the raiding party consisting of 20 law enforcement officers from the City of Albany Police Department, Albany County Sheriff, State troopers, and FBI agents who entered the apartment with guns drawn; the decision to search, seize, and arrest all the occupants;[7] the secret meeting between Donnelly, Police Court Judge Keegan, and other high Albany officials prior to plaintiff's arraignment; and the decision, specifically communicated by Donnelly, to deny plaintiff bail in violation of New York law[8] all reflected a policy decision to illegally search and seize plaintiff and illegally prevent plaintiff from attending the Springboks rugby protest. Donnelly, Greenberg, and Dorfman functioned at a policy making level. Their involvement in the unconstitutional course of conduct establishes the direct liability of Albany County for plaintiffs' damages; the County's liability is direct and not imputed, and there is no immunity. Monell v. New York City Department of Social Services, supra, 436 U.S. at 690-691; Owen v. City of Independence, supra, 445 U.S. at 650-656; Turpin v. Mailet, 579 F. 2d 152 (2nd Cir. 1978) (en banc) ("Turpin I"); Turpin v. Mailet, 619 F. 2d 196, 200 (2nd Cir. 1980) ("Turpin II"); Redcross v. Rensselaer County, supra, 571 F. Supp. 364.

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[7] When the raiding party broke in, all the occupants of Apartment 7K were asleep. Police allegedly found eight common firecrackers inside a closet and a small amount of marijuana in a container on a shelf. All charges against plaintiff Michelson were subsequently dismissed in Albany Police Court on December 8, 1981.

[8] Plaintiff Michelson was charged with violation of P.O. 221.05 and P.L. 270.00(2)(b)(i), both charges being classified as a violation under New York law. A violation is not a crime, and the maximum sentence for a violation is 15 days. P.L. 10.00(3),(6). A defendant is entitled to bail as a matter of right when charged with only a violation. C.P.L. 170.10(7), 530.20(1). As a result of a policy decision, bail was denied at arraignment and plaintiff was in county jail three days without any bail set.

B. Punitive Damages

Whether punitive damages can be awarded in a 1983 action is a matter for determination under federal substantive law. Punitive damages, like the question of immunity, does not depend on state law. Federal standards govern the determination of damages under the federal civil rights statutes. See 42 U.S.C. 1988; Sullivan v. Little Hunting Park, Inc. 396 U.S. 229, 238- 240 (1969); Garrick v. City and County of Denver, 652 F. 2d 969, 971 (10th Cir. 1981); Furtado v. Bishop, 604 F. 2d 80, 96-97 (1st Cir. 1979) cert. denied, 444 U.S. 1035 (1980); Martin v. Duffie, 463 F. 2d 464, 467 (10th Cir. 1972); see also Carey v. Piphus, 435 U.S. 247, 257-259, (1978).

Punitive damages may be awarded under 1983 even where they would not normally be recoverable under the local law in the state where the violation occurred.[9] Garrick v. City and County of Denver, supra, 652 F. 2d at 971; McCulloch v. Glasgow, 620 F. 2d 47, 51 (5th Cir. 1980); Caperci v. Huntoon, 397 F. 2d 799, 801 (1st Cir.), cert. denied, 393 U.S. 940 (1968).

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[9] The only punitive damages case cited by movants is a state court decision [Sharapata v. Town of Islip, 56 N.Y. 2d 332 (1982)] which is not relevant to a 1983 claim.

With respect to the County of Albany only, plaintiff concedes that movant is correct and the County of Albany is not liable for punitive damages in the 1983 action set forth in the first claim. Although 1983 treats a municipality as a natural person subject to suit for a wide range of tortious activity, Congress did not intend to extend the award of punitive damages against municipalities. Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981).[10]

With respect to the named individuals Donnelly, Greenberg, and Dorfman, there is abundant federal precedent that public officials can be personally liable for punitive damages for violation of civil rights under 1983:

> Moreoever, there is available a more effective means of deterrence. By allowing juries and courts to assess punitive damages in appropriate circumstances against the offending official, based on his personal financial resources, the statute directly advances the public's interest in preventing repeated constitutional deprivations.
>
> Newport v. Fact Concerts, Inc., supra, 453 U.S. at 269.

