

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

Dated: December 17, 1981

Lanny Earl Walter

Attorney(s) for Claimant(s)

Office and Post Office Address, Telephone Number

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

The name signed must be printed beneath

Vera Michelson

The name signed must be printed beneath

VERA MICHELSON

INDIVIDUAL VERIFICATION

State of New York, County of Albany ss.:

Vera Michelson

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

CORPORATE VERIFICATION

State of New York, County of ss.:

being duly sworn, deposes and says that deponent is the of

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

This verification is made by deponent because said claimant is a corporation, and deponent an officer thereof, to wit its The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this 17th day of December, 19 81

Lanny Earl Walter

LANNY EARL WALTER

Notary Public in the State of New York
Qualified in Albany County
Commission Expires March 30, 1983
Notary Reg. No. 4147319

Sworn to before me, this 19 day of

In the Matter of the Claim of

VERA MICHELSON

Notice of Claim Against the

COUNTY OF ALBANY

ANITA THAYER
LANNY EARL WALTER
WALTER & THAYER

Attorney(s) for Claimant(s)

Office and Post Office Address

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

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,

-against-

PAUL DALY, AGENT IN CHARGE,
FEDERAL BUREAU OF INVESTIGATION;
JOHN 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.

MOTION TO DISMISS

Civil Action No.
82-CV-1413

(Hon. Roger J. Miner)

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of
RANDALL J. EZICK, sworn to the 4th day of January, 1983, and all
the pleadings and proceedings heretofore had herein, a motion
will be made at a Special Term of this Court to be held in and
for the County of Albany at the U.S. Post Office and Court House
in the City of Albany, on the 21st day of January, 1983, at 9:30
o'clock in the forenoon of that day or as soon thereafter as

counsel can be heard for an Order pursuant to FRCP Rule 12 (b) dismissing the plaintiffs' complaint as against the moving defendants herein upon the ground said pleading fails to state a claim upon which relief can be granted and upon the further grounds that the plaintiff, Capital District Coalition Against Apartheid and Racism, lacks standing to prosecute such claim, together with such other and further relief as to the Court may seem just and proper.

DATED: January 4, 1983

Yours, etc.,

CARTER, CONBOY, BARDWELL,
CASE & BLACKMORE

By *s/ Randall J. Eyzik*

A Member of the Firm
Attorneys for 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, The County of Albany
Office & P. O. Address
74 Chapel Street
Albany, New York 12207

TO: WALTER & THAYER, ESQ.
Attorneys for Plaintiffs
69 Columbia Street
Albany, New York 12207

District Attorney John Dorfman and Unknown Other Albany County District Attorneys, and as such is fully familiar with all the facts, circumstances and proceedings heretofore had herein.

That your deponent makes this affidavit in support of a motion on behalf of the defendants, 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, for an Order pursuant to FRCP Rule 12 (b) dismissing the plaintiffs' complaint as against the moving defendants herein upon the ground said pleading fails to state a claim upon which relief can be granted and upon the further grounds that the plaintiff, Capital District Coalition Against Apartheid and Racism, lacks standing to prosecute such claim, together with such other and further relief as to the Court may seem just and proper.

That upon information and belief this action was commenced to recover money damages for injuries and losses allegedly sustained by the plaintiffs as a result of certain actions taken by the defendants in or about September of 1981 including the alleged false arrest and imprisonment of the plaintiff, Vera Michelson, in an effort to prevent the plaintiffs from peacefully protesting and demonstrating against apartheid in South Africa. A copy of the plaintiffs' complaint is annexed hereto and made a part hereof.

That the time for the moving defendants herein to answer, plead or otherwise appear with respect to the plaintiffs' complaint has not as yet expired.

That it is respectfully submitted that a review of the allegations set forth in the plaintiffs' complaint will establish that, as against the moving defendants herein, the plaintiffs' claims are based exclusively upon unlawful and unconstitutional acts of the Albany County District Attorney's Office in the investigation and prosecution of crime.

That the Court is respectfully referred to Schanbarger v. Kellogg, 35 AD 2d 902, mot. for lv. to ap. den., 36 NY 2d 485, cert. den. 405 US 919, wherein it was determined as a matter of substantive law of the State of New York that a District Attorney is a quasi-judicial officer and as such is immune from civil suit for official acts performed in the investigation and prosecution of crime even if it be assumed that such acts were malicious.

