state action to make the entire conspiracy actionable under § 1983. Hampton at 623.

The Hampton case, supra, illustrates the application of the Kletschkla test. In this case the Seventh Circuit ruled that the District Court had invaded the province of the jury when it ruled that plaintiffs had not established a prima facie case of two conspiracies between federal and state officials. The first conspiracy therein is factually analogous to plaintiff's allegations. The defendants in Hampton were charged with planning a raid, and raiding the apartment of Fred Hampton and other members of the Black Panther Party to subvert and eliminate the Black Panther Party and its members thereby suppressing a vital black political organization. Hampton, supra at 623.

As the instant motion of the defendants is a pre-trial, pre-discovery motion, the liberal pleading rules of Conley v. Gibson, 355 U.S. 41 (1957) apply.

The plaintiffs have alleged acts by city, county, and state officials and federal officials in furtherance of a conspiracy and have alleged that the state and the local officials acting pursuant to state law played a significant role in the result.

Specific joint acts of federal officials and state officials alleged in the complaint include:

1) The defendants Paul Daly and James Rose met with certain Albany City Police officials on September 21, 1981 in the evening and discussed their joint course of action with respect to plaintiffs.

2) Defendants Daly or Rose provided information to Defendant Donnelly and Defendant Tanchak to be used in a search warrant application directed at plaintiff Michelson's apartment.

3) Federal defendants participated with other defendants in the raid on plaintiff Michelson's apartment.

4) Federal defendants conspired with others to arrest and detain plaintiff Michelson and others.

5) The federal defendants provided false and untrue information to State Superintendent of Police John Connellie and Governor Hugh Cary that caused them to believe there was imminent danger of riot.

6) All the defendants conspired together to devise a strategy to discourage participation in the September 22, 1981 anti-apartheid rally and neutralize the efforts of the Coalition Against Apartheid and Racism.

See Complaint, paragraphs 24, 26, 29, 30, 46, 47, 50, 76, 101, 102, 103, 106, 107, 108 and 112.

All the acts of all the defendants including those in which the federal defendants participated were made under color of state law. The search warrant application and execution, the arrest of defendant Michelson and her house guests, and their detention was made in the context of a state criminal prosecution for violations of provisions of New York's penal law. There was no prosecution of plaintiff Michelson or any member of the Coalition pursuant to any penal law. The complaint clearly specifies that the state played a 'significant' role in the results of the joint federal-state conspiracy. The complaint of the plaintiffs meets the Kletschka test and states a property conspiracy claim pursuant to § 1983.

The cases cited by the movants are not to the contrary. In Seibert v. Baptist, 594 F.2d 423 (5th Cir., 1979) cert. denied, 446 U.S. 918 (1979) reh. denied, 447 U.S. 930 (1980) "plaintiffs' only claims are that the defendants abused

their authority under the federal Internal Revenue Code." Seibert, supra at 429. The Court ruled that there was no allegation that defendants were acting under color of state law. In Ryan v. Cleveland, 531 F. Supp. 724 (E.D. N.Y., 1982) plaintiffs disagreed with the policies of the Veteran's Administration towards veterans who claimed to have been exposed to dioxin. No individual V.A. officials were identified as defendants or served. The § 1983 conspiracy was dismissed because plaintiffs therein alleged no state action. (In both of the above cases the courts dismissed § 1983 and § 1985(3) conspiracy claims.)

District of Columbia v. Carter, 409 U.S. 418, 430 (1973) addresses the unique issue of whether or not the District of Columbia is a state or territory within the meaning of § 1983. As the Court ruled the District was not a state, the § 1983 claim failed because of a lack of state action. Koch v. Zuieback, 316 F.2d 1 (9th Cir., 1963) is a lawsuit against a local draft board complaining of due process deprivations suffered by plaintiff while being processed for the Selective Service System. Conspiracy claims were dismissed because there were not allegations that the defendants operated under color of state law. (Note this Court also dismissed a § 1985(3) claim for lack of state action; this case was decided prior to the rule that state action was not necessary for § 1985(3) claims.) (See Part B of Point I of this memo.)

The complaint of the plaintiffs states a proper conspiracy claim pursuant to 42 U.S.C. § 1983.

B. THE FEDERAL DEFENDANTS ARE LIABLE UNDER 42 U.S.C. §1985(3)

In Griffen v. Breckenridge, 403 U.S. 88 (1971), the United States Supreme Court upheld a conspiracy cause of action pursuant to 42 U.S.C. §1985(3) and established four (4) requisites to an action pursuant to this statute. The Griffen criteria are:

(1) the defendants must conspire
(2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and
(3) the defendants must act in furtherance of the object of the conspiracy, whereby
(4) one was (a) injured in his person or property or (b) deprived of having and exercising any right or privelege of a citizen of the United States.