Numerous federal Circuit Courts of Appeal have held that punitive damages can be awarded against public officers under 1983. E.g. Wade v. Haynes, 663 F. 2d 778, 784-786 (8th Cir. 1981) ($5,000 punitive damage award sustained against state correction officer); Garrick v. City and County of Denver,

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[10] However, the Newport case restates that a municipality can not assert the good faith of its officers or agents as a defense to liability for compensatory damages. Newport v. Fact Concerts, Inc., supra, 453 U.S. at 259.

supra. 652 F. 2d 969 ($70,000 punitive damage award sustained against police officer); Scott v. Plante, 641 F. 2d 117, 135 (3rd Cir. 1981); Harris v. Harvey, 605 F. 2d 330, 340 (7th Cir. 1979), cert. denied 445 U.S. 938 (1980) (punitive damages sustained against municipal judge); Fielder v. Bosshard, 590 F. 2d 105, 111 (5th Cir. 1979) (punitive damages sustained against county sheriff); Clappier v. Flynn, 605 F. 2d 519, 533 (10th Cir. 1979); Konezak v. Tyrrell, 603 F. 2d 13, 17 (7th Cir. 1979), cert. denied, 444 U.S. 1016 (1980); Morrow v. Igleburger, 584 F. 2d 767, 769 (6th Cir. 1978), cert. denied 439 U.S. 1118 (1979); Cochetti v. Desmond, 572 F. 2d 102, 105 (3rd Cir. 1978); Guzman v. Western State Banks, 540 F. 2d 948, 953 (8th Cir. 1976); Spence v. Staras, 507 F. 2d 554 (7th Cir. 1974); Smith v. Losee, 485 F. 2d 334, 345 (10th Cir. 1973), cert. denied, 417 U.S. 908 (1974). There are ample grounds stated in the complaint for the jury to award punitive damages against the three individual defendants herein.

POINT II. IN THE SEVENTH, EIGHTH, AND NINTH CLAIMS OF THE COMPLAINT ALLEGING MALICIOUS PROSECUTION, ABUSE OF PROCESS, AND FALSE ARREST AND IMPRISONMENT UNDER PENDENT JURISDICTION, THE DEFENDANTS COUNTY OF ALBANY, ALBANY COUNTY DISTRICT ATTORNEY SOL GREENBERG, AND ASSISTANT DISTRICT ATTORNEYS JOSEPH DONNELLY AND JOHN DORFMAN DO NOT, UNDER APPLICABLE NEW YORK LAW, HAVE ABSOLUTE IMMUNITY FOR TORTS COMMITTED IN PERFORMANCE OF THE INVESTIGATIVE FUNCTION OF THEIR OFFICE. ALTHOUGH THE COUNTY OF ALBANY IS NOT LIABLE FOR PUNITIVE DAMAGES, THE INDIVIDUAL DEFENDANTS DONNELLY, GREENBERG AND DORFMAN ARE LIABLE UNDER NEW YORK LAW FOR PUNITIVE DAMAGES ALLEGED IN THE TORT CLAIMS.

The Seventh, Eighth and Ninth claims of the complaint state causes of action for malicious prosecution, abuse of process, and false arrest and imprisonment against the 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 District Attorneys, while acting in concert with each other and with others. The state tort claims are made in federal court pursuant to pendant jurisdiction. Again, the named individuals are each sued individually and in their official capacity.

A. Immunity

With respect to the County of Albany, the movants' papers do not assert that the County of Albany is immune from this civil action. The moving papers assert only that the District Attorney is immune, not that the county is immune. Indeed, New York statutory law provides that a county is liable for torts such as false imprisonment, false arrest, and malicious prosecution committed by county officers. County Law 53, 54;

Public Officers Law 18(4)(a). A District Attorney or Assistant District Attorney is such a county officer for whose torts the county is liable. Drake v. City of Rochester, 96 M. 2d 86 (S.C., Monroe Co., 1978); cf. Barr v. Albany County, 50 N.Y. 2d 247 (1980). Thus, the County of Albany is not immune in this action.