That based upon the foregoing it is respectfully submitted that the allegations set forth in the plaintiffs' complaint fail to state a claim as against the moving defendants herein and said complaint should in all respects be dismissed.

That in the alternative the Court will note that in addition to seeking compensatory damages the plaintiffs herein seek exemplary and punitive damages which it is respectfully submitted the Court of Appeals of the State of New York has held are not recoverable against a State or its political subdivisions. Sharapata v. Town of Islip, 56 NY 2d 332. Accordingly it is respectfully submitted that that portion of the plaintiffs' complaint seeking punitive damages should be dismissed in the event the Court does not dismiss the complaint in its entirety.

That finally the Court will note that the plaintiff, Capital District Coalition Against Apartheid and Racism, has alleged at paragraph "5" of the complaint to be an unincorporated association and it is submitted that absent a showing of discriminatory conduct adversely affecting associational ties of its members said unincorporated association may not maintain an action in its representative capacity. Citizens Council On Human Relations v. Buffalo Yacht Club, 438 F. Supp. 316. Accordingly it is requested that the action on behalf of said plaintiff be dismissed for lack of standing.

WHEREFORE, your deponent respectfully prays for an Order pursuant to FRCP Rule 12 (b) dismissing the plaintiffs' complaint as against the moving defendants herein upon the ground said pleading fails to state a claim upon which relief can be granted, and upon the further grounds that the plaintiff, Capital District Coalition Against Apartheid and Racism, lacks standing to prosecute such claim, together with such other and further relief as to the Court may seem just and proper.

s/

Randall J. Ezick

Sworn to before me this
4th day of January, 1983.

s/

LINDA A. ROBERTS
Notary Public, State of New York
Qualified in Albany County
Commission Expires March 30, 1983
4747072

tional rights as intrinsically valuable without requiring a showing of out-of-pocket damages. E.g., *Hughes v. Dyer*, 378 F. Supp. 1305 (W.D. Mo. 1974); *Bell v. Gayle*, 384 F. Supp. 1022 (N.D. Tex. 1974). As Judge Sanborn noted in *Venable*, discussing an award of damages for depriving the plaintiff of the right to vote:

"In the eyes of the law this right is so valuable that damages are presumed from the wrongful deprivation of it without evidence of actual loss of money, property or other valuable thing. . . ." *Id.* at 66.

In addition to the intrinsic value of the constitutional right involved, federal courts award damages for emotional and mental distress caused by a constitutional deprivation. E.g., *Donovan v. Reinbold*, 433 F.2d 738 (9th Cir. 1970) (en banc); *Hughes v. Dyer*, 378 F. Supp. 1305 (W.D. Mo. 1974). See generally Note, Measuring Damages for Violations of Individuals' Constitutional Rights, 8 *Valparaiso L. Rev.* 357 (1974).

Representative compensatory damage awards under §1983 are *Rhoads v. Horvat*, 270 F. Supp. 307 (D. Colo. 1967) (\$5,000 for unlawful arrest and 45-minute detention); *Gaston v. Gibson*, 328 F. Supp. 3 (E.D. Tenn. 1969) (\$10,000 for unlawful arrest, physical abuse, and detention for several hours); *Donovan v. Reinbold*, 433 F.2d 738 (9th Cir. 1970) (en banc) (\$5,000 for mental distress caused by First Amendment violation); *James v. Board of Education*, 385 F. Supp. 209 (W.D.N.Y. 1974) (\$21,000 for back pay). See also *Sexton v. Gibbs*, 327 F. Supp. 134 (N.D. Tex. 1970), aff'd, 446 F.2d 904 (5th Cir. 1971); *Wright v. McMann*, 460 F.2d 126 (2d Cir. 1972); *Jenkins v. Averett*, 424 F.2d 1228 (11th Cir. 1970); *Boscarino v. Nelson*, 377 F. Supp. 1308 (E.D. Wis. 1974) (\$1200 for false arrest); *Aldridge v. Mullins*, 377 F. Supp. 850 (M.D. Tenn. 1972), aff'd 474 F.2d 1189 (8th Cir. 1973) (\$10,000 for battery); *United States ex rel. Larkins v. Oswald*, 510 F.2d 583 (2d Cir. 1975) (twelve days in solitary for possession of protected literature — \$1000); *Williams v. New York*, 508 F.2d 356 (2d Cir. 1974) (\$10,000 for malicious prosecution resulting in substantial imprisonment — diversity case); *Davidson v. Dixon*, 386 F. Supp. 482 (D. Del. 1974) (\$1500 for beating; \$500 against superior who acquiesced). See also *Roberts v. Wilson*, 489 F.2d 1273 (D.C. Cir. 1974) (\$3000 each for unlawful arrest of demonstrators); *Tatum v. Morton*, 386 F. Supp. 1308 (D.D.C. 1974); *Dellums v. Powell*, Civ. Action No. 2271-71 (D.D.C. 1975) (\$7500 for First Amendment rights and \$2500 for false imprisonment for each of approximately 1200 demonstrators unlawfully arrested). In *Donaldson v. O'Connor*, 493 F.2d 507 (5th Cir. 1974), aff'd in part, remanded for finding on good faith defense, 95 S. Ct. 2486 (1975), a jury awarded \$38,000 to a plaintiff who had been unlawfully detained in a mental institution for many years.