It is established that Federal officials are persons within the meaning of §1985(3) and regardless of who the conspirators are, they should be liable. See eg. Hampton v. Hanrahan, 600 F 2d 600 (7th Cir., 1979), Novotny v. Great American Federal Savings and Loan Association, 584 F.2d 1235 (3d Cir., 1978), rev'd on other grounds, 442 U.S. 366 (1979); Founding Church of Scientology v. Director, F.B.I., 459 F. Supp. 748 (D.D.C. 1978).

The issue of §1985(3) liability in the present case centers on the second criteria above. Griffen construed §1985(3) to provide relief where the conspiracy was motivated by "some racial, or perhaps otherwise class-based invidiously discriminatory motivation." Griffen, supra at 102. Griffen specifically left undecided the question of what non-racially

motivated conspiracies were proper for §1985(3) liability. See Griffen, supra at 102 , fn. 9.

A subsequent Supreme Court case, Great American Federal Savings and Loan Association v. Novotny, 442 U.S. 366, 370, fn. 6 (1979) suggests that "fundamental rights derived from the Constitution "will provide a cause of action under §1985(3) where the conspiracy is aimed at a person or persons who are part of a class that seeks to exercise their rights.

In the years since Griffen and Novotny lower courts have disagreed concerning which conspiracies motivated by non-racial individiously discriminatory animus fall within the ambient of 1985(3) protection. No post-Griffen court has found that §1985(3) is limited exclusively to racial situations. See Canlis v. San Joaquin Sherriff's Posse Comitatus, 641 F.2d 711 (9th Cir., 1981), cert. denied 454 U.S. 367 (1981).

The Second Circuit to date has not taken a position with respect to the scope of §1985(3) conspiracies. Regan v. Sullivan 557 F.2d 300, 308, (2nd Cir., 1977). Two other Second Circuit cases are not to the contrary. Dacey v. Dorsey 568 F.2d 275 (2nd Cir., 1971) rejected a §1985(3) claim for failing to allege a conspiracy. Weise v. Syracuse University, 522 F.2d 397 (2nd Cir., 1975) reinstated and remanded a §1985(3) claim that had been erroneously dismissed for failing to allege state action and for stating insufficient factual allegations of conspiracy.

Judge Munson of this district did find that the complaint in Thompson v. State of New York, 487 F. Supp 212,

227-228 (N.D.N.Y., 1979) stated a §1985(3) claim because of sufficient allegations of a racially-motivated animus to deprive plaintiffs of equal enjoyment of legal rights. This decision of Judge Munson did not address the issue of what other class-based motivations are subject to a §1985(3) claim for relief.

The Coalition Against Apartheid and Racism alleges that they are the victims of a class-based animus in that there was a conspiracy by various governmental officers to prevent their exercise of a fundamental constitutional right. The federal defendants together with the other defendants interfered and attempted to interfere with the Coalition's efforts to mount a protest of national significance against the presence in Albany, New York of representatives from apartheid South Africa, the only country in the world where racism is legal.

Plaintiff Coalition and plaintiff Michelson base their §1985(3) claim on the factual allegations of the complaint which alleges that the defendants conspired to seize and detain certain protestors to prevent their participation in a planned demonstration. (See Complaint, paragraphs 50 & 51.) They also allege that this conspiracy was motivated by a concern about the "size of the planned demonstration and unprecedented political clout of the Coalition" and a desire to "discourage participation" in the anti-apartheid rally. (See Complaint, paragraph 101.)

These are allegations of animus to the plan and strategy of the members, associates and affiliates of the Coalition Against Apartheid who had been organizing anti-apartheid opposition since July of 1981. (See Complaint, paragraphs 94 to 101.)

This type of animus was specifically discussed in Glasson v. City of Louisville, 518 F.2d 899 (6th Cir., 1975) cert den. 423 U.S. 930 (1975) wherein a § 1985(3) claim was upheld in a conspiracy by government officials to prevent planned, first amendment, lawful activity of anti-government protestors. See also, Cameron v. Brock, 473 F.2d 608 (6th Cir., 1973); and Richardson v. Miller, 446 F.2d 1257 (3rd Cir., 1971).

The above cases state that a class-based animus towards first amendment conduct and activities meets the Novotny, supra, requirements that § 1985(3) conspiracies are alleged when there is animus directed towards any of the "fundamental rights derived from the Constitution."

Therefore, the complaint herein properly states a § 1985(3) conspiracy cause of action.