With respect to the named individuals Donnelly, Greenberg, and Dorfman, New York law is that where a District Attorney is engaged in essentially police activity, then the District Attorney or Assistant District Attorney do not possess absolute immunity. Investigation is outside the scope of the quasi-judicial function of the prosecutor, and a District Attorney engaged in what is essentially police work has only a qualified good faith immunity. Drake v. City of Rochester, supra, 96 M. 2d 86.

There is nothing in the decision cited in the moving papers to the contrary, and in fact Schanbarger v. Kellogg, 35 A.D. 2d 902 (3rd Dept. 1970), mot. for lv. to ap. denied, 36 N.Y. 2d 485, cert. denied 405 U.S. 919, adheres to the traditional distinction between the investigative and quasi-judicial functions of the District Attorney. In Schanbarger, the defendant was arrested by a state trooper and the acts of the Assistant District Attorney complained of by the plaintiff occurred after the plaintiff was already in the Justice Court. The motion for a psychiatric examination by the Assistant District Attorney was made in the courtroom and was clearly quasi-judicial. Schanbarger v. Kellogg, supra, 35 A.D. 2d at 902.

Mr. Greenberg, as the Albany County District Attorney, is liable for the official acts of his Assistant District Attorneys Donnelly and Dorfman. Drake v. City of Rochester, supra, 96 M. 2d 86.

B. Punitive Damages

With respect to the County of Albany only, plaintiff concedes that movant is correct and the County of Albany is not liable for punitive damages for the torts set forth in the Seventh, Eighth and Ninth claims. Sharapata v. Town of Islip, 56 N.Y. 2d 332 (1982).

However, with respect to the named individuals Donnelly, Greenberg, and Dorfman, New York law is that public officials may be personally liable for punitive damages. Although the County is not liable to indemnify a District Attorney for punitive damages, the District Attorney or Assistant District Attorney is personally liable for a judgment of punitive damages. Public Officers Law 18(4)(a),(c).

POINT III: THE CAPITAL DISTRICT COALITION AGAINST APARTHEID AND RACISM HAS STANDING TO MAINTAIN THIS ACTION.

Defendants Greenberg, Donnelly, Dorfman, and unknown other Assistant District Attorneys move to dismiss the complaint of the Capital District Coalition Against Apartheid and Racism on the ground that the Coalition lacks standing to maintain this action. Whether applied to individuals or organizations, there are two basic prongs to the question of standing: (1) ". . . the plaintiff himself has suffered 'some threatened or actual injury resulting from the putatively illegal action. . .'". Warth v. Seldin, 422 U.S. 490, 499 (1975); and (2)". . .the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief." Warth v. Seldin, supra, 422 U.S. at 500.

With reference to an association, there are three grounds upon which standing may be premised: The motion papers refer to one ground which is that an association must demonstrate discriminatory conduct adversely affecting the associational ties of its members. The sole case cited by the defendants, Citizens Council on Human Relations v. Buffalo Yacht Club, 438 F. Supp. 310 (W.D.N.Y., 1977), does identify this basis for standing, but it also identifies the two other grounds for associational standing: (1) an association may have standing to seek judicial relief from injury to itself; and (2) an association may have standing solely in a representative capacity.

The Coalition has standing to bring this action on all three (3) grounds.

(1) Injury to Itself

In order to have standing for injury inflicted directly on the Coalition, it must allege that it suffered actual injury resulting from the puntatively illegal conduct, and that as an association it has the constitutional protection which allegedly was violated.[11] With regard to the constitutional rights of an association, the Coalition is protected by the First and Fourteenth Amendments. NAACP v. Clairborne, U.S. , 50 L.W. 5122, 5128 (1982); NAACP v. Alabama, 357 U.S. 449, 460 (1958). It has the right to bring people together to oppose apartheid and racism, and the right to protest, picket and demonstrate in a lawful manner to promote its objectives. NAACP v. Clairborne, Id; Edwards v. South Carolina, 372 U.S. 229, 235 (1963). In addition, freedom of association, and privacy in association have been closely linked. NAACP v. Alabama, supra, 357 U.S. at 462. It is these constitutionally protected rights that the defendants have violated causing direct and palpable injury to the Coalition.