9. It is now clear that a court may award punitive damages in an appropriate §1983 case. *Basista v. Weir*, 340 F.2d 74 (3d Cir. 1965). *McDaniel v. Carroll*, 457 F.2d 968 (6th Cir. 1972). In *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 232-233 (1970) (separate opinion), Justice Brennan enunciated the following standard for punitive damages in §1983 cases:

"To recover punitive damages, I believe a plaintiff must show more than a bare violation of §1983. On the other hand, he need not show that the defendant specifically intended to deprive him of a recognized federal right. . . . Nor need he show actual damages. . . . It is sufficient for the plaintiff to show either that the defendant acted . . . with actual knowledge that he was violating a right 'secured by the constitution and laws,' or that the defendant acted with reckless disregard of whether he was violating such a right." (Emphasis in original.)

Representative punitive awards in §1983 cases are *Rhoads v. Horvat*, 270 F. Supp. 307 (D. Colo. 1967) (\$2,500 for unlawful arrest and 45-minute detention

without "aggravating circumstances"); *Gaston v. Gibson*, 328 F. Supp. 3 (E.D. Tenn. 1969) (\$30,000 for false arrest, physical abuse, and unlawful detention of several hours); *Auerbach v. African American Teachers' Association*, 356 F. Supp. 1046 (E.D.N.Y. 1973) (\$3,500 for unlawful exclusion from single meeting); *Alldridge v. Mullins*, 474 F.2d 1189 (6th Cir. 1973) (\$3000 for battery); *Palmer v. Hall*, 380 F. Supp. 120 (N.D. Ga. 1974) (\$15,000 for shooting); *United States ex rel. Meyers v. Sielaff*, 381 F. Supp. 840 (M.D. Pa. 1974) (punitive damages authorized even in absence of compensatory award); *Campise v. Hamilton*, 382 F. Supp. 172 (S.D. Tex. 1974) (same); *Holodnak v. Avco Corp.*, 514 F.2d 285 (2d Cir. 1975) (narrow view of punitive damages against private parties acting under color of law); *Davis v. Schuchat*, 510 F.2d 731 (D.C. Cir. 1975) (primary purpose of punitive damages is deterrence); *Williams v. City of New York*, 508 F.2d 356 (2d Cir. 1974) (reversing grant of punitive damages where no need for deterrence); *Spence v. Stans*, 507 F.2d 554 (7th Cir. 1974) (punitive damages authorized even in absence of compensatory damages). In *La Reau v. Manson*, 383 F. Supp. 214 (D. Conn. 1974), a court declined to grant punitive damages for a violation of the Eighth Amendment on the ground that injunctive relief would be a more effective method of assuring compliance with constitutional norms of conduct.