The memorandum of the defendants implies that the class did not coalesce until the alleged illegal conduct of the defendants occurred. This could not be further from the truth. This class of anti-apartheid protestors began organizing in July of 1981. The Coalition and its national affiliate (S.A.R.T.) Stop the Apartheid Rugby Team had stated purposes and goals. This all existed prior to September 21, and September 22, 1981 and was independent of any actions taken or contemplated by the defendants at that time. In Lopez v. Arrowhead, 523 F.2d 924 (9th Cir., 1975), relied on by the

defendants the plaintiffs were a class of victims who did not receive certain employment from the defendants. Their common class identity was that they were victimized by alleged tortious conduct of the defendants. This is not analogous to the allegations herein of plaintiff's complaint.

Likewise, Rodgers v. Tolson, 582 F.2d 315 (4th Cir., 1978) cited by defendant is not an analogous situation. In Rodgers the two plaintiffs were husband and wife and were complaining of a certain sewer system installed across the northwest side of their property which allegedly yielded no benefit. In that case, the court held that as the terms which were used to describe the plaintiffs included no one else and as not even the plaintiffs could identify any other targets of this alleged animus, there was no § 1985(3) conspiracy cause of action.

The complaint herein is distinguished because there is not an allegation of a one-person class but rather allegations of a group of people subject to the animus of the defendants.

The defendants further postulate that the § 1985(3) claim must fail because it lacks allegation of invidious discrimination. (Emphasis used in defendants' memorandum.) A common meaning of invidious discrimination is discrimination or disparate treatment that is offensive. The allegations of the complaint allege a course of conduct by the defendants that is in derrogation of fundamental constitutional rights.

The complaint alleges that the defendants conspired to obtain a search warrant based on untrue and perjured statements, kept people in jail unlawfully, spread false rumors of violence and planned confrontations, and engaged in a general course of

conduct designed to interfere or thwart a demonstration of national significance.

These factual allegations of defendants' gross disregard of plaintiffs' rights in clear violation of the constitution and laws of the United States and the protections commonly afforded other protestors meets any requirement to articulate the invidious nature of defendants' actions.

The cases relied on by the defendant are not to the contrary. A & A Concrete Inc. v. White Mountain Apache Tribe, 676 F.2d 1330 (9th Cir., 1982) alleges that non-Indian defendants sued in tribal courts were treated like Indian defendants. The Court ruled there must be facts of invidiousness to support the plaintiffs' § 1985(3) conspiracy claims. Aldabe v. Adlabe, 616 F.2d 1089 (9th Cir., 1980) is a pro se complaint complaining of an unfair divorce settlement. Ligon v. State, 448 F. Supp. 935 (D. Md., 1977) complains of a rezoning of a single parcel. In all of these cases there is alleged no course of conduct that is in derrogation of any fundamental right or any right or privilege commonly afforded to another group or individual.

The complaint makes quite clear the invidious nature of defendants' conduct. The complaint properly states a § 1985(3) claim and the defendants should be directed to answer forthwith.

POINT II: THE COMPLAINT STATES A CLAIM UNDER 42 U.S.C. § 1986.

The plaintiffs agree that this cause of action is derivative of a § 1985 conspiracy claim. Plaintiffs' complaint states a § 1985(3) complaint and therefore meets the necessary statutory pre-requisite. (See Point I, Part B of this memo.)

Plaintiffs' complaint alleges that certain aspects of the conspiracy by the defendants is on-going. (See Point V of this memo, pages 22 to 26 .) Therefore, the one (1) year statute of limitations has not yet run and the Court cannot hold that the action is time barred. Thompson v. State, 487 F. Supp. (N.D. N.Y., 1979).

POINT III; THE FEDERAL DEFENDANTS ARE NOT ABSOLUTELY IMMUNE FROM LIABILITY FOR COMMON LAW TORTS.

The federal defendants invoke Barr v. Matteo, 360 U.S. 564 (1959), and claim they are absolutely immune from liability for common law torts.

The significance and holding in Barr was closely analyzed in Butz v. Economu, 438 U.S. 478 (1978). In Butz the Court rejected the argument that federal officials are all absolutely immune from "constitutional" tort liability. Id at 505-506. "...a federal official may not with impunity ignore the limitations which the controlling law has placed on his powers." Id at 488. However, the decision was expressly limited to constitutional violations, and did not address the level of immunity of federal officials for common law torts. Id at 495, foot note 22.

Plaintiff has found no Supreme Court decision which answers the question of immunity of federal officials for non-constitutional torts.

The law in the Second Circuit is that federal officials are absolutely immune from liability for "alleged torts based upon acts committed within the scope of their official duties requiring the exercise of judgment or discretion." Huntington Towers Ltd. v. Franklin National Bank, 559 F2d 863, 870 (2d Cir. 1977).