The Coalition was the local initiator of a lawful march and assembly in Albany, New York on September 22, 1981, to protest the staging of a rugby game between a local team and the South African

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11 The Court "must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." Warth v. Seldin, 422 U.S. 490, 501 (1975).

Rugby Team, the Springboks, in Albany's municipal stadium. The Coalition had convened approximately forty (40) local civil rights, civic, student, labor, community and neighborhood organizations, and in coordination with a national effort sought to organize a massive demonstration in Albany to express the participants' moral abhorence for the racist institution of apartheid. Since the City of Albany was the only governmental entity permitting the internationally banned south African team to use a municipal facility or play a public game, it was the location of the national protest action. At all times the demonstration planned by the Coalition was intended to be a peaceful non-violent protest. The organization of the march from downtown Albany, to Bleeker Stadium, and the rally outside the Stadium were scheduled through communication with responsible law enforcement and governmental officials.

The right of the Coalition to organize and stage a demonstration against apartheid was directly and deliberately undermined by the defendants. By spreading false rumors about violence, the defendants intimidated people into not attending the rally and thereby reduced its size and effectiveness. (Par. 101-106). The unlawful arrest and confinement of Plaintiff Michelson and her house guests, including plaintiff Aaron Estis, in the companion case, added to the public impression that the rally organizers were criminals and violence prone. (Par. 107). The right of the Coalition to protect the privacy of its membership and their activities in

the organization was also infringed when plaintiff Michelson's apartment was entered and Coalition documents were confiscated. (Par. 56, 112, Exhibit B). Copies of these documents will be filed with the Court on the return date of the motion with the request that they be sealed.

For the injury suffered directly by the Coalition through the defendants' obstruction of the Coalition's right to exist and express itself, the Coalition has standing to bring this action.

(2) Injury Affecting Associational Ties of Members

Freedom of Association and privacy in association are closely linked. NAACP v. Alabama, supra, 357 U.S. at 462. Defendants' confiscation of lists of names, addresses and telephone numbers, list of petitioners with telephone numbers, a list of Committee assignments designating chairpersons with telephone numbers of committee members, and other organizational documents defeats the right of the Coalition and its members to conduct its affairs free from intimate governmental scrutiny. This gross intrusion by defendants into the internal operation of the Coalition and into the membership of the Coalition adversely affects the associational ties of its members, and gives the Coalition standing to sue on behalf of its members.

(3) In Representative Capacity

When a member of an association has standing, the association itself may bring the action in a representative capacity.

> In order to possess such representational standing, however, an association must allege that at least one of its members is suffering sufficient immediate or threatened injury to satisfy the requirement of standing had such member brought the suit himself. Warth v. Seldin, 422 U.S. at 511." Citizens Council on Human Relations v. Buffalo Yacht Club, supra, 438 F. Supp at 322.

Plaintiff Michelson, Michael Dollard, Chairman of the Coalition, and the other members of the Coalition have the same constitutional rights as the Coalition itself to organize and demonstrate in a lawful manner in opposition to apartheid. In the same sense that the defendants have infringed upon the First Amendment rights of the Coalition, they have also injured those same rights of the members of the Coalition. Since individual and organizational members of the Coalition were actually injured, and are constitutionally protected from the conduct of the defendants, each member would have standing to bring this action.

The Coalition was formed to coordinate the protest action on behalf of its organizational and individual members. As their representative, it made necessary plans for the action, and acted on behalf of the rally participants in dealing with governmental officials. In all matters relating to the demonstration, the Coalition spoke for its members. The Coalition therefore, has standing to bring this action in a representative capactiy on behalf of its individual and organizational constituents.

CONCLUSION

Plaintiff Michelson and the Coalition request that the motion to dismiss be denied in all respects except with regard to any claim for punitive damages against the County of Albany.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK CIVIL DIVISION

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

Plaintiffs,

-against-

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.