10. Prior to *Alyeska Pipeline Service Co. v. Wilderness Society*, 95 S. Ct. 1612 (1975), courts routinely awarded attorneys' fees in §1983 cases to insure that future civil rights plaintiffs secured adequate counsel to vindicate their constitutional rights. E.g., *Stollberg v. Members of Board of Trustees*, 474 F.2d 485 (2d Cir. 1973). Pre-*Alyeska Pipeline* cases approving the award of attorneys' fees in §1983 actions are *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *Hall v. Cole*, 412 U.S. 1 (1973); *La Raza Unida v. Volpe*, 57 F.R.D. 94 (N.D. Cal. 1972), aff'd on other grounds, 488 F.2d 559 (9th Cir. 1973); *Lee v. Southern Home Sites*, 444 F.2d 143 (5th Cir. 1971); *Miller v. Amusement Enterprises*, 426 F.2d 534 (5th Cir. 1970); *Kirkland v. New York State Department of Correctional Services*, 374 F. Supp. 1361 (S.D.N.Y. 1974). Awards to pro bono counsel were approved in *Miller v. Amusement Enterprises*, 426 F.2d 534 (5th Cir. 1970); *Jordan v. Fusari*, 496 F.2d 646 (2d Cir. 1974); *Hoitt v. Vitek*, 495 F.2d 219 (1st Cir. 1974); and *Brandenburger v. Thompson*, 494 F.2d 885 (9th Cir. 1974) (approving award to ACLU volunteer counsel); *Class v. Norton*, 505 F.2d 123 (2d Cir. 1974) (reaffirming that Eleventh Amendment is not a bar). The applicability of the Eleventh Amendment to awards of attorneys' fees is discussed supra in Section C. At the current time, 28 U.S.C. §2412 is a bar to an award of attorneys' fees against the federal government. E.g., *Pyramid Lake Paiute Tribe of Indians v. Morton*, 499 F.2d 1095 (D.C. Cir. 1974). A sampling of the voluminous law review comment on the issue of attorneys' fees may be found at Comment, *Awards of Attorneys' Fees to Legal Aid Offices*, 87 Harv. L. Rev. 411 (1973); *McLaughlin, The Recovery of Attorneys' Fees: A New Method of Financial Legal Services*, 40 Fordham L. Rev. 761 (1972); Note, 41 U. Cin. L. Rev. 405 (1972); Note, 48 Colo L. Rev. 1222 (1973); *Nussbaum, Attorneys Fees in Public Interest Litigation*, 48 N.Y.U.L. Rev. 301 (1973).

Alyeska Pipeline, in rejecting the award of attorneys' fees to "private attorneys-general," presumably puts an end to such fees unless and until Congress authorizes them. Under *Alyeska Pipeline*, courts may award attorneys' fees in the absence of congressional authorization only (a) in common fund cases, e.g., *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); (b) as punishment for the wilful disobedience of a court order; and (c) when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

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LINK BRINK'S TERRORISTS TO BOMBINGS

By RICHARD JOHNSON
THE FBI believes the bombings that rocked Westchester and Nassau Thursday may be the work of the same terrorist groups responsible for the bloody Brink's heist.

The groups are linked to anti-South African activities through a violent demonstration at Kennedy Airport to protest the arrival in September 1981 of the South African Springboks rugby team.

The Joint FBI-New York Police Dept. Terrorist Task Force took over the investigation of the latest wave of terror bombings yesterday after a man telephoned the New York Times at 1:30 p.m.

FBI spokesman Joe Valiquette said the caller identified

Anti-apartheid protest at JFK called the clue

himself as a member of the United Freedom Fighters and claimed responsibility for the two bombs that damaged an IBM building and a South African Transport airline office.

"It's a new group to us," Valiquette said. "We don't know anything about it."

Both bomb targets were apparently chosen to protest the apartheid racial policies of the South African government. IBM does business with that nation.

Valiquette said the anti-ter-

rorist squad is investigating whether the blasts are the work of the same groups involved in the bungled \$1.6 Brink's armored car robbery.

"We are looking into every possibility, but one is whether there is a link between Thursday's bombings and the people charged in the Brink's case," Valiquette said.

Six members of the Weather Underground or the Black Liberation Army are accused of murdering two Rockland County policemen and a

Brink's guard in the Oct. 20, 1981, massacre.

Several other members of the terrorist groups have been jailed for contempt of court, including Eve Rosahn, whose Honda Civic was used as one of the getaway cars.

Miss Rosahn had been arrested earlier at a violent demonstration at Kennedy Airport when the South African Springboks arrived to play several U.S. rugby teams on a tour that was marked by militant protests.

Valiquette said another figure under indictment in the Brink's case, federal fugitive Susan Rosenberg, may have been at the same airport demonstration and has "expressed sympathy for anti-

Springbok groups."

Authorities were alerted 30 minutes in advance of Thursday's bombings and no one was injured.

The first occurred around 3:45 p.m. at the purchasing offices of the South African airline at 1975 Linden Blvd. in Elmont, L.I.