Plaintiff believes that when this immunity issue is considered by the Supreme Court, that defendants such as Daly and Rose will be afforded only qualified immunity from tort liability.

The Court's analysis of Barr in its Butz v. Economu opinion reached the conclusion that Barr allowed absolute immunity only for conduct which was within the scope of the official's authority (albeit at its outer limit). Butz v. Economu, supra, 438 U.S. at 489.

> Barr did not, therefore, purport to depart from the general rule, which long prevailed, that a federal official may not with impunity ignore the limitations which the controlling law has placed on his powers. The immunity of federal executive officials began as a means of protecting them in the execution of their federal statutory duties from criminal or civil actions based on state law. See Osborn v. Bank of the United States, 9 Wheat. 738, 865-866 (1824). A federal official who acted outside of his federal statutory authority would be held strictly liable for his trespassory acts. For example, Little v. Barreme, 2 Cranch 170 (1804), held the commander of an American warship liable in damages for the seizure of a Danish cargo ship on the high seas. Congress had directed the President to intercept any vessels reasonably suspected of being en route to a French port, but the President had authorized the seizure of suspected vessels whether going to or from a forbidden destination. The Court, speaking through Mr. Chief Justice Marshall, held that the President's instructions could not "change the nature of the transaction, or legalize an act which, without those instructions, would have been a plain trespass." Id, at 179. Although there was probable cause to believe that the ship was engaged in traffic with the French, the seizure at issue was not among that class of seizures that the Executive had been authorized by statute to effect. See also Wise v. Withers, 3 Cranch 331 (1806).
>
> Bates v. Clark, 95 U.S. 204 (1977), was a similar case. The relevant statute directed seizures of

alcoholic beverages in Indian country, but the seizure at issue, which was made upon the orders of a superior, was not made in Indian country. The "objection fatal to all this class of defenses is that in that locality (the seizing officers) were utterly without any authority in the premises" and hence were answerable in damages. Id., at 209.

> As these cases demonstrate, a federal official was protected for action tortious under state law only if his acts were authorized by controlling federal law. To make out his defense he must show that his authority was sufficient in law to protect him. Cunningham v. Macon & Brunswick R. Co., 109 U.S. 446, 452 (1883); Belkap v. Schild, 161 U.S. 10, 19 (1896). Since an unconstitutional act, even if authorized by statute, was viewed as not authorized in contemplation of law, there could be no immunity defense. See United States v. Lee, 106 U.S. 196, 218-223 (1882); Virginia Coupon Cases, 114 U.S. 269, 285-292 (1885). Butz v. Economu, supra, 438 U.S. at 488-490.

The Court in Butz was willing to require federal officials to account in a court of law for their alleged constitutional torts. At least constitutional violations were considered unauthorized "in contemplation of law." The intentional torts of false arrest and imprisonment, malicious prosecution and abuse of process are similarly acts unauthorized by law. No federal law permits the commission of these violations of plaintiff's rights, any more than transgression of their constitutional equivalents are authorized.

Congress has also decided that soverign immunity should be waived for intentional torts committed by investigative or law enforcement officers, including "assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution." 28 U.S.C. §2680(h) (as amended

March 16, 1974, Pub. L. 92-253, §2, 88 Stat. 50).

The rationale behind immunity is two fold:

> (1) the injustice, particularly in the absense of bad faith, of subjecting to liability an officer who is required, by the legal obligations of his position, to exercise discretion; (2) the danger that the threat of such liability would deter his willingness to execute his office with the decisiveness and the judgment required by the public good. Scheuer v. Rhodes, 416 U.S. 232, 240 (1974).

The Court in Butz considered these factors to be insufficient to justifying allowing official misconduct to be unchecked through damage actions. Since federal officials, including F.B.I. agents, are subject to personal liability for constitutional torts, and do have to justify their exercise of discretion and judgment in office, the "injustice" and "danger" perceived in a denial of absolute immunity are no longer viable. The balance has been struck in favor of allowing a victim of federal lawless to seek compensation while affording the federal official the shield of a good faith defense.

The policy which once justified protecting federal law enforcement officials from liability for these intentional torts can no longer be sustained in the wake of Butz, and in the wake of the amendment to the Federal Tort Claim Act which now compels these law enforcement officials to defend their intentional tortious conduct. With these significant changes in the law, since Barr v. Mateo, supra was decided, the federal defendants ought to be allowed only qualified immunity from liability for false arrest and imprisonment, malicious prosecution and abuse of process.

mc

8/11/83

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,

82-CV-1413
Hon. Roger J. Miner

-against-

PAUL DALY, AGENT IN CHARGE, FEDERAL BURREAU OF INVESTIGATION: ET AL,

Defendants.

Answering defendants demand a jury trial.