ANSWER

Civil File No. 82-CV-1413

Hon. Roger J. Miner

The defendant, John Tanchak, by his attorney, Vincent J. McArdle, Jr., Corporation Counsel for the City of Albany, as and for an answer to the plaintiffs' complaint, does hereby state and allege:

1. As to paragraph "1" of the plaintiffs' complaint, the defendant admits that certain law enforcement officials entered the plaintiff's apartment, with weapons pointed, seized certain items of personal property, and placed the plaintiff and two others under arrest. As to the balance of said paragraph, the defendant denies knowledge or information

sufficient to form a belief.

2. Denies knowledge or information sufficient to form a belief as to paragraphs "2", "3", "4", "5", "17", "18", "19" and "20".

3. Denies the allegations contained in paragraphs "6" and "7".

AS TO THE FIRST CAUSE OF ACTION

4. Denies knowledge or information sufficient to form a belief as to paragraphs "21", "22", "23", "24", "26", "31" and "32".

5. As to paragraph "25" of the complaint, admits the allegations contained in the first sentence and denies knowledge or information sufficient to form a belief as to the allegations in the second sentence.

6. As to paragraph "28" of the complaint, admits the allegations set forth therein, however, denies knowledge or information sufficient to form a belief, as to whether said activity took place on September 21, 1981.

7. As to paragraph "29" of the complaint, admits that the defendant Rose, assisted in preparing the warrant application, by providing information from a confidential informant, and denies knowledge or information sufficient to form a belief as to the balance of the allegations contained in said paragraph.

8. Denies the allegations contained in paragraphs "30", "34", "39", "40", "41", "42", "43", "44", "50" and "51".

9. As to paragraph "37" of the complaint, the defendant admits that he never spoke with the informant, however, he denies knowledge or information sufficient to form a belief as to the balance of said paragraph.

10. As to paragraph "46" of the complaint, the defendant admits that certain law enforcement officers possessed a warrant to search and in fact did search the plaintiff's apartment, and said defendant denies the balance of the allegations contained in said paragraph.

11. As to the allegations contained in paragraph "48", denies knowledge or information sufficient to form a belief as to the first sentence thereof and denies the allegations contained in the second sentence thereof.

AS TO THE SECOND CAUSE OF ACTION

12. Denies the allegations contained in paragraph "52", except as hereinbefore otherwise specifically pleaded.

13. Denies the allegations contained in paragraphs "55" and "59".

14. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "56", "57" and "58".

AS TO THE THIRD CAUSE OF ACTION

15. Denies the allegations contained in paragraph "60", except as hereinbefore otherwise specifically pleaded.

16. As to paragraph "61" of the plaintiffs' complaint, admits that the plaintiff was arrested and charged with violations of the Penal Law, and denies knowledge or information sufficient to form a belief as to the balance of said paragraph.

17. As to paragraph "62" of the complaint, admits that the plaintiff was removed from her apartment in handcuffs, was booked, photographed, fingerprinted and handcuffed to a desk, and denies the balance of the allegations contained in said paragraph.

18. As to paragraph "63" of the complaint, admits that the plaintiff was held in custody at the Albany City Police Division II Lock-Up and was arraigned by Judge Keegan, and denies the allegations contained in the balance of said paragraph.

19. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "64", "66", "67", "68" and "70".

20. As to paragraph "69" of the complaint, admits that the charges against plaintiff were dismissed, but denies knowledge or information sufficient to form a belief as to the balance of said paragraph;

21. Denies the allegations contained in paragraph "71".

AS TO THE FOURTH CAUSE OF ACTION

22. Denies the allegations contained in paragraph "72", except as hereinbefore otherwise specifically pleaded.

23. Denies the allegations contained in paragraphs "73", "75", "76" and "77".

24. Denies knowledge or information sufficient to form a belief as to paragraph "74".

AS TO THE FIFTH CAUSE OF ACTION

25. Denies the allegations contained in paragraph "78", except as hereinbefore otherwise specifically pleaded.

26. Denies the allegations contained in paragraphs "79", "80" and "81".

AS TO THE SIXTH CAUSE OF ACTION

27. Denies the allegations contained in paragraph "82", except as hereinbefore otherwise specifically pleaded.

28. Denies the allegations contained in paragraph "83".

AS TO THE SEVENTH CAUSE OF ACTION

29. Denies the allegations contained in paragraph "84", except as hereinbefore otherwise specifically pleaded.

30. As to paragraph "85" of the complaint, admits that the charges against the plaintiff were dismissed, and denies knowledge or information sufficient to form a belief as to the balance of said paragraph.