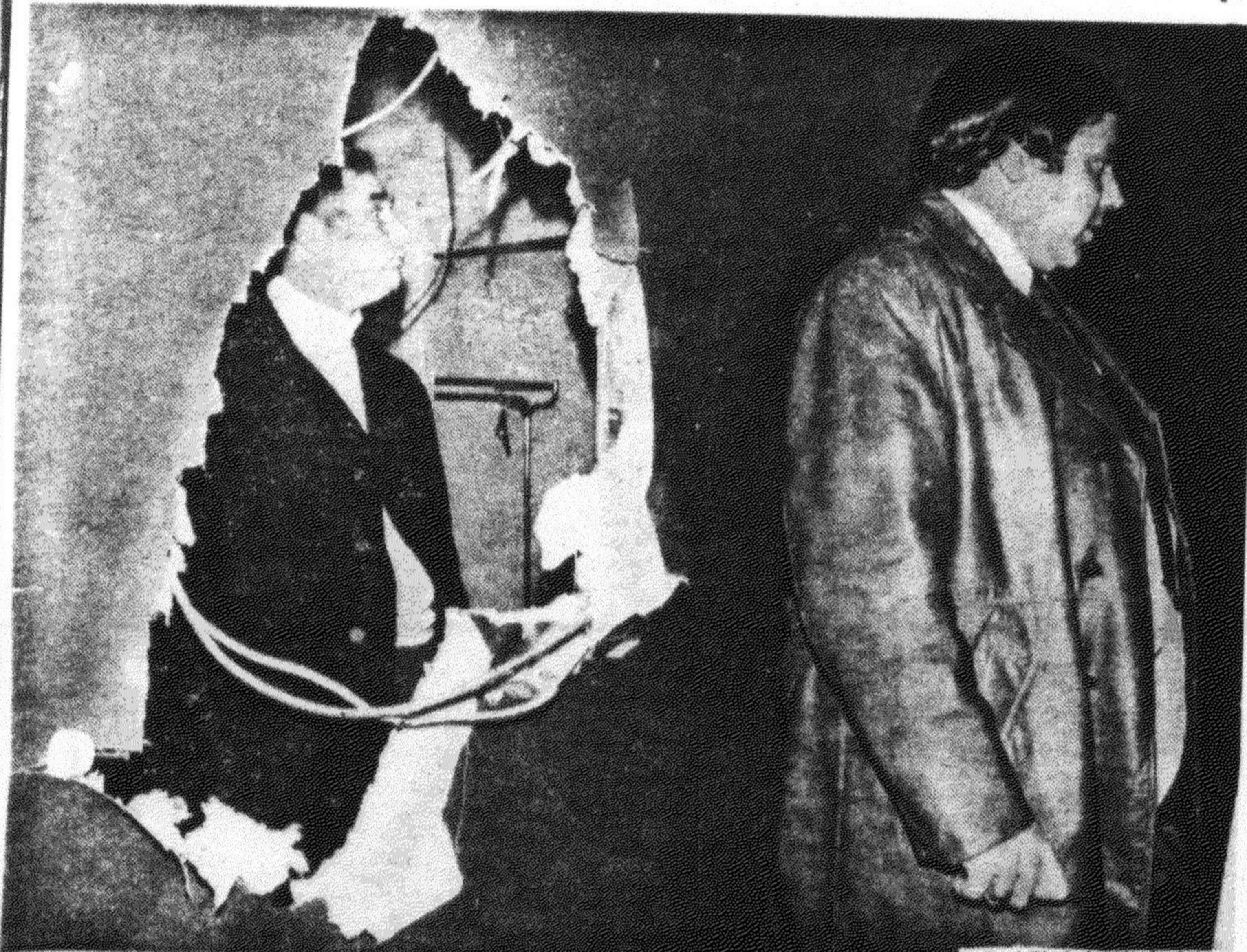
An anonymous caller phoned three times to warn occupants of the building to leave. About 100 people were evacuated.

Police located the bomb in an attache case and threw a metal blanket over it minutes before it exploded, blowing off doors, puncturing walls and ceilings and shattering windows.

The IBM explosion occurred at about 7:30 p.m., a half-hour after Westchester-Rockland Newspapers received a warning call.

Thirty people were evacuated before the bomb shattered 150 windows and blasted a three-foot crater.

The bombing unleashed a number of scares on Friday. Another IBM building in White Plains and Harrison HS were among the reported targets, but no



Bomb investigators examine gaping hole torn in the wall of a South African

Post Photo by Kevin Cohen