The defendants, 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 and the County of Albany (hereinafter referred to as Albany County Defendants) for an answer to the amended complaint herein:

FIRST: Denies any knowledge or information sufficient to form a belief thereof as to the allegations, claims and statements contained in the paragraphs of the amended complaint herein numbered "15".

SECOND: Denies each and every allegation, claim and statement contained in the paragraphs of the amended complaint herein numbered "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12"; "13", "16" and "17", except that the Albany County Defendants refer to the Order referred to in paragraph "1" of the plaintiffs' amended complaint and state that they were never put on notice of the motion which resulted in said Order and never had an opportunity to be heard on said motion and the Albany County Defendants refer all questions of law to the Court and refer to the complaint referred to in paragraph "3" of the plaintiffs' amended complaint

and the answer thereto filed and served on behalf of the Albany County Defendants for all the claims, statements, allegations, admissions, denials and affirmative defenses set forth therein and the Albany County Defendants state that the charges referred to in paragraph "5" of the plaintiffs' amended complaint were on or about December 8, 1981, dismissed in the interest of justice and the Albany County Defendants refer to the decision of the Appealate Division of New York State Supreme Court, Third Judicial Department referred to in paragraph "7" of the plaintiffs' amended complaint for the sum and substance of same.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE
IN DIMINUTION OF DAMAGES AS TO THE
PLAINTIFFS' AMENDED COMPLAINT, THE
ALBANY COUNTY DEFENDANTS ALLEGE:

THIRD: That the injuries and damages mentioned and described in the plaintiffs' amended complaint were caused in whole or in part by the contributory negligence, lack of ordinary care, assumption of risk and/or culpable conduct of the plaintiffs and without any negligence or carelessness on the part of the Albany County Defendants contributing thereto.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
AS TO THE PLAINTIFFS' AMENDED COMPLAINT,
THE ALBANY COUNTY DEFENDANTS ALLEGE:

FOURTH: That at those times mentioned and described in the plaintiffs' amended complaint, the Albany County Defendants acted in a reasonable manner, with probable cause, in good faith, without malice and their actions were justified.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE
AS TO THE PLAINTIFFS' AMENDED COMPLAINT,
THE ALBANY COUNTY DEFENDANTS ALLEGE:

FIFTH: That at those times mentioned and described in the plaintiffs' amended complaint the defendant, Albany County District Attorney Sol Greenberg,

Albany County Assistant District Attorney Joseph Donnelly, Albany County Assistant District Attorney John Dorfman, and unknown other Albany County District Attorneys were quasi judicial officers acting in their official capacity and, therefore, they and the County of Albany are immune from any and all liability in this action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
AS TO THE PLAINTIFFS' AMENDED COMPLAINT,
THE ALBANY COUNTY DEFENDANTS ALLEGE:

SIXTH: That the plaintiffs' amended complaint fails to state a claim upon with relief can be granted.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
AS TO THE PLAINTIFFS' AMENDED COMPLAINT,
THE ALBANY COUNTY DEFENDANTS ALLEGE:

SEVENTH: That the defendants, the County of Albany and Albany County District Attorney Sol Greenberg may not be held liable for the conduct of their employees under the doctrine of respondeat superior.

WHEREFORE, the Albany County Defendants demand judgment dismissing the amended complaint herein with costs.

CARTER, CONBOY, BARDWELL,
CASE & BLACKMORE

BY /s/
JAMES C. BLACKMORE
Attorneys for Defendants
Albany County Defendants
74 Chapel Street
Albany, NY 12207

Mike

U.S. Department of Justice

8/26/83

United States Attorney
Northern District of New York

United States Courthouse and Post Office
Albany, New York 12207

518/472-5522
FTS/562-5522

August 26, 1983

Anita Thayer, Esq.
Walter & Thayer
69 Columbia Street
Albany, New York 12207

Re: Michelson, et al v. Daly, et al
Civil No. 82-CV-1413

Dear Ms. Thayer:

Enclosed are copies of Answers of Defendants Daly and Rose, filed August 25, 1983 with the Clerk, U.S. District Court in the above-captioned matter.

Very truly yours,

FREDERICK J. SCULLIN, JR.
UNITED STATES ATTORNEY

BY:

WILLIAM P. FANCIULLO
ASSISTANT U.S. ATTORNEY

WPF/mat
Enclosures
cc: John Shea, Esq.
Carter, Conboy, Bardwell, Case & Blackmore
Lewis Oliver, Esq.
(w/enclosures)

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,

v.

PAUL DALY, JAMES J. ROSE, and UNKNOWN OTHER AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, ET AL,

Defendants.