31. Denies the allegations contained in paragraphs "86" and "87".

AS TO THE EIGHTH CAUSE OF ACTION

32. Denies the allegations contained in paragraph "88", except as hereinbefore otherwise specifically pleaded.

33. Denies the allegations contained in paragraph "89".

AS TO THE NINTH CAUSE OF ACTION

34. Denies the allegations contained in paragraph "90", except as hereinbefore otherwise specifically pleaded.

35. Denies the allegations contained in paragraphs "91" and "92.

AS TO THE FIRST CAUSE OF ACTION
OF PLAINTIFF COALITION

36. Denies the allegations contained in paragraph "93", except as hereinbefore otherwise specifically pleaded.

37. Denies knowledge or information sufficient to form a belief as to paragraphs "94", "95", "96", "97", "98", "99", "100", "102", "103", "104", "105", "106" and "108".

38. Denies the allegations contained in paragraphs "101", "107", "109" and "110".

AS TO THE SECOND CAUSE OF ACTION
OF PLAINTIFF COALITION

39. Denies the allegations contained in paragraph "111", except as hereinbefore otherwise specifically pleaded.

40. Denies the allegations contained in paragraphs "112", "113", "114" and "115".

AS AND FOR A FIRST DEFENSE

41. The arrest, detention and prosecution of the plaintiff, Michelson, were effectuated, if they were effectuated at all, with good and legal justification, based upon reasonable and probable cause.

AS AND FOR A SECOND DEFENSE

42. That the arrest, detention and prosecution of the plaintiff, Michelson, were effectuated, if they were effectuated at all, in good faith, without malice and with good and legal justification, based on reasonable and probable cause.

AS AND FOR A THIRD DEFENSE

43. That upon information and belief, no item of injury or damage, which plaintiffs claim to have sustained,

was caused or in any way contributed to, by any culpable conduct on the part of the defendant, John Tanchak, but if any such injury or damage was sustained, it was caused solely by the culpable conduct of the plaintiffs and/or some third party over whom this defendant has no control.

AS AND FOR A FOURTH DEFENSE

44. That the cause of action enumerated as, SIXTH CAUSE OF ACTION OF THE PLAINTIFF MICHELSON, fails to state a claim upon which relief may be granted.

AS AND FOR A FIFTH DEFENSE

45. That the complaint of the plaintiff Michelson, with respect to the FIFTH and EIGHTH CAUSE OF ACTION, cannot be sustained, as said plaintiff has failed to comply with the requirements of Section 50-e of the General Municipal Law of the State of New York.

AS AND FOR A SIXTH DEFENSE

46. That inasmuch as the complaint of the plaintiffs', alleges that this defendant is being sued in his individual capacity, said complaint of the plaintiffs' fails to state a claim upon which relief may be granted, as there are no allegations contained in the complaint, that any act or ommission, was performed by said defendant in any capacity other than his official capacity.

AS AND FOR A SEVENTH DEFENSE

47. That upon information and belief, the plaintiff Coalition, lacks the requisite standing to bring this action, and thus those portions of the plaintiff's complaint, fails to state a claim upon which relief may be granted.

AS AND FOR AN EIGHTH DEFENSE

48. Inasmuch as the plaintiff, Michelson's complaint is directed towards the acts of this defendant in his individual capacity, the SIXTH, SEVENTH, EIGHTH and NINTH causes of action are barred by the applicable statute of limitations.

