting attorneys enjoy only the qualified good faith immunity of policemen for planning and implementing police raids in violation of the Fourth Amendment. Forsyth v. Kleindienst,

599 F. 2d 1203, 1211-1215 (3rd Cir. 1979); (U.S. Attorney General authorized warrantless electronic surveillance was entitled to only qualified immunity); Apton v. Wilson, 165 U.S. App. D.C. 22, 506 F. 2d 83, 93 (1974) (U.S. Attorney General who directed police investigative activity against May Day demonstration not absolutely immune); Hampton v. City of Chicago, 484 F. 2d 602 (7th Cir. 1973), cert. denied 415 U.S. 917 (1974) (states attorney not absolutely immune for planning and executing illegal raid); Hampton v. Hanrahan, 600 F. 2d 600, 626-627 (7th Cir. 1979) (same); McCray v. Maryland, 456 F. 2d 1 (4th Cir. 1972); Dodd v. Spokane County, 393 F. 2d 330, 335 (9th Cir. 1968); J.D. Pflaumer, Inc. v. U.S. Department of Justice, 450 F. Supp. 1125, 1131, 1133-1135 (E.D. Pa. 1978); Lofland v. Meyers, 442 F. Supp. 955, 958 (S.D., N.Y. 1977) (assistant U.S. attorney does not have absolute immunity for illegal search and seizure); cf. Briggs v. Goodwin, 569 F. 2d 10, 19-24 (D.C. Cir. 1977); (special federal prosecutor possesses only qualified immunity for false testimony in grand jury).

District Attorney Greenberg and Assistant District Attorr Dorfman participated in the conspiracy to deny plaintiffs their constitutional rights, and by virtue of their involvement Greenberg and Dorfman are liable for the acts of Donnelly and the other conspirator Dorfman's participation in the illegal conspiracy was to arrange that plaintiff Michelson would be denied bail on the petty violations charges. Under New York law plaintiff was entitled

to immediate bail as a matter of right pursuant to C.P.L. 170.10(7), 530.20(1); Cook v. Brockway, 424 F. Supp. 1046 (D.C. Tex. 1977), aff'd. 559 F. 2d 1214; Tunnell v. Wiley, 369 F. Supp. 1260 (D.C. Pa. 1974), aff'd. 514 F. 2d 97; Stringer v. Dilger, 313 F. 2d 536 (10th Cir. 1963).

Greenberg was involved in his role as Albany County District Attorney with supervisory responsibility over his assistants Donnelly and Dorfman. Greenberg is liable for the official acts of his Assistant District Attorneys Donnelly and Dorfman. Drake v. City of Rochester, supra, 96 M. 2d 86.

Also, Greenberg independently participated in and ratified the entire course of conduct to illegally deny plaintiffs' constitutional rights. Greenberg failed to prevent the gross infringement of plaintiffs' constitutional rights when he had a duty to do so, and Greenberg ratified the illegal course of conduct in official actions and public statements.

Greenberg and Dorfman are liable for the illegal conduct of Donnelly and all of the other conspirators who like Donnelly had only qualified immunity. Even if Greenberg and Dorfman had absolute immunity for their own quasi-judicial acts, they do not have absolute immunity for the acts of Donnelly and the police in the investigative phase, for which they are liable and for which Donnelly and the police had only qualified immunity. The only immunity which attaches as a defense to the liability of Greenberg and Dorfman for the acts of their co-conspirators Donnelly and the police, is the

same immunity which the co-conspirators possess for their own acts. Therefore, Greenberg and Dorfman have only qualified immunity for the acts for which they are liable. Rankin v. Howard, 633 F. 2d 844, 849-850 (9th Cir. 1980); Hampton v. Hanrahan, supra, 600 F. 2d at 621-635; Slavin v. Curry, 574 F. 2d 1256 (5th Cir. 1978).

Finally, it should be noted that the affirmative acts by the county officials Donnelly, Greenberg, and Dorfman, were a continuing course of conduct and official decisions which constituted an official policy of Albany County to unlawfully suppress the Springboks protestors, and establishes the direct liability of the County for which there is no immunity. Monell v. New York City Department of Social Services, 436 U.S. 658, (1978); Redcross v. Rensselaer County, 571 F. Supp. 364 (N.D., N.Y. 1981) (Foley, J.). The perjured search warrant application drafted by Donnelly;[6] the composition of

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[6]The proof of perjury (par. 10-44) contained in the search warrant application drafted by Donnelly (Exhibit A) has already been made a matter of record during the trial of Spearman and Young in Albany County Court. For example:

* The application states that Spearman was apprehended in a "stolen" automobile. That is a lie. Trial testimony showed that the automobile was owned by Young and was being operated by Spearman with Young's permission.

* The application states that Mrs. Clara Satterfield told Albany police that Young and William Robinson had threatened her life. At trial Mrs. Satterfield testified that statement was an "absolute lie". Even the Albany police official who had spoken with Mrs. Satterfield did not claim that she made such a statement.

* The application states that a second person "jumped from the car and escaped" at the time of Spearman's arrest. That is a lie. At trial all three police officers present at the scene testified that Spearman was alone at the time the car was stopped and that no one ran out.

Conversations with the jurors subsequent to the verdict indicated that the blatent perjury in the search warrant application discredited the prosecution's witnesses and was a key factor in the acquittal of Spearman and Young. Falsus in uno, falsus in omnibus.