Copy

ANSWER OF DEFENDANT DALY

Civil No. 82-CV-1413

(Hon. Roger J. Miner)

PAUL DALY, Special Agent In Charge, Federal Bureau of Investigation, by his attorney, Frederick J. Scullin, Jr., United States Attorney for the Northern District of New York, William P. Fanciullo, Assistant U.S. Attorney, of counsel, as and for his Answer to the amended complaint herein, states as follows:

1. Defendant DALY denies all of the allegations set forth in paragraphs 4, 6, 8, 10, 11, 12, 14, 16 and 17 of the amended complaint.

2. Defendant DALY lacks knowledge or information sufficient to form a belief as to the truth of all averments in paragraphs 2, 5, 7, 9, 13 and 15 of the amended complaint.

3. Defendant admits the allegations contained in paragraph 1 of the amended complaint.

As his answer to paragraph 3 of the amended complaint, defendant responds by answering all allegations in the complaint, below.

PAUL DALY, Special Agent In Charge, Federal Bureau of Investigation, as and for his answer to the complaint herein, states as follows:

4. Defendant DALY denies all of the allegations set forth in paragraphs 7, 26, 30, 32, 34, 40, 41, 44, 50, 51, 55, 59, 61, 71, 73, 74, 75, 76, 77, 79, 80, 81, 83, 86, 87, 89, 91, 92, 101, 102, 103, 105, 106, 107, 108, 109, 110, 112, 113, 114 and 115 of the complaint.

5. Defendant DALY is without knowledge or information sufficient to form a belief as to the truth of all averments in paragraphs 1, 4, 5, 10, 11, 16, 17, 21, 23, 27, 31, 39, 42, 43, 45, 46, 48, 49, 53, 54, 57, 58, 62, 63, 65, 66, 67, 68, 69, 70, 85, 94, 95, 96, 97, 98, 99, 100 and 104 of the complaint.

6. Defendant DALY denies all allegations in paragraph 2 of the complaint except to state that defendant lacks knowledge or information sufficient to form a belief as to the truth of all averments in the first sentence of paragraph 2.

7. Regarding paragraphs 3 and 18 of the complaint, defendant DALY states that these paragraphs contain legal conclusions as to which no answers are required. To the extent an answer is deemed necessary, the allegations in paragraphs 3 and 18 are denied.

8. Defendant DALY admits the truth of all allegations in paragraphs 6, 12, 13, 14, 15 and 38 of the complaint.

9. Regarding paragraphs 8 and 9 of the complaint, defendant DALY lacks information or knowledge sufficient to form a belief as to the truth of allegations therein, except to admit, upon information

and belief, that Sol Greenberg is the Albany County District Attorney, and Joseph Donnelly was an Assistant District Attorney of Albany County.

10. Defendant DALY cannot understand the allegation with respect to "capacity" in paragraph 19, therefore such allegation is denied. All other allegations in paragraph 19 are also denied.

11. Defendant DALY cannot understand the allegation in paragraph 20, which appears to be an incomplete sentence, therefore defendant denies all allegations in paragraph 20.

12. Regarding the allegations set forth in paragraph 22 of the complaint, defendant DALY denies any such surveillance by defendant or the Federal Bureau of Investigation or at the request of defendant DALY. Defendant lacks knowledge or information sufficient to form a belief as to the truth of all other averments in paragraph 22, including those with respect to other defendants or agencies.

13. Defendant DALY denies all allegations in paragraph 24 of the complaint, except to specifically admit that on September 21, 1981, at the Hyatt House, a discussion took place including PAUL DALY, James Rose, John Reid and William Murray involving information from an FBI informant regarding violence expected to be engaged in by members of the Communist Workers Party.

14. Regarding the allegations in paragraph 25 of the complaint, defendant DALY admits that Spearman was arrested on September 21, 1981. Defendant DALY lacks knowledge or information sufficient to

form a belief as to the truth of all other allegations in the first sentence of paragraph 25, and as to all allegations in the second sentence of paragraph 25.

15. Defendant DALY denies all allegations in paragraph 28 of the complaint, except to admit that on or about September 21, 1981 Joseph Donnelly assisted in the preparation of and application for a search warrant, and Donnelly typed the application for a search warrant. Defendant DALY lacks information or knowledge sufficient to form a belief as to the truth of averments regarding the capacity Donnelly was working in.

16. Defendant DALY denies all allegations in paragraph 29 of the complaint, except to specifically admit that on or about September 21, 1981 defendant Rose provided information from an FBI informant to Joseph Donnelly and other law enforcement officers regarding weapons in Apartment 7K.

17. Regarding the allegations in paragraph 33 of the complaint, defendant DALY states that the search warrant application speaks for itself. To the extent an answer to paragraph 33 of the complaint is required, paragraph 33 is denied.