WHEREFORE, the defendant, John Tanchak, demands judgment dismissing the plaintiffs' complaint, together with the costs and disbursements of this action, reasonable attorneys fees, and such other and further relief as to this Court may seem just and proper.

DATED: January 21, 1983

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK CIVIL DIVISION

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

Plaintiffs,

-against-

PAUL DALY, AGENT IN CHARGE, FEDEPAL 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.

ANSWER

Civil File No. 82-CV-1413

Hon. Roger J. Miner

The defendant, William Murray, by his attorney, Vincent J. McArdle, Jr., Corporation Counsel for the City of Albany, as and for an answer to the plaintiffs' complaint, does hereby state and allege:

1. As to paragraph "1" of the complaint, admits that the plaintiff, Michelson and others, were arrested, that certain items of personal property were seized, and that charges against the plaintiff were subsequently dismissed. The defendant denies knowledge or information sufficient to

form a belief as to the balance of said paragraph.

2. As to paragraph "2" of the plaintiffs' complaint, the defendant denies knowledge or information sufficient to form a belief as to the first sentence of said paragraph, and denies the remaining allegations contained in said paragraph.

3. Denies knowledge or information sufficient to form a belief, as to the allegations contained in paragraphs "3", "4", "5", "17", "18", "19" and "20".

4. Denies the allegations contained in paragraphs "6" and "7".

AS TO THE FIRST CAUSE OF ACTION

5. Denies knowledge or information sufficient to form a belief as to paragraphs "21", "23", "32", "39", "42", and "43".

6. Denies the allegations contained in paragraphs "22", "30", "31", "34", "40", "41", "44", "50" and "51".

7. As to paragraph "24" of the complaint, the defendant admits that a discussion was had between certain named defendants, which included a discussion of information from an F.B.I. informant, some of which dealt with the plaintiff Michelson's apartment. Defendant denies the balance of the allegations of said paragraph.

8. As to paragraph "25" of the complaint, the defendant admits the first sentence of same and denies knowledge or information sufficient to form a belief as to the balance

of said paragraph.

9. As to paragraph "26" of the complaint, the defendant admits that it was agreed to obtain a search warrant for the plaintiff's apartment, but denies knowledge or information sufficient to form a belief as to the balance of the allegations of said paragraph.

10. As to paragraph "28" of the complaint, the defendant admits the allegations contained in the first sentence thereof and denies knowledge or information sufficient to form a belief as to the balance of said paragraph.

11. As to paragraph "29" of the complaint, the defendant admits that the defendant Rose assisted in preparing the warrant application by providing information from a confidential F.B.I. informant, and denies knowledge or information sufficient to form a belief as to the balance of the allegations contained in said paragraph.

12. As to paragraph "37" of the complaint, admits that this defendant did not speak with the informant, but denies knowledge or information sufficient to form a belief as to the balance of said paragraph.

13. As to paragraph "46" of the complaint, admits that certain law enforcement officers possessed a warrant to search the plaintiff's apartment and did in fact search said apartment, and denies knowledge or information sufficient to form a belief as to the balance of the allegations contained in said paragraph.

14. As to paragraph "48" of the complaint, denies knowledge or information sufficient to form a belief as to the first sentence thereof and denies the allegations set forth in the second sentence thereof.

15. As to paragraph "49" of the complaint, the defendant admits that the plaintiff was arrested and removed in handcuffs from the apartment, however said defendant denies knowledge or information sufficient to form a belief, as to the balance of the allegations contained in said paragraph.

AS TO THE SECOND CAUSE OF ACTION

16. Denies the allegations contained in paragraph "52" of the complaint, except as hereinbefore otherwise specifically pleaded.

17. Denies the allegations contained in paragraphs "55" and "59".

18. Denies knowledge or information sufficient to form a belief as to paragraphs "56", "57" and "58".

AS TO THE THIRD CAUSE OF ACTION

19. Denies the allegations contained in paragraph "60", except as hereinbefore otherwise specifically pleaded.

20. As to paragraph "61" of the plaintiffs' complaint, the defendant admits that the plaintiff was arrested, and denies knowledge or information sufficient to form a belief as to the balance of said paragraph.