18. Regarding paragraph 35 of the complaint, defendant DALY states that the search warrant affidavit speaks for itself and the affidavit is based, in part, on information from an informant. Defendants DALY and Rose did provide information to other law enforcement agents, but lack knowledge or information as to all of their identities. All other allegations in paragraph 35 are denied.

19. Regarding paragraph 36 of the complaint, defendant DALY states that the warrant application speaks for itself, and admits that the warrant application does not specifically state the manner in which the information was acquired by the informant. All other allegations in paragraph 36 are denied.

20. Defendant DALY denies all allegations in paragraph 37 of the complaint, and specifically states that the FBI did provide information to Albany Police Officials and states that he is without knowledge or information sufficient to form a belief as to whether Detective Tanchak was directly provided with such information from the FBI.

21. Defendant DALY lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the complaint except to admit upon information and belief, that defendant Rose and one other agent of the Federal Bureau of Investigation were present at Apartment 7K on September 22, 1981.

22. As his answer to paragraph 52 of the complaint, defendant incorporates herein and reaffirms his answers to paragraphs 1 through 51 of the complaint, set forth herein.

23. Regarding paragraph 56 of the complaint, defendant DALY denies all averments in the first sentence of paragraph 56. Defendant lacks knowledge or information sufficient to form a belief as to the truth of all averments in the second sentence of paragraph 56.

24. As his answer to paragraph 60 of the complaint, defendant incorporates herein and reaffirms his answers to paragraphs 1 through

59 of the complaint, set forth herein.

25. Regarding paragraph 64 of the complaint, defendant DALY denies that he participated in any such discussion or agreement, and lacks knowledge or information sufficient to form a belief as to the truth of all remaining allegations in paragraph 64 of the complaint.

26. As his answer to paragraph 72 of the complaint, defendant incorporates herein and reaffirms his answers to paragraphs 1 through 71 of the complaint, set forth herein.

27. As his answer to paragraph 78 of the complaint, defendant incorporates herein and reaffirms his answers to paragraphs 1 through 77 of the complaint, as set forth herein.

28. As his answer to paragraph 82 of the complaint, defendant incorporates herein and reaffirms his answers to paragraphs 1 through 81 of the complaint, as set forth herein.

29. As his answer to paragraph 84 of the complaint, defendant incorporates herein and reaffirms his answers to paragraphs 1 through 83 of the complaint, as set forth herein.

30. As his answer to paragraph 88 of the complaint, defendant incorporates herein and reaffirms his answers to paragraphs 1 through 87 of the complaint, as set forth herein.

31. As his answer to paragraph 90 of the complaint, defendant incorporates herein and reaffirms his answers to paragraphs 1 through 89 of the complaint, as set forth herein.

32. As his answer to paragraph 93 of the complaint, defendant incorporates herein and reaffirms his answers to paragraphs 1 through

92 of the complaint, as set forth herein.

33. As his answer to paragraph 111 of the complaint, defendant incorporates herein and reaffirms his answers to paragraphs 1 through 110 of the complaint, as set forth herein.

34. Defendant denies all allegations in the complaint and the amended complaint not heretofore specifically admitted.

As And For Separate Affirmative Defenses
To The Complaint And The Amended Complaint Herein,
The Defendant Alleges As Follows

35. Defendant is entitled to Qualified Immunity.

36. Defendant is entitled to Absolute Immunity.

37. Defendant at all times acted in good faith.

38. Res judicata and/or collateral estoppel are applicable.

39. Plaintiff's action was not commenced within the statute of limitations.

40. Any alleged injuries of plaintiff were caused by the culpable conduct of the plaintiff and/or other persons over whom this defendant has no control.

41. Defendant acted reasonably at all times.

42. Defendant did not engage in state action.

43. Plaintiff acted illegally.

WHEREFORE, defendant demands judgment dismissing the complaint and the amended complaint, together with costs and disbursements of

defending this action, and such other and further relief which this court deems just and proper.

Respectfully submitted,

FREDERICK J. SCULLIN, JR.
UNITED STATES ATTORNEY

BY:

WILLIAM P. FANCIULLO
ASSISTANT U.S. ATTORNEY

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,

v.

PAUL DALY, JAMES J. ROSE, and UNKNOWN OTHER AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, ET AL,

Defendants.

ANSWER OF DEFENDANT ROSE

Civil No. 82-CV-1413

(Hon. Roger J. Miner)

JAMES J. ROSE, Special Agent, Federal Bureau of Investigation, by his attorney, Frederick J. Scullin, Jr., United States Attorney for the Northern District of New York, William P. Fanciullo, Assistant U.S. Attorney, of counsel, as and for his Answer to the amended complaint herein, states as follows:

1. Defendant ROSE denies all of the allegations set forth in paragraphs 4, 6, 8, 10, 11, 12, 14, 16 and 17 of the amended complaint.

2. Defendant ROSE is without knowledge or information sufficient to form a belief as to the truth of all averments in paragraphs 2, 5, 7, 9, 13 and 15 of the amended complaint.

3. Defendant admits the allegations contained in paragraph 1 of the amended complaint.

As his answer to paragraph 3 of the amended complaint, defendant responds by answering all allegations in the complaint, below.

JAMES J. ROSE, Special Agent, Federal Bureau of Investigation, as and for his answer to the complaint herein, states as follows:

4. Defendant ROSE denies all of the allegations set forth in paragraphs 7, 26, 30, 32, 34, 40, 41, 44, 50, 51, 55, 59, 61, 71, 73, 74, 75, 76, 77, 79, 80, 81, 83, 86, 87, 89, 91, 92, 101, 102, 103, 105, 106, 107, 108, 109, 110, 112, 113, 114 and 115 of the complaint.

5. Defendant ROSE is without knowledge or information sufficient to form a belief as to the truth of all averments in paragraphs 4, 5, 11, 16, 17, 21, 23, 27, 31, 39, 42, 43, 45, 54, 57, 58, 62, 63, 65, 66, 67, 68, 69, 70, 85, 94, 95, 96, 97, 98, 99, 100 and 104 of the complaint.

6. Regarding paragraph 1 of the complaint, defendant ROSE denies all allegations in paragraph 1 of the complaint except to admit that on September 22, 1981 at about 3:00 a.m. an apartment at 400 Central Avenue was entered by state, local and federal law enforcement officers and searched, pursuant to a search warrant. Three occupants of the apartment were placed under arrest. Defendant ROSE lacks knowledge or information sufficient to form a belief as to the specific charges against these three persons, where they were incarcerated, the effect, if any, of this incarceration, and the disposition of such charges.

7. Defendant ROSE denies all allegations in paragraph 2 of the complaint except to state that defendant lacks knowledge or information sufficient to form a belief as to the truth of all averments in the first sentence of paragraph 2.

8. Regarding paragraphs 3 and 18 of the complaint, defendant ROSE states that these paragraphs contain legal conclusions as to which no answer is required. To the extent an answer is deemed necessary, the allegations in paragraphs 3 and 18 are denied.

9. Defendant ROSE admits the truth of all allegations in paragraphs 6, 12, 13, 14, 15 and 38 of the complaint.

10. Regarding paragraphs 8 and 9 of the complaint, defendant ROSE lacks information or knowledge sufficient to form a belief as to the truth of allegations therein, except to admit, upon information and belief, that Sol Greenberg is the Albany County District Attorney, and Joseph Donnelly was an Assistant District Attorney of Albany County.

11. Defendant ROSE lacks knowledge or information sufficient to form a belief as to the truth of all averments in paragraph 10 of the complaint except to admit on information and belief, that John Dorfman was an Assistant District Attorney of Albany County.

12. Defendant ROSE cannot understand the allegation with respect to "capacity" in paragraph 19, therefore such allegation is denied. All other allegations in paragraph 19 are also denied.

13. Defendant ROSE cannot understand the allegation in paragraph 20, which appears to be an incomplete sentence, therefore defendant denies all allegations in paragraph 20.

14. Regarding the allegations set forth in paragraph 22 of the complaint, defendant ROSE denies any such surveillance by defendant

or the Federal Bureau of Investigation or at the request of defendant ROSE. Defendant lacks knowledge or information sufficient to form a belief as to the truth of all other averments in paragraph 22, including those with respect to other defendants or agencies.

15. Defendant ROSE denies all allegations in paragraph 24 of the complaint, except to specifically admit that on September 21, 1981, at the Hyatt House, a discussion took place including Paul Daly, JAMES ROSE, John Reid and William Murray involving information from an FBI informant regarding violence expected to be engaged in by members of the Communist Workers Party.

16. Regarding the allegations in paragraph 25 of the complaint, defendant ROSE admits that Spearman was arrested on September 21, 1981. Defendant ROSE lacks knowledge or information sufficient to form a belief as to the truth of all other allegations in the first sentence of paragraph 25, and as to all allegations in the second sentence of paragraph 25.

17. Defendant ROSE denies all allegations in paragraph 28 of the complaint, except to admit that on or about September 21, 1981 Joseph Donnelly assisted in the preparation of and application for a search warrant, and Donnelly typed the application for a search warrant. Defendant ROSE lacks information or knowledge sufficient to form a belief as to the truth of averments regarding the capacity Donnelly was working in.

18. Defendant ROSE denies all allegations in paragraph 29 of the complaint, except to specifically admit that on or about