21. As to paragraph "62" of the complaint, the defendant admits that the plaintiff was removed from her apartment in handcuffs, and denies knowledge or information sufficient to form a belief as to the balance of said paragraph.

22. Denies knowledge or information sufficient to form a belief as to paragraphs "63", "64", "65", "66", "67", "68" and "70".

23. As to paragraph "69" of the plaintiffs' complaint, admits that the charges were eventually dismissed, but denies knowledge or information sufficient to form a belief as to the balance of said paragraph.

24. Denies the allegations contained in paragraph "71".

AS TO THE FOURTH CAUSE OF ACTION

25. Denies the allegations contained in paragraph "72", except as hereinbefore otherwise specifically pleaded.

26. Denies the allegations contained in paragraph "73", "75", "76" and "77".

27. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "74".

AS TO THE FIFTH CAUSE OF ACTION

28. Denies the allegations contained in paragraph "78", except as hereinbefore otherwise specifically pleaded.

29. Denies the allegations contained in paragraphs "79", "80" and "81".

AS TO THE SIXTH CAUSE OF ACTION

30. Denies the allegations contained in paragraph "82", except as hereinbefore otherwise specifically pleaded.

31. Denies the allegations contained in paragraph "83".

AS TO THE SEVENTH CAUSE OF ACTION

32. Denies the allegations contained in paragraph "84", except as hereinbefore otherwise specifically pleaded.

33. As to paragraph "85" of the complaint, admits that the charges against the plaintiff were dismissed, but denies knowledge or information sufficient to form a belief as to the balance of said paragraph.

34. Denies the allegations contained in paragraphs "86" and "87".

AS TO THE EIGHTH CAUSE OF ACTION

35. Denies the allegations contained in paragraph "88", except as hereinbefore otherwise specifically pleaded.

36. Denies the allegations contained in paragraph "89".

AS TO THE NINTH CAUSE OF ACTION

37. Denies the allegations contained in paragraph "90", except as hereinbefore otherwise specifically pleaded.

38. Denies the allegations contained in paragraphs "91" and "92".

AS TO THE FIRST CAUSE OF ACTION
OF PLAINTIFF COALITION

39. Denies the allegations contained in paragraph "93", except as hereinbefore otherwise specifically pleaded.

40. Denies knowledge or information sufficient to form a belief as to paragraphs "94", "95", "96", "97", "99", "100", "103", "104" and "106".

41. Denies the allegations contained in paragraphs "101", "102", "105", "107", "108", "109" and "110.

AS TO THE SECOND CAUSE OF ACTION
OF PLAINTIFF COALITION

42. Denies the allegations contained in paragraph "111", except as hereinbefore otherwise specifically pleaded.

43. Denies the allegations contained in paragraphs "112", "113", "114" and "115".

AS AND FOR A FIRST DEFENSE

44. The arrest, detention and prosecution of the plaintiff, Michelson, were effectuated, if they were effectuated at all, with good and legal justification, based upon reasonable and probable cause.

AS AND FOR A SECOND DEFENSE

45. That the arrest, detention and prosecution of the plaintiff, Michelson, were effectuated, if they were effectuated at all, in good faith, without malice and with

good and legal justification, based on reasonable and probable cause.

AS AND FOR A THIRD DEFENSE

46. That upon information and belief, no item of injury or damage, which plaintiffs claim to have sustained, was caused or in any way contributed to, by any culpable conduct on the part of the defendant, William Murray, but if any such injury or damage was sustained, it was caused solely by the culpable conduct of the plaintiffs and/or some third party over whom this defendant has no control.

AS AND FOR A FOURTH DEFENSE

47. That the cause of action enumerated as, SIXTH CAUSE OF ACTION OF THE PLAINTIFF MICHELSON, fails to state a claim upon which relief may be granted.

AS AND FOR A FIFTH DEFENSE

48. That the complaint of the plaintiff Michelson, with respect to the FIFTH and EIGHTH CAUSE OF ACTION, cannot be sustained, as said plaintiff has failed to comply with the requirements of Section 50-e of the General Municipal Law of the State of New York.